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Fighting To Exist: Legislative Protection For Human Rights Defenders In Asia

**Legislative frameworks on the rights to freedom of
association, assembly and expression in the seven
jurisdictions in Asia**

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Introduction

Legislative protection for human rights defenders

Human rights defenders are those brave individuals courageously fighting for the interests of rights holders, victims of violations and society as a whole. For carrying out their legitimate work, human rights defenders are targeted and attacked across the globe. In Asia, many governments restrict civil society, suppress dissent, and refuse to respect international human rights laws. Many democratic States also restrict aspects of human rights defenders' work while promoting business interests and development.

The legal recognition and protection of human rights defenders is crucial to ensure they can work in a safe, supportive environment and be free from attacks, reprisals and unreasonable restrictions. The legal recognition and protection of defenders contributes to upholding human rights, and promoting democracy, good government, sustainable development and respect for the rule of law.

Not only is there a significant implementation gap between the UN Declaration on Human Rights Defenders and national laws and policies to support and protect defenders; there is a proliferation of national laws that restrict and criminalise defenders' work.

To help strengthen the legislative protection of human rights defenders, in 2016 the International Service for Human Rights facilitated the development of the Model Law for the Recognition and Protection of Human Rights Defenders.¹ Created in consultation with over 500 human rights defenders from more than 110 States from all regions, sub-regions and legal traditions, the Model Law seeks to assist legislators and policymakers create national laws on defenders, and civil society to guide development of legislation and measure implementation.

Laws or mechanisms for the protection of human rights defenders have been passed in Côte d'Ivoire, Burkina Faso, Mali, Colombia and Mexico. In other States, such as Paraguay, Peru, Niger, Guinea, Mongolia, Nepal and the Philippines, draft laws are in the process of being developed by civil society.

A law for the recognition and protection of human rights defenders is a necessary, but not sufficient element to ensure defenders are safe. In addition, any law that restricts the rights of human rights defenders must be reviewed and amended. The former Special Rapporteur on the situation of human rights defenders outlined the main elements necessary for defenders to operate in a safe and enabling environment in her 2013 report.²

Purpose of this Report

In January 2018 ISHR facilitated a consultation on the legislative protection for human rights defenders in Asia. Participants from India, Indonesia, Mongolia, Nepal, Philippines, Sri Lanka and the Republic of China (commonly known as Taiwan) attended. This report builds on those conversations and discusses the legislative frameworks for the protection of human rights defenders in those seven jurisdictions.

The report summarises the risks and challenges defenders face and examines the legislative frameworks on the rights to freedom of association, assembly and expression in the seven jurisdictions. It also discusses developments regarding laws and policies for the protection of human rights defenders. This report does not examine intersectional elements, such as laws that restrict the rights of certain populations including minorities.

¹ International Service for Human Rights, 'Model Law for the Recognition and Protection of Human Rights Defenders', 2016, https://www.ishr.ch/sites/default/files/documents/model_law_english_january2017_screenversion.pdf

² December 2013 Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/25/55.

International legal frameworks: fundamental rights and freedoms

The International Covenant on Civil and Political Rights³ - which all seven jurisdictions reviewed in this report have ratified - protects fundamental rights essential to human rights defenders and their work:⁴

- Everyone shall have the right to **freedom of association** with others.⁵
- The right of **peaceful assembly** shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.⁶
- Everyone shall have the right to hold opinions without interference and the right to **freedom of expression**; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.⁷

These rights are echoed and emphasized in the Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms⁸ - known as the Declaration on Human Rights Defenders, including:

- Everyone has the right, individually and in association with others:
 - (a) To know, **seek, obtain, receive and hold information** about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
 - (b) As provided for in human rights and other applicable international instruments, freely to **publish, impart or disseminate** to others views, information and knowledge on all human rights and fundamental freedoms.⁹
- Everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or **assemble peacefully**; (b) To **form, join and participate in non-governmental organizations, associations** or groups; (c) To communicate with non-governmental or intergovernmental organizations.¹⁰

³ United Nations Human Rights office of the High Commissioner, 'International Covenant on Civil and Political Rights' <https://bit.ly/2Mrt9ke>

⁴ United Nations Human Rights office of the High Commissioner, 'Status of Ratification', <https://bit.ly/1IEGjfc>

⁵ Article 22, ICCPR, United Nations Human Rights office of the High Commissioner, 'International Covenant on Civil and Political Rights' <https://bit.ly/2Mrt9ke>

⁶ Article 21, ICCPR, United Nations Human Rights office of the High Commissioner, 'International Covenant on Civil and Political Rights' <https://bit.ly/2Mrt9ke>

⁷ Article 19(1), ICCPR United Nations Human Rights office of the High Commissioner, 'International Covenant on Civil and Political Rights' <https://bit.ly/2Mrt9ke>

⁸ United Nations Human Rights office of the High Commissioner, 'International Covenant on Civil and Political Rights' <https://bit.ly/2Mrt9ke>

⁹ Article 6, United Nations Human Rights office of the High Commissioner, 'Declaration on the Right and Responsibility of Individuals [...]' <https://bit.ly/2QkV9MR>

¹⁰ Article 5, United Nations Human Rights office of the High Commissioner, 'Declaration on the Right and Responsibility of Individuals [...]' <https://bit.ly/2QkV9MR>

National legal frameworks: fundamental rights and freedoms

India

The situation for human rights defenders

Human rights defenders in India face attacks and harassment from both State and non-State actors, including killing, physical assault, arbitrary detention, threats and judicial harassment.¹¹ Defenders are increasingly the target of online smear campaigns, labelled ‘anti-national’, arrested under trumped up charges¹² and accused of hate crimes in courts.¹³ Police often perpetrate violence against defenders with incidents rarely being punished.¹⁴ Armed groups and private companies also target defenders for work related to economic development projects.¹⁵

Women defenders are targeted with gender-specific threats, including death, gang rape and acid attacks, as well as online attacks.¹⁶ Similarly, those defending the rights of marginalised communities encounter death threats, destruction of their property, fabricated charges, physical attacks, and caste-based discrimination.¹⁷

According to the 2017 Global Impunity Index, India has the highest level of impunity regarding the murder of journalists.¹⁸ Reporters Without Borders reported that at least four journalists were murdered and three others physically attacked in the first six months of 2018.¹⁹ Whistle blowers and right to information activists are also targeted; according to the National Crime Records Bureau there were 14 recorded attacks in 2017.²⁰

Legislative framework: fundamental rights and freedoms

A. Freedom of expression

While the right to freedom of speech is guaranteed under the Constitution, laws are used to harass and prosecute Government critics.²¹ Under the sedition provision in the Indian Penal Code, attempts to ‘bring into hatred or contempt’ or ‘excite disaffection towards’ the Government can be punished with a fine and imprisonment for up to three years or life.²² According to a national defender, though the Supreme Court ruled that speech criticizing the Government does not violate the Penal Code, critics of the Government continue to face legal action under the Code.²³ In addition, defenders and civil society organisations (CSOs) are the subject of allegations of defamation. Defamation suits and criminal trials are being used to silence critics of the Government.²⁴ This is possible as the Indian Penal Code stipulates that defamation is a criminal offense and those found guilty are subject to criminal sanctions.²⁵

¹¹ Front Line Defenders, India, <https://bit.ly/2l9cO5O>

¹² Report from ISHR regional consultation, January 2018

¹³ Freedom House, ‘India’, 2019 <https://bit.ly/2uQC73D>

¹⁴ Freedom House, ‘India’, 2019 <https://bit.ly/2uQC73D>

¹⁵ Front Line Defenders, India, <https://bit.ly/2l9cO5O>

¹⁶ Front Line Defenders, India, <https://bit.ly/2l9cO5O>

¹⁷ Front Line Defenders, India, <https://bit.ly/2l9cO5O>

¹⁸ Freedom House, ‘India’, 2019 <https://bit.ly/2uQC73D>

¹⁹ Reporters without Borders, RSF issues warning to India in first World Press Freedom Index Incident Report, <https://bit.ly/2lVW1yV>

²⁰ Amnesty International, ‘Gauri Lankesh: Journalists Have a Right to Work Freely and Without Fear’, <https://bit.ly/2HVPOC8>

²¹ Civicus Monitor, India, ‘Expression’, September 2016, <https://bit.ly/2Y05zVT>

²² Library of Congress, ‘Sedition Law in India’, October 2012, <https://bit.ly/2TWj4PJ>

²³ Report from ISHR regional consultation, January 2018

²⁴ Livemint, ‘Tamil Nadu: Cartoonist G.Bala arrested for defaming CM Palaniswami’, <https://bit.ly/2Jw7XMD>; The Hindu, ‘Minister files defamation suit against NGO’, <https://bit.ly/2w9DsTY>; The New Indian Express, ‘Cases filed to stifle voice against corruption’, <https://bit.ly/2M2nLbW>.

