The Asian Forum for Human Rights and Development (FORUM-ASIA), in partnership with Association for Progressive Communications (APC), organised a regional consultation titled “Trends and Trajectory of the Shrinking Civic Space in Asia” in Bangkok on 20 to 22 December 2018. The consultation aimed to highlight intersectionalities of freedoms of expression, peaceful assembly and association, and the situation of human rights defenders in the context of shrinking civic space. Building on FORUM-ASIA’s previous regional consultation, the event is attended by over 80 representatives from national and regional civil society organisations, embassies, the United Nations (UN) and the ASEAN Intergovernmental Commission on Human Rights (AICHR). Esteemed participants provided first hand national and regional insights, contributing to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and the UN Special Rapporteur on the Situation of Human Rights Defenders thematic reports.
PLENARIES

Mapping the Landscape: Intersectionalities of Freedoms of Expression (FoE), Peaceful Assembly and Association (FoAA), and the Situation of Human Rights Defenders (HRDs) in Asia

The regional consultation began with words of welcome from the organisers, followed by an outline of the most pressing concerns faced by HRDs across the region. FORUM-ASIA then provided key security and logistical ground rules for the three-day consultation.

Afterwards, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye, stressed that the intersectionality of rights show the indivisibility of human rights law. He further emphasised that against the backdrop of increased curtailment of free speech by repressive governments, there is a need to continually reinforce the importance of multilateral human rights mechanisms.

The next speaker, Clément Nyaletsossi Voule, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, reiterated his first thematic report on global trends in FoAA practice. He called on participants of the consultation to identify which trends on FoAA restrictions are applicable in Asia as a basis for collaboration with Asian civil society organisations. In response to reflections of the Special Rapporteurs, civil society participants from Southeast Asia, Central Asia, South Asia, and East Asia shared experiences of heightened HRD intimidation, lack of protection and redress mechanisms to address human rights violations, use of repressive laws to criminalise dissent, and police brutality in limiting FoAA. The plenary, surmised by the distinguished professor Vitit Muntarbhorn, ended on the following highlights:

- The rise of populism has led to a questioning of the value of human rights and its existing mechanisms. How can civil society find spaces for engagement while also emphasising the link of Civil and Political Rights with Economic, Social, and Cultural Rights;

- Special Rapporteurs have the access that CSOs often do not have: they can amplify voices, channel messages to the government, and act as advisors. Civil society organisers should utilise this space, keeping in mind the need for clear communications.
The first plenary session of the second day was attended by AICHR representatives for Indonesia in 2016-2018, H.E. Dinna Wisnu, and Malaysia, H.E. Edmund Bon. The session began with an explanation about the ASEAN Intergovernmental Commission on Human Rights (AICHR) and its role within ASEAN as mechanism to promote and protect human rights. AICHR holds a strategic position in member states and in the ASEAN Secretariat, but its progress is slowed down as its mandate does not specifically mention protection mechanisms. The AICHR representatives stressed the importance of civil society engagement through relationship building and by striving to have a consultative relationship with the AICHR. As of December 2018, there are 30 CSOs with a consultative relationship with AICHR. A meeting between the Special Rapporteurs (SR) and AICHR representatives was also conducted. They discussed the possibility of SRs presenting their report to the AICHR, especially from the UN SR on HRD and a collaboration effort from UN SRs and AICHR representatives to do joint visits in ASEAN countries. In this panel session, FORUM-ASIA also re-advertised its 8th flagship report evaluating AICHR’s performance in 2017, where recommendations include:

- Using UPR recommendations and National Action Plan frameworks to build on AICHR’s work;
- Establishing institutionalised relationship with NHRIs and CSOs, not basing solely on formal invitation;
- Revisiting AICHR’s Terms of Reference and highlight its protection mechanism. With this, AICHR representatives can carry out their own investigations to look into human rights violations; and
- Addressing key human rights issues in the region rapidly and effectively, such as the Rohingya Crisis, clampdown of CSOs in Cambodia, and extra-judicial killings in The Philippines.

