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# A RISING TIDE

Shadow Report on Civic Space  
in the Philippines

April 2021

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## EXECUTIVE SUMMARY

Philippine civil society is considered one of the most vibrant in the world. In the 2019 Civil Society Sustainability Index, it was ranked first among countries in Asia. However, recent shifts in government policy evince an increasing tendency to encroach on civic space.

This report analyzes these policy shifts as well as primary data from select communities to ascertain the state of civic space in the Philippines, and in particular the situation of civil society organizations (CSOs) active in natural resources governance and Extractives Industry Transparency Initiative (EITI) issues.

The report finds a shrinking general civic space driven largely by institutional capture and the weaponization of the law. A recently passed law on anti-terrorism, in particular, is feared to impinge on the rights to freely express opinion and free speech, to peaceful assembly, and to association. Further, the report finds that measures that restrict and even pathologize the larger civil society render fragile CSOs involved in natural resources governance and EITI as well. Primary data substantiate concerns over these new shifts in the political order.

### Summary of Findings

Based on focus group discussions (FGDs) and key informant interviews (KIs) with civil society organizations in select local landscapes, the following trends characterize civic space in the country:

- In general, there is fear in publicly expressing opinions and positions against the government, although in local landscapes, this pertains more to the local government. Only in the case of one national informant where reprisals may have come from the national government. Another national informant had no direct experience but knew of other CSOs who did.
- In terms of access to information, including on EITI, in general, there is difficulty in accessing information, and the government, including EITI, are not proactive about making information available.
- There is now fear in holding assemblies and protests compared to the previous administration. And respondents experienced vilification for expressing their opinions, not only from the state, but from community members as well, online as well as offline.

- There is as of yet no difficulty in accessing funding, but new government issued circulars might change that. Locally, there is sometimes difficulty in accessing government-sponsored livelihood opportunities for civil society
- The respondents have clearly felt the chilling effect of the Anti-Terrorism Act (ATA). One even said that ATA, once its effects are felt, would break their group up. The ATA has also made one coalition more cautious in their operations. Policy issuances, one informant said, could jeopardize the operations of CSOs.
- There are experiences of intimidation, harassment, and violent dispersal. A community barricade was violently dispersed, and the mitigating circumstance was a letter from the Office of the Executive Secretary, citing a Department of Environment and Natural Resources (DENR) recommendation. A high-ranking official had also characterized CSOs as a national security threat.
- In general, there is now fear in convening meetings and gatherings. In one landscape, members backed out of a meeting for fear of the ATA, and they shared that the police monitor their meetings and even ask them why they congregate.
- Most respondents believed they were being surveilled. In one landscape, they shared that they were sure one person was assigned to monitor them. A national informant suspected that her phone had at point been bugged and that a suspicious person had taken photos of her home. She had also been told by a member of the Philippine National Police (PNP) that she was part of their watch list.
- In general, respondents were not aware of EITI. One participant who was aware had only been able to attend one meeting. An informant who is active in EITI said that the latter is generally an open space.
- For the respondent who has been involved in EITI, she recommends improving the way EITI is communicated. Participants from people's organizations would have difficulty fully engaging because of the language barrier and the technical nature of EITI. Other respondents again were either unaware or could not elaborate on this theme. All national participants were unaware.
- In general, respondents believe that the media have been persecuted and vilified, and, in one landscape, a media person was even killed. Some of them hesitate working with the media because it might endanger the latter.

Some respondents cautioned, however, that the media can sometimes be manipulated by companies. One respondent also shared that the media could now be engaging in self-censorship because of their persecution.

- Data are inaccessible is the majority sentiment of the respondents. In the data that is available, there are gaps, such as National Commission on Indigenous Peoples (NCIP) data on royalties for indigenous peoples, for example.
- Locally, communities are often left out of hearings, and informed after the fact. When there are hearings, there is trepidation in attending. In one landscape, a public hearing was held inside the premises of a private company, not on neutral ground. One respondent shared, however, that some multi-stakeholder platforms, where CSOs and the government worked together, have completely vanished because of the State's security framework.

The research finds that overarching state policies, priorities, and practices that affect civil society in natural resources governance are necessarily relevant to the benchmarks identified in the EITI Protocol on Civil Society Engagement. Local processes, of course, follow their own rhythms. Historian Patricio Abinales even goes as far as to say that “all politics is local.”<sup>1</sup> But, as is made abundantly clear by the research findings, what are often stand-alone or broad measures do have an impact on local dynamics, including local civil society. Like a rising tide, these overarching changes have reached civic space.

## Recommendations

To safeguard the role of civil society in natural resources governance and in the project of democratization in general, the following are the recommendations of respondents, surfaced during a field research, for improving EITI:

- An information drive should be conducted by EITI for communities, many of whom are unaware of it. This drive should not be a one-off but an iterative activity. A regular radio program conducted in Tagalog or a lingua franca (Bisaya in Mindanao, for example) is one suggestion.
- For EITI activities to include (more) representatives from communities. Whilst EITI does already include community representation, it may not include communities which oppose operational projects.
- For EITI to promote the participation of civil society in the management of resources by the local government. Whilst laws like the Local Government

Code provide for this, in reality, civil society can be marginalized. Corresponding safeguards must be put in place for such an engagement.

- For EITI and more solidarity groups to establish a regular presence in the communities. Already small in number, community-level organizations often feel that they are on their own in their struggles.
- Access to data, especially on benefits, including royalties, should be made available to communities. Respondents repeatedly cited being left in the dark and consultations conducted few and far between. An online portal that houses data could also be established.
- The government must facilitate discussions and disseminate information on the United Nations Guiding Principles on Business and Human Rights (UNGP-BHR) and a legally binding instrument (LBI) to regulation transnational corporations. Both instruments can serve as a common framework of engagement for all sectors concerned.

In addition to the above, the following courses of action are recommended:

- For EITI to expand the parameters of its Protocol on Civil Society Engagement to be able to assess, in addition to engagement within EITI and natural resources governance, the state of civic space, in general.
- And building on the expansion of the Protocol on Civil Society Engagement, to expand the EITI Standard to include an assessment of the democratic space itself. Civil society and civic space are a feature of and subject to the dynamics of democratization. Authoritarian practices within a democracy can lead to institutional, legislative, and judicial capture, i.e. undemocratic practices in natural resources governance. Consistent with the role of EITI to safeguard civil society organizations engaging in EITI, a determination of the quality of civic space would be instructive in making a determination of a country's EITI standing.
- For EITI to expand its definition of civil society, to include a variety of actors, including informal associations, among others.
- Challenging policy issuances, in addition to laws, before the courts, can yield benefits. Judgements in cases mentioned in this report routinely rule in favor of civic freedoms. Legislative lobbying may also be harnessed to defund policies which encroach on civic space.

## BACKGROUND

The Business and Human Rights Resource Centre (BHRRC) found that globally there were 604 attacks against human rights defenders raising concerns about business-related human rights abuses in 2020, up from 572 in 2019. In 2019, the sector that saw the most attacks was mining with 140 attacks; oil, gas, and coal saw 38 attacks.<sup>2</sup>

Extractives Industries Transparency Initiative (EITI) implementing countries are not immune to the corrosion of civic space taking place around the world. The worsening environment for civil society presents a major challenge for EITI to uphold its commitment to safeguarding civic space for civil society organizations (CSOs) engaging in EITI.

Multi-stakeholder initiatives such as EITI provide an effective platform of engagement and action for civil society. In some contexts, the Initiative constitutes a unique avenue through which civil society organizations can engage with their government and participate on a near equal footing with the authorities.

As the leading institution to promote the open and accountable management of oil, gas and mineral resources, the EITI has the responsibility to ensure that civil society organizations can participate effectively and meaningfully in the Initiative. If civil society cannot access or impart information, exercise its rights to freedom of expression, of peaceful assembly and of association, of public participation, or hold government accountable, the EITI will not be transformative in achieving better governance of the oil, gas and mining sectors.

In addition, the EITI has the potential to advance civic freedoms in a specific context. The EITI has proven to be an important tool to repeal contentious pieces of legislation related to fundamental freedoms and to generally limit the backlash against civil society activists.

This research aims to provide critical information for the EITI to consider in its validation of the Philippines. It documents and analyzes Philippine civic space, particularly civil society engagement, during the period January 2017 to March 2021, applying the framework and principles set out in the EITI Standard, Civil Society Protocol, and 2020 Validation Guide. It also offers lessons and recommendations - based on the case of the Philippines - for EITI stakeholders on best practices for addressing/pushing for civic space reforms in the EITI.

## RESEARCH DESIGN

### Research Framework

The research assessed the situation of the civic space in the Philippines from the period January 2017 to March 2021, using the EITI Validation Framework on Civil Society Engagement. This framework examines civil society engagement based on five dimensions, as follows: Expression, Operation, Association, Engagement, and Access to Decision Making.

In applying the EITI Validation Framework on Civil Society Engagement, the study made use of research questions drawing on civic space benchmarks identified by Publish What You Pay (PWYP) and the International Center for Not-for-Profit Law (ICNL). These primary research questions serve as jump-off points for the inquiry. See Annex I for the full research analytical framework.

### Scope and Limitations

This research study addresses key issues identified in the EITI Standard, Protocol on Civil Society Engagement, and 2020 Validation Guide. Where appropriate, this includes consideration of developments and context affecting the enabling environment for civil society engagement in the EITI process.

Research questions on policies, also examined using the same dimensions and benchmarks, were assessed through desk research and analyzed in the policy context. Questions for participant observation dwelt on actual experiences and perceptions of community members and CSOs. Whilst national in scope, the research aims to form a picture that it is representative but not comprehensive. As such, only four emblematic sites, plus a group of national CSOs, were selected to test the assessment tool.

The EITI research framework is gender-neutral. For the purpose of this inquiry, the gender dimensions of civic space were also not interrogated. However, the research team endeavored to attain gender balance in the composition or selection of the participants for the focus group discussions and key informant interviews.

### Research Sites and Population

Four community areas were chosen for the population samples. These areas were chosen because of (1) the emblematic nature of the mining activity or the landscape; (2) the level of engagement of non-governmental organizations with



EITI and natural resources governance issues; and (3) the level of community or grassroots organizing vis-à-vis natural resources governance. KIIs with National CSOs were conducted. See Annex II for a description of the sites. From these sites the research population was selected by the CSO overseeing the research at the local level. For a full description of the population sample and profile of respondents, see Annex III.

## INTRODUCTION

In the 2019 CSO Sustainability Index by the U.S. Agency for International Development (USAID), FHI 360, and the International Center for Not for Profit Law (ICNL), the Philippines was ranked first among countries in Asia. This Index measures the sustainability of civil society organizations (CSOs) across the following seven dimensions: legal environment, organizational capacity, financial viability, advocacy, service provision, infrastructure, and public image.<sup>3</sup>

In this Index, the Philippines (and Timor Leste) led Asian countries with a comparatively impressive overall 3.5 rating, where 7 is the lowest score (see Figure 1).

### TRENDS IN CSO SUSTAINABILITY



Figure 1: Asia CSO Sustainability, 2019 CSO Sustainability Index.

But a closer look at the data reveals a more complex picture, especially when viewed across time. In fact, the rating for the Philippines has been on a downward trend since mid-2016 (see Figure 2).<sup>4</sup> Not coincidentally, in May 2016 the Philippines held a general election and ushered in a new administration.



Figure 2: The Philippines rating, from the USAID's CSO Sustainability Index.

In particular, ratings for the dimensions of legal environment, advocacy, and public image declined significantly. The report cites the following reasons for the drop in the ratings for these specific areas since 2016:

*State harassment of CSOs, human rights defenders, activists, and lawyers representing marginalized groups increased. Extrajudicial killings have been an increasing problem, as well; according to Human Rights Watch, thirty-four human rights lawyers have been killed in the Philippines since 2016. In this context, CSO advocacy has declined as CSOs increasingly engaged in self-censorship and the number of organized groups participating in protests declined. The president [Rodrigo Duterte] perceives human rights activists and CSOs as critics of his public pronouncements and policies, particularly the war on drugs, and the military and police have accused some activists and organizations of being “communists” or “leftists.” In addition, the president verbally attacked major media companies, accusing them of bias in their coverage of government programs and the war on drugs. Following these attacks, the work of advocacy and service delivery CSOs received less national media attention.<sup>5</sup>*

In 2020, CIVICUS downgraded the status of the Philippines in terms of these freedoms from 'obstructed' to 'repressed,' which is one final step away from the lowest rating: 'closed.'

According to CIVICUS, “[a] repressed rating for civic space means that democratic freedoms, such as the freedom of expression, peaceful assembly and association, are severely restricted in the Philippines. The rating changed after a thorough assessment of the state of civic freedoms in the country and comes after a year of regular monitoring. The CIVICUS Monitor is extremely concerned about attacks on human rights defenders and journalists, the vilification and criminalisation of activists, the assault on press freedom and a new draconian anti-terror law.”<sup>6</sup>

Josef Benedict, Asia-Pacific civic space researcher for the CIVICUS Monitor, said, “The Duterte government has incrementally chipped away at civic freedoms since it came to power in 2016 but this has further eroded over the last year. In 2020, we have seen systematic intimidation, attacks and vilification of civil society and activists, an increased crackdown on press freedoms and a pervasive culture of impunity take root.”<sup>7</sup>

**The question for this assessment is whether this larger context has affected civil society engagement in issues relating to natural resources governance, in general, and the Extractives Industries Transparency Initiative (EITI), in particular.**

The EITI Protocol for Civil Society Engagement states that the “participation of civil society is fundamental to achieving the objectives of EITI, including Principle 4 which states that ‘public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development’.”

EITI does not have a definition per se of civil society, but an examination of its Protocol on Civic Engagement assumes a model in which civil society acts as a countervailing force to the State and the market. The EITI board is also an aggregation of representatives from the State, the market, and civil society.

What EITI does have is a definition of civil society organizations which it says are “[n]on-governmental organisations such as trade unions, issue-based coalitions, faith-based organisations, indigenous peoples’ movements, the media, think tanks and foundations.”<sup>8</sup> It even includes the so-called fourth estate, the media.

The protocol further narrows down the parameters of its inquiry. It says that “references to ‘civil society representatives’ will include civil society representatives who are substantively involved in the EITI process, including but not limited to members of the multi-stakeholder group. References to the ‘EITI process’ will include activities related to preparing for EITI sign-up; MSG meetings; CSO constituency side-meetings on EITI, including interactions with MSG

representatives; producing EITI Reports; producing materials or conducting analysis on EITI Reports; expressing views related to EITI activities; and expressing views related to natural resource governance.”<sup>9</sup>

This protocol assesses civil society engagement using several benchmarks under five main dimensions of Expression, Operation, Association, Engagement, and Access to Decision-Making.

