

## NEW WAYS TO ADDRESS AN OLD PROBLEM: POLITICAL REPRESSION

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The term “closing space” has become a widely embraced trope to describe contemporary challenges in the struggle for human rights, suggesting that the human rights movement confronts a global, varied, but overall very serious pushback as governments limit opportunities for civic engagement and activism.

Initially, in the influential report published by Thomas Carothers and Saskia Brechenmacher in 2014, the term “closing space” referred rather narrowly to restrictive measures adopted by a number of states to regulate and, indeed, obstruct international support for democracy- and rights-promoting civil society initiatives. The new laws undermine a dominant modus operandi for collaboration across borders, namely the provision of financial support by democratic states and some private foundations to civil society organizations in countries where local actors are either unable or unwilling to fund human rights and democracy promotion. In response, international donor organizations began to protest these new obstacles.

In the ensuing conversation among activists and policy makers, the term “closing space” quickly caught on and it soon no longer referred just to restrictive NGO legislation. Instead, it has become the shorthand for a much wider proposition, namely that civil society around the world faced a new wave of repression. In this con-

text, it has also been suggested that violations of fundamental rights are on the rise, including violations of rights to life, liberty, and security of person, rights to a fair and public hearing, and freedom from arbitrary arrest and detention. There is no doubt that many human rights activists face threats and rights abuses, though that is not a new situation. Is repression against human rights defenders getting worse?

That notion is advanced by many experienced civil society representatives and also by the CIVICUS Monitor. This is a relatively new online platform which provides ratings of civic space in broad bands for every country in the world, accompanied by frequent narrative descriptions of civic space-related events produced by members of a strong research collaborative of twenty organizations. The Monitor's April 2017 edition raised concern about a "global crackdown," referring to the intimidation, harassment, and detention of activists, the prevention or disruption of protests, and the use of excessive force, censorship, and legislative and bureaucratic restrictions for civil society activities (CIVICUS 2017a, 6). According to the report, civil society activities that challenge power are "becoming increasingly risky in many countries across the world as reprisals abound to prevent criticism and stifle free speech, disrupt protests and manipulate the law to lock up peaceful activists" (CIVICUS 2017a, 2). Similarly, on the occasion of the launch of World Justice Project's 2018 Rule of Law Index, its founder and CEO William H. Neukom spoke about "a global deterioration in fundamental aspects of the rule of law" (WJP 2018), and the latest annual report by Freedom House declared that "democracy faced its most serious crisis in decades" (Abramowitz 2018). None of these measures claim to capture the precise level of fundamental rights violations, but these reports all bolster the assumption that civil society engagement in the name of human rights and democracy is becoming increasingly dangerous. Today the trope "closing space" no longer encapsulates a notion that civil society work is becoming increasingly difficult to fund; instead, it suggests that this work is becoming more and more risky. This is a very different notion than the one first put forward by Carothers and Brechenmacher (2014) and we need to ask ourselves if it is true.

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We consider repression against civil society organizations and individual activists a matter of great concern, and we welcome all efforts to document and shame abuses, particularly collaborative research projects such as the CIVICUS Monitor, which makes a renewed effort to produce not only comparable but also frequently

updated information on a global scale. It is no doubt important to raise international attention to the violations that occur, because they are widespread. At the same time, from a scholarly perspective, we want to caution against drawing overconfident conclusions about a deteriorating trend. We are skeptical that violations of fundamental freedoms are actually on the rise because there exists no solid empirical data to support this claim. Given that the broad narrative of a “closing space” has become a commonly accepted wisdom in activist circles, we worry that the human rights community might become caught in an echo chamber that, at a minimum, paints a grossly simplified picture and, at worst, offers a wrong analysis of the state of fundamental rights around the globe.

A simplified narrative can help ring alarm bells, but only in the short run, and it does not facilitate the generation of nuanced and actionable ideas. Most activists and policy makers would agree that international responses to fundamental rights violations ought to be tailored to local circumstances. Only based on a context-specific analysis can we develop tailored and impact-oriented recommendations on how to improve the situation. But who can do what about a global crackdown?

