FORUM-ASIA

Human Rights in Southeast Asia in Times of Pandemic

Report from FORUM-ASIA Webinar Series:
The Status of Human Rights in ASEAN during COVID-19 Pandemic

Human Rights in Southeast Asia in Times of Pandemic
Report from FORUM-ASIA Webinar Series: The Status of Human Rights in ASEAN during COVID-19 Pandemic

This publication is based on the webinar series "The Status of Human Rights in ASEAN during COVID-19 Pandemic" organised by FORUM-ASIA, Solidarity for ASEAN Peoples' Advocacy, and SHAPE-SEA on 7 April to 15 May 2020.

Published in August 2020, by:
Asian Forum for Human Rights and Development (FORUM-ASIA)

Address :
S.P.D Building 3rd Floor,
79/2 Krungthonburi Road,
Khlong Ton Sai,
Khlong San Bangkok,
10600 Thailand
Tel : +66 (0)2 1082643-45
Fax : +66 (0)2 1082646
Web : www.forum-asia.org
E-mail : info@forum-asia.org

Editorial Team:
Cornelius Damar Hanung, Rachel Arinii Judhistari, and Yuval Ginbar
Design and layout:
Mohamad Reza

ISBN: 978-616-7733-26-5

Acknowledgement:
FORUM-ASIA and SAPA Task Force would like to thank Strengthening Human Rights and Peace Research and Education in Southeast Asia (SHAPE-SEA), Asia-Pacific Resource & Research Centre for Women (ARROW), Child Rights Coalition Asia (CRC Asia), ASEAN Youth Forum (AYF), Philippines Alliance of Human Rights Advocates (PAHRA), In Defends of Human Rights and Dignity Movement (iDEFEND), Initiatives for International Dialogue (IID), and the Global Partnership for the Prevention of Armed Conflict (GPPAC) as the co-organisers for the webinar series; ASEAN Disability Forum (ADF), General Election Network for Disability Access (AGENDA) and Business and Human Rights Resource Centre (BHRRC) for their writing contribution; Alliance for Independent Journalist Indonesia for coordinating technical writing process; and all speakers and participants for their meaningful contributions during the webinar series.

Table of Contents

Remarks

By Shamini Darshni Kaliemuthu

Executive Director, Asian Forum for Human Rights and Development (FORUM-ASIA)

Before the COVID-19 pandemic, Southeast Asia was battling rising authoritarianism and the slow burn of eroding civil and political rights in the region. Xenophobia, racism (institutionalised and social) and the struggle for democracy was already a long and arduous challenge for civil society to overcome.

When the pandemic hit, these challenges came under a microscope. Overnight, the right to sustainable development, equality, healthcare, privacy, movement, was either lost or further threatened. Today, many pockets of ASEAN societies have risen up, innovated and supported each other.

But the ASEAN governments have not. Since the pandemic began, many ASEAN governments have used militarised approaches to manage the pandemic by dusting off old repressive legislation, introducing new and alarming emergency measures and/ or capitalised on the "othering" of migrants and refugees, fueling xenophobia and hate speech.

FORUM-ASIA has recorded an increase in reprisals against human rights defenders, including environmental defenders opposing unethical or unlawful corporate practices and against journalists for reporting human rights violations and abuses committed by State apparatus in the pandemic. The preceding chapters of this report provide evidence of the failure of States of uphold basic human rights during the pandemic.

At a time when the International Labour Organisation estimates that the world will face an estimated 25 million jobs losses (p. 36) – the highest in history – militarised approaches to combating the pandemic will not put food on the table. On the contrary, reports of rising poverty in India and with recent (and legally questionable) executive orders signed by Trump in the United States, indicate that the world's biggest economies are heading for dire straits. As they suffer, so will Southeast Asia. When 8.8 – 35 million people fall below the poverty line, ignoring basic human rights which includes the right to work and the right to movement in order to work, promoting and protecting human rights is paramount.

In an August webinar, we learn that more authoritarian Southeast Asian governments have introduced (mandatory) contact tracing applications to track COVID-19 patterns and infections that leave serious questions on privacy and security of personal data. In downloading the (mandatory) apps, governments are not revealing source codes or are requesting unnecessary permissions that compromise a user's data – a move which regional experts agree has been hastily rolled out and is poorly regulated.

The COVID-19 recovery period is an opportunity to not only strengthen resilience but to develop new and inclusive approaches, tools and systems (p. 66). This is where ASEAN can step in. As we conclude in the report (p. 73), two elements of equality are pertinent – addressing non-discrimination and tackling needs of vulnerable groups – if we are to tackle COVID-19. We are only as strong as the weakest among us, and COVID-19 has further exposed the margins in which many in ASEAN live. The poor, the elderly, people with disabilities, refugees, migrants, children, youth, women and other gender minorities deserve special attention in these times if we are to successfully beat the spread of the virus.

To do this, the respect for human rights must be front and centre of policy formulation. ASEAN governments must be transparent in their pandemic responses while ensuring that these measures are compliant with international human rights law and standards. Civil society in the region must be engaged as many are poised with expertise and data that would be invaluable towards policy formulation to manage the pandemic. Attacking activists, by law or by baton, will not stop the spread of the pandemic.

A human rights-based approach must be employed to combat the pandemic and to guide post-pandemic recovery. With a human rights-based approach, international human rights standards are applied when States tackle issues of economic inequalities, freedoms and discriminatory practices. It is where policies and laws, plans and programmes are developed with the more vulnerable and marginalised sections of society, and with civil society organisations, in order to focus on sustainability as the epicentre in post-pandemic recovery.

As the world braces itself in what we hope will not be another wave of COVID-19 infections, we must employ new ways of working to fight the pandemic. Consolidating political power and introducing militaristic methods while ignoring the most vulnerable amongst us is short-sighted at best and dangerous at worst.

Remarks

By Jerald Joseph

On behalf of Pusat KOMAS and the Solidarity for ASEAN Peoples' Advocacy (SAPA) Task Force

COVID-19 swept into global societies, including ASEAN, without notice and shocked the systems of the government and society at large. The global and national health crisis, combined with the economic crisis, created serious difficulties in many countries that is still raging today. The COVID-19 virus swept across societies without discriminating against anyone within the economic or social power spheres.

It is in times of crisis that a nation must have its strongest believe in its peoples' resilience, a functioning rule of law regime, and a resolve not to short circuit the respect of human right. That is the hope for the peoples in ASEAN.

The speed of infection and death was alarming and understandably many were grasping with the onset of this new public health crisis with little information. Some were food-stocking; some were taking medicines to strengthen the bodies and even some indigenous communities were running deeper into the forest in order to protect themselves against possible infections. All this only showed that we were fearful for ourselves, our families and our friends. This was expected in the chaos in the beginning as many were protecting themselves (or at least in what they believed was needed at that time). Thus, some false or inaccurate news was also widely circulating as there was no avenue to check on the veracity of this social media content.

Correct and accurate information was crucial and needed regularly to be disseminated to all corners in a country. Different nations utilized state media, online media and print publication to inform its populations. But the seriousness of this exercise was in varying degrees. Citizens were subject to the political leadership in each country that worked urgently or were in denial, as seen in some ASEAN countries. The lack of right to information in most ASEAN countries made this even more difficult. Furthermore, journalist role and function to inquire deeply was limited because of the lockdown mode that some governments only allowed official state media to attend press briefings. This was not in the best interest of the nation. The role of journalist is a crucial partner in managing pandemics. Nations must engage all media in moments of crisis and have an open channel with them all the time.

