

ASIA CENTRE | COUNCIL OF ASIAN LIBERALS AND DEMOCRATS



Defending Freedom of Expression

FAKE NEWS LAWS IN EAST AND SOUTHEAST ASIA

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FOREWORD

Whoever said “a lie travels halfway around the world while the truth is putting on its shoes” is right.

Through the power of social media, fake news, misinformation, and lies spread faster and more easily than a virus, and are just as dangerous.

False information going viral have made individuals, institutions, and governments increasingly worried as it impacts on everything from privacy to personal safety to share prices to elections to social unrest.

Defending Freedom of Expression: Fake News Laws in East and Southeast Asia comes at an opportune moment when a huge number of the world population have become reliant on the Internet in the era of the new normal.

As the COVID-19 pandemic rages on, the massive demand for digital connectivity has put the internet's structural integrity and capacity to test. The world has seen how crucial its role is — not just in sustaining aspects of day-to-day life, but enabling communities to thrive throughout the health crisis.

As a universally accessible, decentralized, and open architecture, the internet can be a force for good in the same way that it can be used to choke freedom of speech and chill dissent.

If we understand how disinformation brews, then perhaps we can help curb its transmission.

The Disinformation Baseline Study produced by the Council of Asian Liberals and Democrats and Asia Centre is a useful toolkit for advocates, legislators, political party leaders, academics, civil society activists, journalists and others to ensure that freedom of expression is not compromised in the name of combating disinformation.

The study offers a wealth of relevant information from thorough research of published articles, authenticated social media posts, legislations, and interviews.

Happening amid constrained mobility during the pandemic, the depth of fact-finding and analyzing from January to January 2021 is awe-inspiring giving the readers glimpses of the disinformation hovering in CALD member-countries and efforts to combat it through legislation and policy initiatives.

East Asia's Hong Kong, Japan, South Korea and Taiwan and Southeast Asia's Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, and Thailand were covered.

Aware that advocates are not just fighting an epidemic, but an infodemic, the study dedicated sections on COVID-19 Temporary Legislations in the countries covered, discussing clauses in the legislation and regulations to govern the spread of information, especially false by nature or by character.

Worth mentioning is the observation that, “The COVID-19 health pandemic has allowed governments to issue emergency decrees and pass specific temporary laws and measures that aim to mitigate the spread of the virus....These state of emergency decrees, health advisories and movement control regulations have however, subsequently, also impacted freedoms of expression and opinion exercised by citizens and residents especially through social media platforms, which implicates technology companies as the platform owner.”

“Authoritarian governments especially have found benefit from their increased power and decreased oversight, and have in response attempted to further censor their dissidents by the following measures,” the study added.

Constructive in its approach, the study is not wanting in recommending to CALD member-countries “a toolbox of policy ideas that can be raised during the legislative process, its implementation and review by legislators, political party leaders and other stakeholders.”

These include encouraging member-countries to diligently report to the International Covenant on Civil and Political Rights and extend the invitations to respective United Nations Special Rapporteurs on freedom of expression, racial discrimination, and human rights defenders to

review the country’s application of laws on a regular basis.

The study also urges member-countries to commit to international obligations to realize the Sustainable Development Goals 16.10 to ensure public access to information and protect fundamental freedoms.

It recommends seeking the advice on drafting legislation or policy to address disinformation from intraregional bodies such as European Commission, European Court of Justice, and Organization for Security and Co-operation in Europe, or international organizations such as UNESCO.

In the era of disinformation, “Defending Freedom of Expression: Fake News Laws in East and Southeast Asia” is a worthy read. When people are properly informed, fake news doesn’t stand a chance.

Fake news is lying, and lying is wrong. If we are to survive as societies, then we must remember this simple truth.



Francis “Kiko” Pangilinan,
Philippine Senator
and CALD Chairperson

PREFACE

Since 2019, Asia Centre and CALD have collaborated on activities and projects that safeguard freedom of expression. In July 2019, CALD participated in Asia Centre's 4th International Conference on Fake News and Elections in Asia. The CALD-led panel focused on how political parties and political leaders respond to the spread of disinformation in the digital age. The panel advised that legislation, fact-checking, digital and media literacy and the role of technology companies when addressing fake news need to also protect freedom of expression.

In October 2019, CALD invited Asia Centre to present its research findings on fake news legislations in Southeast Asia at its 40th Executive Committee Meeting in Taipei, Taiwan. The Centre's findings showed that fake news laws are infringing upon freedom of expression which are contrary to international human rights standards. Existing legislation and emerging fake news laws placed governments as the arbiters of truth allowing them to decide what was true or false leading to the increased criminalisation of government critics.

Recognising the use of legalisation by governments to curb freedom of expression in Asia, in December 2019, Asia Centre and CALD signed an MOU to establish cooperation to examine key issues affecting democracy and human rights in the region.

Even throughout the COVID-19 pandemic, both organisations continued their cooperation. On 11 September 2020, Asia Centre, CALD and the Friedrich Naumann Foundation (FNF) for Southeast and East Asia co-convened a webinar, "The 2020 US Presidential Election: Will it Matter for Democracy and Human Rights in Asia?". At the event Asia Centre, highlighted the need for governments to work with civil society to promote and protect civic space and freedom of expression and not suppress it.

In October 2020, CALD convened a panel at Asia Centre's 5th International Conference on Hate Speech in Asia: Challenges and Solutions. CALD panelists acknowledged that, while hate fueled fake news is dangerous as it divides communities and precipitates communal violence. They further noted that hate speech is also a symptom of unaddressed societal problems such as inequality, and the lack of representation and bipartisanship in national politics. The panelists cautioned that proposed "harmony" legislation by some countries to combat hate speech risk infringing freedom of expression.

Throughout 2020, Asia and the rest of the world had to grapple with the coronavirus pandemic. In its wake the region saw an extended use of emergency decrees and COVID-19 temporary laws that also affected freedom of expression. Hence in late 2020 Asia Centre and CALD, with the support of Friedrich Naumann Foundation, came together to comprehensively review existing laws, emerging fake news laws, emergency decrees and the COVID-19 temporary laws to assess their collective effect on freedom of expression in the region. The idea was to develop a policy toolkit that can be used to advocate for freedom of expression.

Defending Freedom of Expression: Fake News Laws in East and Southeast Asia holds recommendations that CALD legislators and political party leaders as well as other stakeholders can use to advocate for better laws and policies that ensure freedom of expression. Asia Centre hopes this guide will be a useful resource document.



Dr. James Gomez
Regional Director, Asia Centre

EXECUTIVE SUMMARY

Defending Freedom of Expression: Fake News Laws in East and Southeast Asia is a toolkit for advocates who want to ensure that when laws and policies are enacted to respond to disinformation, they do not infringe on freedom of expression.

Since 2017, governments around the world have expressed their concerns over fake news, as more of its citizens access social media content over mobile devices. With traditional media declining, governments are concerned about who sets the political agenda. Using the threat of fake news as causing social unrest, many governments have turned to legislation as a primary solution.

In countries with multiparty legislatures and independent government institutions, when formulating laws to deal with disinformation, provisions are included to safeguard human rights and democratic practices, in particular freedom of expression. Adherence to international law also ensures alignment with human rights principles and the presence of independent institutions serve as checks and balances.

In countries where the legislature is made up of one dominant political force, an absence of independent national institutions and a culture of compliance to authority, the focus of laws to combat fake news is centred on authority of the state to decide what is fake news. The provisions in these laws, as to what constitutes fake news, is vaguely-worded and fake news by government office bearers and officials is not subject to these laws.

In East and Southeast Asia existing laws have been used or revised, new dedicated fake news laws have been enacted or proposed and with COVID-19, emergency decrees and temporary laws have been activated, all of which have provisions to deal with fake news. A review of these laws and how they have been applied in the region shows that freedom of expression has been impacted.

In light of these developments, this report sets out a list of recommendations that urges governments to ensure domestic laws adhere to international human rights standards and that independent institutions are in place to provide the necessary oversight. Further that language of the laws are clearly formulated, the punishments are not punitive, the laws are not used for political purposes against opponents by those in power and public officials are equally held accountable for fake news.

Defending Freedom of Expression: Fake News Laws in East and Southeast Asia while is primarily targeted at CALD members, it can be used by all legislators, political party leaders, academics, civil society activists, journalists and others to ensure that freedom of expression is not compromised in the name of combating disinformation.





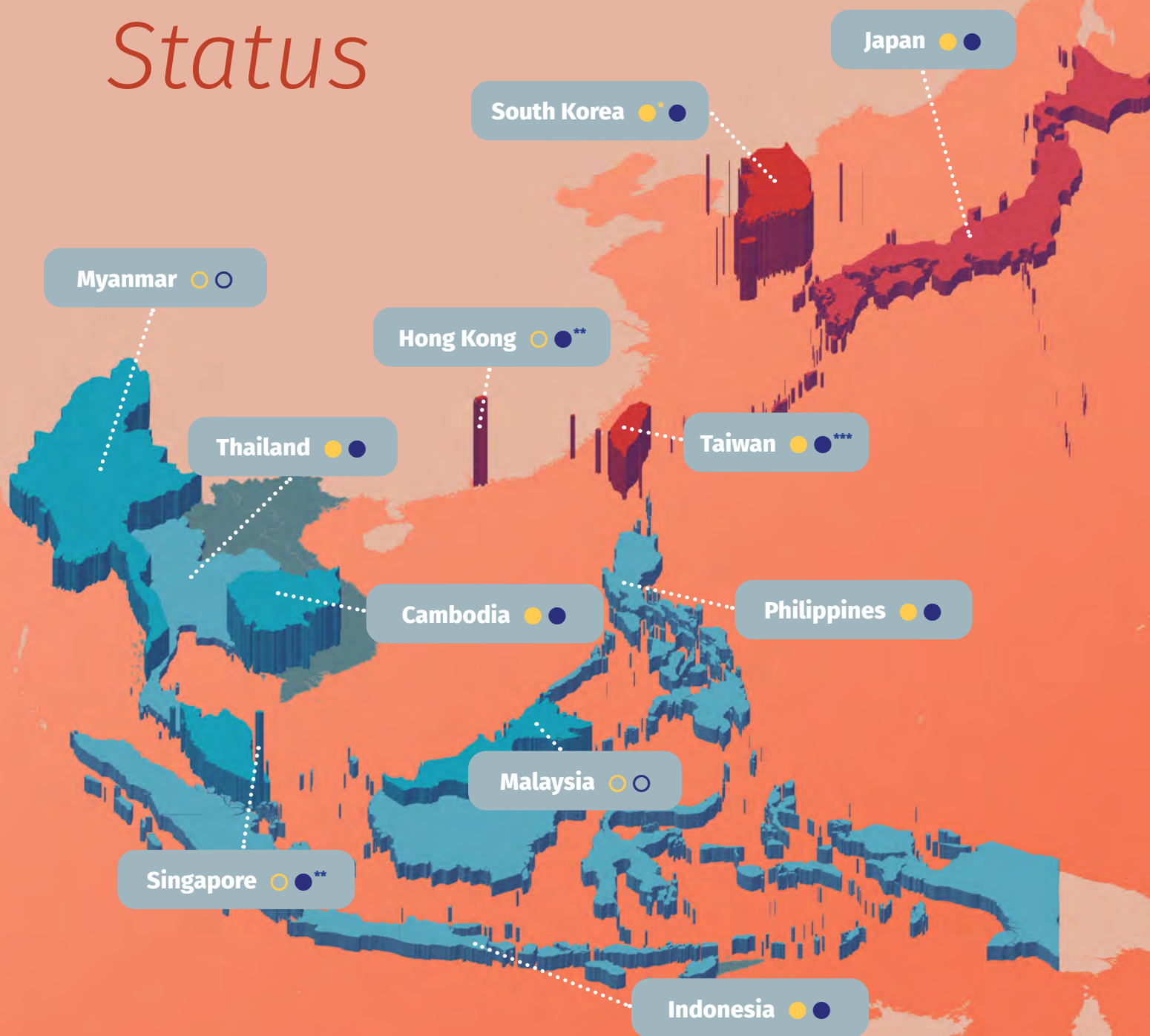
INTRODUCTION

House of representatives and parliaments are at the forefront of creating legislation to respond to issues in society. Since 2017, representatives and parliamentarians have been exploring solutions to the impact of disinformation. In countries, where such institutions are made up only of representatives from a one party state or a single majority in one-party dominant states, political parties, civil society and the international community outside these institutions have also played an advocacy role in shaping or influencing legislation.

In North America (Canada), Europe, The United Kingdom and Australia where there are diverse and multi-party national and regional parliaments; when legislation is proposed to manage disinformation, the debate often centres around ensuring such legislation does not violate human rights and democratic values. International Conventions such as the International Covenant on Civil and Political Rights (ICCPR) and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to an extent, protect fundamental freedoms as they deter signatory countries from penalising speech (used to incite hatred and violence) under criminal laws. National and Regional Human Rights Institutions such as those in Canada, Europe, Great Britain, and Australia further aid by their compliance

with and enforcement of the Paris Principles which ensure independent contribution to and oversight of legislation. Multi-stakeholder responses to addressing disinformation have further aided these jurisdictions in ensuring fundamental freedoms are protected. Take the European Union which, before adapting and creating new policies to address misinformation, called for input from its citizens and stated interest in forming an expert group to compile a report on misinformation (Funke, 2017). In these regions and countries, multi-party parliaments have managed to pass legislation which focuses on countering the spread and influence of disinformation while not violating fundamental principles such as freedom of expression.