How did civil society fare in these areas from January 2017 to March 2021? In 2017, the Philippines “was recognized as the first country to meet all the requirements of the EITI Standard.”<sup>10</sup> Four years hence, are there changes in civic space and, if there are, are they significant enough to affect the country’s standing in the eyes of EITI? Or are these changes unaffected by and thus have nothing to do with the larger question of democracy?

# ASSESSMENT: POLICY CONTEXT

This section lists and analyses the policies that impact on civic space. By no means a comprehensive survey, it only attempts to sketch out the state of civic space in terms of key laws, executive orders, department circulars and memoranda, and court judgements. They either directly impinge or promote the EITI dimensions of expression, association, and the operation of civil society organizations, and to a certain extent, engagement and access to decision making. More often than not, the coverage and ramifications of these laws, orders, and judgements overlap and are thus not arranged per dimension or benchmark.

There are other policies that deal not only with CSOs but with civic freedoms. The focus of this report is on policies that were either designed or harnessed during the period examined (January 2017-March 2021) that relate to civil society organizations, and to a lesser extent and only tangentially, civic freedoms.

Overarching legal frameworks, such as the Philippine Constitution and the Local Government Code, on civil society and natural resources governance are not included. Policies such as the Philippine Mining Act of 1995 and Executive Order 70, which mandated the Philippines to join the EITI, are also no longer discussed. All these were established before 2017 and are generally assumed to facilitate, or at least not undermine, civic space.

## A trifecta of factors

New York-based Human Rights Watch said in a 2012 report on the Philippines that, “Extrajudicial killings of leftist activists and petty criminals continue, with the government failing to acknowledge and address involvement by the security forces and local officials.”<sup>11</sup>

If a culture of extrajudicial violence had always been prevalent in the Philippines, under the Duterte administration it has been flourishing uncontrollably. And it is the State’s so-called “war on drugs” which has introduced a new variety of violence that is more brazen, and more lethal.

As of December 2020, the Philippine Drug Enforcement Agency (PDEA) logged a total of 6,011 deaths from the war on drugs.<sup>12</sup>

The UN Human Rights Council in June 2020 pegged the number at around 8,000, but “human rights groups and the governmental Commission on Human Rights believe that the actual toll is triple that number.”<sup>13</sup>

These killings are purported to be extra-judicial, and the victims are mostly young male breadwinners from poor neighborhoods.

In an interview with CIVICUS in the early days of the administration, CODE-NGO, the largest coalition of civil society organizations in the Philippines, said that civil society was “largely divided in their opinion and position” on the anti-drug campaign, but there were “still some quarters that have mustered courage to go on public and have denounced the excesses of the present administration.”<sup>14</sup>

If the enemies of the State in the war on drugs were peddlers and users, another war was fomenting, and this time the targets were Duterte’s former allies.

“Duterte has had a close relationship with the communist movement, even appointing some leftist leaders to his cabinet. Many communist and left-wing activists initially supported him and did not oppose his murderous ‘war on drugs’...But after the peace talks broke down, they turned against him,”<sup>15</sup> says the Human Rights Watch.

It was the collapse of the peace talks with the Communist Party of the Philippines-New People’s Army in November 2017 that resulted in “the expulsion of all ND (national democratic) activists from the government,” writes Jasmin Lorch based on her interview with an ND activist. “Since then, Duterte has engaged in ‘red-tagging’, persecuting leftist CSOs in general, and ND ones in particular,”<sup>16</sup> she says.

He would eventually sign a proclamation that the CPP and NPA were terrorist groups.<sup>17</sup>

What would be the shape of this persecution? A third war, this time with critics, points to the template.

Former Supreme Court chief justice Maria Lourdes Sereno, Maria Ressa, CEO of online media organization Rappler, and Senator Leila de Lima all share a common experience of earning the ire of the president.

The conflict with Senator de Lima, apparently, started long before Duterte became president. She had threatened to sue him after he threatened to kill an alleged rice smuggler back in 2014 when she was Justice secretary.<sup>18</sup> It did not help de Lima's case that she would launch a Senate investigation into Duterte's anti-drug campaign. Cases were filed against de Lima on what she calls are trumped up drug charges.

"I am now your enemy," Duterte told Maria Lourdes Sereno after she said that the former was behind the quo warranto petition that sought to remove her from office.<sup>19</sup> Sereno had voted against a handful of government proposals.<sup>20</sup> Sereno would be unseated by her peers at the Supreme Court.

In Ressa's case, all it took was a tweet from her during the president's State of the Nation Address to draw his ire.<sup>21</sup> A cyber-libel case was filed by an alleged supporter of the president, on one count of which Ressa has been found guilty by a local court.

In all of these cases, the rule of law was invoked, and local courts and even the Supreme Court found enough legal basis to rule.

A study on Singapore by Jothie Rajah "shows us that many of the same institutions that we more typically associate with liberal democracy—constitutions, elections, legislatures, law, and courts—can be used as tools to subvert representative democracy and liberal rights."<sup>22</sup> She might as well have been describing the Philippines today.

Stemming from the collapse of the alliance between Duterte and the national democratic left and nurtured in a climate of impunity, a new politics and a new infrastructure that weaponise democracy to pathologize civil society was thus born.



## Institutional capture?

In encroaching on civil society, the State first harnessed executive branch institutions at its disposal. Institutions such as the Securities and Exchange Commission (SEC), the Department of Foreign Affairs (DFA), and the Department of Interior and Local Government (DILG), and others became the vessels of the new political order, on which theme we will later expand.

### SEC Memorandum Circular 2018-15

One of the early manifestations of a shrinking civic space for non-governmental organizations (but not smaller or informal groups) is a document issued by the Securities and Exchange Commission (SEC): Memorandum Circular 2018-15 - Guidelines for the protection of SEC Registered Non-Profit Organizations from Money Laundering and Terrorist Financing Abuse (“NPO Guidelines”) issued on November 7, 2018.<sup>23</sup>

The SEC is a government regulatory body that has up until this moment been concerned mostly with the more lucrative private sector. Innocuous sounding, Memo Circular 2018-15 is “an enhanced registration and monitoring system for NPOs [non-profit organizations], which includes mandatory disclosures for all covered entities.” Its aim is to purportedly “protect NPOs from money laundering and terrorist financing abuse.”<sup>24</sup>

A cursory analysis<sup>25</sup> of MC 2018-15 by Jamael Jacob reveals some of its worrisome features:

- *Vague definition for an “NPO at Risk”.* According to the Circular, an NPO at Risk is one that is classified as medium or high risk based on three possible criteria: (1) according to risk factors identified in the MC itself; (2) according to a risk-based points system that may be developed by the SEC; or (3) other factors the SEC may deem material in assessing an NPO’s risk level. Each one is problematic. The so-called “risk factors” just refer to the basic information all NPOs are required to submit to the SEC. The risk-based points system does not yet exist, and its development does not seem to be mandatory. As for the “other factors”, it is entirely up to the SEC to declare what they will consist of. It is easy to see how the system is ripe for abuse.
- *Broad definition for a “Politically Exposed Person” (PEP).* The MC requires each NPO to “establish and record the true and full identity” of its donors who are considered as PEPs. A PEP is a person who is or has been entrusted with a prominent public position/function in: (1) the Philippines,

*with substantial authority over policy, operations, or the use or allocation of government-owned resources; (b) a foreign country; or (c) an international organization...In other words, the MC forces every NPO to intrude into the private lives of its donors. How else is it supposed to know if one of its donors has a mistress, and if so, who?*

- *Unbridled authority to require the submission of any document. The MC allows the SEC to require the submission of any document it thinks is necessary to properly assess the risk of an NPO of being subjected to money laundering or terrorist financing abuse. Any time someone is given such a blanket authority, expect red flags to appear.*
- *Information sharing scheme. The Circular also allows the SEC to enter into agreements with NPO self-regulatory organizations and private organizations for cooperation, coordination, and information sharing purposes. In the case of NPOs at Risk, information sharing is mandatory but with other government agencies, including law enforcement. While data sharing is not prohibited per se, if left unchecked, it facilitates pervasive surveillance and allows the actors behind it to circumvent control mechanisms. Things turn for the worse once law enforcement agencies become involved since they get to skip the need for warrants, subpoenas, or court orders.*
- *Lack of criteria for determining the need for an investigation. With self-restraint as its only limit, the SEC is also permitted to conduct an investigation on a person who “has violated or is about to violate” the mandatory provisions of the Circular, or on an NPO being used for money laundering or terrorist financing. It is not clear how the SEC gets to predict if a person is about to violate the MC. Does it have predictive technology we are not aware of?*

Even with these concerns, NGOs seemed to have no choice but to comply.

### DILG Circular Memorandum Circulars

The Department of Interior and Local Government (DILG), under this administration, has come out with a handful of memorandum circulars that relates to civil society.

The earliest is Memorandum Circular No. 2018-89, dated June 11, 2018, just a day before the country’s celebration of Independence Day. Titled “Guidelines on Engagements with Civil Society Organizations,” MC No. 2018-89 references Section 23, Article II of the 1987 Constitution, which “states that the participation

of non-governmental, community-based and other sectoral organizations shall be encouraged by the State.”<sup>26</sup>

The memorandum covers “CSOs that would be engaged by the DILG to jointly implement Department programs and projects, with or without the use of government funds.”<sup>27</sup> It identifies the following areas where “CSOs may be engaged with the DILG: feedbacking on programs and projects; pushing for various advocacies; formulating plans, policies, and issuances; and implementing capacity development programs and other activities. The circular also says that the DILG accepts funding proposals from CSOs that are in line with its programs and projects. These include provision of potable water supply, road repair, institutionalizing, gender responsive local governance, and, curiously, “transition to federalism.”<sup>28</sup> An accreditation process and a corresponding checklist of requirements are in place.

Another issuance, Memorandum Circular 2019-72<sup>29</sup>, “General Guidelines on Accreditation of CSOs and Selection of Representatives to Local Special Bodies (LSBs)”, was signed on May 22, 2019. This document was issued “to provide the guidelines on the process for accreditation and selection of CSOs and their representatives to the local special bodies, and to strengthen their participation in local governance and development processes, reiterating and strengthening the provisions of RA 7160 and its Implementing Rules and Regulations.” As such, it requires “all provinces, cities and municipalities...[to] conduct an inventory to generate or update their existing Directory of CSOs.” With this document, it would seem that the DILG was just being faithful to the spirit of civil society-government cooperation enshrined in the Constitution.

In one of the early memorandums of the DILG fresh into 2021, however, the DILG seems to view CSOs less as partners than as groups that have to be monitored.

Memorandum Circular 2021-012, or the “Establishment of civil society organization desk [sic] and institutionalization of people’s council [sic] in the [sic] local government units,” is remarkable, at least on paper. It seems to carve out literal physical space for the concerns of local CSOs, federations, people’s organizations, among others, within local government units (LGUs) themselves. A CSO desk would be created in each LGU, and funding support would be provided to operationalize the Desk.

Section 4.1 of the circular, however, might just give CSOs pause. It says: “In addition to the list of accreditation requirements provided under MC 2019-72, for security reasons and to determine the legitimacy of the CSOs intending to apply for accreditation and CSOs intending to join the local Peoples [sic] Council, shall be required to secure clearances from the Armed Forces of the Philippines (AFP),

and the Philippines National Police (PNP) respectively, located within a province, city or municipality. The existing clearance issued by the AFP and PNP shall apply, but shall indicate the such CSO is cleared from any subversive and illegal activities.”<sup>30</sup>

A recent circular, it remains to be seen if or how this will affect civil society. On the face of it, it would seem that, as with the aforementioned SEC circular, documentary and compliance requirements are just increasing for CSOs. However, securing a clearance from the AFP or the PNP bestows a quasi-regulatory function to the State’s armed forces. But perhaps this is not strange. As we shall see later on, the State’s security framework follows a certain logic.

#### [DFA Note Verbale No. 2021-0592](#)

On February 5, 2021, the Department of Foreign Affairs (DFA) issued Note Verbale 2021-0592, which directed foreign government funding to be coursed through DFA. A portion of the Note reads:

“The Department of Foreign Affairs of the Republic of the Philippines presents its compliments to all Diplomatic Missions accredited to the Republic of the Philippines and has the honor to inform the latter that all foreign government funding intended for Philippine non-government organizations (NGOs), regardless of mode of disbursement, transfer or download of funds, shall be coursed through the Department of Foreign Affairs of the Philippines for appropriate clearance.”<sup>31</sup>

A one-page document, it does not outline guidelines or mechanisms for such a policy change. Released just a month into the writing of this report, the full impact of the note verbale has yet to be discovered.

Such measures of a fiduciary nature by the DFA actually began much earlier. In 2019, the DFA had asked all European states to “clear any and all donations to their NGOs in the Philippines” with them amid reports that foreign organizations have “indirectly and unwittingly partnered” with local groups allegedly linked to the Communist Party of the Philippines-New People’s Army (CPP-NPA).<sup>32</sup> It appears, again, a wider net has been cast.

But where the dangers of the SEC, DILG, and DFA circulars concern primarily the operations of CSOs, some laws have trespassed onto the safety of CSOs itself.

## Anti-terror legislation or legislating for terror?

### The Human Security Act

Passed during the term of President Gloria Macapagal-Arroyo, the Human Security Act (HSA) was believed by critics to be “a response to the call of the United States to its allied nations – the “Coalition of the Willing” [17]– to enact anti-terror measures in the wake of the 9/11 attacks in 2001’[18].”<sup>33</sup>

“For years, the Philippine government used its military to quell revolutionary factions. [16] As terrorist networks grew and became increasingly problematic, the Philippine government used its military to fight concurrently against secessionists and terrorists.[17] This response led to the U.N. taking action and the Philippine government passing the HSA, a law that distinguished between acts of secession and acts of terrorism.”<sup>34</sup>

An analysis of the law found that, contrary to the fears of critics, the HSA “with good intentions, has provided numerous safeguards for the protection of the people’s constitutional rights and fundamental liberties. It defined acts that would constitute the crime of terrorism in not a vague manner. [196] It involved the independent judiciary, a known protector of human rights, in the fight to counter terrorism. [197] It placed stringent procedures for authorizing measures. [198] It established bodies that would check the propriety of the measures. [199]”<sup>35</sup>

In fact, if anything, that analysis found HSA to lack teeth: “[B]y being too sensitive to possible violations of human rights and by placing too many safeguards against government abuses, it may not have enough fangs to counter terrorist acts, thus putting into doubt its capacity to in fact protect human rights.”<sup>36</sup>

This analysis was actually borne out by the filing and subsequent legislation of the Anti-Terrorism Act (ATA), which effectively repealed the HSA.

