

Shrinking Civic Spaces for Human Rights Defenders in Afghanistan

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Background/Problem Analysis

After the collapse of the Taliban regime in 2001, a relatively better democratic environment for civil society and human rights began to emerge in Afghanistan. In spite of the massive challenges of general insecurity, civil society and human rights institutions started their journey to assess the status of rights of various sections of society and institutionalise democratic values as a whole. The country's nascent civil society also began working with a legal, albeit deficient base, which became enshrined in the constitution of 2004. Along with a commitment to 'form a civil society void of oppression', the constitution forbade 'any kind of discrimination and distinction' among citizens of Afghanistan.¹ In practice, however, the civic environment remains highly precarious for Human Rights Defenders (HRDs) in the country.

In 2001, the Law on Protest, Assemblies, and Strike was drafted by the Islamic Transitional Government of Afghanistan, which guaranteed the mechanisms for civic protest. However, public space for civil society and the HRDs has begun to shrink after 2014 as the government 'attempted to restrict the right to peaceful assembly and to crack down on protests and demonstrations by amending this law' in a draft bill.² This attempt subsequently faced condemnation from civil society and human rights activists and is now pending

¹ The Islamic Republic of Afghanistan, *The Constitution of Afghanistan* (Kabul: The Islamic Republic of Afghanistan, January 3, 2004), <https://bit.ly/2xcAulA>.

² Mandgar Daily, 'Draft Law on Protest, Assemblies and Strike', *Mandgar Daily*, July 11, 2017, <https://bit.ly/33GzulN>.

before the parliament. In 2016, although President Ashraf Ghani promised the protection of the HRDs as the ‘sole responsibility’ of his government, his government itself has been responsible for intimidation, harassment, and threats against them.³ During this time, the government has used a ‘fear-mongering policy’ by exaggerating the level of threat and engineering the security situation in order to prevent the people from holding protests in the future.

Moreover, non-state actors, including Afghan powerbrokers and terrorist groups such as the Taliban and the self-declared Islamic State (ISIS), too, have posed serious threats to the HRDs in the country. For example, the killing of Samad Amiri, the Acting Director of the Afghanistan Independent Human Rights Commission, in September 2019 by the Taliban is one of the hundreds of examples of violence against HRDs in the country.

The other growing concern in the context of the legal and regulatory environment for HRDs and civil society groups is the decline of freedom of expression. Both the constitution enacted in 2004 and the Mass Media Law of 2009 guarantee this right. However, in practice, it has become increasingly difficult in recent years to exercise it freely.⁴ Despite legal protection, the environment for freedom of expression has become precarious in recent years as government officials, illegal armed groups, politicians, the Afghan security forces, and mafia groups continue to ride roughshod over this right. In the first six months of 2017, 73 cases of violence against journalists were recorded, the highest in recent years.⁵ This trend has caused a significant level of ‘self-censorship’ as a means of survival for most reporters, especially those working in remote provinces.⁶

As in many South Asian countries, discrimination against minorities has been historical in Afghanistan. However, reflecting

3 Amnesty International, ‘Afghanistan: Human Rights Defenders Under Attack’, *Amnesty International*, August 28, 2019, <https://bit.ly/3dk3hFg>.

4 Afghanistan Institute for Civil Society, *The State of the Enabling Environment for Civil Society in Afghanistan* (Kabul: Afghanistan Institute for Civil Society, September 2018), <https://bit.ly/3aiVPs8>.

5 Afghan Journalist Safety Committee, *Six-Month Report (Jan-June 2017) Afghanistan, a Dangerous Country for Journalists and Media* (Kabul: Afghan Journalist Safety Committee, 2017), <https://bit.ly/39e8Ku9>.

6 Mariam Amini, ‘Afghanistan’s Media Self-Censors to Survive’, *Human Rights Watch*, April 10, 2019, <https://bit.ly/33JkLXf>.

on the issue of minority rights is a new phenomenon. Due to the sensitivity of the topic, civil society organisations (CSOs), and human rights activists are not currently working in the area of minorities and not much literature has been produced on the subject over the past 20 years. Therefore, this chapter intends to examine the civic space for HRDs in Afghanistan in general, mainly after 2014. Additionally, it will explore the legal, economic, security, and political measures that have been used to place restrictions on certain civic freedoms, including freedom of expression, association, and assembly. This will be discussed in the context of the ongoing Afghan peace process with the Taliban and its implications for HRDs and civil society activists if any political agreement is reached.

Research Objective and Design

The overall objective of this paper is to examine the dwindling civic space for HRDs and human rights activists in the time period from 2014 till early 2020 in Afghanistan while also providing a list of recommendations to the Afghan government, CSOs, and international donors.

The study will in particular:

- Explore the legal, economic, political, and security environment for HRDs in Afghanistan;
- Analyse the implication of different policies and legislations of the Afghan government on freedom of expression, association, and assembly;
- Explore different cases of shrinking civic space for HRDs and threats against them;
- Explore the past and present environment for HRDs in the context of the ongoing Afghan-Taliban peace talks; and
- Provide recommendations on protection mechanisms to be established to improve civic space for HRDs.

The chapter is based on the use of qualitative methods, combining content analysis and in-depth interviews. The review of secondary literature involved exploring and examining reports, research

papers, the country's laws, and international human rights documents. In addition, several in-depth interviews were conducted with Afghan experts and key informants, such as members of civil society, legal experts, and journalists. Content analysis of data is expected to generate expertise-based insights and a rich understanding of the environment for HRDs in Afghanistan.

HRDs in Different Legal Environments

After the fall of the Taliban in 2001, Afghanistan's new political order provided room for CSOs as an integral element of a fragile democracy. The emergence of the HRDs is an important achievement of the past 20 years and, even with all its shortcomings, the establishment of the legal system provides the foundation to regulate civic and human rights activities. However, the process has neither been smooth nor gone unchallenged throughout this period. Legal hurdles, economic challenges, security, and political problems continue to impact civic space, especially for minorities, in Afghanistan.

Constitutional Context

CSOs are recognised in various Afghan laws. However, in practice, the space is very narrow for civil society activists and the HRDs. The 2004 Constitution provides the citizens with the right to form associations and freely express their thoughts and opinions through different media. The Constitution notes that 'we the people of Afghanistan...form a civil society void of oppression, atrocity, discrimination as well as violence, based on rule of law, social justice, protecting the integrity and human rights, and attaining peoples' freedoms and fundamental rights'.⁷ Article 34 also stipulates that 'freedom of expression is inviolable ... [and] every Afghan has the right to express his thought through speech, writing, illustration, or other means, by observing the provision' of the constitution.⁸ Freedom of expression is further underpinned by Article 7, which requires the government to abide by international

⁷ The Islamic Republic of Afghanistan, *The Constitution of Afghanistan* (Kabul: The Islamic Republic of Afghanistan, January 3, 2004), <https://bit.ly/2xcAulA>.

⁸ Ibid.

conventions to which Afghanistan is a signatory, and the Universal Declaration of Human Rights (UDHR).