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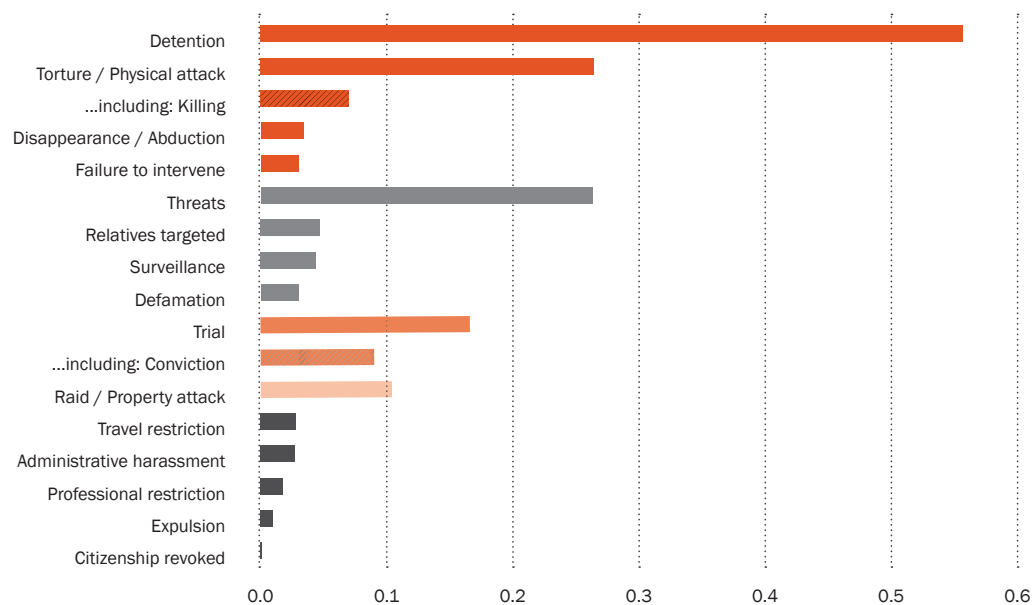
What is more, there is a real risk that the narrative of a global crackdown contributes to normalizing reports on fundamental rights violations, thereby lowering their chances of attracting attention and stirring tangible action. As Kathryn Sikkink aptly argues in this volume, we should also not forget that activists need hope to sustain the human rights struggle. An overly negative analysis, if not substantiated by irrefutable evidence, can easily undermine instead of strengthen resolve to fight against fundamental rights violations.

Finally, the advancement of a badly substantiated argument is undesirable from a tactical perspective because it plays into the hands of opponents who question the credibility of civil society. Human rights activists cannot afford to lose an argument on factual grounds. The *CIVICUS Monitor* itself is a new instrument and, as such, the data it presents does not allow for meaningful comparisons over time yet. As far as we know, currently no empirical data can solidly prove an increase in fundamental rights violations around the world. It is not even clear what the level of analysis should be. Should we look at the total number of repression events around the world?

Considering that mass arrests in one country alone could theoretically explain an increase in the total number of political detention cases recorded around the world, how instructive is a global count? In how many countries must fundamental rights violations occur before the crackdown becomes “global”? The measurement conundrum is further complicated by the multidimensionality of repression. Intimidations, defamations, administrative or professional restrictions, and similar harassments can stop activists from pursuing their causes, and repressive states typically try these softer repression measures before escalating and using their power to detain, disappear, or kill. When measuring repression, what weight should we give to the surveillance of a hundred activists versus the detention of one? We know that there tend to be comparatively few events of hard repression in high-capacity authoritarian states because, in such contexts, most people engage in self-censorship out of fear. That is, fewer cases of physical integrity violations can actually mean higher levels of repression.

In addition to such conceptual questions, the scarcity and overall quality of data on fundamental rights violations is a real problem. To judge whether things are getting better or worse, we need data that is comparable across time and space. One available source on human rights defenders specifically are reports issued by the

*Figure 1. Distribution of violations among individual cases raised by the UN Special Rapporteur on human rights defenders 2000–2016 (n=12,086).*



UN Special Rapporteur on these situations, notably the communications on individual cases issued by the mandate. In the years 2000–2016, the Special Rapporteur addressed more than 12,000 cases of human rights defenders at risk. Figure 1 shows what kinds of repression human rights defenders experienced before the UN raised their cases:

There is a striking prevalence of detention cases in this data—more than 56% of all defenders addressed by the UN over the course of 16 years—whereas softer forms of repression involving administrative measures such as travel or work restrictions are only present in about 8% of all cases. What is more, they are usually mentioned in combination with various forms of hard repression that an individual under consideration experienced. Human rights defenders that only experienced travel restrictions or defamation, to name just two threats, are rarely taken up by the UN special procedure.

The distribution presented in figure 1 is thus highly unlikely to be reflective of repression patterns in reality. Instead, the data is shaped by an attention bias that overemphasizes detention as a threat faced by human rights defenders. Since harder forms of repression capture the most attention, activists who grow used to low-level threats only start reporting when things turn violent; as well, state involvement is comparatively easy to prove in cases of detention. For most detention cases, there exist detention orders; for imprisonment, there are also court documents. In cases of harassment or smear campaigns, on the other hand, it is much more difficult to prove state involvement.

