

The Expression Agenda Report 2016 / 2017

The state of freedom of expression
and information around the world

ARTICLE 19



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ARTICLE 19 works for a world where all people everywhere can freely express themselves and actively engage in public life without fear of discrimination. We do this by working on two interlocking freedoms which set the foundation for all our work.

The Freedom to Speak concerns everyone's right to express and disseminate opinions, ideas and information through any means, as well as to disagree from, and question powerholders. The Freedom to Know concerns the right to demand and receive information by power-holders for transparency good governance and sustainable development.

When either of these freedoms comes under threat, either by the failure of power-holders to adequately protect them, ARTICLE 19 speaks with one voice, through courts of law, through global and regional organisations, and through civil society wherever we are present.

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The State of Freedom of Expression and Information 2017

Thomas Hughes, Executive Director, ARTICLE 19

Freedom of expression belongs to everyone. All of us now have the possibility to be a writer, an activist or a publisher and find a platform to be heard in public, and everybody may therefore face censorship or penalties that were once chiefly a concern for professional journalists and advocates. This revolution in communication since ARTICLE 19 was founded 30 years ago has transformed the space for expression: technology has not only multiplied our ability to participate, it has also increased the possibilities for managing information. We are witnessing a time when governments worldwide are retreating from the commitment to human rights. Freedom of expression is often the first casualty: censorship in the name of national security, new laws to protect us from offensive speech, and unprecedented surveillance of our private communications. It is more important than ever to remember why the protection of freedom of expression is an essential condition of our liberty – enabling us to participate in public life, enjoy a private life and hold the powerful to account. Without it, all our other rights are at risk.

ARTICLE 19 has developed a comprehensive strategy for addressing this complex terrain for free speech in the 21st century – from the protection of individual activists and journalists on the ground in some of the most dangerous countries in the world, to shaping legal frameworks and policy to ensure that states respect international standards. This includes addressing the more traditional means of censorship that have long been the tools of authoritarian regimes – the intimidation, prosecution, imprisonment, and sometimes even murder of journalists, bloggers and human rights defenders. Our work focuses on five strategic areas for freedom of expression and information, ensuring that our defence of free speech is total: civic space, media, digital, protection and transparency. With ten offices across the world, our reach is global. And while we cannot be everywhere physically, our active engagement with the most influential international fora for human rights, including the United Nations (UN), African Union, European Union, Council of Europe, Organization of American States, and Organization for Security and Co-operation in Europe, means that we can make a truly global impact.

As ARTICLE 19 celebrates a generation of advocacy for free speech since the organisation was founded in 1987, we have joined with the social science database V-Dem to launch a unique, authoritative assessment of freedom of expression and information worldwide. With V-Dem's new approach to measuring democracy, the findings of our Expression Agenda (XpA) metric reveal the key threats facing freedom of expression and information, enabling us not only to target our advocacy more effectively, but to measure the impact of our work, as well as provide a lobbying tool for our partners around the world and a reliable new source of insight for journalists, activists, and policymakers. Whilst some of the headlines may not be a surprise, we must not allow ourselves to become numb to the threats or accept anything less than the full realisation of our rights. We should be alarmed that global media freedom is at its lowest level for ten years with state censorship on the increase; academic and cultural freedom at risk; online censorship

accelerating; the space for civil society shrinking; attacks on journalists and activists rising; and commitments to transparency in retreat.

Alongside these trends, technology continues to be a game changer, not only in terms of our access to information, but also in keeping our communications confidential. The question of who controls information has become one of the leading issues of our time: our data is increasingly in the hands of private companies and censorship is no longer solely executed by humans, but now also by algorithms. Surveillance and the loss of privacy are becoming an equally concerning chill on freedom of expression. The United Kingdom has passed one of the most draconian surveillance legislation of any democracy, offering a template for authoritarian regimes and seriously undermining the rights of its citizens to privacy and freedom of expression¹. In one of the most alarming recent cases, the ARTICLE 19 team in Mexico worked with partners to uncover and expose one of the world's largest cases of mass and illegal targeted surveillance of communications. When considered in a context where 111 journalists have been killed since 2000, where state actors are often allegedly complicit or even responsible and there's an impunity rate of more than 99% for attacks, the chilling effect on freedom of expression is extreme².

ARTICLE 19's pioneering work with V-Dem will enable us to assess the multiple complex factors that make an environment unsafe for journalists and activists today: from harassment and access to justice, to self-censorship and legal restrictions. The launch of our XpA metric will also serve to highlight critical information gaps. As the right to protest comes under increasing assault, there is a need for more finely calibrated measures of this erosion, so that we can assess, for example, the impact of the criminalisation of protesters and the use of technology to undermine activism. Similarly, there is a lack of effective criteria to assess the impact of Internet governance and technology standards on freedom of expression and information. We intend to include this data in our future metrics, ensuring that the global threats to free speech can be measured with an unprecedented level of sophistication. This will enable ARTICLE 19 to map this increasingly complex territory with the necessary expertise in order to safeguard the ethical and legal frameworks for an open society and to defend free speech for all.

The protection of individuals on the frontline is at the heart of our work. Our knowledge of the tactics used to silence dissent on the ground helps to drive our advocacy at the national, regional, and international levels. In 2016, the year from which the V-Dem data is drawn, there was much

¹ The Investigatory Powers Act, passed in November 2016

² Mexico, guardian of impunity', Animal Politico, November 2017: <http://www.animalpolitico.com/blogueros-altoparlante/2017/11/06/mexico-guardian-la-impunidad/>"

cause for concern. In Bangladesh, we recorded 320 attacks against journalists and bloggers: three were murdered, including Xulhaz Mannan, editor of the country's first and only lesbian/gay/bisexual/transgender/intersex (LGBTI) magazine Roopban. In Brazil, 22 journalists received death threats and four were murdered. In Mexico, there were 426 attacks against journalists and media outlets, including the murder of 11 journalists. When the authorities failed to prosecute the killers of journalist Pedro Tamayo, his colleague and partner Alicia Blanco bravely denounced their failure to act. She too then became the victim of death threats. In Kenya, more than 80 journalists faced aggression while carrying out their work. The journalist Isaiah Gwengi was arbitrarily detained, beaten, stripped, and taunted by police officers while covering a story on police brutality. The list of attacks around the world is seemingly endless³.

This shocking catalogue of cases is testament to the level of impunity globally, creating a vicious circle of continued intimidation and self-censorship. Alongside state repression, organised crime and religious fundamentalism constitute serious threats for journalists and human rights defenders. Moreover, the rise of citizen journalists, bloggers, and information activists has put more individuals and groups at risk than ever before. In Turkey, now the biggest prison for journalists in the world, trainers and advocates for our partners at Hivos and Amnesty International have been imprisoned and face prosecution. In such a testing climate for freedom of expression, ARTICLE 19 will continue its essential work engaging with governments, calling for access to justice along with the development of effective policies and legal remedies.

However, the news is not all bleak. In ARTICLE 19's lifetime the call for greater transparency is one of the most significant positive shifts for freedom of expression and information. Once again, it is technology that has fuelled the revolution, giving all of us access to information on an unprecedented scale. WikiLeaks, Edward Snowden, the Panama Papers, and, most recently, the Paradise Papers have contributed to transforming our expectations of open democracy, putting pressure on governments to be accountable. The right to information is now law in 119 countries, which is an extraordinary development over the past 20 years. With it, inevitably, have come new attempts to control access to information, including the use of national security and counter-terrorism legislation to harass whistleblowers and shut down investigations. Nevertheless, we are seeing more countries adopt freedom of information laws in a continuing trend. We're also heartened to find international commitments to the protection of journalists becoming stronger, whilst the situation has reportedly improved in some countries, such as Tunisia, Sri Lanka, and Nepal.