²⁵ Livemint, ‘Defamation is a criminal offense, confirms Supreme Court’, <https://bit.ly/30C3Ns2>; The Indian Penal Code, Section 499, <https://bit.ly/2VHPLRD>

Journalists are particularly at risk. The shooting of a journalist and Government critic in Bangalore in September 2017²⁶ prompted the Maharashtra State to pass the Maharashtra Media Persons and Media Institutions (Prevention of Violence and Damage or Loss to Property) Act, mandating firmer protections for journalists and harsher punishments for perpetrators of crimes against them.²⁷ Still, progress remains region-specific; Maharashtra is the only Indian State to pass a law on journalist protection.²⁸

B. Freedom of assembly

The Indian Constitution guarantees the right to peacefully assemble without arms; however, section 144 of the Criminal Procedure Code empowers the authorities to restrict the right to freely assemble and impose a curfew whenever 'immediate prevention or speedy remedy' is required.²⁹

In May 2018, a protest against the expansion of a hazardous copper plant left eleven civilians dead after police fired into the crowd, later alleging that such action was necessary to protect public life and property.³⁰

In November that same year, tens of thousands of farmers marched into the capital to highlight the agrarian crisis and demand better crop prices, drought relief and loan waivers.³¹ This protest built on over two years of demonstrations calling for government action on these issues.³²

C. Freedom of association

India introduced the Foreign Contribution Regulation Act (FCRA) in 2010.³³ All CSOs are required to register under the FCRA before they can receive foreign funds. Licences must be renewed every five years and can be suspended, as well as bank accounts frozen, during investigations of violations.³⁴ The Government has used this law to block thousands of NGOs from receiving foreign funding since 2014.³⁵ Concerns have been raised that the FCRA stifles the productivity of CSOs, restricts their rights and targets organisations speaking out against the Government.³⁶

In 2018, the Income Tax Department and Enforcement Directorate of the Indian Finance Ministry raided the offices of news website, *The Quint*, and Greenpeace India without a warrant. They confiscated documents from Greenpeace and froze its accounts.³⁷ As a result, Greenpeace announced that it would be forced to scale back its work in India. CSOs considered this an attack on civil society in general; noting that those critical of the Government, and those exposing and challenging human rights and environmental violations of corporations are specifically targeted.³⁸

Positive legislative developments toward defender protection

While national defenders work tirelessly for their own protection, they report that the political climate is not currently conducive or sympathetic to defenders. For this reason they consider it may not be strategic to lobby for the enactment of specific laws for their protection at the national level.

²⁶ Freedom House, 'India', 2019 <https://bit.ly/2uQC73D>

²⁷ International Federation of Journalists, 'Maharashtra passes landmark protection law', April 2017 <https://bit.ly/2lb6mdD>

²⁸ Freedom House, 'India', 2019 <https://bit.ly/2uQC73D>

²⁹ Freedom House, 'India', 2019 <https://bit.ly/2uQC73D>

³⁰ The Guardian, 'Police in South India accused of mass murder after shooting dead protesters', May 2018, <https://bit.ly/2s3eB2C>

³¹ BBC, 'India farmers: Tens of thousands march against agrarian crisis', November 2018, <https://bbc.in/2SdHCn9>; The Economics Times, 'Why farmers have stormed Delhi, what they want', 2018, <https://bit.ly/2UgyJPO>

³² VOA, 'Farmer Protests Highlight India's Growing Rural Distress', December 2018, <https://bit.ly/2FXFFth>

³³ Amnesty International, 'Laws Designed to Silence', February 2019, <https://bit.ly/2SWEv0e> (33)

³⁴ Amnesty International, 'Laws Designed to Silence', February 2019, <https://bit.ly/2SWEv0e> (33)

³⁵ Amnesty International, 'Laws Designed to Silence', February 2019, <https://bit.ly/2SWEv0e> (33)

³⁶ Amnesty International, 'Laws Designed to Silence', February 2019, <https://bit.ly/2SWEv0e> (33); Freedom House, 'India', 2019 <https://bit.ly/2uQC73D>

³⁷ Amnesty International, 'Laws Designed to Silence' February 2019, <https://bit.ly/2SWEv0e> (33)

³⁸ Amnesty International, 'Laws Designed to Silence' February 2019, <https://bit.ly/2SWEv0e> (33-34)

Indonesia

The situation for human rights defenders

Human rights defenders experience many risks and challenges in Indonesia. They regularly face killings, attacks, ill-treatment, enforced disappearances, arbitrary arrests, defamation suits and other tactics used by the government to stop their work.³⁹ Defenders working on environmental rights, civil liberties, indigenous rights, land rights, and the rights of lesbian, gay, bisexual, trans and intersex (LGBTI) groups are among the most vulnerable to attack.⁴⁰ LGBTI defenders in particular have faced escalating attacks in recent years, both offline and online.⁴¹

The government has been targeting defenders for many years, but their strategy has changed from direct physical attacks to use of the legal system. In 2016, defenders reported they saw a great number of violent attacks perpetrated against human rights defenders by the Government.⁴² In 2017, the Government's strategy went beyond physical attacks and included criminalizing human rights defenders and their work.⁴³ During that year, at least 152 environmental defenders faced criminal charges.⁴⁴ For example, one defender was charged with forgery when petitioning to protest and another was charged with 'insulting a state symbol' for allegedly holding an Indonesian flag upside down.⁴⁵

In addition, the Government has begun accusing human rights groups of being threats to 'national security'.⁴⁶ The Government has also taken to accusing defenders of spreading communist beliefs or being part of the Indonesian Communist Party and subsequently imprisoning them.⁴⁷ For example, environmental defender Budi Pego held a peaceful anti-mining protest and was charged with displaying banners with communist symbols, although there was no evidence for this.⁴⁸

Legislative framework: Fundamental rights and freedoms

A. Freedom of expression

The right to freedom of expression is protected in Article 28 of the Constitution.⁴⁹ Article 18 of Law No.40 on the Press seeks to further protect this right by implementing penalties for those deliberately restricting the right to freedom of the press.⁵⁰

However, in practice, defenders have been arrested, tortured and killed for expressing their views.⁵¹ Criminal cases have been brought against journalists for reporting stories critical of the Government.⁵² NGOs working on sensitive issues challenging the status quo are also subject to prosecution and carry out self-censorship.⁵³

³⁹ Frontline Defenders, 'Indonesia' <https://bit.ly/2U4KRgV>

⁴⁰ KontraS, 'Protection systems and mechanisms to Mitigate Criminalization against HRDs', <https://bit.ly/2KiqDk5>

⁴¹ Rappler, 'LGBT defenders face escalated attacks in Indonesia', <https://bit.ly/2P5iazL>; The Guardian, 'Why LGBT hatred suddenly spiked in Indonesia', <https://bit.ly/2qMgwsQ>;

⁴² Frontline Defenders, 'Attacks on LGBT Rights Defenders Escalating in Indonesia', <https://bit.ly/2UqJ0lg>

⁴³ Mongabay News, 'Indonesians ruling rings alarms over criminalization of environmental defenders', <https://bit.ly/2U4JNJR>

⁴⁴ Mongabay News, 'Indonesians ruling rings alarms over criminalization of environmental defenders', <https://bit.ly/2U4JNJR>

⁴⁵ Mongabay News, 'Indonesians ruling rings alarms over criminalization of environmental defenders', <https://bit.ly/2U4JNJR>; Penulis : Kompas, <https://bit.ly/2Uq3YHo>

⁴⁶ Mongabay News, 'Indonesians ruling rings alarms over criminalization of environmental defenders', <https://bit.ly/2U4JNJR>

⁴⁷ Coconuts Jakarta News, 'Jailed Activists accused of spreading communism', <https://bit.ly/2D3KjgF>; Asian Human Rights Commission, 'Environment activists in Tumpang Pitu sentenced to 10-month imprisonment', <https://bit.ly/2liakB8>

⁴⁸ Asian Human Rights Commission, 'Environment activists in Tumpang Pitu sentenced to 10-month imprisonment', <https://bit.ly/2liakB8>

⁴⁹ Ref World, 'Constitution of the Republic of Indonesia', <https://bit.ly/2uSabwj>

⁵⁰ Human Rights Watch, Shadow report on the situation of human rights defenders in Indonesia, <https://bit.ly/2YXsa2h>

⁵¹ Civicus monitor, 'Indonesia', <https://bit.ly/2Up95aR>

⁵² Civicus monitor, 'Indonesia', <https://bit.ly/2Up95aR>

⁵³ Civicus monitor, 'Indonesia', <https://bit.ly/2Up95aR>

Article 156a(a) of the 1965 Criminal Code punishes people with imprisonment of up to five years for publically ‘abusing’ or ‘staining’ a religion adhered to in Indonesia.⁵⁴ The law has been used to persecute religious minorities,⁵⁵ and in the last ten years the number of blasphemy charges under this law has steadily risen.⁵⁶ In addition, the conviction rate for these charges is nearly 100 percent.⁵⁷ In 2017 former Governor Basuki ‘Ahok’ Purnama was charged and sentenced to two years in prison for allegedly misinterpreting the Quran and publically insulting the Quran.⁵⁸ In November 2018, the Jakarta Prosecutor’s Office released a mobile phone application named ‘Smart Pakem’ that allows users to report religious heresy, ‘misguided’ religious beliefs, religions not officially recognised by the government and blacklisted organisations.⁵⁹ Civil society has criticised the new application, stating that it infringes the right to freedom of religion and targets minority groups.⁶⁰

More recently, the 2008 Electronic Information and Transaction Law criminalizes defamation and blasphemy, making them punishable by imprisonment.⁶¹ The definition of defamation and blasphemy is vague,⁶² enabling the law to be used to censor the Internet and prosecute defenders.⁶³ It also criminalises the distribution and accessibility of information that is ‘contrary to the moral norms of Indonesia.’⁶⁴

B. Freedom of assembly

Law No. 9 of 1998 on Freedom to Express an Opinion in Public governs the right to freedom of assembly.⁶⁵ Under Article 10, organisers must notify the police of an assembly at least 72 hours before hand, otherwise the authorities can disband it.⁶⁶ The notification must include information on the purpose, venue, the duration and organisers.⁶⁷ Spontaneous assemblies are not permitted.⁶⁸

Assemblies can be also disbanded if there is disrespect for public morals, security and public order, or if the assembly threatens the integrity or unity of the union.⁶⁹ The law provides for punishments, including imprisonment, for those who do not follow the requirements.⁷⁰

Assemblies are also restricted in practice. Hundreds of activists and students have been arbitrarily detained for peacefully protesting in public spheres.⁷¹ On 1 December 2018 authorities arbitrarily

⁵⁴ Indonesian Penal Code, <https://bit.ly/2ORJwHP>

⁵⁵ Amnesty International, Indonesia L Ahok conviction for Blasphemy is an injustice <https://bit.ly/2pZpPoJ>; Asian Correspondent, ‘Ahok release an uncomfortable reminder of the power of blasphemy laws’, <https://bit.ly/2Kn7tcM>

⁵⁶ Foreign Policy, ‘The Islamic World has a Blasphemy problem’, <https://bit.ly/2qrsS5G>

⁵⁷ Foreign Policy, ‘The Islamic World has a Blasphemy problem’, <https://bit.ly/2qrsS5G>

⁵⁸ Pen International, ‘Resolution on blasphemy and the suppression of freedom of expression’, <https://bit.ly/2Gc5oME>; Human Rights Watch, ‘Indonesian Blasphemy Law survives Court challenge’, <https://bit.ly/2VBVB84>

⁵⁹ Independent, ‘Indonesian app that allows uses to report misguided religious beliefs criticized by human rights groups’, <https://ind.pn/2GdV31V>

⁶⁰ Human Rights Watch, ‘Indonesia launches snitch app targeting religious minorities’, <https://bit.ly/2L8zEca>; France 24, ‘Indonesia new ‘heresy app’ draws fire’, <https://bit.ly/2OZ6PKC>.