As the COVID-19 pandemic has now moved into its 8th month, many governments are doing regular and timely updates on pandemic to its populations. This will help reverse false news that may be circulating amongst its populations. Ironically some government took a strong legal and criminal ways to charge people spreading false news. While it is important to get the truth out, the best remedy to reverse false news is to counter it with correct facts and figures.

Some governments even went a step further to arrest journalist and those interviewed on the grounds that the documentary was tarnishing the image of the country. This was evident in the Al Jazeera documentary on the arrest of migrants in Malaysia done during the COVID-19 lockdown period. Again, this is not respecting the freedom of opinion and expression that should be accorded to the press. The government should counter the content (if they so think it is false) with other news interviews or counter documentaries, instead of using the law to arrest and charge the journalist or to arrest and deport a worker who was interviewed.

Public health issues are rights to health for all peoples within a state. Human rights defenders agree that there are reasonable limitations that can be placed in the interest of arresting the pandemic, for the common wellbeing of all. Governments must stretch its powers for the good and benefits of all within the nation. This would include the poorer segments of society that would need extra direct support; the small business communities that would need government intervention to stay alive; the foreign workers, refuges, and asylum seekers who would need a more flexible response during the period, among others.

The "lockdown' in various forms are considered necessary steps that was needed to be done in a fast and quick fashion. Consistency of approach in enforcement is necessary so that politicians who flout the law must also face the same penalty. Many were surprised and were not used to lockdowns due to many practical reasons such as their primary concerns were for their needs of food, money, social security and sustainability. But this limitation on freedom of movement and association, while necessary, must be done reasonably. The lockdown must be done in a holistic manner, which includes security lockdown, a robust health screening and economic support for all in society, if it is to weather this pandemic. New norms were slowly adopted by society in order to protect oneself and the that of others in society. ASEAN peoples' resilience during these trying time is remarkable testimony of managing the difficult conditions by peoples from all corners of ASEAN. This will continue for a period of time and likely to get tougher.

Finally, as human rights defenders, we had hoped that when government moved into pandemic mode, they would have enlisted human rights actors as natural allies in the management of this pandemic. Unfortunately, many governments were still using a bureaucratic approach, without working with other organisations, that only slowed down the reach needed to the larger society. Critical discussions are needed at these most urgent times to find effective ways to weather this storm. CSOs, NHRIs and Community leaders should always be considered as crucial partners. It is important that these actors are considered an essential service provider during the lockdown, apart from government agencies.

COVID-19 is a right to health crisis and a response to managing it demands a whole-society approach that must put human rights at its centre. The journey on COVID-19 management is still long and we will still suffer many lives lost in ASEAN and the world. Let's continue to work together for the rights of all during this pandemic. Human rights must remain at the core of government response to this COVID-19 pandemic. Doing otherwise will only worsen the effectiveness of managing the pandemic.

Remarks

By Eric Paulsen

Representative of Malaysia to the ASEAN Intergovernmental Commission on Human Rights (AICHR) 2019 - 2021

With the COVID-19 pandemic affecting every country in ASEAN, governments have been faced with an unprecedented public health crisis. Emergency laws have been passed and existing laws have been applied in new ways, ostensibly to tackle the spread of the disease and protect public health. But such measures have impacted upon rights already under threat in the region, including freedom of opinion and expression, assembly and association, and freedom from arbitrary arrest and detention.

The major concern for the future of human rights in ASEAN is the potential long-term legacy of such measures and excessive restrictions on fundamental freedoms. There is a risk that they will become normalised and outlast the pandemic, so we must be prepared to face the challenges of the post-COVID-19 world.

Several ASEAN Member States have declared states of emergency, allowing them to pass new laws and restrict human rights in a manner that would not normally be possible. Emergency laws and derogations from human rights are permitted under international law, but strict conditions must be met. The rule of law, the right to a fair trial, non-discrimination and other fundamental principles still apply.

It is of the utmost importance in the ASEAN region, where democratic norms are continuously under threat and with serious restrictions on civic space, that emergency powers are not used to target particular groups or individuals for political ends. Yet there have been serious human rights abuses from across the region of dissidents and opposition figures being harassed, increased limitations on media freedom and heightened surveillance activities.

Even in the countries which have not declared a state of emergency, human rights have suffered during the pandemic. International law provides for some limitations on human rights in normal circumstances, provided they comply with the principles of legality, necessity, proportionality and non-discrimination. But many laws in these countries already restrict fundamental rights in contravention of these principles. It is disconcerting that these have continued to be used and in some cases applied with renewed vigour during this crisis, under the pretence of protecting public health.

In addition to new provisions which have been enacted during the pandemic, there are many existing laws which unduly restrict freedom of speech, particularly in the name of tackling “fake news” or disinformation. These problematic laws are not emergency measures which will be repealed when the public health crisis is over. They have been used before and will be used again to target dissidents, human rights defenders and members of the public who dare to speak up.

This is a particular concern during and immediately post the pandemic, as the actors who normally oppose heavy-handed actions by the authorities are unable to respond as effectively. Many organisations and individuals in the media, political opposition and civil society are physically and socially restricted by the crisis and the overall sense of public obligation to support official efforts to tackle the spread of the disease. Further, there has been widespread use of tracing apps, data collection and surveillance technologies throughout ASEAN, which have largely been accepted by the public as necessary for the protection of public health during the pandemic. But the danger is that

such intrusive measures will be normalised, and the public will become too accustomed to high levels of interference in their private lives by the state.

Throughout the pandemic, the rights and freedoms of some of the most marginalised and vulnerable people in ASEAN have been eroded even further. Existing inequalities and prejudices have been reinforced and exploited by some who are looking for "others", especially non-nationals, to blame for the spread of the disease. Individuals and communities who were already marginalised, including women, children, migrants, refugees, and indigenous people have been disproportionately affected.

The ASEAN Intergovernmental Commission on Human Rights (AICHR) issued a press statement in May, reminding all ASEAN Member States of the importance of promoting and protecting the economic, social, cultural, civil and political rights of all the people of ASEAN in their response to the pandemic, and highlighted the plights of marginalised groups. But more needs to be done to ensure that vulnerable communities are not neglected now or in the aftermath of the crisis.

It is the role of governments and regional leaders to ensure that human rights are at the heart of the response to COVID-19. But where there are failings, it is the role of human rights defenders, civil society and the media to ensure that important advocacy efforts continue throughout and beyond the current crisis.

Human rights violations must be challenged at every stage. We cannot accept excessive and disproportionate limitations on human rights now, when the justification of the pandemic is offered, and not expect this to have a negative impact on the trajectory of human rights post-COVID-19, where they are likely to be further entrenched. It will be more important than ever to challenge abuses of power and human rights violations in the aftermath of the pandemic and the complex human rights environment that will be left in its wake.

Remarks

By Yuyun Wahyuningrum

Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR) 2019-2021

In efforts to contain the spread of the COVID-19 pandemic, many states have imposed the practices of lockdowns, curfews, quarantine, and restriction of movements, which severely limited individual rights and liberties.

As a result, the enjoyment of human rights, such as on freedom of movement, expression and opinion, peaceful assembly, religion, access to information, the right to health, work, education, and privacy, has been compromised in the name of tackling COVID-19. There has been an increasing phenomenon of violence against women and children due to lockdown measures.