Given this bias in available data, one might think that there is a good level of international knowledge about political detention cases at least.<sup>1</sup> But even here our knowledge is sketchy, as shown in a comparative analysis we conducted on individual case data published by four international actors: Amnesty International, the U.S. Department of State, the UN Working Group on Arbitrary Detention and, again, the UN Special Rapporteur on human rights defenders. Covering the years 2001–2010,

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1 There is no internationally agreed-upon definition of “political prisoner.” The Council of Europe defined the term in a resolution adopted in October 2012, but it is only binding on member states of the Council of Europe: <http://assembly.coe.int/nw/xml/Xref/Xref-XML2HTML-en.asp?fileid=19150&lang=de>. Imprisonment requires a court sentence. Since not all cases of politically motivated deprivation of liberty fulfill this criterion, we use the term “detention” instead of “imprisonment.” For the purpose of data collection, we recorded all detention cases framed as politically motivated in reports published by Amnesty International and the U.S. Department of State. For the two UN special procedures, all detention cases were recorded.

**Figure 2.** Number of political prisoner cases raised each year for twenty-six countries by Amnesty International, the U.S. Department of State, the UN Special Rapporteur on human rights defenders, and the UN Working Group on arbitrary detention.

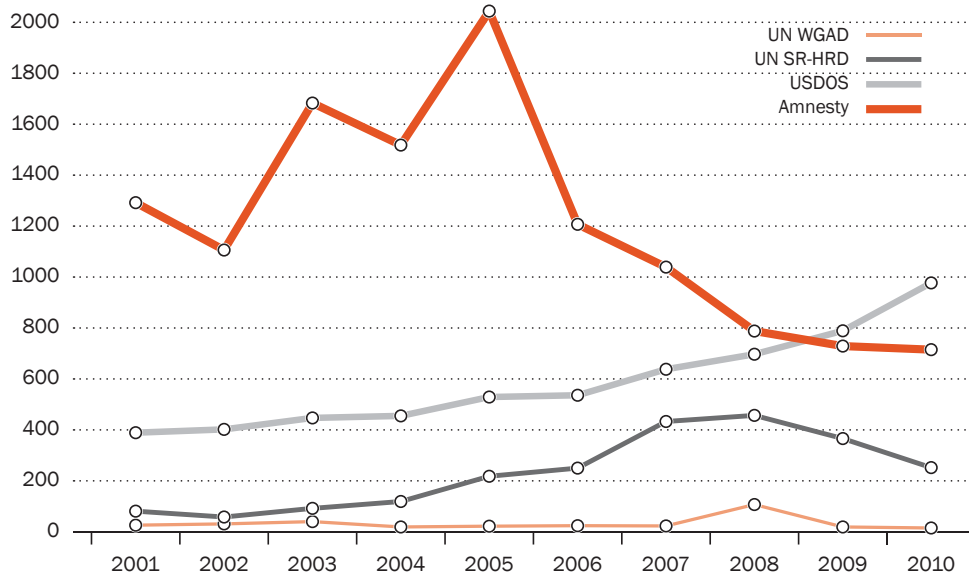


figure 2 shows the number of political detention cases mentioned by each of these actors in twenty-six countries where political imprisonment is systemic. Strikingly, the datasets suggest very different developments over time.

The main take-away from this distribution is that we cannot identify an overall trend. In most of the years under review, the cases reported by the various actors not only show strongly diverging levels but even opposing trends. By looking at Amnesty’s figures, we would assume that there were fewer instances of political detention in 2010 than there were in 2005, while the U.S. State Department’s data suggests there were more in 2010 than in 2005. The UN special procedures suggest that the overall numbers in 2005 and 2010 were almost the same.

Political detention cases are likely to be the best-documented cases of repression suffered by individual activists. Nevertheless, we do not have a clear picture of the overall trend because the number of prisoner cases identified is strongly linked to each reporting actor’s monitoring capacity. The reason that Amnesty data shows a drop in numbers is directly linked to the organization’s decision to shift institutional

resources away from documenting political imprisonment and towards other human rights violations. That is, Amnesty data is shaped by advocacy considerations; it is not a statistically representative sample.

