



COVID-19 in ASEAN: the Human Rights Crisis and How to End it

About the Briefing Paper

In the ASEAN region as elsewhere in the world, the COVID-19 pandemic has created a genuine health emergency, prompting governments to take extraordinary, unprecedented measures in an effort to curb its lethal progress. However, ASEAN Member States have also used the pandemic as an excuse to clamp down on peaceful political and social dissent and to deepen discrimination and violence against vulnerable groups, in a region already suffering from increasing authoritarianism, human rights violations and a narrowing civic space.

On the occasion of the 36th ASEAN Summit, FORUM-ASIA is publishing the result of documentation, rapid assessment, as well as the summary of a webinar series on the status of human rights during the time of the COVID-19 pandemic, March to May 2020, organised by FORUM-ASIA, SHAPE-SEA, and SAPA. This briefing paper aims at informing readers on the human rights situation in the region under the pandemic, on how the ASEAN new normal, created ostensibly to combat the pandemic is affecting the protection of human rights in the region, and to provide recommendations on addressing and reversing these effects.

I. The COVID-19 Impact on Human Rights, Democracy and Civic Space in ASEAN

The new coronavirus disease (COVID-19) has brought havoc globally. The World Health Organisation (WHO) announced it as a pandemic on 11 March 2020. It originated in the city of Wuhan in China, and then spread, initially to neighbouring countries. Due to their proximity to China and extensive interconnections in tourism and trade with it, Association of Southeast Asian Nation (ASEAN) member states were affected early. The ASEAN countries have reported at least 134,829 COVID-19 cases with 3,935 deaths in total as of 23 June 2020¹.

¹ <https://www.csis.org/programs/southeast-asia-program/southeast-asia-covid-19-tracker-0>

The Philippines and Indonesia rank first and second for the mortality rate in ASEAN, accounting for 10.64 and 9.47 deaths per million respectively². The ASEAN Secretary-General, Lim Jock Hoi, estimated that the real numbers are likely to be higher than those officially provided,³ and the figures are continuing to rise. Beyond the catastrophic health impact, the pandemic is also dramatically affecting the economy. According to the Asian Development Bank, the ASEAN region is expected to grow by a meagre of 1 per cent in 2020, compared to 4.6 per cent in 2019⁴. As a consequence, millions are expected to lose their jobs, and for a region with a large informal sector and where social protection is not evenly developed, the implications for many will be dire.

Table 1. COVID-19 cases in ASEAN as of 23 June 2020

Country	Cases	Cases last 24 hr	Death	Tests	Recovered	Cases per Million	Population
World	8,513,725	139,979	454,513	-	4,181,443	417	7,700,000,000
China	84,494	36	4,638	-	79,515	58	1,439,324
USA	2,191,200	27,910	118,435	25,403,498	599,115	3,142	331,003,000
Indonesia	43,803	1,041	2,373	366,581	17,349	38	264,000,000
Philippines	28,803	660	1,130	533,197	7,378	81	104,900,000
Vietnam	349	7	0	261,004	326	3	95,540,000
Thailand	3,146	5	58	284,805	3,008	43	69,400,000
Malaysia	8,535	6	121	462,257	8,070	192	31,200,000
Myanmar	286	23	6	55,412	187	3	53,370,000
Cambodia	129	0	0	12,378	126	8	16,010,000
Laos	19	0	0	11,249	19	3	6,858,000
Singapore	41,615	142	26	576,189	32,712	2,881	5,612,000
Brunei	141	0	3	24,931	138	322	428,607

ASEAN member states have responded to COVID-19 by a wide number of measures, including the introduction of new laws and policies. Cambodia, Laos, Thailand, and the Philippines, instituted state emergency law which gave governments sweeping power. Singapore, Malaysia and Indonesia did not declare emergencies but instead used existing laws and/or introduced specific, non-emergency legislation. Indonesia, Malaysia and Thailand utilize contact tracing apps that act as surveillance for the people's movement. The president of Indonesia declared that he is withholding some information about COVID-19⁵. In addition, despite internet access crucial role in ensuring access to information about COVID-19, 21 June 2020 marked one year of internet restrictions in eight township in Rakhine and Chin States⁶. In Malaysia, more than 20,011 people have been arrested for violating the country's Movement Control Order since it was issued on 18 March 2020.⁷ These numbers include men, women and children, migrants and refugees. In Vietnam, by the end of March, 700 individuals had already been fined by the public security forces, who operate under the Ministry of Public Security, for peacefully expressing views related to the Coronavirus⁸. In summary, the broad trend of ASEAN governments' response to COVID-19 has accelerated

2 <https://www.csis.org/programs/southeast-asia-program/southeast-asia-covid-19-tracker-0>

3 <https://www.thejakartapost.com/academia/2020/06/02/asean-solidarity-and-response-in-the-face-of-covid-19.html>

4 https://asean.org/storage/2020/04/ASEAN-Policy-Brief-April-2020_FINAL.pdf

5 <https://www.thejakartapost.com/news/2020/03/13/we-dont-want-people-to-panic-jokowi-says-on-lack-of-transparency-about-covid-cases.html>








6 <https://www.reuters.com/article/us-myanmar-rakhine/myanmar-reimposes-internet-shutdown-in-conflict-torn-rakhine-chin-states-telco-operator-idUSKBN1ZZ0LC>

7 <https://www.nst.com.my/news/nation/2020/04/587646/over-20000-arrested-violating-mco-march-18>

8 <https://advox.globalvoices.org/2020/06/10/censorship-tactics-overshadow-vietnams-successful-covid-19-response/>

the rise of authoritarianism and increased the use of military in further repressing democracy, human rights and civic space. The policies also further exacerbate public health risks of marginalised populations, including women, the homeless, people living in poverty, indigenous groups, and LGBTIQ.