The adverse impact of these measures has trickled down towards the realisation of the right to food, housing, personal security, and the fair distribution of income, to name of the few. Some policies have often accompanied by unintended consequences observed in disconcerting expressions of nationalism. Some measures related to COVID-19, as documented by AICHR Indonesia, have been conflated with the rhetoric of anti-migrant, anti-minority, xenophobia, and racisms.

The COVID-19 has also shifted the narrative on migration to involve health securitisation. In Malaysia, for instance, migrants were detained in several raid operations under the pretext of containing the spread of the virus in the country. We also observed that the boats carrying Rohingya refugees fleeing persecution were pushed back by Malaysia and Thailand with the stated purpose of protecting the health of the population from being infected by COVID-19. The fear of the virus has been used to justify 'othering others' especially the migrants as alleged carriers of the virus.

At the same time, the human rights community has been relatively slow to react to the impact of the measures. They are also noticeably relatively absent from policy development and decision-making related to the measures to address COVID-19 at the national and regional level. It seems like, human rights have been perceived as a hindrance towards expediting governments' efforts to stop the spread of the virus, rather than as a pre-requisite, means, and goal in containing it by some governments in ASEAN. This reality poses an important question on whether our collective efforts to build 'a rights culture' has been effective.

Indeed, the pandemic has revealed new challenges in mainstreaming human rights in the region, especially in building the rights culture in the process of regionalisation in the ASEAN Community. As in other regions, regionalism project commonly provides a space for 'a rights culture' to be considered as an important element when relevant actors interact with one another to re-organise their economic and political interests and outcomes. It is also the case in ASEAN.

Furthermore, the COVID-19 also exposes the new vulnerabilities on the prevailing inequalities, the system of current governance, and the implementation of the development paradigm in the region. At the same time, it introduced new priorities in the ASEAN regionalism project, which involves public health. Unfortunately, human rights discourse was missing - and was often, silenced, - in the general discussion around COVID-19, public health, and economic recovery in ASEAN. At the national level, some public officials reportedly made comments in the media that the human rights approach is irrelevant in dealing with the pandemic.

Responding this concern, the ASEAN Intergovernmental Commission on Human Rights (AICHR) released a statement in May 2020 emphasising – among others - the importance of putting human rights at the heart of all measures to combat COVID-19 and that ASEAN Member States (AMS) should prioritise those who are at risk or infected by COVID-19, such as women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups in accessing medical care.

There are, however, unexpected positive developments in addressing the COVID-19 crisis, which include, but not limited to the increased, (a) appreciation on the effective protection of socio-economic rights; (b) recognition of the need to allocate resources for health and universal healthcare coverage; (c) acknowledgement of the importance of scientific knowledge in developing policies; (d) appreciation of the work of those rarely in the limelight, such as nurses, cleaners, teachers; and (e) awareness to the use of the advance of technology.

COVID-19 will likely be here to stay for some times. Even when the vaccines are developed and accessible, our world will not return to the one we knew it. The post-COVID-19 world scenario will be shaped by decisions and actions made in the efforts in combatting the virus. The human rights trajectory in the post-COVID-19 situation relies very much on how we respond to the crisis now.

To begin with, the new context that is created by the COVID-19 has generated new structural change, especially on the form and format of the relationship between technology and society. In its turn, it will transform the relationships between, the state and the citizens, the ASEAN and the people, and the duty bearers and rights holders.

Technology can be used as a powerful tool to improve human rights protection, widen civic space in policy decision making, democratise knowledge and information, leverage the participation of community-based organisations, as well as promote inclusion, participation and unity. The post-COVID-19 scenario will likely involve technology in our continuing efforts to build 'a rights culture'. At the same time, technology also has potential adverse human rights impacts, including towards the future of work and the rights of workers.

It is important, therefore, to explore and identify ways of the state obligations in respecting, protecting and fulfilling human rights according to this new form of relationship and governance. Perhaps, by maximizing technology, civil society and progressive policymakers can use the COVID-19 moment to push the State, the ASEAN and the duty bearers to be more accountable on their international obligation to human rights.

Not only the role of business in creating and utilising new technologies is a critical issue, but also on how the private sector builds appropriate safeguards to prevent and mitigate negative outcomes on human rights. Technology and human rights are still considered as ungoverned field and lack regulation. It requires the government to focus on their duty and examine how to ensure that businesses act responsibly to respect human rights.

Preface

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 impact. While measures were taken by ASEAN Member States to genuinely combat the proliferation of the virus, others used it, sometimes concurrently, as a pretext for increasing oppression and violating human rights. Some measures have proven to be detrimental particularly to groups that are routinely subject to abuse.

Between March and May 2020, FORUM-ASIA together with the network of Solidarity for ASEAN Peoples Advocacy (SAPA) and SHAPE-SEA, conducted a series of webinars to discuss the measures taken by ASEAN and its Member States in the context of the COVID-19 pandemic and their impact on the human rights situation on the ground. Participants discussed specific challenges faced both by society as a whole and various vulnerable groups – among other women, LGBTIQ people, children and youth, "refugees" documented and undocumented migrants resulting from the implementation of those measures on national and regional level.

This report summarises the proceedings of the webinar series. These include findings of research into the experiences of specific groups as well as recommendations to be conveyed to ASEAN and its Member States. Recommendations centre on the need to respect, protect and fulfil human rights as provided in international treaties and other instruments, bearing in mind their intersectionality with other aspects during and post-pandemic. The report also includes further information and analysis from media, human rights reports and other sources including issues not covered in the webinar series due to limited amount of time.

The report concludes with a series of recommendations to ASEAN and its Member States, civil society, and the private sector on ways of ensuring the adoption of human rights-based approaches in countering the pandemic. Among other things, the report recommends providing AICHR and ACWC with active human rights monitoring and protection powers and a voice in any regional plans for post COVID-19 recovery and ensuring meaningful participation of civil society in the process. These recommendations were presented during the virtual town-hall meeting in June 2020[1], in conjunction with the 36th ASEAN Summit.

1 https://www.csis.or.id/events/asean-community-virtual-summit-2020

Abbreviations and Acronyms

ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AICHR	ASEAN Intergovernmental Commission on Human Rights
APRRN	Asia-Pacific Refugee Rights Network
APWLD	Asia Pacific Forum on Women, Law and Development
ASEAN	Association of Southeast Asian Nations
COVID-19	Coronavirus disease-19
VOM	Voice of Myanmar
CNRP	Cambodia National Rescue Party
CPP	Cambodia People's Party
ILO	International Labour Organization
IDPs	Internally displaced person
IDI	Indonesian Doctors Association
ICJ	International Court of Justice
ICC	International Criminal Court
KCDCP	Korea Centers for Disease Control and Preventions
LGBTIQ	Lesbian, gay, bisexual, transgender, intersex, and queer
MCO	Movement Control Order
MERS	Middle East Respiratory Syndrome
OIC	Organisation of Islamic Cooperation
OONI	Open Observatory of Network Interference
PhilRights	Philippine Human Rights Information Centre
SARS	Severe Acute Respiratory Syndrome
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
UNICEF	United Nations Children's Fund
UNSR	United Nations Special Rapporteur
WHO	World Health Organization

Executive Summary

ASEAN Member States have responded to COVID-19 with a wide number of measures, including the introduction of new laws, policies and practices. The authorities in Cambodia, Laos, Thailand, and the Philippines passed or invoked state emergency laws which gave governments sweeping powers. Singapore, Malaysia and Indonesia, while not declaring a state of emergency, utilised existing laws and/or introduced specific, non-emergency legislation. Countries such as Indonesia, Malaysia and Thailand have utilised contact tracing apps that act as surveillance over people's movement. Most countries deployed military and police forces to implement movement restrictions and combat what they described as online falsehood or fake news under the pretext of safeguarding national security and countering COVID-19.

