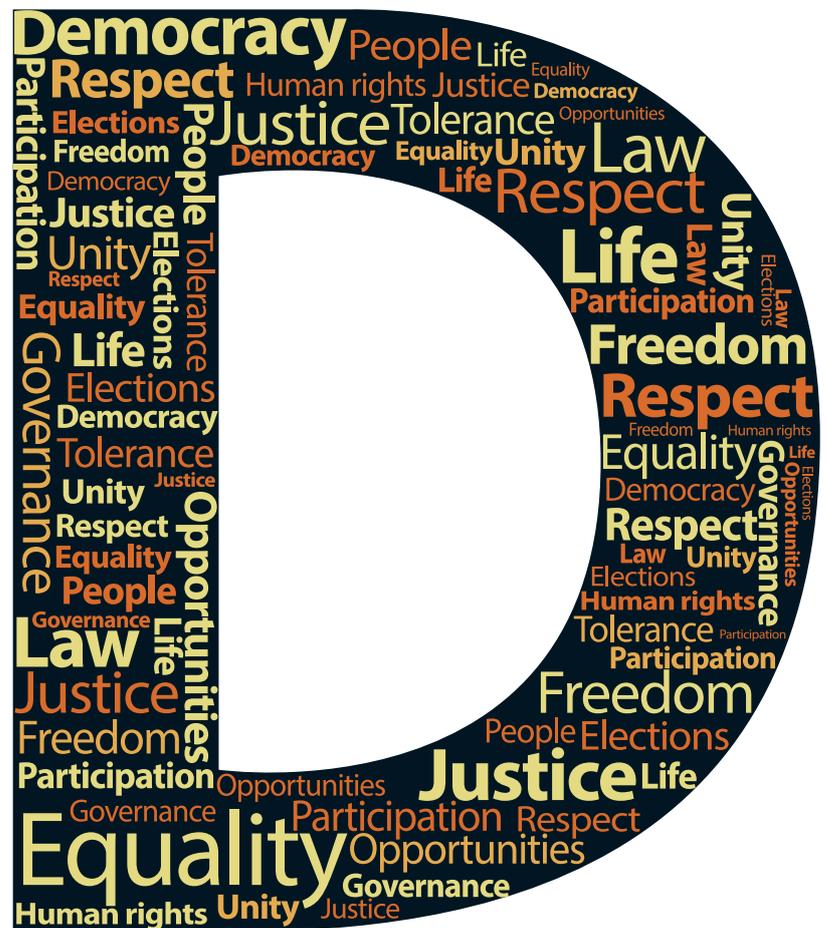


Civic Space in Asia: Emerging Issues and Policy Lessons from Six Asian Countries

March 2018





In 2016, Asia Democracy Research Network (ADRN) selected corruption, shrinking civic space, and gender inequality as the common challenges across Asia that continue to plague and work against deepening the quality of democracy.

Against this background, ADRN published this special report to evaluate the current state of shrinking civic space in the region by studying the strengths and weaknesses of each country's mechanisms including law and regulations, public participation, and public governance.

The report investigates pressing, contemporary questions such as:

What evidences suggest shrinking of civic space in Asia?

What successes and failures has each country experienced in protecting civic space?

What lessons can be drawn to suggest policy actions for expanding civic space?

Drawing on a rich array of resources and data, this report offers country-specific analysis, highlights areas of improvement, and suggests policy recommendations for ensuring civic space in Asia.

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Each author is solely responsible for the content of this report.

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Synthesis

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1. Introduction

Asia as a region is culturally, socially, economically, and politically diverse. It is characterized by its large population, fledgling democratic governance institutions, increasing militarization, sectarianism, and inequalities. Except for China and North Korea, all of the countries in Asia have democratically elected governments. Paradoxically, most Asian countries are also confronted with democratic deficits. Some are too fragile. In recent years, democracy has been weakened, corruption has increased, and the rights of citizens have been denied across the region. Troubled political relations have resulted in mutual mistrust, tensions, and hostility between countries.

International support for the promotion and protection of democracy and human rights saw a steady, historical rise in global reach in the decades after the Cold War. However, in recent years, an increasingly assertive pushback against such efforts has become palpable around Asia. A host of national governments have erected diplomatic, legal, and logistical barriers to externally supported democracy and rights programs that they deem are too politically intrusive and infringe upon the sovereignty of a nation-state.¹

There have been incidents where international organizations and their local partners engaging in democracy and human rights work have been publicly vilified, harassed, and/or expelled by the governments. National and international democracy and human rights activists have been particularly concerned by the viral spread of new laws restricting foreign funding for domestic non-governmental organizations (NGOs).

Although the basic right of the people to a life of dignity and social justice has been theoretically accepted by all governments in the region, the current situation has led to indiscriminate violations of human rights in practice. People are gradually becoming desensitized, development is losing its humane face, and democratic institutions are being weakened. The development budgets of many Asian countries are being diverted to defense activities, and people are being further marginalized as a result.

Civil society's ability to act rests on the realization of the right to association, the right to peaceful assembly, the right to freedom of expression, and the right to participation. These fundamental rights are under renewed and sustained assault. This assault is being driven by a number of motivations, including an increasing focus by states on enforcing national security and countering terrorism; pushback against the successes that mass protests have achieved in recent years; the capture of many governance systems by wealthy elites pursuing private sector interests;

¹ Unmüßig, B. (2016, May 11). The Return of Repression: Closing and Shrinking Spaces. *Heinrich Böll Stiftung*. Retrieved from <https://th.boell.org/en/2016/05/11/return-repression-closing-and-shrinking-spaces>.

and the reduced influence of aid from Global North states in the Global South and the rise of alternate funding sources that have little interest in supporting democracy and human rights.²

It is in this context that this paper seeks to understand the state of civic space in India, Myanmar, Pakistan, the Philippines, Sri Lanka, and Taiwan. This synthesis paper is drawn from the respective country reports, which critically assess the quality of civic space in each of these countries.

Civic space forms the bedrock of any open and democratic society. The degree to which individuals and organized groups have adequate “civic space” is essential to the healthy functioning and development of any society. Civic space is defined, for the purpose of this research, as the freedom and means to speak, associate, organize, and participate in public decision making. The means to do so might include access to information, resources, and institutions. It includes communicating without hindrance and in doing so, influencing political and social structures. For that to happen, a state has a duty to protect its citizens while respecting and facilitating their basic rights to associate, assemble peacefully, and express views and opinions.

2. Research questions

The overall purpose of the research was to enable evidence-based policy actions towards protecting and expanding civic spaces in Asian democracies. The following research questions guided the country research:

- What evidence suggests shrinking of civic spaces in Asian democracies?
- What actions are being taken by the democracy defenders to protect and expand these spaces?
- What has been the impact of these actions on actors and spaces?
- What lessons can be drawn to suggest policy actions for protecting and expanding civic spaces?

Each country research report sought answers to these research questions and collated the findings along the following four parameters:

² Bandyopadhyay, K. and Chakrabarti, K. (2016, November). Civic Space under Siege: Experiences from South Asia. *Asia Democracy Research Network Working Paper Series*. Retrieved from http://www.eai.or.kr/data/bbs/eng_report/2016112818132469.pdf.

2.1) Freedom of association

The following questions were used as pointers for the research:

- Have there been instances where civil society and citizen groups were prevented from forming and registering an association in order to advance collective interests?
- Have there been instances of unreasonable delays that the civil society and citizen groups have experienced when trying to register or form an organization?
- Has the government introduced any new laws that hinder/enable freedom of association? If so, in what ways do they do this?
- Has the government used its authority to deregister or interfere with civil society organizations (CSOs)?
- Have there been incidents where some CSOs (for example those promoting human rights/democracy/good governance) have been specifically targeted?
- Have any CSOs been prevented from opening or maintaining a bank account?
- Have any CSOs been required to undergo unnecessarily frequent (more than prescribed by law) fiscal audits, particularly for democracy and human rights organizations?
- Have CSOs been prevented/restricted from receiving foreign funding?

2.2) Freedom of assembly

The following questions were used as pointers for the research:

- Are civil society and citizen groups allowed to stage/organize protests/demonstrations? What issues are at stake?
- Has the government exercised control over those protests and demonstrations?
- Are there instances where requests to demonstrate have been denied? What were the cited reasons?
- Have organizers of gatherings been required to obtain prior permission/approval for demonstrations?
- If only notice is required, has the notice period changed or not been respected by authorities?
- Have unwarranted 'time and place' restrictions been imposed? For example, has the proposed place location of protest or demonstration been shifted by the authorities from the planned location? Has a protest or demonstration been prevented from reaching a particular destination?
- Are there any incidents of violent protests? What caused this and how did the government respond?
- Do authorities use excessive force against protestors?

- Do security forces make any arbitrary or illegal arrests? If so, what is the criminal charge levied against the person or group?
- Is there a law to regulate public gathering? Has the law been changed to regulate gatherings? Do those changes comply with international law and best practice?
- Have international or national monitors been allowed to monitor protests or demonstrations?
- How has the media reported about these protests? Do they focus on the exercise of the rights and the causes of the protests, or are they just on the lookout to sensationalize the protests that turn violent?

2.3) Freedom of expression

The following questions were used as pointers for the research:

- Has the state infringed on the right of the media, CSOs, academics or activists to freely express themselves?
- Have there been reported incidents of journalists, bloggers, or activists being subjected to interference, harassment, intimidations, and/or physical attacks?
- If there have been reported incidents of attacks, were they perpetrated or instigated by state, non-state actors, or both?
- To what extent has the state-owned media been editorially independent?
- Was self-censorship practiced by the media or civil society? Is there a fear of repercussions that prohibits civil society from promoting certain rights-based issues?
- Does the government facilitate the exercise of freedom of expression of vulnerable and disadvantaged groups?
- How accessible is government information in law and in practice?
- Has the state used the legal system to target people or journalists who express critical opinions in public (for instance through criminal defamation or sedition proceedings)?
- Was freedom of expression on the internet and social media restricted? What are the measures adopted by the government to do so?
- What is the general perception and concern of the citizens about online privacy and state surveillance?
- Has the government introduced or changed laws or what actions have been taken by the state, and how do they facilitate or hinder free expression?

2.4) Right to participation

The following questions were used as pointers for the research:

- Has the state proactively enabled or sought participation from its citizens in planning and monitoring of policies and programs?
- Are there specific initiatives by the state to promote participation of ethnic/religious minorities, women, youth, and other vulnerable groups?
- Has the state enabled any new laws or institutions to institutionalize citizen participation in policies and programs?
- Has the state attempted to undermine the advocacy or activism of independent civil society through overt or covert means?

In the following sections the paper seeks to draw upon the factual evidence to examine the degree of realization of the fundamental rights – the right to association, the right to peaceful assembly, the right to freedom of expression, and the right to participation – in each of these countries.

2.5) Freedom of association

Civil societies have increasingly come under scrutiny and been viewed with mistrust by governments. Their demands on the government for greater transparency and accountability have been perceived as a threat to national sovereignty and, with the exception of Taiwan, wide-ranging regulations have been implemented to clip their freedom of association.

According to Press Trust of India (PTI), excessive documentation under the Foreign Contribution Regulation Act (FCRA) of 2010 has become an impediment to grassroots CSOs in India, affecting nearly 7,500 organizations over three years.³ Non-profit organizations in Sri Lanka are required to register officially (as NGOs) with the NGO Secretariat, a body that operates under the Ministry of Defense and Urban Development. If an organization refuses to do so, severe financial restrictions are initiated as a result, including the closing of bank accounts and a prohibition on receiving foreign funding. Another recent notice – this time issued by the Ministry of Finance and Planning – emphasized that all NGOs should get approval from the Ministry prior to receiving foreign funds. The NGO Secretariat purports to co-opt local NGOs within its network; one of its objectives is to “make sure that NGOs act within the national policy framework of the country.”⁴

³ Press Trust of India. (2017). File returns or get registration cancelled, MHA warns NGOs. *India Today*. Retrieved from <http://indiatoday.intoday.in/story/file-returns-or-get-registration-cancelled-mha-warns-ngos/1/968185.html>.

⁴ Colombage, D. (2017). Sri Lanka accused of trying to gag NGOs. *Al Jazeera*. Retrieved from <http://www.aljazeera.com/indepth/features/2014/09/sri-lanka-accused-trying-gag-ngos-201492263518312357.html>.

Pakistan requires all International Non-Government Organizations (INGOs) to resubmit their registration applications with cumbersome documents while providing no safeguard against arbitrary rejection.⁵ In Myanmar, it is mandatory for organizations to be registered to access foreign funding. Registered domestic associations are required to submit an annual narrative report and financial statement to the relevant registration committee. The submission of the annual report is necessary in order to renew the registration certificate every five years. While domestic associations are not required to pay any kind of renewal fee, International NGOs must pay a prescribed registration fee.⁶ The government of the Philippines requires CSOs to be registered with the Securities and Exchange Commission (SEC). The SEC maintains only eight field offices outside the capital (Metro Manila), leaving a large number of CSOs across the country's eighteen administrative regions without direct access to the SEC.

With the exception of Taiwan, CSOs have reported increased scrutiny and arbitrary regulations governing their operations. India's amended Lokayukt and Lokpal Act, 2013 mandates scrutiny of the income of representatives and officers of NGOs whose annual income exceeds a stipulated amount. A 2014 government directive in Sri Lanka bans public meetings and press conferences by NGOs.⁷ Fifteen overseas Tamil organizations have been blacklisted.

In Pakistan, the provincial government of Punjab issued an order in March 2016 binding all NGOs to seek permission from the district administrator before holding workshops, trainings, or meetings.⁸ The Khyber Pakhtunkhwa (KPK) provincial government has also imposed similar restrictions and many rights-based organizations are required to get No Objection Certificates (NOC) from local administration, involving a gigantic exercise that may restrict activities. In March 2016, Pakistan also temporarily stopped three NGOs from working and appointed government staff as administrators to scrutinize foreign funding in their offices.⁹ In Myanmar, many NGOs face intimidating inquiries from local intelligence officers when they conduct training. Many NGO leaders perceive that their organizations are under state surveillance.

In the Philippines, local government units (LGUs) are reluctant to accredit CSOs critical of local government policies and the actions of officials. Labor rights and farmers' organizations striving to end extrajudicial killings have had their offices raided by military and paramilitary forces. CSOs operating in conflict zones have been subjected to unwarranted public stigmatization labeling them as organizations with communist leanings.

⁵ Asghar, N. (2015). In Pakistan Too, Tough Times Lie Ahead for NGOs. *The Wire*. Retrieved from <https://thewire.in/7682/pakistan-will-impose-a-strict-regulatory-regime-for-ngos/>.

⁶ Civic Freedom Monitor: Myanmar (Burma). (2017, August 8). *The International Center for Not-for-Profit Law*. Retrieved from <http://www.icnl.org/research/monitor/Myanmar.html>.

⁷ Dibbert, T. (2014). Sri Lanka's NGO Clampdown. *Foreign Policy*. Retrieved from <http://foreignpolicy.com/2014/07/25/sri-lankas-ngo-clampdown/>.

⁸ Shah, Z. (2016). Shrinking civic space in Pakistan. *Heinrich Böll Foundation*. Retrieved from <https://www.boell.de/en/2016/09/13/shrinking-civic-space-pakistan>.

⁹ Abbasi, O. (2016). Foreign funding: Three Islamabad-based NGOs stopped from working. *The Express Tribune*. Retrieved from <https://tribune.com.pk/story/1063072/foreign-funding-3-islamabad-based-ngos-stopped-from-working/>.

Violence and intimidation towards human rights activists and defenders have been reported in all these countries. In Sri Lanka, people working for international and local humanitarian agencies have often disappeared, been abducted, tortured, or murdered, particularly between mid-2007 and 2009.¹⁰ During this time, the visas of many foreign NGO workers were cancelled or not extended due to allegations of bias against the government in favor of the Liberation Tigers of Tamil Eelam (LTTE).¹¹ Chinese authorities in March 2017 arrested a human rights activist from Taiwan who had visited the country to interact with social activists in China.¹² Many Taiwanese feel that this is the beginning of an increasing threat against Taiwanese society. According to the Taiwan country report, the women human rights activists have been subjected to unwarranted surveillance, targeted persecution and harassment, criminalization, and arbitrary arrest.

In the Philippines, the killing of civil society activists remains a serious problem with three regional representatives of Karapatan being killed since 2012.¹³ Pakistan too has reported cases of assassination of civil rights activists. In July 2016, veteran civil rights activist Lund was murdered for seeking safeguards against nuclear power plants. The head of a Human Rights Commission of Pakistan (HRCP) taskforce, a lawyer by profession, was killed in his office in Multan in May 2014 for representing a defendant accused of blasphemy.¹⁴ Another woman activist was murdered in Karachi in April 2015. The Secretary General of the Pakistan Fisherfolk Forum was arrested in January 2016.¹⁵

Repression of the activities of trade unions and student unions has seen a steady rise in the recent years across the countries. In Sri Lanka, at least 25 journalists, trade union activists, and railway workers were arrested on suspicion of conspiring with the LTTE. In 2014 the authorities cracked down on student unions in universities. Taiwan has seen a decline in its total number of labor associations. Although trade unions are independent in the Philippines, less than 10 percent of the labor force is unionized. Harassment and violence against labor leaders have been a part of the broader trend of extrajudicial killings in the past decade.

This sector has also seen the mushrooming of dubious state-funded CSOs in recent years. There have been instances of irregularities in government funding for CSOs in India and the creation of fake CSOs by political officials to acquire state funds. Bogus NGOs have also been floated in the Philippines, which witnessed the Priority Development Assistance Fund Scam of 2013.

¹⁰ A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya. (2009, March). *Centre for Policy Alternatives*. Retrieved from http://www.cpalanka.org/wp-content/uploads/2009/3/Vanni_Report.pdf.

¹¹ Samath, F. (2008). SRI LANKA: Clampdown on International NGOs. *Inter Press Service*. Available at: <http://www.ipsnews.net/2008/08/sri-lanka-clampdown-on-international-ngos/>.

¹² Wei-han, C. (2017). China urged to respect human rights, free Lee. *Taipei Times*. Retrieved from <http://www.taipeitimes.com/News/taiwan/archives/2017/06/05/2003671945>.

¹³ CIVICUS and Karapatan. (2016, September 22). Joint Submission to the UN Universal Periodic Review 27th Session of the UPR Working Group. Retrieved from http://www.civicus.org/images/CIVICUS_Karapatan%20UPR%20Submission.pdf.

¹⁴ Aslam, I. (2014). The murder of reason. *Dawn News*. Retrieved from <https://www.dawn.com/news/1107096>.

¹⁵ Awami Workers Party (AWP). (2016). Saeed Baloch, General Secretary of the Pakistan Fisherfolk Forum arrested by paramilitary forces in Karachi!. *Europe Solidaire Sans Frontières*. Retrieved from <https://www.europe-solidaire.org/spip.php?article36992>.

2.6) Freedom of assembly

The right to assemble peacefully is a fundamental right enshrined in international law, but all countries in this study have imposed legal restrictions on assembly.

In India, people need a police permit and a No Objection Certificate (NOC) to hold rallies, but the police have the power to deny permission. The provisions of various pieces of state legislation like the Delhi Police Act, the Bombay Police Act, the Mysore Police Act, the Madras City Police Act, the Madhya Bharat Police Act, and the Travancore-Cochin Police Act are also being used to prevent the holding of meetings and assemblies. In 2016, several students from Jawaharlal Nehru University (JNU) were arrested and charged with sedition for allegedly raising anti-national slogans at a peaceful rally.

Similarly, in Sri Lanka, there have been instances of police obtaining court orders to stop peaceful rallies. In Pakistan, holding public assemblies requires a permit from the district administration. Law and order and sometimes public inconvenience were cited as reasons for disallowing such assemblies. In Taiwan, there is an ongoing issue concerning amendments to the Assembly and Parade Act.

Myanmar has abolished section 18 of the Peaceful Assembly Law (2012), but activists continue to be arrested under Section 19 of the law.¹⁶ The Public Assembly Act of 1985 regulates the conduct of rallies in the Philippines. Permits can be denied on several vague grounds such as endangering public safety, public convenience, public morals, and public health.

Apart from Myanmar and Taiwan, all other countries in this study reported the use of excessive force/police brutality and mass arrests to curb public protests.

According to the National Crimes Record Bureau of India, in 2015 the police resorted to gunfire on 156 occasions, killing 42 and injuring 39 civilians. 327 cases of police lathi-charge¹⁷ were recorded, killing seven people and injuring 298 others. In June 2017, police shot five farmers dead to disperse protesters demanding the waiver of farm loans in Madhya Pradesh.

In Sri Lanka, hundreds of students and others were arrested in Jaffna in November 2012 for supposedly commemorating the Liberation Tigers of Tamil Eelam (LTTE)'s "Heroes Day." Even after the regime change, police brutality has continued. In May 2015 protesters against the rape of a school girl in Jaffna were rounded up while students seeking to discuss systemic changes in higher education were brutally dispersed by the anti-riot squad of the police in October that year.¹⁸

Pakistan has the highest number of enforced disappearances in the world, with Balochistan throwing up "a pattern of enforced disappearances targeting political activists, human rights

¹⁶ Human Rights Watch. (2016, June 29) "They Can Arrest You at Any Time" – The Criminalization of Peaceful Expression in Burma. Retrieved from <https://www.hrw.org/report/2016/06/29/they-can-arrest-you-any-time/criminalization-peaceful-expression-burma>.

¹⁷ Lathi-charge refers to an action where a large group of police run forward in an attacking movement carrying large sticks.

¹⁸ Video Of Sinhala Police Officer Using Racially Motivated Language At An Elderly Jaffna Woman Goes Viral. (2015, May 22). *Colombo Telegraph*. Retrieved from <https://www.colombotelegraph.com/index.php/video-of-sinhala-police-officer-using-racially-motivated-language-at-an-elderly-jaffna-woman-goes-viral/>.

defenders, journalists and lawyers.”¹⁹ A rights watchdog claims to have documented more than 700 extra-judicial killings by security agencies.

Police came down heavily in Taiwan in 2008 to quell widespread protests against a visit from the chairman of China’s Association for Relations Across the Taiwan Straits.

In the Philippines, despite legislation preventing unwarranted police interference in public assemblies, cases of excessive use of force have surfaced. On September 21st 2015, a protest in the Iloilo drawing attention to the 43rd anniversary of the declaration of martial law was violently dispersed by hundreds of anti-riot police with truncheons and shields ²⁰. On April^{1st} 2016, the actions of the Philippines National Police (PNP) to forcibly disperse protesting farmers in Kidapawan City left two dead and several injured, prompting full investigations by the Commission of Human Rights (CHR).

State inaction and state-sponsored violations repressing the freedom of assembly have been reported from all countries except Myanmar and the Philippines. India has also witnessed state inaction to quell public violence and hate crimes against religious minorities, particularly in villages and small towns.

In Sri Lanka, peaceful assemblies have been repeatedly disrupted by Buddhist monks allegedly aligned with the government.²¹ Use of intimidation by security forces, particularly in Tamil-dominated areas, continues despite regime change. Election-related violence and the abuse of state resources for campaigning have been a recurrent phenomenon, and have only intensified under the present dispensation.

Pakistan has enforced the Protection of Pakistan Act of 2014, the Actions in Aid of Civil Power Regulation of 2011, and an executive order to subject suspects of terrorist acts in the Federally Administered Tribal Areas to long-term internment. In 2015, a number of independent national organizations that have worked on labor rights and peace building for the last 20 years were branded as being agents of India.

In Myanmar, religious minority groups have difficulty getting permission to celebrate religious festivals. Protesting students face threats of expulsion from their colleges or universities.

2.7) Freedom of expression

Freedom of expression and speech is constitutionally guaranteed in the six countries covered in this study. Nevertheless, these countries have seen freedom of expression being systematically

¹⁹ Amnesty International. (2017, October 18). Pakistan: Election to UN Rights Body Spotlights Failings. Retrieved from <https://www.amnesty.org/en/latest/news/2017/10/pakistan-election-to-un-rights-body-spotlights-failings/>.

²⁰ Violent dispersal mars anti-Martial Law rally in Iloilo (2015, September 21) Retrieved from <http://newsinfo.inquirer.net/723980/violent-dispersal-mars-anti-martial-law-rally-in-iloilo#ixzz59ujGq7t2>

²¹ Centre for Policy Alternatives. (2014, August 5). Condemnation of violent attack on discussion with families of the disappeared. Retrieved from <http://www.cpalanka.org/condemnation-of-violent-attack-on-discussion-with-families-of-the-disappeared/>.

curtailed by governments with repressive laws formulated to stifle criticism and dissent. Draconian measures have often been put in place to keep the media on a tight leash, and accusations and violence against the press in the name of preserving national security have become commonplace.

In India, the law was also used to arrest people for posting allegedly “anti-national” sentiments on social media in Kerala. People in Madhya Pradesh were arrested for allegedly printing a national map which did not show all of Kashmir within Indian borders. Arrests were made in Karnataka for organizing a protest demanding better working conditions for police personnel. In August 2016, police in Karnataka registered a sedition case against representatives of Amnesty International India for allegedly conducting an “anti-national” event on human rights violations in Jammu and Kashmir.²²

In India, there is a worrying trend of repression of freedom of thought in educational institutions. Nobel laureate Amartya Sen raised the alarm in 2015 over the government’s undermining of the autonomy of academic institutions when he stepped down as the chancellor of Nalanda University.²³ JNU in New Delhi has also seen a steady encroachment on and attack against perfectly viable well-established educational structures.

Strict censorship laws in India have been put in place to restrict freedom of thought in films depicting women and their sexuality. In February 2016, the Supreme Court referred a batch of six curative petitions challenging Section 377 of the Indian Penal Code, which criminalizes consensual same-sex relations, to a five-judge constitution bench.

Under the previous regime in Sri Lanka, there were physical restrictions on radio transmissions, websites were blocked, and legislative codes were applied to media expression. The previous regime also abused state-owned media to vilify NGOs and government critics and incite violence against them.²⁴

In the Philippines, the absence of a comprehensive Freedom of Information law (FOI) has resulted in a lack of government transparency and timely dissemination of information. The Cyber Crime Protection Act of the Philippines (2012) has a wide-ranging anti-defamation clause provision that has the potential to hinder freedom of expression within Philippine cyberspace. Mainstream news networks are also subjected to license renewal and approval under the Philippine Congress.

Although Taiwan is ranked fourth amongst Asian countries according to the freedom of the press index, the ruling Democratic Progressive Party initiated the National Public Security Act. The government proposed setting up a large number of security units in various public and

²² Sedition row: Amnesty rejects allegations, says no employees shouted anti-India slogans (2016, August 16) retrieved from <http://indianexpress.com/article/india/india-news-india/amnesty-international-rejects-allegations-says-no-employees-shouted-anti-india-slogans-2978749/>

²³ Ghosh, S. (2015, February 21). *Academic freedom is under threat in India: Amartya Sen*. Retrieved June 2017, from timesofindia.indiatimes.com: <http://timesofindia.indiatimes.com/india/Academic-freedom-is-under-threat-in-India-Amartya-Sen/articleshow/46318446.cms>.

²⁴ Reporters Without Borders. (2013). Sri Lanka censors BBC’s programs on UN Human Rights Council. Retrieved from <https://rsf.org/en/news/sri-lanka-censors-bbcs-programs-un-human-rights-council>.

private organizations to report, question, and interview suspects who engage in activities that may threaten national security. It allows the government to regulate ideas and it stands to harm freedom of speech. This might be seen as a response to many mainland-based Taiwanese businessmen investing their money back in Taiwan to purchase mass media and telecommunication services. These newspaper and TV outlets publish news that in many cases reflects and promotes the stance of the Chinese government. This poses a potential threat to freedom of speech and the fairness of electoral competition. Nevertheless, unlike other countries, the media in Taiwan is free to criticize politicians without fear of political persecution.

Apart from repressive laws being formulated by governments to curb freedom of expression, the media in most of the countries covered in this study have been subjected to violence and intimidation by both state and non-state actors.

According to the Global Impunity Index of the Committee to Protect Journalists (CPJ), between 1992 and July 2016, 27 Indian journalists were murdered.²⁵ In 2017, Reporters without Borders (RSF) ranked India 136th out of 180 countries. The situation is not different in other Asian countries. In recent years, journalists and bloggers have come under attack due to their independent reporting and/or views in Pakistan. The fallout of certain news reports escalated the environment of intimidation of the media and increased levels of self-censorship. A disturbing rise in assaults on media outlets, TV channel and newspaper offices, as well as press clubs by militant, religious, and political groups has been observed.

The case of the missing bloggers underlines the state of freedom of expression in Pakistan. Four rights campaigners missing since January 2017 were believed to have been picked up by state agencies. Weeks later they were released, but charged with blasphemy, forcing them into exile. A cyber law introduced in 2016 seeks to restrict the boundaries of criticism aimed at officials. The law allows the authorities to intercept communications between citizens, including journalists, political activists, and rights campaigners.²⁶

Three journalists from Magway Region in Myanmar were arrested and charged under Article 66(d) of the sweeping telecommunications law.²⁷ There have been sixty seven cases of journalists being far charged under this Article since the NLD government came to power.

Despite a vibrant press network, journalism remains a dangerous profession in the Philippines. According to the CPJ, since 1992, the country has become the world's third deadliest country for journalists. At least 78 journalists have been killed since 1992, with confirmed political or censorship motives.²⁸ In the infamous Maguindanao massacre of 2009, 57 people,

²⁵ Bhatnagar, G. (2016). Scribes Are Murdered "With Complete Impunity" in India: Committee to Protect Journalists. *The Wire*. Retrieved from <https://thewire.in/62558/scribes-are-murdered-with-complete-impunity-in-india-committee-to-protect-journalists/>.

²⁶ Draconian cyber law. (2016, August 12). *Dawn News*. Retrieved from <https://www.dawn.com/news/1276939>.

²⁷ Radio Free Asia. (2017, June 15). Myanmar Charges Three Reporters Under Telecommunications Law. Retrieved from <http://www.rfa.org/english/news/myanmar/journalists-detention-06152017141304.html>.

²⁸ Media Workers Killed in Philippines – Between 1992 and 2017 / Motive confirmed or unconfirmed. Data from The Committee to Protect Journalists database. Retrieved from [https://cpj.org/killed/asia/philippines/#~\(status~'Killed~motiveConfirmed~\(~'Confirmed\)~motiveUnconfir](https://cpj.org/killed/asia/philippines/#~(status~'Killed~motiveConfirmed~(~'Confirmed)~motiveUnconfir)

mainly journalists and political activists, were killed. A similar situation exists in Sri Lanka, where journalists have been some of the most prominent targets of enforced disappearances. The CPJ has documented the murders of 10 journalists from 2007 onwards (and a total of 19 murders since 1999). The progress of investigation of crimes against journalists (especially Tamil journalists) has not been satisfactory even since the new government came to power. Similarly, under the current regime, ministers and police frequently engage in media intimidation.

2.8) Right to participation

The right to participate is an essential prerequisite to a well-functioning democracy. It lies at the heart of the rights framework and works as an enabling agent to enjoy the aforementioned freedoms. Even though most countries report that the right to participation is enshrined in their constitution, some countries have nevertheless reported varying degrees of limited participation due to government regulations among their different ethno-demographic groups.

For instance, in India, the 73rd and 74th constitutional amendments, related to decentralization, were introduced in 1993 and allowed direct citizen participation at the local level. By reserving one-third of elected positions for women and allocating proportionate reservations for other socially marginalized demographics, these constitutional amendments provided potential for affirmative action. Although these measures ensure representation of marginalized social groups, their participation in a true sense needs to be deepened by building their capacities and reducing the number of proxies.

On the other hand, in Sri Lanka, women and people with disabilities face a steep challenge in participating effectively in politics. Tamil speakers face deep-seated challenges in accessing public institutions and services, particularly in the North and East provinces, creating an ongoing barrier to their right to participation in public life.

In the Philippines, the Local Government Code (LGC) of 1991 considers CSOs major partners and stakeholders in the local development of the Philippines. Local Government Units (LGUs) have been mandated to promote the establishment and operation of CSOs (Section 34). Collaborations through joint ventures in service delivery, capability building, and livelihood projects (Section 35) are being promoted. The government has also extended financial or other forms of assistance to such CSOs (Section 36).

On the other hand, CSOs in Taiwan would actively participate in various environmental impact assessments in the past, but have now seen their window of engagement shrink. This followed from the government announcement in 2017 stating that the length of environmental impact assessments would be reduced to a year at most.

All of the countries in this study have allowed various forms of public engagement in governance. In the last two years, the Indian government launched the Smart Cities Mission, which

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mandated all cities engage with their citizens in planning proposals. Many citizens expressed their suggestions using online and face-to-face consultative mechanisms. Though thousands of citizens were reached, the urban poor were not. Advanced Locality Management (ALM)²⁹ and the Bhagidari System³⁰ are other examples of participation in urban governance in India.

In Sri Lanka, public consultation on major pieces of legislation paints a mixed picture. Public consultations for the Right to Information (RTI) Act are seen to have improved the final legislation, whilst the Office on Missing Persons (OMP) Act was preceded by inadequate public consultations leading to a dearth in public information about the OMP. A twenty-member Public Representations Committee (PRC) on Constitutional Reforms appointed in January 2016 called for and received written representation from the public. It also conducted public sittings across the country before submitting final reports in May and July 2016. The current regime appointed the Consultation Task Force on Reconciliation Mechanisms (CTF) to ascertain the views of the public on the reconciliation mechanisms proposed by the Government. The CTF submitted a final report in early 2017 based on submissions from over 7,000 citizens.³¹

National conferences were held in Taiwan on judicial reform and pension reform. In these conferences, people from various social segments, government representatives, scholars, NGOs, and interested citizens were all invited to share their views. The government promises that these public opinions were used as the basis of the reforms, but it is not obligated to make them so.

In the Philippines, community consultations with Peoples Organizations (POs) and NGOs were conducted during local government budgeting activities. This afforded local citizens a chance to voice their opinions and partake in the creation of proposals for government projects. Under the present government such consultations have been halted.

Women's participation in political and other public spheres has been an overwhelming challenge in Pakistan. In 2013, there were 86.25 million registered voters, including 48.61 million men and 37.63 million women. According to voter registration data released by the Election Commission of Pakistan (ECP) in September 2015 just before local government elections, there were 93.07 million voters on the electoral rolls, including 52.36 million males but only 40.7 million females – a difference of 11.65 million. Alarming, the gap widened in all provinces and

²⁹ The ALM is an identified locality or neighbourhood, the residents of which commit themselves to improve the “Quality of Life” in the locality/neighbourhood in close co-operation with the Municipal Corporation of Greater Mumbai. Sriram, J. (2017, January 1). Own Your Neighbourhood. *The Hindu*. Retrieved from <http://www.governancenow.com/news/regular-story/bhagidari-how-good-plan-goes-wrong>.

³⁰ Initiated in January 2000, the Delhi government's Bhagidari program is meant to promote broad-based civic participation in local governance. In simpler terms, to help residents deal with problems like erratic water supply, power outages, waste disposal, etc. Iyer, A. S. (2013, July 17). Bhagidari: how a good plan goes wrong. *Governance Now*. Retrieved from <http://www.governancenow.com/news/regular-story/bhagidari-how-good-plan-goes-wrong>.

³¹ CTF REPORT: A CHALLENGE AND A WINDOW OF OPPORTUNITY. (2017, January 8). *The Sunday Observer*. Retrieved from <http://www.sundayobserver.lk/2017/01/08/columns/ctf-report-challenge-and-window-opportunity>.

in Islamabad.³² Reportedly, at least 90 percent of the people who are transgender in the province of Khyber Pakhtunkhwa do not possess a national identity card. This is either because they do not have their father's name or there is no option on the form that allows them to properly identify their gender (Daily Times, 2016). The people of Federally Administered Tribal Areas (FATA) are the least politically integrated into the polity. They were guaranteed adult franchise in 1997, and the Political Parties Order, 2002 was extended to the FATA a decade later in 2011.

The situation is not much different in Myanmar. The NLD government is reluctant to welcome citizen groups to participate in policymaking processes. Since its inauguration, the NLD government has not had any consultations with civil society groups.

3. Policy recommendations

Public policy should play a positive role to engineer spaces where citizens from the Asian countries in this study meet on the basis of participatory parity.

Civil society's role in implementing the 2030 Agenda by holding states accountable and monitoring and reporting on progress and impediments is necessary to achieve the 17 Global Goals. Definitions are changing as civil society is recognized as encompassing far more than a mere "sector" dominated by the NGO community: civil society today includes an ever-wider and more vibrant range of organized and under-organized groups. Civil society actors today are blurring the boundaries between sectors and are experimenting with new organizational forms, both online and offline. Civil society actors are demonstrating their value as facilitators, conveners, and innovators as well as service providers and advocates. Hence, the governments of the countries covered in this study should look at civil society organizations as partners in achieving the 2030 agenda and foster a spirit of collaboration. It will be beneficial for these Asian governments to strengthen the overall scope of development cooperation by identifying and exploiting synergies between operations conducted in the framework which takes a diversified strategic approach. International civil society groups should emphasize the importance of national laws and practices consonant with international legal instruments. Civil society must persist in its advocacy, pointing out the interconnectedness of human rights and economic and national interests. Civil society must also improve internal self-governance; demonstrate transparency and accountability in its work; and do better at reaching out to the population at large.

