

INSTRUMENTS OF REPRESSION

A Regional Report on the Status of
Freedoms of Expression, Peaceful Assembly,
and Association in Asia



**A REPORT ON
REPRESSIVE LAWS
IN ASIA**

FORUM-ASIA

Instruments of Repression

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and Association in Asia

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PREFACE

This regional report provides review up to May 2018, of the state of rights-infringing legislation in 20 countries in South, East and Southeast Asia where, with the exception of China and Laos, FORUM-ASIA member organisations operate. The approach taken is thematic and comparative: the analysis is broken down broadly into Articles covering freedom of expression, assembly and association, each with sub-Articles pertaining to particular types of laws. The breakdown is broadly according to the nature of the law (national security laws or defamation laws, for example) but also takes into account how a law is used: many states use laws only tangentially related to the act in question to punish it. This is the case for many laws used to punish or inhibit freedom of assembly, for example, which in many states pertain to vandalism, destruction of property, causing a disturbance, or obstructing a police officer. Laws like these demonstrate a trend throughout the region in which the breadth and vagueness of laws, which empower the authorities to manipulate them freely and illegitimately, are central to the repression of rights. In cases such as these, the nature of the law itself - obstructing a police officer, for instance - is not in and of itself problematic; it is rather the breadth of the law, allowing it to be applied to peaceful protesters, that is the issue. Of course, this is a trend and not a rule: particularly in more repressive states, but also throughout the region, there are a plethora of laws that specifically criminalize peaceful and non-criminal behaviour. Criticism of Government, for example, is criminalized and subject to harsh penalties throughout much of the region. Both in the case of laws that are legitimate in nature but overly broad and those that are explicitly repressive, their interpretation by a politicised judiciary is another central and recurring issue, although it lies beyond the purview of this legislative study.

The broad picture that emerges from this regional study is one of shrinking civil society space as an

increasingly extensive web of legislation criminalizes dissent, but a number of sub-trends can also be drawn out. Several countries, such as Myanmar and Sri Lanka, despite newly elected self-styled liberal Governments, maintain repressive laws and continue to use them despite rhetoric to the contrary and lip service to human rights. Other countries, including many former British colonies, continue to openly and actively use archaic colonial-era laws to suppress civil society, while adding new laws tailored to better target activities of which their Governments disapprove. Falling in this category are Malaysia, the Maldives, Bangladesh, Pakistan, Singapore, and India. Other countries such as Cambodia rely more on a raft of recent repressive legislation passed at a rapid pace in the past few years. Countries such as China, Vietnam and Laos continue to maintain a totalitarian grip upon society and constantly tighten it through a complex web of legislation and regulations, making it possible to prosecute nearly any act, while Thailand is increasingly moving in this direction and appears set to join this group. Already its laws on assembly, defamation and sedition impose an explicit and complete repression of rights in the way that totalitarian states do, while its laws on cybercrime and the press are edging ever closer to this category. On the other side of the spectrum, countries with relatively less restrictive laws such as the Philippines are also rapidly sliding backwards on rights. Indonesia to some extent also falls in this category, with increasingly repressive laws being proposed on lesbian, gay, bisexual, trans, and/or intersex (LGBTI) rights and the increasing use of blasphemy laws. Other countries such as South Korea and Taiwan, while casting themselves as fully compliant with international human rights standards, in reality continue to restrict freedoms. For instance, freedom of assembly in both countries remains heavily restricted and subject to - often violent - state repression.

The analysis also shows how countries can have very inconsistent records on respect for rights. In the case of Indonesia, Myanmar, Sri Lanka, India, Pakistan or the Philippines, there are clear regional disparities: rights that are respected in the capitals may be extremely restricted in areas considered by the Government to be ‘conflict areas.’ Another distinction is in the laws themselves, with some rights being relatively well respected and others very restricted. For instance, many countries have laws that technically permit a relatively free press and generally respect -at least in law- the right to unionize, but have harsh national security and defamation legislation. For example, Sri Lanka has a fairly free press but also continues to detain innocent people under the draconian Prevention of Terrorism Act; Indonesia’s legislation broadly respects the right to unionize, but severely represses religious expression; and South Korea allows Non-governmental organisations (NGOs) to operate with relative freedom but restricts expression under

national security and cybercrime laws. The laws that are most consistently repressive across the region are defamation laws (19 of 20 countries have criminal defamation laws), laws criminalizing assembly (19), cybercrime and telecommunications laws (18), NGO laws (15), and sedition laws (14). Of these, several have experienced a significant surge in legislation in the last decade: anti-terrorism laws, cybercrime and telecommunications laws, NGO laws (particularly pertaining to funding and international contacts) and assembly laws have all been passed in numerous countries in the region in the recent past.

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John Samuel
Executive Director, FORUM-ASIA

BRIEFING PAPER ON THE TRENDS AND TRAJECTORY OF REPRESSIVE LAWS IN ASIA

Part 1. Regional Trends and Trajectory

The broad picture that emerges from this regional study is one of shrinking civil society space as an increasingly extensive web of legislation criminalizes dissent, but a number of sub-trends can also be drawn out.

- Several countries, such as Myanmar and Sri Lanka, despite newly elected self-styled liberal Governments, maintain repressive laws and continue to use them despite rhetoric to the contrary and lip service to human rights.
- Other countries, including many former British colonies, continue to openly and actively use archaic colonial-era laws to suppress civil society, while adding new laws tailored to better target activities of which their Governments disapprove. Falling in this category are Malaysia, the Maldives, Bangladesh, Pakistan, Singapore, and India.
- Other countries such as Cambodia rely more on a raft of recent repressive legislation passed at a rapid pace in the past few years.
- Countries such as China, Vietnam and Laos continue to maintain a totalitarian grip upon society and constantly tighten it through a complex web of legislation and regulations, making it possible to prosecute nearly any act.
- Thailand is increasingly moving to the totalitarian grip direction. Already its laws on assembly, defamation and sedition impose an explicit and complete repression of rights in the way that totalitarian states do, while its laws on cybercrime and the press are edging ever closer to this category.
- On the other side of the spectrum, countries with relatively less restrictive laws such as the Philippines are also rapidly sliding backwards on

rights. Indonesia to some extent also falls in this category, with increasingly repressive laws being proposed on lesbian, gay, bisexual, trans, and/or intersex (LGBTI) rights and the increasing use of blasphemy laws.

- Other countries such as South Korea and Taiwan, while casting themselves as fully compliant with international human rights standards, in reality continue to restrict freedoms. For instance, freedom of assembly in both countries remains heavily restricted and subject to -often violent- state repression.

The analysis also shows how countries can have very inconsistent records on respect for rights. In the case of Indonesia, Myanmar, Sri Lanka, India, Pakistan or the Philippines, there are clear regional disparities: rights that are respected in the capitals may be extremely restricted in areas considered by the Government to be ‘conflict areas.’ Another distinction is in the laws themselves, with some rights being relatively well respected and others very restricted. For instance, many countries have laws that technically permit a relatively free press and generally respect -at least in law- the right to unionize, but have harsh national security and defamation legislation. For example, Sri Lanka has a fairly free press but also continues to detain innocent people under the draconian Prevention of Terrorism Act; Indonesia’s legislation broadly respects the right to unionize, but severely represses religious expression; and South Korea allows Non-governmental organisations (NGOs) to operate with relative freedom but restricts expression under national security and cybercrime laws.

The laws that are most consistently repressive across the region are defamation laws (19 of 20 countries have criminal defamation laws), laws criminalizing assembly (19), cybercrime and telecommunications laws (18), NGO laws (15), and sedition laws (14). Of these, several have experienced a significant surge in legislation in the last decade: anti-terrorism laws, cybercrime and telecommunications laws,

NGO laws (particularly pertaining to funding and international contacts) and assembly laws have all been passed in numerous countries in the region in the recent past. Furthermore, the repressive laws further oppressed social movement and hence W/HRDs are at risks to be targeted by state and non-state actors to be harassed through judicial system in the country. Withal, it is evident that the repressive laws are also intended and utilizes to 'govern' online platform for expression, assembly and association. Furthermore, the recent cases that affecting W/HRD and or CSOs are utilizing ambiguous administrative laws that dictate the organization's registration, source of (funding) resources and taxation and hence further limits the freedom of assembly and association in national level.

Part 2. The Status and Findings in East Asia

Freedom of expression is heavily restricted in East Asia. Governments utilise a range of legal means to control and monitor information online and offline. In China, publication houses are required to have Government licenses. Unauthorised publishers, news agencies, and journalists face the risk of being closed down if found to be non-compliant to regulations. The State Public Officials Act in South Korea and the Social Order Maintenance Act in Taiwan both restrict individuals attempting to express opinions that may be detrimental to 'public order.'

Censorship and heavy restrictions have also encroached cyberspace. China's National Security Law contains broad provisions designed to control and manage online content. A 2016 CyberSecurity Law further strengthens existing censorship regulations and mandates Internet service providers to actively monitor customers' accounts. South Korea's Network Act and Mongolia's state-run Communications Regulatory Commission regulate online freedom of expression and empower government bodies to monitor and censor online content.

Furthermore, freedom of assembly is highly controlled in East and Central Asia. Under China's Assemblies, Processions, and Demonstrations Law, organisers are burdened with unreasonable obligations and liabilities, and are subjected to prosecution if the assembly does not follow guidelines

set in the application. In Mongolia, the Law on Demonstrations and Meetings is severely imposed on environmental and sustainable development demonstrations. Police officials in South Korea can cancel any event as they see fit through the Assembly and Public Demonstrations Act, usually citing concerns about 'traffic disruption' and 'public safety.' In Taiwan, the Social Order Maintenance Act is often misused to penalise individuals who 'harass' residents, or who are alleged to be interfering with Government duties.

Withal, freedom of association in China remains restrictive. NGOs are subjected to invasive monitoring and intimidation. The Foreign NGO Management Law acts a restriction mechanism for foreign NGOs by implementing a cumbersome and difficult registration process. There are fewer restrictions in South Korea and Taiwan, but the Civil Act and Civil Associations Act, respectively, grant both Governments to revoke an organisation's registration without much basis in law. Migrant workers in Mongolia are not allowed to form unions, as that extends only to citizens.

China employs its State machinery to restrict freedom of expression online. Human rights defenders face some of the harshest levels of repression, as the Government tries to maintain total control. As well as human rights defenders, journalists and lawyers have been victimised by the State's laws restricting freedom of expression. 2015 to 2016 saw the detention of hundreds of human rights defenders and lawyers, with some tortured and forced to make confessions. China's laws criminalise any form opposition to the ruling Communist Party, and have also been interpreted to mean restrictions on discussions on religious or ethnic minorities, further limiting the space for dialogue.

These laws have been used against government critics, and stifle dissenting views that relate to both the political and civic space. Human rights defenders face heavy punishments, including intimidation, harassment, and prosecution (see sample case). South Korea's Park Geun-Hye administration used the Network Act to prosecute critics. These included the sentencing of Park Sung-su for printing material critical of the Government, and the filing

of defamation cases against six journalists who had published a report on a leaked document. While the atmosphere for HRDs in Taiwan is relatively free, some activities have been charged under the Social Order Maintenance Act (SOMA) for attempting to bring attention to domestic issues. A lack of enabling laws for the protection of human rights defenders in China, Mongolia and South Korea have also limited recourses for HRDs in cases of harassment or repression.

Emblematic case in East Asia

China employs its State machinery to restrict freedom of expression online. Human rights defenders face some of the harshest levels of repression, as the Government tries to maintain total control. As well as human rights defenders, journalists and lawyers have been victimised by the State's laws restricting freedom of expression. 2015 to 2016 saw the detention of hundreds of human rights defenders and lawyers, with some tortured and forced to make confessions. China's laws criminalise any form of opposition to the ruling Communist Party, and have also been interpreted to mean restrictions on discussions on religious or ethnic minorities, further limiting the space for dialogue

Part 3. The Status and Findings in South East Asia

Restrictions on the practice of freedom of expression in South East Asia exist under the guise of preserving national interests, national security or protecting a country's morals or religious beliefs. These include Cambodia's Press Law, which prohibits the publication of information that may compromise national security, Indonesia's Broadcast Act which limits broadcast content, while Myanmar and Malaysia both have laws that limit the printing or publishing of information. In Laos, the Constitution bans information that can be seen as being against the country's interests. Vietnam's criminal code bans criticism of the government.

Timor Leste's Media Law restricts publications from releasing content that impinge on the right to honour

and reputation, while Singapore's Undesirable Publications Act can ban publications deemed 'obscene'. Blasphemy and defamation laws carry with them heavy punishments. In Indonesia and Thailand, individuals can be charged for insulting authorities, leaders, or heads of the States.

Restrictions on freedom of expression extend to cybercommunications and telecommunications. Cambodia allows government monitoring of private conversations through its Telecommunications Law. Myanmar's Telecommunications Law allows providers to monitor communication services. Thailand's Computer Crime Act criminalises a wide variety of broad acts associated with online content.

State ownership and restrictions on foreign media further discourage State accountability. In Malaysia, the Immigration Law bars foreign media from indirectly participating in 'affairs of the State'. The government inspects all programme content of foreign media in Vietnam, and foreign journalists can be refused access for reporting on politically sensitive issues.

The governments of Cambodia, Laos, Indonesia, Malaysia, Thailand, and Vietnam also restrict freedom of peaceful assembly by requiring individuals to either provide notice or seek permits prior to holding public protests. In Vietnam, participants in illegal gatherings can face up to seven years of imprisonment and up to fifteen years for the organiser. In the Philippines, the law authorises the use of force in dispersing protests, with a violent dispersal in 2016 leading to two deaths. Freedom of association is severely undermined by legislation imposed on the registration and operation of organisations in Cambodia, Laos, Indonesia, Malaysia, Myanmar, Singapore, and Vietnam. In Cambodia, the Law on Associations and Non-Governmental Organisations (LANGO) imposes burdensome registration requirements and has been used by authorities to threaten or close organisations. An emblematic case is the ban on the CSO coalition Situation Room for allegedly failing to maintain 'political neutrality'.

Repressive laws are used to target human rights defenders and political dissidents. They remain

subject to fabricated charges, State-sanctioned violence, imprisonment and extrajudicial killings. In Malaysia, the Sedition Act has been used to prosecute those who speak out against the government and its policies. Political upheavals may also be used to justify further use of these laws against human rights defenders (see sample case). In Cambodia, four human rights defenders were given a six month sentence under a law prohibiting 'insult and obstruction to a public official'. The Philippines President has threatened human rights defenders speaking against the campaign against illegal drugs. Such cases illustrate the use of repressive laws against dissent.

Emblematic Case in South East Asia

State leaders often utilise repressive laws to further gains and maintain political control. After the 2014 coup in Thailand, government criticism was explicitly banned. The Government also imposed the lese majeste law, Sedition, and political gathering ban to go after political dissidents, leading to significantly increased numbers of arrests.

Part 4. The Status and Findings in South Asia

In Bangladesh and India, freedom of expression, particularly of the press is limited by various government controlled means such as control of licensing, content restrictions, and censorship. The Bangladesh's broadcasting Act under National Broadcasting Policy 2014 significantly curtails critical speech under vaguely defined clauses like that ridicules national ideas, sparks unrest, hurts religious values, ridicules law enforcement agencies, runs counter to Government or public interest.

Free expression is also limited through the Broadcasting policy that obliges all broadcasters to air contents deemed of national importance. Likewise, Defamation is also illegitimately criminalized in Bangladesh that burdens the accused to prove such content was published for 'public good'. AKM Wahiduzzaman, a geography

professor was jailed for defamation for a Facebook comment referring Prime Sheikh Hasina as 'pseudo scholar'. Furthermore, in India the Government's wide powers over the press and publishing houses has led the State to widely limit free expression despite the laws provide government with somewhat less space to censor or ban free speech. Much of the limitations come from Article 95 of the Penal Code that has powered Government to seize and forfeit publication suspected to incite enmity between groups, and insult religion. As a consequence, a number of novelists and academics have seen their works banned in India for reasons ranging from unconventional interpretations of history to revelations about private business entities.

In 2013, Calcutta high Court ordered a stay on Sahara: the Untold Story, a book by Ramal Tamal Bandyopadhyaya for publishing details on a business conglomerate. In 2014, Penguin India was forced to pull its book on Hinduism written by an American academic. This legitimized harassment over free expression has led to rise in self-censorship. Similar is the case with the film industry in India where heavy censorship is imposed under vaguely interpreted contents as 'offensive'. Likewise, defamation is also an offense in India which has high benchmarks for the accused to prove one's innocence leading the law open to be abused by the Government, especially politicians to target its critics. From 2011 to 2016, Tamil Nadu Chief Minister Jayalaithaa filed nearly 200 defamation cases against journalists, media outlets and political rivals, a trend which has been practiced by many other politicians in India.

Free speech and expression is highly restrictive in Maldives, particularly of the press, in the current administration of Maldives despite the fact that free press is a constitutionally guaranteed right in Maldives. The Government has adopted various legislations to penalize protests and free expression critical to the government, impose strong pre-publication censorship and tighten rules on media contents. With the backing of such laws, government has launched a full-on assault on independent media outlets and journalists in recent years. In 2016, Channel news Maldives

was forcefully closed obliging the channel to express pro-government views only. Addu Live independent news website was blocked in the same year for revealing a government charity scandal. Likewise, staff of Haveeru media outlet are barred from working in any media-related field until February 2018. Defamation is also an offence in Maldives under The Protection of Reputation and Good Name and Freedom of Expression Act imposes severe restriction of Freedom of Expression and forces extreme self-censorship in order to avoid imprisonment and heavy fines up to US\$ 130,000. Media outlets like Dhi TV, Dhivehi Online, DhiFM, and Raajje TV were all shutdown temporarily or permanently citing immense pressure from the government.

Furthermore, the Government of Pakistan has severe restrictions and control over freedom of the press and media imposed through provisions of government formed entities like National Broadcasting Policy, Electronic Media Regulatory Authority, Electronic (Programs and Advertisement) Code of Conduct. These prevents anyone from airing or publishing contents that are deemed derogatory remarks on religious sects, promotes sectarianism, defamatory contents or contradicts Pakistan's ideology and religious values. The Government has been continuously placing ban on contents critical against the army, judiciary or law enforcement practices. Pakistan Broadcasting Corporation prohibits private radio stations from broadcasting news programs not created by the Corporation. In past several years, multiple television stations have been fined for broadcasting blasphemous contents. Books and magazines are similarly subjected to censorship, and material that is considered obscene is seized by the Government.

Lastly, since the election of President Sirisena in January 2015, the informal constraints on media and the application of repressive laws has been considerably eased, but the latter still remain, although they are not enforced in a repressive manner. The department of Parliamentary Reforms and Mass Media retains control over the registration and licensing of media outlets. Under the Powers and

Privileges Act 1953, the Government has the ability to prosecute anyone who publishes the proceedings of a parliamentary committee before they are presented to Parliament. In 2015, former President Mahinda Rajapaksa threatened to charge employees of the Colombo Telegraph under the Act after the newspaper published Articles of a parliamentary investigation into a government bond scam.

Part 5. Key Recommendations

1. IMMEDIATE STEPS MUST BE TAKEN TO IMPROVE THE ATMOSPHERE IN WHICH W/HRDS CARRY OUT THEIR WORK AND ENSURE THAT THEY MAY SAFELY DO SO. Harassment, intimidation and violence against W/HRDs must be brought to a halt by all means possible; including thoroughly investigating the crimes against them and prosecuting the perpetrators, as well as by reforming laws and institutions.
2. INSTITUTIONS CREATED TO PROTECT HUMAN RIGHTS MUST BE MADE MORE EFFECTIVE. The National Human Rights Commission must take a more active role in protecting w/HRDs, specifically by setting up an W/HRD focal person and an W/HRD protection desk that can receive complaints and take action quickly
3. IN ORDER FOR W/HRDS TO TRULY EXERCISE THEIR RIGHT TO FREEDOM OF EXPRESSION, A NUMBER OF PIECES OF LEGISLATION AND ARTICLES OF THE PENAL CODE MUST BE AMENDED OR REPEALED. The criminalization of defamation is in violation of international standards on free expression, which hold that defamation must be a private matter to be settled by civil suits. Civil defamation laws must be proportionate, have a reasonable severity threshold and avoid fines, with the exception of very serious cases. Therefore, defamation and blasphemy should not be a criminal offence; hence any mention of defamation and blasphemy within the Penal Code must be repealed in their entirety.

4. RESTRICTIONS ON THE ABILITY OF MEDIA WORKERS' AND PUBLISHERS' TO COVER ANY ISSUES IN THE MANNER OF THEIR CHOOSING MUST BE LIFTED. The Broadcast Act must be amended to ensure that limitations on foreign media are lifted, broadcasting licences are issued by an independent body, and Government censorship powers are scrapped.
5. THE LAW ON FREEDOM OF ASSEMBLY AND DEMONSTRATION MUST BE AMENDED TO REMOVE THE REQUIREMENT THAT PERSON SEEKING TO HOLD A PROTEST NOTIFY THE POLICE, as well as to retract the police's power to deny permission for peaceful protests to take place. Restrictions on location and time must also be removed.

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Freedom of the Press

Bangladesh

The Bangladeshi Government limits freedom of the press in a variety of ways that are common throughout the region, including control of licensing, content restrictions, and censorship. In addition to numerous legal barriers to free expression, the press also faces some of the worst extra-judicial threats in the region. In 2015 alone, a secular publisher and four secular bloggers were murdered, while several others were injured when attempts were made on their lives. A long list of others are on radical religious groups' 'hit lists.'

Under the Broadcasting Act 2003, all television and radio channels must have a broadcasting license to be able to transmit content, a rule that most legal systems in the region impose. Although the rules for obtaining the license are fairly straightforward, registration is not a matter of merely notifying Government, but of applying for approval, which automatically gives the Government power to withhold registration. Stations that air politically progressive messages have been routinely denied broadcasting licenses.

Even once registered, television and radio broadcasters are subject to strict regulation on content. The National Broadcasting Policy 2014 contains vague and overly broad clauses that significantly curtail critical speech. Under the policy, television and radio programs are prohibited from airing content that ridicules national ideas, harms the unity of the country, sparks unrest, hurts religious values, ridicules law enforcement agencies, runs counter to Government or public interest, tarnishes the reputation of a member of the judicial branch, or might cause communal discord. These content restrictions are similar to those of many other countries in the region such as Singapore, Malaysia, Laos, China, the Maldives, and Mongolia, some of which are stricter and some less severe, but all of which are broad and vague. The provisions on Government interests,

law enforcement agencies and the judiciary are particularly explicit in banning any criticism of Government. Furthermore, under the policy, all broadcasters are obliged to air content that the Government deems to be of 'national importance,' ensuring the partisanship of media content.

Relatedly, films in Bangladesh are subject to heavy censorship, comparable to Pakistan, India, Malaysia, China and Thailand. The Censorship of Films Act 1963 mandated the creation of the Government-controlled Bangladesh Film Censor Board, which has the power to review all films broadcast in Bangladesh and censor content that could potentially harm state security, public order, religious sentiment, or relations with foreign states, as well as content that is defamatory or plagiaristic. In recent years, the Board has censored content which criticized Government officials or was deemed obscene.

Recommendations

The Broadcasting Act must be amended to ensure that the Government may not arbitrarily, or for political reasons, deny broadcasting licences. The process must be simple, transparent, and accessible, and applicants must have recourse to appeal in an independent court if denied. The National Broadcasting Policy must be amended to exclude prohibitions on vaguely defined partisan concepts such as 'ridiculing national ideas' or 'running counter to Government interests:' there should be no limits at all in the Policy on the content that the media will be allowed to broadcast, particularly on the subject of Government organs, which should be subject to a high degree of scrutiny. Finally, the regressive and outdated Censorship of Films Act must be repealed in its entirety.

Cambodia

Cambodia has legislation that explicitly limits freedom of expression for the press. The Press Law 1995 places strict constraints on journalists' ability to criticize the Government and comment on sensitive issues. Press laws in and of themselves are not problematic: they may protect the freedom of the press by ensuring

that journalists' associations are independent, that their right to keep sources confidential is protected, and that they have the right to access Government information. And indeed, some provisions of the Law are commendable: Article 1 guarantees freedom of the press; Article 2 protects the right of journalists to access Government information; Article 3 forbids 'pre-publication censorship;' and Article 20 states that journalists cannot be held criminally responsible for expressing an opinion. However, the Law contradictorily outlines sweeping restrictions on content and on journalistic associations, with criminal consequences for violation. Article 12 forbids the publication of information that 'may affect national security and political stability.' The consequences for infractions are unstated criminal penalties, fines of up to 1,500,000 riel (US\$370), and suspension of the entire publication for 30 days. The provision is problematic because the phrase 'may affect' is extremely general and could apply to a very wide variety of information, and it empowers the Government to shut down entire publications, rather than merely ordering the retraction of a particular article. Article 13 bans the publication of information that 'humiliates or contempts [sic] national institutions,' effectively creating a severe restriction on the ability of publications to criticise the Government, however legitimately. Finally, Article 14 bans the publication of material that affects 'the good customs of society,' another overly broad provision that provides Government with ample opportunity to abuse it. The above restrictions resemble, to varying degrees, those found in numerous countries in the region such as Singapore, Malaysia, the Maldives, Mongolia, China, Laos and Vietnam.

Articles 6 and 7 of the Law, which concerns journalistic associations, seek to regulate them rather than to guarantee their freedom to govern themselves. A number of requirements are listed for the establishment and operation of these associations, including vague provisions on the need for a code of ethics. The provisions imply that these associations must be 'impartial,' which has a chilling effect on the media, who under international law are guaranteed the right to give voice to any political perspective they should desire to.

Recommendations

The Government of Cambodia must amend the Press Law to bring it in line with international

standards. Article 12 of the Law must be amended to use language that more specifically targets legitimate national security threats, rather than vague and very broad phrasing that could be used for political reasons. Article 13 must be repealed, as it is widely recognized that Governments do not have reputations under law and therefore may not be defamed. The Press Law must be explicit in allowing criticism of the Government. Article 14 must be repealed, or at the very least refined to target material that seeks to harm a particular group through its publication. Finally, Articles 6 and 7 must be repealed and replaced with a guarantee of the total independence of journalistic associations

China

The Government of China maintains direct control over all print, broadcast, and electronic media in the country through a number of strict legal controls, which form the most restrictive atmosphere in the region. The Regulation on the Administration of Publishing 2001 gives the Government direct control over the structure and distribution of all materials published in China. The regulations stipulate that anyone wishing to publish content of any kind must obtain an official Government license or permit. These regulations ensure that the vast majority of print media in China are affiliated with the Chinese Communist Party (CCP) or a Government agency. Those who publish works that are not authorized by Government authorities have been imprisoned or fined. Those wishing to publish news articles must obtain the permission of the Government's press and publication administration agency. Organisations that have not received permission to publish news articles are only allowed to promulgate news from Government sources. In addition, under the Notice Regarding Striking Hard Against Illegal Publishing Activities 1987, only publishing houses that are approved by the state may publish or distribute books, periodicals, or audio-visual materials.

Journalists in China face strict restrictions on their ability to objectively report on current affairs. As of December 2017, 52 journalists in China were imprisoned on charges related to their reporting, the highest number in the world. All news coverage is directly controlled by the Central Propaganda Department or its subsidiary propaganda bodies, which impose strict content control on a number of subjects: for instance, any criticism of the Party

or its members, or any reporting on struggles for autonomy in Tibet or Xinjiang is forbidden. Censorship directives on other topics are also routinely promulgated. Journalists must hold press cards issued by the Government, and reporting without one is a criminal offence. Press cards may be revoked or refused at the behest of Government, if, for instance, a journalist violates content restrictions. In July 2014, the State Administration of Press, Publication, Radio, Film, and Television announced that in order to obtain a press pass, all journalists in China must sign a non-disclosure agreement that prohibits them from releasing any information they have acquired without their employer's consent. In June 2014, the Administration published a directive that stated that Chinese journalists may not pass on information to any media outlet where they are not employed. In 2015, press cards were issued to online media workers for the first time, meaning that they could produce original content, rather than merely reposting print media's reports. However, only 500 press passes were distributed, and only to the most Government-friendly websites. Furthermore, in July 2016, the Cyberspace Administration of China (CAC), China's Internet regulator, ordered a wide-reaching ban on original news reporting of major Internet sites, further consolidating news sources and ensuring that censors are able to effectively control output. Foreign media face additional hurdles, as they may only attend official press briefings conducted by the Ministry of Foreign Affairs, or certain briefings around special events. Journalists from Hong Kong, Macau and Taiwan require prior Government permission to travel inside China and interview people, and all foreign journalists' access to Tibet and Xinjiang is restricted. These measures are reminiscent of Indonesia's treatment of foreign journalists attempting to access West Papua. Many prominent international news companies are blocked in China, and a directive issued in February 2016 requires that all foreign media publishing online in China must have prior Government approval and host all content on servers inside of China.

Article 225 of the Criminal Code, on illegal acts in business operation, is not related to the repression of press freedoms in the letter of the law, but the authorities have frequently used it to punish activists who release controversial or subversive works without an official publishing license. Under

the article, anyone who engages in illegal business activities faces up to five years of imprisonment and can be fined up to 500 per cent of the income he or she has received from the illegal business venture. In January 2015, 81-year-old Huang Zerong (aka Tie Liu) was sentenced to two and a half years in prison and fined 30,000 yuan (US\$4,700) under Article 225 for receiving money from people who had read a series of banned memoirs that he wrote about people persecuted by Mao Zedong. In December 2014, filmmaker Shen Yongping was sentenced to one year in prison for creating the now-banned documentary *100 Years of Constitutional Governance*, which discusses Constitutional history in China after the Qing Dynasty. Although Shen distributed the film for free, the Government prosecuted him based on the fact that he had solicited donations to help with the production of the film.

Recommendations

The Chinese State must bring an end to its strict censorship and control regime over the press and publishing houses. Regulations and legislation authorizing this State control must be repealed in their entirety, and journalists and publishers must be permitted to run whatever content they may choose to. Government licenses should not be required for publishers, media outlets, or journalists: there is no legitimate reason for requiring them apart from attempts to limit rights. To this end, new legislation must be enacted guaranteeing and protecting the freedom of the press, with penalties stipulated for infringement upon this right. Finally, State security forces and the judiciary must stop broadly interpreting articles of the Criminal Code, such as Article 225, in order to target Human Rights Defenders (HRDs) and dissidents.

India

India's laws provide the Government with somewhat less space to censor or ban publications or news media content than many other Governments in the region. But although there are no laws like China's or Myanmar's which specifically grant the Government wide powers over the press and publishing houses, the State has other methods at its disposal with which to limit free expression in this regard. Article 95 of the Penal Code gives state Governments the power to seize and forfeit books, newspapers and other publications suspected to contain content that is

unlawful according to Articles 153A, 153B (inciting enmity between groups) and 295A (insult to religion) of the Penal Code. Under Articles 501-503 of the Penal Code, printing, engraving or selling content knowing it to be defamatory is also a criminal offence. Although targeting publishers, and not media, this law is similar to Myanmar's News Media Law that bans the publication of defamatory material, as well as laws in Singapore, Malaysia, and the Maldives. As explained in the Articles below on defamation,

incitement and insult to religion, these laws are phrased in a very broad manner, meaning that these Penal Code Articles in fact grant the Government the ability to confiscate and censor a wide variety of material. Even if material is eventually found by the courts not to constitute defamation or an insult to religion, the content in question will nonetheless have been banned for the period of time during which the litigation took place.

Under these laws, a number of novelists and academics have seen their works banned in India for reasons ranging from unconventional interpretations of history to revelations about a private business entity. In February 2014, Penguin India was forced to pull its publication of a book on Hinduism written by an American academic as part of a settlement in an insult to religion case under Article 295A concerning the book. In December 2013, Calcutta High Court ordered a stay on Sahara: The Untold Story, a book by Tamal Bandyopadhyay that details the history of business conglomerate Sahara India Pariwar. In April 2014, the company reached an agreement with Bandyopadhyay that states that the book must carry a disclaimer acknowledging that it contains defamatory content. Publishers have also begun to self-censor: after a complaint about a book to the publisher Orient Blackswan by an influential radical Hindu self-appointed censor, the publisher not only revised the book itself, but also requested a number of other books, including one on sexual violence against Muslim women during religious rioting in the state of Gujarat to be modified.

In addition, the Government's Central Board of Film Certification can order directors and producers to remove anything offensive in films, including politically subversive subjects. This power is similar to that exercised by the Bangladeshi Government under its Censorship of Films Law and laws in other

countries such as Malaysia, Pakistan, Bangladesh, Indonesia and Thailand. All films must be reviewed by the Board before they are publicly screened. The Board sometimes denies permission for screening to films that discuss politically or historically sensitive topics. For example, in February 2013, the Board temporarily denied approval to the film Kangal Malsat for several reasons, including abusive language, gratuitous sexuality, and negative portrayals of Joseph Stalin.

Recommendations

Articles 95 and 501-503 of the Penal Code must be repealed because they constitute an unreasonable limitation on freedom of expression and carry disproportionate penalties. These laws provide the Government broad powers to censor content for political reasons. The laws under which Articles 95 and 501-503 allow Government to seize and forfeit documents are so broad as to allow Governments to use them as a tool to silence opposition. The Central Board of Film Certification must be reformed to remove the ability of Government to modify or censor films. While age restrictions are legitimate, censorship for political reasons is not in line with international standards.

Indonesia

The legal framework governing freedom of the press in Indonesia restricts the press somewhat less than in many other countries, but journalists also face informal repression. Media workers face intimidation and judicial harassment all over the country and local restrictions in areas where human rights abuses are rampant, such as West Papua and Aceh.

The environment for freedom of expression in Papua is heavily restricted, somewhat like that of Tibet, but to a lesser degree. It is extremely difficult for journalists from Papua to fully express their opinions in national media outlets without facing Government opposition, and strong controls remain over local media that prohibit them from publicizing information about contentious issues. There have been several recent cases of harsh terminations of public discussion, ending in arrests or abuse.

In May 2015, President Jokowi announced that previous restrictions on the foreign media's access to Papua were being lifted. Foreign media were

previously prohibited from entering the region, and as recently as 2014, foreign journalists have received prison sentences for visiting and reporting on issues in Papua. Although the environment for outside monitoring is opening up, the National Police still requires foreign journalists to apply for a travel permit to visit Papua, and the Ministry of Foreign Affairs still requires the journalists to submit itineraries and notification of activities; both of these actions have no basis in Indonesia's domestic law since the lifting of access conditions, but they are nonetheless enforced. The strategies now being used to keep foreign journalists out are visa denial and blacklisting. In January 2016, France 24 journalist Cyril Payen was denied a visa for a reporting trip to Papua on the basis of his previous reporting having been 'biased and unbalanced.' The Indonesian Government threatened to ban all France 24 journalists from the country. It is also common practice for the Government to detain people who speak to foreign journalists, when they are allowed in. In October 2015, a Papuan activist and his two friends were detained and interrogated for speaking with French journalist Marie Dhumieres.

Indonesia's Broadcast Act 2002 resembles similar acts in most countries in the region that impose strict restrictions on journalists and media companies. Foreign media may not establish themselves in Indonesia, and all stations must broadcast 60 per cent Indonesian content. Article 19 of the law empowers the Government -rather than an independent body- to issue broadcasting licences. Article 35 allows for the restriction of content on very vague grounds, including any material that does not promote morality, national endurance and unity. Article 46 stipulates that films may not be shown before they have been submitted for censorship based on the vague grounds of Article 35. Finally, Article 55 empowers the police to stop broadcasts when they see fit.

The Indonesian Film Censorship Board, like that of Malaysia, Bangladesh, China, India, and several others, has the power to censor all films being shown in the country, and frequently exercises this power to ban political content that the Government disapproves of. Any content criticising the 'supremacy of Government' or having any content depicting Marxism or socialism is banned. Censorship of anything related to the commemoration of the massacre of 1965-1966 is frequent. In 2015, for instance, the Ubud Writers and Readers Festival

was subject to heavy censorship. The Government forced the festival to remove three sessions on the massacre; had the festival organisers not complied, the Government would have cancelled it. This censorship of any Marxist or Socialist content also applies to books: the police, army, and vigilante groups seize and destroy anything that contains reference to these themes. In October 2015, police destroyed hundreds of copies of *Lentera* magazine in Java. The magazine had covered the 50th anniversary of the 1965-1966 massacre.

Recommendations

The Indonesian Government must undertake thorough reform of the police and security forces to ensure that the intimidation, harassment, and killings of media workers are adequately investigated and that perpetrators, including Government officials, are brought to justice. These reforms are most urgently needed in Papua, where journalists must be able to express themselves without fear of retribution. Regulations giving Government the power to censor media content in Papua must be repealed, as must any restriction on foreign journalists' access to the region. The Broadcast Act must be amended to ensure that the limitations imposed on foreign media are not onerous. Broadcasting licences should be issued by an independent body, and the Government should not have the power to censor content. The film censorship board must be abolished, and the Government should have no power to censor content. Finally, the censorship of any Marxist or Socialist content must be halted.

Laos

Government control of the media in Laos is extensive: the censorship regime in Laos is comparable to China's and Vietnam's. Many of the country's newspapers are state-owned and controlled by the Lao People's Revolutionary Party (LPRP). News media is used as a way to disseminate and elucidate Government policies. Journalists and civil society activists practice heavy self-censorship to avoid punishments meted out for speaking against the State and its policies.

Laos' media censorship is unusually explicit and is even laid out in Article 23 of the Constitution, which explicitly bars any media content or activity that is contrary to 'national interests' or 'traditional culture and dignity.'

The Media Law 2008 severely restricts journalists' ability to conduct objective reporting by codifying the Ministry of Information, Culture, and Tourism's ability to regulate and control media. The Law mandates that the ministry should conduct weekly meetings with media editors and give 'feedback' if the news may have negative impacts on the State and its policies. Journalists who write critically about Government issues have seen their works restricted and censored, and have faced penalties.

Under Decree No. 377 of 24 November 2015, all foreign news agencies wishing to establish a bureau must agree to submit all stories to the foreign ministry before their publication. Foreign reporters seeking to publish a story on Laos must apply to the Ministry of Foreign Affairs for permission a minimum of 15 days in advance.

The Publications Law 2009 requires publishers and their agents to obtain Government authorization to be able to publish content. The Law stipulates that all publications must be submitted to the Ministry before they are published to ensure their content does not denigrate Laos or state institutions. The Law also allows for the censorship of visual materials, including photographs.

Persons not adhering to the above rules are criminally penalized: Article 65 of the Penal Code on propaganda against the Lao People's Democratic Republic carries a penalty of up to five years' imprisonment and a fine of up to 10,000,000 kip (US\$1,200).

Recommendations

The Government of Laos must undertake a complete overhaul of its regulations and laws concerning the media. Article 23 of the Constitution must be removed and replaced with an absolute and unconditional guarantee of freedom of expression to the media. The Media Law must be repealed in its entirety to remove all regulations on the conduct of media workers and any censorship of their work. The 24 November 2015 decree on foreign news agencies must be repealed and the right of all media workers, including foreign ones, to pursue their work unencumbered by any Government interference must be restored. The Publications Law must be repealed and all forms of censorship removed. Finally, Article 65 of the Penal Code must be repealed and material critical of the Government's policies must be decriminalized.

Malaysia

Malaysia has very strict laws which allow it to exert control over published materials and ban certain types of content. As in many countries in the region, under the Printing Presses and Publications Act 1984 anyone wishing to create a publication must apply for a license with the Home Minister. This license can be revoked at any time. The Government may prohibit the printing, production, or publishing of any material that could prejudice public order or interest, harm morality or security, or alarm public opinion. While many states do have certain restrictions on publications, most do not have the breadth of these restrictions that are easily manipulated to silence critics. Printing or publishing prejudicial materials or false or malicious news carries a prison sentence of up to three years or a fine of up to 20,000 ringgit (US\$5,000), a provision comparable to those found in India and Myanmar. Taken as a whole, this act is most comparable to legislation in Singapore and Timor-Leste.

In October 2016, Maria Chin Abdullah, Chairperson of Bersih 2.0, was arbitrarily arrested under the Act for handing out Bersih 5.0 pamphlets. She was questioned and then released on bail. Several other activists were also threatened with arrest for the distribution of the leaflets. In August 2015, Bersih 4.0 t-shirts and publications were declared illegal under the Act, just two days before the mass rally calling for accountability in the 1Malaysia Development Berhad (1MDB) scandal. The grounds for the ban were that the shirts were 'likely to be prejudicial to public order.' In April 2015, Perempuan Nan Bercinta, a novel about the Prophet Muhammad's daughter, was banned for allegedly spreading Shi'a propaganda. In December 2013, weekly newsmagazine The Heat was suspended for one month under the Act for allegedly violating the terms of its publishing license. Many believe its suspension was due to a front-page article that detailed Prime Minister Najib Razak's lavish expenditures. In May 2013, the Government used the Law to seize the publications of various opposition political parties. Since 2002, Mini Dotcom, the parent company of online news portal Malaysiakini has been repeatedly rejected in its applications for a permit to publish a print publication. Despite the fact that the High Court has ruled that the Government's rejection of the permit is not valid, the latter has continued to deny the request.

Film and visual media is subject to regulation under the Film Censorship Act 2002, which stipulates that all films being screened in Malaysia must be certified by the Government-run Film Censorship Board. Any person found possessing a film that has not been screened by the Board can be imprisoned for up to three years or fined up to 30,000 ringgit (US\$7,500). The Film Censorship Board can cut out scenes or censor any movie it believes people in Malaysia should not be allowed to view, and has regularly censored films that contain certain political or religious overtones. This law is comparable to ones in Bangladesh, Pakistan, China and Thailand. In September 2013, Lena Hendry, a human rights activist, was charged under the Act for holding a screening of a documentary film about human rights violations in Sri Lanka without permission from the Film Censorship Board. In March 2016, the Kuala Lumpur Magistrate's Court acquitted her, but the Kuala Lumpur High Court overturned the acquittal in September 2016.

Recommendations

The Printing Presses and Publications Act must be repealed in its entirety. The requirement that publishers apply for registration with Government and the ability of the latter to revoke it at any time provides the Government with undue power to control publishers. The extremely broad restrictions on content, including on the grounds of 'morality,' public opinion, and 'truth' are egregiously out of line with international standards on freedom of expression.

The Film Censorship Act must be repealed and the Film Censorship Board abolished. While international standards allow for explicit content to be subject to some restrictions to protect children, there is no place for political censorship. Any censorship must be limited in nature, confined to limiting children's exposure to explicit material, and conducted by a totally independent agency.

Maldives

Despite the fact that Article 28 of the Constitution provides specifically for freedom of the press, stating that all persons have the ability to publish 'news, information, ideas, and views,' freedom of the press is extremely constrained under the current administration, which has passed several key pieces of legislation that restrict it severely.

With strong pre-publication censorship and tight rules on who can report on what, freedom of expression for publishers and the press in the Maldives is most comparable to highly restrictive contexts such as Thailand, Pakistan or Malaysia, but does not restrict freedoms to the extent that Vietnam, Laos and China do.

The Regulations on Approving Literature Published in the Maldives 2014 mandate that anyone wishing to make written materials or artwork publicly accessible, either online or offline, must first seek approval of the work from the National Bureau of Classification. Violators risk fines of up to 5,000 rufiyaa (US\$325). This heavy pre-publication censorship is an extreme limitation on freedom of expression that finds its equal only in similarly draconian restrictions in Vietnam, China and Laos.

The Public Service Media Act 2015 dissolved the Maldives Broadcasting Corporation and created a new State media company, the Public Service Media. Critics of the bill say that it is a way for the current administration to take control of public television in the Maldives and turn it into a mouthpiece for the ruling party.

The Freedom of Peaceful Assembly Act 2013 mandates that journalists reporting at peaceful assemblies must have official accreditation, limiting the ability to write objective accounts on demonstrations to those who have the ability to obtain such credentials, restricting the right to freedom of the press in the context of assemblies.

The Protection of Reputation and Good Name and Freedom of Expression Act 2016 specifically targets the media and is widely viewed as a direct attack on freedom of the press. The law prohibits, with very broad definitions, any statement that is defamatory, contradicts any tenet of Islam, threatens national security or contradicts general social norms. Punishments for the media organisation include: fines of 50,000-2,000,000 rufiyaa (US\$3,250-130,000) which if not paid results in jail time of three to six months; the suspension of its license; and the halting of its broadcasts. Punishments for individual journalists are a fine of 50,000-150,000 rufiyaa (US\$3,250-9,750), which if not paid results in jail time of three to six months. The law stipulates that journalists may only report on statements made 'at podiums, forums and meetings' if they have communicated their interpretation of statements to

the person who made them and received a response. Crucially, not being able to contact the person in question is not considered a defence, meaning that reporting on statements made by politicians is illegal until the politician in question authorizes reporting on it. Another extraordinary provision of the Act is that if someone believes they have been defamed, they may report it to the authorities, who then have the power to immediately stop the broadcast in question, regardless of the validity of the claim.

The Government has recently launched a full-on assault on independent media outlets. In June 2016, Channel News Maldives was forced to close. The website's editor stated that the closure was forced by the Government after it had failed in attempting to force the newspaper to express pro-Government views. In April 2016, the Addu Live independent news website was blocked after revealing that a charity founded by First Lady Fathimath Ibrahim had distributed packets of dates which had been received as a gift to the Government from Saudi Arabia. In August 2015, the High Court forced the ownership of the Haveeru newspaper to split, which led it to cease operations. In July 2016, the civil court barred former Haveeru staff from working in any media-related field until February 2018. Journalists believe that the ruling was meant to incapacitate the Mihaaru newspaper that was employing former Haveeru staff and was filling the gap left by the closures of so many independent news agencies.

Recommendations

Any censorship is an unacceptable restriction on freedom of expression, and pre-publication censorship is the most egregious form of it. The Regulations on Approving Literature Published in the Maldives must therefore be repealed in its entirety. The Public Service Media Act must also be repealed and replaced with legislation that establishes a truly independent state media service that may not be influenced by the political organs of Government. All restrictions on the ability of persons to report on particular subject areas must be lifted: journalists should not need accreditation. The Freedom of Peaceful Assembly Act must be amended to remove the provision mandating that only accredited journalists may report on public assemblies. The Protection of Reputation and Good Name and Freedom of Expression Act must be repealed because defamation and statements contrary to social norms or to tenets of Islam should not be

criminal offences, and the definition of national security, like those of defamation, social norms and tenets of Islam, is overly broad and subject to abuse. The law's requirement of permission before reporting on a statement is also an egregious violation of international norms.

Mongolia

As in most countries in the region, registration of media is mandatory and controlled by the Government in Mongolia. Under the General Law on the State Registration and the Law on Licensing for Business Activity, all media outlets in Mongolia must register with the Government within ten days of their establishment. They must receive permission from their local governor to have the ability to apply for said license; a dangerous requirement given that local Government collusion with environmentally damaging natural resource extraction operations is common. Applicants are also required to submit several documents in their registration application, including financial reports, programming structure, and information about the power and duties of the outlet's governing body.

Under the General Conditions and Requirements for Regulation of Television and Radio 2011, all broadcast media must respect the 'public interest,' similar, albeit less severe, to restrictions in the Maldives, Singapore, and Malaysia. The law also places explicit limits on information that can be publicly shared. The regulations also stipulate that at least 50 per cent of all programming on television and the radio must be either produced by Mongolians or in Mongolia, which resembles Indonesia's restrictions but is somewhat milder.

The Communications Regulatory Commission (CRC) oversees the media in Mongolia and places restrictions on freedom of expression. It has broad scope to place restrictions on 'inappropriate' content in both online and offline media. The Commission has blocked hundreds of websites that contain inappropriate content, including websites that expose official corruption. For example, in July 2014, the Commission blocked popular news website amjilt.com after it posted a story alleging that a resort owned by the Prime Minister was polluting a local river. The CRC is a politicised, Government-controlled institution: appointments to the CRC are conducted by a closed Government process.

Recommendations

The registration process for media organisations must be reformed so that no permission from any level of Government is needed. Giving Government organs the power to reject applications for a media organisation's registration is a dangerous limitation on freedom of expression that gives these organs the power to exert influence on news. Requirements to submit financial reports, programming structure and information on the outlet's governing body must also be abolished.

The General Conditions and Requirements for Regulation of Television and Radio must be significantly amended to remove restrictions on content. The stipulation that media must respect the 'public interest' is a particularly problematic and vague regulation that must be removed to guarantee freedom of expression. The CRC must be abolished and replaced with an arm's-length body that has limited power which does not include the ability to block websites unilaterally, and certainly not on political grounds.

Myanmar

Despite highly touted reforms, laws on press freedom in Myanmar remain as restrictive as those of many other countries in the region. The Printing and Publishing Enterprise Law 2014, which was welcomed because it replaced the draconian Printers and Publishers Registration Law 1962, nonetheless provides for a number of illegitimate restrictions of freedom of expression, like laws in Singapore, Timor-Leste and Malaysia. It allows the Government to withhold or revoke publishing licenses as it sees fit, because the registration process is not defined by the Law (Articles 4 to 7). Fines of up to 5,000,000 kyats (US\$3,800) can be imposed on those who commit an offence under the Law, such as not holding registration (Articles 15 and 16). The law sets out content restrictions for the media that bans reports and articles that could cause unrest, insult religion or violate the Constitution, with fines of up to 1,000,000 kyats (US\$770) for violations (Articles 8 and 25). In November 2015, six people employed at a printing house in Yangon that had published a calendar listing the Rohingya as a Burmese ethnic group were arrested and charged under Article 8 of the Law. They were fined 1,000,000 kyats (US\$770) each. Five of the men were re-arrested soon after

under Article 505(b) of the Penal Code (see 'Incitement', below).

The News Media Law 2014 adds further restrictions to an already constrained press. Chapter 4(9) sets out a code of conduct for all media workers which they are obligated to obey. The code includes the obligation to avoid writing news that affects the reputation of a person or organisation, despite the fact that Myanmar already has strict criminal defamation laws. The code also requires all media workers to obey any regulations published by the Media Council, although what these regulations may be is not specified. In July 2016, Kyaw Saw Win and Win Ko Ko Oo, two editors of the Myanmar Herald were convicted of defaming then-President Thein Sein and fined 1,000,000 kyats (US\$770) each under Article 9 of the News Media Law.

Two older pieces of legislation still restrict expression in the television and film industries. The Television and Video Law 1985 gives the Government-controlled Video Censor Board the power to ban and seize films or require them to be edited. To distribute or show a film, applying for a video censor certificate is necessary under Article 26. Article 32 lists penalties for failing to comply with the above, which may range up to three years in prison. The Motion Picture Law 1996 invests the Motion Picture Censor board with similar powers: it can ban, edit, destroy, or confiscate films under Article 12 of the Law. It also requires anyone showing a film publicly to obtain a certificate, thus giving Government full control over film content shown. The Law imposes fines and up to one year in prison for showing films publicly without a certificate (Article 33). In June 2016, the film censor board showed that the above restrictions on free expression remain in full effect when it banned *Twilight over Burma: My Life as a Shan Princess*, which was set to be screened on the opening night of the Human Dignity International Film Festival in Yangon later that week. The film, which is set in mid-20th century Myanmar and tells the story of an Austrian woman who marries a Shan prince, was banned because the Board found it to pose a threat to national unity.

Recommendations:

The Printing and Publishing Enterprise Law 2014, the News Media Law 2014, the Television and Video Law 1985 and the Motion Picture Law 1996 should all be repealed in their entirety, as none of them have any legitimate reason to exist beyond restricting

freedom of expression. Regarding the first, there is no need for the press to register with Government at all, and there certainly should not be a requirement for applications which can be denied at the whim of Government officials. The News Media Law's 'code of conduct' dictates invasive content restrictions that are illegitimate restrictions of free expression and must be abolished. The Television and Video Law and the Motion Picture Law are also illegitimate because they give the Ministry of Information the power to censor material without justification and for political reasons. Politically-driven Government censorship is unacceptable by international standards and must be halted in Myanmar if its Government wishes to cast itself as democratic.

Nepal

There is no legislation in Nepal that directly restricts freedom of the press, unlike in many surrounding countries. However, somewhat unusually, the Constitution of 2015 does place certain limits on this freedom. Article 19 guarantees that there will be no prior censorship and no closing or cancellation of registration of any media, but proceeds to list several exceptions which provide the Government with the power to restrict press freedoms. If content affects territorial integrity, harmonious relations between the Federal Units or incites acts of hatred or discrimination, then the guarantees of the article can be revoked. Article 19(2) allows the Government to create legislation to regulate media content in any form (radio, television, online). Articles 103 and 187 stipulate that the press must report on matters related to Parliament 'in good faith.' Finally, Article 273 allows the suspension of Article 19's guarantees of press freedom in the event of a state of emergency.

Recommendations

The Constitution must be amended to remove any restrictions on freedom of the press. Existing law is more than adequate for dealing with criminal acts that are committed by any person, including media workers. It is not only unnecessary but also illegitimately restrictive to place limits on press freedom by providing the Government with the power to control content.

Pakistan

Freedom of the Press is severely restricted in Pakistan. Although independent media can operate,

unlike in the most repressive contexts (China, Laos and Vietnam), the Government strictly controls broadcast content. The restrictions on broadcasters most closely resemble Bangladesh, with its National Broadcasting Policy, but also bear resemblance to numerous other countries in the region. Multiple state bodies impose content restrictions and other onerous regulations on the exercise of freedom of expression. The Pakistan Electronic Media Regulatory Authority (PEMRA), formed in 2002, is a Government body responsible for issuing content licenses to print and electronic media, regulating what content may be broadcast, and suspending licences. In August 2015, PEMRA issued the Electronic Media (Programs and Advertisements) Code of Conduct for broadcasters and cable operators, which prevents them from airing any program that contains derogatory remarks about any religious sect, uses visuals that promote sectarianism, contains defamatory statements, or contradicts the 'ideology of Pakistan' or Islamic cultural values. The Code also restricts reporting in areas where Military operations are ongoing. In November 2015, PEMRA banned any media coverage of militant organisations deemed illegal by the Government. In 2002, the Press Council issued an ordinance that stated that all media broadcasts must ensure that their programs do not encourage terrorism, discrimination, sectarianism, or obscenity. In May 2015, PEMRA placed a ban on any content 'against' the army, judiciary or law enforcement. Failure to comply with these regulations can result in fines of between US\$1,000-10,000 or in the suspension or cancellation of licences.

In the past several years, PEMRA has fined and suspended multiple television stations for broadcasting content that was supposedly blasphemous or that maligned state officials. PEMRA also has the ability to censor national and international journals and news sources. For example, the body has censored the international edition of the New York Times several times, most notably in March 2014 when it ran a front-page article about Pakistan's relations with al-Qaeda. Geo TV, the largest private broadcaster in Pakistan, has been involved in multiple cases regarding the content of its programming. In June 2014, PEMRA suspended the channel for 15 days, imposed a fine of 10,000,000 Pakistani rupees (US\$96,000), and revoked their membership in the national

broadcasting association after the channel aired a program that allegedly defamed the Pakistani army. In May 2014, the television channel aired a scene with actress Veena Malik and her husband that had Sufi devotional music playing in the background. A Muslim religious organisation launched a complaint against the television network, and in November 2014, the couple, along with media worker Mir Shakil ur-Rahman, were found guilty of committing blasphemy and were sentenced to 26 years each in prison under the Anti-Terrorism Act and Article 295 of the Penal Code.

The State-run Pakistan Broadcasting Corporation (PBC) is the country's public radio station. It retains an official monopoly on the broadcast of national and international news via radio, and prohibits private radio stations from broadcasting any news programs not created by the PBC. This blanket ban on Non-state-controlled news is comparable only to the most restrictive contexts in the region. All media in areas such as Azad Jammu and Kashmir, the Federally Administered Tribal Areas, or the Provincially Administered Tribal Areas require the local state authorities' permission to broadcast, and applications may be rejected without justification.

Films are strictly censored by the Central Board of Film Censors, which is directly controlled by the Ministry of Culture. Content that paints the Indian Military or Indian leaders in a positive light is removed. Books and magazines are similarly subject to censorship, and material that is considered obscene is seized by the Government. These restrictions are common in the region with countries such as Malaysia, China, Bangladesh, India, Indonesia and Thailand having laws that are similar to varying extents.

Recommendations

The extensive controls on the media in Pakistan must be lifted in their entirety. PEMRA must be disbanded and replaced with an autonomous and apolitical body independent of Government control. This body must issue licences without discrimination, including those based on political considerations. Neither this body nor any other organ of the Government should have the power to revoke or suspend licences, nor should they have the power to regulate media workers and media content through any code of conduct or list of regulations. Restrictions on content under international law are

confined to the protection of children from explicit content; political and religious restrictions such as the banning of content contrary to vague concepts such as the ideology of Pakistan or Islamic cultural values are illegitimate. The media should be free to cover any topic on any group and in any area they should choose to do so. Regulations preventing privately owned radio stations from broadcasting news not issued by PBC must also be lifted, as they constitute blatantly political restriction of free expression. Finally, the Central Board of Film Censors must be abolished, as censorship of content on any grounds other than filtering explicit content for underage audiences is illegitimate.

The Philippines

Relative to other countries in the region, freedom of the press in the Philippines is relatively well protected legally. However, the operating environment for reporting in the country remains extremely difficult due to the actions of Non-state actors. Since 1992, 77 journalists in the country have been murdered -a higher rate than any country in the world besides Iraq and Syria. Few legal regulations exist to protect journalists against violence, and those who assault and murder journalists and media workers often walk free.

Recommendations

The Government of the Philippines must strengthen its human rights infrastructure, including the courts and the Commission on Human Rights, to ensure that journalists have protection under the law and recourse when their rights are violated or they feel threatened by Non-state actors. New laws must be created to protect human rights defenders, including journalists. It must also redouble its efforts to target the local cronyism that shields those who attack journalists from prosecution. Those responsible for these attacks must be held to account through the courts. The Government must also continue to provide human rights education and training for Government officials, particularly law enforcement officials, to ensure that journalists do not face undue reprisals by State actors. It must also mainstream human rights in all its policies and programs.

Singapore

Singapore has extremely strict laws restricting freedom of the press and freedom of publication,

which are most comparable to Malaysia's laws. Under the Undesirable Publications Act 1967, most recently revised in 1998, any publication deemed 'objectionable,' 'obscene,' or 'injurious to the public good' can be banned. Publications can also be banned if they describe or depict matters of race and religion in a way that could cause enmity, hatred, ill will or hostility between different racial or religious groups. Any media deemed 'contrary to the national interest' can also be banned. These conditions match similar ones found in laws in Pakistan, Malaysia, Bangladesh, China, India and Indonesia. In addition, the Films Act 1981, like the legislation of many other countries across the region, mandates that all films publicly screened in the country must first be reviewed by the Government's Board of Film Censors, which can sanction the banning, seizure, and censoring of film and video based on its content.

The Newspaper and Printing Presses Act 1974 allows the Government to control the shareholder activities of any newspaper, which is a condition unique to Singapore. Under the Act, all newspapers in Singapore must register with the Government. Those found printing unregistered newspapers can be imprisoned for up to two years or fined up to SG\$50,000 (US\$35,100). The Act provides the Information, Communications and Arts Ministry the ability revoke or reject licenses for a number of reasons. Under amendments to the Act, the Government can limit the circulation of foreign publications that interfere with domestic politics. Such heavy penalties and broad grounds for rejection mirror laws in Timor-Leste, Malaysia and to some extent Myanmar.

The draconian Internal Security Act 1985 places further restrictions on expression in printed materials. Under the Act, the Government may restrict access to or prohibit the printing of publications that incite violence, have the potential to 'arouse tensions,' or threaten public order. The Government has previously used this law to ban works by Lenin and Mao, as well as other Communist publications. Those found to be possessing subversive publications can be imprisoned for up to five years. The Act also states that anyone who makes or publishes a statement that could create public alarm can face criminal penalties. The Act allows state security officers to enter private places of residence to search for said documents without a warrant. The strictness of this Act and the severity

of penalties under it bear resemblance to the laws of countries such as Lao, China and Malaysia.

The Infocommunications Media Development Authority (IMDA), established in 2016 with the merger of the Media Development Authority and the Infocommunications Development Authority, can censor potentially harmful speech or expression in broadcast media, the Internet, films, and music, and can sanction broadcasters for broadcasting inappropriate content. Online content providers are all automatically registered under the Authority and must adhere to a strict Internet Code of Conduct. The Authority constantly monitors broadcast, print, and online content, and can choose to remove or blacklist 'undesirable' content that undermines public security, racial or religious harmony, or public morals to uphold the 'delicate balance' of Singaporean society. In June 2016, the musical *Les Misérables* was forced by the IMDA to remove a same-sex kiss. In September 2014, the Authority banned the film *To Singapore, With Love*, on the grounds that it undermines national security. The film interviews nine political exiles who fled the country in the 1960s and 1970s for fear of being imprisoned under the Internal Security Act. In April 2008, MediaCorp was fined SG\$15,000 (US\$10,500) for airing a show featuring a gay couple and their adopted child, because it 'normalised and promoted a gay lifestyle.'

In August 2012, the Government established the Media Literacy Council (MLC), which advises the Government on policy responses to media, technology, and consumer participation. Since its enactment, the Council has provided policy suggestions that have constrained citizens' ability to speak out about sensitive topics. The Council places a strong emphasis on the promotion of 'appropriate social norms,' a vague clause which gives them leeway to decide on what is or is not an acceptable form of expression or opinion. The Council has been biased in its interpretation of what constitutes 'anti-social, offensive or irresponsible' expression: Calvin Cheng, one of the Council's members, has repeatedly used his position to make online threats and inflammatory remarks, but the MLC has been silent on the issue. In July 2016, he threatened to have a National University of Singapore (NUS) political science professor fired. He made similar threats in May 2015 against a playwright, again without consequences.

The National Library Board has the power to censor content and ban books available in public libraries. Although it has rarely used this power, in July 2014, the Board banned three children's books which had characters of alternative sexual orientations on the grounds that they did not promote family values. While two of the books were reintroduced to the adult Article of public libraries, one book, *Who's In My Family?*, was permanently banned.

Recommendations

The Undesirable Publications Act must be repealed in its entirety, as the censorship of expression on the basis of broad and arbitrary categories such as 'objectionable' is inconsistent with international standards. The Films Act must be repealed for similar reasons: political censorship is illegitimate.

The Newspaper and Printing Presses Act must be amended to revoke Government power to intervene in shareholder activities, shift registration governance to an arms-length, apolitical agency, abolish criminal penalties for lack of registration, and remove Government power to revoke or deny licences. The Internal Security Act must be amended to remove Articles permitting the censorship of printed material, outlawing certain types of statements and allowing security forces to search without a warrant under the Act.

The Infocommunications Media Development Authority must be stripped of any power to censor material except on narrow grounds related to sexually explicit content and minor audiences, as well as its ability to impose sanctions outside of those cases. Censorship of content deemed 'undesirable' must be halted. The Media Literacy Council must similarly be reformed by removing its power to review online interaction and censor or sanction it on the basis of broad grounds such as 'anti-social' or 'offensive.' The National Library Board's power to censor content and ban books must be eliminated. Content touching on same-sex relationships should not be treated as explicit material if similar material and should be subject to the same standards as heterosexual relationships. All of the above authorities should be arm's-length, apolitical bodies which work within narrow and well-defined ambits and do not target Government critics.

South Korea

There are few specific laws unduly restricting media freedoms in South Korea, although the media is targeted under defamation laws (see 'Defamation' Article below). However, in November 2015, the Newspaper Act was amended to make it impossible for companies with fewer than five employees to register, which would have forced an estimated one third of existing news agencies to close, including most citizen journalist ones. Not registering carried penalties of up to one year of imprisonment or fines of up to KRW20,000,000 (US\$17,500). The Constitutional Court ruled in October 2016 that this requirement infringed on the freedom of the press and thus was in violation of the constitution. The Government also has the power to censor some media content. The Ministry of Gender Equality and Family has the ability to censor or ban songs that contain offensive content. In the past five years, it has banned thousands of songs that contained allegedly 'hazardous' lyrics.

Recommendations

As noted in the Article on defamation below, public officials must stop using defamation laws to target the media. The amendment to the Newspaper Act effectively banning small news agencies must be repealed. Censorship powers currently held by the Ministry of Gender Equality must be more narrowly defined and transferred to an apolitical arm's-length body. The Government's power to censor content must be revoked.

Sri Lanka

Since the election of President Sirisena in January 2015, the informal constraints on media and the application of repressive laws has been considerably eased, but the latter still remain, although they are not enforced in a repressive manner. The Press Council Law 1973 establishes a Press Council that exerts regulatory control over the media and has judicial powers to investigate complaints and impose penalties. Up to two years' imprisonment can be handed down to anyone who discloses fiscal, Military, economic, or security information, cabinet decisions, or matters affecting national security. The Press Council had been dissolved in early 2015 after President Sirisena's election but in July 2015 he made the highly controversial decision to reactivate it, without consulting any stakeholders.

The department of Parliamentary Reforms and Mass Media retains control over the registration and licencing of media outlets. In October 2016, the Carlton Sports Network, a radio and television network with links to the family of former President Rajapaksa, had its broadcasting licence cancelled for allegedly failing to notify the Ministry of a change in address, despite the fact that the Ministry was aware of the company's new address, as it had been sending materials to it.

In a November 2016 Cabinet meeting, the Cabinet voted to begin the public consultation process on the establishment of a board to 'regulate the contents of news published in print media, broadcasting media (radio and television), and registered websites' in order to promote 'professionalism and ethics.' Although the proposed board is designed to be independent, any organisation regulating content in any way beyond the extremely limited ways allowed by international standards is illegitimate.

Under the Powers and Privileges Act 1953, the Government has the ability to prosecute anyone who publishes the proceedings of a parliamentary committee before they are presented to Parliament. In 2015, former President Mahinda Rajapaksa threatened to charge employees of the Colombo Telegraph under the Act after the newspaper published Articles of a parliamentary investigation into a bond scam linked to Central Bank Governor Arjuna Mahendran.

Recommendations

The Press Council Law should be abolished and the regulation of the media should be left to media professionals themselves. Political branches of Government should not have the power to impose penalties on media outlets: this should be within the purview of the courts. The registration of media outlets should be governed by an apolitical body outside the Government's control. The Cabinet should scrap the proposed media regulatory board, because regardless of the intent behind it, it opens the door to censorship of expression on political grounds. The Powers and Privileges Act must be amended to remove the provision allowing for prosecution of the proceedings of a parliamentary committee before they are presented to Parliament.

Taiwan

Relative to other countries in the region, Taiwan's laws impose few and mild restrictions upon the press. The Radio and Television Act 1993 regulates the country's radio and television industries. The Act mandates that all stations wishing to broadcast content must register with the Government and provide the authorities with a lengthy dossier of information about the company and its ownership. The Law also stipulates that all television stations must ensure that the majority of their programming falls under the categories of news, education, and public service, and that all programming not classified as a news broadcast is subject to screening and regulation. The Act additionally stipulates that all entertainment programming should promote Chinese culture, ethics, science, democracy, and education. Previous to January 2016 amendments to the law, the contents of radio and television programs could not be detrimental to the national interest or ethnic dignity, contravene anti-communist policies, impair physical or mental health, disrupt public order, affect social customs, or spread rumours or false information that could mislead the public. If a television program was found to contain erroneous information or fell under one of the above categories, the station would have been liable to criminal charges. In July 2015, three journalists were arrested for allegedly trespassing on Ministry of Education grounds when they were covering a student protest against changes to textbooks. The journalists denied having trespassed and were released the next day without being charged; the Ministry of Education dropped its complaints in August 2015.

Recommendations

The Radio and Television Act must be amended to facilitate the registration process in order to allow small companies with scarce resources to broadcast without difficulty, and to avoid being overly intrusive. Broad and ill-defined restrictions on entertainment programming dictating that content must not negatively affect the national interest or ethnic dignity, disrupt social order, affect social customs or spread false information, and must be anti-communist and promote of Chinese culture and ethics, must be removed.

Thailand

Since the 2014 coup, strict censorship of content on political grounds and harsh punishments for non-compliance have been in place. The strictness of Thailand's laws on press freedom is surpassed only by those of China, Vietnam and Laos, with which the current structure holds many similarities. The annulment of the Constitution of 2007 and its replacement by an interim constitution that provided the military-led National Council for Peace and Order (NCPO) government with sweeping powers meant that most protection of freedom of expression was eliminated. Although the most severe limitations on press freedom originate in laws on defamation, *lèse-majesté*, or computer crimes (all covered below) rather than laws directly targeting the press, there are a number of these laws in place.

In June 2014, the NCPO announced that all branches of media would have their content monitored by relevant Government departments. Under the new regulations, the National Broadcasting and Telecommunications Commission (NBTC) is responsible for monitoring broadcast media, the Special Branch Police monitors print media, the Ministry of Information and Communications Technology monitors online media, and the Ministry of Foreign Affairs monitors foreign media. All forms of media are closely monitored for breach of legal statutes enacted under NCPO orders, which criminalize a very wide variety of acts. NCPO announcement No.97/2014 (amended by Order 103/2014) criminalizes information including false statements on the monarchy, information affecting national security (which includes defamation), criticism of the NCPO, confidential Government information, and information that could lead to social divisions, incitement against the NCPO and any information that could lead to panic among the public. Such explicit banning of criticism is similar to China, Vietnam and Laos' laws. Order 14/2557 bars journalists from conducting interviews with any Government officials or academics who are not holding official positions.

Television and radio stations are subject to strict content conditions under NCPO Orders 23/2014, 27/2014 and 79/2014. Registration is tightly controlled and can be denied, suspended or revoked on extremely broad and political grounds, a system similar to many other countries, stricter

than Malaysia but somewhat less strict than China. Under NCPO Chief Order 41/2016, the NBTC can shut down any media outlet without any oversight, accountability or liability. Numerous television and radio stations have been suspended or shut down and hundreds of websites are blocked by the NBTC at the orders of the NCPO. In April 2015, opposition-aligned TV 24 and Peace TV were shut down by the NBTC for having allegedly criticized Military authorities, thereby ostensibly threatening national security. Peace TV was again shut down for 30 days in July and August 2016 in the run-up to the referendum on the draft constitution for having been critical of the draft.

Pre-existing legislation restricting media freedom also remains in force. Under the Emergency Decree 2005, the Government can prohibit the publication and distribution of any information that could create public panic, and censor any news considered a threat to national security. Under the Film and Video Censors Board Act 2008, like in many other countries such as Bangladesh, Pakistan, Malaysia, and China, all theatre owners and broadcasters in Thailand must submit films that they plan to show, rent, or distribute to the Film and Video Classification Committee for review, which can choose to ban movies for several different reasons, such as insulting or defamatory depictions of the monarchy or Buddha, and content depicting sexual promiscuity. Movie owners and broadcasters frequently self-censor before submitting to streamline the classification process.

Recommendations

All monitoring and censorship of media must be brought to a halt immediately, and the Government's powers to do so must be revoked. NCPO Orders No.97/2014, 103/2014, and 14/2557 must be repealed, and the Emergency Decree and Film and Video Censors Board Act should be amended to this end. Media should be free to broadcast or publish content subject to no restrictions except narrow ones provided for under international law, such as the filtering of explicit content in children's programs. Censoring content on political grounds is a grave and egregious violation of international standards on freedom of expression. Any censorship or classification of content should be carried out by an independent authority free from any political interference.

Registration must be governed by an apolitical body with only extremely limited and well-defined power to reject or revoke registration in the most extreme cases. To this end, NCPO Chief Order 41/2014 must be repealed. The body should be entirely independent of Government influence and its decisions subject to appeal in an independent and impartial court of law.

Timor-Leste

The Media Law 2014 introduces limitations on press freedom. The law restricts publications from publishing content that impinges on the right to honour, good name, reputation, privacy, presumption of innocence, and State secrecy. It also creates a new licensing system under a Press Council which is empowered to grant, suspend, or revoke journalists' registration. All journalists must be accredited, and accreditation requires education and six to 18 months of internship experience, which effectively disqualifies independent journalists with no education from working. This regulation most resembles Singapore's Newspaper and Printing Presses Act, but also bears some resemblance to legislation in Malaysia and Myanmar. Article 20 spells out duties and rules that journalists must observe and imposes fines of up to US\$1,500 (mean annual income is US\$4,500) for breaking them. Required duties include protecting the honour of dignity of citizens, 'promoting the national culture,' promoting 'public interest,' and promoting the creation of 'enlightened public opinion.' These resemble similar broad restrictions placed on journalists in many countries across the region, for instance in neighbouring Singapore and Malaysia.

Foreign journalists' rights to freedom of expression are constrained by the Immigration Law 2003, which bars them from even indirectly participating in 'affairs of the State,' or from participating in 'agencies that monitor paid activities.' These broad restrictions could easily be applied to journalists criticising Government or monitoring elections or other events. Foreigners are also barred from committing acts 'against national security, public order, or good morals,' being 'a threat to the interests and dignity' of the country and its citizens, or interfering in the 'exercise of the right of political participation reserved for citizens.' Foreign journalists criticising persons holding power could be conceived of as being a threat to their dignity, while those exposing corruption or malfeasance could be seen as

disrupting public order. Indonesia and China also have foreigner-specific legislation and practices, but they do not closely resemble those of Timor-Leste and are more strictly enforced.

Recommendations

The Media Law must be repealed to remove Government control on who may work as a journalist and on the content that journalists may produce. The Press Council should be abolished, as should requirements that journalists register. Limits on content on the basis of vague and undefined notions such as 'promoting the national culture' or other grounds must be abolished. The Immigration Law must be amended to remove broadly worded bans on activities which are not criminal by international standards.

Vietnam

Freedom of the press is extremely limited in Vietnam. Private ownership and operation of media outlets is prohibited. Publications are regularly censored, and independent writers, dissidents, and activists who question the legitimacy of the Government and its policies are suppressed, detained, harassed, and imprisoned. Those who oppose the Communist Party and its policies are particularly at risk of being prosecuted. Websites discussing critical issues are routinely blocked and shut down. Since 2010, the number of political prisoners in the country has steadily increased. As of December 2017, 19 journalists were imprisoned on charges due to their reporting, which constitutes the fifth-highest number in the world. All of the cases involve online journalists imprisoned on anti-State charges.

The Law on Media 1989 (amended 2016) places the content of all publications and television networks under Government supervision, and limits speech about the Government to 'constructive' opinions on the Communist Party's policies and the laws of the State. While many countries in the region impose some content restrictions, those in Vietnam are extremely strict, similar to China and Laos. State secrets, information affecting national security, 'false information' about Vietnam, descriptions of 'obscene' acts and information violating Vietnam's 'traditional values' cannot be reported on. Journalists must hand over the identity of their sources if the Government asks them to, and they can be sent to prison for not complying. If their reporting causes harm to any

person or group, the journalist is required to pay damages to them, even if what they reported was true. Under the amended law, publications in Vietnam are no longer subject to pre-publication censorship, but post-publication censorship remains heavy and the state uses licensing and editorial controls to hold publications accountable.

Media Decree 2/2011 stipulates fines of up to 40,000,000 dong (US\$1,900) for journalists and media sources that fail to provide 'honest' news in accordance with the country's interests. The Decree also allows the Government to charge journalists for content infringement, or for failing to publish their sources of information. The Decree on Cultural and Information Activities 2006 states that publications that spread 'harmful' information or exhibit 'reactionary ideology' or fail to give adequate coverage to the achievements of the Government can be fined and their authors imprisoned. Under Decree 51/2002, media workers are not allowed to publish content that undermines state unity or describes 'obscene or repugnant actions,' photographs without clear captions that might slander the person being photographed, information that could negatively impact private life, or information about 'bad habits' or 'superstition.'

Foreign journalists and broadcasters are specifically targeted by laws in Vietnam, as they are in China and Laos. Foreign broadcasts are permitted in Vietnam, but are required to run on a 30-minute delay so that the Government can inspect their program content. Decision 20, which went into effect in May 2013, requires foreign broadcasters to obtain licenses from the Ministry of Information and Communications,

and to have a Government-approved agency translate its programs into Vietnamese. Foreign journalists are required to notify the Government when traveling to outside of Hanoi. Many have been threatened with visa cancellation for reporting on sensitive political topics. Foreign publishers must apply for an annual license, which can also be revoked for publishing information on sensitive political topics.

Recommendations

Private ownership of media outlets must be permitted, and the State-owned media must be dissociated from the political influence of Government. The Law on Media must be amended again, to remove restrictions on content, which are in violation of Vietnam's Constitution as well as its international commitments. Clauses forcing journalists to hand over sources and to pay damages to parties for reporting information must be eliminated. All forms of censorship must be abolished. The Decree on Cultural and Information Activities and Decree 51/2002 must also be abolished because they place illegitimate restrictions on content. The Media Decree 2/2011 must be abolished, as it places overly broad restrictions upon journalists' behaviour, which should be regulated by journalists' associations, not by the Government.

Foreign journalists should not be subject to any restrictions on content or movement, just as local journalists should not be. The censorship of foreign broadcasts should be halted and foreign journalists, broadcasters and publishers should not be required to obtain a permit or notify the Government of their movements.

Defamation

Bangladesh

As in nearly all countries in the region, defamation is illegitimately criminalized in Bangladesh under Articles 499 through 502 of the Penal Code. Under those provisions, anyone who makes any written or spoken statement with the intent to harm the reputation of another, or knowing that by saying it, their reputation will be harmed can be imprisoned for up to two years and can be fined. As with many other countries, a problem with these provisions is that the truth is not considered an adequate defence. In order for a true statement not to be considered defamation, it must be proven by the accused that it was demonstrably made for the 'public good,' which reverses the burden of proof. However, unlike some other countries, the Bangladeshi Penal Code does lay out a number of positive exceptions to the definition of defamation, such as comment on public servants' professional conduct, on public questions, or on the proceedings of a court. In November 2013, AKM Wahiduzzaman, a geography professor, was jailed under Articles 500 and 506 of the Penal Code for posting a comment on Facebook where he referred to Prime Minister Sheikh Hasina as a 'pseudo scholar.'

In addition, under Article 504, anyone who insults another with the aim of inciting him or her to commit an offence can be imprisoned for up to two years and/or be fined.

Recommendations

Articles 499 to 502 and 504 should be struck from the Penal Code because criminalizing insults and defamation is not consistent with international law. Any civil law replacing these provisions must explicitly enshrine the truth as an absolute defence, and ensure that the burden of proof is upon the accuser, not upon the defendant. The courts must also stop abetting judicial harassment of Government opponents by accepting cases where there is no evidence that defamation occurred.

CAMBODIA

In February 2018, Cambodia's National Assembly passed an amendment to the Criminal Code

introducing a *lèse-majesté* offense, similar to that of Thailand. The amended Article 437 states that the punishment for 'insulting the King' range from 2,000,000-10,000,000 riels (US\$500-2,500) in fines and from one to five years imprisonment, and for legal entities the fines range from 10,000,000-50,000,000 riels (US\$2,500-12,500) and the possibility of dissolution. This is a worrying development, significantly raising the penalties for criminal defamation in Cambodia. Indications are that this new *lèse-majesté* law will be used for political purposes: the first individual charged under the amended Article 437 was for online speech related to the banning of Cambodia's main opposition party.

Defamation was already a criminal offense under Article 305 of the Criminal Code, punishable with a fine of up to 10,000,000 riels (US\$2,500). While criminalizing defamation is in contravention of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the law in Cambodia is not as harsh as that of most other countries in the region, where infractions are punished by prison sentences. This was also the case in Cambodia until 2006, when Prime Minister Hun Sen called for the decriminalization of defamation. Although provision for imprisonment was repealed, defamation was not in fact decriminalized: it continued to be an offense under the Criminal Code. Under the revised Criminal Code of 2010 defamation is a criminal offense, but punishment is limited to a fine.

A related offence, also under Article 2 of the Criminal Code, is Article 307, 'Public Insulting [sic].' The article states that '[a]ny insulting expression, any scolding term or any other verbal abuses [sic]' constitute an insult and are punishable by a fine of up to 10,000,000 riels (US\$2,500). The article does not establish any minimum level of offensiveness, leaving it wide open for Government organs to use to silence critics.

Article 311 of the Criminal Code outlaws 'acts of slanderous denunciation,' which is punishable by a fine as well as imprisonment, unlike Articles 305 and 307. Slanderous denunciation is defined as 'denouncing a fact that is known to be incorrect and it is so [sic] knowingly.' Punishments for infraction

of this article are imprisonment of up to a year, and/or a fine of up to 2,000,000 riels (US\$500).

Recommendations

The Government of Cambodia must repeal Articles 305, 307, and 311 of the Criminal Code and ensure that defamation, insults, and false statements are no longer criminal offenses under the law. In the current situation, the letter of the law as well as its extremely broad application, which has targeted Government critics, serve as a severe restriction on freedom of expression. Governments at all levels must halt the judicial harassment of their opponents which is often conducted through these laws.

China

In China, defamation is a criminal offence under Article 246 of the Criminal Code. Any person who 'publicly humiliates' or 'invents stories' about another person can be sentenced to up to three years in prison, criminal detention, 'public surveillance,' and be deprived of political rights. In September 2013, the Supreme People's Court and the Supreme People's Procuratorate issued a guideline on judicial interpretation that extended defamation laws into the online sphere. The law currently allows up to three years of imprisonment for anyone who posts defamatory information online in seven broad and ill-defined circumstances with low thresholds: for example, when it leads to public chaos, has an adverse social impact, is viewed by more than 5,000 people or reposted more than 500 times, or results in any 'other' damage. This extension of defamation laws into the online sphere was designed to target influential and prominent bloggers and social media commentators who speak out on political or sensitive issues, but also punishes low-profile bloggers who create content that suddenly goes viral. Hundreds of social media users have been detained every year since this directive for posting 'defamatory' content since the guidelines were promulgated. In July 2015, police charged prominent free speech advocate Wu Gan with defamation -among other charges- for allegedly insulting the court in reference to a case in which lawyers working on a death penalty case where a confession had been extracted using torture were being harassed. The police have dragged out the investigation and he still is in pre-trial detention.

Recommendations

International legal standards hold that defamation should not be considered a criminal offence. The criminalization of defamation allows Government organs to intimidate and punish dissidents by slapping them with charges for legitimate exercises of free speech. Article 246 must thus be struck from the Criminal Code. Defamation charges must immediately stop being pressed against persons exposing Government malfeasance or telling the truth. Finally, China must adopt a law on whistleblowers, which must include immunity from prosecution on the grounds of defamation.

India

As in Myanmar, Bangladesh and other former British colonies, defamation is criminalized in India under Articles 499 and 500 of the Penal Code. There has been a longstanding movement in India to decriminalize the offence, but in May 2016, the Supreme Court ruled in *Subramanian Swamy vs Union of India* that defamation would remain a criminal offence. Article 499 states that anyone who makes remarks, either written or oral, with the intention of harming either a person or a company, dead or alive, can be imprisoned for up to two years, even if the comments were made ironically. Aside from the fact that international standards hold that defamation should not be a criminal offence, other issues with the law exist. The truth should be an unconditional defence against defamation, but in India, as in most other countries in the region, it is not. The burden of proof for truth is on the defence: the accused must prove that the statement was truthful, rather than the other way around. Furthermore, the statement must be proven to have been made for public good. These are extremely high benchmarks, meaning that the law is open to be abused by the Government to target its critics.

Political figures have used defamation laws to silence opponents and critical journalism. Between 2011 and 2016, Tamil Nadu Chief Minister Jayalalithaa filed nearly 200 defamation cases against journalists, media outlets and political rivals. A typical example of these charges is the case filed in June 2016 against the newspaper

Nakkeeran and its editor for a story alleging Government corruption. In 2014, the Chief Minister filed multiple defamation suits against Dinamalar, a newspaper that had written articles exposing Government wrongdoing. Jayalalithaa has also filed multiple defamation suits against Subramanian Swamy, an opposition politician who led an unsuccessful challenge to criminal defamation laws in 2016.

India also has an unusual and anachronistic law on the 'modesty' of women that has been used to punish critics. Article 509 of the Penal Code criminalizes speech that insults a woman's modesty with up to one year of imprisonment. This Article has been used repeatedly to penalize those who criticize female politicians. For example, in July 2012, university professor Ambikesh Mahapatra was charged under Article 509 for circulating emails that insulted Mamata Banerjee, Chief Minister of West Bengal.

Another unusual law occasionally used to limit freedom of expression is Article 294 of the Penal Code, which states that anyone who utters obscene words in a public place can be imprisoned for up to three months. As detailed in this study's treatment of the Philippines' religious insults laws, the issue with punishing 'obscenity' lies in the arbitrariness, vagueness and subjectivity of the concept. To begin with, rude or insulting words should not be the subject of criminal prosecution. Furthermore, left undefined by the Penal Code, the criminalization of 'obscenity' provides the Government with the ability to level charges against critics whom they perceive to have expressed themselves rudely, which constitutes an unreasonable limit on freedom of speech.

Recommendations

Articles 499 and 500 must be struck from the Penal Code of India because criminal penalties are disproportionate to the act of defamation. Any future civil laws of defamation must more clearly and narrowly define defamation, and considerably raise the threshold of what constitutes it. The law must also contain provisions making the truth an unconditionally valid defence against defamation accusations, and lay the burden of proof upon the

complainant. The law must also drop any reference to the need for a statement to have been made for the public good in order to not be subject to prosecution.

Although effective laws guaranteeing women the right to be free from harassment are badly needed in India, Article 509 of the Penal Code must be reformed. It must be amended to ensure that its language specifically targets harassment rather than leaving it open to prosecution of critics of female politicians on the basis of policy.

Finally, Article 294 of the Penal Code must be repealed. Regulation of people's manners and choice of words, particularly by means of criminal prosecution, is not a legitimate limitation of freedom of expression.

Indonesia

Indonesia's defamation laws are very strict, comparable to those of India, Myanmar and Bangladesh, but carrying heavier sentences. The offence is criminal, and is covered in great depth by a large number of Penal Code articles, primarily Articles 310-321. The definition is extremely broad under Article 310: any person 'who intentionally harms someone's honour or reputation by charging him with a certain fact, with the obvious intent to give publicity thereof' is guilty of defamation. If the act is in writing, the alleged offending party can be imprisoned for up to sixteen months. If the act of defamation involved reporting an alleged misdemeanour to the authorities, the punishment is four years and the deprivation of civil and political rights. Punishment for defamation of an official in the exercise of her or his duty may be increased by a third of what is otherwise set out, meaning that public officials are given an extra layer of protection. The truth is not considered an adequate defence: even if truthful, an allegation must have been made in the public good. In November 2016, two editors of the newspaper Tabloid Obor Rakyat that criticised President Jokowi during the 2014 election race were convicted of defamation under Article 310 of the Penal Code and sentenced to eight months in prison.

Article 207 of the Penal Code also restricts freedom of expression. It criminalizes criticism of Government by punishing any 'insult' of an authority or public

body in Indonesia. The maximum punishment is of 18 months and a fine of 300 rupiahs (US\$0.02).

As noted below, Indonesia's Law on Information and Electronic Transactions has extended defamation to the online sphere, as Governments in China and Bangladesh have done. The law's infamous Article 27 allows social media comments to be prosecutable if they fall under the Penal Code's criminal defamation laws.

Recommendations

Indonesia must repeal Articles 310-321 and Article 207 of the Penal Code: defamation must not be a criminal offence. In their current form, defamation laws constitute an extremely repressive restriction on freedom of speech, particularly for those who comment on political affairs. The truth must be an adequate defence against defamation allegations, and the burden of proof should be upon the aggrieved party to prove that the statements in question were defamatory and untrue, rather than the other way around. Article 27 of the Law on Information and Electronic Transactions must also be repealed.

LAOS

Contrary to many other restrictions in Laos, defamation laws hold less severe punishments than many other countries in the region. However, defamation remains a criminal offence and still entails jail time, and the laws are heavily and arbitrarily used. Defamation is criminalized under Article 94 of the Penal Code, which states that any person who damages the reputation of another faces up to one year imprisonment or fines of up to 300,000 kip (US\$37). Like Indonesia, Thailand, Vietnam and Mongolia, punishment for defamation in Laos is heavier if it targets a Government official. Under Article 159, any person who says anything that could damage the reputation or honour of a public official faces up to two years' imprisonment or fines of up to 1,000,000 kip (US\$120).

Recommendations:

The criminalization of defamation is illegitimate by international standards and therefore Article 94 and 159 of the Penal Code must be repealed in their entirety. Article 159 is particularly egregious:

public officials should be subject to a higher level of scrutiny than other persons, not less.

Malaysia

Defamation in Malaysia is criminalized under Articles 499 to 502 of the Penal Code, which stipulate that someone who intentionally imputes another's reputation can be imprisoned for up to two years. The laws mirror those of other former British colonies, which are often contained in the same articles of the Penal Code. As in other contexts, but to a greater extent in Malaysia, criminal defamation is a useful way for the Government to penalize critics. As elsewhere, the major problem with the law is that even true statements can be interpreted as criminal defamation if they cannot be proven that they were for the public good.

In February 2016, ex-Prime Minister and critic of Prime Minister Najib Razak was investigated under Article 500 for defamation in connection to a blog post criticizing the Attorney-General for failing to charge the Prime Minister over the 1MDB scandal. In September 2012, the Raub Australian Gold Mining Corporation filed criminal defamation charges against the Malaysiakini news outlet for reporting that sodium cyanide used for gold extraction was hazardous to residents near the mine. Malaysiakini was finally cleared of all wrongdoing, but the four-year court battle demonstrates how large corporations can intimidate and silence critics.

Article 509 of the Penal Code also criminalizes insults to modesty: any word or gesture intended to insult the modesty of a person is punishable by a draconian maximum five years' imprisonment. The law mirrors similar provisions in India (also Article 509) and Bangladesh, and as in those countries is problematic because it refers to an act that should not be criminal. In August 2014, People's Justice Party vice-president Chua Tian Chang was charged under Article 509 for insulting a police officer who was seizing his mobile phone.

Recommendations

Defamation is not considered a criminal offence by international standards and thus Articles 499 to 502 of the Penal Code must be abolished. Civil suits

are adequate for such acts and their criminalization merely opens the door for the Government to shield itself from criticism. The use of criminal defamation charges for criticism of Government officials is particularly egregious, as they should in fact be subject to scrutiny because of the political power they dispose of. Article 509 must also be repealed, for insulting someone is not considered a criminal act by international standards.

Maldives

The Maldives' new defamation laws are different from most comparable laws in the region because they are not found in the Penal Code, but rather in new stand-alone legislation. The Protection of Reputation and Good Name and Freedom of Expression Act imposes severe limitations on freedom of expression in the Maldives through a number of restrictions, one of them related to defamation. The law prohibits statements that could be depicted, thought of, or inferred as damaging to a person's reputation. A statement need not be false to be defamatory.

Any act falling under this very broad definition is punishable by a steep fine of 25,000-2,000,000 rufiyaa (US\$1,600-130,000), which, if not paid, results in a prison sentence of three to six months. Appeals to a sentence are not permitted until the fine has been paid. For media organisations convicted of defamation, the organisation would be subject to these fines, and individual journalists would be fined between 50,000-150,000 rufiyaa (US\$3,250-9,750). If a media organisation is convicted more than once, their licence can be suspended and their programming interrupted.

This new regression is particularly worrying because under the previous administration defamation had in fact been decriminalized, in line with international standards. The passing of such legislation at a time when corruption scandals and repression are at an all-time high signals intent to use the law politically. In April 2017, the regulatory body Maldives Broadcasting Commission fined Raajje TV 1,000,000 rufiyaa (US\$65,000) for airing an opposition rally the previous October.

The law has also resulted in extensive self-censorship. For instance, Dhi TV, Dhivehi Online,

and DhiFM were all shut down on 10 August 2016, with the CEO stating that it would be impossible to operate sustainably under the current conditions. Raajje TV, which airs rallies and protests on delay in order to censor content that could be perceived as defamatory by the authorities, has to strictly control on-air interviews and conversations, and has halted the production of two documentaries that criticise Government. In February 2018, Raajje TV shut down its operations for a period citing immense pressure and heightened risk of physical attacks following a police decision to cutback the security they provided the station.

Recommendations

The Protection of Reputation and Good Name and Freedom of Expression Act must be repealed as it covers no actual criminal acts that are not adequately addressed elsewhere in law. Defamation is not a criminal offence by international standards, and although it is punishable through civil suits, there should be no possibility of criminal prosecution for a statement harming the reputation of another person. This is particularly true when the law in question is overly broad and therefore subject to abuse.

Mongolia

In the past, Mongolia's defamation laws resembled many other countries' in the region and were used in comparable ways to limit freedom of expression. However, when the reformed Criminal Code adopted in December 2015 came into force in July 2017, defamation is now decriminalized and merely constitutes a civil offence.

Prior to July 2017 when the old Criminal Code remained in effect, defamation and slander were criminalized under Articles 110 and 111 of the Criminal Code, which stated that anyone who 'wilfully humiliates' another's honour or spreads defamatory information could have been imprisoned for up to three months. Under Article 111.2, those who spread defamatory speech through the mass media could have been imprisoned for up to six months, and under Article 111.3, if someone is found guilty of defaming another by accusing them of a serious crime, he or she could have been imprisoned for up to five years. In addition, under

Article 231, anyone who insulted a state official could have been imprisoned for up to three months or be subjected to 150 hours of forced labour. In all of these cases, the burden of proof lay with the defendant, and strict evidentiary rules mean that it was extremely difficult for the defendant to prove their innocence.

Prior to July 2017, the Government had repeatedly used defamation laws to stifle journalists attempting to criticize elected officials or expose politicians implicated in crimes. Non-state entities in Mongolia had the ability to file defamation cases, and private companies had used defamation suits against those exposing their business practices.

In December 2014, N. Munkhtur was charged with defamation under Article 111.2 for online statements about a local politician. He was found guilty in May 2015 and ordered to pay compensation of 9,700,000 tugrik (US\$4,000), but the decision was overturned in June 2015. In December 2014, S. Ankhbayar was charged under the same article for social media posts implicating a local Government official of corruption. The charges were dropped in June 2015. In December 2014, L. Davaapil was found guilty of defaming Road and Transportation Minister A. Gansukh under Article 111.2 and ordered to pay 9,700,000 tugrik (US\$4,000) in compensation after the former made a post on Twitter accusing Gansukh of corruption. In August 2014, Ts. Bat, a blogger, engineer and brother of the current Minister of Culture, Sports, and Tourism, was sentenced to three months imprisonment for criticizing former Road and Transportation Minister A. Gansukh on Twitter. In December 2013, S. Battulga, a journalist with info.mn, was found guilty of defamation under Article 111.3 for publishing an article that allegedly insulted Noyod LLC, a private company, and was forced to pay compensation of 21,000,000 tugrik (US\$8,700). She was involved in a long legal battle for the subsequent two years and arrested twice before eventually being ordered to pay a 19,200,000 tugrik (US\$8,000) fine. In September 2013, three media workers from the Terguun newspaper were fined 29,000,000 tugrik (US\$12,000) under Article 111.2 of the Criminal Code for articles they had written exposing information about the Prime Minister's business and family.

The defamation laws were also used to shut down media outlets. In the lead-up to the 2016 elections, the Communications Regulatory Commission blocked 11 websites in connection to the alleged defamation of a candidate. Another defamation complaint by a candidate resulted in the seizure and search of a media company without a warrant.

Recommendations

The Government of Mongolia should work to overcome the technical difficulties related to the implementation of the new Criminal Code as quickly as possible in order to ensure that defamation is fully decriminalized in practice. Even once it is decriminalized, legislation will be needed to guarantee that expressing criticism of the State or its policies, or of Government authorities may not lead to criminal prosecution, and that civil suits will not be abused to harass and intimidate HRDs and journalists. The heavy fines provided for under civil law must be reduced so as to ensure that disproportionate sentences are not handed down to Government critics.

Myanmar

Like Bangladesh and other former British colonies, Myanmar has strict defamation laws under Articles 499 to 502 of the Penal Code that criminalize the offence and carry disproportionate penalties. The provisions have increasingly been used in recent years to target Government critics, in particular journalists, who traditionally had not been targeted in this manner. In the wake of the abolishment of the pre-publication censorship board in 2012, defamation lawsuits have been used against the media, particularly by the Military, to impose a form of post-publication censorship. The offence carries a maximum punishment of two years of imprisonment. Most defamation prosecutions occur in the context of the Telecommunications Act, Article 66(d) (see 'Cybercrime' Article below), but sometimes the Penal Code provisions are used. In March 2014, two journalists from the Myanmar Post were charged under Article 500 for publishing an article reporting comments allegedly made by a Military Member of Parliament on the need for the Military to be involved in politics because of low education standards in the country. In July 2016, two journalists with Ladies' Journal were sentenced

to six months of imprisonment or a fine of 20,000 kyats (US\$15) for publishing a story on a land dispute case in Bago Region, where farmers had land confiscated under Military rule. The Military officer in control of the confiscated land filed a defamation lawsuit against the outlet for their reporting, based on the complaint documents filed by the farmers, that the confiscation had occurred in 1995, rather than 1997-8.

Recommendations:

Articles 499 to 502 must be struck from the Penal Code because the criminalization of defamation is an unreasonable limit on free expression that has no basis in international law. Imposing a prison sentence of two years is grossly disproportionate to the offence.

Nepal

Defamation in Nepal is criminalized under the Libel and Slander Act 1959 (amended 2016), which states that anyone guilty of committing libel can be imprisoned for up to two years. This law is similar to that of Bangladesh, Myanmar, Pakistan, Singapore, and India, but is contained in a separate piece of legislation as opposed to the Penal Code. Under the Act, an individual can be jailed for up to six months for selling any material that contains defamatory speech. As with India, Nepal has specific criminal penalties for defamation of women; under the Act, anyone who defames a woman or says something that '[undermines] her privacy' can be imprisoned for up to six months. Unlike many countries in the region, defamation laws are rarely used to target activists or journalists.

Recommendations

The Libel and Slander Act must be amended to remove criminal penalties for defamation. Defamation must be viewed as a private matter between two persons which can be solved through adjudication if necessary, but should not be criminal. The same applies to the problematic provision on defamation of a woman, which, to begin with, is unequal because the penalty is less severe than that of other defamation offences, is worded in a sexist and presumptuous manner, and in any case has no place in a law on defamation because it concerns harassment.

Pakistan

Pakistan's defamation laws are similar to those found in most countries in the region and nearly identical to those of other former British colonies. Article 499 of the Penal Code outlaws any act intended to harm the reputation of a person. As in other similar legislatures, the issue with this Article, aside from the fact that it criminalizes defamation, which should not be a criminal offence, is that the truth is not a defence. Although the law lays out several acts which cannot be considered defamation, which is a positive aspect that many other legislatures do not include, the truth is found to be an exception only when it can be proven that it was made in the interests of the public good. Another problematic exemption is one which exempts anyone who has 'lawful authority over another' from prosecution for defamation; this creates an illegitimate double standard whereby persons holding authority may use defamation laws to pursue those under their power, while those criticising authority are subject to prosecution. Articles 501 and 502 outlaw the printing and sale of defamatory material. The penalty for all of the above crimes, as in other former British colonies, is two years of imprisonment.

Recommendations

Articles 499 to 502 of the Penal Code must be repealed, as defamation is not a criminal offence by international standards and making it so is a disproportionate punishment for the act. In the civil defamation laws that replace the criminal ones, definitions of punishable acts should be narrower and have a higher severity threshold. They must also ensure that the burden of proof is upon the plaintiff, not the accused, and that there are no exceptions accorded to persons in authority. To the contrary, persons in positions of authority such as Government officials should be subject to a higher level of scrutiny than other persons, and this should be clearly laid out in the law.

The Philippines

Defamation constitutes the largest legal restriction of freedom of expression in the Philippines, and indeed its laws are somewhat stricter than the regional average. Article 355 of the Penal Code states that defamation is punishable with up to four years and two months of imprisonment, while Article 354 states that any defamatory act is

presumed to be malicious even if it is true, if there is no demonstrated 'good intention and justifiable motive for making it.' Likewise, Article 361 states that the truth can only be used as a defence against defamation charges if the material was published with good motives and for justifiable ends. These provisions reverse the burden of proof and render conditional the use of the truth as a defence against allegations of defamation in contravention of Article 19 of the ICCPR, which states unconditionally that the truth is a legitimate defence. They potentially give rise to situations whereby defendants are found guilty despite having reported the truth, because they cannot prove that they had good intentions.

Recommendations

The Government of the Philippines must bring its defamation laws into compliance with the ICCPR, most importantly by decriminalizing the offence, in order to eliminate the current climate of suppression created by the possibility of criminal prosecution for exposing wrongdoing by public officials. It must also replace provisions that currently conditionalise the use of the truth as a defence: the use of the truth must be a legitimate defence against defamation under the law. It must also return the burden of proof on the untruth of the allegedly defamatory statements to the complainant.

Singapore

Defamation is criminalized in Singapore under Articles 499 to 503 of the Penal Code. Under these Articles, anyone who makes a statement, either oral or written, that imputes or harms another's reputation can be imprisoned for up to two years. It is also criminalized by the Defamation Act. Unlike many other countries in the region, defamation laws in Singapore require a statement to be demonstrably false and do not reverse the burden of proof: in other words, the plaintiff must prove that a statement is false in order to win a case. This makes its defamation laws somewhat less repressive than those throughout the rest of the region. However, the laws are still problematic because they criminalize defamation. Furthermore, Article 14 of the Defamation Act explicitly states that criticism of public officials is not exempt from prosecution.

The Government has frequently used defamation suits as a way to prosecute political opponents and ruin them financially by imposing exorbitant fines,

or, where even a pliant judiciary cannot convict them, through legal fees. Citizens often choose not to express their opinion on critical topics, particularly domestic politics, for fear of legal and judicial reprisals. In May 2014, Prime Minister Lee Hsein Loong filed a defamation lawsuit against independent blogger and social activist Roy Ngerng, who had written an article accusing the Prime Minister of corruption and misappropriation of funds. In November 2014, Ngerng was found guilty of defamation; after a year of legal wrangling, in December 2015 Ngerng was forced to pay restitution of SG\$150,000 (US\$104,000) to the Prime Minister. In January 2016, another SG\$29,000 (US\$20,500) was added to his original fine.

Recommendations

Defamation must be decriminalized in Singapore, in accord with international standards on free expression. The Defamation Act as well as Articles 499 to 503 of the Penal Code must be repealed. Any civil defamation laws that are enacted to replace them must explicitly preclude prosecution of criticism of public officials. Freedom of expression on political matters is crucial to a democracy, and the scrutiny of persons wielding the powers of political office is fundamental and must not be limited or constrained by the threat of lawsuits.

South Korea

Compared to its neighbours, South Korea is generally less repressive in terms of freedom of expression, but its defamation laws are an exception. They are stricter than those of most countries in the region, in that they carry heavier penalties. Although South Korea's Constitution generally protects freedom of expression, it has unusually explicit defamation-based restrictions: Article 21(4) of the Constitution prohibits speech that violates the honour or rights of another, or undermines public morals or social ethics.

Chapter 33 of the Criminal Act stipulates criminal penalties for defamation. Those found guilty of 'crimes against reputation' can be imprisoned for up to two years or fined up to 5,000,000 won (US\$4,175). Defamation through printed materials carries a prison sentence of up to three years or a fine of up to 7,000,000 won (US\$5,850), and if a person knowingly uses false information to defame someone else, he or she can be imprisoned for up to five years or fined up to 10,000,000 won (US\$8,350).

In addition, under Article 311 of the Criminal Act, anyone who publicly insults someone else can be imprisoned for up to one year.

Thousands of defamation cases are filed every year, with around 20 generally resulting in imprisonment. During President Lee Myung-bak's tenure, 24 criminal defamation charges were filed by the Government on behalf of the President. Under President Park Geun-hye's administration, at least 18 criminal defamation prosecutions took place before her impeachment in March 2017. After taking power in May 2017, President Moon Jae-in has brought criminal defamation charges against his critics numerous times.

In one particularly high-profile case in September 2013, Cho Hyun-oh, the former head of the National Police Agency, was sentenced to eight months imprisonment under Article 308 of the Criminal Act, which criminalizes defamation against dead people with up to two years imprisonment. Cho had alleged that former President Roh Moo-hyun had killed himself because his financial scandals became publicly known. Cho was released eight days after he began his imprisonment. In April 2015, Park Sung-su, a critic of the Government, was sentenced to a year in prison for printing and circulating leaflets claiming that President Park had not responded quickly enough to the sinking of the Sewol ferry. This was part of a broader crackdown on Government critics: in March 2015, the Seoul District Police Agency distributed instructions on how to detain protestors, including those distributing pamphlets, on the basis of various charges, including defamation. In November 2014, the Government filed defamation cases against six journalists from the newspaper *Segye Ilbo* after they published a report about a leaked Government document. In May 2013, Choo Chin-woo and Kim Ou-joon, hosts of the popular podcast *Naneun Ggomsuda*, were indicted under charges of defamation for allegedly defaming President Park's brother.

The Criminal Act, specifically Article 307, doesn't enable the truth of a statement to be used as a defence against defamation charges. Following the growth of the #MeToo movement around the world, Korean women's rights activists have started to campaign against the defamation provisions in Article 307 of the Criminal Act as these hinder the rights of victims of sexual violence to share their experience publicly.

Recommendations

Chapter 33 of the Criminal Act on defamation must be scrapped in its entirety, as defamation should not be considered a criminal offence. Any civil defamation laws implemented as a replacement must be moderate and not easily abused. There should be no requirement that statements be in the public good, and the burden of proof for the truth of a statement must be on the plaintiff. South Korean legislators must pass the bill forbidding public officials from launching defamation cases that have been repeatedly tabled. Public officials should be subject to a higher level of scrutiny than other persons.

Taiwan

Defamation is criminalized in Taiwan, as with the rest of the region. Although the penalties for the offence are a little lighter than the regional average, these laws constitute Taiwan's most severe limit on freedom of expression. Chapter 27 of the Criminal Code broadly covers offenses against reputation, and contains several Articles that criminalize slander and defamatory speech. Article 309 states that a person who publicly insults another can face short-term imprisonment or fines of up to 300 yuan (US\$50). If this offense is committed in a violent manner, the offender can be imprisoned for up to a year. Article 310 states that a person who disseminates information that harms someone's reputation can be imprisoned for up to one year. If this is done in writing, the offender can be imprisoned for up to two years. Article 312 states that a person who defames a deceased person can be imprisoned for up to one year. As with most other countries in the region, these laws are particularly problematic because the truth is not an absolute defence, and the burden of proof is reversed. Under Article 310 it is incumbent upon the defendant to prove that the statement they made was true, and even if it is proved to be true, it must be proven that the information disclosed was of 'public interest.'

Like Mongolia, Indonesia, Thailand, Vietnam and Laos, Taiwan also has a provision that specifically criminalizes insult of a public official. Under Article 140, any person who insults a public official while he or she is discharging his or her duties can be imprisoned for up to six months. As in these other contexts, the penalty for such an act is heavier than it would be for an average person, meaning that

public officials benefit from supplemental insulation from insults.

The Social Order Maintenance Act 2011 (SOMA) imposes further penalties for certain types of speech, including insults to public officials. Anyone who uses ‘inappropriate language’ against Government officials can be detained for up to three days or fined up to 12,000 new Taiwanese dollars (US\$370). Anyone who spreads rumours that could undermine peace or public order can face short-term imprisonment or fines of up to 30,000 new Taiwanese dollars (US\$900).

Activists have been charged under SOMA for attempting to bring attention to domestic issues. In 2014, then-President Ma Ying-jeou filed a defamation case against commentator and radio show host Clara Chou. She was cleared of any wrongdoing by a district court but Ma appealed the ruling and Chou is now being forced to fight a new case in the High Court, which is still ongoing as of December 2016. The case demonstrates how defamation laws can be used to punish critics even when the courts find them innocent. In November 2013, student Sun Chih-Yu was indicted under the Act and fined 5,000 new Taiwanese dollars (US\$150) after she threw a slipper at Taiwanese Premier Jiang Yi-huah to draw attention to a labour dispute. In June 2015, ‘Yu’ was convicted under the Act and was forced to pay 30,000 new Taiwanese dollars (US\$900) for ‘causing nuisance by spreading public rumours.’ He had been spreading information about the Democratic Progressive Party’s relationship with the manager of a water park after an explosion occurred at the park.

Recommendations

Taiwan must repeal Chapter 27 of the Criminal Code, as well as Article 140. According to international standards, defamation is not a criminal offence, and Taiwan’s laws should be brought in line with these standards. Any civil defamation laws that replace them should ensure that the burden of proof is upon the plaintiff, that there be no requirement that the information disclosed be in the ‘public interest,’ that the punishments are proportionate, that there is a well-defined and adequate severity threshold, and that they not accord special protection to public officials, who should in fact be subject to a higher degree of scrutiny. The SOMA must also be amended to remove provisions criminalizing the

use of inappropriate language against Government officials and the spreading of rumours that could be classified in the broad categories of undermining peace or public order.

Thailand

Thailand has criminal defamation laws that are fairly similar to most in the region in breadth and severity, with the exception of the *lèse-majesté* law, which had no comparison in the region until Cambodia’s passage of its own *lèse-majesté* law in February 2018. Criminal defamation laws are also extremely frequently used to target Government critics in Thailand. Under Article 326 of Thailand’s Criminal Code, an individual can be imprisoned for up to one year if he or she makes a statement that impairs the reputation of another person. Under Article 328, those who commit defamation through a published document or recording can be imprisoned for up to two years. Article 133 punishes insults against foreign heads of state with up to seven years imprisonment, and Article 136 allows up to one year imprisonment for anyone who insults a public official. Under Article 287, anyone who makes, publishes, or distributes obscene content can be imprisoned for up to three years. NCPO Chief Orders No.97/2014 and No. 103/2014 and Order 18/2014 add to this by further criminalizing media or online content containing false or defamatory statements about the monarchy.

These laws have frequently been heavily abused to target political opposition groups, journalists and activists since the 2014 coup; to make matters worse, under NCPO announcements No. 37/2014, No. 38/2014, and No. 50/2014, any offence related to an extremely broad conception of national security, *lèse-majesté*, or a violation of NCPO orders committed before September 2016 was tried in a Military court.

In July 2016, three prominent activists were charged with criminal defamation as well as offences under the Computer Crimes Act for releasing a report documenting torture and ill-treatment in the ‘Deep South.’ The three are Somchai Homlaor, a lawyer and long-time advisor to the Cross Cultural Foundation (CrCF), Pornpen Khongkachonkiet, director and chair of the CrCF, and Anchana Heemmina, the director of Duay Jai Group. As the act in question was committed before September

2016, they were to be tried in a Military court. In March 2017, the Thai Military's Internal Security Operations Command announced that the criminal defamation and Computer Crimes Act charges against the three were being dropped. In November 2017, the Pattani Provincial Prosecutor announced that the criminal defamation charges against the three were being withdrawn.

Pornpen Khongkachonkiet had previously been charged for criminal defamation in connection to her advocacy and documentation work in September 2014 by Army Task Force 41. In June 2015, the State Prosecutor found that there were no grounds for prosecution, and the case was dropped.

Investigative journalists in Thailand have been prosecuted for reporting on politically or socially sensitive issues, or issues that expose Government malfeasance or corruption. In July 2013, Phuketwan, a journal based in southern Thailand, published a story alleging that officials from the Royal Thai Navy were involved in trafficking Rohingya people. In December 2013, the Navy brought a claim of criminal defamation against Big Island Media, the parent company of Phuketwan. The reporter and editor involved in the story were charged under the Computer Crime Act. The two were acquitted in September 2015.

In February 2013, British journalist and activist Andy Hall was charged with two civil and two criminal counts of defamation under Articles 326, 328 and 332 of the Criminal Code and Articles 3 and 4 of the Computer Crimes Act for his work on an investigative report that exposed labour abuses and human trafficking in pineapple factories in southern Thailand. In September 2016, Hall was sentenced to a three year suspended prison sentence and a fine of THB150,000 (US\$4170) for one criminal defamation charge by the Bangkok South Criminal Court. In November 2016, he was acquitted of the other criminal charge by the Supreme Court. In March 2018, Hall was ordered to pay THB10,000,000 (US\$312,000) in a civil defamation suit.

Lèse-majesté laws in Thailand constitute the strictest and the most abused defamation laws in the region: no other country has a law so broad, so draconian, and so heavily used. The offense is codified in Article 112 of the Criminal Code, which states that anyone who defames, threatens, or insults the king or the royal family can be punished with

imprisonment of up to fifteen years. These terms are left undefined, meaning that the law may be very broadly interpreted, which it has been by the heavily politicised judiciary. As mentioned above, under NCPO announcements No. 37/2014, No. 38/2014, and No. 50/2014, lèse-majesté suspects were tried by Military courts until September 2016. The total number of civilians tried by Military courts in the first two years of NCPO rule was 1,811. Lèse-majesté prosecutions and convictions have skyrocketed under NCPO rule. In the first year of NCPO rule, at least 47 people were detained under Article 112, and eighteen people were sentenced to jail terms. By May 2017, the number of people charged under the law had reached 105, of which 27 were in the October and November 2016 crackdown following King Bhumibol's death.

The breadth of the law's letter and interpretation means that it is often stretched to prosecute acts that are not defamatory or insulting. Patnaree, the mother of Thammasat University Activist Sirawith 'Ja New,' was arrested in May 2016 and charged under Article 112 for a Facebook conversation in which she had simply written 'Yep' in response to a message which read 'Please don't mind if I spoke like this' in relation to previous messages critical of the monarchy her interlocutor, whom she did not know, had sent her. In February 2015, Patiwat, a university student, and Pornthip, a local activist, were sentenced to thirty months' imprisonment each under Article 112. The duo had performed in *The Wolf Bride*, a play that some have seen as the Thai version of *Animal Farm*. In August 2016, they were pardoned by the King and released after having served 729 and 743 days, respectively. From January to March 2015, twelve people who had uploaded audio clips of Banpodj, a 64-year-old man who spoke openly about political and societal issues, were arrested under Article 112. The content of the audio clips was considered an offense to the royal family. In July 2015, eight of the defendants were sentenced to ten years' imprisonment and two were sentenced to three years' imprisonment.

In the wake of the King's death, several charges were laid against people who had not commented on the monarchy at all, but rather for being critical of the Government or others. This highlights the trend of public fear and totalitarian repression of free speech created by Article 112 and its overzealous application that was first exemplified by the June

2014 charges against a taxi driver who was charged after his passenger made a complaint to the police about the conversation on politics they had engaged in. In October 2016 this totalitarian climate became even more apparent, as any questioning of the way the King's death was being commemorated was met with vigilantism and prosecution. A 19 year-old girl in Bueng Kan was charged under Article 112 for a comment merely criticising the suspension of certain events in the wake of the King's death. In Phang Nga province, a marine who had asked in a Facebook post whether people truly loved their fathers in the same way as they loved the king was charged after a mob gathered outside his house, which was only dispersed when the police assured the crowd that he would be prosecuted. Similarly, in Chonburi, a 19 year old factory worker who had a disagreement on Facebook in which he did not criticise the monarchy, but rather his interlocutors, was beaten and had his room ransacked by a mob, and then was charged under Article 112. In the above cases, no one in the mobs who caused injury to people or their property was prosecuted.