³ All statistics quoted are compiled by ARTICLE 19's regional offices and teams, and further information can be found in the relevant ARTICLE 19 reports or statements

Much still needs to be done to protect journalists from politically motivated prosecutions and imprisonment, but we're pleased to see some advances in the global fight to repeal criminal defamation. As an example, following a petition from ARTICLE 19, the High Court in Kenya declared the offence unconstitutional earlier this year. As people take to the streets and online to voice their protest in ever greater numbers, ARTICLE 19 is working on the ground with authorities and civil society to encourage a response that is based on respect for human rights, which is a significant advance on law enforcement's reliance on crowd control techniques that so often end in violence. In 2016, our advocacy resulted in the adoption of a landmark protocol on the use of force by the police during protests and social demonstrations in Mexico City⁴. Similarly, we can report success in protecting digital space, as thanks to our work with internet governance bodies and technology companies, human rights are now being incorporated into technology standards and online tools. This is a critical achievement that will help to safeguard the digital world for the future.

The launch of the XpA metric demonstrates the challenges facing every individual who seeks to enjoy their fundamental rights. For ARTICLE 19, for our partners and supporters, we hope that it will provide a barometer that can help guide us through the next 30 years of challenge and change.

⁴ <https://articulo19.org/estado-de-mexico-proyecto-de-ley-sobre-uso-de-la-fuerza-es-una-puerta-a-la-arbitrariedad/>

About the Expression Agenda (XpA) Metric

The XpA metric gives a comprehensive picture of the state of freedom of expression and information internationally in 2016, using independently collected and verified data. ARTICLE 19 has partnered with the V-Dem (Varieties of Democracy) Institute, whose multi-dimensional dataset examines 350 aspects of democracy, enabling a cutting-edge analysis that presents the challenges and complexity of the landscape for freedom of expression. Moreover, by reviewing the historical data V-Dem holds for the past ten years, this has provided an opportunity to review trends over the decade in selected countries.

During the development of the United Nations Agenda 2030 (formerly called the Sustainable Development Goals), freedom of expression was excluded on the grounds that it is not measurable: it was considered to be too abstract a concept to evaluate comparative progress rigorously. The lack of a global measure has been an impediment to mobilising resources to protect this fundamental right around the world. V-Dem's pioneering work, now the largest social science data collection project in the world, has at last made it possible to evaluate the state of freedom of expression effectively.

ARTICLE 19 has worked with V-Dem to select 32 indicators⁵ out of the 350 measured by V-Dem to provide a rich and multi-faceted view on the challenges facing freedom of expression and information globally. These indicators have been aggregated into five indices based on ARTICLE 19's assessment of the five defining elements of freedom of expression, as set out in our Expression Agenda strategy.

- **Civic Space:** civic space is the place, physical and legal, where individuals realise their rights. It includes the freedom to speak and to access the means to do so, participate in public decision-making, organise, associate, and assemble. A robust and protected civic space forms the cornerstone of accountable, responsive, democratic governance and stable societies.
- **Media:** media pluralism and media freedom are essential for protecting and promoting freedom of expression and the public interest in an increasingly globalised, digitalised, and converged media landscape worldwide.
- **Transparency:** the basis of transparency is the right of individuals to obtain information from both public and private bodies, where their actions relate to how government operates or affect the public interest. Communities and individuals are then empowered to hold governments and other actors accountable in promoting and defending human and socio-economic rights.

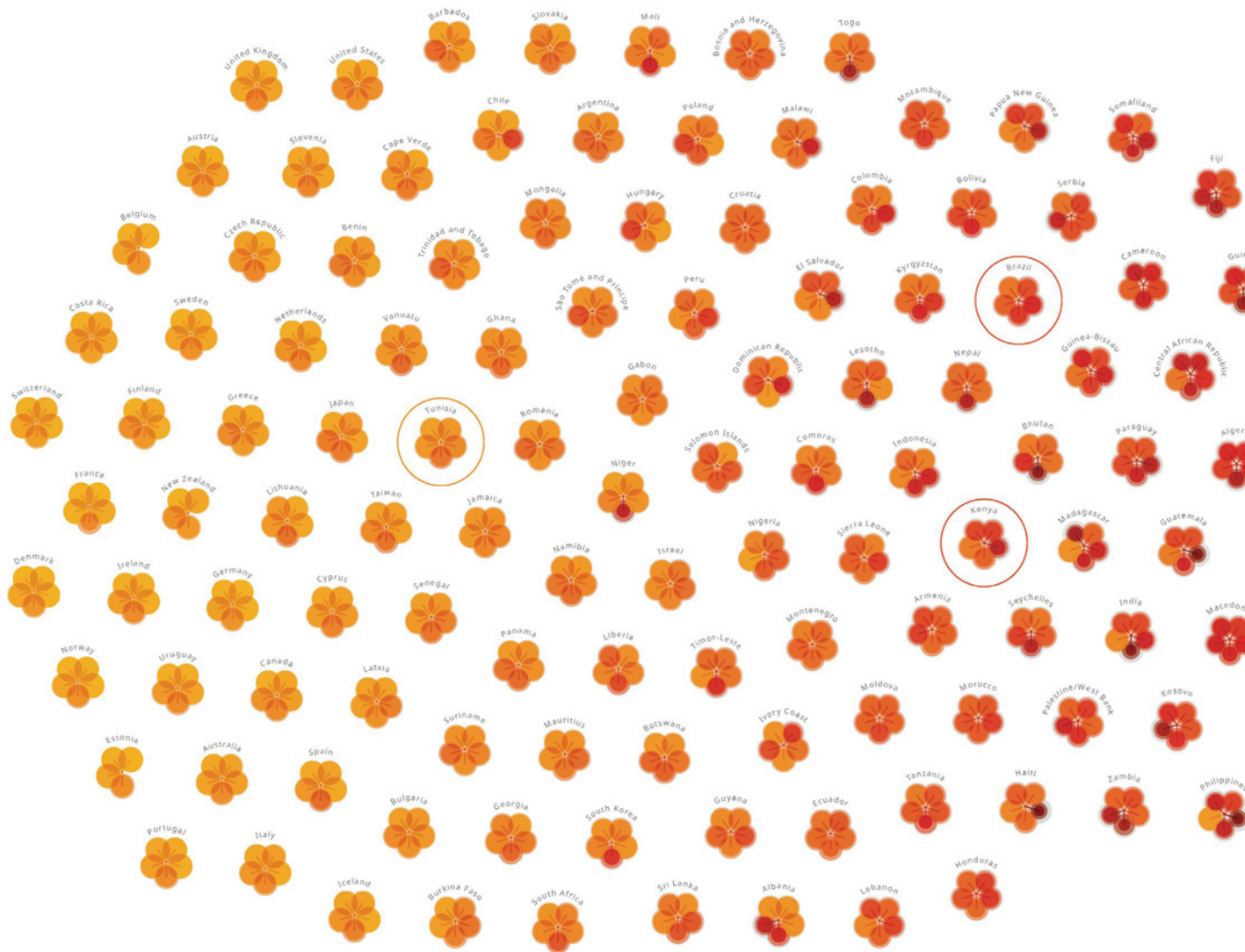
⁵ See Appendix, page 32

- **Digital:** human rights principles on freedom of expression and information must be embedded in the laws, policies, products and processes that have an impact on the Internet. In the digital era, freedom of expression includes a commitment to protect the individual's right to access and engage in debate, dissent, and information-sharing on an open Internet.
- **Protection:** those on the frontline of defending freedom of expression and information must be supported by effective networks of institutions and activists, and by strong legal frameworks and mechanisms. This helps to ensure the safety of communicators and to hold those who violate freedom of expression accountable.

