



## **SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS PURSUANT TO HUMAN RIGHTS COUNCIL RESOLUTION 45/18**

Submitted on 16 April 2021

### **Introduction**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the call for information from the Office of the United Nations High Commissioner for Human Rights (OHCHR), on the impact on the safety and work of journalists and media workers of the measures taken by governments to respond to the COVID-19 pandemic, pursuant to paragraph 18 of Human Rights Council Resolution 45/18 of 12 October 2020.
2. In this submission, the ICJ wishes to draw the attention of the OHCHR to the situation as it relates to three States in the ASEAN region. In particular, the ICJ is concerned at the enactment of new laws and emergence of practices during the COVID-19 pandemic that are not human rights compliant and the continued abuse of existing laws to restrict information and expression on the pandemic in **Cambodia, Thailand and Vietnam**. The very existence of some of these laws and the manner they are misused shrink the civic space that the media operate in and undermine their crucial work in performing their investigative functions and their capacity to impart information to the public.
3. The ICJ has previously analyzed several relevant laws and case studies in several recent reports: (i) *Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia*, released in December 2019;<sup>1</sup> (ii) *Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses*, released in September 2020;<sup>2</sup> (iii) *Dictating the Internet: Curtailing Free Expression and Information Online in Vietnam*, released in December 2020;<sup>3</sup> and (iv) the forthcoming *Dictating the Internet: Curtailing Free Expression and Information Online in Thailand*, which is expected to be released at the end of April 2021.
4. Cambodia, Thailand and Vietnam are parties to the International Covenant on Civil and Political Rights (ICCPR), which protects the freedom of expression and information in article 19, and the International Covenant on Economic, Social and Cultural Rights, which protects the right to health in article 12.

### **Enacting New Non-Human Rights Compliant Laws**

5. In Cambodia, Thailand and Vietnam, new laws have been enacted during and in response to the COVID-19 pandemic that aim at or can be used by State authorities to control information about the virus. Several provisions in these laws are incompatible with human rights law and standards, including the rights to freedom of expression and information and the right to health, rendering them vulnerable to being abused to unduly restrict the professional duties of journalists and media platforms.
6. Several of these laws contain vaguely worded and overbroad provisions, inconsistent with the principle of legality:
  - a. In Cambodia, article 5 of the Law on the Management of the Nation in Emergencies ('Cambodia State of Emergency Law'), which came into force on 29 April 2020,<sup>4</sup> expands government powers to impose, *inter alia*, "bans or limits on distributing or broadcasting information that

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<sup>1</sup> ICJ, 'Southeast Asia: ICJ launches report on increasing restrictions on online speech', 11 December 2019, available at: <https://www.icj.org/southeast-asia-icj-launches-report-on-increasing-restrictions-on-online-speech/>.

<sup>2</sup> ICJ, 'New ICJ global report shows that the right to health must be central to State responses to COVID-19', 1 September 2020, at 112, available at: <https://www.icj.org/ici-new-global-report-shows-that-the-right-to-health-must-be-central-to-state-responses-to-covid-19/>.

<sup>3</sup> ICJ, 'Vietnam: authorities must act to safeguard rights online and end harassment of those expressing themselves – ICJ new report', 9 December 2020 ('ICJ Vietnam Report'), available at: <https://www.icj.org/vietnam-authorities-must-act-to-safeguard-rights-online-and-end-harassment-of-those-expressing-themselves/>.

<sup>4</sup> Rajah & Tann Asia, *Client Update: Cambodia*, May 2020, available at: <https://www.rajahtannasia.com/media/pdf/RTSH0605203.pdf>.

can cause public panic or turmoil, damage to national security or confusion about the situation under the State of Emergency”.<sup>5</sup> Further, article 6 of the Sub-Decree on the Establishment of the National Internet Gateway, issued on 16 February 2021, empowers the blocking of online connections or content deemed to “affect safety, national revenue, social order, dignity, culture, traditions and customs”.<sup>6</sup>

