

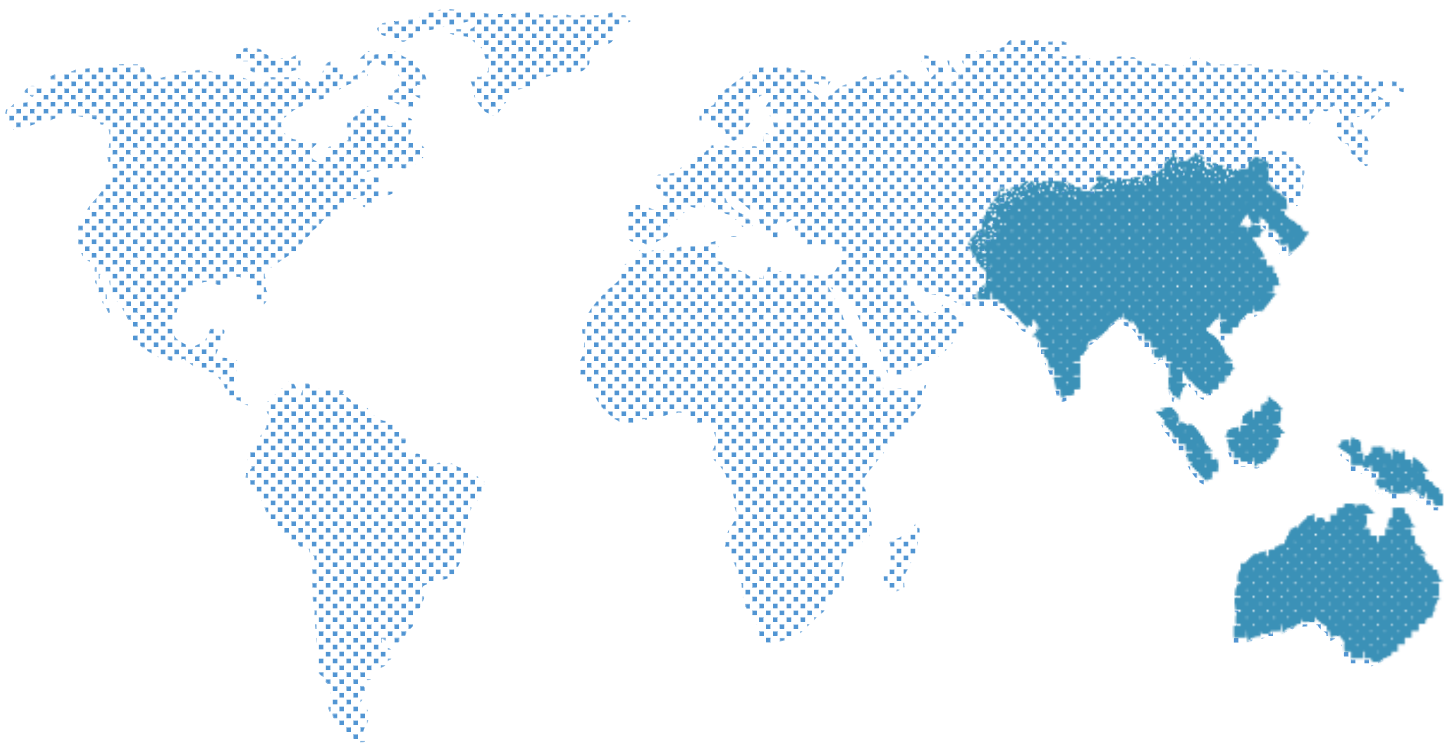


**CENTRE FOR LAW  
AND DEMOCRACY**

## **Restrictions on Civic Space Globally: Law and Policy Mapping Series**

**Volume 1: Asia Pacific Region**

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## Restrictions on Civic Space Globally: Law and Policy Mapping Series

This Report is part of a five-part Series. Each Report maps the legal restrictions on civic society in selected countries in five geographic regions, as of 2019. The five volumes are as follows:

**Volume 1: Asia Pacific Region**

**Volume 2: Europe and Central Asia Region**

**Volume 3: Latin America Region**

**Volume 4: Middle East and North Africa Region**

**Volume 5: Sub-Saharan Africa Region**

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## Executive Summary

This Report reviewed the legal environment for civic space in 15 countries in the Asia-Pacific region as of February 2019, with an emphasis on identifying laws and policies which represent serious threats to the ability of civil society organisations to operate freely, namely: Australia, Bangladesh, Cambodia, China, Indonesia, Malaysia, the Maldives, Nepal, Pakistan, Papua New Guinea, South Korea, Sri Lanka, Taiwan, Vanuatu and Vietnam. Despite significant diversity in terms of the landscape for civil society operating across the 15 countries, some common concerns are present across the region:

- **Limits on the Ability of Organisations to Establish Themselves, Operate or Obtain Funding:** One worrisome trend in the Asia-Pacific region is the introduction of stricter administrative requirements to register civil society organisations and an increase in the discretion of authorities to dissolve an organisation. Several laws also target foreign organisations operating in a given country and there is a notable trend towards restricting civil society access to foreign funding. Most of these rules are justified by reference to concerns about corruption, money laundering, and the financing or promotion of terrorism, often by certain NGOs. While valid concerns, the laws are often not appropriately tailored to meet these concerns while respecting the right to association, and often impose unnecessary burdens on the entire civil society sector.
- **Insufficient Protection for Freedom of Expression:** Almost all countries in this review criminalise defamation or other reputation offences. A few also criminalise blasphemy or other offences against religion. Some provisions which criminalise incitement to ethnic or racial hatred are also unduly vague and fail to conform to international standards on hate speech restrictions. National security laws are often broad or vague enough to encompass peaceful civil society activities. Another recurring concern is that bodies which regulate the media lack independence, especially in the broadcasting sector.
- **Negative Trends in Terms of Digital Communications:** Digital security and cybercrime acts in several countries resurrect or duplicate general content-based speech prohibitions, such as defamation. Often penalties are increased for distributing such content electronically as compared to in other ways, which does not accord with international standards. These laws also introduce new surveillance powers in some countries.
- **Secrecy Laws Limit Access to Information:** Secrecy laws are often very broad in scope and lack exceptions to allow for the dissemination of information in the public interest. Some punish journalists as well as State officials for disclosing State secrets. Although many countries in the region have adopted right to information laws, several have not and these laws rarely override secrecy laws, limiting their ability to promote transparency.
- **Lack of Comprehensive Legislation Supporting an Enabling Environment for Civil Society:** Many States lack comprehensive regulatory frameworks in areas which could support a more vibrant civic space. For example, some countries have not established a clear registration process for non-governmental organisations. Strong whistleblower protection schemes are also absent in several countries.

## Approach and International Standards

Laws which regulate civil society are numerous and often complex. Rather than provide a comprehensive review, this Mapping focuses on more problematic provisions in each country with the goal of identifying areas in need of reform. For example, it documents legal provisions which have been used to bring criminal charges against journalists and activists. The result is that the overall description for each country may skew towards the negative, as even countries which generally have an enabling environment for civil society often still have problematic laws in some areas.

The assessment of laws and policies is organised into eight categories. For each category, domestic laws are assessed against international human rights standards. The eight categories are presented here, along with the key international standards for each area.

**Category 1. Freedom of association: non-profit registration requirements and restrictions on advocacy:** Are civil society organisations required to register? Are features of the registration process burdensome? Do authorities have discretion to deny registration? What limitations are placed on the ability of civil society organisations to operate and advocate?

The right freely to associate with others is guaranteed by Article 22 of the International Covenant on Civil and Political Rights (ICCPR),<sup>1</sup> among other international treaties. States should create an enabling environment in which organisations can be established and operate freely.<sup>2</sup> Any restrictions on the right to association must be prescribed by law and be necessary to protect national security, public safety, public order, public health or public morals, or the rights or freedoms of others.<sup>3</sup>

Civil society organisations should not be required to register as a legal entity; the right to form informal associations is protected under human rights law. Should an organisation choose to be formally legally registered, the procedures for this should be simple, accessible, non-discriminatory and not overly burdensome.<sup>4</sup> If officials can deny registration, it should be on narrow, objective grounds, with the opportunity to appeal to an independent oversight body, such as a court.

Once registered, States should not impose highly burdensome reporting obligations on organisations or intrude on their internal operations. Laws should not prevent organisations from engaging in advocacy activities on matters of public interest. Dissolution of an organisation should be permitted only where there has been a very serious breach of the law, based upon narrow

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<sup>1</sup> Adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

<sup>2</sup> UN Human Rights Council Resolution 24/5, 8 October 2013, p. 2. Available at: <https://undocs.org/A/HRC/RES/24/5>.

<sup>3</sup> ICCPR, Article 22(2).

<sup>4</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 95. Available at: <https://undocs.org/A/HRC/20/27>.

grounds which are clearly articulated in the law, as decided by an independent authority, preferably a court.<sup>5</sup>

**Category 2. Funding restrictions, financial reporting requirements and special tax requirements:**  
Are limits placed on the ability of civil society organisations to obtain foreign funding? Are there burdensome financial reporting or tax requirements?

The right to freedom of association protects the right of organisations to seek, receive and use funding. This includes the ability to access foreign funding, meaning that prohibitions on accessing foreign funding or onerous requirements for organisations receiving foreign funding are not legitimate. States may screen for fraud, money laundering or terrorist financing activities, and promote transparency in the use of funds. However, financial reporting requirements should be tailored to the operating realities of non-profit organisations, and not inhibit their ability to engage in legitimate operations.<sup>6</sup>

States should also not indirectly limit the work of civil society via tax laws. Rather, better practice is to create an enabling environment for civil society, including mechanisms such as allowing tax exempt status for non-profit organisations and tax deduction options for donors.<sup>7</sup>

**Category 3. Media regulation:** Are there registration or licensing requirements for print media or journalists? Are any bodies which are responsible for regulating the media independent?

Regulation of the media must respect the right to freedom of expression, meaning it should respect media independence and should not become a means of government control. On the other hand, intervention may be necessary to promote media diversity and to prevent the emergence of media monopolies.

States should not require journalists to obtain licences or register in order to engage in journalistic activities.<sup>8</sup> Print media should also not be subject to a licensing regime, although merely technical registration requirements may be permissible if they are not overly complex and do not grant authorities discretion to deny registration.<sup>9</sup> In the broadcasting sector, licensing requirements may be appropriate to ensure diversity when allocating broadcasting frequencies, but the process should be fair and transparent, and be overseen by an independent authority.<sup>10</sup>

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<sup>5</sup> See Report of the Special Rapporteur, note 4, paras. 75-76 and 100; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 24 April 2013, UN Doc. A/HRC/23/39, para. 38. Available at: <https://undocs.org/A/HRC/23/39>.

<sup>6</sup> Report of the Special Rapporteur, note 4, paras. 67-72.

<sup>7</sup> Report of the Special Rapporteur, note 4, para. 72.

<sup>8</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/G/GC/34, para. 44, available at: <http://undocs.org/ccpr/c/gc/34>; and International Mandates for Promoting Freedom of Expression, 2003 Joint Declaration, available at: <https://www.osce.org/fom/28235?download=true>.

<sup>9</sup> International Mandates for Promoting Freedom of Expression, 2003 Joint Declaration, *ibid.*

<sup>10</sup> General Comment No. 34, note 8, para. 39.

Bodies that regulate the media should be independent from political or private sector actors. Such regulatory bodies should be accountable and have a clear mandate and structure. The appointment process for members and manner of allocating funding should protect their independence.<sup>11</sup>

**Category 4. Content restrictions:** Are there undue restrictions on the content that the media or civil society may disseminate? Is defamation criminalised? Are there other overbroad or vague restrictions on speech?

The right to freedom of expression, guaranteed by Article 19 of the ICCPR, may only be subject to restrictions which: 1) are provided by law; 2) aim to protect the rights or reputations of others, public order, national security, or public health or morals; and 3) be necessary to protect that interest. Several types of content restrictions commonly found in the Asia Pacific region frequently fail to meet this test:

- Defamation laws: While it is legitimate to protect the reputation of others, special or heightened protections for the reputations of heroes or public figures are inappropriate, since the public has a greater interest in their actions. Criminal penalties for defamation are almost always disproportionate and, as such, do not pass the “necessity” part of the test; defamation should therefore be decriminalised. National symbols, institutions or icons should not be protected by defamation or libel rules, as they cannot be said to have reputations of their own.<sup>12</sup>
- Hate speech: Hate speech is prohibited by Article 20(2) of the ICCPR, which provides: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. States should, therefore, prohibit such speech. However, hate speech laws should not be crafted in vague terms or go beyond the narrow scope of hate speech as recognised under international law. They should also require hateful intent and a sufficiently close nexus to an act of discrimination, violence or hostility. Without these elements, hate speech laws are easily abused to target non-hateful speech.<sup>13</sup> Laws prohibit the expression of opinions about historical facts (genocide denial laws) or impose certain interpretations of history are also not legitimate.<sup>14</sup>
- Religious offence: Speech which incites hatred of certain religious groups may properly be restricted as a form of hate speech. However, other speech criticising religious views or practices should be protected rather than criminalised via blasphemy laws, which often

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<sup>11</sup> African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa, Adopted at the 65<sup>th</sup> Ordinary Session, 21 October to 10 November 2019, Principles 17(1)-(2), available at: <https://www.achpr.org/legalinstruments/detail?id=69>; and Council of Europe, Recommendation (2000) 23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, 20 December 2000, available at: [https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reference%20texts/CoE%20-%20Media%20Freedom%20and%20Pluralism/REF%20COE-CM-Rec\(2000\)23.pdf](https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reference%20texts/CoE%20-%20Media%20Freedom%20and%20Pluralism/REF%20COE-CM-Rec(2000)23.pdf).

<sup>12</sup> General Comment No. 34, note 8, paras. 38 and 47.

<sup>13</sup> *Jersild v. Denmark*, 23 September 1994, Application No. 15890/89 (European Court of Human Rights), paras. 24 and 35-36, available at: <http://hudoc.echr.coe.int/eng?i=001-57891>; and Article 19, Camden Principles on Freedom of Expression and Equality, April 2009, available at: <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>.

<sup>14</sup> General Comment No. 34, note 8, para. 49.



allow for the suppression of minority religious views or inappropriately limit public discourse on religious matters.<sup>15</sup>

- Disinformation: Laws generally prohibiting the dissemination of “fake news” or the sharing of false information are too vague to meet the Article 19 test for restrictions on freedom of expression.<sup>16</sup> Instead, States should only prohibit false statements linked to particular harmful results, such as defamation or fraud, subject to them being made with malicious intent.
- Contempt of court: Contempt of court laws can be legitimate as a means of maintaining order in a courtroom and the fair administration of justice, but laws which prohibit criticism of the judiciary, such as so-called “scandalising the judiciary” offences, improperly restrict public scrutiny of the judiciary.<sup>17</sup>
- Other overly vague offences: The Article 19 test requires restrictions on freedom of expression to be “provided by law”, meaning that they should be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.”<sup>18</sup> Prohibitions on obscenity, for example, may be subject to abuse if not clearly defined.
- Online speech: International law clearly establishes that the “rights that people have offline must also be protected online.”<sup>19</sup> Although the digital era brings some new challenges that require novel regulation, States should not generally create special content restrictions or impose harsher penalties for Internet speech.<sup>20</sup>

**Category 5. Right to information and secrecy laws:** Are public authorities required to provide access to the information they hold? What rules, including secrecy laws, are in place which limit public access to information and/or penalise civil society for disseminating it?

The right to seek and receive information held by public authorities (the right to information or RTI) is a crucial component of freedom of expression. It should be given effect through comprehensive legislation which enables persons to request information from their governments. Such legislation should establish a presumption in favour of public access to information, subject only to a narrow regime of exceptions.<sup>21</sup> The strength of legal frameworks for RTI is assessed based on CLD and Access Info Europe’s RTI Rating (rti-rating.org). This uses 61 indicators to

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<sup>15</sup> Rabat Plan of Action, 11 January 2013, para. 25. Available at:

[https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf).

<sup>16</sup> International Mandates for Promoting Freedom of Expression, Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, 3 March 2017. Available at: [https://www.law-democracy.org/live/wp-content/uploads/2017/03/mandates.decl\\_.2017.fake-news.pdf](https://www.law-democracy.org/live/wp-content/uploads/2017/03/mandates.decl_.2017.fake-news.pdf).

<sup>17</sup> International Mandates for Promoting Freedom of Expression, 2002 Joint Declaration. Available at: <https://www.osce.org/fom/39838?download=true>.

<sup>18</sup> General Comment No. 34, note 8, para. 25.

<sup>19</sup> UN Human Rights Council Resolution 32/13, 18 July 2016, para. 1, available at:

<https://undocs.org/A/HRC/RES/32/13>; and UN General Assembly Resolution 68/167, 21 January 2014, para. 3, available at: <https://undocs.org/A/RES/68/167>.

<sup>20</sup> International Mandates for Promoting Freedom of Expression, 2018 Joint Declaration on Media Independence and Diversity in the Digital Age, para. 3. Available at: <https://www.osce.org/representative-on-freedom-of-media/379351?download=true>.

<sup>21</sup> International Mandates for Promoting Freedom of Expression, 2004 Joint Declaration on Access to Information and on Secrecy Legislation. Available at: <https://www.osce.org/fom/38632?download=true>.



assess the strength of the legal framework for RTI in seven categories: (1) the extent to which the law supports a fundamental right to access information; (2) the scope of the law; (3) the procedures for requesting information; (4) what exceptions justify denying requests for information and the process for such denials; (5) appeals; (6) sanctions for misconduct and protections for those who disclose public interest information; and (7) measures to promote the right to information.

This category also assesses what secrecy laws prohibit the disclosure of information and what penalties are imposed by those laws. Overly broad secrecy laws undermine transparency and public access to information. Of particular concern are provisions which penalise third parties, such as civil society or journalists, for sharing or re-sharing information which has been disclosed to them.<sup>22</sup>

**Category 6. Restrictions on freedom of assembly:** Must organisers obtain prior permission before holding an assembly? Are there other restrictions on or criminal sanctions for participating in an assembly?

The right to assembly, guaranteed by Article 21 of the ICCPR, protects the right to organise and participate in non-violent gatherings, subject to restrictions which meet a test which is similar to the one which applies to freedom of expression and association. States must therefore allow assemblies and protests to occur without unwarranted interference. They may require advance notice of an assembly but laws which require organisers to obtain permission for an assembly are not appropriate.<sup>23</sup> In the interests of public order, some limited requirements regarding the time, location or manner of assemblies may be legitimate, subject to the Article 21 test, and participants must be able to assemble “within sight and sound” of their audience and with enough time to express their views.<sup>24</sup>

Law enforcement actions should respect and protect the exercise of the fundamental rights of the participants and the public. Policing should aim to enable an assembly to take place as planned and minimise the potential for injury to persons or damage to property.<sup>25</sup> Force should be used only when necessary and should be proportionate; lethal force is only permissible “as a last resort to protect against an imminent threat to life and that it may not be used merely to disperse a gathering.”<sup>26</sup> States should also avoid bringing disproportionate penalties against protestors. Laws

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<sup>22</sup> General Comment No. 34, note 8, para. 30; and 2004 Joint Declaration on Access to Information and on Secrecy Legislation, note 21.

<sup>23</sup> Report of the Special Rapporteur, note 4, para. 28; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 7 August 2013, U.N. Doc. A/68/299, para. 24, available at: <https://undocs.org/A/68/299>; and African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 10 November 2017, para. 71, available at: <https://www.icnl.org/post/tools/guidelines-on-freedom-of-association-and-assembly-in-africa>.

<sup>24</sup> See, for example, Human Rights Committee, *Denis Turchenyak et al. v. Belarus*, Communication No. 1948/2010, 10 September 2013, available at: <https://juris.ohchr.org/Search/Details/1672>; and Organization for Security and Co-operation in Europe, Guidelines on Freedom of Peaceful Assembly: Second Edition, 25 October 2010, paras. 99-100, available at: <https://www.osce.org/odihr/73405>.

<sup>25</sup> UN Human Rights Council Resolution 38/11, 18 July 2016, para. 10, available at: <https://undocs.org/A/HRC/RES/38/11>; and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 6 April 2018, UN Doc. A/HRC/26/36, para. 51, available at: <https://undocs.org/A/HRC/26/36>.

<sup>26</sup> UN Human Rights Council Resolution 38/11, note 25, para. 11.

which criminalise mere participation in a protest or impose criminal penalties on protest organisers for acts committed by other participants are particularly problematic.<sup>27</sup>

**Category 7.** National security: Are crimes based on national security concerns, such as terrorism, defined in such a way as to include peaceful civil society activity? What surveillance powers do authorities have? What powers do governments have to suspend human rights obligations during states of emergency?

Where there is a “public emergency which threatens the life of the nation”, States may announce states of emergency and derogate from certain of their human rights obligations. However, derogations are allowed only insofar as they are strictly required by the exigencies of the situation.<sup>28</sup> States of emergency are exceptional circumstances; unrest or internal conflict that does not gravely and imminently threaten the life of the nation, or economic difficulties, are not sufficient to meet this standard.<sup>29</sup> Furthermore, certain rights cannot be derogated from even in emergencies, such as the right to life and the right to be free from torture or slavery.<sup>30</sup>

Where a legitimate state of emergency is not in place, any restrictions on national security grounds must meet the standard tests for restrictions on human rights. States often problematically rely on national security to justify overbroad criminal restrictions on expression, such as in anti-terrorism or treason laws. Such laws should not rely on vague terms like “glorification” of terrorism or “extremism”. Instead, they should only punish behaviour which specifically intends to promote violence and is directly linked to an actual increased risk of a violent or terrorist attack.<sup>31</sup>

Laws should also protect against arbitrary surveillance of civil society actors by the State. Legal frameworks often fail to provide adequate procedural protections to ensure surveillance is not conducted arbitrarily. Surveillance regimes should be clearly established in law and be subject to precise limits on their scope and duration. Monitoring of private communications should be subject to oversight by an independent body, subject to judicial review and should incorporate adequate due process protections.<sup>32</sup>

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<sup>27</sup> See, for example, Inter-American Commission on Human Rights, Criminalization of Human Rights Defenders, Chapter 3(B)(2), 31 December 2015. Available at:

<http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

<sup>28</sup> ICCPR, note 3, Article 4.

<sup>29</sup> Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1 July 1984, Principles 40 and 41. Available at: <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

<sup>30</sup> ICCPR, note 3, Article 4.

<sup>31</sup> International Mandates for Promoting Freedom of Expression, 2008 Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, available at: <https://www.osce.org/fom/99558?download=true>; and The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995, Principle 6(c), available at: <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.

<sup>32</sup> UN and OAS Special Rapporteurs on freedom of expression, Joint Declaration on Surveillance Programs and their Impact on Freedom of Exchange, 21 June 2013, paras. 7-10, available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=927&>; and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 17 April 2013, para. 3, available at: [undocs.org/A/HRC/23/40](http://undocs.org/A/HRC/23/40).

**Category 8.** Whistleblower, witness and other protection systems for those at risk: Are any such systems in place and, if so, are they sufficiently robust?

Whistleblowers play an essential role in exposing institutional corruption, fraud and human rights violations. Due to the high personal risk assumed and the public's interest in the disclosure of this information, States should enact whistleblower protection laws which prohibit retaliatory actions taken by the State or private actors. Strong whistleblower protections laws will also establish accessible channels for reporting wrongdoing, provide whistleblowers with access to remedies and create enforcement mechanisms which enable follow-up and reform following a disclosure. For standards on international better practice in this area, see Transparency International's *International Principles for Whistleblower Protection Legislation*.<sup>33</sup>

## Country Analysis

### Australia

#### Freedom of association: non-profit registration requirements and restrictions on advocacy

Non-profit organisations in Australia can choose among several legal forms. Common forms include incorporated associations, charitable trusts and companies limited by guarantee. Organisations can register at the federal, state or territory level.<sup>34</sup> Overall, the registration process itself does not appear to be a primary concern for civil society in Australia.