International Conventions' Status



Country

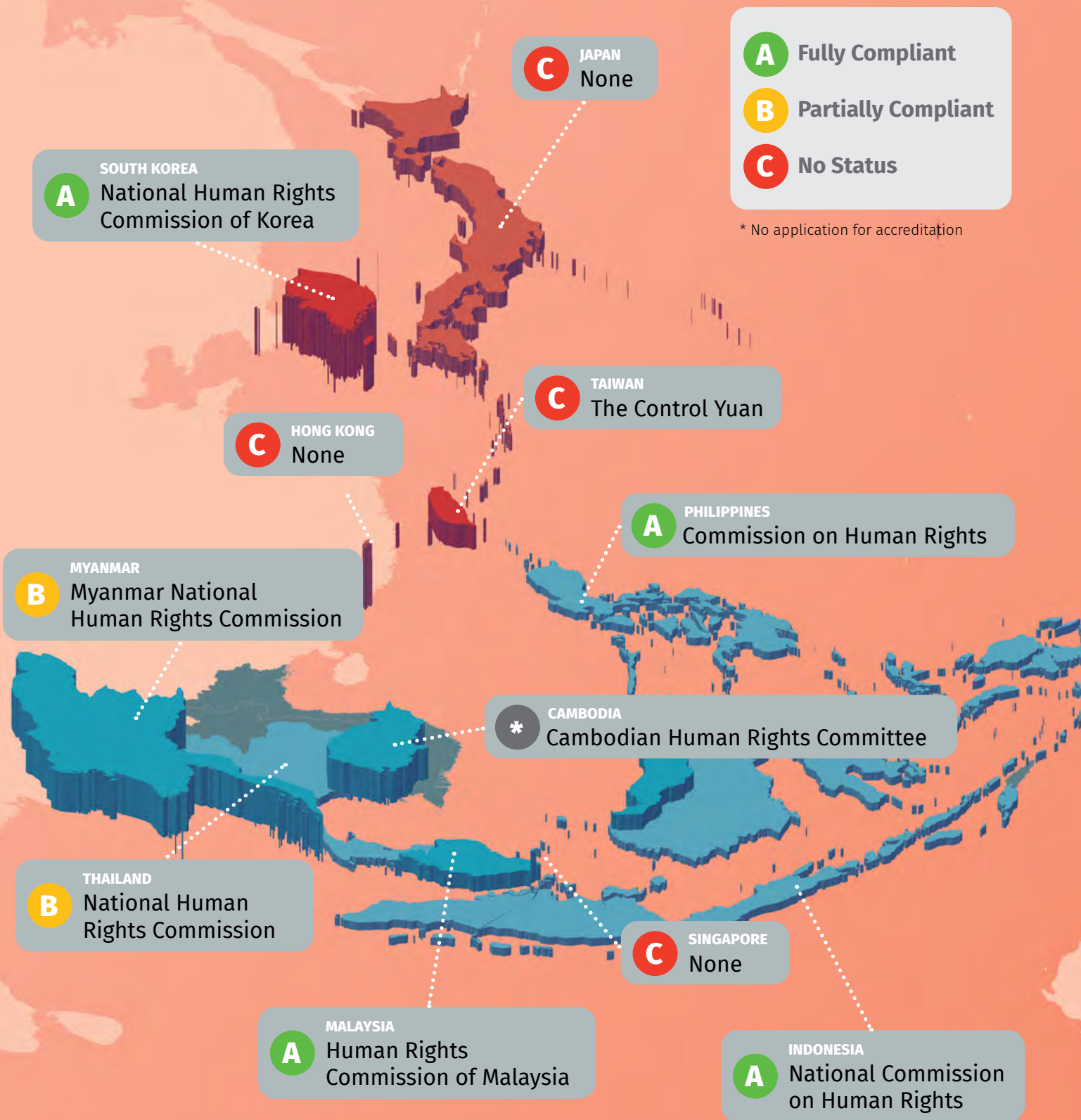
ICCPR

ICERD


● Signatory

○ Non-Signatory

* not ratified
** with reservations
*** void by China



National Human Rights Institutions' Status



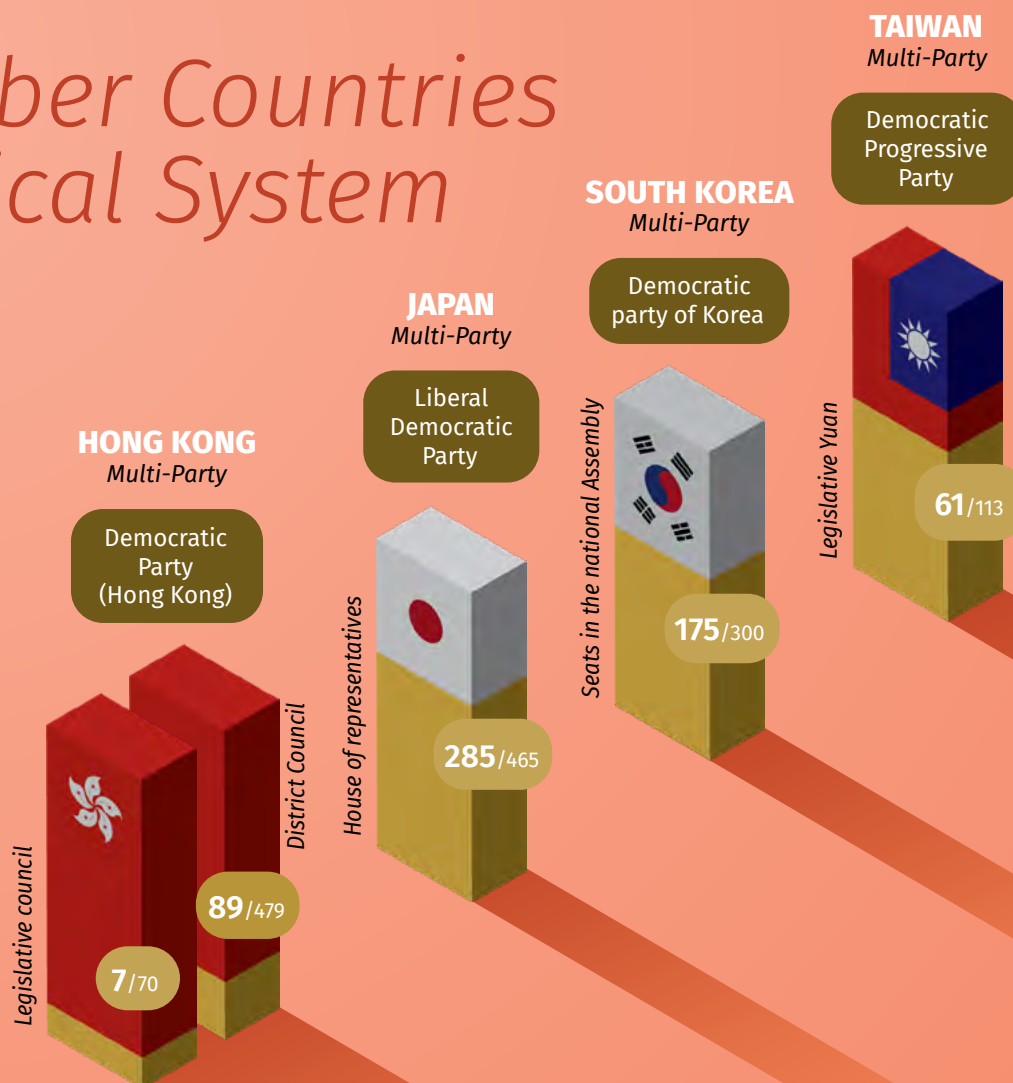
Most countries in East and Southeast Asia are parliamentary democracies in one form or another; some with one party-dominated states. Others are absolute monarchy, communist one party states or dominated by a military junta. Nevertheless, East Asian countries appear to have stronger, well-functioning political institutions and independent watchdog agencies that hold the government accountable; while Southeast Asia nations tend to suffer from an entrenched elite capture of independent institutions or a military dominance of public institutions compromising accountability and transparency.

In East Asia, there are a mixture of presidential (Taiwan), semi-presidential system (South Korea), parliamentary system (Japan) and Special Administrative Region (Hong Kong). Almost all are liberal democracies with strong judiciary, have experienced a change in government and a mixed legislature which ensures that checks and balances take place. National politics in East Asian countries is usually dominated by two major political parties. Hence when laws on disinformation are proposed, there is discussion to ensure that the law does not affect fundamental human rights and does not compromise the countries' commitments to the international treaties. There is robust participation by local civil society organizations. Independent institutions such as the national human rights institutions also provide additional oversight to hold governments accountable. Hong Kong, under China's 'one country two system,' has its own legislature and the Chief Executive as a head of government with a high degree of autonomy. However, in the past few years, China has increasingly exerted direct control over Hong Kong and the government is becoming more autocratic and experiencing democratic regression.

CALD

Member Countries

Political System



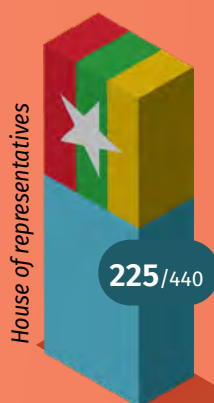
In Southeast Asia, parliamentary compositions are different. Apart from presidential system (Indonesia and Philippines), some are communist one-party states, an absolute monarchy, have significant institutionalised representation of the military in legislatures (Myanmar and Thailand) and others are one-party dominant states (Cambodia, Singapore and Malaysia), where political parties, apart from the ruling ones, are either not allowed to exist or exist under precarious situations often unable to compete freely and fairly before, during and after elections. It is for this reason that most Southeast Asian

countries have a dominant executive branch at the expense of the legislature and judiciary, resulting in weak checks and balances. Some states are not party to significant international treaties that guarantees and safeguards fundamental human rights such as the ICCPR and ICERD, while those that do focus more on reporting obligations rather than international commitments in the treaties. Independent institutions such as the national human rights institutions and election commissions are often politicized as leadership of these organizations are often appointed or pre-screened by the executive branch,

MYANMAR

Multi-Party

National League for Democracy



MALAYSIA

Multi-Party

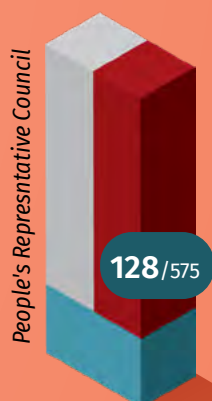
Malaysian United Indigenous party



INDONESIA

Multi-Party

Indonesian Democratic Party of Struggle



CAMBODIA

De Facto One-Party

Cambodian People's Party



THAILAND

Multi-Party

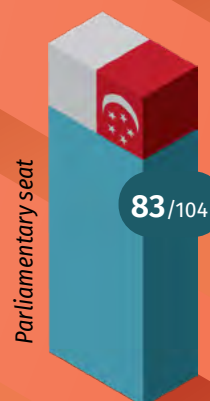
Palang pracharat



SINGAPORE

One-Party Dominant

People's Action Party



PHILIPPINES

Multi-Party

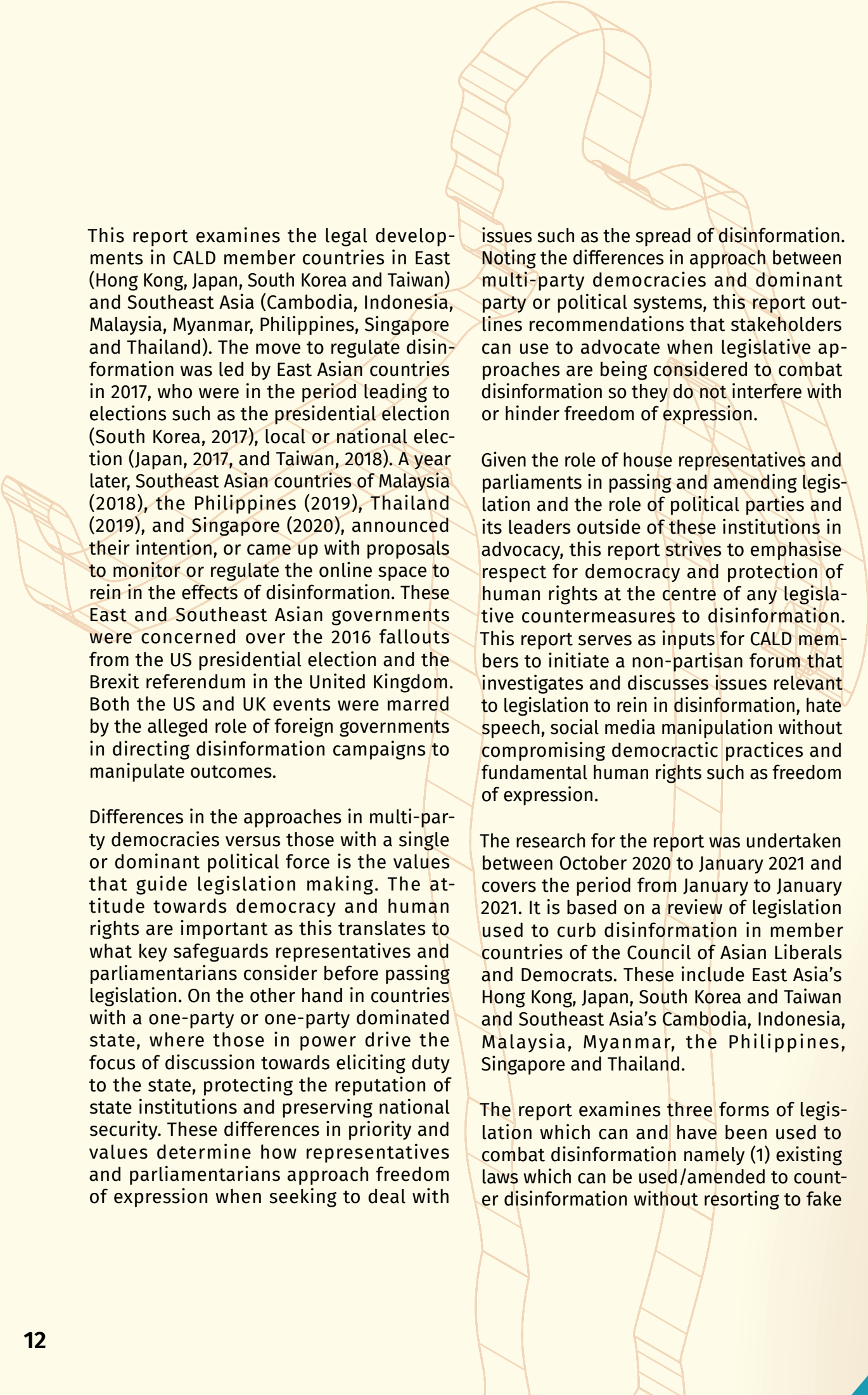
PDP-Laban



compromising the principles of autonomy and independence from the government in the Paris Principles. In some one-party states, independent institutions do not exist, or exist only in name without investigative power to hold the government accountable or to act independently or side with the government in persecuting government's political critics and rivals.

A key difference between houses of representatives and parliaments around the world is their composition. Countries with multiparty systems where there are no clear dominant parties and with

independent institutions, tend to have more oversight to ensure democracy and human rights are not violated in the process of establishing legislation than countries with one-party – and one-party-dominant systems and no independent institutions. Hence, political parties and their leaders when they are not in parliament as well as other stakeholders such as academia, civil society, the media and others, do have a role to play outside of parliament as they are nevertheless politically prominent and can advocate for legislation and policies are subjected to political influence. This is important when it comes to the issue of disinformation.



This report examines the legal developments in CALD member countries in East (Hong Kong, Japan, South Korea and Taiwan) and Southeast Asia (Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore and Thailand). The move to regulate disinformation was led by East Asian countries in 2017, who were in the period leading to elections such as the presidential election (South Korea, 2017), local or national election (Japan, 2017, and Taiwan, 2018). A year later, Southeast Asian countries of Malaysia (2018), the Philippines (2019), Thailand (2019), and Singapore (2020), announced their intention, or came up with proposals to monitor or regulate the online space to rein in the effects of disinformation. These East and Southeast Asian governments were concerned over the 2016 fallouts from the US presidential election and the Brexit referendum in the United Kingdom. Both the US and UK events were marred by the alleged role of foreign governments in directing disinformation campaigns to manipulate outcomes.

Differences in the approaches in multi-party democracies versus those with a single or dominant political force is the values that guide legislation making. The attitude towards democracy and human rights are important as this translates to what key safeguards representatives and parliamentarians consider before passing legislation. On the other hand in countries with a one-party or one-party dominated state, where those in power drive the focus of discussion towards eliciting duty to the state, protecting the reputation of state institutions and preserving national security. These differences in priority and values determine how representatives and parliamentarians approach freedom of expression when seeking to deal with

issues such as the spread of disinformation. Noting the differences in approach between multi-party democracies and dominant party or political systems, this report outlines recommendations that stakeholders can use to advocate when legislative approaches are being considered to combat disinformation so they do not interfere with or hinder freedom of expression.

Given the role of house representatives and parliaments in passing and amending legislation and the role of political parties and its leaders outside of these institutions in advocacy, this report strives to emphasise respect for democracy and protection of human rights at the centre of any legislative countermeasures to disinformation. This report serves as inputs for CALD members to initiate a non-partisan forum that investigates and discusses issues relevant to legislation to rein in disinformation, hate speech, social media manipulation without compromising democratic practices and fundamental human rights such as freedom of expression.