At the ASEAN regional level, the first official response to the COVID-19 Pandemic was on 15 February 2020, with the Chairman's Statement titled *ASEAN's Collective Response to the Outbreak of the 2019 Coronavirus*, on behalf of ASEAN's heads of states and governments.[2] 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 threat of COVID-19. In addition, the statement provides that the people should be "rightly and thoroughly informed on the COVID-19 situation."

Since then, several commitments were undertaken at the regional level, among them the adoption of the Hanoi Plan of Action on Strengthening ASEAN Economic Cooperation and Supply Chain Connectivity in Response to the COVID-19 pandemic and the statement made by the ASEAN Intergovernmental Commission on Human Rights (AICHR) issued in early May to highlight the need to integrate "human rights values" within the response to the pandemic. However, questions have been posed by civil society organisations and the public on whether these commitments have been implemented in practice and in particular whether ASEAN is able to address the human rights situation on the ground.

Participants in the webinars and subsequent research have pointed to several trends in the ASEAN Member States policy on COVID-19. These include resort to a security-approaches as well as wide-scale use of surveillance, which have brought detrimental impact on civic space violations of human rights, including the right to liberty, freedom of expression and peaceful assembly and association.

Based on observations from webinar participants and FORUM-ASIA's research, it is evidential that the ASEAN governments' response to COVID-19 has accelerated the rise of authoritarianism and increased the use of military in further repressing democracy, human rights and civic space. Discriminatory treatment and at times violence towards has marginalised groups, including women, the homeless, people living in poverty, indigenous groups, and LGBTIQ further exacerbate public health risks of members of these groups.

2 ASEAN Secretariat, "Chairman's Statement on ASEAN Collective Response to the Outbreak of Coronavirus Disease 2019," ASEAN, https://asean.org/storage/2020/02/ASEAN-Chairmans-Statement-on-COVID-19-FINAL.pdf.

In Malaysia, a total of 20,011 people were arrested for violating the country's Movement Control Order between 18 March 2020, when it was issued, and 26 April, according to an official.[3] 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 Coronavirus.[4]

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.[5] In Cambodia, members of the dissolved opposition Cambodia National Rescue Party were among those charged with offences involving the spreading of 'fake news'.[6] In the Philippines, the 'fake news' provision in a new law was used to target individuals criticising the government's response to the pandemic.[7] Numerous cases of arbitrary arrests, detentions and violent crowd dispersals have been reported by civil society organisations raising the alarm on human rights abuses in the context of the pandemic.

Being a public health challenge, the pandemic has also adversely impacted the social, economic and psychological aspects of day to day life for the most marginalised, including women and LGBTIQ community due to the pre-existing vulnerability resulting from a persistent patriarchal and heteronormative attitudes and practices in the region. As evident in several countries in ASEAN, including Indonesia, Malaysia, and Singapore, the risk of violence in homes against women, girls, and LGBTIQ people has increased since lockdown measures were imposed. Further, access to key sexual and reproductive health services and supplies such as contraception, safe abortions, maternal health and reproductive cancer screening have been postponed, reduced or made inaccessible due to travel restrictions and the disruption of supply chains.

The COVID-19 pandemic has also exacerbated the vulnerability of children and youth in various aspects. It has disproportionately disrupted the education of children, adolescents and youth, their means of communication with their social networks, as well as access to basic services. The economic depression caused by COVID-19 is expected to bring about a surge in youth unemployment, particularly among those who work in the informal sectors. Youth that are stateless, refugees, or homeless have become even more vulnerable, because they are unable to or have great difficulties in accessing state welfare. As dependants, children and youth are also deeply impacted by their parents' loss of jobs and income.

People with disabilities in ASEAN, like other marginalised groups, have been profoundly impacted by COVID-19 pandemic and governments' emergency responses to it. Many have lost access to routine healthcare, medical and non-medical countermeasures and treatments as a result of poorly designed containment measures that often fail to consult, coordinate, and communicate with people with disabilities and their organisations.

The pandemic has also instigated a rise in xenophobic sentiments, characterised by hate speech and fake news in social media and the lack of both national and regional condemnation of hateful rhetoric. These have resulted in several ASEAN countries refusing to allow refugees to enter their territory, in violation of international law. The Rohingya, already victims of mass deportation and genocide, have suffered particularly harsh treatment. For example, on 16 April, the Malaysian Navy

3 Nuradzimmah Daim, "Over 20,000 arrested for violation MCO since March 18," *New Straits Times*, https://www.nst.com.my/news/nation/2020/04/587646/over-20000-arrested-violating-mco-march-18.

4 The 88 Project, "Censorship tactics overshadow Vietnam's successful COVID-19 response," Advox Global Voices, https://advox.globalvoices.org/2020/06/10/censorship-tactics-overshadow-vietnams-successful-covid-19-response/

5 Human Rights Watch, "Myanmar: 3 Charged for COVID-19 Street Art", Human Rights Watch, https://www.hrw.org/news/2020/04/08/myanmar-3-charged-covid-19-street-art

6 Prak Chan Tul, "Cambodia uses coronavirus crisis to arrest 17 critics, rights group says," Reuters, https://www.reuters.com/article/us-health-coronavirus-cambodia-arrests/cambodia-uses-coronavirus-crisis-to-arrest-17-critics-rights-group-says- idUSKBN21B0JJ.

7 CNN Philippines, "32 arrested over 'fake' COVID-19 news," CNN Philippines, https://www.cnnphilippines.com/news/2020/4/6/arrests-over-coronavirus-fake-news.html.

refused the disembarkation of a boat carrying approximately 200 Rohingya refugees, citing COVID-19 protection measures as justification. The Malaysian authorities have also used COVID-19 to justify rounding up and detaining migrant men, women, and children. ASEAN must work to ensure Member States refrain from normalising restrictive policies enacted during the COVID-19 pandemic and using them to circumvent international obligations.

Facing the deteriorating situation of vulnerable groups in the region and widespread violations of human rights, ASEAN has failed to hold its Member States accountable for failures to uphold their human rights commitments. COVID-19 should not be used as an excuse for any form of repression, discrimination or other human rights violations. The report includes recommendations on a range of measure to be taken by ASEAN and its human rights bodies, national governments, civil society organisations and the private sector. Among them are:

- All measures taken to tackle COVID-19 must be compliant with international human rights law and standards. Government may only place restrictions on derogable human rights that are lawful, necessary, proportional, non-discriminatory and subject to review;
- Governments should help strengthen private-public sector partnerships and work collaboratively to recruit, retain, and train young people whose livelihoods have been impacted by the pandemic, with a view to providing them career opportunities;
- AICHR should carry out, as a matter of urgency, a thematic study on human rights during the COVID-19 pandemic involving field and desk research in each and all ASEAN Member States in accordance with Article 4.12 of its Terms of Reference. It should work in collaboration with the ACWC on gender and children-related aspects of the study;
- Governments must ensure that human rights defenders can continue their work, in particular in monitoring the human rights situation and holding state and non-state actors accountable during the periods of lockdown, state emergency and recovery without intimidation, harassment or criminalisation;
- Civil society organisations should find innovative means of supporting the most marginalised groups, protecting their rights and ensuring that their voices are heard.

