



Dawn of Digital Dictatorship:  
Weaponizing the Law Against  
Online Speech in Southeast Asia



# What is the ASEAN Regional Coalition to #StopDigitalDictatorship?

The ASEAN Regional Coalition to #StopDigitalDictatorship was established in 2020, by human rights and digital rights activists from Southeast Asia, on a mission to decolonize digital rights and restore our online democracies.

Together, we stand in solidarity with one another, with people from the Global Majority, resisting and pushing back against authoritarian governments and complicit tech companies.

We tell our realities from the ground, and we develop solutions together.

**Our truths. Our Stories. Our Solutions. Our Liberation.**

**Fighting back online authoritarianism in Southeast Asia is, and shall always be, decolonial, grounded on feminist values, centred on our voices and our collective power.**

Listed alphabetically, members of the Coalition include: ALTSEAN-Burma, Cambodian Center for Human Rights, ELSAM, Free Expression Myanmar, Foundation for Media Alternatives, ILGA Asia, Manushya Foundation, Project88, The Rohingya Maïyafuïnor Collaborative Network, SAFEnet, and Women's Peace Network.

## Contact:

**ASEAN Regional Coalition to #StopDigitalDictatorship**

**Coordination:** Manushya Foundation

**Email:** WeAreManushyan@manushyafoundation.org

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# List of Abbreviations

|                |  |
|----------------|--|
| <b>AJPA</b>    | Administration of Justice (Protection) Act                 |
| <b>AFP</b>     | Armed Forces of the Philippines                            |
| <b>ASEAN</b>   | Association of Southeast Asian Nations                     |
| <b>CCA</b>     | Computer Crime Act   |
| <b>CIJ</b>     | Centre for Independent Journalism                          |
| <b>CMA</b>     | Communications and Multimedia Act                          |
| <b>CNRP</b>    | Cambodia National Rescue Party                             |
| <b>CPP</b>     | Cambodian People's Party                                   |
| <b>CPV</b>     | Communist Party of Vietnam                                 |
| <b>DCHCP</b>   | Department of Cybersecurity and High-tech Crime Prevention |
| <b>DICT</b>    | Department of Information and Communications Technology    |
| <b>ESO</b>     | Electronic system operator                                 |
| <b>ETL</b>     | Electronic Transactions Law                                |
| <b>FIDH</b>    | International Federation for Human Rights                  |
| <b>HRD</b>     | Human rights defender                                      |
| <b>ICCPR</b>   | International Covenant of Civil and Political Rights       |
| <b>IFJ</b>     | International Federation of Journalists                    |
| <b>ICJ</b>     | International Commission of Jurists                        |
| <b>IP</b>      | Indigenous people  |
| <b>ISOC</b>    | Internal Security and Operations Command                   |
| <b>ISP</b>     | Internet service provider                                  |
| <b>KPK</b>     | Corruption Eradication Commission                          |
| <b>LPRP</b>    | Lao People's Revolutionary Party                           |
| <b>LPSK</b>    | Witness and Victim Protection Agency                       |
| <b>KOMINFO</b> | Ministry of Communication and Information Technology       |
| <b>MCIT</b>    | Ministry of Communication and Information Technology       |
| <b>MCMC</b>    | Malaysian Communications and Multimedia Commission         |
| <b>MIC</b>     | Ministry of Information and Communication                  |

|                |   |
|----------------|---|
| <b>MPTC</b>    | Ministry of Posts and Telecommunications                        |
| <b>MPS</b>     | Ministry of Public Security                                     |
| <b>MNHRC</b>   | Myanmar National Human Rights Commission                        |
| <b>MoI</b>     | Ministry of Information   |
| <b>NEC</b>     | National Election Committee                                     |
| <b>NGO</b>     | Non-governmental organisation                                   |
| <b>NIG</b>     | National Internet Gateway                                       |
| <b>NLD</b>     | National League for Democracy                                   |
| <b>NTC</b>     | National Telecommunications Commission                          |
| <b>NUG</b>     | National Unity Government                                       |
| <b>NUJP</b>    | National Union of Journalists of the Philippines                |
| <b>OHCHR</b>   | Office of the United Nations High Commissioner for Human Rights |
| <b>PAP</b>     | People's Action Party   |
| <b>PAS</b>     | Malaysian Islamic Party   |
| <b>POFMA</b>   | Protection from Online Falsehoods and Manipulation Act          |
| <b>PPPA</b>    | Printing Presses and Publications Act                           |
| <b>PN</b>      | Perikatan Nasional  |
| <b>RGC</b>     | Royal Government of Cambodia                                    |
| <b>RPC</b>     | Revised Penal Code  |
| <b>SAC</b>     | State Administration Council                                    |
| <b>SLAPP</b>   | Strategic lawsuit against public participation                  |
| <b>SUHAKAM</b> | Human Rights Commission of Malaysia                             |
| <b>TLHR</b>    | Thai Lawyers for Human Rights                                   |
| <b>TOC</b>     | The Online Citizen  |
| <b>UDHR</b>    | Universal Declaration of Human Rights                           |
| <b>UN</b>      | United Nations  |
| <b>UNWGAD</b>  | United Nations Working Group on Arbitrary Detention             |
| <b>VNNIC</b>   | Vietnam National Internet Center                                |

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| No | COUNTRY CHAPTER    | ORGANIZATIONS OR NETWORK INDIVIDUALS  | INDIVIDUALS      |
|----|--------------------|---|------------------|
| 1  | <b>CAMBODIA</b>    | Cambodian Center for Human Rights (co-author and reviewer); Manushya Foundation (co-author)                       | xx               |
| 2  | <b>INDONESIA</b>   | Southeast Asia Freedom of Expression Network (SAFE-net) (co-author and reviewer); Manushya Foundation (co-author) | xx               |
| 3  | <b>LAO PDR</b>     | Manushya Foundation   | xx               |
| 4  | <b>MALAYSIA</b>    | Manushya Foundation   | xx               |
| 5  | <b>MYANMAR</b>     | ALTSEAN-Burma; Free Expression Myanmar; Women's Peace Network (reviewers); Manushya Foundation (co-author)        | Anonymous author |
| 6  | <b>PHILIPPINES</b> | Foundation for Media Alternatives (author and reviewer); Manushya Foundation (co-author)                          | xx               |
| 7  | <b>SINGAPORE</b>   | Manushya Foundation   | xx               |
| 8  | <b>VIETNAM</b>     | Project 88 (author); Anonymous reviewer   | xx               |
| 9  | <b>THAILAND</b>    | Manushya Foundation   | xx               |

Fig. X: Organisations and/or network individuals who were responsible for the writing and reviewing of our country-specific sections under Chapter IV: Country Overviews (Analysis).



# Executive Summary: A Regional Overview

The Internet is a powerful tool used by many people in the world. It helps us communicate, conduct mundane activities, but it equally facilitates our access to information, the ability to share opinions, engage in debate, and be active participants in our societies. However, the power of the Internet is a double-edged sword. Just as power can be wielded to improve life for humans, it can also be abused to do harm and oppress.

## SYMBOL KEY:

# Implications and issues faced by victims of Digital Dictatorship

### Digital Dictatorship tactics used against victims:

- 🧠 Psychological violence (e.g. harassment, threats against personal safety, attacks on loved ones, torture, summons and/or intimidating questionings) used against victims
- 📧 Smear campaigns, online hate, and/or online bullying used against victims.
- 🔪 Physical violence (e.g. assassinations/attempted assassinations, physical attacks) used against victims
- 👏 Strategic Lawsuit Against Public Participation (SLAPP) cases used against victims
- 🛂 Immigration issues and/or Transnational Repression (TNR) used against victims, and/or victims forcefully displaced/made into refugees
- 💰 Victims fined
- 🚔 Victims charged, arrested, and/or jailed/imprisoned
- 👁️ Victims reported being surveilled

### Justifications used when victims are accused of Incitement, Defamation, and/or spreading Disinformation

- 🗣️ Victim accused of committing a crime by criticising authorities, the state, and/or other individuals with power
- 👑 Victim accused of committing lèse-majesté (i.e. insult or defamation against the monarchy)
- 🇻🇳 Victim accused of committing incitement against a one-party authority (e.g. against the one-party Socialist authority of Vietnam)
- 🙏 Victim accused of committing a crime by committing religious treason, and/or being 'socially unacceptable' and/or 'deviant of dominant social norms'

### The victims are part of marginalised/exceptionally targeted groups:

- 💙 Rohingya, and/or other marginalised ethnic, racial, and religious groups
- 💗 Women and other gender-marginalised identities
- 🏳️‍🌈 LGBTIQ+ community
- 🇺🇦 HRDs fighting for COVID-19 related transparency (particularly during the lockdown period)
- 🏢 HRDs fighting for Corporate Accountability/Politician Accountability
- 🌱 HRDs for Climate Justice
- 📰 Journalists

Fig. A1: Symbol key for implications and issues faced by victims of Digital Dictatorship

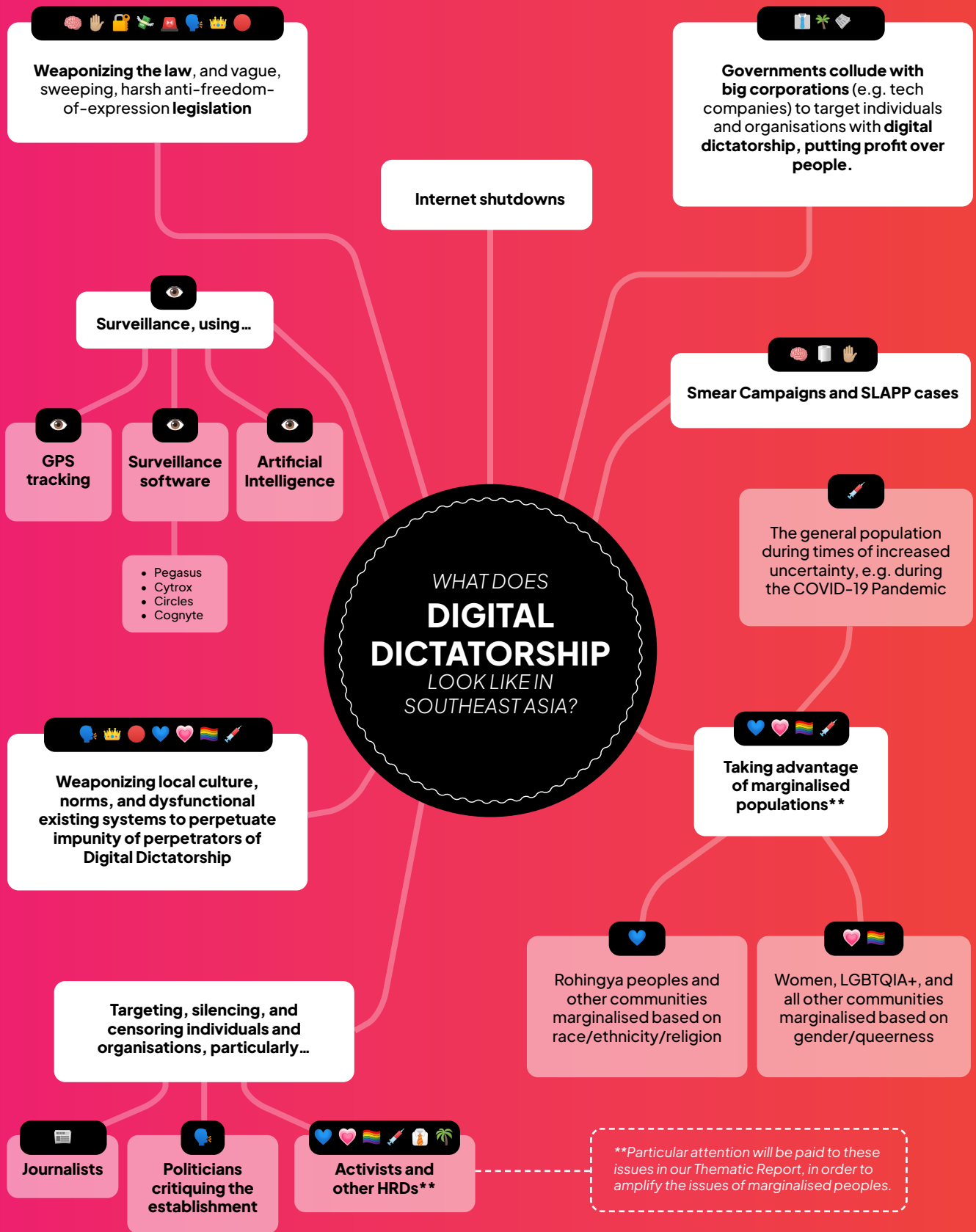


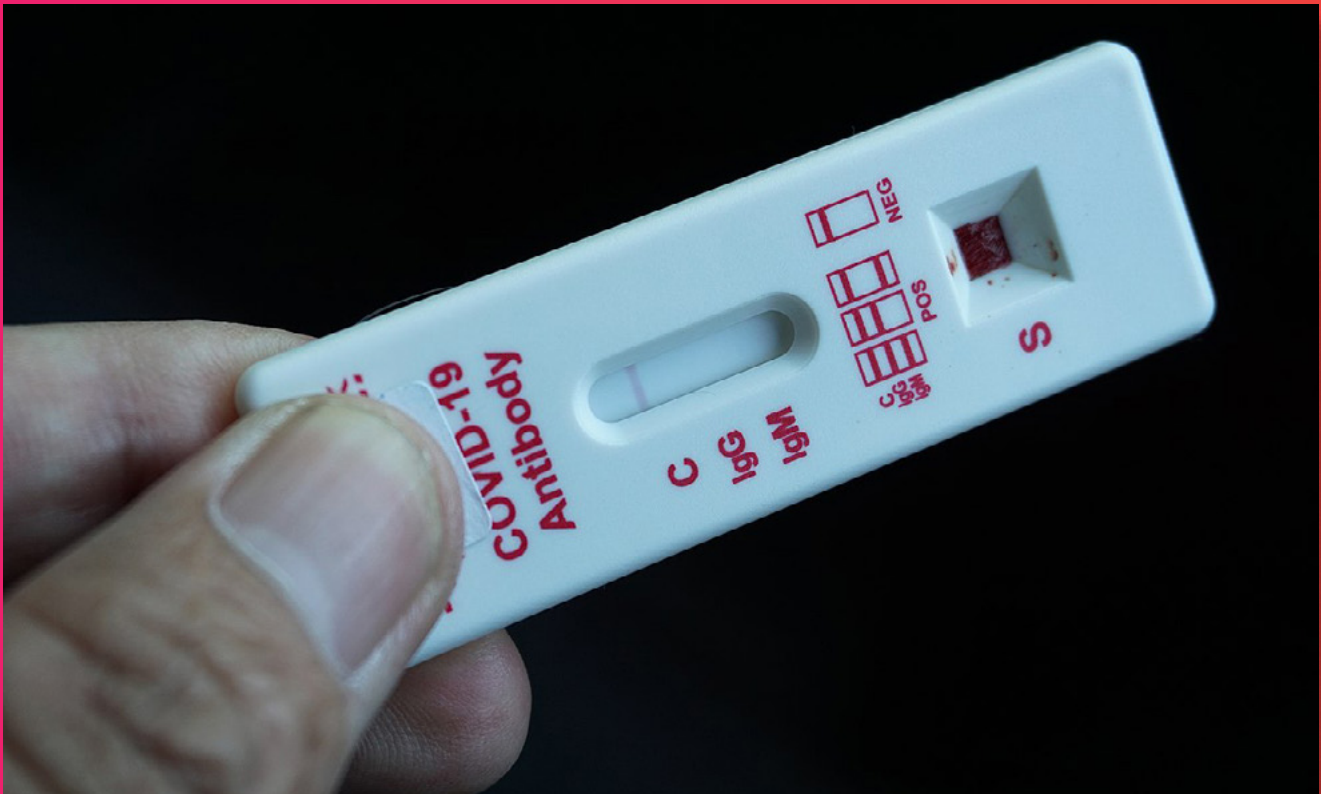
Fig. A2: Symbol key for implications and issues faced by victims of Digital Dictatorship

The Internet is a powerful tool used by many people in the world. It helps us communicate, conduct mundane activities, but it equally facilitates our access to information, the ability to share opinions, engage in debate, and be active participants in our societies. However, the power of the Internet is a double-edged sword. Just as power can be wielded to improve life for humans, it can also be abused to do harm and oppress. There has been a global effort to create global standards and norms, as well as regional and country-based legislation that effectively regulate online space and internet use. Regulating online space and also technology companies is crucial, as self-regulation has proved insufficient to manage the complexities and impacts of their activities on society. The technology industry must be held to account, not only in terms of growth and profits, but also for its impact on society and the environment. This regulation will help guide administrators and users on how to shape the Internet to make it safe, respectful and useful for all.<sup>2</sup> Unfortunately, some states are taking this as an opportunity to implement new ways to oppressively control their populations, under the guise of 'national security' and 'improving the safety' of the internet and the jurisdiction. This might come in the form of oppressive governments creating new legislation that unreasonably and inhumanely controls the people, or in the form of

these governments abusing existing 'loopholes' in legislation to do so. This is what is referred to as 'digital authoritarianism' or 'digital dictatorship.'

Digital authoritarianism is exceptionally prevalent in Southeast Asian countries, where governments have long failed to safeguard certain human rights of their citizens. Some human rights that are still being severely withheld from many Southeast Asian people include their rights to freedom of speech, to information, and to privacy. The goal of this report is to paint a detailed picture of digital repression and the rise of digital dictatorship in Southeast Asia over four years, from 2020 until the end of 2023.

The use of vague and expansive laws to criminalise legitimate online speech have given governments sweeping monitoring powers over the digital space and communication. Laws such as lèse-majesté, sedition, defamation, hate speech, and criminalisation of fake news are just a few of the offences invoked to threaten and punish individuals for speaking the truth or sharing their opinions. Moreover, governments evidently took advantage of the COVID-19 pandemic and lockdown to implement laws and policies that regress democracy, violate human rights, and further entrench repressive measures.



Rapid test method - © Heru sutimbul ([https://commons.wikimedia.org/wiki/File:Hasil\\_Rapid\\_Test.jpg](https://commons.wikimedia.org/wiki/File:Hasil_Rapid_Test.jpg))

## Digital Dictators take advantage of the masses during times of heightened uncertainty, paranoia, and fear, for example, during the COVID-19 Pandemic

The COVID-19 pandemic undeniably increased anxiety, paranoia, and fear levels for people all across the globe. Southeast Asia is no exception. While Southeast Asian governments responded to the people's emergency needs to an extent, many simultaneously took the pandemic, particularly during the global lockdown period, as an opportunity to impose more restrictions on their peoples' freedoms. The increased practice of 'social distancing' and 'work-and-learn-from-home' practices led to more human reliance on the internet, online platforms, and information technology in general. Because of this reliance, digital dictators were effectively able to exploit IT for mass digital dictatorship. This took the forms of passing and abusing State of Emergency Decrees (such as in Cambodia, Malaysia,

and Thailand), creating specialised COVID-19 'task forces' (such as in Laos, Thailand, and Indonesia), increasing surveillance of people's public as well as private movements using software (such as in Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam), and justifying information takedowns and restrictions on people's freedoms as their way of 'combating the spread of false information about COVID-19' ((such as in Lao PDR, Myanmar, the Philippines).



To read more, please see our '**PANDEMIC POLITICS**' discussion boxes included in each country chapter.

Fig. B1: Digital Dictators take advantage of the masses during times of heightened uncertainty, paranoia, and fear, for example, during the COVID-19 Pandemic.

All countries covered in this report have included defamation as a major offence within their criminal and penal codes. For example, in **Cambodia** and **Thailand**, two nations with powerful monarchies, vague and draconian lèse-majesté laws are constantly used to stifle dissent. Digital repression has also been observed in **Indonesia**, **Malaysia**, the **Philippines**, and **Singapore**. These countries have separate cyberspace-regulating legislation that weaponize accusations of ‘defamation’ and ‘blasphemy’ in order to silence people.

These measures are often rooted in the view, held by many Southeast Asian governments, that freedom of expression is an attack against government authority. A particularly complex situation can be witnessed in nations with histories of communist leadership. **Vietnam**, for example, is known as one of the final strongholds of one-party communist rule in the region, with the country being governed by the Communist Party of Vietnam (CPV) since 1976. Though the Vietnamese government’s communist identity makes it stand out in the region, it frequently behaves similarly to its non-communist neighbouring governments. Often under the guise of promoting ‘unity’ among the masses in order to protect the integrity of communism in Vietnam, the government enforces strict controls over the online environment and maintains a strong stance against those expressing opposing views. Similar tactics are used in Vietnam’s communist neighbour, **Lao PDR** (Laos). Laos is also a one-party socialist republic, and the Lao People’s Revolutionary Party (LPRP) has been the only legal political party since 1975. The Lao government notoriously abuses its vaguely written laws in order to silence views, expressed both online and offline, that the government perceives as threatening to its control. More specifically, both Laos and Vietnam use Article 117 of their Penal Code to silence any opposition by punishing anything associated with propagating materials opposing the State.<sup>3,4</sup>

Communist or non-communist, Southeast Asian governments gravitate to similar oppressive tactics; the only difference between them tends to be the justifications they use for their oppression.

All the aforementioned control tactics are fundamentally rooted in establishing fear, in order to compel the masses into submission. A clear example of this is exhibited through the behaviour of **Myanmar’s** military government, which has continuously cracked down on dissenting voices since it took control during the 2021 coup. It utilises violent measures to establish fear among its masses, in order to discourage opposition. For instance, the Ministry of Transport and Communications ordered in 2019 restrictions on mobile internet in nine townships in Rakhine and Chin States under Section 77 of the Telecommunications Act. Despite partial lifts, irregular enforcement persists. In April 2021, all mobile data and wireless broadband were cut off. In addition, the military junta is instilling fear in the population by destroying everything in its path, affecting 80,000 homes and forcing 3,800,000 civilians to flee their homes. However, the measures put in place also target workers legitimately engaged in essential jobs. More than 20 media groups, including press agencies, publishing houses and printing works, have been banned since the coup. More than 140 journalists have been detained and, tragically, four have lost their lives in custody.<sup>5</sup>

As we have just discussed, governments’ efforts to limit freedom of expression and control the flow of information online can be witnessed through instances of censorship of online content, strong hold over tech companies by passing restrictive legislation to control them, and internet shutdowns. Often framed as accidental or due to technical difficulties, the government often has an intentional, direct hand in creating these interferences.

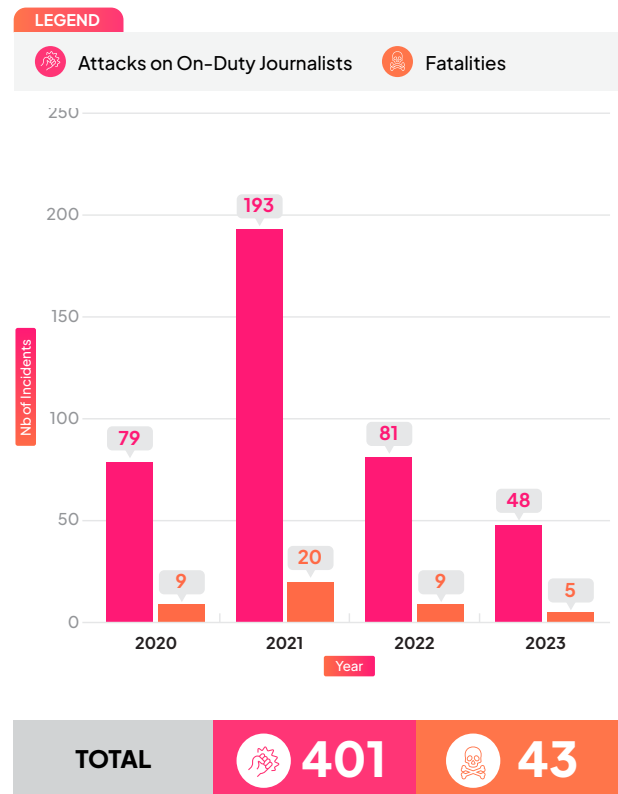
Governments also collude with equally complicit BigTech companies, which often comply with removal requests sent by governments. By complying with these requests, tech companies are complicit in the continuing infringement of freedom of speech and information. For example, Meta received 772 requests for government restrictions in Indonesia in 2020, 1009 in 2021, and 1475 mid-2022. Of these 1475 requests, 1458 restrictions were actually put in place.<sup>6</sup> As such, they should be held accountable for their roles in obstructing freedom of expression in Southeast Asia.

Aside from creating unsuitable legal frameworks, several countries in the region have been suspected of using spyware to surveil, monitor and punish pro-democracy activists, human rights defenders, journalists, academics, and so on. The cases of **Thailand, Malaysia, Myanmar and Indonesia** highlight how far authoritarian governments are willing to go in order to maintain legitimacy, going as far as using advanced information technology to police its citizens, claiming that this is all necessary in the name of “national security.” More precisely, Myanmar uses Cognyte software, Thailand relies on Pegasus, Indonesia uses Cyrox and Circles Technology, while Malaysia also relies on Circles technology.

Even in cases where spyware is not used, a common tactic seen among Southeast Asian countries is the overexertion of police power to silence dissent and cover their abuses against journalists. Southeast Asia is known for having very powerful corrupt and powerful law enforcement entities, resulting from Cold War-era militarization of Southeast Asian armed forces by the United States and other geopolitical stakeholders. Southeast Asian police forces use tactics ranging from threats, stalking, doxxing, summoning, and detaining, to physical violence, including assassinations. The targets of these tactics are often people simply trying to express themselves freely online, or trying to

practise independent, ethical and transparent online journalism, all things that are supposedly recognized by the Universal Declaration of Human Rights. Ironically, it is the police and other armed forces that are the ones committing crimes against international human rights standards, by targeting such individuals. **Myanmar** is the world’s second biggest jailer of journalists, behind China.<sup>7</sup> **Vietnam** has forced many journalists into hiding, or to flee the country. State officials also frequently sue independent media outlets, and sometimes even abuse their powers to revoke independent media licences altogether. Over the past few years, there have been some particularly high-profile cases coming from **Singapore** and **Cambodia**, where news outlets have had their licences revoked based on counterfeit claims.

### Attacks on On-Duty Journalists



The Armed Conflict Location & Event Data Project (ACLED), *Disorder Involving the Media*, (n.d.), available at: <https://acleddata.com/data-export-tool/>

Fig. C: Attacks on On-Duty Journalists

In some of the cases, those involved with media outlets were targeted as individuals, such as the case of Terry Xu in **Singapore**—editor of the now-inoperative The Online Citizen (TOC)—who was targeted outside of his involvement with TOC. Many pro-democracy activists, netizens, and prominent figures who have expressed their dissatisfaction with the authoritarian regimes are often targeted by orchestrated efforts to discredit and tarnish their reputation. While not all Southeast Asian countries employ this method, state-led disinformation and smear campaigns have been observed in **Thailand, Cambodia, and Malaysia**.





Panusaya 'Rung' Sithijirawattanakul - © Adirach Toumlamoon ([https://commons.wikimedia.org/wiki/File:Panusaya\\_Sithijirawattanakul.jpg](https://commons.wikimedia.org/wiki/File:Panusaya_Sithijirawattanakul.jpg))

## Digital Dictatorship threatens the safety of women, LGBTIQ+, and all other communities marginalised based on gender/queerness

Similar to the aforementioned cases regarding people who have been marginalised based on race, ethnicity, and religion, women and LGBTIQ+ people are targeted based on their identities, even when states claim that they recognize gender equality and LGBTIQ+ rights. Online sexual harassment, smear campaigns, doxxing, forced outings, misogyny, and other gender-based violence, are used in every Southeast Asian nation as weapons against people of marginalized gender and sexuality identities, especially those with intersecting marginalized identities. For example, Malaysian Muslim women's advocates have reportedly been harassed for supporting Muslim women's rights causes, and have been accused of being morally 'deviant' for doing so.<sup>1</sup> It must also be acknowledged that separate from online harassment, people of marginalised gender/sexuality identities also deal

with disproportionate levels of gender-based and sexuality-based violence if/when incarcerated as a result of Digital Dictatorship. Part of the issue is also likely the lack of representation of diverse gender identities in governments and other decision-making bodies. If societies are disproportionately straight-identifying and patriarchal, they are more likely to cause and/or allow violence against people of marginalised gender and sexuality identities. Overall, women and LGBTIQ+ individuals are disproportionately affected by gender-based harassment and digital dictatorship overall.





**i**

To read more, please see our '**INTERSECTIONAL GENDER ANALYSIS**' sections at the end of each country chapter.

1. UN Women Asia Pacific, Online Violence Against Women in Asia: A Multicountry Study, (November 2020), available at: <https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEA/Docs/Publications/2020/12/ap-ICT-VAWG-report-7Dec20.pdf>

*Fig. B2, Intersectional Gender Focus: Digital Dictatorship threatens the safety of women, LGBTIQ+, and all other communities marginalised based on gender/queerness.*

In addition to the digital rights infringements faced by netizens at large, marginalised communities within all the nations in question are particularly susceptible to these perils. The online sphere mirrors and perpetuates the power dynamics and inequalities that already existed in the offline space; it is thus no surprise that the challenges experienced by women and LGBTIQ+ individuals and racially/ethnically marginalised communities like the Rohingya peoples are also encountered online. In **Indonesia**, for instance, human rights defenders (HRDs) and activists who express their views online, are subjected to doxxing, intimidation, and slander, to name a few. Likewise, women HRDs and LGBTIQ+ people in **Thailand** experience online attacks and harassment online, in relation to their activism and work. The situation in **Myanmar** is also concerning, with the rampant use of doxxing and smear campaigns used against marginalised communities, often done for elites' political and personal gain. It is widely known that the Rohingya peoples have been targeted in particular by online hate campaigns; in 2022, Amnesty International reported findings that Meta "knew or should have known that Facebook's algorithmic systems were supercharging the spread of harmful anti-Rohingya content in Myanmar," and yet, "still failed to act."<sup>8</sup> Meta's lack of regulation has allowed for disinformation, misinformation, and overall harmful anti-Rohingya rhetoric to be spread amongst the general population. This cannot be taken lightly; spreading this sort of rhetoric directly fuels the dehumanisation and thus exploitation of the Rohingya peoples, and allows for their continued genocide. Amnesty's findings demonstrate how Meta is directly complicit in all of this.<sup>9</sup>

\*\* Look out for these     symbols in the visual aids included throughout our Thematic Report, which will indicate cases specifically related to/that disproportionately affect the Rohingya, women's and LGBTIQ+ communities, cases related to the COVID-19 pandemic, and others.



*Rohingya refugees getting off the boat taking them from Myanmar to Bangladesh, close to Shamlapur village in Cox's Bazar, Bangladesh. 6 September 2017. ©Amnesty International*

## Digital Dictatorship threatens the safety of the Rohingya peoples, and other groups marginalised based on race, ethnicity, and religion

It is widely known that discrimination based on ethnic, religious, racial, or other grounds - is an oppressive tool of authoritarian nation-state governments. These governments know that in order to increase and maintain the power of the 'elite in-group,' and more easily control the masses, they need to demonise and discriminate against 'out-groups.' In Southeast Asia, many different ethnic, religious, racial, and other groups are socially ostracised. Indigenous communities are often targets of this ostracism, because they are often either Indigenously living on lands that governments and corporations want to exploit, or are viewed by governments as a source of exploitable labour. Notable groups in Southeast Asia include the Indigenous hill tribe peoples of the northern and northeastern Mekong Region, the Indigenous peoples of West Papua, as well as the Indigenous Rohingya peoples of the north and northwestern Mekong region. In order to further their discriminatory agendas, authoritarian

governments have exploited social media and surveillance technologies to violate the human rights of these groups. Examples of how this might present itself include orchestrating social media smear campaigns against these marginalised peoples and their allies to intimidate them out of defending these groups, as well as censoring marginalised voices online. For example, the Rohingya peoples have long been targets of online hate campaigns, orchestrated and perpetuated by oppressive governments trying to make them feel unwelcome on their own lands, as well as lands on which they are seeking refuge, such as in Myanmar and, more recently, Indonesia.



To read more, please see our detailed reporting about marginalised groups in our country-specific chapters (e.g. we address Rohingya-related cases as part of our '1. Myanmar' chapter).

*Fig. B3, Rohingya Focus: Digital Dictatorship threatens the safety of the Rohingya peoples, and all other communities marginalised based on race, ethnicity, and religion.*

Thousands of displaced Rohingya are currently seeking refuge on the coasts of Indonesia, Thailand and Malaysia, fleeing Myanmar. Indonesia, like Thailand and Malaysia, has not signed the 1951 United Nations Convention on Refugees, which sets out legal protections, and is therefore under no legal obligation to accept them. What's more, these Rohingya face hostility from the local population.<sup>10</sup> It is risky enough to be a vocal HRD of any kind in Southeast Asia; HRDs with intersectional marginalised identities are at an even greater risk, as the oppressive bodies will intentionally use hateful, discriminatory language and other forms of violence against them.

It is paradoxical for Southeast Asian governments to claim that they are champions of human rights and freedom, while allowing these intense abuses to happen against people expressing themselves freely online and offline. There is no need for such pretence while our democracies are clearly under attack in Southeast Asia. According to Freedom House's methodology, and as indicated in each of our Thematic Report chapters, all except four of the Southeast Asian nations mentioned in our Report were considered 'authoritarian' ('not free') states in 2023. The only four that were considered 'semi-authoritarian' ('partly free') were Singapore, Indonesia, Malaysia, and the Philippines; these three were considered 'semi-authoritarian'.<sup>11</sup> Thus, it will undeniably take time to fully revolutionise outdated and harmful systemic structures; fixing these complex systems will not happen overnight. However, the complexity of these structures is no excuse for denying people of human rights. If Southeast Asian governments truly wanted to demonstrate their commitment to human rights, they would, at very least, implement effective remedy measures to handle cases of human rights abuses, including implementing procedural safeguards and independent oversight. Right now, no Southeast Asian government has these systems in place at an adequate level. For example,

Cambodia, Malaysia, Myanmar, Singapore, and Vietnam have no specific legislation to protect people from Strategic Lawsuits Against Public Participation (SLAPP), at all. Lao PDR does not even recognise human rights defenders, and does not have any anti-SLAPP measures in place. Indonesia, Philippines, and Thailand are among the few countries who have some anti-SLAPP provisions; however, they are either insufficient, very limited (for example, in the case of the Philippines where provisions are only available regarding environmental cases), or difficult to put into practice because of the inefficient judicial systems in place.

**All the above are very concerning symptoms of digital dictatorship.** Evidently, oppressive governments across Southeast Asia recognise the power of the internet, surveillance technology, and Artificial Intelligence, and have abused them for their own gain. If digital freedoms are under threat, then human rights are under threat. This is poignantly demonstrated in the way that Freedom House's 'Freedom on the Net' (FOTN) and 'Freedom in the World' (FITW) reports have both depicted declining trends in societal freedoms. The state of democracy (FITW reports) has significantly declined across the world over the past 17 years, while the state of internet freedom (FOTN reports) significantly declined across the world over the past 13 years.<sup>12</sup> Southeast Asia is no exception to these trends. As the following chapters will show, all the Southeast Asian nations covered in our Thematic Report study fall into the 'not free' or 'partially free' categories for both the state of democracy (FITW) and the state of internet freedom (FOTN) indexes, have remained in these categories for the entirety of the 2020 to 2023 period, and have also all experienced collective score declines during this period.<sup>13</sup> We must not allow ourselves to succumb to these advances of power, and must diligently observe political actions that affect this topic, in

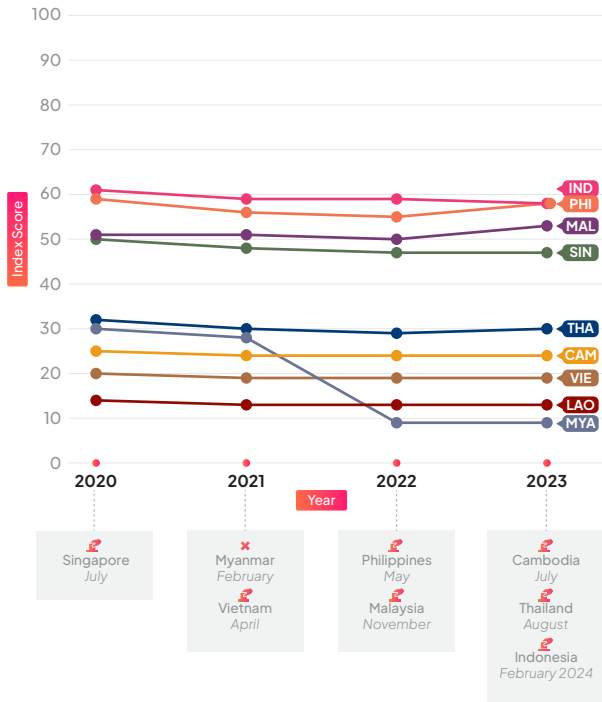
order to more effectively collectively demand from Southeast Asian governing bodies more procedural safeguards, independent oversight, accountability, and overall respect of universal human rights. Oppressive governments are counting on the people to be too afraid or ignorant to advocate for our human rights, so that they can increasingly usurp more power at the expense of our collective freedoms. We must all take digital dictatorship seriously, for it is a lethal tool that forms part of greater dictatorial projects as a whole.

LEGEND

70–100: Free (F) 40–69: Partial Free (PF) 0–39: Not Free (NF)

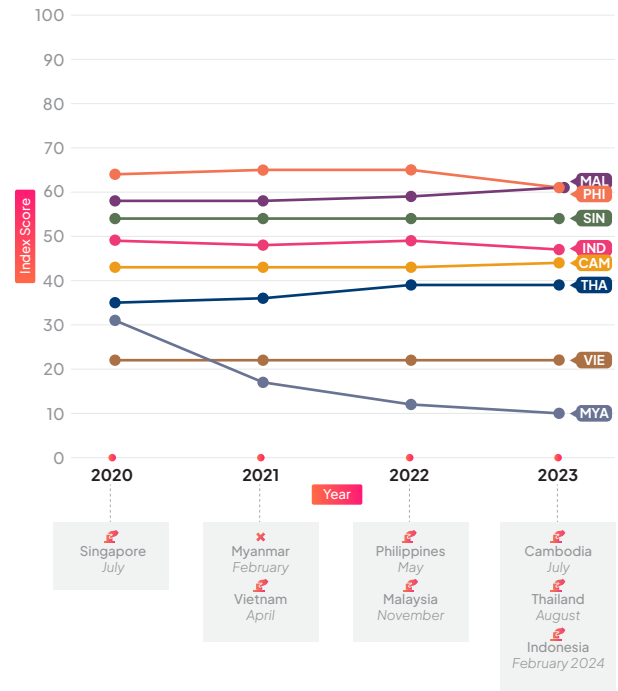
Elections Coup

Democratic Status of the Country



Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fmw&year=2023>

Digital Space & Online Freedom Status



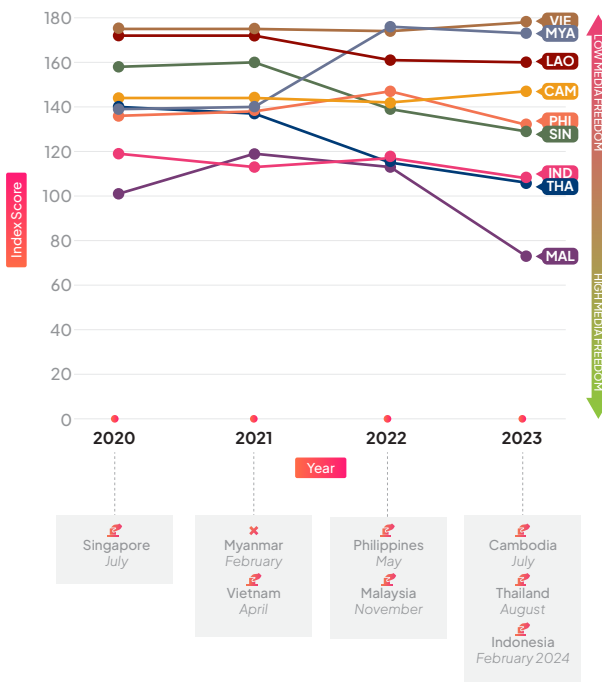
Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fmw&year=2023>

Media and Press Freedom Status

LEGEND

0: High media freedom status 180: Low media freedom status

Elections Coup



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>







Please note that Freedom House and Reporters sans frontières adopt a distinctive method for their yearly assessments. Each assessment corresponds to events from the preceding year. For instance, the decline shown for Myanmar in the 2022 assessment is due to the coup in February 2021.

Fig. D: Data visualisation of Democratic Status, Digital Space and Online Freedom, and Press and Media & Press Freedom Ratings for ASEAN countries acknowledged in this report.

**This report will conclude with a series of recommendations for governments, members of the parliament, civil society organisations (CSOs), and tech companies.** All of these actors play a key role in safeguarding digital freedoms in Southeast Asia. Governments are responsible for ensuring respect for human rights as stipulated in national and international human rights laws. Members of parliament are the actors who must ensure effective creation and implementation of laws that protect human rights. Tech companies have a distinct responsibility not only to respect human rights, but also to manage risks of human rights harms, aiming to prevent them, and to provide remedies when breaches occur. Finally, CSOs and general members of civil society should continue their informative activities, advocacy, and cross-sector collaboration, as well as support independent evaluations and set up an independent multi-stakeholder body which monitors digital rights abuses.

As suggested earlier, the invention and widespread use of information technology has given humans an immense amount of power. While this power can be used in ways that benefit society as a whole, it is the unfortunate case that many people and institutions are actively choosing to use this power to oppress others, and do harm, for their personal gain. This report aims to paint a detailed picture of what the issues are with the Southeast Asian digital rights landscape, who is responsible for this, why they might be compelled to do it, and how the issues can be remedied. Only after truly understanding how interconnected mechanisms work, can we combat digital dictatorship and push for tangible progress. Human behaviour online is a reflection of human behaviour offline; thus, digital rights are human rights.

Fig. E: List of laws weaponised by ASEAN governments to curb online freedoms through Digital Dictatorship, and justifications for their usage.












|   | <br><b>CAMBODIA</b>   | <br><b>INDONESIA</b>   | <br><b>LAOS</b>   | <br><b>MALAYSIA</b>   |
|---|--|---|---|--|
| <b>Sedition</b>   | <b>Article 494</b> - Criminal Code   | Sedition was declared as "unconstitutional" (2007)  | <b>Article 114</b> - Penal Code   | <b>Section 3</b> - Sedition Act (1969)<br>Communications and Multimedia Act (1998)   |
| <b>Defamation</b>   | <b>Articles 305 to 308</b> - Criminal Code<br><b>Articles 10 &amp; 308</b> - 1995 Press Law  | <b>Articles 156a, 219, 241 &amp; 310 to 321</b> - Criminal Code<br><b>Articles 27</b> - Electronic Information and Transaction Law (2016)   | <b>Articles 93 &amp; 117</b> - Penal Code   | <b>Sections 499 to 502</b> - Penal Code  |
| <b>Lèse-majesté</b>   | <b>Article 437bis</b> - Criminal Code  | /   | /   | /  |
| <b>Fake news</b>  | Cybercrime Law (2021)<br><b>Articles 425, 494 &amp; 495</b> - Penal Code   | <b>Articles 27, 28 &amp; 40</b> - Electronic Information and Transaction Law (2016)   | <b>Article 117</b> - Penal Code<br>Law on Prevention and Combating Cyber Crime (2015)<br><b>Decree No. 327</b> - Internet-Based Information Control/Management (2014)                 | Anti-Fake News Act (2018)<br><b>Section 505(b)</b> - Penal Code<br><b>Section 233</b> - Communication and Multimedia Act (1998)  |
| <b>ISPS, media, and tech companies</b>                                  | Press Law (1995)<br>Law on the Media (1995)  | Broadcasting Law (No. 32 of 2002)<br>Electronic Information and Transactions (No. 11 of 2008)<br>Press Law (No. 40 of 1999)<br>Telecommunications Law (No. 36 of 1999)  | Telecom Law (2021)<br>Law on Information and Communication Technology No. 02/NA (2016)  | Communications and Multimedia Act (1998)<br>Printing Presses and Publication Act (1984)  |
| <b>Mass surveillance</b>  | National Internet Gateway Sub-Decree (2021)  | State Intelligence Law (2011)   | SIM Card Registration Act (2021)  | Security Offences (Special Measures) Act (2012)<br>Amended Prevention of Crime Act (2014)  |
| <b>Covid-19 temporary and emergency laws, regulations, task forces.</b> | <b>Section 5</b> - Law on the Management of the Nation in a State of Emergency (2020)<br>COVID-19 Law (2021)<br>National Committee for Combating COVID-19 (Task Force, January 2020)<br>StopCOVID-19 (Tracking Device, April 2020) | <b>Section 5</b> - State of Emergency Law (1959)<br><b>Section 11</b> - COVID-19 Law (2020)<br>Ministerial Regulation Number 5/2020 on Private Electronic System Operators (MR 5/2020)<br>Satgas Penanganan COVID-19 (COVID Task Force, March 2020)<br>PeduliLindungi (Tracking Device, April 2020) | National Taskforce Committee for COVID-19 Prevention and Control (Task Force, May 2021)<br>Special Task Force (Fake News Task Force, May 2021)<br>LaoKYC (Tracking Device, June 2020) | Emergency (Essential Powers) (No.2) Ordinance (2021)<br>Special Ministerial Committee on COVID-19 (Task Force, January 2020)<br>COVID-19 National Sub-Committee (Task force, March 2020)<br>MySejahtera & MyTrace (Tracking Devices, April 2020) |































| MYANMAR   | PHILIPPINES   | THAILAND   | SINGAPORE   | VIETNAM  |
|---|---|--|---|--|
| <b>Articles 124A and 505(a)</b> - Penal Code  | <b>Articles 139 to 142</b> - Penal Code<br><b>Section 9</b> - 2020 Anti-Terrorism Act   | <b>Article 116</b> - Penal Code  | Sedition Act (1948)   | <b>Articles 109 &amp; 117</b> - Penal Code   |
| <b>Article 499</b> - Penal Code   | <b>Articles 353 to 358</b> - Penal Code   | <b>Articles 326 to 328 &amp; 499 to 500</b> - Penal Code   | Defamation Act (1957)   | <b>Articles 155 to 156</b> - Penal Code  |
| Lèse-majesté is no longer in effect (2019)  | /   | <b>Article 112</b> - Penal Code  | /   | /  |
| <b>Articles 68(a) &amp; 77</b> - Telecommunications Law<br><b>Article 38</b> - Electronic Transactions Law<br><b>Article 505(b)</b> - Penal Code          | Cybercrime Prevention Act (2012)  | <b>Sections 14 to 17</b> - Computer Crime Act (2007)<br>Regulation on Prevention, Suppression, and Solving Problems of Fake News Dissemination on Social Media (2022)  | Protection from Online Falsehoods and Manipulation Act (POFMA) (2019)<br>Online Safety (Miscellaneous Amendments) Act (2022)                            | Cybersecurity Law (2018)<br><b>Article 117</b> - Penal Code<br>Decree No. 15/2020/ND-CP  |
| Printing and Publishing Law (2014)<br>News Media Law (2014)<br>Cyber Security Law (2022)  | Public Telecommunications Policy Act (1994)<br>Freedom of Information Order (2016)  | Broadcasting Act (2008)<br>NBTC Act (2010)<br>New Ministerial Regulation of MDES (2021)<br>The Notice Procedure, the Suppression of Dissemination of Computer Data and the Deletion of Computer Data from the System B.E. 2565 (2022)  | Broadcasting Act (1994)<br>Newspapers and Printing Presses Act (1974)<br>Internet Code of Practice (2016)   | Press Law (1989)<br>Publication Law (No. 30/2004/QH11)<br>Telecommunications Law (No. 41/2009/QH12)<br>Decree No. 97 (No. 97/2008/ND-CP)<br>Decree 15/2020/ND-CP<br>Decree No. 53/2022/ND-CP   |
| Law Protecting the Privacy and Security of Citizens (2017)<br>Telecommunications Law (2013)   | SIM Card Registration Act (2022)  | <b>Section 15</b> - Computer Crimes Act (2007)<br>Cybersecurity Act (2019)<br>National Intelligence Act (2019)   | Section 23 of the Cybersecurity Act (2018)  | Decree Number 72/2013/ND-CP  |
| <b>Section 27</b> - Natural Disaster Management Law (2020)<br>Central Committee on Prevention, Control and Treatment of COVID-19 (Task Force, March 2020) | Bayanihan to Heal as One Act (2020) replaced by the the Bayanihan to Recover as One Act (2020)<br>Inter-Agency Task Force for the Management of Emerging Infectious Diseases (Task Force, January 2020)<br>StaySafePH & COVID-KAYA (Tracking Devices, May 2020) | <b>Section 9(3)</b> - Emergency Decree on Public Administration in Emergency Situations (2005)<br>COVID-19 Emergency Decree (2020)<br>Center for COVID-19 Situation Administration (Task Force, March 2020)<br>COVID-19 Fake News Center (Fake News Task Force, May 2021)<br>ThaiChana & MorChana (Tracking Devices, May 2020) | COVID (Temporary Measures) Act (2020)<br>Multi-Ministry Taskforce on COVID-19 (Task Force, January 2020)<br>TraceTogether (Tracking Device, March 2020) | Sections 5 to 9 & 27 Emergency Decree on Public Administration in Emergency Situation (2005)<br>Decree 15/2020/ND-CP<br>National Steering Committee for COVID-19 Prevention and Control (Task Force, January 2020)<br>Bluezone & NCOVI (Tracking Device, 2020) |

Fig. F: Key Events Driving Digital Dictatorship in Southeast Asia; see country chapters for timeline visualisations.

| Country  | Event  | Contextualisation  |
|--|--|--|
| <br><b>CAMBODIA</b>   |  National Internet Gateway (NIG) Sub-Decree (2020)  | This sub-decree was designed to strengthen government control over the Internet by requiring all Internet service providers to route their traffic through a centralised control point, the National Internet Gateway.   |
|  |  Law on Measures to Prevent the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases | This law has been particularly used to control the dissemination of certain information deemed sensitive or potentially detrimental to the management of the health crisis.  |
|  |  Elections  | The legislative elections in Cambodia, held on July 23, 2023, faced significant criticism for taking place in the absence of the main opposition party, the Candlelight Party, which was not allowed to participate. These elections were widely seen as tailored to ensure the victory of the Cambodian People's Party (CPP), led by Prime Minister Hun Sen, as part of an effort to validate the transition of power to Hun Manet, the eldest son of Prime Minister Hun Sen. |
| <br><b>INDONESIA</b> |  Ministerial Regulation Number 5/2020 on Private Electronic System Operators (MR 5/2020)              | The regulation gives the Indonesian Ministry of Communications and Information Technology (MoCI) broad powers to block and restrict access to online content deemed inappropriate or harmful, without clearly defining the criteria or procedures for determining what constitutes a violation.  |
|  |  New Criminal Code (Law No. 1 of 2023)  | The New Criminal Code stipulates harsh penalties for speech-related offenses including the dissemination of false information, insults, defamation, and the promotion of abortion.   |
| <br><b>LAO PDR</b>  |  Telecom Law (2021)   | Telecom Law 2021 requires ISPs to cooperate with the government to block access to certain online content deemed inappropriate or against the law. In addition, Telecom Law 2021 provides for severe penalties, including substantial fines, for ISPs that fail to comply with the requirements of the law.  |
|  |  SIM Card Registration Act (2021)   | This law requires all SIM card users to register their personal details, including name, address and identity card number, with telecoms operators.  |
|  |  Elections  | The Laotian legislative elections of 2021 took place on February 21, 2021, to elect members of the 9th legislature of the National Assembly of Laos. Laos is a single-party state, where the Lao People's Revolutionary Party (LPRP) is the only legal party and controls the entire electoral process. Elections in Laos are not considered free and fair, as all candidates are approved by the LPRP, and no significant opposition is allowed.                              |

|   |  |   |
|---|--|---|
| <br><b>MALAYSIA</b>          |  The Emergency (Essential Powers) (No. 2) Ordinance | <p>This law has been particularly used to control the dissemination of certain information deemed sensitive or potentially detrimental to the management of the health crisis.</p>  |
|   |  Elections (2020)                                   | <p>Muhyiddin Yassin was appointed as the Prime Minister in politically complex circumstances triggered by the sudden resignation of Prime Minister Mahathir Mohamad in February 2020. Subsequently, a political crisis erupted. The manner in which Muhyiddin Yassin became Prime Minister sparked controversies and debates on the legitimacy of the process.</p>  |
|   |  Elections (2021)                                   | <p>Ismail Sabri Yaakob was elected as the Prime Minister of Malaysia on August 21, 2021. He assumed office following the resignation of his predecessor due to political pressure. Ismail Sabri was appointed Prime Minister after gaining the support of a majority of members in the Malaysian Parliament, and there were no elections per se. Instead, Ismail Sabri was selected through the internal political process of Parliament, where members expressed their confidence in his ability to form a stable government.</p>  |
|   |  Elections (2022)                                   | <p>Anwar Ibrahim became the Prime Minister of Malaysia on November 24, 2022, following legislative elections. His appointment marked the end of a prolonged period of political uncertainty post-elections. The 15th Malaysian General Elections (GE15), the first since the Covid pandemic lockdown, aimed to restore political stability after three different prime ministers since 2018. However, the results were inconclusive, with no single coalition winning the minimum seats to form a government. Subsequently, the King entrusted Anwar Ibrahim with the task of forming a new government.</p> |
| <br><b>MYANMAR</b>         |  Cyber Security Law (2022)                        | <p>This law outlaws the use of Virtual Private Networks (VPNs), infringing upon individuals' right to access information online.</p>  |
|   |  Coup d'état (2021)                               | <p>On February 1, 2021, the Burmese military overthrew the civilian government led by Aung San Suu Kyi, ending several years of democratic transition. The military declared a state of emergency, citing allegations of electoral fraud during the November 2020 elections, which were won by Aung San Suu Kyi's party, the National League for Democracy (NLD).</p>   |
| <br><b>THE PHILIPPINES</b> |  SIM Card Registration Act (2022)                 | <p>This law requires all SIM card users to register their personal details, including name, address and identity card number, with telecoms operators</p>   |
|   |  The Anti-Terrorism Act of 2020                   | <p>It grants the government broader powers to prevent and combat terrorism, including the authority to conduct warrantless arrests and detain suspects for an extended period without judicial warrant, allowing the designation of individuals or groups as terrorists without due process and grants authorities the power to conduct surveillance.</p>   |
|   |  Elections (2022)                                 | <p>Ferdinand Marcos Jr., commonly known as Bongbong Marcos, emerged victorious in the presidential election in the Philippines. The son of the late former President Ferdinand Marcos, who ruled the country as a dictator for over two decades, Marcos Jr.'s win has sparked discussions and reactions given the historical context associated with his family's regime.</p>   |

|   |  |   |
|---|--|---|
| <br><b>SINGAPORE</b> |  Online Safety (Miscellaneous Amendments) Act (2022)  | The law grants extensive authority to block online content as deemed necessary by the government.   |
|   |  The Online Criminal Harms Act (2023)   | It introduces stricter regulations and penalties for individuals and entities engaged in online criminal activities.  |
|   |  Election (2020)  | the ruling People's Action Party (PAP), led by Prime Minister Lee Hsien Loong, maintained its uninterrupted hold on power despite a notable decline in popular support. The PAP, in power since 1959, secured a super majority by winning 83 out of 93 seats in parliament. The remaining 10 seats were claimed by the Workers' Party, marking the highest number ever held by opposition lawmakers since Singapore's first general election in 1968. Despite its victory, the PAP's share of the popular vote saw a decline to 61.2%, compared to nearly 70% five years ago and approaching the party's record low of 60% in 2011. The election recorded a high voter turnout of nearly 96%.   |
| <br><b>THAILAND</b>  |  Regulation on Prevention, Suppression, and Solving Problems of Fake News Dissemination on Social Media (2022)                              | Many critics fear that this regulation could be used abusively by authorities to censor dissenting opinions and suppress freedom of expression. Some view this measure as an infringement on media freedom and democracy, as it grants authorities extensive powers to control and filter online content.   |
|   |  The Notice Procedure, the Suppression of Dissemination of Computer Data and the Deletion of Computer Data from the System B.E. 2565 (2022) | The law empowers authorities to issue notices to internet service providers (ISPs) and online platforms to remove or suppress content deemed illegal or harmful.  |
|   |  Elections (2023)   | Progressive and pro-democracy opposition parties, notably the Move Forward Party led by Pita Limjaroenrat, secured a significant victory in Thailand's recent elections. This outcome challenges the long-standing dominance of military-backed incumbents, signaling a strong desire for change among Thai voters. The Move Forward Party is projected to win 151 seats, the highest in the House, while the populist Pheu Thai Party is expected to secure 141 seats. Together, they hold at least 292 seats in the 500-member House. However, challenges persist in forming a government due to the military's influence, particularly through the appointed Senate. Move Forward is currently 67 votes short of the majority needed for Pita Limjaroenrat to become prime minister, leaving uncertainties about potential government formation. |
| <br><b>VIETNAM</b> |  Decree 15/2020/NĐ-CP   | It criminalises the dissemination of false and misleading information, insulting reputations, damaging moral or social values, and revealing state secrets.   |
|   |  Decree No. 53/2022/ND-CP   | The decree imposes stricter requirements on internet service providers and social media platforms to monitor and remove content deemed to be harmful or illegal, particularly content related to national security, public order, and social morality.  |
|   |  Decree No. 72/2023/ND-CP   | The decree imposes stricter requirements on social media companies operating in Vietnam, including the establishment of local representative offices and the appointment of local representatives responsible for compliance with Vietnamese laws. It also mandates that social media platforms must remove content deemed to be illegal or violating Vietnamese laws within 24 hours of receiving a request from competent authorities.  |
|   |  Elections (2021)   | Luong The Huy and pro-democracy forces scored a surprising victory in Vietnam's May 2021 general elections, dealing a significant blow to military-backed incumbents. The progressive Move Forward Party, led by Pita Limjaroenrat, is projected to win 151 seats, while the populist Pheu Thai is expected to secure 141 seats, collectively holding at least 292 out of 500 seats in the House.   |
|   |  Elections (2023)   | Vietnam's National Assembly appointed Vo Van Thuong as the new president in a leadership reshuffle amid an anti-graft campaign. Thuong, 52, secured the position with 98.38% of the votes in the largely ceremonial role. His appointment follows the abrupt resignation of his predecessor Nguyen Xuan Phuc in January, linked to alleged "violations and wrongdoing." Thuong, a Politburo member and anti-corruption advocate, pledged to continue the fight against corruption. Seen as close to General Secretary Nguyen Phu Trong, Thuong's election is considered a step towards leadership stability, reassuring investors and signaling continuity in foreign and economic policies.  |

# Chapter I.

## Introduction

The digital space is quickly emerging as one of the key spaces in which human rights are threatened. In Southeast Asia, the internet is no longer a free, safe, and secure space for expression. Restrictive legislation, intimidation, and even the murder of human rights defenders, activists, and journalists tarnishes the commitment to freedom of expression of the countries in the region. In this light, the need for our rights to be respected, including online, becomes greater.

This report is the outcome of the collaborative work of the ASEAN Regional Coalition to #StopDigitalDictatorship (“the Coalition”). After its establishment in 2020, with the coordination of Manushya Foundation, virtual discussions were initiated to discuss challenges faced, while determining collaborative and inclusive efforts to assess, amend, and monitor implementation of legislations affecting digital rights. The Coalition has established itself as a leading regional expert voice on digital rights in the region and is now a key player, powering local and regional voices to speak their truth to power and to resist digital dictatorship.

A core group of members of the Coalition has collectively developed the research and analysis framework of a regional ASEAN Study, which is divided into three thematic reports. This report is part of the series of three thematic reports and focuses on the right to freedom of speech and expression in the digital space.

The aim of this report goes far beyond merely analysing the legal framework related to freedom of expression online and documenting rights violations in the nine Southeast Asian countries covered. The main goal is to increase public understanding of how important digital rights are to everyone’s lives and to strengthen netizens’ knowledge of those rights. But there is more to consider. As intersectional feminists, we recognise the internet is not equal for everyone. While the digital realm offers immense opportunities, it is far from being neutral or egalitarian, and it remains susceptible to persistent backlash against the rights of women and LGBTIQ+ people. Like other social spaces, it reflects and reproduces power relations and inequalities, including those related to gender.

Coalition members dedicate their work to make Asia a safe and peaceful place for all. While they have different goals and perspectives, the cultivation of an open, safe, and inclusive digital space for all is a key priority for them. At **Manushya Foundation**, we place “equality” at the core of our activities, apply a gender lens to all of our work, and focus on powering women activists and human rights defenders, youth, and LGBTIQ+ individuals to tell their very own stories in a powerful manner for their advocacy. Likewise, **ILGA**

**Asia**, a regional federation of more than 204 member organisations, works for the equality of all people regardless of sexual orientation, gender identity, and sex characteristic, as well as liberation from all forms of discrimination and stigmatisation. **Women’s Peace Network** has “equality” as one of its core visions and works to protect the rights and increase the inclusion of marginalised women, youth, and communities in the Rakhine state and across Myanmar. **The Foundation for Media Alternatives** focuses on the intersection between information and communication technology (ICT) and gender rights, including tech-related gender-based violence.

We also recognise that gender inequality intersects with other forms of oppression, such as race, class, sexuality, and disability, and women exposed to intersecting forms of discrimination are particularly vulnerable to violence in the digital world. Understanding the intricate ways in which power operates, we apply an intersectional feminist lens to explore and tackle the multifaceted dynamics within the digital realm. With this report, we shed light on this and the patriarchal power dynamics that hold our world back from fulfilling a society where everyone is treated with fairness and dignity. However, that is not where our work ends. The ultimate objective is to call, as a strong and unified voice, on governments, policy-makers, and tech companies to move the needle forward from commitments on paper to concrete measures to respect their international human rights obligations—in order to restore our only democracy. Recommendations are also extended to civil society, which provides a critical foundation for holding governments and businesses accountable, and promoting human rights and democracy.

Following **Chapter II: Methodology**, which will clarify our research and compilation process, **Chapter III: Summary of International Human Rights Laws and Standards** will provide important context for the rest of the report with a table addressing the right to freedom of expression; the rights of human rights defenders; the right to privacy; and the right to effective remedy, and indicates the ratification status by country of each convention, where appropriate. Following, **Chapter IV: Country Overviews (Analysis)** is split into nine sections, each one focused on a specific country: **Cambodia**,

## What is the ASEAN Regional Coalition to #StopDigitalDictatorship?

The ASEAN Regional Coalition to #StopDigitalDictatorship was established in 2020, by human rights and digital rights activists from Southeast Asia, on a mission to decolonise digital rights and restore our online democracies. Together, we stand in solidarity with one another, with people from the Global Majority, resisting and pushing back against authoritarian governments and complicit tech companies. We tell our realities on the ground, and we develop solutions together.

**Our truths. Our Stories. Our Solutions.**

**Fighting back online authoritarianism in Southeast Asia is, and shall always be, decolonial, grounded on feminist values, centred on our voices and our collective power.**

**Indonesia, Lao PDR (Laos), Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.** Each section explains how the respective government uses laws and legal frameworks to target free expression and information online, censor or regulate content, and monitor online activities. Each section includes cases of individuals arrested and charged for their online activities, as well as instances of online censorship, monitoring, and surveillance.

In each country section, a part is dedicated to the impact of COVID-19 and democracy in the region. Although the pandemic has brought the world grinding to a halt, Southeast Asian governments took it as an opportunity to tighten their grip over civic space and implemented self-serving laws and policies. Under the banner of safeguarding public health, governments exploited emergency powers and other legal tools, including “fake

news” laws, in restrictive and repressive ways, to advance their authoritarian agendas, suppress freedoms and critical speech, silence political opponents, control the flow of information, and attack media freedoms. While national circumstances differed in how the pandemic was governed, the states covered in this report had extensive repressive powers and used COVID-19 as a pretext to limit democratic space both offline and online.

Further, each country section draws particular attention to cases of online gender-based violence and harassment experienced by women, including those who are more susceptible to online violence because of their jobs, race, religion, or identity, such as women activists and human rights defenders, women journalists, women belonging to religious or ethnic minorities, young women, women with intersecting identities (Indigenous, ethnic and minority, migrant women; lesbian, bisexual, transgender and intersex women; women with disabilities).

The report concludes with a number of **recommendations** for the primary actors identified as holding key functions in enhancing the state of digital freedoms in Southeast Asia, specifically that of online expression. Governments, members of Parliament, tech companies, and civil society have—each one to a different extent—a crucial role to play to uphold human rights and fundamental freedoms in the digital space. Since civil society civil groups are front and centre in representing the factual needs of the people and they can power citizens by providing civic education on human rights, a series of recommendations is likewise made to them. People are more likely to resist attempts to suppress their rights if they are aware of them.

Creating a safe internet space for everyone is crucial for promoting inclusivity, respect, and equal opportunities.

**Only together can we foster a more inclusive and respectful internet culture where everyone can engage, express themselves, and participate without fear of discrimination or harassment. None of us are free until we are all free.**

# Chapter II.

## Methodology

This Thematic Report is a culmination of four years of monitoring, research, writing, reviewing, and examining the digital rights space in nine ASEAN countries: Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, The Philippines, Singapore, Thailand, and Vietnam. Our research does not cover Brunei Darussalam and Timor-Leste due to the lack of coalition members in these countries.



**W**e have entrusted our coalition members to write thorough country-specific analyses, based on their expertise in the digital rights landscapes of their respective countries. It must thus also be noted that as these coalition members are specialists in their own rights, with a wealth of information obtained through lived experiences and field research, not every source will be cited, as a lot of information was first-handedly provided by the author and not obtained from elsewhere. Please find a list of the organisations and/or network individuals who were responsible for the writing and reviewing of our different Chapter IV country-specific subchapters in **Fig. X (p.6)**.

We included voices from the ground and experts' insight from panel discussions, including sessions we held as part of RightsCon, such as the 2022 "Thailand: Digital Authoritarianism Rising" session, the 2021 "Online Freedom Under Attack: Weaponising Misinformation, Disinformation, and 'Fake News' for Censorship in Southeast Asia" session, as well as a series of other webinars hosted by the Coalition. Participants of the webinars and discussions consisted of citizens, experts, representatives of academia, and civil society groups. For some countries, our Coalition members also conducted independent investigations and compiled data from open sources published by the relevant authorities, government agencies and the judiciary. The report's coverage spans the years 2020 through 2023, except for the chapter

on Laos (**Chapter IV, 3. Lao PDR**), where egregious human rights breaches instances prior to 2020 are also included. We focused our inquiries on different target areas, which were ultimately synthesised into primary themes featured in the reports in this series: criminalisation of defamation and lack of human-centred cyber laws and policies; online monitoring and content moderation; threats to privacy and data protection; harassment of activists and human rights defenders (HRDs); and internet shutdowns.

This report is also composed on the basis of desk research, including a systematic literature review of relevant legislation and regulations; reports, studies, and recommendations by UN human rights mechanisms and NGOs; online news articles; policy and white papers; and independent publications. Data was also obtained from studies and external civil society organisations. We carried out interviews with a wide range of stakeholders to receive the most accurate insight on the state of digital rights on the ground relating to the target areas specified above. The study's ultimate objective is to provide a comprehensive analysis on the state of digital rights in the Southeast Asia region, including during the COVID-19 pandemic, by looking at existing national laws, policies and measures; recorded cases of violation; as well as previous recommendations or proposals made in line with international human rights laws and standards.

# Chapter III.

## Summary of International Human Rights Laws and Standards

Fig. G: Summary table of international human rights laws and standards.

| FREEDOMS OF EXPRESSION AND TO HOLD OPINION |   |  |
|--|---|--|
| International Human Rights Instruments     | Relevant Provisions and Interpretations   | Ratification/Voting/Adoption Date and Status   |
| UDHR                                       | <b>Article 19:</b> “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”  | <b>NOT Binding</b> but serves as a cornerstone for the development and evolution of international human rights law. as a matter of customary international law   |
| ICCPR                                      | <b>Article 19:</b> Upholds the right of every individual to freedom of expression, including the freedom to “seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media” without interference.   | <b>Ratified</b><br>Cambodia<br>(May 26, 1992)<br><br>Indonesia<br>(Feb. 23, 2006)<br><br>Lao PDR<br>(Sept. 25, 2009)<br><br>Philippines<br>(Oct. 23, 1986)<br><br>Thailand<br>(Oct. 29, 1996)  |
|  | <b>Article 19(3):</b> Articulates a three-part test, stipulating that any restrictions on expression must be “provided by law”, proportionate, and necessary for “respect of the rights and reputations of others,” “for the protection of national security or of public order, or of public health and morals.” | <b>General comment no. 34: Article 19</b> (freedoms of opinion and expression): States that criminalize defamation must decriminalize it given that “imprisonment is never an appropriate penalty” for, and is neither necessary nor proportionate to the aim of protecting others. <sup>2</sup> |
| UDHR                                       | <b>Article 12:</b> “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”   | <b>NOT Binding</b> but serves as a cornerstone for the development and evolution of international human rights law. Binding as a matter of customary international law   |

Fig. G: Summary table of international human rights laws and standards.(continuous)

|   |   |  |
|---|---|--|
| <p><b>ICCPR</b></p>   | <p><b>Article 17:</b> “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” It also upholds the right of persons to receive legal protection from such interference or attacks.</p> <hr/> <p><b>General comment no. 16: Article 17 (right to privacy):</b> This Article is intended to protect against said infringements, both by states and private individuals. Further, “interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.” The principles of legality, necessity and proportionality also apply to privacy limitations.<sup>3</sup></p>                      | <p><b>Ratified</b><br/>                 Cambodia<br/>                 (May 26, 1992)</p> <p>Indonesia<br/>                 (Feb. 23, 2006)</p> <p>Lao PDR<br/>                 (Sept. 25, 2009)</p> <p>Philippines<br/>                 (Oct. 23, 1986)</p> <p>Thailand<br/>                 (Oct. 29, 1996)</p> <p>Vietnam<br/>                 (Sept. 24, 1982)</p> <p><b>Not signed or ratified</b><br/>                 Malaysia, Myanmar, Singapore</p> |
| <p>Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2016) juncto Report of the OHCHR on the right to privacy in the digital age (2014)</p> | <p>Legitimate surveillance, where intended to limit the freedom of expression, requires states to demonstrate the risk that the expression “poses to a definite interest in national security or public order.”<sup>4</sup> All interference with the right to privacy must also be authorised by an independent oversight body through careful review, and be accompanied with an assurance of effective remedy in case of a breach.<sup>5</sup></p>   | <p><b>Non-binding</b> (interpretive)</p>   |
| <p><b>RIGHTS OF HRDS</b></p>  |   |  |
| <p><b>International Human Rights Instruments</b></p>  | <p><b>Relevant Provisions and Interpretations</b></p>   | <p><b>Ratification/Voting/Adoption Date and Status</b></p>   |
| <p><b>UN Declaration on Human Rights Defenders</b></p>  | <p><b>Article 6:</b> Provides for the right of persons to seek, obtain, receive and hold information about all human rights and fundamental freedoms; freely publish or impart or disseminate information and knowledge on all human rights and fundamental freedoms; and to study, discuss and hold opinions on the observance of these rights.</p> <p><b>Article 7:</b> “Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.”</p> <p><b>Article 9:</b> Everyone whose rights or freedoms pursuant to the Declaration are allegedly violated must be able to access an effective remedy and have their complaint heard by an independent, impartial and competent authority.</p> | <p><b>NOT Binding</b> but serves as a cornerstone for the development and evolution of international human rights law</p>  |

Fig. G: Summary table of international human rights laws and standards.(continuous)

| RIGHT TO AN EFFECTIVE REMEDY           |   |  |
|--|---|--|
| International Human Rights Instruments | Relevant Provisions and Interpretations   | Ratification/Voting/Adoption Date and Status   |
| UDHR                                   | <b>Article 8:</b> “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.   | <b>NOT Binding</b> but serves as a cornerstone for the development and evolution of international human rights law   |
| ICCPR                                  | <b>Article 2(3):</b> Provides for the obligation of states to ensure that those individuals whose rights have been violated have access to an effective remedy whether the violation(s) were committed by a person acting in their official capacity. Further, the effective remedy is to be determined by a competent judicial, administrative, legislative or other authority as mandated by the national legal system. The bottomline is that, regardless of the authority in charge, remedy must actually be granted.   | <p><b>Ratified</b></p> <p>Cambodia<br/>(May 26, 1992)</p> <p>Indonesia<br/>(Feb. 23, 2006)</p> <p>Lao PDR<br/>(Sept. 25, 2009)</p>   |
|  | <b>General comment no. 31 (the nature of the general legal obligation imposed on States Parties to the Covenant):</b> Judicial and administrative mechanisms must be set in place to “investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.” Reparation to individuals can take the forms of “restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.” <sup>7</sup> | <p>Philippines<br/>(Oct. 23, 1986)</p> <p>Thailand<br/>(Oct. 29, 1996)</p> <p>Vietnam<br/>(Sept. 24, 1982)</p> <p><b>Not signed or ratified</b><br/>Malaysia, Myanmar, Singapore</p> |

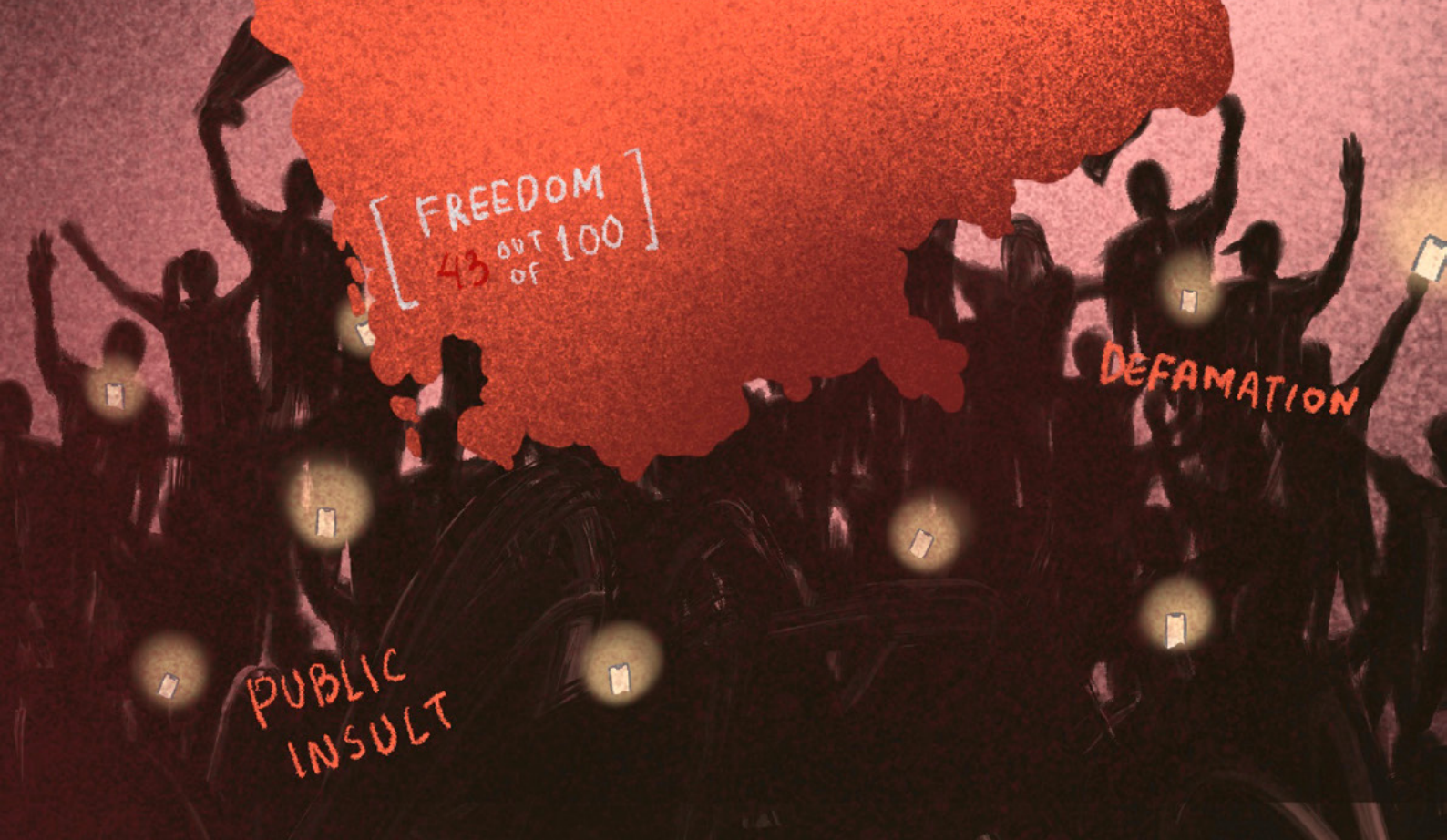
# Chapter IV.

## **#WhatsHappeninginASEAN: Country Overviews (Analysis)**

As explained briefly above, the internet has become increasingly instrumental in the stifling of human rights activism and political dissent around the world. Among those individuals most frequently targeted by government-backed repression are activists, journalists, and HRDs. Vague and expansive laws and policies empower governments to criminalise legitimate exercises of free expression online, control online communication, and pressure individuals and content providers to remove content, often with little to no guarantee of redress.



# CAMBODIA



[ FREEDOM ]  
43 out of 100 of

DEFAMATION

PUBLIC INSULT



# 1. Cambodia



| YEAR | DEMOCRATIC STATUS OF THE COUNTRY<br>(according to the Freedom In The World index) | DIGITAL SPACE & ONLINE FREEDOM STATUS OF THE COUNTRY<br>(Digital Space Status) | PRESS & MEDIA FREEDOM STATUS OF THE COUNTRY<br>(according to the World's Press Freedom Index) |
|------|---|--|---|
| 2020 | 25/100<br>NOT FREE  | 43/100<br>PARTLY FREE  | 144/180 (54,54)<br>DIFFICULT  |
| 2021 | 24/100<br>NOT FREE  | 43/100<br>PARTLY FREE  | 144/180 (53,16)<br>DIFFICULT  |
| 2022 | 24/100<br>NOT FREE  | 43/100<br>PARTLY FREE  | 142/180 (43,48)<br>VERY SERIOUS   |
| 2023 | 24/100<br>NOT FREE  | 44/100<br>PARTLY FREE  | 147/180 (42,02)<br>VERY SERIOUS   |

Fig. 1.1: Summary of freedom ratings for Cambodia, 2020-2023. <sup>14</sup>

## 1.1 Legal Framework

### Freedom of Expression is Guaranteed but Illegitimately Restricted

The Constitution of the Kingdom of Cambodia explicitly guarantees the right to freedom of expression, press and publication for all Khmer citizens, under Article 41. However, such a right cannot be exercised to “infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security.” <sup>15</sup> Although this article

applies only to Cambodian citizens, the freedom of expression of foreigners living in Cambodia is protected under Article 31, which makes international human rights instruments directly applicable in Cambodia’s domestic law. <sup>16</sup> Nevertheless, there are multiple repressive laws that illegitimately restrict freedom of expression, whether for Khmers or foreigners.



## Criminalisation of Defamation and the Lèse-Majesté Law: the Criminal Code

Defamation is punishable by criminal sanctions and broad provisions are included within the Cambodian Criminal Code. Article 305 of the Code defines defamation as “any allegation or charge made in bad faith which tends to injure the honour or reputation of a person or an institution.”<sup>17</sup> Thus, any person who engages in such an act may expose themselves to a penalty. The term “statements” is understood to encompass words made in written documents, photos or audio-visual communications released to the public. Article 305 also applies broadly to defamatory statements carried out with the help of the media.<sup>18</sup> The term “injure” on the other hand, is not accompanied by any fixed definition, nor is there settled jurisprudence to clarify its scope; Cambodian courts therefore retain broad discretion in interpreting it and determining the types of expressions which are injurious in nature. Individuals or media outlets who post content perceived to be defamatory may face steep fines and, potentially, imprisonment.<sup>19</sup>

The Criminal Code contains another provision, Article 307, on so-called public insult, i.e. “outrageous expression, term of contempt or any invective that does not involve any imputation of fact.”<sup>20</sup> Those falling within the ambit of this Article are, among others, statements made in public, written documents, pictures, or audio-visual communication forms released publicly. Violations of Articles 305 and 307 are punishable by a fine of up to KHR 10 million (\$2,500), an exorbitant amount in light of the Cambodian minimum wage of roughly \$190 per month for those working in formal economic sectors.<sup>21</sup>

Individuals charged with defamation against the Royal Government of Cambodia (RGC) or its officials can simultaneously be charged with incitement to either commit a felony under Articles 494 and 495 of

the Criminal Code or to discriminate under Articles 494 and 496 of the same, both of which carry an imprisonment term.<sup>22</sup>

Aside from general defamation provisions, the RGC regularly bypasses the constitutionally guaranteed freedom of expression against its critics by invoking Articles 437-bis (lèse-majesté or insult of a monarch) and 425 (falsification of information) of the Criminal Code. Article 437-bis prohibits any person from defaming, insulting or threatening the dignity of the King by means of “any speeches, gestures, scripts/ writing, paintings, or items.”<sup>23</sup> The Cambodian Justice Minister purportedly confirmed in an interview that the lèse-majesté offence applies to media outlets who publish content deemed insulting to the King.<sup>24</sup> Moreover, in 2018, the Ministry of Information (MoI) warned media outlets against publicising, distributing, or circulating articles, videos, photos or voice recordings that offend the King.

## Defamation or Public Insult by Media: 1995 Press Law

Under articles 306 and 308 of the Penal Code, defamation or public insult cases involving media outlets are specifically regulated by Article 308 and Article 10 of the 1995 Press Law. These provisions enforce civil penalties of up to KHR 5 million (\$1,200) for the publication of false or harmful content, including articles, text, pictures, or drawings that undermine the dignity of an individual.<sup>26</sup> Article 20 of the Press Law is particularly problematic; it appears to be a catchall provision which criminalises any act which runs counter to the country’s criminal law “committed by an employer, editor or author of a text.” The Article does exclude “expression of opinions” from its scope. However, in the absence of a precise definition or interpretive guideline, the exception is devoid of meaning; judges or law enforcement can easily apply narrow understandings that harm accused persons.<sup>27</sup>

## Restricting Expression on Grounds of Combating “Fake News” and Protecting National Security

Another common justification for online censorship is the prohibition against “fake news,” enshrined in Article 425 of the Criminal Code. It applies to communications or disclosures of any “false information with a view of inducing a belief that a destruction, defacement or damage dangerous to other persons will be carried out” and carries a maximum imprisonment term of two years and a fine of up to KHR 4 million (\$980).<sup>28</sup> Certain laws still undergoing the legislative process—such as the Draft Law on Cybercrime, Draft Law on Public Order, and Draft Law on Access to Information—proscribe the creation of disinformation and false statements, further hindering online expression. The Draft Law on Cybercrime, which was leaked in 2020, permits authorities to fine or imprison individuals for up to three years if they knowingly or intentionally makes a “false statement or disinformation through information technology”<sup>29</sup>, which adversely affects national security, public health and public safety, among others.<sup>30</sup> Article 40 prohibits “disturbing, frightening, threatening, violating, persecuting or verbally abusing others by means of a computer.”<sup>31</sup> These formulations are so opaque and loose that they can be abused by authorities, especially in a country with a tarnished human rights record. The draft undergoes perpetual modifications until the end of 2023. In October 2023, Access Now and the International Commission of Jurists (ICJ) sent a joint letter to the Cambodian Ministries of Posts and Telecommunications and Justice denouncing this project and calling for its withdrawal.<sup>32</sup> The Draft Law on Public Order, released in August 2020, also raised alarm among human rights groups as it expands the power of the RGC to control social media communications and disenfranchises women and gender minorities.<sup>33</sup>

The 2015 Telecommunications Law, referred to hereinafter as the Telecommunications Law, criminalises various actions, including the use of equipment in the telecommunications sector “that may affect public order and lead to national insecurity”. These actions are regulated under Articles 66 and 80, and individuals found guilty could face penalties of up to 15 years in prison or a fine of KHR 300 million (\$74,000). In addition, it establishes an enforcement body in charge of investigating suspected violations with the aid of the armed forces, a disproportionate measure per international human rights standards.<sup>34</sup>

The Inter-Ministerial Prakas No. 170 on Controlling the Publication of Websites and the Handling of Social Media, issued in 2018, aims to regulate the publication of all news content, including messages, audio, photos, videos, and other means on websites and social media. The decree grants powers to the Ministries of Interior, Information and Posts and Telecommunications to monitor online activities, as well as to block or shut down websites and/or social media pages containing content deemed to pose a threat.<sup>35</sup> The instruments punish publishers of content seen as unfit for publication or containing false information with an imprisonment term of two years and a maximum fine of \$1,000.<sup>36</sup>

## Rights-Abusing National Internet Gateway and a New Cybersecurity Law to Cement Government’s Grip on Online Freedoms

In February 2021, Cambodia signed into law the National Internet Gateway (NIG) Sub-Decree.<sup>37</sup> The decree establishes a single entry and exit point for all online traffic to filter through before it reaches an end user, otherwise known as a single internet gateway. This law authorises the RGC to exercise control over the online space and grant authorities unfettered surveillance and enforcement powers, thereby strengthening restrictions on online expression already in place. Article 6 of the Sub-

Decree allows the blocking of content deemed to “affect safety, national revenue, social order, dignity, culture, traditions and customs”. The language of Article 6 does not clarify whether it permits the blocking of content prior to publication, which would prohibit particular instances of expression.<sup>38</sup> Article 12 further mandates government appointed NIG operators to censor, disconnect, or block any network connection that facilitates the publication of such content. The RGC decided to postpone the instrument’s implementation the next day, February 16th, citing COVID-19 as its reason.<sup>39</sup> More than 30 civil society groups have expressed concerns regarding the Decree and called for its revocation.<sup>40</sup> The RGC’s ambition to tighten its grip over its internet

has been uncovered by another cybersecurity law, dated Sept. 2, 2022, whose leaked version was obtained in March 2023 by international nonprofit journalism organisation Rest of World. Though intended to prevent and respond to cybersecurity attacks, in reality, it may represent another weapon used by the government to suppress critics and strengthen internet censorship. Indeed, anyone who opposes the execution of the responsibilities of the Ministry or the Security Committee could face up to one year’s imprisonment and a maximum fine of KHR 150 million (around \$37,000). This has raised concerns among civil society actors who consider that the law may pave the way for further abuses, particularly in the run-up to the July 2023 elections.<sup>41</sup>

# 1.2 Challenges and Cases

## Struggles, Legislation, and Repression in Cambodia (2020–2023)



**LEGEND:**

⚠️ : Alleged offense + (articles/provisions invoked against the individual)  
 - "Unknown": Either information is not available or no articles/provisions have been cited by the judiciary

👮 : Legal and extralegal consequences  
 - "Status Unknown": Current status of the individual is unknown (detained, convicted, deceased, etc).