Evolution of Human Rights Mechanism in Asia
PANEL SESSION

**Instruments of repression: Raising of State Authoritarianism and the Use of Restrictive Legislation to Hinder Freedoms of Expression, Peaceful Assembly and Association in Asia**

Discussants from various countries shared experiences on the increasing use of legal instruments to stifle expression online and offline on such vague and arbitrary grounds, such as using national security and public order as pretext for harassing HRDs. Such repressive laws lead HRDs and individuals to practice self-censorship, which exacerbates already repressive environments. In this panel session, FORUM-ASIA also launched “Instruments of Repression: A Regional Report on the Status of Freedoms of Expressions, Peaceful Assembly, and Association in Asia.” The regional report provides information on restrictive laws in Southeast, East, and South Asia, illustrates emblematic cases, and suggests recommendations to government for the improvement of these policies. As there is an increasing trend towards the use of restrictive laws (sedition, defamation, ICT, cybercrime, among others) to suppress free speech and limit peaceful assembly and association, civil society now faces an even more dimming scenario in promoting human rights. This practice of utilising restrictive laws is often coupled with a lack of protective laws towards ensuring compliance to international standards.

PARALLEL SESSIONS

**Business and Human Rights in Asia: Nexus of the Violations against Fundamental Freedom and Rising Inequality**

There is an increasing need to promote existing mechanisms, such as the UN Guiding Principles on Business and Human Rights, to States who continually refuse good practices. In Thailand, so-called development projects led by private companies and even by government lack necessary and effective public consultation. An Indonesian discussant shared that Indonesian farmers are criminalised using the Law on Prevention and Eradication of Forest Destruction. The discussant from Indonesia suggested that environmental protection laws should focus on big companies, not on individuals. Another discussant from The Maldives also shared concern about the lack of social responsibility from business sectors as well as its close government ties.

**Women and LGBTIQ+ rights defenders in exercising fundamental freedoms: Restrictions and Best Practices**

Women and LGBTIQ+ communities are one of the most vulnerable groups impacted by surveillance and breaching of privacy. Apart from harassment and attacks received by gender rights activists, structural barriers and patriarchy-rooted notions are the main obstacles for Women and LGBTIQ+ rights defenders to move forward. One recent case is the Taiwanese referendum on same-sex marriage – a drawback for the LGBTIQ+ community.
Censorship, Defamation and Hate Speech: Landscaping the Restrictions to Promote Political Expressions

The session highlighted restrictions on media and press freedom and hate speech in Southeast and South Asia. Media freedom in the region continues to regress. Defamation laws, sedition laws, and increasing use of cyberlaws now add to the long list on how FoE is being suppressed in different contexts. Organised stifling of dissent in online spaces has also become a tool for governments to silence, harass, and surveil critics, as one participant from Jammu and Kashmir State shared. Gender also plays a key role in religious conservative communities, as highly paid groups are recruited to target LGBTIQ+ and women when promoting political expression.

Human Rights Violations in the Context of Elections: Limitations on Fundamental Freedoms and Their Impact on Democracy

Election monitoring bodies are crafted to monitor elections, but some are not independent. Although some laws explicitly suppress civil society during election time, the most frequently abused are laws which do not deal with elections per se, but rather those which assuming to protect state interests, such as cyberlaws and defamation provisions. National and local election dynamics are different as was demonstrated in the case of Manipur, where elections are used to suppress right to determination. Speakers identified the curtailment of fundamental freedoms, especially freedom of expressions, assembly and association prior, during, and after elections period in most of the Asian countries.
CONSULTATIONS

Civil society groups were enabled to meaningfully participate in three thematic consultations according to UN Special Rapporteurs’ mandates. The consultations strengthened civil societies’ engagement with the UN mechanism by providing relevant inputs to three thematic reports by the UN Special Rapporteurs.