⁶¹ Refworld, Freedom on the Net 2018 – Indonesia, <https://bit.ly/2D43Cvi>

⁶² Front Line Defenders, Indonesia, <https://bit.ly/2U4KRgV>

⁶³ Refworld, Freedom on the Net 2018 – Indonesia, <https://bit.ly/2D43Cvi>

⁶⁴ Front Line Defenders, Indonesia, <https://bit.ly/2U4KRgV>

⁶⁵ Undang-Undang Republik Indonesia Nomor Tahun 1998 Tentang Kemerdekaan Menyampaikan Pendapat Di Muka Umum, <https://bit.ly/2I8uE8M>

⁶⁶ The International Center for Non-Profit Law, ‘Civic Freedom Monitor: Indonesia’, <https://bit.ly/1NGASJI>; Law No. 9 of 1998 on Freedom to Express an Opinion in Public, <https://bit.ly/2VvUyq7>

⁶⁷ The International Center for Non-Profit Law, ‘Civic Freedom Monitor: Indonesia’, <https://bit.ly/1NGASJI>;

⁶⁸ The International Center for Non-Profit Law, ‘Civic Freedom Monitor: Indonesia’, <https://bit.ly/1NGASJI>;

⁶⁹ Article 6, Law No. 9 of 1998 on Freedom to Express an Opinion in Public, <https://bit.ly/2VvUyq7>

⁷⁰ Chapter 5, Law No. 9 of 1998 on Freedom to Express an Opinion in Public, <https://bit.ly/2VvUyq7>

⁷¹ Civic monitor, ‘Indonesia’, <https://bit.ly/2Up95aR>

arrested at least 500 demonstrators across West Papua and other parts of the country, leaving many injured.⁷² State forces also engage in excessive use of force and violence against protestors.⁷³

C. Freedom of association

Article 28 of the Constitution protects the right to freedom of association.⁷⁴ Law No. 17 on Mass Organisations governs civil society organisations.⁷⁵ According to Law No. 17, all NGOs must register with the government⁷⁶ and adhere to State philosophies. The Government has the power to dissolve NGOs that do not follow those philosophies.⁷⁷ The law also makes it difficult for NGOs to receive foreign funding and restricts international NGOs working inside Indonesia.⁷⁸ In October 2017, a regulation was passed that strengthened the law by removing judicial oversight over the disbandment of NGOs.⁷⁹

In 2018, Law No. 15 of 2003 on the Eradication of Terrorism was amended to broaden the definition of terrorism⁸⁰ and allow for suspects to be held for over 200 days without trial.⁸¹ CSOs have publically criticized the amendments,⁸² as they attack civil liberties and can be used to target peaceful activism, specifically of indigenous groups, environmentalists and religious or political organisations.⁸³

Positive legislative developments toward defender protection

While there is not currently a specific law for the protection of human rights defenders, there are laws that can protect them in certain circumstances. Law No. 39 of 1999 on Human Rights includes provisions relating to the roles of human rights defenders.⁸⁴ Specifically, article 100 states that, 'All people, groups, political organizations, community organizations, and self-reliant organizations and other non-government organizations, have the right to participate in protecting, upholding and promoting human rights.'⁸⁵ Articles 101 and 102 describe the right for these people and groups to submit reports of human rights violations and proposals on policies to the National Commission on Human Rights or other agencies.⁸⁶ Article 103 states that these groups, including higher educational institutes and study agencies, have the 'right to study, educate and disseminate information about human rights.'⁸⁷

In 2012, civil society worked with the National Commission on Human Rights to prepare revisions to the Law No. 39 of 1999, mentioned above, to include language on protecting human rights defenders for the

⁷² Civicus, Arrests of hundreds at demonstrations on West Papua highlight relentless suppression of dissent, <https://bit.ly/2E5sVyb>

⁷³ International Center for Not-for-profit Law, Civil Freedom Monitor: Indonesia, <https://bit.ly/2l6Jof>

⁷⁴ Refworld, Constitution of the Republic of Indonesia; <https://bit.ly/2lhKDAM>

⁷⁵ Freedom House, Freedom in the World 2018, Indonesia, <https://bit.ly/2WX2txg>

⁷⁶ Freedom House, Freedom in the World 2018, Indonesia, <https://bit.ly/2WX2txg>

⁷⁷ Freedom House, Freedom in the World 2018, Indonesia, <https://bit.ly/2WX2txg>

⁷⁸ Civicus monitor, 'Indonesia; <https://bit.ly/2Up95aR>

⁷⁹ Jakarta Globe, 'Gov't issues Perppu to Expedite Disbanding of Anti-Pancasila Organizations', <https://bit.ly/2lJjpRy>; International Center for Not-for-profit Law, Civil Freedom Monitor: Indonesia, <https://bit.ly/2l6Jof>; 'Indonesia introduces new power to ban mass organisations that threaten unity', <https://bit.ly/2WObad4>; Jakarta Globe, 'Strict Regulation Mass Organizations Passed into Law', <https://bit.ly/2lJT0Md>; Freedom House, Freedom in the World 2018, Indonesia, <https://bit.ly/2WX2txg>

⁸⁰ Law of the Republic of Indonesia, The amendment to law No 15/2002 concerning money laundering crime, <https://bit.ly/2ll1h2u> Human Rights Watch, Indonesia newly amended anti terror law threatens to undermine human rights, <https://bit.ly/2G0vMrO>; East Asia Activists: Indonesian counterterrorism law threatens civil liberties, <https://bit.ly/2U10je5>; The Jakarta Post, Terrorism law amendments should not threaten rights, <https://bit.ly/2G8jjnh>; Human Rights Watch, Indonesia newly amended anti terror law threatens to undermine human rights, <https://bit.ly/2G0vMrO>; East Asia Activists: Indonesian counterterrorism law threatens civil liberties, <https://bit.ly/2U10je5>; CSO Letter to Speaker of the House of Representatives of the Republic of Indonesia Amnesty International, <https://bit.ly/2OUYkqy>;

⁸¹ Amnesty International, 'Indonesia newly amended anti terror law threatens to undermine human rights', <https://bit.ly/2G0vMrO>

⁸² CSO Letter to Speaker of the House of Representatives of the Republic of Indonesia Amnesty International, <https://bit.ly/2OUYkqy>; The Jakarta Post, 'Terrorism law amendments should not threaten rights', <https://bit.ly/2G8jjnh>

⁸³ East Asia Activists: Indonesian counterterrorism law threatens civil liberties, <https://bit.ly/2U10je5>; CSO Letter to Speaker of the House of Representatives of the Republic of Indonesia Amnesty International, <https://bit.ly/2OUYkqy>; Human Rights Watch, 'Indonesia newly amended anti terror law threatens to undermine human rights', <https://bit.ly/2G0vMrO>

⁸⁴ Republic Of Indonesia Legislation Number 39 Of 1999 Concerning Human, <https://bit.ly/2VAeOqy>

⁸⁵ Republic Of Indonesia Legislation Number 39 Of 1999 Concerning Human, <https://bit.ly/2VAeOqy>

⁸⁶ Republic Of Indonesia Legislation Number 39 Of 1999 Concerning Human, <https://bit.ly/2VAeOqy>

⁸⁷ Republic Of Indonesia Legislation Number 39 Of 1999 Concerning Human, <https://bit.ly/2VAeOqy>

House of Representatives.⁸⁸ However, they have been unsuccessful in passing these revisions in Parliament.⁸⁹

The 2009 Environmental Protection and Management Law contains further protections for defenders, with Article 66 stating that, 'Every person who struggles for the right to a proper and healthy environment cannot be charged with a criminal or civil offence.'⁹⁰ Article 66 has been used as the basis for protecting the safety and security of environmental human rights defenders.⁹¹

In addition, Article 11 of the 2011 Law on Legal Aid similarly states that providers of legal aid cannot be charged with criminal or civil offences.⁹² The 2002 Law on the Corruption Eradication Commission also requires the commission to protect witnesses and whistle blowers in corruption cases.⁹³

Unfortunately, these seemingly positive laws lack supporting regulations and strong frameworks. As a result, they are poorly implemented and unevenly enforced.⁹⁴

Mongolia

The situation for human rights defenders

In addition to the risks and challenges generally faced by human rights defenders in Mongolia, specific groups of defenders are particularly at risk, such as those working on issues of business and human rights. National defenders report physical attacks and harassment from law enforcement agents and non-State agents.⁹⁵ Students with disabilities who expose discrimination and sexual abuse in schools have reported attacks, as have journalists reporting on gender-based violations.⁹⁶

Specific concerns have been raised about a lack of checks and balances in relation to corporate activities; especially as some members of parliament are also prominent figures in the business sector.⁹⁷ Given the NHRI is politically nominated, it has been criticized for self-censoring on human rights issues, specifically those regarding abuses associated with large corporations.⁹⁸ Notwithstanding this, the NHRI effectively raises awareness about human right issues unrelated to business interests, such as those faced by LGBTI people.⁹⁹ This is integral in a context where LGBTI groups and activists are often harassed and discriminated against by the members they serve to protect and the police.¹⁰⁰

While Mongolia has ratified the core international human rights treaties¹⁰¹ and in recent years has passed some laws to ensure public participation (e.g., General Law on Administration, Law on Legislation, Public Hearing Law, Law on Witness and Victim Protection Law, Criminal Procedure Law),

⁸⁸ Shadow Report on the situation of human rights defenders in Indonesia (2012-2016), <https://bit.ly/2YXsa2h>

⁸⁹ Shadow Report on the situation of human rights defenders in Indonesia (2012-2016), <https://bit.ly/2YXsa2h>

⁹⁰ Environmental Protection and Management Law, <https://bit.ly/2Z1Zs07>

⁹¹ Environmental Protection and Management Law, <https://bit.ly/2Z1Zs07>; Shadow Report on the situation of human rights defenders in Indonesia (2012-2016), <https://bit.ly/2YXsa2h>; Europe Solidaire Sans Frontières, Indonesia (Human Rights): Environmentalists face greater risks amid development drive, <https://bit.ly/2D48zEo>

⁹² Shadow Report on the situation of human rights defenders in Indonesia (2012-2016), <https://bit.ly/2YXsa2h>

⁹³ Law on the Commission for the eradication of criminal acts of corruption, <https://bit.ly/2FZhSpM>

⁹⁴ Shadow Report on the situation of human rights defenders in Indonesia (2012-2016), <https://bit.ly/2YXsa2h>

⁹⁵ Regional Consultation, 2018, Manila, Philippines.

