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FREEDOM OF SPEECH AND EXPRESSION UNDER THREAT

This editorial was created by extracting information from FORUM-ASIA's publication titled, "The Instrument of Repressions: Regional Report on the status of Freedom of Expressions, Assembly and Association in Asia" as well as the "Briefing Paper on COVID-19 in ASEAN: The Human Rights Crisis and How to End It".

We cannot have democracy without freedom of expression. The regional trend of further oppression to the civic space contributes to the heightened intimidation and risks faced by women human rights defenders (WHRDs) across the region. This editorial outlines recommendations for the improvement of existing policies, which would enable progressive action by governments, policymakers, duty-bearers, non-governmental bodies, and other stakeholders.

Part 1: Regional Trends and Trajectory –

Within already increasingly authoritarian countries, governments are using the COVID-19 pandemic as a cover to further the implementation of existing policies that curtail peaceful dissent. For others, the pandemic served as a justification for initiating new decrees, laws and policies, or using existing ones to arbitrarily restrict human rights.

Almost all ASEAN Member States have criminalised the dissemination of disinformation or what they consider to be 'fake news' in offline and online spaces, resulting in the curtailment of necessary information and dialogue, and often covering measures targeting peaceful government critics or dissidents.

Technology and digital space are also impacting freedom of speech and

expression. While platforms are available, the uneven distribution in the access to, use of, or impact of information technologies severely affect women and LGBTIQ persons access to online freedom of expressions. In addition, surveillance technology has increased insecurity, especially to dissenting voices. Wiretapping, social media tracking, biometric and facial recognition used by state and non-state actors are utilised to further silence dissent, often leading to judicial harassment and systematic cyber-attacks to those focused on human rights issues.

While platforms are available, the uneven distribution in the access to, use of, or impact of information technologies severely affect women and LGBTIQ persons access to online freedom of expressions.

The recent shutdown of ABS-CBN Philippines and conviction of journalist Maria Rhesa is only a snippet of the depressing erosion facing Asian press freedom.¹ Asia holds the dubious distinction of being home to both the most prolific jailer of journalists (China) and the deadliest places for them to work in (Afghanistan, Pakistan, Philippines and Bangladesh).² One of the trends that is common across Asia is the use of restrictive laws and legislation, including those that lead to financial clampdown on media outlets or human rights defenders. Whether in the form of defamation laws, sedition acts, or foreign funding restrictions, archaic or vaguely formulated laws are used to silence expression.³

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Part II: Freedom of Speech and Expression in East Asia –

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

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

These laws have been used against government critics to stifle dissenting views that relate to both the political and civic space. South Korea's Park Geun-Hye administration used the Network Act to prosecute critics. These included the sentencing of Park Sung-su for printing material critical of the government, and the filing of defamation cases against six journalists who had published a report on a leaked document. While the atmosphere for HRDs in Taiwan is relatively free, some activists have been charged

under the Social Order Maintenance Act (SOMA) for attempting to bring attention to domestic issues. A lack of enabling laws for the protection of human rights defenders in China, Mongolia and South Korea have also limited recourses for HRDs in cases of harassment or repression.⁴

Part III: Freedom of Speech and Expression in South East Asia –

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

Timor Leste's Media Law restricts publications from releasing content that impinge on the right to honour and reputation, while Singapore's Undesirable Publications Act can ban publications deemed 'obscene'. Blasphemy and defamation laws carry with them heavy punishments. In Indonesia and Thailand, individuals can be charged for insulting authorities, leaders, or heads of state.

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

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

Repressive laws are used to target human rights defenders and political dissidents. They remain subject to fabricated charges, State-sanctioned violence, imprisonment and extrajudicial killings. In Malaysia, the Sedition Act has been used to prosecute those who speak out against the government and its policies. In Cambodia, four human rights defenders were given a six-month sentence under a law prohibiting "insult and obstruction to a public official". In 2017, the Philippines President threatened human rights defenders speaking against the campaign against illegal drugs.⁵ In 2020, through the Bayanihan act, the Philippines criminalised those-participating in cyber incidents that took advantage of the current pandemic.⁶

Part IV: Freedom of Speech and Expression in South Asia – In

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

Free expression is also limited through the Broadcasting policy that obliges all broadcasters to air contents deemed of national importance. Defamation is also

illegitimately criminalised in Bangladesh, placing the burden on the accused to prove such content was published for 'public good'. AKM Wahiduzzaman, a geography professor was jailed for defamation for a Facebook comment referring to Prime Minister Sheikh Hasina as 'pesudo scholar'. In India the government's wide powers over the press and publishing houses has led the State to widely limit free expression despite the laws providing governments with somewhat less space to censor or ban free speech. Much of the limitations come from Article 95 of the Penal Code that has empowered the government to seize and forfeit publications suspected to incite enmity between groups, and insult religion.

Repressive laws are used to target human rights defenders and political dissidents. They remain subject to fabricated charges, State-sanctioned violence, imprisonment and extrajudicial killings.

In 2013, the Calcutta high Court ordered a stay on *Sahara: The Untold Story*, a book by Ramal Tamal Bandyopadhyaya for publishing details on a business conglomerate. In 2014, Penguin India was forced to pull its book on Hinduism written by an American academic. These legitimised harassment over free expression, leading to a rise in self-censorship. In the film industry in India, heavy censorship is imposed under vaguely interpreted contents as 'offensive'. Defamation is also an offense in India which requires the accused to prove one's innocence leading the law open to be abused by the government, especially politicians, to target its critics. Between 2011 to 2016, Tamil Nadu Chief Minister Jayalalithaa filed nearly 200 defamation cases against journalists, media outlets and political rivals, a trend

which has been practiced by many other politicians in India.

Free speech and expression are highly restrictive in Maldives, particularly of the press, in the current administration despite the fact that free press is a constitutionally guaranteed right. The government has adopted various legislations to penalise protests and free expression critical to the government. With the backing of such laws, the government has launched a full-on assault on independent media outlets and journalists in recent years. In 2016, Channel News Maldives was forcefully closed obliging the channel to express pro-government views only. The Addu Live independent news website was blocked in the same year for revealing a government charity scandal. Likewise, staff of Haveeru Media were barred from working in any media-related field until February 2018. Defamation is also an offence in Maldives under The Protection of Reputation and Good Name and Freedom of Expression Act which imposes severe restriction of freedom of expression and forces extreme self-censorship in order to avoid imprisonment and heavy fines up to US\$ 130,000. Media outlets like Dhi TV, Dhivehi Online, DhiFM, and Raajje TV were all shutdown temporarily or permanently, citing immense pressure from the government.

The Pakistan government has severe restrictions and control over freedom of the press and media imposed through provisions of government formed entities like the National Broadcasting Policy, Electronic Media Regulatory Authority and Electronic (Programs and Advertisement) Code of Conduct. These prevent anyone from airing or publishing content that is deemed derogatory on religious sects, promotes sectarianism, defamatory or contradicts Pakistan's ideology and religious values. The government has been continuously placing bans on

content critical to the army, judiciary or law enforcement practices. The Pakistan Broadcasting Corporation prohibits private radio stations from broadcasting news programs not created by the Corporation. Multiple television stations have been fined for broadcasting blasphemous content. Books and magazines are subjected to censorship, and material that is considered obscene is seized by the government.

While measures were taken to genuinely combat the proliferation of the virus, others used it as a pretext for increasing oppression and violating human rights.

Part V: The impact of COVID-19 on Freedom of Speech and Expression –

The COVID-19 pandemic has created a genuine health emergency, prompting governments to take extraordinary, unprecedented measures in an effort to curb its lethal impact. While measures were taken to genuinely combat the proliferation of the virus, others used it as a pretext for increasing oppression and violating human rights. Some measures have proven to be detrimental particularly to groups that are routinely subject to abuse.

In particular, The Association of South East Asian Nations (ASEAN) member states have responded with a wide number of measures, including the introduction of new laws and policies. Cambodia, Laos, Thailand, and the Philippines, instituted state emergency law which gave governments sweeping power. Singapore, Malaysia and Indonesia did not declare emergencies but instead used existing laws and/or introduced specific, non-emergency legislation. Indonesia, Malaysia and Thailand utilised contact tracing apps that act as surveillance for the people's movement.

Government responses have involved a crackdown on the rights to freedom of expression, peaceful assembly and association as well as violation of the right to liberty. While under international human rights law certain derogations to these rights are allowed in times of emergency,⁷ in most cases, the governments have failed to limit those to a minimum and meet the principles of necessity and proportionality needed to justify such exceptions.

In addition, despite internet access in ensuring access to information about COVID-19, 21 June 2020 marked one year of internet restrictions in eight townships in Rakhine and Chin States.⁸ In Malaysia, more than 20,011 people have been arrested for violating the country's Movement Control Order (MCO) since it was issued on 18 March 2020.⁹ These numbers include migrants and refugees. Malaysian police also raided the Aljazeera office for reporting on treatment against migrants during MCO.¹⁰ In Vietnam, by the end of March, 700 individuals had already been fined by the public security forces, who operate under the Ministry of Public Security, for peacefully expressing views related to the coronavirus.¹¹ The policies also further exacerbate public health risks of marginalised populations, including women, the homeless, people living in poverty, indigenous groups, and LGBTIQ.

Almost all ASEAN Member States have criminalised the dissemination of disinformation or what they consider to be 'fake news' in offline and online spaces, supposedly as parts of the effort to curb the pandemic.

In Myanmar, artists were arrested for a street painting promoting awareness of the epidemic because authorities argued that their depiction of the virus resembled a Buddhist monk.¹² In Cambodia, members of the dissolved opposition Cambodia National Rescue Party were

among those charged under the ‘fake news’ restrictions.¹³ In the Philippines, the ‘fake news’ provision in a new law was used to target individuals criticising the government’s response to the pandemic.¹⁴ In Malaysia, activists were arrested for allegedly violating the country’s movement control order.¹⁵

Other Southeast Asian countries such as Singapore, Laos and Vietnam all recorded arrests of individuals for allegedly spreading ‘fake news’ related to the pandemic.

Such measures also risk perpetuating structural violence. In Indonesia, where the LGBTIQ community faces discrimination and violence, such restrictions have become a form of reprisal to target the community. Ironically, in May, hundreds of Jakartans flouted social restrictions to mark the last day of a fast-food outlet.¹⁶ The lack of access to necessary and reliable information on the virus for the general public also disproportionately affects the Rohingya refugees in Malaysia, as they have become scapegoats for the disease, reinforcing the systemic and structural discrimination and violence against them.¹⁷

Part VI: Freedom of Expression and Gender Equality

It is evident that the enjoyment of the freedom of expression and freedom of information- to speak freely, participate in public debate, report the news safely and securely and harness digital technology- are influenced by sex, sexuality and gender. As information (and expressions) is power, across the world, research and trends show that being female, or identifying as a woman and/or LGBTIQ person, results in a greater likelihood of poverty, oppression, and exclusion from spheres of public interaction and decision-making.¹⁸

At times, women and LGBTIQ persons face online sexual and gender-based violence; bans on wearing certain types of clothing,¹⁹ and more. In order to fully

and meaningfully promote and defend the universality of freedom of expression and freedom of information, violations including censorship, threats, and attacks must be understood through the eyes and experiences of women and LGBTIQ persons, and the specific and unique threats must be addressed.

Tackling oppression and freedom of speech can start with provision of information on affirmative sexuality.²⁰ Provision of information helps women and LGBTIQ to understand and exercise their rights; make informed decisions with regard to their own health and bodies; hold governments to account and challenge injustice, discrimination, and oppression; participate in the decision-making that affect their lives.²¹ Access to information is an instrument that contributes to overcoming gender inequality and traditional constraints that have historically kept women disempowered and disenfranchised.²² Key information needed is comprehensive sexuality education²³ and progressive laws to protect against online-based sexual and gender-based violence. Large social media platforms such as Facebook should be held accountable to ensure action in addressing sexual and gender-based violence within its community guidelines.