ATA author Senator Panfilo Lacson called the HSA a “dead letter law,” with only one conviction resulting from HSA since its passage. According to Lacson: “So far, there’s only one conviction, si Nur Supian, *yung leader nung* (the leader of) rebel Hukbong Federal sa Marawi siege, the lone convicted felon under the Human Security Act and there’s only one prescribed organization, the Abu Sayyaf.”<sup>37</sup>

It was for this reason that he filed ATA.

In 2018, the Department of Justice issued a proscription list of more than 600 people it tagged as terrorists under the HSA. The list included high-profile personalities, among them a UN rapporteur.<sup>38</sup>

The list was eventually narrowed down to 8, after NGOs slammed it, although the case remains pending in a Manila court.<sup>39</sup>

This suit was purportedly filed after Duterte declared the CPP-NPA terrorist organizations, as earlier mentioned.

Still, with the repeal of the HSA, the ATA is now the State's principal law for dealing with terrorism, which critics fear will encroach on fundamental freedoms. Are their fears unfounded? After all, law author Lacson has called the anti-terror law "one of the kindest in the world."<sup>40</sup>

### The Anti-Terrorism Act

The ATA was passed in 2020, amid the COVID-19 pandemic. The bill was proceeding verily under the radar; if civil society made a fuss, it did not seem that the public had picked up on it. However, a law passed to respond to the pandemic, the Bayanihan to Heal as One Act, was weaponized by the government to stifle dissent. If this was a preview of what the State could do under ATA, citizens were right to be afraid. However, the ATA was passed and signed into law on July 3, 2020.

For former Supreme Court justice Antonio Carpio, "[t]he provision of the Anti-Terrorism Act (ATA) that strikes the deadliest blow on fundamental constitutional rights is its Section 29, which extends detention without judicial warrant, and without judicial charge, to a total of 24 days."<sup>41</sup>

Meanwhile, the Comment from the United Nations Special Rapporteurs (UNSR) and the Working Group on Arbitrary Detention the Act flagged "serious concerns regarding the designation of individuals, civil society, and humanitarian organizations as 'terrorists' in the context of ongoing discrimination directed at religious and other minorities, human rights defenders, and political opponents."<sup>42</sup>

In an analysis by legal think tank Legal Rights and Natural Resources Center (LRC) of the text of the bill that would eventually be passed, "[C]ertain provisions of the bill are vague, while others are contrary to constitutionally vested rights. The [bill] contains, by force of legislative habit, the supposed primacy of fundamental rights. Stripped off its empty allusions to respect constitutional guarantees, however, the ATB [anti-terrorism bill] has the potential to become basis for the neutralization order for those who oppose the people in power."<sup>43</sup>

LRC's analysis of the ATA focuses on three of its most contentious aspects, namely: inherent ambiguity in its definition of terrorism; discipline and control of

humanitarian organisations and NGOs; and expanded Power of the Anti-Terrorism Council (ATC) and extended detention.

The ambiguity in its definition, according to LRC, “practically grants law enforcement officials the unbridled discretion in labeling the acts that constitute terrorism.”<sup>44</sup> Under the ATA, “[T]o avoid the dangers of being branded as a terrorist, NGOs and organizations essentially need to seek prior clearance and recognition for their projects. NGOs who fail to do so risk being red-tagged and having their assets frozen by the Anti-Money Laundering Council. Even funding organizations may be held criminally accountable for extending funding to an “unrecognized” NGO. Establishing the direct link between the actual terror conduct that caused widespread fear and panic, and the humanitarian organization is not relevant under the ATBs framework. What matters merely is the ATC’s controlling—and even random—prior branding made on an entity or person, which could be based on tenuous grounds.”<sup>45</sup>

Finally, LRC warns of the extraordinary powers of the ATC: “Using the esoterically crafted definition of acts constituting terrorism, the ATC has been bestowed the power to stigmatize organizations, groups, and persons. This mark of shame carries with it profound implications. Specifically, it subjects the person or entity to the jurisdiction of the Anti-Money Laundering Council (AMLC), which could freeze his or its bank accounts. This also justifies wire-tapping and surveillance of the person or entity concerned.”<sup>46</sup>

Legal commentary service *Jurist* expounds further on the powers of the ATC as a contravention of the natural justice principle (innocent until proven guilty). And of “**Article 14 (2)** of the International Covenant on Civil and Political Rights (ICCPR), which provides for the right to a fair trial, thereby recognizing the right to be presumed innocent until proven guilty as an important human right.”<sup>47</sup>

Aetas Japer Gurung and Junior Ramos from San Marcelino, Zambales are the first individuals to be charged under the ATA. The military alleged that they took part in a firefight with the military that resulted in the killing of a soldier on 21 August 2020.<sup>48</sup>

On December 23, 2020, the Anti-Money Laundering Council (AMLC) signed an order to freeze the assets of organizations identified with CPP-NPA. This order is keeping with the ATA, “which says that AMLC can freeze assets of a group designated as terrorists by the Philippines’ Anti-Terrorism Council.”<sup>49</sup>

The accounts of Rural Missionaries of the Philippines (RMSP) were frozen, although the AMLC based the order on Republic Act No. 10168, or the Terrorism Financing Prevention and Suppression Act, and not the ATA.



If the legislative mill was busy churning out a law that would consolidate the State's securitization framework, the executive branch was no less hyperactive.

### Executive Order No. 70

The State issued a National Security Plan at the start of the Duterte administration. While NSP trafficked in concern for civilian safety and national development, an executive order highlighted what exactly this security meant.

Executive Order 70 – Whole-of-Nation Approach to End Communist Insurgency (Creation of the NTF-ELCAC) was signed on 4 December 2018. This approach “addresses the root causes of insurgencies, internal disturbances and tensions, and other armed conflict and threats by prioritizing packages by the government, facilitating societal inclusivity and ensuring active participation of all sectors of society.”<sup>50</sup>

The NTF-ELCAC is chaired by the president.

DILG issued MC 2019-125, Guidelines for the Local Government Units in the Implementation of Executive Order No. 70, S. 2018, on August 6, 2019. This circular discusses how to incorporate existing governance clusters into of the whole-of-nation approach and contains guidelines for the creation of sub-task forces at the different local government levels (provincial, city/municipal, barangay).<sup>51</sup>

According to the Administrative Code of 1987, “Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.”<sup>52</sup> In other words, executive orders fall under the law-making powers of the executive branch, and they have as much a reach and effect as a law.

The Congress-approved 2021 budget for NTF-ELCAC is P19 billion.<sup>53</sup>

In a report, the United Nations Office of the High Commissioner for Human Rights (UN OHCHR) warns of the dangers EO 70:

*The departure from a predominantly militarized response to preventing and countering violent extremism is encouraging, but this can only be sustainably achieved through meaningful participation of the communities affected, and respect for human rights and the rule of law. There are concerns, however, that the implementation of Executive Order No. 70 appears to be going in the opposite direction, mobilizing the administration,*



*from the national to local levels, against suspected communist sympathizers, and further sowing suspicions and divisions in communities. Advocacy for economic and social rights comes with the risk of being labelled anti-government and thus pro-insurgency, which may hinder the goal of inclusive and sustainable development. There are concerns that these patterns resemble those that characterize the anti-illegal drugs campaign, notably a presumption of guilt and lack of due process or of effective oversight – this time against those suspected of supporting the Communist Party of the Philippines-NPA.<sup>54</sup>*

As alluded to in the above-mentioned report, one of the unintended effects of NTF-ELCAC is red-tagging.

Philippine jurisprudence defines red-tagging as “the act of labelling, branding, naming and accusing individuals and/or organizations of being left-leaning, subversives, communists or terrorists (used as) a strategy... by State agents, particularly law enforcement agencies and the military, against those perceived to be ‘threats’ or ‘enemies of the State.’”<sup>55</sup>

Although red-tagging has long been a practice of the State forces, with NTF-ELCAC a wider net appears to have been cast.

An AFP general was implicated in red-tagging several alumni of the University of the Philippines. On the Facebook page, Armed Forces of the Philippines Exchange, a list of “students who became NPA (died or captured)” was published. The list included names of alumni who were neither dead nor captured, including former health secretary Alex Padilla, a playwright, and a member of Free Legal Assistance Group (FLAG), among others. The AFP later apologized for what it said was a gaffe.<sup>56</sup>

KADUAMI, a Bantay Kita coalition member from the Cordillera Region, was tagged as “communist terrorist group front organizations” by the Department of Defense.<sup>57</sup>

In a 2017 statement from Bantay Kita, Cordillera People Alliance (CPA) experienced harassment from the Philippine National Police and was maligned by the AFP Northern Luzon Command.<sup>58</sup>

Even celebrities were not spared. After being red-tagged, actress Angel Locsin slammed NTF-ELCAC “for engaging in red-tagging instead of bringing up related issues to the proper forum.”<sup>59</sup>

Actress Liza Soberano and Miss Universe Catriona Gray were also given a warning by NTF ELCAC spokesperson General Antonio Parlade, who had red-tagged Locsin, to stop associating with the left.<sup>60</sup>

Journalists were fair game, too. The same general red-tagged journalist Tetch Torres-Tupas “over her alleged ‘fake’ news report about two Aetas charged with terrorism, but who claimed they were tortured by soldiers in Zambales.”<sup>61</sup>

Photos of alleged communists were plastered all over Davao, the hometown of the president.<sup>62</sup>

In Cordillera, a “tokhang” or “knock and plead” campaign against left-leaning personalities was authorized under “a Regional Law Enforcement Coordinating Committee (RLECC) resolution signed by 45 regional executives, government teams will visit so-called ‘left-leaning personalities’, including government personnel and members of the media, as part of a counterinsurgency campaign.”<sup>63</sup> Tokhang, incidentally, originated in the State’s anti-drug campaign.

Meanwhile, an officer of the PNP penned a letter “ordering the local Office of the Clerk of Court to give him the names of lawyers representing suspected communists and threatening to ‘neutralize’ them.”<sup>64</sup>

In its *en banc* Resolution 08-009-2021 signed on 2 March 2021, the National Commission on Indigenous Peoples (NCIP) denounced the use of the term ‘Lumad’. The resolution cites the testimony of a certain Datu Lito Omos, who attests that “the term lumad was chosen to control the identification of the IPs under the banner of CPP-NDF-NPA (Communist Party of the Philippines-National Democratic Front-New People’s Army).”<sup>65</sup>

Anthropologist Karl Gaspar, in an article in *Mindanews*, said that “This time, not just human persons are red-tagged, but innocent words like Lumad can also be red-tagged.”<sup>66</sup>

The consequences of red-tagging can be deadly.

“In a high-profile case last December, a red-tagged doctor and her husband were gunned down in broad daylight by unknown assailants in the city of Guihulngan. Dr. Mary Rose Sancelan - who had led her community’s response to the COVID-19 pandemic - had reportedly appeared on a list from local militia group ‘Kagubak,’ which baselessly claimed Sancelan had links to the NPA.”<sup>67</sup>

In what human rights advocates have called ‘Bloody Sunday’, nine activists were killed in simultaneous and separate raids in the CALABARZON region on March

7, 2021, “[t]wo days after President Rodrigo Duterte told police and soldiers to ‘kill’ and ‘finish off’ communities rebels in encounters.”<sup>68</sup>

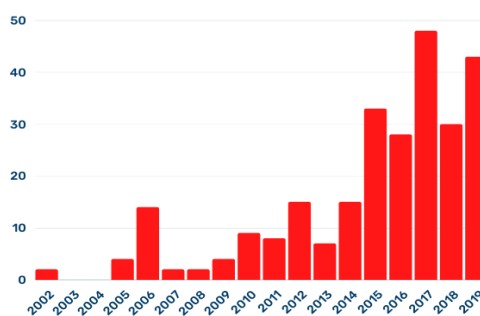
Earlier, on December 30, 2020, just a day before New Year’s Eve, 9 leaders from the Tumandok indigenous people were killed after being red-tagged.<sup>69</sup> These leaders had been opposing the Jalar Mega Dam Project in Panay. In fact, many indigenous peoples had been killed after being red-tagged, even before the issuance of EO 70.

Red-tagging, of course, is not a Duterte invention, nor are the killings of activists and indigenous peoples. In fact, the killings of environmental and land defenders, which would be the data relevant to this report, has been a disturbing reality in the country.

## A culture of violence and impunity

International watchdog Global Witness publishes an annual report that tracks the killings of land and environmental defenders across the world. In its 2019 report, it registered 43 killings under the Duterte administration, earning the Philippines the title of the second most dangerous place for environmental defenders.<sup>70</sup> Global Witness says that “[T]he relentless vilification of defenders by the government and widespread impunity for their attackers may well be driving the increase.”<sup>71</sup> Further, from July 2016 to June 2017 alone, Duterte’s first year in office, there were 44 killings.

### Number of Environmental and Land Defenders Killed



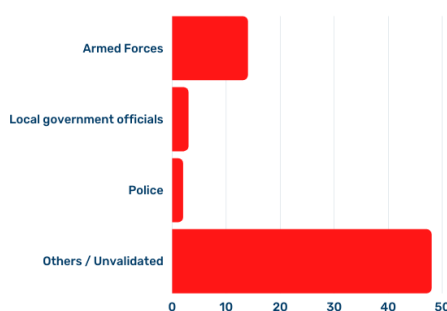
Source: Data compiled from Global Witness Reports produced from 2013 to 2019

Figure 5: Number of Environmental and Land Defenders Killed, Global Witness.

However, compiling data from all of Global Witness’ reports, we see that the killings had been on upward trend when reckoned from 2002 (the time of Gloria Macapagal-Arroyo), and that killings towards the tail end of the Aquino administration were no less high (see Figure 5).<sup>72</sup>

In its report, *Deadly Environment* published in 2013, Global Witness analyzed data from 2002 to 2013. It found that out of the total 67 activists killed, a considerable number, which was validated, was carried out by State agents (see Figure 6).<sup>73</sup>

### Deaths by Perpetrator: 2002- 2013



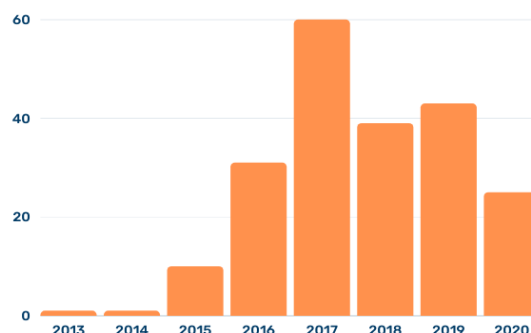
Source: Data culled from "Deadly Environment," Global Witness Report 2013.

Figure 6: Deaths by perpetrator, data from *Deadly Environment*, Global Witness.