Table 2. ASEAN Member States Laws and Policy to Address COVID-19

Country	Law and Policies on COVID-19
 Cambodia	State of Emergency Law (10 April 2020)
 Laos	The Prime Minister’s Order (29 March 2020)
 Thailand	Emergency Decree (26 March 2020)
 Philippines	The Bayanihan to Heal as Once Act (23 March 2020)
 Singapore	Circuit Breaker Measures (07 April 2020)
 Indonesia	Law No.1 2020 on COVID-19 Health Emergency Law (31 March 2020)
 Malaysia	Movement Control Order (16 March 2020)
 Myanmar	Creation of COVID-19 Control and Emergency Response Committee
 Vietnam	Creation of National Steering Committee for COVID-19 Prevention and Control
 Brunei	No specific law or policy created

Having researched the impact of state responses to COVID-19 on human rights in Asia since March 2020, FORUM-ASIA observed several general trends, including resort to a security-approach. These had had a detrimental impact on civic space, involving violations of human rights, including the right to liberty, freedom of expression and peaceful assembly and association, and the wide-scale and arbitrary use of surveillance.

1. Securitisation and civic space

ASEAN Governments have increasingly used a security-focused response rather than a public health approach to counter COVID-19. In Southeast Asian countries, the police and the military often led the implementation and enforcement of pandemic-related restrictions. These have involved intimidation of ordinary individuals, and at times, the use of violence. The security-focused response has come at the expense of much needed public health interventions.

The emergency decrees, laws and policies effectively provide governments, and often the security forces, a range of powers which have been used to institutionalise existing repressive practices. In Indonesia, broad powers were given to the President to respond to the crisis, as well as inclusion of the police and military as part of the COVID-19 task force with full authority to implement the large-scale social restrictions.⁹ In Cambodia, Hun Sen’s rule was effectively cemented by an emergency decree which allowed his government almost unlimited powers.

9 <https://www.indonesia.go.id/narasi/indonesia-dalam-angka/ekonomi/tiga-jurus-darurat-melawan-pandemi-covid-19>

In Malaysia, armed police rounded up and detained hundreds of Rohingya refugees and other migrants, arguing that they were doing so to halt COVID-19.¹⁰ This action, aside from being counterproductive, highlights the disproportionate use of force by the government against an extremely vulnerable group. In the Philippines, the government adopted a 'war' narrative, where the police led the implementation of the restrictions and were implicated in many cases of cruel, inhuman or degrading treatment of lockdown violators.

The wide-ranging restrictions implemented by the security sector, at a time when protests or gatherings have been prohibited, have compromised spaces for dissent. Several governments have also used this period to promote or implement legislation that would further increase the role of the security sector. In the Philippines, the government fast-tracked an anti-terror bill incorporating vague and broad provisions on the definition of terrorism, that would severely crack down on civic space, and foster abuse by the security sector. In addition, abuse of emergency laws and measures to impede the legitimate work of human rights defenders (HRD) was also seen as part of this trend.

2. Violations of the rights to Freedom of Expression, Peaceful Assembly and Association

Government responses have involved a crackdown on the rights to freedom of expression, peaceful assembly and association as well as violation of the right to liberty. While under international human rights law certain derogations these rights are allowed in times of emergency,¹¹ in most cases, the governments have failed to limit those to a minimum and meet the principles of necessity and proportionality needed to justify such exceptions.

Within already increasingly authoritarian countries, governments used the pandemic as a cover to further the implementation of existing policies that curtail peaceful dissent. For others, the pandemic served as a justification for initiating new decrees, laws and policies – or use existing ones - to arbitrarily restrict human rights.

Several governments have failed to provide access to vital information on the pandemic to their people. The most prominent example is Myanmar, where conflict-affected townships continue to suffer from an internet ban. These have rendered the Rohingya and other ethnic minorities living in Rakhine and Chin states extremely vulnerable to the spread of COVID-19. In Indonesia, President Joko Widodo admitted hiding information related to COVID-19, fearing of public uproar.¹²

Almost all ASEAN Member States have criminalised the dissemination of disinformation or what they consider to be 'fake news' in offline and online spaces, supposedly as parts of the effort to curb the Pandemic. These have however resulted in the curtailment of necessary information and dialogue, and often became a cover to measures targeting peaceful government critics or dissidents.

In Myanmar, artists were arrested for a street painting promoting awareness of the epidemic because authorities argued that their depiction of the virus resembled a Buddhist monk.¹³ In Cambodia, members of the dissolved opposition Cambodia National Rescue Party were among those charged under the 'fake news' restrictions.¹⁴ In the Philippines, the 'fake news' provision in a new law was used to target individuals criticising the government's response to the pandemic.¹⁵ In Malaysia, activists were arrested for allegedly violating the country's movement control order.¹⁶

Other Southeast Asian countries such as Singapore, Laos and Vietnam all recorded arrests of individuals for allegedly spreading 'fake news' related to the pandemic. This criminalisation of 'fake news' adopted by ASEAN governments, has severely limited the discussion on how to counter disinformation effectively, and in ways that respect and protect freedom of expression.