ASEAN Member States' Initial Responses to COVID-19 and their Impact on Human Rights

Excerpts from Webinar I:
Human Rights Situation of the COVID-19 Response in ASEAN
7 April 2020

COVID-19, a global pandemic which started in China in late 2019, spread all over the world and has, by August 2020, infected millions of people and killed hundreds of thousands. COVID-19, reached Southeast Asia in early 2020. The governments of ASEAN Member States have since attempted to prevent the COVID-19 from spreading by implementing a wide array of measures. These have ranged from emergency or other specific legislation, campaigns for physical distancing, encouraging and at times forcing remote working from home, restricting public movement, including through curfews, all the way to lockdowns. Other measures have included control of information and even use of military force to ensure compliance with measures introduced to control the pandemic.

"However, these efforts often neglect to take into consideration public health concerns and human rights perspectives by emphasizing a militaristic approach that only further contributes to increasing already high mortality and morbidity rates, exacerbating the health risks faced by marginalised communities including people experiencing homelessness, customary law communities, and LGBTIQ groups," said FORUM-ASIA Executive Director Shamini Darshni Kaliemuthu during the first webinar on 7 April 2020.

FORUM-ASIA listed at least four trends related to measures implemented by ASEAN Member States to curb the pandemic: lack of transparency and placing restrictions on COVID-19-related information; oppressive law enforcement by the military and the police; arbitrary restrictions on the rights to freedom of expression, peaceful assembly and the right to privacy under the pretext of safeguarding national security and preventing riots; more pernicious injustice and increased vulnerability of marginalised groups.

The COVID-19 pandemic and international human rights law

International human rights law recognises that in times of emergency, special measures needed may have an effect on human rights. However, such measures are subject to two key restrictions. Firstly, certain rights, including freedom from discrimination, arbitrary deprivation of life, torture and other ill-treatment, slavery and key fair trial rights, cannot be derogated from even in time of emergency.[8] This means, for instance, that beating peaceful protestors is as unlawful during a pandemic as it is during 'normal' times.

Secondly, measures derogating from other human rights provisions are only allowed to the extent that they are "strictly required by the exigencies of the situation."[9] The Human Rights Committee, the expert body charged with overseeing the implementation of the International Covenant on Civil and Political Rights, has explained that: "...the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers. Moreover, the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation."[10] The Committee also emphasised that "Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature."[11]

In the case of COVID-19, the imposition of certain restrictions on human rights appear justifiable in principle, such as restrictions on movement and businesses, education, peaceful assembly or mandating wearing of masks. However, the imposition of such restrictions must be necessary, proportional, non-discriminatory, subjected to parliamentary and in individual cases judiciary oversight and they must be lifted as soon as they are no longer necessary.

---

8 See for instance Article 4 of the International Covenant on Civil and Political Rights (ICCPR, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976). Brunei Darussalam, Malaysia, Myanmar and Singapore have yet to ratify this Covenant, while the other six ASEAN Member States have. At any rate, no state in ASEAN, irrespective of ICCPR ratification, has asserted rights to murder, enslave or torture in times of emergency.

9 *Ibid.*

10 Human Rights Committee, General comment no. 29: States of emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 5.

11 *Ibid.*, para. 2.

Lack of transparency and restrictions on information

Shamini Darshni Kaliemuthu pointed to an example of lack of transparency by ASEAN Member States by drawing attention to the Lao PDR (Laos) and Myanmar governments' original insistence that none of their citizens have been infected by COVID-19[12]. This denial was contrary to the fact that the pandemic had already been proliferated around the world, including in countries adjacent to Laos and Myanmar. "This gave rise to questions about state competence in handling the situation and whether they are intentionally hiding the information from the public," she said.

The stance taken by the two states during early time of the pandemic, particularly Laos, has raised questions.[13] With a population of seven million, Laos shares land borders with China, the country where the pandemic was first identified. For an illustration, per March 13, 2020 – two days after the WHO made an announcement of the COVID-19 pandemic, Laos and Myanmar claimed that none of their citizens had contracted COVID-19. By then, other ASEAN countries had recorded a number of COVID-19 cases: Singapore 178, Malaysia 129, Indonesia 34, the Philippines 52, Thailand 70.[14]

On 23 March 2020, Myanmar eventually made an official announcement that the first two COVID-19 cases had been discovered in the country[15]. One of them was a 36-year-old who had travelled to the United States and a 26-year-old who had just returned from the United Kingdom. Laos followed with a similar announcement the next day. In a press conference, Laos Deputy Health Minister Phouthone Muongpak stated that a 28-year-old male hotel employee and a 36-year-old female tour guide from Vientiane had tested positive to COVID-19.[16]

Indonesia, according to Asfinawati, Chairperson of the Indonesian Legal Aid Foundation (YLBHI), faced a similar situation. Asfinawati believed that the government of Indonesia had at least initially underestimated the pandemic. From January to February, Indonesia reported zero COVID-19 cases,[17] despite being surrounded by countries that had reported cases of infection including Malaysia, Singapore and the Philippines. Furthermore, flights from countries with high numbers of infections, including South Korea and Thailand, had been allowed to continue operating.

Medical experts and researchers from Harvard University in the United States had expressed concern that Indonesia was unprepared for the pandemic, with COVID-19 cases possibly spreading undetected. In an article published on 11 February 2020[18], the researchers stated that Indonesia may already have some five cases of COVID-19. The scientists arrived at the conclusion using a mathematical model based on estimated air traffic between Indonesia and Wuhan, the ground zero of the pandemic.

---

12 Francis Savankham, "Why Laos Has Not Reported Any COVID-19 Cases," *The Laotian Times*, February 4, 2020, https://laotiantimes.com/2020/02/04/why-laos-has-not-reported-any-coronavirus-cases/.

13 Laignee Barron, "A Silent Epidemic? Experts Fear the Coronavirus Is Spreading Undetected in Southeast Asia," *Time*, February 28, 2020, https://time.com/5792180/southeast-asia-undetected-coronavirus/?utm_source=twitter&utm_medium=social&utm_campaign=editorial&utm_term=world_&linkId=83387499.

14 Current figure of COVID-19 cases in Southeast Asia: Brunei Darussalam 141, Cambodia 243, Indonesia 115,056, Laos 20, Malaysia 9,023, Myanmar 357, Philippines 115,980, Singapore 54,254, Thailand 3,328, Vietnam 717 (data per 6 August 2020). Accessible through https://www.aseanbriefing.com/news/coronavirus-asia-asean-live-updates-by-country/

15 "Myanmar reports first cases of coronavirus," *Reuters*, March 24, 2020, https://uk.reuters.com/article/us-health-coronavirus-myanmar/myanmar-reports-first-cases-of-coronavirus-idUKKBN21B0HB.

16 Taejun Kang, "Laos Confirms First COVID-19 Cases," *The Laotian Times* March 24 2020, https://laotiantimes.com/2020/03/24/laos-confirms-first-covid-19-cases/.

