



Joint Submission to the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression



#StopDigitalDictatorship

FREEDOM, INDEPENDENCE, DIVERSITY OF MEDIA AND THE SAFETY OF JOURNALISTS IN SOUTHEAST ASIA

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INTRODUCTION

Restrictive legislation, intimidation, and even the murder of journalists tarnishes the commitment to freedom of expression of Southeast Asian countries, putting our online democracy under attack. Vague and expansive laws are used to criminalise legitimate online speech and infringe upon individuals' right to freedom of expression, by granting governments sweeping monitoring powers over our digital space and communications. Lesè-majesté, sedition, slander, and 'fake news' are just a few of the offenses invoked to threaten and punish journalists and individuals for speaking the truth and exercising their right to free expression online. Furthermore, Governments' efforts to limit freedom of expression have been documented through censorship and take downs of content on social media platforms, with many of these impositions being introduced under the guise of protecting cybersecurity or combating 'fake news'. All these aspects, along with a lack of procedural safeguards and independent oversight, as well as problematic appeals processes, have led to a shrinking online civic space in the ASEAN region, amounting to digital authoritarianism.

The rise of digital dictatorship recorded in Southeast Asia is being characterised by several trends analysed in this Joint Submission by the **ASEAN Regional Coalition to #StopDigitalDictatorship** (comprising Manushya Foundation, ALTSEAN-Burma, Cambodian Centre for Human Rights, ELSAM (Indonesia), Foundation for Media Alternatives (FMA, Philippines), ILGA Asia (Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), SAFEnet, and Women's Peace Network (Myanmar)). The Joint Submission focuses on eight Southeast Asian countries, namely Cambodia, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand and Vietnam, highlighting the threats and challenges that journalists encounter in conducting their legitimate work. This Joint Submission articulates the broad pattern of abuse of journalists and media across the region where legal provisions curtail the right to freedom of expression, by outlining legal frameworks and relevant cases for each trend.



I. Telling the Truth is now a Crime under SEA’s repressive ICT and Defamation Laws

The provisions under repressive ICT and defamation laws in Southeast Asia are weaponised to target online freedom of expression and to harass and silence journalists, activists, human rights defenders as well as critics.

In **Cambodia**, defamation provisions are mostly used to silence dissent or critical voices. Under the Criminal Code, individuals can be penalised for making statements or sharing any audio-visual communication that affect the reputation of a person or institution, or for purported outrageous expression.^[1] Journalists have been targeted for defamation on numerous occasions, including in two events from March 2020^[2] and September 2021,^[3] when they were summoned and respectively sentenced over their reporting on a land dispute. In addition to defamation provisions, a range of laws^[4] and provisions in the Criminal Code^[5] unduly restrict freedom of expression and stifle criticism, while the NIG Sub-Decree on the Establishment of the National Internet Gateway (NIG Sub-Decree) grants authorities overbearing surveillance powers, potentially allowing for content blocking prior to its publication.^[6] Other laws still in the legislative process, contain provisions that restrict or criminalise online expression.^[7] With such laws in place, independent journalists and media outlets operate in precarious environments and practice self-censorship to ensure their independent reporting does not result in criminal sanctions or other forms of harassment. Reportedly, from January to October 2021 alone, 81 journalists were targeted for doing their work, with 31 of them arrested, including 4 women.^[8]

In **Indonesia**, defamation provisions are enshrined under the Penal Code^[9] and the Electronic Information and Transactions Law (ITE) law,^[10] as well as the pending Revision of the Criminal Code Bill (RKUHP) that contains problematic provisions on defamation against the President, Vice President and the Government.^[11] The ITE Law has been misused to criminalise hundreds of people for exercising their right to freedom of expression, with 81 people charged from January 2020 to October 2021, most of the cases being related to defamation.^[12] In a prominent case, chief editor Mohamad Sadli was sentenced to two-year prison term for an opinion piece critical of a local government’s road construction project.^[13] Human rights defenders Haris Azhar and Fatia Maulidiyanti were threatened with legal action for defamation, under ITE Law and Penal Code.^[14] In addition, the ITE Law contains overbroad provisions that allow authorities to label critical expression as “false information” or “hate speech”, criminalising free expression.^[15] Journalist Muhammad Asrul was detained for alleged hate speech based on three news articles about corruption allegations,^[16] and sentenced to three months in prison in November 2021.^[17]

In **Lao PDR**, the sole legal party has consistently imposed restrictions on traditional media and online media, using provisions under the Penal Code^[18] such as slander and “propaganda against the state” to persecute those who defame state authority and target critics of the government. Moreover, a series of legal provisions under the Penal Code impose unlawful restrictions on freedom of expression and media freedom on the basis of “national security” or “public order”,^[19] while other legislations confer unrestricted power to the authority to silence online criticisms and impose penalties on the circulation of “false information online.”^[20]

In **Malaysia**, the governing powers maintain a tight grip on people, restricting civil liberties through oppressive mechanisms and strict legal provisions. The government has used the defamation provisions under the Penal Code^[21] to silence journalists, opposition lawmakers, activists, and individuals criticising the regime, as in the case of Anna Har and Amin Landak, investigated under the Penal Code and the CMA.^[22]



In addition, in 2021, a criminal defamation prosecution against advocate journalist Rewcastle Brown was reopened, and she was charged in her absence under Section 500 of the Penal Code.^[23] Besides, a great number of repressive laws and provisions aim to impose censorship and punish those voicing their critics.^[24] Between March 2020 and February 2021, 66 cases involving 77 individuals initiated under the Sedition Act and Section 233 of the CMA which infringed on the right to freedom of expression were documented,^[25] with about 60 cases related to online activities. For instance, blogger Dian Abdullah was charged under Section 505(b) of the Penal Code and Section 233(1)(a) of the CMA for allegedly criticising the King and the Prime Minister in her blog post published in March 2020.^[26] Furthermore, journalists and online news outlets have been repeatedly subjected to investigation and prosecution as a result of their critical reporting, as in the case of Tashny Sukumaran, a South China Morning Post correspondent,^[27] and the international broadcaster Al Jazeera.^[28]

