GLOBAL TRENDS IN NGO LAW
A quarterly review of NGO legal trends around the world

THE LEGAL AND REGULATORY FRAMEWORK FOR CIVIL SOCIETY:

GLOBAL TRENDS IN 2012-2013

Introduction

On May 30, 2013, UN Special Rapporteur Maina Kiai presented his second thematic report to the United Nations Human Rights Council. The report highlights two areas of particular concern that Mr. Kiai considers "the most significant ones of his mandate":[1]

- ***Foreign funding of organizations.*** According to the Special Rapporteur, civil society faces "increased control and undue restrictions" on funding, particularly foreign funding, and these controls are in many instances designed to "silence the voices of dissent and critics." Finding that the right to freedom of association includes not only the right to form and join an association but also to seek, receive, and use resources from domestic, foreign, and international sources, Mr. Kiai called upon states to create and maintain enabling environments more conducive to the free flow of funds to non-governmental organizations (NGOs).[2]

- ***Freedom of peaceful assembly.*** The Special Rapporteur notes that "in far too many instances, the ability to hold peaceful assemblies has been denied or restricted by authorities in violation of international human rights norms and standards." He echoed the UN Human Rights Council in calling for states to ensure "open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes." [3]

[1] Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association ["The Report"], p. 1. U.N. Doc. A/HRC/23/39 (April 2013).

[2] Ibid., Section III(A)(12).

[3] Ibid., Section IV(A)(44)-(45).

This publication is wholly or partially financed by the Swedish International Development Cooperation, Sida. Sida does not necessarily share the opinions here within expressed. The author bears the sole responsibility for the content.

The Report concludes with a series of recommendations calling upon states to create and maintain enabling environments more conducive to the free flow of funds, foreign funds included, to NGOs, and to the right to peaceful assembly.[4]

The Special Rapporteur's Report recognizes the significant trend, observed in all major regions of the world, towards the increased imposition by governments of restrictions on NGOs' funding sources, particularly when such sources are foreign-derived, and on the right of peaceful assembly. In this edition of Global Trends, we survey some of the more prominent of these restrictions during 2012-13. We also consider another common restriction in 2012-13 – increased impediments on NGOs' ability to communicate effectively over the Internet. We conclude with a discussion of the Special Rapporteur's recommendations for addressing these trends and his articulation of norms relating to the funding of NGOs and the freedom of peaceful assembly.

Barriers to Funding

The years 2012 and 2013 witnessed the targeting of NGOs' access to funding, particularly from foreign sources, by a number of countries. One of the most prominent cases involved Egypt's high-profile crackdown on foreign NGOs and Egyptian NGOs receiving foreign funding. In December 2011, Egyptian security forces raided the offices of a number of foreign and Egyptian NGOs, seizing their property and forcing them to close. Forty-three employees of the targeted organizations, including the International Republican Institute, the National Democratic Institute, the International Center for Journalists, Freedom House, and the Konrad Adenauer Foundation, were prosecuted on criminal charges involving the management of unlicensed NGOs and receipt of foreign funds without Egyptian government approval. All were convicted in June 2013.

Throughout the first half of 2013, the Ministry of Insurance and Social Solidarity, the Ministry of Justice, the Freedom and Justice Party, the Shura Council, and the Office of the Presidency all proposed draft laws that included a core group of provisions that would significantly constrain Egyptian civil society. The laws intended to create a powerful new "Coordination Committee" to decide on all matters related to foreign funding and foreign organizations operating in Egypt. The Committee would have had the authority to prevent foreign NGOs from conducting operations in Egypt, as well as to prohibit Egyptian NGOs from accepting foreign funds. However, as a result of NGO advocacy, consideration of the laws in the Shura Council was repeatedly deferred, and no new law was adopted before the Morsi administration was removed from office on July 3, 2013.

Other examples include:

[4] Ibid., Section V.

- **Russia**: In November 2012, Russia began implementing a law requiring NGOs receiving foreign funding and conducting "political" activities to register as "foreign agents."[5] Following President Vladimir Putin's speech to the intelligence services insisting that "interference in [Russia's] internal affairs" is unacceptable, the 2012 law has been implemented through a "shock and audit" strategy. Beginning in March 2013, government officers began making unannounced inspections of over 2,000 NGOs in search of "foreign agents." During these inspections, officials demanded a wide variety of information, from staff lists to tax records.[6] The first conviction under the new law came in April 2013 against Golos, an election monitoring organization. Foreign NGOs, such as Amnesty International, Human Rights Watch, and the International Crisis Group were similarly subject to spontaneous inspections despite falling outside the purview of the 2012 law.[7] In October 2012, Russia expelled USAID from the country, accusing it of meddling in politics.[8] In addition, beginning in January 2013, Russian NGOs implementing "political activities" or other activities on the territory of the Russian Federation that constitute threats to the interests of the Russian Federation, were prohibited from receiving any US funding.[9]

- **Sudan**: In May 2013, Sudan's Humanitarian Affairs Commission declared a new policy requiring NGOs to receive prior approval from the Commission for all projects and activities supported with foreign funding. Under the new policy, approval will only be granted to projects dedicated to the provision of "humanitarian services," such as crisis relief or the construction of wells for drinking water. Advocacy activities such as public education campaigns or human rights trainings will not be eligible for approval. With foreign funding entirely cut off to them, many organizations with advocacy missions will likely face dissolution.