The severity of the punishments provided for in the law and the practice of laying multiple charges for the same offence means that sentences are often decades long. In August 2015, Pongsak was sentenced to 60 years' imprisonment under Article 112 in prison for six Facebook posts which the court found to have defamed the monarchy; the sentence was reduced to 30 years because he pled guilty. In March 2015, Tiansutham, 58 years old, was sentenced to 50 years' imprisonment under Article 112 and the Computer Crimes Act for Facebook posts which criticized the NCPO and the Cabinet and mentioned the monarchy; his sentence was reduced to 25 years because he pled guilty.

Multiple mentally ill people have been charged and imprisoned under Article 112, despite claiming they were not cognizant of their actions at the time of their offenses. In October 2016, a grocer suffering from a psychiatric disease who sometimes says things unconsciously was charged for comments made when he had not taken his medicine. In the same month, a woman in Nonthaburi also diagnosed with a psychiatric disorder was also charged under the law for having written disrespectful message in a book of condolences. In June 2015, Thanet Nonthakot was sentenced to 40 months' imprisonment under Article 112. Thanet had sent a link that allegedly

defamed the monarchy to Emilio Esteban, a British national who runs a blog entitled 'Stop Lèse-majesté.' Thanet has been diagnosed with paranoid schizophrenia, and he and his doctor affirmed that he was suffering from the effects of his illness when he committed the act. In May 2014, Thitinan was sentenced to two years imprisonment under Article 112 for stepping on an image of King Bhumibol outside of the Constitutional Court. Thitinan suffers from bipolar disorder, and argued that she could not understand the implications of her actions when the act was committed.

Recommendations

Thailand's criminal defamation and lèse-majesté laws must be repealed, and its civil defamation laws must be amended. Defamation is not a criminal offence by international standards, and its criminalization is thus an illegitimate restriction of freedom of expression. Articles 326, 328, 133, 136 and 287 must be struck from the Criminal Code. NCPO Chief Orders Order 18/2014, No.97/2014 and No. 103/2014 must be abolished. Article 112 of the Criminal Code must be abolished and all those imprisoned under it must be immediately released and be cleared of any criminal wrongdoing. The harsh law is an egregious violation of the right to freedom of expression. Finally, civil defamation laws must be amended to ensure that whistleblowers exposing malfeasance are unconditionally protected from prosecution, that a strict and high severity threshold is established, and that penalties are commensurate to the acts committed.

Timor-Leste

Although some aspects of defamation were decriminalized in 2009, false accusation of a crime remains criminal under Article 285 of the Penal Code. Under this provision, intentionally falsely accusing a person of a crime can be punished by a three-year prison sentence. In January 2016, journalist Raimundos Oki and editor Lourenco Vicente Martins, both of the Timor Post, were charged with false accusations under this provision for having published an article alleging wrongdoing by Prime Minister Rui Maria de Araujo. The article claimed that in 2014, the Prime Minister, who was at that time advisor to the Finance Minister, had interfered in the bidding process for a Government information technology project. In a separate

incident in 2012, journalists Raimundo Oki of the *Independente* and Oscar Maria Salsinha of the *Suara Timor Lorosê* faced charges under Article 285 for writing separate articles about a district prosecutor in Oecuse district suspected of receiving a bribe. A District Court in Dili absolved the two journalists of any criminal liability for defamation, but both were forced to pay a US\$150 fine for ‘causing psychological disturbance’ to the state prosecutor. In February 2009, then-Justice Minister Lucia Lobato brought criminal charges against journalist and newspaper editor Jose Belo, who had been investigating impropriety and corruption in Government construction contracts for a state prison. The charges were eventually dropped.

Recommendations

The criminalization of defamation is in violation of international standards on free expression, which hold that defamation must be a private matter to be settled by civil suits. Criminal penalties, in particular prison sentences, are disproportionate to the act of defamation, and therefore Article 285 must be abolished. Civil defamation laws must be proportionate, have a reasonable severity threshold and avoid fines with the exception of very serious cases.

Vietnam

Vietnam’s defamation laws are similar in form to most others in the region, but carry stiffer penalties. Under Article 156 of the Penal Code (Article 122 of the old Penal Code), those who spread information

that they know is fabricated in order to damage the reputation of another can be imprisoned for up to twelve months. Individuals can be imprisoned for up to three years if they impugn multiple people, defame their parents, or insult people performing their official duties, such as civil servants. Under Article 121 of the old Penal Code, serious infringements on the dignity or honour of other persons, regardless of whether the information is true or in the public’s interests, is punishable by up to two years in prison. Once again, if the ‘humiliation’ targets a public official, the sentence can be heavier; in this case, three years of imprisonment. This additional layer of protection from criticism accorded to public officials is also present in Thailand, Taiwan, Indonesia, Laos and Mongolia, but the length of the sentences possible under Vietnamese law is much greater. In March 2016, prominent blogger Nguyen Huu Vinh was sentenced to five years of imprisonment for defamation of the Communist Party, among other charges. Vinh has been repeatedly harassed and detained for his criticism of the state and Party.

Recommendations

Defamation does not constitute a criminal offence by international standards, and imprisonment for such an act is not proportionate. Articles 156 (Article 121 of the old Penal Code) must be struck from the code and replaced with civil code provisions which are proportionate, have a severity threshold, and for which the truth is an effective defence. Public officials should be subject to a higher degree of scrutiny than regular citizens.

Incitement

Cambodia

As in Myanmar (discussed below), the Cambodian Government represses free speech through a very broad interpretation of draconian provisions against 'provocation to commit offences' (Book 4, Title 1, Chapter 3, Article 3 of the Criminal Code of 2010). This is the result of both overly strict and vague provisions in the Criminal Code, and their extremely broad application by the courts. Article 495 covers 'direct provocation aimed at committing a felony' by any form of public comment and is punishable by up to two years' imprisonment and a fine of up to 4,000,000 riels (US\$980), if the provocation produced no effect. Article 496 concerns 'direct provocation (...), hinting a discrimination, malice or violence against a person or group of person because of their belonging to or non-belonging to an ethnicity, a nationality, a race or a specific religion,' and is punishable by imprisonment of up to three years and a fine of up to 6,000,000 riels (US\$1,500), if the provocation produced no effect. Neither article elaborates on what the punishment would be if the provocation did produce an effect, but Article 498 lays out additional penalties, which include the deprivation of certain civil rights for up to five years. The existence of provisions guarding against incitement to commit violence on groups based on ethnicity or other such factors is not in itself problematic, but Article 496, which criminalizes 'hints,' is too broad. Even more problematic is the tenuous way in which the articles have been interpreted so as to cover protests or civil disobedience. In this extreme reading of the law, anyone who organises actions against illegitimate Government actions such as land grabs can be prosecuted under these provisions and subjected to the harsh punishments they carry. Two brief examples help illustrate the issue: in August 2010, staff members of human rights organisation LICADHO were sentenced to two years of imprisonment and fined 2,000,000 riels (US\$490) under Article 495 of the Penal Code for distributing anti-Government fliers. In December 2010, Seng Kunnaka, a United Nations employee, was sentenced to six months of imprisonment and

fined 1,000,000 riels (US\$245) under Article 495 for sharing a news article with two co-workers that was critical of the Government.

Recommendations

The Government of Cambodia must immediately put an end to the practice -at all levels of Government- of intimidating and harassing critics and opponents by filing cases illegitimately accusing them of incitement to violence. This practice is legally illegitimate and erodes the rule of law. The Government must also establish a truly independent judiciary and halt all meddling and influence it its proceedings. The courts must be able to throw out cases that do not fall under Articles 495 and 496, as most of those targeting Government critics do not. Article 496 must be made more specific and ensure that vague and broad wording such as 'hinting a discrimination' is replaced with unambiguous terms with a minimum severity threshold

India

India's laws on incitement are broad and easily used to repress dissenting expression. Under Article 153(a) of the Penal Code, anyone who promotes enmity between different racial, religious, ethnic or linguistic groups, or any other dissimilar communities, faces up to three years of imprisonment. Expressing any views that are unpopular with certain groups, in particular majority groups, such as Hindu nationalists or the ruling Bharatiya Janata Party (BJP), can thus be interpreted under this law as a criminal act. The opinion of the angered group is not subject to scrutiny under the law, no matter how wrong or violent it is, but the commentary on it is, regardless of how reasonable or peaceful it is. Furthermore, under the Modi administration, those charged under this law tend to be from minority religious groups, rather than Hindus. In October 2016, Ahmed Shehzad Maahi, a Muslim worker with the Youth Congress was arrested for allegedly making comments on Facebook and in WhatsApp chatrooms that criticised restrictions on beef consumption. Critics have pointed out that pro-BJP users from the same region making offensive comments about Muslims have not been targeted.

In 2014, 65 people were convicted in Kerala alone under Article 153; in India as a whole, the number was over 300.

Under Article 505(b) and (c) of the Penal Code, those who make statements likely to cause fear and alarm, or that induce citizens to commit an offense against 'public tranquillity,' can be imprisoned for up to three years. The use of the term 'public tranquillity' is problematic because it is not narrow enough and also presents no severity threshold. An enormous number of entirely peaceful and innocent acts could be construed as disturbing public tranquillity, and under this law, incitement to commit such an act is prosecutable. This extremely broad provision has been used as a catch-all offence to target the free expression of HRDs and Government critics, similar to the situation in Myanmar (discussed below) and Bangladesh. The law, which makes reference to 'public mischief,' may even be compared to China's infamous catch-all 'picking quarrels and provoking trouble,' under Article 293 of the Criminal Code. In 2014, MP K Kavitha was investigated under Article 505 for saying that Jammu and Kashmir and Telangana were forcefully annexed by the Indian Union. Several human rights defenders, including prominent Dalit rights activist Lenin Raghuvanshi -who was charged in 2008- have been charged under this code for making statements that are conducive to 'public mischief.'

Recommendations

Article 153 must be amended, primarily to remove Article 153(a). While some limits on speech, including direct and tangible incitement to commit a violent act are acceptable by international standards, making 'promoting enmity' an offence is far too low a bar to set and criminalizes comments that might anger a particular group, even if they are peaceful and truthful in nature. Speech cannot be limited to what does not anger others. Article 505(b) and (c) must be struck from the Penal Code, as it is far too broad and has far too low a threshold. Banning statements that may cause 'fear and alarm' severely restricts speech and criminalizes much expression on political matters.

Indonesia

Indonesia's laws on incitement are not one of the most common tools for repression of free expression in the country, unlike in other countries such as India, Cambodia and Myanmar, but they are nonetheless frequently used, particularly in Papua and other contested areas. Articles 160 and 161 of the Penal Code, which criminalize the act, have recently seen an uptick in application. Article 160 lays out penalties of up to six years of imprisonment for any statement that incites any punishable act or disobedience. Article 161 similarly covers dissemination of written incitement, carrying a maximum sentence of four years of imprisonment.

In December 2015, Wamoka Yudas Kossay was sentenced to 10 months in prison under Article 160 for having peacefully demonstrated in support of the United Liberation Movement for West Papua in May 2015. He had been detained since May 2015, and was not provided with legal representation during his interrogation by Indonesian police. In May 2015, three men in the Manokwari district of West Papua province were charged under Article 160 for participating in a peaceful rally. In August 2014, students Robert Yelemaken (16 years old) and Oni Wea (21 years old) were arrested for painting pro-independence graffiti. After being subjected to torture, Robert Yelemaken was released, but Oni Wea was charged under Article 160 for incitement.

Recommendations

The Indonesian courts must halt their practice of accepting spurious incitement charges criminalizing non-criminal acts. Articles 160 and 161 must be amended to include minimum thresholds of severity. In their current state, they could be used to target persons seen as inciting any illegal act, which could include participation in a demonstration or organisation of an event that has been illegitimately deemed unlawful on the basis of other flawed legislation.

Laos

Laos has strict laws on incitement between communities which resemble similar laws elsewhere and could be used to target minority rights activists.

Although rarely used, perhaps because of the extreme level of self-censorship in the country, the laws are nonetheless a threat to freedom of expression. Article 60 of the Penal Code on 'Division of solidarity' provides for up to five years of imprisonment for any person 'dividing or causing resentment between ethnic groups and social strata.' Like comparable laws elsewhere, the problematic element of this law is its broad latitude, which affords the Government the possibility to use it to prosecute minority rights activists and political opponents.

Recommendations

Article 60 of the Penal Code must be abolished. Although incitement of ill will between communities is an unfortunate, it is not in itself a criminal act. If the act of incitement is severe and results in serious danger to others, other articles of the Penal Code are adequate for the prosecution of such acts.

Malaysia

Malaysia's incitement laws mirror those of other former British colonies such as Myanmar, India and Bangladesh. Under Article 505(b), anyone who publishes information that can cause fear or public alarm can be imprisoned for up to two years. Article 298(a) supplements this, criminalizing speech causing (or likely to cause) disharmony, disunity, or feelings of enmity on the grounds of religion with up to five years of imprisonment. In September 2016, activist Hishamuddin Rais and Bersih chairperson Maria Chin Abdullah were questioned under Article 505(b) in connection with the TangkapMO1 rally calling for Government transparency and accountability on the 1MDB corruption scandal. In January 2015, blogger Yusuf Siddique al-Surataman was sentenced to two years imprisonment under 505(b) for leaking a memo on police preparations for an armed intrusion into Sabah State.

Candidates for political office have had their speech restricted under the Election Offenses Act 1954, which states that any candidates that makes a statement that promotes feelings of ill will, hostility, or discontent between people of different religions or different races can be imprisoned for

up to five years. Those convicted under the Law are automatically ineligible for running for public office for five years.

The Government often fails to apply these laws when political and religious firebrands broadly aligned with the ruling regime make remarks that could potentially be penalized under the Article. For example, in October 2013, Ibrahim Ali, a far-right politician and head of a Malay supremacy organisation, called Penang Chief Minister Lim Guan Eng a 'pig' for suggesting that Christians had the right to use the word 'Allah' in religious texts, and referred to Christians in Malaysia as 'ungrateful' people who had 'trodden and spat on' Malays. The attorney general refused to charge Ali, saying that his speech was not seditious because it defended the sanctity of Islam.

Recommendations

Articles 505(b) and 298(a) must be amended to significantly narrow the definition of incitement to the encouragement of actual criminal action, and remove reference to acts 'likely' to incite criminal action. Vague and overly broad concepts such as 'causing fear' 'causing public alarm' do not refer to any cognizable act and must be struck from the Articles. The Election Offenses Act must be amended to remove provisions limiting freedom of expression on the basis of incitement to ill will. Existing laws adequately cover incitement to actually criminal acts and need not be doubly legislated.

Maldives

The Maldives' laws on incitement are similar to those of many other countries in the region, restricting free expression by criminalizing disruption of an imagined, and Government-controlled, social unity. The wide-ranging Protection of Reputation and Good Name and Freedom of Expression Act 2016 also pertains to incitement, criminalizing threats to religious unity. The penalty for violation is a fine of 25,000-2,000,000 rufiyaa (US\$1,625-130,000), which, if not paid, results in a prison sentence of up to six months. In addition, under the Regulations on Protecting Religious Unity of Maldivian Citizens 2011, any statement that interferes with the

Government and people's ability to protect religious unity may be subject to criminal penalties. Article 617(5) of the new Penal Code also outlaws attempts to 'disrupt religious unity,' which carries a penalty of up to one year of imprisonment.

In July 2016, opposition activist Shammoon Jaleel was arrested for 'fomenting unrest' and 'inciting hatred' towards the security forces for a tweet in which he likened the police to a group of tigers. In November 2011, the Government used the Regulations on Protecting Religious Unity to shut down hilath.com, which expressed the views of Ismail Khilath Rasheed, a Sufi living in Maldives. In March 2014, the Government began an official investigation of a Facebook group entitled 'Dhivehi Atheists/Maldivian Atheists.' In September 2016, the Maldives Democracy Network and the Maldives Independent were subject to police raids on the basis of their alleged instigation of hatred between the public and state institutions. The investigation was connected to the Al-Jazeera documentary that alleged that the President and other Government officials were corrupt.

Recommendations

The Protection of Reputation and Good Name and Freedom of Expression Act, the Regulations on Protecting Religious Unity of Maldivian Citizens and Article 617(5) of the Maldives' Penal Code must all be repealed, as 'religious unity' is an imagined ideal which does not exist in the Maldives and the 'disruption' of which involves free religious expression. All three of the laws are much too broad, in that they can be interpreted to refer to acts that are not criminal by international standards. The enforcement of religious unity through the restriction of free speech is illegitimate by these standards. Acts actually resulting in harm to communities are adequately covered under other laws.

Myanmar

Myanmar has strict incitement laws carrying heavy punishments that are routinely used to silence critics of the Government and, in particular, the Military. Under the infamous Article 505(b) of the Penal Code, anyone who makes a statement that can cause -or could be construed as having the

intent to cause- public alarm or incite a person to commit an offense against public tranquillity can be imprisoned for up to two years. The broad wording of the provision allows the Government to routinely use Article 505(b) to prosecute journalists and other critics. In November 2015, police arrested four people involved in the printing of a calendar that listed the Rohingya as an ethnic group and charged them under Article 505(b). In June 2016, after being held in detention for seven months, all four were convicted and sentenced to a year in prison. In May 2016, over 70 factory workers and members of the All Burma Federation of Students Unions were arrested for peacefully protesting the illegitimate dismissal of workers and charged with a variety of offences under the Penal Code, including Article 505(b).

Recommendations:

Article 505(b) must be amended to significantly narrow the definition of incitement and remove reference to broad concepts such as public alarm and public tranquillity. The crimes incited to must be laid out in specific terms and leave no room for interpretation of protests or expressions of criticism as crimes under the provision. The courts must similarly stop broadly interpreting the Article and facilitating the judicial harassment of critics.

Pakistan

Like Myanmar, Bangladesh, Malaysia and India, Article 505(1) of the Pakistani Penal Code criminalizes any act that causes, attempts to cause, or is likely to cause fear or alarm to the public whereby any person might be induced to commit an offence against the State or public tranquillity, or any act with intent to incite, or which is likely to incite, any group to commit an offence against another. Article 505(2) criminalises the publication or circulation of any rumour with the intent to promote, or which is likely to promote, ill will between communities. The punishment for offences under both 505(1) and 505(2) is up to seven years of imprisonment. As with Article 505 in Bangladesh, the issue with this law is that it criminalizes a very broad range of acts, which include ones that are not considered criminal by international standards. Because there are no clear

definitions and no severity thresholds, the Article can be used to apply to any criticism of Government or of a religion. The law's inclusion of the phrase 'is likely to cause' broadens it further.

Article 153(a) of the Penal Code also restricts free expression. Under the provision, persons who promote enmity, ill will or incitement on the grounds of religion, race, residence, language, or caste can be imprisoned for up to five years. In practice, this Article has been used almost exclusively to punish those who speak out against narrow, conservative interpretations of Islam and Muslim practices.

The Ordinance on the Maintenance of Public Order 1960 mandates that anyone who makes a statement that could cause fear and alarm or prejudice public safety can be imprisoned for up to three years. Anyone who attempts to promote dissatisfaction with the Government can be imprisoned for life.

Recommendations

Article 505 of the Penal Code must be amended to narrow the definition of incitement, introduce severity thresholds and remove acts that are not criminal from punishable offences. As such, Article 505(1) should be amended, while 505(2) should be deleted. Article 153(a) should be deleted because its definition includes acts that are not criminal, and acts falling under its purview that would be considered criminal by international standards are adequately covered elsewhere in the Penal Code. The 1960 Ordinance on the Maintenance of Public order must be repealed for the same reasons.

Vietnam

Under Article 116 of the new Criminal Code (amended in 2015), anyone who sows division, hatred, or ethnic bias between different groups or between citizens and the Government can be imprisoned for up to fifteen years. Numerous former British colonies in the region have laws resembling this, but none have penalties as strict. The Criminal Code amendments further broaden definitions under the article and lengthen the minimum prison term, although they are not yet in force. Article 116 and its former incarnation Article 87 have been extensively used to persecute religious minorities in Vietnam, in particular ethnic Montagnard Christians. As of May 2018, there are at least 60 Montagnard Christians, many of them activists, in prison for exercising their right to freedom of expression. The law is also used to charge other religious activists as well: in July 2012, Mennonite Pastor Nguyen Cong Chinh (also known as Nguyen Thanh Long) was sentenced to 11 years of imprisonment under Article 87 for allegedly having communicated with foreign media outlets and criticising the authorities.

Recommendations

Article 116 of the Criminal Code (formerly Article 87) is phrased broadly enough to be used to silence any form of expression on religion of which the Party does not approve. Although laws protecting religious minorities from hate speech are legitimate, this law is not phrased to serve this purpose, and in fact is used for the contrary purpose of silencing them. The provision must be repealed in its entirety.

Blasphemy, Obscenity and Religious Expression

Bangladesh

The legal restrictions on freedom of expression in the context of religion in Bangladesh resemble those of other former British colonies such as India and Myanmar. The Penal Code criminalizes any kind of critical commentary on religion, which in reality applies mainly to Islam. Under Article 295(a) of the Penal Code, anyone who deliberately and maliciously insults, or attempts to insult, 'religious feelings' can be imprisoned for two years and be fined. In a similar vein, Article 298 outlaws any kind of 'wounding [of] religious feelings' in very broad terms. Anyone who utters any sound, makes any gesture, or moves any object in a way that intentionally insults religious sentiments can face up to one year of imprisonment and a fine.

Although Article 505 does not explicitly mention religion, it has nonetheless been interpreted to refer to it. Under the Article, anyone who makes, publishes or circulates a statement that could cause public alarm or create feelings of enmity between different communities can be imprisoned for up to seven years and fined. 'Different communities' could be taken to refer to religious communities, thus including religion in the Article's ambit. In October 2014, former Information and Communications Technology Minister Abdul Latif Siddiqui was sacked for making comments criticizing the hajj and the Tablighi Jamaat, an Islamic religious movement. In November 2014, he was arrested and charged 28 times under several Articles of the Penal Code for his comments. He was released from jail in July 2015.

Recommendations

Articles 295(a) and 298 should be struck from the Penal Code. Some legislation against hate speech is legitimate under international law, but disallowing any form of injury to 'religious feelings' is far too broad and therefore illegitimate. The provisions in their current form allow commentators to be prosecuted merely for advocating for secularism. Article 505 must be amended to be more narrowly defined and have a high gravity threshold, ensuring

that casual commentary cannot be interpreted as a crime. The courts of Bangladesh must also stop broadly interpreting all three of the provisions.

Myanmar

Freedom of expression in the context of religion is becoming an increasingly severe issue in Myanmar as the topic becomes increasingly politicized. Myanmar's laws on the issue are similar to Bangladesh's as both Penal Codes were inherited from the British, and the laws are similarly harshly applied. Like in Bangladesh, Articles 295(a) and 298 of the Penal Code allow punishment for those who insult religion, and have been used to criminalize those who make statements that could be construed as attempting to insult (Article 295), or deliberately insulting (Article 298) the religious feelings or beliefs of a particular group. In practice, these Articles have been solely used to quell any speech, writing, or artwork that the Government deems defamatory towards Buddhism, often at the behest of radical Buddhist groups which agitate against other religions, Islam in particular. The provisions are not used to protect religious minorities, which would be a more legitimate application. The penalties for offences under these provisions reach up to two years of imprisonment.

In June 2015, Htin Lin Oo, a journalist and the previous information officer for then-opposition party the National League for Democracy, was sentenced to two years of hard labour under Articles 295(a) and 298 for a speech he gave at a literary festival in October 2014 in which he suggested that Buddhism is not compatible with extreme nationalism. In March 2015, Philip Blackwood, a New Zealand citizen and owner of a bar in Yangon, was sentenced to two years in prison along with two Burmese associates after he posted a picture of the Buddha wearing headphones to the bar's Facebook page. Both cases suggest a worrying downward trend for plurality of religious thought in Myanmar.

Recommendations:

Articles 295(a) and 298 should be struck from the Penal Code. Broad terms such as 'attempting to insult religious freedoms' are not specific enough to ensure that they are not used for political reasons.

As with other Penal Code provisions in Myanmar and elsewhere, the courts must be removed from political pressure and be independent enough to be able to apply the law according to its letter, rather than broadly interpret it according to political pressure. The Government and the courts must both resist being swayed by anti-Islamic Buddhist nationalism and public opinion. The law should protect, rather than target, religious minorities who are under severe threat.

India

Blasphemy laws in India are very strict inheritances from British colonial rule, and thus are similar to both Bangladesh's and Myanmar's laws on the matter. Under Article 295(a) and Article 298 of the Penal Code, anyone who deliberately insults, or attempts to insult, 'religious feelings' can be imprisoned for up to three years. As in Bangladesh, an issue with the provision is its lack of definition of 'religious feelings' and the lack of a severity threshold. With no definition as to what constitutes an offence, a wide variety of acts could be interpreted as insulting certain people's religious feelings, giving rise to the possibility of misuse of the law for political ends. In January 2016, comedian Kiku Sharda was arrested under Article 295(a) for having mimicked the head of the Dera Sacha Sauda sect. In September 2016, atheist blogger Tarak Biswas was arrested under Article 295(a) for reposting an image critical of Islam on Facebook. In February 2013, cartoonist Aseem Trivedi was charged under Articles 294 and 295 for cartoons he had created that mocked Parliament and the Ashoka Pillar. He was also charged under the IT Act for exhibiting the cartoons on his website. In November 2012, Shaheen Dhada was arrested under Article 295(a) for writing a Facebook post questioning procedures surrounding the funeral of Shiv Sena founder Bal Thackeray. One of her friends was also arrested under Article 295(a) for liking the post. In April 2012, Sanal Edamaruku, a prominent rationalist author, was charged under Article 295(a) for suggesting a religious statue was dripping water because of a nearby clogged drain, rather than any miraculous incident. He fled to Finland to avoid arrest.

Recommendations

Articles 295(a) and 298 must be removed from the Indian Penal Code. Blasphemy laws, particularly ones that are so broadly defined as to interpret any critical comment as an insult to religion, are an illegitimate restriction of freedom of expression. Bloggers, journalists and activists should not be subjected to prosecution for comments that represent an alternative viewpoint.

Indonesia

Indonesia has very strict and frequently used blasphemy laws, most comparable to those of Malaysia, the Maldives and Pakistan. Under Article 156(a) of the Penal Code, anyone who expresses feelings of enmity against a religion, or who abuses or 'stains' a religion, may be sentenced to five years in prison. Under Article 156 of the Penal Code, anybody who publicly makes a statement that expresses 'hostility' towards a religious or other group may be punished by up to four years in prison. Regulations under the Decree on the Prevention of Blasphemy and Abuse of Religions 1965 (upheld in a 2011 Constitutional Court ruling) legitimize punitive action against people expressing differing views on religion by allowing up to five years' imprisonment for those found guilty of 'deviant interpretation' of religious teachings. In October 2015, the police issued a circular (SE/6/X/2015) on hate speech, broadening the scope of the concept to include any expression 'aimed at inflicting hatred or hostility against individuals.'

In November 2016, the Christian governor of Jakarta, Basuki Tjahaja Purnama, was named as a suspect in a blasphemy case brought by Muslim groups over his suggestion that people were using religious pretexts to convince people not to vote for him. In June 2015, the head of the Gafatar community organisation was sentenced to four years of imprisonment under Article 156 for insulting religion. In February 2016, the sect was declared illegal by a joint ministerial decree, and in May, three ex-leaders of Gafatar were arrested. In December 2014, an editor of the Jakarta Post was named a suspect in a blasphemy case for a cartoon published in the Post in June, despite the fact

that the paper had already published a retraction and apology for the cartoon. In February 2011, Antonius Bawengan, a preacher based in Java, was sentenced to five years' imprisonment under Article 156(a) for distributing books and pamphlets that were highly critical of certain Islamic teachings. Members of the Ahmadi community in Indonesia face several limits on their freedom of expression. In June 2008, the Government issued a decree that prohibits them from promulgating any materials or teachings that deviate from the traditional teachings of Islam or suggest that there was another prophet that came after the Prophet Muhammad. The Ahmadis have been the objects of numerous attacks by Non-state groups that have gone unpunished by the authorities.

Recommendations

Articles 156 and 156(a) of the Penal Code should be repealed, as they constitute unreasonable restrictions on freedom of expression. Although speech that offends the sensibilities of certain religious groups may not be pleasant for some parties, this is no reason to criminalize the expression of alternative or contradictory viewpoints. The Decree on the Prevention of Blasphemy and Abuse of Religions and police circular (SE/6/X/2015) must be repealed for the same reasons.

Laos

The Decree on Religious Practice 2002, also known as Decree 92, punishes certain exercises of freedom of expression in the context of religion. Under the Decree, in order to be able to preach or publicly disseminate religious teachings, groups must receive approval from the village and district head of the Lao Front for National Construction, a quasi-Governmental front organisation of the LPRP tasked with managing all socio-political organisations in the country. In addition, all religious texts must be sent to the Ministry of Propaganda and Culture and approved by the Central Committee of the Lao Front for National Construction before they are disseminated. Any religious text that '[obstructs] the progress of the nation' is forbidden. In addition, any religious groups that conduct activities that foment social disorder can face legal repercussions.

Recommendations

The Decree on Religious Practice must be repealed and replaced with a law guaranteeing freedom of religious expression. Placing Government control over any statement about religion is a grave violation of the right to freedom of expression. The law should under no circumstances allow for punishments for the exercise of free religious expression.

Malaysia

Insult to religion in Malaysia is a criminal offence under the Penal Code as in other former British colonies, but is further criminalized under additional legislation on the matter, like Indonesia and the Maldives. Article 298 makes any statement in any form of expression that deliberately intends to wound the religious feelings of any person illegal, and carries a penalty of up to one year in prison. In September 2016, opposition MP Jeff Ooi was arrested under Article 298 for a Twitter post in the wake of the death of spiritual leader Harud Din which read 'Adios Harun Din. Let there be peace.'

The Syariah Criminal Offenses Act 1997 adds to the restrictions on freedom of expression and explicitly singles out expression insulting Islam. Under the Act, anyone who makes an oral or written statement that insults, derides, or contradicts Islam or Islamic practices or customs can be imprisoned for up to two years or fined up to 3,000 ringgit (US\$700). Anyone who insults the Quran or the Hadith can be imprisoned for up to three years or fined up to 5,000 ringgit (US\$1,150). In March 2014, 80-year-old activist Kassim Ahmad was charged under the Act for stating that women's hair does not need to be covered and that the Ulema is a 'priest caste.' In June 2012, Nik Raina Abdul Aziz, a bookstore employee, was arrested and charged under the Act for distributing copies of Allah, Liberty, and Love, a banned book, even though the ban had not come into effect at the time of her arrest. The case was dropped in June 2015.

Recommendations

While offending someone's feelings on a subject dear to them, such as religion, is not a commendable act, neither is it a criminal one.

Criminalizing such an act in this way is extremely problematic because the offence is not in the nature of the statement but in the feelings of the person who feels insulted. Regardless of how unreasonable or even dangerous the views of the plaintiff are, insulting them could be conceived of as a criminal act. Beyond this, the criminalization only of insults to Islam creates a legal framework that is responsive to one religious community above others. Finally, these laws must stop being selectively applied to critics of Government: to achieve such an outcome will require reform of the courts and of the security forces.

Maldives

Religious expression in the Maldives is extremely restricted: several laws and even the Constitution limit it. Article 27 of the Maldives' Constitution purports to protect freedom of expression, but stipulates that this freedom only applies to discourse and work that does not contradict any tenet of Islam. The Maldives holds a reservation against Article 18 of ICCPR, which provides for freedom of thought, conscience, and religion, and states that the Article only applies when it does not contradict with the Constitution. The Constitution bans non-Muslims from being citizens, voting or holding public office, and bans any statement contrary to Islam or the Government's policies regarding religion. Sermons must be Government-approved, and the Government controls certification for imams. The Ministry of Islamic Affairs has the power to shut down or ban any websites considered anti-Islamic. The Government has banned several websites that host anti-Islamic content, and the importation of non-Islamic religious texts is banned. Article 617 of the Penal Code outlaws criticism of Islam and content doing so as well as disrupting religious unity.

The Protection of Reputation and Good Name and Freedom of Expression Act 2016 sets out strict blasphemy laws which are among the most restrictive in the region. The Act outlaws insult to Islam, questioning the validity of any tenet of Islam and threatening religious unity. All three of these concepts are either vaguely defined or not defined at all, meaning that virtually any critical discussion of

religion could be prosecutable. Furthermore, under the Act, any dissemination of religious knowledge without the permission of the Government is outlawed; an extreme form of ex ante censorship of any form of expression.

Recommendations

Considerable change is needed to the Constitution and the Penal Code of the Maldives so as to align it with international standards on free expression. The Constitution must be significantly amended so that it guarantees freedom of expression on religion. Provisions in particular need of change are the ban on expression that contradicts Islam and the ban on non-Muslims from being citizens. Article 617 must be repealed in its entirety. The Protection of Reputation and Good Name and Freedom of Expression Act must also be repealed immediately, as it is overly broad and restrictive and in any case is redundant as the offenses contained within it are addressed elsewhere in the law.

Pakistan

Freedom of expression in the context of religion is extremely restricted in Pakistan, which has by far the most restrictive and draconian laws in the region. Like other former British colonies such as India, Bangladesh and Myanmar, insults to religion are covered in the Penal Code; but the laws in Pakistan are broader and carry extremely heavy penalties, including death. Articles 295 through 298 of the Penal Code are the most common legal measures used to inhibit people from speaking in a way that contradicts a narrow interpretation of Islam. Article 295(a) punishes those who commit 'malicious acts' that insult or outrage religious sentiments with up to ten years in prison. Article 295(c) prohibits written, oral, and visual expressions against the Prophet Muhammad, and allows the death sentence or life imprisonment for those found guilty. Article 298 punishes those who make statements with the intention of harming religious sentiments with up to one year of imprisonment. Article 298(a) punishes speech that denigrates the Prophet Muhammad, his family members, any of the Righteous Caliphs, or any of his companions with imprisonment of up to three years. Article 298(b) penalizes the use of words for

holy persons and places in Islam by members of the Ahmadi sect with up to three years imprisonment. Ahmadis can be prosecuted for greeting members of majority religious sects in a certain way or referring to Ahmadi houses of worship as masjids. Article 298(c) punishes Ahmadis who refer to themselves as Muslims or preach their faith publicly with up to three years of imprisonment.

Thousands of religious minorities have been charged or threatened with prosecution under Articles 295 and 298 for religious-related offences, and many activists have also been charged. Individuals calling for the reform of these laws have attracted violence and death threats from extremist groups. Prominent leaders advocating revision of these laws have been targeted in the past, such as Salman Tasser, the late governor of Punjab Province, who was killed in January 2011 by his own security forces for his stance on blasphemy regulations, and Shahbaz Bhatti, former Minister for Minority Affairs, who was killed in March 2011 for his outspoken critiques of the laws.

Under Article 292 of the Penal Code, anyone who sells, distributes, or possesses obscene literature or artwork, including that which defames religion, can be imprisoned for up to three months. Anyone who gives these materials to someone under 20 years old can be imprisoned for up to six months. Under Article 294(b), anyone who says anything obscene in a public place can be imprisoned for up to three months.

Recommendations

Pakistan must immediately amend its Penal Code to remove Articles 292, 294, 295 and 298 in their entirety, as they criminalize acts of free expression that are not criminal under international law and carry unacceptably harsh and disproportionate penalties. Expression contrary to a particular religion or expression which offends the sensibilities of a religious group is well outside the bounds of permissible restrictions on free expression. Denying persons the ability to speak of alternative religions, to speak critically of religions or even to offend religious persons is a fundamental denial of the right to free expression. Penalizing such

expression criminally is illegitimate, and doing so with long prison terms, and even the death penalty is an egregious violation of international standards. A law on free religious expression must immediately be enacted, guaranteeing the right to the above forms of expression to all, and putting in place protective mechanisms for persons who are at risk due to their opinions.

The Philippines

Freedom of expression in the context of religion is restricted in the Philippines under Article 201, whereby ‘immoral doctrines, obscene publications and exhibitions and indecent shows’ that ‘offend any race or religion’ or ‘are contrary to law, public order, morals and good customs’ are punishable by six to 12 years of imprisonment, a fine of six to 12,000 pesos, or both. In August 2011, the St. Thomas More Society, an association of Catholic lawyers, filed a case against artist Mideo Cruz and 10 officials of the Cultural Center of the Philippines over the latter’s showing of the former’s work *Poleteismo*, which they alleged offended Catholicism. Although the Office of the Ombudsman dismissed the complaint in March 2013, the exhibit was prematurely closed due to political pressure, and the CCP Visual Arts division head resigned.

Under Article 133 of the Penal Code, anyone who performs an act that offends ‘the feelings of the faithful’ in a place of worship or during any religious ceremony can be sentenced to one to six months of imprisonment. In January 2013, tour guide and comedian Carlos Celdran was convicted under Article 133 for holding a solo protest inside Manila Cathedral against the Church’s opposition to a reproductive health bill.

Recommendations

The Government of the Philippines must repeal Articles 133 and 201 of the Penal Code and ensure that speech that may be offensive to religious persons is not criminalized and is not subject to arbitrary, undefined and broad tests such as ‘obscenity’.

Singapore

Singapore does not have blasphemy laws, but its laws restrict freedom of religious expression in a

manner similar to other former British colonies, as they were inherited from the repressive colonial Penal Code. Article 298 of the Penal Code criminalizes expression that intends to wound the religious feelings of any person and provides for punishment of up to three years in prison. Article 298(a) states that anyone knowingly promoting written or oral expression that can lead to racial or religious disharmony, hatred, or ill will can be imprisoned for up to three years. Article 292 criminalizes any act related to content that is considered 'obscene,' whether physical or online, placing strict and arbitrary 'moral' constraints upon expression.

In May 2015, 16 year old blogger Amos Yee was sentenced to four weeks imprisonment under Articles 298 and 292 of the Penal Code. In March 2015, Yee posted a video online that allegedly defamed former Prime Minister Lee Kuan Yew. This case became internationally known because Yee was a legal minor at the time of his sentencing. In September 2016, Yee was again convicted under Article 298, this time for posting a picture and five videos online between November 2015 and May 2016 in which he allegedly insulted the Bible and the Quran.

Recommendations

The Penal Code must be amended to remove Articles 292 and 294 to 298(a) which criminalize

obscene expression or insults to religion. Obscenity is a relative concept and thus subject to arbitrary application by the Government, as seen in the case of Amos Yee. Insult to religion, regardless of its offensiveness, is not a criminal act by international standards, and criminalizing it is therefore an illegitimate restriction of freedom of expression.

Vietnam

The Law on Belief and Religion 2016 formalizes the extensive control and repression that the Government exerts upon religious groups. According to the Government Board of Religious Affairs, the law will aid them in cracking down on persons who 'abuse religion to threaten the interests of the state.' The law holds that religious groups must not undermine the 'good traditional cultural values of Vietnam, nor sow divisions.' These concepts are undefined leaving their interpretation to the discretion of the State, which has used the law to suppress persons exercising their right to freedom of expression.

Recommendations

The Law on Belief and Religion must be repealed as it extends Government control far into religious life. Restrictions to freedom of expression on broad cultural and political grounds such as 'undermining traditional values' or 'sowing divisions' is illegitimate as neither of those acts qualify as criminal offences.

Cybercrime and Telecommunications

Bangladesh

Freedom of expression online is increasingly restricted in Bangladesh. The Information and Communication Technology (ICT) Act 2006, amended in 2013, dictates an extremely heavy fourteen years of imprisonment for anyone who publishes or transmits defamatory, obscene or false information online that could deteriorate law and order, prejudice the State, provoke others, or cause harm to religious belief (Article 57). The punishment under the original Act for this was up to 10 years, but it was increased to 14 in the 2013 amended version, making it one of the heaviest of its kind in Asia. The 2013 amendment also changed the Act to allow the authorities to arrest individuals without a warrant and hold them without bail indefinitely. Article 63 criminalizes the unauthorized disclosure of information, but does not limit its ambit to public officials, meaning that it could apply to private persons, and more seriously, does not lay out any exceptions for whistleblowers. Article 46 gives ‘controllers’ (the overseer of certifying authorities) the power under broad conditions to block access to information and conduct surveillance. The Act also creates a number of other new criminal offenses related to computers: computer misuse (Articles 54 to 56); regulatory offences (Articles 58 and 60), for not complying with Government orders; and online speech offences (Article 66).

The ICT Act has been used to prosecute journalists, human rights defenders, and opposition political actors for a wide range of acts. In the first half of 2016 alone, at least 27 people were detained under the Act. On 7 August 2016, three journalists from the online news source banglamail24.com were arrested for erroneously reporting that an airplane crash had killed the Prime Minister’s son. On 28 August 2016, a Rajshahi University student named Dilip Roy was arrested for Facebook posts against a controversial coal plant in a mangrove. On 2 September 2016, Siddiqur Rahman Kahn, a journalist who edits an education-related website, was arrested for allegedly defaming a former Government official online. In January 2017, the High Court rejected a petition filed by Adilur Rahman Khan and A.S.M. Nasiruddin Elan, the Secretary and Director of

Forum-Asia member Odhikar, cancelled a High Court order from 2014 staying the proceedings, and instructed the Cyber Crimes Tribunal to proceed with their trial under Article 57 of the Act for allegedly exaggerating the number of protestors killed by police in a 2013 report.

The draconian and highly repressive draft Digital Security Act (DSA), which was approved by Cabinet in January 2018, would further enhance the Government’s ability to stifle freedom of expression online. At the time of writing the draft DSA has yet to be approved by Bangladesh’s Parliament, although indications are that the Act will be passed in 2018. It is comparable to some of the most repressive legislation in the region (aside from China, Laos and Vietnam) because of its breadth and harsh penalties. The current draft incorporates the highly controversial Article 57 of the ICT Act, which significantly widens the scope for the types of online speech that may be prosecuted through extremely broad definitions of offences, and extends the punishment for certain types of expression to life imprisonment. The DSA’s definitions of obscenity, unlawful access, damage, and suppression of information do not include any need for negative intent, or any need for a security system to have been breached: thus persons accidentally accessing information that they are unauthorized to could be punished under the law. The Law could also certainly be used to punish whistleblowers, as there are no clauses allowing unauthorized access to or publication of information if it is in the public interest. Article 13 on terrorism allows the prosecution of anyone commenting in any critical way on the ‘National Liberation War’ of Bangladesh. Article 14 on the taking, sharing or publication of images has no test of reasonableness or intent, meaning that any photograph of any person so acted on without express consent, could result in imprisonment for 10 years. Perhaps most worryingly, the Law extends broad powers to security forces to investigate possible offences, allowing them unfettered ability to monitor and collect data without a warrant.

Recommendations

The Government of Bangladesh should repeal and replace the ICT Act as well as the DSA. While legislating against cybercrime is a legitimate end, both laws illegitimately and severely curtail the right to freedom of expression online. The ICT Act must

be rid of provisions that criminalize legitimate free expression (particularly Article 57) and that give Government broad powers to block information and conduct surveillance. Similar changes must be made to the draft DSA: definitions throughout the Act must be considerably narrowed so that they target legitimate crimes, rather than acting as a catch-all charge for targeting political opponents. Provisions criminalizing expression of opinions on politics (such as Article 13 on the National Liberation War) have no place in a law on digital security. Bangladesh is in urgent need of legislation explicitly protecting the right to freedom of expression online for all citizens -in particular whistleblowers- and spelling out clear punishments for Government organs' violation of that right.

Cambodia

The Cambodian Government has for the last few years been narrowing the space for free expression in the domain of telecommunications and cyberspace. In December 2015, the legislature promulgated the Law on Telecommunications, which severely restricts freedom of expression even in private conversation. Article 97 of the law allows the newly created 'telecommunications inspections force' (which has full police powers) to secretly monitor any communications in the telecommunications medium on the approval of a 'legitimate authority'. What constitutes a legitimate authority is not specified, which in practice implies that the Government is free to exercise this power when it chooses, without a warrant. This grave breach of citizens' right to privacy is in contravention of the Cambodian Constitution. Article 65 of the Law purports to protect privacy, but is invalidated by the inclusion of an exception that it may be overridden as 'determined by other specific laws'. Attempting to override constitutional provisions through ordinary legislation is, of course, unconstitutional. Article 6 further impedes the right to privacy by compelling telecommunications companies to provide data to Government, also without a warrant. Article 7 invests in the Government the power to take control of the entire industry but does not provide any clear conditions that must be present for this power to be exercised. The Law also creates new criminal offences specific to telecommunications. Article 80 outlaws the use of telecommunications leading to 'national insecurity', without defining the term, meaning that it is open to broad application and could easily be

used to silence dissent. Article 66 prohibits activity that 'may affect public order or national security', which again is left undefined, opening it up to the same potential for abuse as Article 80. Articles 93 to 96 mirror Articles 231, 232, 423 and 424 of the Criminal Code, but carry heavier sentences simply for having been committed online (similar to the Philippines' cyber laws on defamation). Article 107 holds the leaders of organisations as well as organisations themselves responsible for the professional acts of individuals within them. This opens the door to entire media outlets or NGOs being shut down for a minor offence of one of their staff. On the whole, the law provides the Government with extraordinary powers to monitor and punish private communication as well as control the entire telecommunications industry. This has had a very powerful chilling effect on freedom of expression that extends deep into people's private lives.

Aside from this law, the most prominent concern for Cambodians in the online domain recently has been the draft Cybercrime Law, first announced in 2012. A draft version of the law leaked in April 2014 showed that it would establish a National Anti-Cybercrime Committee chaired by Prime Minister Hun Sen and composed of Government officials that would ostensibly target online crime. Some of the law is less controversial, targeting online fraud, for example, but Article 28 bans the production, publication or sharing of any content 'deemed to hinder the sovereignty and integrity of the Kingdom of Cambodia,' 'deemed to generate insecurity, instability and political cohesiveness,' 'deemed to be non-factual which slanders or undermined [sic] the integrity of any Government agencies,' or that may 'incite or instigate the general population that could cause one or many to generate anarchism.' The very broad phrasing of the law, particularly in the Cambodian context, where other laws are very tenuously interpreted to criminalize civil society's work, leaves no doubt that it could be used to crack down on any criticism of Government. Furthermore, punishments stipulated by the law are severe: up to three years of imprisonment, up to 6,000,000 riel (US\$1,500) fines, and potentially indefinite suspension of some civil rights. The status of the draft law has been uncertain since 2014, when, following a public outcry in the wake of the leaked draft, the Government declared that the law had been scrapped. This appears not to have been

the case, however, as a second draft was leaked in July 2015. This draft was the version sent by the Ministry of Posts and Telecommunication to the Interior Ministry, and showed promise, as Article 28 had been omitted. However, given the Interior Ministry's culture of repression, it is possible that it has subsequently been reinserted. As of April 2018, the Cybercrime Law is still forthcoming.

Although Cambodia does not have a central body overseeing online repression, there have been a number of actions taken by the Government to restrict freedom of expression. In February 2012, the Ministry of Posts and Telecommunications and the Ministry of Interior produced a circular ordering Internet cafes to install surveillance cameras and for telecommunications companies to collect user data, although it appears these directives were not enforced. Another directive was issued in October 2014, ordering telecommunications companies to allow the Interior Ministry access to their networks and data logs. And most worryingly, a proclamation was issued in the same month declaring the creation of a Cyber War Team to 'protect the Government's stance and prestige.'

Recommendations

The Government of Cambodia must extensively amend the Law on Telecommunications to make it consistent with the Cambodian Constitution and international standards. Specifically, the Government should not have the power under Article 97 to monitor private conversations without a warrant; Article 65 should be amended to remove the broad exception to the guarantee the right to privacy; Article 6 must be amended so that the Government may not compel telecommunications companies to provide user data without a warrant; Article 7 must be repealed to ensure that the Government may not seize control of the telecommunications industry; Articles 93 to 96 should be repealed as 'threats' are already adequately covered in the Criminal Code; and Article 107 must be repealed because there is no legitimate legal reason to provide Government with the power to shut down entire organisations due to the activities of one staff member.

The Government should also scrap the Cybercrime Law once and for all, as the crimes it covers are already thoroughly addressed under the 2010 Criminal Code. Article 28 in particular must not be included in the Law if it does go ahead, as it is an

explicit attempt to crack down on free speech online. The Government must also repeal other measures taken to restrict free expression: online surveillance must be within the bounds of the law, with a search warrant; and the Cyber War Team designed to go after Government critics must be dismantled as it is explicitly political in nature.

China

The Chinese Government employs an immense array of laws and regulations as well as a massive state machinery to control expression on the Internet, social media, and even private conversations via telecommunications. An increasingly complex system of regulation controls and censors content, and punishes those who break the extremely strict rules. China's case is unusual in that much of its repression takes the form of ad hoc directives or regulations -rather than actual legislation- which significantly shape the landscape of online expression.

Control of online expression is held by the very highest echelons of power. Since 2014 the Central Internet Security Informatization Leading Group controls all decisions on the entire online sector, including cybersecurity, Internet management and content regulation. It is headed by President Xi Jinping, Premier Li Keqiang, and long-time propaganda chief Liu Yunshan. Since 2015, the prominence of the Cyberspace Administration of China and its head, Lu Wei, in developing and implementing Internet controls has also increased.

Under the 2003 Interim Rules for Managing Internet Culture, any commercial entity wishing to produce, duplicate, distribute, or broadcast any articles on current affairs online must apply for a license with the Ministry of Culture. Under the 2005 Regulations on the Administration of Internet Information News Services, personal blogs, online bulletin boards, and chat rooms can all be considered news media, and are subject to the same regulations and restrictions as major journalism services. Users of these websites are prohibited from posting content that could compromise state security, harm State interests, disseminate rumours, destroy social order, or propagate obscenity or defamatory speech. The 2007 Regulations on Internet Audiovisual Program Service Management give the Government the

power to remove any audio or video content from the Internet that propagates superstition, insults or slanders others, or endangers social virtues. In April 2014, the Government used this clause to remove several US television shows from video streaming websites. As noted above, press cards -which are required for websites to produce original content- have only been distributed to online media workers since 2015, and only to a very few pro-Party sites. Furthermore, in July 2016, the Cyberspace Administration of China (CAC) ordered a ban on original news reporting of major Internet sites such as Tencent, Sina, NetEase and Sohu, accusing them of reporting and publishing articles about sensitive subjects.

As noted above, online expression is also governed at the whim of directives from Party organs, or even statements from top officials. The period from 2013 to present has been marked by increasing crackdowns using these tactics. To take a recent example, in June 2016 alone, there were three such comments and directives. The Government's Anti-graft Discipline Commission publicly criticised the propaganda department for failing to adequately control the Internet, and it called for heightened efforts to contain content not serving the goals of Party propaganda. Also in June, Tian Jin, the deputy director of the State Administration of Press, Publications, Radio, Film, and Television, wrote that 'programs that are hyping trending social hot topics, ridiculing state policies, disseminating wrongful views, advocating extreme views, and sparking conflicts will be severely punished.' Finally, the CAC announced in June that it would be heightening its efforts to eliminate and punish 'chaotic' online comments on news websites and on social media, calling on websites to ensure positive comments and better report 'harmful' comments. As is evident from these directives, China's control of online expression differs somewhat from most other countries in the region, as it is less centred on a legislative framework.

The state firewall, which was established in 1993 under the 'Golden Shield Project,' heavily restricts freedom of information online by employing extremely strict content censorship measures. Several key websites, such as Google, YouTube, and Facebook are blocked throughout the country, making it extremely difficult to disseminate content and share information online, particularly with those outside the country. Prominent news websites

Bloomberg and New York Times have been blocked since 2012 after they reported on the wealth of the family of high-ranking Government officials. Additionally, websites that use certain terms, such as 'human rights' and 'democracy' are also blocked, as are sites that discuss controversial issues, such as Tibet, Xinjiang, Taiwan, Falun Gong, and the 1989 Tiananmen Square massacre.

The Chinese Government has used distributed denial of service (DDoS) attacks to shut down or make the websites of Chinese human rights organisations inaccessible. In April 2010, the Government also hacked into and blocked the email accounts of at least ten journalists.

Although Internet control measures in China are already quite extreme, the Government passed new legislation in November 2016 to further inhibit people's ability to express themselves online within China. The 2016 Cyber Security Law mostly codifies and strengthens previously existing Internet control measures in an attempt to make Chinese cyberspace 'safe and harmonious.' The law formally legitimizes the use of the Government's firewall and website censorship, and states that Government departments have the authority to block the transmission of any information prohibited under Chinese law. In addition, the law stipulates that Internet service providers must actively monitor their customers' accounts, delete illegal content and enforce real-name registration. It also permits the shutdown of Internet communications during times of crisis. The Government has already shut down communications in delicate situations, although the practice had not yet been codified. For example, in July 2009, the Government shut down all Internet and international telephone communications in Urumqi after thousands of ethnic Uyghur residents protested police and state violence. Both Internet and phone services remained extremely limited for at least a year after the protests.

In July 2015, China's legislature passed the National Security Law, which contains several extremely broad provisions designed to control and manage Internet systems and content. Under the law, the Government can take any steps necessary to protect China's sovereignty, national unity, economy, society and cyber and space interests. The ambiguity of the offences is such

that it is difficult to tell what exactly will constitute one, meaning that civil society can be targeted at the Government's leisure. The law also has clauses to make information systems more 'secure and controllable' and punishments for activities that 'undermine...cyberspace security.'

Internet service providers (ISPs) in China are already legally obligated to keep files with the personal information of their users, and must provide this information to the Government to facilitate prosecution if users post illegal content. Providers must be able to link screen names of people publishing content online to their real-life identities. Failure to do this can result in fines, warnings, and even forced closure of the ISP under the Cyber-Security Law. This is reinforced by the Decision to Strengthen the Protection of Online Information 2012, whereby Internet users must provide information about their real-life identity to the Chinese Government when signing up for Internet, landline or mobile phone services. If they fail to provide accurate information, they are not legally allowed to use the Internet. The 2000 Administrative Measures on Internet Information Services stipulate that Internet service providers are obligated to help the Government monitor content on the Internet. The regulations state that Internet service providers should only host domestic news on their servers, install software to copy users' e-mails, and remove any subversive, obscene, or slanderous content. In July 2011, the Government announced that all public places offering free Internet to their customers would have to install expensive software that would allow the police to collect users' personal information. Businesses that fail to comply face a minimum fine of 5,000 Yuan (US\$780) and can have their Internet cut off for several months.

Even personal messages are not free from Government surveillance. The Government also has the power to delete personal e-mails and messages that contain sensitive keywords. Social media platforms used within the country are heavily regulated and monitored by Government officials. The 2014 Instant Messaging Regulations state that all users of instant messaging applications in China must sign a contract promising to 'uphold the socialist system' and to refrain from posting information about politics or current affairs without prior Government approval.

Recommendations

The legislative framework that enables the Chinese state to monitor, censor and punish online expression must be repealed in its entirety, most importantly the Cyber Security Law. The Government must not have the authority to place political restrictions on what may be posted or said online, and any restrictions must be clear, narrowly defined, and justified under international legal standards. The Government should not have the power to shut down or take control of the communications and Internet industry. Neither should the Government have the power to deny user access to websites on political grounds, or to remove material from websites. The state must also halt its harassment of dissidents online, through DDoS attacks.

Telecommunications companies and Internet service providers should be under no obligation to monitor or censor content, and the requirement that they do so must be removed. They must also not be required to maintain information related to users' data history or real-life identities, and must under no circumstances be required to share this information with Government without a warrant. The state should not have the authority to monitor individuals' communications, nor should instant messaging application users have to pledge allegiance to the socialist system.

The National Security Law must be amended to remove the broad provisions that grant the Government the power to control and manage Internet systems and content. Offenses under the law must be clearly defined and refer to acts that are criminal according to international standards on freedom of expression.

India

India's laws impose strict restrictions on freedom of online expression that resemble those of most states in the region in their form and severity. The Information Technology (IT) Act 2000, amended in 2008, and again in 2015 on the orders of the Supreme Court, expands Government censorship and monitoring to the online sphere. Under the Act, the Government has the power to block or ban sites that could be deemed offensive, and may also intercept any private communications that could disrupt the sovereignty, integrity, or defence of India, friendly relations with foreign states, or public

order. These vague restrictions referring to broad and undefined concepts such as ‘public order’ and ‘integrity’ resemble provisions in laws in Myanmar, Cambodia, Nepal, Bangladesh, Malaysia, Thailand and Mongolia. In February 2013, the Government used the IT Act to block more than 70 websites that exposed the Indian Institute of Planning and Management as an unaccredited institution. In March 2015, India’s Daughter, a BBC documentary on a rape victim whose case had sparked protests in India in 2012, was blocked online in India.

Before the Supreme Court struck down the Act’s Article 66(a) and watered down Article 79, anyone who posted messages that were offensive, caused annoyance or inconvenience, or were of a menacing character faced up to three years’ imprisonment under the Act. Like Myanmar’s Electronic Transaction Law 2004, which outlaws any data transmission ‘to the detriment of any person,’ language such as ‘causing annoyance or inconvenience’ was much too broad and with much too low a threshold to constitute a legitimate criminal offence, and it was used to persecute Government critics. In August 2014, Polla Suresh Krishna, Inturi Ravi Kiran, and Maddula Prasad were arrested under the Act for posting and commenting on cartoons on Facebook that allegedly defamed Kothapalli Geetha, a Member of Parliament from Lok Sabha constituency. Although the removal of Article 66(a) is a step in the right direction, the Government still retains overly broad powers to monitor private communications and interfere in the online activities of persons in India. Under Article 69, for instance, it can imprison any person who fails to comply with a Government decryption order for seven years.

The Information Technology Rules 2011, introduced as a supplement to the IT Act, further increase the state’s ability to monitor Internet users. The Rules dictate that Internet café owners must obtain identification documents containing the personal information of anyone using computers inside the café, and must maintain records of each access point that anyone at the café uses. These records must be maintained for a minimum of one year. Government officials are allowed free rein to access these records, giving them the ability them to view the web history of anyone who uses public spaces to browse the Web. The Rules also dictate that if Internet service providers are found to be hosting any objectionable or harmful content, they must remove said content

within 36 hours of being notified, or risk legal punishments. These draconian rules are reminiscent of Cambodia’s February 2012 Ministry of Posts and Telecommunications and Ministry of Interior circular ordering Internet cafes to install surveillance cameras and telecommunications companies to collect user data. The effort to have access to users’ real-life identity is also similar to China’s extreme Cyber Security Law, which mandates that ISPs must enforce real-name registration. These similarities are an important reminder of the fact that expression in India’s online environment is heavily restricted.

The Central Monitoring System (CMS), which was introduced in 2013, has been made possible by the IT law and its accompanying rules. It gives law enforcement agencies the power to listen to and record phone calls and read and store e-mails and text messages. Law enforcement officials monitoring content under the CMS do not need to obtain a warrant, and citizens who have been monitored by the CMS have no judicial measures to combat unlawful surveillance. In addition, although the Government adopted new protection mechanisms for data transmission in 2011, the legal framework and oversight procedures for surveillance are still weak and easily susceptible to abuse.

Recommendations

The IT Act currently contains several illegitimate restrictions on freedom of expression that must be removed. The Supreme Court has taken an important step in striking down Article 66(a) which was far too broad to constitute a criminal offense. Provisions that enable the Government to imprison people for not complying with a decryption order, to intercept private communications, or to block or ban sites on the basis of broad concepts such as offensiveness must also be removed. The Information Technology Rules must also be amended to remove obligations on Internet cafes to collect users’ identities and monitor their browsing habits and provisions requiring ISPs to remove ‘objectionable content.’ The Indian Government must immediately halt its practice under the CMS of engaging in mass surveillance of communications, and must draft, pass and implement a Privacy Law that protects persons in India from such interference.

Indonesia

Online speech in Indonesia has been increasingly regulated and restricted. The Law on Information

and Electronic Transactions 2008 (revised in 2016) bears resemblance to similar cyber laws in most countries in the region in that it extends defamation laws into the online sphere. Under Article 27 of the Law, anyone who distributes electronic information that contains defamatory or threatening content or information that contains violence content, threats, incitement, or would result in consumer loss can be imprisoned for up to four years or fined up to 1,000,000,000 rupiah (US\$70,000). Individuals accused of defamation under this law can be detained for 50 days without trial. The 2016 revision of the law included a new cyber-bullying clause under Article 29, ostensibly to protect children, but in reality to target Government critics. The clause vaguely defines bullying as including texts, pictures, videos and memes deemed to incite fear or cause embarrassment, further expanding the scope of critical acts which the Government can prosecute. The Act's defamation component has been a very popular tool with which Government officials target their critics. The majority of plaintiffs in Article 27 cases are public officials.

In August 2016, Haris Azhar, a HRD and coordinator of Forum-Asia member KontraS, had a defamation complaint filed against him by the BNN, the TNI and the National Police under Article 27 of the Information and Electronic Transactions Law. Following public pressure, the National Police put its investigation of Haris Azhar on hold. In August 2015, HRD I Wayan 'Gendo' Suardana was the object of a criminal defamation charge filed under Article 28 of the Law by mass organisation Prospera over Gendo's tweet featuring a play on words of the organisation's name. In July 2015, three anti-graft activists were charged under the Law, as well as Article 310 and 311 of the Criminal Code, for allegedly defaming a law professor. In March 2015, law student Florence Sihombing was sentenced to two months' imprisonment and fined 10,000,000 rupiah (US\$700) under the Law for writing a post on social media that insulted Yogyakarta. In March 2015, Wisni Yetty was sentenced to five months' imprisonment under the Law and fined 100,000,000 rupiah (US\$7,000) for disclosing in private Facebook conversation that her spouse was abusing her. In November 2014, satay vendor Muhamad Arsyad was arrested under the Law for posting edited photographs of current President Joko Widodo and past President Megawati Sukarnoputri on social

media. In July 2014, online commentator Benny Handoko was sentenced to one year of probation under the Information and Electronic Transactions Law for making statements about former MP Muhammad Misbakun on Twitter.

The Law has also been used against social media users posting content deemed to be blasphemous, which includes secular material. In June 2014, Abraham Sujoko was sentenced to two years' imprisonment and fined 3,500,000 rupiah (US\$240) under the Law for posting a video in which he called the Kaaba a 'stone idol.' In June 2012, Alexander Aan was sentenced to 30 months' imprisonment and fined 100,000,000 rupiah (US\$70,000) for a Facebook post he wrote arguing that God does not exist. He was released in January 2014.

As mentioned above, the October 2015 police circular providing guidance on what to consider hate speech considerably broadened the forms of expression that police may be criminal. The circular directly targeted social media content containing insults, blasphemy or defamation.

Recommendations

Article 27 of the Law on Information and Electronic Transactions must be repealed. As noted in the Articles on defamation and blasphemy, acts that offend or damage the reputation of people or offend the sensibilities of religious groups should not be criminalized. In its current form, the Law serves to protect public officials from scrutiny and punish criticism. The October 2015 police circular on hate speech online must also be scrapped as it is far too broad.

Laos

Although Laotians have a relatively low level of Internet access, the Government still heavily curtails freedom of expression online. All Internet traffic in the country is channelled through one Government-run gateway to enable content monitoring. All ISP services and Internet cafe owners must submit detailed quarterly reports to the Government with the number of Internet users they have serviced, the name and profession of each, and which websites they have visited.

The Decree on Information Management on the Internet 2014, also known as Decree 327,

includes several provisions that restrict freedom of expression online. The Decree gives the Government the ability to monitor Internet service providers and the content that they provide, and allows those who disseminate information that it deems illegal to be punished with fines and possibly civil or criminal charges. This is similar to provisions in similar legislation in Myanmar, Cambodia, China, and India, but is much more strictly enforced. The Decree states that individuals can only disseminate information through social media if they can correctly identify the source of the material, whether or not the subject matter of the material is controversial or sensitive, a provision that surpasses even China's draconian laws.

The Decree also mandates that Internet service providers and managers of social media websites must inspect the content of all information before allowing it to be publicly disseminated and are liable for any prohibited or controversial content that appears on websites that they manage. This provision once again is matched only by China and Vietnam's strict Internet regulations. Under the Decree, content that may not be disseminated online includes content that attempts to convince people to attack the state or the Government, or impinges on the peace, independence, sovereignty, democracy, or prosperity of the country, and those who post such information face fines or imprisonment. These vaguely worded provisions allow the Government to muzzle any online dissent and criticism of its policies.

In May 2015, authorities arrested Phout Mitane and charged her with slander after she posted photos on Facebook of local policemen allegedly engaging in extortion. She was detained for two months and ordered to pay a fine of 1,000,000 kip (US\$125). In June 2015, Chanthaphone, an environmental activist, was arrested after she posted on social media about a land concession that the Government of Luang Prabang Province had given to Chinese investors. She was detained for two months. In March 2016, Somphone Phimmason, Lodkham Thammavong, and Soukan Chaithad were arrested for Facebook posts criticising the Government for its human rights violations, corruption, and environmental policy. Amnesty International has reported that in April 2017 the three were sentenced to between 12 and 20 years in prison at a secret trial.

Recommendations

The Government of Laos must repeal the Decree on Information Management on the Internet and replace it with a law on Internet freedom. The current regulations, with their broad and political definitions of what constitutes illegal content and their invasive allowances that Government monitor and control all online activity must be scrapped in their entirety. While some Government action to prevent of actual criminal activity online is legitimate, the current legislation is not because it does not target such activity, but rather political opposition. An Internet freedom law must be passed, enshrining the right of netizens to access the content they choose without Government interference and without punishment for activities that are not criminal by international standards.

Malaysia

Malaysia's laws on online expression resemble many other countries' in the region, but are in some respects more susceptible to Government abuse. Under the Communications and Multimedia Act 1998, anyone who makes an obscene, indecent, or offensive comment on the Internet faces up to one year of imprisonment or fines of up to 50,000 ringgit (US\$11,500). Those who host offensive content can receive additional fines if the content is not removed. These restrictions, like those in many other countries in the region, are vague and broad and therefore susceptible to abuse. The Act also allows the Government to block and shut down 'unfavourable' websites and online content, like similar legislation in Myanmar, Cambodia and India.

In September 2016, three people, including a former journalist, were arrested under Article 233 of the Act for allegedly having posted 'offensive' comments online following the death of spiritual leader Haron Din. The former journalist, Sidek Kamiso, was arrested in a raid on his home in the middle of the night without a warrant, which many commentators saw as uncalled-for intimidation tactics. In February 2015, the Malaysian Communications and Multimedia Commission blocked access in Malaysia to The Malaysian Insider's online news site indefinitely under Articles 233 and 263(2) of the Act for allegedly 'quoting a statement that could cause confusion.' In March 2015, three journalists from The Malaysian Insider were arrested under the Act, as

well as the Sedition Act, for publishing information about the possibility of introducing a Hudud Bill. In August 2014, Effi Saharudin was fined 10,000 ringgit (US\$2,300) under the Act after he posted comments on Twitter that allegedly defamed the monarchy.

In June 2012, the Government passed amendments to the Evidence Act 1950. Under Article 114(a) of the amended act, if someone posts illegal, seditious, or offensive content online using someone else's account, the original account holder is liable for the offensive content, unless he or she can definitively prove that he or she did not write it. This amendment makes bloggers, website administrators, and online forum editors criminally liable for information and comments that others post on their site. In addition, this provision shifts the burden of proof from the prosecutor to the defendant.

Recommendations

The Communications and Multimedia Act must be repealed in its entirety. The extremely broad and vague restrictions on expression are illegitimate and serve the purpose of silencing opposition rather than protecting Internet users. The sweeping powers accorded to Government to shut down websites under conditions left up to its discretion also must be rescinded. The June 2012 amendments to the Evidence Act must also be repealed. Administrators must not be responsible for content not posted by them and under no circumstances must the burden of proof be on the defendant.

Mongolia

The state-run Communications Regulatory Commission (CRC) controls and monitors online commenters, and has broad scope to place restrictions on 'inappropriate' content in both online and offline media. The CRC blocks over 200 websites that it deems to contain inappropriate content, including websites that expose official corruption. This manipulation of 'inappropriateness' mirrors similar practices in Malaysia, India, Cambodia, Nepal, Thailand, and Myanmar. In June 2016, the CRC blocked access to 11 websites based on complaints of false information and defamation. In July 2014, the CRC blocked popular news website amjilt.com after it posted a story alleging that a resort owned by the Prime Minister was polluting a local river. The CRC can also restrict website access without warning as it deems necessary.

Under the CRC's General Conditions and Requirements for Regulation of Digital Content 2011, websites with heavy traffic must install software that filters content and captures the Internet protocol addresses of commenters. This attempt to track users' real-life identities is also found in Cambodia, China, India, and South Korea. The regulations also allow the Justice Minister to identify users who post comments deemed libellous, insulting, or obscene, which is similar to laws all across the region that extend criminal defamation penalties to online content.

In March 2014, the Commission published a list of more than 700 words that Mongolians are banned from using in online forums or on social media. Those who use banned words may be subject to imprisonment or fines.

Recommendations

The CRC's 'Conditions and Requirements' must be abolished or revised. The CRC must be allowed to operate as a fully independent body with public participation and full transparency, and the current system should be amended so that the Prime Minister has no power to appoint and dismiss representatives to the CRC. Decisions made on registration and filtering in digital platforms should be abolished, and current laws restricting certain types of content must be amended.

Myanmar

The Government of Myanmar restricts expression in the realm of telecommunications with legislation similar to that of surrounding states. The Telecommunications Law 2013 introduces several provisions that give communications providers the ability to censor or monitor communication services. Under the frequently-used Article 66(d), penalties of three years are set out for a variety of broadly worded acts through telecommunications, including defamation. Article 76 gives the Government the power to enter and inspect any telecommunications company or to require them to submit documents if it is in the public interest or beneficial to national security, neither of which are defined. Under Article 77, the Ministry of Information may intercept or temporarily control communications services, or

require telecommunications providers to suspend communications services during an 'emergency situation' or other vague standards in the interest of national security. Civil society activists have pointed out that the law gives the authorities the power to restrict the Internet and shut down telecommunication networks if widespread protests occur.

The Electronic Transactions Law 2004 (amended in 2013) is also still routinely used to criminalize political activism on the Internet. Article 34 imposes penalties of up to seven years' imprisonment for using electronic technology in relation to information detrimental to state security, law and order, community peace and tranquillity, national solidarity, the national economy or national culture. Crimes as defined under this Law are extraordinarily broad and vague, particularly if the fact that even receiving such information is considered criminal under the Law. Unfortunately, however, this law is similar to those of most other states in the region, including Nepal, Bangladesh, Cambodia, India, Malaysia, Thailand and Mongolia. The amendments in 2013, although they did make the Law slightly less repressive by reducing prison terms to seven years (from double that previously), did little to halt its use as a tool of political repression.

The Computer Science Development Law 1996 carries severe penalties for the distribution of information or the carrying out of an act which undermines national unity or national culture. National unity and national culture are left undefined under the law, once again leaving it open to broad interpretation. The maximum penalty for offences under this law is a draconian 15 years of imprisonment.

Recommendations

The Telecommunications Law must be repealed because it imposes undue restrictions on freedom of expression and gives the Government unreasonable power to monitor and control information. Offences such as defamation are already set out in the Penal Code and thus need not be doubly covered, and furthermore should not be criminal to begin with. The Government must not have the power to

monitor communications without a warrant, and neither should it be given the power to take control of the industry in vaguely defined circumstances which are left up to the Government to decide. Other holdovers from the junta era such as the Electronic Transactions Law and the Computer Science Development Law must also be repealed to allow people to exercise their right to free expression. Crimes under the former are so broadly defined that almost any act displeasing Government could be construed as one, while the latter's 15-year prison sentence as a maximum penalty is dangerously severe. All three of the laws must immediately stop being used by the Government -with the compliance of politicised courts- to target HRDs and Government critics.

Nepal

Like most countries in the region, Nepal has legislation that restricts freedom of expression online. It most closely resembles legislation in Bangladesh and Myanmar in terms of content restrictions, but unlike most countries in the region, it does not provide for extensive monitoring or surveillance. Under the Electronic Transactions Act 2006, if someone publishes materials online that are contrary to public morality, spread hatred or jealousy, or damage the 'harmonious relations' between groups, he or she can be imprisoned for up to five years. These broad terms are not defined, leaving the Government great power to apply the law to punish critics. The broadness and nature of the terms resembles that used in legislation in Myanmar ('national unity'), Bangladesh ('law and order'/'religious belief') India ('offensive'), Mongolia ('inappropriate') and Malaysia ('offensive'/'indecent').

In November 2016, Arjun Thapaliya, the editor of the Anukalpa newspaper was arrested for a comment on Facebook. Observers believe that the arrest was an act of retaliation for an article critical of the police. In September 2015, Ang Kaji Sherpa, the former head of the Nepal Federation of Indigenous Nationalities, was charged under the Act for 'disturbing social harmony' in relation to online social media posts which had criticised Government. He was acquitted in March 2016.

Recommendations

The Electronic Transactions Act must be amended in order to remove broad and vague restrictions on freedom of expression online. Provisions outlawing content on the basis of being contrary to public morality, spreading hate or jealousy, or damaging the 'harmonious relations' between groups must be removed from the Act.

Pakistan

In August 2016, the President signed into law the restrictive Prevention of Electronic Crimes Act (PECA), which has a very wide purview and provides the Government with a range of powers with which to illegitimately restrict free expression. The Bill has been severely criticised by domestic and international civil society and the Special Rapporteur on freedom of opinion and expression has also voiced concern about it, but the Bill was nonetheless forced through, in a secretive and opaque process. Similar to other legislation in the region, the Act criminalizes a wide range of online acts in broad terms: glorification of an offence, hate speech, misuse of computers, cyber-terrorism, offences against the dignity or modesty of a person, cyber-stalking, unlawful online content. All of these offences are problematic because they either fail to refer to an act that should be criminal, or because they are so broad that they may be applied to non-criminal acts. The penalties for infractions are severe: for example, the ill-defined and dubiously conceived act of 'cyber-terrorism,' carries a maximum penalty of death. Under the law, the Government would be able to seek out users to prosecute by accessing their data without the permission of the user or the courts, meaning that users could be prosecuted for private content. This monitoring power, which circumvents normal legal channels, resembles similar powers granted to Government in recent laws in Bangladesh, Cambodia, Thailand and India. The law also allows the Government to censor online content, also without a court order: it can arbitrarily force Internet companies to remove any kind of content without justification, a power that many countries across the region now exercise, but that is most similar to that of Malaysia or Cambodia, although to a greater extent.

Pre-existing regulations and legislation already significantly limited expression. The 1996 Telecommunications Act extends defamation penalties to the online sphere. It allows up to three years' imprisonment for anyone who communicates any message that he or she knows to be false or indecent. The Electronic Transaction Act 2002 criminalizes a number of acts, again with very broad definitions. Under the Act, accessing an information system without authorization, regardless of intent, knowledge of the information contained therein, and the nature of the information can be punished with a prison term of up to seven years. Anyone who attempts or who performs an act with the intent to alter, modify, delete, remove, generate, transmit or store information without authorization may be imprisoned for up to seven years. These offences are dangerously broad and therefore open the door to political application. The Pakistan Telecommunications Authority (PTA) is empowered with an iron grip on telecommunications, including the Internet. The PTA has the power to block online content that is deemed to be a security threat, blasphemous and un-Islamic, or critical of the State. Since 2012, the Government has implemented content monitoring and filtering systems that allow it to block this 'unacceptable' content. In 2015, the Government blocked more than 200,000 websites under this system.

Recommendations

The PECA must be repealed because the acts it criminalizes are so broadly conceived that they may be applied to non-criminal acts, and because the Act grants the Government overly broad powers to monitor users and censor content. If it is replaced by other cybercrime legislation, the replacement must narrowly apply to actual cybercrime, rather than to a host of vague and arbitrary political offences that have no legal basis. Any Government ability to monitor content must be subject to approval by an independent judiciary. The Government should not have the power to censor content for political reasons.

The Telecommunications Act must be amended to remove the crime of communicating information known to be false. Besides being far too broad, the act of transmitting false information should not

be subject to criminal penalties. The Electronic Transaction Act must be amended by narrowing the definition of unauthorized access to or use of an information system. Both should be punishable only in severe cases where there was clear intent to steal or misuse information. Other acts that do not meet this threshold may be subject to civil suits. The PTA must be made autonomous and stripped of its power to block online content.

The Philippines

As in Sri Lanka, Taiwan and Timor-Leste, freedom of expression online in the Philippines is relatively well protected compared to most other countries in the region. However, it is still somewhat constrained by the Cybercrime Prevention Act 2012. The Act extends restrictions on expression in the Penal Code into the online sphere. The Act allows the Government to obtain a warrant to access subscriber and user data to find evidence of defamation. Internet service providers are required to keep records of transaction data and subscriber information for a minimum of six months. Under the Act, anyone who commits defamation online is subject to penalties a degree in excess of those prescribed by Article 355, meaning that penalties can reach up to 12 years of imprisonment.

Recommendations

The Philippines must amend the Cybercrime Prevention Act to ensure that defamation is not criminalized and bring the Act in line with the ICCPR.

Singapore

The greatest restrictions to online expression in Singapore are not cybercrime laws, but rather the threat of prosecution for defamation, religious insult, or sedition. However, a number of other laws and regulations do directly limit free online expression, some like other countries in the region but some in unique ways.

The Broadcasting Act 1994 and the Newspapers and Printing Presses Act 1974 grant the Government broad powers to censor content and to deny or cancel registration on political grounds, much like other such laws in the region. The Broadcasting

Act contains an Internet Code of Practice which all websites must follow if they wish to maintain registration. Websites must not contain 'undesirable, harmful, or obscene' content, and ISPs are required to filter such content. The Info-communications Media Development Authority (IMDA), which is under the authority of the Ministry of Communications and Information, monitors the Internet for such content and has the power to censor content and sanction infractions without recourse to the courts. The IMDA reportedly blocks about 100 websites, and some political websites have been blocked in the past. In May 2015, the MDA (the IMDA's predecessor) ordered independent news source The Real Singapore to shut down because it had allegedly violated the Internet Code of Practice by inciting anti-foreigner sentiment and spreading false news. As mentioned in the below Article on Sedition, the website's founders were prosecuted under the Sedition Act and sentenced to prison.

The IMDA has also adopted certain strategies to limit free expression that are unique in the region. In May 2013, the Media Development Authority announced strict additional licensing rules that restrict freedom of expression on certain websites, including blogs. Under the regulations, any website that publishes at least one article per week and has visitors from at least 50,000 unique IP addresses over a period of two months must apply for a license to publish content and pay a performance bond of SG\$50,000 (US\$35,400), which ensures they will remove content that violates the public interest, national harmony, or good taste and decency. A website can be denied registration if it contains socially or politically objectionable content, and once registered, the Government can require the website to remove such content from its website. Websites regulated under this law must provide information to the Government about everyone involved in the website and are barred from receiving foreign funding. These rules have significantly muffled free expression and criticism on Singapore's largest independent online media outlets, leading to increased self-censorship among the population. In December 2013, the independent news website The Breakfast Network was forced to close after it refused to comply with the MDA's order

to undergo this additional registration because it objected to providing the Government with a full list of people involved in the website. In July 2015, independent news sources Mothership and The Middle Ground were forced to register individually under these regulations, meaning that they are barred from receiving foreign funding and must comply with the MDA's censorship or risk closure and loss of their bond. The Online Citizen and The Independent Singapore, though not large enough to fall under the 2013 regulations have nonetheless been forced to register individually with the IMDA, and have been forced to agree not to receive foreign funds. In March 2016, the IMDA found that The Online Citizen had broken these rules by accepting advertising revenue from a British book club which is directed by a Singaporean exile. In May 2016, The Middle Ground was ordered to remove an article which surveyed voters because the MDA believed that it was in violation of the Parliamentary Elections Act, which bans polling in the lead-up to an election.

The Computer Misuse and Cybersecurity Act provides the Government with sweeping powers to monitor Internet users in Singapore, in a fashion most similar to Pakistan and Cambodia, but with harsher penalties for non-compliance. Under the Act, the Government can collect any information at any time, without a warrant, if it deems that the information in question may be a threat to 'national security,' a concept left undefined. Under the Act, the penalty for not complying with data requests by Government, even when they have no warrant is imprisonment of up to 10 years and a fine of up to SG\$ 50,000 (US\$35,000). In 2016 lawyer Teo Soh Lung's computer was seized from her home under the Act, without a warrant, in connection to a Facebook post in May which the police claimed may have violated the Parliamentary Elections Act.

The Protection from Harassment Act 2014 is another tool unique to Singapore in the limitation of free expression. It claims to protect people against unlawful harassment or stalking, but in practice is actually used by the Government to curtail freedom of expression by claiming that it has been harassed by individual netizens. The Act states that anyone

who uses threatening or insulting language that could cause alarm, harassment or distress can be fined up to SG\$5,000 (US\$3,550). In January 2015, popular news website The Online Citizen was sued under the Act for making allegedly false statements about the Ministry of Defence. In December 2015, the High Court ruled in the news outlet's favour, but as of 2016 the Ministry's appeal is ongoing. 16 year-old blogger Amos Yee was charged under the Act in 2015 for posting a YouTube video in which he criticised former Prime Minister Lee Kuan Yew, although the charges were later dropped.

As noted above in the cases of lawyer Teo Soh Lung and independent news source The Middle Ground, the Parliamentary Elections Act has become a popular tool for the Government to use to silence critical expression near election time. In recent years, the Act has been used in an unprecedented fashion to target individual expression online, which is bizarre because the law explicitly states that 'the transmission of personal political views by individuals to other individuals, on a non-commercial basis, using the Internet' is not prosecutable. Another prominent case involving the misuse of this Act is the interrogation of political activist and blogger Roy Ngerng Yi Ling and the seizure of his computer and phone in connection to a Facebook post made on his private page in May 2016.

Recommendations

The Broadcasting Act and the Newspapers and Printing Presses Act must be amended to remove the Government's power to censor content or control registration on a political basis. As such, the Acts must narrowly define permissible censorship, explicitly excluding the possibility of exercise of this power on the basis of arbitrary moral or political concepts, and ensure that such narrow power to censor content is invested in an independent agency free from Government influence. As such, the Internet Code of Practice must be removed, the IMDA's powers must be significantly diminished and it must be made independent, rather than under the control of the Government. The Computer Misuse and Cybersecurity Act must be amended to limit the Government's ability to use surveillance

to situations in which a warrant has been issued for such a purpose. The penalties for failure to comply must be limited to a small fine, at the most, and must not include imprisonment. The Protection from Harassment Act must be amended to explicitly exclude the possibility of a Government official being a plaintiff under the law. The courts must stop accepting cases in which the Parliamentary Elections Act is used to charge individuals for expressing their opinions online.

South Korea

The Act on the Promotion of Information and Communications Network Utilization and Data Protection 2001 (Network Act), which regulates online freedom of expression in South Korea, bears some resemblance to legislation in Cambodia, Myanmar, Bangladesh and India in that it extends defamation to the online sphere and empowers the Government to monitor and censor online content. Under the Act, if information disseminated online intrudes on a person's privacy or defames an individual, the publisher of the information can be forced to issue a public apology. The law also criminalizes defamation online with imprisonment of up to seven years or fines of up to 50,000,000 won (US\$41,700), which is stricter than the penalties for defamation offline. If a person files a complaint alleging to be the victim of online defamation, the Internet service provider must delete the information or block access to it for 30 days, without recourse to a court or any form of proof of defamation.

The former Park Geun-Hye administration has used the Network Act to prosecute those speaking out against the Government and its policies. For example, in October 2014, the Government charged Tatsuya Kato, a Japanese journalist working in Seoul, under the Act with defaming President Park Geun-Hye after his newspaper published an article suggesting that she was secretly meeting with a man on the day of the Sewol ferry disaster. He was also charged with criminal defamation, but was eventually acquitted in December 2015.

The Act also stipulates that providers of information and communications online, such as web portals and blog service providers, may temporarily block

access to any specific piece of content for up to 30 days, even if they do not receive a specific request to do so. If the service provider finds content on its network that it believes intrudes upon somebody's privacy, defames someone, or violates someone's rights, it is allowed to take measures 'at its own discretion.' The scope of liability for all of these actions is extremely vague. As such, providers may choose to pre-emptively block information in order to avoid the risk of later punishment.

The quasi-state entity Korea Communications Standards Commission (KCSC), which was established in 2008, has powers similar to those of Singapore and Cambodia, and even some resemblance Chinese regulators. It is empowered with regulating content online, and has the discretion to determine what constitutes illegal expression. The body has the ability to monitor private content in social networks and mobile applications. In a move imitating China's draconian laws on real-life Internet identities, the Commission has stipulated that Internet users in South Korea who wish to post political content must use Government-issued identification numbers in their posts. The main real-name regulation was struck down in 2012 by the Constitutional Court, which found it to be unconstitutional, but other laws have survived: for instance, the Supreme Court upheld real-name identity requirements in the lead-up to elections under the Public Official Election Act. Several civil society groups have argued that the rulings of the KCSC have been used to curb dissent against former Presidents Lee Myung-Bak and Park Geun-Hye. The Office of Internet Communications Review is a sub-department of the KCSC and is also used to monitor online content. The Office has the ability to determine what constitutes harmful or explicit speech in social media posts, and has the power to block users who refuse to take down offensive writing. The Office may restrict content based on very broad grounds, including any content favourably depicting North Korea or undermining the 'traditional social values' of South Korea. The Office has blocked several of websites based on a wide variety of claims about their content. The Office is also responsible for blocking North Korean Government websites and their official YouTube channel.

Recommendations

The Network Act must be significantly amended so that it no longer restricts freedom of expression online. The extension of criminal defamation penalties to the online sphere must be removed, as defamation should not be a criminal offence to begin with; and so must the provision requiring that ISPs delete information that a person claims to be defamatory without any investigation as to the truth or nature of the information. The Government must immediately stop using the law to target critics, and there should be a clause inserted in the law banning its use for political ends. The ability of ISPs to block content pre-emptively and at their own discretion also must be removed.

The KCSC's powers to regulate and monitor online content must be significantly modified and made limited and narrow. The definition of what constitutes illegal expression online must be narrowly and clearly defined according to international standards on legitimate restrictions on freedom of expression. The current requirement that users use their national identification numbers in their online posts must also be scrapped. The KCSC must not have the power to monitor social media or to block users posting content they deem to be offensive based on their interpretation of vaguely worded laws.

Sri Lanka

Sri Lanka has no legislation that restricts expression online or via telecommunications, setting it apart from other countries in the region. The extensive Internet censorship that existed under former President Rajapaksa was swiftly repealed following the election of President Sirisena in January 2015. However, in March 2016, new regulations were issued by the Government, forcing all websites to register with the Ministry of Parliamentary Reforms and Mass Media. The regulation stated that websites that were not registered would be deemed to be unlawful.

Recommendations

The registration of websites should be optional, and under the control of an autonomous body, and not a Government ministry. No website should be considered unlawful by virtue of not being registered. A law against Internet censorship must

be enacted to ensure that the controls put in place under the Rajapaksa administration may not be put in place again.

Taiwan

Unlike most countries in the region, the Government of Taiwan does not engage in Internet censorship, but it does engage in some monitoring. The Personal Data Protection Act allows the Government to collect persons' private data without their consent for 'proper reasons,' which are not defined or elaborated, leaving it up to the Government to judge itself. The Act limits the ability of persons affected to take their cases to court by stating that class action lawsuits may only be filed by large corporations or social organisations with at least 100 members. On the other hand, the law simultaneously provides space to Governments and large corporations to sue individual citizens for obtaining, using or sharing information, and provides no protection to whistleblowers who reveal information about Government or corporate malfeasance.

The Government's National Security Bureau has expanded its intelligence and surveillance work into the online sphere with the establishment of the Internet Safety Division in 2014. Private websites, particularly social media sites, have self-regulated to avoid the risk of Government surveillance and investigation. In 2014, the Bureau established the National Security Operation Centre, which has allowed it to further step up its Internet surveillance.

Recommendations

The Personal Data Protection Act must be significantly amended so that it protects the rights of ordinary citizens, rather than those of large corporations and the Government. User permission to access personal data must be made an absolute precondition, and broad permissions for access by Government such as 'proper reasons' must be removed. The Act must allow any person or group of people to file class action lawsuits. A clause providing absolute protection to whistleblowers must be added. The Internet Safety Division's powers must be explicitly spelled out and narrowly defined to ensure that it is not able to target criticism of Government or large corporations.

Thailand

The Computer Crimes Act 2007, which has been heavily used by the NCPO, was controversially amended in 2017 to place even more severe and ambiguous limits on online freedom of expression despite widespread public opposition. The law criminalizes a wide variety of extremely broad acts and provides the Government with sweeping powers to block and censor content online and access user data. Among the long list of acts criminalized by the law are the entering into a computer system or engaging in online communication 'with ill or fraudulent intent' of any 'false or partially false data,' 'distorted or partially distorted data,' 'obscene' data, data 'jeopardizing maintenance of national security, public safety, national economic stability or public infrastructure,' or data causing panic, which are punishable by a three year prison sentence. Such broad and undefined crimes, with no severity threshold and no limitation in their application clearly leave considerable room for the prosecution of acts that are by no means criminal by international standards, in a manner similar to laws in Pakistan, Bangladesh, Myanmar, Cambodia, Laos, China, India, and Malaysia. In a telling example of how the law is abused, the Government stated after the passing of the amendments that any online criticism, even by sharing, of the law, would classify as 'false information' and be accordingly prosecuted. The law also extends the criminalization of other crimes such as *lèse-majesté*, defamation, and criticism of the NCPO to the online sphere.

The law also conscripts the assistance of service providers such as websites or social media providers in censorship by holding them criminally accountable for content: they must actively delete content, and in the event of prosecution, the burden of proof is on them to prove that they acted quickly enough in this regard. Content that is illegal under the Act, or even that is not illegal but is contrary to the undefined concepts of 'public order' or 'good morals,' can be deleted with a court order at the request of the Ministry of Digital Economy and Society (MDES). However, in practice, the court merely rubber stamps the list of hundreds of websites that the MDES requests

it to. This mirrors practices in Pakistan, China, Laos, Malaysia, Myanmar, Cambodia, India, and Mongolia. The law allows the Government to require service providers to store data for up to two years, and allows it to force them to assist in the decryption of data, as in China. Finally, the law allows the Government to access data without a court order in the course of an investigation of the breach of any law, similar to powers granted to Pakistan's Government under PECA.

NCPO announcement No.97/2014 (amended by Order 103/2014) criminalizes the dissemination of information including false statements about the monarchy, information affecting national security (which includes defamation), criticism of the NCPO, confidential Government information, and information that could lead to social divisions, incitement against the NCPO and any information that could lead to panic among the public. 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 NBTC. NCPO Order 16/2014 set up groups to monitor and block online content, including social media.

In December 2010, the Ministry of Information and Communications started a 'cyber scout' program and encouraged students to police unlawful and immoral content online, facilitating the authorities' ability to prosecute 'questionable' online activities. In July 2014, the NCPO reactivated this program, and currently employs hundreds of cyber scouts that assist the junta in closing down or censoring websites deemed offensive or disrespectful.

As mentioned in the above Article on defamation, in July 2016, three prominent activists were charged under the Computer Crimes Act for releasing a report documenting torture and ill-treatment in the Deep South. The three are Somchai Homlaor, a lawyer and long-time advisor to the Cross Cultural Foundation (CrCF), Pornpen Khongkachonkiet, director of the CrCF and chair of the CrCF, and Anchana Heemmina, the director of Duay Jai Group. As the act in question was committed before September 2016, they were initially tried in a Military court. In March 2017, the Thai Military's Internal Security Operations Command announced

that the Computer Crimes Act charges, as well as the criminal defamation charges, against the three were being dropped.

In June 2016, Narissarawan Kaewnopparat, the niece of Private Wichien Pheuksom, who is thought to have been tortured until his death in a Narathiwat boot camp, was charged under the Act for spreading false information, as well as under the Criminal Code for defamation. The information in question was merely a recount of the facts surrounding her uncle's death and a plea for those responsible to be held to account.

In April 2016, environmental rights defenders Smit and Somlak Hutanuwatr were charged under Article 14 of the Act as well as Articles 326 and 328 of the Criminal Code for allegedly defaming the Akara Resources Public Company Limited. The two had posted a report on Facebook detailing how the mine was damaging the environment as well as the health of residents. In November 2016, they were acquitted. Also in April 2016, nine Resistant Citizen activists were charged under the Act for creating a Facebook page critical of the NCPO, entitled 'We love Gen. Prayut.' They were denied bail, ostensibly because the offending act had been carefully organised. In May 2012, Chiranuch Premchaiporn, the director of well-known independent news website Prachatai, was found guilty of *lèse-majesté* under Article 112 and the Computer Crimes Act and was sentenced to eight months in prison for content in the comments Article in one of the articles on her website. Although Premchaiporn had removed the content when ordered to do so, authorities charged that she had not done so quickly enough.

Recommendations

The Computer Crimes Act must be repealed and replaced with legislation that targets actual cybercrime rather than criminalizing political opposition and the defence of rights. The new legislation must not provide any Government agency the power to ban or censor online content. No act related to spreading false information, distorting information, obscenity, or national economic stability must be criminalized. In line with this, NCPO Orders No.97/2014 and 103/2014 must be repealed. The new legislation should not cover

acts related to national security or public safety, as these offences are adequately covered under other legislation, and need not be found in cybercrime legislation. *Lèse-majesté* and defamation penalties under the Act must be removed because neither of those acts is illegal by international standards. Service providers should not be responsible for the content that users post using their services, and should have no role in regulating online behaviour or decrypting information. NCPO Orders 12/2014, 17/2014 and 16/2014 must also be repealed for this reason. The cyber scout program must be shut down as it exists solely for the purpose of punishing the legitimate exercise of free expression.

Vietnam

Most bloggers in Vietnam are prosecuted under the Criminal Code rather than laws specific to cybercrime, but several laws and regulations provide the Government with extensive powers to monitor and censor online content. These laws and regulations most closely resemble those of China in their breadth and strictness. Owners of websites and social networks that provide information about politics, the economy, culture, or society must obtain an operating license, and all content on their websites must be submitted to the Ministry of Information and Communication for approval. All Internet service providers are at least partially Government-owned and operated, and block content that criticizes the Communist Party of Vietnam or promotes political reform. Government-operated firewalls regularly block websites hosting politically and culturally 'inappropriate' content. Multiple foreign news organisations have had their websites temporarily blocked. All of these measures bear a resemblance to China's regulation of the online sphere.

The Decree on Management, Provision, Use of Internet Services and Content Information Online 2013, also known as Decree 72, prohibits the online distribution of any materials that may harm national security, social order, or safety, contradict national traditions, or oppose the Government. This explicit prohibition of Government criticism is also found in Thailand, Laos and China. In addition, the Decree forbids the posting of any information from

press organisations or Government websites on social media and personal websites, and mandates that bloggers can only post original material that they have written themselves, a measure that bears some resemblance to a similar regulation in China. All personal websites and online profiles must use real-name identification, including social media users, who must provide their full name, national identification number, and home address in order to create an account. Measures similar to this exist in South Korea, China, and to a limited extent, in Cambodia and India. Decree 72 also requires that companies operating websites and social networks within Vietnam store content posted to their sites for up to 90 days and metadata for up to two years. They must remove prohibited content within three hours of being notified by authorities, and are criminally liable if they do not comply. Furthermore, it states that foreign web servers targeting users in Vietnam must have a domestic operations base, making their content susceptible to Government censorship and inspection.

Under Decision 71 of 2004, 'Internet agents' must register the personal information of their customers, store records of their Internet usage, and participate in law enforcement investigations of online activity. Decree 174 of January 2014 bans the posting or communication of 'anti-State propaganda' and 'reactionary ideologies' on social media. The punishment for engaging in such action is a fine of up to VND100,000,000 (US\$4,750).

The Vietnamese Government has also mounted cyber-attacks on popular blogs critical of the State or Party and used malware to monitor dissidents. Numerous investigations by companies and researchers outside of Vietnam have concluded that the Government has been infiltrating the computers and phones of dissidents. Tactics such as these have also been used by the Chinese Government.

Recommendations

All online content regulations, censorship and monitoring without a warrant must be halted, and the laws and regulations permitting it must be abolished. There should be no need to obtain an operating licence in order to provide information about politics, and no censorship of website content. The Government should cease its practice of blocking websites, and should free ISPs of the requirement to do so as well. Decree 72 must be repealed in its entirety, as it is an overly vague, broad Act that does not target legitimately criminal behaviour, but rather criminalizes a wide variety of non-criminal behaviour. Companies should be under no obligation to store data; real-name user identification should not be required; and there should be no content restrictions on what any Internet users can post or read. Decision 71 must be repealed, as must Decree 174, the former because it allows the Government to monitor Internet users, and the latter because it seeks to limit content.

Sedition and Criticism of Government Organs

Bangladesh

Bangladesh has multiple out-dated laws that criminalize seditious and anti-Government expression and carry heavy punishments. The scope and severity of Bangladesh's laws, along with those of India and Pakistan, are among the most restrictive in the region in this regard. Article 124(a) of the Penal Code, which is also shared by Pakistan and India, defines sedition as any act that 'attempts' to 'bring into contempt,' incite 'disloyalty,' or 'excite disaffection towards the Government.' This definition is very broad, effectively criminalizing speech that criticises Government. Even if the act in question merely expresses disapproval of a Government action and does not advocate change by unlawful means, if any disloyalty or enmity towards Government was expressed, it remains sedition. The maximum penalty for this offence is life imprisonment. Furthermore, Article 108 of the Criminal Procedure Code allows a magistrate to require anyone accused of disseminating seditious material to prove why they should not be ordered to execute a bond to guarantee 'good behaviour' in the future. This reversal of the burden of proof allows Government to target opponents merely by accusing them of sedition.

Several opposition politicians and journalists have had cases filed against them for criticizing Prime Minister Sheikh Hasina, other Government officials, or Government policy. In April 2013, Mahmudur Rahman, owner and editor of the Amar Desh newspaper was arrested under the Information and Communication Technology Act and Article 124(a) of the Penal Code after his newspaper printed a series of conversations between Bangladesh's International Crimes Tribunal and a lawyer who illegally provided consulting on a prominent war crimes case. Mahmudur Rahman was released on bail in November 2016. In January 2012, graduate student Muhammad Ruhul Khandaker was sentenced to six months' imprisonment under contempt of court charges. Khandaker was originally charged under Article

124(a) for a comment he made on Facebook that criticized Prime Minister Sheikh Hasina, but did not appear in court to face those charges as he has resided in Australia since 2009.

The Special Powers Act 1974, also known as the 'Black Law,' is particularly explicit in criminalizing criticism of Government. The law confers special powers upon security forces, but no national crisis or state of emergency need be declared for these powers to be exercised. The law allows the Government to prosecute anyone expressing an opinion that is critical of Government officials or Government policies. It also has draconian preventative detention provisions which authorize holding a person for up to 120 days without trial. Several people have been arrested under this Act for criticizing former President Sheikh Mujibur Rahman, as well as current Prime Minister Sheikh Hasina. In July 2014, a law professor from Northern University, Khulna was charged under the Act for criticizing both Sheikh Rahman and Sheikh Hasina.

As in Thailand, India, Cambodia, Myanmar, Mongolia, Singapore and Sri Lanka, contempt of court is a criminal offence in Bangladesh that is used to punish critics of unfair judicial proceedings with up to six months of imprisonment and a fine of 2,000 taka (US\$25). Although contempt of court laws are not illegitimate in and of themselves, Bangladesh's Contempt of Court Act 1926 is overly broad, lacking any definition as to what such 'contempt' entails. It has been used to muzzle the press for critical commentary of court rulings or of a court official, regardless of how valid or truthful these criticisms have been. In 2013, the Government tabled a less restrictive Contempt of Court Act, but it was struck down by the High Court, which was vocal and explicit in its ruling about the need to curb freedom of the press concerning commentary on the judiciary. In 2005, a newspaper editor was fined for publishing a report claiming that a Former High Court judge's law degree was a forgery, despite the fact that the allegation was true. David Bergman, a Dhaka-based British journalist, faced contempt of court charges for making 'adverse comments' about the court in his blog. Bergman was sentenced to a symbolic 'simple imprisonment till the rising of the court' and a fine of 5,000 taka (US\$60) for comments he made in three separate blog postings

regarding legal proceedings at the International Crimes Tribunal at Dhaka.

Recommendations

The Government of Bangladesh must remove Article 124(a) from the Penal Code. The criminalization of disloyalty to a Government is a relic of repressive colonial rule that is illegitimate according to international standards of free expression. The 1974 Special Powers Act must be significantly amended to ensure that criticism of Government is not criminalized, that arbitrary detention is not permitted, and that the Act only applies under specific emergency circumstances and to serious offences. Finally, the Government must pursue its efforts to replace the 1926 Contempt of Court Act with legislation that recognizes the right of all persons to comment on any case or on any court official.

Cambodia

Like most countries in the region, Cambodia's laws forbid any criticism of any member of a Government organ. Article 502 states that any act undermining the dignity of any person in Government (including civil servants) is punishable by up to six days of imprisonment and a fine of up to 100,000 riels (US\$25). Several aspects of this article are problematic. To begin with, Cambodia's criminal defamation and insult laws are more than severe and broad enough to protect all citizens from unwarranted public criticism. There is no legitimate reason to explicitly doubly protect the Government from any critiques: to the contrary, Government officials should be subject to a higher level of scrutiny than ordinary individuals who do not wield power over others. Finally, the provision is extraordinarily broad, covering any public or private statement that may hurt the feelings of anyone in Government. The article in one fell swoop silences critical speech about the actions of any official, regardless of the legitimacy of the statement and of whether it is related to the official's public duties. Although draconian, this law is in fact less severe than most in the region, many of which hold upwards of 20 years' imprisonment for criticism of Government.

The Law on the Election of Members of the National Assembly 2015 deals broadly with electoral reform, but also contains several articles that repress dissent during elections and campaigning periods, and

hinder Cambodians' ability to speak out on political issues. Article 84 bans all NGOs from conducting any activity or making any statement that is not absolutely 'neutral,' and also forbids 'insults,' which are left undefined and open to broad interpretation. Article 85 forbids 'foreigners' from 'direct or indirect activities in the election campaign,' another illegitimate limit on freedom of expression. Article 160 forbids election observers from NGOs to instruct or 'place blame' on election officials, effectively withdrawing their ability to comment on or correct biased behaviour that they might observe.

Articles 522 and 523 ban any critical commentary on the country's heavily politicised courts, which are frequently used by the executive branch to intimidate and punish critics. Contempt of court laws are legitimate insofar as they pertain to either disruptive behaviour in the courtroom or wilfully disobeying a court order. In Cambodia, as in much of the region, however, the rules are much broader: Article 522 outlaws 'any commentaries aiming at putting pressure on the court where a law suit is filed,' while Article 523 bans 'any act of criticizing a letter or a court decision aiming at creating disturbance of public orders or endangering institutions of the Kingdom of Cambodia.' Both are punishable by up to six months of imprisonment, a fine of up to 1,000,000 riels (US\$2,500), and additional penalties including the deprivation of civil rights definitively or for a period of up to five years, prohibition against pursuing a profession, and confiscation of personal possessions related to the alleged offence. In sum, any commentary on the actions of Cambodia's politicized courts could be subject to heavy punishment. In a system where the judiciary takes orders from the executive, this is a particularly egregious repression of free expression. Articles 522 and 523 mirror similar contempt of court laws in India, Bangladesh, Mongolia, Singapore, Sri Lanka, and Thailand, but are closest to those of Myanmar in their scope and severity.

Recommendations

The Government of Cambodia must repeal Article 502 of the Criminal Code. There is no legitimate reason for Government to be shielded from criticism to a greater extent than other citizens. The state of affairs resulting from such a provision is that critics of the Government at any level are simply

unable to give voice to their issues, regardless of how legitimate they are. This is a grave violation of the right to freedom of expression.

The Law on Election of Members of the National Assembly must be amended so that it deals strictly with electoral reform and does not include misplaced provisions that mute NGOs, 'foreigners,' and electoral observers during the electoral period. If elections are to be free and fair, the right to freedom of expression must be fully accorded to all groups, particularly those that monitor elections.

Articles 522 and 523 must be heavily amended to be brought into compliance with international standards on free expression. The provisions may outlaw clearly and narrowly defined disruptive behaviour in the courtroom and also wilful disobedience of court orders, but the current bans on 'any commentary' on or 'any criticism' of the courts severely restrict freedom of expression.

China

Unlike most other countries in the region, a large number of China's laws explicitly criminalize any form of opposition to the CCP, but most of them are more relevant to other themes explored in this analysis, such as press freedoms, cybercrime, and national security, and are therefore addressed in those Articles. Articles 103 to 105 of the Criminal Code touch directly on sedition, outlawing any act or plan intended to 'split the State,' 'undermine the unity of the country,' subvert State power, or overthrow the socialist system. The penalties carried by the provision are extremely harsh, from life imprisonment for 'ringleaders' to 10 years of imprisonment, criminal detention, public surveillance and deprivation of political rights for anyone participating in the act or plan.

Article 103 has been broadly interpreted so as to criminalize any discussion of religious and ethnic minorities in China. The Government restricts all expression of Tibetan culture, identity, and language. Several Tibetan artists, monks, and activists have been jailed under Article 103. In May 2016, Buddhist monk Jampa Geleg was detained for allegedly possessing a Tibetan national flag inscribed with an independence slogan. In March 2016, Tashi

Wangchug was charged with inciting separatism under Article 103 for advocating for bilingual education in Tibet. In September 2014, Ilham Tohti was sentenced to life in prison under Article 103 of the Penal Code for his popular lectures, which criticized State policies towards China's Uyghur population. Tohti is an economist who has written extensively on Uyghur-Han relations and was the host of Uyghur Online, a website that discusses issues related to China's Uyghur community. In December 2014, police also sentenced seven of Tohti's students under Article 103 to imprisonment of three to eight years.

As demonstrated by the above examples, the CCP interprets any reference to minority rights as a seditious attack on national unity. This means that freedom of expression in contested areas such as Tibet or Xinjiang is extremely constricted. Residents face heavy legal restrictions on their ability to speak out against the state and its policies. Religious Affairs Bureaus control enrolment in monasteries and nunneries, and all incoming monks and nuns must sign a declaration rejecting Tibetan independence, swearing loyalty to the CCP and denouncing the Dalai Lama. Nearly 700 of China's roughly 1500 political prisoners are Tibetan. In February 2015, the Government introduced new measures that criminalize 20 activities in Tibet, including arranging protests and promoting discussions about Tibetan independence. The new measures also restrict the ability to form organisations that discuss 'illegal' topics, including literacy and environmental conservation; under previously existing measures, all human rights organisations are banned.

Article 105 is also routinely used, but more commonly targets people involved in human rights or pro-democracy work. The CCP interprets any discussion of these issues as fundamentally seditious because they implicitly challenge its totalitarian governance methods. Using this extremely broad definition, it is possible to lock up activists and dissenters for life. In May and June 2016, Chengdu residents Fu Hailu, Luo Fuyu and Zhang Juanyong were detained on suspicion of 'inciting subversion of state power' under Article 105 for allegedly posting images online that commemorated the 1989 Tiananmen pro-democracy protests.

Perhaps the most famous application of Article 105 is Liu Xiaobo's case. Liu Xiaobo is an internationally recognized literary critic, writer, professor, activist, and founder of the Chinese PEN Center. In December 2009, he was sentenced to 11 years in prison under Article 105 of the Penal Code for co-authoring Charter 08, a manifesto signed by over 10,000 people that calls for an independent legal system, freedom of association, and the elimination of one-party rule. Xiaobo's current prison term is his fourth; before 2009, he spent a total of five years in prison under three different terms for various charges related to his democracy and human rights activism. In 2010, Xiaobo was awarded the Nobel Peace Prize for his efforts.

Recommendations

Articles 103 to 105 of the Criminal Code must be repealed. The language used in the provisions, such as 'split the State,' or 'undermine the unity of the country,' is so broad that the articles have become catch-all charges. The judiciary must also stop the practice of interpreting the provisions extremely broadly, so as to criminalize minority rights and other human rights activists. All those currently imprisoned under these provisions must be freed.

India

India's Penal Code contains broad and draconian provisions outlawing criticism of Government in the name of preventing sedition. Under Article 124(a), a relic of repressive British colonial rule also shared by Bangladesh and Pakistan, anyone who propagates content that 'attempts to excite disaffection,' disloyalty, or enmity towards the Government can face life imprisonment. The problematic aspects of the law scarcely need explanation: any act, words, signs, symbol or other representation that can be construed as containing anything negative about Government falls under the exceedingly broad definition of sedition under this Article. Although it is an archaic provision, it continues to be used actively to repress criticism of Government. In August 2015, the Maharashtra state Government issued a circular on its interpretation of the law that stated that criticism of a Government official would be considered seditious. In February

2016, Kanhaiya Kumar, president of the Jawahar Nehru University Students' Union was arrested under the Article, for having been part of a protest in which some people -not Kumar himself- were alleged to have made statements that were un-nationalistic. In October 2015, the Tamil Nadu Government arrested Dalit folk singer S Sivadas under Article 124(a) for performing satirical songs criticizing the state Government.

Like numerous other countries in the region, India's contempt of court laws are criminal and overly strict and as such constitute an illegitimate limitation on freedom of speech. The Contempt of Courts Act 1971 (amended 2006) defines criminal contempt as any act that 'tends to scandalize or lower the authority of any court, tends to interfere with the due course of any judicial proceeding, or tends to interfere with the administration of justice in any other manner.' As is common, the issue with the law lies in how broadly it may be interpreted: in this case, what constitutes 'scandalizing' is left up to the very judges who might have been criticised to decide on. Giving a Government official the power to decide what criticism of him/her is 'fair' clearly creates conflicts of interest. The use of the word 'tends' also leaves judges extreme latitude in their ability to find a critic in contempt of the court, as an act that tends to interfere with due course, even if the individual act in question has not, is prosecutable. In December 2015, the Bombay High Court declared author Arundhati Roy to be in contempt of court for having written an article criticizing the court's refusal of bail to G.N. Saibaba, who was accused of having links to the Communist Party of India (Maoist).

Recommendations

Article 124(a) must be struck from the Penal Code, as it is in conflict with both the Constitution's guarantee of freedom of expression as well as international standards on the matter. Disloyalty and enmity towards the Government of the day must not be a criminal offence under Indian law. The Contempt of Court Act must be amended so that definitions of contempt are narrowed to acts that actually interfere with the administration of justice, such as not complying with a court order or disruptive behaviour in the courtroom. Courts, like other Government institutions, should not be protected from scrutiny, criticism or disagreement.

Indonesia

Indonesia has a strict subversion law, and previously had sedition laws carrying stiff penalties that were most comparable to those of China and Laos. Article 106 of the Penal Code states that those attempting to separate part of the State or bring it under foreign domination can face life imprisonment. Like former British colonies as well as Cambodia, China, Laos and Vietnam, Indonesia previously also had laws that specifically criminalized criticism of Government. Articles 154 and 155 allowed for up to seven years imprisonment those who publicly express feelings of contempt, hostility, or hatred towards the Government of Indonesia, but the provisions were revoked by the Constitutional Court in 2007.

Article 106 has consistently been used to arrest and prosecute activists advocating for independence in contested areas, particularly Papua. In April 2016, West Papuan Steven Italy was charged under Article 106 for leading a prayer for West Papua to become a member of the Melanesian Spearhead Group. The prayer meeting was broken up and bags woven with the Morning Star as well as a banner bearing the word 'referendum' were seized as evidence. In April 2008, Johan Teterissa was sentenced to life imprisonment (later reduced to 15 years) for performing a war dance and then unfurling the 'Benang Raja,' a banned regional flag in front of President Susilo Bambang Yudhoyono in June 2007. During his pre-trial detention and since his conviction, Johan Teterissa has been subjected to torture and other forms of ill treatment.

Recommendations

Article 106 of the Penal Code must be repealed as it constitutes an illegitimate restriction on freedom of assembly and carries disproportionate penalties. All persons in Indonesia have the right both under the constitution and under the ICCPR, to which Indonesia is a signatory, to express themselves freely; restrictions on discussions of self-determination or Government repression are not legitimate exceptions.

Laos

Laos has a strict and explicit law that criminalizes expression that is critical of the Government. Under Article 65 of the Penal Code, anyone who slanders the State, its policies, or the Lao People's Revolutionary Party faces up to five years' imprisonment or fines of

up to 10,000,000 kip (US\$1,225). The law is similar in substance to sedition or subversion laws throughout the region. In September 2015, prominent democracy activist Bounthanh Khammavong was sentenced to 57 months of imprisonment under Article 65 for posting criticisms of the Lao People's Revolutionary Party and its policies on Facebook.

Recommendations

Article 65 of the Penal Code must be immediately repealed. Broadly banning any criticism of Government is an altogether illegitimate restriction on freedom of expression. The Government must also immediately release political prisoner Bounthanh Khammavong.

Malaysia

Malaysia has extremely strict sedition laws, similar in form to legislation in India, Bangladesh, and Pakistan. The broadness of the laws' application, however, rivals China's draconian laws. Recently, the anachronistic Sedition Act 1948 (amended April 2015) has been heavily used to prosecute civil society activists and opposition figures who speak out against the Government and its policies. Under the amended colonial-era act, anyone making a statement contrary to the Government can be imprisoned for a minimum of three years and a maximum of twenty years (the maximum sentence used to be three years before the 2015 amendment). Because the wording of the Sedition Act is extremely vague, there is no real agreement as to what constitutes a crime under the legislation, giving authorities great discretion to determine what constitutes seditious content. The 2015 amendment stiffened penalties, loosened language so as to make social media users prosecutable, added an aggravated offence, and empowered the courts to ban publications deemed seditious and prevent a person charged with sedition from leaving the country. In October 2015, the Federal Court ruled that Article 4 of the Sedition Act, on uttering seditious words or publishing seditious material, is constitutional as Article 10 of the Constitution allows for limits on freedom of expression in the interests of national security. In November 2016, the Court of Appeal ruled that Article 3(3) of the Act, which states that

the prosecution need not prove intent, is in conflict with Article 10.

Prosecutions under the Act have been ramped up in recent years, and people have been charged under it for a wider range of issues than ever before. Since the narrow electoral victory in 2013, the law has been used over 180 times, which is an exponential increase in application of a law that previously had been used very rarely.