In 2018, civil society expressed alarm over proposed legislation which could require non-profit organisations to register as a foreign agent based on overly broad definitions of foreign influence. In response to this criticism, the Foreign Influence Transparency Scheme Act 2018 ultimately incorporated several amendments to the initial draft legislation, most notably an exemption for registered charities.<sup>35</sup> Some concerns remain as to potential regulatory burdens imposed on organisations which do not fall into the exemption.

#### Funding restrictions, financial reporting requirements and special tax requirements

Registered charities with the Australian Charities and Not-for-profits Commission (ACNC) have tax-exempt status.<sup>36</sup> Under the Charities Act, charities must be not-for-profit organisations whose purposes are charitable and for the public benefit.<sup>37</sup> This applies to a broad range of organisations.

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<sup>33</sup> 5 November 2013. Available at:

[https://www.transparency.org/whatwedo/publication/international\\_principles\\_for\\_whistleblower\\_legislation](https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation).

<sup>34</sup> For a listing of relevant laws and a discussion of the various legal forms, see Council on Foundations, "Australia", November 2018. Available at: <https://www.cof.org/content/australia>.

<sup>35</sup> Foreign Influence Transparency Scheme Act 2018, section 29C. Available at: <https://www.legislation.gov.au/Details/C2018C00507>.

<sup>36</sup> Income Tax Assessment Act 1997, sections 50.5 and 995.1. Available at: [http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol\\_act/itaa1997240/](http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/itaa1997240/).

<sup>37</sup> Charities Act 2013, section 5. Available at: [http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/num\\_act/ca2013104/s5.html#charity](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/num_act/ca2013104/s5.html#charity).

In a ground changing 2010 case, the Australian High Court affirmed that, contrary to previous understandings, an organisation could not be denied tax-exempt status merely because it engages in advocacy around political issues.<sup>38</sup>

It is more difficult for advocacy organisations to obtain status enabling them to accept tax deductible gifts, which is a different determination than qualifying as a charity for tax exemption. The Income Tax Assessment Act has a complex list of categories of organisation which qualify for tax deductible donations based on criteria which vary by category. However, most categories require that the recipient of donations be a public fund or public benevolent institution, which does not include advocacy organisations.<sup>39</sup>

Foreign donations are generally not restricted.<sup>40</sup> The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill, when first introduced, risked banning some forms of foreign donations to non-profit organisations and imposing related registration and disclosure obligations. After a public outcry, the scope of bans on foreign funding was significantly narrowed and the Act currently limits these restrictions to election related activities. Most civil society organisations will accordingly not be impacted by the new law merely for engaging in issue based advocacy.<sup>41</sup>

### Media regulation

Australian media is active and operates in a relatively free environment. Reporters Without Borders ranked Australia 18 out of 180 countries for press freedom in 2018, the highest in the Asia-Pacific region.<sup>42</sup> There is also a strong public broadcasting sector, with legislative safeguards for its independence.<sup>43</sup>

Private sector media is highly concentrated among a few players, raising media diversity concerns.<sup>44</sup> Deregulatory trends may exacerbate this concentration. In 2017, the government abolished two rules designed to ensure media diversity: the 75 percent audience reach rule, which prevented one person from controlling television licenses covering more than 75% of Australians;

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<sup>38</sup> *Aid/Watch Incorporated v. Commissioner of Taxation* [2010] HCA 42, 1 December 2010. Available at: <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2010/42.html>.

<sup>39</sup> Income Tax Assessment Act 1997, Subdivision 30-B. Available at: [http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol\\_act/itaa1997240](http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/itaa1997240). For an in-depth explanation, see Justice Connect Not-for-profit Law, Guide to Deductible Gift Recipient Status, March 2014. Available at: [https://www.nfplaw.org.au/sites/default/files/media/Guide\\_to\\_Deductible\\_Gift\\_Recipient\\_Status.pdf](https://www.nfplaw.org.au/sites/default/files/media/Guide_to_Deductible_Gift_Recipient_Status.pdf).

<sup>40</sup> Council on Foundations, “Australia”. Available at: [https://www.cof.org/content/australia#\\_end18](https://www.cof.org/content/australia#_end18).

<sup>41</sup> For the text of the final act, see Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018. Available at: <https://www.legislation.gov.au/Details/C2018A00147>. For a discussion of the changes to the scope of the proposed law, see Luke Michael, Foreign Donations Bill Changes Labelled a Win for Charities, Pro Bono News Australia, 21 September 2018. Available at: <https://probonoaustralia.com.au/news/2018/09/foreign-donations-bill-changes-labelled-win-charities/>.

<sup>42</sup> Reporters Without Borders, 2018 World Press Freedom Index. Available at: <https://rsf.org/en/ranking#>.

<sup>43</sup> For example, under the Australian Broadcasting Corporation Act 1983, the nominating committee for board members is not under government influence and there are detailed rules on conducting merit based nominations to the board. This reflects reforms introduced in 2012 although some have suggested further reform is needed to depoliticise the Australian Broadcasting Corporation’s Board. For a further discussion, see Bill Browne and Fergus Pitt, Depoliticising the ABC Board and appointment process, The Australia Institute, September 2018. Available at: [http://www.tai.org.au/sites/default/files/Depoliticising%20the%20ABC%20Board%20%5BWEB%5D\\_0.pdf](http://www.tai.org.au/sites/default/files/Depoliticising%20the%20ABC%20Board%20%5BWEB%5D_0.pdf).

<sup>44</sup> BBC, Australia Profile – Media, 26 April 2016. Available at: <https://www.bbc.com/news/world-asia-15675260>.

and the two out of three rule, which prevented one person from controlling more than two of three platforms (television, radio and newspaper) in the same licence area.<sup>45</sup> There are already indications that the removal of these requirements has enabled the merger of media entities.<sup>46</sup>

### Content restrictions

Some Australian states still have criminal defamation laws although they are used rarely.<sup>47</sup> Civil defamation laws in Australia are less speech protective than in other similar jurisdictions and may not always screen out lawsuits designed to harass or intimidate critics.<sup>48</sup>

### Right to information and secrecy laws

Australia's Freedom of Information Act 1982 is ranked 65 out of the 123 national right to information laws assessed on the RTI Rating.<sup>49</sup> The scope of the law is a key limitation as it excludes several important agencies, other government entities and State-owned companies. The law does not trump secrecy provisions in other legislation and the public interest override (meaning a mandate to disclose information when this is in the public interest even if the information is otherwise exempt) is weak.

### **Australia's RTI Scores:**

Category	Max Points	Score	Percentage
1. Right of Access	6	2	33%
2. Scope	30	11	37%
3. Requesting Procedures	30	21	70%
4. Exceptions and Refusals	30	15	50%
5. Appeals	30	23	77%
6. Sanctions and Protections	8	2	25%
7. Promotional Measures	16	10	63%
<b>Total score</b>	<b>150</b>	<b>84</b>	<b>56%</b>

Problematic secrecy laws are embedded in numerous Australian laws. In 2018, a new law repealed but then largely replicated the highly criticised general secrecy provision contained in section 70 of the Crimes Act. The new secrecy provision, now contained in section 122.4 of the Criminal Code, makes unauthorised disclosure of information by current and former Commonwealth

<sup>45</sup> Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017, Schedules 1 and 2. Available at: <https://www.legislation.gov.au/Details/C2017A00113>.

<sup>46</sup> Mike Cherney, Australia's Fairfax Media Agrees to Take Over by TV Network Nine, Wall Street Journal, 26 July 2018. Available at: <https://www.wsj.com/Articles/changing-channels-tv-station-to-snap-up-a-187-year-old-newspaper-1532598144>.

<sup>47</sup> Report of the Special Rapporteur on the situation of human rights defenders on his mission to Australia, 28 February 2018, U.N. Doc. A/HRC/37/51/Add.3, para. 24. Available at: [www.undocs.org/A/HRC/37/51/Add.3](http://www.undocs.org/A/HRC/37/51/Add.3).

<sup>48</sup> For a discussion of some of these challenges, see <https://www.lexology.com/library/detail.aspx?g=96f0a7fe-9eae-4c62-aba4-e255deb13c96>; and <https://www.smh.com.au/national/fixing-australia-s-broken-defamation-laws-20181129-p50j9z.html>.

<sup>49</sup> See: <https://www.rti-rating.org/country-data/>.

(federal) officers a crime penalised by a two-year prison sentence. The provision broadly refers to any information which the officer is under a duty imposed by law not to disclose.<sup>50</sup> Some defences, such as that the information was disclosed in accordance with the Public Interest Disclosure Act or the Freedom of Information Act, provide limited protections although they are not sufficiently comprehensive to prevent abuse.<sup>51</sup>

Australian law includes a number of specific secrecy provisions. In 2009, the Australian Law Reform Commission counted 506 secrecy provisions across 176 pieces of legislation and recommended significant reforms.<sup>52</sup> These recommendations have not been implemented,<sup>53</sup> except for the law described above. In addition, some new secrecy provisions have been introduced in recent years. For example, the Australian Border Force Act provides for up to two years' imprisonment for any Immigration and Border Protection Force worker who discloses Immigration and Border Protection information.<sup>54</sup> This can include contractors, although the government excluded health workers from this provision after doctors treating detained asylum seekers filed a lawsuit questioning the constitutionality of the law.<sup>55</sup>

### Restrictions on freedom of assembly

Freedom of assembly is generally protected. In recent years, some state governments have taken steps to target protests on mining and forestry projects. However, in a positive development that may slow this trend, the High Court overturned the Tasmanian Workplaces (Protection from Protesters) Act in 2017, finding that the Act placed unjustified burdens on the freedom of political communication.<sup>56</sup>

### National security

Provisions of the Criminal Code relating to national security include some potentially rights-restrictive language. The includes, for example, vague language in the definition of "national security", some anti-terrorism offences and new espionage and sabotage provisions introduced in 2018.<sup>57</sup>

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<sup>50</sup> The Criminal Code Act 1995, section 122.4. Available at: <https://www.legislation.gov.au/Details/C2019C00043>.

<sup>51</sup> *Ibid.*, section 122.5.

<sup>52</sup> Australian Law Reform Commission, *Secrecy Laws and Open Government in Australia*, December 2009, p. 22. Available at: <https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC112.pdf>.

<sup>53</sup> Human Rights Law Centre, *Secrecy offenses: the wrong approach to necessary reform*, 22 January 2018, para. 2. Available at: <http://www.loeildelexile.org/wp-content/uploads/2018/03/Submission-11-Human-Rights-Law-Centre.pdf>.

<sup>54</sup> Australian Border Force Act, section 42. Available at: <https://www.legislation.gov.au/Details/C2019C00034>.

<sup>55</sup> *Ibid.*, section 5; Australia lifts gag order on doctors treating refugees, Al-Jazeera, 20 October 2016, available at: <https://www.aljazeera.com/news/2016/10/australia-lifts-gag-order-doctors-treating-refugees-161020072304237.html>.

<sup>56</sup> *Brown v. Tasmania*, High Court of Australia [2017] HCA 43, 18 October 2017, para. 152. Available at: [eresources.hcourt.gov.au/downloadPdf/2017/HCA/43](https://www.hcourt.gov.au/downloadPdf/2017/HCA/43). Australia does not have a bill of rights in its Constitution but the courts have read in an implied freedom of political communication based on the democratic system of government the Constitution does provide for.

<sup>57</sup> The Criminal Code Act 1995, Divisions 80, 90 and 90.4. Available at: <https://www.legislation.gov.au/Details/C2019C00043>.

## Whistleblower, witness and other protection systems for those at risk

The Public Interest Disclosure Act, 2013 provides some protection for public officials from liability or reprisals when they disclose information that is in the public interest. It also establishes offences for disclosing the identity of whistleblowers and establishes a framework for investigating wrongs exposed by disclosed information.<sup>58</sup> However, this regime is not adequate given the many secrecy provisions in other legislation discussed earlier.

Positively, the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018, currently before Parliament, would, if passed, strengthen protections for whistleblowers in the corporate and financial sectors.<sup>59</sup>

## **Bangladesh**

### Freedom of association: non-profit registration requirements and restrictions on advocacy

Non-profit organisations can register under one of several legal statuses such as Voluntary Social Welfare Organisations under the Voluntary Social Welfare Agencies Ordinance, 1961, charitable associations under the Societies Registration Act, 1860 or non-profit companies under the Companies Act, 1913. The registration process varies depending on the legal format but there are some barriers. These include a high number of minimum members across all forms, high registration fees (in some cases), bureaucratic delays and occasional delay or denial due to “prejudicial activities” or the pretext of police verification.<sup>60</sup>

The Foreign Donations (Voluntary Activities) Act, 2016 prohibits derogatory comments about the Constitution or constitutional institutions as well as engaging in anti-state activities.<sup>61</sup> These are undefined and may attract sanctions ranging from cancellation of registration, stopping the activities of the organisation or individual or taking other action under the law.<sup>62</sup> The vagueness of these provisions could operate as a restriction on advocacy.

### Funding restrictions, financial reporting requirements and special tax requirements

The Foreign Donations (Voluntary Activities) Regulation Act, 2016 requires any non-profit organisation receiving foreign funds to register with the NGO Affairs Bureau and obtain approval of projects receiving foreign donations. The Bureau may require the organisation to alter their proposal and the Act does not establish clear criteria for what proposals may be considered

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<sup>58</sup> Public Interest Disclosure Act 2013. Available at: <https://www.legislation.gov.au/Details/C2019C00026>.

<sup>59</sup> Parliament of Australia, Bills of the current Parliament: Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018. Available at: <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/billhome/s1120%22>.

<sup>60</sup> As summarized by ICNL, Civic Freedom Monitor: Bangladesh, 4 October 2018. Available at: <http://www.icnl.org/research/monitor/bangladesh.html>.

<sup>61</sup> Foreign Donations (Voluntary Activities) Act, 2016, section 14, as translated. Available at: <http://www.icnl.org/research/library/files/Bangladesh/FDVA.pdf>.

<sup>62</sup> *Ibid.*, section 15(1).



objectionable.<sup>63</sup> Similarly, appointing foreign consultants or advisors also requires approval. Affected organisations and individuals must also submit statements on their activities every financial year.<sup>64</sup>

Violating the provisions of the Foreign Donations Act may result in a cautionary letter, cancelled registration, a halt to the activities of the organisation or other action under the law. If an organisation receives foreign donations without approval, they may be subject to a fine equivalent in an amount of between the quantum of the donation up to three times that.<sup>65</sup> The Act also permits penal action against officials of any NGO who violate the Act unless that person can prove that the offence was committed without his or her knowledge or that he or she had taken sufficient preventative measures.<sup>66</sup>

Additional registration and regulatory requirements apply to institutions engaged in microfinance activities, as articulated in the Microfinance Regulatory Law, 2006.<sup>67</sup>

### Media regulation

The media regulatory landscape is complex and sometimes contradictory, with around 50 laws and regulation governing the news media.<sup>68</sup> We will not attempt to summarise all these here, except to note that print media must be licensed under the Printing Presses and Publication Act 1973. In addition, Bangladesh appears poised to enact a new Broadcasting Act, which would follow a new broadcasting policy introduced in 2014. This would create a new commission to regulate broadcasters, which will include online mass media. The commission is supposed to be independent although concerns over government control remain.<sup>69</sup> Notably, the commission will have the power to suspend the licences of operators who violate the law, including by breaching certain broadly worded content rules, such as broadcasting statements against the public interest or contrary to the national culture.<sup>70</sup>

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<sup>63</sup> Foreign Donations (Voluntary Activities) Regulation Act 2016, section 6. Available at: <http://www.icnl.org/research/library/files/Bangladesh/FDVA.pdf>.

<sup>64</sup> *Ibid.*, section 13(1).

<sup>65</sup> *Ibid.*, section 15(1).

<sup>66</sup> *Ibid.*, section 15(2).

<sup>67</sup> An unofficial English translation is available at:

[http://www.mra.gov.bd/index.php?option=com\\_content&view=Article&id=22&Itemid=40](http://www.mra.gov.bd/index.php?option=com_content&view=Article&id=22&Itemid=40).

<sup>68</sup> Amnesty International, Caught Between Fear and Repression: Attacks on Freedom of Expression in Bangladesh, p. 53. Available at: <https://www.amnesty.nl/content/uploads/2017/05/Bangladesh-Caught-between-fear-and-repression.pdf?x23787>.

<sup>69</sup> An English copy of this draft was not available. For a discussion of the provisions, see Article 19, Bangladesh: Violations of the right to freedom of expression in 2017, 2018, p. 27, available at: [https://www.Article19.org/wp-content/uploads/2018/05/Bangladesh\\_violations-of-right-to-FOE-2017.pdf](https://www.Article19.org/wp-content/uploads/2018/05/Bangladesh_violations-of-right-to-FOE-2017.pdf); and “Cabinet Approves New Act to Create Independent National Broadcasting Commission for Radio, TV and Bangladesh NGOs Network for Radio and Communication, “Online Mass Media”, 15 October 2018, available at: <https://bnnrc.net/cabinet-approves-new-act-to-create-independent-national-broadcasting-commission-for-radio-tv-and-online-mass-media/>.

<sup>70</sup> Factbox: Bangladesh’s broad media laws, Reuters, 12 December 2018. Available at: <https://www.reuters.com/Article/us-bangladesh-election-media-factbox-idUSKBN1OC08S>.

The Digital Security Act 2018 empowers the Bangladesh Telecommunication and Regulatory Authority to remove or block data that threatens digital security or a hinders a range of vaguely described values such as national unity, security and public discipline.<sup>71</sup>

### Content restrictions

The Penal Code of 1860 contains a number of content restrictions on freedom of expression including offences for obscenity and insult to religious beliefs. However, in practice, the most problematic provision is on criminal defamation, which is subject to a penalty of a fine, up to two years in prison or both.<sup>72</sup> Although a list of enumerated exceptions limits the scope of the crime somewhat as regards comments about public officials or on matters of public interest, these exceptions are not rigorous or comprehensive.

The Digital Security Act 2018 incorporates a number of content restrictions on online speech, including some which duplicate provisions in the Penal Code and yet impose steeper penalties. These include propaganda against the anthem, flag, “Father of the nation” or liberation war (potential 10 years imprisonment on first offence), sending offensive or fear inducing information or spreading false information online (potential 3 years in prison) and publication of information that hampers religious sentiment (potential 7 years in prison).<sup>73</sup> The penalty for defamation under the Penal Code is also increased to three years (or five years for a repeat offence).<sup>74</sup>

The new Broadcasting Bill 2018, if passed, would introduce further content based offences including making statements against the public interest, sharing misleading information, broadcasting advertisements contrary to the national culture and heritage, and broadcasting scenes with indecent language.<sup>75</sup>

The colonial era Contempt of Court Act, 1926 gives the judiciary broad powers to impose prison terms or fines for contempt of court.<sup>76</sup> In 2013, the government repealed this law and replaced it with the Contempt of Court Act 2013. However, later that year the High Court found the new law to be unconstitutional and overturned it. It appears that this brought the 1926 Act back into force although there is some legal confusion on this point.<sup>77</sup> In practice, contempt of court continues to

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<sup>71</sup> Digital Security Act 2018, section 8. Available at: <https://www.cirt.gov.bd/wp-content/uploads/2018/12/Digital-Security-Act-2018-English-version.pdf>.

<sup>72</sup> Penal Code of 1860, sections 499 and 500, available at: [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=11](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=11); and Article 19, Bangladesh: Violations of the right to freedom of expression in 2017, 2018, p. 27, available at: [https://www.Article19.org/wp-content/uploads/2018/05/Bangladesh\\_violations-of-right-to-FOE-2017.pdf](https://www.Article19.org/wp-content/uploads/2018/05/Bangladesh_violations-of-right-to-FOE-2017.pdf).

<sup>73</sup> Digital Security Act 2018, sections 21, 25 and 28. Available at: <https://www.cirt.gov.bd/wp-content/uploads/2018/12/Digital-Security-Act-2018-English-version.pdf>.

<sup>74</sup> *Ibid.*, section 29.

<sup>75</sup> An English copy of the Bill was not available. Content provisions described as summarised at Factbox: Bangladesh’s broad media laws. Reuters, 12 December 2018. Available at: <https://www.reuters.com/Article/us-bangladesh-election-media-factbox-idUSKBN1OC08S>.

<sup>76</sup> Contempt of Courts Act, 1926. Available at: [http://bdlaws.minlaw.gov.bd/print\\_Sections\\_all.php?id=140](http://bdlaws.minlaw.gov.bd/print_Sections_all.php?id=140).

<sup>77</sup> Noor Mohammed Bhuiyan, Freedom of Speech and Contempt of Court: A Continuous Clash Between a Fundamental Rights and Dignity of Judiciary, 8 December 2018, South Asian Journal of Law and Policy, Vol. 2(5). Available at: [http://www.sajlp.org/publication-details.php?archives\\_id=25](http://www.sajlp.org/publication-details.php?archives_id=25).

be a tool for restricting speech in circumstances which do not reflect international human rights standards, such as for criticism of the judiciary.<sup>78</sup>

The Criminal Procedure Code gives the government the authority to order the forfeiture and seizure of any publication which it deems to be defamatory of the President, Prime Minister, Speaker of Parliament or Chief Justice, grossly indecent or obscene or likely to incite anyone to a cognizable offence, or which includes content which violates certain provisions in the Penal Code.<sup>79</sup>

### Right to information and secrecy laws

Bangladesh's Right to Information Act is relatively strong, ranked at 29 out of the 123 countries assessed by the RTI Rating.<sup>80</sup> It establishes an Information Commission with a robust mandate and the scope of the law is broad. Less positively, the Act does not apply to national security and intelligence institutions although even these institutions are supposed to disclose information related to corruption and human rights violations.<sup>81</sup>

#### **Bangladesh's RTI Scores:**

Category	Max Points	Score	Percentage
1. Right of Access	6	2	33%
2. Scope	30	25	83%
3. Requesting Procedures	30	16	53%
4. Exceptions and Refusals	30	20	67%
5. Appeals	30	23	77%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	15	94%
<b>Total score</b>	<b>150</b>	<b>107</b>	<b>71%</b>

Secrecy laws present concerns of overly broad language. The Official Secrets Act, 1923 penalises disclosure or failure to take reasonable care of information entrusted to a person by a government official or obtained as part of a government office position or contract, among other things.<sup>82</sup> The Digital Security Act 2018 imposes steeper penalties or up to 14 years imprisonment for the same offence committed through a digital medium.<sup>83</sup>

### Restrictions on freedom of assembly

<sup>78</sup> For example, see Dominic Yobbi, Bangladesh Supreme Court Finds Two Ministers Guilty of Contempt, Jurist, 27 March 2016. Available at: <https://www.jurist.org/news/2016/03/bangladesh-supreme-court-finds-two-ministers-guilty-of-contempt>.

<sup>79</sup> Code of Criminal Procedure, 1898, section 99A. Available at: [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=75](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75).

<sup>80</sup> RTI Rating, Country Data, as of January 2019. Available at: <https://www.rti-rating.org/country-data>.

<sup>81</sup> Right to Information Act, 2009, sections 32(1)-32(2).

<sup>82</sup> Section 5. Available at: [http://bdlaws.minlaw.gov.bd/Sections\\_detail.php?id=132&Sections\\_id=6997](http://bdlaws.minlaw.gov.bd/Sections_detail.php?id=132&Sections_id=6997).

<sup>83</sup> Digital Security Act, 2018, section 32. Available at: <https://www.cirt.gov.bd/wp-content/uploads/2018/12/Digital-Security-Act-2018-English-version.pdf>.

The right to peaceful assembly is protected under the Constitution subject to “any reasonable restrictions imposed by law in the interests of public order or public health.”<sup>84</sup> However, in practice police are “selective and discriminatory” in granting permission for assemblies and police have arbitrarily arrested and detained participants in protests.<sup>85</sup>

Legal provisions facilitate these abuses, especially the Criminal Procedure Code. Section 127 allows a police officer or Magistrate to disperse any assembly of five or more persons likely to disturb the public peace. Sections 128 and 129 provide for the use of civil or military force to disperse such assemblies and section 132 protects those using force to disperse assemblies in good faith from prosecution.