According to the CIVICUS Civil Society Index (CSI) project of 2008-2011, across CSOs in 33 countries, only eight percent believe that the legal and policy environment for civil society is fully enabling for their operations, and a higher amount (47 percent) find it either quite limiting or highly restrictive compared to those that find it moderately enabling (45 percent). Governments

³² Khan, I. (2017, May 6). Gap between male, female voters worries CEC. *Dawn*. Retrieved from <https://www.dawn.com/news/1331413>.

should abandon the policy of adopting laws and regulations that restrict the operations of CSOs/NGOs and create an enabling ecosystem for the CSO/NGOs to achieve their full potential as development actors.

Tolerance is of utmost importance in a liberal democracy that allows its citizens to enjoy republican values. Yet, the countries in this study represent cases where the state machinery has clamped down on narratives contrary to majoritarian views. The governments in these respective countries must promote free speech and appreciate contradicting opinions, thereby strengthening democracy in each of these countries. Mutual understanding between opposing political thoughts and groups goes a long way toward reducing suspicion and the need to enforce laws and executive measures to suppress alternative opinions and positions. The governments in each of these countries should remain vigilant and clamp down on any actions and/or speech that incite violence. Offenders must be duly apprehended and brought to justice.

Efforts to encourage governments not to adopt restrictive NGO laws should also be included as an area of diplomatic engagement. Aid providers should seek to capture knowledge from these experiences, disseminate best practices, and strengthen related efforts.

The governments need to ensure that people including women, children, and those from marginalized communities, especially political minorities, can exercise their freedom to peacefully assemble to demonstrate dissent. The state must refrain from using legal measures to restrict the right to freedom of peaceful assembly under the garb of national security. Most of the countries in this study have reported incidents of politically motivated public violence in their recent history. If such sporadic incidents occur, then justice should be swift without any impunity. It has been recognized that police inaction and state impunity aggravates violence, and hence should not be tolerated.

Apart from Taiwan, most of the countries in this study have fared poorly in global indices on press freedom. The draconian laws limiting press freedom in these countries must be repealed. These countries have also witnessed a growth in violence directed towards journalists. Hence there is an urgent need for these governments to enact special laws addressing the safety of journalists. Free speech should not be curbed on social media on the pretext of national security. Governments should decriminalize freedom of expression online. State agents found to be acting aggressively towards dissidents online must be brought to justice. These countries, especially in South Asia, need to promote the protection of whistleblowers from prosecution and/or physical harm. Only then will whistleblowers effectively promote transparency and accountability of office bearers. Violence or vitriolic speech against transgender people or religious and political minorities should not be tolerated by the government. The ruling parties must refrain from harboring elements within their ranks who seek to practice this divisive brand of politics.

Incidents of violence against students have been growing in the countries included in this study. Since youth are the agents of social change, governments must be more appreciative and tolerant towards student dissidents and refrain from unleashing law enforcement agencies upon them. The participation of women and transgender people must be promoted and reforms must be enacted to ensure such participation.

Enacting the aforementioned recommendations would help in achieving a vibrant democracy in this global political climate where there has been major pushback against democratic values.

4. Conclusion

The wave of pushback against international support for democracy and human rights that emerged ten years ago has reversed the previous global trend of growing openness to such work. Contrary to the continued belief of some practitioners and observers, pushback is not just the work of a handful of outspoken foreign leaders who are particularly suspicious of Western interventionism. In fact, more than 50 countries including the Asian countries in this study have engaged in some form of pushback against any external support and solidarity for the promotion of democracy and human rights. Civic space is undoubtedly on a downward trajectory. This is attributed to a number of factors including the consolidation of elite economic power, exploitation of the security and anti-terrorism agenda, state backlash against popular protests, the rise of extremist forces, and the lessening of pressure to comply with the human rights conditions of external funders.

Despite the increasing international response, civil society is still losing space in many countries. Just as restrictive legal environments around the world increased after the “Color Revolutions” in some former Soviet countries, the “Arab Spring” of 2011 triggered a new wave of restrictive measures against popular uprisings, public movements, and civic associations. This proliferation of legal restrictions imposed on civil society continues around the world, adding to more traditional forms of repression such as imprisonment, harassment, disappearances, and execution.

The internet and the resourcing of civil society have become new and key areas of contestation, and civil society activists are being targeted on the basis of the challenge their advocacy presents to power, as well as on the basis of their identity as members of marginalized or excluded groups.

The issue of shrinking and closing spaces for civil society must be added to the agenda of national parliaments, multilateral organizations, and international negotiation processes. Freedom of opinion, association, and assembly are the essence of democracy. Efforts to limit such freedoms must therefore be regarded as a challenge to all democratic governments and to global cooperation – and they must be stopped.

References

- Abbasi, O. (2016). *Foreign funding: Three Islamabad-based NGOs stopped from working*. [online] The Express Tribune. Available at: <https://tribune.com.pk/story/1063072/foreign-funding-3-islamabad-based-ngos-stopped-from-working/> [Accessed 18 Dec. 2017].
- Amnesty.org. (2017). *Pakistan: Election to UN Rights Body Spotlights Failings*. [online] Available at: <https://www.amnesty.org/en/latest/news/2017/10/pakistan-election-to-un-rights-body-spotlights-failings/> [Accessed 18 Dec. 2017].
- Asghar, N. (2015). *In Pakistan Too, Tough Times Lie Ahead for NGOs*. [online] The Wire. Available at: <https://thewire.in/7682/pakistan-will-impose-a-strict-regulatory-regime-for-ngos/> [Accessed 18 Dec. 2017].
- Aslam, I. (2014). *The murder of reason*. [online] DAWN.COM. Available at: <https://www.dawn.com/news/1107096> [Accessed 18 Dec. 2017].
- Awami Workers Party (AWP) (2016). *Saeed Baloch, General Secretary of the Pakistan Fisherfolk Forum arrested by paramilitary forces in Karachi!* -. [online] Europe-solidaire.org. Available at: <https://www.europe-solidaire.org/spip.php?article36992> [Accessed 18 Dec. 2017].
- Bandyopadhyay, K. and Chakrabarti, K. (2016). *Civic Space under Siege: Experiences from South Asia*. [online] Eai.or.kr. Available at: http://www.eai.or.kr/data/bbs/eng_report/2016112818132469.pdf [Accessed 18 Dec. 2017].
- Bhatnagar, G. (2016). *Scribes Are Murdered "With Complete Impunity" in India: Committee to Protect Journalists*. [online] The Wire. Available at: <https://thewire.in/62558/scribes-are-murdered-with-complete-impunity-in-india-committee-to-protect-journalists/> [Accessed 18 Dec. 2017].
- Centre for Policy Alternatives. (2014). *Condemnation of violent attack on discussion with families of the disappeared*. [online] Available at: <http://www.cpalanka.org/condemnation-of-violent-attack-on-discussion-with-families-of-the-disappeared/> [Accessed 18 Dec. 2017].
- Civicus.org. (2016). *Joint Submission to the UN Universal Periodic Review 27th Session of the UPR Working Group*. [online] Available at: http://www.civicus.org/images/CIVICUS_Karapatan%20UPR%20Submission.pdf [Accessed 18 Dec. 2017].
- Colombage, D. (2017). *Sri Lanka accused of trying to gag NGOs*. [online] Aljazeera.com. Available at: <http://www.aljazeera.com/indepth/features/2014/09/sri-lanka-accused-trying-gag-ngos-201492263518312357.html> [Accessed 18 Dec. 2017].
- Colombo Telegraph (2015). *Video Of Sinhala Police Officer Using Racially Motivated Language At An Elderly Jaffna Woman Goes Viral*. [online] Colombo Telegraph. Available at: <https://www.colombotelegraph.com/index.php/video-of-sinhala-police-officer-using-racially-motivated-language-at-an-elderly-jaffna-woman-goes-viral/> [Accessed 18 Dec. 2017].
- cpalanka.org. (2009). *A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya*. [online] Available at: http://www.cpalanka.org/wp-content/uploads/2009/3/Vanni_Report.pdf [Accessed 18 Dec. 2017].
- Cpj.org. (2017). *CPJ's database of attacks on the press Philippines*. [online] Available at: [https://cpj.org/killed/asia/philippines/#~\(status~'Killed~motiveConfirmed~\(~'Confirmed\)~motiveUnconfirmed~'Unconfirmed~type~'Media*20Worker~typeOfDeath~\(~\)~sourcesOfFire~\(~\)~localOrForeign~\(~\)~gender~\(~\)~employedAs~\(~\)~jobs~\(~\)~coverages~\(~\)~mediums~\(~\)~cc_fips~\(~'RP\)~start_year~'1992~end_year~'2017~group_by~'year](https://cpj.org/killed/asia/philippines/#~(status~'Killed~motiveConfirmed~(~'Confirmed)~motiveUnconfirmed~'Unconfirmed~type~'Media*20Worker~typeOfDeath~(~)~sourcesOfFire~(~)~localOrForeign~(~)~gender~(~)~employedAs~(~)~jobs~(~)~coverages~(~)~mediums~(~)~cc_fips~(~'RP)~start_year~'1992~end_year~'2017~group_by~'year) [Accessed 18 Dec. 2017].
- Daily Times. (2017). *Voting rights for transgender*. [online] Available at: <https://dailytimes.com.pk/41535/voting-rights-for-transgenders/> [Accessed 18 Dec. 2017].
- Dawn (2016). *Draconian cyber law*. [online] Available at: <https://www.dawn.com/news/1276939> [Accessed 18 Dec. 2017].
- Dibbert, T. (2014). *Sri Lanka's NGO Clampdown*. [online] Foreign Policy. Available at: <http://foreignpolicy.com/2014/07/25/sri-lankas-ngo-clampdown/> [Accessed 18 Dec. 2017].
- Human Rights Watch. (2016). *"They Can Arrest You at Any Time" | The Criminalization of Peaceful Expression in Burma*. [online] Available at: <https://www.hrw.org/report/2016/06/29/they-can-arrest-you-any-time/criminalization-peaceful-expression-burma> [Accessed 18 Dec. 2017].

- Icnl.org. (2017). *Myanmar - Civic Freedom Monitor - Research Center - ICNL*. [online] Available at: <http://www.icnl.org/research/monitor/Myanmar.html> [Accessed 18 Dec. 2017].
- Iyer, A. S. (2013, July 17). *Bhagidari: how a good plan goes wrong*. Retrieved June 2017, from governancenow.com: <http://www.governancenow.com/news/regular-story/bhagidari-how-good-plan-goes-wrong>.
- Khan, I. (2017). *Gap between male, female voters worries CEC*. [online] DAWN.COM. Available at: <https://www.dawn.com/news/1331413> [Accessed 18 Dec. 2017].
- PTI (2017). *File returns or get registration cancelled, MHA warns NGOs*. [online] Indiatoday.intoday.in. Available at: <http://indiatoday.intoday.in/story/file-returns-or-get-registration-cancelled-mha-warns-ngos/1/968185.html> [Accessed 18 Dec. 2017].
- Radio Free Asia. (2015). *Myanmar Charges Three Reporters Under Telecommunications Law*. [online] Available at: <http://www.rfa.org/english/news/myanmar/journalists-detention-06152017141304.html> [Accessed 18 Dec. 2017].
- RSF. (2013). *Sri Lanka censors BBC's programmes on UN Human Rights Council*. [online] Available at: <https://rsf.org/en/news/sri-lanka-censors-bbcs-programmes-un-human-rights-council> [Accessed 18 Dec. 2017].
- Samath, F. (2008). *SRI LANKA: Clampdown on International NGOs* | *Inter Press Service*. [online] Ipsnews.net. Available at: <http://www.ipsnews.net/2008/08/sri-lanka-clampdown-on-international-ngos/> [Accessed 18 Dec. 2017].
- Shah, Z. (2016). *Shrinking civic space in Pakistan*. [online] Heinrich Böll Foundation. Available at: <https://www.boell.de/en/2016/09/13/shrinking-civic-space-pakistan> [Accessed 18 Dec. 2017].
- Sriram, J. (2017, January 1). *Own Your Neighbourhood*. Retrieved June 2017, from thehindu.com: <http://www.governancenow.com/news/regular-story/bhagidari-how-good-plan-goes-wrong>.
- Sunday Observer. (2017). *CTF report: a challenge and a window of opportunity*. [online] Available at: <http://www.sundayobserver.lk/2017/01/08/columns/ctf-report-challenge-and-window-opportunity> [Accessed 18 Dec. 2017].
- The Indian Express. (2016). *Amnesty faces sedition case for 'anti-India' slogan at event*. [online] Available at: <http://indianexpress.com/article/india/india-news-india/amnesty-faces-sedition-case-for-anti-india-slogan-at-event-2977653/> [Accessed 18 Dec. 2017].
- Unmüßig, B. (2016). *The Return of Repression: Closing and Shrinking Spaces*. [online] Heinrich-Böll-Stiftung South East Asia. Available at: <https://th.boell.org/en/2016/05/11/return-repression-closing-and-shrinking-spaces> [Accessed 18 Dec. 2017].
- Web-archive-2017.ait.org.tw. (2017). *2016 Human Rights Report Taiwan*. [online] Available at: <https://web-archive-2017.ait.org.tw/en/officialtext-ot1701.html> [Accessed 18 Dec. 2017].
- Wei-han, C. (2017). *China urged to respect human rights, free Lee - Taipei Times*. [online] Taipei Times. Available at: <http://www.taipetimes.com/News/taiwan/archives/2017/06/05/2003671945> [Accessed 18 Dec. 2017].

Civic Space in India

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1. Introduction

As a country of 1.3 billion people, more than 800 million of whom are eligible to vote, India takes pride in being the world's largest democracy. India has often been lauded for its ability to transfer power peacefully every five years since the first general election of 1951. Nevertheless, the health of a democracy cannot be measured only by the size of its voter base or simply by the peaceful transition of power. Such standards of evaluation may be sufficient for nascent democracies struggling to implement the practice of universal adult suffrage, but not for India, which has a more mature democracy. As India's democracy continues to consolidate, an increasingly important indicator will be the health of its constituent political institutions and the ability of these institutions to facilitate the growth of India's civic space, which allows such social institutions as civil society and free and vibrant media to thrive. Civic space forms the bedrock of any open and democratic society. The degree to which individuals and organized groups have adequate 'civic space' is essential to the healthy functioning and development of any society. Civic space is defined, for the purpose of this research, as the freedom and means to speak, associate, organize, and participate in public decision making.

The fundamental rights of a citizen, the republican values in our Constitution, and the judiciary act as necessary checks and balances on the powers of the democratically elected government. In reality, the effect of those rights has been gradually eroded due to various exceptions introduced to the fundamental rights both by the legislature as well as the judiciary, excesses of majority rule, inadequate state capacity, and lack of demand from citizens to uphold fundamental rights.

In recent years, there has been an erosion of these republican values as repressive laws have been introduced by the Indian government restricting the growth of civil society. Freedom of expression, press freedom, online freedom, and personal freedoms continue to be at the center of debate in India as citizens and journalists come under various forms of attack for being critical of the majoritarian opinion. The freedom to assemble peacefully is a fundamental right under the

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country's constitution and is a prerequisite for the fruition of citizen participation. A long list of incidents proves that this right is subject to the arbitrary will of the government and is frequently violated by high-handed law enforcement. These dramatic infringements on citizens' rights have taken place subsequent to the conclusion of the Paris Agreement which, together with the highly ambitious Sustainable Development Goals (SDGs), can only be achieved with the participation of citizens everywhere.

Given this context, the following sections aim to understand the health of Indian democracy by analyzing pushback in the spheres of freedom of association, assembly, expression, and the right to participation. The study also will provide policy recommendations for creating an ecology conducive to fostering citizen participation.

2. Civic space in India

2.1) Freedom of association

Article 19(1)(c) of the Indian constitution explicitly recognizes the right to association. Over the years the government and civil society have worked together on various societal issues. Voluntary Action Network in India (VANI), the apex body of more than fifteen thousand voluntary organizations in India, has not only advocated issues in this sector but has also supported the government by providing input as needed. One such example is when VANI collaborated with the Foreigners Division of the Ministry of Home Affairs (MHA) to frame the Foreign Contribution Regulation Act (FCRA) in 2011. VANI organized an interface between sector leaders, legal experts, and the MHA. VANI provided input to the MHA, citing the challenges faced by the voluntary sector and offered suggestions to improve the efficacy of the FCRA. In the past, VANI had also organized outreach workshops on FCRA jointly with the ministry.

Nevertheless, the state of affairs for civil society today is contradictory. Civil society relies greatly upon collaborations and collectivization to adhere to its social commitments. This has been a culturally, professionally, and socially accepted norm for decades, but things in India have recently taken a turn for the worse.

Just like any other law, the laws governing voluntary organizations come with multiple interpretations and applications. The very definition of civil society is not clear and even includes private schools and hospitals, which results in a loose composition of civil society. Associations, especially the voluntary sector in India, can be incorporated in multiple forms such as trusts, societies, cooperatives, trade unions, companies, etc. and are guided by several tax regimes leading to compliance pressures from numerous sources.

More contemporary changes in law and policies have made things worse. The Intelligence Bureau Report by the Ministry of Home Affairs stated that particular categories of civil society were one of the reasons for the two percent decline in the country's GDP. This was followed by

other controversial statutes and amendments like the FCRA of 2010; the Direct Tax Code Bill, 2010; the Lokpal and Lokayukt Act, 2013, and others which had direct and indirect effects on the presence of civil society in India. Provisions like Lokpal were primarily formulated to ensure accountability of the government officials and functionaries but were abruptly extended to civil society organizations (CSOs). “FCRA’s vague terms such as ‘political nature,’ ‘economic interest of the State,’ or ‘public interest’ are too wide and do not conform to a prescribed aim, and are not proportionate responses to the purported goal of the restriction.”² Similarly, the inclusion of NGOs under the amended Lokayukt and Lokpal Act of 2013 mandates scrutiny of the income of representatives and officers of NGOs whose annual income exceeds a stipulated amount. While the efforts to maintain transparency are valid, the amendment creates unwarranted nuisances for civil society and practical glitches in their everyday operation and funding.

Under certain circumstances, the FCRA permits the central government to deny NGOs access to foreign funding. Well-known International NGOs as the Climate Work Foundation, the Danish International Development Agency, Greenpeace, Hivos, Mercy Corps, and the Sierra Club are rumoured to have been placed on a “watch list”.³ It was in the year 2015 that the amendment to the FCRA led to a domino effect, resulting in the paralysis of numerous NGOs including some popular ones like the Centre for Promotion of Social Concerns (known for their People’s Watch program), Sabrang Trust, the Lawyers Collective, Act now for Harmony and Democracy (ANHAD). This forced the closure of prominent international donor organizations like Compassion International, Bethesda Charitable Endeavors, and others.⁴ Media reports quoted government sources as saying that the NGOs had acted against “national interest.” The suspicion of the presence of multiple spurious NGOs in the country’s civic space is understandable, but the berserk cancellation of licenses of approximately 7,500 organizations over just three years since 2014 is troubling.⁵ Andrew Firmin points out the excessive documentation hurdles and inadequate information available to civil society, raising the suspicion that registration has come under more scrutiny because of the deteriorating relations between CSOs and the government.⁶ This scrutiny is particularly high for NGOs working on the issues of human rights; democracy, transparency, and accountability; development of policy; and corruption.

² Kiai, M. (2016, April 20). Analysis of International Law, Standards and Principles Applicable to the FCRA Act 2010 and Rules 2011. Geneva: Office of the United Nations High Commissioner for Human Rights.

³ Sands, G. (2015, May 11). India Cracks Down on NGOs. *Foreign Policy Blogs*. Retrieved from <https://foreignpolicyblogs.com/2015/05/11/india-cracks-down-on-ngos/>.

⁴ Barry, E. and Raj, S. (2017, March 7). Major Christian Charity is Closing India Operations Amid a Crackdown. *The New York Times*. Retrieved from https://www.nytimes.com/2017/03/07/world/asia/compassion-international-christian-charity-closing-india.html?module=WatchingPortal®ion=c-column-middle-span-region&pgType=Homepage&action=click&mediaId=thumb_square&state=standard&contentPlacement=8&versio.

⁵ Press Trust of India. (2017, June 1). File returns or get registration cancelled, MHA warns NGOs. *India Today*. Retrieved from <http://indiatoday.intoday.in/story/file-returns-or-get-registration-cancelled-mha-warns-ngos/1/968185.html>.

⁶ Firmin, A. Ed. Van Severen, I. (2017, February). Contested and Under Pressure: A Snapshot of the Enabling Environment of Civil Society in 22 Countries. *CIVICUS*.

A report by the Asian Centre for Human Rights highlights the irregularity and negligence in government funding of the voluntary sector. It portrays instances of corruption and political motives behind such practices. The study shows colossal differences between official records as opposed to actual spending of the government on funding in the social sector. It also comments on the tendency to extend funding to organizations providing service delivery rather than those dealing with the issues of democracy and law. Additionally, the monitoring and evaluation of funding is inadequate, which in turn affects its accountability and transparency. Other similar reports have also shown a worrying possibility of political officials creating fake CSOs to avail state funds for their personal agendas.

A successful and fruitful association would require citizens, civil society, NGOs, intellectuals, policy makers, and others to safely coexist in a space that is collaborative and nonviolent. International instruments like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) to which India is a signatory insist on the Right to Association. International agencies like the United Nations have repeatedly condemned India's actions against CSOs and have asked for the repeal of troublesome provisions that are detrimental to the growth of civic space and violate international rules and principles of human rights. Their statement reads, "We are alarmed that FCRA provisions are being used more and more to silence organizations involved in advocating civil, political, economic, social, environmental, or cultural priorities, which may differ from those backed by the Government."⁷ The need of the hour is to mandate sturdier constitutional safeguards and guarantees to the right of association for CSOs.

2.2) Freedom of assembly

The freedom to assemble peacefully and without arms is a fundamental right under Article 19 of the country's constitution. The rights of assembly include the rights to hold meetings and processions. It needs to be acknowledged that the practice of publishing dissent, as long as it is peaceful, is facilitated by a democratic state. It is recognized that the tradition of expressing grievances through direct action or peaceful protest is a valuable aspect of political life in India. Organized, nonviolent protest marches were a key weapon in the struggle for independence. This section will analyze the culture of demonstrating, public protests, and the state's response.

Following the tradition of nonviolent protests, in contemporary times citizens have taken collective action to demand their rights or to demonstrate dissent. On June 28th 2017, the #NotInMyName campaign brought together citizens across at least ten cities in India simultaneously to protest peacefully against the ongoing mob lynchings and vigilante violence

⁷ Kiai, M. (2016, April 20). Analysis of International Law, Standards and Principles Applicable to the FCRA Act 2010 and Rules 2011. Geneva: Office of the United Nations High Commissioner for Human Rights.

against minorities.⁸ These protests were nonviolent and the state was supportive in facilitating them. A similar example of nonviolent protests was the gathering of more than 200 social organizations and movements with 5,000 tribal, farmers and landless laborers from over 12 states in Delhi between February 23rd and 25th in 2015 to peacefully oppose the government's Land Acquisition Ordinance. As a result, the government agreed to a homestead land bill and national land reform policy and will amend the new ordinance. The march was not only an expression of the struggle of landless laborers and farmers; it was a demonstration of the power of nonviolence.⁹

Peaceful agitation by a group of retired military personnel have been demanding the implementation of One Rank One Pension (OROP) in Delhi from June 2015. A section of ex-servicemen protesting under the banner of Indian Ex-Servicemen Movement (IESM) for "rightful" implementation of One Rank One Pension (OROP) wrote a letter in blood to Prime Minister Narendra Modi on Thursday to mark two years of their protests at Jantar Mantar.¹⁰

Though OROP was implemented in September 2015, ex-servicemen said the scheme didn't address all of the concerns raised. Similar to the aforementioned instances of public dissent, this protest has not reported any incidents of the state clamping down on the protestors. In April 2017, approximately 100 farmers from Tamil Nadu had reduced themselves to a spectacle, compromising their sense of dignity, as a form of non-violent protests in Delhi. As a consequence of the worst drought in Tamil Nadu in 140 years, they demanded a loan waiver from nationalized banks, the creation of a significant drought relief package by the Centre for Tamil Nadu, and the formation of a Cauvery Water Management Board that would give them a decent share of Kaveri River water even in a bad year. As a result of their public demonstration, the Chief Minister of Tamil Nadu provided assurance that a relief package would be forthcoming.¹¹ This comes against the backdrop of other state governments such as Uttar Pradesh and Maharashtra waiving loans for farmers in their local jurisdictions. The stir caused by the Tamil Nadu farmers brought up the long-pending issue of the government's neglect of the agricultural sector. The farmer protests then took a shocking turn when at least five farmers were shot dead and four others injured after police fired weapons during a protest demanding the waiver of farm loans in Madhya Pradesh on June 6th 2017.¹²

⁸ Desk, E. W. (2017, June 28). What is the 'Not in my name' protest? *The Indian Express*. Retrieved from <http://indianexpress.com/article/what-is/what-is-the-not-in-my-name-protest-lynching-junaid-khan-4725668/>.

⁹ Ekta Parishad initiates a historical achievement in nonviolent Land Rights movement. (2015, March 4). *Ekta Parishad*. Retrieved from <http://www.ektaparishad.com/Resources/MediaReports/TabId/136/ArtMID/528/ArticleID/170/Ekta-Parishad-initiates-a-historical-achievement-in-nonviolent-Land-Rights-movement.aspx>.

¹⁰ OROP: veterans see red in inaction. (2017, June 15). Retrieved from <http://www.thehindu.com/news/national/orop-veterans-see-red-in-inaction/article19077316.ece>

¹¹ Sudhir, T. S. (2017, April 24). Tamil Nadu farmers call off protest, serving a grim reminder of how far removed state has become from India. *Firstpost*. Retrieved from <http://www.firstpost.com/india/tamil-nadu-farmers-call-off-protest-stirring-a-grim-reminder-of-how-far-removed-state-has-become-from-india-3400686.html>.

¹² Five Indian farmers killed during protest. (2017, June 6). Retrieved from <https://www.aljazeera.com/news/2017/06/indian-farmers-killed-protest-170606145244088.html>

Although the Supreme Court of India in August 2016¹³ held that the right to peaceful protest is a fundamental right guaranteed by the constitution, they also clarified that it is subject to reasonable restrictions to protect the interest of the sovereignty and integrity of India, as well as public order. Over the last few years, there have been flash points between dissidents and law enforcement as protests have turned violent.

The Jat reservation demand has simmered since March 2008. The protesters have had a history of destroying public and private property with impunity. The movement reached its zenith of violence in February 2016, when the state saw unprecedented instances of looting and arson which caused 30 people to lose their lives while property worth thousands of crores of rupees was vandalized and gutted.¹⁴ Such actions stem from a mindset that detests negotiations and believes that unless a crisis is triggered, politics will not provide resolution. The presence of army troops in Haryana had little effect on the violent protesters, who continued to engage in acts of arson and rioting, raising questions about why the troops were deployed as a force of first resort.¹⁵

Such violent protests reinforce state suspicion of public protests and prompt preemptive law enforcement measures to avoid violent outbreaks that disturb public peace. However, all not all protests and protesters have to be dispersed by force nor should they be subjected to police brutality.

In June 2014, police fired water cannons to disperse hundreds of protesters demonstrating outside the Chief Minister's office in Uttar Pradesh where two teenage cousins were gang raped and hanged.¹⁶

In March 2015, tribal activists and human rights defenders numbering around 15,000 were prevented from participating in a conference organized by two prominent CSOs in the Godchiroli district of Maharashtra.¹⁷ Activists were detained and forced to retreat. Many were subjected to police brutality. In April 2015, police cracked down on hundreds of tribal Dalits and Adivasis, including a large number of women, who were peacefully protesting against the illegal construction of the Kanhar Dam in the Sonbhadra district of Uttar Pradesh. This resulted in at least six women being seriously injured and an Adivasi leader's death.

¹³ Rashid, M. (2016, August 12). Right to Peaceful Protest is a fundamental right:SC [Read Judgment]. *Live Law*. Retrieved from <http://www.livelaw.in/right-peaceful-protest-fundamental-right-sc/>.

¹⁴ Press Trust of India. (2016, February 22). Jat quota stir: Sporadic incidents of arson as Haryana limps to normalcy. *The Indian Express*. Retrieved from <http://indianexpress.com/article/india/india-news-india/jat-quota-stir-sporadic-incidents-of-arson-as-haryana-limps-to-normalcy/>.

¹⁵ Chhina, M. A. (2016, February 24). Jat agitation: Worst violence in Rohtak, Jhajjar took place after Army flag march. *The Indian Express*. Retrieved from <http://indianexpress.com/article/india/india-news-india/jat-quota-rohtak-jhajjar-army-flag-march/>.

¹⁶ India police fire water cannon at gang-rape protesters. (2014, June 2). *BBCNews*. Retrieved from <http://www.bbc.com/news/world-asia-india-27659446>.

¹⁷ hrdaindi_jeya. (2015, August). Right to Freedom of Peaceful Assembly and Association in India. *Human Rights Defenders Alert- India*. Retrieved from <http://hrdaindia.org/?p=1283>.

In February 2016, policemen in Delhi brutally beat up students who were protesting against the death of a Dalit scholar.¹⁸ In light of such events, the Delhi Assembly passed a resolution demanding "immediate action" against the officers responsible for the "inhuman attack" on protesters. In the same month, several students from Jawaharlal Nehru University (JNU) were arrested on the charge of sedition for allegedly raising "anti-national" slogans at a peaceful demonstration inside the university.

On July 8th 2016, a separatist fundamentalist was killed by the army in Kashmir. This sparked a series of demonstrations and protests. Given the law and order situation and the history of separatist violence in the state, 45 percent of protests that attracted police force were in Kashmir alone.¹⁹ The armed forces responded to the stone-pelting protesters with lethal force, resulting in 94 deaths.²⁰

According to the National Crimes Record Bureau of India, the police resorted to firing on 156 occasions during the year 2015.²¹ In 2015, 42 civilians were killed in these incidents, while 39 civilians were injured. 327 instances of police lathi-charges were recorded in the same year, with 7 civilians dead and 298 civilians injured. 54,916 complaints, both non-cognizable and cognizable, were reported to the police authorities against police personnel in 2015.²² Among these, 94 cases of human rights violations were filed.²³ It must also be noted that various incidents of public

¹⁸ Police brutality: Delhi cops beat up students, including girls, protesting over Rohith Vemula's death. (2016, February 1). *Firstpost*. Retrieved from <http://www.firstpost.com/india/police-brutality-in-delhi-cops-beat-up-students-including-girls-protesting-over-rohith-vemulas-death-2606576.html>.

¹⁹ Students in Literate States Lead Spike In Indian Protests. (2016, November 30)

Retrieved from: <http://www.indiaspend.com/cover-story/students-in-literate-states-lead-spike-in-indian-protests-10578>

²⁰ Waheed, M. (2016, November 8). India's crackdown in Kashmir: is this the world's first mass blinding?. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding>.

²¹ In comparison to 176 occasions during 2014, 684 occasions during 2013, 584 occasions during 2012, and 482 occasions during 2011.

²² An increase of 14.9 percent was noticed in registered complaints against police personnel in comparison to the previous year (from 47,774 in the year 2014 to 54,916 in 2015). Maximum complaints against police personnel were received in Delhi, which accounted for 23.5 percent (12,913 out of 54,916 complaints) followed by Madhya Pradesh accounting for 18.4 percent (10,089 complaints), Maharashtra 14.6 percent (8,004 complaints), and Uttar Pradesh 8.5 percent (4,659 complaints). In some States, FIRs were registered in all complaints/allegations received; these states are Goa, Meghalaya, Nagaland, Sikkim, Tripura, A&N Islands, Daman & Diu, Lakshadweep, and Puducherry. National Crime Records Bureau (Ministry of Home Affairs) Government of India. (2016). Crime in India 2015 – Statistics. Retrieved from <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/CrimeInIndia2015.pdf>.

²³ The category of human rights violations by police constitutes 40.4 percent (38 out of 94 cases) of total human rights violations by police followed by "hurt/injury" (14 cases); "extortion" (13 cases); "assault on women with intent to outrage her modesty" (7 cases); "atrocities on SCs" (6 cases); "atrocities on STs," "torture," and "Sec. 23(4) of the Protection of Children from Sexual Offence Act, 2012" (3 cases each); "disappearance of persons," "Illegal detention or arrests," "insult to the modesty of women," "torture of others" (2 cases each); and "illegal detention or arrests of SCs," "illegal detention or arrests- others," "failure in taking action," and "torture of SCs" (1 case each) during 2015. National Crime Records Bureau (Ministry of Home Affairs) Government of India. (2016). Crime in India 2015 – Statistics. Retrieved from <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/CrimeInIndia2015.pdf>.

violence in recent times, state impunity, and police inaction have aggravated targeted violence against religious minorities, particularly in villages, small towns, and urban slums.

The state needs to appreciate that there can be no democracy without dissent. The state should not have a uniform reaction to all forms of protest. Certain violent protests can be dealt with immediately by law enforcement. This should not be the response of the state to peaceful protests by students or farmers. A mature democracy does not only tolerate but facilitates and encourages displays of dissent, irrespective of how abhorrent the thought or manner of expression is as long as it is peaceful. In fact, the government should allow for an imperfect thought to be voiced and democratically rejected amidst a plethora of ideas rather than repressing it.

2.3) Freedom of expression

Freedom of expression is protected under Article 19(1) (a) in Part III of the Indian constitution which enumerates fundamental rights and international treaties to which India is a party. However, the constitution also allows the government to impose “reasonable restrictions” in the interest of “public order, decency or morality.” There have been commitments made by successive governments to protect freedom of expression. The Prime Minister Narendra Modi said in June 2014, a month after taking office, “Our democracy will not sustain if we can’t guarantee freedom of speech and expression.”²⁴ Nevertheless, there seems to be a trend where successive governments have sought to bring in tighter controls on this freedom. This mindset was reflected earlier this year when some union cabinet ministers indicated that the central government perceives freedom of speech as a right granted by the state in the wake of the unfortunate events at a college in Delhi.²⁵

While India’s courts have generally protected freedom of expression, their record is uneven. Some lower courts continue to issue poorly reasoned speech-limiting judgements, and the Supreme Court, while often a forceful defender of freedom of expression, has at times been inconsistent. This lack of consistency has left the door open for continued use of repressive laws²⁶ by local officials and interest groups to harass and persecute people²⁷ who legitimately exercise their right to freedom of

²⁴ Prime Minister’s Office (2014, June 26). PM blogs on completion of one month in office – Every decision guided solely by national interest. *Press Information Bureau, Government of India*. Retrieved from <http://pib.nic.in/newsite/mbErel.aspx?relid=105903>.

²⁵ On February 22, Delhi University’s North Campus seems to have turned into a battleground with ideologically charged student groups backed by left and right wing political parties locking horns. Scuffles broke out at Delhi’s Ramjas College during a protest march by students demanding action against the ABVP members who had disrupted a literary event in the college one day before. At least a dozen students and a professor of English were wounded, and eight policemen suffered injuries in the clashes between the two factions of students.

²⁶ These laws include the Unlawful Activities (Prevention) Amendment Act, 2008, passed shortly after the November 26 Mumbai attacks were used by the government, in conjunction with India’s laws on sedition, criminal defamation, hate speech, hurting religious sentiments, contempt of court, and the Official Secrets Act. Another act detrimental to the freedom of expression is the Information Technology Act, the amendment for which was hurriedly passed after the Mumbai attacks in 2008.

²⁷ These laws have been used to target political opponents, tribal groups, and religious and ethnic minorities.

expression. On the brighter side, in September 2015, authorities withdrew after proposing a draft encryption policy²⁸ which would have threatened free expression and privacy.²⁹

Although the Freedom of the Press 2015 India³⁰ report states that while India's vibrant media remains the most free in South Asia, press freedom continues to be at the center of the debate around freedom of expression in India. India has been faring badly according to the 2016 World Press Freedom Index of Reporters without Borders (RSF) because of the number of journalists killed and impunity for perpetrators of crimes of violence against the media. This has been the trend for the last several years, spanning the previous and the current governments. In 2017, RSF ranked India 136th out of 180 countries, three notches down from the 2016 figures where it was ranked 133rd and placing it below Afghanistan, Palestine, and Myanmar in the World Press Freedom Index. As reported by a leading national daily, India was the third most dangerous country for journalists after Iraq and Syria in 2015 as nine reporters lost their lives.³¹ It is challenging for journalists to cover "sensitive" issues of organized crime linked to politicians, especially in "disturbed" regions such as Kashmir. Between July 2015 and March 2016, four journalists in Bastar, Chhattisgarh were arrested on politically motivated charges.³² As reported by The Hoot,³³ 54 journalists came under attack in the 16 months spanning 2016 and the first quarter of 2017. According to the Impunity Index of the Committee to Protect Journalists (CPJ), between 1992 and July 2016, 27 Indian journalists were murdered.³⁴ The RSF report found that prosecutions were used to "gag journalists critical of the government," including the use of the sedition law which comes with life imprisonment as punishment.³⁵ On the brighter side, the apex

²⁸ The new law would have forced Indians to store plain-text versions of their encrypted data for 90 days and make it available to security agencies. The draft policy sparked outrage on social media, as most messaging services use some form of encryption. The encryption policy was proposed to enhance information security in India.

²⁹ India withdraws controversial encryption policy. (2015, September 22). *BBC News*. Retrieved from <http://www.bbc.com/news/world-asia-india-34322118>.