By examining freedom of expression in this holistic approach, we can achieve a far deeper understanding of the benefits, risks, and global trends that impact on the ability of everyone to raise their voice and be heard, regardless of sex, gender, ethnicity, race, or religion.

This metric is a work in progress: some of the indicators that ARTICLE 19 considers relevant for assessing the state of freedom of expression have not yet been measured by V-Dem. This includes restrictions on the right to protest, the impact of Internet governance and financial transparency. ARTICLE 19's partnership with V-Dem will support the development of additional, relevant indicators in the global dataset. We would welcome your feedback on the selected indicators as we refine this for the future. We hope that this metric, to be published annually, helps galvanise action at the global, regional, and national level to protect freedom of expression for future generations.

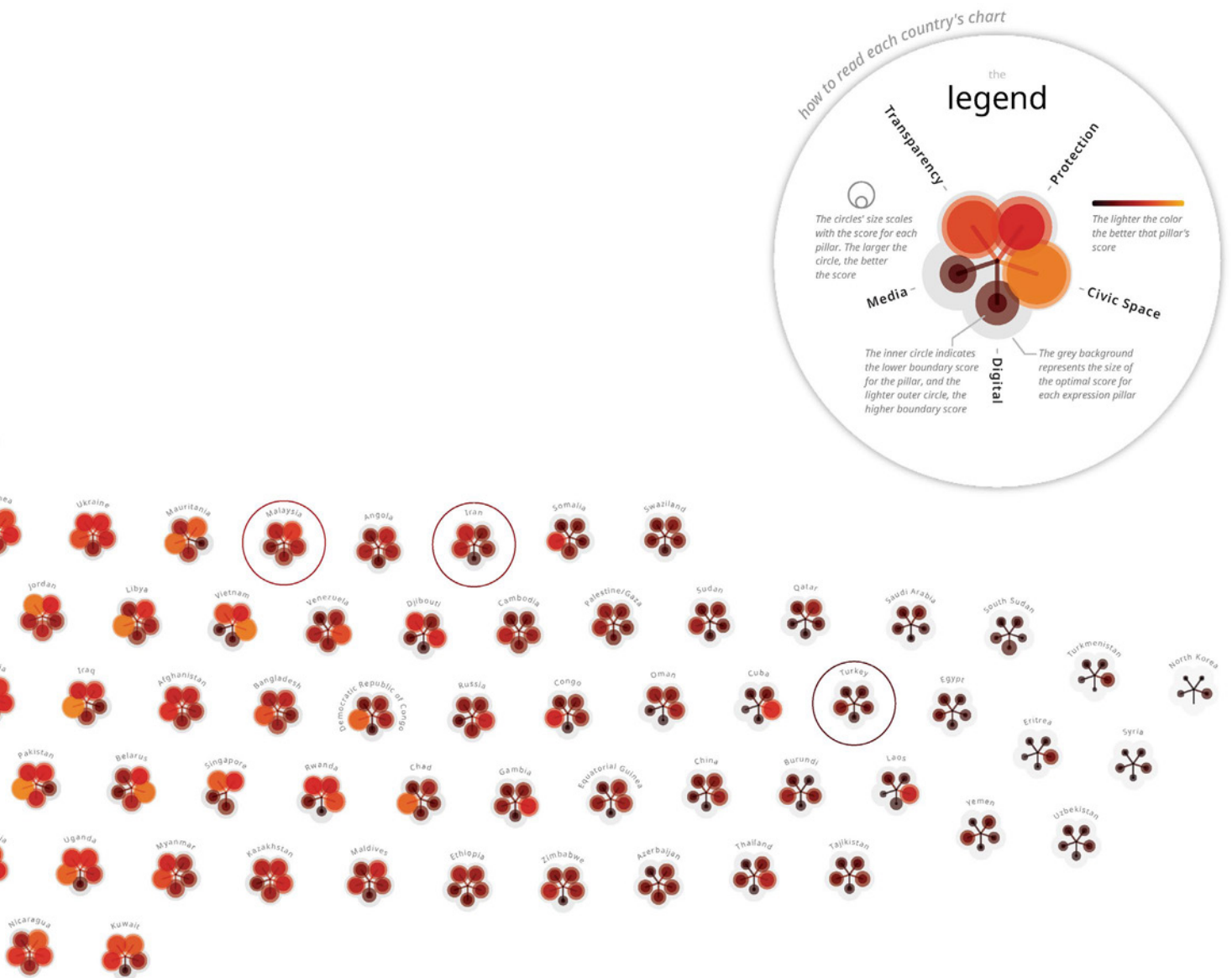
The Expression Map 2016



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Global Thematic Trends

Civic Space

Civic space is the place where individuals realise their rights. It is the freedom to speak and to access the means to do so: to receive information, participate in public decision-making, organise, associate, and assemble.

A robust and protected civic space forms the cornerstone of accountable, responsive, democratic governance and stable open societies. ARTICLE 19 and its partners seek to ensure that the right to participate publicly in decision-making, engage in open debate, criticise, protest, and dissent, in physical and online space, are widely recognised in legislation, policy, and practice.

This approach strengthens and protects civic discourse, actively supporting the voices of the marginalised. However, governments are employing unprecedented legal and extra-legal measures to silence dissenting voices, impede civic action, and stigmatise individuals and civil society organisations (CSO) both on and offline. These tactics include labelling non-governmental organisations (NGOs) as ‘foreign agents’ and engaging in illegal surveillance of NGOs and journalists. The power to realise or restrict rights is further complicated by the role of private sector actors, both through technology, developed at their discretion and at the request of states, and through more traditional means, such as vexatious litigation, where corporations may seek to silence activists who call their practices into question. There is a strong link between the factors influencing the indices for digital, protection, and civic space.

Not surprisingly, it is often the most vulnerable individuals in society who bear the brunt of rights violations in a shrinking civic space. They face additional barriers to speaking out and being heard. Laws that target or disproportionately affect these individuals and groups undermine the founding principle of human rights law – that all people are equal in dignity and rights.

The XpA metric looks at a combined set of indicators to assess the state of civic space in a number of countries and the ability of civil society organisations to associate and be active. The indicators consider the participatory environment outside elections, and how equality and tolerance are practiced and perceived based on membership of social groups⁶ or on gender and/or sexuality.

⁶ A social group is differentiated within a country by caste, ethnicity, language, race, region, religion or a combination. It does not include identities grounded in sexual orientation or socio-economic status. Social group identity is contextually defined and is likely to vary across countries and through time. Social group identities are also likely to cross-cut, so that a given person could be defined in multiple ways, i.e., as part of multiple groups. Nonetheless, at any given point in time there are social groups within a society that are understood – by those residing within that society – to be different, in ways that may be politically relevant.