Unfortunately, data on the Philippines in these reports were not always disaggregated per perpetrator, and per sector in which the killing was related. But available data for 2019 found that 16 of the 43 deaths were related to the extractives sector, and half of the deaths were carried out by State forces.<sup>74</sup> In 2017, 56% of the 48 deaths were carried out by State forces. And in 2016, a third of the deaths were in the extractives sector.<sup>75</sup>

Meanwhile, Frontline Defenders' annual Global Analysis reports, published since 2013, tracks killings of human rights defenders, including land and environmental defenders. In the data below (see Figure 7), the killings surged during the Duterte administration.<sup>76</sup>

## Number of Human Rights Defenders Killed



Source: Data compiled from Frontline Defenders' Global Analysis Reports produced from 2013 to 2020

Figure 7: Number of Human Rights Defenders Killed, Global Analysis reports, Frontline Defenders.

In the 2020 report, it recorded 25 killings, 84% of whom were working on land, environmental, and indigenous peoples' rights.<sup>77</sup>

In 2019, while no numerical information was indicated, the report said that "Defenders working on land, environmental and indigenous peoples' rights were most frequently attacked, as they highlighted violations related to land grabbing or environmental degradation."<sup>78</sup>

In 2018, again while no number was given, the report said that "Most of these killings were linked to struggles against mining and other extractive industries."<sup>79</sup>

The same finding was echoed in the 2017 report where it found that "the vast majority of defenders killed in Asia were those protecting community and/or indigenous peoples' rights in the face of agribusiness and extractive industry in the Philippines, which remains one of the most dangerous countries in the world to be a human rights defender."<sup>80</sup>

It was again noted in 2016 when the killings dramatically surged from the previous year that "Many attacks targeted indigenous or environmental rights HRDs who objected to extractive or polluting industries."<sup>81</sup>

A majority of these killings went unpunished. What the numbers also tell us is that the culture of violence and the climate of impunity made a turn for the worse under the Duterte administration.

As the report of the UN OHCHR on the situation of human rights in the Philippines, dated June 29, 2020, says “Persistent impunity for human rights violations is stark, and practical obstacles to accessing justice within the country are almost insurmountable.”<sup>82</sup>

As international organization Frontline Defenders said: “The climate of impunity in the Philippines, coupled with the administration’s encouragement of extrajudicial killings of suspected drug users, as well as the increasingly hard line of the military against the Philippine National Democratic Front, have led to a serious deterioration of the situation of human rights defenders in the country.”<sup>83</sup>

Before we examine developments in the judiciary vis-à-vis these policy shifts, we look at how the law has been weaponized amid the COVID-19 pandemic against civic space.

## Weaponizing the pandemic?

For human rights lawyer Jose Manuel “Chel” Diokno, “There is a clear effort from some quarters in the government to shrink the democratic space and free discussion that is essential to a democracy,” under one of the world’s longest lockdowns.<sup>84</sup>

United Nations High Commissioner for Human Rights Michelle Bachelet described the Philippines’ handling of the crisis as a “highly militarized response”.<sup>85</sup> Generals head the Inter-Agency Task Force (IATF) on COVID-19, and generals were also named as vaccine and contact-tracing czars.

## The Bayanihan to Heal as One Act

In response to the COVID-19 pandemic, the Duterte administration passed the Bayanihan to Heal as One Act. The law gave the president 30 special powers to respond to the pandemic. This includes granting remuneration for health frontliners and cash aid to 18 million poor families, taking over of private medical facilities, directing banks to implement a 30-day grace period for loans, among others.<sup>86</sup>

The law also punishes a number of violations with imprisonment and fines of up to 1 million pesos.<sup>87</sup>

Among these violations include “Individuals or groups creating, perpetrating or spreading false information regarding the COVID-19 crisis on social media and other platforms, such information having no valid or beneficial effect on the population and are clearly geared to promote chaos, panic, anarchy, fear or

confusion; and those participating in cyber incidents that make use or take advantage of the current crisis situation to prey on the public through scams, phishing, fraudulent emails, or other similar acts;”

According to an analysis by Jeremiah Joven Joaquin and Hazel Biana,<sup>88</sup>

*Section 6f of the Bayanihan Act criminalises people who make and spread false information (on social media and other platforms). Accordingly, people who proliferate information that have ‘no valid or beneficial effect on the population, and are clearly geared to promote panic, chaos, anarchy, fear and confusion’ shall be imprisoned for up to 2 months or be fined for up to one million pesos (approx. US\$ 25,000.00) (Congress of the Philippines, 2020a).*

*In less than a month since its implementation, 47 persons were nabbed for the alleged violations of the provision (Caliwan, 2020). Among them is the celebrated Cebu-based artist and scriptwriter, Maria Victoria Beltran. Due to her COVID-19 satirical post on social media, where she wrote: ‘9,000+ new cases (All from Zapatera) of COVID-19 in Cebu City in 1 day. We are now the epicentre in the whole Solar System’, Beltran was threatened by the city mayor, put in jail and even had to post bail amounting to PhP 42,000.00 (approx. US\$ 800.00). She was ‘arrested by the Philippine National Police in the dark hours of midnight, interrogated, tied to a chair like a dog. . . and held incommunicado for 16 hours’ (Panti, 2020).*

The law was also used to arrest protesters. Twenty-one residents, who were protesting that they had not received food aid, were arrested in Quezon City. They were charged for violating the Bayanihan to Heal as One Act, and other laws, including the Public Assembly of 1985, the Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act (Republic Act No. 11332), and Resistance and Disobedience to a Person in Authority.<sup>89</sup> They were dispersed violently by the Quezon City Police District (QCPD).<sup>90</sup>

### Republic Act 11332, or The Mandatory Reporting of Notifiable Diseases and Health Events of Public Concern Act

At least 20 protesters who organized a Pride March were arrested and “charged with disobedience of persons in authority in relation to Republic Act 11332, otherwise known as the Law on Reporting of Communicable Diseases, and Batas Pambansa 880, otherwise known as the Public Assembly Act.”<sup>91</sup>

Human rights lawyers maintain that RA 11332, as well as the aforementioned BaHO law, do not prohibit rallies.<sup>92</sup>

A group of activists from the Makabayan bloc who had distributed relief packs in Bulacan were also arrested for flouting RA 11332.

### Inciting to Sedition

On May 11, National Bureau of Investigation agents arrested, without a warrant, Ronnel Mas, a 25-year-old public school teacher who had tweeted that he would pay 50 million pesos to anyone who would assassinate the president.<sup>93</sup>

A case was filed by the DOJ against Mas for inciting to sedition. Four others made death threats on social media.

### Cybercrime Law

The Cybercrime bill was similarly used by the State to run after citizens who had taken to social media to express their frustration with the government's response to the COVID-19 pandemic.

This included an overseas Filipino worker (OFW) living in Taiwan. Elanel Oridor posted videos on Facebook criticizing the use of force under the lockdown. "On April 25, the official website of the Department of Labor and Employment (DOLE) posted a statement from Labor Attaché Fidel V. Macauyag asking Taiwan to deport Oridor for violating the cybercrime law."<sup>94</sup>

### Local ordinances

Local governments and local police also clamped down on public assemblies using local ordinances.

Members of transport group Piston were arrested in Caloocan City after protesting the jeepney ban imposed during the lockdown. Complaints were filed against them "for violating city ordinances on social distancing and mass gatherings and for resistance and disobedience to persons in authority under the Revised Penal Code."<sup>95</sup>

There are other ordinances that ought to be further examined.

Finally, it was also amid the pandemic that the franchise for the country's largest media network was not renewed. A committee of the House of Representatives voted not to grant a franchise to ABS-CBN Broadcasting Corporation, allegedly at the behest of the president. "Mr. Duterte has accused ABS-CBN of bias, including favoring a political opponent in the 2016 election, and had earlier warned that he would not allow the renewal of its franchise."<sup>96</sup>



The test of laws, whether of its foundational constitutionality or its application and interpretation, is the domain of the courts. So, while institutions under the purview of the executive branch and laws may have been weaponized to encroach on civic space, what we have not determined thus far is the role of the judiciary.

## The judiciary as contested terrain

It should not come as a surprise that in indices which measure the rule of law, the Philippines has received less than sterling assessments.

World Bank's Rule of Law Index assesses "perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence." The Philippines' percentile rank was 34.135 in 2019. The last time it was assessed, in 2014, during the Aquino administration, the country was ranked at 43.750. The first ever assessment, in 2009, under Macapagal-Arroyo, it was at 35.071.<sup>97</sup>

In the World Justice Project (WJP) Rule of Law Index 2020, the Philippines had a score of 0.47 out of 1, with a global rank of 91, unchanged from 2019. WJP defines rule of law "as a durable system of laws, institutions, norms, and community commitment that delivers accountability, just laws, open government, and accessible and impartial dispute resolution."<sup>98</sup>

In weaponizing the law, however, the State has found that it is a double-edged sword. Far from acquiescing to its overtures, courts become "more typically become lively arenas of contention, resulting in a "judicialization of authoritarian politics."<sup>99</sup>

Rulings in the judiciary which pertain to or reference the laws, orders, and promulgations we so far discussed reveal the texture of this contested field. Local courts evince a streak of independence that has served time and again to foil the weaponization of the law.

In February 2021, for example, a local court dismissed one of the three cases against Senator de Lima.<sup>100</sup>

Progressive group Akbayan said that this acquittal reveals that "despite the weaponisation of the law, the people will push back in order for truth and justice to find their way out."<sup>101</sup>

A local court threw out the case against the arrest of Makabayan activists for violating RA 11332, and for the first time “offered an interpretation of the broad public health law – Republic Act 11332.”<sup>102</sup>

“Judge Badillo said that Section 9(d) only punishes the non-cooperation of people who should report or respond to the health crisis – and these do not include the activists who were distributing relief packs.”<sup>103</sup>

The inciting to sedition case filed against public school teacher Ronnel Mas was dismissed by Judge Richard Paradeza of Olongapo City Regional Trial Court Branch 72. In his decision, Paradeza said: “The author/s of the said post should be made liable and punished to the fullest extent of the law. However, no matter how contemptible or reprehensible the post is, the person or persons suspected to be responsible [for] the posting of the subject provocative text should be afforded their constitutional rights.” he said. “Even the worst criminals have constitutional rights too,” he added.<sup>104</sup>

Journalist Lady Ann Salem and trade unionist Rodrigo Esparago were released following the dismissal of charges of illegal possession of firearms and explosive against them by Judge Monique Quisumbing-Ignacio.<sup>105</sup>

Salem is editor at *Manila Today*, one of the media outfits red-tagged by the NTF-ELCAC during a Senate hearing.<sup>106</sup>

Judge Quisumbing-Ignacio, after freeing Salem and Esparago, would herself be red-tagged. A tarpaulin, with the logo of the CPP, thanking her for the release of the two was put up along the iconic Epifanio de los Santos Avenue in Shaw.<sup>107</sup>

Meanwhile, activists allege that Quezon City Regional Trial Court Branch 89, presided by Executive Judge Cecilyn Burgos-Villavert, has become a warrants factory. The Makabayan bloc filed a resolution in the House of Representatives alleging that “Villavert ‘seemed’ to be ‘favored by the Philippine National Police (PNP) as source of ‘multiple search warrants founded on fabricated facts.’”<sup>108</sup>

From this rough sketch, we can intimate that courts have on occasion shown an independence that would have been assumed comprised with a country ruled with an increasing iron grip.

As for the Supreme Court, decisions relating to policies we have brought up reveal a less predictable pattern.

On April 17, 2018, the Supreme Court (SC) affirmed the decision of a local court ruling on the arrest and detention Senator Leila de Lima based on drug charges.

As previously mentioned, it had also voted out its very own member, former chief justice Sereno.

The SC also dismissed the petition against the constitutionality of the Bayanahin to Heal as One Act.<sup>109</sup>

The SC also junked the petition to include the two Aetas charged against the Anti-Terror Act, directing their lawyers to file the case at the local court first. The SC has started to hear oral arguments around the ATA.

The constitutionality of the ATA has been raised before the Supreme Court, which has started hearing oral arguments based on a historic avalanche of 37 petitions against the ATA.

However, the SC, sitting as the Presidential Election Tribunal (PET) dismissed the case filed by Ferdinand Marcos, Jr. against the electoral victory of Vice President Maria Leonor Teresa “Leni” Robredo. Marcos is a known ally of the president. Remarkably, the decision was unanimous. Whilst not related to the cases we have brought up so far, this decision nevertheless signaled change that would be more pronounced as we shall shortly see.

The weaponization of the law under the present administration has another grim aspect, which perhaps could only have been the result of the prevailing culture of impunity: the rise in the killings of lawyers.

An unprecedented 61 lawyers have been killed so far under this administration according to data collected by *Rappler* (see Figure 8), the most number of lawyers killed in an administration since the time of Marcos. In fact, all the combined number of killings from the time of Marcos to Aquino is still lower compared to the time of Duterte. According to Free Legal Assistance Group (FLAG), half of these killings were work-related.<sup>110</sup>

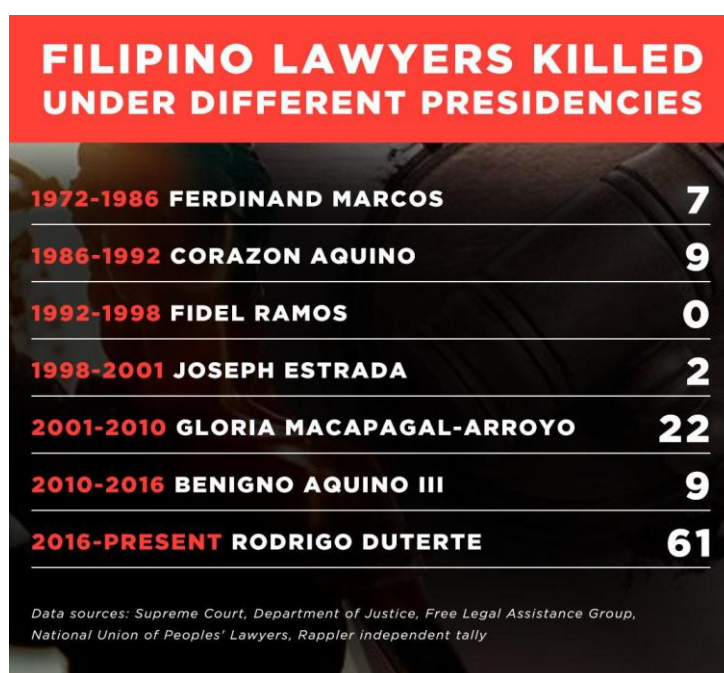


Figure 8: Number of lawyers killed per administration. Source: Rappler

On March 23, 2021, the Supreme Court issued a statement “responding to calls for action on the killings of lawyers and threats to our judges.” This was only the second time the Court issued a statement under the Duterte administration, the first being on the quo warranto case against then chief justice Maria Lourdes Sereno. The Supreme Court said:

*The Judiciary is one of the three pillars of our republic democracy, which itself hangs on a careful balance between and among governmental powers. To threaten our judges and our lawyers is no less than an assault on the Judiciary. To assault the Judiciary is to shake the very bedrock on which the rule of law stands...*

*We are all too aware that everything the Court stands for must bend its arc toward ensuring that all of its officers can fairly and equitably dispense their duties within the legal system, unbridled by the constant fear that such exercise may exact the highest cost. In this light, the Court condemns in the strongest sense every instance where a lawyer is threatened or killed, and where a judge is threatened and unfairly labeled. We do not and will not tolerate such acts that only perverse justice, defeat the rule of law, undermine the most basic constitutional principles, and speculate on the worth of human lives.<sup>111</sup>*

Reacting to the statement, opposition leader Senator Francis Pangilinan said the Supreme had “found its voice.”<sup>112</sup>

# ASSESSMENT: FIELD RESEARCH FINDINGS

We shall analyze the preceding policy shifts described within the framework of the political order which the present administration ushered. But to elaborate and substantiate the effects of these changes on civic space, we need to first examine the experiences of civil society organizations working in natural resources governance, EITI, and within the larger project of democratization, which is the foundation, after all, of civic space.