17 Randy Mulyanto & Febriana Firdaus, "Why are there no reported cases of coronavirus in Indonesia?" Aljazeera, February 18, 2020, https://www.aljazeera.com/news/2020/02/reported-cases-coronavirus-indonesia-200218112232304.html.

18 https://news.harvard.edu/gazette/story/2020/02/harvard-expert-says-coronavirus-likely-just-gathering-steam/

After the initial optimism that the country was as yet free from the disease, on 2 March 2020, President Joko Widodo announced the first COVID-19 cases in the country of 270 million. The first cases were a dance instructor and her mother from Depok, West Java. The two had held a dance class in a restaurant in Kemang, South Jakarta, on 14 February 2020, which was attended by over a dozen people. Among them was a Japanese national who tested positive for COVID-19 after coming to Jakarta.

However, while cases of COVID-19 had been officially acknowledged in the country, Asfinawati said the government had yet to demonstrate an appropriate sense of emergency. The government still greenlighted an international commercial automotive exhibition on 5th - 8th March. Further, in light of the potential for outbreaks, the government did not immediately issue relevant health instructions or guidance.

In addition to being perceived as slow in its response to the pandemic, the government of Indonesia was also criticised for lack of transparency on the number of infected cases. Central and regional government data on positive cases and mortality also showed discrepancies. This prompted the Indonesian Doctors Association (IDI) to urge the government to be more transparent on the issue[19]. on 13 May 2020, President Joko Widodo eventually admitted that not all of the information had been divulged to the public for fear of causing panic and unrest[20].

Wide-ranging restrictions on access to information, including in the times of pandemic, were imposed in Myanmar. The government had initially shut down internet services in parts of the states of Rakhine and Chin since June 2019 citing as its justification the armed conflict between the Myanmar military (Tatmadaw) and the Arakan Army rebels. [21] Prior to that, military attacks on civilians had led over 700,000 Rohingya to leave the country since 2017. Altogether over a million Rohingya people have been forced to flee. Most of them live, as of August 2020, in refugee camps in Cox's Bazar in Bangladesh. UN investigators have categorised the Myanmar military action in 2017, among other things, as genocide.[22]

The government of Myanmar lifted the internet restriction in five townships in Rakhine state in September 2019, but internet shutdown was reimposed starting 3 February 2020[23]. The internet blockade has denied residents of the area access to information, including news on COVID-19 and measures taken against it. Humanitarian groups declared in a statement that the blockade was hindering efforts to coordinate aid distribution and publication of updates on the conflict in the region.[24]

The internet blockade had also made it difficult to gauge Myanmar's compliance with the provisional measures ordered by the International Court of Justice (ICJ). Gambia, on behalf of the Organization of Islamic Cooperation (OIC) had filed a suit with ICJ against Myanmar in November 2019, citing

---

19 Henny Rachma Sari, "Jawaban Pemerintah Soal Desakan Transparansi Data Pasien COVID-19" (Government response to pressure for transparency on number of COVID-19 patients), *Merdeka.com*, 29 April 2020, https://www.merdeka.com/peristiwa/jawaban-pemerintah-soal-desakan-transparansi-data-pasien-COVID-19-hot-issue.html.

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

21 Jacob Goldberg and Cape Diamond, "Myanmar cuts internet to Rakhine state amid unrest," *Guardian*, June 25, 2019, https://www.theguardian.com/world/2019/jun/25/myanmar-cuts-internet-to-rakhine-state-amid-unrest.

22 UN Human Rights Council, Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2, Sept. 7 2018, pp. 353-365.

23 "Myanmar: Lift Internet Restrictions to Protect Public Health," Fortify Rights, March 26, 2020. https://www.fortifyrights.org/mya-inv-2020-03-26/.

24 Jason Slotkin, "Parts Of Myanmar Unaware Of COVID-19 Due To Internet Ban, Rights Advocates Say," *NPR*, June 24, 2020, https://www.npr.org/sections/coronavirus-live-updates/2020/06/24/882893419/parts-of-myanmar-unaware-of-COVID-19-due-to-internet-ban-advocates-say.

allegations of genocide against the predominantly Muslim Rohingyas. On 23 January 2020, the Court ordered Myanmar to immediately take measures to prevent the commission or attempted commission of all acts of genocide, the destruction of evidence of past crimes, and report to the Court on measures it has taken in compliance with these orders.[25]

Yanghee Lee, the UN Special Rapporteur on the human rights situation in Myanmar asserted at the end of the 23 January 2020 mission statement that the internet blockades imposed by the Myanmar authority "severely exacerbate" the impact of the humanitarian crisis[26].

Initial measures

The deployment of security forces in some ASEAN Member States to enforce measures against the spread of COVID-19, particularly the military, has been accompanied by human rights violations in a region which had already seen increasingly authoritative and repressive governments. Violations have included arbitrary arrests and detention, criminalisation, and silencing of dissent through intimidation and threats.

On 30 January 2020, the first case of COVID-19 in the Philippines was confirmed in Metro Manila. The patient was a 38-year-old Chinese woman who was being treated at San Lazaro Hospital in Manila. The second case was confirmed on 2 February, a Chinese national aged 44 who had died the previous day, the first confirmed death from COVID-19 outside of mainland China.

On 9 March 2020, President Rodrigo Duterte issued Decree No. 922 which declared the Philippines to be under a public health emergency. The announcement was followed by the imposition of a lockdown on Manila on 12 March 2020, after health officials confirmed three deaths from the virus in the country. "Community quarantine is hereby put in place in the entire Metro Manila," Duterte said in a national broadcast. "We don't want to call it that because you're afraid of calling it a lockdown. But it is in fact a lockdown."[27]

On 12 March 2020, President Duterte signed into law Republic Act No. 11469, also known as Bayanihan to Heal as One Act, passed by Congress the previous day. The Act granted the President the authority, for a limited time and subject to certain conditions, to implement policies in line with the national emergency brought on by the COVID-19 pandemic across the Philippines.[28]

"With the special powers granted to the President of the Philippines by the enactment of RA 11469: Bayanihan Act, Duterte is authorised to use 275 billion pesos of public funds, include former military officers in the COVID-19 mitigation command, and oppress freedom of expression under the pretext of war on 'hoax,'" said Dr. Nymia Pimentel Simbulan, Executive Director of the Philippine Human Rights Information Center in the FA and SAPA webinar on 7 April 2020.

In implementing this Act, Dr. Nymia Pimentel Simbulan said, official used cruel and inhuman practices against individuals and groups in urban areas who allegedly broke curfews or lockdowns, the majority of them being daily workers whose livelihood depends on what they do that day.

This was what happened, for instance, on 1 April 2020, when residents of San Roque in Quezon City were lining up along the EDSA—Metro Manila major thoroughfare—after receiving news that aid would be distributed there. The group Save San Roque Alliance stated that when no aid package was

25 International Court of Justice, *Application of the Convention on The Prevention and Punishment of the Crime of Genocide (the Gambia v. Myanmar)*, Order of 23 January 2020, para. 86.

26 Special Rapporteur on the situation of human rights in Myanmar, "Mission 15-23 January 2020, End of Mission Statement," January 23, 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25490&LangID=E.