³⁰ For India, a Year of Shrinking Freedom of Speech. (2017, January) retrieved from <https://thewire.in/dissent/for-india-a-year-of-shrinking-liberty>

³¹ 110 journalists killed in 2015, India among 3 most dangerous nations. (2015, December 29). *Hindustan Times*. Retrieved from <http://www.hindustantimes.com/india/110-journalists-killed-in-2015-india-deadliest-asian-country/story-7QLJwYGHQiq5EK8vdpPjQN.html>.

³² Human Rights Watch. (2016, April 18). India: High Cost for Reporting in Chhattisgarh. Retrieved from <https://www.hrw.org/news/2016/04/18/india-high-cost-reporting-chhattisgarh>.

³³ The Hoot. (2017, May 4). The India Freedom Report, January 2016-April 2017 (The Hoot). *SabrangIndia*. Retrieved from [sabrangindia.in: https://sabrangindia.in/article/india-freedom-report-january-2016-april-2017-hoot](https://sabrangindia.in/article/india-freedom-report-january-2016-april-2017-hoot).

³⁴ In February 2016, a journalist was shot dead by gunmen on motorcycles in Sultanpur, Uttar Pradesh. The state police said that the journalist had been targeted for his reports on illegal soil mining. In May 2016, another journalist was shot dead by unknown assailants in Siwan, Bihar. He had covered local politics and crime extensively. According to the Impunity Index of CPJ, "Rural and small-town journalists are at greater risk of being killed in retaliation for their work than those in the big cities. The language a reporter writes in and most importantly what they are writing about – especially if it challenges the powerful – increase the vulnerability."

³⁵ India ranks 136 on World Press Freedom Index, slips three places since 2016. (2017, April 26). *Scroll.in*. Retrieved from <https://scroll.in/latest/835698/india-ranks-136-on-world-press-freedom-index-slips-three-places-since-2016>.

court stayed proceedings initiated by the Uttar Pradesh legislative assembly against two journalists alleged guilty of breach of privilege of two Uttar Pradesh ministers.

A state news channel in Andhra Pradesh was blocked for covering sensitive issues of local agitation. Two of the largest newspaper offices in a sensitive region of Kashmir were raided and printing presses shut down in 2016. A leading national news channel³⁶ decided to self-censor its discussions and coverage of the surgical strikes³⁷ in October 2016.³⁸ The state continues to dominate the radio sector, and private radio stations are not allowed to air news content. The television and print sectors have expanded considerably over the past decade, with many new outlets targeting specific regional or linguistic audiences.

Former Prime Minister Manmohan Singh alleged that independent thinking and free expression in Indian universities "are now under threat." In February 2016, three students at JNU were arrested by police in Delhi for sedition³⁹ after they allegedly raised "anti-national" slogans. The same month, Delhi police also arrested an academic for sedition for allegedly raising "anti-India" slogans at a closed-door event. Universities are supposed to be safe spaces for debate and discussion, but in February 2017, violence erupted in the North Campus of Delhi University over the participation of two students from JNU at a two-day seminar at Ramjas College. Twenty were injured during the clashes.

The law has also been used to arrest people for posting "anti-national" sentiments on social media in Kerala, for printing a map in Madhya Pradesh which did not show all of Kashmir within Indian borders, and for organizing a protest for better working conditions for police personnel in Karnataka. In August 2016, police in Karnataka registered a sedition case against representatives of Amnesty International, India for allegedly conducting an "anti-national" event on human rights violations in Jammu and Kashmir.

Freedom of religion is constitutionally guaranteed and generally respected in practice. Nevertheless, the authorities have failed to prevent hundreds of incidents of communal violence across the country. Incidents of violence against Dalits and Adivasis were reported by several states including Uttar Pradesh, Bihar, Karnataka, and Tamil Nadu.⁴⁰ In July 2017, a bus carrying Hindu pilgrims was attacked twice in quick succession by two teams of terrorists. Seven pilgrims,

³⁶ NDTV decided to self-censor its discussions and coverage of the surgical strikes in October 2016. The editorial director of the TV channel, Sonia Singh, sent out an email to the organization that also put out the decision that "national security cannot be compromised by politics," leading to an interview done by Barkha Dutt with Congress leader P. Chidambaram being dropped from the evening news.

³⁷ Nearly 10 days after the Uri attack that claimed 18 soldiers, India carried out surgical strikes in Pakistan Occupied Kashmir, inflicting heavy casualties on terrorists and "those protecting them" and indicating a change of stance on the rules of engagement on the disputed line of control. The response, the first of its kind across the Pakistani border during peace time, was based on specific intelligence.

³⁸ Roy, S. (2017, May 2). For India, a Year of Shrinking Freedom of Speech. *The Wire*. Retrieved from <https://thewire.in/131167/for-india-a-year-of-shrinking-liberty/>.

³⁹ Amnesty International.(n.d.) Annual Report – India 2016/17. Retrieved from <https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/>.

⁴⁰ Ibid.

including six women, were killed and 19 injured in the attack.⁴¹ There are incidents of anti-minority views being promoted by ultra-nationalist organizations and some local media outlets. Since 2015, there has been a surge in lynchings⁴² and killings involving Muslims and Dalits. Minorities have been subjected to violent attacks linked to the alleged slaughter or mishandling of cows (animals held to be sacred by Hindus). Despite condemnations from a number of central ministers, such incidents continue to be reported, raising questions about the safety and security of religious minorities. Such actions restrict diversity and promote socio-cultural homogenization. These incidents of violence can be interpreted as an insidious attempt to distort the democratic social fabric.

When Nobel laureate Amartya Sen stepped down as the chancellor of Nalanda University in 2015, he raised the alarm over the government's undermining of the autonomy of academic institutions.⁴³ JNU too has seen steady encroachment and attacks on perfectly viable, well-established educational structures. In interviews that took place between June 26th and 30th 2017, around 40 students were invited to the campus⁴⁴ of one of the top colleges of mass communication. Testimonies from students who were interviewed stated that a majority of the questions were casteist and polarizing in nature. The institute has been accused by its own staff of making politically motivated appointments.⁴⁵

Indian films often become the target of public ire and censorship due to their content. Of late, there have been instances where films about women and their sexuality have been censored, leading to a debate between liberals and conservatives. In February 2016, the Supreme Court referred to a five-judge constitution bench a batch of six curative petitions challenging Section 377 of the Indian Penal Code, which criminalizes consensual same-sex relations. In July, the cabinet approved a bill on transgender people's rights which has been criticized by activists for its problematic definition of transgender people as well as its provisions on anti-discrimination, which were not aligned with a 2014 Supreme Court judgment.

Free speech, or more broadly freedom of thought, is the foundation of modern India, a foundation that has been slowly crumbling for some time. "Free" expression must not come with a condition that reads, "Free, as long as you agree." Laws and practices that criminalize peaceful

⁴¹ Press Trust of India. (2017, July 12). Two groups attacked bus carrying Amarnath pilgrims three minutes apart: J-K govt. *Hindustan Times*. Retrieved from <http://www.hindustantimes.com/india-news/bus-carrying-amarnath-pilgrims-was-attacked-twice-in-3-minutes-j-k-govt/story-ekyLYx4O6xAb9s06hat8EP.html>.

⁴² Chronology Of Lynchings And Killings Of Muslims In India Since September 2015. (2017, June 27). *Caravan Daily*. Retrieved from <http://caravandaily.com/portal/chronology-of-lynchings-and-killings-of-muslims-in-india-since-september-2015/>.

⁴³ Ghosh, S. (2015, February 21). Academic freedom is under threat in India: Amartya Sen. *The Times of India*. Retrieved from <http://timesofindia.indiatimes.com/india/Academic-freedom-is-under-threat-in-India-Amartya-Sen/articleshow/46318446.cms>.

⁴⁴ Nechiyil, S. (2017, July 13). Are college interviews now a saffron litmus test?. *NewsLaundry*. Retrieved from <https://www.newsLaundry.com/2017/07/13/are-college-interviews-now-a-saffron-litmus-test>.

⁴⁵ Marvel, I. (2016, March 10). Was the Attempt to Transfer Amit Sengupta From the IIMC Indicative of Government Interference?. *The Caravan Magazine*. Retrieved from <http://www.caravanmagazine.in/vantage/amit-sengupta-removed-iimc-government-interference>.

expression are inconsistent with India's international legal obligations, undermine the constitution, and weaken efforts to combat communal violence. Since freedom of expression is an enabler of other rights, its erosion threatens to fray human rights protections more generally. No fundamental right is or can be absolute. However, imposed restrictions should not be as excessive or disproportionate as to limit civic engagement or citizen participation.

2.4) Right to participation

The right to participate is an essential pre-requisite to a well-functioning democracy. It includes diverse but interrelated components such as free elections; freedom of assembly; freedom of association; and economic, social, and cultural rights.⁴⁶ It lies at the heart of the rights framework and works as an enabling agent for the other aforementioned freedoms. Apart from being an important means of accountability, it can lead to personal empowerment as participation enables a transformative process that turns citizens from passive recipients to active participants in the development process.

Political participation, the premise of democracy, in its simplest explanation is associated with the electoral voting process, to which India has shown a satisfactory commitment. The 73rd and 74th constitutional amendments, related to decentralization, were introduced in 1993 and allowed direct citizen participation at the local level. By reserving one-third of positions for women and allocating proportionate reservations for other socially marginalized groups, these constitutional amendments provided the potential for affirmative action. One of the most important roles of local governance institutions is to plan for local development and ensure social justice consistent with the needs and aspirations of citizens. The institution of Gram Sabha⁴⁷ is envisaged as a space for participatory governance with regard to planning, monitoring, and evaluation of development programs to be implemented by local autonomous governments. However, its effectiveness and democratic functioning remains an area of concern. Recent developments in the Panchayati Raj institutions have been hopeful. The Gram Panchayat Development Plans under the 14th Finance Commission are granted funds for participatory planning to realize higher socioeconomic goals.⁴⁸ Such a mandate gives space to ordinary citizens to assess their own needs and participate in planning, implementing, and monitoring of development schemes. However, there is still much to be desired when it comes to influencing the formulation of law and policy. The Panchayats Extension to the Scheduled Areas (PESA) Act of 1996 directs local governance institutions in scheduled areas and devolves special power to the

⁴⁶ Farer, T. J. (1988). The Human Right to Participate in Government: Toward an Operational Definition. *American Society of International Law*, 82, 505-518.

⁴⁷ A Gram Sabha (village assembly) comprises all the adult voters in a Gram Panchayat (a local governance institution in rural India). It is a platform for participatory planning and monitoring of all the development projects carried out in a Gram Panchayat.

⁴⁸ Sharma, N. (2016, July 30). How Gram Panchayat Development Plan is changing the villages of India. *The Economic Times*. Retrieved from <http://economictimes.indiatimes.com/news/politics-and-nation/how-gram-panchayat-development-plan-is-changing-the-villages-of-india/articleshow/53458749.cms>.

Gram Sabhas, paving the way for participatory democracy.⁴⁹ In practice, it is routinely violated. Recent reports point out that PESA has been grossly misused and underutilized, disenfranchising Adivasi communities all over the country⁵⁰.

The government launched a host of new urban programs in the last two years – among these, Smart Cities Mission 2015 is considered to be the landmark program for urban development. The mission aims to develop 100 cities, making them citizen friendly and sustainable. It mandated all cities to engage with their citizens in the proposal planning process. Many citizens offered suggestions via online and face-to-face consultative mechanisms. Though thousands of citizens were reached, the urban poor were not. Other initiatives such as Advanced Locality Management (ALM)⁵¹ and the Bhagidari System⁵² provide examples of participation in urban governance. They took root and shape in the metropolitan cities of Mumbai and Delhi and have been replicated by several other cities, including Bangalore. However, they have not been awarded sincere institutional recognition due to a lack of sufficient attention and support from the government authorities.

Civil society finds itself at the helm of the right to participation. Since the Supreme Court's judgment on police reforms in August 2006, states have begun developing new laws to replace the archaic Societies registration Act of 1860. For the most part, those states that have enacted new laws or are in the process of doing so have not bothered to consult with their populations or even active civil society groups. Kerala has, however, been a noteworthy exception and between 2010 and 2011 went all out to make the process of introducing a new police law as participatory as possible. In the early stages when the new Kerala police law was being drafted, the Commonwealth Human Rights Initiative (CHRI) recommended to the Chief of Police placing the draft on the Kerala Police website to invite suggestions and feedback. Seeing the value of this move, the Chief placed the draft on the website along with an email address to which comments could be submitted. Feedback did come in. Responses were received and CHRI also sent a detailed critique with recommendations and suggestions for improvements. Encouragingly, some of these were incorporated into the draft. The 19-member Select Committee headed by the Home Minister and comprising MLAs from almost every party drafted a questionnaire on the bill, which was placed on the website. Suggestions were invited from public at large. To make it truly a participatory exercise, the Committee also decided to hold districtwide public consultations and invite as much feedback and input into the bill as possible. Over a period of several months, public consultations were held in all 14 districts of the state. In 2011, the Select Committee's report was laid before the House. 240 of the suggested 790 amendments were accepted and passed.

⁴⁹ Mahaprashasta, A. A. (2013, May 3). PESA and pressures. *Frontline*. Retrieved from <http://www.frontline.in/social-issues/social-justice/pesa-and-pressures/article4613751.ece>.

⁵⁰ Mohanty, A. (2017, April 12). Armed with a toothless law, the plight of the Adivasi worsens. *The Wire*. Retrieved from <https://thewire.in/123372/pesa-tribal-activist-rights/>.

⁵¹ Sriram, J. (2017, January 1). Own Your Neighbourhood. *Governance Now*. Retrieved from <http://www.governancenow.com/news/regular-story/bhagidari-how-good-plan-goes-wrong>.

⁵² Iyer, A. S. (2013, July 17). Bhagidari: how a good plan goes wrong. *Governance Now*. Retrieved from <http://www.governancenow.com/news/regular-story/bhagidari-how-good-plan-goes-wrong>.

The pre-legislative consultative process adopted in Kerala provided a rare moment for the community at large to voice grievances publicly and in a safe space. The presence of their elected representatives paying attention raised credibility levels of the process as well as the government. The fact that the police were party to the exercise built respect and confidence as well as a better understanding of the challenges of policing. At the same time, it also allowed all parties involved to gain knowledge and ownership of the new law itself.

India has many examples of social movements and advocacy campaigns that have demanded the participation of all sectors of society. One of the most noteworthy examples is the introduction of the Right to Information (RTI) Act, 2005. However, the recent proposals of amendments to the RTI Act are raising concerns for civil society. The main contestations relate to an increase in fees; reduced word count of applications; closure of RTI applications in cases of second appeal or death of the applicant, and others. The apprehension is that such proposals would cause undue threat to the safety of the applicant and create blockades in accessing information from the government.

The Indian government is aiming to make participation fast and efficient with the introduction of Information and Communication Technology (ICT) in governance. One of the key pillars of the Digital India campaign is information for all, an idea that emphasizes the value of participation and accountability. The government is introducing online portals and forums such as mygov.nic.in whereby citizens can actively engage in matters relating to them, allowing them to be a part of the change-making process. Additionally, the government has instituted an online grievance redressal mechanism⁵³ that allows citizens to directly report their complaints to the authorities for better and faster conciliation. The launch of the Protection of Children from Sexual Offences (POCSO) e-box, which facilitates online registration of complaints regarding child sex abuse, is a laudable example of this redressal mechanism. The recent mandates linking all these government schemes to Aadhaar cards is a step towards the inclusion of everyone in the governance of the country.

Recent progressive laws like the granting of legal status to transgender people, the abolition of manual scavenging, and the Lokpal and Lokayukt Act reinforce the importance of participation in Indian democracy. However, India, being more representative than participative, needs to acknowledge remaining governance gaps, especially in the context of marginalized and minority populations, and bridge the lacunae with participation.

3. Policy lessons

Public policy should work to engineer spaces that allow Indians to meet on the basis of participatory parity. Widespread public services, from schools and hospitals to parks and crematoria, are one way

⁵³ Available at <http://pgportal.gov.in/>.

to bring individuals together as they struggle from birth to death. Repeated interactions between different groups of people in public spaces would empower the citizens to realize their common humanity and enable them to see any residual identity for what it really is.

Civic space is a prerequisite for groups to independently highlight the concerns of society's most marginalized sectors, and to reflect on the impact that political and administrative impediments to the proper implementation of government policies and provisions have on vulnerable sectors of the population. The space to build synergy and complementarity between people and the government is shrinking at a time when educated young people from socially excluded communities are engaging more actively in civil society spaces. The threat of particular political ideologies encroaching upon the space of civil society is of concern.

In this regard, the study presents the following recommendations:

1. The erstwhile Planning Commission had laid the groundwork for the National Policy on the Voluntary Sector of 2007. The document laid the ground for institutionalizing engagement between the voluntary sector and the government. However, the parliament is yet to approve the policy by enacting it into law. Hence this study recommends that the government promptly enact this law.
2. Formation of Nodal Ministry/Department for Voluntary Sector: Formation of an exclusive ministry for the voluntary sector, similar to the Ministry of Corporate Affairs, will also help in fostering an enabling environment for the sector and assist the government in monitoring social development programs. This ministry would facilitate communication between the government and the voluntary sector, as well as liaise with the corporate sector on corporate social responsibility.
3. The government should make concerted efforts to repeal Section 377, thereby decriminalizing homosexuality. The government should implement the Transgender Bill, but clarity needs to be brought about on the role and constitution of transgender welfare boards.
4. A group of citizens came together to draft what they wish would become a law, Manav Suraksha Kanoon (MaSuKa), which defines 'mob lynching' and seeks to make lynching a non-bailable offense. The draft proposes punishing those convicted of mob lynching with life imprisonment. It also mandates that the concerned Station House Officer of the area would be suspended forthwith until a time-bound judicial probe absolves them of charges. The proposal may be worth considering with the rise in hate crimes being directed towards minorities.
5. Taking into account recent incidences of public violence, the state must recognize that state impunity and police inaction have aggravated targeted violence against religious minorities, particularly in villages, small towns, and urban slums. Comprehensive reform of the police force is overdue. There must be a law to ensure the independence and accountability of the police and law enforcement.
6. Speech inciting violence must be monitored, and offenders punished according to the existing law.

4. Conclusion

In recent decades, India has proven itself capable not only of preserving democracy, but of deepening and broadening it by moving to a more inclusive brand of politics. Political participation has widened, electoral alternation has intensified, and civil society has pressed more vigorously for governance reforms and greater government accountability.

In recent years, however, there has been pushback against the progress made in terms of civic engagement. Beginning with the tenure of the previous government, the authorities have used repressive laws to curb freedom of expression and silence critics. Human rights defenders and organizations continue to face harassment and intimidation, and vigilante cow protection groups have carried out several attacks. Thousands have protested against discrimination and violence faced by minorities. Millions of people have opposed changes to labor laws. Jammu and Kashmir witnessed months of curfews and a range of human rights violations by authorities. Such events reflect India's trend away from constitutional democracy towards a populist democracy, where majoritarian views are upheld.

This marks the need for the government to amplify its policy effort to create spaces where citizens may interact freely and peacefully. Republican values must be protected by the state. This would entail the state facilitating the enjoyment of the freedoms of association, assembly, expression, and the right to participate in civic engagement. Such developments will improve the health of constituent political institutions and the ability of these institutions to facilitate the growth of India's civic space which allows social institutions, such as its civil society and free and vibrant media, to thrive. It is only then that Indian democracy will truly mature and cast its shadow on the global stage.

References

- Amnesty, 2. (n.d.). *Annual Report: India 2016/17*. Retrieved June 2017, from amnesty.org: <https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/>.
- Anonymous. (2016). *The Hindu*. Retrieved June 15, 2017, from <http://www.thehindu.com/news/cities/bangalore/Amnesty-event-ABVP-activists-storm-into-college-campus-detained/article14570157.ece>.
- Asia, P. R. (n.d.). *Civil society scan in Jharkhand*. Delhi: PRIA.
- Barry, E. (2017). *The New York Times*. Retrieved June 16, 2017, from https://www.nytimes.com/2017/03/07/world/asia/compassion-international-christian-charity-closing-india.html?module=WatchingPortal®ion=c-column-middle-span-region&pgType=Homepage&action=click&mediaId=thumb_square&state=standard&contentPlacement=8&versio.
- BBC, 2. (2014, June 2). *India police fire water cannon at gang-rape protesters*. Retrieved June 2017, from bbc.com: <http://www.bbc.com/news/world-asia-india-27659446>.
- BBC, 2. (2015, September 22). *India withdraws controversial encryption policy*. Retrieved June 2017, from bbc.com: <http://www.bbc.com/news/world-asia-india-34322118>.
- Caravan Daily, 2. (2017, June 27). *Chronology Of Lynchings And Killings Of Muslims In India Since September 2015*. Retrieved July 2017, from caravandaily.com: <http://caravandaily.com/portal/chronology-of-lynchings-and-killings-of-muslims-in-india-since-september-2015/>.
- CDRO. (2017, May 9). *Peoples Union for Democratic Rights*. Retrieved June 12, 2017, from <http://www.pudr.org/content/midnight-raids-and-fabricated-surrenders-niyamgiri-suraksha-samiti-activists-raygada>.
- Chakma, S. (2013). *India's Funds to NGOs squandered*. New Delhi: Asian Centre for Human Rights.
- Chhina, M. A. (2016, February 24). *Jat agitation: Worst violence in Rohtak, Jhajjar took place after Army flag march*. Retrieved June 2017, from indianexpress.com: <http://indianexpress.com/article/india/india-news-india/jat-quota-rohtak-jhajjar-army-flag-march/>.
- Correspondent, H. (2015, December 29). *110 journalists killed in 2015, India among 3 most dangerous nations*. Retrieved June 2017, from hindustantimes.com: <http://www.hindustantimes.com/india/110-journalists-killed-in-2015-india-deadliest-asian-country/story-7QLJwYGHQiq5EK8vdpPjQN.html>.
- Crimes in India (2015). National Crime Records Bureau, Ministry of Home Affairs, Government of India.
- Defendes, H. R. (2017). *India: Attacks on human rights defenders and shrinking*. Geneva: Human Rights Council.
- Desk, E. W. (2017, June 28). *What is the 'Not it my name' protest ?* Retrieved July 2017, from indianexpress.com: <http://indianexpress.com/article/what-is/what-is-the-not-in-my-name-protest-lynching-junaid-khan-4725668/>.
- Firmin, A. (2017). *Contested and Under Pressure: a snapshot of the enabling environment of Civil Society in 22 countries*. CIVICUS.
- Firmin, A. (2017). *Contested and under Pressure:A snapshot of the enabling environment of Civil Society in 22 countries*. CIVICUS.
- Firstpost, 2. (2016, February 1). *Police brutality: Delhi cops beat up students, including girls, protesting over Rohith Vemula's death*. Retrieved June 2017, from firstpost.com: <http://www.firstpost.com/india/police-brutality-in-delhi-cops-beat-up-students-including-girls-protesting-over-rohith-vemulas-death-2606576.html>.
- Ghosh, S. (2015, February 21). *Academic freedom is under threat in India: Amartya Sen*. Retrieved June 2017, from timesofindia.indiatimes.com: <http://timesofindia.indiatimes.com/india/Academic-freedom-is-under-threat-in-India-Amartya-Sen/articleshow/46318446.cms>.
- Hdraindi, J. (2015, August). *Right to Freedom of Peaceful Assembly and Association in India*. Retrieved June 2017, from Human Rights Defenders Alert: <http://hrdaiindia.org/?p=1283>.
- Hill, S. (2017, March 23). *Privacy, security and legality are not the only serious problems with Aadhaar. Here are four more*. Retrieved June 2017, from scroll.in: <https://scroll.in/article/832595/privacy-security-and-egality-are-not-the-only-serious-problems-with-aadhaar-here-are-four-more>.

- Hoot, T. (2017, May 4). *The India Freedom Report, January 2016-April 2017*. Retrieved June 2017, from sabrangindia.in: <https://sabrangindia.in/article/india-freedom-report-january-2016-april-2017-hoot>.
- HRW, 2. (2016, April 18). *India: High Cost for Reporting in Chhattisgarh*. Retrieved June 2017, from hrw.org: <https://www.hrw.org/news/2016/04/18/india-high-cost-reporting-chhattisgarh>.
- Iyer, A. S. (2013, July 17). *Bhagidari: how a good plan goes wrong*. Retrieved June 2017, from governancenow.com: <http://www.governancenow.com/news/regular-story/bhagidari-how-good-plan-goes-wrong>.
- Kiai, M. (2016). *Analysis of International Law, Standards and Principles applicable to the FCRA Act, 2010 and Rules, 2011*. Geneva: United Nations Human Rights.
- Mahaprashasta, A. A. (2013, May 3). *PESA and pressures*. Retrieved June 2017, from frontline.in: <http://www.frontline.in/social-issues/social-justice/pesa-and-pressures/article4613751.ece>.
- Marvel, I. (2016, March 10). *Was the Attempt to Transfer Amit Sengupta From the IIMC Indicative of Government Interference?* Retrieved June 2017, from caravanmagazine.in: <http://www.caravanmagazine.in/vantage/amit-sengupta-removed-iimc-government-interference>.
- Mohanty, A. (2017, April 12). *Armed with a toothless law, the plight of the Adivasi worsens*. Retrieved June 2017, from thewire.in: <https://thewire.in/123372/pesa-tribal-advansi-rights/>.
- Nayak, V. (2016, July 7). *Counterview.org*. Retrieved June 13, 2017, from <https://counterview.org/2016/07/07/lokpal-act-ngos-must-not-be-misunderstood-as-opponents-of-their-own-accountability/>.
- Nechiyil, S. (2017, July 13). *Are college interviews now a saffron litmus test?* Retrieved July 2017, from newslaundry.com: <https://www.newslaundry.com/2017/07/13/are-college-interviews-now-a-saffron-litmus-test>.
- News, C. S. (2016, August). *Civil Society Online*. Retrieved June 12, 2017, from <http://www.civilsocietyonline.com/governance/ngos-govt-on-warpath-again/>.
- Office, P. M. (2014, June 26). *PM blogs on completion of one month in office*. Retrieved June 2017, from <http://pib.nic.in: http://pib.nic.in/newsite/mbErel.aspx?relid=105903>.
- Parishad, E. (2015, March 4). *Ekta Parishad initiates a historical achievement in nonviolent Land Rights movement*. Retrieved July 2017, from ektaparishad.com: <http://www.ektaparishad.com/Resources/MediaReports/TabId/136/ArtMID/528/ArticleID/170/Ekta-Parishad-initiates-a-historical-achievement-in-nonviolent-Land-Rights-movement.aspx>.
- PTI. (2016, February 22). *Jat quota stir: Sporadic incidents of arson as Haryana limps to normalcy*. Retrieved June 2017, from indianexpress.com: <http://indianexpress.com/article/india/india-news-india/jat-quota-stir-sporadic-incidents-of-arson-as-haryana-limps-to-normalcy/>.
- PTI. (2016, July 28). *The Indian Express*. Retrieved June 12, 2017, from <http://indianexpress.com/article/india/india-news-india/ngos-ngo-executives-under-lokpal-law-private-sector-bribes-worry-activists-2876723/>.
- PTI. (2017). *IndiaToday.in*. Retrieved June 12, 2017, from <http://indiatoday.intoday.in/story/file-returns-or-get-registration-cancelled-mha-warns-ngos/1/968185.html>.
- PTI. (2017, July 12). *Two groups attacked bus carrying Amarnath pilgrims three minutes apart: J-K govt*. Retrieved July 2017, from hindustantimes.com: <http://www.hindustantimes.com/india-news/bus-carrying-amarnath-pilgrims-was-attacked-twice-in-3-minutes-j-k-govt/story-ekyLYx4O6xAb9s06hat8EP.html>.
- Rashid, M. (2016, August 12). *Right to Peaceful Protest is a fundamental right:SC*. Retrieved June 2017, from livelaw.in: <http://www.livelaw.in/right-peaceful-protest-fundamental-right-sc/>.
- Roy, S. (2017, May 2). *For India, a Year of Shrinking Freedom of Speech*. Retrieved June 2017, from thewire.in: <https://thewire.in/131167/for-india-a-year-of-shrinking-liberty/>.
- SAHRDC. (2010). *Stifling Freedom of Expression and Opinion. Economic and Political Weekly*, 19-22.
- Sands, G. (2015, May 11). *India Cracks Down on NGOs*. Retrieved June 12, 2017, from <https://foreignpolicyblogs.com/2015/05/11/india-cracks-down-on-ngos/>.

- Sharma, N. (2016, July 30). *How Gram Panchayat Development Plan is changing the villages of India*. Retrieved June 2017, from [economictimes.indiatimes.com: http://economictimes.indiatimes.com/news/politics-and-nation/how-gram-panchayat-development-plan-is-changing-the-villages-of-india/articleshow/53458749.cms](http://economictimes.indiatimes.com/news/politics-and-nation/how-gram-panchayat-development-plan-is-changing-the-villages-of-india/articleshow/53458749.cms).
- Sriram, J. (2017, January 1). *Own Your Neighbourhood*. Retrieved June 2017, from [thehindu.com: http://www.governancenow.com/news/regular-story/bhagidari-how-good-plan-goes-wrong](http://www.governancenow.com/news/regular-story/bhagidari-how-good-plan-goes-wrong).
- Staff, S. (2017, April 26). *India ranks 136 on World Press Freedom Index, slips three places since 2016*. Retrieved June 2017, from [scroll.in: https://scroll.in/latest/835698/india-ranks-136-on-world-press-freedom-index-slips-three-places-since-2016](https://scroll.in/latest/835698/india-ranks-136-on-world-press-freedom-index-slips-three-places-since-2016).
- Sudhir, T. S. (2017, April 24). *Tamil Nadu farmers call off protest, serving a grim reminder of how far removed state has become from India*. Retrieved June 2017, from [firstpost.com: http://www.firstpost.com/india/tamil-nadu-farmers-call-off-protest-stirring-a-grim-reminder-of-how-far-removed-state-has-become-from-india-3400686.html](http://www.firstpost.com/india/tamil-nadu-farmers-call-off-protest-stirring-a-grim-reminder-of-how-far-removed-state-has-become-from-india-3400686.html).
- Tom J. Farer, J. D. (1988). *The Human Right to Participate in Government: Toward an Operational Definition*. *American Society of International Law*, 82, 505-518.
- Tucker, V. L. (2017, March 21). *Freedom House*. Retrieved June 12, 2017, from <https://freedomhouse.org/article/global-assault-civil-society>.
- Waheed, M. (2016, November 8). *India's crackdown in Kashmir: is this the world's first mass blinding?*. Retrieved June 2017, from [theguardian.com: https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding](https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding).
- Watch, H. R. (2016, November 8). *India: Foreign Funding Law Used to Harass 25 Groups*. Retrieved June 12, 2017, from [www.hrw.org: https://www.hrw.org/news/2016/11/08/india-foreign-funding-law-used-harass-25-groups](https://www.hrw.org/news/2016/11/08/india-foreign-funding-law-used-harass-25-groups)

Civic Space in Sri Lanka

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1. Introduction

The situation of civic spaces in Sri Lanka over the last decade can be categorized under two distinct time periods: from 2007 until 2015 and from 2015 to the present. 2015 marked the end of the Mahinda Rajapaksa administration and the start of the Maithripala Sirisena administration and the national unity government.²

During the first period, from 2007 until 2015, there was an observable shrinking of civic spaces in Sri Lanka and notable threats to fundamental rights and freedoms. This period is marked significantly by the end of Sri Lanka's 25-year-old civil conflict in 2009 when the government militarily defeated the Liberation Tamil Tigers of Eelam (LTTE). During this time, there were notable rights violations as the government sought to centralize state power and crack down on civic spaces in the name of national security.

The initiation of the second time period, from 2015 onwards, saw an inverse expansion of civic spaces and greater latitude for citizens to exercise fundamental rights and freedoms. However, this period has not seen the complete removal of prior threats to civic spaces. Whilst the government itself is not seen to violate these rights as egregiously as before, it has also allowed the country's culture of impunity to continue without meaningfully reinforcing or safeguarding these rights.

Restrictions and violations of the freedoms of association, assembly, and expression and the right to participation have been, and continue to be, disproportionately targeted at Tamil communities in the North and East of the country.³

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² Rajapaksa – who amended the constitution to remove term limits on the presidency and served two consecutive five year terms as president from 2005 to 2015 – was defeated in a bid for a third term by Sirisena in 2015. Parliamentary elections later in the year resulted in a government which effectively united the two major parties in Sri Lanka, the United National Party (UNP) and a section of the Sri Lanka Freedom Party (SLFP), as well as a number of minor parties.

³ These violations continually impact the memorialization of victims of civil conflict, the operations of media outlets, and the day-to-day socioeconomic wellbeing of communities still dealing with the massive physical, material, and psychological trauma of decades-long conflict.

The freedoms of association, assembly, and expression and the right to participation are protected as fundamental rights in the Sri Lankan Constitution through articles 14(1)(c), (b), (a), and (e)-(g), respectively. Restrictions on all of these rights can be prescribed by law “in the interests of racial and religious harmony,” much broader grounds than are permissible under international human rights law.⁴

2. Civic space in Sri Lanka

2.1) Freedom of association

Under Rajapaksa’s rule (2005–2015), civil society organizations faced numerous challenges in carrying out their activities and operating in the country. The government used numerous laws, rules, and regulations to restrict NGO activities and media campaigns to drive public sentiment against them, all of which severely curtailed the freedom of association.⁵

2.1.1) Laws restricting the freedom of association

A special Parliamentary Select Committee for the “Investigation of the Operations of Non-Governmental Organizations and their Impact,” set up in 2006 with cross-party representation, made an interim report in 2008⁶ which heavily criticized NGOs for financial misappropriation and lack of transparency as well as threatening the “sovereignty and national security of Sri Lanka.”⁷

In 2014, the government passed new regulations requiring all non-profit organizations in Sri Lanka to register officially with the NGO Secretariat, a body operating under the Ministry of Defense and Urban Development.⁸ This permitted increased scrutiny of NGO activity by intelligence agencies, security forces, and police. Refusals to register with the NGO Secretariat were met with threats of severe financial restrictions, including the closure of bank accounts.

⁴ The International Movement Against All Forms of Discrimination and Racism. (2016, March 8). Freedom of Assembly in Sri Lanka (HRC31, 2016, WS). Retrieved from <http://imadr.org/freedom-of-assembly-srilanka-hrc31-2016-ws/>.

⁵ Large, J. (2009). *Push Back: Sri Lanka's Dance with Global Governance*. Chicago: Zed Books. 53-56.

⁶ Parliamentary Series No. 20 of the Sixth Parliament of the Democratic Socialist Republic of Sri Lanka (Third Session) – Interim Report of The Select Committee of Parliament for investigation of the Operations of Non-Governmental Organisations and their Impact. (2008, December 8). P.10. Retrieved from http://www.tisirilanka.org/pub/li/pdf/Interim_Report_NGO.pdf.

⁷ What the PSC on NGOs said. (2011, June 9). *The Island*. Retrieved from www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=27413. CIVICUS and The Centre for Policy Alternatives. (2013, November). Sri Lanka’s Harassed Civil Society. Retrieved from <https://www.scribd.com/document/183359571/Sri-Lanka-Report-SRI-LANKA-S-HARASSED>.

⁸ Colombage, D. (2014, September 22). Sri Lanka accused of trying to gag NGOs. *Al Jazeera*. Retrieved from www.aljazeera.com/indepth/features/2014/09/sri-lanka-accused-trying-gag-ngos-201492263518312357.html.

In 2014, the government also announced that NGOs would no longer be allowed to hold press conferences, conduct trainings for journalists, or issue press releases.⁹ In 2014, the government introduced new restrictions on NGOs receiving foreign funds, including a requirement to obtain approval from the Ministry of Finance and Planning before receiving foreign funds.¹⁰

In 2014, the government blacklisted 15 overseas Tamil organizations for alleged links to the militarily defeated LTTE, evidently to freeze their assets and sever any contact they had with persons and organizations in Sri Lanka.¹¹

2.1.2) Violence and intimidation towards human rights activists and defenders

During the previous regime, the intimidation of human rights activists and defenders was commonplace. Through murders, violence, physical intimidation, death threats, and misuse of state media, the work of human rights lawyers, humanitarian workers, and other civil society actors was continually threatened, placing large burdens on the freedom of association.

Sri Lankan employees of international and local humanitarian agencies have been the victims of a number of documented disappearances, abductions, instances of torture, and murders, particularly during the escalation of military conflict between mid-2007 and 2009.¹²

Furthermore, during this period, the government heavily restricted the access of international humanitarian workers to the country. Between mid-2007 and 2009, the visas of as many as 40 foreign workers of NGOs and agencies were reportedly cancelled or not extended over allegations of bias against the government (or in favor of the LTTE).¹³ Government supporters issued continuous vitriolic attacks on humanitarian workers for allegedly being part of an “international conspiracy” against Sri Lanka.¹⁴

⁹ Dibbert, T. (2014, July 25). Sri Lanka’s NGO Clampdown. *Foreign Policy*. Retrieved from <http://foreignpolicy.com/2014/07/25/sri-lankas-ngo-clampdown/>.

¹⁰ Ibid. In one case in July 2014, the United States Agency for International Development (USAID) cancelled funding for a voter education program after the Government raised objections. Bastians, D. (2014, July 4). USAID Cancels Funding for “Voter Education Project” After Def. Secretary Gotabaya Rajapaksa Threatens Probe into Recipients. Retrieved from <http://dbsjeyaraj.com/dbsj/archives/31498>.