- b. In Thailand, clause 6 of Regulation No. 1 Pursuant to Section 9 of the 2005 Emergency Decree on Public Administration in Emergency Situation (‘Regulation No. 1’), issued in March 2020, prohibits the presentation or dissemination of information through any media “featuring content on the COVID-19 which is false or may instigate fear among the people, or to intentionally distort information which causes misunderstanding of the emergency situation to the extent of affecting public order or the good morals of people”.<sup>7</sup>
  - c. In Vietnam, article 101 of Decree No. 15/2020/ND-CP (‘Decree No. 15/2020’), which came into force on 15 April 2020, prohibits users of social media from, *inter alia*, providing or sharing “fake or false information” which “distort or damage the prestige, honour and dignity of other organizations, authorities or individuals”, or information not conforming with “national good traditions and customs”, or information “with the aims of causing a panic among the population”.<sup>8</sup> In addition, article 8 of Decree No. 119/2020/ND-CP (‘Decree No. 119/2020’), which came into force on 1 December 2020, prohibits newspapers, newsletters and special issues to post and broadcast information that, *inter alia*, is false and caused “serious consequence”, is “not suitable to the interests of the country and the people”, or “distorted, fabricated or causing confusion among people”.<sup>9</sup> Article 20 prohibits news websites from posting information that is “distorted, fabricated or confusing among the people, but not to the extent where criminal prosecution is needed”.<sup>10</sup>
7. These provisions prescribe severe penalties, including criminal sanctions and onerous fines, for non-compliance, which are incompatible with the principles of necessity and proportionality:
- a. In Cambodia, failing to comply with measures under article 5 of the Cambodia State of Emergency Law can result in prison sentences of up to one year and a fine of up to two million riels (approx. USD\$498).<sup>11</sup>
  - b. In Thailand, violating regulations issued under the Emergency Decree, including Regulation No. 1, may incur imprisonment for a term not exceeding two years or a fine of up to 40,000 baht (approx. USD\$1,276), or both.<sup>12</sup>
  - c. In Vietnam, article 101 of Decree No. 15/2020 imposes fines of up to 20 million VND (approx. USD\$867).<sup>13</sup> Article 8 of Decree No. 119/2020 imposes fines of up to 100 million VND (approx. USD\$4,333) for false information causing “extremely serious consequence”, and fines of up to 200 million VND (approx. USD\$8,666) for information “not suitable to the interests of the

<sup>5</sup> Article 5, Law on the Management of the Nation in Emergencies, 10 April 2020 (‘Cambodia State of Emergency Law’), available at: <https://akp.gov.kh/post/detail/29564>. The ICJ has previously analyzed this law in a statement; see, ICJ, ‘Cambodia: State of Emergency bill violates the rule of law’, 8 April 2020, available at: <https://www.ici.org/cambodia-state-of-emergency-bill-violates-the-rule-of-law/>. See also, OHCHR, ‘Cambodia’s state of emergency law endangers human rights, warns UN expert’, 17 April 2020, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25801&LangID=E>.

<sup>6</sup> Cambodian Center for Human Rights, ‘Joint statement – CSOs call on the Royal Government of Cambodia to repeal the sub-decree on the establishment of the National Internet Gateway’, 19 February 2021, available at: [https://cchrcambodia.org/index\\_old.php?title=CSOs-call-on-the-Royal-Government-of-Cambodia-to-repeal-the-sub-decree-on-the-establishment-of-the-National-Internet-Gateway&url=media/media.php&p=press\\_detail.php&prid=801&id=5&lang=eng](https://cchrcambodia.org/index_old.php?title=CSOs-call-on-the-Royal-Government-of-Cambodia-to-repeal-the-sub-decree-on-the-establishment-of-the-National-Internet-Gateway&url=media/media.php&p=press_detail.php&prid=801&id=5&lang=eng).

<sup>7</sup> Clause 6, Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 1), 25 March 2020 (‘Regulation No. 1’), available at: <https://www.mfa.go.th/en/content/115867-regulation-issued>.