In Myanmar, the military has created an environment of fear and cracked down on dissenting voices, with 114 journalists and media staff arrested by 31 December 2021, of whom 43 are still detained.^[29] Defamation is criminalised under a myriad of laws, such as the Penal Code and the Telecommunications Law.^[30] In January 2021, editor U Ne Win San and reporter Ma Hnin Nwean were sued by the military under Section 66 (d) of the Telecommunications Law for publishing a news story about alleged military corruption.^[31] In addition, since the coup, the State Administration Council (SAC) has amended a few laws and enacted a draft Cyber Security Law (CSL) which further creates the legal basis for violation of online freedom. The work of journalists and online media is further restricted by the licensing regime imposed, as news agencies and websites are required to register prior to producing content.^[32] Moreover, provisions under the Penal Code includes wide-ranging restrictions on freedom of expression,^[33] while the 2014 amended Electronic Transactions Law (ETL) and its 2021 Amendment restrict expression through electronic transactions technology and establish harsh criminal sanctions for those convicted.^[34] The post-coup crackdown on free media came after the military repeatedly threatened to revoke media licenses if they continued using the words “regime” or “junta”.^[35] Many private news media companies have been banned for disobeying the junta’s commands, and those who attempt to remain operational have faced strict censorship.^[36] While hundreds of journalists hunted by the military were forced to hide,^[37] others have been arrested and/or charged, such as reporter Kay Kay Zon Nway,^[38] journalists Han Thar Nyein and Nathan Maung,^[39] Sithu Aung Myint and Htet Htet Khine.^[40]

In recent years, Singaporean authorities have increasingly used harsh and overly broad laws to restrict and prosecute speech critical of the government, censoring independent media. Extremely strict defamation provisions are enshrined in the Penal Code,^[41] and, in addition to criminal charges, civil libel suits brought under the Defamation Act^[42] are systematically used to silence dissenting voices and activists.^[43] As such, editor Terry Xu and contributor Daniel De Costa of The Online Citizen (TOC) went on trial on charges of criminal defamation, after Xu published De Costa’s letter in which he accused the PAP leadership of corruption.^[44] In November 2021, each was convicted of defaming Cabinet members.^[45] Terry Xu was also involved in a separate defamation suit by the PM Lee,^[46] in which the Court ruled the defamatory statements as “grave and serious”,^[47] and the PM Lee Hsien Loong was awarded a large amount of money in damages and costs and disbursements.^[48] Moreover, a series of repressive laws criminalise online activities and hamper the enjoyment of online freedom by individuals.^[49] Since the Foreign Interference (Countermeasures) Bill (FICA) allows authorities to legitimately control almost any form of expression, including to remove or disable online content, journalists are disproportionately impacted by default, as the issues on which they work are under increased State oversight and control.^[50]



In Thailand, the authorities have weaponised laws and policies to censor information and target journalists, HRDs and activists in relation to criticism of the monarchy and the government. In the past years, many young people have become citizen journalists, reporting the truth of what is happening in Thailand. State actors and large corporations have long wielded defamation provisions under the Penal Code^[51] to target journalists and activists who bring to light human rights violations or share information critical of the regime, having a chilling effect on their legitimate work.^[52] As such, a committee was established to investigate defamatory content against the Prime Minister and his cabinet on social media platforms, and over 100 cases have been initiated against those criticising the PM, as of June 2021.^[53] Furthermore, unduly restrictive laws such as the Computer Crime Act (CCA), imposing restrictions on freedom of expression online by punishing individuals who disseminate “fake news” via online means,^[54] and several provisions under the Criminal Code (Article 112 on lèse-majesté, Article 328)^[55] further criminalise freedom of expression. From 24 November 2020 to 6 December 2021, at least 168 lèse-majesté lawsuits were documented.^[56] Notably, in January 2021, Anchan Preekert, a former revenue officer, who uploaded to YouTube 29 audio clips of “Banpot,” a radio host critical of the Thai monarchy, was sentenced to a record of 87 years in prison under Article 112. Her sentence was later halved to 43 and a half years after she pleaded guilty to the charge.^[57] With restrictive laws in place to criminalise free expression, activists who bring to light human rights violations or share information critical of the regime are frequently charged for sedition and computer crimes.^[58] Additionally, an “anti-fake news” centre was established in November to strictly implement provisions of the CCA. The definition of “fake news” and the scope of the centre’s mandate is, however, overbroad and appears to target critical dissent.

In Vietnam, the Communist Party of Vietnam maintains a strong stance against those who express dissent. For daring to speak truth to power, the individuals are met with extreme vengeance by authorities.^[59] While a broad criminal defamation provision is entailed in the Criminal Code,^[60] the Vietnam authority has rarely utilised it, invoking frequently Articles 117 and 331 of the Criminal Code to charge individuals for “defaming” the government.^[61] Besides, the Law on Cybersecurity^[62] and numerous decrees are used to defy the constitutional and legal provisions guaranteeing freedom of expression and information. Many of the provisions of Decree 72/2013/ND-CP restrict the freedom of expression,^[63] while Decree 15/2020/ND-CP makes it a crime to post or share “fake news” on social networks.^[64] Journalists are fined and prosecuted for criticising the government and promoting democracy or discussing sensitive matters online. For instance, journalists Nguyen Tuong, Le Huu Minh Tuan and Pham Chi Dung were sentenced to a total of 37 years for sharing ‘anti-state propaganda’ under Article 117 of the Criminal Code, with Pham Chi Dung facing 15 years in prison - the longest sentence for this crime up to date.^[65] Moreover, Pham Doan Trang, outspoken Vietnamese democracy journalist, activist and HRD, was charged under the Penal Code with 9 years for anti-state charges.^[66] Other five journalists were likewise sentenced to prison for “anti-state” posts on Facebook, and were banned from working for three years.^[67]

II. The Weaponisation of COVID-19 to Silence Critics in SEA

The COVID-19 health crisis has exacerbated the effect of so-called anti-fake news laws in Southeast Asia, where laws with either a dedicated statute to target the spread of “fake news” or with statutes aimed specifically at regulating “fake news” about COVID-19 have been enacted.