Although the constitution appears to be progressive, it remains cautiously and paradoxically conservative. Thus, while it requires the government to observe all the international treaties and charters to which Afghanistan is a state party, Article 3 of the constitution resists any law that ‘contravenes the tenets and provisions of the holy religion of Islam’.⁹ The ‘tenets of the holy religion of Islam’ is also a general and ambiguous legal phrase, creating leeway and being open to misinterpretations. While Articles 7 and 34 grant the right to freedom of expression, Article 3 unequivocally restricts it. Despite the fact that the Afghan government has committed itself to observing the UDHR, Article 3 is in direct conflict with Article 18 of the Declaration, which endows the people with ‘freedom of thought and religion.’¹⁰ Article 6 of the constitution requires the government to protect human rights; however, no mechanism that can safeguard the lives of the HRDs has been established. Many observers believe that ‘as the Afghan government is busy with many basic challenges, protection of HRDs has not been a priority.’¹¹ Therefore, these obvious contradictions and shortcomings in the constitution demonstrate a failure to protect the individual rights to freedom of expression, religion, belief, and further violates international human rights standards.

Mass Media Law

As a part of the unfolding democratic process, the rise of the media in Afghanistan has been a significant achievement of the post-2001 reconstruction efforts. From limited or no media outlets prior to 2001, the country now hosts hundreds of private radio and television stations and a panoply of magazines and newspapers circulating on a regular basis. The new media outlets play an increasingly critical role in Afghanistan, including facilitating public debate and shaping public opinion on different aspects of life in the country.

⁹ Article 3, *ibid.*

¹⁰ United Nations, *Universal Declaration of Human Rights* (Geneva: United Nations, December 10, 1948), <https://bit.ly/2B7Lcvp>.

¹¹ Anonymous, one aid organization, interview by Abdul Rahman Yasa, April 21, 2020.

In 2009, the Afghan parliament approved the Mass Media Law (MML) which is considered to be a promising step forward in consolidating freedom of expression. However, there are serious restrictive clauses and ambiguous terms in the law that increase concerns about squeezing freedom of expression. For example, the introduction part places emphasis on the role of religion by recalling Article 3 of the constitution, which makes it impossible for any law to contradict the principles of Islam.¹² Also, Chapter 19 of the law prohibits publication of certain materials that contains ambiguities and limitations. Restrictions on materials ‘contrary to the principles of Islam’, ‘insulting’, considered ‘libellous/defamatory’ or ‘promoting religion other than Islam’¹³ are not only in conflict with the spirit of the UDHR but also contradict Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Vague terms such as ‘insult’ or ‘libellous’ in the law can also be open to different interpretations. In practice, this gives law enforcement agencies the opportunity to interpret this article in ways to restrict freedom of press and expression.

Moreover, Afghanistan has been the most dangerous place for journalists with increasing deterioration of security in recent years. Due to the existence of a culture of impunity and failure of law enforcement, any allusion to sensitive issues, including corruption, land grabbing, violence against women, and human rights violations becomes life-threatening enough to force journalists into self-censorship.¹⁴ Although the stated purpose of the MML is to guarantee citizens’ right to freedom of thought and expression, those who strive to promote this right are not safe. This is especially true when the MML lacks the mechanism to protect journalists and media activists, and safeguard conditions for the free operations of mass media.

The 2009 MML also included a provision for the establishment of the Media Complaint Commission within the Ministry of Information and Culture. Chaired by the minister, the commission

¹² Ministry of Justice of Afghanistan, *Mass Media Law* (Kabul: Ministry of Justice of Afghanistan, July 6, 2009), <https://bit.ly/2Al6OUD>.

¹³ Ibid.

¹⁴ Human Rights Watch, ‘Afghanistan: Media under Attack’, *Human Rights Watch*, January 21, 2015, <https://bit.ly/3dfu5WU>.

largely served as a ‘cudgel’ to intimidate the press and control the media streams under the pretext of violating media regulations.¹⁵ In 2015, following a growing concern and anger among journalists and media outlets across the country, the government decided to dissolve the commission.

Non-Governmental Organisations Law

After 2001, a large number of non-governmental organisations (NGOs) emerged to strengthen democratic values and support development programmes in Afghanistan. Subsequently, in 2005, the Afghan government passed a law on NGOs with the aim of promoting professionalism and accountability as well as legalising and regulating their activities. In 2017, however, the Afghan government made an attempt to change this law by bringing several provisions that stirred up criticism and opposition from CSOs and human rights activists, which called the new amendment highly restrictive and problematic.¹⁶ The changes proposed included the following:

- All NGOs shall re-register their organisations every three years;
- The government can refuse to register an organisation for ‘technical reasons’; and
- When holding their annual General Assembly, CSOs must invite the representative of the Ministry of Economy of Afghanistan (MoEC).¹⁷

The ambiguities and issues that emerge from the proposed changes provide grounds for misuse and confusion. In addition to a burdensome bureaucratic process, the ‘re-registration’ clause allows the government to arbitrarily refuse to re-register a CSO,

¹⁵ Afghanistan Journalists Center, ‘A Hard-Fought Victory for Afghan Media: Media Complaint Commission Dissolved’, *Afghanistan Journalists Center*, May 6, 2015, <https://bit.ly/2MdKgrH>.

¹⁶ Zaman Sultani, South Asia Researcher for Amnesty International, interview by Abdul Rahman Yasa, April 20, 2020.

¹⁷ Anonymous, Independent Researcher, interview by Abdul Rahman Yasa, May 8, 2020.

leading to its automatic removal. Similarly, the issue of ‘technical reasons’ is not only vague but also authorises the government to avoid registering an organisation.¹⁸ By sending their representative, the government intended to keep maintaining its influence on CSOs. The ensuing outcry, however, forced the government to withdraw the bill.

Access to Information Law

The enactment of the Access to Information Law (AIL) in 2018 is a promising step forward to consolidating the freedom of press and expression and improving transparency and accountability. However, without effective implementation, this law, like many other forms of legislation, will have little or no effect. Prior to its ratification, Afghan journalists, CSOs, and HRDs were continuously being denied access to information from government bureaucrats and officials. They were, and continue to be, subjected to threats, intimidation, and violence while reporting.¹⁹ Government officials used to deny journalists access to government documents over fear of disclosure of corruption scandals. The AIL challenges those wrongdoers and powerbrokers in the government and forces them to abide by the rules.

Article 50 of the Afghan Constitution guarantees citizens the right to access information from state departments and Article 34 provides the right to freedom of expression.²⁰ The AIL, however, is the first legislative move of its kind in the country. Pursuant to this law, state institutions are required to make information available upon request to the general public.²¹ Likewise, the law requires the government to ‘ensure people can access all the information necessary to realise their human rights and hold the authorities accountable for their actions in the spirit of transparency’ and to curb corruption.²² Despite what is laid down in the AIL, the

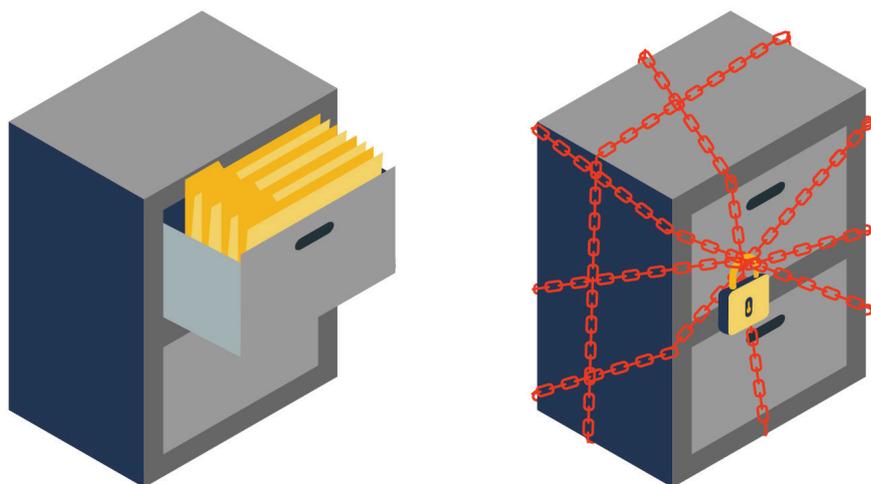
18 Ibid.