¹¹ INFORM Human Rights Documentation Centre, Colombo, Sri Lanka. (2014, September 20). Freedoms of Assembly and Association in Sri Lanka. Retrieved from <https://ihrdc.files.wordpress.com/2014/08/freedom-of-assembly-association-in-sri-lanka-inform-20sep2014.pdf>.

¹² Centre for Policy Alternatives. (2009, March). A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya. Retrieved from http://www.cpalanka.org/wp-content/uploads/2009/3/Vanni_Report.pdf. From this period, there are documented abductions, arrests, and arbitrary detentions of more than 20 humanitarian workers from the United Nations and the abduction and murder of two Sri Lankan Red Cross workers. Amnesty International. (2013). Sri Lanka’s Assault On Dissent. Pp. 22-23. London: Amnesty International Ltd.

¹³ Samath, F. (2008, August 10). SRI LANKA: Clampdown on International NGOs. *Inter Press Service News Agency*. Retrieved from <http://www.ipsnews.net/2008/08/sri-lanka-clampdown-on-international-ngos/>.

¹⁴ For instance, the *Sunday Observer*, a state-controlled newspaper, repeatedly called NGO employees “goons” who “tarnished the country’s image by pumping oxygen to Tiger terrorists... who thrive on international

During this period, death threats against particular human rights activists were common. Prominent activists who have been repeatedly targeted include Dr. Nimalka Fernando,¹⁵ a lawyer and director of the International Movement Against Discrimination and Racism (IMADR); Dr. Paikiasothy Saravanamuttu,¹⁶ director of the Centre for Policy Alternatives; Sunanda Deshapriya,¹⁷ a journalist and media freedom activist; and J.C. Weliamuna,¹⁸ a lawyer and former director of Transparency International Sri Lanka.

2.1.3) Attacks on activities of trade unions and student unions

In February 2007, at least 25 journalists, trade union activists, and railway workers were arrested and detained by the Terrorist Investigation Division on suspicion of conspiring with the LTTE to overthrow the government.¹⁹ Employers in Export Processing Zones (EPZs) regularly harass workers engaging in trade union activities, particularly in the Katunayake EPZ, where workers engaging in setting up trade unions have been sacked.²⁰ In 2014, several student unions were dissolved and student activists suspended from university.²¹

funding and shout from the rooftops” and who are “ready to betray the country for a mess of pottage.” Sri Lanka: Writing on the Wall for Errant INGOS, NGOS– State Media. (2014, July 13). *Sri Lanka Brief*. Retrieved from <http://srilankabrief.org/2014/07/sri-lanka-writing-on-the-wall-for-errant-ingos-ngos-state-media/>.

¹⁵ On November 4th 2013, the Sri Lanka Broadcasting Corporation broadcast a program featuring callers urging in an explicit manner the deaths of Fernando and other human rights defenders for cooperating with the international community. AHRC Condemns State Media Attack On Nimalka Fernando. (2013, November 13). *Colombo Telegraph*. Retrieved from <https://www.colombotelegraph.com/index.php/ahrc-condemns-state-media-attack-on-nimalka-fernando/>.

¹⁶ On August 20th 2009, Saravanamuttu received an anonymous death threat posted to his residence for allegedly conspiring in Sri Lanka being deprived of the European Union’s GSP Plus trade benefits scheme. Centre for Policy Alternatives. (2009, August 20). Dr. Paikiasothy Saravanamuttu, CPA Executive Director, receives death threat. Retrieved from www.cpalanka.org/wp-content/uploads/2009/10/Death%20threat%20to%20CPA%20Executive%20Director.pdf.

¹⁷ In March 2012, the Minister of Labour Mervyn Silva addressed a public rally in Sri Lanka where he threatened to “break the limbs” of Deshapriya, Fernando and Saravanamuttu. VIDEO: I chased Poddala, warning to ‘traitors’ – Mervyn. (2012, March 23). *Ada Derana*. Retrieved from <http://www.adaderana.lk/news.php?nid=17473>.

¹⁸ On September 27, 2008, unidentified assailants threw two hand grenades at Weliamuna’s residence, one of which exploded and caused damage to property. Weliamuna was involved in a number of legal cases implicating the government in torture and corruption. Amnesty International. (2013). *Sri Lanka’s Assault On Dissent*. London: Amnesty International Ltd. Pp. 44-45.

¹⁹ Akuna newspaper staff abducted. (2007, February 6). *BBC News*. Retrieved from http://www.bbc.co.uk/sinhala/news/story/2007/02/070206_abduction_journalists.shtml; Court releases ‘Sinhala Tigers’. (2009, February 13). *BBC Sinhala*. Retrieved from http://www.bbc.co.uk/sinhala/news/story/2009/02/090213_sinhala_tigers.shtml; Amnesty International. (2008, February). *Sri Lanka: Silencing Dissent*. P. 19. Retrieved from <https://www.amnesty.org/download/Documents/52000/asa370012008en.pdf>. The detainees had been agitating to protect workers’ rights in the railways industry. Most reported being tortured and made to give false confessions while in custody.

²⁰ Joint Civil Society Submission To The Third UN Universal Periodic Review (Sri Lanka) – Third Cycle, 28th Session 2017. Retrieved from http://imadr.org/wordpress/wp-content/uploads/2017/04/UPR28_Sri-Lanka_Joint-Civil-Society-Submission_2017.pdf. [18], 25n67.

²¹ INFORM Human Rights Documentation Centre. (2014, September 20). *Freedoms of Assembly and Association in Sri Lanka*. Retrieved from <https://ihrc.files.wordpress.com/2014/08/freedom-of-assembly->

2.1.4) Regime change, moves to strengthen freedom of association, and continuing challenges

The Sirisena regime moved the NGO Secretariat from the Ministry of Defense to the newly created Ministry of National Co-existence Dialogue and Official Languages in 2015.²² A number of individuals from Tamil diaspora organizations previously blacklisted have been de-listed.²³

Despite this, the government still maintains some scrutiny and supervision over NGOs.²⁴ The NGO Secretariat purports to co-opt local NGOs within its network – one of its objectives is to “make sure that NGOs act within the national policy framework of the country.”²⁵

In September 2015, Police and intelligence service personnel reportedly harassed organizers and volunteers assisting with the signature campaign of the Tamil Action Committee for International Accountability Mechanism, a group based in the North and East provinces.²⁶ For organizations in the North and East, such harassment is still not uncommon.

There are signs of a possible return to the previous government’s attitudes towards freedom of association. In June 2017, the Minister of Justice Wijedasa Rajapakse claimed that new laws were required to regulate NGOs, calling them threats to national interests.²⁷

2.2) Freedom of assembly

Freedom of assembly has frequently been threatened in Sri Lanka over the past decade. Arrests made during protests, excessive state-inflicted violence on protesters, and state-sponsored disruption, intimidation, and surveillance of protests and protesters are widespread.²⁸ Areas of

[association-in-sri-lanka-inform-20sep2014.pdf](#). In August 2014, the Administrative Board of Rajarata University decided to dissolve the main student union and faculty unions temporarily. At the same time, student leaders of the Open University in Colombo were suspended for leading a protest campaign demanding the right to unionize.

²² The NGO Secretariat now reports to the Minister of National Co-existence Dialogue and Official Languages.

²³ US Department of State. (2015). Sri Lanka 2015 Human Rights Report. Retrieved from <https://www.state.gov/documents/organization/253187.pdf>.

²⁴ Deshapriya, S. (2016). Freedom of Expression, Association and Assembly. In Human Rights Documentation Centre, *Human Rights Situation in Sri Lanka – August 17, 2015 – August 17, 2016* (pp.15-19). Retrieved from <https://www.forum-asia.org/uploads/wp/2016/08/Human-Rights-in-SL-one-year-after-parliamentary-elections-INFORM-18Aug2016.pdf>.

²⁵ See “About Us” on the National Secretariat for Non-Governmental Organizations’ website at http://www.ngosecretariat.gov.lk/web/index.php?option=com_content&view=article&id=46&Itemid=27&lang=en.

²⁶ Sri Lanka police disrupt signature campaign in Trincomalee. (2015, September 6). *Tamil Guardian*. Retrieved from <http://tamilguardian.com/content/sri-lanka-police-disrupt-signature-campaign-trincomalee?articleid=15831>. The chief of the Tamil National People’s Front party, Gajendrakumar Ponnambalam, was among those harassed.

²⁷ Laws needed to regulate NGOs: Wijedasa Rajapaksa. (2017, June 29). *Daily Mirror*. Retrieved from <http://www.dailymirror.lk/article/Laws-needed-to-regulate-NGOs--131852.html>.

²⁸ Fonseka, B., Ganeshathasan, L., and Daniel, S. (2017, February). Two Years In Government: A Review Of The Pledges Made In 2015 Through The Lens Of Constitutional Reform, Governance And Transitional Justice.

repeated violations include student protests against the government, remembrance and commemoration events held by Tamil communities and survivors of the country's civil conflict, and election-related activities. These violations have continued despite the regime change.

2.2.1) Excessive uses of force and mass arrests

There have been recurrent instances of violent dispersals of protests by the police using excessive force, including the deployment of tear gas and water cannons and assaults on protestors.²⁹ In events during November 2012, hundreds of students and persons in Jaffna were arrested, assaulted, and tortured for supposedly commemorating the LTTE's "Heroes Day."³⁰ Protests by FTZ workers in June 2011,³¹ fishermen in 2012,³² and civilians in August 2013³³ were met with excessive force, killing and injuring numerous demonstrators.

Police brutality has continued despite government change. In May 2015, hundreds of protesters were arrested without due process as protests against the rape and murder of teenage schoolgirl Vidya in Jaffna turned violent.³⁴ In October 2015, students seeking to discuss systemic

Centre for Policy Alternatives. P. 6. Retrieved from www.cpalanka.org/wp-content/uploads/2017/02/2-February-2017-FINAL-REPORT-.pdf.

²⁹ Unemployed graduate student protests in 2009 were disrupted by police using tear gas, rubber bullets and water cannons, injuring more than 10 protesters. Sri Lanka police fire water cannon at protesters. (2009, November 4). *Reuters*. Retrieved from www.reuters.com/article/idINIndia-43676120091104.

³⁰ Heroes Day, established to commemorate cadres killed during Sri Lanka's armed conflict, happened to coincide that year with the Hindu festival *Karthikai Deepam*. A number of lamp lighting ceremonies were disrupted by security forces, and peaceful counter-protests were also violently broken up. Arrested student leaders were detained in a "rehabilitation" center in Welikanda, and held without charge for months. Amnesty International. *Sri Lanka's Assault On Dissent*. (2013). London: Amnesty International Ltd. Pp. 43-44.

Amnesty International. (2012, December 4). URGENT ACTION –STUDENTS AT RISK OF TORTURE FOLLOWING MARCH. Retrieved from <https://www.amnestyusa.org/files/uaa06714.pdf>.

³¹ In June 2011, thousands of workers in Sri Lanka's Free Trade Zone demonstrated against a proposed pension plan that would require workers to contribute an additional two percent of their wages without a guaranteed return. Haviland, C. (2011, June 2). Sri Lankans protest over killing of co-worker. *BBC News*. Retrieved from <http://www.bbc.co.uk/news/world-south-asia-13631758>; US Department of State. (2012). Sri Lanka 2012 Human Rights Report. P. 24. Retrieved from <https://www.colombotelegraph.com/wp-content/uploads/2013/04/204623.pdf>.

³² In February 2012 an estimated 300,000 fishermen held an island-wide protest against a fuel price hike. Obeyesekere, S. Chilaw After a Demonstrating Fisherman was Shot to Death. (2012, February 18). *The Nation*. Retrieved from <http://transcurrents.com/news-views/archives/8237>.

³³ On August 2nd 2013, three civilians, including a 17-year-old, were shot dead by the Sri Lankan military during a protest against contaminated drinking water caused by a glove manufacturing plant in Weliweriya. Centre for Policy Alternatives. (2013, August 6). Statement on the violence in Weliweriya. Retrieved from <http://www.cpalanka.org/statement-on-the-violence-in-weliweriya/>.

³⁴ Gang-rape prompts protests in Sri Lanka's north. (2015, May 21). *Al Jazeera*. Retrieved from liberties.aljazeera.com/en/news/uncategorized/gang-rape-prompts-protests-in-sri-lankas-north. A senior Police officer was also recorded racially abusing a protesting elderly woman. Video Of Sinhala Police Officer Using Racially Motivated Language At An Elderly Jaffna Woman Goes Viral. (2015, May 22). *Colombo Telegraph*. Re-

problems in the higher education sector were brutally attacked by the police with the anti-riot squad deploying water cannons and tear gas.³⁵ In November 2015, a student march organized by the Inter University Students' Federation of Sri Lanka (IUSF) was brutally attacked by the police.³⁶ Student protests in 2016 and 2017 organized by the IUSF against the private education institute South Asian Institute of Technology and Medicine were dispersed by police using tear gas and water cannons in Colombo, with mass arrests following.³⁷

State-sponsored violations of the freedom of assembly through disruptions, intimidation, and surveillance

Numerous protests have been obstructed by security forces intimidating organizers and protesters,³⁸ deployment of government supporters,³⁹ and arbitrary arrests of organizers.⁴⁰ Throughout the decade, peaceful assemblies have been disrupted by Buddhist monks allegedly aligned with the government.⁴¹

rieved from <https://www.colombotelegraph.com/index.php/video-of-sinhala-police-officer-using-rationally-motivated-language-at-an-elderly-jaffna-woman-goes-viral/>.

³⁵ Nine students were injured by the attack. The Human Rights Commission of Sri Lanka (HRCSL) concluded the students' fundamental constitutional rights had been violated and recommended monetary compensation. International Movement against All Forms of Discriminations and Racism. (2016, March 8). Freedom of assembly in Sri Lanka: limitations through use of force and intimidation. (January 2015-Present). Retrieved from http://imadr.org/freedom-of-assembly-srilanka-hrc31-2016-ws/#_ftn11.

³⁶ The protest march was organized by the IUSF against the privatization of and cuts to the standards of the Higher National Diploma in Accountancy. Eight students were hospitalized as a result of the police assault. Dealing with Dissent; Tell us how the govt. plans to deal with protests in future. (2015, November 3). *Pressreader*. Retrieved from <https://www.pressreader.com/sri-lanka/daily-mirror-sri-lanka/20151103/281814282735538>.

³⁷ Tear gas fired at protesting students who defied court orders (Video). (2017, May 18). *News 1st*. Retrieved from <http://newsfirst.lk/english/2017/05/tear-gas-fired-protesting-students-defied-court-orders-video/167130>; Anti-SAITM protest: Eight students remanded. (2017, May 18). *Sunday Times*. Retrieved from www.sundaytimes.lk/article/1022123/anti-saitm-protest-eight-students-remanded.

³⁸ US Department of State. (2013). Sri Lanka 2013 Human Rights Report. Retrieved from <https://www.state.gov/documents/organization/220616.pdf>.

³⁹ On January 25th 2012, a protest rally by media groups to mark the deaths and disappearances of journalists was obstructed by protesters reportedly transported with government support to block the demonstration. US Department of State. (2012). Sri Lanka 2012 Human Rights Report. Retrieved from <https://www.colombotelegraph.com/wp-content/uploads/2013/04/204623.pdf>.

⁴⁰ On May 23rd 2014, the Terrorist Investigation Division arrested Tamil National People's Front politician Thangaraj Jegatheeswaran for organizing a demonstration to demand the resettlement of displaced Kilinochchi residents and to prevent military takeovers of civilian land. As a result, the planned protest was postponed. US Department of State. (2014). Sri Lanka 2014 Human Rights Report. Retrieved from http://photos.state.gov/libraries/sri-lanka/5/pdfs/hr_report_2014_en.pdf.

⁴¹ On August 4th 2014, a mob led by Buddhist monks forcibly entered a meeting organized by the Centre for Society and Religion in Colombo for high-ranking members of the diplomatic community to meet with members of families of persons who had been disappeared. Condemnation of violent attack on discussion with families of the disappeared. Centre for Policy Alternatives. (2014, August 5). Condemnation of violent attack on dis-

The use of intimidation tactics by security forces, particularly in Tamil-majority areas, has persisted despite regime change.⁴² The summoning of community leaders and event organizers has been an ongoing intimidation technique causing disruptions to protests and public events.⁴³ Intelligence officers are often present at public remembrance events; their attendance alone induces fear due to their role in the abuses perpetrated both during and since the conflict.⁴⁴

Freedom of assembly has also been subjected to state interference in the context of elections. Election-related violence and the abuse of state resources for campaigning has been a recurrent phenomenon in Sri Lanka, but this intensified under the previous regime. This is illustrated by the three national elections (the 2010 presidential election⁴⁵ and parliamentary elections⁴⁶ and the 2015 presidential election⁴⁷) and numerous local elections⁴⁸ held under its watch during the

cussion with families of the disappeared. Retrieved from <http://www.cpalanka.org/condemnation-of-violent-attack-on-discussion-with-families-of-the-disappeared/>.

⁴² Pathirana, R. (2016, March). Memorialisation for Transitional Justice in Sri Lanka: A Discussion Paper. *Centre for Policy Alternatives*. Pp. 20-23. Retrieved from <https://www.cpalanka.org/wp-content/uploads/2016/03/Memorialisation-for-Transitional-Justice-in-Sri-Lanka-FINAL.pdf>; INFORM.

(2015, May 11). Beginning of Mullivaikal remembrance week marked, under watch of security forces. *Tamil Guardian*. Retrieved from <http://www.tamilguardian.com/article.asp?articleid=14715>.

⁴³ On May 20th 2017, Father Elil Rajan was summoned for interrogation three times regarding a commemorative event for the victims of the civil war. Frontline Defenders. (2017, May 23). Father Elil Rajan was summoned for interrogation for the third time in a week about a commemorative event for the victims of the civil war. Retrieved from <https://www.frontlinedefenders.org/fr/case/father-elil-rajan-summoned-third-time-one-week#case-update-id-5775>.

⁴⁴ Intelligence officers aggravate the sense of intimidation through filming, questioning, and recording details of participants. International Movement against All Forms of Discriminations and Racism. (2016, March 8). Freedom of assembly in Sri Lanka: limitations through use of force and intimidation. (January 2015-Present). Retrieved from http://imadr.org/freedom-of-assembly-srilanka-hrc31-2016-ws/#_ftn11.

⁴⁵ At a presidential election held in January 2010, the Centre for Monitoring Election Violence (CMEV) recorded over 800 verified incidents of violence (including four murders) in the election and post-election periods and over 150 verified incidents of violence and irregularities at polling stations on Election Day itself. Centre for Monitoring Election Violence. Final Report on Election Related Violence: Presidential Election 2010. (2010, July 26). Retrieved from <https://cmev.files.wordpress.com/2010/07/presidential-election-2010-final-report.pdf>.

⁴⁶ At the parliamentary elections held in April 2010, the CMEV recorded over 400 verified incidents of violence (including one murder) and state property misuses in the election and post-election periods as well as over 500 verified incidents of violence and irregularities at polling stations on election day itself. Centre for Monitoring Election Violence. (2010, October). Final Report on Election Related Violence and Malpractices – Parliamentary Election 2010. Pp. 1-3. Retrieved from <https://cmev.files.wordpress.com/2010/12/final-report-on-election-violence-and-malpracticesenglish-ge-2010.pdf>.

⁴⁷ Leading up to the election, there were major incidents of violence ranging from attempted murder, assault, threat, and intimidation to arson attacks, as well as police refusals to investigate. Centre for Monitoring Election Violence. (2015, January). Final Report on Election Related Violence: Presidential Election 2015. P. 7. Retrieved from https://cmev.files.wordpress.com/2015/06/final-report-presidential-election-2015_cmev.pdf.

⁴⁸ For instance, the campaign for the 2013 Northern Provincial Council Election was marked by numerous attacks, intimidations, and the destruction of property belonging to Tamil candidates as well as disruptions of polling places on polling day, allegedly by security forces. Centre for Monitoring Election Violence. (2013, October 23). Final Report on Election Related Violence: Provincial Council Elections 2013, Northern Province. Retrieved from <http://cl.ly/3P3f0f473l3E>.

surveyed period. Election violence and state abuse of resources has had an observable negative impact on citizen political engagement, including rates of participation in political activities and voting itself.

By contrast, the parliamentary elections of August 2015, the first held under the Sirisena administration, are widely considered to be the first free and fair elections held in the country in some time.⁴⁹

2.2.2) Legal restrictions on assembly

The government has continually placed restrictions on the timing and location of protests.⁵⁰ Under both regimes, event organizers in Jaffna faced numerous problems in organizing events, in addition to the presence of the military which impedes via implication the freedom of assembly.⁵¹ In the context of continued militarization, the situation in the North and East is more repressive than other areas.⁵²

There have been numerous occasions upon which the police attempted to obtain court orders to stop peaceful assemblies.⁵³ Several such incidents have been reported, especially from Jaffna

⁴⁹ Centre for Monitoring Election Violence. (2015, August 17). Final Report on Election Related Violence – Parliamentary General Election 2015. Retrieved from <https://cmev.files.wordpress.com/2016/02/final-report-on-election-related-violence-and-malpractices-parliamentary-general-election-17th-august-2015.pdf>.

⁵⁰ In 2013, the government banned all protests during the November 15-17 Commonwealth Heads of Government Meeting (CHOGM) in Colombo. Tamil Civil Society Forum. (2014, September 12). Further Written submission to the UN Human Rights Committee, On the Fifth Periodic Report of the Government of Sri Lanka on the International Covenant on Civil and Political Rights. Available at https://www.google.co.kr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwit4fCD1O3YAhWCHpQKHTIKBswQFggLMAA&url=http%3A%2F%2Fbinternet.ohchr.org%2FTreaties%2FCCPR%2FShared%2F520Documents%2FLKA%2FINT_CCPR_CSS_LKA_18261_E.docx&usg=AOvVaw1Tvw-E8A7Nq57XQ0z234gK.

Asylum Research Consultancy. (2016, March). Sri Lanka COI Query Response-Update, February 19, 2016. Retrieved from <http://www.refworld.org/pdfid/56e2e1584.pdf>.

⁵¹ Centre for Policy Alternatives. (2007, August 9). Press statement condemning military interference on Jaffna NGOs meetings with UN Under Secretary General on humanitarian affairs. Retrieved from <http://www.cpalanka.org/press-statement-condemning-military-interference-on-jaffna-ngos-meetings-with-un-under-secretary-general-on-humanitarian-affairs9th-august-2007/>.

⁵² Spiralling incidents of military intimidation in the North: Ruki Fernando. (2017, March 10). *Groundviews*. Retrieved from <http://groundviews.org/2017/03/10/spiraling-incidents-of-military-intimidation-in-the-north-ruki-fernando/>.

⁵³ On September 9th 2014, Sri Lankan police in Batticaloa sought and obtained a court ban against the holding of a remembrance event commemorating 24 years since the Chatturukondan massacre, in which more than 180 people are suspected to have been massacred by the Sri Lankan Armed Forces. Tamil Civil Society Forum. (2014, September 12) Further Written submission to the UN Human Rights Committee, On the Fifth Periodic Report of the Government of Sri Lanka on the International Covenant on Civil and Political Rights. Available at https://www.google.co.kr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi5u-HZ1O3YAhXIKZQKHOpCDugQFggLMAA&url=http%3A%2F%2Fbinternet.ohchr.org%2FTreaties%2FCCPR%2FShared%2F520Documents%2FLKA%2FINT_CCPR_CSS_LKA_18261_E.docx&usg=AOvVaw1Tvw-E8A7Nq57XQ0z234gK.

and Vavuniya, in relation to events staged by political parties, doctors, and students.⁵⁴ In 2017, the Minister for Law and Order made a statement that the government will introduce new laws to allocate separate zones for protest.⁵⁵

2.3) Freedom of expression

The previous regime heavily repressed expression against state military violence, corruption, and misconduct, creating a dangerous environment for the media and civil society. Both the government's actions and the socio-political climate it engineered against dissent ensured that the media and civil society practiced heavy self-censorship. The country's pervasive culture of impunity continues to jeopardize freedom of expression, even after regime change.

2.3.1) State control of the freedom of expression

Under the previous regime, threats against freedom of expression included physical restrictions of radio transmissions,⁵⁶ blocking of internet websites,⁵⁷ and legislative codes governing media expression.⁵⁸ The previous regime also abused state-owned media to vilify NGOs⁵⁹ and government critics,⁶⁰ incite violence against them,⁶¹ and minimize negative coverage.⁶²

⁵⁴ Asylum Research Consultancy. (2016, February 19). Sri Lanka COI Query Response-Update. Retrieved from <http://www.refworld.org/pdfid/56e2e1584.pdf>.

⁵⁵ Perera, Y. (2017, February 8). New laws allocating separate areas for protests. *Daily Mirror*. <http://dailymirror.lk/article/New-laws-allocating-separate-areas-for-protests-123454.html>.

⁵⁶ In 2012, the government built a new broadcast tower in the Vanni but selectively blocked certain private stations from using it. US Department of State. (2012). Sri Lanka 2012 Human Rights Report. Retrieved from <https://www.colombotelegraph.com/wp-content/uploads/2013/04/204623.pdf>. The state-owned Sri Lanka Broadcasting Corporation (SLBC) repeatedly censored its FM retransmission of the BBC's Tamil-language broadcasts during the March 2013 session of the UNHRC. Reporters Without Borders. (2013, March 27). Sri Lanka censors BBC's programs on UN Human Rights Council. Retrieved from <https://rsf.org/en/news/sri-lanka-censors-bbcs-programs-un-human-rights-council>.

⁵⁷ The previous regime blocked internet access to numerous websites, including Tamil news websites (such as the pro-LTTE TamilNet.com) and citizen journalism sites critical of the government. Centre for Policy Alternatives. (2011, November). Freedom of Expression on the Internet in Sri Lanka. Retrieved from <http://www.cpalanka.org/wp-content/uploads/2011/11/FOE-REPORT-NOV-2011-FINAL-CPA.pdf>.

⁵⁸ In 2012, the Ministry of Mass Communication and Media published a draft code of ethics for the media, stating that "no publications should be published" that contain "criticism affecting foreign relations" or "materials against the integrity of the executive, judiciary, and legislature. US Department of State. (2013). Sri Lanka 2013 Human Rights Report.

⁵⁹ For instance, the state-owned *Sunday Observer* repeatedly called NGO employees "goons" who "tarnished the country's image by pumping oxygen to Tiger terrorists." Sri Lanka Brief. (2014, July 13). Sri Lanka: Writing on the Wall for errant INGOS, NGOS-State Media. Retrieved from <http://srilankabrief.org/2014/07/sri-lanka-writing-on-the-wall-for-errant-ingos-ngos-state-media/>.

⁶⁰ In 2012, state-owned media vilified activists and journalists supportive of the March 22 UNHRC resolution on Sri Lanka, broadcasting footage and thinly disguised photographs of activists marked as "traitors." US Department of State. (2012). Sri Lanka 2012 Human Rights Report.

Government ministers frequently engaged in physically threatening and assaulting media organizations,⁶³ journalists and crewpersons,⁶⁴ editors,⁶⁵ and other media personnel.⁶⁶ Media intimidation by the police has also been widespread.⁶⁷

The previous regime heavily controlled the access of international journalists and media outlets to the country, both during the escalation of armed conflict from 2007 to 2009⁶⁸ and afterwards.⁶⁹ It has also detained and tortured local individuals suspected of assisting international researchers.⁷⁰

The previous regime's rule was marked by numerous incidents of attacks causing property destruction on newspaper offices,⁷¹ printing presses,⁷² TV stations,⁷³ and websites.⁷⁴

⁶¹ Joint Civil Society Submission To The Second UN Universal Periodic Review (Sri Lanka), Second Cycle, 14th Session 2012. Retrieved from https://www.uprinfo.org/sites/default/files/document/sri_lanka/session_14_october_2012/js1_upr_lka_s14_2012_jointsubmission1_e.pdf [26].

⁶² After the anti-Muslim riots which occurred in July 2014, state-owned media reported that three persons were killed, yet reporting from Al-Jazeera revealed that, according to hospital reports, seven people were killed. Sri Lanka Brief. USA Country Reports on Human Rights Practice: Sri Lanka Section. (2015, June 26). Retrieved from <http://srilankabrief.org/2015/06/usa-country-reports-on-human-rights-practice-sri-lanka-section>.

⁶³ In 2007, the Minister of Labor Mervyn Silva and his bodyguards stormed the offices of the Sri Lanka Rupavahini Corporation and assaulted its news director. Media freedom in Sri Lanka under grave assault. (2007, December 30). *The Nation*. Retrieved from www.nation.lk/2007/12/30/news3.htm.

⁶⁴ In August 2008, Silva and his bodyguards assaulted a Sirasa TV journalist and cameraman and seized their equipment at a public event. Silva was tried for the assaults but acquitted after the police failed to file any charges against him. Minister Mervyn Silva acquitted. (2009, February 20). *BBC Sinhala*. Retrieved from www.bbc.com/sinhala/news/story/2009/02/090220_mervyn_sirasa.shtml.

⁶⁵ In July 2012, the Defence Secretary Gotabhaya Rajapaksa reportedly threatened *Sunday Leader* editor Frederica Jansz by telephone for probing allegations of personal favoritism at the national airline. Jansz was dismissed when the paper was purchased by the government. Jansz, F. (2012, July 8). Gota Goes Berserk. *The Sunday Leader*. Retrieved from <http://www.thesundayleader.lk/2012/07/08/gota-goes-berserk/>. Jansz, F. (2013, January 15). Frederica Jansz: Sri Lanka's media crackdown. *Al Jazeera*. Retrieved from <http://www.aljazeera.com/programmes/listeningpost/2013/01/201311512210128360.html>.

⁶⁶ Speaking on northern development in May 2013, minister Douglas Devananda told journalists that if they misinterpreted what he said, he had the power to "crush the necks" of the media. US Department of State. (2013). Sri Lanka 2013 Human Rights Report. Retrieved from <https://www.state.gov/documents/organization/220616.pdf>.

⁶⁷ In May 2014, police banned and intimidated media coverage of a defamation case filed by Secretary of Defence Gotabaya Rajapaksa at the Mount Lavinia Magistrate Court. United States Department of State. (2014). Sri Lanka 2014 Human Rights Report. Retrieved from http://photos.state.gov/libraries/sri-lanka/5/pdfs/hr_report_2014_en.pdf.

⁶⁸ Journalists from the UK's Times and Channel 4 were denied visas or deported after reporting on or attempting to report on military abuses during the armed conflict and poor conditions in displacement camps. Amnesty International. (2013, April 30). Sri Lanka's Assault On Dissent. London: Amnesty International Ltd. Pp. 23-24.

⁶⁹ Ibid.

⁷⁰ Ibid., 24.

⁷¹ In March 2009, a grenade was thrown into the Jaffna-based Tamil daily newspaper *Uthayan*, causing extensive damage and injuring a security guard. Committee to Protect Journalists. Sri Lankan newspaper office bombed. (2009, April 23). Retrieved from <https://cpj.org/2009/04/sri-lankan-newspaper-office-bombed.php>.

2.3.2) Assaults, killings, and disappearances of journalists

Violence against journalists has been endemic to Sri Lanka, and the last decade has seen prominent and numerous murders, assaults, abductions, and enforced disappearances of journalists and media personnel.⁷⁵

The Committee to Protect Journalists has documented the murders of ten journalists from 2007 onwards (and a total of 25 murders since 1999).⁷⁶ The number of murders was particularly high during the last stages of the war, with victims being predominantly Tamil journalists working in the Tamil language.⁷⁷ A number of high profile journalist murders have been linked to senior members of the previous regime, including the 2009 murder of Lasantha Wickramatunge, the editor of the anti-government *Sunday Leader*.⁷⁸

⁷² In 2009, thousands of copies of *Uthayan*, *Thinakkural*, and *Valampuri* were burnt in the street by armed men after the papers had refused to print a statement against the LTTE. Reporters Without Borders. (2009, June 30). Who wants to silence the Tamil newspaper Uthayan?. Retrieved from <https://rsf.org/en/news/who-wants-silence-tamil-newspaper-uthayan>. In 2013, armed men entered the paper's office in Jaffna and threatened security guards before damaging equipment and setting its printing press ablaze. Uthayan office in Jaffna set on fire. (2013, April 13). *Daily Mirror*. Retrieved from www.dailymirror.lk/news/28098-uthayan-office-in-jaffna-set-on-fire.html.

⁷³ On January 6, 2009, a group of 20 persons armed with firearms and explosives broke into the government-critical MTV/MBC Studio Complex, took its security guards hostage, and destroyed broadcasting equipment. Today marks six years since the attack on MTV/MBC's Depanama Studio. (2016, January 6). *News 1st*. Retrieved from <http://newsfirst.lk/english/2015/01/six-years-since-attack-mtvmbc-studio-complex-depanama/71031>.

⁷⁴ In January 2011, unidentified attackers set fire to the offices of Lankaenews.com, a website critical of the government whose staff had repeatedly been threatened. Haviland, C. (2011, January 31). Offices of anti-government Lankaenews.com set on fire. *BBC News*. Retrieved from www.bbc.com/news/world-south-asia-12322916.

⁷⁵ Hattotuwa, S. (2009, July). The flip side of media freedom. *Centre for Policy Alternatives*. Retrieved from <http://www.cpalanka.org/wp-content/uploads/2009/7/The%20flip%20side%20of%20media%20freedom%20-%2010%20May%202009doc.pdf>.

⁷⁶ Committee to Protect Journalists. (n.d.) Journalists Killed in Sri Lanka. Retrieved from [https://cpj.org/killed/asia/sri-lanka/#~\(status~'Killed~motiveConfirmed~\(~'Confirmed\)~motiveUnconfirmed~'Unconfirmed~type~'Media*20Worker~typeOfDeath~\(~\)~sourcesOffire~\(~\)~localOrForeign~\(~\)~gender~\(~\)~employedAs~\(~\)~jobs~\(~\)~coverages~\(~\)~mediums~\(~\)~cc_fips~\(~'CE\)~start_year~'1992~end_year~'2018~group_by~'year](https://cpj.org/killed/asia/sri-lanka/#~(status~'Killed~motiveConfirmed~(~'Confirmed)~motiveUnconfirmed~'Unconfirmed~type~'Media*20Worker~typeOfDeath~(~)~sourcesOffire~(~)~localOrForeign~(~)~gender~(~)~employedAs~(~)~jobs~(~)~coverages~(~)~mediums~(~)~cc_fips~(~'CE)~start_year~'1992~end_year~'2018~group_by~'year).

⁷⁷ For example, journalist Selvarajah Rajivarnam, a *Uthayan* reporter, was shot dead in Jaffna close to a military checkpoint on April 29th 2007, allegedly by government-aligned paramilitaries. Committee to Protect Journalists. (2007, April 29). Selvarajah Rajewarnam Killed. Retrieved from <https://cpj.org/killed/2007/selvarajah-rajeewarnam.php>.

⁷⁸ Wickramatunge was murdered in broad daylight in central Colombo by a "death squad" allegedly operated by Gotabhaya Rajapaksa, the previous Defense Secretary and brother of the former President. Ex-leader's brother 'led death squad' in Sri Lanka. (2017, March 20). *Al Jazeera*. Retrieved from www.aljazeera.com/news/2017/03/leader-brother-led-death-squad-sri-lanka-170320151120965.html.

Recorded police assaults of journalists have included newspaper editors⁷⁹ and reporters.⁸⁰ The assault and torture of abducted journalists was a related phenomenon during the previous regime, with the notable cases of journalists J.S. Tissainayagam,⁸¹ Keith Noyahr,⁸² Namal Perera,⁸³ and Poddala Jayantha.⁸⁴

Journalists have been some of the most prominent targets of enforced disappearances in the country, with the prominent cases of Prageeth Eknaligoda,⁸⁵ Subramaniam Ramachandran,⁸⁶ and Vadivelu Nirmalaraj⁸⁷ all victims of the “white van” culture under Rajapaksa.

⁷⁹ In 2009, Uthayan editor N. Vithyatharan was arrested by the police without a warrant and allegedly beaten in custody. Human Rights Watch. (2009, March 1). Sri Lanka: Editor Arrested and Beaten. Retrieved from <https://www.hrw.org/news/2009/03/01/sri-lanka-editor-arrested-and-beaten>.

⁸⁰ During 2011, the editor of *Uthayan*, Gnanasundaram Kuhanathan, and one of its reporters, S. Kavitharan, were badly beaten in two separate incidents. In November 2012, *Uthayan's* new editor, T. Mano Premanath, was assaulted while trying to record a military incursion into Jaffna University. In the same month, *Uthayan* Managing Director and Tamil National Alliance MP E. Saravanapavan's vehicle windows were smashed with cinder blocks while he was meeting with Jaffna University students. US Department of State. (2012). Sri Lanka 2012 Human Rights Report. Retrieved from <https://www.colombotelegraph.com/wp-content/uploads/2013/04/204623.pdf>.

⁸¹ Tissainayagam, who was critical of the government's treatment of Tamil civilians affected by armed conflict, was arrested in 2008, allegedly tortured, and arbitrarily detained for five months before being sentenced to 20 months imprisonment on a variety of charges, including inciting racial and ethnic disharmony. He was released from detention in January 2010 and later issued a presidential pardon as a result of sustained international and domestic pressure. Amnesty International. (2013). Sri Lanka's Assault On Dissent. London: Amnesty International Ltd. Pp. 17-18.

⁸² Noyahr, from *The Nation* newspaper, was abducted and assaulted by unidentified persons in May 2008. Noyahr fled the country soon after. In 2017, five army personnel, including a major, were arrested in relation to the incident. Tracing the abduction of Keith Noyahr. (2017, March 2). *Daily Mirror*. Retrieved from <http://www.dailymirror.lk/article/Tracing-the-abduction-of-Keith-Noyahr-124755.html>.