27 *Luis Liwanag and Jeoffrey Maitem, "Duterte Orders Manila Locked Down as Philippines Reports More COVID-19 Deaths," Benar News, March 12, 2020, https://www.benarnews.org/english/news/malaysian/Rohingya-refugees-04272020185533.html.*

28 Bayanihan to Heal as One Act, passed by Congress on March 23, 2020, approved by President Duterte March 24, https://www.officialgazette.gov.ph/downloads/2020/03mar/20200324-RA-11469-RRD.pdf.

distributed, the residents decided to stay in the area and staged a protest to demand aid from the Quezon City municipal government. The police told them to leave the area and arrested those who disobeyed the order. However, the resident alliance told Amnesty International that the police had broken up the protest and were beating the protesters with wooden sticks. As many as 21 protesters were arrested and detained in Quezon City police precinct.[29]

On April 1, 2020, in an address that was broadcast on television, President Duterte issued a warning to anyone who might be causing "problems" during the lockdown. Referring to left-wing factions, but apparently also to anyone who might be protesting or questioning the government action, he explicitly spoke of ordering the police, military and local officials to shoot to kill in certain circumstances.

"I will not hesitate. My order to the police, the military, and also *barangay* is when problems or situations occur where people are resisting and your life is on the line, shoot them to kill. Do you understand? Dead. Never mind causing problems, I will be sending you to the grave," President Duterte said.[30]

According to Dr. Nymia Pimentel Simbulan, many people, especially men, were beaten by the military forces for breaking the lockdown rules. Five of them were thrown into a dog cage. In Manila, people were made to stand under the blazing midday sun on a hot day; children were stuffed into coffins in Cavite; a farmer in Agusan del Norte was shot by the police for refusing to wear a mask; a Taguig resident died of unknown cause in a detention cell after being arrested for breaking curfew.

Government officials also took to using the pandemic as an excuse to disregard prevailing laws. On 21 March, Minister of Home Affairs and Regional Government Martin Dino said in a TV interview[31]: "There are no human rights under emergency circumstances. There is to be no *habeas corpus*." *Habeas corpus* is the right of every detainee to be brought before a judge or a court of law, where they can challenge their detention and the authority must produce valid legal grounds for the arrest and continued detention. It is enshrined in Section 15 of the Philippines Constitution and can only be suspended "in cases of invasion or rebellion."

Arrests for alleged breaking of lockdown orders were also frequent in Malaysia. Minister of Health Dzulkefly Ahmad, stated on January 25, 2020 that the country's first three infected patients were linked to a 66-year-old man who had been confirmed by Singaporean health authority as a COVID-19 case[32]. The number of cases continued to increase afterward.

On March 16, 2020, Malaysian Prime Minister Muhyiddin Yassin officially announced the issuance of the 2020 Movement Control Order (MCO) under the Prevention and Control of Contagious Diseases Act of 1988 and the Police Act of 1967. The order imposes sweeping restrictions, including shutting down all but essential government and private premises, banning travelling abroad, closing down the education system and prohibiting public gatherings throughout the country. The local and international media had dubbed the policy as "lockdown" or "partial lockdown".

A Human Rights Watch report states that 15,000 people were arrested on March 18, the day the order came into effect, for violating the order. On April 2, 2020, Defense Minister Ismail Sabri

29 Amnesty International, Philippines: President Duterte gives "shoot to kill" order amid pandemic response, April 2, 2020, https://www.amnesty.org/en/latest/news/2020/04/philippines-president-duterte-shoot-to-kill-order-pandemic/.

30 *Ibid*.

31 Kristine Joy Patag, "CHR: Human rights, writ of habeas corpus remain during state of national emergency, calamity," *Philstar*, March 23, 2020,https://www.philstar.com/headlines/2020/03/23/2002902/chr-human-rights-writ-habeas-corpus-remain-during-state-national-emergency-calamity.

32 Reuters, "Malaysia confirms first cases of coronavirus infection," January 25, 2020, https://www.reuters.com/article/china-health-malaysia/malaysia-confirms-first-cases-of-coronavirus-infection-idUSL4N29U03A.

Yaakob announced that 4,189 people had been arrested in the previous two weeks for breaking movement restrictions. Out of this number, 1,449 had since be tried in court. Only after the Malaysian Director General of Correctional Facilities expressed concerns about prison overpopulation did the government opt to fine these people instead.

On 15 April, the Defense Minister announced that police would take action against the those who violated the orders and detain them in 13 police academies which had been converted into temporary detention centres. Human rights organisation condemns the decision, raising concerns about the spreading of the disease in overcrowded detention centres.

Arbitrary Restrictions on Freedom of Expression and Peaceful Assembly

On 6 March 2020, the UN High Commissioner for Human Rights Michelle Bachelet urged countries affected by COVID-19 to make human rights a priority amidst the highly contagious outbreak. She also stated that while it was important for governments to take measures to curb the spread of the disease, additional steps should be taken to minimise the potential negative impact of those actions in public life.[33]

On 16 March, UN human rights experts cautioned countries to avoid overreach of security measures in their response to the pandemic. The experts warned that emergency laws adopted in the struggle against COVID-19 should not justify the silencing of dissenting opinions.[34] Nevertheless, human rights groups asserted that four ASEAN countries had frequently disregarded such advice: Cambodia, the Philippines, Thailand, and Myanmar.[35]

Cambodia registered its first COVID-19 case on 27 January 2020 when a man from China was tested positive at the Pasteur Institute in Phnom Penh. The man and three of his family members had arrived in Preah Sihanouk Province in southwest Cambodia on 23 January 2020 via direct flight from Wuhan, the source of the outbreak. Starting in early April, the government took steps to control the spreading of the disease, including sweeping movement restrictions. Subsequently the Cambodian National Council under the ruling Cambodian People's Party (CPP) led by Prime Minister Hun Sen, announced that the government would pass an emergency law.

Human rights experts expressed grave concerns that passing the law would only serve to exacerbate human rights violations in the country. Their misgivings were not unfounded. By early 22 April people had been arrested on charges of conspiracy and spreading fake rumours about COVID-19, four of them former members of the opposition Cambodia National Rescue Party (CNRP) which had been disbanded.

On 7 April 2020, Sovann Rithy, director of online news service TVFB, had quoted Hun Sen's speech earlier that day on his personal Facebook account: "If you're a motorcycle taxi driver who goes bust, sell your motorbike to get spending money. The government does not have wherewithal to help." The tweet led to Rithy's arrest. At a hearing on 9 April 2020, the judge charged him with "inciting crime", a violation of Articles 494 and 495 of the Criminal Law and ordered for his detention throughout the trial.

---

33 UN News, "Coronavirus: Human rights need to be front and centre in response, says Bachelet," March 6, 2020. https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E.

34 UN News, "COVID-19: States should not abuse emergency measures to suppress human rights – UN experts," 16 March 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E.

35 Luke Hunt, "4 ASEAN States Abusing COVID-19 Emergency Powers," *The Diplomat* 27 April 2020. https://thediplomat.com/2020/04/4-asean-states-abusing-COVID-19-emergency-powers/

Vietnam showed a number of similar traits with Cambodia. The country had its first confirmed COVID-19 case on 23 January 2020, which was a 66-year-old man who had travelled to Wuhan to visit his child. The Vietnamese government took various measures to prevent the spreading of the disease. But at the same time the government also tried to criminalise citizens for sharing information about the pandemic.