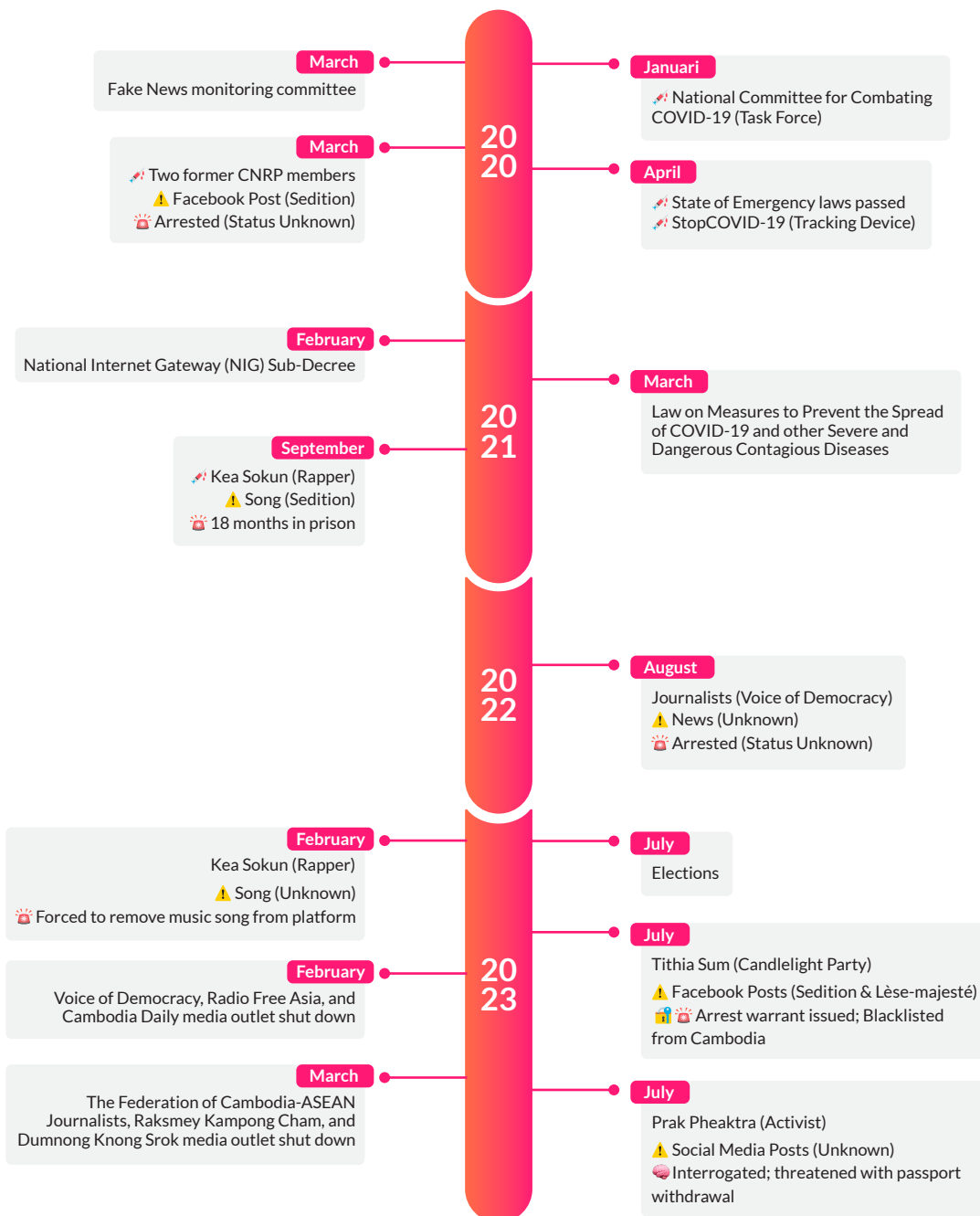


Fig. 1.3A: Summary timeline for Cambodia, 2020-2023





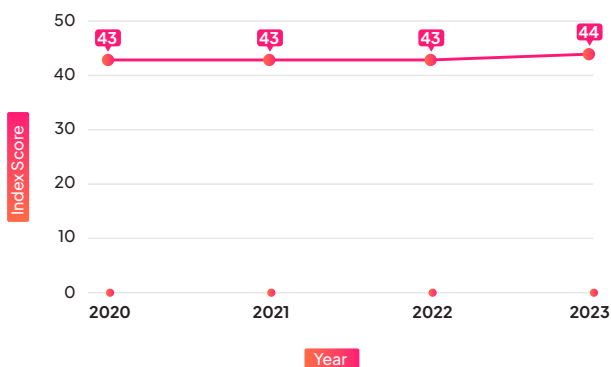
| Country  | Event  | Contextualisation  |
|--|--|--|
| <br><b>CAMBODIA</b> |  National Internet Gateway (NIG) Sub-Decree (2020)  | This sub-decree was designed to strengthen government control over the Internet by requiring all Internet service providers to route their traffic through a centralised control point, the National Internet Gateway.   |
|  |  Law on Measures to Prevent the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases | This law has been particularly used to control the dissemination of certain information deemed sensitive or potentially detrimental to the management of the health crisis.  |
|  |  Elections  | The legislative elections in Cambodia, held on July 23, 2023, faced significant criticism for taking place in the absence of the main opposition party, the Candlelight Party, which was not allowed to participate. These elections were widely seen as tailored to ensure the victory of the Cambodian People's Party (CPP), led by Prime Minister Hun Sen, as part of an effort to validate the transition of power to Hun Manet, the eldest son of Prime Minister Hun Sen. |

Fig. 1.3B: Contextualisation for Cambodia's timeline, 2020-2023

The multitude of repressive legislation and regulations in Cambodia has caused the country's score to drop in civic rights indices. For instance, Cambodia scores 43 out of 100 in Freedom House's Freedom on the Net Index in 2021 and 2022.<sup>42</sup> It is also one of the

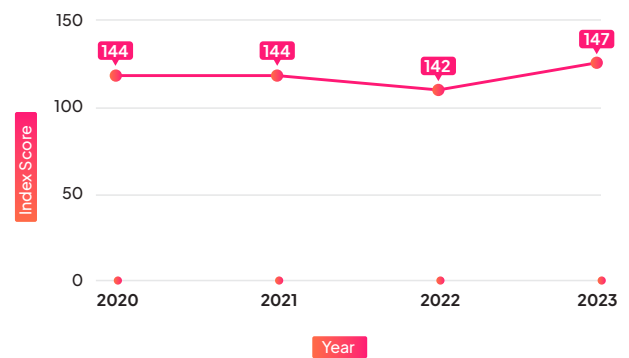
bottom countries in the World Press Freedom Index of 2022, placing 142nd out of 180 countries with a score of 43.48/100 and falling even further in the 2023 Index, now placing 147th out of 180 countries with a score of 42.02/100.<sup>43</sup>

**CAMBODIA: DEMOCRATIC STATUS OF THE COUNTRY (according to the Freedom In The World index)**



Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

**PRESS & MEDIA FREEDOM STATUS OF THE COUNTRY (according to the World's Press Freedom Index)**



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Figure 1.4: Digital Space & Online Freedom Status (Freedom on The Net) and Media & Press Freedom (World Press Freedom Index) Ratings for Cambodia over the years, 2020-2023.

## Politically Motivated Criminal Charges against Members of the Opposition

The prevalence of defamation provisions being used in this context is best illustrated in the case of exiled former president of the Cambodia National Rescue Party (CNRP), Sam Rainsy. In 2009, Rainsy was charged with defamation for accusing Prime Minister Hun Sen of corruption and alleging that a Phnom Penh municipal governor had been involved in a vote-buying scandal.<sup>44</sup> Since then, Rainsy has faced almost yearly defamation lawsuits lodged against him by government officials, many of which stem from statements he made on Facebook about various political issues, such as the ruling party's bribery of a CNRP member to disband the opposition, the Cambodian judiciary's lack of independence and Prime Minister Hun Sen's purchase of millions of Facebook "likes" to appear more popular.<sup>45</sup> Sam Rainsy has been living in self-imposed exile in France since 2015. In October 2023, a court sentenced him and opposition leader Mu Sochua to prison terms in a case linked to a Facebook discussion in early 2021 about whether Cambodians should temporarily stop paying back their loans due to the slowdown in business activity across the country caused by the COVID-19 pandemic. The Cambodian government has formally banned his return to the country.<sup>46</sup>

Members of other opposition parties are also targets of defamation lawsuits brought by the RGC. On Dec. 7, 2020, Vice President of the League for Democracy Party E. Saing Leng, was sued by the National Election Committee (NEC) for defamation and incitement as a result of his Facebook posts in which he alleged irregularities and fraud in electronic voter registration lists.<sup>47</sup> On Aug. 16, 2022, Sok Srey Nuon, the second deputy head of Tbong Khmum's Preah Theat commune from the Candlelight party, was summoned by the Tbong Khmum Provincial Court to testify on a defamation lawsuit filed against her by the ruling party. A few days later, on Aug. 22, she was ordered by the NEC to pay a \$1,250 fine to

the Tbong Khmum Provincial Election Commission. The complaint came after she posted a picture on Facebook suggesting that the Cambodian People's Party (CPP) tried to persuade voters to vote for the party with money before the commune council election.<sup>48</sup> On Oct. 7, 2022, Candlelight Party Vice-President Son Chhay was convicted of defamation by the Phnom Penh Municipal Court in two separate lawsuits filed by the NEC and the CPP after he publicly criticised the June 5 commune elections over irregularities and the NEC's lack of independence in a radio interview. In the lawsuit brought by the CPP, Chhay was sentenced to pay the ruling party KHR 3 billion (\$750,000) in damages as well as KHR 8 million (\$2,000) in fines. In the lawsuit brought by the NEC, he was sentenced to pay KHR 9 million (\$2,250) in fines.<sup>49</sup> In July 2023, Tithia Sum, a member of the Candlelight Party, left Cambodia after being informed of an arrest warrant issued against him. The notice from the Ministry of the Interior requested the cooperation of the Immigration Department in "blacklisting" him and preventing him from entering Cambodia. According to the notice, he is accused of using Facebook from 2020 to 2022 to "insult the king and incite social unrest in Cambodia" on charges of *lèse-majesté*, an offence punishable by up to five years' imprisonment and a fine of up to \$2,500. At the same time, Thol Samnang, a youth leader of the Candlelight Party, was arrested in Bangkok two days after fleeing Cambodia to escape the police. Earlier, police had surrounded his residence in Kandal for two days, attempting to arrest him without a warrant. In the weeks preceding his arrest, Samnang had expressed criticism of Prime Minister Hun Sen on Facebook, while calling on voters to protest against the elections by spoiling their ballot papers.<sup>50</sup> In total, in 2023, 42 individuals were removed from the electoral roll and banned from standing for election by the Phnom Penh Municipal Electoral Committee (PEC) under the new legislation in force.<sup>51</sup>

In terms of activism, the RGC most frequently targets former members of the CNRP, activists and

HRDs.<sup>52</sup> Sympathisers and politicians belonging to the disbanded political group are frequently hunted down, subjected to mass trials on unsubstantiated incitement and conspiracy charges, and sentenced to extended terms.<sup>53</sup> On some occasions, cases against the individuals stem from their online activities: in 2020, former CNRP youth activist Kung Raiya was convicted for advertising t-shirts on Facebook with quotes by Kem Ley, a murdered political activist. He was handed a two-year suspended sentence in June 2020. Raiya has also reported of being stalked by unknown people at his residence following his case, which led to him ceasing all political activism altogether.<sup>54</sup> Kung Raiya eventually fled to Thailand for his safety in July 2023, becoming a political refugee at risk of transnational repression.<sup>55</sup>

### Regular Citizens Are No Less Susceptible to Defamation Lawsuits

In Cambodia, defamation lawsuits pose a significant threat not only to public figures and activists but also to ordinary citizens. Recent events highlight how expressing dissent or criticism can quickly lead to legal battles for individuals across all walks of life. Towards the end of 2020, for instance, the Phnom Penh Municipal Court summoned political analyst Kim Sok on defamation and incitement charges over a Facebook post in which he claimed to have discovered a tactic which would save Cambodia's democracy.<sup>56</sup> He had previously served an 18-month sentence and was fined \$200,000 for the same offences in 2017, suggesting that the ruling party at the time was behind the death of a prominent political analyst Dr. Kem Ley.<sup>57</sup>

Rapper Kea Sokun was targeted by the authorities in January 2023, after he released a new song, "Workers Blood". Released on Cambodia's ninth anniversary of a deadly response to a garment workers' strike, the video was characterised by authorities as incitement to commit a crime. The police further threatened to take legal action if the video was not taken off

the streaming platform.<sup>58</sup> The human rights group who commissioned the video proceeded with the removal, to avoid legal repercussions.<sup>59</sup>

More recently, in November 2023, Kang Saran was sentenced to three years in prison after criticising the ruling party on Facebook for its apparent inability to solve problems such as illegal immigration from Vietnam and drug use. The charges against him included defamation, incitement and insulting the king, handed down by the Banteay Meanchey provincial court. Although he was released on bail after being held for ten days, Saran still faces imprisonment, with human rights activists calling for a careful review of his case.<sup>60</sup>

In January 2021, an indigenous environmental activist was accused of defamation and fined KHR 40 million (\$10,000) for posting on Facebook that the governor of O'Raing—a district located in the central lowlands of the Mekong River—was involved in encroaching 300 hectares of land in the area.<sup>61</sup> In September of the same year, Ratha, Kunthea, and Keoreaksmeay were arrested for their social media posts. The posts referred to plans by Kunthea, a 22-year-old chemistry student and teacher, to march to the Prime Minister's residence to raise awareness of the environmental impacts of the Boeng Tamok lake development. The three individuals were charged with direct incitement to commit a crime or to disrupt social security, under Articles 494 and 495 of the Penal Code.<sup>62</sup>

On July 20, 2022, Deth Huor, a community representative of Kampong Speu's Chi Khor Leu commune, was convicted of malicious denunciation and defamation and sentenced to one year imprisonment. The case was filed by a tycoon with whom her community has been embroiled since 2007 for her social media post criticising him for encroaching on her community's land. However, no arrest warrant was issued against her by the court, allowing her to remain free.<sup>63</sup>

In August 2023, ten Koh Kong land activists were arrested on charges of slanderous denunciation and

incitement to disrupt social security. The ten convicted activists include Chhan Chheurn, Det Huor, Erb Vy, Erp Teung, Heng Chey, Inn Thou, Kert Nov, Kong Men, Puo Houn and Sok Chey. All were sentenced to one year in prison and ordered to collectively pay KHR 40 million (around \$9,600). Det Huor, Heng Chey and Sok Chey were already being held in Koh Kong Provincial Prison on separate charges relating to social media posts.<sup>64</sup> In September 2023, Ny Nak, a Cambodian critic, was attacked along with his wife by individuals armed with batons during masked assaults, an unfortunately relatively frequent practice that mainly targets members of the opposition. He was subsequently arrested on defamation charges brought by a government minister in connection with Facebook posts criticising the Ministry of Agriculture. Nak had previously served an 18-month prison sentence for publicly criticising the government over its Covid-19 restrictions.<sup>65</sup>

“

*It has been clearly shown that freedom of expression is backsliding in an extreme way that has impacted the rights of citizens who dare to speak the truth in Cambodia.*<sup>66</sup>

–Thon Ratha, Mother Nature Cambodia activist

## Smear Campaigns, Threats, and Harassment against HRDs and Activists

A New York Times investigation from August 2020 found evidence of a government-directed smear campaign on Facebook which targeted a Buddhist monk and HRD, Luon Sovath, as a result of his criticism of the RGC.<sup>67</sup> Videos were shared by a fake Facebook page alleging him of having a sexual relationship with a woman and her three daughters and quickly spread through the platform in the weeks that followed. The page had reportedly stolen photos uploaded by both Sovath and one of the women prior to publication of the videos. It has since been taken down by Facebook, but the videos themselves are still circulating. The two government officials suspected to be behind the content remain on the platform. Luon has since been living in exile in Switzerland and continues to advocate for social media as a useful tool in combating authoritarianism.<sup>68</sup>

On Sept. 26, 2021, activist Touch Srey Nich was attacked by several unknown assailants on a motorbike in Phnom Penh, leaving her with serious injuries. The attack came after she gave an interview with the media outlet Radio Free Asia (RFA) two days earlier in which she commented on the persecution of youth activists in Cambodia.<sup>69</sup> On April 19, 2022, youth activist Eng Malai, who is known for her activism and outspokenness, including online, was assaulted in a similar way in the capital, an attack that she considered to be a repercussion of her continued activism.<sup>70</sup> In December 2022, fearing for her and her family's lives, she fled the country and applied for refugee status in Thailand after she allegedly received death threats.<sup>71</sup> Since her escape, Eng Malai has remained discreet to avoid transnational repression, and no information about her has been found in the media.



“

*The reason I decided [to go] is firstly the death threat, and, secondly, they threatened to stir up trouble for my brothers and sisters. We are always being threatened.<sup>72</sup>*

–Eng Malai, youth activist

Netizens and activists often have to refrain from expressing their opinions online about sensitive topics, for fear of being threatened or jailed. In November 2021, Kak Sovannchhay, 16-year-old autistic son of jailed CNRP member Kak Komphear, was sentenced to eight months for sending messages to a private Telegram group deemed to constitute incitement and insult of public officials.<sup>73</sup> In November 2021, he was sentenced to eight months, with part of the sentence suspended. He was released from prison 10 days after the verdict but placed under judicial supervision for two years.<sup>74</sup> He had been arrested at his home several months prior and detained at Prey Sar Prison, the same facility where his father has been serving time on charges of conspiracy and incitement since May 2020. In the wake of Sovannchhay’s case, Cambodians expressed concerns not only about freedom of expression, but also the RGC’s treatment of children with disabilities.<sup>75</sup> Despite the concerns raised, on March 14, 2022, the Phnom Penh Court of Appeal upheld Sovannchhay’s conviction and sentence.<sup>76</sup> However, on Oct. 12, 2022, the Supreme Court ordered his retrial and asked the Phnom Penh Court of Appeal to take his status as a minor and other conditions when doing so.<sup>77</sup> In December 2022, the court upheld the conviction, and changed the probation measures for him.<sup>78</sup>

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*Suspend draconian laws and reform them ... Drop court cases and end the detention of those who disagree with the authorities. Restore political rights to members of the members of the political opposition and propel reconciliation. Share the power and end the monopoly.<sup>79</sup>*

–Vitit Muntarbhorn, UN Special Rapporteur on the situation of human rights in Cambodia

Sat Pha is an activist who is also facing threats. She was serving a one-year prison sentence for inciting social unrest during a peaceful demonstration outside the Chinese embassy in Phnom Penh. She also took part in demonstrations organised by fellow activist Theary Seng, a Cambodian-American lawyer on trial in Phnom Penh for treason and incitement. She first received a handwritten threat, in April 2022, which Hun Sen's one-track government authorities placed on the door of her house. The threat read: "You, contemptible, don't be bold or you will be disappeared." More threats followed, forcing her to leave Cambodia under pressure from the government.<sup>80</sup> No information about her has been accessible in the media since April 2022.

Another well-known activist is Prak Pheaktra. Having experienced exploitation himself as a worker in Thailand, Prak Pheaktra has become an advocate to help his fellow Cambodians receive fair treatment at work. Despite threats from the Cambodian authorities, who feared he would damage the government's image, Pheaktra used social media to inform workers about living and working legally in Thailand and to warn them about exploitation by middlemen. In February 2023, when he helped ten Cambodian workers whose employer was not paying them, he was questioned by the head of the Labour Attaché Office at the Cambodian Embassy. When he was working on another case in Rayong, he was asked if he was aware that his actions could affect the public image of the Cambodian government and was threatened with the withdrawal of his passport.<sup>81</sup>

### Crackdown on Freedom of Expression on Grounds of Combating "Fake News"

In March 2020, a fake news monitoring committee was established under the Mol—the government body tasked with regulating content—to monitor disinformation on social media and block websites or accounts deemed to partake in spreading fake news.<sup>82</sup> By mid-2021, the committee identified 1,868 cases

“

*I think it's natural to have fear, but when I see someone is arrested for saying something on social media I don't feel comfortable. I think that people should feel free to express themselves.*<sup>85</sup>

–Kounila Keo, a Cambodian blogger and communications consultant

of disinformation, incitement and unfair criticism of the leadership and insult of the King.<sup>83</sup> In February 2021, the Mol also announced that it would start monitoring TikTok in addition to Facebook, YouTube, Twitter as well as closed source platforms such as WhatsApp, Facebook Messenger, and Telegram to combat "fake news."<sup>84</sup>

Throughout 2021, the number of recorded cases climbed to 1,938, encompassing reports of messages inciting crimes, causing social chaos or insulting the country's leadership posted on Facebook, TikTok, YouTube, or websites.<sup>86</sup> In the first semester of 2022, the fake news monitoring committee reported it had investigated 1,376 cases, representing an increase of 476 cases compared to the first semester of 2021, with the highest increase being recorded during commune elections the campaign period.<sup>87</sup>

For the year 2023, the Fundamental Freedoms Monitor Project (FFMP) observed 147 incidents related to the national election through incident reports and daily media monitoring.<sup>88</sup> In addition, the Cambodian government has blocked critical media

websites and a public database, Kamnotra Database, in accordance with a pre-election decision.<sup>89</sup> Radio Free Asia and Cambodia Daily were both blocked by the Cambodian government in an effort to tighten its hold on the press.<sup>90</sup> The government's grip on critical media websites clearly provide public information and the ongoing digital dictatorship.<sup>91</sup> This unsettling, ever-expanding hold on unfettered information is not new. It is rooted in the intention to undermine the right to access information. In February 2023, for instance, the government had already shut down the independent media outlet Voice of Democracy. This monopoly on information undermines the free press and impedes the free passage of information. Ultimately, an informed citizenry is necessary for a democratic society to function.<sup>92</sup> It enables Cambodians to exercise their rights, hold their leaders accountable, and shape their nation's future.<sup>93</sup> This stringent control over the dissemination of information seeks to stifle any criticism of the government and restrict the Cambodian populace's access to dissenting voices, raising concerns about the electoral process's fairness and transparency. At the end of 2023, the government announced the creation of the National Coordinating Committee for Information and Public Opinion, tasked with strengthening public opinion and protecting Cambodia's positive image. The committee, established by a sub-decree signed by Prime Minister Hun Manet, will have six members. Its missions include defending national sovereignty, promoting government achievements, and responding quickly to false information.<sup>94</sup>

### Revoking Media Licences and Perpetuating Abuse against Journalists

RGC also levels threats against media outlets and journalists to prevent them from exposing the situation on the ground. According to a report by the Office of the United Nations High Commissioner for Human Rights, from January 2017 to August 2022, the UN Human Rights Office in Cambodia documented 23

cases of journalists facing criminal charges for disinformation, defamation or incitement in the course of their work.<sup>95</sup> In 2022, media groups recorded at least 57 cases in the first ten months of the year, testifying to a continuing deterioration in democratic rights in the country.<sup>96</sup> Another report from 2022 states that of the sixty-five journalists surveyed, all reported interference with their work. More than 80% of respondents said they had experienced surveillance and disproportionate or unnecessary restrictions, including on access to information.<sup>97</sup> During the third quarter of 2023, the period of the elections, three media outlets were blocked by government orders, and nine cases of harassment involving 14 journalists, including two women, were recorded.<sup>98</sup>

In May 2020, Sok Oudom, owner of the news website Rithysen and radio station 99.75, was arrested for reporting on a land dispute involving a military official. The licences for his radio station and online media outlet were subsequently revoked.<sup>99</sup> In 2021, six independent media outlets had their licences revoked.<sup>100</sup> In the first half of 2022, three digital media outlets also had their licences revoked by the Mol for allegedly violating journalistic professional ethics and standards. Representatives of two of these outlets said the revocations occurred after they had reported on corruption.<sup>101</sup> On May 26, 2022, TCN TV Producer Thai Bunrith was arrested for broadcasting a live video on Facebook via his channel in which he claimed that Kandal provincial authorities took bribes to turn a blind eye to illegal gambling operations and cock fighting, which the Kandal Provincial Police Commissioner denied. He was charged with incitement to discrimination and defamation under Articles 494, 496 and 305 by the Kandal Provincial Court.<sup>102</sup> At last update, he remains in prison.<sup>103</sup> In February 2023, the licence of Voice of Democracy (VOD)—the leading bastion of independent journalism in Cambodia—was revoked by the government through an arbitrary executive order without legal backing.



*Since the Royal Government of Cambodia ignited a crackdown on independent media in 2017, the press freedom landscape has become more precarious. Many journalists and media outlets have borne the brunt of repressive tactics employed by the RGC to stifle freedom of expression, including online. The RGC has also been empowered to target investigative journalists and critical media outlets through the passage of laws that have consolidated its power over the telecommunications sector as well as policies that have negatively impacted journalists' rights. Many of these laws have given the RGC sweeping discretionary powers to target and silence online content that they arbitrarily deem unfit for public consumption, posing a significant threat to freedom of expression online, particularly press freedom. It is, therefore, paramount that the RGC urgently redresses the declining situation of freedom of expression online in Cambodia and increases efforts to protect, respect, and fulfill this fundamental freedom in compliance with Cambodian and international law.*

– Sopheap Chak, Executive Director of the Cambodian Center for Human Rights (CCHR)

The order came after VOD published an article about a \$100,000 aid package given to Turkey, approved by Prime Minister Hun Sen's son, Hun Manet.<sup>104</sup> In March 2023, the Ministry denounced serious breaches of journalistic ethics and non-compliance with ministerial instructions by the Khmer-language online media: the Federation of Cambodia-ASEAN Journalists, Raksmei Kampong Cham and Dumnong Knong Srok.<sup>105</sup> Since then, there seems to have been a tendency towards self-censorship for fear of having the licence revoked. However, VOD has recently announced that it will broadcast a daily news programme from October 2023. The programmes will be broadcast on Facebook, YouTube and TikTok, as stated in the VOD press release.<sup>106</sup>

Journalists also become targets of lawsuits and physical assaults due to their work.<sup>107</sup> In September 2021, National Defense Minister Tea Banh ordered a lawsuit against online journalist Yuon Chhiv for his news report on a land dispute case related to the Botum Sakor National Park in Cambodia's southwestern most Koh Kong province. Chhiv was accused of publishing disinformation on the status of the disputed land and making "an exaggeration intended to disturb social security."<sup>108</sup> Yuon Chhiv was convicted of incitement by the Koh Kong Provincial Court on Sept. 30, 2021 and sentenced to one year in prison and a KHR 2 million (\$500) fine. His conviction was upheld on appeal in mid-2022 but his sentence was reduced to eight months.<sup>109</sup>

In 2022, nine journalists were detained for questioning and seven of them faced legal actions. Among them, journalist Chheoun Bunchhi was summoned by the Oddar Meanchey provincial court for allegedly spreading false information on social media on July 25, 2021. The summons followed the publication of information about the land dispute between the community and the District Forestry Administration.

The Court ordered him to pay a fine of four million riels (approximately \$1,000).<sup>110</sup> On Aug. 16, 2022, five Voice of Democracy (VOD) journalists were arrested and detained by members of the Prime Minister's bodyguard unit while they were attempting to report on the reforestation efforts of the Phnom Tamao forest.<sup>111</sup> The last journalist of 2022 is Yuos Sareoun. He was summoned by the Kampot provincial police after publishing an article criticising the deputy chief of the provincial police for allegedly making inappropriate comments about the family of a suspect. He was therefore charged with disseminating false information and public defamation. However, Yuos Sareoun claimed that he had published accurate information in a professional manner. He did not show up at the police office and stated that the notice to appear should be sent to the institution.<sup>112</sup>

During the first 10 months of 2023, 30 journalists were targeted by acts of harassment, 23 faced violence and threats, four were subjected to judicial pressure and two were detained for questioning.<sup>113</sup> Journalists are not safe even when they are abroad. Sarada Taing, a Washington-based reporter for the Cambodia Daily, has been the target of violent threats from a pro-government social media personality in Cambodia. Pheng Vannak, a former police officer, has sent audio messages via Facebook Messenger expressing his intention to harm Taing, including threats of sexual violence against Taing's family. The harassment escalated after the Cambodia Daily ran a story about a Cambodian businessman accused of corruption.<sup>114</sup>

As a result of this unending series of abuse, independent journalists and media outlets—a vast number of whom engage in online reporting—operate in precarious environments and practice self-censorship to avoid getting in trouble with authorities.<sup>115</sup>

# CAMBODIA



Fig. 1.4: Case study - Voice Of Democracy Cambodia journalists and Khmer Thavarak activists.

## 2023 Political Overview

Parliamentary Constitutional Monarchy with an elected parliamentary government in theory, authoritarian regime in practice.

### Head of State, Monarch

Norodom Sihamoni

### Head of Government

Prime Minister Hun Manet (de facto authority; assumed office in August; preceded by his father, Prime Minister Hun Sen)

## #VoiceOfDemocracyCambodia

## #KhmerThavarak

### CASE STUDY

**Digital Dictatorship** used to silence **Cambodian journalists** and **environmental justice** activists.

#### WHEN

16 August 2022 (arrests)

#### WHERE

Phnom Tamao Zoo, Cambodia (site the journalists and activists were reporting on and defending, and where they were arrested)

#### WHO

👥 Nine people of different genders (NB: some activists remain anonymous)

📁 5 Cambodian Voice of Democracy (VOD) Journalists...

- Only some of these journalists have publicised their faces and/or names (e.g. journalist Mom Moniroth)

📁 ...and 4 Cambodian environmental activists from the Khmer Thavarak activist group

- Only some of these activists have publicised their faces and names (e.g. activist Hun Vannak)

#### WHY/WHAT

🗣️ Reported on government/corporate attempts to clear the land at Phnom Tamao Zoo

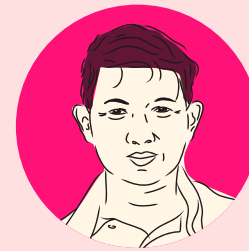
📁 Entered Phnom Tamao Zoo in a supposed 'prohibited' area and attempted to take photographs of the land and expose the land clearing that was being carried out.

#### HOW

⚠️ How Digital Dictatorship has caused the violation of these HRDs and journalists' human rights

👮 They were arrested, detained and questioned by PM Hun Sen's bodyguard unit.

👮 Activist Hun Vannak alleged that the bodyguard unit violently handled them while they were being arrested.



Hun Vannak

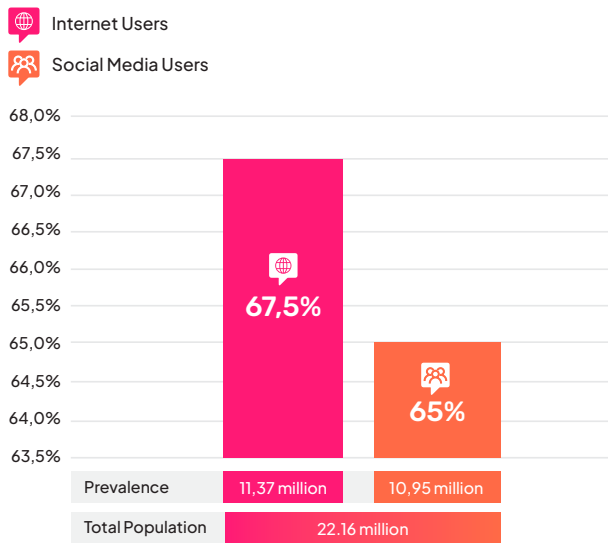
Member of The Khmer Thavarak Activist Group



Camboja News, *Journalists and environmental activists detained, beaten*, (16 August 2022), available at: <https://cambojanews.com/journalists-and-environmental-activists-detained-beaten/>

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.

## Online Content Manipulation & Restrictions



DataReportal, *Digital 2023, Cambodia*, (9 february 2023), available at : <https://datareportal.com/reports/digital-2023-cambodia>

Fig. 1.5A: Percentage of Internet and Social Media Users in Cambodia, 2023.

The RGC employs many methods and tactics to limit online speech, including indirect content manipulation. Such is carried out with the assistance of a coordinated network of cyber troops that has been known to exist since 2020. This network is designed to amplify pro-government propaganda, attack political opposition and spread disinformation on social media on behalf of government entities, lawmakers, political parties and—in some cases—citizens and influencers.<sup>116</sup>

Moreover, in the larger scheme of Cambodia's control over online speech, websites that disseminate content that could be perceived as a threat to the government are subject to blocking, as a government's tool to shield itself from criticism. From January to June 2022, 43 websites were blocked.<sup>117</sup> Additionally, 123 gambling websites were blocked by the Telecommunication Regulator of Cambodia (TRC) in January 2022.<sup>118</sup>

## Government Requests to Remove or Restrict Content or Accounts

The extent of government content removal or restriction requests to tech companies remains opaque, as the implementation is based on informal communications between government officials and service providers.<sup>119</sup> From 2020 to 2023, Meta reported no restriction or removal in Cambodia.<sup>120</sup> On June 29, 2023, Meta's Oversight Board recommended the Prime Minister Hun Sen's Facebook account to be blocked for six months for incitement to violence after sharing a video.<sup>121</sup> However, Hun Sen deleted his account shortly after the decision arrived and, in a typical authoritarian attempt to tighten control over the online environment, the Cambodian government declared 22 members of Meta's Oversight Board persona non grata and banned them from entering the country.<sup>122</sup> Similarly, TikTok reported no requests since 2019 when the platform started publishing transparency reports.<sup>123</sup> Meta and Tik Tok have not yet released their data for the period from July to December 2023.<sup>124</sup> As for Google, seven requests have been made, one in 2020 and 6 in 2023.<sup>125</sup> According to data from the Surfshark website, Cambodia has had a total of 16 account requests from Apple, Google, Meta, and Microsoft between 2013 and 2021.<sup>126</sup>

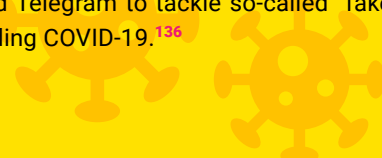


## PANDEMIC POLITICS: COVID-19 IMPACT ON ONLINE FREEDOM

The COVID-19 pandemic has provided ample grounds for the RGC to further restrict online freedoms. In response to the pandemic, the RGC passed a State of Emergency Law providing the government with sweeping powers to implement measures during states of emergency, including restricting or prohibiting free speech and movement, surveilling communication, as well as monitoring and controlling social media.<sup>127</sup> Article 5 especially restricts freedom of expression as it bans or limits “distributing or broadcasting information that can cause public panic or turmoil, damage to national security, or confusion about the situation under the State of Emergency.”<sup>128</sup> This open-ended and vague terminology grants authorities unrestrained discretion when implementing the law, allowing for a selective interpretation, targeting and stifling opposition. The State of Emergency Law created overly broad and excessively severe penalties for violating the law, as individuals could face up to five years in prison and fines of up to KHR 5 million (\$1,200).<sup>129</sup> Additionally, in March 2021, the RGC passed the COVID-19 Law, which contains several problematic provisions that restrict online freedoms.<sup>130</sup> Article 11 outlaws “intentionally obstructing” the implementation of COVID-19 measures and prescribes a prison sentence of up to five years and a fine of up to KHR 20 million (\$4,900). As of March 2023, the law on the state of emergency has been promulgated but never used.<sup>131</sup>

The authorities used the pandemic as a pretext to further suppress online speech. For example, between late January and June 2020, 30 individuals were arrested for posting “fake news” online regarding the COVID-19.<sup>132</sup> In February 2021, two former CNRP members were arrested and charged for criticising the efficacy of the Chinese Sinopharm vaccine on Facebook. In March 2021, another former CNRP member was arrested after she posted on Facebook that the Chinese Sinopharm vaccine was unsafe and caused several deaths.<sup>133</sup>

Journalists and independent media have also been harassed for their online activities. In March 2020, Sovann Rithy was arrested for accurately quoting a comment made by Prime Minister Hun Sen during a speech on COVID-19. His online media outlet, TVFB, was blocked and its licence revoked.<sup>134</sup> In May 2020, Monoroom.info news website was blocked by the RGC after it published several articles relating to COVID-19 in Cambodia.<sup>135</sup> COVID-19 has also been used as an excuse to monitor online activities at disproportionate rates. In February 2021, the MoI announced that it was expanding its monitoring capabilities to include TikTok, as well as WhatsApp, Messenger, and Telegram to tackle so-called “fake news” surrounding COVID-19.<sup>136</sup>







## INTERSECTIONAL GENDER ANALYSIS: ONLINE FREEDOM IN CAMBODIA

In Cambodia, prevailing gender norms and ideologies are frequently identified as underlying factors contributing to gender inequalities.<sup>137</sup> Online gender-based violence and harassment are rooted in these issues. Despite growing awareness of these problematics, the translation of this recognition into effective policies and laws remains insufficient. The inadequacies are evident in Cambodia's draft cybercrime law, which narrowly addresses the problem of child pornography in Article 27, overlooking the broader spectrum of online violence targeting women and marginalised groups, as emphasised by Open Development Mekong. This critical observation underscores a significant gap in the legal framework concerning the protection of vulnerable groups within the digital realm.<sup>138</sup>

As mentioned earlier, Cambodia's legislative foundation for digital development is characterised by its incompleteness and insufficiency. The absence of laws about data protection, privacy, electronic transactions, public information, and cybercrime leaves a void in regulatory mechanisms. These cavities are particularly concerning given the rapid expansion in both the scope and volume of the digital and technology sector, coupled with the introduction of new challenges and hazards. This inadequacy is acknowledged in the Cambodia Digital Economy and Society Policy Framework 2021-2035, as outlined by The Royal Cambodian Government in 2021. Addressing these legal gaps is imperative to ensure a robust and comprehensive legal framework that can effectively govern the evolving digital landscape and safeguard the interests of individuals and groups vulnerable to online threats and violence.<sup>139</sup>

It is estimated that 12.5 million individuals are internet users in 2022, out of which 8.4 million actively engage with various social media platforms.<sup>140</sup> Among many social media platforms, Facebook, YouTube, Google, Telegram, and TikTok stand out as the top five choices.

Notably, Facebook enjoys unparalleled popularity, with over 80 percent of internet users, followed by YouTube with a user base exceeding 60 percent. However, the increased use of social media also brings about challenges, particularly in the form of online harassment. A survey conducted by Lirneasia in 2018 reveals that 29 percent of female internet users aged 15 to 65 in Cambodia have encountered online harassment.<sup>141</sup> This encompasses experiences such as being subjected to offensive names, criticism, embarrassment, physical threats, sexual harassment, and unwanted contact. Furthermore, a UNICEF study spanning 160 countries estimates that 85.7 percent of Cambodian youth aged 15 to 25 years are vulnerable to online harassment.<sup>142</sup> Notably, a report from LICADHO in 2021 emphasises that online harassment rates are notably high within LGBTIQ+ groups, among activists, and youth and they identify Facebook as a predominant platform for online harassment in Cambodia.<sup>143</sup>

Furthermore, The comprehensive analysis of repressive legislation and regulations in Cambodia reveals their wide-ranging impact on individuals of all genders. Notably, defamation lawsuits, frequently deployed against opposition figures and activists, present unique challenges with distinct gender implications. Within the realm of journalism, women journalists in Cambodia not only encounter these disproportionate threats but also contend with limited access to gender-sensitive support services, including gender-responsive legal advice. Both male and female journalists confront challenges to their professional activities, but female journalists associated with entities such as Voice of Democracy confront arrests and legal challenges, fostering an environment where women in media may feel disproportionately vulnerable. The fear of legal repercussions and harassment can dissuade women from pursuing careers in journalism, thereby restricting the diversity of voices in the media landscape.<sup>144</sup>

## 1.3 Access to Effective Remedy: A Constitutional Right, but Loosely Enforced

Article 39 of the Cambodian Constitution stipulates the right of Cambodian citizens to denounce, make complaints, or file claims against any breach of the law committed by the state and social organs or by members of such organs in the course of their duties. The Article adds that such complaints and claims must be dealt with by a competent court.<sup>145</sup> Despite this constitutional guarantee, access to effective remedy in the context of breached digital freedoms remains unclear. In the first place, most of the relevant domestic legislation governing digital rights establish an appeal process under the executive branch; this way, complainants or applications are unable to have their case heard by an independent and impartial court.

The Telecommunications Law includes provisions for dispute resolution, but it is silent on the options available to individuals whose digital rights have been violated by the government or its agents. Its cousin, the Inter-Ministerial “Prakas” on Publication Controls of Website and Social Media Processing via Internet, similarly fails to lay out any appeal procedure against government censorship. The NIG Sub-Decree, perhaps the most controversial out of the group, does not make any reference to independent oversight, due process or procedural safeguards for individuals to benefit from in case of a rights breach or deprivation while being online. Its Chapter 8 enables appointed NIG and telecommunications operators, ISPs and any other person to lodge appeals with the MPTC against non-compliance penalties imposed by the TRC, and even allow for the decision of such appeals to be brought before a judge. However, the

Chapter provides that the complaints filed before a court “do not have the effect of frustrating” the MPTC decision, meaning the mechanism essentially has no influence on a person’s right to have their complaint heard independently. In addition, Cambodian courts are notorious for being corrupt; without recourse to a specially designated supervisory or judicial body with a clearly established mandate and independence, human rights infringements facilitated by the NIG Sub-Decree would continue to go unchecked and unremedied.<sup>146</sup>

The Cambodian judiciary’s lack of independence has been highlighted time and again in a myriad of proceedings, including that of Kea Sokun. The 22-year-old rapper was arrested in September 2020 after producing a song on YouTube titled Dey Khmer (lit. Khmer Land), in which he pointed out contentious land issues in Cambodia.<sup>147</sup> He was charged with Articles 494 to 496 of the Criminal Code and was sentenced to 18 months in December 2020, following a trial that lasted one hour and hinged on a single statement made by a police officer concluding that parts of the song amounted to incitement to violence.<sup>148</sup> His appeal was denied in June 2021 without clear grounds.<sup>149</sup>

### Non-Judicial Grievance Mechanisms Available, but Not Sufficient

Some state-based non-judicial grievance mechanisms are available. Following-up on the recommendations received during its third cycle of Universal Periodic Review, Cambodia drew up the first draft of the Law on the Establishment of a National Human Rights Body in June 2021.<sup>150</sup> The Law establishes a National Human Rights Institution that is tasked with promoting and protecting human rights through human rights education, complaints handling, national inquiries and engagement with UN human rights monitoring mechanisms. In August 2021, some 60 human rights groups, unions, and local communities signed a joint statement expressing their concerns over the Law’s

efficacy. The state of Cambodia's politics, according to signatories, would subjugate the envisioned Institution and strip it of the independence it requires to operate effectively.<sup>151</sup>

### Lack of Anti-SLAPP and Whistleblowers Protection: A Challenge for Freedom of Speech

Despite the general protections provided under international treaties and the Cambodian Constitution, there is no specific legislation in Cambodia that explicitly protects activists and HRDs from harassment. Individuals who face strategic lawsuits against public participation (SLAPP) proceedings, which are regularly resorted to by the RGC to stifle activism, are rendered virtually powerless, given the absence of an anti-SLAPP regime in the country. Additionally, there is an absence of legal protection for whistleblowers and basis for witness protection. As such, anyone who engages in online activism is vulnerable to government targeting not only when they are party to a SLAPP proceeding, but also when they supply information to authorities or testify in a case.<sup>152</sup>

In 2022, SLAPPs were used 37 times against 79 individuals, compared with 127 individuals targeted by SLAPPs in 2023, 53 of whom were convicted.<sup>153</sup> For example, Kong Bunrith, a Cambodian university student, claimed on Facebook in February 2020 that his fellow students had bribed officials to pass their exams. The authorities launched an investigation, but the Ministry of Justice chose to target Bunrith himself, accusing him of incitement, defamation and slander. Bunrith claimed that he had obtained the information from a confidential source and had simply wanted to alert the authorities. Under pressure and the threat of a prison sentence, Bunrith finally retracted his allegations in 2022.<sup>154</sup>

In 2023, there were 39 suspected cases of SLAPPs against 127 individuals. Political activists, journalists and members of landowning communities were

the most frequently targeted. Prosecutions against activists (52 people, or 31% of cases) were linked to their views on the elections. A further 21% of cases involved complaints against journalists (nine people) after publishing or covering stories related to corruption or sensitive issues. SLAPPs were initiated in every month of 2023, with a notable increase in July during the national elections, most of them issued by the government or the judiciary and frequently targeting several individuals simultaneously. A concrete example of this judicial repression is the case of Mr Phat Horn, journalist for KH Plus News, who was summoned and questioned by the Svay Rieng provincial police in September 2023 following a live video denouncing irregularities in road construction. A complaint for "public defamation" lodged by the Svay Rieng provincial administration led to an interrogation before the provincial court on 26 September 2023.<sup>155</sup>

# Endnotes

1. NB: At the request of its author, this chapter has not been standardised to uphold the same organised structure as our other chapters have, and thus has this unique structure. It will still provide the same categories information as our other chapters, just not organised by subsection (i.e. Legal Framework, Challenges and Cases, and Access to Effective Remedy).
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# INDONESIA



# 2. Indonesia

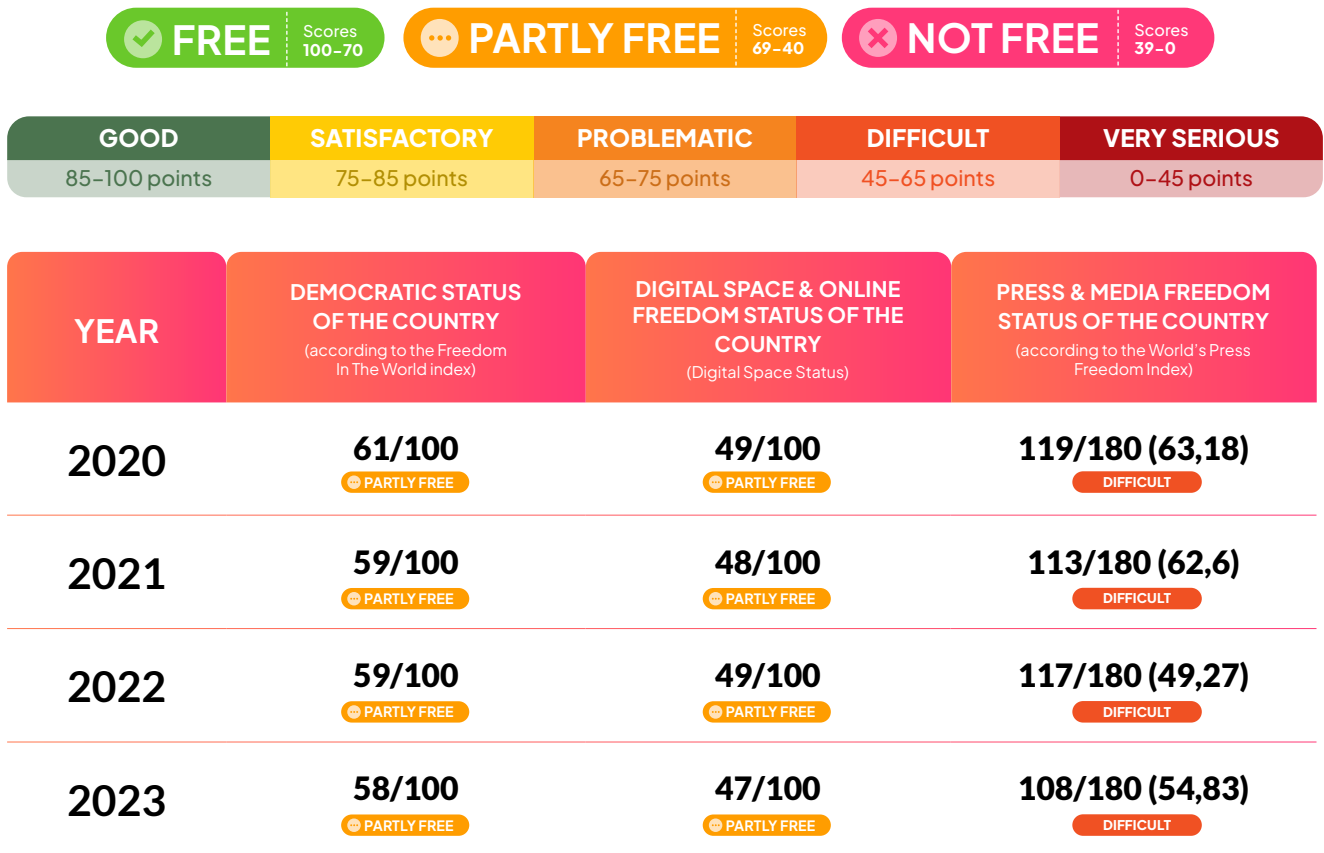


Fig. 2.1: Summary of freedom ratings for the Indonesia, 2020-2023.<sup>1</sup>

## 2.1 Legal Framework

### Freedom of Expression: Guaranteed yet Illegitimately Restricted

In Indonesia, the right to freedom of expression and speech is guaranteed by Articles 28, 28E, and 28F of the 1945 Constitution. These provisions stipulate that individuals are entitled to express themselves both verbally and in writing, and to communicate and search for, receive, possess, store, process and transmit information using all channels available.<sup>2</sup> Furthermore, Law Number 39 of 1999 on Human Rights emphasises guarantees and protection for freedom of opinion. Article 23 (2) ensures that “every person is free from holding, expressing and

widely disseminating his/her beliefs, orally or in writing through printed or electronic media, taking into consideration religious values, morals, order, public interest and nation’s unity”. Additionally, Article 25 guarantees that “every person has the right to express opinion in public, and this includes the right to strike, in accordance with the provisions of legislation”.<sup>3</sup> The ratification of the International Covenant on Civil and Political Rights in 2006 also enhanced the protection of freedom of expression in Indonesia.<sup>4</sup> These pivotal advancements underscore the heightened normative assurance for the freedom of expression in the country.

However, in Indonesia, constitutional and legal guarantees are undermined by laws such as the New Criminal Code (Law of The Republic of Indonesia Number 1 Of 2023 on Criminal Code) and the Revised ITE Law (Law Number 1 of 2024, Second Amendment to Law Number 11 of 2008 on Information and Electronic Transactions). These laws contain problematic articles that implement a form of digital dictatorship, eroding freedom of expression both offline and online. Examples include: weaponizing defamation, criminalising individuals who spread “fake news”, convicting religious minorities of blasphemy, and posing risks of re-victimisation and legal ambiguities that impact women’s rights. The situation of digital dictatorship in Indonesia is becoming severe, silencing the voices of journalists, human rights defenders, and Indonesian citizens.<sup>5</sup>

### Under Siege: The Perilous Impact of Indonesia’s New Criminal Code on Freedom

On December 6, 2022, Indonesia’s parliament ratified a new Criminal Code, officially signed by the President of Indonesia on January 2, 2023,<sup>6</sup> replacing the century-old Dutch colonial-era legislation. The new Criminal Code is scheduled to come into force three years after its promulgation, specifically on January 2, 2026. It is crucial to emphasise that the new Criminal Code poses a grave threat to democratic activities and freedom of expression, both online and offline. Several contentious articles within the new Criminal Code raise serious concerns.

### State-Sanctioned Silence: Legal Measures Against Government and State Institutions

Articles 218-220 in the newly enacted Criminal Code resurrect clauses prohibiting the act of insulting the president, reminiscent of *lèse-majesté* provisions crafted to safeguard the honour of a head

of state in a monarchy. The language employed in the new Criminal Code specifies “attacks towards the honour and dignity of the President and/or Vice-President,” mirroring the explanation used for defamation, described as “degrading or damaging the good name or dignity, including through insults or slander”.<sup>7</sup>

These two articles were broadened by the existence of Articles 240 and 241, which extend to include insults directed at state institutions like the People’s Consultative Assembly (MPR), House of Representatives (DPR), Regional House of Representatives (DPD), Supreme Court, and Constitutional Court, deeming such acts as criminal offences. Additionally, Articles 353-354 impose additional penalties for insults targeting public power and state institutions, carrying the risk of imprisonment.<sup>8</sup>

The existence of Articles 218-220, Articles 240-241, Article 353-354 serve as tools to stifle public criticism through legal mechanisms, impeding the exercise of the right to freedom of opinion. The presence of these clauses can hinder societal critiques directed at the government or those in authority for the shortcomings of a prevailing system or events. This is due to the potential distortion of such criticism into an offence that falls under criminal law, posing a barrier to open expression.

### Controlling Narratives: The Criminal Code’s Stance on Spreading Fake News

Articles 263 and 264 of the Criminal Code criminalise people who spread fake news, either intentionally or due to failure to cross-check, thereby causing riots or possibly doing so. These articles were derived and modified from the provisions outlined in Articles 14 and 15 of Law No. 1 of 1946. There is a slight difference, in that disturbance (*keonaran*) has been replaced by riot

(kerusuhan) in the supplanting regulation. Indeed, most elements in these articles remain problematic.<sup>9</sup> Further, the situation in Indonesia is already precarious, and digital dictatorship is not a new phenomenon; yet, it is increasingly worrying. Another barrier for activists and journalists fighting for democracy is Indonesia's suspected use of spyware produced by Cytrox to monitor them.<sup>10</sup>

### **Blurred Lines: The Unsettling Landscape of Religious Blasphemy in Indonesia**

Articles 304-309 of the new Criminal Code aim to penalise deviations from the fundamental principles of Indonesia's six officially recognized religions—Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Since the inception of the Blasphemy Law in 1965, over 150 individuals, predominantly belonging to religious minorities, have faced convictions, including the case of former Jakarta Governor Basuki "Ahok" Purnama, a Christian, in 2017.<sup>11</sup>

Moreover, Ahmad Taufan Damanik, Chairperson of the National Commission of Human Rights from 2017 to 2022, highlighted the discriminatory application of regulations related to religious blasphemy in Indonesia. Often manipulated for specific purposes, particularly in political contexts, Damanik emphasised the excessive nature of these practices, leading to unclear boundaries. Cases are inconsistently categorised as religious blasphemy, introducing an element of discrimination, especially concerning the majority and minorities. Consequently, the articles on blasphemy become riddled with ambiguity, multiple interpretations, and discriminatory practices, and are frequently driven by political interests, straying far from the intended goal of legal justice to uphold religious purity.<sup>12</sup>



**#PeoplePower | How Are People Resisting Digital Dictatorship?****In the Face of Silence: People Power and Civil Society's Battle for Freedom in Indonesia**

Civil society in Indonesia is rallying against these restrictions on freedom of expression. A civil society coalition staunchly opposes government-led silencing, including the endorsement of the new criminal code.<sup>13</sup> In December 2022, a coalition of legal experts and civil society groups, under the National Alliance of Criminal Code Bill Reform, campaigned to cancel the ratification of the Criminal Code Bill and called for increased scrutiny of several controversial articles of the new criminal code in engagement with media outlets. The National Alliance opposing the bill's passing was mainly concerned about threats to freedom of expression, the articles are regressive, will curb free speech, and represent a "huge setback" in ensuring the retention of democratic freedoms after the fall of authoritarian leader Suharto in 1998.<sup>14</sup>

**International Critique from United Nations Special Rapporteur**

Prior to the president's approval in November 2021, Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders, delivered a scathing condemnation of Indonesia's criminalisation of defamation. Lawlor's forceful critique laid bare the intentional targeting of civil society organisations merely for fulfilling their essential roles. Arguing passionately for a paradigm shift, she asserted that defamation should be considered a civil matter, not a criminal offence—a sentiment echoed by various UN bodies advocating for the removal of defamation from Indonesia's criminal code. Lawlor's stark warning resonates:

“

***I am extremely concerned at the way defamation laws are being used in Indonesia to undermine the right to freedom of opinion and expression.<sup>15</sup>***

- Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders

**#PeoplePower | How Are People Resisting #DigitalDictatorship?**

## The ASEAN Regional Coalition to #StopDigitalDictatorship Takes a Stand: Unyielding Advocacy for Digital Freedom in Indonesia and Beyond.<sup>16</sup>

The ASEAN Regional Coalition to #StopDigitalDictatorship, standing in solidarity with the Indonesian people, vehemently condemned the government's criminalisation of defamation. The coalition called for an immediate repeal of the criminal defamation provisions within the Penal Code, urging an end to the harassment and suppression of freedom of expression.

The coalition continues to urge the Indonesian government to overhaul repressive laws that hinder the protection of freedom of expression. A crucial call echoes, emphasising the need to align these laws with international human rights standards for the unequivocal protection of fundamental freedoms. The coalition deems the criminalisation of defamation inherently disproportionate and an unnecessary restriction on the right to freedom of opinion and expression, as mandated by international human rights law.



The coalition's demands extend further, pressing the Indonesian government to annul any other laws and regulations that infringe upon fundamental freedoms in ways incongruent with international standards. Their uncompromising stance underscores the urgent need for legal reforms aligning with the principles of liberty and human rights.

In a resounding declaration, the ASEAN Regional Coalition to #StopDigitalDictatorship strongly condemns all actions by the Indonesian government that violate human rights. Emphasising the indispensable right of the Indonesian people to freely express themselves both offline and online, the coalition stands as a formidable advocate for digital freedom in the ASEAN region. The struggle in Indonesia becomes emblematic of a broader regional fight against oppressive measures, echoing the collective cry for unrestricted freedom of expression.

### Undermining Freedom: The Perils of Indonesia's Revised Law on Electronic Information and Transactions (ITE Law)

On January 4, 2024, President Joko Widodo signed Law Number 1 of 2024, marking the second amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE). The Civil Society Coalition for Advocacy on the

ITE Law exposed persisting flaws within the revised law, including contentious articles on defamation, attacks on reputation, hate speech, false information, and access termination. These problematic provisions intensify the threat to public access to information and the fundamental right to freedom of expression in Indonesia.<sup>17</sup>

## Weaponizing Defamation: Unveiling the Threat of Article 27A in Indonesia's ITE Law

The addition of Article 27A, addressing attacks on honour or good name, remains a flexible provision with the potential to criminalise critical communities. This provision, found in Article 27(A), allows intentional attacks on someone else's honour or good name through electronic information and documents, making it susceptible to misuse. Historically, the ITE Law has been weaponised to silence human rights defenders, academics, and commoners. Between January 2019 and December 2022, Amnesty International Indonesia documented over 1,021 cases where human rights defenders faced prosecution, arrests, attacks, and threats under the defamation article in ITE Law.<sup>18</sup>

## Combating Fake News: Ambiguities and Threats to Expression

Articles 28 and 45 A(3) address hoaxes and hate speech online, imposing severe penalties of up to six years in prison and a fine of IDR 1 billion (\$66,884). Article 28(1) prohibits the act of "disseminating, knowingly and without title, false and misleading information resulting in injury to customers of "[e]lectronic [t]ransactions."<sup>19</sup> Criminal hate speech can likewise be found in Article 28(2), which proscribes the spreading of information with the intention of provoking hate or enmity among individuals or groups based on their ethnicity, religion, race or group identity. Despite these clauses being intended to reinforce user protection and prevent hate crimes respectively, they are extremely susceptible to erroneous and expansive interpretations: "false information" and "hate speech," for instance, can be understood in many different ways depending on their context.<sup>20</sup> This ambiguity becomes even more concerning in light of the questionable integrity of the Indonesian judiciary and law enforcement.

## The Revised ITE Law: Enabling an Arbitrary State

The current revision of the ITE Law becomes a legal basis for an arbitrary state instead of protecting human rights because it grants the government more power to curtail internet access and block social media accounts. In Article 40, the government of Indonesia is empowered to block access to online content deemed defamatory or otherwise order internet service providers to do so on its behalf. Article 40 (2B), "...the government has the authority to terminate access and/or order electronic system operators to terminate access to electronic information and/or electronic documents that contain unlawful content".<sup>21</sup>

## Revictimization Risks and Legal Ambiguities: Implications of the Revised ITE Law on Women and Freedom of Expression

The revised ITE Law in Indonesia has concerning consequences, particularly for women who are victims of sexual violence. The indiscriminate transmission of electronic evidence puts them at risk of unjust criminalisation instead of recognition as victims of harassment or violence. This vulnerability allows perpetrators to exploit legal gaps, leading to a dual-layered violence – first offline and then facilitated by technology.<sup>22</sup>

An illustrative case is that of Mrs. Baiq Nuril Maknun in Lombok, who, after facing sexual harassment, found herself prosecuted under the ITE Law by her perpetrator, H. Muslim. This attempt to criminalise her, utilising Article 27 (1),<sup>23</sup> goes against Indonesia's obligation under UN CEDAW's Article 2 to eliminate discrimination against women.<sup>24</sup> Despite this commitment after another, the Indonesian government, by maintaining Article 27, fails to protect victims who speak out on social media, contradicting its obligation to prevent gender-based violence.

**#PeoplePower | How Are People Resisting #DigitalDictatorship?****Resisting Repression: People Power Against the Revised ITE Law**

The Serious Coalition for Revision of the ITE Law vehemently rejects the Second Revision, citing a lack of meaningful public participation and the perpetuation of articles threatening freedom of expression.<sup>25</sup> The coalition also highlighted the closed nature of the revision process, leaving little room for public involvement and oversight. This lack of transparency poses a major risk of potentially resulting in regulations that benefit elites rather than protecting human rights.<sup>26</sup>

**Defying Oppression: The ASEAN Regional Coalition's Fight Against Censorship in Revised ITE Law.<sup>27</sup>**

The ASEAN Regional Coalition to #StopDigitalDictatorship stands in solidarity with Indonesian civil society, vehemently condemning the Indonesian government's stance on the criminalisation of defamation, hate speech, and false news. The coalition advocates for the immediate repeal of these provisions within the Penal Code and the ITE law, emphasising the imperative to uphold the principles of freedom of expression as per international human rights law.

The coalition urgently calls on the Government of Indonesia to fulfil its obligations to uphold, respect, and protect freedom of expression and opinion, as outlined in Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Critically, the current revised ITE

Law is criticised for lacking transparency, open governance, and meaningful public participation, ultimately failing to adhere to the foundational principles crucial for a thriving democratic society. Furthermore, expressing regret over the lack of transparency and accountability during the revision process, the coalition underscores the persistence of restrictions on freedom of expression within the revised law. In the spirit of true democracy, the coalition advocates for open discussions to be encouraged, fostering a diversity of opinions and ensuring that legislative decisions are well-informed and representative of the public interest.





*The draft criminal code and provisions in the ITE Law in Indonesia pose significant problems, as they have the potential to harm numerous victims and hinder critical discourse. These regulations also risk unjustly criminalizing survivors of sexual violence, which is deeply concerning. To address these issues, it is crucial that revision efforts actively involve the participation of these victims. By including their voices, policymakers can ensure that fear is not perpetuated and that freedom of expression is not unjustly limited. The Community of Victims of the ITE Law, or PAKU ITE, strongly urges policymakers to listen to the voices of the victims and prioritise the protection of citizens' rights. It is important to view laws as instruments for safeguarding individuals' well-being and promoting a just society, rather than as tools of suppression. By centering the experiences and perspectives of those affected by these laws, policymakers can make informed decisions that uphold human rights and foster an environment of inclusivity, justice, and freedom of expression.*

- Anindya Shabrina, Deputy Chair of PAKU ITE

## What is MR5 and its amendment MR10 ?

This ministerial regulation signed in 2020 and amended in 2021, raises significant concerns as it grants government authorities excessively broad powers to regulate online content, access user data, and penalise non-compliant companies.

Companies are mandated to “ensure” that their platforms are free from “prohibited content”, implying a requirement for active content monitoring. Failure to comply may result in the blocking of the entire platform, raising issues of prepublication censorship.

KOMINFO will sanction non-registrants by blocking their services. Private ESOs choosing to register must provide information granting access to their “system” and data, essential for effective “monitoring and law enforcement”. Any disobedience, such as a failure to provide “direct access” to systems (Article 7 (c)), can lead to various penalties, including warnings, temporary blocking, full blocking, and, ultimately, the revocation of registration.<sup>28</sup>

## Silencing Cyberspace: The Chilling Impact of MR5 and its amendment MR10 on Freedom of Expression in Indonesia

### MR5 and Its Amendment MR10 on Freedom of Expression in Indonesia: Unravelling the Controversial Regulatory Web Since 2020.

On November 16, 2020, the Ministry of Communication and Information Technology (KOMINFO) issued Regulation Number 5 of 2020 on Private Electronic System Operators (ESOs) (hereinafter MR5). Further, in May 2021, it was amended with its Ministerial Regulation Number 10 of 2021 (MR10).<sup>29</sup>

This instrument grants authorities unfettered powers to regulate online content and force social media platforms, apps and other service providers to register with KOMINFO through a designated portal and provide access to any stored user data on their systems. Failure to comply with this requirement would lead to blocking of the entire platform.<sup>30</sup>

Companies must “ensure” that their platform does not contain or facilitate the distribution of “prohibited content,” which implies that they have an obligation to monitor content.<sup>31</sup> Failure to comply with this requirement would lead to blocking of the entire platform.<sup>32</sup> This new regulation will affect national and regional digital services and platforms, as well as multinational companies like Google, Facebook, Twitter, and TikTok.<sup>33</sup>

This regulation is one of the most controversial regulations passed by President Widodo’s administration. Aside from condemnations by local and international human rights groups, a petition circulating online since early 2022 that calls for its repeal, has been signed by no less than 11,000 netizens.<sup>34</sup>

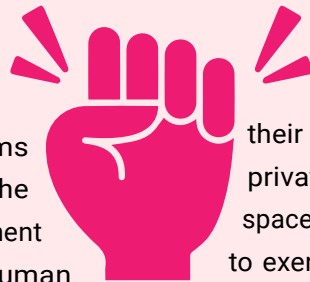
**#PeoplePower | How Are People Resisting #DigitalDictatorship?**

## The ASEAN Regional Coalition to #StopDigitalDictatorship urges Indonesia to repeal Ministerial Regulation Number 5 Year 2020 (MR5) and its amendment, Ministerial Regulation Number 10 Year 2021 (MR10)<sup>35</sup>

The regulation introduces content moderation provisions inconsistent with internationally recognised human rights, including freedom of expression. The coalition stresses that MR5 and its amendment MR10 exacerbate existing challenges for freedom of opinion and expression, severely impeding internet freedom through excessive penalties for non-compliance. Expressing concerns, the coalition notes the government's inadequate response to problems hindering online freedoms and the heightened risk of judicial harassment faced by citizens, particularly human rights defenders. MR5 and MR10, with their authoritarian enforcement, disrupt the civic space, erasing crucial channels for online expression. Failure to register will result in blocking, limiting Indonesians' ability to access information freely—a right protected by international human rights treaties and principles.

The coalition emphasises the insufficient public participation in developing legislation, policies, and implementing guidelines related to MR5 and its amendment MR10. Despite falling under KOMINFO's lawmaking authority,

public participation remains essential. Pressing further, the coalition asserts that Indonesia has neither improved its response to issues hindering such freedoms nor addressed the associated risk of judicial harassment faced by citizens, especially human rights defenders, expressing themselves online.



The coalition stresses that MR5 and its amendment MR10, with their authoritarian enforcement against private ESO, seriously disrupt the civic space, erasing key channels for individuals to exercise their online freedoms. Private ESOs that fail to register will be blocked in Indonesia. To date, major platforms have not registered or shown any intention to do so. Their refusal, resulting in service-blocking, substantially limits Indonesians' ability to access information freely—a right protected by human rights treaties and principles to which Indonesia is bound.

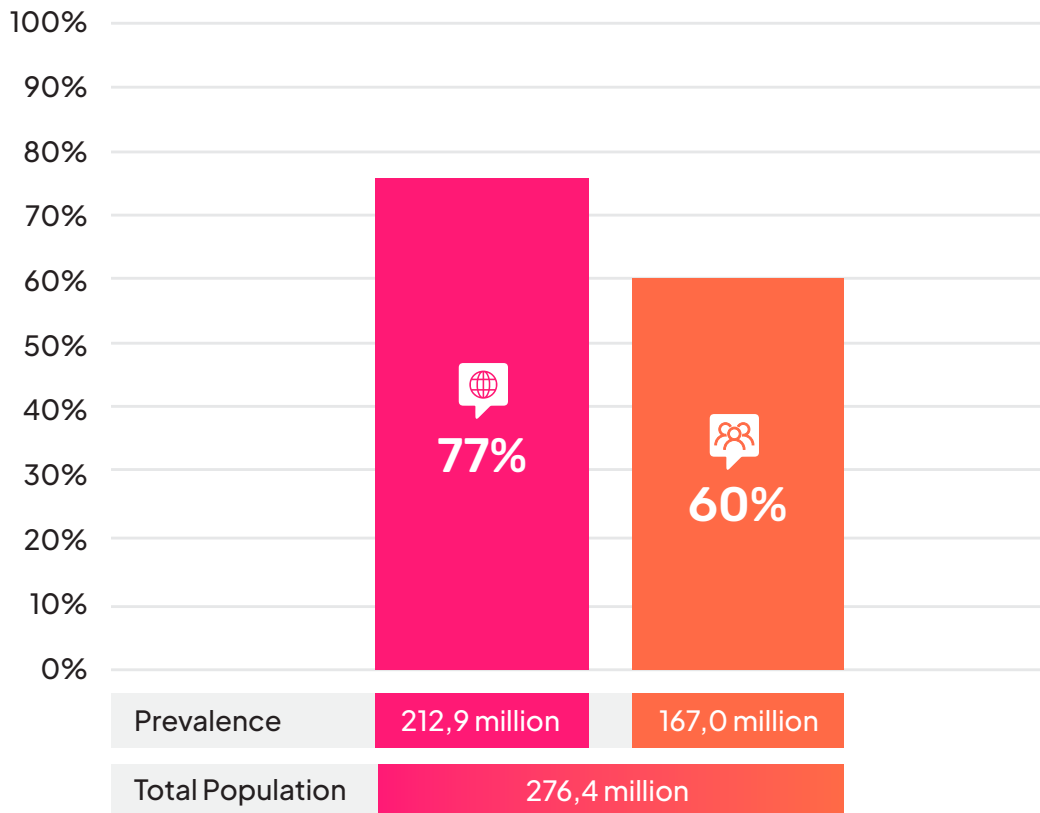
## Indonesia Percentage of Internet and Social Media Users



Internet Users



Social Media Users



DataReportal, *Digital 2023, Indonesia*, (9 february 2023), available at : <https://datareportal.com/reports/digital-2023-indonesia>

Fig. 2.2A: Percentage of Internet and Social Media Users in Indonesia, 2023.

The situation in Indonesia is already precarious and digital dictatorship is not a new phenomenon, yet it is increasingly worrying. Another barrier for activists and journalists fighting for democracy is Indonesia's suspected use of spyware produced by Cytrox to monitor them.<sup>36</sup>



## 2.2 Challenges and Cases

### Struggles, Legislation, and Repression in Indonesia (2020–2023)



**LEGEND:**

⚠️ : Alleged offense + (articles/provisions invoked against the individual)  
 - "Unknown": Either information is not available or no articles/provisions have been cited by the judiciary

🔥 : Legal and extralegal consequences  
 - "Status Unknown": Current status of the individual is unknown (detained, convicted, deceased, etc).

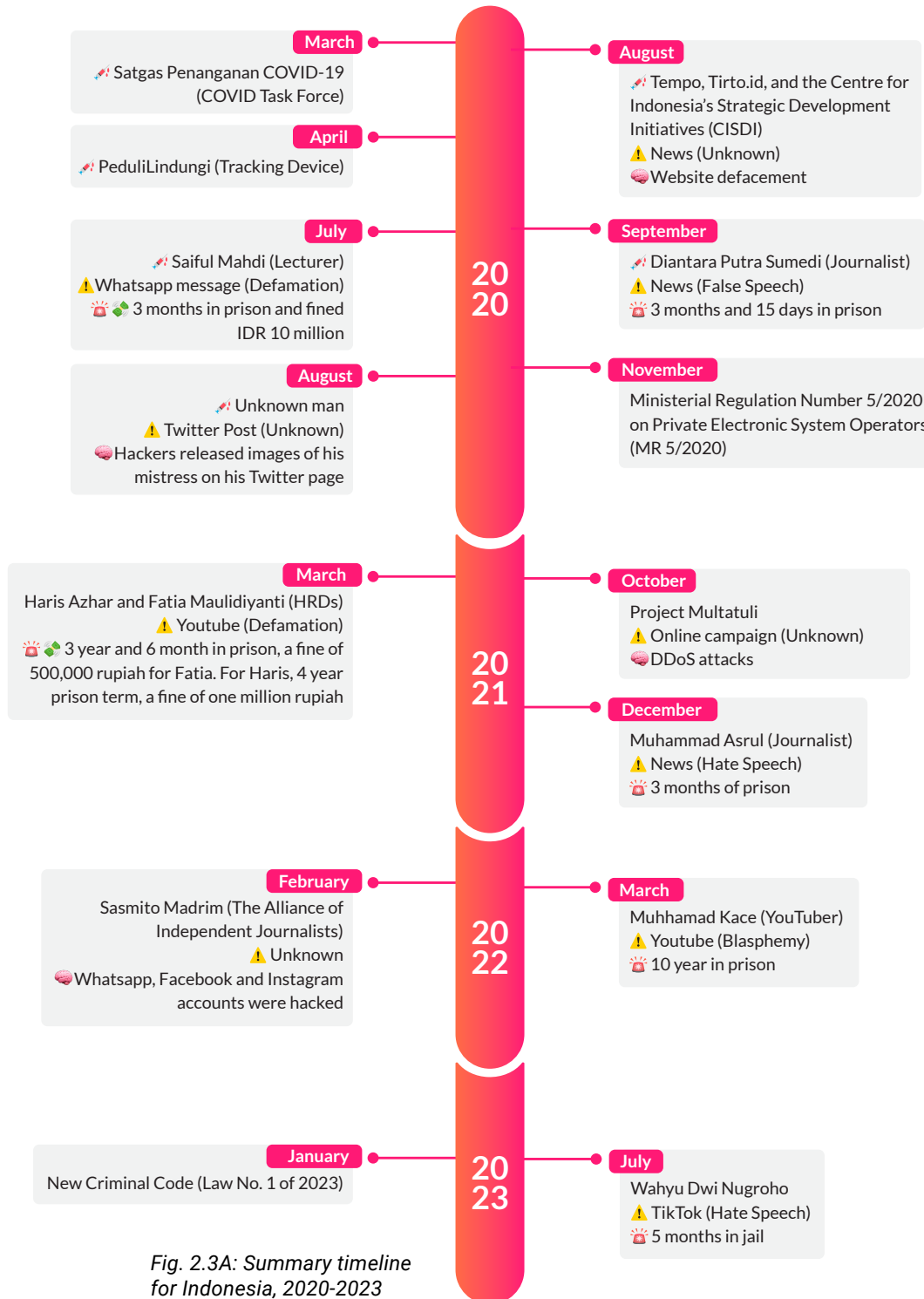


Fig. 2.3A: Summary timeline for Indonesia, 2020-2023




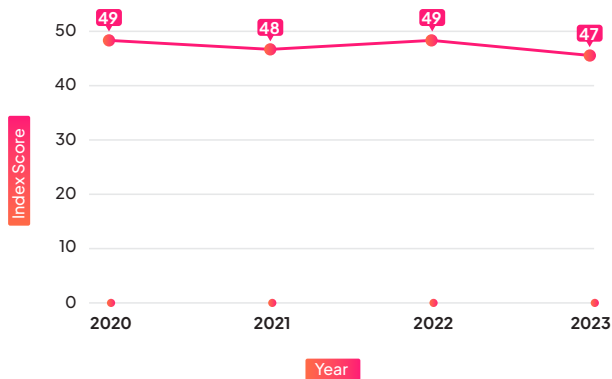
| Country   | Event   | Contextualisation   |
|---|---|---|
| <br><b>INDONESIA</b> |  Ministerial Regulation Number 5/2020 on Private Electronic System Operators (MR 5/2020) | The regulation gives the Indonesian Ministry of Communications and Information Technology (MoCI) broad powers to block and restrict access to online content deemed inappropriate or harmful, without clearly defining the criteria or procedures for determining what constitutes a violation. |
|   |  New Criminal Code (Law No. 1 of 2023)   | The New Criminal Code stipulates harsh penalties for speech-related offenses including the dissemination of false information, insults, defamation, and the promotion of abortion.  |

Fig. 2.3B: Contextualisation for Indonesia’s timeline, 2020-2023.

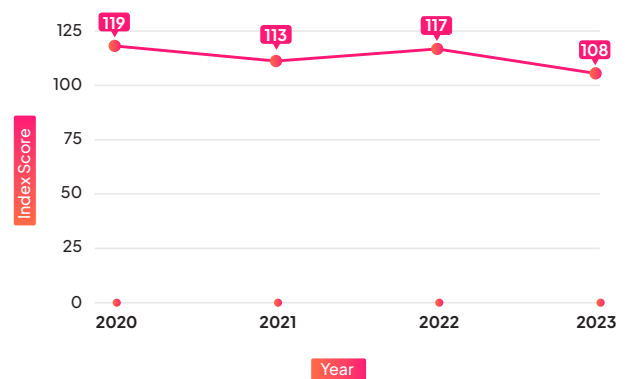
Various indices suggest the rise of digital dictatorship in Indonesia in recent years. Freedom on the Net ranked Indonesia “partly free” with an aggregate score of 48/100 in 2021, score of 49/100 in 2022 and a score of 47/100 in 2023.<sup>37</sup> Indonesia placed 117th out of 180 countries on Reporters Without Borders’ 2022 World Press Freedom Index, with a score of 49.27, and placed 108th out of 180 countries on Reporters Without Borders’ 2023 World Press Freedom Index, with a score of 54.83.<sup>38</sup>

### Digital Space & Online Freedom Status (Freedom on The Net)



Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

### Media & Press Freedom (World Press Freedom Index)



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Fig. 2.4: Digital Space & Online Freedom Status (Freedom on The Net) and Media & Press Freedom (World Press Freedom Index) Ratings for Indonesia over the years, 2020-2023.

## A Worrying Increase in Online Reports Based on Defamation

The Indonesian National Police has a special Cyber Crime Unit who is tasked with handling reports of computer and computer-related crimes. According to data published on the Unit’s website, the number of reports they receive is consistently increasing.<sup>39</sup> The Indonesian House of Representatives also revealed that some 3,500 reports were received by the Unit in the first quarter of 2021 alone.<sup>40</sup> By the end of that year, a tally released by the Unit showed that the figure had climbed to 4,080. However, this data is neither final nor accurate as it does not line up with the breakdown provided in Table 1 below.<sup>41</sup>

According to a breakdown of these numbers based on the type of offence, defamation is the most commonly reported, followed by indecency and hate speech. Meanwhile, fake news reports had a significant jump between 2019 and 2020, a period that coincides with the coronavirus outbreak. Full data from 2021 is unavailable, although we were able to fetch figures of cyber threat and fake news reports.<sup>42</sup>

| YEAR | DEFAMATION | HATE SPEECH | INDECENCY | CYBER THREATS | FAKE NEWS |
|------|------------|-------------|-----------|---------------|-----------|
| 2020 | 1,479      | 223         | 404       | 135           | 197       |
| 2021 | N/A        | N/A         | N/A       | 5,276         | 414       |
| 2022 | N/A        | N/A         | N/A       | 4,860         | N/A       |
| 2023 | 838        | N/A         | N/A       | 3,758         | N/A       |

Fig. 2.5: Breakdown of reports based on offence type, Indonesia, 2020-2023.