19 Amnesty International, ‘Afghanistan: Implement Access to Information Law’, *Amnesty International*, February 5, 2020, <https://bit.ly/2BlQqEd>.

20 Ministry of Justice of Afghanistan, *Access to Information Law* (Kabul: Ministry of Justice of Afghanistan, March 31, 2018), <https://bit.ly/3goDSvA>.

21 Ibid.

22 Amnesty International, ‘Afghanistan: Implement Access to Information



government's severe restrictions on state-owned information has and continues to be a problem.²³ Moreover, under this law, the government has to protect those individuals who disclose cases and information related to corruption, mismanagement, and human rights abuses. Since the law still fails to outline mechanisms to protect such whistle-blowers, it can be a discouragement against speaking out.

Another challenge to effective implementation of the AIL is the lack of public awareness about the existence and significance of the law. Many people have little or no idea of enforced laws in the country. This means that even when they face challenges and obstacles, they cannot exercise their legal rights. To handle this problem, rigorous public awareness-raising programmes are needed to highlight on the existence and importance of this and other relevant laws.

The Law on Gatherings, Strikes, and Demonstrations

The Afghan constitution protects the right of citizens to freedom of assembly and association and to peacefully express their demands and concerns. According to Article 36, people can achieve their legitimate demands peacefully by holding unarmed

Law', *Amnesty International*, February 5, 2020, <https://bit.ly/2BlQqEd>.

²³ Haseeb Maudoodi, 'Afghan Media Watchdog Calls for Information Policy Enforcement', *BBC*, February 5, 2020, <https://bit.ly/307XjmU>.

demonstrations.²⁴ The endorsement of the new Law on Gatherings, Strikes, and Demonstrations in 2003 (hereinafter, Assembly Law) further corroborates the efforts to promote human rights and space of openness in the country. According to this law, ‘the government shall ensure the security and safety of gatherings, strikes, and demonstrations’.²⁵ In practice, however, security forces have not only refrained from providing necessary security, but they have deliberately targeted protesters, leaving several dead and wounded in many cases. For example, more than five people were killed in Kabul, in June 2017, after the police opened fire on protesters who had been demanding the government to step down.²⁶ And in May 2020, the police killed at least four civilians, including a journalist, and injured 14 others in the central Ghor province.²⁷ The incident took place after dozens of civilians had gathered outside the provincial governor’s office to protest against the negligence of the local administration towards poverty-stricken families during the Covid-19 pandemic.

The enacted Assembly Law still places significant restrictions on gatherings, protests, and demonstrations in Afghanistan, which is a serious concern for HRDs. Article 14 of the Assembly Law specifies that if a place of gathering is not deemed safe or secure, demonstrators and their leaders will have to immediately evacuate the place once ordered by the police or face prosecution.²⁸ The issue with this Article is that the term ‘security reasons’ is ambiguous and open to interpretations and will likely be misused by the police to limit the right to protest by prosecuting protesters. Article 10 of the Assembly Law provides the police with the authority to

²⁴ The Islamic Republic of Afghanistan, *The Constitution of Afghanistan* (Kabul: The Islamic Republic of Afghanistan, January 3, 2004). <https://bit.ly/2xcAulA>.

²⁵ Ministry of Justice of Afghanistan, *The Afghan Law on Gatherings, Strikes, and Demonstrations* (Kabul: Ministry of Justice of Afghanistan, March 13, 2003), <https://bit.ly/2TSjaLa>.

²⁶ Secunder Kermani, ‘Kabul Bomb: Protesters Shot Dead in March in Afghan Capital’, *BBC*, June 2, 2017, <https://bbc.in/2MmUMwU>.

²⁷ Ayaz Gul, ‘Afghan Protesters Killed in Clashes with Police’, *VOA*, May 9, 2020, <https://bit.ly/34PI98a>.

²⁸ Ministry of Justice of Afghanistan, *The Afghan Law on Gatherings, Strikes, and Demonstrations* (Kabul: Ministry of Justice of Afghanistan, March 13, 2003), <https://bit.ly/2TSjaLa>.

resort to force.²⁹ Under the Afghan Police Law, when a suspect does not comply with police warnings, the police can resort to shooting the suspect. However, though public gatherings, strikes, and demonstrations are one's political right, resorting to force or shooting at the protesters is an outright violation of international human rights laws to which Afghanistan is a signatory. Moreover, pursuant to Article 21 of the Assembly Law, 'nobody shall organize gatherings, demonstrations, and strikes during the state of emergency'.³⁰ And yet, the term 'state of emergency' is vague, general, and interpretable, i.e., the police can practically stop any demonstration and protest under this pretext.

During the National Unity Government (NUG), several demonstrations took place in Kabul and other provinces to challenge government policies.³¹ The Farkhunda demonstration in March 2015, the so-called Tabasum Movement in November 2015, two mass protests of the Enlightenment Movement in 2016, and the Uprising for Change in 2017 defied the government. These protests, and the government's inability to peacefully control them, enabled the National Security Council (NSC) of Afghanistan to mull over changing the Assembly Law and restrict the citizens' right to protest. In 2017, the NSC ordered to renew the Assembly Law, which proposed significant changes. When a copy of the new draft leaked to the media, it faced strong pushbacks from CSOs and civil society activists.³² The Afghanistan Independent Human Rights Commission, several CSOs, and HRDs maintained that the new change to the Assembly Law would place more restrictions on civic space to organise and participate in protests and demonstrations.

According to the new draft, the police reserves the right to use 'technical barriers to blockade the route to demonstrators, as security officials identify them necessary.'³³ The terms 'technical

²⁹ Ibid.

³⁰ Ibid.

³¹ Ehsan Qaane, 'Afghanistan's New Law on Freedom of Assembly: Limiting the Space to Demonstrate', *Afghanistan Analysts Network*, August 26, 2017, <https://bit.ly/3cd5wsg>.

³² Ibid.