10 <https://www.theguardian.com/global-development/2020/may/02/malaysia-cites-covid-19-for-rounding-up-hundreds-of-migrants>

11 See for instance International Covenant on Civil and Political Rights, Article 4.

12 (<https://nasional.kompas.com/read/2020/03/13/16163481/jokowi-akui-pemerintah-rahasiakan-sejumlahinformasi-soal-corona>)

13 <http://www.mizzima.com/article/criminal-charges-against-street-artists-should-be-dropped-hrw>

14 <https://www.reuters.com/article/us-health-coronavirus-cambodia-arrests/cambodia-uses-coronavirus-crisis-to-arrest-17-critics-rights-group-says-idUSKBN21B0JJ>

15 <https://www.cnnphilippines.com/news/2020/4/6/arrests-over-coronavirus-fake-news.html>

16 <https://www.malaymail.com/news/malaysia/2020/06/04/five-activists-charged-with-violating-cmco-following-arrests-outside-ipoh-h/1872363>

Laws, decrees and policies in Cambodia, Thailand, Myanmar, Indonesia, and the Philippines also imposed bans on public gatherings to halt the spread of the pandemic, similar to many countries outside the region. While physical distancing measures appear necessary to curb COVID-19, governments in ASEAN have used such measures as justification to clamp down on human rights defenders and activists. These have included activists calling for justice for a missing activist in Thailand¹⁷ and the violent dispersal of community defenders in the Philippines.¹⁸

These measures disproportionately target community-based human rights defenders specifically land and environmental human rights defenders as well as indigenous people's rights defenders (e.g: the case of James Watt of Central Kalimantan WALHI case) and ordinary individuals who have limited or access to legal resources to fight against judicial harassment. Within an already repressive climate, threats of reprisals or arrests for speaking out not only violate the rights of the specific people concerned but risks further marginalising vulnerable communities and depriving them of their much-needed representation.

Such measures also risk perpetuating structural violence. In Indonesia, where the LGBTIQ community faces discrimination and violence, such restrictions have become a form of reprisal to target the community. In late March, a gathering of transgender women was dispersed by authorities in Mojokerto using COVID-19 as a cover.¹⁹ While on the same month, hundreds of Jakartans flouted the social restrictions to mark the last day of a fast-food outlet.²⁰ The lack of access to necessary and reliable information on the virus for the general public also disproportionately affects the Rohingya refugees in Malaysia, as they have become scapegoats for the disease, reinforcing the systemic and structural discrimination and violence against them.²¹

3. Surveillance and violations of the right to privacy

The use of contact tracing applications to counter the spread of the Pandemic became one of the critical responses of governments. Civil society has raised concerns about its potential for violations of privacy. In a region where data protection laws are lax, and where governments have been accused of using state surveillance to intimidate the public, the wide-scale use of applications to monitor movement raises concerns of possible abuse.

Governments have readily adopted contract tracing applications, without necessarily ensuring that the principles of necessity and proportionality in any infringement of the right to privacy have been adequately met. Besides, most government In ASEAN have not adhered to the 17 principles on utilising digital tracking for COVID-19 as issues by the WHO²². The Trace together app in Singapore enables contact tracing and duplication of contact without consent. The 'peduli lindungi' app in Indonesia records the COVID-19 patient's movement for fourteen days without any informed consent or protection of private data confidentiality. The Thai Chana application has been deployed at shopping malls, restaurant and other venue which required location tracking.

While lauded for their ability to monitor movement and halt or minimise transmissions, there have been scant discussions of the scope, and the limitations of the use of these technologies. Human rights defenders have raised issues of possible future abuse of these movement tracking mechanisms, and the data accumulated in the hands of authoritarian governments.

These violations of the right to privacy may be disproportionately targeting or affecting vulnerable groups. For instance government monitoring may result, albeit unintentionally, in outing LGBTIQ individuals, making them susceptible to backlash or discrimination.

In a region with lax data protection laws and non-democratic governments, the mismanagement of data and the wide-scale use of surveillance pose significant risks for human rights defenders who are already being targeted. Individuals and communities who face discrimination such as the stateless, refugees and migrants may be increasingly targeted through the wide-scale use of surveillance.

17 <https://coconuts.co/bangkok/news/savewanchalerm-activists-detained-for-tying-bows-at-democracy-monument/>

18 <https://www.rappler.com/nation/257275-groups-decry-violent-dispersal-barricade-mining-firm>

19 <https://news.detik.com/berita-jawa-timur/d-4954417/artisan-waria-di-mojokerto-dibubarkan-cegah-penyebaran-corona/2,%2026%20March%202020>

20 <https://www.thejakartapost.com/academia/2020/05/13/mcdonalds-farewell-gathering-the-cost-of-covid-19-lies.html>

21 <https://www.reuters.com/article/us-health-coronavirus-malaysia-rohingya/rohingya-targeted-in-malaysia-as-coronavirus-stokes-xenophobia-idUSKBN22Z00K>

22 <https://apps.who.int/iris/rest/bitstreams/1278803/retrieve>

II. ASEAN's Response to COVID-19

ASEAN's response to the COVID-19 Pandemic started officially on 15 February 2020, with the Chairman's Statement entitled *ASEAN's Collective Response to the Outbreak of the 2019 Coronavirus*, on behalf of ASEAN's heads of states and governments.²³ The statement highlights the need to strengthen coordination of national and regional efforts in ensuring ASEAN's readiness and responsive measures to mitigate and subsequently eliminate the threats of COVID-19. In addition, the statement provides that the people should be "rightly and thoroughly informed on the COVID-19 situation."

On 9 April 2020, the ASEAN Foreign Ministers held a video conference on COVID-19 which resulted in a commitment to maintain peace and stability as well as the establishment of a COVID-19 ASEAN Response Fund which was initiated by Indonesia.

ASEAN member states discussed the regional response to the COVID-19 pandemic further during the ASEAN special summit (as well as ASEAN+3 discussion) on COVID-19, on 14 April 2020.