Several prominent political opposition figures, lawyers, journalists and activists have been charged under the Act. Between February 2015 and November 2016, Zulkiflee Anwar Haque (aka Zunar), a prominent political cartoonist, was charged with 10 offences under the Sedition Act for addressing the 1MDB corruption scandal in his work. If convicted on all counts, he could face nearly half a century of imprisonment. In October 2015, student activist Khalid Ismath was charged with three offences under the Act for criticising abuse of power by the police. Adam Adli, a student activist, was sentenced to one year of imprisonment in September 2014 under the Sedition Act for making a speech advocating for people to protest the results of the 2013 general election. His conviction was upheld by the High Court in February 2016, but after a lengthy appeal he was acquitted in February 2018. N. Surendan, a lawyer and People's Justice Party MP from Padang Sarai constituency, was charged in August 2014 for stating in an online video that the trial of Opposition leader Anwar Ibrahim was a political conspiracy. Teresa Kok, a Democratic Action Party MP for Seputeh constituency, was charged in May 2014 for allegedly insulting Muslims in an online video. Khalid Samad, a Malaysian Workers' Party MP for Shah Alam Constituency, was charged in August 2014 for challenging the position of the Sultan of Selangor as head of state and for questioning the Government's confiscation of Malay-language bibles.

As the Sedition Act faces constitutionality challenges, the authorities have increasingly used Article 124 of the Penal Code to penalize human rights defenders and activists pushing for democracy. Under the Article, anyone who commits an activity deemed 'detrimental to parliamentary democracy' can face up to 20 years' imprisonment. This extraordinarily vague and broad provision has been levelled at

political opponents, activists and critics with increasing frequency. In November 2016, BERSIH 2.0 Chairperson Maria Chin Abdullah was arrested under Article 124(c) of the Penal Code for the offence of attempting to commit an act detrimental to parliamentary democracy in connection to the organisation's receipt of funds from the Open Society Foundation. She was subsequently detained under the Security Offences (Special Measures) Act 2012, which allows for preventative detention for up to 28 days (see 'National Security' Article below). In July 2015, Tong Kooi Ong, the owner of The Edge Media Group, and Ho Kay Tat, the group's publisher and CEO, were investigated by police under the Article. In August 2015, Tony Pua and Rafizi Ramli were investigated under the Article for their role in shedding light on the 1MDB scandal, and 17 students were arrested under the Article for staging a protest. In September 2015, 7 activists were investigated under the Article due to their participation in the Bersih 4.0 rally the month before.

Recommendations

The Sedition Act must be immediately repealed, as the acts covered by it are not clear and not necessarily criminal, and criminal acts that it could address are well covered by other legislation. Expressing an opinion that criticizes Government and calls for elections or a change in regime is not a criminal offence in a democracy. Punishing opposition to Government is inherently undemocratic and a severe infringement on the right to free expression. Article 124 of the Penal Code must also be repealed. The Article is open for the authorities to use -and has been used- to do exactly what it ostensibly seeks to prevent: undermine parliamentary democracy.

Maldives

The Maldives' current administration has used a variety of tactics to criminalize criticism of Government. Unlike surrounding countries, the tactics used are often informal. One practice that has been reported by the Special Rapporteur on the independence of judges and lawyers is the requirement that lawyers sign an affidavit swearing not to criticise the Supreme Court before being able to appear before it. The penalty for disobeying this is contempt of court and disbarment. Article 141 of the Constitution outlaws interference with the courts, and on this basis the Supreme Court in 2014 issued

regulations banning the portrayal of the judiciary in a negative light, demeaning any aspect of the court, or criticizing any court official. The penalty for acts that fall under this definition is 15 days in jail, 1 month of house arrest or a fine of up to 10,000 rufiyaa (US\$650). The Supreme Court has also unilaterally taken control of legal licences, declaring that it needed to ensure that lawyers comply with standards stipulated by the law.

The courts have been extremely active in restricting free expression in this way. In November 2016, prominent lawyer Husnu Suood was temporarily disbarred and the courts ordered an investigation for contempt of court. In October 2016, prominent human rights lawyer Nazim Abdul Sattar was suspended for six months by the criminal court for ‘tarnishing the good name of judges and inciting hatred against the judiciary.’ He was suspended for filing a complaint after the criminal court denied adequate legal representation to one of his clients. In November 2015, former Vice-President Ahmed Adeb’s lawyer was suspended by the Supreme Court, which ordered the police to open a criminal investigation.

Charges of treason and ‘undermining the constitution,’ which carry a maximum punishment of up to 25 years of imprisonment have also been used against anyone perceived to have criticised the Government or the courts. In September 2014, the Supreme Court, acting on its own authority alone, initiated proceedings against the Human Rights Commission of the Maldives (HRCM) for treason and undermining the constitution in connection to the HRCM’s submission to the UN’s Universal Periodic Review of the Maldives, which criticised the Supreme Court’s acting beyond its mandate. The Court acted both as plaintiff and judge in the case, and ruled in June 2015 that the submission was unlawful. The ruling also set out an 11-point set of guidelines that the HRCM would be legally bound to follow, which included upholding national norms, faith, etiquette and rule of law, and protecting unity, peace and order. Ironically, the Court also ordered the HRCM not to overstep its mandate, protect the Maldives’ reputation, and only communicate with international bodies through the Maldives’ Government.

Recommendations

The Maldivian judiciary must undergo considerable reform in order to ensure its political

independence and its impartial application of and respect for the laws of the Maldives. Article 141 of the Constitution must be amended to ensure that contempt of court may not be used to target any commentary or criticism, particularly by lawyers, who have the right to contest judgements. The Supreme Court-issued regulation on contempt of court must also be repealed as it severely restricts freedom of expression. The court must also stop the practice of accepting politically motivated charges and issuing sentences through extremely broad application of the law.

Mongolia

Mongolia’s contempt of court laws limit expression regarding court cases and decisions. Under Article 259 of the Criminal Code, any ‘slander’ of a court official in connection with a case is punishable by a fine or up to a three month prison sentence. Although it is acceptable for states to punish failure to comply with a court order or incidents of severe disruption in a courtroom with contempt of court, subjecting comments on a case to arbitrary and vague categories like ‘slander’ is a dangerous restriction of rights. The Mongolian judiciary further restricted expression in 2014, when the courts issued regulations that banned any media coverage on defamation trials implicating media workers as long as the trials are ongoing.

Recommendations

Article 259 must be struck from the Criminal Code, and the regulation banning media coverage of certain defamation cases must be repealed. Both constitute illegitimate restrictions on freedom of expression. As public officials wielding great power, judges must not be protected from scrutiny any more than an average person.

Myanmar

As in Bangladesh and numerous other countries in the region, commenting on the judiciary is illegal in Myanmar under Article 228 of the Penal Code, which outlaws insulting or interrupting any public servant conducting judicial duties, punishable by six months of imprisonment. However, unlike in most other countries, Myanmar also has a restrictive law on the courts that was quite recently enacted, as opposed to being a long-standing colonial relic.

The Contempt of Courts Law 2013 outlaws any comment on a judicial decision before it is passed -unless it can be proven to be true- or any comment which ‘impairs the public trust’ in the institution. The consequence of committing such an offence is up to six months in prison. In May 2015, 15 factory workers from Sagaing Division were charged with incitement under Article 505(b) for protesting illegal dismissal. They were later found to be in contempt of court for not cooperating with their trial on trumped-up charges and were therefore slapped with a fine and one month of imprisonment.

Recommendations

The Contempt of Courts Law places illegitimate limits on free expression. Its recent promulgation, at a time when other countries are considering limiting such laws, is testament to the fact that Myanmar’s judiciary remain politicised. Contempt of court is a legitimate legal concept when it targets lack of cooperation with court orders, but its application to commentary on the courts’ decisions is overreach. The Law must be significantly amended so that the public is free to comment on or criticise the court’s decisions at any time, and that lawyers or defendants on trial under illegitimate charges are not punished for standing up for their right to a fair trial.

Nepal

Although less frequently used than in countries such as Malaysia, Myanmar, and India, Nepal’s sedition law carries heavy penalties. The Crime against State and Punishment Act 1989 restricts freedom of speech by outlawing subversion and treason, both of which are very broadly defined. Under the Act, if someone attempts to cause or causes disorder with the intention to jeopardize sovereignty, integrity or national unity, they are guilty of subversion and may be imprisoned for life. If someone attempts to incite ‘enmity or contempt’ among any groups, or cause ‘enmity or contempt of the Government of Nepal’ based on inauthentic facts, they are guilty of treason and may be imprisoned for up to three years.

Nepal’s Constitution also explicitly limits freedom of expression on similar grounds to the above law. The Government is authorized to create legislation that restricts this right in cases involving the ‘nationality, sovereignty, independence and

indivisibility of Nepal, or federal units,’ putting at risk the ‘harmonious relations subsisting among the people,’ ‘inciting racial discrimination,’ ‘contempt of court,’ an ‘incitement of offence,’ or ‘contrary to decent public behaviour or morality.’ These categories are so broad and numerous, and therefore cover such a vast array of acts, many of them not criminal, that they effectively negate the constitutional guarantee.

In September 2014, minority rights activist Chandra Kant Raut was arrested under the Crime against State and Punishment Act 1989 for allegedly arguing that a part of Nepal should separate. He was charged with sedition in October 2014, despite the fact that he never advocated violence in any form. The Supreme Court eventually cleared Raut of all charges.

Recommendations

The Crime against State and Punishment Act must be amended to be far more specific in targeting actual crimes. Definitions must be tightened, severity thresholds must be established, and a clause banning its use for political ends must be inserted with specific examples of how it may not be used. Under no circumstances should causing ‘enmity’ towards a Government or its policies be a criminal act; nor should statements perceived as a threat to an imagined ‘national unity’ be so. Similarly, the Constitution must be amended to be drop limits on freedom of expression on the basis of morality, contempt of court, harming ‘harmonious relationships,’ and threatening the ‘nationality’ and ‘indivisibility’ of Nepal. The other limits on expression must be defined in a narrow way consistent with international standards.

Pakistan

Pakistan’s sedition laws, which mirror those of India and Bangladesh, are among the most severe in the region. Article 124(a) of the Penal Code outlaws any act that attempts or ‘brings into hatred or contempt, or attempts to excite disaffection towards the Federal or Provincial Government.’ The maximum penalty is life imprisonment. As with other sedition laws throughout the region, the broad scope of the law makes it extremely

problematic for freedom of expression. The law is not aimed at penalizing only acts or attempts to act to topple the Government by unlawful means; in fact, its wording is not at all concerned with such acts, but rather any act that causes disaffection, hatred or contempt of Government, regardless of their veracity, peacefulness, scope or severity. Under this law, virtually any criticism of Government can be punished by extreme penalties, which creates a severe chilling effect on free expression.

In the last few years, the law has been used as part of a heavy-handed approach to silence activists calling for respect for minority rights and democratic rights, particularly in the Gilgit-Baltistan region, which is not recognized as a province and whose inhabitants have limited political rights. In the lead-up to the June 2015 regional elections, over 50 people were charged with sedition to silence their voices. In February 2015, a group of 19 people was arrested and charged with sedition for their participation in a conference on the status of the contested Gilgit-Baltistan region. In June 2015, eight nationalist activists were charged for protesting the region's elections and attempting to give a letter to UN election observers calling for a referendum. In August 2011, more than 100 persons, including prominent human rights activist and politician Baba Jan, were arrested for protesting the killing of a peacefully protesting father and son by security forces. He and 11 others were convicted of sedition in September 2014 and sentenced to life imprisonment. In the same month, nine HRDs protesting Baba Jan's conviction were arrested and also charged with sedition. In July 2016, Baba Jan lost his final appeal to the sentence.

Recommendations

Article 124(a) of the Penal Code must be repealed. The provision is so broad that it covers a wide range on non-criminal acts, such as simple criticism of Government, even if the criticism is true. The implication of such a restrictive law with such draconian penalties is a denial of the right to free expression.

Singapore

Singapore's Sedition Act 1948 closely resembles laws in other former British colonies -in Malaysia,

the eponymous act and elsewhere under Article 124(a) of the Penal Code, as in Bangladesh, India, and Pakistan- but is somewhat less severe in the punishments it carries. Under the Act, anyone who makes or publishes a statement that could cause discontent or disaffection amongst the citizens of Singapore, bring contempt or enmity towards the Government, or promote feelings of ill will or hostility between different racial or religious groups can be imprisoned for up to three years or fined up to SG\$5,000 (US\$3,500). Anyone who possesses a publication containing any of the above themes can be imprisoned for up to 18 months or fined up to SG\$2,000 (US\$1,400). In September 2015, Ed Bello was sentenced to four months in prison under the Act for making anti-Filipino posts on Twitter. Founders of The Real Singapore independent news website Ai Takagi and Yang Kaiheng were sentenced under the Act to 10 months of imprisonment in March 2016, and eight months of imprisonment in June 2016, respectively, for allegedly making incendiary posts about Filipino migrants. The Government ordered the closure of the website in May 2015.

Contempt of court laws are also used to silence criticism of the court, just as they are in many other former British colonies. Under the Supreme Court of Judicature Act 1969, the High Court and the Court of Appeals have the ability to punish people for 'scandalizing the judiciary.' The Courts were further empowered to stamp out criticism with the passing of the Administration of Justice (Protection) Act 2016, which allows fines of up to SG\$100,000 (US\$69,000) for scandalizing the court. Acts that imply partiality or ulterior motives and reduce public confidence in the court are subject to prosecution, which means that speaking out about unjust prosecutions and sentences is criminal. In March 2015, blogger Alex Au was fined SG\$8,000 (US\$5,600) under contempt of court charges for an article he wrote in which he suggested that the Chief Justice Sundaresh Menon had manipulated court dates on a constitutional challenge to Article 377(a) of the Penal Code on sodomy. In December 2015, his sentence was upheld by the Court of Appeal. In July 2013, political cartoonist Leslie Chew was charged with contempt of court for publishing four cartoons on his website that implied court bias.

Charges were dropped after Chew retracted the cartoons and apologized. In November 2010, British journalist Alan Shadrake was sentenced to six weeks' imprisonment and fined SG\$20,000 (US\$14,200) after he suggested in his book *Once a Jolly Hangman* that the country's judiciary lacked independence; he was deported in July 2011.

Recommendations

The Sedition Act must be repealed. As with sedition laws elsewhere, the issue with the Act is that it explicitly criminalizes criticism of Government, which is not an offence that is considered criminal by international standards on free expression. Contempt of Court is likewise an outdated concept that criminalizes any criticism of a Government organ and is thus illegitimate under international law. Although penalizing behaviour that is actually disruptive to the administration of justice, such as disobeying court orders, is legitimate, elevating the judiciary above any critical discussion is not.

South Korea

Korea's laws on sedition and subversion are more narrowly defined than those of most other countries in the region and until 2014 they had not been used since the end of martial law in the 1980s. Since 2014, Articles 87 to 100 of the Criminal Act, which cover any attempt to violently subvert the Constitution, have been invoked twice. In December 2015 the police recommended that prosecutors charge HRD Sang-gyun Han, President of the Korean Confederation of Trade Unions (KCTU), with sedition. The charge was in relation to his participation in protests that took place in April and May 2015 to commemorate the first anniversary of the sinking of the Sewol Ferry and to call for an independent and transparent investigation into the incident. The police announced that they would also be adding sedition to charges against some of the 27 group leaders who were being investigated. Although the prosecutor never took up the sedition charges formally, threatening to prosecute HRDs under such a severe law has a significant chilling effect.

Another law that is used to punish criticism of Government organs is the State Public Officials

Act 1949. Under this law, civil servants are prohibited from expressing their opinions on topics that could potentially be seen as politically contentious. Members of the South Korea Teachers and Education Workers Union (KTU) have been subjected to punitive measures under the Act, including investigation, dismissal, harassment and surveillance, after signing statements on public interest issues or engaging in demonstrations against Government policies. Nearly 400 teachers and KTU members were charged under the State Public Officials Act for engaging in protests calling for an independent investigation into the sinking of the Sewol ferry in April 2014 and demanding the resignation of President Park for her mishandling of the event.

Recommendations

The Park administration must halt the emerging practice of laying sedition charges to criminalize opposition to Government. It is worrying that laws unused since Military rule have been revived. The Public Officials Act should be amended to ensure that criticism of Government by public servants on their own time should be permitted.

Sri Lanka

Like other former British colonies, Sri Lanka has an article in its Penal Code that outlaws criticism of Government. However, unlike in other countries, this law has not been used under the current administration. Under Article 120 of the Penal Code, anyone who makes a statement that causes disaffection towards the State, holds the court in contempt, or raises discontent, disaffection or ill will among the people of Sri Lanka can be imprisoned for up to two years.

Recommendations

Article 120 of the Penal Code should be deleted, as outlawing criticism of organs of Government is an illegitimate restriction of freedom of expression.

Thailand

Article 116 of the Criminal Code resembles sedition laws in Pakistan, Singapore, Bangladesh, Malaysia, and India. Under the Act, any act that seeks to

bring a change in law by force, to raise unrest and dissatisfaction in a manner likely to cause disturbance, or to cause people to break laws is punishable by a prison sentence of seven years. What constitutes 'by force,' 'dissatisfaction,' and 'disturbance' is not specified and there is no severity threshold established. This has serious implications, as by this definition, any criticism of the Government or opposition to laws could be conceived as an act 'likely' to cause some form of 'unrest' or 'dissatisfaction.' In October 2016, eight people were arrested and charged under Article 116 for having created a satirical Facebook page entitled 'We Love Gen. Prayut' which was critical of the NCPO. In September 2016, human rights lawyer Sirikan Charoensiri was charged under Article 116 in retaliation for her work defending the legal rights of 14 student activists also charged under Article 116 for peacefully protesting. The student activists, members of the New Democracy Movement, were arrested in June 2015 for expressing their opposition to Military rule through peaceful rallies in the same month. In May 2016, Theerawan Charoensuk was arrested and charged under the Article for having posted a picture of herself with a red bowl which read 'The situation may be hot, but brothers and sisters may gain coolness from the water inside this bucket.' The colour red is associated with the opposition-affiliated Red Shirt movement. In December 2015, Thanakorn Siripaiboon was arrested and charged under Article 116 for having copied an infographic on the Rajabhakti Park corruption scandal to a Red Shirt Facebook page. He was held at an undisclosed location for six days and denied bail. In the same month, Tanet Anantawong, a social activist, was also arrested, held at an undisclosed location and charged under Article 116 for posting a picture of Rajabhakti Park with a message on the corruption scandal.

Since the 2014 coup, criticism of Government has been explicitly banned in a variety of ways, a measure that finds its equal only in China, Laos and Vietnam. NCPO Announcement No.97/2014 criminalizes criticism of the NCPO or any type of information that could incite disaffection with it. The 2016 Referendum Act, which came into force in April 2016, effectively banned any critical discussion of the draft constitution that the referendum would be on. Article 61 of the Act states that 'anyone

who disseminates text, pictures or sounds that are inconsistent with the truth or in a violent, aggressive, rude, inciting or threatening manner aimed at preventing a voter from casting a ballot or vote in any direction or to not vote' can be sentenced to 10 years in prison, be fined THB200,000 (US\$5,600) and be stripped of their political rights for 10 years. Despite the fact that the law is extremely broad, the Military Government's application of the law went far beyond its letter, guided by multiple pronouncements and threats made by NCPO Chief General Prayut and a number of other officials, who stated repeatedly that no criticism at all of draft constitution would be permitted. Many persons were penalized simply for having voiced disagreement with the draft, despite not having done so in a 'violent, aggressive or rude' way. At least 208 people were charged under the Act, despite its very short tenure, and dozens of discussions of the draft by groups that might have been critical of it were forced to be cancelled, while any positive discussion was allowed to go ahead. In April 2016, Pheu Thai member Watana Muangsook was arrested for merely stating on Facebook that he would vote against the draft constitution. In June 2016, 13 student activists were arrested and charged under the Act for having distributed leaflets critical of the draft constitution. Four activists and a Prachatai reporter were arrested and charged under the Act in August 2016 for being in possession of fliers critical of the draft constitution, despite the fact that they had not been handing them out.

Criticism of the judiciary is banned in Thailand under Article 198 of the Criminal Code and Article 64 of the Act on Establishment of Administrative Courts and Administrative Court Procedure 1999. Article 198 states that 'insulting the Court or the judge in the trial or adjudication of the case, or obstructing the trial or adjudication of the Court' is punishable by up to seven years' imprisonment. The length of this punishment far outstrips any other contempt of court laws in the region, which usually provide for under a year of imprisonment or a fine. The Act on Establishment of Administrative Courts and Administrative Court Procedure contains lighter penalties: Article 64 holds that contempt of court may be punished with up to one month of imprisonment, while

Article 65 specifies that a criticism of the court ‘in good faith and by academic means’ will not be guilty of contempt of court. Unfortunately, the inclusion of the caveats ‘in good faith’ and ‘by academic means’ allows the courts to pursue critics unhindered. In December 2016, the Phra Khanong Provincial court ordered Thai Lawyers for Human Rights to delete a report which criticised the denial of bail to a pro-democracy activist, threatening the group with prosecution for contempt of court if it did not comply. In November 2016, Sudsangan Sutheesorn, a lecturer at Thammasat University, was sentenced to one month of imprisonment by the Supreme Court in connection to a June 2014 protest in which he, along with two other activists, laid a wreath in front of the Civil Court with a message that read ‘for the injustice of the Civil Court.’ One of the activists, Picha Wijitslip, a lawyer with a political opposition movement, died during the case, and the other, Darunee Kritboonyalai, fled to the United States.

Recommendations

Article 116 of the Criminal Code must be deleted because it is an outdated and repressive law that disallows criticism of Government. Expression that causes dissatisfaction with Government is critical to the function of a democracy and is a fundamental freedom guaranteed by international law. NCPO Announcement 97/2014 must be repealed for similar reasons. Article 198 of the Criminal Code and the Act on Establishment of Administrative Courts and Administrative Court Procedure must be repealed because they forbid criticism of courts. International standards do permit failure to obey court orders to be punished, but do not allow for censorship of expression on trials.

Vietnam

Vietnam’s sedition and Government criticism-related laws are the most draconian in the region. They explicitly ban any criticism of Government, punishable by long prison terms and even capital punishment.

Article 117 (Article 88 of the pre-2017 Criminal Code) silences voices critical of the Government and State policies by banning all ‘anti-State propaganda.’ It has been a prominent tool used by the Government

in the 2015-2016 crackdown on criticism. Under Article 117, individuals can be imprisoned for up to twenty years for defaming or propagating information critical of the Government, spreading false news with the aim of confusing people, or producing or publishing anti-state documents. Under the revised Criminal Code, a new offence was added punishing ‘preparation of committing this crime’ with up to five years of imprisonment.

In November 2016, prominent blogger Ho Van Hai was arrested under Article 88 for ‘spreading information and documents on the Internet that are against the Government.’ His blog and Facebook page were also shut down by the authorities. The charges are in connection to online articles related to Government corruption as well as the need for accountability for the environmental disaster of April 2016, in which a leak from a steel plant contaminated the ocean, resulting in the mass death of fish and serious impact on the livelihoods of poor fisherpeople. In October, prominent blogger Nguyen Ngoc Nhu Quynh (also known as ‘Mother Mushroom,’ was also charged under Article 88 for her work on the same environmental disaster. In March 2016, prominent blogger Nguyen Dinh Ngoc (also known as Nguyen Ngoc Gia) was sentenced to four years’ imprisonment and a subsequent three years of probation under Article 88 for ‘disseminating propaganda against the state.’ Gia had been in detention since December 2014 in relation to his writing for independent blogs and comments on the radio about the cases of three bloggers detained under Article 88. His sentence was reduced to three years in jail and three years of probation in October 2016 because of the revolutionary credentials of his family. Also in March 2016, land rights activists Nguyen Thi Tri, Ngo Thi Minh Uoc, and Nguyen Thi Be Hai were sentenced to three, four and three years respectively, as well as three years of probation, under Article 88. They were arrested in July 2014 for demonstrating outside the US Consulate demanding that the Government return seized land to farmers.

Article 330 of the Criminal Code (Article 258 of the pre-2017 Criminal Code) criminalizes the

'abuse' of freedom of expression, assembly, and association to infringe upon State interests. Those found guilty under this article face up to seven years' imprisonment. In March 2016, prominent bloggers Nguyen Huu Vinh and Nguyen Thi Minh Thuy were sentenced to prison terms of five and three years, respectively, on charges under Article 258 for running a popular website which featured alternative news that sometimes was critical of the Government. The site reported on several major events in Vietnam that were not covered by state media, such as protests, land evictions, police brutality, and trials of human rights advocates. Also in March 2016, Dinh Tat Thang, a 73 year-old activist working to expose corruption, was sentenced to seven months in prison under Article 258 for allegedly insulting the 'dignity and prestige' of Party officials by exposing corruption. A few days before his arrest in August 2015, Dinh Tat Thang had accused a high level police officer's brother of engaging in corrupt behaviour. In May 2015, the editor of the local magazine Người Cao Tuổi ('The Elderly'), was charged under Article 258 after the magazine published several reports about official corruption. The charge that the paper was disseminating false information and revealing confidential security-related information was related to several articles on official corruption published by the paper. In December 2016, the charges were dropped. In October 2013, blogger and activist Dinh Nhat Uy was sentenced to 15 months of house arrest under Article 258 for writing online posts calling for the release of his brother, a student activist who was arrested in October 2012 under Article 88 for distributing leaflets that criticized the Government.

Article 109 of the Criminal Code (Article 79 of the pre-2017 Criminal Code) criminalizes activities, or the establishment or joining of organisations with the intention of overthrowing the Government, punishable by capital punishment or life imprisonment. The revised Criminal Code added the crime of preparing to commit this offence, punishable by up to five years in prison. Although the article is mostly used to target freedom of association, there have been instances of charges related to freedom of expression. In May 2009, HRDs Tran Huynh Duy Truc, Le Cong Dinh, Nguyen Tien Trung, and Le Thang Long were arrested under this article after they spoke out about social and economic issues in Vietnam and advocated for Government reform. Tran Huynh Duy Truc is currently serving a 16-year prison sentence and an additional five years of house arrest for allegedly attempting to 'overthrow' the State in connection to his blog and book on Government reform.

Recommendations

Articles 109, 117, and 330 of the Criminal Code must be abolished. Article 109 does cover some acts that could be considered criminal, such as armed rebellion, but the law does not limit itself to these criminal acts. Rather, it is left wide open to be interpreted as referring to any opposition to the Party, which is not a criminal act by international standards and severely restricts freedom of expression. Any law replacing this article and dealing with rebellion must be narrowly defined and have a severity threshold to ensure that no peaceful act of opposition may fall under its purview. Articles 117 and 330, meanwhile, are illegitimate in their entirety as they explicitly criminalize expression critical of the Government.

National Security

Bangladesh

Article 505(a) of Bangladesh's Penal Code is a good representation of the catch-all nature of national security legislation throughout the region that allows it to be applied to Government critics. Under the Article, anyone who makes, publishes, or circulates a statement, or in any way communicates -including 'by sign'- something that is deemed 'likely to be prejudicial to the interests or security of the Bangladesh' can be imprisoned for up to seven years and fined an unspecified amount. The use of the word 'likely' significantly broadens the ambit of the provision, as does the word 'prejudicial:' there is no test of severity, and there need to have been no actual effect for a sentence to be handed down. The seven year sentence, particularly applied to persons whose crime is merely not supporting Government policies, is disproportionate. A related problem -as with the application of such laws throughout the region- is the broad interpretation of the law by the courts.

The Anti-Terrorism Act 2009 (amended in 2013) is also used to target free expression. The Act defines 'terrorist activities' vaguely, which allows it to be abused for political ends. Acts that are considered to be terrorist activities include 'creating fear amongst the public to jeopardize the solidarity of Bangladesh' by causing 'damage to any property of a person.' Persons found guilty of spreading speech that incites or leads to seditious activity or terrorism against the State can also be prosecuted. The penalties under the Act range from a minimum of 20 years of imprisonment to the death penalty, which, given the fact that the Act has been used to target political opponents, is worrying.

The draft Liberation War (Denial, Distortion, Opposition) Crime Law would criminalize any deviation from the official Government line on 'liberation war' of 1971. Although 'atrocities-denial' laws have some basis in international law, this law is overly broad and appears to be designed to muzzle critics of the Government's reading and use of the event. Article 4(2) outlaws 'giving a malicious statement that undermines any events related to

the liberation war,' 'misrepresenting or devaluing any Government publication on the history of the liberation war,' 'mocking any events, information or data about the liberation war,' and 'committing contempt of the liberation war by calling the liberation war anything other than a historic fight for the nation's independence.' This definition of offences goes far beyond denial of atrocities and extends to any criticism of the Government's use of the narrative for its political ends. Under Article 5, the penalties for offences under Article 4 are up to five years of imprisonment and a fine of up to 10,000,000 taka (US\$118,000).

Recommendations

The courts must stop interpreting Article 505(a) so broadly as to apply to persons merely opposing the ruling party's politics. The provisions of the article itself must be modified so as to specifically apply to actions that severely and concretely affect public security, and it must explicitly state that it may not be applied to political dissenters. The terms 'likely' should be struck from the article, and the term 'prejudicial' should be replaced to establish a clearer and higher threshold.

The Anti-Terrorism Act 2009 must be amended to ensure that it does not touch on activities unrelated to terrorism, such as damage to property. The definition of 'terrorist activities' should be significantly narrowed and incorporate the three-part test developed by the United Nations. Provisions regarding speech leading to seditious or terrorist activity must also be removed from the law altogether and not treated as terrorist offences.

The draft Liberation War (Denial, Distortion, Opposition) Crime Law must be scrapped in order to ensure that criticism of the Government's particular take on or use of historical events is not criminalized.

China

Two types of national security laws are generally used to crack down on free expression in China: the first, similar to laws used in Myanmar and elsewhere, is law governing state secrets; the second, similar to Bangladesh and elsewhere, is anti-terrorism

legislation. These laws, as with national security laws elsewhere in the region, use vaguely defined terms, allowing the Government to subvert, punish, and criminalize any expression that it believes goes against the interests of the Party and the State.

The 1989 Law on Guarding State Secrets bars Chinese citizens from disclosing classified state information. The law defines the term 'state secret' in extremely broad terms, and provinces have their own security bureaus that have the power to classify nearly any information as secret. Information can be classified as a state secret retroactively, and many citizens have been arrested and charged for information that was not considered a state secret when it was published. The 2010 revision to the law expands the penalties to the online sphere. In addition, under the revision, information and communications technology providers must aid the Government with investigations of state secret leaks, and stop the transmission of state secrets if they are discovered on the provider's network. Service providers must also maintain regular records which must be submitted to Government entities, who can examine their content.

Article 111 of the Criminal Code is another law on state secrets that is used to crack down on dissent. Under Article 111, anyone convicted of stealing state secrets or intelligence can face punishments that range up to life imprisonment, for a serious offence. 'State secrets and intelligence' are not defined in the provision, meaning that virtually any form of state information, no matter how trivial, could be considered one. In April 2015, Gao Yu, a veteran independent journalist who has been imprisoned repeatedly for critiquing the Chinese Government, was sentenced to seven years in prison -later reduced to five- under Article 111 of the Criminal Code for leaking a memo to a local newspaper. Gao was 71 at the time of her sentencing, and thus will be imprisoned until she is nearly 80. In September 2015, Zhang Chongzhu, a church pastor, went missing; in February 2016 he was officially criminally detained under Article 111, and in March 2016 he was formally arrested under that charge. It is believed that Zhang was being punished for having met with a U.S. diplomat in Shanghai in 2015. In

July 2010, three webmasters – Dilshat Perhat, Nureli Obul, and Nijat Azat – were sentenced to five, three, and ten years in prison respectively under Article 111 of the Penal Code. The three had failed to delete posts on their websites that discussed hardships in Xinjiang Province. In July 2010, Gheyret Niyaz, a Uyghur journalist, was sentenced to 15 years of imprisonment under Article 111 after he gave interviews to overseas news outlets about the July 2009 riots in Urumqi.

The 2015 Anti-Terrorism Law also has the potential to be used to restrict freedom of expression. Article 104 of the law defines 'terrorism' in extremely broad terms which include 'thought, speech or behaviour' that is subversive or that seeks to influence national policy making. This definition clearly covers acts far beyond actual terrorism, like similar laws in Bangladesh, Malaysia, the Maldives, Pakistan and Sri Lanka. The definition of extremism is similarly broad and open to application to a wide variety of peaceful dissenting acts. The law labels organisations that partake in acts classified as terrorist under its definition as terrorist organisations and outlaws them, meaning that CSOs which seek to influence national policy making or that work on 'subversive' issues such as human rights could easily be targeted. The law also authorizes the Government to engage in large-scale monitoring and surveillance.

Recommendations

The 1989 Law on Guarding State Secrets must be amended to specifically define what a 'state secret' is and to ensure that what is covered is a limited amount of highly confidential material. Information must not be permitted to be retroactively classified as a state secret to allow prosecution under the act. It must also have an explicit exemption for whistleblowers to ensure that persons releasing information on Government malfeasance are not targeted. The 2015 Anti-Terrorism Law's definition of 'terrorism' must be significantly narrowed to ensure that it targets actual violence and is consistent with international standards. A clause must be inserted that explicitly protects HRDs and Government critics from prosecution under

this law. Clauses giving Government sweeping powers to monitor people without a warrant must also be repealed. Article 111 of the Criminal Code must be amended to include a clear definition of 'state secrets and intelligence' with a high threshold regarding to what constitutes one, and must have a clause similar to the one recommended for the Anti-Terrorism Law on the immunity of HRDs and whistleblowers from prosecution under the article.

India

The 1967 Unlawful Activities Prevention Act (UAPA), last amended in 2012, has been used to silence activists trying to speak out about social issues in India. The law gives the Government the power to ban associations if they engage in 'unlawful activities,' and to arrest any member of the association. 'Unlawful activities' is very broadly defined to include any speech that causes 'disaffection against India' or 'supports any claim' for secession. Limitation of free speech on the basis of political issues that might cause negative feelings towards a country or that might be perceived as in supporting the right to self-determination is illegitimate by international standards and gives the Government the opportunity to limit legitimate exercise of the right to freedom of speech. In this regard, the UAPA mirrors other legislation in the region, such as Bangladesh's 2009 Anti-Terrorism Act or Sri Lanka's PTA, with their broad definition of 'unlawful activities' or 'terrorism.'

In May 2014, Professor GN Saibaba was arrested for alleged links to the Communist Party of India (Maoist). After two years in custody, he was finally granted bail in April 2016. Dr. Saibaba is an HRD who had organised meetings highlighting the plight of people facing displacement due to development projects. In January 2011, the police arrested Sudhir Dhawale, a social activist and the editor of Vidrohi magazine, and charged him with under the Act, as well as Articles 121 and 124 of the Penal Code, due to his alleged links to the banned Naxalite movement. Many believe his arrest was retaliation for his writings against the caste system and his activism on behalf of the Dalit community.

Recommendations

The UAPA must be amended to ensure that it specifically targets serious and legitimate national security threats. The definition of what constitutes 'unlawful' activities must be significantly narrowed, and must not include any legitimate exercise of free speech by international standards, including expressing support for autonomy or criticising Government policy. The Act must explicitly bar its application to the prosecution of persons for political views held or expressed.

Indonesia

Like Myanmar, China, Mongolia, and Sri Lanka, Indonesia has legislation limiting the disclosure of state information that can be used to illegitimately limit freedom of expression. The 2011 State Intelligence Law contains several broad, vaguely worded restrictions on information disclosure that can easily be abused to restrict the dissemination of sensitive information and target anyone affecting 'national stability.' The concept of 'national stability' is left undefined, meaning that it could be used to criminalize information leaked in the public interest. The law criminalizes the leaking of confidential information related to intelligence activities with up to fifteen years of imprisonment or a fine of 500,000,000 rupiah (US\$35,000). The Law also grants the State Intelligence Agency the ability to intercept communications that it suspects support terrorism, separatism, or threats or disturbances against the State, without receiving Government approval. Several other laws in Indonesia, including the Psychotropic Law, Narcotics Law, Electronic Information and Transactions Law, and Corruption Law contain clauses that legalize or legitimize state surveillance of private communications in the case of suspected illegal activity.

The draft State Secrecy Bill, first announced in 2009 and revived in 2014, also imposes restrictions on freedom of expression. Under the law, the president is given the power to determine what constitutes a 'state secret,' the definition of which is overly broad and could be used to criminalize political opposition, activists, and media organisations disclosing cases of corruption and malfeasance.

The draft National Security Bill, originally proposed in 2009, also threatens to limit freedom of expression. The definition of threats to 'national security' under the draft bill includes attempts to harm the unity of the nation in terms of security, ideology, politics, economics, and culture, including national development. The definition of 'national development' in the Bill is broad enough to include any development project undertaken at any level of Government. This means that opposition to opaque, politically motivated, environmentally damaging development projects undertaken without any local consultation -such as the Trans-Papua Highway- could be criminalized under this law.

The Law on Conflict and Resolution gives local Governments sweeping powers to quell dissent. Under the law, governors, regents and mayors, with the consent of local leaders, have the right to deploy the Indonesian Armed Forces (TNI) in order to quell 'social conflict'. The definition of social conflict is overly broad, and this is problematic because it could be applied to situations where locals are opposing the actions of a company. As local leaders' interests tend to be in line with those of companies, this means that the Law can be used to quell any opposition to companies or development projects with Military force.

Recommendations

The 2011 State Intelligence Law must be amended to restrict the acts punishable under it, which are currently far too wide-reaching. Vague language such as 'national stability' must be replaced with specific wording that targets highly classified information not released in the public interest that directly puts citizens in grave danger. It must also include the need for a warrant in order to intercept private communications. The draft State Secrecy Bill should be scrapped and replaced with legislation that specifically defines what a State secret is, establishes a high threshold, and has a clause providing unconditional amnesty to whistleblowers. The draft National Security Bill must be significantly amended to ensure that it targets actual threats to national security, as opposed to any opposition to Government. Finally,

the Law on Conflict and Resolution must be amended to remove the provisions enabling local officials to call in the TNI and provide specific definitions of social conflict. The law also must change the forms of Government intervention provided for in the law: rather than simply stating that 'social conflict' will be quelled by Military force, the Government must be required by law to play an active role in seeking to address the grievances that underlie such conflict, such as local companies causing environmental damage or grabbing land.

Laos

Laos has extremely broad and severe national security laws that are comparable to China's and Vietnam's. Article 56 of the Penal Code on treason provides for penalties of 20 years for any Lao citizen in contact with foreign nationals for the purpose of undermining the independence, sovereignty, territorial integrity, grand political causes, defence and security, economy, or culture and society of Laos. The offence is so broad that it can be applied to almost any conceivable form of political opposition. Article 57 on rebellion, Article 58 on spying, and Article 71 on the disclosure of state secrets are equally broad and repressive.

Recommendations

All Penal Code articles pertaining to national security, in particular articles 56, 57, 58, 71, must be amended so that they refer narrowly to acts that are criminal by international standards and may not be applied to persons merely voicing opposition to Government.

Malaysia

Malaysia's national security legal framework is strict and rapidly tightening. The laws' application has become extremely strict in the last few years and now explicitly targets any criticism of Government. The 2016 National Security Act, which came into force in August, gives the Government sweeping powers under ambiguous conditions and severely restricts freedom of expression. The Prime Minister, as head of the National Security Council, can declare any area to be under a security threat and impose the equivalent of martial law there. The conditions

under which an area may be labelled a security threat are broad and vague and include economic stability and national unity, among others. In those areas, civil liberties will be restricted and security forces will have broad powers to search, seize and arrest without a warrant; the security forces will also have the power to evacuate areas and use lethal force. Impunity is assured through the guarantee of immunity to the National Security Council and those acting under its orders.

The 2012 Security Offences [Special Measures] Act (SOSMA) restricts a number of rights, including freedom of expression and bears resemblance to Sri Lanka's draft Counter Terrorism Act (CTA) and the Maldives' Anti-Terrorism Act. SOSMA was sold as a non-repressive replacement of the infamous 1960 Internal Security Act, but it is open to many of the same abuses and has been used in a similar way to target Government critics. Under the Act, the police have the power to detain a person incommunicado for 48 hours, and may extend the detention period without laying charges for 28 days. The detainee does not have the right to be released on bail, and is kept in detention throughout the entirety of their trial.

In November 2016, on the eve of the Bersih 5.0 rally, Chairperson of Bersih 2.0 Maria Chin Abdullah was arrested under Article 124(c) and placed under SOSMA for receiving funds from the Open Society Foundation. She was held incommunicado for 48 hours without access to a lawyer, and was then held for another nine days in solitary confinement. She was released after a total of 11 days in detention, the day before her habeas corpus hearing challenging her detention. In November 2016, the offices of the NGO EMPOWER were raided under Article 124(c) of the Penal Code and the security forces invoked SOSMA, threatening staff with arbitrary detention without access to a lawyer under the Act. The raid and the threats were made in connection to Bersih 2.0's funding.

Recommendations

The 2016 National Security Act must be immediately repealed as it presents an extremely dangerous threat to an array of rights, including freedom of

expression. The law goes far beyond what is allowed by international standards in the restriction of this right, giving the Government free rein to use extreme force against anyone engaging in activities the ruling party disapproves of. It presents a clear and immediate danger to the ability of anti-corruption and pro-democracy activists to express themselves. Likewise, the 2012 Security Offences (Special Measures) Act must be repealed as the legislation is fundamentally flawed. Instead of narrowly targeting actual criminal offences, it is used broadly and in a political fashion to target Government critics. Any public security or anti-terrorist legislation enacted to replace these laws must be extremely narrow in their definitions so as to not be applicable in any way for political reasons.

Maldives

The Maldives' national security laws are unusually restrictive and are extraordinarily broad, making them among the most repressive in the region. The 2016 Protection of Reputation and Good Name and Freedom of Expression Act, which covers defamation and blasphemy, also applies to national security. Under the law, any expression that conveys 'opinions that damage national security or sovereignty' is unlawful. As in most countries in the region, the issue with this law is the vague definition provided for how an opinion will be judged to damage national security: in this case, it is determined to be so when a 'sane person' would deem it to be. The penalty for violation is a fine of 25,000-2,000,000 rufiyaa (US\$1,625-130,000), which, if not paid, results in a prison sentence of up to 6 months.

The 2015 Anti-Terrorism Act, which replaced the 1990 Prevention of Terrorism Act, grants the executive branch and security forces broad powers to prosecute a very wide variety of acts. The President has the power to unilaterally declare groups to be terrorist organisations, a provision that resembles, but is more extreme than the Indonesian Government's power to declare an area under threat of 'social conflict' or the South Korean Government's ability to arbitrarily label groups as 'anti-state organisations.' It closely resembles the Burmese President's ability to declare associations

illegal on broad grounds. The extraordinarily broad definition of terrorist organisations includes groups that ‘destroy property,’ even if that is not the intent or aim of the group. The definition of terrorism is similarly broad and includes damaging property, disrupting public services, inciting violence at demonstrations and damaging critical infrastructure, with no severity threshold specified. Although anti-terrorism laws in the region are usually problematically broad, this law is set apart by specifically declaring acts that have nothing to do with terrorism as terrorist. Similar to Malaysia’s SOSMA, the law deprives the accused access to legal counsel for up to 96 hours, and strips them of the right to remain silent. The law also provides the Government with extensive monitoring powers, which includes the ability to secretly install cameras in the homes of persons suspected of being terrorists.

In February 2016, Sheikh Imran Abdullah, the leader of the Adhaalath opposition party, was sentenced to 12 years in prison on terrorism charges for a speech at a rally against the jailing of dissidents, after a manifestly unfair trial. In June 2016, former Vice-President Ahmed Adeb was convicted on two counts of terrorism and sentenced to 25 years in prison for allegedly brandishing a firearm at an opposition rally and attempting to assassinate the President, charges which he rejected. His trial was also marred with irregularities and is widely considered to have been politicised. Numerous other prominent figures have been sentenced to long prison terms under anti-terrorism legislation, including former President Mohamed Nasheed, former prosecutor general Muhthaz Muhsin, and senior judge Ahmed Nihan.

Recommendations

The 2016 Protection of Reputation and Good Name and Freedom of Expression Act must be repealed. Its definition of national security is overly broad and therefore subject to abuse and political application. The draconian 2015 Anti-Terrorism Act must also be immediately repealed as it poses extreme restrictions on freedom of expression. Any new legislation replacing it must define terrorism

narrowly and within the bounds of internationally-accepted definitions, which must not include damage to property or disruption of public services. The President must not have the power to simply declare an organisation to be a terrorist one: this is a process that must go through the courts.

Mongolia

Like Myanmar, China, Laos, Indonesia and Sri Lanka, Mongolia has a law on state secrets that is overly broad and subject to abuse. The 1995 State Secrets Law poses restrictions on freedom of expression by outlawing the publication of a wide variety of information. The law defines State secrets so broadly that virtually anything can be declared to be one, thus giving the Government the tools to punish expression it does not like and encourage self-censorship to avoid such punishment. The law does not specify any limits on what may not, or should not, be considered a State secret. The law allows information to be classified indefinitely and has strict laws on declassification, making it unlikely that information will be declassified.

Recommendations

The 1995 State Secrets Law must be repealed and replaced with a law that strongly protects whistleblowers and freedom of expression. The replacement legislation must guarantee that whistleblowers will be immune from prosecution. It must narrowly define the concept of State secrets and ensure that it applies only to information that is classified as such by international standards, and there must be clear and significant elaboration on what cannot be considered a State secret.

Myanmar

The Myanmar Government continues to use outdated national security legislation to prosecute people exercising their right to freedom of expression. While not as draconian as Bangladesh’s national security laws, they are similarly used to target dissent. Under the Official Secrets Act 1923, anyone who possesses or releases documents that could affect foreign relations or threaten state safety can be imprisoned for up to 14 years. The Act contains vaguely worded, broad provisions

on what can be considered a state secret, making it easy to prosecute people who reveal information that could be construed as damning for the Government, and essentially ensuring that whistleblowers are prosecuted. The Official Secrets Act closely resembles Sri Lanka's law which shares the same name and has the same roots in British colonial law. In July 2014, the CEO of, and four journalists from, the Unity journal were sentenced to ten years in prison with hard labour under the Act for running a story in January 2014 on a Government chemical weapons factory. In October 2014 their appeal to the Magwe Divisional Court resulted in a reduced sentence of seven years of jail with hard labour. In January 2018, Reuters reporters Wa Lone and Kyaw Soe Oo were charged under the Act for reporting on the Rohingya crisis, and are facing a 14-year prison sentence.

Although rarely used, the Emergency Provisions Act 1950 contains several vague clauses that have been used to punish several people exercising their right to free expression. Under the Act, anyone who knowingly spreads false news or affects the 'loyalty' of civil servants can face up to seven years of imprisonment. In July 2014, three journalists working for the Bi Mon Te Nay media outlet were arrested and originally charged under this Act for publishing an article that erroneously claimed that opposition leader Aung San Suu Kyi had formed an interim coalition Government. They were eventually convicted under Article 505(b) of the Penal Code.

Recommendations

The Official Secrets Act, a century-old relic of colonial rule, must be repealed in its entirety, as it serves more to protect Government from transparency and scrutiny than it does to protect national security. Myanmar urgently needs to enact an effective Whistleblowers' Act to ensure that Government officials guilty of malfeasance are held accountable for their actions.

The Emergency Provisions Act must be amended to ensure that there are clear and limited conditions under which it may be enacted, that the crimes contained within it are narrowly defined and cannot be used to target mere dissent, criticism or acts

affecting the 'loyalty' of the civil service, and that the penalties for the offences set out are proportionate. The Act must explicitly specify that its provisions may not be used to target Government critics.

Pakistan

Pakistan's national security legislation, like that of the Maldives and most countries in the region, is problematic because of the breadth of acts considered national security offences. The Anti-Terrorism Act 1997 is very broad and applicable to acts that have nothing to do with terrorism. The Act explicitly goes beyond terrorist offences: the preamble states that it addresses 'the prevention of terrorism, sectarian violence, heinous offence and matters connected there with and incidental there to.' The definition of terrorism includes creating a sense of insecurity, damaging public property, barring public servants from their duties, and crucially, the malicious insult of religious beliefs or derogatory statements about holy figures in Islam. Under the Act, persons can be detained without charge for up to 90 days, and the offence is non-bailable and immune to habeas corpus.

Recommendations

The Anti-Terrorism Act must be repealed and replaced with a law that defines terrorism more clearly and narrowly. The definitions of terrorism under the existing Act are so broad as to cover a wide range of non-terrorist acts, and even non-criminal acts. The new law must leave out any reference to insult to religion as well as damage to public property or barring public servants from their duties. Instead, it should define terrorism according to internationally accepted standards, with appropriate specificity and severity thresholds.

South Korea

South Korea has draconian national security legislation that is as restrictive as that of more repressive states such as Bangladesh and Myanmar. Article 37(2) of the Constitution stipulates that any freedoms and rights can be restricted for reasons of national security, the maintenance of law and public order, or general public welfare. The National Security Law 1948 has been used to penalize critics of the South Korean Government

and its policies and places significant restrictions on South Koreans' ability to express themselves freely. The Law forbids expression that refers positively to 'anti-State' organisations. The term 'anti-State organisation' is not defined, but it has been interpreted as meaning things as diverse as North Korea, groups that have expressed positive ideas about North Korea, or persons or groups that have expressed opposition to the South Korean Government. Even possession of a book deemed 'anti-State' (such as a book not toeing the official South Korean Government line on North Korea), or meeting someone who has expressed 'anti-State' views may result in a 10 year jail sentence. The law penalizes those who join 'anti-State' groups with up to two years' imprisonment. Chief organisers and leadership face death or life imprisonment. Under the Law, the Government may limit expression which praises or incites 'anti-State' groups, and prosecute members of said groups who spread information that could disturb public order.

The Government has routinely used the law to prosecute those who make statements in support of the Government and policies of North Korea, but it is also sometimes used to target various forms of criticism of the South Korean Government. The Government deletes tens of thousands of online posts a year that praise North Korea and its Government. In April 2016, a pastor was sentenced to six months of imprisonment for allegedly voicing pro-North Korean ideas online. In January 2015, Shin Eun-mi, a Korean-American conducting a speaking tour about her visits to North Korea, was interrogated for more than 50 hours, then deported and barred from entering the country for five years under the Law. Hwang Sun, who arranged her speaking tour, was arrested under the Law. In October 2014, the state deported a Chinese student under the National Security Law because he had posted comments online in support of North Korea and against South Korean President Park Geun-Hye. In September 2014, poet Chung Seol-Kyo was sentenced to 18 months imprisonment under the Act for his writings, which praised North Korean leaders and, ironically, called for the abolition of the National Security Law. In December 2014, the left-wing United Progressive Party (UPP) was disbanded

on the orders of the Constitutional Court after it was convicted of carrying out pro-North Korean activities. Its five members sitting in the National Assembly were removed from office, and its leader, Lee Seok-gi, was sentenced to nine years in prison.

In March 2016, despite widespread opposition, the ruling conservative party was able to push through the Anti-Terrorism Act. The Act confers broad powers to the National Intelligence Service (NIS), which has a documented track record of illegitimately overstepping its mandate and becoming actively involved in politics, most recently helping former President Park come to power. The Act provides the NIS with the power to wiretap phones and secretly collect personal information without a warrant and without any evidence or cause. To confer a security organisation proven to have interfered in politics before with the power to collect evidence without a warrant effectively gives the Government the ability to crack down on all political opposition and critics. The Act also establishes an 'anti-terror' centre under the personal control of the President, further enhancing the political role of security forces. Finally, like similar laws all across the region, the Act defines 'terrorism' very vaguely, allowing virtually any criticism of Government to be classified as such.

Recommendations

The National Security Law must be immediately and unconditionally repealed, as it severely restricts freedom of expression on political grounds. Legitimate national security threats are more than adequately covered by other national security legislation and the Criminal Act. The law in its current form allows the Government to criminalize and punish extremely severely critical political expression. In the meantime, the Government must stop its illegitimate use of the law to silence critics and release all persons convicted under the Law.

The Anti-Terrorism Act must also be repealed in its entirety as it provides the NIS with powers that are much too broad and discretionary for an intelligence organisation. Terrorist crimes are covered by existing legislation and thus need not be legislated against again, particularly not when defined in such a broad manner.

Sri Lanka

Sri Lanka has strict national security laws that were extensively used under the Rajapaksa administration but which remain in force and continue to be used by the current administration, albeit with less frequency. The Prevention of Terrorism Act 1979 covers an extremely broad range of offences, including ‘unlawful activities’ which are left undefined, and allows for up to 18 months of detention before having to bring the suspect before a magistrate. The law most closely resembles India’s Unlawful Activities Act, but also contains similarities to anti-terrorist legislation in Bangladesh, Malaysia, the Maldives and Pakistan. The Government has used the law to prosecute individuals speaking out about certain progressive issues. Several civil society activists have been arrested or imprisoned under this law. In March 2014, prominent human rights defender Ruki Fernando was arrested under the Act for trying to ensure the welfare of Balendran Vithushaini, the daughter of Balendran Jeyakumari, who was also arrested under the Act in March 2014 for her work questioning enforced disappearances in the country. After 362 days in detention, she was released in March 2015, only to be re-arrested for six days in September 2015, and summoned to the Terrorism Investigation Division in August 2016. Over 200 people are still held under the Act, with only roughly 50 of them charged with any offence.

The Official Secrets Act 1955 closely resembles Myanmar’s ‘Official Secrets’ law, also modelled on the British colonial act of the same name. It bans reporting on classified information, and individuals convicted under the Act can be imprisoned for up to 14 years. As with similar legislation elsewhere, the main issue with the Act is the broad definition of what constitutes an official secret: any information related to the armed forces or the defences of Sri Lanka, or that could be used ‘for any purpose prejudicial to the safety or interests of the State.’ To be guilty of an offence under the Act, one need only obtain or communicate this information to another person: sharing it publicly is not required for prosecution.

The draft Counter Terrorism Act (CTA) is being drafted to replace the PTA when the latter is repealed. However, the most important issues with the PTA remain unaddressed in the CTA. The CTA covers a very wide range of acts with definitions broad enough to leave room for substantial abuse. ‘Terrorism’ is so broadly defined that it includes any act ‘unlawfully compelling the Government to reverse, vary, or change a policy decision.’ Acts also covered under the law include statements that may ‘harm the unity, territorial integrity or sovereignty of Sri Lanka.’ The law provides for the denial of access to legal counsel in the first 48 hours of arrest, a provision also shared by Malaysia’s infamous SOSMA. Punishments remain draconian and disproportionate, ranging up to the death penalty.

Recommendations

The Government of Sri Lanka should take immediate steps, in line with its 2015 pledge at the Human Rights Council, to repeal the PTA and release or charge those held under it. The President’s order that security forces respect the directives issued by the Human Rights Council is a positive step, but as long as the Act is in place, freedom of expression is restricted. The draft CTA must be significantly amended, most importantly by narrowing the acts covered under the Act to terrorist offences as defined by international standards. The definition of terrorism must be narrowed accordingly, and no other offences must be listed under the Act. Access to legal counsel must be provided to suspects at any time, and penalties must be made proportionate to offences. The Official Secrets Act must be repealed; although the current administration has not used it, the Act, like the PTA, still holds the potential to be abused for as long as it is in effect.

Vietnam

Vietnam has a number of extremely strict national security-related Criminal Code provisions which have been used with increasing frequency in recent years. However in this analysis, they all fall within different categories (sedition, incitement, freedom of assembly), so they will only briefly be covered here. As

noted in the above Article on sedition and criticism of Government, Article 109 (previously Article 79) criminalizes activities aimed at overthrowing the State in broad terms, leaving it open to application to simple criticism of Government. Article 117 (previously Article 88) criminalizes any ‘anti-State propaganda,’ which applies to any criticism of Government; Article 330 (previously Article 258) achieves the same end by outlawing infringement upon ‘State interests.’ Article 116 (previously Article 87) outlaws the incitement of divisions between different groups, but in practice is used to silence religious minorities. Article 118 (previously Article 89) outlaws any act ‘disrupting State security,’ but is used to target freedom of assembly, so will be addressed below.

Recommendations

Article 116 of the revised Criminal Code of 2017 (previously Article 87) is broadly phrased enough to be used to silence any form of expression on religion of which the Party does not approve. Although laws protecting religious minorities from hate speech are legitimate, this law is used for the contrary purpose: to silence them. The provision must be repealed in its entirety. As noted above, Articles 109, 117, and 330 (previously Articles 79, 88 and 258) must also be repealed because they criminalize opposition to the Government. Article 118 (previously Article 89), as noted below, must be repealed for the same reason, except pertaining to freedom of assembly.

II FREEDOM OF ASSEMBLY

Public Assembly Laws

Bangladesh

Bangladesh's Constitution protects freedom of assembly, but in reality this right is heavily restricted. Under the Metropolitan Police Ordinance 1976, groups wishing to hold public demonstrations in Dhaka must apply in advance for a permit, which can be denied at the discretion of the police. The need for permission from Government to hold a protest is common to nearly half the countries in this report. As is common throughout the region, the ordinance is selectively enforced and has increasingly been used to penalize human rights organisations or opposition political groups. The authorities have used the Ordinance dozens of times to deny members of opposition political party Bangladeshi Nationalist Party the ability to hold political rallies. The ordinance also gives police the power to issue a blanket ban on any assembly for up to 30 days, and decide where, when and how approved assemblies may take place. Finally, the ordinance also gives police the power to make arrests on suspicion.

Recommendations

The Metropolitan Police Ordinance must be repealed to ensure that it cannot be used to deny peaceful public assemblies. Unless posing a serious and immediate threat to public security under a narrow definition and with a high threshold, all public assemblies must be legal. The authorities should not have the power to deny an application for a protest: rather, at the most, they could request a non-mandatory notification from organisers. Blanket bans to be imposed at the discretion of a police force are unconstitutional and contrary to international law.

Cambodia

The Law on Peaceful Assembly 2009 criminalizes peaceful protests and public assemblies, and is

relatively harsh compared to other such laws in the region. It is most comparable in scope and severity to the public assembly laws of Myanmar and Malaysia. The law mandates that organisers of public demonstrations must apply for permission five days in advance of any planned event (although if the protest will have less than 200 participants or will be held in a Government-designated 'freedom park,' organisers only need to apply 12 hours in advance). The only assembly law in the region requiring notification further in advance is Malaysia, which requires 10 days. Article 20 stipulates that unauthorized protests, even if they are peaceful, will be disbanded and that participants may be arrested. Permission to hold a public assembly may be denied under Article 2 on a number of broad grounds that are easy to manipulate to block legitimate protests: if the proposed assembly inhibits the rights or freedoms of others, impinges on societal customs, or jeopardizes public order or national security, permission may be denied. Undefined terms such as 'societal customs,' 'public order,' and 'national security' are overly broad and subjective, and are broadly interpreted by Cambodia's politicised courts to apply to any criticism of Government. The state thus regularly denies permits for opposition political groups and movements that criticize the state and its policies, and these groups have no legal recourse to challenge such illegitimate decisions. In addition, under Article 14, all demonstrations must occur between the hours of 6 AM and 6 PM, and are prohibited from taking place during national holidays.

Recommendations

The Government of Cambodia must amend the Law on Peaceful Assembly to ensure that its focus is on protecting protesters from Government organs, rather than restricting their right to assemble. Protests should not be contingent upon permission from Government: all protests must be legal, and any exceptions should be very specifically and narrowly defined to ensure that only serious offenses

committed by a large proportion of participants merit disbandment. Participation in a protest, regardless of its nature, must not be punishable if the participant is not engaging in behaviour that is illegal under the Criminal Code. Protests must be allowed to proceed at any time, and Article 14 must be amended to reflect that.

China

Public Assembly is extremely tightly controlled in China, by a combination of legislation, the Criminal Code, administrative directives (both public and not public) and informal tactics, such as investigation and surveillance by state security forces. China's Assemblies, Processions, and Demonstrations Law 1989, although one of the strictest in the region, is seen as largely irrelevant by civil society working on sensitive topics, who would generally not consider applying for a permit because they know that it would be denied and they would be exposing their identities, thus opening themselves up to investigation and future prosecution. Public assemblies may be held if they are created in collaboration with Government: for example, the 2012 anti-Japanese demonstrations.

The Assemblies, Processions, and Demonstrations Law, which was hurriedly enacted in the wake of student protests the same year, dictates what type of public gatherings can legally occur in the country and under what circumstances they can take place. Under the law, all public gatherings must be approved by a public security bureau, with the exception of selected religious activities. Applications must be submitted five days in advance, and must include an exhaustive list of information about the protest, down to posters and slogans. People may only participate in assemblies that occur in the cities they reside in, and foreigners are prohibited from participating in all public assemblies. In addition, the Law stipulates that a protest or public demonstration cannot take place within 300 meters of several State and Government buildings, a location where a State guest is staying, a Military installation, or an airport, railway station, or port. Protests may only take place between the hours of 6 AM and 10 PM unless

the local Government gives additional clearance. Spontaneous protests are considered unlawful and their participants are subject to prosecution. Organisers are burdened with unreasonable obligations and liabilities, having a duty to 'maintain order' and being subject to prosecution if the assembly does not follow the specific guidelines set in the application, down to the slogans used. The law contains a number of provisions that are broadly phrased and therefore give the authorities a great deal of discretion and power to deny or shut down assemblies and prosecute participants. Article 12, for example, bans assemblies that might 'oppose cardinal principles of the Constitution,' which are nowhere defined.

Recommendations

The Assemblies, Processions and Demonstrations Law must be repealed in its entirety and replaced with legislation that guarantees people the right to assemble under any circumstances, at any time, and in any place, with exceptions only in extreme and well-defined circumstances. No permission from the state should be required, and no one should be criminally liable for participation in an assembly of any sort, nor should any organiser or participant be liable for any of the actions of other participants.

India

In India, like most other countries in the region, the restriction of freedom of assembly is typically accomplished through the Penal Code, but the Indian government also has another archaic law at its disposal. The Prevention of Seditious Meetings Act 1911 allows the Indian government to designate areas 'proclaimed' if they deem there is a credible threat of disturbance to public tranquillity. In such a situation, public meetings that could cause 'disturbance or public excitement' can only take place in said area if participants receive prior permission from authorities at least three days in advance. Those that hold meetings in proclaimed areas without permission can be imprisoned for up to six months. Although the Law Commission of India has recommended that the anachronistic, colonial-era Act be repealed, it has not yet been scrapped.

Recommendations

The Prevention of Seditious Meetings Act must be repealed, as it is an archaic law designed to quell dissent by restricting people's right to freedom of assembly. Its phrasing is overly broad and the thresholds contained within it are far too low. Furthermore, giving Government the power to deny protests before they have started is an illegitimate restriction on freedom of assembly, as is criminal punishment for peaceful protesting.

Indonesia

Indonesia has a large number of laws directly pertaining to the governance of assemblies compared to most other countries in the region. Although its laws on public assembly are not among the most restrictive in the region, they nonetheless give the Government wide-ranging powers to deny permission for assembly. The Law on Freedom to Express an Opinion in Public 1998 makes spontaneous assembly illegal, and mandates that the organiser of a public assembly must inform authorities at least 24 hours in advance unless the assembly relates to academic activities on a university campus or religious activities. The notification must include the purpose and form of the assembly; its time, duration, and location; the equipment that will be used during the assembly; the number of participants expected; and the name and address of the person or organisation in charge. The authorities can dismiss the assembly if they feel the equipment used could harm public safety or if the organiser does not provide enough information. For every 100 participants in an assembly, organisers must name five persons organising it. The law also mandates several locations where public assemblies cannot take place, including religious centres, the presidential palace, hospitals, ports, train stations, and Military installations, and states that public assemblies may not take place during national holidays.

The Decree on the Security of Vital National Objects 2004 allows officials to ban all protests around 'vital national installations.' Under the Decree, any place can be declared a vital installation if threats against it could negatively affect economic development. In September 2014, the Government announced

it would use this law to provide extra security protection to safeguard the property of private companies and industrial estates against assemblies, worker protests, and strikes.

Gubernatorial Regulation No. 228/2015 (October 2015) on the control of free speech in public spaces imposed further restrictions in Jakarta. The regulations imposed rules similar to Singapore's in that protests could only take place in three designated areas in Jakarta, which were not suitable to such purposes. As in Cambodia, China and Timor-Leste, protests would only be permitted from 6 AM to 6 PM. The sound system would be limited to an extraordinarily low 60 decibels, and convoys would be prohibited. Responding to heavy criticism from civil society, the regulation was replaced in mid-November by Regulation No. 232/2015, which lifted other restrictions but maintained the volume limit and the 6 AM to 6 PM protest times.

Recommendations

The Law on Freedom to Express an Opinion in Public must be amended so that it protects people's right to do so, rather than restricting it. Most importantly, spontaneous assembly must be legalized, and organised assemblies must not be under any obligation to ask the authorities for approval. Any power granted to Government to deny protests pre-emptively is an illegitimate restriction on the right to free assembly. This means that all requirements to provide information on a foreseen assembly must be dropped. The law should also add clauses laying out penalties for the interference - particularly by Government organs - with persons' right to assemble freely.

The Decree on the Security of Vital National Objects must be repealed as it is overly broad and is not necessary to prevent acts that are otherwise well covered in the Penal Code. The definition of 'vital national installations' is far too broad to be useful, and provides the Government with the power to qualify virtually any place as such. Acts causing actual damage to property are already covered under the Penal Code and thus need not be addressed by an additional piece of legislation.

Gubernatorial Regulation No. 232/2015 must be scrapped. The unreasonably low limits on volume and the illegitimate restriction on times at which protests can be held are particularly egregious.

Malaysia

The Peaceful Assembly Act 2012 regulates all public protests in Malaysia and places restrictions on citizens' ability to engage in public protests. It bears resemblance to laws in Myanmar, the Maldives, Singapore, Cambodia, and Thailand. The Act outlaws spontaneous assembly, requiring notification of intention to protest to be submitted to the authorities an extraordinary 10 days in advance. When notification is not served, protestors can be subject to criminal penalties. The police are not legally permitted to turn down a protest, but they frequently do so by claiming that the notice did not meet the conditions and therefore declaring it illegal. One excuse frequently used by the police is the lack of proof of consent from local authorities in the notification. The police may also impose a long list of conditions regarding place, time, date, manner, among many others. The courts have given conflicting interpretations of the constitutionality of this part of the Act, but as of 2018 it remains in force. The Act contains several blanket restrictions, such as a prohibition against all street protest and a mandate that children under the age of 15 and non-citizens are barred from participating in public assemblies. In addition, under the Act people under the age of 21 are not allowed to organise public assemblies, effectively restricting many student-led movements and progressive student groups from organising public actions. Protest organisers must also ensure that no participants in the assembly make any statement that promotes feelings of ill will, discontent, or hostility, or do anything during the rally that may disturb public tranquillity. Anyone not complying with these regulations can be fined up to 10,000 ringgit (US\$2,320). The Act also proposes bans on gatherings within 50 meters of several public places, including hospitals, gas stations, and schools. In March 2018, the Human Rights Commission of Malaysia stated that the Government should review provisions of the Peaceful Assembly Act, including

the 10-day notification requirement, the ban on organizers under 21 years old and the prohibition of certain locations.

In August 2016, the police called in nine participants of an anti-corruption protest held in that same month and opened an investigation for violation of the Peaceful Assembly Act. Although they had notified police, the police declared the rally illegal because Kuala Lumpur City Hall refused to give students permission to hold the rally. In May 2013, Nik Nazmi, a youth leader and People's Justice Party MP for Seri Setia constituency, was the first person formally charged under the Peaceful Assembly Act after he failed to inform the police about the location of a planned political opposition rally. In May 2014, Nazmi was acquitted of all charges after the courts decided that Articles 9(1) and 9(5) of the Act, which criminalize spontaneous public assemblies, were unconstitutional. But in October 2015, a different Court of Appeals (dealing with the Yuneswaran case- see below) found that these Articles were constitutional, and a few days later, Nazmi was again charged for the same 2013 protest. In December 2016, Nik Nazmi pleaded guilty to the charge and was fined 1,500 ringgit (US\$350). In September 2013, opposition politician R. Yuneswaran became the first person convicted under the Peaceful Assembly Act, and was fined 6,000 ringgit (US\$1,400) for failing to inform the police ten days before he held a rally protesting the outcome of the general elections.

Recommendations

The Peaceful Assembly Act must be amended to remove the requirement of notification of intention to hold an assembly and to remove the possibility of criminal prosecution for failing to abide by the stipulations of the Act. Blanket restrictions on people of certain ages and on non-citizens must be lifted. Vague and broad restrictions on assembly issues such as avoiding promoting ill will must be lifted. The Act must also be amended to absolutely and unconditionally guarantee that peaceful assemblies of any sort, including spontaneous ones, will not be subject to prosecution.

Maldives

Before the 2016 amendment to the Freedom of Peaceful Assembly Act 2013, freedom of assembly in the Maldives was restricted to roughly the same degree as countries like India or Indonesia. However, the law now severely restricts Maldivians' ability to engage in peaceful assembly, and in its current form more closely resembles Cambodia's strict Law on Public Assembly. An assembly is defined as a gathering of more than one person attending a place temporarily to express a certain viewpoint. As of 2016, the amended Act requires prior approval from the police for assemblies anywhere except in certain designated places. 36-hour notice must be given to the authorities even in the areas where assemblies are designated to be allowed. A protest can be deemed not peaceful, and therefore unlawful, if any protestor is deemed to incite people to violent activity (which includes the destruction of property), or there is any act that condones illegal activity or is illegal itself. Limits to the right to assemble freely include threats to national security, public safety, and public morals; these categories are broad enough to allow assembly on most sensitive topics to be deemed illegal. The law also bans demonstrations held outside of private homes and Government offices, or within 50 feet of the President's office, the legislature, mosques, schools, buildings, hospitals, and diplomatic buildings. Only Government-accredited journalists may report on demonstrations.

Recommendations

The 2016 amendment to the Freedom of Peaceful Assembly Act must be repealed in order to ensure that no permission to conduct a protest under any circumstances is required. Spontaneous protests must also be permitted under all circumstances. Restrictions on the right to assemble must be narrowed and tightened, removing conditions such as 'threat to public morality,' so that they comply with international standards, which allow for restriction only in rare and specific circumstances. The limits on the locations in which assemblies can be held must be dropped.

Mongolia

Freedom of Assembly is relatively less restricted in Mongolia than in most countries in the region. However, the Law on Demonstrations and Meetings 1993 imposes some restrictions on peaceful assembly in Mongolia. It prohibits foreigners from organising demonstrations and requires that Mongolian nationals planning demonstrations notify the local authorities about their intentions. Demonstrations are often diverted from key areas in Ulaanbaatar such as Chinggis Khan Square and the area around the Government House. Crackdowns are particularly severe on demonstrators advocating for environmental protection and sustainable development.

In August 2015, the LGBTI Center, an LGBTI rights NGO, applied for permits to use public areas for pride day activities weeks in advance. The day before the event, the local Governments who received the applications denied permission for their use, and on pride day, participants were physically prevented from accessing Chinggis Square. In January 2014, environmental activists Ts. Munkhbayar, G.Boldbaatar, D.Tumurbaatar and J.Ganbold were sentenced to 21 years and six months in jail on charges of terrorism in connection with a September 2013 protest. Their sentences were reduced to between seven to 10 years in April 2014. The four led a protest outside of Parliament with members from the United Movement of Mongolian Rivers and Lakes and 11 other partner organisations protesting the Government's attempts to weaken a key law on environmental protection.

Recommendations

The Law on Demonstrations and Meetings must be amended to remove restrictions on freedom of assembly, including the prohibition on foreigners organising demonstrations, the power of the authorities to reject notifications of assemblies, and the power of the authorities to ban peaceful assemblies.

Myanmar

Despite recent political reforms, Myanmar remains a repressive state with regard to freedom of assembly. The Peaceful Assembly and Peaceful Procession Law 2011 (amended in 2014) contains several provisions

that restrict freedom of assembly. Articles 4 and 8 of the law stipulate that all people wishing to hold public assemblies obtain Government permission 48 hours in advance. This need for prior permission is common in the region, with Bangladesh, Cambodia, China, Laos, Maldives, Singapore, Thailand and Vietnam requiring it. The protest, in order to be legal, is then limited to a specific date, time, location, number of attendees, and specific chants used: all of this information must be sent to the authorities in advance. These requirements are also found in Malaysia and Indonesia. Like most public assembly laws in the region, applications for assembly can be denied if authorities believe that rule of law, state security, public tranquillity, or existing laws may be breached. Under Article 12 of the Law, its organisers are liable for any of the actions of the participants. Criminal penalties for failure to provide advance notification remain in effect under the revised law, and spontaneous assemblies remain classified as unlawful. Articles 18 and 19 of the Law, on penalties, state that those found guilty of participating in an unlawful assembly can be imprisoned for up to six months. However, under the new National League for Democracy (NLD) administration -which has continued the practice of the previous Thein Sein government- protest organisers are often charged for each township in which a protest takes place, meaning that organisers can receive numerous six-month sentences for participating in protest marches that travel over multiple townships. In May 2016, two leaders of a peaceful local protest against the controversial Letpadaung copper mine were charged with unlawful assembly under Article 18 of the Law. Sein Than, a community leader, was sentenced to 30 months imprisonment on multiple charges under Article 18 from August 2013 to September 2014 for participating in a protest against previous charges levelled against him, as well as leading a protest march to Daw Aung San Suu Kyi's house. He was released from prison in July 2015.

Recommendations:

The Peaceful Assembly and Peaceful Procession Law must be amended again, primarily to remove the requirement on acquiring prior approval from the Government for a public assembly by submitting its date, time, location, organisers, number of attendees,

and specific chants. This information, and indeed the obligatory application itself, is superfluous and should be removed. The law should in no way provide criminal penalties for any involvement in a protest, and in the interim, the practice of charging protestors multiple times under different townships for the same offence must be halted as it constitutes double jeopardy.

Nepal

Unlike many other countries in the region, Nepal has no piece of legislation specifically addressing public assembly. The Constitution of Nepal guarantees the right to freedom of assembly and there is no requirement to notify the authorities of an assembly. However, the Constitution grants freedom of assembly only to citizens of Nepal, contrary to international standards, and also explicitly permits the Government to create laws that restrict this right in cases where sovereignty, independence and indivisibility are concerned or where relations between groups or public law and order are disturbed.

The Local Administration Act 1971 defines an assembly as a gathering of more than 25 persons with an objective. Under the Act, the Government has the right to declare restricted zones where protests and public assemblies may not occur, and the district chief officer can impose curfews if there is a chance that a public assembly will disturb the peace. Assemblies in front of the President's Office, in front of Parliament, or in front of the Government's administrative headquarters are prohibited.

Because non-citizens do not have the right to assembly, the authorities have denied the right to assembly to Tibetan refugees, or assemblies related to Tibet. Tibetans in Nepal are forbidden from engaging in several cultural practices in public, such as celebrating the Dalai Lama's birthday or the Tibetan New Year. The Government has also denied people the right to protest on other sensitive political or ethnic issues.

Recommendations

The Constitution of Nepal must be amended to remove the restrictions on the guarantee of freedom of assembly. A freedom is not guaranteed if it comes with the caveat that the Government may limit

it when it deems necessary under grounds broad enough to be applicable in situations that do not merit such limitation under international law. The Constitution must also guarantee the full exercise of freedom of assembly to all persons, as opposed to only citizens, in line with international law. There must be no zones off-limits to assemblies, and the Government should not have the power to put blanket bans in place unless the country is under emergency law, which should only be permitted under specifically delineated extreme circumstances.

Pakistan

Article 16 of the Constitution guarantees the right to freedom of assembly in Pakistan, but states that this right may be restricted by ‘reasonable restrictions’ in the interest of ‘public order.’ Neither ‘reasonable restrictions’ nor ‘public order’ are defined, in effect voiding the guarantee. Spontaneous assembly is not banned nationwide, unlike in many other countries, but Article 120 of the Police Order 2002 permits the police to issue notices making it illegal and requiring prior notification to hold a protest. The conditions upon which an application can be denied are not specified, thus investing broad and arbitrary power in the police. The police may also dictate protest routes, times, number of participants, and a number of other conditions, which protests must abide by in order to be considered lawful. Under Article 121, the police may disperse any protest if it violates any of the conditions imposed by the police or any police order. Any assembly that has been ordered to disperse is considered unlawful.

Recommendations

The Constitution must be amended to either remove the restrictions to the right to freedom of assembly under Article 16, or to define them narrowly and extensively and to explicitly state that under no circumstances may they be used to halt peaceful protests. Article 120 and 121 of the Police Order must be amended to revoke the power currently granted to police to require prior notice and to reject applications arbitrarily. Spontaneous peaceful assembly must be unconditionally legal, and the police must never have the power to deny or to dissolve such an assembly.

The Philippines

Freedom of assembly is guaranteed by the Philippines’ constitution, and compared to the severely repressive contexts elsewhere in the region the country has relatively permissive laws governing public assembly. Nonetheless it has some illegitimate restrictions that lead to protests being dissolved, sometimes violently. The Public Assembly Act of 1985, enacted during the Martial Law period, requires permits to be acquired prior to a demonstration, and also allows Government officials to have a hand in choosing the protest route, ostensibly to avoid harmful effects to trade. The law also authorizes the use of force to dispel protests that are deemed to be violent. In practice, this has led to serious violations of human rights: in April 2016, an assembly of farmers in Kidapawan City was violently dispersed by the Philippine National Police, which fired live ammunition on the farmers, leaving two dead and 116 wounded. 70 farmers were arrested.

Recommendations

The Government of the Philippines must repeal or amend the Public Assembly Act to guarantee the right to assemble where they wish and when they wish without a permit. The Government should not have a hand in deciding protest routes, and should not have the discretion to reject permits. Police should under no conditions be permitted to fire live ammunition upon protesters, regardless of their perceived unruliness. Providing human rights education to public officials, in particular law enforcement officials is also crucial to avoid serious violations of human rights such as those that occurred in Kidapawan City in April 2016.

South Korea

Although South Korea has ratified all nine core international human rights treaties, it reserves the right not to comply fully with Article 22 of the International Covenant on Civil and Political Rights, which provides for freedom of assembly, in accordance with the country’s constitution and laws.

The Assembly and Public Demonstrations Act 1962 bears some resemblance to Indonesia’s Law

on Freedom of Expression in that it does not ban assembly or require an application, but nonetheless lays out some limits on the exercise of that right. Under the Act, the Government can ban any demonstration that poses a threat to public peace and order. The Act also requires that event organisers notify the police at least 48 hours in advance of the event taking place, and provide information about the objective of the assembly, when and where it will take place, personal information about event organisers, and the estimated number of participants. While it is not necessary for organisers to obtain a permit, police officers can decide to cancel events as they see fit, and annually bar hundreds of assemblies from occurring. Many protests are banned on the grounds that they will cause an obstruction to traffic. Under the Act, there are blanket bans on protests near the Blue House and the National Assembly. Organisers or participants who violate forced cancellations can face up to two years of imprisonment or fines of up to 2,000,000 won (US\$1,715) under Articles 6 and 21 of the Act, respectively on organising illegal protest and refusing to disperse.

In September 2016, the Court of Appeals confirmed the sentencing of Park Laegoon and Kim Hyejin for their participation in protests in solidarity with the victims of the Sewol ferry tragedy. Park Laegoon, a long-time human rights defender and co-standing steering committee member of the 4.16 Coalition on the Sewol Ferry Disaster, was sentenced under Articles 6 and 21 of the Assembly and Public Demonstration Act, and Articles 141, 144 and 185 of the Criminal Act (see Unlawful Assembly section below).

Recommendations

The Government of South Korea should drop its reservations under Article 22 of the ICCPR and allow persons on its territory to fully exercise their right to freedom of assembly. The Assembly and Public Demonstrations Act must be amended to revoke the Government's power to deny assemblies and to punish peaceful protestors. Blanket bans on protests near Government buildings are another illegitimate restriction that shields Government from the voice of citizens and must be lifted. Under no circumstances should a peaceful protestor be subject to prosecution.

Taiwan

Although in practice Taiwan is one of the most permissive contexts in the region with regard to freedom of assembly, legal restrictions regulating the ability to publicly demonstrate do exist and are used. The Assembly and Parade Act 2006 places stringent restrictions on protest organisers by requiring them to apply for police permission six days prior to a planned public assembly and inform police about the objective and scope of their actions. Even if the assembly is granted permission, police can take it back retroactively at their own discretion. In addition, the Act grants police officers the right to forcefully dismiss gatherings and invoke criminal penalties for protest leaders who refuse to disperse. Furthermore, the Act stipulates several places where public assemblies are not permitted to take place, such as Military facilities, ports, and embassies. Under the Act, only citizens over the age of 20 are permitted to lead public assemblies. In 2016 the ruling Democratic Progressive Party (DPP) put an amendment of the Act on the legislative agenda, but it did not pass due to public protest and lack of support among lawmakers including some from within the DPP itself. The amendment would have removed provisions requiring protest organisers to apply for permission: under the amended law, they would not even be required to submit notification. However, the restricted zones and the police's ability to forcibly disperse protests would remain.

Recommendations

The Assembly and Parade Act must be repealed in its entirety and replaced with legislation that guarantees all persons the right to assemble peacefully without any restrictions. The DPP must go further than it has proposed to and ensure that no zones be restricted and that the police not have the ability to disperse any peaceful protest by force.

Thailand

The Public Assembly Act 2015 governs all assemblies, but is less frequently used to crack down on protests than NCPO Order 3/2015 and Article 116 of the Criminal Code (see Unlawful Assembly Article below) because it does not explicitly ban all

political gatherings or criticism. Nonetheless, the Act imposes a number of heavy restrictions on the right to freedom of assembly which are comparable to those found in similar general legislation on public assembly found in Indonesia, Malaysia, Myanmar, Maldives, Singapore and Cambodia. The Act requires that all protesters apply for permission for rallies at least 24 hours in advance, bans all demonstrations within 150 meters of several key Government buildings, and bars protesters from 'creating disturbances,' such as roadblocks. Public assemblies can be restricted if the authorities have reason to believe they will cause disruption or disturb public order. The Act also grants officials the right to order a person not to commit certain actions that may cause 'unnecessary nuisance.' Organisers of unlawful assemblies face severe criminal penalties under the Public Assembly Act. If a public assembly causes 'unnecessary disruption to the general public,' the assembly's organisers can be imprisoned for up to two years. Organisers can also be subject to imprisonment for several other reasons, including failure to adequately notify authorities of their intention to hold an assembly.

Recommendations

The Public Assembly Act must be repealed in its entirety and replaced with legislation that guarantees the right of freedom of assembly to all. Spontaneous assembly must be permitted, no permit must be required for the carrying out of any assembly, and geographic limits must be removed. The power of the police or any other Government authority to disperse an assembly must be strictly limited to cases where significant threat to the safety of the public is at hand, and these conditions must be exhaustively and narrowly listed. Under the law, no person should be subject to prosecution for participation in a peaceful assembly.

Timor-Leste

Timor-Leste, like many countries in the region, has a relatively recent assembly-specific act that puts in place certain restrictions. The Law on Freedom of Assembly and Demonstration 2006 places constraints on the right to hold public

protests and assemblies, although these are less severe than those found in most such legislation elsewhere in the region. It most closely resembles Indonesia's Assembly and Public Demonstrations Act. Under the law, those wishing to hold a public demonstration must issue a notice to relevant state authorities before the demonstration is to take place. The notice must be signed by five protest organisers, who must provide their contact information and job information to authorities. The police have at times denied requests for protests that raise concerns with Government policies or that criticize elected officials. In addition, the Law stipulates that demonstrations may not be held less than 100 meters from any public facility, including the offices of political parties and the residences of Government officials. Given Dili's small size and the layout of Government buildings, these rules make it very difficult to protest in an area where protestors will have their demands heard. The law also stipulates that demonstrations may only take place between 8 AM and 6:30 PM.

As mentioned above, the Timor-Leste's Immigration Law severely restricts the rights of foreigners in the country, including the right to free assembly, which is common to many countries in the region. They are barred under the law from even indirectly participating in 'affairs of the State,' or from participating in 'agencies that monitor paid activities.' Furthermore, foreigners can be deported for committing acts 'against national security, public order, or good morals,' if they are 'a threat to the interests and dignity' of the country and its citizens, or if they interfere in the 'exercise of the right of political participation reserved for citizens.' Such broad restrictions could easily be applied to non-citizens participating in peaceful assemblies criticising Government policies or impunity.

Recommendations

The Law on Freedom of Assembly and Demonstration must be amended to remove the requirement that persons seeking to hold a protest notify the police as well as retract the police's power to deny peaceful protests permission to take place. Restrictions on location and time must also be

removed. The Immigration Law must be amended to remove broad provisions allowing foreigners exercising their right to freedom of peaceful assembly to be deported. Disrupting public order or good morals are not criminal activities by international standards and thus must not be used to punish peaceful assemblies.

Vietnam

Freedom of assembly in Vietnam is heavily suppressed by a highly restrictive legal framework that seeks to censor all political dissent. Although this legal framework bears some resemblance to other countries in the region that require permission for assemblies, it carries heavier penalties and is much more strictly enforced most, making it similar to China, Laos and Thailand.

Permission from the authorities is required to hold public gatherings, and those touching on sensitive political issues are in practice banned. Decree 38, which was enacted in April 2012, requires the registration of all public gatherings, except for those organised by the Government and Government-sponsored groups. In addition, any public assembly with five or more participants can be deemed illegal if the group organising the assembly is not registered with a provincial or district-level Government committee. Individuals participating in illegal gatherings face up to seven years of imprisonment. Decision 76/2010/QD-TTg, which took effect in January 2011, forces those organising a conference or seminar to register the event with the Government, even if the conference will take place online. The Prime Minister's office is tasked with screening all applications and has full discretion to decide which groups can obtain permission. The law does not provide clear criteria for the approval of applications. Since the decision was enacted, there has been a general rejection of events that criticize the Government and its policies.

These regulations mirror similar ones in about a third of countries in the region, but are more comprehensive and more strictly enforced. In May 2016, peaceful demonstrations against a massive toxic leak into the ocean from a steel plant which killed millions of fish and endangered the livelihood of tens of thousands of fisherpeople were repeatedly shut down with excessive force. The police were deployed in large numbers and blocked off streets to prevent protesters from moving forward, arrested peaceful protesters at random, refused to allow dozens of activists to leave their homes, and physically assaulted activists outside police stations protesting the arbitrary detention of protesters. Protests continued throughout 2016 and were often met with the same tactics.

Circular 13/2016/TT-BCA, which entered into force in April 2016, is unique to Vietnam: it allows the police to disband any gathering outside a courthouse, and to arrest 'opposition elements, instigators and leaders of the disturbance.' This criminalizes any expression of solidarity with persons undergoing judicial harassment or unjust trials.

Recommendations

All restrictions on peaceful assembly must be immediately removed. Decree 38 must be abolished: public gatherings should not be subject to Government approval and any form of peaceful demonstration should be permitted to take its course without interference of any sort. Decision 76/2010/QD-TTg must be repealed for the same reason. Circular 13/2016/TT-BCA must also be abolished, as the law is so broad that virtually any movement outside of a courthouse could be deemed a legitimate target for a police crackdown.

Unlawful Assembly

Bangladesh

Article 127 of the Criminal Procedure Code provides the state magistrate the power to issue an order to stop any meeting or gathering that could cause nuisance or danger, and punishes those attending unlawful gatherings with up to two years of imprisonment. Two years in prison is an unusually harsh punishment -even among states in the region- for merely being part of a group that has assembled without a permit and has a strong chilling effect on the exercise of the right to free assembly. Article 144 of the Criminal Procedure Code allows a district magistrate to force a person or group of people to abstain from acting if he or she believes such action could cause obstruction, annoyance, or injury, or cause a danger to human life, health, or safety. The broad phrasing of this provision, using the terms 'obstruction' or 'annoyance' makes it easily applicable to protests. The Government has used Article 144 hundreds of times to stop meetings of opposition parties, progressive social movements, and dissenting groups. From January to September 2016 alone, Article 144 was imposed 20 times. In April 2016, the district administration imposed Article 144 to attempt to disband a protest by villagers against a coal-fired power plant in Chittagong District. The police then fired on the crowd, killing four people. In early 2015, the Government used Article 144 to ban an alliance of opposition political parties from holding any public rallies or gatherings. Their ability to hold public meetings was reinstated after the ruling Awami League realized they had scheduled a rally at the same time and venue. In December 2014, the Government used Article 144 to ban all public meetings in Gazipur District, an area of Dhaka, after political opposition parties called for mass protests to demand new parliamentary elections. Similar blanket bans have been used in Myanmar, Nepal and Thailand.

In addition, under Article 143 of the Penal Code, any member of an unlawful assembly can be imprisoned for up to six months and be fined an unspecified amount. An assembly can be deemed unlawful

under Article 141 for a number of reasons, including resisting the execution of any law, committing mischief, 'denying any person the right of way,' or any 'other offence'. This overly broad definition of course lends itself to abuse by the authorities. Furthermore, under Article 141, an assembly that was not unlawful when it began may subsequently become unlawful, meaning that persons participating in what they thought was a legal protest may find themselves arrested and sentenced to prison for six months. The law also holds all participants in an assembly responsible for any offence that is allegedly committed by any one participant, which opens the door for law enforcement or other actors to infiltrate protests and allow for mass arrests and charges (Article 146, 149). Articles 141-149 closely resemble unlawful assembly laws in other former British colonies, as they were inherited from the repressive colonial regimes. Inducing students to participate in a riot is also a criminal offence under Article 153(b), punishable by two years in prison and an unspecified fine. Finally, under Article 155, any person whose ownership of land or claim to land are the concern of a riot are held criminally responsible for all offences committed. This means that, for instance, if a person is the victim of a land grab and a protest starts on their behalf, they are held responsible for it.

Recommendations

Articles 141 to 160 of the Penal Code and Articles 127 and 144 of the Criminal Procedure Code must be significantly amended to ensure that these provisions may not be used as a tool with which to repress peaceful public assemblies. All peaceful public assemblies must be legal. Blanket bans to be imposed at the discretion of a police force are unconstitutional and contrary to international law. The wording in all of the above legal provisions must be made narrow and specific in order to explicitly make it illegal for protests to be denied or dispersed unless extreme circumstances are present.

Cambodia

The Criminal Code provisions used to criminalize public assembly in Cambodia are different from those used in Bangladesh, Myanmar and other

British colonies and in fact are somewhat unique within the region. Rather than use laws that target public assembly, the authorities interpret articles related to destruction of property and violence extremely broadly in order to punish peaceful protesters. Although not the most draconian laws in the region, these laws nonetheless carry penalties that are heavier than in many other countries. These articles of the Criminal Code are more commonly used to punish people having exercised their right to freedom of assembly than the Law on Peaceful Assembly, possibly because they carry much heavier penalties.

Two commonly used provisions are Book 3, Title 2, Chapter 1, on Destruction, Degradation and Damage, and Book 2, Title 2, Article 2 on Violence. Article 410 and 411 of Book 3, Title 2, Chapter 1 cover the ‘intentional act to destroy, deteriorate or damage properties,’ which carries harsh penalties: up to two years of imprisonment, as well as a fine of up to 4,000,000 riels (US\$980). Under Article 411, committing intentional damage under ‘aggravating circumstances’ is punishable by up to five years in prison and up to a 10,000,000 riel (US\$2,450) fine. Aggravating circumstances include ‘when [the infraction] is committed by several persons,’ and ‘when it is committed at the expenses of the public buildings or public roads.’ Cambodia’s partisan courts have convicted peaceful protesters by interpreting Article 410 and 411 very broadly: because of the phrasing of the law, any damage to any property, however slight, and even if it results only because of police brutality, is cause to prosecute protesters. Furthermore, because protests involve groups of people, it is possible for the authorities to apply the heavier penalties laid out in Article 411. In January 2014, 23 persons demonstrating for the respect of labour rights were charged under article 411 after police forcibly dispersed their peaceful protest. At least ten were also charged under Article 218 (see below).

Article 421 of Article 1 is even more worrying, as it states that the same penalties shall apply to persons who are deemed to merely have ‘attempted to commit damage,’ making it even easier to dock

peaceful protesters. Article 422 lays out an extensive list of extremely severe additional penalties for all of the above infractions: deprivation of civil rights definitively or for a period of five years, prohibition against pursuing a profession for five years, prohibition against driving a vehicle for five years, prohibition of taking a residency for up to 10 years, prohibition for foreigners against entering Cambodia definitively or for five years, confiscation of possessions ‘intended to commit the offence,’ confiscation of objects or funds which were the subject of offences, confiscation of vehicles owned by the convicted person, and closure of an establishment used to prepare for the offence for five years, among others.

Articles 423 and 424 of Article 2 on Threats to Destroy, Damage or Deteriorate has also been used to punish peaceful protests, and are even easier to interpret broadly, as no actual damage must have resulted in order to charge protestors. The penalties remain harsh, at up to six months in prison and a fine of 1,000,000 riels (US\$245) for a threat under Article 423, and up to two years in prison and a fine of up to 4,000,000 riels (US\$980) under Article 424 ‘if the threat was followed by an order to do or not do anything.’ The same list of severe additional penalties as in Article 1 applies under article 426, giving the Government the power to completely paralyze its critics, and do the same to the organisations to which they belong. In August 2015, three environmental activists were charged under Article 424 of the Criminal Code for participating in a peaceful protest against sand dredging in Koh Kong Province.

Book 2, Title 2, Article 2 of the Criminal Code has also been used against peaceful protestors in Cambodia, again due to unreasonably broad interpretation by the courts. Article 217 outlaws ‘acts of violence committing [sic] on another person,’ punishable by up to three years of imprisonment and a fine of up to 6,000,000 riels (US\$1,475). Article 218 covers aggravating circumstances, punishable by up to five years of imprisonment and a fine of up to 10,000,000 riels (US\$2,450). Once again, one of the aggravating circumstances allowing for the imposition of heavier

penalties is if the infraction is committed 'by many persons,' meaning that it is easy to apply harsher penalties to protestors. Again, additional penalties (Article 229) are numerous and extremely harsh, making the risks for individuals and organisations of participating in a peaceful assembly extremely high. As with the above Chapter on Destruction, Degradation and Damage, the provisions are not in and of themselves problematic, but their extreme application by the courts severely represses freedom of assembly. As mentioned above, in January 2014, at least ten people demonstrating for a living wage were charged under these articles after police forcibly dispersed their peaceful protest. In December 2012, Yorm Bopha, a land rights activist, was sentenced to three years of imprisonment under Article 218 of the Penal Code for allegedly assaulting two taxi drivers. She had been heavily involved in peaceful protests against development around Boeung Kak Lake.

Recommendations

The Government of Cambodia must immediately stop harassing, intimidating and harshly punishing peaceful protestors by filing spurious criminal charges against them on the basis of violence and damage to property. Likewise, the courts must stop accepting such charges and issuing convictions based on the ludicrously broad application of Articles 217, 218 and 229, as well as 410, 411, 421, 422, 423, 424 and 426 of the Criminal Code. These articles must be amended to ensure that they include explicit definitions of what constitutes violence and destruction to property, which exclude peaceful protest or defence against violent attacks by security forces or pro-Government Non-state actors. The Government must amend its Law on Peaceful Assembly to ensure that specific punishments are laid out for security forces or Non-state actors cracking down on peaceful protestors.

China

As mentioned above, China restricts freedom of assembly to an extreme extent. Its public assembly law is rarely used to target assemblies; rather, it uses criminal code provisions, administrative directives and informal tactics to quell and punish peaceful

protesters. The laws on public assembly that result in actual prosecution in a country where few public assemblies on sensitive topics occur are broadly defined articles in the Criminal Code that are stretched to cover a wide range of acts. Article 291 on gathering to disrupt order is used to prosecute assembly, carrying the heavy penalty of five years in prison. Article 293 on 'gathering a crowd to disrupt order,' and 293(4) on 'picking quarrels and provoking trouble' are particularly common. These laws have been used by the authorities to prosecute people not only for assembly but for a bewildering array of other acts, sometimes totally unrelated to public assembly. The extent of the articles' vagueness has allowed the state to punish any dissenting actions, particularly those related to sensitive topics such as democracy, human rights, political dissidents, critiques of State and Party policies, and ethnic and religious minorities.

There are several internationally known cases of activists who have been arrested or imprisoned under these articles for exercising their right to free assembly. In 2014, Xu Zhiyong, the founder of the New Citizens Movement, a coalition that advocates for human rights and constitutionalism, was sentenced to four years of imprisonment under Article 291 of the Criminal Code for leading demonstrations calling for education equality and Government transparency. Several other members of the New Citizens Movement have also been fined, arrested, or jailed. In September 2013, Cao Shunli, a prominent Chinese lawyer and human rights activist, was forcibly disappeared and subsequently arrested under Article 293 of the Criminal Code. Cao had led a two-month sit-in at the Ministry of Foreign Affairs to seek information about China's Universal Periodic Review. Cao was detained until her death in custody in March 2014. Her body showed signs of abuse. In March 2015, women's rights and LGBTI activists Li Tingting, Wu Rongrong, Zheng Churan, Wei Tingting, and Wang Man were detained under Article 293 on rumours that the quintet was planning to lead events and distribute leaflets against the sexual harassment of women. The five women were released in April 2015 after heavy condemnation and lobbying by several international human rights groups and foreign Governments.

Since a 2013 issuance of judicial interpretation guidelines by the Supreme People's Court and the Supreme People's Procuratorate, acts committed online have been prosecuted under Article 293. The guidelines extended the offence of 'creating disturbances' into the online sphere, meaning that online postings could result in prosecution under a law aimed at targeting public assemblies. Several prominent bloggers and content providers have thus been penalized for publishing controversial content under Article 293 of the Criminal Code. In October 2014, Wang Zang, a well-known poet, was detained under Article 293 of the Criminal Code for posting pictures of himself online with an umbrella, allegedly to show solidarity with the democracy movement in Hong Kong. He was held without trial for nine months in several different prisons. In June 2014, Shi Genyuan, a popular blogger that posted politically provocative content, was forcibly committed to Quanzhou psychiatric hospital, where he was detained for more than four months. In 2013, he was detained under Article 105 for making politically charged comments, and was forced to undergo a psychiatric evaluation, which became the basis of his detainment in Quanzhou. In March 2014, Huang Qi, founder of a website that tracks cases of human trafficking and Government exploitation, was detained under Article 293 of the Criminal Code after he reported on protests and security breakdowns in Beijing.

If the restrictions on freedom of assembly in China are extreme, in Tibet and Xinjiang, they are near-total. Peaceful assembly in Tibet is de facto illegal, although the Chinese Government does not use an explicit legal justification for this ban. Scores of peaceful demonstrators in the Tibet Autonomous Region have been arrested for advocating for democratic representation in the region, and for respect of their basic human rights. Protesters, including monks, are assaulted and even killed by police and security personnel for advocating for freedoms in the region. During the 2008 protests for greater autonomy, dozens of protestors were shot dead by police. In 2014, five peaceful protestors died of gunshot wounds in detention after police opened fire on an assembly protesting the detention of a village leader.

Recommendation

Articles 291 and 293 must be struck from the Criminal Code because they fail to meet the requirements of specificity under international standards. 'Picking quarrels and provoking trouble' is so broad a definition that the law serves the role of a catch-all offence that provides the state with far too much ability to apply it to acts that are not legitimately criminal. Finally, the extreme repression of freedom in Tibet and Xinjiang must be lifted. The authorities must immediately halt the use of force, sometimes lethal, to disband peaceful protests; they must be allowed to occur unhindered.

India

Although the right to freedom of assembly is generally respected in India, there are several laws that the Government can use to restrict people's right to demonstrate. As in Myanmar, Bangladesh and other former British colonies, a number of Articles of the Penal Code on unlawful assembly are at the disposal of the Government to limit the right to freedom of assembly.

Article 141 of India's Penal Code outlaws assemblies of more than five people if their objective is to show criminal force, resist the execution of any law, commit mischief or criminal trespass, or to compel a person to do something he or she does not want to do. Members of unlawful assemblies can be imprisoned for up to six months. Beyond the fact that it is illegitimate to criminalize mere participation in an assembly, the law is problematic because it provides magistrates too much latitude in interpreting the law. It is left up to the magistrate to decide what the intentions of an assembly are, and to decide if they can be construed as compelling a person to do something. In August 2016, Bengaluru police opened an investigation on Amnesty International India under Articles 142 to 143 for unlawful assembly, among other charges (see following paragraph) for organising an event on human rights violations in Kashmir. The booking was issued on the basis of an allegation that the event had been anti-nationalist. In May 2016, 23 fishermen were arrested under Article 141 for not obeying the local Government's ban on protests.

Again as in other former British colonies, the Government can also decide to prosecute illegal assembly as 'rioting,' which, under Article 147 of the Penal Code, is punishable with up to two years' imprisonment. In addition, under Article 149, if one member of an illegal assembly commits an offense, every member of the assembly is assumed to be guilty of the same offense and may be held criminally liable. Under Article 153a(b), anyone who participates in an assembly that could prejudice racial or religious harmony can be imprisoned for up to three years. The investigation into the Amnesty International India event mentioned above was also opened under Article 147 for rioting, despite the fact that the event had been entirely peaceful, as well as Article 153(a), for promoting enmity by highlighting security forces rights abuses.

The authorities have also used Article 151 of India's Criminal Procedure Code to arrest and lock up activists that they believe will engage in cognizable offences, which includes unlawful public assemblies. Under Article 151, which is similar to Bangladesh's Article 127, police can arrest anyone they believe will commit a cognizable offense and detain them for up to 24 hours without charge. Allowing the police to infer motives and thoughts gives them the power to arbitrarily detain anyone they might wish to. Anyone engaging in activity not approved of by the state could be accused of 'intending' to join an assembly. In June 2013, twelve women's rights activists were arrested under Article 151 after they attempted to submit memoranda to the Chief Minister of West Bengal on the rape and murder of two local students.

Recommendations

Articles 141 to 149 and 153 of the Indian Penal Code must be significantly amended to ensure that they do not criminalize public assembly. All public assemblies must be legal, unless they pose a large-scale, severe and credible violent threat to people's safety. The wording in the provisions must be narrow and specifically define offences that are acceptable by international standards. Individuals must under no circumstances be held accountable for the actions of others in an assembly, and no person should be subject to prosecution solely for

participation in any assembly.

Article 151 of the Criminal Procedure Code must be deleted for similar reasons. Detention without charge on mere suspicion of having the intention to do join an assembly both provides the police with far too broad an ability to detain people wrongfully and establishes far too low a threshold for a crime.

Indonesia

Indonesia's public assembly laws are less restrictive than those of most other Southeast Asian countries, and its penal code is less frequently used to punish peaceful protesters. However, this general rule does not apply to conflict areas: as noted in the above Articles on incitement and sedition, the Government has used Penal Code Articles 106 (incitement) and 160 (sedition) to prosecute peaceful participants in public demonstrations in Papua. The use of sedition laws to target peaceful public assemblies is also used in Thailand. In May 2015, three men were charged under Article 160 after they attended a peaceful demonstration for Papuan independence. In April 2015, five activists were arrested and charged under Article 106 for attending a meeting with Government officials in Jakarta to discuss problems in Papua. Protest organisers in Papua are routinely denied permission to hold demonstrations, because the authorities believe that any demonstrations in the region will involve calls for independence, which is illegal. Security forces fail to distinguish between a violent acts and a peaceful expression of political views, often arresting persons displaying banned symbols such as the Morning Star while attending demonstrations. Security forces routinely use excessive and unnecessary force to crack down on public assemblies. In April 2016, two persons delivering an assembly notification letter to a police station were unlawfully arrested, and the application was denied without justification. In the following days, roughly 50 people involved in the lead-up to the demonstration were arrested, most of them arbitrarily. On 2 May 2016, the day of the protest, an estimated 1,783 persons were arrested for participation in a protest for which Government had denied authorization with no justification.

Recommendations

The Government must carry out reform both on its policies on Papua and on the security forces' practices there. Members of the security forces arbitrarily arresting or detaining Papuans exercising their right to assemble freely or using excessive force against protestors must be disciplined and brought to justice. Articles 106 and 160 must be amended to narrow their definitions so that they may not be applied to peaceful protesters under any circumstances.

Laos

Freedom of Assembly is severely restricted in Laos, although it is technically guaranteed in the Constitution. Like China and Vietnam, Laos explicitly forbids all forms of assembly that the State disapproves of. Laos is party to the ICCPR but the Government has stated that Article 22, which provides for unhindered freedom of association, will only be guaranteed in congruence with national laws and constitutional statutes already in place. Under Article 72 of the Penal Code, anyone organising or participating in a public gathering that could be construed as a protest march or a demonstration, or any public gathering that could cause social disorder or societal damage, can be imprisoned for up to five years and fined 50,000,000 kip (US\$6,100). The terms of the law are so broad, the Government's power of the courts so entrenched, and the Government's will and capacity to detain and arrest anyone so great that participating in any public gathering not approved of by the Government can very easily have serious consequences. Thus, public demonstrations are rare and few people attempt to exercise their right to free assembly. All indications are that at present, two democracy activists arrested in 1999 for planning peaceful pro-democracy and human rights demonstrations remain in solitary confinement serving 20 year sentences for 'generating social turmoil and endangering national security.'

Recommendations

All barriers to the free exercise of the right to assembly must be immediately lifted. This will require significant institutional and legal reform, beginning with Article 72 of the Penal Code, which

must be abolished as part of broader reforms eliminating provisions criminalizing the exercise of freedom of assembly. New legislation replacing it must be narrowly interpreted by the courts to refer to acts that are criminal by international standards and must under no circumstances be used to penalize peaceful assembly of any sor

Malaysia

Although freedom of assembly is constitutionally protected in Malaysia, those attempting to exercise this right to face arrest, imprisonment fines, and other punitive actions. Article 10(1)(b) only protects freedom of assembly Malaysian citizens, and non-citizens, including foreign politicians, have been deported for participating in protests. The legislative framework governing assembly is very similar to that of Myanmar, India and Bangladesh, as all four still use colonial-era Penal Code provisions as well as newer legislation specifically restricting freedom of assembly. Several recent rallies have been met with a massive police presence and punitive criminal cases for participants.

Chapter 8 of the Penal Code elucidates the regulations on unlawful assembly, and is very similar to provisions in other former British colonies. Under Article 141, an assembly that consists of five or more people can be designated unlawful for several reasons, including resisting the execution of any law or intending to commit 'mischief' or criminal trespass. Participants in such assemblies can be imprisoned for up to six months. Under Article 145, whoever joins an unlawful assembly knowing that the assembly has already been ordered to disperse can be imprisoned for up to two years. Under Article 147, anyone guilty of rioting can be imprisoned for up to two years, and under Articles 146 and 149, if one member of an illegal assembly engages in prohibited activities, all the members of the assembly are liable to criminal punishment.

Article 186 has also been used to detain peaceful protesters. Under this law, anyone who obstructs a public servant from discharging his or her duties can be imprisoned for up to three months. This particular Article is similar to Myanmar's Article 188 and is used in a similar fashion. In October 2013, police

arrested 19 people, including prominent human rights activist Nalini Elumalai and two members of Parliament, under Article 186. The group had been participating in a peaceful protest against the demolition of Kampung Hakka Mantin village.

The Bersih movement, which has called for a number of political and electoral changes over the past decade, has been met with heavy repression. Hundreds of participants in the Bersih rallies have been arrested or assaulted by state security officials. The police declared the Bersih 5.0 mass rally in November 2016 illegal, ostensibly for allegedly not fully completing the requirement of notification (although notification had in fact been served). Bersih 5.0 chairwoman Maria Chin Abdullah was held for 11 days under the SOMSA before being released. Police then began investigating her under Article 9(5) of the Peaceful Assembly Act, and have threatened to re-arrest her. Opposition politician Chua Tian Chang was arrested on 19 November under Article 147 on rioting, despite the fact that the protest was entirely peaceful. A long list of others, including activists, opposition politicians, artists, and other rally participants, have been investigated, detained and arrested for involvement. Previous Bersih rallies have also been met with repression. In October and November 2015, Bersih organisers Jannie Lasimbang and Maria Chin Abdullah were charged with under Article 9(5) for failing to notify the Government of the rally despite the fact that this Article had been ruled unconstitutional. In April 2012, the Government filed a suit against Ambiga Sreenevasan, former chairperson of Bersih, as well as 14 other members of Bersih's steering committee, claiming the group breached the Peaceful Assembly Act by failing to ensure that the assembly would not cause damage to property or the environment. The case was dismissed in January 2015. The Government has targeted large numbers of people for other peaceful protests as well: in May 2016, 15 activists were found guilty of violating Article 143, and 10 of them were also found guilty of violating Article 147.

Recommendations

Articles 141 to 149 must be struck from the Penal Code, as all of them allow for the criminalization of peaceful participation in a public assembly. Article

186 must be amended so that it narrowly targets criminal acts rather than persons exercising their right to assemble freely.

Maldives

Since President Mohammad Nasheed was forced out of office in 2012, the authorities have been cracking down on public assembly by broadly interpreting Penal Code provisions not related to assembly, in a fashion similar to Myanmar, Malaysia, Nepal and Sri Lanka. Charges such as obstructing justice (Article 530), obstructing a Government official (Article 532 and 533), or intimidating or retaliating against a public official (Article 541) have been used to punish peaceful protesters. In March 2015, four journalists from Raajje TV were arrested for covering an opposition protest and held for five days without charge. As of November 2016, the four are facing charges of obstructing or assaulting a police officer under Article 532 of the Penal Code. In April 2016, 16 journalists were arrested for taking part in a protest against Government attempts to curb freedom of expression. They were strip-searched and pepper-sprayed and are under investigation, as of November 2016, on charges of obstructing a police officer under Article 532. In July 2016, independent MP Ahmed Mahloof was convicted of obstructing a police officer under the same Penal Code Article and sentenced to 24 days in prison for trying to prevent police officers from mistreating his wife, who was pinched, had her arm twisted, and had buttons torn from her top.

Recommendations

The courts and police must stop laying spurious charges on obstruction of public officials' duty on peaceful protesters. Protecting oneself from police violence is not a criminal act and should not be subject to prosecution. Relevant Articles of the Penal Code (particularly Article 532) must be amended in order to narrow and elaborate on the definition of what constitutes obstruction of duty and limit it to cases in which the officer in question is intentionally harmed while not abusing his or her power.

Myanmar

As noted above, the laws governing public assembly in Myanmar remain strict. Freedom of assembly is

severely restricted by a large number of Articles of the Penal Code which combine to criminalize public assembly in a variety of ways. These provisions bear close resemblance to those of other former British colonies in the region, but are more broadly interpreted and strictly applied than in most other contexts. Under Article 141 on unlawful assembly, any assembly of more than five persons can be considered unlawful if its participants resist the execution of any law, aim to commit mischief, or compel someone to do something they do not want to do. Those found guilty of participating in an unlawful assembly can face up to six months imprisonment under Article 143.

Under Article 145, those who join or continue to take part in an unlawful assembly after state security forces have attempted to disperse participants face up to two years of imprisonment. Under Articles 146, 147, and 149, if any individual uses force or violence, all other members of the assembly can be prosecuted and imprisoned for violence, irrespective of actual involvement, in the same way as they can in Bangladesh and other former British colonies. Articles 141 to 149 have been used to arrest and charge hundreds of protesters in the past two years. The most prominent two cases, as noted in the above Article on public assembly laws, were the more than 100 student protesters in Letpadan in March 2015 and the more than 70 arrested in Sagaing Division in May 2016.

Article 505(b) has been consistently used to prosecute civil society activists attempting to exercise their right to free assembly, although the provision actually refers to freedom of expression and is sometimes used in that regard as well (see 'Incitement,' above). It criminalizes making a statement 'with intent to cause, or which is likely to cause, fear or alarm to the public whereby any person may be induced to commit an offence against public tranquillity.' Because literally any noise could be construed as affecting public tranquillity, which is left undefined, the Article is convenient for targeting protesters. The law was used to arrest and prosecute students for participating in the March 2015 protests in Letpadan Township, Pegu Division, against the National Education Bill. More recently, it was used to arrest over 70 protesters peacefully marching against illegal dismissals in Tathton Township, near Naypyitaw.

Under Article 188 of the Penal Code, disobeying the order of a public servant that results in harm or the endangerment of public safety carries a prison sentence of up to six months. Several protesters and protest leaders have been charged under this law. For example, in 2013 and 2014, dozens of protesters, many of them miners, were arrested under Article 188 after holding peaceful demonstrations in Mandalay against the privatization of the Moehti Moemi gold mine in Yamethin Township. Article 353 of the Penal Code mandates up to two years of imprisonment for those who assault or use criminal force against a civil servant discharging his or her duties. In May 2014, the authorities sentenced prominent human rights activist Aye Thein to six months in prison with hard labour under Article 353 for helping landowners and vendors in a March 2013 dispute with the Government. Similarly, Article 332 outlaws voluntarily causing hurt to deter public servant from his duty. In June 2016, BBC journalist Nay Myo Lin was convicted and sentenced to three months of hard labour for having intervened on behalf of a peaceful student protestor whom a police officer had assaulted with no provocation. The police allegedly applied pressure on the court in this case to ensure that Nay Myo Lin was convicted. These three provisions are similar to laws on obstruction of public servants found in Malaysia, Nepal, the Maldives, and Sri Lanka, which are also used to target protesters.

Criminal trespass charges, under Articles 141 and 441 of the Penal Code are frequently levied against farmers and small landowners participating in peaceful protests against Government land confiscation and seizure. In the ultimate irony, they are found guilty of trespassing on land that is rightfully theirs but has been wrongfully taken from them and is now owned by the Government or corporations. Since 2012, hundreds of farmers who have participated in these protests have been arrested and jailed.

Article 144 of the Emergency Act has repeatedly been used to shut down public assemblies. The Act allows the Government to disperse or prevent an assembly if the Government believes -no evidence

need be provided- could lead to crime or violence. The Act has been very broadly interpreted by the Government in order to put in place a blanket ban on protests in Rakhine state by people of Islamic faith from 2012 until mid-august 2017 when a government commission had recommended keeping Article 144 in place going forward. In late August 2017 when large-scale Military-led 'clearance operations' started in Rohingya areas of northern Rakhine state, the repression and violence surpassed that of Article 144. The ban meant that no gatherings of five people or more have been allowed in that time in any public area, including mosques, which presented a severe disruption to the livelihood of Muslims. Buddhists in Rakhine state remained able to gather unhindered. The Act also provides the Government with broad discretionary powers to limit movement at night. In December 2014, the Government also used the Act in Sagaing Division following police violence at protests over the Letpadaung copper mine that led to the death of one demonstrator.

In November 2015, the Nay Pyi Taw Council issued a directive that banned city hotels and guest houses from hosting political meetings. This was followed up by another directive in February 2016 to 10 major hotels, re-iterating the ban's enforcement. This followed a broader ban issued in August 2013 by the Yangon Regional Government that stated that public establishments, such as restaurants, schools, and hotels, must ask the Government for permission at least 20 days in advance if they plan to host any political meeting, putting the onus of registration on the establishments themselves and forcing political groups to plan out any encounter, however informal, at least three weeks in advance. Multiple establishments have been threatened with Government action for failing to inform authorities before an event took place. The Government has used this measure to block meetings of political opposition groups.