If policies targeting (national democratic) leftist organizations were eventually applied to CSOs and ordinary citizens alike, including even judges and celebrities, would CSOs and communities involved in this research have been spared?

The research results will be presented and analyzed per benchmark.

## EXPRESSION

### **Civil society is able to engage in public debate and express opinions, including on issues related to natural resource governance and transparency and to the EITI process**

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**Question:** How does speaking critically in public of government policies related to natural resources and EITI make you feel?

**Probing:** Have you experienced any reprisals for speaking up?

Respondents from a focus group discussion (FGD) conducted in Antique expressed feeling fear and not being able to air out their grievances against the local government. They said this probably stems from the fact that they are small in number. Only those affiliated with CSOs are “standing up and engag[ing] in advocacy.”

During the same FGD, one participant broadened the answer to include reprisals from companies when communities speak up. He suspected that the company did not hire his son after learning that he (the father) had asserted his rights and defended their land. One also shared that “they were not free (to speak up) because company hires would be terminated if the company knew that they disagreed with or were not in favor (of certain policies). You would immediately be called to the office at once.”

In Tampakán, it was not so much that there was nothing to fear as that the respondents were fearless. One respondent said: “I’ve never been afraid of my stance because I am with the Church. However, if you are in the Church and you are actively saying you are anti-mining, threats are normal even with the government and mining company.”

In Palawan, a key informant (KI) revealed being afraid of getting sued, of saying things that might get the community sued, but he said that they still express what they want to say anyway. In fact, there was one time that their group (of indigenous peoples) got into a “conflict” with the government, and they were afraid that something would happen, but nothing did.

Another respondent from Palawan shared that because of her longer experience in advocacy, she was no longer hesitant to speak publicly about government policies. She acknowledged being aware of politicians who might have connections to mining companies and who might get angry. But she said that when she deals with them, she is always “thankful and respectful.”

In Didipio, FGD respondents shared the local government knows their (anti-mining) sentiments but does not meddle as it is a “national government law that prevails.” In Didipio, the OceanaGold Philippines mining plant operates under a financial and technical assistance agreement (FTAA) issued by the Office of the President.

Respondents from two national NGOs had no direct experience, although one shared that members of their coalition fear “reprisal for critical statements made versus extractive operations (mining, logging),” and that this she knew “of people who have experienced harassment and threats for speaking up.”

One national group informant shared that their coalition had not experienced any reprisals when speaking up about natural resources issues. However, the opposite was true when it came to civil and political rights.

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## EXPRESSION

**Civil society is able to seek and impart information freely, including on issues related to natural resource governance and transparency and to the EITI process**

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**Question: Are you able to access information related to natural resources governance and EITI without difficulty?**

Only one of the respondents (active in Bantay Kita) from the landscapes reported being able to access information related to EITI. A community member from the same landscape said that if one didn’t work hard at getting it, one won’t be able to “get information on what’s going on inside.” Additionally, although this was brought up by the respondent in answer to a different question, this applies under this benchmark more. The respondent from Palawan said that although the community is promised benefits from mining, they “don’t see what’s being given to [them].”

Respondents from Didipio shared that they are able to access some information on natural resources but not on EITI per se. One FGD participant acknowledged the Philippine National Police (PNP) and the Department of Environment and Natural Resources (DENR) for informing them of the prohibition on cutting forest trees, for example, although many other community residents are unaware.

In Antique, respondents said they are not able to access information on how mining activities are managed. One respondent shared: “They don’t give official notice to the public when a public hearing is to be conducted. Usually, you will only be surprised that the public hearing was already done. The people are not

informed on the conduct of the public hearing.” “During the general assembly, they only notify the utility workers so they could secure an attendance to show that the general assembly was conducted,” said another participant.

In Tampakan, respondents echoed this difficulty in accessing information. For example, they and many others have not been able to read the Memorandum of Agreement (MOA) between the local government and Sagittarius Mines, Inc. (SMI), which operates the Tampakan Gold-Copper Project (TGCP). In consultations for the MOA, only tribal chieftains and barangay captains are invited; they should re-echo the results of the consultations to the communities, the respondents suggested.

They said that SMI had not initiated consultations with them during the time period concerned (for this report), except for one meeting in 2021. It was the Social Action Program of the Diocese of Marbel which initiated the consultation. At this consultation, however, representatives from Sagittarius Mines Incorporated were junior company officials, who could not answer their questions and would have to consult with higher-ups first. “And whenever they present things, it’s always about the positive or the advantages and not the disadvantages,” they said.

In a markedly different experience, a tribal leader said (in an unstructured sharing) that there had been negotiations with SMI, and that this lasted for 13 years. A MOA between them and SMI was signed, and they are waiting for SMI to make good on their promises to the community. This leader said that because of a local environmental code (that bans open-pit mining) and the vacillating position of the local government, the mining project can’t seem to get off the ground. The community he represents is keen for the project to push through.

Two respondents from the national group expressed “challenges in accessing information from time to time,” that “it has not been without difficulty.” Further, “information posted is not updated or it takes a long before needed information is given.”



## EXPRESSION

**Assemblies, protests, or gatherings, including on issues related to natural resource governance and transparency and to the EITI process, are permitted to take place with minimal interference from government authorities**

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**Question:** How does exercising the freedom to assembly and protests make you feel?

**Probing:** Do authorities interfere with assemblies and protests? Do the government or private security use unwarranted or excessive force or other forms of intimidation or harassment to police or disperse peaceful assemblies, protests or gatherings?

FGD respondents in Didipio shared that “while [they] could still exercise their right to assembly, [they] convene with fear.” They said that by speaking up they risk being tagged as leftists. For them, the Aquino administration was more open to assemblies.

One respondent had this to say: “We have fears. To express what we feel does not mean that we are anti-government. I feel that only rich people are those whose rights are noticed. Those who can afford to pay the government, those who pay big taxes are favored. The government do not pay attention to problems raised by poor people.”

Another respondent said: “If I am to compare the previous and the present administration, I find the previous administration more open to assemblies and other forms of gatherings. The current administration is so strict. And with the anti-terror bill, we are afraid to gather and express our sentiments because of red-tagging. Should the Duterte administration respond to all concerns raised by the people then there can be no reason for some to be against the government and to be a [part of the] New People’s Army.”

This sense of fear was echoed by respondents from the FGD in Antique. One respondent said: “We are free in the sense that we actually can do these activities in our capability but there is always that fear... the fear that when they see you in those activities... you can’t tell exactly what will happen to you next. We are innately free but we ourselves are afraid something might happen.” Another respondent said that participating in these activities lead to disputes with relatives and family members who work in the local government or in the mining company and who are afraid they would lose their jobs.

In Tampakán, respondents said they attend meetings, usually organized by the SAC Marbel. One respondent shared that they have joined rallies in Tampakán and at the provincial capitol. This respondent said: “Sometimes we fear but we are not afraid to die.”

In Palawan, a KI said the local government even gives them advice, saying “it’s only right what [we’re] fighting for.” The local government even told them to call the latter in case of violence. The interviewee had no experience with the company security dispersing them either. He could only remember one instance when a meeting was cut short and he was not allowed to finish what he was saying.

Another Palawan KI shared in the sentiment that, compared to the Aquino administration, there are now reservations in exercising human rights, especially in the context of the Anti-Terrorism Act and red-tagging.

Meanwhile, two KIs from the national group had not experienced any police dispersals in assemblies they participated in. One of them noted though of massive police presence in assemblies, while the other learned of “instances when government forces (i.e., the police) have used force to disperse force that started [out] as peaceful and got ‘unruly’.”

One national KI said that their national coalition had no experience when it came to natural resources, but it was different when it came to “civil and political issues civil and political issues, especially extrajudicial killings and attacks on human rights defenders. In these cases, [they] always have that fear.” They used to be brave in holding rallies and picketing; it was easy for them. Now they’re always worried when they join a mobilization. “On top of that is the threat to be infected with COVID which the government does not take seriously and is using a militarized approach,” the KI said. When their group held a rally inside a Church compound, amid the pandemic, “the police went in and took pictures and shot videos of [them].”

The KI said, however, that it is seldom in their own experience that the police use excessive force, “[b]ut the fear persists that the government would use a militarized approach. It has that chilling effect and you would be conscious about when you go to a protest, rally and gathering.”

## EXPRESSION

**CSO representatives are not persecuted for engaging in public debate, expressing opinions, and seeking and imparting information, including on issues related to natural resource governance and transparency as well as on the EITI process**

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**Question: Have you experienced being insulted, criticized, harassed, vilified, or red-tagged for speaking critically of the government or private companies and how did it affect you?**

FGD respondents from Didipio shared that the “pro-mining residents of this barangay even used the social media to harass [them]. The pro-mining and employees of OGPI are harassing [them] online.”

In Palawan, one KII had no experience, while the other KI shared experiencing being red-tagged in the past (not necessarily during the period being examined). What their organization usually does is to organize a dialogue with the military. Still, their volunteers have encountered people who say the New People’s Army supports their organization.

Two KIs from the national group had no personal experience, with one just getting “some sarcastic remarks or look, though rare.” One KII shared how one high-ranking government official threatened to sue their organization after they issued a statement “calling for better standards in the country, including improved monitoring, transparency, and analysis.” “But this issue died off and no legal action was undertaken.”

The third KI from the national group also had no experience when it came to environmental advocacy, but the situation was different again when it came to civil and political rights.

The KI experienced “everything – be insulted, criticized.” She was vilified—peppered with expletives—when a photo quote of hers appeared on social media. She recounted a senior diplomat going on “a 10-minute tirade insulting Iceland, the UN Human Rights Committee, all the human rights defenders from the Philippines” at a UN event in Geneva. The diplomat accused the CSO representatives at that meeting of being “paid trolls and...traitors to our own nation.”

She also recounted being red-tagged as early as 2019. An article by the Philippine News Agency (PNA) accused their organization and a handful of others for operating illegally because they did not have SEC registrations. Their names were going to be submitted to the NTF-ELCAC for allegedly being terrorist supporters. In July 2109, her organization received a letter from their bank asking them to update their financial records and statements. The bank said that if they did not comply, their account would be closed. In April 2020, the AFP in Negros (in the Visayas) portrayed their organization and others as “terrorists and virus that have to be combatted.” Different members of their coalition have also been red-tagged, including on Facebook. She shared that in the Philippines Human Rights Report to the UN Human Rights Council, her organization was red-tagged.

All this has affected their group. “We always feel worried. But we are unperturbed. This fear will not silence us. We continue to speak up and be critical through statements or speeches. We continue giving the same criticisms to the government. We are not afraid,” she said.

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## OPERATION

**CSOs are not subject to significant restrictions on their ability to access resources, including to carry out activities relating to natural resource governance and transparency, or to the EITI process**

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**Question: Have certain government policies or statements dissuaded you from applying for grants from certain funding institutions?**

In the FGD in Antique, respondents revealed that while the local government has no written policy, officials withhold grants from certain organizations. One respondent who was about to avail of a screen for seaweed farming was told that it had already been reserved for someone else.

In Palawan, a KI said that she’d already heard of the latest circular about grants having to go through the government. She expressed the need to scrutinize the government’s statements. There are now additional requirements, like with the General Information Sheets of the Securities and Exchange Commission. “It’s not that [our organization] is prevented from getting grants, but it is not very easy.”

All three KIs from the national group had no experience, although two mentioned the DFA Note Verbale.

One KI expressed worries, however, that note verbale and other circulars would eventually have an effect on CSO's access to resources. She said that the "possible restrictions would be if they allowed the funding to reach us. That is normally our experience. Of course, you know that there are funding restrictions imposed upon us, and they would say that they target alleged terrorists. They say alleged terrorists but almost all NGOs would be affected by it, and it is saddening especially for humanitarian organizations that provide direct services. Even they would possibly be affected."

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## OPERATION

### CSOs are free to engage in desired activities

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**Question:** Has the government prevented or hindered you from participating in activities related to natural resources governance, including government decision-making processes or projects?

**Probing:** How do ordinances or laws like the Anti-Terrorism Act make you feel? Do they affect your operations as a CSO?

In the Didipio FGD, one of the respondents said that "[s]ometimes the PNP seems to prevent us from expressing our sentiments. But because of our explanations and other concerned Filipino groups and individuals who share with us on our plight, we are still allowed to convene and make noise to express our feelings."

An Antique FGD respondent said that the "ATA is only [targeted at] the poor. Even universities have been included. But the rich are untouched."

According to a KI from Palawan, the National Commission on Indigenous Peoples (NCIP) had called them liars, denying that there were mining activities in a certain area (Bulanjao). He said these activities had pushed through without their FPIC.

On ATA, the same respondent said that the community thinks about it. They have not seen its impact yet, but based on the news, they are scared and worried about it. It has not yet affected the operations of their organization, "but when it...has bad effects, the groups may split up."

The other KI from Palawan said that their organization has still not been prevented from participating in government projects, even with the passage of the ATA. This is probably because, she said, they are a legal organization and they know laws about it. This is what makes them different from ordinary people's organizations.

One KI from the national group said the “ATA makes coalition members angry and anxious.” She also brought up the DILG memorandum circular “that now requires CSOs to get accreditation from a local council, and to get police/military clearance to get such accreditation. It’s an additional, overbroad, and unreasonable requirement that affects our local partners.”

Another national KI said that she had no experience so far about being prevented from participation. She said, however, that laws like the ATA have made “staff on the ground more cautious in their actions and activities lest it be interpreted as in violation of the said legislation.”