---

[5] For an analysis of this law (Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Function of Foreign Agents), see ICNL, NGO Law Monitor: Russia (Barriers to Resources), available at: http://www.icnl.org/research/monitor/russia.html.

[6] "Will Russia Play Tough with its "Foreign Agent" Law?" *The Economist,* May 28, 2013, available at http://www.economist.com/blogs/easternapproaches/2013/03/russian-politics.

[7] Ibid.

[8] "Russia Expels USAID Development Agency," *BBC News Europe*, September 19, 2012, available at: http://www.bbc.co.uk/news/world-europe-19644897.

[9] On December 28, 2012, President Putin signed the Federal Law of the Russian Federation on Measures of Affecting Persons Related to Violation of Basic Human Rights and Freedoms, Rights and Freedoms of the Citizens of the Russian Federation, which came into effect on January 1, 2013

- **Azerbaijan**: In February 2013, Azerbaijan's parliament passed a series of amendments to a number of bills that ban cash donations, require organizations to register donations with the Ministry of Justice, and establish stiff penalties for the violation of these measures. Failure to follow the new financial reporting requirements could subject individuals to fines between AZN 1,500 and 2,500 (US $3,185 - $6,370), legal entities to fines ranging from AZN 5,000 to 15,000 (US $6,370 - $19,100), and NGOs to the confiscation of property. In response to this development, 60 NGOs released a statement labelling the amendments a "sophisticated repressive system" aimed at stifling freedom of association, expression, and assembly.[10]

- **Turkmenistan**: In a decree issued in January 2013, President Gurbanguly Berdimuhamedov established a new state commission to approve and supervise all "projects and programs" receiving foreign funding. To get a program approved, donors and beneficiaries must traverse a byzantine application process involving at least twelve ministries and state agencies, including the Ministries of Foreign Affairs, Justice, and Economy and Development. To date, we are aware of only two projects that have been approved, indicating that the level of state control established by the new decree could significantly curb civil society operations and growth.[11]

- **British Virgin Islands**: A new law enacted in November 2012 requires non-profit organizations with more than five employees to appoint an Anti-Money Laundering Reporting Officer. The officer must report any suspicious activity, even if he or she does not have any particular reason to believe that the transactions relate to a crime.[12] This vaguely worded requirement would create an unnecessary burden on organizations, particularly smaller ones with limited human and financial resources. In addition, any person who operates an unregistered organization is now subject to a US $50,000 fine and/or a prison term of up to three years.

- **Tajikistan**: In the summer of 2012, the Ministry of Education established new rules requiring prior approval for all forms of cooperation between educational institutions and international organizations. In conjunction with the new rules, the First Deputy Minister of Education issued a letter to the heads of all educational institutions

---

[10] Mina Muradova, "Azerbaijan Restricts NGO Funding," *The Central Asia-Caucasus Analyst,* February 20, 2013, available at: http://www.cacianalyst.org/publications/field-reports/item/12654-azerbaijan-restricts-ngo-funding.html.

[11] "Turkmenistan: Ashgabat Closing Door on Foreign Donors?" *EurasiaNet,* May 23, 2013, available at: http://www.eurasianet.org/node/67011.

[12] Joint Anti-Money Laundering Coordinating Committee, "Guidance Notes on the Prevention of Money Laundering," 23, available at: http://www.bvifsc.vg/Portals/2/AML_Guidance_Notes_BVI%20(3).pdf.

informing them that all conferences, seminars and meetings held by international organizations for students are prohibited. The letter instructed them to "carefully monitor this issue and take concrete measures to prevent the participation of students in the above-mentioned activities."[13] Although it was later clarified that the prohibition applies only to events taking place outside of classroom hours, these new rules created an overall chilling effect on efforts by international organizations to engage with students.

- **Nicaragua:** In September 2012, Nicaragua's newly passed Law to Create the Financial Analysis Unit (UAF) came into effect. While purportedly aimed at countering money laundering and terrorism financing, its vaguely drafted language allows the UAF to investigate virtually any NGO or individual at any time.[14] The UAF may, for example, demand information of any public or private organization about "transactions or economic operations *which may be related to* the laundering of money, property and assets derived from illegal activities and financing of terrorism."[15] The law does not define "may be related," opening the way for abusive and arbitrary investigations of NGOs.

Other restrictive initiatives proposed or considered during 2012-13 include the following:

- **Bangladesh**: In January 2012, Bangladesh's NGO Affairs Bureau released the Draft Foreign Donations (Voluntary Activities) Act, which would compel individuals and organizations seeking foreign funding to register with the Bureau and to seek prior government approval before pursuing foreign funded projects.[16]

- **Israel**: In July 2013, two legislators submitted a bill to the Knesset that would prevent NGOs advocating certain positions—including calling for the prosecution of Israel Defense Forces (IDF) soldiers or supporting boycott, divestment, or sanction measures

---

[13] ICNL, NGO Law Monitor: Tajikistan (Update), available at: http://www.icnl.org/research/monitor/tajikistan.html.