Table 3. The ASEAN mechanisms responding to COVID-19

 <p>THE ASEAN RESPONSE TO COVID-19</p> 	ASEAN Plus Three Senior Officials Meeting for Health Development (APT SOMHD)
	Mechanism Responding to COVID-19
	ASEAN Health Ministers and ASEAN Plus Three Health Ministers in Enhancing Cooperation on COVID-19
	ASEAN Emergency Operations Centre (EOC) Network for public health emergencies
	ASEAN BioDiaspora Virtual Centre (ABVC) for Big Data Analytics and Visualisation
	ASEAN Coordinating Council Working Group (ACCWG) on Public Health Emergencies
	ASEAN Plus Three Field Epidemiology Training Network (ASEAN+3 FETN)
	ASEAN Risk Assessment and Risk Communication Centre (ARARC)
	Public health laboratories network under the ASEAN Health Cluster 2 on Responding to All Hazards and Emerging Threats
	Regional Public Health Laboratories Network (RPHL) through the Global Health Security Agenda platform

In addition, the ASEAN Economic Ministers Meeting on 4 June adopted the Hanoi Plan of Action on Strengthening ASEAN Economic Cooperation and Supply Chain Connectivity in Response to the COVID-19 pandemic. At the meeting, the ministers also discussed the prospects of a post-pandemic economic recovery plan including the proposal by the ASEAN Business Advisory Council to establish a high-level special commission in dealing with the current crisis.²⁴

²³ <https://asean.org/storage/2020/02/ASEAN-Chairmans-Statement-on-COVID-19-FINAL.pdf>.

²⁴ <https://asean.org/asean-economic-ministers-adopt-action-plan-increase-resilience-amid-pandemic/>

Lastly, the ASEAN Intergovernmental Commission on Human Rights (AICHR) issued a statement in early May on the need to integrate “human rights values” within the response to the pandemic.²⁵ We will compare the response of ASEAN’s human rights mechanism with other regional human rights bodies in the next part of this briefing paper.





FORUM-ASIA, SAPA, and SHAPE-SEA launched a ‘Rapid Assessment of Civil Society Organisations on the effectiveness of ASEAN during COVID-19’ in June 2020.²⁶ The respondent resides in all ASEAN countries, with 20% from the Philippines and 15% from Indonesia.

More than 80% of the respondents were of the view that the human rights situation in the region is severely deteriorating. 40% of respondent strongly disagree that ASEAN leaders have successfully protected the right of people during the pandemic, while 35% somewhat disagree with the statement. In addition, 40% of the respondent strongly disagree that the ASEAN Human Rights Mechanism have ensured the adoption and implementation of human rights based approach in the ASEAN pandemic response. While 33% somewhat disagree with the statement.

Furthermore, 45% respondent shared their strong disagreement on the role of ASEAN in facilitate meaningful CSOs participation during the pandemic. In addition, 40% respondent somewhat disagree with the statement.

Some of the respondent further explain their response by sharing that the ASEAN Human Rights mechanisms have not able to convince governments to incorporate human rights principles in addressing the pandemic, as seen in the surge of repressive laws and policies enacted by member states in response to COVID-19.

Table 4. Result of Rapid Assessment of Civil Society Organisations on the effectiveness of ASEAN during COVID-19

	 Strongly disagree	 Somewhat disagree	 Somewhat agree	 Strongly agree
ASEAN leaders have successfully protected the right of people during the pandemic	40%	35%	15%	5%
The ASEAN Human Rights Mechanism have ensured the adoption and implementation of human rights based approach in the ASEAN pandemic responses	40%	33%	17%	10%
ASEAN have facilitate meaningful participation of CSOs during the pandemic	45%	40%	10%	5%

In 2015, ASEAN leaders adopted the “Kuala Lumpur Declaration on a People-Oriented, People-Centred ASEAN.”²⁷ The “people-centred” concept should translate into including people’s inputs and policy initiatives, represented by the civil society organisations and grassroots communities, in the making of ASEAN’s decisions and policies. However, ASEAN decision-making dynamics now are still dominated by the states.²⁸ Prospects for change are crippled by ASEAN’s non-interference principle which is being invoked extensively, often unjustifiably, and paralysed by the “consultation and consensus” rule in decision-making.

25 <https://aichr.org/news/press-release-on-coronavirus-disease-2019-covid-19-by-the-asean-intergovernmental-commission-on-human-rights-aichr/>

26 <https://form.jotform.com/201661697866065>

27 <https://asean.org/storage/2012/05/26th-KUALA-LUMPUR-DECLARATION-ON-A-PEOPLE-ORIENTED-PEOPLE-CENTRED-ASEAN-Final.pdf>.

28 <http://www.politik.lipi.go.id/kolom/kolom-1/politik-internasional/1382-people-centered-asean-in-the-time-of-covid-19-pandemic>

Currently there is little if any visible utilisation of, the people-centred concept in ASEAN's response to the COVID-19 Pandemic²⁹. CSOs engagement has been utterly minimal, or even non-existent in the ASEAN special summit on COVID as well as in the runup to the 36th ASEAN Summit in June. The failure of ASEAN to ensure the protection of human rights during the Pandemic, which would contribute to the effectiveness of the response, might stem from the absence of people's participation in decision making.

III. Translating commitment to actions: Comparative responses of regional human rights mechanisms across the world to COVID-19 (from February to June 2020)

The pandemic has affected the lives of people across the world. Anticipating the adverse impact on vulnerable groups of governments' responses to COVID-19, and the risk of human rights violations disguised as responses to the pandemic, regional mechanisms across the globe have played a significant roles in insuring member states live up to their commitment to respect, protect and fulfil the human rights of all their people, and holding them accountable when they fail to do so. Table 5 compares the responses taken by four regional mechanisms during the first six months of 2020.