### National security

Sedition is a crime under section 124A of the Penal Code. It may be punished by life in prison or a shorter term and/or a fine.<sup>86</sup> The provision includes highly ambiguous language, penalising anyone who brings or attempts to bring the Government into hate or contempt or excites disaffection towards the Government.<sup>87</sup> The government has previously brought sedition charges against editors who published anti-corruption stories or otherwise criticised the government.<sup>88</sup> Furthermore, a 2011 amendment to the Constitution provides that someone who unconstitutionally conspires against or subverts the Constitution is guilty of sedition although the exact relationship of this provision with the Criminal Code or other existing legislation is not clear.<sup>89</sup>

The Anti-Terrorism Act, 2009 contains definitions that are vague or overly broad and provides for the death penalty for financing terrorist activities, which may have a chilling effect on civil society’s economic operations. A new amendment introduced in 2013 would allow courts to accept photographs and audiovisual material from social media in the trial of terrorism cases, which while not inherently problematic, may have a chilling effect on freedom of expression in combination when used in combination with other vague provisions in the Act.<sup>90</sup>

The Special Powers Act of 1974 grants the executive significant powers, without obtaining a judicial order or a warrant, to detain someone to prevent that person from committing a “prejudicial

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<sup>84</sup> Constitution, Article 37. Available at: [http://bdlaws.minlaw.gov.bd/print\\_Sections\\_all.php?id=367](http://bdlaws.minlaw.gov.bd/print_Sections_all.php?id=367).

<sup>85</sup> Forum-Asia, Shrinking Democratic Space and Freedom of Expression in Bangladesh, December 2018, pp. 23-24. Available at: [https://www.forum-asia.org/uploads/wp/2018/12/Shrinking-Democratic-Space-and-Freedom-of-Expression-in-Bangladesh\\_Dec-2018.pdf](https://www.forum-asia.org/uploads/wp/2018/12/Shrinking-Democratic-Space-and-Freedom-of-Expression-in-Bangladesh_Dec-2018.pdf).

<sup>86</sup> Penal Code of 1860, section 124A. Available at: [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=11](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=11).

<sup>87</sup> *Ibid.*

<sup>88</sup> For one example, see Michael Safi, Bangladeshi editor who faced 83 lawsuits says press freedom under threat, *The Guardian*, 18 May 2017. Available at: <https://www.theguardian.com/world/2017/may/18/it-all-depends-on-how-i-behave-press-freedom-under-threat-in-bangladesh>.

<sup>89</sup> Constitution of Bangladesh, Article 7A, as translated. Available at: [http://bdlaws.minlaw.gov.bd/print\\_Sections\\_all.php?id=367](http://bdlaws.minlaw.gov.bd/print_Sections_all.php?id=367).

<sup>90</sup> English versions of the amended Anti-Terrorism Act were not available so this paragraph relies on secondary sources. See FIDH, Bangladesh: New Amendment to Anti-Terrorism Act gags Freedom of Expression, 14 June 2013, available at: <https://www.fidh.org/en/region/asia/bangladesh/bangladesh-new-amendment-to-anti-terrorism-act-gags-freedom-of-expression-13457>; and ICNL, Civic Freedom Monitor: Bangladesh, 4 October 2018, available at: <http://www.icnl.org/research/monitor/bangladesh.html>.

act”.<sup>91</sup> A “prejudicial act” is defined broadly to include acts intended or likely to prejudice Bangladeshi sovereignty, security or public order, excite enmity between communities, cause fear or alarm to the public or prejudice the economic interests of the State, among other things.<sup>92</sup> In the notable case *Blast v. Bangladesh*, the High Court elaborated a 19-point guideline constraining some of the arrest and detention powers in Bangladesh, including a direction to limit use of the Special Powers Act. It appears implementation of these guidelines is, however, limited.<sup>93</sup>

#### Whistleblower, witness and other protection systems for those at risk

A Whistleblower Protection Act provides protection for persons who disclose public interest information to a competent authority. The identity of the whistleblower cannot be disclosed without his consent and the whistleblower has protection from criminal or civil liability and employment retaliation.<sup>94</sup> There is no legislation providing for special rules when crimes are committed against freedom of expression.<sup>95</sup>

## **Cambodia**

#### Freedom of association: non-profit registration requirements and restrictions on advocacy

Registration requirements for non-profit organisations are highly restrictive. The Law on Associations and NGOs (known as LANGO) requires all organisations and associations in the country to register with the government. Domestic organisations must register with the Ministry of the Interior by submitting, among other requirements, profiles of their founding members and statutes which conform with prescribed rules.<sup>96</sup> The Ministry may deny registration applications if the purpose of the organisation would endanger security, stability, public order, national security, national unity, culture or the traditions and customs of Cambodia.<sup>97</sup> Registered organisations must submit annual activity reports and annual financial reports.<sup>98</sup>

The Ministry of the Interior has the power to suspend activities of domestic organisations following a warning if they do not comply with their own statutes. The Ministry also has broad discretion to deregister organisations that conduct activities endangering security, stability, public order, national security, national unity, culture or the traditions and customs of Cambodia. Organisations may appeal denials of registration, suspensions of their activities or deregistration to the courts within 30 days. No administrative system of appeals is available.<sup>99</sup>

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<sup>91</sup> Special Powers Act, 1974, section 3. Available at: [http://bdlaws.minlaw.gov.bd/print\\_Sections\\_all.php?id=462](http://bdlaws.minlaw.gov.bd/print_Sections_all.php?id=462).

<sup>92</sup> *Ibid.*, section 2(f).

<sup>93</sup> Nilima Jahan, When There is No Warrant, The Daily Star, 2 March 2018. Available at: <https://www.thedailystar.net/star-weekend/human-rights/when-there-no-warrant-1541947>.

<sup>94</sup> Whistleblower Protection Act, 2011, section 5. Available at: [http://www.mrdibd.org/downloads/Whistleblower\\_protection\\_act\\_2011\\_English.pdf](http://www.mrdibd.org/downloads/Whistleblower_protection_act_2011_English.pdf).

<sup>95</sup> Article 19, Bangladesh: Violations of the right to freedom of expression in 2017, 2018, p. 27. Available at: [https://www.Article19.org/wp-content/uploads/2018/05/Bangladesh\\_violations-of-right-to-FOE-2017.pdf](https://www.Article19.org/wp-content/uploads/2018/05/Bangladesh_violations-of-right-to-FOE-2017.pdf).

<sup>96</sup> LANGO, Articles 6 and 7. As translated at: [https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Unofficial\\_Translation\\_of\\_5th\\_LANGO\\_ENG.pdf](https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Unofficial_Translation_of_5th_LANGO_ENG.pdf).

<sup>97</sup> *Ibid.*, Article 8

<sup>98</sup> *Ibid.*, Article 25.

<sup>99</sup> *Ibid.*, Articles 30 and 31.

Foreign associations and non-governmental organisations must register with the Ministry of Foreign Affairs and International Cooperation and are subject to additional requirements, such as obtaining a supporting letter from public authorities in Cambodia.<sup>100</sup>

Under the LANGO, both domestic and foreign organisations must be politically neutral.<sup>101</sup> The Ministry of the Interior may temporarily suspend the activities of an organisation which violates this rule if, after a warning, the organisation fails to comply. In the case of repeated non-compliance, the Ministry may deregister the organisation.<sup>102</sup>

#### Funding restrictions, financial reporting requirements and special tax requirements

As noted previously, non-profit organisations must report annually on their financial situations. In addition, within 30 days of registering, they must provide their bank accounts to the Ministry of the Interior and the Ministry of Economic and Finance. Failing to do so may result in a suspension of their operations.<sup>103</sup>

Although there are restrictions on international NGOs (see above) there are no explicit restrictions on foreign funding for domestic NGOs.

The Law on Taxation of 1997 provides for income tax exemptions for organisations with religious, charitable, scientific, literary or educational purposes.<sup>104</sup> Donations to such organisations may be tax deductible, up to the limit of five percent of the donor's taxable income.<sup>105</sup> In practice, strict implementation of this law has reportedly made it difficult for civil society to obtain tax exempt status.<sup>106</sup>

#### Media regulation

Print media is regulated by the 1995 Press Law. Positively, the Law prohibits pre-publication censorship and guarantees source confidentiality.<sup>107</sup> However, editors must register with the Ministry of Information before commencing publication.<sup>108</sup> In addition, the Law contains numerous specific content requirements for the print media, breach of which may result in fines or action under the criminal law. The content requirements are quite vague, such as a prohibition on publishing any information that may affect national security or political stability. In this case,

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<sup>100</sup> *Ibid.*, Articles 12 and 13.

<sup>101</sup> LANGO, Article 24, as translated. Available at: [https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Unofficial\\_Translation\\_of\\_5th\\_LANGO\\_ENG.pdf](https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Unofficial_Translation_of_5th_LANGO_ENG.pdf).

<sup>102</sup> *Ibid.*, Article 30.

<sup>103</sup> *Ibid.*, Articles 10 and 30.

<sup>104</sup> Law on Taxation, Article 9(1). Available at: [https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/wtacckhm3a3\\_leg\\_48.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/wtacckhm3a3_leg_48.pdf).

<sup>105</sup> *Ibid.*, Article 16.

<sup>106</sup> USAID and ICNL, 2017 Civil Society Organizations Sustainability Index, November 2018, p. 34. Available at: <https://www.fhi360.org/sites/default/files/media/documents/resource-civil-society-organization-2017-asia-regional-report.pdf>.

<sup>107</sup> Press Law, 1995, Articles 2 and 3, as translated. Available at: [http://sithi.org/admin/upload/law/Law%20on%20the%20Press%20\(1995\).ENG.pdf](http://sithi.org/admin/upload/law/Law%20on%20the%20Press%20(1995).ENG.pdf).

<sup>108</sup> *Ibid.*, Articles 8 and 9.

authorities may confiscate copies of the publication and suspend the publication for up to 30 days.<sup>109</sup>

The Telecommunication Regulator of Cambodia (TRC) is responsible for issuing and withdrawing licences, developing a code of conduct for the telecommunications sector, investigating and acting on violations of law or the code of conduct and engaging in other oversight and regulatory functions.<sup>110</sup> It is not independent from the government but rather operates under the control of the Ministry of Posts and Telecommunications.<sup>111</sup>

The Law on Telecommunications also grants significant surveillance powers to the government by granting it new investigatory powers and permitting the authorities to listen to or record dialogue over personal telecommunications systems.<sup>112</sup> In addition, the Law permits the competent ministries or institutions to order telecommunications operators to take necessary measures in the event of a force majeure. Such broad phrasing could potentially be used to impose communication blocks or shutdowns.<sup>113</sup>

### Content restrictions

The Constitution protects freedom of expression but also allows for broad restrictions when speech infringes the honour of others, the good customs of society, public order or national security.<sup>114</sup>

The Penal Code contains a number of content restrictions. One is defamation, defined as any bad faith allegation which injures the reputation of another person or institution.<sup>115</sup> Public insult, defined as outrageous expression or invective not based on fact, is also criminalised as is insult of public officials.<sup>116</sup> In 2018, Cambodia added the offence of insulting the king to the Penal Code. It carries a penalty of one to five years' imprisonment and/or a fine.<sup>117</sup>

Another speech restrictive provision in the Penal Code is the prohibition on incitement to discrimination, hostility or violence against persons based on ethnicity, nationality, race or religion. No further explanation of these terms prevents their over application.<sup>118</sup> Another

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<sup>109</sup> *Ibid.*, Article 12.

<sup>110</sup> Law on Telecommunications, 2015, Article 12, as translated. Available at: [http://sithi.org/admin/upload/law/20150127\\_TelecommunicaitonDraftLaw\\_En%20edited-2.pdf](http://sithi.org/admin/upload/law/20150127_TelecommunicaitonDraftLaw_En%20edited-2.pdf).

<sup>111</sup> *Ibid.*, Article 24.

<sup>112</sup> *Ibid.*, Articles 70, 72 and 97.

<sup>113</sup> *Ibid.*, Article 7.

<sup>114</sup> Constitution of Cambodia, Article 41. Available at: [https://www.constituteproject.org/constitution/Cambodia\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Cambodia_2008.pdf?lang=en).

<sup>115</sup> Penal Code, Article 305, as translated. Available at: [http://sithi.org/admin/upload/law/Criminal\\_Code\\_Book\\_with\\_cover\\_Jan\\_2014.pdf](http://sithi.org/admin/upload/law/Criminal_Code_Book_with_cover_Jan_2014.pdf).

<sup>116</sup> *Ibid.*, Articles 307, 502.

<sup>117</sup> Penal Code, Article 437 *bis*, as described in ICJ, Submission to the Universal Period Review of Cambodia, 12 July 2018, para. 13. Available at: <https://www.icj.org/wp-content/uploads/2018/07/Cambodia-UPR-Advocacy-Non-legal-submission-July-2018-ENG.pdf>.

<sup>118</sup> Penal Code, Article 496, as translated. Available at: [http://sithi.org/admin/upload/law/Criminal\\_Code\\_Book\\_with\\_cover\\_Jan\\_2014.pdf](http://sithi.org/admin/upload/law/Criminal_Code_Book_with_cover_Jan_2014.pdf).



provision criminalises criticising a judicial decision with the aim of disturbing public order or endangering a public institution.<sup>119</sup>

### Right to information and secrecy laws

Cambodia does not have a right to information law although a draft law has been in the process of being developed for many years. A version has been posted for public comment on the website of the Ministry of Information.<sup>120</sup>

The Press Law provides that the press has the right to access government held records, except for information the disclosure of which would harm national security or relations with other countries, invade the rights of individuals, expose confidential commercial or financial documents, affect fair trial rights or endanger public officials carrying out the law. Officials are supposed to respond to written requests within 30 days, giving written reasons for any denial.<sup>121</sup>

### Restrictions on freedom of assembly

Like freedom of expression, freedom of assembly is constitutionally protected but may be limited based on broadly defined grounds.<sup>122</sup> Under the Law on Peaceful Assembly, those wishing to hold an assembly at a public venue must notify the authorities at least five days in advance. This notice must include contacts and addresses of three leaders, the purpose of the assembly, its location, the time and the number of participants.<sup>123</sup>

Authorities should approve the assembly unless it is held on certain national holidays or if there is clear information indicating that it may jeopardise security, safety or public order.<sup>124</sup> If permission is not given and agreement cannot be reached between the local authorities and the assembly organisers, the Minister of the Interior issues a final decision.<sup>125</sup> Once an assembly is authorised, the authorities are not supposed to disperse it unless it turns violent.<sup>126</sup>

### National security

Some aspects of the Penal Code's provisions on espionage and treason are potentially open to abuse. For example, it is an offence to make material which is liable to prejudice national defence accessible to a foreign State.<sup>127</sup> This could conceivably incorporate the posting online of a wide

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<sup>119</sup> *Ibid.*, Article 523.

<sup>120</sup> Preliminary Draft, Law on Access to Information. Available at: <http://a2i.info.gov.kh/khmer/a2i/A2I-draft-law-ENG.pdf>.

<sup>121</sup> Press Law, 1995, Article 5, as translated. Available at: [http://sithi.org/admin/upload/law/Law%20on%20the%20Press%20\(1995\).ENG.pdf](http://sithi.org/admin/upload/law/Law%20on%20the%20Press%20(1995).ENG.pdf).

<sup>122</sup> Constitution of Cambodia, Article 41. Available at: [https://www.constituteproject.org/constitution/Cambodia\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Cambodia_2008.pdf?lang=en).

<sup>123</sup> Law on Peaceful Assembly, Articles 5 and 6. Available at: [http://cambodia.ohchr.org/sites/default/files/Law\\_on\\_peaceful\\_demonstration-promulgated\\_Eng.pdf](http://cambodia.ohchr.org/sites/default/files/Law_on_peaceful_demonstration-promulgated_Eng.pdf).

<sup>124</sup> *Ibid.*, Article 9.

<sup>125</sup> *Ibid.*, Articles 11 and 12.

<sup>126</sup> *Ibid.*, Article 20.

<sup>127</sup> Penal Code, Article 445, as translated. Available at: [http://sithi.org/admin/upload/law/Criminal\\_Code\\_Book\\_with\\_cover\\_Jan\\_2014.pdf](http://sithi.org/admin/upload/law/Criminal_Code_Book_with_cover_Jan_2014.pdf).

variety of content. Some journalists have been charged with espionage although this is a new trend.  
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The Ministry of Interior is reportedly developing a State Secrets Law. However, little is known about what this law would entail.<sup>129</sup>

### Whistleblower, witness and other protection systems for those at risk

Progress is ongoing on drafting a Whistleblower Law but currently no protection regime is in place.<sup>130</sup>

## **China**

### Freedom of association: non-profit registration requirements and restrictions on advocacy

Civil society in China may register in numerous legal and informal forms under a complex regulatory landscape. It is not possible to summarise these various forms here, particularly because the registration process for each is typically burdensome and detailed. However, many organisations need first to obtain sponsorship from certain government units, such as a ministry or provincial government agency. After this is obtained, registration may be sought from the local civil affairs bureau or the Ministry of Civil Affairs.<sup>131</sup>

Chinese authorities also retain significant authority to close down or ban NGOs. For example, the Interim Measures for Banning Illegal Non-Governmental Organisations from 2000 provides that illegal non-profits are those that carry out activities in the name of a social activity when unregistered or after registration has been cancelled. Local registration authorities make the decision to ban such a group.<sup>132</sup>

Under the Charities Act, charitable associations must not go against social ethics, endanger national security, damage the public interest or injure the lawful rights and interests of others. In addition, charities are supposed to reflect the core value of socialism.<sup>133</sup>

### Funding restrictions, financial reporting requirements and special tax requirements

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<sup>128</sup> Abby Seiff, Journalists in Cambodia Face Espionage Charges Amid Crackdown on Opposition and Media Groups, ICJ, 21 February 2018. Available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=71240cd1-82d0-4048-acfc-f0d4e551c979>.

<sup>129</sup> ICNL, Civic Freedom Monitor: Cambodia. 13 December 2018. Available at: <http://www.icnl.org/research/monitor/cambodia.html>.

<sup>130</sup> Global Legal Monitor (Library of Congress), Cambodia: Whistleblower Law Being Drafted, 9 January 2018. Available at: <http://www.loc.gov/law/foreign-news/Article/cambodia-whistleblower-law-being-drafted/>.

<sup>131</sup> This process is summarised in ICNL, Civic Freedom Monitor: China. Available at: <http://www.icnl.org/research/monitor/china.html>.

<sup>132</sup> Interim Measure for Banning Illegal Non-Governmental Organisations, 2000, as translated. Available at: <http://www.icnl.org/research/library/files/China/banillegal.pdf>.

<sup>133</sup> Charities Act, 2016, Articles 4 and 5, as translated. Available at: <http://en.pkulaw.cn/display.aspx?id=a93e549306965813bdfb&lib=law>.

The Law on Administration of Activities of Overseas NGOs in Mainland of China governs NGOs which are legally established outside of China. However, this Law may indirectly impact foreign funding of Chinese organisations which partner with foreign organisations on temporary projects. Such Chinese partners must submit various documents and information to local authorities regarding the foreign partner and the joint activities. This includes evidence of the Chinese partner's costs and funding sources and bank account details.<sup>134</sup>

A new 2018 notice from the Ministry of Finance and the State Administration of Taxation amends tax exemption qualification standards. It clarifies that registered non-profit organisations engaged in charitable activities are eligible for tax exemption provided minimum requirements are met.<sup>135</sup>

### Media regulation

China regulates the media closely via a complex system of censorship overseen by more than a dozen government bodies.<sup>136</sup> The Publicity Department of the Communist Party is in charge of both party propaganda and regulation of broadcasting, news and film.<sup>137</sup> A major restructuring of media regulators in 2018 consolidated regulatory powers under the Publicity Department and merged the main State broadcasters.<sup>138</sup> The Department's operations are secretive and relevant laws and regulations on the new structuring have not been translated into English but, given the nature of the body, it is safe to assume that it is not independent.

### Content restrictions

Defamation, meaning public humiliation or false stories about another person, done under serious circumstances carries a penalty of up to three years' imprisonment or public surveillance and deprivation of political rights.<sup>139</sup> When read in combination with the Law on the Handling of Defamation through Information Networks, this includes fabricating or spreading facts that damage another's reputation through information networks. Furthermore, the "serious circumstances" triggering the penalty are present if the defamatory information is clicked on more than 5,000 times or forwarded more than 500 times.<sup>140</sup>

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<sup>134</sup> Law on Administration of Activities of Overseas Nongovernmental Organisations in the Mainland of China, 2016, Article 17, as translated. Available at: <http://www.chinafile.com/ngo/laws-regulations/law-of-peoples-republic-of-china-administration-of-activities-of-overseas>.

<sup>135</sup> For an English language summary of the notice, see China Briefing, "Non-profit Organisations in China: How to Apply for Tax Exempt Status", 20 May 2018. Available at: <https://www.china-briefing.com/news/non-profit-organizations-china-apply-tax-exempt-status/>.

<sup>136</sup> Beina Xu and Eleanor Albert, Media Censorship in China, Council on Foreign Relations, 17 February 2017. Available at: <https://www.cfr.org/backgrounder/media-censorship-china>.

<sup>137</sup> Publicity Department of the Communist Party, Thomson Reuters Practical Law, 2019. Available at: [https://uk.practicallaw.thomsonreuters.com/w-015-2153?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-015-2153?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1).

<sup>138</sup> Patrick Frater, "China's New Media Regulator Is Likely to Push Patriotism – and the Communist Party", Variety, 13 March 2018. Available at: <https://variety.com/2018/film/asia/why-china-is-throwing-out-its-media-regulator-1202725189/>.

<sup>139</sup> Criminal Law, Article 246, as translated. Available at: <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814270.pdf>.

<sup>140</sup> Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Specific Application of Law in the Handling of Defamation through Information Networks and Other Criminal Cases, 2013. Available at: <http://en.pkulaw.cn/display.aspx?id=7f6c282f867d4cbfbdfb&lib=law>.

The 2017 Cybersecurity Law contains a list of restrictions on certain activities on cyber networks. These include activities that endanger national security, honour or interest, undermine national unity, advocate in favour of terrorism, propagate ethnic hatred or discrimination, fabricate or disseminate false information to disrupt the economic and social order, or infringe upon the reputation, privacy or other lawful rights of another person.<sup>141</sup>

Certain speech or acts seen as unpatriotic are also prohibited. The Law on Protection of Heroes and Martyrs forbids distorting, desecrating or denying the deeds of the heroes and martyrs of the Communist Party or the nation. Insulting or defaming their names, likenesses, reputations or honour is also forbidden. Doing so may result in civil, administrative or criminal liability.<sup>142</sup> Disrespect to the national flag, national emblem or national anthem is also criminalised.<sup>143</sup>

### Right to information and secrecy laws

China’s Ordinance on Openness of Governance Information ranks 84 out of the 123 countries assessed on the RTI Rating.<sup>144</sup> Key weaknesses include its application to a relatively limited scope of government entities and the lack of an independent oversight body. Furthermore, the fact that the Ordinance does not trump other secrecy laws is highly problematic given the broad scope of Chinese secrecy laws, discussed below.

### **China’s RTI Scores:**

Category	Max Points	Score	Percentage
1. Right of Access	6	1	17%
2. Scope	30	12	40%
3. Requesting Procedures	30	18	60%
4. Exceptions and Refusals	30	15	50%
5. Appeals	30	13	43%
6. Sanctions and Protections	8	1	13%
7. Promotional Measures	16	13	81%
<b>Total score</b>	<b>150</b>	<b>73</b>	<b>49%</b>

<sup>141</sup> Cybersecurity Law, 2017, Article 12, as translated. Available at: <http://en.pkulaw.cn/display.aspx?id=a9bc8a6c2ad2ad03bdfb&lib=law>.

<sup>142</sup> Law on Protection of Heroes and Martyrs, 2018, Articles 22 and 25, as translated. Available at: <https://www.chinalawtranslate.com/%E4%B8%AD%E5%8D%8E%E4%BA%BA%E6%B0%91%E5%85%B1%E5%92%8C%E5%9B%BD%E8%8B%B1%E9%9B%84%E7%83%88%E5%A3%AB%E4%BF%9D%E6%8A%A4%E6%B3%95/?lang=en>.