[14] ICNL, NGO Law Monitor: Nicaragua (Pending NGO Legislative/Regulatory Initiatives), available at: http://www.icnl.org/research/monitor/nicaragua.html.

[15] The Law to Create the Financial Analysis Unit, Article 4, available at: http://www.icnl.org/research/library/files/Nicaragua/ley_uaf_2012.pdf (emphasis added).

[16] For analysis of this draft law, see ICNL, NGO Law Monitor: Bangladesh (Pending NGO Legislative/Regulatory Initiatives), available at http://www.icnl.org/research/monitor/bangladesh.html.

against Israel—from receiving funding from foreign government entities in excess of NIS 20,000 (approximately US $5,500).[17]

- **Kyrgyzstan**: In early 2013, draft legislation regarding money laundering and terrorism financing was proposed. The draft contained an article entitled "Preventive measures for NCOs [Non-Commercial Organizations]." This article would subject organizations receiving a "high percentage of funds from abroad" to new reporting requirements and additional scrutiny by state intelligence bodies. Such organizations would be compelled to submit reports on their activities, internal accounting procedures, and donors to three different governmental offices.[18] A determined advocacy campaign waged by local NGOs resulted in a promise by the draft law's sponsors to remove the offending article, but it could be reintroduced at any time.

- **India**: In December 2012, the Indian Minister of State for Home Affairs warned that he would have a "re-look" at India's Foreign Contributions Regulation Act of 2010 in order to "plug loopholes that are perceived to be vulnerable to abuse by foreign intelligence agencies."[19] The law is already restrictive, prohibiting "organizations of a political nature" from receiving foreign funding and granting the government the power to define whether or not an organization is "political."[20]

- **Malaysia**: In December 2012, the Domestic Trade, Cooperatives, and Consumerism Ministry announced that it might enact "special laws" to monitor the entry of foreign funds, NGOs, and companies into the country.[21] This followed an October 2012 proposal by parliamentarians that would compel NGOs to declare all funds received from local or foreign sources to the Registrar of Societies, the government office responsible for

---

[17] Stuart Winer, "Right-Wing MKs Revive Bill that Targets NGO Funding" *The Times of Israel,* July 10, 2013, available at: http://www.timesofisrael.com/right-wing-mks-revive-bill-that-targets-ngo-funding/.

[18] Souhayr Belhassen and Gerald Staberock, "Kyrgyzstan: Open Letter to the Authorities," *International Federation for Human Rights,* May 6, 2013, available at: http://www.fidh.org/kyrgyzstan-open-letter-to-the-authorities-13236.

[19] Dalip Singh, "MHA Puts Funds Squeeze on Intl NGOs," *Deccan Herald*, December 2, 2012, available at: http://www.deccanherald.com/pages.php?id=295983.

[20] Foreign Contributions Regulation Act of 2010, available at: http://www.icnl.org/research/library/files/India/ForeignContribution.pdf.

[21] "Ministry may create laws to monitor foreign funds in NGOs, companies," *The Malaysian Insider*, December 12, 2012, available at: http://www.themalaysianinsider.com/litee/malaysia/article/ministry-may-create-laws-to-monitor-foreign-funds-in-ngos-companies/.

overseeing registered organizations.[22] In support of the draft legislation, Minister Mohamed Nazri Abdul Aziz noted that "[t]he influx of foreign funds will cause us to become agents of foreign powers."[23] The proposal was introduced as the Financial Action Task Force[24] initiated its assessment of the country and shortly after a leading newspaper thought to be a mouthpiece for the ruling regime accused six Malaysian NGOs of "plot[ting] to destabilize the government."[25]

- **Pakistan:** In February of 2012, Pakistan introduced a Draft Foreign Contributions Regulations Act (FCRA), which would allow the government to deny an NGO permission to receive foreign funding if the organization is likely to use the funding for "undesirable purposes." Commenting on the law's purpose, Senator Tariq Azeem, the law's author, noted that:

> *These NGOs are not maintaining their accounts properly and are not answerable to any government institution. Many countries in the world have started legislating to properly regulate functions of NGOs. Egypt recently arrested representatives of 27 NGOs…*[26]

The restrictions described above are likely to have deleterious effects on the vibrancy of civil societies around the globe given the importance of foreign funds to many NGOs, particularly struggling NGOs operating in already restrictive legal and regulatory environments.

Constraints on Assembly

In addition to funding constraints, a wide range of governments continued to impose measures restricting the ability of individuals to dissent, demonstrate, protest, and otherwise exercise

---

[22] "Draft law: Foreign NGOs and funding still require permits," *Ahram Online*, October 3, 2012, available at: http://english.ahram.org.eg/NewsContent/1/64/54687/Egypt/Politics-/Draft-law-Foreign-NGOs-and-funding-still-require-p.aspx.