While digital spaces bring about new opportunities, they also create new forms of threats and violence that have a disproportionate impact on women. Globally, it is estimated that women were 27 times more likely to be harassed online.²⁴ Women activists’ increased engagement in digital spaces has also ‘exposed them to further risk of online harassment, smear campaigns, intimidation and violence with clear gender dimensions aimed at delegitimising their work to defend human rights,’ said the Women Human Rights Defenders International Coalition in a statement.²⁵

Across Asia, online harassment and cyber-attacks against human rights defenders, especially women human rights defenders and LGBTIQ, has become a serious concern.²⁶ Such online harassment, conducted by both state and non-state actors against politically active women, creates distress, and also restrains them from their activism, often leading to self-censorship, and reduces their presence online.²⁷ Dubravka Šimonović, the United Nations Special Rapporteur on violence against women affirmed that online abuse against women journalists and women in media are a direct attack on women’s public participation.²⁸

Part VII: Key Recommendations –

- Repeal all laws criminalising people who speak out or protest peacefully. In addition, articles of the Penal Code must be amended or repealed. The criminalisation of defamation is in violation of international standards on free expression, which hold that defamation must be a private matter to be settled by civil suits. Civil defamation laws must be proportionate, have a reasonable severity threshold and avoid fines, with the exception of very serious cases. Defamation and blasphemy should not be a criminal offence, hence any mention of defamation and blasphemy within the Penal Code must be repealed in their entirety.
- Restrictions on media workers’ and publishers’ to cover any issues in the manner of their choosing must be lifted. The Broadcast Act must be amended to ensure that limitations on foreign media are lifted, broadcasting licences are issued by an independent body, and Government censorship powers are scrapped.
- Gender transformative policies to protect women and LGBTIQ’s freedom of expressions need to be upheld and implemented.
- People should have access to information, and the power of

governments and companies to obtain information about individuals and organisations must be restricted.

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spotlight

FEMINISTS NAVIGATING DIGITAL SPACE AND COUNTERING TECHNOLOGY 'ENABLING' VIOLENCE

"*Pothi baseko ramro hoina*" (it is not good if the she-hen crows) is a popular idiom in Nepali society used to silence women's voices. This old saying is deeply rooted across policies, institutions and social norms that make it challenging for those who are marginalised by the heteronormative, patriarchal and caste-ist system to express their opinions freely and openly. Stepping out of the set boundary could mean harm and violence inflicted upon them by those who gain from conserving the status-quo. However, these marginalised

voices have always been able to find small cracks in these systems to express themselves and share their stories, and struggle constantly against the dominant narrative.

Narratives of women, queer people and other marginalised communities are powerful tools that build communities and strengthen movements. Internet technology has brought change in the systems of knowledge production and has provided space to those traditionally deprived of such opportunities. Social

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justice movements are increasingly engaging in digital spaces for mobilisation and lobbying, in addition to sharing information about their work and raising awareness. Despite these advancements, digital spaces however are not free from the realities of the

offline world as it mirrors the power structure and hierarchy based on caste, class, gender identity, sexual orientation, geography, disability status, etc.

Selective Expression. Feminist and queer activists not only bear the brunt of targeted digital threats and harassment, but they are also the ones leading the struggle against the online violence against them and their communities. In a study¹ conducted in Nepal among sexual and gender rights advocates, 88% of respondents reported having witnessed someone being subjected to violence on the internet and 52% of respondents have experienced such violence themselves. Among those who have experienced violence online, it is disproportionately higher among women, queer individuals and Dalit women. There are also bots and paid accounts that exist online to attack and troll activists, feminists and progressive thinkers. Such attacks are personalised and their sexuality and bodies are used as battle grounds. The targeted online violence reflects the structural violence and culture² we live in. Online violence can cause psychological harm, social isolation, economic loss, limited mobility, self-censorship,³ and in some instances it translates to physical and self-inflicted harm. However, when direct physical harm is not visible, the legal system, including the police and the courts, makes it difficult for the victims/survivors to access justice.

Policy mapping of laws around online violence in Nepal by Body & Data show provisions are ambiguous which criminalises behavior that might be deemed 'obscene', 'vulgar', 'indecent' and 'improper'. The laws overlook consent as a factor and criminalises online behavior including sexual expression which can potentially backfire on the victim/survivor.⁴ Someone possessing a nude picture even with consent will still be criminalised as the

content itself is seen as obscene and victim blaming is blatant. However unsolicited pictures of male genitalia received without consent are easily perceived as a norm.⁵ Such laws infringe on one's legitimate sexual and political expression⁶ and right to participate actively as citizens as authorities have sweeping power to interpret the regulations.

In a study conducted in Nepal among sexual and gender rights advocates, 88% of respondents reported having witnessed someone being subjected to violence on the internet and 52% of respondents have experienced such violence themselves.

Arbitrary censorship of internet content stems from patriarchal and protectionist notions to counter gender-based violence against women and children. In 2018, the Nepali government, in response to a demand from citizens to find the perpetrator of a rape case, banned online porn. Such censorship and regulation of digital spaces not only curtails one's freedom of expression and right to information related to sex and sexuality,⁷ but also promotes a false sense of security. Similarly, young girls have been banned from using cell phones in villages in Nepal⁸ and India⁹ either as a response to curb early and child marriage or as a claim on how they are not "good for them" and are distracting girls from education. There is anxiety induced among families and society that young people will find their possible romantic partners online along with a fear of them meeting predators.¹⁰ Thus, online behavior for young people is continuously policed and surveilled by the men and elders in the family¹¹ in the name of their safety and with the purpose of preserving the 'purity' within the caste system. Agency and autonomy

of women and girls are thus controlled by laws and social norms when it comes to accessing and using digital technologies.

Tech Design And Infrastructure.

While we see digital spaces as a significant area to express ourselves and access information, something that is invisibilised to most is the power structure within these platforms and how technology is built in the first place. The constant fights against online violence and advocating for inclusive legal and justice reforms will bring sustainable change only if the digital technologies are built and run ethically to protect everyone's rights online.

Digital technology in today's age holds a lot of power in society and it is foundationally social.¹² Thus, the infrastructure and design of technology is already biased on the basis of race, sexuality, gender, ability, etc. Even when they are designed for social good, they can be used beyond the intended purpose. For example, a review of 50 safety apps developed in India showed that due to their lack of privacy policies the apps are being used as a surveillance tools on women's mobility by the family and law enforcement agencies, thus, compromising their privacy.¹³

... something that is invisibilised to most is the power structure within these platforms and how technology is built in the first place. The constant fights against online violence and advocating for inclusive legal and justice reforms will bring sustainable change only if the digital technologies are built and run ethically to protect everyone's rights online.

The system shows little to no accountability to provide feminists and queer activists with safety and protection measures. It instead imposes the protectionist idea of 'morality' and 'decency' and infringes on their freedom of expression and sexual expression.

Online violence, like offline violence, is looked at from a unidimensional approach that includes perpetrators and victims/survivors.

Social media platforms create 'echo chambers' shaped by algorithms which provide us with a fabricated sense of choice to decide what we consume in our (social media) feeds, whereas in reality, they are benefiting platform owners through targeted advertisements.¹⁴ As such, social media platforms can influence people's opinions by creating the bubbles depending on their social and economic status, political opinion, location, etc. Algorithms are designed to pick the most engaging topics including conversation on gender-based violence as it generates high traffic and engagement rate. When there is more engagement such as 'likes', 'shares' and comments, there is more data generated, which are further compiled for profit. The compiled data is used to polarise opinion, again profiting these platform owners. Now let's imagine the social media feed of anti-feminists and queerphobic persons and what this does to the narrative we are trying to put forward. There is already a struggle to bring attention to the feminist cause, and the design of these algorithms highlights certain voices and silences others.

Despite the realisation of the need of digital security and literacy to protect activists from digital threats, feminists and activists in the developing countries lack such skills. Most of the times these skills are not communicated according to their needs and is often frightening and technically confusing.¹⁵ There is a need for fun and pleasure centric digital security teaching where activists can have agency in what they are learning.

Conclusion. The power structures and injustices of society are reflected in digital spaces. While feminists and queer activists are attacked and harassed in digital spaces merely based on their identity, values and opinion, it is benefiting the very platforms that we use to express ourselves. The system shows little to no accountability to provide them with safety and protection measures. It instead imposes the protectionist idea of 'morality' and 'decency' and infringes on their freedom of expression and sexual expression. Online violence, like offline violence, is looked at from a unidimensional approach that includes perpetrators and victims/survivors. Different stakeholders around the ecosystem of the internet including policy makers, law enforcement agencies, tech giants and the civil society need to understand the complexity and nuances around it to share their portion of accountability so as to make digital spaces safe, just and accessible for everyone.

Though online harm can be prevented or minimised by promoting safer digital practices among the users and by strategising steps to be taken when incidents happens, there needs to be a holistic approach. The infrastructure of the platforms needs to be changed to counter online harassment against people, and tech platforms need to ensure accountable and ethical reporting

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mechanisms. The key to making sure that online spaces are safe, secure, and free of violence also falls under the users by making sure we respect each other's freedom of expression, boundaries and consent in both digital and physical spaces.

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“RAPE HER”: Gendered Hate Speech Against Rohingya Women

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Five years have passed since the National League for Democracy (NLD) in Myanmar won the general elections in a landslide victory. With decades of an influential pro-democracy movement led by Daw Aung San Suu Kyi at their backs, and a repudiation of the military dictatorship, what should have been a turning point in Myanmar's transition towards democracy has turned to dismay. It has spiraled into uncontrollable hate speech, emboldening of ultranationalism, grave human rights violations, escalation of armed conflict, further restrictions on freedom of expression and flagrant anti-minority discrimination, reminiscent of the hallmarks of repressive military rule. The epitome of the decline in human rights is the genocide committed against the Rohingya, with virulent hate speech as a significant contributor to the atrocity crimes.

The use of hate speech to incite violence against “the Other” is not a new phenomenon. It was a precursor to genocide in Bosnia and Rwanda, and once again in Myanmar where Rohingya were characterised as an existential and external threat to Myanmar, branded as immigrants and terrorists who posed a “threat to Burmese racial purity” and “Buddhist religious sanctity”.¹ Unfortunately, the promise of “never again” rang hollow as little action was taken to stop the vitriol and hate against Rohingya in Rakhine State in 2017. One year later in 2018, the UN Independent International Fact-Finding Mission on Myanmar (IIFMM) found “reasonable grounds to conclude” that members of Myanmar's military and security forces had committed acts of genocide and other atrocity crimes against the Rohingya.²

A year later in 2019, a small African country, The Gambia, filed a case against Myanmar at the International Court of Justice (ICJ) for violating the Genocide Convention.³ Citing the IIFMM report, The Gambia featured hate speech in its oral arguments, noting that Myanmar's genocidal intent is evidenced by its “tolerance for public rhetoric of hatred and contempt for the Rohingya.” In January 2020, the ICJ granted The Gambia's request for provisional measures, ordering Myanmar to take all measures within its power to prevent any acts that contribute to genocide, to avoid destroying evidence, and to submit a periodic report on measures it has taken.⁴

The use of hate speech to incite violence against “the Other” is not a new phenomenon. It was a precursor to genocide in Bosnia and Rwanda, and once again in Myanmar where Rohingya were characterised as an existential and external threat to Myanmar.

While the ICJ hearings have drawn attention to the rampant rights abuses, far less attention has been paid to the root causes of hate speech. Hate speech against Muslims in general, and Rohingya in particular, has long been systematically promoted and disseminated by powerful interests, including the military, religious leaders, businesses, ultranationalists and other maligned actors, who benefit from these constructed hate-narratives and resulting division and conflict in society.

Other ethnic and religious minorities, particularly those in armed conflict areas such as the Kachin and Rakhine, have also been victims of such hate speech. The Myanmar government has not displayed any genuine political will to combat this institutionalised hate speech and at times has been complicit in advocating national, racial or religious hatred and narratives that drive discrimination and tear away at social cohesion.⁵

Worse yet, the Myanmar government has made no attempts to amend or abolish discriminatory laws that disenfranchise the rights of Rohingya, including the 1982 Citizenship Law that deny Rohingya their rights as citizens of Myanmar, and helps to portray them as foreign immigrants.

Constructed narratives of hate speech often focus on portraying Islam as a “violent” foreign religion that will overpower Buddhism in Myanmar. A strong military is maintained in protecting the nation against these perceived threats and national unity. Those who may question or challenge these narratives are branded as “race traitors” who equally threaten the sanctity and security of the nation. These narratives are ultimately interlinked to, and reinforce, the status quo of the majority ethnic Burman and Buddhist dominance that has been systematically promoted and perpetuated by previous military regimes for decades and is now uncontested by the NLD government.