<sup>143</sup> Criminal Law, Article 299, as translated, available at: <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814270.pdf>; and Christ Buckley and Keith Bradsher, “Jail Time for Disrespecting China’s Anthem Jumps from 15 Days to 3 Years”, New York Times, 4 November 2017, available at: <https://www.nytimes.com/2017/11/04/world/asia/china-hong-kong-national-anthem.html>.

<sup>144</sup> RTI Rating, Country Data, as of January 2019. Available at: <https://www.rti-rating.org/country-data/China/>.

Under the Criminal Law, anyone who unlawfully obtains or holds State secrets may be sentenced to up to three years' imprisonment, criminal detention, public surveillance or deprivation of political rights. "Serious" circumstances increase the penalty.<sup>145</sup>

The Law on the Protection of State Secrets allows the government to classify an extremely broad range of information as a State secret. State secrets are matters related to State security and national interests which are entrusted to a limited number of people for a fixed period of time.<sup>146</sup> This includes certain specified categories, like matters concerning major policy decisions or national economic and social development, as well as any other matter that is classified as a secret by the national State Secrets Bureau.<sup>147</sup> Administrative sanctions may be imposed for disclosing State secrets if sanctions are not imposed under the Criminal Law.<sup>148</sup>

The State Security Law also includes secrecy provisions. It establishes that secretly gathering or unlawfully providing State secrets constitutes an act endangering State security. The State security organ may detain someone for 15 days for intentionally or negligently destroying State secrets and the offender shall be investigated for criminal responsibility.<sup>149</sup>

### Restrictions on freedom of assembly

Holding an assembly, procession or demonstration in China requires permission from local authorities. The only exceptions to this requirement are celebrations held by the State or assemblies held by State organs or institutions or the Communist party.<sup>150</sup> Authorities have discretion to grant permission and must provide written notice of the decision. Where the assembly relates to specific issues, the authorities may inform relevant departments working on those issues.<sup>151</sup>

### National security

Numerous actions constitute the crime of endangering national security under the Criminal Law. Some of these are vague and open ended, such as organising to undermine the unity of the country.<sup>152</sup> There is also an offence of organising or carrying out a scheme to subvert State power or overthrow the socialist system, which includes inciting others to spread rumours or slanders as a means of subverting State power.<sup>153</sup>

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<sup>145</sup> Criminal Law, 1997, Article 282, as translated. Available at: <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814270.pdf>.

<sup>146</sup> State Secrets Law, 1988, Article 2, as translated. Available at: [https://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC\\_StateSecrets\\_02.pdf](https://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC_StateSecrets_02.pdf).

<sup>147</sup> *Ibid.*, Article 7.

<sup>148</sup> *Ibid.*, Article 31.

<sup>149</sup> State Security Law, 1993, Article 28, as translated. Available at: <http://www.china.org.cn/english/government/207480.htm>.

<sup>150</sup> Law on Assemblies, Processions and Demonstrations, 2009, Article 7, as translated. Available at: <http://en.pkulaw.cn/display.aspx?cgid=6973fefa97d2eaa8bdfb&lib=law>.

<sup>151</sup> Law on Assemblies, Processions and Demonstrations, 2009, Article 10, as translated. Available at: <http://en.pkulaw.cn/display.aspx?cgid=6973fefa97d2eaa8bdfb&lib=law>.

<sup>152</sup> Criminal Law, 1997, Article 103, as translated. Available at: <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814270.pdf>.

<sup>153</sup> *Ibid.*, Article 105.

Acts endangering State security are also penalised under the State Security Law. These are worded in a general fashion, including plotting to subvert the government, dismember the State or overthrow the socialist system, espionage, instigating or luring a State official to become a traitor, or committing any other act of sabotage endangering State security.<sup>154</sup>

### Whistleblower, witness and other protection systems for those at risk

China does not have a comprehensive whistleblower protection law but a number of laws and regulations contain protections for whistleblowers or those who expose misconduct. For example, the Prosecutor General's Office has developed regulations which require prosecutor's offices to develop a whistleblower protection plan when receiving a report from a whistleblower.<sup>155</sup>

## **Indonesia**

### Freedom of association: non-profit registration requirements and restrictions on advocacy

Indonesian organisations are generally either a foundation, an association or a social organisation without legal status. The process for registering foundations and associations is regulated by the Law on Foundations and the Staatsblad 1870-64 respectively. It requires registering a deed of establishment at the Ministry of Law and Human Rights.<sup>156</sup>

Under Regulation No. 57/2017, CSOs without legal status should either register with the Ministry of Home Affairs, which will then issue a Registration Certificate, or with the local government.<sup>157</sup> Organisations with legal status are supposed to provide notice to the Ministry of Home Affairs. There is no penalty for not registering but it appears that in practice this is often necessary to be able to conduct activities.<sup>158</sup>

Regardless of whether they have legal entity status, all three of the above forms are regulated by the so-called Law on Mass Organisations. This imposes additional restrictions on the activity of non-profit organisations, including limits on their advocacy activities. Article 59 contains a list of prohibited behaviour that largely mirrors content restrictions present elsewhere in the legal system (discussed below). These include engaging in hostile acts against racial, religious or other groups, committing defamation or blasphemy of religion, disrupting the public order, or embracing or disseminating teachings that contradict the national ideology of *Pancasila*.<sup>159</sup>

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<sup>154</sup> State Security Law, 1993, Article 4, as translated. Available at: <http://www.china.org.cn/english/government/207480.htm>.

<sup>155</sup> See "China to Protect Whistleblowers Exposing Corruption", Reuters, 29 October 2014. Available at: <https://www.rt.com/business/200379-china-whistleblowers-corruption-protection/>.

<sup>156</sup> ICNL, Civic Freedom Monitor: Indonesia, 8 October 2018. Available at: <http://www.icnl.org/research/monitor/indonesia.html>.

<sup>157</sup> Council on Foundations, Indonesia, December 2018. Available at: <https://www.cof.org/content/indonesia#end9>.

<sup>158</sup> USAID and ICNL, 2017 Civil Society Organizations Sustainability Index, November 2018, p. 43. Available at: <https://www.fhi360.org/sites/default/files/media/documents/resource-civil-society-organization-2017-asia-regional-report.pdf>.

<sup>159</sup> Indonesian Government 'Restricts' Civil Society Organizations Movement, The Insider, 13 July 2017. Available at: <https://theinsiderstories.com/indonesian-government-restrict-movement-society-organizations/>.

The government substantially increased its authority to dissolve civil society organisations by taking advantage of its state of emergency powers to issue Government Regulation in Lieu of Law No. 2/2017. The new law amends the Law on Mass Organisations to allow authorities to by-pass judicial proceedings to dissolve organisations that are “anti-Pancasila” or opposed to the national ideology. The law was ostensibly introduced as a means of dissolving Islamic extremist groups but civil society have expressed fears that it will be used to target peaceful organisations.<sup>160</sup>

#### Funding restrictions, financial reporting requirements and special tax requirements

Non-profit organisations are only eligible for limited tax exemptions and cannot generally obtain tax-deductible status. Similarly, tax deductions are only granted for limited activities such as disaster relief and research and development, and the procedures for obtaining them are complex.<sup>161</sup>

#### Media regulation

Law No. 40 of 1999 on the Press guarantees freedom of the press, prohibits censorship, permits journalists to choose their own associations and establishes a press council which is independent of government control.<sup>162</sup> The 2002 Broadcasting Act also established an independent broadcasting commission, although final decisions on licensing rest with the government. Self-censorship remains a problem, however, due to content restrictions in other laws.<sup>163</sup>

#### Content restrictions

Several provisions in the Criminal Code penalise expressive content. For example, defamation is criminalised. Penalties for defamation of public officials may be enhanced by one third, while there are separate offences for insulting authorities or public bodies.<sup>164</sup> Another problematic feature of the defamation law is that the defence of truth is available only where the statement was also in the public interest and the judge may impose an additional four years’ imprisonment if the defendant attempts to assert truth as a defence and fails.<sup>165</sup>

The Criminal Code also contains a problematically vague hate speech provision which provides for up to four years’ imprisonment or a fine for persons who express feelings of hostility, hatred or contempt against one of the enumerated groups.<sup>166</sup> This does not require intent, as provided for under international law relating to hate speech. There is also a blasphemy provision, which

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<sup>160</sup> See: <https://freedomhouse.org/report/freedom-world/2018/indonesia>; and <https://www.amnesty.org/download/Documents/ASA2167222017ENGLISH.pdf>.

<sup>161</sup> USAID and ICNL, 2017 Civil Society Organizations Sustainability Index, November 2018, p. 43. Available at: <https://www.fhi360.org/sites/default/files/media/documents/resource-civil-society-organization-2017-asia-regional-report.pdf>.

<sup>162</sup> Available at: <http://humanrightspapua.org/resources/nlaw/184-indonesian-law-no-40-in-1999-on-press>.

<sup>163</sup> BBC Media Profile – Indonesia, 5 September 2017. Available at: <https://www.bbc.com/news/world-asia-pacific-15105923>.

<sup>164</sup> Criminal Code, Articles 207,208 and 316. Available at: [https://www.unodc.org/res/cld/document/idn/indonesian\\_penal\\_code\\_html/I.1\\_Criminal\\_Code.pdf](https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf).

<sup>165</sup> *Ibid.*, Articles 310, 311 and 31.

<sup>166</sup> *Ibid.*, Article 156.



prohibits public expression or acts which abuse a religion adhered to in Indonesia or which are made with the intent of preventing a person from adhering to any religion based in belief in God. The penalty is up to five years' imprisonment.<sup>167</sup>

Indonesia's Constitutional Court has determined that some content restrictions in the Criminal Code are unconstitutional. These include the *lese majeste* provisions, which provide for special defamation rules relating to the President and Vice President, as well as provisions criminalising the expression of hostility, hatred or contempt towards the government.<sup>168</sup> However, the Court has also upheld, while in some cases limiting, Criminal Code provisions governing other defamation provisions and blasphemy.<sup>169</sup>

The Criminal Code is currently being revised with a new version expected later this year. Draft versions have included the offences of insulting the President or Vice President even though similar provisions have previously been ruled unconstitutional.<sup>170</sup> Other previously proposed provisions have included spreading false news that leads to public disorder and spreading unreliable or exaggerated news.<sup>171</sup>

The Electronic Information and Transactions Act also contains a number of restrictions on content intentionally distributed via electronic means. These generally duplicate and often increase the penalty for prohibitions under the Criminal Code. Specifically, they prohibit statements against propriety, defamation, false or misleading information and incitement to hatred or dissension to individuals or certain groups.<sup>172</sup>

### Right to information and secrecy laws

Indonesia's Public Information Disclosure Act, 2008 ranks 38 out of the 123 countries assessed by the RTI Rating.<sup>173</sup> The law's scope is expansive and covers a range of public information produced or handled by public bodies. However, the law does not override secrecy provisions in other laws and does not protect those who release information in good faith. Requesters must also provide reasons for their requests, which does not reflect international better practice.

### **Indonesia's RTI Scores:**

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<sup>167</sup> *Ibid.*, Articles 156a.

<sup>168</sup> Human Rights Watch, *Turning Critics into Criminal*, 3 May 2010. Available at: <https://www.hrw.org/report/2010/05/03/turning-critics-criminals/human-rights-consequences-criminal-defamation-law>.

<sup>169</sup> Pan Maohamad Faiz, *The Protection of Civil and Political Rights by the Constitutional Court of Indonesia*, *Indonesia Law Review* (2016) 2: 158-179. Available at: [http://ilrev.ui.ac.id/index.php/home/Article/view/230/pdf\\_82](http://ilrev.ui.ac.id/index.php/home/Article/view/230/pdf_82).

<sup>170</sup> Sheany, *Five Problematic Articles in Draft Revisions on National Criminal Code*, *Jakarta Globe*, 15 March 2018. Available at: <https://jakartaglobe.id/context/five-problematic-Articles-draft-revisions-national-criminal-code>.

<sup>171</sup> "Actions considered crimes in Criminal Code bill", *The Jakarta Post*, 30 January 2018. Available at: <https://www.thejakartapost.com/news/2018/01/30/actions-considered-crimes-in-criminal-code-bill.html>.

<sup>172</sup> Law No. 11 of 2008 concerning Electronic Information and Transactions, as amended by Law No. 19 of 2016, Articles 27, 28 and 29. As translated by Wishnu Basuki. Available at: <https://www.scribd.com/document/6486602/Law-No-11-of-2008-19-of-2016-Electronic-Information-and-Transactions-Indonesia-Wishnu-Basuki>.

<sup>173</sup> RTI Rating, *Country Data*, as of January 2019. Available at: <https://www.rti-rating.org/country-data/>.

Category	Max Points	Score	Percentage
1. Right of Access	6	6	100%
2. Scope	30	28	93%
3. Requesting Procedures	30	13	43%
4. Exceptions and Refusals	30	16	53%
5. Appeals	30	25	83%
6. Sanctions and Protections	8	3	34%
7. Promotional Measures	16	10	63%
<b>Total score</b>	<b>101</b>	<b>150</b>	<b>67%</b>

Some secrecy laws are similarly problematic. The Law on State Intelligence, which imposes secrecy obligations on the general public, presents broad categories of what constitutes an intelligence secret, including information relating to natural resources, information detrimental to economic security and memos that “by their nature” should be kept secret.<sup>174</sup> Deliberately disclosing secrets that one should keep secret by virtue of one’s office or profession is also a crime under the Criminal Code.<sup>175</sup>

#### Restrictions on freedom of assembly

Law 9 of 1998 regulates the Freedom of Expression in Public. While this, along with the Constitution, generally protects the right, spontaneous assemblies are not permitted. Prior written notice of public expressions of opinion, including rallies and demonstrations, must be given to the police. This notice must contain details about the purpose, time, location and duration of the assembly, as well as the name and address of the organisation or individuals giving notice, and the number of expected participants. If these requirements are not met or the equipment used in the assembly is harmful to public safety, the police may halt the assembly.<sup>176</sup>

Some provisions in the Criminal Code risk criminalising peaceful assemblies. For example, if there is a street crowd and a person deliberately refuses to immediately move after a competent authority has given three orders to do so, he may be imprisoned for up to four months and two weeks or fined.<sup>177</sup>

#### National security

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<sup>174</sup> Article 19, Judicial Review of Law Number 17/2011 on State Intelligence: Public Amicus Brief by Article 19, 1 May 2012, Case number 07/PUU-X/2012. Available at: <https://www.refworld.org/docid/4fa778732.html>.

<sup>175</sup> Criminal Code, Article 322. Available at:

[https://www.unodc.org/res/cld/document/idn/indonesian\\_penal\\_code\\_html/I.1\\_Criminal\\_Code.pdf](https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf).

<sup>176</sup> Law No. 9 of 1998 concerning Freedom of Expression in Public, as summarised by ICNL, Civic Freedom Monitor: Indonesia, 8 October 2018. Available at: <http://www.icnl.org/research/monitor/indonesia.html>.

<sup>177</sup> Criminal Code, Article 218. Available at:

[https://www.unodc.org/res/cld/document/idn/indonesian\\_penal\\_code\\_html/I.1\\_Criminal\\_Code.pdf](https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf).

The government has relied on *makar*, which may be translated as rebellion or treason, to target peaceful activism, especially in Indonesia's separatist regions.<sup>178</sup> The relevant provisions of the Criminal Code criminalise separatist and revolutionary actions or conspiring to these actions or inducing others to commit them.<sup>179</sup> When authorities cannot provide evidence that the elements of the crime are met, they reportedly combine the *makar* provisions with other provisions of the Criminal Code.<sup>180</sup> Although activists have tried to challenge the constitutionality of the *makar* provisions, the Constitutional Court rejected these petitions.<sup>181</sup>

Civil society commentators have expressed concern about new amendments to the Anti-Terrorism Act, passed in 2018, especially vague wording which could result in the targeting of peaceful groups and an unclear role for the military. In addition, under the amendments, police can detain terror suspects for 21 days without charging them and for another 200 days, if necessary, to gather evidence.<sup>182</sup>

#### Whistleblower, witness and other protection systems for those at risk

Indonesia does not have a comprehensive whistleblower protection regime in place. However, Law No. 13 of 2006 concerning Protection of Witness and Victim provides for security protection measures and the provision of other assistance to witnesses or victims in criminal proceedings.<sup>183</sup> There is no formal mechanism in place for protecting journalists although informal civil society mechanisms exist.<sup>184</sup>

## **Malaysia**

#### Freedom of association: non-profit registration requirements and restrictions on advocacy

Under the Societies Act of 1966, an unregistered society is illegal and may be subject to fines. This is a matter of concern since the Registrar of Societies has discretion to refuse to register a society where it appears to him or her that the society is unlawful or is likely to be used for purposes

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<sup>178</sup> Gustav Brown, NUS. *Makar and the Re-Emergence of Old Power in Indonesia*, East Asia Forum, 30 July 2017, available at: <http://www.eastasiaforum.org/2017/07/30/makar-and-the-re-emergence-of-old-power-in-indonesia>; and *What We Know About Indonesia's Treason Arrests*, Vice, 2 December 2016, available at: [https://www.vice.com/en\\_asia/Article/8q9dix/what-we-know-about-indonesias-treason-arrests](https://www.vice.com/en_asia/Article/8q9dix/what-we-know-about-indonesias-treason-arrests).

<sup>179</sup> Criminal Code, Articles 106, 107 and 110. Available at: [https://www.unodc.org/res/cld/document/idn/indonesian\\_penal\\_code\\_html/I.1\\_Criminal\\_Code.pdf](https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf).

<sup>180</sup> Alliance for Democracy in Papua, *68 Years Since Indonesia Became Independent, Treason [Makar] Is Still Being Used Against Papuans*, 13 September 2013. Available at: <http://www.aldp-papua.com/68-years-since-indonesia-became-independent-treason-makar-is-still-being-used-against-papuans/>.

<sup>181</sup> Amnesty International, *Constitutional Court's Ruling Could Lead to More Repression of Peaceful Protestors*, 4 February 2018. Available at: <https://www.amnestyindonesia.org/constitutional-courts-ruling-lead-repression-peaceful-protesters>.

<sup>182</sup> *Indonesia Passes Controversial Anti-Terror laws to Fight ISIL*, Al-Jazeera, 25 May 2018. Available at: <https://www.aljazeera.com/news/2018/05/indonesia-passes-controversial-anti-terror-laws-fight-isil-180525055635674.html>

<sup>183</sup> Available at: <https://www.legal-tools.org/doc/51b8a3/pdf/>.

<sup>184</sup> IMS, *Defending Journalism*, October 2017, p. 125. Available at: <https://www.mediasupport.org/publication/defending-journalism/>.

incompatible with peace, welfare, security, public order, good order morality in Malaysia.<sup>185</sup> Similarly, the Registrar can cancel the registration of a society for similar reasons.<sup>186</sup> Appeals against such decisions may be made to the relevant Minister, whose decisions shall be final.<sup>187</sup>

The Minister may also declare a society unlawful.<sup>188</sup> An office-bearer in an unlawful society may be penalised by a fine and/or up to five years' imprisonment. Members of unlawful societies and those who knowing allow a meeting of such a society on their premises may face a fine and/or three years' imprisonment.<sup>189</sup>

Registered societies may not engage in any activity which shows disregard for the system of government, Islam as the religion of Malaysia, the position of Malays and natives of the States of Sabah and Sarawak, or the legitimate interests of other communities.<sup>190</sup>

#### Funding restrictions, financial reporting requirements and special tax requirements

The Registrar of Societies may prohibit a society from having an affiliation, communications or other dealings with an organisation or other body outside Malaysia. This could presumably encompass foreign donations.<sup>191</sup> Societies must also submit annual financial reports.<sup>192</sup>

#### Media regulation

The Printing Presses and Publications Act of 1984 require those wishing to operate a printing press to obtain a licence, or a permit for printing or publishing a newspaper.<sup>193</sup> Operating a printing press or newspaper without authorisation is an offence, subject to up to three years' imprisonment. The Minister of Home Affairs, who is responsible for granting licences and permits, has broad discretion to refuse to grant, revoke or suspend licences and permits.<sup>194</sup> Furthermore, the Minister has significant censorship powers over publications considered to be undesirable (see Content restrictions below).

Broadcasting and telecommunications are regulated under the Communications and Multimedia Act, which establish the Malaysia Communications and Multimedia Commission to handle numerous regulatory functions such as licensing, receiving complaints and conducting investigations. The Act does not establish any procedures for the appointment or establishment of

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<sup>185</sup> Societies Act, 1966, Sections 7(3)(a). Available at: <https://www.mercy.org.my/wp-content/uploads/2015/05/Societies-Act-1966.pdf>.

<sup>186</sup> *Ibid.*, Section 13(1).

<sup>187</sup> *Ibid.*, Sections 5 and 17.

<sup>188</sup> *Ibid.*, Section 41.

<sup>189</sup> *Ibid.*, Sections 42-44.

<sup>190</sup> Societies Act, 1966, Section 2A. Available at: <https://www.mercy.org.my/wp-content/uploads/2015/05/Societies-Act-1966.pdf>.

<sup>191</sup> *Ibid.*, Section 13A.

<sup>192</sup> *Ibid.*, Section 14.

<sup>193</sup> Printing Presses and Publications Act, 1984, Sections 3 and 5. Available at: [http://www.moha.gov.my/images/maklumat\\_bahagian/PQ/Act301.pdf](http://www.moha.gov.my/images/maklumat_bahagian/PQ/Act301.pdf).

<sup>194</sup> *Ibid.*, Sections 3 and 6.

this Commission, meaning it essentially operates under the Ministry of Communications and Multimedia rather than being independent.<sup>195</sup>

### Content restrictions

Defamation is a crime under the Penal Code, punishable by a fine and/or two years' imprisonment. It is defined as making any imputation about a person knowing or having reason to know that it will harm that person's reputation. Defamation also protects associations and collection of persons. A defence of truth is only available if the statement is also in the public interest.<sup>196</sup>

It is also a crime to utter words with the deliberate intention of wounding the religious feelings of another person. This includes uttering words or making a sound or gesture in the hearing or sight of the person in question. This is punishable with up to one year' imprisonment.<sup>197</sup> Similarly, acts or words which cause or are likely to cause disharmony, disunity or prejudice on religious grounds may be punished by between two and five years' imprisonment. A person is presumed to have acted in this way if he alleges that another person has ceased to profess his religion or does not believe in that religion. For these crimes, it is not a defence to assert that the acts or words were based on an honest belief or honest interpretation of the teaching of any religion.<sup>198</sup>

Other worrisome provisions in the Penal Code include the offences of attempting to commit an activity which is detrimental to parliamentary democracy and insult with the intent to breach the peace. Both of this fail to include clear definitions of what they entail.<sup>199</sup>

The Printing Presses and Publications Act allows censorship of material that is prejudicial or likely to be prejudicial to public order, morality, security or the public or national interest.<sup>200</sup> It also creates an offence of maliciously publishing false news, with malice being presumed if there is no evidence showing the accused took reasonable measures to verify truth.<sup>201</sup> A controversial Anti-Fake News Act duplicated this offence without the malice requirement but was repealed in 2018 following the change in government.<sup>202</sup>

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<sup>195</sup> Communications Multimedia Act, 1998. Available at:

[https://www.unodc.org/res/cld/document/mys/communications\\_and\\_multimedia\\_act\\_html/Malaysia\\_Communications\\_and\\_Multimedia\\_Act\\_1998.pdf](https://www.unodc.org/res/cld/document/mys/communications_and_multimedia_act_html/Malaysia_Communications_and_Multimedia_Act_1998.pdf).

<sup>196</sup> Penal Code, Sections 499 and 500. Available at:

<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>.

<sup>197</sup> *Ibid.*, Section 298A(1).

<sup>198</sup> *Ibid.*, Section 298A.

<sup>199</sup> *Ibid.*, Sections 124C and 504.

<sup>200</sup> Printing Presses and Publications Act, 1984, Sections 7. Available at:

[http://www.moha.gov.my/images/maklumat\\_bahagian/PQ/Act301.pdf](http://www.moha.gov.my/images/maklumat_bahagian/PQ/Act301.pdf).