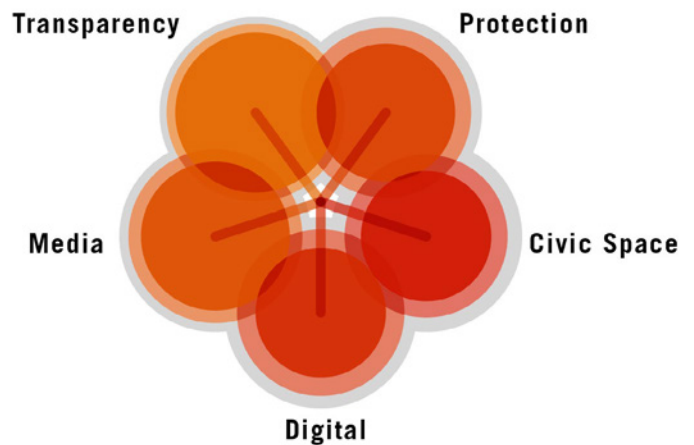


Image 1: Expression pentafoil for Brazil

Key trends

The cumulative indicators for civic space reflect a general international trend towards a shrinking space: there has been a notable decline since 2010. This corresponds with a period of increasing authoritarianism globally.

We see this trend in an increasingly fragile legal environment for civil society organisations as governments have adopted measures designed to stifle dissent and accountability. The environment for civic debate and participation has also diminished significantly over the past ten years, as demonstrated by a decline across indicators that look at the repression of civil society organisations, access to justice, power by social group, and engaged society indicators.

In its annual report for 2016, V-Dem calls particular attention to the decline in the indicator that measures ‘engaged society’⁷, including the extent to which broad public deliberations are held when important policy changes are being considered. The worrying decline of ‘engaged society’ in countries as diverse as the United States (US), Brazil, India, and Mongolia, illustrates that a key principle of open deliberative democracies is under pressure. Democratic governance is founded on the principle of voters’ engagement in decision-making and with lawmakers. An erosion could signal a deeper challenge for democracies globally. This indicator is also closely linked to a decline in the XpA metric’s media index (see p21), as the media comes under pressure in the digital landscape.

In the lengthy build up to the contested elections in Kenya this year, the authorities invoked alleged national security concerns as grounds for obstructing freedom of expression and access to information. Similarly, in Cambodia, preparations for elections in 2018 have been accompanied by a drastic deterioration in the safety of human rights defenders and journalists. Impunity for attacks, as well as attempts to reduce civic space through new laws and policies on association and crackdowns on peaceful protests, are well documented.

An increase in hate speech has also resulted in eroding civic space. This is reflected in declines in the indicators for freedom of religion, social class, and social group equality in respect of civil

⁷ The ‘engaged society’ indicator asks: when important policy changes are being considered, how wide and how independent are public deliberations?

liberties. Divisive nationalist rhetoric has become a dominant issue, whether viewed through the lens of Brexit, the US elections, the Myanmar Rohingya crisis, or the Kenyan elections. The driving factors behind hate speech are complex, requiring sophisticated solutions to protect freedom of expression and address some of the root causes that allow nationalistic rhetoric to have political influence.

This trend defines another challenge to freedom of expression: defending the right both from those who seek to abuse it to justify hateful speech and in order to control dissenting and legitimate speech. International law sets clear standards and limits on the right to freedom of expression and information, which must be respected.

More positively, the data indicates notable progress in the inclusion of women in the democratic process. The indicator for 'power distributed by gender' demonstrates that more countries experienced statistically significant increases than decreases, mostly due to substantial improvements in Myanmar, Tunisia, Algeria, Ecuador, and Sierra Leone.

In Brazil, Bangladesh, and Turkey the civic space index shows a serious decline over the last ten years, and is accompanied by a decline in most, if not all, other indices: protection, transparency, digital, and media. In Brazil, the economic crisis and corruption scandals in the lead up to the World Cup 2014 and Olympics 2016 brought people out on the streets to demand accountability and an end to impunity. The authorities met the response with disproportionate force and new laws criminalising protest, as well as reversing progressive human rights initiatives.

In Bangladesh, religion and national identity are generating serious tensions and creating a dangerous climate for those who speak for freedom of religion or belief and human rights. One of the most dramatic deteriorations of civic space has taken place in Turkey. This includes the routine suppression of dissent through intimidation and malicious charges, accompanied by a concerted government effort to delegitimise opposing voices in the public sphere.

In Kenya and Senegal, the civic space index has not declined over the past decade. Nevertheless, gains in some areas are marred by setbacks in others. States such as Kenya are using innovative ways to restrict the space, employing laws that indirectly affect expression and association, such as cyber-crime, counter-terrorism and public order legislation that are not reflected in the traditional indicators for civic space. Public benefit organisations in Kenya, especially those working on human rights issues or with marginalised groups, contend with harassment, intimidation, stigmatisation and criminalisation. There has also been a marked slide in the protection of journalists and human rights defenders in Eastern Africa. This may be due to the failure to implement existing laws and policies.

Progress is possible, but against a backdrop of increasing pressures. In Tunisia, from the advent of the Arab Spring through to the Tunisian Revolution, we have witnessed the influence of a flourishing civic space through the change from a repressive government to one keen on adopting positive standards, including the new constitution in 2014. Tunisia represents fragile progress in an otherwise fraught region: its transition to democratic governance is not yet secure and requires continued effort and support to realise its full potential.

Against this backdrop, while threats to civic space are increasing, so is the response of its defenders. Political actors, nationally and internationally, are speaking up against the shrinking space and calling for the reform of inadequate legislation. This requires continued advocacy for the adoption of progressive legal and policy frameworks, channelled through identified government champions. In particular, the right to protest, which has come under increasing challenge around the world, must be vigorously defended in law and practice. The worrying decline in engaged participation in decision-making requires further study to understand the root causes and what can be done to improve public participation. It is through this participation that the rights to expression and information can demonstrate their power to change lives on the ground.

Looking ahead: measuring the right to protest

As a result of pervasive corruption, lack of transparency and accountability, impunity, and abuse of power in many of our target countries, ARTICLE 19 has seen individuals and civil society organisations respond using traditional and innovative ways to mobilise and make their voices heard. This has been empowering for communities and individuals and demonstrates the resilience of civil society. However, we have also seen governments responding with equal force and by limiting the right to protest through the use of technology to undermine activists and human rights defenders. ARTICLE 19's report *In the streets, in the laws, in the courts: violations of the right to protest in Brazil, 2015-2016* provided a detailed analysis of the process of criminalisation of the right to protest that has occurred in Brazil in the three branches of governance: executive, legislative, and judicial.

At present, there are no effective international measures of the right to protest globally. ARTICLE 19 will be working with V-Dem to define potential additions to the codebook that will enable a more comprehensive assessment of its state of health in future reports.

Digital

The Internet is the most disruptive communication technology of our age. It enables us to express our opinions in near real time and to an extent never before imagined. The technology that makes this possible can also be used to block access to content and facilitates electronic surveillance on an unprecedented scale. States have increasingly sought to regulate the Internet through legislation or by putting pressure on private actors to censor on their behalf. Much of the world's online content is now regulated by the community standards of a handful of Internet companies, whose processes lack transparency and are not subject to the checks and balances of traditional governance. Moreover, the bodies that manage Internet resources play a critical role in developing technological standards that incorporate human rights values and enable the free flow of information.

Governments have sought to exercise control through the adoption of laws or by interfering with the Internet's infrastructure. States are also increasingly seeking to pass legislation to enable digital surveillance, from imposing backdoor encryption to legalising mass surveillance. Alongside attempts to restrict anonymity online, these moves greatly facilitate the surveillance of our communications and pose a chilling effect on freedom of expression.