<sup>8</sup> Article 101, No. 15/2020/ND-CP, Decree on Penalties for Administrative Violations Against Regulations on Postal Services, Telecommunications, Radio Frequencies, Information Technology and Electronic Transactions, 3 February 2020 (‘Decree No. 15/2020’), available at: <https://vanbanphapluat.co/decree-15-2020-nd-cp-penalties-for-administrative-violations-against-regulations-on-postal-services>. The ICJ has previously analyzed these provisions in a report; see, ICJ Vietnam Report, pp. 37 – 39.

<sup>9</sup> Article 8, No. 119/2020/ND-CP, Decree on Penalties for Administrative Violations in Journalistic and Publishing Activities, 7 October 2020 (‘Decree No. 119/2020’), available at: <https://vanbanphapluat.co/decree-119-2020-nd-cp-penalties-for-administrative-violations-in-journalistic-and-publishing-activities>.

<sup>10</sup> Article 20(6)(b), Decree No. 119/2020.

<sup>11</sup> Article 8, Cambodia State of Emergency Law.

<sup>12</sup> Clause 15, Regulation No. 1; ICJ, ‘ICJ Legal Briefing: The Implementation of Thailand’s Emergency Decree in Response to Protests in 2020’, 22 October 2020, p. 11, available at: <https://www.ici.org/wp-content/uploads/2020/10/Thailand-Protests-Legal-Briefing-2020-ENG.pdf>.

<sup>13</sup> Article 101, Decree No. 15/2020.

country and the people” or that is “distorted, fabricated or causing confusion among people”.<sup>14</sup> Violations of article 20 of Decree No. 119/2020 may result in fines of up to 200 million VND (approx. USD\$8,666) for news websites.<sup>15</sup>

### **Abusing Existing Laws to Restrict Information and Expression**

8. During the pandemic, the authorities in the three countries have also continued abusing laws that are not human rights compliant to arbitrarily restrict information and expression during the pandemic.
9. In particular, journalists in Cambodia and Thailand have been targeted with disproportionate sanctions or the threats of sanctions for fulfilling their professional reporting functions related to the COVID-19 pandemic:
  - a. In Cambodia, at least two journalists were convicted under articles 494 and 495 of the Criminal Code, which criminalize “incitement to commit a felony” with the potential punishment of up to two years’ imprisonment and a fine of up to four million riels (approx. USD\$984).<sup>16</sup> On 5 October 2020, Sovann Rithy, director of online news outlet TVFB, was sentenced to 18 months in prison for reporting on advice from Prime Minister Hun Sen for motorbike-taxi drivers to sell their motorbikes if they are facing financial difficulties.<sup>17</sup> The Information Ministry also revoked TVFB’s media license.<sup>18</sup> On 13 November 2020, Ros Sokhet, publisher of the Cheat Khmer newspaper, was sentenced to 18 months in prison for his Facebook posts criticizing the government’s response to the pandemic.<sup>19</sup> Separately, on 24 February 2021, Shen Kaidong, editor-in-chief of the Chinese-language news outlet Angkor Today, was arrested and deported to China after he allegedly “published fake news” and “caused social chaos”, for allegedly reporting that Chinese nationals in Cambodia had been offered chances to buy shots of the COVID-19 vaccine. The Ministry of Information also revoked Angkor Today’s license to operate in the country.<sup>20</sup>
  - b. In Thailand, the ICJ obtained credible information from a lawyer, according to whom in April 2020, the Thai Red Cross Society, which is administered and funded by the State, filed a criminal defamation complaint under sections 326 and 328 of Thailand’s Criminal Code against a journalist and two social media users, in relation to social media posts questioning the inaction of the provincial Thai Red Cross Society in Phang-nga province during the pandemic. The case is currently being considered by the Provincial Court of Phang-nga Province.<sup>21</sup> Separately, in April 2020, the owner of an anonymous investigative Facebook page called “Queen of Spades” was reportedly threatened by the police to be charged with violating the Computer-related Crimes Act B.E. 2550 (‘CCA’), and to have her identity publicly exposed. This threat occurred after she allegedly posted photos showing persons closely linked to a politician being involved with the illegal exporting of facial masks to buyers in China amid severe domestic shortage of personal protective equipment in the country.<sup>22</sup>
10. Further, during the pandemic, the authorities have targeted: (i) social media users for disseminating alleged “false information” about COVID-19; and (ii) journalists generally, even if not in direct relation to the pandemic. These actions stand to cast a chilling effect on the work of journalists and media workers, who may fear harsh reprisals from the authorities for reporting on the COVID-19 pandemic.
11. Social media users have been targeted by the authorities for allegedly disseminating “false information” about COVID-19. Although the ICJ recognizes the necessity to combat the spread of false information online to protect public health during the uncertainty of a pandemic, this objective, in line with the conditions for limitations under article 19(3) of the ICCPR, can and must be carried out using