Our comparison dates back to the last decade, but the same data discrepancies exist today. Consider one aspect of the above-mentioned CIVICUS Monitor. For June 2016–September 2017, CIVICUS reports 292 detention cases—roughly 18 cases per month—suffered by human rights defenders, and asserts that detention and physical attacks were the most frequently used measures of repression (CIVICUS 2017b, 5). To put this into perspective, the current UN Special Rapporteur, Michel Forst, was acting on an average of 28 cases of detained defenders per month between taking office in June 2014 and November 2016. The fact that even the UN mandate, a mechanism with highly limited capacity, has been taking up substantially more cases of detained human rights defenders than CIVICUS shows that the latter’s data is not a comprehensive and most certainly not a statistically representative sample. We believe that the CIVICUS event data—like the UN data—reflects an international attention bias towards political detention and disproportionately reports violent threats. As we have established above, the UN Special Rapporteur’s sample is also not comprehensive and statistically representative; with this caveat in mind, it is nevertheless noteworthy that the most recent peak in cases reported by the UN occurred in 2013, when the Special Rapporteur identified 724 detained defenders; in 2016, the procedure identified 408 detained activists.<sup>2</sup>

To be sure, a count of individual cases cannot be equated with our knowledge and understanding of repression in a specific context which is precisely why the CIVICUS Monitor relies on multiple data sources and not only on event data. But individual casework is still one of the major tools of advocacy around fundamental rights violations, and it offers a glimpse into some of the problems we face in terms of rigorous documentation. The overall victim numbers are simply too large for a comprehensive count. An often-used alternative measure are standards-based indexes based on Amnesty and U.S. State Department reports, and qualitative expert assessments—but such assessments are typically shaped by available data on individual cases as well. In fact, it remains very difficult to measure changing levels of fundamental right violations around the world.

From our perspective, the following conclusions can be drawn:

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2 Data is available for the period January–November 2016.

- In activist circles, it is becoming common wisdom that fundamental rights violations are getting worse around the world. However, no credible dataset exists to substantiate claims that civil society engagement is becoming increasingly risky worldwide. As well, important differences exist between country contexts.
- The monitoring capacity of international actors presents a serious bottleneck as we seek to understand fundamental rights violations around the world. The reported violations are not a representative sample of the type of violations that occur.
- The advocacy shift away from “political prisoners” and towards “human rights defenders” has brought some attention to softer forms of repression, but due to available evidence on state involvement and, most importantly, an attention bias towards more severe forms of repression, international reports on attacks suffered by human rights defenders continue to overemphasize detention as a threat.

Instead of quibbling about just how dangerous civil society engagement is and whether or not things are getting worse around the globe, we believe it is more important to ask, “What should be done internationally in response to fundamental rights violations? And how can we best support local activists in their efforts to open closed spaces?” These are not new questions; hence, we can and should learn from what has been tried so far. We propose two fundamental shifts in emphasis:

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1. From victim-focused advocacy toward perpetrator-focused advocacy
2. From documenting hard repression toward more documentation of soft repression

It no doubt remains important to collect data on repression events, because repressive states fear international attention. Detailed data on distinct acts of repression is a necessary ingredient for credible naming and shaming. At the same time, repressive states have learned how to undermine the power of shaming; for example, by launching counter-discourses, by criminalizing members of civil society, including through frame-ups, by conducting mass arrests so that human rights organizations



cannot keep up with collecting data on the affected individuals, and by altering the tactics of repression. So far, most human rights organizations engage in documenting individual cases of concern and in telling the stories of victims. It is high time that this tactic be complemented with more rigorous efforts to document lines of responsibility. So far, we know and talk too little about the perpetrators of fundamental rights violations, about the very decision-makers who plan and implement attacks on civil society. We let them hide in anonymity, and that has to change.

Repression is the result of political calculations on how to use and maintain the power to rule. To counter politically motivated attacks on civil society, activists and policymakers must therefore engage in activities that alter the cost-benefit calculations of perpetrators. We rightly attribute acts of repression to the state, but individuals make the political calculations that drive repression. Other individuals execute these decisions, and others decide to ignore events of repression instead of resisting them, either passively or actively. We need much better knowledge on who is who in a given state apparatus: how different decision-makers think and act, and how the lines of responsibility are constructed. In addition to trying to alter the cost-benefit calculations by exposing individual perpetrators and encouraging those who resist, we know it is possible to counter fundamental rights violations by entangling state representatives in a discussion about norms, pushing them to commit themselves publicly to upholding human rights. However, none of this can happen as long as activists continue to address the state apparatus as a black box and those responsible remain unknown to international audiences. Local civil society actors typically have a very detailed understanding of lines of responsibility and can share their knowledge on individual perpetrators with their international partners.