Against this background of complex and multi-layered developments, ARTICLE 19 seeks to protect and promote an Internet that enables the defence of human rights.

Key trends

Internet censorship has dramatically increased since 2006, a year in which both Facebook and YouTube were in their infancy and Twitter had just been created. V-Dem's indicators demonstrate a decline in both Internet freedom and freedom of discussion online for men and women over the past ten years. Freedom of discussion online for women is under significant challenge, particularly in countries such as Brazil, Uganda, Azerbaijan and Turkey. Men are also encountering significant restrictions to their freedom of discussion in these countries. Overall, the vast majority of countries restrict access to a range of websites. During the course of the last two years in particular, ARTICLE 19 has seen new regulatory trends emerge.

With increased reliance on internet platforms as the primary means of communication and expression, companies are slowly assuming the role of gatekeepers. There has been a tendency among social media companies to fail to take human rights violations seriously, by either reinstating legitimate content that has been removed or addressing problems in the application of algorithms. Due to a lack of transparency, it is hard to uncover these violations of human rights and freedom of expression unless a verifiable harm occurs. The standards for protecting

legitimate speech are at risk of being reduced to the proprietary terms of service and internal guidelines of online platforms, thereby significantly hindering the exercise of freedom of expression.

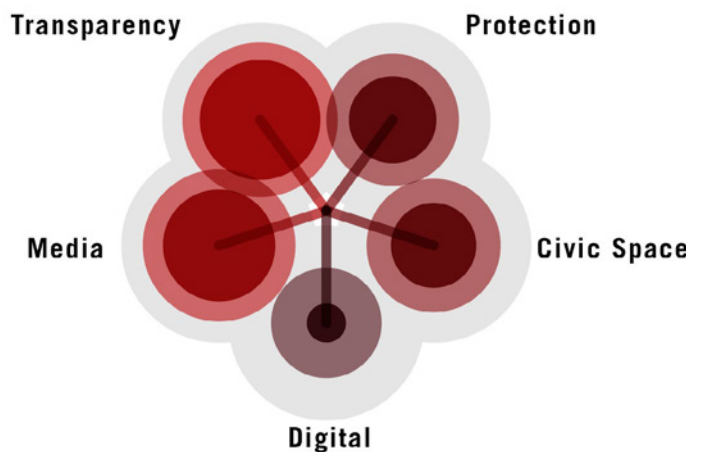


Image 2: Expression pentafoil for Iran

With terrorist groups such as ISIS adept at using technology for propaganda, governments across the world turn to platforms like Facebook and Twitter to monitor, filter, censor, and block speech, which can result in restrictions on legitimate expression. Algorithms are increasingly used to enforce the law or remove content deemed undesirable, both by governments and pressure groups. Yet there is little transparency about the way in which they operate and the extent to which individuals are able to challenge decisions made on the basis of algorithms is unclear. Some governments have also granted powers to public authorities to order the blocking of content deemed to be terrorist. As a result, law enforcement through algorithms is increasingly being implemented, sometimes positioning these intermediaries as enforcers of the rights of Internet users, challenging a variety of human rights and freedoms.

Intermediaries should not be held liable for content hosted on their platforms. Limitations to freedom of speech should always be sanctioned by a court and allow for due process. Moreover, technical measures adopted by governments to restrict access to content online are a very serious interference with freedom of expression, comparable to banning a newspaper or a television station. The blocking of an entire website is almost always a disproportionate measure, as legitimate content is inevitably censored too and blocking can easily be circumvented.

Furthermore, governments must recognise that the right to freedom of expression includes the right to anonymity, including the ability to browse the web and access information anonymously. Similarly, social media and private platforms should not require 'real name' registration for potential users and allow the option of anonymity.

Governments, corporations and civil society must also ensure the continued viability of the multi-stakeholder model of Internet governance to protect human rights online, whilst encouragingly there is growing acceptance at Internet standards bodies (such as the Internet Engineering Task Force, The Internet Corporation for Assigned Names and Numbers, and the The Institute of Electrical and Electronics Engineers) for the inclusion of human rights standards within the infrastructure of the Internet.

Looking ahead: measuring Internet censorship

Existing indicators in the XpA metric do not cover the wide range of issues that arise in the digital field. At present, there are no solid global measures to examine the impact of internet governance, policy, and technical standard-setting bodies on freedom of expression and other human rights explicitly. ARTICLE 19 believes that working at this level will be essential for the protection of the internet as an environment that supports human rights. ARTICLE 19 will be looking to develop more detailed indicators on the basis of law and practice in the area of digital rights, from the existence of restrictive legal frameworks to technical restrictions on access to information online. We will also seek to develop indicators to measure the impact of the policies and measures adopted in Internet governance fora and technical standard setting bodies. It is hoped that this will enable us to give a more accurate measure of the level of protection of digital rights in future XpA reports.

Media

Under international law, states should not only refrain from restricting freedom of the media, they also have a duty to create an enabling legal and regulatory environment that allows the development of a free, diverse, and pluralistic media landscape. It is only in such an environment that all media operators can fulfil their role in a democracy.

ARTICLE 19 supports the broadest possible diversity of information and ideas, in particular on questions of public interest to enable individuals to act as informed citizens, play their part in political life, and hold government to account. The challenges to the independence of the media have changed significantly over the past decade. While newspapers, broadcast radio, and television remain important sources of information and ideas, the Internet is taking on a position of ever increasing importance as a platform for the distribution of content. Search engines and social media platforms now hold a decisive influence over the visibility and commercial success of the media, posing a challenge to regulatory frameworks, as well as to the economic future of news publishers and broadcasters.

Key trends

V-Dem's indicators demonstrate that media freedom is at its lowest level since the turn of the century. Indicators on government censorship of the media, media corruption and bias, lack of media pluralism and self-censorship, show alarming declines around the world with a notable increase in government censorship of the media.

Governments and corporations have found creative ways to control information and narrative through exploiting both direct and indirect censorship of the media. The disastrous impact of unregulated public advertising on independence and pluralism in the media landscape in Mexico is a particularly striking example. As such, the recent decision by Mexico's Supreme Court obligating Congress to regulate such advertising is a welcome step in the right direction⁸.

In the context of media convergence, competitive pressures and a shift in advertising revenues towards the Internet has led to an increasing concentration of media markets. The economic impact on traditional media companies has resulted in redundancies and cutbacks, with rising concern about accurate and reliable journalism in the 21st century.

⁸ Historic decision of the Supreme Court requires Congress to regulate official advertising, November 2017: <https://articulo19.org/fallo-historico-de-la-suprema-corte-obliga-al-congreso-a-regular-publicidad-oficial/>

Media pluralism is on the retreat in many parts of the world. Over the past ten years, this deterioration has been accompanied by a parallel decline in democratic freedoms more broadly. Brazil, Turkey, Burundi, Egypt, Poland, Venezuela, and Bangladesh, among other countries, have all witnessed disturbing drops in a diverse and independent media.

