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REPRESSIVE LAWS SUMMARY

APRIL - JUNE 2021



QUARTERLY REVIEW

For the second quarter of 2021, repressive laws continued to be used to stifle fundamental freedoms and civic space in the region. In Myanmar, where the military junta continues to kill civilians and peaceful protesters every day, repressive laws continue to be enacted and used to consolidate the military's power, and to evade accountability for grave human rights violations.

Laws on 'national security' are being wielded to discredit civil society actors and social movements as terrorists or as threats. Two years since the start of the anti-extradition protests in Hong Kong, the National Security Law has been used to justify a sweeping crackdown against civil society, activists, journalists and dissenters. In its first designation of 'terrorists' using the Anti-Terrorism Law in the Philippines, the Anti-Terror Council publicised the names of 19 individuals that it said were connected to the Communist Party.

Instead of rights-based solutions to address a rapidly worsening COVID-19 situation in the region, governments have again resorted to vaguely defined emergency decrees and repressive laws which have exacerbated human rights violations and have been ineffective in addressing the crisis. Individuals who speak out are being accused of inciting public fears or public chaos. Legislation targeting 'fake news' on the pandemic has been used in Thailand, Malaysia, and Indonesia. In Cambodia, the government has threatened journalists and individuals prosecution for critical commentary on the outbreak. In India, the National Security Act has been used against individuals criticising COVID-19 misinformation on Facebook.

Governments also have also continued the trend of enacting regulations to grant authorities overly broad powers to regulate online content, access user data, and penalise companies that fail to comply. Examples include the recently implemented Ministerial Regulation 5/2020 (MR5) in Indonesia, Cambodia's new internet Gateway Decree, and India Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules.

Repressive laws continue to be used as reprisals against human rights defenders and journalists and to reinforce a culture of fear. In Indonesia, the country's electronic and information law continues to be used to intimidate journalists for their reporting. In Bangladesh, a journalist was arrested under the Official Secrets Act while investigating corruption in the health sector. In Thailand, pro-democracy activists face compounded charges of royal defamation and violations of the Emergency Decree. India's Unlawful Activities Act is being used to target human rights and civil society, over allegations of being anti-state.

Despite the continued repression from the Asian States, Asian civil society have continued to create and strengthen interregional alliances, create platforms for solidarity and speak out for one another's causes.

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COUNTRY UPDATE

BANGLADESH

Reprisals continue against journalists investigating corruption in government. Journalist Rozina Islam, was arrested under the country's Official Secrets Act, while investigating corruption and mismanagement in Bangladesh's health sector. The Digital Security Act (DSA) continued to stifle dissent, and opposition voices as evidenced by the arrest of journalists Abu Tayyab, Khalilur Rahman, and Al Amin Hossain on allegations of defamatory social media posts and news reports against pro-government leaders. The bail hearing for journalist Jhumon Das Apon, apprehended for criticising a religious leader, has been postponed multiple times while Ruhul Amin Gazi was finally released on bail. Prominent photojournalist Shafiqul Islam Kajol's case has been transferred to Dhaka Cyber Tribunal for trial under DSA.

CAMBODIA

In May, five environmental defenders were convicted of incitement to commit a crime for a planned peaceful march to protest the filling of a lake. In June, defenders from Mother Nature were charged with conspiracy and lese-majeste, apparently for their documentation of the sewage draining into the Tonle Sap River. An emergency law passed in March has given way towards disproportionate penalties towards presumed violators, and the further closing of civic space. The government once again used the pandemic to stifle reporting and commentary regarding its handling of the outbreak. Using vaguely worded laws such as incitement and the emergency decree, the government targeted journalists, activists and individuals who have either reported on or criticised the government's actions. These included Sam Rainsy, the exiled president of the banned Cambodia National Rescue Party, who was issued a warrant for incitement after he called on the public to disobey the stringent lockdowns and criticised government corruption in the handling of the pandemic.

The newly-appointed Special Rapporteur to Cambodia, Vitit Muntarbhorn has also raised concerns over a recently-passed legislation establishing a national internet gateway, reminding the government that any form of limitation towards accessing information should abide by international standards.

HONG KONG

The 12th of June 2021 marked the second anniversary of the anti-extradition protests in Hong Kong. Two years since the wave of protests that rocked Hong Kong, Chinese and Hong Kong authorities have escalated their tactics to crack down on all sectors of civil society. The National Security Law, passed in 2020, has facilitated this systematic crackdown -- as pro-democracy activists, politicians and journalists were charged under this law. Prominent activists have faced compounded charges often comprising violations of the National Security Law, the country's public assembly legislation. Apple Daily media tycoon Jimmy Lai and Martin Lee often called the 'father of democracy' were among the prominent individuals sentenced for participating in an unauthorised assembly in April. Jimmy Lai would be sentenced again in May, for his participation in another assembly. Joshua Wong, who is in jail for charges of illegal assembly and violations of the National Security Law, was handed another ten months in prison for his participation in last year's events marking the 1989 crackdown in Tiananmen Square.