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The recently adopted U.S. *Global Magnitsky Human Rights Accountability Act*<sup>3</sup> presents a good opportunity to push forward on a more perpetrator-focused international response to fundamental rights violations. Yet U.S. action alone is not sufficient, especially when the U.S. has lost credibility on human rights matters. Even if

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3 The bill foresees U.S. entry and property sanctions against foreign persons responsible for gross violations of human rights, including extrajudicial killings and torture. A summary of the bill and the full text are available here: <https://www.congress.gov/bill/114th-congress/senate-bill/284>.

the U.S. regains that credibility under a new administration, the world's unipolar moment is undoubtedly over. No one country can fill the current human rights leadership gap. Instead, we must build a fine-meshed net of collaboration between democracies in the global South and the global North whose common task will be to identify not only the victims but also the perpetrators of fundamental human rights violations. Wherever sufficient evidence for gross violations is available, and after due review of each perpetrator's case, democratic states should limit that perpetrator's international mobility by denying entry visas. A similar effect could be achieved by a more systematic domestic exercise of universal jurisdiction over international crimes. Under the *Global Magnitsky Act*, it is furthermore possible to freeze personal assets held in bank accounts abroad—another response to perpetrators that is worth emulating. Canada adopted its own *Sergei Magnitsky Law* in late 2017<sup>4</sup>; the parliaments of Estonia, the U.K., Lithuania, and Latvia have also passed similar legislation. More democracies should follow suit.

**As perpetrators continue to experiment with such measures in different parts of the world, human rights organizations should double down on their efforts to monitor softer forms of repression, which are very likely more common than hard repression**

A wider shift of emphasis from the traditionally victim-focused toward more perpetrator-focused advocacy would go a long way in better addressing and preventing fundamental rights violations. However, this tactic would, again, focus on acts of hard repression and, as such, not do justice to lower-level threats that can be equally crushing for members of civil society.

The other chapters in this volume rightly draw attention to those repressive measures that too often remain under the radar of international attention: funding restrictions, smear campaigns, cooptation of the media, operational burdens placed on NGOs, and delegitimizing narratives that aim to limit the credibility of civil society. As perpetrators continue to experiment with such measures in different parts of the world, human rights organizations should double down on their efforts to monitor softer forms of repression, which are very likely more common than hard repression. This volume's contribution to better understanding and countering softer forms of repression, and the documentation of a wide range of repressive measures, as pro-

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4 The full name of the Canadian bill is *Justice for Victims of Corrupt Officials Act (Sergei Magnitsky Law)*. See <http://laws.justice.gc.ca/eng/acts/J-2.3/>.

moted for example by the CIVICUS Monitor, are timely efforts because repressive states have learnt that international attention tends to focus predominantly if not exclusively on violent crackdowns. Accordingly, arbitrary arrests and physical integrity violations have, in fact, become less attractive policy options for those who chose their tactics of repression based on cost-benefit calculations.

The political costs associated today with arbitrary arrests and physical integrity violations are to a great extent the result of relentless efforts by domestic and transnational civil society actors who work together to expose fundamental rights violations. Building on this success, civil society organizations can unite against soft repression as well.

## REFERENCES

- Abramowitz, Michael J. 2018. "Freedom in the World 2018: Democracy in Crisis." Freedom House. Retrieved from <https://freedomhouse.org/report/freedom-world/freedom-world-2018>.
- Carothers, Thomas, and Saskia Brechenmacher. 2014. *Closing Space: Democracy and Human Rights Support Under Fire*. Retrieved from [http://carnegieendowment.org/files/closing\\_space.pdf](http://carnegieendowment.org/files/closing_space.pdf).
- CIVICUS. 2017a. "People Power Under Attack: Findings from the CIVICUS Monitor." CIVICUS, April 2017. Retrieved from [http://www.civicus.org/images/People\\_Power\\_Under\\_Attack\\_Findings\\_from\\_the\\_CIVICUS\\_Monitor.pdf](http://www.civicus.org/images/People_Power_Under_Attack_Findings_from_the_CIVICUS_Monitor.pdf).
- CIVICUS. 2017b. "People Power Under Attack: Findings from the CIVICUS Monitor." CIVICUS, October 4, 2017. Retrieved from [http://www.civicus.org/images/CM\\_Findings\\_7Oct\\_v1.pdf](http://www.civicus.org/images/CM_Findings_7Oct_v1.pdf).
- WJP. 2018. "2017–2018 WJP Rule of Law Index: Global Press Release." World Justice Project, January 31, 2018. Retrieved from <https://worldjusticeproject.org/news/2017-2018-wjp-rule-law-index-global-press-release>.