[23] "Proposal to have new law on influx of foreign funds will be studied: Nazri Aziz," *The Malaysian Insider*, October 13, 2012 available at: http://www.themalaysianinsider.com/malaysia/article/proposal-to-have-new-law-on-influx-of-foreign-funds-will-be-studied-nazri-aziz.

[24] FATF is an intergovernmental policy-making body that sets anti-terrorist financing and anti-money laundering standards, including recommended regulations for the nonprofit sector. Its standards are followed by over 180 countries.

[25] "Plot to Destabilize Government," *The New Straits Times*, September 21, 2012, available at: http://www.nst.com.my/top-news/plot-to-destabilise-govt-1.146549#.

[26] Sajid Chaudhry, "Use of Foreign Funds," *Daily Times*, February 28, 2012, available at http://www.dailytimes.com.pk/default.asp?page=2012\02\28\story_28-2-2012_pg7_1.

their rights to peacefully assemble in 2012-13. Many of these measures are inconsistent with the freedom to assemble peacefully, which is protected in all major international and regional human rights instruments,[27] as well as in the national constitutions and charters of many nations around the globe.[28]

Examples of restrictive measures include:

- **Uganda:** According to a bulletin on the website of Uganda's parliament, in August 2013 the parliament enacted the Public Order Management Bill., The text of this Bill as passed by parliament had not been released at the time of publication of this issue of Global Trends. However, the most recent available version grants broad discretion to the Inspector General of Police to "direct the conduct of all public meetings"; criminalizes all unauthorized demonstrations of more than three people; authorizes police to use firearms without requiring that such use be a proportionate response to a threat; and limits political speech. The Bill currently awaits the President's signature.

- **Azerbaijan:** On June 5, 2013, amendments to the Code of Administrative Offenses came into effect, increasing the penalties for several offenses, including violation of the procedure for organizing assemblies (Article 298), petty hooliganism (Article 296), disobedience to police officers (Article 310), and disobedience to other law enforcement officers (Article 313). The penalty for these offenses now includes up to two months of administrative arrest. This move further limits the ability of Azerbaijani citizens to exercise their right to freedom of assembly, and CSOs are concerned that these new penalties will be used in order to prevent activists from organizing and participating in assemblies.

  In November 2012, amendments were adopted to the Law on Freedom of Assembly that exorbitantly increased the administrative fines on participants and organizers of unsanctioned protests. For example, the maximum fine for participating in unsanctioned public gatherings was increased from seven to thirteen manats (US $9 to $16) to 300 to 600 manat (US $383 to $765). As no protests have been sanctioned in the center of Baku since 2006, many feel that they have no choice but to participate in unsanctioned

[27] E.g., Universal Declaration of Human Rights, Art. 20 (1948); ICCPR, Art. 21 (1966); European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 11 (1950); American Convention on Human Rights, Art. 15 (1969); CIS Convention on Human Rights and Fundamental Freedoms, Art. 12 (1995); UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Art. 5 (1999).

[28] E.g., South African Bill of Rights, art. 17; Canadian Charter of Rights and Freedoms, § 2; Constitution of Japan, art. 21; Constitution of Ireland, art. 40(6)(1); Constitution of Spain, art. 21; Constitution of Turkey, art. 34; U.S. Constitution, amend. I.

protests. During a wave of public protests in Baku and other cities in January 2013, the month the amendments went into effect, over twenty people were fined while a number of people were sentenced to several days in administrative detention.

- **Kyrgyzstan:** In February 2013, in a move designed to restrict freedom of assembly, the Kyrgyz government enacted amendments to the Administrative Code penalizing "unauthorized blocking of roads."

- **Maldives:** In January 2013, President Mohamed Waheed Hassan Manik signed into law the Freedom of Peaceful Assembly Bill. The legislation, passed by the People's Majlis at the end of 2012, bans demonstrations held outside of private homes and government offices and limits media coverage of such protests. Because it imposes a restriction on protests held within 200 feet of the President's office, the legislature, mosques, schools, hospitals, and diplomatic buildings, the law confronted significant opposition in the Majlis and has been denounced by local civil society organizations.[29]

- **Russia:** In December 2012, the Moscow City Council passed severe restrictions on the freedoms of assembly and expression, banning vigils by individuals if "united by a common organizer and goal" and prohibiting the use of vehicles in demonstrations. The latter prohibition includes driving in the city center while displaying political or protest symbols. These restrictions target protest strategies used in Moscow to evade earlier restrictions on large-scale rallies. In June 2012, President Putin signed into law amendments to the Code on Administrative Violations to the Law on Assemblies, Meetings, Demonstrations, Marches and Picketing, which increased fines for breaching provisions of the law by 150 times for individuals and 300 times for organizations. The new maximum penalty for participation in a protest not conducted in full accordance with government regulations is up to 300,000 rubles (approximately US $9,000) for individuals and up to one million rubles (approximately US $32,000) for organizations.

