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Duterte's War on Drugs Continues to Have Deadly Consequences

October 23, 2017
by Abbey Reynolds

The Constitution of the [Philippines](#), adopted in 1987, contains an entire article on social justice and human rights, which includes the creation of an independent office called the Commission on Human [Rights](#). The purpose of this commission is to combat human rights violations within the country and enact legislation that will protect the rights of citizens.

In 2016, the Philippines elected President Rodrigo Duterte as the leader of their country. Since his inauguration, Duterte has called for a “war on [drugs](#)” As a result, an estimated 10,000 people have been killed under the guise of pursuing [justice](#). Police forces within the country say that only about one-thirds of those murders have been in self-defense. It is widely assumed that the other two-thirds have largely been killed by assassins in cooperation with the government, though this is vehemently rejected by the police forces within the [country](#).

The Philippines' Commission on Human Rights is burdened with the task of investigating these extra-judicial killings. The Commission requested \$34 million for their 2018 budget and was instead allotted only \$20. This budget cut was approved by a vote of 119 to 32 in Congress. On September 21, 2017, the Commission's budget was restored to \$12.2 million, still less than half of the requested [amount](#). Funding for this commission is essential to prevent Duterte's increasing attempts to silence dissenting voices and edge closer to an authoritarian [regime](#).

The situation seems overwhelmingly out of control and, most importantly, at odds with several provisions in the Constitution of the Philippines protecting the rights of its citizens. The decision of the Philippine lawmakers to cut the budget of the constitutionally-created Commission on Human Rights makes it clear that they do not consider it a priority to stop the extra-judicial killings which are dividing the country. One of the powers of the Commission is to “investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political [rights](#).” Cutting the budget of a Commission designed to investigate the types of violations currently happening is indicative of the priorities of the Philippine lawmakers. These are representatives who are supposed to have the best interests of the country in mind, yet they seem reluctant to fund investigating the murders of their constituents. Given that the Constitution also includes an article on social justice and human rights stating that, “the Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human [dignity](#),” their highest priority in this situation should be investigating the practices which are killing thousands of their constituents. Based on their recent actions, however, it does not appear that this is the case.

Duterte's approach to eliminating crime does not seem to be implementation of harsher laws or punishments, but rather simply eliminating the individuals that commit [crimes](#). This approach completely bypasses the existence of a judicial system and leaves no checks on the power of the executive office in the Philippines. Critics of Duterte within the Philippines are holding out hope

that a lawsuit brought in the International Criminal Court is the way to achieve [justice](#) for the thousands of deaths suffered since his inauguration. It is unclear whether this approach would be successful as Duterte has openly said that he does not care about human rights and his goal is to [kill](#) criminals. However, it is clear that something must be done by international human rights organizations to bring Duterte to justice. Standing by and observing would be inappropriate, especially for someone who has described himself as the [Philippines' Hitler](#).

Interpreting a Right to Privacy: A Groundbreaking Judgment from the Indian Supreme Court

November 9, 2017

by Achalie Kumarage

In a [judgment](#) pronounced on August 24, 2017, the Supreme Court of India affirmed a right to privacy, significantly redefining the concept of liberty and the entitlements that flow out of its protection. This [ground-breaking judgment](#) from a nine-judge bench, has potentially far reaching implications in South Asia and beyond.

In deciding the case, the court revisited the founding principles of the Indian Constitution to consider whether privacy was envisioned as a way of life for Indians. Addressing a challenge of constitutional interpretation, the court had to determine whether privacy is a constitutionally protected right and to redefine the concepts of liberty and the privileges that flow from it. The determination has ignited hopes among the Indian community for fresh entitlements rooted in the concept of privacy and human dignity, such as secrecy attributed to one's sexual orientation which, according to reports, may possibly lead to the [decriminalization of homosexuality](#) in India.

Background of the Case

The issue before the court was a petition challenging the 'Aadhaar card scheme' of the Indian Government. The petition challenged the government's compilation of demographic and biometric data into a central database containing citizen information on the ground that it violated privacy.