⁹⁶ Amnesty International, 'Mongolia 2017/2018', <https://bit.ly/2TWO1Dc>

⁹⁷ Report from ISHR regional consultation, January 2018

⁹⁸ Report from ISHR regional consultation, January 2018

⁹⁹ Report from ISHR regional consultation, January 2018

¹⁰⁰ Frontline Defenders, 'Mongolia', <https://bit.ly/2lcmwDA>

¹⁰¹ OHCHR, Mongolia Ratification by Country, <https://bit.ly/2uhaxfS>

defenders report that existing laws have failed to protect defenders from harassment and unjustified interference with their privacy.¹⁰²

Legislative framework: fundamental rights and freedoms

A. Freedom of expression

The right to freedom of expression is protected by the Constitution.¹⁰³ The 1988 Law on Media Freedom reinforces this,¹⁰⁴ and prohibits the Government from passing any laws restricting the right to freedom of the media and prevents the State from controlling or censoring public media.¹⁰⁵

Notwithstanding these protections, the right to freedom of expression and speech are restricted by laws seeking to protect the interests of State security, social order, and reputation.¹⁰⁶ The 2018 Administrative Offense Act allows fines to be imposed where ‘false information’ is published that could damage the reputation of individuals or business entities.¹⁰⁷

The Criminal Code contains provisions on slander and defamation that can result in a fine of 20 to 50 times the minimum salary or imprisonment for one to three months.¹⁰⁸ The revised 2016 Election Law imposed further restrictions that ‘defamation and dissemination of false information through press and social media’ during election periods could result in a six-month suspension of a CSO’s license.¹⁰⁹

While media operates relatively freely, it practices self-censorship for fear of arrest and fines.¹¹⁰ Some journalists report threats against them and their families;¹¹¹ in 2015 CSOs called for an investigation into the suspicious death of investigative reporter and press freedom activist Luntan Bolormaa.¹¹²

B. Freedom of assembly

The right to freedom of assembly is protected in the Constitution.¹¹³ While the Ulaanbaatar City Government has been known to ban protests, events, demonstrations and other public gatherings in the central square to ‘ensure public order and safety’,¹¹⁴ this right is generally upheld.¹¹⁵

A number of protests successfully took place in 2017, including events demanding the Government take action to reduce pollution and reform the mining industry.¹¹⁶ In November of 2018, a protest was held outside of Mongolia’s State palace demanding an official investigation into senior government officials channelling over \$1 million US dollars to friends and families.¹¹⁷ The public frustration over corruption in this case led to the arrest of implicated members of the scandal.¹¹⁸

¹⁰² Amnesty International, ‘Mongolia 2017/2018’, <https://bit.ly/2TWO1Dc>; *Mongolia General Administrative Law*, <https://bit.ly/2YBL6m8>; *Library of Congress, Mongolia: Domestic Violence Made a Criminal Offense*, <https://bit.ly/2VesujH>; *Criminal Law Procedure of Mongolia*, <https://bit.ly/2Hvsxur>; *Privacy Shield Network, ‘Mongolia Legal Regime’*, <https://bit.ly/2HuAi3C>

¹⁰³ The Constitution of Mongolia, <https://bit.ly/2TUgaLs>

¹⁰⁴ Human Rights Committee, Consideration of reports by States parties under article 40 of the Covenant (20), <https://bit.ly/2HYMafW>

¹⁰⁵ Article 2 and 3.1; Human Rights Committee, Consideration of reports by States parties under article 40 of the Covenant (20), <https://bit.ly/2HYMafW>

¹⁰⁶ Human Rights Committee, Consideration of reports by States parties under article 40 of the Covenant (20), <https://bit.ly/2HYMafW>

¹⁰⁷ Amnesty International, ‘Mongolia 2017/2018’ <https://bit.ly/2TWO1Dc>

¹⁰⁸ United States Department of State, ‘Mongolia 2016 Human Rights Report’, 2016 <https://bit.ly/2HY21eA> (9)

¹⁰⁹ United States Department of State, ‘Mongolia 2016 Human Rights Report’, 2016 <https://bit.ly/2HY21eA> (9)

¹¹⁰ Civicus Monitor, ‘Human Rights Defenders still at risk from stated actors and businesses’, Association, June 2018, <https://bit.ly/2WKdqSr>

¹¹¹ Civicus Monitor, ‘Human Rights Defenders still at risk from stated actors and businesses’, Association, June 2018, <https://bit.ly/2WKdqSr>

¹¹² AKIpress, ‘Human rights defenders appeal for justice in killing of well-recognized Mongolian Journalist’, 10 March 2016, <https://bit.ly/2VlwnL9>

¹¹³ Article 16.16, The Constitution of Mongolia, <https://bit.ly/2TUgaLs>

¹¹⁴ United States Department of State, ‘Mongolia 2016 Human Rights Report’, 2016 <https://bit.ly/2HY21eA> (9)

¹¹⁵ Freedom House, ‘Mongolia’, 2016 <https://bit.ly/2vdAHjX> (3)

¹¹⁶ Freedom House, ‘Mongolia’, 2016 <https://bit.ly/2vdAHjX> (3)

¹¹⁷ Nikkei Asian Review, ‘Mongolia shaken by widening loan scandal’, November 2018 <https://s.nikkei.com/2TqNvP1>

¹¹⁸ Nikkei Asian Review, ‘Mongolia shaken by widening loan scandal’, November 2018 <https://s.nikkei.com/2TqNvP1>

C. Freedom of association

The 1997 Law of Mongolia on Non-Governmental Organizations governs CSOs through rules that for the most part align with international standards.¹¹⁹ Individuals have the right to establish, individually, or collectively, non-governmental organisations without the permission of any State body, and ‘illegal’ restriction of the right to establish non-governmental organisations is restricted.¹²⁰

In practice, many CSOs are small, lack organisational capacity and have limited access to finance.¹²¹ Funding restrictions can limit the scope of their work. For example, EU funding only provides capacity to engage in EU supported sectors, such as persons with disabilities, human trafficking and LGBTQI issues.¹²² During a discussion on disadvantages faced by CSOs,¹²³ it was recommended that CSOs be granted tax-exempt status and State funds be dedicated to them through transparent and fair processes.¹²⁴

Positive legislative developments toward defender protection

In 2016, a civil society collective called the Human Rights Committee prepared a draft law for the protection of human rights defenders.¹²⁵ Following this, the national human rights institution agreed to establish a working group to discuss the law.

The draft law used the Model Law as a resource document, and on that basis seeks to incorporate the UN Declaration on Human Rights Defenders into national law. Despite some obstacles, civil society continues to work towards the passage and ultimate enactment of this law.

Nepal

The situation for human rights defenders

After a decade-long civil war Nepal has adopted a permanent Constitution as a step towards stabilizing politics. The pressure on journalists has decreased and peaceful assembly is now tolerated, but progress remains to be made.¹²⁶ Journalists continue to experience harassment and physical threats, including from political party members.¹²⁷ In 2016, members of Nepal’s UN Human Rights Commission were questioned on a statement given during Nepal’s Universal Periodic Review.¹²⁸

An LGBTI network has been subject to regular harassment and arbitrary arrest, while civil society groups defending the rights of Tibetan refugees have been attacked.¹²⁹ Women human rights defenders face gender inequality and injustice. Women are regarded as ‘second class’ under the law,¹³⁰ with challenges to accessing education, healthcare and the right to vote.¹³¹

¹¹⁹ Mongolia Law on non-governmental organizations 1997’ <https://bit.ly/2VsBpFP> (2)

¹²⁰ Human Rights Committee, Consideration of reports by States parties under article 40 of the Covenant (20), <https://bit.ly/2HYMafW>

¹²¹ EU Roadmap for Engagement with Civil Society, ‘Mongolia’, June 2016, <https://bit.ly/2ldj9ff> (3)

¹²² EU Roadmap for Engagement with Civil Society, ‘Mongolia’, June 2016, <https://bit.ly/2ldj9ff> (3)

¹²³ Civicus Monitor, ‘Human Rights Defenders still at risk from stated actors and businesses’, Association, June 2018, <https://bit.ly/2WKdqSr>

¹²⁴ Civicus Monitor, ‘Human Rights Defenders still at risk from stated actors and businesses’, Association, June 2018, <https://bit.ly/2WKdqSr>

¹²⁵ Report from ISHR regional consultation, January 2018

¹²⁶ Freedom House, ‘Mongolia’, 2016 <https://bit.ly/2vdAHjX>(3)

¹²⁷ Civicus Monitor, Mongolia <https://bit.ly/2TXF78y>

¹²⁸ Civicus Monitor, Mongolia <https://bit.ly/2TXF78y>

¹²⁹ Civicus Monitor, Mongolia <https://bit.ly/2TXF78y>

¹³⁰ Open Democracy, The struggles of women human rights defenders in Nepal, <https://bit.ly/2Z0aO4Z>