³³ Afghanistan Independent Human Rights Commission and Civil Society

barriers’ and ‘as security officials identify them to be necessary’ are not clear and can be open to interpretation. This will increase the chance of its misuse by security forces to block the roads to protestors. The new draft also stipulates that the demonstration or protest committee, consisting of three members deemed responsible for the protest, will be held accountable for any illegal actions during the demonstration.³⁴ The legal clause is at direct odds with Article 26 of the constitution, which reiterates that ‘crime is a personal act’ and that ‘investigation, arrest, and detention of an accused, as well as penalty execution, shall not incriminate another person.’ Hence, the government is not only violating Article 6 of the current enforced Assembly Law, which requires the government to ensure security and safety of gatherings but is also trying to restrict civic space for HRDs and civil society activists. This is an outright evasion of responsibility of the Afghan government to protect the public during gatherings and protests. More surprisingly, Article 21 of the new draft prohibits any gatherings, strikes, demonstrations, and sit-ins based on ethnicity, religion, region, and actions that harm the national economy or disrupt public order.³⁵ In a democratic environment, ethnic, religious, or other underprivileged segments of the society are able to question the government’s discriminatory policies by holding protests or sit-ins to raise their legitimate voices. Therefore, enforcing such a law will clearly choke many ethnic minorities’ voices, such as Afghan Hindus, Sikhs, and other dissidents from raising legitimate concerns. It also goes against the domestic and international human rights obligations of the Afghan government.

Although the new draft of the Assembly Law has not yet been formally passed by the parliament, the government has, in practice, always sought to limit civic space. These restrictions range from blocking the roads using military equipment and shipping containers to physical assault, arrests, and even deliberate shooting of protesters. In the face of deteriorating security situation, the

Organisations, ‘AIHRC’s Consultative Meeting with CSOs to Review the Draft Law on Gatherings, Strikes, and Demonstrations’, *Afghanistan Independent Human Rights Commission*, July 27, 2017, <https://bit.ly/2Xkc2ck>.

³⁴ Ibid.

³⁵ Ibid.

crackdown on civilian protests has had such a devastating effect that no one in Kabul dares to hold mass protests anymore. Civil society activists are concerned about the gradual shrinking of civic space by use of legislation, especially the latest draft law on demonstration. Zia Moballegh, a human rights activist, described the situation as such:

Given the citizens' unforgettable lessons from the horrific history of Afghanistan, people do not accept such repressive laws, especially freedom of expression, [...], and deprivation of meaningful civic participation because the participation of the people guarantees the current republican system and protects the elected government. Isolation of the state and attempts to confront citizens by resorting to any means, especially to suppressing civic participation and closing the sphere of democratic activities, are the early stages of the decline that will highly likely lead to an absolute dictatorship or fall into possibly civil war.³⁶

Economic Environment

With an influx of reconstruction funding in Afghanistan, a tremendous amount of money has been spent in the country. Several international philanthropic organisations and foreign embassies, together with the UN-affiliated organisations began supporting Afghan CSOs with financial assistance, inclusion in policy- and decision-making processes, and their relation with the Afghan government.³⁷ Over the last two decades, CSOs have played critical roles in various areas of human rights, women empowerment, peace, capacity-building, advocacy, and governance. And yet, concerns about the challenges CSOs are facing in Afghanistan are increasing. Since their rise in the post-2001 era, Afghan CSOs, as the government itself, have been heavily dependent on foreign aid. Thus, with the security transition to Afghan security forces

³⁶ Zia Moballegh, 'New Bill on Demonstration, Deliberate and Restrictive Ambiguity of Citizenship Rights', *Rah-e-Madanyat Newspaper*, July 12, 2017, <https://bit.ly/2XYgtcb>.

³⁷ The European Union, *Afghanistan: EU Country Roadmap for Engagement with Civil Society* (Brussels: EU, August 26, 2018), <https://bit.ly/3eT8gws>.

in 2014, there were fears of a decrease in international funding to Afghanistan that held back the majority of CSOs operating in the country.³⁸

Over the past 20 years, international donors have followed two different aid provision mechanisms for Afghanistan: 1) on-budget, and 2) off-budget.³⁹ The former is disbursed through the Afghan government budgetary programmes, and the latter channelled through development partners other than the Afghan government such as the UN agencies and NGOs operating in Afghanistan. Since 2014, the shrinking of foreign aid and the trend to move a large proportion of off-budget aid to on-budget have left Afghan CSOs concerned over availability of finances to implement their activities.⁴⁰ Given the nature of foreign-aid dependency and project-driven income, any fluctuation in external aid will also affect the position and activities of CSOs in Afghanistan.

Given the financial constraints mentioned above, heavy taxation on media with little government support, especially during the NUG, has crippled a large number of TV stations, radio stations, and print media, mostly those based in the provinces of Afghanistan. As of August 2017, more than two hundred media outlets, mostly print, were closed due to financial problems.⁴¹ Many journalists called on the Afghan government to fulfil its constitutional commitment to support the media with tax exemption or tax reduction, as most of the print media, in particular, have little or no permanent source of income.⁴² Moreover, due to financial crisis at the time, a large number of CSOs and networks were either downsized or closed altogether.⁴³

38 Mariam Safi, 'Civil Society in Afghanistan: A Decade of Progress and Challenges', *Peace Insight*, December 20, 2012, <https://bit.ly/2UiRf7e>.

39 Abdul Rahman Yasa, 'From Security Sector Reform to Endemic Corruption: The Case of Afghanistan', *Journal of Strategic Security* 13, No. 3:109 (2020), <https://bit.ly/3nIr5Yr>.

40 The European Union, *Afghanistan: EU Country Roadmap for Engagement with Civil Society* (Brussels: EU, August 26, 2018), <https://bit.ly/3eT8gws>.

41 VOA, 'More than 200 Media Outlets in Afghanistan have been Shut Down in the Four Years', *VOA*, August 20, 2017, <https://bit.ly/2Y9kw5p>.

42 Ibid.

43 Sayed Hussain Anosh, Executive Director of Civil Society and Human Rights Network, interview by Abdul Rahman Yasa, June 12, 2020.

The continued trend left negative implications on freedom of expression in the absence of substantial assistance.

While CSOs are playing crucial roles from functioning as watchdogs and informing citizens about their rights and entitlement to improving service delivery and development projects, the surge of Covid-19 pandemic has exposed CSOs to financial problems. Many lesser-funded CSOs with little support from the government and international community are now on the brink of collapse. To minimise the impact of the pandemic on the private sector, NGOs have requested the Afghan government to provide them with support through mechanisms such as tax adjustment.⁴⁴

Political Environment

At the political level, civil society activists and HRDs receive little support from the government apparatuses, which has been and continue to be one of their main challenges by affecting the enabling environment for civil society in Afghanistan. Over the last two decades, Afghanistan has reportedly been the most unfavourable environment for civil society and human rights activists.⁴⁵ Journalists, civil society activists, and HRDs have been under constant threat from Afghan officials, power-holders, MPs, influential leaders, illegal armed groups, mafias, and terrorist networks such as the Taliban and ISIS members. Amid the post-2014 security deterioration, there has been a dramatic decline in the civic space for human rights activists. According to a 2018 report by the EU, lack of support from the government, financial constraints, and conflict have been among the most pressing challenges civil society has faced.⁴⁶