These have occurred amidst a background of continued repression, and as authorities consolidate control. In June, the government announced censorship of films that are endangering national security. Apple Daily announced its closure following the freezing of its accounts and targeting of its journalists. Meanwhile, even defenders who have left the city face intimidation from their government. In May, the country's top official warned individuals charged under the National Security Law who have left the city that they would be 'pursued for life'.

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MYANMAR

The military junta has continued to use repressive laws to consolidate its power. After its attempted coup it amended laws such as Section 505(a) and Section 124 of the Penal Code to incorporate vague and overbroad provisions that would allow the junta to target those opposing the junta. These laws are now being used against protesters, journalists, celebrities and individuals speaking against the coup. The warrantless arrests of protesters have continued, with more than 6000 arrested since the start of the coup. Min Nyo, a reporter at the media outlet Democratic Voice of Burma became the first journalist to be sentenced to three years under Section 505 (a) under a new provision that made it illegal to publish material that could cause State officials to mutiny. Two more journalists were sentenced in June, while it is estimated that half of the more than forty detained journalists have been charged under this law. Celebrities and social media influencers have also been targeted with Section 505 for encouraging protests.

Leaders of the National League for Democracy are also facing charges. Aung San Suu Kyi will be tried for six charges including corruption, violation of the official secrets act and inciting public unrest. National League for Democracy member U Win Hten will face sedition charges. Amidst these, the junta has continued to pass or amend laws. In April it passed the Law Amending Television Law which stated that a person can be sentenced to less than a year in prison and / or fined under vague provisions.

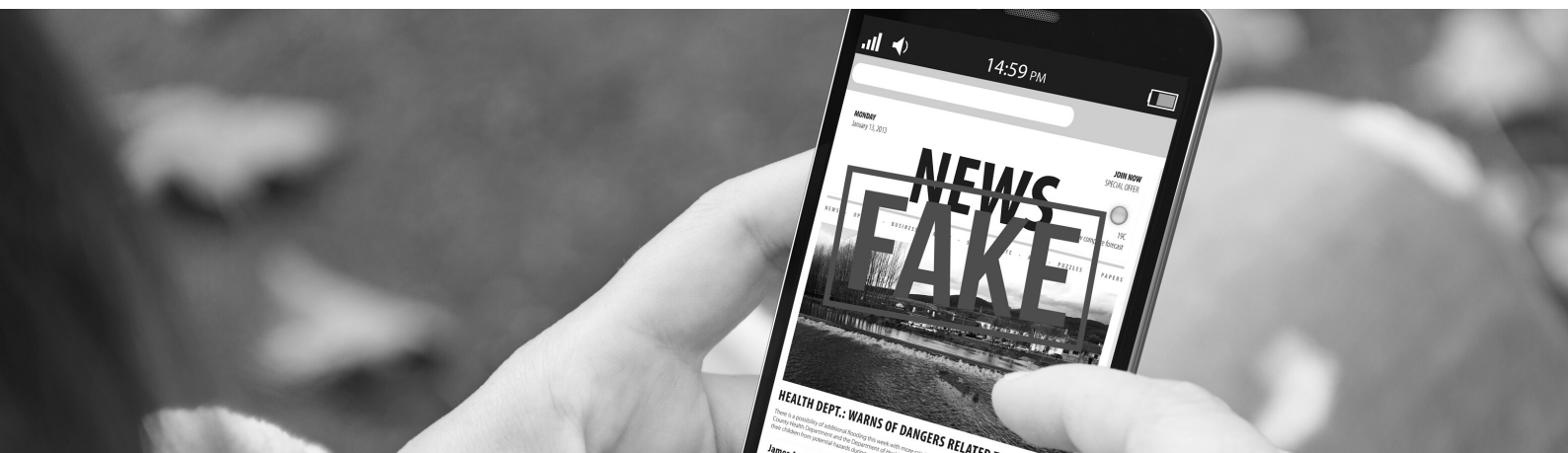
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MALAYSIA

The government has continued to use ordinances under the state of emergency to stifle freedom of expression. As of early May, the police had opened twelve investigations on violations of the Emergency Ordinance (Essential Powers) (No 2) 2021, or the ‘fake news’ provision. Individuals investigated under this ordinance often also face investigations under Section 233 of the country’s Communications and Multimedia Act (CMA), which criminalises the improper use of network systems. CMA 1998, along with Section 505 of the Penal Code, which bans statements or reports that can cause ‘public mischief’ have been used by the government against dissenters and critics even prior to the announcement of a state of emergency. In May, political cartoonist Zulkiflee Anwar Ulhaque, better known as Zunar, was summoned and questioned by the police under CMA 1998 and the Penal Code, for a caricature he made of Kedah Menteri Besar Muhammad Sanusi Md Nor. In April Fahmi Reza faced investigation for sedition and CMA 1998 for allegedly insulting the Malaysian queen after posting a satirical playlist.

From January 2019 to June this year, a total of 1897 probes have opened on cases involving social media, which have included cases involving the royal institution, racial matters, and insults against the government or religions. In April a man was arrested in relation to investigations of a letter condemning a mosque and insulting social media. In the same month, a photographer was fined for two counts of insulting Hinduism over two comments he posted on Facebook.