In Cambodia, the COVID-19 pandemic has provided fertile grounds for the Royal Government of Cambodia to restrict freedom of expression online. A State of Emergency Law and the COVID-19 Law were passed, providing the government with sweeping and unfettered powers to implement measures during states of emergency, including restricting or prohibiting free speech, surveilling communication and controlling social media.[68] Consequently, journalists and independent media have been highly repressed. In March 2020, journalist Sovann Rithy was arrested for quoting a comment made by the Prime Minister during a speech on COVID-19. His online media outlet was blocked and its license was revoked.[69] Similarly, journalist Kouy Piseth, was detained for expressing concerns on Facebook regarding the Cambodian government’s decision on the use of vaccines.[70] Moreover, in May 2021, the Ministry of Information warned journalists to cease broadcasting live from within red zones of the lockdown areas, treatment centres or hospitals, or otherwise face legal action.[71]

In Indonesia, under the guise of COVID-19 pandemic, the Indonesian authorities have invoked the ITE Law and other regulations to restrict the civic space in the country. Furthermore, a Directive was issued in April 2020 authorising police officers to crack down on “coronavirus-related hoaxes”.[72] From January 2020 to March 2021, 113 individuals were being investigated for spreading false information about COVID-19.[73] In addition, the Government has routinely required platforms and content hosts to remove negative content posted by users related to COVID-19.[74] Media outlets and civil society organisations, including Tempo, Tirto.id, and the Centre for Indonesia’s Strategic Development Initiatives (CISDI), were hacked after posting articles that criticised the government’s management of the COVID-19 pandemic and their journalists were targeted by doxing attacks.[75]

In Lao PDR, amid the COVID-19 pandemic, cases of arrests for “fake news” or “spreading rumours aimed at causing public panic” related to COVID-19 have been documented. Although no cases of journalists convicted for spreading information related to COVID-19 have been reported, several cases of ordinary users were registered.[76] Moreover, for the purpose of allegedly controlling the spread of “fake news” concerning the pandemic, the Ministry of Information, Culture and Tourism enforced the registration order by asking provincial authorities to keep records of official social media channels and encouraging them to supervise the registration of social media platforms.[77] The following day, on 21 May 2021, a notice was issued indicating the set-up of a special taskforce to surveil, trace and respond to “illegal online media” and “fake news” posted by both domestic and international actors.[78]

In Malaysia, the Emergency (Essential Powers) (No. 2) Ordinance adopted in March 2021 establishes a number of criminal offences relating to ‘fake news’ about the COVID-19 pandemic and raises concerns about freedom of expression in Malaysia.[79] From March to December 2021, 30 investigations were opened for uploading or spreading fake news on COVID-19 and the Emergency Proclamation.[80] Provisions of the Penal Code have also been invoked to crack down on journalists reporting on the coronavirus pandemic. For instance, journalist Wan Noor Hayati Wan Alias faces six years’ imprisonment if convicted for three charges over COVID-19 related posts on her Facebook account.[81]

Myanmar’s COVID-19 response has exacerbated the human rights issues in the country, as the authorities have restricted the right to freedom of expression under the guise of the pandemic. Journalists, activists and individuals have been charged for reporting or sharing information about the virus on the Internet, with some being found guilty and serving prison sentences of up to two years.[82] The Prevention and Control of Communicable Disease Law (PCCDL), the Natural Disaster Management Law, and existing repressive laws have provided the legal framework for the COVID-19 response.[83]



Censorship related to the COVID-19 pandemic has been documented in **Singapore**, as the Government has curtailed free expression and information online through Protection from Online Falsehoods and Manipulation Act (POFMA).[84] In May 2020, Singapore States Times Facebook page was blocked under the Anti-fake News Law for communicating “falsehoods regarding the COVID-19 virus situation”.[85] In 2021, numerous correction notices were issued by the Ministry on Health on contents related to COVID-19.[86] For instance, a correction notice was issued in October on materials published on the effectiveness of COVID-19 vaccines, while in December, the Minister of Health instructed POFMA to issue a correction notice over Facebook posts containing “egregious claims” about the Omicron variant of the COVID-19 virus.[87]

In **Thailand**, overbroad restrictions on freedom of expression and access to information under the pretext of COVID-19 have been imposed. Section 9 of 2005 Emergency Decree on Public Administration in Emergency Situation (Emergency Decree) and Section 5 of the State of Emergency to combat COVID-19 limit free speech in relation to information regarding COVID-19 or opinions over government’s measures to contain the pandemic.[88] while Regulation No. 27 punishes those disseminating information or news that causes “fear”, “misunderstanding” or “affects national security or public order”.[89] In addition, a new centre under the Department of Special Investigation (DSI) was set up in May 2021 to support the DSI in its investigations surrounding COVID-19 so-called “false information”, with a focus on online platforms and the mandate to submit reports to the Justice Ministry.[90] Numerous cases of online users charged under CCA for expressing criticism over the government’s handling of pandemic and vaccine policy have been recorded.[91]

In **Vietnam**, the COVID-19 pandemic has been used by the government as an excuse to tighten the control online, including over social media and websites. Claiming to be for “fake or false information” which distorts or damages the dignity of others, and to stop panic among the population, the authorities have abused laws to arbitrarily restrict information and expression during the pandemic. Such provisions are found under Decree No. 15/2020[92] and Decree No. 119/2020.[93] Furthermore, in July 2021, the Ministry of Information and Communications (MIC) issued a document that requires ministries and other authorities to inform the police when they detect “fake news” information about COVID-19 on the Internet.[94] Since the COVID-19 pandemic, the Vietnam government has taken a notably restrictive course of action than it had previously, with journalists or likewise being charged and/or arrested for reporting on the pandemic.[95] Amid growing criticism of government containment efforts of COVID-19 virus, in October 2021, former journalist Vo Hoang Tho was arrested for allegedly defaming the country’s leaders over a series of online posts criticising government efforts to prevent and control the spread of COVID-19.[96]

III. State-sponsored Online Disinformation to Manipulate Public Debate & State Propaganda in the name of Combating ‘Fake News’

With the exception of **Singapore**, state-sponsored online disinformation and/or propaganda to manipulate public debate and discredit journalists and media have been reported in the Southeast Asian countries covered in this Joint Submission.

In **Cambodia**, journalists have been oftentimes attacked or threatened with violence for their investigative work and reporting. Government-direct smear campaigns designed to discredit outspoken critics of the country’s authoritarian policies have been implemented, with at least 72 journalists harassed in 2020[97] and 21 from July to September 2021.[98] In addition to such smear campaigns, as in the case of Luon Sovath,[99] the government has also pressured, threatened or harshly criticised civil society groups, undermining their work.