⁸³ In June 2008, defense correspondent Perera, who had been responsible for coordinating several media protests, was abducted, assaulted, and forced to flee the country. Media condemn kidnap attempt. (2008, July 1). *BBC Sinhala*. Retrieved from http://www.bbc.com/sinhala/news/story/2008/07/080701_freemedia.shtml.

⁸⁴ Jayantha was abducted on his way home in June 2009, tortured, and left on a roadside by alleged military abductors. Jayantha fled and claimed political asylum in the U.S., alleging that Gotabhaya Rajapaksa personally sent for him and threatened him a few days before his abduction. Sri Lanka Brief. (2017, June 20). Poddala Jayantha Returns To Sri Lanka To Make A Complaint On His Abduction And Assault In 2009. Retrieved from <http://srilankabrief.org/2017/06/poddala-jayantha-return-to-sri-lanka-to-complaint-on-his-abduction-and-assault/>.

⁸⁵ Eknaligoda was a cartoonist, political analyst, and journalist who had campaigned for the opposition candidate Sarath Fonseka and worked for the pro-opposition website Lankaenews.com. Reporters Without Borders. (2010, March 23). Cartoonist kidnapped two months ago still missing. Retrieved from <https://rsf.org/en/news/cartoonist-kidnapped-two-months-ago-still-missing>.

⁸⁶ Yarl Thinakural correspondent Ramachandran went missing in February 2007 after writing a report implicating a businessman and military officers in illegal trafficking in sand. Reporters Without Borders. (2007, November 22). Tamil newspaper's proof reader missing in Jaffna. Retrieved from <https://rsf.org/en/news/tamil-newspapers-proof-reader-missing-jaffna>.

⁸⁷ In November 2007, Uthayan proof reader Nirmalaraj was abducted as he returned home after work. Ibid.

There have been no recorded journalist murders following the regime change of 2015. However, incidences of violence have continued such that a completely free atmosphere of press or activist freedom cannot be observed.⁸⁸

Regarding disappearances, while the new regime released the first official estimate of missing persons due to the war and two southern insurrections,⁸⁹ it has yet to operationalize the legislated Office of Missing Persons or enforce the country's ratification of the International Convention for the Protection of All Persons from Enforced Disappearances.⁹⁰

2.3.3) Regime change, regressions, and the persistent culture of impunity

While heavy restrictions on expression and media activities were lifted to a large extent following regime change in 2015, undue government influence on expression remains. Leading members of the government have repeatedly accused the media of not covering their achievements sufficiently.⁹¹

In June 2017, human rights lawyer Lakshan Dias was forced to flee the country following threats after he made a statement on television revealing an increasing number of documented attacks on religious minorities in Sri Lanka, particularly Christians and Muslims, under the new government.⁹²

While the new government was elected with a promise to investigate cases of journalist and activist murders, assaults, and disappearances, progress on such cases is largely non-existent, especially in the cases of Tamil journalists and activists.⁹³ This points to the conclusion that the

⁸⁸ In June 2016, Freddy Gamage, the editor of the Sinhala-language newspaper Meepura who was known for his reporting on crime and corruption was assaulted by two unidentified men. CPJ calls for thorough investigation. (2016, June 5). *Daily News*. Retrieved from www.dailynews.lk/2016/06/05/law-order/83732.

⁸⁹ Sri Lanka admits 65,000 missing from war, insurrection. (2016, June 8). *Reuters*. Retrieved from in.reuters.com/article/china-labor-idINKBN19S0L9.

⁹⁰ Centre for Policy Alternatives. (2017, June 1). A Call to President Maithripala Sirisena: Establish the Office of Missing Persons Immediately. Retrieved from <http://www.cpalanka.org/a-call-to-president-maithripala-sirisena-establish-the-office-of-missing-persons-immediately/>.

⁹¹ Prime Minister Ranil Wickramasinghe has called editors and newspapers anti-government and implied that those editors who do not change their editorial line might lose their positions. Joint Civil Society Submission To The Third UN Universal Periodic Review (Sri Lanka) – Third Cycle, 28th Session 2017. Retrieved from http://imadr.org/wordpress/wp-content/uploads/2017/04/UPR28_Sri-Lanka_Joint-Civil-Society-Submission_2017.pdf.

⁹² Govt. must assure democratic space and freedom. (2017, July 3). *Daily Mirror*. Retrieved from www.dailymirror.lk/article/Govt-must-assure-democratic-space-and-freedom-132027.html. Dias was threatened with disbarment by the Minister of Justice, Wijedasa Rajapakse, unless he withdrew his statement. Centre for Policy Alternatives. (2017, June 18). Serious Concerns with Recent Comments Made Against Attorney-at-Law Mr. Lakshan Dias. Retrieved from www.cpalanka.org/serious-concerns-with-recent-comments-made-against-attorney-at-law-mr-lakshan-dias/.

⁹³ The Chief Minister of the Northern Province, C.V. Vigneswaran, stated that under the current government there has been no interest in investigating the killings of Tamil journalists like Nirmalarajan, Nadesan, SugirthaRajan, and Sivaram, citing the fact that 35 such murders remain unsolved. Discrimination over the investigation of murdered Tamil Journalists: accuses Wigneswaran. (2016, March 27). *Tamil Diplomat*. Re-

few continuing investigations are “show trials,” and that the present government has no real interest in providing answers to existing cases.⁹⁴ The few cases that have been opened, such as Eknaligoda’s, have been subject to undue government influence.⁹⁵

Legally, the draconian Prevention of Terrorism Act – which allows prolonged administrative detention without judicial review – still exists as a barrier to the freedom of expression.⁹⁶

The most welcome step relating to the freedom of expression from the new regime has been the enactment of a right to information system, which promises to expose and rectify state abuses of power.⁹⁷

2.4) Right to participation

2.4.1) Participation by various demographic groups

Sri Lanka faces a number of obstacles to the comprehensive exercise of the right to participation by all of its citizens. This remains the case when considering the country’s demographic groups according to gender, ethnicity, religion, disability, and sexual and gender identity.

Women face enormous challenges in participating effectively in politics;⁹⁸ obtaining equal job opportunities and equal wages;⁹⁹ and avoiding sexual exploitation and sexual bribery by various state officials.¹⁰⁰ Impunity prevails in the main for all forms of sexual violence.¹⁰¹

trieved from <http://tamildiplomat.com/discrimination-over-the-investigation-of-murdered-tamil-journalists-accuses-wigneswaran/>.

⁹⁴ Sri Lanka Brief. (2015, January 30). No Justice for Sri Lanka’s Missing and Killed Journalists. Retrieved from <http://srilankabrief.org/2016/01/no-justice-for-sri-lankas-missing-and-killed-journalists/>.

⁹⁵ All 13 suspects in Eknaligoda’s disappearance, for example, were granted bail following a statement by President Sirisena; many important military intelligence documents regarding the investigation disappeared; and the investigating magistrate was suspiciously transferred. Ashanthi Warunasooriya. (2016, November 20). Political Interference Suspects in Prageeth’s Case. *Sunday Observer*. Retrieved from <http://www.thesundayleader.lk/2016/11/20/political-interference-suspected-in-prageeths-case/>.

⁹⁶ Centre for Policy Alternatives. (2013, May 9). The Need to Repeal and Replace the Prevention Of Terrorism Act (PTA). Retrieved from www.cpalanka.org/the-need-to-repeal-and-replace-the-prevention-of-terrorism-act-pta/. Those under PTA custody can face over a decade in custody without indictment and/or facing trials. Human Rights Commission of Sri Lanka. (2017, March 30). Submission of the Human Rights Commission of Sri Lanka to the Third Universal Periodic Review of Sri Lanka. Pp.5-6.

⁹⁷ RTI Act comes into force in Sri Lanka. (2016, February 4). *The Hindu*. Retrieved from www.thehindu.com/news/international/RTI-Act-comes-into-force-in-Sri-Lanka/article17190752.ece.

⁹⁸ Chulani Kodikara. (2008, September 2). Women and politics in Sri Lanka: The Challenges to meaningful participation. *Groundviews*. Retrieved from <http://groundviews.org/2008/09/02/women-and-politics-in-sri-lanka-the-challenges-to-meaningful-participation/>.

⁹⁹ Joint Civil Society Submission To The Third UN Universal Periodic Review (Sri Lanka) – Third Cycle, 28th Session 2017. Retrieved from http://imadr.org/wordpress/wp-content/uploads/2017/04/UPR28_Sri-Lanka_Joint-Civil-Society-Submission_2017.pdf. [21]-[22].

¹⁰⁰ Joint Civil Society Submission To The Third UN Universal Periodic Review (Sri Lanka) – Third Cycle, 28th Session 2017. Retrieved from http://imadr.org/wordpress/wp-content/uploads/2017/04/UPR28_Sri-Lanka_Joint-Civil-Society-Submission_2017.pdf. [21]-[22].

Interreligious violence remains a deep-seated issue facing the country, severely threatening the right to participation of religious and ethno-religious minorities. Anti-Muslim riots by Buddhist Sinhala mobs in June 2014 resulted in the deaths, injuries, displacements, and property destruction of Muslims.¹⁰² Anti-Muslim violence and harassment continues to fester in the country.¹⁰³ The same remains true for the country's Christian¹⁰⁴ and Hindu minorities,¹⁰⁵ with places of worship being particularly subject to vandalism and destruction. Law enforcement responses are weak and impunity for such crimes continues.¹⁰⁶ Efforts at publicizing these attacks are met with disbelief and threats, as demonstrated by the Lakshan Dias case.

Tamil language speakers face deep-seated challenges in accessing public institutions and services, particularly in the North and East provinces, creating an ongoing barrier to their right to participation in public life.¹⁰⁷ Despite constitutional and legal protections, many public authorities do not use Tamil in practice.¹⁰⁸

Persons with disabilities also face enormous challenges in being able to adequately exercise the right to participation. Legally, Sri Lanka is yet to accede to the Optional Protocol to the Convention on the Rights of Persons with Disabilities, and disability is not an explicit category of protection covered within the constitutional right to equality. Besides this, persons with disabilities face disproportionate difficulties in accessing justice, obtaining employment, accessing

¹⁰¹Ibid.

¹⁰² Centre for Policy Alternatives. (2014, June 18). CPA Condemns Religious Intolerance and Violence. Retrieved from <http://www.cpalanka.org/cpa-condemns-religious-intolerance-and-violence/>; Joint Civil Society Submission To The Third UN Universal Periodic Review (Sri Lanka) – Third Cycle, 28th Session. Retrieved from http://imadr.org/wordpress/wp-content/uploads/2017/04/UPR28_Sri-Lanka_Joint-Civil-Society-Submission_2017.pdf. [20].

¹⁰³ From 2012 to 2017, the Secretariat for Muslims (SFM) recorded over 470 incidents perpetrated against Muslims – incidents including threats, attacks, attempted attacks, harassment, incitement, intimidation, and violence. Centre for Policy Alternatives. (2017, May 23). Effective Action and Accountability Needed Now to Counter Religious Violence and Tension. Retrieved from <http://www.cpalanka.org/effective-action-and-accountability-needed-now-to-counter-religious-violence-and-tension/>; Joint Civil Society Submission To The Third UN Universal Periodic Review (Sri Lanka) – Third Cycle, 28th Session 2017. Retrieved from http://imadr.org/wordpress/wp-content/uploads/2017/04/UPR28_Sri-Lanka_Joint-Civil-Society-Submission_2017.pdf. [20].

¹⁰⁴ From 2012 to 2017, the National Christian Evangelical Alliance of Sri Lanka (NCEASL) has recorded over 450 incidents of intolerance faced by Christian Evangelical communities from 2012 to 2017. Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ United Nations Sri Lanka. (2016, October 20). Full Statement by Rita Izsák-Ndiaye, UN Special Rapporteur on minority issues, at the conclusion of her official visit. Retrieved from <http://lk.one.un.org/news/full-statement-by-rita-izsak-ndiaye-un-special-rapporteur-on-minority-issues-at-the-conclusion-of-her-official-visit/>.

¹⁰⁸ Lost in Translation: Shortfalls in the implementation of Sri Lanka's official languages policy. (2017, February 20). *Groundviews*. Retrieved from <http://groundviews.org/2017/02/20/lost-in-translation-shortfalls-in-the-implementation-of-sri-lankas-official-languages-policy/>; Centre for Policy Alternatives. (2016, February 19). International Mother Language Day: A Look at Language Rights in Sri Lanka. Retrieved from <http://www.cpalanka.org/international-mother-language-day-a-look-at-language-rights-in-sri-lanka%E2%80%8B/>.

information, voting, and securing equal tertiary education.¹⁰⁹ Further, despite policy recognition of sign language since 2010, it is yet to be given any legal recognition.¹¹⁰

Criminalization of consensual same-sex sexual activity between adults is used to legitimize the mistreatment of LGBTIQ persons by state officials¹¹¹ and bar them from accessing state services.¹¹² The absence of mechanisms to address hate speech and the dissemination of homophobic/transphobic statements by government representatives and the media continues to violate the right to participation in public life of LGBTIQ persons.¹¹³

As already noted, the recently enacted RTI Act has provided some impetus for a society in which the peoples of Sri Lanka are able to more fully participate in public life by having the means to monitor the government and hold it accountable.

2.4.2) Public engagement on reconciliation and constitutional and legislative reforms

The previous regime undertook two primary public engagement exercises as reconciliation measures in response to international calls for independent investigations into allegations of war crimes committed during the last stages of the civil conflict. The Lessons Learned and Reconciliation Commission (LLRC), established in May 2010, was heavily criticized for having an inadequate scope and deficient facilities for public consultation;¹¹⁴ putting witnesses at risk;¹¹⁵ and for government inaction on its findings.¹¹⁶ The 2013 Presidential Commission to Investigate Complaints Regarding Missing Persons (COI), also known as the Paranagama Commission,

¹⁰⁹ Joint Civil Society Submission To The Third UN Universal Periodic Review (Sri Lanka) – Third Cycle, 28th Session 2017. Retrieved from http://imadr.org/wordpress/wp-content/uploads/2017/04/UPR28_Sri-Lanka_Joint-Civil-Society-Submission_2017.pdf. [26]-[27].

¹¹⁰ Ibid., [45]. There is a dire shortage of sign language interpreters in Sri Lanka, which violates the rights of the deaf community to express their views and receive information.

¹¹¹ Sections 365, 365A, and 399 of the Penal Code and the Vagrants Ordinance are primarily used to harass and mistreat LGBTIQ persons.

¹¹² Joint Civil Society Submission To The Third UN Universal Periodic Review (Sri Lanka) – Third Cycle, 28th Session 2017. Retrieved from http://imadr.org/wordpress/wp-content/uploads/2017/04/UPR28_Sri-Lanka_Joint-Civil-Society-Submission_2017.pdf. [25].

¹¹³ Ibid. Worryingly, recommended proposals in the draft National Action Plan for the Protection and Promotion of Human Rights 2017-2022 to repeal sections 365 and 365A and to ensure sexual orientation and gender identity equality were condemned by members of the government and removed.

¹¹⁴ A lack of infrastructure, language facilities, and translation services prevented large numbers of persons from the North and East from being able to effectively provide testimony. Centre for Policy Alternatives. (2011, January 4). Release of the Lessons Learnt and Reconciliation Commission (LLRC) Report. Retrieved from www.cpalanka.org/release-of-the-lessons-learnt-and-reconciliation-commission-llrc-report/.

¹¹⁵ In the absence of a Witness Protection Act or similar mechanism, the LLRC provided the context for threats, intimidation, and surveillance of witnesses and intimidation of human rights defenders observing proceedings. Ibid.

¹¹⁶ Centre for Policy Alternatives. (2014, February). Commentary On The Progress Achieved In Implementing The National Plan Of Action To Implement The Recommendations Of The Lessons Learnt And Reconciliation Commission. Retrieved from <http://cl.ly/2o3W2n3Q3J0L>.

received over 19,000 complaints. However, only a small portion of these complaints were investigated¹¹⁷ and the investigations were heavily criticized.¹¹⁸

As part of a renewed reconciliation push, the new regime appointed the Consultation Task Force on Reconciliation Mechanisms (CTF) to ascertain the views of the public on the reconciliation mechanisms proposed by the government.¹¹⁹ The CTF submitted a final report in 2017 based on submissions from over 7,000 citizens.¹²⁰

The new regime also committed to engaging the public on a number of major constitutional and legislative reforms. A 20-member Public Representations Committee (PRC) on Constitutional Reforms appointed in January 2016 called for and received written representations from the public and conducted public sittings across the country before submitting final reports in May and July 2016.¹²¹ The government has, however, been criticized for not acting on either the CTF or the PRC.¹²²

Public consultation on other major pieces of legislation paints a mixed picture. Public consultations for the RTI Act are seen to have improved the final legislation,¹²³ while the Office on Missing Persons (OMP) Act was preceded by inadequate public consultation, leading to a dearth of public information about the OMP.¹²⁴

¹¹⁷ Centre for Policy Alternatives. (2014, March). A Commentary On The Presidential Commission To Investigate Missing Persons During The Period Of June 1990 – May 2009 In The Northern And Eastern Provinces. Retrieved from <http://cl.ly/UHGB>. Concerns were raised over the COI's legitimacy and independence: the executive heavily controlled its appointments, mandates, and functions; it undertook private sittings with senior military officials but not ordinary citizens; and it did not disclose any of the investigations it carried out. Further, the COI mandate was extended multiple times to cover a wider range of issues.

¹¹⁸ While the COI has submitted its final reports, it has not officially disbanded and there are concerns that it has morphed into a lobbying body attempting to shield the government from war crime allegations and advocating for narrow reconciliation measures. Sri Lanka Campaign for Peace and Justice. (2016, July 6). The Paranagama Commission has done great damage. Now that damage must be repaired. Retrieved from <https://www.srilankacampaign.org/paranagama-commission-done-great-damage-now-damage-must-repaired/>.

¹¹⁹ CTF Report: A Challenge And A Window Of Opportunity. (2017, January 8). *Sunday Observer*. Retrieved from www.sundayobserver.lk/2017/01/08/columns/ctf-report-challenge-and-window-opportunity.

¹²⁰ Ibid.

¹²¹ Public Representations Committee on Constitutional Reform. (2016, May). Report on Public Representations on Constitutional Reform. Retrieved from http://www.yourconstitution.lk/PRCRpt/PRC_english_report-A4.pdf.

¹²² Neither the President nor the Prime Minister were present for the launch of the report. Finding The Truth The CTF Way (2017, January 15). *Sunday Leader*. Retrieved from www.thesundayleader.lk/2017/01/15/finding-the-truth-the-ctf-way/.

¹²³ Shaheid, F. and Jayakody, R. L. (2016, April 2). Right To Information Is For People's Power. *Colombo Telegraph*. Retrieved from <https://www.colombotelegraph.com/index.php/right-to-information-is-for-peoples-power/>.

¹²⁴ OMP: Fear due to lack of information – CTF. (2016, August 22). *Daily Mirror*. Retrieved from www.dailymirror.lk/114486/OMP-Fear-due-to-lack-of-information-CTE.

3. Policy recommendations

International civil society groups should emphasize the importance of national laws and practices consistent with international legal instruments. Civil society organizations must persist in their advocacy, pointing out the interconnectedness of human rights with economic and national interests. Civil society organizations must also improve internal self-governance, demonstrate transparency and accountability in their work, and do a better job of reaching out to the population at large.

The government itself must prioritize ongoing communication and outreach with the population at large on the rationale and requirements of systemic state reform – both politically and economically – in substantive terms. Particular attention needs to be paid by both government and civil society to the 18-40 demographic, who were especially politically proactive in 2015 and have now become extremely disappointed and disillusioned.

The above is pivotally important since the ostensible agenda of the present government is what liberal civil society had designed, defended, and advocated for many years. The challenge now is to avoid co-option and confrontation and develop a robust strategy for critical and constructive engagement.

Civic Space in Pakistan

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South Asia Partnership Pakistan

1. Introduction

Pakistan is a federal republic consisting of the capital territory and the four provinces of Balochistan, Khyber Pakhtunkhwa, Punjab, and Sindh.² It has de facto effective control and administration of Azad Jammu and Kashmir³ as well as Gilgit-Baltistan.⁴

The Constitution of Pakistan includes a bill of rights which guarantees fundamental rights, including freedoms of expression, association, assembly, and political participation all subject to so-called “reasonable restrictions.”⁵

Pakistan has a competitive multiparty system. However, the military exerts enormous influence over security and other issues. Since Pakistan came into being in 1947, it has been ruled by the military for the greater part of its history. If it hasn’t ruled directly, it has managed democratic governments from behind the scenes. Islamist extremist groups, often supported directly or indirectly by the military for tactical or strategic reasons since the Afghan Jihad began, continue to exist and target religious minorities, those liberal and democratically inclined segments, groups, and non-governmental organizations deemed impediments to Islamization. The military and intelligence services enjoy impunity for indiscriminate use of force and other practices which are in violation of the constitutional guarantees. The accountability of police organizations, too, is weak. Authorities routinely curtail constitutionally guaranteed fundamental freedoms of expression, association, assembly, and political participation.⁶

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² See The Constitution of Pakistan at <http://www.pakistani.org/pakistan/constitution/part1.html>.

³ See the website of the government of Azad Jammu and Kashmir (AJK) at <http://www.ajk.gov.pk/>. AJK borders with the Indian state of Jammu and Kashmir.

⁴ Ali, Z., Naqash, T., and Nagri, J. (2017, January 19). ‘Almost’ Pakistan: Gilgit-Baltistan in a constitutional limbo. *Dawn*. Retrieved from <https://www.dawn.com/news/1198967>. Gilgit-Baltistan borders China.

⁵ “Chapter 1: Fundamental Rights” in The Constitution of Pakistan, available at <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>. It may be noted that these rights are available to the citizens of Pakistan only, and are subject to reasonable restrictions imposed by law.

⁶ Freedom House. (n.d.) Freedom in the World 2017 – Pakistan Profile. Retrieved from <https://freedomhouse.org/report/freedom-world/2017/pakistan>; Human Rights Watch. (2016, September 26).

Democratic growth in Pakistan is an enigma. The power of the armed forces has waned in some ways but they continue to pose challenges for the elected governments. Procedural democracy seems to have begun taking root for a little less than a decade since the last military dictator was forced out in 2008. Another round of general elections took place in 2013. The Parliament agreed to some much needed amendments to devolve power to the provinces in 2010. As a result, those residing within the provinces feel more secure. In turn, despite all the odds, the provinces have established local governments, although these governments are not entirely in the same spirit as was envisaged in the 2010 amendments.⁷

At the same time, the judiciary has come up as another contender in the struggle for power.⁸ Despite the fact that the judiciary is at times seen to stand with the armed forces on critical issues, the possibility of imposition of martial law seems more distant than ever.⁹

The struggle to establish civil liberties remains full of challenges and is at times dangerous. The influence of electronic media has risen as its territory expands, and it continues to set trends for public discourse as domestic media outlets grow exponentially. The same is true of social media. At the same time, however, the state, especially its security establishment, has also learnt new methods of control and repression. Internet surveillance, contrary to democratic norms, is a given. Electronic media is often seen as toeing the line of the security establishment.

Civil society in Pakistan has been brought under severe strain by the state and non-state elements in recent years. Fundamental freedoms that allow democratic growth have suffered unprecedented restrictions by the state with the aim of curbing dissent in the name of national security and religion.¹⁰ Non-state elements have used violence to successfully instill fear as a constant in the lives of citizens. Even though the number of casualties has been consistently declining since 2009, extremism has successfully and significantly contributed to the thwarting of the democratic growth of a Pakistani polity.¹¹

Most freedoms have been curtailed in the name of national security and religion, the two most powerful tools of repression in Pakistan today. For instance, the country's "hate speech"

This crooked system: Police Abuse and Reform in Pakistan. Retrieved from <https://www.hrw.org/report/2016/09/26/crooked-system/police-abuse-and-reform-pakistan>; Omer, R. (2017, January 31). Crisis of impunity. *Dawn*. Retrieved from <https://www.dawn.com/news/1311707>.

⁷ Blick, A. (2015, February). Democratic Development in Perspective. Paper written for the Pakistan Institute of Legislative Development and Transparency. Retrieved from <http://www.pildat.org/Publications/publication/DemocracyAndLegStr/DemocraticDevelopmentinPerspective.pdf>.

⁸ Shahid, S. (2017, August 3). New tactics being used to undermine the parliament. *Dawn*. Retrieved from <https://www.dawn.com/news/1349271>.

⁹ Pervaiz, F. (2016, February 2). Pakistan's military-democracy complex. *Stratfor*. Retrieved from <https://worldview.stratfor.com/article/pakistans-military-democracy-complex>.

¹⁰ Khan, I. A. (2017, May 24). Govt plans to draw 'red lines' for social media in Pakistan. *Dawn*. Retrieved from <https://www.dawn.com/news/1335058>; Alexander, P., Khan, A., and Shah, P. W. (2017, March 16). Pakistan cracks down on social media blasphemous content. Retrieved from <https://www.voanews.com/a/pakistan-cracks-down-blasphemous-social-media-content/3769606.html>.

¹¹ South Asia Terrorism Portal. (n.d.) Fatalities in terrorist violence in Pakistan 2003-2018. Retrieved from <http://www.satp.org/satporstp/countries/pakistan/database/casualties.htm>.

laws, generally referred to as blasphemy laws, clearly impose undue restrictions on freedom of speech. The penal code contains offenses relating to religion which have a chilling effect when abused by the state and non-state actors.¹² The counter-terrorism framework has been extended beyond what is reasonable. The policy of enforced disappearances is now an accepted norm for the state, and, though laws are not needed for this purpose, the state has found it convenient to provide legal cover to this practice. For instance, the Anti-terrorism Act of 1997 has been amended to allow administrative detention for up to a year. Such detention often starts unacknowledged, especially in the case of civil society members. Freedom of assembly and peaceful protest are routinely curbed under unreasonable laws retained from colonial times.

This is happening despite the fact that the Constitution of Pakistan guarantees fundamental freedoms like free speech, assembly, association, and political participation. Pakistan has also ratified the International Covenant on Civil and Political Rights (ICCPR) and, therefore, is obligated to ensure these fundamental freedoms under international law.

This has occurred as the state has increasingly adopted and used laws and policies or threats thereof, including elected governments and national security institutions. These laws and policies aid and abet, directly or indirectly, non-state actors as well.

The four basic freedoms — the rights to freedom of expression, information, assembly, and association – are under a great deal of strain. The government has demonized and muzzled dissenting voices from civil society, while using registration renewal and the scheme of requiring no-objection certificates to arrange activities as a means to bend civil society organizations to their will. Armed groups continue to threaten and target media outlets and journalists for their work. A vague and overly broad cybercrimes law has placed new curbs on freedom of expression and allowed government authorities to access the data of internet users without judicial review or oversight. According to the Human Rights Commission of Pakistan, religious minorities continue to face attacks and suffer insecurity and discrimination while the government fails to provide them with protection or hold perpetrators accountable. Provincial governments continue to deny the local government any real authority. Stakeholders show little interest in electoral reforms

Following is a brief overview of the current state of the four fundamental freedoms- the freedoms of expression, assembly, association, and political participation, which are directly related to political and democratic development- in Pakistan.

¹² On the abuse of blasphemy laws, see Amnesty International. (2016, December 21). “As Good as Dead”: *The Impact of the Blasphemy Laws in Pakistan*. Retrieved from <https://www.amnesty.org/en/latest/news/2016/12/pakistan-how-the-blasphemy-laws-enable-abuse/>.

2. Civic space in Pakistan

2.1) Freedom of expression

In recent years, journalists and bloggers have come under attack due to their independent reporting and/or views. The fallout from certain news reports escalated the environment of intimidation of the media and increased levels of self-censorship by the media. A disturbing rise in assaults on media outlets and TV channel and newspaper offices as well as press clubs by militant, religious, and political groups has been observed. Civil society activists came under slanderous attacks online for their advocacy of peace. A cyber law introduced in 2016 seeks to restrict the boundaries of criticism aimed at officials. The law allows the authorities to intercept the communications of citizens, including journalists, political activists, and rights campaigners.¹³

In October 2016, the government put journalist Cyril Almeida's name on the Exit Control List after the newspaper *Dawn* published his scoop on a rift between the country's civilian and military leaderships. The push to restrict his travel came from the country's security establishment. This instance not only curtailed one journalist's freedom of movement, it also put the whole of the news media on notice not to cross the red line.¹⁴

Human rights observers have recorded the following instances of killings and attacks on journalists in 2016 alone:¹⁵

- Seven killings in various parts of country
- Fifteen physical attacks on journalists
- Nine attacks on media establishments/offices
- Threats of harassment on at least two dozen occasions

2.1.1) Resistance to introducing special measures to protect journalists and to eliminate impunity for assaults on journalistic independence

The ongoing struggle to develop specific legal and executive mechanisms to combat impunity for attacks on journalists and administer justice for aggrieved journalists, media workers and their legal heirs remains a critical issue for Pakistan's media. The government, which signaled apparent willingness to enact legislation on media safety in 2014, failed to complete its consultations with stakeholders to develop a consensus draft in 2016 despite several meetings. The government seems to want to limit its responsibilities to providing security for media buildings, allowing

¹³ Draconian cyber law. (2016, August 12). *Dawn*. Retrieved from <https://www.dawn.com/news/1276939>.

¹⁴ Pakistan: Cyril Almeida of Dawn 'on Exit Control List.' (2016, October 11). *Al Jazeera*. Retrieved from <http://www.aljazeera.com/news/2016/10/pakistan-cybil-almeida-dawn-exit-control-list-161010204921917.html>.

¹⁵ Human Rights Commission of Pakistan (HRCP). (2016). State of human rights in 2016. Pp. 105-109. Retrieved from <http://hrcep-web.org/hrcepweb/wp-content/uploads/2017/05/State-of-Human-Rights-in-2016.pdf>.

media outlets to assume responsibility for making complete security arrangements for their journalists and media workers. However, journalists and the media outlets feel the security of life and limb is a state responsibility.

While the country has a long way to go before it can provide justice to the families of more than 100 journalists and media workers killed for their work since 2000, a small victory was won in 2016 when a court in the city of Karak, Khyber Pakhtunkhwa awarded life imprisonment and a fine of Rs.5 million (approximately USD \$77,350) to the alleged killer of journalist Ayub Khattak. The punishment, handed down on March 16, 2016, is only the third time that the murderer of a journalist in Pakistan has ever been found guilty.¹⁶

2.1.2) Enactment of the Prevention of Electronic Crimes Act of 2016 (PECA)

The Prevention of Electronic Crimes Act of 2016 (PECA) was presented before the National Assembly during the spring of 2015. The original draft law was roundly criticized both in Pakistan and internationally for its criminalization of freedom of expression online, its user data retention guidelines, and its lack of oversight and transparency. It was finally passed by the parliament in August 2016 after some cosmetic changes despite fierce opposition from civil society and opposition parties. Throughout 2016, there were demands for the law to be dismissed due to concerns that it had a high potential to harm freedom of expression and access to information.¹⁷ Pakistan's security and intelligence agencies have long demanded total access to the personal data of citizens within Pakistan, and have come down hard on entities that refuse to hand over said data. This demand led to the decision by Blackberry, the Canadian smart phone and enterprise service company, to leave Pakistan at the end of 2015. The company pulled out of Pakistan after refusing to provide the Pakistan Telecommunication Authority (PTA) with complete access to its encrypted Blackberry Enterprise Services. After protests in the media, PTA reversed the decision for the time being, allowing Blackberry to continue its operations into 2016, but clouds of uncertainty still hang over the horizon.¹⁸

2.1.3) The case of the bloggers/social media campaigners

Four rights campaigners went missing in January 2017.¹⁹ They were believed to have been picked up by state agencies without acknowledgement. Circumstances clearly indicated that their critical views of state policies were the reason for their disappearance. Observers pointed fingers at the

¹⁶ Human Rights Commission of Pakistan (HRCP). (2016). State of human rights in 2016. Retrieved from <http://hrcp-web.org/hrcpweb/wp-content/uploads/2017/05/State-of-Human-Rights-in-2016.pdf>.

¹⁷ Khan, R. (2016, August 11). Cyber crime bill passed by NA: 13 reasons Pakistanis should be worried. *Dawn*. Retrieved from <https://www.dawn.com/news/1276662>.

¹⁸ Haider, I. (2015, November 30). Blackberry delays Pakistan shutdown as talks on govt access continue. *Dawn*. Retrieved from <https://www.dawn.com/news/1223298>.

¹⁹ Whereabouts of four social media activists still unknown. (2017, January 9). *Dawn*. Retrieved from <https://www.dawn.com/news/1307293>.

national security institutions. Weeks later, the abducted activists were released, but not without consequences for themselves and for civil society. Two of the abducted activists have since then alleged they were tortured.²⁰

Once released, they were accused of blasphemy.²¹ Afterwards, it became impossible for those activists to live active public lives in Pakistan. They are reported to have gone into exile since their release. Such incidents have a chilling impact on civil society activism.

2.1.4) Harassment and intimidation of campaigns addressing peace between India and Pakistan

In November 2015, the Pakistan Institute of Labor Education and Research (PILER), an independent national organization working for labor rights and peacebuilding for 30 years, was accused of being an agent of India, Pakistan's archrival neighbor. A vilifying campaign was launched in local media against the organization and its senior staff on the basis of a so-called report prepared by the Federal Board of Revenue (FBR), the country's official tax collection body. The report alleged that the organization was receiving funds from the Indian intelligence agency, the Research and Analysis Wing (RAW).

PILER management believes that they were targeted because of their campaigns for peace between India and Pakistan and a recent campaign which sought safeguards for the public against installation of nuclear power plants near Karachi, the largest city in Pakistan with a population of over 20 million. PILER has challenged the FBR and media reports in a court of law where a decision is still pending.

2.2) Freedom of association

In March 2016, the government temporarily halted the operations of two NGOs and appointed government staff as administrators to the organizations to scrutinize their foreign funding. Nothing improper was detected, and the organizations resumed normal operations after a brief period. But the harassment and uncalled-for government action resulted in reputational damage and the harassment of staff.

In addition to these direct actions, some indirect or vague government actions are also badly affecting the work of civil society organizations in Pakistan, and large parts of the country have literally become no-go areas for non-governmental organizations as a result. For example, the provincial government of Punjab issued an order in March 2016 binding all NGOs to seek prior permission from district administrators to hold even small workshops, trainings, or meetings.

²⁰ Pakistan activist Waqass Goraya: The state tortured me. (2017, March 9). *BBC News*. Retrieved from <http://www.bbc.com/news/world-asia-39219307>.

²¹ Sayid, S. (2017, January 9). Missing Pakistani activists' families decry blasphemy allegations. *Reuters*. Retrieved from <http://www.reuters.com/article/us-pakistan-activists-idUSKBN1522CW>; also see Hoodbhoy, P. (2017, January 14). Abducting social activists. *Dawn*. Retrieved from <https://www.dawn.com/news/1308254>.

This condition has made it almost impossible for many organizations to conduct their activities, particularly in the Southern Punjab areas.

The Khyber Pakhtunkhwa (KPK) provincial government has also imposed similar restrictions, and many rights-based organizations are required to get No Objection Certificates (NOC) from local administrations. The acquisition of such certificates requires applicants to go through a lengthy exercise that may restrict activities.

2.2.1) The curbing of the activities of NGOs

Sudden closure of offices of Save the Children in Islamabad in July 2015 on charges of operating against “national interest” shocked many as the Ministry of Interior did not provide any details of the charges. The government had to withdraw its decision after international outcry, but the Save the Children Fund was asked to limit its operations. Later, the Ministry of Interior came up with a policy to regulate all International Non-Governmental Organizations (INGOs). The policy, announced in October 2015, has put in place several restrictions which many view as contradictory to the country’s international commitments, such as the ICCPR, and are aimed at curtailing the space of civil society in Pakistan.

The policy asks all INGOs operating in Pakistan to resubmit their registration applications along with a bulk of unnecessary documents. This adds uncertainty to the whole registration process and provides no safeguards against arbitrary denial of registration. Experts believe that the new policy is in clear contradiction to the requirements of a democratic and civic space. It is likely to put non-governmental organizations under tight government control, which will further limit the role of civil society.

The government has also proposed a draft law which violates certain constitutional guarantees, including the rights to association and political participation. At the same time, the proposed draft law violates the principles enshrined in the International Covenant on Civil and Political Rights.

2.2.2) Prohibition of student unions

In Pakistan, the youth are largely unrepresented in the political system. Student unions remain banned in the country. The ban on student unions in Pakistan is more than three decades old — a remnant of the regime of military dictator Zia-ul-Haq. However, successive democratic governments have also been unable, or unwilling, to lift the ban. Despite the issue being debated in the parliament almost every year, the government has failed to act on any of the submitted recommendations. In January 2016, a Senate committee debated the revival of student unions. Earlier, the Senate chairman had termed the ban on student unions in educational institutions “unconstitutional” and referred the matter to the committee. The government informed the committee that they had no reservations about the revival of student unions as long as certain regulations were put in place. A national conference on the political participation of women,

minorities, and youths held in Karachi in March 2016 called for the restoration of student unions in the country. Removing the ban on student unions would do much to promote a democratic culture.