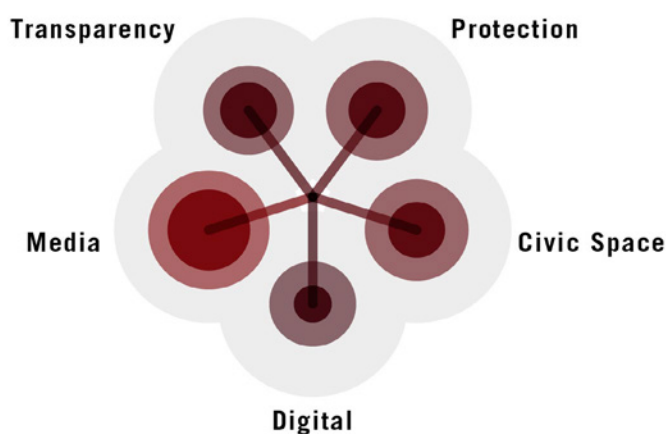


Image 3: Expression pentafoil for Turkey

In countries that are undergoing a transition towards democracy, ARTICLE 19 encourages efforts to develop a legal framework that complies with international standards. It is encouraging that in Myanmar and Tunisia, as shown by the corresponding indicator, the scope for broadcast and print media to criticise public authorities has improved. Other indicators reinforce the picture of media freedom being increasingly respected in both countries, despite the persecution of the Rohingya in Myanmar in 2017.

The creation of independent regulatory institutions and press councils can contribute decisively to the dynamic growth of free, independent, and pluralistic media landscapes. In the Gambia there are also hopeful signs that recommendations to the new government on the promotion of pluralism will bring positive change in a country where media freedom has historically been under assault.

Laws on defamation are easily abused by the authorities to limit criticism and to stifle public debate. The threat of harsh criminal sanctions, especially imprisonment, exerts a profoundly chilling effect on freedom of expression. Such sanctions clearly cannot be justified, particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals' reputations. Civil laws on defamation can, however, also become an instrument of abuse, in particular by powerful private claimants. It is not uncommon for a company to sue for defamation or seek an injunction to chill media investigations: this practice is known as SLAPP (strategic lawsuits against public participation), threatening journalists or other contributors to public debate with lengthy and costly legal procedures in order to silence them. The results of the use of defamation

and SLAPP by governments and corporations can be seen in the impact of government censorship and the decline in media pluralism indicators.

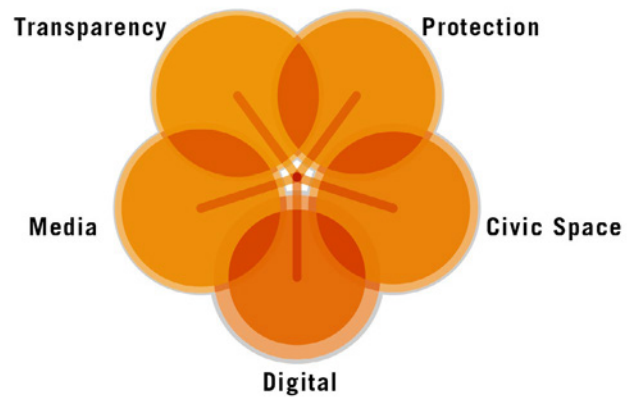


Image 4: Expression pentafoil for Tunisia

While misinformation is not a new concept, recent political developments have led to renewed interest and speculation around ‘fake news’. Under international standards, legal prohibitions targeting ‘fake news’ are not the appropriate way to deal with occurrences of intentional misinformation. Any legal prohibition would inevitably create a chilling effect upon the media and on anyone who contributes to public debate. Current proposals such as fact-checking and treating social media in the same way as traditional media outlets raises human rights concerns regarding compliance with international freedom of expression standards and due process. In understanding this issue, it is also crucial to engage more effectively with the role of search engines and algorithms in delivering news and information to digital audiences, and especially those using social media platforms.

Policy-makers have an opportunity to define positive standards supporting freedom of expression, which are necessary for an informed public to engage in debates that foster social progress and democracy. As such, there is a need to elaborate policies that present a comprehensive framework capable of sustaining the development of the independent and pluralistic media in the digital age, and for the application of of such frameworks worldwide.

Protection

Around the world, the safety of those on the frontline defending freedom of expression has seen a dramatic deterioration in the past decade. New threats have emerged alongside state repression, including organised crime, business interests and religious fundamentalism. An increase in citizen journalism, blogging and information activism, while welcome, has placed more individuals and groups at risk than ever before.

We have seen an alarming rise in attacks on members of the media, human rights defenders, and activists who seek to expose corruption and abuse. These attacks are met with impunity in the vast majority of cases, creating a cycle of intimidation and self-censorship that erodes the fundamental building block of democracy: freedom of expression and information.

The protection of free expression requires safeguarding voices in public debate, whether from a traditional newsroom, a civil society group or a social media users. This variety of voices continues to be affected by traditional means of censorship, particularly imprisonment and murder, but also by indirect means such as an increasingly sophisticated use of coercion, repressive laws, and aggressive litigation, particularly for defamation. The free flow of information, ideas, and opinions requires a strong, supportive legal framework, robust public policies, media literacy, and a willingness to confront historic patterns of discrimination.

The declines in the XpA protection index since 2006 demonstrates that these problems are getting worse. The combined set of indicators looks at harassment of journalists, freedom from political killing, media self-censorship, access to justice for women and men, and repression of CSOs. These indicators allow us to examine the multi-dimensional and complex factors that shape an environment that is supportive of journalists, rights activists, and social media users as they seek to realise their right to freedom of expression.

In 2016, the declining country scores for Turkey and Venezuela show the speed with which advances in the consolidation of democratic institutions and practices can be reversed. In both countries the independent press, social media communicators, and members of the political opposition who challenge increasing authoritarianism have paid a dramatic cost.

Key trends

The indicator that measures freedom from political killings reveals a significant decline over the past ten years: 20 countries have increased the physical repression of their opponents for political reasons, including Turkey, Russia, Burundi, and Thailand. There has been a marked deterioration in the Philippines, where troubling political rhetoric has resulted in a significant

number of extra-judicial killings of suspected drug users. These countries also demonstrate increased repression of civil society: 24 countries have experienced dramatic declines since 2006, including Brazil and Italy.

Over the past decade, nearly 20 countries experienced a decline against the indicator that measures harassment of journalists, compared to improvements in just nine countries. While Turkey, Burundi, Bangladesh, and Brazil demonstrated a decline in the safety of journalists, we also see evidence of increased harassment in Poland, Iceland, Spain, and Slovenia.

Journalists in countries with high rates of impunity for attacks protect themselves through self-censorship. This can be seen clearly in Brazil, which has experienced a significant decline in access to justice, as well as an increase in self-censorship in the media over the past ten years. The biggest threat to freedom of expression in Mexico is generated through direct and intentional attacks on journalists and human rights defenders that come mainly (53%) from public authorities, and the impunity that exists for those attacks. The effect is so corrosive that expression or participation in public life has been dramatically weakened in areas known as “silenced zones,”* where journalists and media workers have been intimidated into silence by frequent attacks by government or organised crime actors. A 2017 investigative report by the New York Times, in collaboration with ARTICLE 19, R3D, Socialtic and Citizen Lab in Canada, brought to light the new sophisticated digital surveillance employed by the government to intimidate those who hold them to account.⁹

Nevertheless, there are positive messages in the data. The protection index illustrates rising scores for Tunisia, Sri Lanka, and Nepal, all of which have seen significant investment from the global community to improve the safety of journalists. This suggests that strategic intervention and resourcing, combined with political openness, can result in an improved environment for journalists and human rights defenders. Furthermore, protection and safety of journalists have gained support in nearly all regional and international human rights fora. This has resulted in a comprehensive set of standards and principles providing a concrete way forward, such as UN Human Rights Council resolution 33/2 on the safety of journalists or UNESCO’s Plan of Action on the Safety and Security of Journalists.

