



INPUTS FOR THE THEMATIC REPORT OF THE SPECIAL RAPPOREUR ON FREEDOM OF OPINION AND EXPRESSION TO THE UN HUMAN RIGHTS COUNCIL: "FREEDOM OF OPINION AND EXPRESSION AND SUSTAINABLE DEVELOPMENT - WHY VOICE MATTERS"

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Contribution by:

Asian-Pacific Resource and Research Centre for Women (ARROW) based on ARROW's long-running, peer-reviewed serial publication that explores current and emerging issues related to SRHR, as well as its inter-linkages with other development issues:

- **ARROW FOR CHANGE (AFC): The Right to Freedom of Speech and Expression.**

Link to publication:

https://arrow.org.my/wp-content/uploads/2020/12/AFC_Right-to-Freedom-of-Speech-Expression.pdf

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CALL FOR INPUTS TO THE THEMATIC REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF OPINION AND EXPRESSION TO THE UN HUMAN RIGHTS COUNCIL: “FREEDOM OF OPINION AND EXPRESSION AND SUSTAINABLE DEVELOPMENT - WHY VOICE MATTERS”

Response to Questionnaire

- 1. In your view, how does the right to freedom of opinion and expression contribute to the achievement of the SDGs? Please provide examples, where possible, with concrete data relating to impact. Please also mention relevant laws, policies and other measures.***

SDG16 seeks to 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'. In doing so, freedom of expression, including the right to accurate and accessible information, and press freedom, have direct connections to achieving Goal 16. Without freedom of expression and information, open and inclusive societies, which are integral to sustainable development, will not be able to thrive.

We cannot have democracy without freedom of expression. The regional trend of further oppression to the civic space contributes to the heightened intimidation and risks faced by women human rights defenders (WHRDs) across the region. Article 19 in the Universal Declaration of Human Rights establishes, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” This right is fundamental to participation, accountability, sustainable development and exercise of all other rights, including SRHR, and extends to the realm of online and offline settings in the contemporary context in the Asia Pacific region. Sexuality and SRHR information and services, have clear connections in the established right to freedom of expression and access to information. This builds from the fact that all human rights—political, civil, social, cultural and economic—are equal in importance and none can be fully enjoyed without the others.

- 2. Are there restrictions or other challenges to freedom of expression or access to information that affect the delivery of public services and achievement of economic, social and cultural rights in your country? Which groups of people are most affected by these restrictions and in what ways? What measures would you recommend to address their problems?***

Almost all ASEAN Member States have criminalised the dissemination of disinformation in offline and online spaces, resulting in the curtailment of necessary information and dialogue, and often covering measures targeting peaceful government critics or dissidents. Technology and the digital space are also impacting freedom of speech and expression. Though platforms are available, the uneven distribution in the access to, use of, or impact of information technologies severely affect women and LGBTIQ persons access to online freedom of expression. In addition, surveillance technology has increased insecurity, especially to dissenting voices. Wiretapping, social media tracking, biometric



and facial recognition used by state and non-state actors are utilised to further silence dissent, often leading to judicial harassment and systematic cyberattacks to those focused on human rights issues. Freedom of expression is heavily restricted in East Asia. Governments utilise a range of legal means to control and monitor information online and offline. In China, publication houses are required to have government licenses. Unauthorised publishers, news agencies, and journalists face the risk of being closed down if found to be noncompliant. The State Public Officials Act in South Korea and the Social Order Maintenance Act in Taiwan both restrict individuals attempting to express opinions that may be detrimental to 'public order.' Censorship and heavy restrictions have also encroached cyberspace. China's National Security Law contains broad provisions designed to control and manage online content. A 2016 Cybersecurity Law further strengthens existing censorship regulations and mandates Internet service providers to actively monitor customers' accounts. South Korea's Network Act and Mongolia's state-run Communications Regulatory Commission regulate online freedom of expression and empower government bodies to monitor and censor online content. These laws have been used against government critics to stifle dissenting views that relate to both the political and civic space. South Korea's Park GeunHye administration used the Network Act to prosecute critics.

Repressive laws are used to target human rights defenders and political dissidents. They remain subject to fabricated charges, State-sanctioned violence, imprisonment and extrajudicial killings. In Bangladesh and India, freedom of expression, particularly of the press, is limited by government controlled means such as control of licensing, content restrictions, and censorship. Bangladesh's Broadcasting Act under its National Broadcasting Policy 2014 significantly curtails critical speech under vaguely defined clauses like those that ridicule national ideas, spark unrest, hurt religious values, ridicule law enforcement agencies, and runs counter to government or public interest. The Pakistan government has severe restrictions and control over freedom of the press and media imposed through provisions of government formed entities like the National Broadcasting Policy, Electronic Media Regulatory Authority and Electronic (Programs and Advertisement) Code of Conduct. These prevent anyone from airing or publishing content that is deemed derogatory on religious sects, promotes sectarianism, defamatory or contradicts Pakistan's ideology and religious values.