In **Indonesia**, hired by the government to promote government policies, state-sponsored disinformation by paid commenters, known as “buzzers”, has continued to proliferate.[100] Reportedly, there was a network of 10 online news sites funded and operated by the military that publish pro-government propaganda and target government critics and human rights advocates.[101] The presence of cyber troops in Indonesia since 2019 has influenced the elections, the controversial Omnibus Law on Job Creation, and the nation’s COVID-19 policy, posing a considerable and growing threat to public debate and democracy.[102] Also, the government has frequently monitored activities on social media platforms in 2018 and 2021.[103]

In **Lao PDR**, state-sponsored pages promoting fake news are used by the government’s cyber army to discredit human rights activists and citizen journalists. State-led disinformation is frequently employed against them, as in the case of Emilie Pradichit, Founder and Executive Director of Manushya Foundation, who was accused of influencing Lao people to migrate to Thailand for better jobs, then returning them to Laos infected with COVID-19. Additionally, she is wrongly accused by state-sponsored disinformation pages and governments’ Information Operations (IO) accounts of running the anti-state propaganda page called “Sivid Nor”.[104]

In **Malaysia**, state propaganda in the name of countering “fake news” and monitoring sensitive statements exist, and reports indicated the presence of government-sponsored online commenters, known as cyber troopers.[105] In addition to the fact-checking portal SEBENARNYA,[106] several government agencies have been regularly monitoring social media platforms for false and sensitive statements relating to the 3Rs (race, religion and royalty).[107] Moreover, apart from the authority, civilians have been policing the Internet through a WhatsApp group set up by the Malaysian Communications and Multimedia Commission asking people to lodge screenshots of social media posts that they deem sensitive to the 3Rs.[108]

In **Myanmar**, online freedom has deteriorated in recent years, as the authority controls the entire broadcasting sector and owns a significantly large portion of media.[109] Cyber troops have been employed in Myanmar to shape public opinion, including networks of bots to amplify certain messages, and groups of trolls to harass political dissidents or journalists. In addition, in the months following the coup, the junta-controlled Ministry of Information has started publishing books denouncing the anti-regime movement, praising the junta’s State Administrative Council, and blaming social influencers for inciting the protests and causing people’s death and arrest.[110]

In **Thailand**, state-sponsored disinformation and online hate speech and harassment against activists are aiming to disqualify and discredit the legitimacy and reputation of the HRDs and CSOs. For instance, the Internal Security Operations Command (ISOC)—a political arm of the Thai military— has been carrying out Information Operations (IOs) to conduct cyber warfare against HRDs, journalists and academics by funding military-linked accounts publishing posts, stories, articles critical of activists who promote democracy, peace and human rights, as well as manipulating information and disseminating hate speech.[111] A Facebook post reporting the voice of the wife of Porla-je “Billy” Rakchongcharoen, an environmental indigenous HRD,[112] and one containing a video of the protest by Karen peoples have been filled with a large number of negative comments from IOs accounts.[113] In October 2020, the CyberCrime Investigation Bureau (CCIB) was established under the Royal Thai Police to investigate cybersecurity crimes, giving more power to the State to crack down on dissenting voices. Patterns of ‘cyber army’ instigating online disinformation are constantly growing. During a censure debate on 31 August 2021, Move Forward Party MP Nattacha Boonchaiinsawat confirmed the existence of the Thai army’s secret IO network by exposing an authentic footage of an army unit inside an office room dedicated to manipulating pro-government sentiments and targeting political opposition figures online.[114]



Facebook’s Coordinated Inauthentic Behaviour Report reported the detection and removal of 185 social media accounts found to bear links with the ISOC to target audiences in the country’s Deep South.^[115] The report identifies Coordinated Inauthentic Behaviour as “coordinated efforts to manipulate public debate for a strategic goal where fake accounts are central to the operation”. The accounts removed often posted messages in favour of the military and asserted a narrative manipulating the public opinions by discrediting the civil societies and political opponents. One example is the Facebook page named Comprehending the Operation (ຮູ້ກັນໝວນກາ), which published a post criticising the NGOs, labelling them as uncaring of local people unless they can benefit from them financially.^[116]

In Vietnam, the government has taken direct action to manipulate content and public opinion. “Public opinion shapers” are deployed to defend the state against “hostile forces”, and Force 47, a group of cyber troops to counter “wrongful opinions” about the regime, was introduced in 2017.^[117] Moreover, approximately 10,000 of these so-called “cyber troops” have been employed to manipulate online discourse in line with Communist Party’s line.^[118]

IV. Infringement of Online Privacy and State Mass Surveillance with AI

The legislation and regulations in place in Southeast Asia enable monitoring and surveillance of Internet activity, allow for the interception of digital communications, and enable the acquisition and preservation of personal data, infringing on the right to privacy. Due to this, journalists are forced to practice self-censorship out of fear of punishment. Furthermore, as part of their efforts to contain the spread of COVID-19, states have established new monitoring techniques, such as track-and-trace applications, raising serious concerns about journalists' privacy rights.

Although Cambodia’s Constitution provides general protections surrounding the right to privacy, it fails to mention privacy online or of online communications.^[119] Conversely, the laws that include such provisions, namely the 2015 Law on Telecommunications,^[120] the NIG Sub-Decree^[121] and State of Emergency Law^[122] can facilitate the mass surveillance of all Internet activity, as they allow for interception of digital communications. Likewise, the Draft Law on Cybercrime contains provisions on mandatory data retention without legitimate justification, procedural safeguards or judicial oversight. There have been records of individuals’ privacy being unlawfully interfered with, as in the case of two former CNRP activists sentenced to prison on the grounds of the transcript of a private phone conversation.^[123] Besides, during the pandemic, the identities of individuals infected with COVID-19 were published online for tracking purposes.^[124] The “Stop COVID-19” QR Code system has raised further privacy concerns.^[125] Moreover, the use of CCTV cameras and the announcement of a new security deal with the Chinese government to supply biometric surveillance technologies to Cambodia poses additional threats to privacy rights.^[126]