The research for the report was undertaken between October 2020 to January 2021 and covers the period from January to January 2021. It is based on a review of legislation used to curb disinformation in member countries of the Council of Asian Liberals and Democrats. These include East Asia's Hong Kong, Japan, South Korea and Taiwan and Southeast Asia's Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore and Thailand.

The report examines three forms of legislation which can and have been used to combat disinformation namely (1) existing laws which can be used/amended to counter disinformation without resorting to fake

news legislation (2) adopted and proposed fake news legislation (3) and emergency and temporary laws to manage the COVID-19 pandemic. The impact of these legislations on freedom of expression are noted and recommendations provided. The recommendations will serve as a knowledge kit for liberal legislators and CALD political party leaders to advocate for better laws and policies that ensure freedom of expression.



DISINFORMATION

According to UNESCO's handbook for journalism education and training, fake news or disinformation is a subset of information disorder (Positti. J, et al., 2018). The handbook outlines three types of information disorder: misinformation, disinformation and mal-information.



Misinformation is information that, by nature, is false, but the person who spread it is not aware of its falsehood.

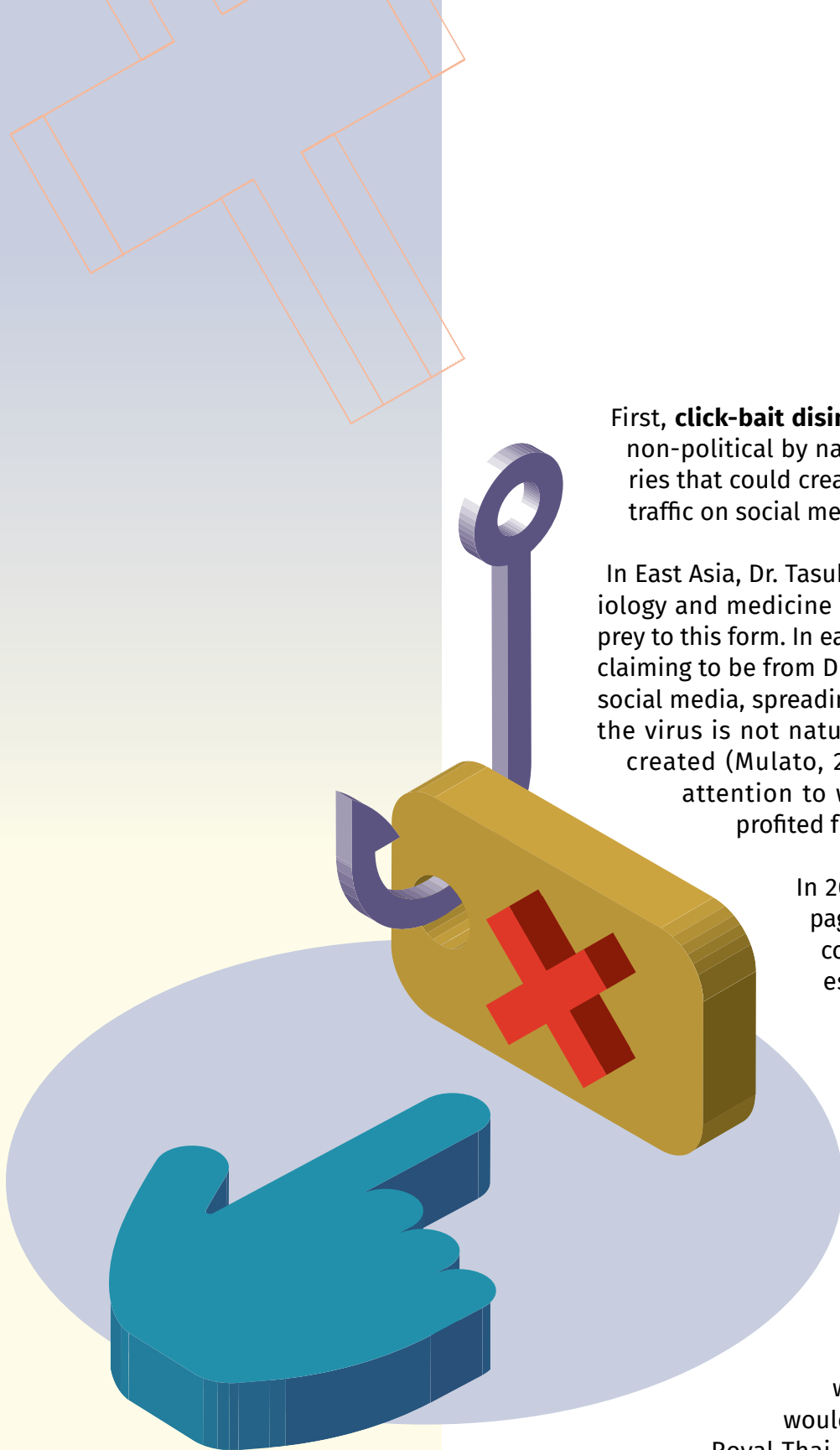


By contrast, disinformation is false information and the person who disseminates it knows that it is false, but has malicious intent to deceive. In other words, disinformation is a deliberate, intentional deception. In the Joint Declaration on 'Fake News', Disinformation and Propaganda, UN Special Rapporteur on Freedom of Expression David Kaye similarly defines disinformation as statements that the person who spread it know to be false, but interestingly juxtaposes this with propaganda, statements with an acute disregard for verifiable information (OHCHR, 2017).



Meanwhile, mal-information is information that is based on reality, but employed strategically to inflict reputational, physical or both, harm on an individual, group or an organisation.

Expanding on the definition of disinformation above, Asia Centre's research (The Irrawaddy, 2019), had identified at least *four types of disinformation*.



First, **click-bait misinformation** which is often non-political by nature; pivoted more on stories that could create sensationalism to drive traffic on social media platforms.

In East Asia, Dr. Tasuka Honju, a **Japanese** physiology and medicine Nobel laureate, has fallen prey to this form. In early 2020, fabricated quotes claiming to be from Dr. Honju circulated through social media, spreading his 'expert opinion' that the virus is not natural and rather artificially created (Mulato, 2020). Aside from driving attention to web articles, stores have profited from these articles as well.

In 2019, in Thailand, Facebook page of Wearing it, Joy Joy and commercial website xiwatch-es.com—selling investment solutions, used the profile and picture of Korn Chatikavanij, a former Thai finance minister (2008-2011) for advertising their investment scheme. This resulted in Korn posting on his Facebook account that the advertisement was fake and announced he would lodge a complaint to the

Royal Thai Police's Technology Crime Suppression Division and Minister of Digital Economy and Society currently the post that were found guilty are labeled as fake by the Thai Anti Fake News Centre. (Bangkok Biz News, 2019).

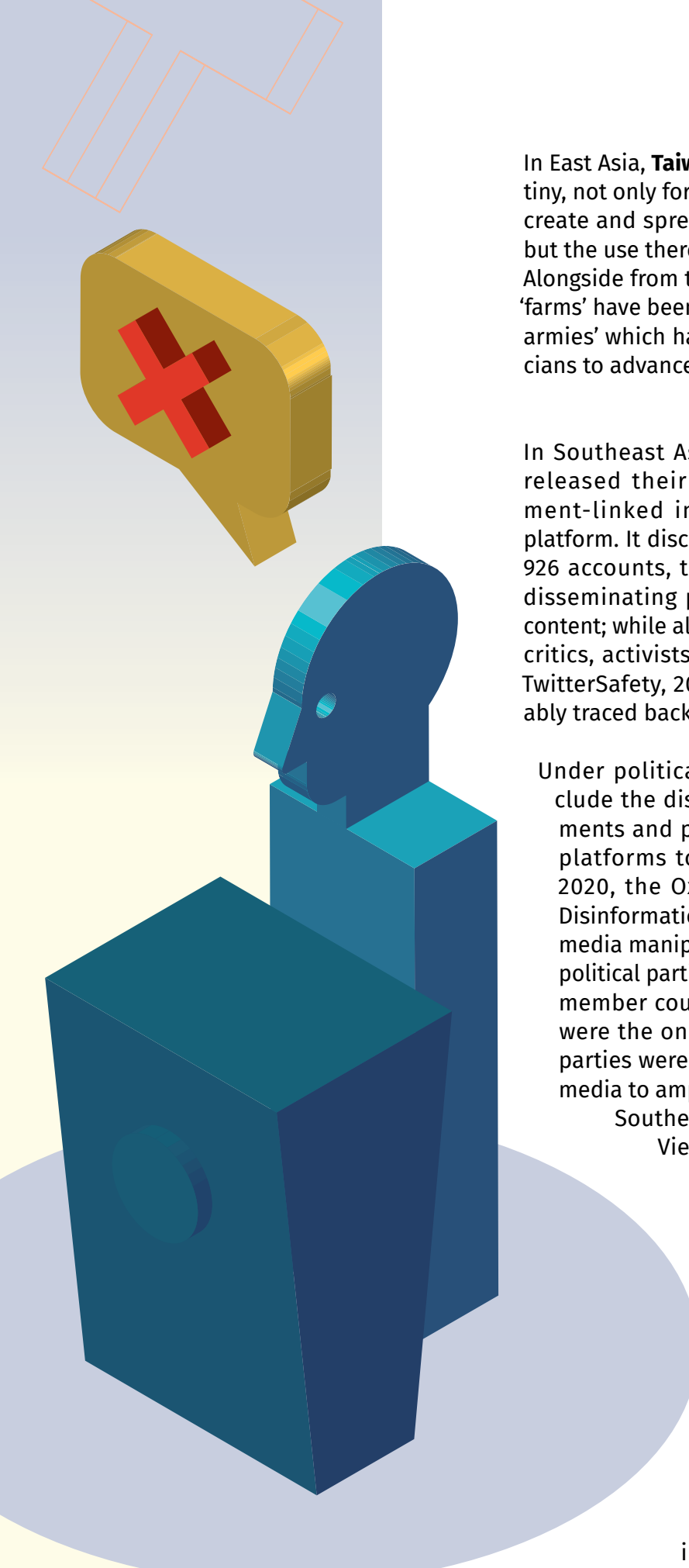
The second type is **hate speech disinformation**. This form often contains false and discriminatory contents related to ethnicity, gender, identity, race and religion, which is more noticeable in multi-ethnic, multi-religion countries. Here, foreign nationals, migrant workers, refugees, women and the LGBTI community often find themselves on the receiving ends of hate speech based on fake news (Asia Centre, 2020a).

In 2019, the case of Japan, the Kyoto district court fined a former senior member of an anti-Korean group Zaitokukai a sum of 500,000 Yen for defamation. As the convicted offender had been speaking to a loudspeaker by one of the Korean schools claiming that the former principal had abducted Japanese citizens and is wanted internationally (JIJI, 2019a).

In the case of Southeast Asia. In Singapore there has been a report of an audio clip being spread in chat messages of somebody supposedly working at the Sembawang shipyard telling the Malay Muslim community to stock up food and supply as the “Chinese” are going on buying frenzy. This false report to incite chaos and race hatred is a part of many false information that has been circulating on the internet according to the Singaporean Law and Home Affairs Minister (The Straits Times, 2020)

The third type is **political disinformation** used to attack, label and manipulate opinion among groups contending for domestic influence and power. The purpose of these kinds of fake news is to inflict reputational damage, gain influence and negate valid criticisms.

This usually applies to both individuals and political parties contending for power nationally, NGOs and INGOs, and the United Nations. In Asia, it is important to note that this type of fake news is the one that authoritarian governments often use to prosecute activists, critics and political rivals; clamping down on freedom of expression.



In East Asia, **Taiwan** has since 2015 been under scrutiny, not only for its ‘fake news content farms’ which create and spread false information (Hioe, 2020a) but the use thereof to manipulate domestic politics. Alongside from the rise in content created by these ‘farms’ have been their gradual transition into ‘cyber armies’ which have been rented and used by politicians to advance their narratives (Lin and Wu, 2019).

In Southeast Asia, in October 2020, Twitter has released their investigative report of government-linked information operations on their platform. It discovered that **Thailand** had operated 926 accounts, the highest among the other four, disseminating pro-government and pro-military content; while also targeting prominent government critics, activists and key opposition members (@TwitterSafety, 2020). These accounts could be reliably traced back to the Royal Thai Army.

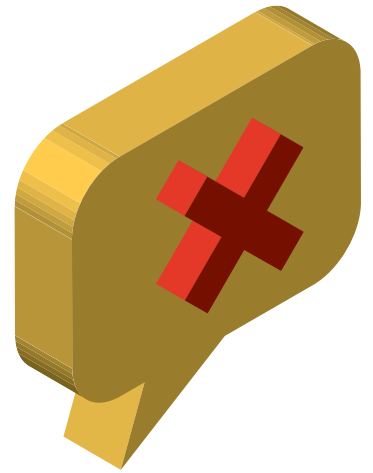
Under political disinformation we can also include the dissemination of content by governments and political parties over social media platforms to manipulate public opinion. In 2020, the Oxford University’s Industrialized Disinformation Order report revealed the social media manipulation tactics of governments and political parties in 70 countries. In East Asia, CALD member countries of South Korea and Taiwan were the ones where politicians and political parties were called out for manipulating social media to amplify their narratives or contents. In Southeast Asia, Cambodia, Thailand, and Vietnam were identified in the report as authoritarian regimes that have engaged in information operation in three distinct manners: (1) suppressing fundamental human rights; (2) wrong-footing political opponents and; (3) drowning out dissenting views (Bradshaw and Howard, 2019).

The concern over the spread of disinformation reaches its high in Southeast Asian countries especially during parliamentary elections (Kurlantzick, 2019).

A fourth and emerging type is **foreign government disinformation** which is generated with the aim of manipulating political outcomes by creating internal conflict between competing factions or inflicting reputation damage on other governments.

Japan's Ministry of Defence, in its annual defence review published in July 2020, expressed concerns over China's COVID-19 related disinformation campaign. The review, with key excerpts noted by then Prime Minister Shinzo Abe, highlights China's disinformation campaigns undermining Tokyo's governance in the Senkaku Islands during COVID-19 (Nakamura, 2020). It notes China's tactic of providing medical assistance to the Senkaku Islands, with the purpose of foreign influence. Taiwan and Hong Kong have also been on the receiving end of Chinese disinformation campaigns.

The International Republican Institute has published reports calling out China for interfering with **Taiwan's** Presidential Election (International Republican Institute, 2020) whilst Doublethink Lab has laid out at least three main narratives of COVID-19-related disinformation targeting Taiwan: 1) COVID-19 is nothing more than a seasonal flu, 2) the number of COVID-19 patients in Taiwan are underreported, 3) China is helping the world combatting the virus (Tsheng, Shen, 2020).



Non-Legal Measures

Hong Kong, on the other hand, has faced authoritarian disinformation to disrupt and sow confusion against the homegrown pro-democracy activists, protesters and government critics. Similar to Taiwan's domestic use of 'cyber armies', the Chinese Communist Party (CCP) has utilised its own 'troll armies' through Facebook, Twitter, WeChat and Weibo.