The notable surge in reported cases, particularly during 2020, predominantly concerning defamation and hate speech, serves as compelling evidence of the escalating constraints on online speech and expression in recent years. While there is a decrease in defamation reports, we still need to examine whether this indicates a genuine reduction in actual incidents or if, in reality, the dark figure has increased. It could be changes in reporting mechanisms, public awareness, or legal frameworks, given Indonesians must often practise self-censorship and refrain from speaking up against or criticising the government. It was also revealed that a good portion of those reports were submitted by individuals who are in a position of power, such as public officials, professionals and affluent persons.<sup>43</sup>

## Everybody is At Risk of Being a Target of the Government

In 2020, SAFEnet documented 22 cases of internet users being charged with Article 27(3) of the ITE Law. An additional 17 were reported in 2021.<sup>44</sup> Data gathered by Amnesty International Indonesia, conversely, shows that the ITE Law was used against approximately 81 people from January 2020 to October 2021, most of whom were accused of defamation.<sup>45</sup> Between January 2019 and December 2022, Amnesty International Indonesia documented that at least 1,021 human rights defenders faced prosecution, arrests, attacks, and threats, under the defamation article in ITE Law.<sup>46</sup> SAFEnet has also highlighted a concerning trend, reporting a total of 89 cases of criminalisation related to these articles from January to October

2023.<sup>47</sup> These findings support the longstanding observation of activists and HRDs that the ITE Law is routinely misused to criminalise hundreds of people simply for exercising their right to freedom of expression online.<sup>48</sup> A 2023 report by FORUM-ASIA and KontraS shows a new pattern in officials' efforts to suppress criticism: Cease-and-Desist letters. Started in 2021, this type of action consists of public officials redacting letters to file lawsuits against activists, often citing defamation, insults, or fake news. The approach often ends in criminalisation, with the accused facing charges and further pressure from the government to cease their activism. This also occurred in Haris Azhar and Fatia Maulidiyanti's cases detailed below.<sup>49</sup>

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*Despite by the end of 2023 the ITE Law having been amended or revised twice, the defamation and blasphemy articles, which have often been misused to silence criticism and repress press freedom, are still maintained. In fact, now new articles have been added, such as articles prohibiting disinformation and excessive authority to cut off Internet access, making the ITE Law even more dangerous for the future of Internet freedom and democracy in Indonesia. It is easy to imagine the number of judicial harassment cases increasing and online censorship becoming more rampant.*

- Damar Juniarto, Executive Director of SAFEnet 2018-2023 and Advisor of SAFEnet

March 2020 saw the prosecution of Mohamad Sadli, chief editor of online news outlet Liputan Persada. Sadli was charged with hate speech and defamation, and sentenced to two years for an opinion piece he wrote which criticised a road construction project backed by the local government.<sup>50</sup> Just less than a month later, Saiful Mahdi, a university lecturer at Syiah Kuala University in Banda Aceh, was handed a three-month sentence and fined IDR 10 million (\$668) under Article 27(3) of the ITE Law for his WhatsApp messages criticising the university policy on staff recruitment. The Supreme Court upheld his guilty verdict on June 29, 2021 and Mahdi began to serve his time in September.<sup>51</sup> He was granted a presidential pardon after one month.<sup>52</sup> Article 27(3) of the ITE Law was also used against activist and urban planning expert Marco Kusumawijaya in February 2021. He was accused of defamation after posting on Twitter that a residential area in North Jakarta looted sand from the shores of Bangka Belitung, his hometown, during its development phase.<sup>53</sup> His case was closed. In October 2021, Marco posted screenshots of a Google alert he received showing that potential government-backed attackers were attempting to hack his email account.<sup>54</sup>

Another example is the case of Alvoaria Reba, a Papuan activist behind “Qvarica,” a Facebook account associated with the Free Papua Movement. In April 2020, she was sued by the West Papua Provincial Government’s legal team for having allegedly insulted the Governor of West Papua on social media. The allegation stemmed from a post in which she expressed her disagreement with the closure of Rendani Manokwari Airport. She now faces defamation charges carrying a maximum sentence of four years and/or a fine of up to IDR 750 million (\$50,163).<sup>55</sup>

In April 2021, a labour union leader by the name of Stevanus Mimosa Kristianto was charged under Article 310(1) of the Criminal Code and Article

27(3) of the ITE Law on allegations of defamation against Maybank Indonesia after a speech he had delivered while protesting against the bank appeared in an online news article.<sup>56</sup> The same two laws were used against HRDs Haris Azhar and Fatia Maulidiyanti, both of whom were subpoenaed by Minister for Maritime Coordination Luhut Binsar Panjaitan and threatened with a lawsuit in August 2021. The case emerged following a talk show featured on Azhar’s YouTube channel titled “Ada Lord Luhut di balik Relasi Ekonomi-Ops Militer Intan Jaya!! Jenderal BIN juga Ada!!” (There is Lord Luhut behind the relation of Economy-Military Operation Intan Jaya!! The General of State Intelligence Agency is also there!!) in which him and Maulidiyanti discussed findings in a multi-stakeholder report revealing the involvement of Indonesian army officials and retirees in an extractive gold mining project in Papua.<sup>57</sup> On Sept. 22, the Minister filed a complaint against both persons and demanded each to pay him IDR 100 billion (\$7 million) in compensation.<sup>58</sup> On Jan. 18, 2022, they were summoned for questioning by the Greater Jakarta Police Department, where they had to answer a total of 37 questions on the details of the case and their activism over six hours.<sup>59</sup> By March 18, they were officially named suspects and as of March 2023, they face defamation charges which could lead to imprisonment for up to four years if convicted.<sup>60</sup> Since April 3, 2023, Fatia and Haris have undergone 31 hearings. On November 12, during the indictment reading at the 28th hearing, the lead prosecutor recommended a three-year and six-month prison sentence for Fatia, along with a fine of IDR 500,000 (\$32).<sup>61</sup> For Haris, the prosecutor advised a four-year prison term, accompanied by a fine of one million rupiah (\$65). It’s noteworthy that the latter penalty represents the maximum punishment stipulated under the ITE law. The adjudication of the final judgement is scheduled to take place in the second week of January 2024.<sup>62</sup>

# INDONESIA

## 2023 Political Overview

Parliamentary Presidential system in theory, semi-authoritarian regime in practice.

### Head of Government

President Joko Widodo

## #FreeFatiaHaris

### 📄 🗣️ 🌱 CASE STUDY

**Digital Dictatorship** used to silence **Indonesian activists** fighting for **corporate accountability** and **climate justice**...

### WHO

❤️ Fatia Maulidiyanti, an Indonesian HRD, and coordinator of KontraS

Haris Azhar, an Indonesian HRD, educator, and ED of Lokataru Foundation

### WHY/WHAT

📄 🗣️ 🌱 Targeted by authorities for releasing a YouTube video featuring them discussing ways in which gold mining corporations and the Indonesian military were complicit in exploitative practices at the Blok Wabu site in Intan Jaya, Papua.

🗣️ Fatia and Haris assured that their data was well-researched and backed up by various studies performed by multiple CSOs. Nevertheless, the Coordinating Minister for Maritime and Investment Affairs accused them of spreading false news, and defamation.

### WHEN

20 August 2021 (content posted); 22 September 2021 (charged); 13 November 2023 (sentences administered); 8 January 2024 (acquittal)

### WHERE

Blok Wabu, Intan Jaya, Papua (gold-rich land that Fatia and Haris were raising awareness about)

### HOW

⚠️ How Digital Dictatorship has caused the violation of Fatia and Haris' human rights:

Fatia and Haris were charged with slander and defamation (**under Articles 310 and 311 of the Criminal Code**) and for violating the **amended Electronic Information and Transaction (EIT) Law (Article 45(3))**.

- 🗣️ 🌱 Fatia: Sentenced to 3 years and 6 months in prison. Fined 500,000 rupiah.
- 🗣️ 🌱 Haris: Sentenced to 4 years in prison. Fined 1,000,000 rupiah

🗣️ Both faced judicial harassment for many years. Both were acquitted in early 2024.



### Haris Azhar

Indonesian HRD, educator, and ED of Lokataru Foundation

### Fatia Maulidiyanti

Indonesian HRD, and coordinator of KontraS

FIDH, *Indonesia: Prosecution requests harsh prison sentences for Fatia Maulidiyanti and Haris Azhar*, (17 November 2023), available at: <https://www.fidh.org/en/region/asia/indonesia/indonesia-prosecution-requests-harsh-prison-sentences-for-fatia>

ECPM, *Indonesia: Fatia Maulidiyanti and Haris Azhar acquitted*, (8 January 2024), available at: <https://www.ecpm.org/en/ecpm-partners-fatia-and-haris-acquitted-the-battle-goes-on-after-the-prosecutors-appeal/>

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.



*In light of similar cases, the criminalisation [of Azhar and Fatia] inevitably attests to the tendency of public officials to perceive criticisms as a personal attack.<sup>63</sup>*

- Robertus Robet, human rights activist and member of the Indonesian Caucus Advisory Council for Academic Freedom (KIKA)

According to Amnesty International, at least 35 cases of physical and digital attacks involving 150 human rights activists and organisations were reported in 2022.<sup>64</sup> In April, YouTuber Muhhamad Kace was sentenced to ten years in prison after being accused, in 2021, of allegedly posting blasphemous content online insulting the Islam religion.<sup>65</sup> A similar case happened during the same month, when Ferdinand Hutahaean, a former Christian who converted to Islam, was given five months imprisonment after being accused of spreading false information, including a Tweet about Islam.<sup>66</sup>

The Alliance of Independent Journalists (AJI) Indonesia's chairperson was hacked on multiple platforms in February 2022. Sasmito Madrim's Whatsapp, Facebook and Instagram accounts were

hacked simultaneously: he was unable to receive calls and messages and had his profile photo changed into a pornographic image. Furthermore, false information was posted on his accounts which supported the arrest of HRDs Fatia and Haris, as well as the construction of the Bener Dam in Purworejo, Central Java, in an attempt to alienate AJI from other civil society organisations.<sup>67</sup>

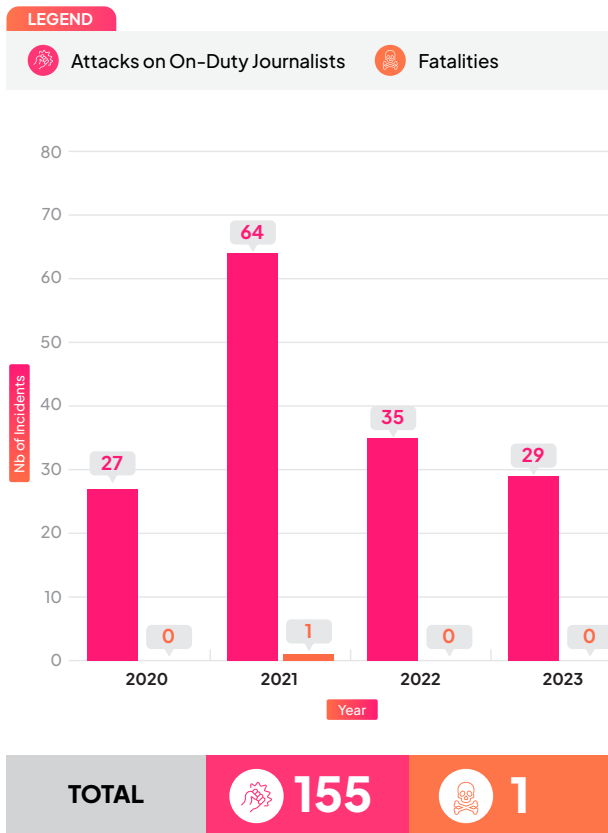
### **False News and Hate Speech: A Pretext for the ITE Law and MR5 to Censor Free Speech**

Aside from defamation, ITE Law provisions on false news and hate speech are also often cited in cases against netizens. Out of 84 online speech-based convictions SAFEnet recorded throughout 2020, 64 were delivered based on at least one (or a combination of) those articles within the ITE Law.<sup>68</sup> In 2021, the total number of convicted persons dropped to 38, of which 10 were activists, the highest since the ITE Law came into effect.<sup>69</sup> In 2022, a total of 97 cases of criminalisation were documented, affecting 107 victims. The primary articles used to prosecute the defendants predominantly pertained to ITE Law.<sup>70</sup> The SAFEnet 2023 report has not yet been released.

Article 28(2) of the ITE Law on hate speech was used against, amongst others, Muhammad Asrul, a journalist of online news outlet Berita News. He was detained for 36 days after publishing three articles covering a corruption scandal involving the son of the mayor of Palopo, a city in South Sulawesi.<sup>71</sup> Asrul was sentenced to three months by the Palopo District Court on Nov. 23, 2021.<sup>72</sup> On Aug. 10, 2020, blogger and journalist Diantara Putra Sumedi from Kalimantan was sentenced to three months and 15 days after publishing a piece online about a land dispute between a palm oil company and the indigenous Dayak community considered to be inflammatory.<sup>73</sup>

## Attacks on On-Duty Journalists

INDONESIA



The Armed Conflict Location & Event Data Project (ACLED), *Disorder Involving the Media*, (n.d.), available at: <https://acleddata.com/data-export-tool/>

Fig. 2.2B: Attacks on On-Duty Journalists in Indonesia, 2020-2023.

The foregoing cases make up a fraction of all instances of government overreach in limiting online speech, particularly on the basis of the ITE Law. From February to April 2021, the Criminal Investigation Bureau of the National Police issued content removal warnings against 200 social media accounts for allegedly engaging in hate speech, in contravention to Article 28(2), as part of its newly invented Virtual Police Program.<sup>74</sup> Created in February 2021, it had the power to warn netizens about the illegality of their posts.<sup>75</sup> As of March 2023, Indonesia reportedly plans to introduce new legislation tightening control over social media platforms and would allow the government to make “urgent” requests for content to be removed within four hours.<sup>76</sup>

In 2022, pursuant to the stipulation of MR5, several major online service providers including Google, Twitter and META registered themselves with KOMINFO to avoid being blocked in the country.<sup>77</sup> As a result of such registration, these platforms must now comply with the government’s stringent content moderation guidelines, take down any prohibited content identified, and provide the government access to their systems and user data stored thereon. A number of platforms who failed to comply with this registration requirement before the set deadline of July 24 were subsequently blocked; among the list were Yahoo and PayPal.<sup>78</sup> In August, KOMINFO stated that registered platforms could still be subject to blocking if they fail to moderate content as mandated.<sup>79</sup> KOMINFO representatives have since denied that MR5 poses substantial online expression and privacy risks, maintaining that it is rather necessary to enhance cybersecurity in the country.<sup>80</sup>

Wahyu Dwi Nugroho faced charges under Indonesia’s Information and Electronic Transactions (ITE) Law for a TikTok video he posted in mid-2022 regarding shopping at stalls near the influential Majelis Taklim Al Busyro neighbourhood. The Majelis Taklim holds significant influence in West Java and neighbouring areas. Wahyu’s legal defence was provided by the Keadilan Bogor Raya Legal Aid Institute, with support from PAKU ITE, a collective of ITE Law victims formed by SAFENet. In a concerning turn of events, Wahyu, who had been detained since March 2023, was released on the evening of Aug. 11, 2023, following a scheduled verdict hearing at the South Jakarta District Court on Aug. 10, 2023. Surprisingly, he was sentenced to 5 months in jail. This outcome has raised serious questions about justice in his case. Wahyu’s situation highlights the misuse of Article 28 (2) of the Indonesian ITE Law, which deals with “hate speech.” It reveals how this law’s flexibility is exploited to address a wide range of online disputes without considering power imbalances.



This climate instills fear and discouragement among those wanting to express their opinions, particularly as Indonesia approaches the February 2024 election. Wahyu's case and the misuse of the ITE Law emphasise the urgent need to protect justice and democracy in Indonesia. Addressing these issues through comprehensive legal reforms will not only rectify current injustices but also strengthen the democratic principles essential for the nation's progress.<sup>81</sup>

“

*The three-part test has not been effectively incorporated into the legal framework of Ministerial Regulation 5, thereby opening up avenues for the infringement of freedom of expression in Indonesia. It imposes unrealistically short time frames for content removal, and would likely result in over-censorship by many digital platforms and services.*

- Alia Yofira Karunian, Member of PurpleCode Collective

### **State Surveillance to Stifle Dissent**

The government supposedly employs surveillance technologies to stifle online freedoms. The government is under suspicion of procuring spyware manufactured by Cyrox to conduct surveillance on journalists and activists,<sup>82</sup> as well as utilising Circles technology.<sup>83</sup>

## PEGASUS TO SCARE PEOPLE INTO SILENCE

According to a disquieting report published by IndonesiaLeaks in June 2023, the insidious Pegasus spyware has been active in Indonesia since 2018, targeting a wide range of individuals, including activists, investigative journalists, media outlets, and politicians.<sup>84</sup>

This highly intrusive tool, created by the Israeli company NSO Group, operates without the device owner's involvement and has been licenced to governments and law enforcement agencies worldwide. Its primary objective is to stealthily collect information from a compromised device and send it to a third party without the owner's knowledge or consent.<sup>85</sup> The programme shockingly infiltrated Indonesia via international shipment.<sup>86</sup> The use of spyware constitutes one of the most egregious invasions of privacy, as it monitors the most intimate mobile device activities. Regrettably, authoritarian regimes around the world have adopted Pegasus as a tool for monitoring and silencing human rights defenders, activists, and journalists who venture to expose corruption and abuses of power. It is crucial to recognise that certain forms of expression, which may not legitimately fall under the designation of terrorist activities or within the boundaries of terrorism definitions, are unjustly deemed illegal.<sup>87</sup>

Pegasus compromises the privacy of all types of personal information, including online and offline communications. This permits governments and affiliated entities to intercept sensitive information, exposing individuals to harassment, intimidation, and potential threats to their safety. Dangerously severe consequences await those who venture to disagree, discouraging many from engaging in political activities and compelling them to self-censorship.<sup>88</sup>

Unfortunately, since the release of the Indonesia Leaks report, there have been no discernible efforts from the government to publicly address the concerns raised regarding the acquisition practices related to Pegasus. While the report does include a statement from Indonesian Police (POLRI) asserting that they do not utilise Pegasus, it is noteworthy that they do not dispute the accuracy of the zero-click acquisition method mentioned in the report. The Indonesian Corruption Watch submitted a public information request on Oct. 7, 2023 regarding this issue, and according to regulations, law enforcement is required to respond within 14 days of receiving such requests. As of the end of 2023, there has been no response from the police.<sup>89</sup> It appears that the

acquisition practices detailed in the report may extend beyond Pegasus, as per information gathered from Indonesia Leaks, which could encompass various software or tools.<sup>90</sup>

Furthermore, the investigation revealed a significant lead involving a company named PT Mandala Wangi Kreasindo, which

had procured intelligence-related software from a subsidiary of NSO Group known as Q Cyber Technologies. This suggests a third-party connection in the acquisition process. Additionally, when examining the acquisition made by Polda Metro Jaya, a branch of Polri, during the years 2017-2018, it was facilitated through a private company called PT Radika Karya Principal, with a clear link to zero-click technology, strongly indicative of Pegasus. This aligns with the prevailing understanding that Pegasus is the foremost and most advanced tool globally for implementing spyware via the zero-click method, as repeatedly emphasised in reports by various international agencies. In essence, it appears that despite utilising third-party intermediaries, these tools continue to find their way into Indonesia.<sup>91</sup>



**#People Power | Crucial Intervention:**

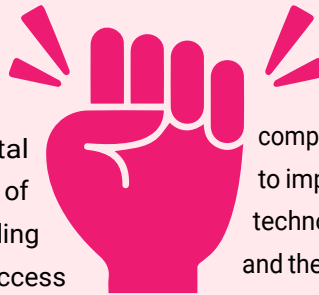
## The ASEAN Regional Coalition to #StopDigitalDictatorship Call to End Pegasus Spyware Abuses<sup>92</sup>

The ASEAN Regional Coalition to #StopDigitalDictatorship stands united in solidarity with activists and victims affected by the invasive Pegasus spyware, strongly urging the Indonesian government to promptly cease and prohibit the utilisation of targeted digital surveillance technologies. This egregious practice infringes upon fundamental rights and constitutes a grave violation of universally-protected freedoms, including the rights to freedom of expression, access to information, privacy, peaceful assembly, and association. The resultant chilling effect on civil societies and the broader civic space necessitates immediate action.

The coalition calls on the Indonesian government to adhere to international human rights standards concerning privacy, as articulated in Article 12 of the Universal Declaration of Human Rights (UDHR) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Additionally, the government is urged to respect the rights to freedom of expression and information, enshrined in Article 19 of the UDHR and ICCPR.

Denouncing the systemic failure to meet international human rights obligations, the ASEAN Regional Coalition criticises the violation of people's rights to freedom of expression and privacy, guaranteed by national laws. Articles 28, 28E, and 28F of the 1945 Constitution safeguard the right to freedom of expression, while Article 28G protects the right to privacy. The recently enacted Personal Data Protection (PDP) Act of 2022 further solidifies

privacy and data protection rights. The coalition emphasises that mass surveillance contradicts the concept of privacy and infringes upon fundamental rights protected by national and international law.



The ASEAN Regional Coalition to #StopDigitalDictatorship issues a compelling call to the Indonesian government to implement an immediate ban on spyware technology in collaboration with civil society and the private sector to prevent human rights abuses. The coalition also urges reaffirmations of protections for activists and human rights defenders, recognizing their legitimate work and safeguarding freedom of expression and civic space.

Furthermore, the coalition calls for the establishment of judicial and non-judicial grievance mechanisms for victims to seek remedy, with due process and judicial oversight integral to the surveillance spyware regime. It emphasises the need to ensure that the use of surveillance technology aligns with domestic laws and international human rights standards of legality, necessity, proportionality, and legitimacy. The coalition stresses the importance of making information regarding the acquisition of surveillance technology accessible to the public, fostering open discussions necessary for a democratic society.

The coalition further calls upon the international community to enforce a strict moratorium on the export, sale, transfer, and use of highly intrusive spyware tools such as Pegasus until robust regulations guarantee compliance with international human rights standards.

## Cyber-attacks on HRDs and Activists Continue to Erode Democracy

Much like other Southeast Asian countries, Indonesia is not a safe place for HRDs and activists to express their views online. A range of cyber torture techniques are employed, the most prominent being intimidation, humiliation, slander, and doxxing.<sup>93</sup> As human rights activism increasingly became digital in the wake of the COVID-19 pandemic, the methods of attacks diversified to include Zoom-bombing and SMS phishing. Out of 147 digital attacks SAFEnet recorded throughout 2020, 66 or 44.90% targeted critical voices such as journalists, activists, university students, and civil society organisations.<sup>94</sup> In 2021, SAFEnet reported 193 incidents of digital attack, with activists being targeted in 50 of them, civil society in 10 and media workers in 25.<sup>95</sup> Another set of data, however, shows that the total number of attacks against HRDs in that same year stands at 120.<sup>96</sup> In 2022, there were at least 97 cases of criminalisation related to expression in the digital realm, with 16 involving activists and 11 involving student activists. They both rank among the top 5 most victimised groups of 2022.<sup>97</sup> Data for the 2023 SAFEnet report has not yet been released.

In May 2021, some 50 former members of KPK who had been discharged for having allegedly failed the National Knowledge Examination—a test designed to gauge one’s proficiency in Indonesia’s state ideology—reported being doxxed, Zoom bombed with pornographic materials and having their email accounts hacked by anonymous persons.<sup>98</sup> The events persisted through September, targeting different former members and individuals who protested the discharge.<sup>99</sup>

In another case, independent media outlet Project Multatuli, became a victim of digital attacks after launching an online campaign with the hashtag #PercumaLaporPolisi (lit.

#NoUseReportingtoPolice) in relation to law enforcement’s failure to handle a rape case involving three minors in East Luwu, South Sulawesi. Project Multatuli’s website, on which a piece on the case was also published, was subjected to a series of DDoS attacks and became inaccessible for a period of time.<sup>100</sup>

Moreover, state authorities regularly block access to websites and online news outlets perceived to be critical of the administration.<sup>101</sup> Among those that have been blocked are information-sharing blogs such as Reddit and websites focused on political content, gaming, alcohol and drugs, gambling and online dating.<sup>102</sup> In July 2022, Indonesia implemented additional restrictions by blocking access to various online platforms, including the search engine website Yahoo, payments from PayPal, and several gaming websites. These actions were taken due to the failure of these platforms to comply with licensing regulations imposed by authorities.<sup>103</sup> In 2023, Indonesia blocked 14 websites comprising 16 links in the category of Political Criticism and Terrorism and Militants. More than half of the blocking indicated HTTP blocking only (51.6%) as opposed to DNS tampering only (32.3%) or both DNS tampering and HTTP blocking (16.1%).<sup>104</sup> Blocking is rarely, if ever, done with transparency as to its justification and duration. There has also been a proliferation of state-sponsored “buzzers” on social media platforms who are hired by the government to promote state policies or spread disinformation to manipulate public opinion on certain sensitive issues, oftentimes by using doxxing or harassment techniques. Buzzers receive between IDR 1 and 50 million (\$66–3,344) for their work, and are largely employed on a contractual basis.<sup>105</sup> One buzzer team leader interviewed by Reuters revealed that he was able to control more than 250 accounts spread across Facebook, Instagram, Twitter, and other major platforms during one operation, each with a false persona.<sup>106</sup> Buzzer support was notably

widespread during the 2019 crackdown on a series of protests in Papua and ahead of the general election.<sup>107</sup> Political cyber troops are known to be a common and highly effective tactic used to stifle online expression.<sup>108</sup> However, their impact extends beyond domestic affairs. In December 2023, their actions took on a new dimension with the resurgence of fake UN accounts. These impostor accounts played a significant role in exacerbating anti-Rohingya sentiment, posting anti-Rohingya messages and further complicating advocacy efforts for freedom of expression in Indonesia. This highlights the urgent need for safeguards against online misinformation and manipulation.<sup>109</sup>

## Online Content Manipulation & Restrictions

### Government Requests to Remove or Restrict Content or Accounts

The Indonesian authorities regularly issue requests to websites and social media platforms to remove information or content on their platforms. In 2020, **Meta** received 772 restriction requests in total and restricted access to 760 items on grounds of alleged violations of local laws. In 2021, it received 1009 requests for both platforms (Facebook and Instagram) and restricted access to 4,011 items in total. The first half of 2022 saw a decrease, with 1,475 requests and 1,458 items being restricted on the two social media websites. In the second half of 2022, 2,590 contents were restricted. Finally, the first half of 2023 consisted of 5,240 requests.<sup>110</sup>

**Google** reported to have received 66 requests in 2020 across its platforms and had a compliance rate of 24.4% in the first half of the year and 60.9% in the second half. It reported 426 requests in 2021 and notably complied with 88.6% of them in the second half of the year. In 2022, Google had 309 requests and a compliance rate of 56.8%. For 2023, 224 requests were made.<sup>111</sup>

In 2020, **Twitter** received 291 requests, and in 2021, it reported 269 requests. Its latest reports show a climb in compliance rate similar to that of Google, from 28.1% in 2020 to more than 60% in 2021.<sup>112</sup> The transparency report from Twitter only covers data up to the end of 2021 for all countries. From 2020 to 2022, TikTok received few requests to remove and/or restrict content due to local law violations. For the first half of 2023, 225 requests were made.<sup>113</sup>

## TECH COMPANIES COMPLICIT OF DIGITAL DICTATORSHIP: THE CASE OF TELEGRAM IN INDONESIA



Regarding Telegram specifically, the government imposed a temporary prohibition on the messaging application in 2018 on the grounds that it facilitated communication between terrorists. Following Telegram's commitment to enhance content moderation and establish a representative office in Indonesia, the prohibition was lifted. According to a report by Nava Nuraniyah (2017), the underlying rationale for the blockade was not to suppress extremism, as the statement asserts. On July 17, three days subsequent to the prohibition, Durov, the CEO of Telegram, issued a statement wherein he admitted to his delayed reaction to the government's appeals to obstruct certain extremist channels and pledged to enhance collaboration with the government by means of establishing a "direct line of communication." However, it was not sufficient. To further compel the lifting of the prohibition, the government has now mandated that Telegram establish a local office in Indonesia, akin to the operations of Google, Yahoo, and Facebook. The level of concession that Telegram will offer is yet to be determined. Eliminating Telegram access is, at best, a strategic manoeuvre employed to align the operations of tech behemoths with governmental regulations.<sup>114</sup>



## PANDEMIC POLITICS: COVID-19 IMPACT ON ONLINE ACTIVITIES

The COVID-19 pandemic has allowed authorities to constrict civic space in the country, and freedom of expression was limited excessively. Social media users who criticised the government's handling of COVID-19 have been charged under ITE Law for allegedly spreading disinformation about the COVID-19 pandemic. In the two-year window between January 2020 and 2022, authorities have opened investigation into and prosecuted 767 pandemic-related disinformation cases.<sup>115</sup> Police order No. ST/1100/IV/HUK.7.1.2020 came into force in April 2020, giving police emergency powers to conduct "cyber patrols" and monitor online discussions around COVID-19, the government's handling of it, and any other information surrounding this topic.<sup>116</sup>

The pandemic allowed authorities to limit freedom of speech excessively in the country. In 2020, a university professor said that hackers released images of him and a woman they claimed to be his mistress on his Twitter page after he criticised the government's handling of the COVID-19 pandemic.<sup>117</sup> Several other organisations alleged that hackers erased content from their websites, while media outlets and civil society organisations, including Tempo, Tirto.id, and the Centre for Indonesia's Strategic Development Initiatives (CISDI), were hacked after posting articles criticising the pandemic management.<sup>118</sup> In another Article 28(2) case, Wira Pratama, a resident of Riau Islands off the coast of Sumatra, was prosecuted for uploading on his personal Facebook account a meme of President

Widodo with the caption “[w]e will be watching if you corrupt the COVID-19 fund”. On April 8, 2020, Pratama was arrested for spreading hatred towards and insulting the President.<sup>119</sup>

The government has also routinely required platforms and content moderators to remove negative content related to COVID-19. For instance, in 2021, Facebook restricted access to 2,483 items, purported to be false COVID-19-related claims.<sup>120</sup> The MCIT claimed to have identified 2,442 hoaxes and misinformation spread across various social media platforms from January 2020 through

November 2021.<sup>121</sup> Some of these cases are still under investigation while the remaining majority ended in access blocking by the government, under either account suspension or content takedown. It is unclear what criteria were used to classify content as a hoax or misinformation and whether procedural standards were complied with in responding to these findings. There are also vast inconsistencies in the numbers disclosed by different officials, rendering difficult any attempt to have an accurate estimate of the actual case count.<sup>122</sup>



## INTERSECTIONAL GENDER ANALYSIS: ONLINE GENDER BASED VIOLENCE IN INDONESIA

When addressing issues related to Online Gender Based Violence, hereinafter referred to as “Kekerasan Berbasis Gender Online” in Indonesian, it is crucial to understand the underlying dynamics of gender power relations. Both the digital space and offline space are important democratic and civil domains that should be accessible and safe for all members of societies including women, children and LGBTIQ+.

Current reports highlight that women are the primary group facing technology-facilitated gender-based violence. Additionally, minority communities, particularly the LGBTIQ+ population, are targeted due to their identities. Strikingly, Indonesia lacks legal protection for LGBTIQ+ individuals against hate crimes and discrimination, leaving them exposed to online abuse, including “cyber-homophobia” based on sexual orientation.<sup>123</sup> State authorities contribute to the issue by

spreading online homophobic and transphobic narratives, escalating to online violence. Instances include the Indonesian Air Force’s discriminatory policies and a former minister justifying violence against LGBTIQ+ individuals based on religion. Media outlets exacerbate the problem by using stigmatising language, blaming the LGBTIQ+ community for natural disasters. This pervasive online hostility, fueled by state authorities and media, underscores the urgent need for comprehensive measures to address technology-facilitated GBV, recognising the unique challenges faced by women and the LGBTIQ+ community in Indonesia.<sup>124</sup>

### Spotlight on the OGBV and judicial harassment faced by Veronica Koman

However, within Indonesia’s complex digital landscape, marginalised groups, including women

human rights defenders, grapple with formidable challenges, encountering instances of OGBV. For example, consider Veronica Koman, a woman human rights defender advocating for the West Papuan indigenous peoples.<sup>125</sup> Since 2019, she faces OGBV, experiencing death threats, rape threats, racist and misogynistic abuse via social media. She has been labelled a traitor due to her tweets about the situation in Papua and a crackdown on pro-Papuan independence activists in Surabaya, East Java, sparking weeks of protests.<sup>126</sup>

Additionally, Veronica Koman faces charges in Indonesia, including alleged “incitement,” “spreading fake news,” “displaying race-based hatred,”<sup>127</sup> and “disseminating information aimed at inflicting ethnic hatred.” The threats extend to Koman’s family, underscoring the intersectionality of being a woman human rights defender facing risks that also extend to her family. In December 2021, the UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor, condemned Indonesia to immediately cease threats, intimidation, and reprisals against human rights defender Veronica Koman and her family.<sup>128</sup> Currently, Veronica Koman is in self-imposed exile in Australia due to considerable risks to her security in Indonesia.<sup>129</sup>

### **Lack of support and access to remedy for survivors of OGBV cases**

Despite these challenges, a comprehensive analysis gap persists among public interest lawyers and peer assistants providing support to justice seekers in this context. One significant issue that needs to be addressed is the imbalance between the availability of institutions and communities dedicated to handling OGBV cases and the increasing number of OGBV cases year by year.<sup>130</sup>

The Task Force KBGO, initiated by PurpleCode

Collective, is dedicated to providing assistance for victims through three pillars: legal aid, technological aid, and psychological aid. In 2022, out of the 98 complaints received by Task Force KBGO, 82 of them were submitted directly by victims, while the remaining 16 complaints were filed by companions such as family members or friends. The majority of complaints, both from victims and companions, came from individuals in the 21-25 age group. The highest number and percentage of complaints were from 21-year-olds, making up 13.27% of the total complaints. Following closely were 25-year-old complainants, accounting for 12.24% of the total. The third-highest number of complaints came from 24-year-olds, with 10 complaints (10.20%). On the other hand, individuals aged 28, 30, 37, 38, and 49 each made up only 1.02% of the total complaints. Among the 98 complainants, there were two individuals for whom Task Force OGBV couldn’t ascertain their identities. These two victims were referred to Task Force KBGO by the National Human Rights Commission, Komnas Perempuan.<sup>131</sup>

### **Young people are more at risk of the OGBV**

According to the 2022 Indonesian Internet Profile released by the Indonesian Internet Service Providers Association (APJII), the largest group of internet users falls within the 19-34 age bracket. This data supports the dominance of the 21-25 age range among complainants. It suggests that individuals in this age group have more extensive internet access, making it relatively easier for them to find Task Force KBGO and file complaints. However, this doesn’t necessarily imply that other age groups are less susceptible to experiencing OGBV. It may simply be due to variations in internet access among different age groups, which could be addressed by ensuring



broader coverage.<sup>132</sup>

Among the 80 complaints identified by Task Force OGBV, the age range of the victims spanned from 14 to 45 years. Notably, victims aged 21 years old were the most frequent, comprising 13.41% of the total complaints. Additionally, there were 10 victims (12.20%) aged 25 years, eight victims (9.76%) at 24 years, and six victims (7.32%) aged 17 years. It's worth highlighting that two age groups, 14 and 17 years old, fall within the children's category according to the Convention on the Rights of the Child, which defines children as those under 18 years old. This underscores the gravity of OGBV affecting children, with potentially more severe and lasting impacts.<sup>133</sup>

### The different forms of OGBV in Indonesia

Furthermore OGBV encompasses various forms of online violence, includes doxing, extortion, impersonation, psychological violence, verbal abuse, photo and video manipulation, content coercion, unauthorised content storage, non-consensual recording and dissemination of intimate images (NCII), online stalking, outing, forced abortion, hacking, sextortion, tech-enabled surveillance, and trolling. Often, when victims or their companions approach Task Force KBGO, they may not be aware of the specific type of KBGO they are experiencing. What unites them is the presence of threats and violence.

According to Task Force KBGO, sextortion, a form of violence involving sexual threats, constitutes the majority of OGBV cases handled in 2022. Task Force KBGO dealt with 64.29% of the 98 reported cases. This number is significant and alarming, surpassing more than half of all OGBV cases that Task Force OGBV addressed. Sextortion cases sometimes overlap with other forms of OGBV,

such as NCII (Non-Consensual Dissemination of Intimate Images), extortion, and doxing.

NCII, the second most common type, accounted for 26.53% of cases. NCII involves the act of perpetrators distributing intimate photos or videos of victims without their consent (PurpleCode Collective, 2020). These media may have been created consensually between the victim and the perpetrator or solely by the victim and then shared with the perpetrator. For Task Force KBGO, this highlights the importance of a layered approach to consent. Just because someone consents to creating or sending a photo/video does not imply consent to its dissemination. The act of creating/sending and the act of sharing are distinct actions, and consent should be obtained for each of these actions separately.

It's important to note that consent follows these principles:

- Layered (across actions, individuals, times, places, and platforms).
- Can be withdrawn at any time and is not perpetual.
- Clearly informed.
- Silence does not equate to consent.

Following NCII, the subsequent breakdown of OGBV cases is as follows: recording without consent, trolling, storing recordings without consent, and extortion, each accounting for 16.33%, 11.22%, 10.20%, and 10.20%, respectively. Next in line are doxing at 4.08%, verbal violence at 2.04%, content coercion at 3.06%, forced content transmission at 6.12%, online stalking at 2.04%, outing at 5.10%, and hacking at 5.10%.

The lowest percentage is attributed to impersonation, psychological violence, photo and video manipulation, unauthorised content storage, forced abortion, and tech-enabled surveillance, each at 1.02%.<sup>134</sup>

### How to address cases of OGBV?

OGBV in Indonesia and anywhere often involves multiple types, making cases intricate. Relevant solutions must be tailored to each OGBV type experienced by victims. Hence, it is necessary to frequently engage with various individuals and organisations to inquire and collaborate on OGBV cases. In handling OGBV cases, we need to acknowledge that it cannot be a one-size-fits-all solution.<sup>135</sup>

### Digital Darkness: Unmasking the Ominous Surge of Online Hate Campaigns Against Rohingya Refugees in Indonesia

#### What happened?

Amid Indonesia's digital repression, a dire situation has emerged with the plight of Rohingya refugees seeking shelter in Aceh, including areas like Sabang, Pidie, and Bireuen. Drawing parallels to the lead-up to the 2017 Rohingya genocide in Rakhine State, online disinformation and hate speech comments targeted at Rohingya refugees in Indonesia are now contributing to an unsafe environment.<sup>136</sup> This is evident through the systemic dissemination of content depicting Rohingya refugees in Indonesia in a negative light, for example, portraying them as disrespectful to their host country, or accusing them of wasting food aid.<sup>137</sup> Destructive narratives persist, stigmatising Rohingya individuals as 'illegal' immigrants and portraying them as

perceived threats to local customs, regulations, and norms.<sup>138</sup> The Rohingya people are subjected to malicious hate speech and face various forms of violence, including persecution, deprivation of citizenship, and genocide in their homeland, Myanmar. This not only exacerbates their physical suffering but also inflicts profound psychological scars, adding another layer of difficulty to their struggle for support and the acknowledgement of their basic human rights.<sup>139</sup>

Further, these dehumanising narratives are purposefully crafted to sow anxiety and fear among the local Acehnese population, cultivating the unfounded belief that welcoming Rohingya refugees would overwhelm and jeopardise Acehnese resources. It is crucial to highlight that the recorded Rohingya population in Aceh stands at a mere 1,700 individuals, constituting a negligible fraction compared to the 5.4 million Acehnese residents.<sup>140</sup>

#### Social Media Onslaught: Unveiling the Shocking Hostility Towards Rohingya

The evidence underscores a disturbing reality: The UN's official Instagram account, @UNinIndonesia, has been inundated with 17,380 comments since November 21, 2023, specifically targeting four posts related to Rohingya. The UN's assessment revealed a staggering 91 per cent of these comments qualified as "hate comments".<sup>141</sup> Moreover, the UNHCR itself has also become the target of what it has called an "orchestrated" disinformation campaign on social media platforms such as TikTok and Instagram, referring to the emergence of social media accounts spreading anti-Rohingya rhetoric, all while falsely claiming to be UN-affiliated.<sup>142</sup> TikTok made a statement that accounts impersonating UNHCR Indonesia

“will be removed;” in response to a request for comment made by This Week in Asia, while Meta did not immediately respond.<sup>143</sup>

In the absence of intervention, the unchecked proliferation of disinformation poses a grave risk, potentially culminating in heightened waves of targeted attacks – and even atrocities – against Rohingya refugees in Indonesia and the broader South and Southeast Asian region. The systematic dissemination of online hate speech targeting the Rohingya has historically served as a catalyst for previous instances of targeted assaults on this vulnerable community. It is indisputable that the inadequacy of regulatory frameworks in managing this hostile online environment significantly contributed to the tragic events of the 2017 genocide against the Rohingya, compelling their forced displacement to neighbouring countries within Myanmar.<sup>144</sup>

## 2.3 Access to Effective Remedy

The Indonesian Constitution contains general references to the right of individuals to access courts and administrative bodies to seek damages. In practice, however, this constitutional guarantee is often impeded by corruption and political influence within the system. Cyber laws are also not equipped with provisions on access to an effective remedy in case of a breach, nor do these laws set up procedural safeguards and an independent mechanism to oversee their implementation. Thus, individuals or entities who suffer the consequences of a misinterpretation or misapplication of those cyber laws are all but deprived of their right to obtain redress.<sup>145</sup>

Due to the limited recognition of Strategic Lawsuits Against Public Participation (SLAPP) within the Indonesian legal framework, coupled with the absence of anti-SLAPP jurisprudence, human rights defenders (HRDs), activists, or any individual embroiled in judicial harassment cases face significant challenges. Without the option to have their cases dismissed, they are compelled to navigate through a protracted and costly judicial

process, leaving them even more vulnerable or sometimes completely incapacitated and paralysed.

Moreover, within the Indonesian legal system, crimes of libel and defamation under the Criminal Code can only be prosecuted through a complaint lodged by an injured party. Such a complaint mechanism is what is often wielded by individuals or certain groups with vested interests to target their critics. Equally problematic is Article 312 of the Criminal Code which provides that judges may assess the falsity of alleged libellous or defamatory statements only in cases where such an assessment is (1) necessary to test an accused’s assertion that he had been acting in pursuance of a general interest or self-defence or (2) the accused is a public official acting within his official powers. This formulation gravely restricts an accused’s scope of defence in court. By extension, it hinders access to an effective remedy for HRDs and activists who face charges for attempting to expose wrongdoing by authorities or private persons.<sup>146</sup>

## Non-Judicial Grievance Mechanisms Available, but Not Sufficient

State-based non-judicial grievance mechanisms are available; individuals can file complaints to the Indonesia National Commission on Human Rights, or *Komnas HAM*. The Commission is authorised to conduct inquiries into gross human rights violations under the 2000 Law on the Establishment of an *Ad Hoc* Human Rights Court.<sup>147</sup> Inquiries initiated by the Commission, however, do not automatically trigger a prosecution, nor does they make prosecution more likely to take place. Complaints handled by the Commission rarely amount to criminal charges, leaving high levels of impunity. This is partly due to the fact that the Attorney General's Office, who is in charge of deciding whether cases of gross human rights violations can proceed to litigation, rarely decides so.<sup>148</sup> Furthermore, politics and the backgrounds of commissioners can exacerbate this general hesitance to see complaints through. A religiously conservative commissioner, for instance, would assess a case in a manner different from someone with a background in human rights activism.<sup>149</sup> As a result, the Commission's role rarely pierces through the investigatory or advisory capacity, making it even more unlikely for digital freedoms breaches to be remedied through this avenue.<sup>150</sup>

## Whistleblowers Protection and Environmental Cases

Whistleblowers and activists are especially vulnerable to state-backed harassment for expressing themselves online. Indonesia does not have a comprehensive whistleblower protection regime; the 2006 Law on Witness and Victim Protection is the only piece of legislation that sets out their fundamental rights.<sup>151</sup> The Law has a number of shortcomings, including that whistleblowers are merely characterised as "reporters" of suspected crimes. Thus, anyone

who discloses sensitive information related to a crime they know about, which may be done in the online space, would not enjoy special protection. In addition, the oversight body in charge of administering protection for victims and witnesses, the Witness and Victim Protection Agency (LPSK), operates in tandem with other agencies that are known for their corrupt practices and lack of independence, such as the Corruption Eradication Commission (KPK) and the National Police. Therefore, the Law's implementation is substantially hindered by lack of transparency and institutional gaps.<sup>152</sup>

## Environmental Cases

In addition, there are laws in place that prevent the filing of lawsuits against individuals who advocate for environmental rights. For instance, the 2009 Law on Environmental Protection and Management, and the 2013 Law on the Prevention and Eradication of Forest Destruction offer such protection. Furthermore, individuals who provide information about or report on environmental issues are also safeguarded by these laws. However, it's important to note that while these laws are generally seen as a response to Strategic Lawsuits Against Public Participation (SLAPP), they lack a specific definition of SLAPP and only apply to environmental cases. Consequently, they may not provide sufficient grounds for SLAPP defendants to have their cases dismissed, nor can judges rely on them to prevent legal abuses.<sup>153</sup>

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Article 34 of the state acknowledges the rights of the human individual. The rights to... PROPAGANDA THE... recognizes that hinder on provides, protect[s], a... including... speech and press... laws, and... mass media interests" or



# LAO PDR



# 3. Lao PDR (Laos)

✓ **FREE** Scores 100-70
⋯ **PARTLY FREE** Scores 69-40
✗ **NOT FREE** Scores 39-0

|                              |                                     |                                    |                                  |                                    |
|------------------------------|-------------------------------------|------------------------------------|----------------------------------|------------------------------------|
| <b>GOOD</b><br>85-100 points | <b>SATISFACTORY</b><br>75-85 points | <b>PROBLEMATIC</b><br>65-75 points | <b>DIFFICULT</b><br>45-65 points | <b>VERY SERIOUS</b><br>0-45 points |
|------------------------------|-------------------------------------|------------------------------------|----------------------------------|------------------------------------|

| YEAR | DEMOCRATIC STATUS OF THE COUNTRY<br><small>(according to the Freedom In The World index)</small> | DIGITAL SPACE & ONLINE FREEDOM STATUS OF THE COUNTRY<br><small>(according to Manushya Foundation's Assessment)</small> | PRESS & MEDIA FREEDOM STATUS OF THE COUNTRY<br><small>(according to the World's Press Freedom Index)</small> |
|------|--|--|--|
| 2020 | 14/100<br><span>✗ NOT FREE</span>  | <span>✗ NOT FREE</span>  | 172/180 (35,72)<br><span>VERY SERIOUS</span>   |
| 2021 | 13/100<br><span>✗ NOT FREE</span>  | <span>✗ NOT FREE</span>  | 172/180 (29,44)<br><span>VERY SERIOUS</span>   |
| 2022 | 13/100<br><span>✗ NOT FREE</span>  | <span>✗ NOT FREE</span>  | 161/180 (36,64)<br><span>VERY SERIOUS</span>   |
| 2023 | 13/100<br><span>✗ NOT FREE</span>  | <span>✗ NOT FREE</span>  | 160/180 (36,66)<br><span>VERY SERIOUS</span>   |

Fig. 3.1: Summary of freedom ratings for Lao PDR (Laos), 2020-2023.<sup>1</sup>

## 3.1 Legal Framework

### Freedom of Expression is Guaranteed but Illegitimately Restricted

Although the Lao Constitution recognises basic human rights, there are many laws that hinder online freedoms. Article 34 of the Constitution provides that “the state acknowledge[s], respect[s], protect[s], and guarantee[s] the human rights including fundamental rights of the citizen in accordance with the law.” The rights to freedom of speech and press are recognised under Article 44 of the Constitution but should not be “contrary to the laws.” Similarly, Article 23 prohibits all “cultural and mass media activities” contrary to “national interests” or “traditional culture and dignity.”<sup>2</sup>

### Criminalisation of Defamation: the Penal Code

The Lao Penal Code provides vague and broadly formulated offences of defamation, libel and insult. Articles 205 and 206 of the 2017 Penal Code (Articles 94 and 95 of the 2005 Penal Code) provide broad definitions of defamation. More precisely, article 205 stipulates that “any person severely damaging the reputation of another person or resulting in severe damage to the other person’s honour through written, verbal or other means and any person seriously infringing upon the dignity or honour of another shall be sentenced to imprisonment for a term ranging from three months to one year or by reeducation without deprivation of liberty and a fine ranging from LAK 1 to 5 million (\$52-262).”<sup>3</sup>



“

*Using unwarranted defamation, libel, and slander charges, justified by vague claims of ‘national interests’, the government increasingly restricts any speech or actions that would highlight corruption or the violation of rights resulting from development projects and investments, specifically those related to land and sustainable development. The Lao government must immediately repeal or amend legislations that do not comply with international human rights standards and obligations through transparent and inclusive mechanisms of public consultation. The Lao government must also end the harassment and intimidation against persons who speak up, and provide effective remedy in cases where the rights of individuals have been denied or violated.”<sup>4</sup>*

—Emilie Pradichit, Founder & Executive Director of Manushya Foundation

## Censoring Dissent: The 2015 Cybercrime Law

The 2015 Law on Prevention and Combating Cyber Crime further affords the government power to silence online criticisms by criminalising vaguely defined web content including deceptive statements and statements “propagating to destroy or against the political regime in order to cause turbulence in society” or against the government and Lao PDR. “Causing damages via online social media” is identified as one of the cybercrimes under Article 8. Particularly, actions including applying “false,” “misleading” and “deception information,” and bringing information “destroying national security, peace, order in society, national culture and fine tradition of the nation” are punishable by imprisonment from three months to three years with fining from LAK 4 to 20 million (\$230 to 1,180) according to Articles 13 and 62.<sup>5</sup>

## Restricting Expression on Grounds of Protecting National Security: The Weaponisation of ‘anti-state propaganda’

Aside from defamation provisions, a series of legal provisions and laws prescribe restrictions on freedom of expression, access to information and media freedom on the basis of “national security” or “public order.” Article 117 of the Penal Code (Article 65 of the 2005 Penal Code), known as the provision on “propaganda against the state,” punishes anyone “conducting propaganda activities against and slandering the Lao PDR, or distorting the guidelines of the Party and policies of the government, or circulating false rumours causing disorder by words, in writing, through print, newspapers, motion pictures, videos, photographs, documents, electronic media, or by other means, which are detrimental to the Lao PDR or are for the purpose of undermining or weakening state authority”, with one to five years of imprisonment and a fine from LAK 5 to 20 million (\$290 to 1,180). Given the imprecision of various aspects of this provision, it grants unfettered discretion to the authorities and allows for arbitrary interpretation.<sup>6</sup>

“

*We can't say much. If you say something bad, you'll be accused of trying to break up the Party and government. We can't talk back to or make any argument against the authorities.<sup>7</sup>*

—A resident of Champasak province

## Restricting Expression on Grounds of Combating False Information: The Weaponisation of ‘Fake News’

### **Decree No. 327 on Internet-Based Information Control/Management, which entered into force on Oct. 1, 2014**

The Decree contains a number of provisions that unduly restrict the right to freedom of expression by imposing harsh penalties on online criticism and the circulation of “false information online.” It criminalises the dissemination and commenting of “false or misleading information against the Lao People’s Revolutionary Party or the Government”; “false propaganda” with the aim of undermining social unity and the solidarity among ethnic/minority groups and nations; “edited photos and other photos that are prohibited under the law of the Lao PDR, including photos discrediting the Lao tradition”; national secrets, military secrets or “other secrets”

“

*When there are no clear guidelines for punishing specific wrong actions, those in power can unfairly punish individuals. By deliberately avoiding the establishment of such limits, the authorities seek to stifle the very essence of democracy and suppress dissenting voices.*

–Emilie Palamy Pradichit, Founder and Executive Director of Manushya Foundation

as indicated in Lao PDR’s legislation and regulation. The range of prohibitions applies to the online space as the Decree explicitly covers information shared on social media platforms and websites. Terms such as “false,” “misleading” or “untrue” information are vague and open to misapplication. Article 26 lists a number of sanctions applicable to individuals, legal entities or organisations who violate the Decree. These sanctions range from warnings, education, penalty, fines, to criminal prosecution, depending on the severity of the case. Nevertheless, it does not specify the violations to which each sanction corresponds, allowing the authorities to arbitrarily punish legitimate criticism against government policies.<sup>8</sup>

### **The 2021 Special Task Force to control the spread of ‘fake news’ related to the COVID-19 pandemic**

In May 2021, the Ministry of Public Security ordered the establishment of a “special task force” designated for tracking and combating online “fake news” concerning the COVID-19 pandemic on social media platforms. The task force is to be composed of officials from the Ministry of Information, Culture and Tourism, and public security and police divisions.<sup>9</sup>

### **The 2023 Social Media Clampdown: the Lao government’s Intention to Address ‘Fake News’ from social media accounts inside and outside Lao PDR (Laos)<sup>10</sup>**

Early in August 2023, the Ministry of Technology and Communications of the Lao government announced its intention to regulate social media utilisation both inside and outside the country.<sup>11</sup> A representative from the Lao Ministry of Defence and Security indicated that those who use social media to spread false news, distort information, or criticise the government may face repercussions. Initially, so-called “education” would be enforced for the first offence, with legal punishment and prosecution ensuing for subsequent offences. This measure seeks to maintain societal order and address the issue of foreign media outlets that disturb the peace, misrepresent the facts, or criticise the actions of Lao authorities. The government elaborated that while it intended to exercise control over the content shared on domestic social media platforms, the primary challenge lies in effectively managing the content originating from accounts or individuals located outside the country that spread ‘fake news’ about the Lao government. The stakes are elevated. The government is not only determined

to censor social media content within the country, but it also seeks to expand its reach beyond the Lao borders, alleging without legal evidence that some foreign social media accounts are spreading “fake news” about the Lao government.<sup>12</sup>

## No Independent Media: Lao Authorities’ Tool for Controlling Information

### The 2016 Media Law

The Media Law was adopted in 2008 and amended in 2016 to “ensure that the media implements their duties and mission to be a sharp voice of the ruling [Lao People’s Revolutionary] Party and the people in order to propagate the guidelines and directions, and laws and social-economic development plans of the state.” It allows the authorities to have broad discretion to control information and communication, which greatly undermines the independence of the media.<sup>13</sup>

There is no independent media in Lao PDR (Laos). Despite the intended role of the media to serve as a voice, bringing attention to societal issues and scrutinising government policies for public awareness, the reality is that the state exerts total control over the media. The government tightly controls media to ensure that TV, radio and printed publications comply with and reflect the government policies. The 24 newspapers, 32 television networks, and 44 radio stations in the country are all obliged to follow the party line mandated by the Peoples’ Propaganda Commissariat, meaning that people in Lao PDR (Laos) have access to little, if any, reliable information.<sup>14</sup>

This severe control results in a lack of clear, detailed, and comprehensive coverage of societal problems, making it less appealing for people to rely on the country’s state media outlets for news about their communities.<sup>15</sup> As a result, in recent years, Lao people have increasingly turned to social media to find the truth, social media accounts of online bloggers, activists, and citizen journalists.

This has led to the Lao government’s growing attempts to control social media platforms and accounts functioning as online news outlets, to silence citizen journalists, and stopping the world from knowing what’s really happening in Laos. .

### The 2019 Order Number 256 Mandating Registration of News Outlet Administrators on Social Media

As highlighted, Lao citizens increasingly prefer internet and social media platforms over state-controlled news outlets for accessing uncensored information. In response, the Ministry of Information, Culture, and Tourism (MICT) issued the Government Order Number 256 in July 2019, mandating registration of news outlet administrators on social media. Non-compliance with this directive carries harsh penalties, justified as measures to combat fake news and disinformation.

The order was issued with the intention of regulating the dissemination of “fake news and disinformation in social media” to combat the spread of misinformation and prevent public panic.<sup>16</sup>

In August 2020, former Prime Minister Thongloun Sisoulith pushed media and publishing officials to continue “defeating the fake, deceptive, and harmful news” found on social media.<sup>17</sup> In September 2020, the Ministry of Information, Culture, and Tourism issued another notice, reiterating that “any individual, legal entity, state or private sector that continues to publish and provide information to the public via social media without permission will face measures in line with the laws of the Lao PDR”. Reportedly, 20 Facebook pages, including Tholakhong, Inside Laos, and Lao Youth, have been registered while some news sites such as the Lao-Thai Facebook page have not.<sup>18</sup>

## The 2021 Order to Register Social Media Platforms Disseminating News <sup>19</sup>

In addition, the Ministry of Information, Culture, and Tourism (MICT) requires any “individual, legal entity, state or private sector” that distributes news on social media platforms to register or face legal consequences.<sup>20</sup> Indeed, on 20 May 2021, the Ministry of Information, Culture and Tourism (MICT) ordered the departments of Information, Culture and Tourism in all provinces to keep records of official social media platforms including websites, online news pages and Facebook pages and to forward them to the Mass Media Department, under the guise of combating

“false information” during the COVID-19 pandemic. It also encouraged its provincial departments to supervise the registration of social media platforms. The notice stated that unregistered platforms would not be allowed to publish information or news under the Media Law and continuous operation would also face legal consequences. It was claimed that registration aims to regulate social media and ensure that information and news posted on social media platforms are accurate. Officials highlighted punishment for the circulation of fake news and misinformation causing loss or damage through social media under the 2015 Law on Prevention and Combating Cyber Crime.

## #PeoplePower | How Are People Resisting #DigitalDictatorship?

### The ASEAN Regional Coalition to #StopDigitalDictatorship calls for Immediate Reforms for the Safeguard of LAO PDR (Laos) Digital Rights Landscape

The ASEAN Regional Coalition to #StopDigitalDictatorship issued two Joint Statements in 2021 and 2023 to stand in solidarity with the Lao people, calling on the Lao government to stop online control and surveillance. The coalition advocates for an independent and free media, and urges Lao authorities to repeal or amend laws and regulations that curtail freedom of expression, independent media, and access to information, aligning them with Article 19 of the UDHR and the ICCPR. The coalition strongly emphasises the need to refrain from using allegations of ‘fake news’ as a pretext to restrict online information and stifle free media.

Additionally, the coalition implores the Lao government to cease the weaponisation of constitutional provisions, such as Article 23, to unduly limit media activities under vague and overly broad notions of ‘national interests.’ Furthermore, the coalition calls for a commitment to transparency, ensuring access to information for all

individuals in Lao PDR (Laos), especially when it pertains to the public interest and impacts individuals’ rights to expression, information, and public participation. The coalition advocates for the adoption of a law that facilitates such access, guaranteeing transparency and promoting open information flow. The coalition also stresses the importance of ensuring that measures addressing disinformation and misinformation align with international human rights obligations.

Finally, the Coalition reminds the Lao government of the UN Human Rights Committee’s concerns in its 2018 Concluding Observations over the state’s absolute control over media aiming at ensuring that TV, radio and printed publications adhere to and reflect the government policies. In January 2020, during its 3rd Universal Periodic Review (UPR) cycle, Lao PDR received 24 recommendations relating to freedom of opinion and expression and 7 recommendations calling for respect of press freedom.<sup>21</sup>

## China's Grip Tightens: Controlling Lao News through the One Belt, One Road Initiative

Lao PDR (Laos) and China are closely collaborating under the One Belt, One Road initiative, strengthening their relationship through improved infrastructure. At the 3rd One Belt, One Road summit, the Lao and Chinese presidents endorsed a media cooperation agreement to enhance reporting on initiative developments.<sup>22</sup>

In 2023, the Lao Ministry of Information, Culture, and Tourism (MICT) and China's Radio-Television signed an agreement to modernise the Lao media industry over the next decade. Foresees increased exchanges between radio and television personnel to promote the One Belt, One Road initiative globally. Collaboration between Lao National Television and Chinese counterparts has already improved electronic media quality through equipment provision and training. China has granted scholarships for Lao media officials' training, fostering closer ties. The growing relationship is evident in joint efforts to report on One Belt, One Road developments, including feature films, documentaries, online broadcasts, and collaborative radio and television programs.<sup>23</sup>

This orchestrated control over media outlets not only stifles journalistic freedom but also results in a dire lack of credible information for the Lao citizens, undermining their right to access accurate and diverse news sources.

### Web of Control: Internet Service Providers and Mass Surveillance in Lao PDR (Laos)

#### Surveilling Netizens: The 2020 Notice for Mandatory Sim Card Registration

In June 2020, the Ministry of Posts and Telecommunications issued a notice<sup>24</sup> to Lao people making it mandatory to register all sim cards, and all phone numbers, as a way to surveil Lao people.

The deadline for Lao people to register their mobile phone numbers was extended several times, until December 16, 2023. Individuals who fail to register their SIM cards would face fines and could risk being disconnected and permanently removed from the phone network.<sup>25</sup>

The ministerial notice was originally issued amid the COVID-19 pandemic under the guise of virus containment measures, but officials now claim it's aimed at combating scams, while Human Rights groups suspect its true intent is to surveil dissenting voices.

#### Regulating Content by Controlling Internet Service Providers: The Telecom Law 2021

The New Telecommunications Law, dated 16 November 2021 (the Telecom Law 2021), has replaced the previous Telecommunications Law of December 2011.<sup>26</sup> Under the Telecom Law 2021, Internet Service Providers (ISPs) will have the obligation to cooperate with the government to block content deemed inappropriate, and to "report web users' names, professions and data search histories to the authorities."<sup>27</sup>

## 3.2 Challenges and Cases

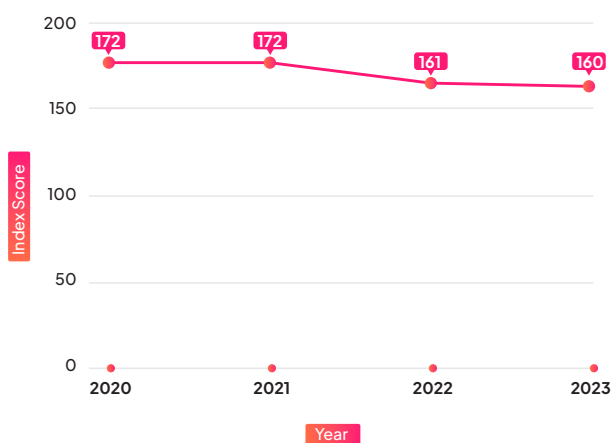
### #WhatsHappeningInLaos

The Lao PDR (Laos) is a single-party state, with the Lao People's Revolutionary Party (LPRP) exercising monopoly over every aspect of the country, often by impinging on fundamental rights. In December 2022, Sonexay Siphandone was nominated as prime minister with an overwhelming majority, winning 149 out of the 151 votes from the National Assembly. He is a former deputy prime minister and investment minister.<sup>28</sup>

## Lao PDR (Laos) Freedom Ratings

Despite constitutional provisions aimed at recognising basic rights, Lao PDR (Laos) maintains a consistently poor human rights record. Although Freedom on the Net data is unavailable for Lao PDR (Laos), the Manushya Foundation, serving as the digital rights expert in Lao PDR (Laos), has assessed the digital space as 'not free'. Furthermore, according to the Freedom in the World report by Freedom House, Lao PDR (Laos) has consistently been rated as 'not free', with scores of 13/100 in 2021, 2022, and 2023.<sup>29</sup> The political rights score is 2 out of 40, and the civil liberties score is 11 out of 60. Additionally, the country's 2022 press freedom score of 36.64, ranking 161st out of 180 countries, highlights issues in the functioning of media and democracy. Unfortunately, the situation did not improve in 2023, with the country now placed at the 160th position with a score of 36.66.<sup>30</sup>

## Lao PDR Digital Space & Online Freedom Status



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Fig. 3.2. Media & Press Freedom (World Press Freedom Index) Rating for Lao PDR (Laos) over the years, 2020-2023

The government's efforts to suppress increasing criticism from the population follow a familiar pattern observed in authoritarian regimes across the ASEAN region. Despite the rise of digital dictatorship in the country, citizens are increasingly vocal about issues such as the lack of accountability, mismanagement of national finances, escalating crime rates, and rampant corruption.<sup>31</sup> A telling illustration of this corruption surfaced in October 2022 when Zhao Wei, a notorious casino owner and businessman, was shockingly awarded a Medal of Bravery "to honour his [...] contribution to [...] national public security."<sup>32</sup> However, Zhao Wei's true identity as an internationally-recognised criminal, sanctioned by the US for offences including drug and human trafficking, money laundering, and bribery, starkly contrasts with the government's attempt to honour him. Even amidst such glaring examples of corruption, censorship and intimidation tactics persist, particularly targeting dissenters who dare to challenge the oppressive regime.<sup>33</sup>

The country's freedom ratings highlight a concerning situation: the Lao government maintains strict control over the media, abusing its authority to manipulate and suppress public opinion. This misuse of power constitutes a serious infringement on the rights and freedoms of Lao citizens. Given this dominance, social media has become a crucial avenue for accessing information for the Lao people.<sup>34</sup> Consequently, there is a growing surge of public discontent in Lao PDR (Laos), with individuals turning to social media to voice their opinions.

## Lack of Freedoms worsened by Soaring Inflation: Lao PDR (Laos) witnessed its first online government protests

The country's deteriorating economic situation, highlighted by an inflation rate exceeding 41%<sup>35</sup> in February 2023, presents a particularly alarming trend. It all started in the summer of 2022, when the inflation rate skyrocketed, plunging the Lao people into economic distress. Yet, amidst this turmoil,

something unprecedented occurred: for the first time in history, the Lao people refused to cower in fear. Using the power of social media, they boldly criticised the government's incompetence and economic injustices without reservation, mainly on the Facebook platform. This courageous act marked a historic turning point, demonstrating the irrepressible spirit of a populace determined to hold their leaders accountable, no matter the consequences.<sup>36</sup>

Sadly, this period of online empowerment was short-lived. Following the rise of a new Lao Prime Minister, Sonexay Siphandone, in December 2022, repression against Lao people resurged. This was compounded by a tragic event on April 29, 2023, when Jack Anousa, a Lao youth democracy activist, fell victim to an attempted murder due to his online activism.<sup>37</sup> A few weeks later, Bounsuan Kitiyano, a 56-year-old Lao activist affiliated with the 'Free Laos' democracy group and recognized as a political refugee who had fled to Thailand, fell victim to transnational repression. His lifeless body was discovered on May 17, 2023, in Ubon Ratchathani Province, situated in the Isaan region of Thailand.<sup>38</sup>

## When the Rich get Richer, and the Poor get Poorer... Young people are escaping

Despite the government's attempts to curb inflation, the average rate for the year stood at 31.23% by 2023 end<sup>40</sup>, exacerbating inequalities and impoverishing large segments of the population, disproportionately impacting low-income earners and marginalised communities. Lao PDR (Laos) has incurred debt and faced distress as a result of China's promise of prosperity, as the country grapples with the consequences of heavy borrowing and economic dependence.<sup>41</sup> As a result, the rising cost of living is placing immense strain on households already struggling to make ends meet, pushing many further into poverty. Meanwhile, the wealthy elite are able to navigate the inflationary environment, often benefiting from investments and assets that shield them from the worst effects of rising prices. This widening gap between the rich and the poor underscores the systemic inequalities ingrained within the economic structure, where inflation serves to further entrench the disparities between the privileged few and the marginalised many.<sup>42</sup>

“

*[Young people] aren't even thinking about change, it's a feeling of how am I going to get out of this country - I'm stuck here, there's no future for me. If you see your country becoming a colony of China, you see a government that is totally corrupt, and you cannot speak up because if you do you might be killed - would you want to stay?<sup>39</sup>*

–Emilie Palamy Pradichit, Founder & Executive Director of Manushya Foundation



“

*Every person in this generation doesn't believe in the government. They want to leave Laos, they don't believe anything the government says. Most of my friends have the same thoughts, but we only talk about it privately. If you say bad things about them in public, I don't know what will happen.*<sup>44</sup>

–Jo, a 22-year-old Lao Youth

The economic uncertainty and restricted freedoms have driven Lao youth abroad, particularly to neighbouring Thailand, seeing little hope and limited free speech in Lao PDR (Laos).<sup>43</sup> This talent drain compounds the nation's challenges, hindering its development.

### **The Lack of Independent and Free Civil Society inside Lao PDR (Laos): self-censoring by fear of reprisals**

The rise of digital dictatorship and economic uncertainty in Lao PDR (Laos) has exacerbated an already restricted civic space, dating back to the enforced disappearance of Sombath Somphone in December 2012. Sombath, a prominent development activist and founder of the Participatory Development Training Centre (PADETC), vanished under suspicious circumstances, casting a chilling shadow over civil

society and citizen engagement. Since then, the climate of fear has only intensified, stifling free expression and dissent.<sup>45</sup> The absence of recognition for human rights defenders further undermines efforts to establish a legal framework supporting their vital work. Instead, HRDs are viewed as 'enemies' by the State, impeding the growth of an independent civil society.<sup>46</sup> This control is further reinforced through the Decree No. 238 on Non-profit Associations (NPAs) adopted in November 2017, replacing the previous 2009 Decree, which significantly heightens scrutiny over civil society organisations (CSOs). The decree grants authorities broad powers to obstruct NPA formation, criminalise human rights organisations, restrict activities, limit foreign funding, and dissolve groups at will, with no avenue for appeal. Consequently, civil society operates under constant fear of reprisals and stringent limitations.<sup>47</sup>

## Struggles, Legislation, and Repression in Lao PDR (Laos) (2020–2023)

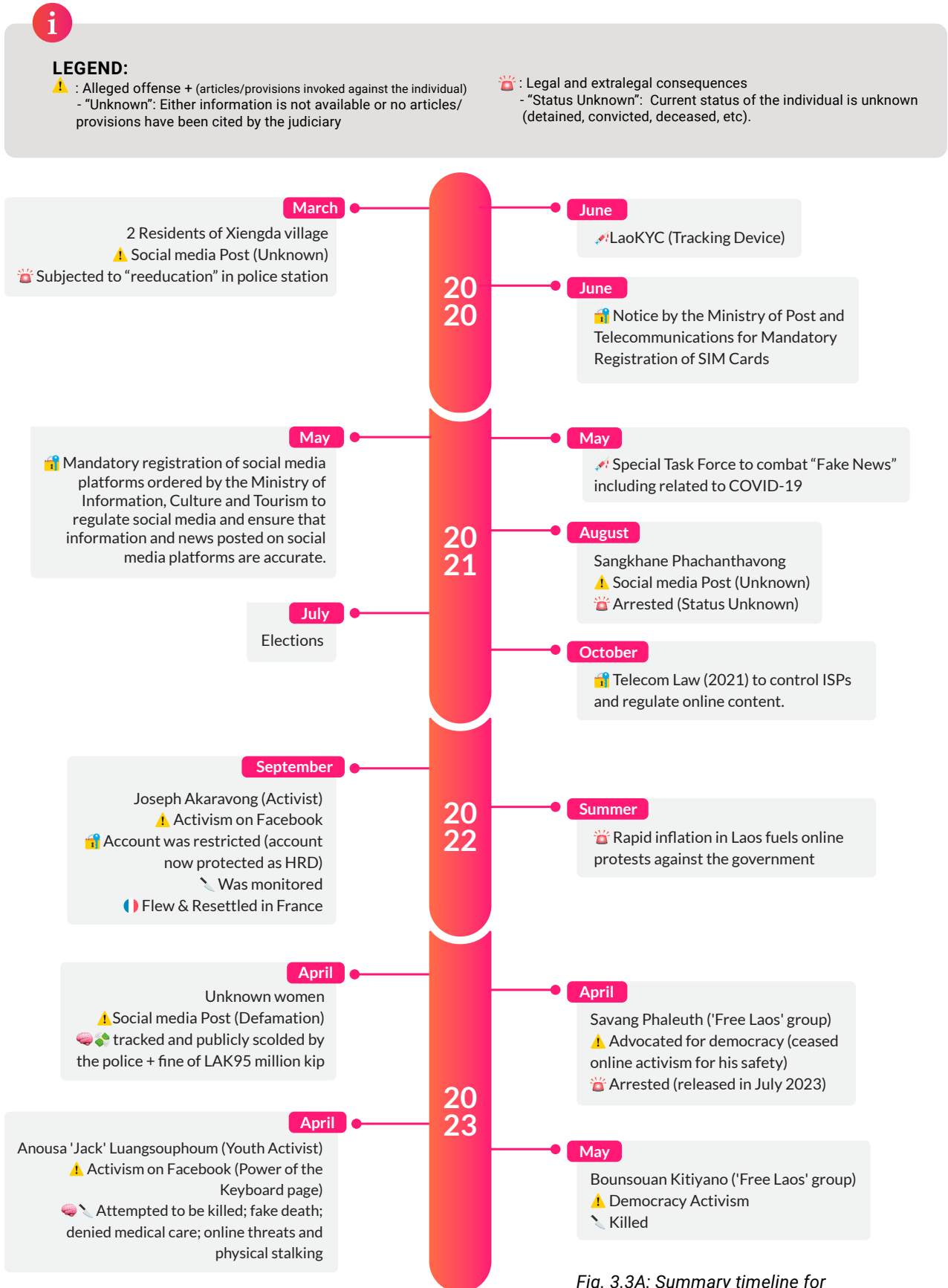


Fig. 3.3A: Summary timeline for Lao PDR (Laos), 2020-2023





| Country   | Event   | Contextualisation   |
|---|---|---|
|  <p>LAO PDR (LAOS)</p> |  Telecom Law (2021)                  | Telecom Law 2021 requires ISPs to cooperate with the government to block access to certain online content deemed inappropriate or against the law. In addition, Telecom Law 2021 provides for severe penalties, including substantial fines, for ISPs that fail to comply with the requirements of the law.   |
|   |  SIM Card Registration Notice (2020) | This law requires all SIM card users to register their personal details, including name, address and identity card number, with telecoms operators.   |
|   |  Elections                           | The Laotian legislative elections of 2021 took place on February 21, 2021, to elect members of the 9th legislature of the National Assembly of Laos. Laos is a single-party state, where the Lao People's Revolutionary Party (LPRP) is the only legal party and controls the entire electoral process. Elections in Laos are not considered free and fair, as all candidates are approved by the LPRP, and no significant opposition is allowed. |

Fig. 3.3B: Contextualisation for Lao PDR (Laos)'s timeline, 2020-2023

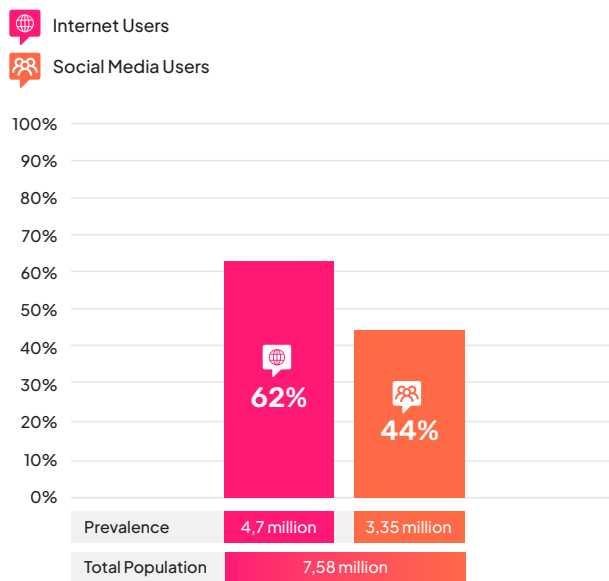
### Heavy reliance on Social Media and Online Citizen Journalists as Sources of Truth

The ASEAN Regional Coalition to #StopDigitalDictatorship observed that Lao people have increasingly relied on the Internet and social media - rather than state-owned media - to share information and seek uncensored news in recent years. This shift happened after the 2018 Xe-Pian Xe-Namnoy dam collapse - a widespread environmental and human-made disaster which impacted thousands of people. While state-controlled media were vague and inconsistent in their reporting of the damage, social media users reported on and checked most of first-hand information. In a bid to discredit critical online information, the Prime Minister warned all Lao citizens not to believe the alleged misinformation of the foreign media and social media and instead to only trust information shared by state-owned media instead. Warning from the Lao government did not stop the Lao people. Radio Free Asia reported that residents in Vientiane revealed a growing reliance on social media as a primary source for staying informed about societal news, government policies,

and potential solutions to prevailing issues, with Facebook and YouTube, as their main channels for tracking local news and government initiatives.<sup>48</sup> In October 2020, inspired by the #MilkTeaAlliance and pro-democracy movements in Asia, Lao online users launched a rare online campaign with the hashtag #ຖ້າການຮັບຮອງໄດ້ດີ (#IfLaoPoliticsAreGood) on Twitter. The hashtag has been used hundreds of thousands of times by netizens to criticise bad governance.<sup>49</sup>

Furthermore, data in 2023 revealed that a substantial segment of the Lao population embraces the digital era, actively participating in social media engagement: 85% possessing smartphones and 65% having Internet accessibility. Popular platforms such as Facebook, Instagram, Twitter, and YouTube played a pivotal role, with 44.2% of users relying on these avenues for information dissemination and personal expression.<sup>50</sup> Despite social media serving as a platform for expressing opinions and advocating for fundamental human and digital rights, the prevailing digital repression in Laos obstructs citizens from fully enjoying their rights.

## Lao PDR(Laos) Percentage of Internet and Social Media Users



DataReportal, *Digital 2023, Laos*, (9 february 2023), available at : <https://datareportal.com/reports/digital-2023-laos>

Fig. 3.4A: Percentage of Internet and Social Media Users in Laos, 2023.

### Lao Netizens: Persecuted and Intimidated for Posting Critical Information Online

While Lao people rely on social media as a primary source of information, individuals remain reluctant to voice dissent against the government's oppressive policies and actions, fearing potential reprisals and repercussions.<sup>51</sup> Instead of defamation provisions, authorities have a tendency to opt for slander, "propaganda against the state," and "national security" provisions to stifle online expression, arresting and charging users who speak up online. Moreover, the authority frequently threatens online users by warning them to abide by laws and refrain from posting content critical of the government. In August 2020, the Ministry of Posts and Telecommunications issued instructions warning social media users against posting content or comments criticising the country's government, leading to a sudden disappearance of some critical articles and comments from social media.<sup>52</sup> In April 2021, president Thongloun Sisoulith warned people who "use social media to commit crimes,

to destroy the country and to cause any disorder by undermining the unity, creating misunderstanding and creating antagonistic parties in the country" and called on all security forces to make efforts against such actions.<sup>53</sup>

There have been numerous cases of individuals being arbitrarily arrested, detained and interrogated for reporting alleged wrongdoings by officials. However, due to repression of domestic media and the regime's opaque nature, coverage of such cases in the country is limited. In March 2020, two residents of Xiangda village in Vientiane's Saysettha district were arrested for circulating a video of a land grab on social media. They were reportedly subjected to "reeducation" in the district police station.<sup>54</sup> A similar case happened in August 2020 in Champasak where Sangkhane Phachanthavong, known as Thisi, was arrested and detained for over a month after posting a video criticising nepotism among the high-level government officials. He is now on bail and facing charges.<sup>55</sup> In a recent 2023 case, a woman was tracked and publicly scolded by the police for an online post alleging that to become a public security official, one must pay LAK 95 million (\$4,989). The authorities denied the allegations and labelled the post as defamatory, followed by a warning to the public to abstain from spreading false information.<sup>56</sup>

### Speaking Out Online Comes at a Steep Price: Attempted Murder and Arbitrary Detention

Lao authorities primarily target courageous human rights defenders who dare to raise their voices against the environmental and social consequences of development projects. Their dissent is met with severe repercussions including threats, arbitrary arrests, detentions, enforced disappearances, and killings. This systematic repression undermines freedom of expression and peaceful dissent, fostering an atmosphere of fear and intimidation that erodes the human rights landscape in Lao PDR (Laos).<sup>57</sup>

“

*I survived the attempted murder, and that day changed my life forever. I will never give up my activism. We, Lao people, want democracy and freedom!*<sup>59</sup>

–“Jack” Anousa Luangsouphom

### **#JusticeForJack: Shot, but Not Silenced!**

In an egregious case, Anousa Luangsouphom, also known as “Jack,” a youth democracy activist known for his calls for justice and human rights in Laos, was attempted to be killed. On April 29, 2023, he was shot twice in a café in Vientiane and was initially reported to be dead. In reality, he was alive but his family was afraid to make this public, as they thought the killer might try to come back to finish the job. Additionally, after the police visited Jack in hospital, he stopped receiving medical care, despite having extensive injuries. While Lao authorities claimed that Jack was targeted due to a personal dispute, attempting to cover up the truth, he was, in fact, silenced because of his online activism.<sup>58</sup>

In addition, Jack is one of the administrators of two distinct Facebook pages that both advocate for the protection of human rights in Laos from the repressive Lao government.

He is also the administrator of a closed Facebook group “Laos Drama”<sup>60</sup>, which was set up in April 2020 by citizen journalists to discuss democracy and human rights issues in Laos, counting more than 7,000 members, using the hashtag #ຖ້າການເມືອງລາວດີ (if only Lao politics were good)—a hashtag created among members of the Milk Tea Alliance across Asia. The group was infiltrated by government spies, prompting Jack to create his own Facebook page in March 2022 with three other passionate activists. The page created is called ຂັບເຄື່ອງປັດວັຍ ອັບອັດ (“Power of the Keyboard”)<sup>61</sup> and serves as a platform for public political debate in the country. It discusses human rights topics, with a focus on China’s quasi-monopoly regarding investments in Laos, as well as Lao children’s and teenagers’ right to education. It denounces Lao teacher’s violent physical and emotional practices to “punish” students daring to speak up.

The page also discusses environmental issues, decrying the severe haze pollution during burning seasons, and advocates for LGBTIQ+ rights. During the summer of 2022, the followers of the page criticised the government, expressing their discontent over the economic crisis and the high inflation rate. Jack is also one of the administrators of another public Facebook page created in March 2022 called “Sathalanalat” (“The Republic”), promoting human rights in Laos and discussing similar issues as the “Power of the Keyboard,” with a focus on the need for a democratic regime. Due to his outspoken stance against human rights abuses, he has been intimidated and received online threats from fake Facebook accounts. Online political trolls frequently messaged him directly on his personal account, asking him to close the “Power of the Keyboard” page.

In October 2022, he received his last death threat, warning him to leave the country as he would be killed if he did not stop his online activism. After being monitored online for about a year, he started to be physically followed since at least January 2023.<sup>62</sup>

The brutal attempted murder of Jack is the latest in a string of similar attacks in recent years targeting Lao human rights activists who speak out against the authoritarian government, furthering the cycle of political violence and suppression of dissenting voices in the country. It confirmed that Lao authorities have a record of oppressing, repressing, and forcibly disappearing activists and human rights defenders, as well as taking part in transnational repression to silence dissent among diasporas and exiles.<sup>63</sup>

“

*We received strong indications that the attempted murder of Jack is extrajudicial, perpetrated in the hands of Lao authorities wanting to stop any pro-democracy youth movement to grow from inside the country. Voices of dissent cannot be stifled by the barrel of the gun.*

–Emilie Palamy Pradichit, Founder & Executive Director of Manushya Foundation

# LAOS



## 2023 Political Overview

One-Party Parliamentary Socialist Republic in theory, authoritarian regime in practice.

### Head of State, Head of Government

President Thongloun Sisoulith (de facto power), with Prime Minister Sonexay Siphandone.

#JusticeForJack #PowerOfTheKeyboard

#FreeLaos #Laolssara

### CASE STUDY

A **murder attempt** was carried out to silence a **Lao youth activist** for online activism, almost resulting in his death. This is **Digital Dictatorship**.

#### WHEN

29 April 2023 (attack)

#### WHERE

'After School Chocolate & Bar,' a local cafe in Vientiane, Laos (site of shooting)

#### WHO

Anousa 'Jack' Luangsouphom, a Lao youth activist. 🇱🇵 🗳️ 🌿

#### WHY/WHAT

🇱🇵 🗳️ 🌿 🗣️ Jack is a very prominent youth activist who ran a Facebook community page, 'Power of the Keyboard,' that engaged members in topics such as corruption, air pollution, LGBTIQ+, and government accountability.

🗳️ 🗡️ On 29th April 2023, he was shot in the face and chest while he was sitting in a local cafe. A masked and gloved shooter approached the bar Jack was at and fired shots directly at him, before promptly leaving.

#### HOW

⚠️ How Digital Dictatorship has caused the violation of Jack's human rights:

Lao authorities responded with deflections and denying their own involvement, such as by claiming that Jack was subjected to this violence because of personal disputes related to 'business' and 'romantic affairs with a girl.'

🗳️ 🗣️ The informed public became quickly suspicious of these claims, for many reasons. For one, Jack openly identifies as gay. Further, Jack's case is one of many examples of forced disappearances, violent attacks, and assassination attempts made against Lao activists trying to hold the government accountable for their actions. To protect him until he received medical care and made his way to safety, Jack's support system pronounced him dead, before revealing later on that he was alive and had sought refuge outside of Laos.



Anousa 'Jack' Luangsouphom

Lao youth activist



Manushya Foundation, #JusticeForJack: Shot, but Not Silenced, (1 June 2023), available at:

<https://www.manushyafoundation.org/post/justiceforjack-shot-but-not-silenced>

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.

## #FreeMuay from Jail!

In another case, on Sept. 12, 2019, environmental activist and WHRD, Houayheuang Xayabouly, –also known as “Muay”, –was arbitrarily arrested by authorities for repeatedly criticising the Lao government on Facebook. She was charged with defamation and distributing anti-state propaganda under Article 117 of the Penal Code. Muay remained in custody until her trial commenced more than a month later. During this time, she was denied communication with her family and lawyer, and never had the opportunity to challenge the legality of her detention. She was also not allowed to appoint her own lawyer for her summary trial in November that year. Following a trial that violated Muay’s right to due process, she was sentenced to five years in jail and fined LAK 20 million.<sup>64</sup> As of December 2023, she remained in prison, serving the sentence.

Muay’s online advocacy dates back to 2017, when she recorded a video to raise awareness of the financial burden caused against common tradespeople who had to use a bridge on the Chong Mek border with Thailand, and pay a toll, on a daily basis. She herself had been subjected to paying an excessive toll to cross the same bridge.<sup>65</sup> Following the viral spread of the video, local law enforcement officers paid her a visit, warning her about expressing criticism towards the government.<sup>66</sup>

In May 2018, Muay began to address corruption in Lao PDR (Laos) by bringing attention to the buying and selling of government positions. Due to Muay’s constant activism and criticism of rampant government corruption in Lao PDR (Laos), her employer was pressured by the government to fire her from her tour guide job. After losing her job, Muay began highlighting problems that resulted from international businesses and investments in the country which she witnessed while working in the tourism industry. In 2018, following the collapse of the Xe-Pian Xe-Namnoy dam,<sup>68</sup> Muay spoke up about the consequences of the collapse and how it affected the communities in the South of Lao PDR (Laos), and created Facebook videos while visiting camps that housed displaced villagers. In a Facebook video posted on Sept. 5, 2019, she criticised the slow response of the government in providing assistance to the victims of heavy floods in Southern Lao PDR (Laos), and brought attention to the failure of the government to learn from its shortcomings. The video was viewed more than 173,000 times, and caused her to be arbitrarily arrested and detained.