Inter-American Commissions on Human Rights (IACHR)

On 20 March 2020, the IACHR issued a joint statement with the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (OSRESCER) to urge its OAS member states to provide comprehensive protection for human rights and public health during the COVID-19 pandemic, without any discrimination.³⁰ To strengthen the institutional capacities in protecting human rights during the Pandemic, on 27 March 2020, IACHR established the Rapid and Integrated Response Coordination Unit for the COVID-19 Pandemic (SACROI COVID-19).³¹ The Unit was instructed to use several strategies to perform its mandate including continuous monitoring of human rights violations, advising member states, and ensuring access to information and public awareness.

One of the immediate responses of the Unit was the drafting of Resolution No. 1/2020, Pandemic and Human Rights in the Americas, which analyses the crucial challenges for human rights linked to the pandemic and recommends measures to be adopted by states and other actors in the Americas. The resolution, sponsored by Antigua and Barbuda, was adopted by the IACHR on 10 April 2020.³²

The SACROI COVID-19 has received 106 petitions within the first two months since it was established, and the numbers are still increasing. It has issued 25 statements (per 20 June 2020, please see annex for further details), addressing the rights of persons deprived of liberty; persons with disabilities; women; migrants, refugees, and displaced persons; LGBTI persons; the elderly; children and adolescents; Afro-descendants; indigenous peoples; and human rights defenders; the rights of relatives of persons who died in the context of the COVID-19 Pandemic; freedom of expression and access to information. Two of the statements addressed the country situation in Nicaragua³³ and Venezuela.³⁴

African Commission on Human and Peoples' Rights (ACHPR)

As early as 28 February, the ACHPR Chairperson issued a joint statement with the Chairperson of the Commission's Working Group on Economic, Social and Cultural Rights to remind African Union states of the potential impact of the COVID-19 crisis on human rights in the region.

29 <http://www.politik.lipi.go.id/kolom/kolom-1/politik-internasional/1382-people-centered-asean-in-the-time-of-covid-19-pandemic>

30 https://www.oas.org/en/iachr/media_center/PReleases/2020/060.asp

31 http://www.oas.org/en/iachr/SACROI_COVID19/

32 <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>.

33 https://www.oas.org/en/iachr/media_center/PReleases/2020/072.asp.

34 https://www.oas.org/en/iachr/media_center/PReleases/2020/064.asp.

Among other things, the joint statement called for setting up “effective and efficient systems to monitor the measures adopted and to take corrective actions and undertake investigation in cases of allegations of violations of human and peoples’ rights.”³⁵ Although it did not establish a dedicated mechanism or outline a strategy on how to protect rights in the specific context of the pandemic, the ACHPR has been actively engaged, including through statements and press releases posted on its website and the media. So far, the Commission has issued 16 statements addressing various rights issues related to the pandemic (for which see annex) including persons deprived of liberty; freedom of expression and access to information; indigenous peoples’ women’s and children’s rights; human rights defenders, the rights of mine workers; and economic, social and cultural rights generally.

The ACHPR also issued, during April – May 2020, specific statements on the situations of Tanzania,³⁶ Libya,³⁷ and Burundi³⁸ respectively, demanding that each of these states respects and protects the human rights of their people when implementing their responses to the pandemic.

Council of Europe / The Commissioner of Human Rights

Similar to the ACPHR, the Council of Europe did not create a dedicated task force to deal with the human rights aspects a of the Pandemic. Nevertheless, the Council published guiding its member states on how to “respect democracy, the rule of law and human rights in the framework of the COVID-19 sanitary crisis”³⁹ on 7 April, that is, within less than a month after the World Health Organisations (WHO) declared the disease as a pandemic.

The toolkit guides the member states of the Council of Europe, among other things, to respect the limited scope allowed for emergency legislation and other measures by aligning the measures with requirements such as lawfulness, proportionality and strict necessity in accordance with international human rights law and standards. The toolkit also reminded member states that the European Court of Human Rights may be called upon to determine the lawfulness of measures adopted by them under the European Convention on Human Rights. This guidance was timely, considering the authoritarian measures imposed by certain European governments under the pretext of combating COVID-19, and which have amounted to or opened the door to violations of human rights. . Further, the toolkit also emphasises the importance of ensuring an enabling environment for the media, medical professionals, civil society activists and the public at large to criticise the authorities and scrutinise their response to the crisis.

The Council of Europe has so far issued 13 statements (for which see annex), addressing, among others, the rights of older persons; refugees and asylum seekers; press freedom; LGBTIQ persons; persons deprived of liberty; and indigenous peoples. It has also addressed country-specific situations in Poland (pertaining to women’s and children’s rights) and Malta (on refugees and boat people).

The ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

As noted, AICHR issued a statement on COVID-19 on 1 May 2020.⁴⁰ The statement calls ASEAN on member states, among other things, to bear in mind the importance of promoting and protecting all human rights while combatting the pandemic. The statement mentions the importance of ensuring access to healthcare services to “women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups,” but significantly omits LGBTIQ people. It also highlighted the importance of access to information and freedom of opinion and expression in this context.

35 <https://www.achpr.org/pressrelease/detail?id=480>.

36 <https://www.achpr.org/pressrelease/detail?id=498>.

37 <https://www.achpr.org/pressrelease/detail?id=488>

38 <https://www.achpr.org/pressrelease/detail?id=503>

39 <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

40 <https://aichr.org/news/press-release-on-coronavirus-disease-2019-covid-19-by-the-asean-intergovernmental-commission-on-human-rights-aichr/>.