In the era of COVID-19, many countries in the region responded with a wide number of measures, including the introduction of new laws and policies. Cambodia, Laos, Thailand, and the Philippines, instituted state emergency law which gave governments sweeping power. Singapore, Malaysia and Indonesia did not declare emergencies but instead used existing laws and/or introduced specific, non-emergency legislation. Indonesia, Malaysia and Thailand utilised contact tracing apps that act as surveillance for the people's movement. Government responses have involved a crackdown on the rights to freedom of expression, peaceful assembly and association as well as violation of the right to liberty.

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



decision-making. At times, women and LGBTIQ persons face online sexual and gender-based violence; bans on wearing certain types of clothing, and more. In order to fully and meaningfully promote and defend the universality of freedom of expression and freedom of information, violations including censorship, threats, and attacks must be understood through the eyes and experiences of women and LGBTIQI persons, and the specific and unique threats must be addressed.

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

Recommendations:

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

3. *What factors affect the right to expression and information of women and girls, indigenous peoples and other poor and marginalized communities and their access to information and communications technology in your country? What legal, policy or other measures has the government taken to overcome these problems? How effective are these measures and what improvements would you recommend?*

Sexuality and SRHR information and services, have clear connections in the established right to freedom of expression and access to information. This builds from the fact that all human rights—political, civil, social, cultural and economic—are equal in importance and none can be fully enjoyed without the others. At the 1994 International Conference on Population and Development (ICPD)



Programme of Action, and the Beijing Platform for Action (table), governments endorsed the right to be informed on SRHR. Furthermore, the UN Committee on Economic, Social and Cultural Rights, noted in its general comment in 2000 that the right to health is connected and dependent on the realisation of rights such as the right to information. The Committee further recommended that

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

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

4. *What have digital companies done to promote safe and uninterrupted online access to timely and pluralistic information and communications of women and poor and marginalized communities? How can information and communication technology companies better engage with governments and communities to promote sustainable development?*

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

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



5. What role does the media play in promoting sustainable development in your country? What challenges and threats do journalists face in accessing public information or reporting on or criticizing development policies?

Please refer to our response to Question 2. In addition:

On July 3, 2020, Philippine President Rodrigo Duterte signed the Anti-Terrorism Bill into law, a much contested legislation that sought harsher measures against suspected terrorists. Its proponents say repealing an already existing anti-terrorism law was a matter of national security, but critics are afraid that the new law's vague definition of a 'terrorist' could be used against the government's dissenters and stifle freedom of expression in the country. Just about a week after the Anti-Terrorism Law took effect, the Philippine National Police confiscated copies of the progressive magazine Pinoy Weekly, for allegedly promoting "anti-government" sentiments. Red-tagging, or labelling people or groups as subversives, is not new in the Philippines, but human rights groups fear that it has gotten especially dangerous because of the new powers authorities gained from the new law. The Anti-Terrorism Law expands the definition of a terrorist and makes "inciting to commit terrorism" through "speeches, proclamations, writings, emblems, banners, or other representations" an offense punishable by 12 years imprisonment. The law does not specify social media posts critical of the government as an act of terrorism but many are afraid that the crackdown could extend to the internet, where many Filipinos are active in sharing opinions on current events.

6. What do you believe are the key issues in relation to sustainable development in addition to or instead of the bullet points above that deserve attention by this mandate? Do you have any specific recommendations that you think the Special Rapporteur should make in her report?

Tying all our responses together, we recommend the following:

- Repeal all laws criminalising people who speak out or protest peacefully. In addition, articles of the Penal Code must be amended or repealed. The criminalisation of defamation is in violation of international standards on free expression, which hold that defamation must be a private matter to be settled by civil suits. Civil defamation laws must be proportionate, have a reasonable severity threshold and avoid fines, with the exception of very serious cases. Defamation and blasphemy should not be a criminal offence, hence any mention of defamation and blasphemy within the Penal Code must be repealed in their entirety.
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- States should take measures to ensure SRHR information does not discriminate against groups such as unmarried women, young people, ethnic, indigenous and minority groups, gender non-conforming or any other groups or individuals. It is the core obligation of States to ensure the repeal of laws, policies and practices that criminalise, obstruct or undermine access to sexual and reproductive health information and services.