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<sup>14</sup> Article 8, Decree No. 119/2020.

<sup>15</sup> Article 20, Decree No. 119/2020.

<sup>16</sup> Articles 494 and 495, Criminal Code, available at:

<https://www.ajne.org/sites/default/files/resource/laws/7195/criminal-code-cambodia-en-kh.pdf>.

<sup>17</sup> CamboJA News, ‘Journalist handed 18-month sentence for incitement’, 5 October 2020, available at:

<https://cambojanews.com/journalist-handed-18-month-sentence-for-incitement/>.

<sup>18</sup> ASEAN Today, ‘Cambodia expands monitoring of social media to private messaging apps, citing fake news’, 18 February 2021, available at: <https://www.aseantoday.com/2021/02/cambodia-expands-monitoring-of-social-media-to-private-messaging-apps-citing-fake-news/>.

<sup>19</sup> CPJ, ‘Cambodia jails journalist Ros Sokhet for criticizing Prime Minister Hun Sen’, 13 November 2020, available at: <https://cpj.org/2020/11/cambodia-jails-journalist-ros-sokhet-for-criticizing-prime-minister-hun-sen/>.

<sup>20</sup> CPJ, ‘Cambodia deports Chinese journalist Shen Kaidong for ‘fake news’ on COVID-19 vaccine sales’, 4 March 2021, available at: <https://cpj.org/2021/03/cambodia-deports-chinese-journalist-shen-kaidong-for-fake-news-on-covid-19-vaccine-sales/>.

<sup>21</sup> ICJ communication with a Thai lawyer. The President of the Thai Red Cross Society is Queen Sirikit, and the Society is supervised by the Council of Ministers and has its expenses borne by the government.

<sup>22</sup> Khaosod English, ‘Investigators seeking mask hoarding ring whistleblower’, 10 April 2020, available at:

<https://www.khaosodenglish.com/politics/2020/04/10/investigators-seeking-mask-hoarding-ring-whistleblower/>.

the least intrusive means, rather than unnecessary and disproportionate measures like arrests, detentions, criminal prosecutions and onerous fines. These international obligations have been flouted by the three countries. For example:

- a. In Cambodia, it was documented that 30 people were arrested for expressing their views on COVID-19 between 28 January and 17 June 2020, of whom 15 were held in pre-trial detention.<sup>23</sup> In February 2021, the Ministry of Justice announced that it would classify the spreading of “false news” on COVID-19 as incitement under articles 494 and 495 of the Criminal Code.<sup>24</sup>
- b. In Thailand, the Ministry of Digital Economy and Security and the Technology Crime Suppression Division of the Royal Thai Police arrested individuals who disseminated allegedly “false information” about COVID-19.<sup>25</sup> The authorities also invoked the CCA and article 112 of the Criminal Code to prosecute individuals expressing criticism of the government’s COVID-19 response.<sup>26</sup>
- c. In Vietnam, it was documented that more than 650 individuals were summoned to police stations between January and March 2020 about allegedly “false information” on COVID-19 shared on Facebook, including 146 individuals who were issued fines.<sup>27</sup> There are further reports of individuals potentially facing charges under article 288 of the Penal Code 2015 for “illegal provision or use of information on computer networks or telecommunication networks”<sup>28</sup> and article 331 of the Penal Code 2015 for “abusing of democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens”.<sup>29</sup> These have resulted in, for instance, convictions of six months of imprisonment for Pham Van Hai under article 288 for spreading allegedly “false news” on a COVID-19 death<sup>30</sup> and nine months of imprisonment for Ma Phung Ngoc Phu under article 331 for her Facebook posts regarding the outbreak.<sup>31</sup>