These narratives intersect with gender, often painting non-Muslim women as vulnerable and in need of protection,

particularly from the predatory attacks of Muslim men who seek to convert them and their children. Muslim women, on the other hand, face multiple forms of hate speech that lie on varying axes of discrimination based on their gender and religion and are usually targeted as destroyers of Buddhist religion. For Rohingya women, this is further compounded by their identity as Rohingya.

The multiple, compounded and intersectional discriminations against Rohingya women manifest themselves in some of the most heinous violence against women. During the 2017 “clearance operations”, Myanmar military and security forces reportedly hurled derogatory insults such as “Bengali bitch”⁶ at Rohingya women that specifically targeted their status as Rohingya while they beat and raped them.⁷ Despite overwhelming evidence of the military’s use of rape as a weapon of war, State Counselor’s Facebook page described testimony of sexual violence survivors as “Fake Rape”, stoking further hatred towards Rohingya.

The co-author of this piece, Wai Wai Nu, as an outspoken Rohingya women human rights defender (HRD), has frequently experienced violent threats and online gender-based violence. Multiple campaigns that included over 1,000 ultranationalists and groups likely related to the military have attacked Wai Wai Nu online, using fake news and misinformation to defame and humiliate her. Some derogatory posts have been shared by over 10,000 Facebook users. Comments on public posts and private messages she received accompanied incitement to violence, including comments such as “rape her” and “I want to kill her”. These online forms of gender-based violence frequently reference her religion and identity as Rohingya, using derogatory words such as “Bengali” and “Kalar”.⁸ In some

instances, the attacks would involve the use of misinformation, falsification and mischaracterisation of personal information to draw links between Wai Wai Nu and the NLD, portraying the NLD as supporters of Rohingya, and thus race and national “traitors”.

Many women, particularly HRDs, activists and journalists who speak out about the rights of minorities, and in particular the Rohingya, continue to be targets of hate speech and branded as “race traitors”. Khin Ohmar, a Burmese women HRD and a founder and Chairperson of Progressive Voice who vehemently defends the rights of Rohingya and champions human rights for all in Myanmar, is a frequent target of hate speech. During her most recent intervention at the 45th Regular Session of the Human Rights Council in September 2020, she was a target of such hate speech, including being called “Kalar’s wife”.

While the NLD and Daw Aung San Suu Kyi have been complicit in the denial, obfuscation and distortion of Rohingya identity and crimes committed against them, she too has been a target of the deeply ingrained racist and patriarchal gender discrimination that has been systematically promoted and politically deployed by the Myanmar military and ultranationalists. In criticising Daw Aung San Suu Kyi for choosing to marry a white man, the military and ultranationalists have deployed the use of the word *kala-phyu*, or “white kalars,” (referring to Europeans and Caucasians) throughout her political career in the 1990s.⁹

Hate speech against women not only infringes on women’s right to self-determination and bodily integrity, but also leads to self-censorship, limits their ability to craft their own online identities, and to engage in discussions meaningfully without fear.¹⁰ In addition, while impunity for hate speech remains

unchallenged as the government has not taken action to prevent hate speech and hold perpetrators to account, HRDs, activists and journalists who are critical of the government and military are charged, jailed and sentenced under domestic laws that are weaponised against them and their freedom of expression.¹¹

International accountability processes are not a panacea to ending hate speech. However, the process continues to provide records of grave human rights violations that help to shed light on contested narratives that are at the root of hate speech. Gendered narratives of hate intersect with race and religion and act as a source to further fuel Buddhist-Burman dominance and their status quo which has been emboldened by decades of military rule – this must be meaningfully dismantled.

Thus, it is imperative that all accountability processes ensure that women and girls experience of online and offline gender-based violence are central and of omnipresent concern. This includes the ways in which hate speech has been specifically aimed and targeted against Rohingya women and girls and those who have worked to defend their rights. Gender dynamics that underpin the grave crimes committed against Rohingya must never be overlooked and treated equally under international law. More urgently and specifically, concerted effort by the international community is needed to ensure that Myanmar takes its ICJ provisional measures order seriously and act to halt genocide. Countries must live up to their own obligations to prevent genocide and ensure that ICJ measures are enforced, so that conditions improve in Myanmar for the over a million Rohingya who have fled waves of violence over decades to be able to one day, safely return home without fear of being targeted by the visceral hate that is still so prevalent in Myanmar today.

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LIP SYNC TO JAIL

In March, our world turned on its head when the novel coronavirus was declared a pandemic by the World Health Organization.¹ In Egypt, with much uncertainty stemming from how a handshake could transmit the virus within such a short amount of time, women from low-income backgrounds began to risk their lives by documenting social isolation through the use of lip-sync apps. Following this, a handful of these women TikTokers were sent to jail under the guise of protecting "Egyptian Family Values". Public conversations around class became clearer when these women were charged for immorality, while upper class women continued using the internet without moral policing and punishment, a right that should be granted to all women without discrimination.

Our jaws dropped reading through the number of charges against the women. The commonality of the applications, mainly TikTok and Instagram, where they cultivated large audience bases and generated income, was what brought them together, other than being women from a lower class. Over a span of three months, ten women were charged with violating Egyptian Family Values, inciting immorality and debauchery. One of them, 17-year-old Menna Abdel Aziz, was arrested after posting a video of

herself asking for help after being raped and beaten.² She then found herself a defendant, accused of undermining Egyptian Family Values because of her TikTok content.³ It was the first time we noticed that wording from a legislation that has been around since 2018; Egyptian Family Values.⁴ To this day, there has been no legal interpretation of what this vague term entails.

According to the Middle East Monitor, several lawmakers and politicians have called for increased online surveillance to prevent young people, especially women, from misusing some apps to undermine public morals and breaching social norms.

Law No. 175 of 2018, The Anti-Cyber and Information Technology Crimes Law, which is Egypt's first cybercrime legislation,⁵ was ratified in 2018. The law is considered to be controversial as it extends the state's power to monitor online speech and expression. Similarly, a new media regulation⁶ allows authorities to monitor personal websites, social media accounts and blogs with 5000 followers or more. There are many reasons why this

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cybercrime law restricts freedom of expression and enables extreme online surveillance and moral policing. Most significantly, Article 25 of the law stipulates that anyone who posts online content that "violates the family principles and values upheld by Egyptian society" could face charges ranging from a minimum of six months of imprisonment and/or a fine of EGP50,000-100,000, which, so far, has been used primarily to regulate bodies, online presence, and sexuality.⁷ According to the Middle East Monitor, several lawmakers and politicians have called for increased online surveillance to prevent young people, especially women, from misusing some apps to undermine public morals and breaching social norms.⁸ In contrast, Massar, a group of lawyers and technologists, have issued a defense memorandum to explain why Article 25 of the law is considered unconstitutional as it violates the right to freedom of speech which is granted by the Egyptian constitution, among many other constitutional texts.⁹

Furthermore, the public prosecutor ordered the launch of a new unit for Social Media Monitoring in November 2019.¹⁰ This was followed by a controversial announcement in May 2020, stating that the cyber sphere is now considered a fourth border, in addition to land, air and sea, and thus needs “radical changes to the legislative policy” to maintain national security and protect society from “forces of evil”. The announcement ends with a justification to assert national security through regulating women’s bodies: “Are not invitations for entertainment how immorality is promoted! Do not girls fall victims of prostitution by abuse of their vulnerabilities and social need!”.¹¹

But what fueled the TikTok crackdown?

Ashraf Farahat, a lawyer, kicked off a moralistic campaign and called it, “Let’s wipe it clean”.¹² Through this campaign he reported women TikTokers to the Public Prosecution based on videos produced mostly by men via their YouTube channels. The male YouTubers attacked original content by female TikTokers through reaction videos on YouTube. The attack videos posted corresponded to the dates of submitted reports through the campaign that Farahat started. In all of the male YouTubers’ reaction videos, they mocked women TikTokers’ content by framing it as overly sexual and inappropriate, arguing that the content lacked purpose, and therefore was an unjustifiable means for making profit. By going through the reaction videos which those men produced, it became clear how they were building a virtual base from mocking the women’s TikTok content. This is the running theme through their YouTube videos, out of which they are creating a large viewership and, ironically, making money.

To illustrate, a public uproar scrutinising the daring invitation from TikTok celebrity, Haneen Hossam, erupted when she posted an Instagram story inviting women who were going through economic hardships because of COVID-19, to join Likee, a free

short videos and live streaming application which monetises virtual gifts exchanged between its guests and influencers. In order to charge the public opinion against Haneen, her invitation was interpreted as a call for online sex work by male YouTubers. Accordingly, Cairo University made an announcement¹³ of an internal investigation for challenging public morality because Haneen promoted a profitable online gig to young women. Similarly, Mawada El Adham has been accused of breaching the COVID-19 curfew, which was the theme of one of her TikTok videos.¹⁴ Additionally, her leaked photos from two years ago were used against her during police investigations into the charges of her provocative online presence, as well as private chat from her confiscated phone that was classified as “inappropriate”. In July 2020, the first court verdict, relying on Article 25 of the Law No. 175 of 2018, was used against Hossam and Al Adham.¹⁵ They were charged with two years of imprisonment and a fine of EGP300,000.¹⁶

Furthermore, the Public Prosecution responded to submitted reports by lawyers participating (in)directly in the “Let’s wipe it clean” campaign. Across all the TikTok cases, the Public Prosecution responded with heavily toned, overly parental protectionist statements,¹⁷ calling on families to watch over their children’s screens and threatening punishment to all foreign behaviors destabilising Egyptian Family Values.

On July 13, 2020, a campaign calling for the release and freedom of TikTok women took off via #freetiktokwomen¹⁸ which launched an online petition¹⁹ soliciting signatures and empathy, as well as called on the National Council for Women to provide legal support for the detained women. The campaign highlighted the classist targeting of lower-class women and dared to avert misogynist social norms. The campaign drew on the class divide between TikTok and Instagram, primarily on how the former attracted lower class users and the latter is a platform

for vaunting wealthier internet users.²⁰ For the first time outside of theoretical confinements, the overdue public feminist discussions of class became associated with TikTok cases after decades of negligence. Despite its glaring impact on our daily lives, class only used to be discussed from a privileged standpoint and only in terms of how much money someone had. Affluence, opportunities, foreign languages, economic, digital and political literacy, and social capital were not considered.

However, public discussions on class took a turn when online storms whirled (gang) rape accusations against wealthier perpetrators as was the case with the serial rapist Ahmed Bassam Zaki²¹ following the horrific Fairmont gang rape crime²², when groups of upper-class sextorted women came forward with rape testimonies which pointed at men abusing their power and influence over them. For weeks after, online spaces were flooded with the testimonies, and even personal information of witnesses and victims/survivors. Simultaneously, women who came forward had their names pushed up to the top searches on porn websites.

To sum up, it comes as no surprise that the feminist campaigning against the TikTok crackdown made strong connections to the massive wave of exposing sexual violence which was provoked by the cases of Zaki and Fairmont. The class divide was highlighted in how the upper-class victims of sexual violence in the Zaki and Fairmont cases received official support from the National Council for Women, but the lower class female TikTokers were abandoned and looked down upon. These connections work to articulate the regulation of women’s bodies online and offline within the wider frame of structural sexual violence against women. This massive public attack on women over the past few months makes it imperative to understand and address the intersection of class and sexuality with violence against women in Egypt.

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EQUAL BEFORE GOD?: Women and the Right to Freedom of Religion

Discussing religion is seldom an easy task with differing opinions around the table. This is just as true, if not more so, on the internet. The internet and other information and communications technologies (ICTs) have become an integral part of our lives, and numerous aspects of our daily functioning largely intersect with online spaces. Online platforms, more particularly social media, have provided an alternative medium for not only expression of opinion, but finding spaces and people who are seeking answers to questions that trouble us. These discussions and alternative viewpoints or life stories may otherwise be difficult to find in traditional offline spaces.