The third national KI spoke about activities involving civil and political rights. She recounted that prior to the Duterte administration, her organization had a smooth working relationship with the government. They had open communication and even held dialogues with the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and other Grave Violations of the Right to Life, Liberty and Security of Persons. All this changed when Duterte came to power. She shared that CSOs should be wary of the ATA and other laws and ordinances mentioned in the policy context of this report. (She mentioned EO 70, SEC MC 25 (15), DFA Note Verbale 2021-0592, and DILG MCs 2021-012, 2019-116, and 2019-125 in her interview.)

These are laws and issuances that regulate and restrict and suppress the rights of CSOs, according to her. She further shared that the framework of anti-terrorism and anti-insurgency represses lawyers who are human rights defenders. “Judges and media personnel are killed,” she said.

“The chilling effect is felt among all of us. Anyone who questions, files an action or even the decision[s] of the Supreme Court, these take longer.” She cited the petition for a temporary restraining order (TRO) against the ATA that still has not been granted. Despite attacks on petitioners and lawyers challenging the constitutionality of the ATA, the SC has not granted the TRO, she said.

“It feels like everything is against us,” she said. “At this time, we have no allies, so it is difficult to take action. Our operations in the CSO are affected.”

CSOs must look into how these issuances will jeopardize them and must be careful so that the government will not find fault with them. She said that SEC “will most probably release an assessment of NGOs which are low-, medium-, and high-risk. Most likely hundreds of CSOs are included in their list.”

But the “framework of the security sector, the SEC, and the government in general” will likely categorize all CSOs as being at high risk of being utilized by

terrorists. The list will most likely include names of those they are “targeting as [being] associated with the communist[s].” She said that she expects her organization to be a part of this list since their bank accounts had been questioned before.

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## OPERATION

### **CSOs, including those carrying out activities relating to natural resource governance and transparency, or to the EITI process, operate free from interference or harassment**

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**Question:** Are you able to hold activities without fear of being subjected to harassment, intimidation, or red-tagging by security forces?

**Probing:** Have you experienced harassment, intimidation, red-tagging, or other abuses? Does the government regularly characterize you as undermining the country’s culture/religion, as national security threats, or as foreign agents?

FGD respondents in Didipio shared that that they have experienced intimidation and harassment, and even a violent dispersal. They have been red-tagged as well. Pro-mining residents call them “ka” – short for *kasama*, the Tagalog word for comrade. One respondent, a woman, shared that there was even a drunken community member who threatened them at the community barricade.

The dispersal proved to be a traumatic incident for one of the respondents who had been part of the barricade, that he could still not talk about it at length during the FGD.

The dispersal being referred to occurred on April 6, 2020 when “an estimated 100 personnel from the provincial and municipal police forces dispersed the community barricade composed of 29 community leaders and members of peasant groups.”<sup>113</sup>

The company and the police “brandished a letter dated January 2020 from the Office of Executive Secretary Salvador Medialdea endorsing the entry of fuel trucks inside the mining area.”<sup>114</sup>

Rolando Pulido, who chairs the Didipio Earth Saver’s Movement Association that is active in anti-mining, was arrested and charged for disobedience for crawling under one of the tanks, according to an article in *Sun Star Manila*. In that same article, the police said that “contrary to claims, no violence was intentionally used and that maximum tolerance was employed by all tasked PNP personnel as can

be seen at the videos that were already uploaded by netizens.”<sup>115</sup> They further clarified that it was not “the intent of the PNP to support or go against any mining activity as we stand on neutral grounds. The said incident took place emanating from the implementation of a legal order.” The police said that they received the order on March 13, 2021.

OceanaGold, in an article in *Licas News*, said that “the ‘unlawful barricade’ had prevented the on-time delivery of the fuel that resulted in ‘a critically low point’ of the mine’s diesel supply. ‘The local interpretation of enhanced community quarantine measures in response to COVID-19 has also hampered the movement of goods and services essential to protecting the mine from a significant flooding event,’ read the company statement.”<sup>116</sup>

In a statement, the Commission on Human Rights (CHR) called for an investigation into the matter, saying,

*While people are trying to flatten the curve by complying with the enhanced community quarantine, such action by OGPI and the police increases the danger of losing the lives of the involved communities. Furthermore, the intensified presence of the military and the police nationwide heightens the fear of crackdown and attacks against indigenous peoples’ rights defenders given the restrictions of movement. We strongly remind the government that in pursuit of national development, it should never resort to oppressive policies that jeopardise the human rights of the marginalised, vulnerable, and disadvantaged sectors such as our indigenous peoples. Similarly, we underscore and reiterate that in this time of health crisis, the government must address the basic and medical needs of these communities—not persecute nor attack them.*<sup>117</sup>

It is worth noting that in case of Didipio, it was the provincial government that ordered the suspension of OceanaGold Philippines after the expiration of its permit. It was a decision that was deemed legal by a local court, which ruling was also upheld by the Court of Appeals.<sup>118</sup>

A Palawan KI shared that their community had not experienced any interference or harassment. They are not scared either for they are “not doing anything bad.” This was echoed by the other Palawan KI who said that “if it’s a collaborative effort with the government, you should not be afraid.”

A national KI shared that their coalition had also no experience, although she said that “several coalition members and their networks experience different shades of harassment or are worried about the turns in national security policy.”



Another national KI shared that a high-ranking government official, in a speech during an event at the Philippine National Police, identified several organizations as spreading fake news and narratives to the international community, which was why an (international) investigation was being conducted on the Philippines. The informant said that these organizations were considered a national security threat and were undermining the country. This was “very telling of the position of the government against [these kinds of] of organizations.”

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## ASSOCIATION

**CSOs, including those carrying out activities relating to natural resource governance and transparency, or to the EITI process, can freely cooperate amongst themselves and with other entities in the business and government sectors, whether domestically or abroad**

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**Question: Are you able to convene meetings and gatherings with other groups without fear?**

**Follow-up: Are you able to travel freely in remote areas and engage with marginalized groups?**

In the Antique FGD, respondents said that they don't feel safe and were sure that they are being monitored. One of them said: “I remember that there was an incident here where the company's security guards...in combat gear arrived here because they said there was an NPA here.”

In Didipio, one of the respondents said: “We convene meetings with fear. We have also lessened the meeting schedules because of fear. Especially that the Anti-Terrorism [law] is now here. Due to fear, some members of the group have backed out. We can travel but we have that fear.”

One of the respondents from Didipio also spoke about being monitored by the police: “We cannot expand our organizational activities because when they learn of who is leading us, the leader is under monitoring of the PNP. The pro-mining group are also always taking photo of us in the checkpoint. But I just ignored. Just let them take photo since we cannot control them clicking their phone cameras. Never mind for as long as we are not doing wrong or anything against the law.”

Another respondent shared that “[E]ven a small group meeting is questioned by the PNP. They want to know about our talking points and they ask if who are

involved in the meeting. That is why the others who are worried do not attend meetings. Sometimes, the PNP say that because of the social distancing protocols, meetings are discouraged. But they want to know is if there are NPA who are with us in the meetings.”

Still another respondent shared that she was not afraid in the barangay but of “being tagged and posted in social media. This is because not all members of the family are supportive of me.”

In Palawan, a KI said that their organization can hold meetings, but at the community level “like for example, particularly on that, not on mining no.” The KII however, said that “I don't feel like I can't travel remotely.” In 2017, some 18 communities “had reservations when they met regarding mining. Especially when communities are divided.”

KIs from the national group said they could conduct activities without fear. However, one was now worried about the DILG memorandum circular on accreditation. Another KI said that “pre-pandemic, colleagues can travel freely to remote areas.” However, she said that “coordination with local authorities is at times undertaken, particularly in areas which are known to have insurgents (e.g. NPAs).”

Another KII said that travel has been difficult because of COVID-19 restrictions. Their organization has used safe digital platforms and social media where they discuss different topics. “We did not stop from speaking out. I would always say that we all have that fear and anxiety at the back of our minds that something may happen, we may get arrested, or our office may be raided. But despite that, we did not stop in taking action and in speaking up,” she said.

## ASSOCIATION

**CSOs, including those carrying out activities relating to natural resource governance and transparency, or to the EITI process, are able to freely engage in communications without unjustified interference, monitoring, or surveillance**

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**Question: Do you think the government or private companies surveil you and how does this affect you?**

In Antique, one respondent said that there is a person assigned to monitor them and report them to the LGU. This was why they have become very careful about who they invite to meetings. One said that it was a good thing that they have an organization because they don't feel alone.

Didipio FGD respondents said they felt they were being watched and even red-tagged.

Palawan KIs said they believed they are being surveilled. One KI said: "It really does affect us because, one thing, we can't really focus on what we want to say. Because, like all of us, for example, among the 20 members, not all of them are determined, some of them will withdraw... Somehow, if they get convinced (*by the other side*). That's why we're worried about the monitoring." He believed that they have been monitored for a long time.

The other KI from Palawan said: "So, I'm sure we are on their radar. So that's why there are stories on the ground. They're not top-ranking military, but those that say intelligence, as ifs... They say, like we, ah, supported by the NPA." This is why she said they have to be more careful and why they had to undergo a security training.

Two of the national group KII did not believe they are being surveilled. The third national KI said she was being surveilled.

She recounted an incident where a police officer approached her in September 2016 and told her to be careful. She was supposed to have been "included in the persons of interest of the PNP. And PNP has created a small unit inside Camp Crame monitoring social media accounts of those who are vocal and critical of the government." When she dug deeper, she found out that she was also on the watch list of the AFP, and that five other members of her organizations were there as well.

In 2020, she suspected her phone was tapped. And just a month ago (February 2021), she noticed “someone always coming to visit discreetly.” There was a beggar who came begging late at night, when beggars are usually no longer out on the streets at that hour. Another time, her nephew told her that a man on a parked motorcycle was taking photos of their house at 1:30 in the morning.

Because of all of this, she has “developed paranoia.” And although these “instances remain unconfirmed and unvalidated,” she has no choice but to take these seriously. “I am always nervous,” she said, “but for me to be stopped and to cower from fear, I have not reached that point. In fact, it angers me more, that is why I speak up and criticize more.”

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## ENGAGEMENT

### Civil society representatives can fully contribute and provide input to the EITI process

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**Question:** In your experience, are EITI activities, events, and meetings open spaces that welcome and affirm your inputs?

It was the first time for Didipio respondents to hear of EITI.

In the Antique FGD, one respondent shared attending one event. When asked if EITI spaces are open to their inputs, the respondents said that it’s a great help, but did not elaborate.

One Palawan KII also was not aware of EITI, although he brought up the importance of transparency. He said they’d like more meetings on transparency, that this would allay their fears. For example, if they could know about not only what would be given to them (in exchange for agreeing to the project), but what would be expected of them in return; what would they allow to be “done to the mountain,” or their area. He said that even if they don’t get anything, that it would be all right for as long as the company does not “touch the rest of it.” “We are not saying that we want mining to go away...but what’s left, for the sake of those who don’t have capacity to work...or are dependent on the resources in the mountains, we hope they won’t touch it anymore.”

Further, he shared that platforms like Bantay Kita would be helpful because information is usually not shared with them. This would help increase their confidence that what they are doing is right and that they can’t be sued.

The other Palawan KI said that EITI assemblies are generally open.

This was not applicable to all national informants.

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## ENGAGEMENT

**Civil society representatives who are substantially involved in the EITI process, including but not limited to members of the multi-stakeholder group, have the capacity to actively and meaningfully engage in - and have an impact on - the EITI process**

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**Question: Is your technical capacity of supported, to be able to meaningfully engage in the EITI process?**

Again, in Didipio, this was their first time to hear of EITI, and perhaps because of their limited engagement, Antique FGD respondents did not take this up.

The Palawan KI who said the EITI spaces are open, however, said that “not all civil society representatives, especially the people’s organizations...have the courage to talk. Of course, they are hesitant...[I]t really needs to be adequately facilitated...It’s because the EITI is too technical. First, the EITI, Extractive Industries Transparency Initiative is in English.” She said that EITI should be explained repeatedly.

This was not applicable to national respondents.

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## ACCESS TO DECISION-MAKING

**CSO representatives are able to foster public debate on issues related to natural resource governance and transparency as well as on the EITI process**

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**Question: Are journalists persecuted in the country and how does this affect your desire or ability to engage with media?**

One respondent from the Antique FGD said there is hesitation with working with media because it might put “one’s life in danger.”

One respondent was reprimanded by the HR office when he was still working for the mining company. He had given a media interview where he said seaweed farming had been affected negatively by mining. (One could produce 5 kilos compared to the 1 kilo when mining was established.) The company asked him why he allowed members of the media to stay at his home.

They also said that sometimes what the media report is what is fed them by the company. For example, for one story, media were not allowed inside the company premises, and they were only allowed aerial shots. As a result, the story the media produced was one-sided. Respondents said that media stories can be manipulated in favor of the company.

They also said that they are not really able to give interviews to the media because they themselves don't have access to information about what is going on inside company.

In the Didipio FGD, a respondent said that "because of news on persecutions of media, we are sometimes hesitant to bring out our concern to the media because we are worried that if we share our sentiments and the media will bring it out – it could be the reason for their persecution."

In his interview, a Palawan KI said that people ask them when they talk to media. These people discourage them, "saying it is dangerous...and that we will be persecuted for it." This happened when they requested media to visit them once. The local government did not let them use the gym, so the media interviewed them in the community area. But they would like still to work with the media, because it's helpful for them. He noted, however, that while some media outlets tell the truth, some do not.

The other Palawan KI said that "journalists will really be persecuted. Someone already died...It still has an effect on CSOs, that's why you have to be prepared. You have to be careful with what you say. So, that's why we had security training."

A KI from the national group said that "media can still freely operate, but there's contempt openly expressed against them for being critical of policies or personalities. Some media personalities or entities who've been critical of some government officials in the past (or still are) are also targeted using other measures— filing of criminal charges seemingly not related to their critical stance, or non-renewal of franchise for technicality."

Another national KI agreed that media are persecuted and that there have even been deaths.

A third national KI said that “it is obvious as to what they are doing with the media. We do not reduce our engagement with the media but the takeaway is that they are doing self-censorship, as I have personally heard from them.”

She felt that media now has fear and doubts on engaging with human rights organizations. The media still make reports, but they are cautious in associating themselves with organizations because they may get called out by the government. She cited the experience of Inquirer journalist Tetch Torres being called out by General Antonio Parlade of the NTF-ELCAC. Media persecution and suppression has not stopped their organization’s engagement with the media, but she said that “maybe it is the media itself that is doing self-censorship.”

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## ACCESS TO DECISION-MAKING

**CSO representatives are able to conduct analysis and advocacy to outreach to and to disseminate information to inform the public on issues related to natural resource governance and transparency as well as on the EITI process**

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**Question: Do government authorities and companies allow and help you to access EITI data and are these data generally accurate and reliable?**

In the Didipio FGD, one respondent said that “there may be data but it’s not clear to us,” and that “we can supposedly learn about those data during assembly meetings, but I have not heard about the EITI data.”