PHILIPPINES

Terrorist tagging or ‘red-tagging’ has remained rampant, and became a key issue during the oral arguments against the Anti-Terrorism Law. Amidst these arguments, the Anti-Terrorism Council published the names of 19 individuals it designated as terrorists, without a court order. The overly-broad terminology under the Anti-Terrorism Law allowed the government to determine at its own discretion what activities constitute crimes under the law. This has led to lack of safeguarding for civil society actors and human rights defenders in doing their work.

While the government has maintained that designation will only lead to the freezing of accounts, civil society and families continuously raised concerns about ‘red-tagged’ individuals facing threats or violence. In an interview in April, the Secretary of Justice acknowledged that it is ‘very possible’ that the law may have emboldened the security sector to ‘red-tag’ individuals. Among those who have been accused of having communist links are organisers of community pantries, who have stepped up to provide food and necessities within communities.



INDIA

Amendments to Foreign Contribution (Regulation) Act, mandated all NGOs receiving foreign funding to open a bank account at the State Bank of India branch in New Delhi. Bureaucratic delays from the pandemic prevented nearly 13000 NGOs from opening an account, which resulted in restrictions in their operations. The misuse of the Unlawful Activities (Prevention) Act continued unabated as evidenced by the arrest of human rights defenders Hidme Markam and Laishram Herojit Singh, mass raids, and suspension of rights organisations on allegations of being anti-state. Human rights defenders Rona Wilson and Shoma Sen, who were previously arrested in the Bhima Koregaon case filed a bail petition following a new forensics report that showed key evidence used against the detainees was planted into Wilson's computer. Another bail petition by Gautam Navlakha was dismissed by the Supreme Court while the Bombay High Court upheld the petitions to shift Sudha Bharadwaj and Hany Babu to hospitals outside the prison owing to their deteriorating health.

Journalist Kishorchandra Wangkhem and activist Erendro Leichombam were arrested under the National Security Act (NSA) for their Facebook posts criticising misinformation related to COVID-19. A few weeks before his arrest, Kishorchandra had filed a public interest litigation in the Supreme Court challenging the constitutionality of the sedition law. The Uttar Pradesh government ordered strict action under NSA against those 'creating panic' on social media, including those seeking help for COVID-19 treatment. The Supreme Court told states and the police that any clampdown on information related to COVID-19 assistance could constitute contempt.

INDONESIA

On World Press Freedom Day, the civil society group Alliance of Independent Journalists said that the country's information and electronic transaction law has been used against 25 journalists, with some of these journalists jailed under this law. The law, which aims to regulate online content, has been criticised for its vague and broad provisions that have been used as reprisals against critics. Laws targeting 'fake news' have also been used; authorities arrested a Papuan pro-independence leader for allegations of spreading 'false news' about leaders of the Catholic Church.

Islamic organisations are calling for the extradition of an exiled Youtuber over allegedly blasphemous posts where the Youtuber criticised the prophet Muhammad and declared himself the 26th prophet. The man has been named a suspect for blasphemy which carries up to a five-year sentence, and may face additional charges under the information and electronic transaction law. The government is currently implementing the IT Ministerial Regulation 5/2020 (MR 5) that grants authorities to 'governing' all private electronic system operators for accessing user data, regulate online content and penalize companies that fail to comply. The regulation's definition of prohibited content is extremely broad, which might further derailed protection of free speech.

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PAKISTAN

The Islamabad High Court asked the five-member inter-ministerial committee constituted in April to examine the “Removal and Blocking of Unlawful Online Content (Procedure, Oversight and safeguards) Rules, 2020” to submit its report by 10 May. Certain rights organizations were invited to furnish written submissions about the Rules and attend consultations on a day’s notice which was criticized as unreasonable, mala fide, and perfunctory. Journalist Asad Ali Toor was issued a summons to appear and record a statement before the Federal Investigation Agency for his alleged defamation of a government institution. The Federal Investigation Agency did not specify which institution was concerned in the inquiry.

THAILAND

Since reviving the use of lese-majeste (Article 112), the government has escalated the use of this law along with the Computer Crime Act and other legislation to stifle dissent against the monarchy and the government. Among those summoned or indicted under the lese majeste law were famous Thai singer Suthipongse 'Heart' Thatphithakkul, students from Chiang Mai University for an art installation piece, and a Tiktok user who uploaded a clip where she criticised the government’s handling of COVID-19. Most recently, a 14-year-old became the youngest so far summoned for lese majeste charge. Civil society Thai Lawyers for Human Rights documented her as the 7th person under the age of 18 to face charges under this law.

As of May, an estimated 580 people associated with the protests face prosecution for various charges, from minor offences such as littering to lese-majeste, which carries a sentence of up to fifteen years in jail. On 12 June, the number of individuals charged with lese-majeste reached 100, covering the period November 2020 to June 2021.

These laws and policies in these countries have paved the way towards institutionalising a system of unquestioned authoritarianism. FORUM-ASIA continues to track these developments, with the help of its members and partners, and to advocate against their use.

For more information, go to:
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