- **Bahrain:** In one of the most dramatic attempts to put an end to the anti-government uprisings underway in Bahrain since 2011, the Ministry of Interior announced a ban on all protests and demonstrations on October 30, 2012.[30] Interior Minister Sheikh Rashid Al Khalifah announced that the ministry was "fed up" with protests and that "there was

---

[29] Constance Johnson, "Maldives: President Signs Bill on Freedom of Peaceful Assembly," *Global Legal Monitor*, January 22, 2013, available at: http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403462_text.

[30] "Bahrain bans all protests in crackdown of Shia Opposition Movement," *The Guardian*, October 30, 2012, available at: http://www.guardian.co.uk/world/2012/oct/30/bahrain-bans-protests-crackdown-opposition.

a need to put an end to them."[31] More recently, during the summer of 2013, in advance of an opposition rally scheduled for August, Bahrain amended its Law on Public Gatherings to "ban organizing protests, rallies, gatherings or sit-ins in Manama, with the exception of sit-ins outside [offices of] international organizations" held in the capital and with written police authorization.[32]

- **Fiji:** In a series of July 2012 reforms lifting restraints on the freedom of assembly—including repeal of the 2009 Public Emergency Regulations, which banned public protests — the Attorney General announced that public permits would no longer be required for private meetings of three of more individuals.[33] However, he exempted meetings held on public roads, public parks or gardens, and playgrounds or sports arenas, for which permits continue to be required.[34]

- **Canada:** The National Assembly of Quebec passed Bill 78, an emergency law adopted at the height of student protests over tuition increases, on May 18, 2012.[35] It restricts protests or picketing on or near university grounds and requires demonstrations of more than fifty people to submit proposals specifying the demonstration's route, duration, and time at least eight hours in advance.[36] Moreover, the law's ambiguous language leaves unclear precisely which acts are and are not permitted. Following its adoption, a coalition of groups opposing the new law unsuccessfully requested a temporary injunction to suspend the bill,[37] which has been roundly condemned by the

---

[31] "Bahrain Government Bans Protests Amid Violence," *BBC News Middle East*, October 30, 2012, available at: http://www.bbc.co.uk/news/world-middle-east-20135218.

[32] "Bahrain bans protests in capital ahead of major anti-govt demonstration," *RT.com*, August 7, 2013, available at http://rt.com/news/bahrain-bans-protests-manama-170/

[33] Amended Public Order Act, § 8. See "Fiji Politicians Welcome Free Meetings Permit by Govt," *Global Times*, July 19, 2012, available at: http://www.globaltimes.cn/content/722062.shtml.

[34] Freedom House, *Freedom in the World 2013: FIJI*, 2013, available at: http://www.freedomhouse.org/report/freedom-world/2013/fiji.

[35] An Act to Enable Students to Receive Instruction from the Postsecondary Institutions they Attend, art. II(13), available at http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2012C12A.PDF.

[36] Ibid., art. III(16).

[37] "Quebec Human Rights Commission Slams Bill 78," *CBCNews*, June 19, 2012, available at: http://www.cbc.ca/news/canada/montreal/story/2012/07/19/quebec-human-rights-commission-on-bill-78.html.

Canadian Association of University Teachers, The Quebec Human Rights Commission, and other human rights activists working in Quebec.[38]

- **Malaysia:** The Peaceful Assembly Act went into effect in April 2012 and has seriously curtailed the work of many NGOs and civil society groups in Malaysia. The Act bans street protests, broadly defined as any "open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes."[39] The law also prohibits participation in peaceful assemblies held by non-citizens,[40] forbids those under fifteen years old from participating in most assemblies,[41] imposes onerous responsibilities on organizers of assemblies (such as ensuring that no one makes any statements which might cause "ill-will" or "hostility" among the public at large),[42] and subjects violators to excessive fines.[43] The law has been widely condemned by civil society actors around the world, including members of the Malaysian bar who publicly opposed the law, stating that it will only lead to "further suppression and oppression, which restricts more civil freedom."[44]

Draft laws that would restrict the freedom of assembly were also proposed in Egypt and Iraq:

- **Egypt**: In March 2013, the Shura Council passed "in principle" draft legislation requiring organizers to provide authorities with the time, route, number of participants, and demands of a protest three days prior to its occurrence. If actual events diverge from any of the organizers' advance information, security forces would have the authority to disperse the demonstration. The law would also prevent protests within 200 meters of

---

[38] Andrew Gavin Marshall, "Quebec Steps Closer to Martial Law to Repress Students," *The Media Co-Op*, May 19, 2012, available at http://www.mediacoop.ca/story/quebec-steps-closer-martial-law-repress-student-movement/10960.

[39] Peaceful Assembly Act 2012, § 3. English translation available at: http://www.federalgazette.agc.gov.my/outputaktap/20120209_736_BI_JW001759%20Act%20736%20(BI).pdf

[40] Ibid., § 4(1)(b).

[41] Ibid., § 4(1)(d).

[42] Ibid., § § 6(2)(b), 7(a)(iii).

[43] Ibid., § 9(5).

[44] James Burke, "Malaysian Bar Denounces Peaceful Assembly Bill," *Epoch Times*, November 29, 2011, available at: http://www.theepochtimes.com/n2/world/malaysian-bar-denounces-peaceful-assembly-bill-149931.html.

government buildings.[45] The draft was not adopted prior to the Morsi administration's removal from office.