FoE Consultation: The Surveillance Industry and Human Rights

Surveillance and human rights issues cannot be a separate issue on its own. HRDs are continuously being monitored, as third-party services are utilised by states to criminalise human rights defenders in the guise of protecting national security. A participant from Indonesia voiced that non-state actors also conduct surveillance, particularly extremist groups, and end up physically harassing women and LGBTIQ+ communities in the name of Islam. The participant further added that it is the same intolerant groups who ask government to file charges against human rights defenders under the blasphemy law. In the Philippines, the Foreign Surveillance Act complement the Human Security Act, allowing state surveillance for foreign entities who give support to local CSOs. Philippine human rights organisations are now obliged by law to provide information on funding and donor matters.

Recommendations from the consultation include:

- Regulating internet service providers and technology communications investors employing surveillance mechanisms to ensure that they are held accountable;
- Taking action against third-party entities who conduct surveillance;
- Providing guidance for private sectors in securing basic user rights; and
- Enabling effective and immediate remedy mechanisms for cases related to privacy and surveillance.

HRD Consultation: HRDs and the Culture of Impunity

The many faces of perpetrators of impunity make it difficult for CSOs to hold each actor accountable. Perpetrators of impunity range from state authorities to multinational companies. Cases of impunity against HRDs are rampant, especially those involving vulnerable groups – LGBTIQ+, religious minorities, young women and girls, among others. Many HRDs in the region face backlash resulting from their legitimate work, ranging from physical and judicial harassment, online hate speech, and other forms of threat.

Recommendations from the consultation include:

- Establishing a follow-up mechanism rooted in state accountability in the UN through coordination with UN country teams especially on the emblematic cases related to impunity;
- Developing an international protocol to guide states and key stakeholders for the promotion and protection of HRDs;
- Developing a solidarity network strengthening civil societies’ movements to make stronger impacts; and
- Enhancing capacity of independent national organisations, including NHRIs and the Ombudsman.

FoAA Consultation: The Rights to Freedom of Peaceful Assembly and of Association in the Digital Age

There are increasing cases of internet shutdowns in Asia. For example, in Jammu and Kashmir State, surveillance in communication applications are common to destabilise mass mobilisation. The role of ICT companies was also pointed out, with participants unanimously agreeing that these companies have the responsibility to align their policies with the UN Guiding Principles on Business and Human Rights. A clear definition of online practice of FoAA remains unclear. As such, there is a continued need to dissect and understand what online FoAA is, the relationship between online and offline FoAA, and how they reinforce one another.

Recommendations from the consultations for the private sector include:

- Incorporating Assurance of Anonymity schemes in terms of agreements in websites and webpages;
- Encouraging Information Communication Technologies (ICT) firms to enhance local community standards;
- Crafting effective guidelines and algorithms on how to investigate online harassment done in online spaces; and
- Establishing a good working relationship with CSOs and the UN.
SUBREGIONAL CAUCUSES

The regional consultation ended with follow up plans by sub-region to catalyse action. After identifying the most pressing issues in their respective regions, the groups presented their action plans.

The Southeast Asian bloc is planning on:

- Utilizing regional human rights mechanism to submit cases and collaborating with regional organizations (such as SEAPA and FORUM-ASIA) for monitoring and research efforts in alignment with FoE and FoAA;
- Exploring potential engagements with government actors, businesses, and tech companies to work on business and human rights issues;
- Conducting media independence campaigns to build solidarity and expand networks among Asian journalists;
- Sharing drafts for inputs and endorsements for Special Rapporteurs’ submission.

The South Asian bloc is planning on:

- Conducting a training for election monitoring in India in order to carry out good monitoring on the field;
- Creating spaces for collective experience sharing of documentation in conflict areas;
- Sharing drafts for inputs and endorsements for Special Rapporteurs’ submission; and
- Coming up with a study capturing the “human” stories of shutdowns.

The Northeast and Central Asian bloc is planning on:

- Forming a country-specific working group to discuss and come up with a business and human rights framework;
- Releasing a comparative study on restrictive laws and regulations coupled with capacity building workshops;
- Collaborating for an International film festival to be held in Kyrgyzstan;
- Sharing drafts for inputs and endorsements for Special Rapporteurs’ submission.
Regional Consultation: Trends and Trajectory of the Shrinking Civic Space in Asia

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