The downside of engaging with conversations about religion remains the swiftness of response, which does not

provide space for considered opinion generation. Reactionism, especially on issues that deeply relate to identities of individuals, ultimately results in hateful messaging. Lines are drawn and limits of tolerance for what is acceptable become subjective. This is particularly a challenge in Asia, where most countries have diverse ethnic and religious communities. Religion, caste and ethnicity are central to mainstream political structures, and the polarisation is palpable around elections or other key democratic moments.

Often times, groups that are invisibilised by religion have the least say in how religious practices and beliefs should play out. Women, across all prominent religions, are viewed as second-class citizens to be governed in a manner that is

not applicable to men. In many cases, religious texts and their interpretation point to discriminatory thinking propounding the need to "protect" the bodies and "morality" of women. On the internet, it becomes nearly impossible for women to express themselves on issues relating to religion affecting our autonomy and bodies without attracting violence. The message is clear—women are welcome to talk about religion as long as it furthers and glorifies the majoritarian version of it. Men who disagree with these discriminatory beliefs are also subjected to violence. This is evident from a recent instance in India where Thol Thirumavalavan, a prominent Dalit leader, pointed out the misogyny in Manusmriti, a Hindu text.¹ He was subjected to vile online bullying and a criminal case has

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been registered against him for supposedly making derogatory remarks on the religious text.²

The conflation of religion, culture and morality is used to control how women must live and behave in the interest of the larger society. Discriminatory and harmful practices perpetrated in the name of religion or culture include female genital mutilation, the denial of free choice in marriage or divorce, stigma around abortion, prevention of entry into places of worship, and outright killing for sexual “impropriety”. The rhetoric is ingrained in our minds through education, arts, politics and familial discourse to a point where support for these practices also stems from other women, as was seen in the “Ready to wait” campaign in India.³

Although this conditioning is centuries old, it is only in recent times that the experiences of women in the context of religion have been explored in relation to their right to freedom of religion or belief. Until a few years ago, the United Nations was largely unresponsive to the intersection of gender and religion. For instance, the 2016 report⁴ of the UN Special Rapporteur on the right to freedom of religion or belief, which addressed the intersection and mutually reinforcing nature of the right to religion and the right to freedom of expression, failed to recognise the gendered experience of women in the context of religion. Similarly, the Rabat Plan of Action,⁵ which seeks to combat incitement to hatred, also fails to address the specific challenges faced by women in the name of religion or the role of online spaces in furthering or quelling hate. While the International Covenant on Civil and Political Rights prohibits advocacy of religious hatred, it fails to address hate in the name of religion against women sufficiently.⁶

There have been some positive developments, however—for example, the fact that the recent United Nations

Strategy and Plan of Action on Hate Speech⁷ addresses communication in speech, writing or behaviour that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of gender. Further, in his most recent report, the UN Special Rapporteur on freedom of religion or belief analysed the relationship between religion and gender equality.⁸ It is an encouraging sign that the report brings to light the problems with religious validation of these discriminatory practices and calls on states and religious leaders to take steps to remedy this.

The conflation of religion, culture and morality is used to control how women must live and behave in the interest of the larger society.

While the International Covenant on Civil and Political Rights prohibits advocacy of religious hatred, it fails to address hate in the name of religion against women sufficiently.

Despite some developments in the discourse in international spaces, across Asia, the on-the-ground realities seem to be worsening.⁹ States have taken a problematic position in relation to censoring expression in the name of defending religion. Information and content relating to social, political or religious issues in several Asian states remain heavily regulated, policed, punished and prevented. This mindset is ultimately translated into laws and policies that regulate the conduct of women and gender minorities.

The banning of websites relating to sexual expression and LGBT and SOGI issues in Pakistan and Indonesia over the past

few years has been done in the name of religious morality, with the websites being termed “un-Islamic”.¹⁰ Women-led organisations like Sisters in Islam have received fatwas and seizure orders for their work and writings deemed as being against the teachings of Islam.¹¹ Maryam Lee in Malaysia was subjected to online bullying and state-sponsored legal harassment for her book *Unveiling Choice* on her journey to abandoning the head scarf.¹² The Aurat March in Pakistan demanding gender equality has been attacked online and offline.¹³ Shakhthika Sathkumara was arrested in Sri Lanka over his novel about a gay Buddhist monk.¹⁴ In 2010, Sri Lankan author Sarah Melanie Perera was arrested for her book speaking about her conversion to Islam from Buddhism.¹⁵

In the meantime, personal laws in the region seek to further control women, such as the Buddhist Women’s Special Marriage Law in Myanmar, which places absurd constraints on women including the need to obtain consent from their parents to marry non-Buddhists.¹⁶ In India, men from minority communities, especially Islam, are targeted by Hindu groups for entering into relationships or marriage with Hindu women.¹⁷ Many of these attacks result in honour killings and violence in India that are justified as actions against “love jihad”.¹⁸

Often, the issue of suppression of women in religion is reduced to or projected as an Islam issue. The above examples across different countries and religions show that all religions, whether they are in majority or not, are riddled with issues that diminish the space and voices of women. These incidents illustrate how subversion of the agency of women takes place to further a regime of protectionism by men who claim to be acting in the interest of women.

Social media platforms, especially large ones such as Facebook, have further compounded the problem. The community standards of these platforms prohibit

the sharing of images of parts of a woman's body, such as the breasts.¹⁹ On the other hand, platforms have been accused of working in tandem with governments, especially authoritarian governments, to deal with content online in accordance with their commands.²⁰ The arbitrary treatment of content online and restrictions on the expression of women are contrary to international human rights standards. It is ironic that these giant platforms seek to control women's bodily and sexual expression, while failing miserably to tackle hate speech against them.²¹ A bulk of this hate speech targets women or seeks to mock the masculinity of men who question authoritarian regimes backed by religious leaders.²²

The unrelenting attacks from state and non-state actors cut across theists, atheists, the undecided, those who are religion-fluid as well as women who are indifferent. By resorting to draconian measures that preserve the propriety of religion in the name of preventing defamation of religion, states are in effect desecrating the right to freedom of expression of women, and compromising their right to religion as well.

More worryingly, these restrictions prevent all forms of dialogue and discussion on existing legal and social norms that touch upon religion even for academic purposes, which only contributes to weakening democratic practices. Given this context, any discussion on religion in online spaces that is not discriminatory and does not incite violence should be welcomed, irrespective of whether we subscribe to the view presented. Despite these daunting challenges, women have in many instances successfully leveraged online spaces to push back against repression. The Not in My Name²³ campaign in India was led by women against mob lynching of minorities for consuming beef. The Flower Speech²⁴ and My Friend²⁵ campaigns in Myanmar were developed by women to advocate for acceptance and tolerance. Women

in Pakistan have relied on social media and digital tools to organise and mobilise the Aurat March,²⁶ public processions of women, to highlight issues relating to gender equality. These campaigns have been met with violence or hate on the basis of religious sensitivities.

Excluding women and threatening their expression are a great disservice to the realisation and evolution of religions. To make women's voices heard we need spaces that promote conversations and we need to find ways to improve tolerance for hearing the experience of women in religion. Policy spaces and religious institutions must dialogue with women to go beyond tokenistic presence of their bodies towards meaningful participation. Finally, for women, who have historically been censored, the internet might be the last bastion of free speech and exploration in our times. It is therefore critical that we ensure that it is open, free and without any form of hate or discrimination.

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WORKING AROUND MEDIA CENSORSHIP TO TELL OUR STORIES

When someone mentions censorship, I'm reminded of a scene in an Iranian film I watched many years ago in which a mother gives her adult son a hug. I remember watching it and thinking, "What an odd angle for a hug. So artsy!" Later on, I read that in Iran, you can't depict physical contact in films between men and women who aren't related. The director worked his way around that restriction by making it look like the actors had physical contact, when in fact they were many inches apart. This fact amazed me, because the story remained intact while complying with censorship requirements.

That workaround remained at the back of my mind when, in Malaysia, I started writing LGBT-themed songs that got the message across in a hater-friendly manner.

Our stories matter because we've been silenced for too long. Our stories add colour to Malaysia's tapestry, and they will continue to shine long after we are gone. The arts shape society's cultural identity, and LGBTIQ+ people continue to contribute to the cultural development of the country even though we aren't acknowledged for who we are. We exist even though we've been told we don't, which is why it is important to share our stories to say "Hi, we're here and we're queer". With all the restrictions in Malaysia it may be difficult, but it is not impossible.

As a band, Shh...Diam! has had a lot of doors close on us, whether it's for funding, events, radio play, or show spaces, because we're openly queer.

We've had to turn down shows knowing we could be harmed. Our entire 11-year existence is one big workaround.

Our stories matter because we've been silenced for too long. The arts shape society's cultural identity, and LGBTIQ+ people continue to contribute to the cultural development of the country even though we aren't acknowledged for who we are. We exist even though we've been told we don't.

Censorship of LGBTIQ+- related music material is very vague, so we take full advantage of it. Sometimes, organisers will ask us to play without researching any of our songs or background. When this happens, we don't tell them we're queer and bring out the rainbow tunes when we get on stage. By then, it's too late to reject us.

When coming up with a setlist before each show, we decide if it's safe to play songs such as our hits, "Lonely Lesbian" or "I Woke Up Gay". Most of the time, we throw caution to the wind and play all the gay songs. It never ceases to amaze me how some people react. In the beginning of the song their arms are folded across the chest, and they're frowning, but by the end they're laughing and singing along. I hope that when they go home, they'll think about the absurdity that inspired the lyrics and start talking about it with their friends.

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It's probably a lot tougher in film, though, where the restrictions are more specific and more people have access to the material. The film censorship board (Lembaga Penapisan Filem) removes any scenes - or entire films - deemed to be "promoting" LGBT culture.

In 2018, then deputy home Minister Datuk Mohd Azis Jamman was quoted as saying, "These aspects are related to national security and public order, socio-culture, decorum, morality and religion. LGBT issue (sic) falls under socio-culture, so the board will remove and will not approve any scene and dialogue that promotes such culture in films and dramas."¹

The worsening situation over the years for LGBTQ folks in Malaysia, especially the constant politicisation and policing of the community, demands that we respond by telling our own stories and lived realities.

Azis added that the scenes would be kept only under the condition that there was a lesson to be learned. The "lesson" is usually death, or repentance framed in a cheerful heteronormative marriage scene. Maybe both. It's ok to defy logic as long as the gays are punished in the name of entertainment.

This type of censorship poses unique challenges that force artists to be more creative in finding alternative ways of telling our stories.

Our stories

*add colour to Malaysia's tapestry, and they will continue to shine
long after we are gone...which is why it is important to share
our stories to say*

**Hi, we're here and we're
queer.**



In creating Songsang, Ineza and co-creator Mien Ly, with the support of queer collective Nose Nest, put out a call for queers interested in participatory filmmaking. People were keen on joining or helping out, but it was a challenge to find Malay Muslims who were willing to be visible on camera.

The makers of the soon-to-be-launched YouTube channel Songsang (Inverted) have their work cut out for them. The channel aims to portray everyday lives of Malaysian LGBTIQ+ folks, countering the predominantly negative narratives in the mainstream while bringing serious issues to the forefront. It's the first of its kind in Malaysia.

"The worsening situation over the years for LGBTQ folks in Malaysia, especially the constant politicisation and policing of the community, demands that we respond by telling our own stories and lived realities. The main target audience would be queer folks as an avenue of building solidarity and community. As the videos will be made public, they will be accessible to a broader audience as a means of creating awareness," says co-creator Ineza Roussille.

YouTube was chosen as the platform for the show because the government and censorship board have less control over its content. YouTube can also accommodate the crew's small budget* and is accessible to all.

I say 'less' control and not 'no' control because the government is full of surprises. For example, there is a law that requires anyone who produces videos to obtain a RM50,000 film license. The law was passed in 1982 (National Film Development Corporation Act 1982,

Section 22(1)) which says "no person shall participate in any production activities, distribute and exhibit films or any combination the activities specified in Section 21(1) unless a license is issued authorising him to do so."

What's baffling is Communications and Multimedia Minister Saifuddin Abdullah's application of an outdated law from a time when only rich people had camcorders, to today's age of social media. There is no stopping the government from pulling this law out if they don't like what you're putting out on the web. There's an assortment of laws that can and has been used to arrest people for their posts and comments, and LGBTIQ content is no exception.