- **Iraq:** In May 2012, the Council of Ministers approved a draft Law on the Freedom of Expression, Assembly, and Peaceful Protest, which requires organizers to seek authorization at least five days in advance of a planned assembly, and authorizes government officials to refuse authorization based on the assembly's subject or purpose with no recourse if an assembly is prohibited.[46] Assemblies would be prohibited on public roads and could only take place between 7 am and 10 pm.[47] In addition, participants would be allowed to display banners or slogans or give press statements only if the conveyed messages are not contrary to "public order or morals," a determination left to the discretion of government authorities.[48] The draft law currently awaits parliamentary approval.

Impediments to Communication

Electronic modes of communication, including Twitter, blogs, Facebook, and cells phones, have become increasingly instrumental in empowering individuals to effectuate change.[49] Yet—or perhaps because of the empowering effects of electronic communications—in 2012-13, a number of countries introduced laws prohibiting certain types of online content and impeding the work of Internet users. Such measures stifle the right of individuals and NGOs to receive and provide information and to exchange ideas with civil society counterparts inside and outside their home countries. In addition to countries like Belarus, China, Iran, Syria, Bahrain, and Venezuela, where online restrictions are long established, the list now includes Malaysia, Sri Lanka, Russia, Libya, Azerbaijan, Pakistan, Rwanda, and Thailand.

Restrictions on electronic communications have taken a number of forms. Examples include:

---

[45] "New Egyptian protest law threatens right to protest: NGO," *Ahram Online*, March 27, 2013, available at: http://english.ahram.org.eg/NewsContent/1/64/67865/Egypt/Politics-/New-Egyptian-protest-law-threatens-right-to-protes.aspx.

[46] Draft Law on Freedom of Expression, Assembly and Peaceful Protest, art. 7(1). English translation available at: http://www.law-democracy.org/wp-content/uploads/2012/01/Iraq.FOE-FOA.IREX-translation.pdf.

[47] Ibid., art. 8(2), 8(3), and 10(2).

[48] Ibid., art. 8(4).

[49] William Saletan, "Springtime for Twitter," *Slate*, July 18, 2011, available at: http://www.slate.com/articles/technology/future_tense/2011/07/springtime_for_twitter.html; "The Influence of Social Media on the Arab Spring," *Yale Press Log*, September 13, 2012, available at: http://yalepress.wordpress.com/2012/09/13/the-influence-of-social-media-on-the-arab-spring/.

- **Singapore**: New licensing requirements promulgated by the Media Development Authority went into effect in June 2013. The new rules require that news websites be licensed by the state and provide a "performance bond" of S $50,000 (US $39,948). Any website that publishes one or more articles per week over a period of at least two months and registers visits from at least 50,000 unique IP addresses within Singapore is subject to the licensing regime. The new requirements, established without any public consultation, may serve to curtail access to alternative and independent news sources.[50]

- **Azerbaijan**: In May 2013, the National Assembly passed amendments to the criminal code that extended the definition of criminal defamation to include expression on the Internet. Given the preexisting constraints on activist activities and the press, the Internet had become the country's "main refuge of freedom of expression and political dissent,"[51] making the criminalization of Internet expression a particularly troubling development.

- **Syria:** Internet access has been completely interrupted several times since the start of Syria's civil war. One such blackout occurred in May 2013, and while the Syrian government attributed the failure to an accidentally cut cable, independent analysis suggested that it was the result of purposeful government action.[52]

- **Russia:** In November 2012, amendments to the Law on Information, Information Technologies, and Information Protection took effect, allowing the blacklisting of certain websites deemed to contain content threatening to children. Under the changes, Russian Internet service providers (ISPs) have twenty-four hours after notification to ensure that all offending content is removed, after which the entire site can be forcibly shut down. Reporters Without Borders warned that "the implementation of this blacklist will open the way to abusive filtering and blocking of online content."[53] In July 2012, Russia reintroduced defamation as a criminal offense, and media outlets

---

[50] "Regulating Singapore's internet: Two steps back," *The Economist,* June 5, 2013, available at: http://www.economist.com/blogs/banyan/2013/06/regulating-singapores-internet.

[51] "New legislative amendments further erode rights to freedom of expression and peaceful assembly," *Reporters Without Borders,* May 16, 2013, available at: http://en.rsf.org/azerbaijan-new-legislative-amendments-further-16-05-2013,44622.html.

[52] David Sullivan, "Network Shutdowns Go Beyond Syria," May 9, 2013, available at: http://www.slate.com/blogs/future_tense/2013/05/09/internet_shutdowns_go_beyond_syria.html.

[53] "Freedom of Information threatened by Website Blacklisting and Recriminalization of Defamation," *Reporters without Borders*, July 13, 2012, available at: http://en.rsf.org/russia-freedom-of-information-threatened-13-07-2012,43019.html.

producing "defamatory" public statements became subject to fines of up to two million rubles (approximately US $61,000).