This scheme draws validity from the [Aadhaar \(Targeted Delivery of Financial and Other Subsidies, Benefits and Services\) Act](#) No. 18 of 2016, enacted to provide for efficient, transparent, and targeted delivery of subsidies, benefits, and services to individuals residing in India. The services are rendered by assigning a unique, non-transferrable identity number by the name 'Aadhaar number.' Each holder is assigned an Aadhaar number once their demographic and biometric information is submitted to the Central Identities Data Repository following an enrollment process; the data is then retained for authentication purposes.

As defined under Section 2 of the Act, demographic information includes the name, date of birth, address, and other relevant information of an individual. Whereas biometric information contains photographs, finger prints, iris scans, or other such biological attributes of an individual as may be specified by [regulations](#). However, information such as race, religion, caste, tribe, ethnicity, language, records of entitlement, income, or medical history are not collected. The holders of Aadhaar numbers are intimated about the use and management of their information and can exercise a right to access services. The system is managed by the [Unique Identification Authority of India](#) (UIDAI). Although it is not yet mandatory to have a twelve-digit Aadhaar number, the list of transactions that require it is increasing, which will eventually make possessing a card a necessity

Examination of the Right to Privacy in India

Although a right to privacy is not enshrined in the Constitution of India, it has been dealt with over a period of time as a subset under Articles 19 and 21 of the [Constitution](#). Article 19 stipulates a right to freedom under seven specific rights including the right to freedom of expression and speech, while Article 21 pronounces protection of life and personal liberty.

In arriving at their final determination in this case, the Supreme Court ventured into clarifying various interests and entitlements that privacy can potentially safeguard under the existing legal framework.

Acknowledged as a work in progress, the court primarily explored the concept of privacy, defining it in its simplest sense, as the “inviolable core” of [each human being](#). This conception of autonomy was deemed to be compromised by the societal existence and the overarching presence of state and non-state actors. The court admitted that it was an enormous challenge to set parameters on the concept of privacy in an era where technology governs virtually every aspect of human life.

The most intriguing fact about the judgment is its analysis of the already complex right to privacy in the context of a global information-based society. The absence of an explicit right to privacy enshrined in the constitution made the effort more challenging and raised “far reaching questions involving interpretation.”

In defining privacy, the court looked at broad contours of the right, including the doctrinal foundations of the claim to privacy, contents of the right, and state regulation.

Evolution of the Privacy Doctrine in India

The judgment referred to the jurisprudence of the court to trace the development of the privacy doctrine in India. The opinions in early cases dealing with the same matter remain divided. In cases [Kharak Singh v. State of U.P](#) (1963) and [MP Sharma v. Satish Chandra](#) (1950) the court declined to recognize the existence of a right to privacy, when the minority judgment considered privacy as an ingredient of personal liberty. In the [Gopalan Doctrine](#) (1954), the court construed the relationship between Articles 19 and 21 as one of mutual exclusion.

[R.C. Cooper v. Union of India](#) (1970) was the turning point, where the majority recognized a right to privacy as constitutionally protected, rejecting the theory that the fundamental rights are watertight compartments. Subsequent decisions including [Menaka Gandhi v. Union of India](#) (1978), [Gobind v. State of Madhya Pradesh](#) (1975), [R Rajagopal v. State of Tamil Nadu](#) (1994), and [People’s Union for Civil Liberties v. Union of India](#) (1997) affirmed, by interpretation, the existence of a constitutionally protected right to privacy. The issue was that these decisions were delivered by smaller benches of the Supreme Court which technically had lesser strength than the judgments which declined a right to privacy. These disparate opinions led to the current judicial exploration.

In arriving at its finding, the court engaged in a careful exploration of cases dealing with various matters pertaining to privacy such as wiretapping, [maintaining police records and surveillance](#) (1981), [entrance to private homes to commit rape](#) (1991), [privacy of communication](#) (1985), [publication of an autobiography of a condemned prisoner](#) (1994), the

intersection between privacy and medical jurisprudence including [doctor- patient confidence](#) (1998) and the [unwed mother's right not to disclose the name of the putative father](#) of her child (2015).