In Indonesia, several laws and regulations allow for government surveillance without judicial oversight and safeguards, such as the ITE law,^[127] and the 2018 amendments to the 2003 Eradication of Criminal Acts of Terrorism Law (CT Law) which grants the authorities sweeping powers to conduct surveillance in the name of counterterrorism.^[128] In recent years, the government has indicated or considered several plans on restriction of anonymity, including the use of biometric data for SIM card registration, the requirement for users to add their phone numbers when signing up for a social media account, and the regulation of VPN use through licenses.^[129]



Spyware and other sophisticated surveillance tools are allegedly used by the authority to collect data such as Skype audio, key logs, and screenshots.[130] Also, the government’s response in order to track the spread of COVID-19 has raised concerns about privacy violations.[131]

In Lao PDR, cybersecurity laws grant the government sweeping powers to surveil the use of the Internet and even private communications and to collect relevant data when there is a perceived security threat, without effective oversight or procedural safeguards, creating the basis for illegal intrusion into users’ privacy.[132] Such problematic provisions raise concerns over the possible abuse of users’ information for unsubstantiated “national security” related investigations or targeting. In addition, mandatory SIM card registration raised concerns over individuals’ privacy online. According to the notice issued by the Ministry of Posts and Telecommunications, those who fail to properly register would face disconnection.[133] To facilitate the registration process, the Ministry developed 3 Grab Sim Registration app, allowing users to register their SIM cards online. However, the app contains excessive permissions, putting at risk personal information and privacy.[134]

In Malaysia, there is a series of legal provisions that allow for search, interception and data collection by the authority, with limited oversight and procedural safeguards under the pretext of emergency or national security. Such provisions are included in the Security Offences (Special Measures) Act (SOSMA)[135] and the Criminal Procedure Code.[136] Worryingly, the Emergency (Essential Powers) No. 2 Ordinance empowers police officers to request traffic data and “computerised data” from individuals, corporations, and social media platforms.[137] To assist in managing the COVID-19 outbreak in the country, the government has also set up a number of contact-tracing applications that collect and access personal information.[138]

In Myanmar, vague provisions under the Law Protecting the Privacy and Security of Citizens and the Telecommunications Law allow for authority surveillance and access to unspecified information, without clear procedures or judicial review to prevent data from being collected and stored illegally.[139] Several privacy safeguards granted in Chapter IV of the Law Protecting the Privacy and Security of Citizens were suspended by the SAC, rendering anyone subjected to arbitrary interference with their privacy.[140] The draft Cybersecurity Law further poses significant risks to privacy by giving the military unrestricted access to private data. Online anonymity and the use of pseudonyms are also curbed in the draft law and punishable.[141] In addition, the enforcement of SIM card registration requirements since 2017 has made users less likely to maintain anonymous communication online or via mobile data.[142] Surveillance technology was also employed by law enforcement agencies and intelligence to collect data from the journalists’ smartphones[143] as well as to counter those causing “instability” online.[144] Since the coup, the use of sophisticated technology has been reported to increase.[145]

In Singapore, a number of laws provide the government with the power to search electronic devices without judicial oversight and access to users’ personal information if it is deemed to be in the national interests. The 2018 Cybersecurity Act[146] and the Criminal Procedure Code[147] are examples of such laws. Although State’s monitoring capabilities and tactics are unknown in their entirety, law enforcement agencies have extensive power to carry out surveillance and gather information, without prior judicial authorisation.[148] In addition, to cope with the spread of the COVID-19 pandemic, the government developed the contact tracing system. There are concerns arising from the collection and use of data in criminal investigations[149] as well as mandatory use of one of the apps.[150] Further, being in the top 20 of the most surveilled cities and lacking guarantees for the right to privacy in the Constitution, the plan to increase the number of police camera surveillance raises serious privacy concerns.[151]



Laws in **Thailand** allow for surveillance and the arbitrary search and seizure of data on grounds of public order and national security, largely curtailing individuals’ rights to privacy and heightening conditions for unlawful digital surveillance.^[152] Indeed, there is an inadequate legal and policy framework in Thailand on privacy and data protection. While the Personal Data Protection Act (PDPA) contains many progressive provisions and provides the protection of personal data, its implementation has been repeatedly delayed to June 2022.^[153] Also, the PDPA retains a number of serious loopholes. For instance, Section 4 of the PDPA excludes data collected to protect national security. The PDPA also leaves out the difference between automated and non-automated means of data processing, without specifying consumers’ rights to be informed about the existence of automated decision-making and profiling. Furthermore, as the PDPA is not applied to the data collected or used by operations of public authorities, it leaves out a huge number of high-risk AI technologies, such as predictive policing and racial profiling. In the absence of enforcement of data protection law, individuals are at significant risk of personal data being stolen or processed without consent. This is exacerbated by the fact that the AI Ethics Guidelines^[154] provide no solid legal protection against the advent of AI and machine learning. The Guidelines are merely a set of ethical norms and standards, and therefore do not create legal rights and obligations towards third parties, leaving the protection of users’ rights in times of AI and machine learning at the voluntary discretion of the involved parties. Besides, the Guidelines are not in line with international standards, such as the UNESCO Recommendations on the Ethics of Artificial Intelligence and the draft EU Artificial Intelligence Act. Stolen and/or collected sensitive personal data is at risk of exploitation at the hands of AI algorithms, which can infringe a number of human rights.

AI facial recognition system, along with CCTV cameras and the forced collection of biometric data has been extensively and excessively applied in the Deep South to surveil Malay Muslims.^[155] They have also been required to register their SIM cards via a facial recognition system along with their national identification card details.^[156] Furthermore, two contact tracing apps, endorsed by the government to stop the spread of COVID-19, store users’ personal data while containing excessive user permissions, lacking transparent terms and conditions, and without informing how personal data is being used and shared.^[157] Worryingly, there is an increased data sharing between government agencies,^[158] which not only jeopardises data subjects’ rights, but can also be abused for unsubstantiated “national security” investigations or targeting. To verify information shared online and combat unverified news, the Anti-Fake News Center has applied a hybrid of human and Artificial Intelligence (AI).^[159] In November 2021, an alarming news report emerged when Thai politicians, activists and academics received an email from Apple notifying them of possible ‘state-sponsored attackers’ who were remotely targeting their iPhones “because of who [they] are and what [they] do”. This news report raises serious privacy concerns, especially after a report by The Citizen Lab of the University of Toronto published in 2018 revealed the notorious Pegasus spyware could be active in Thailand.^[160]