“

*I cannot be silent as we have in the past. The era of the regime keeping the eyes and mouths of the people closed has come to an end.*<sup>67</sup>

– “Muay”, Houayheuang Xayabouly



## #PeoplePower | How Are People Resisting #DigitalDictatorship?

### Manushya Foundation's Impact Litigation before the United Nations:

#### Defending Muay Against Online Authoritarianism<sup>69</sup>

In the shadows of Lao PDR (Laos)'s authoritarian regime, Muay's story emerged as a stark testament to the brutality endured by its citizens. Recognising the urgency of Muay's case, her deserving of justice, and the need to tell the truth about #WhatsHappeningInLaos and the harsh realities faced by women human rights defenders, Manushya Foundation has been tirelessly advocating for Muay's release since March 2020. It was critical to hold the Lao government accountable, by shedding light on the regime's online authoritarianism and atrocities.



#### At the forefront of Manushya's efforts

#### was the litigation before the United Nations

#### to #FreeMuay.

On March 30, 2020, Manushya, in collaboration with Humanity Beyond Borders, filed an international legal complaint<sup>70</sup> against the Lao government. This complaint denounced the harrowing human rights violations endured by Muay and urged UN Special Rapporteurs to protect the victim. On July 13, 2020, following Manushya's complaint, the United Nations issued a communication<sup>71</sup> to the Lao government, requesting information and explanation regarding Muay's

case. The UN human rights experts, in their communication, expressed their concern « regarding the sentencing of woman human rights defender Ms Xayabouly for the legitimate exercise of her right to freedom of opinion and expression », and called for her immediate release.

#### Lies, lies, lies, and more lies by Lao authorities to justify its digital dictatorship

In October 2020, the Lao government released an official reply to the Joint Allegation Letter sent by UN Human Rights Experts on July 13, 2020. In their reply, Lao authorities rejected any allegation of wrongful conviction and human rights violations concerning Muay, and went as far as finding that *"many information and allegations included in the said joint communication are inaccurate and twisted, and some are blatantly fabricated"*.<sup>72</sup>

#### Manushya Foundation's Continued Fight for Justice:

#### Filing a Second UN Complaint for Muay

Following the Lao government's lies and their wrongful justification to detain Muay, Manushya decided to send another warning to the government, by filing a second complaint before the United Nations on December 15, 2020. This time, the international legal complaint<sup>73</sup> was filed before a semi-judicial body, the United Nations Working Group on Arbitrary Detention (UNWGAD), to seek justice for Muay and address the inadequacies of the judicial system in an authoritarian regime like Lao PDR (Laos). In May 2021, the United Nations Working Group on Arbitrary Detention (UNWGAD) ruled Muay's arrest and subsequent detention as arbitrary, demanding her immediate release. In their opinion, the UNWGAD also condemned Lao PDR (Laos) for its persecution of Muay.<sup>74</sup> The Lao government has yet to respond.<sup>75</sup>

## POLITICAL PROFILE & CASE STUDY

# LAOS



Houayheuang  
'Muay' Xayabouly

### 2023 Political Overview

One-Party Parliamentary Socialist Republic in theory, authoritarian regime in practice.

#### Head of State, Head of Government

President Thongloun Sisoulith (de facto power), with Prime Minister Sonexay Siphandone.

### #FreeMuay

#### 📍🗣️🌱 CASE STUDY

**Environmental activists, particularly women human rights defenders fighting for corporate accountability and climate justice,** face disproportionately high levels of repression under Digital Dictatorship for their activism, such as this **Lao WHRD**...

#### WHEN

12 September 2019 (arbitrarily arrested and detained)

#### WHY/WHAT

📍🗣️ Muay is a woman human rights defender (WHRD) dedicated to exposing and speaking out against the injustices and human rights violations tied to foreign investment in her province in Southern Laos, including:

##### 1. Corruption:

Muay exposed the rampant buying and selling of government positions.

##### 2. Business Ethics:

Muay denounced the activities of Chinese enterprises and investment in Laos, which led to land grabbing.

##### 3. Environmental Harm and Adverse Impacts on Local Communities:

Muay exposed the chemical pollution from Chinese-owned banana plantations, adversely affecting the environment and the suffering of forced plantation workers.

##### 4. Government Inaction:

Muay highlighted the government's inaction and inadequate assistance to communities affected by the 2018 Xe-Pian Xe-Namnoy dam collapse and 2019 tropical storm floods.

#### WHERE

Champasak Province, Southern Laos.

#### WHO

Houayheuang 'Muay' Xayabouly

#### HOW

⚠️ How Digital Dictatorship has caused the violation of Muay's human rights:

📺🗣️ Muay was arbitrarily arrested and detained since September 2019, unjustly charged with **"anti-state propaganda"** under **Article 117 of the Lao Penal Code** for using Facebook live videos to criticise the government's inaction while Lao people were severely affected and displaced due to heavy floods in Southern Laos. Muay also exposed the government's corruption and harmful business practices. Following a trial that violated Muay's right to due process, she was sentenced to 5 years in prison and fined 20 million KIP in November 2019. It must be noted that Muay was the main breadwinner for her family. Without her, Muay's entire family is forced to continue without her support. While in detention, Muay was denied visitations from friends; only immediate family members were allowed. All her visits are highly monitored. Her mental and physical health have deteriorated, leading to depression and significant weight loss. September 2024 will mark 5 years since Muay was imprisoned. There is no updated news regarding her rights to be freed, despite UN human rights experts ruling her detention as arbitrary and calling for her immediate release.

Manushya Foundation, *#FreeMuay 4 Years Behind Bar- Honoring Muay's Fight for Economic, Social and Cultural Rights in Laos*, (13 September 2023), available at: <https://www.manushyafoundation.org/post/freemuay-4-years-behind-bars>

Learn more about our #FreeMuay Campaign:

<https://www.manushyafoundation.org/free-muay-from-jail-in-laos>

Sign our Change.org Petition to #FreeMuay from Jail in Laos!

👉 <https://chng.it/5WKtFKN4V8>

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.



“

*Muay fearlessly used Facebook Live videos to expose government corruption, business abuses, and destructive practices that harm local communities and the environment, gaining widespread attention among the Lao audience. The popularity of her videos became evident; Muay vocalised what others were afraid to say, and what the Lao government couldn't bear to hear.<sup>76</sup>*

–Emilie Palamy Pradichit, Founder & Executive Director of Manushya Foundation

### **Transnational Repression against Lao Blogger Citizen Journalist and Democracy Activists**

The risk faced by HRDs in Lao PDR (Laos) extends beyond borders to include the threat of transnational repression in neighbouring or safe countries, where they are exiled to seek refuge.

### **Joseph Akaravong: a Lao Blogger exposing environmental damages and corruption**

Similar to Muay, the online activism of Lao blogger Joseph Akaravong made him a target of reprisal by the Lao government. He had to leave his motherland in August 2018 and has been in hiding for many years for denouncing the corruption around the failed construction of the Xe-Pian Xe-Namnoy, which collapsed on July 23, 2018.<sup>78</sup> He has been using Facebook as the main channel to advocate

#### **What is Transnational Repression?**

According to Freedom House's definition, it is governments reaching across borders to silence dissent among diasporas and exiles, including through assassinations, illegal deportations, abductions, digital threats, Interpol abuse, and family intimidation.<sup>77</sup>

for human rights and denounce Lao authorities' violations and human rights abuses.<sup>79</sup> On August 9, 2022, after weeks of intense activism on Facebook with regards to two leaks from the Nam Theun 1 dam in Laos, his account was restricted for 29 days, purportedly for violating Facebook Community Standards.<sup>80</sup> In September 2022, the Head of Department of Public Relations of Lao PDR issued an official report on Akaravong's case in which the Lao government admitted to having monitored his account and attempted to have it suspended or disabled. The same report disclosed that the Lao Department of Cybersecurity had requested the Lao Embassy in France and the Lao Ministry of Foreign Affairs to track down Akaravong, and "educate" him. Throughout October 2022, Joseph Akaravong issued seven Facebook posts on a very controversial issue: he revealed that the Lao businesswoman who was murdered and whose body was found on Sept. 29, 2022, in a suitcase floating in the Mekong River, had a close relationship with the Lao Prime Minister. His Facebook posts generated important online debates in Lao PDR (Laos) and resulted in the creation of several fake Facebook accounts by Lao authorities, impersonating Joseph Akaravong, and sharing false scandalous news, including sexual insults on Lao human rights activists and diaspora. On Oct. 25, 2022, Joseph Akaravong's authentic Facebook account was abruptly deactivated without prior notice. Multiple fake accounts impersonated him, spreading false narratives about him and his work. Following appeals from the Manushya Foundation, Meta reinstated Joseph's account on Nov. 12, 2022 recognising it as an HRD account. As of December 2023, Joseph has not encountered any significant issues with his account.<sup>81</sup>

## **'Free Laos' Democracy Group: disappearing and being killed, one after the other**

Members of the 'Free Laos' democracy group, comprising Lao workers and pro-democracy activists residing in exile in Thailand, have become a prominent target of the Lao government, due to their online and offline activism and calls for democracy.<sup>82</sup> Since August 26, 2019, Od Sayavong, a Lao democracy activist and refugee in Bangkok, has gone missing. Known for his activism, Od actively exposed human rights violations and corruption in Lao PDR (Laos). A few months before his disappearance, Od met with the UN Special Rapporteur on Extreme Poverty and Human Rights in Bangkok in March 2019, ahead of the Rapporteur's mission to Lao PDR (Laos). Od was also planning to stage a protest during the ASEAN People's Forum (APF) held in September 2019 in Thailand.<sup>83</sup> After the enforced disappearance of Od Sayavong, some members of the 'Free Laos' group ceased their online activism and gradually relocated to a third country for their safety between 2019 and 2022. However, in January 2022, Khoukham Keomanivong, one of the co-founder of 'Free Laos' democracy group was arrested by the Thai police in Thailand and faced deportation to Lao PDR (Laos) where he was wanted by the Lao government for his online and offline activism. He was thankfully bailed out and relocated to Canada in March 2022.

In 2023, Manushya observed a surge in violence and repression against Lao activists, a trend that aligns with the inauguration of the new Lao Prime Minister, Sonexay Siphandone, who assumed office in December 2022. This escalation in brutality against activists likely aims to quash any dissenting voices that could tarnish his authority and reputation, 'particularly in anticipation of Laos' 2024 Chairmanship of ASEAN.'<sup>84</sup>

Savang Phaleuth, also member of the 'Free Laos' democracy group, was arbitrarily arrested by the Lao police on April 20, 2023, in Song Khone District, Savannakhet Province while he returned to Lao PDR (Laos) from Thailand to visit his Lao family. He was released in July 2023, and returned to live in Thailand.<sup>85</sup> More tragic is the killing of Bounsuan Kitiyano, a recognized-UNHCR refugee and also a member of the 'Free Laos' group, on May 17, 2023. He was found dead in a forest along the Thai-Laos border, in Ubon Ratchathani, a week before his resettlement to Australia. As of December 2023, the responsible party for his death remains unknown.<sup>86</sup>

## Online Content Manipulation & Restrictions

The official number of government requests for content restriction or removal remains unknown. Laos is not included in Google's and Twitter's transparency reports, while Meta did not report any requests from 2020 through 2023,<sup>87</sup> and neither did TikTok ever since 2019 when the platform started sharing transparency reports.<sup>88</sup> However, according to Vientiane Times, over 12 million items of misinformation were removed from Facebook between March and October 2020.<sup>89</sup> The exact numbers in this respect for the past three years remain unknown.



### PANDEMIC POLITICS: COVID-19 IMPACT ON ONLINE ACTIVITIES

The COVID-19 pandemic facilitated state control over the online environment. On May 20, 2021, the Ministry of Information, Culture and Tourism requested provincial authorities to keep records of official social media platforms including websites, online news pages, and Facebook pages, and to forward them to the Mass Media Department, under the guise of combating "false information" during the pandemic. The notice also stated that unregistered platforms would not be allowed to publish information or news under the Media Law. Officials highlighted punishment for the circulation of fake news and misinformation causing loss or damage through social media under the 2015 Law on Prevention and Combating Cyber Crime.<sup>90</sup> The following day, on May 21, the Ministry of Public Security issued a notice

indicating that a special task force had been set up to surveil, trace, and respond to "illegal online media" and "fake news" posted by both domestic and international actors. A first-time offence carries a warning, while a second offence is punished with a fine and a third time offender will be jailed.<sup>91</sup>

This excessive control can be seen through the number of arrests. Multiple cases of "fake news" or "spreading rumours aimed at causing public panic" related to COVID-19 have been documented. For instance, in February 2020, a 25-year-old woman was arrested and reportedly charged with "spreading rumours" for posting allegations that persons infected with coronavirus were shopping at a shopping mall in Vientiane. In another case, a Facebook user was arrested for live-streaming an event that violated a stay-at-home order.<sup>92</sup> The District Governor explained that the person "was handed over to the district police who will summon and charge him according to the law."<sup>93</sup>



## INTERSECTIONAL GENDER ANALYSIS: LAO PDR (LAOS)

The 1991 Constitution acknowledges the equal rights of women and men, laying the foundation for gender equality. However, the Lao constitution fails to explicitly recognise the equality of the LGBTIQ+ community under the law, as it does not state that all Lao citizens are equal in the eyes of the law, irrespective of their sexual orientation and gender identity. Article 37 unambiguously excludes LGBTIQ+ individuals by specifying that only 'both genders' enjoy economic, social, and cultural rights. This omission not only reflects a legal gap but also perpetuates societal discrimination and marginalisation against LGBTIQ+ individuals.<sup>94</sup>

Complementing the constitutional mandate on gender equality, the National Action Plan on Gender Equality 2021–2025 (NAPGE) aims to promote gender equality and eliminate discrimination. Contrastingly, Laos' Parliament reflects a disparity in gender representation. For example, in 2021, the Lao PDR (Laos) had only 21.95% representation of women in Parliament.<sup>95</sup> These rates have been low for some years, although they are one of the highest in Southeast Asia. Unlike some neighbouring countries, Lao PDR (Laos) does not enforce gender quotas in its national Parliament, contributing to the persistent underrepresentation of women in political decision-making processes.

The gender composition of Parliament significantly influences the gender responsiveness of legislation, including laws about digital freedom, thus warranting attention to address gender disparities in political representation.<sup>96</sup>

Globally, 85% of women reported witnessing digital violence, and nearly 40% have experienced it personally, but there is no data of this nature in Lao PDR (Laos).<sup>97</sup> While the NAPGE categories violence into physical, sexual, psychological, and economic forms, digital violence remains underexplored within Lao PDR (Laos). The absence of this specific data on digital violence against women hampers targeted interventions and policy formulation in this domain. It underscores a critical gap in addressing gender disparities in digital spaces because such data is crucial for policymakers, advocacy groups, and stakeholders to develop targeted interventions and policies aimed at addressing and preventing digital violence against women effectively.<sup>98</sup>

Interestingly, in Lao PDR (Laos), just 2% of women who experience violence appeal to legal authorities, although more than a third of women experience one type of violence in their life.<sup>99</sup> Cultural norms, fear of retaliation, and distrust in legal mechanisms contribute to this underreporting, perpetuating a cycle of impunity for perpetrators and silence for victims. Online Gender-Based Violence (OGBV) is deeply rooted in discriminatory social norms, and gender inequality and is often connected to offline violence.<sup>100</sup>

### 3.3 Access to Effective Remedy: Outlined in Law but Routinely Denied in Practice

Lao people may seek judicial remedy for violations of their rights in a court or an administrative remedy from the National Assembly. Article 41 of the Lao Constitution allows people to file complaints and petitions to the National Steering Committee on Human Rights, under the National Legislative Assembly.<sup>101</sup>

However, HRDs and activists who have been detained and prosecuted for online activities face barriers in seeking redress as due process, judicial independence and trial procedures remain a serious problem. LPRP's influence on the judiciary as well as corruption continue to undermine the rule of law in the country. Due process rights have been denied and appeals processes are often non-existent or delayed, sometimes indefinitely. Alarming, judges often decide guilt or innocence prior to trials on the basis of police or prosecutorial investigation reports, despite assurances of presumption of innocence being in place.<sup>102</sup>

## Lack of Anti-SLAPP and Whistleblowers Protection: A Challenge for Freedom of Speech

The national legal system does not provide any definition of HRDs as the term is considered to be “very broad and vague” and the Declaration on HRDs is likewise “very open and all-encompassing.”<sup>103</sup> Therefore, there is no legal framework to protect HRDs. Statutory provisions on anti-SLAPP are non-existent and enforced disappearance is neither defined or criminalised.<sup>104</sup> Equally absent is a comprehensive regime on witnesses and whistleblowers protection.<sup>105</sup>

For instance, in the case of Muay, she was denied prompt access to and assistance by a legal counsel, due process, the right to a fair trial, and an opportunity to appeal. During her detention, she was denied bail and forced to confess guilt without a lawyer or judge present. As mentioned above, she was also not given the option to choose her own counsel and the state appointed her a lawyer without explaining how the lawyer was appointed or prior consultation with her. Her state-appointed legal counsel allegedly neither spoke with Muay regarding her case, nor advocated on her behalf. Instead, the counsel reportedly assisted the government in obtaining a forced confession from her. She never received her case file, such as the court order pronouncing her sentencing. Her parents specifically asked her counsel for such an order, but the Court refused to provide it to them as well. Additionally, Muay was not given the opportunity to appeal against the decision of the court. She did not have access to remedy in light of these fundamental breaches of her rights.<sup>106</sup>

Similar issues were manifest in the prosecution of three pro-democracy activists: Lodkham Thammavong, Somphone Phimmasone, and Soukan Chaithad in 2016-2017. Their families were barred from accessing remedies. Soukan’s family lodged a complaint regarding his detention at the local police station but there were no reports of a response from the authorities.

Somphone’s family was warned by the authorities that they would be charged with committing crimes against national security should they try to find the whereabouts of these activists. Victims of human rights abuses and their families in Laos routinely avoid seeking justice for fear of reprisals.<sup>107</sup> This also hints at the case of Anousa ‘Jack’ Luangsouphoum. As of December 2023, there is no suspect list or any type of measures undertaken by the Lao authorities to indicate that a proper investigation is currently underway. This lack of progress raises concerns about his access to remedies for the harm he has experienced.

The absence of specific provisions for appealing against the abuse of power by public authorities in relevant cyber laws exacerbates the vulnerabilities faced by online users. Additionally, the lack of procedural safeguards and independent, effective oversight further undermines the legal framework. As a result, individuals who experience incorrect interpretation and application of cyber laws are less likely to have access to redress.<sup>108</sup>

## Non-Judicial Grievance Mechanisms, Existent but Not Independent

Despite receiving numerous UPR recommendations for its establishment during Lao PDR (Laos)’s third Universal Periodic Review in January 2020, the country still lacks a National Human Rights Institution.<sup>109</sup> Furthermore, national governmental bodies with mandates relating to human rights, including the National Steering Committee on Human Rights, are not independent bodies compliant with international standards, as noted by the UN Human Rights Committee.<sup>110</sup> The Department of Treaties and Legal Affairs within the Ministry of Foreign Affairs serving as the secretariat of the National Steering Committee on Human Rights indicates a lack of independence, as it implies a subordinate relationship.<sup>111</sup>

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# MALAYSIA

# 4. Malaysia

✓ **FREE** Scores 100-70
⋯ **PARTLY FREE** Scores 69-40
✗ **NOT FREE** Scores 39-0

|                              |                                     |                                    |                                  |                                    |
|------------------------------|-------------------------------------|------------------------------------|----------------------------------|------------------------------------|
| <b>GOOD</b><br>85-100 points | <b>SATISFACTORY</b><br>75-85 points | <b>PROBLEMATIC</b><br>65-75 points | <b>DIFFICULT</b><br>45-65 points | <b>VERY SERIOUS</b><br>0-45 points |
|------------------------------|-------------------------------------|------------------------------------|----------------------------------|------------------------------------|

| YEAR        | DEMOCRATIC STATUS OF THE COUNTRY<br><small>(according to the Freedom In The World index)</small> | DIGITAL SPACE & ONLINE FREEDOM STATUS OF THE COUNTRY<br><small>(Digital Space Status)</small> | PRESS & MEDIA FREEDOM STATUS OF THE COUNTRY<br><small>(according to the World's Press Freedom Index)</small> |
|-------------|--|---|--|
| <b>2020</b> | <b>52/100</b><br>PARTLY FREE   | <b>58/100</b><br>NOT FREE   | <b>101/180 (66,88)</b><br>PROBLEMATIC  |
| <b>2021</b> | <b>51/100</b><br>PARTLY FREE   | <b>58/100</b><br>NOT FREE   | <b>119/180 (60,53)</b><br>PROBLEMATIC  |
| <b>2022</b> | <b>50/100</b><br>PARTLY FREE   | <b>59/100</b><br>NOT FREE   | <b>113/180 (51,55)</b><br>PROBLEMATIC  |
| <b>2023</b> | <b>53/100</b><br>PARTLY FREE   | <b>61/100</b><br>NOT FREE   | <b>73/180 (62,83)</b><br>PROBLEMATIC   |

Fig. 4.1: Summary of freedom ratings for Malaysia, 2020-2023.<sup>1</sup>

## 4.1 Legal Framework

### Freedom of Expression is Guaranteed but Illegitimately Restricted

The right to freedom of speech and expression, as recognised in Article 10(1)(a) of Malaysia’s Federal Constitution, is guaranteed to all citizens. Notwithstanding the rights enshrined in the Federal Constitution, Malaysia’s legal framework is made up of a number of repressive laws and provisions that aim to impose censorship and punish those exercising their right to freedom of expression. For instance, paragraph (2)(a) of the Constitution allows certain restrictions that are “deem[ed] necessary

or expedient in the interest of the security of the Federation or any party thereof ... public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence.”<sup>2</sup> The article has been narrowly interpreted in numerous cases, resulting in the state wielding undue power to regulate and constrain freedom of expression. Additionally, Article 10(4) emphasises Parliament’s authority to enact laws imposing the aforementioned restrictions in the name of the Federation’s security.<sup>3</sup>

## Criminalisation of Defamation: the Penal Code

Defamation is punishable under the Penal Code. It is stipulated within Chapter XXI (Sections 499-502) which reads “whoever, by words either spoken or intended to be read or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation and shall also be punishable by up to two years in prison, a fine or both, to defame that person.”<sup>4</sup> Coupled with the turbulent state of freedom of speech in Malaysia, defamation provisions arm the authorities in levelling defamation accusations against voices critical of the government. Moreover, Section 505(b) of the Penal Code makes it a criminal offence to “make, publish or circulate any statement, rumour or report with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity.”<sup>5</sup> The provision fails to meet the requirement that any limitation on expression shall be expressed precisely enough for a person to understand what speech would be deemed “likely to cause fear and alarm in the public” or what will be considered an offence “against public tranquillity.” Moreover, Section 298A(1) of the Penal Code, which criminalises the insult of any religion, and has resulted in the arbitrary prosecution of religious speech, continues to be used despite having been declared unconstitutional by the Supreme Court and the Court of Appeal in 1987 and 2014 respectively.<sup>6</sup>

Section 203A of the Penal Code is also another barrier which criminalises the disclosure of information acquired during official duties or in the exercise of one’s functions under any written law. This provision carries penalties of imprisonment for up to one year, a fine of up to RM 1 million (\$238,095), or both, potentially stifling freedom of expression. Particularly concerning is its potential use to suppress information,

including disclosures related to government corruption. Notably, Section 203A also extends its reach to media outlets reporting on such matters, thus restricting their ability to disseminate information obtained from civil servants or other sources.<sup>7</sup>

In addition, the law on defamation in Malaysia is governed by the Defamation Act 1957 for civil claims, although it is less used in this context. It distinguishes between two forms of defamation: permanent defamation, known as “libel”, which concerns written records or drawings, and temporary defamation, known as “slander”, which concerns temporary statements of a gestural or verbal nature.<sup>8</sup>

## Sedition Law to Muzzle Critics

Another law used to limit online speech is the Sedition Act. Originally enacted in 1948, it went through an amendment in 2015 that broadened its scope to include online statements. The Sedition Act, which dates back to the colonial era, is notoriously used by the authorities to silence dissent and opponents.<sup>9</sup> It has also been used to stifle discourse on topics like religion, race, ethnicity, and Malaysian royalty. Section 3 of the Act criminalises any “publishing, distribution and importing of seditious publications,” as well as “publication by electronic means” and acts which “cause to be published” materials that “promote feelings of ill will, hostility or hatred ... on the grounds of religion,” or “bring into hatred or contempt or to excite disaffection against any Ruler.” Section 3(1) carries a maximum sentence of seven years’ imprisonment and a maximum sentence of 20 years’ imprisonment for a new “aggravated” offence of sedition causing “bodily harm” or “damage to property.” It also accords courts the power to order individuals to remove online content deemed seditious, ban individuals from accessing an electronic device, and order an officer authorised under the Communications and Multimedia Act 1998 to restrict access to online content deemed seditious.<sup>10</sup>

## Chilling Free Speech and Controlling Media: the 1950 Evidence Act, the PPPA, and the CMA

Other laws include the 1950 Evidence Act and the Printing Presses and Publications Act (PPPA). The 2012 amendment to the 1950 Evidence Act holds individuals liable if they “facilitate” the publication of the offending content, and holds the owner of the computer the content was published from liable, regardless of whether they are the author. Section 114A creates a reverse onus clause, meaning that an accused is presumed to be the publisher of illicit online content—including that of defamatory, seditious, or libellous nature—unless he or she proves otherwise. This construction distorts evidentiary processes (the processes in which the evidence is recorded by the court) in cases initiated under other laws such as the Communications and Multimedia Act (CMA) and the Sedition Act.<sup>11</sup> The PPPA provides the government with unfettered powers to stifle press freedom and disproportionately restrict the public’s right to access information. Under Section 7(1), the Minister of Home Affairs has the authority to ban media that is “in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise

prejudicial to or is likely to be prejudicial to public interest or national interest.” Any printing press or other media outlet is required to obtain a licence from the Ministry under Section 3.<sup>12</sup>

While Section 3(3) of the CMA explicitly states that “nothing in this Act shall be construed as permitting the censorship of the Internet,” it includes several clauses which unduly restrict free expression and are incompatible with international human rights law. Section 233 imposes a maximum of one year’s imprisonment and a fine for the use of network facilities or network service to transmit communications that are “obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person.” Similarly, Section 211 punishes “content applications service provider(s), or other person(s) using a content applications service” for “providing content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.” The broad criminalisation of online content alongside the use of loose terms such as “indecent,” “obscene,” “false,” “menacing,” or “offensive” affords the authorities a wide discretionary margin to target government criticism or unpopular or controversial opinions.<sup>13</sup>

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*In Malaysia, women and gender diverse individuals face significant restrictions on their freedom of expression, impeding their advocacy for rights. Oppressive legislations and censorship practices create barriers that silence their voices, hindering their participation and representation in the media. The state's rigid interpretation of Article 10(1)(a) of the Federal Constitution excessively controls and further limits its citizens' freedom of expression. Moreover, the criminalisation of defamation and utilisation of the Sedition Act further suppress dissent, subjecting individuals to false accusations and severe punishments. There is a dire need for Malaysia to prioritise protecting freedom of expression, and cultivating an inclusive media landscape that encompasses the perspectives and voices of women and gender diverse individuals.*

–Henry Koh, Executive Director of ILGA Asia

## 4.2 Challenges and Cases

### Struggles, Legislation, and Repression in Malaysia (2020–2023)



**LEGEND:**

⚠️ : Alleged offense + (articles/provisions invoked against the individual)  
 - "Unknown": Either information is not available or no articles/provisions have been cited by the judiciary

🔥 : Legal and extralegal consequences  
 - "Status Unknown": Current status of the individual is unknown (detained, convicted, deceased, etc).

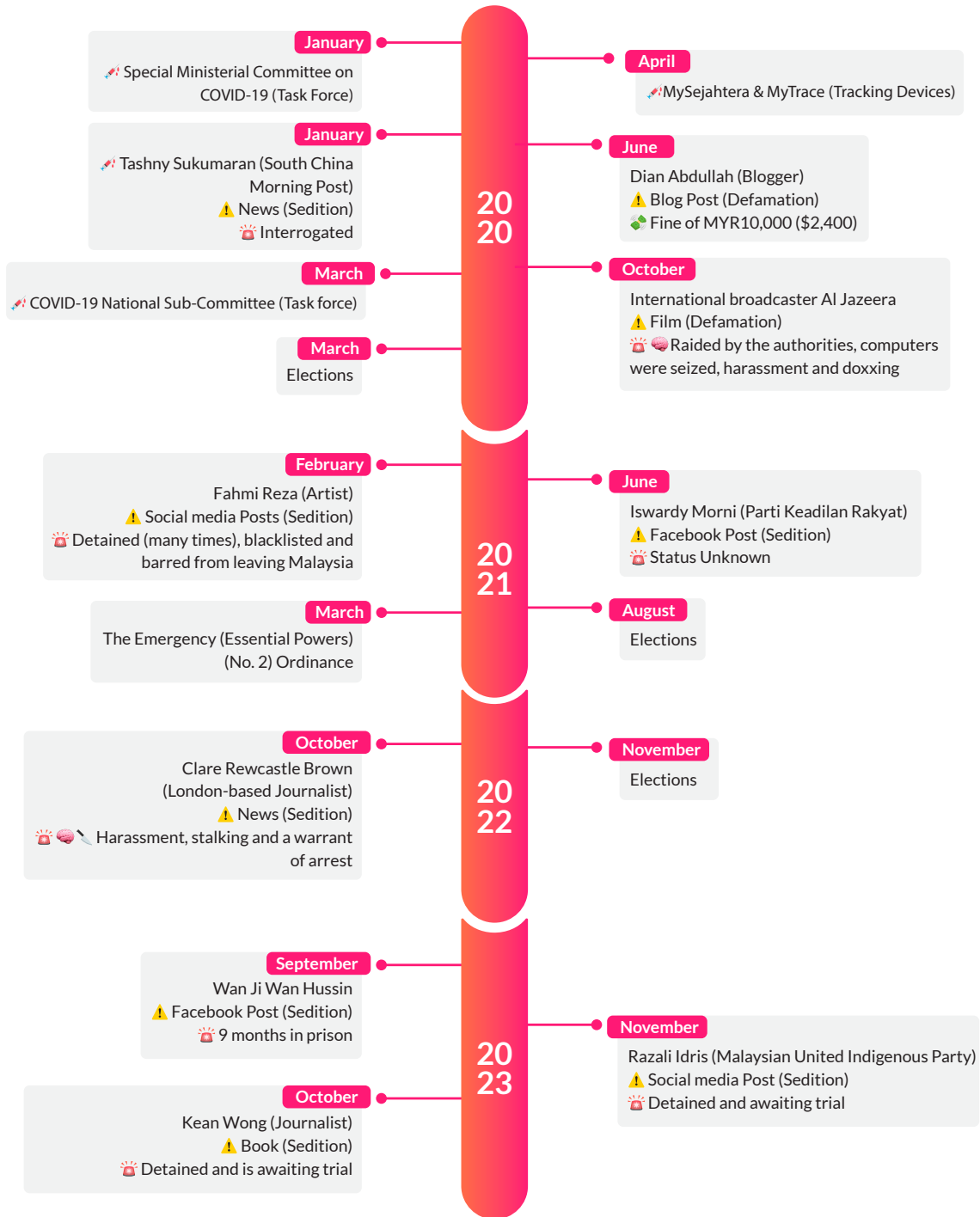


Fig. 4.2A: Summary timeline for Malaysia, 2020-2023






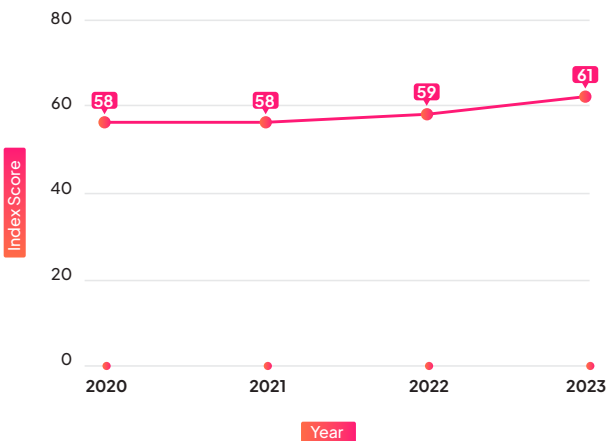
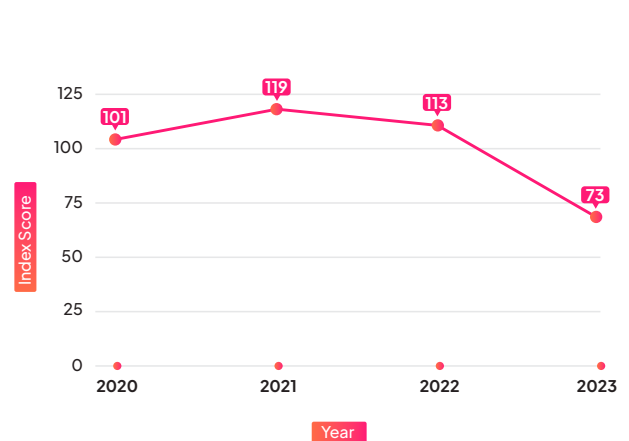
| Country  | Event  | Contextualisation   |
|--|--|---|
|  <p><b>MALAYSIA</b></p> |  The Emergency (Essential Powers) (No. 2) Ordinance | <p>This law has been particularly used to control the dissemination of certain information deemed sensitive or potentially detrimental to the management of the health crisis.</p>  |
|  |  Elections (2020)                                   | <p>Muhyiddin Yassin was appointed as the Prime Minister in politically complex circumstances triggered by the sudden resignation of Prime Minister Mahathir Mohamad in February 2020. Subsequently, a political crisis erupted. The manner in which Muhyiddin Yassin became Prime Minister sparked controversies and debates on the legitimacy of the process.</p>  |
|  |  Elections (2021)                                   | <p>Ismail Sabri Yaakob was elected as the Prime Minister of Malaysia on August 21, 2021. He assumed office following the resignation of his predecessor due to political pressure. Ismail Sabri was appointed Prime Minister after gaining the support of a majority of members in the Malaysian Parliament, and there were no elections per se. Instead, Ismail Sabri was selected through the internal political process of Parliament, where members expressed their confidence in his ability to form a stable government.</p>  |
|  |  Elections (2022)                                 | <p>Anwar Ibrahim became the Prime Minister of Malaysia on November 24, 2022, following legislative elections. His appointment marked the end of a prolonged period of political uncertainty post-elections. The 15th Malaysian General Elections (GE15), the first since the Covid pandemic lockdown, aimed to restore political stability after three different prime ministers since 2018. However, the results were inconclusive, with no single coalition winning the minimum seats to form a government. Subsequently, the King entrusted Anwar Ibrahim with the task of forming a new government.</p> |

Fig. 4.2B: Contextualisation for Malaysia's timeline, 2020-2023.

**Digital Space & Online Freedom Status: Malaysia**

Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

**Media & Press Freedom Status: Malaysia**

Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Fig. 4.3: Digital Space & Online Freedom Status (Freedom on The Net) and Media & Press Freedom (World Press Freedom Index) Ratings for Myanmar over the years, 2020-2023.

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*In recent years, the trend of arrests of online users expressing their views on the monarchy, government, or Islam continues to increase. It is common for people in Malaysia to come under scrutiny for questioning or expressing challenging views related to the royal institution, race, or religious matters (3Rs), and the government. Authorities are actively monitoring digital space for 3Rs remarks, and this has been openly acknowledged by the Communications and Digital Minister.*

*–Kelly Koh, Programme Officer at Sinar Project*

Malaysia has been ruled by four different prime ministers from 2020 to 2023.<sup>14</sup> Despite continued political tumult, little has been done to address the persistent crackdown on fundamental freedoms in the country. For instance, Malaysia was ranked “partly free” in the Freedom on the Net Report, with a score of 58/100 in 2021 and 59/100 in 2022.<sup>15</sup>

On press freedom, Malaysia placed 113th out of 180 countries and scored 51.55/100 on the 2022 World Press Freedom Index by Reporters Without Borders and witnessed notable improvement in 2023, now situated 73rd out of 180 countries, with a score of 62.83/100.<sup>16</sup>

Freedom of expression is continuously under threat. With power conferred on the authorities to weaponise broad and loosely worded laws, HRDs, journalists, political opponents, and ordinary users are prosecuted, investigated, and jailed for their online activities. Individuals are investigated under Penal Code Section 298A, CMA Section 233, and the Sedition Act for expressions that touch on race, religion, and royalty (hereinafter **3Rs**).<sup>17</sup>



## Defamation Laws: Used to Silence Dissenting Voices

The government has used the defamation laws to silence opposition lawmakers, activists, journalists and individuals criticising the regime. Reports have surfaced in recent years of individuals being investigated and prosecuted based on the defamation laws for freely expressing themselves. On July 1, 2021, FreedomFilmFest organiser Anna Har and the animator of “Chili Powder and Thinner” Amin Landak, were questioned by the police in connection with the release of a four-minute animation depicting Malaysian police officers torturing and abusing individuals in custody. They were investigated under Sections 500 and 505(b) of the Criminal Code—concerning defamation and “statements conducing to public mischief” respectively—along with Section 233 Article 1(a) of the CMA, for improper use of network facilities.<sup>18</sup> They were eventually released, but three computers, a modem, and a router as well as Landak’s personal computer were seized during the search.<sup>19</sup> In July 2022, a nature activist was investigated under Section 500 and 500(b) of the Penal Code and Section 233 of CMA over a Twitter post allegedly insulting the Pahang regent.<sup>20</sup> In June 2020, blogger Dian Abdullah was accused of criticising the King and ex-Prime Minister Muhyiddin Yassin through her blog post published in March 2020; aside from the Penal Code, Abdullah was additionally charged under Section 233(1)(a) of the CMA.<sup>21</sup> In December 2021, the court handed her a fine of MYR 10,000 (\$2,400).<sup>22</sup> But these laws do not apply exclusively to human beings. In fact, they were almost used in 2023 against Meta for violating the law on communications and multimedia, but the project was abandoned after meetings with the company.<sup>23</sup>

## The Sedition Act and CMA: Another Political Weapons

One of the key promises within the manifesto made by the current Prime minister, Dato Seri Anwar Ibrahim’s

political party during the November 2022 election was a call for a review and repeal of “oppressive legislations that can be misused curtail freedom of expression”, including the SA 1948 and Section 233 of CMA 1998.<sup>24</sup> However, it was soon announced that the government has no plans to abolish the Sedition Act. In fact, between January 2022 and November 2023, The Centre for Independent Journalism (CIJ) reported an increase of the number of investigations and arrests under the Sedition Act from 15 in 2022 to 31 incidents in 2023.<sup>25</sup> Additionally, In the early months of 2023, it was disclosed that 444 cases had undergone investigation under Section 233 of the CMA from 2020 to Jan. 23, 2023.<sup>26</sup>

Between March 2020 and February 2021, 66 cases were initiated under the Sedition Act and Section 233 of the CMA,<sup>27</sup> with about 60 cases related to online activities. Over the course of 2021 and 2022, a significant increase in the use of oppressive legislation to silence dissenting opinions and expressions was recorded. The Centre for Independent Journalism (CIJ) documented 140 incidents under Section 233 CMA and 19 under Sedition Act in 2021.<sup>28</sup> In 2022, from January to November, 114 such incidents were documented.<sup>29</sup> A report on the state of freedom of expression in Malaysia by the Centre for Independent Journalism (CIJ) that was released on Dec. 10 2023 found that Section 233 of the Communication and Multimedia Act - which criminalises the improper use of network facilities or network services - has already been used 103 times this year up until November.<sup>30</sup> However it is also noted that the 2023 data does not reflect investigations triggered by the 3R election task force and police statements during the elections.<sup>31</sup> This is compared to the 114 times the law was used for the whole of 2022. According to the official statistics from the Home Minister, 367 investigations were opened under the sedition act from 2018 to 2022, with only five cases tried in court. Under the Communications and Multimedia Act (CMA) the police conducted 692 investigations between January 2020 and June 2022.<sup>32</sup>

In June 2021, Iswardy Morni, member of opposition Parti Keadilan Rakyat, was charged under the Sedition Act for statements made on Facebook deemed to be seditious and insulting towards the King. If found guilty, he could be fined up to MYR 5,000 (\$1,100) or a maximum of three years' imprisonment, or both.<sup>33</sup> In another case from April 2022, a campaign worker for the opposition Democratic Action Party was arrested under the Sedition Act for his comments on a social media post allegedly encouraging ethnic Indians not to vote for the Malaysian Indian Congress.<sup>34</sup> More recently, in late 2023, Muhammad Sanusi Md Nor, a politician affiliated to the conservative Islamic party PAS, faced two charges of sedition under section 4(1)(a) of the Sedition Act 1948. The charges were brought against him for insulting the country's sultans. Sanusi's comments questioned decisions taken by the royalty regarding the formation of government at the federal and state levels. He appeared in court, pleading not guilty.<sup>35</sup> On Nov. 24, 2023, Razali Idris, Information Chief of the Malaysian United Indigenous Party (Bersatu), Terengganu executive councillor and Kijal assemblyman from an opposition political party was charged under the Section 4(1)(b) of the Sedition Act for allegedly making seditious remarks about the court decision against MP Syed Saddiq and another politician who was granted a discharge not amounting to acquittal.<sup>36</sup> He alleged that the Malaysian Anti-Corruption Commission (MACC) and judges were under the control of the current Prime Minister. Another notable case took place on Sept. 25, 2023, Wan Ji Wan Hussin appealed against the first appeal verdict that sentenced him to nine months in prison for publishing offensive words and insulting the Sultan of Selangor via Facebook in 2012. Although this sentencing is shorter than the initial conviction in July 2019 of a one-year prison term, the sentencing is still deemed as disproportionate to the crime.<sup>37</sup>

Repressive laws have also been used against the #Lawan protest organisers.<sup>38</sup> On July 29, 2021, the police arrested activist Sarah Irdina under the Sedition

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*The Sedition Act is reportedly used in a way that prevents Malaysians from expressing and debating, freely and openly, a diverse range of political opinions and ideas.*<sup>41</sup>

-A group of UN experts

Act and CMA. She was questioned for 10 hours in relation to posts calling on people to participate in the protests.<sup>39</sup> Aside from Sarah, the government also opened an investigation against seven other activists of the youth coalition Sekretariat Solidariti Rakyat (SSR) based on a report published on an online portal.<sup>40</sup>

Activists and HRDs in Malaysia continue to face numerous obstacles to conducting their work. On March 3, 2020, Fadhiah Nadwa Fikri, a human rights lawyer, was summoned by the police for a Twitter post calling for people to join a rally against the new government, amid the political instability triggered by the change in government. During the question, she was compelled to give the police access to her Twitter account.<sup>42</sup>

Artist and activist Fahmi Reza has repeatedly faced judicial harassment for his work, critical of the

government. In March 2021, he was summoned by police about his satirical artworks of the Health Minister posted online. On April 23, 2021, he was arrested in relation to satirical online commentary about the Queen under Section 4(1) of the Sedition Act and Section 233 of the CMA. The material on his Facebook page was associated with a Spotify playlist called “This Is Dengki Ke?” with cover art depicting Queen Tunku Hajah Azizah Aminah Maimunah Iskandariah and the title “100 dengki songs, all in one playlist.” The playlist includes 101 select songs about jealousy. On May 6, he was again summoned for two new cases regarding previously posted graphics. In July 2021, for the seventh time, he was summoned by the police because of his satirical poster allegedly related to PAS.<sup>43</sup> On Oct. 4, 2021, Fahmi Reza was arrested over a caricature of former Prime Minister Ismail Sabri Yaakob’s “Keluarga Malaysia” concept and later freed on police bail.<sup>44</sup> On April 14, 2022, he was arrested over a satirical artwork depicting what appears to be an ape in a monarch’s clothing, published on his Facebook page.<sup>45</sup> At the time of writing, Fahmi Reza is being investigated for several cases under laws including Section 504 of the Penal Code, Section 4(1) of the Sedition Act and Section 233 of the CMA.<sup>46</sup> In April 2022, he was blacklisted and barred from leaving Malaysia.<sup>47</sup> The ban was lifted in the following month. In January 2023, he was questioned by the police over a democracy workshop he held outside Universiti Sains Malaysia (USM), after authorities did not allow him to conduct it on campus.<sup>48</sup> After the police returned one of the phones confiscated from him one year ago, Fahmi Reza stated that he has 10 ongoing cases against him, as of June 2023.<sup>49</sup>

Apart from being the targets of police inquiries and criminal investigations, many HRDs and activists are also subjected to online harassment, intimidation, threats and hateful remarks.<sup>51</sup> For instance, Clare Rewcastle Brown, a London-based investigative journalist known for her work on deforestation in her blog Sarawak Report, has drawn the attention of

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*I always remind people that we should not be afraid of the government and the authorities because that is exactly what they want. They want us to keep quiet. As citizens, we have the power.*<sup>50</sup>

–Fahmi Reza, graphic artist and political activist

the Malaysian government. She revealed that around \$700 million had been paid into Prime Minister Najib Razak’s personal accounts from the state investment fund, 1Malaysia Development Berhad (1MDB). In August, the Malaysian government issued a warrant for her arrest, accusing her of activities prejudicial to parliamentary democracy and disseminating false reports that caused public concern. If convicted, she faces up to 25 years in prison. The journalist is firmly convinced that her email has been hacked since her contacts in Malaysia have been arrested. She was placed under police protection after being stalked and photographed in London.<sup>52</sup>

Furthermore, the investigative processes under the CMA have been marred by prolonged remand periods, lasting 3 to 410 days. This protracted

detention period prompts concerns regarding the proportionality and necessity of such measures since it potentially infringes upon individuals' rights and raises doubts about the effectiveness of CMA investigations. It was also reported by the Deputy Minister of Communications and Digital that out of 876 investigations initiated under Section 233 of the CMA, between January 2018 to November 2023, only 65 cases were charged in court. This statistic underscores the broad scope of Section 233 and the low proportion of cases that meet the threshold for prosecution, suggesting a potential misuse of the law to suppress speech and online content. Further, the incorporation of CMA with other legal provisions such as Sections 504, 505, and offences outlined in the Penal Code (Section 500) establishes a comprehensive legal framework.<sup>53</sup>

### Prosecutions for Blasphemy

Aside from defamation and cyber laws, Malaysia has resorted to blasphemy provisions to charge and prosecute individuals for expressions allegedly insulting religion, religious figures, or beliefs. In July 2020, an individual was sentenced to over two years in prison for social media content purportedly insulting the Prophet Muhammad, Islam, and Malaysian Islamic Party (PAS) President.<sup>54</sup> In July 2022, a man was arrested by the police for allegedly insulting Islam in a TikTok video clip.<sup>55</sup> Two filmmakers of a film banned in Malaysia, "Mentega Terbang", have been charged with "offending religious feelings". It tells the story of a young Muslim girl confronted with questions about life after death. The film was banned in September 2023 due to criticism from conservative groups under the directive of the Home Minister, who cited Section 26 of the Film Censorship Board 2002 as grounds for the ban. The film's producer, Tan Meng Kheng, and director, Khairi Anwar Jailani, were charged under the blasphemy provisions of Section 298 of the Penal Code, but were released on bail of RM 6,000 and RM 6,500 respectively, with strict conditions.<sup>56</sup>

“  
**Conducting a raid  
 on our office and  
 seizing computers is  
 a troubling escalation  
 in the authorities’  
 crackdown on media  
 freedom and shows  
 the lengths they are  
 prepared to take  
 to try to intimidate  
 journalists.**”<sup>63</sup>

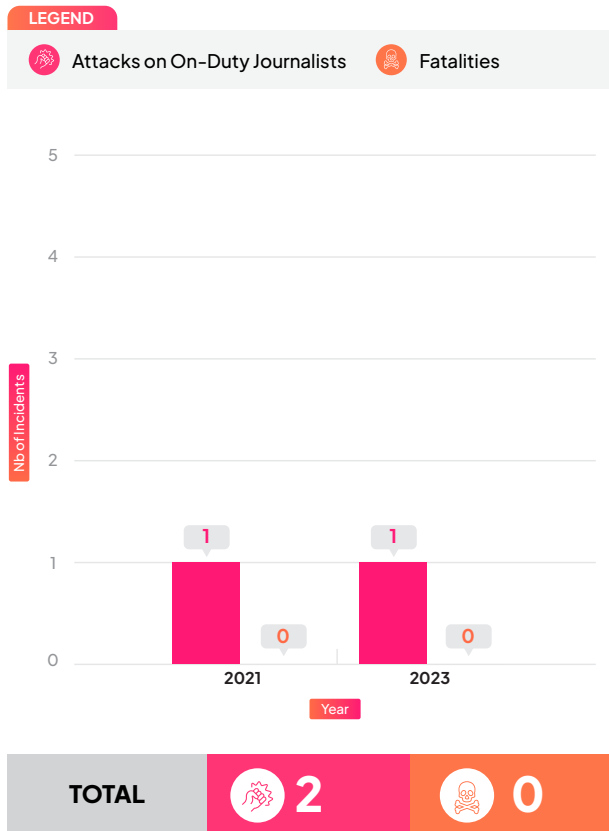
–Giles Trendle, managing director  
 of Al Jazeera English

### State Surveillance to Stifle Dissent

In addition to prosecutions, the government is under the suspicion of employing surveillance technologies to stifle online freedoms. The government is determined as a potential customer of Circles technology, which exploits weaknesses in mobile phone networks to spy on calls, texts, and location information.<sup>57</sup>

### Crackdown on Media and Journalists

Journalists and online news outlets have also been repeatedly subjected to investigation and prosecution as a result of their critical reporting.<sup>58</sup> In July 2020,



The Armed Conflict Location & Event Data Project (ACLED), *Disorder Involving the Media*, (n.d.), available at: <https://acleddata.com/data-export-tool/>

Fig. 4.4: Attacks on On-Duty Journalists in Malaysia, 2020-2023.

international broadcaster Al Jazeera and several of its journalists were investigated for sedition, violations of the CMA, and defamation. This came after Al Jazeera broadcasted a short film called “Locked Up in Malaysia’s Lockdown,” which uncovered the plight of thousands of undocumented migrant workers who were detained during raids in areas under tight lockdowns. Malaysian officials criticised the documentary as being inaccurate and unfair, claiming that it constituted an attempt to tarnish Malaysia’s international reputation.<sup>59</sup> In August 2020, the offices of Al Jazeera in Kuala Lumpur and that of two local broadcasters were raided by the authorities and computers were seized.<sup>60</sup> Following the incident, Malaysia’s communications minister announced that all film producers must possess a licence to shoot and produce videos in the country, including those

who broadcast on social media.<sup>61</sup> Al Jazeera staff also faced abuse online, including death threats and publication of their personal information on social media, in relation to the documentary.<sup>62</sup>

This episode is part of a larger pattern of harassment of media outlets and individuals drawing attention to politically sensitive subjects, including corruption, and the state of human rights. Rewcastle Brown’s case, the founder and editor of the Sarawak Report—a news website known for reporting on corruption in Malaysia, was reopened in 2021 over a book she wrote on the Malaysia Development (1MDB) scandal.<sup>64</sup> The case was halted in 2018 after the police decided “no further action,” but an arrest warrant was issued against her for not attending court proceedings on Sept. 23, 2021. She was charged in absentia under Section 500 of the Penal Code,<sup>65</sup> and on November 5, Malaysian authorities made a public appeal for information on her.<sup>66</sup> The IFJ called Brown’s case “another arbitrary attempt by the Malaysian authorities to quash critical reportage and crucial investigative journalism.”<sup>67</sup> In 2023, Malaysian journalist Kean Wong, who lives in Australia, was briefly detained and is under investigation for sedition in Malaysia after publishing a book banned by the Malaysian government. The book, entitled “Rebirth: Reformasi, Resistance, And Hope in New Malaysia”, was banned on national security grounds. Wong was arrested while attempting to renew his passport in Malaysia but was released shortly afterwards.<sup>68</sup>

**In the larger scheme of Malaysia’s control over online speech, the government has strictly controlled information, invoking the “national security” justification to shield itself from criticism.**<sup>69</sup> Websites that address LGBTIQ+ and religious issues are subject to blocking. LGBTIQ+ websites [www.gaystarnews.com](http://www.gaystarnews.com), [www.planetromeo.com](http://www.planetromeo.com), and [www.utopia-asia.com](http://www.utopia-asia.com) were the first ones targeted.<sup>70</sup> Additionally, 4,068 pornographic websites were blocked by the Malaysian Communications and Multimedia Commission (MCMC) from September

2018 to 2021.<sup>71</sup> As of December 2022, a total of 217 websites have been blocked in Malaysia, out of which 24 were on human rights, 18 on the LGBTIQ+ community, 15 news outlets, 7 on religion, and 13 contained pornographic material.<sup>72</sup>

Furthermore, on several occasions, actions to restrict media coverage were undertaken. In October 2020, the coverage of the 14th Parliament session was limited to 15 media agencies, excluding online news portals which operate exclusively online.<sup>73</sup> Similarly, in September 2021, only 16 media agencies were allowed to cover the proceedings from inside the Parliament. New Straits Times, Malay Mail, The Vibes, The Malaysian Insight and Free Malaysia Today were all denied entry for the Dewan Rakyat sitting.<sup>74</sup>

In a prominent case, the news portal Malaysiakini was fined an excessive sum of MYR500,000 (\$125,000) for comments made on their platform by third-party subscribers. Although Malaysiakini immediately proceeded with deleting the comments, a proceeding was initiated by the Attorney-General against Malaysiakini and its chief editor, claiming that the “comments threaten[ed] public confidence in the judiciary and are clearly aimed at tarnishing the administration of justice by the judiciary.” On Feb. 19, 2021, the Federal Court held Malaysiakini liable under Section 114A of the 2012 amended Evidence Act for publishing the comments.<sup>75</sup>

“

*Portals such as Malaysiakini will be held liable for third-party comments. It is thus required to ensure adequate safeguards are in place prior to publishing to ensure they are not held liable. Not only will this be resource-intensive to moderate the sheer volume of comments, but it will also be a form of censorship and curtailment of the readers’ freedom of expression.<sup>76</sup>*

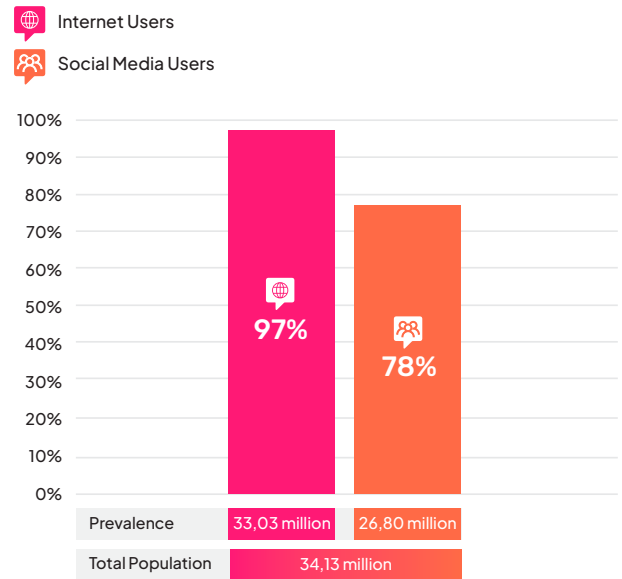
–Wathshlah G. Naidu, Executive Director of the Center for Independent Journalism

## Online Content Manipulation & Restrictions

Online content manipulation persists. There are government-sponsored online commenters, known as cyber troopers, that use social media to influence public opinion, set public agendas and spread ideas. Many of these efforts took place on major platforms such as Twitter and WhatsApp.<sup>77</sup> In 2020, the Perikatan Nasional (PN) government allocated funds to revive the Special Affairs Department (JASA), an agency mandated to disseminate information and conduct strategic communication on behalf of the government which had been previously dissolved.<sup>78</sup> Several government agencies have been regularly monitoring social media platforms for false and sensitive statements relating to the 3Rs, including a unit established by the Department of Islamic Development Malaysia or Jakim to monitor complaints and the MCMC.<sup>79</sup>

In June 2022, referring to content relating to the 3Rs, Communications and Multimedia Minister Tan Sri Annuar Musa said that “MCMC does not have to wait for a report [to be made] as action can be taken to remove the post as MCMC is allowed to do that.”<sup>80</sup> In November, MCMC reaffirmed its commitment to monitoring and preventing the dissemination of false information and malicious statements involving the 3Rs.<sup>81</sup> MCMC also urged civilians to police the internet through a WhatsApp group set up by the MCMC, asking people to lodge screenshots of social media posts that they deem sensitive to the 3Rs. The establishment of this hotline is a form of policing of free expression as well as a step backward in the country’s democracy.<sup>82</sup>

Malaysia’s mid-2023 elections were marred by controversy, including the blocking of websites. The ruling Pakatan Harapan (PH) coalition, previously hailed for introducing democratic reforms in 2018, took a worrying turn by blocking access to four pro-opposition media sites. MalaysiaNow, UtusanTV, Malaysia Today, TV Pertiwi and former politician Wee



DataReportal, *Digital 2023, Malaysia*, (9 february 2023), available at : <https://datareportal.com/reports/digital-2023-malaysia>

Fig. 4.5: Percentage of Internet and Social Media Users in Malaysia, 2023.

Choo Keong’s blog were all subjected to unexplained blocks by local ISPs 15 days before the elections. Communications Minister Fahmi Fadzil denies any involvement.<sup>83</sup>

## The Nexus of Freedom: Navigating Expression, Religion, Politics, and Disinformation

The digital landscape in Malaysia has become a battleground between the intersections of freedom of expression, political interest, and disinformation. This already complicated relationship is exacerbated by Malaysia’s dual-track legal system that consists of the civil and the Syariah Courts that can prosecute Malay Muslims based on religion, sexual orientation and gender identity under the Syariah Criminal Offences (Federal Territories) Act 1997.<sup>84</sup>

Political and conservative groups often utilise digital platforms to amplify their narratives that are focused on race, religion, gender, and LGBTIQ+. The Center for Independent Journalism (CIJ)’s monitoring finds resurfacing ‘kafir harbi’ and ‘Islam is under threat’ rhetoric fueled by disinformation campaigns that creates a false sense of urgency.

**#PeoplePower | How Are People Resisting #DigitalDictatorship?****Courage Under Fire: Nik Elin's Battle Against Syariah Laws & Misinformation**

The case of Lawyer Nik Elin Zurina is a prime example of people power. In 2022, together with her daughter Tengku Yasmin, they constitutionally challenged the 2019 enactment of some Islamic Syariah Criminal law provisions by the Kelantan State Legislature, eliciting strong reactions from conservative right-wing groups. Despite the Federal Court establishing the constitutionality of her case, these groups claim that contesting such Syariah provisions threatens the position of Islam and the Syariah courts in Malaysia. Nik Elin, in response, has become a target of extensive misinformation, online gender-based

violence, including threats to her life.<sup>85</sup> On 9 February 2024, two years after the start of the legal process, Nik Elin and Yasmin won the case with a majority 8-1 ruling that the Kelantan state government did not have the power to enact Syariah Criminal Code provisions that are already covered by the jurisdiction of the federal parliament.<sup>86</sup> This monumental ruling does not only impact other conservative state legislations, but it also paves the way towards a more progressive and democratic Malaysia.



Similarly, the Center for Independent Journalism (CIJ) reported rising trends of hostility against migrant and refugee communities. Ustaz Sophian Mohd Zain, an Islamic religious leader perpetuates this through documenting his harassment, verbal abuse and doxxing by revealing personal information and last known locations through his TikTok platforms against the community. CIJ's social media monitoring also noted that user generated comments from these platforms tend to steer towards hostile language and calls for the erasure of migrant and refugee communities.<sup>87</sup>

**Government Requests to Remove or Restrict Content or Accounts**

In 2020, Twitter received 194 requests to remove content and complied with 59.2% of them. In 2021, there were 221 removal requests and a 27.6% compliance rate.<sup>88</sup> In February 2022, Twitter suspended a pseudonymous account called Edisi Siasat (also Edisi Khas) for allegedly violating its terms of service.<sup>89</sup> The account was investigated by the government several times for reporting on corruption and abuse of power involving government officials.<sup>90</sup>

In 2020, Meta received 398 restriction requests, and 269 in 2021, both for Facebook and Instagram. From January to June 2022, 80 items were reported on the two social media platforms, out of which 66 were subsequently restricted, including 19 items which contained misinformation, having allegedly violated Section 505(b) of the Penal Code. The second half of 2022 was composed of 59 requests. For the first half of 2023, there were 59 requests.<sup>91</sup> In June 2023, MCMC announced that it will take legal action against Meta for failing to remove "undesirable content" from Facebook. The content is related to defamation, impersonation, online gambling, scam advertisements, and the 3Rs.<sup>92</sup> Between July 2022 and June 2023, Meta addressed requests from the Malaysian communications regulator and various government entities by placing restrictions on more than 3,500 items.<sup>93</sup> These encompassed content critical of the government and posts allegedly violating laws related to illegal gambling, hate speech, racial or religious division, bullying, and financial scams, according to Meta's report. Google reported 42 requests throughout 2020, complying with 40.4% of them. In 2021, it received 80 requests and complied



with 47.15% of them. In 2022, between January and June, it received 27 requests and complied with 47.9% of them.<sup>94</sup> The second half of 2022 is characterised by 36 requests, with one additional request for the first half of 2023.

In 2020, Tik Tok received 547 requests, 4156 in 2021, 5009 in 2022, and 4,083 requests in the first six months of 2023 (January to June).<sup>95</sup> More specifically, during

the initial half of 2023, Tik Tok received 340 requests from the Malaysian government to remove or restrict access to specific content, affecting approximately 890 posts and accounts, with the platform taking action against 815 of them due to violations of local laws or its community guidelines.<sup>96</sup> According to data from the Surfshark website, Malaysia has had a total of 1,208 account requests from Apple, Google, Meta, and Microsoft between 2013 and 2021.<sup>97</sup>



## PANDEMIC POLITICS: COVID-19 IMPACT ON ONLINE ACTIVITIES

The Government has used the COVID-19 pandemic as an opportunity to silence critics and adopt new repressive laws criminalising speech. In March 2021, the Emergency (Essential Powers) (No. 2) Ordinance<sup>98</sup> was adopted, which establishes several criminal offences related to “fake news” about the pandemic, raising concerns about freedom of expression in Malaysia. The Ordinance follows the structure of the 2018 Anti-Fake News Act which had been repealed in 2019, and many provisions are identical to those in the Act. It subjects anyone who creates, publishes, distributes, or disseminates “fake news,” “with intent to cause, or which is likely to cause fear or alarm to the public, or to any section of the public” to a RM 100,000 fine, three years of jail, or both. There has been a steady stream of arrests and detention for online speech, many of them conducted without a warrant, including for social media criticism of government policies related to insufficient screening procedures or a lack of government preparedness. Additionally, internet service providers (ISPs) and digital platforms have been compelled by the authorities to facilitate censorship and surveillance or otherwise face harsh penalties. For instance, in the first half of 2020, Twitter restricted access to 190 items pertaining to COVID-19 misinformation, following the government’s requests.<sup>99</sup> The state of emergency lasted until Aug. 1, 2021.<sup>100</sup>

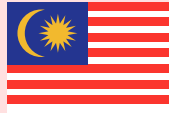
While the government claimed that the Ordinance is imperative for combating disinformation about the

COVID-19 pandemic,<sup>101</sup> it fails to establish a standard for what constitutes falseness, rendering it prone to misuse. In December 2021, the Senate approved a motion to revoke a string of Emergency Ordinances, including the Emergency (Essential Powers) (No. 2) Ordinance.<sup>102</sup>

A report by Amnesty International shows that Malaysia’s crackdown on human rights defenders, journalists, opposition members, and activists has continued through the COVID-19 pandemic and the resulting state of emergency in 2021.<sup>103</sup> In May 2020, Tashny Sukumaran, a South China Morning Post correspondent, was questioned and summoned to a police station in Kuala Lumpur after co-writing an online article about raids targeting migrants and refugees during the pandemic. She is being investigated under Section 504 of the Penal Code, for “intentional insult with intent to provoke a breach of the peace,” and under Section 233 of the CMA.<sup>104</sup>

In July 2021, the Malaysian police summoned for questioning Boo-Su Lyn, Editor-in-Chief of healthcare news outlet CodeBlue and socio-political activist, after she published an article about a COVID-19 outbreak at a local vaccination centre.<sup>105</sup> In February 2022, graphic designer Fahmi Reza was charged under Section 233 of the Communications and Multimedia Act after he made a satirical post about the Minister’s decision to shorten the quarantine period for Cabinet ministers returning from official visits abroad.<sup>106</sup>

# MALAYSIA



## 2023 Political Overview

Elected Parliamentary Constitutional Monarchy in theory, semi-authoritarian regime in practice.

### Head of State, Monarch

Abdullah of Pahang by the end of 2023 (currently reigning monarch is Sultan Ibrahim of Johor, who ascended in 2024)

### Head of Government

Prime Minister Anwar Ibrahim

## #PandemicPolitics

## #TashnySukumaran

### 📖💡📰 CASE STUDY

Authorities in Malaysia **weaponised the COVID-19 shutdown** used to silence a journalist for reporting on raids targeting **refugees and migrant workers** in Malaysia. This is an example of **Digital Dictatorship**.

#### WHEN

1 May 2020 (article published); 5–6 May 2020 (summoned and questioned)

#### WHERE

Kuala Lumpur, Malaysia

#### WHO

Tashny Sukumaran, Malaysia correspondent for the South China Morning Post 📰

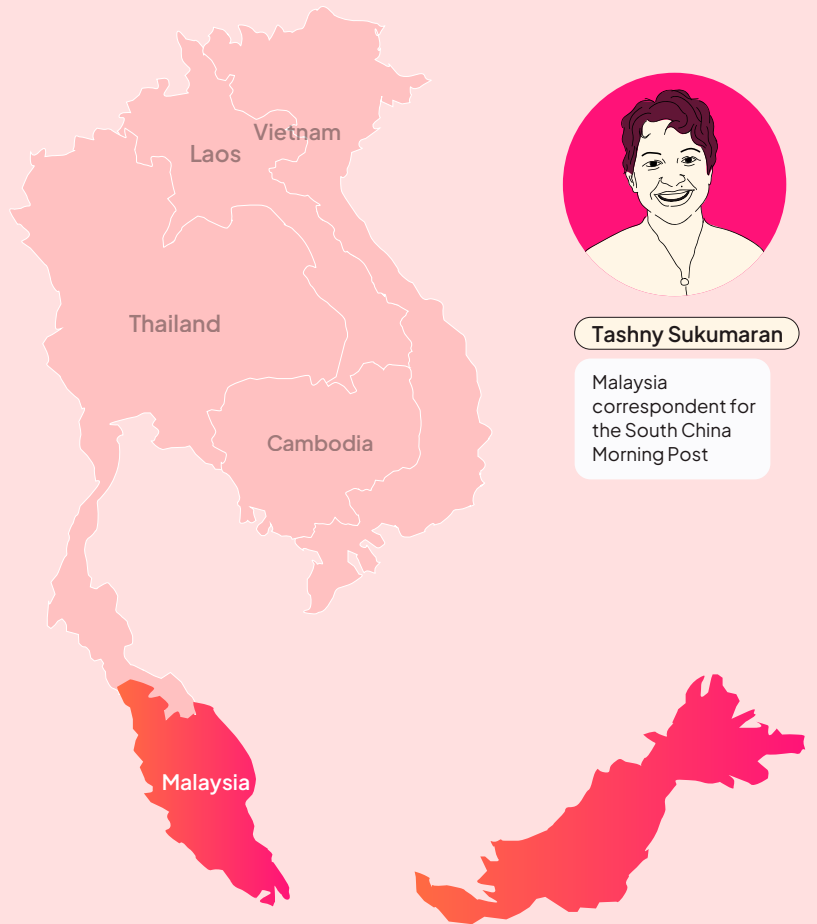
#### WHY/WHAT

📖💡📰 Sukumaran co-wrote an article (with Hong Kong based journalist Bhavan Jaipragas) titled 'Coronavirus: hundreds arrested as Malaysia cracks down on migrants in Covid-19 red zones,' how brutal immigration raids were being executed against refugees and migrant workers, including men, women, and very young children, during the COVID-19 pandemic. Sukumaran had also personally gone to the 'red zone' and interviewed community members, as part of her due diligence and journalistic duty. In the article, she exposed how Malaysian authorities were taking advantage of the pandemic to target marginalised groups.

#### HOW

⚠️ How Digital Dictatorship has caused the violation of Tashny Sukumaran's human rights:

📰👮🇲🇾 Sukumaran was summoned and questioned by the Royal Malaysian Police for questioning after her co-written article was published. She was accused of, and charged for, violating **Section 504 of the Malaysian Penal Code (for "intentional insult with intent to provoke a breach of the peace")** and **Section 233 of the Malaysian Communications and Multimedia Act**. It must also be noted that many other news publications reported a similar story, yet were not targeted in the same way Sukumaran was, demonstrating inconsistencies and potential identity-based discrimination involved in these decisions.



Original article by Tashny Sukumaran for SCMP: SCMP, *Coronavirus: hundreds arrested as Malaysia cracks down on migrants in Covid-19 red zones*, (1 May 2020), available at: <https://www.scmp.com/week-asia/politics/article/3082529/coronavirus-hundreds-arrested-malaysia-cracks-down-migrants>.

RSF, *Malaysian police investigate reporter who covered Covid-19 arrests*, (6 May 2020), available at: <https://rsf.org/en/malaysian-police-investigate-reporter-who-covered-covid-19-arrests>.



Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.

## INTERSECTIONAL GENDER ANALYSIS: DIGITAL THREAT TOWARDS MARGINALISED GROUP IN MALAYSIA

Online gender-based violence (OGBV) is an extension of the forms of gender-based violence experienced by women, girls, and LGBTIQ+ community. The advancement and ubiquity of digital technologies have provided an additional fertile ground for gender inequalities and gender-based violence to manifest with even greater intensity and reach. While both men and women may encounter online violence, it is women, girls, and LGBTIQ+ community who are disproportionately targeted based on their gender identity, expression, and roles.<sup>107</sup>

Online sexual harassment, occurring through various digital channels, has become a widespread concern as highlighted by a 2018 survey conducted by the Malaysian Centre for Constitutionalism and Human Rights.<sup>108</sup> The survey revealed alarming statistics, indicating that 50.4 percent of respondents had experienced online harassment at least once in their lives, with women experiencing online sexual harassment at nearly twice the rate of men.<sup>109</sup> According to Malaysian CSOs, Muslim women's advocates, in particular, are harassed online by overdressing and behaviour deemed "inappropriate" by those intent on moral policing of women's bodies and actions. For example, a female politician was harassed online for not putting on make-up, and for supporting a civil society organisation deemed "deviant" by her attackers due to its work on the rights of Muslim women.<sup>110</sup>

A 2021 survey conducted by Justice for Sisters that involves 220 members of the LGBTIQ+ community indicated that 55% and 53% experienced heightened stress due to sensationalism in the media and online hate speech, while 33% to 39% faced discrimination.<sup>111</sup> Despite a prevalent political atmosphere of LGBTIQ+phobia, with instances such as the outing of politicians based on perceived sexual orientation and the dissemination of explicit videos, there has been a lack of action against the hostility, exploitation, and scapegoating of LGBTIQ+ individuals and issues.<sup>112</sup> In 2019, a female human rights defender encountered public backlash

after being appointed as a civil society representative for an oversight mechanism for the Global Fund to fight AIDS, Tuberculosis, and Malaria. This backlash included pressure to review her representation and replace her with an ex-transgender person, along with death threats and doxing, where her personal information and pre-transition photos were disclosed without consent.<sup>113</sup>

In the context of Malaysian politics, the year 2022 witnessed a significant milestone for women during the 15th General Elections (GE15). Despite political parties falling short of the 30% target for women political candidates during the nomination process, the year witnessed the highest-ever number of women in political representation in Malaysian history. However, this achievement was overshadowed by a surge in attacks against women political candidates, particularly during the campaign period. Online harassment, online sexual harassment, and misogynistic speech proliferated across various social media platforms, including TikTok, Facebook, Twitter, and Instagram.<sup>114</sup>

### GENDER DISINFORMATION

Furthermore, gendered disinformation is pervasive in Malaysia, also particularly targeting women politicians. For instance, a TikTok video falsely claimed that Datuk Seri Rina binti Mohd Harun's only accomplishment in 30 months of power was weight loss, diverting attention from her actual contributions. Such disinformation contributes to a hostile environment by perpetuating harmful stereotypes against women, girls, and gender-non-conforming individuals. Statements like Datuk Seri Muhammad Sanusi Md Nor's assertion that women representatives were ineffective during floods further reinforce damaging stereotypes, portraying women as lacking leadership skills and equal contribution capabilities.<sup>115</sup> The impact of gendered disinformation extends beyond the political sphere, affecting women and gender non-conforming individuals in various aspects of life. Addressing this issue is crucial to combat the perpetuation of negative stereotypes and mitigate the harm caused by false narratives. By promoting a more inclusive and respectful online environment, Malaysia can work towards dismantling the structures that facilitate online gender-based violence and foster greater gender equality.

**#PeoplePower | How Are People Resisting #DigitalDictatorship?**

**On 3 October 2022, the parliament unanimously passed the Anti–Stalking Bill that criminalises acts of stalking both online and offline after years of advocacy from women groups.<sup>116</sup>**

What happened before the law? Previously, existing laws related to stalking such as the Domestic Violence Act or offences under the Communications and Multimedia Act 1998 did not address the basic act of stalking such as continuous following and contacting, and did not have measures to restrain



stalkers. In 2020, Women’s Aid Organisation (WAO) reported that 91% of women have experienced an act of stalking with 39% of them feeling fearful, 8% threatened with harm and 12% experienced harm.<sup>117</sup> In 2021, a woman was stabbed to death by her boyfriend in front of her children despite numerous police reports filed against him regarding stalking incidents, harassments and break-ins a month before.<sup>118</sup>

## 4.3 Access to Effective Remedy: No Constitutional Right to Access Justice and Appeal

The Federal Constitution of Malaysia does not stipulate the right to access justice, appeal and obtain effective remedy. In *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd*, the Malaysian Federal Court reasoned that the right of access to justice “cannot amount to a guaranteed constitutional right.”<sup>119</sup> As such, there is an ongoing judicial debate between the Court of Appeal and the Federal Court over whether or not the right to access justice is a fundamental right. In practice, access to justice is frequently hampered by the lack of a clear legal framework for obtaining damages for harm suffered, as well as by the limits of current legal provisions.<sup>120</sup>

Limited judicial independence, along with legislation restricting judicial review and the executive influence over judiciary, deters individuals from seeking redress. According to members of the Malaysian Bar Council, NGO officials, and other observers, the demarcation lines between the executive, the judiciary, and the state are becoming increasingly blurred. This is also evidenced by a series of arbitrary or politically motivated verdicts in high-profile cases issued by courts.<sup>121</sup> Several existing laws jeopardise the right to due process. For the broadly specified “security offences,” the 2012 Security Offences (Special Measures) Act allows police to detain anyone for up

to 28 days without judicial review, and offenders can be detained for up to 48 hours before being allowed access to a lawyer.<sup>122</sup> Likewise, the 1983 amended Prevention of Crime Act, 2015 Prevention of Terrorism Act, along with the 2016 National Security Council Act, grant the authority broad powers of detention, search and seizure without a warrant.<sup>123</sup>

### Alternative Options for Challenging Misinterpretation and Abuse of Laws: the CMA and the PPPA

There are few options available to individuals and organisations to challenge the misinterpretation and abuse of the laws restricting online expression and regulating online information, as the laws fail to provide effective appeal processes, remedy or accountability. Sections 120 and 121 of the CMA allow for appeals against the decision of MCMC, through a review by the Appeal Tribunal and Judicial Review. Nevertheless, this mechanism does not apply under all circumstances; it is limited to decisions and actions of MCMC taken under Part V (Powers and Procedures of the Malaysian Communications and Multimedia Commission) only. Legal challenge or appeal of an access blocking order is not explicitly laid out in the Act.<sup>124</sup> Despite the fact that the 2012 amendments to the PPPA permit media outlets to challenge the Ministry's decision to suspend or revoke their licence before a court of law, the uncertainty of the process and high costs are likely to subject media outlets to prolonged and expensive legal processes.<sup>125</sup>

### Human Rights Commission of Malaysia: Another Solution Turned Into an Obstacle

In terms of state-based non-judicial grievance mechanism, the Human Rights Commission of Malaysia (SUHAKAM), created as a “channel for the people to forward their grievances about infringements and violations of human rights” is equally problematic. It was especially criticised for

the lack of transparent appointment and dismissal process of its commissioners, which weakened the independence of the institution.<sup>126</sup> SUHAKAM commissioners are also not explicitly required by the legislation to have any expertise on human rights. Although SUHAKAM's mandates are in line with the Paris Principles, its constitutive instrument—the 1999 Human Rights Commission of Malaysia Act—is fundamentally flawed; “human rights” is narrowly defined as to encompass only those fundamental liberties enshrined in Part II (Fundamental Liberties) of the Federal Constitution of Malaysia.<sup>127</sup> Moreover, SUHAKAM has limited powers. Under Section 12(2) (a) of the 1999 Act, it shall not “inquire into any complaint relating to any allegation of the infringement of human rights which is the subject matter of any proceedings pending in any court, including any appeals.” This has resulted in a consistent number of investigations being withdrawn.<sup>128</sup> Concerningly, SUHAKAM's annual reports have been largely ignored by the government, with the first SUHAKAM report being debated in 2019. In addition, SUHAKAM commissioners were summoned for questioning by the police in August 2021 for merely complying with their duties as monitors at the #Lawan protest.<sup>129</sup>

In 2022, SUHAKAM's appointment of the commissioners were shrouded in controversy as there was a “lack of transparency” and “parliamentary oversight” of the appointment process and was only made public after the fact. In 2019, the appointed chairman was one of four academics that successfully opposed the ratifying of the Rome Statute of the International Criminal Court which impeded Malaysia's commitment to the global peacekeeping mission.<sup>130</sup> Other commissioners' composition were of individuals strongly associated with major political parties and former director-general of the Islamic Development Department (Jakim). Suaram, a human rights organisation, asserts that Suhakam needs to be independent from political influence in order to effectively carry out its mandate to hold the Malaysian government accountable to the International Human Rights Standard.<sup>131</sup>

## Anti-SLAPP and Whistleblowers Protection

Malaysia recognizes HRDs as well as their rights and responsibilities through the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly in 1998. Malaysia also acknowledges the UN General Assembly Resolution 70/161 on HRDs, adopted in 2015, with Malaysia voting in favour. Nonetheless, there is no anti-SLAPP law to protect HRDs and activists from lawsuits.<sup>132</sup> Additionally, Malaysia enacted the 2010 Whistleblower Protection Act<sup>133</sup> which protects any person who provides

information as to the wrongdoing of any company or its directors.<sup>134</sup> Nonetheless, the protection afforded by Whistleblower Protection Act is limited to disclosures made to a law enforcement agency including any ministry, department, agency or other body set up by the Federal Government or State Government. Moreover, the whistleblower protection could be limited in several circumstances enshrined in Section 11(1). For instance, any disclosure of improper conduct which is “frivolous or vexatious,” or improper conduct that “principally involves the merits of government policy, including policy of a public body,” is excluded from protection. As is the common pattern with these laws, “improper conduct” is loosely defined, thus enabling its misapplication.<sup>135</sup>

# Endnotes

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# MYANMAR



# 5. Myanmar

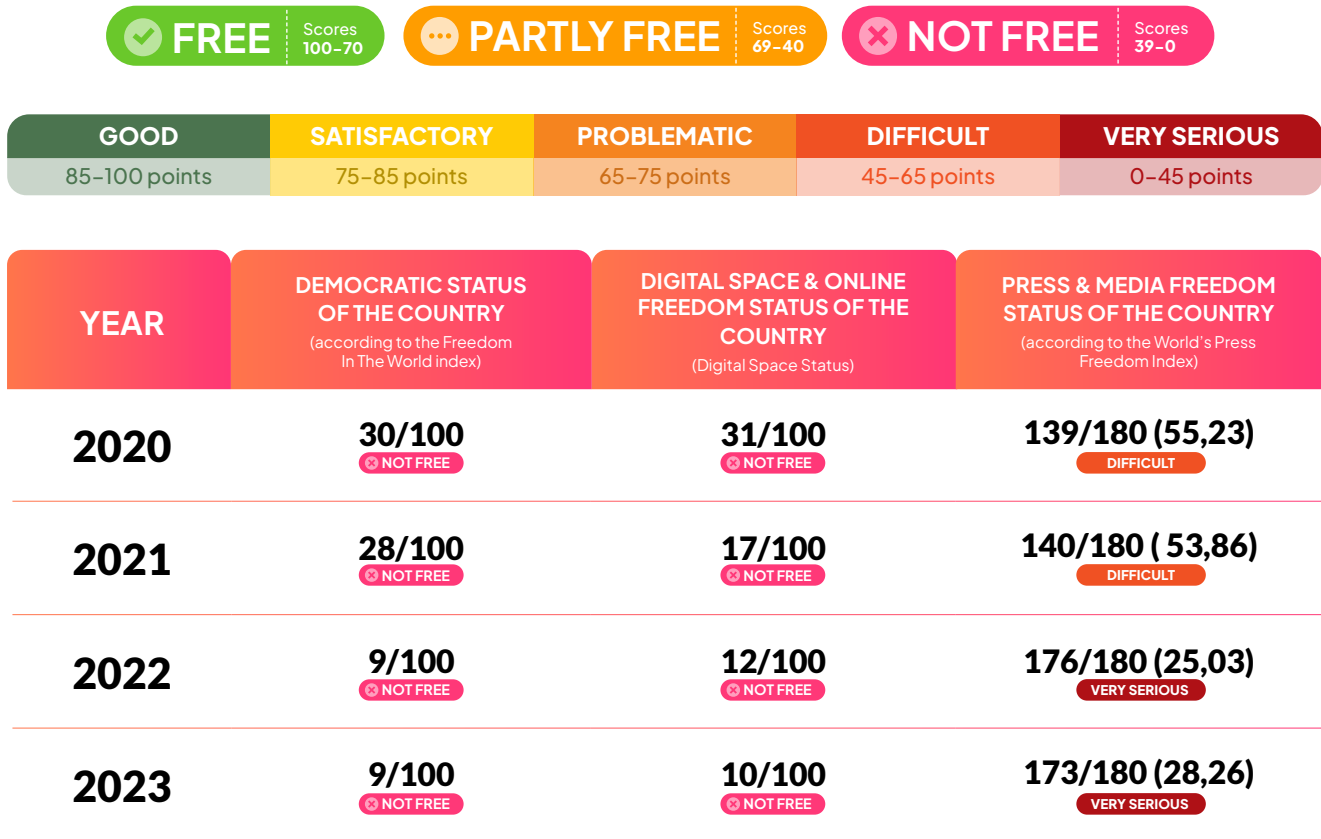


Fig. 5.1: Summary of freedom ratings for Myanmar, 2020-2023.<sup>1</sup>

## 5.1 Legal Framework

### Freedom of Expression: Not Recognised by Law, Yet Legally Restricted

In Myanmar, the exiled revolutionary government, alongside its associated pro-democracy actors, has repealed the military-authored 2008 Constitution and replaced it with a temporary one with the aim of adopting a publicly mandated constitution in the near future. Article 354 of the 2008 Constitution guaranteed the right to freedom of expression to Burma citizens insofar as it is not “contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality.”<sup>2</sup> It is noteworthy that Article 354 only granted this

right to Burmese citizens, in a country where many ethnic groups—notably the Rohingya—have been stripped of citizenship. Additionally, the Unlawful Associations Act let the President decide which groups are considered unlawful. Their members and anyone contributing to one of these groups face up to three years’ imprisonment according to section 17(1). Since its implementation in 2015, the Act has been frequently used to target groups.<sup>3</sup>

A large number of restrictions excessively infringe upon online freedom, including the 2013 Telecommunications Law. Excessive restrictions are also found in the Electronic Transactions Law (ETL), the 2014 Printing and Publishing Law and the Penal Code (1861) which were each unlawfully amended by the military. These legislations were used during Myanmar’s



attempted transition to democracy to justify the arbitrary imprisonment of journalists, human rights defenders, students and many other civilians for acts ranging from criticising the government to reporting on the 2017 attacks of genocide against Rohingya, and the waves of state-sponsored violence leading up to it. Since the coup, the State Administration Council (SAC)–the military junta–has unlawfully amended a few laws without parliamentary approval,<sup>4</sup> and made worse a draft Cyber Security Law, which would further expand the grounds on which online freedom could be curbed.<sup>5</sup>

### **Criminalisation of Defamation: the Penal Code, 2013 Telecommunications Law, Anti-Corruption Law, the 2014 News Media Law, and the Privacy Law**

Sections 499-502 of the Penal Code punishes defamation by a maximum of two years' imprisonment or a fine or both. It is the only law that defines defamation and provides potential defences against it. Nevertheless, these defences are weak, limited in scope and fall short of the international standards.<sup>6</sup> A criminal defamation clause is also found in the 2013 Telecommunications Law. Section 66(d) of the Law criminalises the “extorting, defaming, disturbing or threatening [of] any person by using any telecommunications network.” Violators could be imprisoned for up to two years, fined or both. Although it contains a range of grounds for prosecution, defamation is the one that has been used most frequently by authorities, especially when it involves the use of a telecommunications device. The provision does not define what constitutes defamation or outline any defences.<sup>7</sup>

Likewise, Section 34(d) of the ETL criminalises the “creat[ion], modif[ication] or alter[ation] of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organisation or any person,” and carries a prison term of three years.<sup>8</sup> Under Section 46 of the

Anti-Corruption Law, on the other hand, an informer or complainant can be punished if they “give[] the information or complaint intentionally for the purpose of any person aggrieved or to be defamed without credible evidence.”<sup>9</sup> Similarly, Section 9(g) of the 2014 News Media Law makes it a crime to write news that “deliberately affects the reputation of a person or organisation or that disrespects their human rights, unless the writing is in the public interest,” which is essentially tantamount to a broadly formulated crime of defamation. The provision carries a fine of up to MMK 1 million (\$476).<sup>10</sup> Similarly, Section 8(f) of the Law Protecting the Privacy and Security of Citizens (Privacy Law) states that “no one shall act in any way to slander or harm [a citizen’s] reputation.” Violators can be sentenced to between six months and three years and fined between MMK 300,000 (\$142) and 1.5 million (\$714).<sup>11</sup> In a nutshell, these articles lack precision and impose disproportionate criminal sanctions, contrary to the right to freedom of expression.