<sup>201</sup> Printing Presses and Publications Act, 1984, Sections 7. Available at:

[http://www.moha.gov.my/images/maklumat\\_bahagian/PQ/Act301.pdf](http://www.moha.gov.my/images/maklumat_bahagian/PQ/Act301.pdf).

<sup>202</sup> A. Ruban, "Anti-Fake News Bill a Rehash of Existing Laws, lawyers Say", Malay Mail, 26 March 2018, available at: <https://www.malaymail.com/news/malaysia/2018/03/26/anti-fake-news-bill-a-rehash-of-existing-laws-lawyers-say/1607795>; and Jessie Yeung, "Malaysia Repeals Controversial Fake News Law", CNN, 17 August 2018, available at: <https://www.cnn.com/2018/08/17/asia/malaysia-fake-news-law-repeal-intl/index.html>.

The Communications and Multimedia Act also prohibits the dissemination of content that is indecent, obscene, false, menacing or offensive with the intent to annoy, threaten or harass any person. These terms are not further defined in the Act.<sup>203</sup>

#### Right to information and secrecy laws

Malaysia does not have a right to information law.

The Official Secrets Act of 1972 permits broad classification of information on grounds of secrecy with few clear limitations. Wrongful communication of an official secret in one's possession, which includes failing to take reasonable care to protect it as well as intentional disclosures, is punishable by one to seven years' imprisonment. There is no override where there is a public interest in disclosing the information.<sup>204</sup> Section 203A of the Penal Code also criminalises the disclosure of any information obtained in the performance of one's duties.<sup>205</sup>

#### Restrictions on freedom of assembly

The stated object of the Peaceful Assembly Act is to protect the right of citizens to peaceful assembly subject to restrictions deemed to be necessary in a democratic society in the interest of national security, public order or the protection of the rights and freedoms of others.<sup>206</sup> However, the law then exempts from the scope of this right any assembly held in a prohibited place, a street protest or protests involving children.<sup>207</sup>

Organisers of an assembly must notify police beforehand and comply with any restrictions imposed by the police. The police have broad authority to impose restrictions deemed to be necessary or expedient.<sup>208</sup> Participants in an assembly must also refrain from acts or statements that promote ill will among the public or disturb public tranquillity. Organisers must prevent participants from engaging in such acts or making such statements and meet additional obligations, such as ensuring clean-up cost and appointing persons to ensure orderly conduct during the assembly.<sup>209</sup>

The Penal Code criminalises "unlawful assemblies", defined as five or more persons with the common object of using criminal force, resisting the law or committing another offence. Since

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<sup>203</sup> Communications Multimedia Act, 1998, Article 211. Available at: [https://www.unodc.org/res/cld/document/mys/communications\\_and\\_multimedia\\_act\\_html/Malaysia\\_Communications\\_and\\_Multimedia\\_Act\\_1998.pdf](https://www.unodc.org/res/cld/document/mys/communications_and_multimedia_act_html/Malaysia_Communications_and_Multimedia_Act_1998.pdf).

<sup>204</sup> Official Secrets Act, 1972, Section 8. Available at: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%2088.pdf>.

<sup>205</sup> Penal Code, Section 203A. Available at: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>.

<sup>206</sup> Peaceful Assembly Act, 2012, Section 2. Available at: [http://www.federalgazette.agc.gov.my/outputaktap/20120209\\_736\\_BI\\_JW001759%20Act%20736%20\(BI\).pdf](http://www.federalgazette.agc.gov.my/outputaktap/20120209_736_BI_JW001759%20Act%20736%20(BI).pdf).

<sup>207</sup> *Ibid.*, Section 4.

<sup>208</sup> *Ibid.*, Section 16(2).

<sup>209</sup> *Ibid.*, Sections 6 and 7.

other offences could include minor crimes or other problematic restriction on free expression, this is overly restrictive.<sup>210</sup>

### National security

The Sedition Act, which criminalises seditious words or publications and acts which have seditious tendencies, has a highly problematic definition of seditious tendency. For example, it includes bringing into hatred any government, exciting dissatisfaction against the administration of justice and promoting feelings of ill will or hostility between different races or classes or between persons on the basis of religion. While there are some exceptions, such as pointing out errors in the government or identifying feelings of ill will with a view to promoting their mitigation, these are inappropriately indeterminate grounds for a charge of sedition.<sup>211</sup>

Some provisions of the Security Offences (Special Measures) Act raise due process concerns in relation to investigations into security offences. The Act allows for arrest without warrant where there is reasonable belief that someone is involved in security offences, a sufficiently high-ranking police officer may extend pre-trial detention to twenty-eight days without any judicial oversight and an arrested person may be denied access to a lawyer for forty-eight hours.<sup>212</sup>

### Whistleblower, witness and other protection systems for those at risk

Malaysia has a whistleblower protection law which provides protection against civil and criminal action or other forms of reprisal. The law has several weaknesses, however. First, it only applies to persons who disclose improper conduct to an enforcement agency. Second, it does not cover disclosures prohibited by other laws, such as secrecy laws.<sup>213</sup> Third, whistleblower protection is waived if the whistleblower participated in the unlawful conduct or if the disclosure primarily involves questioning the policy of a public body.<sup>214</sup>

## **The Maldives**

### Freedom of association: non-profit registration requirements and restrictions on advocacy

All associations must register under the 2003 Associations Act. Penalties for operating an association without registering are between two and five years' imprisonment, house arrest or

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<sup>210</sup> Penal Code, Section 141. Available at:

<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>.

<sup>211</sup> Sedition Act, 1948, Section 3, available at:

<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%2015.pdf>; as amended by Sedition (Amendment) Act, 2015, available at:

[http://www.federalgazette.agc.gov.my/outputaktap/20150604\\_A1485\\_BI\\_Act%20A1485.pdf](http://www.federalgazette.agc.gov.my/outputaktap/20150604_A1485_BI_Act%20A1485.pdf).

<sup>212</sup> Security Offences (Special Measures) Act 2012, Sections 4, 5(2) and 13. Available at:

[http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20747%20-%20Security%20Offences%20\(Special%20Measures\)%20Act%202012.pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20747%20-%20Security%20Offences%20(Special%20Measures)%20Act%202012.pdf).

<sup>213</sup> Whistleblower Protection Act, 2010, Section 6. Available at:

<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/5.%20Act%20711%20-%2030.10.2016.pdf>.

<sup>214</sup> *Ibid.*, Section 11.



banishment to another island.<sup>215</sup> Because the Act does not clearly define what constitutes an association, this places heavy risks on any unregistered civil society activity.

The Act provides that associations should be registered if they meet the registration requirements and their articles of incorporation do not contravene the principles of Islam.<sup>216</sup> However, there are no clear limits on the discretion of the Registrar of Associations, a political appointee, to refuse to register an organisation. In addition, associations with certain prohibited purposes are not permitted to incorporate. These include conflicting with Islamic principles, undercutting the freedom or sovereignty of the country and inciting conflict within society, among other things.<sup>217</sup> Many of the prohibited purposes are vague and poorly defined. If an association engages in these activities, the Registrar of Associations may deregister the organisation.<sup>218</sup>

### Funding restrictions, financial reporting requirements and special tax requirements

Associations must submit annual reports and financial accounts to the Registrar of Associations.<sup>219</sup> In addition, pursuant to the Associations Act, they must obtain approval for any foreign funding.<sup>220</sup> The Act provides no further details, leaving the exact process to be determined by regulations. This is highly problematic as it gives the government the discretion to significantly restrict access to foreign funding without parliamentary oversight.

### Media regulation

The Maldives Broadcasting Commission is responsible for licensing broadcasters as well as overseeing and sanctioning breaches of broadcasting rules. The Commission is formally established as an independent institution, with all seven members being appointed by the President with the approval of Parliament.<sup>221</sup> The Commission receives complaints and, after giving the broadcaster a reasonable opportunity to respond, may impose sanctions such as a public warning or an order to desist from certain actions. In cases of repeated breach, the Commission can levy a fine or impose a programme suspension.<sup>222</sup> In practice, there have been claims that the Commission imposes fines in an arbitrary and partial manner.<sup>223</sup>

The Maldives Media Council, which regulates print media, is robustly independent. It consists of a mix of media representatives and representatives of the public. Media members are elected by

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<sup>215</sup> Associations Act, 2003, section 37(b). Available at: <http://www.agoffice.gov.mv/pdf/sublawe/294.pdf>.

<sup>216</sup> *Ibid.*, section 6.

<sup>217</sup> *Ibid.*, section 19.

<sup>218</sup> Associations Act, 2003, sections 19 and 32. Available at: <http://www.agoffice.gov.mv/pdf/sublawe/294.pdf>.

<sup>219</sup> *Ibid.*, sections 28 and 29.

<sup>220</sup> *Ibid.*, section 22.

<sup>221</sup> Broadcasting Act 2010, sections 3,4, 5 and 6. Available at: [http://broadcom.org.mv/v2/wp-content/uploads/2015/08/Broadcast-Act-Translation\\_1.pdf](http://broadcom.org.mv/v2/wp-content/uploads/2015/08/Broadcast-Act-Translation_1.pdf).

<sup>222</sup> *Ibid.*, sections 42, 43 and 44.

<sup>223</sup> Human Rights Watch, “An All-Out Assault on Democracy: Crushing Dissent in the Maldives”, 2018, p. 18. Available at: [https://www.hrw.org/sites/default/files/report\\_pdf/maldives0818\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/maldives0818_web2.pdf).

media representatives while members of the public are selected from amongst candidates proposed by the government, although they are a minority of the Council.<sup>224</sup>

### Content restrictions

The most controversial law restricting freedom of expression in the Maldives in recent years has been the defamation law, which penalised defamation with imprisonment or fines. It had been used by the Maldives Broadcasting Commission to impose significant fines on privately owned television stations. However, the law was repealed in November 2018.<sup>225</sup>

The Broadcasting Act empowers the Maldives Broadcasting Commission to develop a Code of Practice which, among other things, should prohibit the airing of content that violates religion, violates the Constitution or any law, or promotes a religion other than Islam.<sup>226</sup> The Code of Practice includes significant and wide-ranging content restrictions. For example, content should not create religious discord, promote behaviour contrary to social norms, positively portray crimes or contain defamatory content.

### Right to information and secrecy laws

The Maldives passed the Right to Information Act in 2014. This is a strong law, ranking 16<sup>th</sup> out of the 123 laws assessed on the RTI Rating.<sup>227</sup> One key weakness is that the law does not prevail over other laws in case of conflict.<sup>228</sup> However, the primary challenge so far has been implementation of the law, which has been very weak.

### **The Maldives RTI Scores:**

Category	Max Points	Score	Percentage
1. Right of Access	6	2	33%
2. Scope	30	28	93%
3. Requesting Procedures	30	20	67%
4. Exceptions and Refusals	30	17	57%
5. Appeals	30	29	97%
6. Sanctions and Protections	8	8	100%
7. Promotional Measures	16	12	75%
<b>Total score</b>	<b>150</b>	<b>116</b>	<b>77%</b>

<sup>224</sup> Maldives Media Council Act, as described by Transparency Maldives, Review of Appointment and Dismissal of Members of Selected Independent Institutions of Maldives, p. 35. Available at: [http://transparency.mv/v16/wp-content/uploads/2017/04/Review\\_Report\\_Web.pdf](http://transparency.mv/v16/wp-content/uploads/2017/04/Review_Report_Web.pdf).

<sup>225</sup> Anti-Defamation Law Repealed, Maldives Independent, 14 November 2018. Available at: <https://maldivesindependent.com/politics/anti-defamation-law-repealed-142649>.

<sup>226</sup> Broadcasting Act 2010, section 37. Available at: [http://broadcom.org.mv/v2/wp-content/uploads/2015/08/Broadcast-Act-Translation\\_1.pdf](http://broadcom.org.mv/v2/wp-content/uploads/2015/08/Broadcast-Act-Translation_1.pdf).

<sup>227</sup> RTI Rating, Country Data, as of January 2019. Available at: <https://www.rti-rating.org/country-data/>.

<sup>228</sup> Right to Information Act, 2014, section 22(a), as translated. Available at: <https://www.rti-rating.org/wp-content/uploads/Maldives.pdf>.

## Restrictions on freedom of assembly

The Constitution protects the right to peaceful assembly without prior permission from the State. Like other fundamental rights, this is subject to such reasonable limits prescribed by law as are justified in a democratic society.<sup>229</sup>

The Law on Peaceful Assemblies undermines the constitutional protection against being required to seek prior permission for assemblies. It requires organisers to give prior notice of assemblies and hold preparatory meetings with the police. While the Law clarifies that this notice is not to be conflated with seeking permission, the police have significant powers to restrict the assembly and there are numerous restrictions on holding assemblies in certain locations.<sup>230</sup> Furthermore, a 2016 amendment requires prior permission from the police for all assemblies in Malé, the capital.<sup>231</sup> These provisions undermine the protective rules found in the Constitution and elsewhere in the Law on Peaceful Assemblies.

Some provisions of the Penal Code are open to abuse. Criticising Islam in public, distributing material which criticises Islam, attempting to disrupt religious unity and acting in a manner which may cause religious segregation are all crimes which may be penalised by up to one year imprisonment.<sup>232</sup> The offence of disorderly conduct includes using abusive or obscene language.<sup>233</sup> Although the provisions on obstruction of justice and obstruction of government functions do not expressly forbid specific types of content, in practice they have been used to silence criticism of the government.<sup>234</sup>

## National security

The definition of terrorism in the 2015 Anti-Terrorism Act potentially covers peaceful civil society activity through references to negative influencing the government or illegally promoting religious or political views. It also provides for the similarly vague crime of encouraging terrorism.<sup>235</sup>

## Whistleblower, witness and other protection systems for those at risk

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<sup>229</sup> Constitution of the Maldives, 2008, Articles 16 and 32, as translated. Available at: <http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf>.

<sup>230</sup> Freedom of Peaceful Assembly Act, sections 24, 27, 32 and 33, as translated. Available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106007/129796/F1856810830/MDV106007.pdf>.

<sup>231</sup> Global Legal Monitor, Maldives: President Ratifies First Amendment of Freedom of Peaceful Assembly Act, 18 October 2016. Available at: <http://www.loc.gov/law/foreign-news/Article/maldives-president-ratifies-first-amendment-of-freedom-of-peaceful-assembly-act/>.

<sup>232</sup> Penal Code of 2014, section 617, as translated. Available at: <https://www.law.upenn.edu/live/files/4203-maldives-penal-code-2014>.

<sup>233</sup> *Ibid.*, section 615.

<sup>234</sup> *Ibid.*, sections 530 and 533; and Human Rights Watch, “An All-Out Assault on Democracy: Crushing Dissent in the Maldives”, 2018, p. 20, available at: [https://www.hrw.org/sites/default/files/report\\_pdf/maldives0818\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/maldives0818_web2.pdf).

<sup>235</sup> An English version of this law was not available. This summary is based on Human Rights Watch, “An All-Out Assault on Democracy: Crushing Dissent in the Maldives”, 2018, p. 20, available at: [https://www.hrw.org/sites/default/files/report\\_pdf/maldives0818\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/maldives0818_web2.pdf).

A draft Bill on Protection of Whistleblowers has been submitted to Parliament and is currently at the committee stage of consideration.<sup>236</sup> Currently, however, no protection regime is in place. Positively, the RTI law does include a provision protecting those who make good faith disclosures about wrongdoing from administrative or employment sanctions and civil or criminal liability.<sup>237</sup> Parliament is reportedly also considering a new evidence law which provides for witness protection.<sup>238</sup>

## Nepal

### Freedom of association: non-profit registration requirements and restrictions on advocacy

Associations must register with the government under the Association Registration Act 1997 and fines may be imposed on organisations which operate without registering.<sup>239</sup> This requires the submission of an application, the organisation's statute and a prescribed fee. The application must provide the organisation's name, objectives, information on the members of the Management Committee, sources of funding and address.<sup>240</sup> The Act does not clearly limit the discretion of the authorities to reject registration applications.

These requirements may be burdensome for some organisations and this may be compounded by obligations to register multiple times. Some government directives require civil society organisations to register at district offices and to obtain approvals from local government although such directives are not properly based on legislation.<sup>241</sup> There is also disagreement between civil society and local governments over the scope of the Local Government Operation Act, 2074, which requires civil society to cooperate with local authorities. Some local governments have reportedly required organisations to register at the local level and/or obtain approval for projects.<sup>242</sup>

### Funding restrictions, financial reporting requirements and special tax requirements

For any project with international funding, social welfare organisations must first apply on a project specific basis for government permission.<sup>243</sup> A draft National Integrity Policy would have

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<sup>236</sup> Transparency Maldives, Bill on Protection of Whistleblowers, 12 December 2018. Available at: <https://transparency.mv/2018/12/bill-on-protection-of-whistleblowers/>.

<sup>237</sup> Right to Information Act, 2014, section 69(b), as translated. Available at: <https://www.rti-rating.org/wp-content/uploads/Maldives.pdf>.

<sup>238</sup> Aishath Mihna Nasih, Govt Lobbies New Evidence Bill Offering Major Witness Protection, The Edition, 9 February 2017. Available at: <https://edition.mv/news/2329>.

<sup>239</sup> Associations Registration Act, 2034 (1977), section 12. Available at: <http://www.icnl.org/research/library/files/Nepal/Associations.pdf>.

<sup>240</sup> *Ibid.*, sections 3 and 4(a).

<sup>241</sup> USAID, ICNL, and FHI 360. Assessment of the Legal Environment for Civil Society and Media in Nepal, p. 6. Available at: [http://www.icnl.org/programs/asia/Nepal%20Assessment\\_Final\\_June26.pdf](http://www.icnl.org/programs/asia/Nepal%20Assessment_Final_June26.pdf).

<sup>242</sup> Prithvi Man Shrestha, NTOs Resist Pressure to Register at Local Level, The Kathmandu Post, 27 November 2018. Available at: <http://kathmandupost.ekantipur.com/news/2018-11-27/ngos-resist-pressure-to-register-at-local-level.html>.

<sup>243</sup> The Social Welfare Act, 2049 (1992), section 16. Available at: <http://www.icnl.org/research/library/files/Nepal/Social.pdf>.

established a separate regulatory framework for civil society organisations receiving foreign assistance but controversy over these rules has stalled the adoption of the policy.<sup>244</sup>

### Media regulation

In a positive step, the new 2015 Constitution prohibits prior censorship of publications, broadcasters and other media, and provides that media outlets shall not be closed, seized or have their registration cancelled based on the content that they disseminate. However, both of these statements are subject to regimes of restrictions which contain problematically vague language and could justify restrictive laws.<sup>245</sup>

Print media must register under the Press and Publication Act, 2048. Problematically, this Act also provides that journalists must obtain a press representative certificate. This does not accord with international standards, which provide that accreditation for the media should only be used to ensure privileged access of journalists to forums where public access is otherwise limited.<sup>246</sup>

Broadcasting licences are issued by the Ministry of Information and Communications rather than by an independent body.<sup>247</sup> In addition, the main public broadcasters, namely Nepal Television Corporation and Radio Nepal, are not independent of government.<sup>248</sup> Reforms are needed to create an independent broadcasting licensing authority and shift towards a public service media model.

In 2016, via the Online Media Operation Directive 2073, the government required online news media to register and empowered the authorities to suspend online media or websites that did not register, publish certain prohibited content or otherwise violate the law.<sup>249</sup> The government is reportedly considering cybercrime and information technology bills which could further impact negative on the operations of online media.

### Content restrictions

Nepal's 2015 Constitution protects freedom of expression. However, it also allows for restrictions for expression which are broader than what is permitted under international human rights law.<sup>250</sup>

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<sup>244</sup> Anil Giri, Integrity policy gathers dust at PM's Office, The Kathmandu Post, 29 December 2018. Available at: <http://kathmandupost.ekantipur.com/news/2018-12-29/integrity-policy-gathers-dust-at-pms-office.html>.

<sup>245</sup> Constitution of Nepal 2015, Article 19, as translated. Available at: <http://www.icnl.org/research/library/files/Nepal/Nepalconst.pdf>

<sup>246</sup> Press and Publication Act, 2048 (1991), Chapter 5. Available at: <http://www.lawcommission.gov.np/en/archives/19687>.

<sup>247</sup> National Broadcasting Act, 2049 (1993), sections 4 and 6, available at: <https://nta.gov.np/wp-content/uploads/2012/06/The-National-Broadcasting-Act1993.pdf>; and National Broadcasting Rules, 2052 (1995), Rules 3 and 4, available at: <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/09/national-broadcasting-rules-2052-1995.pdf>.

<sup>248</sup> Nepal Profile – Media, BBC, 18 April 2017. Available at: <https://www.bbc.com/news/world-south-asia-12561481>.

<sup>249</sup> Online Media Operation Directives, 2073, sections 3, 11 and 21. Available at: <http://research.butmedia.org/wp-content/uploads/2016/06/OnlineDirective2073.pdf>.

<sup>250</sup> Constitution of Nepal, 2015, Article 17, as translated. Available at: <http://www.icnl.org/research/library/files/Nepal/Nepalconst.pdf>.

Nepal enacted a new Criminal Code in 2017 which retains or introduces a number of content based restrictions on freedom of expression.<sup>251</sup> The offences of libel and slander are punishable by two years’ imprisonment, or three years if committed via the electronic or mass media. Criticising the President or Members of Parliament is also a criminal offence, as is satire. Encouraging religious conversion may result in a fine or five years’ imprisonment.

Section 47 of the Electronic Transactions Act, 2063 (2008) makes it an offence to use the electronic media to publish or display material which is contrary to public morality or decent behaviour, or to spread hatred or jealousy among peoples, subject to a penalty of a fine, five years’ imprisonment or both.<sup>252</sup> The aforementioned Online Media Directive, which requires online news media to register, also contains content prohibitions such as harm to national integrity or good relations between communities, treason, defamation, public morality and content without an authorised source which impacts on international relations.<sup>253</sup>

### Right to information and secrecy laws

Nepal’s Right to Information Act, adopted in 2007, is relatively strong with a ranking of 22<sup>nd</sup> out of 123 countries assessed by the RTI Rating.<sup>254</sup> Some weaknesses include the lack of a public interest override, the fact that the law does not prevail over conflicting secrecy legislation and the fact that non-citizens cannot make information requests.

### **Nepal’s RTI Scores:**

Category	Max Points	Score	Percentage
1. Right of Access	5	6	83 %
2. Scope	27	30	90 %
3. Requesting Procedures	19	30	63 %
4. Exceptions and Refusals	18	30	60 %
5. Appeals	26	30	87 %
6. Sanctions and Protections	6	8	75 %
7. Promotional Measures	12	16	75 %
<b>Total score</b>	<b>113</b>	<b>150</b>	<b>37 %</b>

### Restrictions on freedom of assembly

<sup>251</sup> An English language version of the new criminal code is not available. This section relies on the following sources: Nepal’s New Criminal Act Raises Press Freedom Concerns, SAMSN Digital Hub, 17 August 2018, available at: <https://samsn.ifj.org/nepals-new-criminal-act-raises-press-freedom-concerns>; Binod Ghimire, 15 Things in the New National Law Every Nepali Should Know About, The Kathmandu Post, 17 August 2018, available at: <http://kathmandupost.ekantipur.com/news/2018-08-17/15-things-in-the-new-national-law-every-nepali-should-know-about.html>; and Binaj Gurubacharya, AP Explains: How New Criminal Laws Threaten Nepal Journalism, AP News, 21 September 2018, available at: <https://apnews.com/71ad040804b94107b6f3681cb159e234>.

<sup>252</sup> Available at: <http://www.tepc.gov.np/uploads/files/12the-electronic-transaction-act55.pdf>.

<sup>253</sup> Online Media Operation Directives, 2073, section 11. Available at: <http://research.butmedia.org/wp-content/uploads/2016/06/OnlineDirective2073.pdf>.

<sup>254</sup> RTI Rating, Country Data, as of January 2019. Available at: <https://www.rti-rating.org/country-data/>.