The declines in the protection scores for specific countries over the past ten years, such as Mexico, Cambodia, Vietnam, the Philippines, and Honduras, indicate that poorly conceived and implemented public policies can have a deadly impact on freedom of expression. The policies related to the so-called ‘war on drugs’ in the Philippines, Mexico and Honduras have resulted in

⁹ http://www.oas.org/en/iachr/expression/docs/publications/ZONAS_SILENCIADAS_ENG.pdf

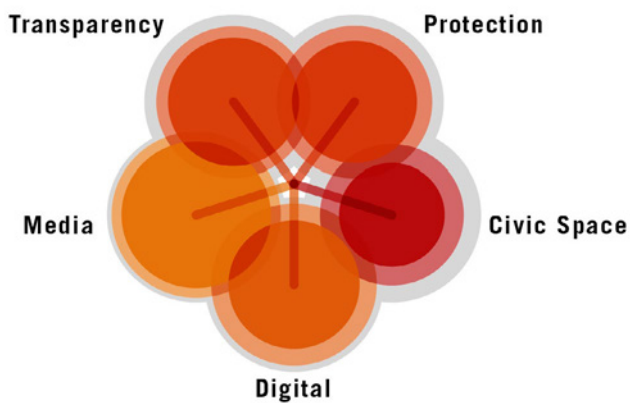


Image 3: Expression pentafoil for Kenya

the increasing vulnerability of those reporting on the issue or expressing criticism of its outcomes. Similarly, poor implementation of public policies on land and environmental issues, via weak or corrupt institutions in Southeast Asian countries like Cambodia and Vietnam, has led to a significant decrease in the protection index scores. This demonstrates the need to engage with governments on broader legal, access to

justice and policy measures to bring about an improvement in safety for communicators around the world. In this regard, ARTICLE 19 believes that justice is the only sustainable and definitive means to protect the right to freedom of expression and impunity is an open invitation for further attacks.

Looking ahead: measuring the threat to expression and information rights

Around the world there is an evolving threat to collective expression in the form of protest. People are protesting in increasing numbers, on the streets and online, but this is being met by crackdowns. Additionally, attacks against environmental and land activists who are documenting and sharing information are increasing. These occur mostly out of sight in remote regions where people seek to protect their land from illegal activities and seizure. Whilst there is no specific evidence on threats facing protesters and environmentalists in the data set, the decline in the overall environment facing journalists and activists is reflective of the risks facing these groups.

Transparency

In the context of freedom of expression, transparency and accountability concern the ability of individuals and communities to be able to obtain information about the activities of public bodies, along with important players in society, and to hold them to account. This is essential for democracy and the well-being of each individual. It enables the strengthening of citizen participation and the exercise of socio-economic and political rights, fosters development, improves economic performance, and makes national authorities accountable for their actions and management of public finances and public services. This in turn enables the right to information, one of the fundamental freedoms that underpin the international human rights regime.

Under the transparency index, the XpA metric looks at a number of issues including whether laws are understandable and enforced in a predictable manner; whether there are bodies that can conduct oversight of executive branch officials who are acting in illegal or unethical manners; the extent to which public administration is carried out in a rigorous and impartial manner when handling cases of ordinary individuals; and the breadth and independence of consultations, along with the level of their engagement with NGOs and access to justice. The V-Dem data only partially captures the range of issues on which we work under transparency, so we have also referred to other related indicators to measure progress.

Key trends

Transparency and accountability have seen significant progress during the lifetime of ARTICLE 19. In 1970, only four countries had national right to information laws: Finland, Norway, Sweden, and the US. Today, following what could be described as a transparency revolution, the right to information has now been adopted into law or policy in 119 countries around the world, equal to 62% of UN member states, and is recognised as a necessity for the functioning of governments across the world. These include the largest countries, China, India, Indonesia, Brazil, Nigeria and Mexico, and some of the smallest, such as Vanuatu, encompassing nearly 90% of the world's population. In addition, 90 countries have now adopted explicit constitutional guarantees. However, despite these advancements, the transparency index registers an overall decline in the past six years.

The index examines more than just legislation, demonstrated by the indicator on transparent laws with predictable enforcement. By looking more comprehensively at the elements that determine an accountable society, we see that a number of indicators posted significant declines during this period, possibly reflecting the rise of authoritarianism globally. For example, more countries experienced negative movements in the access to justice, freedom of academic and cultural expression, engaged society, and civil society organisation consultation indicators.

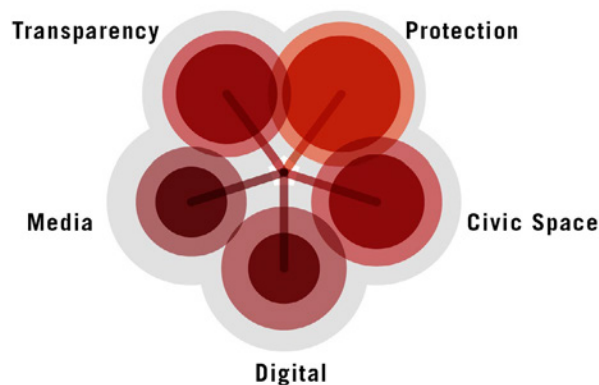


Image 4: Expression pentafoil for Malaysia

Even the indicator on the extent to which there are transparent laws with predictable enforcement demonstrates a complex and shifting environment for transparency, where 18 countries around the world have made gains, but 14 countries regressed considerably. Romania, Sri Lanka, and Tunisia are among the best positive movers, while Venezuela, Turkey, and Greece are among those countries backsliding. In most of our focus countries, the trend has been similar, with peaks followed by declines, some of which are significant over the past decade.

In Kenya, recent positive developments include the revision of the constitution in 2010 and the adoption of the Right to Information Act in 2016. The year 2010 represented a high point in the accountability index for Kenya, but it has significantly declined every year since. It will be interesting to see if the new law, which has only recently gone into effect, will reverse that trend.

In Turkey, the data indicates that transparency peaked in 2003, the year that the law on the right to information was adopted, and has declined significantly ever since, now down to almost the level following the 1980 coup. There has been particular progress in Tunisia. Following the 2011 Jasmine Revolution, virtually all aspects of the administration have improved transparency: the constitution was reformed to include a recognition of the right to information; one of the world's most advanced laws was adopted to enforce that right; and more recently a new progressive law on whistleblowing was adopted. Moreover, a bill guaranteeing public participation is now under consideration.

This year, a number of countries have adopted right to information laws, including Kenya, Tanzania, Malawi, Lebanon, Argentina, the Bahamas, and East Timor. These advances are being driven by a number of factors, including anti-corruption measures and the increasing accountability of governments, especially those in transition. A further 40 countries are currently considering introducing legislation.

The most significant challenge to the transparency revolution is making it effective in practice. While nearly 120 countries have adopted laws or policies, implementation varies widely, with some spending considerable effort and resources to make access to information quick and effective, while in many others few even know about the law or are able to use it. Furthermore, many of the laws are of poor quality and unlikely to be effective. Countries have also increasingly

promoted transparency of their administration, but failed to implement legislation or have released data sets that have minimal impact in increasing accountability.

A number of other information access laws are increasingly common around the world. Nearly all countries have environmental impact assessment laws that require informing and consulting the public before major development projects are conducted; more than 150 countries require public officials to disclose information about their assets and liabilities; more than 20 countries have now adopted comprehensive whistleblower laws, nearly all in the past 15 years; while more than 90 countries have adopted protections in the workplace or relating to corruption and the environment. There are also increasing commitments to making information about the ownership of properties and trusts public. Many countries are also implementing transparency initiatives such as e-government or open data portals.