### **Sedition Law and New Loosely Defined Provision in the Penal Code to Muzzle Critics**

Section 124(a) of the Penal Code criminalises sedition, defined as behaviour that brings “or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection” against the government. The provision was unlawfully expanded by the military in the 2021 amendments to include comments relating to its defence services and defence services personnel. Violations are punishable by up to 20 years in prison. Moreover, Sections 295(a) and 153(a) punish with up to two years' imprisonment the acts of “outraging religious feelings” and promoting feelings of enmity or hatred between groups of people respectively. A provision newly introduced in 2021 by the military, Section 505A, expands the scope of its previous version by criminalising expression that “cause[s] fear,” spreads “false news, [or] agitates directly or indirectly a criminal offence against a Government employee” and punishing it with a maximum of three

years. Section 505(b) prohibits statements made “with intent to cause, or which is likely to cause fear or alarm to the public.”<sup>12</sup> These constitute yet another example of a loosely formulated prescription which prevents individuals from predicting the kind of expression which would be considered criminal. These provisions are a tool for the military junta to suppress any form of public online dissent or debate as well as any attempt to hold its officials accountable for their activities. It has notably been used to a great extent against those partaking in the pro-democracy movement.

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*The amendments to the Penal Code imposed by the military junta unreasonably infringe upon fundamental rights protected by international law, including freedom of expression. By stripping the people of Myanmar of their rights, the military once again displays its lack of respect for international human rights<sup>13</sup>*

- Human Rights Watch

## Crackdown on Media: Licensing Requirements, Stifled Press Freedom, and Unlawful Amendments to ETL and Broadcasting Law

The 2014 Printing and Publishing Law establishes a licensing regime for news agencies and websites that are required to register prior to producing content, including for publishing online. Vague and overly broad administrative and criminal sanctions can be imposed against those running a website without a licence. The 2014 News Media Law sets out a code of conduct and punishments applicable to media workers which are formulated with insufficient precision which can be misused to control media and arbitrarily criminalise those who report on critical news.<sup>14</sup> A year later, the Broadcasting Act was enacted. This legislation applies the same licensing framework mentioned earlier, but specifically to the broadcast media rather than the print media.<sup>15</sup>

Several other laws that criminalise free expression contravene lawful restrictions provided under international law. Section 68(a) of 2013 Telecommunications Law states that “communication, reception, sending, distribution, or sharing of incorrect information with dishonest intention” is subject to a maximum of one-year imprisonment or a fine or both. The broad criminalisation of maliciously communicating false information without precise definitions makes the provision vulnerable to arbitrary enforcement.<sup>16</sup> Section 3 of the 1923 Official Secrets Act imposes a maximum term of 14 years for a wide range of activities including obtaining, collecting, recording, publishing of secret official code or password, or any sketch, plan, model, article or note or other document or information which can be “directly or indirectly, useful to an enemy”. Similarly, Section 5 states that anybody who has, controls, communicates, uses, retains, or receives information classified as “secret” under the law, can be punished with a prison term of two years.<sup>17</sup> The overbroad language alongside the lack of definition for terms employed therein

results in potential abuse to prosecute activists and journalists.

The 2014 amendment and the military's unlawful 2021 amendment to the ETL restrict expression through electronic transactions technology and establish harsh criminal sanctions for those convicted. The ETL had already been deemed restrictive prior to the coup as its Section 33 criminalises the use of electronic transactions technology to receive, send or distribute electronic information which harms state security, law and order, community peace and tranquillity, national solidarity, the national economy or the national culture, with a prison term ranging from five to seven years. The 2021 amendment adds several problematic provisions that enhance the preexisting risks for crimes to be misconstrued and curtail online expression. Particularly, Section 38B punishes individuals "obtaining, disclosing, using, destroying, modifying, disseminating, or sending someone's personal data to anyone else without approval," with one to three years in prison. Under Section 38C, the creation of "misinformation or disinformation with the intent of causing public panic, loss of trust or social division in cyberspace" is subject to one to three years' imprisonment in addition to fines.<sup>18</sup> As is the case with the abovementioned laws, these provisions are imprecise and could be employed to limit the exercise of expression online and prevent the disclosure of information.

In November 2021, the military introduced so-called amendments to the Broadcasting Law, expanding licensing requirements to include online media. It requires news websites that publish videos and individuals sharing news videos on social media to obtain a licence from the Ministry of Information. It is above all law no. 63/2021, the Second Amendment Law to the Television and Radio Broadcasting Law, that is drawing attention. Non-compliance with the law could lead to harsher penalties such as imprisonment for a maximum period of five years.<sup>19</sup>

## Draconian Cyber Security Law: More Oppression in the 2022 Amendment and the Outlaw of VPNs

Its latest draft, as circulated on Jan. 13, 2022,<sup>20</sup> expands the scope of an earlier draft published in 2021<sup>21</sup> and grants the junta sweeping powers to further suppress free expression in the country. It confers unfettered authority to the junta to control internet service and police content online on grounds of "public interest." A variety of vague and overlapping crimes, such as online expression deemed to constitute "misinformation" or "disinformation" that causes hate and risks disrupting unity, stability and peace, and "written and verbal statements against any existing law," are punishable by three years' imprisonment, a fine or both. These provisions lack clear definitions for key terms, potentially enabling the military to prosecute individuals for posting online content deemed threatening without precise criteria or boundaries.<sup>22</sup> The 2022 draft outlaws the use of Virtual Private Networks (VPNs), infringing upon individuals' right to access information online. Harsh penalties are furthermore applicable to any person who encourages the use of VPNs. In addition, provisions permit the arbitrary blocking of digital businesses and social media without safeguards or judicial due process, in violation of the right to freedom of expression.<sup>23</sup> Similarly to the military's 2021 ETL amendment, accessing online content deemed "illegal" or "unauthorized", particularly if it is considered confidential for reasons of national, international, or multilateral security, with the intention of damaging the country's relationships with foreign nations, may lead to prosecution. This provision poses a threat to whistleblowers, investigative journalists, or activists who aim to expose materials that could undermine the regime via digital channels. In effect, this law permits the military to justify taking action against anyone who circulates information online which may threaten its unlawful, brutal authority.<sup>24</sup>

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*A draft Cybersecurity Law would further empower authorities to block online content or restrict internet access without judicial oversight and would ban the use of virtual private networks (VPNs), with VPN users facing up to three years' imprisonment.*<sup>25</sup>

- UN human rights experts

## 5.2 Challenges and Cases

### Struggles, Legislation, and Repression in Myanmar (2020–2023)



**LEGEND:**

⚠️ : Alleged offense + (articles/provisions invoked against the individual)  
 - "Unknown": Either information is not available or no articles/provisions have been cited by the judiciary

👮 : Legal and extralegal consequences  
 - "Status Unknown": Current status of the individual is unknown (detained, convicted, deceased, etc).

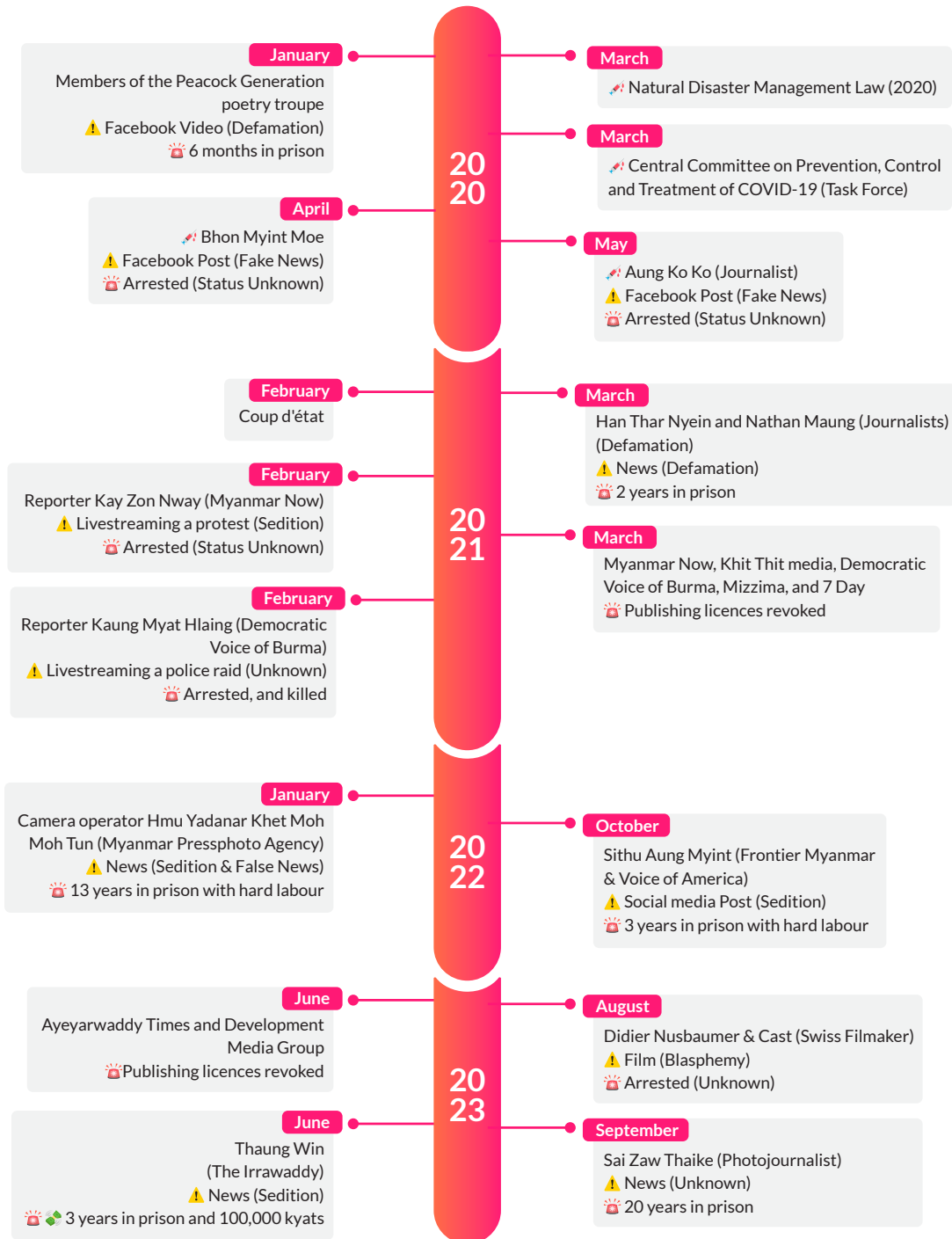


Fig. 5.2A: Summary timeline for Myanmar, 2020-2023.




| Country   | Event   | Contextualisation  |
|---|---|--|
| <br><b>MYANMAR</b> |  Cyber Security Law (2022) | This law outlaws the use of Virtual Private Networks (VPNs), infringing upon individuals' right to access information online.  |
|   |  Coup d'état (2021)        | On February 1, 2021, the Burmese military overthrew the civilian government led by Aung San Suu Kyi, ending several years of democratic transition. The military declared a state of emergency, citing allegations of electoral fraud during the November 2020 elections, which were won by Aung San Suu Kyi's party, the National League for Democracy (NLD). |

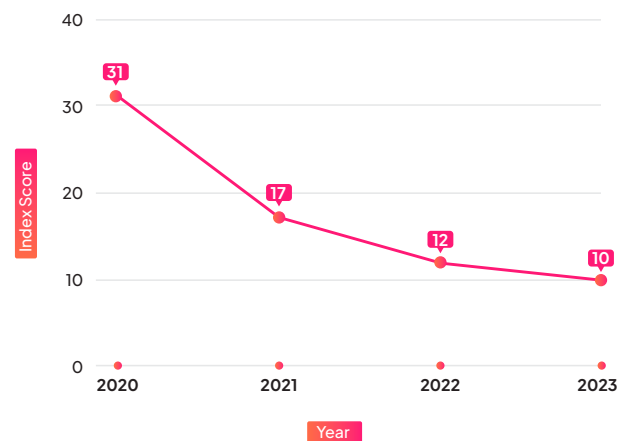
Fig. 5.2B: Contextualisation for Myanmar's timeline, 2020-2023

### Environment of Fear: Arrests, Executions, Lawsuits, and Everything Else in Between to Silence Pro-Democracy Movement

The military started their coup with the arbitrary detention of civilian heads of its government on Feb. 1, 2021, when the Parliament was scheduled to convene for the first time since the November 2020 general elections. The military has since intensified its cracking down on dissenting voices, including netizens, human rights defenders, journalists, activists, social media influencers, and political leaders through torture, arbitrary arrest, detention, and sentencing of individuals, the blocking of websites and social media platforms, ban on news outlets, and increased military propaganda. With the execution of at least four people, including activists and politicians by the military in July 2022, and many more on death row or facing death sentences, rights abuses are surging on an unprecedented scale.<sup>26</sup> These regressions are also reflected in internet and press freedom indices: Freedom on the Net scored Myanmar 17/100 in 2021.<sup>27</sup> The score dropped to 12/100 in 2022.<sup>28</sup> Myanmar has been ranked as the second-worst country globally for infringing upon internet freedom, trailing only China, according to the latest annual report on online freedom of expression published by Freedom House in 2023 with only 10/100.<sup>29</sup> The World Press Freedom Index ranked Myanmar 176th out of 180 countries in 2022, with a score of 25.03 and in 2023, Myanmar climbed up to 173rd position,

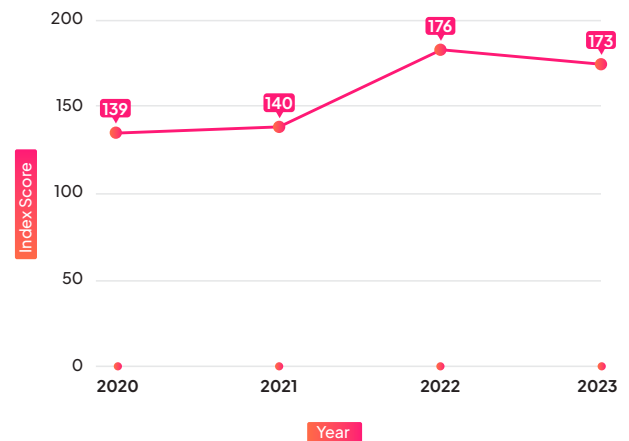
with a score of 28.26. However, it continues to be among the 10 most oppressive countries in the world in terms of media freedom.<sup>30</sup>

#### Digital Space & Online Freedom Status: Myanmar



Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

#### Media & Press Freedom Status: Myanmar



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Fig. 5.3: Digital Space & Online Freedom Status (Freedom on The Net) and Media & Press Freedom (World Press Freedom Index) Ratings for Myanmar over the years, 2020-2023.

While the erosion of freedom of speech in Myanmar had already commenced before the coup, its complete absence has become apparent since the military seized power. In the four years leading up to February 2021, at least 539 lawsuits related to speech freedom were brought against 1,051 individuals in relation to expression. Of these, 495 were individuals unassociated with civil society, 326 activists, and 67 journalists or media professionals.<sup>31</sup> Since it took power in February 2021 to November 2022, the junta has arbitrarily arrested and detained over 16,000 people for allegedly violating established speech freedom restrictions and continues to expand the grounds on which it could effectively eliminate the right to freedom of expression in Myanmar.<sup>32</sup> As of June 20, 2023, the number reached 23,386 people arrested and detained.<sup>33</sup> According to a military source, from January until the end of October 2022, more than 900 Facebook users were arrested for their posts and comments on the pages of public personalities or news organisations.<sup>34</sup> In all, from the coup in February 2021 to December 2023, 25,883 people have been arrested, of whom 19,966 are still being held, and 8,585 are serving sentences. A total of 80,000 homes have been burnt down since the coup by the military junta, displacing 3,800,000 civilians.<sup>35</sup>

Criminal defamation provisions have long been wielded by public officials, politicians, religious and military leaders and even businesses to charge journalists, activists and ordinary citizens perceived as critics of the government and the military. Proceedings are lengthy and courts tend to side with the prosecution and impose heavy penalties against defendants. Additionally, defences included in the Criminal Code are regularly overlooked.<sup>37</sup>

Internet users are frequently penalised, and Section 66(d) of the 2013 Telecommunications Law is commonly invoked.<sup>38</sup> In February 2020, three members of a performance group were sentenced to six months under this Section for posting photos, videos, and livestreaming on Facebook satire performances allegedly related to the military.<sup>39</sup> In January 2021,

“

*After the military coup happened, we lost our freedom of speech, freedom of expression and our access to information. We have also lost the democratic space created by the media in the country. Also, reporters are always at the centre of protests with shooting, tear gas and water cannons. This is dangerous as now there is no institution that journalists and media can turn to in this situation.*<sup>36</sup>

- Tin Tin Nyo, Managing Director of BNI Multimedia Group

editor U Ne Win San and reporter Ma Hnin Nwean at the Sittwe-based Development Media Group were sued by the military for publishing a news story about alleged military corruption.<sup>40</sup> After the coup, the situation took a turn for the worse. On Feb. 3, 2021, renowned monk U Thawbita, who repeatedly posted messages on Facebook criticising the military, was sentenced to two years under Section 66(d). He has been facing multiple charges brought by the military for several offences, including defamation, since pre-coup times.<sup>41</sup> More recently, Ye Htut was sentenced to three years in prison for sedition under Article 124(a) of the Penal Code, following his “subtle ridiculing” of the military administration on Facebook. Before his arrest in October 2023, he had previously held the posts of Minister of Information and Presidential Spokesman under the military-backed administration of President Thein Sein.<sup>42</sup> In November 2023, five individuals were arrested in connection with the start of a major anti-regime offensive in neighbouring Shan State two weeks earlier. One man was arrested for confirming curfew rumours on social media. A woman was taken into custody after sharing a video of herself with an eugenics plant, widely used to express support for People’s Defence Force groups. The circumstances of the arrests of the other three people in November, as well as the articles or laws used against them, remain unknown to date. However, it has been reported that the arrests were linked to their online activities.<sup>43</sup>

### Exiled or Detained: The Plight of HRDs and Activists

Targeting by the military has pushed many HRDs and activists into exile.<sup>44</sup> Those unable to flee the country ended up being detained in most cases. In addition, their residences are frequently invaded, their belongings taken, and family members threatened and harassed.<sup>45</sup> Even when they are in exile, activists remain exposed to danger. For example, Thuzar Maung, her husband and their three children were reportedly abducted from their home in the Malaysian state of Selangor in July 2023, according to CCTV footage.

Thuzar Maung is the head of the Myanmar Muslim Refugee Community and has over 93,000 followers on her Facebook page, where she regularly criticises the alleged abuses committed by the Burmese junta.<sup>46</sup> For those who actively oppose the military junta, the penalties are extremely severe. Activist Kyaw Thet, aged 30, holds the sad record of being sentenced to 225 years in prison and the death penalty as a member of the People’s Defence Force. Activist Aung Khant Oo is close behind, second only to Thet in receiving the heaviest sentence. Facing several terrorism-related charges, he was given a total sentence of 203 years by the Magway District Court, under the control of the regime.<sup>47</sup>

“

*[Our] empowerment was for a fleeting moment. There are so many activists like me. They are jailed, they are detained, they are sexually harassed. Many of them are fleeing the country ... Many people died, and many people are grieving.*<sup>48</sup>

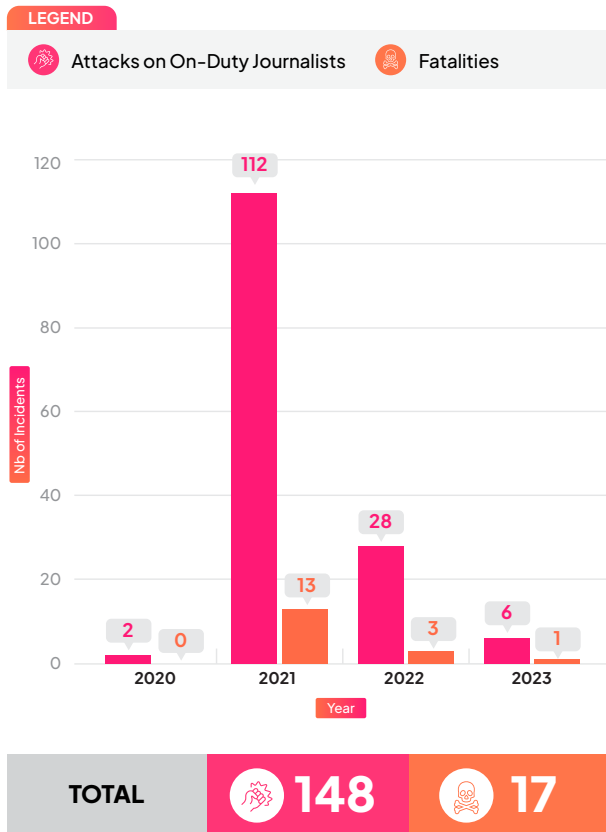
- Nandar, a women’s rights activist and podcaster who fled Yangon and is now in hiding



## Targeting of Journalists and Media Opposing the Military Regime

### Attacks on On-Duty Journalists

MYANMAR



The Armed Conflict Location & Event Data Project (ACLED), *Disorder Involving the Media*, (n.d.), available at: <https://acleddata.com/data-export-tool/>

Fig. 5.4A: Attacks on On-Duty Journalists in Myanmar, 2020-2023.

Many journalists, including citizen journalists, and media professionals, are threatened by the military junta and are being forced to go into hiding or leave the country.<sup>49</sup> Under the junta, journalists face life threatening conditions. Myanmar has become the world's second biggest jailer of journalists. Since the coup, the junta has detained more than 140 journalists, 64 of them are still jailed and four died in custody.<sup>50</sup> On May 3, 2023, the junta pardoned 2,153 prisoners detained based on article 505(A) of the Penal Code.<sup>51</sup> Five of those freed are journalists.<sup>52</sup>

“  
We, who are based in Thailand, are also not safe online. Our family members are still in Myanmar. So even a single trace of our names could risk our family's detention by the military regime. And even here, a lot of us journalists don't share our online identity with anybody.”<sup>53</sup>

- May (Pseudonym) & founder of the Myanmar Women Journalists Society

TV and junta-run newspapers broadcast and publish the names of those accused of violating the Section 505A of the Penal Code, including bloggers, vloggers and social media influencers who showed support for anti-junta demonstrations. Those on the wanted list had to go underground and hide.<sup>54</sup> For example, in February 2021, the junta announced that seven prominent opposers of the coup were being hunted for their comments on social media, claiming that these individuals had threatened national stability in violation of Section 505(b) of the Penal Code.<sup>55</sup>

“

**Today, no journalist inside Myanmar is safe. They could be arrested at any time and potentially face decades in prison.**<sup>56</sup>

- Thomas Kean, Editor-in-chief at Frontier Myanmar

On Feb. 12, 2021, Myanmar Now reporter Kay Zon Nway was charged with incitement under Section 505A of the Penal Code and arrested while livestreaming a protest in downtown Yangon. She was released towards the end of June that year.<sup>57</sup> In March 2021, journalists Han Thar Nyein and Nathan Maung were both charged under Section 505A for “spreading fake news.” The charges against Nathan Maung were dropped in June 2021,<sup>58</sup> while Han Thar Nyein was sentenced to two years in March 2022.<sup>59</sup>

In November 2021, Danny Fenster, managing editor of Frontier Myanmar, was arrested and subsequently convicted on allegations of endangering the interests

of the armed forces under Section 505A, illegal association under section 17(1) of the Unlawful Association Act, and violating immigration law section 13(1) of the Immigration Act. He received an 11-year sentence, as well as a MMK 100,000 fine (\$46).<sup>50</sup> According to Frontier, the charges were based on the false belief that he was employed at Myanmar Now, an independent news site critical of the military. After negotiations between the junta and Bill Richardson, former US ambassador to the UN, he was released on “humanitarian grounds” on Nov. 15, 2021.<sup>61</sup>

The case of Kaung Myat Hlaing, a reporter for the Democratic Voice of Burma, likewise proves that the life of the Burmese journalists is at stake. Kaung Myat Hlaing was detained and arrested, and brutally shot for livestreaming the police raid near his apartments in the southern coastal town of Myeik on March 2, 2021.<sup>62</sup> In another case from July 2022, a Japanese journalist was arrested while covering a protest in Yangon, then charged with encouraging dissent against the military.<sup>63</sup> He was still in detention as of March 2023. In October 2022, Sithu Aung Myint, a Frontier Myanmar columnist and contributor to Voice of America, was sentenced to three years in prison with hard labour after 14 months in pre-trial detention. He was convicted of “inciting government employees to commit crimes” under Section 505 A of the Penal Code.<sup>64</sup> According to military-run media, Sithu Aung Myint was arrested over articles he posted to social media that were critical of the junta and that allegedly encouraged people to support the opposition.<sup>65</sup> More recently, in April 2023, Kyaw Min Swe—editor in chief of the now banned Aasan (The Voice) newspaper—was secretly detained by the junta and charged under section 505A. His arrest was made public 10 days after it occurred.<sup>66</sup> Hmu Yadanar Khet Moh Moh Tun—reporter for Myanmar Pressphoto Agency—also continues to be targeted: initially serving a three year sentence given in December 2022 under charges of incitement to fake news, on May 26, 2023, she was given 10

more years with hard labour under the Counter-Terrorism Law.<sup>67</sup> On June 28, 2023, the former publisher of The Irrawaddy—an independent media outlet—was sentenced to five years in prison for sedition and was fined MMK 100,000 (\$47).<sup>68</sup> As of July 2023, he remains in detention.<sup>69</sup> In September 2023, photojournalist Sai Zaw Thaïke was sentenced to 20 years in prison by a court under the military regime, the longest known prison sentence for a journalist since the coup. He was arrested in the western state of Rakhine while reporting for Myanmar Now on the aftermath of Cyclone Mocha, which claimed many lives at the end of May. Sai Zaw Thaïke was facing four charges, including an offence under the Telecommunications Act. However, Myanmar Now reported that the precise charges against him were unclear. He had been detained without access to a lawyer or family visits before the trial began.<sup>70</sup> Finally, Dhanabir Maibam, editor of the Hueiyen Lanpao, was arrested at the end of December 2023 under Section 505A for a report on the law and order situation in the border town of Moreh in Tengenoupal, which shares a border with Myanmar.<sup>71</sup> The military junta's ongoing efforts to control the flow of information has also included the mass arbitrary arrests of writers and poets.<sup>72</sup>

# MYANMAR



## 2023 Political Overview

Was in 'democratic transition' before the Tatmadaw-led authoritarian regime ascended after the 2021 coup.

### Head of State, Head of Government

Chairman of the State Administration Council, Min Aung Hlaing (de facto power), with Acting President Myint Swe.

## #SaveKaungMyatHlaing

## #SaveMyanmar

### CASE STUDY

Case study: **Physical and psychological violence** was used to silence a Burmese journalist for reporting about the 2021 military coup d'état - an example of **Digital Dictatorship**.

#### WHEN

2 March, 2021 (day of livestream, and attack/arrest)

#### WHERE

Myeik, Myanmar

#### WHO

Kaung Myat Hlaing (also known as Aung Kyaw), Burmese journalist for the Democratic Voice of Burma (DVB) ♦

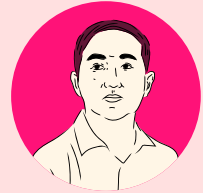
#### WHY/WHAT

🗣️🔪👮🇲🇲 Kaung Myat Hlaing, and DVB, have a long history of being surveilled by Burmese authorities for reporting about anti-authoritarian movements, and exposing the Burmese lived experience under authoritarian regimes. During this particular incident, he was specifically targeted for live streaming a police shooting happening near his apartment during the time of the 2021 coup.

#### HOW

⚠️ How Digital Dictatorship has caused the violation of Kaung Myat Hlaing's human rights:

🗣️🔪🇲🇲 During his livestream, armed authorities stormed his apartment and started shooting. The gunshots were heard on his livestream. Kaung Myat Hlaing was then detained.



**Kaung Myat Hlaing (also known as Aung Kyaw)**

Burmese journalist for the Democratic Voice of Burma (DVB)



Frontier, *Myanmar journalist arrested after overnight attack: employer*, (2 March 2021), available at: <https://www.frontiermyanmar.net/en/myanmar-journalist-arrested-after-overnight-attack-employer/>

CPJ, *Myanmar police arrest at least 4 more journalists, injure Democratic Voice of Burma reporter during home raid*, (2 March 2021), available at: <https://cpj.org/2021/03/myanmar-police-arrest-at-least-4-more-journalists-injure-democratic-voice-of-burma-reporter-during-home-raid/>.

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.



## “Regime” and “Junta”: The Key Words Leading to Media Licence Revocation

The post-coup crackdown on free media came after the military repeatedly threatened to revoke media licences if they continued using the words “regime” or “junta.”<sup>73</sup> While many private news media companies have been banned for disobeying the junta’s commands, those who attempt to remain operational have faced strict censorship that blocks the report of any news on the NUG and which use the terms “coup,”<sup>74</sup> “military government” and even “military coup.” The digital and print publishing licences of five domestic outlets (Myanmar Now, Khit Thit media, Democratic Voice of Burma, Mizzima, and 7 Day) were cancelled and their offices raided.<sup>75</sup> They have been banned from publishing, broadcasting, and transmitting information via online and offline means. Most now operate from exile. By the end of 2022, more than 20 media groups, including press agencies, publishing houses and printing works, have been banned since the start of the coup in February 2021.<sup>76</sup> More recently, Ayeyarwaddy Times licence was revoked by the junta in June 2023. At the end of October 2023,<sup>77</sup> the military junta closed down the independent media Development Media Group. Soe Win Aung, the night watchman, was arrested during the search of their offices by soldiers, while the rest of the staff went into hiding. Without giving any explanation, the military junta sealed the media company’s offices and confiscated several cameras and laptops. The media, an organisation covering conflict and human rights abuses in the western state of Rakhine, had already been the subject of defamation suits by the junta since the start of the coup in 2021.<sup>78</sup>

Online freedom has been steadily deteriorating in Myanmar even prior to the coup. The Social Media Monitoring Team established under the Ministry of Transport and Communications monitored online activities for the purpose of—as it claimed—preventing foreigners and foreign organisations from causing

unrest and threatening the country’s sovereignty through interference.<sup>79</sup> It remains unclear whether there was any oversight procedure to complement the monitoring.

## Doxxing and Harassment of Pro-Democracy Activists, Women Activists, and HRDs

In the puzzle of digital oppression in Myanmar, doxxing is one piece. Doxxing is the action of “publishing private information about someone on the internet without their permission”.<sup>80</sup> The information can include revealing names, addresses and be used to harass people. Pro-democracy activists and HRDs are subjected to doxxing, as retribution for denouncing the junta’s suppression of critical voices and sharing about the plight of Myanmar’s people.<sup>81</sup> The Telegram channel Han Nyein Oo, particularly well-known with 73,238 subscribers in August 2022, stands out. It regularly broadcasts the Facebook profiles and personal details of alleged resistance supporters. On several occasions, arrests have been reported, affecting individuals whose information and locations were shared in these messaging groups.<sup>82</sup> For instance, Ye Htut, mentioned earlier in this text, was arrested a few days after the pro-military Telegram account leaked his address and urged the military to arrest him.<sup>83</sup> Women activists and HRDs are particularly targeted by pro-junta accounts that use hateful, sexualised, and discriminatory language in an attempt to discredit them and silence their voices.<sup>84</sup> This trend is reflected in the wave of hatred directed at women activists following the showing of the film “Don’t expect anything”. The 12-year-old girl, the protagonist of this film directed by Swiss filmmaker Didier Nusbaumer, is at the heart of the controversy. According to the military junta,<sup>85</sup> the film is perceived as blasphemy against the Buddhist religion. However, the Buddhist monk U Kovida said that he did not see any insult in Nusbaumer’s statements. It should be noted that the 12-year-old actress, the entire cast and the director were arrested

by the junta. As they strive for justice and to shed light on the plight of Myanmar’s people, women activists and human rights defenders face a targeted onslaught from pro-junta accounts, employing a disturbing array of tactics infused with hate, sexualisation, and discrimination. Their concerted efforts aim to undermine and stifle the powerful voices of these resilient women, yet their spirit remains unyielding.<sup>86</sup>



*In Burma, women human rights defenders in particular increasingly face vicious online harassment and doxxing campaigns, which often target their family members and loved ones – with the goal to harm them and silence our Spring Revolution. These campaigns further risk the safety and security of WHRDs, forcing them to flee their home and country. I remain in utmost awe of my fellow sisters, all of whom remain strong, resilient, and determined despite their life-threatening circumstances.*

- Wai Wai Nu, Founder & Executive Director, Women Peace Network Myanmar

Additionally, the military junta is under suspicion of utilising Israel’s Cognyte Software to target rebel groups and civilians. Documents reveal that Cognyte won a tender to sell intercept spyware to a state-backed telecommunications company a month before the coup.<sup>87</sup>

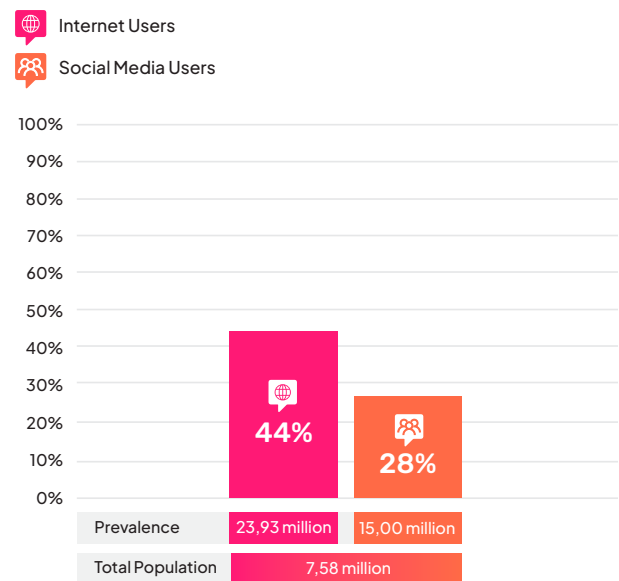


*We can say that Israel is one of the top countries in surveillance tech. That’s why the technical support that the Myanmar military received from [Cognyte] must be really sophisticated and effective.<sup>88</sup>*

- Kyaw Saw Han, Security Analyst

**The Junta’s control over social media: state-led disinformation, hate speech and propaganda**

**Myanmar Percentage of Internet and Social Media Users**



DataReportal, *Digital 2023, Myanmar*, (9 february 2023), available at : <https://datareportal.com/reports/digital-2023-myanmar>

Fig. 5.4B: Percentage of Internet and Social Media Users in Myanmar, 2023.

Since Feb. 1, 2021, the junta has taken control of platforms considered government and state media communications prior to its attempted coup, including Facebook pages and Twitter accounts, in an attempt to dominate public discourse and spread pro-military propaganda. While less than 30% of Myanmar's population uses social media, disinformation posts, coordinated information warfare and propaganda launched by the junta have been overwhelmingly prevalent since the coup.<sup>89</sup> For example, the authority wielded a rumour that discouraged people from protesting for 72 hours after the coup, in an effort to silence individuals.<sup>90</sup> In 2021, about 200 military personnel were found to operate social media accounts to propagate the junta's view and target dissenters online.<sup>91</sup> Telegram is also one of the most used platforms for pro-junta accounts. Once made aware, Telegram blocked 13 pro-junta social media accounts but, since the platform allows for paid premium subscriptions, pro-military supporters and officials can simply create new accounts and continue their oppression and harassment of pro-democracy supporters.<sup>92</sup>

Prior to the coup, lawsuits in the US and UK allege that Facebook facilitated the genocide of the Muslim-majority Rohingya in Myanmar due to the platform's negligence. Facebook's algorithms allegedly amplified Islamophobic and anti-Rohingya hate speech, and the platform failed to remove inflammatory posts. These allegations have led to compensation claims in excess of £150 billion.<sup>93</sup> Despite some measures taken by Facebook to limit the dissemination of military content by removing some pages under military control and prohibiting paid advertisements by military-linked businesses, the situation appears to have only partially changed since the coup. The NGO Myanmar Witness found that the majority of the violent and misogynist publications it analysed remained online on Facebook and Twitter for at least six weeks, despite their failure to comply with community standards. Even after the Myanmar Witness reports, many publications remained active. Some content may have escaped detection by using images

or coded language.<sup>94</sup> It is crucial to note that in the Burmese context, Facebook plays a predominant role, as the figures show that people use both Facebook and the Internet. Facebook thus seems to be used as a search engine, underlining the importance of stepping up vigilance on the platform.<sup>95</sup>

Although Facebook remains the most widely used platform in Myanmar, the coup has led to an increase in downloads from Twitter, Instagram and TikTok. These platforms are now used both by democracy supporters demanding their rights and by the military junta to pursue its propaganda.<sup>96</sup> However, regulation of these platforms seems difficult, although TikTok has banned a number of accounts belonging to military personnel.<sup>97</sup> Moreover, active pro-military propagandists, including Han Nyein Oo, Kyaw Swar and Thazin Oo, have transitioned to other platforms such as Viber and VKontakte (VK), according to a statement in late 2023. They remain committed to monitoring individuals online, contributing to the junta's hunt for those it considers to be political opponents.<sup>98</sup>

## TECH COMPANIES COMPLICIT OF DIGITAL DICTATORSHIP

The military administration has increased its oversight of the internet by implementing measures such as mandating telecom providers to disable access and pressuring platforms to censor content critical of the coup. Two renowned international law experts presented a compelling legal memorandum to Telenor Group and M1 Group. Their advice was clear and urgent: halt the proposed sale of Telenor's Myanmar subsidiary. The reason? To allow for comprehensive due diligence and ensure the transaction underwent rigorous scrutiny.



## Internet Disruption & Internet Shutdown

Similarly, the military junta employs internet shutdowns as a method of control and repression. On June 20, 2019, under Section 77 of the Telecommunications Act, the Ministry of Transport and Communications issued a directive ordering all telecommunications operators to restrict mobile internet services in nine townships in Rakhine and Chin States. This article gives the Ministry the power to order the suspension of telecommunications services in what they believe are emergency situations. Although some of these restrictions have been lifted, others have continued to be applied irregularly since then.<sup>100</sup> Of particular note is the Sagaing Region, which has experienced prolonged disruptions, with a service cut that commenced in March 2022 and continues indefinitely.<sup>101</sup> On April 2, 2021, all mobile data and wireless broadband internet were cut off, leaving most of Myanmar's population without internet access.<sup>102</sup> Only wired connections remain, to which few people have access.

At the end of 2019, the National Archives and Records Act restricts access to information by granting the government total discretion. This legislation allows the government to make certain documents inaccessible to the public for thirty years.<sup>103</sup> At the same time, The Computer Science Development Law is used to give heavy penalties, ranging from 7-15 years, to anyone who sets up a computer network or creates a connection within the computer network without authorisation from the Ministry. Similarly, anyone who compromises the State's security by using information technology will face similar penalties.<sup>104</sup>





## PANDEMIC POLITICS: COVID-19 IMPACT ON ONLINE ACTIVITIES

In response to the COVID-19 outbreak, in February 2020, the NLD-led government put forward a draft Prevention and Control of Communicable Diseases Bill. The document included a provision which would sanction health officials who disseminate certain health information during specified times if it could lead to fear or panic.<sup>105</sup> The draft bill specifies that first-time offenders would be fined between MMK 50,000 and MMK 100,000 (\$23.8 and \$47.7), while repeated offenders can be imprisoned up to six months and, additionally, be fined between MMK 300,000 and MMK 500,000 (equivalent to \$143 and \$238.6).<sup>106</sup> The authorities' claim was that the proposed law sought to prevent public disorder, as well as the spread of intentionally false information and, at the time of the coup, the bill was still in its draft form.

COVID-19 fueled the civilian government's crackdown on netizens, journalists, and human rights defenders. Throughout 2020, numerous cases were documented where individuals faced arrests for sharing information on their personal platforms about the virus, deemed false or misleading by the authorities. On April 4, 2020, netizen Bhon Myint Moe shared on his Facebook news about COVID-19 spreading into his township. He was subsequently charged under Section 27 of the Natural Disaster Management Law on allegations of spreading false information.<sup>107</sup> Three months later, the police charged Eleven Myanmar journalist Aung Ko Ko under Section 68(a) of the Telecommunications Act for "spreading misinformation" following his Facebook post commenting on the Ministry of Health and Sports' underreporting of cases and delayed news releases relating to the COVID-19 in the country. He was said to have done so "with intent to harm the State image."<sup>108</sup> As reported by ARTICLE 19, in May 2020, the holder of a Facebook account named "Nyan Lin Htat Referee" was prosecuted under Section 124A of the Penal Code

on sedition for pointing out the Government's failure to comply with its own health protocols, including the restriction on public gatherings.<sup>109</sup> In July 2020, Zaw Naing Oo, politician of the Sagaing Region, was charged under Section 505(b) for circulating a letter in which he criticised the regional government's pandemic response.<sup>110</sup>

Following the coronavirus outbreak, Myanmar launched its own app-based QR pass system called Saw Saw Shar. A publicly available project proposal for its development from 2020 reveals that the app is not only intended for controlling the spread of COVID-19, but also to "provide the information dissemination to tackle the related fake news."<sup>111</sup> The extent to which the app is engaged in battling fake news is unknown and so is the way it operates to achieve this goal. The NLD-led government also restricted access to information by ordering telecommunications companies to block access to select ethnic news websites, citing the spreading of false COVID-19 news as the reason for such a measure.<sup>112</sup> By March 2020, 221 websites which report on "military abuses" and spread alleged COVID-19 fake news were blocked on the order of the Ministry of Transport and Communications.

Furthermore, Myanmar's ruling military has been accused of exploiting the COVID-19 pandemic to justify its coup in 2021. Prior to the coup, Myanmar's military junta used the spike in COVID-19 cases to question the legitimacy of the November 2020 national elections, citing concerns about public security. During the coup itself, the pandemic was exploited to justify military actions and legitimise the arrest of civilian leaders, including Aung San Suu Kyi, based on alleged violations of the National Disaster Management Law. After the coup, the junta continued to use the pandemic as a pretext to limit public gatherings and any uprisings, and to tighten its control.<sup>113</sup>

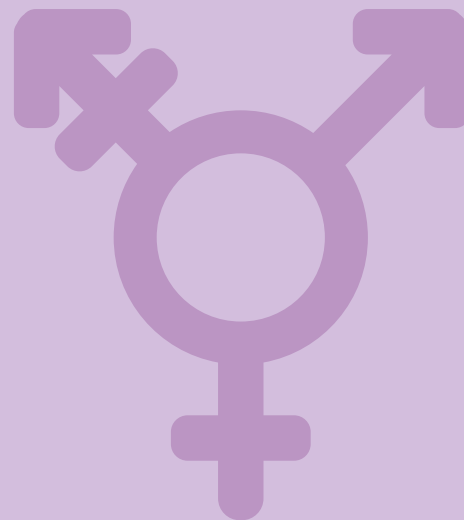


## INTERSECTIONAL GENDER ANALYSIS: ONLINE GENDER BASED VIOLENCE IN MYANMAR

Online Gender-based Violence (OGBV) is a crucial issue in Myanmar, requiring a thorough understanding of its intersectional nature with intersectional lens. It particularly targets women, members of the LGBTQ+ community, ethnic and religious minorities, as well as other vulnerable groups.<sup>114</sup> These incidents represent a violation of universal human rights, protected by international human rights conventions. They affect areas such as the right to personal security, the right to the highest attainable standard of physical and mental health, the right to freedom from torture or cruel, inhuman or degrading treatment, and the right to life (IASC). It should be pointed out that the literature on gender-based online violence, although intersectionality, remains limited. This documentation therefore focuses particularly on cases of violence against women, which are those that have been studied most extensively.<sup>115</sup>

Online hate is the most commonly documented behaviour.<sup>116</sup> Specifically, a study conducted by Myanmar Witness in late 2022 revealed alarming results about the prevalence of online hate particularly among the Burmese military and its supporters. Their analysis based on 1.6 million messages on Telegram revealed that politically motivated online abuse against women was at least five times more prevalent compared to the weeks following the coup. The total prevalence of abusive messages targeting women on Telegram was up to 500 times higher than international benchmarks for social media abuse. Among all online abuse, up to 8,338 abusive messages on Telegram targeting women with hateful rhetoric and up to 15,000 other doxxing messages were identified. Of the doxxing analysed, 28% included an explicit call

to punish the targeted women and asking the military junta to arrest the woman and/or seize her goods. In addition, there is evidence that doxxing campaigns are coordinated through Telegram channels sympathetic to the State Administrative Council (SAC). These channels play an active role in informing about women who oppose the SAC and celebrating news of their arrests. It is important to note that Myanmar Witness highlights a significant dark figure. Indeed, a number of posts have been deleted or coded to go unnoticed by radar. As far as online abusers are concerned, most are men who support the military coup in Myanmar, mainly targeting women. In fact, around 90% of abusive messages come from Pro-State Administration Council accounts, while 70% of abusers are men. In addition, around 83% of messages targeted women supporting the Myanmar National Unity Government (NUG) or the People's Defence Forces (PDF).<sup>117</sup>



## #PeoplePower | How Are People Resisting #DigitalDictatorship?

## Resilient Voices: Rohingya's Struggle Against Meta's Role in State-Led Hate Speech and Genocide

### What happened?

In 2017, the United Nations Human Rights Council established the Independent International Fact-Finding Mission on Myanmar (IIFMM) to establish the facts and circumstances of the alleged human rights violations by military and security forces, and abuses, in Myanmar.<sup>118</sup> In 2018, The United Nations (UN) underscored social media's pivotal role in the Rohingya genocide, specifically citing Facebook as a "useful instrument" for disseminating hate speech.<sup>119</sup>

The complicity of Meta in the dissemination of hate speech against the Rohingya has faced strong condemnation.<sup>120</sup> According to Amnesty International, Meta's profit-driven algorithms significantly played a part in the brutal actions carried out by the Myanmar military. Agnès Callamard, Secretary General of Amnesty International, explicitly linked the escalation of hatred against the Rohingya to Facebook's algorithms, stating, "In 2017, the Rohingya were killed, tortured, raped, and displaced in the thousands as part of the Myanmar security forces' campaign of ethnic cleansing. In the months and years leading up to the atrocities, Facebook's algorithms were intensifying a storm of hatred against the Rohingya which contributed to real-world violence".<sup>121</sup>

### Fighting back in court!

Communication technologies function as the essential lifeblood for the Rohingya diaspora, allowing them to articulate a unified narrative advocating for justice and citizenship rights in international spheres. Armed with digital skills, the diaspora is steadfast in vocalising their opposition against the genocidal regime, utilising various platforms to intensify their battle and expose the

collusion of Meta/Facebook.<sup>122</sup>

Rohingya diaspora members have tirelessly campaigned for the recognition of their sufferings and

rights. Activists have urged international human rights agencies, including the United Nations, to endorse the findings of the Independent International Fact-Finding Mission (IIFMM) report, emphasising the Rohingyas' ongoing vulnerability to genocide.<sup>123</sup>

Finally, on 23 January 2020, the ICJ ordered provisional measures to prevent the genocide of Rohingya Muslims in Myanmar in the first ruling related to *The Gambia v. Myanmar*, a case filed in November 2019 that seeks to enforce the UN 1948 Genocide Convention.<sup>124</sup>

In 2018, Meta publicly acknowledged its involvement in the Rohingya Muslim genocide in Myanmar, admitting to being slow in addressing misinformation and hate on its platform. Despite commitments to enhance hate speech detection



and moderation, including assembling a team of Burmese speakers and implementing measures such as banning military accounts and disrupting misinformation networks, Meta's effectiveness remained uncertain as no official regulatory approach was disclosed. Few years later, in December 2021, Rohingya refugees from Myanmar initiated a \$150 billion class action lawsuit against Meta, alleging the company's failure to address anti-Rohingya hate speech that fueled violence. One year later, additional evidence of Meta's negligence emerged through research by Global Witness, revealing that Facebook's purportedly improved mechanisms were ineffective. Global Witness conducted experiments by paying Facebook to publish eight advertisements containing hate speech. All eight advertisements were indeed published by Facebook.<sup>125</sup>

Moreover, Rohingya diaspora groups boldly articulate the atrocities of injustice and genocide they have endured, encompassing digital repression, torture, profound suffering, and the denial of their citizenship rights. Utilising digital platforms such as the YouTube-based Rohingya Vision and The Arakan Times Rohingya News, seamlessly synchronised with other influential social media platforms like Twitter, Facebook, and Instagram, the Rohingya diaspora globally has amplified their voices.<sup>126</sup>

# MYANMAR



## 2023 Political Overview

Was in 'democratic transition' before the Tatmadaw-led authoritarian regime ascended after the 2021 coup.

### Head of State, Head of Government

Chairman of the State Administration Council, Min Aung Hlaing (de facto power), with Acting President Myint Swe.

## #SaveRohingya

### CASE STUDY

Region-wide authorities (e.g. in Myanmar and Indonesia) collude with social media platforms and big tech corporations to **orchestrate online hate campaigns against marginalised groups**, such as **the Rohingya**; this is considered **Digital Dictatorship**.

### WHEN

2023, though this has happened throughout recent history and is still ongoing.

### WHERE

Myanmar, Indonesia, and across Southeast Asia

### WHO

🇲🇲 The Rohingya people, Indigenous to the Western Mekong Region/Myanmar, who have been historically discriminated against and forcefully displaced from their homelands; the situation has significantly worsened over the past decade.

### WHY/WHAT

🗣️ Recently, there has been a general uptick in anti-Rohingya sentiment online, perpetuated by hateful online campaigns, doxxing/smear campaigns, online sexual/misogynistic abuse, and a lack of regulation by both government authorities and social media corporations alike.

### HOW

⚠️ How Digital Dictatorship has caused the violation of Rohingya human rights:

🗣️ Pro-government groups and individuals have colluded with various digital dictatorship entities (e.g. social media corporations, such as Facebook) to spread and perpetuate racist and xenophobic hate online, often also integrated with misogyny, Islamophobia (particularly in Myanmar), homophobia, and other hateful rhetoric. Recently, the Rohingya people have been at the receiving end of a lot of this abuse, enabled by the Myanmar and Indonesian authorities.

🗣️ Hateful rhetoric is often spread online for the purpose of causing the masses to fear these marginalised groups based on harmful stereotypes, to make the masses easier to divide and control by the authorities. This deeply harms the marginalised groups by threatening their dignity, safety, and other human rights, and causing their continued displacement.



OHCHR, *Myanmar: Social media companies must stand up to junta's online terror campaign, say UN experts*, (13 March 2023), available at: <https://www.ohchr.org/en/press-releases/2023/03/myanmar-social-media-companies-must-stand-juntas-online-terror-campaign-say>

The Guardian, *The online hate campaign turning Indonesians against Rohingya refugees*, (18 January 2024), available at: <https://www.theguardian.com/world/2024/jan/18/the-online-hate-campaign-turning-indonesians-against-rohingya-refugees>.

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.

## 5.3 Access to Effective Remedy: Weak Before the Coup, Non-Existent Since Then

Myanmar's judicial system was flawed before the 2021 coup. The dominant influence of the Burmese military was constant, whether after the 1962 coup d'état, with the prosecution and imprisonment of lawyers considered political for having defended justice, or during the attempted democratic transition, when a few reforms became possible.<sup>127</sup> After 2021, there was a setback compared to the few previous successes. The 2008 Constitution, introduced by the military, allows the military to take over the reins of the country in an emergency situation for an initial period of one year, with the possibility of two extensions of six months each. According to the 2008 Constitution, during this emergency period, the military can assume all government responsibilities, giving the head of the ruling military council, General Min Aung Hlaing, legislative, judicial and executive powers. However, the junta-run National Defence Security Council has authorised the military to extend the so-called emergency period, marking multiple extensions since then. The Council justifies this decision by arguing that the country remains in an abnormal situation.<sup>128</sup>

Before the coup, the right to a fair and public trial and due process rights were often violated in Myanmar, particularly in cases of freedom of expression.<sup>129</sup> Trials concerning online activity were often filled with procedural mistakes and lacked tested and reliable evidence.<sup>130</sup> The denial of bail was prevalent in politically motivated arrests and detention. For example, in June 2019, Min Htin Ko Ko Gyi, who was sued under Article 66(d) of the 2013 Telecommunication Act and also charged under Article 505(a) of the Criminal Code for a series of Facebook posts, was denied bail despite undergoing

liver cancer treatment.<sup>131</sup> However, individuals had the option to file a complaint against an injurious decision with the Myanmar National Human Rights Commission (MNHRC), which theoretically had the authority to conduct presumed independent inquiries under the civilian government.<sup>132</sup> However, the protection provided under MNHRC's mandate was inadequate. Civil society organisations criticised the Commission's ability to promote and protect human rights, especially due to its failure to take prompt action and publicly defend two Reuters journalists who reported on the situation of Rohingya in Rakhine State.<sup>133</sup> The two reporters were charged under 1923 Official Secrets Act for accessing "illegally acquired information with the intention to share it with foreign [online] media." Owing to its inability to operate as an independent and effective non-judicial grievance mechanism, MNHRC was accredited "B" by the Global Alliance of National Human Rights Institutions.<sup>135</sup>

Numerous initiatives have been taken since 2021, leading to a deterioration in respect for the law and independent justice in Myanmar, such as launching investigations without any information on the case, inadequately documenting searches by the police, and the lack of clarity regarding the existence of arrest warrants.<sup>136</sup> Indeed, the now junta-run MNHRC has been stripped further of its proper functioning, having done nothing to address widespread and systematic human rights violations in the country.<sup>137</sup> Among the most significant is the military's suspension of the writ of habeas corpus under the 2008 Constitution. The 2008 Constitution allows for the immediate suspension of the writ of habeas corpus and the rule of law as soon as a state of emergency is declared (article 381). At the same time, it authorises the restriction or even revocation of certain fundamental rights, while guaranteeing the military junta's impunity (article 432). As a result, the suspension of the writ of habeas corpus is used to legitimise illegal detentions, torture and other forms of ill-treatment, as well as enforced disappearances.<sup>138</sup> Photographer and anti-junta activist Aye Kyaw was

found dead in custody after his arrest in July 2022. The military junta had arrested him on charges of storing weapons in his home, although no weapons were found. The activist's family was informed of his death by a hospital ten hours after his arrest. A member of a charity funeral service, who was involved in transporting the body from the hospital to a religious centre, said: "We did not observe any superficial wounds on the body, but I noticed that his chest was largely sutured, as in a post-mortem operation". This hastily closed wound supports the theory of a particularly violent interrogation that may have crossed the line, followed by a subsequent attempt at concealment. A hospital resident said that the lack of external injuries suggested that Aye Kyaw had died as a result of extreme torture. Sadly, Aye Kyaw is not the first to lose his life in this way. Indeed, the modus operandi is very reminiscent of that of Soe Naing, who died as a result of injuries sustained during interrogation in December 2021, with those responsible also attempting to conceal their crime by leaving his body outside a hospital. It is crucial to note that the military instructed the journalist's family not to share any details about his death or burial on Facebook.<sup>139</sup>

Before the coup, criminal trials were held in civil courts. They were supposed to comply with the regulations set out in the Constitution, Courts Manual, Evidence Act, Union Judiciary Law, and case law. The courts followed these regulations, at least to some extent.<sup>140</sup> Since the coup, by setting up courts within the prisons to try those arbitrarily arrested after the coup, the State Administration Council (SAC) has destroyed all forms of due process, including by preventing observers from attending the hearings. Each district court set up within the prisons is headed by a single judge. Forced to handle a number of cases well beyond their capacity, with more than 100 cases a day, these judges are also faced with a case overload. Moreover, physical evidence is rarely presented in court, while electronic evidence is generally used as it is, without going through the junta-run Criminal

Investigation Department, which is supposedly responsible for extracting credible evidence.<sup>141</sup> This situation means that those arbitrarily detained are further denied from exercising their fundamental rights to a fair trial, including their right to challenge evidence. This is all the more alarming because, as we have seen, the military junta frequently uses posts on social media as evidence. At the same time, the SAC sets up military courts to try people. In Yangon and Mandalay Townships, regional military officials have been given full executive and judicial powers. The court is usually composed of three members of the military. In summary, both the few remaining civilian courts and the military courts are illegitimate, all entirely controlled by the military junta.<sup>142</sup>

Before the coup, defence lawyers were required to respect the rights and regulations set out in the Constitution, Courts Manual, Evidence Act, Anti-Corruption Law, and Union Judiciary Law. In practice, defence lawyers generally followed at least some of these rights and regulations. Since February 2021, the recent amendments to the Bar Council Act aim to control the legal profession by allowing the military to choose and appoint lawyers according to its preferences. On occasion, the military junta records lawyers without their knowledge and airs the footage on national media, falsely claiming adherence to fair trial principles. In addition, defence lawyers, if any, frequently find it difficult to challenge the evidence presented in court, because of the risk involved. Presenting contradictory evidence or simply opposing the junta raises the likelihood of lawyers facing arrest. As a result, there is almost a 100% conviction rate, and the most severe sentence is almost always imposed on the person found guilty.<sup>143</sup> The few courageous defence lawyers who persist in practising their profession justly are subjected to continuous harassment by the military junta and, to some extent, face severe persecution. For instance, lawyer Ywet Nu Aung was arrested and sentenced in December 2022 in a junta-controlled court to 15 years' imprisonment with hard labour, after being

found guilty of violating Myanmar's anti-terrorism law. She was defending Dr. Zaw Myint Maung, Regional Vice-Chairman of the National League for Democracy (NLD), as well as Win Mya Mya and Swe Win, Regional Vice-Chairman and Editor-in-Chief of Myanmar Now respectively. All were fiercely opposed to the military junta.<sup>144</sup>

Finally, Myanmar has never had an anti-SLAPP regime or any laws dedicated to protecting whistleblowers or HRDs. Be that as it may, given that there is no rule of law under the rule of SAC, any legal framework created to this end would be far from reliable to guarantee access to remedy for human rights abuses.<sup>145</sup>



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DEFAMATION

# PHILIPPINES



# 6. The Philippines

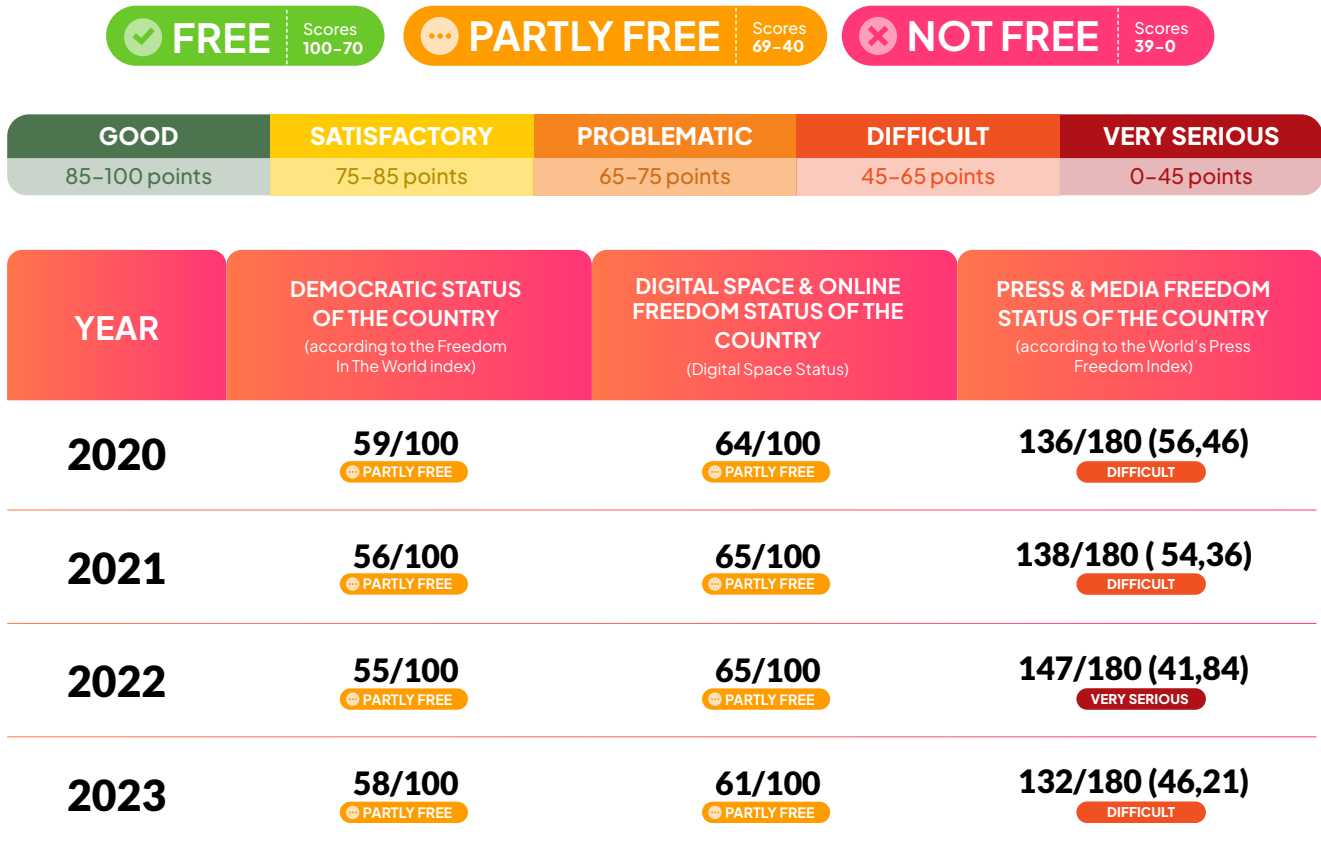


Fig. 6.1: Summary of freedom ratings for the Philippines, 2020-2023.<sup>1</sup>

## 6.1 Legal Framework

### Freedom of Expression is Guaranteed but Illegitimately Restricted: The 1987 Constitution

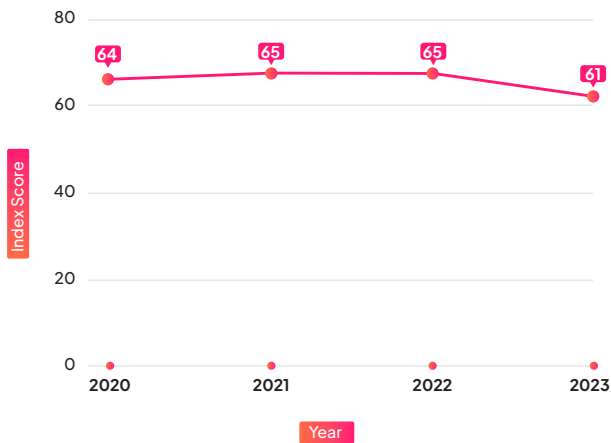
In The Philippines, the 1987 Constitution provides for freedom of expression.<sup>2</sup> Section 4, Article III states that “[n]o law shall be passed abridging the freedom of speech, of expression or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.” According to one of the drafters of the Philippine Constitution, the provisions on speech, expression, and press encompass various forms of communication, including oral, written, recorded, symbolic, and even

peaceful picketing. These provisions serve two main purposes: firstly, they prohibit prior restraint, meaning government restrictions before publication or dissemination, and secondly, they prohibit subsequent punishment that excessively curtails expression.

Exceptions to the rule against prior restraint are recognised in cases involving sensitive information during wartime, obscene publications, incitement to violence, or attempts to overthrow orderly governments by force.<sup>3</sup> However, any system of prior restraint is met with significant scepticism regarding its constitutional validity.<sup>4</sup> On the other hand, the rule against subsequent punishment is subject to exceptions determined by courts when the right to free speech conflicts with other government interests.

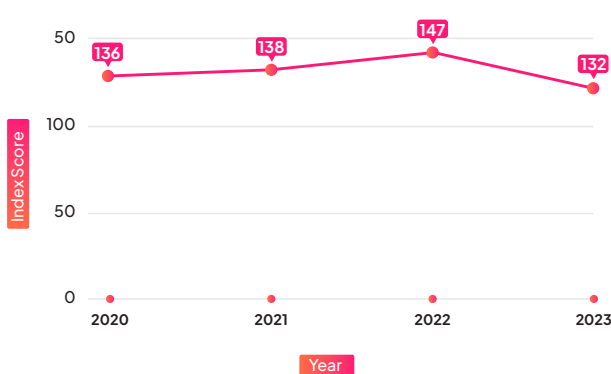
In both cases, courts may apply tests such as the ‘clear and present danger’ or ‘dangerous tendency’ to justify restrictions on free speech or conduct a ‘balancing of interests’.<sup>5</sup> Additionally, the courts utilise the O’Brien Test to differentiate between content-based and content-neutral legislation. However, this commitment to preserving human rights and safeguarding the freedom of speech and expression is not supported by real practice, especially since former President Rodrigo Duterte assumed office in 2016. Certain practices and laws undermine the protection of free expression enshrined in the Constitution.

**Democratic Status (Freedom In The World): The Philippines**



Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

**Media & Press Freedom Status (World Press Freedom Index): The Philippines**



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Fig. 6.2: Digital Space & Online Freedom Status (Freedom on The Net) and Media & Press Freedom (World Press Freedom Index) Ratings for the Philippines over the years, 2020-2023.

**Criminalisation of Defamation: RPC, 2012 Cybercrime Act, and the House Bill No. 1769**

Defamation is defined as the “publication of anything which is injurious to the good name or reputation of another or tends to bring him into disrepute.”<sup>6</sup> Article 353 of the Revised Penal Code (RPC) defines libel as “a public and malicious imputation of a crime, vice or defect, real or imaginary; or any act, omission or circumstance tending to cause the dishonour, discredit or contempt of a natural or juridical person, or to blacken the memory of a dead.”<sup>7</sup> It may be committed by means of writing, printing, radio, or similar means, while slander is defamation committed by oral means.<sup>8</sup>

For a statement to be considered libellous, it must fulfil the cumulative requirements of (1) being defamatory; (2) containing an element of malice; (3) being published; and (4) being made against an identifiable person.<sup>9</sup> Article 358 of the RPC states that slander or oral defamation is punishable by arresto mayor in its maximum term of six months to prisión correccional or a fine not exceeding PHP 200 (\$3). On the other hand, Article 355 states that libel is “punishable by prisión correccional in its minimum and medium periods or a fine ranging from PHP 200 to 6,000, or both, in addition to the civil action which may be brought by the offended party.”<sup>10</sup>

The concept of online or cyber libel was introduced in Republic Act No. 10175, otherwise known as the 2012 Cybercrime Prevention Act (hereinafter, the Cybercrime Act).<sup>11</sup> Section 4(c)(4) of the Act defines cyber libel as “the unlawful or prohibited acts of libel as defined in Article 355 or the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.” In essence, the Cybercrime Act has a catch-all provision that makes all crimes in the Revised Penal Code a “cybercrime” if committed through a computer system. The penalty applicable to online libel is more severe than libel committed

outside of the digital space; it entails a maximum period of *prisión correccional*—which ranges from four years, two months and one day to six years—and a minimum period of *prisión mayor*, i.e. from six years and one day to eight years. The use of information and communications technology or infrastructure in the commission of the crime determines the severity of this penalty. As held by the Philippines Supreme Court in *Disini et al. v. The Secretary of Justice et al.*, “[by] using [the] technology in question, the offender often evades identification and is able to reach far more victims or cause greater harm.”<sup>12</sup>

“

*The criminalisation of journalists for libel impedes public interest reporting and is incompatible with the right to freedom of expression. Criminal libel law has no place in a democratic country and should be repealed.*<sup>14</sup>

- Irene Khan, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In 2013, the cyber libel provision within the Cybercrime Act had its constitutionality challenged by 15 groups of petitioners at the Philippines High Court. Two years later, the Supreme Court dismissed the challenges, ruling that the cyber libel provision, as well as most other provisions contained within the Act, were indeed constitutional.<sup>13</sup> The Supreme Court decision stirred controversy and has been contested by human rights advocates, who note that – much like the crime of offline defamation – penalties prescribed for cyber libel are overly broad, and could affect the right to freedom of expression and access to information.

Initiatives have been taken to push for the decriminalisation of libel. Representatives from the Makabayan Bloc in Congress, for instance, filed House Bill No. 1769, which includes the repeal of several provisions in the RPC. According to the authors of the bill, “the repeal of the libel law, without derogating the right of a person to enjoy privacy, dignity, good reputation and a peace of mind, will be a big step towards democracy in [the Philippines].”<sup>15</sup> The bill remains pending at the Committee on Revision of Laws. Moreover, newly elected senator Raffy Tulfo who was targeted by several libel cases, stated that one of his priority bills will deal with the decriminalisation of the act.<sup>16</sup> No such bill has been put forward to date by Tulfo and his position is that it is okay to decriminalise libel but it should only apply to practitioners from established news organisations who practise code of ethics and editorial standards.<sup>17</sup>

### **Sedition Under the RPC and Anti-Terror Law to Stifle Dissent**

Incitement to sedition is a crime under Article 142 of the RPC. It penalises those who “incite others ... by means of speeches, proclamations, emblems, cartoons, banners or other representations.”<sup>18</sup> Article 154 penalises a range of online speech categories, notably “any person who by means of printing, lithography, or any other means of publication shall publish or cause to be published as news any false news which may endanger the public order, or cause

damage to the interest or credit of the State.”<sup>19</sup> Convicted persons may face prison terms varying from one month and one day, to six months, or be fined between PHP 200 to 1,000 (\$3 to \$18). These penalties apply to online incitement.<sup>20</sup>

During the 18th Congress from July 2019 to 2022, several bills were introduced to empower authorities to issue content takedown orders, “rectify” false or misleading content, or to block websites, without judicial oversight and procedural safeguards.<sup>21</sup> At the height of the COVID-19 pandemic, the 2020 Anti-Terrorism Act was passed by the legislature and was signed into law in July 2020.<sup>22</sup> Section 9 of the Act criminalises incitement of terrorism, which is broadly defined as any incitement of the execution of terrorism by a person not taking any direct part in the commission of such terrorism. Prohibited incitement could be in the form of speeches, proclamations, writings, and other representations. Those found guilty could be sentenced for up to 12 years. In addition, suspected terrorists can be detained for up to 14 days without a warrant or being charged, a term which may be extended for another 10 days in some cases. The constitutionality of the 2020 Anti-Terrorism Act has been challenged through 37 petitions lodged by various groups and sectors.<sup>23</sup> Civil society has raised alarm regarding the Act’s broad scope, and its potential to be used by state authorities as yet another tool to target critics and stifle free expression. One of the common themes of the petitions was threats to freedom of speech arising from many provisions under the law, including that of incitement of terrorism. Even prior to its signing into law, the Act was heavily criticised by civil society groups, which called for its revocation.<sup>24</sup>

“

*The Anti-Terror Bill disproportionately expands the State’s surveillance powers by providing longer periods of permissible surveillance and by creating new grounds therefore, while giving the government a wide berth when deciding who may be considered legitimate targets of this extreme form of privacy intrusion. At the same time, it deprives people who have been wrongfully detained [of] means of redress and reduces the powers of the Commission on Human Rights as an effective foil against potential abuses of the law. These proposals clearly violate the people’s constitutional right to communications privacy and do not adhere to international human rights standards.*

- Lisa Garcia, Executive Director of the Foundation for Media Alternatives

## Crackdown on Freedom of Expression on Grounds of Combating False Information: Introducing the Anti-False Content Bill

During the 18th Congress from July 2019 to 2022, several bills were introduced to empower authorities to issue content takedown orders, “rectify” false or misleading content, or to block websites without judicial oversight and procedural safeguards.<sup>25</sup> One of them, known as the Anti-False Content bill, prescribed offences which could be penalised by up to 20 years’ imprisonment and a maximum fine of PHP 1 million (\$20,000).<sup>26</sup> Among other things, the bill prohibits the posting on one’s personal account, or on a “fictitious” or anonymous website, of content known or believed to contain “information that is false or that would tend to mislead the public.” The provision of services or funds to assist in the creation or publication of such content is likewise penalised.<sup>27</sup>

## SIM Card Registration Act: Threatening the Right to Free Expression, Especially for the Most Vulnerable

On Oct. 10, 2022, President Marcos Jr. signed the SIM Card Registration Act into law. The Act obliges all persons to register their SIM cards using their identification details and sign up for social media accounts using their real names.<sup>28</sup> The deadline was originally Apr. 26, 2023, but the government extended it to Jul. 25 just one day before that. While the law is intended to curb the problem of online scams, human rights observers have expressed concerns that data collected under the law could be used to further persecute perceived state enemies, including journalists and human rights defenders.<sup>29</sup> Requiring people to register their SIM cards can also contribute to the digital divide and it creates an additional step in acquiring a mobile connection. This can pose a challenge, particularly for people who already face barriers to accessing mobile networks, such as those in rural or remote areas with limited infrastructure.<sup>30</sup>

“

*The threat of [farmers, fisherfolk, and people in the countryside] losing their access to their SIM and other social media is a direct attack [on] their right to be heard, be informed and communicate.*

- Danilo Ramos, Chairperson of Kilusang Magbubukid ng Pilipinas

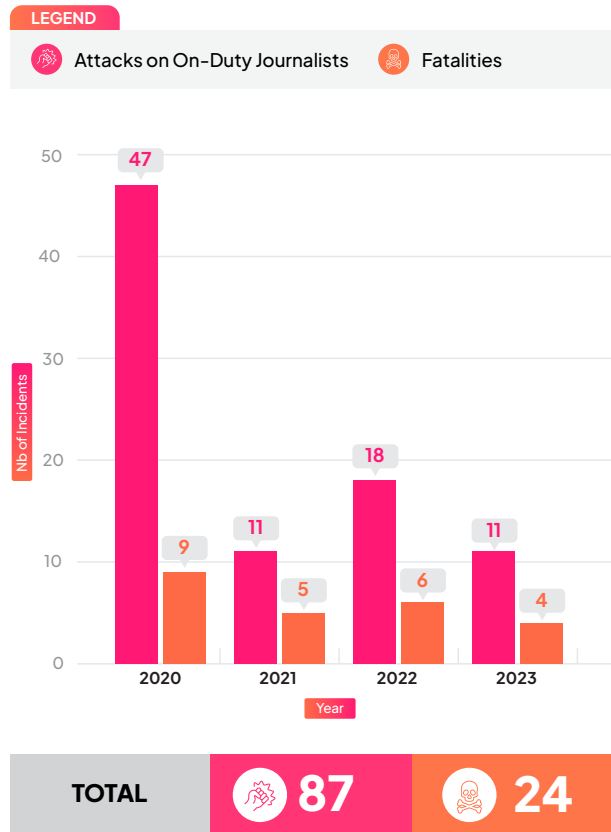


## 6.2 Challenges and Cases

The Philippines is ranked “partly free” in the Freedom of the Net Index with an aggregate score of 65 in 2021 and 2022. It placed 147th out of 180 countries in the World Press Freedom Index 2022 with a score of 41.84 and occupies position 132 in 2023, with a score of 46.21.<sup>32</sup> The Philippines is also one of the most unsafe countries in the world for journalists to conduct their work.<sup>33</sup>

### Attacks on On-Duty Journalists

PHILIPPINES



The Armed Conflict Location & Event Data Project (ACLED), *Disorder Involving the Media*, (n.d.), available at: <https://acleddata.com/data-export-tool/>

Fig. 6.3A: Attacks on On-Duty Journalists in the Philippines, 2020-2023.

## Struggles, Legislation, and Repression in The Philippines (2020–2023)



**LEGEND:**

⚠️ : Alleged offense + (articles/provisions invoked against the individual)  
 - "Unknown": Either information is not available or no articles/provisions have been cited by the judiciary

👮 : Legal and extralegal consequences  
 - "Status Unknown": Current status of the individual is unknown (detained, convicted, deceased, etc).

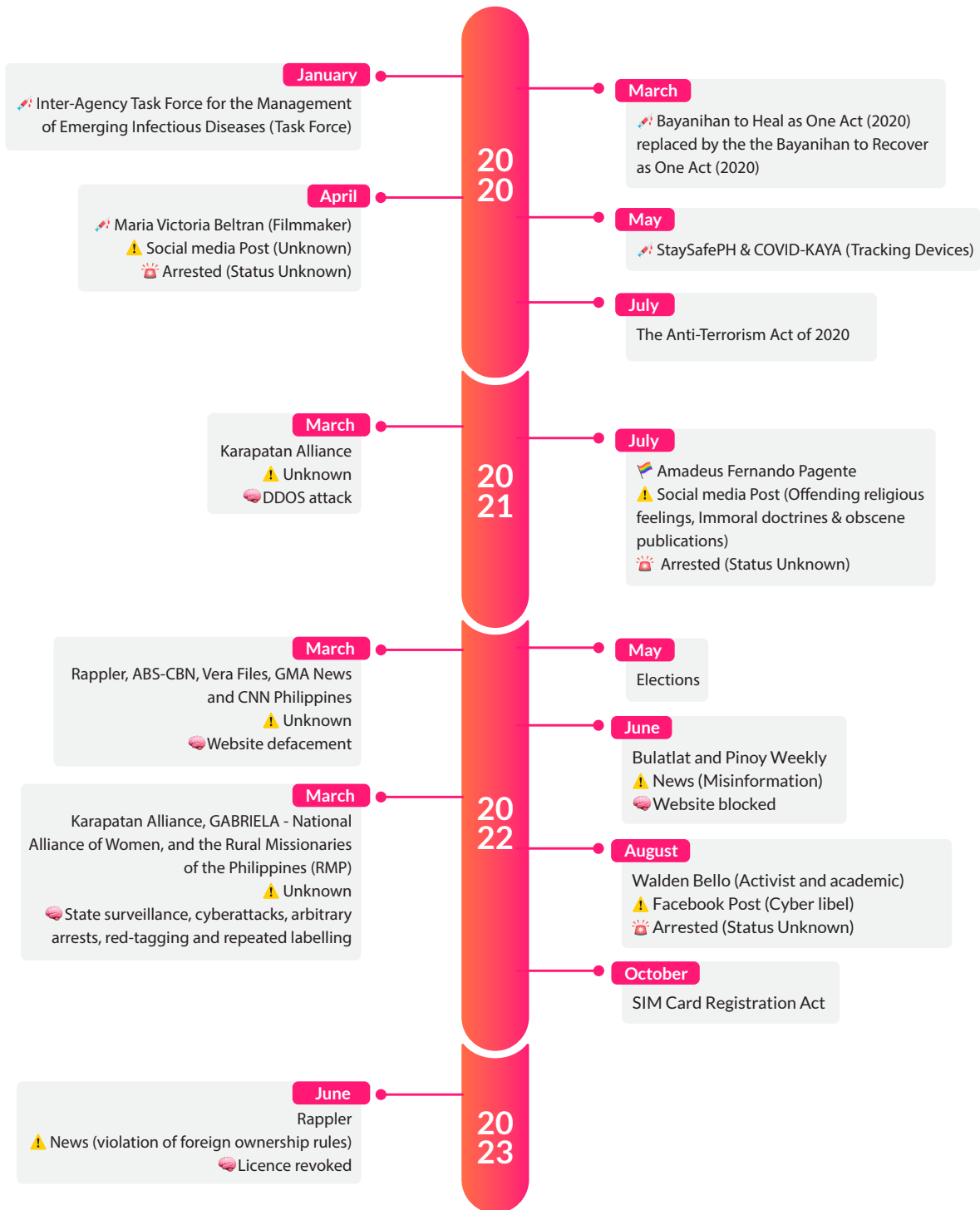


Fig. 6.4A: Summary timeline for the Philippines, 2020-2023





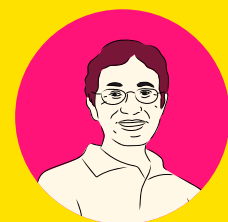
| Country   | Event  | Contextualisation  |
|---|--|--|
| <br><b>THE PHILIPPINES</b> |  SIM Card Registration Act (2022) | This law requires all SIM card users to register their personal details, including name, address and identity card number, with telecoms operators   |
|   |  The Anti-Terrorism Act of 2020   | It grants the government broader powers to prevent and combat terrorism, including the authority to conduct warrantless arrests and detain suspects for an extended period without judicial warrant, allowing the designation of individuals or groups as terrorists without due process and grants authorities the power to conduct surveillance.                     |
|   |  Elections (2022)                 | Ferdinand Marcos Jr., commonly known as Bongbong Marcos, emerged victorious in the presidential election in the Philippines. The son of the late former President Ferdinand Marcos, who ruled the country as a dictator for over two decades, Marcos Jr.'s win has sparked discussions and reactions given the historical context associated with his family's regime. |

Fig. 6.4B: Contextualisation for the Philippines' timeline, 2020-2023

## Philippines' Cyber Libel Law: Invoked to Silence Journalists, Bloggers, and Netizens

### THE OBSESSION TO SILENCE MARIA RESSA

One landmark case of cyber libel in the country is that of Rappler Executive Director Maria Ressa and researcher-writer Reynaldo Santos Jr. The Manila Regional Trial Court found Maria Ressa and Reynaldo Santos guilty of violating the Cybercrime Act in June 2020 over a Rappler article which the latter wrote on the links of the chief justice Renato Corona to several business people, including Wilfredo Keng who filed the case.<sup>34</sup> It also contained a line suggesting that Wilfredo Keng had ties to drugs and human trafficking operations. The article was published in May 2012, a few months before the Cybercrime Act took effect in September. It was republished in February 2014 with corrected typographical errors. This latter revised version of the article was regarded as a republication of the story and became the basis of a separate offence charged against them by the Regional Trial Court.



**Maria Ressa**

The conviction of Maria Ressa and Reynaldo Santos brought into sharp relief the myriad human rights concerns arising from the Act. Among those concerns is the fact that Wilfredo Keng filed the case in 2017, almost five years following the publication of the original article and way beyond the one-year statute of limitations for libel under the RPC. The Cybercrime Act, conversely, is silent on the statute of limitations for this offence. In response to such a problem, the Department of Justice used Republic Act No. 3326 to extend the RPC libel statute of limitations from one to 12 years. This means that libel suits can be filed by any person within 12 years of the publication of an alleged libellous material. According to Atty. Marnie Tonson of the Philippine Internet Freedom Alliance (PIFA), since the Cybercrime Act was passed after the publication of the article in the Rappler case, the change in statute of limitations should not extend to that case. The National Bureau of Investigation, however, claimed that the article is subject to the theory of “continuous publication,” which assumed that Wilfredo Keng discovered the story about him only after the law had been passed.<sup>35</sup> The conviction against Maria Ressa and Reynaldo Santos was upheld on appeal in July 2022. The Court of Appeals additionally sentenced both to longer sentences, adding eight months and 20 days.<sup>36</sup>

In February 2020, Wilfredo Keng filed a second cyber libel lawsuit against Maria Ressa over a social media post she had made earlier that month, which included screenshots of the 2002 Philippine Star article linking him to a murder case.<sup>37</sup> Subsequently, the case was withdrawn on June 1, 2021.