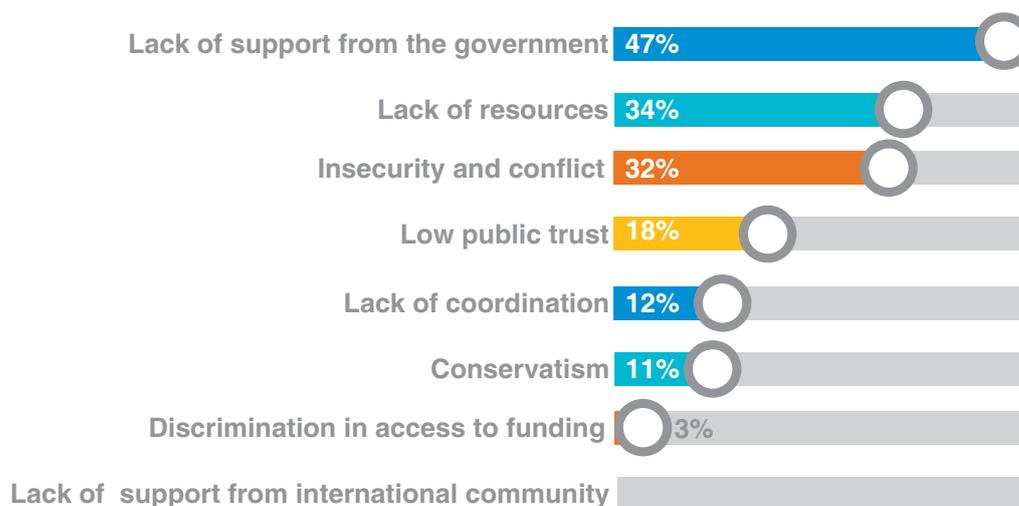
Given that freedom of expression has been a pivotal achievement of the last two decades, the growing threats against journalists, media, and civil society activists are jeopardising this gain. According to Afghan journalists, freedom of the press and

⁴⁴ Tolo News, 'Afghan, EU Envoys Seeking Ways to Mitigate COVID-19 Risk', *Tolo News*, April 10, 2020, <https://bit.ly/2AxaByL>.

⁴⁵ Amnesty International, 'Afghanistan: Human Rights Defenders under Attack', *Amnesty International*, August 28, 2019, <https://bit.ly/3cZmXgb>.

⁴⁶ The European Union, *Afghanistan: EU Country Roadmap for Engagement with Civil Society* (Brussels: EU, August 26, 2018), <https://bit.ly/3eT8gws>.

Figure 1: Main Challenges to an Enabling Environment for Civil Society



Source: The European Union, *Afghanistan: EU Country Roadmap for Engagement with Civil Society* (Brussels: EU, August 26, 2018), <https://bit.ly/3eT8gws>.

expression is currently in a ‘downward spiral’ with increasing intimidation and violence from both state and non-state actors, lack of support from the Afghan government, and waning international assistance.⁴⁷ Shah Hussein Murtazavi, a former journalist and current advisor to President Ghani, once argued ‘in all our investigative reports, there is a minister, a governor, or an MP involved. All of whom have armed men. Some have 40 guards, and [for media with few or no guards] every story is a risk.’⁴⁸

Many believe that the Afghan government is afraid of granting freedom of expression to their citizens because it can provide an enabling space to expose what the political leaders have been doing. For example, there will be the possibility of cases of corruption, land-grabbing, human rights abuse, and other malfeasance being aired to the public. According to one interviewee, who spoke on condition of anonymity:

As human rights defenders put forward sensitive topics and civil society functions as a ‘watchdog’ of the performance of

47 Patricia Gossman, ‘Threats to Media Freedom in Afghanistan’, *Human Rights Watch*, January 21, 2015, <https://bit.ly/2YB4y48>.

48 Patricia Gossman, ‘Afghanistan: Media under attack’, interview by Shah Hussain Murtazavi, *The Human Rights Watch*, January 21, 2015, <https://bit.ly/2YzSZdp>.

the government which will challenge the system as a whole. The danger, of course, will come from anyone whose interests are threatened, including the government officials, religious, cultural, and political leaders.⁴⁹

As mentioned earlier, during the rule of the NUG, several mass protests, including the so-called Tabasum Movement in 2015, Enlightenment Movement in 2016, and the Uprising for Change Movement in 2017, exposed the government's outright failure in managing the protests. In response, severe restrictive steps have been taken by the government to narrow down civic space for any potential protest in the future. As the first move, the government sought to re-draft the Assembly Law shortly after these movements. As a result of which, several limiting articles and clauses were added to the draft of the law. In an unprecedented move, the Afghan government banned WhatsApp and Telegram messaging services for 20 days in November 2017. The government labelled this as a security measure to stop the Taliban and other insurgent groups from these encrypted-messaging services.⁵⁰ This action further stirred growing concerns over censorship of freedom of expression in the country. These politically motivated measures saw pushback from CSOs and human rights activists. The WhatsApp ban was subsequently lifted, but the new draft of the Assembly Law is still pending before the parliament.

In 2009, Ali Mohaqiq Nasab, a magazine editor, was arrested by the Afghan police and sentenced to two years' imprisonment. The court in Kabul had convicted Nasab of blasphemy to Islam. Nasab had published articles, among others, that 'criticised the practice of punishing adultery with 100 lashes and argued that men and women should be considered as equals under Islamic law'.⁵¹ Under the Afghan constitution, any sentiments and belief against the principles of Islam are strictly prohibited. In a similar case, in 2012,

⁴⁹ Anonymous, one aid organization, interview by Abdul Rahman Yasa, April 21, 2020.

⁵⁰ BBC, 'Outcry as Afghanistan Moves to Ban WhatsApp and Telegram', *BBC*, November 4, 2017, <https://bbc.in/2vKfi5Q>.

⁵¹ VOA, 'Afghan Journalist Given Two-Year Jail Sentence for Blasphemy', October 30, 2009, <https://bit.ly/2UE69VW>.

Zaman Ahmadi was sentenced to twenty years in prison for his unpublished article which was considered apostasy and blasphemy to the principles of Islam.⁵² In a highly conservative society, it is difficult to develop and institutionalise freedom of expression.

Among other things, a deeply engrained culture of impunity in Afghanistan has crippled the country's already ineffective judiciary and legal system. Law enforcement bodies are either incapable of executing the law or unwilling to do so. Increased violent attacks and threats against HRDs, civil society activists, and journalists go un-investigated. As a result, self-censorship has become a means of survival, both literally and figuratively. Many journalists prefer not to report on sensitive topics, including corruption, land-grabbing, and human rights abuses, as a means to minimise safety risks.⁵³

Reflecting the law-and-order situation, a 2018 CIVICUS assessment reported that the environment in Afghanistan remains risky for HRDs and CSOs, which was highlighted through the Universal Periodic Review (UPR) but the government has failed to fully implement its recommendations.⁵⁴ The failures include inability to ensure effective investigation and accountability of violations against journalists, threats against HRDs and media, and the dominant culture of impunity.⁵⁵ Consequently, civic space in Afghanistan is rated as 'repressed', reflecting the tremendous constraints placed on civil society's fundamental freedoms.⁵⁶

Security Environment

Aside from the regulatory and political constraints encountered by civil society, lack of security remains the key challenge for

52 Ezzatullah Mehrdad, 'Afghan Man Serves 20 Years Sentence in Prison for Writing an Article', *Insight Over*, November 7, 2019, <https://bit.ly/3e1HVMH>.