The Antique FGD revealed that data is completely inaccessible: “Nothing.” “News blackout.” “What we see are only those in the tarpaulin which is not an itemized report.”

For one of the Palawan KIIs, “the EITI process is complicated to ordinary indigenous people. If it’s a farmer or a fisherman or a citizen, and then the government at the ground also doesn’t know enough...like local government units, what is EITI for them?”

The available data helps, according to her, but the gap in the data would be NCIP data, such as royalties. “How much does NCIP get? That’s what’s missing in the data.” At the general and national level, there is data, but “in more specific terms at the community level, you won’t feel it.”

This was not applicable to all three national informants.

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## ACCESS TO DECISION-MAKING

**CSO representatives are able to have an effective impact on public debate on issues related to natural resource governance and transparency as well as on the EITI process**

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**Question: Are you able to participate in government hearings and other public fora without fear of reprisal?**

In the Didipio FGD, they shared that they had been invited to one public hearing, but they did not go, because this was held inside the compound of the mining plant. Only pro-mining community members attended the hearing. The research assistant conducting the FGD elaborated that they did not attend the hearing because of fear, since almost all the participants were pro-mining.

An Antique FGD respondent shared feeling that they “are always the least priority.” A respondent recounted one particular incident: “I once attended a public hearing Barangay Semirara. When I raised a question towards the DENR, I was quickly cut off and instructed to talk one-on-one with the DENR personnel.”

They said they are not informed of hearings, and are only told once the hearings are finished. Once they were informed of a hearing but when they arrived, there was no hearing. They were told it was rescheduled, and when they again went to the new meeting, there was no hearing again. They were then told that the meeting had already been conducted.

In Palawan, a KI said that there have been no hearings, that “it seems like we are not being recognized as communities, especially when you’re not in a (government) position...Only those (with) positions, those are the ones they recognize.”

Meanwhile, the other Palawan KI said that her organization can assert itself and is able to submit petitions and position papers without fear “because the law is on our side.” Because of their organization’s knowledge of the rule of law they aren’t afraid to participate in public hearings.

Two KIs from the national group affirmed that they are able to participate in hearings without fear.



A third national KI said that her organization can freely participate in lobbying in Congress and that they are even invited as resource persons. There are no reprisals, she said, but they are “marked by the government.”

She expressed being dismayed, however, that previous platforms for engagement no longer exist. Much as she also did not want to coordinate with certain officials, she has to deal with them, especially in writing reports on compliance to certain treaties like the ICCPR, CEDAW, CRC, among others. She said that compared to lobby hearings where they are not attacked or demonized as human rights defenders, other officials from government agencies, as in the high-ranking official that she used to work with and was friends with, attack them.

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## Recommendations

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**Question: If you could make recommendations to the EITI for improving civil society engagement, what would these be?**

Antique FGD participants suggested that EITI conduct activities on the island so that they will be educated on matters of transparency and others. This would also show people that they have many affiliations and motivate others to join their organization. One respondent said: “I hope they will send someone here to educate us. And someone who will stay with us in our cause.” One respondent lamented that “many affiliates (organizations) don’t stay here, that’s why we carry all the burden of the work.” Finally, they said their “desire [is] to be given equal participation and engagement in the management of our resources here in our locality and mainly our problem is our LGU.”

Didipio respondents broached the idea of including participants from small groups during EITI-related activities for them to be educated about EITI; for EITI to bring this down to the people’s organizations level; and for EITI to conduct an information drive, including distribution of materials and set aside one day for IEC on EITI.

Tampakan respondents expressed the feeling that they seemed to have been forgotten by Bantay Kita (BK). For them, it was important for their education to continue, for them to be informed of plans, so they could share these in turn to communities. They seem to only see BK annually or after every few years. They would appreciate more capacity building and regular meetings, so BK could also assist them and provide them of updates. They also asked for guidelines for carrying out similar discussions and for getting help on other aspects at the local level in the future.

A Palawan KI expressed the need for better access to data, for example, in benefits received from a mining activity. Meetings should be facilitated. He said that it is really difficult for communities like them to access data from the government. He also reiterated his position that no new mining should be allowed in the area, that the present mining should not be extended anymore. He thanked the interviewer and hoped that organizations helping them won't tire of them, of explaining the truth. He hoped that their knowledge as a community will increase, because it will give them "courage in what [they] do."

The other Palawan KI recommended that the government fund or support monthly local radio programs on EITI, conducted in Tagalog, because "you can't expect ordinary persons to understand [EITI] right away." She said that "people's awareness is limited because the government's effort is still very limited." Most of the work is being done at the national level and "you can't feel it locally." A forum that's conducted once every two years is not enough to remind people of what the EITI is, she said.

A national KI shared several challenges for NGOs. She mentioned COVID-19 and security-related considerations (ATA, DILG MC) that will pose limitations to public engagement, e.g., restrictions on mobility, assembly/gathering. She also brought up the issue of an infodemic, which creates a lot of noise and misinformation, adding difficulty for public engagement; and the varying levels of capacity to verify or discern legitimate sources of information. She said that "it's important to protect both the organization, its network members, and individuals aligned with the organization. There's a need to highlight policy messages decoupled from the political messages (which require a separate strategy for amplification)." When policy and political messages are conflated, they are trolled and dismissive reactions gain traction, contributing to the infodemic, she said.

Another national KI recommended "strengthening safeguards for civil society participation and engagement. With everything being online at the moment, perhaps a portal where information can be shared and be accessible would be useful." She noted though that this would be difficult for communities.

A third national KI recommended improving civil society engagement and finding a common ground between the government and businesses in the United Nations Guiding Principles on Business and Human Rights. The government must disseminate more information on this, and all sectors involved—business, CSOs, communities affected by extractive industry, and the general public—must have a shared understanding.

She also pushed for the adoption of an international legally binding treaty (on business and human rights). "We can elevate the discourse if there is trust. "If we cannot find a common understanding on the concepts on BHR, it would be difficult

to improve on our engagement, even amongst us CSOs, to disseminate [information on] the UNGP and the legally binding treaty,” she said. Further, she said that the “EITI should be prioritized in the NAP (National Action Plan), which the government is mandated to formulate, with the participation of businesses and CSOs.”

## SYNTHESIS

The policy review and the field research data convincingly show us that the space in which CSOs operate has indeed shrunk in the period of our inquiry.

As reported in the UN CHR, “Human rights advocacy is routinely equated with insurgency, with the focus being diverted to discrediting the messengers rather than examining the substance of the message. This has muddied the space for debate, for disagreement and for challenging State institutions and policies, which has resulted in deep mistrust between the Government and civil society – a rift in urgent need of repair.”<sup>119</sup>

The experiences of communities, people’s organizations, and civil society organizations, however, are not uniform. Let’s briefly synthesize their experiences under the period of inquiry.

### Summary of Findings

- In general, there is fear in publicly expressing opinions and positions against the government, although in local landscapes, this pertains more to the local government. Only in the case of one national informant where reprisals may have come from the national government. Another national informant had no direct experience but knew of other CSOs who did.
- In terms of access to information, including on EITI, in general, there is difficulty in accessing information, and the government, including EITI, are not proactive about making information available.
- There is now fear in holding assemblies and protests compared to the previous administration. And respondents experienced vilification for expressing their opinions, not only from the State, but from community members as well, online as well as offline.
- There is as of yet no difficulty in accessing funding, but new circulars might change that. Locally, there is sometimes difficulty in accessing government-sponsored livelihood opportunities for civil society
- The respondents have clearly felt the chilling effect of the Anti-Terrorism Act (ATA). One even said that ATA, once its effects are felt, would break their group up. The ATA has also made one coalition more cautious in their operations. Policy issuances, one informant said, could jeopardize the operations of CSOs.

- There are experiences of intimidation, harassment, and violent dispersal. A community barricade was violently dispersed, and the mitigating circumstance was a letter from the Office of the Executive Secretary, citing a Department of Environment and Natural Resources (DENR) recommendation. A high-ranking official had also characterized CSOs as a national security threat.
- In general, there is now fear in convening meetings and gatherings. In one landscape, members backed out of a meeting for fear of the ATA, and they shared that the police monitor their meetings and even ask them why they congregate.
- Most respondents believed they were being surveilled. In one landscape, they shared that they were sure one person was assigned to monitor them. A national informant suspected that her phone had at point been bugged and that a suspicious person had taken photos of her home. She had also been told by a member of the Philippine National Police (PNP) that she was part of their watch list.
- In general, respondents were not aware of EITI. One participant who was aware had only been able to attend one meeting. An informant who is active in EITI said that the latter is generally an open space.
- For the respondent who has been involved in EITI, she recommends improving the way EITI is communicated. Participants from people's organizations would have difficulty fully engaging because of the language barrier and the technical nature of EITI. Other respondents again were either unaware or could not elaborate on this theme. All national participants were unaware.
- In general, respondents believe that the media have been persecuted and vilified, and, in one landscape, even killed. Some of them hesitate working with the media because it might endanger the latter. Some respondents cautioned, however, that the media can sometimes be manipulated by companies. One respondent also shared that the media could now be engaging in self-censorship because of their persecution.
- Data are inaccessible is the majority sentiment of the respondents. In the data that is available, there are gaps, such as National Commission on Indigenous Peoples (NCIP) data on royalties for indigenous peoples, for example.

- Locally, communities are often left out of hearings, informed after the fact. When there are hearings, there is trepidation in attending them. In one landscape, a public hearing was held inside the premises of a private company, not on neutral ground. One respondent shared, however, that some multi-stakeholder platforms, where CSOs and the government worked together, have completely vanished because of the State's security framework.
- Following the conception of civil society as a third sector<sup>120</sup>, we shall also include here the sentiment of one informant involved in the Tampakan data-gathering. A pro-mining tribal leader, he complained that promises made by a mining company had still not been delivered. The company had trouble doing so because of a local environmental code that prevents open-pit mining, which method the company will employ. Perhaps out of exasperation, for the agreement of the tribe and the company was forged after 13 years of negotiations, the informant said: "There are lots of NGOs that are anti-mining, which cannot be controlled by the local government because they also have their rights. Also, the local government—sometimes they are in favor of mining, sometimes they are against it, so we don't understand anymore. If I am in the government of South Cotabato, I will close the province so all the NGOs will go out." In the future, an inquiry may also be made for analyzing spaces where community positions on natural resources governance may be complicated—instead of clarified—by CSOs.

These experiences coupled with the policy shifts discussed earlier (which illustrate institutional capture, the politicization of the judiciary, and the weaponization of the law, even amidst, or perhaps especially under, the COVID-19 pandemic) paint a composite picture of the state of civic space.

We can conclude that these measures to restrict and even pathologize the larger civil society renders CSOs involved in natural resources governance more fragile. This could not be clearer than in the case of Didipio.

CSOs and communities which oppose or resist large-scale development projects are often red-tagged and called anti-State and anti-development. The development paradigm of the state predicated on large-scale development projects, from mining to plantations, puts it at odds with civil society organizations and communities who do not share this view.

This is where the danger lies: When civil society and communities take a position different from a state that traffics in what sociologist Nicole Curato calls 'authoritarian practices', what happens? The fear precisely that the ATA triggers

in the respondents of this paper hints at the extent of the power of the State to cast a more uncertain and insecure world.

In the mining sector, for example, what are the ramifications for local landscapes of the statement of the Department of Environment and Natural Resources that it will “introduce responsible mining as one of the initiatives to resuscitate the country's economy”<sup>121</sup> post-pandemic?

This is precisely why overarching state policies, priorities, and practices that will affect civil society in natural resources governance are necessarily relevant to the benchmarks identified in the EITI Protocol on Civil Society Engagement. Local processes, of course, follow their own rhythms. Patricio Abinales even goes as far as to say that “all politics is local.”<sup>122</sup> But, as was made abundantly clear by the research findings, what are often stand-alone or broad measures do have an impact on local dynamics, including local civil society. Like a rising tide, these overarching changes have reached civic space.

## RECOMMENDATIONS

The field research surfaced the following recommendations for improving EITI:

- An information drive should be conducted by the EITI for communities, many of whom are unaware of it. This drive should not be a one-off but an iterative activity. A regular radio program conducted in Tagalog or a lingua franca (Binisaya in Mindanao, for example) is one suggestion.
- For EITI activities to include (more) representatives from communities. Whilst EITI does already include community representation, it may not include communities which oppose operational projects.
- For EITI to promote the participation of civil society in the management of resources by the local government. Whilst laws like the Local Government Code provide for this, in reality, civil society can be marginalized. Corresponding safeguards must be put in place for such an engagement.
- For EITI and more solidarity groups to establish a regular presence in the communities. Already small in number, community-level organizations often feel that they are on their own in their struggles.
- Access to data, especially on benefits, including royalties, should be made available to communities. Respondents repeatedly cited being left in the dark and consultations conducted few and far between. An online portal that houses data could also be established.
- The government must facilitate discussions and disseminate information on the United Nations Guiding Principles on Business and Human Rights (UNGP-BHR) and a legally binding instrument (LBI) to regulation transnational corporations. Both frameworks can serve as a common framework of engagement for all sectors concerned.

In addition to the above, the following courses of action are recommended:

- For EITI to expand the parameters of its Protocol on Civil Society Engagement to be able to assess, in addition to engagement within EITI and natural resources governance, the state of civic space, in general.
- And building on the expansion of the Protocol on Civil Society Engagement, to expand the EITI Standard to include an assessment of the democratic space itself. Civil society and civic space are a feature of and subject to the dynamics of democratization. Authoritarian practices within a democracy



can lead to institutional, legislative, and judicial capture, i.e. undemocratic practices in natural resources governance. Consistent with the role of EITI to safeguard civil society organizations engaging in EITI, a determination of the quality of civic space would be instructive in making a determination of a country's EITI standing.

- For EITI to expand its definition of civil society, to include a variety of actors, including informal associations, among others.
- Challenging policy issuances, in addition to laws, before the courts, can yield benefits. Judgements in cases mentioned in this report routinely rule in favor of civic freedoms. Legislative lobbying may also be harnessed to defund policies which encroach on civic space.

## CONCLUSION

### Civic space, democracy and Duterteismo

It is not within the scope of the paper to analyze the aforementioned policy shifts vis-à-vis the project of democratization. It would, however, be helpful to understand these shifts within the new political order that Duterte established when he came to power. This would help partly explain the state of civic space in the Philippines.