A third libel case was instituted against Maria Ressa and another Rappler reporter Rambo Talabong over an investigative story on an alleged corruption practice at a university. Responding to the case, Rappler’s legal counsel stated that “cyber libel is now the first option in case of disagreement on reporting.”<sup>38</sup> On Aug. 10, 2021, the Manila court dismissed the case after the complainant decided that he was no longer interested in pursuing the case.<sup>39</sup> Notably, this

dismissal closely follows the withdrawal of Wilfredo Keng’s second cyber lawsuit just 2 months before.

On top of the multiple spurious charges against Maria Ressa, both Ressa and Rappler have also been facing targeted tax evasion charges since a case was filed by the Duterte administration in 2018. However, in a consequential legal victory on Sept. 12, 2023, both were acquitted of the charges, ending four years and 10 months of the trial.<sup>40</sup> The weaponisation of tax evasion laws is one of the common tactics used by authoritative governments to crackdown on activists and dissidents, and suppressing freedom of expression.

“

*These ridiculous cases remind us all of the importance of independent journalism holding power to account.*<sup>41</sup>

- Maria Ressa, Executive Director of Rappler

Despite the repeated weaponisation of libel by various actors, the Supreme Court appears to have shown some inclination to decriminalise it. In 2019, for instance, it sustained the conviction of broadcaster journalist and current senator Raffy Tulfo arising from an article he had written for Abante Tonight, a local tabloid publication, in 2003. The Court nevertheless only ordered Raffy Tulfo to pay the imposed fine and overturned his prison sentence. In 2021, the Court proceeded to acquit Raffy Tulfo of all libel charges against him and held that the “constitutionality of criminali[s]ing libel is doubtful.” In its decision,

the Supreme Court also stated that “[t]he need to protect freedom of speech and of the press cannot be understated. These freedoms are the most pervasive and powerful vehicles of informing the government of the opinions, needs, and grievances of the public.”<sup>42</sup>

## Media is Under High Pressure

In a concerted effort to repress media work in the country, on June 28, 2022, the Philippine Securities and Exchange Commission ordered the revocation of Rappler’s operating licence over an alleged violation of foreign ownership rules.<sup>43</sup> Rappler had also been the subject of a tax probe by the Duterte administration in early 2018 on similar foreign ownership allegations, which led to the online news outlet and its head Maria Ressa being indicted on tax evasion and failure to file tax returns charges later that year.<sup>44</sup> On Jan. 18, 2023, after more than four years of trial, Ressa and Rappler were acquitted by the Philippines’ Court of Tax Appeals, leaving her and Rappler with three remaining defamation and tax cases related to their activities.<sup>45</sup>

“  
Throughout the six years of the Duterte administration, we have seen lawsuits and regulatory processes used as tools to muzzle the press and these, as much as the touted infrastructure projects, form part of the Duterte legacy.”<sup>46</sup>

- Written statement on the Rappler shutdown by the National Union of Journalists of the Philippines (NUJP)

Aside from Rappler, other media outlets and activists have also been targeted by cyber libel cases. Since its enactment in 2012, 3,770 cyber libel cases have been filed.<sup>47</sup> As of May 2022, there were 12 convictions on the basis of cyber libel.<sup>48</sup> In a study published in June 2023 analysing at least 50 Filipino journalists who face libel charges, the National Union of Journalists in the Philippines (NUJP) stated that in 61% of the cases, local politicians are the ones filing cases against journalists—thus reinforcing the idea that freedom of expression is often infringed upon by political actors.<sup>49</sup>

On Aug. 8, 2022, social activist and academic Walden Bello was arrested on cyber libel charges. The charge came after he wrote in a Facebook post that Jefry Tupas, an ex-information officer for Vice President Sara Duterte, was involved in illegal drug use at a party raided by the Philippine Drug Enforcement Agency in November 2021. Walden Bello is an ardent critic of the late Ferdinand Marcos, father of sitting President Ferdinand Marcos Jr. and Duterte, in addition to being a well-reputed progressive voice in the country.<sup>50</sup>

In a previous case from February 2022, Pauleen Velasquez, a 31-year-old woman in General Santos City, was arrested during a joint operation carried out by several law enforcement units in the area.<sup>52</sup> A complaint was made against her for posting an allegedly libellous message on Facebook using a dummy account. She is now facing an imprisonment of prison mayor or a minimum fine of PHP 200,000 (\$3,522).<sup>52</sup>

## Online Attacks on Alternative and Mainstream Media

The past few years have also seen online attacks on both alternative and mainstream media sites.<sup>53</sup> In 2021, the human rights group Karapatan fell victim to sustained distributed denial of service (DDoS) attacks; a Swedish-based digital forensics nonprofit by the name of Qurium Media found that

the attacks were linked to the Department of Science and Technology of the Philippine military.<sup>54</sup> The Computer Emergency Response Team (CERT-PH) in the Department of Information and Communications Technology (DICT) also confirmed that an internet protocol address associated with cyberattacks against various alternative media outlets was linked to the Department of Science and Technology and the military.<sup>55</sup> The DICT stated that the allegations were “unfounded and patently false.”<sup>56</sup>

The news websites Rappler and ABS-CBN, as well as websites Vera Files, GMA News and CNN Philippines, have all experienced several technical attacks.<sup>57</sup> A hacking group called Pinoy Vendetta claimed responsibility for these attacks, as well as others conducted on websites of opposition senators, the Philippine Senate and left-leaning groups. A spokesperson of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC), Lorraine Badoy, praised the hackers for being able to put down websites of the political left. Despite this, the NTF-ELCAC and Pinoy Vendetta have both consistently denied collusion.<sup>58</sup> Lorraine Badoy has likewise accused Rappler of being “an ally and mouthpiece” of the Communist Party of the Philippines, New People’s Army and the National Democratic Front of the Philippines, in addition to stating that Facebook’s fact-checkers are “liars and unethical journalists” like Maria Ressa and Rappler.<sup>59</sup>

### Red-Tagging of Activists and Critics

In addition to lawsuits and cyberattacks, individuals in the country are targeted by state agencies through the creation of false narratives online. In January 2021, the Armed Forces of the Philippines (AFP) listed through a Facebook post several names of University of the Philippines alumni, claiming that they were joiners of the New People’s Army and had been killed or captured. The AFP has since taken down the post, but it has been circulated around by other Facebook pages. In a statement, the NUJP underscored that the AFP was motivated to push

the narrative that the University of the Philippines is a “breeding ground” for enemies of the state.<sup>60</sup>

Journalists are among those who often get red-tagged publicly on social media. In April 2020, a photo of female journalists conducting a media safety training session from 2013 surfaced on several platforms. The photo’s caption claimed that one of the photographed women, who works with ABS-CBN broadcasting network, was involved in local communist groups.<sup>61</sup> In a different incident, the Butuan City police posted a photo that named several organisations as communist groups on Facebook, while other law enforcement authorities in the city of Baguio accused a handful of left-wing groups of being terrorists on Twitter.<sup>62</sup> Under the Duterte administration, red-tagging was a common form of harassment and intimidation, and it appears to continue under the current president, Ferdinand Marcos Jr. Red-tagging is especially dangerous for Indigenous activists because, having already reduced visibility, red-tagging further marginalised Indigenous peoples by labelling them as terrorists or communists. However, red-tagging can happen to anyone part of the opposition and, perhaps its most dangerous trait is that it often is a precursor for violent attacks.<sup>63</sup> There was hope for improvement in 2022 when the now ex-National Security Advisor, Clarita Carlos, declared she would want to stop this oppressive tactic.<sup>64</sup> That quickly changed only seven months into her role, when, in her own words, was forced out by other “forces.”<sup>65</sup> She was replaced by retired general Eduardo Año, who did not address the red-tagging issue so far. This is even more concerning because he is allegedly involved in the abduction of activist Jonas Burgos in April 2007 who has officially been ruled as an enforced disappearance authored by the military, and was also chief-of-staff of the Armed Forces of Philippines during Duterte’s authoritarian regime.<sup>66</sup>

“

*Red-tagging is a dangerous weapon used to stifle dissent and silence voices of truth. It undermines the very fabric of democracy, casting a shadow of fear and intimidation over those who dare to speak out for justice and equality.*

-Anonymous

National Security Adviser Hermogenes Esperon Jr. also initiated a perjury case against three human rights groups in July 2019: Karapatan, GABRIELA (National Alliance of Women), and the Rural Missionaries of the Philippines (RMP) in retaliation to a protection order from government threats and harassment filed by the groups at the Supreme Court. In June 2022, the trial in their case began, which prompted international human rights organisations to call for its immediate suspension.<sup>67</sup> All three groups have been victims of state surveillance, cyberattacks, arbitrary arrests, red-tagging and repeated labelling in the past.<sup>68</sup>



*As we rejoice in the triumph of civil society groups Karapatan, GABRIELA, and RMP, who have been acquitted of the perjury charges levied against them, it is imperative that we maintain a vigilant stance. In the midst of 2023, there was a notable attempt to resurrect judicial harassment against ten Human Rights Defenders (HRDs) at a higher court, though the case was ultimately dismissed. This incident underscores the disconcerting trend of the government weaponizing the Anti-Terrorism Act (ATA) to stifle and persecute HRDs. The blatant misuse of the Anti Terror Law for suppressing and persecuting HRDs is alarming, and we urge the authorities to desist from such actions and refrain from causing further harm. The resilience of these individuals in the face of unfounded charges should serve as a testament to the importance of safeguarding the rights and freedoms of those dedicated to advocating for human rights. Despite the reprieve in this instance, it is crucial to remain watchful and proactive in defending against any future attempts to curtail the vital work of HRDs.*

– Cornelius Hanung, East Asia and ASEAN  
Programme Manager at FORUM-ASIA



## Online Content Manipulation & Restrictions

State authorities also block access to websites and online news outlets. On June 8, 2022, the National Telecommunications Commission (NTC) ordered the blocking of access to the independent news websites Bulatlat and Pinoy Weekly on accusations that they publish “misinformation” and support local terrorist organisations.<sup>69</sup> National Security Adviser Hermogenes Esperon Jr. said that the order was issued pursuant to the Anti-Terrorism Act, citing provisions on incitement of and recruiting to commit terrorism. The blocking of these sites was condemned by the NUJP, who stated that it “leaves a gap in discourse and in the flow of information and highlights the threat posed by the Anti-Terrorism Law on freedom of expression and on freedom of the press.”<sup>70</sup>

“

***[T]he journalism community and the communities that we report about and must stand together against government moves to harass, restrict and silence any of us to keep the press free for all of us.***<sup>71</sup>

- Anonymous (NUJP)

Bulatlat, one of the websites subject to the order, filed a civil lawsuit at the Quezon City Trial Court seeking the issuance of a temporary restraining order and/or a writ of preliminary injunction on the NTC memorandum.<sup>72</sup> In August 2022, the Court ordered the NTC to cease access blocking and granted the independent media group’s application for an injunction.<sup>73</sup> The NTC, however, did not immediately execute the order, prompting Bulatlat’s managing company, Alipato Media, to file an indirect contempt petition against the NTC to compel implementation of the order.<sup>74</sup>

The disruption of online expression is furthermore conducted by changing public narratives about sensitive political issues. During the May 2022 election period, politicians and political parties coordinated harassment campaigns to delegitimise critics and the media.<sup>75</sup>

In the research project conducted by Digital Public Pulse (DPP), researchers identified several indicators of “networked political manipulation” on social media, including influential accounts taken down before analysis, obscure accounts widely shared, supposedly non-political pages sharing significant political content, and inflammatory attacks on politicians and media.<sup>76</sup> These accounts, termed “anti-democratic” actors, contribute to the influence of politicians on social media without being covered by election-related policies. Their freedom to spread partisan content without identity disclosure shields them from scrutiny. Platforms address such manipulation differently, with Facebook and YouTube conducting takedowns for coordinated inauthentic behaviour or influence operations, while Twitter handles it under its platform manipulation policy.

Further, requests to limit access to or remove content were reported by tech companies. Meta restricted access to 13 items on Facebook in 2020, one of which was based on a “private report of defamation” and to 25 items in 2021 on Facebook and Instagram.<sup>77</sup> Between January and June 2022,

the platform received 51 requests to restrict access to the two social media platforms and complied with 37 of them. They received 101 requests in the second half of 2022. There was a peak in requests in the first half of 2023, with 5,240 cases in total. Google reported 12 removal requests in 2020 and 81 in 2021, with a 43.7% compliance rate in the second half of 2021. We observe 62 requests for 2022. Like many other countries in Southeast Asia, there is a peak in 2023 with 66 requests only from January to June.<sup>78</sup> Throughout 2020, Twitter received 13 requests to remove content on 36 accounts and complied with a little over 60% of them.<sup>79</sup> A social media platform that did not record any requests to limit access or remove content between 2019 and 2022 was TikTok; however, in 2023, seven government requests to remove or restrict content or accounts were reportedly sent to the platform.<sup>80</sup> Further, according to data from the SurfShark website, the Philippines has had a total of 584 account data requests from Apple, Google, Meta, and Microsoft between 2013 and 2021.<sup>81</sup>

The legal response to the blocking of Bulatlat, including a civil lawsuit and court orders against the National Telecommunications Commission (NTC), reflects media organisations' efforts to challenge online expression restrictions. This shows the ongoing struggle between independent media and state authorities attempting to control the narrative, particularly in politically sensitive matters.

This also highlights how politicians and parties orchestrated harassment campaigns during the May 2022 election, undermining critics and the media. Exposing a broader pattern of manipulating public discourse during crucial moments, emphasising challenges to freedom of expression and the media's role in democracy. Finally, data on content restriction requests from tech giants like Meta, Google, and Twitter offers a quantitative view of content moderation efforts, revealing evolving dynamics in online restrictions and the response of major platforms to government demands.



## PANDEMIC POLITICS: COVID-19 IMPACT ON ONLINE FREEDOM

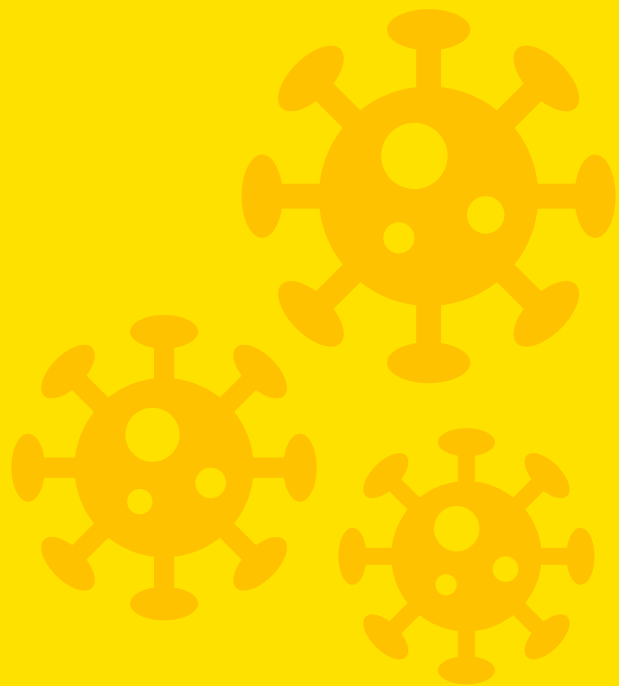
In light of the COVID-19 pandemic, the Philippine Government enacted RA No. 11469 in March 2020. Also known as the Bayanihan to Heal as One Act, the legislation grants the president additional authority to further criminalise online expression. The law passed determined several media and civil society groups to warn about the serious danger it poses to freedom of expression, mainly due to its failure to define false information.<sup>82</sup> Although Section 6(f) of the Act expired in June 2020, at the time it penalised individuals and groups for the creation, perpetuation and spreading of ‘false information’ about the pandemic on social media and other platforms—especially if said information is clearly promoting “chaos, panic, anarchy, fear or confusion.”<sup>83</sup> Those found guilty could serve up to two months prison time, as well as be fined with sums ranging from PHP 10,000 (\$208) to 1 million pesos (\$20,755), or both.

The Bayanihan to Heal as One Act expired in Jun. 2020 and was subsequently replaced in September 2020 by RA No. 11494, also known as the Bayanihan to Recover as One Act.<sup>84</sup> However, the provision in the original law regarding the penalisation of those who spread false information was not renewed.<sup>85</sup>

The government attempted to dictate the narrative around the COVID-19 pandemic and, in doing so, restricting online freedom. Individuals were reportedly forced by authorities to publicly apologise for posting critical content on social media.<sup>86</sup> There were also instances

when agencies ordered employees to refrain from making public critical comments on social media.<sup>87</sup> As a result, the Philippines witnessed an increase in online and media censorship.

In April 2020, filmmaker Maria Victoria Beltran was threatened with arrest and was eventually detained after she made a satirical social media post calling Sitio Zapatera in Cebu the nucleus of COVID-19.<sup>88</sup> During the same month, an editor of a university campus newspaper was threatened with the charge of cyber libel after he criticised on social media the Government’s response to COVID-19. Joshua Molo was then forced to publicly apologise.<sup>89</sup>

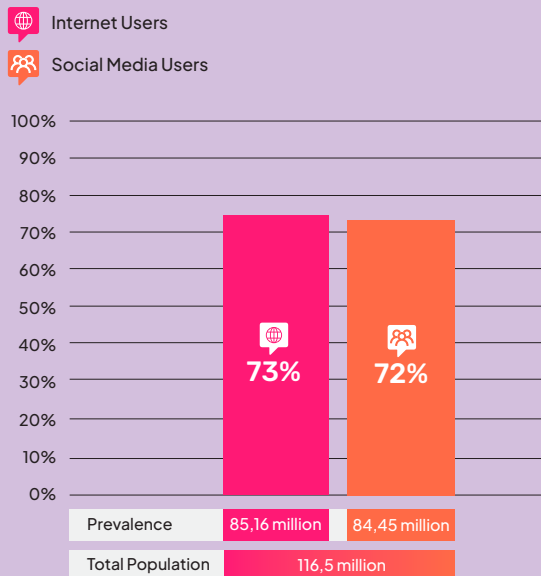




## INTERSECTIONAL GENDER ANALYSIS: ONLINE GENDER BASED VIOLENCE IN THE PHILIPPINES

The Philippines maintains its position as the leading social media user in the Asia Pacific region for the year 2023, with an average daily usage of 3 hours and 38 minutes per individual.<sup>90</sup> While this extensive digital engagement might suggest a thriving online environment, it's essential to recognise that the sheer volume of activity does not necessarily translate to stringent adherence to laws and regulations by authorities.

### The Philippines Percentage of Internet and Social Media Users



DataReportal, *Digital 2023, Philippines*, (9 february 2023), available at : <https://datareportal.com/reports/digital-2023-philippines>

Fig. 6.3B: Percentage of Internet and Social Media Users in the Philippines, 2023.

Despite the widespread use of social media, concerns persist regarding the effective implementation and enforcement of existing laws and regulations. The extensive online presence and the dynamic nature of digital interactions underscore the need for continuous scrutiny and refinement of legal frameworks to ensure the protection and rights of internet users in the Philippines.

Circumstances or cases wherein women in the Philippines, and those with intersecting identities, find themselves subjected to distinct forms of harassment. The venom of misogynistic comments and gender-based violence disproportionately targets them. Gender-based violence (GBV) facilitated by technology (called Technologically-Facilitated Gender Based Violence, TF GBV), includes acts committed, aided, intensified, or amplified through information communication technologies or other digital tools. This extends further as LGBTIQ+ individuals and ethnic minorities encounter compounded forms of online victimisation.<sup>91</sup> TF GBV are frequently disregarded because they do not involve direct physical harm. However, they result in a variety of harms and violations of rights and freedoms, encompassing physical, sexual, psychological, economic, social, and political consequences.<sup>92</sup>

In 2023, a 55-year-old widow from Nueva Ecija, faced extortion, with a man threatening to disseminate her intimate images unless she paid 3,000 pesos.<sup>93</sup> The perpetrator, now apprehended,

had no real connection with the victim-survivor; he found the images on a pornography site that included her personal information. In Caloocan City, a woman reported her ex-partner sharing her intimate images with friends after their breakup.<sup>94</sup> The 31-year-old man, upset about the relationship ending, demanded a meeting for deletion. Angeles City, Pampanga, witnessed a similar case where an offender sought sex in exchange for not publishing his former partner's intimate videos.<sup>95</sup>

According to the 2023 ground mid-year report by Foundation for Media Alternatives, from January to June 2023, FMA documented 27 cases of Online Gender-Based Violence (OGBV), a 15% decrease from the previous year. The primary forms include non-consensual sharing of intimate content (81%), threats or blackmail (44%), and physical or sexual abuse (19%). Other offences include spying or surveillance (11%), harassment (7%), and control of accounts or information (4%). The National Capital Region reported the most cases (15), followed by Central Luzon (4) and CALABARZON (2). Victims are predominantly women and girls, with 40% below 18 years old, and perpetrators, all men or boys, have known relations with 76% having connections to the victims, ranging from partners to family, friends, or acquaintances.

These compellingly refutes the prevailing misconception that technology-facilitated sexual violence has minimal impact on women's lives. Contrary to this perception, Online Gender-Based Violence (OGBV), much like offline GBV, ruthlessly exploits people marginalised based on gender and LGBTIQ+ identity, exacerbating the marginalisation already faced by these communities. The stories vividly illustrate the pervasive and profound consequences of TF

GBV, challenging assumptions and underscoring the urgent need for comprehensive interventions to address the multifaceted dimensions of gender-based violence in the online realm.

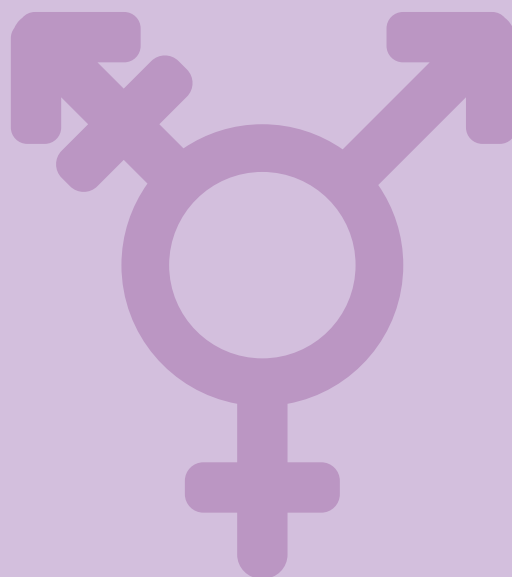
In the LGBTIQ+ community, the reality is that they still face challenges expressing themselves freely on social media due to pervasive criticism and discrimination. Despite advancements in recognising and affirming LGBTIQ+ rights, many individuals within this community still encounter prejudice, bias, and derogatory comments when sharing their experiences, opinions, or personal stories on various social media platforms. Pura Luka, also known as Amadeus Fernando Pagente, a LGBTIQ+ (non-binary identifying) Philippine drag artist, has been charged with six counts of violating Article 133 (offending religious feelings) and Sections (2)(B)(3) and (2)(B)(5) of Article 201 (immoral doctrines and obscene publications) of the Revised Penal Code, in connection with Section 6 of Republic Act 10175, the Cybercrime Prevention Act of 2012, simply for their artistry.<sup>96</sup> This arose after Pura Luka uploaded a series of videos posted on social media, including their controversial "Ama Namin" performance.<sup>97</sup> This is just one of many under-reported cases of online discrimination and violence against the LGBTIQ+ community in the Philippines.

The practice of actively exercising one's political rights is also heightened for women and LGBTIQ+ individuals in the Philippines. During the National elections in 2022, Aika Robredo, one of the daughters of Former Vice President Leni Robredo who is running for Presidential position was not exempted from experiencing TF GBV. Social media and the Google search engine were suddenly inundated with links to an alleged sex video purportedly involving Aika

Robredo, the eldest daughter of the Vice President.<sup>98</sup> Here, the Commission on Human Rights has maintained its position to condemn practices that debase, objectify, and treat women and their bodies as instruments of entertainment and tools for political mudslinging amid campaign events.<sup>99</sup>

While there are policies and regulations in place, there must be a convergence in the formulation of government policies. Thus, the need for data intricacy becomes evident. Gender-disaggregated data is not merely a statistic but a tool for nuanced understanding, a compass guiding policies to impact different groups equitably. An intersectional feminist approach calls for inclusive decision-making processes, ensuring that policies are crafted to address the nuanced needs and concerns of women with diverse identities. Aside from forming holistic policies in the Philippines, there is also a need to spearhead digital literacy and education for empowerment. This should include an intersectional approach that demands cultural sensitivity in educational programs, recognizing the diverse needs of women with various identities. It should go beyond imparting basic skills, but aiming to empower women and intersecting genders to engage critically with technology, challenging prevailing gender norms and stereotypes perpetuated online.

Overall, the above examples demonstrate the obstacles in the way for women and LGBTIQ+ communities to safely navigate the Philippine digital space. The narratives and information above will ideally call the community to action to recognize, understand, and dismantle the barriers that impede the full and equal participation of women with diverse identities in the digital evolution of the Philippines, as well as for the rest of the region.



# THE PHILIPPINES



## 2023 Political Overview

Congressional Presidential system in theory, semi-authoritarian regime in practice.

### Head of State, Head of Government

President Ferdinand 'Bongbong' R. Marcos Jr.



### Pura Luka Vega

Philippine nonbinary drag artist

## #FreePuraLuka

### 🏳️‍🌈❤️ CASE STUDY

**Identity-based violence, anti-LGBTQIA+ sentiment, and the weaponisation of religion** are tools often used to perpetuate **Digital Dictatorship**, such as in the case of this Philippine drag artist...

#### WHEN

2021–2023 (videos posted); early October 2023 (arrest)

#### WHERE

Manila, the Philippines

#### WHO

Pura Luka Vega (government name Amadeus Fernando Pagente), Philippine nonbinary drag artist 🏳️‍🌈❤️

#### WHY/WHAT

🏳️‍🌈❤️ Pura Luka posted a series of videos on social media of their drag shows. This was enough to have reports filed against them, and for them to be detained.

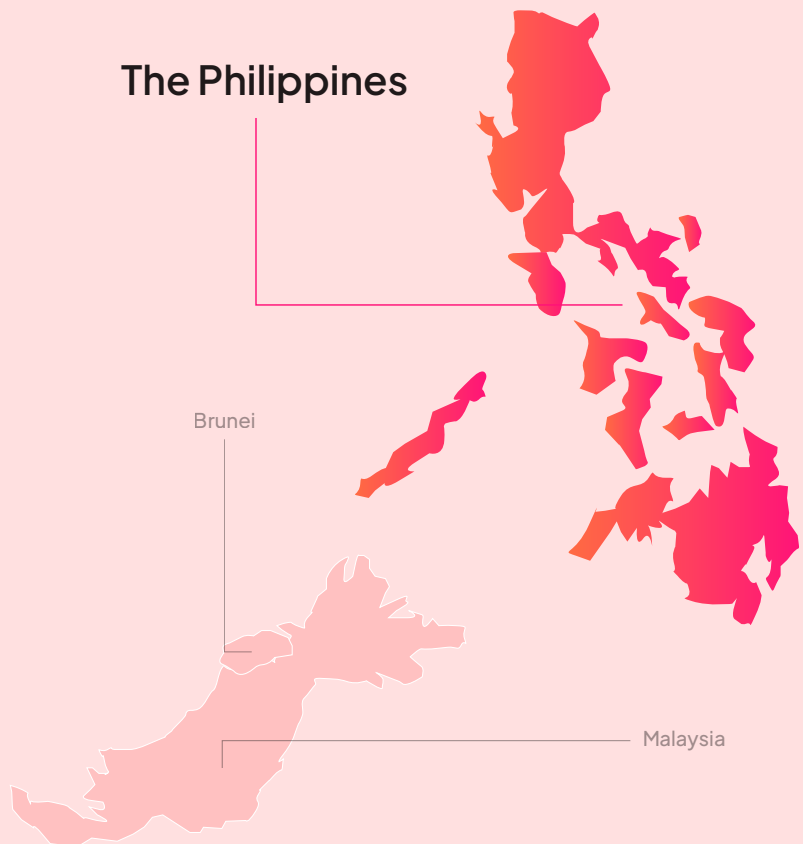
#### HOW

⚠️ How Digital Dictatorship has caused the violation of Pura Luka's human rights:

🗣️📺🙏 Kapisanan ng Social Media Broadcasters ng Pilipinas Inc. (KSMBPI) made a complaint to the Pasay Prosecutor's Office, on the grounds that Pura Luka was allegedly spreading 'vulgar content,' 'mocking Jesus,' and being 'immoral.' In the context of LGBTQIA+ lived experiences, these accusations are likely rooted in homophobia.

🙏📺 Pura Luka was declared persona non grata (a socially 'unacceptable/unwelcome person') and arrested, charged with violating **Article 133 (offending religious feelings), and Sections (2)(B)(3) and (2)(B)(5) of Article 201 (immoral doctrines and obscene publications) of the Revised Penal Code of the Philippines**. Pura Luka was detained for 3 days, and was released upon paying a P 72,000 bail bond.

## The Philippines



Al Jazeera, *Philippines' drag artist Pura Luka Vega arrested for 'offending religion'*, (6 October 2023), available at:

<https://www.aljazeera.com/news/2023/10/6/philippines-drag-artist-pura-luka-vega-arrested-for-offending-religion>

Inquirer, *Pura Luka Vega faces new criminal raps for offending religious feelings*, (23 October 2023), available at:

<https://entertainment.inquirer.net/524202/pura-luka-vega-faces-new-criminal-raps-for-offending-religious-feelings-cybercrime>.

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.

## 6.3 Access to Effective Remedy: Granted by the Constitution, but Hindered by an Inaccessible Legal System

Article III, Section 14 of the Philippine Constitution embodies the principles of due process of law and presumption of innocence in criminal proceedings. Section 11 further mandates the free access of all persons to the courts, quasi-judicial bodies and adequate legal assistance. The Public Attorney's Office (PAO) was established under the Department of Justice to provide free legal representation to persons who either have no income or are below certain income thresholds in civil, criminal and administrative cases. There are also legal groups that provide free legal assistance to indigents, such as the Integrated Bar of the Philippines and the Free Legal Assistance Group. Law schools also have pro bono legal service centres with similar functions. Nevertheless, it is generally known that the Philippine legal system is difficult to navigate, expensive, and resource-consuming, and the justice system continuously fails to guarantee due process rights.

### Non-Judicial Grievance Mechanisms

Non-judicial grievance mechanisms are further available to citizens. The Philippines is a member of the UN and, like most other member states, it undergoes a Universal Periodic Review every four to five years, which puts its human rights laws and policy under the microscope to be reviewed by other states.

The Philippines has an A-accredited National Commission on Human Rights as one of the three independent offices set up to investigate all forms of human rights violations involving civil and political rights in the country. Following the expiry of the

previous set of commissioners on May 5, 2022, the institution was left in a vacuum.<sup>100</sup> In September 2022, President Marcos Jr. appointed the first two of five commissioners.<sup>101</sup>

In the current 19th Congress, three bills addressing the issue of HRDs were filed at the House of Representatives.<sup>102</sup> During the previous Congress, a similar bill authored by Rep. Edcel C. Lagman was adopted by the Lower House but was never enacted, given the Senate's failure to adopt its corresponding bill.<sup>103</sup> The Duterte administration criticised this initiative as unnecessary, unconstitutional, and serving only the interest of terrorist organisations such as the Communist Party of the Philippines, the New People's Army and the National Democratic Front.<sup>104</sup> The absence of an effective mechanism exacerbates the situation, allowing for the continuation of "red-tagging" practices without proper accountability. Recently, the UN expert's call for authorities to denounce these practices and the suggestion to abolish the counter-terrorism task force (NTF-ELCAC) indicate a need for comprehensive non-judicial mechanisms.<sup>105</sup> Such mechanisms would not only protect individuals from unjust accusations but also foster a more inclusive and transparent process for addressing human rights concerns, thereby contributing to a more just and accountable society. Such mechanisms would not only protect individuals from unjust accusations but also foster a more inclusive and transparent process for addressing human rights concerns, thereby contributing to a more just and accountable society. The persistence of threats, surveillance, and even unlawful killings emphasises the urgency of establishing or strengthening non-judicial grievance mechanisms to safeguard the rights of individuals and create a more conducive environment for freedom of expression and activism.<sup>106</sup>



## Anti-SLAPP and Whistleblower Protections: A Challenge for Freedom of Speech in the Philippines

Another important view to consider in protecting the Freedom of Speech mandated under the 1987 Constitution is protection against SLAPP cases and whistleblowers. Protection against SLAPP cases is limited to environmental cases. The 2010 Supreme Court Rules of Procedure for Environmental Cases allows a SLAPP defence when an accused can allege that a lawsuit is brought against them “with the intent to harass, vex, exert undue pressure or stifle any legal recourse that one has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.”<sup>107</sup> Moreover, courts could hold a summary hearing and dismiss a case if it is proven to constitute a SLAPP suit and permit a SLAPP accused to seek damages and compensation.<sup>108</sup> Nothing in the rule indicates that such a dismissal is mandatory, however, save for cases where it is specifically requested by the party concerned.

While the Philippines’ whistleblower protection framework is far from perfect, Republic Act No. 6981, or the Witness Protection Security and Benefit Act contains a clause that encourages “a person who has witnessed or has knowledge of the commission of a crime to testify before a court or quasi-judicial body, or before an investigating authority, by protecting him from reprisals and economic dislocation,”<sup>109</sup> in practice, past whistleblowers involved in high-profile scandals were still pushed into exile for fear of such reprisal and dislocation. The Witness Protection Program of the Department of Justice is also limited to those testifying about an offence not categorized as a grave felony or if there is no sufficient likelihood that the witness or their family will be killed, forced, intimidated, harassed, or corrupted. Several attempts by the Senate to pass a whistleblower act have failed. In 2016, former President Duterte urged Congress to

legislate a bill on the subject, and one such bill was debated the year after, but not passed.<sup>110</sup>

Both Anti-SLAPP measures and whistleblower protections contribute to the creation of an environment where citizens are free to express their opinions, discuss matters of public interest, and expose wrongdoing without the fear of legal repercussions or personal harm. Moreover, by protecting those who disclose information about illegal or unethical conduct of the erring public officials, these measures contribute to a more accountable society. Freedom of speech, coupled with legal protections, ensures that information that serves the public interest is not suppressed, allowing for a more transparent and accountable governance.

The Philippines can adapt to these measures to cultivate a culture where openness and transparency are valued. This, in turn, strengthens the principles of freedom of speech enshrined under the 1987 Constitution by removing barriers that might otherwise hinder individuals, concerned citizens, and human rights defenders from expressing their views or sharing critical information. Further, this ensures that human rights defenders can engage in their advocacy work without being unduly hindered by the threat of lawsuits or retaliation. This contributes to a more robust human rights culture, where defenders play a pivotal role in advancing justice and accountability.

Finally, Anti-SLAPP measures and whistleblower protections are integral components of a legal framework that safeguards and enhances freedom of speech. By discouraging intimidation tactics and providing legal safeguards for those who speak out against wrongdoing, these measures contribute to a society where open discourse thrives, accountability is upheld, and the public interest is well-served.

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Singapore Constitution  
Parliament is entitled  
protect the privilege  
provide against any  
defamation or incite  
when the  
security,  
the legal  
sever  
expr  
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Article 14  
However, th  
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DEFAMATION  
ASPA

# SINGAPORE



POFMA

SEDITION LAW

PUBLIC ORDER  
ACT



# 7. Singapore



| YEAR | DEMOCRATIC STATUS OF THE COUNTRY<br><small>(according to the Freedom In The World index)</small> | DIGITAL SPACE & ONLINE FREEDOM STATUS OF THE COUNTRY<br><small>(Digital Space Status)</small> | PRESS & MEDIA FREEDOM STATUS OF THE COUNTRY<br><small>(according to the World's Press Freedom Index)</small> |
|------|--|---|--|
| 2020 | 50/100<br><small>PARTLY FREE</small>   | 54/100<br><small>PARTLY FREE</small>  | 158/180 (44,77)<br><small>VERY SERIOUS</small>   |
| 2021 | 48/100<br><small>PARTLY FREE</small>   | 54/100<br><small>PARTLY FREE</small>  | 160/180 (44,8)<br><small>VERY SERIOUS</small>  |
| 2022 | 47/100<br><small>PARTLY FREE</small>   | 54/100<br><small>PARTLY FREE</small>  | 139/180 (44,23)<br><small>VERY SERIOUS</small>   |
| 2023 | 47/100<br><small>PARTLY FREE</small>   | 54/100<br><small>PARTLY FREE</small>  | 129/180 (47,88)<br><small>DIFFICULT</small>  |

Fig. 7.1: Summary of freedom ratings for Singapore, 2020-2023.<sup>1</sup>

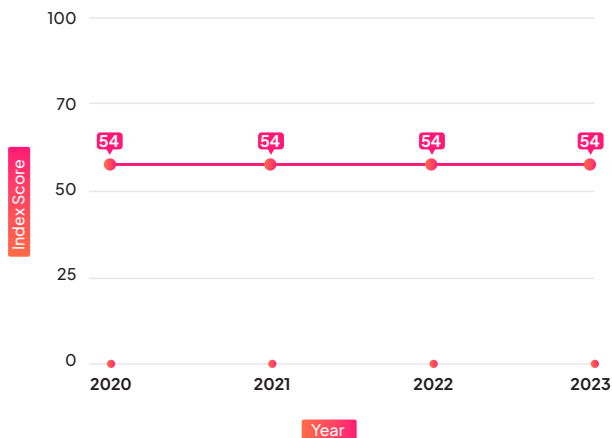
## 7.1 Legal Framework

The right to freedom of expression is constitutionally guaranteed in Article 14 of the Singapore Constitution. However, the Parliament is entitled to restrict the right to protect the privileges of Parliament and provide against any contempt of court, defamation or incitement to any offence, as well as when the Parliament considers that doing so is necessary in the interest of national security, public order, morality etc.<sup>2</sup> A restrictive legal and regulatory regime in the country severely undermines the right to freedom of expression.

### Criminalisation of Defamation: the Penal Code and 2014 Defamation Act

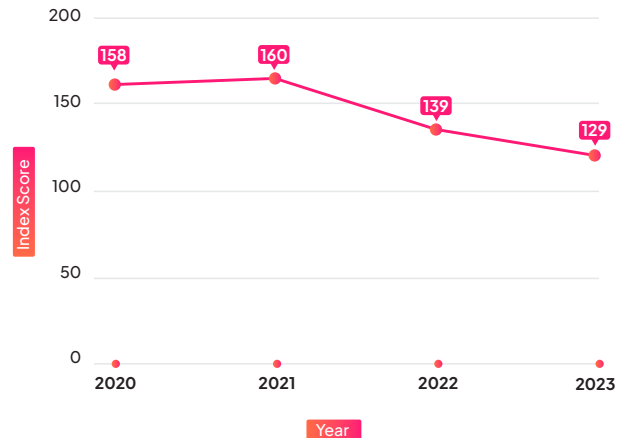
Singapore has an extremely strict criminal defamation law, despite decades-long urge by the UN for its decriminalisation. Sections 499 and 500 of Singapore’s Penal Code criminalise defamation with up to two years’ imprisonment or a fine or both.<sup>3</sup> Under Section 499, defamation is considered to have taken place where a person “by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.”

## Digital Space & Online Freedom Status: Singapore



Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

## Media & Press Freedom Status: Singapore



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Fig. 7.2: Digital Space & Online Freedom Status (Freedom on The Net) and Media & Press Freedom (World Press Freedom Index) Ratings for Singapore over the years, 2020-2023.

In addition to criminal charges, Singapore systematically uses civil defamation suits against dissidents and activists to silence them,<sup>4</sup> pursuant to the 2014 Defamation Act.<sup>5</sup> The law also applies to the broadcasting of words by means of telecommunication. People's Action Party (PAP) leaders have been awarded damages ranging from SGD 100,000 to SGD 300,000 (\$74,000 to \$222,000) in defamation suits brought against opposition politicians, activists, and news media corporations.<sup>6</sup>

### Sedition Law to Muzzle Critics

The 1948 Sedition Act, as amended in 2013, which has been in force since the colonial era, criminalises expression that can “bring into hatred or contempt or to excite disaffection” against the government or the administration of justice in Singapore, “raise discontent or disaffection” among the inhabitants of Singapore, or “promote feelings of ill-will and hostility between different races or classes of the population of Singapore.” Violations are punishable by two years.<sup>7</sup> Section 298 of the Penal Code additionally provides for prison terms of up to three years for offenders with “the deliberate intention to wound that person’s religious or racial feelings.”<sup>8</sup>

### Prominent Instruments that Limit Free Speech: AJPA, POFMA, and Foreign Interference Act

#### The Administration of Justice (Protection) Act (AJPA)

Section 12(1) of the 2017 Administration of Justice (Protection) Act (AJPA) criminalises contempt of court or “scandalisation of courts” by imposing the harsh penalties of three years’ imprisonment or a fine of SGD100,000 (\$74,000) or both. The offence of “scandalising the court” includes (i) “impugning the integrity, propriety or impartiality” of judges by “intentionally publishing any matter or doing any act that ... poses a risk that public confidence in the administration of justice would be undermined” (Section 3(1)(a)); and the (ii) “intentional” publishing of any material which interferes with pending court proceedings (Section 3(1)(b)).<sup>9</sup> It essentially prohibits criticising the court or the administration of justice generally and even forbids reporting on ongoing cases if it is deemed as a “risk” to the trial. Combined with the harshness of the potential penalty and the vagueness of the offence, AJPA could significantly curtail open discussions of the administration of

justice in Singapore under the guise of “maintaining orderly proceedings,” not excluding those which take place in the online space.

## The Protection from Online Falsehoods and Manipulation Act (POFMA)

On the other hand, the 2019 Protection from Online Falsehoods and Manipulation Act (POFMA), a “Fake News” law that came into effect in October 2019, allows for nearly any form of communication—written, visual, audio, or otherwise—to be targeted and classified as a criminally liable “false statement of fact.” Section 7 criminalises the communication of any “false statement of fact” where such communication is likely to “be prejudicial to the security of Singapore, to public health, public safety, public tranquillity,” “influence the outcome of an election,” “incite feelings of enmity, hatred or ill-will”, or “diminish public confidence in the performance of any duty or function of, or in the exercise of any power by, the Government, an Organ of State, a statutory board.” This provision fails to define the categories “public safety,” “public tranquillity,” and “public interest.” Offences under Section 7 are punishable by a fine of up to SGD 50,000 (\$37,100), imprisonment of up to five years or both.<sup>10</sup>

POFMA also allows for the determination of “falsehood” by taking a portion of a statement out of context under Section 2(1), stipulating that a statement may be found to be false “if it is false or misleading, whether wholly or in part, and whether on its own or in the context in which it appears.”<sup>10</sup> Thus, it does not clearly explain what constitutes false or misleading content and broadly defines “public interest” to include the preservation of “public tranquillity,” “friendly relations” with other countries and public confidence in government institutions. Those vague and overbroad provisions prevent precise understanding of the law to enable individuals to regulate their conduct accordingly, in contravention of the international human rights principle of legality. Moreover, Sections 10-12 grant any government

minister the unchecked and extended power to issue a so-called “correction order”—essentially a notification that a statement in question is false—or a “Stop Communication Direction,” which requires a person to “stop communicating the subject statement by the specified time.” Non-compliance with these Directions is punishable with a fine up to SGD 20,000 (\$14,800), imprisonment of up to 12 months or both. A Minister also has the unfettered authority to issue access blocking orders when an individual or online news outlet fails to comply with directions and rectify “false” content. Such directions and orders can be issued on vague and unspecified assessments without court orders.<sup>11</sup>

## The Foreign Interference (Countermeasures) Act

The act took effect on July 7, 2022, and is aimed at “prevent[ing], detect[ing] and disrupt[ing] foreign interference in ... domestic politics.” It enables authorities to order social media platforms to investigate alleged “hostile information campaigns” and foreign interference in Singapore’s internal affairs.<sup>12</sup> Other broad provisions under the act allow the authorities to control almost any form of expression and association relating to politics, social justice or other matters of public interest. The law makes it a criminal offence to undertake “clandestine” electronic communications on behalf of a foreign principal under certain circumstances, including when that activity “diminishes or is likely to diminish public confidence in ... the Government or a public authority” or “is likely to be directed towards a political end in Singapore.” Activity “directed towards a public end” includes influencing conducts or seeking to influence government decisions or public opinion on matters of “public controversy” or “political debate” in Singapore. Lacking clear provisions on what is deemed illegal makes it difficult for people to adjust their behaviour according to the law, and further gives the executive branch unrestricted latitude in interpreting and enforcing the law. The consequences for breaking

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*Despite its claims to be a democracy, the Singaporean government has systematically chipped away at fundamental freedoms using ambiguous and overly-broad legislation, such as on defamation, the Protection Against Online Falsehoods and Manipulation Act (POFMA), and the Public Order Act, to suppress activism and muzzle free speech.*

–Josef Benedict, Civic Space  
Researcher at CIVICUS

the Foreign Interference (Countermeasures) Act are severe, with the heaviest penalties being a fine of up to SGD100,000 (\$74,000) and/or imprisonment of up to 14 years. Individuals could be penalised for any “deliberate” use of encrypted communication platforms to achieve said public or political end. This puts at risk anyone who uses encrypted messaging and email services, or VPNs. Under the Act, authorities may issue directions to censor, block, or restrict access to online content or services seen to be in violation of these provisions. These directions are issued without independent oversight and could only be appealed to a limited extent.<sup>13</sup> Offences under the Act are additionally non-bailable and arrestable. The law will disproportionately impact journalists, academics, artists, and other individuals who express their opinion, share information and advocate on sociopolitical issues and matters of public interest, as the issues on which they work are under increased state oversight and control.<sup>14</sup>

### **Sweeping Restrictions on Online Journalism: 2018 Public Order Act, 1974 Newspaper and Printing Presses Act, and the 1994 Broadcasting Act**

In addition, the 2018 Public Order and Safety (Special Powers) Act allows the authorities to ban communications including videos, images, text, or audio messages in the event of a “serious incident” whereas the definition of a “serious incident” varies from terrorist attacks to peaceful protests such as large sit-down demonstrations or even a standalone protest. These powers allow the commissioner of police to prohibit anyone from taking or transmitting photographs or videos in a defined area, or from making text or audio messages about police operations. A breach of the order may lead to imprisonment for up to two years, a fine of up to SGD20,000 (\$14,800) or both.<sup>15</sup> It imposes heavy restrictions on online journalism and information sharing surrounding major public events. The 1974 Newspaper and Printing Presses Act and the 1994 Broadcasting Act,

applicable to digital platforms, restrict the activity of news outlets and independent media through licensing and registration requirements.<sup>16</sup>

### Escalating State Censorship Online: Online Safety Bill

On Nov. 9, 2022, the Singaporean Parliament passed the Online Safety (Miscellaneous Amendments) Bill to amend the Broadcasting Act. The Bill would empower the Infocomm Media Development Authority to issue orders to social media platforms to block access to harmful content within hours.<sup>17</sup> If they fail to do so, they can be fined with up to \$1 million, or the Infocomm Media Development Authority can issue a direction to ISPs to block users' access to that platform.<sup>18</sup>

## 7.2 Challenges and Cases

Singapore has had a parliamentary political system dominated by the ruling People's Action Party (PAP) and the family of current PM Lee Hsien Loong since 1959. The existing legal and institutional framework that PAP has constructed allows for democratic rights, political pluralism to some extent, and acknowledges fundamental rights, including freedom of expression. Nevertheless, the growth of credible opposition parties is constrained and the country has a relatively bad record of human rights performance, especially in relation to digital rights. Freedom on the Net 2021 and 2022 ranked Singapore "partly free" with an aggregate score of 54/100 and remained under the threat with the same score of 54/100 during the coverage period of 2023.<sup>19</sup> The World Press Freedom Index 2022 by Reporters Without Borders ranked Singapore 139th out of 180 countries with a score of 44.23.<sup>20</sup> In 2023, the Index showed slight improvements, with Singapore ranking 129th with a score of 47.88.<sup>21</sup>

## Struggles, Legislation, and Repression in Singapore (2020–2023)



**LEGEND:**

⚠️ : Alleged offense + (articles/provisions invoked against the individual)  
 - "Unknown": Either information is not available or no articles/provisions have been cited by the judiciary

🔒 : Legal and extralegal consequences  
 - "Status Unknown": Current status of the individual is unknown (detained, convicted, deceased, etc).

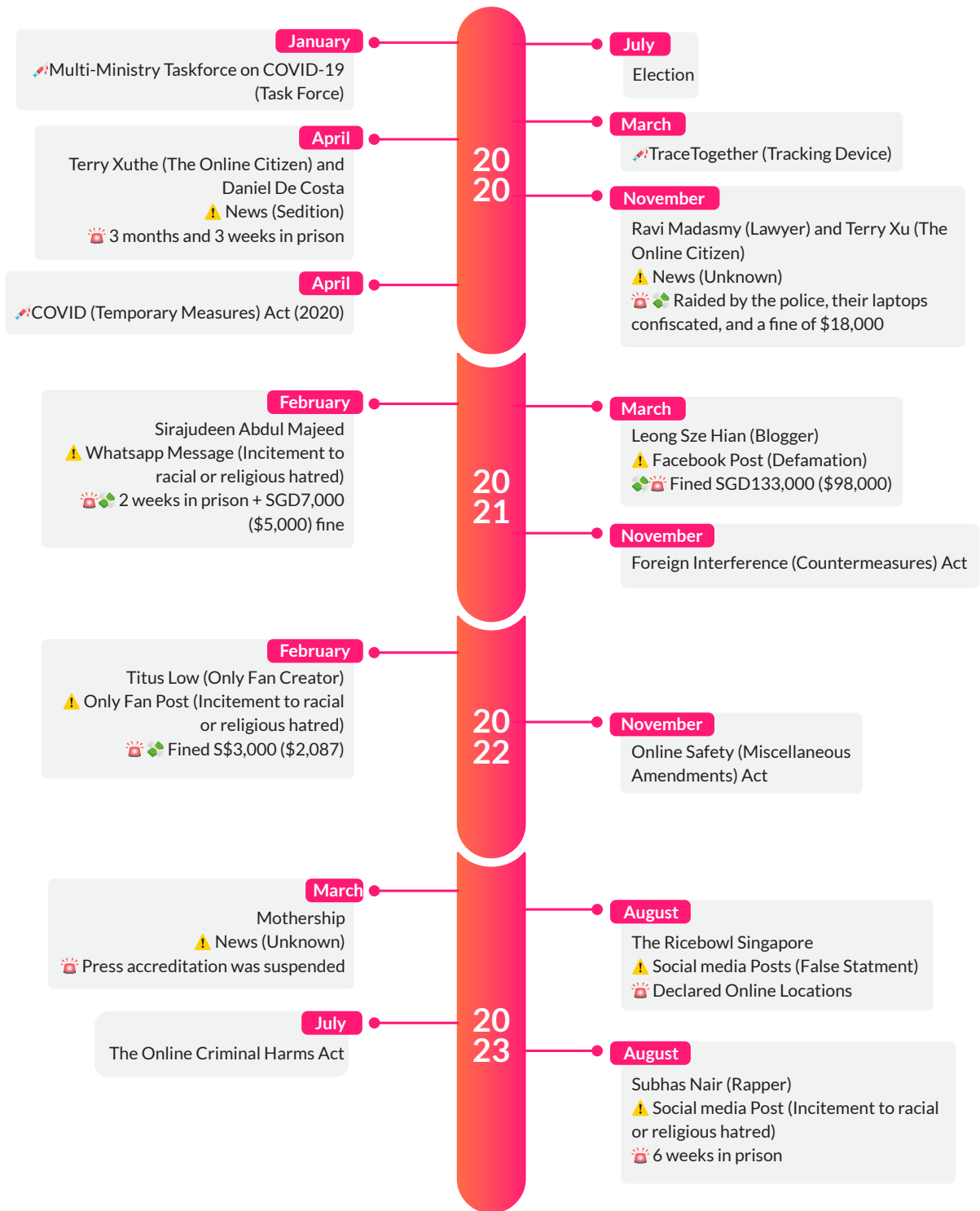


Fig. 7.3A: Summary timeline for Singapore, 2020-2023.





| Country   | Event   | Contextualisation   |
|---|---|---|
| <br><b>SINGAPORE</b> |  Online Safety (Miscellaneous Amendments) Act (2022) | The law grants extensive authority to block online content as deemed necessary by the government.   |
|   |  The Online Criminal Harms Act (2023)                | It introduces stricter regulations and penalties for individuals and entities engaged in online criminal activities.  |
|   |  Election (2020)                                     | the ruling People's Action Party (PAP), led by Prime Minister Lee Hsien Loong, maintained its uninterrupted hold on power despite a notable decline in popular support. The PAP, in power since 1959, secured a super majority by winning 83 out of 93 seats in parliament. The remaining 10 seats were claimed by the Workers' Party, marking the highest number ever held by opposition lawmakers since Singapore's first general election in 1968. Despite its victory, the PAP's share of the popular vote saw a decline to 61.2%, compared to nearly 70% five years ago and approaching the party's record low of 60% in 2011. The election recorded a high voter turnout of nearly 96%. |

Fig. 7.3B: Contextualisation for Singapore's timeline, 2020-2023.

### Abuse of Defamation Provisions by the Powerful to Limit Criticism

Defamation provisions have been systematically invoked by the State and other powerful actors to protect themselves and avoid criticism. In October 2020, Terry Xu, the editor of now-inoperative The Online Citizen (TOC),<sup>22</sup> along with newspaper contributor Daniel De Costa, went on trial on criminal defamation charges lodged in 2018. This came after Xu published online De Costa's letter in which he accused the PAP leadership of "corruption at the highest echelons."<sup>23</sup> On Nov. 12, 2021, each was convicted of defaming Cabinet members, and on April 21, 2022, Xu was sentenced to three weeks imprisonment, while De Costa was jailed for three months and three weeks.<sup>24</sup>

Terry Xu was also involved in a separate defamation suit. On Aug. 15, 2019, TOC published an article online titled "PM Lee's wife Ho Ching weirdly shares article on cutting ties with family members" that referred to a post made on Facebook by the PM's wife and reported on a dispute between members of the PM's family. PM Lee's press secretary Chang Li Lin issued a letter to TOC on Sept. 1, 2019 demanding the removal of the article and a public apology. After Xu refused, PM Lee instituted legal proceedings against him and the article's writer, Rubaashini Shunmuganathan.<sup>25</sup>

“

*[A] person of power using his public office to issue a letter, it creates some doubts as to the angle [from which] he is approaching the matter ... If I were to undertake the apology and say what I published was defamatory, action may not follow legally but it may follow in terms of other statutory boards or ministries ... coming to us and saying we've published questionable content.*

-Terry Xu, the editor of The Online Citizen (TOC)

“

*Wham’s conviction merely for exercising his right to free expression is part of a wider pattern of harassment and intimidation against activists and defenders in Singapore. The continuous judicial harassment he is subjected to is meant to intimidate Singaporeans into silence.*

–FORUM-ASIA

In September 2021, PM Lee Hsien Loong was awarded SGD210,000 (\$155,000) in damages by the High Court,<sup>26</sup> and another SGD87,833 (\$65,000) in costs and disbursements in October 2021, with the Court ruling that the defamatory statements made in the article were “grave and serious” as they “do not merely attack [Mr Lee’s] personal integrity, character and reputation, but that of the prime minister, and damage his moral authority to lead Singapore.”<sup>27</sup>

Similarly, Leong Sze Hian, blogger and financial adviser, was sued by PM Lee for civil defamation after sharing an article on his Facebook account and was ordered to pay SGD133,000 (\$98,000) in damages to PM Lee as per a High Court ruling on March 24, 2021.<sup>28</sup>

Legal provisions on defamation, together with laws on public safety have also been exercised to intimidate and judicially harass activists who are critical of the status quo or of those in high ranks. The abuse of these laws consequently bars them from pursuing their human rights work and exercising their fundamental freedoms of expression mainly due to fear of reprisals. Jolovan Wham—a well-known and

outspoken HRD—has faced several criminal charges for his activities.<sup>29</sup> In February 2022, he was fined SGD 3,000 (\$2,200) for holding up a piece of paper with a support message to Terry Xu and Daniel De Costa written on it, which he posted online.<sup>30</sup>

### **Race, Religion, Obscene Materials, and Government Critics: Sensitive and Subject to Prosecution and/or Removal**

The authorities have a track record of weaponising repressive laws to crack down on free expression and hinder access to information. In February 2021, Sirajudeen Abdul Majeed was the first person to be charged under Section 298A(a) of the Penal Code and sentenced to two weeks in jail along with a SGD 7,000 (\$5,000) fine. His charge came after he sent a message in a WhatsApp group stating the PAP “want[ed] to make the Malay community a sub-minority” and made several racist remarks in a phone call with a police officer.<sup>31</sup> Similarly, Zainal Abidin Shaiful Bahari, was sentenced to three weeks in prison under Section 298(A) of the Penal Code for posting multiple racially insensitive tweets.<sup>32</sup>



# SINGAPORE

## 2023 Political Overview

Unitary parliamentary republic in theory, semi-authoritarian regime in practice.

### Head of State, Head of Government

Prime Minister Lee Hsien Loong (de facto power), President Tharman Shanmugaratnam

## #StandWithSubhas

### ♥ CASE STUDY

**Artists expressing their political views** are also frequently targeted by state-enabled **Digital Dictatorship**, such as in the case of this Singaporean rapper...

### WHO

Subhas Nair, Singaporean-Indian rapper ♥

### WHY/WHAT

♥🗣️ Subhas Nair filmed a satirical rap song and music video raising awareness for the colorism, Islamophobia, anti-Indian sentiment, anti-Malay sentiment, and general anti-brown sentiment that is prevalent in Singapore. In his song, he particularly called out Singaporean Chinese people, who make up the majority of the Singaporean elite.

### WHEN

2019–2020 (Nair shares music video and other various comments critiquing racism in Singapore); 2 November 2020 (Nair takes down the video), 5 September 2023 (sentenced)

### WHERE

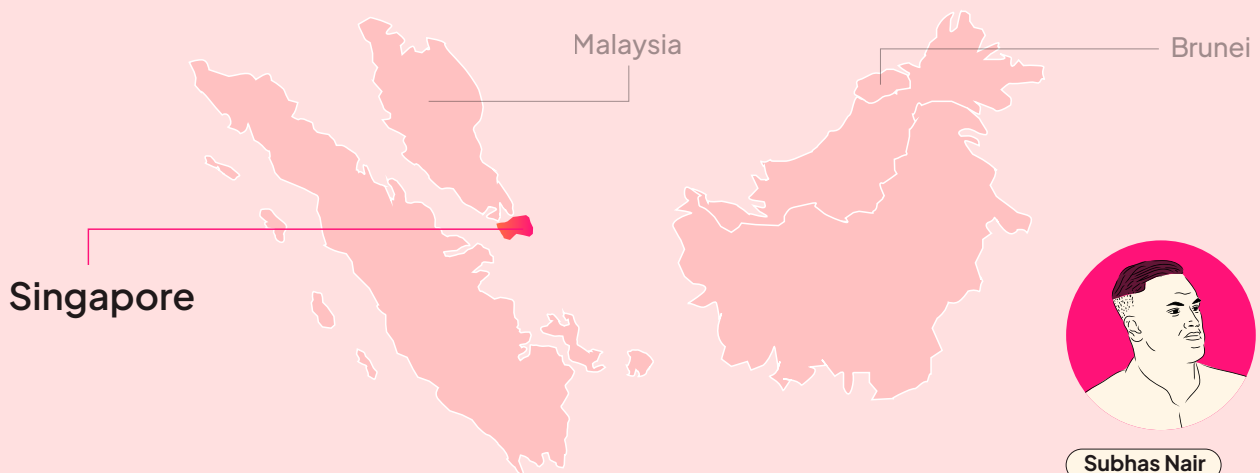
Singapore

### HOW

⚠️ How Digital Dictatorship has caused the violation of Fatia and Haris' human rights:

🗣️🙋 Nair has maintained in all his statements on the matter that he was never trying to be racist. Rather, he insinuated that he was trying to critique the way that certain racial/ethnic groups in Singapore *have contributed* to a pattern of racism towards other groups. Nevertheless, he received a lot of backlash from the conservative public and from elites, with people accusing him of being 'vulgar' and 'insensitive' towards certain races.

🗣️🙋👤🙋 Nair was given a 'conditional warning' (along with his sister Preeti, who helped him produce the song) after posting the video, and was then formally charged with **violating Section 298A of Singapore's Penal Code (knowingly 'promoting ill will' between different racial groups)** after he made some additional comments on social media critiquing Chinese Singaporean exceptionalism. In 2023, Nair was sentenced to 6 weeks in jail.



Subhas Nair

Singaporean-Indian rapper

The Straits Times, *Rapper Subhas Nair gets 6 weeks' jail for trying to promote feelings of ill will between groups*, (5 September 2023), available at: <https://www.straitstimes.com/singapore/courts-crime/rapper-subhas-nair-gets-6-weeks-jail-for-trying-to-promote-feelings-of-ill-will-between-groups>.

TIME, *A Singaporean Rapper Tried to Call Out Racism. He's Been Sentenced to Jail For His Statements*, (5 September 2023), available at: <https://time.com/6310667/subhas-nair-singapore-racism-rap/>

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.

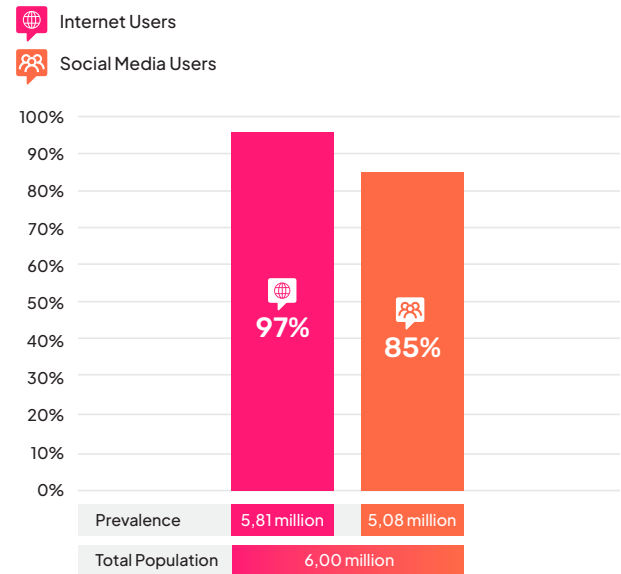


In November 2021, rapper Subhas Nair was charged with four counts of inciting public ill-will or hostility between religious and racial groups for posting on social media about alleged double standards in how different ethnic groups are treated in Singapore. Nair was said to have breached a conditional warning issued against him in 2019 over a rap video he made with his sister.<sup>33</sup> On March 21, 2023, Nair testified stating that his online comments targeted the racism and hate speech happening in the country (especially “brownface”) and were not meant to create animosity between racial and religious groups. However, in September 2023, he received a six-week jail term for four charges related to attempting to incite hostility between various racial and religious communities in Singapore.<sup>34</sup>

In a similar vein, OnlyFans creator Titus Low was charged in December 2021 for transmitting obscene material by electronic means and violating an order not to access his account. He was slapped with two additional counts for similar offences. His case sparked a debate among Singaporeans of whether adult content behind a paywall and thus gives people the option to either watch or not watch it should be criminalised.<sup>35</sup>

## Invoking POFMA to Further Suppress Criticism

The government has invoked POFMA many times since it came into force against online content critical of the government or its policies.<sup>36</sup> According to the POFMA Office Media Centre, as of December 2022, the Office has issued some 77 Correction Directions.<sup>37</sup> A different dataset compiled by the Singapore Internet Watch, however, shows that there have been 96 orders issued since POFMA became effective in October 2019 to May 2022, targeting news websites, NGOs, opposition politicians, and social media users.<sup>38</sup> Several orders, instructed by different ministries in the government, were sent to independent online media, such as TOC and New



DataReportal, *Digital 2023, Singapore*, (9 february 2023), available at : <https://datareportal.com/reports/digital-2023-singapore>

Fig. 7.5: Percentage of Internet and Social Media Users in Singapore, 2023.

Naratif, and civil societies, resulting in a chilling effect on the free communication of opinions or discussions about matters of public interest and concern. In June 2020, access to National Times Singapore’s Facebook page was disabled in Singapore. This was the fourth Facebook page operated by Alex Tan, a political dissident, to be subject to a disabling order.<sup>39</sup>

Strict online information controls further undermine free expression and lead to poor access to information and lack of public oversight on government policies. For instance, in July 2020, there were several POFMA Correction Directions issued by various ministers related to online content, statements, or talking points from opposition politicians about: government spending on foreign students;<sup>40</sup> COVID-19 testing for foreign workers and the handling of the pandemic;<sup>41</sup> and plans to increase the city’s population.<sup>42</sup> In May 2022, activist Gilbert Goh also received a POFMA Correction Direction for a Facebook post he made in April, claiming that a woman and her partner who were in urgent need of financial assistance for basic necessities had “no one [they] can turn to” for help.<sup>43</sup> In addition, the abusive law has been also frequently

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*A law like POFMA, with its broad powers and potential penalties like access blocks and defunding of platforms down the line, should not be used merely to help government institutions protect their reputations or save face.*

–Kirsten Han, freelance journalist and curator of the *We, The Citizens* newsletter

used to target political opposition parties, especially during election cycles.

In May 2023, Josephine Teo—Minister for Communications and Information and Second Minister for Home Affairs—issued POFMA directions for a series of posts criticising the way the government dealt with the case of a man given the death penalty for allegedly planning to smuggle cannabis.<sup>44</sup> She also rejected Transformative Justice Collective (TJC)’s application to cancel a POFMA correction order they were given after the group discussed the same case.<sup>45</sup>

Access restriction and content blocking are also prevalent, at the expense of the right to information. On May 18, 2021, a POFMA order was issued to TOC, an Instagram user and Singapore Uncensored over a post claiming that a police officer bullied an older woman for not wearing a mask. TOC’s appeal against this Correction Direction was dismissed by a High Court judge in 2022.<sup>46</sup> In January 2020, the Ministry of Communications and Information ordered ISPs to block a website belonging to the Malaysian NGO Lawyers for Liberty after the group failed to publish a POFMA correction notice in relation to its statements on Singapore’s methods of capital punishment.<sup>47</sup>

Both POFMA and the Foreign Interference (Countermeasures) Act are expected to destabilise news outlets by allowing the government to demonetise them. The laws empower ministers to label any website or online page found to have repeatedly published alleged false information or is suspected of being involved in foreign interference activities as a “declared online location” or “proscribed online location.” Those labelled are prohibited from accepting donations or charge for advertisements and subscriptions. Since February 2020, the Facebook pages of States Times Review, Singapore States Times, National Times Singapore, and the private page of dissident Alex Tan have been designated as “declared online locations” after receiving POFMA orders.<sup>48</sup>

### **AJPA: Criminalising People for Criticising the Courts or the Administration of Justice**

Contempt of court proceedings under AJPA have extensively been used to curtail freedom of expression and the right to information, preventing HRDs, individuals and civil society from discussing any judicial proceedings and causing people to self-censor. In 2020, the offices of public interest lawyer Ravi Madasamy and Terry Xu were raided by the police and their laptops confiscated, after TOC published

an article questioning the legality of the extradition of Madasamy's client. Madasamy's client Mohan Rajangam and TOC writer Danisha Hakeem were likewise investigated as part of this case.<sup>49</sup>

In August 2021, contempt of court proceedings were initiated by the Attorney General against Terry Xu over a separate blog post on the legal system, which was also published on Facebook.<sup>50</sup> One year later, Xu's bid to terminate the proceedings was dismissed by the Court of Appeal.<sup>51</sup> Terry Xu was fined \$18,000 in 2023 for his article questioning the Singaporean legal system and for his acts which were described as "failed [to practise] responsible journalism."<sup>52,53</sup>

## Online Content Manipulation & Restrictions

### Media Licences Revocation and Website Blocking

Blocking media outlets and websites for spreading information deemed inappropriate by the government is not new to Singapore. For example, on Sept. 14, 2021, TOC's media licence was removed with the media outlet being ordered to cease posting on its website and social media channels.<sup>54</sup>

Free video streaming websites are also illegal and, in 2022, the country's courts ordered 99 websites to be blocked, most of them streaming Kdramas and sports.<sup>55</sup> Gambling websites can also be blocked by the Gambling Regulatory Authority (GRA).<sup>56</sup> More than a thousand gambling sites have been blocked since the Gambling Control Act took effect in 2022.<sup>57</sup>

While online pornography websites are not illegal and the exact number is hard to determine, it is estimated that approximately 100 websites containing pornographic material have been blocked by the Info-communications Media Development Authority of Singapore (IMDA) to show that they do not coincide with the Singaporean society's values.<sup>58</sup>

### Government Requests to Remove or Restrict Content or Accounts

In 2020, Meta restricted access to 546 content items on Facebook and Instagram based on requests by Singaporean agencies, including from InfoComm Media Development Authority. Four items were allegedly in violation of the POFMA and six were reported as defamation by private parties.<sup>59</sup> In 2021, almost 2,000 items were restricted on the same two platforms, although none indicated an attempt to restrict online freedom of expression. This trend continued until June 2022, with 576 items being restricted without any apparent connection to the limitation of online freedom of expression.<sup>60</sup>

Google received 13 requests with an average compliance rate of 28.6% in 2020 and 27 requests in 2021, with the compliance rate virtually unchanged. In the first half of 2022 however, the platform received 265 requests and increased its compliance rate to 70.6%.<sup>61</sup> While numbers from 2020 were unlogged, the most recent data shows Twitter reported five requests by Singapore to remove content in 2021, 60% of which were complied with.<sup>62</sup> TikTok did not receive a significant number of requests to limit and/or restrict content between 2020 and 2022.<sup>63</sup>

The Minister for Communications and Information also announced in February 2022 that Singapore is exploring the possibility of using artificial intelligence to block scam websites more rapidly. She also disclosed that 12,000 of these sites were blocked in 2021, a sharp increase from 500 in 2020.<sup>64</sup>

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*The contempt of court is undeniably a tool for the authorities to curb reportage and opinions on issues that warrant public awareness.*

–Terry Xu, editor-in-chief of TOC



## PANDEMIC POLITICS: COVID-19 IMPACT ON ONLINE FREEDOM

Singapore has not invoked emergency laws to deal with the COVID-19. Instead, it employed a legislative model whereby the emergency was handled through ordinary legislation delegating special and temporary powers to the executive.

Amid the pandemic, individuals were prosecuted for their online activity, as Singapore continued extending its controlling powers over online freedom of speech. For instance, in May 2020, an individual was sentenced to four months imprisonment for sending a message in a private Facebook group claiming that more stringent COVID-19 pandemic measures would be put in place, despite deleting the post after 15 minutes.<sup>65</sup>

Singapore sustained its use of the POFMA to restrict freedom of expression online, requiring news outlets and social media platforms to comply with correction orders. According to the POFMA Office Media Centre, as of December 2022, 50% of the POFMA cases were COVID-19 related.<sup>66</sup> In January 2020, Facebook was ordered to block Times Review’s website after it stated that Singapore was running out of masks.<sup>67</sup> In July 2020, several orders were related to online content about COVID-19 testing for foreign workers and the handling of the pandemic.<sup>68</sup> They were also issued to Twitter and Facebook in May 2021, forcing them to warn all users about false claims circulating on social media regarding a Singapore variant of the virus.<sup>69</sup>



## INTERSECTIONAL GENDER ANALYSIS: ONLINE GENDER BASED VIOLENCE IN SINGAPORE

Online gender-based violence in Singapore is a concerning issue that manifests in various harmful behaviours, such as sexual harassment, defamation, cyberstalking, hate speech and doxing.<sup>70</sup> According to a 2022 study, two out of five Singaporeans have either experienced cyberbullying or observed sexist content within the past two years. Among the examples of harmful content examined, two recurring forms were particularly prevalent, with 14% involving comments or images implying male superiority and 12% suggesting that women bear responsibility for many of the challenges faced by men. These findings highlight the persistent presence of gender stereotypes in the online sphere. Despite the concerning statistics, there is a collective sentiment against online abuse, with 71% of Singaporeans agreeing that women should not be subjected to such behaviour. However, agreement is lower among men (63% vs. 79% among women).<sup>71</sup>

A separate survey conducted in 2022 by the Sunlight for Action Alliance to tackle online harm found that women aged 25-34 were the most likely to have experienced behaviours such as sexual harassment, stalking and non-consensual posting of intimate images.<sup>72</sup> Further research has pinpointed the top four online harms encountered are sexual harassment, cyberbullying, impersonation, and defamation. The dangers of the Internet are not perceived in the same way by the two genders. Young women aged between 15 and 34 are more concerned about sexual harm and sexual harassment, while young men in the same age group are more concerned about defamation and cancel campaigns.<sup>73</sup> In essence, these statistics underscore the urgent need for comprehensive strategies to address online gender-based violence, taking into account the experiences and perceptions of different demographic groups.

In Singapore, the main threat is image-based sexual abuse. In 2020, these incidents accounted for 65% of cases of technology-facilitated sexual abuse, and up from 61% in 2019. This category includes the dissemination

of sexual, nude or intimate photos or videos of another person. Overall, Aware's SACC recorded 163 new cases of technology-facilitated sexual abuse in 2021, down from 191 in 2020. Of these 163 cases, the perpetrator was someone known to the victim in 134 situations.<sup>74</sup>

One of the most shocking cases was the "SG Nasi Lemak" affair in Singapore in 2019. Thousands of private photos were shared in a Telegram newsgroup called "SG Nasi Lemak", mainly of Singaporean women, without consent. At its peak, the group had 44,000 members and 29 administrators. According to one report, the men in the group had to contribute and share photos or risk being excluded from the group. The police arrested four administrators after receiving a large number of complaints. Two of them were released on parole; another was sentenced to nine weeks in prison and fined \$26,000; the last was sentenced to one year's compulsory treatment instead of a prison term. The scandal made the rounds on social networks, sparking outrage at its scale and the fact that almost all the participants escaped with impunity. As a result of this impunity, a number of spin-offs from the discussion group have emerged and continue to do so.<sup>75</sup>

On 18 July 2023, the implementation of the Code of Practice for Online Safety and the Content Code for Social Media was an initial attempt to address the problem, but was also seen as a way for the Singapore government to maintain control over the information available to citizens. The code can also be useful in cases of revenge porn, which is particularly prevalent in Singapore.<sup>76</sup> For example, in December 2023, a man met a teenager via an online gaming application and began a relationship with her. During this relationship, which lasted around a month, the two exchanged nude photos. After they broke up, the man decided to post the naked photos of the girl online out of revenge. He also shared her personal details and photos of her face so that she could be easily identified.<sup>77</sup>

## 7.3 Access to Effective Remedy: Constitutional Right but Undermined by the Judiciary's Independence

Singaporean law provides for the right to seek remedies in the form of appeal before a court or administrative body, as well as the right to a fair and public trial. Judicial independence is guaranteed by the constitution, and the government generally respects it. Nevertheless, the undue government influence over the judiciary has been extensively documented.<sup>78</sup>

For victims of abuse of free expression in Singapore, accessing redress remains difficult. Under Sections 17 and 29 of POFMA, any appeal to challenge a Correction or Stop Communication Direction must first be brought before the minister who issued the order and can only be brought before the High Court if the minister has refused the appeal. Yet, the Court only considers an appeal under limited circumstances, i.e. where (a) “the person did not communicate in Singapore the subject statement”; (b) “the subject statement is not a statement of fact, or is a true statement of fact”; or (c) “it is not technically possible to comply with the Direction.” An appeal process also does not suspend a Direction, so that it remains effective until a decision is reached. In light of this, the appeal option under POFMA deters individuals from taking action; it is an expensive and time-consuming process that only serves as a last resort alleviatory measure, rather than a mechanism to prevent erroneous implementations.<sup>79</sup>

In practice, there have only been a handful of POFMA Direction appeals brought before judges. Two of those were brought by the Singapore Democratic Party and TOC, and were examined in closed chambers.<sup>80</sup>

The High Court in the Singapore Democratic Party's case ruled that the responsibility of proving a statement's falsity should be on the government, whereas the judgement in TOC's case later contradicted this by underlining that the appellant should bear this responsibility. The High Court dismissed both appeals, and TOC and Singapore Democratic Party took both decisions up to the Court of Appeal.<sup>81</sup> On Oct. 8, 2021, the Court of Appeal ruled that it is the person who makes an allegedly false statement who must disprove the statement's falsity, and not vice versa. In its decision, the court also upheld the constitutionality of POFMA.<sup>82</sup>

Individuals facing prosecution initiated by state authorities for expression critical of the government possess limited avenues for remedy, as the court judgements frequently reject attempts to seek remedy by injured parties.<sup>83</sup> Both of these men have passed away, killed by Singapore's judicial system. Indeed, Singapore's legal aid system does not cover post-appeal cases. Families therefore have to either find lawyers willing to work for free or raise the necessary funds, which can be particularly difficult given that most of them come from modest social backgrounds at best.

The country lacks relevant pieces of legislation such as SLAPP law to guard against lawsuits that may restrict the work of HRDs as well as whistleblowing legislation to protect those exposing rights abuses.

Additionally, there is no national human rights institution in place to act as a state-based non-judicial grievance mechanism.

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# THAILAND

# 8. Thailand



| YEAR | DEMOCRATIC STATUS OF THE COUNTRY<br><small>(according to the Freedom In The World index)</small> | DIGITAL SPACE & ONLINE FREEDOM STATUS OF THE COUNTRY<br><small>(Digital Space Status)</small> | PRESS & MEDIA FREEDOM STATUS OF THE COUNTRY<br><small>(according to the World's Press Freedom Index)</small> |
|------|--|---|--|
| 2020 | 32/100<br><small>NOT FREE</small>  | 35/100<br><small>NOT FREE</small>   | 140/180 (55,06)<br><small>DIFFICULT</small>  |
| 2021 | 30/100<br><small>NOT FREE</small>  | 36/100<br><small>NOT FREE</small>   | 137/180 ( 54,78)<br><small>DIFFICULT</small>   |
| 2022 | 29/100<br><small>NOT FREE</small>  | 39/100<br><small>NOT FREE</small>   | 115/180 (50,15)<br><small>DIFFICULT</small>  |
| 2023 | 30/100<br><small>NOT FREE</small>  | 39/100<br><small>NOT FREE</small>   | 106/180 (55,24)<br><small>DIFFICULT</small>  |

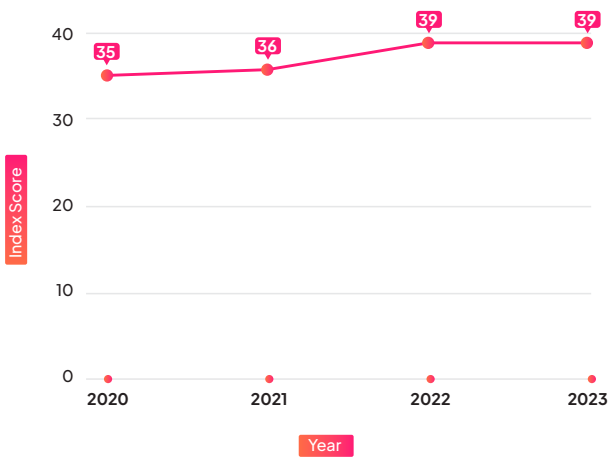
Fig. 8.1: Summary of freedom ratings for Thailand, 2020-2023.<sup>1</sup>



*Thailand’s digital democracy is under siege, with alarming weaponisation of digital platforms against political opponents and youth democracy activists. The continued abuse of COVID-19 and cyber laws to stifle dissent is distressing.<sup>2</sup>*

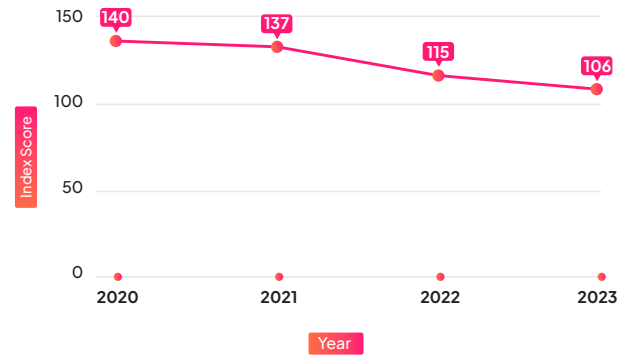
- Emilie Palamy Pradichit, Founder of Manushya Foundation and co-author of the Freedom on the Net: Thailand Country Report.

## Digital Space & Online Freedom Status (Freedom on The Net)



Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

## Media & Press Freedom (World Press Freedom Index)



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Fig. 8.2: Digital Space & Online Freedom Status (Freedom on The Net) and Media & Press Freedom (World Press Freedom Index) Ratings for Thailand over the years, 2020-2023.

## 8.1 Legal Framework

The 2017 Constitution protects the right to freedom of expression under Sections 34 and 36, with limitations relating to national security, public interest, and public health and order. The Constitution also guarantees media freedom without any censorship under Section 35 and only authorises restrictions if the country is at war. Further, access to information is recognized as a fundamental right under both Sections 41 and 59 of the Constitution.<sup>3</sup> However, the government imposes disproportionate and unnecessary restrictions on these rights in the digital space by using a number of repressive provisions and laws.

### Criminalization of Defamation: the Criminal Code

In Thailand, defamation is punishable under the Criminal Code, and the types of defamation offences and penalties are detailed in Sections 326 to 333. Section 326 defines defamation as an act which

damages another person's reputation or exposes them to hatred or scorn. Those found guilty of this crime may face up to one year in prison or a THB 20,000 (\$560) fine, or both. It is important to note that this provision does not specify that defamation must be caused by false statements to be an offence. An individual may also be punished on the basis of truthful statements if those statements are proven to have caused harm to another party's reputation. Additionally, Section 328 prohibits defamation via publication of documents, pictures, letters, or other types of media. Defamation committed through these means will result in more severe penalties: a prison sentence of up to two years and a maximum fine of THB 200,000 (\$5,600). A person may not bear the responsibility if the statement is made in self-defence (Section 329(1)), fair criticism (Section 329(3)), or as reports of court proceedings (Section 329(4)).<sup>4</sup>





*We are seeing the use of defamation cases as a tool to undermine the legitimate rights and freedoms of communities and rights holders, who are often from some of the most vulnerable groups in society. Criminal defamation charges against human rights defenders serve only to criminalise their legitimate human rights work and may violate their right to freedom of expression.<sup>5</sup>*

- A coalition of UN Human Rights Experts

## Royal Defamation Law as a State-Weapon to Silence Dissent

Much like Cambodia, Thailand has a special regime that governs defamation against the monarchy or lèse-majesté. It is found under Section 112 of the Criminal Code, which forbids any action that “defames, insults or threatens the King, the Queen, the Heir-apparent, or the Regent.” Offenders could be imprisoned for three to 15 years, the most severe for a crime of this nature.<sup>6</sup> Those who face multiple counts under Section 112 must also serve consecutive sentences. Thus, many have had to be imprisoned for long periods, sometimes decades, simply for expressing themselves. On top of that, enforcement of this provision can be problematic as the term “insult” is not clearly defined. A wide variety of acts and expressions can be penalised as a result. Section 112 also does not require for complaints to be submitted by an injured party or the authorities; anyone can file a lèse-majesté complaint.<sup>7</sup> As such, the law is open to politicisation and weaponization against expression. Since its inception, Section 112 has created an environment of fear around free speech in the digital space. In January 2023, ultraconservative political party Thai Pakdee revealed that it was seeking an amendment of the Thai constitution so that Section 112 covers royal families of the past and present, as well as “lower-ranking royals.”<sup>8</sup> His petition was approved by the Parliament on Feb. 7, 2023.<sup>9</sup>

## Sedition Law to Muzzle Critics

Section 116 of the Criminal Code, known as the sedition law, is also a provision frequently invoked by the state to prosecute pro-democracy activists and netizens. Under Section 116, an act is considered seditious where it is carried out to incite change in the country’s laws or the Constitution “by the use of force or violence”; raise “unrest and disaffection amongst the people”; or contribute to the people’s infringement of the laws.