In **Vietnam**, repressive laws suppress the right to privacy by granting unfettered and unlimited power to the authority to access users’ information.^[161] The Law on Cyberinformation Security (LOCS) allows the authority to request users’ information from private companies without a warrant, and similar provisions are also laid out in various Decrees.^[162] Although the extent of the use of the surveillance technology by the authorities remains unknown, the country has reportedly developed considerable cyberespionage capabilities in recent years, setting up social media monitoring mechanism to regularly surveil online usage.^[163] Moreover, amid the pandemic, the government released Bluezone, a COVID-19 tracing app, which can silently transmit complete contact history and determine the real-world identity of users.^[164] Subsequently, individuals and journalists are increasingly hesitant to voice their opinions for fear of being identified and prosecuted by the government.



V. Looming Control over ISPs and Media outlets

A range of legal provisions in Cambodia compel online service providers to facilitate government surveillance, retain and hand over users' data, and collaborate with the authority to block or disconnect network connections. [165] The extent of government requests for users' information or to remove content from online service providers remains opaque and unknown, as the implementation is based on informal communications between government officials and service providers. [166] On 4 March 2021, the Ministry of Posts and Telecommunications warned telecom operators of legal action if they collude with or sell wholesale Internet access services to unlicensed providers. [167]

In Indonesia, the law allows the authority to compel service providers, tech companies and social media platforms to filter content and facilitate censorship. The ITE Law requires ISPs to disable access to content upon any request by authorities. [168] MR5, similarly, contains provisions aimed at subjecting private entities to government control in managing online content. [169] The authority regularly issues requests to websites and social media platforms to remove information referred to as hoaxes and/or "insult" and hate speech. [170]

In Lao PDR, provisions in cybersecurity laws are used by the authorities to pressure web managers, social media companies and ISPs into facilitating censorship by holding them accountable for the publication of illegal information published on their platforms. [171] The official number of government requests for content restriction and user information remains unknown. Neither Google nor Twitter has documented the Lao government's requests to remove content or for user information on their website. [172] Facebook reported 12 restrictions between July to December 2020, and one between January to June 2021. [173] According to a news article, over 12 million items of misinformation have been removed from Facebook from March to October 2020. [174] Moreover, media is tightly controlled by the government through repressive laws aiming to ensure that TV, radio and printed publications are adherent to and reflect the government policies. After the 2018 Xe Pien-Xe Nam Noy dam collapse, the Prime Minister warned all Laotians to only trust information shared by state-owned media. [175] Online media is further suppressed by the authorities as the news outlets administrators on social media platforms are compelled to register their accounts with the Ministry of Information, Culture and Tourism. [176] A special task force was set up in May 2021 to surveil, trace and respond to "illegal online media" and "fake news" posted by both domestic and international actors. [177]

In Malaysia, Internet providers and tech companies are forced to assist governments in online surveillance and information takedowns. [178] The government and law enforcement agencies have continued to request social media platforms and news outlets to restrict access to content or remove it. For instance, in 2019, the Malaysian Communications and Multimedia Commission ordered all social media platforms to take down any video of the Christchurch shootings, in New Zealand, in which two Malaysians got injured, [179] and in 2020, it warned that legal action can be taken against account holders of parody accounts. [180] Twitter and Facebook received numerous demands from the government to remove content and restrict access to items. [181] Media activities have been tightly regulated and limited. The news portal Malaysiakini was fined an excessive sum for comments made on the platform by third-party subscribers. [182] Media coverage has been restricted on several occasions in October 2020 and September 2021. [183]



In Myanmar, telecommunications companies need licenses to operate and are bound to vaguely worded licensing compliance guidelines.^[184] The government is granted powers to exert absolute control over online service providers, allowing both temporary and permanent bans on any online service provider, and temporary control of any network devices.^[185] Under both the Telecommunications Law and the draft Cybersecurity Law, online service providers can be pressured by the authority to facilitate online monitoring and surveillance by retaining and disclosing users' information, without judicial oversight or procedural safeguards.^[186] Prior to 2020, the government rarely blocked or filtered content. It first began such a move in March 2020 when the Ministry of Transport and Communications issued a series of directives ordering ISPs to block media outlets and websites.^[187] Since the coup, illegitimate pressure on Internet service providers to block websites has been an increasingly critical issue.^[188] Reportedly, the junta sent secret orders to ISPs, asking them to block VPNs.^[189] The exact list of blocked websites is not available, and service providers are prevented from publishing such directives.^[190] As of June 2021, the licenses of seven major media outlets had been revoked.^[191] Official requests for social media platforms to remove content are not publicly reported by Google, Twitter, and Facebook. Prior the coup, officials called on platforms, especially Facebook and WhatsApp, to address "misinformation" and incitement on their platforms.^[192] The military has dominated public discourse and promoted propaganda by taking control of all government and State media communications including Facebook pages and Twitter accounts. In addition, in an attempt to further silence the dissemination of information, Myanmar's military regime instructed police and village administrators to seize radios from shops, and planned to restrict imports.^[193]

Internet regulation is a reality in Singapore; however, there is a lack of transparency in the process for restricting online and digital content. Long-term blocks are imposed on various websites, and the government directs Internet service providers (ISPs) to restrict access to websites and pages. POFMA contains flawed provisions on intermediary liability, which forces ISPs and digital platforms to correct, remove or restrict access to content deemed "false".^[194] The Broadcasting Act imposes similar obligations on intermediaries.^[195] In addition, under the Foreign Interference (Countermeasures) Bill (FICA), the Minister of Home Affairs is granted the powers to issue directions to social media services, Internet access services, media, as well as to people who run websites, blogs or social media pages to block content.^[196] The state's Infocomm Media Development Authority (IMDA) has also imposed a series of restrictions to stifle and silence online criticisms of the government.^[197] In October 2021, the license of The Online Citizen (TOC) website, often critical of authorities, was cancelled after it failed to comply with its legal obligation to declare all sources of funding.^[198] As the government has repeatedly invoked POFMA, ISPs are compelled to block news sites or websites that are essential to public discourse.^[199] News outlets and social media platforms are also required to comply with correction orders and restrict access to certain pages.^[200] Since the implementation of the Protection from Online Falsehoods and Manipulation Act (POFMA), the government has invoked it many times, primarily against online content critical of the government or its policies. According to POFMA Office Media Centre, from 2019 to December 2021, about 45 correction notices were sent to POFMA Office by different Ministries to issue correction directions.^[201]