For Mark Thompson, Duterte broke away from the script of liberal reformism of the (previous) Aquino administration and ushered in his own brand of governance. “By challenging liberal reformism despite his predecessor Noynoy Aquino’s personal popularity, Duterte was able to take advantage of the ‘systemic disjunction’ of this once dominant political order – due to the discrediting of the good governance narrative, the weakening influence of key “strategic groups” backing it (particularly the Church and social democrats), and the vulnerability of key institutions. Duterte not only won the election but also quickly established a new political order.”<sup>123</sup>

Called by scholars “Dutertismo”, this new order “must be seen as a reaction to the system that the EDSA Revolution created,” according to historian Lisandro Claudio. He explains: “More than thirty years after the revolution, its promise of social renewal had yet to be fulfilled, causing disillusionment among voters. Duterte’s campaign was able to link the lethargy of the post-EDSA system in achieving meaningful reforms to a broader critique of liberal democratic values such as human rights. It was also able to use disillusionment with the ‘EDSA system’ to tap into an authoritarian nostalgia that in recent years had manifested in increasing support for the Marcos family. In critiquing the EDSA system, Duterte was able to challenge previously trusted groups and individuals: the Catholic Church, the Aquinos and their allies in the Liberal Party, middle class reformists, the mainstream media, etc.”<sup>124</sup>

Far from being a stand-alone phenomenon, the war on drugs had far-reaching consequences, according to sociologist Nicole Curato. It was a whirlpool into which the sanctity of institutions drained. She argues that “the policy and rhetoric of the Duterte administration’s war on drugs have created fragile democratic institutions that are prone to abuse of power.” She cites three main areas of concern: “the increasing role of coercive institutions like the police and military in all levels of governance undermines long efforts at institutionalizing democratic control over security forces; the regime’s systematic and aggressive attacks against the political opposition, the judiciary, and the media weaken the capacity of monitory institutions to scrutinize and hold the regime accountable; and

disinformation campaigns further corrode the capacity of the public to engage in critical discourse and informed political decision making.”<sup>125</sup>

The State’s security framework, in particular, has been brought to bear on civic space.

For the Legal Rights and Natural Resources Center (LRC), quoting Haddad (2020), the “Duterte administration’s approach to human security is one of war framing...which suggests an urgency in which ‘now’ is never the time for critique—in wartime, we band together, we do not criticize.” Further, LRC says that,

*Implicit in the war discourse is the preservation of society’s homogeneity and pathologinisation of the “foes” of the State (Slomp, 2009, p. 7). The construction of this Manichean world is necessary in order to compel its citizens to obey (Slomp, 2009, p. 9) and bolster the legitimacy of an oppressive regime (Slomp, 2009, p. 65). The ‘foes’ in this context take the form of those who are defiant, disobedient, the dissenter, the ICCs/IPs defending their lands and rights from corporate encroachment, compared to the wealthy tycoon whose business interests are necessary for the preservation of the State. In this process, the faces that have come to represent the dissenters are altered to represent icons that threaten public safety and the State. In this context, the imposition of extraordinary measures is justified because, “the prince is duty bound toward the estates or the people only to the extent of fulfilling his promise in the interest of the people. He is not normatively bound under conditions of urgent necessity” (Schmitt, 2005, p. 8).<sup>126</sup>*

LRC also analyzes the national security framework through Giorgio Agamben’s notion of a ‘state of exception’.

*By constructing conditions as emergency, fueled by rhetoric of war (against drugs, insurgency, pandemic), the State seeks to engender a case for a state of exception. In a state of terror and emergency, the State is enabled to impose extra-judicial violence. Constitutionally protected rights and democratic processes give way to the expansion of the State’s police power. When this is further couched in law, such violence is clothed with legitimacy. Through legislation, what are ambiguous and extra-judicial are given justification and become normative. The Anti-Terrorism Act 2020, for example, sets the stage for furthering the security agenda of the State. As defined by law, dissent, protests, and community resistance can be alleged as “inciting sedition” and “acts of terrorism.” Under the guise of the law, dissent is eliminated. The law becomes a mechanism to consolidate and maintain power within a purported landscape of democracy.<sup>127</sup>*

It is no surprise then that cabinet is now mostly made up of retired generals, including the secretary for the Department of Environment and Natural Resources. At one point, the president was even able to declare Martial Law, in Mindanao.

It would be instructive now to zoom out from the appreciation of civic space to a snapshot of Philippine democracy itself, on which many civic freedoms rest, including the very existence of civil society.

The Philippines is classified as a flawed democracy by the Economist Democracy Index. The Index is “based on the ratings for 60 indicators, grouped into five categories: *electoral process and pluralism*; *civil liberties*; *the functioning of government*; *political participation*; and *political culture*.” Based on the scores for these indicators, countries are either classified as full democracies, flawed democracies, hybrid regimes, and authoritarian regimes. Flawed democracies are countries which have “free and fair elections and, even if there are problems (such as infringements on media freedom), basic civil liberties are respected. However, there are significant weaknesses in other aspects of democracy, including problems in governance, an underdeveloped political culture and low levels of political participation.”<sup>128</sup>

What is worth noting is that the ranking of the Philippines on this Index has been slipping since Duterte came to power.

Another metric that is instructive for our purposes is the Freedom of World Index, which categorizes nations under three statuses: free, partly free, and not free. In 2021, the Philippines given a ‘partly free status and a score of 56 out of 100.<sup>129</sup> In 2020, this was 59 out of 100 and also partly free. In 2019, 61 and partly free. 62 and partly free in 2018; 63 and partly free, 2017.

To be fair, the Philippines had also been rated partly free in 2016, with a score of 65. In 2015, while the numerical scoring system was different, the Philippines still ended up with a partly free status. What can be gleaned, of course, is that the numerical scores have been on a downward trajectory since 2017, the starting point of the period of inquiry of this report.

“The weaker the layer of civic association, the stronger the vertical relationship of the individual and the State becomes—a relationship characterized not by voluntary action and cooperation but by power, authority, and dependence. When civil society atrophies, the individual is left more and more isolated in a politicized and conflicted society in which all roads lead to the lawyer’s office, to the courts, and to social agencies, which are increasingly called upon to exercise custodial function over vulnerable individuals and fragile families,”<sup>130</sup> Don Eberly says. At least in the case of the Philippines, this observation seems to hold water.

## ANNEX

### Annex I: Research Analytical Framework

In applying the EITI Validation Framework on Civil Society Engagement, the study made use of research questions drawing on civic space benchmarks identified by Publish What You Pay and the International Center for Not-for-Profit Law (ICNL)

The benchmarks served as the primary research questions and jump-off point for the inquiry.

All the respondents were from organizations that work in natural resources governance and, in some cases, with the EITI process.

Owing to restrictions because of the COVID-19 pandemic, primary data gathering employed a hybrid approach. Where restrictions allowed for small gatherings, physical focus group discussions and key informant interviews were endeavored. Otherwise KIs were conducted online or via questionnaires. Desk research was employed to examine the general policy context.

Dimension	Research Benchmarks	Interview Questions	Data Harvest via
Expression	Civil society is able to engage in public debate and express opinions, including on issues related to natural resource governance and transparency and to the EITI process	How does speaking critically in public of government policies related to natural resources and EITI make you feel?  <i>PROBING</i> <i>Have you experienced any reprisals for speaking up?</i>	Focus Group Discussions  Key Informant Interviews
	Civil society is able to seek and impart information freely, including on issues related to natural resource	Are you able to access information related to natural resources governance and	Focus Group Discussions

Dimension	Research Benchmarks	Interview Questions	Data Harvest via
	governance and transparency and to the EITI process	EITI without difficulty?	Key Informant Interviews
	Assemblies, protests, or gatherings, including on issues related to natural resource governance and transparency and to the EITI process, are permitted to take place with minimal interference from government authorities	<p>How does exercising the freedom to assembly and protests make you feel?</p> <p><i>PROBING</i></p> <p><i>Do authorities interfere with assemblies and protests?</i></p> <p><i>Do the government or private security use unwarranted or excessive force to police or disperse peaceful assemblies, protests or gatherings?</i></p>	<p>Focus Group Discussions</p> <p>Key Informant Interviews</p>
	CSO representatives are not persecuted for engaging in public debate, expressing opinions, and seeking and imparting information, including on issues related to natural resource governance and	Have you experienced being insulted, criticized, harassed, vilified, or red-tagged for speaking critically of the government or private companies and how did it affect you?	<p>Focus Group Discussions</p> <p>Key Informant Interviews</p>

Dimension	Research Benchmarks	Interview Questions	Data Harvest via
	transparency as well as on the EITI process		
Operation	CSOs are not subject to significant restrictions on their ability to access resources, including to carry out activities relating to natural resource governance and transparency, or to the EITI process	Have certain government policies or statements dissuaded you from applying for grants from certain funding institutions?	Focus Group Discussions  Key Informant Interviews
	CSOs are free to engage in desired activities	Has the government prevented or hindered you from participating in activities related to natural resources governance, including government decision-making processes or projects?  <i>PROBING</i>  <i>How do ordinances or laws like the Anti-Terrorism Act make you feel? Do they affect your operations as a CSO?</i>	Focus Group Discussions  Key Informant Interviews

Dimension	Research Benchmarks	Interview Questions	Data Harvest via
	<p>CSOs, including those carrying out activities relating to natural resource governance and transparency, or to the EITI process, operate free from interference or harassment</p>	<p>Are you able to hold activities without fear of being subjected to harassment, intimidation, or red-tagging by security forces?</p> <p><i>PROBING</i></p> <p><i>Have you experienced harassment, intimidation, or other abuses?</i></p> <p><i>Does the government regularly characterize you as undermining the country's culture/religion, as national security threats, or as foreign agents?</i></p>	<p>Focus Group Discussions</p> <p>Key Informant Interviews</p>
Association	<p>CSOs, including those carrying out activities relating to natural resource governance and transparency, or to the EITI process, can freely cooperate amongst themselves and with other entities in the business and</p>	<p>Are you able to convene meetings and gatherings with other groups without fear?</p> <p><i>FOLLOW UP</i></p> <p><i>Are you able to travel freely in remote areas and</i></p>	<p>Focus Group Discussions</p> <p>Key Informant Interviews</p>



Dimension	Research Benchmarks	Interview Questions	Data Harvest via
	government sectors, whether domestically or abroad	<i>engage with marginalized groups?</i>	
	CSOs, including those carrying out activities relating to natural resource governance and transparency, or to the EITI process, are able to freely engage in communications without unjustified interference, monitoring, or surveillance	Do you think the government or private companies surveil you and how does this affect you?	Focus Group Discussions Key Informant Interviews
Engagement	Civil society representatives can fully contribute and provide input to the EITI process	In your experience, are EITI activities, events, and meetings open spaces that welcome and affirm your inputs?	Focus Group Discussions Key Informant Interviews
	Civil society representatives who are substantially involved in the EITI process, including but not limited to members of the multi-stakeholder group, have the capacity to actively and meaningfully engage in - and have an impact on - the EITI process	Is your technical capacity of supported, to be able to meaningfully engage in the EITI process?	Focus Group Discussions Key Informant Interviews

Dimension	Research Benchmarks	Interview Questions	Data Harvest via
Access to Decision Making	CSO representatives are able to foster public debate on issues related to natural resource governance and transparency as well as on the EITI process	Are journalists persecuted in the country and how does this affect your desire or ability to engage with media?	Focus Group Discussions  Key Informant Interviews
	CSO representatives are able to conduct analysis and advocacy to outreach to and to disseminate information to inform the public on issues related to natural resource governance and transparency as well as on the EITI process	Do government authorities and companies allow and help you to access EITI data and are these data generally accurate and reliable?	Focus Group Discussions  Key Informant Interviews
	CSO representatives are able to have an effective impact on public debate on issues related to natural resource governance and transparency as well as on the EITI process	Are you able to participate in government hearings and other public fora without fear of reprisal?	Focus Group Discussions  Key Informant Interviews
Other recommendations		If you could make recommendations to the EITI for improving civil society engagement, what would these be?	Focus Group Discussions  Key Informant Interviews

## Annex II: Research Sites

Each major island group of the Philippines is represented by at least one community site, except for Luzon, which has two. National, that is, Manila-based CSOs are considered as one group.

- Palawan, Luzon – Considered the last ecological frontier of the Philippines because of its high ecological values. It is also the site of significant large-scale metallic mining projects. Most mining projects are in commercial operations stage and have existing legal cases in courts or quasi-judicial bodies. Mining projects in Palawan have various conflicts with other land uses such as protected areas, ancestral domains, prime agricultural lands. Former DENR Sec. Gina Lopez ordered the suspension and closure of these mines, but most have continued their operations.
- Nueva Vizcaya, Luzon – Owned and operated by OceanaGold Philippines, Inc. (OGPI), which was awarded the first Financial Technical Assistance Agreement (FTAA) by the government. The FTAA expired last June 2019, and a people's barricade supported by local governments have been in place since then. The Commission on Human Rights (CHR) of the Philippines has issued a landmark resolution in 2011 citing cases of human rights violations in the mining project and recommending the revocation of the mining permit. The provincial government's official stand is that the mining contract has expired and the project should be in decommissioning and rehabilitation stage already.
- Semirara, Antique, Visayas – Where Semirara Mining and Power Corporation operates the largest coal production in the Philippines. Semirara is also "the only power producer in the country that owns and mines its own fuel source." (Semirara website)
- Tampakan, South Cotabato, Mindanao – The country's and Southeast Asia's largest open-pit mining project, which was awarded the second FTAA issued ever issued in the country. The mining project is still in the exploration stage and faces serious political and legal challenges that prevent its operations. These include a local law that bans open-pit mining; overlap of the mining tenement to prime agricultural lands and agrarian reform beneficiaries; and a contentious issuance of FPIC (free, prior and informed consent) from indigenous peoples.
- National (Manila-based) CSOs – Representatives of national CSOs that engage in natural resources governance and EITI, human rights promotion, or democratization.

### Annex III: Population Size and Profile of Respondents

Respondents were chosen by the local CSO overseeing the research at the landscape level.

The research gathered primary data through semi-structured interviews with:

*For the community areas,*

- Leaders or representatives of civil society organizations, people's organizations, and communities engaged in EITI and, if possible, natural resources management.
- A minimum of three (3) respondents participated in each focus group discussion (FGD) per one community area. Gender balance shall be endeavored as much as possible.
- Leaders or representatives who have been part of or familiar with natural resources governance issues since 2017. A familiarity with EITI processes is ideal but NOT required.
- One key informant interview (KII) was conducted with a key CSO figure or leader in Palawan and Tampakan.
- Optional: Malayang Pagkukwento by a community member/s – The lead CSO may opt to have a community member/s share their experiences freely, without needing to follow the interview guide. This method is considered more culturally appropriate and can supplement the findings from the FGD and KII.

*For the national level,*

- Three (3) KIIs with national CSOs that engage in natural resources governance, human rights promotion, or democratization were conducted. National respondents have been familiar with said issues since 2017.

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