The definition of “unrest or disaffection” in Section 116 is ambiguous, and the court’s sentencing may be arbitrary as a result of this extremely broad language. A sedition conviction may lead to a maximum of seven years’ imprisonment.<sup>10</sup>

### Computer Crime Act (CCA): Tightened Control over Online Expression

Paragraphs (1) and (2) of Section 12 of the 2017 CCA penalise the import of “false” or “distorted” information into a computer system, while Section 14(3) strictly bans the dissemination of any information that could threaten national security or is likely to negatively affect national security or give rise to panic among the public. The forwarding and sharing of the content prohibited under Section 14(1) through Section 14(3) can also be prosecuted. Moreover, according to Section 17, Thai citizens residing abroad who publish information that harms the Thai people or government could similarly be punished under the law.<sup>11</sup> Because of the ambiguity of wordings such as “false” and “distorted” as well as the broad nature of “national security” and “public panic” offences, the CCA charges and rulings largely depend on the interpretations of government officials and the court.<sup>12</sup> These provisions therefore back the authorities’ crusade against opponents of the regime who are vocal on digital platforms, potentially triggering a chilling effect and self-censorship. The Cybersecurity Act of 2019 fortifies the state’s online monitoring and mass surveillance powers, enabling the government to monitor and limit free speech.<sup>13</sup>

September 2020 saw the establishment of a committee based on the Prime Minister’s Order No. 32/2563 to investigate and prosecute any person who disseminates disinformation and misinformation regarding the then prime minister Prayuth Chan-o-Cha. Within less than a year, the committee claimed that it had initiated approximately 100 cases on behalf of the Prime

Minister under defamation and lèse-majesté provisions and the CCA.<sup>14</sup>

On Sept. 6, 2020, the Royal Thai Police’s Technology Crime Suppression Division created a Cyber Police Bureau tasked with combating cybercrimes and enforcing cyber laws including CCA and the Cybersecurity Act.<sup>15</sup> This Bureau gives more power to the police to control online speech and crackdown on dissenting voices.

### Increased State Surveillance: Cybersecurity Act and National Intelligence Act

The 2019 Cybersecurity Act fortifies the State’s online monitoring and mass surveillance powers. Brought into force to combat “cyber threats”, the Act provides for overbroad powers to executive authorities to monitor online information and search and seize electronic data and equipment where “national security” is compromised and to protect the country’s “Critical Information Infrastructure” (CII) – where both “national security” and CII are left undefined. The Act establishes insufficient independent monitoring mechanisms – where a threat is deemed “crisis” level, any search or seizure can be undertaken without a court warrant and without access to appeal before the courts. The Act also does not include remedy or accountability provisions for rights violations. Risks for unaccountable violations are imminent as the policy-making bodies determining “national security” or “threat” levels are led by the military and members appointed by the military-led Cabinet.<sup>16</sup>

The 2019 National Intelligence Act, which came into full effect in April 2019 grants the National Intelligence Agency (NIA) unrestricted powers in compelling ISPs to hand over sensitive personal information whenever the NIA considers the case to be a “national security” threat. The term “national security” still remains undefined and is subjectively interpreted as anything the NIA or

government sees fit can fall under this definition, and without adequate, independent or effective oversight mechanisms provided for under the Act. For instance, in situations where the information is not provided by a government agency or individual, the NIA has the authority to “use any means, including electronic telecommunication devices or other technologies” to obtain the particular information.<sup>17</sup>

### Not-for-Profit Organizations Draft Act: Censorship on Expression

The Draft Act on the Operations of Not-for-Profit Organizations, enacted to regulate the operations of not-for-profit organisations in the country, may have a wide-ranging impact on online freedoms. It was originally approved by the cabinet in February 2021 and the latest draft is dated January 2022. Under the bill, civil society groups must be registered in order to operate, otherwise they face criminal penalties. However, since there is no precise definition of a non-profit organisation in the bill, any group of persons, including online groups, carrying out any activities might be subject to its provisions.<sup>18</sup> The bill has not been submitted for cabinet consideration, thus it has not yet come into effect.

### Media Ethics and Professional Standards Promotion Draft Act Risks Stifling Coverage of Sensitive Issues

On Jan. 11, 2022, the Cabinet approved the Draft Media Ethics and Professional Standards Promotion Act. It requires media organisations to register with the Media Council responsible for overseeing their activities and setting ethical standards of reporting.<sup>19</sup> The registration requirement puts unregistered organisations and citizen journalists, who cannot register, at a risk of being banned from reporting, which further

impinges media freedom in the country, including in the digital space. The Council is authorised to develop a set of standardised media ethics and take action against those whose work do not conform to the standards. However, there are no clear bounds to how such non-conformity is assessed. Equally problematic is that the Draft Act requires news reporting to be compliant with social mores. Outlets who fail to align their activities with the “duties of Thai people or good morals of the public” could have their licences revoked. The bill was under debate by the Parliament in February 2023, but, due to a lack of quorum, the meeting was adjourned before a vote.<sup>20</sup>

### Anti “Fake-News” Laws: Other Instruments to Curb Online Speech

In February 2022, the Cabinet approved the Draft Regulation on Prevention, Suppression, and Solving Problems of Fake News Dissemination on Social Media.<sup>21</sup> Under the guise of combating disinformation on social media, the Draft Regulation proscribes “inappropriate content or fake news on social media or in computer systems that may cause damage to the public or affect the peace or cause chaos or damage in the country.”<sup>22</sup> It also broadly defines as “fake news” “any computer data on social media or in a computer system that is false information, whether wholly or partly,” without designating any particular authority to be responsible for making such a determination. In effect, the regulation’s restrictions could apply to any information or online content. The Draft Regulation also creates a coordination mechanism operating on three levels: central under the Ministry of Digital Economy and Society (MDES), ministerial under each ministry and provincial. Each is vested with the power to take legal action against fake news publishers and to notify the MDES of suspected misinformation for removal.

The government had previously established two other fake news-suppression bodies: one in 2019, set up by the MDES,<sup>23</sup> and another one in 2021, created under the Department of Special Investigation in the Ministry of Justice to investigate attempts to spread false news about the COVID-19.<sup>24</sup>

## Ramping up State Censorship Online by Controlling Service Providers

On Dec. 25, 2022, a ministerial decree entered into force, as part of Thailand's latest attempt to intensify state censorship online. Ministerial Notification of MDES re: Procedures for the Notification, Suppression and Dissemination and Removal of Computer Data from the Computer System B.E. 2565 replaces its 2017 predecessor<sup>25</sup> and requires service providers—intermediaries and social media providers—to comply with draconian time limits ranging from 24 hours to mere days to respond to content takedown orders by the general public and users.<sup>26</sup> The decree operates on the basis of loosely-defined provisions under the CCA and provides almost no avenue for independent oversight or checks-and-balances, thereby risking the overcriminalization of service providers and disproportionate removal of online content. Vague and overbroad offences under Section 14 of the CCA are used as a frame of reference for content which must be taken down. In addition, service providers must comply with any and all complaints it receives irrespective of their basis, necessity and proportionality.

## 8.2 Challenges and Cases

### #WhatsHappeningInThailand

Following nearly a decade of military-aligned rule, Thailand held a general election in May 2023. It was the first general election since the pro-democracy movement started, and voters delivered a clear

preference for pro-democracy parties.<sup>27</sup> However, on Aug. 22, 2023, Srettha Thavisin, a real estate tycoon affiliated with the Pheu Thai Party, assumed the role of Thailand's prime minister following a parliamentary session for the Prime Minister Voting. Srettha Thavisin secured a decisive victory, obtaining a substantial majority of votes from both the House of Representatives and the Senate. Notably, he emerged as the sole contender for the prime ministerial position, as Pita Limjaroenrat, the candidate from the winning Move Forward party, failed to garner sufficient support from the junta-appointed senate. Taking over from Prayuth Chan-ocha, the former military general who seized power through a coup d'état in 2014, Srettha Thavisin is now set to lead a coalition government that includes military parties involved in past coups, such as Palang Pracharath and Ruam Thai Sang Chart. This development sends a clear message that the voices of the over 25 million Thais who voted for a return to democracy may be overlooked.<sup>28</sup>

Additionally, although the Constitution recognises the fundamental rights to freedom of expression and access to information,<sup>29</sup> the country has seen a deterioration of democracy and a growing digital dictatorship in recent years. Freedom on the Net ranked Thailand "not free" for three consecutive years with an aggregate score of 36/100 in 2021 and 39/100 in 2022 and 2023.<sup>30</sup> The World Press Freedom Index by Reporters Without Borders ranked Thailand 115th out of 180 countries with a score of 50.15 in 2022.<sup>31</sup> In 2023, it moved up to the 106th position with a score of 55.24.<sup>32</sup> As far as the media's role is concerned, former PM Prayuth has notably stated that journalists "play a major role in supporting the government's affairs."<sup>33</sup>

## Struggles, Legislation, and Repression in Thailand (2020–2023)



**LEGEND:**

⚠️ : Alleged offense + (articles/provisions invoked against the individual)  
 - "Unknown": Either information is not available or no articles/provisions have been cited by the judiciary

👮 : Legal and extralegal consequences  
 - "Status Unknown": Current status of the individual is unknown (detained, convicted, deceased, etc).

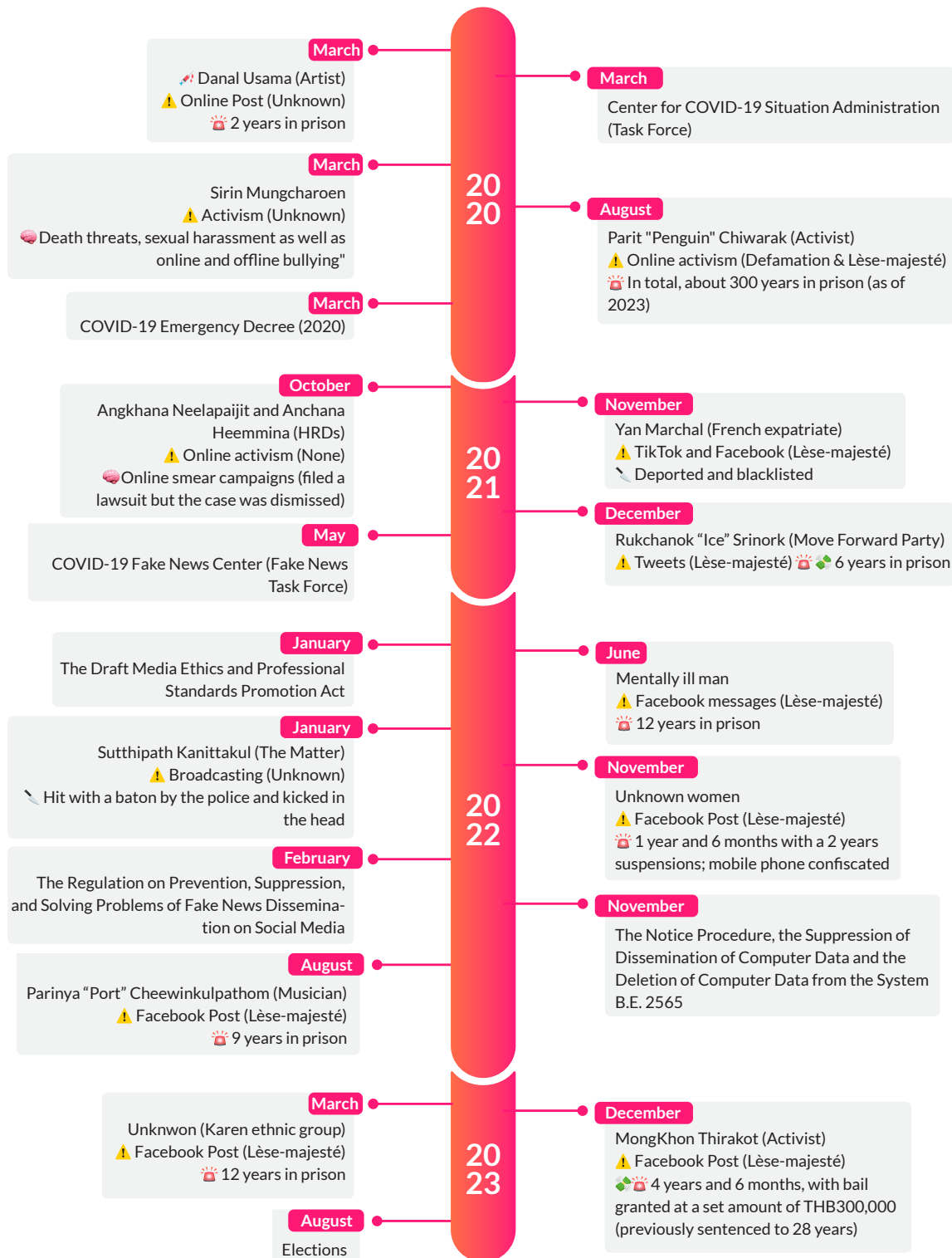


Fig. 8.2A: Summary timeline for Thailand, 2020-2023





| Country  | Event  | Contextualisation   |
|--|--|---|
| <br><b>THAILAND</b> |  Regulation on Prevention, Suppression, and Solving Problems of Fake News Dissemination on Social Media (2022)                              | Many critics fear that this regulation could be used abusively by authorities to censor dissenting opinions and suppress freedom of expression. Some view this measure as an infringement on media freedom and democracy, as it grants authorities extensive powers to control and filter online content.   |
|  |  The Notice Procedure, the Suppression of Dissemination of Computer Data and the Deletion of Computer Data from the System B.E. 2565 (2022) | The law empowers authorities to issue notices to internet service providers (ISPs) and online platforms to remove or suppress content deemed illegal or harmful.  |
|  |  Elections (2023)   | Progressive and pro-democracy opposition parties, notably the Move Forward Party led by Pita Limjaroenrat, secured a significant victory in Thailand's recent elections. This outcome challenges the long-standing dominance of military-backed incumbents, signaling a strong desire for change among Thai voters. The Move Forward Party is projected to win 151 seats, the highest in the House, while the populist Pheu Thai Party is expected to secure 141 seats. Together, they hold at least 292 seats in the 500-member House. However, challenges persist in forming a government due to the military's influence, particularly through the appointed Senate. Move Forward is currently 67 votes short of the majority needed for Pita Limjaroenrat to become prime minister, leaving uncertainties about potential government formation. |

Fig. 8.2B: Contextualisation for Thailand's timeline, 2020-2023

“

*During the past 8 years, the right to freedom of expression that belongs to us has been taken away. In the past, we may have been discriminated against by social norms, being stigmatised as “rebels who aim to overthrow the monarchy” or “nation haters.” In contrast, expressing your opinions today can be a matter of life and death.<sup>34</sup>*

- Sophon “Get” Suraritthamrong, founder of Mokeluang Rimnam activist group

## Speaking Out is Dangerous and Can Result in Lengthy Prison Sentences

Since the rise of the pro-democracy movement in 2020, Section 112 (lèse-majesté) of the Criminal Code and the CCA have been extensively invoked to target activists, HRDs, and internet users who turn to digital platforms to call for true democracy and reform of the monarchy. According to Thai Lawyers for Human Rights (TLHR), from the commencement of the “Free Youth” protest on July 18, 2020, until Dec. 31, 2023, at least 1,938 individuals have faced prosecution in 1,264 cases for their involvement in political assemblies and expressions. Among them, 286 are children and youth under 18 years old. Specifically concerning Section 112 and the CCA, there were at least 287 lèse-majesté lawsuits against 262 individuals and at least 214 charges targeting 195 individuals related to online expression.<sup>35</sup>

This phenomenon of legal abuse can be attributed to the announcement made by the then PM Prayuth Chan-o-cha on Nov. 19, 2020, stating that the government would use all necessary laws, including Section 112 of the Criminal Code, against protesters in order to maintain the country’s peace and order.<sup>36</sup> Consequently, after two years of moratorium on the use of Section 112, the draconian law was enforced again, especially to curb anti-royalty opinions online, and the number of cases started by this law has increased. Moreover, the lèse-majesté law has evolved since November 2021, when the Thai Constitutional Court ruled that activists’ calls for royal reform constitute an attempt to overthrow the monarchy.<sup>37</sup> The ruling set a dangerous legal precedent for Thailand that may have a devastating impact on the eventual verdicts on lèse-majesté cases. For example, on Aug. 16, 2022, dissident musician **Parinya “Port” Cheewinkulpathom** was sentenced to nine years on lèse-majesté and CCA charges over three Facebook posts he made in

2016 about the monarchy.<sup>38</sup> In November 2022, Nacha (pseudonym), was found guilty of violating Section 112 of the Criminal Code and the CCA, and sentenced to three years in prison for commenting on a picture of King Vajiralongkorn in the Royalist Marketplace Facebook group. Her sentence was reduced to one year and six months with a two-year suspension, and her mobile phone was confiscated by the court.<sup>39</sup>

Additionally, courts have also expanded the scope of lèse-majesté application to encompass any defamatory statements made about previous Kings and not just the current King, Queen, and Heir-apparent or Regent as the law intends. In November 2022, a court of appeal sentenced a student to one year and four months for violating Section 112 on the basis of a Facebook post he had made criticising the former King Rama IX,<sup>40</sup> setting a dangerous precedent for future Section 112 cases. Moreover, due to the persistent enforcement of Section 112 or lèse-majesté and the CCA, a multitude of cases and charges have emerged, alleging violations of Section 112 and the CCA. Consequently, a substantial number of individuals find themselves sentenced to imprisonment for durations exceeding a decade. For instance, in June 2022, **a mentally ill man was sentenced to 12 years** over four messages he had posted in the Facebook group Royalist Marketplace that were seen as defamatory of the King and Queen. The Court denied his defence’s request to provide psychiatric support for him at his trial as the man was “able to talk about himself.”<sup>41</sup> Moving to March 2023, **a member of the Karen ethnic group was sentenced to 12 years** for Facebook posts discussing the king’s neutrality and promoting a pro-democracy demonstration. His bail request was denied.<sup>42</sup> In May 2023, **a 34-year-old security officer received a 15-year prison sentence** (later reduced to 7 years and 6 months) for Facebook posts and TikTok videos regarding the former and current king of Thailand.<sup>43</sup>

In June 2023, a 60-year-old **man received a 18-year sentence** for online posts about the monarchy. His sentence was subsequently reduced to a two-year suspended sentence following his confession.<sup>44</sup> On Oct. 30, 2023, **Mongkhon ‘Bas’ Thirakot**, an activist and online clothing vendor based in Chiang Rai, faced charges under Section 112 and CCA for two Facebook posts from July 2022. One post featured an image of the King with a message on wearing black in mourning, while another showcased an edited picture of Mongkhon holding a picture frame. He received a cumulative sentence of four years and six months, with bail granted at a set amount of THB 300,000. Notably, Mongkhon had previously been charged with royal defamation for 27 Facebook posts. Found guilty on 14 counts, he was sentenced to 28 years in prison by the Chiang Rai Provincial Court. The court ruled for the sentences in both cases to be served consecutively. Currently, Mongkhon is in the process of filing an appeal.<sup>45</sup>

The imprisonment term can escalate significantly. Another instance involved in January 2023, **pro-democracy activist Mongkhon “Bas” Thirakot Bas was sentenced to 42 years in prison**, later reduced to 28 for being cooperative—for Facebook posts “defaming” the monarchy. According to the Thai Lawyer for Human Rights, the court ordered Mongkhon to be tried in secret, and initially the courtroom was off-limits to everyone not involved in the trial. Mongkhon was released on bail while his case is on appeal.<sup>46</sup> It is the second-longest term handed down in modern times after the sentence of Anchan Praelert in January 2021. **Anchan Praelert, a former civil servant, was sentenced to 87 years in prison** for uploading audio clips of “Banpot,” a radio host critical of the monarchy, to YouTube. Her sentence was reduced to 43 and a half years after pleading guilty.<sup>47</sup> She was previously detained pre-trial for nearly four years from January 2015, and released on bail in November 2018.

“

*Anchan has been subjected to unfair judicial proceedings in a military court, lengthy detention before and during trial, and an unprecedented prison sentence. The Thai government must right the wrongs suffered by Anchan and immediately release her.*

*- Yaowalak Anuphan, Thai Lawyers for Human Rights Head.<sup>48</sup>*



# THAILAND



**Anchan Preelerd**

Former civil servant



## 2023 Political Overview

Parliamentary Constitutional monarchy with elected government in theory, authoritarian regime in practice.

**Head of State**

King Maha Vajiralongkorn

**Head of Government**

Prime Minister Srettha Thavisin

## #FreeAnchan

## #Section112

### 📖 CASE STUDY

No-one is safe from Digital Dictatorship when authorities weaponise the law, exemplified by the case of this former civil servant..

**WHO**

📖 Anchan Preelerd, a former civil servant

**WHERE**

Bangkok, Thailand

**HOW**

⚠️ How Digital Dictatorship has caused the violation of Anchan Preelerd's human rights:

**WHEN**

2014–2015 (audio clips shared);  
19 January 2021 (sentenced), remains in jail to this day.

**WHY/WHAT**

👑📢 Anchan was accused of uploading audio clips onto social media that were deemed 'defamatory' against the monarchy, and that violated lèse-majesté laws.

📖👏🙏🙇🙇🙇🙇 In 2021, Anchan was given a guilty verdict and sentenced to 87 years in prison for these audio clips. Her sentence was only reduced to 43 years and 6 months after she pleaded guilty. This is considered one of Thailand's harshest lèse-majesté-related cases. Anchan and her lawyers have spoken out many times about the inhumane treatment she has experienced while in detention at the Central Women's Correctional Institution. As an elder and a woman, she experiences disproportionately dehumanising treatment.



FIDH, *UN body demands immediate release of woman jailed for record lèse-majesté sentence*, (29 December 2021), available at: <https://www.fidh.org/en/region/asia/thailand/un-body-demands-immediate-release-of-woman-jailed-for-record-lese>.

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.

**Pro-democracy activist Parit “Penguin” Chiwarak has the highest number of Section 112 (lèse-majesté) cases** in Thai history. Among more than 20 lèse-majesté or royal defamation cases he is undergoing, several were brought against him over his online activism against the dictatorial regime, including his criticism of the royal family. On Dec. 9, 2020, “Penguin” was notified of his first case involving simultaneous lèse-majesté and CCA violations for posting a letter to King Vachiralongkorn on his Facebook which detailed the pro-democracy movement’s three-point demands for the resignation of the then PM, an amendment of the Constitution, and a monarchy reform.<sup>49</sup> However, this was not the only attempt by royal supporters and the government to persecute and intimidate him into silence, as he was later charged for a number of Facebook posts and comments. In a September 2020 case, he faced charges of royal defamation and Section 14(3) of the CCA for inviting people to join the campaign to boycott Siam Commercial Bank, where King Vachiralongkorn is reported to be the largest shareholder.<sup>50</sup> In March 2023, he was charged with Section 112, CCA, and sedition for his speech at a 2020 protest and for broadcasting it online. He was released on bail.<sup>51</sup> In May 2023, he was indicted for Section 112 and CCA for criticising online the court’s withdrawal of bail for political prisoners. He was released on bail.<sup>52</sup> However, if convicted on all charges, he could face up to 300 years in prison.

“

*Dissenters deserve to be safe. This is how we build a new social structure and move forward as a society.*<sup>53</sup>

- Sophon “Get” Suraritthamrong, founder of Mokeluang Rimnam activist group

## Arrests and Arbitrary Detention of Activists

The weaponisation of the Section 112 and CCA to restrict online activities regularly leads to arrests and arbitrary detention of activists. Their requests for bail are usually rejected or granted with stringent conditions. In March 2022, **Tantawan “Tawan” Tuatulanon**, a 20-year-old activist and member of the pro-democracy group Thaluwang, was arrested while livestreaming at Ratchadamnoen Nok Avenue in Bangkok before a royal motorcade was scheduled to pass. During the broadcast, Tawan questioned why farmers protesting near the royal motorcade route had to be moved and discussed the results of the opinion poll she conducted in February on traffic closures caused by royal motorcades. She was charged under Sections 112 and 116 of the Criminal Code, and Section 14(2) and 14(3) of the CCA. Even though Tawan was released on bail two days after the arrest, it was on the condition that she must not “commit any act that may damage or denigrate the monarchy” while awaiting her trial. This condition enabled the police to imprison her again in April after she announced online her intention to appear near a motorcade route on March 17, 2022. Later, on May 26, 2022, she was granted another conditional bail after having her previous requests denied, and was detained for 37 days, during which she went on a hunger strike to protest the unjust treatment she was subjected to.<sup>54</sup>

On Jan. 16, 2023, **Tawan and Orawan “Bam” Phuphong** revoked their own bail to demand release of political prisoners, after the court revoked bail for fellow activists **Nutthanit “Bai Por” Duangmusit** and **Sophon “Get” Surariddhidhamron**, charged with lèse-majesté.<sup>55</sup> The couple went on hunger strike on Jan. 18, 2023 and other pro-democracy activists convicted of royal defamation followed suit nearly immediately after.<sup>56</sup> Following Tawan and Orawan strike, concerns over the necessity of bail reform

and calls for the release of political detainees were raised by a range of actors: opposition parties,<sup>57</sup> youth-led monarchy reform group Thulawang, law professors, and health workers.<sup>58</sup> After 20 days of a dry-hunger strike, they were granted bail due to the deteriorating health condition.<sup>59</sup> On March 11, 2023, they ended their hunger strike after 52 days in order to receive life-saving treatment so they could carry on their campaign for reform.<sup>60</sup>

In addition, **Warunee's** case serves as another prominent illustration of the intricate interplay between Thailand's royal defamation law and the CCA. It was initiated when Warunee shared a photo on Facebook in which King Rama 10's image was altered, along with the seasonal attire of the revered Emerald Buddha, provoking perceptions of disrespect towards both figures.<sup>61</sup> This led to a lawsuit in February 2022, alleging her intention to defame the King and insult religious symbols.<sup>62</sup> In May 2023, Warunee admitted to the Section 112 charges but contested the accusation of religious insult, citing her bipolar disorder. Her initial three-year sentence was subsequently reduced to one year and six months due to her guilty plea. Despite her legal situation, she was denied bail, prompting her to embark on a hunger strike in August 2023, which ultimately resulted in her hospitalisation. After more than a month of being hospitalised and 46 days of hunger strike, the bail has yet been granted despite her physical and medical health concerns.<sup>63</sup> All bail requests were consistently denied by the courts, who cited the severity of the charges and concerns about potential flight risk.<sup>64</sup>

Parallel to Warunee, "**Weha Sanchonchanasuk**," faces charges under Section 112 and CCA, is also seeking bail.<sup>65</sup> His allegations stem from his experience of temporary detention at the Bangkok Remand Prison in the Thawi Watthana district, which gained attention on Twitter in 2021. On May 18, 2023, Weha received a sentence of three years and 18 months without suspension<sup>66</sup> and has been in custody since. He initiated a concurrent

food strike with Warunee on Aug. 23, 2023. Unlike a complete hunger strike, Weha abstained from solid food while still consuming liquids like water, fruit juices, and milk.<sup>67</sup> The strike lasted for 49 days without being granted bail.<sup>68</sup> Furthermore, on Oct. 31, 2023, he faced additional charges under Article 112 and CCA for posts on the Facebook page "Free Youth Group," criticising the government's vaccine management and posting messages critical of the court on New Year's Day. He received a two-year and 12-month imprisonment sentence, to be served consecutively with the previous case, with no granted bail.<sup>69</sup> The case of Warunee and Weha underscore the ongoing complexities within Thailand's legal framework, where the delicate balance between preserving the monarchy and safeguarding individual rights remains a contentious issue.

“

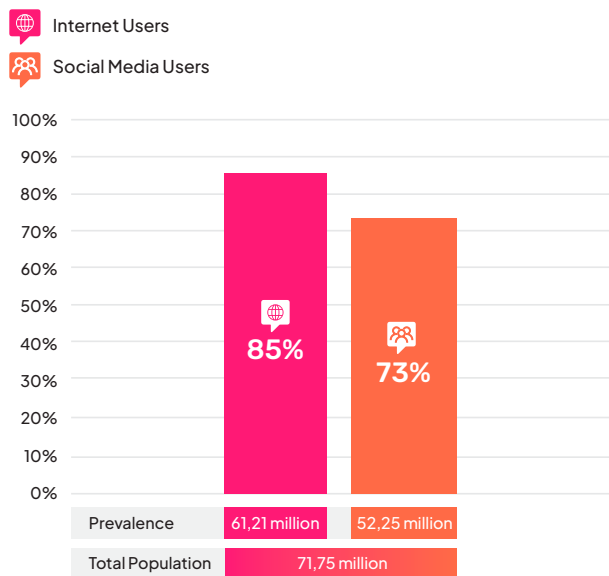
*Political interventions by the military seriously limit freedom of speech when it comes to politics. Because the military government is a dictatorship, they are empowered to enforce absurd laws, exploit the existing laws to their advantage, or suppress criticism.*<sup>70</sup>

- Kanyakorn "Jib" Suntornprug, member of the United Front of Thammasat and Demonstration

## Section 112's Reach Extends Beyond Political Activists to Ordinary Internet Users

Due to Section 112's extremely vague formulation, not only are political activists targeted, the provision has also been abused to infringe on the right to free speech of ordinary internet users who casually participates in critical discussions about the monarchy. For example, Pipat, a 20-year-old man, faces charges under Section 112 and CCA for posting a picture to the Royalist Marketplace, a satirical Facebook group that circulates otherwise forbidden information about royalty. In the post, a photograph of King Rama X and the Crown Prince Dipangkorn Rasmijoti was accompanied by a short text, allegedly defamatory and hostile to the two royal members.<sup>71</sup> In Sept. 2023, Samut Prakan Provincial Court dismissed the case on the ground that the evidence was not credible and may have been edited.<sup>72</sup>

### Thailand Percentage of Internet and Social Media Users



DataReportal, *Digital 2023, Thailand*, (9 february 2023), available at : <https://datareportal.com/reports/digital-2023-thailand>

Fig. 8.4A: Percentage of Internet and Social Media Users in Thailand, 2023.

On Oct. 19, 2022, a provincial court convicted “**Pakpinya**,” a former librarian in Bangkok, of lèse-majesté for her Facebook posts allegedly containing insults against King Rama X. She was sentenced to a total of nine years’ imprisonment.<sup>73</sup> In early November 2022, a 26-year-old single mother identified by the pseudonym “**Nacha**” was sentenced to three years for commenting on a picture of the King posted by a political exile in the Facebook group Royalist Marketplace. Her sentence was later reduced to one year and six months after she pled guilty to all charges.<sup>74</sup>

In addition to these charges, the past years have also seen chilling court verdicts on online criticism of the monarch. **Punyapat** (pseudonym) was sentenced to 12 years in prison for social media posts questioning the King’s stay in Germany and his popularity amongst Thai people. His sentence was reduced to six years for confessing.<sup>75</sup> In another worrying case, a former guard for the anti-government movement Red Shirts, **Sombat Thongyoi**, received a six-year prison sentence for violations of lèse-majesté and CCA. This sentencing resulted from the accusation that Thongyoi damaged the King’s reputation with a Facebook caption “#verybrave #verygood #thankyou,” which is quoted from the King’s comment to one of his supporters and was widely mocked by the royal reform movement at the time.<sup>76</sup> He was detained from April 2022 to February 2023, when he was released on bail with conditions, including wearing an EM tag, refraining from repeating the offences, and participating in demonstrations or activities that may damage the reputation of the monarchy.<sup>77</sup>

As Section 112 has become more politicised, its enforcement has also been extended to regulate expressions that allegedly paint the royal institution in a negative light. This abusive application is clearly seen in the arrest of influencer **Kittikhun “Mom Dew” Thammakitiraj**. Alongside two other influencers, Aniwat Pathumthin, known as “**Nara Crape Katoey**” and **Thidaporn “Nuu-rat”**

**Chaochuwieng**, she was charged with Section 112 violation in June 2022. The charges are related to their advertisement for e-commerce platform Lazada, which was believed by many royalists to be a mockery of the royal family. All three persons were granted bail,<sup>78</sup> and the prosecution against two of them started in May 2023.<sup>79</sup> Later, on Dec. 21, 2023, the Criminal Court dismissed charges against Aniwat, ruling that the videos in question, created as part of a marketing campaign, did not violate the royal defamation law. The court highlighted the absence of “anti-monarchy symbols,” normal speech usage, and the lack of personal coat of arms of a royal family member. Despite the prosecution’s claim of parody, the court concluded that the defendants were merely playing roles to promote their products, with the content deemed inappropriate by certain groups but not constituting defamation.<sup>80</sup>

**Wave (pseudonym)**, a 30-year-old individual from Nonthaburi, is facing charges under Section 112 and the Computer Crime Act (CCA). The charges arise from the dissemination of information via the Facebook website, involving the public sharing of images and text. The images depict King Rama 10 and include text raising questions about the production of COVID-19 vaccines by Siam Bioscience in May 2021. The prosecutor asserts that such actions amount to defamation and insult towards the King, with the intention of undermining the revered institution of the monarchy. This is seen as causing public disrespect and contempt towards the revered King, who is considered inviolable by the Thai people. Additionally, this information is deemed a computer-related offence against the stability of the Kingdom of Thailand under the criminal code. Consequently, he received one year and six months of imprisonment but was granted with the two-year suspension of sentence.<sup>81</sup>

Wave’s case illustrates the expansion of prosecution beyond online criticism of the

monarchy, particularly concerning the management of COVID-19 vaccines. In another instance, Jirawat, a 32-year-old online clothing vendor, has been handed a six-year prison sentence. This conviction is linked to Jirawat’s sharing of three Facebook posts in 2021 addressing the government’s Covid-19 vaccine policy, police corruption, and advocating for monarchy reform. On Dec. 6, 2023, Jirawat was sentenced to six years in prison, a reduction from the initially proposed nine years, and no bail has been granted thus far.<sup>82</sup>

In another instance, **Rukchanok “Ice” Srinork**, a Member of Parliament (MP) from the Move Forward Party (MFP), was convicted on Dec. 13, 2023, under Section 112 and the CCA. The conviction was related to two tweets in 2021 addressing the monarchy and criticising the government’s decision to grant a licence exclusively to one company for the production of the AstraZeneca COVID-19 vaccine. This decision resulted in a vaccine shortage, impacting people’s lives. Ice received a six-year prison sentence without suspension but was later granted provisional bail on the same day, with THB 500,000 as security. Fortunately, she will retain her seat in parliament and can continue fulfilling her parliamentary duties as an MP.<sup>83</sup>

Furthermore, the government has also taken retaliatory measures against both online and offline critics. In November 2021, Yan Marchal, a French expatriate was deported and blacklisted over his political parody of the government on Facebook and TikTok. His actions were deemed to potentially pose a threat to public order.<sup>84</sup> Another incident occurred on Aug. 7, 2023, where **Tanruthai “Pim” Thanrat**, a pro-democracy and indigenous rights activist from the Mokuang Rimnam group, faced charges of “defaming the monarchy” following her speech at a July 14, 2023 protest. Originally centred on seeking parliamentary alignment with the people’s will in selecting the prime minister, Pim was charged with royal defamation. Her case reflects a pattern seen in numerous instances,

where ultra-royalists initiate charges. Thailand's lèse-majesté law permits anyone to report violations, and authorities, along with the courts, frequently entertain these cases, contributing to a broader trend of legal actions against activists expressing dissent.<sup>85</sup>

### **Sedition Law: Weaponized to Prosecute Demands for Democracy**

In March 2021, a 45-year-old farmer Tiwakorn Vithiton was accused of violating the sedition law for posts urging the royal institution to end Section 112 enforcement and calling for the release of four activists. He was also held liable for posting pictures of himself in a shirt that says "We have lost faith in the royal institution" on Facebook, as well as his reasons for wearing the shirt. Authorities claimed that his posts not only

defamed the monarchy, but also "convinced the audience to disrespect the king," "invited similar comments" and in turn "threatened the people's loyalty to the King."<sup>86</sup>

In September 2021, Panusaya "Rung" Sithijirawattanakul, an activist and student protest leader, was arrested and charged under Section 116 of the Criminal Code and Section 14 of the CCA for running the Facebook page of student-led pro-democracy group "United Front of Thammasat and Demonstration (UFTD)".<sup>87</sup> She was granted bail after eight weeks in prison, with strict bail conditions requiring her to refrain from offending the monarchy and to regularly attend court sessions.<sup>88</sup> Panusaya faces 24 criminal charges, ten of which are related to royal defamation, and could face a maximum sentence of 135 years in prison, if found guilty on all charges.<sup>89</sup>

“

*The government's goal is to truly put an end to the pro-democracy movement by exhausting activists physically and mentally in order to maintain the establishment in power. Now, more than ever, we must mobilise and join forces to resist Thailand's digital dictatorship and ensure pro-democracy activists remain strong and brave and can care for themselves as a priority.*

- Emilie Pradichit, Founder & Executive Director of Manushya Foundation

## Pro-Democracy Activists: Subjected to Harassment and Extralegal Intimidation

Individuals who criticise the monarchy are subject to harassment for their online content and face threats. For instance, Sirin Mungcharoen briefly withdrew from social media accounts due to “death threats, sexual harassment as well as online and offline bullying” for a popular video of her protest and several other posts that challenged the status quo.<sup>90</sup> Hundreds of critics of Thailand’s monarchy were also doxed by royalists in June 2021.<sup>91</sup> Not only individuals, but also human rights groups have faced attacks for their work, as in the case of Amnesty International.<sup>92</sup>

Many live in fear for their lives and have no choice but to leave the country, seeking refuge in other nations. However, even after fleeing, the harassment persists, with some activists falling victim to enforced disappearance. For example, in 2020, Wanchalearm Satsaksit, who had been a vocal critic of the military regime on Facebook and was wanted for violating the CCA, disappeared in Cambodia a day after he posted a video criticising the then prime minister.<sup>93</sup>

“

*A society that makes its people feel like a gun is constantly being pointed at their head is not considered a safe society. It is obvious that the situation we are currently facing is not at an individual level. It doesn’t mean that what happened to Wanchalearm Satsaksit can only happen to him. We live under the same system.*<sup>94</sup>

-Sophon “Get” Suraritthamrong, founder of Mokeluang Rimnam activist group

## Online Content Moderation and Restrictions

According to the Freedom on the Net Report 2022 and 2023,<sup>95</sup> the widespread blocking of content critical of the monarchy is evident. However, due to a lack of transparency, the complete scope of this blocking remains unclear. Websites encountered blocks for reasons such as national security concerns, the presence of gambling content, alleged violations of intellectual property rights, and the hosting of unauthorised virtual private network (VPN) services. The government consistently restricts critical content online by blocking web pages and online news outlets. In October 2020, the government issued an order to silence four independent media agencies—VoiceTV, The Standard, Prachatai and The Reporters, and youth-led group “Free Youth”, in an effort to prevent them from reporting on the pro-democracy protests and sharing with the world the truth about [#WhatsHappeningInThailand](#).<sup>96</sup> Nevertheless, the government’s request was eventually rejected by the Criminal Court.<sup>97</sup>

## Government Requests to Remove or Restrict Content or Accounts

Court orders have also been sought by the MDES to block 8,440 URLs with content allegedly offensive to the monarchy—mostly on Facebook—between August and December 2020, of which 5,025 URLs were blocked by January 2021.<sup>98</sup> The Ministry of Digital Economy and Society (MDES) additionally revealed that 4,035 URLs were blocked for “insulting the monarchy and security” throughout 2022.<sup>99</sup> Additionally, petition websites have been blocked in recent years, particularly those concerning the royal family or royal reform. The website “change.org” was also blocked in October 2020, due to its hosting of a petition urging Germany to declare King Maha Vajiralongkorn persona non grata.<sup>100</sup> Website “no112.org”—an online petition platform to repeal the lèse-majesté law—was likewise blocked in February 2022 by the MDES.<sup>101</sup> Human rights lawyer and activist Anon Nampa, being one of the persons who has started the campaign to repeal Section 112, has challenged the decision before the court. He argued that making a petition to amend or repeal a law is permissible under the constitution. In March 2023, the court held there is no reason to change the decision.<sup>102</sup>

The breadth of censorship is constantly growing, and authorities requested tech companies to remove or restrict online content. In 2020, Meta restricted access to 1,961 items on Facebook, out of which 1,947 were in response to reports from the MDES alleging violations of lèse-majesté law, while throughout 2021, 705 items were restricted on Facebook and Instagram, on the same grounds out of a total of 2,634 restrictions. The numbers were higher in 2022 with 8,550 restrictions and 5,240 only for the first half of 2023.<sup>103</sup> According to Google’s Transparency Report, the government sent 184 requests from January to December 2020 to remove 3,250 items across various Google platforms, including YouTube, and 235 requests in 2021.<sup>104</sup>

Most requests are related to criticism of the monarchy and the government. By December 2022, there were 599 requests and 179 for the first half of 2023.<sup>105</sup> Twitter reported 107 requests to remove content in 2020, while only complying with 11.2% of them. In 2021, it logged 128 requests and complied with 13.2% of them.<sup>106</sup> TikTok received a small number of requests to restrict and/or remove content between 2020 and 2023.<sup>107</sup> According to data from the SurfShark website, Thailand has had a total of 1,435 account requests from Apple, Google, Meta, and Microsoft between 2013 and 2021.<sup>108</sup>

Moving forward to 2023, the Freedom On The Net Thailand’s report co-authored by Manushya Foundation summarises that internet freedom in Thailand still remains under attack,<sup>109</sup> while the ASEAN Regional Coalition to #StopDigitalDictatorship exposed a new decree, enforced in December 2022, that placed demands on Internet Service Providers (ISPs), requiring them to adhere to content removal requests within a tight timeframe of 24 hours.<sup>110</sup>

## Online Content Manipulation and Online Smear Campaigns

There is a prevalent occurrence of spreading online propaganda, disinformation, and manipulating content. Suspicions arise that state entities and specific political parties utilise diverse methods for such practices, often directing them towards the opposition, human rights defenders, and specific segments of the population. Government-led online smear and disinformation campaigns are specifically directed at activists and human rights defenders, intending to undermine their credibility and legitimacy. The Internal Security Operations Command (ISOC)—the political arm of the Thai military—has been carrying out Information Operations (IOs) to conduct cyber warfare against HRDs, journalists and academics by funding military-linked accounts publishing posts, stories, articles critical of activists who promote democracy, peace and human rights, as well as



manipulating information and disseminating hate speech.<sup>111</sup> In August 2021, a Move Forward Party MP shared documents detailing the structure of the Thai army's network of commentators, which includes soldiers designated to spread pro-government sentiments, respond to criticism of the government, and target political opposition figures online. The MP also criticised the ISOC's budget request for THB 7.88 billion (\$11.5 million) for information operations.<sup>112</sup> In 2021, the military allegedly signed contracts with public relations companies to enhance the quality of their information operations campaigns,<sup>113</sup> exacerbating the impact caused by the existing regime-backed cyber army. Two women HRDs, Angkhana Neelapajit and Anchana Heemmina, have been subjected to online smear campaigns against them for years after exposing officials' wrongdoing.<sup>114</sup> However, they did not keep silent and filed a lawsuit against the Office of the Prime Minister in charge of the ISOC and the Royal Thai Army for their involvement in the campaign. On Feb. 16, 2023, the court dismissed the case for insufficient evidence to demonstrate that ISOC was responsible for the dissemination of information, citing the lack of evidence like web traffic data.<sup>115</sup>

Furthermore, during the 2023 general election, ISOC faced heavy criticism after it posted online hourly updates on Move Forward Party's (MFP) activity in the Prachinburi province. ISOC has been criticised for fulfilling the authoritarian regimes' demands and has been, allegedly, involved in the creation of far-right propaganda, with some people calling for its dissolution.<sup>116</sup>

### The 2023 Election Period: Surge of Manipulated, False, and Misleading Online Content

According to the Freedom on the Net Report 2023,<sup>117</sup> the 2023 general election period witnessed a surge in manipulated, false, or deceptive online content, predominantly designed to discredit opposition parties

and prominent political figures. Specific information operations spread misinformation alleging that the Move Forward Party (MFP) had introduced a proposal to eliminate the teacher pension system.<sup>118</sup> During a broadcasted pre-election debate, MDES Minister Chaiwut Thanakamanusorn, in relation to MFP's pledge to amend Section 112, argued that Section 112 cannot be amended due to a previous ruling by the Constitutional Court that an amendment is an attempt to overthrow the monarchy.<sup>119</sup> However, the Constitutional Court declared Section 112 to be constitutional.<sup>120</sup> In an online speech, a PM candidate from the royalist political party Thai Pakdee asserted that Section 112 has never been employed to harass individuals and is devoid of any problems.<sup>121</sup> After the elections, malicious rumours circulated, allegedly connected to ISOC, which claimed that the MFP has plans to allow the United States to establish a military base in Thailand.<sup>122</sup> Additionally, women and individuals from marginalised communities have become subjects of information operations (IO) targeting their political engagements. In 2022, Paetongtarn Shinawatra of the Pheu Thai party faced unfounded allegations of replicating a policy from a prior administration. This campaign sought to undermine her political competence and raise doubts about the leadership capabilities of women.<sup>123</sup>

In the predominantly Malay-Muslim southern region, these tactics were also employed to undermine local politicians, activists, and human rights defenders, and associate them with the insurgency leading up to the 2023 election. IOs' target was Romadon Panjor, a peace activist who later became an MFP MP candidate, falsely claiming that he held sympathies towards the insurgency.<sup>124</sup> During 2023, this misleading content continued to be circulated on social media accounts linked to a conservative Buddhist organisation. Their purported objective was to protest what they perceived as pro-Muslim policies by the junta government.<sup>125</sup>

“

*It is the state's duty to protect every citizen from any human rights violation, including smear or hate campaigns. These kinds of campaigns clearly violate human rights, and if the state has failed to stop them, it should constitute an act of negligence – No matter if the state was somehow implicated or not.... We are subject to constant surveillance. They keep commenting on Facebook posts with offensive and denigrating words that make me anguish. I started to get annoyed by their mockery. Instead of trying to understand what we do, some people tend to believe in manufactured content produced to attack us on social media. They use the images and the false claims to berate our work.*

—Angkhana Neelapaijit, WHRD and former  
National Human Rights Commissioner

## State Surveillance to Stifle Dissent

In addition to prosecutions, the government employs surveillance technologies to stifle online freedoms and intimidate pro-democracy activists and dissenting voices. A study on Pegasus Spyware Used against Thailand’s Pro-Democracy Movement in July 2022 revealed that the government deployed Pegasus spyware against at least 30 Thai pro-democracy activists, HRDs, and academics, among others.<sup>126</sup> Following this, MDES Minister admitted during the no-confidence debate that some Thai government departments have been using Pegasus spyware for “national security” and to combat drug trafficking.<sup>127</sup>

### #PeoplePower | How Are People Resisting #DigitalDictatorship?

#### Defending Democracy: Thai Activists’ Battle Against Pegasus Spyware and State Surveillance



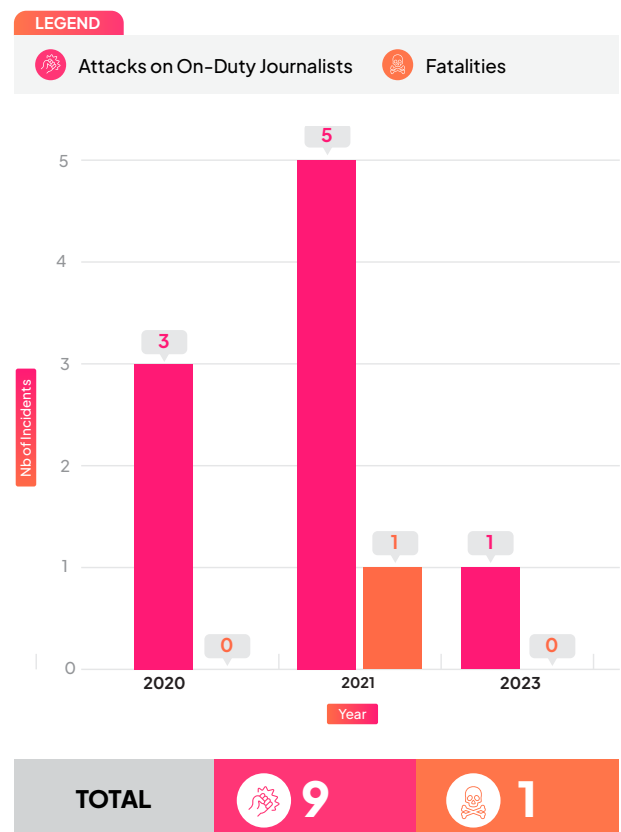
As a response to the State surveillance, eight Thai citizens jointly filed a civil lawsuit against the NSO group in November 2022, accusing them of violating their privacy rights. Nevertheless, their legal pursuit has encountered obstacles.<sup>128</sup> Consequently, in June 2023, Yingcheep Atchanont from iLaw and Arnon Nampa, a Thai human rights lawyer, lodged a lawsuit against nine state agencies. The Administrative Court dismissed the case in August 2023, citing vague claims lacking clear allegations of misconduct. The case is presently awaiting an appeal to the Supreme Administrative Court for reassessment.<sup>129</sup>

Furthermore, on the international scale, in April 2023, a correspondence conveying apprehensions about the utilisation of Pegasus was transmitted to the government by four United Nations Special Rapporteurs (UNSRs).<sup>130</sup> Presently, the government has not provided a response to this UN Communication.

## Freedom of the Press: Under Fire

The media faces increasing pressure over the broadcasting and publishing of content related to the pro-democracy movement or the monarchy. In November 2021, Commissioner of the National Broadcasting and Telecommunications Commission Lt Gen Perapong Manakit warned media outlets against reporting on the youth pro-democracy movement’s call for monarchy reform, citing the Constitutional Court’s ruling that the speeches demanding the reform constitute an attempt to overthrow the “democratic regime of government with the King as Head of State.”<sup>131</sup>

## Attacks on On-Duty Journalists



The Armed Conflict Location & Event Data Project (ACLED), *Disorder Involving the Media*, (n.d.), available at: <https://acleddata.com/data-export-tool/>

Fig. 8.4B: Attacks on On-Duty Journalists in Thailand, 2020-2023.

In May 2023, the broadcast of Move Forward Party's Pita Limjaroenrat's interview on True Visions cable TV, as part of BBC World's program, was momentarily interrupted, displaying a blank screen accompanied by the message: "Programming will return shortly."<sup>132</sup> The discussion revolved around the election results and the political agenda of the party, including the amendment of Section 112. This incident adds to a series of instances where international news media have faced censorship. In the past, various news broadcasts were abruptly cut off, with True Visions stating that they were merely adhering to state policy.<sup>133</sup> The police have also frequently assaulted and arrested journalists for reporting the protests.<sup>134</sup>

Police repressed with violence journalists covering the dispersal of a protest march that was heading towards the Asia-Pacific Economic Cooperation (APEC) meeting in Bangkok on Nov. 18, 2022. **Journalist Sutthipath Kanittakul** of the online news agency, The Matter, was hit with a baton by the police and kicked in the head as he was broadcasting scenes from the crowd dispersal. **Waranyu Khongsathittum** of The Isaan Record was likewise punched and kicked,<sup>135</sup> and a freelance photojournalist **Chaline Thirasupa** suffered an eye injury due to a glass bottle being thrown by the police towards a group of photographers.<sup>136</sup> The Matter filed a lawsuit against the national police force.<sup>137</sup>



## PANDEMIC POLITICS: COVID-19 IMPACT ON ONLINE FREEDOM

The authorities have restricted free expression online using non-human rights compliant laws and regulations, purportedly to respond to the COVID-19 pandemic. Section 5 and 9 of the 2005 Emergency Decree on Public Administration in Emergency Situation (Emergency Decree), which the government activated in March 2020, impeded free speech, including online, in relation to the pandemic. Violation of the Emergency Decree can be punished with two years' imprisonment and/or a fine of THB 40,000 (\$1136).<sup>138</sup> On July 13, 2021, Regulation no. 27 under the Emergency Decree came into force, punishing those who disseminate information or news that causes "fear" or "misunderstanding" or "affects national security or public order or the good morals of the people." The Regulation raised concerns about the prosecution of information sharing even if it is factually accurate.<sup>139</sup>

In June 2021, a "Fake News Center" was also set up under the Department of Special Investigation

(DSI, under the Ministry of Justice) to investigate attempts to spread false news online to mislead the public about the COVID-19 situation.<sup>145</sup>

The state of emergency lapsed in October 2022, and the regulations, announcements, and orders issued thereunder were repealed. Despite this, individuals however continue to face charges under the law with. At the end of December 2023, at least 1,469 people in 664 cases have been prosecuted since May 2020 when the first lawsuit against political activists was filed.<sup>146</sup> The amended Communicable Diseases Act (CDA) became the primary legislation governing Thailand's COVID-19 response on the expiration of the state of emergency.<sup>147</sup> Thai civil society groups and UN experts expressed their concern over the law's repressive provisions, which could similarly restrict freedom of expression, and the lack of transparency around amendments to the CDA approved by the cabinet in September 2021, which have not been made public as of June 2023.<sup>148</sup>

**#PeoplePower | How Are People Resisting #DigitalDictatorship?****Resisting Censorship: How Thai Civil Society and Media Companies****Protected Online and Media Freedoms by Defeating Prayuth's****Unlawful Regulation 29**

On July 29, 2021, former Prime Minister Prayuth Chan-o-cha wielded his decreed powers to enact Regulation 29<sup>140</sup>, authorising the suspension of internet services for those sharing content deemed to “instigate fear,” “mislead,” or affect security. The regulation also mandated internet service providers (ISPs) to identify and immediately suspend internet service to accused IP addresses. This move incited immediate opposition from civil society and journalists.<sup>141</sup>

On August 2 of the same year, The Human Rights Lawyers Alliance and 12 Thai media companies contested the regulation in civil court.<sup>142</sup> Just days later, on August 6, the Civil Court decisively ruled in favour of online freedoms. It criticised the regulation’s vague language, which could infringe upon constitutionally guaranteed freedom of expression and press freedoms. Additionally, the Court acknowledged the vital role of internet access during the COVID-19 pandemic, emphasising the undue burden the regulation placed on citizens.<sup>143</sup>

In response to the court’s ruling, an emergency order halted the former Prime Minister from enforcing Regulation 29, prompting the government to repeal it.<sup>144</sup> **This outcome represented a significant triumph for online freedom of expression and underscored the indispensable role of civil society in safeguarding digital rights.**

It is clear that an Emergency Decree has been used by officials to punish individuals who disseminated allegedly false information about the pandemic and suppress critical voices. In March 2020, artist **Danai Usama** was arrested and charged under Section 14 (2) of CCA for posting online criticism about the lack of screening measures for COVID-19 symptoms at Suvarnabhumi Airport. His case was initially dismissed but, in January 2023, an appeal court overturned the decision, giving him a suspended sentence of two years.<sup>149</sup> In another prominent case, **Thanathorn Juangroongruangkit**, leader of the Progressive Movement and dissolved Future Forward party, was accused by the MDES of violating Section 112 and the CCA for a Facebook live broadcasted in January 2021 in which he raised questions about the government’s COVID-19 vaccine

procurement with reference to Siam Biosciences, a Thai pharmaceutical company owned by the Crown Property Bureau. Following the MDES complaint, the Criminal Court ordered the records of his live broadcast to be taken down from Facebook and Youtube under Sections 14(3) and 20 of the CCA. He filed an appeal against the ban. The court overturned its earlier ruling and lifted the order, citing Thanatorn was critical of the government’s vaccine procurement plan but not of the royal institution itself. However, in June 2023, the Supreme Court upheld the Appeal Court’s decision to remove the clip, citing national security concerns. Thanatorn is still facing criminal prosecution on charges of lèse-majesté and the CCA for the content of his speech during the broadcast.<sup>150</sup>



## INTERSECTIONAL GENDER ANALYSIS: UTILISING SOCIAL MEDIA PLATFORMS AS A MEANS TO ARTICULATE PERSPECTIVES AND HIGHLIGHT PERCEIVED INJUSTICES

Social media platforms serve as a means to articulate perspectives and shed light on perceived injustices. To better comprehend this dynamic, three significant cases are examined. The first initial case revolves around Tanruthai “Pim” Thanrut, an unwavering lesbian human rights defender, a pro-democracy activist, and a dedicated indigenous rights activist, from Mokuang Rimnam.<sup>151</sup> Pim, amidst her fervent commitment, has become a victim of Online Gender-Based Violence (OGBV). The second case involves Nada Chaiyakit, where charges were brought forth by a businessman holding a political position within the renowned Move Forward Party (MFP). The third case of three women human rights defenders (WHRDs) was instigated by the state, often perceived as a manifestation of digital dictatorship.

**Tanruthai “Pim” Thanrut**, a Thai youth activist has experienced Online Gender Based Violence, including doxing. Commencing approximately in 2020, Pim

bravely shared her experiences of sexual assault on a post addressing feminism and gender-based violence. However, instead of empathy, people responded to her comments with vulgarities and insults, questioning whether Pim was dressed to deserve rape. Around the midpoint of 2023, someone (identified as he/him/his) posted pictures of Pim, and making sexually harassing remarks and threatening her. As a lesbian, Pim endured taunts and received disturbing visual messages depicting both male and female genitalia. This relentless onslaught, often accompanied by threats, left Pim in a vulnerable state. In reaction to the harrowing experience, Pim courageously proclaimed, Pim’s encounter with OGBV is multidimensional, reflective of her identity as part of the LGBTIQ+ community, a survivor of rape, a fervent youth activist, and a resolute proponent of pro-democracy and indigenous rights. Tragically, this relentless assault has deprived Pim of the fundamental rights to freedom of expression, digital security, and a safe online environment.

“

*I am one of those who have been subjected to Online Gender Based Violence. I hope I’m the last. But in reality there are still many people facing this violence. Stop sexual violence. With respect for each other’s personalities!*<sup>152</sup>

—Tanruthai Pim Thanrut

**#PeoplePower | How Are People Resisting #DigitalDictatorship?**

A noteworthy legal case regarding gender, harassment, and defamation involves **Nada Chaoyajit**, an advocate for LGBTIQ+ rights who has been active on LGBTQI+ issues and corporate accountability for more than decades. She is also the Sexual Orientation, Gender Identity and Expression, Sex Characteristics (SOGIESC) advisor for the Thai Business and Human Rights Network.<sup>153</sup> Nada faced a defamation lawsuit filed by a businessman, who was not only a politician and an elected Bangkok councillor from MFP but also the employer involved in the case. This legal action was triggered by Nada's

condemnation, shared through multiple social media posts, of the alleged sexual harassment committed by the businessman against a transgender woman employee within his company.<sup>154</sup>

**On Dec. 21, 2022, the Ratchada Criminal Court dismissed the case, citing section 329(3) of the Criminal Code.** The court concluded that Nada's expression of opinion was made in good faith and constituted "fair comment on any person or thing subjected to public criticism." Furthermore, the court recognized Nada as a human rights defender, affirming her role in safeguarding the rights of the victim of sexual harassment in the workplace.<sup>155</sup>

**What is the significance of the Nada Chaoyajit's case?**

Nada Chaoyajit's case provides a profound understanding into the enduring challenges faced by the LGBTIQ+ individuals particularly concerning workplace discrimination and harassment. The legal obstacles underscore the potential difficulties that advocates for the rights of LGBTIQ+ individuals may encounter. However, the court's recognition of Nada as a human rights defender signifies a positive development, acknowledging the critical role activists play in upholding the rights of marginalised

communities, including the LGBTIQ+ groups. Further, the case also highlights the intersectionality of gender and transgender rights embedded within her advocacy, addressing challenges faced by transgender individuals, particularly within workplace contexts. The inclusion of a transgender woman as a victim of sexual harassment emphasizes the need to consider diverse gender identities in broader discussions surrounding workplace harassment.<sup>156</sup>

**#PeoplePower | How Are People Resisting #DigitalDictatorship?**

Concurrently, in a parallel legal episode, three Women Human Rights Defender (WHRDs) - **Angkhana Neelapaijit, Puttanee Kangkun, and Thanaporn Saleephol** faced legal action from Thammakaset Company Limited, for their support of other victims of the company's judicial harassment on Twitter. These tweets contained links to an open letter related to defamation cases filed by Thammakaset, which in turn contained a link to a video about labour rights, subject to a defamation suit.<sup>157</sup> Thammakaset's initiation of defamation proceedings against nearly 40 individuals over the past four years raises concerns about

corporate accountability and the potential suppression of voices critical of alleged misconduct.<sup>158</sup>

**Fortunately, on Aug. 29, 2023, the Bangkok South Criminal Court acquitted all three women human rights defenders of criminal defamation charges brought by Thammakaset Company Limited.** This ruling followed nearly four years of criminal complaints filed by Thammakaset against the women for their social media posts expressing solidarity with human rights defenders facing lawsuits from the company.<sup>159</sup>

**What is the significance of Women Human Rights Defender (WHRDs) cases?**

While Nada's case underscores the importance of advocacy for human rights and addressing issues like sexual harassment, the situation of the WHRDs raises concerns about the use of defamation lawsuits to stifle voices critical of corporate misconduct, suggesting a concerning pattern that could impede freedom of expression. In addressing judicial harassment and corporate accountability, the case involving the WHRDs spotlights corporations initiating legal actions against activists, potentially discouraging individuals from speaking out against corporate malpractices and human rights abuses. The recurrent use of defamation proceedings by Thammakaset Company Limited. prompts

reflection on corporate accountability and the need for mechanisms to prevent the misuse of legal processes to silence critics.

In conclusion, these cases intricately illustrate the dynamic interplay of gender, LGBTIQ+ rights, freedom of expression, digital security, digital rights and corporate accountability. They underscore the significance of acknowledging and addressing the multifaceted challenges faced by advocates striving for justice and equality. Simultaneously, the legal outcomes in the aforementioned cases carry the potential to set precedents for future activism and the protection of human rights in similar contexts.



## THAILAND



## 2023 Political Overview

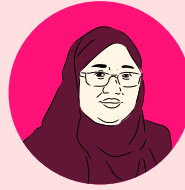
Parliamentary Constitutional monarchy with elected government in theory, authoritarian regime in practice.

## Head of State

King Maha Vajiralongkorn

## Head of Government

Prime Minister Srettha Thavisin



Anchana Heemmina

Thai human rights defender, founder of Duay Jai group, and former NHRC subcommittee member for the Thai Southern Border Provinces (SBPs)



Angkhana Neelapaijit

Thai human rights defender, founder of Justice for Peace Foundation, and former National Human Rights Commissioner of Thailand

#AngkhanaNeelapaijit #AnchanaHeemmina

#StopOnlineHateSpeech #WHRDs

## CASE STUDY

**WHRDs, and HRDs of other marginalised gender identities, suffer disproportionately** from state-enabled **Digital Dictatorship**, and rarely receive reparations or justice, such as in the case of these **two Thai WHRDs...**

## WHO

❤️❤️ Angkhana Neelapaijit, renowned Thai human rights defender, founder of Justice for Peace Foundation, and former National Human Rights Commissioner of Thailand

❤️❤️ Anchana Heemmina, renowned Thai human rights defender, founder of Duay Jai group, and former NHRC subcommittee member for the Thai Southern Border Provinces (SBPs)

## WHEN

4 November 2020 (Angkhana and Anchana file complaints); 16 February 2023 (complaint case dismissed)

## WHERE

Thailand

## WHY/WHAT

❤️❤️🗣️📢🌱 Angkhana and Anchana are both outspoken advocates for women's rights, religious freedom, corporate and government accountability, anti-torture, journalistic freedom, and other justice-related causes, with a particular focus on the Thai Southern Border Provinces (SBPs). Throughout their careers, Angkhana and Anchana have reported various instances of Digital Dictatorship being used against them.

## HOW

⚠️ How Digital Dictatorship has caused the violation of Angkhana and Anchana's human rights:

🗣️📢 In early 2020, during a debate and discussion in the Thai government House about the Draft Budget Act, evidence arose that the ISOC - supported by Thai taxpayer money - were enabling the spread of online disinformation and misinformation, namely about HRDs trying to hold the state accountable for things. In late 2020, Angkhana and Anchana submitted complaints to the Bangkok Civil Court, accusing Thai authority figures including the Office of the Prime Minister and the ISOC, as well as the Royal Thai Army, of involvement in the above examples of digital dictatorship.

❤️❤️🗣️📢🗣️📢🗣️📢 Angkhana and Anchana cited that surveillance and smear campaigns have long been used against them. They noticed that every time they spoke out significantly about human rights issues, they would receive heightened online hate, and have disinformation spread about them, such as on the website <https://pulony.blogspot.com/>. These hate campaigns are very frequently full of misogyny and xenophobia directed towards Angkhana and Anchana. Unsurprisingly to Angkhana and Anchana, who are no strangers to injustice, the court dismissed their case, claiming there was insufficient evidence that the ISOC was complicit in the hate campaigns and disinformation being spread.

Protection International, *Angkhana Neelapaijit and Anchana Heemmina File Civil Case against PM's Office and Royal Thai Army for Their Involvement in a Disinformation and Smear Campaign*, (16 November 2020), available at:

<https://www.protectioninternational.org/news/thailand-angkhana-neelapaijit-and-anchana-heemmina-file-civil-case-against-pms-office-and-royal-thai-army-for-their-involvement-in-a-disinformation-and-smear-campaign>.

iLaw, *ศาลแพ่งยกฟ้องคดีนักสิทธิเรียกร้องค่าเสียหายสำนักนายกรัฐมนตรีถูก IO โจมตี*, (16 February 2023), available at: <https://www.ilaw.or.th/articles/5666>.

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.



## 8.3 Access to Effective Remedy: Guaranteed by Law but Hindered in Practice by the Politicised and Corrupt Judicial System

The law generally provides for access to courts and administrative bodies to redress human rights violations. Section 41 of the Constitution recognizes the right of people to present a petition to a state agency and be informed of the result of its consideration in due time. Moreover, Section 29 enshrines the principle of presumption of innocence and further provides that detention of the suspect should only be undertaken as necessary to prevent escape and that, in such a case, an application for bail must be considered. However, the reality in Thailand shows these rights have not been respected. Courts regularly deny bail requests submitted by pro-democracy activists and netizens who are charged under Section 112 of the Criminal Code, citing that their conduct leading to the allegations is serious which could prompt them to flee, or that offences might be repeated.<sup>160</sup>

The Thai judicial system suffers from politicisation and corruption. One of the many instances illustrating such was the Constitutional Court ruling that activists' royal reform call sought to overthrow the monarchy and activists were ordered to cease all further action.<sup>161</sup> Such a verdict sets a precedent for what is currently happening in Thailand, the politicisation and corruption of a supposedly impartial court of law, using its powers to suppress opposition and intimidate any future dissidents. Moreover, the high number of political cases filed against activists since the pro-democracy protests started in 2020 raises serious questions about the court's impartiality.

In most cases, protection against arbitrary applications of the laws is also absent. For instance, Section 330 of the Criminal Code creates barriers to justice for victims of legal harassment by setting a high

threshold to prove innocence. The Section stipulates that truth is a defence to a charge of defamation, but a defendant is not allowed to prove the truth of the statement if "such imputation concerns personal matters, and such proof will not be benefi[cial] to the public."<sup>162</sup> Citizens accused of defamation are thus systematically denied an impartial due process and remedy. When defamation laws are weaponized to silence critics of government officials by bringing charges against those who speak truth to power, those accused have only limited ways to prove innocence.

### Anti-SLAPP and Whistleblowers Protection

Thailand neither recognizes HRDs in its 2017 Constitution and national legislation nor has specific legislation comprehensively protecting whistleblowers and strengthening their rights. This aspect is partially covered by two relevant acts: Organic Act on Counter Corruption of 1999 amended in 2015<sup>163</sup> and the Witness Protection Act of 2003<sup>164</sup> prescribing measures for protecting the person giving testimony or for whistleblowers, although they do not define the term "whistleblower." Moreover, many provisions under the Witness Protection Act are vague and discretionary.

HRDs, journalists, and ordinary users who face SLAPP cases continuously encounter challenges in accessing judicial grievance mechanisms and defending themselves. Existing provisions within the Criminal Procedure Code to ensure domestic legal protections against SLAPP are inadequate to tackle SLAPP cases. Section 161/1 of the Criminal Procedure Code as an "anti-SLAPP provision" was amended in 2018,<sup>165</sup> which gives the court the power

to dismiss a lawsuit of a plaintiff that has been filed in bad faith or by distorting facts in order to intimidate or take advantage of the defendant. In addition, this Section prohibits the filing of a new lawsuit by the same private plaintiff on similar grounds against the defendants in cases where a final judgement has been reached in accordance with Section 39 (4) of the Criminal Procedure Code. However, this mechanism does not apply to public prosecutors, even when they are representing a plaintiff in the same case that has been filed in bad faith or by distorting facts. Section 165/2 of the Criminal Procedure Code was also added through the 2018 amendment, stating that a defendant may declare to the court a fact or a law, which the court could use to declare the absence of merit in the case in its preliminary stage.<sup>166</sup> The fact that the burden of proof is placed on the defendant or the person facing harassment—often HRDs with limited resources, finances, and access to information—makes this section extremely problematic. Sections 161/1 and 165/2 have been in force since 2019. Criminal law provisions are being used to protect against SLAPP cases, allowing for these criminal cases to be filed in the first place. Thus, instead of providing a criminal provision as protection against SLAPP laws, they should be struck down in their entirety.<sup>167</sup> In practice, these two Sections are rarely being used by the judges who instead would need to hear from both parties to decide on the merits of the case before it can be dismissed.

## Non-Judicial Grievance Mechanisms Available, but Not Sufficient

In terms of the state-based non-judicial grievance mechanism, individuals can file complaints to the National Human Rights Commission of Thailand (NHRCT). However, the NHRCT is unable to monitor and investigate human rights violations in a timely and effective manner, proven by little intervention in cases of HRDs. Moreover, the government rarely pays attention to the recommendations by the NHRCT. Rather, it has the power to pressure the NHRCT to “correct” reports on Thailand by international organisations and NGOs, forcing it to align its agenda with the government.<sup>168</sup> With the limited capacity of NHRCT, it is ineffective for victims of online freedom violations to get access to remedy through this channel. The NHRCT was downgraded from “A status” to “B status” by SCA in 2015 due to concerns over its deficiencies. However, it regained its “A status” in March 2022, and as of Nov. 29, 2023, NHRCT remains in status at A.<sup>170</sup>

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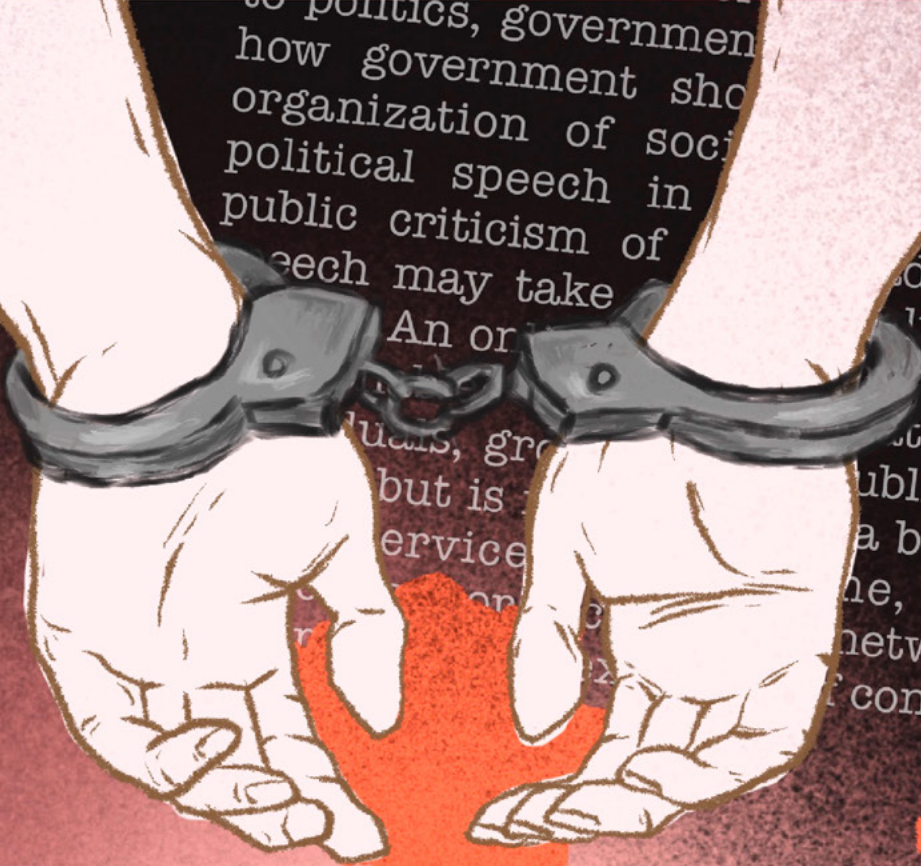
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# VIETNAM

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# 9. Vietnam<sup>1</sup>

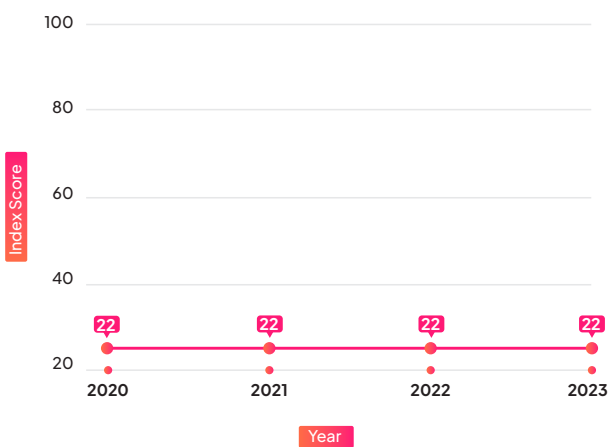
✓ **FREE** Scores 100-70
⋯ **PARTLY FREE** Scores 69-40
✗ **NOT FREE** Scores 39-0

**GOOD** 85-100 points
**SATISFACTORY** 75-85 points
**PROBLEMATIC** 65-75 points
**DIFFICULT** 45-65 points
**VERY SERIOUS** 0-45 points

| YEAR | DEMOCRATIC STATUS OF THE COUNTRY<br><small>(according to the Freedom In The World index)</small> | DIGITAL SPACE & ONLINE FREEDOM STATUS OF THE COUNTRY<br><small>(Digital Space Status)</small> | PRESS & MEDIA FREEDOM STATUS OF THE COUNTRY<br><small>(according to the World's Press Freedom Index)</small> |
|------|--|---|--|
| 2020 | 20/100<br><b>NOT FREE</b>  | 22/100<br><b>NOT FREE</b>   | 175/180 (25,29)<br><b>VERY SERIOUS</b>   |
| 2021 | 19/100<br><b>NOT FREE</b>  | 22/100<br><b>NOT FREE</b>   | 175/180 (21,54)<br><b>VERY SERIOUS</b>   |
| 2022 | 19/100<br><b>NOT FREE</b>  | 22/100<br><b>NOT FREE</b>   | 174/180 (26,11)<br><b>VERY SERIOUS</b>   |
| 2023 | 19/100<br><b>NOT FREE</b>  | 22/100<br><b>NOT FREE</b>   | 178/180 (24,58)<br><b>VERY SERIOUS</b>   |

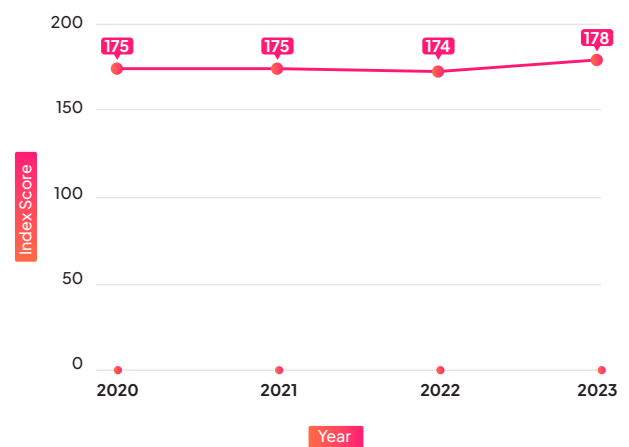
Fig. 9.1: Summary of freedom ratings for Vietnam, 2020-2023.<sup>2</sup>

## Digital Space & Online Freedom Status: Vietnam



Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

## Media & Press Freedom Status: Vietnam



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Fig. 9.2: Digital Space & Online Freedom Status (*Freedom on The Net*) and Media & Press Freedom (*World Press Freedom Index*) Ratings for Vietnam over the years, 2020-2023

“

*Vietnam employs a variety of administrative, economic, and criminal tactics—not just detention and arrests—to repress online political speech. The result of these combined tactics is a sophisticated, secretive government ecosystem that preempts, prohibits, and punishes free speech online.*

- Kaylee Uland, Co-Director the Project88 Vietnam

## Introduction

Vietnam uses various means to regulate political speech online. Since the popularisation of the Internet in the country during the early 2000s, an elaborate policy framework has been developed to limit political speech in virtual spaces. Drawing on an analysis of policy documents and media reports, this chapter identifies relevant policies, highlighting their aims, scope, means of implementation, and implications. We argue that while some measures, such as the Law on Cyber Security or certain provisions of the Criminal Code (2015), have received a lot of international media attention, policies such as the Law on the Press or Party Resolution 35, are more consequential for freedom of expression. Further, although there has been an uptick in criminal prosecutions and arrests linked to online activity in recent years, criminal law tends to be used in a minority of cases and as a measure of last resort.

## Conceptualising the Issue: Regulating Political Speech Online

Political speech refers to any form of expression, spoken or written, that relates to politics, government, government policy, how government should be run and the organisation of society. An example of political speech in Vietnam is citizens' public criticism of state leaders. Political speech may take place in online or offline spaces. An online space is any virtual space that enables the communication between individuals, groups or the public. This may include but is not limited to a blog, website, cloud service, online game, messaging application, or social media network for the dissemination or exchange of content.

## The Vietnamese State's Policy Framework Regulating Political Speech Online

Vietnam's policy framework for regulating speech online spans the party-state apparatus: encompassing the agenda-setting policies of the Vietnamese Communist

|                           |  |  |   |   |
|---------------------------|--|--|---|---|
| <b>POLICY TOOL</b>        | Criminal sanctions, police summons   | Economic sanctions                           | Procedural regulations  | Agenda setting policies, propaganda, social mobilisation  |
| <b>KEY POLICY ACTORS</b>  | MPS  | MPS and MIC                                  | MPS and MIC   | VCP   |
| <b>POLICY INSTRUMENTS</b> | The Criminal Code (2015)<br>The Criminal Procedural Code<br>The Ordinance of Communal Public Security Forces | Decree 15/2020/NĐ-CP<br>Decree 14/2022/NĐ-CP | Law on Cybersecurity (2019)<br>Law on the Press (2016)<br>Decision 1418/QĐ-BTTTT<br>Law on Telecommunication<br>Law on Information Technology (2006)<br>Decree 72/2013/NĐ-CP<br>Circular 38/2016/TT-BTTTT | Political Bureau Resolution 35-NQ/TW October 22 2018 (XII)<br>National Plan No. 14 - KH/TW March 25 2019 (XII) issued by the VCP Secretariat<br>Political Bureau Decision 169-QĐ/TW<br><br>Directive 47/CT-CT<br><br>t1198/QĐ-TTg |
| <b>CHARACTERISTICS</b>    | Intrusive, punitive.   | Deterrent, cost-imposing.                    | Procedural, controlling.  | Manipulative, disguised.  |

Fig. 9.3 Policy Framework.

party (VCP or “party”), as well as policymaking by executive branches of government. While the party sets political agendas within which government policy is developed, the government has developed policy on crime, media, and telecommunications that aims to regulate online speech. The following table provides an overview of the Vietnamese state’s policy framework for regulating political speech online.

The three main actors that oversee this policy framework are: the Ministry of Public Security (MPS), the Ministry of Information and Communication (MIC), and the party. The MPS - which oversees the police force in Vietnam - invokes criminal law to criminalise certain forms of speech. Its methods are the most violent and intrusive, as summons, arrests and prosecutions directly restrict basic rights to freedom of expression and freedom from arbitrary detention. The MIC, by contrast, focuses on administrative punishments and the regulation of platforms where political speech is disseminated.

The MIC has the mandate to regulate the content of social media platforms, establish registration processes for news websites, and issue administrative fines against individuals who are deemed to have violated norms of acceptable speech. Finally, the party sets political agendas within which state policy is made, while also mobilising its base and propaganda apparatus to manipulate public opinion. While this division of powers is useful for the purpose of analysis, in practice, responsibilities and powers overlap. For instance, the MPS often requires the MIC’s “expert” assessment to conclude if someone has violated norms of online speech. At the same time, both the MPS and MIC have party cells inside their own institutional structures.

### Policies Criminalising Political Speech Online

Criminal sanctions for political speech involve direct interactions between online users, commentators,



and government authorities (i.e. detention, arrests, summons, etc.). These sanctioning policies rely on state power to set norms for appropriate online conduct, and impose sanctions for inappropriate conduct. The involvement of law enforcement agencies incites fear in citizens, discouraging them from participating in online activities that the government has labelled as punishable. While in recent years, the Criminal Code has been increasingly used to silence political speech online, it tends to be used as an option of last resort and continues to be used in a minority of cases.

The MPS oversees criminal sanctions for political speech with its power to impose judicial punishments. The same articles of the Criminal Code that have traditionally been used to punish political speech offline have also been used to punish political speech online. Specific provisions used in criminal prosecutions of people for their online speech include:

1. Article 116 on "Sabotaging national unity";
2. Article 117 on "Making, storing, disseminating and propagating documents...opposing the Socialist Republic of Vietnam";
3. Article 155 on "Insulting another person";
4. Article 156 on "Defamation";
5. Article 200 on "Tax evasion";
6. and Article 331 on "Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organisations and/or citizens."<sup>3</sup>

These six crimes constitute the basic web of charges used to criminalise speech, with the majority of criminal prosecutions for online political speech in recent years involving one of these charges. Article 117 and Article 331 remain the two most popular provisions used to police free speech online in Vietnam.

Article 117 is frequently used against various individuals in the population, regardless of their activity or profession. This article is primarily used

against HRDs and their fellow activists. The case of Nguyen Ngoc Anh demonstrates an in-practice example of the use of Article 117. According to an investigation into this case by the United Nations Working Group on Arbitrary Detention, Anh's case demonstrates multiple international law violations, including arbitrary arrest and wrongful conviction. The Vietnamese blogger and human rights defender was detained in 2018 due to his livestreams and posts, attempting to expose the government's poor management of social issues and violations of freedom of expression. While being held incommunicado for 6 months at his pretrial detention, he was reportedly assaulted by inmates. and received death threats as a form of intimidation to stop his appeal. In 2019, he was sentenced to six years in prison and five years under house arrest after a 4 hour trial hearing, which only allowed those 'with invitations' to attend; ultimately, only attended by state media were the only 'outside' attendees. In 2022, Anh has launched a sit-down and hunger strikes to protest the terrible conditions that political activists are subjected to.<sup>4</sup>

Nguyen Thuy Hanh, a human rights activist, is known for founding the 50K fund to support political prisoners and for her active involvement in defending human rights. On April 7, 2021, she was arrested without clear legal justification and charged under Article 117 of the 2015 Penal Code for anti-state propaganda. Unfortunately, while in detention, Nguyen Thuy Hanh is currently battling depression and stage 2 cervical cancer without access to treatment. Her health is deteriorating, particularly given the conditions of prisoners in Vietnam. Indeed, her husband has stated that Nguyen Thuy Hanh has been ill-treated and deprived of adequate nutrition and hydration. The authorities restricted her access to five bottles of water and five cans of milk a month from the prison canteen, forcing her to drink dirty water used by prisoners to shower. For a whole year in prison, she was not allowed visits from her family or lawyers, nor was she allowed to receive any parcels.<sup>5</sup>

## Struggles, Legislation, and Repression in Vietnam (2020–2023)



**LEGEND:**

⚠️ : Alleged offense + (articles/provisions invoked against the individual)  
 - "Unknown": Either information is not available or no articles/provisions have been cited by the judiciary

👮 : Legal and extralegal consequences  
 - "Status Unknown": Current status of the individual is unknown (detained, convicted, deceased, etc).