Interpretation of the right to privacy was primarily drawn from the Preamble of the Indian Constitution which was deemed to encompass the core values of the Constitution as a whole. Liberty and dignity were highlighted by the court as remarkably illustrative of the conception of [privacy](#). The court opined that man has certain natural or inalienable rights and that it is the function of the state, in order that human liberty might be preserved and human personality developed, to give recognition and free play to those rights. Privacy was deemed an essential attribute to lead a life in dignity.

The court further held privacy as intrinsic to freedom and liberty and that it cannot be waived. In interpreting the right to privacy, the court pronounced that the constitutional vision of the founding fathers should not freeze but be furthered by the experience of oppressed individuals whose rights were violated; constitutional interpretation is but a process in achieving justice, liberty, and dignity for all. Therefore, as society evolves, so must the Constitution.

International Character of the Judgment

The judgment is remarkable in another sense for its approach in interpretation. Interpreting the right to privacy, the court considered India's commitments under international law as well as the right as protected by [other jurisdictions](#). Specific focus was on the international human rights regime and its core instruments including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and International Covenant of Economic, Social and Cultural Rights (ICESCR) which all pronounce a right to privacy. The court held that recognition of privacy as a fundamental constitutional value is part of India's commitment to a global human rights [regime](#). Further, Article 51 of the Constitution requires the State to endeavor to "foster respect for international law and treaty obligations." The comparative analysis, in the judgment, drew from Canada, England, South Africa, Europe, and the Supreme Court of the United States.

Influence of the Judgment

This decision by the Supreme Court of India has the potential to impact a number of areas within India including respect for sexual orientation and sexual identity. Further stretching the boundaries of privacy, the Supreme Court of India explicitly upheld that privacy contains at its core preservation, *inter alia*, sexual orientation and a right to be left alone. Under [Section 377 of the Indian Penal Code](#), homosexuality is a criminal offence. In 2014, the Supreme Court of India delivering the judgment in *National Legal Services Authority v. Union of India* recognized transgender as a [third gender](#). However, this ruled out lesbians, gays, and bisexuals from the [definition](#). In the current judgment, individual autonomy and personal choices are regarded as intrinsic to privacy and one's sexual orientation was accepted as a matter of their private life which should be respected by others.

This judgment has also impacted the day to day lives of populations in neighboring countries as persuasive authority in related matters. Recently, a discourse is building up in [Sri Lanka](#) against a

digital national identity card, for which a central database containing finger prints, iris scans, and other biometric data of its citizens will be developed. Much of the opposition for this project is stemming from the concerns petitioners took up against the *Aadhaar* scheme in India and its information database.

This is evidence of a growing global movement to protect the right to privacy. A few years before this judgment, [England](#) scrapped their existing national biometric identification scheme. Prime Minister Theresa May declared that “The national identity scheme represents the worst of government.... It is intrusive and bullying, ineffective and expensive. It is an assault on individual liberty which does not promise a greater good.” England rescinded the system in the face of serious concerns raised for privacy.

Conclusion

The judgment of the Supreme Court of India is not only ground breaking but is particularly significant in its approach to define the right to privacy. Founded upon norms and values of collectivism, it is intriguing to see how these claims and concerns arise from jurisdictions in the Global South, as opposed to jurisdictions in the Global North which have always celebrated individualism pertaining to rights and liberties. This is an indication of the changing course of rights-based justice in the Global South due to the impacts of globalization. The judgment concludes on a profound note that a Constitution must evolve with the felt necessities of the time to meet the challenges emanating from the democratic order.

Scaling-Up Housing for Rohingya Refugees in Bangladesh

November 19, 2017

by Page Monji

Following approximately [87,000](#) new Rohingya refugees in Bangladesh from October 2016 to March 2017, the Northern Rakhine State saw recent violence against police outposts by the Arakan Rohingya Salvation Army (ARSA), resulting in Burmese security forces responding with an escalation of violence since August 25, 2017. In this response, [Human Rights Watch](#) reported destruction of homes, arson, killing, and looting by the Burmese security forces. As of September 19, [214 villages](#) in the Rakhine state were destroyed since August 25. As a result, Bangladesh's borders saw a large [influx of Rohingya refugees fleeing from the area](#). This influx of new refugees in Bangladesh strains an already limited resource environment.