Although this is the only official response so far issued by AICHR, it is the first statement made by AICHR addressing a current human rights issue, on which all representatives from the ten member states agreed. For AICHR this is quite remarkable given the heavy influence of the non-interference, non-confrontational and decisions-by-consensus approach of ASEAN bodies, including AICHR. This statement gives a ray of hope that the Commission, which has been widely criticised for being ineffective and inactive in addressing human rights situations in the region, can develop and become more active. It should be remembered though that the statement, beyond making calls recommendations, does not promise to follow them by monitoring member states' laws, policies or practices with respect to COVID-19. So while this statement is a small step in the right direction, we have as yet to see the AICHR, whose key mandate is to protect and promote human rights in the region, doing any actual protection work..

Individual AICHR commissioners have been more active than the Commission as a whole during the pandemic, in particular the representatives of Indonesia and Malaysia. The representative of Indonesia has called out the Government of Malaysia for aggravating the situation of undocumented migrants, asylum seekers, and refugees in the country, and the rising of xenophobia in the country during the pandemic.⁴¹ The representative of Malaysia has called for reviewing the AICHR Terms of Reference (TOR) since the COVID-19, has shown the necessity to reconsider how the consensus and non-interference principles are applied in the context of human rights. The Malaysia representative points to the fact that currently a member state's representative can veto any action or discussion of human rights in his/her state, and suggests ensuring an alternative decision-making process for AICHR where consensus cannot be reached.⁴²

While there is no documented evidence of ACWC COVID-19-related interventions, the ASEAN ministerial meeting on social welfare and development (AMSWD), to which ACWC reports, issued a joint statement, entitled "Mitigating Impacts of COVID-19 on Vulnerable Groups in ASEAN."⁴³ Among specific points highlighted are the impacts of the spread of the virus on the poor children, older persons, women and girls, persons with disabilities, and the profound effects of the pandemic and containment measures on children which include susceptibility to domestic, online and other forms of violence and abuse. Like the AICHR, the AMSWD neglects to mention LGBTIQ among groups that may be particularly vulnerable in view of discriminatory laws and practices in several ASEAM member states.⁴⁴

The abovementioned examples illustrate how each regional human rights mechanism has responded to the human rights risks which the COVID-19 pandemic poses. Acknowledging that there is no one-size-fits-for-all approach and the flaws that each regional mechanism might have, the response by ASEAN human rights mechanism's nevertheless sticks out as evidentially insufficient in comparison to the other mechanisms.

This insufficiency is especially stark against the backdrop of severe human rights violation taking place during first few months of the pandemic, and considering the severity of the pandemic in the Southeast Asia region. It is for the duty of the AICHR and ACWC to maximise their admittedly limited powers to influence the ASEAN member states, for instance by providing guidelines and advisory notes, but also by taking upon themselves to conduct studies and monitoring through other means the compliance of member states with their human rights commitments and hold them accountable for any failures. One statement, which has so far not been translated to further action, is not enough.



41 <https://en.antaranews.com/news/146632/aicr-indonesia-concerned-over-reports-of-malaysia-refusing-rohingya>.

42 <https://www.thejakartapost.com/academia/2020/06/13/aicr-ready-to-become-stronger-human-rights-mechanism.html>.

43 https://asean.org/storage/2020/06/AMMSWD-Joint-Statement-on-COVID19_ADOPTED.pdf.

44 https://asean.org/storage/2020/06/AMMSWD-Joint-Statement-on-COVID19_ADOPTED.pdf.

Table 5. Summary of Interventions from Regional Human Rights Mechanisms on COVID-19 (Please see Annex for further details)

	 IACHR Inter-American Commission on Human Rights	 HUMAN RIGHTS ACHPR OUR COLLECTIVE RESPONSIBILITY	 COUNCIL OF EUROPE CONSEIL DE L'EUROPE	
 Number of Joint State-ment related to COVID-19 (from February – June)	25	16	13	1
 Issued ad-dressed / mentioned	Persons deprived of liberty; persons with disabilities; women; migrants, refugees, and displaced persons; LGBTI persons; the elderly; children and adolescents; afro-de-scendants; indigenous peoples; human rights defenders; the rights of relatives of persons who died in the context of the COVID-19 Pandemic; freedom of expression and access to information; ECOSOC rights.	Persons deprived of liberty; freedom of expression and access to information; indigenous peoples' women's and chil-dren's rights; human rights defenders, rights of mine work-ers; ECOSOC rights	Rights of older per-sons; refugees and asylum seekers; press freedom; LGBTI; persons deprived of liberty; women; chil-dren and adolescence; freedom of expression; indigenous peoples	Women and children; the elderly; persons with disabilities; migrant workers; freedom of expression; vulnerable and margin-alised groups
 Established Resolution / Guideline / Toolkit	Yes	No	Yes	No
 Established taskforce	Yes	No	No	No

IV. Recommendations for the post-COVID-19 era

How will human rights fare in a post-COVID world? What would be the face of human rights in a post-COVID-19 world? The UN Special Rapporteur on the right to privacy Joseph Cannataci discussed the implications on the right to privacy of the proliferation of technological measures to combat COVID-19. He emphasised that COVID-19 should not be used as an excuse for any form of repression and breaching of privacy. Measures to combat a pandemic or crisis should be necessary and proportionate in democratic society, and there should be sufficient oversight to ensure accountability for their use. Once the emergency that justifies such measures is over, they should be rescinded and any data collected on individuals deleted from all records.