53 Patricia Gossman, 'Threats to Media Freedom in Afghanistan', *Human Rights Watch*, January 21, 2015, <https://bit.ly/2YB4y48>.

54 CIVICUS, *Joint Submission to the UN Universal Periodic Review 32nd Session of the UPR Working Group* (Kabul: CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC, Afghanistan Human Rights Organisation, People's Action for Change Organization, Civil Society and Human Rights Network, July 12, 2018), <https://bit.ly/3d1z1Oa>.

55 Ibid.

56 Ibid.

CSOs and HRDs operating in Afghanistan. For the past 20 years, and especially since 2014, Afghanistan has been one of the most dangerous countries in the world for civil society activists, HRDs, and aid workers. Constant threats, intimidation, harassment, killing, kidnapping, and other forms of violence are commonly faced by HRDs, especially female human rights activists in the country.⁵⁷ State and non-state actors, including government officials, MPs, powerbrokers, influential and religious leaders, the Taliban, and the ISIS have been the obstacles to enabling civic spaces.

Despite public promises to safeguard the HRDs, the government is the main culprit for threats, intimidation, and harassment of human rights activists. In June 2016, the Kabul police carried out a brutal crackdown on a civil strike by deploying heavy forces, killing several protesters.⁵⁸ As mentioned earlier, the NUG rule has been heavily criticised by the public due to their restrictive policies. To suppress civil protests, in a well-coordinated plan, the government positioned overnight shipping containers to block off all routes leading into Kabul city centre, preventing anyone from entering the area.⁵⁹

In 2017, the Civil Society and Human Rights Network (CSHRN), in collaboration with a group of CSOs, compiled a shadow report on torture. Before submitting the report to the UN Committee against Torture (UN-CAT), CSHRN received threats via anonymous phone calls as the report included the names of senior government officials. One of the respondents in this research, who was involved in developing the UN-CAT shadow report, described the story as such:

For final approval, we had sent out the UN-CAT shadow report to the CSHRN members and partner organisations. Just after three hours, we got an anonymous call with a threat. 'If you do not take out the case described on page 22 [of the shadow report], the CSHRN office will not be safe anymore from

⁵⁷ Amnesty International, *Defenceless Defenders: Afghanistan's Human Rights Community under Attack* (London: Amnesty International, 2019), 61, <https://bit.ly/37vbtQk>.

⁵⁸ Ibid.

⁵⁹ Tolo News, 'Government Shuts Down Kabul City, Blocks Roads with Containers', *Tolo News*, May 16, 2016, <https://bit.ly/3htKRDW>.

tomorrow onwards.’ The case on page 22 was a situation, in which a high government leader has been excused of torture in a local prison. After a long discussion, looking into different options to deal with this situation, we decided that the case shall be mentioned generally in the official report; however, the detailed shall be put as a confidential report to the UN-CAT commission in Geneva.⁶⁰

In 2019, two human rights activists, Musa Mahmoudi and Ehsanullah Hamidi, were arrested by the Afghan intelligence agency (NDS). The two activists, who worked for the Logar Youth, Social and Civil Institution based in Logar province, had exposed sexual abuse of 546 children by teachers, headmasters, and local government officials.⁶¹ Initially, the NDS denied any involvement in the arrest, but it later became known that both were in NDS custody. The NDS released both activists following the pressure from civil society, the Afghan Independent Human Rights Commission (AIHRC), and international human rights organisations. With the help of national and international human rights organisations, Mahmoudi and Hamidi were both evacuated to Uzbekistan due to perceived threats against them.

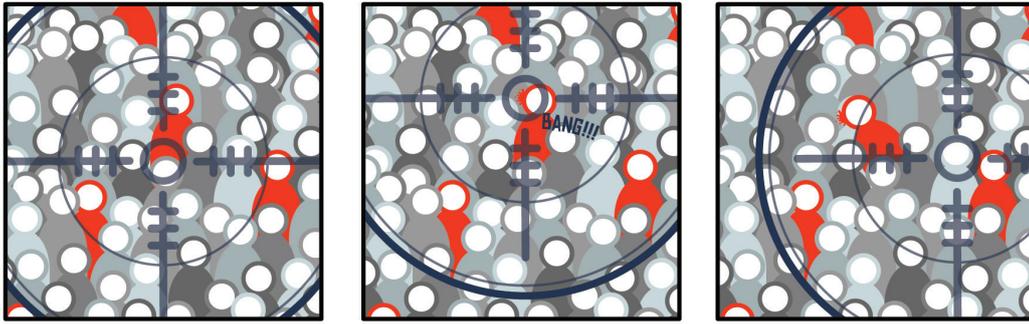
Following the intensification of insecurity, mainly after 2014, the country has turned into the most terrible hotspot for journalists and media. According to CIVICUS, more than 15 journalists were killed during 2018, and at least five others were shot dead in the first half of 2019.⁶² On 31 May 2020, a car with employees of an Afghan private television network was attacked in Kabul, killing one journalist and the driver and injuring four others. Hours after the incident, ISIS claimed responsibility for the attack.⁶³ Afghan journalists face constant risks, threats, and attacks covering the

⁶⁰ Anonymous, one aid organization, interview by Abdul Rahman Yasa, April 21, 2020.

⁶¹ Ayesha Tanzeem, ‘Afghan Intelligence Admits Detaining Activists who Flagged Abuse’, *VOA*, November 26, 2019, <https://bit.ly/2XZlAc9>.

⁶² CIVICUS, ‘Statement: Afghanistan’s Adoption of Universal Periodic Review on Human Rights’, *CIVICUS*, July 4, 2019, <https://bit.ly/2C7FtGD>.

⁶³ Aljazeera, ‘Journalist Killed in Kabul Bomb Blast Targeting TV Workers’, *Aljazeera*, May 31, 2020, <https://bit.ly/2UIabfT>.



country's long-running conflict. To continue their work, journalists are required to remain neutral in such circumstance; otherwise, they are bound to be threatened by different actors, mainly the Taliban and ISIS. Over the past years, the Taliban has repeatedly warned the Afghan media to cease 'broadcasting what they describe as government propaganda against the armed group'.⁶⁴ In 2016, the Taliban targeted a bus carrying employees of Tolo TV network, killing seven journalists. The group called the attack a retaliation against the propaganda in favour of the Afghan government and its international allies, which was broadcast by Tolo TV.⁶⁵

Journalists and civil society activists are not the only ones targeted by such terrorist attacks. In July 2018, a suicide bombing targeted the Afghan Sikh and Hindu community in Jalalabad, which killed nineteen people, including Ottar Singh Khalsa, the only Sikh candidate, also respected by minority Hindus, for the upcoming parliamentary elections at the time.⁶⁶ Likewise, in 2019, Abdul Samad Amiri, a human rights activist working for the provincial office of the AIHRC based in Ghor province, was shot dead by the Taliban on his way home.⁶⁷

In addition to insecurity, the existence of radical and old-fashioned views in society is also a major challenge, especially for women activists and journalists. For example, in western Afghanistan, Mawlavi Abdul Rahman Ansari, who casts himself

⁶⁴ Aljazeera, 'Taliban Mistakenly Kidnaps Six Afghan Journalists', *Aljazeera*, September 2, 2019, <https://bit.ly/2B7oQdw>.