The Rohingya are a Sunni Muslim minority in Arakan, the historical name for the Myanmar border region that was renamed as the Rakhine state in [1989](#). The Rohingya are considered to be “stateless” due to systemic discrimination in Myanmar under the [1982 Citizenship Law](#), which deterred citizenship for Rohingya amongst other ethnic groups. Amidst complex political unrest and violence, the Rakhine state share a long history of refugee migration and repatriation [with Bangladesh, Pakistan, Thailand, and Malaysia](#). Bangladesh has seen two previously [large influxes](#) of Rohingya refugee migration: the first in 1978 and the second in 1991-1992 with each encompassing around 250,000 people. In response, international organizations like the UN High Commissioner for Refugees (UNHCR) and the UN Joint Initiative provided support to support previous influxes. In 2008, the UNHCR developed the [Special Initiative on Protracted Refugee Situations](#) that outlined support for some of the largest refugee situations across the world including the Rohingya refugees in Bangladesh.

In the most recent influx, the [UNHCR](#) has reported as of October 6, that 515,000 refugees have fled Myanmar to Bangladesh. In southern Bangladesh, two official refugee camps set up in the 1990's lie in Kutupalong in Cox Bazar area and Nayapara, which previously held a combined population around [77,000](#) people. Converted [communal shelters](#) that normally house 10 people, are now inhabited by [20 to 30](#) to accommodate the new influx. With camp resources strained, a disproportionate number of refugees are residing outside of the two camps. Within camps, refugees are [vulnerable](#) to adverse climate events, malnutrition, infrastructure concerns, and health risk including cholera and diarrhea. Outside of camps, the picture becomes more obscure.

As of September 22, UNHCR estimated of the then 420,000 new refugees, [389,000](#) were living in make-shift camps and sites along the roadside. Occupation also extends to the Teknaf and Ukhia outside of the camps with undocumented resettlements in other areas of Bangladesh. In response, on September 14th, the Bangladesh government allocated [2,000 acres of forest land](#) adjacent to the existing Kutupalong settlement for a new camp and recently also promised an additional 1,000 acres of land. On September 17, the UNHCR announced support for additional housing resources known as the [Kutupalong extension](#) to extend past the Kutulong Camp to house 3,500 families selected by community leaders. However, amidst these commitments, the potential capacity and

new refugee population figures reflect a vast gap in an already resource-strained environment. [Maps](#) of Kutupalong refugee camp show the extent of growth of makeshift settlements beyond the refugee camps before and after August 2017.

As Bangladesh looks to another influx of new Rohingya refugees amidst resources limitations, scale up efforts highlight underlying historical challenges. Since the enactment of the [1951 UNHCR Refugee Convention and 1967 Protocol](#) which aimed to ensure the protection of refugees and regulate refugee affairs, UNHCR has noted that [Bangladesh has not signed](#) the convention nor the protocol. According to a publication from [UNHCR in 2008](#), there is also a limitation of regulations and laws governing refugee rights and affairs in Bangladesh at a national and international level.

Amongst the challenges mentioned in the [UNHCR 2009 New Issues in Refugee Research](#), coordination with host governments can challenge the effectiveness of initiatives; a dichotomy between the appearance of government encouragement of hosting refugees against reluctance to integrate refugee populations permanently underlies many regions. Regarding the tension between host countries and separated refugee populations, in a [UNHCR](#) review by the Policy Development and Evaluation Services (PDES) from [2011](#), the UNHCR PDES noted refugee desires to escape induced large scale repatriation. Further, refugee population figures are obscured by regional sentiments that work against documentation of Rohingya. In Bangladesh, Rohingya are referred to as [Undocumented Myanmar Nationals](#) and are considered illegal immigrants in Bangladeshi law. While the [UNHCR](#) has issued photo identification cards for Rohingya within camps, they are not officially recognized by the government and cannot preclude refugees from arrest or detainment. Similarly, within camps, [birth registration](#) cards are issued in clinics but are not recognized by authorities. However, outside of camps, unregistered refugees cannot obtain [birth registration cards](#). Difficulties in pathways to citizenship and induced repatriation may highlight some challenges currently affecting support for the Rohingya refugees. Apprehension against refugee populations are reflected in [policing](#) as well with monitoring of Rohingya leaving the camps until they return to their countries of origin. Police have also asked citizens not reject housing for Rohingya refugees.