The writers had to find a way to present serious issues in an entertaining and educational way, while keeping in mind religious sensitivities, potential political offence and the safety of the cast members. The possibility of a backlash is always there, regardless of how well-prepared the Songsang team is.

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in our own words

prepared the Songsang team is. Religious authorities get away with anything because you can't question the word of God. To defy them is to defy God, even if you don't believe in God. If you're Malay, you're a Muslim forever even if you're an atheist. Apostasy is punishable under shariah law and you can't escape.

The team knows this, and they've put various measures in place in anticipation of a possible backlash. "We will only be putting folks on camera who are already out, on top of doing risk assessments for all participants and providing support systems," says Ineza.

The challenge of creating characters and scenarios that achieve just the right level of visibility in a way that circumvents restrictions is bound to produce some creative shots, and I can't wait to see what they come up with.

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*Government-run and most private funding programmes will not fund LGBTIQ+ arts activities, so content creators source from outside Malaysia where there is a higher chance of securing funding. This probably encourages the conspiracy theory that the LGBTIQ+ lifestyle is a Western/Jewish agenda.

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DOES THE DIGITAL SECURITY ACT INCREASE INSECURITY FOR PEOPLE IN BANGLADESH?

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In the face of gathering public protests on the restrictions on free speech, the Government of Bangladesh finally repealed section 57 of the Information and Communications Technology Act 2006 (amended 2013) through enacting the Digital Security Act 2018 (DSA).

In the two years since the DSA came into force, around 2,000 cases have been filed under the law.¹ This has created a chilling effect on public discourse and achieves no legitimate objective. Reporting on the law's arbitrary use is also being stifled over time.

Over 800 cases have been lodged between January and September 2020.² 339 persons were arrested in the first two months of 2020.³ 89 cases were filed against 173 individuals within the first three months of the COVID-19 pandemic in March this year.⁴ These include at least 22 journalists.⁵

An alarming number of dissenters of the State's response to the crisis were arrested under the Act for allegedly "spreading rumours and misinformation on Facebook".⁶ Arrestees include a cartoonist, a woman lecturer,⁷ writers, journalists, and activists,⁸ some of whom remain in jail. Amongst the recent slew of cases brought under the Act was the arrest of a 15-year-old boy for posting a critical comment on Facebook.⁹ Reportedly, most cases before the Tribunal filed under the ICTA or DSA result in charges not being framed due to inadequate evidence.¹⁰

The notorious Section 57 of the ICTA had criminalised individuals for publishing online content on nine separate broadly defined grounds.¹¹

The ICTA was amended in 2013 allowing arrest without warrant, restricting the use of bail to release detainees pending trial, increasing the maximum prison term from ten to fourteen years for convicts, and dedicating a Cyber Tribunal to deal with offences under the law.

In the two years since the Digital Security Act came into force, around 2,000 cases have been filed under the law. This has created a chilling effect on public discourse and achieves no legitimate objective.

In the five years between this amendment and repeal of section 57, the number of police cases and arrests had escalated with 1,271 charge sheets or investigation reports being submitted to the Tribunal in that period.¹²

Prominent national and international organisations such as ARTICLE 19,¹³ Human Rights Watch,¹⁴ Ain O Salish Kendra,¹⁵ and Odhikar¹⁶ criticised the vague wording of section 57 for enabling unfettered powers of law enforcing agencies, thus opening the scope for abuse and resulting in a massively chilling effect on free speech. Former¹⁷ and current¹⁸ law ministers, a former information minister¹⁹ also did the same, and a special public prosecutor also acknowledged the misuse.²⁰

The ICTA had been used for arrests of journalists and the general public mostly for alleged criticism of government actions through Facebook posts and other online content. This included sharing posts appealing for peace or reporting on ongoing events.

In July 2018, two school students were killed while waiting for a bus on the roadside in Dhaka. This sparked a massive political movement on the roads and on social media led by thousands of school students and young persons demanding road safety. In that period, many were arrested including at least seventeen under the ICTA for allegedly "spreading rumours on social media platforms".²¹ In the wake of continuing protests around its misuse, section 57 was abolished the same year.

This welcome though belated step was however undermined by the inclusion in the new law of further widely and vaguely defined offences using undefined concepts.

These include: Section 25 (1) (a) of the DSA which criminalises "publishing, sending of offensive, false or fear inducing data information" with the intent to *annoy, insult, humiliate or malign* a person; and section 25(1)(b) which also includes imprecise terms such as "*spreading confusion*" and "*affecting the image or reputation of the nation*".

Section 29 criminalises publishing of defamatory information online with a maximum punishment of three years imprisonment, and five years for reoffending.

Section 28 allows imprisonment of a person for up to five years for publishing anything that hurts religious sentiment and ten years for reoffending.

The ICTA had been used for arrests of journalists and the general public mostly for alleged criticism of government actions through Facebook posts and other online content. This included sharing posts appealing for peace or reporting on ongoing events.

Section 31 criminalises individuals for publishing anything in digital format that creates enmity, hatred or hostility among different classes or communities of the society. It also penalises individuals for publishing content that destroys communal harmony, creates unrest, deteriorates or advances to deteriorate the law and order situation. An offender is punishable with imprisonment of up to seven years and up to ten years for reoffending. The broad terms in this provision leave huge scope for abuse in the absence of clear definition as to what constitutes hatred and enmity.

The lack of precise definitions of what may constitute offences under these provisions have broadened the scope for silencing speech. The High Court in February 2020 asked the concerned authorities to explain why sections 25 and 31 of the Digital Security Act 2018 would not be declared illegal and unconstitutional.²² There has not been a hearing on this matter since.

Bangladesh is a party to the ICCPR since 2000 and therefore is legally bound to uphold the right to freedom of expression under Article 19 of the Covenant. ICCPR is a multilateral treaty adopted by United Nations General Assembly on 16 December 1966, which came into force on 23 March 1976. Parties to the Covenant are committed to respect the civil and political rights of individuals, including freedom of speech, rights to due process and a fair trial among others.

Article 39 of the Constitution of Bangladesh also guarantees the right to freedom of expression subject to reasonable restrictions in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. The Constitution also guarantees the right to be treated in accordance with law. If these provisions of the Digital Security Act remain, they will not only continue the legacy of section 57 of the ICTA but serve to provide barely any guarantee of the right to freedom of expression and speech. Such a freedom will no longer be a right, and is rather becoming a privilege.

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FIJI'S ONLINE SAFETY ACT

Fiji is an archipelago of over 300 islands nestled in the South Pacific. The very famous “bula” is synonymous with the carefree spirit often present on the islands. This bula spirit allows Fijians to express themselves in a way that is communal and welcomes visitors to explore its culture. Even with the “bula” spirit, however, sometimes Fijian society rears its ugly head when contentious issues arise which may lead to further marginalisation and polarisation of some members of the community who face discrimination and abuse.

That is precisely the dilemma faced by society when trying to dissect this very crucial human right: the right to freedom of speech and expression. In Fiji, this is a constitutional right as stipulated in Article 17 of the 2013 Fiji Constitution.¹

Online Safety Act. The Online Safety Act of Fiji (OSA)² was set up in 2018 to regulate online content in Fiji. However, the mechanism is complaint-based and regulation is not arbitrary, in the sense that the Online Safety Commission (OSC) cannot of itself determine the content published online, unless someone raises a complaint with them. Any person residing in Fiji may lodge a complaint, even if the content posted online was done by anyone outside of the country (section 4).

The Fiji Women's Rights Movement (FWRM) in its submissions leading up to the codification of the Online Safety Act (the “Act”) mentioned that it would be beneficial to incorporate a set of guiding principles in the OSA.³ The benefit of having a set of guiding principles would be that the courts and the body that administers the Act (Online Safety Commission) would have guidance on interpreting and enforcing provisions of the Act. In its absence, even though individual provisos such as sections

24 and 25 (offences) are laid out in the Act, there is ambiguity as to what the overall principles guide the interpretation of the Act. Examples of what these guiding principles could ideally contain would be minimum thresholds for determining harmful behaviour and adherence to international human rights principles such as freedom of speech and expression.

The ambit of the Act is quite limited in the sense that it seeks to hold accountable those that engage in harmful online content. It does not provide special protection for marginalised groups (WHRDs, LGBTQI women) who face added layers of online bullying because of their identity expression and advocacy work. Because there is no specific added protection included in the Act, this may have contributed to the lack of engagement by citizens in accessing the services of the Commission to lodge complaints.

Curtailing of Freedom of Speech. The dilemma is that on one hand the State uses public health emergencies to curtail this right, and on the other hand provides very little recourse for victims of hate speech and bullying when they belong to marginalised communities, and sometimes themselves express the hate speech towards marginalised communities. This right is often picked and chosen by state and individuals to serve their self-interest.

A very significant example of this was when famous rugby player (rugby is almost like religion in Fiji) Amenoni Nasilasila, was convicted and sentenced to serve prison time for rape. This prompted hate speech online by members of popular chat groups on Facebook which have wide audiences of more than 20,000 members. The hate speech (calling for the victim to be raped again, anyone supporting the victim to also be raped, victim blaming) was directed

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towards the victim/survivor. This invoked a national response in the form of the Minister for Women denouncing the sexist and derogatory comments.⁴

COVID-19 further saw the curtailing of the right to freedom of speech and expression which was violated for political reasons, such as when Fiji recorded its first set of COVID-19 cases. The State through the police arrested prominent public figures including a sitting member of parliament from the opposition based on what they had posted on their Facebook page, using COVID-19 as an excuse to justify curtailing of civil liberties.⁵ It was an absolute waste of valuable resources (in laying the charge, and proceeding to file the criminal case in court), as the charges were since dropped by the State.⁶ Additionally, this culture of authoritarian rule is compounded on the backdrop of homophobic sentiments expressed by the Prime Minister who expressed concern as to why some religious organisations were in support of same-sex marriage.⁷ This set a very alarming tone by the State towards members of the LGBTQI community, and those standing in solidarity with them, including women human rights defenders (WHRDs).

Violence and discrimination can be perpetuated anywhere and the Fijian Parliament is no exception; in 2017 a parliamentarian was quoted making sexist remarks about gender roles of women and who they choose to marry.⁸ Human rights defenders, especially WHRDs, face additional gender-specific threats and violence, in both public and private spheres, such as gendered verbal abuse (online and offline), sexual harassment, rape and sexual violence, which can

also lead to further violations, such as stigmatisation.⁹

Case Study: Kris Prasad. In Fiji, a queer human rights activist, Kris Prasad, was subjected to online bullying because of his work highlighting double standards within the prison systems in Fiji for convicted rapists.¹⁰ Arguments presented by contenders were that it was their right to free speech and that they could direct online bullying towards anyone. The explosion of hate speech directed towards Prasad was amplified by the fact that he was Fijian of Indian descent, in contrast to Nasilasila's iTaukei race, which according to some did not give Prasad a right to highlight rape culture in Fiji. Given that Fiji is very much racially divided and religiously polarised, the levels of hate speech directed towards Prasad cut across different levels of his identity being that of an ethnically Indian young male advocate who raised concerns about the

rape culture in rugby in Fiji. It is unclear, however, whether Prasad had eventually lodged a complaint with the OSC, though it is also important to note that the OSC provides very limited remedies such as issuing notices to the perpetrator, referring to the police for criminal prosecution and mediation. All of these processes are lengthy and perhaps this is why a lot of people choose not to lodge their complaint with the OSC.

Way Forward. The Online Safety Commission, in its efforts to implement the Online Safety Act, should engage with marginalised groups such as WHRDs, women and girls, LGBTQI communities and the disability community to provide targeted assistance to specific groups needing special protections. Legal activism is also crucial in developing jurisprudence in this area, which would further strengthen ideals sought in the Online Safety Act.

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THE CHALLENGE OF PROTECTING FREE SPEECH IN DUTERTE'S PHILIPPINES

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On July 3, 2020, Philippine President Rodrigo Duterte signed the Anti-Terrorism Bill into law, a much contested legislation that sought harsher measures against suspected terrorists. Its proponents say repealing an already existing anti-terrorism law was a matter of national security, but critics are afraid that the new law's vague definition of a 'terrorist' could be used against the government's dissenters and stifle freedom of expression in the country.