In Southeast Asia, in 2020, Facebook and Instagram removed a slew of social media pages connected to the CCP for spreading political disinformation in the **Philippines**, now titled 'Operation Naval Gazing', with the intent of securing maritime power (Nimmo, Eib, Ronzaud, 2020). This is connected to China's geopolitical ambition in the South China Sea that affected the Philippines and Indonesia.

Earlier, a 2019 report showcased how the CCP has similarly been attempting influence operations through cultural identity and propaganda, relying on Chinese nationalism and ethnic pride, to spread its influence in **Singapore** (Sim, 2019). Albeit

China's response to the influence operations allegations in Singapore was essentially framing it as 'fake news' (Channel News Asia, 2019a) five months prior to the release of the report, the Singaporean government noted its intention of "consider[ing] legislation in both of these areas"; both areas referring to spreading "online falsehoods" and "state-sponsored campaigns that threaten our national security" (Sim, 2019).



Apart from legislation, non-legal measures were also considered. In East Asia, where there is no regional intergovernmental grouping, countries in that region, apart from legislation, also promote the use of fact checking centres, media and digital literacy and communicate the need for technology companies to rectify the problem. In Southeast, apart from national legislation, ASEAN ministers during the 14th Conference of the ASEAN Ministers Responsible for Information (AMRI) also signed the Framework and Joint Declaration to Minimise the Harmful Effects of Fake News. The framework agreed to by signatories to combat 'fake news' also outlines education, community participation, detection of disinformation and response. However, in both regions, the legal approach is the dominant approach towards combating disinformation.

Fake News Criminals



The 2020 COVID-19 public health crisis extended the spotlight on the negative impact of disinformation and fake news. In East and Southeast Asian countries COVID-19 temporary laws were used by governments to expand their power during the pandemic. The often unchecked executive powers were broadened whilst existing vaguely-worded laws were expanded to prosecute the purveyors of fake news in the time of COVID-19 pandemic. It soon became clear that when these governments were subjected to criticism for their mismanagement of the pandemic, these very same laws were invoked to silence individual critics, civil society activists, opposition parties, students and other dissenting voices creating a chilling effect on freedom of expression. While East Asia does not have a regional grouping, on 25 August 2020, ASEAN Ministers Responsible for Information (AMRI) adopted the Joint Statement of the ASEAN Ministers Responsible for Information to Minimise the Negative Effects of Coronavirus Disease 2019 (COVID-19) to outline regional practices prioritising, among other things, information sharing between officials and promotion of accurate, 'authoritative' sources of information. Previously, similar recognition to the COVID-19 related misinformation was noted in the Declaration of the Special ASEAN Summit on Coronavirus Disease 2019 in April, and in the Joint Statement by The ASEAN Defence Ministers on Defense Cooperation Against Disease Outbreaks in February respectively.

The 2020 COVID-19 pandemic has afforded governments the ability to expand their reach through a variety of legislation. State of emergency decrees, public health emergency laws, and other related temporary laws have empowered the governments to handle the global public health crisis. Given their track record on human rights, transparency and other governance related issues, there have been genuine concerns that state officials are profiteering from the COVID-19 situation as the aforementioned laws have expanded the boundaries of the already problematic vaguely-worded anti-fake news legislation, risking violations of human rights.

The efforts by governments to combat “Fake News” have unfortunately also turned out to be the latest battle against freedom of expression in the region. While efforts to set up fact-check centres, initiate media literacy programmes and engage technology companies to do their part, these laws are still the main tool used by governments to silence dissenting voices. Hence, this joint project between Asia Centre and Council of Asian Liberal Democrats (CALD) seeks to examine the

range of existing laws, proposed legislation and COVID-19 temporary laws, employed by governments to combat disinformation, that primarily affect freedom of expression, in Southeast and East Asia. A review of the laws will allow the formulation of recommendations that can be used by legislators and other stakeholders to ensure that there are safeguards to protect democratic practices and fundamental human rights such as freedom of expression when formulating or revising laws to combat disinformation.





EXISTING LEGISLATION

Existing legislation refers to laws and legislation that have been utilised to combat disinformation and ‘fake news’. These include legislation which cover defamation, rumours, electronic and IT laws as well as offence ordinances, penal and criminal codes, election acts, broadcasting related legislation, public order acts, and the unlawful use of publications. As governments in the region began to introduce new and specific legislation to combat fake news in 2017, for the purposes of this report, existing legislation refers to that which was implemented prior to 2017. The legislation reviewed are those that have been used to prosecute and/or arrest individuals for spreading information—deemed as false and harmful to the public, and usually government reputation. Existing legislation includes that which has been revised after 2017, albeit it may include mentions of the spread of fake and/or false news.



East Asia

However rarely enacted and successful in penalising, East Asian governments have relied on a variety of Offence Ordinances, Penal and Criminal codes, Election Acts and Broadcasting related legislation to respond to disinformation.







COUNTRY

Regulation	Maximum Penalty	
		Fine (US\$)
		Jail or Detention



HONG KONG

Section 20 (a) and (b) of the Summary Offences Ordinance		\$1,000
		2 months




JAPAN

Article 230 of the Penal Code		\$4,700
		36 months
Article 233 of the Penal Code		\$4,700
		36 months
Article 235 of the Public Offices Election Act		\$9,500
		48 months

SOUTH KOREA

Article 307(2) of the Criminal Code		\$8,800
		60 months
Article 250 (1) of the Public Official Election Act		\$26,500
		60 months

TAIWAN

Article 313 of the Criminal Code		\$7,000
		30 months
27 of the Satellite Broadcasting Act		\$70,000

To discourage the spread of disinformation, authorities in **Hong Kong** have utilized section 20(a) and (b) of the Summary Offences Ordinance which notes a fine of up to US\$1,000 and two month imprisonment. These penalties fall on any person who “sends any message by telegraph, telephone, wireless telegraphy or wireless telephony which is grossly offensive or of an indecent, obscene or menacing character; or sends by any such means any message, which he knows to be false, for the purpose of causing annoyance, inconvenience or needless anxiety to any other person”.

In **Japan**, articles of the Penal Code have been used to prosecute the spread of false information. Both article 230 and 233 of the Penal Code note a fine of up to US\$4,700 or imprisonment of a maximum three years liable on a person who “defames another by alleging facts in public shall, regardless of whether such facts are true or false” (230) or “damages the credit or obstructs the business of another by spreading false rumors” (233). Japan has additional legislation in place to deter the spread of disinformation directed towards politicians. Article 235 of the Public Offices Election Act stipulates a fine of up to US\$9,500 or a prison term of up to four years for manipulating the outcome of a candidate’s electoral success.

South Korea, uniformly, has referred to Article 307(2) of the Criminal Code. This legislation imposes a fine of up to US\$8,800 or imprisonment of a maximum five year sentence on a person who “defames another by publicly alleging false facts”. Additionally, resulting from a political landscape riddled with political disinformation, under circumstances where the spread of misinformation may increase; the Criminal Code will subsidize and make way for the Public Official Election Act. Article 250 (1) of the Public Official Election Act dictates a fine of up to US\$26,500 or imprisonment of a maximum of five years for “any person who publishes or makes another person publish the false facts...on the birthplace, status, occupation, career, etc., property, personality, behavior of a candidate, his spouse, lineal ascendants or descendants, or siblings, or on organizations to which they belong by means of a speech, broadcast, newspaper, wire service, magazine, poster, propaganda document or others...with the intention of getting elected or getting another person elected, or persons who possess a propaganda document in which a false fact is entered with the intention of distributing it”.

Similarly, **Taiwan** has commonly penalised spreading false information under defamation and libel legislation. Article 313 of the Criminal Code outlines the circumstances under which spreading false information is a criminal offence. A fine of up to US\$7,000 or imprisonment of up to two years (up to 2.5 if spread through “radio, television, electronic communications, the Internet or other means of communication media”) for a person who “damages the credit of another by circulating rumors” is noted. Furthermore, article 27 of the Satellite Broadcasting Act stipulates a maximum fine of up to US\$70,000 subject to a “satellite broadcasting business, the branch office or agent of a foreign satellite broadcasting business, or other type channel and program supply business” in the event their “produced and broadcasted news and comments” do not “pay attention to fact verification and principles of fairness.”

Southeast Asia







Resorting to similar Penal Codes, Electronic Laws, and Public Order Acts; Southeast Asian governments, especially authoritarian in practice, have successfully decreased their framed view of disinformation. Often framing disinformation as defamation, the following laws are utilised.

Cambodia's Penal Code articles have often been relied upon to interrupt and halt the spread of disinformation. Violators of Article 425 of the Penal Code are subject to a maximum fine of US\$900 and imprisonment of up to two years for *"communicating or disclosing false information with intention to create an impression that destruction, deterioration or damage to persons"*. Moreover article 453 of the Penal Code notes imprisonment of up to twenty years for *"any scheme" to "commit a criminal attempt"*. Further, articles 494 and 495 of the Penal Code note a fine of up to US\$1,000 and imprisonment to the extent of two years. This is enforceable when provocation is committed by *"speeches....or writing...by any means of audio-visual communications for the public"*.



Under **Indonesian** controversial Electronic Information and Transactions Law (ITE) of 2008, those violating article 27 of the 2008 Electronic Information and Transactions Law can be subject to a maximum fine of US\$52,000 and/or imprisonment of a maximum four years. These fall on any person who *"knowingly...distributes...transmits and/or causes to be accessible Electronic Information and/or... Documents with contents of affronts and/or defamation"*.

Malaysia has routinely resorted to punishing the spread of false information by relying on its, equally controversial, Communication and Multimedia Act (CMA). Section 233 of the Communication and Multimedia Act notes a fine of up to US\$12,000 and/or imprisonment of up to one year for a person who *"by means of any network facilities or network service or applications service knowingly...makes, creates or solicits...any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive...with intent to annoy, abuse, threaten or harass another person"*. Furthermore, violation of Article 505 of the Penal Code results in an unspecified fine amount and/or imprisonment of up to two years. To be framed as a violation of such, an individual who *"makes, publishes or circulates any statement, rumour or report... with intent...or which is likely to cause, any officer, soldier, sailor or airman in the Malaysian Armed Forces or any person to whom section 140B refers, to mutiny or otherwise disregard or fail in his duty as such" or "cause, fear or alarm to the public"* will be held liable.





CAMBODIA

Article 425 of the Penal Code	 \$900
	 24 months
Article 453 of the Penal Code	 Unspecified
	 40 months
Article 494 and 495 of the Penal Code	 \$1,000
	 24 months

INDONESIA

Article 27 of 2008 Electronic Information and Transactions Law	 \$52,000
	 48 months

MALAYSIA

Communication and Multimedia Act – Section 233	 \$12,000
	 12 months
Article 453 of the Penal Code	 Unspecified
	 24 months

MYANMAR

Article 505(b) of the Penal Code

\$ \$12,000

24 months

Section 66(d) of The Telecommunications Law

Unspecified

35 months

PHILIPPINES

Article 154 of the Revised Penal Code

\$ \$20

6 months

Republic Act (RA) 10951

\$ \$3,900

6 months

SINGAPORE

Section 14.D of the Miscellaneous Offences (Public Order and Nuisance) Act

\$ \$7,300

36 months

THAILAND

Section 14(1) of the Computer Crime Act 2007

\$ \$3,100

60 months

Perpetrators in **Myanmar**, have been persecuted under its Penal Code and Telecommunications Law. Article 505(b) of the Penal Code; nearly identical to Malaysia, notes an unspecified fine amount and/or maximum imprisonment of two years for “*whoever makes, publishes or circulates any statement, rumour or report...with intent to...cause, or which is likely to cause, any officer, soldier, sailor or airman, in the Army, Navy or Air Force...to mutiny or otherwise disregard or fail in his duty as such...or...with intent to cause, or which is likely to cause, fear or alarm to the public*”. Additionally, violating Section 66(d) of The Telecommunications Law imposed an unspecified fine amount and/or imprisonment of up to three years, for whoever is guilty of “*Extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network*”.

The **Philippines** has previously used its Revised Penal Code to punish the spreading of false information. Article 154 of the Revised Penal Code stipulates a fine of up to US\$20 and imprisonment of up to six months. In 2017, the Republic Act (RA) 10951 was passed thereby expanding the maximum fine to US\$3,900 and/or imprisonment of up to six months. This article places penalties on those who “*by means of printing, lithography, or any other means of publication shall publish...any false news which may endanger the public order, or cause damage to the interest or credit of the State*”.

Singapore has also relied on its Miscellaneous Offences (Public Order and Nuisance) Act. Section 14.D of the Miscellaneous Offences (Public Order and Nuisance) Act addresses a maximum fine of US\$7,300 and/or imprisonment of a maximum three year term. These fall on any person who “*transmitted a message which he knows to be false or fabricated*”.

Perpetrators of spreading false information have been penalised under **Thailand**'s Computer Crime Act. The Computer Crime Act 2007 notes a fine up to US\$3,200 and/or imprisonment of up to five years for a person who “*import[s] to a computer system...false computer data in a manner that is likely to damage the country's security or cause a public panic*”.

Existing legislation, drafted or updated in the late 1990s or early 2000s, sought to update their statutes to go past the coverage of traditional media and to include developments in mobile phone, computer and the internet technology. Hence, it is not surprising that these laws have been used to prosecute disinformation or fake news over social media. However, these laws tend to be vaguely-worded and open avenues for abuses or overcriminalization. Coupled with the absence of strong democratic, independent institutions and

lack of oversight, these laws, originally intended to regulate malicious information, the telecommunication sector and online fraud, are instead used to shield public institutions or figures from legitimate criticisms and silence political opponents, dissidents, or sometimes members of the press and general critics. We will see in the next section, when new fake laws are introduced to police content over social media and hold technology companies accountable, similarly problems in law and implementation occur.



FAKE NEWS LEGISLATION

Fake news laws refer to laws and legislation that have been created with the sole purpose of combating disinformation and the viralization of ‘fake news’ over mobile smartphones. These often characterise the action of spreading knowingly false information, often through social media, as a punishable act. In some instances, the perpetrator (individuals, businesses and technology companies especially) may be punished for spreading information they did not know was false as well. These ‘fake news’ dedicated laws further place legal obligations on technology companies for failure to comply with the government’s request to remove and/or flag ‘fake’ or ‘false’ data, which are often in the form of small fortunes in fines. For the purpose of this report, fake news legislation covers that which have been enacted post-2017 and/or proposed by governments in the region.

East Asia

East Asian governments, aside from Taiwan, rarely have legislation in place which specifically addresses penalties for disseminating fake news. The Hong Kong government for example has the ability to punish the spread of fake news, only under emergency situations. Under the Emergency Regulation Ordinance, the Chief Executive in Council may “make any regulations whatsoever which he [Chief Executive in Council] may consider desirable in the public interest”. Japan, rather, has attempted to rectify the spread of fake news by collaborating with technology companies and establishing voluntary task forces/ committees/ teams solely responsible for combating fake news and overseeing the standards of technology companies (IJI, 2019b). Whilst South Korea, on the other hand, has pointed towards potentially punishing technology companies such as YouTube (fine up to 10% of their revenue) who fail to remove false information from their platforms (Yeo, 2020).