Chinese Activists Subjected to Invasive Investigations

November 24, 2017
by Abbey Reynolds

Privacy is a human right recognized in the Universal Declaration of Human Rights and among many other regional and international treaties. The [Declaration](#) states that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” The Chinese Government is violating this [right](#). Chinese officials are launching vigorous investigations into the activities and finances of human rights lawyers and law firms in an attempt to discourage these organizations from making progress on behalf of individuals who have been [victimized](#) by the Government. China defends its actions by contending that it is simply following the rule of law in their country and these activists have “damaged social stability and endangered national [security](#).” The Government has also tightened restrictions on the types of cases that these firms can take on, making it more difficult for them to defend human rights cases, which the Government terms “sensitive” [cases](#).

Since 2015, [thousands](#) of human rights lawyers and activists have been arrested, jailed, or detained. Many of these detentions have occurred without any legal basis, causing the United Nations to step in and call for the release of these [activists](#). One example is Su [Changlan](#), a forty-seven year old teacher who was detained for three years after speaking out in support of women’s rights and the democratic movement in Hong Kong. Changlan was first arrested on October 24, 2014, and her lawyer claims that she was illegally detained for three years before she was formally [convicted](#) in March 2017. She was [charged](#) with “inciting subversion of state power.” Upon Changlan’s release, Amnesty International released a statement celebrating her release but condemning the “cramped” and “unhygienic” conditions of her unjustified [detention](#). A United Nations human rights panel, the Working Group on Arbitrary Detention, recently released a statement calling for the release of three human rights [lawyers](#); Xie Yang a [defender](#) of supporters of Hong Kong’s democratic movement, Hu Shigen an advocate for religious freedom and democracy, and Zhou Shifeng, who led a large firm committed to taking on cases the government deemed “sensitive.” The [panel](#) has reason to believe that these three advocates were denied their right to due process, but they are also deeply concerned about evidence that their confessions were procured through torture.

The UN also reports a record number of other states punishing human rights [activism](#). Twenty-nine states, including Iran and Saudi Arabia, have launched efforts to retaliate against citizens who cooperate with the United Nations. Nine of these states are [members](#) of the Human Rights Council of the UN. The Assistant Secretary-General for Human Rights, Andrew Gilmour, said that individuals that have been [communicating](#) with the United Nations “have been abducted, detained, held incommunicado, or disappeared.” The increasing number of nations who are making efforts to quash the opinions of individuals advocating for human rights or aligning themselves with organizations who advocate for human rights is alarming. The number of nations engaging in these efforts while maintaining membership on the Human Rights Council is disheartening.

The road to securing human rights for citizens who fall victim to these shocking violations, especially in China, will be a long one. In March of 2016 at the UN Human Rights Council, a group of twelve governments, including the United States, signed a statement denouncing the [deterioration](#) of human rights in China. Amnesty International's 2017 World Report describes the situation as "[dire](#)." One of the main problems faced by those wishing to enforce punishment for human rights violations, however, is that it is difficult to hold violators accountable. Amnesty International is of the opinion that the key to stopping human rights violations is to gather as much data and research on the issues as possible in order to allow people to "get at least some semblance of [justice](#)." Gathering data allows for a clearer picture of the situation within each country and gives lawyers insight into human rights violations by governments, which lets them better evaluate ways in which to bring justice to victims.

Effects of Cambodia's Legal Policies on Sex Worker's Health Access

November 30, 2017

by Page Monji

Cambodia has an estimated population of 37,000 sex workers, [14.7 percent](#) of whom are living with HIV and AIDs. Despite national initiatives to suppress sexual exploitation, policies criminalizing sex work have instead led to an inequitable access to healthcare services amongst other human rights violations.