The Constitution protects the right to peaceful assembly although, as with freedom of expression, this is subject to problematically broad restrictions.<sup>255</sup> In practice, police have denied permits or used force against protestors in circumstances which appear to violate this right although this has improved in recent years.<sup>256</sup> Such abuses do not appear to be based on any particular law and, in a positive step, the Supreme Court recently halted a ban on demonstrations in a popular protest location in Kathmandu.<sup>257</sup>

### National security

The Crime against State and Punishment Act, 2046 (1989) contains some problematically vague language, particularly regarding the offence of treason, which covers inciting or causing enmity or contempt between classes, castes, religions or regions, as well as creating enmity or hatred for the Government.<sup>258</sup> It is possible that this language has been amended or replaced by new treason provisions in the new Criminal Code but we could not confirm this because no English version of the Code is available.

### Whistleblower, witness and other protection systems for those at risk

The Right to Information Act protects whistleblowers, prohibiting legal or employment related sanctions against them. This protection is limited to employees of public bodies and no more comprehensive whistleblower protection system has so far been put in place.<sup>259</sup>

While attacks on journalists have decreased overall since the start of Nepal's peace process, journalist safety remains a concern. For example, between August 2015 and February 2016 177 journalists and media workers were threatened or attacked.<sup>260</sup> Nepal's National Human Rights Commission is in the process of establishing a national safety mechanism for journalists. In 2016, its staff drafted regulations for a proposed mechanism that would include a rapid response network and rapid response teams to provide safety measures on an urgent basis where needed.<sup>261</sup>

## **Pakistan**

### Freedom of association: non-profit registration requirements and restrictions on advocacy

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<sup>255</sup> Constitution of Nepal, 2015, Article 17, as translated. Available at: <http://www.icnl.org/research/library/files/Nepal/Nepalconst.pdf>.

<sup>256</sup> FIDH, Nepal: Arbitrary Arrest of Twelve Human Rights Defenders and Victims of Human Rights Violations, 4 March 2016, available at: <https://www.fidh.org/en/issues/human-rights-defenders/nepal-arbitrary-arrest-of-twelve-human-rights-defenders-and-victims>; and Freedom House, Freedom in the World 2018: Nepal, available at: <https://freedomhouse.org/report/freedom-world/2018/nepal>.

<sup>257</sup> ICNL, Civic Freedom Monitor: Nepal, 9 October 2018. Available at: <http://www.icnl.org/research/monitor/nepal.html>.

<sup>258</sup> Crime against State and Punishment Act, 2046 (1989), sections 4.2 and 4.3. Available at: <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/crime-against-state-and-punishment-act-2046-1989.pdf>.

<sup>259</sup> Right to Information Act, 2064 (2007), section 29. Available at: <https://www.rti-rating.org/wp-content/uploads/2018/09/Nepal.RTI-Act.official.pdf>.

<sup>260</sup> IMS, Defending Journalism, October 2017, p. 172. Available at: <https://www.mediasupport.org/publication/defending-journalism/>.

<sup>261</sup> *Ibid.*, p. 183-184.

Non-profit organisations may register under four different laws, including a relatively simple registration process. Notably, however, some provinces have begun to impose stricter registration requirements or to require organisations to re-register.<sup>262</sup> In addition, the Minister of the Interior is reportedly drafting new legislation which would introduce new registration requirements.<sup>263</sup>

Separate and more difficult registration requirements are imposed on international non-governmental organisations. Under a 2015 policy, they must register with the Minister of the Interior and sign a Memorandum of Understanding with the government.<sup>264</sup> The government has issued several expulsion orders for international NGOs working in the country.<sup>265</sup>

### Funding restrictions, financial reporting requirements and special tax requirements

In 2013, the government introduced a policy imposing new requirements on organisations which receive foreign funding. This policy is supposed to operate until a Foreign Contributions Act is adopted although this has not yet happened.<sup>266</sup> The policy specifies that any organisation using foreign economic assistance must first register with the government. The organisation and government must then sign a Memorandum of Understanding which includes specific information such as the intended operations and geographic area for projects.<sup>267</sup> If enacted, the Foreign Contributions Act could impose extensive additional requirements for the receipt of foreign funding.

### Media regulation

All newspapers, printing presses, news agencies and books must meet registration and declaration procedures outlined in a 2002 Ordinance.<sup>268</sup> Printing newspapers or disseminating news without authorisation may result in fines and/or six months' imprisonment.<sup>269</sup>

The regulatory body for journalists is the Press Council of Pakistan, established in 2002 and empowered to impose ethical rules and handle complaints. The Council's members are nominated

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<sup>262</sup> USAID and ICNL, 2017 Civil Society Organizations Sustainability Index, November 2018, p. 62. Available at: <https://www.fhi360.org/sites/default/files/media/documents/resource-civil-society-organization-2017-asia-regional-report.pdf>.

<sup>263</sup> ICNL, Research Monitor: Pakistan. Available at: <http://www.icnl.org/research/monitor/pakistan.html>.

<sup>264</sup> Government of Pakistan, Ministry of Interior, Policy for Regulation of International Non-governmental Organisations (INGOs) in Pakistan, 1 October 2015. Available at: <http://www.icnl.org/research/library/files/Pakistan/INGOpakistan.pdf>.

<sup>265</sup> Saad Sayeed, "Pakistan tells 18 international NGOs to leave: Action Aid", Reuters, 4 October 2018, available at: <https://www.reuters.com/Article/us-pakistan-ngos/pakistan-tells-18-international-ngos-to-leave-actionaid-idUSKCN1ME1N3>; and Nashrah Baqi, "Pakistan orders 29 INGOs to leave country within 60 days", The Express Tribune, 14 December 2017, available at: <https://tribune.com.pk/story/1583668/1-pakistan-orders-29-foreign-ngos-leave-country-within-60-days/>.

<sup>266</sup> ICNL, Research Monitor: Pakistan. Available at: <http://www.icnl.org/research/monitor/pakistan.html>.

<sup>267</sup> Policy for regulation of organisations receiving foreign contributions, 28 November 2013. Available at: <http://www.icnl.org/research/library/files/Pakistan/policy.pdf>.

<sup>268</sup> Press, Newspaper, News Agencies and Books Registration Ordinance, 2002, as translated. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/pk/pk043en.pdf>.

<sup>269</sup> *Ibid.*, sections 25, 26, 28 and 30.



by a mix of media management, professional organisations and, for a minority of members, the government.<sup>270</sup> It operates as an autonomous body although protections for its independence could be stronger. In practice, the Council has faced operational challenges and has not always been functional.<sup>271</sup>

The regulatory body for broadcasting and the electronic media is the Pakistan Electronic Media Regulatory Authority (PEMRA), also established by a 2002 Ordinance.<sup>272</sup> It is responsible for issuing broadcasting licences and handling complaints. The Authority is not independent although, following a Supreme Court order, the government amended the Ordinance in 2018 to increase its independence.<sup>273</sup> In particular, directives issued by the federal government are no longer binding on PEMRA. In addition, the majority of members are no longer government officials, but most members are still nominated by provincial governments.<sup>274</sup>

The government is currently considering merging the Press Council and the PEMRA into a new Pakistan Media Regulatory Authority (PMRA). While efforts to reform and streamline media regulation in Pakistan are welcome, the current proposals raise serious concerns about extending licensing to cover digital media and the lack of structural independence from the government of the proposed regulatory body.<sup>275</sup>

### Content restrictions

Defamation is a criminal offence in Pakistan. There is a defence for truthful statements but only if the statement is for the public good.<sup>276</sup> Criminal penalties are also imposed for promoting enmity between different groups. This offence includes problematically vague terms such as disharmony, feelings of enmity and public tranquillity.<sup>277</sup>

The Penal Code also contains several blasphemy offences.<sup>278</sup> Deliberate and malicious acts intended to outrage religious feelings may result in ten years' imprisonment and/or a fine. Defiling the Holy Quran, which is defined to include using it in any derogatory manner, is punished by life

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<sup>270</sup> Press Council of Pakistan Ordinance, 2002, section 6, as translated. Available at: [http://pid.gov.pk/uploads/media\\_laws/pcp\\_ordinance.pdf](http://pid.gov.pk/uploads/media_laws/pcp_ordinance.pdf).

<sup>271</sup> See: <https://tribune.com.pk/story/764674/rudderless-press-council-of-pakistan-a-name-with-no-faces/>.

<sup>272</sup> PEMRA Ordinance 2002. Available at: [http://www.moib.gov.pk/Downloads/Ordenances/Ordinance\\_2002.pdf](http://www.moib.gov.pk/Downloads/Ordenances/Ordinance_2002.pdf).

<sup>273</sup> Sohail Khan, Caretake govt makes Pemra powerful through amendment, *The News (Pakistan)*, 8 June 2018. Available at: <https://www.thenews.com.pk/print/327214-caretaker-govt-makes-pemra-powerful-through-amendment>.

<sup>274</sup> PEMRA Ordinance 2002, sections 5 and 6. Available at: [http://www.moib.gov.pk/Downloads/Ordenances/Ordinance\\_2002.pdf](http://www.moib.gov.pk/Downloads/Ordenances/Ordinance_2002.pdf), as amended by Ordinance No. IX of 2018, available at: [http://www.na.gov.pk/uploads/documents/1537799915\\_547.pdf](http://www.na.gov.pk/uploads/documents/1537799915_547.pdf).

<sup>275</sup> For a full discussion of the proposed policy see CLD and IRADA, Pakistan: Note on the Proposed Mandate and Scope of the Pakistan Media Regulatory Authority. Available at: <https://www.law-democracy.org/live/wp-content/uploads/2019/01/Pakistan.PMRA-Note.Jan19.pdf>.

<sup>276</sup> Penal Code of 1860, section 499. Available at: <https://www.refworld.org/pdfid/485231942.pdf>.

<sup>277</sup> *Ibid.*, sections 295, 295A, 295B and 295C.

<sup>278</sup> *Ibid.*, sections 153A and 295C.

imprisonment. Derogatory remarks about the Holy Prophet Muhammad are punishable by death or life imprisonment. For this last offence, specific intent is not required.<sup>279</sup>

Under the Constitution, the Supreme Court and the High Court have the power to punish anyone who scandalises the courts or does anything which brings a court or a judge into hatred, ridicule or contempt.<sup>280</sup> The Contempt of Court Ordinance places some limits on the application of contempt of court to criticisms of final judgments, academic criticisms and personal criticisms directed at specific judges. However, it then undermines these protections by limiting them to criticisms which use “temperate language”, for which no definition is provided.<sup>281</sup>

The Electronic Crimes Act duplicates content restrictions distributed electronically. Disseminating content that advances or is likely to advance interfaith, sectarian or racial hatred may result in a fine or seven years’ imprisonment or both.<sup>282</sup> Intentionally sharing defamatory information known to be false may be penalised by three years’ imprisonment and/or a fine.<sup>283</sup> In addition, the Pakistan Telecommunication Authority has the power to block or remove information when it deems this to be necessary to protect the glory of Islam, security of Pakistan, public order, decency, morality, contempt of court or the commission of an offence under the Act.<sup>284</sup>

#### Right to information and secrecy laws

Pakistan’s Right of Access to Information Act of 2017 ranks 33<sup>rd</sup> out of 123 national right to information laws assessed by the RTI Rating.<sup>285</sup> This is a much stronger law than the 2002 Ordinance which previously governed right to information in Pakistan. It covers a broad range of public bodies and provides for relatively simple procedures for making and processing requests. However, it lacks a public interest override and is limited in terms of the scope of information covered. The independence of the oversight body could also be stronger.<sup>286</sup>

#### **Pakistan’s RTI Scores:**

Category	Max Points	Score	Percentage
1. Right of Access	6	6	100%
2. Scope	30	25	83%
3. Requesting Procedures	30	21	70%
4. Exceptions and Refusals	30	17	57%
5. Appeals	30	21	70%

<sup>279</sup> *Ibid.*, section 295-C. For a discussion of courts failing to require specific intent, see ICJ, On Trial: The Implementation of Pakistan’s Blasphemy Laws, November 2015, p. 14. Available at: <https://www.icj.org/wp-content/uploads/2015/12/Pakistan-On-Trial-Blasphemy-Laws-Publications-Thematic-Reports-2015-ENG.pdf>.

<sup>280</sup> Constitution of Pakistan, Article 204. Available at: <http://www.pakistani.org/pakistan/constitution/part7.ch4.html>.

<sup>281</sup> Contempt of Court Ordinance, 1998. Available at:

[http://www.pakistani.org/pakistan/legislation/1998/ord\\_X.html](http://www.pakistani.org/pakistan/legislation/1998/ord_X.html).

<sup>282</sup> Electronic Crimes Act, 2016, section 11. Available at: <http://www.nr3c.gov.pk/peca16.pdf>.

<sup>283</sup> *Ibid.*, section 20.

<sup>284</sup> *Ibid.*, section 37.

<sup>285</sup> RTI Rating, Country Data, as of January 2019. Available at: <https://www.rti-rating.org/country-data>.

<sup>286</sup> Right of Access to Information Act, 2017. Available at: [https://www.rti-rating.org/wp-content/uploads/2018/09/Pakistan.FOI\\_2017.Official.pdf](https://www.rti-rating.org/wp-content/uploads/2018/09/Pakistan.FOI_2017.Official.pdf).

6. Sanctions and Protections	8	4	50%
7. Promotional Measures	16	11	69%
<b>Total score</b>	<b>150</b>	<b>105</b>	<b>70%</b>

### Restrictions on freedom of assembly

Freedom of peaceful of assembly is protected in the Constitution, subject to reasonable restrictions imposed by law to protect public order.<sup>287</sup> However, under Police Order 2002, certain specified police heads may require those wishing to hold an assembly to obtain a licence, which may then be issued with conditions. Police may stop any procession which violates the conditions of a licence or order it to disperse and, if the police order is not obeyed, it constitutes an unlawful assembly.<sup>288</sup>

Unlawful assemblies are criminal under the Penal Code. These are defined as assemblies of five or more persons with the object of pursuing certain enumerated offences. For the most part, these are tied to the use of force or other criminal behaviour but there is some vague language, such as a general reference to resisting the execution of any law.<sup>289</sup> In addition, it is an offence knowingly to join an assembly likely to disturb the public peace after it has been ordered to disperse.<sup>290</sup>

### National security

Sedition is an offence under the Penal Code, which is defined as bringing or attempting to bring into hatred or contempt, or excite disaffection towards, the government and is subject to life imprisonment.<sup>291</sup> In practice, sedition charges have been brought against peaceful activists.<sup>292</sup>

The Anti-Terrorism Law defines terrorism in problematically vague terms which could apply to peaceful activities. Specifically, the enumerated list of terrorist acts includes inciting religious, sectarian or ethnic hatred which causes internal disturbance and disseminating or preaching one's own interpretation of beliefs without explicit government approval. These acts may constitute terrorism if they are found to, among other things, create a sense of fear or insecurity in society.<sup>293</sup>

The Electronic Crimes Act also creates offences of cyber terrorism and glorification of an offence. The latter is of particular concern given that "glorification" is an ambiguous concept. The explanatory note specifies that it constitutes praise or celebration in a desirable manner, which does not establish clear boundaries.<sup>294</sup>

<sup>287</sup> Constitution of Pakistan, Article 16. Available at: <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>.

<sup>288</sup> Police Order 2002, Articles 120 and 121. Available at: <http://punjablaws.gov.pk/laws/2185a.html>.

<sup>289</sup> Penal Code of 1860, section 141. Available at: <https://www.refworld.org/pdfid/485231942.pdf>.

<sup>290</sup> *Ibid.*, section 151.

<sup>291</sup> *Ibid.*, section 124A.

<sup>292</sup> For example, see Amnesty International, Pakistan: Alarming Crackdown Ahead of Elections, 14 June 2018. Available at: <https://www.amnesty.org/en/latest/news/2018/06/pakistan-alarming-crackdown-ahead-of-elections>.

<sup>293</sup> Anti-Terrorism Act, 1997 (as amended), section 6. Available at: <http://www.molaw.gov.pk/molaw/userfiles1/file/Anti-Terrorism%20Act.pdf>.

<sup>294</sup> Act No. XL of 2016, section 9. Available at: <http://www.nr3c.gov.pk/peca16.pdf>.

Due process violations on the basis of protecting national security are a potential threat for civil society. In 2015, the government amended the Constitution to permit military courts to try civilians on terrorism related charges.<sup>295</sup> This permission was set to lapse in January 2017 but the government extended it through another constitutional amendment.<sup>296</sup> At the time of writing, the provision is again set to expire and Parliament is debating whether or not to adopt another extension.<sup>297</sup> Significant due process and fair trial violations take place in the military courts, which operate in secret.<sup>298</sup> In addition, the Anti-Terrorism Act allows police and armed forces to arrest without a warrant anyone whom they reasonably suspect has committed or is about to commit a terrorist act.<sup>299</sup> It also establishes special anti-terrorism courts and provides for longer pre-trial detention periods during investigations than for other offences.<sup>300</sup>

### Whistleblower, witness and other protection systems for those at risk

The Government is currently considering a Whistleblower Protection Bill but no protection system is currently in place.<sup>301</sup> A federal witness protection law is in place but does not apply at the provincial level although some provinces have also enacted witness protection laws.<sup>302</sup>

## **Papua New Guinea**

### Freedom of association: non-profit registration requirements and restrictions on advocacy

Registration is not mandatory but organisations can choose to register under one of several legal forms. The primary form is as an association under the Associations Incorporation Act, which establishes a relatively simple registration process. Registration entails giving prior public notice, for example in a newspaper, of the intention to incorporate, followed by the submission of an application. The application includes basic information, the most burdensome of which is a copy of the rules of the association, although even here a set of model rules is available which associations can adopt.<sup>303</sup>

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<sup>295</sup> The Constitution (Twenty-first Amendment) Act, 2015. Available at: <https://pakistanconstitutionlaw.com/21st-amendment-2015/>.

<sup>296</sup> The Constitution (Twenty-third Amendment) Act, 2017. Available at: [http://www.na.gov.pk/uploads/documents/1491460727\\_515.pdf](http://www.na.gov.pk/uploads/documents/1491460727_515.pdf).

<sup>297</sup> Syed Irfan Raza, Opposition takes united stance on military courts, Dawn, 24 January 2019. Available at: <https://www.dawn.com/news/1459457/opposition-takes-united-stance-on-military-courts>.

<sup>298</sup> ICJ, Military Injustice in Pakistan: A Briefing Paper, June 2016. Available at: <https://www.icj.org/wp-content/uploads/2016/06/Pakistan-Military-court-Advocacy-Analysis-brief-2016-ENG.pdf>.

<sup>299</sup> Anti-Terrorism Act, 1997, section 5(2)(ii). Available at: <http://www.molaw.gov.pk/molaw/userfiles1/file/Anti-Terrorism%20Act.pdf>.

<sup>300</sup> Anti-Terrorism Act, 1997 (as amended), sections 11EEEE and 13. Available at: <http://www.molaw.gov.pk/molaw/userfiles1/file/Anti-Terrorism%20Act.pdf>.

<sup>301</sup> Law minister says Whistleblower Protection Bill will be adopted soon, Dawn, 26 October 2018. Available at: <https://www.dawn.com/news/1441542/law-minister-says-whistleblower-protection-bill-will-be-adopted-soon>

<sup>302</sup> Witness Protection, Security and Benefit Act, 2017, available at: <http://www.molaw.gov.pk/userfiles1/file/Witness%20Protection,%20Security%20and%20Benefit%20Act,%202017.pdf>; Sindh Witness Protection Act, 2013, available at:

<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.LI%20of%202013.pdf>; and Bolachistan Witness Protection Act 2016, available at: <http://www.pabalochistan.gov.pk/uploads/acts/2016/Act042016.pdf>.

<sup>303</sup> Associations Incorporation Act, Cap. No. 142, sections 2 and 6. Available at: [http://www.paclii.org/pg/legis/PG-consol\\_act\\_1986/aia307.pdf](http://www.paclii.org/pg/legis/PG-consol_act_1986/aia307.pdf).

## Funding restrictions, financial reporting requirements and special tax requirements

With support from the Australian government, Papua New Guinea is reportedly reviewing the Associations Incorporation Act. This may affect a number of areas but one specific goal of the review is to bring the Act into compliance with international anti-money laundering standards.<sup>304</sup> While this is not necessarily problematic, it may be worth watching for the imposition of new burdens or restrictions.

Otherwise, there are no special financial reporting requirements or burdensome funding or tax restrictions for civil society organisations.

## Media regulation

Print media is regulated under a law dating from 1956 which requires printing presses and newspapers to register under a fairly straight forward procedure. The definition of a newspaper is limited to publications which discuss public events and are periodically published for sale, with additional enumerated characteristics.<sup>305</sup> As background context, there are only two newspapers in Papua New Guinea, both foreign owned. Radio is more important due to high illiteracy rates and many isolated settlements.<sup>306</sup>

The National Information and Communications Technology Authority regulates the licensing and regulation of other forms of communication media. The Authority has four members, one of whom is an independent expert. The law provides that it is an independent, autonomous body operating without direction from the industry or any ministry. This is limited by the fact that the members are appointed by the Head of State upon the advice of an appointments committee made up largely of government actors, although it also includes the leader of the opposition.<sup>307</sup>

## Content restrictions

The primary restrictive legislation in this area is the 2016 Cybercrime Code Act, in particular the section on defamatory publications which criminalises defamation. Defamatory material is any imputation with the intention of injuring a person's reputation. Intentionally using an electronic system to publish such material without lawful excuse is a crime punishable by a fine and/or up to 15 years' imprisonment. It is a defence if the material was true, for the public benefit, constituted a fair comment or was made in good faith.<sup>308</sup> The offence of defamation also applies to corporate bodies, in which case a fine may be levied of up to K100,000 (approximately USD29,700)<sup>309</sup> or

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<sup>304</sup> Naomi Neilson, PNG Not-For-Profit Governance Act to be Reviewed, Third Section, 6 July 2018. Available at: <https://thirdsector.com.au/png-not-for-profit-governance-act-to-be-reviewed/>.

<sup>305</sup> Printers and Newspapers Act, Cap. No. 151, and Printers and Newspapers Regulation. Available at: [http://www.pacii.org/pg/legis/PG-consol\\_act\\_1986/pana274.pdf](http://www.pacii.org/pg/legis/PG-consol_act_1986/pana274.pdf).

<sup>306</sup> BBC, Papua New Guinea profile – Media, 5 September 2017. Available at: <https://www.bbc.com/news/world-asia-15592924>.

<sup>307</sup> National Information and Communications Technology Act, 2009, sections 12, 13 and 40. Available at: <https://nicta.gov.pg/about-us>.

<sup>308</sup> Cybercrime Code Act, section 21. Available at: [http://www.parliament.gov.pg/uploads/acts/16A\\_35.pdf](http://www.parliament.gov.pg/uploads/acts/16A_35.pdf).

<sup>309</sup> Exchange rate as of 25 January 2019.

more if the act is committed with the knowledge the statement is false or if it is used to extort or procure a benefit.<sup>310</sup>

The National and Information Communications Technology Act may also be used to limit freedom of expression. The Act makes it an offence to use an ICT service to send communications known to be indecent, obscene or menacing, or known to be false for the purpose of causing annoyance or inconvenience. Such action is punishable by a fine and/or up to three months' imprisonment.<sup>311</sup>

### Right to information and secrecy laws

The Constitution establishes a right of reasonable access to official documents subject to a list of enumerated exceptions. It also provides for a law to be enacted setting out the procedures for accessing information.<sup>312</sup> However, Papua New Guinea has not yet adopted a right to information law although it has made a commitment to adopt one by 2020 in its OGP Action Plan.<sup>313</sup>

A prohibition on “unlawful disclosures” in the Cybercrime Code Act could penalise information-sharing by civil society. It provides that anyone who intentionally and without lawful excuse, or recklessly, uses an electronic system to disclose “any confidential or classified communication” or sensitive data may be fined and/or imprisoned for up to 15 years. Penalties are higher when the offender has lawful authority over the data. What constitutes confidentiality is not defined although it is a defence to show that the disclosure was for the public benefit.<sup>314</sup>

### Restrictions on freedom of assembly

Freedom of assembly is protected by the Constitution<sup>315</sup> although in practice the right is not always respected. In a high profile incident in 2016 police fired live ammunition on a student demonstration resulting in a number of students being shot and injured.<sup>316</sup> Challenges in this area likely stem from the lack of clear police regulations rather than restrictive laws. For example, there appears to be no clear policy on when police may use live ammunition.<sup>317</sup>

### National security

Sedition is a crime under the Penal Code. The definition of seditious intent relies on several vague concepts such as bringing the Head of State into hatred or contempt, raising discontent or

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<sup>310</sup> Cybercrime Code Act, section 21. Available at: [http://www.parliament.gov.pg/uploads/acts/16A\\_35.pdf](http://www.parliament.gov.pg/uploads/acts/16A_35.pdf).