¹³¹ Open Democracy, The struggles of women human rights defenders in Nepal, <https://bit.ly/2Z0aO4Z>

Legislative framework: fundamental rights and freedoms

A. Freedom of expression

Freedom of expression is recognized in the Constitution. However, the Government can limit the right on grounds of sovereignty, harmonious relations, incitement, defamation and public morality.¹³²

The 2018 Criminal Code threatens press freedom by criminalizing a range of journalistic activities.¹³³ Journalists can face fines of up to 30,000 rupees (US\$270) and imprisonment of up to three years for violations.¹³⁴

While Internet use is unrestricted and online public debate has grown; some police have been known to target individuals who are critical of the Government online.¹³⁵

In February 2019, the Government tabled draft legislation that would impose sanctions on ‘improper’ posts on social media, ultimately curbing freedom of speech.¹³⁶ The proposed law would allow the Government to block all social media platforms unless registered in Nepal and instruct site operators to remove posts. Failure to comply with these regulations would result in a three-year jail term or/and a fine of 30,000 Nepalese rupees.¹³⁷ A simple post deemed defamatory to national sovereignty would be punishable up to five years in jail and 1.5 million Nepalese rupees.¹³⁸

B. Freedom of assembly

Article 17 of the Constitution and the 1955 Citizens Act support the right to freedom of assembly. However, these rights can be limited to maintain ‘sovereignty, harmony and public order’.¹³⁹ Assemblies and spontaneous protests are generally allowed; however, they have on occasion been prevented by curfews if the use of violence is expected.¹⁴⁰

While security force crackdowns on public assemblies led to three deaths in March 2017, in general, public assemblies were better tolerated in 2017 — particularly in the context of elections — than in previous years.¹⁴¹ However, crackdowns do still take place, disproportionately in the southern regions where there is a large Madhesi population.¹⁴² In November 2018, Nepalese authorities detained at least 30 people protesting outside the Indian embassy for protesting the Indian government’s crackdown on civil society.¹⁴³

¹³² Civicus Monitor, Nepal, <https://bit.ly/2KgXiq6>

¹³³ Ifex, New Nepali criminal code threatens press freedom, <https://bit.ly/2UKOKMr>

¹³⁴ Ifex, New Nepali criminal code threatens press freedom, <https://bit.ly/2UKOKMr>

¹³⁵ Civicus Monitor, Nepal, <https://bit.ly/2KgXiq6>

¹³⁶ MSN Asia, Nepal social media bill sparks freedom of speech concerns, <https://bit.ly/2WXd8b5>; Outlook, Nepal introduces social media bill, sparks concerns over freedom of speech, <https://bit.ly/2Inh2WI>; Phys, Nepal social media bill sparks freedom of speech concerns, <https://bit.ly/2Vxvgn>

¹³⁷ MSN Asia, Nepal social media bill sparks freedom of speech concerns, <https://bit.ly/2WXd8b5>; Outlook, Nepal introduces social media bill, sparks concerns over freedom of speech, <https://bit.ly/2Inh2WI>; Phys, Nepal social media bill sparks freedom of speech concerns, <https://bit.ly/2Vxvgn>

¹³⁸ MSN Asia, Nepal social media bill sparks freedom of speech concerns, <https://bit.ly/2WXd8b5>; Outlook, Nepal introduces social media bill, sparks concerns over freedom of speech, <https://bit.ly/2Inh2WI>; Phys, Nepal social media bill sparks freedom of speech concerns, <https://bit.ly/2Vxvgn>

¹³⁹ Civicus Monitor, Nepal, <https://bit.ly/2KgXiq6>

¹⁴⁰ Civicus Monitor, Nepal, <https://bit.ly/2KgXiq6>

¹⁴¹ Freedom House, Freedom in the World 2018, Nepal, <https://bit.ly/2CXoGUl>

¹⁴² Freedom House, Freedom in the World 2018, Nepal, <https://bit.ly/2CXoGUl>

¹⁴³ Amnesty, Nepal release amnesty international activists now, <https://bit.ly/2WVQikb>

C. Freedom of association

The freedom to form associations is recognized in the 1955 Citizens Rights Act and Article 17 of the Constitution, however this right is can be restricted on grounds of ‘national security, sovereignty, public morality and harmony’.¹⁴⁴

An organisation is required to register under the Association Registration Act to function legally.¹⁴⁵ Registration must be renewed annually, and annual reports submitted.¹⁴⁶ CSOs report that the compliance processes are burdensome, especially when compared to regulations for private companies, and the grounds on which registrations can be rejected are vague.¹⁴⁷

In order to receive government or foreign assistance, associations must register, or ‘seek affiliation with’ the Social Welfare Council under the Social Welfare Act, in addition to seeking approval to receive foreign funding on a case-by-case basis.¹⁴⁸ CSOs report that this Act gives the Social Welfare Council significant discretion and these regulations have been used to promote the Government agenda by silencing unfavourable opinions.¹⁴⁹ Its location in the capital also creates difficulties for CSOs based in outlying districts.

The 2002 Income Tax Act 2058 has a category for tax exempt status applied to those with a non-profit motive, however most CSOs have found application of the criteria unclear.¹⁵⁰

A Government-initiated draft ‘National Integrity Policy’ aimed to ‘promote integrity and transparency’ was criticized by CSOs and UN experts for enhancing State control over international and national CSOs.¹⁵¹ It would have restricted INGOs from engaging in projects that influence the laws¹⁵² and required them to have budgets and programs approved by the Finance Ministry.¹⁵³

Positive legislative developments toward defender protection

Civil society in Nepal has developed a draft law for the protection of human rights defenders, seeking to implement the UN Declaration on human rights defenders into national law. The Parliament has not seen the passage of this law as a priority to date, but civil society continues to push for its passage and implementation.

Philippines

The situation for human rights defenders

In the Philippines, human rights defenders are targeted and even killed at the hands of the Government.¹⁵⁴ Defenders engaged in land rights and environmental rights are particularly vulnerable to killings and attacks. The Philippines is the deadliest country in Asia for these defenders.¹⁵⁵

¹⁴⁴ Civicus Monitor, Nepal, association <https://bit.ly/2KgXiq6>

¹⁴⁵ International Center for Not-for-profit Law, Civil Freedom Monitor, <https://bit.ly/2zurC8U>

¹⁴⁶ International Center for Not-for-profit Law, Civil Freedom Monitor, <https://bit.ly/2zurC8U>

¹⁴⁷ Civicus Monitor, Nepal, association <https://bit.ly/2KgXiq6>

¹⁴⁸ International Center for Not-for-profit Law, Assessment of the Legal Environment for civil society and media in Nepal, <https://bit.ly/2lj3njs>

¹⁴⁹ International Center for Not-for-profit Law, Assessment of the Legal Environment for civil society and media in Nepal, <https://bit.ly/2lj3njs>

¹⁵⁰ International Center for Not-for-profit Law, Civil Freedom Monitor, <https://bit.ly/2zurC8U>

¹⁵¹ Civicus, Nepal Government must halt efforts to curtail civil society organisations, <https://bit.ly/2Kf35bC>

¹⁵² Civicus, Nepal Government must halt efforts to curtail civil society organisations, <https://bit.ly/2Kf35bC>

¹⁵³ Civicus, Nepal Government must halt efforts to curtail civil society organisations, <https://bit.ly/2Kf35bC>

¹⁵⁴ FIDH, ‘Casualties on the rise in President Duterte’s war on human rights defenders’, February 2019, <https://bit.ly/2EBBQrc>

¹⁵⁵ Reuters, ‘Philippines is Asia’s deadliest country for land activists, say rights groups’, July 2018, <https://reut.rs/2l93sqj>

The government publicly vilifies the work of human rights defenders.¹⁵⁶ They are frequently labeled as terrorists¹⁵⁷ and falsely associated with terrorist groups; authorities have been known to create lists of defenders with alleged terrorist associations.¹⁵⁸

Those critical of the Government are also attacked. In 2018, the Chief Justice of the Philippines, Justice Maria Lourdes Sereno, was impeached and accused of corruption and betrayal of public trust after she criticised President Duterte.¹⁵⁹

Journalists are subject to harassment, threats, stalking, illegal arrests, raids on their outlets and killings.¹⁶⁰ President Duterte has implied that journalists are rightfully killed, stating that ‘most’ slain reporters had ‘done something’ to deserve their persecution.¹⁶¹

Legislative framework: Fundamental rights and freedoms

A. Freedom of expression

Although the right to freedom of expression is protected in section 4 of the Constitution,¹⁶² it is heavily restricted in practice. The Philippines continues to be one of the deadliest countries in the world for journalists.¹⁶³

The libel provisions and associated penalties in the 2012 Cybercrime Prevention Act¹⁶⁴ have been criticised widely by CSOs.¹⁶⁵ However, challenges have been upheld by the Supreme Court.¹⁶⁶ The unsuccessful attempt to charge Rappler journalist Maria Ressa for ‘cyber libel’ in February 2019 for an article published prior to the creation of the law indicates the lengths the Government will go to in order to silence journalists.¹⁶⁷

In 2018, websites for groups such as the National Union of Journalists and other alternative news sites were targeted.¹⁶⁸ Some CSOs had their entire website shutdown for over a month.¹⁶⁹ Media groups believe the Duterte regime is using every possible means to silence dissent, criticism and free expression, targeting alternative media that reports on events and issues rarely covered by the dominant media.¹⁷⁰

¹⁵⁶ FIDH, ‘Casualties on the rise in President Duterte’s war on human rights defenders’, February 2019, <https://bit.ly/2EBBQrc>

¹⁵⁷ FIDH, ‘Unfounded terrorist accusations against dozens of human rights defenders’, March 2018, <https://bit.ly/2GHUHKj>

¹⁵⁸ The Philippine Business and News, ‘Women HRDS claim escalating violations committed against women by government’, <https://bit.ly/2I7RAFP>; Karapatan, ‘Rights group slams military hitlist in Northern Mindanao, continuing detention of rights defenders’, 2019, <https://bit.ly/2YXHtlw>