2.2.3) Instances of curbing civic space

Civil society is at the receiving end of the consistently shrinking space for human rights and secular space. In Pakistan, civil society faces harsh restrictions, and human rights campaigners risk legal action, charges, harassment, imprisonment, and even unacknowledged detention, a misnomer for enforced disappearances. Fundamental freedoms of speech, association, assembly, and participation have never been under such consistent attack from the state and non-state actors as they were in the year 2017. Some recent events will illustrate the problem.

2.2.4) Human rights campaigners face elimination

In July 2016 Zafar Lund, a 52-year-old veteran civil society activist in Pakistan, was shot dead in his hometown, Kot Addu, a town 400 kilometers southwest of Lahore in Punjab province. In addition to being a strong voice against religious extremism, Lund was leading a campaign seeking safeguards against nuclear power plants being built in the area. Lund is one of the latest victims of growing hostilities against civil society activists in Pakistan, in addition to a number of other activists who have lost their lives in the shrinking democratic space in the country.

Rashid Rehman, head of the Human Rights Commission of Pakistan (HRCP) taskforce and a lawyer by profession was killed in his office in Multan in May 2014. While representing a defendant accused of blasphemy, Rehman was threatened in an open court to either withdraw from the case or face dire consequences. People accused of insulting Islam, the Quran, or Prophets are charged under blasphemy laws in Pakistan, which carry a potential death sentence. Lawyers and government officials who dare to defend the accused have often paid a heavy price similar to Rehman.

Sabeen Mehmood, a brave woman activist, was assassinated in the coastal city of Karachi on April 24th 2015, just a few days after she allowed a talk on Balochistan at a citizens' voice space called The 2nd Floor. Mehmood was running the space where people could meet, sit, and talk about issues concerning their lives and fellow Pakistanis. Balochistan, the province of Pakistan with the largest land area but the smallest population, is the hottest conflict zone in the region. Both Baloch separatists and security forces accuse each other of violence. There is an undeclared ban on public debate over the Balochistan conflict. In addition to those deprived of life, there are many who are languishing in jails for raising their voices against the violation of peoples' rights.

2.2.5) Human rights activists face imprisonment and other forms of state repression

Saeed Baloch and Maher Abdul Sattar are the two most recent victims of the state's repression. Mr. Baloch, who is Secretary General of Pakistan Fisherfolk Forum, an active and dynamic social

movement, was arrested by the paramilitary force Rangers in Karachi in January 2016 and kept in confinement for six months. Though a court has released Baloch on bail, he is facing charges under the anti-terror law.

Meher Abdul Sattar, who leads the social movement Anjuma-e-Mazareen Punjab (AMP), an association of agricultural tenant farmers in the province of Punjab, is fighting for the rights of peasants. He was arrested in April 2016 while leading a protest demonstration. He is also being tried under the anti-terror law and is still in prison. AMP is in a row with the military in Okara District, Punjab over the ownership of agricultural land. Peasants claim that the land belongs to them, as they have been the tenants since the British Raj, whereas the military claims the land was allotted to them for agriculture farming to meet the food requirements of personnel.

It has never been easy for civil society organizations, particularly those engaged in advocacy for civil rights, and recent years have been more difficult and filled with many obstacles. This is also due to a narrative and a certain mindset being promoted by a group of media organizations, allegedly at the behest of state authorities. The narrative is that civil society organizations are agents of the West and India, receiving foreign funds and working against “national interests.” This narrative has prompted government action, which has further restricted civil society space and made it difficult for organizations and actors to operate independently.

2.3) Freedom of assembly

The right to assemble peacefully rests at the core of the functioning of a democratic system and is closely linked to freedoms of expression and association. Protection of the right is crucial to creating a tolerant and pluralistic society. Though freedom of assembly is enshrined in Pakistan's constitution, the laws limiting it are broader in scope than the reasonable restrictions the International Covenant on Civil and Political Rights (ICCPR) provides for.

The government's arbitrary use of violence and implementation of laws such as section 144 of the Pakistan Penal Code, which forbids the gathering of more than four people, shows how the rights to freedom of peaceful assembly were violated in 2016. The government's reliance on force exposed its deficiencies in crowd management. The blocking of roads and thoroughfares affected the fundamental right of citizens to public passage.

The government generally prevented political and civil society groups of any affiliation from holding demonstrations in Islamabad, citing security restrictions that limit all public rallies and gatherings in the Red Zone, a secured area where the diplomatic enclave and government buildings are located. In 2016, in a repressive crackdown that restricted the exercise of their right to protest peacefully, hundreds of members of the opposition party, Pakistan Tehreek-e-Insaf, including parliamentarians, were detained in indiscriminate and arbitrary mass arrests en route to Islamabad to mount a protest against Prime Minister Nawaz Sharif. The government banned all political meetings, rallies, and protests in Islamabad ahead of the march on November 2. The authorities used unnecessary and excessive force, firing tear gas shells and rubber bullets at protesters.

On several occasions the Punjab police resorted to the indiscriminate use of force on blind men who protested to demand quotas for employment.²²

There were incidents of violence by protesters and gridlocks that blocked people's freedom of movement and caused the deaths of patients due to delayed access to healthcare.

2.3.1) Response of civil society

The Pakistan Civil Society Forum²³ aims to reclaim space for civic society. In response to government restrictions, major organizations came together in Islamabad and launched a platform known as the Pakistan Civil Society Forum (PCSF) in January 2016. In its declaration, the Forum termed the NOC condition a violation of the constitutional rights of freedom of association and expression and vowed to fight back against such tactics to restrict civic space. In an interview, veteran human rights activist I. A. Rehman said, “We will not allow the government to turn enabling laws into restrictive laws. Civil Society has every right to question the government when it deviates from constitutional obligations and duties,” he asserted.²⁴

The forum has reminded the state authorities that civil society organizations are contributing positively to the development of the country and that without them, the social indicators of Pakistan would not be very impressive. “Any restrictions on civil society’s work will badly affect the development targets that government has committed with its own people and also under international commitments,” says another senior representative of PCSF in clear reference to the Sustainable Development Goals (SDGs).²⁵

The latest²⁶ report released in February 2017 from the government’s own Ministry of Planning and Development confesses that over 65 percent of its population is malnourished and lacks dietary necessities. This concurs with the results of the Pakistan Economic Survey, which says millions of Pakistanis are barely surviving below the poverty line. Pakistan is often dubbed the home of the illiterate, as 40 percent of its adult population is illiterate and an additional 22.6 million school-age children are not attending school.²⁷

²² [Police baton-charges blind protesters in Lahore, several injured](https://www.dawn.com/news/1148521). (2014, December 3). *Dawn*. Retrieved from <https://www.dawn.com/news/1148521>; Ahmed, H. Punjab govt turns a blind eye to the visually-impaired. (2016, January 13). *Pakistan Today*. Retrieved from <https://www.pakistantoday.com.pk/2016/01/13/punjab-govt-turns-a-blind-eye-to-the-visually-impaired/>.

²³ Civil society forum condemns maligning of NGOs. (2015, June 20). *Dawn*. Retrieved from <https://www.dawn.com/news/1189344>.

²⁴ ‘Civil society has right to challenge govt’ (2016, February 1). *Dawn*. Retrieved from <https://www.dawn.com/news/1236720/civil-society-has-right-to-challenge-govt>.

²⁵ Shah, Z, (2016, September 13), Shrinking civic space in Pakistan <https://www.boell.de/en/2016/09/13/shrinking-civic-space-pakistan>.

²⁶ The Economic Consequences of Undernutrition in Pakistan: An Assessment of Losses.”

²⁷ 22.6m Pakistani children still out of school (2017, March 9). *Dawn*. Retrieved from: <https://www.dawn.com/news/1319300/226m-pakistani-children-still-out-of-school-report>.

2.4) Right to participation

The right to participation refers to the right and ability of citizens to contribute to public life, most importantly in the management of the affairs of the state. The preamble to the Constitution of Pakistan prescribes that “the state shall exercise its powers and authority through the chosen representatives of the people...the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.” Article 32 prescribes “The state shall encourage local government institutions composed of elected representatives of the areas concerned and within such institutions special representation will be given to peasants, workers and women.” Article 34 requires the state to take steps to ensure the full participation of women in all spheres of national life. Similarly, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) reiterate that every citizen has the right to “take part in the conduct of public affairs, directly or through freely chosen representatives.”

2.4.1) Women’s participation in public life

Women’s participation in political and other public spheres has been an overwhelming challenge for Pakistan. The increasing difference between male and female voter registration rates is disturbing, as registration as a voter is the primary step towards political and electoral empowerment for citizens. Despite an increase of 6.83 million registered voters between 2013 and 2015 – including 3.74 million men and 3.07 million women – the gap between the number of men and women registered grew by 0.68 million following the general election in 2013. Alarming, the gap widened in all provinces as well as in Islamabad.

In 2013, there were 86.25 million registered voters, including 48.61 million men and 37.63 million women. According to voter registration data released by the Election Commission of Pakistan (ECP) in September 2015 just before local government elections, there were 93.07 million voters on the electoral rolls, including 52.36 million males but just 40.7 million females – a difference of 11.65 million.²⁸

The participation of women in public life has gradually improved over the decades. However, there are still huge blocks of resistance. In the general election of 2013, women in several constituencies were prevented from casting votes.²⁹ Over 95 percent of registered women voters in at least 17 National Assembly constituencies did not cast their votes in the 2013 general elections.³⁰ In one of the most recent elections in the northern Punjab district of Chakwal, the

²⁸ Khan, I. A. (2017, May 6). Gap between male, female voters worries CEC. *Dawn*. Retrieved from <https://www.dawn.com/news/1331413>; Free and Fair Election Network. (2015, November 25). FAFEN Calls for Women’s Voter Registration Emergency. Retrieved from <http://fafen.org/fafen-calls-for-womens-voter-registration-emergency/>.

²⁹ No woman to vote in parts of KPK, Punjab. (2013, May 11). *The Nation*. Retrieved from <http://nation.com.pk/elections-2013/11-May-2013/no-woman-to-vote-in-parts-of-kpk-punjab>.

³⁰ Khan, I. A. (2017, January 1). Over 95pc women in 17 constituencies didn’t vote in 2013. *Dawn*. Retrieved from <https://www.dawn.com/news/1305675>.

turnout rate of women voters was zero in at least three polling stations monitored by election observers.³¹ Evidence suggests that such situations arise due to agreements between parties or among local elders. In May 2017, an amendment to the Representation of the People Act of 1976 made the act of preventing or an agreement to prevent women from exercising their right to vote a corrupt practice punishable by imprisonment or a fine.³²

In the higher echelons of the government, the representation of women is abysmally low. Representation of women as government officials from Grade 18 to 22 is low, with:

- 13.55 percent in Grade 18
- 5.5 percent in Grade 19
- 10 percent in Grade 20
- One woman in Grade 21 and no women in Grade 22, the highest grade in the Central Superior Services of Pakistan

The fair representation of women in public life, despite some progress made in the last few decades, has a long way to go.

2.4.2) Transgender people

Obstacles for transgender voters are particularly acute in Pakistan, one of the most conservative countries, where ethnic, religious, and sexual minorities have often been victims of violence and persecution. One of the obstacles for the transgender community to exercise their right to vote is the acquisition of the new Computerized National Identity Card (CNIC). Reportedly, at least 90 percent of the people who are transgender in the province of Khyber Pakhtunkhwa do not possess a national identity card. This is either because they do not have their father's name or there is no option in the form that identifies their gender.³³

Legal recognition of the rights of transgender people in Pakistan is a long unmet demand. The first ever passport for a transgender person was issued as recently as June 2017.³⁴ Several bills proposed by the National Commission of Human Rights and the Federal Ombudsman's Office are pending for consideration before the Human Rights Committee of the Senate of Pakistan.³⁵

³¹ Free and Fair Election Network. (2017, April 18). Chakwal By-Election: Zero Turnout of Women Voters at 3 Polling Stations. Retrieved from <http://fafen.org/chakwal-election-zero-turnout-women-voters-3-polling-stations/>.

³² Bill empowers ECP to hold re-election if women barred from voting. (2017, May 21). *Geo.tv News*. Retrieved from <https://www.geo.tv/latest/142745-bill-empowers-ecp-to-hold-re-election-if-women-barred-from-voting>.

³³ Voting rights for transgenders. (2016, December 7). *Daily Times*. Retrieved from <http://dailytimes.com.pk/editorial/08-Dec-16/voting-rights-for-transgenders>.

³⁴ Pakistan issues first third-gendered passport for transgender activist. (2017, June 24). *Dawn*. Retrieved from <https://www.dawn.com/news/1341545>.

³⁵ Abbasi, K. (2017, July 14). Two transgender rights bills prepared by task force. *Dawn*. Retrieved from <https://www.dawn.com/news/1345253>.

2.4.3) Local governments

Article 140-A of the Constitution of Pakistan requires devolution of political, administrative, and financial authority to the elected representatives of local governments.³⁶ It took almost three years from the time of enactment of new local government laws in 2013 in Punjab and Sindh to the time the local governments actually started working in 2016. Years of struggle and judicial battles later, in 2016, the local governments were headless in Punjab until December 2016 and in Sindh until August; without resources in Balochistan, Islamabad Capital Territory, and Khyber-Pakhtunkhwa; powerless in the 42 cantonments; and missing in the Federally Administered Tribal Areas and Gilgit-Baltistan.³⁷

2.4.4) The Federally Administered Tribal Areas (FATA)

The people of Federally Administered Tribal Areas (FATA) are the least politically integrated into the polity. They were guaranteed adult franchise in 1997 and the Political Parties Order of 2002 was extended a decade later in 2011. The region sends 12 members to the National Assembly and has eight seats in the Senate. However, since 2013, NA-38 (the central Kurram Agency) is without representation due to its poor law and order situation. After military operation Zarb-e-Azb aimed at weeding out terrorism from FATA, the call for governance reforms gained momentum.

Legally and constitutionally, FATA is a black hole. Under the constitution, the parliament cannot legislate for FATA, whose population numbered more than 3 million according to the last census held in 1998 and is now estimated to have doubled. FATA MPs cannot propose legislation in the parliament. There is no local government system. The legislation for FATA is done through executive decree by the president. The criminal justice system is founded on a somewhat reformed version of the Frontier Crimes Regulation of 1901, which retains its colonial and undemocratic features to this day.

The prime minister established a five-member FATA Reforms Committee, which contained zero members from FATA. The committee, however, consulted tribal elders. Its recommendations were laid before the parliament in September 2016. A majority of the FATA legislators and the tribes indicated their approval of the committee's recommendation to merge FATA with the adjoining Khyber Pakhtunkhwa province. The report has been made public to elicit further debate and discussion towards developing a national consensus on the

³⁶ Article 140-A reads, "Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments."

³⁷ Powerless local bodies. (2015, November 4). *The Nation*. Retrieved from <http://nation.com.pk/04-Nov-2015/powerless-local-bodies>; Abbasi, K. (2016, April 25). Elected LG officials powerless, unaware of functions of their offices. *Dawn*. Retrieved from <https://www.dawn.com/news/1254272>; Ghymman, K. (2015, December 4). Parliament watch: Who wants to be Islamabad's 'powerless' mayor?. *Dawn*. Retrieved from <https://www.dawn.com/news/1224132>.

recommendations laid out within.³⁸ The plan to reform and fully empower the people of FATA, however, has been put on hold for the time being.³⁹

2.4.5) Electoral reform

Since June 2014 Pakistan, has been yearning for comprehensive electoral reforms. A 33-member multi-party Parliamentary Committee on Electoral Reforms (PCER) presented its first report in May 2016 recommending reform of the ECP. Subsequently, the 22nd Constitutional Amendment was passed in June 2016 to pave the way for four new permanent members of the ECP. The PCER proposed a second set of reforms to the parliament, and suggestions were solicited from citizens on the draft election bill. This is the first parliament-led electoral reform initiative, and intends to unify nine existing electoral laws. Five of these nine laws are the legacy of military regimes that engineered and distorted the nation's electoral system. The Parliament allowed 20 days for citizens to submit their suggestions and comments for improvement.

The proposed electoral reforms package attempted to address many issues but was conspicuously silent about the concerns of religious minorities. Legislators from the religious minorities had no representation in the 33-member PCER.

3. Recommendations and policy implications

3.1) Freedom of expression

- The federal government urgently needs to enact a special law on the safety of journalists to outline legal mechanisms for their protection after consultations with the principal stakeholders: working journalists. Since law and order is a provincial subject and since media and media practitioners are spread across the country, the four provinces also need to enact provincial versions of journalist safety laws to provide more accessible redress mechanisms at the local level. Media outlets across the country need to draft and adopt their own staff security policies and safety protocols aimed at preempting and preventing threats to journalists and curbing the unbridled culture of risk-taking.
- The federal government needs to enact a whistleblower protection act to safeguard both journalists and government officials from prosecution or harm for using information that promotes transparency of offices run with taxpayer money while allowing for special case exemptions on strategic security or intelligence matters.

³⁸ Government of Pakistan. (2016, August). Report of the Committee on FATA Reforms 2016. Retrieved from <http://www.safron.gov.pk/safron/userfiles1/file/Report%20of%20the%20Committee%20on%20FATA%20Reforms%202016%20final.pdf>.

³⁹ Delayed FATA reforms. (2017, May 9). *Dawn*. Retrieved from <https://www.dawn.com/news/1331897>.

- The Prevention of Electronic Crimes Act (PECA), enacted in 2016, urgently needs to be revisited to decriminalize freedom of expression online, rationalize user data retention guidelines, and add provisions to allow for oversight and transparency in its implementation mechanisms.
- Impunity for harassment and assaults on freedom of expression online and elsewhere and of CSOs must be eliminated. State agents found violating the law and citizen rights must be brought to justice.

3.2) Freedom of association

- The government should abandon its policy of harassing CSOs/NGOs and invite them to the table for consultation if it wants to introduce a new regulatory framework for the non-governmental sector. Changes to the regulatory framework without meaningful consultation with CSOs should not be allowed to proceed. The current policy of registration with the federal government and the way it is implemented is a violation of the right to association; it must be revisited immediately.
- The arbitrary ban on student unions should be immediately lifted and NGOs must be provided an enabling environment to carry on their work. If there are allegations against them, they must be given a chance to address them and demonstrate that they are operating lawfully.

3.3) Freedom of assembly

- The authorities should take all appropriate measures to ensure that people, including women, children, and those from marginalized communities, are allowed to exercise their right to peaceful assembly.
- Section 144 should never be used to unduly restrict the right to freedom of peaceful assembly and needs to be repealed.
- People should be properly warned of road blocks and told about detours they can take to avoid blockades.
- If sporadic incidents of violence occur, the authorities should identify the people responsible instead of using the violent acts of a few as a pretext to restrict or impede the rights of the majority.
- Attacks on women and other marginalized communities during protests should be dealt with sternly and without impunity.
- Media workers covering protests should be allowed to do their jobs freely and without fear of attacks or intimidation.

3.4) Political participation

- Political, administrative, and financial responsibility and authority must be devolved to local governments by the provincial legislatures.
- The electoral reforms process must be expedited so that the Election Commission of Pakistan and other relevant officials have enough time to implement them.
- FATA reforms must match the inclusive democratic benchmarks of the 21st century and reflect the genuine will of the people.
- Special steps need to be taken to bridge the serious gender gap in the electoral rolls.
- Well-organized democratic political parties are vital for a functional democracy; they must be provided an environment that allows them to perform their role effectively.
- Women's participation should be ensured in the political process through effective implementation of the existing laws and by introducing new legislative measures.
- Immediate steps need to be taken to ensure that transgender rights are duly and effectively implemented, with special emphasis on the participation of transgender people in the political process.
- Participation of the youth in the democratic process must be ensured.

5. Conclusion

Political developments require the promotion of an open democratic space. The Human Capital Report 2016⁴⁰ ranks Pakistan at 118 and therefore at the bottom among 130 countries. The World Economic Forum report takes into account education, employment, and demographics when ranking countries. Another similar ranking known as the Global Gender Gap Index⁴¹ also ranks Pakistan second from the bottom, even lower than Sub-Sahara African. The index tracks women's progress in the areas of education, health services, economic opportunities, and political representation.

With such dismal social indicators, government actions that impede and discourage civil society organizations from functioning independently will only add to the burden of the government. Such government actions are seen as a violation of the fundamental rights guaranteed by Pakistan's own constitution and the international conventions to which the country is a party.

It is important that the government recognize the role of civil society and promote a culture of cooperation and trust rather than an environment of hostility. Global as well as national political developments require the government of Pakistan to promote open democratic space where people

⁴⁰ World Economic Forum. (2016). Human Capital Report 2016. Retrieved from <http://reports.weforum.org/human-capital-report-2016/>.

⁴¹ World Economic Forum. (2016). The Global Gender Gap Index 2016. Retrieved from <http://reports.weforum.org/global-gender-gap-report-2016/>.

can actively participate in the political process and are able to positively contribute to the overall development of the country.

Civic Space in Taiwan

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1. Introduction and background

Taiwan has adopted a semi-presidential system in which the president is directly elected and can nominate the premier. The president can serve up to two terms. The Legislative Yuan, Taiwan's parliament, has 113 members who are elected every four years. It includes 73 geographical seats, 34 party-list seats, and six aboriginal seats. In general, Taiwan has a very vibrant democracy. The function of democracy performs quite well in various dimensions. Both presidential and parliamentary elections are considered to be fair and competitive with regards to political participation.² In the category of rule of law and corruption, the judicial system is basically independent and impartial, and the level of corruption continues to be reduced. Both mass media and social media are free of government control. The government does not own or control any major media outlets. The mass media is free to criticize the government without worrying about political interference. Civil society organizations can also freely express their views without government intervention. In addition, Taiwan has both gender and aboriginal quotas in various levels of representative elections as part of an effort to ensure the rights of minorities and women. Finally, there is very little violence in Taiwan. Even with mass protest events such as the Sunflower student protest, it is still comparatively peaceful.

Taiwan's vibrant democracy in large part rests on its vibrant economy. Economic growth improves peoples' lives and effectively addresses the wealth distribution issue. Taiwan's economy has broken free from the middle-income trap, and the nation continues to upgrade its industry despite slow growth.³ From 2008 to 2015, the GDP (PPP) per capita growth rate was 4.4 percent.⁴ This laid the foundation for democratic consolidation and the deepening of democracy.

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² Murkowski, L. (2016). International Election Observation Mission, 2016—Taiwan. Congressional Record Online through the Government Publishing Office. Retrieved from <https://is.gd/t4L4R9>.

³ Aiyar, S., Duval, R., Puy, D., Wu, Y., and Zhang, L.. (2013). Growth Slowdowns and the Middle-Income Trap. International Monetary Fund Working Paper No.13/71. Washington, DC: International Monetary Fund.

The function of democracy in Taiwan has its flaws. The practice of vote-buying and party assets makes elections an uneven playing field. Despite the growing independence of the judiciary, string-pulling is still quite prevalent in Taiwan. For civil society participation, a difficult task is to seek a delicate balance between monitoring the government and hindering political compromises between political camps. Income inequality is also on the rise due to globalization and advances in production automation, and the income gap between the rich and the poor is growing. Economic stagnation has hit the younger generation particularly hard. In addition, there are still elements of procedural unfairness that contributes in part to the economic gap between minority ethnic groups. Gender equality faces an uphill battle as well. Despite the recent election of the first female president, Tsai Ing-wen, only 14 percent of her first Cabinet is female. Minority rights such as rights for immigrant laborers, foreign spouses, and health insurance for foreign students all have room to improve. Finally, Taiwan's nascent democracy has survived the two-turnover test as both parties are willing to hand over executive power to the opposition when they lose an election. This exciting news covers the fact that neither of the opposition parties, DPP and KMT, was willing to observe the ruling party's legislative power even in the presence of a unified government. Since the first party turnover in 2000, gridlock in parliament has become frequent. During President Chen's tenure, the coalition of the KMT and FPF blocked virtually all the major legislative bills introduced by the DPP government. Many of these bills were actually drafted under President Lee's terms. The DPP did the same thing during both of President Ma's terms, upgrading the practice to a new level. Although the KMT has enjoyed a majority of seats in Parliament, it was in many cases unable to push its own agenda forward. After the DPP came to power in 2016, it immediately wanted to restrict the debate and review process in parliament. On the other hand, the KMT also quickly turned into a parliamentary fighting machine as it tried to block several major DPP initiatives.

Taiwan is a divided society. There are significant differences in attitude between the Pan-Blue and Pan-Green camps regarding national identity, independence-unification choices, the political relationship between Taiwan and China, and cross-strait economic relations. On the Green side, the Taiwanese nationalists advocate a separate Taiwanese national identity and push for de jure independence. On the Blue side, the Chinese nationalists oppose Taiwanese independence and favor the status quo. They may even consider the option of reunification if China eventually democratizes. Elections in Taiwan are not only about the selection of government leaders, but also about the selection of nationality. Views of trade policies, filibusters in parliament, law enforcement, and several massive social protests have also been highly divided along party lines in recent years. The social divide hinders political parties from seeking common ground and making firm decisions. As of yet, this division is not deep enough to shake the foundation of Taiwan's democracy, but it does play a strong role in shaping the landscape of democratic practice and

⁴ Hsiao, F. (2016). How Bad Is Taiwan's Economy? Compared to other Economies around the World, Taiwan is Doing just Fine. *The Diplomat*. Retrieved from <http://thediplomat.com/2016/07/how-bad-is-taiwans-economy/>.

pose a threat to the health of democracy. The rising social divide in Taiwan in recent years has been aggravated by the rise of China and its iron-fisted authoritarianism under President Xi. Taiwan cannot effectively solve the dilemma by itself without changes in China's political system.

Overall, Taiwan has a vibrant democracy. In the past few years, in general, civil society has been thriving. But there are potential threats to Taiwan's civil society. The two main threats, domestically and externally, relating to the space of civil society are both associated with China. The increasing threat from China threatens the liberty of Taiwan's liberal democracy. For example, the potential influence of mainland-based Taiwanese businessmen on elections and mass media poses a threat to freedom of the press. On the other hand, the evolution of national identity in Taiwan is an ongoing tug of war. Both camps fiercely compete to gain control of the state apparatus so that they can control the pace and direction of nation-building and the cross-strait political and economic relationship in the direction of either Taiwanization or Sinicization. They thus pay less attention to compromise, tolerance, due process, and rule of law, the critical conditions that enable a liberal democracy to function.⁵ In the past year, because of perceived threats from China to liberal democracy and Taiwan's political independence, the ruling DPP government has tried to enact more stringent laws that regulate travel, and dissemination of information, and these regulations have the potential to harm the liberty of civil society in the future.

2. Civic space in Taiwan

2.1) Freedom of association

In Taiwan, all civil society organizations are subject to registration requirements. Civil society organizations are free to register and operate. The number of social organizations has increased consistently since the democratic transition. Some social organizations were founded prior to democratic transition, and although they were unregistered at that time, they actively demanded political liberalization. Academic & cultural associations, social services, charity associations, and economic business associations are the major types of non-governmental associations. Other types of social associations such as medical associations, religious associations, sports associations, and international associations also increased significantly during this period. Occupational associations, industrial associations, commercial associations, and professional associations also increased, but at a slower rate. The total number of labor associations, on the other hand, has decreased over the years. The number of political associations, including political parties and nationwide political associations, also increased following democratic transition. Civil society organizations are free to express their views without government intervention. Workers are free

⁵Chu, Y. (2005). Taiwan's Democracy at Turning Point. *American Journal of Chinese Studies*, 11(2): 901-924.

to join trade unions. The union participation rate, however, has declined over time, largely due to the shrinking manufacturing sector in Taiwan. Before 2011, party law forbade any parties that advocated communism or secession of national territory. In 2011, those clauses were eliminated by the parliament.

An authoritarian legacy of Taiwan is the huge number of party assets that the KMT has. In each election, the KMT donated huge amounts of money to its candidates, especially its presidential candidate. These assets were accumulated during the authoritarian period and the earlier period of democratic transition, when plutocracy politics were prevalent. The practice of vote-buying and party assets makes elections an uneven playing field. After the DPP reassumed power in 2016, the KMT's party assets became a target under the flag of transitional justice. These issues are under reform and may eventually cease to be an issue. With the passing of an illegal party assets law in 2016, the KMT's party assets are likely to eventually fade into history.⁶

In 2017, the DPP government drafted a new law to regulate religious groups aimed at increasing financial transparency, putting limits on how profits can be used, and demanding that each religious organization file financial reports. This new policy sparked opposition from religious organizations and some religious scholars.⁷ They argue that such a law violates religious freedom and puts religion under state control. Due to the political reactions, the DPP government finally gave up and announced that they will no longer implement this law. Actually, over the past two decades, there have been several legislative proposals that attempted to regulate religious groups, but failed due to strong opposition.⁸ Many such organizations receive huge donations from the private sector but do not need to disclose their financial situations. No one outside the temples knows where the money goes.

In another case, the National Women's League, an organization affiliated with the KMT, had assets worth NT\$38.4 billion (approximately USD \$1.3 billion). The organization used its party connection during the authoritarian era to secure income and tax privileges.⁹ The organization did not disclose its financial situation to the government until 2016, when the DPP government took office and asked it to file financial disclosure forms to the government in the name of transitional justice. Finally, under the pressure of the DPP government, the National Women's League agreed to donate a majority of its assets to the government. These two cases suggest that certain government regulation of civil society organizations is necessary, especially regarding financial transparency. Striking a balance between interfering with the liberty of CSOs and ensuring financial transparency is an important but difficult task.

⁶ Chu, Y. and Wu, C. (2017). State of Democracy in Asia: Taiwan. Paper prepared for presentation at Workshop of Asian Democracy Research Network and East Asia Institute, Seoul, Korea.

⁷ PTS News Network. (2017). Academics Call On Government to Stop Interference in Religion. Retrieved from <http://news.pts.org.tw/article/365789>.

⁸ Chen, C. (2016). Religious Groups Act Assessment. NPF Research Report. Retrieved from <http://www.npf.org.tw/2/15686>.

⁹ <http://www.taipeitimes.com/News/front/archives/2017/07/17/2003674714>

2.2) Freedom of assembly

In 2010, the government passed a law that gave greater collective bargaining power to the industrial sector-wide unions. The bargaining power of labor organizations was previously restricted to individual factory unions. Another ongoing issue concerns the amendment of the Assembly and Parade Act. Both the DPP and KMT agreed to eliminate a rule that required anyone wishing to hold an outdoor protest to apply in advance for government approval. However, both parties prefer to place restrictions on the location of social protests so that they can maintain the dispersal power of police forces. Civil society organizations, on the other hand, prefer to have the right to stage protests within some restricted districts, such as the presidential palace and the area surrounding the Legislative Yuan, in order to be able to influence government decision making.¹⁰

In 2008 Chen Yunlin, the chairman of China's Association for Relations Across the Taiwan Straits, visited Taiwan to discuss direct flights and food safety issues. Because of the strong symbolism of his position, his visit induced widespread protest. To avoid conflicts, police took action to restrict protesters from certain areas, forbid the display of Taiwan's national flag, and banned the play of certain Taiwanese songs. Such police actions of course infringe on civil liberties. Taiwan and China had not had official contact for decades, but with the rising power of China and its authoritarian government, many Taiwanese were quite nervous about the potential negative effects on Taiwan. Before the signing of the agreement, many Taiwanese, especially Pan-Green supporters, were suspicious about the benefits of the process and worried that it might endanger the sovereignty of Taiwan. The process also generated rising tension between the KMT government and the DPP and its supporters. The DPP politicians exploited the fear of China among Pan-Green supporters. Actually, few people in Taiwan paid much attention to visits from Chinese representatives in the years that followed.

In 2017, the DPP government reformed the civil servant pension system to prevent future bankruptcy. During the review of the reform, a group of incumbent and retired civil servants and teachers launched a series of protests in an attempt to block the legislation. Some of the protesters engaged in mob-like activities.¹¹ Even after the Legislative Yuan passed the reform bill, pensioners launched several flash protests that targeted the president, forcing her to cancel several activities. When a great majority of citizens in Taiwan support a government bill in repeated polls, such protest activities do not have legitimate grounds. It is probably time to discuss the proper boundary of the use of social protests. Imposing some restrictions on protest activities, such as where to protest, is necessary in order to pass some reform bills.

¹⁰ Chu, Y. and Wu, C. (2017). State of Democracy in Asia: Taiwan. Paper prepared for presentation at Workshop of Asian Democracy Research Network and East Asia Institute, Seoul, Korea.

¹¹ The China Post. (2017). Protesters Bar Entrance to Legislature ahead of Pension Reform Review. Retrieved from <http://www.chinapost.com.tw/taiwan/national/national-news/2017/04/19/495852/protesters-bar.htm>.

2.3) Freedom of expression

The media in Taiwan enjoys a much higher degree of freedom than most of its Asian neighbors. In both its 2015 and 2016 reports, Freedom House rated Taiwan as free.¹² Excluding the small island countries, Taiwan ranks number four in the Asia Pacific region, after New Zealand, Australia, and Japan, in the Freedom of Press Index compiled by Freedom House. The media sector is free from government control and remains fiercely competitive with mushrooming television and internet news services. The government does not directly own or control any major news outlets. The Taiwanese media is free to criticize politicians and track government scandals without worrying about political persecution.

In Taiwan, two main threats, domestically and externally, are related to the space of civil society. Both threats are essentially associated with China. Externally, the threats to Taiwan's liberal democracy come directly from China. Despite the freedom the media enjoys now, the China factor poses a potential threat to press freedom in Taiwan. Over the past few years, the Chinese government has tightened its control over civil society. In recent years it has also tightened its control over Hong Kong. As China still claims sovereignty over Taiwan, many Taiwanese worry about the potential threat that it poses.

First, there is a fundamental dilemma facing Taiwan. Taiwan's economy is inextricably intertwined with the Chinese economy. Taiwan exports mainly strategic components to China to be assembled and consumed locally or exported to other parts of the world. Without the huge trade surplus from China, Taiwan would have a trade deficit. On the other hand, China is not a democracy and it has not given up the prospect of using force to unify Taiwan. Hence, the rise of China poses a threat to democracy in Taiwan. Even though the government of Taiwan wants to diversify its export market, it has not achieved much success. The two sides have developed a "frenemy" relationship. China is Taiwan's largest trade partner, accounting for about 40 percent of Taiwan's exports.¹³ In addition, visitors from mainland China have accounted for the largest part of Taiwan's total foreign tourists in recent years. Because of this, many observers worry that China has enormous economic leverage over Taiwan. For example, when President Tsai refused to recognize the principle of "One China," the Chinese government strategically responded by restricting the number of Chinese tour groups allowed to visit Taiwan. Until now, Chinese citizens have been required to obtain permission from both sides of the government to be able to visit Taiwan. As a result, the tourism industry, including hotels, restaurants, bus companies, souvenir shops, and tour guides, suffered all across Taiwan.¹⁴ President Tsai still refuses to recognize the "One China" principle.

¹² Freedom House. (2016). Freedom in the World. Retrieved from <https://freedomhouse.org/report/freedom-world/2016/taiwan>.

¹³ Yan, S. (2015). Trade has Turned China and Taiwan into 'Frenemies.' *CNN Money*. Retrieved from <http://money.cnn.com/2015/11/05/news/china-taiwan-trade-economy/index.html>.

¹⁴ Time. (2016). China Is Using Tourism to Hit Taiwan Where It Really Hurts. Retrieved from <http://time.com/4574290/china-taiwan-tourism-tourists/>.

The second threat comes from the influence of mainland-based Taiwanese businessmen. Over the past few years, members of this group have begun dumping their money back into Taiwan and purchasing mass media, telecommunication services, real estate, and other companies. These newspaper and TV outlets publish news that is in many cases closely in line with the stance of the Beijing government. This force poses a potential threat to freedom of speech and the fairness of electoral competition. The influence of money coming from the other side of the strait makes some people uneasy. So far, Chinese-owned companies are not allowed to invest in certain Taiwanese industries, especially media, telecommunication, infrastructure, and real estate. Given the sheer size of these companies and their ties with the Chinese government, opening the market to allow their investment could raise further concerns.

In March 2017, Chinese authorities arrested Lee Ming-che, a human rights advocate from Taiwan. He had visited China several times and contacted social activists there. He was charged with subverting the state.¹⁵ This is the first time the Chinese government arrested a Taiwanese citizen on a subversion charge. The DPP government has urged China to release Lee Ming-che. Many Taiwanese worry that this action is likely the beginning of an increasing threat against Taiwan's liberal society. It is estimated that two million Taiwanese people live or work in China. Many Taiwanese citizens have investments in China, regularly travel across the strait, or have a stake in cross-strait business. This action may force Taiwanese citizens to be more cautious about their words while remaining quiescent on violations of human rights and the lack of democratic procedure in China. This is a sign of the rising tensions across the strait since the DPP assumed office and, moreover, the persistent crackdown on civil society under President Xi.

Domestically, to counter the pressure from China, the ruling Democratic Progress Party recently initiated the National Public Security Act.¹⁶ Many DPP legislators think that China's penetration of Taiwan poses a serious threat to Taiwan's autonomy. This proposed act raises concerns about the tightening control of the state on civil society. The government proposes setting up many security units in various public and private organizations to report, question, and interview suspects who engage in activities that may threaten national security. Many people think this proposal is a setback against decades of democratic progress. It may allow the government to regulate ideas they do not like in the name of protecting national security. If this bill passes, it is very likely to hurt freedom of speech.