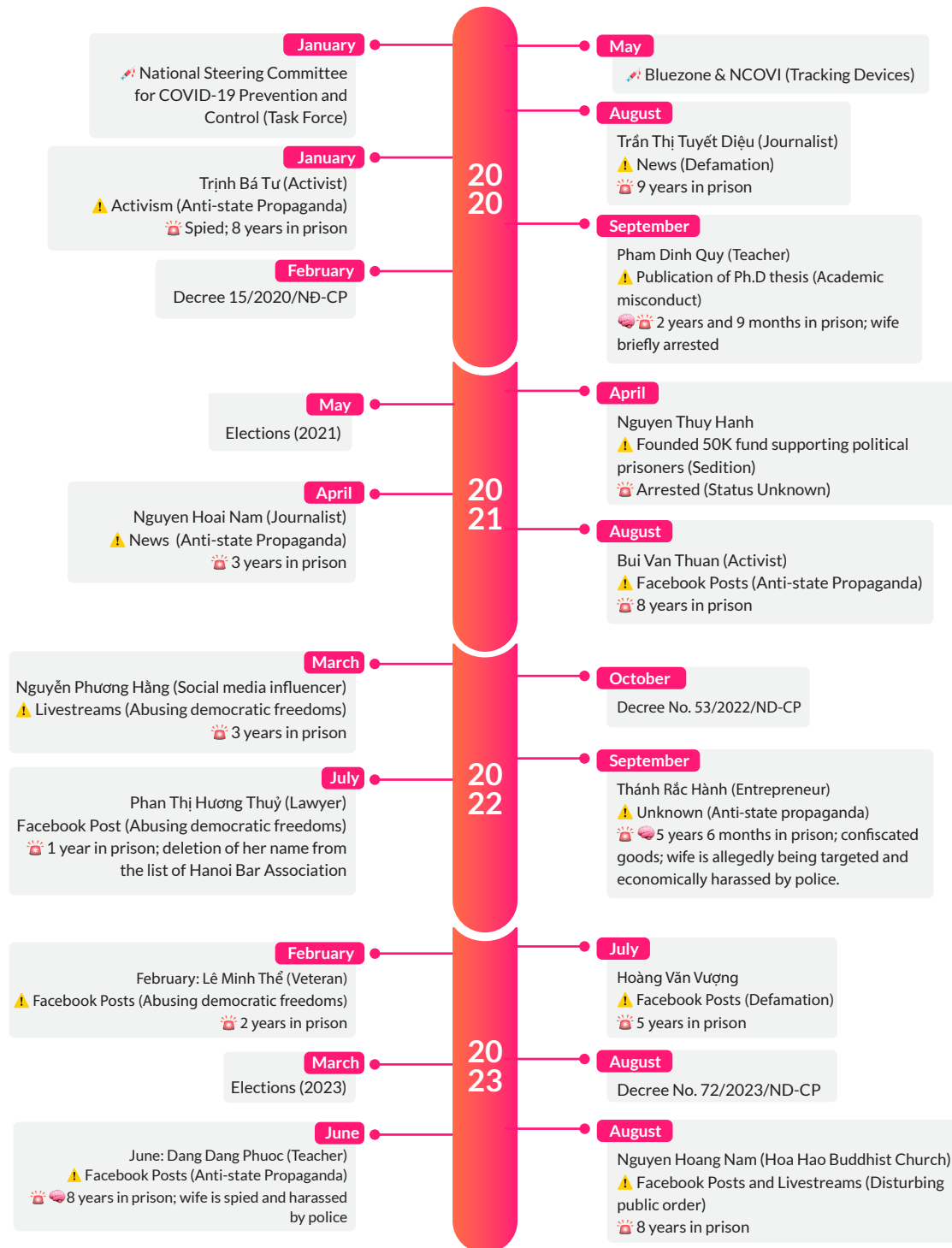


Fig. 9.4A: Summary timeline for Vietnam, 2020-2023.






| Country   | Event  | Contextualisation  |
|---|--|--|
| <br><b>VIETNAM</b> |  Decree 15/2020/NĐ-CP     | It criminalises the dissemination of false and misleading information, insulting reputations, damaging moral or social values, and revealing state secrets.  |
|   |  Decree No. 53/2022/ND-CP | The decree imposes stricter requirements on internet service providers and social media platforms to monitor and remove content deemed to be harmful or illegal, particularly content related to national security, public order, and social morality.   |
|   |  Decree No. 72/2023/ND-CP | The decree imposes stricter requirements on social media companies operating in Vietnam, including the establishment of local representative offices and the appointment of local representatives responsible for compliance with Vietnamese laws. It also mandates that social media platforms must remove content deemed to be illegal or violating Vietnamese laws within 24 hours of receiving a request from competent authorities.   |
|   |  Elections (2021)         | Luong The Huy and pro-democracy forces scored a surprising victory in Vietnam's May 2021 general elections, dealing a significant blow to military-backed incumbents. The progressive Move Forward Party, led by Pita Limjaroenrat, is projected to win 151 seats, while the populist Pheu Thai is expected to secure 141 seats, collectively holding at least 292 out of 500 seats in the House.  |
|   |  Elections (2023)         | Vietnam's National Assembly appointed Vo Van Thuong as the new president in a leadership reshuffle amid an anti-graft campaign. Thuong, 52, secured the position with 98.38% of the votes in the largely ceremonial role. His appointment follows the abrupt resignation of his predecessor Nguyen Xuan Phuc in January, linked to alleged "violations and wrongdoing." Thuong, a Politburo member and anti-corruption advocate, pledged to continue the fight against corruption. Seen as close to General Secretary Nguyen Phu Trong, Thuong's election is considered a step towards leadership stability, reassuring investors and signaling continuity in foreign and economic policies. |

Fig. 9.4B: Contextualisation for Vietnam's timeline, 2020-2023.

Bui Van Thuan, an activist known for running a Facebook meme page critical of corruption, was arrested on August 30, 2021, after being seen in public wearing a t-shirt with perceived anti-state symbolism. Subsequently, he was accused of spreading propaganda against the state and charged under Article 117 of the 2015 Criminal Code. Thuan was sentenced to eight years in prison with an additional five years under probation. During Thuan's trial, the prosecution called 12 witnesses, but only one witness, Le Quoc Quyen, showed up in court. The defence argued that the witness could not provide concrete details about the charges against Thuan. Despite a request to bring criminal charges against the witness for false testimony, the judge denied the request.<sup>6</sup>

Activist Trinh Ba Tu received an eight-year prison sentence in 2021 for spreading propaganda against the state, charged under Article 117 of the 2015

Criminal Code. Similarly, his mother, Can Thi Theu, and his brother, Trinh Ba Phuong, both advocates for land and human rights, were also sentenced. Can Thi Theu received eight years' imprisonment with three years' probation, while Trinh Ba Phuong was sentenced to ten years in prison with five years' probation. The family utilised social media to advocate for land rights and other causes. Trinh Ba Tu reportedly faced repercussions for exposing conditions in the prison where he was detained, enduring alleged beatings and solitary confinement with chained feet. He resorted to a hunger strike to protest his treatment. Amnesty International has urged Vietnamese authorities to drop the charges against the family and secure their immediate release.<sup>7</sup>

In September 2022, noodle vendor Bui Tuan Lam was sentenced to 5 years and 6 months in prison for charges related to anti-state propaganda under

Article 117. The incident stemmed from a video he posted on social media, raising questions about how government officials in Vietnam could afford luxurious items while on modest salaries. When summoned by the police, Lam denied mocking the minister. However, authorities claimed that Lam had been warned multiple times against posting content that insulted leaders or their reputation. They also accused Lam of being associated with several “civil society organisations” considered anti-state groups. Following his arrest, Lam’s goods were confiscated, and his wife reportedly faced police targeting and economic harassment. The specific details leading to Lam’s arrest were not immediately disclosed.<sup>8</sup>

Article 117 has also been used to silence journalists. For instance, journalist Tran Thi Tuyet Dieu was sentenced to eight years in prison for her writings deemed “anti-state” under defamation charges. Arrested in August 2020, she managed a Facebook profile called “Tuyết Babel” and a YouTube account under the name “Tuyết Diệu Trần.” According to the indictment, she disseminated 25 news stories and nine videos deemed to be against the state, and stored seven other anti-state stories on her laptop. Additionally, she published online materials in support of democracy activist Nguyen Viet Dung, violating Article 117 of the Vietnamese penal code. Following her arrest, she was not allowed to contact anyone for months and could only meet her lawyer in November 2020.<sup>9</sup> Similarly, Le Van Dung, an activist and independent journalist, was charged under Article 117 of the 2015 Criminal Code and sentenced on January 7, 2021 to five years in prison, while his 66-year-old uncle received an 18-month suspended sentence for hiding him from police.<sup>10</sup> An indictment alleged that Dung posted 12 video clips online between March 2017 and September 2018 that defamed the government, spread false news, and insulted Party and State leaders. Dung’s social media posts addressed corruption, land confiscations, and various political and social issues.<sup>11</sup>

Non-political individuals who do not necessarily identify as ‘activists’ are not safe from Article 117 either. Nguyen Phuong Hang, a well-known social media influencer in Vietnam, received a three year prison sentence in March 2022 for allegedly abusing democratic freedoms under Article 331 of the 2015 Criminal Code. She was accused of using abusive language and insults during livestream discussions on YouTube and TikTok, targeting the honour and dignity of various politicians and celebrities. Despite her family’s application for bail, citing her charitable activities and health concerns, their request for her release on a 10 billion dong bail (\$400K) was rejected.<sup>12</sup>

Dang Dang Phuoc, a music instructor from Dak Lak Province, received an 8-year prison sentence under Article 117 of Vietnam’s Penal Code in September 2022 for disseminating “anti-state propaganda” via his Facebook content. Despite repeated admonitions from local authorities, Phuoc persisted in sharing material deemed distorted and anti-government. Notably, one of his recent posts referenced the arrest of activist Bui Tuan Lam, which occurred a day prior to Phuoc’s apprehension. Over the past decade, Phuoc has campaigned against local corruption and advocated for enhanced safeguards of civil and political liberties, including freedom of expression, assembly, and religion. He has openly criticised Vietnam’s stringent 2018 cybersecurity legislation. Phuoc has endorsed various pro-democracy initiatives, such as Petition 72, which called for constitutional reforms to enable multi-party elections, and the Free Citizens’ Declaration, aimed at abolishing Article 4 of the 1992 Vietnamese Constitution, granting the Communist Party of Vietnam sole authority.<sup>13</sup>

In August 2023, Nguyen Hoang Nam, a former political detainee and member of the Hoa Hao Buddhist Church in An Giang province, was arrested for allegedly using social media to undermine the state, leading to an 8-year imprisonment sentence under Article

117 of Vietnam's Penal Code. Specifically, Nam was accused of managing four Facebook accounts to distribute content critical of the ruling Communist Party and the state, including satirical live streams and posts ridiculing local authorities. Despite efforts to secure witnesses, logistical challenges prevented their attendance at the trial. Additionally, Nam's family sought legal representation from a Ho Chi Minh City attorney, but restrictions imposed by the law firm's head prevented the attorney from meeting Nam before the trial or participating in the proceedings.<sup>14</sup>

As mentioned earlier, Article 331 is also frequently used against the Vietnamese people. Journalist Nguyen Hoai Nam was arrested on April 2, 2021, and initially received a three and a half-year prison sentence under Article 331 of the Criminal Code. Nam's indictment mentioned his investigative article about the Vietnam Inland Waterway Administration in 2018, in which he exposed corruption within the public agency. Additionally, in a Facebook post, Nam accused Lieutenant General Tran Van Ve and several investigators from the Ministry of Public Security's Investigative Agency of corruption and bribery. However, the court of appeals later reduced his sentence to two years, citing a change in attitude, acknowledgment of wrongdoing, and contributions by his family to the revolution.<sup>15</sup>

In July 2022, Lawyer Phan Thị Hương Thuy was sentenced to 1 year in prison and removed from the Hanoi Bar Association's list for "abusing democratic freedoms" under Article 331 of the Criminal Code. Initially, in March 2018, she accused Nguyen Van Chien of financial misconduct and lacking qualifications to join the Hanoi Bar Association. However, the Vietnam Bar Federation found no merit in her claims. Subsequently, Thuy allegedly posted 3 Facebook posts insulting Nguyen Van Chien's personal prestige, leading to her conviction.<sup>17</sup> In February 2023, Le Minh The, a veteran, received a two-year prison sentence for Facebook posts that

authorities deemed to violate democratic freedoms under Article 331. Although the specific content of his Facebook posts was not specified by authorities, his recent posts included various content related to Vietnam, such as information, images, and videos, along with discussions on topics like Vietnam's VinFast electric cars and a recent RFA report about a former fortune-teller who became a Catholic priest under dubious circumstances. Additionally, a police summons was issued to Le Thi Binh, The's younger sister, regarding her livestream videos. The wife was permitted to attend the trial but had to observe the proceedings via CCTV from a separate room.<sup>18</sup>

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*We are deeply disturbed at the continued use of Article 117 of the [Vietnamese] Criminal Code which is overly broad and appears to be aimed at silencing those who seek to exercise their human right to freely express their views and share information with others.*

- UN Special Rapporteurs Irene Khan, Mary Lawlor, Karima Bennouna, Clément Voule

Charged under Article 331 of the Penal Code, Le Thach Giang, a political commentator and land rights defender, was sentenced to three and a half years in prison for documenting abuse of power by the Vietnamese authorities including coercion and confiscation of lands.<sup>19</sup> In addition to the harsh prison term, Vietnam prisons are known for their abhorrent living conditions and denial of medical attention for political prisoners, that leads to worsening health conditions despite being perfectly healthy prior to their incarceration. An example of this is Do Cong Duong, a journalist also exposing land rights abuses and corruption, who had died in prison after contracting many diseases since being detained. His family had reportedly protested to allow Duong to access medical care, however the authorities refused and only hospitalised him when he was near death.<sup>20</sup>

Article 116 is used specifically when a minority group or individuals question or challenge policies of the government, in relation to different ethnic groups. If the local authorities deem it necessary, they can also invoke Article 155 and Article 156 to prosecute minor and insignificant instances of expression. Using curse words against public officials, or calling public officials an unpleasant name, such as “pig” or “dog”, can amount to the “crime” of ‘insult’ or ‘defamation’ under these Articles. For instance, Nguyen Van Nhanh was arrested in January 2021, sentenced under Article 155 to one year of imprisonment for publicly criticising officials on livestream.<sup>21</sup> On a similar note, university lecturer Pham Dinh Quy was arrested on September 25, 2020, without a formal arrest order and charged under Article 156 of the 2015 Criminal Code. His arrest followed allegations he made against Bui Van Cuong, the party secretary of Dak Lak Province, accusing Cuong of plagiarising his doctoral thesis. This accusation led to Quy being charged under Article 156 of Vietnam’s Penal Code and sentenced to 2 years and 9 months in prison.<sup>22</sup>

Article 200 ‘tax evasion’ charges have also been commonly used against civil society leaders and

NGO professionals using the Internet and social media to build coalitions and engage in policy activism. The MPS has successfully jailed at least five individuals for tax evasion since 2021. The most well-known case of use of Article 200 is the Vietnam Four; though their cases go beyond only digital rights matters, it is important to acknowledge their high-profile cases and the ways in which Article 200 was employed against them. The Vietnam Four refers to four prominent climate activists: Dang Dinh Bach, Nguy Thi Khanh, Mai Phan Loi, and Bach Hung Duong. They campaigned for Vietnam to pledge to achieve net zero carbon emissions by 2050, resulting in a substantial energy transition agreement with the G7. This case is widely seen as a crackdown on civil society in Vietnam, as the activists were charged with tax evasion in what many perceive as an attempt to silence and intimidate others.<sup>23</sup>

Nguy Thi Khanh, a prominent environmental activist in Vietnam, was apprehended by Hanoi police for suspected “individual income tax evasion” under Article 200 of the 2015 Criminal Code. Although her arrest took place in January 2022, it was formally announced by authorities in February of the same year. Subsequently, in June 2022, Khanh received a two-year prison term for the tax evasion charges, which were linked to her failure to settle around \$18,000 in taxes associated with the Goldman Environmental Prize she was awarded in 2018. Khanh was silently released from prison in May 2023, five months before the end of her sentence. While the exact reasons for her early release were not disclosed, it coincided with Vietnam’s pursuit of international financing to advance its decarbonization objectives.<sup>24</sup>

Mai Phan Loi, the founder of the Center for Media in Educating Community (MEC), encountered legal consequences when he was also charged under Article 200 of the 2015 Criminal Code and handed a four-year prison sentence in January 2022, alongside a significant fine of nearly 2 billion dong (\$90K USD). This action was perceived as a politically motivated

act targeting individuals critical of the Vietnamese Communist Party's stance on press freedom and freedom of expression. Loi's advocacy for free speech and critical thinking, exemplified through his work with MEC and the Young Journalists Forum, had already led to the revocation of his press card in 2016. Some believe his arrest may be linked to his endeavours to establish an NGO network under EVFTA regulations. Alongside Loi, his alleged accomplice, Bach Hung Duong, was also accused of involvement in tax evasion related to financial contributions received by MEC, facing sentencing around the same period as Loi.<sup>25</sup>

Despite not being given an arrest warrant, Bach's arrest and charge announcements were given in July, coinciding with Mai Phan Loi's case. On January 24, 2022, Bach was sentenced to five years in prison under Article 200, accompanied by a significant fine. Since January 10, 2023, he has been on a hunger strike, protesting against his extended detention and lack of family visits, with concerns arising about his declining health, evident by his weight dropping below 45 kg by April 2023. During a visit on March 17, 2023, Bach faced strict monitoring by officials, with guards limiting conversations and traditional medicine for his asthma. Moreover, personal items such as his reading light, battery charger, and alarm clock were confiscated since July, worsening his condition. Bach was transferred to a new prison without his family's knowledge, discovered only during an attempted visit by his wife, Thao. Facing financial strain, Thao encountered threats from the local government to freeze her bank accounts and sell her assets, compounded by Bach's frozen accounts and locked credit cards, leading to difficulties in managing finances and even utility disconnection threats. As of February 2024, the authorities have withheld the family's "pink book," which is the legal document allowing a citizen to rent or use land or property. Thao and her family are now closer than ever to becoming unhoused.<sup>26</sup>

On January 11, 2022, the Hanoi People's Court handed down a 30-month prison sentence to Bach Hung Duong for "tax evasion" under Article 200 of the 2015 Criminal Code, which was later reduced to 27 months on appeal. Duong served as the Director of the non-profit Media in Educating Community (MEC) from 2014 to 2021. MEC is a prominent NGO known for promoting free and critical thinking, freedom of information, and civic education, with partnerships including the Embassy of the United Kingdom and the United States of America in Vietnam. During his tenure, Duong allegedly supported the aforementioned Mai Phan Loi, the founder of MEC, in evading taxes on financial contributions amounting to nearly 20 billion dong (US\$ 880,200) received from domestic and foreign donors between 2014 and 2021. While Duong did not personally benefit from these activities, he faces a ban on undertaking managerial positions and practising or working in the field of taxation for five years following his release. Expected for release on September 24, 2023, Duong's whereabouts remain unknown as of February 2024.<sup>27</sup>

While arrests make up only a small portion of the overall repression of political speech online, it is important to note that arrests of online activists and bloggers have increased over time.<sup>28</sup> In 2019, online users made up less than half of political arrests. By 2022, they accounted for over 80%. There is no legal threshold for applying relevant sanctions to criminalise online political speech in Vietnam. In some cases, a single social media post is enough to land someone behind bars.<sup>29</sup> Activists with a long history of speaking out online often receive lengthy prison sentences.<sup>30</sup>

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*The arrest, detention, prosecution, conviction and harsh sentencing of individuals simply for exercising their right to freedom of expression to report on human rights issues is an arbitrary deprivation of liberty under international human rights law.<sup>31</sup>*

- UN Human Rights experts

### Other Types of Criminal Sanctions

Apart from arrests, the MPS has also exploited their eligibility to ‘summon’ individuals for questioning regarding their public expressions, enabled by the Law on the Organisation of the Investigating Agencies (2015) and the Criminal Procedural Code (2015 version, and earlier versions; see Article 37).<sup>32</sup> The definitions and regulations are very vague in these codes. Summoning is used when Public Security forces claim to need information from other individuals who are not necessarily under

investigation or directly involved in a crime. Further, through a series of legal instruments, such as the Ordinance of Communal Public Security Forces and the Law on Public Security Forces, the legal system has extended the power of the criminal investigation agencies to the local police, which previously had no role in the process of criminal investigations. These policy changes enable all levels of police to use summoning as a tool of intimidation

An example of how this occurs is exhibited through how Article 9.9 in the Ordinance allows communal public security forces “to request organisations and individuals in the commune to cooperate in local activities, provide information and perform tasks related to ensuring social security, order, and safety.” Police departments can apply this tool at their discretion, without needing to consult with other authorities. Thus, in addition to the power to summon, authorities can also weaponise their power to demand information and cooperation from people, to intimidate them out of freely expressing themselves online..

Several geographic divisions and actors, of varying levels of authority, have the power to summon individuals, including the local (commune-level) police, the MPS Department of Cybersecurity and High-tech Crime Prevention (usually at the district level), and the MPS Security Investigating Agency.

1. Local police can summon residents within its jurisdiction without providing a reason. As demonstrated by Project88’s Database, the majority of political prisoners in Vietnam have been summoned for various cited reasons, for example, posting parody videos, or managing a fund that supports human rights defenders.<sup>33</sup>
2. The MPS Department of Cybersecurity and High-tech Crime Prevention (DCHCP), generally considered to be at the district level, can summon residents within its jurisdiction any time, using the accusation that residents have violated the



‘order and safety’ of the internet environment. According to the record of the Communist Online Newspaper (directly provided by the DCHCP), from the end of 2020 to September 2021, the DCHCP alone summoned over 1,800 individuals who posted content criticising the government or discussing COVID-related information. These individuals were given warnings about their online activity, and forced to delete any posts seen as unacceptable.<sup>34</sup> These numbers do not reflect the number of actual arrests; only a small portion of people who are summoned are actually arrested. This suggests why summoning works as such an effective method of suppressing unwanted political speech. The process intimidates and inconveniences people without necessarily leading to their arrest making people less likely to repeat their behaviour.

3. Finally, criminal investigation agencies (most often the Security Investigating Agency) are also legally eligible to summon individuals for official investigations regarding their public expressions.

Overall, it is evident that the summoning process is exploited by the Vietnamese governing system as an effective tool to deter people from, and punish people for, expressing ‘political speech’ that is seen as threatening by the regime.

### Understanding the MPS, MIC, and Economic Sanctions

Another mechanism of overt control of ‘political’ online speech is that of economic sanctions. Economic sanctions refer to the direct imposition of financial penalties against individuals whose online speech is considered unacceptable. Two government-issued instruments, Decree 15/2020/NĐ-CP<sup>35</sup> and Decree 14/2022/ND-CP,<sup>36</sup> provide the legal basis for these sanctions.

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*This decree [Decree 15/2020/NĐ-CP] provides yet another potent weapon in the Vietnamese authorities’ arsenal of online repression.<sup>37</sup>*

- Tanya O’Carroll, Director of Tech at Amnesty International

Any prohibited act of online expression is subject to a fine, according to the aforementioned policies. Prohibited acts include a wide range of vaguely-defined activities,<sup>38</sup> such as:

1. “Providing and sharing fake information, or information that distorts, slanders, or insults the reputation of governmental agencies or organisations, honour and dignity of individuals;
2. Providing and sharing information promoting customs, superstitions, lewdness, debauchery, all of which are not suitable with the national customs and traditions;
3. Providing and sharing information detailing the action of slashing, murdering, and horror in general;
4. Providing, sharing fabricated information, causing public confusion; inciting violence, crimes, social evils, or gambling;
5. Providing or sharing journalistic, literary, artistic or published works generally without the consent

- of the intellectual property right holder, or works that have not yet been allowed to circulate or have been banned from circulation;
6. Advertising and sharing information about banned goods and services;
  7. Providing and sharing images of Vietnam’s map that does not rightly reflect the national sovereignty;
  8. Providing and sharing links to online information with prohibited content.”

Importantly, the definition of “prohibited content” has not been made clear in the Decree. Consequently, the sharing of any links, posts, or videos that are deemed “inappropriate” or “dangerous” by either the MPS or the MIC is potentially subject to a fine.

There is a lack of data to fully illustrate the economic sanctions on political speech online. However, a conservative estimate puts government-issued administrative fines for online speech at 114 incidents in 2022, totalling fines of 1.9 VND (~\$81,000).<sup>39</sup> In addition, during the early COVID-19 Pandemic, the MIC published a separate section on their website titled “Information on Administrative Fine” (thông tin xử phạt), as an attempt to show much it costs to publish ‘fake, wrong, and unlawful’ information on social, likely to encourage citizens to be intimidated out of doing this.<sup>40</sup> Administrative fines for “prohibited” speech are an important tool in the government’s toolbox for regulating political speech online.

## Policies Regulating the Information Environment

In addition to criminal law-based coercive measures, the Vietnamese government also uses general policies to regulate general use of technology. While an exhaustive review of these regulations – which span policy domains of telecommunications, media, and cybersecurity – is beyond the scope of this chapter, we have identified key policies that regulate the structure of the online press publishing environment, as well

as the general online environment. These include:

1. The Law on the Press 2016<sup>41</sup> (along with Decision 1418/QĐ-BTTTT<sup>42</sup>);
2. The Law on Telecommunication (2009)<sup>43</sup>;
3. The Law on Information Technology (2006)<sup>44</sup>;
4. Decree 72/2013/NĐ-CP<sup>45</sup> and Circular 38<sup>46</sup>

In the following section we discuss each of these policies in turn:

The Law on the Press not only allows the government a lot of control over state-made, print-based media; it also regulates online newspapers, and even online publications from international outlets. Articles 31 and 33 of the Law give the MIC complete control over which media organisations, whether Vietnamese or non-Vietnamese, can circulate online publications. They also regulate how these news publications should be edited and published.

In response to the recent proliferation of news websites and journalistic activities online, the MIC issued Decision 1418/QĐ-BTTTT. The decision limits which organisations can act as ‘official’ sources of online news, preventing non-official sources from competing with state media organisations. It imposes sanctions for a range of practices, including:

1. Websites that use journalistic language that might mislead readers or viewers, such as: “daily news,” “daily digest,” “television,” “tv,” “hot news,” “breaking news,” or “online”;
2. Academic institutions and journals that employ a disproportionate number of “journalists” in relation to their mission or have too many local “correspondents”; and
3. Websites that send “journalists” or “representatives” on field assignments to collect news and information.

Decision 1418, as with the Law on the Press, seeks

to perpetuate the government’s monopoly on journalism. Recently, a draft proposal has emerged that, if adopted, would impose a classification system dividing social media accounts into “normal accounts” and “abnormal accounts.” “Abnormal accounts” would be defined as accounts that amass over 10,000 unique visitors per month. According to the proposal, these abnormal accounts would be required to register with the MIC, and would be subjected to regulations over live streaming and annual reporting.<sup>47</sup>

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*In Vietnam, the media are seen as a tool of the ruling party and government. They lose their function of creativity and criticism, as they are closely controlled by the Communist Party of Vietnam’s Central Commission on Education and Communications. The media are only allowed to tell one-sided stories, especially in human rights cases.*

- TAnonymous human rights lawyer from Vietnam

While the Law on the Press allows the MIC to control online news media, the Law on Telecommunication allows the MIC to control the architecture of the internet itself. Internet resources such as IP address, domain names, and the “.vn” extension, are all subject to official registration procedures set by the MIC.

The Vietnam National Internet Center (VNNIC) is the administrative agency responsible for internet affairs under the MIC. It manages almost all aspects of Vietnam’s internet operations, including the allocation of IP addresses and domain names. IP addresses can only be obtained by government-sanctioned entities, limiting who can access the internet and share information. VNNIC also oversees the administration of domain names. VNNIC’s official mouthpiece, ICT Vietnam, provides guidelines to the public: “It is necessary to check the domain name of the website that publishes information. Very often, websites in Vietnamese that have foreign domain names (.com, .org) are the source of toxic and fake news. Websites with Vietnam’s domain name (.vn) are more reliable sources of news.”<sup>48</sup> This demonstrates the extent to which the Vietnamese government regulates online political speech. Not only does it try to regulate the citizens’ use of the internet, it also regulates the structure of the Vietnamese internet jurisdiction itself.

While the Law on Telecommunication governs broad internet setup procedures, the Law on Information Technology, Decree 72, as well as Circular 38, provide the framework for more specific, user-centric registration processes and data storage rules. The Law on Information Technology and Decree 72 focus on general procedures concerning the registration of websites, the obligations of online search engines, and storage of personal information. Circular 38, on the other hand, exclusively deals with cross-border sharing of information. While it is not possible to review all of these policies in depth here, key registration requirements that online businesses and internet users must adhere to include:

1. Requirements for search engines to register and submit to control (according to Article 19, The Law on Information Technology). Companies operating search engines have to exclude every search result that the government considers illegal.
2. Requirements concerning the registration and control over electronic information (according to Article 20, The Law on Information Technology). These regulations require that every piece of electronic information circulated under the Vietnamese jurisdiction must be seen as lawful by the Vietnamese state.
3. Registration and control over electronic information pages and social media platforms (Section 2, Decree 72). Website owners and social media companies have various responsibilities and duties to the MIC, including proving that they have adequate human resources, providing periodic reports, moderating content, and immediately responding to requests from the MIC (e.g. by taking down information or providing users' information). Yet, there are virtually no procedural safeguards for online businesses or their users, making it a very difficult and unregulated job for website moderators and social media companies.
4. Organisations or individuals who disseminate "public information" over international borders are all required to register with the MIC (Article 3, Circular 39/2016/BTT-TT). This is considered a random, unenforceable requirement. It even regulates content disseminators from outside of Vietnam; for example, even bloggers and content creators who live outside of Vietnam, but have Vietnamese audiences, must register with the MIC.

This complex web of policies has far-reaching implications for freedom of expression.

## Policies of the Communist Party of Vietnam

### Resolution 35 (35-NQ/TW)

The most consequential policy of the party for online speech in recent years has been Resolution 35, which was passed by the Politburo on October 22, 2018. While the full text of the Resolution has not been made public, it has been reported on widely in state media.<sup>49</sup> Resolution 35 can be understood as a massive propaganda effort to uphold the supremacy of the Communist Party. It purportedly aims to "[protect] the ideological foundation of the Party" and "fight against wrong and hostile views in the new era." The policy also alleges that it was influenced by "Marxist-Leninist" and "Ho Chi Minh thought," likely to assure citizens that these policies are rooted in the party's Communist agenda, and thus essential.

### Plan 14 on implementation of Resolution 35-NQ/TW (14-KH/TW)

Plan 14, issued by the Central Party Committee, provides guidance on how Resolution 35 should be interpreted and implemented. Key aims of the plan involve increasing "positive information" and "fighting against and limiting toxic information and wrongful and hostile views in communications media, especially on the Internet," in order to "defeat all plots and countermeasures of hostile and reactionary forces."<sup>50</sup> The plan is comprised of six parts:

1. Creating and training ideological defence committees in "all provinces, cities, ministries, industries";
2. Revising the policy framework on the press, publication, the internet, and social media;
3. Planning for news agencies;
4. Creating training programs on Marxist-Leninist thought, socialism, Ho Chi Minh's ideology, and the history of the Communist Party in popular education;
5. Introducing new responsibilities for teachers of

political doctrine on protecting the ideological foundation of the Party and fighting against wrong and hostile views; and

#### 6. Protecting state secrets.

Party organisations at all levels of society are responsible for implementing the plan, and the Propaganda Committee of the Central Party Committee is charged with providing direction to these organisations.

Future plans, such as Decision 169-QD/TW, issued by the Politburo on January 7, 2019, would establish the institutional framework through which these goals could be achieved. Decision 169, although not in the public domain, reportedly establishes a series of committees (each committee is referred to as a ‘Committee 35’) to implement Resolution 35, from the central level down to provincial, district, and even commune/ward levels. This therefore also involves regulating ministries, committees, and mass community organisations (farmer’s unions, women’s groups, etc.). These committees (Ban Chi Đạo 35 or Committee 35) have been characterised as groups of shapers of public opinion and were assigned a role in the government’s response to the COVID-19 pandemic.<sup>51</sup>

### Mandatory Social Media Users Identification

In November 2023, an Amended Telecommunications Law was passed by the Vietnamese Government, with one of its key objectives allegedly being to reduce scams and other “telecommunications waste,” by mandating regulatory firms to ‘verify’ information more strictly, and to require more user authentication.<sup>52</sup> The implementation of this measure has the potential to intensify restrictions on freedom of expression online.

In addition, the Ministry of Information and Communications introduced Drafting Decree Number 72/20132013/ND-CP in July of 2023.<sup>53</sup> If passed, this draft amendment to the decree would transform the digital sphere into a zone of pervasive surveillance

and control.<sup>54</sup> In an effort to combat human trafficking and fraud, it mandates that social media accounts be verified with actual names and contact information. Nonetheless, this intrusive approach flagrantly violates a fundamental right: the right to privacy, which is intrinsically linked to the protection of human autonomy and individual identity.<sup>55</sup>

It was initially anticipated that by the end of 2023, the amendment to Decree 72, which addresses the management, provision, and use of internet services and online information, would have been formally enacted. This amendment would have closely paralleled Decree 53, also known as the Cybersecurity Guidance Law, which went into effect in October 2022. Under Decree 53, international platforms must store data within Vietnam’s borders and establish local offices at the request of the Vietnamese government.<sup>56</sup> Collectively, these measures represent a concerted effort by the Vietnamese government to exert control over the digital sphere, which raises concerns not only regarding freedom of expression but also the erosion of online privacy and autonomy. Ultimately, Decree 72 has yet to be legally amended.

### Activities of Committees 35 at the Sub-National Level

Reports on implementation of Resolution 35 by sub-national party organisations provide insights into the activities of these organisations. One official report from a district-level propaganda department describes how its Committee 35 set up “reporting” teams and groups of “social opinion shapers” on platforms like Zalo and Facebook, in order to bring online content that they deem concerning to the attention of higher-up government committees. The report also states that in 2022, the committee shared 42,105 images and 11,549,143 news pieces and videos on social media, and made 103,543 comments against wrongful views. It then goes on to detail how 12 articles written by members of the committee included “fighting against arguments that distort the prosecution of Pham Thi Doan Trang”

and "Vietnam's election to the UN Human Rights Council dispels distortions about the human rights situation in Vietnam."

An investigation by The Intercept in 2018 provides some insight into how various Committee 35 groups operate in practice.<sup>57</sup> The investigation exposed the operation of E47, a secret Facebook group named after Force 47, that was set up at the end of 2017. One of the group's administrators, Huyen Nguyen, describes the organisation as "not a space for free, democratic and pluralistic debate but rather an army battalion." E47 served several functions, which include silencing criticism of the government and Communist Party, manipulating public opinion by spreading disinformation, and acting as a tool of state surveillance and harassment. Strategies used by the group to achieve these aims include compiling lists of activists and dissidents to troll and harass, abusing Facebook's Community Standards (particularly its content moderation rules) to have posts deleted and accounts banned, running disinformation campaigns,

and reporting government critics to the police. Before it was taken down, E47 had over 3,000 members and was run by a group of six administrators with connections to the government and the party. Many members were allegedly employed by the state (police, military, media) and primarily motivated by ideology. Importantly, Facebook was aware of the group's activities since at least October 2018, yet it only took the group down (without closing accounts of the groups administrators or members) in 2021, after the company changed its policy on harmful behaviour.<sup>58</sup> E47 is thought to have been one of the most active groups working to implement party Resolution 35.

It is also within the context of Resolution 35 and Decision 169 that groups like Force 47, a group within the Vietnamese army dedicated to fighting "wrong views," "hostility" and "political opportunity" online, were established. Force 47 was first announced by General Vu Trong Nghia (now the Communist Party's chief propagandist), who claimed that the

NĂM THỨ 61  
SỐ: 1854  
**THỨ HAI**  
**12**  
THÁNG 4 - 2021  
Ngày 01 tháng Ba năm Tân Sửu



# Quân khu Bốn

CƠ QUAN CỦA ĐẢNG ỦY - BỘ TƯ LỆNH QUÂN KHU  
TIẾNG NÓI CỦA LỰC LƯỢNG VŨ TRANG QUÂN KHU

TRỤ SỞ BAN BIÊN TẬP  
191 - LÊ DUẨN - TP. VINH - NGHỆ AN  
ĐIỆN THOẠI: 069.789.579  
069.789.580  
02383.556.264  
FAX: 02383.556.264  
EMAIL: baogk4@gmail.com  
dientubqk4@gmail.com

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**HỌC TẬP VÀ LÀM THEO TƯ TƯỞNG, ĐẠO ĐỨC, PHONG CÁCH HỒ CHÍ MINH**

**ĐƠN MANG QUYẾT ĐỊNH MỚI XÃ HỘI VÀO CUỘC SỐNG**

### Phát triển văn hóa trở thành nền tảng tinh thần của xã hội

**Báo Quân khu 4**

**TR**ONG quan điểm chỉ đạo, Nghị quyết Đại hội XIII của Đảng xác định rõ: "... gắn kết chặt chẽ và triển khai đồng bộ các nhiệm vụ, trọng điểm phát triển kinh tế, xã hội là trung tâm; xây dựng Đảng là then chốt; phát triển văn hóa là nền tảng tinh thần; bảo đảm quốc phòng, an ninh là trọng yếu, thường xuyên".

Nhằm lại chặng đường 5 năm thực hiện Nghị quyết Đại hội XIII của Đảng, bằng sự nỗ lực và phấn đấu không ngừng, toàn Đảng, toàn dân, toàn quân đã đạt được nhiều kết quả rất đáng khích lệ trên mọi lĩnh vực của đời sống xã hội, trong đó phải kể đến những thành tựu về văn hóa.

Nghị quyết Đại hội XIII của Đảng chỉ rõ: "Lĩnh vực văn hóa, xã hội chứa có nhiều đột phá, hứa quả chưa từng; đời sống của một bộ phận Nhân dân còn khó khăn". Từ đánh giá này của

### Thủ tướng Bộ Tư lệnh Quân khu đón nhận Kỷ niệm chương "Vì sự nghiệp biên giới, lãnh thổ quốc gia"



Thưa ủy quyền, Trung tướng Nguyễn Đoàn Anh, Ủy viên Ban Chấp hành Trung ương Đảng, Tư lệnh Quân khu, lãnh đạo các cơ quan, phòng, ban Quân khu, đơn vị trực thuộc và trung đoàn đủ quân dự Hội nghị.

Tại Hội nghị, Thủ tướng Bộ Tư lệnh Quân khu đánh giá, các cơ quan, đơn vị đã duy trì

(Xem tiếp trang 2)  
Tin. ảnh: **LÊ THĂNG**

**HƯƠNG TỎI BẦU CỬ QUỐC HỘI KHÓA XV VÀ HỘI ĐỒNG NHÂN DÂN CÁC CẤP NHIỆM KỲ 2021 - 2026**

### Triển khai công tác bảo vệ bầu cử

Bộ Tham mưu Quân khu vừa tổ chức Hội nghị giao nhiệm vụ bảo vệ bầu cử đại biểu Quốc hội Khóa XV và đại biểu Hội đồng Nhân dân các cấp nhiệm kỳ 2021 - 2026 tại điểm bầu cử cơ quan Quân khu. Thủ tướng Trần Khắc Bang, Phó Tham mưu trưởng Quân khu chủ trì Hội nghị.

(Xem tiếp trang 2)  
**HỒ TRĂNG**

### Lực lượng vũ trang Quân khu chủ động đấu tranh trên không gian mạng

(Xem tiếp trang 4)  
Tin. ảnh: **HOÀNG THÁI**



Trung tướng Trần Văn Dũng, Bí thư Đảng ủy, Chính ủy Quân khu trao Bằng khen tặng các tập thể, cá nhân về thành tích xuất sắc trong thực hiện Chỉ thị 47.

An article about a ceremony marking five years since implementing Directive 47/CT-CT (Source: Báo Quân khu 4).

group, which operated within the army, had 10,000 members.<sup>59</sup> Nevertheless, while much has been written about Force 47 in the international media, it is only one manifestation of Resolution 35 and not necessarily the most significant; we must also pay attention to other manifestations. It is also worth noting that in 2017, Decree 1198/QĐ-TTg of the Prime Minister established a whole division of the army dedicated to cyber operations. Like Force 47, little is known about the operations of this division and what role it plays in efforts to regulate political speech online. Overall, it can be witnessed that even on a sub-national level, many formalised and non-formalised entities exist, working in cooperation with official, national bodies, further complicating and systemizing restrictions of freedom of online speech under the Vietnamese jurisdiction.

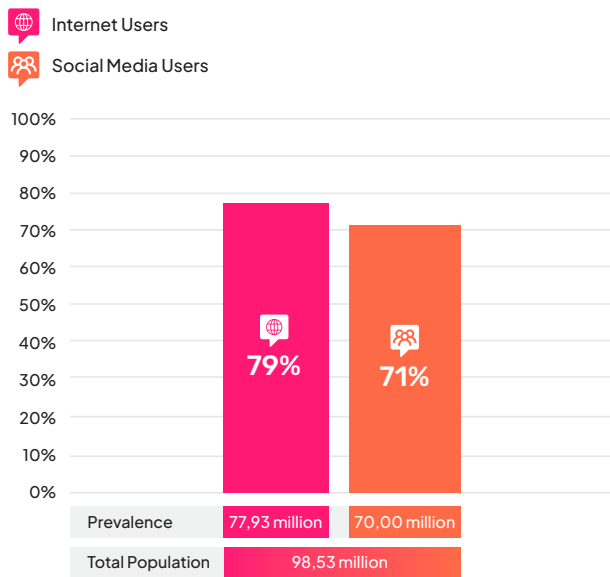


Fig. 9.5: Percentage of Internet and Social Media Users in Vietnam, 2023.

### Tech companies complicit of digital dictatorship

The government regularly restricts critical content online by pressuring social media companies to comply with content removal requests deemed unlawful in Vietnam. In 2020, Meta restricted access to 3,039 items related to content allegedly violating the Decree No. 72/2013/ND-CP, including content

opposing the CPV and the government, as well as COVID-19 misinformation.<sup>60</sup> In November 2020, a Facebook’s official told Reuters that the government had threatened to shut its entire service down in Vietnam if Facebook did not agree to comply with the government demands for increased compliance with its content restriction requests.<sup>61</sup> In the same month, Mark Zuckerberg, the CEO of Meta, admitted to the US Senate that Facebook “might have” suspended postings of land rights activists after the Vietnamese government demanded it.<sup>62</sup> In 2021, Facebook declared its agreement to substantially enhance its adherence to governmental mandates pertaining to the restriction of access to content deemed unlawful in Vietnam. Following the government’s threat to disable Facebook’s services in the country if the company failed to comply, this decision was reached. Facebook CEO Mark Zuckerberg acquiesced to the Vietnamese government’s censorship demands for posts containing anti-state rhetoric in 2020, facing the prospect of forfeiting an approximate annual revenue of \$1 billion from the nation. Facebook justified the Vietnam decision in a statement to the Washington Post, stating that it was necessary “to ensure our services remain accessible to the millions of individuals who depend on them daily.”<sup>63</sup>

Throughout 2021, access to 2,005 items was restricted by Meta on Facebook and Instagram, 987 of which were allegedly in violation of Decree No. 72/2013/ND-CP, including content critical of the CPV Party and the Government, and 885 items on COVID-19 misinformation.<sup>64</sup> The first half of 2022 saw a decrease in restrictions on both Facebook and Instagram, with a total of 998 items being restricted, out of which 982 allegedly violated Decree No. 72/2013/ND-CP.<sup>65</sup>

“

*It's very easy for a dictatorial government to abuse Facebook's policies. They pay these people to report my posts, saying I'm spreading hate.*<sup>66</sup>

- TNguyen Van Hai, Vietnamese blogger

Likewise, Google reported that it received requests from the authorities to remove 13,123 items in 2020, with a 73.7% compliance rate in the first half of the year and 91.2% in the second. The vast majority of requests were based on content classified as “government criticism.” In 2021, it received requests to remove 19,984 items, of which 92% were related to “government criticism.” Between January and June 2022, authorities requested the removal of 7,470 items, with 84% of them being labelled under “government criticism.” Google complied with 80.8% of the requests.<sup>67</sup>

Out of all the countries analysed in this report, Vietnam is the only one which reported a significant number of requests to ban and limit access on TikTok, being also the only global social media company to have an office in Vietnam. While few requests were recorded in 2020 and 2021, there was a major increase in requests in the second half of 2021. Requests were made in relation to 1,780 items, out of which 1,064 were removed or restricted or

allegedly violating local laws. From January to July 2022, the government made 16 requests referring to 292 items, out of which 184 were either removed or restricted on the same grounds.<sup>68</sup>

Since February 2023, state-controlled media has begun to blame TikTok for promoting “anti-government” and “offensive” content.<sup>69</sup> Few months later, the Ministry of Information and Communications launched a probe into TikTok to ensure the platform’s adherence to Vietnamese law. The investigation spans eight government departments and covers censorship, user authentication, and algorithm distribution of the content, among others. The Ministry stated that “toxic” content on the platform “poses a threat to the country’s youth, culture and tradition,” and warned of a complete ban of the company.<sup>70</sup> The results of the findings are expected to be made public in July 2023.<sup>71</sup>

“

*[TikTok] was generally non-political. However, as it has attracted more users, and as Facebook and YouTube have come under heavy censorship, there has been a surge in political content. That has created unease among the censors.*<sup>72</sup>

- Nguyen Khac Giang, an expert on Vietnamese politics and a visiting fellow at the ISEAS–Yusof Ishak Institute





## INTERSECTIONAL GENDER ANALYSIS: ONLINE GENDER BASED VIOLENCE IN VIETNAM

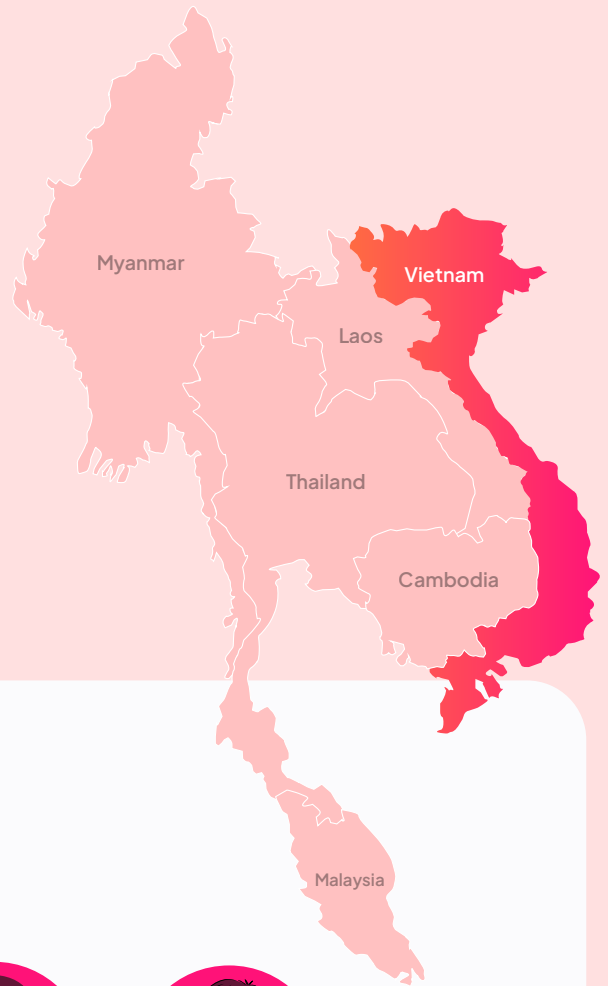
Vietnam is moving in the right direction to reduce gender-based inequalities in the internet sector. In 2006, Vietnam already enacted the Law on Gender Equality, guaranteeing equal access to science and technology for men and women. The year 2020 is of particular importance, as this is when three key digital transformation documents were published, namely the National Strategy on Industry 4.0 to 2030 (2020), the National Digital Transformation Programme to 2025, with a vision to 2030 (2020), and the Business Support Programme for Digital Transformation in 2021-2025.<sup>73</sup> Various initiatives have been launched, in particular by the SecDev Foundation, which has set up two programmes. The first initiative aimed to support women with disabilities. The goal was to strengthen the digital resilience of a cohort of 258 Vietnamese women with disabilities, while using this experience to better understand the specific threats they face online. Another initiative, entitled “Online Safety 4 Girls”, focused on woman-identifying students (aged 14 to 19) at two ethnic minority boarding schools in the provinces of Thai Nguyen and Viet Bac.<sup>74</sup> In 2023, across its 63 provinces, there are few marked gender disparities in terms of access to information and communication technologies (ICTs), media exposure, mobile phone use, and mastery of basic ICT skills. Mobile phones are used by 91.1% of women and girls in Vietnam.<sup>75</sup>

However, the disparities between girls and boys pursuing careers in technology are particularly marked.<sup>76</sup> The government is therefore placing particular emphasis on increasing the number of women entrepreneurs with digital skills working in the technology sector.<sup>77</sup> For example, the “4M Solution” programme has been developed to support micro-entrepreneurs from ethnic minorities. This project guides them in meeting professionals,

establishing e-commerce partnerships and obtaining mentoring from partners, in order to help their businesses grow. After being successfully tested and replicated in four Vietnamese provinces (Bac Kan, Dak Nong, Lao Cai and Son La), this initiative has proved successful. Thanks to the new skills acquired, many women entrepreneurs have been able to expand their activities, with an increase in turnover of at least 30% for 100 cooperatives, benefiting more than 13,000 women.<sup>78</sup>

However, it is important not to forget the women who are persecuted online, particularly activists and more specifically the wives of activists.<sup>79</sup> According to Project88, in January 2024, 103 women and 477 men were arrested. The Project also documented various forms of mistreatment and harassment against these women, ranging from former political prisoners to the wives of jailed activists and ordinary citizens.<sup>80</sup> For instance, the renowned pop star Mai Khoi, utilised her fame to advocate for LGBTIQ+ rights, feminism, and free speech. Her outspokenness on human rights led to authorities detaining her for eight hours upon her return from a European tour in 2018. Subjected to ongoing online harassment, Mai Khoi now resides in the US.<sup>81</sup> Additionally, two activists’s wives had the courage to confide in Radio Free Asia. Trinh Thi Nhung, the wife of Bui Van Thuan, was summoned several times by the police in Thanh Hoa province without any clear explanation, and questioned about a Facebook account using her husband’s photo as a profile picture. Similarly, Le Thanh Lam, the wife of Bui Tuan Lam, earns a living selling food to support her children and her imprisoned husband. However, she has been harassed by police and market authorities in Da Nang, who have confiscated her goods and fined her for unknown offences.<sup>82</sup>

# VIETNAM



## 2023 Political Overview

One-Party Communist Republic in theory, authoritarian regime in practice.

### Head of State, Head of Government

General Secretary of the Communist Party of Vietnam (CPV) Nguyễn Phú Trọng (de facto power); Prime Minister Phạm Minh Chính; President Nguyễn Xuân Phúc (up to January 2023) and Võ Văn Thưởng (current).

#BuiVanThuan #BuiTuanLam

#TrinhThiNhung #LeThanhLam

## ♥ CASE STUDY

The intimidation of the loved ones, such as the wives, of prominent human rights defenders is a clear example of **how identity-based violence** goes hand-in-hand with **Digital Dictatorship**

### WHO

#### ♥ Trinh Thi Nhung...

...wife of Vietnamese activist Bui Van Thuan, imprisoned for being seen wearing t-shirts with symbols on them deemed to be critical towards the Vietnamese and/or Chinese establishments. ●

#### ♥ Le Thanh Lam...

...wife of Vietnamese activist Bui Tuan Lam, imprisoned for posting a satirical video. 🗣️

### WHERE

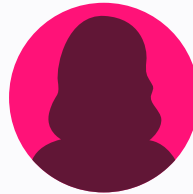
Da Nang and Thanh Hoa, Vietnam

### WHEN

30 August 2021 (Bui Van Thuan arrested); 7 September 2022 (Bui Tuan Lam arrested); early February 2024 (escalation of police harassment of the two women)

### WHY/WHAT

♥ 🗣️ 👁️ Prominent Vietnamese activists Bui Van Thuan and Bui Tuan Lam are currently still serving their prison sentences. In the meantime, their respective wives Trinh Thi Nhung and Le Thanh Lam, have become the targets of constant harassment and surveillance by Vietnamese police.



Trinh Thi Nhung



Le Thanh Lam

### HOW

⚠️ How Digital Dictatorship has caused the violation of Nhung and Lam's human rights:

👁️🗣️ Both Nhung and Lam have been constantly questioned, intimidated, and surveilled by the police.

👁️🗣️ The implications of this harassment extend beyond the activists and their wives. Lam, for example, has dependents to take care of including three small children, along with a small food business, as well as her imprisoned husband. She told RFA of how a police officer once directly addressed her at her husband's trial, saying "I will not leave you and your mother alone," openly admitting that they were going to use intimidation against her family. Digital Dictatorship does not just affect dissident individuals; they affect the entire community.



RFA, *Wives of jailed Vietnamese activists claim constant harassment*, (20 February 2024), available at: <https://www.rfa.org/english/news/vietnam/wives-harassed-02202024212439.html>.

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.

## Access to Remedy

The Vietnamese Constitution contains provisions pertaining to access to redress for human rights violations; Article 30 allows citizens to lodge complaints for violations of their rights and Article 31 provides for the presumption of innocence in trial reparation, the right of a fair trial and to legal representation.<sup>83</sup> However, in practice, individuals, HRDs and organisations whose rights have been violated barely have access to an independent judicial or redress mechanism.

The Vietnamese law states in theory that citizens can file complaints about administrative decisions or acts, and sue the government over the same. However, in reality, citizens' complaints and lawsuits on online speech cases almost always carry no weight in court, and are often not taken seriously. This renders individuals and organisations subject to content restrictions with no real opportunity to challenge decisions made by the authorities. Furthermore, procedural safeguards, as well as independent and effective oversight, are non-existent in the legal framework.

Victims detained and prosecuted for online activities are prevented from seeking redress due to the heavy political influence, endemic corruption, bribery, and inefficiencies which mark the judicial system. Individuals are often denied the right to a fair and public trial and due process rights. The practice of incommunicado detention is so pervasive in Vietnam that in 2022 alone at least half of people arrested for political crimes were held incommunicado from their lawyer, families, or both prior to trial.

Blogger Nguyen Lan Thang<sup>84</sup> was held incommunicado<sup>85</sup> from his arrest in July 2022 until February 2023. His lawyers were notified on March 30 that his closed trial would take place on April 12, giving them only 13 days to prepare. His wife, Le Bich Vuong, did not receive any notification of the trial. In a one-day proceeding that lasted only a few hours, Thang was

convicted of distributing “anti-state propaganda” and sentenced to six years of prison plus two years of probation. Like many other political prisoners in Vietnam, Nguyen reports being psychologically terrorised by authorities in confinement; in December 2023, his wife alleged to Project88 that he is being psychologically abused in Prison No. 5, where he was transferred to mid-2023.<sup>86</sup>

Although convicted persons have the right to appeal, the appeals process seldom results in sentence reduction, and outright overturning of sentences is exceedingly rare. In most cases, successful appeals are the result of guilty pleas or family connections to the Communist Party of Vietnam. In Nguyen Lan Thang's case, he decided in June 2023 not to appeal, in order to “lessen the pressure on [his] family” and because he believed that “appeals never change the result but only lengthen the time he has to suffer the terrible conditions.”<sup>87</sup> This demonstrates that political prisoners such as Nguyen are very aware that justice is unlikely, so much that they would decide against pursuing these so-called ‘remedy’ channels, believing that they would actually cause them further harm.

Of the people tried in 2022 who appealed their sentences, only four were known to have received any type of sentence reduction. One of these in the fourth instances was the of a sentence reduction in 2022 case of, journalist Nguyen Hoai Nam,<sup>88</sup> who had his sentence reduced from three and a half to two years. In Nam's case, the reasons given<sup>89</sup> were that he had a “change in attitude,” “recognized his wrongdoings,” and because his family “contributed to the revolution.”

The three other cases involve the high profile environmentalists Mai Phan Loi, Nguy Thi Khanh, and Bach Hung Duong, three of the ‘Vietnam Four.’ All three chose to plead guilty to “tax evasion” charges against them. NGO leader Dang Dinh Bach of the ‘Vietnam Four,’ was convicted of the same charges as the other three; he, however, did not plead guilty,

and thus did not have sentence reduced.<sup>90</sup> For those who do decide to lodge an appeal, prison authorities often make it difficult for prisoners to send and receive documents necessary for the appellate process or to petition for mistreatment behind bars.<sup>91</sup> Many political prisoners also report no desire to attempt an appeal, due to a lack of trust in the procedure.

In November 2022, Facebook user Bui Van Thuan was sentenced to eight years in prison plus five years of probation for spreading “anti-state propaganda” – one of the top two longest prison sentences handed down to activists in 2022.<sup>92</sup> In his closing statement at trial, he maintained his innocence and said he would not appeal the verdict because he had no faith in the system. His expected release is August 2029.<sup>93</sup>

Overall, while judicial remedy is written into Vietnamese law, it is both highly inaccessible and highly partisan due to the systemic repression of fair trial safeguards, as well the lack of an independent mechanism for appointing judges.<sup>94</sup>

### Whistleblowers and Anti-SLAPP Protection

Whistleblowing protections are also minimal in Vietnam.<sup>95</sup> The Law on Denunciations states that public authorities who receive complaints/denunciations are obliged to protect the complainant/denouncer from retaliation by the denounced individual(s). The specific obligations include the following: protect the whistleblower’s personal information; protect the business and employment of the whistleblower within their capacity to do so; and protect the life, health, property, honour and dignity of the whistleblower.<sup>96</sup> While laws are used by the government to ‘justify’ its wrongful acts towards its people, individuals are unable to use the law to protect themselves against the government. The definition of SLAPP, referring to lawsuits brought by individuals and powerful actors who want to silence critical voices and undermine scrutiny, along with anti-SLAPP provisions is still missing in the existing framework.

### Non-Judicial Grievance Mechanisms

There is no national human rights institution in Vietnam as a State-based non-judicial grievance mechanism. While many states have called for the establishment of a national human rights institution during the Universal Periodic Review cycles, no follow-up action has been taken.<sup>97</sup>

“

*Now the kinds of reprisals and intimidation that they [individuals who try to cooperate with the UN] face can include harassment, travel bans, loss of employment, physical attacks as well as arbitrary arrest, detention and torture... So, it is very important for us to send an alarm on this.*<sup>98</sup>

- Ravina Shamdasani, OHCHR Spokesperson

Further, HRDs are often targeted with reprisals when they attempt to access existing international grievance mechanisms. For example, Tran Phuoc Thao, wife of political prisoner Dang Dinh Bach, has faced intensive intimidation that threatens her family's living situation.<sup>99</sup> The Department of Civil Judgment Enforcement (DCJE) of Hanoi called Thao in January 2023 and told her to pay the alleged tax amount owed of VND 1,381,093,134 (\$58,059).<sup>100</sup> The representative said that if the money was not paid, the department would confiscate property belonging to the family. Over the following months, the DCJE continued to harass Thao and her family. In March, she reported to Project88 that the DCJE specifically threatened to freeze her bank accounts and force her to sell her house, her car, and other possessions if she refuses to pay the tax. In April, DCJE officers even went to her home to make a list of assets. Bach's bank accounts have been frozen and his credit cards locked since his conviction, so Thao does not have the means to comply with the DCJE request even if desired. Thao has been a vocal advocate for her husband's release and has advocated extensively with foreign governments and the UN.<sup>101</sup>

Evidently, there are many issues regarding Vietnam's remedy systems to safeguard its citizens' digital rights. These issues include a lack of an appeals process for online content moderation; insufficient legal safeguards for both detention periods and trials; minimal whistleblower protections; disinterest in creating domestic non-judicial grievance mechanisms; as well as disinterest in facilitating access to international non-judicial grievance mechanisms. Having laws and systems in place to restrict people's digital freedoms in the name of 'cybersecurity' is one issue. Not having laws in systems in place to provide effective access to remedy is another issue. Both demonstrate key concerns regarding the overall digital rights landscape in Vietnam.

## Conclusion

Overall, many complex, concerning legislative measures exist in Vietnamese Law, enforced by the Vietnamese government and other collaborating regulatory entities. Vietnam uses various means to regulate political speech online. Since the popularisation of the Internet in the country during the early 2000s, an elaborate policy framework has been developed to limit political speech in virtual spaces. The Criminal Code is the most visible punitive instrument used to suppress online political speech, with the potential to completely silence individuals and isolate them from society. Although there has been an uptick in criminal prosecutions and arrests linked to online activity in recent years, criminal law tends to be used in a minority of cases and as a measure of last resort. Administrative fines and police summons are more common. The power of the Law on Cybersecurity, by contrast, is sometimes exaggerated by mainstream narratives; this legislation plays a novel and important complementary role, but contains no substantive provision to punish or discipline political speech online. More troubling policies exist that regulate the architecture of the online environment, such as registration requirements for online newspapers and IP addresses under the Law on Telecommunications and the Law on the Press, that do not receive as much attention. The role of the Vietnamese Communist Party and its various organisations also appears to be important, though it unsurprisingly remains shrouded in secrecy. For this reason, it is difficult to assess its role.

# Endnotes

1. NB: At the request of its author, this chapter has not been standardised to uphold the same organised structure as our other chapters have, and thus has this unique structure. It will still provide the same categories information as our other chapters, just not organised by subsection (i.e. Legal Framework, Challenges and Cases, and Access to Effective Remedy).
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100. Bach is serving a five-year sentence for tax evasion in a case that Project88 has argued is politically motivated. See The Project88 report "Weaponizing the Law to Prosecute the Vietnam Four" for further details: <https://the88project.org/weaponizing-the-law-to-prosecute-the-vietnam-four/>
101. Project88, As Dang Dinh Bach's Hunger Strike Continues, His Family Faces Potential Forced Eviction: Letter from Tran Phuong Thao, Bach's Wife, May 16, 2023, (17 May 2023), available at: <https://the88project.org/letter-dang-dinh-bach-may-16-2023/>

# Chapter V.

## Recommendations

Based on the foregoing analysis, we are able to identify primary actors who hold key functions in enhancing the state of digital freedoms in Southeast Asia, specifically that of online expression. Governments hold the obligation to respect, protect and fulfil those freedoms in accordance with international human rights standards

**M**embers of Parliament, on the other hand, are meant to serve the ASEAN population, by responding to our needs for justice and true democracy. They are principally proxies through which governments can effectively satisfy their role; they are responsible not just for the creation, but also the smooth implementation, of laws and regulations that adhere to existing standards. Furthermore, civil society groups are front and centre in voicing the factual needs of the people, monitoring the development of the situation on the ground and advocating the core demands of a free and democratic digital society. Finally, tech companies, given the increasing relevance of technology to the realisation of human rights in practice, have a responsibility to respect human rights and remedy abuses.

## Recommendations to Governments

- 1 Decriminalise defamation and libel and bring any other relevant provisions of the Criminal and Penal Codes into line with article 19 of the International Covenant on Civil and Political Rights;
- 2 Enact a stand-alone anti-SLAPP law to ensure legal protections against strategic lawsuits against public participation (SLAPP) aiming at silencing dissent, and protect individuals from judicial harassment by the state and corporations;
- 3 Repeal or substantially amend laws and regulations that unduly restrict freedom of expression, independent media, and access to information, to bring them in line with international human rights law. In particular, clarify or reform vague laws, so that they are written in ways that are comprehensible and accessible to all members of society, so that all society members are aware of their responsibilities, protections, and the consequences of not abiding. The repeal or amendment process should include effective public consultation (in particular, taking into account historically marginalised opinions);
  - a. Clarify legal responsibility under civil and administrative law for what constitutes ‘online gender-based violence (OGBV),’ ‘hate speech,’ ‘hateful conduct,’ ‘harassment,’ ‘doxxing,’ and other key terms, while simultaneously upholding the right to freedom of expression and opinion. Enable people of marginalised groups (e.g. women, LGBTIQ+, disabled peoples, people marginalised based on race, Indigenous peoples, etc.) to guide and participate in the development of reasonable definitions for terms used in legislation that disproportionately affect them. Ensure that reports of online gender-based violence (OGBV) are subject to systematic and consistent investigation, and offer assistance to individuals or groups affected;
  - b. Expand any definitions of ‘personal information’ and/or ‘private information’ to protect (if not already protected) an individual’s full legal name; date of birth; age; gender/legal sex; LGBTIQ+ identity; places of residence, education and work; private personal information of family members and relatives; descriptions and pictures depicting an individual’s physical appearance; and screenshots of text messages or messages from other platforms. These should be considered when investigating cases of doxxing, smear campaigns, and other instances of online violence that weaponise an individual’s personal/private information

against them. Ensure that reports of doxxing campaigns and other forms of violence on the digital space are subject to systematic and consistent investigation, and offer assistance to individuals or groups affected.

- 4 When punishing expression as a threat to national security under laws, the government must demonstrate, with evidence, that:
  - a. the expression is intended to incite imminent violence;
  - b. it is likely to incite such violence; and
  - c. there is a direct and immediate connection between the expression and the likelihood of occurrence of such violence, in line with the Johannesburg principles;<sup>1</sup>
- 5 Guarantee transparency and access to information, both offline and online, particularly where such information relates to the public interest and impacts upon the individual's right to public participation, including by amending existing laws or adopting a law to enable provision of such access. Implement measures to enhance transparency in political advertising, including clear disclosure of funding sources and target audiences to promote accountability and integrity, and combat disinformation;
- 6 Enable HRDs, journalists, civil society members, ordinary users, lawyers and academics to safely carry out their legitimate online activities to spread awareness for human rights violations without fear or undue hindrance, obstruction, judicial harassment, and/or online harassment (e.g. OGBV and general OBV, hate speech campaigns, or doxxing);
- 7 Working with responsible MPs and with tech companies, enforce social media policies to prevent harmful effects of doxxing, while considering applicable regulations in relevant countries. Establish a committee, if not already in place, to ensure compliance with these regulations, with a particular focus on moderating or removing illicit content.
- 8 Repeal or amend all laws and regulations that establish a licensing regime for the print and online media, replacing them with a system of self-regulation;
- 9 Cease the targeting and criminalisation of legitimate online speech by opposition activists, journalists, HRDs, and other dissenting voices solely in the exercise of their rights to free expression online, through the abuse of laws and administrative regulations;
- 10 Prevent acts of harassment and intimidation against, the placement of arbitrary restrictions on, or arrests of journalists, activists and human rights defenders who merely criticise public officials or government policies;
- 11 Recognise online and technology facilitated online gender-based violence (OGBV) as a human rights violation and include it in laws to criminalise and prohibit all forms of violence in digital contexts. Enhance the capabilities of law enforcement agencies to effectively investigate and prosecute such crimes;
- 12 Strengthen collaboration with the technology industry, feminist organisations, civil society, and national and regional human rights bodies to bolster measures and policies aimed at promptly and effectively providing remedies to victims of online gender-based violence (OGBV);
- 13 Implement an immediate moratorium on the export, sale, transfer, servicing, and use of targeted digital surveillance technologies until rigorous human rights safeguards are put in place to regulate such practices. In cases where such technologies have been deployed, ensure both targeted individuals and non-targeted individuals whose data was accessed as a result of someone else's surveillance are notified, implement independent oversight, and ensure targets have access to meaningful legal remedies;

1. ARTICLE 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, (November 1996), available at: <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>

- 14 End all legal proceedings against individuals facing investigation, charges or prosecution initiated by state authorities for engaging in legitimate activities protected by international human rights law or for addressing violations. Cease all violence against independent media and journalists allowing them to freely report on the emerging situation in the country and stop all efforts to restrict independent information from reaching people;
- 15 Legally recognise human rights defenders and provide effective protection to journalists, HRDs and other civil society actors who are subjected to intimidation and attacks owing to their professional activities;
- 16 Ensure that all measures restricting human rights that may be taken in response to mass-distabilising events, including public health emergencies such as a global pandemic, are lawful, necessary, proportionate and non-discriminatory. Review the measures taken in response to the pandemic in order to ensure that a clear and sufficient legal framework exists for the response to any future pandemic, and take a cautious, progressive approach to emergency measures, adopting those that require derogation only as a last resort when strictly required because other, less restrictive options prove inadequate;
- 17 Take immediate steps to ensure and protect the full independence and impartiality of the judiciary and guarantee that it is free to operate without pressure and interference from the executive;
- 18 Facilitate the participation, leadership, and engagement of a diverse range of people of marginalised communities in government. Create task forces to take proactive initiatives to safeguard marginalised communities (e.g. women, LGBTIQ+, people marginalised based on race) from specific forms of abuse, (e.g. hate crimes, smear campaigns, the sharing of intimate images online including revenge porn), doxxing, hate speech, and overall gender-based violence.
- 19 Carry out routine assessments of the state of digital rights under the jurisdiction. Facilitate the creation of task forces, consisting of individuals trained in the safeguarding of digital rights, to investigate these affairs.
- 20 Set up accessible and appropriate, judicial and non-judicial grievance mechanisms; Provide, among the remedies, fair treatment, just compensation or satisfaction, and the establishment of sufficient grounds to avoid its repetition. Also, implement an evaluation system that regularly screens the existing mechanisms.

## Recommendations to Members of Parliament

- 1 Propose amendments to the Criminal and Penal Codes and other laws to address all shortcomings in line with international human rights standards such as UDHR and the ICCPR; and gather consensus among other MPs to ensure these amendments are adopted into the text of the law;
- 2 Hold the government accountable by ensuring that the steps taken by government bodies and agencies in the legal framework are evaluated and analysed on an individual as well as regular basis, applied only in cases where there is a risk of serious harm and cover both the enterprises in the public and private sector without discrimination, particularly when such a step could result in the violation of rights of individuals affected;



- 3 Build discussion and debate around digital rights with specific attention paid to the country context as well as good practices adopted regionally and internationally, with the general public actively involved in providing the grassroots perspective;
- 4 Adopt and enforce national laws to address and punish all forms of gender based-violence, including in the digital space. Legal and policy measures to eradicate online gender-based violence (OGBV) should be framed within the broader framework of human rights that addresses the structural discrimination, violence and inequalities that women and other communities marginalised based on gender (e.g. the LGBTIQ+ community) face. Policies should also highlight specific forms of abuse that people marginalised based on gender often face online (e.g. doxxing, non-consensual sharing of intimate pictures online, the spread of deep fakes);
- 5 Adopt specific laws and measures to prohibit new emerging forms of online gender-based violence (OGBV), as well as specialised mechanisms with trained and skilled personnel to confront and eliminate online gender-based violence;
- 6 Organise and take responsibility for task forces that will take proactive initiatives to safeguard marginalised communities (e.g. women, LGBTIQ+, people marginalised based on race) against specific forms of abuse (e.g. hate crimes, smear campaigns, the sharing of intimate images online including revenge porn), doxxing, hate speech, and overall gender-based violence.
- 7 Ensure that the opposition parties are allowed to fully participate in drafting and passing legislation to enable them to fully represent their constituents.

## Recommendations to Tech Companies

- 1 Ensure the companies' terms of services and policies are uniform and in compliance with international standards on freedom of expression, which are reviewed regularly to ensure all circumstances and situations that may arise have been addressed, while also addressing new legal, technological, and societal developments, in line with the obligation to respect human rights under the UNGPs;
- 2 Drop the for-profit business model that revolves around overcollection of data. Such business models are being utilised by the government and are violating data rights.
- 3 Adopt the Global Network Initiative Principles on Freedom of Expression and Privacy;
- 4 Clearly and completely explain in guidelines, community standards, and terms of services what speech is not permissible, what aims restrictions serve, and how content is assessed for violations;
- 5 Ensure the integrity of services by taking proactive steps to counteract manipulative tactics utilised in the dissemination of disinformation, including the creation of fake accounts, amplification through bots, impersonation, and the proliferation of harmful deep fakes.
- 6 Prioritise prediction of, preparation for, as well as protection against digital dictatorship and online-based violence when launching, revolutionising, or reforming products, services, and initiatives. The guidelines of the Center for Countering Digital Hate

(CCDH) 'STAR Framework' should be urgently considered, which include: safety by design; transparency in algorithms, rules enforcement, and economics; accountability systems implementation; and corporate responsibility.<sup>2</sup> In addition, these predictive, preparative, and protective factors must take into account and implement the input of marginalised communities (e.g. LGBTIQ+ peoples, women, and those marginalised based on race) who often become targets of online violence that is often unregulated or even perpetuated by existing systems;

- 7 Products, services, and initiatives must have consumer safety in mind from the very beginning of conception. This means that product, service, and initiative developers, as well as high-level executives, must all take all possible measures to ensure that their products are safe, by design for all users, including marginalised communities (e.g. including LGBTIQ+ peoples, women, and those marginalised based on race). Not only does far-sighted consideration ensure user safety and the safeguarding of human rights, but it will also increase the longevity of these products, services, and initiatives in a rapidly changing economy where people are becoming increasingly aware and adamant about the protection of their human rights. Ensuring safety by design includes the practice of performing thorough risk assessments, and educating developers as well as executives to recognise their responsibilities to uphold human rights standards during the development as well as execution processes;
  - 8 Promote transparency. CCDH specifically highlights the need for transparency in "algorithms; rules enforcement; and economics, specifically related to advertising." Though transparency is more of a 'preparative' factor rather than a 'preventive' one, it will make civic engagement and corporate accountability much more effective, ultimately amounting to increased 'prevention' efficacy;
  - 9 Promote transparency. CCDH specifically highlights the need for transparency in "algorithms; rules enforcement; and economics, specifically related to advertising." Though transparency is more of a 'preparative' factor rather than a 'preventive' one, it will make civic engagement and corporate accountability much more effective, ultimately amounting to increased 'prevention' efficacy;
- a. Transparency in algorithmic development, for example, is essential; though algorithms are not responsible humans, they were created by responsible humans. This same logic can be applied to Artificial Intelligence (AI); though AI is not human, it was created by humans. If algorithms and AI are developed and/or trained by humans with harmful biases (e.g. misogynistic, anti-LGBTIQ+, ableist, racist biases), they are accordingly likely to cause and perpetuate harm (e.g. misogynistic, anti-LGBTIQ+, ableist, racist harm). Transparency in the development of algorithms, AI, and other technologies is essential so that any harm being perpetuated by these non-human systems can be flagged, and accordingly addressed.
  - b. The same logic can be applied to company regulation development processes, as well as advertising strategy. For example, if company regulations were formulated in a way that disproportionately excludes marginalised voices (e.g without any adopted input from a diverse range of people of intersectional identities, such as women, LGBTIQ+ people, disabled people, or people marginalised based on race), those regulations are more likely to cause or perpetuate human rights violations. Companies should implement measures to enhance transparency in advertising, including clear disclosure of funding sources and target audiences to promote accountability and integrity, and combat disinformation;

2. CCDH, *PUBLIC SUPPORT FOR SOCIAL MEDIA REFORM: Assessing CCDH's STAR Framework for social media regulation*, (16 August 2023), available at: <https://counterhate.com/research/public-support-for-social-media-reform-star/>; The following recommendations will elaborate on this.

executives) must recognise they hold a lot of economic, political, and social power by virtue of being in their positions, and thus naturally hold more responsibility than the average consumer. This means that though consumers have their own responsibilities, companies cannot put responsibility disproportionately on the consumer to regulate their own use of the companies' products, services, and initiatives, if these companies genuinely intend to safeguard human rights. Thus, companies must implement regulatory systems that put people above profit, in order to allow themselves to be held accountable, and in order to facilitate their self-regulation;

- 10 Enable people of marginalised groups (e.g. women, girls, LGBTIQ+ people, disabled people, people marginalised based on race), to participate and lead in the technology sector to guide the design, implementation, and use of safe and secure digital tools and platforms.
- 11 Commit to eradicating online gender-based violence (OGBV) and allocate resources to information and education campaigns aimed at preventing ICT-facilitated gender-based violence. Additionally, invest in raising awareness for the intersection between human rights and digital security, demonstrating how human rights must be taken seriously in both the offline and online spaces. This can come in many forms, including working closely with local communities and human rights organisations (e.g. feminist groups, LGBTIQ+ groups) to facilitate dialogue and sensitivity training regarding the needs of people marginalised based on gender and/or other factors;
- 12 Implement and communicate stringent user codes of conduct across their platforms, ensuring their enforcement. Additionally, establish uniform content moderation standards that can effectively identify and address nuanced forms of online violence, while remaining sensitive to diverse cultural and linguistic contexts;
- 13 Improve the systems for reporting abuse so that victims of online gender-based violence (OGBV) and racial discrimination can easily report it and track the progress of the reports;
- 14 Publish regular information on official websites regarding the legal basis of requests made by governments and other third parties and regarding the content or accounts restricted or removed under the company's own policies and community guidelines, and establish clear, comprehensive grievance mechanisms that allow governing bodies and civil society members to dispute restrictions or removals of content and accounts. Aside from being clear and comprehensive, these mechanisms must have efficient, effective, and bias-trained systems of humans and/or electronic systems ready to receive and handle the grievances.;
- 15 When appropriate, consider less-invasive alternatives to content removal, such as demotion of content, labelling, fact-checking, promoting more authoritative sources, and implementing design changes that improve civic discussions;
- 16 Engage in continuous dialogue with civil society to understand the human rights impacts of current and potential sanctions, and avoid overcompliance in policy and practice;
- 17 Ensure that the results of human rights impact assessments and public consultations are made public;
- 18 Ensure that any requests, orders and commands to remove content must be based on validly enacted law, subject to external and independent oversight, and demonstrates a necessary as well as proportionate means to achieve one or more aims.
- 19 Organise task forces and initiate proactive initiatives to safeguard LGBTIQ+, women, girls and other concerned minorities against specific forms of abuse, (e.g. the non-consensual sharing of intimate images, including revenge porn), doxxing, hate speech, and overall gender-based violence.

- 20 Carry out routine assessments of human rights impacts and provide comprehensive transparency reports on measures taken to address the against marginalised communities (e.g. e.g. hate crimes, smear campaigns, the sharing of intimate images online including revenge porn).
- 21 Conduct assessments and due diligence processes to determine the impact of business activities on users, with respect to online freedom. Ensure meaningful and inclusive stakeholder engagement, with no one left behind.

## Recommendations to Civil Society

- 1 Set up an independent multi-stakeholder body with the cooperation of various sectors to monitor and provide recommendations on trends in, and individual cases of digital rights abuses;
- 2 Work alongside governments and other stakeholders, to generate dialogue on issues and ensure accountability of government measures especially when it comes to issues related to democracy and human rights;
- 3 Support the independent evaluation and analysis of substantive aspects, including the use of the principles of necessity and proportionality through established global standards, and the impact of responses on society and economy;
- 4 Hold implementing authorities and officials liable for the misuse of their powers or information obtained, while carrying out their duties in the existing legal framework;
- 5 Strengthen understanding and solidarity among underprivileged people (e.g. class solidarity, solidarity among women and others marginalised based on gender, understanding among different ethnic groups within a jurisdiction);
- 6 Promote a safe and respectful environment for free online expression;
- 7 Continue to increase knowledge on digital security through training and capacity building programs, and actively carry out training on media literacy, including how to verify information to be true;
- 8 Continue to conduct awareness campaigns to educate individuals and communities about the various forms of gender-based violence, its impact on survivors, and the importance of promoting a safe and respectful online environment;
- 9 Advocate for the implementation and enforcement of robust laws and policies that criminalise all forms of gender-based violence, including online gender-based violence (OGBV);
- 10 Develop and implement digital literacy programs that equip individuals, especially women and marginalised communities, with skills to navigate online platforms safely, recognise and respond to online harassment, and protect their privacy;
- 11 Create and participate in grassroots, community-led initiatives to safeguard LGBTIQ+, women, girls and other concerned minorities against specific forms of abuse (e.g. the non-consensual sharing of intimate images, including revenge porn), doxxing, hate speech, and overall gender-based violence. Wherever possible, mobilise these initiatives to hold governments, MPs, and corporations accountable.
- 12 Collaborate with social media platforms and technology companies to develop and enforce policies and mechanisms that effectively address online gender-based violence (OGBV).

# Glossary

**Abolition:** putting an end to something by law

**Appeal:** the resort to a higher court to review the decision of a lower court, or to a court to review the order of an administrative agency

**Arresto mayor:** In Philippine criminal law, a sentence of imprisonment with a full range of one month and a day to six months

**Attorney:** a person legally appointed or empowered to act on behalf of another person

**Bail:** a sum of money paid by a defendant upon release to ensure later appearance in court

**Bill:** a statute in draft, before it becomes law

**Charge:** the specific statement of the crime accused to a party in the indictment or criminal complaint in a criminal case

**Chilling effect:** suppression of free speech and legitimate forms of dissent among a population due to fear of repercussion

**Customary international law:** international obligations arising from established international practices accepted as the norm

**Conviction:** an adjudication or formal declaration of a criminal defendant's guilt

**Damages:** a sum of money the law imposes to compensate a loss or injury

**Defendant:** someone who is being sued or accused of committing a crime

**Distributed Denial-of-Service (DDoS) attack:** a malicious attempt to disrupt normal traffic to a website or targeted server

**De facto:** Latin for "in fact." Phrase to show that that a state of affairs is true in fact, but not officially sanctioned

**Directive:** a set of instructions, guidelines, decisions or regulations issued by an official body outlining how a legal objective is to be achieved

**Disenfranchisement:** the removal of the rights and privileges inherent in an individual or group

**Doxxing:** publicly revealing identifying information about a person online

**Entry into force:** the coming into effect of a law or international agreement as to make it binding

**Extradition:** surrender by a country of a person charged with a crime in another country, usually under provisions of a treaty

**Felony:** a crime, characterised under federal law and state statutes as any offence punishable by imprisonment of over one year or death

**Grievance mechanism:** a formalised process, either judicial or non-judicial, by which a harm or cost suffered by a person can be compensated or remedied

**Hoax:** a trick or something else that is intended to deceive someone

**Incommunicado detention:** a situation of detention where a person is denied access to family members, an attorney or independent physician

**Indictment:** a formal written accusation stating that a person is being charged with a crime and must undergo a criminal trial

**Injunction:** a court order by which a person is ordered to perform, or restrain from performing, a certain act

**Lawsuit:** a disagreement between people or organisations that is brought to a court of law for a decision

**Libel:** a published false statement that is damaging to a person's reputation

**Moratorium:** a delay or suspension of an activity or law until further consideration

**Perjury:** the intentional act of swearing a false oath or falsifying an affirmation to tell the truth, whether spoken or in writing, concerning matters material to an official proceeding

**Persecution:** severe discrimination that results in the denial or infringement of fundamental rights

**Phishing:** a technique to trick a person into disclosing sensitive data through the use of deceptive emails or websites

**Pre-trial detention:** the detaining of an accused person in a criminal case before the trial has taken place

**Prisión correccional:** In Philippine criminal law, a sentence of imprisonment with a full range of six months and one day to six years

**Prisión mayor:** In Philippine criminal law, a sentence of major imprisonment with a full range of from six years and one day to twelve years

**Probation:** an alternative to imprisonment allowing a convicted person to stay in the community, usually under conditions and supervision of a probation officer

**Prosecution:** the initiation of criminal proceedings against a person accused of a crime

**Ratification:** an international act whereby a state expresses its consent to be bound to a treaty by an exchange or deposit of requisite instruments

**Redress:** relief or remedy or a means of seeking relief or remedy

**Red-tagging:** a harmful practice that targets people who often end up being harassed or even killed

**Reverse onus:** a legal provision that shifts the burden of proof onto a specified individual, normally the defendant, to disprove an element of an information

**Self-censorship:** withholding of one's true opinion from others in the absence of formal obstacles

**Slander:** false oral statements which damages the reputation of others

**SLAPP suit:** a civil claim filed against an individual or organisation to dissuade criticism, or intimidate or harass into silence

**Smear campaign:** a planned attempt to harm the reputation of a person or company by telling lies about them

**Status quo:** state of affairs as it exists at a particular time, normally one that precedes a controversy

**Statute of limitations:** a law that sets the maximum time that parties have to initiate legal proceedings from the date of an alleged offence

**Sub judice contempt:** a form of law that protects a person's right to a fair hearing by preventing the publication of material or comment which may improperly influence a jury or witness

**Summons:** a document issued by a court notifying someone that they are being sued or required to appear in court

**Uphold (of a decision):** to agree with a decision made earlier by a lower court

**Writ:** a written order issued by an administrative or judicial body



# #STOPDIGITAL DICTATORSHIP