Recommendations:

Immediate changes are urgently needed to both the Penal Code and a number of pieces of legislation in order to ensure that the right to freedom of assembly

is restored to the people of Myanmar. Article 505(b) of the Penal Code must be amended to narrow the offence it covers, ensuring that it targets specifically defined actions that cause concrete harm. Explanations should be included to ensure that it cannot be applied to persons participating in a peaceful protest of any kind. Articles 141 to 149 on 'unlawful assembly' must be heavily amended to ensure that they do not criminalize peaceful public assembly. Specifically, provisions that define unlawful assemblies in broad terms, that generalize liability for any offence to all participants in a protest, and that lay out penalties for mere participation in a protest are unacceptable. In the interim, these Articles must be applied by the courts according to the letter of the law, rather than for political expediency. The same tightening of definitions and narrowing of application by the courts should apply to Articles 188 (disobeying the order of a public servant), 353 (assault of a civil servant), 332 (causing hurt to deter a public servant) and 411 (criminal trespass), which although legitimate in their own right, have consistently been applied by the courts to harass and punish HRDs, journalists, farmers and any other critics or dissenters.

Article 144 of the Emergency Act should be repealed, as existing Penal Code provisions already cover the use of violence in public assemblies. As it stands, the Act is used to justify illegitimate blanket bans on assembly over large areas. The Act's wording is so broad that its use is not confined to legitimate emergencies, but rather may be used at the Government's discretion.

Finally, existing regulations banning political meetings and requiring advance notification in any part of the country must be repealed immediately as they are in conflict with the Constitution and have no basis in law.

Nepal

The Some Public (Crime and Punishment) Act 1970 is used to restrict and punish the exercise of freedom of assembly. The Act outlaws a long list of behaviour in public, which resembles the provisions that many other states contain in their Penal Codes. This list includes obstructing

a public servant, breaking the public peace by rioting or obscene acts, causing hindrance to public services, trespassing on land without authority (including Government land), damaging public property, 'making undue behaviour' in a public place, or hindering anyone's passage, among others. The broad language and low threshold of the crimes contained in the Act make it a convenient tool to crack down on protests with. Furthermore, the police may arrest anyone they believe to have committed such an act without a warrant under the Act. The Chief District Officer may keep persons arrested under the Act in detention for up to 35 days. If charges are laid, a sentence of up to two years in prison may be handed down, which is comparable to the stiff penalties in many countries throughout the region for such offences.

In November 2016, Madhesi rights activist Chandra Kant Raut was arrested along with 33 of his supporters for leading a rally in support of regional autonomy. He had previously been arrested in November 2014 along with 300 other protesters in a similar rally. He was subsequently charged under the Some Public (Crime and Punishment) Act for 'causing public disorder' at a public gathering. The police have cracked down on several protests for Madhesi autonomy with excessive force.

Recommendations

The Some Public (Crime and Punishment) Act must be repealed. For the most part, the offences listed under the Act are not criminal offences by international standards or are so broadly defined that they could be interpreted to apply to non-criminal behaviour. Behaviour such as violence in a demonstration is adequately covered in the Penal Code and need not be over-legislated.

Pakistan

Articles 128 and 131 of the Criminal Procedure Code give the local authorities and security forces undue power to force assemblies to disband. Under the Code, any participant may be arrested, with broad conditions allowing police to abuse this power by arresting peaceful protesters in order to shut down assemblies. The police may also conscript the help

of any male person to assist in cracking down on a protest, meaning dangerous Non-state actors can be given free rein to wreak havoc upon assemblies they disagree with, while having the police on their side. Under Article 131, a provincial Government may call in the armed forces to dispel protests. Article 132 protects the police and armed forces from prosecution for any actions taken under the Code.

Multiple Articles of the Penal Code constrict the space for public assembly and demonstration in a fashion very similar to that of other former British colonies like Myanmar, Bangladesh, India and Malaysia. Article 141 of the Penal Code states that any assembly of more than five people is unlawful if the objective of the assembly is to resist any the execution of any law or inhibit the legal process; to commit mischief or criminal trespassing; or to take possession of another person's property. Participants in an unlawful assembly can be imprisoned for up to six months. Under Article 145, a person who continues to participate in an unlawful assembly after it has been told to disperse can be imprisoned for up to two years. Under Article 149, if any member of an unlawful assembly commits an offense, all the members of the assembly are liable to prosecution for that offense.

In late October 2016, police arrested roughly 2,000 opposition party activists in the lead-up to planned protests in early November. Gatherings of more than five persons were declared illegal in Islamabad for two months, beginning in late October 2016. The protesters were arrested for unlawful assembly under various relevant Articles of the Penal Code (141-160).

Recommendations

Articles 128, 131, and 132 of the Criminal Procedure Code must also be amended or struck down to limit the powers conferred upon security forces to disband assemblies. Article 128 must be amended to put in place specific conditions under which a person may be arrested in the context of a protest. A peaceful protester should not be subject to arrest under any circumstances, and police must have clear evidence of a criminal act in order to arrest a person. The provision allowing the police to conscript the services of any person in disbanding an assembly

must also be removed as it constitutes a severe threat to the safety of protesters. Article 131 must be struck from the Code, as pitting the armed forces against protesters is grossly disproportionate. The domestic use of the armed forces should be very constrained, applicable only in the narrowest and most extreme situations, and must be under a legal framework such as emergency rule, with the permission of the national legislature. Article 132 must also be removed, as the police and armed forces should not be protected from prosecution.

The Penal Code must also be significantly amended. Article 141 must be amended to tighten and narrow definitions of an unlawful assembly and to explicitly state that a peaceful assembly must under no circumstances be considered unlawful. Articles 145 and 149 must be struck from the Code, as they illegitimately allow for the prosecution of peaceful protesters.

South Korea

In South Korea, as in Cambodia, protesters are often prosecuted under articles of the Criminal Code for offenses that are only tangentially related to protesting. Article 141 on the destruction of public goods, Article 144 on the obstruction of public duty and Article 185 on the general obstruction of traffic are commonly used. Roughly 1,500 protesters who had participated in the ‘People’s Rally’ held in November 2015 were summoned for investigation, some of whom had in fact not even been a part of the protests.

The use of bus barricades and excessive force such as water cannon and chemical irritants on persons exercising their right to assemble is common. The ‘People’s Rally’ of November 2015 was disrupted with excessive repressive force, with water cannon and liquid tear gas being fired at peaceful protesters, including 68 year-old farmer Baek Nam-gi, who died of his injuries in September 2016 after having been in a coma from being hit by a water cannon.

As mentioned above, in September 2016, Park Laegoon and Kim Hyejin were found guilty of violation of Articles 141, 144 and 185 of the Criminal Act by the court of appeals for their participation in protests in solidarity with the victims of the Sewol ferry tragedy.

Recommendations

The Government must stop its practice of charging protestors under articles of the Criminal Code such as obstruction of traffic or the destruction of public goods. These articles must be amended to ensure that they contain severity thresholds that explicitly permit the holding of peaceful assemblies. Finally, the Government must stop using excessive force on protestors, who are often assaulted by security forces without provocation

Sri Lanka

Unlike many other countries in the region, Sri Lanka does not have legislation that explicitly permits the authorities to prevent or dissolve peaceful assemblies. Spontaneous assemblies are legal, and no permit or prior notification is required in order to hold an assembly legally. However, a number of provisions in the Penal Code, Criminal Procedure Code and Police Ordinance can be and are broadly interpreted to limit freedom of assembly. Like the Penal Code of other former British colonies throughout the region, under Article 138 an assembly of five or more persons may be deemed to be unlawful on broad grounds, which include depriving a person of the right of way or use of water, compelling a person to do something illegal by show of criminal force, committing mischief, or overawing any public officer by show of force. The police need not get permission from the courts in order to shut down a protest, opening the door to broad and partial application of the law: under Article 95 of the Criminal Procedure Code, any unlawful assembly can be dispersed on the orders of a police officer. Under Article 98(1) and Article 106, a magistrate can order any obstruction of a public place to be prevented or removed if it causes, or is likely to cause, a ‘nuisance.’ Under Article 77(3) of the Police Ordinance, any officer above the rank of Assistant Superintendent, without consulting the courts, can ban an assembly if the officer considers it necessary to maintain public order.

Chapter 8 of the Penal Code lays out punishable offences related to assemblies. Under Article 140, any member of an unlawful assembly can be imprisoned for up to six months. Under Article 142, if someone

joins an unlawful assembly that has been commanded to disperse, he or she can be imprisoned for up to two years. Under Article 143, if force of violence is used by any member of an unlawful assembly, every participant is guilty of rioting, which carries a penalty of up to two years. Similarly, under Article 146, if any one member of an unlawful assembly commits a criminal offense, all of the members of the assembly can be held liable for that offense. Under Article 149, anyone who obstructs a public official from attempting to disperse an unlawful assembly can be imprisoned for up to three years.

Despite the Sirisena administration's promises of better respect for rights, it has consistently prevented and dissolved peaceful assemblies using tear gas and water cannon. In 2016, the Deputy Minister of Justice proposed a new piece of legislation to limit where protests may be held, in the way many other countries in the region do. In December 2016, police fired teargas and deployed water cannons to forcibly disperse a peaceful assembly by the political opposition demanding local elections, as well as another peaceful assembly by taxi and bus drivers protesting a 50-fold hike in fines for traffic offences. In November 2016, police used tear gas and water cannon to disperse a peaceful protest by disabled soldiers asking for a pension as well as civil society groups and Buddhist monks who support their cause. In July 2016, the opposition organised a rally, but the Government imposed restrictions upon it by obtaining a number of court orders controlling the march. In May 2016, the Mullaitivu Magistrate Court banned any protests in the district for two weeks.

Recommendations

The Penal Code, the Criminal Procedure Code and the Police Ordinance must be amended to ensure that under no circumstances may a peaceful assembly be prevented or disbanded, or a person charged for participating in one. The definition of an unlawful assembly under Article 138 must be narrowed to ensure that only the use of significant violence that has not been instigated by police and that involves a large proportion of protestors may warrant the declaration of an assembly unlawful. Articles 143 and 146, which make protestors responsible for offences

they themselves did not commit, must be repealed, and the punishments for all offences in the chapter must be lessened to be more proportionate. Articles 95, 98(1) and 106 must be amended to preclude the possibility of an assembly being disallowed before it has started, and Articles 95 and 98(1), as well as Article 77(3) of the Police Ordinance must also remove the police's power to declare a protest unlawful without receiving a court order

Taiwan

As noted above, Taiwan is in practice a relatively permissive context regarding freedom of assembly, but in law this right is restricted by the Assembly and Parade Act. However, this Act has come under heavy criticism recently as a martial-law-era piece of legislation that restricts and penalises civil society activists, and is therefore seen as illegitimate. Accordingly, the Government has instead begun to prosecute protesters under the Social Order Maintenance Act (SOMA), which includes several clauses that restrict freedom of assembly. Individuals who make 'noise or [trouble]' at in public places can be fined up to 6,000 new Taiwanese dollars (US\$185). Individuals who 'harass' local residents in public places can be imprisoned for up to three days or fined up to 12,000 new Taiwanese dollars (US\$370). Individuals who gather at a public place and refuse to leave after being ordered to disperse can be imprisoned for up to three days or fined up to 18,000 new Taiwanese dollars (US\$555). Individuals who gather and 'make noises' that interfere with Government duties can be imprisoned for up to three days or fined up to 12,000 new Taiwanese dollars. Persons prosecuted under the Act often suffer from a lack of timely and effective judicial redress.

Police have also reportedly denied journalists and media workers access to public demonstrations for fear that state security officials will be taped doing something illegal or incriminating. In January 2015, the Taipei City Police Department issued a protocol that would require reporters to remain in designated areas during protests and require media workers to wear press vests during public demonstrations.

In December 2016, at least 21 labour rights activists were arrested and charged under SOMA for alleged acts of 'violence' near DPP MP Ker Chien-ming. The 'violent' acts in question include throwing a water bottle. In June 2015, eight South Korean nationals who had travelled to Taiwan to protest the shutting of a Taiwanese-owned Hydis Technologies plant in Korea were arrested and deported for having allegedly violated the SOMA by protesting. Continuing attempts by numerous former Hydis employees to enter Taiwan, including one in December 2016, have continued to be blocked by the DPP Government, which has maintained a blacklist on numerous Hydis employees. Numerous peaceful protests on this issue have been forcibly dispersed by the police: for instance, a protest against the arrest of the eight workers in June 2015 was violently dispersed, injuring several participants.

Recommendations

The SOMA must be amended to remove provisions criminalizing making noise, harassing local residents, refusing to leave public places, or interfering with Government duties. Most of the acts that fall under these definitions are not criminal by international standards, and those that might be are more than adequately covered in the Criminal Code. The blacklist of former Hydis employees must be lifted and they must be permitted to enter Taiwan and engage in peaceful protests against the violation of their labour rights.

Thailand

The legal framework governing public assembly in Thailand is the most restrictive in the region. The most severe restriction on freedom of assembly in Thailand -and indeed in the region- is NCPO Order No. 3/2015. Under Article 12 of the Order, which replaced NCPO Announcement 7/2014 on the same subject, political gatherings of five or more persons that have not been permitted by the Head of the NCPO or an authorized representative are punishable by a six month prison sentence. The police are given free rein to crack down on protests with excessive force through Article 14 of the Order, which states that police officers who act in good faith in accordance with the Order are

protected from prosecution under Article 17 of the Decree on Public Administration in Emergency Situations 2005.

Article 116 of the Criminal Code has also been interpreted to apply to public assembly and heavily used to crack down on protests critical of Government in any way. The Article criminalizes any public act with the intention of bringing a change in law through force, raising disaffection among people in a manner likely to cause a disturbance or to cause people to violate laws. The penalty for acts in contravention of this article is a prison sentence of up to seven years. The criminalization of efforts to change a law or acts that lower the esteem of a Government means that in effect, any assembly that is critical of Government in any way could be prosecuted under this law. The use of this sedition-like law, with its extremely heavy penalties, to crack down on public assembly is not unique to Thailand: in Indonesia, for instance, the infamous Article 160 has been used extensively in West Papua to punish public demonstrations.

In August 2016, 11 activists attending a talk on the implications of the draft constitution for Thailand's Northeast were arrested and charged under Order 3/2015 for being part of an allegedly political gathering of five or more persons. Among the activists arrested were Rangsiman Rome, an New Democracy Movement member, Jatupat 'Pai' Boonpattaraksa, an activist with the community rights group Dao Din, (who was later charged with lèse-majesté in December 2016 for an unrelated act), land rights activist Natthaporn Arjhan, and Thai Lawyers for Human Rights members Neeranuch Neamsub and Duangthip Karnrit. In June 2016, 13 activists, including eight from the New Democracy Movement, were arrested under NCPO Order 3/2015 for handing out fliers on the draft Constitution. In December 2015, 36 activists were arrested while taking part in a train ride drawing attention to the Rajabhakti Park corruption scandal under NCPO Order 3/2015. 11 student activists, including members of the New Democracy Movement, who refused to sign a pledge to renounce participation in any political movement were charged under the order, while those who signed

the pledge were released. In June 2015, 14 New Democracy Movement activists were arrested and charged under Article 116 and NCPO Order No. 3/2015 for peacefully protesting against the 2014 coup. The charges against them remain pending.

Recommendations

NCPO Order No. 3/2015 must be immediately repealed, as it constitutes a grave violation of freedom of assembly. Blanket bans on assemblies such as this one, particularly on political grounds, are illegitimate by international standards. Article 116 of the Criminal Code must also be repealed as it is so broad that it could and has been interpreted to criminalize any public criticism of Government. Peaceful participation in an assembly of any kind should not be subject to prosecution.

Vietnam

As mentioned above, Vietnam's laws on public assembly are among the strictest in the region. Decree 38, Decision 76/2010/QĐ-TTg, and Circular 13/2016/TT-BCA give the Government total control over what assemblies may go ahead and hold harsh penalties for those who defy these orders. However, the punishment of assemblies deemed unlawful is not limited to public assembly laws and regulations: as in other countries in the region, the Criminal Code is also used.

Under Article 245 of the Criminal Code, an individual who causes 'public disorder' can be imprisoned for up to two years. There is no definition of what constitutes disruption of public order, meaning that it can be interpreted to refer to peaceful acts such as making noise. If the act in question takes place 'in and organised manner,' causes obstruction to traffic, or incites others to commit disorder, the alleged perpetrator may be imprisoned for up to seven years. In September 2016, land rights activist and HRD Can Thi Theu was sentenced to one year and eight months of imprisonment under Article 245 for having organised a demonstration in April 2016 condemning the detention of a human rights lawyer. Can Thi Theu has spent a decade fighting for adequate compensation for persons whose land has been expropriated by the Government, during which time she has faced imprisonment and physical attacks. Her appeal to the sentence was rejected in November 2016. In August 2014, prominent land rights activist

Bui Thi Minh Hang was sentenced to three years' imprisonment under Article 245 after she, along with 20 other activists, attempted to visit human rights lawyer Nguyen Bac Truyen. In the same month, activist Nguyen Van Minh was sentenced to two years and six months of imprisonment in connection with the same attempted visit.

Article 118 of the revised Criminal Code (previously Article 89) criminalizes the intent to oppose the Party or Government by gathering 'many people' to disrupt security, or to obstruct officials or agencies. These acts are punishable by 15 years of imprisonment. The revised Criminal Code added a new offence, and the article now includes up to five years of imprisonment for 'preparation of committing this crime.' In October 2010, labour rights activists Doan Huy Chuong, Do Thi Minh Hanh and Nguyen Hoang Quoc Hung were sentenced to seven years, seven years, and nine years imprisonment respectively under Article 89 for helping workers in a shoe factory organise a strike to improve their working conditions.

Both Article 118 (previously Article 89) and 245 resemble the use of the Criminal Code in many other countries in the region to criminalize public assembly. However, as noted above, Vietnam's laws carry much heavier penalties than most and as such most closely resemble China's Criminal Code provisions on the matter. In the strictness and breadth of their application, these laws also most closely match their Chinese counterparts.

Recommendations

Article 245 of the Criminal Code must be repealed, as it criminalizes peaceful assembly. If it is to be replaced, the new provision must target only violent assemblies, must have a clear and high severity threshold, must explicitly exclude any peaceful participation in an assembly from criminal prosecution, and must have proportionate punishments to the act committed, meaning that unless severe physical assault occurs, there should be no jail time. Article 89 must also be repealed for similar reasons: 'disrupting security' does not necessarily refer to violent acts, leaving open the possibility that peaceful protestors be charged. If it is to be replaced, the new provision should be subject to the limitations noted above with regard to Article 245

Non-Governmental Organisations

Bangladesh

The Bangladeshi legal framework severely restricts freedom of association and in recent years the Government has increasingly tightened its stranglehold on NGOs. Under the Societies Registration Act, all civil society organisations in Bangladesh must register with the Government. As in most countries in the region, the registration process is cumbersome, lengthy and subject to arbitrary requirements that prevent many Civil Society Organizations (CSOs) from successfully applying. Upon registration, the organisation must have an executive committee of at least seven members, and at least three times the number of organisational members as members in the committee. This means that any CSO must have a minimum of 21 founding members, effectively forcing all small organisations to operate illegally or to close their doors. In addition, an organisation must have a physical office with its own address and a publicly viewable signboard, and also must have the funds to register, which can cost as much as 15,000 taka (US\$200). This restricts the founding and formation of organisations to those who have the resources to rent or buy an office space and pay for registration. Only adult citizens of Bangladesh may found or belong to a CSO. Registration requires prior clearance from the Ministry of Home Affairs, which generally takes at least two months. Organisations must also go through a background check to receive clearance from the National Security Intelligence, a process that is in practice extremely slow unless the organisation has the resources to pay a bribe.

The recently passed Foreign Donations (Voluntary Activities) Regulation Act 2016 amends the Foreign Donations (Voluntary Activities)

Regulation Ordinance 1978 and integrates the Foreign Contributions (Regulation) 1982 into it. The law resembles similar ones in countries such as India, Pakistan, China, Laos, Vietnam, Nepal and Thailand that ensure Government control over the receipt of foreign funding. Provisions from the previous ordinances such as obligatory registration with the NGO Affairs Bureau -which is under the direct control of the Prime Minister's office- and approval from the Bureau for every activity that involves funding, remain. The grounds for rejection or changes by the Bureau are not specified, effectively granting it broad powers to interfere with and control and even cancel CSOs' work. Under the new Act, all CSOs receiving foreign funds must re-register every ten years with the NGO Affairs Bureau and submit annual reports to it. The Bureau is invested with the power to cancel their registration or forbid particular projects it does not like. Furthermore, no clear time frame for the approval of registration or individual projects is specified, and there is no provision granting automatic registration in the event of the Bureau's failure to respond to a registration request. Permission must also be obtained from the bureau for travel abroad by a CSO member who is traveling in connection to their duties. The Bureau must also approve the hiring of any foreign advisor or specialist. Perhaps the most worrying aspect of the new Act is that it specifies that any foreign-funded NGO that engages in anti-State activities, extremism or terrorism, or makes 'inimical' or 'derogatory' comments about the Constitution and constitutional institutions (in other words, Government), will have its registration revoked. The punishment is the same for any violation of the other above conditions: an organisation's registration may be revoked or individual projects may be cancelled. The law contains no mention of proportionality, which means that even the most minor offence

(not submitting an annual report, for example), could lead to the shuttering of an entire CSO. Organisations have the right to appeal only to the Prime Minister's Office, which directly controls the Bureau, and not to a court.

Recommendations:

The Government must significantly amend the Societies Registration Act to ensure that registration for all NGOs is not obligatory, and is a matter of, at most, notifying the Government, not of applying and possibly being rejected. Provisions setting out high and arbitrary barriers to registration must be removed in their entirety to ensure that the Government has no say in the internal structure of an organisation, the characteristics of its members, its decision to have an office or not, or any other matter of its structure or operation. The process for notification must be simple, rapid and must not have any costs associated with it.

The Foreign Donations (Voluntary Activities) Regulation Act must be repealed immediately and replaced with legislation that protects the right of all NGOs to freedom of association as enshrined in the Constitution of Bangladesh and under international law. The Government must have no say in matters concerning the funding of an NGO. The NGO Affairs Bureau must not have any power to involve itself in registration, activities, funding, travel abroad, or hiring. Neither must NGOs be required to report to the Bureau on any of the above matters. New legislation replacing the Act must guarantee NGOs the right to acquire funding without restrictions or interference and operate freely -which includes the right to criticize Government as they choose.

Cambodia

The right to form and operate organisations is subject to severe restrictions in Cambodia, particularly since the promulgation of the draconian Law on Associations and NGOs (LANGO) in 2015. Extremely repressive contexts such as China, Laos and Vietnam aside, Cambodia now ranks among the worst in the region in its repression of NGOs' ability to organise. The Law on Associations and NGOs in one fell swoop empowered the Government to be the ultimate arbiter of any action taken by NGOs,

made it exceedingly difficult to operate them, and made it impossible for NGOs to be independent and free. The Law mandates that any and all CSOs, no matter how small or informal, must register with the Ministry of the Interior. Article 10 clearly states that any form of activity by a non-registered organisation is illegal, with punishments for continued activity set at a fine of up to 10,000,000 riels (US\$2,500) for domestic organisations (Article 32) and expulsion for foreign organisations (Article 34).

The registration process is unnecessarily long and complicated as well as subject to arbitrary rules, and the reporting requirements are unreasonably frequent and exhaustive. Registration requires three founding members, who must be over 18, and must be Khmer (Article 5). Aside from the fact that the Government not have any legitimate basis in international law to stipulate exactly how an organisation should be led, these provisions could make it impossible for a small organisation, or one involving foreign nationals to register, meaning that they would have to be dissolved. The registration process requires extensive documentation, including banking information for both foreign and domestic organisations (Articles 6 and 10). For local organisations, it also includes a detailed governing statute, rules for management, and its sources of funding. Foreign organisations must obtain a Memorandum of Understanding (MoU) with the Ministry of Foreign Affairs, budgets for six months and letters of support for all projects from relevant Government organs are among the requirements (Article 13). This is extremely problematic because it not only provides the Ministry of Foreign Affairs with the ability to veto activity through the acceptance or denial of a MoU, but also provides other levels of Government with the ability to influence the nature of the foreign NGO's activities in order to give its approval so that the foreign organisation might successfully apply for an MoU. The grounds for rejection of a registration application are vague and essentially make it a matter of discretion for the Ministry of the Interior (MoI) (Article 11). Applications can be rejected if they do not 'fulfill the conditions for registration,' which are determined by the MoI by Prakas. Applications from domestic organisations

may be rejected if the group ‘could adversely affect public security, stability and order or generate a threat to national security, national unity, or the culture, traditions and customs of Cambodian national society.’ The use of this vague and undefined terminology provides the MoI with total discretion over the decision on registration without any real legislative constraints; and in any case, the Ministry is not required to provide an explanation in the event of an application’s rejection. International organisations do not have any legal recourse if their application is rejected: there is no appeal process for them (Article 8).

Even once an organisation is formed, it is vulnerable to constant Government oversight, harassment, and even dissolution. Reporting requirements under the Law are excessive, and include regular reports on activities and finance to the MoI and the Ministry of Economics and Finance (MEF) for domestic organisations, and the MoFA, MEF, and Council for the Development of Cambodia for international organisations. Both international and domestic organisations must provide copies of their agreements with donors, the annual reports they submit to donors on their activities and financing, and information on their funding (Article 25). Both must also inform the MoI within 15 days of changes within the organisation such as leadership or location. The penalty for not complying with these directives extends to dissolution of the organisation (Article 30). Article 25 further provides the Government with tools it can use to harass civil society by permitting the MEF or the National Audit Authority to conduct audits at will. Under Article 24 and 30, the Government may also dissolve an organisation if it does not ‘adhere to a stance of neutrality towards political parties,’ which in the Cambodian context means that opposition to Government policy in any form could be grounds for dissolution. Finally, the MoU between INGOs and the MoFA may be suspended or terminated upon a number of vague conditions: where the organisation is found not to be neutral; did not report to the Ministry’s satisfaction; did not ‘properly comply’ with the MoU, as determined unilaterally by the MoFA;

took actions that contradicted their organisational statutes; or behaved in a way ‘adversely affecting public security, stability and order or generating a threat to national security, national unity, or the culture, traditions and customs of Cambodian national society.’ These limitations on the nature of work that organisations can pursue (adherence to political ‘neutrality’ and promotion of ‘public order’) to varying extents resemble restrictions in China, Laos, Vietnam, Malaysia, India, the Maldives, Indonesia and Nepal. Taken together, this set of rules on reporting and monitoring invest in Government the power to exert near total control over civil society organisations. Under the law, an omnipotent Government decides on what organisations may function within its borders, how they may govern themselves, and what actions they may take.

Recommendations

The Government of Cambodia must immediately repeal the Law on Associations and NGOs and replace it with legislation that guarantees people’s right to form and join organisations. The law in its current form lays out a Kafkaesque system of rules and regulations which give the Government total control over civil society organisations, in clear contravention of Cambodia’s obligations under international law, as well as its own Constitution. Specifically, organisations must be allowed to function legally without registration, and should be independent and free to partake in any legal activities they should choose to. Government should have no say in whether these organisations can legally function or not except in cases of criminal activity as defined by international standards, which do not include lack of political ‘neutrality.’

The Government should have no say in the composition of domestic or foreign organisations’ leadership, nature, source and nature of funding, activities, or direction. Organisations should be under no obligation or pressure to submit documents on their location, leadership, finances, activities, or otherwise to the Government, and their right to independence in political positions must be guaranteed. The inalienable right of organisations to all of the above privileges must be explicitly outlined

in a law that seeks to protect them from Government oversight, interference, and harassment, which should be punishable by law.

China

The Chinese Government employs several methods to restrict freedom of association. Many of these tactics are informal and have no basis in law: all civil society activities are informally prohibited, for example, in sensitive domains such as advocacy, legal assistance, labour rights, religious rights, and ethnic minority rights. Informal or extra-legal tactics used to shut down organisations include invasive monitoring and inspections, intimidation, public humiliation, stigmatization and denunciation, detention without charge, arrest on spurious charges, seizure of property, and forcible closure. Although these tactics are familiar throughout the region, they are applied to a much greater extent in China than elsewhere, leaving virtually no space for association.

Several laws place severe burdens on associations such as onerous and obligatory registration processes, Government interference in internal affairs, exhaustive reporting requirements, frequent audits, and surveillance and inspections. All organisations must officially register and receive approval from both the Ministry of Civil Affairs and the local Civil Affairs Bureau under the Regulations on the Registration and Management of Social Organisations 1998. Organisations excepted from this regulation are trade associations, science and technology organisations, charitable organisations working in Party-approved fields, and community service organisations -which all must only register once. An egregiously strict and partisan requirement for registration is that all organisations must find a Government or Party official to sponsor their registration, who must continue to play a supervisory role after the registration has been approved, and is liable if the group engages in unsanctioned activities. The organisation must obtain written approval from a Government official for all of its activities, and the official is held accountable for the organisation's plans and projects. This regulation alone ensures that associations that are not pro-Party and whose activities are not sanctioned by the Party cannot

legally exist in China. Even organisations that are able to register are forced to shut down if they touch on any sensitive issue or displease the Government or Party in any way. The only groups that are truly able to safely participate in Chinese civil society are pro-Government organisations (GONGOs), although organisations working on non-sensitive topics such as charity organisations that assist elderly are usually able to function more freely.

China, like India, Bangladesh, Pakistan, Laos, Nepal, Thailand, Cambodia and Vietnam, restricts the ability of NGOs to receive foreign funds. Although they are allowed to receive foreign funds, there are restrictions on what type of projects the funds can be used for. Under the Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated To or By Domestic Institutions 2010, domestic organisations may not use foreign funds for projects that go against 'social morality' or that could harm public interest. Domestic organisations must jump through several hoops to acquire donations from foreign organisations. Having any form of foreign contact can be difficult for Chinese NGOs: they are sometimes required to report such contact to the authorities, or to seek approval for visits, international cooperation or foreign donations. If they work closely with foreign organisations, they often face invasive monitoring and harassment.

The passing of the Charity Law 2016 and Foreign NGO Management Law 2016 follows a trend in the region of Governments seeking to regulate and control civil society activities. The laws will even further restrict civil society's freedom, will raise the barriers for Chinese organisations seeking foreign funding or collaboration with foreign organisations, and will significantly reduce to ability of foreign NGOs to work in China.

The Charity Law has certain positive aspects for non-profit work not related to sensitive areas such as human rights, and has therefore been well-received in circles not related to these sensitive areas. For those working on these issues, however, the Charity Law further tightens the noose on them, providing the Government with yet another legal

weapon in its arsenal to restrict, control and punish their work. Most concerning are the provisions on national security, which provide the Government with a pretext for restricting operations or shutting down organisations. If an organisation is found by the Government to endanger national security, its registration will be revoked. The issue of course lies with the vague definition of the concept in the National Security Law and the Criminal Code, as well as with the legal precedent of extraordinarily broad interpretation of the concept to cover any activity that displeases the CCP. The law also restricts NGOs' ability to raise funds by requiring organisations to be registered to raise funds, with penalties of up to 200,000 yuan (US\$30,000) for not complying. This last measure, limiting NGOs' ability to fundraise, is also present in South Korea and Nepal.

The draconian Foreign NGO Management Law explicitly aims to directly control and hinder the work of foreign organisations in China. To successfully apply for registration, all foreign NGOs must have a permanent office in China, and their registration must be sponsored by a Government of Party official, like that of local organisations. This provision ensures that no foreign NGO will conduct activities that run counter to the Party's interests, and is a grave blow to civil society, particularly in sensitive areas such as minority rights and democratization. In addition, the law clearly lays out fields in which foreign NGOs may and may not work: any work related to political or religious activities is explicitly outlawed. The registration requirements are onerous: approval must be sought from both the public security departments and the state council departments at the local as well as national level. The state directly involves itself in NGOs' activities by requiring them to submit activity plans for each upcoming year, showing exactly what activities will be undertaken and where, as well as how much funding will be allocated to these activities. Work reports for the previous year of operation must also be submitted yearly. All of this documentation must be sent to the authorities for comment, and then must be accordingly modified before being sent to registration management organs to seek approval, which is required for the organisations to be permitted to carry out their activities. Public security

officials are mandated to maintain a catalogue of all activities being carried out by foreign NGOs and submit it regularly to Party officials. Foreign NGOs are unable to accept donations in China, nor will they be able to fundraise there. Foreign staff may not exceed more than 50 per cent of the organisation's staff, and foreign staff will not be able to work for more than one NGO.

Examples abound of organisations forced to close down due to Government harassment, intimidation and pressure: the Weizhiming Women's Center and Beijing Zhongze Women's Legal Counselling and Service Center (women's rights), Liren Libraries (rural education), Zhongyixing (disability rights), the Panyu Workers Center and the Nanfeiyan Social Worker Center (labour rights); Yirenping (anti-discrimination), and the Transition Institute (social policy research).

In July 2015, Chinese authorities detained and otherwise targeted hundreds of human rights lawyers and public defenders under a number of different charges. The crackdown was centred around Beijing-based Fengrui Law Firm, which has a strong record of working on human rights cases. The crackdown also included a State-led smear campaign against the law firm and its lawyers, with references to the group as 'criminal syndicate.' In August 2014, Uyghur linguist and blogger Abduweli Ayup was sentenced to eighteen months imprisonment for 'illegal fundraising.' Ayup had been raising money to build a Uyghur-language school. The authorities have also harassed and penalized Yirenping since at least June 2014, when state authorities raided the office and seized computers and documents after the organisation refused to take part in a Government-administered security review. In July 2014, the authorities arrested Chang Boyang, Yirenping's legal advisor, under Article 225 of the Criminal Code due to his involvement with the organisation. He remained in detention until November 2014.

Recommendations:

All Chinese Government organs must immediately halt their harassment and intimidation of persons seeking to form associations, particularly those carrying out work related to 'sensitive issues.' The

Regulations on the Registration and Management of Social Organisations must be repealed and replaced with legislation that guarantees the right of all to freedom of association, with specific penalties for interfering with that right. CSOs must not be required to have Government permission to operate, and the Government must have no influence with regard to their operations, staff, or funding sources. To this end, the Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated To or By Domestic Institutions must also be repealed. The Charity Law must be amended to narrow the definition of what is a charity to what in reality constitutes one, rather than being a blanket applying to all CSOs. It must also be rid of any reference to national security, which has nothing to do with charities and is more than adequately covered by other law, such as the Criminal Code and the National Security Law. Provisions regarding controls on funding -for instance by restricting fundraising to registered organisations- must be struck from the law. The Foreign NGO Management Law must be repealed in its entirety, as it serves no other purpose than to restrict freedom of association in a manner which has no basis in international law. Finally, China must promulgate a law on associations that guarantees the right of anyone to join or form any association with no exceptions, laying out specific consequences for any person, in the employ of the state or otherwise, who interfere with that right in any way.

India

Although India's legal framework allows greater freedom of association than some in the region, it places restrictions on aspects of that right, particularly on the ability to carry out work related to politics and receive foreign funds. This targeting of foreign funding is comparable to that found in Cambodia's LANGO and Bangladesh's Foreign Donations Regulations Act as well as legislation in China, Laos, Nepal, Thailand and Vietnam. The Indian courts, in applying the Bombay Public Trusts Act 1950, the Income Tax Act 1961, and the Finance Act (last amended 2015), have ruled consistently that an organisation whose primary objective is political cannot be charitable. An NGO supporting a particular party or candidate,

seeking to change a law or policy or seeking to change public opinion would not fall under the definition of a charitable organisation. This strict limitation on NGOs' work resembles that of Cambodia, China, Laos, Vietnam and Indonesia.

The 2010 Foreign Contributions Regulation Act (FCRA) requires all organisations receiving foreign funding to register with the central Government. It prohibits organisations that work in fields 'of a political nature' from receiving foreign funding, mirroring the LANGO's requirement of political 'neutrality' and China's total ban on any political work. The Act also requires that all civil society organisations receiving foreign funding receive advance approval from the Ministry of Home Affairs, which is also similar to the aforementioned legislation elsewhere.

The Government amended the Foreign Contributions Regulation Amendment Rules in December 2015, raising barriers to access to foreign funding and complicating the rules. Specific information on foreign contributions must be submitted regularly, banks are required to immediately report any foreign contribution, and NGOs must immediately notify the Government of any change regarding its operation, structure or location. Ominously, the rules adopt the overly broad definition of national economic security from the Unlawful Activities Prevention Act. Infringement of these broad criteria would result in FCRA registration cancellation.

The Act has been used to intimidate internationally funded NGOs that criticize the state and its policies. The Government has cancelled the licenses of thousands of organisations receiving foreign funding: as of July 2016, 14,000 NGOs had been barred from receiving foreign funds. In March 2015, over 1,000 were barred in Andhra Pradesh alone. Hundreds of others have been blacklisted due to non-compliance with the Act's onerous and confusing reporting requirements. Sabrang Trust, an NGO run by Teesta Setelvad, who has been fighting for the victims of the Gujarat riot, had its registration to receive foreign funds under the FCRA cancelled in June 2016. The Ford Foundation has also been placed on a watch-list for its funding of the Sabrang Trust, allegedly for interfering with India's domestic affairs and disrupting communal harmony.

In June 2014, India's Intelligence Bureau presented a secret report to the Prime Minister's office on foreign-funded organisations, and told the Ministry of Home Affairs to disallow certain organisations from receiving foreign funds. The report named several international NGOs such as Greenpeace India and ActionAid as foreign policy tools of Western Governments and working against India's national interest. In April 2015, the Government froze the bank accounts of Greenpeace India and suspended its operating license for failing to comply with FCRA regulations.

The Unlawful Activities Prevention Act, as mentioned in the above Article on national security legislation's application to freedom of expression, allows the Government to outlaw associations if they are engaged in 'unlawful activities' as very broadly defined under the Act. The definition includes causing 'disaffection' against India, or supporting regional autonomy. It is thus used as a pretext for repressing NGOs fighting for the rights of mistreated minorities.

Recommendations

India is in dire need of an NGO law that, rather than restricting people's right to associate freely, guarantees it. NGOs must be explicitly allowed to engage in work related to politics, such as advocating for changes in policy or legislation. They must also be allowed to seek and receive funding from sources of their choice without Government intervention, which means that the FCRA and its accompanying rules must be repealed in their entirety. As they stand now, they constitute an illegitimate barrier to freedom of association that is manipulated by Government to attack critics.

The UAPA must be amended to narrow its scope considerably. The definition of 'unlawful acts' is in immediate need of more specificity. In its current state, it includes any criticism of the Indian state, and any support for the rights of minorities. The definition must be narrowed to acts posing a threat to Indian national security as defined by international standards.

Indonesia

Unlike Bangladesh, Cambodia and China, Indonesia does not require mandatory registration

for most CSOs. However, control over organizations is exercised in other ways. The registration process is overly bureaucratic and cumbersome, and unregistered organisations can face difficulties with receiving information and funding, particularly from the state.

The Law on Mass Organisations 2013 contains several clauses that have the power to severely restrict freedom of association in Indonesia. The law stipulates expensive and difficult registration application regulations, such as the requirement to submit the request through a notary. Like laws in China, India, Cambodia, and Malaysia, among others, it imposes vague obligations and prohibitions on the activities of CSOs. It requires organisations to provide support for the national unity and integrity of Indonesia, as well as 'religious, cultural, ethical and moral norms.' In a stipulation reminiscent of Chinese law, it also mandates that all organisations adhere to the principle of monotheism and the concept of Pancasila, rendering all polytheistic, Atheist, and communist organisations illegal. The Law stipulates that foreign CSOs must register, unlike Indonesian ones. Foreign nationals seeking to set up an Indonesian CSO must have been residents of Indonesia for five consecutive years and be permanent residents. The CSO must have a minimum of 1,000,000,000 rupiah (US\$100,000) in assets, and is obliged to function in partnership with an Indonesian CSO and with the Government.

The Law on Foundations imposes several administrative burdens on foreign organisations and domestic organisations that receive foreign funds, although it does not require prior Government approval to receive them. It mandates that foundations owned or operated by foreign nationals must have partnerships within the Government and Indonesian civil society. Foreign foundations may only work in 'social, religious or humanitarian' fields, a provision that excludes them from any work related to politics, as in numerous other countries such as China, Laos, Vietnam, Cambodia, India and Maldives. A minimum of 100,000,000 rupiah (US\$10,000) in foundation assets is also required. All foreign organisations in

Indonesia are barred from engaging in activities that could disrupt the ‘integrity and stability’ of the country, and work must be deemed politically, legally, and technically ‘safe,’ a concept that is left undefined. The Law also mandates that organisations that have received funds from parties outside Indonesia totalling at least 500,000,000 rupiah (US\$50,000) must be publicly audited, and a summary of their annual report must appear in the local newspaper.

CSOs operating in Papua are subject to a high level of scrutiny and the security forces closely monitor the activities of foreign organisations that are able to acquire permits to work there. In April 2010 the Government refused to renew Dutch NGO Cordaid’s registration. Cordaid, a funding organisation that had been operating in Papua for over thirty years, was accused of supporting the Papuan separatist movement. In 2009, the Government similarly banned the International Committee of the Red Cross from operating in Papua in retaliation for the organisation’s meeting with political prisoners.

Recommendations

The Law on Mass Organisations must be amended to simplify the process of registration and ensure that it is free of cost. The activities of an organisation must not be subject to any restrictions beyond those imposed on any citizen or legal entity to prevent criminal acts, and certainly not vague restrictions such as promoting support for national unity and moral norms. Foreign CSOs should not be under an obligation to register, nor should there exist supplementary regulations for Indonesian CSOs established by non-Indonesians.

The Law on Foundations must similarly be amended to remove restrictions on foreign organisations or domestic ones receiving foreign funds. CSOs should be free to collect funds where they wish without Government interference. The activities of foreign foundations must not be restricted to non-political fields, and they must not be subjected to different auditing requirements than local organisations are.

Finally, the Indonesian Government must stop the practice of targeting CSOs operating in West Papua. Associations anywhere in the country must be allowed to be created and operated freely, without Government interference.

Laos

Laotian civil society in general is extremely constrained due to heavy Government restrictions. All human rights organisations, political opposition groups and associations that criticize the Government or its policies are banned. Organisations that wish to legally conduct operations in the country must undergo a slow and cumbersome registration process. Many organisations choose to operate illegally rather than engage in the registration process, subjecting them to fines and other penalties.

Passed on 15 November 2017,¹ the Decree on Associations, 2017 superseded the Decree on Non-Profit Associations, 2009.² The Decree of 2017 continues to restrict the freedom of association for local non-profit association in the country. The Decree of 2017 further outlines an extremely onerous and political registration process mandatory for all associations by requiring prior approval by government agencies, at various stages of establishment, for the formation of any association. It also sets a new requirement for establishment of association that shall not be based on the ground of ‘political’, ‘religion’, and ‘social origin’, which empower the authorities to refuse the registration or renewal of registration with broadly defined grounds. In the past during the enforcement of the Decree of 2009, the Government can disallow an organisation’s registration for various reasons, and has previously barred organisations with sensitive keywords in their names, such as ‘rights’ and ‘democracy’, from registering. The Government has also repeatedly refused to approve organisations that place people from ethnic minorities in leadership positions, or target the needs of ethnic minority groups. The extent and explicitness of these controls is matched only by China and Vietnam in the region.

1 ‘Decree on Association’ <http://laocs-kis.org/resources/decreedecree-association-2017-unofficial-english-translation/>

2 ‘Decree on Non-Profit Associations’ <http://www.icnl.org/research/library/files/Laos/associationsdecreedecree.pdf>

The Decree stipulates that registered organisations must receive Government approval for each project they plan to carry out, which is similar to the rules in China. The process of receiving project approval generally takes about one year. Organisations must go through many hoops, including signing Memorandums of Understanding with various Government ministries. Government officials can also ask organisations to modify the goals and objectives of their projects. The lengthy waiting period makes it difficult to gain funding from international donors, who usually require that money for programs is spent in a timely manner. The Decree also requires NGOs to notify state authorities if projects will be implemented using foreign funding, and ask for permission to receive said funding.

The Decree mandates that the Government can dissolve any organisation that has been inactive for over a year. In the past, Government officials have used the project approval process to delay or deny projects for a year or more, ensuring that certain groups remain technically inactive and giving officials the ability to dissolve them. Projects that cover sensitive issues, such as LGBTI rights and reproductive health, have been repeatedly denied permits.

The Decree on International Non-Governmental Organisations 2010 further restricts freedom of association for international organisations operating inside Laos. Many countries -Bangladesh, Cambodia, China, India, Malaysia, the Maldives and Nepal, for example- control foreign NGOs, but only China and Vietnam do so to the extent that Laos does. Under the Decree, all international NGOs must register with the Government and obtain an annual operations permit in order to be able to operate legally in the country. International organisations must also have a value assistance of at least US\$500,000, and must have at least five years of successful development experience already within the country. As with domestic organisations, international organisations must obtain separate permits for each project that they undertake. Organisations that carry out programs or projects contrary to the Government and its policies face

punishment, including fines and expulsion. In December 2012, Anne-Sophie Gindroz, head of the Laos program for Helvetas, an international cooperation organisation, was expelled from the country for allegedly criticizing the Government.

Decree 377 further places restrictions on the publications of international organisations: Articles 14 and 18 require them to submit all work to the Ministry of Foreign Affairs for approval before publication. The decree also requires all international organisations to abide by the ‘culture and traditions’ of Laos, which is left undefined.

Recommendations

The Government must ensure a safe, unhindered environment for NGOs and civil society activists through reform of the onerous registration system and lifting of requirements for Government approval for activities, the power of the Government to dissolve organisations, and any other Governmental interference with their goals, structure, funding or activities. This requires the total repeal of the Decree on Non-Profit Associations as well as the Decree on International Non-Governmental Organisations. Decree 377 on the Press Activities of Foreign Media Agencies, Diplomatic Missions and International Organisations must also be repealed. A comprehensive NGO law must be passed that explicitly and unconditionally guarantees the freedom to join and form associations and conduct activities in total freedom, with penalties laid out for any attempt by a public official to interfere with those rights.

MALAYSIA

Although the Malaysian Government does not disallow non-Governmental association to the extent that Laos does, the restrictions on freedom of association in Malaysia are severe, comparable to those in Cambodia or Bangladesh. The Societies Act 1966 makes it compulsory for any organisation with more than seven members to register with the Government as a society to be able to operate legally. The process is lengthy and often fraught with bureaucratic delays. In addition, the Act provides the Government with wide discretion to refuse applications for registration, allowing it to

refuse any society that is 'likely' to be unlawful or 'incompatible with peace, welfare, security, public order, or morality.' Societies can also be deregistered for any of the above reasons. These vague terms are nearly as onerous as the Cambodian LANGO's requirement that associations be politically neutral.

The Act also gives the registrar the ability to enact broad, sweeping regulations on an organisation's structure and mandate. Failure to comply with these regulations can result in imprisonment of up to six months and a fine of up to 2,000 ringgit (US\$500) for the organisation's members. If an organisation uses a sign or emblem that has not been approved by the registrar, its members can be imprisoned for up to three months or fined up to 3,000 ringgit (US\$750). Fines also exist for several other violations, such as failing to furnish annual reports, or changing the location where the society is based without informing state officials. In addition, the registrar can prohibit a society from communicating with certain groups outside of Malaysia if it believes that the communication will harm public safety, order, or security. Failure to comply with this order can lead to imprisonment of up to five years or a fine of up to 15,000 ringgit (US\$3,500). This provision to some extent mirrors similar legislation in many countries across the region that seek to limit and control any form of associational interaction internationally -although usually this is done through a restriction on funding.

If the registrar believes that a society has violated a clause of the Societies Act, it can visit the offices of said society to inspect its books, accounts, minutes, or meetings. In cases where the registrar believes that a society is implementing activities against peace, welfare, or morality, it can enter the society's offices and conduct a search without prior notice, and can also seize and hold documents.

The Act also mandates that civil society organisations respect 'core tenets of Malaysian life,' including the importance of Islam, the use of Malay language for official purposes, and 'the position of Malay and the natives of Sabah and Sarawak.' If an organisation is found to be carrying out activities incompatible with these provisions, the authorities can revoke its

certificate of incorporation, suspend its activities, or even dissolve the organisation itself.

In 2015, the Registry of Societies rejected nearly 40 per cent of applications. As of November 2016, the registrar continues to carry on a battle against the opposition Democratic Action Party (DAP), failing to recognize its central executive committee or its branch offices. It has been investigating the DAP for over two years. In July 2014, Negara-Ku, a group advocating for racial and religious harmony, was declared illegal because its name, which is also the name of Malaysia's national anthem, was 'inappropriate.' In July 2011, political reform group Bersih 2.0 was deemed an unlawful society under the Act because its activities were seen as potentially prejudicial to public order and security in Malaysia.

Recommendations

The Societies Act must be significantly amended to remove any restriction on the right to join, form and operate associations. Registration should not be mandatory, and for those organisations that do decide to register, the process must be fast, easy, and transparent, governed by an independent body with a right to appeal. Political bodies of Government must not have any power over this process. There should be no restrictions on the structure, mandate or activities of associations. Broad requirements for an organisation to work towards 'public order,' 'morality' or the 'core tenets of Malaysian life' must be scrapped, as must be any requirements to produce documents such as annual reports or logos to the Government. The Government's power to control associations' international communications must also be lifted. In the place of these restrictions should be clear restrictions on the Government's ability to interfere with associations, with clear penalties for infringement on these rights.

Maldives

Freedom of association is restricted in the Maldives, similar to the situation in Cambodia and to an extent, Malaysia. Under the Associations Act 2003, all organisations in the Maldives must register with the Government, a burdensome and time-consuming process. The Government can choose to block the registration an organisation for a host of reasons. Persons with criminal records,

children and non-citizens are barred from forming organisations. No association may list as its objective any issue area that is contained under the mandate of any Government office, leaving very little room for associations to work. Associations are prohibited from registering if they conflict with Islamic principles or aim to incite conflict within society. International organisations must obtain permission in order to operate in the Maldives; they may be denied if the proposed activities do not contribute to the national development plans of Government institutions. Those who head unregistered organisations, which are illegal, can be imprisoned for up to five years.

Onerous reporting requirements are imposed upon associations even once they have registered, and the Government is empowered to meddle in the activities of associations. An association wishing to establish a branch office must obtain permission from the Registrar of Associations. The Registrar may change an association's name at its discretion: for example, in June 2014, the Maldives Bar Association was forced to disband after it refused to remove the word 'Maldives' from its title. The Act even involves the Government in the choosing of a seal, flag or motto. If all members of an Executive Committee resign, the organisation must apply to the Registrar -which is empowered to deny this request- to establish a temporary committee.

Recommendations

The Associations Act must be considerably amended to remove the Government's power to involve itself in the registration or operation of associations. The registration should be simple, easy and accessible and crucially, must not be subject to denial by the Government. If an association is engaged in actual criminal activity, the Penal Code contains adequate provisions to prosecute: the issue need not be over-legislated by imposing onerous requirements upon all associations. The Government should also have no power to meddle in the activities, objectives, structure, funding, communications, or any other aspect of an association's work. Provisions requiring the Registrar's permission to open a branch, change a name, motto or seal, or establish a temporary committee must be removed. The Registrar should not be empowered to disband associations under any circumstances.

Myanmar

Relative to freedom of expression and assembly, the right to freedom of association is less restricted under Myanmar's laws. Unlike many of its neighbours, Myanmar does not require all associations to register, which takes away some of the Government's power over CSOs. The Association Registration Law, enacted in 2014, which regulates all organisations in Myanmar, was drafted with extensive civil society participation. Organisations that do choose to register must re-register every five years and pay 30,000 kyat (US\$23) each time, an amount that could be prohibitive for many groups in rural and low-income areas.

The Unlawful Associations Act of 1908 provides the Government with a range of ways to limit the right to free association. Articles 2 and 16 allow the President to declare any association illegal on the basis of a range of broad grounds related to security and maintenance of law and order. Article 17 imposes penalties of up to three years' imprisonment for any member of an unlawful association or anyone who assists the association's operations. The manager of an unlawful association may be imprisoned for up to five years. Article 17(1) continues to be used all over the country, but in particular in Kachin and Rakhine states, often with little supporting evidence. In October 2016, 49 people were charged under the Act for participating in a community training session, which the state interpreted as Military training. In April 2016, Zaw Zaw Latt and Pwint Phyu Latt were convicted under Article 17(1) of the Act and sentenced to two years in prison for being part of interfaith peace delegation visiting Kachin state in 2013.

Recommendations:

The Association Registration Law should be amended to ensure that registration is free and that organisations need not submit annual reports. The Unlawful Associations Act should be repealed in its entirety, as it gives the executive undue, unrestricted and overly broad powers to shut down CSOs.

Nepal

The right to freedom of association in Nepal is limited. The Association Registration Act 1977 resembles legislation in many countries in the

region in that the registration process is onerous and the Government has the power to dictate the structure of, interfere with, and dissolve CSOs. The Act stipulates that all organisations must register with the Government in order to function legally in Nepal. Unregistered organisations are subject to a fine of up to 2,000 rupees (US\$20) for each member of the organisation's management committee. The Act also stipulates that each organisation must have at least seven founders, who must submit a report containing the details of their organisation and its statute to the local authority in order to register. However, Government institutions face a severe lack of capacity, which hinders and delays the process of obtaining registration. The District Administration Office, which is tasked with registering associations, is not staffed with enough competent professionals to ensure that organisations can be registered in a smooth and timely manner. Organisations must re-register every year, and pay a fine of 500 rupees (US\$5) if they fail to comply. In order to re-register, they must not only get the permission of the District Administration Office, but also the Village Development Committee. If they do not re-register the organisation for five years, they face a fine of 5,000 rupees (US\$50), and their registration is automatically cancelled, making them an illegal organisation. They then must re-register the organisation as a completely new organisation if they wish to continue operations. In addition, an organisation must submit a financial audit as part of the re-registration process. If it fails to do this, each member of the management committee must pay a 500 rupee (US\$5) fine. The grounds for dissolution under the Act are not clear and limited: to the contrary, Article 14 of the Act states that an association may be dissolved if it does not carry out its statutory functions or 'for any other reasons whatsoever.'

In August 2016, the Government issued a notice stating that Chief District Officers must halt their participation in any activities organised by CSOs, and obtain permission from the Home Ministry to engage in any of these activities. Civil society has voiced concerns that this will negatively impact their ability to work with Government.

As with freedom of assembly, the right to freedom of association in Nepal is only constitutionally protected for citizens, and there are multiple regulations that restrict foreigners' ability to contribute and work within Nepali civil society. Foreigners do not have the right to participate as founders of an association or members with voting rights. An organisation's founders must submit their citizenship certificates when registering the organisation, which also limits many citizens from participating in leadership roles, as many people in the country do not possess citizenship certificates. Nepal's restriction of foreigners' ability to participate in NGOs is similar to that of Bangladesh, Cambodia, Malaysia, and the Maldives.

Regulations on foreign NGO activities in Nepal are similarly restrictive. Although foreign NGOs are allowed to open branches in Nepal, they must implement their programs through local CSOs through project-specific agreements, which may require approval from multiple Government ministries. International NGOs may not fundraise in Nepal. In July 2012, the Government began requiring that international NGOs register with the Ministry of Finance. This process is lengthy, bureaucratic, and vulnerable to corruption.

Under the Social Welfare Act 1992, a Nepali CSO must receive advance approval from the Government to obtain foreign funding, and organisations not registered with the Social Welfare Council may not partner with foreign NGOs. Advance approval of project plans and budget must be part of the application submitted to Government. This law resembles similar attempts to tightly control foreign funding in Bangladesh, Cambodia, China, India, Indonesia, Laos, Thailand, Pakistan and Vietnam. In addition, the Development Cooperation Policy of 2014 mandates that international NGOs must seek permission from the Government to look for sources of project funding. The draft Social Welfare and Development Act creates even more obstacles to accessing international funding and empowers the Social Welfare Council with great control over civil society. As of August 2017, the Minister for Women, Children and Social Welfare stated that the Act remains under review in preparation for submission to Cabinet and Parliament.

The Government has inhibited the re-registration of organisations it disagrees with or that work on controversial topics. For example, in 2013, the Government delayed and refused the re-registration of Blue Diamond Society, a LGBTI organisation that provides support and social services for people who are suffering from AIDS or are HIV-positive. Because of the failure to renew the organisation's license in a timely manner, it had to shut down its several of its programs that constituted the sole organ in Nepal providing care and treatment to HIV-positive individuals.

Recommendations

The Association Registration Act must be significantly amended, primarily by revoking the Government's power to deny associations the right to register. Providing such power to Government opens the process to politicisation and abuse of power. Registration should be a simple, costless, easy, and fast process that consists of notifying an independent Government body. The Government should not have the power to dissolve an organisation unless it is engaging in criminal acts by international standards, and these grounds should be clearly laid out in the law. The requirement to re-register should be abolished as it constitutes an unnecessary burden on CSOs that is an obstacle to their operation. Foreigners must be permitted to found associations and participate in them freely, like all other persons. The Constitution should also be amended to guarantee all persons, not only Nepali citizens, the right to join and form associations.

The Social Welfare Act must be amended to remove any barriers or Government involvement in associations' funding. Requirements for Government approval must be scrapped, and associations free to seek and receive funding from whomever they should wish. As such, the 2014 Development Cooperation Policy must also be amended.

The draft Social Welfare and Development Act must be significantly amended in line with the above recommendations: access to funding, including from foreign sources, must be free of Government interference, and Government should have no power over associations if criminal activity is not involved.

Pakistan

The Policy for Regulation of International Non-Governmental Organisations in Pakistan of 2015 mirrors legislation in a number of countries seeking to restrict the activities of International Non-Governmental Organisations (INGOs). China, Laos, Indonesia, Nepal, Maldives, Malaysia and India have similar laws, with Pakistan's tending towards the stricter end of the spectrum. The Policy requires all INGOs to renew their registration and sign a new MoU with the Government. INGOs will then be limited to specific fields of work and specific areas. Approval for projects is subject to the approval of various levels of Government and must align with Pakistan's 'national priorities,' and political activity is banned. The registration requirements are onerous. The conditions for the rejection of an application are unclear and overly broad, and there is no right of appeal for denied applications. Accessing foreign funds, providing assistance to other NGOs, spending money, and hiring foreign staff (capped at 10 per cent of an organisation's total staff) requires Government permission. In 2015, nine INGOs were denied registration: Save the Children, Catholic Relief Services, World Vision International, iMMAP, International Alert, Norwegian Refugee Council, Danish Refugees Council, ZOA International, and Dhaka Ahsania. Although the ban on certain organisations, such as Save the Children, was later reversed, some 20 other INGOs were placed under investigation.

Domestic NGOs are subject to similar rules under Circular No. 02/2015 of the Securities and Exchange Commission of Pakistan. Under the National Action Plan on Counterterrorism, non-profits registered under the Companies Ordinance 1984 are required to revalidate and renew their operating licenses, ostensibly to ensure that they have not received funding from terrorist groups over the last five years. Renewal is subject to confirmation, as required under the Ordinance, that all activities 'are applied solely towards the promotion of the objects for which the association was formed.' Hundreds of non-profits have lost their licenses because they

were unable to provide the lengthy documentation needed for reporting. In September 2016, the registration of over 100 NGOs was cancelled for inactivity, although many of the organisations subsequently claimed in media reports that they had submitted their registration applications and that they were indeed active. Many organisations that have changed their addresses without notifying the authorities have fallen victim to this denial.

The draft Regulation of Foreign Contributions Bill 2015 curtails access to foreign funds and allows the state to deny NGOs the ability to receive foreign funding for projects the Government deems unacceptable. The Bill is a stricter version of similar recent legislation promulgated in a number of countries in the region, such as India, Bangladesh, China, Laos, Nepal, and Thailand. In order to be eligible to receive contributions, NGOs must obtain a certificate from the Securities and Exchange Commission of Pakistan, which can be denied or cancelled on extremely broad and vague grounds. To maintain their certificate, NGOs and INGOs must keep all activities strictly within the fields approved in their application, seek permission for every new source of foreign funding and for all assistance provided to another NGO, avoid causing religious tensions or violating ‘cultural and religious sentiments,’ and avoid carrying out activities outside the location approved for their operation, or activities detrimental to Pakistan’s ‘national interests.’ In order to use funds obtained, a separate application must be made for each project, a process that can take up to four months as it requires permission from a number of different Government organs. Violations of the Act, which include knowingly providing false information, concealing facts, and receiving or using foreign funds without permission, are punishable by one year of imprisonment or a fine under Article 20.

Recommendations

The Policy for regulation of International Non-Governmental Organisations in Pakistan and Circular No. 2/2015 must be repealed and replaced with legislation that guarantees INGOs’ and NGOs’ rights to operate free of Government interference. The new law must guarantee associations’ right to function without Government interference in the

geographic areas and issue areas of their choice, and without the need for Government approval in order to register, receive funds, and carry out activities of their choice. Restrictions on associations’ activities on political grounds, such as a ban on ‘political activities’ or the requirement that they be aligned with the Government’s priorities are illegitimate. The new legislation must explicitly spell out the fact that the Government should not have the power to deny or cancel registration, punish organisations, or limit their operation in any way. The draft Regulation of Foreign Contributions Bill must also be scrapped in its entirety for the same reasons.

Singapore

Singapore restricts freedom of association in the context of NGOs somewhat less than most other countries in the region, but nonetheless limits it in a number of ways. The Societies Act 1967 mandates that all prospective organisations of at least ten people must register with the Government registrar, which has the ability to refuse any society from gaining legal status based on several vague grounds, such as prejudice to public peace, welfare, good order, or the national interest. The registrar does not have to give the disallowed group any reason for denying its registration. Unregistered associations are illegal, and anyone found managing illegal societies can be imprisoned for up to five years. Members of illegal associations can be imprisoned for up to three years or fined up to SG\$5,000 (US\$3,580).

Groups that work on sensitive issues have faced limits on their ability to register their organisations or complete projects. For example, organisations that work on LGBTI issues have been repeatedly denied registration because of the belief that their work is ‘contrary to the national interest.’ No LGBTI organisation has ever been granted registered status. While human rights groups have generally gotten their registrations approved, they been limited in the work they are allowed to accomplish. Groups have had to agree not to engage in any activities that undermine ‘national interest, public security, public order or public confidence,’ placing severe limitations on their ability to advocate effectively for human rights.

Recommendations

The Societies Act must be amended to fully guarantee the right of all persons to join or form associations free of Government interference in any form. The Government's power to refuse associations' registration must be eliminated, and associations of any size should not be required to register. Article 4(2)(b), which outlines broad grounds upon which registration may be denied, must absolutely be struck from the Act. No person should be barred from -or face any criminal penalty for- forming or joining a peaceful association.

South Korea

NGOs in Korea face fewer restrictions than most other countries in the region, as they need not register to operate legally, but they do not benefit from complete access to freedom of association. If an association wishes to fundraise or have legal personality, it needs permission from the Government, which may be denied on political grounds. The Government has complete control over whether an association will be deemed a legal personality and has broad grounds to use if it wishes to reject such an application under the Civil Act. The control over aspects of registration is reminiscent of the grip most countries exert on civil society through such legislation. Under the Act, the Government may revoke such status if organisations conduct activities deemed to be beyond the purview of their actions at the time of their application. Branches of Government may also deny legal status to organisations whose work they deem as not falling within their purview. Thus in 2015 a LGBTI organisation was denied registration with the Ministry of Justice as the latter deemed its scope of operation (rights of sexual minorities) to be too narrow. The 4.16 association of Sewol victims was also denied because the Ministry of Maritime Affairs and Fisheries declared that its mandate to uncover the truth had already been covered by Government. The existence of these narrow and substantively useless provisions enabling the Government to deny legal status to organisations is illegitimate as the rules serve no useful purpose beyond providing the Government with the power to deny registration to groups it disapproves of.

Similarly, restrictions on fundraising through the Act on Collections and Use of Donations whereby anything but the smallest of fundraising drives must be applied for and approved by Government provide the latter with the power to interfere politically. The application process involves not only a collection plan, but also, irrelevantly, a plan for the expenditure of the resources. These restrictions on funding match repressive practices in India and Indonesia. Unsurprisingly, associations organising against Government policy, such as Ganjeong Village and the Miryang Power Towers Opposition Committee, have been denied registration. The former was in fact denied registration on the explicit grounds that the association opposed some aspects of Government policy.

Recommendations

The Government of South Korea must lift all restrictions on the registration and funding of organisations and ensure that it has no power to deny organisations the ability to function and seek funding in any way they see fit. To this end, the Civil Act must be amended by scrapping provisions giving the Government the power to deny applications for legal status: organisations should not have to apply for status at all. Provisions allowing the Government to deny status to organisations based on alignment of organisations' work with their stated goals must also be dropped. Finally, the Act on Collections and Use of Donations must be amended to drop restrictions on organisations' ability to fundraise.

Sri Lanka

The climate for operation of NGOs has significantly improved under the Sirisena administration, and is now less restrictive than most countries in the region. Over half of the organisations blacklisted under the former regime have been normalized. The governance of civil society has been shifted from the Ministry of National Defence to the Ministry of National Dialogue. However, there are concerns that the newly established NGO Secretariat plans to co-opt the work of NGOs: worryingly, one of the Secretariat's official objectives is to 'make sure that NGOs act within the national policy framework of the country.' Under the Voluntary Social Services

Organisations Act 1980, certain NGOs in Sri Lanka are required to register with the Registrar for Voluntary Social Services. The Act requires all organisations that receive Government grants or require visas for expatriate staff to register. Regulations pursuant to the Bill under Gazette Notification No. 1101/14 in 1999 further restricted the freedom of NGOs by imposing dictates on the administration and financial management of NGOs. The Right to Information Act 2016 also opens the door to harassment of NGOs, as it includes NGOs that receive Government or foreign funding under the definition of 'public authorities' from whom information may be requested. As public authorities are required to respond to requests for information, persons wishing to obstruct the activities of an NGO may submit it to a barrage of information requests.

Recommendations

The mandate of the NGO Secretariat must be changed to remove any reference to guiding the nature of NGOs' work. The work undertaken by NGOs should be determined by them and free of any interference from Government. The Voluntary Social Services Organisations Act must be amended to remove any requirement for registration, and regulations pursuant to Gazette Notification No. 1101/14 should be changed to remove any requirements regarding financial management and administrative structure, which should be under the purview of NGOs, not of Government. The Right to Information Act must be amended to remove NGOs from the definition of 'public authorities' to ensure that they are not subject to harassment.

Taiwan

The Civil Associations Act 2011 contains several provisions that limit the scope and scale of associations. Under the Act, those wishing to start an organisation must obtain a permit from the Ministry of Interior. The paperwork for this endeavour is cumbersome and time-consuming. The authorities sometimes abuse the permit process to create complications for organisations critical of the Government. In addition, under the Act, if the Government finds an unregistered organisation operating and the organisation does not comply with

orders to close, its founder can be imprisoned up to two years. The law also involves the Government in the management and administration of NGOs, dictating particular structural requirements. Despite its many restrictive clauses, the Civil Association Act is not currently enforced because most of its regulations fall under the purview of the Ministry of the Interior, which suffers from a chronic lack of resources and is unable to fulfil its mandate. At the same time, associations in Taiwan do suffer from general over-regulation. The new DPP Government has pledged to reform the Act to simplify the registration process and diminish the Ministry of Interior's power to reject applications. The proposed changes would also remove structural requirements, allowing NGOs to decide how to structure themselves.

Recommendations

The DPP must move forward with its plans to amend the Civil Associations Act, but must go further than it has proposed to. Registration should not be obligatory, should be a simple and easy process, and lack of registration must not be a criminal offence. The Ministry of Interior should not have the power to dissolve an organisation unless it has committed a criminal offence. All aspects of an NGO's structure and management should be free from Government regulation.

Thailand

Like many other countries in region, Thailand's laws severely restrict freedom of association. There is no specific law governing NGO registration in Thailand, and NGOs must register as companies, associations, and foundations, the latter being the most favourable for tax purposes. However, registration is a long, complicated process subject to arbitrary denial. Foundations are required to serve the public's interest, a criterion that is left undefined and therefore subject to manipulation by Government to hinder the work of critical voices. Adding to this subjectivity is the lack of clarity in the required documentation to establish an NGO, which, even for a non-critical organisation, can drag the registration process out for well over a year. Registration is also highly invasive: the three

board members required by law must provide financial details, identification, and police clearance. Foreigners are technically permitted to serve on a board, but they are subject to intense scrutiny, which can further encumber the registration process. The law also requires there to be at least 10 members, whose personal information must be provided, which excludes small organisations from legal status. Another significant barrier to registration is the requirement that THB200,000 (US\$5,500) -and in some cases, up to THB500,000 (US\$14,000)- be deposited in a bank account prior to registration. This money must remain in the account at all times, meaning that all costs are over and above this sum, and if the organisation is dissolved, the money may not be claimed. The foundation must also show proof of a lease in order to register. The name of the organisation must be in Thai, and may not be transliterated, even in part. Finally, excessive paperwork with district and provincial, and national-level offices, as well as the requirement that associations and foundations file annual reports, including income and expenses auditing certified by an accountant add to the burdens placed on NGOs.

The Rule of the Ministry of Labour and Social Welfare on the Entry of Foreign Private Organisations to Operate in Thailand of 1998 restricts the activities of foreign NGOs and also the ability of domestic NGOs to access foreign funding. Under Article 9 of the regulations, Government approval is necessary for a domestic NGO to receive foreign funding, as it is in India, Bangladesh, Pakistan, China, Laos and Nepal. International NGOs also need permission to organise or fund seminars, or to establish an office in Thailand. According to the regulations, work related to politics is forbidden, and the objectives and operation plan of an organisation must be 'in conformity with the development policy and security of Thailand,' as well as 'not contrary to the policy of the Thai Government.' These regulations explicitly allow Governments to limit work that might be critical of it or its policies, and mirrors similar provisions in China, Laos, Bangladesh, India and Cambodia. The application process is lengthy, cumbersome and difficult, requiring the submission of, among other things, the organisation's objectives, politics, work plan, financial sources and budget.

Recommendations

The registration process for domestic and international NGOs must be simplified, shortened, non-mandatory, and handled by an independent apolitical agency. There should be no requirements that they serve the public interest as defined by the Government of the day, that they refrain from political activity, or that their work aligns with that of the Government. These restrictions on the nature of associations' work are a blatant violation of the right to freedom of association. Conditions regulating the structure, leadership and funding of organisations must be removed: organisations should be fully empowered to determine these matters for themselves. The Government should have no ability to prevent an organisation from receiving funding from international sources, and neither should it have the ability to stipulate that prior to forming an organisation should possess a specific amount of money.

Vietnam

The Government of Vietnam drafted a law on associations in the 1990s and early 2000s but these drafts were abandoned in 2006 and then revived in 2015. Throughout 2016 drafts of a new Law on Associations have been considered by Parliament, but the draft law on associations was ultimately dismissed in November 2016. This means that the registration and management of NGOs is still governed by a set of very repressive decrees.

Decree 45 of July 2010 made the already lengthy and cumbersome registration process for NGOs even more so. The strictness and breadth of the restrictions that it places upon civil society most closely resemble those of China and Laos. Under the Decree, all organisations must register with the Government, which can prohibit an organisation from obtaining registration if it deems that the organisation contravenes the interests of the Party or the state. In order to be considered a national organisation, at least 100 Vietnamese citizens must back the organisation, and at least 50 Vietnamese citizens are necessary to form a provincial group. These prohibitively high membership numbers are extremely difficult for nascent organisations to

obtain. The organisation must also have a Board of Founders and clearly defined bylaws, both of which must be approved by the Government before the organisation itself can apply for registration.

Decree 45 also states that only six organisations -the Vietnam General Confederation of Labour, the Ho Chi Minh Communist Youth Union, the Vietnam Peasants Association, the War Veterans Association, and the Vietnam Women's Union- may engage with Government agencies and comment on the formulation of public policy. This ensures that the vast majority of civil society stakeholders have no ability to participate in the determination and deliberation of new legislation and policy. Civil society organisations apart from these six are only allowed to participate in programs, projects, and Government consultations if a relevant Government agency specifically requests their input. Moreover, all civil society groups are prohibited from conducting activities deemed harmful to 'national security, social order, ethics, and national...practices.' These vague provisions empower the authorities to ban any group of whose opinions or work it disapproves.

It is extremely difficult for Vietnamese civil society groups to obtain funding from foreign donor organisations. Decree 93, issued in October 2009, regulates the management and use of foreign aid for non-Governmental organisations. Under the Decree, all foreign aid provided to civil society groups in Vietnam must first be approved by the Government, a provision with similarities to laws in Thailand, India, Bangladesh, Pakistan, China and Nepal. Donor aid that could potentially affect political security, social order, or state interests is prohibited. Under Decree 38, enacted in 2013, NGOs are generally prohibited from receiving official development assistance if they are not working on specifically prioritized projects.

Decision 97 of 2009 prohibits NGOs focused on science or technology from working on specific policy issues, such as economic policy and politics, and enumerates 317 topics on which they are allowed to conduct research. Researchers are prohibited from studying any topic not explicitly outlined in the list, and are not allowed to openly discuss their research.

Critics have argued the law was specifically created so that the Government could close the Institute of Development Studies, which was Vietnam's only independent think tank. The Institute voluntarily disbanded in protest the day before the decree went into effect. This barring of NGOs from political work resembles laws in Cambodia, China and Laos.

Article 109 of the revised Criminal Code (previously Article 79) criminalizes the act of joining or establishing organisations with the intention of overthrowing the Government, punishable by capital punishment or life imprisonment. In the power it provides to Government to accuse groups of engaging in rebellion, it resembles the Maldives' Anti-Terrorism Act, Korea's National Security Law, Sri Lanka's Counter-Terrorism Act, India's Unlawful Activities Prevention Act and Laos' Article 57 on rebellion. The revised version of the Penal Code added the crime of preparing to commit this offence, punishable by up to five years in prison. The provision, which is used to trample any dissent, has seen a significant uptick in use in recent years. In December 2016, pro-democracy activists Tran Anh Kim and Le Thanh Thung were sentenced to 13 and 12 years of imprisonment respectively for having prepared to found the 'National Force to Launch the Democracy Flag' group. The Government accuses them of seeking to overthrow the Government, despite the fact that the organisation had not even been established yet, much less planned any activities. In November 2016, pro-democracy activists Luu Van Vinh, Nguyen Van Duc Do, Du Phi Truong and Tuan Doan were arrested and charged under Article 79 for having established a group entitled 'the Alliance of Self-Determined People.' In February 2013, 22 activists of the Council for the Laws and Public Affairs of Bia Son a religious group seeking to protect the environment were sentenced to between 12 years to life in prison under Article 79 for being members of the group, which the Government considers a terrorist organisation. In January 2013, 13 people, including religious activists, students and bloggers were sentenced to between three and 13 years of imprisonment under Article 79 for allegedly being part of the overseas-based Viet Tan pro-democracy group.

The draft Law on Associations, dismissed by lawmakers in November 2016, had maintained all of the restrictions that exist in the current regime, and added even more barriers. Registration remained mandatory under the draft, and was a difficult and complicated process that was subject to Government approval. There were restrictions on the structure and composition of an organisation, including the health, qualifications, age and reputation of its founders, and excessive financial requirements. Foreign funding was banned under the draft, except in exceptional circumstances that are specifically authorized by the Government. Mass organisations, which are Government-run, meanwhile, operated under a different and more permissive set of rules.

Recommendations

Decree 45 must be repealed because it imposes a number of illegitimate restrictions on freedom of association. Registration should be a choice, rather than being obligatory, and no person or organisation should be subject to any form of penalty for participation in a peaceful association. The registration process for organisations that choose to register must be simple, easy, rapid, and administered by a body independent of Government. Restrictions on the activities of associations on grounds beyond those considered legitimate by international standards, such as the use of violence, must be eliminated; Decision 97 must also be repealed for this reason. There must

be no Government interference in the structure, management or operations of associations. The Government must engage with all stakeholders when drafting legislation or creating regulations. Decree 93 must be abolished because funding should be a matter left up to an association and beyond the control of the Government. To require permission for receiving foreign funding is a violation of freedom of association.

The draft Law on Associations must be extensively revised because in its current form it imposes the same illegitimate restrictions on freedom of association as Decree 45, Decision 97 and Decree 93. The law must guarantee freedom of association to all, without mandatory registration or Government intervention in structure, composition, activities, affiliations, funding or any other regard.

Article 109 (previously Article 79) of the Criminal Code must be significantly amended to ensure that it is limited to actual acts of violent rebellion and may not be applied under any circumstances to peaceful acts. By its current definition, it may be widely interpreted to refer to any participation in an organisation opposing the Government. The amended version must explicitly exclude its application to circumstances in which an actual attempt to overthrow the Government through the use of force has not occurred. The Article must also be amended to make punishment proportionate to the act committed.

Unions

Bangladesh

Bangladesh has ratified ILO Conventions 87 and 98 on freedom of association and collective bargaining, but its labour laws remain very restrictive, and the Government remains extremely antagonistic towards trade unions and workers' rights organisations, despite international pressure since the April 2013 building collapse that killed 1,100 garment workers. The Bangladesh Labour Act 2006, labour rules and laws on export processing zones (EPZs) place significant barriers in the way of registering, funding and operating their organisations, making it a more hostile environment for unions than most in the region. The requirements and procedures for registration are excessive and difficult, in violation of international law, which holds that Governments may not have the power to inhibit or prevent the formation of unions. Labour law requires a union to comprise of an excessive 30 per cent of workers in a factory; that its leaders be 'permanent workers;' that all members submit their national identification numbers and union membership certificates; that local police must verify that workers met on a particular day to elect leadership; and that union applications may be 'inspected' by police, which includes interviews of members in the presence of factory management. These barriers not only run contrary to international law, but also give police and factory management opportunities to harass and threaten workers by legally protected means. The Government's powers to reject applications are vaguely defined, giving it great discretion in the matter, which it has used to deny the majority of applications even since 2013. In EPZs in Chittagong and Mongla ports, only one trade union is allowed per port, and no trade union office may be set up within 200 metres of the ports. The right to strike is also very limited, not only in EPZs but in the country as a whole. Finally, the Government has granted total impunity to factories for union-busting, which remains very common. Police routinely refuse to accept complaints from workers of threats, intimidation and physical abuse by factory management.

The draft Export Processing Zone Labour Law, approved by Cabinet in February 2016, has been touted by Government as an improvement for EPZ workers' rights to association. Although it is true that the Law is slightly better than the existing situation, it entrenches the current double standards under which these EPZ workers' right to association are severely constrained. The draft law allows for the formation of Workers' Welfare Associations (WWA), but still bars workers from forming unions in EPZ factories. The law also stipulates that WWAs will not have the ability to bargain on any issue without prior approval of factory owners, will not be permitted to affiliate themselves with national trade unions, and will not have legal status as collective bargaining agents.

In June 2010, the Government cancelled the registration of the workers' rights NGO the Bangladesh Centre for Worker Solidarity, revoked their ability to receive foreign funds, and ordered their bank accounts frozen after one of the organisation's leaders, Aminul Islam, was involved in a protest that called for an increase in the minimum wage for textile workers in Bangladesh. He was murdered in 2012 for his continued struggle for workers' rights, and the authorities have yet to properly investigate his death.

Recommendations

Bangladesh must revise its Labour Act, labour rules and laws on EPZs and bring them in line with its international legal commitments, including the ICCPR and ILO Conventions 87 and 98. The Government should not have the power to deny unions registration, much less impose unreasonable restrictions upon them doing so and investing in itself broad powers to reject applications based on unspecified grounds. EPZs must be subject to the same labour laws as the remainder of the country, where workers should be able to join and form unions in total freedom. The right to strike must be explicitly enshrined in labour law, and interfering with this right must be explicitly made criminal. Specific legislation outlawing any form of union-busting is also necessary, and police must investigate and punish any cases of it that arise.

Cambodia

Aside from extremely repressive contexts such as China, Laos and Vietnam, Cambodia's laws on trade unions are among the most restrictive in the region. Although workers do have the right to form unions in Cambodia, this right is considerably restricted by the Trade Union Law 2016. Rather than focusing on how the freedom to join a union might be guaranteed, the Law concerns itself with restricting unions' registration, structure and operation. Chapter 3 of the Law requires unions to register with the Ministry of Labour (Article 10), and also states that registration must be 'approved' by the Ministry (Article 11). The conditions for approval are not laid out, and are based on Ministry of Labour's policy, meaning that it will have complete control over the approval or denial of registration, without reference to the Trade Union Law. Investing in the Government the potential ability to not allow the formation of a trade union is in contravention of the ICESCR. All activities by unregistered unions are considered illegal under Article 14, meaning that unions cannot begin to operate from the date they submit their application for registration.

The Law also includes a long list of illegitimate restrictions on the autonomy of unions that contravene international law. Articles 20 and 21 lay out specific restrictions on who may hold positions in the union, which include age (18), literacy (obligatory), language (Khmer), and criminal history (none) requirements. All of these requirements are in contravention of international standards as they discriminate on illegitimate grounds totally unrelated to the function of a union, which in any case it is not the business of Government to regulate. The provision on criminal history is particularly worrying given the highly politicized nature of Cambodia's courts. Article 30 adds to these restrictions by stating that any leader of a dissolved union may not be the leader of another union for five years. This restriction is another illegitimate Government attempt to control unions and is particularly egregious given that it would bar the leader of a union which was dissolved due to the closure of the company from serving as the head of another union.

Under Article 24, strict rules on the sources and uses of funding by unions are laid out, once again in contravention of unions' rights to govern their finances. Furthermore, unclear language used in the article appears to suggest that employers may request the audit of unions, which opens up the door to abuse of power and an unequal relationship.

Article 29 allows for the dissolution of unions by the Labour Court on grounds that should be exclusively under the control of unions and require no Government intervention. The article allows a union to be dissolved if it 'contravenes the objectives of the union as stated in its statute,' which is a matter for the union to decide on and certainly does not warrant its disbandment. Furthermore, the article also stipulates that another ground for dissolution is criminal activity undertaken by a member of its leadership, whether or not it is related to the union's activities. The dissolution of an entire union due to an act of an individual member is unacceptable.

Beyond restrictions on their composition, funding, creation and dissolution, the Law also lays out severe controls on union activities. Article 5 lists the activities a union may pursue, but does not include striking. Likewise, Article 9 lists a union's rights, but does not include the right to strike. Article 65 is comprised of a long list of unlawful union activities (much longer than the very brief list in Article 5 on legitimate activities), one of which is if a union is pursuing 'purely political purposes or personal ambition' (65(f)). A union's job is to promote its members interests, and if these coincide with the platform of a political party, this in no way constitutes an unlawful act by the union by international standards. Provision 65(g) is likewise problematic as it bans the obstruction of entrance or exit gates, which is likely to occur in a large crowd if a union holds a demonstration outside of a company's gates.

Finally, the Law displays a clear bias towards employers. This is made clear in Article 79, which establishes fines for preventing a person from joining a union at 1,000,000 riels (US\$250), and fines for compelling a person to join a union against their preference five times higher, at 5,000,000 riels (US\$1,250). Articles 51 and 53 also demonstrate this trend by placing different obligations on

unions and employers: while unions are compelled to compromise with other parties, employers are merely compelled to negotiate.

Similar to Myanmar (discussed below), students' freedom of association is restricted in Cambodia. The situation in Cambodia is different, however, in that the ban is more recent and harsher. In August 2015, an Education Ministry directive was enacted that banned all political activities and unauthorized associations at academic institutions throughout Cambodia. Students are barred from participation in NGOs and speaking out against Government policies. The directive also allows for the removal of staff and students that 'tarnish' academic institutions' political 'neutrality.' However, ruling Cambodian People's Party-aligned organisations will be allowed to continue to operate on campuses.

Recommendations

Although the Trade Union Law is not as repressive as it was in previous drafts, it must be amended. In terms of general purpose of the Law, it must be made clear that it seeks to protect the freedom and independence of unions, rather than focusing on strictly controlling them. Articles 10 and 11 must be amended to transform the process of union establishment from seeking approval to notifying Government. Articles 20 and 21 must be repealed, because the matter of criteria for leadership is up to unions to decide. For similar reasons, Article 30 must be amended to remove the provision forbidding leaders of dissolved unions from holding leadership positions in another union. Article 24 must be amended to give unions full power over their finances. Article 29 must be amended to exclude illegitimate provisions on the grounds upon which the Labour Court may dissolve a union, such as criminal behaviour by a member of leadership or a union's failure to operate according to its guiding principles. Articles 5 and 9 must be amended to clearly state that unions have the right to strike and the right to freedom from interference, and that striking is a lawful activity. Article 65(f) and (g) must be repealed to ensure that unions may freely promote the interests of their members. Article 79 must be amended to ensure that fines for preventing someone from joining a union are at least equal to those for compelling someone to join a union against

their will. Finally, Articles 51 and 53 must be amended to ensure that unions do not have more duties to compromise than employers' organisations do.

The Government of Cambodia must also repeal the Education Ministry's August 2015 directive which entirely withdraws students' right to freedom of association. The ban has no basis in law and is in contravention of Cambodia's own constitution as well as international law that to which Cambodia is bound.

China

Workers in China are not permitted to freely join or form unions, similar to the situation in Laos and Vietnam. The Trade Union Law 1992 stipulates that no trade unions are permitted outside to the All-China Federation of Trade Unions (ACFTU), which is controlled by the Party. Thus, while union activity is technically allowed, it is only authorized to occur under the ACFTU, meaning that workers cannot join or form unions as they choose. Because the ACFTU is under Party control, neither can workers choose their leaders, and this is reflected in the ACFTU's priorities, which centre upon social stability, rather than the rights of its workers. There is no national legislation on collective bargaining, meaning that employers are not required to bargain with employees. Neither is the right to strike guaranteed in law.

Recommendations

The Trade Union Law must be amended to ensure that workers are free to join and form independent unions unaffiliated with any other union or body. Legislation must be enacted to guarantee the right of workers to strike, and also on collective bargaining, to ensure that this right is fully protected and that employers are required to bargain with workers by law.

India

The right to join and form unions is relatively protected in India, but many restrictions, particularly at the state level, remain. Under the Trade Unions Act 2001, a union must have a minimum of 100 workers or 10 per cent of the workforce in order to be established. This is an

excessively high size requirement that discourages the proliferation of unions and constitutes a very clear restriction on freedom of association. The Act also limits the number of persons not employed in the company who are permitted to serve on a union executive committee, which limits the right of persons to choose their leadership freely. Under the Act, there is no legal obligation for employers to recognize a union or engage in collective bargaining with it, which is a crucial omission debilitating to unions' ability to bargain collectively. The Act also distinguishes between civil servants and other workers, with the former's rights to association being extremely limited.

The Industrial Disputes Act 1947 stipulates an unreasonably long notice for the holding of a strike. Under the Act, public utilities workers are required to announce a strike at least 14 days before it is to take place. In special economic zones, an extraordinary 45 days of prior notice is required. In certain other sectors, notice must also be submitted.

States also have great powers to limit freedom of association. Although prior authorization is generally not required to form a union, it can be at the state level: for example, in Sikkim, trade unions are subject to police inquiries, and poor relations between union leaders and the police can result in denial of registration. States may also ban strikes across the board: in 2002, Kerala banned all strikes that involved the total shut-down of activities.

The Tamil Nadu Essential Services Maintenance Act demonstrates other powers that states legally have to restrict freedom to associate. Under the Act, workers who provide essential services do not have the right to strike, and the definition of 'strike' includes the refusal to accept work, refusal to work overtime, or any other behaviour that is likely to result in a slowdown of work. This extremely broad legislation provides employers with the ability to force workers to accept overtime and overly heavy workloads. The penalty for 'striking' as defined by the Act is up to three years of imprisonment and a 5,000 rupee (US\$75) fine. This penalty also extends to anyone who instigates workers to go on strike or provides financial assistance to striking workers.

Recommendations

India's Trade Unions Act must be amended to significantly lessen the number of workers needed to form a union and to remove the limitation on the number of union employees who may not be workers at the enterprise in question. It must also remove the distinction between civil servants and private employees. The Act must establish a clear legal obligation for companies to recognize unions and negotiate with them. Finally, the Act must clearly outlaw any interference with the right to form unions, bargain collectively, or strike at the state level.

State Governments in India currently restricting these rights -particularly Tamil Nadu, Kerala, Manipur, Maharashtra and Sikkim- must repeal all such legislation immediately. There should be no need to notify or apply for permission to strike; all workers should be permitted to strike; there should be no need to apply for registration; no workers should be financially liable for losses incurred by their employer in the event of a strike; and there should be no criminal penalties for any union activity.

The Industrial Disputes Act must be amended to remove the provision requiring any notice by any worker of a strike.

Indonesia

The right to form and join unions is better-protected under Indonesian law than many other countries in the region; but despite this, there are some shortcomings in the legislation on the matter. Under the Trade Union/Labour Union Act of 2000, civil servants' right to organise is restricted under Article 44. The right to strike is protected by Law No. 13/2003 on Manpower, but it must be held in a 'legal, orderly and peaceful' manner and as a result of a failed negotiation. These two provisions, particularly the former, allow the Government to limit strikes. Furthermore, the Government must be provided with information about the strike ahead of time, and strikes are banned for workers in industries that serve the public interest. Employers are also authorized to take lockout actions in retaliation.

Recommendations

The Trade Union/Labour Union Act must be amended to remove the restrictions on civil servants' ability to strike. The Law on Manpower must be amended to remove the conditions on the right to strike.

Laos

Freedom of association for workers is severely restricted in Laos, to an extent matched only by China and Vietnam. Independent trade unions are expressly prohibited in Laos under the Trade Union Law 2008. As in China, the Law states that all unions must affiliate with the Government-controlled Lao Federation of Trade Unions, which has publicly stated that it helps the Government enforce 'labour discipline.' The Law also requires that all trade unions conduct their activities in line with the leadership of the LPRP.

Workers' ability to strike is severely limited. Under the Labour Law, workers are not permitted to stop work in the event of a dispute over labour regulations or benefits. This means that while arbitrators are trying to work out a deal, workers must remain in their positions, making it unlikely that executives will accede to their demands. Any person involved in such a stoppage, or who incites workers to take part in one, faces legal repercussions.

Recommendations

The Trade Union Act and the Labour Act should be amended to allow for the free formation of labour and trade unions wholly independent from Government interference, and should include provisions that safeguard workers' right to strike.

Malaysia

As in most countries in the region, trade unions in Malaysia have some independence and some ability to promote workers' interests, but the right to free association is not fully secured and is restricted in some regards. The Trade Unions Act 1959 governs the right of association for workers and trade unions. Under the Act, the Director General of Trade Unions in the Ministry of Human Resources may refuse to register a trade union without providing

any justification, and without the union having any right to appeal. Officers of trade unions cannot hold political office. This means that workers affiliated with unions are generally not afforded a voice in political dialogues. The Act allows the Director-General of Trade Unions, a Government official, to decide what industry a particular trade union belongs in. In the past, this has been used to control and weaken trade unions by splitting unions from similar industries into different groups, making it more difficult for them to project a unified voice. The right to strike is limited by the requirement that two thirds of members must vote for a strike (and the Government must verify that this requirement has been met). Strikes relating to union registration or illegal dismissals are also not permitted, and neither are general strikes. There are criminal penalties for participating in an illegal strike, which can range up to a year of imprisonment. Trade unions are also regulated under the Industrial Relations Act 1967, which mandates that prospective unions submit requests to unionize to their employer. The Act also stipulates that workers with job roles categorized as confidential, managerial, executive, or security are barred from forming or joining a union. Non-clerical police and Military personnel are also prohibited from unionizing.

The Universities and University Colleges Act 1971 limits university students' exercise of the right of free association, which to some extent is similar to the regulations in Cambodia. Under the Act, all students and university faculty were previously prohibited from participating in any society, political party, or trade union. The 2012 amendments to the Act stipulate that students can join political parties and campaign as candidates in elections, but may not engage in political activities on campus. The law also mandates that the university approve all student-run organisations. Universities retain the ability to disband or forbid students from participating in any organisation deemed unsuitable to the interests or well-being of the university and its students. Any university vice-chancellor may take disciplinary action against students who participate in political activities that are 'unsuitable to the interest or well-being of the university.' In October 2016, Universiti Malaya subjected four students to disciplinary hearings due to their participation in

the TangkapMO1 anti-corruption protests in August 2016. The university threatened the students with fines, suspensions and expulsion. In the first half of 2014, students who participated in on-campus protests against the Trans-Pacific Partnership, against the death sentence in Egypt, and against the declining price of rubber were all disciplined under this act. In October 2014, eight students at the University of Malaya who had organised an event where Opposition leader Anwar Ibrahim was to give a talk were suspended and fined under the Act.

Recommendations

The Trade Unions Act and the Industrial Relations Act must be amended to remove the requirement that unions gain any form of permission from employers to form a union. Any power provided to employers in the formation or operation of a union is an illegitimate interference with the right to association. Unions themselves should be given the power to determine what quota of votes is needed to trigger a strike, and any restrictions on the right to strike should be lifted. Participation in a peaceful strike should under no circumstances result in criminal penalty. Unions must also be given the power to self-designate freely, and the Government's power in this regard must be abolished. All workers must be guaranteed the right to unionize.

The Universities and University Colleges Act must be repealed, as it explicitly restricts students' ability to associate. Students, like any persons, are entitled to join, form and operate associations freely and as they see fit, without any restrictions by Government.

Maldives

The Associations Act 2003 requires any association, including trade unions, to register with the Government, which has the ability to block registration for a wide variety of reasons. Workers in the Maldives also face an uncommon problem: as unions have only been legal in the Maldives since the passing of the Employment Act 2008, the necessary infrastructure to enforce the right to join and form unions and participate in union activities is not yet present, meaning that employers often violate the law with impunity. The right to collective bargaining is still not enshrined in law.

Although the law technically allows all citizens of the Maldives to join trade unions, one must be a Muslim in order to be considered a citizen of the country. Because many of the country's migrant workers are not Muslims and are not citizens, their ability to form trade unions and advocate for their rights is not constitutionally protected and has, in practice, been restricted by the state.

Recommendations

The Associations Act and the Employment Act must be amended to ensure that the Government has no power to refuse permission for a union to be established: at the most, unions may be required to notify Government. The Government must also engage in the development of adequate institutions to make the rights of unions effective and ensure that violations of labour law do not go unpunished. The right of migrant workers to join and form trade unions must be enshrined in the Maldivian constitution.

Mongolia

Freedom to join and form trade unions is broadly respected in Mongolia to a greater degree than most other countries in the region, but there are some restrictions on this right. Under the Law on the Public Service, public servants are banned from participating in unions and engaging in strike action. Migrant workers do not have the right to unionize, as the Constitution and the Law on the Rights of Trade Unions only refer to the rights of 'citizens.' Employers also frequently attempt to inhibit the formation of unions by forbidding union activities during work hours, firing workers who join unions, refusing to negotiate collective bargaining agreements, or not paying salary deductions for union dues.

Recommendations

The Government of Mongolia should amend the Law on the Public Service to allow public servants to join and form unions. It must also amend the Constitution and the Law on the Rights of Trade Unions to ensure that migrant workers who are not Mongolian nationals the right to join and form unions. Finally, it must improve its enforcement of labour law to ensure that employers are penalized if they do not fully respect the right of their employees to unionize.

Myanmar

Under Military rule, all student and teachers' unions in Myanmar were technically illegal, and were unable to register as groups on university campuses. There was hope in 2014 that the National Education Law would change this situation and officially recognize teachers' and students' unions as legal entities, but the law was amended to remove this provision before it was passed. The continuing lack of legal recognition for these unions is a limitation on the right to free association.

Recommendations:

The National Education Law must be amended according to interested parties' -particularly students'- input. In particular, teachers' and students' unions must be explicitly recognized as legal entities under the law.

Pakistan

Workers' right to join and form trade unions and unions' right to bargain collectively is broadly protected in Pakistan, but many workers are forbidden from joining unions by a range of legislation: the Industrial Relations Act (IRA) 2012, the Khyber-Pakhtoonkwa IRA (KPIRA), the Punjab IRA (PIRA), the Sindh IRA (SIRA), and the Balochistan IRA (BIRA). Under this legislation public servants, EPZ workers, agricultural workers, members of the armed forces, police, health workers, workers in the non-profit sector, essential service providers, and workers in the education sector are all barred from joining unions. These categories of workers account for approximately 60 per cent of the formal workforce. Workers not under a contract -in other words, informal workers, who constitute some 70 per cent of the total workforce- are not permitted to join and form unions.

The IRA, BIRA, KPIRA, PIRA and SIRA also place barriers in the way of union formation and meddle in union structure and operation. Under the laws, if there are already two unions in place for a particular group of workers, another union may not be formed unless it constitutes an unreasonable 20 per cent of the workers. Workers are not permitted to join more than one union. Any person convicted of a criminal

offence in the previous five years or convicted of a crime under the IRA is not eligible for union leadership. With regard to internal affairs, the IRA dictates that union leaders' terms may not exceed two years and that the National Industrial Relations Commission (NIRC) may forcibly reinstate a leader who has been expelled from a union. The NIRC may cancel a union's registration on broad grounds, and this decision may not be appealed.

Recommendations

The IRA, KPIRA, PIRA, SIRA and BIRA must be amended to abolish the restrictions on workers' ability to organise freely. All workers must be permitted to unionize, including informal workers, who are the most vulnerable to abuse and therefore most in need of this right. Legal restrictions on the formation and operation of unions must be abolished: the restriction on the establishment of more than two unions must be removed, as must limitations on who can hold office. The NIRC's power to forcibly reinstate union members must be revoked, and its power to cancel a union's registration must be made narrower and more clearly defined, and must be subject to appeal in an independent court.

The Philippines

Freedom of Association and the right to bargain collectively are guaranteed by the Philippines' constitution, and the ILO deems the Philippines to be a nation that has made significant improvement in this regard, but certain hindrances to these rights remain, although they are mostly relevant to policy, rather than legislation. Union registration is a lengthy and complicated process that can inhibit workers' ability to organise. Furthermore, the ILO has ruled that the Philippines' Government has been illegally involved in interference with the process of unions' leadership selection. Finally, companies routinely circumvent their obligations by employing contractualisation tactics, whereby they sign workers to five month contracts to avoid allowing them becoming full-time employees with the right to unionize. Although the Department of Labour and Employment has issued a directive forbidding this practice, it remains widespread.

Recommendations

The Government of the Philippines must take proactive measures to guarantee workers the right to organise by simplifying union registration, not interfering with unions, and cracking down on industry practices such as contractualisation. Companies employing tactics to bust or inhibit unions and full worker participation therein should be criminally liable for their actions.

Singapore

The right to form and join trade unions in Singapore is generally respected by the Government but still subject to minor restrictions. Under the Trade Unions Act 1940, all trade unions must register with the Government's Registrar of Trade Unions, which can choose to refuse registration at its discretion. All civil servants in Singapore are prohibited from joining trade unions under the Act, but the Act allows the President of Singapore to make exceptions, and most civil servants are members of the Amalgamated Union of Public Employees. Furthermore, as in Thailand, only citizens of Singapore can serve as officers or trustees of unions, and only citizens may accept or reject collective bargaining agreements that are negotiated by union representatives. Sectors such as domestic work are not considered formal and therefore not governed by the Act, meaning that some 180,000 domestic migrant workers cannot unionize. These stipulations make it difficult for migrant workers to advocate for better working conditions. In November 2012, Chinese bus drivers went on strike to demand equal pay as well as the payment of overtime. 29 were deported and five others were prosecuted with one receiving a six week prison sentence. They were charged with striking illegally because transportation constitutes an 'essential service' according to the Government, despite the fact that the ILO does not view it as such.

Recommendations

Singapore must amend the Trade Unions Act to fully guarantee the right of all persons, including non-citizens and public servants, to join and form unions. The Registrar of Trade Unions' power to refuse trade union registration must be eliminated or narrowed so that the body may only have the power to require

that basic procedural requirements be fulfilled. Government regulations governing unions' structure and leadership should be removed as well; these should be the exclusive domain of unions.

South Korea

Article 33 of the Korean Constitution guarantees the right to collective action but limits the application of these rights for public officials and employees in the defence industry. This mirrors laws in India and Indonesia that deny all or certain workers in the public sector the right to organise. Under the Act on the Establishment, Operation Etc. of Trade Unions for Teachers (AEOTUT), teachers are not able to engage in any kind of political activity, and university lecturers are not permitted to join or form unions. This requirement is reminiscent of Cambodia's LANGO requirement that associations be 'politically neutral.' The Act on the Establishment, Operation Etc. for Public Officials' Trade Unions (AEOPOTU) forbids public officials from engaging in industrial action.

Trade unions rights are repressed through a variety of laws. In recent years, the Government has used articles of the Criminal Act, in particular Article 185 on the obstruction of traffic, to criminalize union activities. Unions' ability to assemble to voice opinions of Government policy is a central part of the right to strike, and denying them that ability is denying them the right to strike. In July 2016, Han Sang-gyun, the leader of the Korean Confederation of Trade Unions, was sentenced to five years in prison under Article 144(2) (injury to a public official), 144 (obstructing a public official), 141 (destruction of public goods) and 185 (obstructing traffic) for participating in protests in 2014-2015.

Unions' right to strike is also restricted by the Government's use of Article 314 of the Criminal Code on obstruction of business. Under the law, anyone who interferes with the business activities of another through the threat of force can be imprisoned for up to five years. This article has been used to punish unions engaging in strikes by interpreting a strike as an obstruction of business. Employers also have the right to sue unions for damages. Strikes, by their very nature, are an impediment to business:

that is the point of a strike. To use legislation on the impediment of business to override the right to strike is an effective negation of that right.

In December 2013, members of the South Korean Railway Workers Union began a strike against the Government's plan to privatize and restructure South Korea's rail system. Two weeks after the strike began, eighteen protest leaders were charged under Article 314 of the Criminal Code. The charges were dropped in December 2014. Korean Railways then sued the union for damages worth 16,200,000,000 won (US\$15,000,000).

Trade unions regularly face interference from company management in their operations. Sham unions aligned with the employer are formed, companies engage in surveillance, place pressure, issue threats, and dismiss employees who are part of a union. These tactics are used subtly by large corporations such as the Samsung Group so as not to explicitly break labour law.

Recommendations

The Constitution must be amended to remove the limitations it places upon public officials' and defence industry workers' right to engage in collective action. The AEOTUT must be amended to guarantee teachers' unions the right to engage in 'political activity' such as advocating for or against policies and to guarantee university lecturers the right to join and form unions. The AEOPOTU must be amended to allow public officials to engage in industrial action. Placing minor limitations on the ability of state employees involved in the provision of vital services to engage in industrial action is acceptable by international standards; but placing major barriers in the way of all public officials is not.

The right to strike must be fully guaranteed to all workers. Articles of the Criminal Act being used to override this right must be amended to include provisions forbidding their application to persons engaging in strike activity, which includes peaceful political demonstrations. Articles 185, 144, 141 and 314 in particular must be amended in this fashion. The Government must take a proactive stance in preventing intimidation and union-busting which is currently prevalent.

Taiwan

The right to join or form independent unions, conduct strikes and bargain collectively is protected by law in Taiwan, but there are certain restrictions on these rights. As in most countries in the region, unions are obliged to register with the Ministry of Labour, which has the power to reject applications or to dissolve unions who have violated their constitutions or broken the law. Public servants, teachers and defence workers do not have the right to strike, and those in utilities, hospital services and telecommunication must maintain a level of service during strikes. No striking is permitted on fundamental issues such as collective agreements, labour contracts and regulations, which must be handled in the courts.

Recommendations

The Ministry of Labour should not have the power to reject an application for the establishment of a union, and should have the power to shut a union only when serious criminal malfeasance has occurred. All workers must be permitted to strike on any issue.

Thailand

The Labour Protection Act 1998 protects certain aspects of freedom of association, but restricts others. As in Singapore, non-citizens cannot be one of the 10 workers who are required in order to a union to be established. This effectively strips millions of migrant workers from Myanmar and Cambodia of the right to form unions. The Ministry of Labour may dissolve a union if its membership falls below 25 per cent of the workforce eligible to join it, which is an excessively high baseline. The law forbids there being more than one union in a state-owned company. Only workers who are employed in the relevant workforce are able to be union members, meaning that persons whose employment is terminated are automatically no longer union members, regardless of the legality of the termination. The ability of unions to bargain collectively is also limited: the union must have voted in favour of it at its annual meeting in order for it to begin, which places unnecessary delays upon the process. Furthermore, unions may only bargain collectively if they represent at least 15 per

cent of the workforce. Private sector strikes may be prevented by the Government if they could impact national security or 'the population at large.' Under the State Enterprise Labour Relations Act, state enterprise employees are not permitted to engage in lock-outs and civil servants do not have the right to strike. 'Essential service' providers, who are more broadly defined in the Act than by the ILO, are also forbidden from striking. Under Order No. 54/1991, promulgated by the NCPO Military Government and still in effect, unions may only employ two advisers at a time, and they must register with the Ministry of Labour, which can reject their registration on broad grounds.

Recommendations

The Labour Protection Act must be amended to permit non-Thais to form unions, and eliminate requirements on the proportion of the eligible workforce and limits on the number of unions. Unions must be permitted to form their own regulations governing termination and union membership. Restrictions on the right to bargain collectively and to strike under this Act as well as the State Enterprise Labour Relations Act must be eliminated. Order No. 54/1991 must be revoked to remove restrictions on union advisers.

Vietnam

Vietnam's Trade Union Law does not allow for the free joining and forming of trade unions. As in Laos

and China, the law states that there may only be one trade union which controls organised labour for the entire country. This union, the Vietnam General Confederation of Labour (VGCL), is directed by the Communist Party. Its leadership is not independent: union officials at every level are essentially Government employees. The consequence of this is that the union does not represent its workers, but rather the Government, and has a poor record of promoting workers' interests. Only Vietnamese workers may join or establish a trade union. In February 2010, labour activists Do Thi Minh Hanh, Nguyen Hoang Quoc Hung and Doan Huy Chuong were arrested for handing out leaflets at a shoe factory to help them organise themselves to obtain decent pay and working conditions. In October 2010, they were sentenced to seven, nine and seven years of imprisonment respectively under Article 89 for 'disrupting security.' Do Thi Minh Hanh was released in 2014 following international pressure.

Recommendations

The Trade Union Law must be significantly amended in order to be brought in line with international standards. The one-union system must be abolished, and workers must be free to join and form independent unions which are not subject to Government oversight or approval. Union members must be free to elect leaders of their choice, with no restrictions imposed by the Government. Any worker of any nationality should

BANGLADESH

Synopsis of the challenges of HRDs

Bangladesh is a politically divided country. The division has resulted in a climate in which the work of Human Rights Defenders (HRDs) becomes difficult and dangerous. The aggressive attitude and repressive acts of the government add to the difficulty and danger in various ways.

Threats to HRDs, including political opponents, started the day the 15th Amendment to the Constitution of Bangladesh was introduced to remove the system of holding elections by a caretaker government.³ This paved the way for the ruling Awami League to assume power, in January 2014, for a second term through elections that were boycotted by the main opposition Bangladesh Nationalist Party and other political parties. Four years down the line, Bangladesh has reneged to an 'autocratic rule' according to Transformation Index 2018 Germany-based Bertelsmann Stiftung,⁴ with almost all state institutions perceived to toe the party line of the Awami League. In such a situation, the safety and security of HRDs remains precarious as does of government critics and leaders and activists of opposition political parties.

Non-governmental organisation (NGO) activists, journalists, bloggers and trade unionists are facing persecution and harassment by the Government and Non-state actors who are allegedly supported by

the Government. HRDs are the victims of physical attacks, torture, enforced disappearances and extrajudicial killings. Detained HRDs have been subjected to torture and ill treatment. Surveillance of civil society activists are under Bangladesh's draconian laws, remains frequent. Intelligence agencies and security forces monitor events on human rights issues. NGOs are routinely forced to cancel events.

The arbitrary application of repressive laws against political activists and HRDs results in judicial harassment, arbitrary arrests and fabricated charges. The threat of legal action for exposing information on human rights violations is often used to silence those involved in human rights work. NGOs have to operate under severely restricted and challenging circumstances due to imposition of repressive laws, lack of financial resources and economic sustainability, political instability, and a prevailing culture of impunity in which human rights abuses against HRDs go unpunished. Bangladesh ranks 102 out of 113 countries on World Justice Project instability.⁵

The repression of disagreement and critical opinions through the violent dispersal of public assemblies has reached alarming levels. HRDs publicly calling for political reform or for greater observance of women's, ethnic, religious or linguistic minorities' rights are exposed to reprisals from State and Non-state actors. Discussion of sensitive issues related to human rights is largely confined to online blogs

³ The Caretaker Government system was incorporated in the Constitution through the 13th amendment to the Constitution, as a result of people's movement led by the then Opposition Awami League and its alliance between 1994 and 1996 due to the continuation of enmity, mistrust and violence between the two main political parties (BNP and Awami League). Later this system received a huge public support. However, in 2011 the caretaker government system were removed unilaterally by the Awami League government through the 15th amendment to the Constitution, without any referendum and ignoring the protests from various sectors, including civil society; and a provision was made that elections were now to be held under the incumbent government. As a result, the 10th Parliamentary elections were held on 5 January 2014 despite a boycott by a large majority of political parties. The election was farcical and out of 300 constituencies, 153 MP's were declared elected uncontested even before the polling commenced.

⁴ Democracy under Pressure: Polarization and Repression Are Increasing Worldwide, <https://www.bertelsmann-stiftung.de/en/topics/aktuelle-meldungen/2018/maerz/democracy-under-pressure-polarization-and-repression-are-increasing-worldwide/>

⁵ WJP Rule of Law Index, 2017-2018, <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018>

and forums, but even that medium is no longer safe with the advent of harsh cyber laws and attacks on bloggers and online activists. Non-state actors have killed and assaulted bloggers who have expressed their views against Islam, creating a climate of fear for the past five years. Bloggers have been forced to go into hiding or leave the country. Labour activists challenging vested business interests are also often targeted, and attacks against them are rarely effectively investigated. The Government organs are also directly involved in the repression of labour leaders: In December 2016, police filed a case against 15 labour leaders and activists under Article 16(2) of the Special Powers Act, 1974 with Ashulia Police Station for the allegations of 'conspiracy' or planning criminal activities. Police arrested eight of the 15 persons by calling them to the police station for a 'discussion' under Article 16(2) of the Special Powers Act, despite this Article being repealed.⁶ Furthermore, in August 2014, police detained two labour rights activists as they were travelling to attend a rally organised by garment workers.⁷

Implementation of constitutional standards of human rights is poor and the criminal justice system is dysfunctional and the Judiciary is unwilling to address human rights violations. Regarding freedom of expression, a series of systematic and organised targeted attacks on bloggers, journalists, HRDs, Lesbian, gay, bisexual, trans, and/or intersex (LGBTI) and online activists have been carried out since 2015. Attackers remain unpunished due to an absence of credible investigation and due to a culture of impunity. These killings create an atmosphere of fear, and bloggers are either leaving the country or self-censoring their writings so as to not compromise their safety and security. In May, 2017, Sultana Kamal, a lawyer and Women Human Rights Defender (WHRD) in Bangladesh received threats from the Islamist group Hefazat-e-Islam

(Hefazat), a coalition of teachers and students of quami Madrasas, after expressing her opinion on a news channel's talk show.⁸ FORUM-ASIA's member organisation Odhikar and its staff members -particularly Secretary, Mr. Adilur Rahman Khan, who is also the Vice-Chairman of FORUM-ASIA, and Director, Mr. A.S.M Nasiruddin Elan- have continuously faced judicial harassment since 2013 and have been charged under Article 57 of the Information Communication and Technology (ICT) Act for publishing a report on extrajudicial killings.⁹

At present, there is no atmosphere of guaranteed security for expressing any opinion in the country. There have been several emblematic cases of repression of the right to freedom of expression and judicial harassment of journalists. Mahmudur Rahman, Acting Editor of the Daily Amar Desh newspaper, was arrested on 11 April 2013 and arbitrarily held in pre-trial detention for 1,322 days until his release on bail on 24 November 2016. Despite his release, Mahmudur Rahman continues to face prosecution in 118 cases filed against him across the country, mainly on defamation and sedition charges. Shafik Rehman, an 83-year-old author and journalist, was arrested on 16 April 2016 by plainclothes men without a warrant. He was eventually charged with 'conspiring to abduct and assassinate' Prime Minister Sheikh Hasina's son, and was repeatedly denied bail despite his advanced age and frail health. He was freed from jail on 6 September 2016. Mahfuz Anam, Editor of The Daily Star, is facing 82 cases of sedition and defamation for having published reports in 2007 that allegedly accused Prime Minister Sheikh Hasina of corruption. Shaukat Mahmud, Editor of the Weekly Economic Times and President of the Bangladesh Federal Union of Journalists, was arrested on 18 August 2015 and held for nearly a year in arbitrary detention on 24 fabricated criminal

⁶ Human rights monitoring report of January 2017, Odhikar 1 February 2017, http://www.odhikar.org/wp-content/uploads/2017/02/HRR_January_2017_English.pdf

⁷ 'Bangladesh: union leaders & HRDs were assaulted and arrested,a FORUM-ASIA, 16 March 2015, <https://asianhrds.forum-asia.org/?events=bangladesh-union-leaders-hrds-were-assaulted-and-arrested>

⁸ Joint Statement – Bangladesh: Conduct a credible investigation into threats of violence and ensure protection of Sultana Kamal, <https://www.forum-asia.org/?p=24224>

⁹ Bangladesh: Stop judicial harassment of Adilur Rahman Khan and A.S.M Nasiruddin Elan of Odhikar, <https://www.forum-asia.org/?p=22818>

charges of arson and vandalism. On 22 June 2016, he was finally released on bail on orders of the High Court Division. On 5 January 2016, the authorities arrested Abdus Salam, Chairperson of Ekushay TV, on trumped-up charges for broadcasting a speech of an exiled opposition leader. Abdus Salam is on bail.

There have been grave allegations of torture, extrajudicial executions and disappearances committed by the state agencies against political opponents and dissidents. Abuse of power by law enforcement agencies is rampant. The Rapid Action Battalion (RAB) and the Detective Branch (DB) of Police are widely viewed as the main perpetrators in cases of torture, enforced disappearances, and extrajudicial killings of HRDs. Furthermore, on 3 May, 2018, Prime Minister Sheikh Hasina approved for the RAB to continue armed operations against drug abusers, reportedly to combat the spread of Yaba, a mixture of methamphetamine and caffeine, widely known in Asia. From 15 May 2018, incidents of 'gunfight' commenced across the country during 'anti-drug drives' and since then, killing sprees in 'gunfights' between drug peddlers and law enforcers during such operations are rapidly increasing. At least 165 persons were allegedly killed extra-judicially and more than 26 thousand people were arrested as alleged drug peddlers in raids carried out under an anti-drug drive from 15 May to 30 June 2018.¹⁰ Since then, about 21 thousand people arrested and 15,333 cases have been filed in connection to drug dealing.¹¹ The United Nations High Commissioner for Human Rights, Zeid Raad Al Hussein expressed concern, and urged fundamental criminal justice principles like presumption of innocence and the right to due process must be at the forefront of any efforts to tackle crime.¹² These incidents are seen as an attempt to create fear amongst HRDs, dissidents and political opponents ahead of the upcoming 11th Parliamentary Elections to be held in December 2018. In addition to this, HRDs also

face serious threats from radical religious groups and other Non-state actors.