⁶⁵ Ibid.

⁶⁶ Gulabuddin Ghubar, 'Afghan Sikhs Lose Key Member of Their Community', *Tolo News*, July 2, 2018, <https://bit.ly/2YyAsOS>.

⁶⁷ Amnesty International, 'Afghanistan: Killing of Human Rights Defender is A War Crime', Amnesty International, September 5, 2019, <https://bit.ly/3d0Ljq1>.

as a religious figure, ‘has been publicly opposing work of female journalists and calling to suppress women’s presence in public’.⁶⁸ Against this background, working in Afghanistan for journalists, HRDs, and civil society activists remains highly precarious. The current situation, which is characterised by a high level of culture of impunity and a lack of a clear-cut protection mechanism with little support from the government, reflects an uncertain path for those working to ensure democratic values.

As of this writing, the Afghan government has been trying to kick off intra-Afghan peace negotiations in which all parties involved will work together to reach a political settlement to end the country’s many bloody years of conflict. This has become a possibility following the US-Taliban agreement in Qatar early in 2020. The agreement left both sides with terms of conditions to meet to set the stage for the US military withdrawal from Afghanistan and for the Taliban to start negotiating with the Afghan government for a political settlement. Nevertheless, CSOs, HRDs, and minority groups are concerned about the decline in civic space and the loss of gains made over the past two decades as a result of the peace process that will pave the way for arrival of the Taliban and its direct engagement in public sphere.

According to CSOs and activists, the Taliban have a history of deep-rooted animosity with HRDs and civil society activists, mainly with female human rights defenders. During their rule in the late 1990s, the Taliban suppressed and tortured ethnoreligious minorities and civil activists.⁶⁹ Following the withdrawal of international security forces in 2014, the tension between the Afghan government and the Taliban escalated dramatically. As a result, the Taliban took control of Kunduz and Ghazni cities, and a large part of Farah province. During this time, ‘all human rights offices in these provinces were looted and set on fire by the Taliban’.⁷⁰ In 2019, in a meeting held in Moscow, the Taliban harshly ‘attacked women’s rights activists for spreading immorality and

⁶⁸ Zaman Sultani, South Asia Researcher for Amnesty International, interview by Abdul Rahman Yasa, April 20, 2020.

⁶⁹ Jawad Darwazian, Human Rights Researcher for Civil Society and Human Rights Network, interview by Abdul Rahman Yasa, April 29, 2020.

⁷⁰ Ibid.

indecenty'.⁷¹ Such vilification has always been a common narrative against HRDs from the Taliban and other radical figures.

This shows that the Taliban has not changed its views on human rights issues since the group was pushed from power in 2001. If the hard gains of the past two decades are not supported and guaranteed, the disappearance of these achievements after the arrival of the Taliban in the aftermath of the peace deal does not seem unlikely. The group is still radical and dogmatic.

Conclusion

This report highlighted that civic space for HRDs and civil society activists in Afghanistan has shrunk mainly after 2014. After the fall of the Taliban in 2001, there was growing hope for the creation and growth of conducive civic space for the work of civil society and human rights organisations. This hope emerged largely due to the financial and political support of the international community to CSOs in Afghanistan. During this period, the security situation gradually improved because of the strong presence of foreign troops. With the significant reduction in international troops in 2014, however, foreign aid to Afghanistan, and local CSOs, also decreased significantly. The withdrawal not only undermined the Afghan CSOs politically and economically but also worsened the security situation for them.

Amid the security deterioration and protracted political infighting in the NUG led by President Ghani and Chief Executive Abdullah Abdullah, supporting and protecting HRDs and civil society activists was not a priority for the government. In most sensitive cases, when human rights abuses, corruption, land-grabbing, or suppression of minorities have been put forward by HRDs and CSOs, they have been constantly threatened, harassed, and intimidated by both state and non-state actors.

Since 2014, despite some legal improvement such as the Access to Information Law which was passed by the government, there has been significant decline in the rights to freedom of

⁷¹ Emma Graham Harrison and Akhtar Mohammad Mokoi, 'The Taliban Took Years of My Life: The Afghan Women Living Under the Shadow of War', *The Guardian*, February 9, 2019, <https://bit.ly/3emkeik>.

assembly, freedom of expression, and freedom of the press. The government's undue interference in the work of CSOs, arbitrary arrest, harassment and intimidation of HRDs and activists by the government, MPs, influential leaders and powerbrokers, and the use of excessive force by security forces during peaceful protests reflect a shrinking of civic space during the NUG. Placing restrictions on social media such as Telegram and WhatsApp messaging services and re-drafting the Assembly law and NGOs law are all deliberate attempts made by the NUG to further close civic space. Contradictions and ambiguities in the country's enacted laws, including the constitution and its conflict with international laws, have restricted freedom of expression, on one hand, and undermined the Afghan government's international human rights obligations on the other.

Moreover, threats from various terrorist groups, including the Taliban and the ISIS, pose additional risks to shrinking civic space. As mentioned earlier, many HRDs and civil society activists are being intimidated and killed by armed groups and insurgents. Female human rights defenders have been vilified by the Taliban for promoting indecency and immorality, and journalists have been killed for perceived writings against the insurgent groups. Meanwhile, despite the government's pledge to protect HRDs and journalists from growing harassment, threats, and intimidation, absence of political will and lack of a protection mechanism expose them to threats more than ever.

Finally, the Afghan peace process with the Taliban is underway to find a political settlement to the current crisis. If the concerns and voices of CSOs, human rights organisations, and minority groups are not taken into account, the achievements of the last two decades may be compromised and will have been in vain.

Recommendations

To the Afghan government

- i. Take practical steps to ensure that all reported cases of killings, threats, harassment, and intimidations against HRDs by both state and non-state actors are thoroughly and

- impartially investigated and perpetrators held accountable.
- ii. Remove all legal contradictions existing in various laws of the country and make them conform to all international treaties to which it is a signatory.
 - iii. Improve the enabling environment and develop an effective protection mechanism for HRDs in close consultations with all stakeholders, including CSOs and human rights organisations.
 - iv. Strengthen rule of law at all levels by fighting the culture of impunity.
 - v. Implement all the recommendations the country receives on the circumstances of HRDs provided by the UN Special Rapporteur and other relevant reports.

To civil society

- i. Request and support the government in establishing a protection mechanism for HRDs.
- ii. Develop an income-generating action plan to diversify income sources and reduce donor dependency.
- iii. Strengthen intra-CSOs communication to work closely to improve effectiveness of their activities and advocacy efforts through a clear mechanism.
- iv. Work to influence policy-makers and those in power to prevent the squeeze on freedom of expression, the press, and assembly.

To the international community

- i. Encourage the Afghan government to change its repressive approach to prevent the detention, intimidation, and harassment of HRDs in the country.
- ii. Pressure the Afghan government to ensure the safety of HRDs by establishing protection mechanism with strong legal framework.
- iii. Empower and provide continued financial and political support to Afghan CSOs.
- iv. Switch from the current project-based approach to a more programme-oriented approach.