¹⁵⁹ The New York Times, ‘She stood up to Duterte. Now faces impeachment.’, March 2018, <https://nyti.ms/2rY4HhF>

¹⁶⁰ Civicus monitor, ‘Philippines’, <https://bit.ly/2P0QsEg>

¹⁶¹ Civicus monitor, ‘Philippines’, <https://bit.ly/2P0QsEg>

¹⁶² Official Gazette, ‘The 1987 Constitution of the Republic of The Philippines’, <https://bit.ly/2FIBoxv>

¹⁶³ Reuters, ‘Philippines is Asia’s deadliest country for land activists, say rights groups’, July 2018, <https://reut.rs/2I93sqr>; Rappler, Philippines ‘deadliest country’ in Asia for Journalists in 2017, <https://bit.ly/2D5RiuB>

¹⁶⁴ Republic Act No. 10175, known as the Cybercrime Prevention Act of 2012; Philstar, ‘Online libel in Cybercrime law constitutional’, <https://bit.ly/2YQzRHw>; Phys, ‘Philippines top court upholds cyber libel law’, <https://bit.ly/2V2oxp4>;

¹⁶⁵ Human Rights Online Philippines, ‘Unity statement’, <https://bit.ly/2KjAnKQ>; FIDH, ‘Concerns regarding the Cybercrime Prevention Act of 2012’ <https://bit.ly/2U72gWi>

¹⁶⁶ Philstar, ‘Online libel in Cybercrime law constitutional’, <https://bit.ly/2YQzRHw>; Phys, ‘Philippines top court upholds cyber libel law’, <https://bit.ly/2V2oxp4>

¹⁶⁷ Civicus Monitor, ‘Indictments against news sire Rappler and attempt to intimidate and control public narrative’ <https://bit.ly/2NsDRbX>;

Rappler, Maria Ressa arrest tests cyber libel law Philippines, <https://bit.ly/2G7MSnM>

¹⁶⁸ Bulatlat, ‘Overcome cyber martial law’, <https://bit.ly/2IISf5u>; Asia Pacific Report, <https://bit.ly/2YZRXH5>

¹⁶⁹ Karapatan, <https://bit.ly/2OYtw8l>

¹⁷⁰ Bulatlat, ‘Overcome cyber martial law’, <https://bit.ly/2IISf5u>

B. Freedom of assembly

The 1985 Public Assembly Act¹⁷¹ requires a permit to hold an assembly in a public place, unless held in a ‘freedom park’ on private property with the owner’s consent, or on government-owned educational institutions.¹⁷² Violations of this Act are punishable with imprisonment from one day to six years.¹⁷³

In 2018, the legislature began considering a new Public Assembly Act¹⁷⁴ that required the city or municipal mayor to be given at least three days’ notice prior to an assembly.¹⁷⁵ While somewhat of an improvement, the law would still subject organisers to criminal liability for holding an assembly without notice.¹⁷⁶ As of April 2019, the Act had not been passed.

In practice, the right to freedom of assembly is heavily restricted. Authorities use excessive force to disperse demonstrators¹⁷⁷ and protestors have been killed and arrested during demonstrations.¹⁷⁸

C. Freedom of association

The right to freedom of association is enshrined in Article 3 of the Constitution.¹⁷⁹ Despite this, President Duterte has voiced his plan to use the Human Security Act of 2007 (Republic Act No. 9372) or the 2007 Anti-Terrorism Law, against CSOs the government alleges are fronts for the Communist Party or terrorist organisations.¹⁸⁰ CSOs have noted that the criminalization of activism has come to a new low, where CSOs commonly receive trumped up charges linked to terrorism and are labeled as terrorists.¹⁸¹ In 2018, the Congress deliberated revisions and amendments to the Anti-Terrorism Law that would enhance the Government’s power to use the law to attack human rights defenders.¹⁸² The amendments would widen the definition of terrorism,¹⁸³ extend detention without a warrant,¹⁸⁴ enhance surveillance powers,¹⁸⁵ and allow the Government to consider anyone a terrorist on mere suspicion.¹⁸⁶ At the most recent session of Congress in May 2019, the Senate Vice President called for the amendments to be passed immediately.¹⁸⁷ His statement sparked great concern from civil society, who warned that the amendments have the potential to ‘cripple our basic and fundamental rights, all while removing strong accountability measures’.¹⁸⁸

In November 2018, the Philippines Securities and Exchange Commission issued a new ‘Guidelines for the Protection of Security and Exchange Commission (‘SEC’) Registered Non-Profit Organizations (NPOs) from Money Laundering and Terrorist Financing Abuse.’¹⁸⁹ CSOs have expressed concern over the guidelines, stating that they could be used to persecute political opponents.¹⁹⁰ The guidelines force CSOs

¹⁷¹ The LAWphil Project, <https://bit.ly/2Vvb0qB>

¹⁷² The LAWphil Project, <https://bit.ly/2Vvb0qB>

¹⁷³ The LAWphil Project, <https://bit.ly/2Vvb0qB>

¹⁷⁴ International Commission of Jurists, ‘New public assembly act inconsistent with human rights’ <https://bit.ly/2scWgmk>

¹⁷⁵ International Commission of Jurists, ‘New public assembly act inconsistent with human rights’ <https://bit.ly/2scWgmk>

¹⁷⁶ International Commission of Jurists, ‘New public assembly act inconsistent with human rights’ <https://bit.ly/2scWgmk>

¹⁷⁷ Civicus Monitor, ‘Human Rights Lawyer assisting families of slain sugar farmers in Sagay gunned down’, <https://bit.ly/2G8MEOK>; Civicus Monitor, ‘Latest arrests part of government campaign to silence activists’, <https://bit.ly/2G2ZtZn>

¹⁷⁸ Civicus Monitor, ‘Human Rights Lawyer assisting families of slain sugar farmers in Sagay gunned down’, <https://bit.ly/2G8MEOK>

¹⁷⁹ Official Gazette, ‘The 1987 Constitution of the Republic of The Philippines’, <https://bit.ly/2FIBoxy>;

¹⁸⁰ FIDH, ‘Slandering comments against Human Rights NGOs’, March 2018, <https://bit.ly/2Vsl4Rq>

¹⁸¹ Karapatan, ‘Rights group slams military hitlist in Northern Mindanao, continuing detention of rights defenders’, 2019, <https://bit.ly/2YXHtlw>

¹⁸² The Diplomat, ‘Why the Philippines Anti-Terror Law would be a blow to rights’, July 2018, <https://bit.ly/2IIQEfG>

¹⁸³ The Diplomat, ‘Why the Philippines Anti-Terror Law would be a blow to rights’, July 2018, <https://bit.ly/2IIQEfG>

¹⁸⁴ The Diplomat, ‘Why the Philippines Anti-Terror Law would be a blow to rights’, July 2018, <https://bit.ly/2IIQEfG>

¹⁸⁵ The Diplomat, ‘Why the Philippines Anti-Terror Law would be a blow to rights’, July 2018, <https://bit.ly/2IIQEfG>

¹⁸⁶ The Diplomat, ‘Why the Philippines Anti-Terror Law would be a blow to rights’, July 2018, <https://bit.ly/2IIQEfG>

¹⁸⁷ Campaign Human Rights Philippines, ‘Karapatan expresses concern on the possible railroading of anti-human rights bills as 17th Congress resumes sessions’, <https://bit.ly/2HMnXH5>

¹⁸⁸ Campaign Human Rights Philippines, ‘Karapatan expresses concern on the possible railroading of anti-human rights bills as 17th Congress resumes sessions’, <https://bit.ly/2HMnXH5>

¹⁸⁹ Rappler, ‘Group slam new SEC guidelines for nonprofits’, <https://bit.ly/2FZQjNb>

¹⁹⁰ Rappler, ‘Group slam new SEC guidelines for nonprofits’, <https://bit.ly/2FZQjNb>

to reveal sensitive information about their work and beneficiaries, impose burdensome reporting requirements, and grant wide powers in the case of violations of the guidelines.¹⁹¹ In January 2019, a coalition of twelve political parties requested that the guidelines be reviewed,¹⁹² on the basis that if implemented ‘many sectors and communities could be deprived of the important services [CSOs] provide’, and CSO beneficiaries would risk harassment.¹⁹³

Positive legislative developments toward defender protection

There are currently draft laws for the protection of human rights defenders in the Philippines, one before the Senate and the other before the House of Representatives. The Bill before the Senate was presented by Senator de Lima in February 2018. It has been pending with the Senate Committee on Justice and Human Rights since then, with no Senate meeting scheduled since its filing.

Two laws have been presented to the House of Representatives. In 2016 House Bill No. 1617 of Representative Zarate et al and in 2018 House Bill No. 8128 of Representative Lagman. The draft bill by Representative Lagman built upon a series of consultations with national defenders and was guided by the Model Law.

There was a public hearing on the two house bills on 9 October 2018, by the House of Representatives Committee on Human Rights. Following that, the Committee determined that a technical working group should be formed to reconcile both bills.

The TWG members unanimously passed a consolidated version of the Human Rights Defenders Protection bills of House Bill No. 1617 and House Bill No. 8128. This consolidated version very strongly builds on and relies on the Model Law.