These fears come amid extrajudicial killings in Duterte's infamous war on drugs, threats to the media and government critics online, and COVID-19 pandemic

restrictions that limit people's mobility and ability to demonstrate.

Just about a week after the Anti-Terrorism Law took effect, the Philippine National Police confiscated copies of the progressive magazine Pinoy Weekly, for allegedly promoting "anti-government" sentiments. Red-tagging, or labelling people or groups as subversives, is not new in the Philippines, but human rights groups fear that it has gotten especially dangerous because of the new powers authorities gained from the new law.

The government published the law's Implementing Rules and Regulations in October, despite ongoing petitions against it. Under the Anti-Terrorism Law, the government can create an Anti-Terror Council appointed by the administration, conduct warrantless surveillance and arrests, and mete harsher punishments against alleged terrorists. In November, it was revealed that the first known case under the Anti-Terror law involved two members of an Indigenous group accused of shooting soldiers.

The Anti-Terrorism Law expands the definition of a terrorist and makes “inciting to commit terrorism” through “speeches, proclamations, writings, emblems, banners, or other representations” an offense punishable by 12 years imprisonment. The law does not specify social media posts critical of the government as an act of terrorism but many are afraid that the crackdown could extend to the internet, where many Filipinos are active in sharing opinions on current events.

One of its most vocal critics is the women’s group Gabriela, which has filed a petition against the law at the Supreme Court.

“The terror will undoubtedly spread, the chilling effect magnified a hundred thousand times over, to every woman, every citizen, who does and shall still find the voice to assert her right and dignity as a woman, to speak truth to power because it will become a necessity for her survival,” the group said.

Months after the law was enacted, many women have become victims of red-tagging. In October, a top military official accused Gabriela of being part of a “terrorist organization.” This comes after the same official red-tagged Angel Locsin and Liza Soberano, two prominent actresses known for their humanitarian work and women’s rights initiatives. Both spoke out against the Anti-Terror Bill. Female activists face unique struggles, like those experienced by Reina Mae Nasino, who gave birth to a daughter in July while she was detained for alleged illegal possession of firearms and explosives. She was separated from the baby a month later and Nasino was not allowed to visit even as the newborn’s health deteriorated. The baby eventually died of pneumonia in early October and the activist was only given a few hours to attend the funeral.

Apart from Gabriela’s, there are now over 30 petitions against the Anti-Terror Law in the Supreme Court. Another group uniquely affected by the law are social media users.

“The Philippines, including our portion of the internet, must be free,” a group of internet personalities who petitioned against the new law said. “One can easily be tagged as a terrorist or terrorist sympathizer, or terrorist enabler and anyone may be subjected to surveillance, attack and even peddled fake and false news against their persons.”

The passing of the Anti-Terror Law has only stoked fears that the government could use it to silence its critics and the media.

Social media has become an important platform for activism in the Philippines as the coronavirus continues to keep people in their homes and out of the streets.

Before the Anti-Terror Law, Filipinos were already concerned about a cybercrime law that could be used to police online content under provisions against “cyber libel.” The passing of the Anti-Terror Law has only stoked fears that the government could use it to silence its critics and the media.

Social media has become an important platform for activism in the Philippines as the coronavirus continues to keep people in their homes and out of the streets. The government even used pandemic restrictions to limit demonstrations against the Anti-Terror Law, including an incident wherein at least 20 people from an LGBTQ Pride event protesting the then-bill were arrested and charged under the Law on Reporting of Communicable

Diseases, despite keeping social distancing measures.

The Supreme Court has yet to conduct oral arguments on the petitions against the Anti-Terror Law. Online, many Filipinos continue to speak out against it, exercising the freedom of speech they’re actively fighting for.

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THE BLASPHEMY REGIME IN PAKISTAN*

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Pakistan has some of the strictest anti-blasphemy laws in the world. Clauses of the penal code outlawing hate speech and defilement of holy symbols, first codified by the colonial imperative to contain communal violence, have expanded under successive governments to mandate imprisonment for wounding religious feelings,¹ outlaw religious practice of specific minorities² and sentence death³ for insulting of Holy personages. Yet, mob vigilantism increasingly outpaces proceedings under the law and those accused end up facing death threats or exile while vigilantes are lionized as religious exemplars.⁴

As a majority of accused under Pakistan's blasphemy regime are men, it is difficult to form a direct link between women's rights, SRHR and the specific act of blasphemy except inference from media coverage of cases. However, within the rubric of political, religious and social forces influencing state and society, the charge of blasphemy is also mobilised to blunt citizens' demand for rights and accountability in general, and women's rights in particular for being inimical to Islamic norms or a conspiracy against the Islamic way of life.

Within the rubric of political, religious and social forces influencing state and society, the charge of blasphemy is also mobilised to blunt citizens' demand for rights and accountability in general, and women's rights in particular.

The women's movement in Pakistan has a legacy of challenging religious orthodoxy and its framing of public policies that discriminate against the poor, women, and minority communities. Women's rights activists and groups have been targeted by the ultra-right (and by extension, the state) when they rally for the rights of women, democracy, demilitarisation, an end to the incursion of religion in politics and for the repeal of the death penalty for blasphemy.⁵ They have been told repeatedly that discriminatory laws against women and minorities are God-ordained and sacrosanct. This line of defense, like the justification of the death penalty for blasphemy, impeded for nearly 27 years, attempts to reform rape laws under the Hudood Ordinances, 1979^{6,7} and setting 18 years as the minimum age of marriage to curb child marriage.⁸

Historically, the politico-religious forces that support the death penalty for blasphemy and persecute religious minorities and critical Muslim voices are the same that block women's rights legislation and justify violence against women. Being part of national and provincial assemblies, it is difficult to discern whether they operate under patronage of the state or if the state is willing to cede ground in a bid to contain/ appease them.

Currently, accusations of blasphemy are on the rise in Pakistan. In the month of August 2020, more than 40⁹ cases were registered based on social media posts. While blasphemy related killings have been cyclical¹⁰ over the decades, the recent spate of accusations and killings are accompanied by a wave of media censorship,¹¹ enforced disappearances,¹²

extrajudicial killings,¹³ and the general curtailment of free speech.¹⁴ In this environment while social justice movements have grown and become more visible across the country due to social media,¹⁵ the state can be seen policing and containing detractors through a range of made-for-purpose laws,¹⁶ the use of offline violence¹⁷ and manipulation of online spaces, populating them with anti-minority and anti-women narratives.

The women's movement in Pakistan has a legacy of challenging religious orthodoxy and its framing of public policies that discriminate against the poor, women, and minority communities.

Apart from the legal legacy, blasphemy and women's rights are also connected by the set of acts, manufactured or performed, that are cast as personal affronts to be hurriedly 'cancelled' via public shaming and rituals of repentance¹⁸ with social media as a tool of enforcement. While women's access to the internet is expanding, women journalists have recently come forward¹⁹ claiming that online spaces are becoming increasingly unsafe for women. Dr. Arfana Mallah who was recently accused of blasphemy by religio-political parties for 'defending' a colleague accused of blasphemy was eventually forced to 'repent publicly' via a video message²⁰ circulated widely on social media. A few months earlier, the same groups had attempted to register a legal case against the 2020 Aurat Marches

across Pakistan while participants were abused²¹ and eventually petitioned for 'sloganeering against Islam'.²² In turn, the Khyber-Pakhtunkhwa provincial assembly dubbed the marches 'un-Islamic', 'unconstitutional' and a conspiracy against the Islamic way of life, legitimising claims of the ultra-right.²³

Evidence suggests that blasphemy laws are not only being increasingly invoked, they are weaponised to stamp out dissent on a range of issues.²⁴ When read with other laws, the lines between sacrilege, sedition, dissidence, anti-statism, social impropriety, and freedom of expression seem increasingly blurred. It is also unclear who delivers justice to those accused of blasphemy—the state through enforcement of laws;^{25, 26} mobs whipped to frenzy;²⁷ opportunistic politicians;²⁸ televangelists;²⁹ social media influencers;³⁰ or all acting symbiotically.³¹

Under the current blasphemy regime in Pakistan, accusations of blasphemy will likely continue to be used as a cudgel to undermine opposition. While feminists have long known that there is no ultimate appeasement of the ultra-right, women and minorities will continue to suffer as the state uses religion to gain political legitimacy and panders to those using violence to make their point.³²

Evidence suggests that blasphemy laws are not only being increasingly invoked, they are weaponised to stamp out dissent on a range of issues. When read with other laws, the lines between sacrilege, sedition, dissidence, anti-statism, social impropriety, and freedom of expression seem increasingly blurred.

While feminists have long known that there is no ultimate appeasement of the ultra-right, women and minorities will continue to suffer as the state uses religion to gain political legitimacy and panders to those using violence to make their point.

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31. Khan, M Ilyas. "Why was Pakistan General Giving Money to Protesters?" November 29, 2017. BBC News. <https://www.bbc.com/news/world-asia-42149535>.
32. "The TLP's Rise to Power Explained." November, 16, 2020. Samaa News. <https://www.samaa.tv/news/2020/11/the-tlps-rise-to-power-explained/>.

RESOURCES FROM THE ARROW SRHR KNOWLEDGE SHARING CENTRE

Compiled by Keshia Mahmood

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ARROW's SRHR Knowledge Sharing Centre (ASK-us) hosts a special collection of resources on gender, women's rights, and sexual and reproductive health and rights (SRHR). It aims to make critical information on these topics accessible to all. ASK-us is also available online at <http://www.srhr-ask-us.org/>. To contact ASK-us, please email: keshia@arrow.org.my.

ARTICLES AND BOOKS

Wang, Ping. "The Prosecution of Taiwan Sexuality Researcher and Activist Josephine Ho." *Reproductive Health Matters* 12, no. 23 (2004): 111-115. [https://doi.org/10.1016/S0968-8080\(04\)23116-0](https://doi.org/10.1016/S0968-8080(04)23116-0).

This article explores a case filed against Josephine Ho, founder of the Center for the Study of Sexualities, National Central University, Taipei, Taiwan, for "propagating obscenities that corrupt traditional values". Ho has been researching sexuality and supporting freedom for marginalised sexual minorities for ten years. In a public statement in response to the charges, she said that the work of scholarly research must not be dictated by prejudice and that differences in sexual values should not be arbitrated by law and should be open for public discussion. As the legal process began in January 2004, Ho's supporters in Taiwan have called for the preservation of the Taiwan Constitutional decree on integrity and autonomy of academic research and freedom of expression on the internet, for the University to resist calls to dismiss Ho from her post, and for respect for freedom of speech and expression and the right to create spaces to educate people about non-normative sexualities.

Amnesty International. *Toxic Twitter – A toxic place for women.* Amnesty International, 2018. <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/#topanchor>.

This research highlights the particular experiences of violence and abuse on Twitter against women of colour, women from ethnic or religious minorities, lesbian, bisexual or transgender women – as well as non-binary individuals – and women with disabilities, to expose the intersectional nature of abuse on the platform. The findings paint a worrying picture that Twitter can be a toxic place for its female users. The company's failure to meet its responsibilities regarding violence and abuse means that many women are no longer able to express themselves freely on the platform without fear of violence or abuse.

Article 19. *Tackling Gender Inequality Through Access to Information.* London: Article 19, 2020. <https://www.article19.org/resources/tackling-gender-inequality-through-access-to-information/>.

While the right to information is instrumental in ensuring physical, economic and political empowerment, women face structural obstacles and barriers that undermine their ability to fully exercise this fundamental right. Under international human rights law,

States have an obligation to promote and protect both gender equality and access to information. States must ensure that all barriers for women in accessing information are eliminated. This briefing sets out the role of access to information in achieving women's empowerment and tackling gender inequality, and provides recommendations for governments and civil society.

Shah, Svati P. "Sedition, Sexuality, Gender, and Gender Identity in South Asia." *South Asia Multidisciplinary Academic Journal* 20, (2019): 1-23. <https://doi.org/10.4000/samaj.5163>.