Following the introduction of the National Security Act, party legislators proposed an espionage law that would strengthen the power of the national security agency to monitor and tap the telephones of suspects. As cross-strait issues are so important in Taiwan, a very large portion of people are vulnerable to such regulation. In addition, since Taiwan is a divided society and political parties are divided along the national identity line, such power essentially gives the ruling party the power to attack the opposition party. In addition, the ruling party legislators hope that

¹⁵ Taipei Times. (2017b). China Urged to Respect Human Rights, Free Lee. Retrieved from <http://www.taipetimes.com/News/taiwan/archives/2017/06/05/2003671945>.

¹⁶ Apple Daily. (2017b). National Public Security Act: Potential Retreat in Human Rights. Retrieved from <http://www.appledaily.com.tw/realtimenews/article/new/20170309/1072620/>.

the proposed act can regulate fake news whether or not it is related to national security. If passed, this clause may allow the government to regulate speech they do not like in the name of attacking fake news. This poses a serious threat to freedom of speech. Until now, none of these proposals have been seriously discussed in the Legislative Yuan. Many countries have laws that regulate their relationships with their main enemies. It is understandable that Taiwan needs to protect its national security. Balancing national security and civic freedom is not an easy task for any government.

Another potential threat to freedom of speech comes from the internet. Over the past few years, use of the internet and in particular the popularity of social media has enabled people to disseminate news and ideas faster. This development also strengthens the power of civil society to check the discretion and encroachment of the state. However, it also creates the problem of echo chambers. People access political information primarily through social media. This creates a cyberspace in which people exchange information only with those who hold the same political views. In addition, people are less tolerant of different political views. In some cases, people even try to block different political views on some social media platforms. For example, some Facebook users report the accounts of users who express opposite political views to their own to Facebook regulators for violating Facebook's policies in order to get those accounts suspended. These accounts may simply be critical of the government, express different political views, or be against major public policy stances of the government such as nuclear power. This happens mainly to the accounts of supporters of the opposition party, the KMT.¹⁷

2.4) Right to participation

When President Tsai assumed office, the government hosted several National Conferences. One was on judicial reform and another was on pension reform. In these conferences, people from various social segments, government representatives, scholars, NGOs, and interested citizens were all invited to share their views. The conclusions of the conference were then sent to the parliament to serve as the basis for the discussion of reform bills. The merit of this approach is that it allows more people to express their views. However, in reality, government representatives still dominate the conferences and reach the conclusions they want. Many participants from the private sector are even handpicked by the ruling party because they share the same policy preferences. No wonder the conference conclusions are basically consistent with the ruling party's preferences. More importantly, the parliament does not have any obligation to follow the conference conclusions. Legislators can drastically change the core elements of the reform bills at will. The process of civil servant pension reform clearly demonstrates this. In addition, the National Conferences are essentially extra-constitutional institutions. They bypass and

¹⁷ Apple Daily. (2017a). KMT: Users' Accounts were Suspended for Criticizing the President. It Is Likely Due to Malicious Reporting. Retrieved from <http://www.appledaily.com.tw/realtimenews/article/new/20170621/1144704/>.

downgrade the role of regular bureaucratic and legislative institutions in deliberating and forming policy suggestions.

Over the past few years, different layers of Taiwan's government have witnessed the growing importance of civil participation in public decision making. The role of public hearings is more important than it was in the past. In addition, in 2015, the Taipei City Government introduced the I-Voting online polling platform which allows citizens to express their preferences on important public policy issues. Two years later, the system even allows citizens to submit proposals on issues to be voted on by the public after approval by city officials and a public participatory committee.¹⁸ In practice, however, the government does not necessarily accept the results of the I-Voting process. More importantly, many of the issues to which I-Voting is applied are highly complicated and technical, such as major public issues like Build-Operate-Transfer (BOT), so I-Voting may not be the best way to decide those policies. In many cases, I-Voting is just a way for the government to increase its popularity rather than adequately solve policy problems.

As the mobilization power of civil society groups increases, so does their ability to influence the legislative agenda. The participation of civil society organizations is important to the legislative process, as they provide decision makers with important information and prevent legislators from violating democratic procedures. In some cases, however, this power prohibits parties from seeking common ground. In a polarized society, seeking common ground is extremely important but hard to achieve, as can be seen in the state of American politics in recent years. The Sunflower student movement that occupied the parliament was a clear example. The students were able to force the opposition party not to compromise. The review of the Cross-Strait Agreement Supervisory Act, which occurred shortly after the Sunflower Movement, provides another example. The DPP whip told the KMT whip that they could not allow the bill to pass quickly because if they did, they would be unable to answer to the students. Dissuading parties from finding common ground is not a helpful practice in a healthy democracy.

In 2017, to expedite environmental impact assessments, government announced that it would shorten the process to at most one year. The purpose of this change was to reduce hurdles for investment, along with other related factors. In addition, the government announced a proposed bill that would exempt certain areas, such as urban renewal projects, from environmental impact assessments. In the past few years, NGOs have actively participated in various environmental impact assessments to block or reduce the scale of several controversial development projects. Reducing the gatekeeping power of environmental impact assessments essentially curtails the role of NGOs in reviewing decisions. In many cases, they are the only gatekeepers against environment degradation in Taiwan.

¹⁸ I-Voting Platform Updated to Allow Proposals by Public. (2017). *Taipei Times*. Retrieved from <http://www.taipeitimes.com/News/taiwan/archives/2017/04/19/2003669007>.

3. Policy lessons

The social cleavage of national identity difference and the rise of China's dominance in this region contribute to the fierce political competition between Pan-Blue and Pan-Green. Election stakes are so high that both sides mobilize all segments of society to compete against each other. In a liberal democracy, tolerance is more important than freedom, yet many people in Taiwan's divided society are ignorant of this. Each camp must respect and learn the historical background and perspective of the other camp. Political elites should avoid hate speech like "native Taiwanese are the descendants of the citizens of the Japanese Emperor" and "the KMT elite are a small group who seek to sell out Taiwan to China." Taiwan is a small island facing an imminent political and economic threat from across the strait. If we want to maintain our democracy and way of life, both sides of the Pan-Blue and Pan-Green camps and the older and younger generations have to begin dialogues that promote greater understanding and achieve common ground. Mutual understanding can reduce suspicion and the urge to use laws and executive measures to suppress different political views.

Polarization in Taiwan is not only domestically induced; it is also externally determined. The rise of China has triggered and aggravated political divisions in some of the countries surrounding China. Learning how to promote political reform in China will be the key. Przeworski and Yebra argue that globalization may compel countries to adopt similar policies, such as engaging in tax competition, so authoritarian governments tend to lose some of their control over the economy and society.¹⁹ Dalpino predicts that WTO rules will force the Chinese government to be more transparent and accountable and to strengthen the rule of law, both of which are important conditions for the development of democracy.²⁰ Moreover, newer versions of free trade agreements incorporate not only tariff reduction but also clauses that govern business, the environment, and labor regulations. For example, all signatories of the Trans-Pacific Partnership (TPP) will have to adopt the same business and labor standards. In order to participate in the TPP, Vietnam has planned to introduce legislation stipulating that all factories with more than fifty workers must set up a trade union. After President Trump withdrew the U.S. from the Trans-Pacific Partnership, Vietnam felt no need to improve its human rights record and has since tightened its control over society. Although China is much larger than Vietnam, it would still be a positive push for political liberalization in China if it also joined the TPP.

Last, Taiwan should encourage more mainland students to come to Taiwan to attend university, treat them fairly, and let them choose freely what they want to read and see. We can also encourage them to participate in student affairs in universities. By doing so, they can learn what a free society looks like and eventually internalize these liberal democratic values. In

¹⁹ Przeworski, A. and Yebra, C. M. (2003). Globalization and Democracy. Paper prepared for the Workshop on Globalization and Egalitarian Redistribution, Santa Fe Institute. Retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.602.116&rep=rep1&type=pdf>.

²⁰ Dalpino, C. E. (2001). Does Globalization Promote Democracy? An Early Assessment. *Brookings*. Retrieved from <http://www.brookings.edu/research/articles/2001/09/fall-democracy-dalpino>.

authoritarian countries, education curriculums are tightly controlled by the government and news stories are usually censored. For this reason, it is difficult for people in these countries to obtain an accurate picture of what is going on overseas by reading, listening to, or watching domestic media. It is important for younger Chinese students to be exposed to a different atmosphere. Treating them fairly is also important. Otherwise they will feel discriminated against and dislike Taiwan and its democratic institutions.

4. Conclusion

After 2008, President Ma's administration implemented direct transportation and sought to sign a free trade agreement with China. The Green camp believes this acceleration of cross-strait economic exchanges was detrimental to Taiwan's economic and political autonomy because a closer relationship aggravates Taiwan's economic vulnerability, facilitates Beijing's political infiltration of Taiwanese society, and will lead to the erosion of a separate Taiwanese identity. On the political side, President Ma embraced the "One China, two interpretations" policy, or the so-called 1992 Consensus. The Pan-Green camp believes the One-China Policy constrains Taiwan's international space. The policies pursued by President Ma further aggravated the social divide. All in all, the rising social divide affects the performance of democracy in various dimensions in Taiwan. The social divide has historical roots, but the China factor plays a decisive role in aggravating it. The China factor includes the rising political and military power of China, the more conservative and authoritarian trend of President Xi's term, and ongoing cross-strait economic integration that may hurt some low-skilled laborers in Taiwan. These factors directly and indirectly pose a threat to Taiwan's liberal democracy. As direct and indirect threats on civil society are both closely related to political developments in China, Taiwan cannot effectively solve the dilemma by itself without changes in China's political system.

Civic Space in the Philippines

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1. National context

The year 1986 marked an important flashpoint in the Philippines' multi-decade structural transformation towards democratic transition from the authoritarian rule of Ferdinand Marcos. The new regime set up by President Corazon Aquino restored democratic mechanisms, institutions, and freedoms embodied in the 1987 Constitution. The Philippine Constitution guarantees the conduct of free and competitive elections, respect for the bill of rights of individuals, and civil liberties such as the freedom of speech, freedom of assembly, and the right to political participation. The fundamental law of the country also envisaged the creation and operation of independent institutions to safeguard civil liberties and state accountability such as the Commission on Human Rights, Commission on Audit, and the Office of the Ombudsman. The promulgation of the 1987 Philippine constitution also paved the way for important institutional reforms such as the decentralization/devolution of government, transfer of national police responsibilities from military to civilian authority, and recognition of civil society organizations as key actors in governance.

The Philippines is also a signatory to several international human rights agreements. The country is responsible for implementing the principles and provisions of the Universal Declaration of Human Rights, the United Nations Declaration on Human Rights Defenders, and the International Covenant on Civil and Political Rights. These agreements impose a responsibility to comply with international human rights obligations in order to create, maintain, and ensure a safe and enabling civic space for civil society. The fundamental freedoms of expression, association, peaceful assembly, and the right to participate in governmental affairs are universal rights that enable citizens to share ideas, form new ones, and guarantee the rights of others around them. It is through the exercise of these public freedoms that citizens make

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informed decisions about their socioeconomic development, take part in civic activity, and build democratic societies.²

While there have been fundamental reforms brought about by the 1986 Philippine People Power Revolution, it has been generally observed that fostering civic space – political rights and civil liberties – conducive for democratic consolidation remains challenging. The shrinking of civic space stems from the weakness of democratic institutions resulting from corruption, the absence of rule of law, inequality in the allocation of economic resources, and the dominance of an elite-based political economy. In 1999, thirteen years after the restoration of democracy, the country was still besieged by problems of lawless violence and corruption within critical democratic institutions such as the legislature, judiciary, and police. As a Freedom House report discusses:

*Each year, police, soldiers, and local civilian militias are accused of committing several extrajudicial killings and disappearances and are implicated in the torture and arbitrary arrest and detention of suspects. Security forces are also accused of involvement in extortion schemes, the drug trade, illicit logging, and other illegal private activities.*³

More evidently, the country's categorical status was downgraded from "Free" to "Partly Free" between 2005 and 2006. Freedom House cited "credible allegations of massive electoral fraud, corruption, and the government's intimidation of elements in the political opposition" as the key reasons for the relegation in categorical status.⁴ The Philippines has never regained the "Free" ranking since. In addition, the Varieties of Democracy Civil Liberties Index (CLI) finds a slight negative change in the country's scores between 1999 (CLI = 0.73) and 2015 (CLI = 0.71), the latter score being even lower than that in 1987 (CLI = 0.73). However, the period from 2010 to 2011 saw a high in civil liberties (CLI = 0.78 for both years).⁵

2008 to 2010 was the worst period for freedom in the Philippines. The Philippines' ratings were 3.5 for freedom and four for political rights, with higher scores indicating less freedom. These results reflecting less freedom also coincided with the Philippines' CLI rating of 0.70 in 2009, the lowest score the country has ever attained in the CLI since 1986. The Maguindanao massacre played a highly significant part in the scores the Philippines received in said indexes, and is discussed below in the *Freedom of expression* section.

² Office of the United Nations High Commissioner for Human Rights. (2014). Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society. Retrieved from http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSystem_Guide.pdf.

³ Freedom House. (1999). Philippines – Country report. Retrieved from <https://freedomhouse.org/report/freedom-world/1999/philippines>.

⁴ Freedom House. (2006). Philippines – Country report. Retrieved from <https://freedomhouse.org/report/freedom-world/2006/philippines>.

⁵ Varieties of Democracy. (2016a). Civil liberties (variable graph). Retrieved from <https://www.v-dem.net/en/analysis/VariableGraph/> [accessed June 27th 2017].

Though the image painted above may seem bleak, the Philippines' scores on political rights and freedoms are either in line with or more favorable than those of some of its democratic Asian neighbors. In 2015, the Philippines surpassed India, Singapore, South Korea, and Japan in V-Dem's Civil Society Participation Index. The Philippines also has a remarkably good record with regards to respecting the freedom of CSOs. The country's CSO repression score in 2015 (2.54, with higher scores indicating less repression) rates better than that of a few well-known democracies in Asia: India (0.61), Indonesia (1.84), South Korea (0.76), Japan (1.70), and Singapore (0.63). Since the latest scores date from 2015, the effect of President Rodrigo Duterte's controversial policies has not yet been taken into account.

President Duterte's open support for the war on drugs, which allegedly incited a supposed increase in extrajudicial killings of suspected drug criminals by vigilantes and the police, has become a focal point for Freedom House's assessment of the Philippines.⁶ These problems have resulted in a decline in the country's civil liberties.⁷ Freedom House reports that problems of lawless violence and extrajudicial killings are not unique to the Duterte administration. However, with the May 2017 crisis in Marawi and the imposition of martial law in Mindanao, there is heightened worry over the future of civil freedoms in the country. Armed rebellions by the Maute group similar to the current crisis have had an adverse effect on the country's freedom ratings before, especially during the Arroyo administration.

1.1) Philippine civil society

Although there is no universal definition of "civic space," Philippine literature describes it as the *space between the state and the market occupied by civil society organizations (CSOs)*. It is mainly where the aggregation of members of civil society, civil institutions, and citizens' organizations that are distinct from both state and private business⁸ can freely exercise and enjoy fundamental rights essential to human dignity, economic empowerment, sustainable development, and democracy.⁹

The Philippines recognizes the role of CSOs in promoting empowerment and participation in governance. The 1987 Philippine Constitution, Article II, Section 23 directs the Philippine state to "encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation." Moreover, Article XIII, Section 15 provides that the state should respect the role of people's organizations "to enable the people to pursue and protect, within the

⁶ Freedom House. (2017). Philippines – Country report. Retrieved June 27, 2017 from <https://freedomhouse.org/report/freedom-world/2017/philippines>.

⁷ Bacungan, V. J. (2017, February 2). Report: Philippines on downward trend in upholding freedom due to war on drugs. *CNN Philippines*. Retrieved from <http://cnnphilippines.com/news/2017/02/02/freedom-house-philippines-drug-war-duterte.html>.

⁸ Serrano, I. (1994). *Civil Society in the Asia Pacific Region*. Manila: Civicus.

⁹ United Nations General Assembly. (2016, September 14). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Retrieved from http://www.un.org/ga/search/view_doc.asp?symbol=A/71/385&referer=/english/&Lang=E.

democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means” while Section 16 safeguards the right of people’s organizations to “effective and reasonable participation at all levels of social, political, and economic decision-making” as well as mandates the state to “facilitate the establishment of adequate consultation mechanisms” to protect such rights.

Philippine CSOs date back to 1906, when the Philippine Corporation Law “recognized the right to create private nonprofit organizations.¹⁰” After the restoration of democracy from Ferdinand Marcos’s authoritarian regime in 1986, there was a boom in the number and activity of non-governmental organizations (NGOs). Laws such as the Cooperation Code of 1990 and the Local Government Code (LGC) of 1991 promoted civil society activity in the nation’s development agenda.

By 1991, the number of CSOs/NGOs and their importance to national development became notable. Subsequently, the Caucus of Development NGO Networks (CODE-NGO), which is a federation of NGO networks comprising over 1,600 non-governmental organizations, was formed. CSOs/NGOs have the option to register with the government through the Securities and Exchange Commission (SEC), the Cooperative Development Authority (CDA), the Department of Labor and Employment (DOLE), or the Housing and Land Use Regulatory Board (HLURB). Registered CSOs/NGOs are obliged to register or stamp their membership book, submit general information sheets and minutes of their annual meetings, and submit their audited financial statements to the SEC. In 1998, NGOs formed the Philippine Council for NGO Certification (PCNC) which oversees a system of certifying NGOs based on credibility and other merits.¹¹

The need to formalize and monitor CSOs/NGOs in the country reflects the important role that these entities play in Philippine development and governance. The Philippines “has the largest number of CSOs/NGOs per capita in Asia, and many believe that if civil society has contributed to democratization anywhere, it is in the Philippines.”¹² Governments, both national and local, have incorporated CSOs/NGOs into the formulation and implementation of local plans, projects, and policies. Former President Fidel Ramos (s. 1992–1998) promoted a social reform agenda that engaged CSOs/NGOs in national development. A combination of administrative orders thus authorized CSOs/NGOs to be represented in local councils around the country.¹³

¹⁰ Asian Development Bank. (2013). Civil society briefs – Philippines. Retrieved from <https://www.adb.org/sites/default/files/publication/30174/csb-phi.pdf>. Pp. 1.

¹¹ Asian Development Bank. (2013). Civil society briefs – Philippines. Retrieved from <https://www.adb.org/sites/default/files/publication/30174/csb-phi.pdf>.

Macasaet, S. D., & Hartay, E. (2011). Achieving accountability through public and self-regulation initiatives: The Philippines – NGO certification and donee institution status. *The International Center for Not-for-Profit Law*. Retrieved from <http://www.icnl.org/programs/global/gf2011/materials/NGO%20Certification%20in%20the%20Philippines.pdf>.

¹² Asian Development Bank. (2013). Civil society briefs – Philippines. Retrieved from <https://www.adb.org/sites/default/files/publication/30174/csb-phi.pdf>. Pp. 2.

¹³ Asian Development Bank. (2013). Civil society briefs – Philippines. Retrieved from <https://www.adb.org/sites/default/files/publication/30174/csb-phi.pdf>.

A compilation study edited by Carino¹⁴ is a seminal work and one of the first comprehensive Philippine research efforts to examine the breadth of the country's civil society. Through the use of available published data and a field survey of a total of 1,848 organizations in four key cities, the study estimated that there are approximately half a million CSOs in the Philippines. It also observed civil society sector's economic contributions, such as goods and services for members and beneficiaries, with nonprofit expenditures adding 1.5 percent to the Gross Domestic Product (GDP) and 6.5 percent of the combined national and local government budget in 1997. More importantly, the study emphasized civil society's significant contributions to governance, particularly as a major vehicle for citizen participation in political affairs and articulation of the interests of various sectors in the country.

Another substantial research effort was made by CODE-NGO in 2011 with the release of its Philippine report on the Civil Society Index (CSI). The CSI measures the effectiveness and impact of civil society in a country by using a combination of organizational surveys, population surveys, and case studies. Five aspects of civil society are specifically measured – civic engagement, level of organization, practice of values, perception of impact, and external environment – and the CSI provides a measure between 0 and 1.00 for each of the said dimensions. After surveying 120 organizations, CODE-NGO reported that Philippine CSOs have an above average rating of 62.8 percent in perception of impact which indicates that the sector is positively regarded in the country.¹⁵

In terms of their level of organization, Philippine CSOs received an above average score of 57.9 percent due to the adequate managerial and operational systems found within the sector. A good rating of 54.7 percent was achieved in the civic participation area, denoting that Filipino citizens are quite active in social and community concerns. The environment for Philippine CSOs was also viewed positively with a rating of 53 percent, meaning that the country provides a supportive environment for civil society. However, a little less than below average rating of 48.9 percent was received for CSOs/NGOs' practice of values owing to a lack of adequate labor standards, with CSOs being donor- and project-dependent and thus unable to give their workers more stable, regular employment.

The CSO mapping conducted by the Local Government Academy (LGA) in 2012 is possibly the largest organization survey that has been undertaken in the Philippines to develop a comprehensive database of CSOs in the country and enhance civil society participation in local governance. The mapping covered 3,900 CSOs spread throughout nearly every province with the help of the Department of the Interior and Local Government (DILG) and engagement with regional survey coordinators from selected CSOs. More importantly, the study was able to generate basic information on CSOs including their (1) contact details; (2) number of years in operation; (3) registration or accreditation in government agencies; (4) registration, accreditation,

¹⁴ Carino, L. (2002). *Between the State and the Market: The Nonprofit Sector and Civil Society in the Philippines*. Manila: NJP Printmakers.

¹⁵ Caucus of Development NGO Networks. (2011). *Civil Society Index: Philippines, An Assessment of Philippine Civil Society*. Quezon City: CODE-NGO.

or recognition in regions and/or LGUs; (5) type of organization; (6) scope of operation; (7) sectors served and programs and services extended; and (8) average annual operating budget.

The CSOs covered in the mapping were asked in which local governance service areas they are willing to engage. A plurality of the CSOs mentioned their willingness to engage in agricultural development and development planning (45 percent for both). Other areas cited are in the basic services such as health and nutrition (40 percent) as well as education (40 percent). On the other hand, the least preferred area for engagement is in housing and basic utilities (14 percent).¹⁶

2. Civic space in the Philippines

2.1) Freedom of association

Freedom of association is legally guaranteed through Article III, Section 8 of the 1987 Philippine Constitution: “the right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.” As mentioned in Article II, Section 23 and Article XIII, Sections 15 to 16, the constitution also recognizes civil society associations and organizations as significant actors in governance and public service delivery in the country.¹⁷ Article 22 of the ICCPR, to which the Philippines is a party, guarantees freedom of association for everyone “including the right to form and join trade unions” for the protection of one’s interests. Nevertheless, practical barriers remain, which in turn prevent the full realization of the right to association.

One example of a practical barrier involves CSO registration with the SEC. Despite clear guidelines regarding CSO registration, the process remains unduly burdensome and is subject to overly strict bureaucratic controls. Although all documentation required for non-stock corporation registrations must be manually submitted to the SEC, the SEC only maintains eight field offices outside the capital (Metro Manila) which leaves a significant number of CSOs across the Philippines’ 18 administrative regions without direct access to the SEC.

In some localities, on the other hand, CSOs have been experiencing layers of either unwarranted or extraneous barriers to accreditation. These may be by means of refusal or reluctance of LGUs to accredit CSOs which are deemed critical of local government policies and the actions of local officials. They may even be in the form of additional requirements such as business permits and other unnecessary documents which delay the accreditation process. Such arbitrary limitations and prescriptions undermine the exercise of the right to freedom of

¹⁶ Local Government Academy. (2012). *Diversity and Discovery: Mapping Civil Society Organizations in the Philippines*. Manila: Local Government Academy.

¹⁷ Asian Development Bank. (2013). Civil society briefs – Philippines. Retrieved from <https://www.adb.org/sites/default/files/publication/30174/csb-phi.pdf>.

association and undermine the government's constitutional commitments to support and encourage CSO activities.

Trade unions are independent, but a union must first represent at least 20% of a given bargaining unit in order to register. Large firms are increasingly using contract workers who are prohibited from joining unions. Less than 10 percent of the Philippine labor force is unionized. Collective bargaining is common among unionized workers and strikes may be called, but unions must first provide notice and obtain majority approval from their members. Harassment and violence against labor leaders has also been part of the broader trend of extrajudicial killings over the past ten years.¹⁸

Even with the Constitution and the Philippines' international legal commitments, CIVICUS and Karapatan have concluded that the Philippine government has failed to take adequate measures to remove unwarranted bureaucratic and policy restrictions on CSO registration and operational procedures.¹⁹ Furthermore, the recently released Global Rights Index compiled by the International Trade Union Confederation (ITUC) has also ranked the Philippines among the ten worst countries in which to be a worker, citing particular dangers under which union leaders operate—violence, intimidation, and murder, as well as discrimination and dismissals. This is heavily supported by documented instances of violence against striking farmers; harassment and intimidation of workers forming a union at a Japanese-owned company in Cavite; and the suspension and dismissal of union members who were attempting to regularize casual employees at a five-star hotel in Manila.²⁰

With such an active CSO/NGO community composed of thousands of individual organizations, the question of CSO/NGO regulation arose. Regulations and monitoring activities have mainly been carried out by CSOs/NGOs themselves, and thus CSOs/NGOs remained autonomous. CODE-NGO enacted a Code of Conduct for NGOs, while the PCNC, an institution formed by the country's six largest NGOs, constructed a system for accrediting and certifying NGOs as trustworthy recipients of donations.

The registration system of CSOs/NGOs with the government does not pose a threat to CSO/NGO autonomy. An estimated 40 percent of CSOs/NGOs are registered with the SEC.²¹ While formal institutions regulating CSOs/NGOs were crafted with respect to CSO/NGO autonomy, other threats to sectoral autonomy have been identified. Problems with funding hamper the efforts of CSOs/NGOs. As nonprofit institutions, CSOs/NGOs are, almost by nature, lacking in optimal

¹⁸ Freedom House. (2017). Philippines – Country report. Retrieved from <https://freedomhouse.org/report/freedom-world/2017/philippines>.

¹⁹ CIVICUS & Karapatan. (2016). Joint Submission to the UN Universal Periodic Review: 27th Session of the UPR Working Group. Retrieved from http://www.civicus.org/images/CIVICUS_Karapatan%20UPR%20Submission.pdf.

²⁰ Puhm, C. (2017, June 23). PH Is 'One of the 10 Worst Countries in the World for Working People.' *Esquire*. Retrieved from <http://www.esquiremag.ph/politics/report-ph-is-one-of-the-ten-worst-countries-in-the-world-for-workers-a00201-20170623>.

²¹ Asian Development Bank. (2013). Civil society briefs – Philippines. Retrieved from <https://www.adb.org/sites/default/files/publication/30174/csb-phi.pdf>.

financial security. With disinterest and skepticism from the public (in one survey, 36 percent of respondents saw CSOs/NGOs as having corrupt elements), donations become more difficult to come by. This gives greater leverage to donors from the private sector, government, and international organizations in influencing, or even directing, CSO/NGO behavior.²²

State power has informally encroached upon the CSO/NGO community. Certain politicians have allegedly employed and even established bogus and dubious CSOs/NGOs for their own purposes, some of them illicit, e.g. money laundering. The biggest scandal in recent history was the Priority Development Assistance Fund scam of 2013, where numerous bogus CSOs/NGOs were allegedly fabricated by a number of senators and their conspirator, Janet Lim-Napoles, to launder “pork barrel” funds. In 2004, the Masaganang Ani Para sa Magsasaka Foundation Inc. (MAMFI) organization was accused of involvement in the infamous fertilizer fund scam, where PHP 723 million (USD \$13.9 million) worth of funding for a farmer assistance program was used in the campaign of former President Gloria Macapagal-Arroyo.²³

The disrepute of a number of CSOs/NGOs, especially in light of national-level scandals, has led to state regulation of CSOs/NGOs. In 2014, the Commission on Audit (COA) issued more rigorous guidelines for CSO/NGO accreditation and transparency. These include the imposition of more requirements, the expansion of agencies with accreditation powers to include the Department of Interior and Local Government (DILG), and a new obligation for CSOs/NGOs to publish records of how their funds are used online.²⁴

While organizing in the Philippines continues to be free and legal, CSO/NGO behavior is vulnerable to constraints and pressures as its legitimacy and importance vis-a-vis the role of the state and public opinion increases. The effects of bogus CSOs/NGOs and the new guidelines do not seem to have significantly impacted the “mainstream” CSOs/NGOs like those under CODE-NGO and those certified by the PCNC, but a balance between autonomy and regulation needs to be actively upheld.

2.2) Freedom of assembly

Citizen activism and public discussion are robust, and demonstrations are common in the Philippines. However, despite legal guarantees, the authorities continue to subvert the right to freedom of assembly through a combination of legislative restrictions and the use of excessive

²² Jimenez-David, R. (2012, November 18). Thoughts on NGOs/CSOs. *Inquirer.net*. Retrieved from <http://opinion.inquirer.net/41022/thoughts-on-ngoscsos>.

²³ Marcelo, E. (2017, April 22). Napoles-owned NGO tagged in fertilizer scam. *The Philippine Star*. Retrieved from <http://www.philstar.com/headlines/2017/04/22/1692808/napoles-owned-ngo-tagged-fertilizer-scam>.

²⁴ Macaraig, A. (2014, March 17). After ‘pork’ scam, COA to issue new rules for NGOs. *Rappler*. Retrieved June 30, 2017 from <http://www.rappler.com/nation/53208-coa-new-guidelines-ngos-after-pdaf-scam>.

force. In particular, permits are required for rallies and the police sometimes use violence to disperse anti-government protests in different parts of the country.²⁵

Article III, Section 4 of the 1987 Philippine Constitution guarantees the right to freedom of assembly, stating that “no law shall be passed abridging the right of the people peaceably to assemble.” In international law, the freedom of peaceful assembly is enshrined in Article 21 of the ICCPR.

One manifestation of the freedom of assembly would be citizen activism. Activism is a frequent phenomenon in the Philippines. There are a plethora of groups that usually take part in assemblies and a majority of them promote human rights and social welfare while also campaigning against crimes such as extrajudicial killings and bureaucratic corruption and other social issues, both domestic and international.

By law, permits are needed in order to hold rallies in the Philippines. The application guidelines for obtaining permission, along with the responsibilities of the protestors, are cited in Batas Pambansa Bilang 880, also known as “The Public Assembly Act of 1985.” In general, the Philippine Constitution gives enough space for public assembly and it mandates the government to allow people to peacefully assemble and protest provided that they have acquired the appropriate permit to do so.

Some activists argue that the law’s stipulations are used as an excuse for the state to prevent and disperse rallies.²⁶ Permits can be denied on a number of vague grounds, including endangering public safety, public convenience, public morals, and/or public health under Section 6(a). An assembly held without prior written approval is prohibited under Section 13(a), and Section 12 allows the authorities to disperse an assembly which was held without a permit. Additionally, penalties ranging from one month and one day to six months can be imposed on organizers who convene without prior written authorization or in public spaces other than those approved by the authorities.²⁷

Due to this, former congressman Satur Ocampo, along with some other lawmakers, filed House Bill No. 1555. This bill essentially tries to counter the requirement of a permit when groups assemble and rally, and it also urges the government to redress grievances. At present, the bill is in the archives and has yet to be re-filed 2017. There has been another attempt to repeal Batas Pambansa Bilang 880 that was initiated by Bayan Muna members Neri Colmenares and Carlos Isagani Zarate. They filed House Bill No. 3668 together, which essentially tries to achieve the objectives of House Bill No. 1555.²⁸

²⁵ CIVICUS & Karapatan. (2016). Joint Submission to the UN Universal Periodic Review: 27th Session of the UPR Working Group. Retrieved from

http://www.civicus.org/images/CIVICUS_Karapatan%20UPR%20Submission.pdf.

²⁶ Laserna, M. (2010, July 8). Freedom of Assembly. *Atty. Manuel J. Laserna Jr.* [blog]. Retrieved from

<http://attylaserna.blogspot.com/2010/07/freedom-of-assembly.html>.

²⁷ CIVICUS & Karapatan. (2016). Joint Submission to the UN Universal Periodic Review: 27th Session of the UPR Working Group. Retrieved from

http://www.civicus.org/images/CIVICUS_Karapatan%20UPR%20Submission.pdf.

²⁸ Repeal of Public Assembly Act up to Congress. (2014). *The Manila Times*. Retrieved from

<http://www.manilatimes.net/repeal-of-public-assembly-act-up-to-congress/95798/>.

During the years after the bill was put on hold, protesters have been denied permits by regional courts. For instance, in 2011, Bagong Alyansang Makabayan was denied permission to hold a rally at Batasang Pambansa by the Quezon City Court. The protest was the group's attempt to protest against former President Benigno Aquino III during his State of the Nation Address.²⁹

Over the years, CSOs have also been mirroring the sentiments of Ocampo and Colmenares. These groups have been complaining about violent dispersals, while there are times when the protesters themselves instigate violence by provoking security forces. With the exception of the first year of President Duterte, antigovernment rallies are usually dispersed. With the uptick in nationwide rallies following the controversial burial of the late President Marcos at the Cemetery of Heroes, Duterte assured the public that protesters didn't need permits to stage rallies.

Another event where the President gave leeway for protesters was the mobilization of KADAMAY, an urban poor group. On March 8th 2017, KADAMAY and other supporting groups marched towards Bulacan to settle within unoccupied government housing units. They claimed that the Philippine government had continuously ignored the plight of the poor.³⁰ As a result, the President did not just give KADAMAY room for protest; he also gave them the housing units under the condition that they adhere to the housing application process. KADAMAY has continuously bargained for common needs such as water, power, free housing, and employment assistance since it occupied the housing units.³¹ Although these accounts demonstrate that the current president is providing ample space for freedom of assembly, these actions are counterintuitive to his threats against civil society activists and journalists.

A rule by the Commission of Elections (COMELEC) during the 2016 elections required the submission of campaign rally expenses to COMELEC within seven days of the expenditure. It also came with a rule that the public rally notice must be submitted three working days prior to the event. This shortened the time period stipulated by the Omnibus Election Code of the Philippines. Section 88 of the code requires notification seven working days prior to the event.

While Section 9 of the Public Assembly Act of 1985 forbids law enforcement agencies from unwarrantedly interfering in public assemblies, police officers are allowed to disperse a peaceful assembly in the event that it turns violent under Section 11. In practice, however, there have been several reported cases of excessive use of force by law enforcement agencies when dispersing peaceful assemblies. On September 21st 2015, a protest in the Iloilo region that aimed to bring attention to the 43rd anniversary of the Declaration of Martial Law was violently dispersed by

²⁹ QC court denies Bayan request to stage rally at Batsan. (2011). *Philippine Daily Inquirer*. Retrieved from <http://newsinfo.inquirer.net/29431/qc-court-denies-bayan-request-to-stage-rally-at-batasan>.

³⁰ International Alliance of Inhabitants. (2017). Urban poor Filipinos make history: #OccupyBulacan 6.000 vacant houses. Retrieved from http://www.habitants.org/news/inhabitants_of_asia/urban_poor_filipinos_make_history_occupybulacan_6.000_vacant_houses.

³¹ Ilas, J. (2017, April 4). Duterte to soldiers, policemen: Give up housing in Pandi to Kadamay. Retrieved from <http://cnnphilippines.com/news/2017/04/04/duterte-afp-kadamay-housing.html>.

hundreds of anti-riot police with truncheons and shields. According to police statements, the protest was dispersed due to the absence of a prior written permit.³²

On April 1st 2016, officers from the Philippine National Police (PNP) forcibly dispersed farmers and protesters at a large demonstration in Kidapawan City, leaving two protesters dead, four critically wounded, and many others less seriously injured. This drew significant media attention and prompted a full investigation by the Commission on Human Rights (CHR). PNP officers fired on the drought-affected farmers and protesters who had gathered to demand food assistance from the local government. The CHR investigation found that the involved PNP authorities had abused their authority and used unnecessary force to disperse the protest. As of June 2017, no disciplinary action had been taken and no charges were filed as the case was still under preliminary investigation by the PNP.³³

Another example of a violent dispersal took place during an anti-US protest outside the American Embassy. A policeman got into a van and deliberately rammed the vehicle into protesters. Three student activists were taken to the hospital because of sustained injuries.³⁴

2.3) Freedom of expression

Article III, Section 4 of the 1987 Philippine Constitution guarantees freedom of speech, freedom of expression, and freedom of the press:

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.

Varieties of Democracy's Freedom of Expression Index rates 2016 as the Philippines' worst year for freedom of expression.³⁵ The Philippines received a relatively low ranking compared to the rest of ASEAN. As of 2016, the Philippines had the second-highest rating for freedom of expression in ASEAN and the fourth-highest in ASEAN+3. The country's 2016 score of 0.73—on a scale of 0 to 1—places it below South Korea (0.80) and above Myanmar (0.57) in ASEAN+3. When compared to its 2015 performance, however, the country's rating dropped by 0.09; the

³² CIVICUS & Karapatan. (2016). Joint Submission to the UN Universal Periodic Review: 27th Session of the UPR Working Group. Retrieved from

http://www.civicus.org/images/CIVICUS_Karapatan%20UPR%20Submission.pdf.

³³ US Department of State. (2016). Philippines 2016 Human Rights Report. Retrieved from

<https://www.state.gov/documents/organization/265578.pdf>.

³⁴ Associated Press. (2016). Police van rams protesters as violence erupts in Philippines at anti-US rally outside American Embassy in Manila. *The Telegraph*. Retrieved from <http://www.telegraph.co.uk/news/2016/10/19/philippine-police-van-rams-protesters-as-violence-erupts-at-anti/>.