12. Journalists in the three countries continue to operate in repressive landscapes and face legal threats. These threats are likely aimed at, and certainly risk, intimidating them from carrying out their work:

- a. In Cambodia, independent journalists have long been harassed by the authorities, especially when reporting critically about the government.<sup>32</sup> According to the Cambodian Journalism Situation Report 2020, 35 cases of harassment against 72 journalists were documented in 2020, with more than 42 of these journalists being detained for questioning or imprisoned. At

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<sup>23</sup> Human Rights Watch, ‘List of arrests and persons in detention for COVID-19 related offenses’, 23 March 2020, available at: <https://www.hrw.org/video-photos/interactive/2020/03/23/list-arrests-and-persons-detention-covid-19-related-offenses>.

<sup>24</sup> Khmer Times, ‘Spreading fake news on C-19 vaccines considered ‘incitement’’, 23 February 2021, available at: <https://www.khmertimeskh.com/50816839/spreading-fake-news-on-c-19-vaccines-considered-incitement/>.

<sup>25</sup> For example, Post Today, ‘Arresting Nine People Who Post Fake News and Caused Confusion’, 16 April 2020, available at: <https://www.posttoday.com/politic/news/621028> (in Thai); Siamrath, ‘Anti-Fake News Center Showed that they Could Suppress those Who Posted Fake News/Distorted Information’, 10 September 2020, available at: <https://siamrath.co.th/n/181276> (in Thai); and Manager Online, ‘Being Charged! A Guy From Chiang Khong Who Posted that He Attended Songkran Celebration was Charged for Both Emergency Decree and Computer-Related Crimes Act’, 16 April 2020, available at: <https://mgronline.com/local/detail/9630000039663> (in Thai).

<sup>26</sup> TLHR, ‘The Artist criticized the Govt COVID Screening Measures at Suvarnabhumi Airport Was Released on Bail After 14 Hours in Detention’, 24 March 2020, available at: <https://tlhr2014.com/archives/16645>; Khaosod English, ‘Investigators Seeking Mask Hoarding Ring Whistleblower’, 10 April 2020, available at: <https://www.khaosodenglish.com/politics/2020/04/10/investigators-seeking-mask-hoarding-ring-whistleblower/>; Channel News Asia, ‘Thai government to file royal defamation complaint against opposition figure Thanathorn’, 20 January 2021, available at: <https://www.channelnewsasia.com/news/asia/thai-government-to-file-royal-defamation-complaint-against-opposition-figure-thanathorn-14002118>.

<sup>27</sup> ICJ Vietnam Report, p. 66.

<sup>28</sup> VN Express, ‘Man faces criminal charges for posting fake news on Covid-19 death’, 11 April 2020, available at: <https://e.vnexpress.net/news/news/man-faces-criminal-charges-for-posting-fake-news-on-covid-19-death-4083130.html>.

<sup>29</sup> Defend the Defenders, ‘Vietnamese Well-known Facebooker Threatened with Heavy Punishment For Disseminating News on Covid-19’, 28 March 2020, available at: <https://www.vietnamhumanrightsdefenders.net/2020/03/28/vietnamese-well-known-facebooker-threatened-with-heavy-punishment-for-posting-on-covid-19/>.

<sup>30</sup> VN Express, ‘Man jailed for posting false news on Covid-19 death’, 23 April 2020, available at: <https://e.vnexpress.net/news/news/man-jailed-for-posting-false-news-on-covid-19-death-4088977.html>.

<sup>31</sup> The 88 Project, ‘Ma Phung Ngoc Phu’, 27 February 2021, available at: <https://the88project.org/profile/469/ma-phung-ngoc-phu-/>; Defend the Defenders, ‘Vietnamese Facebooker Sentenced to Nine Months in Prison for “Abuse of Democratic Freedom” for Posting on COVID-19’, 11 May 2020, available at: <https://www.vietnamhumanrightsdefenders.net/2020/05/12/vietnamese-facebooker-sentenced-to-nine-months-in-prison-for-abuse-of-democratic-freedom-for-posting-on-covid-19/>.