<sup>311</sup> National Information and Communications Technology Act, 2009, section 266. Available at: <https://nicta.gov.pg/about-us>.

<sup>312</sup> Constitution of Papua New Guinea, Article 51. Available at: [https://constituteproject.org/constitution/Papua\\_New\\_Guinea\\_2016.pdf?lang=en](https://constituteproject.org/constitution/Papua_New_Guinea_2016.pdf?lang=en).

<sup>313</sup> OGP, Papua New Guinea, Commitments: 01 Legislation on Access to Information. Available at: <https://www.opengovpartnership.org/commitment/01-legislation-on-access-information>.

<sup>314</sup> Cybercrime Code Act, section 25. Available at: [http://www.parliament.gov.pg/uploads/acts/16A\\_35.pdf](http://www.parliament.gov.pg/uploads/acts/16A_35.pdf).

<sup>315</sup> Constitution of Papua New Guinea, “Basic Rights”. Available at: [https://constituteproject.org/constitution/Papua\\_New\\_Guinea\\_2016.pdf?lang=en](https://constituteproject.org/constitution/Papua_New_Guinea_2016.pdf?lang=en).

<sup>316</sup> Colin Packham and Matt Siegel, “Dozens Wounded as Papua New Guinea Police Fire on Protesters, Riots Spread”, Reuters, 7 June 2016. Available at: <https://www.reuters.com/Article/us-papua-protests-idUSKCN0YU04N>.

<sup>317</sup> Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 30 March 2015, para. 23, UN Doc. A/HRC/29/37/Add.1.

disaffection and promoting ill will and enmity between classes. There are, however, protections for good faith efforts to point out mistakes, to remove enmity between classes or to promote lawful change.<sup>318</sup>

#### Whistleblower, witness and other protection systems for those at risk

Papua New Guinea does not have a witness protection system.<sup>319</sup> It also does not have a whistleblower protection regime although Parliament is considering legislation in this area.<sup>320</sup>

## **South Korea**

#### Freedom of association: non-profit registration requirements and restrictions on advocacy

South Korean civil society organisations do not need to register but can choose to obtain legal personality by drawing up articles of incorporation and registering as corporations.<sup>321</sup> Generally, this process does not involve significant barriers or burdens.

#### Funding restrictions, financial reporting requirements and special tax requirements

The Assistance for Non-Profit, Non-Governmental Organisations Act provides that registered NGOs can obtain tax exempt status and obtain other benefits, such as certain subsidies for public interest activities.<sup>322</sup>

#### Media regulation

Both print and online newspapers must register under the Act of Promotion of Newspapers, which requires the provision of basic information about the newspaper.<sup>323</sup> The relevant authority can suspend a newspaper for up to six months but must go to court to revoke the registration. The grounds for suspension or revocation include fraudulent registration, if the contents seriously and repeatedly violate the purpose of the publication, obscene contents which seriously violate social ethics and certain management violations, like committing certain crimes.<sup>324</sup>

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<sup>318</sup> Criminal Code Act, 1974, sections 44 and 45. Available at:

[http://www.pacii.org/pg/legis/consol\\_act/cca1974115/](http://www.pacii.org/pg/legis/consol_act/cca1974115/).

<sup>319</sup> Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 30 March 2015, para. 73, UN Doc. A/HRC/29/37/Add.1.

<sup>320</sup> Calls for Whistleblower Protections in PNG Grow Louder as ICAC Faces Fresh Delays, Radio Australia, 5 April 2018. Available at: <https://www.abc.net.au/radio-australia/programs/pacificbeat/calls-for-whistleblower-protections-in-png-grow/9621172>.

<sup>321</sup> Civil Act, Articles 32 and 40, as translated. Available at:

<http://www.moleg.go.kr/english/korLawEng?pstSeq=52674>.

<sup>322</sup> Assistance for Non-Profit, Non-Governmental Organisations Act, as amended, Article 10. Available at: <http://law.go.kr/LSW/eng/engLsSc.do?menuId=2&Section=lawNm&query=ssistance+for+Non-profit%2C+Non-governmental+Organizations+Act&x=0&y=0#liBgcolor0>.

<sup>323</sup> Act on the Promotion of Newspapers, Etc., Article 9, as translated. Available at:

<http://law.go.kr/LSW/eng/engLsSc.do?menuId=2&Section=lawNm&query=newspaper&x=0&y=0#liBgcolor3>.

<sup>324</sup> *Ibid.*, Article 22.

Online newspapers must also register under this Act. In 2015, the government amended the Enforcement Decree for the Act to require that online newspapers have at least five employees. The Constitution Court struck this provision down, deciding that it infringed on freedom of the press, but upheld the requirement that online newspapers must be registered.<sup>325</sup>

In terms of broadcasting, a key concern is that the regulatory bodies are not sufficiently independent. The members of both the Korea Communications Commission, which monitors telecommunications and broadcasting, and the Korea Communications Standards Commission, which monitors content, are all appointed by the President upon the advice of the National Assembly.<sup>326</sup> This is especially problematic in the case of the latter entity, which regularly sanctions content.<sup>327</sup>

### Content restrictions

South Korea still has a criminal defamation law. Defamation via public statements may be punished by up to five years' imprisonment. In the case of printed defamatory statements, the penalty increases to up to seven years. These provisions are especially problematic because the defence of truth is only available where the statement was also solely for the public interest.<sup>328</sup>

### Right to information and secrecy laws

South Korea's Act on Disclosure of Information by Public Agencies is ranked 45<sup>th</sup> out of the 123 right to information laws assessed by the RTI Rating.<sup>329</sup> Notable weaknesses include the fact that the law does not trump conflicting secrecy legislation and has a limited public interest override.<sup>330</sup>

#### **South Korea's RTI Scores:**

Category	Max Points	Score	Percentage
1. Right of Access	6	4	67%
2. Scope	30	22	73%
3. Requesting Procedures	30	16	53%
4. Exceptions and Refusals	30	21	70%
5. Appeals	30	21	70%
6. Sanctions and Protections	8	1	13%

<sup>325</sup> Case on the Unconstitutionality of the Enforcement Decree of the Act on the Promotion of Newspapers, Etc. Prescribing the Employment Requirements for an Online Newspaper, 27 October 2016, Constitutional Court, as translated. Available at: [http://search.court.go.kr/ths/pr/ths\\_pr0101\\_P1.do](http://search.court.go.kr/ths/pr/ths_pr0101_P1.do).

<sup>326</sup> Act on the Establishment and Operation of Korea Communications Commission, 2008, Articles 5(1) and 18(3), as translated. Available at: [https://elaw.klri.re.kr/eng\\_mobile/viewer.do?hseq=33740&type=part&key=17](https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=33740&type=part&key=17).

<sup>327</sup> Freedom House, "South Korea", Freedom on the Net 2018. Available at: <https://freedomhouse.org/report/freedom-net/2018/south-korea>.

<sup>328</sup> Criminal Act, Articles 307, 309 and 310, as translated. Available at: [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=28627&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=28627&lang=ENG).

<sup>329</sup> RTI Rating, Country Data, as of January 2019. Available at: <https://www.rti-rating.org/country-data/South%20Korea/>.

<sup>330</sup> Act on Disclosure of Information by Public Agencies, Articles 4(3), 9(1), 13 and 15, as translated. Available at: [https://www.rti-rating.org/wp-content/uploads/2018/09/Korea.FOI\\_.2017.pdf](https://www.rti-rating.org/wp-content/uploads/2018/09/Korea.FOI_.2017.pdf).



7. Promotional Measures	16	12	75%
<b>Total score</b>	<b>97</b>	<b>150</b>	<b>65%</b>

### Restrictions on freedom of assembly

The Constitution protects freedom of assembly and prohibits the imposition of licensing requirements or other controls on assemblies.<sup>331</sup> However, the Assembly and Demonstration Act undermines this protection by imposing prior notice requirements that can effectively require those wishes to hold an assembly to obtain prior police permission. Organisers must submit a report indicating various details about the planned assembly to the police.<sup>332</sup> Police may then impose bans or restrictions on assemblies on fairly broad grounds, such as the smooth flow of traffic, which is not clearly defined.<sup>333</sup> Holding an assembly without first notifying the police or after a ban has been imposed on the assembly is a criminal offence.<sup>334</sup>

### National security

South Korea's National Security Law was enacted in 1948 in response to military threats from North Korea. The law criminalises involvement in anti-government organisations, defined as organisations which fraudulently use the title of government or aim to foment rebellion against the State and have a command and leadership system.<sup>335</sup> In practice, North Korea is viewed as an anti-government organisation, meaning that this law broadly criminalises activities and speech seen as sympathetic to North Korea.<sup>336</sup>

Vague language in the law makes it subject to abuse against peaceful activities. Under the Law, praising the activities of an anti-government organisation or a member of such an organisation is punishable by up to seven years' imprisonment. Holding or acquiring materials with the intention of praising or joining an anti-government organisation is also a criminal offence which risks chilling the mere possession of materials discussing North Korean issues. Similarly, the Law criminalises the mere making of contact or meeting with a member of an anti-government organisation in the knowledge that it threatens the democratic order.<sup>337</sup>

### Whistleblower, witness and other protection systems for those at risk

South Korea enacted the Act on the Protection of Public Interest Whistleblowers in 2011. Overall, this is a strong law, establishing protections for both government and private sector

<sup>331</sup> Constitution of Korea, Article 21, as translated. Available at: <http://www.moleg.go.kr/english/korLawEng?pstSeq=54794>.

<sup>332</sup> Assembly and Demonstration Act, 2016, Article 6(1), as translated. Available at: [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=37525&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=37525&lang=ENG).

<sup>333</sup> *Ibid.*, Articles 8, 12.

<sup>334</sup> *Ibid.*, Article 20.

<sup>335</sup> National Security Act, Article 2(1), as translated. Available at: [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=26692&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=26692&lang=ENG).

<sup>336</sup> Human Rights Watch, "South Korea: Cold War Relic Law Criminalizes Criticism", 28 May 2015. Available at: <https://www.hrw.org/news/2015/05/28/south-korea-cold-war-relic-law-criminalizes-criticism>.

<sup>337</sup> National Security Act, Articles 7(1), 7(5) and 8(1), as translated. Available at: [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=26692&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=26692&lang=ENG)

whistleblowers. It covers the disclosure of information about any act that is punishable by a penal or administrative sanction and that infringes public health or safety, the environment, consumer interests or fair competition.<sup>338</sup> Whistleblowers may request personal safety protection measures, receive mitigation or remission of their own culpability and be protected from retaliation.<sup>339</sup> The Act also provides for an Anti-Corruption and Civil Rights Commission to address confidentiality and protection of whistleblowers, the payment of rewards and processing of whistleblowing cases.<sup>340</sup>

## Sri Lanka

### Freedom of association: non-profit registration requirements and restrictions on advocacy

Every voluntary social organisation must register under the Voluntary Social Service Organisation (Registration and Supervision) Act (VSSO Act). This includes any non-governmental, non-profit organisation which pursues one of the enumerated charitable purposes.<sup>341</sup>

The Act does not proscribe detailed requirements for registration or the subsequent obligations of organisations. The Registrar is supposed to register the organisation if satisfied that it complies with the provisions of the law.<sup>342</sup> The government has reportedly been considering an amendment to the Act to provide for more stringent rules.<sup>343</sup>

### Funding restrictions, financial reporting requirements and special tax requirements

There are currently no notable restrictions, although there are concerns that proposed amendments to the VSSO Act could lead to differential treatment for foreign funded organisations.<sup>344</sup>

### Media regulation

Sri Lanka's media regulators are not independent of the government. The Sri Lanka Rupavahini Corporation, a State-owned media entity, is also responsible for issuing broadcasting licences, making it a regulator and an actor in the same broadcasting market.<sup>345</sup> Its members are all appointed by the Minister of Finance.<sup>346</sup> Similarly, the Sri Lanka Broadcasting Corporation, also

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<sup>338</sup> Act on the Protection of Public Interest Whistleblowers, 2011, Article 2(a). Available at: <http://www.moleg.go.kr/english/korLawEng?pstSeq=58460&pageIndex=2>.

<sup>339</sup> *Ibid.*, Articles 13, 14 and 15.

<sup>340</sup> *Ibid.*, Article 4.

<sup>341</sup> Voluntary Social Service Organisation (Registration and Supervision) Act, 1980, Section 18. Available at: <http://www.icnl.org/research/library/files/Sri%20Lanka/service2.pdf>.

<sup>342</sup> *Ibid.*

<sup>343</sup> Centre for Policy Alternatives, Observations on the Bill to Amend the Voluntary Social Services Organisations (Registration and Supervision) Act 1980, 22 March 2018. Available at: <https://www.cpalanka.org/wp-content/uploads/2018/03/CPA-Note-on-VSSO-Amendment-2018-FINAL-2-1.pdf>.

<sup>344</sup> *Ibid.*

<sup>345</sup> Sri Lanka Rupavahini Corporation Act, 1982, Sections 7 and 8. Available at: <https://www.lawnet.gov.lk/1947/12/31/sri-lanka-rupavahini-corporation-2/>.

<sup>346</sup> *Ibid.*, Section 3.

controlled by the government, exercises regulatory functions over the radio sector.<sup>347</sup> Telecommunications entities must obtain a licence from the Telecommunications Regulatory Commission, which, while not a media entity, similarly lacks independence since its membership consists of government members or government appointees.<sup>348</sup>

Sri Lanka's Press Council is also not an independent body although it has slightly more diverse membership. Its members, although still consisting of the Director of Information and six presidential appointees, must include one person selected from among persons nominated by the journalism associations in Sri Lanka and one person from among nominees from the trade associations for newspaper employees.<sup>349</sup> The Council receives complaints about the press and has powers to issue sanctions such as an apology or correction.<sup>350</sup> In practice, however, it has not been operational for many years because the media community has refused to nominate their members.

### Content restrictions

Although, positively, Sri Lanka has abolished criminal defamation a number of other offences raise free speech concerns. Exciting disaffection towards the President or government, exciting contempt of justice or promoting feelings of ill will and hostility among classes of people may all be punished with up to two years' imprisonment. Exceptions to this offence, including pointing out errors in the government, encouraging lawful change or pointing out feelings of ill will in hopes of removing them, are not sufficient to prevent abuse.<sup>351</sup>

The Penal Code also prohibits deliberately uttering words with an intent to wound the religious feelings of another, as well as a prohibition on acts undertaken deliberately and maliciously with the intent to insult the religious beliefs of a class of persons. Despite strong intent requirements, the lack of definition for some of these terms may result in over criminalisation of speech.<sup>352</sup>

The Press Council Act contains prohibitions on certain printed content, including profane or obscene matters. Profane matter is defined to include any content which is intended to insult any religion, the founder of any religion or any deity or saint venerated by a religion. Obscene statements are those likely to deprave and corrupt persons.<sup>353</sup>

### Right to information and secrecy laws

Sri Lanka's Right to Information Act, 2016 is one of the strongest in the world, ranking 4th out of the 123 right to information laws assessed by the RTI Rating.<sup>354</sup> The law is especially strong in

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<sup>347</sup> Sri Lanka Broadcasting Communications Act, 1966. Available at: <http://www.sancomonline.net/wp-content/uploads/2015/02/SLBC-Act.pdf>.

<sup>348</sup> Sri Lanka Telecommunications Act, 1991, Section 3. Available at: [http://www.commonlii.org/lk/legis/num\\_act/slt25o1991337](http://www.commonlii.org/lk/legis/num_act/slt25o1991337).

<sup>349</sup> Sri Lanka Press Council Act, 1973, Section 3. Available at: <https://www.refworld.org/pdfid/4be018692.pdf>.

<sup>350</sup> *Ibid.*, Section 9.

<sup>351</sup> Penal Code, Section 120. Available at: <http://citizenslanka.org/wp-content/uploads/2016/02/Penal-Code-No-02-of-1883-E.pdf>.

<sup>352</sup> *Ibid.*, Sections 291A and 291B.

<sup>353</sup> Sri Lanka Press Council Act, 1973, Section 15. Available at: <https://www.refworld.org/pdfid/4be018692.pdf>.

<sup>354</sup> RTI Rating, Country Data, as of January 2019. Available at: <https://www.rti-rating.org/country-data/>.

terms of the scope of information it covers and the strength of the appeals mechanism. It does not provide protection for whistleblowers, however, which is unfortunate given the lack of whistleblower protection legislation (described below).

### Sri Lanka's RTI Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	5	83%
2. Scope	30	28	93%
3. Requesting Procedures	30	26	87%
4. Exceptions and Refusals	30	23	77%
5. Appeals	30	29	97%
6. Sanctions and Protections	8	4	50%
7. Promotional Measures	16	16	100%
<b>Total score</b>	<b>150</b>	<b>131</b>	<b>87%</b>

Sri Lanka's Official Secrets Act prohibits the disclosure of an official secret or secret document. Both the person entrusted with the secret and others who have possession of it are covered.<sup>355</sup> The Act provides some definitional limits on what constitutes an official secret, but this is still overly expansive and includes any information relating directly or indirectly to Sri Lankan defences or any particulars or information related to a prohibited place.<sup>356</sup>

#### Restrictions on freedom of assembly

Organisers must notify the police prior to holding a protest. Persons who organise or participate in a procession for which prior notice was not given may be subject to a fine and/or up to three years' imprisonment. Police officers of sufficiently high rank are empowered to ban protests.<sup>357</sup>

#### National security

The Prevention of Terrorism Act, which dates from 1979, raises numerous concerns, including an especially problematic offence of causing religious, racial or communal disharmony, without further definition or clarification. Certain other offences, such as defacing a road sign, should not be penalised under terrorism legislation.<sup>358</sup> The Act also prohibits certain publications which are likely to cause religious, racial or communal disharmony.<sup>359</sup> Furthermore, it expands police authority in relation to terrorism offences, allowing them to keep a person in custody for 72 hours

<sup>355</sup> Official Secrets Act, 1955, Section 7. Available at: [http://www.commonlii.org/lk/legis/consol\\_act/os50199.pdf](http://www.commonlii.org/lk/legis/consol_act/os50199.pdf).

<sup>356</sup> *Ibid.*, Section 27.

<sup>357</sup> Police Ordinance of 1865, Section 77. Available at:

[http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK\\_Police\\_Ordinance.pdf](http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Police_Ordinance.pdf).

<sup>358</sup> Prevention of Terrorism (Temporary Provisions) Act, 1979, Section 2. Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/8a597180e56d83edc125773700393abb/\\$FILE/Prevention%20of%20Terrorism%20Act.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/8a597180e56d83edc125773700393abb/$FILE/Prevention%20of%20Terrorism%20Act.pdf).

<sup>359</sup> *Ibid.*, Section 14.

before bringing him or her before a judge, and authorising pre-trial administrative detention for three months at a time, which may be renewed for up to a total period of eighteen months.<sup>360</sup>

An updated terrorism law entitled the Counter Terrorism Act of 2018 is currently under consideration. In some areas, it constrains the excesses in the Prevention of Terrorism Act, but activists and civil society have still expressed opposition to several provisions in the bill.<sup>361</sup>

#### Whistleblower, witness and other protection systems for those at risk

Sri Lanka does not have a comprehensive whistleblower protection regime in place. The 2015 Assistance to and Protection of Victims of Crime and Witnesses Act provides protection for witnesses and makes it an offence to harm them. It also establishes a National Authority for the Protection of Victims of Crime and Witnesses, along with a division of the police responsible for witness assistance and protection.<sup>362</sup>

## **Taiwan**

#### Freedom of association: non-profit registration requirements and restrictions on advocacy

Non-profit organisations must register as civil associations in Taiwan. Operating an organisation without registering it may lead to penalties of up to two years' imprisonment or fines.<sup>363</sup> The registration process includes some burdensome elements, such as a requirement that at least 30 people initiate the organisation and compliance with a prescriptive set of internal governance rules.<sup>364</sup> An additional concern is that authorities have relatively broad discretion to deregister organisations based on a violation of the law or encumbering the public welfare.<sup>365</sup>

The Ministry of the Interior is reportedly considering a Social Associations Bill that would replace the current law governing registration of non-profit organisations. Civil society has expressed concern that the new bill is similarly restrictive.<sup>366</sup>

#### Funding restrictions, financial reporting requirements and special tax requirements

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<sup>360</sup> Prevention of Terrorism (Temporary Provisions) Act, 1979, Sections 7 and 9. Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/8a597180e56d83edc125773700393abb/\\$FILE/Prevention%20of%20Terrorism%20Act.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/8a597180e56d83edc125773700393abb/$FILE/Prevention%20of%20Terrorism%20Act.pdf).

<sup>361</sup> For a more complete discussion, see Sri Lanka Draft Counter Terrorism Act of 2018, Human Rights Watch Submission to Parliament, 21 October 2018. Available at: <https://www.hrw.org/news/2018/10/21/sri-lanka-draft-counter-terrorism-act-2018>.

<sup>362</sup> Assistance to and Protection of Victims of Crime and Witnesses Act, 2015. Available at: [https://www.srilankalaw.lk/gazette/2015\\_pdf/4%20of%202015.pdf](https://www.srilankalaw.lk/gazette/2015_pdf/4%20of%202015.pdf).

<sup>363</sup> Civil Associations Act, Articles 60 and 61, as translated. Available at: [https://www.moi.gov.tw/english/english\\_law/law\\_detail.aspx?sn=66](https://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=66).

<sup>364</sup> *Ibid.*, Articles 8, 17-32.

<sup>365</sup> *Ibid.*, Article 58.

<sup>366</sup> Abraham Gerber, "NGO Draft Bill is Cosmetic: Groups", Taipei Times, 7 February 2017. Available at: <http://www.taipeitimes.com/News/taiwan/archives/2017/02/07/2003664505>.

Associations must compile both budget and accounting reports each year, submit them to the members' congress for approval and send a final accounting report to the board of supervisors for auditing. The results of these audits must then be sent to the regulatory authority.<sup>367</sup>

### Media regulation

The media regulatory environment in Taiwan is generally free. Print media are not required to register.

The communications regulatory authority is the National Communications Commission. The law requires the Commission to act independently and in a non-partisan manner.<sup>368</sup> Similarly, a majority of the Commission cannot be affiliated with one political party. However, since the Premier makes appointments with advice from the legislature, the body is not entirely independent from political control.<sup>369</sup>

### Content restrictions

Taiwan's primary problematic content restriction is the criminal insult and slander provisions, which may, respectively, result in up to one or two years' imprisonment. Exceptions exist for fair comment on a matter of public concern, a fair report on court, legislative proceedings or a public meeting, and the protection of a legal interest. Truth is a defence to slander, but only if the statement is on a matter of public concern.<sup>370</sup>

### Internet and digital rights

There are no notable restrictions beyond the aforementioned content restrictions.

### Right to information and secrecy laws

Taiwan's Freedom of Government Information Law is relatively weak, ranked at 114<sup>th</sup> out of the 123 right to information laws assessed by the RTI Rating.<sup>371</sup> The law does not override secrecy provisions in other laws, does not require the authorities to give a reason for denying access and an override for public interest in the information is only available in limited circumstances. Requestors must give personal information and reasons for their request and there are no clear limits on fees.<sup>372</sup>

## **Taiwan's RTI Scores:**

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<sup>367</sup> Civil Associations Act, Articles 34, as translated. Available at:

[https://www.moi.gov.tw/english/english\\_law/law\\_detail.aspx?sn=66](https://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=66).

<sup>368</sup> The National Communications Commission Organization Act, 2011, Article 8, as translated. Available at:

<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=P0000008>.