In Thailand, there are legal provisions that require companies to store or hand over user data, such as the Computer Crime Act^[202] and the 2019 National Intelligence Act.^[203] Moreover, in the attempt to impose an authoritative control over the digital space, the Ministerial Regulations of the Ministry of Digital Economy and Society regarding criteria for the retention of computer traffic data by service providers requires telecommunication and broadcast carriers to preserve Internet traffic logs.^[204]



The government has repeatedly cracked down on the digital space, threatening tech companies to take down or restrict access to content.[205] Facebook and Google reported a great number of requests from the government to restrict access to different items, especially content related to monarchy and government criticism.[206] The Ministry of Digital Economy and Society initiated legal actions against Facebook and Twitter for refusing to comply with court-issued takedown orders.[207] Furthermore, the government threatened four independent media agencies with suspension in 2020,[208] and in 2021, a NBTC Commissioner warned media outlets against reporting on the activists' call for monarchy reform, citing the Constitutional Court's former ruling.[209]

In Vietnam, intermediary responsibility has been laid out in a variety of laws, which force tech companies to facilitate online censorship for the Vietnam government and provide authorities with users' information upon request.[210] In addition, various laws compel tech companies to assist the government in surveillance through data retention and localisation provisions, and offshore Internet-based service providers are also required to locate at least one server in Vietnam.[211] Pressured by the authorities, social media platforms have removed content and slowed down traffic.[212] Both Facebook and Google reported a high number of item removal requests from the authorities.[213]

VI. Shutdown and Disruptions of Internet and Media

In four of the eight countries analysed in this Submission, episodes of Internet and media disruptions and shutdown have been recorded. In Indonesia, the government misuses the law to implement an Internet shutdown policy. The rise of hoaxes, the need to restore security and control the dissemination of purportedly fake news, racial hate speech, and provocations are among the most frequently claimed grounds for such policy. Episodes of disrupted Internet connectivity and shutdowns were registered prior to and amid the pandemic to crack down on free expression and control the flow of information.[214] In Myanmar, the Telecommunications Law and the draft Cybersecurity Law includes provisions that enable the authority to control Internet connections, mobile services, and ban any online service for reasons of "public interest".[215] The censorship events in Myanmar reflect increasing patterns of politically motivated censorship and provide insight into how the governing powers have used censorship tactics to attain their immediate goals. Shutdown episodes in Myanmar's history are numerous, with the most recent ones making timely reporting of human rights violations committed during the coup difficult, if not impossible, and preventing information about the COVID-19 pandemic from reaching the public in the midst of the ongoing health emergency.[216] In the case of Thailand, although no Internet shutdown was reported, media agencies and outlets were silenced during pro-democracy protests, hampering access to information online already extensively restricted by the government through the crackdown on journalists and online media, access restriction, and content blocking and removal.[217] The petition website change.org was blocked, after it hosted a petition calling for King Maha Vajiralongkorn to be declared persona non grata in Germany.[218] Pornhub and 190 other pornographic URLs were also blocked.[219] Vietnam witnessed several episodes of disrupted Internet connectivity in 2017 and 2020. Moreover, Facebook's local servers were taken offline with traffic being slowed down significantly and restored after Facebook agreed to remove much more "anti-state" material.[220]



RECOMMENDATIONS

While individuals are increasingly interconnected through the Internet, the rise of digital dictatorship through repressive laws, provides ASEAN governments the ripe opportunity to scrutinise individuals' actions in the digital space. In recent years, the number of journalists, activists and human rights defenders threatened, harassed, and prosecuted for exercising their fundamental freedoms online has risen. Defamation and computer-related laws as well as fake news provisions are used to curtail free speech. Many individuals face steep prison sentences for crimes such as sharing 'fake news' and disinformation. Through targeting dissenting voices, Southeast Asian governments are successfully undermining the rule of law, ensuring an absence of diverse opinions and equal representation in their governments, and eroding fundamental principles of democratic governance.

To ensure plurality of views and respect for freedom of expression, governments must abide by their obligations under international human rights law. Therefore, the [ASEAN Regional Coalition to #StopDigitalDictatorship](#) makes the following recommendations for advancing the right to freedom of expression and promoting media freedom, independence and diversity in Southeast Asian countries:

1. Regarding the use of repressive ICT and defamation laws

- 1.1. Repeal or substantially amend executive orders and regulations that serve to unduly restrict the right to freedom of expression. Provide effective protection to journalists, human rights defenders and other civil society actors who are subjected to intimidation and attacks owing to their professional activities.
- 1.2. Refrain from using criminal provisions as tools to suppress the expression of critical and dissenting opinions. Take all measures to end prosecutions against those charged for exercising their freedom of opinion and expression, and provide appropriate training to judges, prosecutors and law enforcement personnel regarding protection of freedom of expression and opinion.
- 1.3. Decriminalise defamation and bring any other relevant provisions of the Penal Codes in line with international human rights law.

2. Regarding the weaponisation of COVID-19 to silence critics

- 2.1. Refrain from broadly applying and interpreting criminal provisions to punish legitimate expression and media by using the COVID-19 pandemic as a weak and unjustified excuse; Strengthen protection of journalists, media professionals, human rights defenders and other dissenting voices who expose governmental shortcomings or failures or who merely report on COVID-19-related news, in line with the UN Declaration on Human Rights Defenders.

3. Regarding state-sponsored online disinformation and state propaganda

- 3.1. Fulfil the duty to ensure the right to information, by increasing transparency and proactively disclosing official data; by reaffirming the commitment to media freedom, diversity and independence; and by refraining from making, sponsoring, encouraging or disseminating false statements through disinformation campaigns to control the narrative of public debates or discredit human rights activists and citizen journalists.
- 3.2. Stop deploying cyber troops to manipulate public opinion over social media for propaganda purposes.