Annex

Assessment of Civic Space in Afghanistan: Survey Findings

The online survey of civic space 2020 in Afghanistan includes a sample of 17 civil society activities and CSOs members. Of which, two respondents were female and the remaining 15 were male all aged between 20 to 50 years old with 11 participants from the minority groups. The survey was shared with respondents residing in Kabul, Mazar-e-Sharif and Herat.

This section of the survey on the assessment of civil liberties showed that 35.3 per cent of the respondents believed that there was discrepancy in the enjoyment of civil liberties across different social groups, in terms of language, caste, ethnicity, race, region, and religion. The survey also showed that 41.2 per cent of the respondents strongly disagreed that poor people enjoyed the same level of civil liberties as rich people in the country. In addition, 52.9 per cent of the respondents strongly disagreed that men, women, and sexual minorities enjoyed the same degree of civil liberties, implying that one’s sexual orientation and gender identity could impact their enjoyment of civil liberties.

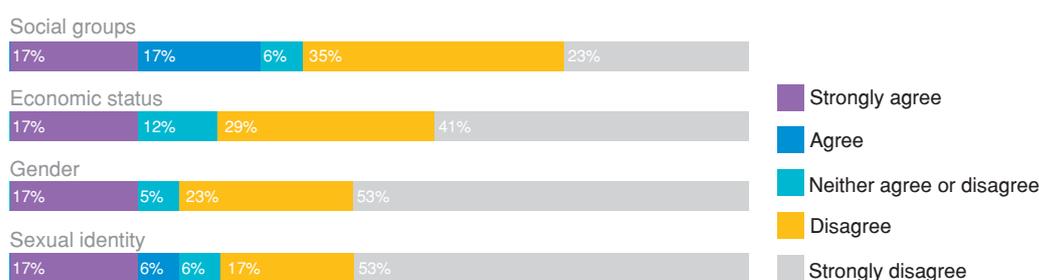


Figure 1: Civil Liberties Enjoyed Equally by Different Groups

On whether the state has put restrictions on registration and operation of civil societies, the responses were rather mixed. A total of 52 per cent of the respondents believed that the state allowed different groups, including people from marginalised communities to form and register an organisation, while 18 per cent of the respondents believed otherwise and further confirmed that the state unduly interfered in the work of CSOs to control

them accordingly. Moreover, the survey showed that 41.2 per cent of the respondents viewed an increase in attacks against human rights defenders and civil society activists in Afghanistan.

According to the survey, 64.7 per cent of the respondents believed that the media has a critical role in representing political views across the country. However, 47.1 per cent of the respondents agreed that media workers have faced threats, intimidation, harassment, and even killing by state and non-state

All groups have been allowed to form and register an association in order to advance collective interests



Figure 2: Association Registration and Access to Information

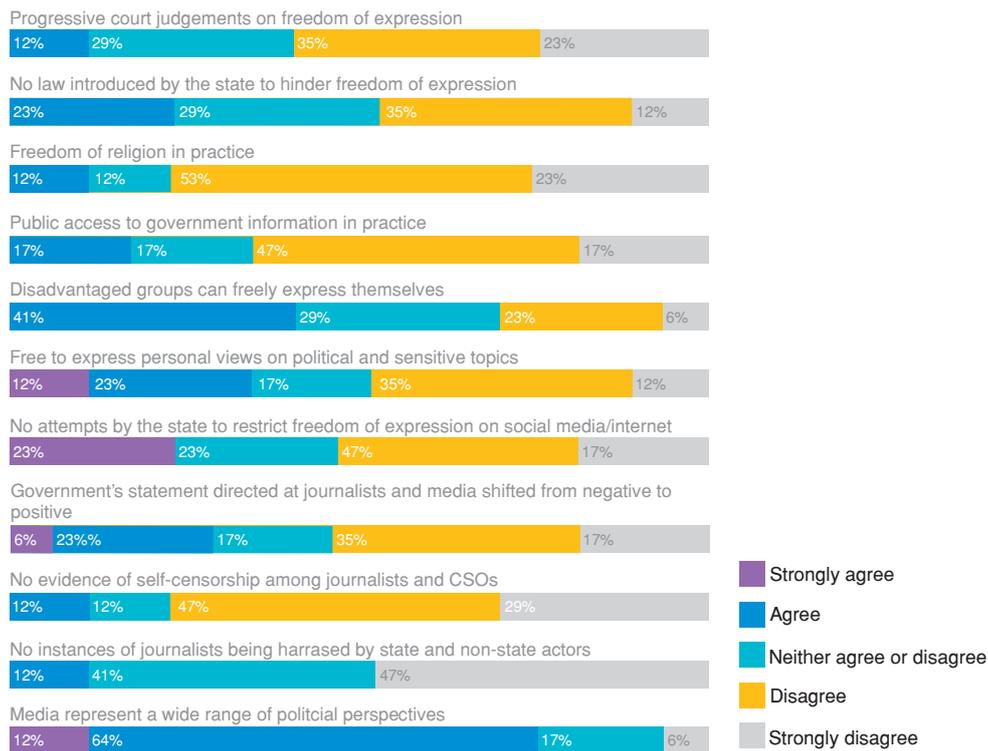


Figure 3: Freedom of Expression

actors, especially those who are reporting on sensitive subjects, for whom the situation remains highly precarious. Public access to government information remains a serious issue with 47.1 per cent of the responses indicating that media workers, civil society

activists, and other independent researchers are constantly facing difficulties in getting required information from public institutions.

Furthermore, 47.1 per cent of the respondents agree that there is freedom of assembly guaranteed in law in the country. According to the survey, 58.8 per cent of the respondents agree that the state has allowed peaceful protests. However, 47.1 per cent believed that the security forces have used physical violence to suppress the demonstrators. In addition, 35.3 per cent of the respondents agreed that protesters in the country faced arbitrary or illegal arrests during the demonstrations by the security forces.

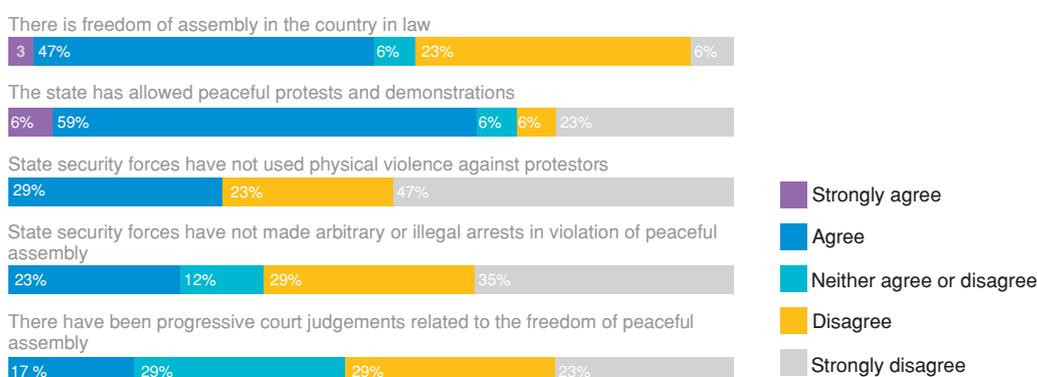


Figure 4: Freedom of Peaceful Assembly