Sri Lanka

The situation for human rights defenders

The situation for human rights defenders in Sri Lanka has significantly improved following the election of President Maithripala in 2015. That said, the Government has been slow to implement positive change to address the aftermath of a 26-year civil war between government forces and Tamil rebels.¹⁹⁴

Impunity for crimes against defenders is a major concern, where the Government has shown no real intention to hold security forces responsible for crimes committed against defenders and journalists during the civil war. In addition, defenders seeking accountability for violations committed during the conflict face risks including death threats, smear campaigns, judicial harassment, torture, enforced disappearances and killings.¹⁹⁵

Human rights defenders fighting against corruption, enforced disappearances or defending environmental rights remain at risk.¹⁹⁶ In March 2018, police threatened the family of a defender after he addressed the UN Human Rights Council. In July 2018, Srishibana Yogalimgam, a defender who works against enforced disappearances, was assaulted and Amitha Priyanthi, an anti-torture activist, was attacked by two unidentified men¹⁹⁷

¹⁹¹ Rappler, ‘Group slam new SEC guidelines for nonprofits’, <https://bit.ly/2FZQjNb>; Human Rights Online Philippines, ‘New SEC memo on non-profit organizations violates right to organize’, <https://bit.ly/2UBkCmJ>

¹⁹² Manila Bulletin, ‘Makabayan Bloc moves to scrutinize SEC memorandum on NPOs/NGOs’, January 2019, <https://bit.ly/2G8J0E2>

¹⁹³ Manila Bulletin, ‘Makabayan Bloc moves to scrutinize SEC memorandum on NPOs/NGOs’, January 2019, <https://bit.ly/2G8J0E2>

¹⁹⁴ Freedom House, ‘Sri Lanka’, 2019, <https://bit.ly/2TWemkT>

¹⁹⁵ Front Line Defenders, Sri Lanka, <https://bit.ly/2KnI42V>

¹⁹⁶ Front Line Defenders, Sri Lanka, <https://bit.ly/2KnI42V>

¹⁹⁷ Freedom House, ‘Sri Lanka’, 2019, <https://bit.ly/2TWemkT>

Those who speak out in support of equal rights for LGBTQI persons are also subject to attacks on social media.¹⁹⁸ Further, attempts are made to belittle women defenders who fight against discriminatory laws; they are labeled as ‘nagging’ and ‘nitpicking’.¹⁹⁹

Legislative framework: fundamental rights and freedoms

A. Freedom of expression

Freedom of expression is protected in the Constitution,²⁰⁰ however restrictive legislation introduced under Rajapaksa’s administration remains unchanged.²⁰¹ In addition, senior officials, including the Prime Minister, undermine media freedoms through public criticism.²⁰² In 2018, two local reporters were attacked on social media and maligned by Parliament Members at a press conference following an article scrutinizing the Government’s dealings with Chinese companies to build the Hambantona port.²⁰³

The 1979 Prevention of Terrorism Act contains broad restrictions used to restrict free speech particularly opposing views.²⁰⁴ While the draft Counter Terrorism Act represents a significant improvement to previous proposals to replace the Act, several problematic provisions remain.²⁰⁵ The text contains a wide definition of terrorism and clauses grant excessive power to the police to detain people for long periods without judicial supervision.²⁰⁶

The World Press Freedom Index indicates that Sri Lanka’s press freedom has improved in relation to other countries in the last year, however this does not indicate a significant improvement of the situation of press freedom in Sri Lanka since 2017.²⁰⁷ There have been some improvements, such as the lifting of restrictions on visiting foreign journalists and somewhat diminishing self-censorship by journalists in response to the Government’s stated commitment to media freedom. However,²⁰⁸ journalists in Tamil regions continue to be harassed²⁰⁹ and incidents indicate a trend where the authorities seem determined to restrict reporting on matters considered to be sensitive, such as disappearances, remembering war-dead, land and militarisation.²¹⁰ In March of 2018, the Army detained and questioned Tamil journalist, Shanmugam Thavaseelam, who was reporting on the Army’s alleged attempts to seize the land of a destroyed cemetery of the Tamil Tigers.²¹¹ That same month, the Army detained, questioned and deleted the evidence of journalists researching Sinhalisation in a Tamil-majority area.²¹²

Restrictions in access to social media have been used to ‘quell violence’. In March 2018 the Telecommunications Regulatory Commission Lanka ordered all telecommunication operators to restrict access to Facebook, Viber and Whatsapp for three days in an attempt to prevent the spread of anti-Muslim posts the government claimed were fueling violence. While social media was used to spread

¹⁹⁸ Groundviews, ‘Freedom of Expression on the decline in Sri Lanka’, May 2018, <https://bit.ly/2GwFNOP>

¹⁹⁹ Groundviews, ‘Freedom of Expression on the decline in Sri Lanka’, May 2018, <https://bit.ly/2GwFNOP>

²⁰⁰ The Constitution of the Democratic Socialist Republic of Sri Lanka, <https://bit.ly/2TVoavx>

²⁰¹ Civicus Monitor, Sri Lanka, ‘Expression’, January 2016, <https://bit.ly/2iiOvIh>

²⁰² Freedom House, ‘Sri Lanka’, 2019, <https://bit.ly/2TWemkT>

²⁰³ Freedom House, ‘Sri Lanka’, 2019, <https://bit.ly/2TWemkT>

²⁰⁴ Civicus Monitor, Sri Lanka, ‘Expression’, January 2016, <https://bit.ly/2iiOvIh>

²⁰⁵ Human Rights Watch, Sri Lanka draft counter terrorism act 2018, <https://bit.ly/2UK0wGQ>

²⁰⁶ Front Line Defenders, Sri Lanka, <https://bit.ly/2Knl42V>

²⁰⁷ Groundviews, ‘Freedom of Expression on the decline in Sri Lanka’, May 2018, <https://bit.ly/2GwFNOP>

²⁰⁸ Freedom House, ‘Sri Lanka’, 2019, <https://bit.ly/2TWemkT>

²⁰⁹ Civicus Monitor, Sri Lanka, ‘Expression’, January 2016, <https://bit.ly/2iiOvIh>

²¹⁰ Groundviews, ‘Freedom of Expression on the decline in Sri Lanka’, May 2018, <https://bit.ly/2GwFNOP>

²¹¹ Groundviews, ‘Freedom of Expression on the decline in Sri Lanka’, May 2018, <https://bit.ly/2GwFNOP>

²¹² Groundviews, ‘Freedom of Expression on the decline in Sri Lanka’, May 2018, <https://bit.ly/2GwFNOP>

statements of hate, actions taken in response should not contravene a citizen's right to freedom of expression.²¹³

B. Freedom of assembly

The constitution protects the right to freedom of assembly, but provides that it can be restricted on the basis of religious harmony, national security, public order or the protection of public health or morality.²¹⁴ In addition, protesters must seek permission from local police prior to holding protests under the Police Ordinance.²¹⁵ Furthermore, the authorities have been known to use excessive force, tear gas and water cannons to disperse protesters;²¹⁶ an example of which took place in February 2018.²¹⁷

On the basis of 'maintaining civil order', assemblies are specifically repressed in the Tamil-majority North and East regions, particularly assemblies in memory of Tamil rebels killed.²¹⁸ These events, which many claim are essential to inter-community reconciliation, are also banned under the anti-terror laws such as the Prevention of Terrorism Act.²¹⁹

Religious groups have reported their worship activities being classified by authorities as 'unauthorized gatherings.' As a result they were required to end their activities on allegations that the groups were not registered with the Government, despite there being no such law or regulation in place.²²⁰

C. Freedom of association

While the ability to form and join associations is a fundamental right protected under the Constitution, other laws restrict those rights and restrictive legislation introduced by the former administration to curb the CSO sector has yet to be repealed.²²¹ This includes provisions which criminalise association with or membership in banned organisations.²²² The Voluntary Social Service Organizations (Registration and Supervision) Act (VSSO Act) requires NGOs to register with an NGO Secretariat, which previously functioned under the Ministry of Defence.²²³

In 2018 the Minister of National Coexistence, Dialogue and Official Languages withdrew proposed amendments to the VSSO Act following representations made to him by over 130 CSOs that would have brought CSOs under government supervision.²²⁴ The amendments would have allowed the regulation, supervision and inspection of NGOs through a National Secretariat for NGOs with powers regarding reporting and approvals.²²⁵ The Minister also requested that CSOs assist to develop sustainable policies that would protect national interests and the independence of CSOs.²²⁶ CSOs ask that they be subject to requirements consistent with the business and public sectors, without also being subject to special surveillance and monitoring by a specialised government agency.²²⁷

²¹³ Civicus Monitor, 'Government commits to the protection of human rights defenders', <https://bit.ly/2OLCHJp>

²¹⁴ Sri Lanka Brief, 'US State Department Report on Human Rights Practices', 2017, <https://bit.ly/2WGwe4Y>

²¹⁵ Sri Lanka Brief, 'US State Department Report on Human Rights Practices', 2017, <https://bit.ly/2WGwe4Y>; *Constitution of Sri Lanka*, article 77(1), <https://bit.ly/2IX5kUe>

²¹⁶ Freedom House, 'Sri Lanka', 2019, <https://bit.ly/2TWemkT>

²¹⁷ Sri Lanka Brief, 'US State Department Report on Human Rights Practices', 2017, <https://bit.ly/2WGwe4Y>

²¹⁸ Freedom House, 'Sri Lanka', 2019, <https://bit.ly/2TWemkT>; <https://www.frontlinedefenders.org/en/location/sri-lanka>

²¹⁹ Civicus Monitor, Sri Lanka, 'Peaceful Assembly', January 2016, <https://bit.ly/2IiOvIh>

²²⁰ Sri Lanka Brief, 'US State Department Report on Human Rights Practices', 2017, <https://bit.ly/2WGwe4Y>

²²¹ Civicus Monitor, Sri Lanka, 'Association', January 2016, <https://bit.ly/2IiOvIh>

²²² Sri Lanka Brief, 'US State Department Report on Human Rights Practices', 2017, <https://bit.ly/2WGwe4Y>

²²³ Civicus Monitor, Sri Lanka, 'Association', January 2016, <https://bit.ly/2IiOvIh>

²²⁴ Civicus Monitor, Government backs down restrictive ngo law amendments, <https://bit.ly/2OLCHJp>

²²⁵ Civicus Monitor, Government backs down restrictive ngo law amendments, <https://bit.ly/2OLCHJp>

²²⁶ Sri Lanka Brief, 'US State Department Report on Human Rights Practices', 2017, <https://bit.ly/2WGwe4Y>

²²⁷ Sri Lanka Brief, 'US State Department Report on Human Rights Practices', 2017, <https://bit.ly/2WGwe4Y>