COUNTRY

Regulation	Maximum Penalty	
	\$	Fine (US\$)
	⛔	Jail or Detention

Taiwan, the only one of those examined in East Asia, has an arsenal of legislation which directly addresses ‘fake news’. These include the Social Order Maintenance Act, Disaster Prevention and Protection Act, Communicable Disease Control Act, Act Governing Food Safety and Sanitation, Civil Servants Election And Recall Act, and Presidential and Vice Presidential Election and Recall Act. Article 41 of the Disaster Prevention and Protection Act and Article 46-1 of the Act Governing Food Safety and Sanitation note a fine of up to US\$35,000 or a maximum imprisonment of three years for anyone or person who “spreads rumors or untrue information about disasters and thus causes damage to the public or other people” or who “disseminates a rumor or incorrect information concerning food safety and thus causes damage to the public or others”.

Furthermore, Article 63 of the Social Order Maintenance Act notes a maximum fine of US\$1,000 or detention up to three days for those individuals found guilty of “spreading rumors in a way that is sufficient to undermine public order and peace.” Whereas Article 63 of the Communicable Disease Control Act notes a maximum fine of US\$105,000 for those who “disseminate rumors or incorrect information concerning epidemic conditions of communicable diseases, resulting in damages to the public or others”.

Finally, Article 104 of the Civil Servants Election And Recall Act and Article 90 of the Presidential and Vice Presidential Election and Recall Act note a maximum imprisonment of five years for any one who “disseminates rumors or spreads false sayings by text, picture, audio tape, video tape, speech or any other method for the purpose of making a candidate elected or not elected or making the proposal of recall adopted or vetoed and thus causing damages to the public or others” or “diffuses rumor or spread[s] false saying by text, picture, audio tape, video tape, speech or other method for the purpose of making a candidate elected or not elected and thus causing damages to the public or others”.

TAIWAN

Article 41 of the Disaster Prevention and Protection Act	\$ \$35,000
	⛔ 6 months
Article 46-1 of the Act Governing Food Safety and Sanitation	\$ \$35,000
	⛔ 36 months
Article 63 of the Social Order Maintenance Act	\$ \$1,000
	⛔ 3 days
Article 63 of the Communicable Disease Control Act	\$ \$105,000
Article 104 of the Civil Servants Election And Recall Act	⛔ 60 months
Article 90 of the Presidential and Vice Presidential Election and Recall Act	⛔ 60 months

Southeast Asia

The majority of Southeast Asian governments have proposed and/or implemented legislation which cover 'fake news' in their respective jurisdictions. Cambodia, Malaysia, the Philippines and Singapore. Indonesia, Myanmar and Thailand have relied on existing legislation and more prominently on legislation and authority covered in section 5. COVID-19 Laws.

CAMBODIA

Article 28.4 of the Draft Cyber Crime Law	\$ \$1,400
	36 months
Inter-ministerial Regulation	\$ \$1,000
	24 months

In **Cambodia**, a combination of proposed legislation and an Inter-ministerial Regulation concern placing penalties on spreading 'fake news'. Proposed amendments, from 2020, to Article 28.4 of the Cyber Crime Law note a fine of up to US\$1,400 and imprisonment of up to three years for "Publications or continuation of publication that deemed to be non-factual which slanders or undermined the integrity of any governmental agencies, ministries, not limited to departments, federal or local levels". The Inter-ministerial Regulation furthermore notes a fine of up to US\$1,000 and imprisonment of up to two years for the "dissemination of fake news online and through publications".

MALAYSIA

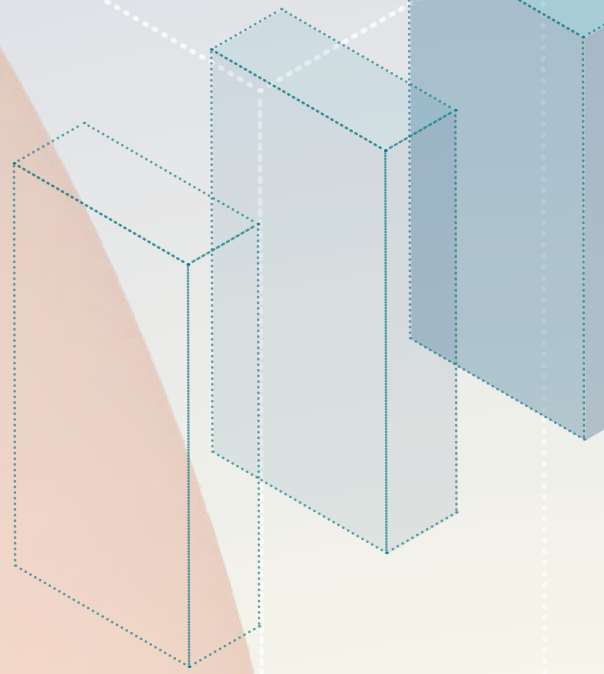
Anti-Fake News Act	\$ \$121,000
	120 months

Malaysia in 2018 passed, relied on and then in 2019 repealed, the Anti-Fake News Act. During its use, the Anti-Fake News Act subjected up to US\$121,000 in fines and imprisonment of up to ten years to those found guilty of "creating, offering, publishing...fake news or publications containing fake news" and "failing to carry out duty to remove publication containing fake news". However, in November 2020, after a change of government in March, UMNO representative Shahidan Kassim presented and discussed a proposal for a revival of the Anti-Fake News Act during a parliamentary session.

PHILIPPINES

Section 4 of the Anti-False Content Act	\$ \$6,200
	144 months

The **Philippines**, in 2019, introduced the Anti-False Content Act to the Senate of the Philippines. Section 4 of the Anti-False Content Act notes a fine of up to US\$6,200 and/or a maximum prison term of twelve years. This is liable to any person found guilty of "creating and/or publishing...content knowing or having a reasonable belief that it contains information that is false or that would tend to mislead the public".



SINGAPORE

Protection from Online Falsehoods & Manipulation Act	Individual	\$ \$37,000
		60 months
	Bot User	\$ \$73,000
		120 months
	Non-Individual	\$ \$540,000

Finally, in **Singapore**, the Protection from Online Falsehoods and Manipulation Act (POFMA) has been relied on to deter and vilify spreading false information. The Protection from Online Falsehoods and Manipulation Act notes a maximum fine of US\$37,000 and/or five years imprisonment. This falls on a person who “*communicate[s] a false statement of fact*”. In the event that the perpetrator used a “*bot*” to spread false statements, a maximum fine and imprisonment increase to US\$73,000 and ten years respectively. “*Non-individuals*”, found guilty of spreading false statements, are subject to a maximum fine of US\$540,000.

In the review of existing laws which limit and punish the spread of truly false information, similarly problems of vaguely-worded laws, impunity to government officials and its use against political opponents and critics remain. In particular, these fake news laws push the debate further on what exactly is and is not ‘false’ and more importantly – who makes the ultimate decision. Furthermore, when one examines the routine in which these laws are utilised it becomes apparent that these vague stipulations create a vacuum for authoritarian governments to interpret against their critics and holding technology companies to financial ransom for failing to abide by their requests. In correlation with the existing legislation that has been used to prosecute ‘fake news’; the dedicated ‘fake news’ legislation have no safeguards in place which protect human rights (freedom of speech) or democratic values (freedom of information and expression). In the next section we will see, the additional powers granted to governments under COVID-19 and their use to manage and throttle the spread of ‘fake news’ are in line with the consensus that they are equally as superfluous as the ‘fake news’ dedicated laws.





COVID-19 TEMPORARY LEGISLATION

In 2020, a number of governments have introduced laws and procedures designed to control and mitigate the spread of not only COVID-19 infections, but by-products of the virus such as disinformation. COVID-19 Laws refer to laws and legislation, *temporary* in duration, passed specifically in the year 2020 as a reaction to the COVID-19 pandemic. Most of these laws and procedures, despite being public health control oriented with their emphasis on travel and health advisories, contain minor clauses which have been used to expand the executive power of the state in their efforts to fight disinformation and fake news during the COVID-19 crisis. These include provisions and protocols within State of Emergency decrees, task forces and committees, and regulations announced from governments which act as temporary safeguards for the public from disinformation.

East Asia

Increased authority granted to governments during the COVID-19 pandemic have been, or have the potential to be, used to create legislation, task forces and committees, and limit the spread of information (regardless of its factfulness). Neither **Japan** nor **South Korea** have taken any legislative responses, nor signalled their intent to introduce laws or policies which cover COVID-19 disinformation. It should be noted however that Hong Kong and Japan, whilst considering their responses below, have not encroached on the rights of their citizens and have seldom resorted to legislation.



COUNTRY

Regulation	Maximum Penalty	
	 Fine (US\$)	
	 Jail or Detention	

HONG KONG

Emergency Regulations Ordinance	Hong Kong National Security Law	 \$5,000
		 24 months

TAIWAN

Article 14 of the Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens		 \$105,000
		 36 months

Hong Kong by declaring a State of Emergency granted Carrie Lam, the Chief Executive in Council, additional powers to “*make any regulations whatsoever which [s]he may consider desirable in the public interest*” as noted by the Emergency Regulations Ordinance. The authority to create regulations include those related to “*censorship, and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication*”. Unless otherwise stated, “*any person who contravenes any regulation made under this Ordinance*” will be held liable for a maximum fine of US\$5,000 and imprisonment of up to two years. The recently imposed Hong Kong National Security Law which was passed on 30 June 2020 written by the Beijing government has article 44 on “*handling cases concerning offence endangering national security*” While not explicitly stating fake news, the laws allow for a Beijing appointed task force to (4) “*requiring a person who published information or the relevant service provider to delete the information or provide assistance*”.

Taiwan, similarly, enacted new legislation temporary in duration, yet may be “*extended with the approval of the Legislative Yuan upon expiry*” which aims to provide economic subsidies to frontline public health officials fighting the pandemic and economic reliefs to vulnerable individuals, outlaws and assigns penalties for, among other things, price gouging, spreading misinformation, and violation of isolation or quarantine orders. Article 14 of the Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens notes a maximum fine of US\$105,000 or imprisonment of up to three years for “*disseminat[ing] rumors or false information regarding the epidemic conditions of severe pneumonia with novel pathogens, causing damage to the public or others*”.

Southeast Asia

The majority of governments in Southeast Asia, including Cambodia, Indonesia, Myanmar, the Philippines, Singapore and Thailand have created, discussed and/or implemented a state of emergency or COVID-19 temporary legislation that includes provisions to manage the spread of disinformation during the pandemic. Despite the already restrictive existing legislation and 'fake news' dedicated legislation in place; the following countermeasures grant unbalanced and unchecked authority for the governments and their agencies to mitigate the spread of not only disinformation, but information in general.

Albeit not enacted, the **Cambodian** government promptly took measures to expand the reach of its State of Emergency decree. The revised articles 7-9 of the law about Nation Management in the State of Emergency note a maximum fine of US\$244,000 and imprisonment of up to ten years for *"disobeying the measures set out by the government under the provisions of Article 5"*. Article 5 of the law about Nation Management in the State of Emergency notes that under the State of Emergency (which may be for an *"unlimited time"*) the government may *"watch and observe...all telecommunication systems"*, *"ban or restrict news sharing or media which...[can] make confusion about the situation of the state of emergency"* whilst *"the government has the rights to...[implement] other measures that are suitable and necessary to respond to the emergency"*. Essentially, the movement of all information may be blocked, for an unlimited period, whilst the government may introduce new legislation to set these measures in stone.

Indonesia's National Police Headquarter announced provisions for authorities which have been used to combat disinformation. Telegram Letter ST/1100/IV/HUK.7.1/2020 places authority on the national police to cyber patrol media spaces and penalise *"hoax spreaders"* under Articles 14 and 15 of the Criminal Code there is provision for a maximum prison sentence of three years for *"misdemeanors"*.

Myanmar's Telecommunication Law outlines similar provisions of power for the Ministry of Transport and Communications during crises situations. Section 77 of the Telecommunications Law notes that during an emergency, the ministry may direct a service provider to *"suspend a Telecommunications Service [and] intercept not to operate any specific form of communication...and to temporarily control the Telecommunications Service and Telecommunications Equipments"*. It further gives the ministry the authority to *"obtain necessary information and communications"*. Anyone who *"contravenes"* this law faces imprisonment of up to one year. Additionally, the Coronavirus Disease 2019 (COVID-19) Control and Emergency Response Committee regulations grant the committee the authority to *"take action in accordance with the existing law to...people who spread misinformation on social media and elsewhere...immediately"*. Therefore, penalties relate closely to those outlined in the existing legislation¹.

¹ Refer to Section 3: Existing Legislation

CAMBODIA

Article 5 of the law about Nation Management in the State of Emergency

\$ \$244,000
120 months

INDONESIA

Telegram Letter ST/1100/IV/HUK.7.1/2020

36 months

MYANMAR

Section 77 of the Telecommunications Law

12 months

The government of the **Philippines** in 2020 implemented legislation under the announcement of a State of Calamity, which has been extended until September 2021. The Bayanihan To Heal As One Act notes a maximum fine of US\$20,000 and/or imprisonment of up to two months for “individuals and groups creating, perpetrating, or spreading false information regarding the COVID-19 crisis on social media and other platforms”. Furthermore, the act grants the president near absolute unchecked power and authority to manage the crisis ranging from finances to security.

PHILIPPINES

Bayanihan to Heal as One Act	\$ \$2,000
	6 months

SINGAPORE

COVID-19 (Temporary Measures) Act 2020	\$ \$20,000
	6 months

THAILAND

Section 9 of The Emergency Decree on Public Administration in Emergency Situations	\$ \$3,100
	60 months

Singapore has also passed COVID-19 specific temporary measures. The COVID-19 (TEMPORARY MEASURES) Act 2020 grants the Minister the authority to “make regulations...for the purpose of preventing, protecting against, delaying or otherwise controlling the incidence or transmission of COVID-19 in Singapore”. These regulations do not necessarily have to apply to only COVID-19, but may be used to supplement other laws, such as POFMA². Those found guilty of contravening the control order, or the regulations made by the minister, are liable for a fine of up to US\$7,400 and/or imprisonment of up to six months (doubled for a repeat offence).

Whereas **Thailand**’s government has, announced and on several occasions extended, a State of Emergency. Section 9 of The Emergency Decree on Public Administration in Emergency Situations grants the Prime Minister the authority to create regulations which may “prohibit the press release, distribution or dissemination of letters, publications or any means of communication containing texts which may...distort information which misleads understanding of the emergency”. Those found to violate any regulation under this section, and others are subject to a maximum fine of US\$1,300 and/or imprisonment up to two years. The State of Emergency Decree of 26 March further guides authorities to prosecute the spread of false information under the Computer Crime Act of 2007³ as it is “prohibited to present or disseminate news, through any media channel, containing content or information of the situation of Coronavirus (COVID-19) which is false or may instigate public fear” (TAT Newsroom , 2020). On 15 October 2020 during the height of the student protests the Thai government declared a “Serious Emergency Situation” in Bangkok. This would allow the policing authorities to “search letters, books, publication, telegram, telephone and other means of communication” and “to shut down all forms of communication” (Prachachat, 2020). However, on 22 October 2020, due to public pressure the Serious Emergency Decree was retracted.

² Refer to Section 3: Existing Legislation

³ Refer to Section 3: Existing Legislation

The COVID-19 emergency decrees and temporary laws allow governments to expand their authority and enjoy reduced oversight. Throughout 2020, governments have routinely extended the decrees and expanded on their temporary legislation. When we compare the approaches from East and Southeast Asia, it is clear that in East Asia, governments use the emergency decrees sparingly, whilst in Southeast Asia, governments have become accustomed to the additional powers they are granted. However as far as disinformation is concerned, governments and ruling parties in

the region are profiteering from the COVID-19 public health crisis as they continue to use vaguely-word provision about what is fake news and use it against their political opponents and critics. Additionally, given that the check-and-balance system is being sidelined during the pandemic for the executive branch in some countries, use these newly acquired authority to pass controversial laws or take action on what would normally trigger public resistance or international condemnation. Hence, an oversight of governments and protection of freedom of expression is needed.