- **Rwanda:** In August 2012, the lower house of Rwanda's parliament adopted an amendment to the 2008 Law Relating to the Interception of Communications,[54] which empowers the intelligence services to monitor private communications both on and offline in order to protect "public security." Under the amended law, all communication service providers (CSPs) will be responsible for creating a technical infrastructure that would enable the Rwandan government to intercept and directly control all communications nationwide.[55] The amendment awaits approval of the Senate, the upper house of parliament.

- **Sri Lanka:** In July 2012, the government announced new registration fees for prominent human rights and news websites. Such sites will be required to pay an initial registration fee of LKR 100,000 (US $750) and an annual renewal fee of LKR 50,000 (US $375).[56]

- **Malaysia:** In June 2012, the Malaysian parliament hastily passed an amendment to the 1950 Evidence Act that holds the hosts of online forums, news outlets, blogging services, and businesses providing Wi-Fi responsible for any seditious content posted by anonymous users.[57] Under the new provision, if an anonymous person posts content deemed offensive or illegal using another person's Internet account, account holders are assumed liable unless proven otherwise. This effectively shifts the burden of proof onto Internet users rather than prosecutors/investigators. Human rights and media freedom groups, including the Human Rights Commission of Malaysia (SUHAKAM), have strongly criticized the amendment and called for its repeal.[58] The government continues to defend the law's passage on national security grounds.

---

[54] Law No. 48 Relating to the Interception of Communications, available at: http://www.vertic.org/media/National%20Legislation/Rwanda/RW_Law_48_2008.

[55] Emmanuel Karake and Fred Ndoli, "Rwanda: MPs Pass Phone Tapping Bill," *All Africa,* 10 August, 2012, available at: http://allafrica.com/stories/201208100101.html.

[56] "Sri Lankan Government Must Repeal Registration Fees for News Websites," *International Federation of Journalists,* July 10, 2012, available at: http://asiapacific.ifj.org/en/articles/sri-lankan-government-must-repeal-registration-fees-for-news-websites.

[57] Evidence (Amendment) (No. 2) Act 2012, § 114(A). English translation available at: http://www.parlimen.gov.my/files/billindex/pdf/2012/DR162012E.pdf.

[58] Lim Chee Wee, Press release: Repeal section 114A of the Evidence Act 1950*, The Malaysian Bar,* August 13, 2012, available at: http://www.malaysianbar.org.my/press_statements/repeal_section_114a_of_the_evidence_act_1950.html.

- **Mexico:** In April 2012, the Mexican Congress passed the Geolocation Law, which allows law enforcement agencies to gain access to the location data of mobile equipment (cell phones, tablets, smartphones, etc.), without a warrant and in real time if there is suspicion that the device is being used in the commission of a crime. The law has drawn sharp criticism from Mexican attorneys, civil rights activists, and bloggers.[59]

In addition to legislative constraints, governments in several countries stifled communication through arrests and prosecutions. Examples include:

- **Vietnam**: In May 2013, prominent Vietnamese blogger Truong Duy Nhat was arrested for publishing posts that were critical of the government and charged with "abusing democratic freedoms in order to infringe upon the interests of the state, the legitimate rights and interests of organizations and/or citizens."[60] His blog, "Another point of view," was subsequently rendered inaccessible. The arrest comes on the heels of the imprisonment of six "netizens" over the course of 2012.[61]

- **Thailand:** In May 2012, Chiranuch Premchaiporn, forum moderator for the popular online news outlet "Prachatai," received a suspended eight-month jail sentence and a fine for not deleting an anonymous reader's criticism of the royal family in an expeditious fashion.[62]

- **Tunisia**: In March 2012, two Tunisians received seven-year prison sentences for publishing online content considered offensive to Islam and "liable to cause harm to public order or public morals," a crime punishable since the Ben Ali era. One of the individuals posted an essay on Scribd.com perceived as offensive to the Prophet Muhammad, while the other posted photos and satirical writings about Islam and the Prophet on his Facebook page.[63]

---

[59] "Mexico's Geolocation Law & Mobile Surveillance," *CIPP Guide,* June 26, 2012, available at: https://www.cippguide.org/2012/06/26/mexicos-geolocalization-law-mobile-surveillance/.

[60] "Vietnam Arrests Well Known Blogger Truong Duy Nhat for criticism," *South China Morning Post,* May 28, 2013, available at: http://www.scmp.com/news/asia/article/1247215/vietnam-arrests-well-known-blogger-truong-duy-nhat-criticism.

[61] "Newly Detained Blogger Insisted He Was "Neither Criminal nor Reactionary," *Reporters Without Borders,* May 27, 2013, available at: http://en.rsf.org/vietnam-newly-detained-blogger-insisted-he-27-05-2013,44681.html.

[62] Robert Horn, "Thai Webmaster Gets Suspended Sentence in Free-Speech Case," *Time,* May 30, 2012, available at: http://world.time.com/2012/05/30/thai-webmaster-gets-suspended-sentence-in-free-speech-case/.

[63] Freedom House, *Freedom on the Net 2012: Tunisia,* available at: http://www.freedomhouse.org/report/freedom-net/2012/tunisia.