The judiciary is formally separated from the executive branch, but is considered ineffective due to corruption, political intervention and lack of independence. Impunity for crimes against HRDs is a serious contributor to their general lack of security.

As of 2018, Bangladesh has not accepted a request for a visit by the UN Special Rapporteur on the situation of human rights defenders made in 2013, and has failed to substantively address a number of General Allegations and Joint Urgent Appeals sent by several UN Special Rapporteurs.

Repressive laws and policies

Amidst tighter international donor budgets for human rights, HRDs in Bangladesh are also grappling with an increasingly intrusive Government which in recent years has introduced several pieces of legislation that severely restrict their freedom.

In October 2016, Parliament passed the Foreign Donations (Voluntary Activities) Regulation Act, 2016.¹³ The Act places undue restrictions on Civil Society Organisations' (CSO) access to resources, as well as their freedom to structure themselves and carry out activities freely. The Act amends the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 and integrates the Foreign Contributions (Regulation), 1982 into it. Restrictive provisions from the previous ordinances remain under the new Act: all NGOs are obliged to register with the NGO Affairs Bureau -which is under the direct control of the Prime Minister's Office- and must obtain approval from the Bureau for every activity that involves funding. The grounds for rejection or changes by the Bureau are not specified, effectively granting it broad powers to interfere with, control, and even cancel CSOs' work. Organisations' registrations have previously been

¹⁰ Odhikar's documentation

¹¹ <https://www.ucanews.com/news/bangladesh-plans-death-penalty-for-drug-dealers/82635>

¹² <https://www.forum-asia.org/?p=26463>

¹³ 'Foreign Donations (Voluntary Activities) Regulation Act, 2016, 2016for-drug-dealers/826http://www.icnl.org/research/library/files/Bangladesh/FDVA.pdf

rejected because the Bureau was 'not satisfied' with the organisation's objectives or plans.

Under the new Act, NGOs must submit annual reports and re-register with the Bureau every 10 years. Organisations whose applications for registration are rejected have no recourse for an independent appeal: their only right to appeal is to the Prime Minister's Office, which controls the NGO Affairs Bureau. Furthermore, no clear time frame for the approval of registration or individual projects is specified, and there is no provision granting automatic registration in the event of the Bureau's failure to respond to a registration request. The Bureau's commissioners will review on a monthly basis the progress made by NGOs in the implementation of their projects. The Bureau will have the authority to approve each appointment of a foreign consultant or expert under foreign-funded projects, as well as all travel abroad paid for by foreign funding. The Act also stipulates that no NGOs shall engage in 'anti-state activities' or make comments that are 'derogatory' about the Constitution or any 'constitutional institution.' No definition is provided for these terms, meaning that any critical comment involves the risk of leading to the shuttering of an NGO.¹⁴

The penalties for failure to comply with any of these directives are the suspension or cancellation of registration, cancellation of particular activities, or sanctions against the organisation and its employees. Critically, there is no mention of proportionality in the Act, meaning that even the most minor offence (not submitting an annual report, for example), could lead to an NGO being closed down.

The Information and Communications Technology (ICT) Act, 2006,¹⁵ amended in 2009 and 2013, allows for heavy restrictions on online freedom of

expression. The law criminalises the publication of any defamatory or false information online as well as information that is obscene, could deteriorate law and order, prejudice the state, or cause harm to religious belief (Article 57). The Act also criminalizes whistle blowing, as any unauthorized disclosure of information, with no exceptions for intent, is an offence (Article 63). The Act has been used to prosecute journalists, HRDs and opposition political groups and block websites with content deemed sensitive by the authorities. In August 2013, Adilur Rahman Khan, Secretary of Odhikar, a prominent human rights NGO and member organisation of FORUM-ASIA, was arrested under the ICT Act and Article 505(a) and 505(c) of the Penal Code.¹⁶ He was arrested on accusations that Odhikar had allegedly distorted the number of protestors killed in a police crackdown during an assembly of Hefazate Islam in May 2013. Weeks after his arrest, the government amended the ICT Act and made offences under Articles 54, 56, 57 and 61 of the Act cognizable and non-bailable. This means that law enforcement officials may arrest suspected violators of the law without a warrant and keep them detained without bail for an indefinite period. The amendment in 2013 also increased the maximum punishment from 10 years to an extraordinarily harsh 14 years with a mandatory 7 years imprisonment. Following the amendment, in November 2013, Nasiruddin Elan, the Director of Odhikar, was also arrested under the ICT Act and Article 505(a) and 505(c) of the Penal Code.

A draft Digital Security Act (DSA)¹⁷ was approved by Bangladesh's Cabinet on 29 January 2018,¹⁸ and placed in the Parliament on April 9, 2018,¹⁹ after recommending that five Articles, including

¹⁴ 'Bangladesh: New law designed to stifle civil society must be repealed, 17 October 2016, <https://www.amnesty.org/download/Documents/ASA1349962016ENGLISH.pdf>

¹⁵ 'Information and Communications Technology (ICT) Act, 2006 Act, 2006ENGLISH.pdf6ENGhttp://www.icnl.org/research/library/files/Bangladesh/comm2006.pdf

¹⁶ Penal Code of Bangladeshhttp://bdlaws.minlaw.gov.bd/Articles_detail.php?id=11

¹⁷ 'Digital Security Act, 2016,<https://www.forum-asia.org/uploads/wp/2016/08/Digital-Security-Act-English-09.03.2016.pdf>

¹⁸ 'Draft of Digital Security Act Approved: Gag on freedom of expression',ital of Digital Security Act Approh<https://www.thedailystar.net/frontpage/draft-digital-security-act-approved-gag-freedom-expression-1527013>

¹⁹ <https://www.dhakatribune.com/regulation/2018/04/10/digital-security-bill-2018-placed-parliament/> ; <https://www.thedailystar.net/frontpage/digital-security-bill-placed-js-amid-concern-1560637>

Article 57 of the ICT Act be revoked. Regrettably the repressive Articles removed from the ICT Act have been incorporated into the DSA. Furthermore, there are fears that Article 32²⁰ of the approved draft DSA, relating to spying on computers and other digital crimes, can be used by the government against journalists and HRDs. The draft DSA has no requirement of malicious intent for breach of a security system, meaning that accidental access could be prosecuted. Article 14 allows the prosecution of anyone commenting in any critical way on the 'National Liberation War' of Bangladesh.²¹ The accused can be arrested without a warrant and offences carry a maximum punishment of 20 years. The law would also apply to people outside of Bangladesh who are deemed to threaten national security or state sovereignty within the country. At the time of writing the draft DSA has yet to be approved by Bangladesh's Parliament, although indications are that the Act will be passed in 2018.²²

Another relatively new piece of legislation that has been misused against HRDs is the Anti-Terrorism Act (ATA), 2009,²³ amended in 2012 and 2013. The definition of terrorism in the Act is quite broad and vague, opening possibilities for abuse. The definition of terrorist acts includes property crimes and disruption of public services that do not involve violence or injury to people. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has affirmed that the concept of terrorism should be limited to acts committed with the intention of causing death or serious bodily injury, or the taking of hostages,

and should not include property crimes.²⁴ Under the Act, even peaceful protests could be perceived by the Government as threats against the State and as such terrorism. The Act also allows the Government to selectively prosecute anyone expressing their opinion on opposition politics and allows courts to accept videos, still photographs, audio clips, and chat conversations from social media platforms such as Facebook, Skype and Twitter. The draconian penalties under the Act range from a minimum of 20 years of imprisonment to the death penalty.

The draft Liberation War (Denial, Distortion, Opposition) Crime Law, 2016 would criminalize any deviation from the official government line on the 'liberation war' of 1971. While 'genocide-denial' laws have some basis in international law, this law is overly broad and appears to be designed to muzzle critics of the Government's reading and use of the event. Article 4(2) outlaws 'giving a malicious statement that undermines any events related to the liberation war,' 'misrepresenting or devaluing any government publication on the history of the liberation war,' 'mocking any events, information or data about the liberation war,' and 'committing contempt of the liberation war by calling the liberation war anything other than a historic fight for the nation's independence.' This definition of offences goes far beyond denial of atrocities and extends to any criticism of the Government's use of the narrative for its political ends. Under Article 5, the penalties for offences under Article 4 are up to five years of imprisonment and a fine of up to Taka 10,000,000 (US\$127,000).

²⁰ Article 32 states that if anyone collects, publishes or preserves or assists in preservation of any confidential information/ reports through computer, digital device, computer network or any other electronic form, by illegally entering into an office of the government or a semi-government, autonomous or statutory body, it will be considered a crime of computer or digital spying. Due to this the accused person will have to face punishment of 14 years in jail or pay Tk. 2.5 million as fine or both. If such crime is committed twice by the same person, he/she will be sentenced life imprisonment or 10 million taka fine or both.

²¹ 'Bangladesh: Scrap Draconian Elements of Digital Security Act' Human Rights Watch, 22 February 2018, <https://www.hrw.org/news/2018/02/22/bangladesh-scrap-draconian-elements-digital-security-act>

²² 'Uproar over Bangladesh's new cyber security law' *Banglad*, 31 January 2018, <https://www.ucanews.com/news/uproar-over-bangladeshs-new-cyber-security-law/81389>

²³ 'Anti-Terrorism Act, 2009' http://www.satp.org/satporgtp/countries/bangladesh/document/papers/AntiTerrorism_Act2009.pdf

²⁴ <http://iva.aippnet.org/wp-content/uploads/2015/07/NATIONAL-SECURITY-2015-Low.pdf>

The authorities have also used longstanding legislation to criminalise HRDs. The archaic Societies Registration Act, 1860,²⁵ a relic of the colonial era, poses a constant constraint on freedom of association. It requires all civil society organisations in Bangladesh to register with the Government, a process that is cumbersome, lengthy and subject to arbitrary requirements. To successfully register, the organisation must have an executive committee of at least seven members, and at least three times the number of organisational members as members in the committee. In addition, an organisation must have a physical office with its own address and a publicly viewable signboard, and also must have the funds to register, which can cost as much as 15,000 Taka (US\$200). This restricts the founding and formation of organisations to those who have the resources to rent or buy an office space and pay for registration. Only adult citizens of Bangladesh may found or belong to a NGO. Registration requires prior clearance from the Ministry of Home Affairs, which generally takes at least two months. Organisations must also go through a background check to receive clearance from the National Security Intelligence, a process that is in practice slowed down until receipt of a bribe.²⁶

The Special Powers Act, 1974,²⁷ also known as the Black Law, allows the government to prosecute anyone expressing an opinion that is critical of government officials or government policies. It also provides for extensive preventive detention, meaning detention without a warrant and without charge. Members of the security forces who detain people under this act are protected under Article 34.

Law enforcement agencies have been known to abuse the powers granted to them under Articles 54 and 167 of the Code of Criminal Procedure,

1898.²⁸ Article 54 of the Code lists nine grounds on which a police officer may carry out arrests without a warrant. As some of these grounds are vaguely worded, they are prone to abuse of power by law enforcement officials. Article 167 of the Code authorises the detention of any person by the police beyond 48 hours up to a maximum of 15 days, subject to the orders of a magistrate in cases where police are unable to complete the investigation within 24 hours of the arrest.²⁹

The Code of Criminal Procedure also empowers Magistrates to misuse the law. Article 127 of the Code³⁰ provides the state magistrate the power to issue an order to stop any meeting or gathering that could cause nuisance or danger, and to punish those attending unlawful gatherings with up to two years imprisonment. Article 144 of the Code allows a district magistrate to force a person or group of people to abstain from acting if he or she believes such action could cause obstruction, annoyance, injury, or cause a danger to human life, health, or safety. The broad phrasing of this provision, using the terms ‘obstruction’ ‘annoyance’ makes it easily applicable to protests. The Government has used Article 144 hundreds of times to stop meetings of opposition parties, progressive social movements, and dissenting groups. Finally, Article 108 of the Code allows a magistrate to require anyone accused of disseminating seditious material to prove why they should not be ordered to execute a bond to guarantee ‘good behaviour’ in the future. This total reversal of the burden of proof allows the Government to target opponents merely by accusing them of sedition.

The Contempt of Court Act, 1926³¹ lacks clear definition of what ‘contempt’ entails and violates freedom of expression by criminalizing any critical commentary on the court or cases under

²⁵ ‘1860 Societies Registration Act http://bdlaws.minlaw.gov.bd/pdf/10____.pdf

²⁶ Civic Freedom Monitor: Bangladesh, Civic Freedom Monitor: Bangladesh, Profit Law, 14 January 2018, <http://www.icnl.org/research/monitor/bangladesh.html>

²⁷ ‘Special Powers Act, 1974, http://bdlaws.minlaw.gov.bd/print_Articles_all.php?id=462

²⁸ ‘Code of Criminal Procedure, 1898n https://www.unodc.org/tldb/pdf/Bangladesh_Code_of_Criminal_Procedure_1898_Full_text.pdf

²⁹ <http://www.commonlii.org/pk/other/PKLJC/reports/49.html>

³⁰ ‘Code of Criminal Procedure,’ https://www.unodc.org/tldb/pdf/Bangladesh_Code_of_Criminal_Procedure_1898_Full_text.pdf

³¹ ‘Contempt of Courts Act, 1926’ http://bdlaws.minlaw.gov.bd/print_Articles_all.php?id=140

its consideration, regardless of how truthful this commentary is. In 2013, the government tabled a new Contempt of Court Act -ultimately struck down by the High Court- which quite explicitly ruled that the public's freedom to comment on cases had to be curbed. In 2005, a newspaper editor was fined for publishing a report claiming that a Former High Court judge's law degree was a forgery, despite the fact that the allegation was true. David Bergman, a Dhaka-based British journalist, faced contempt charges for making 'adverse comments' about the court in his blog. Bergman was sentenced to a symbolic 'simple imprisonment till the rising of the court' and a fine of Taka 5,000 (about US\$56) for comments he made in three separate blog postings regarding legal proceedings at the International Crimes Tribunal at Dhaka.

A law directly impeding the work of trade unionists and labour right defenders is the Labour Act, 2006,³² amended in 2008 and 2013, and supplemented by restrictive labour rules. The law restricts trade union activity at Chittagong and Mongla ports to only one trade union per port, and forbids the establishment of any trade union office within 200 metres of the ports. Registration is obligatory and difficult; requiring that unions comprise of an excessive 30 per cent of workers in a factory, that its leaders be 'permanent workers,' that all members submit their national identification numbers and union membership certificates, that local police must verify that workers met on a particular day to elect leadership, and that union applications may be 'inspected' by police, which includes interviews of members in the presence of factory management. The Government's powers to reject applications are vaguely defined, giving it great discretion in the matter, which it has used to deny the majority of applications since 2013. Finally, the Government has granted total impunity to factory owners to conduct union-busting activities, which remain very common. Police routinely refuse to accept complaints from workers regarding threats, intimidation and physical abuse by factory management.

The draft Export Processing Zone (EPZ) Labour Law, approved by Cabinet in February 2016, has been touted by the Government as an improvement for EPZ workers' right to association. While it is true that the Law does slightly improve the existing situation in some ways, it also entrenches the current double standards under which these EPZ workers' right to association are severely constrained. The draft law allows for the formation of Workers' Welfare Associations (WWA), but still bars workers from forming unions in EPZ factories. The law also stipulates that WWAs will not have the ability to bargain on any issue without prior approval of factory owners, will not be permitted to affiliate themselves with national trade unions, and will not have legal status as Collective Bargaining Agents.

Bangladesh's Constitution protects freedom of assembly, but in practice this right is heavily restricted. Under the Metropolitan Police Ordinance, 1976,³³ groups wishing to hold public demonstrations in Dhaka must apply in advance for a permit, which can be denied at the discretion of the police. The ordinance also gives police the power to issue a blanket ban on any assembly for up to 30 days, and decide where, when and how approved assemblies may take place. Finally, the ordinance also gives police the power to make arrests on suspicion.

The Penal Code³⁴ in Bangladesh contains a number of provisions that are broadly interpreted so as to be applied to HRDs and Government critics. Under Article 505(a), anyone who makes, publishes, or circulates a statement, or in any way communicates -including 'by sign'- something that is deemed 'likely to be prejudicial to the interests or security of Bangladesh' can be imprisoned for up to seven years and fined an unspecified amount. The use of the words 'likely' and 'prejudicial' significantly broaden the ambit of the provision: there is no test of severity, and there does not need to have been any actual effect for a sentence to be handed down. Under Article 143, any member of an unlawful assembly can be imprisoned for up to six months and be fined an unspecified amount. An assembly can be

³² 'Bangladesh Labour Act, 2006,' <https://ogrlegal.files.wordpress.com/2015/11/bangladesh-labour-act-2006-english.pdf>

³³ 'Dhaka Metropolitan Police Ordinance, 1976' <http://www.icnl.org/research/library/files/Bangladesh/dhaka.pdf>

³⁴ 'Penal Code, 1860' <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46812525.pdf>

deemed unlawful under Article 141 for a number of reasons, including resisting the execution of any law, committing mischief, 'denying any person the right of way,' or any 'other offence.' Articles 146 and 149 hold all participants in an assembly responsible for any offence that is allegedly committed by any one participant. Under Article 295(a), anyone who deliberately and maliciously insults, or attempts to insult, 'religious feelings' can be imprisoned for two years and be fined. In a similar vein, Article 298 outlaws any kind of 'wounding [of] religious feelings' in very broad terms. Anyone who utters any sound, makes any gesture, or moves any object in a way that intentionally insults religious sentiments can face up to one year of imprisonment and a fine. Article 124(a) defines sedition as any act that 'attempts' to 'bring into contempt' or 'excite disaffection towards the Government,' which includes any 'disloyalty.' Even if the act in question is merely a disapproval of a Government action and does not advocate change by unlawful means, if any disloyalty or enmity towards Government was expressed, it remains sedition. The maximum penalty for this offence is life imprisonment.

Enabling laws and policies

There are no specific legal frameworks, laws or regulations that aim to facilitate or protect the activities and work of HRDs in Bangladesh.

The Constitution of Peoples' Republic of Bangladesh³⁵ provides general protection to HRDs under Article 11 (democracy, fundamental human rights), Article 31 (right to protection of law), Article 32 (right to life and personal liberty), Article 33 (safeguards as to arrest and detention), Article 36 (right to freedom of movement), Article 37 (right to freedom of peaceful assembly), Article 38 (right to freedom of association), and Article 39 (right to freedom of expression).

The National Human Rights Commission of Bangladesh was established in 2007 under the Human Rights Commission Ordinance during the State of Emergency and it was re-constituted under the National Human Rights Commission Act, 2009 on 22 June 2010 after the 9th Parliamentary Elections in December 2008. The NHRC comprises of a full-time Chairman, a full-time Member and five part-time Members. With power to investigate but no authority to sanction any action, it is to be an 'independent body'³⁶ for 'protecting, promoting and providing guarantee to human rights properly.'³⁷ However, the process of selecting the NHRC Chairman and members put to question the independence of the Commission as six out of seven members of the Selection Committee are government officials with the remaining member being a member of parliament from the Treasury Bench and two Ministers under the leadership of the Speaker of the Parliament.³⁸ This results in the selection being based on loyalty to the government.

The NHRC's primary responsibility was to educate the public about human rights, and ostensibly advise the government on key human rights issues. However, the NHRC is not seen to do both. It has failed to take action against state actors for gross human rights violations, and is found to focus on cases perpetrated by Non-state actors. The NHRC has done no monitoring or investigation of cases of persecuted human rights defenders. Nor has it initiated other actions to address their concerns. The complaint receiving mechanism of the Commission is extremely weak. So far the Commission has not made any focused or dedicated effort to receive complaints relating to rights violations of HRDs and WHRDs since its inception.³⁹ It is accredited with the International Coordinating Committee on National Human Rights Institutions, but it has been

³⁵ 'The Constitution of Bangladesh,' http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367

³⁶ NHRC Act 2009, Chapter II, Article 3 (2), see http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/law/de62d323_fe91_45f0_9513_a0d36ab77fdf/NHRC%20Act%20English.pdf

³⁷ NHRC Act 2009, Preamble

³⁸ According to Article 7, the Selection Committee shall consist of the Speaker of the House of Nation, Ministers for Law and Home Affairs, Cabinet Secretary, Chairman of the Law Commission, and two MPs nominated by the Speaker of the Parliament, out of whom one shall belong to the ruling party and the other from the opposition party. NHRC Act 2009, Chapter II, Article 7, http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/law/de62d323_fe91_45f0_9513_a0d36ab77fdf/NHRC%20Act%20English.pdf

³⁹ 2017 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA, 5 December 2017/ <https://www.forum-asia.org/?p=25246>

given a third grade, meaning that it is not in full compliance with the Paris Principles.

The Right To Information (RTI) Act, 2009⁴⁰ provides for the establishment of an Information Commission. The initiative and lobbying for the passage of the RTI legislation came from a variety of different interest groups and individuals: HRDs, media professionals, academics, grassroots organisations, NGOs and concerned citizens. The purpose of the RTI Act is to increase transparency and accountability, decrease corruption and establish good governance; goals which a significant number of HRDs have worked to achieve. Several groups have noted that the RTI Act has had a concrete effect on the ground and holds the potential to achieve significant societal change in the future, yet the implementation of the Act remains a challenging process, not least because of a persisting culture of fear and lack of trust.⁴¹

Plagued by enormous levels of corruption, Bangladesh installed an Anti-Corruption Commission (ACC) in 2004. Acts of corruption have widely expanded and a state of anarchy has been established in the country. In most cases, leaders and activists of the Awami League and various professionals affiliated to the government are allegedly involved in corruption and the ACC has failed to take any effective action against the persons accused. HRDs have criticised it and called for comprehensive reforms at all of its levels. The ACC is seen as ineffective because its officials are faced with political and administrative pressures when they handle sensitive corruption cases. On 31 May 2018, while the High Court Division of the Supreme Court giving a verdict over the investigation process of graft cases, referring to its previous order, the High Court Division stated that the ACC being a statutory institution, has failed to implement the order of the highest court of the country, which is disgraceful to the court, making

the court order meaningless. While dealing with scam and graft cases, neutrality, transparency and willingness of the ACC is under severe question.⁴²

Recommendations

Immediate steps must be taken to improve the atmosphere in which HRDs carry out their work and ensure that they may safely do so. Harassment, intimidation and violence against HRDs must be brought to a halt by all means possible; including thoroughly investigating the crimes against them and prosecuting the perpetrators, as well as by reforming laws and institutions as described below.

Institutions created to protect human rights must be made more effective. The National Human Rights Commission must take a more active role in protecting HRDs, specifically by setting up an HRD focal person and an HRD protection desk that can receive complaints and take action quickly. The Information Commission must also be empowered so that it can become an actor capable of fulfilling its mandate. The Anti-Corruption Commission must be reformed to ensure that it is a fully independent body that is not influenced by any political actors. The organisation must embody the principles of transparency and independence that it ostensibly serves.

Urgent action is also required to ensure the protection of the right to freedom of association for all, in particular for NGOs. The Foreign Donations (Voluntary Activities) Regulation Act must be repealed immediately and replaced with legislation that protects freedom of association as enshrined in the Constitution of Bangladesh and under international law. The Government must have no say in matters concerning the funding, structure or operations of an NGO. The Government must also significantly amend the Societies Registration Act to

⁴⁰ 'The Right To Information Act,' http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/bangladesh/bangladesh_rti_act_2009_summary.pdf

⁴¹ Asia Disclosed: A Review of the Right to Information across Asia, Article 19, 2015,' <https://www.article19.org/data/files/medialibrary/38121/FINAL-Asia-Disclosed-full.pdf>

⁴² 'Half-yearly human rights monitoring report, January – June 2018,' Odhikar, 1 July 2018, http://www.odhikar.org/wp-content/uploads/2018/07/Six-Month_HRR_2018_Eng.pdf

ensure that registration for all NGOs is a matter of, at most, notifying the Government, and nothing more. The process for notification must be quick and must not have any costs associated with it. With regard to unions, the Labour Act, labour rules and laws on EPZs must be brought in line with international legal standards. The Government should not have the power to deny unions registration; EPZs must be subject to the same labour laws as the remainder of the country; the right to strike must be explicitly enshrined in labour law; and union-busting must be made a criminal offence.

Regarding HRDs' right to freedom of assembly, Articles 141 to 160 of the Penal Code, Article 127 and 144 of the Criminal Procedure Code, and the Metropolitan Police Ordinance must be significantly amended. The authorities should not have the power to deny an application for a protest or impose a blanket ban on assemblies.

Immediate action is also needed to guarantee HRDs their right to freedom of expression. The ICT Act and the draft Digital Security Act must be reviewed and rewritten. Legislation legitimately targeting cybercrime, if it is enacted, must have narrow definitions so that they do not act as a catch-all charge for targeting critics. Provisions criminalizing expression of opinions on politics have no place in a law on digital security or cybercrime. Bangladesh is in urgent need of legislation explicitly protecting the

right to freedom of expression online for all citizens, in particular whistleblowers.

The Anti-Terrorism Act must be amended to ensure that it does not criminalize legitimate activities or disproportionately punish actions such as damage to property. The definition of terrorist activities should be significantly narrowed. Provisions regarding speech leading to seditious activity must be removed from the law altogether. Similarly, the draft Liberation War (Denial, Distortion, Opposition) Crime Law must be significantly amended so that it removes any reference to criticism of the Government's particular interpretation of or use of historical events, and does not criminalize legitimate discussion of events related to the Liberation War.

Laws criminalizing criticism of the Government must also be amended. Article 124(a) of the Penal Code must be removed and all those previously convicted of the offence must be immediately freed. The Special Powers Act must be repealed in its entirety, or significantly amended to ensure that criticism of the Government is not criminalized and that arbitrary detention is not permitted. The Government also must pursue its efforts to replace the Contempt of Court Act with legislation that recognizes the right of all persons to comment on any case or on any court official. Finally, Articles 295(a) and 298 of the Penal Code, which outlaw statements that insult 'religious feelings,' must also be deleted.

CAMBODIA

Synopsis of the challenges of HRDs

Cambodian civil society has become increasingly visible through protests and other peaceful actions yet it is forced to operate within a restrictive and hostile environment. Human Rights Defenders (HRDs)⁴³ increasingly face threats, harassment, legal action and violence for promoting and protecting human rights. State security forces, including police, military police, soldiers and government-contracted private security guards routinely crack down on demonstrations with excessive force, and specifically target protest monitors and journalists.⁴⁴

The extrajudicial threats faced by HRDs are severe, with several assassinations of prominent HRDs in recent years; including CSO leader Chea Vichea of the Free Trade Union of Workers (FTUWKC) in 2004, journalist Hang Serei Odom in 2012, and political analyst Kem Ley in 2016.

HRDs who work to promote and protect economic, social, and cultural rights are targeted by the authorities. Community activists defending the right to housing and protesting against land grabs and forced evictions have faced fabricated charges and jail terms. Activists and organisations engaged in exposing the nexus between Government authorities and influential private actors are intimidated and prevented from carrying out their work. The spurious charges levelled against HRDs vary, but often include defamation, assault, insult, contempt of court, incitement, illegal occupation of land, destruction of property, trespassing and forging documents concerning land disputes. The right to freedom of association has faced further restrictions with the authoritarian Law on Associations and Non-Governmental Organisations (LANGO) in effect since 2015.

Fabricated charges shadow the work of HRDs in Cambodia. From April 2016, five HRDs -including four senior staff members from the Cambodian Human Rights and Development Association (ADHOC) and the deputy secretary-general of the National Election Committee- were kept in pre-trial detention for 14 months on charges of bribery of a witness as a result of their legitimate work. The UN Working Group on Arbitrary Detention asserted that their detention was arbitrary and that their rights had been violated under the ICCPR.⁴⁵ They were released on bail on 29 June 2017, yet a trial date has not been set. In another case, one of Cambodia's most vocal land rights activists, Tep Vanny, was charged with multiple trumped up charges. She has been in detention since August 2016 ostensibly because she was involved in a peaceful vigil. She is currently serving a two and a half year sentence for 'intentional violence with aggravating circumstances', following participation in a 2013 protest. The conviction was upheld by the Supreme Court in February 2018, despite a lack of evidence and the absence of plaintiffs all stages of proceedings.

Independent unions face difficulties in promoting decent working conditions and fair wages due to legal barriers and extrajudicial threats. HRDs protecting labour rights risk being fired, harassed, or arrested for organising industrial action. The Trade Union Law (TUL), enacted in 2016, formalizes many of the constraints unions already dealt with, and gives them the force of law.

In January 2014, the Ministry of Interior imposed a blanket ban on assemblies, demonstrations and marches. This ban was made in response to large-scale protests organised against flawed elections, the autocratic rule of the Cambodian People's Party (CPP), and in favour of an increase in garment workers' wages. A blanket ban on 'colour protests' has

43 Cambodian HRDs come from a wide range of sectors including land and housing rights activists from urban, rural and indigenous communities, grassroots groups and informal groups, associations and NGOs, trade unionists, journalists, and parliamentarians.

44 'Attacks and Threats Against Human Rights Defenders 2013-2014,' Cambodian League for the Promotion and Defense of Human Rights, December 2015, https://www.licadho-cambodia.org/reports/files/21120150912_HRD2013-3014_ENGFinal%20%283%29.pdf

45 'Opinion No. 45/2016 of the UN Working Group on Arbitrary Detention concerning Ny Sokha, Nay Vanda, Yi Soksan, Lim Mony, and Ny Chakrya,' HRC, A/HRC/WGAD/2016/45, 17 January 2017, <https://bit.ly/2to8hT0>.

also been in effect since May 2016.⁴⁶ Similarly, extra-legal blanket bans were placed on demonstrations surrounding the dissolution of the former leading opposition party, the Cambodian National Rescue Party (CNRP) in November 2017, and surrounding the arrest and subsequent hearings of former CNRP leader, Kem Sokha, in October and November 2017. Despite Cambodian law enshrining a notification regime in accordance with international standards, rather than requiring protestors to seek permission to hold demonstrations, the law is routinely misapplied to restrict peaceful demonstrations which have not been granted 'permission.'

Journalists who criticise the Government face serious charges, lengthy trials, imprisonment and violence. Under the Criminal Code of the Kingdom of Cambodia (Criminal Code), Government critics who peacefully express views about individuals and Government institutions risk criminal prosecution for defamation, insult and spreading false information. Since 2017, targeting of individuals expressing dissenting opinions on social media, notably via Facebook, have substantially increased. For example, labour activist Sam Sokha was convicted of incitement to discriminate and insult of a public official after a video of her throwing a shoe at a CPP billboard was posted to Facebook. In February 2018, she was extradited from Thailand and subsequently convicted, despite recognition of her refugee status by UNHCR, and is currently serving a two-year sentence.

The rule of law in Cambodia remains weak. The justice system is used to persecute HRDs, inhibit their work and infringe on their rights -a trend that has worsened recently. The authorities have in recent years used trumped-up charges against HRDs that are unrelated to their human rights work, such as assault, violence, and drug trafficking. In some cases, HRDs are arrested and then released on bail, while others are forced to thumbprint statements promising to cease their activism. Often, charges are brought and not acted on but never dropped

and remain a lever to coerce HRDs into ceasing their activism. Cases may be revived years later if the HRD in question has not toed the Government line. In other cases, HRDs are arrested and detained, tried on spurious charges and sentenced to prison terms. Convictions are frequently rendered despite a lack of evidence, and most of the trials do not meet international standards of fairness and impartiality. Such judicial persecution removes HRDs from their communities, associations, NGOs, trade unions and others groups. It also deters other HRDs from continuing their activism, for fear of being arrested and imprisoned⁴⁷

Human rights groups continue to be vocal and creative in their response to threats against HRDs. They engage with and are supported by international and regional human rights groups, the OHCHR country office, the UN Special Rapporteur, donors, and other stakeholders. It is therefore all the more regrettable that the Government of Cambodia did not accept a request for a visit by the UN Special Rapporteur on the situation of human rights defenders made in 2012, and has not replied to a joint allegation letter and a joint urgent appeal on the harassment of HRDs.

In the period leading up to the general election in July 2018, the ruling CPP, with an aim at silencing critical voices, had imposed severe repression to civil society, media, and political opponents.

Since August 2017, media outlets perceived as critical have faced a severe crackdown, resulting in numerous closures. In August and September 2017, 32 radio frequencies were removed from air on vague citations of licensing violations, which disproportionately affected Radio Free Asia (RFA), Voice of Democracy (VOD), and Voice of America (VOA). RFA subsequently closed its bureau in Phnom Penh, claiming government pressure as the cause. Similarly, the two largest newspapers published in both Khmer and English -the Cambodia Daily and the Phnom Penh Post-

⁴⁶ 'Prime Minister bans color-coordinated demonstrations,'The Cambodia Daily, 11 May 2016,<https://www.cambodiadaily.com/news/prime-minister-bans-color-coordinated-demonstrations-112434/>

⁴⁷ 'Cambodia: A deteriorating situation for Human Rights Defenders – Amnesty International and LICADHO submission to the UN Universal Periodic Review, January – February 2014,'Amnesty International, June 2013, <https://www.amnesty.org/download/Documents/12000/asa230042013en.pdf>

were issued with multi-million dollar tax bills. As a result, in September 2017 the Cambodia Daily shut down, whilst in May 2018 the Phnom Penh Post was sold to a Malaysian company without transparency, resulting in widespread criticism.⁴⁸ Overall, this has severely limited access to diverse sources of information in Cambodia, particularly in rural and remote areas.

A host of hasty amendments were made to the Law on Political Parties and other related laws without public debate or input over the course of 2017, which provided grounds for the harassment of opposition politicians and the dissolution of political parties. In October and November 2017, 10 political parties were dissolved, and 22 were deregistered, with no evidence of any clear or imminent danger to a legally protected interest. Notably, on 16 November 2017, the CNRP, the only significant and credible opposition force against the CPP was dissolved by the Supreme Court, making the general election non-competitive. The CNRP was dissolved despite having won 44.5% of votes at the 2013 national elections and consequentially 45% of seats in the National Assembly; and 43.8% of votes during commune elections in June 2017, and 45% of commune councillor seats as a result. In conjunction with the dissolution, elected officials were removed from their position, and 118 senior politicians and leaders of the CNRP were banned from political activities for a period of 5 years. The CNRP's seats were redistributed among minor parties, whilst all of the CNRP's Commune Chief seats were transferred to the ruling CPP. This additionally impacted Senate appointments, which are determined by votes of commune councillors and members of the National Assembly. On 25 February 2018, the CPP obtained all of the 58 available Senate seats which were up for election. Meanwhile, the former opposition leader Kem Sokha, along with other lawmakers and party

officers remain in detention, while former opposition leader Sam Rainsy has been officially exiled since 2016 after being convicted of multiple counts of defamation. Subsequently many CNRP members fled or faced severe pressure to 'defect' to the ruling party.

Repressive laws and policies

Cambodia has ratified eight out of the nine international human rights treaties, one of the highest ratification records in Asia. In addition, international human rights treaties ratified by Cambodia are enshrined into domestic law by Article 31 of the Constitution of the Kingdom of Cambodia (the Constitution),⁴⁹ and their direct applicability in domestic law was confirmed by a 2007 ruling of the Cambodia's Constitutional Council.⁵⁰ However, this record is not reflected under Cambodian law, which contains numerous provisions that directly target and severely restrict HRDs' work. In addition, the legal framework is routinely misapplied, with HRDs facing severe harassment and danger. The authorities use broad ranging provisions in the Criminal Code and other laws that do not inherently violate international standards to target HRDs and other critical voices, as well as legislation designed to limit human rights, to harass and intimidate HRDs. This is made possible by a pliant and politicised judiciary that interprets the law extremely broadly in order to carry out the executive branch's will. The consequent threats of arrest or legal action result in severe restrictions on free speech, the jailing of Government critics, and the dispersion of workers, trade union representatives and land and housing rights activists and others engaging in peaceful assembly.

On 5 March 2018, five amendments to the Constitution were promulgated which provide the framework for and have the potential to be used

⁴⁸ Cambodia: In Solidarity with The Cambodia Daily, Stop Silencing Dissenting Voices <https://www.forum-asia.org/?p=24672>

⁴⁹ Article 31 of the Constitution reads: "The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, and the covenants and conventions related to human rights, women's rights, and children's rights: Constitution of the Kingdom Cambodia, 21 September 1993, <https://bit.ly/2GMpc6U>.

⁵⁰ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007, <https://bit.ly/2B2omj0>.

for restricting freedoms of association, assembly and expression. Under amended Articles 42(2) and 49(2), political parties and Khmer citizens are obligated to ‘uphold the national interest’ and prohibited from ‘conduct[ing] any activities which either directly or indirectly affect the interests of the Kingdom of Cambodia and of Khmer citizens.’ Considering the extremely vague and broad language, these provisions could be applicable to a swathe of undefined actions, and could allow any action in opposition to the government to be deemed against the national interest. Article 53(3), a new provision, ‘absolutely opposes any interference from abroad conducted through any forms into its own internal affairs.’ This could have broad application such as to restrict the fundamental freedoms of non-citizens within Cambodia, or prevent associations from receiving international funding. Amended Article 34(5) broadens the language of the previous article, providing grounds to potentially undermine the right to vote and stand for election. Finally, the amended Article 118 removes secretaries of state from the membership of the Council of Ministers, thereby further consolidating the power of remaining members. While these amendments do not have direct regulatory effect, they provide a framework for more restrictive subsequent legislation and could influence the implementation of existing legislation.

A number of laws covered below directly target HRDs’ work. The Criminal Code, 2010,⁵¹ amended in February 2018, is most frequently used to harass, intimidate and punish HRDs. The Criminal Code contains numerous provisions on defamation, insults and incitement that curtail freedom of expression, particularly as it pertains to criticism of Government organs, including the courts, which are worded so broadly and so vaguely that they may be used to crack down on virtually any critical expression.

In contravention of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), defamation is a criminal offense in Cambodia.⁵² The Criminal Code’s Article 305⁵³ on defamation prohibits any comment made in bad faith and likely to injure a person or institution. Infractions are punishable by a fine of up to 10,000,000 Riels (US\$2,500). In 2006, Prime Minister Hun Sen called for the decriminalization of defamation, but no action to this effect was ever taken.

A related offence is Article 307,⁵⁴ which prohibits ‘public insulting [sic].’ The article states that ‘[a]ny insulting expression, any scorning term or any other verbal abuses [sic]’ constitute an insult and is punishable by a fine of up to 10,000,000 Riels (US\$2,500), which, if not paid, could result in the defendant serving jail time. The article does not establish any minimum level of offensiveness, leaving it vulnerable to broad interpretation to silence critics.

In February 2018, the Criminal Code was amended to include a new offence of ‘insulting the king’ under Article 437-bis, or what is called *lèse-majesté*. The offence stipulates an insult as ‘any speeches, gestures, writings, paintings or items that are affecting the dignity of individual person(s)’. Individuals convicted under the offence could result in one to five years imprisonment. Moreover, legal entities may also be found guilty under the offence and is punishable by dissolution, legal supervision, or prohibition from carrying certain activities. There is concern that the ambiguous terms can be used as tool to stifle political opposition or dissidents, which would result in restriction of freedom of expression and freedom of association.⁵⁵

Article 311 of the Criminal Code outlaws ‘acts of slanderous denunciation,’ and unlike Articles 305

51 ‘CriminalCodeoftheKingdomofCambodia’ https://www.unodc.org/res/cld/document/khm/criminal_code_of_the_kingdom_of_cambodia_html/Cambodia_Criminal-Code-of-the-Kingdom-of-Cambodia-30-Nov-2009-Eng.pdf

52 ‘International Covenant on Civil and Political Rights’ <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>; <https://www.article19.org/data/files/pdfs/standards/definingdefamation.pdf>.

53 ‘CriminalCodeoftheKingdomofCambodia’

54 Ibid.

55 ‘Joint Statement – CSOs call for outright rejection of draft amendments to the Constitution and Criminal Code, amid legislative assault on Cambodian peoples’ rights and freedoms’

https://www.forum-asia.org/?p=25672#_ftnref3

and 307, is punishable by imprisonment as well as a fine. Slanderous denunciation is defined as 'denouncing a fact that is known to be incorrect and it is so [sic] knowingly.' Punishment for infraction of this article is imprisonment of up to a year, and a fine of up to 2,000,000 Riels (US\$500). Once again, how a 'fact' is 'known to be incorrect,' and by whom, is not specified in the article, leaving it vulnerable to broad interpretation.

Supplementing the above articles on defamation and insults, Cambodia has unusually explicit and strict Criminal Code provisions outlawing any criticism of any member of a Government organ, including the courts. Article 502⁵⁶ states that any act undermining the 'dignity of any person in Government' (including civil servants) is punishable by up to six days of imprisonment and a fine of up to 100,000 Riels (US\$25). This provision appears to criminalize any act that a public official might interpret as hurting their feelings, regardless of whether the statement is legitimate or whether it was in connection to their public duties. Cambodia's criminal defamation and insult laws are more than severe and broad enough to protect all citizens from unwarranted public criticism. There is no legitimate reason to doubly protect the Government from any critiques.

In September 2016, four villagers - Tep Vanny, Bo Chhor, Heng Mom and Kong Chan - were convicted and sentenced to six months in prison for 'insult and obstruction to a public official with aggravating circumstance' under Article 502 and 504 of the Criminal Code, after dormant charges laid in 2011 were revived. In November 2011, they were part of a group of about 50 villagers who protested outside City Hall to demand that the Government hasten the process of issuing them land within an onsite resettlement area set aside by the Government. The four were sentenced despite a lack of evidence from the prosecution.

Articles 522 and 523⁵⁸ further criminalize legitimate expression, this time pertaining to the judiciary. They ban any critical commentary on the country's heavily politicised courts, which are frequently used by the executive branch to intimidate and punish HRDs. While contempt of court laws are legitimate under international law, Cambodia's are extremely broad and harsh: Article 522 outlaws 'any commentaries aiming at putting pressure on the court where a law suit is filed,' while Article 523 bans 'any act of criticizing a letter or a court decision aiming at creating disturbance of public orders or endangering institutions of the Kingdom of Cambodia.' Both are punishable by up to six months of imprisonment, a fine of up to 1,000,000 Riels (US\$250), and additional penalties including the deprivation of civil rights definitively or for a period of up to five years, prohibition against pursuing a profession, and confiscation of personal possessions related to the alleged offence. Any commentary on the actions of Cambodia's politicized courts could thus be punished extremely heavily. In a system where the judiciary takes orders from the executive to persecute HRDs, this is a particularly egregious repression of free expression.

An example of the misuse of the above provisions to criminalize legitimate expression is the conviction in September 2016 by the Court of Appeal of Ny Chakrya, the former head of Human Rights and Monitoring section of ADHOC, a member organisation of FORUM-ASIA. He was convicted on charges of public defamation (Article 305), acts of slanderous denunciation (Article 311) and publication of commentaries intended to unlawfully coerce judicial authorities (Article 522), and sentenced to six months of imprisonment and a fine of 6,000,000 Riels (US\$1,500). The charges were in reference to Ny Chakrya's comments at a press conference on ADHOC's legal defence of two land rights victims, in which he criticised procedural irregularities in the courts' handling of the case.⁵⁹

⁵⁶ 'CriminalCodeoftheKingdomofCambodia'

⁵⁷ 'Activists Jailed for Six Months,' Khmer Times, 20 September 2016, <http://www.khmertimeskh.com/news/29937/activists-jailed-for-six-months>

⁵⁸ Ibid.

⁵⁹ 'Civil Society Condemns Conviction of Human Rights Defender NyChakrya,' Cambodian League for the Promotion and Defense of Human Rights, 22 September 2016, <https://www.licadho-cambodia.org/pressrelease.php?perm=409>

A number of provisions in the Criminal Code are also interpreted extremely broadly by the Cambodian courts to levy harsh penalties against HRDs exercising their right to freedom of assembly. Articles 410 and 411⁶⁰ cover the ‘intentional act to destroy, deteriorate or damage properties,’ which carries harsh penalties: five years in prison and up to a 10,000,000 Riels (US\$2,475) fine if the infraction is carried out under ‘aggravating circumstances,’ which include being in a group and causing damage to public property. Because of their broad phrasing, which cover any damage however slight, these laws have been used to target protesting HRDs. One well-known instance of this was the charges laid in January 2014 under Articles 411 and 218 against 23 people, including four HRDs, for protesting for the payment of a fair wage to garment workers. All of the defendants were charged with violating Article 411, although charges under this particular provision were dropped against the four HRDs and six others due to lack of prosecutorial evidence. All 23, however, were sentenced to between twelve and fifty-four months in prison under either or both Article 411 and 218 (covered below).⁶¹

Articles 421 to 426⁶² of the same chapter of the Criminal Code are even more worrying, as none of them require any actual damage to have been committed, and the penalties for infraction are extremely heavy. Article 421, which covers persons who ‘attempted to commit damage,’ carries the same penalties as Articles 410 and 411. Similarly, Articles 423 and 424, which cover ‘threats to destroy, damage or deteriorate,’ may be applied in cases where no actual damage was done. Penalties remain harsh, at up to two years in prison and a fine of up to 4,000,000 Riels (US\$1,000). Furthermore, Articles 422 and 426 detail an extensive list of extremely severe additional penalties for all of the

above infractions under Book 3, Title 2, Chapter 2: deprivation of civil rights definitively or for a period of five years, prohibition against pursuing a profession for five years, prohibition against driving a vehicle for five years, prohibition against taking a residency for up to 10 years, prohibition for foreigners against entering Cambodia definitively or for five years, confiscation of possessions ‘intended to commit the offence,’ confiscation of objects or funds which were the subject of offences, confiscation of vehicles owned by the convicted person, and closure of an establishment used to prepare for the offence for five years, among others. These additional penalties give the Government the power to totally paralyze HRDs, and even their organisations, for having been perceived as ‘threatening’ or ‘attempting’ to commit damage.

For example, in August 2015, three environmental activists were charged and imprisoned under Articles 28 and 424 for instigating the offence of ‘threatening to destroy property accompanied by an order’ following their participation in a peaceful protest against sand dredging by Direct Access -the company that filed the complaint- in Koh Kong Province. After spending over 10 months in pre-trial detention, they were found guilty in June 2016 and ordered to pay US\$25,000 to the company and US\$500 each to the court, with the remainder of their 18-month sentence suspended.⁶³

Articles 217 and 218⁶⁴ have also been used against peaceful protestors in Cambodia, again due to unreasonably broad interpretation by the courts. Article 217 outlaws ‘acts of violence committing [sic] on another person,’ punishable by up to three years of imprisonment and a fine of up to 6,000,000 Riels (US\$1,500). Article 218 covers aggravating circumstances, punishable by up to 5 years of imprisonment and a fine of up to 10,000,000 Riels

⁶⁰ ‘CriminalCodeoftheKingdomofCambodia’

⁶¹ ‘CCHR calls for the acquittal of ‘the 23’ and their immediate release,’ Cambodian Centre for Human Rights, 29 May 2014, http://cchrcambodia.org/media/files/press_release/497_ccftaot2atire_en.pdf

⁶² ‘CriminalCodeoftheKingdomofCambodia’

⁶³ ‘Mining Companies Told to Comply,’ Khmer Times, 7 July 2016, <http://www.khmertimeskh.com/news/26950/mining-companies-told-to-comply>

⁶⁴ ‘Criminal Code of the Kingdom of Cambodia’

(US\$2,475). Once again, one of the aggravating circumstances allowing for the imposition of heavier penalties is if the infraction is committed 'by many persons,' meaning that it is easy to apply harsher penalties to protestors. Again, additional penalties (outlined in Article 229) are numerous and extremely harsh, meaning that organising a peaceful assembly is a high risk for HRDs. As mentioned above, the 23 people charged in January 2014 for protesting for a living wage for garment workers were all sentenced under Article 218.

Article 495 and 496⁶⁵ on 'provocation to commit offenses' are also broadly interpreted by the courts to criminalize the work of HRDs. This 'provocation,' which is left undefined by the Code, carries a prison sentence of up to two years and a fine of up to 4,000,000 Riels (US\$1,000). If the additional penalties (outlined in Article 498) are imposed, the penalty could also include a deprivation of civil rights for up to five years. In August 2010, staff members of human rights organisation LICADHO, a member organisation of FORUM-ASIA, were sentenced to two years of imprisonment and fined two million Riels (US\$490) under Article 495 of the Penal Code for distributing anti-Government flyers. In December 2010, Seng Kunnaka, a United Nations employee, was sentenced to six months of imprisonment and fined 1,000,000 Riels (US\$240) under Article 495 for sharing a news article with two co-workers that was critical of the Government. In September 2017, Hun Vannak and Doem Kundy, environmental activists affiliated with the recently deregistered Mother Nature Cambodia (MNC), were arrested while filming two large vessels anchored off the coast of Prek Khsach in Koh Kong province, which they suspected of illegally carrying sand for export. They were detained and convicted of 'violation of privacy' and 'incitement to commit a felony' under Articles 302 and 495 of the Criminal

Code in January 2018 after being held in pre-trial detention for five months.⁶⁶ They were released in February 2018, with the remainder of the one-year sentence suspended. The recording was taken from open waters, yet to be considered a violation of privacy, the recording had to have been taken on private property. Mother Nature Cambodia also deregistered as an NGO in September 2017, with its founder citing persistent harassment of its leaders as the cause.

In the chapter on state security of the Criminal Code, Article 445⁶⁷ criminalises the offence of 'supplying a foreign state with information prejudicial to national defence.' With vaguely written terms, a person can be charged for 'supplying to a foreign state of information or documents that are liable to prejudice the national defence.' If convicted, it is punishable by imprisonment from seven to fifteen years. On 14 November 2017, Uon Chhin and Yeang Sothearin -two former reporters of RFA were arrested and charged under Article 445 amid the allegation that they were still filing reports to the headquarters of RFA in the United States. They have been denied the right to bail. In April 2018, the Court of Appeal upheld the decision by the Lower Court that their pre-trial detention is still under the legal timeframe as claimed by the police. As of 30 April 2018, they have been detained for 167 days.

While the Criminal Code is used to hand down harsh penalties to HRDs without explicitly criminalizing their work, a number of laws passed in recent years directly criminalize the work of HRDs by specifically targeting citizens' rights to freedom of expression, assembly and association.

The Law on Peaceful Assembly,⁶⁸ a 2009 amendment to the previous 1991 law, largely complies with international standards, however contains some provisions which unduly restrict the right to

⁶⁵ Ibid.

⁶⁶ Joint Statement – CSOs Call for Immediate Release of Mother Nature Cambodia Activists Hun Vannak and DoemKundy <https://www.forum-asia.org/?p=25164>

⁶⁷ 'Criminal Code of the Kingdom of Cambodia'

⁶⁸ 'Law on Peaceful Assembly' (unofficial translation) <http://www.licadho-cambodia.org/delusion2011/laws/DemonstrationLaw-English.pdf>

freedom of peaceful assembly. The law mandates that organisers of public demonstrations must notify authorities five days in advance of any planned event⁶⁹ (although if the protest will have less than 200 participants or will be held in a Government-designated ‘freedom park,’ organisers only need to provide notification 12 hours in advance). Whilst a notification regime, rather than a requirement to seek permission in advance of assemblies, complies with international best practice,⁷⁰ the required notification period has the potential to restrict assemblies in rapid response to current events, in contradiction with international standards.⁷¹ In practice, the law is regularly misapplied, and assemblies without express permission are restricted with no basis in law. Article 20 stipulates that assemblies for which a notification letter was not submitted, even if peaceful, may be disbanded. Those who participate in peaceful protests are often arrested or subjected to unwarranted violence.

Permission to hold a public assembly may be denied on a number of broad grounds that are easy to manipulate to block peaceful protests: if the proposed assembly inhibits the rights or freedoms of others, impinges on ‘societal customs,’ or jeopardizes public order or national security, permission may be denied under Article 2. Undefined terms such as ‘societal customs,’ ‘public order,’ and ‘national security’ are overly broad and subjective, and as in other laws are frequently broadly interpreted to suppress critical voices. The state thus regularly prohibits assemblies for opposition political groups and movements that criticize the state and its policies. There is no avenue for appeal to an independent body if an assembly is not permitted.⁷² In addition, under Article 14, all demonstrations must occur between the hours of

6 AM and 6 PM, and are prohibited from taking place during certain national holidays. Blanket bans on specific days fail to meet the three-part test required for restricting the right to freedom of assembly as defined by Article 21 of the ICCPR.

When the Government feels that even these stringent conditions are not enough to silence protest, it can issue executive orders. Thus, from January to February 2014, the Government issued a blanket ban on all demonstrations in Phnom Penh, and from January to August 2014, the Government also implemented a ban on gatherings in Freedom Park in Phnom Penh. Blanket bans on protests with no basis in law were also applied to all ‘Black Monday’ and other colour coordinated protests from May 2016, and in October and November 2017 surrounding the dissolution of the CNRP, and the arrest and subsequent hearings of its former head, Kem Sokha.

In August 2015, the controversial Law on Associations and Non-Governmental Organisations (LANGO) was promulgated into law,⁷³ despite widespread criticism from civil society and the international community that the law would severely restrict civil society’s activities in Cambodia. Mandatory registration requirements under the LANGO for all domestic and international associations are overly burdensome and vague, giving the Ministry of Interior unfettered discretion over their registration. Without registration an organisation is illegal, thus the Government maintains absolute control over civil society. For a domestic organisation, registration requires three founding members, who must be over 18, and must be Khmer, as well as extensive documentation, such as banking information, funding sources, a detailed governing statute, rules

⁶⁹ Law on Peaceful Assembly, article 7.

⁷⁰ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council (HRC), A/HRC/20/27, 21 May 2012, para. 28

⁷¹ Spontaneous assemblies which are held in rapid response to an unforeseen development should not be subjected to prior notification procedures, which should be stated for in law. See ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association,’ Maina Kiai, HRC, A/HRC/20/27, 21 May 2012, recommendation 91, op. cit.

⁷² The Minister of Interior shall provide the final decision in writing and at least 24 hours before the scheduled peaceful assembly (Law on Peaceful Assembly, article 12), however the Minister of Interior – as a member of the executive branch – is not an ‘independent body,’ and there is no means for further appeal.

⁷³ ‘Law on Associations and NonGovernmentalOrganisations’ http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Unofficial_Translation_of_5th_LANGO_ENG.pdf

for management, and funding sources (Articles 5, 6, 10, and 13). The rules for international organisations are similarly strict, except they must obtain a Memorandum of Understanding (MoU) from the Ministry of Foreign Affairs, as well as approval for every project from local authorities (Article 13). The grounds for rejection of a registration application are vague and essentially make it a discretionary matter for the Ministry of the Interior (Article 11). Even if registration is approved, organisations remain vulnerable to Government oversight, harassment, and dissolution. Reporting requirements are onerous placing an unreasonable workload particularly on smaller and resource-scarce organisations. The Government may revoke registration or even dissolve an organisation at any time under the Law's broad phrasing: for instance, if an organisation does not 'adhere to a stance of neutrality towards political parties,' it may be dissolved (Articles 24 and 30).

In October 2017, the Ministry of Interior issued a letter which requires all associations and NGOs to notify authorities in writing of the 'nature' of any activities at least three days in advance.⁷⁴ According to the letter, if authorities are not informed they have the right to stop the activity and must report it to the Ministry of Interior. This entails a prior authorisation regime for any CSO activities, which is neither necessary nor proportionate, and excessively restricts the right to freedom of association. While the letter cites the LANGO, a notification regime has no basis in the LANGO or other Cambodian law.

In July 2017, the Situation Room, an informal coalition of 40 CSOs which undertook neutral electoral observation activities, was banned for allegedly failing to register under the LANGO, despite having no requirement to do so as a temporary and information coalition. In August 2017, the National Democratic Institute (NDI), a US funded organisation, was closed and its foreign staff expelled on allegations that the organisation had failed to register in accordance with the LANGO despite NDI having submitted all required

documentation and not receiving a response within the required timeframe of 45 days (Article 14). In September 2017, Equitable Cambodia, an NGO working on land right issues, was suspended for 30 working days for allegedly violating the LANGO. Despite having fully serviced this suspension under Article 30 of the LANGO, the MoI stated that Equitable Cambodia's operation may only resume with their permission, in an extra-legal extension of the suspension, which was not explicitly lifted until February 2018.

In December 2015, the legislature promulgated the Law on Telecommunications,⁷⁵ which severely restricts freedom of expression, even in private conversation. Article 97 allows the newly created 'telecommunications inspections force' (which has full police powers) to secretly monitor any communications without a warrant, opening the door to severe harassment of HRDs. Article 6 further impedes the right to privacy by compelling telecommunications companies to provide data to Government, also without a warrant. Article 7 invests in the Government the power to take control of the entire industry, but does not provide any clear conditions that must be present for this power to be exercised. The Law also creates new criminal offences specific to telecommunications. Article 80 outlaws the use of telecommunications leading to 'national insecurity,' without defining the term, meaning that it is open to broad application and could easily be used to silence dissenting opinions on sensitive issues. Article 66 prohibits activity that 'may affect public order or national security,' which again is left undefined, opening it up to the same potential for abuse as Article 80. Articles 93-96 mirror Articles 231, 232, 423 and 424 of the Criminal Code, but carry heavier sentences simply for having been committed online. Article 107 holds the leaders of organisations, as well as organisations themselves, responsible for the professional acts of individuals within them. This means that entire media outlets or NGOs could be shut down for

⁷⁴ The original letter (in Khmer) can be found at <http://www.freshnewsasia.com/index.php/en/localnews/67305-2017-10-10-11-02-46.html>; see also 'Ministry ups scrutiny of NGOs', The Phnom Penh Post, 10 October 2017, <https://www.phnompenhpost.com/national/ministry-ups-scrutiny-ngos>.

⁷⁵ 'Law on Telecommunications (Royal Decree No. NS/RKM/1215/017)' <https://www.trc.gov.kh/wp-content/uploads/2016/03/Law-on-Telecommunicaiton-in-English-Unofficial-Translation.pdf>

a minor offence committed by one of their staff. On the whole, the law provides the Government with extraordinary powers to monitor and punish private communication as well as control the entire telecommunications industry. This has had a very powerful chilling effect on expression that extends deep into people's private lives.

The Law on Trade Unions, 2016⁷⁶ seriously undermines the right to form trade unions and strike in Cambodia. Rather than focusing on how the freedom to join or form a union might be guaranteed, the Law concerns itself with restricting unions' registration, structure and operation. Chapter 3 of the Law requires unions to register with the Ministry of Labour (Article 10), and states that registration must be 'approved' by the Ministry (Article 11), meaning that it will have complete control over the approval or denial of registration, in contravention of the ICESCR. The Law also includes a long list of illegitimate restrictions on the autonomy of unions that contravene international law. Articles 20, 21 and 30 state that union leadership must be 18 years of age or more, be literate, speak Khmer, have no criminal history, and not have been the leader of a dissolved union in the past five years. The provision on criminal history is particularly worrying given the highly politicized nature of Cambodia's courts, which frequently target HRDs. Article 24 lays out strict funding rules on unions, and authorizes employers to call for unions to be audited. Article 29 allows a union to be dissolved by the Labour Court if it 'contravenes the objectives of the union as stated in its statute,' which is clearly a matter for the union, not the Government, to decide on. The Law explicitly leaves out the right to strike from a list of rights unions have (Articles 5 and 9). The law imposes onerous requirements prior to undertaking a strike (Article 13). Unions and their representatives are also unable 'to agitate for purely political purposes or for their personal ambitions' (Article 65(f)). This vague language risks

broad interpretation. Finally, the Law has a clear pro-employer bias, laying out unequal obligations in negotiation (Articles 51 and 53) and setting fines five times higher for compelling someone to join a union than for preventing someone from joining one.

The draft Cybercrime Law⁷⁷ contains provisions that would introduce restrictions on freedom of speech on the internet despite widespread public opposition. A draft of the law released in 2014 provided grounds for the establishment of a regulatory body (the National Anti-Cybercrime Committee) composed of Government officials and chaired by Prime Minister Hun Sen that would be able to take legal action and monitor the online activity of Internet users in Cambodia. Article 28 of the 2014 draft bans the production, publication or sharing of any content 'deemed to hinder the sovereignty and integrity of the Kingdom of Cambodia,' 'deemed to generate insecurity, instability and political cohesiveness,' 'deemed to be non-factual which slanders or undermined [sic] the integrity of any Government agencies,' or that might 'incite or instigate the general population that could cause one or many to generate anarchism.' In July 2015 a second draft was informally released which also raised concerns, however did not include the controversial Article 28. As of April 2018, no further legislative developments have since been made public.

In January 2018, the Ministry of Information released a Draft Access to Information Law,⁷⁸ which was drafted with the support of UNESCO. Whilst the law enshrines the right to access information held by public institutions and provides protections for whistleblowers, it includes exemptions for categories of information deemed as confidential and provides broad powers to the 'officer in charge of information' to define confidential information.⁷⁹

In August 2015, an Education Ministry directive was enacted that bans all political activities and

⁷⁶ 'ILO's statement on Trade Unions law in Cambodia,' International Labour Organisation, 4 April 2016, http://www.ilo.org/asia/media-centre/news/WCMS_466553/lang--en/index.htm

⁷⁷ 'Cybercrime Law' (2014 Draft) https://www.article19.org/data/files/medialibrary/37516/Draft-Law-On-CyberCrime_Englishv1.pdf

⁷⁸ Draft Law on Access to Information, Ministry of Information, available at http://www.a2i.info.gov.kh/html/law_eng.php.

⁷⁹ Daphne Chen, 'Draft of Long-Awaited Access-to-Information Law Unveiled,' The Phnom Penh Post, 1 February 2018, <https://www.phnompenhpost.com/national/draft-long-awaited-access-information-law-unveiled>.

unauthorised associations at academic institutions throughout Cambodia. The directive also allows for the removal of staff and students that 'tarnish' institutions' political 'neutrality'. Under the directive, students cannot participate in non-Governmental organisations, or speak out against Government policies that they disagree with. However, ruling CPP-aligned organisations will be allowed to continue to operate on campuses.

In conclusion, Cambodia's judiciary suffers from corruption and remains under the control of the ruling Cambodian People's Party. The courts are used to persecute HRDs by accepting cases on spurious grounds and imposing convictions based on ludicrously broad applications of the law - particularly the Criminal Code. The courts also effectively grant impunity to perpetrators of human rights abuses against HRDs.

Enabling laws and policies

The Government of Cambodia has not developed any significant public policies or protection mechanisms for HRDs in the country. Efforts towards the establishment of an NHRI began in 1997 but have never come to fruition. Currently, a number of bodies ostensibly serve to promote and protect human rights: the National Assembly Commission on Human Rights, the Senate Commission on Human Rights, and the Cambodian Human Rights Committee. However, none of these bodies are independent of Government, nor do they come close to being in line with the Paris Principles.⁸⁰

Cambodia's Constitutional Council is the supreme body through which citizens including HRDs should be able to challenge the constitutionality of laws and state decisions affecting their constitutional rights, including human rights. The procedures involved in making such challenges, however, either deter or prevent citizens from accessing the Council, which is not independent from the Government. Someone wishing to make such a challenge must convince either the King, the Prime Minister, the

Senate President, the National Assembly President, one tenth of National Assembly members, or one quarter of Senators to make a submission.⁸¹

Recommendations

Cambodia accepted over 150 recommendations under its 2nd Universal Periodic Review in February 2014, among them to bring the Criminal Code into line with the ICCPR to prevent the harassment of HRDs; to guarantee freedom of expression, association and assembly to all citizens, including HRDs; to implement laws on the independence of the judiciary; and to create an NHRI in line with the Paris Principles. The Government must take action to comply with the recommendations that it has accepted.

Specifically, articles 42, 49 and 53 of the Constitution should be appealed or amended to bring them into line with Cambodia's international obligations. The Government must also immediately amend the Criminal Code to ensure that HRDs are not targeted for carrying out their work. Defamation must be decriminalized by repealing Articles 305, 307 and 311 of the Criminal Code. Article 502 on insulting public officials must be repealed in its entirety, for there is no legitimate reason for Government to be shielded from criticism more than other citizens. Articles 522 and 523 must also be repealed, in accordance with Cambodia's international legal obligations, so that commentary on a court case no longer carries any penalty, let alone harsh criminal ones. Article 496 on incitement must be made more specific and strike the word 'hint' from its description.

Moreover, the Government must stop illegitimately persecuting HRDs through spurious charges of unrelated provisions in the Criminal Code, and the courts must stop accepting such charges by unreasonably broad applications of the law. Articles 217, 218 and 229 (violence), 495 and 496 (incitement), 410, 411, 421, 422, 423, 424 and 426 (destruction), 407 (insulting), and 437-bis (Insulting the King) must all be amended to ensure that they

⁸⁰ 'Cambodia: Symbolic institutions are no substitute,' The Cambodian Human Rights and Development Association, 3 August 2015, <https://www.forum-asia.org/uploads/wp/2015/09/2-Cambodia-FINAL-03-Aug-2015.pdf>

⁸¹ 'Cambodia: A deteriorating situation for Human Rights Defenders – Amnesty International and LICADHO submission to the UN Universal Periodic Review, January – February 2014,' Amnesty International, June 2013, <https://www.amnesty.org/download/Documents/12000/asa230042013en.pdf>

are specifically targeting actual crimes, and that they are explicitly forbidden from being applied to peaceful assemblies.

The Cambodian judiciary must also undergo significant reform to free it of political meddling and ensure that it is a legitimately independent and unbiased institution capable of fairly administering justice. In its current state it serves, from a rights perspective, little purpose other than to rubber-stamp Government repression of civil society.

The legislature must also amend a number of repressive laws to bring them in line with international standards and ensure that they are not used as tools of repression. The Press Law's Articles 6, 7, 13, and 14 must be repealed and replaced with explicit guarantees of press freedom. Article 12 must be amended to legitimately target national security threats, rather than speech critical of the Government. Concerning the Law on Telecommunications, Articles 7 (ability to seize telecommunications industry), 93-96 (threats), 97 (monitoring), and 107 (power to shut down organisations) must be repealed, while Article 65 (right to privacy) must be amended so that there are no exceptions, and Article 6 (power to compel data provision) must be amended so that a warrant is needed. The Cybercrime Law should be scrapped in its entirety, once and for all. The Law on the Election of Members of the National

Assembly must be amended so that it deals strictly with electoral reforms and does not place restrictions on civil society. The Law on Peaceful Assembly must be amended so that its focus is on protecting protestors from Government, rather than on restricting their right to assemble. The Trade Union Law must be changed by repealing Articles 20, 21 and 30 (criteria for leadership), and 65(f) and 65(g) (unlawful union activities). The following amendments must also be made to the law: Articles 10 and 11, to remove the need for Government approval; Article 24, to give unions full power over their own finances; Article 29, to exclude illegitimate reasons for dissolving a union; Articles 5 and 9, to explicitly state that unions have the right to strike; and Articles 51, 53, and 79, to ensure that any pro-employers bias is removed from the Law. The LANGO must be immediately repealed in its entirety and replaced with legislation guaranteeing people's right to form and join organisations. Similarly, the October 2017 letter requiring notification for all CSO activities should be immediately repealed. The Education Ministry's directive prohibiting student involvement in political activities must be annulled as well. Finally, the Government must ensure that all draft laws comply with international standards prior to promulgation following meaningful consultation with civil society actors and other relevant stakeholders, notably the Draft Cybercrime Law and Draft Law on Access to Information.

CHINA

Synopsis of challenges for HRDs

Human Rights Defenders (HRDs) in China remain among the most persecuted in the world. They are subjected to one of the most restrictive legal frameworks in the region, a thoroughly politicised judiciary that interprets these laws extremely broadly, a vast web of shifting public and private Government and Party directives, regulations and unspoken rules which make it hard to know what actions will in fact be punished, and severe extra-judicial harassment by Government security forces. This environment continues to worsen as the Government formalizes in legislation the informal restrictions that HRDs already face. New national security, cyber-security and telecommunications laws give the Government an increasing number of tools with which to repress and punish HRDs.

HRDs of all kinds in China are systematically repressed and punished for their work through myriad legal and extra-legal means, and the situation has been worsening since Xi Jinping took office in 2013. Since then, there has been a sustained and relentless crackdown on civil society and on HRDs in particular. HRDs are harassed and their work is disrupted by endless detentions and spurious legal charges. They are often detained without charge, merely on suspicion, and kept in detention until charges are laid, which can take years. The courts and police participate in synchronized legal interpretation gymnastics to stretch the law beyond recognition in arresting and convicting HRDs based on laws that are sometimes not even related to the act in question. HRDs and their organisations face constant monitoring and intimidation from security forces. With new legislations on cybercrime and national security being passed into law, the legal methods at the disposal of security forces with which to monitor, censor and prosecute dissent have grown. Security forces also commonly employ extra-legal tactics. Civil Society Organizations (CSOs) have consistently faced intimidation and harassment: for example, the Government, in addition to blocking most

rights-related websites, has launched distributed denial of service (DDOS) attacks on CSO websites. HRDs often face months or even years of arbitrary detention, while others are simply disappeared. Sometimes, as in the case of renowned activist Cao Shunli, death is the consequence.

2015-2016 has seen a severe and wide-ranging attack on human rights lawyers in China, with over 300 people detained, some of whom remain missing. Many of those detained have been subjected to torture and other ill-treatment in an attempt to extract confessions. The state-run media have called the victims a 'criminal gang,' and security forces have spread a wide dragnet, pursuing family members and colleagues.

Bloggers working on sensitive issues such as minorities, rights and freedoms, and Government transparency and accountability are increasingly being persecuted by a Government seeking to exert total control over the online sphere. With the advent of new legislation on cyber-security providing the Government with greater powers to monitor online activity, as well as the judiciary applying more laws to the online sphere, they face rising risks in promoting and defending human rights, a de facto criminal act in China.

Academic and journalist HRDs are also increasingly restricted, monitored, harassed and prosecuted. Official directives have officially placed discussion of issues such as human rights off-limits in university classrooms, and the practice of having video monitoring in classrooms is becoming widespread. Journalists are also forbidden from addressing rights-related subjects, and the little space that was available for expression a few years ago has been squeezed shut as censorship rules tighten under Xi's administration, resulting in record numbers of jailed journalists.

The rights situation in Tibet and Xinjiang continues to be extremely grim. Government security forces are omnipresent and monitor HRDs invasively. HRDs cannot work openly, as any reference to minority rights, autonomy, self-representation, religious rights, or rights abuses is met with repression in the form of arrest on national security charges,

arbitrary detention and enforced disappearances. Independent trade unions and human rights groups are illegal, and even non-governmental organisations (NGOs) working in fields such as public health and development are subject to heavy restrictions. Any public demonstration, regardless of how peaceful or small, is met with immediate and brutal force: live ammunition is used on protestors, and casualties are frequent. Hundreds of political prisoners from Tibet and Xinjiang are in detention, often victims of arbitrary arrest.

Repressive laws and policies

The right of HRDs to express themselves freely is severely constrained in China through the Criminal Code, specific legislation, and a vast and complex maze of directives and regulations. A large number of laws and criminal code provisions criminalize any criticism of or opposition to the Chinese Communist Party (CCP) as subversion, slander and threats to national security. Articles 103 to 105⁸² of the Criminal Code outlaw any act or plan intended to ‘split the State,’ ‘undermine the unity of the country,’ ‘subvert state power,’ or ‘overthrow the socialist system.’ The penalties carried by the provision are extremely harsh, from life imprisonment for ‘ringleaders’ to 10 years of imprisonment, criminal detention, public surveillance and deprivation of political rights for anyone participating in the act or plan.

Article 103⁸³ has been broadly interpreted to criminalize any discussion of religious and ethnic minorities in China. In May 2016, Buddhist monk Jampa Geleg was detained for allegedly possessing a Tibetan national flag inscribed with an independence slogan. He has not yet been charged but is being held on the basis of Article 103. In March 2016, Tashi

Wangchug was charged with inciting separatism under Article 103 for advocating for bilingual education in Tibet. In September 2014, Ilham Tohti was sentenced to life in prison under Article 103 of the Criminal Code for his popular lectures, which criticized State policies towards China's Uyghur population. Article 105⁸⁴ is also used to harass and punish HRDs as well as those involved in pro-democracy work. In May and June 2016, Chengdu residents Fu Hailu, Luo Fuyu and Zhang Juanyong were detained on suspicion of ‘inciting subversion of state power’ under Article 105 for posting images online that allegedly commemorated the 1989 Tiananmen pro-democracy protests.

Defamation is a criminal offence in China under Article 246⁸⁵ of the Criminal Code, constituting an effective tool for the silencing of HRDs critical of Government rights abuses. Under the article, any person who ‘publicly humiliates’ or ‘invents stories’ about another person can be sentenced to up to three years in prison, criminal detention, ‘public surveillance,’ and deprivation of political rights. The September 2013 judicial interpretation guidelines of the Supreme People’s Court and the Supreme People’s Procuratorate⁸⁶ extended defamation law into the online sphere, laying out punishments for anyone who posts defamatory information online in seven broad and ill-defined circumstances with low severity thresholds. These interpretation guidelines allowed the authorities to begin targeting activist bloggers and social media users; hundreds have been detained since the guidelines were promulgated. In July 2015, police charged prominent free speech advocate Wu Gan with defamation for allegedly insulting the court in reference to a case in which lawyers defending a client who had been tortured were being harassed.⁸⁷

⁸² ‘Criminal Law of the People’s Republic of China’ <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/5375/83719/F869660960/CHN5375.pdf>

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ ‘SPC and SPP Interpretation on Internet Speech Crimes,’ 10 September 2013, <http://chinalawtranslate.com/spc-and-spp-interpretation-on-internet-speech-crimes/?lang=en>

⁸⁷ ‘China: List of Political Prisoners Detained or Imprisoned as of October 11, 2016,’ Congressional-Executive Commission on China, 11 October 2016, https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Pris%20List_20161011_1433.pdf

Article 111⁸⁸ of the Criminal Code is a provision on state secrets that is used to punish criticism of Government. Under Article 111, anyone convicted of stealing state secrets or intelligence can face punishments that range up to life imprisonment. ‘State secrets and intelligence’ are not defined in the provision, meaning that possessing virtually any form of state information could be a prosecutable offence. In April 2015, Gao Yu, a veteran independent journalist who has been imprisoned repeatedly for critiquing the Chinese Government, was sentenced to five years of imprisonment under Article 111 of the Criminal Code for leaking a memo to a local newspaper. The Law on Guarding State Secrets, 1989⁸⁹ also defines ‘state secret’ very broadly, and furthermore allows information to be retroactively declared a secret. The 2010 revision to the law expands the penalties to the online sphere and lays out invasive requirements for telecommunications companies to monitor clients and report offending content. The Anti-Terrorism Law, 2015⁹⁰ is another national security law that threatens HRDs’ work. The definition of ‘terrorism’ is exceedingly broad, including ‘thought, speech or behaviour’ that is subversive or that seeks to influence national policy making. Organisations engaging in such activity can be labeled as terrorist organisations.

Article 225⁹¹ of the Criminal Code, on illegal acts in business operation, is frequently used to punish

activists who release content without an official publishing license. Penalties range up to five years of imprisonment and fines of up to 500 percent of the income received from the ‘illegal business venture.’ The Regulation on the Administration of Publishing, 2001⁹² and the Notice Regarding Striking Hard Against Illegal Publishing Activities, 1987⁹³ similarly stipulates that anyone wishing to publish content of any kind must obtain an official Government license or permit. Nor is there room for HRDs to promote rights through the established media, which is also under the Government’s vicelike grip. Government-issued press cards that may be revoked at any time are required to conduct journalism, journalists’ ability to share information among themselves is restricted, and media outlets are subject to an extremely strict set of constantly changing content regulations that ban any discussion of sensitive topics.

HRDs’ freedom of expression online is restricted by a massive and complex array of laws and regulations that allow the Government to monitor and censor all online information, right down to private conversations. Under the Cyber Security Law, 2016,⁹⁴ the National Security Law, 2015,⁹⁵ the Instant Messaging Regulations, 2014,⁹⁶ the Decision to Strengthen the Protection of Online Information, 2012,⁹⁷ the Provisions on the Administration of Internet Video and Audio Programming Services,

⁸⁸ ‘Criminal Law of the People’s Republic of China’

⁸⁹ ‘1989 Law on Guarding State Secrets (Chinese and English Text)’ <http://www.cecc.gov/resources/legal-provisions/1989-law-on-guarding-state-secrets-chinese-and-english-text>

⁹⁰ ‘China’s Comprehensive Counter-Terrorism Law,’ The Diplomat, 23 January 2016, <https://thediplomat.com/2016/01/chinas-comprehensive-counter-terrorism-law/>

⁹¹ ‘Criminal Law of the People’s Republic of China’

⁹² ‘Regulation on the Administration of Publishing (Chinese and English Text)’ <https://www.cecc.gov/resources/legal-provisions/regulation-on-the-administration-of-publishing-chinese-and-english-text>

⁹³ ‘Circular Regarding Striking Hard Against Illegal Publishing Activities (Partial CECC Translation and Chinese Text)’ <http://www.cecc.gov/resources/legal-provisions/circular-regarding-striking-hard-against-illegal-publishing-activities>

⁹⁴ ‘2016 Cybersecurity Law’ <http://chinalawtranslate.com/cybersecuritylaw/?lang=en>

⁹⁵ ‘National Security Law’ <http://chinalawtranslate.com/2015nsl/?lang=en>

⁹⁶ ‘Provisions on management of Instant Messaging Services’ <http://chinalawtranslate.com/provisions-on-management-of-instant-messaging-services/?lang=en>

⁹⁷ ‘National People’s Congress Standing Committee Decision concerning Strengthening Network Information Protection,’ 29 December 2012, <https://chinacopyrightandmedia.wordpress.com/2012/12/28/national-peoples-congress-standing-committee-decision-concerning-strengthening-network-information-protection/>

2007,⁹⁸ and the Interim Rules for Managing Internet Culture, 2003⁹⁹ the Government has broad powers to monitor how individuals use the internet and censor what they are able to post and access. Strict regulations require users to link their online presence to their real-life identity, and force companies to play an active role in monitoring, reporting and censoring content. These laws and regulations give the Government the power to delve deep into HRDs' lives and gather information with which to prosecute them under the laws detailed above.

HRDs' freedom of assembly is extremely restricted in China through a combination of legislation, the Criminal Code, administrative directives (both public and not public) and informal tactics such as investigation and surveillance by state security forces. The main barriers to assembly are informal: although not explicitly laid out in law, any discussion, let alone assembly, related to 'sensitive issues' such as human rights is forbidden. Although China's Assemblies, Processions, and Demonstrations Law, 1989¹⁰⁰ is very strict, HRDs do not consider it to be the central barrier to assembly. Most would not consider applying for a permit because their activities are clandestine and hidden from the Government. Applying would simply reveal their identities to security forces, which would open investigations and lay charges. Freedom of assembly is more commonly repressed through prosecution under a range of articles in the Criminal Code.

The Criminal Code articles related to public assembly are a much-used tool by the authorities to crackdown on a wide range of HRDs. Article 291¹⁰¹ on gathering to disrupt order is used to prosecute assembly, carrying the heavy penalty of five years

in prison. The use of Article 293¹⁰² on 'gathering a crowd to disrupt order' – in particular 293(4)¹⁰³ on 'picking quarrels and provoking trouble' – is very common. Because of their vague phrasing, these laws have been used by the authorities to prosecute HRDs not only for assembly but for a bewildering array of other acts, sometimes totally unrelated to public assembly. HRDs' work, which often touches on sensitive topics such as democracy, human rights, ethnic and religious minorities, and critiques of state and Party policies, is particularly targeted under these provisions. In June 2016, poet and rights activist Liang Taiping was criminally detained on suspicion of 'picking quarrels and provoking trouble' under Article 293 in connection with his attendance at a commemoration on 29 May 2016 of the 1989 Tiananmen protests.¹⁰⁴ In 2014, Xu Zhiyong, the founder of the New Citizens Movement, a coalition that advocates for human rights and constitutionalism, was sentenced to four years of imprisonment under Article 291 for leading demonstrations calling for education equality and Government transparency. Several other members of the New Citizens Movement have also been fined, arrested, or jailed. In September 2013, Cao Shunli, a prominent Chinese lawyer and human rights activist, was forcibly disappeared and subsequently arrested under Article 293. Cao had led a two-month sit-in at the Ministry of Foreign Affairs to seek information about China's Universal Periodic Review, and was detained until her death in custody in March 2014. In March 2015, women's rights and lesbian, gay, bisexual, trans, and/or intersex (LGBTI) activists Li Tingting, Wu Rongrong, Zheng Churan, Wei Tingting, and Wang Man were detained under Article 293 on rumours that the five were planning

⁹⁸ 'Provisions on the Administration of Internet Video and Audio Programming Services (Chinese Text)' <https://www.cecc.gov/resources/legal-provisions/provisions-on-the-administration-of-internet-video-and-audio-programming>

⁹⁹ 'Interim Provisions on the Administration of Internet Culture' <http://en.pkulaw.cn/display.aspx?cgid=46368&lib=law>

¹⁰⁰ 'Law of the People's Republic of China on Assemblies, Processions and Demonstrations' <http://www.icla.up.ac.za/images/un/use-of-force/asia-pacific/China/Law%20on%20Processions%20and%20Demonstrations%20China%201989.pdf>

¹⁰¹ 'Criminal Law of the People's Republic of China'

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ 'China: List of Political Prisoners Detained or Imprisoned as of October 11, 2016,' Congressional-Executive Commission on China, 11 October 2016

¹⁰⁵ Ibid.

to lead events and distribute leaflets denouncing the sexual harassment of women.¹⁰⁵

In 2013, the acts prosecutable under Criminal Code provisions related to public assembly were significantly broadened with the issuance of a guide to judicial interpretation released by the Supreme People's Court and the Supreme People's Procuratorate.¹⁰⁶ The guidelines stated that Article 293 on 'creating disturbances' could now be applied to online acts, which suddenly made HRDs active online, such as bloggers, vulnerable to prosecution under a broad and draconian provision related to public assembly. In July 2016, online citizen journalists Lu Yuyu and Li Tingyu, were arrested and charged with 'picking quarrels and provoking trouble' under Article 293, after a month in detention under suspicion of that offence. The two manage a blog and Twitter account that track protests and labour strikes throughout China. They have been systematically harassed and intimidated for their work documenting protests. In March 2014, Huang Qi, founder of a website that tracks cases of human trafficking and Government exploitation, was detained under Article 293 after he reported on protests and security breakdowns in Beijing.

As mentioned above, China also has specific legislation restricting the right to freedom of assembly. The Assemblies, Processions, and Demonstrations Law, 1989¹⁰⁷ requires all public gatherings to be approved by a public security bureau. Applications must be submitted five days in advance and must include an exhaustive list of information about the protest, down to posters and slogans. People may only participate in assemblies that occur in the cities they reside in, and foreigners are prohibited from participating in any public assemblies. In addition, the Law stipulates that a protest or public demonstration cannot take place within 300 meters of several state and Government buildings, a location where a state guest is staying, a Military installation, or an

airport, railway station, or port, which in practice makes it difficult to organise a protest in a city. Protests may only take place between the hours of 6 AM and 10 PM unless the local Government gives additional clearance. Spontaneous protests are considered unlawful and all participants are subject to prosecution. Organisers are burdened with unreasonable obligations and liabilities, having a duty to 'maintain order' and being subject to prosecution if the assembly does not follow the specific guidelines set in the application, down to the slogans used. The law contains a number of provisions that are broadly phrased and therefore give the authorities a great deal of discretion and power to deny or shut down assemblies and prosecute participants. Article 12, for example, bans assemblies that might 'oppose cardinal principles of the Constitution,' which are nowhere defined. In June 2016, Zhang Hailong and Ou Quanjiang, two of the alleged organisers of a protest against the planned construction of a waste incineration plant, were criminally detained on suspicion of 'illegal assembly, procession or demonstration.'¹⁰⁸

HRDs' freedom of association is heavily restricted in China through a wide variety of methods. It is nearly impossible for HRDs to form and join associations to promote and protect human rights because the CCP sees human rights promotion as a fundamental threat to its rule. Many of the tactics used by the Government are informal and have no basis in law: all human rights-related work – though particularly advocacy, legal assistance, labour rights, religious rights, and ethnic minority rights – are informally prohibited for civil society. Informal or extra-legal tactics used to shut down organisations include invasive monitoring and inspections, intimidation, public humiliation, stigmatization and denunciation, detention without charge, arrest on spurious charges, seizure of property, and forcible closure.

While the legislation surrounding freedom of association is only part of the picture, it is

¹⁰⁶ 'SPC and SPP Interpretation on Internet Speech Crimes' <http://chinalawtranslate.com/spc-and-spp-interpretation-on-internet-speech-crimes/?lang=en>

¹⁰⁷ 'Law of the People's Republic of China on Assemblies, Processions and Demonstrations'

¹⁰⁸ 'China: List of Political Prisoners Detained or Imprisoned as of October 11, 2016,' Congressional-Executive Commission on China, 11 October 2016

nonetheless very repressive. Under the Regulations on the Registration and Management of Social Organisations, 1998¹⁰⁹ all organisations, except for those working in apolitical fields such as science, must officially register and receive approval from both the Ministry of Civil Affairs and the local Civil Affairs Bureau. To register, all organisations must find a Government or Party official to sponsor their registration, who is liable if the group engages in unsanctioned activities. This regulation alone ensures that all associations promoting or defending human rights cannot legally exist in China. Furthermore, organisations must obtain written approval from a Government official for all of its activities, and are forced to shut down if they touch on any sensitive issues.

NGOs' ability to receive foreign funds and interact with foreign organisations or Governments is also severely constrained. Regarding funding, under the Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated To or By Domestic Institutions, 2010,¹¹⁰ domestic organisations may not use foreign funds for projects that go against 'social morality' or could harm public interest. Under the notice, domestic organisations must jump through several hoops to receive funds from foreign organisations.

Particularly for HRDs, whose work the CCP consistently targets, having any form of foreign contact can be very difficult and carry consequences. Organisations having such contact are sometimes required to report it to the authorities, or to seek approval for visits, international travel or international cooperation. If they work closely with foreign organisations, they often face invasive monitoring and harassment. For example, in 2013 Cao Shunli, an activist who attempted to travel to Geneva to participate in China's human rights review at the United Nations, was barred from traveling,

detained, and denied adequate medical treatment until she died in custody. Another example is the dozens of human rights lawyers detained and arrested during a 2015-2016 Government crackdown initially centering on the Fengrui law firm but soon spreading far beyond, many of whom were forbidden from traveling abroad.

The Charity Law, 2016¹¹¹ further concretizes the existing restrictions against HRDs. It tightens the noose on funding and registration and provides the Government with yet another legal weapon in its arsenal to restrict, control and punish their work. The provisions on national security provide the Government with a pretext for restricting operations or shutting down organisations: if found by the Government to be endangering national security, registration will be revoked. The issue of course lies with the vague definition of the concept in the National Security Law and the Criminal Code, as well as with the legal precedent of extraordinarily broad interpretation of the concept to cover any activity that displeases the CCP. The law also restricts NGOs' ability to raise funds by requiring organisations to be registered to raise funds, with penalties of up to 200,000 RMB (US\$30,000) for not complying. As human rights-related organisations are unable to register, this effectively further criminalizes their work.

The draconian Foreign NGO Management Law, 2016¹¹² explicitly aims to directly control and hinder the work of foreign organisations in China. All foreign NGOs must have a permanent office in China and their registration must be sponsored by a Government or Party official, similar to the requirement for local organisations. The law explicitly prohibits any work related to political or religious activities. Registration requirements under the law are onerous, requiring the approval of numerous Government organs for all activities and funds disbursement.

¹⁰⁹ 'Regulations on the Registration and Management of Social Organisations (CECC Full Translation)' <http://www.cecc.gov/resources/legal-provisions/regulations-on-the-registration-and-management-of-social-organisations>

¹¹⁰ 'Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated To or By Domestic Institutions (China, 2010)' <http://www.icnl.org/research/library/files/China/NoticeoftheState.pdf>

¹¹¹ '2016 Charity Law' <http://chinalawtranslate.com/2016charitylaw/?lang=en>

¹¹² '2016 PRC Law on the Management of Foreign Non-Governmental Organisations' Activities Within Mainland China' <http://chinalawtranslate.com/2016-foreign-ngo-law/?lang=en>

As these laws have only recently come into effect, examples of their application are not yet available. However, examples abound of organisations forced to closedown before the advent of these laws due to Government harassment, intimidation and pressure. In July 2015, Chinese authorities detained and otherwise targeted hundreds of human rights lawyers and public defenders under a range of different charges. The crackdown was centered on Beijing-based Fengrui Law Firm, which has a strong record of working on human rights cases. The crackdown also included a state-led smear campaign against the law firm and its lawyers, with references to the group as ‘criminal syndicate.’ In recent years, the following human rights-related organisations have been persecuted until they have been forced to close: the Weizhiming Women’s Center and Beijing Zhongze Women’s Legal Counseling and Service Center (women’s rights), Liren Libraries (rural education), Zhongyixing (disability rights), the Panyu Workers Center and the Nanfeiyan Social Worker Center (labour rights), Yirenping (anti-discrimination), and the Transition Institute (social policy research).¹¹³

Enabling Laws and Policies

Article 35 of the Constitution¹¹⁴ guarantees ‘freedom of speech, of the press, of assembly, of association, of procession and of demonstration’ to citizens of the PRC. Article 36 guarantees freedom of religious belief, as long as it is ‘normal,’ does not disrupt ‘public order’ and is not ‘subject to foreign domination.’ Article 40 guarantees Chinese citizens the freedom and privacy of correspondence. Article 41 protects the right to criticize any state organ, as long as there is no ‘distortion of facts.’ However, Article 51 appears to negate the above by stating that ‘the exercise by citizens of the PRC of their freedoms and rights may not infringe upon the interests of the state.’ Furthermore, the total politicization of the judiciary and de facto restrictions on free expression make it impossible to challenge the Government on its infringement of articles in the constitution.

Recommendations

China’s Criminal Code must be significantly amended to ensure that the definitions are precise enough to target actual criminal activity, rather than to act as catch-all provisions that allow the state to punish the legitimate exercise of rights. Regarding freedom of expression, the articles must be stripped of broad language such as ‘split the state,’ (103-105) ‘inventing stories,’ (246) and ‘stealing state secrets and intelligence’ (111), and provide precise definitions with appropriate severity thresholds of what constitutes the criminal speech offence in question. Articles 291 and 293 on assembly must be stricken from the code because the acts they define do not constitute crimes, according to international standards. ‘Picking quarrels and provoking trouble,’ (293) a popular catch-all offence, is emblematic of the issues with the Criminal Code.

Equally importantly, China’s judiciary is in urgent need of reform in order to be able to serve its purpose as an impartial adjudicator of the law. Its current role as lackey of the CCP in fact undermines the rule of law. The courts must cease twisting their interpretation of the Criminal Code to maximize the state’s ability to punish the legitimate exercise of rights by HRDs.

Numerous pieces of legislation must also be either repealed or amended to establish definitions and severity thresholds. The Law on Guarding State Secrets must be amended to specifically define what a ‘state secret’ is, to ensure that what is covered is a limited amount of highly confidential material. It must also have an explicit exemption for whistleblowers. The Anti-Terrorism Law’s definition of terrorism must be significantly narrowed to ensure that it targets actual violence and is consistent with international standards. All legislation and directives limiting people’s ability to publish material must be repealed, including the Regulation on the Administration of Publishing and the Notice Regarding Striking Hard Against

¹¹³ ‘New Charity Law Will Further Isolate & Weaken Civil Society in China,’ Chinese Human Rights Defenders, 21-31 March 2016, <https://www.nchr.org/2016/03/chrp-new-charity-law-will-further-isolate-weaken-civil-society-in-china-march-21-312016/>

¹¹⁴ ‘Constitution of the People’s Republic of China’ <http://en.people.cn/constitution/constitution.html>

Illegal Publishing Activities. Publishers should require a permit, and content should in no way be interfered with by the Government. Similarly, the Cyber Security Law, the National Security Law, the Instant Messaging Regulations, the Decision to Strengthen the Protection of Online Information, the Regulations on Internet Audiovisual Program Service Management, and the Interim Rules for Managing Internet Culture should be repealed. They serve no legitimate purpose; merely providing the state with the authorization to monitor and control online expression. The Assemblies, Processions, and Demonstrations Law must be thoroughly amended, or replaced in its entirety. Persons wishing to demonstrate should be legally entitled to do so under any circumstances, with exceptions only for very severe and exceptional circumstances. No one should be criminally liable for participation in an assembly of any sort.

All Chinese Government organs must immediately halt their harassment and intimidation of HRDs seeking to form associations. The Regulations on the Registration and Management of Social

Organisations must be repealed: CSOs must not be required to have Government permission to operate, and the Government must have no influence regarding their operations, staff, or funding sources. To this end, the Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated To or By Domestic Institutions must also be repealed. The Charity Law must be amended to be rid of any reference to national security and of provisions regarding controls on funding; for instance by restricting fundraising to registered organisations. The Foreign NGO Management Law must be repealed in its entirety, as it serves no other purpose than to restrict freedom of association in a manner which has no basis in international law. Finally, China must promulgate a law on associations that guarantees the right of anyone, particularly HRDs, to join or form any association working on any issue with no exceptions, laying out specific consequences for any person, in the employ of the state or otherwise, who interferes with that right in any way.

INDIA

Synopsis of the challenges of HRDs

In India, Human Rights Defenders (HRDs) face an array of challenges including intimidation, spurious legal charges, slander campaigns, ill treatment and even extrajudicial killings. Those defending the rights of marginalised communities are often targeted by both State and Non-state actors. HRDs are faced with draconian laws and oppressive policing, and they are routinely arrested and beaten. Judicial harassment against HRDs is widespread. In certain regions, members of India's security forces continue to enjoy impunity for serious human rights violations. Armed groups and private companies are also among the perpetrators of attacks against HRDs. Most rights abuse cases in which the security forces are involved remain unpunished. World Peace Project's rule of law index (2017-2018), ranks India at third out of six countries in the South Asia region, seventh out of 30 lower-middle income countries, and 62nd out of 113 countries and jurisdictions worldwide.¹¹⁵

The rise in bureaucratic harassment of civil society organisations and activists in India is an issue of increasing concern. The crackdown on CSOs has intensified, as the authorities have tightened restrictions on Non-governmental organisations (NGOs), cancelled registration to receive funds from abroad, frozen bank accounts, and shut down and blacklisted some organisations. Civil society groups critical of big development projects' negative impact on the environment and the health and livelihoods of affected populations have been particularly targeted. International donors have also found themselves 'watch-listed' and subjected to intense scrutiny. HRDs have been labelled as 'anti-national' and 'anti-development' and accused of undermining the country's integrity and economic growth. Slandorous public statements by senior Government officials and the vilification of activists in the media have created a prohibitive operating environment for India's civil society.

On 19 December 2017, Indian Immigration authorities' refused entry to Mukunda Raj Kattel -Director of FORUM-ASIA in the country- by the Immigration Department at Tiruchirappalli International Airport in Tamil Nadu for his 'NGO activity'. Mukunda was held for more than 18 hours, denied access to a lawyer and deported back to Bangkok, Thailand, on 20 December 2017. As a Nepali citizen, Mukunda does not require a visa to travel to India. The Treaty of Peace and Friendship between the two countries enables Nepali and Indian citizens to move freely across the border without a passport or visa, live and work and even own property or conduct trade. The detention was yet another example of the hostility of the Indian authorities towards human rights defenders.¹¹⁶

HRDs making use of the Right to Information (RTI) Act have been the victims of physical attacks and killings. While RTI has been instrumental in exposing corruption and bringing greater transparency in the governance system, 68 RTI activists have been killed since 2005 and 365 more have been assaulted, harassed or threatened. In March 2018, two RTI activists, Poipynhun Majaw and Nanjibhai Sondarva were killed in the States of Meghalaya and Gujarat, creating fear among the RTI activists in the entire country. Poipynhun Majaw was found dead in Rymbai road of East Jaintia Hills of Meghalaya on 20 March 2018 with several wounds to his head. Nanjibhai Sondarva, a 35-years old a resident of Manekwada village in Kotada Sangani Taluka of the Rajkot district of Gujarat, was found murdered on 9 March 2018.¹¹⁷

Women Human Rights Defenders (WHRDs) are particularly vulnerable in rural areas, especially in the armed conflict regions like Manipur and Chhattisgarh. In Manipur, on 27 February 2018, Ranjeeta Sadokpam, a researcher with Human Rights Alert (HRA) was harassed and intimidated at around 1 AM by a group of police and army personnel. Later on 7 April 2018, Salima Memcha, a District Coordinator of Extrajudicial Execution Victim Families Association (EEVFAM) was

¹¹⁵ https://worldjusticeproject.org/sites/default/files/documents/ROLIndex_2017-2018_India_eng.pdf

¹¹⁶ <https://www.forum-asia.org/?p=25357>

¹¹⁷ 'India: Put an End to the Killing of Right to Information Activists,' <https://www.forum-asia.org/?p=26031>

threatened, abused, intimidated and harassed by the Manipur Police Commandos. Commandos entered her house in the early morning at around 5 AM and destroyed her property and belongings.¹¹⁸

Dalits' rights defenders face death threats, the destruction of their property, fabricated charges, physical attacks, as well as caste-based insults and discrimination. Community leaders and environmental rights defenders have suffered attacks for their work in relation to economic development projects and their impact on the local communities or the environment. On 8 June 2017, Dalit human rights defender, Chandrashekhar Azad Ravan was detained under the National Security Act (NSA) without charge or trial. He was held under administrative detention until February 2018. Later, on 27 January 2018, his detention was extended until 2 May 2018. A non-judicial 'advisory board' established under the NSA further extended his detention until 2 November 2018. This is mockery of justice and a gross violation of Chandrasekhar's human rights guaranteed under the constitution of India, including the right to fair trial.¹²⁰

Protestors demonstrating against key economic or international development projects have also been penalised. For nearly a decade, the Government of India and Korean business conglomerate POSCO have been developing a US\$12 billion steel plant project in the state of Odisha. Civil society has spoken out against the plant, which would see the forced relocation of tens of thousands of residents. People in the project-affected area attempting to protest the construction of the plant have seen their efforts met with violence, harassment, arbitrary

detention, and false charges. In 2013, dozens of protesters who assembled at the site were charged and arrested under multiple statutes.

Violence against journalists, authors and academics has also been on the rise. A 2017 report by the Committee for the Protection of Journalists (CPJ) reveals that as many as 24 journalists were murdered for work-related reasons in India since 1992.¹²¹ 96 per cent of those murders remain unsolved. India ranks 14th globally for impunity in murder cases against journalists according to the CPJ Index and 136th out of 180 countries in the 2017 World Press Freedom Index.¹²² On 5 September 2017, senior journalist, writer and HRD, Gauri Lankesh was assassinated in Bangalore.¹²³ Hindu nationalist groups such as Sri Ram Sene and Sanatan Sanstha exact vigilante-style punishment on those whom they perceive to have offended to their beliefs. Two rationalists who have written on Hindu idol worship and religious intolerance were killed in 2015. The Government has failed to respond effectively to these attacks, creating an environment of fear and repression. The year 2018 has seen an increase in the incidents of violence against HRDs. Journalist and activist, Shujaat Bukhari was murdered outside his offices in central Kashmir on June 14, 2018;¹²⁴ Tamil Nadu police opened fire on peaceful protestors in Thoothukudi, resulting in the death of 13 civilians; and WHRDs such as Rana Ayyub and Masrat Zahra were made targets of online abuse and harassment.

FORUM-ASIA's members People's Watch and MASUM (Banglar Manabadhikar Suraksha Mancha) have been facing judicial harassment for

¹¹⁸ 'India: Stop harassment and intimidation of human rights defenders and women human rights defenders fighting impunity in Manipur,' <https://www.forum-asia.org/?p=26167>

¹¹⁹ '#India,' Front Line Defenders, <https://www.frontlinedefenders.org/en/location/india>

¹²⁰ 'India: Open Letter to the National Human Rights Commission on continued arbitrary detention and harassment of Dalit rights activist, Chandrashekhar Azad Ravana,' <https://www.forum-asia.org/?p=26407>

¹²¹ '48 Journalists Killed in India,' https://cpj.org/data/killed/asia/india/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&cc_fips%5B%5D=IN&start_year=1992&end_year=2018&group_by=year

¹²² 'Deadly threat from Modi's nationalism,' <https://rsf.org/en/india>

¹²³ 'India: Ensure justice for Gauri Lankesh and protect space for dissent as a democratic value,' <https://www.forum-asia.org/?p=24702>

¹²⁴ 'India: Ensure credible and prompt investigation into the murder of journalist Shujaat Bukhari in Kashmir,' <https://www.forum-asia.org/?p=26575>

their activities. MASUM undertakes research and runs campaigns against torture and killings by security forces in the area of West Bengal and has been facing harassment, intimidation, arbitrary arrest and detention for last few years. People's Watch's FCRA was not renewed on 29 October, 2016 and their bank accounts were frozen on 31 October, 2016. Since 1 November, 2016, People's Watch has been unable to pay their staff members and maintain their activities.

Media sources revealed the list of 25 organisations that were denied approval to renew foreign funding license (called a FCRA) without valid reasons. The listed organisations include Act Now for Harmony and Democracy (ANHAD), run by activist Shabnam Hashmi, Marwar Muslim Education and Welfare Society, Gujarat-based Navsarjan Trust, and Rural Development Research Center (RDRC), Ahmedabad. Other NGOs targeted by the government include Center for Promotion of Social Concerns (People's Watch), Sanchal Foundation Hazards Center, Indian Social Action Forum (INSAF), Institute of Public Health (Bengaluru) and Compassion East India. The renewal of FCRA licenses of Greenpeace India, Sabrang Trust and Citizens for Justice and Peace also got cancelled in December 2016 after a day of renewal notification.¹²⁵ The FCRA of the Centre for Social Development - a key NGO supporting the civil society activities in Manipur and North East India- was suspended on 2 January 2017.

The Indian Government has continued to tighten its grip on online expression. Making use of recently enacted repressive legislation, the Government

blocks and censors an increasing array of online content on political grounds. The Government actively monitors HRDs' online communications and has prosecuted numerous people for comments on social media or in messaging application chatrooms on spurious charges such as defamation or sedition. Access to internet has been periodically shut down in regions such as Gujarat and Jammu and Kashmir.¹²⁶

Repressive laws and policies

India's national security laws severely curtail HRDs' freedoms and give the Government sweeping powers to arrest and prosecute them as well as mistreat them with impunity.¹²⁷ The Armed Forces Special Powers Act (AFSPA)¹²⁸ and the Terrorist and Disruptive Activities (Prevention) Act (TADA, now repealed)¹²⁹ are additional to state of emergency and exceptional circumstances provisions and give rise to serious breaches of rights, especially in areas affected by armed conflict, putting minority rights activists at serious risk.

AFSPA, which has been in force for decades in India's north-eastern states and Jammu and Kashmir had long provided effective immunity to members of the armed forces for killings of civilians and other serious human rights violations. HRDs and numerous independent commissions in India, along with the United Nations and international human rights and humanitarian organisations, have long recommended repealing or amending the law but the Government has failed to do so. After decades of civil society activism, there have been important steps forward forced by the Supreme Court. In July 2016, the court put an end to total immunity

¹²⁵ 'India: Stop clamp down on NGOs and Repeal FCRA,' <https://www.forum-asia.org/?p=22511>

¹²⁶ India witnessed highest number of Internet shutdowns in 2017-18: UNESCO report
Read more at:

http://economictimes.indiatimes.com/articleshow/64150543.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, <https://economictimes.indiatimes.com/tech/internet/india-witnessed-highest-number-of-internet-shutdowns-in-2017-18-unesco-report/articleshow/64150543.cms>

¹²⁷ National Security Act 1980, Armed Forces Special Powers Act 1958 as amended in 1972, Public Security Act (in Jammu and Kashmir), Unlawful Activities (Prevention) Act 1967 as amended several times, Disturbed Areas Act 1967, Commissions of Inquiry Act 1952, Maintenance of Internal Security Act (MISA), Terrorist And Disruptive Activities (Prevention) Act (TADA), repealed, Prevention Of Terrorism Act (POTA), repealed, Preventive Detention Act 1950

¹²⁸ 'Armed Forces Special Powers Act, 1958' <http://nagapol.gov.in/PDF/The%20Armed%20Forces%20Special%20Powers%20Act%201958.pdf>

¹²⁹ 'Terrorist and Disruptive Activities (Prevention) Act', <http://www.satp.org/satporgtp/countries/india/document/actandordinances/TADA.HTM>

for the armed forces by ruling that absolute legal immunity for security forces members was illegal. The ruling stated that every death in a 'disturbed area' must be investigated under the criminal law. It also ruled that even if the victim was found to be an 'enemy combatant,' a probe should be initiated to examine whether excessive force was used.¹³⁰ A public interest litigation has been filed by the Extra-Judicial Execution Victim Families Association Manipur (EEVFAM) and Human Rights Alert (HRA), a member organisation of FORUM-ASIA, before the Supreme Court of India in 2012, seeking a probe into 1,528 cases of extrajudicial killings -often termed as 'fake encounters'- in Manipur committed between 1979 and 2012 by the Manipur Police and Indian Armed forces. But despite of the judgment of the Supreme Court to defang the impunity enjoyed by the security forces in 'disturbed areas' the investigation ordered by the court is moving at an extremely slow pace. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on Human Rights Defenders made a statement on 4 July 2018 asking for speedy disposal of the litigation.¹³¹ HRDs who are associated with the case, have experienced and reported an increase in incidents of harassment and intimidation.¹³²

In India, on 14 September 2016, prominent Kashmiri HRD Khurram Parvez was prohibited from leaving the country as he was about to travel to Geneva, Switzerland to participate in the 33rd session of the United Nations Human Rights Council (UNHRC). He was detained for one and a half hours at the airport, and subsequently told that he would not be arrested, but would not be allowed to leave the country. Two days later, police officers came to his home and arrested him without a warrant, which is allowed under the Public Safety Act. They took him

to the police station, where he remained in arbitrary detention for 75 days.

In the north-eastern state of Manipur, WHRD Irom Sharmila protested and called for the repeal of AFSPA for 16 years. She was on hunger strike from 2 November 2000 to 9 August 2016. She was arrested four days after starting her hunger strike and charged with attempted suicide, a crime under Article 309 of the Indian Penal Code. According to Article 309, a person convicted of the crime of attempted suicide may only be imprisoned a year. Since then, Sharmila has been arrested, released and rearrested to be released after a year of judicial custody where she is force-fed through a nasogastric tube. Sharmila was never been convicted of charges of attempted suicide and has repeatedly rejected the allegation that she is trying to commit suicide, maintaining that she is on hunger strike demanding the repeal of AFSPA.¹³³

The Unlawful Activities Prevention Act (UAPA), 1967,¹³⁴ last amended in 2012, has been used to silence journalists and activists trying to speak out about social issues in India. The law gives the Government the power to declare associations unlawful if they engage in 'unlawful activities,' and to arrest any member of the association. 'Unlawful activities' is very broadly defined to include any speech that causes 'disaffection against India' or 'supports any claim' for secession.

The tiny north eastern state of Manipur, which constitute less than 0.05 per cent of the total Indian population, where there is a history of annexation and a consequent movement for self-determination, shares 65 per cent of the UAPA cases in the country.¹³⁵ Prominent leaders like R.K. Sanayaima, chairman of the United National Liberation Front (UNLF), demanding a UN monitored plebiscite in Manipur,

¹³⁰ 'SC ends impunity for armed forces,' The Hindu, 18 September 2016, <http://www.thehindu.com/news/national/SC-ends-impunity-for-armed-forces/article14478391.ece>

¹³¹ UN rights experts call for finishing probe into Manipur staged killings, https://www.business-standard.com/article/news-ians/un-rights-experts-call-for-finishing-probe-into-manipur-staged-killings-118070401429_1.html

¹³² India: Stop harassment and intimidation of human rights defenders and women human rights defenders fighting impunity in Manipur, <https://www.forum-asia.org/?p=26167>

¹³³ 'India: Free Irom Sharmila!,' Asian Human Rights Defenders, 1 November 2015, <https://asianhrds.forum-asia.org/?p=19480>

¹³⁴ 'The Unlawful Activities (Prevention) Act, 1967' http://www.satp.org/satporgtp/countries/india/document/actandordinances/the_unlawful_activities_act1967.htm

¹³⁵ <https://www.thehindu.com/todays-paper/tp-national/manipur-has-highest-number-of-uapa-cases/article7563568.ece>

was convicted by the National Investigative Agency (NIA) court under the UAPA.¹³⁶

The UAPA has targeted defenders supporting or from marginalised groups such as the tribal, Dalit, Muslim, Sikh, and Christian communities. In May 2007, HRD Binayak Sen was detained for allegedly supporting Naxalites and thereby allegedly violating the Chhattisgarh Special Public Security Act, 2005 (CSPSA) and the UAPA. In 2010 he was convicted and sentenced to life imprisonment for alleged sedition and allegedly helping Naxalites set up a network to fight the State. He was granted bail on 15 April 2011 by the Supreme Court of India, which gave no reason for the order.¹³⁷ In January 2011, authorities arrested Sudhir Dhawale, social activist and editor of Vidrohi magazine, and charged him with sedition under the Act due to alleged links to the Naxal movement. Many believe his arrest, which involved several illegal procedures, was due to his writings against the caste system and his activism in the Dalit community.¹³⁸ In May 2014, Professor Dr. GN Saibaba was arrested for alleged links to the Communist Party of India (Maoist). After years in custody, he was finally granted bail in April 2016. Dr. Saibaba is an HRD who had organised meetings highlighting the plight of people facing displacement due to development projects.¹³⁹ On June 6, 2018, five Dalit activists, Adv. Surendra Gadling, Sudhir Dhawale, Prof. Shoma Sena, Rona Wilson and Mahesh Raut, were arbitrary arrested and denied bail under the Unlawful Activities Prevention Act (UAPA).

The National Security Act (NSA), 1980¹⁴⁰ serves the purpose to 'provide for preventive detention in

certain cases and for matters connected therewith.' The NSA can be invoked against those who risk the international relations of the state, its defence and security, public order, and the maintenance of essential supplies and services. These terms are used vaguely, and can easily be misinterpreted. The NSA grossly abuses a citizen's right to a fair trial, and their right to life, as it allows the state to keep such offenders in custody without charging them for any of these offences. It also permits the extra-judicial detention of individuals, for up to six months, without any review, if the government is subjectively 'satisfied' of an individual's guilt. The procedures stipulated under the NSA gives the government and police authoritarian power, as they can easily escape the strictures of the criminal justice system. According to the 177th Law Commission Report of 2001,¹⁴¹ however provides that 1,457,779 individuals have been arrested under preventive provisions in India.

Sedition charges are frequently used to punish HRDs for their work. Article 124a of the Code of Criminal Procedure (CrPC)¹⁴² stipulates that anyone who propagates content that 'attempts to excite disaffection towards the Government or any other form of disloyalty or enmity can face life imprisonment. In August 2015, the Maharashtra state Government issued a circular on its interpretation of the law that stated that criticism of a Government official would be considered seditious. This archaic relic of colonial rule continues to be frequently used. In February 2016, Kanhaiya Kumar, president of the Jawarhal Nehru University (JNU) Students' Union, was arrested under the Article for having been part

¹³⁶ <https://www.hindustantimes.com/india-news/nia-court-convicts-manipur-based-unlf-chief-17-others/story-3CLt335C9led1zwOBuvBzO.html>

¹³⁷ 'India: HRD released after 100 days imprisonment,' Asian Human Rights Defenders, 21 June 2012, <https://asianhrds.forum-asia.org/?events=india-hrd-released-after-100-days-imprisonment>

¹³⁸ 'Letter to The Chairperson of the National Human Rights Commission,' 23 October 2014, <http://hrdaindia.org/wp-content/uploads/2014/10/2014-10-23-HRDA-UA-Maharashtra-Sudhir-Dhawale.pdf>

¹³⁹ Jailed for alleged Maoist link, DU professor GN Saibaba gets bail, Indian Express, 1 July 2015, <http://indianexpress.com/article/india/india-others/jailed-for-alleged-maoist-link-du-professor-gn-saibaba-gets-bail/>

¹⁴⁰ National Security Act, 1980, <https://indiankanoon.org/doc/190229/>

¹⁴¹ 177th report of Law Commission, <http://lawcommissionofindia.nic.in/reports/177rpt1.pdf>

¹⁴² 'Code of Criminal Procedure' <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814340.pdf>

of a protest in which some people, but not Kumar himself, were alleged to have made statements that were un-nationalistic.¹⁴³ In October 2015, the Tamil Nadu Government arrested Dalit folk singer S.Sivadas under Article 124a for performing satirical songs criticizing the state Government.¹⁴⁴

India's laws on incitement are similarly used to silence HRDs, particularly those working on minority rights. Under Article 153a of the Penal Code¹⁴⁵ anyone who promotes enmity between different racial, religious, ethnic or linguistic groups, or any other dissimilar communities faces up to three years of imprisonment. Hindu nationalists frequently, and successfully, push for activists to be charged under this Article. Under Article 505(b) of the Penal Code those who make statements likely to cause fear and alarm, or that induce citizens to commit an offense against 'public tranquillity,' can be imprisoned for up to three years. This extremely broad provision has been used as a catch-all offence to target the free expression of HRDs and critics. In 2014, Member of Parliament K Kavitha was investigated under Article 505 for saying that Jammu and Kashmir and Telangana were forcefully annexed by the Indian Union.

Defamation charges are also frequently levelled against HRDs in India as defamation is a criminal offence under Articles 499 and 500 of the Penal Code. Article 499 states that anyone who makes remarks, either written or oral, with the intention of harming either a person or a company, dead or alive, can be imprisoned for up to two years, even if the comments were made ironically. Political figures have used defamation laws to silence critics. Between 2011 and 2016, Tamil Nadu Chief Minister Jayalalithaa filed nearly 200 defamation cases against journalists, media outlets and political rivals. A typical example of these charges is the case filed in June 2016 against the newspaper *Nakkeeran* and its editor for a story alleging Government corruption.

The Indian Government wields enormous power to monitor online content and communications. The Information Technology Act, 2000, last amended in 2015, gives the Government the power to block or ban sites that could be deemed offensive, and to intercept any private communications that could disrupt the sovereignty, integrity, or defence of India, friendly relations with foreign states, or public order. Before Article 66a was struck down by the Supreme Court in 2015, people could be imprisoned for three years for such communications. Even under the revised version of the Act, refusal to comply with a Government decryption order (in the case of an HRD protecting the identity of victims of Government repression, for example) is punishable by seven years in prison. The Information Technology Rules, 2011 supplement the Act, giving the Government even greater powers to monitor online communications by forcing ISPs to participate in monitoring and reporting offences.