³⁵ Varieties of Democracy. (2016d). Freedom of expression index (variable graph). Retrieved from <https://www.v-dem.net/en/analysis/VariableGraph/> [accessed July 4th 2017].

country was the highest-rated for freedom of expression in ASEAN and the second-highest in ASEAN+3 in 2015, second only to Japan.³⁶

2.4) Freedom of information

The lack of an effective and comprehensive Freedom of Information (FOI) law in the Philippines continues to hamper efforts toward government transparency and the timely dissemination of information. Since 1986, which marked the Republic's transition to a democratic regime, 40 FOI bills have been written in both legislative chambers of the Philippines. However, none of the bills has succeeded in passing all of the necessary hurdles to become law.

On May 6th 2010, then-Senator and former President Benigno Aquino III announced during his campaign that an FOI bill would be a priority during his administration. After he was elected president, Aquino reiterated his intentions to make FOI a priority. 24 bills were then filed in Congress during the month of July 2010. However, the Legislative-Executive Development Advisory Council (LEDAC) excluded the FOI bill from its list of priority bills on February 28th 2011. The President also failed to mention the bill in his subsequent State of the Nation Address. Afterwards, the FOI bill continued to be contested in Congress as the second Aquino presidency progressed. On March 3rd 2014, the House of Representatives canceled their technical working group on the FOI bill.³⁷

As for the present administration, the landmark Executive Order (EO) No. 2, signed by President Duterte in 2016, mandates freedom of information throughout the executive branch. It has had mixed results, with some agencies responding better and more comprehensively. The Philippine Statistics Authority (PSA) has had outstanding responsiveness, while the PNP's performance was less than satisfactory. An estimated half of obliged agencies have not yet given out their FOI manuals.³⁸

The passage of EO No. 2 is an important part of the country's open government initiative. This is because when there is transparency, citizens can clearly see whether or not the government is indeed operating in the interest of the entire nation. Unfortunately, the Palace also released 166 exemptions to the E.O.³⁹ which include the following:

- "Information covered by executive privilege;
- Privileged information relating to national security, defense or international relations;
- Information concerning law enforcement and protection of public and personal safety;

³⁶ The 2016 index does not include Singapore and Brunei Darussalam. Singapore's latest score was taken in 2012 (0.37), which is still far below the Philippines' scores in 2015 and 2016. There is no data for Brunei Darussalam.

³⁷ Center for Media Freedom and Responsibility. (n.d.). Freedom of Information. Retrieved from <http://cmfr-phil.org/freedom-of-information/>.

³⁸ Rey, A. (2017, March 17). Gov't officials, groups urge passage of FOI law. *Rappler*. Retrieved from <http://www.rappler.com/nation/164484-pass-freedom-information-law-foi>.

³⁹ Salaverria, L. (2016). Palace to clarify 166 exemptions to FOI order. *Inquirer.net*. Retrieved from <http://newsinfo.inquirer.net/811266/palace-to-clarify-166-exemptions-to-foi-order>.

- Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims or crimes, or the accused;
- Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers;
- Prejudicial premature disclosure;
- Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged;
- Matters considered confidential under banking and finance laws, and their amendatory laws; and
- Other exceptions to the right to information under laws, jurisprudence, rules and regulations.⁴⁰

2.5) Freedom of the press

In general, Philippine media outlets enjoy a relative amount of autonomy and have access to diverse avenues conducive to expressing independent views. National airwaves are dominated by two primary broadcasting companies, ABS-CBN and GMA-7, with channels such as TV5 and CNN Philippines also existing in conjunction with other state-owned, private, and community channels.

National broadsheets, as well as local papers, are widely circulated across the country. Independent media organizations, journalists, and CSO and NGO representatives as well as ordinary citizens can express their thoughts on mainstream media, social media, and internet platforms freely without fear of censorship from the government.

Although freedom of expression is constitutionally guaranteed, certain laws limit this freedom in the Philippines. The Cybercrime Protection Act of 2012 has a wide-ranging anti-libel provision that has the potential to hinder freedom of expression on Philippine cyberspace, particularly if the content is controversial. Section 19 of the same law also gives the Department of Justice discretion and punitive ability over information shared and transmitted on cyberspace that is found to be directly against its provisions.

Mainstream networks are also subject to license renewal and approval under the Philippine Congress. Duterte previously threatened ABS-CBN stating that he would ask Congress to block the renewal of their franchise due to the alleged inability of the media conglomerate to address unaired campaign videos despite ABS-CBN's receipt of payment.⁴¹

⁴⁰ Alvarez, K. (2016, November 24). Exceptions down from 166 to 9 as FOI order takes effect Friday. *GMA News*. Retrieved from <http://www.gmanetwork.com/news/news/nation/590040/exceptions-down-from-166-to-9-as-foi-order-takes-effect-friday/story/>.

⁴¹ Duterte says will block ABS-CBN franchise renewal. (2017, April 27). *ABS-CBN*. Retrieved from <http://news.abs-cbn.com/news/04/27/17/duterte-says-will-block-abs-cbn-franchise-renewal>.

Despite the country's vibrant press network, journalism remains a dangerous profession in the Philippines. Since 1992, the Philippines has become the world's third deadliest country for journalists. At least 78 journalists—an average of 3.12 journalists per year—have been killed since 1992 with confirmed political or censorship motives. The only other countries which are deadlier for journalists are Iraq and Syria.⁴²

The Maguindanao massacre was an infamous case of violence against journalists. In November 2009, 57 people, mainly journalists and political supporters on their way to file the Certificate of Candidacy for would-be governor Esmel Mangudadatu, were gunned down in Maguindanao. The Committee to Protect Journalists (CPJ) has named the massacre the “single deadliest event” for journalists.⁴³ Most recently, on December 19th and 20th 2016, journalist Larry Que was shot and killed after writing an article critical of local officials.⁴⁴

2.6) Right to participation

The Philippine Constitution assures the role of Filipino citizens in creating groups that uphold the interests of the general populace through Article 13, Section 15-16. The Constitution qualifies the rights of People's Organizations (POs) and NGOs as “the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.”

The Local Government Code (LGC) of 1991 considers CSOs as major partners and stakeholders in Philippine local development. Certain features of the LGC emphasize relations between local government units (LGUs) and CSOs, with LGUs being mandated to promote the establishment and operation of CSOs (Section 34); linkages such as joint ventures in basic service delivery, capability building, and livelihood projects (Section 35); as well as financial or other forms of assistance to such CSOs (Section 36).

More importantly, the LGC also establishes a decentralized governance policy infrastructure composed of four local special bodies (LSBs). These bodies are mandated to have representation of CSOs to ensure citizen participation in the planning process of each LGU as well as in the implementation and monitoring of programs. The LGC also specifically mandates the creation or organization of the following LSBs by each LGU – the Local Development Council (LDC), Local Peace and Order Councils (POC), Local Health Board (LHB), and Local School Board (LSB).

⁴² Committee to Protect Journalists. (n.d.). Killed since 1992. Retrieved from <https://cpj.org/killed/>.

⁴³ Papa, A. (2009, November 26). Maguindanao massacre worst-ever for journalists. *Inquirer.net*. Retrieved from <https://web.archive.org/web/20091129120848/http://newsinfo.inquirer.net/breakingnews/nation/view/20091126-238554/Maguindanao-massacre-worst-ever-for-journalists>.

⁴⁴ Kam, V., & Roberts, E. (2016, December 23). Publisher slain in Philippines after criticizing officials over drugs. *CNN*. Retrieved from <http://edition.cnn.com/2016/12/22/asia/journalist-killed-philippines/index.html>.

The administration of former President Benigno Aquino III paved the way for Bottom-up Budgeting (BUB). The budgeting program is designed to encourage participation, empowerment, and cooperation at the grassroots level. Community consultations with POs and NGOs are conducted during local government budgeting activities. Simply put, the local citizens had the opportunity to let their interests be heard and partake in the creation of proposals for government projects. Under the administration of current President Duterte, this consultative tool was halted.

Listed below are concrete examples of programs born out of dialogue between citizens and the government, at both national and local levels, during the last five years:

- The Pantawid Pamilyang Pilipino Program is one example at the national level. The program provides cash transfers to families that are stuck in poverty in exchange for commitments in the vital areas of education and health.⁴⁵
- The Budget Partnership Agreement – the Department of Budget Management (DBM) issued National Budget Circular No. 536 in 2012. This guideline creates a platform for CSOs to partake in budget proposals.⁴⁶
- Seal of Good Local Governance, Department of the Interior and Local Government.
- The Kapit-Bisig Laban sa Kahirapan (KALAHI)-Comprehensive and Integrated Delivery of Social Services (CIDSS) Project addresses poverty reduction and post-disaster rehabilitation on a municipal level. It began in 2014.⁴⁷
- The Bantay Lansangan program monitored Department of Public Works and Highways (DPWH) procurement processes.⁴⁸
- Participatory Audit, Commission on Audit

3. Policy recommendations

The Philippine government is legally required to create conditions - economic, political, social, cultural, and legal - that actively support the ability and capacity of individuals and/or associations to engage in civic activities. At a minimum, the following conditions should be guaranteed: (1) freedom of association, (2) freedom of peaceful assembly, (3) freedom of expression, and (4) the right to participation. The following specific recommendations are made:

⁴⁵ Cruz, E. (2016). PNoy legacy: Turning dreams into achievements. Retrieved from <http://www.philstar.com/opinion/2016/06/26/1596726/pnoy-legacy-turning-dreams-achievements>.

⁴⁶ Magno, F. (2015). Public Participation and Fiscal Transparency in the Philippines. Retrieved from <http://www.fiscaltransparency.net/resourcesfiles/files/20150706115.pdf>.

⁴⁷ Ibid.

⁴⁸ Ibid.

3.1) Freedom of association

- Institutionalize an independent body that can offer capacity building as well as technical support to CSOs
- Adopt a strategic and standardized regulatory policy for CSOs
- Develop a systematic mechanism among CSOs that will promote transparency and accountability in their operations
- Take measures to stop the harassment and vilification of CSOs, especially in conflict areas

3.2) Freedom of assembly

- Adopt best practices or international standards for the freedom of peaceful assembly should be adopted and call for notification rather than explicit permission to assemble
- Immediately and impartially investigate all instances of excessive force committed by security forces while monitoring protests
- Conduct human rights training among police officers to effectively guide them in the monitoring of demonstrations and how to appropriately respond
- Provide judicial review and effective remedy, along with just compensation, especially in cases of unlawful denial of the right to assemble by state authorities

3.3) Freedom of expression

- Adopt a comprehensive FOI law that allows access to public documents
- Build community-based centers that provide training and materials for grassroots groups on the FOI
- Develop clear guidelines that include the rights and obligations of individuals and/or organizations in accessing public documents
- Adopt a framework for the protection of journalists and human rights defenders from persecution, intimidation, and harassment

3.4) Right to participation

- Organize trainings, Focused Group Discussions, and Round Table Discussions which aim to increase public literacy on the planning and budget processes of the government.
- Promote localized and demand-driven decision making through mobilization of grassroots organizations and communities in planning, implementing, and managing development projects.
- Ensure that all local development plans are effectively integrated into national development plans.

References

- ABS-CBN. (2017, April 27) . Duterte says will block ABS-CBN franchise renewal. ABS-CBN. Retrieved from <http://news.abs-cbn.com/news/04/27/17/duterte-says-will-block-abs-cbn-franchise-renewal>.
- Agence France-Presse. (2016, June 1). Duterte endorses killing corrupt journalists. Inquirer.net. Retrieved July 4, 2017 from <http://newsinfo.inquirer.net/788543/duterte-endorses-killing-corrupt-journalists>.
- Alvarez, K. (2016, November 24). Exceptions down from 166 to 9 as FOI order takes effect Friday. GMA News. Retrieved from <http://www.gmanetwork.com/news/news/nation/590040/exceptions-down-from-166-to-9-as-foi-order-takes-effect-friday/story/>.
- American Civil Liberties Union. (2014). FAQ: The Covenant on Civil & Political Rights (ICCPR). Retrieved from <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr>.
- Asian Development Bank. (2013). Civil society briefs – Philippines. Retrieved June 29, 2017 from <https://www.adb.org/sites/default/files/publication/30174/csb-phi.pdf>.
- Associated Press. (2016). Police van rams protesters as violence erupts in Philippines at anti-US rally outside American Embassy in Manila. Retrieved from <http://www.telegraph.co.uk/news/2016/10/19/philippine-police-van-rams-protesters-as-violence-erupts-at-anti/>.
- Bacungan, V. J. (2017, February 2). Report: Philippines on downward trend in upholding freedom due to war on drugs. CNN Philippines. Retrieved June 30, 2017 from <http://cnnphilippines.com/news/2017/02/02/freedom-house-philippines-drug-war-duterte.html>.
- Baez-Camargo, C. (2016). Participatory monitoring to improve performance of government services and promote citizen empowerment: A success story from the Philippines. Retrieved June 30, 2017 from Integrity Action: https://integrityaction.org/sites/default/files/casestudies_files/IAC_038_Philippines_Case_Study_r1_SP.pdf
- Bueza, M. (2015). Comelec proposal: Submit campaign rally expenses within 7 days. Retrieved from <http://www.rappler.com/nation/politics/elections/2016/101432-comelec-omnibus-rules-campaign-finance>.
- Bueza, M. (2017, April 23). In numbers: The Philippines’ ‘war on drugs’. Rappler. Retrieved July 3, 2017 from <http://www.rappler.com/newsbreak/iq/145814-numbers-statistics-philippines-war-drugs>.
- Carino, L. (2002). Between the State and the Market: The Nonprofit Sector and Civil Society in the Philippines. Manila: NJP Printmakers.
- Caucus of Development NGO Networks. (2011). Civil Society Index: Philippines, An Assessment of Philippine Civil Society. Quezon City: CODE-NGO.
- Center for Media Freedom and Responsibility. (n.d.). Freedom of Information. Retrieved July 3, 2017 from <http://cmfr-phil.org/freedom-of-information/>.
- Chan Robles Virtual Law Library. (n.d.). Philippine Laws, Statutes and Codes – Chan Robles Virtual Law Library. Retrieved from www.chanrobles.com/bataspambansanilang880.htm#.WVNFsGiGNPb.
- CIVICUS & Karapatan (2016). Joint Submission to the UN Universal Periodic Review: 27th Session of the UPR Working Group. Retrieved from http://www.civicus.org/images/CIVICUS_Karapatan%20UPR%20Submission.pdf.
- Committee to Protect Journalists. (n.d.). Killed since 1992. Retrieved July 3, 2017 from <https://cpj.org/killed/>.
- Cruz, E. (2016). PNoy legacy: Turning dreams into achievements. Retrieved from <http://www.philstar.com/opinion/2016/06/26/1596726/pnoy-legacy-turning-dreams-achievements>.

- De Guzman and Remitio. (2017). Duterte to soldiers, policemen: Give up housing in Pandi to Kadamay. Retrieved from <http://cnnphilippines.com/news/2017/04/04/duterte-afp-kadamay-housing.html>.
- Freedom House. (1999). Philippines – Country report. Retrieved June 27, 2017 from <https://freedomhouse.org/report/freedom-world/1999/philippines>.
- Freedom House. (2006). Philippines – Country report. Retrieved June 27, 2017 from <https://freedomhouse.org/report/freedom-world/2006/philippines>.
- Freedom House. (2010). Philippines – Country report. Retrieved June 27, 2017 from <https://freedomhouse.org/report/freedom-world/2010/philippines>.
- Freedom House. (2017). Philippines – Country report. Retrieved June 27, 2017 from <https://freedomhouse.org/report/freedom-world/2017/philippines>.
- International Alliance of Inhabitants. (2017). Urban poor Filipinos make history: #OccupyBulacan 6,000 vacant houses. Retrieved from http://www.habitants.org/news/inhabitants_of_asia/urban_poor_filipinos_make_history_occupy_bulacan_6.000_vacant_houses.
- Jimenez-David, R. (2012, November 18). Thoughts on NGOs/CSOs. Inquirer.net. Retrieved June 30, 2017 from <http://opinion.inquirer.net/41022/thoughts-on-ngoscsos>.
- Kadamay. (2016). On the SONA: Urban poor groups welcome ‘no demolitions,’ root cause of poverty still to be addressed. Retrieved from <http://kadamay-natl.blogspot.com/>.
- Kam, V., & Roberts, E. (2016, December 23). Publisher slain in Philippines after criticizing officials over drugs. CNN. Retrieved July 4, 2017 from <http://edition.cnn.com/2016/12/22/asia/journalist-killed-philippines/index.html>.
- Laserna, M. (2010). Freedom of Assembly. Retrieved from <http://attylaserna.blogspot.com/2010/07/freedom-of-assembly.html>.
- Local Government Academy (2012). Diversity and Discovery: Mapping Civil Society Organizations in the Philippines. Manila: Local Government Academy.
- Macaraig, A. (2014, March 17). After ‘pork’ scam, COA to issue new rules for NGOs. Rappler. Retrieved June 30, 2017 from <http://www.rappler.com/nation/53208-coa-new-guidelines-ngos-after-pdaf-scam>.
- Macasaet, S. D., & Hartay, E. (2011). Achieving accountability through public and self-regulation initiatives: The Philippines – NGO certification and donee institution status. Retrieved June 28, 2017 from The International Center for Not-for-Profit Law: <http://www.icnl.org/programs/global/gf2011/materials/NGO%20Certification%20in%20the%20Philippines.pdf>.
- Magno, F. (2015). Public Participation and Fiscal Transparency in the Philippines. Retrieved from <http://www.fiscaltransparency.net/resourcesfiles/files/20150706115.pdf>.
- Manasan, R. (2016). Assessment of the Bottom-up Budgeting process for FY 2016. Retrieved June 30, 2017 from OpenBUB: <http://openbub.gov.ph/research-publication>.
- Marcelo, E. (2017, April 22). Naples-owned NGO tagged in fertilizer scam. The Philippine Star. Retrieved June 30, 2017 from <http://www.philstar.com/headlines/2017/04/22/1692808/naples-owned-ngo-tagged-fertilizer-scam>.
- NC BUY. (2004). Philippines Human Rights Report. Retrieved from <http://www.ncbuy.com/reference/country/humanrights.html?code=rp&sec=2b>.
- Office of the United Nations High Commissioner for Human Rights (2014). Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society. Retrieved from http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSystem_Guide.pdf.

- Ong, T. (2013). Bottom-Up- Budgeting: Experience at the grassroots?. Retrieved from <https://www.rappler.com/move-ph/issues/budget-watch/34734-bub-experience-grassroots>.
- Pante, R. (n.d.). Participatory Governance in the Philippines: Empowering Selected Cities in Metro Manila through Community Involvement. Retrieved from http://www.journals-of-science.com/uploads/6/8/9/3/6893524/ronaldo_s._pante_for_publication_july_30_2014.pdf.
- Papa, A. (2009, November 26). Maguindanao massacre worst-ever for journalists. Inquirer.net. Retrieved July 3, 2017 from <https://web.archive.org/web/20091129120848/http://newsinfo.inquirer.net/breakingnews/nation/view/20091126-238554/Maguindanao-massacre-worst-ever-for-journalists>.
- Pasion, P. (2016, July 24). Duterte signs order on Freedom of Information. Rappler. Retrieved July 3, 2017 from <http://www.rappler.com/nation/140718-duterte-signs-executive-order-freedom-of-information>.
- Philippine Daily Inquirer. (2011). QC court denies Bayan request to stage rally at Batsan. Retrieved from <http://newsinfo.inquirer.net/29431/qc-court-denies-bayan-request-to-stage-rally-at-batasan>.
- Puhm, C. (2017, June 23). PH Is ‘One of the 10 Worst Countries in the World for Working People.’ Esquire. Retrieved June 30, 2017 from <http://www.esquiremag.ph/politics/report-ph-is-one-of-the-ten-worst-countries-in-the-world-for-workers-a00201-20170623>.
- Rappler. (2016). 1 killed, 13 wounded in farmers’ protest in Kidapawan. Retrieved from <http://www.rappler.com/nation/127852-kidapawan-farmers-protest-dispersal>.
- Rey, A. (2017, March 17). Gov’t officials, groups urge passage of FOI law. Rappler. Retrieved July 3, 2017 from <http://www.rappler.com/nation/164484-pass-freedom-information-law-foi>.
- Salaverria, L. (2016). Palace to clarify 166 exemptions to FOI order. Retrieved from <http://newsinfo.inquirer.net/811266/palace-to-clarify-166-exemptions-to-foi-order>.
- Serrano, I. (1994). Civil Society in the Asia Pacific Region. Manila: Civicus.
- The Hunger Project. (n.d.). Participatory Local Democracy. Retrieved from <https://localdemocracy.net/countries/asia-pacific/philippines/>.
- The Manila Times. (2014). Repeal of Public Assembly Act up to Congress. Retrieved from <http://www.manilatimes.net/repeal-of-public-assembly-act-up-to-congress/95798/>.
- United Nations. (n.d.). Equal participation in political and public affairs. Retrieved from <http://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx>.
- United Nations Special Rapporteur (2016). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Retrieved from http://www.un.org/ga/search/view_doc.asp?symbol=A/71/385&referer=/english/&Lang=E.
- United States Department of State (2016). Philippines 2016 Human Rights Report. Retrieved from <https://www.state.gov/documents/organization/265578.pdf>.
- Varieties of Democracy. (2016a). Civil liberties (variable graph) . Retrieved June 27, 2017 from <https://www.v-dem.net/en/analysis/VariableGraph/>.
- Varieties of Democracy. (2016b). Civil society participation (variable graph) . Retrieved June 27, 2017 from <https://www.v-dem.net/en/analysis/VariableGraph/>.
- Varieties of Democracy. (2016c). CSO repression (variable graph). Retrieved June 27, 2017 from <https://www.v-dem.net/en/analysis/VariableGraph/>.
- Varieties of Democracy. (2016d). Freedom of expression index (variable graph). Retrieved July 4, 2017 from <https://www.v-dem.net/en/analysis/VariableGraph/>.

Civic Space in Myanmar

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1. Introduction

After decades of authoritarian rule, Myanmar saw its first general election in 2010. Former general Thein Sein became the country's first president following a controversial election in which the major opposition party, the National League for Democracy (NLD), was not allowed to participate. Many people believed that a liberalization effort was initiated by President Thein Sein when most political prisoners, including famous student leaders, were released and many demonstrations and protests were seen in various places in the country. In the 2012 by-election, the NLD decided to run and won a majority of the constituencies. Again in the 2015 general election, the NLD won a landslide victory and was able to form a popular government by a rather free and fair election. Many laws were introduced to guarantee personal freedom, and some repressive laws such as Section 5(J) were abolished. However, there are many challenges ahead to safeguarding civic space in the country, which is in a vulnerable position because of the 2008 constitution and restrictions on the competence of the popular government.

2. Civic space in Myanmar

2.1) Freedom of association

The 2008 constitution does allow freedom of association and assembly, on the condition that the exercise of these laws does not contravene existing security laws. The existing Association Registration Law (ARL) demands that applicants meet many requirements: the time period for the review of registration at the union level lasts 90 days; the applicant is not given the right to appeal denial of the registration; the permission of the association has to be renewed every five years; if the applicant wants to change a township-level association to region- or state-level, (s)he

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has to resubmit an application to the appropriate registration committee; and the association is required to submit annual financial and activities reports to the committee. These requirements are imposed by the government to take control of free and independent associations.

There have been instances where workers were prevented from forming and registering unions by authorities through different means. Daw Mar Mar Oo (a former member of the 88 Generation Peace and Open Society) said that workers in industries face many difficulties in forming trade unions. For instance, trade union leaders have been fired by industry owners and given three months' salary, according to the labor law, despite the fact that worker leaders who were union organizers did not make any mistakes in their work. She also said that trade unions could not be established in factories in Yangon until now. Salai Uk Nunbawi, who works for the Chin Youth Organization, said that so far, faith-based organizations (Christian) in Chin State have been prevented from registering religious organizations. The Yangon School of Political Science (YSPS) encountered unreasonable delays while trying to register as an organization as the government stated that it must drop 'school' from the name and replace it with 'organization' or 'association' in order to register. It took nearly one year to receive an association registration card as the Myanmar Political Science Association.

Even though the newly-amended law offers some slight improvements, the corrupt and ineffective practices of bureaucrats still present barriers to freedom of association. They treat associations differently, not as equals. The applicants for the associations of Democracy, Human Rights, and Ethnic Origins were forced to change their own names to others as per bureaucrats' demands to get their registrations, and they are under the constant surveillance of the Special Intelligence Branch. Naw Thet Thet Htun, the director of Karen Women's Empowerment Group, said that the government used its authority to change her organization's name when she applied for registration because it was an ethnic CSO. The authorities on the registration committee (union level) said that the organization could get permission for registration if the organization's founder deleted Karen from the title.

Ko Nyein Chan – Coordinator of the Future Light Center, which delivers political awareness trainings on human rights, transitional justice, and non-violence – also shared his experience. As his center was established to support former political prisoners, military intelligence and police from the Special Intelligence Department (Special Branch) visited to inquire whenever trainings were delivered at the center. Ko Moe Thway, a chairperson of Generation Wave, said policemen from the Special Intelligence Department (Special Branch) openly watch his organization. Intelligence forces often contact organization leaders by phone to inquire about their current activities. On July 17th 2017, a policeman (Special Branch) phoned Ko Moe Thway to inquire about his meeting with Ms. Yanghee Lee, who is currently serving as the UN-mandated Special Rapporteur on the situation of human rights in Myanmar, in a CSO meeting.

Although it is commonly known that failure to register does not carry a penalty, organizations without registrations cannot open bank accounts, and so cannot receive funding from abroad. Yan Naing Htun, one of the leaders of the Laiza peace march group, said that they have no registration, and thus cannot open a bank account under the organization's name.

Consequently, they have to open a joint account in a private bank with their own names. Ko Moe Thway has also said that he has to find partner organizations for foreign funding because his organization has no registration for their association. They are trying to register soon, but don't want to ask for a recommendation letter from the Ministry of Social Welfare, Relief and Resettlement as their campaign trainings are empowerment programs. They cannot open an organization account, so three leaders in the organization opened a joint account for funding.

2.2) Freedom of assembly

Freedom of assembly in Myanmar has to progress to meet international standards, though it has been expanding since the civilian government took power through the 2010 election. The Peaceful Assembly and Procession Law, which has regulations that allow at-will crackdowns on peaceful protests and issues criminal penalties for any violations of its restrictions, was drafted by the Thein Sein government in December 2011. The law was amended in 2014 with slight improvements. The government can still control peaceful protests and assemblies. In major protests and demonstrations since 2011, the issues of land grabbing, educational law, the military hold on veto power in government, and labor rights have been at stake. The organizers of the protests and gatherings have had to obtain prior permission and approval for demonstrations, otherwise they can be charged under Article 18 of the Peaceful Assembly and Procession Law. The authorities can decide where the demonstrations take place and which slogans and chants should be used. In May 2016, the NLD government put forward a new Peaceful Assembly and Procession Law, weakening the oppressive tools in the former one. The authorities can still deny any request for permission or approval for demonstrations. The new law precludes two of the most abusive practices under the former law: charging demonstrators months and even years after the protests, and in multiple townships, for the same offense. For example, university students Zeyar Lwin, Paing Ye Thu, and Nan Linn, who demonstrated to call upon the military to relinquish its role in the government, were charged under Article 18 of the Peaceful Assembly and Procession law and section 505 (b) of the Penal Code in July 2015. Zeyar Lwin had to attend trials in six different township courts four days a week after he was arrested. He was also informed that he was charged for being involved in protests against the new educational law in 2014. Under the new law, demonstrators must be charged within fifteen days after a demonstration. Despite those improvements, the 2016 Peaceful Assembly and Procession Law retains many flaws from the former one that fall short of international standards of the right to peaceful assembly. The authorities still can control the content of the assembly according to restrictions under Article 19 of the law, which requires information about the topic of the assembly, slogans and chants that will be used, organizers' profiles, the purpose of the protest, the number of protesters, and where the assembly is to be held. Demonstrators who do not fulfill those requirements and who use slogans that were not specified will be charged. Authorities often deny slogans and ask organizers to shift the planned location. One of the students of YSPS, Salai Uk Nunbawi, who was involved in peaceful protest against the sale of alcohol in Chin State, said "the police deny most of our

slogans and we protested not what we want to protest but what they want us to protest.” In 2014, police forces cracked down on a peaceful student demonstration against the new national education law in Letpadan. Police cracked down again on a student demonstration in Yangon against the brutal crackdown on the student demonstrators in Letpadan, and many students were arrested by the police and Swan-Ar-Shin forces, which have been used by the military regime to take violent actions on dissidents.

In 2017, students from Sagaing Educational College were arrested violently by the police, put on trial, and imprisoned for not obtaining prior permission to demonstrate from the authorities. When they were freed from prison, one student was forced to quit school by the headmistress on the ground that he had broken the disciplinary code of the university, degree college, and college. This age-old disciplinary code had been issued by the military regime, and the elected civilian government still retains these flaws. The students have to face double punishment, both in judiciary trials and in the school’s Disciplinary Committee.

2.3) Freedom of expression

Since the adoption of the 2008 constitution and the election of a quasi-civilian government in 2010, some laws have been passed to guarantee freedom of expression. However, there are many weaknesses in these laws. This is because the parent law, the 2008 Constitution, has flaws and cannot genuinely secure the rights of the people. According to the fundamental principles of constitutional writing, the parent law must secure the rights of the people and the existing law must be consistent with the parent law. In Section 354 of the 2008 constitution, however, there are some conditional sentences that restrict the rights of the people. It shows that the people cannot practice their rights contrary to the existing laws enacted for union security, the prevalence of law and order, community peace and tranquility, or public order and morality. This means the existing law is placed above the parent law.

The existing laws that restrict freedom of expression are Section 66(d) of the Telecommunications Law and Section 505(b) of the penal code. The Telecommunications Law was adopted in 2013 with the aim of improving the climate for foreign investors in the telecommunications sector. However, Section 66(d) has been used to crack down on individuals who express opinions on social media that meet with official disapproval. It is stated in Section 66(d) that anyone “extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any telecommunications network” faces prosecution and a possible prison sentence of up to three years, plus a fine. Ma Chit Tha Me aka Ma Chaw Sandi Tun, Patrick Kum Ja Lee, and the poet Maung Saung Kha faced legal action under the former government in relation to Facebook posts that criticized the former president and the Tatmadaw chief. Maung Saung Kha was sentenced to six months in prison in May 2016 for a poem he posted on Facebook, and Aung Win Hlaing was sentenced to nine months in prison in September 2016 for calling the president an “idiot” and “crazy” on Facebook. U Myo Yan Naung Thein, who posted on Facebook to call for the resignation of the armed forces chief,

was charged under 66(d) of the Telecommunications Law. Even the elected civilian NLD government used this provision to charge Eleven Media for reporting that Yangon Prime Minister U Phyo Min Thein accepted an expensive watch from an unknown businessman. The film *Twilight Over Burma* was prohibited from being shown on Human Rights Day by the NLD government on the grounds that showing this film might disrupt national reconciliation with the Tatmadaw. In late June 2016, the Ta'ang Women's Organization was forced to cancel a press conference in Yangon to launch a report documenting military abuses against ethnic Palaung in Northern Shan State. In August 2012, the government proclaimed a complete end to prepublication censorship and the dissolution of the Press Scrutiny and Registration Division. Despite this progress, there are also older laws and guidelines which call for prison sentences for those who disseminate certain types of information that are perceived to pose a threat to national security, domestic tranquility, or racial harmony, including reports about corruption, ethnic politics, or negative portrayals of the government. The three reporters from the Irrawaddy who tried to cover ethnic armed organization and conflict affairs were arrested by the Tatmadaw under a provision of the Unlawful Association Act. This Act blocks the media's efforts to gain access to information about the armed ethnic groups and infringes on the right of the people to gain access to information.

2.4) Right to participation

In 2010, there was no space for civil society participation in Myanmar except in the ethnic autonomy areas. Civil society organizations which emphasize the sectors of development, culture, education, and welfare are the only ones allowed by the central government. Civil society organizations that relate to or target political changes are not allowed to participate in political processes. The government still does not allow civil society participation in the policy making process. Great suspicion exists that civil society may challenge the military's power, so the government only allows NGOs to engage in local activities.

In January 2012, the President met with civil society groups and promised that the government would cooperate with them. In January 2013, the Minister of the President's Office asked civil society groups to help monitor the ceasefire and peace processes. The labor ministry cooperates with civil society to help migrant workers from neighboring countries return home, although some ministries do not cooperate with civil society and parliament does not pay attention to civil society organizations. In addition, media groups are not included in the formulation of media law.

In 2016, Myanmar continued to liberalize and civil society was allowed more space in decision making than before. However, civil society still reports a lack of transparency and smooth communication with government ministries. In addition, local authorities are still extremely reluctant to listen to civil society groups. Activists fighting for land rights or environmental rights face discrimination and repression at the local level.

According to the BTI Project reports, Myanmar’s civil society participation score was 2 in 2012. This increased to 4 in both the 2014 and 2016 reports (1 being the lowest and 10 being the highest score).

In the 2015 election, some Ma Ba Tha monks (an extreme Buddhist group) criticized the National League for Democracy (NLD) as a “pro-Islam” party for which Buddhists should not vote. Due to Ma Ba Tha, both the NLD and the Union Solidarity and Development Party did not field any Muslim candidates in the 2015 election. The NLD’s leadership made the decision to exclude Muslims from its candidate list to avoid criticism, with NLD spokesman Win Htein stating “Our NLD members who are Muslims are very much understanding of this situation.”

Moreover, three important ministries – the Ministry of Home Affairs, the Ministry of Defense, and the Ministry of Border Affairs – are under the control of the Tatmadaw’s commander in chief. According to Article 20 (b) of the 2008 constitution, “The Defense Services has the right to independently administer and adjudicate all affairs of the armed forces,” so no civil society can be included in the decision-making process of above three ministries.

In the peace process, civil society organizations are not allowed to take part in discussion regarding the three main sectors of politics, defense, and security. They are allowed to discuss only developmental issues. The proportion of women in politics is still low, and no effective measures have been taken to handle the situation.

Women MPs: a comparison between the outgoing and incoming Parliaments

	Women as % of elected MPs Parliament 2010-2015	Women as % of elected MPs Parliament 2016-2021
Union Parliament	5.9%	14.5%
State/Region Parliaments	3.9%	12.5%
Ethnic Affairs Ministers	0%	17.2%

Source: Myanmar Women MPs Graph by Asia Foundation

3. Policy lessons

Although there is a popularly elected government in Myanmar, there are still challenges posed by the 2008 constitution and the sensitive situation of the transition. Important ministries such as the Ministry of Home Affairs, Ministry of Defense, and Ministry of Borders are still under the direct control of the military and they are responsible for all of the actions that have been carried out to curb civic space in Myanmar.

²Win, S. (2015, October 16). Will there be any Muslim MP’s in Myanmar’s Parliament? *Myanmar Now*. Retrieved from <http://www.myanmar-now.org/news/i/?id=a493c069-b412-4f77-9cfb-e7edbd17dbee>.

Lack of judicial independence, which has become an institutional culture in Myanmar, plays a critical role in effectively denying citizen rights that are essential to the freedom of expression, freedom of assembly, and freedom of association, resulting in diminished civic space. Throughout the period of the military government, judges handed down sentences for cases involving political activists who committed certain resistant acts. These judgements were not based on evidence; the judges relied upon orders from military intelligence. This is still the case now under the NLD government.

However, there are some spaces in the legislation process for civil society groups and if a bill is not sensitive, i.e., it does not jeopardize the national reconciliation process, they have a chance to meet with relevant parliamentary committees and present their ideas. This is the only space for people to engage in politics.

4. Conclusion

Despite the NLD's landslide victory in the 2015 general election and its efforts in the democratization process, the national reconciliation and 2008 constitution pose barriers, and civic space is still curbed in the country. In some cases it has shrunk even more, such as Section 66(D) of the Telecommunications Act under which more prosecutions have been made in the NLD era than under Thein Sein's government. These two great barriers overshadow the democratization process, and there are many limitations and restrictions to fight against before ample civic space can be realized in the country.

References

- Journal of Democracy, October 2012, Volume 23, Number 4,
<https://www.journalofdemocracy.org/sites/default/files/Zin-23-4.pdf>.
- “Myanmar: Peaceful Assembly and Peaceful Procession Bill,” May 2016, Legal analysis by Article 19,
Retrieved from http://www.burmalibrary.org/docs22/A19-2016-05-16-LA-peaceful_procession_bill-tpo-hr.pdf.
- Section 5 of the Emergency Provisions Act [Burma Act 17, 1950] (9Th March 1950) retrieved from
http://www.icnl.org/research/library/files/Myanmar/Section_5_of_the_Emergency_Provisions_Act-en.pdf.
- Constitution of the Republic of the Union of Myanmar (2008).
- Registration of Organization Law (2014, Pyidaungsu Hluttaw Law No. 31) 1376, New Moon of Thadingyut 7th day (July 18, 2014) retrieved from
http://www.burmalibrary.org/docs21/Registration_of_Organizations_Law-en.pdf.
- “Myanmar The penal Code” retrieved from
http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf.
- “Myanmar: Freedom of the press” by Freedom House, retrieved from
<https://freedomhouse.org/report/freedom-press/2016/myanmar>.
- BTI report 2010, Myanmar Country Report.
- BTI report 2012, Myanmar Country Report.
- BTI report 2014, Myanmar Country Report.
- BTI report 2016, Myanmar Country Report.

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