

**SUBMISSION TO THE THEMATIC REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF OPINION AND EXPRESSION TO THE UN HUMAN RIGHTS COUNCIL: "FREEDOM OF OPINION AND EXPRESSION AND SUSTAINABLE DEVELOPMENT - WHY VOICE MATTERS"**

# COVID-19 and the Implications for Freedom of Expression in Southeast Asia

*Asia Centre is a civil society research institute in Special Consultative Status with the United Nations Economic and Social Council (UN ECOSOC). It was established in Bangkok, Thailand, in 2015. Then, a second office was established in 2018 in Johor Bahru, Malaysia. Asia Centre serves as a knowledge partner and undertakes evidence-based research to publish baseline studies and policy toolkits. It also provides training and capacity-building programmes for end beneficiaries such as government officials and universities.*

In the months following the outbreak of the COVID-19 pandemic in March 2020, the number of new infections grew exponentially ([WHO, 2022](#)). Consequently, governments worldwide responded with political measures to keep the virus at bay that implied limiting people's freedoms to some extent, including freedom of expression. Southeast Asia reported 60.5 million infections as of November 2022 or 10% of the infections globally ([Ibid](#)). In the region, most governments mimicked China's zero-COVID approach and imposed strict measures that limited people's freedoms to control the spread of the virus ([Bardsley, 2021](#); [Kelter, 2022](#); [The Economist, 2021](#)).

The executives in Southeast Asian countries could impose harsh restrictions because Article 4 of the International Covenant on Civil and Political Rights ([1966](#)) allows governments to derogate their obligations to ensure certain fundamental rights to their people in emergency situations, only if that contributes to returning to normalcy ([McGoldrick, 2004](#)). However, certain rights cannot be derogated (Article 4(2)), such as the right to life (Art. 6), freedom from slavery and servitude (Arts. 8(1) and (2)), or the freedom of thought, conscience and religion (Art. 18). Initially, by using Article 4 and limiting some rights, political measures to contain the spread of the virus were effective in Southeast Asia, if the number of new infections is considered. Still, using legal measures to control an issue of public health curbed freedom of expression in the region, thus posing a new challenge to sustainable development.

Governments used the state of emergency (SoE), temporary laws, and temporary powers invoked under existing health legislation on infectious diseases to reduce the number of new infections. Freedom of expression was limited because with the use of legal measures, people's right to assembly and protest was limited, electoral integrity decreased, and surveillance increased.

First, strict lockdowns that forced people to stay home were one of the initial measures imposed by most governments. This measure was different from country to country and affected people's right to travel internationally and also domestically to other states and provinces in their own countries. As a result of the adoption of mobility restrictions, other rights, including freedom of expression, were also affected. Lockdowns were used as a pretext to limit people's freedom of assembly, including the right to protest and express their views in demonstrations. In some cases, anti-COVID-19 measures were also used to silence dissenting voices defending human rights or those disagreeing with governmental narratives ([CIVICUS, 2022](#)). In Cambodia, the Law on Preventive Measures Against the Spread of COVID-19 affected workers

wanting to defend their labour rights since freedom of protest declined ([Hanung, 2022](#)). In Phnom Penh, the police challenged the right to freedom of expression of union activists participating in a strike to defend the rights of several employees who had been discharged alleging that they violated anti-COVID-19 measures and obstructed the state's efforts to contain the pandemic ([Human Rights Watch, 2022](#); [Mech & Dickinson, 2022](#)).

**Second**, anti-COVID-19 measures affected the quality of elections during the pandemic since limitations of freedom of expression challenged how certain political parties and citizens engaged with one another. Celebrating elections during the pandemic was a cause of concern among many groups. On the one hand, the virus' transmissibility raised debates concerning whether elections should be celebrated. On the other hand, altering the course of electoral cycles could also affect the quality of multiparty elections. Therefore, the primary challenge was how to allow people to vote without putting them in jeopardy because of the virus. Cases like the Myanmar one show that elections were celebrated during the pandemic mostly to serve the interests of political elites. However, commissions were celebrated with strict anti-COVID-19 measures that challenged freedom of expression.

Myanmar imposed travel restrictions in the early stages of the pandemic ([MoHS, 2020](#)). Given the number of infected people two months before the elections in August 2020, the opposition party Union Solidarity and Development Party (USDP) called to put off GE2020. On the other end, the National League for Democracy (NLD) was against it, reasoning that a power vacuum was not desirable since the Constitution did not contemplate extending the mandate of the incumbent government ([Lidauer & Saphy, 2021](#)). Although elections were celebrated, stay-at-home orders in some townships were imposed that affected people's opportunities to express their views before the elections. Campaigning activities were limited ([Lidauer & Saphy, 2021](#)) and attendees to political rallies were capped to fifteen ([MoHS, 2020](#)). However, it was reported that NLD's political campaigning was excessive, indicating that limitations on freedom of expression were selective and mostly affected members of the opposition, thus limiting members of certain political groups to express their views on the elections in the country.

**Third**, limitations on freedom of expression resulted in the criminalisation of policy criticism. Given the number of new infections and the fact that the pandemic was lasting longer than expected, governments imposed new measures to keep the virus at bay. New measures tackled online information flows, which decreased freedom of expression in the digital sphere. Some governments added fake news provisions to control the spread of inflammatory content regarding the state of the pandemic. Nonetheless, these legal measures were reportedly used to curtail freedom of expression ([Wiseman, 2020](#)).

In Thailand, the government used anti-fake news to control the narrative concerning the pandemic, resulting in damaged freedom of expression in the country. The Thai Authorities used the Emergency Decree to identify comments from the media deemed as threatening for the government ([HRW, 2020](#)). However, the decree was widely used to target critics, thus shrinking the space for freedom of expression. For example, Thai artist Danai Usama express his dissatisfaction with the anti-COVID measures at Bangkok airport via Facebook. Later, he was arrested and accused of violating section 14(2) of the Computer-Related Crime Act which could have resulted in the spread of panic among people ([Article19, 2020](#)). This exemplifies how regulating the spread of false information was used to target comments regarding the governmental management of the pandemic, which put freedom of expression in jeopardy.

Given these developments, several recommendations can be made to improve freedom of expression and sustainable development in Southeast Asia. Governments should sign and ratify the ICCPR (including its first Optional Protocol (ICCPR OP-1) to institute an individual complaints mechanism) if they have not done so yet. In case of future emergency situations, they should ensure that all measures are justified and proportional. Additionally, provisions in legal frameworks should be more specific and avoid vague terms that can be used to justify crackdowns on freedom of expression. Working closely with civil society organisations in creating a rights-friendly legal framework is essential.

International organisations should lobby governments so they sign and ratify the ICCPR/OP-1 to ensure freedom of expression and sustainable development in the region. Furthermore, international organisations should also have a more relevant role in assisting governments in the implementation of derogatory measures to avoid unnecessary limitations on people’s fundamental rights like freedom of expression.

Finally, civil society organisations should keep monitoring infringements of freedom of expression in their countries and inform governments and the international community about any limitations to such fundamental rights. They should also reinforce their commitment to providing educational opportunities to the population to increase awareness of fundamental rights so reduce the chances of freedom of expression being curtailed by governments in emergency situations.

*These inputs are drawn from the policy paper “Moving Beyond COVID-19 Restrictions in Southeast Asia: Pushing Back Against Authoritarian Pandemic Governance”, produced by Asia Centre in partnership with the International Center for Not-for-Profit Law (ICNL). Read the full policy paper [here](#).*

*The Thematic Report that drew from Asia Centre’s input can be found [here](#).*