6

IMPACT ON FREEDOM OF EXPRESSION

Governments in East and Southeast Asia have been resorting to a suite of existing, 'dedicated fake news' and temporary legislation to curb disinformation.



Self Censorship



Shrinking Civic Space



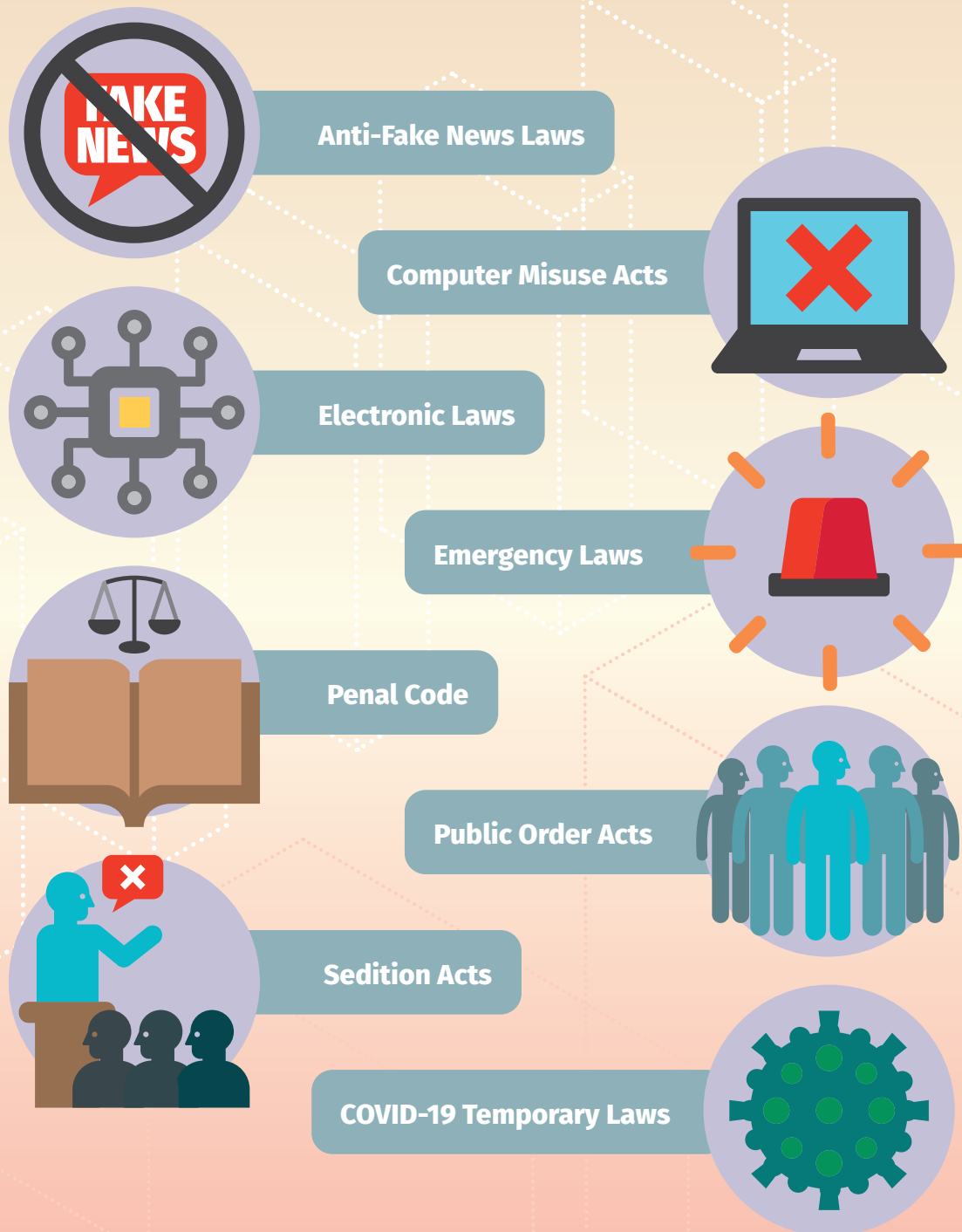
Chilling Effect



Overcriminalization

Although disinformation, particularly during a period of public health crisis is potentially dangerous and needs to be addressed, there has been growing concern that some governments in the region are taking political advantage of the "fake news" clauses in legislation and during the COVID-19 pandemic to censor their dissidents. As social gatherings and political assemblies cannot be mobilized due to travel and health advisories, and the judiciary and the legislature are sidelined by the executive branch which rules by State of Emergency decrees and/or COVID-19 Temporary Laws, some governments have taken the opportunity to introduce controversial laws. For example, in Indonesia the government passed the Omnibus Law on Job Creation which allows for a reduction of business and labour regulatory requirements. In the Philippines where President Duterte passed the Anti-Terrorism Act, that allows for a 42 days detention of suspects. Such laws would normally trigger public resistance but were muted or short-lived during the pandemic. Meanwhile, criticisms directed at governments' mismanagement of the COVID-19 pandemic or the questioning of their policies and directives are often treated as 'disinformation' and are dealt with through criminalization. This has resulted in increasing trends of self-censorship by citizens, residents and businesses alike, and created a chilling effect on freedom of expression in the region.

Legal Measures



As will be noted in this section, East Asian governments more often rely on non-legal measures to deter the spread of disinformation. These include promoting fact checking initiatives, facilitating and encouraging media literacy campaigns, collaborating with social media companies and relying on their citizens' shared socio-cultural values (especially prominent in Japan and South

Korea). Southeast Asia governments, however, rely primarily on criminalization through legal measures to combat disinformation. While policies and practices such as fact-checking initiatives and media literacy campaigns do exist, they tend to be placed under government agencies or funded by them, raising the question of impartiality or independence.

EXISTING LEGISLATION

In both subregions governments have, to their own disadvantage, clearly exemplified the ability of existing legislation to combat disinformation. Representatives and parliamentarians must take note of the following outcomes for they establish the basis of the report – which aims to provide evidence of the unjustifiable, additional legislation in the form of ‘fake news’ dedicated laws.

East Asia

However rarely relied on, governments in East Asia have nonetheless been found to utilise existing legislation to penalise the spread of false information in the following instances.



Hong Kong: In February 2020, a West Kowloon based security guard was the first person to be arrested under Section 20(a) and (b) of the Summary Offences Ordinance of the Summary Offences Ordinance (South China Morning Post, 2020). Concerned with the spread of COVID-19, the security guard in question was arrested for sharing an audio clip online which raised concern of co-workers on sick leave – and asking the public to avoid the area. A second incident arose in July 2020 when a 39 year old man was arrested by the Hong Kong Police for sharing speculations about the government’s cash payout and policies (Hong Kong News, 2020). Due to the case being under current investigation, the exact content has not been released to the public. The man is also charged for allegedly posting a parody of the pro Beijing Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) party featuring some of its members (HongKong FP, 2020).



Japan: In 2019, journalist, Yasumi Iwakami, was ordered to pay around US\$3,000 in damages to a former Osaka governor, Toru Hashimoto, for defamation via a retweet claiming that one of Osaka’s City worker was driven to suicide under the office of the former Osaka’s governor (The Straits Time, 2019). Despite the judge ruling that there is not enough evidence to charge Yasumi, the ruling added that (in Japan) it is fair to interpret a retweet as endorsement of the original’s post content except when there is further context on why the post was retweeted; making the interpretation of the law very subjective and open to the future reference for prosecution. More relevant to the matter of this report, however, is the freedom of expression and opinion exercised by the reporter has been subjected to prosecution.

South Korea: In 2014, during the Sewol Ferry disaster which resulted in more than 300 casualties, a Japanese news reporter suggested that the president of South Korea, who was absent for 7 hours during the disaster, was engaging in a romantic act with his married colleague. The Japanese journalist was indicted under Article 307(2) of the Criminal Code, with defamation charges, although in 2015 he was found not guilty (Voice Of America, 2015). Similarly, in November 2017, the Cheongju District Court ruled that a defendant has violated the Public Official Election Act by posting false and defamatory statements to badmouth the presidential candidate Moon Jae-in. The person was later found guilty for posting false information on Facebook and other online platforms (Park and Youm, 2018).



Taiwan: In 2019, a Taiwanese news Channel CTi was fined US\$35,050 for violating Article 27 of the Satellite Broadcasting Act by spreading false information on the case of farmers dumping tons of pomelo into a reservoir (Everington, 2019). Furthermore, the National Communications Commission (NCC) data has shown that in 2019 alone the channel has accumulated a total of US\$193,000 in fines for violating the broadcasting act (Taipei Times, 2020).

To reiterate, albeit these are not often resorted to, legislation to deter and prosecute the spread of disinformation is in place and has been used or already expanded to determine the outcomes of the spread of false information through digital media sources. These laws, as seen, are often used in the political context under the pretense of protecting national security and peace, and penalising defamation.

Southeast Asia

The prevalent use of disinformation laws against individuals, especially under the provision of causing public unrest, have been implemented in various countries in Southeast Asia. Similar to East Asia, the majority of comments (categorized as “false information”) were spread through digital media. The use of existing defamation laws to silence critics of the government or penalize those who cause public unrest are more prevalent in Southeast Asia compared to East Asia.



Cambodia: In March 2020, Cambodian Prime Minister Hun Sen, branded those who spread disinformation related to the COVID-19 as ‘terrorists’ and threatened to arrest a local human rights advocate over the latter’s criticism of his policies and measures effectiveness against the pandemic (Narim, 2020). Between January 2020 and March 2020 seventeen individuals in Cambodia have been arrested for sharing information COVID-19 in Cambodia (Reuters Staff, 2020a). Referencing Article 453 of the Penal Code, in September 2020, seven members of the disbanded Cambodia National Rescue Party (CNRP) were arrested. Five of which were sentenced to seven years imprisonment for treason by spreading false information (Lipes, 2020).

In March 2020 a man from Phnom Penh was arrested for posting alleged ‘fake news’ on social media about the COVID-19 outbreak. He was charged under Article 425 of the Penal Code for spreading “false information”. A review of the man’s Facebook account revealed he had shared two videos a week prior. These videos included a narrator stating false information of COVID-19 infected travellers within the country (VOACambodia, 2020).



Indonesia: In April 2020, Metro Jaya Regional Police apprehended Rasio Patra over a WhatsApp message that encouraged people to riot and loot, which was sent via his Whatsapp account by another individual. Rasio, an independent researcher, is known for his connection with the Westminster Foundation for Democracy and on a usual basis contributing his opinion on current affairs through Twitter. Though the manner of how this transpired suggests that Rasio’s WhatsApp was hacked, authorities charged Rasio under Article 28(1) of the ITE Law for propagating fake news, but later changed to Article 28(2) which penalizes an act of inciting hate speech based on race and religion (Coconuts Jakarta, 2020). In October 2020, eight people from the Save Indonesia Coalition (KAMI), a movement affiliated with the protest against the Indonesian government’s new OMNIBUS job creation bill, were arrested. They were charged under the allegation of violating the ITE law (Jakarta post, 2020).



Malaysia: In July 2020 Al-Jazeera aired its investigative documentary 'Locked Up in Malaysia's Lockdown,' suggested that while the efforts to contain the pandemic were proving successful, the Malaysian government was taking advantage of the COVID-19 Movement Control Order to crackdown on undocumented migrant workers and refugees. The documentary quickly received a rebuke from Putrajaya which accused Al-Jazeera for being "inaccurate, misleading and unfair," and opened investigations under Section 233 of the Communications and Multimedia Act on local staff.

In October 2020, after announcing he had now secured enough MP support to challenge Prime Minister Muhyiddin Yassin's Perikatan coalition government, Anwar Ibrahim was investigated under Section 505(b) of the Penal Code and Section 233 of the Communications and Multimedia Act. Director of the Federal Criminal Investigations Department, Huzir Mohamed, explained the police action was guided by the provisions under the two laws covering statements that could cause public mischief. He also urged the public not to share and spread information that is unverified and could lead to incitement (Teoh, 2020).



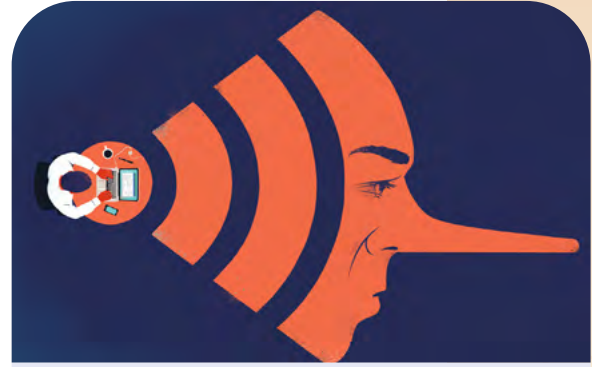
Myanmar: In May 2020, Myanmar officials sentenced Zaw Ye Htet, chief editor of a privately owned newspaper, to two years imprisonment under Section 505(b) of the Penal Code, due to an error he made while reporting on the coronavirus death, alleging that there has been a COVID-19 related death in eastern Karen state (Channel News Asia, 2020b). Further in July 2020, the government initiated a case against Eleven Media Group journalist Aung Ko Ko under Section 68(a) of the Telecommunications Law over his comment on his personal Facebook account, complaining that the Ministry of Health has delayed and underreported news related to the COVID-19 developments in Myanmar. Originally, the Criminal Investigation Department had attempted to charge him under Section 27 of the Natural Disaster Management Law, but later referred to the Telecommunications Law instead (Eleven Myanmar, 2020).

Philippines: Authorities mainly use Article 154 of the Revised Penal Code to punish any person who publishes "false news which may endanger the public order". In April 2020, 32 people were arrested and charged for spreading fake news about the COVID-19 pandemic on social media (CNN Philippines Staff, 2020). In June 2020, the head of Rappler.com, Maria Ressa, and her former writer Reynalld Santos Jr. were charged and found guilty of cyber libel for reports from 2012 about a connection between a businessman and the former chief justice of the Philippines (Bloomberg, 2020).





Singapore: Despite having the Protection from Online Falsehoods and Manipulation Act (POFMA), Singapore has also employed the Miscellaneous Offences (Public Order and Nuisance) Act to curb misinformation during the COVID-19 emergency. In May 2020, a taxi driver was sentenced to four months in prison for posting 'fake news' claiming that COVID-19 could be transmitted through disposable food containers, and speculating that supermarkets and food markets would soon be closing, and urging the public to stockpile necessities as supermarkets would reduce their operating hours (Lam, 2020). Since the inception of the POFMA law there have been 4 cases of opposition politicians being asked to put a banner on their social media posts which states that it contains false information (Reuters, 2020). There has been concern that the law was passed to silence critics as several civil society activists and independent media have also been sanctioned via the POFMA law.