Conclusion

In recognition of the trends discussed above, the UN Special Rapporteur on Freedom of Peaceful Assembly and Association focused his second report to the Human Rights Council on the issues of NGO funding and the right to peaceful assembly. The report was notable for its articulation of norms surrounding these issues, which can be used by NGOs and the international community to advocate for stronger protections.

NGO Funding. The UN Special Rapporteur's Report cites established international norms reaffirming the ability of NGOs to access resources, including foreign funding. Among other examples, the UN Special Rapporteur references communication No. 1274/2004 of the Human Rights Committee, *Korneenko et al. v. Belarus*:

> The right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association …. *Accordingly, fundraising activities are protected under article 22 of the [International Covenant on Civil and Political Rights (ICCPR)], and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22.*[64]

The Report also notes that Human Rights Council Resolution 22/6 calls on states to ensure that reporting requirements "do not discriminatorily impose restrictions on potential sources of funding." In addition, the UN Special Rapporteur references the UN Declaration on Human Rights Defenders, which affirms that:

> "[E]veryone has the right, individually and in association with others, *to solicit, receive and utilize resources* for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration."[65]

The Special Rapporteur thus concludes that "the right to freedom of association not only includes the ability of individuals or legal entities to form and join an association *but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources*."[66] Consequently, restrictions on the receipt and use of funding are allowable only under the very limited exceptions to the right to associate outlined in ICCPR Art. 22. The Special Rapporteur specifically identified as problematic many of the constraints

---

[64] The Report, para. 16 *(emphasis added).*

[65] Ibid., para. 17 *(emphasis added).*

[66] Ibid., para. 8.

discussed above, including outright prohibitions on funding, requirements for prior government approval of funding, and bans on particular activities, such as advocacy, by foreign funded NGOs.

Freedom of Peaceful Assembly. In his report, the Special Rapporteur also reinforced the well-established norms surrounding the right to peaceful assembly. He noted that the right to assembly is recognized by Article 21 of the ICCPR and is to be enjoyed by everyone.[67] He reiterated the well-established principle that "freedom is to be considered the rule and its restriction the exception," explaining that the right is subject to very narrow limitations, "which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."[68]

The Report highlights a number of significant points with respect to allowable restrictions on peaceful assemblies:

- *The presumption in favor of assemblies.* The Special Rapporteur reiterated that there is a presumption in favor of peaceful assemblies, meaning that assemblies are presumed lawful. The presumption applies to all people without discrimination; thus, acts of sporadic violence by certain individuals should not deprive others of their right to peaceful assembly.[69]

- *Notification systems.* The Special Rapporteur stated that assemblies should not require prior authorization by the government. They should instead be "governed at most by a regime of prior notification whose rationale is to allow State authorities to facilitate this exercise and to take measures to protect public safety and order and the rights and freedoms of others."[70] The exception to this rule is for spontaneous assemblies, where notification should never be required. Moreover, even the notification procedure should be required only for large assemblies or those where disruption is anticipated. The Special Rapporteur expressed the view that notification should be required only forty-eight hours in advance of an assembly.[71]

---

[67] Ibid., para. 46, citing article 2 of the ICCPR and Resolutions 15/21 and 21/16 of the Human Rights Council.

[68] Ibid., para. 47.

[69] Ibid., paras. 49-50.

[70] Ibid., par. 51.

[71] Ibid., paras. 51-52.

- *Content*. Restrictions on the content of messages conveyed at assemblies are prohibited, especially those that relate to criticism of government policies, unless they specifically relate to "incitement to discrimination, hostility or violence."[72]

- *Access to public space.* The Special Rapporteur noted the necessity of making public space available for assemblies, and quoted the Inter-American Commission on Human Rights (IACHR) regarding the State's obligation to protect and ensure the right to peaceful assembly despite disruptions to ordinary activities: "such disruptions are part of the mechanics of a pluralistic society in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves."[73]

- *Responsibilities of organizers and law enforcement authorities.* The Special Rapporteur emphasized that organizers of peaceful assemblies should never be held liable for the unlawful acts of others. Even if an organizer has not respected a legitimate restriction on the right to peaceful assembly, sanctions for the offence should be proportionate so as not to deter others from organizing assemblies.[74]

While new communications technologies were not a focus of the report, the Special Rapporteur addressed their importance in connection with the organizing of peaceful assemblies. He made clear that "organizers and participants of peaceful assemblies should be allowed access to the Internet and other new technologies at all times,"[75] and expressed concern that access to communications technologies had reportedly been blocked in the time periods surrounding peaceful assemblies in, among other places, Algeria, China, and Egypt.[76]

The Special Rapporteur's second thematic report provides important guidance on the issues of foreign funding of NGOs and the right to peaceful assembly, and his recommendations will hopefully move states to adopt laws more conducive to the free flow of funds to NGOs, and to protections to the right to assembly.

---

[72] Ibid., para. 59.

[73] Ibid., para. 65.

[74] Ibid., paras. 77-78.

[75] Ibid., para. 73

[76] Ibid., para. 75.