There is an increased interest in whistleblower protections in countries around the world, in recognition that there is considerable information in the public interest that is not being released by governments voluntarily or under transparency laws. A number of countries including Tunisia, France, Namibia, and the Netherlands have adopted significant legislation in the last year, which was highlighted at the most recent UNECE Aarhus Convention Meeting of Parties.

Existing laws, especially those on state secrets, national security, and counter-terrorism, are routinely used around the world in nearly all countries to deny access to information, harass whistleblowers and journalists, close courts, and shut down inquiries. Unfortunately, there seems to be little appetite in most countries to challenge these and reforms often lead to further restrictions.

Furthermore, it seems likely that the growing trend of 'strong men' leaders like Trump, Putin, Duterte, and Erdoğan, who have little concern about public oversight and accountability, will reduce the amount of information available about their activities even in countries with effective legislation. Already, there has been systematic elimination of information on US government websites about issues such as climate change. Strong and sustained civil society engagement to fight restrictions will be necessary.

There have been significant developments at the international level at the UN General Assembly and Human Rights Council, in general comments and cases before the UN Human Rights Committee and Committee on Social, Economic and Cultural Rights and in anti-corruption conventions. A number of important multi-stakeholder initiatives which promote transparency including the Open Government Partnership and the Extractive Industries Transparency Initiative

have also emerged over recent years. The incorporation of access to information in the 2015 Sustainable Development Goals, as seen in Goal 16 on governance as well as implicitly in many other goals and targets, has been an important milestone.

However, international bodies that set the standards governing our lives have not kept pace with improvements at the national level. A new report released in October by David Kaye, the UN Special Rapporteur on Freedom of Expression and Opinion, sharply criticises the United Nations for not having an access to information policy. Only a handful of UN bodies, including UNESCO and UN Environment, have adopted policies.

Appendix



Appendix

V-Dem: indicators and methodology

The complete V-Dem data set includes 350 indicators that measure different aspects of democracy worldwide. In producing the XpA Report, ARTICLE 19 worked with V-Dem to select a subset of these indicators which best matched with our broad and holistic view of freedom of expression and information to create our metric: the XpA. These 32 indicators are listed in the table in the next page (some of which are repeated between indexes), along with the original V-Dem coding identifier should anyone wish to look up the original data sets on the V-Dem website.

About V-Dem

Varieties of Democracy (V-Dem) is a new approach to conceptualising and measuring democracy. It provides multi-dimensional and disaggregated dataset that reflects the complexity of the concept of democracy as a system of rule that goes beyond the simple presence of elections. The V-Dem project distinguishes between seven high-level principles of democracy: electoral, liberal, participatory, deliberative, egalitarian, majoritarian and consensual, and collects data to measure these principles.

It is a collaboration among more than 50 scholars worldwide which is co-hosted by the Department of Political Science at the University of Gothenburg, Sweden and the Kellogg Institute at the University of Notre Dame, USA. With four principal investigators, 15 project managers with special responsibility for issue areas, more than 30 regional managers, 170 country coordinators, research assistants, and 2,800 country experts, the V-Dem project is one of the largest social science data collection projects focusing on research, with a database containing over 18 million data points. Since April 2017, the dataset covers 177 countries from 1900 to 2016 with annual updates to follow. V-Dem is the recipient of the Lijphart/Przeworski/Verba Dataset Award 2016.

V-Dem draws on theoretical and methodological expertise from its worldwide team to produce data in the most objective and reliable way possible. Approximately half of the indicators in the V-Dem dataset are based on factual information obtainable from official documents such as constitutions and government records. The remainder consists of more subjective assessments on topics like democratic and governing practices and compliance with de jure rules. On such issues, typically five experts provide ratings for the country, thematic area and time period for which they have expertise.

| Index | Indicator | V-Dem code |
|---|--|------------------------|
| Digital | Internet censorship | v2mecenefi |
| | Freedom of discussion for men and women | v2cldiscm v2cldiscw |
| Media | Government censorship efforts –media | v2mecenefm |
| | Internet censorship efforts | v2mecenefi |
| | Media corrupt | v2mecorrpt |
| | Media bias | v2mebias |
| | Print/broadcast media critical | v2mecrit |
| | Print/broadcast media perspectives | v2merange |
| | Media self-censorship | v2meslfcen |
| Transparency | Freedom of discussion for men and women | v2cldiscm v2cldiscw |
| | Freedom of academic and cultural expression | v2clacfree |
| | Rigorous and impartial public administration | v2clrspct |
| | Access to justice for men/women | v2clacjstm, v2clacjstw |
| | CSO consultation | v2cscnsult |
| | Engaged society | v2dlengage |
| | Transparent laws with predictable enforcement | v2cltrnslw |
| | Executive oversight | v2lgotovst |
| Protection | Media self-censorship | v2meslfcen |
| | Harassment of journalists | v2meharjrn |
| | Access to justice for men/women | v2clacjstm, v2clacjstw |
| | Freedom from political killing | v2clkill |
| | CSO repression | v2csreprss |
| Civic Space | Engaged society | v2dlengage |
| | CSO entry and exit | v2cseeorgs |
| | CSO repression | v2csreprss |
| | CSO participatory environment | v2csprcpt |
| | CSO consultation | v2cscnsult |
| | Party ban | v2psparban |
| | Access to justice for men/women | v2clacjstm, v2clacjstw |
| | Social class equality in respect for civil liberties | v2clacjust |
| | Social group equality in respect for civil liberties | v2clsocgrp |
| | Weaker civil liberties population | v2clsnlpct |
| | Power distributed by gender | v2pepwrgen |
| | Lower chamber female legislators % | v2lgefemleg |
| | Freedom of Religion | v2clreliq |
| Power distributed by social group | v2pepwrSOC | |
| Power distributed by sexual orientation | v2pepwrort | |

To address variation in coder ratings, V-Dem works closely with leading social science research methodologists and has developed a state of the art Bayesian measurement model that, to the extent possible, addresses coder error and issues of comparability across countries and over time. V-Dem also provides upper and lower point estimates, which represent a range of probable values for a given observation. When the ranges of two observations do not overlap, we are relatively confident that difference between them is significant. V-Dem is continually experimenting with new techniques and soliciting feedback from experts throughout the field. In this sense, V-Dem is at the cutting edge of developing new and improved methods to increase both the reliability and comparability of expert survey data. V-Dem also draws on the team's academic expertise to develop theoretically informed techniques for aggregating indicators into mid- and high-level indices.

About V-Dem country definitions:

For the purposes of this report, and to maintain consistency in the data, we have adopted the nomenclature of V-Dem when describing countries.

V-Dem determine countries based on the following criteria:

- Formal (legal) sovereignty, or at least claims to sovereignty (e.g. present-day Somaliland).
- Continuity with a contemporary nation-state.
- Defined borders (even if imprecise or under dispute).
- A capital, i.e. a single locus of claimed sovereignty.
- A person or body that exercises executive powers i.e. a head of state and/or head of government.
- Self-rule, at least with respect to domestic affairs.
- A distinct governing style and/or quality of democracy relative to surrounding territories.
- A distinct constitution from the surrounding territories or the wider polity the country might be subservient to.
- Lacking (equal) representation at the central level of the wider polity it might be subservient to.