While there is a consensus that we are in a period of heightened official foreclosure of critical speech in South Asia, it would be wrong to presume that this historical period is exceptional in this regard. This special issue of SAMAJ takes up the ways in which laws against sedition and other laws controlling speech in South Asia are being used by the governments there with increasing frequency—against activists, lawyers and journalists. The issue is an examination of the uses of judicial and extrajudicial means to silence dissent throughout South Asia, and with an eye toward the historical precedents of particular contemporary instantiations of foreclosing and repressing critical speech.

resources

Stone, Adrienne, Rishad Chowdhury and Martin Clark. "The Comparative Constitutional Law of Freedom of Expression in Asia." In *Comparative Constitutional Law in Asia*. Edited by Rosalind Dixon and Tom Ginsburg, 227-249. Gloucestershire: Edward Elgar Publishing, 2014. <https://doi.org/10.4337/9781781002704>.

Constitutional protection of freedom of expression is virtually universal. While freedom of expression has particularly strong roots in the Western liberal political tradition, the arrival of constitutionalism in Asia has brought constitutional protection of freedom of expression with it. Most Asian constitutions, reflecting the international consensus evident in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (which were either in existence or in the pipeline at the time most Asian constitutions were adopted) afford explicit protection, in one form or the other, to the right to speech and expression. However, just as Western forms of constitutional law have been adapted to the particular contexts of Asian countries, understandings of freedom of expression too have been shaped by the distinctive political contexts and traditions of Asia.

Tan, Jun-E. "Digital Rights in Southeast Asia: Conceptual Framework and Movement Building." In *Exploring the Nexus between Technologies and Human Rights: Opportunities and Challenges in Southeast Asia*. Edited by Khoo Ying Hooi and Deasy Simandjuntak, 11-38. Bangkok: SHAPE-SEA, 2019. <http://shapesea.com/wp-content/uploads/2019/12/Exploring-the-Nexus-Between-Technologies-and-Human-Rights-r3.pdf#page=19>.

This book chapter builds a conceptual framework for digital rights by drawing from digital rights advocates in Southeast Asia, and provides a snapshot of the

digital rights movement in the region through the advocates' areas of work, challenges faced, and recommendations for advancing the movement. The conceptual framework proposes four spheres of digital rights, as follows: 1) conventional rights translated to digital spaces, 2) data-centred rights, 3) rights to access to digital spaces and services, and 4) rights to participate in the governance of the digital or the Internet. Empirical observation of the digital rights movement in Southeast Asia reveals that most work has been done on conventional rights translated to digital spaces. The lack of technical capacity is a major gap in addressing digital rights violations that require a deeper understanding of how the technology functions.

Zalnieriute, Monika. "Digital Rights of LGBTI Communities: A Roadmap for a Dual Human Rights Framework." In *Research Handbook on Human Rights and Digital Technology: Global Politics, Law and International Relations*. Edited by Ben Wagner, Matthias C. Kettmann and Kilian Vieth. 411-434. Gloucestershire: Edward Elgar Publishing, 2019. <https://doi.org/10.4337/9781785367724.00030>.

This book chapter aims to move beyond the existing narratives on digital technologies and LGBTI rights by sketching a preliminary roadmap for the development of a combined LGBTI and digital rights analytical framework and research programme. Such a framework is necessary for two reasons. First, it is vital to address the growing complexity of the implications of the Internet and digital technology for human rights that in reality go well beyond the so-called classical digital rights issues of censorship and surveillance, which have captured and even expropriated scholarly and activist attention at the expense of other pressing issues. Second, such a framework is instrumental for the

LGBTI movement to expand its political spectrum beyond 'traditional' issues, such as marriage equality and gender identity, and confront other pressing civil rights concerns to assure the effective and full equality of LGBTI communities in the digital age. The goal of this chapter is to illuminate the problematic issues at the intersection of LGBTI communities and digital technologies.

Asian Forum for Human Rights and Development. *Freedom of Expression Under Threat: Perspectives From Media And Human Rights Defenders In Asia*. Bangkok: FORUM-ASIA, 2019. <https://www.forum-asia.org/uploads/wp/2019/07/Freedom-of-expression-under-threat.pdf>.

This publication attempts to raise awareness about the threats and challenges faced by media and human rights defenders in the current restrictive and repressive environment in many countries in Asia. More awareness about what is going on, and more awareness about what could or should be done. The publication features various chapters on issues, including: trends of killings and disappearances across Asia; doxing, persecution and violence threatening journalists in Indonesia; press freedom and repressive laws in the Maldives; the blurring of lines between journalists and human rights defenders; hate culture in India; hate speech against marginalised groups on social media; fake news in Asia; women in the digital age; cyber martial law in the Philippines; online censorship, bots and hate speech in Pakistan; and ownership and independent media.

Kim, Eunha, Jean Dinco, Louise Suamen, Mike Hayes and Tilman Papsch. "The Impact of Securitisation on Marginalised Groups in the Asia Pacific: Humanising the Threats to Security in Cases from the Philippines, Indonesia and China." *Global Campus Human Rights Journal* 1, no. 2 (2017): 414-434. <https://doi.org/20.500.11825/421>.

Securitisation has a disproportionate impact on marginalised groups. This article examines the impact of securitisation on four groups of people: the poor and children in Duterte's 'war on drugs' in the Philippines; female North Korean refugees in China; and the LGBTI community in Indonesia. The article argues that the term 'security threats,' does not adequately describe the consequences of securitisation. The term 'human threats' is more suitable as it demonstrates that state securitisation impacts humans and their rights, and that the existential threats have real-life consequences.

Miller, Alice M., Eszter Kismödi, Jane Cottingham and Sofia Gruskin. "Sexual Rights as Human Rights: A Guide to Authoritative Sources and Principles for Applying Human Rights to Sexuality and Sexual Health." *Reproductive Health Matters* 23, no. 46 (2015): 16-30. <https://doi.org/10.1016/j.rhm.2015.11.007>.

This Guide seeks to provide insight and resources to actors interested in the development of rights claims around sexuality and sexual health. After engaging with the vexed question of the scope of sexual rights, it explores the rules and principles governing the way in which human rights claims are developed and applied to sexuality and sexual health, and how that development is linked to law and made a matter of state obligation. This understanding is critical to policy and programming in sexual health and rights, as it supports calling on the relevant range of human rights,

such as privacy, non-discrimination, health or other universally accepted human rights, as well as demanding the action of states under their international and national law obligations to support sexual health.

Reang, Putsata. *Freedom of Expression and Right to Information in Asean Countries: A Regional Analysis of Challenges, Threats and Opportunities*. London: Internews Europe, 2014. https://www.internews.org/sites/default/files/resources/InternewsEU_ASEAN_FoE_and_RTI_Study_2014.pdf.

This study aims to assess the current state of the Freedom of Expression (FoE) and Right to Information (RTI) movements across Southeast Asia, both at the national and regional levels. The FoE landscape is visibly struggling across the region in the face of increasing threats within national borders, including from a cross-regional domino effect of regressive laws and policies. With external and regional support dwindling, and a lack of recognition for FoE as a concept worthy of support in its own right, the report concludes particularly that there is – across the region – the demand and potential for achieving greater impact with an evidence-based, region-wide strategy to reinforce and complement national-level initiatives.

resources

International Commission of Jurists. *Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia*. 2019. <https://www.icj.org/wp-content/uploads/2019/12/Southeast-Asia-Dictating-the-Internet-Publications-Reports-Thematic-reports-2019-ENG.pdf>.

Through analyses of legal frameworks and selected cases throughout the region, this report maps out a general pattern of abuse across the region, where legal provisions have been implemented in a way that curtails the rights to freedom of expression, opinion and information online. This trend is not new – Southeast Asian governments have, for decades, crafted and enforced the law to curtail expression and information, and have in recent years extended these old patterns of violation to the online sphere. This report concludes by reasserting that international human rights law not only remains relevant, but that its application is needed, now more than ever in the digital age, to protect the exercise of rights online as well as offline.

Cherevko, Antonina. *Covid-19 and the Impact on Freedom of Expression, Access to Information and Freedom of the Media*. International Media Support (IMS), 2020. <file:///D:/Users/User/Downloads/Covid-19-and-FoE-analysis-AC-layout.pdf>.

This paper provides an overview of the trends and challenges to freedom of expression, freedom of the media and access to information stemming from national governments' responses to the Coronavirus pandemic. It considers some of the most pressing issues pertaining to media such as procedural shortfalls, disinformation, hate speech, troubles in accessing information and impediments to journalistic freedom.

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OTHER RESOURCES

United Nations Educational, Scientific and Cultural Organization. Freedom of information: The right to know. UNESCO, 2011. <https://unesdoc.unesco.org/ark:/48223/pf0000193653>.

This document is a compilation of resources, presentations and panel discussions during the UNESCO World Press Freedom Day 2010 conference, titled: Freedom of Information: Current Status, Challenges and Implications for News Media. Despite significant progress and emergence of a world community of advocates for freedom of information, there are still many factors constraining advance toward fully achieving its promise to empower individuals and further accountability, transparency and the fight against corruption. This publication reviews some of the main issues and challenges, stressing the contribution of traditional news media and information and communication technologies (ICTs) in facing them.

United Nations Human Rights. Report on freedom of expression, states and the private sector in the digital age. <https://www.undocs.org/A/HRC/32/38>.

This report provides an overview of the regulatory ecosystem that underpins the Internet and trends in State and private action that implicate freedom of expression online. Online expression is increasingly mediated through private networks and platforms created, maintained and operated by a diverse range of companies commonly referred to as the Information and Communications Technology (“ICT”) sector. While the rapid growth of the ICT sector has led to unprecedented opportunities for access to information and communication, it has also triggered

new forms of State regulation that threaten the very existence of a free and open Internet. The activities of the private sector also have an outsized impact on the freedom of expression of millions of users, given their role as gatekeepers of the global exchange of information and ideas.

United Nations Human Rights. Report on content regulation. <https://www.undocs.org/A/HRC/38/35>.

In the first-ever UN report that examines the regulation of user-generated online content, the Special Rapporteur examines the role of States and social media companies in providing an enabling environment for freedom of expression and access to information online. In the face of contemporary threats such as “fake news” and disinformation and online extremism, the Special Rapporteur urges States to reconsider speech-based restrictions and adopt smart regulation targeted at enabling the public to make choices about how and whether to engage in online fora. The Special Rapporteur also conducts an in-depth investigation of how Internet companies moderate content on major social media platforms, and argues that human rights law gives companies the tools to articulate their positions in ways that respect democratic norms and counter authoritarian demands.

United Nations Human Rights. Disease pandemics and the freedom of opinion and expression. <https://undocs.org/A/HRC/44/49>.

This report outlines the steps that are necessary and appropriate to protect everyone’s right to freedom of opinion and expression during the COVID-19 health crisis and any future pandemic. The report is based on the premise that, particularly in the face of a global pandemic, the free flow of information, unhindered by threats and intimidation

and penalties, protects life and health and enables and promotes critical social, economic, political and other policy discussions and decision-making. It urges an approach to address the problem of misinformation that fosters public correction of rumours and the calling out of harmful chicanery and that avoids driving such misinformation into places where conspiracy theories defeat rigorous scientific assessments and public health warnings—one rooted in legal frameworks that promote the sharing of reliable information.

FILMS/DOCUMENTARIES

Joshua: Teenager vs. Superpower (2017) is a documentary about Hong Kong pro-democracy activist Joshua Wong’s role as a student leader during the 2014 Occupy protests. Wong first hit the headlines after leading a protest in 2012, when he was just 14 years old, eventually forcing the government to scrap its controversial national education curriculum. More on the documentary at: <https://www.scmp.com/news/hong-kong/politics/article/2092265/netflix-releases-trailer-documentary-about-hong-kong-pro> and https://www.youtube.com/watch?v=7lN9_mQq2mQ&feature=emb_logo.

Shouting Fire: Stories from the Edge of Free Speech (2009) is a documentary that delves into the history and current state of the First Amendment to the United States Constitution. Detailing how the protection and exercise of free speech has changed and how global politics influences these trends, the film studies a number of free speech cases, many of them post-9/11. With comments from a range of scholars, students and political pundits, “Shouting Fire” presents a fascinating insight into one of the cornerstones of U.S. democracy. More on the documentary at: https://www.youtube.com/watch?v=LR6O9-9sJ38&feature=emb_logo.