<sup>32</sup> ICJ, ‘Cambodia: ICJ and 56 organizations call on authorities to release journalists and cease harassment of independent media’, 2 November 2020, available at: <https://www.ici.org/cambodia-ici-and-56-organizations-call-on-authorities-to-release-journalists-and-cease-harassment-of-independent-media/>.

least 22 journalists were either attacked or threatened with violence while on duty. One journalist died in what the police concluded was a traffic accident without proper investigation.<sup>33</sup> This number includes Sok Oudom, owner of Ritysen radio station and website, who was convicted on 22 December 2020 to 20 months in prison with a fine of 20 million riel (approx. USD\$4,935) over charges of incitement under article 494 and 495 of the Criminal Code. The charges likely stem from Oudom reporting on Facebook Live on an ongoing land dispute between residents of Kampong Chhnang and the military.<sup>34</sup>

- b. In Thailand, the authorities have cracked down on journalists and news outlets, in the face of the pro-democracy protests, for allegedly violating the CCA and Emergency Decree. At least two journalists were arrested or summoned for covering the protests.<sup>35</sup> On 20 October 2020, the Ministry of Digital Security and Economy obtained closure orders from the Bangkok Criminal Court to shut down the online platforms of Voice TV, Prachatai, The Reporters, The Standard and Free Youth for allegedly disseminating “false information” about the protests, but this order was later revoked.<sup>36</sup>
- c. In Vietnam, OHCHR noted in January 2021 the use of “vaguely defined laws” to arbitrarily detain an increasing number of, *inter alia*, journalists, with several reports of detainees being held incommunicado for long periods, violations of the right to a fair trial, concerns about treatment in detention and convictions resulting in lengthy sentences for crimes against national security.<sup>37</sup>

## Recommendations

13. In light of the above-mentioned concerns, the ICJ calls upon the OHCHR to continue engaging the relevant authorities in Cambodia, Thailand and Vietnam and recommend:

- a. That the respective legislatures of the three substantially amend or repeal the aforementioned and other laws that criminalize or unduly restrict the work of journalists and media workers, and the rights to freedom of expression, information and health;
- b. That State agents cease harassment and persecution of all individuals, including journalists and media workers, for merely exercising their rights to free expression and information, through the abuse of laws; and enable access to adequate, effective and prompt remedy for all individuals whose rights have been violated; and
- c. That the prosecuting authorities drop charges against all individuals, including journalists and media workers, facing prosecution for alleged violations of domestic provisions that are inconsistent with the countries’ obligations under international human rights law guaranteeing the rights to freedom of expression, information and health. All persons held in pre-trial detention or imprisoned upon conviction in such cases should be immediately released.

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<sup>33</sup> Cambodian Journalists Alliance Association, ‘Cambodian Journalism Situation Report 2020’, 29 March 2020, p. 4, available at: <https://www.camboja.net/wp-content/uploads/2021/03/Cambodian-Journalism-Situation-Report-2020.pdf>.

<sup>34</sup> *Ibid.*, p. 16.

<sup>35</sup> Prachatai, ‘Prachatai reporter arrested while covering police crackdown’, 16 October 2020, available at: <https://prachatai.com/english/node/8848>; ICJ Emergency Decree Briefing, at 13 – 14; ABC News, ‘Thailand’s pro-democracy protestors warn of possible coup’, 28 November 2020, available at: <https://abcnews.go.com/International/wireStory/thai-pro-democracy-protesters-warn-coup-74428250>.

<sup>36</sup> ICJ Emergency Decree Briefing, at 17 – 18; Bangkok Post, ‘Media closure order lifted’, 21 October 2020, available at: <https://www.bangkokpost.com/thailand/politics/2005927/media-closure-order-lifted>.

<sup>37</sup> OHCHR, ‘Press briefing notes on Viet-Nam’, 8 January 2021, available at:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26644&LangID=E>; ICJ Vietnam Report, pp. 8 – 9.