Thailand: In March 2020, a local social-media-influencer-turned whistleblower 'Mam-Phoe-Dam' was charged under the Computer Crime Act after she revealed the unlawful stockpiling and price gouging of necessary medical equipment which implicated individuals close to cabinet members (Daily News, 2020). In January 2021, the Ministry of Digital Economy and Society (MDES) filed a Computer Crime Act lawsuit against the former Future Forward Party leader Thanathorn Juangroongruangkit over his Facebook livestreamed statement on the lack of transparency of government's COVID-19 vaccine procurement. MDES Deputy Minister Newin Chorchaitip reasoned that Thanathorn's comment was 'false criticism' and it created misunderstanding among people (BenarNews, 2021). MDES has also used the CCA to prosecute Facebook, Twitter and Google over their failure to comply with the government requests to take down "illegal posts" insulting the monarchy (BBC News, 2020).

In Southeast Asia, the government is the main agency which uses existing disinformation legislation for the purpose of silencing critics, whistleblowers and reports that do not follow the government's narrative. It is mainly the government or an authority within government which files the charges using the existing disinformation law on critics who are vocal.

The use of existing laws in East and Southeast Asia differ widely. In political cases where disinformation legislation is being used to bring charges in East Asia, these are mainly infringements by individual politicians. On the other hand, in Southeast Asia, any individual who voices criticisms or tries to paint a counter narrative to the governments' propaganda are charged with disinformation. There was also a higher incident of disinformation prosecutions during the COVID-19 pandemic in Southeast Asian countries compared to East Asian countries. In both subregions, the necessity of 'fake news' dedicated legislation is once again questioned, given the use of the legislation already in place.

FAKE NEWS LEGISLATION

Even though there is ample existing legislation that has been used to punish the spread of disinformation (or the characterisation of any information as such), anxiety ridden governments in both East and Southeast Asia have implemented, drafted, discussed their intent to or are in the process of implementing 'fake news' dedicated legislation which (1) notes digital content over social media and (2) places hefty fines on perpetrators (both individuals and businesses alike).

East Asia

In East Asia, the Taiwanese government is the only one to have passed legislation specifically aimed at combating 'fake news'. The governments of Hong Kong, Japan, and South Korea have relied on the social initiatives previously addressed⁴. Japan and South Korea for example have placed emphasis on collaborating with or pressuring technology companies to change their own internal regulations.

⁴ Refer to Section 4: Fake News Laws



Taiwan: In 2019, Taiwanese president Tasi Ing-wen filed a defamation lawsuit against two professors who claimed that her diploma was faked (Su and Chung, 2019). Citing Article 63 of the Social Order Maintenance Act, Tasi Ing-wen threatened further legal action against others who made the same defamatory claims. Referring to the same act, in July 2019, a 70-year-old woman in New Taipei City was fined for spreading a false story through the internet speculating that Taiwan's President Tsai Ing-wen sent NT\$4.5 billion to Haiti as a gift, but refused to give the same amount to the Kaohsiung mayor Han Kuo-yu from the opposition party who at the time was combating dengue fever (Chung, 2019).

In February 2020, three women were placed under investigation for circulating rumors which led to a panic buying of toilet paper nationwide. According to the Police the three suspects were facing charges of contravening provision of article 63 of the Social Order Maintenance Act, as the trio are likely to have aimed for benefit by spreading their false rumors (Pan, 2020).

Taiwan, when considering the combination of ample existing legislation and 'fake news' dedicated legislation, is a text-book example of the *anxiety ridden* approach to maintain public order and a fixed government narrative.

Southeast Asia

Fake news legislation is relatively recent compared to other existing laws that have provisions to deal with the spread of falsehoods. Few countries in Southeast Asia have implemented these 'fake news' laws in Southeast Asia, although there has been an increasing mention of 'fake news' legislation in countries such as the Philippines where there is a proposal for an "Anti False Content Act" (CMFR, 2019a). The concern around fake news laws specific to Southeast Asia is the vagueness of the definition of the term itself, and the implications of its use on freedom of expression and opinion in states with increasing human rights concerns.



Cambodia: So far Cambodia's efforts to combat disinformation have been everything short of developing specific anti-fake news legislation, preference is given to using existing law to deal with the issue. Before the COVID-19 pandemic, the latest government attempt to control the proliferation of fake news was the requirement that all printed and online media outlets register with the Ministry of Information or face license revocation. Since 2017, 400 online outlets have registered with the government (Khidhir, 2019).

In January 2020, Information Minister Khieu Kanharith ruled out drafting new legislation to counter fake news and disinformation, but instead placed emphasis on "educating journalists to ensure public's access to reliable information" (Sovuthy, 2020). Placing aside the problems of framing the media as the perpetrator, the government's announcement of focussing on media literacy does not disguise the authoritarian legislation (such as the Draft Cyber Crime Law) currently under review.



Singapore: In Singapore, the COVID-19 outbreak has provided a debut for the Protection from Online Falsehoods and Manipulation Act (POFMA) to perform its stated functions during a national emergency. As of May 2020, a total of 27 actions have been taken by the POFMA office. 22 involved issuing correction orders either to individuals or platform providers such as Facebook or internet forums to correct what the government believed to be misinformation. The remainder are a notification to Facebook informing the company of the profit-seeking nature of some pages that spread fake news.

However, when closely examining the implementation of POFMA and the timing of its inception, the legislation appears more to be used to shield the ruling People's Action Party (PAP) leadership from criticism and to silence critics, activists and members of the opposition in the period leading to the 2020 general election. PAP ministers have spoken up to rule out such allegations either as coincidence (Ling, 2020) or misunderstanding (Mahmud, 2020).



Malaysia: In April 2018, Salah Salem Saleh Sulaiman became the first person to be prosecuted under the Anti-Fake News Act over what the police claimed to be “inaccurate criticism of the Force” on social media. Sulaiman previously posted a video on YouTube commenting that the police have taken nearly 50 minutes to respond to the distress calls of a shooting incident where a Palestinian lecturer was left dead two weeks prior. The court sentenced Sulaiman to a week imprisonment and a fine of US\$2,400 (Reuters in Kuala Lumpur, 2018).

When the bill was introduced in April 2018, one month before the general election, public concerns surfaced noting the use of the bill to curb criticisms and dissenting views on the sitting Barisan Nasional government led by Prime Minister Najib Razak (Cnet, 2018)). Razak, at the time, was at the centre of the 1 Malaysia Development Berhad (1MDB) financial scandal involving US\$700 million (Gomez, 2018). When Pakatan Harapan (PH) unexpectedly won and formed the government, as one of its election pledges, it immediately started the process to repeal the anti-fake news legislation. The bill was thereafter revoked in the house of representatives but was rejected by the Senate in August 2018. Given that the Senate rejection was not final, a year later, PH re-submitted its appeal to the house of representatives and the bill was effectively repealed in October 2019 (Al Jazeera, 2019).

Southeast Asian governments, either prohibited by their parliament or facing difficulty in relying on the existing legislation to deter the spread of misinformation and silence criticism, have taken the first steps towards solidifying online censorship.

In comparison to the use of existing legislation, ‘fake news’ dedicated legislation is not prominent in East and Southeast Asian countries, since there are very few countries who have adopted such legislation. Countries such as Taiwan and Singapore have successfully used these legislations as a tool to criminalise those they determine are spreading ‘fake news’. On the other hand, Malaysia and Cambodia demonstrate how these laws may be used for the purpose of silencing critics and leading to censorship. Lastly, countries that do not impose these laws can opt for other non-legislative means. Collaboration or putting pressure on technology companies to self-regulate, Japan and South Korea for example, have taken this route.

COVID-19 TEMPORARY LEGISLATION

The COVID-19 health pandemic has allowed governments to issue emergency decrees and pass specific temporary laws and measures that aim to mitigate the spread of the virus. The majority of these include health related measures aiming to minimise the transmission of the virus. These state of emergency decrees, health advisories and movement control regulations have however, subsequently, also impacted freedoms of expression and opinion exercised by citizens and residents especially through social media platforms, which implicates technology companies as the platform owner. Clauses in the legislation and regulations have been expanded to also govern the spread of information, especially false by nature or by character. Authoritarian governments especially have found benefit from their increased power and decreased oversight, and have in response attempted to further censor their dissidents by the following measures.

East Asia

As previously mentioned, and established by both existing and 'fake news' legislation, East Asian governments, except for Taiwan, are characterised by minute instances of prosecuting through legislation. The legislation addressed in section five⁵, demonstrate that even Hong Kong, which passed the controversial national security bill, has yet to show evidence of fast tracking further legislation to combat disinformation. Taiwan, however, in accordance with what is seen as a trend, has implemented additional measures in response to COVID-19.

⁵ Refer to Section 5: COVID-19 Laws

Taiwan: The Taiwanese authority has implemented the 'Special Act for Prevention, Relief and Revitalisation Measure for Severe Pneumonia and Novel Pathogens'. This Act encapsulates economic stimulus packages and distribution of medical equipment during crises environments such as COVID-19 in 2020. However, Article 14 of the Act is of particular significance to this report, as it notes punishment to those who spread false information regarding the disease. The Social Order Maintenance Act meanwhile remains the main instrument used by Taiwanese authorities to respond to fake news purveyors. In the first half of 2020 alone, the law has been invoked 233 times mainly due to the COVID-19 related disinformation (Hioe, 2020b).

Taiwan, contrary to the actions taken by its neighbours in East Asia, has continued its stigmatic response to troubles by implementing additional legislation. This approach also transcends to Southeast Asia.



Southeast Asia

In Southeast Asia, where legal measures have been approved to criminalise 'fake news', has found its citizens, residents and technology companies blocked by additional barriers which are temporary if not dismantled. In the case of Cambodia, is the changes made to the state of emergency decree which, if declared, essentially remove all human rights freedoms in the interest of national security. Similarly, yet to a lower degree, other Southeast Asian governments have taken additional approaches to further manage disinformation under the guise of COVID-19 protection.



Indonesia: In April 2020, nine people in West Java were arrested for insulting President Jokowi, which under Telegram Letter ST/1100/IV/HUK.7.1/2020 issued by the Chief of National Police, lists hoaxes and insults against the president as two of the several forms of cybercrimes during the coronavirus pandemic (Azhar and Fahm, 2020). Of the seven arrested, two have consequently been treated as suspects whilst the remaining five have been released.



Myanmar: With the COVID-19 Control and Emergency Response Committee in place, Myanmar officials have revisited the Natural Disaster Management Law to criminalize the dissemination of false information. In April 2020, a man from the Bago was charged under the Natural Disaster Management Law for posting a message to a Facebook group suggesting that there was a COVID-19 positive case in a local village and warned people to be careful (Mann, 2020).

On 9 September 2020, three student activists were detained after their anti-government protest, calling for the restoration of internet access in the Rakhine and Chin states, was quelled by the police (Reuters Staff, 2020b). The activists' lawyer stated that they were

charged under Article 25 and 26 of the Natural Disaster Management Law that punishes an act of negligence which likely to cause disaster, and the interference or prevention of disaster management carried out by the authorities.

Myanmar's Ministry of Transport and Communications has further invoked Section 77 of the Telecommunications Law, which authorizes the suspension of communication during an emergency, to block one website and three associated IP addresses (Reuters Staff, 2020c). This includes a campaign group called Justice for Myanmar which investigates the military's business interests. The same source also noted the shut down of roughly 200 websites, for 'fake news' related reasons.



Philippines: Less than a month since its enactment, at least 47 individuals have been arrested for the alleged trespasses under the Bayanihan to Heal as One Act (Caliwan, 2020). Activists have called out the manipulation of the Act by authorities, for the snap investigations announced towards them in response for their public dismay (Gil, 2020). Furthermore, in April 2020, two reporters in Cavite were arrested under the charge of spreading fake news, thereby violating the Section 6(6) of the “Bayanihan to Heal as One Act”. The two journalists faced the possibility of two months in jail and a US\$19,000 fine (Centre for Media and Freedom and Responsibility, 2020b).

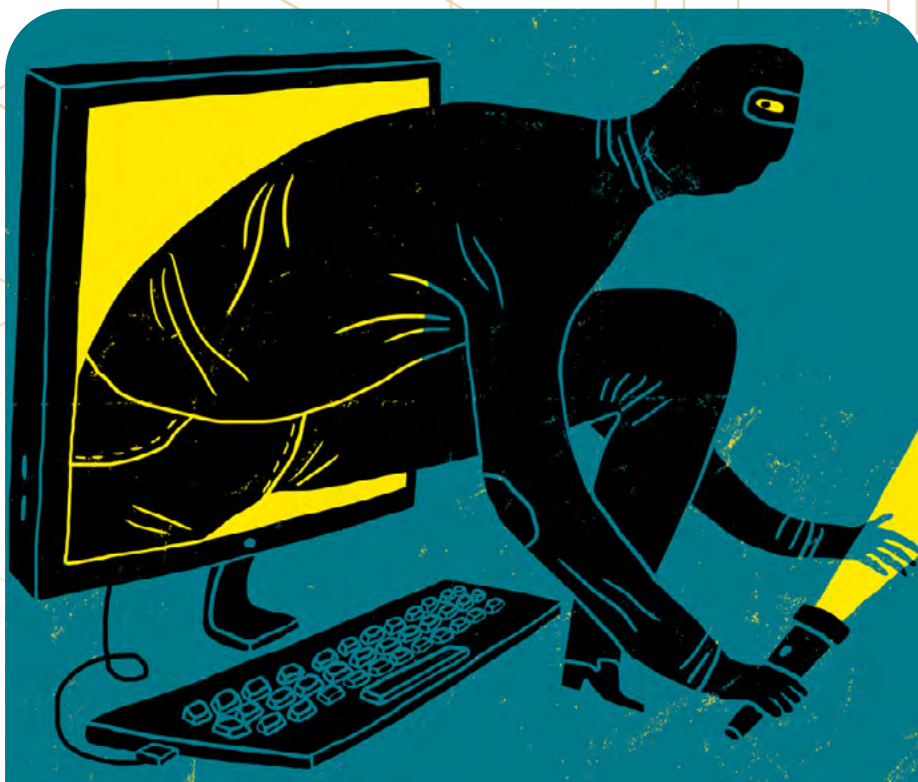
On another occasion, a Cebu-based writer, Maria Victoria Beltran was arrested without warrant over her Facebook post commenting that “all residents of Sitio Zapatera in the village of Luz have been infected with the coronavirus”. A week earlier, 82 individuals from the concerned neighbourhood, estimated to house roughly 9,000 people, tested positive for COVID-19. Beltran’s comments drew an irksome response from Mayor Edgar Labella who accused her of spreading ‘fake news’ and threatened imprisonment. Maria later removed her post and said in a statement that she had no intention in spreading confusion and fear by what she wrote. The specificity of her rebuttal, is with regards to the Bayanihan to Heal as One Act which notes purveyors as those who promote chaos, anarchy, fear, or confusion (Coconuts Manila, 2020).



Singapore: In May 2020, historian and activist PJ Tham was issued with a correction order after he posted his video on the New Narratiff’s YouTube Channel, in which he used POFMA as an example of how laws are “created and abused in Singapore,” asserting that the Act has rendered all criticisms of government illegal (Yuen-C, 2020).

On the 23rd of June 2020, president Lee Hsien Long announced the dissolution of the 13th Parliament of Singapore resulting in a snap election scheduled on the 10th of July 2020. With the COVID-19 Temporary Law in place, political parties could not hold physical rallies, one of the few opportunities that Singaporeans have to be able to gather for political purposes (Han, 2020). As a result most of the campaigning was conducted through online platforms and mass media. This placed additional barriers on smaller parties with fewer financial and human resources to compete against larger parties, especially those with more established online presences such as the government’s People Action Party (PAP) (Ibid) with its access to the mainstream media. This decision to continue an election amidst a pandemic, with restrictions on physical rallies, placed far reaching limits on campaign and communication access to the electorate.

