

Southeast Asia: States must respect and protect rights in combating misinformation online relating to COVID-19

Bangkok, Thailand -- The ICJ today called on States in Southeast Asia to respect and protect human rights online and offline, in accordance with their obligations under international law, as they take steps to stop the spread of COVID-19. It urged States to ensure that avoiding adverse impacts on the exercise of the rights to freedom of expression, opinion, information and privacy are front and center when implementing measures to counter misinformation about the virus.

"This is a health emergency, unprecedented in modern times, that calls for urgent, targeted and effective responses by the State including measures to curtail false or misleading information about the spread of COVID-19," said Frederick Rawski, ICJ's Director for Asia and the Pacific.

"However, such measures must be implemented in accordance with rule of law principles, and their enforcement should protect the rights to health and life just as much as the rights to free expression, opinion, information and privacy."

Governments in Southeast Asia have introduced and begun to enforce severe measures to control information online about the virus. This raises concerns about the potential for State over-reach in light of how Southeast Asian governments have historically enforced laws to curtail rights and censor content online in violation of international law. This trend was mapped out in its [2019 regional report](#).

The ICJ's concerns has already been substantiated by recent actions taken by law enforcement authorities in some countries in the region. Arrests and detentions for online expression, in some cases without a warrant, have been reported in the Philippines, Malaysia, Indonesia, Cambodia, Vietnam and Thailand. Some of the laws in these countries which the ICJ had identified in its [report](#) as non-compliant with international human rights standards have been mis-used to arrest, detain and charge individuals accused of spreading false information online on the COVID-19 virus.

Legal provisions pursuant to which these arrests have been made carry significant criminal penalties including imprisonment terms and heavy fines – in some cases for merely expressing criticism of government measures on social media, such as complaints about inadequate screening measures or a lack of government preparedness.

"We urge governments not to repeat the mistakes of the past. The mere perception that the law is being used to suppress speech will only undermine the credibility of State institutions at a time when maintaining public trust is crucial," said Rawski.

"Misinformation can be curtailed using less intrusive means than arrests, detentions and disproportionately onerous fines or imprisonment terms."

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Background

In its 2019 report, *'Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia'*, the ICJ mapped out a trend of how Southeast Asian governments have, for decades, crafted and enforced laws to curtail the rights to free expression, opinion and information both offline and online.

It criticized and called for the repeal or amendment of certain legal frameworks deemed non-human rights compliant for their vague, overbroad provisions, imposition of severe penalties and lack of adequate oversight mechanisms. These included, *inter alia*: laws brought into force to prevent the spread of false information online, including Malaysia's Communications and Multimedia Act (CMA), Indonesia's Law on Electronic Information and Transactions (UU ITE) and Thailand's Computer-related Crimes Act (CCA), national security laws in Vietnam and Cambodia, and sedition laws in the Philippines.

In recent months, these same laws have reportedly been used to arrest, detain and charge individuals.

In the **Philippines**, a school teacher was [arrested](#) without warrant and faces charges with incitement to sedition under Philippines' Revised Penal Code for a Facebook post criticizing the local government's response to the outbreak and urging people to raid a local gym where food items were allegedly being stocked. While there appears to have been a legitimate and important concern requiring prevention of such a raid, the use of archaic and severe sedition provisions appears to have been unnecessary and other laws could have been invoked towards this end.

Similarly, in **Vietnam**, an individual [faces](#) a potentially prolonged imprisonment term and/or onerous fines under alleged "abuse of democratic freedoms" or "anti-State propaganda" for disseminating more than 200 articles on Facebook on the outbreak. Independent bloggers in Vietnam often attempt to share information on social media on matters not covered in State-controlled media. In this case, as in Philippines, despite a real need to control information online on the outbreak, harsh criminal penalties in the name of "national security" are likely disproportionate and not strictly necessary.

In **Cambodia**, as of 24 March, 17 individuals have been [arrested](#) for allegedly sharing false information online regarding the virus – including a 14-year-old girl who had shared on social media her concerns about COVID-19 cases in her school and province. Four persons who remain in detention, under national security-related charges including "incitement to commit a felony", are members of the now-defunct main opposition Cambodia National Rescue Party (CNRP). This raises significant concerns that the virus is being used as a pretext by the government to [continue](#) harassment and persecution of former CNRP members following the party's [dissolution](#) in late 2017.

The use of non-human rights compliant laws to arrest and investigate individuals may not be in itself unlawful, if utilized in a strictly necessary and proportionate manner. The use of laws which are in themselves non-human rights compliant, however, deepens concerns of potential violations of the rights to liberty and security where individuals are deprived of their liberty in accordance with these laws.

Thus, in **Malaysia, Indonesia and Thailand**, the [CMA](#), the [UU ITE](#) and the [CCA](#) have respectively been used to arrest, detain, investigate and charge individuals for allegedly spreading misinformation online on the virus. These States must take clear, concerted

efforts to ensure their arrests, detentions and investigations of accused persons are appropriate, just, and comply with due process of law.

In March, the UN High Commissioner for Human Rights [called](#) upon States to put “human dignity and rights front and centre” in their measures to combat the COVID-19 outbreak, and ensure their implementation “in strict accordance with human rights standards, in a way that is necessary and proportionate to the evaluated risk”. Soon after, 25 UN Experts [cautioned](#) against overreach and reasserted that restrictions imposed by States must be “proportionate, necessary and non-discriminatory”, achieve legitimate public health aims, and “not function as a cover for repressive action” or “used simply to quash dissent.”

International law and standards

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) protects the rights to free expression, opinion and information. Article 19(3) provides that these rights can be “subject to certain restrictions” but these restrictions must be provided by law and necessary for a legitimate purpose such as (i) ensuring respect of the rights or reputations of others, or (ii) protecting national security, public order or public health or morals.

In clarifying the scope of article 19 protections, the UN Human Rights Committee, in its General Comment No. 34, has clarified that the test of necessity entails that limitations on the rights should not be enforced where alternative measures can be undertaken that do not restrict fundamental freedoms, while the test of proportionality ensures that limitations should be proportionate to their specific function, not be overbroad and be the “least intrusive instrument amongst others to achieve their protective function”. Restrictions must “not put in jeopardy the right itself”.

In July 2018, the UN Human Rights Council adopted by consensus a resolution affirming that “the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with articles 19 of the UDHR and ICCPR.”

Article 12 of the Universal Declaration of Human Rights (UDHR) and article 17 of the ICCPR protect the right of every individual against arbitrary or unlawful interference with his or her privacy. The UN Human Rights Committee has affirmed that the principles of legality, necessity and proportionality apply to the right to privacy in a manner similar to free expression and other fundamental freedoms.

The 1984 Siracusa Principles authoritatively provide guidance that, during a “public emergency which threatens the life of the nation”, State measures to limit or derogate from rights under the ICCPR must comply strictly with the principles of legality, necessity and proportionality. States of emergency must be limited in duration and limitations on rights should take into consideration disproportionate impacts on different populations.

The UN Office of the High Commissioner for Human Rights has [advised](#) that measures to combat COVID-19 must have “specific focus and duration” and “match the needs of different phases of this crisis”. It has also provided guidance that surveillance or monitoring of individuals – including through online and digital technologies – must be strictly enforced for a legitimate public health aim and “limited in both duration and scope”.

See also

ICJ, ['Southeast Asia: ICJ launches report on increasing restrictions on online speech'](#), 11 December 2019