HRDs'ability to peacefully Assemble is also restricted by multiple Articles of the CrPC. Articles 141 to 153 on 'unlawful assembly' criminalize assembly in a variety of ways. Article 141 outlaws assemblies of more than five people if the objective of the assembly is to show criminal force, resist the execution of any law, commit mischief or criminal trespass, or to compel a person to do something he or she does not want to do. Members of unlawful assemblies can be imprisoned for up to six months. The Government can also decide to prosecute an assembly as 'rioting,' which, under Article 147, is punishable with up to two years imprisonment. In addition, under Article 149, if one member of an illegal assembly commits an offense, every member of the assembly is assumed to be guilty of the same offense and may be held criminally liable. Under Article 153, anyone who participates in an assembly that could prejudice racial or religious harmony can be imprisoned for up to three years. Article 144 empowers a magistrate

¹⁴³ 'Govt. acts tough, JNU student leader charged with sedition,' *The Hindu*, 18 October 2016, <http://www.thehindu.com/news/cities/Delhi/jnusu-president-arrested-under-sedition-charges/article8227527.ece>

¹⁴⁴ 'Urgent action: Dalit folk singer arrested for sedition,' Amnesty International, 2 November 2015, https://www.ecoi.net/file_upload/1226_1446535408_asa2027902015english.pdf

¹⁴⁵ 'The Indian Penal Code' <http://ncw.nic.in/acts/THEINDIANPENALCODE1860.pdf>

to prohibit an assembly of more than ten people in an area. Article 151 allows police to arrest anyone they believe will commit an offence and detain them for 24 hours without charge.

The Prevention of Seditious Meetings Act, 1911 allows the Government to designate areas 'proclaimed' if they deem there is a credible threat of disturbance to public tranquillity. Those that hold meetings in proclaimed areas without permission can be imprisoned or up to six months. In August 2016, Bengaluru police opened an investigation on Amnesty International India under Articles 142-143 for unlawful assembly and Article 147 for rioting for organising an event on human rights violations in Kashmir, despite the fact that the event had been entirely peaceful. The booking was issued on the basis of an allegation that the event had been anti-nationalist. In June 2013, 13 women's rights activists were arrested under Article 151 after they attempted to submit memoranda to the Chief Minister of West Bengal on the rape and murder of two local students.¹⁴⁶

Under the Foreign Contribution (Regulation) Act (FCRA), 2010,¹⁴⁷ all organisations seeking to receive foreign funding must first register with and apply for the permission from the Union Home Ministry. The law was conceived and enacted during the 1975-1976 Indian Emergency to stifle civil society activities. The Indian Government has used the law ever since to control what civil society does. Organisations applying to be allowed to receive foreign funding are subject to investigations by intelligence officials. It can take up to two years for the application to be approved or rejected, during which time intelligence officials regularly visit applicants. Funding for activities that are potentially embarrassing or inconvenient to the Government is simply blocked without any explanation. The impact of the FCRA on Indian civil society has been severe. When the Indian Home Ministry conducts an investigation pursuant

to the FCRA, it often freezes the accounts of the NGO being investigated, cutting its source of funding, and forcing it to stop its activities. Such tactics have a wider chilling effect on the work of other groups. Greenpeace India is among the thousands of NGOs that have been targeted. In recent years, intimidation and targeting of critics have intensified: the Government has cancelled the licenses of thousands of organisations receiving foreign funding. As of July 2016, 14,000 NGOs had been barred from receiving foreign funds. In March 2015, over 1,000 were barred in Andhra Pradesh alone. Hundreds of others have been blacklisted due to non-compliance with the Act's onerous and confusing reporting requirements. In 2014, the Narendra Modi Government asked India's central bank to seek prior permission before moving foreign funds into Greenpeace India's accounts, intensifying concerns that the Government would be less tolerant of organisations that questioned the Government's development and infrastructure projects. In September 2015, India cancelled a licence allowing Greenpeace's local unit to receive donations from abroad.¹⁴⁸ The order was later overturned. Sabrang Trust, an NGO run by Teesta Setalvad, who has been fighting for the victims of the Gujarat riot, had its registration to receive foreign funds under the FCRA cancelled in June 2016. The Ford Foundation has also been placed on a watch-list for its funding of the Sabrang Trust, allegedly for interfering with India's domestic affairs and disrupting communal harmony.

HRDs are also increasingly facing trumped-up charges under standard criminal legislation. Social activist Teesta Setalvad continues to face harassment through groundless charges in connection with her work to achieve justice for the victims of the Gulbarg Society Massacre during the horrific 2002 communal riots in Gujarat. Judicial proceedings have been ongoing against her and her spouse, based on spurious charges of alleged embezzlement of funds intended for the construction of a

¹⁴⁶ 'Rape Protesters Detained in West Bengal,' The Wall Street Journal, 14 June 2013, <http://blogs.wsj.com/indiarealtime/2013/06/14/rape-protesters-detained-in-west-bengal/>

¹⁴⁷ https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

¹⁴⁸ 'India: Greenpeace India accounts frozen by Indian Government,' Asian Human Rights Defenders, 10 April 2015, <https://asianhrds.forum-asia.org/?events=india-greenpeace-india-accounts-frozen-by-indian-Government>

memorial to the victims of the 2002 Gujarat riots. An investigation that began in January 2014 has resulted in continuous harassment and systematic probes into the accounts of Setalvad's NGO and groundless accusations of non-cooperation. In July 2015, officers of the Central Bureau of Investigation raided her house and office and in June 2015 a travel ban was imposed on her.¹⁴⁹

Enabling laws and policies

The National Human Rights Commission of India (NHRC) was established under the Protection of Human Rights Act, 1993.¹⁵⁰ The NHRC has considered the protection of HRDs as part of its mandate and established a focal point for HRDs in May 2010. While human rights bodies exist both at the national and at the state levels, HRDs expressed strong criticism of their work and effectiveness. In 2015, the Human Rights Defenders Alert network filed 104 cases of attacks, threats and harassment of HRDs with the NHRC, but only 81 were accepted. In none of the cases did the NHRC provide relief to the HRDs. India was slow to act on the recommendations of the Global Alliance for National Human Rights Institution's (GANHRI) Sub-Committee on Accreditations to diversify its composition, make appointments independent of Government, better engage with civil society, and more effectively and promptly investigate complaints, without using former police officers.¹⁵¹ In November 2017, India's National Human Rights Commission was granted 'A' status from the Sub-Committee, meaning that it is 'Fully compliant with the Paris Principles.'¹⁵²

The Judiciary is not always consistent with rulings but is somewhat important for the protection of

HRDs, in particular through rulings of the Supreme Court. For instance, in March 2015, the Supreme Court struck down Article 66a of the Information and Technology Act, which had allowed police to arrest persons who had posted 'offensive content' online. The Article had been widely used to persecute HRDs because of its breadth, and its removal gave HRDs some breathing room.¹⁵³

The Whistle-blowers Protection Act¹⁵⁴ provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in Government bodies, projects and offices. The wrongdoing might take the form of fraud, corruption or mismanagement. The Act was approved in the context of a drive to eliminate corruption in the country's bureaucracy. Some of the fundamental weaknesses of the Act are that it does not cover state Government (provincial) employees and it does not extend its jurisdiction to the corporate sector. It also does not provide a penalty for attacking a complainant. The Act has a limited definition of disclosure, and does not define victimisation. It does not allow for admission of anonymous complaints and lacks penalties for officials who victimise whistle-blowers.

Recommendations

The AFSPA must be repealed. While the 2016 Supreme Court ruling somewhat reduced the scope of the Act, the law remains repressive and conducive to immunity for rights abuses. The UAPA and TADA must be amended to ensure that they specifically target serious and legitimate national security threats. The definition of what constitutes 'unlawful' or 'terrorist' activities must

¹⁴⁹ 'https://TeestaSetalvad and her struggle', Asian Human Rights Defenders, 23 September 2015, <https://asianhrds.forum-asia.org/?p=19408>

¹⁵⁰ 'The Protection of Human Rights Act, 1993' http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf

¹⁵¹ '2016 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia', The Asian NGO Network on National Human Rights Institutions and FORUM-ASIA, 2016, <https://www.forum-asia.org/uploads/wp/2016/11/ANNI-Report-2016-Full-Report.pdf>

¹⁵² 'Chart of the status of national institutions', GANHRI, 21 February 2018, <https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%2821%20February%202018.pdf>

¹⁵³ 'Supreme Court's full judgment on Article 66A of IT Act', The India Express, 24 March 2015, <http://indianexpress.com/article/india/india-others/supreme-courts-full-judgment-on-Article-66a-of-it-act/>

¹⁵⁴ 'Whistle Blowers Protection Act, 2011' <http://egazette.nic.in/WriteReadData/2014/159420.pdf>

be significantly narrowed, and must not include any legitimate exercise of free speech by international standards, including expressing support for regional autonomy or criticising Government policy. The Act must explicitly bar its application to the prosecution of persons for political views held or expressed. The legitimate right to self-determination of people under international law should not be collapsed with the vague definition of 'terrorism'.

Article 124a on sedition must be struck from the Penal Code, as it is an inheritance of repressive colonial rule and serves the same purpose now as it did a century ago. Loyalty and non-enmity towards the Government of the day cannot be considered a criminal offence. Similarly, Penal Code provisions on incitement must be amended or removed. Article 153 must be amended because making 'promoting enmity' an offence is far too low a bar to set and criminalizes comments that might anger a particular group, even if they are peaceful and truthful in nature, which puts minority rights HRDs at risk. Article 505(b) must be struck from the Penal Code, as it is far too broad and has far too low a threshold. Banning statements that may cause 'fear and alarm' severely restricts speech and criminalizes much expression on political matters. Articles 499 and 500 on defamation must be struck from the Penal Code because criminal penalties are disproportionate to the act of defamation.

The Information Technology Act currently contains several illegitimate restrictions on freedom of expression that must be removed. The Supreme Court has taken an important step in striking down Article 66A, which was far too broad to constitute a criminal offense. Provisions that enable the Government to imprison people for not complying with a decryption order, to intercept private communications, or to block or ban sites on the basis of broad concepts such as offensiveness must also be removed. The Indian Government must draft, pass and implement a

Privacy Law that protects all persons, particularly HRDs, from such interference.

Articles 141-149 and 153 of the Indian Penal Code, as well as Article 144 and 151 of the CrPC must be significantly amended to ensure that they do not criminalize public assembly. All public assemblies must be legal unless they pose a large-scale, severe and credible violent threat to people's safety. The wording in the provisions must be narrow and specifically define offences that are acceptable by international standards. Individuals must under no circumstances be held accountable for the actions of others in an assembly, and no person should be subject to prosecution solely for participation in any assembly. The Prevention of Seditious Meetings Act must be repealed, as it is an archaic law designed to quell dissent by restricting people's right to freedom of assembly. Its phrasing is overly broad and the thresholds contained within it are far too low.

India is in dire need of an NGO law that guarantees people's right to associate freely, rather than restricting it. NGOs must be explicitly allowed to engage in work related to politics, such as advocating for changes in policy or legislation. NGOs must also be allowed to seek and receive funding from sources of their choice without Government intervention; which means that the FCRA and its accompanying rules must be repealed in their entirety. The FCRA and accompanying rules constitute an illegitimate barrier to freedom of association that is manipulated by the Government to attack critics.

Finally, India needs to comply with the SCA's recommendations and allow the NHRC to become a strong and independent actor capable of preventing immunity and protecting HRDs. It must immediately be made fully independent of any Government organs, including the police and the executive; it must be made more diverse; it must engage better with civil society; and it must more effectively investigate complaints.

INDONESIA

Synopsis of the challenges of HRDs

Indonesia's civil society plays a critical role in enhancing the awareness of human rights throughout the country and in developing national legislation relating to human rights. Civil Society Organisations (CSOs) actively monitor and disclose human rights violations and have successfully mobilised public opinion to demand Government accountability. However, the rights and freedoms of Human Rights Defenders (HRDs) in Indonesia are regularly violated by both State and Non-state actors. State actors include security forces personnel, state officials and civil servants. Non-state actors targeting HRDs include companies, hired criminals and members of religious organisations. HRDs have faced threats, intimidation, physical assault, restrictions on their freedom of expression and assembly, judicial harassment and criminalisation, stigmatisation, arbitrary arrest, ill-treatment, torture, enforced disappearances and killings.

One of the most vulnerable sub-groups of HRDs in Indonesia is activists working on land rights and natural resources issues. There are many cases of criminalisation of HRDs working on land and natural resources. The challenges and risks are compounded for women who fight for land rights and environmental justice. Much of the land grabbing and environmental degradation takes place in remote areas, making it dangerous and difficult to document violations. Women also struggle against social norms that have traditionally seen only men as leaders.

Eva Bande is a defender of women's human rights, land rights, and the environment, in addition to being a mother of three. She founded the People's Front for Central Sulawesi Palm Oil Advocacy to organize communities to stop illegal land grabs and monitor environmental degradation. Because of her activism, Eva was arrested and sentenced to four and a half years in prison on the spurious grounds of incitement. Local farmers

and community members supported her as she continued to organize behind bars. The President granted her clemency in December 2014, but she still faces threats and challenges.¹⁵⁵

In recent years, Indonesia has also seen a rise in religious intolerance. This rise has resulted in a spread of negative attitudes towards religious minorities, women and lesbian, gay, bisexual, trans, and/or intersex (LGBTI) persons, as well as HRDs promoting and protecting their rights. Extremist religious groups have been responsible for an increasing number of threats, harassment and intimidation directed towards HRDs. Lawyers who take on cases related to blasphemy and religious minorities increasingly face acts of harassment and intimidation by non-state actors. HRDs in Aceh – a special territory where sharia law applies in full, including criminal law – have been often labelled as anti-Islam by extremist groups. LGBTI people, and HRDs working to protect them, have faced particularly serious threats in 2016 when for several months there was a frenzied persecution of anyone of alternative sexual orientations. Multiple levels of Government incited and fully participated in the threats and violence, even initiating decrees and legislation to strip LGBTI people of their most basic rights.¹⁵⁶

HRDs also encounter difficulties working in the general Indonesian context of impunity and corruption. Corruption is evident in the legal system and in the area of law enforcement as bribery is commonplace. Persons guilty of grave human rights violations under the previous regime have not been brought to justice; instead those who have criticised past or present abuses have been targeted and persecuted.

In West Papua, freedom of expression, peaceful assembly and association are restricted and tightly controlled by the Military. The stigmatization of HRDs as 'separatists' is common in the region. This stigmatization is used as a pretext to legitimize the maintenance of a large Military presence in the provinces. Many of the crimes committed against HRDs in West Papua are perpetrated by members of

¹⁵⁵ 'Good news! Indonesian WHRD Eva Bande released!,' Women Human Rights Defenders International Coalition, 30 January 2015, <http://www.defendingwomen-defendingrights.org/2015/01/30/good-news-indonesian-whrd-eva-bande-released/>

¹⁵⁶ 'These Political Games Ruin Our Lives: Indonesia's LGBT Community Under Threat,' Human Rights Watch, 10 August 2016, <https://www.hrw.org/report/2016/08/10/these-political-games-ruin-our-lives/indonesias-lgbt-community-under-threat>

the security forces and criminal factions thought to be employed by the authorities.

Repressive laws and policies

Indonesia's Constitution protects freedom of expression, peaceful assembly, and association. Over the past 15 years, the environment within which to practice these rights has been relatively liberal, and there have been comparatively few laws used to restrict them. However, heavy restrictions remain in conflict areas, particularly in West Papua, and when discussing highly sensitive issues, such as communism, self-determination or secularism.

Criminal defamation charges are one of the most frequently used legal means to silence the voices of HRDs. Journalists defending human rights and HRDs working on anti-corruption and labour rights have been especially targeted with accusations of defamation. Defamation charges are mostly made based on Articles 207 and 310 to 321 of the Indonesian Penal Code¹⁵⁷ and Articles 27 and 28 of the Law on Information and Electronic Transactions (IET), 2008.¹⁵⁸ Articles 310-321 of the Penal Code define defamation very broadly and provide for up to sixteen months of imprisonment. The truth is not considered an adequate defence against charges under these articles. Article 207 outlaws any 'insult' of an authority or public body in Indonesia, and carries a maximum punishment of 18 months imprisonment. Article 27 of the IET threatens web commentators with prison sentences and fines if they distribute electronic information that contains defamatory or threatening content, as well as information that contains violence, threats, incitement, or would result in consumer loss. In August 2016, Haris Azhar, a HRD and coordinator of Forum-Asia member KontraS, had a defamation complaint filed against him by the National Anti-Narcotics Agency (BNN), the TNI and the National Police under Article 27. Following public pressure, the National Police put its investigation of Haris Azhar on hold, but the charges remain as of November 2016. In August 2015, HRD I Wayan 'Gendo' Suardana was the object of a criminal defamation charge filed under Article 28 of the Law

by mass organization Prospera over Gendo's tweet featuring a play on words of the organization's name. In July 2015, three anti-graft activists were charged under the IET Law, as well as Article 310 and 311 of the Penal Code, for allegedly defaming a law professor. In June 2012, Alexander Aan, creator of a Facebook group called Minang Atheists, was sentenced to 30 months imprisonment and fined 100,000,000 Rupiah (US\$7,000) for a Facebook post he wrote arguing that God does not exist.

In July 2013, the restrictive Law on Mass Organisations (Ormas) was passed. The law contains several clauses that have the power to severely restrict freedom of association. It gives the authorities expansive discretionary powers to restrict or control CSOs and arbitrarily and unduly constrict the space in which they can operate. The law imposes vague obligations and prohibitions on Non-Governmental Organization (NGO) activities. It also requires organisations to provide support for the 'national unity' and 'integrity' of Indonesia, as well as 'religious, cultural, ethical and moral norms.' The law places additional restrictions on religious associations by requiring that all organisations in Indonesia, whether religious or not, adhere to the principle of monotheism and the concept of Pancasila.¹⁵⁹ This means that polytheistic, atheist and communist organizations are not allowed to exist. In 2014, the Constitutional Court acknowledged that the law restricts the freedom of association provided for in the Constitution. However, citing Article 28(J) of the Constitution the Court ruled that the law is not excessive in nature and, thus, is constitutional. At the same time, however, the Court found several individual provisions of the law to be unconstitutional or 'conditionally unconstitutional' – that is, depending on the way the provision is implemented. The law also imposes several administrative burdens on foreign organisations and those that receive foreign funds. All foreign organisations are barred from engaging in activities that could disrupt the 'integrity and stability' of the country, and their work must be deemed politically, legally, and technically 'safe.'¹⁶⁰

¹⁵⁷ 'The Indonesian Penal Code' http://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf

¹⁵⁸ 'Electronic Information and Transactions Law' <http://www.bu.edu/bucflp-fig/files/2012/01/Law-No.-11-Concerning-Electronic-Information-and-Transactions.pdf>

¹⁵⁹ 'Amicus Brief on Indonesia's Ormas Law,' FORUM-ASIA, 24 March 2014, <http://www.forum-asia.org/?p=16822>

¹⁶⁰ Ibid.

The Law on Foundations, 2001¹⁶¹ also restricts freedom of association. Under the law, foreign foundations may only work in 'social, religious or humanitarian' fields. A minimum of 100,000,000 Rupiah (US\$7,000) in foundation assets is also required. All foreign organisations in Indonesia are barred from engaging in activities that could disrupt the 'integrity and stability' of the country, and work must be deemed politically, legally, and technically 'safe,' a concept that is left undefined. The law also mandates that organizations which have received funds from parties outside Indonesia totalling at least 500,000,000 Rupiah (US\$35,000) must be publicly audited, and a summary of their annual report must appear in the local newspaper.

The Law on Freedom to Express an Opinion in Public, 1998 makes spontaneous assembly illegal, and mandates that the organisers of a public assembly must inform the authorities at least 24 hours in advance and provide a long list of information unless the assembly relates to academic activities on a university campus or religious activities. The authorities can dismiss an assembly on broad grounds. The law also mandates several locations where public assemblies cannot take place, including religious centres, the presidential palace, hospitals, ports, train stations, and Military installations. Public assemblies may not take place during national holidays. Gubernatorial Regulation No. 232/2015 imposes even stricter conditions in Jakarta: stipulating that protests have to be kept at a volume of less than 60 decibels and take place only between 6 AM and 6 PM. The strictest enforcement of the laws remains in Papua, however, where in April 2016, an estimated 1,783 persons, including hundreds of HRDs, were arrested for participation in a protest that the Government had not authorized.¹⁶²

Besides facing intimidation and harassment, HRD media workers face legal barriers to their work. Content on Marxism or Socialism as well as sensitive topics such as self-determination and the 1965-1966 massacre is severely restricted. Indonesia's Broadcast Act, 2002 bans the broadcast of content on very vague grounds – including any material that does

not promote morality and national endurance and unity – and empowers the police to stop broadcasts whenever they see fit. In 2015, the Ubud Writers and Readers Festival was subjected to heavy censorship. The Government forced the festival to remove three sessions on the 1965-1966 massacre; under threat that had the festival organizers not complied, the Government would have cancelled the entire festival. In October 2015, police in Java destroyed hundreds of copies of a *Lentera* magazine issue covering the 50th anniversary of the 1965-1966 massacre. While foreign journalists officially no longer require permits to travel to Papua, in practice the police are still requiring and denying them. For example, in January 2016 France 24 journalist Cyril Payen was denied a visa for a reporting trip to Papua on the basis of his previous reporting having been 'biased and unbalanced.' The Indonesian Government threatened to ban all France 24 journalists from the country.

Indonesia's very strict blasphemy laws severely restrict the ability of HRDs protecting religious minorities such as the Ahmadis to express themselves freely. Under Article 156(a) of the Penal Code, anyone who expresses feelings of enmity against or abuses or 'stains' a religion may be sentenced to five years in prison. Under Article 156 of the Penal Code, anybody who publicly makes a statement that expresses 'hostility' towards a religious or other group may be punished by up to four years in prison.

Strict sedition laws are consistently used to arrest and prosecute activists advocating for minority rights. Article 106 of the Penal Code states that those attempting to separate part of the State or bring it under foreign domination can face life imprisonment. Like Cambodia, China and India, Indonesia has laws that specifically criminalize criticism of the Government. In April 2016, West Papuan Steven Italy was charged under Article 106 for leading a prayer for West Papua to become a member of the Melanesian Spearhead Group. The prayer meeting was broken up, and bags woven with the Morning Star design and a banner bearing the word 'referendum' were seized as evidence. In April 2008, Johan Teterissa was sentenced to

¹⁶¹ 'Law on Foundations' <http://www.usig.org/countryinfo/laws/Indonesia/Law%20%20on%20Foundations%202001.pdf>

¹⁶² 'Urgent Appeal - Unlawful Mass Arrests of at least 1,783 West Papuans in April and May 2016,' Human Rights and Peace for Papua, 18 May 2016, <http://humanrightspapua.org/news/193-urgent-appeal-unlawful-mass-arrests-of-at-least-1-783-west-papuans-in-april-and-may-2016>

life imprisonment (later reduced to 15 years) for performing a war dance and then unfurling the 'Benang Raja' – a banned regional flag – in front of President Susilo Bambang Yudhoyono in June 2007. During his pre-trial detention and after his conviction, Johan Teterissa has been subjected to torture and other forms of ill-treatment.

Articles 160 and 161 of the Penal Code, which criminalize incitement to commit an illegal act, have recently seen an uptick in application. These Articles carry maximum penalties of six and four years of imprisonment respectively. In December 2015, Wamoka Yudas Kossay was sentenced to 10 months in prison under Article 160 for having peacefully demonstrated in support of the United Liberation Movement for West Papua in May 2015.

The State Intelligence Law, 2011 provides the Government with broad powers to prosecute whistle-blowers by criminalizing the release of information affecting 'national stability,' vague phrasing left undefined. Those charged under this law can be penalized with up to 15 years of imprisonment. The draft State Secrecy Bill threatens to add to this problem by penalizing the leaking of 'state secrets,' which are very broadly defined. The draft Bill defines a threat to national security as any threat to security, ideology, politics, economics, and culture, including national development. This means that opposition to opaque, politically-motivated, environmentally damaging development projects undertaken without any local consultation – such as the Trans-Papua Highway – could be criminalized under this law.

The anti-LGBTI frenzy in 2016 prompted further legislation cracking down on alternative orientations.¹⁶³ The Child Protection Commission decree, 2016¹⁶⁴ forbids people from expressing themselves on the subject of LGBTI issues in any format that might be accessed by children. This tactic is an effective way of criminalizing the work of HRDs attempting to protect and stand up for the LGBTI community.¹⁶⁵

Enabling laws and policies

There is no legislation for the protection of HRDs in Indonesia as of yet. Human rights NGO and FORUM-ASIA member Imparsial initiated a draft law for the protection of HRDs in 2009. The National Human Rights Commission (Komnas HAM) also led an initiative for the recognition and protection of HRDs with a proposal to amend the existing Human Rights Law and establish a HRD protection unit in the Komnas HAM. Both draft texts featured on the Indonesian Parliament's agenda for 2010-2014, but neither was passed.

From 2007 to 2012, Komnas HAM appointed one commissioner responsible for HRDs, but this mechanism did not function well. In June 2014, Komnas HAM Commissioner Siti Noor Laila was appointed as Special Rapporteur for HRDs. She pledged a thorough review of the Commission's files on HRD issues and improved coordination with Government bodies, such as the Lembaga Perlindungan Saksi dan Korban (LPSK), which is charged with the protection of victims and witnesses, in order to strengthen the protection of HRDs. With six understaffed regional offices, Komnas HAM's capacity to cover the entire Archipelago is low, particularly for cases involving HRDs operating in remote areas. As of 2018, unfortunately, the HRD desk within Komnas HAM is no longer exist.

The LPSK, known in English as the Witness and Victim Protection Agency, is an independent institution whose mandate is to give protection to witnesses and victims, usually related to corruption cases. In some HRD cases, the LPSK can be used as one mechanism that provides protection for HRDs that are witnesses to or victims of human rights violations. Indonesia does not have a comprehensive whistle-blower protection law, although the Law on Witness and Victim Protection offers protection to whistle-blowers who reveal information leading to criminal prosecution. The implementation of this protection in practice is reportedly severely flawed.

Indonesia has two laws that recognise the role of civil society in addressing human rights and

¹⁶³ 'LGBT Crisis' Exposed Official Bias: Government Drove Discriminatory Campaign,' Human Rights Watch, 10 August 2016, <https://www.hrw.org/news/2016/08/10/indonesia-lgbt-crisis-exposed-official-bias>

¹⁶⁴ 'Court Reviews Anti-LGBT Law: Criminalizing Same-Sex Relations Raises Privacy, Discrimination Concerns,' Human Rights Watch, 23 August 2016, <https://www.hrw.org/news/2016/08/23/indonesia-court-reviews-anti-lgbt-law>

¹⁶⁵ 'These Political Games Ruin Our Lives: Indonesia's LGBT Community Under Threat,' Human Rights Watch, 10 August 2016, <https://www.hrw.org/report/2016/08/10/these-political-games-ruin-our-lives/indonesias-lgbt-community-under-threat>

environmental issues: Law No. 39/1999 on Human Rights and Law No. 32/2009 on Environment Protection and Management. In practice, the Government has never used those laws to recognize the work of HRDs.

In 2008, Indonesia adopted the Public Information Disclosure Act (RTI Act), which came into force two years later, on 1 May 2010. The RTI Act aims to secure the rights of Indonesian citizens to public information; improving the transparency of policy decision-making processes. However, information can be withheld following the application of a consequential harm or public interest test -the specifics of which are not explicitly clarified, although mentioned in the legislation.

Recommendations

In order for HRDs to truly exercise their right to freedom of expression, a number of pieces of legislation and articles of the Penal Code must be amended or repealed. Defamation should not be a criminal offence, and therefore Articles 207 and 310-321 of the Penal Code must be repealed in their entirety. Article 27 of the Law on Information and Electronic Transactions must also be scrapped. The courts of Indonesia must stop accepting spurious criminal charges levelled against HRDs, and public officials must stop laying them.

Restrictions on the ability of media workers' and publishers' to cover any issues in the manner of their choosing must be lifted. The Broadcast Act must be amended to ensure that limitations on foreign media are lifted, broadcasting licences are issued by an independent body, and Government censorship powers are scrapped. The film censorship board must be abolished. The censorship, both legal and extra-legal, of content dealing with Marxism, Socialism, the 1965-66 massacre and self-determination must also be halted. Controls on both foreign and local journalists in Papua must be lifted in their entirety.

The Penal Code Articles 156 and 156(a) on blasphemy, Article 106 on sedition, and Articles 160 and 161 on incitement should be repealed. All of these Articles have been used to criminalize the work of HRDs.

National Security legislation such as the State Intelligence Law must be amended to make the language more specific and narrowly targeted towards actual national security threats, rather than the work of HRDs. The draft National Security Bill must be similarly amended. The draft State Secrecy Bill should be scrapped and replaced with legislation that specifically defines what a state secret is, establishes a high threshold, and has a clause providing amnesty to whistle-blowers.

The Law on Mass Organizations and the Law on Foundations must be amended to remove registration costs, any restrictions on activities or access to funding (for both foreign and local CSOs), and any requirement to undergo overly burdensome requirements such as annual Government auditing.

The Law on Freedom to Express an Opinion in Public must be amended to legalize spontaneous assembly, remove any approval requirement for organized assemblies, and add clauses laying out penalties for the interference with people's right to assemble freely. Gubernatorial Regulation No. 232/2015 must be scrapped. The unreasonably low limits on volume and the illegitimate restriction on times at which protests can be held are particularly egregious. The Government must carry out reform of both its policies on Papua and on the security forces' practices there. Members of the security forces arbitrarily arresting or detaining Papuans exercising their right to assemble freely or using excessive force against protestors must be disciplined and brought to justice.

The Child Protection Commission decree, which criminalizes speech on LGBTI issues, must be repealed in its entirety. Legislation to comprehensively protect HRDs' rights, as well as protect them from the grave dangers they face particularly in remote or contested areas must be tabled in Parliament in collaboration with CSOs. A comprehensive whistle-blower protection law must also be enacted. Komnas HAM's capacity to address threats to HRDs and address impunity must be enhanced: more offices must be established and it must be given sufficient authority to bring security forces, in particular the armed forces, to account.

LAOS

Synopsis of the challenges of HRDs

Laotian civil society is extremely constrained due to heavy Government restrictions. The ability of Human Rights Defenders (HRDs) to conduct their work is severely limited, or even banned outright, by myriad pieces of legislation, articles of the Penal Code and various decrees. It is extremely difficult and dangerous for HRDs to pursue their work in Laos. HRDs frequently fall victim to harsh criminal prosecution. Unlike other countries where HRDs are harassed through the legal system, in Laos they are simply imprisoned, sometimes for decades.

The legal framework is so explicitly repressive that it is very easy for Government organs to use it to punish any kind of activism. Compounding this problem are the completely politicised courts, which merely rubber-stamp any decision made by the Lao People's Revolutionary Party (LPRP) including the prosecution of HRDs. The result is a penal system that holds some of Southeast Asia's longest-serving political prisoners: a group of five activists from Lao Students Movement for Democracy (LSMD) were arrested following their demonstration on 26 October 1999 that called for respect of citizen rights and democratic reforms. One of them died in prison after alleged torture and food deprivation. With the limited access to information, the remained four are either still in prison, have disappeared, or are dead.¹⁶⁶

HRDs are also at risk of being subjected to extra-legal retribution such as arbitrary detention, ill-treatment, torture, and enforced disappearance. In 2012, activist Sombath Somphone was disappeared by the police after he was halted for a routine traffic stop. The authorities have consistently denied any wrongdoing despite clear closed-circuit television evidence of his abduction at the police station, and have engaged in years of obfuscation to cover up evidence of his fate. There has never been a legitimate and adequate investigation of his disappearance.

Even for HRDs whose work may not be directly persecuted by the Government, it is exceedingly

difficult to be granted legal permission to work on human rights issues. Rights organisations that wish to legally conduct operations in the country must undergo a slow and cumbersome registration process that is subject to Government approval and interference at every step.

HRDs' work is also encumbered by the Government's strict controls on the dissemination of information. Most of the country's newspapers are state-owned and controlled by the LPRP. News media is used by the Party as a channel to disseminate Government policies, and there is no space for activist or investigative journalism. Journalists must practice heavy self-censorship to avoid the typical punishments meted out for speaking on sensitive issues, including anything related to human rights. The LPRP also exercises very strong control over information on the internet. It engages in systematic monitoring of both publicly and privately transmitted information; which is facilitated by the country's single internet gateway controlled by the Government.

The years 2015 and 2016 saw the Lao state increasingly crackdown on online activities, perhaps due to concern over the country's international image during its ASEAN chairmanship. During the Laotian ASEAN chairmanship, the ASEAN People's Forum – a parallel civil society summit to the ASEAN summit – was not held in Laos because the Lao Government refused to agree to not target Lao civil society participants. This was the first time since its inception in 2005 that the ASEAN People's Forum was not held in the country hosting the ASEAN summit. The actions of Lao Government were an ominous reminder of the ruthless crackdown on civil society in the wake of the 2009 Asia-Europe People's Forum in Beijing. The Lao Government had also banned discussion of several key agenda points, notably enforced disappearances, mega-projects, environmental rights, the rights of indigenous groups and Lesbian, Gay, Bisexual, Trans, and/or Intersex (LGBTI) rights.

In early 2016, three Government critics went disappeared in March after returning to Laos from Thailand. It was reported that they were

¹⁶⁶ 'Exiled Lao Activist Recalls 1999 Protest, Says Democracy Still Attainable', Radio Free Asia, 29 October 2014 <https://www.rfa.org/english/news/laos/exiled-activist-10292014185811.html>

arbitrary arrested and detained incommunicado. Back in Thailand, the three openly criticised Lao Government on their social media and they also participated in protest against their government in front of the Lao embassy in Bangkok. In 2017, the court handed the sentence of 12 years, 18 years, and 20 years of imprisonment to the three critics.¹⁶⁷

Repressive laws and policies

The Decree on Information Management on the Internet, 2014¹⁶⁸ gives the Lao Government the ability to monitor Internet service providers and the content that they provide to internet users. The Decree also allows those who disseminate information deemed by the Government to be illegal to be targeted with civil or criminal charges. Individuals can only disseminate information through social media if they can correctly identify the source of the material. Content that attempts to convince people to attack the state or the Government, or impinges on the peace, independence, sovereignty, democracy, or prosperity of the country is banned. In May 2015, the authorities arrested Phout Mitane and charged her with slander after she posted photos on Facebook of local policemen allegedly engaging in extortion. She was detained for two months and ordered to pay a fine of 1,000,000 Kip (US\$125). In June 2015, Chanthaphone, an environmental activist, was arrested after she posted on social media about a land concession that the Government of Luang Prabang Province had given to Chinese investors. She was detained for two months.

Passed on 15 November 2017, the Decree on Associations, 2017¹⁶⁹ superseded the Decree on Non-Profit Associations, 2009.¹⁷⁰ The Decree of 2017 continues to restrict the freedom of association for local non-profit association in the country. The Decree of 2017 further outlines

an extremely onerous and political registration process mandatory for all associations by requiring prior approval by government agencies, at various stages of establishment, for the formation of any association. It also sets a new requirement for establishment of association that shall not be based on the ground of 'political', 'religion', and 'social origin', which empower the authorities to refuse the registration or renewal of registration with broadly defined grounds. The Decree of 2017 also interferes the right to privacy as it require the association to submit unjustifiably intrusive personal information to government authorities for approval. The Decree of 2017 also adds measures to criminalize unregistered associations and allow for prosecution of their members.¹⁷¹

In the past during the enforcement of the Decree of 2009, the Government has also repeatedly refused to approve organisations that place people from ethnic minorities in leadership positions, or target the needs of ethnic minority groups. Every individual project requires Government permission to go ahead, and the Government frequently intervenes in the goals and implementation processes of projects. Permission must also be received to secure funding, which compounds an already difficult process because the long waits for project approval make acquiring international funding difficult to begin with. The Government can dissolve any organisation that has been inactive for over a year, and in the past Government officials have used the project approval process to delay or deny projects for a year or more, ensuring that certain groups remain technically inactive and giving officials the ability to dissolve them.

The Decree on International Non-Governmental Organisations, 2010¹⁷² requires all international non-Governmental organisations to register with the

¹⁶⁷ 'Three Lao Workers Handed Lengthy Jail Terms for Slamming Government Online', Radio Free Asia, 16 May 2017 <https://www.rfa.org/english/news/laos/sentences-05162017165950.html>

¹⁶⁸ 'Decree on Information Management on the Internet' <http://www.directoryofngos.org/ingo2/a/d?id=document2093&field=file¬etype=document&file=RGVjcmVlXzMyN18tX01hbmMhZ2VtZW50X29mX0ludGVybmV0Xy1fMTZfU2VwXzIwMTQucGRm>

¹⁶⁹ 'Decree on Association' <http://laocs-kis.org/resources/decree-association-2017-unofficial-english-translation/>

¹⁷⁰ 'Decree on Non-Profit Associations' <http://www.icnl.org/research/library/files/Laos/associationsdecree.pdf>

¹⁷¹ https://www.hrw.org/news/2017/12/17/joint-letter-lao-government-re-decree-associations#_ftnref1

¹⁷² 'Decree on International Non-Governmental Organisations' <http://www.directoryofngos.org/ingo2/document/1830>

Government, obtain an annual operations permit, and obtain separate permits for each project that they undertake. To be considered for registration, they must be providing assistance in the order of at least US\$500,000 and have at least five years of successful development experience already within the country. Organisations that carry out programs or projects contrary to the Government's wishes face punishment, including fines and expulsion. In December 2012, Anne-Sophie Gindroz, head of the Laos program for Helvetas, was expelled from the country for allegedly criticizing the Government.

Independent trade unions are expressly prohibited in Laos under the Trade Union Law, 2007.¹⁷³ The Law requires all unions to be affiliated with the Government-controlled Lao Federation of Trade Unions, which has publicly stated that it helps the Government enforce 'labour discipline.' The Law also requires that all trade unions conduct their activities in line with the leadership of the LPRP. HRDs working on labour rights are further encumbered by the Labour Law, 2006,¹⁷⁴ which denies workers and activists the right to strike.

The Media Law, 2008¹⁷⁵ mandates that the Media Department at the Ministry of Information, Culture and Tourism should conduct weekly meetings with media editors and give 'feedback' if the news may have negative impacts on the state and its policies. Journalists who write critically about Government issues have seen their work restricted and censored, and have faced penalties. A November 2016 amendment to the law further extended censorship and regulation of journalists' work.¹⁷⁶ The Publications Law, 2009¹⁷⁷ requires publishers and their agents to obtain Government authorization to be able to publish content, to ensure that no content critical of state institutions is published.

Numerous articles of the Penal Code¹⁷⁸ are used to restrict HRDs' rights. Under Article 72 of the Penal Code anyone organising or participating in a public gathering that could be construed as a protest march or a demonstration, or any public gathering that could cause social disorder or societal damage, can be imprisoned for up to five years and fined 50,000,000 Kip (US\$6,100). In 2017, the authorities announced the latest status of three out of the five democracy activists who were arrested in 1999 for planning peaceful pro-democracy and human rights demonstrations. The Government announced that Thongpaseuth Keuakoun and Sengaloun Phengpanh were released on 25 January 2017 after spending 16 years in prison, and that Bouvanh Chanmanivong died from illness during the incarceration in 2005.¹⁷⁹ It has been alleged that Khamphouvieng Sisa-at died in prison as a result of torture and food deprivation in 2001. The whereabouts of Keochay are still unknown, despite the claim by Lao authorities that Keochay was released in 2002.¹⁸⁰ The credibility of this information has yet to be fully scrutinised as the access to information is severely restricted by the Government.

Article 56 of the Penal Code on treason provides for penalties of 20 years for any Lao citizen in contact with foreign nationals for the purpose of undermining the independence, sovereignty, territorial integrity, grand political causes, defence and security, economy, or culture and society of Laos. The offence is so broad that it can be applied to almost any conceivable form of political opposition. Article 57 on rebellion, Article 58 on spying, and Article 71 on the disclosure of state secrets are equally broad and repressive.

Under Article 65 of the Penal Code, anyone who slanders the state, its policies, or the LPRP faces up to five years imprisonment or fines of up to 10,000,000 Kip (US\$1,225). In September 2015, prominent

¹⁷³ 'Law on Lao Trade Unions' http://asean.org/storage/2016/06/L1_LAW-on-Lao-Trade-Unions-2007.pdf

¹⁷⁴ 'Labour Law' <http://www.directoryofngos.org/ingo2/document/2091>

¹⁷⁵ No English translation of the '2008 Media Law' is available.

¹⁷⁶ 'Lao Lawmakers Approve Restrictive Amendment to Media Law,' Radio Free Asia, 10 November 2016, <http://www.rfa.org/english/news/laos/lao-lawmakers-approve-restrictive-amendment-to-media-law-11102016153123.html>

¹⁷⁷ No English translation of the '2009 Publications Law' is available.

¹⁷⁸ 'Penal Law of the Lao People's Democratic Republic' http://www.wipo.int/wipolex/en/text.jsp?file_id=180194

¹⁷⁹ '2016 Country Reports on Human Rights Practices: Laos,' United States of America Department of State, 3 March 2017, <https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265348.htm>

¹⁸⁰ <https://www.fidh.org/en/region/asia/laos/three-government-critics-arbitrarily-arrested-detained-incommunicado>

democracy activist Bounthanh Khamvong was sentenced to 57 months of imprisonment under Article 65 for posting criticisms of the LPRP and its policies on Facebook.

Article 66 of the Penal Code on division of solidarity provides for up to five years imprisonment for any person 'dividing or causing resentment between ethnic groups and social strata.' The problematic element of this law is its broad latitude, which affords the Government the possibility to use it to prosecute minority rights activists.

Defamation is criminalized under Article 94 of the Penal Code, which states that any person who damages the reputation of another faces up to one year of imprisonment or fines of up to 300,000 Kip (US\$37). Under Article 159, any person who says anything that could damage the reputation or honour of a public official faces up to two years imprisonment or fines of up to 1,000,000 Kip (US\$120).

Enabling laws and policies

Laos has no laws or policies that provide an enabling environment for HRDs. Article 44 of the Constitution¹⁸¹ provides citizens with the rights of freedom of speech, the press, assembly, and association, but only where 'not contrary to laws.' Given that the legal framework, as explained above, severely limits all of these freedoms, this is not a very strong guarantee.

Recommendations

The Government of Laos must repeal the Decree on Information Management on the Internet and replace it with a law on internet freedom. The current regulations, with their broad and political definitions of what constitutes illegal content, and their allowance of invasive Government monitoring and control over all online activity, must be scrapped in their entirety. The total repeal of the Decree on Associations as well as the Decree on International Non-Governmental Organisations is also necessary to ensure a safe, unhindered environment for non-Governmental organisations and civil society activists. The Media Law and the Publications Law must be repealed in their entirety to remove all regulations on the conduct of media workers and publishers, and any censorship of their work.

The Trade Union Act and the Labour Act should be amended to allow for the free formation of labour and trade unions wholly independent from Government interference, and should include provisions that safeguard workers' right to strike.

Numerous articles of the Penal Code must be revised or repealed to provide HRDs full access to their rights. Article 72 of the Penal Code must be abolished to remove barriers to the free exercise of the right to assembly. Article 65 must also be immediately repealed, as broad bans on any criticism of Government significantly hinder the work of HRDs protecting people victimized by it. Article 66 of the Penal Code must be abolished, as other articles of the Penal Code are adequate for the prosecution of severe acts of aggression between communities. Articles 94 and 159 must also be struck from the Penal Code, as defamation should not be considered a criminal act. All Penal Code articles pertaining to national security, in particular articles 56, 57, 58, and 71 must be amended so that they refer narrowly to acts that are criminal by international standards and may not be applied to persons merely voicing opposition to Government.

The Lao Government must ratify the International Convention for the Protection of all Persons from Enforced Disappearance, which it signed in 2008, and ensure that the convention is fully implemented in and harmonized with national legislation. A national human rights commission must be created in line with the Paris Principles, and must include a focal point on HRDs capable of providing assistance, promoting their work, and bringing perpetrators of violations against them to justice. A thorough law on the rights and freedoms of HRDs is also urgently needed. The law must lay out in detail the rights and freedoms that HRDs must benefit from, in line with the Declaration on Human Rights Defenders, and must override restrictive legislation until the latter is removed. Finally, a law on non-profit associations must be passed which explicitly and unconditionally guarantees the freedom of all to join and form associations and conduct activities in total freedom, with penalties laid out for any attempt by a public official to interfere with those rights.

¹⁸¹ 'The Amended Constitution of the Lao People's Democratic Republic' http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/legaldocument/wcms_117348.pdf

MALAYSIA

Synopsis of the challenges of HRDs

Human Rights Defenders (HRDs) in Malaysia continue to face judicial harassment, arbitrary arrest, threats, intimidation and smear campaigns. Intimidation and harassment by State institutions and Non-state actors such as religious organisations have become commonplace; the latter sometimes with the tacit consent of the Executive. Domestic laws not in compliance with international human rights standards on freedom of expression, peaceful assembly and association have been used to hamper the legitimate work of HRDs in the country.

There is a worrying trend of increasing judicial intimidation against HRDs critical of the Government. Judicial intimidation has also targeted HRDs calling for free and fair elections, especially in the aftermath of the 2013 general elections. Restrictions on freedom of expression and peaceful assembly have become more visible.

The Malaysian press struggles with a lack of freedom. Government-controlled media is a major challenge for HRDs as it has a great influence on the public's perception of HRDs. The public is perpetually exposed to information that is favourable to the ruling Government. Any dissenting opinions or criticism against Government policies or administration by the opposition leaders, NGOs and civil society are published in such a way as to create negative public perceptions of the right to dissent. Further, the limited access to independent media, which can only be accessed online due to restrictions imposed by the Government, deprives the public from getting the 'other side of the story.' The negative perception imparted by the Government-controlled media results in a lack of support for HRDs among the general public. Groups of HRDs who have been targeted in state-controlled media include those working on election monitoring and good governance, labour rights, and sexual orientation and gender identity.

In the lead-up to general elections in May 2013, and ever since, the Government has taken specific steps to

target, intimidate, and harass HRDs and independent media outlets -Bersih members and leadership in particular. The Bersih movement, which has called for a range of political and electoral reforms over the past decade, has seen its organisers and supporters arrested and given heavy punishments. Both Bersih 2.0 and Bersih 3.0, held in 2011 and 2012 respectively, saw the arrest of hundreds and the assault of dozens of supporters. In April 2012, the Government filed a suit against Ambiga Sreenevasan, former chairperson of Bersih, as well as 14 other members of Bersih's steering committee for damages caused during the Bersih 3.0 protest. The suit claimed that the group breached the Peaceful Assembly Act by failing to ensure that the assembly would not cause damage to property or the environment. The case was dismissed in January 2015. Bersih 4.0 and 5.0 were both declared illegal and saw considerable intimidation as well as a spate of arrests and spurious charges targeting protestors and organisers such as chairperson Maria Chin Abdullah, both before and after the rallies.

Another challenge is the general lack of participation from the civil society, NGOs and opposition parties in Government and public affairs due to a lack of recognition and engagement by the Government. This results in deprivation of access to information and no room for effective discussion. Policies or legislation which affect the rights of the public are passed without due consultation of civil society; and any attempt to submit opinions, proposals and criticisms to Government are in vain.

Institutionalised religion encumbers the work of HRDs in Malaysia as it leaves room for religious authorities to exercise their restrictive power when it comes to issues to freedom of religion. Individuals or organisations that defend the rights of lesbian, gay, bisexual, trans, and/or intersex (LGBTI) persons are viewed as morally corrupt and are therefore subjected to intimidation, harassment and reprisal by the authorities and religious groups. In July 2014, a fatwa was issued against the Muslim women's rights group Sisters in Islam (SIS), declaring them to be subscribers to liberalism and religious pluralism and thus deviating from Islam.¹⁸² The fatwa allows for any publications deemed liberal and plural to

¹⁸² 'Malaysia: Muslim women's rights group facing fatwa,' Asian Human Rights Defenders, 2 November 2014, <https://asianhrds.forum-asia.org/?events=malaysia-muslim-womens-rights-group-facing-fatwa>

be banned and seized. In addition, it calls for any form of social media that promotes such content to be monitored and restricted. SIS was not informed of the fatwa issued against them until coming across it by chance in October. The group has filed for a judicial review against the edict, which was rejected by the High Court in July 2016 because it found that the matter was under the jurisdiction of the Syariah Courts.¹⁸³ On 24 April 2017, the Court of Appeal reversed the lower court's ruling that had dismissed the judicial review and allowed SIS to continue judicial review against the fatwa.¹⁸⁴

Recently, an increase in online threats against HRDs, in particular Women Human Rights Defenders (WHRDs), has been observed. WHRDs experience pressure not only from the Government but at times even from their own community and families. In 2016, Maria Chin Abdullah was relentlessly harassed and intimidated by the government and those affiliated with the government. The harassment includes the travel ban imposed on her when she was to travel to South Korea to accept Gwangju Prize Human Rights Award. . Legal challenges was mounted against the Immigration Department for the ban but the challenge was dismissed by the court.¹⁸⁵ Apart from the harassment faced by Maria, other human rights activists such as Ambiga Sreenevasan¹⁸⁶ was issued a death threat by unknown individuals; the office of women rights' group, EMPOWER were raided under security law; and death threat against Siti Kassim.

Other notable issues include the frequent abuse of the criminal justice system by enforcement agencies . As an example, 30 settlers from Kampung Thamarai Holdings Sdn Bhd protested the demolition of their village and plantation and formed a human blockade, preventing lorries from transporting rubber logs from Kampung Gatco, the community

was arrested and detained for alleged obstruction under Article 186 of the Penal Code. A lawsuit by the settlers was struck out by the High Court at prima facie in spite of evidence of misconduct. The Court of Appeal, Subsequently reversed the decision, however the High Court finding at the full trial still returned unfavourable to the settlers.

Indigenous activists in the northern state of Malaysia, Kelantan suffered similar fates when their barricade against logging activities and incursion into their customary land was broken down by the forestry department with the support of the police force. Activists manning the barricade was arrested¹⁸⁷ alongside journalists covering the news.¹⁸⁸

Malaysia has not accepted the requests for a visit by the UN Special Rapporteur on the situation of human rights defenders made in 2002 and 2010. Nevertheless, there are signs that Malaysia will move in a positive new direction regarding the implement of its human rights commitment after the election victory of the opposition coalition 'Pakatan Harapan' (Alliance of Hope) in May 2018.

Repressive laws and policies

Malaysia is not party to the International Covenant on Civil and Political Rights (ICCPR), and therefore does not have to abide by international standards of law on freedom of assembly, expression, and association. Although the Constitution of Malaysia guarantees the right to freedom of assembly, peaceful protest and association, however, the right to peaceful assembly is not absolute. Under the Federal Constitution, the right to peaceful assembly may be restricted by parliament which in turn leads to abuse of power by the authorities and the intimidation of civil society. For years, human rights activists have condemned Malaysia's use of

¹⁸³ 'Court rejects Sisters in Islam's legal bid against 'deviant group' label,' New Straits Times, 24 June 2016, <http://www.sistersinislam.org.my/news.php?item.1434.27>

¹⁸⁴ 'SIS Forum (Malaysia) and 2 Others v Jawatankuasa Fatwa Negeri Selangor and 2 Others,' <http://judgments.my/ca/sis-forum-malaysia-and-2-others-v-jawatankuasa-fatwa-negeri-selangor-and-2-others/10239>

¹⁸⁵ 'Maria Chin fails to challenge Immigration DG's travel ban,' Malay Mail Online, 18 May 2017, <https://www.malaymail.com/s/1379779/maria-chin-fails-to-challenge-immigration-dgs-travel-ban>

¹⁸⁶ <https://www.malaysiakini.com/news/359435>

¹⁸⁷ <https://www.thestar.com.my/news/nation/2016/11/29/orang-asli-gua-musang-arrested/>

¹⁸⁸ <http://www.freemalaysiatoday.com/category/nation/2017/01/24/two-journalists-16-orang-asli-arrested-in-gua-musang/>

national security legislation which contravenes international human rights standards. However, in recent years, the exercise of freedom of assembly has come a long way since the draconian laws of the past. An example is the Peaceful Assembly Act which replaced its oppressive predecessor, the Police Act. Unlike its predecessor, an assembly without the prerequisite notification is not an unlawful assembly and the police cannot prohibit an assembly merely because prior notification was not given.

Adding to that, the long-awaited repeal of two draconian security laws in September 2011, the Internal Security Act (ISA), 1960 and three emergency declarations, including the Emergency (Public Order and Prevention of Crime) Ordinance, 1969, was seen as a first positive step towards a more open sphere for HRDs. In practice, however, pre-trial detention and other problematic practices continued through the use of the Security Offences (Special Measures) Act (SOSMA),¹⁸⁹ passed in June 2012 as a replacement for the ISA. Like its predecessor, SOSMA does not clearly define what constitutes a security offence or a threat to public order. The law is open to interpretation and possible abuse. The police can arrest and detain persons without a warrant on mere suspicion within 24 hours, and has the discretion to extend the detention for a further 28 days for investigation without producing the detainee before a court. The arrested person can also be denied the right to consult a legal practitioner within the first 48 hours of detention by the police.

On November 2016, on the eve of the Bersih 5.0 rally, the Bersih 2.0 Chairperson Maria Chin Abdullah was arrested under Article 124(c) of the Penal Code and placed under SOSMA for receiving funds from the Open Society Foundation. She was held incommunicado for 48 hours without access to a lawyer, and was then held for another nine days in solitary confinement. She was released after a total

of 11 days in detention, the day before her habeas corpus hearing challenging her detention on the grounds of unlawful arrest. On the same month, the offices of EMPOWERED -a local NGO dedicated to ensuring justice and democracy in Malaysia- were raided under Article 124(c) and the security forces invoked SOSMA, threatening staff with arbitrary detention without access to a lawyer under the Act. The raid and the threats were made in connection to Bersih 2.0's funding as the NGO had made clear of its alliance with Bersih 2.0.

Another worrying trend is the hasty passing of legislation that has the greatest implications towards human rights. Two examples of this are the amendments to the Sedition Act and the Prevention of Terrorism Act 2015 (POTA).¹⁹⁰ Introduced under the pretext of combating terrorism, POTA was passed in a hurried manner in the Lower House of the Malaysian Parliament just after midnight on the 6 April 2015. The anti-terrorism law faced considerable condemnation and backlash for containing a detention without trial provision, similar to the repealed ISA, which coincided with the arrest of 17 suspected militants. The major concern over POTA, like the ISA, is that it gives the police and the appointed board the power to detain suspects without warrant or judicial review for an extended period of time. The administration had approved of this oppressive legislation, dismissing the advice from the Malaysian Bar Council and respective international law organisations.

The National Security Council Act, 2016¹⁹¹ gives the Government sweeping powers under ambiguous conditions and severely restricts freedom of expression. The Prime Minister, as head of the National Security Council, can declare any area in the country to be a 'security area' and impose the equivalent of martial law over that province, provided he deems it a potential source of 'harm'.

¹⁸⁹ 'Security Offences (Special Measures) Act,' http://www.federalgazette.agc.gov.my/outputaktap/20120622_747_BI_Act%20747%20BI.pdf
'Police raid Empowered Office,' <https://www.thestar.com.my/news/nation/2016/11/28/police-raid-empower-office/>
'Peaceful Assembly Act,' [http://www.federalgazette.agc.gov.my/outputaktap/20120209_736_BI_JW001759%20Act%20736%20\(BI\).pdf](http://www.federalgazette.agc.gov.my/outputaktap/20120209_736_BI_JW001759%20Act%20736%20(BI).pdf)

¹⁹⁰ 'Prevention of Terrorism Act,' http://www.federalgazette.agc.gov.my/outputaktap/aktaBI_20150604_Act769%28BI%29.pdf

¹⁹¹ 'National Security Council Act,' http://www.federalgazette.agc.gov.my/outputaktap/aktaBI_20160607_776-BI.pdf;
'NSC Act risks increasing climate of impunity' <https://www.amnesty.org/download/Documents/ASA2845762016ENGLISH.pdf>;
'National Security Council Act' <https://www.amnesty.org/en/latest/news/2016/08/malaysia-national-security-act-abusive-powers/>

The conditions under which an area may be labelled a security threat are broad and vague and include economic instability and national discourse, amongst others. In areas under the jurisdiction of this legislation, civil liberties will be restricted and security forces will have broad powers to search, seize and arrest without a warrant as well as impose unrestricted curfews towards citizens. Equally, security forces will gain the authority to evacuate areas and use lethal force without internationally recognised safeguards. Impunity is assured through the guarantee of immunity to the National Security Council and those acting under its orders. Even more disturbing, with Malaysia's track record of custodial deaths and police brutality without accountability, that Article 35 of the Act allows Magistrates and coroners to dispense with inquests into any deaths which occurred 'in the security area as a result of operations undertaken by the Security Forces for the purpose of enforcing any written law.'

The Sedition Act, 1948,¹⁹² amended in 2015, has been used to prosecute HRDs and political opponents for making statements critical of the Government, its political leaders, the prime minister's party, United Malays National Organisation (UMNO), or for remarks the Government considers to be derogatory toward Malaysia's sultans or disrespectful of religion. There has been a significant increase in the number of people charged with sedition since the 2013 election, including opposition activists, parliamentarians, student leaders, NGO members, human rights lawyers, journalists and academics.¹⁹³ The Sedition Law's overly broad scope and outdated provisions have become an effective tool to silence legitimate voices of dissent and evidently fall short of international standards on freedom of expression. The Act criminalises any speech or publication that has a 'seditious

tendency.' The arbitrariness of determining what is actually seditious makes the law very political.

Amongst those that have been dubiously charged under the Sedition Act include popular political cartoonist Zulkiflee Anwar Alhaque (better known as 'Zunar'). Zunar was investigated under Article 4(1)(c) of the Sedition Act in regards to his criticisms of the administration and political issues, in particular, his posting on Seri Anwar Ibrahim's sodomy verdict on the popular social platform, Twitter. An interesting extension to this abuse of legislative power is the arrestment of Nurul Izzah (Lembah Pantai MP and PKR vice-president). She was arrested on the grounds of a seditious speech made in parliament when she criticized the judiciary over the Federal court's decision over the sodomy charge of Seri Anwar Ibrahim. Nurul Izzah was held under Article 4(1) of the Sedition Act.

On 1 October 2014, Professor Azmi Sharom filed a constitutional challenge to Article 4 of the Act, claiming that it violates free speech guarantees contained in Article 10 of the Federal Constitution. In early November, the High Court transferred the case to the Federal Court, Malaysia's apex court, for consideration. A year later, the Federal Court of Malaysia ruled that Article 4 of the Sedition Act was in fact is constitutional. The verdict marked a serious setback to the already dismal environment for fundamental freedoms and paves the way for the prolonged rampant use of the Act against any expression of dissent in the country.¹⁹⁴ In November 2016, the Court of Appeal ruled that Article 3(3) of the Sedition Act, which states that the prosecution need not prove intent, is in conflict with Article 10 of the Federal Constitution and therefore unconstitutional and invalid. The upshot of this ruling remains uncertain, however, as progressive court rulings in the past have been overturned. The number of arrests under the Sedition Act jumped

¹⁹² 'Sedition Act,' http://www.commonlii.org/my/legis/consol_act/sa19481969183/

¹⁹³ '#Malaysia,' Front Line Defenders, <https://www.frontlinedefenders.org/en/location/malaysia>
'Prevention Of Terrorism Act,' <http://www.malaysiandigest.com/features/564892-prevention-of-terrorism-act-pota-a-closer-look-at-the-pros-and-cons.html>

¹⁹⁴ 'Malaysia: Federal Court's decision on Sedition Act further hinders rights in the country,' Suara Rakyat Malaysia and FORUM-ASIA, 7 October 2015, <https://www.forum-asia.org/?p=19617>
'Zunar arrested under Sedition Act,' <https://www.thestar.com.my/news/nation/2016/11/26/zunar-arrested-sedition-act/>
'Nurul Izzah detained under Sedition Act,' <https://www.thestar.com.my/news/nation/2015/03/16/nurul-izzah-arrested-sedition-act/>

from 18 in 2013 to 44 in 2014 and 91 in 2015.¹⁹⁵ Several prominent political opposition figures, lawyers, and activists have been charged recently under the Sedition Act, including Adam Adli, a student activist, who was charged in May 2013 and convicted in September 2014¹⁹⁶ for making a speech advocating for people to protest the results of the general elections, and Zunar, a prominent political cartoonist who has been charged 10 times under the Act for subjects covered in his artwork. In April 2015, the legislature passed amendments to the Sedition Act.¹⁹⁷ The new provisions include bans on online media, loosened language to make social media users prosecutable, empowering the courts to ban publications deemed seditious and prevent a person charged with sedition from leaving the country, as well as harsher penalties for seditious activity, including a minimum jail sentence of three years, and up to 20 years in jail for 'aggravated' seditious speech that leads to bodily harm or property damage.

As the Sedition Act faces constitutionality challenges, the authorities have increasingly used Article 124 of the Penal Code¹⁹⁸ to penalize human rights defenders. Under Article 124, anyone who commits an activity deemed 'detrimental to parliamentary democracy' can face up to 20 years of imprisonment. This extraordinarily vague and broad provision has been levelled at activists with increasing frequency. As mentioned above, in November 2016, BERSIH 2.0 Chairperson Maria Chin Abdullah was arrested under Article 124(c) of the Penal Code for the offence of attempting to commit an act detrimental to parliamentary democracy in connection to the organisation's receipt of funds from the Open Society Foundation. She was subsequently detained under SOSMA, which allows for preventative detention for up to 28 days. In July 2015, Tong Kooi Ong, the owner of The Edge Media Group, and Ho Kay Tat,

the group's publisher and CEO, were investigated by police under the Article. In September 2015, seven activists were investigated under the Article due to their participation in the Bersih 4.0 rally in August of the same year.

Articles of the Penal Code on incitement are also used to target HRDs. Under Article 505(b),¹⁹⁹ anyone who publishes information that can cause fear or public alarm can be imprisoned for up to two years. Article 298(a) supplements this, criminalizing speech causing (or likely to cause) disharmony, disunity, or feelings of enmity on the grounds or religion with up to five years of imprisonment. In September 2016, HRD Hishamuddin Rais and Bersih chairperson Maria Chin Abdullah were questioned under Article 505(b) in connection with the TangkapMO1 rally calling for Government transparency and accountability on the 1MDB corruption scandal.

Siti Kassim, a prominent human rights activists and lawyer was arrested on 13 June 2017 after she confronted officers of the Federal Territories Islamic Religious Department (JAWI) during a raid on a private transgender fundraising dinner in Kuala Lumpur in April 2016. Siti Kassim was later charged with 'obstructing a public servant in discharge of his public functions' under Article 186 of the Penal Code.

The Citizen Action group on Enforced Disappearance was called for questioning and investigation in May 2017 following the issuance of a press statement by the group. The group was called for investigation under Article 504 of the Penal Code ('intentional insult to provoke a breach of peace').

The Government also continues to use the Printing Presses and Publication Act (PPPA),²⁰⁰ which requires that all publishers obtain a license, to limit the content of publications. The Home Minister may

¹⁹⁵ 'Critical Crackdown : Freedom of Expression Under Threat in Malaysia,' Amnesty International, 2016, <https://www.amnesty.org/download/Documents/ASA2831662016ENGLISH.PDF>

¹⁹⁶ After a lengthy appeal, Adam Adli was acquitted in February 2018.

¹⁹⁷ 'An Act to amend the Sedition Act 1948' https://www.cljlaw.com/files/bills/pdf/2015/MY_FS_BIL_2015_17.pdf

¹⁹⁸ 'Penal Code' <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>

¹⁹⁹ Ibid.

²⁰⁰ 'Printing Presses and Publication Act' http://www.commonlii.org/my/legis/consol_act/ppapa1984359/

suspend or revoke a license at any time on grounds of security, public order, or morality. In October 2016, Maria Chin Abdullah, Chairperson of Bersih 2.0, was arrested under the Act for handing out Bersih 5.0 pamphlets. She was questioned and then released on bail. Several other activists were also threatened with arrest for the distribution of the leaflets. In August 2015, Bersih 4.0 t-shirts and publications were declared illegal under the Act, just two days before the mass rally calling for accountability in the 1MDB scandal. The grounds for the ban were that the shirts were 'likely to be prejudicial to public order.' The Government also continued the prosecution of NGO activist Lena Hendry in 2016 for allegedly violating Article 6 of the Film Censorship Act, 2002 for her involvement in screening the documentary film 'No Fire Zone: The Killing Fields of Sri Lanka' in Kuala Lumpur in July 2013. In September 2016 her acquittal was reversed by the High Court of Kuala Lumpur and was fined for US\$2,000. Under the Act, any person found possessing a film that has not been screened by the Board can be imprisoned for up to three years or fined up to 30,000 Ringgit (US\$7,000).

Freedom of assembly is highly restricted by the Peaceful Assembly Act (PAA), 2012.²⁰¹ Drafted four months after the Bersih 2.0 rally, the Peaceful Assembly Act was part of the administration's intention to amend the heavily criticized Police Act. PAA prohibits all street protests and spontaneous assemblies. Youth under the age of 15 and non-citizens are barred from participating in public assemblies, and citizens under the age of 21 are not allowed to organise public assemblies. This effectively bans all student-led movements and public actions by progressive student groups. Protest organisers must also ensure that no participants in the assembly make any statements that promote feelings of ill-will, discontent, or hostility, or conduct themselves in a manner that would potentially disturb public tranquillity; the vague wording of these Articles

leaves them open to abuse by Government officials. In addition, protest organisers must notify their local police district of their intent to protest at least ten days before the event. The police frequently declare assemblies illegal by invoking technicalities voiding the notification. The Act also bans on gatherings within 50 meters of several public places, including hospitals, gas stations and schools. Under Article 15, the police may easily be manipulated and control the whole nature of the assembly. This Article has yet to be interpreted by the judiciary. Anyone who is not compliant with these regulations can be fined up to 10,000 Ringgit (US\$2,350).

Multiple Articles of the Penal Code²⁰² are also used to criminalize assembly. Under Article 141 an assembly that consists of five or more people can be designated unlawful for several reasons, including resisting the execution of any law or intending to commit 'mischief' or criminal trespass. Participants in such assemblies can be imprisoned for up to six months. Under Article 145 whoever joins an unlawful assembly knowing that the assembly has already been ordered to disperse can be imprisoned for up to two years. Under Article 147 anyone guilty of rioting can be imprisoned for up to two years. Under Articles 146 and 149 if one member of an illegal assembly engages in prohibited activities, all the members of the assembly are liable for the offence.

On 4 October 2017, nine people were arrested during a protest to stop three houses from being demolished near the Sultan Abdul Aziz Shah airport in Subang Jaya. 17 people were chased away during the demolition and were without a place to live in. However, the protesters claimed that there were no prior instructions from the Selangor Menteri Besar's office to stop the demolition. The case was under investigation under Article 186 of the Penal code. This is an illustrative example of how Articles of the Penal code are being used to criminalise assemblies and peaceful protests

²⁰¹ 'Peaceful Assembly Act' http://www.federalgazette.agc.gov.my/outputaktap/20120209_736_BI_JW001759%20Act%20736%20%28BI%29.pdf
'Peaceful Assembly Act 2012' <https://www.globalbersih.org/malaysian-laws/peaceful-assembly-act/>

²⁰² 'Penal Code' <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>

'Nine arrested at protest against demolition of houses in subang' <https://www.thestar.com.my/news/nation/2017/10/04/nine-arrested-at-protest-against-demolition-of-houses-in-subang/>

without administrative accountability for the unconstitutional use of the legislation.

The police declared the November 2016 Bersih 5.0 rally illegal; ostensibly for allegedly not fully completing the requirement of notification (although notification had in fact been served) under the Peaceful Assembly Act. Bersih 5.0 chairwoman Maria Chin Abdullah was held for 11 days under the SOMSA before being released, and police are now investigating her under Article 9(5) of the Peaceful Assembly Act and have threatened to re-arrest her. In October and November 2015, Bersih organisers Jannie Lasimbang and Maria Chin Abdullah were charged with under Article 9(5) for failing to notify the Government of the rally, despite the fact that this Article had been ruled unconstitutional. In April 2012, the Government filed a suit against Ambiga Sreenevasan, former chairperson of Bersih, as well as 14 other members of Bersih's steering committee, claiming the group breached the Peaceful Assembly Act by failing to ensure that the assembly would not cause damage to property or the environment. The case was dismissed in January 2015. The Government has targeted large numbers of people for other peaceful protests as well. In May 2016, 15 activists were found guilty of violating Article 143, and 10 of them were also found guilty of violating Article 147. In August 2016, the police called in nine participants of an anti-corruption protest held in that same month and are investigating them for violation of the Peaceful Assembly Act. Although they had notified police, the police declared the rally illegal because Kuala Lumpur City Hall refused to give students permission to hold the rally.

A range of selectively enforced laws are used to restrict freedom of association in Malaysia, such as: the Societies Act, 1966; the Trade Unions Act, 1957; and the University Colleges Act, 1971

The Societies Act, 1966²⁰³ makes it compulsory for an organisation of more than seven members to register with the Government as a society; a lengthy process often encumbered with bureaucratic delays. Many civil society organisations are forced to undertake

their advocacy efforts illegally due to the difficult and time-consuming process of registration, with those found managing an unlawful society could be imprisoned for up to five years. The Act provides the Government with wide discretion to refuse applications for registration, allowing it to refuse any society that is likely to be unlawful or incompatible with peace, welfare, security, public order, or morality.

In 2015, the registrar rejected nearly 40 per cent of applications. Societies can also be deregistered if they engage in any of the above behaviours. In July 2011, Bersih 2.0 was deemed an unlawful society under the Act because its activities were seen as potentially prejudicial to public order and security in Malaysia. The Societies Act also mandates that civil society organisations respect core tenets of Malaysian life, including the importance of Islam, the use of Malay language for official purposes, and 'the position of Malay and the natives of Sabah and Sarawak.' If an organisation is found to be carrying out unlawful activities or activities incompatible with these provisions, authorities can revoke its certificate of incorporation, suspend its activities, or even dissolve the organisation itself.

In 2015, the Secretary General of the Home Ministry declared COMANGO -Coalition of Malaysian NGOs in the UN Human Rights Council Universal Periodic Review (UPR) Process- an 'unlawful organisation.' The Secretary General said COMANGO was promoting 'sexual rights contrary to Islam' and that 15 of its 54 group members were unregistered under the Societies Act. Civil society believes the ban is in fact a reprisal for COMANGO's submission during the second cycle of UPR of Malaysia in October 2013. The insistence that the government cannot arbitrarily outlaw a coalition on Malaysian NGOs in the Universal Periodic Review Process (COMANGO) on a case-by-case basis even if there were grounds to the argument that some of the groups were not legally registered. Challenging the enabling powers of this legislation, Eric Paulsen (co-founder of Lawyers for Liberty) claimed the law to be 'ultra vires' of the home minister's power.

²⁰³ 'Societies Act' <http://mercy.org.my/wp-content/uploads/2015/05/Societies-Act-1966.pdf>
'Comango cannot be outlawed' http://www.malaysianbar.org.my/legal/general_news/lawyers_comango_cannot_be_outlawed_putrajaya_playing_to_gallery.html

The Trade Unions Act, 1959²⁰⁴ governs the right to association for workers and trade unions. Under the Act, officers of trade unions cannot hold political office. This means that workers affiliated with unions are not afforded a voice in political dialogues. Workers with job roles categorised as confidential, managerial, executive, or security are barred from forming or joining a union. Non-clerical police and Military personnel are also disallowed from unionising. The Trade Unions Act allows the Director-General of Trade Unions, a Government official, to decide what industry a particular trade union belongs in. In the past, this has been used to control and weaken trade unions by splitting unions from similar industries into different groups, making it more difficult for them to project a unified voice. Trade unions are also regulated under the Industrial Relations Act, 1967,²⁰⁵ which complicates the registration process and limits freedom of association by mandating that prospective unions submit requests for recognition to their employer before being able to apply to the Government.

It comes to no surprise that Malaysian Trade Union and Labour Laws fall short of minimum international standards. During the period in which Malaysia wished to be included in the Trans-Pacific Partnership Agreement (TPPA), one of the preconditions put forward was for Malaysia to make significant amendments to its labour laws to bring it up to par with minimum human rights and worker rights standards. However, no amendments have been put forward and administratively approved so far. This lack of protect may be one of the reasons why workers and trade unions whose rights have been violated choose to not conduct industrial actions such as strikes or dissenting campaigns against their employers. Since 1998, people in Malaysia have gradually been becoming aware of the kleptocracy plaguing the country, however, the trade union movement has not been very active despite the continued erosion of worker and trade union rights.

The Universities and University Colleges Act, 1971²⁰⁶ heavily restricts the space for free association for university students. The law mandates that the university approve all student-run organisations. Universities retain the ability to disband or forbid students from participating in any organisation deemed unsuitable to the interest or well-being of the university and its students. Students may join political parties and campaign as candidates in elections, but may not engage in political activities on campus. Any university vice-chancellor may take disciplinary action against students who participate in political activities that are ‘unsuitable to the interest or well-being of the university.’

In October 2016, Universiti Malaya subjected four students to disciplinary hearings due to their participation in the TangkapMO1 anti-corruption protests in August 2016. The university threatened the students with fines, suspensions and expulsion. The students proceeded to file an originating summons seeking a declaration that the Act was unconstitutional in prohibiting students from exercising their right to freedom of speech and expression and to participate in demonstrations, have contravened Article 10(2) of the Federal Constitution.

In 2014, students who participated in on-campus protests against the Trans-Pacific Partnership, against the death sentence in Egypt, and against the declining price of rubber were all disciplined under this Act; demonstrating the Government’s desire to subvert critical thought on any issue it chooses. In October 2014, eight students at the University of Malaya who had organised an event where Opposition leader Anwar Ibrahim was to give a talk were suspended and fined under the Act.

The Government of Malaysia enacted the Anti-Fake News Act in April 2018, a month before the 14th General Election. Despite the criticisms conveyed by civil society representatives, SUHAKAM and other stakeholders, the government pushed the bill through Parliament immediately before the dissolution of the Parliament. The Act introduces

²⁰⁴ ‘Trade Unions Act’ <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/10327/99503/F626669980/MYS10327.pdf>

²⁰⁵ ‘Industrial Relations Act’ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48066/99440/F1841123767/MYS48066.pdf>

²⁰⁶ ‘Universities and University Colleges Act’ <https://legal.usm.my/v3/phocadownload/act%2030%20-%20universities%20and%20university%20colleges%20act%201971amended%202012.pdf>

vague definitions such as those related to ‘fake news’ and the concept of ‘maliciousness’ which allow for multiple interpretations and grant the Government the liberty to interpret terms and potentially abuse it for political gain. Under the Act, fake news is defined as ‘any news, information, data and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas.’ The Act can be used to prosecute people who are deemed to be contributing to or giving support for the creation of fake news concerning Malaysia and/or Malaysians. If proven guilty, the alleged offenders, regardless of their nationality or physical location, can be fined up to 500,000 Ringgits, imprisoned for a term not exceeding six years, or both.

Despite the assurance that this law would not be abused, the two known cases brought under the Act do not inspire confidence. The first case involved the prosecution of Salah Salem Saleh Sulaiman, a witness to an assassination who claimed that the Malaysian police took 50 minutes to respond to emergency calls in Kuala Lumpur after the shooting of Palestinian lecturer and Hamas member Fadi al-Batsh on 21 April 2018.²⁰⁷ The second known case involves the investigation against Tun Mahathir following his claim that his flight was sabotaged.²⁰⁸

The Communications and Multimedia Act (CMA) was initially created under the duress of fulfilling the need to regulate an increasingly convergent communications and multimedia industry. However, the Malaysian Bar has consistently criticized the abuse of the CMA. Vice President George Varughese, urged the administration to repeal legislation that negates the exercise of freedoms of speech, expression, opinion and thought. Resorting to such tactics as the CMA by the authorities has a chilling effect on the freedom of opinion and thought, creating a climate of fear that suffocates freedom of expression and threatens to

silence Malaysians. He further criticized the misuse of Articles 233(1) and 263(2) of the CMA as being another ‘dressed-up political weapon.’

Article 233(1)(a) of the CMA criminalises the use of network facilities or network services by a person to transmit any communication that is deemed to be offensive and could cause ‘annoyance’ to another person. Article 263(2) provides for the barring of public access to websites and had been perceived as constituting intimidation and harassment of the media.

On 20 February 2018, satirical cartoonist and filmmaker, Fahmi Reza was charged under Article 233(1)(a) of the CMA for his depiction of the then-Prime Minister as a clown in satirical protest of the decision of the attorney general to clear the Prime Minister of any corruption. Prior to the charge, Fahmi Reza embarked on a social media campaign and posted the satirical clown image of Najib Razak as part of the campaign opposing the use Sedition Act in Malaysia and the corruption in Malaysia.

Enabling laws and policies

There is no legislation or policy in place for the protection of HRDs in Malaysia and the Government has not shown any initiative in that direction.

Article 10 of Malaysia’s Constitution²⁰⁹ guarantees that every citizen has the right to freedom of expression; however, Article 10.2(a) immediately constrains this right by allowing Parliament to restrict freedom of expression as it deems necessary for several different reasons. As such, a solid provision protecting this right does not exist.

The Human Rights Commission of Malaysia (SUHAKAM) is a national human rights institution whose duties and functions are, among others, to provide awareness and education on human rights and conduct research on policy development, complaints, inquiries and monitoring. SUHAKAM

²⁰⁷ <https://www.straitstimes.com/asia/se-asia/foreigner-to-be-first-person-charged-under-malysias-new-anti-fake-news-law>

²⁰⁸ <https://www.nst.com.my/news/politics/2018/04/363873/dr-m-maintains-claim-private-jet-sabotage>

²⁰⁹ ‘Federal Constitution’ <http://www.jac.gov.my/images/stories/akta/federalconstitution.pdf>
‘Fhami Reza Sentenced To Prison and Fined’ <https://www.frontlinedefenders.org/en/case/fahmi-reza-sentenced-prison-and-fined>
‘Communications and Multimedia Act being abused like Sedition Act’ <https://www.malaymail.com/s/1288815/communications-and-multimedia-act-being-abused-like-sedition-act-says-malay>

plays a significant role in promoting the protection of human rights in the country. SUHAKAM's inquiries' findings and reports have been a point of reference in court in cases pertaining to infringement of human rights. SUHAKAM has regular exchanges with civil society.²¹⁰ In December 2015, the Government of Malaysia announced SUHAKAM's budget would be halved.²¹¹ In July 2016, SUHAKAM Chairperson Tan Sri Razali claimed that access to a lawyer is not essential in cases involving people detained for alleged terrorism and called for Bersih not to protest to communicate the people's demands.²¹²

The National Legal Aid Foundation (NLAF), lobbied for by the Malaysian Bar Council and launched by the Prime Minister on 25 February 2011, has funds provided by the Government so that the lawyers registered with NLAF can be remunerated for providing legal representation to clients in criminal matters. Before the establishment of NLAF, only the members of the Bar contributed to the legal aid fund. Police are required to provide information on arrest and detention to NLAF and allow lawyers' access to the detainees in the police station.

The existing Whistleblowers Protection Act 2010²¹³ is inadequate to encourage whistleblowers to come forward. In fact, it is considered more detrimental to whistle-blowers as there are restrictions on the kind of information whistle-blowers are allowed to disclose and to whom they can disclose it. The outcry against the Act confirms the public perception that the Act was put in place to intimidate whistleblowers and was enacted hastily.²¹⁴

Recommendations

The National Security Council Act, the Prevention of Terrorism Act and the Security Offences (Special Measures) Act must be immediately repealed as they

present an extremely dangerous threat to HRDs' rights. Rather than targeting actual national security concerns, the laws' broadness give the Government free rein to use extreme force against and arbitrarily detain anyone engaging in activities the ruling party disapproves of, which puts HRDs at great risk, particularly those working on sensitive subjects. Any public security or anti-terrorist legislation enacted to replace these laws must be extremely narrow in their definitions so as to not be applicable in any way for political reasons.

The Sedition Act and Article 124 of the Penal code must likewise be immediately repealed, as the acts covered by them are not clear and not necessarily criminal, and criminal acts that it could address are well covered by other legislation. Expressing an opinion that criticizes Government, calls for elections or calls for a change in regime is not a criminal offence by international standards. Punishing opposition to Government is a severe infringement on the right to free expression.

Article 505(b) and 298(a) of the Penal Code must be amended to significantly narrow the definition of incitement to the encouragement of actual criminal action and remove reference to acts 'likely' to incite criminal action. Vague and overly broad concepts such as 'causing fear' and 'causing public alarm' do not refer to any specific act and must be struck from the Penal Code.

The Printing Presses and Publications Act must be repealed in its entirety as it provides the Government with undue power to control publishers and content. The Film Censorship Act must be repealed, and the Film Censorship Board abolished.

The Peaceful Assembly Act must be amended to remove the requirement of notification of intention to hold an

²¹⁰ 'Malaysia: Room to be proactive,' Suara Rakyat Malaysia, <https://www.forum-asia.org/uploads/wp/2015/09/3-Malaysia-Draft-3-26-July-20151.pdf>

²¹¹ 'Malaysia: ANNI Open Letter to Prime Minister on SUHAKAM's Budget Cut,' Asian NGOs Network on National Human Rights Institutions, 14 December 2015, <https://www.forum-asia.org/?p=19807>

²¹² 'Malaysia: SUHAKAM Standard Must Align to Human Rights and Fundamental Liberties,' Asian NGOs Network on National Human Rights Institutions, 2 August 2016, <https://www.forum-asia.org/?p=21274>

²¹³ 'Whistleblower Protection Act' <http://www.bheuu.gov.my/pdf/Akta/Act%20711.pdf>

²¹⁴ 'Goodbye to whistleblowers,' The Star Online, 4 November 2013, http://www.malaysianbar.org.my/members_opinions_and_comments/goodbye_to_whistleblowers.html

assembly and to remove the possibility of criminal prosecution for failing to abide by the stipulations of the Act. Blanket restrictions on people of certain ages and on non-citizens must be lifted. Vague and broad restrictions on assembly issues such as 'avoiding promoting ill will' must be lifted. The Act must also be amended to absolutely and unconditionally guarantee that peaceful assemblies of any sort, including spontaneous ones, will not be subject to prosecution. Articles 141 to 149 must be struck from the Penal Code, as all of them allow for the criminalization of peaceful participation in a public assembly.

The Societies Act must be significantly amended to remove any restriction on the right to join, form and operate associations. Registration, operation, activities, funding, communication and any other aspect of an association's being should be free from any Government influence. Similarly, the Trade Unions Act and the Industrial Relations Act must be amended to remove any Government or employer influence in any sphere of the founding, operation, or structure of trade unions. The Universities and University Colleges Act must be repealed, as it explicitly restricts students' ability to associate. Students, like any persons, are entitled to join, form and operate associations freely and as they see fit, without any restrictions by Government.

A review of the National Forestry Act is sorely needed, especially light of the decision by the Forestry Department of Kelantan to demolish another Orang Asli Blockade in Gua Musang, Kelantan. NGOs are deeply concerned that this marginalized and vulnerable community who are among Malaysia's poorest minority have been targets of long-standing discrimination, exclusion and more recently, violence. Unrestrained commercialisation of the forests, which violates the many established principles on business and human rights, such as the duty of the state to protect, and the duty of business to respect the rights of the ethnic Orang Asli.

The Whistle-blowers Protection Act must be amended to remove any restrictions on the content that whistle-blowers may disclose and whom they may disclose it to and must strengthen the provision of support to whistle-blowers.

Finally, the Government must also take step to ensure SUHAKAM's effective function. It must accept and adopt the amendments proposed by SUHAKAM regarding its enabling act, consult it in the drafting of legislation with human rights implications, and ensure that it receives adequate funding for its operations.

THE MALDIVES

Synopsis of the challenges of HRDs

The human rights situation in the Maldives has been deteriorating over the past few years as threats and attacks against Human Rights Defenders (HRDs), independent media critical of the Government and political activists are on the rise.

Two significant cases are the abduction of journalist Ahmed Rilwan in August 2014 and the murder of blogger Yameen Rasheed in April 2017. The disappearance of Rilwan was given very little attention by the authorities after he was reported missing, with the police waiting over 600 days to publicly confirm that he was abducted at knifepoint.²¹⁵ Yameen Rasheed was stabbed in the stairwell of his apartment building, later dying in the hospital.²¹⁶ Yameen Rasheed's alleged killers have been arrested but the court proceedings are happening behind a veil of secrecy.²¹⁷

Other notable incidents of attacks on HRDs include the threats received by Zaheena Rasheed, the editor of the Maldives Independent, which forced her to flee the country; physical attacks of vandalism on the property of the human rights Non-governmental organization (NGO) the Maldivian Democracy Network (MDN) in 2013, and another raid on its offices as well of those of the Maldives Independent (formerly Minivan News) in 2016; the ill-treatment of 16 journalists engaged in a protest; a formal letter threatening to deregister Transparency Maldives in 2013; published photos and threats of disappearance, death and rape of MDN employees following the case of Rilwan's disappearance; violent threats against bloggers and social media activists on Twitter; the violent attack on the offices of Minivan News following Rilwan's disappearance; and the September 2015 attack on human rights lawyer Mahfooz Saeed which left him with stab wounds on his head. Despite domestic and international

concern about these attacks, the relevant authorities have failed to take action.

Under the Freedom of Peaceful Assembly Act, 2013, the authorities have imposed far-ranging restrictions on where and when protests can take place in the capital city Malé. As empowered by the Freedom of Peaceful Assembly Act, the police have used the discretionary powers to impose further arbitrary restrictions. Demonstrations are subject to police permission and are only allowed in certain areas far away from official buildings, contrary to international law and standards. Protesters and opposition activists taking part in peaceful demonstrations have been arrested, detained and ill-treated for days or weeks, and released only after having conditions imposed preventing them from taking part in future demonstrations for a certain period. Political rallies have been attacked by gangs suspected of working in collaboration with the police. None of the attackers, even those allegedly known to the police, have been brought to justice.

Judicial politicization and overreach remains a serious concern. This has included curtailing the independence of the National Human Rights Commission of Maldives (HRCM), which the Government failed to defend. The Supreme Court initiated a 'undermining the constitution' case against the HRCM in September 2014 following a report on the judiciary included in the Commission's stakeholder submission to the UPR. The trial concluded in June 2015 with a verdict that the HRCM had acted against the law and the formation of a 'guideline' that the Commission was mandated to follow. This guideline has resulted in the Commission being stripped of its independence in sharing information and opinion to external agencies.

The Government of the Maldives has failed to respond to requests by the UN Special Rapporteur on the situation of human rights defenders for an

²¹⁵ 'Rilwan was abducted, confirms police,' The Maldives Independent, 2 April 2016, <http://maldivesindependent.com/crime-2/rilwan-was-abducted-after-hostile-surveillance-police-confirm-123185>

²¹⁶ 'Maldives blogger stabbed to death in capital,' The Guardian, 23 Apr 2017, <https://www.theguardian.com/world/2017/apr/23/maldives-blogger-yameen-rasheed-stabbed-to-death-in-capital>

²¹⁷ 'Openly killed, secretly charged: Yameen Rasheed's murder one year on,' The Maldives Independent, 23 April 2018, <http://maldivesindependent.com/crime-2/openly-killed-secretly-charged-yameen-rasheeds-murder-one-year-on-137648>

official country visit in 2006 and 2015, and the country remains on the ‘Outstanding visits requested by the Special Rapporteur’ list.²¹⁸

Repressive laws and policies

The Protection of Reputation and Good Name and Freedom of Expression Act, 2016 is a highly controversial omnibus law that covers a broad variety of offences: it outlaws statements that are defamatory, blasphemous, or threaten national security, social norms or religious unity. Under the law, any expression that conveys ‘opinions that damage national security or sovereignty’ is unlawful. As in most countries in the region, the issue with this law is the vague definition provided for how an opinion will be judged to damage national security: in this case, it is determined to be so when a ‘sane person’ would deem it to be. The law recriminalizes defamation (it had been de-criminalized in 2009), prohibiting statements that could be depicted, thought of, or inferred as damaging to a person’s reputation. A statement need not be false to be considered defamatory under the law. The Act also outlaws insult to Islam, questioning the validity of any tenet of Islam, threatening religious unity, or spreading religious teachings without Government permission; these vague concepts are left inadequately defined. The section on social norms is the vaguest: it outlaws acts or opinions that are contrary to how people ‘would normally behave.’ Any act falling under these very broad definitions is punishable by a steep fine of 25,000 Rufiyaa (US\$1,625) to 2,000,000 Rufiyaa (US\$130,000), which, if not paid, results in a prison sentence of three to six months. Appeals to a sentence are not permitted until the fine has been paid. For media organisations convicted of defamation, the organisation would be subject to these fines, and individual journalists would be fined between 50,000 Rufiyaa (US\$3,250) and 150,000 Rufiyaa (US\$9,753). If a media organisation is convicted more than once, their licence can be

suspended and their programming interrupted.

The law has resulted in extensive self-censorship. For instance, Dhi TV, Dhivehi Online, and DhiFM were all shut down on August 10, 2016 with the CEO stating that it would be impossible to operate sustainably under the current conditions. Another example is Raajje TV, which airs rallies and protests on delay in order to censor content that could be perceived as defamatory by the authorities, has to strictly control on-air interviews and conversations, and has halted the production of two documentaries that criticise the Government.

The Freedom of Peaceful Assembly Act, 2013²¹⁹ places severe restrictions on the ability to hold a public assembly, which it defines as a gathering of more than one person attending a place temporarily to express a certain viewpoint. The Act outlaws assemblies that are deemed to threaten such broad categories as national security, public safety, and, crucially, public morals; these categories are broad enough to allow assembly on most sensitive topics to be deemed illegal. The law bans demonstrations held outside of private homes and Government offices and also disallows protests held within 200 feet of the President’s office, the legislature, mosques, schools, buildings, hospitals, and diplomatic buildings. The law also places limits on media coverage of protests, mandating that only Government-accredited journalists may report on them. A controversial amendment came into force in August 2016, despite widespread criticism both domestically and internationally that it severely restricted freedom of assembly. The Act now states that prior police approval is required everywhere in the country except a few designated areas, where the police must nonetheless be notified 36 hours in advance.

The Penal Code²²⁰ is also used to restrict freedom of assembly in the Maldives. Charges such as obstructing justice (Article 530),²²¹ obstructing a Government official (Articles 532 and 533),²²² or

²¹⁸ ‘Special Rapporteur on the situation of human rights defenders - Country visits’ <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CountryVisits.aspx>

²¹⁹ ‘Maldives – Freedom of Peaceful Assembly Act, 2013 (Unofficial Translation),’ <https://www.forum-asia.org/?p=17526>

²²⁰ ‘Law no 6/2014 Penal code,’ <https://www.law.upenn.edu/live/files/4203-maldives-penal-code-2014>

²²¹ Ibid.

²²² Ibid.

intimidating or retaliating against a public official (Article 541)²²³ have been broadly interpreted to penalize peaceful protesters. In March 2015, four journalists from Raajje TV were arrested for covering an opposition protest and held for five days without charge. The four faced a mix of charges relating to obstructing or assaulting a police officer under Article 532 of the Penal Code. In April 2016, 16 journalists were arrested for taking part in a protest against Government attempts to curb freedom of expression. They were strip-searched and pepper-sprayed and investigated on charges of obstructing a police officer under Article 532.

The Anti-Terrorism Act, 2015 contains such a broad definition of terrorist activities that it allows the authorities to interpret legitimate peaceful political activities as terrorism and as such be used to suppress anti-Government activities and jail politicians on trumped-up charges. Inciting violence at demonstrations, causing damage to property, disrupting public services, and threatening the country's independence and sovereignty are considered acts of terrorism. The President has the power to unilaterally declare that a group is a terrorist organisation without going through legal channels, and the security forces have the authority to secretly install hidden cameras in the homes of persons suspected of terrorism to monitor them. Offences under the Act carry penalties of up to 25 years in jail. Numerous politicians have been jailed under the Act or its predecessor in only the last few years, including former President Mohamed Nasheed, former Vice-President Ahmed Adeeab, former prosecutor general Muhthaz Muhsin, senior judge Ahmed Nihan, and leader of the Adhaalath opposition party Sheikh Imran Abdullah.

Freedom of expression in the context of religion is heavily restricted in the Maldives. According to the

Constitution of the Maldives,²²⁴ citizens, who must be Muslim, are prohibited from expressing opinions that could be perceived as criticism of Islam or advocacy for religious pluralism. The Constitution bans non-Muslims from voting or holding public office, and bans any statement contrary to Islam or the Government's policies regarding religion. In addition to the limits set out under the Protection of Reputation and Good Name and Freedom of Expression Act, Article 617 of the Penal Code²²⁵ outlaws anti-Islamic expression and the disruption of religious unity. The 2011 Regulations on Protecting Religious Unity of Maldivian Citizens²²⁶ criminalise any statement that interferes with the Government and people's ability to protect religious unity. In November 2011, the Government used the Regulations to shut down hilath.com, which expressed the views of Ismail Khilath Rasheed, a Sufi living in Maldives. In March 2014, the Government began an official investigation of a Facebook group entitled 'Dhivehi Atheists/Maldivian Atheists.'

The Regulations on Approving Literature Published in the Maldives, 2014²²⁷ mandate that anyone wishing to make written materials or artwork publicly accessible, either online or offline, must first seek approval of the work from the National Bureau of Classification, or risk fines of up to 5,000 Rufiyaa (US\$325).

The Associations Act, 2003²²⁸ requires that all organisations register with the Government, a burdensome and time-consuming process. The Government can choose not to register an organisation for a host of reasons, such as objectionable words in its name. In June 2014, the Maldives Bar Association was forced to disband after it refused to remove the word 'Maldives' from its title. Persons with criminal records, children and non-citizens are barred from forming organisations. No association may list as its objective any issue area that is contained under

²²³ Ibid.

²²⁴ 'Constitution Of Maldives,' <http://www.presidencymaldives.gov.mv/Documents/ConstitutionOfMaldives.pdf>

²²⁵ 'Law no 6/2014 Penal code (unofficial translation),' <https://www.law.upenn.edu/live/files/4203-maldives-penal-code-2014>

²²⁶ 'Regulation on protection of religious unity among Maldivian citizens (unofficial translation),' <http://minivannewsarchive.com/files/2011/09/Translation-of-Religious-Unity-Regulation.docx>.

²²⁷ 'Regulation on Authorisation of Literary and Artistic Works in the Maldives (unofficial translation),' <http://minivannewsarchive.com/files/2014/09/Regulation-on-Authorisation-of-Literary-Artistic-Works.docx>.

²²⁸ 'Associations Act (Act no: 1/2003),' <http://homeaffairs.gov.mv/files/Association-Act-2003-English.pdf>

the mandate of any Government office, leaving very little room for associations to work in. Associations are prohibited from registering if they conflict with Islamic principles or aim to incite conflict within society. International organisations must obtain permission in order to operate in the Maldives; they may be denied if the proposed activities do not contribute to the national development plans of Government institutions. Those who head unregistered organisations, which are illegal, can be imprisoned for up to five years. The law also gives the Government broad powers to interfere with and obstruct the activities of associations.

Criticism of the powerful and politicised judiciary is also used to silence and punish HRDs. One practice that has been reported by the Special Rapporteur on the Independence of Judges and Lawyers is the requirement that lawyers sign an affidavit swearing not to criticise the Supreme Court before being able to appear before it.²²⁹ The penalty for disobeying this is contempt of court and disbarment. Article 141 of the Constitution²³⁰ outlaws interference with the courts, and on this basis the Supreme Court in 2014 issued regulations banning the portrayal of the judiciary in a negative light, demeaning any aspect of the court, or criticizing any court official. The penalty for acts that fall under this definition is 15 days in jail, one month of house arrest or a fine of up to 10,000 Rufiyaa (US\$650). The Supreme Court has also unilaterally taken control of legal licences, declaring that it needed to ensure that lawyers comply with standards stipulated by the law. In October 2016, prominent human rights lawyer Nazim Abdul Sattar was suspended for six months by the criminal court for ‘tarnishing the good name of judges and inciting hatred against the judiciary.’ He was suspended for filing a complaint after the criminal court denied adequate legal representation to one of his clients. In September 2014, the Supreme Court, acting on its

own authority alone, initiated proceedings against the Human Rights Commission of the Maldives (HRCM) for ‘undermining the constitution’ in connection to the HRCM’s submission²³¹ to the UN’s Universal Periodic Review of the Maldives, which criticised the Supreme Court’s acting beyond its mandate. The Court acted both as plaintiff and judge in the case, and ruled in June 2015 that the submission was unlawful. The ruling also set out an 11-point set of guidelines that the HRCM would be legally bound to follow, which included upholding national norms, faith, etiquette and rule of law, and protecting unity, peace and order. Ironically, the Court also ordered the HRCM not to overstep its mandate, protect the Maldives’ reputation, and only communicate with international bodies through the Government of the Maldives.²³²

Enabling laws and policies

There are no laws or policies in place for the protection of HRDs in the Maldives and the Government has not shown any initiative towards this.

The Constitution of the Maldives²³³ guarantees freedom of expression under Article 27. However, the Article stipulates that this freedom only applies to discourse and work that does not contradict any tenet of Islam. Article 28 provides specifically for freedom of the press, stating that all persons have the ability to publish ‘news, information, ideas, and views.’ Article 32 states that everyone has the right to peaceful assembly without prior state permission. However, legal restrictions hamper Maldivians’ ability to engage in peaceful protest and assembly. Article 30 guarantees the right to association and stipulates that every citizen has the right to form and participate in political parties, form and participate in any association or society for any economic, social, educational, or cultural purpose, or form and participate in trade unions.

²²⁹ ‘Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut,’ 21 May 2013, <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/23/43/Add.3&Lang=E>

²³⁰ ‘Constitution Of Maldives,’ <http://www.presidencymaldives.gov.mv/Documents/ConstitutionOfMaldives.pdf>

²³¹ ‘HRCM Submission to the Universal Periodic Review of the Maldives, April–May 2015 (22nd session),’ September 2014, http://www.hrcm.org.mv/Publications/otherdocuments/UPR_submission_Sept_2014.pdf

²³² <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2015/08/Maldives-Justice-Adrift-Rule-of-Law-Publications-fact-finding-report-2015-ENG.pdf>

²³³ ‘Constitution Of Maldives,’ <http://www.presidencymaldives.gov.mv/Documents/ConstitutionOfMaldives.pdf>

The Right to Information Act²³⁴ was drafted with the aim of widening and improving the scope of citizens' right to information to increase transparency and accountability. Under the Act, any public authority is obliged to comply with a request for information within 21 days. However, if the request is relevant to an individual's liberty or protection of a person's life, information must be provided within 48 hours. The Act also provides protection to whistle-blowers if the whistle-blower publicises information regarding corruption or breach of the law.

The Human Rights Commission Act²³⁵ (Law 6/2006) established the National Human Rights Commission of The Maldives (HRCM). While the HRCM has a general complaints mechanism which includes a hotline, there have not been appropriate measures undertaken for the protection of HRDs. HRDs have continued to request that the HRCM establish such a mechanism either in the form of a special desk or Article at the Commission to whom HRDs in difficulty can report or contact to seek urgent assistance for the prevention of targeted attacks. HRDs working individually or as organisations have faced several kinds of attacks and threats over the years and these incidents have either not been addressed by the HRCM at all, or not satisfactorily. It is not known whether the HRCM has addressed any of the incidents of threats of de-registration of NGOs, Government statements warning such NGOs to stop certain efforts for the protection of rights, or threats to individuals working with NGOs. Some of these threats include physical assault, rape, death and disappearance. It is also unknown whether the HRCM has informed mechanisms such as the UN Special Procedures of these incidents.²³⁶ The HRCM has come under full frontal attack from the Government in recent years, as mentioned above. The Supreme Court ruling in June 2015 placed severe restrictions on the HRCM's ability to carry out its mandated tasks by forcing it to cease any criticism of the Government.

Recommendations

The Maldives is in urgent need of considerable legislative and policy reform in order to provide a safe environment conducive to HRDs' work. Most urgently, various branches of Government, particularly the executive, the judiciary and the security forces, must immediately halt their practices of harassing, intimidating, and even killing HRDs and must instead seek to protect them. The Maldives must enact an HRD law that sets out the rights and freedoms guaranteed to HRDs according to international standards, which explicitly overrides legislation that inhibits their rights. Numerous parts of Maldivian law, including legislation, the Penal Code, and policies must be amended and repealed.

The Protection of Reputation and Good Name and Freedom of Expression Act must be repealed as it covers no actual criminal acts that are not adequately addressed elsewhere in Maldivian law. Defamation, threats to social norms, and insult of Islam are not a criminal offence by international standards. There should be no possibility of criminal prosecution for a statement harming the reputation of another person, for speaking critically of a religion or of Government policy on religion, or for not acting in accordance with social norms. This is particularly true when the law in question is overly broad and therefore subject to abuse.

The 2016 amendment to the Freedom of Peaceful Assembly Act must be repealed in order to ensure that no permission to conduct a protest under any circumstances is required. Spontaneous protests must also be permitted under all circumstances. Restrictions on the right to assemble must be reviewed and narrowed, removing conditions such as 'threat to public morality,' so that they comply with international standards, which allow for restriction only in specific rare circumstances. The limits on the locations in which assemblies can be held must be dropped. The courts and police must stop laying spurious charges of obstruction of public

²³⁴ 'Right to Information Act 2014 (unofficial translation)' http://transparencyadvisorygroup.org/uploads/Maldives_-_Translated__Right_to_Information_Act_2014__Unofficial__.pdf

²³⁵ 'Human Rights Commission Act,' <http://www.hrcm.org.mv/publications/otherdocuments/HRCMActEnglishTranslation.pdf>

²³⁶ 'ANNI Report 2016,' <https://www.forum-asia.org/uploads/wp/2016/11/6.-Maldives-Final.pdf>

officials' duty on peaceful protesters. Protecting oneself from police violence is not a criminal act by international standards. Thus, relevant Articles of the Penal Code (particularly Article 532) must be amended to narrow and elaborate on the definition of what constitutes obstruction of duty and limit it to cases in which the officer in question is actually harmed while not abusing his or her power.

The draconian Anti-Terrorism Act must be immediately repealed as it poses extreme restrictions on freedom of expression. Any new legislation replacing it must define terrorism narrowly and within the bounds of internationally-accepted definitions, which must not include damage to property or disruption of public services. The President must not have the power to simply declare an organisation to be a terrorist one: this is a process that must go through the courts.

The Constitution must be significantly amended so that it guarantees freedom of religious expression. Provisions that should be prioritized for reform are the ban on expression that contradicts Islam and the ban on non-Muslims being citizens. Article 617 of the Penal Code must be repealed in its entirety.

The Associations Act must be considerably amended to remove the Government's power to involve itself in the registration or operation of associations. The registration should be simple, easy and accessible and, crucially, must not be subject to denial by the Government. If an association is engaged in actual criminal activity, the Penal Code contains adequate provisions to prosecute it: the issue need not be

over-legislated by imposing onerous requirements upon all associations. The Government should also have no power to meddle in the activities, objectives, structure, funding, communications, or any other aspect of an association's work.

Any censorship is an unacceptable restriction on freedom of expression, and pre-publication censorship is the most egregious form of it. The Regulations on Approving Literature Published in the Maldives must therefore be repealed in its entirety.

The Maldivian judiciary must undergo considerable reform in order to ensure its political independence and its impartial application of and respect for the laws of the Maldives. Article 141 of the Constitution must be amended to ensure that contempt of court may not be used to target any commentary or criticism, particularly by lawyers, who have the right to contest judgements. The Supreme Court-issued regulation on contempt of court must also be repealed as it severely restricts freedom of expression. The court must also stop the practice of accepting politically motivated charges and issuing sentences through extremely broad application of the law.

The HCRM must be also be reformed, most crucially by freeing it of the Government control imposed upon it by the 2015 Supreme Court ruling that left it toothless. Its independence must be guaranteed with regard to funding, appointments and activities, and it must be aligned with the Paris Principles. A HRD desk must be set up which can receive, seek out, and effectively act upon violations of the rights of HRDs.

MONGOLIA

Synopsis of the challenges of HRDs

Human Rights Defenders (HRDs) in Mongolia face numerous challenges related to their work promoting and protecting human rights. There is a general lack of awareness of who HRDs are, what they do and what their rights are, as listed in the UN Declaration on HRDs. Furthermore, there is no protection and recognition of HRDs under Mongolia's current legal framework.

Examples of the challenges faced by HRDs in Mongolia include the cancellation of media operating permits following criticism of high-ranking public officials, the sentencing of individuals struggling for environmental preservation, and restrictions of the right to freedom of association for - Lesbian, gay, bisexual, trans, and/or intersex (LGBTI) rights defenders. HRDs in Mongolia face threats, harassment, criminalisation, vilification and smear campaigns because of their work supporting victims of Economic, Cultural and Social Rights (ESCR) violations. This is exacerbated by the lack of redress and effective remedies for HRDs to address the violations and abuses they face.

Members of the LGBTI community often receive hate speech and violence due to a lack of public awareness and information on LGBTI rights. In July 2017, a law criminalising discrimination based on Sexual Orientation or Gender Identity (SOGI) was passed by the Mongolian Government.²³⁷ Mongolia's new 2017 Criminal Code prohibits hate crimes.²³⁸ Nevertheless, LGBTI rights defenders do not seek support from the police due to fear of reprisal. Despite of the anti-discrimination law, LGBTI groups have faced resistance from the State. The Government's refusal to approve the registration of Lesbian, Gay Bisexual and Transgender Centre (LGBT Centre) as Non-Governmental Organisation (NGO) for over two years exemplified this resistance. The LGBT Centre first registered its name in February 2007 and proceeded to apply for an official NGO registration.

It was not permitted to register at the time, nor was it allowed in 2009, when it made at least 10 attempts to register. After three years of resistance from state authorities, the LGBT Centre was eventually registered on 16 December 2009, after interventions from the Office of the President and the National Human Rights Commission of Mongolia.

HRDs working on ESCR or corporate accountability face violations frequently. Human rights abuses by mining operations have increased, and HRDs working on violations related to large-scale mining are facing increased pressure, harassment and threats. In November 2015, founder and editor-in-chief of the Mongolian Mining Journal Luntan Bolormaa was found dead due to a brain haemorrhage from a head concussion. Civil society groups have called for the death to be adequately investigated to find out if there was foul play involved.

One of the root causes for the increase of threat to HRDs is the lack of knowledge among the public officials, law enforcement and the general public about the discourse and who are the HRDs, therefore in some instances they contravene the law to defend human rights. A key example is the criminal prosecution of Ts. Munkhbayar, a 2007 Goldman Environmental Prize winner known for his work with the Government and grassroots organisations to shut down destructive mining operations along Mongolia's scarce waterways. Ts. Munkhbayar organised a nationwide movement to develop, push through Parliament, and later protect the Law on Prohibition of Mineral Exploration and Extraction in Headwaters of Rivers and Forest Resource Protection Zones. On 16 September 2013, as deliberations were underway to repeal the law, he entered the Government compound armed with a rifle in a symbolic act to demonstrate that all legal means of struggle had been exhausted. This act did not cause any damage and there were no victims in this incident, but he was sentenced to seven years of imprisonment. All persons related to him either have been arbitrarily detained, interrogated and/or undergone house searches with no warrant.

Criminal defamation has been increasingly used to intimidate journalists. While in 2011 there were

²³⁷ 'New law passed to protect LGBTI community from hate crimes,' Civicus Monitor, 21 September 2017, <https://monitor.civicus.org/newsfeed/2017/09/21/new-law-protect-LGBTI-community-Mongolia/>

²³⁸ 'Criminal Code of Mongolia (excerpts related to hate crime),' <http://legislationline.org/topics/country/60/topic/4/subtopic/79>

two defamation cases against journalists, in 2015 there were five. The threat of criminal defamation has a chilling effect on freedom of expression, particularly as it relates to exposing the misdeeds of Government officials.

Repressive laws and policies

Mongolia's previous Criminal Code²³⁹ included Slander (Article 110) and Defamation (Article 111) as criminal offences, and sanctions provided for fines, arrest and detainment for a period of up to six months or imprisonment for two to five years. In addition, under Article 231, anyone who insulted a state official could be imprisoned for up to three months or subject to 150 hours of forced labour. The revised Criminal Code that entered into force in July 2017 decriminalizes insult and slander, but until that time these articles remained in force. Under all of these defamation or insult provisions, the burden of proof lay with the defendant, and strict evidentiary rules meant that it was extremely difficult for the defendant to prove their innocence. The authorities used these laws to prosecute and threaten whistle-blowers and journalists. According to Globe International's reports, there were 27 criminal defamation cases between 2005 and 2012 and 14 in 2015 alone.²⁴⁰ All the plaintiffs of criminal defamation cases in Mongolia are elected authorities, powerful public officials and public organisations.²⁴¹ In December 2013, Sodnomdarjaa Battulga, a journalist with info.mn, was found guilty of defamation under Article 111.3 for publishing an article that allegedly insulted Noyod LLC, a private company, and was forced to pay compensation of 21,000,000 Tugrik (US\$10,500). She was involved in a long legal battle for the subsequent two years and arrested twice before eventually being ordered to pay a 19,200,000 Tugrik (US\$10,000) fine in 2015. In September 2013, three media workers from the Terguun newspaper were fined 29,000,000 Tugrik

(US\$14,500) for articles they had written exposing information about the Prime Minister's business and family.

Freedom of assembly is guaranteed under Article 16 of Mongolia's Constitution, although the Law on Demonstrations and Meetings, which broadly defines the parameters of legal protest in Mongolia, prohibits foreigners from organising demonstrations and requires that Mongolian nationals planning demonstrations notify the local authorities about their intentions. Demonstrations are often held in key areas of Ulaanbaatar, such as Chinggis Khan Square and the area around the Government House. Crackdowns are particularly severe on demonstrators advocating for environmental protection and sustainable development. In August 2015, the LGBT Center, an LGBTI rights NGO, applied for permits to use public areas for pride day activities weeks in advance. The day before the event, the local Governments who received the applications denied permission to use public areas, and on pride day participants were physically prevented from accessing Chinggis Square. As mentioned above, environmental activists Ts. Munkhbayar, G.Boldbaatar, D.Tumurbaatar and J.Ganbold were sentenced to 21 and a half years in jail in January 2014 on charges of terrorism in connection with a September 2013 protest against the weakening of a key piece of environmental legislation. Their sentences were reduced to between seven to 10 years in April 2014.

Under the General Law on the State Registration and the Law on Licensing for Business Activity,²⁴² all media outlets in Mongolia must register with the Government within ten days of their establishment. They must receive permission from their local governor to have the ability to apply for said license; a dangerous requirement given that local Government collusion with environmentally

²³⁹ 'Criminal Code of Mongolia' http://www.unodc.org/res/cld/document/mng/2001/criminal_code_of_mongolia_html/Mongolia_Criminal_Code_2002.pdf

²⁴⁰ '2015 Media Freedom Report,' Globe International Center, 2016 <http://www.globeinter.org.mn/images/upld/Hevleliinerhcholoos2016eng.pdf>

²⁴¹ 'UPR Submission: Freedom of Opinion and Expression,' Globe International Center, May 2015 http://www.upr-info.org/sites/default/files/document/mongolia/session_22_-_mai_2015/gic_upr22_mng_e_main.pdf

²⁴² 'Law on Licensing for Business Activity' <http://www.wipo.int/edocs/lexdocs/laws/en/mn/mn017en.pdf>

damaging natural resource extraction is common. Under the General Conditions and Requirements for Regulation of Television and Radio, 2011²⁴³ all broadcast media must respect the 'public interest.' The state-run Communications Regulatory Commission (CRC) controls and monitors online activity, and has broad powers to place restrictions on 'inappropriate' content in both online and offline media. The CRC blocks over 200 websites that it deems to contain inappropriate content, including websites that expose official corruption. In July 2014, the CRC blocked popular news website amjilt.com after it posted a story alleging that a resort owned by the Prime Minister was polluting a local river.

The State Secrets Law, 1995²⁴⁴ defines state secrets so broadly that virtually anything can be declared to be one. The law does not specify any limits on what may not be considered a state secret. The law allows information to be classified indefinitely, and has strict procedures for declassification.

The Law on Non-Governmental Organisations, 1997²⁴⁵ governs NGO registration, which is cumbersome and requires specific information such as a very precise definition of the NGO's mission. CSOs struggle to survive in Mongolia due to the lack of a legal and financial framework conducive to their support, which means that they have difficulty maintaining financial viability while attracting staff.

Enabling laws and policies

There are no legal provisions protecting or recognising the role and rights of HRDs in Mongolia. The UN recommendations to legislate protection of HRDs is reiterated in many documents addressed to the Government of Mongolia, including the

most recent Universal Periodic Review and Human Rights Working Group reports, but these continue to be unacknowledged by public officials. There is no political will to open up public discussion on who HRDs are and what they do. Mongolian HRDs have identified the lack of meaningful legal protection, particularly for Women Human Rights Defenders (WHRDs), and the absence of a national mechanism for supporting and protecting HRDs in emergency situations as obstacles to their work. Gender-based violence remains one of the most serious violations of human rights in Mongolia, leaving WHRDs particularly vulnerable. The HRD Protection Law has been tabled since 2016, nevertheless in 2017 the parliament pending the discussion of the law given the lack of the government budget to implement the laws as well as the parliamentarian changes due to the internal gridlock within the winning political party.

The National Human Rights Commission of Mongolia (NHRCM) was established in 2001 under the National Human Rights Commission Act²⁴⁶ as an administrative body set up to protect and monitor human rights in Mongolia. The NHRCM was reaccredited as an 'A' status institution in October 2014, after deferral of its periodic review in November 2013, by the International Coordinating Committee of National Institutions for the Promotion of Human Rights. Its 2015 status report on human rights and freedoms in Mongolia's NHRCM included a chapter on a study about the rights of HRDs in Mongolia.²⁴⁷ The 2015 report improved upon earlier status reports by elaborating on the challenges faced by HRDs in their work and the need for legislation specifically addressing their needs, but did not refer to any activities conducted by the NHRCM about HRDs. The Commission does not have any specific mechanism for dealing with and protecting HRDs.²⁴⁸

²⁴³ 'General Regulatory Conditions and Requirements of the Television and Radio broadcasting' <http://www.globeinter.org.mn/images/upld/TranslationTVRadioBraodcasting.pdf>

²⁴⁴ 'Law On State Secrets' http://www.forum.mn/res_mat/secretlaw_eng.pdf

²⁴⁵ 'Law on Non-Governmental Organisations' http://www.legislationline.org/download/action/download/id/7605/file/Mongolia_law_non_Governmental_organisations_1997_en.pdf

²⁴⁶ 'National Human Rights Commission of Mongolia Act' [http://www.legislationline.org/download/action/download/id/4178/file/national-human-rights-commission-of-mongolia-act\[1\].pdf](http://www.legislationline.org/download/action/download/id/4178/file/national-human-rights-commission-of-mongolia-act[1].pdf)

²⁴⁷ National Human Rights Commission of Mongolia, <http://mn-nhrc.gov.mn/eng>

²⁴⁸ 'Mongolia: Absent in national policy-making,' Centre for Human Rights and Development, 2016, <https://www.forum-asia.org/uploads/wp/2016/11/10.-Mongolia-Final.pdf>

Recommendations

The Government of Mongolia should work to overcome the technical difficulties related to the implementation of the new Criminal Code as quickly as possible in order to ensure that defamation is decriminalized at the earliest possible date. Even once it is decriminalized, legislation will be needed to guarantee that expressing criticism of the state or its policies, or of Government authorities may not lead to criminal prosecution, and that civil suits will not be abused to harass and intimidate HRDs and journalists. The heavy fines provided for under civil law must be reduced to ensure that disproportionate sentences are not handed down to Government critics.