Reflecting on the deteriorating situation of vulnerable groups in the regions, characterised by massive violations of human rights, ASEAN has failed to meaningfully hold its member states accountable for its commitment. In light of all the above, FORUM-ASIA and SAPA are making the following recommendations to the key players in ASEAN on ways to ensure that human rights are respected and democracy thrives as the region tackles and hopefully emerges from the COVID-19 crisis:

Recommendations to ASEAN member states:

- Respect human rights, fundamental freedoms, and human dignity, and in particular abide with international human rights law and standards when implementing measures to address the COVID-19 pandemic as well as in developing ASEAN's post-pandemic recovery plans (including the economic recovery plan);
- Ensure that full access to social and legal protection mechanisms, including access to justice for women, girls, and those who are affected by sexual and gender based violence during the lockdown is available at times of quarantines;
- Encourage all national human rights institutions to monitor the human rights impact of their State's measures, together with civil society, and facilitate such monitoring by providing access to relevant information and officials;
- Provide holistic measures, through law, policy, and practice, to uphold and ensure workers' and migrant workers' rights, welfare, safety, and security, regardless of legal status;
- Provide temporary and safe shelter during enforced quarantines for the homeless and members of other vulnerable communities;
- Facilitate regular and transparent access to accurate, timely, and comprehensive information to the public regarding the disease, including the risk of transmission, prevention, and governmental efforts to address the situation;
- Ensure that all employers, including public institutions and private companies and businesses, provide adequate compensation to all employees affected by the Pandemic – with government support if necessary;
- Generate a timely and adequate response accessible to all people without discrimination, including those who have limited access to healthcare facilities;
- Provide free and high quality tests, treatment, and care to all people affected by the pandemic,

including members of marginalised groups and undocumented populations;

- Respect legal obligations under treaty and customary international law regarding the principle of *non-refoulement*;
- Take immediate action to counter dangerous xenophobic and other hateful narratives against undocumented migrants, refugees, asylum seekers, minorities and any other groups;
- Ensure that the needs and concerns of refugees and asylum seekers are included in all policies in response to COVID-19, including relief packages;
- Enact measures to promote women's voices and leadership, deliver gender-sensitive assistance that enables them and prevents gender-based violence.
- Mobilise all available macro, financial, and structural policy tool to aligned with business and human rights principles within the economic recovery plan
- Strengthen social safety nets for all.

Recommendation to ASEAN Human Rights Mechanisms

- Establish an ad-hoc mechanism to monitor, identify and address human rights violations under the pretext of COVID-19 in all ASEAN member states
- Share best practices and cooperate with other regional human rights mechanisms
- Review the TORs of the AICHR and ACWC to enhance their independence and expertise; enable the creation of meaningful complaint mechanisms and other forms of human rights protection; and enable majority decisions where a consensus cannot be reached
- Proactively provide member states with advice on holistic measures in law, policy and practice, to protect, respect and fulfil vulnerable groups' rights, welfare, safety, and security, regardless of legal status
- Expedite collaboration with other ASEAN mechanisms to create a holistic COVID-19 response where the safety, rights and dignity of women, girls, the LGBTIQ community, persons with disabilities, and other vulnerable communities are protected

Recommendation to ASEAN member states for HRD protection:

- Ensure HRDs can continue monitoring the human rights situation and keep state and non-state actors accountable during the period of 'lockdown' & 'state emergency'. This includes:
 - 1) Stop the increased judicial harassment and arrest of HRDs, and guarantee freedom of expression of defenders scrutinising government policies and response measures on COVID-19;
 - 2) Ensure access to information on COVID-19. Stop using emergency laws and anti-fake news laws against HRDs and journalists;
 - 3) Ensure transparency on the use of surveillance technology, and ensure that the use of these tools, and all other measures that may compromise people's privacy, are legal, necessary, proportionate and non-discriminatory. Increased surveillance poses a concern for citizens and HRDs privacy.
- Recognise the important role of HRDs in overcoming the pandemic in a way that is inclusive and respectful of human rights, and ensure transparency and meaningful participation in decision-making processes. This includes halting all business operations with potential adverse impact on human rights as the public participation is very limited or denied.
- Ensure that full access to protection mechanisms for HRDs, including access to justice, do not cease under quarantine. This includes:
 - 1) Release all detained HRDs;
 - 2) Facilitate grassroots / local HRDs' access to external resources (e.g. funding, legal support, networks);
 - 3) Ensure, through judicial, administrative, legislative or other appropriate means that HRDs and those affected by business-related human rights abuse have access to effective remedy.

Annex 1.