At an international level, the [Universal Declaration of Health Rights](#) and other conventions prohibit discrimination against all people, including sex workers. Cambodia's government has ratified [numerous international human rights treaties](#) and has recognized these international treaties in 1993 under [Article 31 of the Cambodian constitution](#) with provisions prohibiting exploitation of women adopted in Article 46 and equal employment rights in [Article 36](#). However, the Cambodia government ratified numerous major international human rights treaties after the enactment of its civil laws, some of which remain noncompliant with Cambodia's [international human rights obligations](#).

In 2008, Cambodia's [Law on the Suppression of Human Trafficking and Sexual Exploitation](#) ("Trafficking Law") criminalized most areas of the sex work industry. Concurrently, the corresponding Police Guideline on the Implementation of the Law on Suppression of Human Trafficking and Sexual Exploitation specifically negated the criminalization of sex [workers](#). Despite efforts to create a legal framework preventing sexual exploitation and human trafficking, the result of the Trafficking Law drove much of the sex industry further underground to less regulated [environments](#). The legacy of the Trafficking Law has also been marred with human rights violations including [reported](#) police extortion, demands for bribes, arbitrary detention, violation of due process rights, physical violence, rape, sexual harassment, forced labor, extortion, confiscation of belongings, and ill treatment.

Foreshadowing the decrease in health access, Article 25 of the [Trafficking Law](#) equated the act of procuring prostitution to "hindering the act of prevention, assistance or re-education undertaken either by a public agency or by a competent private organization for the benefit of persons engaging in prostitution or being in danger of prostitution." Following the Trafficking Law, the number of sex workers seeking health services and communication with NGO outreach [entities](#) declined. This apprehension also affected sex workers' access to health information, Antiretroviral Therapy (ARV), and [condoms](#).

Other government initiatives have exacerbated healthcare access limitations for sex workers. The National HIV/ AIDS Strategic Plan 2011-2015 revised Prakas 006, the former 100 percent condom use policy, in hopes of increasing the condom use of sex workers in non-brothel [establishments](#). Although a directive from the Ministry of Interior in 2011 prohibited utilization of condoms as evidence for [arrest](#), police continued to use condoms as evidence of sex workers in entertainment [establishments](#). The criminalization shifted the industry to unregulated

environments, limiting sex workers' negotiation power in condom use and increasing their exposure to [violence](#).

Furthermore, forced detention of sex workers also can restrict access to health therapies. With the intention to clean-up the city, law enforcement has continued to unlawfully [arrest and detain](#) sex workers and other marginalized populations in social rehabilitation centers like [Prey Speu](#). Most recently, law enforcement detained 440 sex workers in Phnom Penh in preparation for the 2012 ASEAN [summit](#). During unlawful detention, [sex workers](#) can be restricted from accessing ARV therapies and healthcare services for sustained periods of time.

Efforts at the commune level have also challenged healthcare access for sex workers. In 2011, the [Sangkat Commune Safety Policy](#) intended to promote commune safety by targeting drug crimes, prostitution, child trafficking, and other crimes. As a result, the policy further limited the ability for health outreach agents to deliver HIV prevention services and needle programs to [at-risk populations](#) including syringe drug users, who were targeted by law enforcement. International agencies in collaboration with the local government have made efforts since to implement law enforcement education programs and other partnership initiatives.

While the intention of policies has been to reduce the sex work industry, laws and law enforcement practices have disrupted HIV prevention efforts and access to basic healthcare services. Policies in Cambodia have shown that the criminalization of sex work, condom policies, and law enforcement practices including rehabilitation or detention do not always have the intended effects in reducing the sex work industry but instead rob already vulnerable populations of access to health resources and protection. International agencies aim to provide legal support, medical care, and other outreach [services](#). However, the effects of the Trafficking Law and other policies underscore a need for further legal services for sex workers to specifically mitigate the threats of arbitrary detention and violence.