4. Regarding infringement of online privacy and state mass surveillance with AI

4.1. Develop effective safeguards against State abuse of surveillance technologies, data collection and violation of online privacy, including by ensuring that effective and independent oversight mechanisms are in place to limit unfettered executive discretion, and establish redress mechanisms consistent with the obligation to provide victims of surveillance-related abuses with adequate and effective remedy.

4.2. Repeal or otherwise amend laws which provide for overbroad executive powers to infringe on the right to privacy to bring them in line with Southeast Asian countries' international human rights obligations.

4.3. Amend the laws to address AI and automation by developing legal procedures and evidentiary standards for biometrics with care to protect human rights and due process; Minimise the amount of and type of data the government and associated service providers collect; Implement measures for accountability and responsibility; Refrain from unlawful interception.

5. Regarding looming control over ISPs and media outlets

5.1. Refrain from requiring or pressuring tech companies, Internet service providers or other telecommunications companies to moderate and remove content online in contravention of the rights to free expression and information and ensure their compliance with their responsibilities to respect human rights in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and the GNI Principles;

5.2. Provide transparent, detailed and regular updates relating to content moderation requests from government authorities to tech companies and Internet providers, including takedown orders, in a public and accessible manner, and information on legal proceedings or action taken against tech companies and Internet providers for failure to comply with such requests.

6. Regarding shutdown and disruptions of Internet and media

6.1. Recognise the right to access and use the Internet as a legal right and as an essential condition for the exercise of other fundamental rights.

6.2. Refrain from shutting down, throttling, or blocking the Internet, and make a state pledge to refrain from imposing any unlawful restrictions on Internet access and telecommunication in the future; Repeal and amend any laws and policies that allow for Internet shutdowns and enact legislation prohibiting and punishing these measures. Any new legislation should fully incorporate international human rights norms and standards and to ensure the effective implementation of the prohibition against shutdowns.

6.3. Ensure that the Internet, including social media and other digital communication platforms, remains open, accessible, and secure. Refrain from pressuring technology companies, Internet service providers or other telecommunications companies to moderate content online in contravention of human rights norms and standards.



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About ALTSEAN-Burma

ALTSEAN-Burma was formed in October 1996 by a diverse network of organizations and individuals at the Alternative ASEAN Meeting on Burma, held in Bangkok. Their mission is to develop and strengthen strategic relationships among key networks and organizations from Burma, Southeast Asia, and the international community; support cooperation and partnership among activists, particularly women, youth, ethnic groups, LGBTQ+, displaced people, migrants, and other marginalized communities; implement innovative strategies that are responsive to emerging needs and urgent developments; and produce practical resources for these purposes. ALTSEAN has pursued its mission through advocacy, training and collaboration, focusing on women's participation and leadership, business and human rights, atrocity prevention, and broader human rights and democracy issues. ALTSEAN supports grassroots activists by ensuring local voices are heard at international strategy forums, including their robust analysis and policy recommendations.



About Cambodian Center for Human Rights

CCHR is a leading non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights - in Cambodia. It empowers civil society to claim its rights and drive for progress; and through detailed research and analysis it develops innovative policy, and advocates for its implementation.



About Foundation for Media Alternatives

Founded in 1987, the Foundation for Media Alternatives (FMA) assists citizens and communities, especially civil society organizations (CSOs) and other disadvantaged sectors, in the strategic and appropriate use of information and communications technologies (ICTs) for democratization and popular empowerment. FMA exists to enable the empowerment of civil society and social movements in the information age by advocating for democratic governance of ICTs; human rights in digital environments; equitable and safe access to and responsible use of ICTs; gender-transformative perspectives, policies and practices – through critical and meaningful engagement with development stakeholders.



About ILGA Asia

ILGA Asia is the Asian Region of the International Lesbian, Gay, Bisexual, Trans, and Intersex Association, representing more than 190 member organisations across East Asia, South Asia, Southeast Asia, and West Asia. Our vision is a world where Asia is a safe place for all, where all can live in freedom and equality, be properly informed in the nature of sexual orientation and gender identity & expression and sex characteristic (SOGIESC) rights, have access to justice, and diversity is respected.



About Institute for Policy Research and Advocacy (ELSAM)

The Institute for Policy Research and Advocacy (ELSAM) is a civil society organisation that works to enhance the democratic political order in Indonesia by empowering civil society. Founded in 1993, it actively participates in efforts to promote human rights through policy and legal research, advocacy, and training.



About Manushya Foundation

Manushya Foundation was founded in 2017 with the vision to build a movement of Equal Human Beings *#WeAreManushyan*. Manushya is an intersectional feminist human rights organization reinforcing the power of humans, in particular women, human rights defenders, indigenous peoples, forest-dependent communities, environmental defenders, LGBTI groups, and Youth, to be at the heart of decision-making processes that concern them and to speak truth to power at the forefront of their fight for Human Rights, Equality, Social Justice and Peace. Through coalition building, capacity building, community-led research, advocacy and campaigning, and sub-granting, local communities become Agents of Change fighting for their rights and providing solutions to improve their lives and livelihoods, pushing back on authoritarian governments and harmful corporations. Manushya defends local communities and seeks justice with them before the United Nations, focusing on women's rights and gender equality, digital rights, climate & environmental justice, and corporate accountability across Asia.



About Southeast Asia Freedom of Expression Network (SAFE net)

SAFE net is a network of digital rights defenders in Southeast Asia which was established on 27 June 2013 in Bali, Indonesia. The establishment of SAFE net was motivated by the widespread criminalization of netizens because of its expression on the Internet after the enactment of Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE). This prompted a number of bloggers, journalists, Internet governance experts, and activists to form this association. In 2018, SAFE net began to widen the issue of advocacy towards the fulfilment of digital rights after previously only focusing on advocating freedom of expression on the Internet.



About Women's Peace Network

Women's Peace Network is composed of lawyers, community leaders, and peace activists from Myanmar and around the globe who share a common goal: peacefully promote and protect human rights. They strive to ensure that Myanmar is a place where all people can enjoy peace, justice, and prosperity and live together harmoniously. They work to protect the rights, enhance the status, and increase the inclusion of marginalized women, youth, and communities in the Rakhine state and across Myanmar, so that they can live peacefully and prosperously.



MANUSHYA

#WeAreManushyan ∞ Equal Human Beings

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