Hooligan Sparrow (2016) follows maverick activist Ye Haiyan (aka Hooligan Sparrow) and her band of colleagues to Hainan Province in southern China to protest the case of six elementary school girls who were sexually abused by their principal. Marked as enemies of the state, the activists are under constant government surveillance and face interrogation, harassment, and imprisonment. Sparrow, who gained notoriety with her advocacy work for sex workers' rights, continues to champion girls' and women's rights and arms herself with the power and reach of social media. More on the documentary at: <https://hooligansparrow.com/>.

"Impunidade mata" ("Impunity kills") (2015) is a mini documentary which tells the story of investigative journalist Rodrigo Neto, killed by three gunshots in 2013, in the city of Ipatinga, in Brazil. The film reflects on how to address the involvement of political authorities and police in crimes against freedom of expression. More on the documentary at: https://www.youtube.com/watch?v=aQU-NVuV_EQ.

DEFINITIONS

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Freedom of Expression: "Everyone shall have the right to hold opinions without interference. Everyone shall have 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. The exercise of the rights provided for in paragraph 2 of

this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.¹

Freedom of Information: Freedom of Information can be defined as the right to access information held by public bodies. It is an integral part of the fundamental right of freedom of expression, as recognized by Resolution 59 of the UN General Assembly adopted in 1946, as well as by Article 19 of the Universal Declaration of Human Rights (1948), which states that the fundamental right of freedom of expression encompasses the freedom to "to seek, receive and impart information and ideas through any media and regardless of frontiers".²

Reproductive Health: "A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant."³

definitions

Reproductive Rights: "[E]mbrace certain human rights that are already recognised in national laws, international human rights documents, and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion, and violence, as expressed in human right documents."⁴

Sexual Health: "A state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination, and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected, and fulfilled."⁵

Sexual Rights: "[E]mbrace human rights that are already recognised in national laws, international human rights documents, and other consensus documents. They include the rights of all persons, free of coercion, discrimination, and violence, to the highest attainable standard of health in relation to sexuality, including access to sexual and reproductive healthcare services; seek, receive, and impart information in relation to sexuality; sexuality education; respect for bodily integrity; choose their partner; decide to be sexually active or not; consensual sexual relations; consensual marriage; decide whether or not, and when, to have children; and pursue a satisfying, safe, and pleasurable sexual life."⁶

Sexuality: “Sexual health cannot be defined, understood or made operational without a broad consideration of sexuality, which underlies important behaviours and outcomes related to sexual health. The working definition of sexuality is: ...a central aspect of being human throughout life encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes,

values, behaviours, practices, roles, and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious, and spiritual factors.”⁷

Notes & References

1. Article 19 of the International Covenant on Civil and Political Rights. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

2. Article 19 of the Universal Declaration of Human rights. <https://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>.

3. United Nations, “Programme of Action Adopted at the International Conference on Population and Development Cairo,” 5–13 September 1994, 20th Anniversary Edition (New York: UNFPA, 2014), para 7.2, http://www.unfpa.org/sites/default/files/pub_pdf/programme_of_action_Web%20ENGLISH.pdf.

4. United Nations, “Programme of Action,” para 7.3.

5. This is a working definition, not an official WHO position. See: WHO, “Sexual and Reproductive Health,” http://www.who.int/reproductivehealth/topics/gender_rights/sexual_health/en/.

6. WHO, “Sexual and Reproductive Health.”

7. Extracted from WHO website: http://www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/.

factfile

FREEDOM OF SPEECH AND EXPRESSION AND SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS: Connections and Contemporary Context in the Asia Pacific Region

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The Global Expression Report 2018-19 documents over 90% of the people in the Asia and the Pacific region live in countries which saw a decline in Freedom of Expression over the last decade.¹ Threats to freedom of expression and access to information including sexual and reproductive health and rights (SRHR), particularly online expression, are on an increase in the Asia Pacific region.² A rise in populism, fundamentalism, misogynistic, sexist and homophobic environments, hate speech normalising violence against women, young people and gender non-conforming persons, and socio-cultural barriers steeped in patriarchy continue to exclude young people, women and marginalised communities from

exercising their right to freedom of expression, access to information as well as engagement in civic space.

At the policy level, this stifling of freedom of expression, opinion and information, is orchestrated via the enactment and implementation of laws in respective countries. The colonial-era penal provisions such as sedition, obscenity acts, penal codes, and national security measures in the form of criminal defamation and cyber security legislations, further impede the right to freedom of expression and access to information, including on sexuality. In the current COVID-19 crisis this right is under threat as an excuse to adopt aggressive laws, including emergency,

that restricts freedom of expression, peaceful assembly and association. Internet shutdowns are frequent and have been documented in countries like Sri Lanka, India, Singapore, Thailand, and Vietnam in the recent past, further restricting freedom of expression and access to information.³

The right to freedom of expression and access to information is established in international conventions, treaties, UN conferences, and has its origins in the first session of the United Nations' General Assembly as “a fundamental human right”.⁴ Furthermore, the right to freedom of expression and access to information has been guaranteed globally through Article 19 of the Universal

Declaration of Human Rights and Article 19 of the *International Covenant on Civil and Political Rights*.⁵

Article 19 in the Universal Declaration of Human Rights establishes, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” This right is fundamental to participation, accountability, sustainable development and exercise of all other

rights, including SRHR, and extends to the realm of online and offline settings in the contemporary context in the Asia Pacific region.

Sexuality and SRHR information and services, have clear connections in the established right to freedom of expression and access to information. This builds from the fact that all human rights—political, civil, social, cultural and economic—are equal in importance and none can be fully enjoyed without the others.

At the 1994 International Conference on Population and Development (ICPD) Programme of Action,⁶ and the Beijing Platform for Action (table), governments endorsed the right to be informed on SRHR. Furthermore, the UN Committee on Economic, Social and Cultural Rights, noted in its general comment in 2000 that the right to health **is connected and dependent on the realisation of rights such as the right to information**. The Committee further recommended that States should implement “all possible measures”.⁷ The reference to

INTERNATIONAL HUMAN RIGHTS FRAMEWORKS THAT AFFIRM THE RIGHT TO FREEDOM OF EXPRESSION AND INFORMATION WITH FOCUS ON SEXUAL AND REPRODUCTIVE HEALTH INFORMATION AND SERVICES

International Human Rights Treaties/UN Conferences on the Right to Information, Including SRHR Information	Specific Article References
Universal Declaration of Human Rights	Articles 19 (Right To Information) and 25 (Right To Health).
International Covenant on Economic, Social and Cultural Rights	Article 1; Article 2 (para 2); Article 3 (Non-Discrimination), Article 10 (Right To Family, and Consent And Choice To Marriage) Article 12 (Right To Health).
International Covenant on Civil and Political Rights	Article 19 (Right To Information); Article 20; Article 26 (Non-Discrimination and Equality Before the Law); Article 23 (Equality in Marriage).
International Covenant on Civil and Political Rights	...that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so... Implicit in this last condition are the right... to be informed (Para 7.2); Specifically, Governments... by removing unnecessary legal, medical, clinical and regulatory barriers to information... (Para. 7.20); ...obligation to maintain ethical and technical standard for SRHR services in the context of fertility in particular (Para12.16). ⁸
Beijing Platform for Action: Fourth World Conference on Women, 15 September 1995,	The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence (Para. 96). ⁹ The Paragraphs 89-105: - Strategic objective C.1. Increase women's access throughout the life cycle to appropriate, affordable and quality health care, information and related services; - Strategic objective C.4. Promote research and disseminate information on women's health.
Transforming our world: The 2030 Agenda for Sustainable Development (Resolution 70/1).	Target 3.7: By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.
The Yogyakarta Principles ¹⁰ Plus 10 (2017)	Principle 19: The Right to Freedom of Opinion and Expression.

“all possible measures” can expand to include the right to information around comprehensive sexuality education, gender equality, sexuality, contraception, abortion, infertility, pregnancy including risk of early pregnancy and closely-spaced pregnancies, childbirth and well-being, reproductive tract infections, sexually transmitted diseases including HIV/AIDS, and cancers of the reproductive system among other sexual and reproductive health and rights.

KEY TRENDS IN THE REGION THAT ARE NEGATIVELY IMPACTING OBLIGATIONS OF THE STATES TO COMPLY WITH INTERNATIONAL COMMITMENTS AND CONSTITUTIONAL PROVISIONS PERTAINING TO RIGHT TO FREEDOM OF EXPRESSION, AND ACCESS TO INFORMATION INCLUDING SRHR.

Firstly, countries in the region are witnessing a systematic crack down on critical and progressive voices. Human rights defenders, activists, and NGOs in the region increasingly face criminal charges of “sedition” and “defamation” for expressing critical opinions. Civil society in many countries in the region face the challenge of fighting threats to freedom of expression from content restrictions, imposing legal and administrative requirements and other censorship. For example, the recent adoption of the Indian Foreign Contribution (Regulation) Amendment Bill 2002 (FCRA) in India, fails to comply with India’s international obligations and constitutional provisions around the right to freedom of expression, association and assembly. Restrictions in the bill will further threaten and harass civil society, human rights advocates, and restrict access to funding including for smaller youth-led, youth-serving SRHR and women organisations and this will have an impact at the grassroots and around sustainable, human rights-based development work.¹¹

All human rights treaties/frameworks (table1), expound the right to freedom of expression and access to SRHR information for all persons in all their diversity.

Secondly, restrictive donor policies around SRHR information and services, such as the Global Gag Rule, introduced in 2017, requiring NGOs receiving funding from United States to certify that they do not engage in abortion-related activities, including counselling, referral and advocacy on the access to safe abortion information and services. This rule is having a major impact on women and girls in the region.

Further to this, all human rights treaties/frameworks (refer to the table on page 31), expound the right to freedom of expression and access to SRHR information for all persons in all their diversity. This implies States should take measures to ensure SRHR information does not discriminate against groups such as unmarried women, young people, ethnic, indigenous and minority groups, gender non-conforming or any other groups or individuals. It is the core obligation of States to ensure the repeal of laws, policies and practices that criminalise, obstruct or undermine access to sexual and reproductive health information and services.¹²

In Indonesia, the Constitutional Court received a petition seeking to criminalise consensual, same-sex behaviour and increase penalties for sexual activity out of wedlock. The proposed amendments to the Penal Code included limits on the distribution of contraceptive supplies and on the provision of information about contraception, which goes against human rights obligations of the state.¹³ This petition was narrowly but successfully rejected by Indonesia’s constitutional

court in 2017, and shines positive light on the ability of rights activists to challenge rights violations and over-criminalisation of sexuality.¹⁴

Thirdly, across the region, gender and sexuality is encountered with threats and violence. In the recent past we have witnessed online harassment and persecution of women human rights defenders, and lesbian, gay, bisexual, trans and queer (LGBTIQ+) activists across countries in the region, particularly in Indonesia, Malaysia, Pakistan, and Bangladesh.¹⁵ While Pakistan’s recent Transgender Persons (Protection of Rights) Act, is one step forward, organised criminal gangs have continued to target transgender communities for their work on human rights through sexual violence, gang rapes, and murder. In Indonesia, in 2018, policemen raided beauty salons in Aceh, detaining 12 trans rights activists and forcing them to publicly undress and have their hair cut.¹⁶ Restrictive laws and regulations relating to expression of sexual orientation and gender identity have also contributed to increased stigma and harassment in health-care settings for LGBTIQ persons seeking sexual health care and services, including refusal of admission of services and a lack of comprehensive health services tailored to their needs.¹⁷


It is the core obligation of States to ensure the repeal of laws, policies and practices that criminalise, obstruct or undermine access to sexual and reproductive health information and services.

The right to freedom of expression, and access to information is crucial to the realisation of SRHR in its entirety for all persons in all their diversity. These rights are inter-dependent and cannot exist in silos and the realisation of one right is squarely dependent on the realisation of all other rights. The connection is best expressed in Yogyakarta Principle 19, which succinctly looks at the linkages of freedom of expression and access to information to sexuality, sexual and reproductive health and rights: "Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers."¹⁸

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Access to information is an instrument that contributes to overcoming gender inequality and traditional constraints that have historically kept women disempowered and disenfranchised.

Key information needed is comprehensive sexuality education and progressive laws to protect against online-based sexual and gender-based violence.

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