The Law on Demonstrations and Meetings must be amended to remove restrictions on freedom of assembly, including the prohibition on foreigners organising demonstrations, the power of the authorities to reject notifications of assemblies, and the power of the authorities to ban peaceful assemblies.

The registration process for Media organisations must be reformed so that no permission from any level of Government is needed. Giving Government organs the power to reject applications for a media organisation's registration is a dangerous limitation on freedom of expression that gives these organs the power to exert influence on news. Requirements to submit financial reports, programming structure and information on the outlet's governing body must also be abolished. The 2011 General Conditions and Requirements for Regulation of Television and Radio must be significantly amended to remove restrictions on content. The stipulation that media must respect the 'public interest' is a particularly problematic and vague regulation that must be removed to guarantee freedom of expression. The CRC must be abolished and replaced with an arm's-length

body with limited powers which do not include the ability to block websites unilaterally, especially not on political grounds.

The State Secrets Law must be repealed and replaced with a law that strongly protects whistleblowers and freedom of expression. The replacement legislation must guarantee that whistleblowers will be immune from prosecution. It must narrowly define the concept of state secrets and ensure that it applies only to information that is classified as such by international standards, and there must be clear and significant elaboration on what cannot be considered a state secret.

The Law on NGOs must be amended to shorten and simplify the registration process. NGOs should not be required to submit an excessive amount detailed information; the provision of which would require an undue expenditure of time and resources. The Government should also amend relevant legislation to ensure that the legal framework on taxation and finances allows NGOs to stay afloat.

The Government of Mongolia must consult the NHRCM in the drafting of legislation and regulations. In addition, the Government should guarantee the NHRCM's independence by providing it with adequate funding and human resources. The NHRCM must be more proactive in advocating for the prompt passing of legislation related to HRDs. The NHRCM must establish an HRD desk which focuses solely on protecting HRDs both by seeking out and responding to violations against HRDs and by proactively promoting their rights. As recommended by the NHRCM, the Government must pass a law on HRDs that specifically lays out their rights, mechanisms to promote these rights, and punishments for their violation.

MYANMAR

Synopsis of the challenges of HRDs

Despite recent political and legal reform, Human Rights Defenders (HRDs) in Myanmar continue to face serious challenges. There has been a continuation in the arbitrary arrest and detention of democracy activists, journalists, students, youth leaders and HRDs working on issues such as land, labour, women's and lesbian, gay, bisexual, trans, and/or intersex (LGBTI) persons' rights. HRDs in Myanmar have been the victims of judicial harassment, threats, assault, enforced disappearance and extrajudicial killings. These violations are in most cases premeditated and targeted and often affect family members and HRD's close entourage.

The Myanmar security forces continue to monitor, intimidate, harass and arrest HRDs and others critical of the Government and the Military. HRDs have been criminalised for their legitimate human rights work, without being accorded the right to a fair trial and other due process rights such as legal representation and open trials. Incommunicado detention and ill treatment in detention remain of great concern. Even under the new National League for Democracy (NLD) administration -which led to a regime change from a Military Government, after winning relatively free and fair elections in November 2015- there has been no improvement in terms of the hostility encountered by HRDs in the country. Crackdown on dissent persists, with no significant reduction in the number of arrests of peaceful critics, land protesters and student activists. It is very worrying that Myanmar was one of the 14 states that voted against a resolution on HRDs at the UN General Assembly in 2015.²⁴⁹

While there have been positive developments in some areas relating to democratisation and human

rights, it has been far from uniform across Myanmar; with the situation remaining dire or worsening in Rakhine State, Kachin State, and Karen State. Under the Constitution of 2008, the Military retains 25 per cent of the seats in parliament, effectively ensuring interdiction of any amendment that could result in a more democratic and pluralistic constitution. The judiciary remains under the control of the Government and the Military, which consequently serves to further entrench the culture of impunity and violations of the rule of law.²⁵⁰ As of January 2018, there are 50 political prisoners behind bars according to the Assistance Association for Political Prisoners (Burma).²⁵¹

Since the outbreak of communal violence in Rakhine State in 2012, there has been an alienation of communities. This has made it more difficult for Rohingya and Muslim HRDs to work freely. With the rapid rise in Buddhist nationalism, HRDs working to protect the rights of the Rohingya population are afraid to speak up publicly for fear of persecution as well as fear of being ostracised by society at large, as well as, worryingly, within Myanmar's mainstream activist community.

Unfair land rights and investment laws together with the execution of business deals by large multinational corporations in partnership with the Government and Military have resulted in mass confiscation of land, displacing local communities with no avenues for redress. Further, with the opening of the country's economy resulting in the arrival of foreign companies, threats against HRDs working in the field of economic, social, and cultural rights have increased. Judicial harassment has been widely used against HRDs who work to support communities affected by land grabs or the environmental consequences of primary resource exploitation, such as the Letpadaung mining project and labour rights violations. Many of those who work to document

²⁴⁹ 'Human Rights Defenders: Asian States Must Endorse the Decision of the Third Committee at the General Assembly Plenary Session,' FORUM-ASIA, 2 December 2015, <https://www.forum-asia.org/?p=19762>

²⁵⁰ 'Briefing Paper on the Situation of Human Rights in Burma/Myanmar/Myanmar,' Burma Partnership, Equality Myanmar and FORUM-ASIA, 12 March 2015, <https://www.forum-asia.org/?p=18520>

²⁵¹ 'Remaining Political Prisoners' (Excel sheet), Assistance Association for Political Prisoners (Burma), 31 January 2018, <http://aappb.org/wp-content/uploads/2018/02/JAN-45-Remaining-PPs-Updated-on-Jan-31-2018-1-1.xlsx>

human rights violations linked to the Letpadaung mining project have been arrested, imprisoned, and prevented from traveling to the area.

Gender-based violence and discrimination against Women Human Rights Defenders (WHRDs) by both State and Non-state actors such as local communities, the Military and ethnic armed and political groups are also of particular concern. A new trend is the increase in online attacks against WHRDs and HRDs working on LGBTI persons' rights. Rape threats and slanderous altered photos of these HRDs are being circulated on social media. Organisations working on LGBTI rights continue to face challenges due to the widespread stigma and discrimination against LGBTI people.

Repressive laws and policies

A range of laws are being used as tools for repression and silencing dissent, including both pre-transition laws and recently enacted laws such as the Printing and Publishing Enterprise Law, 2014, the Telecommunications Law, 2013 and the Peaceful Assembly and Procession Law, 2011. Before the 2015 election, the Government passed several laws with significant human rights limitations, failing to address calls for constitutional reform. Since the NLD took power in April 2016, the legislative situation remains the same, as do the conditions HRDs face on the ground, where these repressive laws continue to be applied. Laws governing land, labour, education, the Myanmar National Human Rights Commission, religion, telecommunications, the press, educational institutions and national security perpetuate gender inequality, restrict religious freedom, and encourage communal violence and other human rights violations.

The Article 18 of the Peaceful Assembly and Peaceful Procession Act²⁵² (amended in 2014) and Article 505(b) and (c) of the Penal Code²⁵³ are among the most common tools for repression and silencing of dissent; frequently being used to detain activists. Both impose severe restrictions on freedom of peaceful assembly and are not in accordance with

international human rights standards.

The Peaceful Assembly and Peaceful Procession Act, even after its 2014 amendment, still requires protest organisers to obtain the 'consent' of the Government 48 hours in advance. To obtain consent, an unreasonably long list of details must be submitted, including the time and location, all specific slogans that will be used, the purpose of the assembly, the number of attendees, as well as names and addresses of the organisers. The revised law retained criminal penalties, meaning that those who contravene its provisions are criminally liable under Article 18, which imposes a maximum jail sentence of six months and a maximum fine of 30,000 kyat (US\$24). As spontaneous assemblies remain illegal under the law, HRDs face prison time for conducting peaceful assemblies or processions without obtaining prior permission from the authorities. Furthermore, protestors are often charged with the same offence in every township they pass through, meaning that they can face numerous six-month sentences. Bail is rarely granted, and when it is, it is set at a high amount disproportionate to the alleged offences. In May 2016, two leaders of a peaceful local protest against the controversial Letpadaung copper mine were charged with unlawful assembly under Article 18. Sein Than, a community leader, was sentenced to 30 months imprisonment on multiple charges under Article 18 from August 2013 to September 2014 for participating in a protest against previous charges levelled against him, as well as leading a protest march to Daw Aung San Suu Kyi's house.

Article 505(b) and (c) of the Penal Code prohibit the incitement of crimes against the State or against public order and public tranquillity by means of any statement, rumour or report. The use of dangerously vague terms such as 'crimes against the state,' 'public order,' and in particular, 'public tranquillity' leave room for abuse, because literally any noise could be interpreted as a disruption of public tranquillity. Due to this

²⁵² 'The Right to Peaceful Assembly and Peaceful Procession Act' http://www.burmalibrary.org/docs15/2011-Peaceful_Assembly_and_Procession_Act-en.pdf

²⁵³ 'The Penal Code' http://www.burmalibrary.org/docs17/1861-Penal_Code-ocr-en+bu.pdf

phrasing, although the Article also takes aim at limiting free expression, it is in practice frequently used to crackdown on peaceful assemblies. The law was used to arrest and prosecute students for participating in the March 2015 protests in Letpadan Township, Pegu Division, against the National Education Bill. In May 2016, it was used to arrest over 70 protestors peacefully marching against illegal dismissals in Tatkon Township, near Naypyitaw. On 28 March 2018, Aung Ko Htwe -a former child soldier who in August 2017 exposed the Myanmar Military's practice of recruiting child soldiers- was sentenced to two years in prison with hard labour by Dagon Seikkan Township Court.

Articles 141 to 149 of the Penal Code²⁵⁴ related to unlawful assembly further restrict the right to assembly. Under Article 141 on unlawful assembly, any group of more than five persons can be considered unlawful if its participants resist the execution of any law, aim to commit mischief, or compel someone to do something they do not want to do. Those found guilty of participating in an unlawful assembly can face up to six months of imprisonment under Article 143. Under Article 145, those who join or continue to take part in an unlawful assembly after state security forces have attempted to disperse participants face up to two years of imprisonment. Under Articles 146, 147, and 149, if any individual uses force or violence, all other members of the assembly can be prosecuted and imprisoned for violence, irrespective of actual involvement. Articles 141 to 149 have been used to arrest and charge hundreds of protestors in recent years.

Although rarely deployed, the following Articles of the Penal Code have also been used to harass

activists: Article 188 (disobeying the order of a public servant); Article 353 (assault of a public servant); and Article 332 (causing hurt to a public servant).²⁵⁵ In June 2016, BBC journalist Nay Myo Lin was convicted and sentenced to three months of hard labour for having intervened on behalf of a peaceful student protestor whom a police officer had assaulted with no provocation. The police allegedly applied pressure on the court in this case to ensure that Nay Myo Lin was convicted.

Laws that restrict freedom of association still remain in effect in Myanmar.²⁵⁶ The freedom of particular groups to associate, including former political prisoners, labour rights activists, student unions, and members of ethnic nationalities have been selectively denied by both old and new laws; including the Unlawful Association Act, 1908²⁵⁷ and the Registration of Organization Law 2014.²⁵⁸ Article 17 of the Unlawful Association Act allows the President to declare any association illegal on the basis of a broad range of grounds related to security and maintenance of law and order, and imposes penalties of up to three years' imprisonment for any member of an unlawful association. Article 17 continues to be used all over the country, but in particular Kachin and Rakhine States, often with little supporting evidence. In July 2015, the Myanmar authorities arrested Zaw Zaw Latt and Pwint Phyu Latt for their participation in a well-publicized interfaith peace delegation to Kachin State in June 2013 organised by a prominent Buddhist monk; they were released on 24 May 2017.²⁵⁹ In October 2016, 49 people were charged under the Act for participating in a community training session in Kachin state, which the Government interpreted as Military training with a Non-state Ethnic Armed Organisation. The Association Registration Law is much less restrictive than previous legislation

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ 'Briefing Paper on the Situation of Human Rights in Burma/Myanmar,' Burma Partnership, Equality Myanmar and FORUM-ASIA, 12 March 2015, <https://www.forum-asia.org/?p=18520>

²⁵⁷ 'The Unlawful Associations Act, 1908' <http://www.icnl.org/research/library/files/Myanmar/UNLAWFUL.pdf>

²⁵⁸ 'Registration of Organization Law' <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103627/125983/F666167193/MMR103627%20Eng.pdf>

²⁵⁹ 'Myanmar: Interfaith Activists Freed in Amnesty,' Fortify Rights, 24 May 2017, <http://www.fortifyrights.org/publication-20170524.html>

on association, but still includes certain barriers to registration, such as cost and the requirement to submit annual reports. Furthermore, in June 2017, Lawi Weng, senior reporter of the Irrawaddy Magazine was charged with Article 17 of Unlawful Association Act for interviewing Ta'ang National Liberation Army in northern Shan State.²⁶⁰

No teacher and student unions may have legal status in Myanmar, even though many of the latter, such as the All Burma Federation of Students Union, have been at the forefront of democratic change and the opening up of the country for more than two decades. Since the group is technically an illegal organisation, it is unable to register as a student group on university campuses. There was hope in 2014 that the National Education Law²⁶¹ would change this situation and officially recognize teachers' and students' unions as legal entities, but the law was amended to remove this provision before it was passed, in effect concretizing their lack of legal status.

Despite the international perception of reform in Myanmar, restrictions on freedom of expression remain some of the strictest in the region. The press, which used to be muzzled through pre-publication censorship, is now finding itself constrained -by what has been called post-publication censorship- through press-related laws and Penal Code provisions. The Printing and Publishing Law, 2014²⁶² allows the Government to withhold or revoke publishing licenses as it sees fit, and imposes fines of up to 5,000,000 kyats (US\$4,000) for not possessing one. It also sets out strict content restrictions that ban reports and articles that could cause unrest, insult religion

or violate the Constitution, with fines of up to 1,000,000 kyats (US\$800) for violations. The law also requires the submission of publications to the newly instituted Copyright and Registration Division for post-publication review.²⁶³ Article 9 of the 2014 Media Law²⁶⁴ sets out a code of conduct for all media workers which they are obligated to obey. The code includes avoiding news that affects the reputation of a person or organisation and to obeying any (unspecified) regulations published by the Media Council. HRDs seeking to expose Government malfeasance or rights abuses must take the risk that they will be prosecuted under these laws.

HRDs are also increasingly being subjected to judicial harassment, under both the Penal Code and statutory legislation, for exercising their right to free expression, particularly if it implicates the Military. The Telecommunications Law, 2013,²⁶⁵ which gives the Government broad and vague powers to monitor and control the entire industry, is frequently used to attack HRDs through Article 66(d),²⁶⁶ in which penalties of three years are set out for a variety of broadly worded acts, including defamation. The number of Article 66(d) cases has increased significantly since the NLD administration came to power; from 21 cases in early 2016 to 106 cases in late 2017. Up to March 2018, there have been 118 cases recorded.²⁶⁷ The fact that the law gives the Government the power to monitor communications without a warrant or seize control of the entire industry further puts HRDs at risk. The Electronic Transactions Law, 2004²⁶⁸ (amended in 2013) is also still routinely used to criminalize HRDs' online work. Releasing or even receiving information

²⁶⁰ <https://thediplomat.com/2018/05/despite-international-pressure-2-journalists-remain-behind-bars-in-myanmar/>

²⁶¹ 'National Education Law' http://www.burmalibrary.org/docs20/2014-09-30-National_Education_Law-41-en.pdf

²⁶² 'Printing and Publishing Enterprise Law' <https://www.article19.org/data/files/medialibrary/3679/Printing-and-Publishing-Enterprise-Law-Bill.pdf>

²⁶³ 'Briefing Paper on the Situation of Human Rights in Burma/Myanmar,' Burma Partnership, Equality Myanmar and FORUM-ASIA, 12 March 2015, <https://www.forum-asia.org/?p=18520>

²⁶⁴ 'Media Law' http://www.burmalibrary.org/docs17/2014-Media_Law-en.pdf

²⁶⁵ 'Telecommunications Law' http://www.burmalibrary.org/docs23/2013-10-08-Telecommunications_Law-en.pdf

²⁶⁶ 'The Penal Code' http://www.burmalibrary.org/docs17/1861-Penal_Code-ocr-en+bu.pdf

²⁶⁷ 'Use of 66(d) substantially increased under NLD Government,' 30 November 2017, <https://www.saynoto66d.info/>

²⁶⁸ 'Electronic Transactions Law' <http://unpan1.un.org/intradoc/groups/public/documents/un-dpdm/unpan041197.pdf>

deemed detrimental to State security, law and order, community peace and tranquillity, national solidarity, the national economy or national culture carries penalties of up to seven years' imprisonment.

The Law Protecting the Privacy and Security of Citizens, was adopted on 8 March 2017 to enact Article 357 of the Constitution. The Law's Article 8(f) criminalises defamation, stating: 'no one shall act in any way to slander or harm [a citizen's] reputation.' Article 10 says that anybody found guilty under Article 8(f) shall be punished with a prison sentence between six months and three years, and a fine between 300,000 and 1,500,000 kyats. Civil Society Organisations expressed strong discontent that the Law was inconsistent with international human rights norms and definitions, and was written and adopted by Parliament without public consultation. Civil groups have contested that defamation should not be criminal. International standards say that criminal punishment is too severe to protect someone's reputation and should be replaced with civil laws (like the Maldives and Sri Lanka). Criminal defamation laws are usually used by powerful people to exploit their influence over the power of the State to silence legitimate criticism. A Myanmar national, U Aung Ko Ko Lwin, was sued by a member of the Mon State ethnic affairs committee last January 2018 after posting several posts critical of the Mon State chief minister's controversial remark urging the residents of Thaton Township to 'eat only a dish of curry' at mealtime in order to bring down food prices.

The Contempt of Courts Law, 2013²⁶⁹ outlaws any comment on a judicial decision before it is passed, unless it can be proven to be true, or any comment which 'impairs the public trust.' The consequence for

committing such an offence is up to six months in prison. This in effect prevents HRDs from denouncing politicised trials in which Myanmar's courts are acting as the lackeys of other political actors.

Older laws such as the Official Secrets Act, 1923²⁷⁰ have also been used to judicially harass, sentence and imprison political activists and HRDs. Five journalists from Unity Weekly journal were arrested in January 2014 for reporting on an alleged secret chemical weapons factory and charged under Article 3(a) of the Act. They were each sentenced to 10 years in prison with hard labour, later reduced to seven years on appeal.²⁷¹ In January 2018, Reuters reporters Wa Lone and Kyaw Soe Oo were charged under the Act and are facing a 14-year prison sentence.²⁷²

As older pieces of legislation are reformed, numerous Articles of the Penal Code are increasingly being used as a replacement to criminalize HRDs' work. Articles 499 to 502 of the Penal Code²⁷³ on defamation have been used against activist journalists in an unprecedented manner in recent years. The offence carries an overly harsh maximum punishment of two years of imprisonment. In July 2016, two journalists with Ladies' Journal were sentenced to six months in prison or a fine of 20,000 kyats (US\$16) for publishing a story on a land dispute case in Bago Region where farmers' lands were confiscated under Military rule.²⁷⁴ The Military officer in control of the land filed a defamation lawsuit against the outlet for reporting this matter. On 21 May 2018, the Myanmar Army's Northern Regional Command filed lawsuits against three activists, Lum Zawng, Zau Jat, and Nang Pu under Article 500 of the Penal Code for statements

²⁶⁹ 'Contempt of Courts Law' http://www.burmalibrary.org/docs18/2013-Contempt_of_Courts_Law-en.pdf

²⁷⁰ 'The Burma Official Secrets Act, 1923' <http://www.icnl.org/research/library/files/Myanmar/secrets.pdf>

²⁷¹ '2015 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia,' The Asian NGO Network on National Human Rights Institutions, 2015, https://www.forum-asia.org/uploads/wp/2015/09/ANNI_Report_2015.pdf

²⁷² 'Myanmar prosecutor seeks Official Secrets Act charges against two Reuters reporters,' Reuters, 10 January 2018, <https://www.reuters.com/article/us-myanmar-journalists/myanmar-prosecutor-seeks-official-secrets-act-charges-against-two-reuters-reporters-idUSKBN1EY2S8>

²⁷³ 'The Penal Code' http://www.burmalibrary.org/docs17/1861-Penal_Code-ocr-en+bu.pdf

²⁷⁴ 'Journalists, Farmer Fined Under Defamation Charge,' The Irrawaddy, 14 July 2016, <https://www.irrawaddy.com/news/Burma/Myanmar/journalists-farmer-fined-under-defamation-charge.html>

they made at a press conference and peaceful rally in Myitkyina on 30 April and 1 May 2018.²⁷⁵

As noted above, the Penal Code provision on incitement (Article 505(b))²⁷⁶ is also frequently used to restrict HRDs' freedom of expression, as it technically concerns incitement to commit a crime. In May 2016, over 70 factory workers and members of the All Burma Federation of Students Unions were arrested for peacefully protesting the illegitimate dismissal of workers.

HRDs involved in protecting religious minorities are increasingly coming under threat through the use of Articles 295 and 298 of the Penal Code²⁷⁷ on religious insults. Ironically, these Articles, which ban statements that could be seen as attempts to insult a religion or deliberate insult to religious feelings, have been used to crackdown on those standing up for minorities, rather than those persecuting these minorities. The penalties for offences under these provisions reach up to two years of imprisonment.

It must be noted that the greatest concern with some of the above laws lies not in their phrasing, but in their application. This is part of a trend in which the Myanmar authorities are increasingly using trumped up charges under standard criminal law against political activists and HRDs. For example, Penal Code Article 236²⁷⁸ on counterfeiting and Penal Code Article 447²⁷⁹ on trespass are legitimate criminal provisions in themselves, but have been applied to HRDs with the help of a pliant and politicised judiciary. The judiciary remains under the control of the Government and the Military, and consequently serves to further entrench the culture of impunity and whitewash violations of the rule of law.

Enabling laws and policies

There is no specific legal framework that aims to facilitate or protect the activities and work of HRDs in Myanmar. The current Constitution was published in 2008 following a referendum widely seen as illegitimate. Articles 345 to 381²⁸⁰ guarantee fundamental rights such as the rights to freedom of expression and the rights to freedom of peaceful assembly and association. Chapter 8 of the Constitution on the other hand includes exceptional clauses that can limit fundamental rights for reasons of state security and public tranquillity. A number of provisions in the Constitution are among the most significant obstacles to establishing democracy.

In 2011, Myanmar installed a Myanmar National Human Rights Commission (MNHRC). The MNHRC was subsequently restructured with the passage of the National Human Rights Commission Law, 2014. At present, there is no strong complaint mechanism in place for human rights violations. The selection process for commissioners remains Government-controlled: a selection board with a significant number of Government officials create a list of potential candidates, which the President and the speakers of both houses of Parliament then choose from. There is no mention in the enabling law of how the budget will be made, and how the MNHRC will be insulated from Government influence. In order to be effective the MNHRC must be restructured to allow for complete independence from external influence or interference. This involves reforming the selection process to ensure that MNHRC members are appointed by non-political actors, and empowering MNHRC members and staff to fulfil their mandate for the protection and promotion of

²⁷⁵ 'Kachin Activists Charged With Defamation to File Appeal With Regional Supreme Court' <https://www.rfa.org/english/news/myanmar/kachin-activists-charged-with-defamation-to-file-appeal-05212018165258.html>

²⁷⁶ 'The Penal Code' http://www.burmalibrary.org/docs17/1861-Penal_Code-ocr-en+bu.pdf

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ 'Constitution of the Republic of the Union of Myanmar (2008)' http://www.Burma/Myanmarlibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

human rights throughout the complaint handling process in accordance with the Paris Principles. It also includes offering protection for HRDs and complainants who may be subject to reprisal.²⁸¹

Recommendations

The use of legal and extra-legal tactics to punish and prevent HRDs from doing their work must be halted immediately. The Myanmar Military institution continues to exert an undue influence on politics, and is seemingly free to act with total impunity and disregard for the rule of law. Threats, harassment, assault, enforced disappearances and extrajudicial killings must be stopped, and perpetrators must be held to account.

A law specific to the protection of HRDs must be enacted, guaranteeing the right of HRDs to enjoy all freedoms they are entitled to under international law, and laying out clear penalties for interfering with their work. The Government must ensure that the police thoroughly investigate abuses perpetrated against HRDs.

The Government must also extensively reform the judiciary to ensure that it be independent of all political influence, whether by the Executive branch or the Military. The judiciary must stop unfairly acquitting powerful figures and unfairly convicting HRDs and other critics of the Government by using legal acrobatics to avoid applying the law according to its letter. To this end, the Contempt of Courts Act must be amended to ensure that it prohibits only significant disruptions of the courts -such as refusals to obey court orders or uncooperative behaviour in the courtroom- and that it explicitly allows public criticism of the courts' decisions at any time, especially in situations where the judiciary is seen to be politicised. The MNHRC must also be granted total independence from the Government as well as given the power and capacity to take effective action where rights have been infringed. The MNHRC must have full autonomy from Government in the selection of its members and staff, and its budget.

The right to freedom of peaceful assembly and association must be guaranteed through a significant legislative reform. The Peaceful Assembly and Peaceful Procession Act must be amended so that no Government approval or consent of any sort is required for a protest to take place. All peaceful protests must be legal, including spontaneous ones, and there should be no criminal sanctions merely for participation in a protest of any sort.

Immediate changes to the Penal Code must be made. Article 505(b) must be amended so that it covers a narrow and serious offence, and explanations should be added that explicitly exclude the possibility of it being applied to peaceful protestors. Articles 141 to 149 must be amended to align with normative human rights standards as the existing provisions merely and indiscriminately serve to criminalize any kind of public assembly despite being peaceful in nature. The definition of what constitutes an unlawful assembly must be narrowed to one that is actually violent and dangerous; no one should be held liable for the actions of others; and participation in any kind of peaceful protest must be legal. All of these provisions, as well as those on disobeying or assaulting a public servant (Articles 188, 332, and 335) must be fairly interpreted by the judiciary.

To guarantee freedom of association to HRDs, the Unlawful Associations Act must be repealed in its entirety, as it gives the executive unrestricted, undue, and overly broad powers to shut down CSOs. The Association Registration Law should be amended to ensure that registration is free and that organisations need not submit annual reports. The National Education Law must be revised in consultation with student groups and other relevant stakeholders, and must explicitly give legal status to students' and teachers' unions.

The Printing and Publishing Enterprise Law should be repealed in its entirety, as it has no legitimate reason to exist. There is no need for the press to register with the Government at all, and there certainly should not be a requirement for applications which can be

²⁸¹ '2015 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia,' The Asian NGO Network on National Human Rights Institutions, 2015, https://www.forum-asia.org/uploads/wp/2015/09/ANNI_Report_2015.pdf

denied at the whim of Government officials. The News Media Law must also be repealed; its 'code of conduct' dictates invasive content restrictions that are illegitimate restrictions of free expression and must be abolished.

The Telecommunications Law and the Electronic Transactions Law must be repealed because they impose undue restrictions on freedom of expression and give the Government unreasonable power to monitor and control information, and to punish offences that are too broadly defined. Moreover, offences such as defamation are already set out in the Penal Code and thus need not be doubly covered, and in any case should not be criminal to begin with. The Government must not have the power to monitor communications without a warrant, and neither should they be given the power to take control of the industry in vaguely defined circumstances which are left up to the Government to decide.

The Official Secrets Act must also be repealed, as it primarily serves to protect Government from scrutiny and is a relic of British colonial rule. If

it is amended or replaced, the new Act must be sure to explicitly include a provision whereby whistleblowers and persons accidentally leaking information are immune from prosecution.

Numerous Penal Code provisions must also be abolished or amended to guarantee freedom of expression to HRDs. Articles 295 and 298 must be amended to ensure that their framing is narrowed to specifically target speech that brings concrete harm to religious people or groups, and that it cannot be used to criminalize the defence of the rights of religious minorities. Articles 499 to 502 must be struck from the code because defamation should not be a criminal offence and moreover, two years of imprisonment is a grossly disproportionate penalty.

Crucially, all Penal Code provisions, including any not mentioned above, must be interpreted apolitically and according to letter of the law. Much of the harassment HRDs face originates in the overly broad and politicised application of the law by the courts. The courts must be free of all interference and pressure in carrying out their functions and must have full independence from other branches of Government as well as public opinion.

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Synopsis of the challenges of HRDs

Since the end of the civil war in 2006, the overall situation for Human Rights Defenders (HRDs) in Nepal has improved. Informal Sector Service Centre (INSEC), FORUM-ASIA's member organisation in Nepal, has recorded a substantial decrease in reported cases of violations against HRDs.²⁸² Nepal rose five positions in the World Justice Project's Rule of Law Index between 2016 and 2018. Nepal ranks highest out of six South Asian countries.²⁸³ There are, however, still instances of physical assault, harassment and defamation against HRDs in Nepal. The targeting of HRDs while they are engaging in legitimate human rights work remains a concern. In a context where justice is not ensured for victims of human rights abuses, HRDs documenting violations and fighting against impunity continue to be subjected to reprisals by both State and Non-state actors. HRDs promoting the rights of marginalised communities –including lesbian, gay, bisexual, trans, and/or intersex (LGBTI) people- are particularly at risk.

HRDs advocating accountability for perpetrators of human rights violations committed during the conflict between 1996 and 2006 remain particularly susceptible to threats, harassment and arbitrary detention. Threats and stigmatising remarks against HRDs in the media have also been reported. Of particular concern are the calls for 'peoples action' against HRDs, which have led to violent physical attacks on them. Publishers, media workers and journalists who write about sensitive issues such as impunity or corruption are still at great risk.

Women Human Rights Defenders (WHRDs) face gender-based violence, especially because the nature of their work, which tends to challenge customs and norms. Such violence includes verbal abuse, and sexual harassment and rape. WHRDs have been attacked for defending and promoting the rights of women, in

particular Dalit women, who face caste discrimination. Police have refused to record cases of violence against women or to provide information to WHRDs on the status of investigations. Nepali women are not treated equally, not just in practice, but under law as well. The law regarding nationality, for example, discriminates against women, effectively making some of them second-class citizens in society.²⁸⁴

Likewise, LGBTI rights defenders are more prone to facing specific risks as the issues they work on challenge deep-rooted perceptions and assumptions of society. There have been incidents of police harassment of WHRDs and LGBTI activists. A Non-Governmental Organisation (NGO) working to promote respect for the rights of lesbian, gay, bisexual and transgender persons has had its registration unduly delayed and members of the group have faced arbitrary arrests, harassment, intimidation by the police and ill-treatment in detention.

The nature of the work of the HRDs not only endangers their security but also that of their organisations and family members. Their family members are regarded as a tool to pressure the defenders to halt the activities they undertake.

The Nepali State has repeatedly used force to break up or dissolve rallies, including by sexually assaulting female protesters. In 2016, dozens of minority rights protesters were arrested for exercising their right to free assembly, including an incident in November 2016 where 34 protesters, including several human rights defenders, were arrested at once. In 2015, 332 people suffered violations of their right to free assembly, 355 people were the victims of police baton charges, and dozens of people were arrested under various ordinances for protesting key clauses in Nepal's interim constitution. On 3 August 2015, three HRDs were severely injured during a violent police crackdown on a peaceful protest. The protest called on the authorities to respect the political rights of the Dalit community and to include them in drafting

²⁸² According to Informal Service Sector Centre (INSEC) Human Rights Yearbooks from 2014, 2015 and 2016 there were 126 reported cases in 2013, 76 in 2014, and 43 in 2015, <http://www.insec.org.np/hr-yearbook/?lang=english>

²⁸³ 'WJP Rule of Law Index,' 2017-2018, <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018>

²⁸⁴ The struggles of Women Human Rights Defenders in Nepal, <https://www.opendemocracy.net/democraciaabierta/civicus/civicus-asian-human-rights-commission-ahrc/struggles-of-women-human-rights-defenders-in-nepal>

the country's new constitution.²⁸⁵ In November 2014, the police arrested more than 300 people who held a peaceful rally in Kathmandu. In another case in November 2014, the police used force against peacefully protesting conflict victims and their supporters in Kathmandu who were calling for an amendment of the Truth and Reconciliation (TRC) Act and protesting its provisions allowing amnesties for crimes committed under international law.

On 19 February 2016, a large number of HRDs were arrested by the police in Tundikhel, Ratna Park, Kathmandu, where several Government representatives (including Prime Minister Khadga Prasad Sharma Oli and President Bidhya Devi Bhandari), were expected to observe Democracy Day. Those arrested include: Janak Bahadur Raut, Chairperson of the Conflict Victims Society for Justice; Ram Bhandari, Secretary General of the Conflict Victims Common Platform; Bikash Basnet, Program Coordinator at Advocacy Forum-Nepal; Surya Bahadur Adhikari, Chairperson of Amnesty International Nepal; Ashok Shrestha Joshi and Bikram Dhukuch, two members of Amnesty International Nepal; Charan Prasai, a human rights activist; Rasna Dhakal and Kanak Mani Dixit, two journalists and human rights activists; and Mahamuni Ishwor Acharya, Bikram Chaudhary and Ms. Sabitri Shrestha, victims of Nepal's armed conflict. At the time of their arrest, the demonstrators were peacefully sitting on the roadside with a banner which read 'Give Justice to Ganga Maya, Implement Supreme Court's Order, Give Justice to Conflict Victims.'²⁸⁶ They were later released.

On 22 April 2016, Kanak Mani Dixit - a journalist, human rights activist, and founder/editor of Himal media- was arrested on alleged corruption charges related to his position as the Chairman of Sajha Yatayat, a state run transportation company.²⁸⁷ Kanak Dixit is also the founder and editor of Himal

Southasian, a regional journal promoting 'cross-border journalism' in South Asia, and was forced to suspend its publication from November 2016. According to the publishers, the decision was taken 'due to non-cooperation by regulatory state agencies in Nepal that has made it impossible to continue operations after 29 years of publication.' They resumed the publication from Sri Lanka in May 2018.

The arbitrary arrest of Shesh Narayan Jha on 23 May, 2016, while he was carrying out his professional duties as a journalist, was a flagrant violation of his human rights and a serious attack on press freedoms in Nepal.²⁸⁸

On 3 April 2016, the then prime minister of Nepal summoned NHRC Chairperson Anup Raj Sharma and other commissioners to question them about the NHRC statement issued by Commissioner Mohna Ansari during the Universal Periodic Review of the human rights situation in Nepal before the UN Human Rights Council in Geneva in March, 2016.²⁸⁹ The Nepal Government was urged to respect and guarantee the independence and integrity of the NHRC as the principal constitutionally mandated human rights body instead of intimidating their statements.

Repressive laws and policies

On 20 September 2015, the second Constituent Assembly announced the promulgation of the Constitution of Nepal.²⁹⁰ The new Constitution provides the Government with the power to restrict people. It also constitutionally mandated human rights body for regulating domestic and international NGOs, expanding Government scrutiny and involving them only in areas of national priority.²⁹¹

The Local Administration Act, 1971²⁹² defines an assembly as a gathering of more than 25 persons with

²⁸⁵ 'Case history: Ganesh BK', www.frontlinedefenders.org/en/case/case-history-ganesh-bk

²⁸⁶ 'Nepal: Arbitrary arrest of twelve human rights defenders and victims of human rights violations,' <https://www.fidh.org/en/issues/human-rights-defenders/nepal-arbitrary-arrest-of-twelve-human-rights-defenders-and-victims>

²⁸⁷ 'Nepal: Release journalist Kanak Mani Dixit immediately,' <https://www.forum-asia.org/?p=20604>

²⁸⁸ 'Nepal: Release Journalist Shesh Narayan Jha immediately and unconditionally,' <https://www.forum-asia.org/?p=20737>

²⁸⁹ 'Rights bodies accuse PM Oli of harassing NHRC,' <https://thehimalayantimes.com/nepal/rights-bodies-accuse-pm-oli-harassing-nhrc/>

²⁹⁰ 'Constitution Bill of Nepal,' <http://www.wipo.int/edocs/lexdocs/laws/en/np/np029en.pdf>

an objective. Under the Act, the Government has the right to declare restricted zones where protests and public assemblies may not occur, and the Chief District Officer can impose curfews if there is a chance that a public assembly will disturb the peace. Assemblies in front of the President's Office, in front of Parliament, or in front of the Government's administrative headquarters are prohibited.

The Some Public (Crime and Punishment) Act 1970²⁹³ is also used to restrict and punish the exercise of freedom of assembly. The Act outlaws a long list of behaviours in public, including obstructing a public servant, breaking public peace by rioting or obscene acts, causing hindrance to public services, trespassing on land without authority (including Government land), damaging public property, 'making undue behaviour' in a public place, or hindering anyone's passage. Under the Act, the police may arrest anyone found to have committed such an act without a warrant. The Chief District Officer may keep persons arrested under the Act in detention for up to 35 days. If charges are laid, a sentence of up to two years in prison may be handed down. In November 2016, Madhesi rights activist Chandra Kant Raut was arrested along with 33 of his supporters for leading a rally in support of regional autonomy. He had previously been arrested in November 2014 along with 300 other protesters at a similar rally. He was subsequently charged under the Some Public (Crime and Punishment) Act for 'causing public disorder' at a public gathering. The police have used excessive force to crackdown on several protests for Madhesi autonomy.

The Government has at times denied the right to protest for sensitive political or ethnic issues. In the past, the authorities have denied the right to

assembly to Tibetan refugees, or assemblies related to Tibet, because the Government of Nepal abides by China's 'One China' policy.

The Crime against State and Punishment Act, 1989²⁹⁴ restricts freedom of speech by outlawing subversion and treason, both of which are very broadly defined. Under the Act, if someone attempts to cause or causes disorder with the intention to jeopardize sovereignty, integrity or national unity, they are guilty of subversion and may be imprisoned for life. If someone attempts to incite 'enmity or contempt' among any groups, or cause 'enmity or contempt of the Government of Nepal' based on inauthentic facts, they are guilty of treason and may be imprisoned for up to three years. In September 2014, minority rights activist Chandra Kant Raut was arrested under the Crime against State and Punishment Act for allegedly arguing that a part of Nepal should separate. He was charged with sedition in October 2014, despite the fact that he never advocated violence in any form. The Supreme Court eventually cleared Raut of all charges.²⁹⁵

As in many other countries, the authorities are increasingly cracking down on online expression, particularly that which criticises Government policy. Under the Electronic Transactions Act, 2008²⁹⁶ if a person writes something online that could contradict public morality or good behaviour, spread hate or jealousy, or damage the 'harmonious relations' between groups, they could be imprisoned for up to five years. In November 2016, Arjun Thapaliya, the editor of the Anukalpa newspaper was arrested for a comment on Facebook. Observers believe that the arrest was an act of retaliation for an article critical of the police.²⁹⁷ In September 2015, AngKaji Sherpa, the former head of the Nepal Federation

²⁹¹ 'Civic Freedom Monitor: Nepal,' The International Center for Not-for Profit Law, 22 September 2017, <http://www.icnl.org/research/monitor/nepal.html>

²⁹² 'Local Administration Act,' <http://faolex.fao.org/docs/pdf/nep137758.pdf>

²⁹³ 'Some Public (Crime and Punishment) Act,' <http://www.lawcommission.gov.np/en/documents/2015/08/some-public-crime-and-punishment-act-2027-1970.pdf>

²⁹⁴ 'Crime against State and Punishment Act,' http://nepalconflictreport.ohchr.org/files/docs/1989-09-27_legal_govt-of-nepal_eng_a.pdf

²⁹⁵ 'Silencing CK Raut,' The Record Nepal, 7 July 2016, <http://www.recordnepal.com/perspective/silencing-ck-raut/>

²⁹⁶ 'The Electronic Transactions Act,' <http://www.tepc.gov.np/uploads/files/12the-electronic-transaction-act55.pdf>

of Indigenous Nationalities, was charged under the Act for 'disturbing social harmony' in relation to online social media posts which had criticised Government.²⁹⁸ He was acquitted in March 2016. In June 2014, a journalist was detained for 20 days under the Electronic Transactions Act for sharing a post on Facebook about the security situation in his district.²⁹⁹

There are some restrictions on the right to freedom of association in Nepal. Under Article 16(1) of the Social Welfare Act, 1992,³⁰⁰ Civil Society Organisations (CSOs) must receive advance approval from the Social Welfare Council (SWC) to receive foreign funding and implement programs with foreign support. The Development Cooperation Policy, 2014³⁰¹ mandates that international NGOs must seek permission from the Government to look for sources of project funding. The draft Social Welfare and Development Act, currently under review, creates even more obstacles to accessing international funding and empowers the SWC with great control over civil society. Under the Association Registration Act, 1977³⁰² forming an association without registering is considered a violation that is subject to a fine, and associations are required to renew their registration annually, for which permission from two levels of Government is needed. The Act also stipulates arbitrary requirements in the structure and composition of an association that are necessary for registration. For instance, each organisation must have at least seven founders, all of whom must be Nepali citizens. The Act provides the Government with broad discretion to dissolve associations: Article 14 states that an association may be dissolved if it does not carry out its statutory functions or 'for any other reasons whatsoever.' Foreign

NGOs may not operate independently: they can only operate in partnership with Government or local NGOs. In July 2012, the Government began requiring that international non-Governmental organisations register with the Ministry of Finance, a process that is lengthy, bureaucratic, and vulnerable to political influence

The Government has inhibited the re-registration of organisations it disagrees with or that work on controversial topics. For example, in 2013, the Government delayed and then refused the re-registration of Blue Diamond Society, an LGBTI organisation that provides support and social services for HIV-positive and AIDS sufferers in Nepal. Because of the failure to renew the organisation's license in a timely manner, it had to shut down several of its programs that constituted the sole organ in Nepal providing care and treatment to HIV-positive individuals.³⁰³

The Government of Nepal has drafted the Mass Communications Act, 2016, with the aim to revoke the Press and Publication Act, 2048 BS, the National Broadcasting Act, 2048 BS and the Working Journalist Act, 2051. The bill envisions the establishment of a National Mass Communications Authority for the purpose of regulating licenses, but provides the state the authority to hire employees. That would clearly hamper the autonomy of this regulating body. The bill further provides the National Mass Communications Authority with the power to cancel permission letters for broadcasting banned news. The bill also revoked the Working Journalist Act, without giving provisions for another act aimed to protecting the rights of journalists. The policy has failed also to add specific provisions safeguarding the freedom of expression.³⁰⁴

²⁹⁷ 'Journalist arrested under controversial Nepalese Electronic Transaction Act,' International Federation of Journalists, 29 November 2016, <http://www.ifj.org/nc/news-single-view/backpid/1/article/journalist-arrested-under-controversial-electronic-transaction-act/>

²⁹⁸ 'All about Ang Kaji,' Nepali Times, 8 September 2015, <http://www.nepalitimes.com/blogs/thebrief/2015/09/08/all-about-ang-kaji/>

²⁹⁹ 'Kathmandu journalist arrested for Facebook post,' International Press Institute, 3 October 2013, <https://ipi.media/kathmandu-journalist-arrested-for-facebook-post/>

³⁰⁰ 'The Social Welfare Act,' <http://www.ifrc.org/Docs/idrl/882EN.pdf>

³⁰¹ 'Development Cooperation Policy,' <http://mof.gov.np/ieccd/newsbook/20140629144552.pdf>

³⁰² 'Associations Registration Act,' <http://www.icnl.org/research/library/files/Nepal/Associations.pdf>

³⁰³ 'Report to the Regional National Human Rights Institutions Project on Inclusion, the Right to Health and Sexual Orientation and Gender Identity,' National Human Rights Commission of Nepal, 5 October 2012, http://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2013-nhri-project-on-right-to-health-sogi-nepal.pdf

³⁰⁴ https://ifex.org/nepal/2017/01/23/nepal_national_mass_communications_policy_freedom_forum.pdf

Enabling laws and policies

Nepal lacks a law specifically laying out the rights of HRDs and the obligations of the State regarding HRDs. The National Human Rights Commission of Nepal (NHRCN) was established by the National Human Rights Commission Act, 2012.³⁰⁵ The NHRCN has regular exchanges with civil society. Despite deferring the review of NHRCN more than twice, the International Coordinating Committee of NHRIs' Sub-Committee on Accreditation (ICC-SCA) recommended that the NHRCN retain rev status in its accreditation review held in October 2014 after the appointment of new commissioners. The effectiveness of the NHRCN was previously undermined owing to a lack of commissioners for over a year.³⁰⁶

The NHRCN has been attacked by both Non-state actors and the Government. In December 2015, a number of NHRCN staff members were attacked and their vehicle was vandalized by protesters. In April 2016, Prime Minister KP Sharma Oli summoned the NHRCN Chair and commissioners in connection with the NHRCN December 2015. This move to intimidate and bring the NHRCN into submission was a clear violation of its independence.

The NHRCN does not have a dedicated HRD focal person or HRD desk.³⁰⁷ It does bring attention to violations against HRDs through press releases, but only conducted one HRD-specific training in 2015 and has not begun to draft HRD-specific legislation.³⁰⁸ The only document directly related to HRDs in Nepal is the Human Rights Defenders Directives, 2013 prepared by the NHRCN. The main objectives of the Directives are the promotion, protection, respect and fulfilment of human rights and the monitoring of the State's responsibility from the perspective of adequacy, effectiveness and standards, and to make HRDs' role strong, accountable and transparent. As per the Directives, the NHRCN

formed a committee to oversee the issues of HRDs, but by 2016 the committee was still not yet operational. The committee will devise ways to protect the rights of the HRDs including distributing HRD identity cards and monitoring HRDs activities based on an HRD code of conduct. The delay can be attributed to the NHRCN's low priority towards HRDs and their interests. Prior to the NHRCN initiative on HRDs, there was a 2009 civil society led initiative which saw INSEC submit a draft decree on HRDs to the Nepalese authorities. The draft included an explicit reference to the UN Declaration on Human Rights Defenders and a definition of the rights and responsibilities of HRDs as listed in that declaration. The draft also included the creation of a Human Rights Defenders Commission. After multiple debates, the initiative was stalled.³⁰⁹

The Bill to Amend Some Nepal Acts to Maintain Gender Equality and End Gender Based Violence, 2014 was signed into law by the President in 2015. The Law changes the wording of numerous other pieces of legislation to attempt to correct some of the blatantly discriminatory provisions and double standards that exist in much of the law. It amends legal governance of violent crimes, including sexual crimes, remuneration, marriage, finances, property ownership and inheritance, among others. The law increases the sentence for marital rape from three months to six months of imprisonment and extends the time period after a sexual crime during which it can be reported from 35 days to 180 days. Although these are much-needed steps forward, further reform is needed.

Recommendations

The Constitution of Nepal must be amended to modify the current restrictions on the rights of association, expression and peaceful assembly. Although certain restrictions to these rights are legitimate under international law, the currently existing ones in the Constitution go far beyond this in their vague wording. What constitutes a

³⁰⁵ 'National Human Rights Commission Act', http://www.nhrcnepal.org/nhrc_new/doc/newsletter/National+Human+Rights+Commission+Act.pdf

³⁰⁶ 'Nepal: All eyes on new team,' Informal Sector Service Centre, ANNI Report 2015, <https://www.forum-asia.org/uploads/wp/2015/09/10-Nepal-FINAL-150803.pdf>

³⁰⁷ See the NHRCN Organogram at http://www.nhrcnepal.org/nhrc_new/doc/organisation/160630043933_Nepal_NHRC_Organogram_2073web.pdf

³⁰⁸ 'Nepal: Rising hope,' Informal Sector Service Center, ANNI Report 2016, <https://www.forum-asia.org/uploads/wp/2016/11/7.-Nepal-Final.pdf>

³⁰⁹ 'Focus 2013 - Public Policies for the Protection of Human Rights Defenders: The State of the Art,' Protection International, March 2013, http://protectioninternational.org/wp-content/uploads/2013/05/Focus-2013_130523_ENG_2nd-Ed1.pdf

‘reasonable restriction’ must be clearly and narrowly defined, and the reference to ‘harmonious relations’ must be removed.

The Some Public (Crime and Punishment) Act must be repealed. For the most part, the offences listed under the Act are not criminal offences by international standards or are so broadly defined that they could be interpreted to apply to non-criminal behaviour. Behaviour such as violence in a demonstration is adequately covered in the Penal Code and need not be over-legislated. The Local Administration Act must also be amended to revoke the authorities’ right to place blanket bans on assemblies in certain areas or at certain times.

The Crime against State and Punishment Act must be amended to be far more specific in targeting actual crimes. Definitions must be tightened, severity thresholds must be established, and a clause banning its use for political ends must be inserted with specific examples of how it may not be used. Under no circumstances should causing ‘enmity’ towards a Government or its policies be a criminal act; nor should statements perceived as a threat to an imagined ‘national unity.’ Similarly, the Constitution must be amended to be drop limits on freedom of expression on the basis of morality, contempt of court, harming ‘harmonious relationships,’ or threatening the ‘nationality’ of Nepal. The other limits on expression must be defined in a narrow way consistent with international standards.

The Electronic Transactions Act must be amended in order to remove broad and vague restrictions on freedom of expression online. Provisions outlawing content on the basis of being contrary to public morality, spreading hate or jealousy, or damaging the ‘harmonious relations’ between groups must be removed from the Act.

The Association Registration Act must be significantly amended, primarily by revoking the Government’s power to deny associations the right to register. Providing such power to Government opens the process to politicisation and abuse of power. Registration should be a simple, costless, easy, fast and optional process that consists of notifying an independent Government body. The Government should not have the power to dissolve an organisation unless it is engaging in criminal acts by international standards, and these grounds should be clearly laid out in the law. The requirement

to re-register should be abolished as it constitutes an unnecessary burden on CSOs that is an obstacle to their operation. Foreigners must be permitted to found associations and participate in them freely, like all other persons. The Constitution should also be amended to guarantee all persons, not only Nepali citizens, the right to join and form associations. The Social Welfare Act must be amended to remove any barriers or Government involvement in associations’ funding. Requirements for Government approval must be scrapped, and associations should be free to seek and receive funding from whomever they wish. As such, the Development Cooperation Policy must also be amended. The draft Social Welfare and Development Act must be significantly amended in line with the above recommendations: access to funding, including from foreign sources, must be free of Government interference, and Government should have no power over associations if criminal activity is not involved.

The executive branch must cease its illegitimate intervention in the affairs of the NHRCN. Acts such as summoning Commissioners for having criticised the Governments: access to funding, including from foreign sources, must be free of Government interference to the independence of the NHRCN guaranteed by the Human Rights Commission Act. The NHRCN must establish HRD focal desks in all of the regions it operates in to respond to and prevent the violation of HRDs’ rights. The NHRCN must be more proactive in promoting the rights of HRDs, including by operationalizing the HRD Committee. A higher priority to HRDs must be accorded generally by the Commission. The NHRCN should particularly address the severe issues faced by WHRDs by promoting legislation that goes further than the Bill to Amend Some Nepal Acts to Maintain Gender Equality and End Gender Based Violence and promote specific initiatives breaking down the significant obstacles WHRDs face in reporting crimes against them. In addition, the penalties for sexual assault must be increased, and the persistent insecurity that WHRDs and all women face must be better addressed, including by putting in place concrete structures that allow women to report sexual crimes without fear of the immense risks that they currently face.

PAKISTAN

Synopsis of the challenges of HRDs

Pakistan is one of the most dangerous countries in the region for Human Rights Defenders (HRDs). HRDs face a high number of risks ranging from arbitrary arrest and detention, surveillance, threats and judicial harassment to abduction and kidnapping. In recent years, HRDs have had their offices attacked or burnt down. Journalists, lawyers and Non-governmental organisation (NGO) workers have been killed or disappeared. In April 2016, prominent Woman Human Rights Defender (WHRD) Sabeen Mahmud was shot dead. In July 2016, HRD Abdul Wahid Baloch disappeared. This leaves no doubt that the civic space for Civil Society Organisations (CSOs) and HRDs in Pakistan is steadily shrinking. Islamic fundamentalists are threatening civic space as they continuously attack HRDs. Many HRDs have relocated to Islamabad from Peshawar, as they fear their lives are under threat. The State is unable to satisfactorily address rights violations against HRDs through a judicial process that is perceived as corrupt, inaccessible, and inefficient. Judicial commissions on killings of HRDs fail to attribute responsibility. Legal aid is not readily available or institutionalised, except for sporadic efforts. The increased radicalisation of society and persistent violence has further limited human rights discourse in the country, leading some to support harsh laws and capital punishment. World Justice Project laws and capital punishment, as corrupt, inaccessible, and inefficient. Judicial commissions on killings of fifth out of six countries in the South Asia region.³¹⁰

HRDs working in tribal areas where extremist groups operate face higher levels of risks. In the provinces of Khyber Pakhtunkhwa (KP) and the Federally Administered Tribal Areas (FATA), WHRDs in particular are targeted by security agencies, religious groups, militants and armed gangs. They operate in an environment affected by strong traditional views about the role of women in society, and are in perpetual danger as a result

of their activism. Besides threats by security agencies and armed groups, WHRDs in these two regions often received threats from their own family members, who exert pressure on them to quit human rights work. Many WHRDs have also received threats concerning their children.

In Balochistan, most NGOs operating in Quetta have closed their offices and relocated their staff outside the area due to severe sectarian violence in the area. Travel restrictions are common in Balochistan, KP and FATA, and HRDs need to ask for permissions from local authorities to travel to remote areas.

Anyone publicly calling for political reform or for greater observance of women Balochistan, KP and FATA, rights, or for those of HRDs, is exposing her or himself to reprisals from both state and non-state actors. The Blasphemy Law, which provides for capital punishment, is widely used to target dissent as well as HRDs. HRDs who work to defend the rights of Christian minorities have been accused of committing blasphemy in an attempt to silence them. Salman Tasser, the former governor of Punjab province, was shot dead in 2011 for his opposition to these laws.

After the 2014 Peshawar attacks, the formulation of a national action plan for combating terrorism included plans to monitor and restrict funding to CSOs. The situation is undoubtedly complex in Pakistan, which has a great number of faith-based CSOs, some of which conceal extremist identifications behind the mask of humanitarian work, and where religious schools, some of which inculcate extremism, register under the same regulations as CSOs and most importantly their new face of religious political parties such as Tehreek-e-Labaik Pakistan. In December 2014, the state Government of KP deregistered 3,000 out of 4,000 registered CSOs without providing any reasons. CSOs face harassment from security forces in the form of frequent visits meant to intimidate and constant scrutiny. The Government has started to introduce new laws to take control over CSOs' funding. The main target

³¹⁰ 'WJP Rule of Law Index, 2017-2018,' <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018>

will be rights-based and advocacy organisations. Some CSOs foreign currency accounts have been closed down by the State Bank.³¹¹

In January 2017, four bloggers, Waqas Goraya, Asim Saeed, Salman Haider, Ahmed Raza Naseer and Samar Abbas, were abducted and later returned. All of these activists regularly wrote against the Government and the establishment. With the blatant abduction of four bloggers, a trend of enforced disappearances has emerged, with complete impunity. A climate of fear and self-censorship especially online, is increasing in Pakistan.

On 8 August 2017, Partab Shivani, an activist and HRD, writer Naseer Kumbhar and a political leader of Jeay Sindh QaumiMahaz (JSQM), Mohammad Umer were allegedly abducted by law-enforcement agencies. They were released in the late hours of 9 August. On 25 June, 2017, a journalist of Daily Qudrat, Zafar Achakzai was arrested by armed men from his house in Quetta. On 29 June, he was handed over to the FIA and charged under the Prevention of Electronic Crimes Act (PECA) 2016, for allegedly posting 'illegal material' on Facebook.³¹² In May, 2017, the Pakistan Bureau Chief for WION News, Taha Siddiqui was summoned several times for interrogation at the FIA's Counter-Terrorism Wing.

In December 2017, Pakistan government ordered closure of over 20 international aid agencies 'without any verifiable cause.' In 2015, a committee comprising of several ministries sealed Save the Children's offices and instructed expatriate staff to leave the country. The committee also temporarily rejected the registrations of 15 other NGOs, including Norwegian Refugee Council, Danish Refugee Council, Catholic Relief Services, World Vision, and Mercy Corps.³¹³

The general elections of Pakistan are scheduled to be held on 25 July 2018. However, in the

wake of the announcement of the election date, there have been alarming reports of increased suppression of the freedom of expression, arbitrary arrests, attacks, threats and intimidation of journalists and activists. On 21 June, 2018, the home of journalist and activist Marvi Sirmed in Islamabad, was ransacked and burgled. Laptops, phones, passports of her family members and other travel documents were stolen. Surprisingly, her jewels and valuables were left untouched. The incident was likely an attempt at intimidation and adds to concerns over flagrant targeting of individuals and institutions who are critical of the State. Earlier, on 6 June, British-Pakistani columnist, activist, and a well-known critic of the Pakistani military Gul Bukhari was abducted en-route to a television news station, and detained for hours. A day before, at a press conference, the military spokesperson complained about social media users criticising the State, and highlighted their accounts. This blatant targeting of activists, and the invasion of privacy of citizens who are merely exercising their freedom of expression is extremely concerning³¹⁴.

It is discouraging that Pakistan was among the 14 countries that voted against a UN General Assembly resolution calling for the protection of HRDs. It also has failed to respond to requests for official visits, in 2003, 2007, 2008 and 2010 by the UN Special Rapporteur on the situation of human rights defenders.

Repressive laws and policies

Discriminatory and punitive laws such as the infamous Blasphemy laws (295-A,B,C and 298), the Frontier Crime Regulations (depriving citizens of FATA of constitutional protections), and various draconian anti-terrorism laws and the death penalty have a silencing effect on activism, and subject HRDs and other citizens to arbitrary prosecution.

³¹¹ 'Reclaiming space: civic response to terrorism in Pakistan State of civil society,' Civicus, 2015, <http://civicus.org/images/StateOfCivilSocietyFullReport2015.pdf>

³¹² 'Pakistan: Stop harassment, arbitrary arrests and disappearances of human rights defenders,' <https://www.forum-asia.org/?p=24586>

³¹³ 'Join Statement: Reverse NGO ban, Pakistan told by international civil society groups,' <https://www.forum-asia.org/?p=25340>

³¹⁴ 'Pakistan: Protect democratic space for dissent and expression to ensure free and fair elections,' <https://www.forum-asia.org/?p=26676>

Blasphemy and anti-Ahmadiyya provisions in Chapter XV of the Penal Code³¹⁵ create an environment that is hostile to religious minorities and those defending their rights by restricting their freedom of expression, subjecting them to prosecution, and condoning of violence against them. Blasphemy laws inherited from the British and worsened in 1986 by Military leader Zia-ul-Haqqa amendment of the Penal Code and Criminal Procedure Code³¹⁶ continue to be used in a discriminatory manner against religious minorities and HRDs who advocate for reform of such laws and in support of those wrongly accused. This includes members of the media, lawyers who defend those accused, lawmakers who propose repeal or amendments to certain infamous provisions, and even judges who are pressured to hand down the maximum penalties. Under Article 298C of the Penal Code, inserted under Zia-ul-Haq, Ahmadis cannot call themselves Muslim or 'pose' as Muslims, which is a crime punishable by three years in prison. Article 295A punishes those who commit 'malicious acts' that insult or outrage religious sentiments with up to 10 years in prison. Article 295C prohibits written, oral, and visual expressions against the Prophet Muhammad, and allows the death sentence or life imprisonment for those found guilty. Article 298 punishes those who make statements with the intention of harming religious sentiments with up to one year of imprisonment. Article 298A punishes speech that denigrates the Prophet Muhammad, his family members, any of the Righteous Caliphs, or any of his companions with imprisonment of up to three years. Discriminatory laws have created a formal, institutionalised culture of intolerance that has fed into and grown with the advent of madrassas, increased radicalisation of society and the growing intolerance for religious diversity. This culture further allows the state to exploit religion to restrict speech, funding for NGOs, and other rights that they decide are in violation of religious sensibilities and morality. Individuals calling for the reform of these laws have attracted violence and death threats from extremist groups. Prominent leaders advocating revision of these laws have been targeted in the past,

such as Salman Tasser, the late governor of Punjab Province, who was killed in January 2011 by his own security forces for his stance on blasphemy regulations, and Shahbaz Bhatti, former Minister for Minority Affairs, who was killed in March 2011 for his outspoken critiques of the laws.

While controlling terrorism and bringing suspects to justice is a legitimate goal, the solution cannot come from regressive laws that may be used to deprive citizens of substantive and procedural due process. People are routinely disappeared in FATA as well as in Baluchistan where the citizens group 'the Voice for Baluch Missing Persons' estimates that 10,000 people have been disappeared. HRDs are unable to research, document, and seek redress in individual cases. The Anti-Terrorism Act, 1997³¹⁷ is very broad and applicable to acts that have nothing to do with terrorism. The Act explicitly goes beyond terrorist offences as the preamble states that it addresses 'the prevention of terrorism, sectarian violence, heinous offences and matters connected there with and incidental there to.' The definition of terrorism includes creating a sense of insecurity, damaging public property, barring public servants from their duties, and crucially, the malicious insult of religious beliefs or derogatory statements about holy figures in Islam. Under the Act, persons can be detained without charge for up to 90 days, and the offence is non-bailable and immune to habeas corpus.

In August 2016, the President signed into law the Prevention of Electronic Crimes Act (PECA), 2015,³¹⁸ a law criticized for curbing the freedom of expression and the right to privacy. The Act was severely criticised by domestic and international civil society, and the Special Rapporteur on freedom of opinion and expression also voiced concern about it, but it was nonetheless forced through in a secretive and opaque process.³¹⁹ Article 34 of the Act is overly broad and fails to include adequate safeguards for the protection of the rights to privacy and freedom of expression, in breach of Pakistan's obligations under international human rights law. It grants new sweeping powers to the Pakistan Telecommunication Authority (PTA) to 'manage

³¹⁵ <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46816797.pdf>

³¹⁶ <https://www.thepersecution.org/50years/paklaw.html>

³¹⁷ <http://www.ppra.org.pk/doc/anti-t-act.pdf>

³¹⁸ http://www.na.gov.pk/uploads/documents/1421399434_340.pdf

³¹⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16879&LangID=E>

intelligence' and order the removal or blocking of access to 'any' information online without a determination of its legality by a court. The Act criminalizes a wide range of online acts in broad terms: glorification of an offence, hate speech, misuse of computers, cyber-terrorism, offence against the dignity or modesty of a person, cyberstalking, and unlawful online content are all criminal offences. The penalties for infractions are severe: for example, the ill-defined and dubiously conceived act of 'cyber-terrorism,' carries a maximum penalty of death. Under the law, the Government would be able to seek out users to prosecute by accessing their data without the permission of the user or the courts, meaning that users could be prosecuted for private content.

The Telecommunications Act, 1996³²⁰ extends defamation penalties to the online sphere. It allows up to three years of imprisonment for anyone who communicates any message that he or she knows to be false or indecent. The Electronic Transaction Ordinance, 2002³²¹ criminalizes a range of acts, again with very broad definitions. Under the Ordinance, accessing an information system without authorization, regardless of intent, knowledge of the information contained therein, and the nature of the information can be punished with a prison term of up to seven years. Anyone who attempts or who performs an act with the intent to alter, modify, delete, remove, generate, transmit or store information without authorization may be imprisoned for up to seven years.

The Pakistan Telecommunication Authority (PTA), the agency responsible for telecommunication regulations, has repeatedly violated the right to freedom of expression by arbitrarily suspending licenses or threatening to do so. Moreover, according to the Jinnah Institute, a think-tank, the PTA has failed to issue clear regulations on censorship. In October 2012, the Military ordered that certain videos depicting violence in the Swat Valley be

removed. In 2012, the PTA banned youtube.com completely after claiming they were unable to block a film called 'Innocence of Muslims,' which was deemed offensive to Muslims. The ban was only lifted in 2016, after Google agreed to remove information deemed offensive by the PTA. FORUM-ASIA member organisation Bytes for All filed a case before the Lahore High Court challenging this ban. The Court instructed the PTA to seek interpretation of the original Supreme Court decision issued in September 2012.³²² In 2015, the Lahore High Court ordered the Pakistan Electronic Media Regulatory Authority (PEMRA) to block all content related to political party Muttahida Qaumi Movement's leader Altaf Hussein because of his criticism of the state and the army.³²³ The PTA regularly blocks over 200,000 sites, and in 2016 began blocking some 400,000 sites. From 2013 to 2016, it blocked over 25 million text messages.

Article 124(a) of the Penal Code³²⁴ outlaws any act that attempts or 'brings into hatred or contempt, or attempts to excite disaffection towards the Federal or Provincial Government.' The maximum penalty is imprisonment for life. The law is not aimed at penalizing only acts or attempts to act to topple the Government by unlawful means; in fact, its wording is not at all concerned with such acts, but rather any act that causes disaffection, hatred or contempt of Government, regardless of their veracity, peacefulness, scope or severity. Under this law, virtually any criticism of Government can be punished by extreme penalties, which creates a severe chilling effect on free expression. In the last few years, the law has been used as a part of a heavy-handed approach to silence activists calling for respect for minority rights and democratic rights, particularly in the Gilgit-Baltistan region, which is not recognized as a province and whose inhabitants have limited political rights. In the lead-up to the June 2015 regional elections, over 50 people were charged with sedition to silence their voices. In

³²⁰ http://www.na.gov.pk/uploads/documents/1329727963_180.pdf

³²¹ <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan010245.pdf>

³²² <https://www.apc.org/en/node/21474>

³²³ http://content.bytesforall.pk/sites/default/files/Pakistan_Internet_Landscape_2016_Web.pdf

³²⁴ <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46816797.pdf>

February 2015, a group of 19 people was arrested and charged with sedition for their participation in a conference on the status of the contested Gilgit-Baltistan region. In June 2015, eight nationalist activists were charged for protesting the region's elections and attempting to give a letter to UN election observers calling for a referendum. In August 2011, more than 100 persons, including prominent human rights activist and politician Baba Jan, were arrested for demonstrating against the killing of a peacefully protesting father and son by security forces. He and 11 others were convicted of sedition in September 2014 and sentenced to life imprisonment. In the same month, nine HRDs protesting Baba Jan's conviction were arrested and also charged with sedition. In July 2016, Baba Jan lost his final appeal to the sentence.

The Police Order, 2002³²⁵ allows the police to outlaw spontaneous assemblies, require applications for assemblies, deny these applications on broad grounds, dictate protest routes, times and other conditions, and order assemblies to disperse on broad grounds. Articles 128, 131 and 132 of the Criminal Procedure Code³²⁶ give the police, local authorities and security forces permission to use excessive force deny these applications on broad grounds, dictate protest routes, times and other conditions, and order assemblies to disperse on ts, even if they are peaceful. Articles 141-160 of the Penal Code³²⁷ outline a long list of offences related to unlawful assembly. Under Article 141, an assembly may be deemed unlawful if the objective of the assembly is to resist the execution of any law or inhibit the legal process; to commit mischief or criminal trespass; or to take possession of another person's property. Participants in an unlawful assembly can be imprisoned for up to six months. Under Article 145, a person who continues to participate in an unlawful assembly after it has been told to disperse can be imprisoned for up to two years. Under Article 149, if any member of an unlawful assembly commits an

offense, all the members of the assembly are liable to prosecution for that offense.

The Policy for regulation of International Non-Governmental Organisations in Pakistan, 2015³²⁸ requires all INGOs to renew their registration and sign a new MoU with the Government, limiting them to specific issue areas and locations. The registration requirements are onerous, the conditions for the rejection of applications are unclear and overly broad, and there is no right of appeal for denied applications. Approval for projects is subject to the acquiescence of various levels of Government and must align with Pakistan's 'national priorities,' and political activity is banned. Accessing foreign funds, providing assistance to other NGOs, spending money, and hiring foreign staff (which is capped at 10% of an organisation) requires Government permission. In 2015, nine INGOs were denied registration: Save the Children, Catholic Relief Services, World Vision International, iMMAP, International Alert, Norwegian Refugee Council, Danish Refugees Council, ZOA International, and Dhaka Ahsania. Although the ban on certain organisations, such as Save the Children, was later reversed, some 20 other INGOs were placed under investigation.

Under Circular No. 02/2015 of the Securities and Exchange Commission of Pakistan³²⁹ all non-profits registered under the 1984 Companies Ordinance are required to revalidate and renew their operating licenses. Renewal is subject to confirmation, as required under the Ordinance, that all activities 'are applied solely towards the promotion of the objects for which the association was formed.' In September 2016, the registration of over 100 NGOs was cancelled for inactivity, although many of the organisations subsequently claimed in media reports that they had submitted their registration applications or that they were active but had not been able to meet the onerous reporting requirements.

³²⁵ <http://punjabpolice.gov.pk/system/files/police-order-2002-updated-version.pdf>

³²⁶ <https://www.oecd.org/site/adboecdanti-corruptioninitiative/39849781.pdf>

³²⁷ <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46816797.pdf>

³²⁸ <http://www.icnl.org/research/library/files/Pakistan/INGOpakistan.pdf>

³²⁹ <http://www.icnl.org/research/library/files/Pakistan/circular.pdf>

The Prevention of Electronic Crimes Act (PECA), 2016, was passed by the National Assembly in April 2016 and approved by the Senate in July 2016. It was enacted as a law on August 18, 2016, after receiving the formal assent of the President of Pakistan. The law is vaguely worded and can be easily misused to curtail free speech and fair election, as can be seen in the case of Zafar Achakzai. The law is controversial and provides for the federal government power to designate an investigation agency, which is the Federal Investigation Agency (FIA), to investigate technology driven offences. As per the law, the agency will 'establish its own capacity for forensic analysis of the data or in information systems and the forensic analysis reports generated by the investigation agency shall not be inadmissible in evidence before any court for the sole reason that such reports were generated by the investigation agency.' An investigating officer can access and search information systems and make copies of the data.³³⁰ Under the pretext of national security, the laws legitimizes interception, monitoring and tracking of digital communications. Article 54 of the Pakistan Telecommunication Act, 1996, enables the federal government to authorize any person or persons to intercept calls and messages or to trace calls through any telecommunication system, under national security threat.³³¹ Moreover, under the law, approval for carrying out surveillance on communications can be sought from higher courts. Under the Investigation for Fair Trial Act (IFTS) 2013, Inter-Services Intelligence (ISI), the three Services Intelligence Agencies, Intelligence Bureau (IB) and Police can apply to a High Court judge for secret warrants authorising surveillance, electronic interception, surveillance, and seizure of equipment. Service providers also cannot deny the government access to their data, as they would be subjected to heavy fines.

The draft Regulation of Foreign Contributions Bill,³³² aimed at regulating foreign contributions

to INGOs as well as domestic NGOs seeking a certain threshold of foreign contributions, remains pending. The new law, if passed in the current form, could significantly curb access to foreign funding. Prime Minister Nawaz Sharif reportedly shifted the responsibility of the monitoring and security clearance of NGOs to the Interior Ministry, whereas previously these duties were under the purview of the Economic Affairs Division. All domestic and foreign NGOs would be required to register or re-register within six months; otherwise they would have to cease operations. During this period, INGOs would only be allowed to operate within 'specified areas of operation' allowed by authorities. In addition, NGOs would no longer be able to work in FATA, Gilgit-Baltistan, and other 'security zones.' Under the Bill, for NGOs to be eligible to receive contributions they would need to obtain a certificate from the Securities and Exchange Commission of Pakistan, which could be denied or cancelled on extremely broad and vague grounds. To maintain their certificate, NGOs and INGOs would be required to keep all activities strictly within the fields approved in their application, seek permission for every new source of foreign funding and for all assistance provided to another NGO, avoid causing religious tensions or violating 'cultural and religious sentiments,' and avoid carrying out activities outside the location approved for their operation, or activities detrimental to Pakistan's 'national interests.' For NGOs and INGOs to make use of the funds obtained, a separate application would have to be made for each project; a process that could take up to four months as it would require permission from a number of different Government organs. Violations of the Act, which include knowingly providing false information, concealing facts, and receiving or using foreign funds without permission, would be punishable by one year of imprisonment or a fine under Article 20.

³³⁰ 'The Prevention of Electronic Crimes Act 2016,' http://www.na.gov.pk/uploads/documents/1472635250_246.pdf

³³¹ 'The Pakistan Telecommunication (Re-organization) Act, 1996,' http://www.na.gov.pk/uploads/documents/1329727963_180.pdf

³³² 'Foreign Contributions Bill (draft),' <http://www.icnl.org/research/library/files/Pakistan/forcont.pdf>

Discussion of the draft law occurred against a backdrop of stigmatisation of NGOs receiving funding from abroad, which have been depicted as working on behalf of foreign interests and as agents of the West.

Enabling laws and policies

The National Human Rights Commission of Pakistan (NHRCP) was established in 2015 pursuant to the National Human Rights Commission Act 2012.³³³ The Act empowers the NHRCP to investigate human rights violations, verify the legality of detentions by visiting detention centres, make suggestions about revisions to Pakistani law to harmonize it with international human rights standards and Pakistan's international legal obligations and develop a national plan of action for the protection and promotion of human rights. In its investigations, the Commission is granted the power of a civil court, but a crucial and debilitating weakness is the Commission's inability to inquire into acts by the armed forces and intelligence agencies. The NHRCP thus remains toothless, as it has no power over those who most regularly perpetrate human rights abuses.

In addition to Pakistan having ratified major human rights conventions including ICCPR, UNCAT, and CEDAW, the Pakistani Constitution guarantees fundamental rights including freedom of association, assembly, speech, religion and equality, albeit with major restrictions to each. The last five years have also seen a growth in laws expanding women's rights. Examples include laws against acid throwing, protection against sexual harassment and domestic violence, and equitable inheritance. There is also a law in the works giving labour status to home based workers. The laws are far from perfect but provide a legal basis to address human rights violations. Enforcement, however, remains a problem for which there is limited institutional support.

Article 19(A) of the Constitution states that: 'Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions

imposed by law.' Although two provinces (Punjab and KPK) enacted Right to information (RTI) Laws in 2012 -in light of devolution of matters to provinces- Pakistan lacks the institutional mechanisms to enforce such laws.

In November 2015, a separate Ministry of Human Rights was created, for the third time, following sustained civil society advocacy. The new Ministry has a unit devoted to HRDs, and also houses the National Commission on the Status of Women and the National Commission for Human Rights. Among other projects, there is a national human rights hotline being developed, although it appears that it merely provides legal advice, rather than being connected to a mechanism allowing for concrete action to be taken. The Ministry of Human Rights has developed a Plan of Action³³⁴ on the promotion and protection of human rights, which has been approved by the Prime Minister's Office and is currently in effect. There have been complaints that the implementation of the Plan has been slow and ineffective, despite its generous budget allocation.³³⁵ The Plan of Action covers policy and legislative reform, access to justice, UN treaty implementation, and strengthening national human rights institutions among other priorities. As of October, a Joint Committee composed of CSOs and federal and provincial Governments is reviewing legislation to identify gaps or changes needed. Since July 2016, the Ministry has been seeking to expedite the passage of pending legislation on reproductive rights, anti-rape law, domestic violence, and torture, while pushing for the more effective enforcement of laws on workplace harassment, acid throwing, gender-based discrimination, and false accusations of blasphemy. The protection of women and minorities rights has been established as a national priority in the Plan of Action, but the rights of HRDs are not addressed in the plan. Prior to the 2013 merger of the Ministry of Human Rights with the Ministry of Law and Justice, there were at

³³³ 'Human Rights Act', <http://pgil.pk/wp-content/uploads/2014/06/National-Commission-for-Human-Rights-Act-2012.pdf>

³³⁴ Action plan for rights protection unveiled,' Dawn, 26 February 2016, <https://www.dawn.com/news/1241964>

³³⁵ <https://www.pakistantoday.com.pk/2017/03/23/human-rights-ministry-fails-to-implement-action-plan-for-human-rights/>

least two civil society-driven initiatives to set up HRD protection mechanisms in the country. The first proposed mechanism had a national scope and was developed by local CSOs with the support of international counterparts; the mechanism was also linked to the development of a national human rights policy framework. The draft of the HRD protection mechanisms and policy framework was agreed in a national consultation and later shared with the then Ministry of Human Rights. However, following the merger of the ministries, as of late 2013 the civil society network responsible for following-up on the project had received no response from the Ministry of Law and Justice. The second proposed mechanism was intended for Islamabad Province only, and the then Ministry of Human Rights committed to taking the draft forward by organising provincial- and district-level consultations in order to reach consensus. However, as of late 2013, there was no one within the Ministry of Law and Justice responsible for the process.³³⁶

Recommendations

Pakistan must immediately amend its extremely repressive blasphemy laws -in particular Articles 292, 294, 295 and 298 of the Penal Code- as they criminalize acts of free expression that are not criminal under international law and carry unacceptably harsh and disproportionate penalties. Denying HRDs the ability to speak of alternative religions, to speak critically of religions or even to offend religious persons is a fundamental denial of the right to free expression. A law on free religious expression must immediately be enacted, guaranteeing everyone the right to the above forms of expression, and putting in place protective mechanisms for HRDs who are at risk due to their opinions or work.

The Anti-Terrorism Act must be repealed and replaced with a law that defines terrorism more clearly and narrowly. The definitions of terrorism under the existing Act are so broad that they cover a wide range of non-terrorist and non-criminal acts. The new law must leave out any reference to insult

to religion as well as damage to public property or barring public servants from their duties. Instead, it should define terrorism in the way that it is defined by international standards, with appropriate specificity and severity thresholds.

The Prevention of Electronic Crimes Act must be repealed because the acts it criminalizes are far too broadly defined, and because the Act grants the Government overly broad powers to monitor internet users and censor content. If it is replaced by other cybercrime legislation, the replacement must narrowly apply to actual cybercrime, rather than to a host of vague and arbitrary political offences that have no basis in international law. Any Government ability to monitor content must be subject to approval by an independent judiciary. The Government should not have the power to censor content for political reasons.

The Telecommunications Act must be amended to remove the crime of communicating information known to be false. The Electronic Transaction Act must be amended by narrowing the definition of unauthorized access to or use of an information system. Both should be punishable only in severe cases where there was clear intent to steal or misuse information. Other acts that do not meet this threshold may be subject to civil suits. The Pakistan Telecommunication Authority must be made autonomous and stripped of its power to block online content.

Article 124(a) of the Penal Code must be repealed because it criminalizes simple criticism of Government, even if the criticism is true. The implication of such a restrictive law with such draconian penalties is a denial of the right to free expression.

Articles 120 and 121 of the Police Order must be amended to revoke the power currently granted to police to require prior notice and to reject applications arbitrarily. Spontaneous peaceful assembly must be unconditionally legal, and the police must never have the power to deny or to dissolve such an assembly.

³³⁶ 'Focus 2014: public policies for the protection of HRDs,' Protection International, 2015, <https://www.protectioninternational.org/en/node/991>

Articles 128 of the Criminal Procedure Code must be amended, and Articles 131 and 132 must be struck down, to limit the powers conferred upon security forces to disband assemblies. A peaceful protester should not be subject to arrest under any circumstances, and police must have clear evidence of a criminal act to arrest a person. The domestic use of the armed forces should be very constrained, applicable only in the narrowest and most extreme situations.

The Penal Code must also be significantly amended. Article 141 must be amended to tighten and narrow definitions of an unlawful assembly and to explicitly state that a peaceful assembly must under no circumstances be considered unlawful. Article 145 and 149 must be struck from the Code, as they illegitimately allow for the prosecution of peaceful protesters.

The Policy for regulation of International Non-Governmental Organisations in Pakistan and Circular No. 2/2015 must be repealed and replaced with legislation that guarantees NGOs a rights to operate free from Government interference. The new law must guarantee associations' right

to function without restrictions on associations' activities on political grounds, such as a ban on 'political activities', or Government interference in the geographic areas and issue areas of their choice, and without the need for Government approval to register, receive funds, and carry out activities of their choice. The draft Regulation of Foreign Contributions Bill must also be scrapped in its entirety for the same reasons.

The National Human Rights Commission Act must be amended to strengthen the Commission and make it more autonomous. Most importantly, the NHRCP must be empowered to investigate, with the full force of a criminal court, any human rights violation by any actor, including the armed forces, the police, and intelligence agencies. The Act must be explicit in granting the NHRCP this power and must put in place material structures and mechanisms allowing this power to be used effectively. The Plan of Action on human rights should be amended to make the protection of HRDs, and in particular WHRDs, a central priority. A law specifically protecting and promoting the rights of HRDs should be drafted and submitted to parliament.

SINGAPORE

Introduction

A state of emergency was declared in Singapore 70 years ago on 24 June 1948. The recent enactment of the Public Order (Additional Temporary Measures) Act or PO-ATM Act confirms that Singapore is still possessed by the 'siege mentality' and a deep sense of insecurity. The authorities have always stressed how vulnerable the country is to economic, political and social threats and the leaders often remind the world of this. This insecurity forms the justification for many of the restrictive laws that the city-state has enacted to keep order.

However, even after being placed in the top 20 in the world for human development by the United National Development Programme (UNDP) -consolidating its developed nation status in terms of life expectancy, literacy, education, standards of living and quality of life, and firmly sealing it as a nation- the ruling People's Action Party still continues to stress Singapore's vulnerability to maintain order and remain in control.

The Public Order (Preservation) Act (POPA) is only one of key legislations that provide a picture of a nation under emergency rule. It was originally put in place during the 1950's period of turmoil and unrest. Today, in Singapore, we continue to live under its shadow alongside other draconian emergency-like laws including the Internal Security Act (ISA) and the Criminal Law (Temporary Provisions) Act (CLTPA), both of which permit detentions without trial.

In addition, the Public Order Act and the Public Entertainment and Meetings Act (PEMA) ensure that any one person who wishes to demonstrate and protest is required to apply for a permit. But any individual who participates in peaceful assembly without the required license may face charges of illegal assembly. Other key laws restricting our freedom of speech and expression are the Newspaper and Printing Presses Act, the Broadcasting Act, the Sedition Act, the Public Entertainment and Meetings Act, the Public Order Act, and the Films Act.

Draconian laws like the ISA make a crime of 'guilt by association' and its executive detentions or preventive detentions can never be substantively challenged in court. These laws have worked to promote unnecessary fear among the people, discouraging them from freely associating with each other and foreign workers to dialogue on their concerns for their labour, civil and political rights

Synopsis of the challenges of HRDs

The economic success story of Singapore stands in stark contrast with the situation of fundamental freedoms and certain civil and political rights in the country. Human rights defenders (HRDs) in Singapore have difficulty conducting their legitimate work due to restrictive legislation, lack of an enabling environment, lawsuits, debilitating fines, police intimidation, arrest and detention, and travel bans.

Defamation suits have been used by the ruling People's Action Party (PAP) against both opposition politicians and HRDs. Members of the ruling party have been known to target individuals for allegedly libellous articles and books. Publishers such as printers and news vendors may also be sued, especially if found to have knowledge that disseminating such material is likely to be libellous.

The Government can censor and ban content, as well as impose criminal sanctions where it sees fit. Independent news websites have been targeted through draconian registration laws which force them to choose between censoring content and facing heavy fines or even imprisonment. Several outlets have been forced to shut down. Bloggers and online activists face intimidation online from regulatory bodies as well as judicial harassment that frequently ruins critics of the Government financially.

Public demonstrations are rare in Singapore due to laws that make it illegal to hold cause-related events without a valid licence from the authorities. Protests and demonstrations at the Speakers' Corner in Hong Lim Park do not need a police permit as long as the topic of the assembly does not touch on racial or religious issues and the organiser and

speakers are Singaporean citizens. Foreigners who are not permanent residents are not permitted to participate without a police permit.

Legislation grants the authorities broad discretionary powers to restrict the right to freedom of association. Under the Societies Act, associations with more than 10 members must seek approval to exist, and the Registrar of Societies has broad authority to deny registration if it determines that a group could be 'prejudicial to public peace, welfare or good order.' While human rights groups mostly have their registrations approved, they are still limited in the work they are allowed to accomplish. Registered groups are subject to the wide discretionary powers of the Minister to dissolve them if they run contrary to public peace, welfare or good order (s.24, Societies Act). Groups that work on what the state terms locally sensitive issues, have faced limits on their ability to register or complete their work. For example, organisations that work on lesbian, gay, bisexual, trans, and/or intersex (LGBTI) issues have repeatedly been denied registration because of the belief that their operations are 'contrary to the national interest.'

Labour unions are allowed to register, but remain strictly regulated, as all key positions within the Singapore National Trade Union Congress (NTUC) are controlled by the PAP. Foreign workers are not allowed to form trade unions but can apply for membership. The Trade Unions Act (Cap.333) bars migrant workers from being employees of unions, which means that they may not form their own unions. Furthermore, many migrants work in fields where unionization is not permitted because they are considered informal. Some 180,000 domestic workers are thus deprived of the right to unionize. The number of foreign domestic workers as it stands in 2017 has risen to 240,000.

Un-unionised workers do not have the leverage of being able to collectively negotiate the terms of their employment and are unable to effectively give voice to exploitation, poor living conditions or discriminatory pay. They run the risk of repatriation if their employers revoke their work permits without further recourse to appeal. This is illustrated by what the courts ruled as an illegal

strike of Chinese bus drivers in November 2012 following poor living and salary conditions, and the lack of avenues for foreign drivers to address their concerns. He Jun Ling, Gao Yue Qiang, Liu Xiangying and Wang Xian Jie – all employed by the national transport operator SMRT Ltd. – were charged under the Criminal Law (Temporary Provisions) Act in relation to a strike on 26 and 27 November involving over 170 Singapore Mass Rapid Transit (SMRT) bus drivers. A fifth bus driver was also charged and 29 workers were repatriated after getting their work permits revoked.

Singapore has also not accepted or adhered to Core Labour Standards adopted in the ILO Declaration on Fundamental Principles and Rights at Work and in the Declaration on Social Justice for a Fair Globalization. International standards governing the management of migrant workers facing expulsion are defined under the various conventions and recommendations of the International Labour Organisation and the United Nations have not been incorporated into municipal laws and practices, particularly centring around rights to appeal against expulsion orders by migrant workers individually, and rights against collective expulsion in favour of individual access to justice.

In December 2013, an unfortunate fatal accident sparked off a spontaneous outbreak of rioting by migrant workers in Singapore. A total of 57 workers were collectively deported, without confirmation of their culpability or individual charges under any specific provision. This was done under the Immigration Act where the workers' permits were revoked on unclear legal grounds and without specifying what national security or public order grounds the workers had contravened.

Singapore has not accepted requests for a visit by the UN Special Rapporteur on the situation of human rights defenders. Two requests were made by the mandate in 2002 and 2004.

Repressive laws and policies

Key provisions in the Penal Code have been repeatedly used to limit public debate on issues that are regarded by local authorities as highly

sensitive. Article 292 of the Penal Code³³⁷ stipulates that anyone who distributes, imports, or produces obscene content can be imprisoned for up to three months. Article 298 criminalizes expression that intends to wound the religious feelings of any person and provides for punishment of up to three years in prison. Article 298A states that anyone knowingly promoting written or oral expression that can lead to racial or religious disharmony, hatred, or ill-will can be imprisoned for up to three years. In 2007 the Ministry of Home Affairs (MHA) decided to expand Articles 292 and 298 to 'cover offences committed via electronic medium.' In May 2015, 16-year-old blogger Amos Yee was sentenced to four weeks of imprisonment under Articles 298A and 292 of the Penal Code in connection to a March 2015 video in which he criticised former Prime Minister Lee Kuan Yew and made disparaging comments about religion, as well as for a post on his blog with a sexually vulgar, drawn image of two caricatures, namely of Mr Lee Kuan Yew and former British Prime Minister Margaret Thatcher. In September 2016, Yee was again convicted under Article 298, this time for a picture and five videos posted online between November 2015 and May 2016 in which he allegedly insulted the Bible and the Quran.

Defamation is not only criminalised under Articles 499 to 503 of the Penal Code³³⁸ but also a tort under Singapore's civil law. Key members of the Singapore Government have used civil law suits against political opponents and those who speak out on controversial issues. In May 2014, Prime Minister Lee Hsien Loong filed a defamation lawsuit against independent blogger and social activist Roy Ngerng, who had written an article accusing the Prime Minister of corruption and misappropriation of funds. After a year of legal wrangling, in December 2015, Ngerng was ordered by the Courts to pay SG\$150,000 (US\$111,000) in general and aggravated damages to the Prime Minister. In addition, Ngerng was ordered

to pay another SG\$29,000 (US\$22,000) in legal costs to the Prime Minister. The use of costly law suits has been an effective strategy in instilling a climate of fear in Singapore, where individuals choose not to express their opinion on critical topics, particularly domestic politics concerning government leaders or the judiciary, for fear of legal and financial reprisals.

Singapore is one of several countries in the region that retain and continue to apply archaic laws on contempt of court. With the passing of the Administration of Justice (Protection) Act that was made law in 2016,³³⁹ it criminalises people who criticise the courts or disrupt the administration of justice by making remarks, especially over social media, which would prejudice the outcome or proceedings of ongoing court cases. Persons found liable for contempt of court may be fined up to SG\$100,000 (US\$75,000) or imprisoned for up to three years. The Government has used contempt of court charges to penalise those who speak out against court decisions. In March 2015, blogger Alex Au was fined SG\$8,000 (US\$6,000) under contempt of court charges for an article he posted online in which he suggested that the Chief Justice had manipulated court dates on a constitutional challenge to Article 377A of the Penal Code (Cap.22), which criminalises sex between two men. His conviction was upheld in December 2015 by the Court of Appeals.

Numerous pieces of legislation further limit freedom of expression and opinion. Under the Undesirable Publications Act (Cap.338),³⁴⁰ most recently revised in 1998, any publication deemed 'objectionable,' 'obscene,' or 'injurious to the public good' can be banned. A publication can be deemed 'objectionable' if it describes or depicts matters of race and religion in a way that could potentially cause enmity, hatred, ill-will or hostility between different racial or religious groups. Similarly, under the Films Act (Cap.107),³⁴¹ all films publicly screened in the country must first be reviewed by

³³⁷ 'Penal Code,' <https://sso.agc.gov.sg/Act/PC1871>

³³⁸ Defamation is also criminalized under the Defamation Act of 1957, last amended in 2014 (available at <https://sso.agc.gov.sg/Act/DA1957>)

³³⁹ 'Administration of Justice (Protection) Act,' <https://sso.agc.gov.sg/Act/AJPA2016>

³⁴⁰ 'Undesirable Publications Act,' <https://sso.agc.gov.sg/Act/UPA1967>

³⁴¹ 'Films Act,' <https://sso.agc.gov.sg/Act/FA1981>

the Government's Board of Film Censors, which can sanction the banning, seizure, and censoring of film and video if it is deemed to be obscene or against public interest.

There are multiple Government bodies that further restrict freedom of expression. The Infocommunications Media Development Authority (IMDA), established in 2016 with the merger of the Media Development Authority and the Infocomm Development Authority of Singapore, has the ability to censor potentially harmful speech or expression and can sanction broadcasters for broadcasting inappropriate content. Under the direct authority of the Ministry of Communications and Information, the Authority constantly monitors broadcast, print, and online content, and can choose to remove 'undesirable' content which undermines public security, racial or religious harmony, or public morals. This role is justified by the Government as upholding the 'delicate balance of Singaporean society.' In June 2016, the musical *Les Misérables* was forced by the IMDA to remove a same-sex kiss. In September 2014, the MDA banned the film *To Singapore, With Love*, on the grounds that it undermines national security. The film features interviews with political activists who fled Singapore in the 1960s and 1970s rather than face political persecution and possible detention under the country's Internal Security Act (ISA) which has been historically used to deal with political opponents and dissidents viewed as threats to Singapore's ruling party.

The IMDA's most significant ability to restrict of freedom of expression lies in the online sphere. All websites are all automatically class-licensed under the Authority and must adhere to a strict Internet Code of Practice, based on the Broadcasting Act (Cap.28).³⁴² The IMDA has the power to censor content and sanction infractions without recourse to the courts. The IMDA reportedly blocks about 100 websites, and some political websites have been blocked in the past. In May 2015, the Media Development Authority (the predecessor of the IMDA) ordered independent news source *The Real Singapore* to shut down because it

had allegedly violated the Internet Code of Practice by inciting anti-foreigner sentiment and spreading false news. As mentioned in the Article on Sedition below, the website's founders were prosecuted under the Sedition Act and sentenced to prison.

In May 2013, the MDA announced additional individual licensing rules for websites, including blogs: any website that publishes at least one article per week on Singapore news and current affairs, and which has at least 50,000 unique visitors each month over a period of two months must apply for an individual license. These sites must also put up a performance bond of SG\$50,000 (US\$37,000). A website can be denied registration if it contains socially or politically objectionable content, and once registered, the Government can require the website to remove such content from its website. Websites regulated under this law must also give an undertaking that they will not receive foreign funding due to concerns regarding foreign interests manipulating local media for political influence. Several independent news websites in Singapore have been forced to register under the Act, including *Mothership*, *The Middle Ground*, *The Breakfast Network*, *The Online Citizen* and *The Independent Singapore*. *The Breakfast Network* refused to register because it did not wish to release a list of all persons involved in the website and was forced to close. In March 2016, the IMDA found that *The Online Citizen* had broken funding rules by accepting advertising revenue from a British book club which is directed by a Singaporean exile.

Printed materials continue to be regulated by the Newspaper and Printing Presses Act (Cap.206)³⁴³ which requires all newspapers to renew their registration annually and limits circulation of foreign newspapers which the Government determines have 'engage(d) in the domestic politics of Singapore.' Those found printing unregistered newspapers could be imprisoned for up to two years or fined up to SG\$50,000 (US\$37,000).

The Protection from Harassment Act (Cap. 256A)³⁴⁴ claims to protect people against unlawful

³⁴² 'Broadcasting Act,' <https://sso.agc.gov.sg/Act/BA1994>

³⁴³ 'Newspaper and Printing Presses Act,' <https://sso.agc.gov.sg/Act/NPPA1974>

³⁴⁴ 'Protection from Harassment Act,' <https://sso.agc.gov.sg/Act/PHA2014>

harassment or stalking online, but has been used by the Government to curtail freedom of expression by claiming harassment by individual netizens. In January 2015, popular news website The Online Citizen was sued under the Act for making allegedly false statements about the Ministry of Defense. It was held in January 2017, however, that the government cannot be deemed to be a 'person' protected from harassment under the Act.

In August 2012, the Government established the Media Literacy Council, which advises the Government on policy responses to media, technology, and consumer participation. Since its enactment, the Council has provided policy advice and suggestions that have constrained the ability to speak out about what the state decides are locally sensitive topics. The Council places a strong emphasis on the promotion of 'appropriate social norms,' which gives them leeway to decide on what is or is not an acceptable form of expression or opinion. The Council has been biased in its interpretation of what constitutes 'anti-social, offensive or irresponsible' expression: Calvin Cheng, one of the Council's former members, repeatedly used his position to make online threats and inflammatory remarks, but the Council was silent on the issue. In July 2016, he threatened to have a National University of Singapore political science professor fired, and he had made similar threats in May 2015 against a playwright; both without consequences.

The draconian Internal Security Act (Cap.143)³⁴⁵ places further restrictions on expression in printed materials. Under the Act, the Government may restrict access to or prohibit the printing of publications that incite violence, promote ill-will and hostility between races and classes or threaten public order, security and national interest. The Act also allows state security officers to enter private places of residence to search for said documents without a warrant.

Under the Sedition Act (Cap.290)³⁴⁶ anyone who makes or publishes a statement that could cause

discontent or disaffection amongst the citizens of Singapore, bring contempt or enmity towards the Government, or promote feelings of ill-will or hostility between different racial or religious groups can be imprisoned for up to three years or fined up to SG\$5,000 (US\$3,700). Anyone who possesses a publication containing any of the above themes can be imprisoned for up to 18 months or fined up to SG\$2,000 (US\$1,500). The founders of The Real Singapore independent news website -Ai Takagi and Yang Kaiheng- were sentenced under the Act to 10 months of imprisonment in March 2016, and eight months of imprisonment in June 2016, respectively, for allegedly making incendiary posts. The Government ordered the closure of the website in May 2015.

There are several laws in Singapore that restrict the right to freedom of assembly, especially opposition political rallies and demonstrations. The Public Order Act (Cap.257A)³⁴⁷ tightens existing legislation governing freedom of assembly including peaceful assemblies which are a common, basic feature of natural rights of citizens in many countries. Under the Act, anyone wishing to carry out any cause-related assembly in any public place, or to which members of the general public are invited, must apply for a permit prior to the event unless it is to be held in Hong Lim Park's Speaker's Corner. A permit must also be obtained for any indoor gathering or talk especially when it involves discussion of race or religion. Grounds for denial of permits are left largely to the discretion of police where decisions to deny permits are not made known. Even the right to hold a demonstration in Speaker's Corner is limited: under Article 14 of the Act, the Government may revoke permission to protest without a permit even in Speaker's Corner for as long as it wishes. In 2011, before and during the general elections, such a revocation was issued, and again in 2015 after the death of Lee Kuan Yew.

Restrictions against public assemblies mean that all demonstrations must take place in Speakers' Corner, located in Hong Lim Park. Prospective

³⁴⁵ 'Internal Security Act,' <https://sso.agc.gov.sg/Act/ISA1960>

³⁴⁶ 'Sedition Act,' <https://sso.agc.gov.sg/Act/SA1948>

³⁴⁷ 'Public Order Act,' <https://sso.agc.gov.sg/Act/POA2009>

speakers and participants at such events must be citizens of Singapore and must show their identification to state security officials. In addition, the regulations governing the Speakers' Corner dictate that speakers cannot discuss religion, or topics that could cause enmity or hostility between different racial or religious groups. As participants at the Speakers' Corner are located in one place, the authorities can locate and shut down events that they deem inappropriate or illegal, or disruptive to security and public order.

Enabling laws and policies

There is a serious lack of enabling laws and policies for the protection of HRDs in Singapore. While Article 14(1) of Singapore's Constitution³⁴⁸ grants citizens the right to freedom of expression, assembly, and association, Article 14(2) allows for curtailment of those rights by stating that they may be restricted by ordinary legislation or statute laws enacted to protect public order, morality, and friendly relations with other countries. The Government has used Article 14(2) to justify the passage of laws that introduce legal constraints on freedom of expression and assembly particularly in the case of political expression, and racial or religious discourse.

The Reaching Everyone for Active Citizenry at Home (REACH) program was launched as the Government's official engagement platform in 2009, although it had been in existence as a feedback and public participation mechanism in various forms since 1985. Among its key roles are phone, text message, email, and social network hotlines, public forums and dialogue sessions, as well as the facilitation of public consultation on public policy and legislation. However, REACH does not have a human rights focus, and the input of human rights groups is generally ignored. Surveys which are purportedly done by REACH to rationalise the 'people's voice' comprise small sample sizes usually in the hundreds, on country-wide issues such as support for proposed laws against fake news. Civil society in general does not enjoy any sustained engagement with the Government as the authorities continue to use their online avenues such as REACH

to justify widespread support for their policies and decisions when actual numbers and their impact vis-à-vis Singapore's population are questionable and go unchallenged.

Recommendations

The Penal Code must be amended to decriminalize obscenity, religious insult and defamation. None of the three acts are criminal by international standards, and therefore Articles 292, 294 to 298A, and 499-503 must be removed. Any civil defamation laws that are enacted must explicitly preclude criminal prosecution of criticism of public officials.

Contempt of Court is an outdated concept that elevates a Government organ above public discussion and is thus illegitimate under international law. While it is legitimate to penalize behaviour that is truly disruptive to the administration and expediency of justice, criminalizing any discussion of the judiciary through the imposition of 'any risk' rather than a 'real risk' of contempt of court shuts down any meaningful discussion or fair comment made of our judiciary. The Administration of Justice (Protection) Act needs to be repealed, leaving case law precedent, a feature of any common law system such as Singapore's, to determine the levels of risk that inform whether the reputation or integrity of Singapore's courts and judges are compromised.

Laws governing the press, publications and online expression must be significantly revised to ensure that the Government's ability to censor or ban content, control the registration of media or publishers, and impose sanctions in relation to content is entirely revoked. The Undesirable Publications Act must be repealed, and the Internal Security Act, Newspaper and Printing Presses Act, and Films Act must be amended in line with this. The IMDA and the Media Literacy Council must be transformed into arms-length, apolitical bodies which work within narrow and well-defined ambits incapable of explicitly targeting Government critics.

The Sedition Act must be repealed, given that there are existing laws already governing public order and

³⁴⁸ 'Constitution of the Republic of Singapore,' <https://sso.agc.gov.sg/Act/CONS1963>

maintaining religious harmony. The law's continued existence and application is clear evidence of the Singapore Government's desire to repress and punish expression.

The Public Order Act must be significantly amended, most importantly to decriminalize spontaneous assemblies, remove the requirement that persons seeking to hold a demonstration must apply for a permit, and revoke the Government's power to deny peaceful protests from occurring. The Act must explicitly protect the right of any person, including non-citizens, to assemble peacefully at any time and place.

The Societies Act must be amended to fully guarantee the right of all persons to join or form associations free of Government interference in any form. The Government's discretionary powers to refuse associations' registration must be curtailed, and associations of any size should not be required to register. Article 4(2) (b), which outlines broad grounds upon which registration may be denied, must be struck down. No person should be barred from, or face any criminal penalty for, forming or joining a peaceful association where there is no incitement of violence or harm.

The Trade Unions Act must be amended to fully guarantee the right of all persons, including non-citizens and public servants, to join, form,

participate in and be employed by unions. Singapore also needs to align with and fully ratify the ILO's core labour instruments that protect the rights of all workers, and further complement it by signing on in 2015 the expected ASEAN Instrument on the rights and protection of migrant workers that raises the level of protection and promotion of migrant workers' rights to international standards. Singapore must recognise and respect the World Trade Organisation's framework which calls for human rights and labour standards to be embedded in any free trade agreement. This would have the effect of framing the scope for civil society and trade unions to monitor the implementation of human rights and fundamental freedoms under municipal laws.

Article 14(2) of the Constitution must be amended to remove the restrictions on the rights to freedom of expression, association and assembly. A national human rights commission must be established, in line with the Paris Principles. It must be granted powers to review new and existing legislation and consider how best to harmonize it with international human rights frameworks of which Singapore would need to ratify and adopt. The NHRC must also establish an HRD desk capable of receiving complaints of rights violations, of prosecuting these violations, and of providing legal assistance to HRDs being judicially harassed.

SOUTH KOREA

Synopsis of the challenges of HRDs

South Korea has a vibrant and well-organised civil society working on human rights issues. Overall, Human Rights Defenders (HRDs) in South Korea are able to operate freely but in an environment that is not always sufficiently conducive to the full exercise of their rights. Significant challenges originate in the existing legal framework governing the exercise of basic freedoms, such as the right to freedom of opinion and expression, peaceful assembly and association. Legislation pertaining to national security and the geopolitical situation on the Korean peninsula also has a restrictive impact on the environment in which HRDs operate. Rather than promoting and protecting the activities of HRDs, there have been instances where the previous administrations have intimidated and discouraged HRDs by using physical force, criminal charges and compensation suits against them. In 2016, however, South Korea's Candlelight vigil protest movement brought around 16 million South Korean people in the street. Even though there have been several harassments against organisers of the candlelight vigil protest, Peoples' movement was able to topple down previous Park's administration and restore fundamental freedoms in the country.

In 2013, former Special Rapporteur on HRDs Margaret Sekaggya concluded at the end of her official visit to South Korea that 'the country should widen the space for HRDs.' She identified the existence of defamation as a criminal offence, the use of vague and broad provisions in the National Security Act and laws regulating Internet content as key factors that not only unduly punish those who are critical of Government policies but also considerably reduce the space for HRDs to exercise the basic right to freedom of expression, which is key to claiming other rights.³⁴⁹

Despite an explicit ban on licensing assemblies in the Korean Constitution, a de-facto authorisation

system for demonstrations seems to be in place. Of concern for HRDs is the use of force by the police when handling 'unauthorised' demonstrations,' as illustrated by the death of activist farmer Baek Nam-gi in September 2016. Prior to her impeachment in 2017, there was concern about President Park Geun-hye's use of intimidation tactics against her political opponents and crackdowns on public criticism of her administration, such as her performance following the Sewol ferry tragedy. These moves point to a gradual regression of the rights to freedom of peaceful assembly and of association in South Korea.

Undue restrictions are placed on the legitimate right to freely associate for certain groups of HRDs, in particular those working on labour rights and the rights of migrant workers. Lesbian, gay, bisexual, trans, and/or intersex (LGBTI) groups such as the Beyond the Rainbow Foundation have experienced problems in attempting to obtain legal personality.

Other groups of HRDs, such as journalists, trade unionists, and those protecting the right to live in a safe, clean and healthy environment also face serious challenges. The local residents of Miryang and Gangjeong on Jeju Island, for instance, have been met with repression in their attempt to exercise their legitimate right to protest against large-scale development projects that lack local consent. HRDs working for the rights of students also face heightened risks. There have been violations of the rights of striking workers and attempts to deregister a teacher's union. Most recently, the Korean Teachers and Education Workers Union (KTU) has been outlawed.

Repressive laws and policies

The National Security Act, 1948³⁵⁰ imposes significant restrictions on the freedom of expression of South Koreans, as well as their freedom to create and join political associations or even to meet with other people or own a book. The Act has been

³⁴⁹ 'South Korea should widen the space for human rights defenders, UN expert says,' Office of the United Nations High Commissioner for Human Rights press release, 7 June 2013, <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13427&LangID=E>

³⁵⁰ 'National Security Law' (unofficial translation), <http://www.hartford-hwp.com/archives/55a/205.html>

used to prosecute those with ‘different’ views of North Korea or who oppose South Korean policy on the North, as well as HRDs who have expressed criticism of Government policies. The Act targets ‘anti-Government organisations,’ a term which is not clearly defined in the Act, and has been applied to everything from North Korea itself to organisations that simply express ideological views at odds with those of the South Korean Government. Any person who joins such an organisation, is associated with any member of one, or expresses support for one is subject to severe penalties. The law further criminalises anyone who constitutes or joins an organisation aimed at propagating, inciting, praising, or acting in concert with an anti-Government organisation.³⁵¹

The Act on the Promotion of Information and Communications Network Utilization and Data Protection, 2001³⁵² (last amended in 2016) places numerous restrictions on online expression and can be used to monitor HRDs. The Act extends criminal defamation laws from the Criminal Code (see below for more discussion of defamation) to the online sphere, with even heavier punishments -up to seven years in prison- than for similar offline offences.

In March 2016, despite widespread opposition, the ruling conservative party was able to push through the Anti-Terrorism Act.³⁵³ The Act confers broad powers on the National Intelligence Service (NIS), which has a documented track record of illegitimately stepping beyond its boundaries and becoming actively involved in politics, most recently helping President Park come to power.

The Act provides the NIS with the power to wiretap phones and secretly collect personal information without a warrant and without any evidence or cause. The Act also establishes an ‘anti-terror’ centre under the personal control of the President, further enhancing the political role of the security forces. Finally, the Act defines ‘terrorism’ very vaguely, allowing virtually any criticism of Government to be classified as such.

The 2015 amendment to the Newspaper Act³⁵⁴ bans small independent news agencies by making it impossible for agencies employing fewer than five employees to register.³⁵⁵ As operating without registration is illegal and carries penalties of up to one year of jail time, this is an effective ban on an estimated 30% of Korean news agencies, and almost all news agencies focusing on human rights, justice and accountability. At the time of writing the law was under review by the Constitutional Court.

Although HRDs seeking to join or form associations face fewer restrictions in Korea than most other countries in the region, as they need not register in order to operate legally, the Civil Act³⁵⁶ and the Act on Collection and Use of Donations³⁵⁷ do somewhat interfere with the right to freedom of association. Under the Civil Act, organisations must apply if they wish to have legal status, which can be denied if the relevant authority deems the organisation’s mandate not to be aligned with its own. Thus, in 2015, Beyond the Rainbow, an LGBTI rights organisation, was denied registration with the Seoul Metropolitan Government, the NHRC, and finally, the Ministry of Justice. The Ministry, in its refusal, explained that

³⁵¹ ‘South Korea: Cold War Relic Law Criminalizes Criticism,’ Human Rights Watch, 28 May 2015, <https://www.hrw.org/news/2015/05/28/south-korea-cold-war-relic-law-criminalizes-criticism>

³⁵² ‘Act on the Promotion of Information and Communications Network Utilization and Data Protection,’ http://www.koreanlii.or.kr/w/images/d/df/DPAAct2014_ext.pdf

³⁵³ ‘Act on Anti-Terrorism for the Protection of Citizens and Public Security,’ <http://law.go.kr/query=%EA%B5%AD%EB%AF%BC%EB%B3%B4%ED%98%B8%EC%99%80%20EA%B3%B5%EA%B3%B5%EC%95%88%EC%A0%84%EC%9D%84%20EC%9C%84%ED%95%9C%20ED%85%8C%EB%9F%AC%EB%B0%A9%EC%A7%80%EB%B2%95#liBgcolor0>

³⁵⁴ An English translation of the amended ‘Newspapers Act’ is not available; the 2010 version is available here: http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=18440&type=sogan&key=8

³⁵⁵ ‘Government pushing measures to tighten control of the internet,’ Hankyoreh, 18 September 2015, http://english.hani.co.kr/arti/english_edition/e_international/709487.html

³⁵⁶ ‘Civil Act,’ <http://www.moleg.go.kr/english/korLawEng?pstSeq=52674>

³⁵⁷ ‘Act on Collections and Use of Donations,’ http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=29674&type=part&key=10

Beyond the Rainbow's operations (rights of sexual minorities) were ostensibly too narrow compared to the Ministry's (all rights).³⁵⁸ The Act on Collections and Use of Donations places restrictions on fundraising by requiring permission for anything but the smallest of fundraising drives. The application process involves not only a collection plan, but also a plan for the expenditure of the resources. Associations organising against Government policy, such as Ganjeong Village and the Miryang Power Towers Opposition Committee, have been denied registration. The former was in fact denied registration on the explicit grounds that the association opposed some aspects of Government policy.

The Assembly and Public Demonstrations Act, 1962³⁵⁹ contains several clauses that restrict freedom of assembly in Korea. Under the law, any public assembly that is likely to undermine order is prohibited. The law also requires that event organisers notify the police in advance of the event taking place. While it is not necessary to obtain a permit, police officers can decide to cancel events as they see fit. Violating the cancellation can lead to up to two years of imprisonment or a fine of up to 2,000,000 KRW (US\$1,630). In June 2015, police did not permit the Gay Pride parade to take place in Seoul, citing concerns over public safety and traffic disruption. A Seoul court later overturned the ban.

Provisions in the Criminal Code³⁶⁰ have also been used to criminalise the activities of HRDs. In July 2015, Laegoon Park, a long-time human rights defender and steering committee member of the 4.16 Coalition on the Sewol Ferry Disaster, was officially indicted on charges of organising an 'illegal' protest; refusing to disperse (Articles 6 and 21 of the Assembly and Public Demonstration Act), invalidity of public documents and destruction of public goods (Article 141 of the Criminal Code), special obstruction of public duty (Article 144 of the Criminal Code) and general obstruction of traffic (Article 185 of the Criminal Code). Park was

detained by the Seoul Metropolitan Police for three and a half months in relation to his participation in a series of protests to commemorate Sewol victims and calling for an independent and transparent investigation into the Sewol Ferry tragedy. According to Coalition 4.16, no conclusive evidence was provided for Park's involvement in inciting violent acts during the protests. To the contrary, Coalition 4.16 has stated that Park tried to calm participants during the protests and asked them not to use any violence against authorities. Nevertheless, the Seoul Central District Court found him guilty on 22 January 2016 and sentenced him to three years' imprisonment, suspended for four years. Park appealed the sentence, but it was confirmed by the Court of Appeals in September 2016. In December 2015, another HRD, Sang-gyun Han, President of the Korean Confederation of Trade Unions (KCTU), was accused of violating the Assembly and Public Demonstration Act and Article 185 on the obstruction of traffic in relation to his participation in protests that took place in April and May 2015 to commemorate the first anniversary of the sinking of the Sewol Ferry and to call for an independent and transparent investigation into the Sewol Ferry incident. Han was summoned by the police for questioning, but he refused to appear for fear that he would be arbitrarily arrested. Police asked prosecutors to charge Han with sedition, a charge that has not been used since the Chun Doo-Hwan era. The police also announced that they would also be adding sedition to charges against some of the 27 group leaders who were being investigated, although sedition charges were never formally laid. Han was sentenced to five years in prison in July 2016 under articles 144(2), 144, 141 and 185 of the Criminal Code; the prosecutor has appealed, seeking an eight year sentence. In addition, 13 other KCTU members have been convicted to one year and six months in prison, and seven more await verdicts.³⁶¹ In December 2013, members of the South Korean Railway Workers Union began a strike against the

³⁵⁸ 'LGBT group deserves answer: The Government of South Korea should act swiftly to uphold the rights of LGBT people,' Korea JoongAng Daily, 22 April 2016, <https://www.hrw.org/news/2016/04/22/lgbt-group-deserves-answer>

³⁵⁹ 'Assembly and Demonstration Act,' http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=17771&type=part&key=11

³⁶⁰ 'Criminal Code,' <http://www.refworld.org/docid/3f49e3ed4.html>

³⁶¹ 'Case History: Sang Gyun Han,' Front Line Defenders, <https://www.frontlinedefenders.org/en/case/case-history-sang-gyun-han>

Government's plan to privatize and restructure South Korea's rail system. Two weeks after the strike began, 5,000 police officers arrived to break up the strike, and 18 protest leaders were charged under Article 314 of the Criminal Code (obstruction of business). The group was found not guilty in December 2014. Article 314 is frequently used to override the right to strike laid out in labour law, as it makes interference with business activities through the threat of force illegal. Strikes, by their very nature, are an impediment to business, which makes it easy for the corporations and the Government to deny the right to strike when they so desire.