Positive legislative developments toward defender protection

There are currently no laws for the protection for human rights defenders in Sri Lanka. However, progress toward defender protection is not non-existent. In its Universal Periodic Review in March 2018, the Government supported recommendations to ensure a safe and enabling environment for civil society and human rights defenders and proper investigation into alleged attacks against them and to prosecute those found responsible. Further, in a step forward in the promotion of human rights, the Human Rights Commission of Sri Lanka received A status accreditation by the Global Nation Human Rights Institutions in 2018 for its compliance with the Paris Principles,²²⁸ committing to work harder for the protection of human rights of all.²²⁹

Taiwan

The situation for human rights defenders

Despite Taiwan being a relatively open society, defenders face challenges; from legislative restrictions of fundamental freedoms to excessive use of force by authorities at demonstrations.²³⁰ However, overall, defenders have reported that they generally have a safe environment in which to work, and a judicial system that is relatively strong and functions to protect their rights.²³¹

Legislative framework: Fundamental rights and freedoms

A. Freedom of expression

Article 11 of the Taiwanese Constitution guarantees the right to freedom of speech, teaching, writing, and publication.²³² In addition, The Freedom of Government Information Law allows public access to information held by Government agencies, including financial audit reports and documents, administrative plans, meeting records, etc.²³³ In fact, the current environment for the media and press in Taiwan is arguably the most open in Asia, reflecting a diversity of views and beliefs.²³⁴ In recent years there have been very few reports of restrictions to Internet access or monitoring of online communication.²³⁵

CSOs have prioritised plurality of views. For example, in response to calls from civil society, Taiwanese officials dropped the idea of screening books from China²³⁶ and released a detained activist who was promoting reunification with mainland China.²³⁷

Notwithstanding the relative freedom, civil society have reported some restrictions imposed by the Government, such as preventing civil servants from publishing statements or online commentary on issues of public concern.²³⁸ Civil society have also noted concerns with Taiwan compromising on its political values to avoid angering Beijing.²³⁹

²²⁸ Asia Pacific Forum of National Human Rights Institutions, 'Sri Lanka awarded A Status Accreditation, June 2018, <https://bit.ly/2K6ERo0>

²²⁹ Asia Pacific Forum of National Human Rights Institutions, 'Sri Lanka awarded A Status Accreditation, June 2018, <https://bit.ly/2K6ERo0>

²³⁰ CIVICUS MONITOR, Taiwan, monitor.civicus.org/country/taiwan/

²³¹ Freedom House, Freedom in the World, Taiwan, <https://bit.ly/2CzgwV1>; 2018 Regional Consultation, Manila, Philippines.

²³² Constitution of the Republic of China (Taiwan) <https://bit.ly/2UzUw3a>

²³³ Civicus Monitor, 'Taiwan' <https://bit.ly/2WPhhxR>

²³⁴ Civicus Monitor, 'Taiwan' <https://bit.ly/2WPhhxR>; Freedom House, 'Taiwan', 2018 <https://bit.ly/2G9JZUx>; The New York Times, 'Asia's Bastion of Free Speech? Move aside, Hong Kong, its Taiwan Now.' <https://nyti.ms/2H21Pqu>

²³⁵ Freedom House, 'Taiwan', 2018 <https://bit.ly/2G9JZUx>

²³⁶ Taipei Times, 'Taiwan replaces Hong Kong as bastion of free speech', <https://bit.ly/2WWrHLR>

²³⁷ New Bloom, 'Blacklash against reported plans to censor Chinese books shows high value placed on free speech in Taiwan', May 2018, <https://bit.ly/2J7HHYt>

²³⁸ Civicus Monitor, 'Taiwan' <https://bit.ly/2WPhhxR>;

²³⁹ Taipei Times, 'Taiwan replaces Hong Kong as bastion of free speech', <https://bit.ly/2WWrHLR>

B. Freedom of assembly

The right to freedom of assembly is protected in the Constitution in Article 14.²⁴⁰ However, the principal law regulating the right to freedom of assembly, the Parade and Assembly Act (PAA),²⁴¹ requires police approval prior to an outdoor assembly or a parade.²⁴² It can also be used to limit the location, purpose and manner in which the assembly can take place.²⁴³ Authorities additionally have wide powers to disperse assemblies, and violators face prosecution or jail.²⁴⁴

CSOs and lawmakers have long called for the repeal of the PAA,²⁴⁵ on the basis that it contradicts the Constitution.²⁴⁶ In response the Constitutional Court has ruled that the restrictions on assemblies are unconstitutional.²⁴⁷ However, the Government has used other laws to clamp down on assemblies.²⁴⁸ The Taiwanese Criminal Code has been used to arrest and detain protesters for ‘insulting a public official’, ‘endangering public safety’, and ‘obstructing an officer in discharge of duties’.²⁴⁹

Excessive use of force by authorities against protestors has been documented over the last ten years.²⁵⁰ The last reported case was on 6 August 2018 when protestors were violently dragged away and forced into a barricaded area, into police cars and deprived of water.²⁵¹ More recently, thousands of protestors peacefully rallied in the capital in October 2018 without Government interference to call for a referendum on independence from China.²⁵²

C. Freedom of association

The right to freedom of association in Taiwan is protected in Article 14 of the Constitution.²⁵³ The 1989 Civil Associations Act regulates NGOs.²⁵⁴ Under the CAA, NGOs must apply for a permit to operate legally.²⁵⁵ The Ministry of the Interior has the power to review and reject applications.²⁵⁶ If NGOs are not granted a permit and continue to operate, they could be punished with a significant monetary fine and imprisonment for up to two years.²⁵⁷ Article 58 of the CAA also grants the government the power to revoke a permit and seek to stop a NGO’s operations entirely.²⁵⁸

Recently, a draft of a new Social Associations Act (SAA), intended to replace the CAA, was passed in the legislature.²⁵⁹ CSOs raised concerns about the drafting of the law without any civil society or community input.²⁶⁰ The SAA also retains significant powers with the government, including the right to review and

²⁴⁰ Constitution of the Republic of China (Taiwan) <https://bit.ly/2UzUw3a>

²⁴¹ Assembly and Parade Act, 2002, <https://bit.ly/2OXO94x>

²⁴² Assembly and Parade Act, 2002, <https://bit.ly/2OXO94x>; FIDH, The hidden face of Taiwan, lessons learnt from the ICCPR/ICESCR review process, <https://bit.ly/2lkw2EK>

²⁴³ Assembly and Parade Act, 2002, <https://bit.ly/2OXO94x>

²⁴⁴ Assembly and Parade Act, 2002, <https://bit.ly/2OXO94x>

²⁴⁵ Civicus Monitor, ‘Taiwan’ <https://bit.ly/2WPhhxR>; FIDH, The hidden face of Taiwan, lessons learnt from the ICCPR/ICESCR review process, <https://bit.ly/2lkw2EK>; Taipei Times, Assembly and Parade Act scrutinized, <https://bit.ly/2uRsaDc>; New Bloom, Demonstrations Against the Parade and Assembly Act, <https://bit.ly/2l3FL37>

²⁴⁶ Taipei Times, Assembly and Parade Act scrutinized, <https://bit.ly/2uRsaDc>

²⁴⁷ Civicus Monitor, Peaceful Assembly, <https://bit.ly/2WPhhxR>

²⁴⁸ Civicus Monitor, Peaceful Assembly, <https://bit.ly/2WPhhxR>

²⁴⁹ Civicus Monitor, Peaceful Assembly, <https://bit.ly/2WPhhxR>

²⁵⁰ Amnesty International, ‘Taiwan: Police should avoid using excessive force at upcoming protests’, <https://bit.ly/2Vz5kvS> Taipei Times, ‘Activists question absence of brutality probe’, <https://bit.ly/2FWaU4S>

²⁵¹ Civicus Monitor, Excessive force used by Taiwan police against eviction protesters, <https://bit.ly/2WRtTzB>

²⁵² Reuters, ‘Thousands rally in Taiwan, call for referendum on independence from China’, October 2018, <https://reut.rs/2OWeu2Y>

²⁵³ Constitute Project, ‘Taiwan (Republic of China) ‘s Constitution of 1945’ <https://bit.ly/2UzUw3a>

²⁵⁴ Civicus Monitor, Association, <https://bit.ly/2WPhhxR>; Taiwan Civil Associations Act, <https://bit.ly/2TXxf7c>

²⁵⁵ Civicus Monitor, Association, <https://bit.ly/2WPhhxR>; Taiwan Civil Associations Act, <https://bit.ly/2TXxf7c>

²⁵⁶ Civicus Monitor, Association, <https://bit.ly/2WPhhxR>; Taiwan Civil Associations Act, <https://bit.ly/2TXxf7c>

²⁵⁷ Civicus Monitor, Association, <https://bit.ly/2WPhhxR>; Taiwan Civil Associations Act, <https://bit.ly/2TXxf7c>

²⁵⁸ Civicus Monitor, Association, <https://bit.ly/2WPhhxR>; Taiwan Civil Associations Act, <https://bit.ly/2TXxf7c>

²⁵⁹ Civicus Monitor, Association, <https://bit.ly/2WPhhxR>;

²⁶⁰ Civicus Monitor, Association, <https://bit.ly/2WPhhxR>;

terminate operations of NGOs.²⁶¹ While in practice NGOs generally operate without government harassment, the SAA remains a concern due to its potential abuse against NGOs.²⁶²

Positive legislative developments toward defender protection

While there have not been steps taken towards the development of a national human rights defender protection law, there have been developments related to the creation of a national human rights institution (NHRI). In January 2017, the Taiwanese government announced a plan to establish a NHRI adhering to the Paris Principles.²⁶³ However, no developments have occurred since then. As of February 2019, the NHRI has not been established.

²⁶¹ Civicus Monitor, Association, <https://bit.ly/2WPhhxR>;

²⁶² Civicus Monitor, 'Taiwan' <https://bit.ly/2WPhhxR>

²⁶³ Focus Taiwan, 'Taiwan to set up national human right institution, <https://bit.ly/2U3v9CT>