<sup>369</sup> *Ibid.*, Article 4.

<sup>370</sup> Criminal Code, Articles 310 and 311.

<sup>371</sup> RTI Rating, Country Data, as of January 2019. Available at: <https://www.rti-rating.org/country-data/>.

<sup>372</sup> The Freedom of Government Information Act, 2005. Available at: <https://www.rti-rating.org/wp-content/uploads/Taiwan.pdf>.

Category	Max Points	Score	Percentage
1. Right of Access	6	2	33%
2. Scope	30	20	67%
3. Requesting Procedures	30	9	30%
4. Exceptions and Refusals	30	17	57%
5. Appeals	30	6	20%
6. Sanctions and Protections	8	1	13%
7. Promotional Measures	16	2	13%
<b>Total score</b>	<b>150</b>	<b>57</b>	<b>38%</b>

### Restrictions on freedom of assembly

The Assembly and Parade Act of 1988 requires approval from a competent authority for all outdoor assemblies, with some exceptions for academic, cultural, sports, religious and festive celebration, or assemblies held under another law.<sup>373</sup> Authorities are supposed to approve applications except for in case of enumerated exceptions but these are not narrowly defined. For example, they allow the authorities to deny permission if there is sufficiently obvious evidence to suggest the assembly will endanger the public interest.<sup>374</sup>

These restrictive rules have been mitigated somewhat by judicial interpretation from the Constitutional Court which says that the requirement to obtain permission, without any exclusion for urgent and incidental assemblies, is unconstitutional.<sup>375</sup>

The Assembly and Parade Act significantly restricts speech at assemblies by making it a crime, subject to a fine or up to two years' imprisonment, to insult or defame public agencies or civil servants with words, graphics, speeches or otherwise during an assembly.<sup>376</sup>

### National security

The National Security Act prohibits the obtaining or delivery of confidential information or the creation of an organisation for use by a foreign country or Mainland China. The intent to endanger national security or social stability is required but the lack of clear criteria or definitions risks overbroad application of this offence.<sup>377</sup>

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<sup>373</sup> Assembly and Parade Act, 1988, Article 8, as translated. Available at: <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?pcode=D0080058>.

<sup>374</sup> *Ibid.*, Article 11.

<sup>375</sup> Constitutional Court, Judicial Interpretation No. 718, 21 March 2014, as translated. Available at: [https://www.judicial.gov.tw/constitutionalcourt/EN/p03\\_01.asp?expno=718](https://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=718)

<sup>376</sup> Assembly and Parade Act, 1988, Article 30, as translated. Available at: <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?pcode=D0080058>.

<sup>377</sup> National Security Act, 2013, Articles 6 and 2, as translated. Available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030028>.

A proposed amendment to the National Security Act to stop the spread of “fake news”, specifically misinformation from pro-China sources, has raised concerns.<sup>378</sup>

### Whistleblower, witness and other protection systems for those at risk

There is no comprehensive whistleblower protection regime. The Anti-Corruption Informant Rewards and Protection Regulations provide that an informant’s safety shall be protected although no system for this is provided for.<sup>379</sup> The Witness Protection Act provides for protective orders to be issued for witnesses who testify and imposes penalties on those who disclose identifying information about a witness.<sup>380</sup>

## **Vanuatu**

### Freedom of association: non-profit registration requirements and restrictions on advocacy

Currently, Vanuatu permits informal organisations and does not impose mandatory registration requirements for civil society groups. Organisations may choose to register as one of several forms, the most relevant being as a charitable association under the Charitable Associations (Incorporation) Act. Organisations may register as a charitable association through a relatively simple registration process. The Registrar must grant registration where the application complies with the Act, the association is established for charitable purposes, the sources of funds are shown and committee members or beneficial owners have not been convicted of crimes or placed on a financial sanctions list.<sup>381</sup>

Organisations must submit annual reports, along with a prescribed fee, which detail the organisation’s activities during the past year, specify if any activities have taken place in countries other than Vanuatu, show that activities were undertaken in charitable sectors and describe the financial accounts.<sup>382</sup> Certificates of incorporation may be cancelled on grounds such as committing fraud, undertaking unlawful activities, discriminating against a class of persons, dissolution of the organisation, failure to comply with the law, or violation of anti-money laundering rules or policies governing sources of funds.<sup>383</sup>

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<sup>378</sup> Lawrence Chung, “Taiwan’s Bid to Tackle ‘Fake News’ Raises Fears Over Freedom of Speech”, South China Morning Post, 1 October 2018. Available at: <https://www.scmp.com/news/china/politics/Article/2166262/taiwans-bid-tackle-fake-news-raises-fears-over-freedom-speech>.

<sup>379</sup> The Anti-Corruption Informant Rewards and Protection Regulation, 2016, Article 12, as translated. Available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=I0070003>.

<sup>380</sup> Witness Protection Act, 2018, as translated. Available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030161>.

<sup>381</sup> Charitable Association (Incorporation) Act, section 2(2), as amended by Charitable Associations (Incorporation) (Amendment) Act No. 21 of 2017. Available at: <https://www.vfsc.vu/wp-content/uploads/2016/03/Charitable-Associations-IncorporationAmendment-Act-No.-21-of-2017.pdf>.

<sup>382</sup> *Ibid.*, section 8A; and Charitable Associations (Incorporation) Regulation Order No. 112 of 2015, section 5. Available at: <https://www.vfsc.vu/wp-content/uploads/2018/08/Charitable-Associations-Incorporation-Regulations-Order-No.-112-of-2015.pdf>.

<sup>383</sup> *Ibid.*, section 10.



In December 2018, the Prime Minister proposed a political reform package, including a bill to introduce mandatory registration requirements for charitable associations.<sup>384</sup> The Bill's Explanatory Note justifies this change as necessary to reduce the risk of money laundering and to ensure Vanuatu does not get added to the FATF's Grey list.<sup>385</sup> All charitable organisations would be required to register and be incorporated under the Charitable Associations (Incorporation) Act.

#### Funding restrictions, financial reporting requirements and special tax requirements

Recent amendments to the Charitable Associations (Incorporation) Act reflect clear concerns with the use of charitable associations for money laundering. As noted above, the annual reporting requirement includes financial reporting requirements. In addition, the amendments would strengthen the requirement that charities have appropriate rules and policies governing sources of funds. Such additions target criminal activity and are not inherently problematic but they could also be abused. For example, the amendments do not clearly define what constitutes appropriate rules on sources of funds.

Charitable associations are reporting entities under the Anti-Money Laundering and Counter-Terrorism Financing Act of 2014. Among other requirements, this means that they are subject to certain reporting requirements regarding suspicious activity or transactions and must conduct risk assessments. While preventing money laundering or terrorist financing through civil society organisations is a valid concern, this Act places the same regulatory burden on charities as on private companies. This is not clearly necessary and compliance may be challenging for smaller organisations.

#### Media regulation

Vanuatu's media sector is small and dominated by State-owned outlets. There is only one television channel, the Vanuatu Broadcasting and Television Corporation (VBTC) run by the government, along with a government newspaper and radio station. There are a handful of private radio stations and newspapers.<sup>386</sup>

VBTC is obligated to provide broadcasting services which serve the best interests of the general public but it is not sufficiently independent to be considered a public service broadcaster.<sup>387</sup> Members of the VBTC are appointed by the Minister responsible for broadcasting and television, who may also remove those members for unsatisfactory performance, among other reasons.<sup>388</sup> The law does not clearly guarantee the editorial independence of the VBTC.

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<sup>384</sup> The Vanuatu Independent, "Public consultation on proposed political reform laws", 2 January 2019. Available at: <https://vanuatuindependent.com/2019/01/02/public-consultation-proposed-political-reform-laws>.

<sup>385</sup> Bill for the Charitable Associations (Incorporation) (Amendment) Act No. \_\_ of 2018, Explanatory Note. Available at:

[https://parliament.gov.vu/images/Bills/2018/2nd\\_Extra/English/Bill\\_for\\_the\\_Charitable\\_Associations\\_Incorporation\\_s\\_Amendment\\_Act\\_No\\_of\\_2018.pdf](https://parliament.gov.vu/images/Bills/2018/2nd_Extra/English/Bill_for_the_Charitable_Associations_Incorporation_s_Amendment_Act_No_of_2018.pdf).

<sup>386</sup> Vanuatu Profile – Media, BBC, 14 March 2015. Available at: <https://www.bbc.com/news/world-asia-16426202>.

<sup>387</sup> Broadcasting and Television Act, Cap. 214, section 10(2)(a). Available at: <https://wipo.lex.wipo.int/en/text/197758>.

<sup>388</sup> *Ibid.*, sections 2 and 4.

More positively, in 2018 Parliament removed the VBTC's power to issue broadcasting licences and transferred it to the Telecommunications and Radiocommunications Regulator.<sup>389</sup> This was a much needed step, as it was inappropriate for the primary broadcasting entity in Vanuatu also to exercise regulatory powers over other broadcasters. Less positively, news reports suggest that Parliament is considering amendments which would limit the independence of the regulator.<sup>390</sup>

There are no notable restrictions or licensing requirements placed on the print media or journalists. However, Vanuatu also does not have strong laws or policies protecting journalists and threats against journalists by government officials are reportedly common.<sup>391</sup>

### Content restrictions

Defamation is still a criminal offence with a penalty of up to three years' imprisonment<sup>392</sup> although we did not find any cases of criminal defamation charges being brought against activists or journalists.

A proposed Cybercrime Bill contains additional content restrictions, including defamation or insult to the religion of any class of persons via an electronic device or system. The proposed penalty for defamation would be up to 5 years' imprisonment and/or a fine, while the penalty for offence against religious would be up to 2 years' imprisonment and/or a fine.<sup>393</sup>

### Right to information and secrecy laws

Vanuatu enacted a Right to Information Law in 2016. Overall, this is a strong law, ranking 15<sup>th</sup> out of the 123 countries assessed by the RTI Rating.<sup>394</sup> A few gaps remain, such as the absence of a fee waiver for impecunious requestors and the lack of clear, centrally set rules regarding fees. The primary challenge, however, is implementation of the new law. A Ministerial Order in October 2018 applied the RTI law to all 52 government agencies, expanding from the seven originally targeted for initial implementation.<sup>395</sup>

## **Vanuatu's RTI Scores:**

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<sup>389</sup> See generally the Bill for the Telecommunications and Radiocommunications Regulation (Amendment) Act No. \_\_ of 2018. Available at: [https://www.trr.vu/attachments/Article/724/trbr\\_act\\_no\\_of\\_2018.pdf](https://www.trr.vu/attachments/Article/724/trbr_act_no_of_2018.pdf). As indicated on the website of the Telecommunications Regulator (see <https://www.trr.vu/en/about-us/legislative-framework>), this text was passed into law by Parliament.

<sup>390</sup> Dan McGarry, Telecoms Regulator to be Demoted, Daily Post (Vanuatu), 8 December 2018. Available at: [http://dailypost.vu/news/telecoms-regulator-to-be-demoted/Article\\_c752dd2f-f139-5409-af0d-ec0302f457aa.html](http://dailypost.vu/news/telecoms-regulator-to-be-demoted/Article_c752dd2f-f139-5409-af0d-ec0302f457aa.html). The text of these amendments is not currently available online.

<sup>391</sup> Pacific Media Assistance Scheme, 2013 State of Media and Communication Report – Vanuatu, p. 6. Available at: <http://www.abc.net.au/cm/lb/9280328/data/vanuatu%3A-state-of-the-media-report-data.pdf>.

<sup>392</sup> Penal Code [Cap. 135], section 120. Available at: <https://wipo.lex.wipo.int/en/text/198052>.

<sup>393</sup> Bill for the Cybercrime Act No. \_\_ of 2015, sections 18 and 19. Available at: [http://ogcio.gov.vu/images/Bill\\_for\\_the\\_Cybercrime\\_Act\\_No.\\_of\\_2015\\_Consultation\\_Version.pdf](http://ogcio.gov.vu/images/Bill_for_the_Cybercrime_Act_No._of_2015_Consultation_Version.pdf).

<sup>394</sup> RTI Rating, Country Data, as of January 2019. Available at: <https://www.rti-rating.org/country-data/>.

<sup>395</sup> Ministerial Order as described in Godwin Ligo, "52 Government agencies covered in RTI Second Ministerial Order", 15 October 2018. Daily Post. Available at: [http://dailypost.vu/news/government-agencies-covered-in-rti-second-ministerial-order/Article\\_47c53d5c-447b-50ed-ba77-ba418861def4.html](http://dailypost.vu/news/government-agencies-covered-in-rti-second-ministerial-order/Article_47c53d5c-447b-50ed-ba77-ba418861def4.html).

Category	Max Points	Score	Percentage
1. Right of Access	6	3	50%
2. Scope	30	26	87%
3. Requesting Procedures	30	21	70%
4. Exceptions and Refusals	30	23	77%
5. Appeals	30	26	87%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	14	88%
<b>Total score</b>	<b>150</b>	<b>119</b>	<b>79%</b>

### Restrictions on freedom of assembly

Overall, there are no serious restrictions on freedom of assembly either in law or in practice. Freedom of assembly is guaranteed in the Constitution, subject to the same limitations as other enumerated rights (“respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health”).<sup>396</sup> Provisions of the Penal Code prohibiting unlawful assemblies and riots require either intent to commit an offence, conduct causing reasonable fear of a breach of the peace or provoking others to a breach of the peace.<sup>397</sup>

### National security

The Counter Terrorism and Transnational Organised Crime Act of 2005 contains troublesome language in its definition of terrorist acts, such as a very general reference to acts that prejudice national security or public safety. This is somewhat constrained by an exception for acts committed during advocacy, protest and dissent and which do not damage persons, property or create a serious public health and safety risk.<sup>398</sup>

Similarly, the Penal Code’s definition of sedition contains some potentially problematical language, such as showing disrespect towards the Government. This is limited by language exempting actions intended to expose government error or advocating for a change in the law or government through lawful means. A ban on printing, distributing or knowingly possessing seditious publications, subject to up to 15 years’ imprisonment, could also present an opportunity for abuse.<sup>399</sup>

### Whistleblower, witness and other protection systems for those at risk

<sup>396</sup> Constitution of Vanuatu, 1980, Article 5(1)(h). Available at: [https://www.constituteproject.org/constitution/Vanuatu\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Vanuatu_2013.pdf?lang=en).

<sup>397</sup> Penal Code, sections 68-79.

<sup>398</sup> Counter Terrorism and Transnational Organised Crime Act, 2005, section 3. Available at: [https://sherloc.unodc.org/res/cld/document/vut/2006/counter\\_terrorism\\_and\\_transnational\\_organised\\_crime\\_act\\_html/Vanuatu\\_Counter\\_Terrorism\\_and\\_Transnational\\_Organised\\_Crime\\_Act.pdf](https://sherloc.unodc.org/res/cld/document/vut/2006/counter_terrorism_and_transnational_organised_crime_act_html/Vanuatu_Counter_Terrorism_and_Transnational_Organised_Crime_Act.pdf).

<sup>399</sup> Penal Code [Cap. 135], sections 63 and 65. Available at: <https://wipolex.wipo.int/en/text/198052>.

The new Right to Information Law protects good faith whistleblowers from legal liability, administrative sanction or employment-related sanction.<sup>400</sup> Otherwise, Vanuatu does not have a whistleblower, witness or other system of protection in place.<sup>401</sup>

## Vietnam

### Freedom of association: non-profit registration requirements and restrictions on advocacy

The primary registration form that domestic organisations can elect to use is that of an association, which is governed by the Decree on the Organisation, Operation and Management of Associations. Applicants must first apply for a licence to convene a congress of members and then, within 90 days of convening the congress, the applicant must submit documentation from this meeting, including a charter, minutes of meetings to elect the board, the agenda and the congress resolution. The State then approves the charter.<sup>402</sup> An association is subject to dissolution if its activities seriously violate the law.<sup>403</sup>

The law governing associations does not expressly prohibit political advocacy. However, it is a crime to establish or join an organisation that acts against the people's government. The penalty is up to life imprisonment or even death for organisers or those who cause serious consequences while accomplices face five to twelve years' imprisonment.<sup>404</sup> This essentially prohibits political advocacy on sensitive issues.

### Funding restrictions, financial reporting requirements and special tax requirements

Non-profits must submit annual financial statements about funds received from foreign sources. The Ministry of Finance is also empowered to manage the receipt and use of foreign funds by associations.<sup>405</sup> However, there are no general prohibitions on receiving foreign funds.

### Media regulation

The State essentially controls all of the media in the country. The Press Law requires organisations engaging in media activities to establish a press agency. Permits for press agencies are issued by the Ministry of Information and Communications. The Ministry has the power to grant and revoke all types of permits for press activities and press cards.<sup>406</sup> The law also requires the press to support

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<sup>400</sup> Right to Information Act No. 13 of 2015, section 83. Available at: [https://www.rti-rating.org/wp-content/uploads/2018/08/Vanuatu.RTI\\_.2017.pdf](https://www.rti-rating.org/wp-content/uploads/2018/08/Vanuatu.RTI_.2017.pdf).

<sup>401</sup> UNCAC Implementation Review Group, Executive summary: Vanuatu, 25 November 2013, CAC/COSP/IRG/2013/CRP.19, p. 5. Available at: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf> (and no additional measures since the date of this report).

<sup>402</sup> Decree on the Organisation, Operation and Management of Associations, 2010, Articles 9-13, as translated. Available at: <http://vietnamlawmagazine.vn/decree-no-45-2010-nd-cp-of-april-21-2010-on-the-organization-operation-and-management-of-associations-4709.html>.

<sup>403</sup> *Ibid.*, Article 29.3.

<sup>404</sup> *Ibid.*, Article 109.

<sup>405</sup> *Ibid.*, Articles 24.11 and 37.3.

<sup>406</sup> Press Law, 2016, Articles 6, 7 and 18, as translated. Available at: <https://wipolex.wipo.int/en/text/447052>.

the policies of the Communist Party.<sup>407</sup> Publishing or printing any works without proper certificates or that have been banned is a criminal offence.<sup>408</sup>

Vietnam's Law on Cybersecurity came into effect on 1 January 2019 and gives the State broad powers over the country's digital information networks, including to shut down digital media companies and to force Internet service providers to retain and provide information on their users.<sup>409</sup>

### Content restrictions

The Criminal Code contains several content restrictions. Insult to another person is punishable by a fine and up to three years of community service. Slander, broadly defined as fabricating information or spreading false information that harms another's reputation, is punishable by up to one year' imprisonment.<sup>410</sup> It is also a crime to make statements against the State. Making, storing and spreading information for the purposes of opposing the State is subject to a penalty of five to twelve years' imprisonment or, in extreme cases, ten to twenty years.<sup>411</sup>

The Press Law also prohibits publishing or broadcasting information which is against the Socialist Republic of Vietnam. Among others things, this includes anything that distorts, defames or negates the People's administration, distorts history, undermines the implementation of international solidarity or causes division among people.<sup>412</sup>

The Law on Cybersecurity establishes a broad list of prohibited acts including organising or participating in opposition to the Socialist Republic of Vietnam, duping, enticing or training people to oppose the government of the Socialist Republic of Vietnam, distorting history or denying the history of revolutionary achievement, undermining national solidarity, or providing false information for the purpose of causing public confusion, among other things.<sup>413</sup> It also provides that online propaganda includes any information that slanders or defames the people's government, that is used for psychological warfare, that offends the people or that desecrates certain national leaders and symbols.<sup>414</sup>

### Right to information and secrecy laws

Vietnam's Law on Access to Information, which was passed in 2016 and took effect in 2018, is ranked 100<sup>th</sup> out of the 123 right to information laws assessed on the RTI Rating. The law has

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<sup>407</sup> *Ibid.*, Article 25(3)(b).

<sup>408</sup> Criminal Code, Article 344, as translated. Available at:

<https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

<sup>409</sup> Law on Cybersecurity, 2018, Articles 10-15, as translated. Available at: <https://english.luatvietnam.vn/law-no-24-2018-gh14-dated-june-12-2018-of-the-national-assembly-on-cybersecurity-164904-Doc1.html>.

<sup>410</sup> Criminal Code, 2015, Articles 155 and 156, as translated. Available at:

<https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

<sup>411</sup> *Ibid.*, Article 117.

<sup>412</sup> Press Law, 2016, Article 9, as translated. Available at: <https://wipolex.wipo.int/en/text/447052..>

<sup>413</sup> Law on Cybersecurity, 2018, Article 8, as translated. Available at: <https://english.luatvietnam.vn/law-no-24-2018-gh14-dated-june-12-2018-of-the-national-assembly-on-cybersecurity-164904-Doc1.html>.

<sup>414</sup> *Ibid.*, Article 16.

significantly overbroad exceptions and information can be withheld if it concerns politics, national defence, national security, foreign affairs, economics, sciences, technology or other fields regulated by law. Information may also be withheld if it harms State interests or the wellbeing of the nation.<sup>415</sup>

### Vietnam's RTI Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	3	50%
2. Scope	30	17	56.67%
3. Requesting Procedures	30	16	53.32%
4. Exceptions and Refusals	30	14	46.67%
5. Appeals	30	9	30%
6. Sanctions and Protections	8	2	25%
7. Promotional Measures	16	8	50%
<b>Total score</b>	<b>150</b>	<b>69</b>	<b>46</b>

Deliberate disclosure of classified information is an offence under the Criminal Code, without any exception to protect the public interest.<sup>416</sup>

#### Restrictions on freedom of assembly

Article 25 of the Constitution protects freedom of assembly. However, various laws severely restrict the right in practice. Protests which are deemed to interfere with Communist Party leaders or State entities are banned and prior permission must be obtained for all gatherings of more than five people. Protests outside courts and public buildings are also limited.<sup>417</sup>

Furthermore, the Criminal Code broadly criminalises the “disturbance of public order”, imposing fines or criminal penalties of up to two years’ imprisonment on “any person who causes disturbance of public order which negatively impacts social safety, order, or security.”<sup>418</sup>

#### National security

The Criminal Code and the Counter-Terrorism Law both include broad provisions on “violations” against the State. For example, as noted above, the Criminal Code penalises establishing or joining an organisation that acts against the people’s government.<sup>419</sup> Provisions on sabotaging socio-

<sup>415</sup> Law on Access to Information, 2016, Article 6, as translated. Available at: <https://www.rti-rating.org/wp-content/uploads/Vietnam.pdf>.

<sup>416</sup> Criminal Code, Article 337, as translated. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

<sup>417</sup> Decree 38 of 2006 and Circular 13/2016/TT-BCA, as described in Civicus, Voice and Human Rights Foundation, Joint Submission to the UN Universal Periodic Review, 12 July 2018. Available at: [https://www.upr-info.org/sites/default/files/document/viet\\_nam/session\\_32\\_-\\_january\\_2019/js7\\_upr32\\_vnm\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/viet_nam/session_32_-_january_2019/js7_upr32_vnm_e_main.pdf).

<sup>418</sup> Criminal Code, Article 318, as translated. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>

<sup>419</sup> *Ibid.*, Article 109.

economic policies or solidarity policies carry broad prohibitions and may result in up to 15 years' imprisonment.<sup>420</sup> The Counter-Terrorism law also grants sweeping powers to the Ministry of Information and Communications to control the press as part of an anti-terrorism policy.<sup>421</sup>

#### Whistleblower, witness and other protection systems for those at risk

Vietnam does not have a comprehensive whistleblower protection scheme. Some legal provisions offer limited protection. For example, the Law on Denunciations provides that the People's Committees are responsible for protecting whistleblowers although no specific regime for this is created.<sup>422</sup>

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<sup>420</sup> *Ibid.*, Articles 115 and 116.

<sup>421</sup> Counter-Terrorism Law, 2013, Article 46, as translated. Available at: <https://english.luatvietnam.vn/law-no-28-2013-gh13-dated-june-12-2013-of-the-national-assembly-on-counter-terrorism-79375-Doc1.html#download>.

<sup>422</sup> Law on Denunciations, as translated. Available at: <https://english.luatvietnam.vn/law-no-25-2018-gh14-dated-june-12-2018-of-the-national-assembly-on-denunciation-164912-Doc1.html>.