Defamation in South Korea is criminalised under Chapter 33 of the Criminal Act (Crimes against Reputation).³⁶² Those found guilty can be imprisoned for up to two years or fined up to 5,000,000 KRW (US\$4,100). Defamation through printed materials carries a prison sentence of up to three years or a fine of up to 7,000,000 KRW (US\$5,700), and if a person knowingly uses false information, he or she can be imprisoned for up to five years or fined up to 10,000,000 KRW (US\$8,150). The burden of proving that a statement is true is placed on the defendant, not the plaintiff. The fact that a statement is true is not an absolute defense under the law. Criminalisation of defamation has a chilling effect and leads to self-censorship by HRDs in South Korea, which amounts to a considerable constraint of the space in which to exercise the fundamental right to freedom of expression - a key right to claim other rights.

Enabling laws and policies

There are no pieces of legislation or policies in place for the protection of HRDs in the South Korea and the Government has not shown any initiative towards this end.

The National Human Rights Commission of Korea (NHRCK) was established under the National Human Rights Commission Act in 2001. The NHRCK was created with the aim to ensure that inviolable, fundamental human rights of all individuals are

protected and the standards of human rights are improved. The National Human Rights Commission Act enables the NHRCK to investigate discrimination and human rights violation cases and to provide access to remedies. In recent years however, the NHRCK has failed to fulfil its mandate of protecting human rights. It has provided blanket impunity to the State's violations of human rights by ignoring them. As a result, the NHRCK has been continuously criticised by both domestic and international human rights organisations as well as the National Assembly for its abrogation of responsibility. These failures mainly resulted from the lack of independence and transparency of the NHRCK's operation, as well as the involvement of many unqualified commissioners who do not have professional experience in, knowledge of, or sensitivity to human rights. In certain cases, the so-called civil society cooperation promoted by the NHRCK has compromised the universality of human rights. On 19 March 2015, the NHRCK meeting room was used as a venue for the '2nd Human Rights Forum to Overcome Homosexuality' organised by anti-LGBTI groups. The forum was to promote conversion therapy for lesbian, gay and bisexual Koreans, regarding homosexuality as a disease not sexual orientation. Despite the NHRCK Act stating that discrimination based on sexual orientation is a violation of the right to equality, the Commission granted permission for use of its premises to propagate disrespect for human rights in the name of human rights.³⁶³

Through the Anti-Corruption and Civil Rights Commission Act, the Korea Independent Commission Against Corruption (KIAC) and its whistleblower protection system was established. Anyone can report, on an anonymous basis, any corrupt act of a public official to the KIAC. The Act also protects whistleblowers from retaliatory actions on the part of the Government.

There have been a few cases where the Constitutional Court of Korea (CCK) has made decisions which may have contributed to the promotion of the

³⁶² 'Criminal Act' https://elaw.klri.re.kr/eng_service/lawView.do?hseq=28627&lang=ENG

³⁶³ 'South Korea: Looing on when not looking away,' Korean House for International Solidarity in 2015 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, 2016, https://www.forum-asia.org/uploads/wp/2015/09/14-South-Korea-FINAL-11-Aug-2015_KUMAR.pdf

activities of and the protection of HRDs. The CCK found the Assembly and Public Demonstration Act's ban on night time demonstrations prior to midnight to be unconstitutional, as it did the ban on night assembly. The CCK also decided that instalment of bus barricades around Seoul Plaza by the chief of the National Police Agency in response to a rally against then President Lee Myung-bak's Government, which protesters accused of cutting back on democratic freedoms, was unconstitutional.

The Assistance for Non-Profit, Non-Governmental Organisation Act, established in 2000, and amended several times, aims to enshrine the voluntary activities of non-profit civil organisations and their development to Non-Governmental Organisations (NGOs). However, there are many cases of financial support to pro-Government organisations, which are mostly conservative organisations. The problem does not so much lie with the law itself, but rather with how it is implemented.

Recommendations

Numerous changes to legislation are required to ensure that HRDs may enjoy their rights fully. The National Security Law and the Anti-Terrorism Law must be immediately and unconditionally repealed, as legitimate national security and terrorist threats are more than adequately covered by other national security legislation and the Criminal Act. The Act on the Promotion of Information and Communications Network Utilization and Data Protection must be significantly amended so that defamation is no longer included in the Act. Defamation is covered elsewhere in Korea's body of laws, and, furthermore, should not be a criminal offence. The amendment to the Newspaper Act effectively banning small news agencies must be repealed. The Civil Act must be amended by scrapping provisions giving the Government the power to deny or revoke applications for legal status in any way. The Act on Collections and Use of Donations must be amended to drop restrictions on organisations' ability to fundraise. The Assembly and Public Demonstrations Act must be amended to revoke the Government's power to deny assemblies and to punish peaceful protestors. Blanket bans on protests near Government buildings are an illegitimate restriction that must be lifted. Under no

circumstances should a peaceful protestor be subject to prosecution.

The Criminal Code must also be significantly amended, as must the Courts' practices in interpreting it. Articles of the Criminal Act being used to override the right to assemble freely must be amended to include provisions forbidding their application to persons peacefully participating in assemblies. Articles 185, 144, 141 and 314 in particular must be amended in this fashion. In the meantime, the Government must abide by its obligations under the ICCPR as well as its own constitution and stop laying such charges on protestors. Chapter 33 of the Criminal Act on defamation must be scrapped in its entirety, as defamation should not be considered a criminal offence. Any civil defamation laws implemented as a replacement must be moderate and not easily abused. There should be no requirement that statements be in the public good, and the burden of proof for the truth of a statement must be on the plaintiff. South Korean legislators must pass the bill forbidding public officials from launching defamation cases that has been repeatedly tabled. Public officials should be subject to a higher level of scrutiny than other persons.

The NHRCK must be thoroughly reformed to make it more independent and effective. The institution should have complete autonomy from Government: it must have independently guaranteed funding that may not be revoked by the Government, and its members must be appointed totally independently and chosen based on their suitability in terms of commitment to and experience with human rights work. The Assistance for Non-Profit, Non-Governmental Organisation Act must be non-politically interpreted: an organisation's political stance should have no bearing on the decision to provide it with assistance.

Non-legislative restrictions on the work of HRDs such as the use of excessive force and the politicised and selective harassment and targeting of certain groups must be brought to an end. The conservative Park, Lee and Moon administrations have overseen the regression on the rights of HRDs and a constantly shrinking civil society space. In particular, the unfair treatment of LGBTI groups, opponents of large-scale development projects and Government critics must be halted.

SRI LANKA

Synopsis of the challenges of HRDs

Since the ousting of President Mahinda Rajapaksa in 2015, the situation for Human Rights Defenders (HRDs) in Sri Lanka has improved. Though incidents of repression of dissent continued to be reported, especially from the northern and eastern parts of the country, the number of incidents and their intensity was much less than in 2014 and years before.³⁶⁴ The new Government has embarked on constitutional reforms to restrict executive powers and ensure the independence of the Human Rights Commission of Sri Lanka, has completed some legislative reform and has taken steps to restore the independence of the judiciary. According to the World Justice Project's rule of law Index 2017-18, Sri Lanka has improved dramatically, moving up nine positions to 59th place out of 113 indexed countries.³⁶⁵

The Government has also taken some action on enforced disappearances, ratifying the International Convention against Enforced Disappearances and establishing an Office of Missing Persons. Even though initially, there were some significant breakthroughs and arrests in relation to the disappearance of journalist and cartoonist Prageeth Ekneligoda, there have been no indictments. Other cases are proceeding very slowly or not at all, with the Military failing to cooperate with court requests.³⁶⁶

Several important human rights issues remain unresolved and repressive institutional structures, policies and practices subsist in Sri Lanka. The harassment and intimidation of HRDs and war victims continues in the north and east of the

county alongside Military occupation of civilian land, torture and sexual abuse. People continue to be detained under the abusive Prevention of Terrorism Act (PTA): from August 2015 to August 2016, there were at least 36 arrests under the PTA. Some people who have disappeared remain unaccounted for. With the exception of the disappearance of Prageeth Ekneligoda, there has been no progress in investigations, prosecutions and convictions for most cases of repression of attacks or killings of HRDs.

The Government has not made any meaningful progress on the reform of national security legislation, and has signaled its intention to continue abusing legislation repressing the press. The State media remains a Government mouthpiece, and journalists have been targeted by Government statements 'reminding' them that they are bound to create a 'positive attitude.'³⁶⁷ New regulations were introduced in March 2016 forcing all websites to register with the Ministry of Parliamentary Reforms and Mass Media, and criminalizing unregistered websites.³⁶⁸

Surveillance of public and private events is still happening regularly, particularly in the north and the east of the country, although it has lessened. In September 2015, the organisers of a signature campaign calling for an international accountability mechanism to deal with mass atrocities committed during the final stages of Sri Lanka's armed conflict reported that the demonstrations had been filmed by Sri Lanka's Police Media Unit. They also reported that the police attempted to stop a signature campaign.³⁶⁹ Further, on 6 March 2018, Sri Lankan President, Maithripala Sirisena announced a nationwide state of emergency, after targeted violence towards the

³⁶⁴ 'Human Rights Situation in Sri Lanka: August 17, 2015-August 17, 2016,' Inform Human Rights Documentation Centre, 2016, <https://www.forum-asia.org/uploads/wp/2016/08/Human-Rights-in-SL-one-year-after-parliamentary-elections-INFORM-18Aug2016.pdf>

³⁶⁵ <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018>

³⁶⁶ Ibid.

³⁶⁷ 'Media duty bound to cultivate positive attitude among people: President (press release),' Ministry of Finance & Mass Media, 23 November 2016, <http://www.media.gov.lk/news-archives/689-media-duty-bound-to-cultivate-positive-attitude-among-people-president>

³⁶⁸ 'Register news websites under Mass Media Ministry,' News.lk (The Official Government News Portal of Sri Lanka), March 2016, <http://www.news.lk/news/business/item/12445-register-news-websites-under-mass-media-ministry>

³⁶⁹ 'Repression of Dissent in Sri Lanka: July –September 2015,' Inform Human Rights Documentation Centre, <https://ihrdc.files.wordpress.com/2015/10/repression-of-dissent-in-sri-lanka-by-inform-july-sept-2015-english-24oct2015.pdf>

Muslim community had erupted in some villages and towns in the Kandy district.³⁷⁰ The emergency regulations was declared in a context where the Police and its Special Task Force (STF) had failed to enforce existing laws, including to stop mob violence during curfew hours. The Government also blocked and restricted access and use of some social media platforms for around a week, restricting the right to information and freedom of expression and opinion.

Repressive laws and policies

Since coming to power in January 2015, the Sirisena administration has taken a hard line with media outlets not aligned with the administration. The Press Council Law, 1973³⁷¹ establishes a Press Council that exerts regulatory control over the media and has judicial powers to investigate complaints and impose penalties. Up to two years' imprisonment can be handed down to anyone who discloses fiscal, military, economic, or security information, cabinet decisions, or matters affecting national security. The Press Council had been dissolved in early 2015 after President Sirisena's election but in July 2015, he made the highly controversial decision to reactivate it, without consulting any stakeholders.

Despite the fact that the country has not been under a state of emergency since August 2012, the authorities command many extraordinary powers through the Prevention of Terrorism Act, 1979 (PTA).³⁷² As is the case with many so-called counter-terrorism laws, the PTA contains extremely broad provisions such as the criminalization of undefined 'unlawful activities,' and has been used to restrict and criminalise speech and assembly. Under the Act, anyone who publishes information that may cause religious, racial, or communal disharmony can be imprisoned for up to five years. The Government continues to selectively use the law in the north and

east of the country to prosecute those speaking out on certain progressive issues, including HRDs. The PTA allows arrests for 'unlawful activities' without a warrant and permits detention for 18 months without laying charges or bringing the suspect before a court. Furthermore, the PTA prohibits proceedings against officials who act in 'good faith' or who act on orders given under the PTA, resulting in impunity for wrongful acts, including torture. On 13 March 2014, prominent campaigner against enforced disappearances Balendran Jeyakumari and her 13-year-old daughter were taken into custody, and Jeyakumari was subsequently detained under the PTA. Three days later, two well-known HRDs - Ruki Fernando, a former FORUM-ASIA staff member; and Father Mahesan, a priest- were arbitrarily detained under the PTA when attempting to ascertain the circumstances of Jeyakumari's detention. They were released on 19 March under the condition that they could not leave the country. After 362 days in detention, Balendran Jeyakumari was released in March 2015, only to be re-arrested for six days in September 2015, and summoned to the Terrorism Investigation Division in August 2016. Over 200 people are still held under the Act, with only roughly 50 of them charged with any offence.³⁷³

The draft Counter Terrorism Act (CTA)³⁷⁴ is being drafted to replace the PTA when the latter is repealed. However, the most important issues with the PTA remain unaddressed in the CTA. The CTA covers a very wide range of acts with definitions broad enough to leave room for substantial abuse. 'Terrorism' is so broadly defined that it includes any act 'unlawfully compelling the Government to reverse, vary, or change a policy decision.' Acts also covered under the law include statements that may 'harm the unity, territorial integrity or sovereignty of Sri Lanka.' The law provides for

³⁷⁰ <https://www.reuters.com/article/us-sri-lanka-clashes/sri-lanka-declares-state-of-emergency-after-buddhist-muslim-clash-idUSKCN1GI0WG>

³⁷¹ 'Press Council Law,' http://www.commonlii.org/lk/legis/num_act/slpcl5o1973298/

³⁷² 'Prevention of Terrorism Act,' http://www.commonlii.org/lk/legis/num_act/potpa48o1979608/

³⁷³ 'Human Rights Situation in Sri Lanka: August 17, 2015-August 17, 2016,' Inform Human Rights Documentation Centre, 2016, <https://www.forum-asia.org/uploads/wp/2016/08/Human-Rights-in-SL-one-year-after-parliamentary-elections-INFORM-18Aug2016.pdf>

³⁷⁴ 'Counter Terrorism Act (draft),' <https://www.scribd.com/document/327735161/Proposed-Counter-Terrorism-Act-of-Sri-Lanka>

the denial of access to legal counsel in the first 48 hours of arrest. Punishments remain draconian and disproportionate, ranging up to the death penalty. As of early 2018, the Government is still dragging its feet on repealing the PTA and replacing it with a 'rights-respecting counterterrorism legislation' that goes beyond the CTA.³⁷⁵

The Official Secrets Act, 1955,³⁷⁶ modelled on the British Colonial act of the same name, bans reporting on classified information. Individuals convicted under the Act can be imprisoned for up to 14 years. As with similar legislation elsewhere, the main issue with the Act is the broad definition of what constitutes an official secret: any information related to the armed forces or the defences of Sri Lanka, or that could be used 'for any purpose prejudicial to the safety or interests of the State.' To be guilty of an offence under the Act, one need only obtain or communicate this information to another person: sharing it publicly is not required for prosecution.

Despite the fact that Sri Lanka does not have strict legal barriers to assembly, the Sirisena administration has failed to reform, and indeed has made active use of, what laws there are to restrict peaceful assembly. Spontaneous assemblies are legal, and no permit or prior notification is required in order to hold an assembly legally, but peaceful assemblies can be criminalized in certain ways. Under Article 138 of the Penal Code,³⁷⁷ an assembly of five or more persons may be deemed to be unlawful on broad grounds, which include depriving a person of the right of way or use of water, of compelling a person to do something illegal by show of criminal force, committing mischief, or overawing any public officer by show of force. The police need not get permission from the courts in order to shut down a protest, opening the door to broad and partial application of the law: under Article 95 of the Criminal Procedure Code³⁷⁸ and Article 77(3) of the Police Ordinance,³⁷⁹ any unlawful assembly can be dispersed on the orders

of a police officer. Under Articles 98(1) and 106 of the Criminal Procedure Code, a magistrate can order any obstruction of a public place to be prevented or removed if it causes, or is likely to cause, a 'nuisance.'

Criminal offences related to unlawful assemblies, contained in Chapter 8 of the Penal Code, are disproportionate, overly broad, and leave open the possibility of charging someone who is peacefully protesting with a criminal offence. Under Article 140, any member of an unlawful assembly can be imprisoned for up to six months. Under Article 142, if someone joins an unlawful assembly that has been commanded to disperse, he or she can be imprisoned for up to two years. Under Article 143, if force or violence is used by any member of an unlawful assembly, every participant is guilty of rioting, which carries a penalty of up to two years. Similarly, under Article 146, if any one member of an unlawful assembly commits a criminal offense, all of the members of the assembly can be held liable for that offense. Under Article 149, anyone who obstructs a public official from attempting to disperse an unlawful assembly can be imprisoned for up to three years.

The Sirisena administration has consistently prevented and dissolved peaceful assemblies using excessive force, including tear gas and water cannons. In December 2016, the navy fired warning shots at dock workers demonstrating against a controversial Chinese project to build a port city. In May 2015, a peaceful protest -by environmentalists as well as Christian and Buddhist leaders- against the same project was disbanded by force, and several activists, including nuns, were charged with unlawful assembly. In November 2016, police used tear gas and water cannons to disperse a peaceful protest by disabled soldiers asking for a pension as well as civil society groups who support their cause. In May 2016, the Mullaitivu Magistrate Court banned any protests in the district for two weeks.

³⁷⁵ 'Locked Up Without Evidence: Abuses under Sri Lanka's Prevention of Terrorism Act,' Human Rights Watch, 29 January 2018, <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act>

³⁷⁶ 'Official Secrets Act,' http://www.commonlii.org/lk/legis/consol_act/os50199.pdf

³⁷⁷ 'Penal Code,' http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf

³⁷⁸ 'Civil Procedure Code,' <http://www.wipo.int/edocs/lexdocs/laws/en/lk/lk008en.pdf>

³⁷⁹ 'Police Ordinance,' http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Police_Ordinance.pdf

Under the Voluntary Social Services Organisations Act³⁸⁰ certain Non-Governmental Organisations (NGOs) in Sri Lanka are required to register with the Registrar for Voluntary Social Services. The Act requires all organisations that receive Government grants or require visas for expatriate staff to register under this Act. In 1999, a Presidential Circular was issued, calling all NGOs to re-register with the National NGO Secretariat, and asking them to declare their sources of funding, annual expenditure and annual budgets. In order to re-register, NGOs had to get clearance from the Ministries of Defence, Foreign Affairs and Plan Implementation. NGOs conducting activities in one district or at divisional levels also have to register with the applicable District or Divisional Secretary. In 2010, the NGO Secretariat was controversially re-assigned to the Ministry of Defence despite protest by civil society actors, although it was shifted again in 2015, this time to the Ministry of National Dialogue.³⁸¹ There are concerns that the newly established NGO Secretariat plans to co-opt the work of NGOs: worryingly, one of the Secretariat's official objectives is to 'make sure that NGOs act within the national policy framework of the country.' Ironically, the Right to Information Act, 2016³⁸² also opens the door to harassment of NGOs, as it includes NGOs that receive Government or foreign funding under the definition of 'public authorities' from whom information may be requested. As public authorities are required under the Act to respond to requests for information, persons wishing to obstruct the activities of an NGO may submit it to a barrage of information requests.

Enabling laws and policies

Article 14 of the Constitution of Sri Lanka³⁸³ guarantees fundamental freedoms such as the

rights to freedom of expression, movement, assembly, and association, including the right to form trade unions.

Sri Lanka has had a National Human Rights Commission since 1996. The Human Rights Commission of Sri Lanka (HRCSL) was established under Act No. 21 of the Human Rights Commission of Sri Lanka.³⁸⁴ The HRCSL is vested with a broad mandate to promote human rights, to inquire into and investigate complaints of violations or imminent violations of fundamental rights and provide relief through conciliation and mediation, to advise and assist the Government in formulating legislation, to make recommendations to the Government to ensure that laws and administrative practices are in accordance with international standards and on the need to subscribe or accede to international instruments. The HRCSL can also conduct its own investigations into infringements of human rights, although this power has been exercised only on very rare occasions. The Commission has appointed a Director of Inquiries and Investigation as the focal point on HRDs. After years of stagnation, a significant improvement to the HRCSL was made in 2016 with the 19th Amendment to the Constitution that provided for an independent appointment process for Commissioners. In October 2015, independent and well-regarded appointments were made to the HRCSL. In July 2015, the HRCSL released the Guidelines on Protecting Human Rights Defenders³⁸⁵ for the Government, which were formulated with the consultation of CSOs. In November 2015, the HRCSL issued a set of guidelines to be followed by the armed forces and police when making arrests under the PTA. However, the current Commissioners have emphasized legislation rather than response to individual cases: there is no rapid

³⁸⁰ 'Voluntary Social Services Organisations(Registration And Supervision) Act,' http://www.commonlii.org/lk/legis/num_act/vssoasa31o1980803/

³⁸¹ 'Human Rights Situation in Sri Lanka: August 17, 2015-August 17, 2016,' Inform Human Rights Documentation Centre, 2016, <https://www.forum-asia.org/uploads/wp/2016/08/Human-Rights-in-SL-one-year-after-parliamentary-elections-INFORM-18Aug2016.pdf>

³⁸² 'Right to Information Act,' http://www.media.gov.lk/images/pdf_word/2016/12-2016_E.pdf

³⁸³ 'The Constitution of the Democratic Socialist Republic of Sri Lanka,' <http://www.parliament.lk/files/pdf/constitution.pdf>

³⁸⁴ Act No. 21 of the Human Rights Commission of Sri Lanka,' <http://www.hrsl.lk/PFF/HRC%20Act.pdf>

³⁸⁵ 'Guideline for Protecting Human Rights Defenders,' Human Rights Commission of Sri Lanka, July 2015, <http://hrsl.lk/english/wp-content/uploads/2015/07/HRD-English.pdf>

response mechanism to deal with emergency situations.³⁸⁶ Sri Lanka remains on the 'Outstanding visits requested by the Special Rapporteur on the situation of human rights defenders' list.³⁸⁷

Under the current Government, the NGO Secretariat is now under the Ministry of National Dialogue instead of the Ministry of Defence.³⁸⁸ The Prime Minister has appointed a four member civil society advisory committee to advise the Government on necessary changes to make sure freedom of expression and association is guaranteed in the execution of the duties of the NGO Secretariat in regulating and coordinating with NGOs.

In August 2016, the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, 2016³⁸⁹ was signed into law, thereby establishing the Office of Missing Persons. The Act grants families the right to information about disappeared relatives, protects witnesses by protecting their anonymity, and gives the Office the power to summon people, request documents, visit places to collect evidence and seek warrants to exhume bodies. However, a significant drawback of the Bill is that the families of the disappeared and civil society have no role or say in the Office, and the Act was drafted in secret without any stakeholder consultation.

In June 2016, the Right to Information Act, 2016³⁹⁰ was passed into law. The Act provides the right to information (RTI) to the public, guaranteeing that the public will be able to gain access to information from the Government. The Act provides for the creation of a RTI Commission to oversee the release of information, on which civil society and the media are guaranteed seats. However, one crucial problem with the Act, as noted above, is that NGOs receiving foreign funding or funding from the Government are included under the definition of 'public authority,' meaning that they are required

to respond to requests for information in the same way as Government is, opening the door to potential harassment. The Act also does not lay out penalties for delayed provision of information, and there is no protection provided for whistleblowers who provide information of their own initiative, rather than in response to a request. Some steps have begun to be taken on this front with the drafting of a separate Whistleblowers Protection Act, but the Act remains at the draft stage.

Recommendations

The Press Council Law should be abolished and the regulation of the media should be left to media professionals themselves. Political branches of Government should not have the power to impose penalties on media outlets: this should be within the purview of the courts. The registration of media outlets should be governed by an apolitical body outside the Government's control.

The Government of Sri Lanka should take immediate steps, in line with its 2015 pledge at the Human Rights Council, to repeal the PTA and release or charge those held under it. The President's order that security forces respect the directives issued by the HRCSL is a positive step, but as long as the Act is in place, freedom of expression is restricted. The draft CTA must be significantly amended, most importantly by narrowing the acts covered under the Act to terrorist offences as defined by international standards. The definition of terrorism must be narrowed accordingly, and no other offences must be listed under the Act. Access to legal counsel must be provided to a suspect at any time, and penalties must be made proportionate to the crimes. The Official Secrets Act must be repealed; although the current administration has not used it, the Act, like the PTA, still holds the potential to be abused as long as it is in effect.

³⁸⁶ 'Sri Lanka: New Faces, New Challenges,' Law & Society Trust in ANNI Report 2016, <https://www.forum-asia.org/uploads/wp/2016/11/8.-Sri-Lanka-Final.pdf>

³⁸⁷ 'Special Rapporteur on the situation of human rights defenders - Country visits,' <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CountryVisits.aspx>

³⁸⁸ 'About Us,' National Secretariat for Non-Governmental Organisations, http://www.ngosecretariat.gov.lk/web/index.php?option=com_content&view=article&id=46&Itemid=27&lang=en

³⁸⁹ 'Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act,' http://imadr.org/wordpress/wp-content/uploads/2016/09/Sri-Lanka_OMP-Act-No.-14_2016.pdf

³⁹⁰ 'Right to Information Act,' http://www.media.gov.lk/images/pdf_word/2016/12-2016_E.pdf

The Penal Code, the Criminal Procedure Code and the Police Ordinance must be amended to ensure that under no circumstances may a peaceful assembly be prevented or disbanded, or a person charged for participating in one. The definition of an unlawful assembly under Article 138 must be narrowed to ensure that only the use of significant violence that has not been instigated by police and that involves a large proportion of protestors may warrant the declaration of an assembly unlawful. Articles 143 and 146, which make protestors responsible for offences they themselves did not commit, must be repealed, and the punishments for all offences in the chapter must be lessened to be more proportionate. Articles 95, 98(1) and 106 must be amended to preclude the possibility of an assembly being disallowed before it has started, and Articles 95 and 98(1), as well as Article 77(3) of the Police Ordinance must also be amended to remove the police's power to declare a protest unlawful without receiving court order.

The mandate of the NGO Secretariat must be changed to remove any reference to guiding the nature of NGOs' work. The work undertaken by NGOs should be determined by them and free of any interference from the Government. The Voluntary Social Services Organisations Act must be amended to remove any requirement for registration.

The HRCSL must be provided with adequate funding, resources and power to more effectively address individual cases of violations. Effective hotlines capable of handling a high volume of cases must be operationalized, and rapid response mechanisms with power adequate to the task of intervening and holding security forces and the police to account must be established. A special unit on HRDs must be established to deal with violations against them. The HRCSL's powers and jurisdiction must be expanded to allow it to hold persons not complying with its orders in contempt and to allow it to deal with economic, cultural and social rights.

The Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act must be submitted to civil society and the families of the disappeared for comment, and appropriately amended. The Office should be invested with prosecutorial power to allow it to effectively investigate and bring perpetrators to justice.

The Right to Information Act must be amended to remove NGOs from the definition of 'public authority.' Furthermore, the whistleblowers clause must be expanded to also cover those who leak information of their own volition, without the prompting of a request.

TAIWAN

Synopsis of the challenges of HRDs

In March 2009, Taiwan ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Although Taiwan has not been a member State of the United Nations (UN) since 1971, this ratification means that the contents of the Covenants are legally-binding.³⁹¹ Without access to the UN review process, an implementation act provided for a review of all laws, regulations, ordinances and administrative measures to ensure they were aligned with the Covenants within two years.³⁹² While Taiwan has taken further steps to implement international human rights standards, human rights concerns remain, notably the guarantee of the right to freedom of peaceful assembly and housing and land rights, and human rights violations such as the death penalty, torture and other ill treatment and gender discrimination.

There were high hopes that the election of a Democratic Progressive Party (DPP) administration would significantly improve the human rights situation as the result of Taiwan elections in 2016, unfortunately until recent days, it has still not taken any significant steps on human rights. Although it has release a statement of intention to establish a National Human Rights Commission (NHRC) and amend rights-infringing legislation, the President still has not instructed relevant ministries to draft legislation for repealing the repressive Assembly and Parade Act, Social Order Maintenance Act and Civil Associations Act. Furthermore, the proposed reforms to this legislation have been inadequate.

Public assemblies and protests are generally allowed in Taiwan. However, police can exert tight control, and many restrictions regulate the ability to protest in the

country. Multiple activists have been charged under the Social Order Maintenance Act for attempting to bring attention to domestic issues. Peaceful protests against the Government's plans to start a fourth nuclear power plan, eviction in light of development projects, closer trade ties with the Government of Mainland China, changes to high school textbooks, and labour rights abuses have been violently dispersed.

The DPP administration has continued the Kuomintang of China's (KMT), hard line approach to labour activists, arresting dozens in its first few months in power. In December 2016, 21 labour rights activists were arrested and charged for peacefully exercising their right to protest. The DPP continues to collude with corporations in the abuse of workers' rights: Korean activists and workers fired by a Taiwanese-owned company continue to be refused entry to the country to prevent them from drawing attention to the violation of their rights.

Student activists continue to face criminal proceedings in connection with the 2014 Sunflower movement against a trade deal with China. Although the DPP has ordered charges to be dropped against over 100 protesters, some 20 persons continued to be prosecuted. Lawsuits against the police for the use of excessive force are proceeding extremely slowly as the Government drags its feet and the police are actively uncooperative.³⁹³ In July 2015, 30 students were arrested for protesting against pro-China changes to high school textbooks at the Ministry of Education. Three journalists who were merely covering the protests were also arrested.³⁹⁴

Critical voices in the press continue to be vulnerable to attack for expressing opinions on politicians' exercise of power. Draconian defamation laws comparable in scope and severity to those found in countries such as Pakistan and Malaysia are used to silence investigative journalists and others who seek

³⁹¹ "A breakthrough in human rights," Taipei Times, 8 April 2009, <http://www.taipetitimes.com/News/editorials/archives/2009/04/08/2003440494>

³⁹² "Taiwan: Initial State Report on ICCPR & ICESCR," fidh, 25 April 2012, <https://www.fidh.org/en/region/asia/taiwan/Taiwan-Initial-State-Report-on>

³⁹³ "Sunflowers file claims for compensation from police," Taipei times, 24 March 2016, <http://www.taipetitimes.com/News/taiwan/archives/2016/03/24/2003642317>

³⁹⁴ "Taiwanese Students Occupy Education Ministry Over Textbook Controversy," The Diplomat, 24 July 2015, <http://thediplomat.com/2015/07/taiwanese-students-occupy-education-ministry-over-textbook-controversy/>

to expose Government malfeasance. Restrictive press laws which give the Government power to withhold registration and influence content remain in place.

In April 2014, anti-nuclear activists marched to Taipei Railway Station, and occupied the major artery of traffic. Despite the Government's commitment, made under public pressure, that the Nuclear Plant would be "sealed for safekeeping," the next morning the police used disproportionate force in brutally dispersing the masses who were exercising their freedom of peaceful assembly.³⁹⁵

Repressive laws and policies

The Civil Associations Act (CAA)³⁹⁶ contains several provisions that limit the scope and scale of associations. General overregulation has caused problems for those in associations, as well as those wishing to start them. Under the CAA, those wishing to start an organisation must ask the Ministry of Interior (MOI) for permission to establish an association. The paperwork is cumbersome and takes a long time to process. The authorities have been known to abuse this process to create more bureaucratic red tape for dissident organisations. The Act also involves the Government in the management and administration of NGOs, dictating particular structural requirements. The new DPP Government has pledged to reform the Act to simplify the registration process and diminish the MOI's power to reject applications. The proposed changes would also remove structural requirements, allowing NGOs to decide how to structure themselves.³⁹⁷

Article 310 of the Criminal Code³⁹⁸ criminalises defamation. It states that any person who disseminates information that may harm someone else's reputation can be imprisoned for up to a year or fined up to 500 Yuan (US\$75). A person who does this in writing can

be sent to prison for up to two years or fined up to 1,000 Yuan (US\$150). Article 309 states that a person who publicly insults another can be imprisoned or fined up to 300 Yuan (US\$50). These laws are particularly problematic because the truth is not an absolute defence, and the burden of proof is placed on the defendant. Under Article 310 it is incumbent upon the defendant to prove that the statement they made was true, and even if it is proved to be true, it must be proven that the information disclosed was of "public interest." In 2013, an environmental scientist whose research suggested that elevated cancer rates in central Taiwan were caused by emissions from a conglomerate's chemical plants was accused of defamation by the conglomerate. The courts dismissed the case, but even when such cases are dropped, the silencing effect of intimidation remains. Under Article 140 any person who insults a public official while he or she is discharging his or her duties can be imprisoned for up to six months or be fined 100 Yuan (US\$15), which is a heavier penalty than that carried by the offence of insulting other persons under Article 309. Under Article 153 any person who expresses, either by writing or by speech, incitement to others to commit an offence or to disobey legal order, can be imprisoned for up to two years.

The Social Order Maintenance Act, 2011 (SOMA)³⁹⁹ further criminalises certain types of speech. The Act stipulates that those who spread rumours that could undermine peace or public order can face up to three days' imprisonment or be fined up to 30,000 new Taiwanese dollars (US\$900). Anyone who uses "inappropriate language" against Government officials can be detained for up to three days or fined up to 12,000 new Taiwanese dollars (US\$370). The Act has also been used to restrict freedom of assembly. Individuals who make "noise or [trouble]" in public places can be fined up to

³⁹⁵ "Taiwan: Betting on the 2016 general election," ANNI Report 2015, <https://www.forum-asia.org/uploads/wp/2015/09/15-Taiwan-FINAL-20-July-2015.pdf>

³⁹⁶ "Civil Associations Act" http://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=66

³⁹⁷ MOI to simplify regulations on NGOs, Taipei Times, <http://www.taipeitimes.com/News/taiwan/archives/2016/05/26/2003647155>

³⁹⁸ "Criminal Code of the Republic of China" (Chinese / English version) <https://docs.google.com/file/d/0B3trLdAfiNMfTjZLRXZLS254UWc/edit>

³⁹⁹ "Social Order Maintenance Act" http://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=267

6,000 new Taiwanese dollars (US\$185). Individuals who “harass” local residents in public places can be imprisoned for up to three days or fined up to 12,000 new Taiwanese dollars (US\$370). Individuals who gather at a public place and refuse to leave after being ordered to disperse can be imprisoned for up to three days or fined up to 18,000 new Taiwanese dollars (US\$555). Individuals who gather and “make noises” that interfere with Government duties can be imprisoned for up to three days or fined up to 12,000 new Taiwanese dollars (US\$370).

Multiple activists have been charged under the Social Order Maintenance Act for attempting to bring attention to domestic issues. In December 2016, at least 21 labour rights activists were arrested and charged under SOMA for alleged acts of ‘violence’ near the DPP MP Ker Chien-ming. The ‘violent’ acts in question include throwing a water bottle. In June 2015, eight South Korean nationals who had travelled to Taiwan to protest the shutting of a Taiwanese-owned Hydis Technologies plant in Korea were arrested and deported for having allegedly violated the SOMA. Continuing attempts by numerous former Hydis employees to enter Taiwan, including one in December 2016, have been blocked by the Government, which has maintained the blacklist on numerous Hydis employees. Numerous peaceful protests on this issue have been forcibly dispersed by the police: for instance, a protest against the arrest of the eight workers in June 2015 was violently dispersed, injuring several participants. In November 2013, student Sun Chih-Yu threw a slipper at Taiwanese Premier Jiang Yi-huah to draw attention to a labour dispute. The student was indicted under the SOMA and charged 5,000 new Taiwanese dollars (US\$150). In June 2015, “Yu” was fined 30,000 new Taiwanese dollars (US\$900) after being found guilty under the SOMA of causing nuisance by spreading public rumours. He had been spreading information about the DPP's relationship with the manager of a water park after an explosion occurred at the water park.

Unions in Taiwan are obliged to register with the Ministry of Labour, which has the power to reject

applications or to dissolve unions which have violated their constitutions or broken the law. No striking is permitted on fundamental issues such as collective agreements, labour contracts and regulations, which must be handled in the courts. Trade unions, particularly those with migrant workers as members, face significant difficulties in Taiwan with holding strikes for better working conditions. As mentioned above, dozens of members of Korean trade unions have been arrested under SOMA for participating in peaceful protests in connection to the closing of the Hydis plant in Korea.

The Assembly and Parade Act, 2006⁴⁰⁰ places stringent restrictions on protesters by requiring them to apply for police permission six days prior to a planned public assembly, and to inform police about the objective and scope of the planned action. Police can retroactively take back this permission at their own discretion. In addition, the Act gives police officers the right to forcefully disperse gatherings and invoke criminal penalties on protest leaders who refuse to disperse. The Act stipulates several places where public assemblies are not permitted to take place, such as Military facilities, ports, and embassies. Only citizens over the age of 20 are permitted to lead public assemblies. Police have also reportedly denied journalists and media outlets access to protest for fear of being taped doing something illegal or incriminating. The Taipei City Police Department has recently enforced a new policy that requires reporters to remain in designated areas during protests. In 2016 the DPP put an amendment to the Act on the legislative agenda, but its passage appears to have stalled. The amendment would remove provisions requiring protest organisers to apply for permission: under the amended law, they would not even be required to submit notification. However, the restricted zones and the police's ability to forcibly disperse protests would remain.

The Constitutional Court also ruled that the Assembly and Parade Act violated the Constitution with regard to the need for approval for urgent and incidental assemblies and demonstrations. Therefore,

⁴⁰⁰ “Assembly and Parade Act” <http://glrs.moi.gov.tw/EngLawContent.aspx?Type=E&id=271>

the police have chosen to turn to laws with graver consequences, such as Article 304 (offenses against public safety) or Article 135 (obstructing official duties) of the Criminal Code.⁴⁰¹ They use these laws to trivialize the act of peaceful assembly and cast it as a conflict between individual protestors and the police. Protesters and organisations are forced to spend scarce resources on the litigation process to establish their innocence. Social activists who exercise the right to freedom of speech and assembly continue to be convicted and sent to jail. In 2013, activist Wang Chung-ming was sentenced to two separate three month prison sentences for obstructing official duties in connection with his participation in demonstrations against the demolition of a Military veterans' community and against the removal of trees for a public construction project.⁴⁰²

Enabling laws and policies

Taiwan does not have an HRD protection law, and there has been no Government discussion of drafting one. Freedom of expression, assembly, and association are protected under Article 35 of the Constitution.⁴⁰³ While the people of Taiwan do enjoy general freedom of expression, the right is increasingly being eroded in several ways. Taiwanese media faces concentration issues due to mergers and acquisitions by pro-Chinese groups and businesses. Furthermore, the 2013 internet policy reform sparks fear of censorship and will affect freedom of expression, assembly and association in the digital platform.

There are several agencies with the function of human rights protection in Taiwan. For example, the Control Yuan has a Human Rights Group; several task-force-based committees are found in the Presidential Office Human Rights Consultative Committee, the Human Rights Protection and Promotion Committee under the Executive Yuan,

the Department of Gender Equality under Executive Yuan, and Human Rights Working Groups organised by every ministry as well as Gender Equality Committees established by every level of central authority. The Control Yuan has the power to investigate complaints, review Government agencies' respect for international human rights standards, audit Government agencies, suggest human rights legislation, engage with human rights groups and promote human rights education. Nonetheless, although casting itself as a national human rights institution, the Control Yuan, which aims at examining illegal behaviour and dereliction of duties among Government officers and public servants, is usually silent on significant events of human rights infringement. From 2012 to 2015, the Control Yuan received 53,785 complaints involving human rights, but only investigated 836 of them (1.5%).⁴⁰⁴

In addition, committees scattered within the hierarchies of Government institutions lack their own independent budgets and human resources. The civil members in these committees are often the 'friendly' professionals or scholars designated by potentates. Without a credible selection mechanism, and with infrequent (typically once every six months) meetings, the mission-based committees are not equipped to respond to crucial human rights events. Likewise, specific issues of focus selected by committee members are deficient in scope as well as strategic thinking and planning. In this regard, the agenda of committees have degraded into particular topics that are of concern to these individual professionals and scholars. Apparently, there is no pro-active planning or inter-departmental coordination and collaboration. Because the aforementioned mechanisms fall short of human rights protection, there is a need for Taiwan to establish an independent national human rights institution (NHRI) that is in accordance with the

⁴⁰¹ "Criminal Code of the Republic of China" (English version) <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/80254/112858/F-1444561515/CHN80254%20Eng.pdf>

⁴⁰² "Protecting the right to protest," Taipei Times, 27 January 2016, <http://www.taipetitimes.com/News/feat/archives/2016/01/27/2003638149>

⁴⁰³ "Taiwan (Republic of China)'s Constitution of 1947 with Amendments through 2005" https://www.constituteproject.org/constitution/Taiwan_2005.pdf?lang=en

⁴⁰⁴ "State Reports on ICCPR and ICESCR," The Presidential Office Human Rights Consultative Committee, Office of the President of the Republic of China (Taiwan), <https://english.president.gov.tw/Page/228>

Paris Principles.⁴⁰⁵ A major step forward was taken in July 2016, when, after decades of tireless civil society drafting and advocacy, the Presidential Office Human Rights Consultative Committee unanimously agreed to recommend the creation of a NHRI compatible with the Paris Principles as soon as possible.⁴⁰⁶

In 2000, the Legislative Yuan passed the Witness Protection Act⁴⁰⁷ which offers protection for witnesses who testify in criminal cases concerning areas such as money laundering, election fraud or bribery by public officials. The Law also requires the identity of the witness to be kept anonymous. The Anti-Corruption Informant Rewards and Protection Regulation⁴⁰⁸ provides protection for whistleblowers, confidentiality in reporting acts of corruption, and compensation for the whistleblower.

Recommendations

In light with the upcoming local and general elections, the elected government must move forward with its plans to amend the Civil Associations Act. Registration should not be obligatory, should be a simple and easy process, and the absence of registration must not be a criminal offence. The Ministry of Interior should not have the power to dissolve an organisation unless it has committed a criminal offence. All aspects of an NGO's structure and management should be free from Government regulation.

Taiwan must repeal Chapter 27 of the Criminal Code, as well as Article 140 and 153. Defamation is not a criminal offence by international standards, and Taiwan's laws should be brought in line with these. Any civil defamation laws that replace them should ensure that the burden of proof is upon the plaintiff, that there is no requirement that the information disclosed be in the "public interest," that the punishments are proportionate, that there is a well-defined and adequate severity threshold, and that they do not accord special protection to public officials.

The SOMA must also be amended to remove provisions criminalizing the use of inappropriate language against Government officials and the spreading of rumours that could be classified in the broad categories of undermining peace or public order. Provisions criminalizing making noise, harassing local residents, refusing to leave public places, or interfering with Government duties must also be removed. Most of the acts that fall under these definitions are not criminal by international standards, and those that are in fact criminal are more than adequately covered in the Criminal Code.

The Assembly and Parade Act must be repealed in its entirety and replaced with legislation that guarantees all persons the right to assemble peacefully without any restrictions. The DPP must go further than it has proposed to and ensure that no zones be restricted and that the police not have the ability to disperse any peaceful protest by force.

The Ministry of Labour should not have the power to reject an application for the establishment of a union, and should have the power to shut a union only when serious criminal malfeasance has occurred. All workers must be permitted to strike on any issue.

Immediate steps must be taken towards the establishment of a NHRI in line with the Paris Principles. As the Presidential Office Human Rights Consultative Committee has already agreed that an NHRI must be established, the President must instruct the Department of Justice to formulate a draft in conjunction with civil society, to be presented to the legislature and considered alongside the existing drafts being put forward by two separate legislators. Crucial powers that the NHRI must have which are currently lacking are the mandate to effectively receive and investigate, or investigate of its own volition, human rights violations with full prosecutorial powers. The institution must have a department dedicated to the protection of HRDs and the promotion of their rights.

⁴⁰⁵ "Taiwan: Betting on the 2016 general election," ANNI Report 2015, <https://www.forum-asia.org/uploads/wp/2015/09/15-Taiwan-FINAL-20-July-2015.pdf>

⁴⁰⁶ "Taiwan: An NHRI on the horizon," Covenants Watch and Taiwan Association for Human Rights in ANNI Report 2016, <https://www.forum-asia.org/uploads/wp/2016/11/12.-Taiwan-Final.pdf>

⁴⁰⁷ "Witness Protection Act" <http://db.lawbank.com.tw/Eng/FLAW/FLAWDAT01.asp?lsid=FL000851>

⁴⁰⁸ "The Anti-Corruption Informant Rewards and Protection Regulation" <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=I0070003>

THAILAND

Synopsis of the challenges of HRDs

Human Rights Defenders (HRDs) in Thailand have been facing increased risks since the Military junta took power in May 2014. Severe restrictions on the rights to freedom of expression and assembly have been put in place; resulting in human rights activists, Non-governmental organisation (NGO) workers, journalists and others who have expressed dissent being intimidated and criminalised.

There are several specific groups of HRDs who are most at risk; including those advocating for civil and political rights such as pro-democracy activists, who have been subject to a drastically increased number of human rights violations since the 2014 coup. Other specific groups of 'at risk' HRDs include those working on migrant issues; on economic, social, and cultural rights (ESCRs); and on peace and conflict issues in the militarised zones of the three southernmost provinces in Thailand. Economic, social, and cultural rights defenders are most vulnerable when working in remote areas, and often have very limited access to the national and international NGOs in the capital. Between 2003 and 2012, the National Human Rights Commission of Thailand documented 35 cases of extrajudicial killings of HRDs. Approximately 30 of those killed were HRDs working on economic, social, and cultural rights.⁴⁰⁹ The situation is even more critical in Southern Thailand, where violations against human rights organisations take place in a context of widespread impunity for the perpetrators -who are often Government or Military officials. Martial law remains in place in parts of the Southern border provinces. The emergency decree introduced in 2005 allows for persons to be held for 30 days

without charge. HRDs in the South, particularly those working with the victims of the conflict, who are for the most part Muslim, report regular abuse of the law and emergency decree and a general abuse of power by authorities. HRDs have had their offices raided, been forced to undergo DNA tests, and been maligned in the media and online.⁴¹⁰

Freedom of expression is limited by the Head of the National Council for Peace and Order (NCPO) Order 3/2015, Article 116 of the Criminal Code on sedition, the Computer Crime Act and the *lèse-majesté* provision (Article 112) in the Criminal Code; all of which have been repeatedly used to target activists, HRDs and other independent voices. A prominent labour rights defender was sentenced to 10 years of imprisonment in early 2013 for printing two articles in his capacity as editor of a magazine, allegedly criticising the royal family. There has been a staggering increase in the number of cases investigated since the NCPO, the ruling junta, took power.⁴¹¹ In the wake of King Bhumibol's death in October 2016 this issue has been further exacerbated, with 27 charges laid in the six weeks following.⁴¹² Harsh and lengthy prison sentences handed down by Military courts continue to be served to civilians convicted of the charges. All individuals charged with this offence are almost always convicted. On 24 June 2015, 14 student activists from the New Democracy Movement took part in a peaceful rally in Bangkok calling for an end to Military rule under the NCPO. Two days after the rally, they were arrested for violation of the Head of the NCPO Order 3/2015 and sedition under article 116 coupled with Article 83 of the Criminal Code.

The Thai Military and private companies have used defamation lawsuits to try to silence HRDs and make it more difficult for victims to voice their complaints.

⁴⁰⁹ '#Thailand,' Front Line Defenders, <https://www.frontlinedefenders.org/en/location/thailand>

⁴¹⁰ 'Thai NGOs Coalition for UPR: Stakeholder Submission, 21 September 2015

Thailand Second Cycle UPR,' April 2016, https://www.upr-info.org/sites/default/files/document/thailand/session_25_-_may_2016/js12_upr25_tha_e_main.pdf

⁴¹¹ 'Charges against individuals after 2014 coup - List of individuals charged with

Article 112 of the Criminal Code (*lèse majesté*),' iLaw Freedom of Expression Documentation Center, <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup>

⁴¹² 'One Month after the Royal Passing: Conflict and Lèse Majeste Prosecutions in Review,' Thai Lawyers for Human Rights, 5 December 2016, <http://www.tlhr2014.com/th/?p=2988>

In July 2016, three prominent activists from the Cross Cultural Foundation (CrCF) and Duay Jai were charged with criminal defamation for releasing a report on torture in the Deep South. In August 2014, the army's 41st Task Force in Yala province filed defamation suits against CrCF director Pornpen Khongkachonkiet -who was also charged in the 2016 case mentioned above- for allegedly damaging the army's reputation by publishing an open letter in May 2014 exposing torture of an ethnic Malay Muslim man by a Para-military unit. In December 2013, Chutima Sidasathian and Alan Morison, journalists from the online newspaper Phuketwan, were accused of defamation and breach of the Computer Crime Act by the Royal Thai Navy for publishing a paragraph from a Reuters' special report on the Rohingya. The court later acquitted the journalists on both offences on 1 September 2015. In September 2016, labour activist Andy Hall was convicted of criminal defamation with a suspended prison sentence under charges filed by Natural Fruit Co. Ltd., one of Thailand's biggest pineapple processors, regarding a report he co-wrote alleging serious labour rights abuses at one of its factories, and he still faces two civil defamation suits. Later on 31 May 2018, the Court of Appeals dismissed the case on the ground that such interview should be made public. Despite good sign of court rulings, the judicial harassments are still ongoing with human rights defenders on numerous cases.

The NCPO has banned political gatherings of more than four persons. Military and police have forced organisers or hosting venues to cancel political events, seminars, and academic panels on political and human rights issues on grounds that the events threatened stability and national security. HRDs report surveillance and the attendance of Military personnel, sometimes in plain-clothes, at events and meetings that are permitted to take place.

Repressive laws and policies

On 31 March 2015, the Thai Military Government announced that the nationwide enforcement of the Martial Law Act was replaced with Article 44 of

the Interim Constitution.⁴¹³ Article 44 empowers the NCPO leader to issue any order 'that it is necessary for the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarchy, national economics or administration of State affairs, whether that act emerges inside or outside the Kingdom.' The orders issued are all deemed 'legal, constitutional and conclusive.' Article 44 thus grants Military personnel sweeping law enforcement powers over the civilian population, potentially overriding a wide range of human rights guaranteed under national and international law. It allows the Military to secretly detain people without charge or trial and interrogate them without access to lawyers or safeguards against mistreatment. Activists, opposition leaders, academics and journalists have been detained for 'attitude adjustment.' The NCPO has summarily dismissed allegations that the Military has tortured and ill-treated detainees but has provided no evidence to rebut them. Articles 47 and 48 provide amnesty for all past and future Military actions, absolving anyone carrying out actions on behalf of the NCPO of all legal liability. Promulgating after passing by the constitutional referendum in 2016, the Constitution of 2017 recognises human rights and liberties of Thai citizen, under its Article 25. Although, under Article 265 of the Constitution, the Article also resumes the NCPO status and power under Article 44 of the Interim Constitution, until the next government is in place, enabling the NCPO to still limit, suspend or suppress fundamental human rights.

The Head of the National Council for Peace and Order (NCPO) Order 3/2015⁴¹⁴ severely limits freedom of association and peaceful assembly by banning political gatherings of more than four people, which are punishable by up to six months' imprisonment. It authorises Military officers to arbitrarily detain individuals and censor a variety of media. Peaceful public demonstrations of

⁴¹³ 'Thailand's Constitution of 2014' (unofficial translation), https://www.constituteproject.org/constitution/Thailand_2014.pdf?lang=en

⁴¹⁴ 'Unofficial translation of Thai junta's order, replacing martial law with Article 44 of interim charter,' <https://prachatai.com/english/node/4933>

dissent have been prohibited, including reading of George Orwell's 1984. During a period leading up to a constitutional referendum, in August 2016, 11 activists attending a talk on the implications of the draft constitution for Thailand's Northeast were arrested and charged under Order 3/2015 for being part of an allegedly political gathering of more than four persons. Among the activists arrested were Rangsiman Rome, a New Democracy Movement member, Jatupat 'Pai' Boonpattaraksa, an activist with the community rights group Dao Din, (who was later charged with lèse-majesté in December 2016 for an unrelated act), land rights activist Natthaporn Arjharn, and Thai Lawyers for Human Rights members Neeranuch Neamsub and Duangthip Karnrit. In June 2016, 13 activists, including eight from the New Democracy Movement, were arrested under the order for handing out fliers on the draft Constitution.

Article 116 of Thailand's Criminal Code⁴¹⁵ has been interpreted to apply to public assembly, and is also used to curb freedom of expression. It criminalizes any public act with the intention of bringing a change in law through force, raising disaffection among people in a manner likely to cause a disturbance, or to cause people to violate laws. This interpretation constitutes an effective ban on criticism of Government. The penalty for acts in contravention of this article is a prison sentence of up to seven years. In June 2015, 14 student activists were arrested and charged with violations of the Head of the NCPO Order 3/2015 and Article 116 for protesting against the 2014 coup. In September 2016, human rights lawyer Sirikan Charoensiri was charged under Article 116 in retaliation for her work defending the legal rights of these student activists.

The Referendum Act, 2016,⁴¹⁶ which came into force in April 2016, effectively banned any critical discussion of the draft constitution that would be the subject of the referendum. The Act punishes expression related to the draft Constitution that is 'false' with up to 10 years in prison, a fine of

THB200,000 (US\$6,400) and the revocation of political rights for 10 years. In practice, NCPO Chief General Prayut stated that no criticism whatsoever of the draft constitution would be permitted, and the law was applied in this manner. In the few months leading up to the referendum, at least 208 people were charged under the Act and dozens of discussions of the draft were forced to be cancelled. In June 2016, 13 student activists were arrested and charged under the Act for having distributed leaflets critical of the draft constitution. Four activists and a Prachatai reporter were arrested and charged under the Act in August 2016 for being in possession of fliers critical of the draft constitution, despite the fact that they had not been handing them out.

The Public Assembly Act was entered into force in August 2015. The Act imposes severe restrictions on the right to freedom of assembly, and gives authorities sweeping powers to ban public assemblies on vague and arbitrary grounds. A public assembly that takes place without submitting an application for prior approval or a public assembly banned by the authorities is regarded as unlawful, and results in criminal liability. Failure to comply with the provisions of the law can result in disproportionately harsh penalties, such as a prison sentence of up to 10 years or a fine of up to THB200,000 (US\$6,400).

Criticism of the judiciary is banned under Article 198 of the Criminal Code and Article 64 of the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedure.⁴¹⁷ Article 198 states that 'insulting the Court of the judge in the trial or adjudication of the case, or obstructing the trial or adjudication of the Court' is punishable by up to seven years' imprisonment. Under the Act on Establishment of Administrative Courts and Administrative Court Procedure, contempt of court may be punished with up to one month of imprisonment. In December 2016, the Phra Khanong Provincial court ordered Thai Lawyers for Human Rights to delete a report which criticised the denial

⁴¹⁵ 'Criminal Code,' <http://library.siam-legal.com/thai-criminal-code/>

⁴¹⁶ 'Referendum Act violates rights: Ombudsman's Office,' Prachatai, 1 June 2016, <https://prachatai.com/english/node/6220>

⁴¹⁷ 'Act on Establishment of Administrative Courts and Administrative Court Procedure (B.E. 2542 - 1999),' http://www.asianlii.org/th/legis/consol_act/aoeoacaacp1999775/

of bail to a pro-democracy activist, threatening the group with prosecution for contempt of court if it did not comply. In November 2016, Sudsangan Sutheesorn, a lecturer at Thammasat University, was sentenced to one month of imprisonment by the Supreme Court in connection to a June 2014 protest in which he, along with two other activists, laid a wreath in front of the Civil Court with a message that read ‘for the injustice of the Civil Court.’ One of the activists, Picha Wijitslip, a United Front for Democracy Against Dictatorship (UDD) lawyer, died during the case, and the other, Darunee Kritboonyalai, fled to the United States.

Under Articles 326-328 of the Criminal Code defamation is punishable by a prison sentence of up to two years. The truth of a statement is not an absolute defence, and the burden of proof that a statement was both true and ‘in the public interest’ lies with the defendant. In July 2016, three prominent activists were charged with criminal defamation as well as offences under the Computer Crime Act for releasing a report documenting torture and ill-treatment in the Deep South. The three are Somchai Homlaor, a lawyer and long-time advisor to the CrCF; Pornpen Khongkachonkiet, director and chair of the CrCF; and Anchana Heemmina, the director of Duay Jai. As the act in question was committed before September 2016, they will be tried in a Military court. Pornpen Khongkachonkiet had previously been charged with criminal defamation in connection to her advocacy and documentation work in September 2014 by Army Task Force 41. The State Prosecutor found that there were no grounds for prosecution in June 2015 and the case was dropped. In February 2013, British journalist and activist Andy Hall was charged with two civil and two criminal counts of defamation under Articles 326, 328 and 332 of the Criminal Code and Article 14(1) of the Computer Crime Act for his work on an

investigative report that exposed labour abuses and human trafficking in pineapple factories in southern Thailand. In September 2016, Hall was sentenced to a three year suspended prison sentence and a fine of THB150,000 (US\$ 4,800) for one criminal defamation charge by the Bangkok South Criminal Court. In November 2016, he was acquitted of the other criminal charge by the Supreme Court. In March 2018, Hall was ordered to pay THB10,000,000 (US\$312,000) in a civil defamation suit.⁴¹⁸

Since the 2014 coup, the authorities have prioritised enforcement of Article 112 of the Criminal Code⁴¹⁹- the lèse-majesté law- and continued to treat criticism of the monarchy as a security offence, resulting in a drastic increase in the number of lèse-majesté cases with harsh and lengthy sentences. Under NCPO Announcements No. 37/2014 and No. 38/2014, lèse-majesté suspects were tried by Military courts until September 2016. The judicial process for such offences has been marked by secrecy, closed trials and denial of the right to bail. Military courts also increased sentences handed down for lèse-majesté offences by ordering prison terms for separate offences to be served consecutively.

The Computer Crime Act, 2007,⁴²⁰ which has been heavily used by the NCPO, was controversially amended in 2017⁴²¹ to place even more ambiguous limits on online freedom of expression despite widespread public opposition. The law criminalizes a wide variety of extremely broad acts and provides the Government with sweeping powers to block and censor content online and access user data. Among the long list of acts criminalized by the law are entering into a computer system or engaging in online communication ‘with ill or fraudulent intent’ of any “false or partially false data,” ‘distorted or partially distorted data,’ “obscene” data, data ‘jeopardizing maintenance of national security, public safety, national economic stability

⁴¹⁸ ‘Thailand: Verdict Threatens Labor Abuse Reporting,’ Human Rights Watch, 28 March 2018, <https://www.hrw.org/news/2018/03/28/thailand-verdict-threatens-labor-abuse-reporting>

⁴¹⁹ ‘Criminal Code,’ <http://library.siam-legal.com/thai-criminal-code/>

⁴²⁰ ‘Computer Crime Act 2007,’ http://www.mdes.go.th/assets/portals/1/files/600908_01Computer-RelatedCrimeActBE2550Amended-E.pdf

⁴²¹ ‘Computer Crime Act - 2017 amendment,’ <http://www.krisdika.go.th/wps/wcm/connect/16aa6600426df0df92a9da09167c07d3/COMMISSION+OF+COMPUTER-RELATED+OFFENCES+ACT+%28NO.+2%29%2C+B.E.+2560+%282017%29.pdf?MOD=AJPERES&CACHEID=16aa6600426df0df92a9da09167c07d3>

or public infrastructure,' or data causing panic, which are all punishable by a three-year prison sentence. The law also extends the criminalization of other crimes such as lèse-majesté, defamation, and criticism of the NCPO to the online sphere. In April 2016, environmental rights defenders Smit and Somlak Hutunuwatr were charged under Article 14 of the Act as well as Articles 326 and 328 of the Criminal Code for allegedly defaming the Akara Resources Public Company Limited. The two had posted a report on Facebook detailing how the mine was damaging the environment as well as the health of residents. In November 2016, they were acquitted. As mentioned in the above Article on defamation, in July 2016, three prominent activists were charged under the Computer Crime Act for releasing a report documenting torture and ill-treatment in the Deep South.

Enabling laws and policies

After being approved by the controversial referendum in 2016, the Constitution of 2017 superseded the Interim Constitution of 2014. However, Article 309⁴²² of the new Constitution still legitimises all NCPO activities, both in the past and future after its promulgation. Under Article 265, it also resumes the NCPO status and power under Article 44 of the Interim Constitution, until the next government is in place. Therefore, despite the fact that Constitution of 2017 under Article 25 recognises human rights and liberties of Thai citizen, however, the NCPO still has broad authority under Articles 44 and 47 to limit, suspend, or suppress fundamental human rights protection.

There is no legislation in place for the specific protection of HRDs. The first initiative from a state

body to look into who HRDs are and how to protect them has been implemented by the Department of Rights and Liberties Protection under the Ministry of Justice, which has established a HRD themed working group with participation from Civil Society Organisations.

Thailand has legislation to protect whistleblowers. The 2011 amendment to the Organic Act on Counter Corruption (OACC), 2009⁴²³ introduced provisions that established protective measures for whistleblowers and their close family members including access to safe houses, police escorts, allowance, and assistance altering one's name and identification cards.

Thailand has a Witness Protection Act⁴²⁴ (enacted in 2003) and maintains a witness protection office under the jurisdiction of the Ministry of Justice. Witnesses in Thai criminal cases, however, have legitimate fears once they commit to testifying and activists have urged authorities to strengthen witness protection and ensure that the measures are implemented efficiently.

The Official Information Act, 1997⁴²⁵ allows citizens to demand official information from a State agency. The law does not provide detailed guidance on the procedures and necessary steps taken by the requesters to demand access to information. The implementation of the law has been widely seen as weak.⁴²⁶

Following the enactment of the National Human Rights Commission Act⁴²⁷ in 1999, the National Human Rights Commission of Thailand (NHRCT) came into existence and started functioning in July

⁴²² <http://www.krisdika.go.th/wps/wcm/connect/d230f08040ee034ca306af7292cbe309/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+%28B.E.+2560+%282017%29%29.pdf?MOD=AJPERES&CACHEID=d230f08040ee034ca306af7292cbe309>

⁴²³ 'Organic Act on Counter Corruption,' <http://www.oecd.org/site/adboecdanti-corruptioninitiative/46817329.pdf>

⁴²⁴ 'Witness Protection Act,' http://www.unodc.org/res/cld/document/tha/2003/witness_protection_act_b_e__2546_html/Thailand_Witness_Protection_Act_BE_2546_2003.pdf

⁴²⁵ 'Official Information Act,' [http://www.track.unodc.org/LegalLibrary/LegalResources/Thailand/Laws/Thailand%20Official%20Information%20Act%20\(1997\).pdf](http://www.track.unodc.org/LegalLibrary/LegalResources/Thailand/Laws/Thailand%20Official%20Information%20Act%20(1997).pdf)

⁴²⁶ 'Asia Disclosed: A Review of the Right to Information across Asia 2015,' Article 19, 2015, <https://www.article19.org/data/files/medialibrary/38121/FINAL-Asia-Disclosed-full.pdf>

⁴²⁷ 'National Human Rights Commission Act,' [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/bdf5fb8758a5a78ec125709100277e49/\\$FILE/National%20Human%20Rights%20Commission%20Act,%20B.E.%202542%20\(1999\).pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/bdf5fb8758a5a78ec125709100277e49/$FILE/National%20Human%20Rights%20Commission%20Act,%20B.E.%202542%20(1999).pdf)

2001. The NHRCT has come under harsh criticism for its performance as a credible defender and ally of HRDs. With the repeal of most of the 2007 Constitution in 2014, the NHRCT lost its ability to take strong action in individual cases, including the ability to bring cases to court. An aspect that has hampered the protection of HRDs and marginalised communities, particularly in the new incarnation of the NHRCT, is the lack of effective exchange between them and the Commission, which has been aloof and distant from civil society. To the extent that the marginalized communities and HRDs who experience rights abuses are able and willing to seek judicial remedy for business-related violations, instances of harassment, persecution and retaliation against them are all too common. Currently, safe access to accountability and grievance mechanisms is not a priority in Thailand. Moreover, following the military coup in May 2014, the NCPO proceeded with the appointment of the third batch of NHRCT commissioners. As the Selection Committee did not reflect pluralist representation, it remains a concern that the selection process was not in full conformity with either constitutional norms or the Paris Principles. Due to its reticence to investigate abuses, its non-independent appointment process, and its stunted powers, which are limited to making recommendations, the NHRCT was downgraded to 'B' status in 2015. The Constitution approved in August 2016 further restricts its powers and independence, with appointments made by the NCPO-appointed Senate, and a Commission that only has the power to issue recommendations and reports. The new Constitution and together with the newly promulgated National Human Rights Commission Organic Act further added a new mandate for the NHRCT 'to clarify and report facts when there are incorrect or unfair reports on the human rights situation in Thailand.' The new provisions further worsen the concern over the impartiality of the NHRCT that it will be weakened to be a government mouthpiece.

Recommendations

The Head of the NCPO Order 3/2015 and 13/2016 must be immediately repealed, as it constitutes a grave violation of freedom of assembly. Article 116 of the Criminal Code must also be repealed as it is

so broad that it could be, and has been, interpreted to criminalize any public criticism of Government.

Thailand's criminal defamation and *lèse-majesté* laws must be repealed, and its civil defamation laws must be amended. Articles 112 and 326 to 328 must be struck from the Criminal Code, and all those imprisoned under these charges must be immediately released and cleared of any criminal wrongdoing. Civil defamation laws must be amended to ensure that whistleblowers exposing malfeasance are unconditionally protected from prosecution; that a strict and high severity threshold is established; and that penalties are commensurate to the acts committed.

The Computer Crime Act must be repealed and replaced with legislation that targets actual cybercrime rather than criminalizing political opposition and the defence of rights. The new legislation must not provide any Government agency the power to ban or censor online content. No act related to spreading false information, distorting information, obscenity, or national economic stability must be criminalized. The new legislation should not cover acts related to national security or public safety, as these offences are adequately covered under other legislation, and need not be found in cybercrime legislation. The new legislation should also be concise without ambiguous terms that could lead to misuse of interpretation.

The Witness Protection Act must be strengthened to provide reliable protection to persons fearing retribution from state actors such as the Military or the police. The Official Information Act must be amended to explicitly lay out the procedures in access to information requests, and its implementation must be improved. The Constitution of 2017 and the National Human Rights Commission Organic Act must be amended so that the NHRCT has effective power to address human rights issues in a timely manner; take up cases of its own volition; prosecute these cases in a court; and amend legislation to ensure that it is in compliance with international standards, and that its commissioners are appointed in a transparent and independent manner.

THE PHILIPPINES

Synopsis of the challenges of HRDs

Human Rights Defenders (HRDs) in the Philippines are under increasingly serious threat. HRDs face extrajudicial killings, enforced disappearances, physical assault, threats, intimidation, vilification, fabricated charges, arrest, and denial of bail. Despite being party to eight out of nine core international human rights treaties,⁴²⁸ the Philippines provides HRDs with little or no protection. Even worse, the abuse of HRDs is tolerated, authorized, and encouraged from the highest possible level: President Rodrigo Duterte himself. In 2017, FORUM-ASIA documented nine cases of killings of HRDs in the Philippines. FORUM-ASIA documented 18 cases of killings of indigenous defenders as of April 2018. Under the administration of President Duterte, every month at least two indigenous peoples have been victims of extrajudicial killing. Perpetrators are often not brought to account and impunity of security forces are prevailing in the country.

HRDs working in the field of peasants' rights, land and environmental rights, indigenous human rights, and increasingly, drug addiction and anti-extrajudicial killings, are particularly exposed to retaliation. Police, the Military or private security personnel hired by corporations are responsible for abuses against HRDs; including violence, killing, surveillance, threats and intimidation. Of particular concern is the safety of HRDs standing up against the current tidal wave of extrajudicial killings in the context of the so-called 'War on Drugs.' Police and vigilantes have killed an estimated 12,000 people since Duterte was inaugurated.⁴²⁹

In 2017, human rights violations intensified when the Martial Law declaration was extended until the end of 2018. Human rights violations intensified after the Armed Forces of the Philippines (AFP) and the President made the pronouncement that 75 to 80 per cent of New Peoples Army (NPA) members -who they deem to be terrorists- are Indigenous Peoples of Mindanao.

Violence against journalists and media workers has long persisted in the Philippines. The Government has failed to effectively investigate and bring those responsible to justice. Instead of more protection for journalists and media workers, there has been a sharp increase in the number of unlawful killings of those who exercise free speech. Since 1992, 78 reporters have been killed because of their work, a number exceeded only by Iraq and Syria.⁴³⁰ No member of the Military responsible for the murder of a journalist has ever been brought to justice. This has fostered a culture of impunity for perpetrators of violence against journalists and media workers, who know that speaking out involves serious risks to their safety as well as that of their family.

A common strategy used to stop HRDs from doing their work under previous right-wing administrations was to discredit them publicly, by branding them as working for armed groups related to the Communist Party of the Philippines (CPP). This practice was called 'red tagging.' Linking HRDs to the Communist Party was an attempt by the security sectors to vilify those who were critical of Government's policies. There are cases where HRDs have been falsely accused of being linked to rebel groups such as the New Peoples' Army (NPA) and Moro Islamic Liberation Front (MILF).⁴³¹ HRDs have also faced fabricated criminal charges of using

⁴²⁸ 'Ratification Status for The Philippines,' Office of the United Nations High Commissioner for Human Rights, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN

⁴²⁹ 'Duterte's 'Drug War' Claims 12,000+ Lives: Government Harassment, Threats Against Rights Defenders,' Human Rights Watch, 18 January 2018, <https://www.hrw.org/news/2018/01/18/philippines-dutertes-drug-war-claims-12000-lives>

⁴³⁰ 'Journalists Killed in Philippines between 1992 and 2018,' Committee to Protect Journalists, <https://cpj.org/killed/asia/philippines/>

⁴³¹ 'Human rights defenders at the forefront despite ongoing culture of violence and impunity: International fact-finding mission report,' The Observatory for the Protection Of Human Rights Defenders, February 2015, http://www.omct.org/files/2015/07/23254/v1.3_en_w_rprrtphilippines_obs15.pdf

violence. Under the current self-declared leftist administration, while linking HRDs to the CPP may be less of a concern, the Government has shown a penchant for labelling critics as ‘drug pushers’ or enemies of the state who are aligned with interventionist Western powers.

Attacks attempting to impede the work of Sexual Orientation and Gender Identity (SOGI) rights activists in the Philippines occur in similar ways; including public vilification and surveillance, arbitrary arrests and criminalisation. Additionally, SOGI rights defenders in the Philippines are under pressure from community authorities to conduct their activities less openly because of radical religious fundamentalism. Religious leaders and lay members affiliated to organised Christian faiths are aggressive in accosting lesbian, gay, bisexual, trans, and/or intersex (LGBTI) people in public spaces.⁴³²

In 2015 the UN Special Rapporteur on the situation of human rights defenders extended a request to visit the Philippines to enable him to gain a better understanding of the situation of HRDs in the country. The Government has not responded positively to his request. The Philippines remains on the ‘Outstanding visits requested by the Special Rapporteur’ list.⁴³³ The Government has also failed to respond to a recent urgent appeal and letter of allegation sent by the Special Rapporteur, on the surveillance of the Karapatan NGO and the extrajudicial killings of nine indigenous HRDs in Mindanao.⁴³⁴

Repressive laws and policies

The Human Security Act of 2007⁴³⁵ is a counter-terrorism law that contains overly broad and dangerous provisions that could allow authorities to bring spurious prosecutions against HRDs. The vague language of the Human Security Act leaves room for the Government to misuse it. The law contains overly harsh mandatory penalties applicable even to minor violations of the law, which undermines the ability of judges to assign a penalty commensurate with the infraction. The law provides for indefinite detention of terrorism suspects without adequate procedural protections. In contravention of Article 9 of the International Covenant on Civil and Political Rights (ICCPR), the authorities may hold a suspect for three days without a warrant and without laying charges, and furthermore, the review of detention under the Act is conducted by the executive, rather than by the judiciary. The Act has been criticised by numerous civil society leaders and international and national human rights advocates. The UN Special Rapporteur on human rights and counterterrorism called on the Government to repeal or significantly amend the Act as its implementation could negatively affect human rights. The Rapporteur stated that the overly broad definition of ‘terrorist acts’ was incompatible with Article 15 of the ICCPR, which provides the right to a fair trial.⁴³⁶

Defamation is a criminal offense in the Philippines, with a maximum punishment of four years’ imprisonment, under Articles 353-359 of the 1930 Philippines Penal Code.⁴³⁷ Article

⁴³² ‘The status of lesbian, gay, bisexual, and transgender rights in The Philippines,’ Joint submission to the Human Rights Council for Universal Periodic Review 13th Session by the Rainbow Rights Project and Philippine LGBT Hate Crime Watch, http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS1_UPR_PHL_S13_2012_JointSubmission1_E.pdf

⁴³³ ‘Special Rapporteur on the situation of human rights defenders - Country visits’ <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CountryVisits.aspx>

⁴³⁴ ‘Addendum: Observations on communications transmitted to Governments and replies received (A/HRC/31/55/Add.1),’ Report of the Special Rapporteur on the situation of human rights defenders Michel Forst, 19 January 2016, <https://www.frontlinedefenders.org/en/file/1625/download?token=BaRRh5uE>

⁴³⁵ ‘Human Security Act’ https://www.lawphil.net/statutes/repacts/ra2007/ra_9372_2007.html

⁴³⁶ ‘UN Special Rapporteur calls for changes to The Philippines’ Human Security Act (press release),’ Office of the United Nations High Commissioner for Human Rights, 12 March 2007, <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=1844&LangID=E>

⁴³⁷ ‘The Revised Penal Code’ http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf

354 states that ‘every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown.’ Therefore, the burden is not on the prosecution to prove malice, but rather, on the defendant to prove good intention and justifiable motive to overcome the implicated malice. Under international standards on freedom of expression, truth is a complete defence to an allegation of defamation. Individuals or media outlets should never be found liable for defamation unless they are shown to have made a false assertion of facts.⁴³⁸ Journalists and media workers continue to be intimidated with defamation charges and convictions.⁴³⁹

A troubling development for free expression in the Philippines was the enactment of the Cybercrime Prevention Act of 2012⁴⁴⁰ and the verdict of the Philippine Supreme Court that upheld its constitutionality. The Act covers a range of offenses, but it is primarily the controversial online defamation provision that troubles rights activists in the Philippines. According to the Act, anyone found guilty of committing defamation online faces up to 12 years’ imprisonment. Introducing the threat of prison sentences for online defamation is contrary to the global trend towards decriminalising libel. Although the Supreme Court struck down articles allowing security forces to monitor internet data in real time and to shut down websites without due process, the law remains problematic because the issues with defamation legislation, covered above, extend to it. Furthermore, the law arbitrarily stipulates that punishments for online crimes will be one degree more severe than comparable infractions offline. The implementation of the Cybercrime Prevention Act creates a climate in where netizens cannot openly dissent on public matters.

Freedom of expression is also restricted in the Philippines under the heavy-handed Article 201 of the Penal Code,⁴⁴¹ whereby ‘immoral doctrines, obscene publications and exhibitions and indecent shows’ that ‘offend any race or religion’ or ‘are contrary to law, public order, morals and good customs’ are punishable by six to 12 years of imprisonment, a fine of 6,000-12,000 pesos (US\$130-260), or both. The broad phrasing of this law, with reference to vague and highly ideological concepts such as morality, obscenity, indecency, and good customs leaves it open to abuse and places HRDs at risk. HRDs fighting for equal rights for LGBTI people, for instance, might be seen in the eyes of prejudiced religious conservatives as promoting obscene or immoral doctrines.

The imposition of Martial law in Mindanao -in place for over a year at the time of writing- has worsened the situation for HRDs in general.

The proposed Charter reforms include two repressive measures: limiting free speech protections; and abolishing the Office of the Vice President, Office of the Ombudsman, and Judicial and Bar Council. The House of Representatives is seeking to amend Article 3 and 4 of the Constitution’s Bill of Rights, which states ‘No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances’ to ‘No law shall be passed abridging the responsible exercise of the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.’ This poses a threat because defining ‘responsible’ will rest on the government, and will likely lead to targeting HRDs seen as threats to the government.

⁴³⁸ ‘Submission by ARTICLE 19, the Southeast Asian Press Alliance, Media Defence Southeast Asia, the Center for Media Freedom and Responsibility, the Philippine Center for Investigative Journalism, and the Center for International Law to the UN Universal Periodic Review of the Republic of the Philippines,’ Thirteenth Session of the Working Group of the Human Rights Council, May-June 2012, http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS14_UPR_PHL_S13_2012_JointSubmission14_E.pdf

⁴³⁹ ‘Criminal libel suits against journalists,’ Center for Media Freedom and Responsibility, 10 April 2016, <http://cmfr-phil.org/autonomy-press-freedom/press-freedom/criminal-libel-suits-against-journalists/>

⁴⁴⁰ ‘Cybercrime Prevention Act of 2012’ <http://www.officialgazette.gov.ph/2012/09/12/republic-act-no-10175/>

⁴⁴¹ ‘The Revised Penal Code,’ http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf

President Duterte signed Republic Act 10973 on March 1, amending the Republic Act 6975 also known as the Local Government Code, giving the Philippine National Police (PNP) and Criminal Investigation and Detection Group additional Subpoena powers. Under the revised law, the PNP chief and the director and deputy director for administration of the PNP-Criminal Investigation and Detection Group 'shall have the power to administer oath, issue subpoena and subpoena duces tecum (documents) in relation to its investigation.' This leads to increased judicial harassment against HRDs

The House of Representatives and the Senate recently approved the establishment of a national ID system in the country. CSOs have criticised the imposition of this system, raising concerns that having people's data in one place in a context where the President is systematically targeting and killing specific segments of the population, could pose serious threats to those most targeted (this includes HRDs).

The Government of the Philippines has often used foreign funding regulations to limit the ability of NGOs to receive support to continue their human rights work. Rappler's case is a good example of this: The Securities and Exchange Commission (SEC) said it had revoked the incorporation certificates of Rappler and Rappler Holdings Corp because they violated a provision in the Philippine constitution reserving media ownership to Filipinos.

In 2017, the House of Representatives passed a bill that sought to cut the budget of the Commission on Human Rights of the Philippines (CHR) to P1000 (US\$100.00).

President Rodrigo Duterte announced on March 14, that the Philippines will withdraw from the International Criminal Court (ICC) 'effective immediately.' This will further foster a culture of impunity.

Enabling laws and policies

The Philippine Constitution's Article 3 (Bill of Rights)⁴⁴² provides that the State values the dignity of every human person and guarantees full respect for human rights. Article 13 provides that the Philippine Congress gives highest priority to the enactment of measures that protect and enhance the rights of all people to human dignity; to reduce social, economic and political inequalities; and to remove cultural inequalities by equitably diffusing wealth and political power for the common good.

Article 3 and Article 15 of the Philippines Constitution guarantee the privilege of the writ of habeas corpus to all citizens, except in times of rebellion or invasion. The writ of habeas corpus is a recourse in law whereby any person can report illegal detention to a court, and the court may summon the relevant authority to produce the detainee before the court and prove the legality of the detainee's detention. If the authority is not legally permitted to hold the detainee, he or she must be released. The burden of proof is upon the detaining party to demonstrate their authority to hold the detainee. As such, the writ of habeas corpus is in theory an excellent protection against illegal detention. However, the writ of habeas corpus does not protect the victims of enforced disappearance or extrajudicial killings, which so often target HRDs. Police and Military officials were able to circumvent the writ by using the defence of alibi and issuing denial of the allegations. Neither does the writ ensure a fair trial or guarantee against detention illegal under international law: in the Philippines, detention without charge is legal under legislation such as the Human Security Act, and therefore invoking the writ would not be an effective remedy.

Due to the above shortcomings of the writ of habeas corpus, in 2007 the Supreme Court of the Philippines created the legal concepts of the writ of amparo⁴⁴³ (protection) and the writ of habeas

⁴⁴² 'The Constitution of the Republic of the Philippines,' <http://www.officialgazette.gov.ph/constitutions/1987-constitution/>

⁴⁴³ 'The Rule on the Writ of Amparo,' <http://hrlibrary.umn.edu/research/Philippines/The%20Rule%20On%20The%20Writ%20Of%20Amparo.pdf>

data⁴⁴⁴ (access to information) to specifically target enforced disappearances and extrajudicial killings. The writ of amparo broadly protects individuals' right to life, liberty and security, compelling relevant authorities to come before the court to prove the specific actions they have taken to solve cases of enforced disappearance or extrajudicial killings. The writ of habeas data compels the relevant authorities to produce for the court all information relevant to the case. Unlike habeas corpus, the respondent may not use general denial as a defence, thus addressing the circumvention of the original writ used by police and the Military previously. Furthermore, the writ of amparo provides for state protection of the aggrieved party in order to lessen the effects of intimidation.

The Commission on Human Rights of the Philippines (CHR) is an independent commission that monitors the Government's compliance with its human rights obligations under international treaties created by the Constitution of the Philippines, Article 13, Article 17 to 19. The CHR was established in 1987, making it the first in Southeast Asia. Under the Constitution, the Commission is only mandated to investigate violations of civil and political rights. However, the Commission also investigates violations of economic, social and cultural rights, based on the principles of indivisibility, interrelatedness and interdependence of human rights. The CHR provides appropriate legal measures for the

protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad. It also provides for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection. The Constitution also gives the CHR visiting privileges with jails, prisons, and detention facilities. The CHR employs a focal person on HRDs, and in 2015 a former HRD focal person was elected as a Commissioner to the CHRP.

The Human Rights Defenders (HRD) Act House Bill 5379 -drafted by Philippines CSOs Karapatan (Human Rights Organisation Alliance) and Tannggol Bayi (Defend Women)- was introduced before the House of Representatives in Congress in October 2011 but was not passed. In July 2013, the HRD Act was re-introduced (now titled House Bill 1472) but it was never passed into law.⁴⁵¹

The Witness Protection, Security and Benefit Act⁴⁵² seeks to encourage a person who has witnessed or has knowledge of the commission of a crime to testify -before a court or quasi-judicial body, or before an investigating authority- by protecting him/her from reprisals and from economic dislocation. The Act tasks the Department of Justice, through its Secretary, to formulate and implement a witness protection programme pursuant to the provisions of the Act. However, a UN Independent expert judged the witness protection programme to be weak

⁴⁴⁴ 'The Rule on the Writ of Habeas Data,' <http://hrlibrary.umn.edu/research/Philippines/Rule%20on%20Habeas%20Data.pdf>

⁴⁴⁵ 'Anti-Torture Act,' <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83683/92577/F1828061043/PHL83683.pdf>

⁴⁴⁶ <http://www.gov.ph/2012/12/21/republic-act-no-10353/>

⁴⁴⁷ 'Human rights defenders at the forefront despite ongoing culture of violence and impunity: International fact-finding mission report,' The Observatory for the Protection Of Human Rights Defenders, February 2015, http://www.omct.org/files/2015/07/23254/v1.3_en_w_rpprtphilippines_obs15.pdf

⁴⁴⁸ 'PNP Guidebook on Human Rights-based Policing (2013 edition),' Philippine National Police, http://pnppro1.org/Downloads/PNP_GUIDEBOOK_opt.pdf

⁴⁴⁹ 'Philippines propose new model for its National Preventive Mechanism,' Association for the Prevention of Torture, 2 May 2014, https://www.ap.t.ch/en/news_on_prevention/philippines-propose-new-npm-model/

⁴⁵⁰ 'OPCAT Situation: Philippines,' Association for the Prevention of Torture, 2 May 2014, 11 December 2017, https://www.ap.t.ch/en/opcat_pages/opcat-situation-58/?pdf=info_country

⁴⁵¹ 'Philippines,' Protection International, <http://focus.protectionline.org/countries/the-philippines/>

⁴⁵² 'Philippines Witness Protection, Security and Benefit Act' https://www.unodc.org/res/cld/document/phl/witness-protection--security-and-benefit-act_html/Philippines_Witness_Protection_Security_and_Benefit_Act.pdf

and, one of the most significant causes of continued impunity.⁴⁵³

Republic Act No. 10368 define the rules and regulations for implementing the Human Rights Victims Reparation and Recognition Act of 2013. The Act provides compensation for families who suffered a loss due to martial law under Marcos, and sets a strong precedent for breaking the culture of impunity.

The creation of Human Rights Units in the Armed Forces and the National Police is a positive development. As is the establishment of a focal point for Human Rights Defenders in the Filipino Human Rights Commission.

Recommendations

The Government of the Philippines must ensure that the rights guaranteed to citizens in the Constitution and body of law are respected and protected. The CHR must be empowered to act as a true check on Government infringement of rights, and it must be granted the authority to hold the Government to account, which it does not currently do in practice. An effective and empowered NPM must be created at the soonest in compliance with the Philippines' obligations under OPCAT.

Other enabling legislation such as the Anti-Torture Act, the Anti-Enforced Disappearance Act and the Witness Protection, Security and Benefit Act must be effectively implemented. Human rights training for the PNP and AFP should be expanded so that all serving members understand their obligations. More human rights units must be established in the PNP and AFP, and these units must be granted the power to prevent and investigate human rights abuses. Crucially, members of the PNP and AFP who commit human rights abuses must be held to account in all cases. Only when the number of PNP and AFP members convicted of torture, enforced disappearance or other abuses approaches the number of these types of abuses that actually occur can it be said that these bodies are being held accountable.

The Government of the Philippines must repeal, or at the very least, amend the Human Security Act. The overly broad definition of terrorist acts must be refined to target actual terrorist threats, rather than being an umbrella provision that allows the targeting of Government critics. The provision dictating draconian mandatory minimum penalties must be removed. The law must be amended so that it no longer allows any detention without charge; and the new law must stipulate that the review of detentions must be conducted by an independent judicial body, not by an organ of the executive branch.

The Government of the Philippines must bring its defamation laws into compliance with the ICCPR, most importantly by decriminalizing the offence, in order to eliminate the current climate of suppression created by the possibility of criminal prosecution for exposing wrongdoing by public officials. It must also replace provisions that currently put certain conditions on the use of the truth as a defence. Truth must be a legitimate defence against defamation under the law. The burden of proving the untruth of an allegedly libellous statement must be shifted to the complainant. The Cybercrime Prevention Act must likewise be amended to ensure that defamation is not criminalized and that sentences for online crimes are not one degree more severe than comparable offline crimes.

The Government of the Philippines must repeal Article 201 of the Penal Code and ensure that speech which may be offensive to religious persons is not criminalized and is not subject to arbitrary, undefined and broad tests such as 'obscenity'. Archaic, religiously-motivated blasphemy laws are inconsistent with the respect for fundamental human rights guaranteed by the Philippines' Bill of Rights.

Finally, legislation that specifically protects and enables HRDs must be tabled and passed in the House of Representatives. The Human Rights Defenders Act proposed in October 2011 was a promising piece of legislation, but it was never heard in the House. Recognizing the challenges and dangers HRDs face, and specifically addressing them, is crucial to the creation of an enabling human rights environment.

⁴⁵³ 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, on his mission to the Philippines (12-21 February 2007) (UN Doc.A/HRC/8/3/Add.2); 16 April 2008, para 52-54, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/130/01/PDF/G0813001.pdf?OpenElement>

TIMOR-LESTE

Synopsis of the challenges of HRDs

A culture of impunity exists in Timor-Leste, with inadequate efforts having been made to address past human rights abuses. Sexual and gender-based violence, particularly against indigenous women, has not been adequately addressed.⁴⁵⁴ Human Rights Defenders (HRDs) who call attention to this impunity are themselves at risk of having their rights violated with impunity.

In January 2016, HRDs from Yayasan HAK, a human rights Non-Government Organisation (NGO), were harassed by the security forces as well as the police for organising a peaceful protest calling for accountability for crimes committed during the Indonesian occupation during Indonesian President Joko Widodo's visit.⁴⁵⁵ On the day of the protest, the security forces intimidated the activists by attempting to enter the organisation's premises and ordering a staff member to remove a 'Free West Papua' t-shirt. The organisation has subsequently received harassing phone calls from the police about the demonstration. In 2014, all foreigners working in agencies related to anti-corruption, prosecution, or the judiciary were expelled from the country in an attempt by the Government to disrupt the progress of cases against its allies.⁴⁵⁶

Journalists face both intimidation and judicial harassment, particularly for work exposing corruption or impunity. In March and April 2015, police officers assaulted journalists on four occasions in retribution for articles they had published. Journalists have also faced defamation charges for their work.⁴⁵⁷ Since 2009, there have been five high-profile defamation cases against journalists and editors.

The country held Parliamentary elections in 2017, which resulted in the formation of a government comprised of a coalition between FRETILIN and PD (Democratic Party). The Parliament was dissolved through a presidential decree in January 2018 following months of deadlock. The coalition Government failed to pass its programmatic and budget plan due to the tension between the ruling coalition and the opposition coalition, AMP. In follow-up elections in 2018, the AMP coalition won a majority of seats and formed a new Government. This situation of political gridlock following the 2017 elections affected the Government's ability to implement its human rights and democratic commitments. For example, the draft anti-corruption law was not able to be passed. During the time of political gridlock, CSOs and HRDs could not conduct their advocacy and lobbying activities as the government was not functioning properly.

Repressive laws and policies

Article 285 of the Penal Code criminalises false accusation of a crime, while Article 418 of the Civil Code covers all other defamation cases. Under Article 418 anyone who publicizes a statement that can harm someone's personal standing can be the subject of a civil lawsuit. Under Article 285 anybody who intentionally falsely accuses another of a crime can be jailed for up to three years. In January 2016, journalist Raimundos Oki and editor Lourenco Vicente Martins, both of the Timor Post, were charged under this provision with making false accusations for having published an article alleging wrongdoing by Prime Minister Rui Maria de Araujo. The article claimed that in 2014, the Prime Minister, who was at that time advisor to the Finance Minister, had interfered in the bidding process for a Government information technology project. Journalists Raimundo Oki of the Independente and Oscar Maria Salsinha of the

⁴⁵⁴ 'Observations on the State of Indigenous Human Rights in Timor-Leste,' Cultural Survival, March 2016, <https://www.culturalsurvival.org/sites/default/files/media/uprreporttimor-leste2016.pdf>

⁴⁵⁵ 'Timor-Leste: Stop Intimidation and Harassment of Human Rights Activists for Exercising their Rights,' Forum-Asia, 10 February 2016, <https://www.forum-asia.org/?p=20241>

⁴⁵⁶ 'Dismissal of international officials and advisors in the Timor-Leste judicial sector,' Judicial System Monitoring Programme, December 2014, <https://www.laohamutuk.org/Justice/2014/JSMPRept16Dec2014en.pdf>

⁴⁵⁷ 'Media freedom and regulation in Timor Leste,' Asosiasaun Jornalista Timor Lorosa'e, 8 May 2015, https://www.ifex.org/east_timor/2015/05/19/freedom_regulation/

Suara Timor Lorosê faced charges in 2012 under Article 285 for writing separate articles about a district prosecutor in Oecuse district suspected of receiving a bribe. A District Court in Dili absolved the two journalists of any criminal liability for defamation, but both were forced to pay a US\$150 fine for 'causing psychological disturbance' to the state prosecutor.

The Law on Freedom of Assembly and Demonstration, 2006 places constraints on the ability to hold protests and public assemblies. Under the law, those wishing to hold a public demonstration must issue a notice at least four days before the demonstration is to take place. The notice must be signed by five organisers, who must provide their contact information and professions. Protesters wishing to raise concerns with Government policies or against elected officials have seen their permits denied. In addition, the Law stipulates that demonstrations may not be held less than 100 meters from any public facility, including the offices of political parties and the residences of Government officials. Given Dili's small size and the layout of Government buildings, these rules make it very difficult to protest in an area where protestors will have their demands heard. The law also stipulates that demonstrations may only take place between 8 AM and 6:30 PM.

Enabling laws and policies

The Office of the Provedor for Human Rights and Justice, or Provedoria dos Direitos Humanos e Justiça (PDHJ), is the National Human Rights Institution of Timor-Leste. It was established under Article 27 of the Constitution of Timor-Leste in May 2002 and first opened its doors in 2006. The PDHJ has a dual mandate covering human rights and good governance. Law No. 7/2004 has given the PDHJ the power to oversee and to make recommendations on any violations of human rights committed by any State institution on the implementation of these legal frameworks on the protection and promotion of human rights. The PDHJ has been trying to fulfil some of its constitutional and legal obligations through establishing complaint mechanisms as described previously, appointing focal points in the districts

and conducting trainings, seminars and visits to prisons. PDHJ gave trainings to the Polícia Nacional de Timor-Leste, public employers, community leaders and students. There have been no programs, protection mechanisms or trainings undertaken to respond to the needs of HRDs in Timor Leste.⁴⁵⁸ Furthermore, the PDHJ has failed to intervene when called on upon multiple times. The movement of its representatives has also been curtailed by the Military when it has attempted to monitor Military operations. Finally, there is significant room for improvement in the attention given to its recommendations by other branches of Government.

Recommendations

The criminalization of defamation is in violation of international standards on free expression, which hold that defamation must be a private matter to be settled by civil suits. Criminal penalties such as prison sentences are disproportionate to the act of defamation, and therefore Article 285 of the Penal Code must be abolished. Civil defamation laws must be proportionate, have a reasonable severity threshold and avoid fines, with the exception of very serious cases. Article 419 of the Civil Code must be amended accordingly.

The Law on Freedom of Assembly and Demonstration must be amended to remove the requirement that person seeking to hold a protest notify the police, as well as to retract the police's power to deny permission for peaceful protests to take place. Restrictions on location and time must also be removed.

The PDHJ must take a more proactive approach to preventing and addressing violations against HRDs, by establishing an HRD focal point and an HRD protection mechanism, as well as providing trainings to HRDs. The Provedoria must also be more proactive in investigating human rights violations, and be sure to respond and take effective action when it receives complaints. The Military must be prevented from limiting the ability of PDHJ members to oversee its operations, and any such limitation should be the subject of a thorough inquest and appropriate punishment.

⁴⁵⁸ 'Timor-Leste: Proactive steps needed for further improvement,' Judicial System Monitoring Programme in ANNI Report 2015, <https://www.forum-asia.org/uploads/wp/2015/09/5-Timor-Leste-FINAL-03-Aug-2015.pdf>

VIETNAM

Synopsis of the challenges of HRDs

Human Rights Defenders (HRDs) in Vietnam have been increasingly persecuted in recent years as the Government attempts to retain an authoritarian grip on a society that is increasingly calling for the respect of human rights. As the Government struggles to suppress increasing dissatisfaction with its failure to respect the rights of its citizens, and it uses increasingly heavy-handed tactics to crush any dissent. HRDs in Vietnam face the most repressive legal and policy framework in the region, which criminalizes all aspects of their work and places obstacles in their path at every step. Any form of criticism of the Government is met with a wide range of severe repression, some of it thinly justified under a maze of arbitrarily imposed restrictive regulations, and some of it in the form of sheer extra-legal violence. Despite the extreme repression that they face, HRDs continue to attempt to hold the Government to account, and 2016 saw unprecedented protests calling for more Government accountability and respect for rights.

The Vietnamese Government is using draconian and broadly phrased national security-related articles of the Criminal Code to put HRDs in prison, often for terms of over a decade. These articles explicitly criminalize criticism of Government and actions that are not in the Government's 'interests,' thus providing a legal pretext to intimidate and silence activists. Judicial harassment is extremely common, many HRDs are repeatedly targeted under a complex and ever-shifting set of regulations created by an unaccountable Government to justify its persecution of HRDs. The judiciary is fully under the control of the Communist Party, meaning that activists are never acquitted unless the Party decides it. Torture and other forms of ill-treatment while in detention are very common. For example, elderly activists sentenced to long prison terms are often denied medical treatment.

The Government frequently adjusts the legislative framework to make it more repressive or so that it can better target HRDs and dissenters. The

manipulation of the legal framework governing associations demonstrates this practice. In 2009, the Government passed Decision 97, which prohibits Non-Governmental Organisations (NGOs) registered as science or technology organisations -Vietnam's restrictive registration system does not allow the registration of political organisations- from working on policy issues such as economics and politics, and enumerates a list of subjects which research must be limited to. This move was a targeted measure to shut down the Institute of Development Studies, which was Vietnam's only independent think tank. A new draft Law on Associations tabled in 2016 seeks to expand restrictions on associations, by, among other measures, banning foreign funding of NGOs.

The use of informal and extra-legal forms of repression is also extremely common in Vietnam. As there are no independent Government organs to check the Party's power or provide redress to victims, the Government frequently deals with dissent by simply using brute physical force. For instance, in May 2016, during unprecedented protests against the Government's handling of an environmental disaster caused by a leak from a steel plant, dozens of activists were simply not permitted to leave their homes. This informal house arrest is a frequently-used tactic. Other common acts of intimidation include confiscation of passports and prevention from international travel, monitoring, beatings, and hiring thugs to throw stones at activists' homes. Environmental rights defenders came under severe attack in 2016 following the aforementioned environmental disaster: any attempt to shed light on the situation or call for adequate compensation was severely repressed, and there were many instances of arrests and prosecution over this issue. Land rights defenders continue to be at risk as uncompensated and forced Government appropriation of farmers' land continues to accelerate. HRDs defending the rights of religious minorities also continue to be targeted, with dozens of activists imprisoned for having stood up for these communities. HRDs daring to develop links with foreign organisations or to comment to foreign media are also subject to harsh repression.

Women Human Rights Defenders (WHRDs) constitute a large proportion of the HRDs in Vietnam. WHRDs face risks not only from the Government, but also from their families and society at large, as it is widely believed that women should not participate in public life.⁴⁵⁹

Repressive laws and policies

The Vietnamese Criminal Code has been utilised as a tool by authorities to suppress the critics and dissidents of the one-party-state Government of Vietnam. The National Assembly adopted the new Criminal Code in 2015 with an amendment to the draft law in 2017. The new Criminal Code became effective on 1 January 2018 replacing the 1999 and 2009 Criminal Code (the old Criminal Code). Nevertheless, several provisions constituting ban on criticisms against the Government remain the same and even worsen with additional offences.

Despite the amendment that reduced the length of imprisonment for criminal defamation or 'Slander' offence, Vietnam's defamation laws carry stiff penalties and can be used to silence HRDs by treating. Under Article 156 of the Criminal Code⁴⁶⁰ (Article 122 of the old Criminal Code⁴⁶¹), those who spread information that they know is fabricated in order to damage the reputation of another can be imprisoned for up to three years; if the act involves insult to people performing their official duties, such as law enforcement officers, it can be punished by up to two years of imprisonment. Under Article 121 of the old Criminal Code, serious infringements on the dignity or honour of another person, regardless of whether the information is true or in the public interest, is punishable by up to two years in prison. Once again, if the 'humiliation' targets a public official, the sentence can be heavier; in this case, three years of imprisonment. In March 2016, prominent blogger Nguyen Huu Vinh was sentenced to five years of imprisonment for defamation of the Communist Party, among other charges. Vinh has been repeatedly harassed and detained for his writings on human rights and social issues.

A number of other clauses in the Vietnamese Criminal Code explicitly ban any criticism of Government, punishable by long prison terms and even capital punishment. Article 117 in the new Criminal Code (Article 88 of the old Criminal Code) silences voices critical of the Government and state policies by banning all 'anti-state propaganda.' It has been a prominent tool used by the Government in the 2015-2016 crackdown on HRDs and dissidents. Article 117 prescribes imprisonment of up to 20 years for extremely making or spreading information that oppose the Government, spreading fabricated information with the aim of dismaying people, or producing or publishing psychological warfare against the Government. Under the November 2015 revisions to the Criminal Code which came into effect 1 January 2018, a new offence were added, punishing 'preparation of committing this crime' with up to five years of imprisonment.

There are several cases of HRD being charged with the Article 88 of the old Criminal Code. Nguyen Van Dai, a well-known peace campaigner and founder of Vietnam Human Rights Centre (VHRC), was one of the victims of the 'anti-state propaganda' Article 88. Due to his activity, On 16 December 2015, Nguyen Van Dai was arrested by the police. His pre-trial detention was extended again in December 2016, which marks the third time of the extension since his arrest. In April 2017, the investigation period was extended. In July 2017, after 19 months of investigative detention, he was charged for violating Article 79 of the old Criminal Code. It is uncertain whether he is still facing the charge on Article 88 or not. In November 2016, prominent blogger and HRD Ho Van Hai was arrested under Article 88 for 'spreading information and documents on the internet that are against the Government.' His blog and Facebook page were shut down by the authorities. The charges are in connection to online articles about the need for accountability and compensation for the environmental disaster of April 2016, in which a leak from a steel plant contaminated the ocean, resulting in the mass death

⁴⁵⁹ 'Concluding observations on the combined seventh and eighth periodic reports of Viet Nam,' Committee on the Elimination of Discrimination against Women, 29 July 2015, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=CAqhKb7y-hsl2Y0YMjGrSfy7wV721E18VKdeE3T7cAq%2b98u1ormSza%2bEljxZ1%2feYG2C8f89XyuvbIWtHiXzafalZNaRseZelGcT-gHLluL2gYNkUXC7FFp>

of fish and serious impacts on the livelihoods of fisherpeople. In October 2016, blogger and HRD Nguyen Ngoc Nhu Quynh (also known as 'Mother Mushroom,' was also charged under Article 88 for her work on the same environmental disaster. In March 2016, prominent blogger and HRD Nguyen Dinh Ngoc (also known as Nguyen Ngoc Gia) was sentenced to 4 years' imprisonment and a subsequent three years of probation under Article 88 for 'disseminating propaganda against the state.' Gia had been in detention since December 2014 in relation to his writing for independent blogs and comments on the Radio Free Asia about the cases of three other bloggers detained under Article 88. His sentence was reduced to three years in jail and three years of probation in October 2016 because of the revolutionary credentials of his family. Also in March 2016, land rights activists Nguyen Thi Tri, Ngo Thi Minh Uoc, and Nguyen Thi Be Hai were sentenced to three, four and three years respectively, as well as three years of probation, under Article 88. They were arrested in July 2014 for demonstrating outside the US Consulate demanding that the Government return seized land to farmers.

Under Article 116 of the new Criminal Code (Article 87 of the old Criminal Code), anyone who sows division, hatred, or ethnic bias between different groups or between citizens and the Government can be imprisoned for up to 15 years. The 2015 Criminal Code amendments that came into force on 1 January 2018 further broaden definitions under the article and lengthen the minimum prison term from five to seven years of imprisonment. Article 87 of the old Criminal Code has been extensively used to persecute religious minorities in Vietnam fighting for their right to free expression, in particular ethnic Montagnard Christians: as of July 2016, there are 27 Montagnard Christian activists in prison for exercising their right to freedom of expression.⁴⁶²

Article 87 has been used to charge other religious activists as well: in July 2012, Mennonite Pastor Nguyen Cong Chinh (also known as Nguyen Thanh Long) was sentenced to 11 years of imprisonment for allegedly having communicated with foreign media outlets and criticising the authorities' policies towards ethnic minorities.

Article 331 of the Criminal Code (Article 258 of the old Criminal Code) criminalizes the 'abuse' of freedom of religion, expression, assembly, and association to infringe upon state interests. If found guilty and the offence has a negative impact on social security, order, or safety, the convicted could face up to seven years' imprisonment. In March 2016, prominent bloggers and HRDs Nguyen Huu Vinh and Nguyen Thi Minh Thuy were sentenced to prison terms of five and three years respectively, on charges under Article 258 of the old Criminal Code for running a popular website which featured alternative news on social issues and human rights. The site reported on several major events in Vietnam that were not covered by state media, such as protests, land evictions, police brutality, and trials of human rights advocates. In October 2013, blogger and activist Dinh Nhat Uy was sentenced to 15 months of house arrest under Article 258 of the old Criminal Code for writing online posts calling for the release of his brother, a student activist who was arrested in October 2012 under Article 88 for distributing leaflets that criticized the Government.

Under Article 245 of the old Criminal Code, an individual who causes 'public disorder' can be imprisoned for up to two years. There is no definition of what constitutes disruption of public order, meaning that it can be interpreted to refer to peaceful acts such as making noise. Under Decree No. 38/2012/N⁴⁶³ of April 2012 and Decision 76/2010/QD-TTg⁴⁶⁴ of November 2010, any unauthorized public gathering is

⁴⁶⁰ 'The Criminal Code 2018' <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>

⁴⁶¹ 'The Old Criminal Code' <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn017en.pdf>

⁴⁶² 'Prisoners of Conscience in Vietnam,' Amnesty International, July 2016, <https://www.amnesty.org/download/Documents/ASA4143892016ENGLISH.pdf>

⁴⁶³ 'Decree Regulating in detail the implementation of a number of articles of the Law on Food Safety' http://www.puntofocal.gov.ar/notific_otros_miembros/vnm22s1_t.pdf

⁴⁶⁴ 'Decision on organisation and management of international conferences and seminars in Vietnam' http://moj.gov.vn/vbqp/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10713

illegal. Under Circular 13/2016/TT-BCA⁴⁶⁵ any assembly outside a courthouse is unlawful. All three of these quite different and wide-ranging regulations shed light upon the types of ‘offences’ that can be prosecuted under Article 245. Under this article, if the act in question takes place ‘in and organised manner,’ causes obstruction to traffic, or incites others to commit disorder, the alleged perpetrator may be imprisoned for up to seven years. In September 2016, land rights activist and HRD Can Thi Theu was sentenced to one year and eight months of imprisonment under Article 245 for having organised a demonstration in April 2016 condemning the detention of a human rights lawyer. Can Thi Theu has spent a decade fighting for adequate compensation for persons whose land has been expropriated by the Government, during which time she has faced imprisonment and physical attacks. Her appeal to the sentence was rejected in November 2016. In August 2014, prominent land rights activist and HRD Bui Thi Minh Hang was sentenced to three years’ imprisonment under Article 245 after she, along with 20 other activists, attempted to visit human rights lawyer Nguyen Bac Truyen. In February 2017, she was released from prison after serving her full sentence.

Article 118 of the Criminal Code (Article 89 of the old Criminal Code) also limits freedom of assembly by criminalizing the intent to oppose the Party or Government by gathering ‘many people’ to disrupt security, or to obstruct officials or agencies. These acts are punishable by 15 years of imprisonment. The amendment to the Criminal Code additionally includes up to thirty-six month of imprisonment for ‘preparation of committing this crime.’ In October 2010, labour rights activists Doan Huy Chuong, Do Thi Minh Hanh and Nguyen Hoang Quoc Hung were sentenced to seven, seven and nine years imprisonment, respectively, under Article 89 of the old Criminal Code for helping workers in a shoe factory organise a strike to improve their working conditions.

Article 109 of the Criminal Code (Article 79 of the old Criminal Code) severely restricts freedom of association by criminalizing the act of establishing or joining organisations with the intention of acting against the Government, punishable by up to capital punishment or life imprisonment. The amendment of the Criminal Code added the crime of preparing to commit this offence, punishable by up to five years in prison. In practice, this article can be used to target any organisation which the Government disapproves. Article 79 had seen a significant uptick in use in the years prior to the passage of the amendments. In December 2016, pro-democracy activists Tran Anh Kim and Le Thanh Thung were sentenced to 13 and 12 years of imprisonment respectively for having prepared to found the ‘National Force to Launch the Democracy Flag’ group. The Government accuses them of seeking to overthrow the Government, despite the fact that the organisation had not even been established yet, much less planned any activities. In November 2016, pro-democracy activists Luu Van Vinh, Nguyen Van Duc Do, Du Phi Truong and Tuan Doan were arrested and charged under Article 79 for having established a group entitled ‘the Alliance of Self-Determined People.’ In February 2013, 22 activists from the Council for the Laws and Public Affairs of Bia Son, a religious group seeking to protect the environment, were sentenced to between 12 years to life in prison under Article 79 for being members of the group, which the Government considers a terrorist organisation. In January 2013, 13 people, including religious activists, students and bloggers were sentenced to between three and 13 years of imprisonment under Article 79 for allegedly being part of the overseas-based Viet Tan pro-democracy group.

Beyond being criminally prosecuted, associations in Vietnam face difficulties due to extremely strict regulations governing them. Under Decree No. 45/2010/ND-CP⁴⁶⁶ of July 2010 any unregistered organisation is unlawful, and the Government has full control over which organisations are granted

⁴⁶⁵ ‘New restrictions on the right to demonstrate in Vietnam,’ Vietnam Human Rights Defenders, 31 March 2016, <http://www.vietnamhumanrightsdefenders.net/2016/03/31/new-restrictions-on-the-right-to-demonstrate-in-vietnam/>

⁴⁶⁶ ‘Decree on the organisation, operation and management of associations’ <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84259/93533/F1158441545/VNM84259.pdf>

registration. The decree bans activities deemed harmful to ‘national security, social order, ethics, and national (...) practices.’ The registration requirements under the decree are onerous, preventing small organisations from registering. Finally, the decree mandates that only the six Government-affiliated mass organisations may engage with Government agencies. It is also extremely difficult for Vietnamese civil society groups to obtain funding from foreign donors. Decree No. 93/2009/ND-CP,⁴⁶⁷ issued in October 2009, states that all foreign aid provided to civil society groups in Vietnam must first be approved by the Government.

The draft Law on Associations⁴⁶⁸ maintains all of the current restrictions, and adds even more barriers. Registration remains mandatory under the draft, and remains a difficult and complicated process that is subject to Government approval.⁴⁶⁹ There are restrictions on the structure and composition of an organisation, including the health, qualifications, age and reputation of its founders, as well as excessive financial requirements. Foreign funding is banned under the draft, except in exceptional circumstances that are specifically authorized by the Government. Mass organisations, which are Government-run, meanwhile, operate under a different and more permissive set of rules.

Enabling laws and policies

There are no laws or policies in Vietnam that provide for the fostering of an enabling environment or the protection or promotion of their rights. Numerous clauses of the 2013 Constitution⁴⁷⁰ appear to guarantee human rights: Articles 3 and 14 state that the Government will respect human rights; Article 25 guarantees the right to ‘freedom of opinion and speech, freedom of the press, to access

to information, to assemble, form associations and hold demonstrations;’ Article 16 guarantees equality before the law and forbids discrimination on the basis of political views; and Articles 31, 102 and 103 provide for fair and open trials and compel the courts to protect human rights. However, Article 14 effectively negates this guarantee by stating that these rights may be infringed ‘for the reasons of national defence, national security, social order and security, social morality, and the health of the community.’ Article 15 states that ‘the practice of human rights and citizen’s rights cannot infringe national interests.’ Articles 70, 88 and 105, meanwhile, provide for continued control of the courts by the Party.

The Access to Information Law, 2016,⁴⁷¹ which will enter into effect in July 2018, provides citizens some power to request Government information. However, the existing definition of confidential information outside the scope of the law is too broad. The Government may classify information as it wishes, and only once it is declassified may it be disclosed to the public. Documents related to ‘politics, defence, national security, foreign relations, economics, technology or any other areas regulated by the law’ are not subject to disclosure. Corporations are provided some ability to avoid access to information requests.

Recommendations

Articles 156 (Article 122 of the old Criminal Code) must be struck from the Criminal Code because defamation does not constitute a criminal offence by international standards, and imprisonment for such an act is not proportionate. They may be replaced with civil code provisions which are proportionate, have a severity threshold, and for which the truth is an effective defence. Public officials should be subject to a higher degree of scrutiny that regular citizens, not a lower one.

⁴⁶⁷ ‘Decree promulgating the regulation on management and use of foreign nonGovernmental aid’ <http://kenfoxlaw.com/resources/legal-documents/Governmental-decrees/2562-vbpl-sp-16720.html>

⁴⁶⁸ ‘Law on Associations (draft)’ <http://dvov.org/wp-content/uploads/2014/07/DRAFT-Law-on-Associations-2015-EN.pdf>

⁴⁶⁹ ‘A plan to legalise Vietnam’s private charities and clubs is shelved: but the state does not have the capacity to do their work,’ *The Economist*, 24 November 2016, <https://www.economist.com/news/asia/21710856-state-does-not-have-capacity-do-their-work-plan-legalise-vietnams-private>

⁴⁷⁰ ‘Final Constitution of the Republic of Vietnam Adopted by the National Assembly 28 November 2013’ (unofficial translation) <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94490/114946/F114201808/VNM94490%20Eng.pdf>

⁴⁷¹ ‘New Law on Access to Information,’ *Vietnam Law & Legal Forum*, 11 July 2016, <http://vietnamlawmagazine.vn/new-law-on-access-to-information-55>

Articles 117 and 331 of the new Criminal Code are illegitimate in their entirety and must therefore be abolished. They explicitly criminalize expression critical of the Government, which is a restriction on freedom of expression that is not permitted under international law. Article 116 of the new Criminal Code is broadly phrased enough to be used to silence any form of expression on religion of which the Party does not approve. Although laws protecting religious minorities from hate speech are legitimate, this law is not phrased to serve this purpose, and in practice is used for the contrary purpose of silencing them. The provision must be repealed in its entirety.

All restrictions on peaceful assembly must be immediately removed. Decree 38 must be abolished: public gatherings should not be subject to Government approval and any form of peaceful demonstration should be permitted to take its course without interference of any sort. Decision 76/2010/QĐ-TTg must be repealed for the same reason. Circular 13/2016/TT-BCA must also be abolished, as the law is so broad that virtually any movement outside of a courthouse could be deemed a legitimate target for a police crackdown. Article 118 must also be repealed for similar reasons: 'disrupting security' does not necessarily refer to violent acts, leaving open the possibility of peaceful protestors being charged.

Article 109 of the new Criminal Code must be significantly amended to ensure that it is limited to actual acts of violent rebellion and may not be applied under any circumstances to peaceful acts. By its current definition, it may be widely interpreted to refer to any participation in an organisation opposing the Government. The amended version must explicitly exclude its application to circumstances in which an actual attempt to overthrow the Government through the use of force has not occurred. The article must also be amended to make punishment proportionate to the act committed.

Decree 45 must be repealed because it imposes a number of illegitimate restrictions on freedom of association. Registration should be a choice, rather than being obligatory, and no person or organisation should be subject to any form of

penalty for participation in a peaceful association. The registration process for organisations that choose to register must be simple, easy, rapid, and administered by a body independent of Government. Restrictions on the activities of associations on grounds beyond those considered legitimate by international standards, such as the use of violence, must be eliminated. There must be no Government interference in the structure, management or operations of associations. The Government must engage with all stakeholders when drafting legislation or creating regulations. Decree 93 must be abolished because funding should be a matter left up to an association and beyond the control of the Government. To require permission for receiving foreign funding is a violation of freedom of association.

The draft Law on Associations must be extensively revised because in its current form it imposes the same illegitimate restrictions on freedom of association as Decree 45 and Decree 93. The law must guarantee freedom of association to all, without mandatory registration or Government intervention in structure, composition, activities, affiliations, funding or any other regard.

The Constitution must be amended to remove the restrictions currently placed on the guarantees of human rights. Article 14 and 15 in particular must be modified to remove the list of restrictions and the subordination of human rights to the national interest. The Access to Information Law must be amended to remove the restrictions on the type of information that may be requested, as these restrictions negate the utility of the law. It must also narrow the definition of classified material to documents that immediately put lives in danger if they are disclosed: the Government must not have free rein to classify any information it chooses not to disclose.

The Government of Vietnam, in full consultation with civil society (including unregistered organisations), must draft both a law establishing a NHRI with a HRD component fully compliant with the Paris Principles, as well as draft a law on the protection and promotion of HRDs' human rights and the creation of an enabling environment for their activities.

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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.

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