In 2020, Dr. Chee Soon Juan and his Singapore Democrat Party (SDP) were the subject of extensive political targeting through the fake news bill. Firstly, POFMA was invoked against Dr. Chee and his party in January 2020 over his statement, made in June 2019, on the increased rate of local PMET (professionals, managers, executives and technicians) (Lam, 2020). Secondly, in July 2020, during the campaigning period, along with Lim Tean of People’s Voice Party (PV) and the alternative news site The Online Citizen, the POFMA office issued a correction order for the SDP Facebook page. The order was for a long standing public claim that the CEO of the Housing Development Board had suggested that the Singaporean population will reach 10 million by 2030 (Lay, 2020). However, the claim was never corrected by any public agency or the government but the fake news correction order was issued during the height of the elections.



Thailand: The announcement and routine renewal of the State of Emergency Law, have given incentive to authorities to refer to the Computer Crime Act to deter and penalise spreading false information. Aiming to deter further protests, authorities arrested several pro-democracy protesters and leaders, three of which were charged under Section 8(1) of the Computer Crime Act for demanding the reform of Thailand's monarchy (Khaosod English, 2020).

The student-led protests have, contradictory to what was in-

tended by authorities, regained momentum since August 2020 and was quelled once again during 15-16 October 2020 (Khaosod, 2020). Thereafter, cyberspace became an increasingly relied on platform to spread demands and information—by both the military-backed cyber-troops and bots, and protesters. The Minister of Digital Economy and Society, Puttipong Punnakanta, has since threatened to take legal action against 300,000 social media users for violating the State of Emergency Law for disseminating “illegal information”.

Governments in Southeast Asia have, invigorated by COVID-19 and the reduced oversight granted to their workings, empowered authorities to act on their behalf—framing the arrest and censorship of their citizens as in the interest of national security. In other words, COVID-19 temporary laws continue the ongoing problems associate with existing laws and specific fake new legislation enacted to combat disinformation, namely the vaguely-worded clauses being used to target critics, resulting in overcriminalization, lack of oversight and independent institutions to ensure that fundamental human rights are respected and holding the government accountable for its abuse of the law.

The difference, in combating disinformation, in East and Southeast Asia is apparent. East Asian governments respond to the spread of COVID-19 false information by relying on the education and values of their citizens – who hold trust in their authority – and whose criticism is regarded for its purpose of calling for improvement. Southeast Asian governments, however, tend to criminalize critics by using vaguely-worded laws without independent oversight (Asia Centre, 2020b).

From the intra-regional overview, it is evident that in East Asia, where democratic values and institutions have more or less taken hold, there is either protection of freedom of expression from the government side (Japan and South Korea), strong civil society (Taiwan) or organic, local social movements (Hong Kong) that resist the rule-by-law approaches taken by governments when addressing disinformation. Such a trend does not exist in Southeast Asia where the current legal measures taken have blatantly criminalized the spread of information deemed ‘fake’ and/or ‘false’, on a case by case basis, by authorities who notice their failing hold on power.

This is not to deny that the harmful effects of fake news or disinformation or that these have spiked during COVID-19. Rather this report aims to clearly point out that legislation as the sole means to block disinformation is not effective, especially when it is open to interpretation for those who have control. Therefore, governments, parliamentarians, technology companies and other stakeholders are given a set of recommendations which (1) serve as a reminder of the international obligations they are committed to, (2) emphasise the necessity of independent institutions to maintain oversight, (3) encourage multi-stakeholder approaches to legislation and policies, (4) outline what must be considered, from civil society, when legislating and (5) aid technology companies in taking responsibility for the spread of disinformation through their platforms.



The background features a series of 3D rectangular blocks of varying heights and colors (shades of blue, teal, and orange) arranged in a stepped pattern. A large, stylized silhouette of a person's head in profile is visible on the right side, facing left. The overall color palette is warm, with oranges, yellows, and reds, and geometric patterns like dashed lines and hexagons are scattered throughout.

RECOMMENDATIONS

Following a review of the different types of legislation, how they are used by governments to address fake news / disinformation and its impact on freedom of expression, the report in this section presents a set of

recommendations that foster respect for democratic practices and human rights principles. These recommendations, targeted primarily at the CALD member countries reviewed in this report, represent a toolbox of policy ideas that can be raised during the legislative process, its implementation and review by legislators, political party leaders and other stakeholders. The recommendations provide guidance in the following areas: independent institutions, international obligations, multi-stakeholder collaboration, national legislation, policies and practices and role of technology companies.

RECOMMENDATIONS



International Obligations

Encourage South Korea, Malaysia, Myanmar and Singapore to sign, ratify and honour the obligation under the ICCPR.

Encourage current signatories to honour and be diligent in their reporting obligations under the ICCPR

Extend the invitations to respective UN Special Rapporteurs on freedom of expression, racial discrimination, and human rights defenders to review the country's application of laws on a regular basis.

Commit to the international obligations to realize the Sustainable Development Goals 16.10 (ensure public access to information and protect fundamental freedoms).

Respond to recommendation by states and civil society organizations during the countries' UPR cycle and its mid-term review.

Seek advice on drafting legislation or policy to address disinformation from intra-regional bodies such as European Commission, European Court of Justice and Organization for Security and Co-operation in Europe, or international organizations such as UNESCO.



Independent Institutions

Advise the Election Commission to set up a public register for political advertisement during the election period, which requires political parties to list all political ads for public display so that, while regulation is not imposed, transparency and accountability is for all to see and ensure.

Encourage Japan, Hong Kong, and Singapore to establish a national human rights institution.

Ensure that NHRIs' functionality and performance adhere to the Paris Principle

Provide and enforce functional immunity of NHRIs to protect members from legal liability for acts undertaken in good faith in their official capacity.

Ensure that national human rights institutions place the Sustainable Development Goals 16.10. in their work plans.



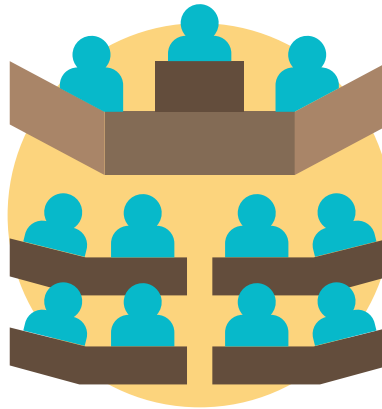
Multi-Stakeholder Collaborations

Consult with UN human rights bodies or international human rights organization when formulating new laws that might affect freedom of expression as part of multi-stakeholder collaboration

Take heed and respond to concerns or statements from global, regional human rights monitoring bodies on human rights violations resulting from the application of anti-disinformation legislation.

Seek advice on drafting anti-fake news laws and policy, and on human rights generally, from respective relevant UN Special Rapporteurs.

Shift from the current authoritative regulatory approach to a more co-regulatory one involving local civil society organizations, journalist associations and private sector to become super-correctors debunking false information.



National Legislations

Ensure that the state of emergency is declared as a last resort and, if implemented, have specific timeline and internal review process involving the legislature and the judiciary.

Come up with a specific situational emergency law for public health calamity or natural disaster with clear limits on the authority of the executive.

Assign or establish a special, multi-stakeholder committee to head the implementation of state of emergency guided by impartiality, scientific facts, and evidence-based recommendations.

Amend existing vaguely-worded legislation or administrative orders used to prosecute the act of spreading disinformation based on international standards.

Anti-fake news legislation must also ensure that governments are held accountable and are transparent in its affiliation with platforms providers where online discussion takes place.

Ensure the three-part test – legality, proportionality and necessity – for restriction of rights also applies to measures to address cases of disinformation.

Set a high threshold for restrictions of the right to freedom of expression in line with Articles 19(3) and 20(2) of the ICCPR.

Ensure that criminal penalties are justified, proportionate, setting limits on fines and giving alternatives to criminal sentences such as community service.

Revise existing public health or communicable disease legislation to include prohibition on spreading health-related disinformation short of incarceration and offer alternatives to criminal sentences such as community services or restrictions on the use of data.

Amend existing disaster prevention and mitigation legislation to include prohibition on spreading man-made or natural disaster disinformation short of incarceration and offer alternatives to criminal sentences such as community services or restrictions on the use of data.

Strengthen the legal framework for personal data protection, particularly in the digital ecosystem, to prevent unauthorized usage of personal data for advertising purposes.

Provide effective protections and immunities for whistleblowers.



Policies and Practices

Encourage social media service providers to end advertisement partnership with state controlled media.

Impose a levy on social media companies to fund countries' comprehensive digital and media literacy program.

Facilitate antitrust and competition commission to conduct a comprehensive audit of the operation of the advertising industry on social media platforms.

Avoid the establishment of politicised administrative bodies for the purpose of identifying, investigating or initiating prosecutions for 'fake news' or 'disinformation'.

Collaborate with existing fact-checking organizations certified by the International Fact-Checkers Network.

Support and ensure that local digital and media literacy initiatives are adequately funded.

Institute a mandatory national training initiative to train government authorities, especially law enforcement officials and communication officers, on digital and media literacy to promote fact-checking capacity and pluralism as an alternative to criminalization.



Technology Companies

Impose a new policy on social media platforms to label state-controlled media content and publish details on state-supported information operation content as part of their transparency report.

Develop Code of Practice on Online Disinformation in East and Southeast Asia in a manner similar to commitments in the European Commission.

Review and revise its advertising policies, especially on targeted advertisements, to prevent disinformation and manipulation being directly fed to key voting groups during the period of national election.

Subject political advertisements to fact-checking across their platforms.

Deploy adequate resources to monitor disinformation and take them down in a timely manner before they create harmful effects.

Take responsibility to effectively tackle disinformation and not rely on the government to formulate regulation.

Adhere to guidelines on business and human rights to ensure that freedom of expression is protected while taking action against disinformation.



CONCLUSION


This report's review of legislation used, updated and introduced since 2017 to address disinformation in **CALD member countries and beyond** in East and Southeast Asia have had an impact on freedom of expression. The key issue is the vaguely-worded definition of what is “fake news” and its use by sitting regimes against their political critics and opponents while government officials are not subject to the same laws. Given the use of legislation this way, it is important that during the lawmaking process that legislators, political party leaders as well other stakeholders such as academics, civil society activists, journalists and technology professionals advocate for better laws that ensure democratic practices and human rights are protected.

In addressing disinformation and its malign influence, recommendations in this report urge countries to honour international obligations by signing up to the ICCPR and be diligent in fulfilling its reporting mechanisms. International obligation should also extend beyond the treaty body to encompass other UN mechanisms such as the Universal Periodic Review, the thematic Special Procedures and Sustainable Development Goals (SDGs).

Another recommendation is to set up independent institutions such as election commissions and national human rights institutions which can help to ensure transparency and accountability from the government. In particular, by providing oversight in their specific areas to the legislative process or implementation of laws, policies and practices such as drafting new anti-fake news legislation, or revision of political campaigning guidelines.

Increasing multi-stakeholder inputs is another recommendation where efforts and new ways to combat disinformation can be sourced from academic, civil society activists, journalists and others in a way that it does not infringe on freedom of expression.

Meanwhile, when drafting new legislation or revising existing ones, parliamentarians and legislators must recognize that the key issue would be to build in safeguards for democratic practices and fundamental human rights. All laws must strictly follow the provisions and conditions provided for and in line with the international treaties and standards.

The background of the page features a large, light-colored silhouette of a person's head and shoulders in profile, facing right. In the bottom right corner, there is a 3D bar chart with five blue bars of increasing height from left to right, set against a red and orange gradient background. A small, grey, stylized human figure stands on the base of the chart, reaching out towards the first bar.

Policies and practices that promote fact-checking, media literacy, quality journalism and other measures can also contribute to the overall efforts to counter disinformation. However, these should be done without resorting to the establishment of politicised administrative bodies with their impartiality questionable and indirectly becoming the government's mouthpiece deciding on what is true or false.

Advocates, using the recommendation in this report, can also push technology companies not to hide behind the excuse that their platforms are just a medium over which disinformation passes through and deny responsibility. They can be urged to proactively address disinformation on their platforms, label government propaganda and conduct rigorous review and reform of their advertising policies that so far has allowed disinformation to be profitable.

Disinformation is a challenging issue facing countries in East and Southeast Asia as the attempts to deal with this have been further undermined by the COVID-19 pandemic which juxtaposed public safety and fundamental human rights. The recommendations in this report are tools that CALD legislators and political party leaders and as well as other stakeholders can use to advocate that laws to curb disinformation do not infringe on freedom of expression.

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ABSTRACT

Defending Freedom of Expression: Fake News Laws in East and Southeast Asia examines the existing and recently enacted, laws and policies in East and Southeast Asia which govern disinformation with the aim of empowering legislators, political party leaders, academics, civil society activists, journalists to protect freedom of expression. This report compares the impact of legislation in countries with multiparty legislatures and independent government institutions, and countries with one dominant political force and an absence of independent national institutions. It finds that in the former countries, provisions are included to safeguard human rights and democratic practices, in particular freedom of expression, whilst international conventions are adhered to and aligned with human rights principles. In contrast, the latter countries place the authority of the state at the centre of dis-information laws, and their interpretation of what constitutes fake news is often vaguely-worded. To address these issues, a set of recommendations are prescribed to governments in the region to adhere to the international obligations, set up independent institutions, ensure multi-stakeholder collaboration, and seek expert advice the conditions to regard when implementing national legislation, policies and practices.



ASIA CENTRE

Asia Centre, a not-for-profit organisation, was founded in 2015 in Bangkok, Thailand. It aims to create human rights impact in the region through its programme of activities. To this end the Centre has organised conferences, roundtable discussions, seminars and workshops as well as undertaken evidence-based research producing books, commentaries and reports. The Asia Centre has standing MOUs with universities, think-tanks, INGOs and other established entities and has achieved visibility through its engagement with international media as a commentator on regional issues.

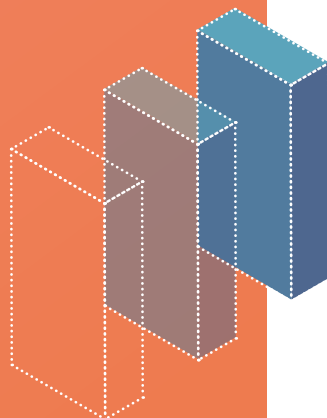


CALD

The Council of Asian Liberals and Democrats (CALD) was inaugurated in Bangkok, Thailand in 1993, with the support of then Thai Prime Minister Chuan Leekpai and South Korea's Kim Dae-Jung. CALD, which offers a unique platform for dialogue and cooperation, is the only regional alliance of liberal and democratic political parties in Asia.

CALD was formed out of the recognition of leaders of like-minded political parties in Asia of the need for a dynamic forum promoting discussion and exchange of ideas regarding trends and challenges affecting democracy, human rights and the rule of law in the region.

The Liberal Party of the Philippines is currently the chair party of CALD (2020-2022). Senator Francis "Kiko" Pangilinan and Congressman Francis "Blue" Abaya are serving as Chairperson and Secretary General, respectively.



Defending Freedom of Expression

FAKE NEWS LAWS IN EAST AND SOUTHEAST ASIA