The Regional Human Rights Mechanism Response to COVID-19

	Inter- American Commissions on Human Rights	African Commission on Human and Peoples' Rights	Council of Europe	ASEAN Human Rights Commission
Dedicated Coordination Unit (Complaint Mechanism)	Rapid and Integrated Response Coordination Unit for the COVID-19 Pandemic (SACROI COVID-19) ¹ - established 27 March 2020	N/A	N/A	N/A
Statements	<ul style="list-style-type: none"> - IACHR and OSRESCER joint statement urging States to Guarantee Comprehensive Protection for Human Rights and Public Health during the COVID-19 Pandemic - 20 March 2020² - Statement: IACHR Implements Rapid and Integrated Response Coordination Unit for COVID-19 Pandemic Crisis Management³ - IACHR and its SRESCER Deeply Concerned about the Impact of COVID-19 Pandemic on Venezuela, Call for Safeguards for the Rights of Venezuelans around the Americas – 29 March 2020⁴ - The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 Pandemic – 31 March 2020⁵ - The IACHR Calls on States to Provide Comprehensive Protection for the Lives of People with Disabilities During the COVID-19 Pandemic – 8 April 2020⁶ - IACHR and OSRESCER Express Serious Concern About the Human Rights Situation During the Response to the COVID-19 Pandemic in Nicaragua – 8 April 2020⁷ - IACHR adopts Resolution on Pandemic and Human Rights in the Americas – 10 April 2020⁸ - The IACHR calls on Member States to adopt a gender perspective in the response to the COVID-19 Pandemic and to combat sexual and domestic violence in this context – 11 April 2020⁹ - The IACHR urges States to protect the human rights of migrants, refugees and displaced persons in the face of the COVID-19 Pandemic – 17 April 2020¹⁰ - IACHR Statement on Freedom of Expression – 18 April 2020¹¹ 	<ul style="list-style-type: none"> - Press Statement of the African Commission on Human & Peoples' Rights on the Coronavirus (COVID-19) crisis – 28 February 2020²⁶ - Statement on Human Rights Effective Responses on COVID19 - 24 March 2020²⁷ - Statement on FoE and Access to Information during COVID19 - 8 April 2020²⁸ - Statement on human rights in Libya during COVID19 - 13 April 2020²⁹ - Statement on the rights of persons deprived of liberty during COVID19 - 22 April 2020³⁰ - Statement on the rights of indigenous people during COVID-19 - 23 April 2020³¹ - Statement on the rights of women during COVID19 - 6 May 2020³² - Statement on letter to Tanzania - 7 May 2020³³ - Statement urging the Chair of African Union to make human rights key pillar of the continental response to COVID19 - 7 May 2020³⁴ - Joint Statement on human rights defenders in COVID19 - 11 May 2020³⁵ - Statement on COVID-19-related mutiny in a prison in Togo - 15 May 2020³⁶ 	<ul style="list-style-type: none"> - Call to respect human rights and fundamental freedoms during COVID-19 - 16 March 2020⁴² - Statement on the rights of older persons during COVID-19 - 20 March 2020⁴³ - Statement on the release of asylum seekers and refugees under detention during COVID19 - 26 March 2020⁴⁴ - Statement on the rights of persons with disability during COVID-19 - 2 April 2020⁴⁵ - Statement on press freedom during COVID-19 - 3 April 2020⁴⁶ - Statement on the rights of prisoners during COVID-19 - 6 April 2020⁴⁷ - Statement on the rights of indigenous peoples - 7 April 2020⁴⁸ - Statement on the situation in Poland (related to women and children's rights) during pandemic - 14 April 2020⁴⁹ - Statement on ensuring rescue at sea and allow safe disembarkation during the COVID-19 crisis - 16 April 2020⁵⁰ - Statement on the situation in Malta during COVID-19 - 11 May 2020⁵¹ - Statement on the rights of LGBTI during Pandemic - 15 May 2020⁵² - Statement on the situation in long-term care facilities - 20 May 2020⁵³ - Statement on human rights during the Pandemic - 3 June 2020⁵⁴ 	<ul style="list-style-type: none"> - Press Release on Coronavirus Disease 2019 (COVID-19) by the ASEAN Intergovernmental Commission on Human Rights (AICHR) – 1 May 2020⁵⁵

	Inter- American Commissions on Human Rights	African Commission on Human and Peoples' Rights	Council of Europe	ASEAN Human Rights Commission
Statements	<ul style="list-style-type: none"> - IACHR launches monitoring site – 18 April 2020¹² - IACHR Statement on LGBTI – 20 April 2020¹³ - IACHR statement (procedure – suspension of deadlines)¹⁴ - IACHR statement on rights of older person¹⁵ - IACHR statement on rights of children and adolescents¹⁶ - IACHR statement on the rights of afro-descendants and racial discrimination¹⁷ - IACHR statement on families right to mourn their dead¹⁸ - IACHR statement on Human Rights Defenders¹⁹ - IACHR Statement on Specific Vulnerability of Indigenous Peoples²⁰ - IACHR and others, Joint statement on LGBT people during the COVID-19 pandemic²¹ - Statement Rights of Venezuelans Who Return During the Pandemic²² - Review of SACROI-COVID19²³ - Statement on right to information in Nicaragua²⁴ - Statement on democracy and rule of law²⁵ 	<ul style="list-style-type: none"> - Statement on the rights of mine workers in South Africa - 18 May 2020³⁷ - Statement on democracy and election in Burundi- 19 May 2020³⁸ - General statement on COVID-19 and its impact in Africa – 18 May 2020³⁹ - Statement on ceasefire and addressing peace and security during pandemic - 26 May 2020⁴⁰ - Statement on the impact of COVID-19 on ECOSOC rights - 5 June 2020⁴¹ 		
Resolution / guideline / toolkit on human rights approach	<p>Resolution No. 1/2020, Pandemic and Human Rights in the Americas</p> <p>Adopted: 10 April 2020</p>		Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: toolkit for member states ⁵⁶	
Rights addressed	Persons deprived of liberty; persons with disabilities; women; migrants, refugees, and displaced persons; LGBTI persons; the elderly; children and adolescents; Afro-descendants; indigenous peoples; and human rights defenders; the rights of relatives of persons who died in the context of the COVID-19 Pandemic; freedom of expression and access to information; as well as the general situation in Nicaragua and Venezuela. ⁵⁷	Persons deprived of liberty; freedom of expression and access to information; indigenous peoples' women's and children's rights; human rights defenders, rights of mine workers; ECOSOC rights; situation of Libya, Tanzania, and Burundi	Older persons; refugees and asylum seekers; press freedom; LGBTI; persons deprived of liberty; indigenous peoples; situation of Poland and Malta	Women and children; the elderly; persons with disabilities; migrant workers; and vulnerable and marginalised groups

(Endnotes)

- 1 http://www.oas.org/en/iachr/SACROI_COVID19/
- 2 https://www.oas.org/en/iachr/media_center/PReleases/2020/060.asp
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