One of the victims of such criminalization was Ma Phung Ngoc Phu, aged 28. The Public Prosecutor's Office in Ninh Kieu District, Can Tho Province, arrested him on 25 February 2020 for posting an update on a Facebook account under the username James Ng, stating: "We have just received information on COVID-19-related death in Vietnam. Why haven't the government media reported it?" The police added that this account had posted a total of 14 stories that they claimed were fake about the pandemic situation in Vietnam.[36]

In a similar case Dinh Vinh Son, aged 27, was charged with posting on Facebook about COVID-19 death in Lam Dong capital city Da Lat on 1 April 2020. Security forces claimed that Dinh had been investigated for "illegal posting or using information on computer networks and telecommunication networks," an offense that carries a maximum penalty of seven years in prison. The police reported over 600 Facebook users had been summoned for interrogation related to COVID-19 posts on social media. Many were fined up to ten million of Vietnamese Dong (the equivalent of over US$1,000).[37]

The government of Indonesia took similar steps in managing COVID-19. In addition to efforts to control the outbreak, the government took actions against what it referred to as false information and disparaging remarks against the government with regards to COVID-19. The Indonesian Police Chief General Idham Azis issued Telegram Memo No. ST/1100/IV/HUK.7.1.2020 on 4 April 2020[38]. In the memo, the Police Chief instructed the ranks of police to run cyber patrols to monitor opinion pieces, targeting "hoaxes" about COVID-19 or government policy on coronavirus mitigation. The Memo also instructs police officers to target "insults" against the president and other government officials.

The Police Chief memo drew condemnation from civil society, including the YLBHI. "The government needs to prioritise persuasive and humanitarian approaches in the midst of Covid-10 pandemic. Repressive action to discipline the masses will fail without the incentive of addressing the public needs and raising people's awareness. We note that the memo may potentially undermine the due process of law, encouraging more arrests of critical members of the society, and furthermore potentially violate the rights to freedom of opinion and expression," said YLBHI Chairperson Asfinawati.[39]

Asfinawati said the Chief of Police's Memo, which was issued without adequate explanation, had the potential for being abused. She said that policies focusing on criminalization are counterproductive, not least in light of President Joko Widodo's policy of releasing over 30,000 inmates from Correctional Facilities and Juvenile Special Correctional Facilities to prevent COVID-19 from spreading in prison. In the days that followed the release of the Memo, the police began legal process on at least 72 cases of false information regarding COVID-19.

The Secretary-General of the Asia-Pacific Refuge Rights Network (APRRN) Themba Lewis in the webinar said that COVID-19 pandemic had a significant impact on displaced peoples, primarily due to restrictions on movement, strict border security, and nosediving economies. In ASEAN, the refugees facing the most serious challenges have been the Rohingya Muslims who had fled the violence in their country.

---

36 Radio Free Asia, "Vietnam, Laos Arrest Facebookers on COVID-19-Related Charges," April 13, 2020, . https://www.rfa.org/english/news/vietnam/facebook-04132020154643.html.

37 *Ibid*.

38 https://kontras.org/2020/05/11/15985/

39 Tribunnews, *YLBHI Soroti Kebijakan Represif Pemerintah di Masa Pandemi COVID-19* (YLBHI draws attention to state repression in the times of the pandemic), April, 8 2020.

Themba Lewis said that most ASEAN Member States, do not have clear regulations for processing or accommodating refugees, among them Thailand, Myanmar's neighbor. Along Thailand/Myanmar border, Malaysia-bound Rohingya refugees lived in barracks. Apart from Malaysia, the refugees' preferred destination is Australia, which makes Indonesia a transit destination. While already accommodating Rohingya refugees, Malaysia does not have specific laws on refugees either. As of the end of June 2020, some 177,940 refugees and asylum seekers were registered with UNHCR in Malaysia. Some 153,190 were from Myanmar, consisting of 101,320 Rohingya people, 22,510 Chins, and 29,340 others.[40]

As a refugee transit destination, Indonesia too has yet to ratify the UN Refugee Convention of 1951 and the Protocols Relating to the Status of Refugees of 1967. The country implements Presidential Regulation No. 125 of 2016 on Management of Foreign Refugees, which governs the treatment of refugees from the point of being found, sheltering, ensuring their security and monitoring, with the coordination and cooperation from domestic and international agencies including UNHCR.

Surrounded by states that harbor large numbers of asylum seekers and refugees including Malaysia, Thailand and Australia, Indonesia is regularly impacted by these movements of population. According to UNHCR, as of late December 2019, the cumulative number of registered refugees in Indonesia stood at 13,657 individuals from 45 countries, with people originating in Afghanistan origin making up half of the number.[41] According to Themba Lewis, there are not many refugees still living in Indonesia. He believed the 2016 Presidential Regulation did not offer rights-based provisions, but merely protection and priority for treatment for vulnerable groups.

Themba Lewis said that while Cambodia has ratified the 1951 Convention on Refugees and its 1967 Protocol, the country has provided? very limited information on refugees living within its borders it has not ratified the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

According to the UN High Commission for Refugees (UNHCR) report on Cambodia, delivered during the 32nd Universal Periodic Review (UPR) in December 2018, the only data available on refugees in Cambodia was as follow: as of 1 January 2018, the Department of Refugees in Cambodian Department of Immigration registered a total 32 refugees (24 males/8 females, 5 under the age of 18) and 16 asylum seekers (12 males/4 females).[42]

Singapore is also not a state party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol nor the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. "There is no representative of the UNHCR in Singapore and little support for the refugees. The refugees face significant risk of deportation, but so far there is no record of it," said Themba Lewis. According to UNHCR report on Singapore which was delivered during the 24th Universal Periodic Review (UPR) in June 2015, as of 28 February 2015, Singapore was harboring three adult refugees and no asylum seekers.[43]

---

40 UNHCR, Figures at glance in Malaysia, https://www.unhcr.org/figures-at-a-glance-in-malaysia.html.

41 UNHCR, Figures at glance in Indonesia, https://www.unhcr.org/id/en/unhcr-in-indonesia.

42 Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 32nd Session: Cambodia, July 2018, https://www.refworld.org/country,,UNHCR,,KHM,,5c52c9b74,0.html.

43 Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: Singapore,

2nd Cycle, 24th Session, June 2015, https://www.refworld.org/country,,UNHCR,,SGP,,5a12da0a2,0.html.

Lessons from South Korea, Taiwan and elsewhere

While there is no single solution to resolving the host of new problems that the COVID-19 pandemic has brought, ASEAN countries can learn from the measures on COVID-19 mitigation and their human rights perspectives, implemented by South Korea and Taiwan.

In South Korea, the central and regional governments ensured that transparent, detailed and timely information on COVID-19 is presented through websites, cell phones, and warning messages. The government conducted up to 20,000 rapid tests per day during the beginning of the pandemic, followed by contact tracking to prevent the spreading of the disease. The government allocated US$100 billion to jumpstart the economy and protect vulnerable populations. The government also waived any payment on COVID-19 tests both for South Korean and foreign nationals. "The government started the campaign to eradicate COVID-19-related xenophobia and discrimination both for its citizens and foreigners.

In addition, the government of South Korea also involved the National Human Rights Commission of Korea (NHRCK) which advised the government on ways to mitigate internet trolling and hate speech against COVID-19 patients while refraining from divulging the patients' private data.

In Taiwan, people who had recently travelled to Wuhan volunteered to be tested. Taiwan was the first country that banned flights from Wuhan, on 26 January 2020. The country's centralised coordinated policy to protect public health by issuing a travel ban and using technology to track down people who might have been infected proved successful in flattening out the COVID-19 curve. The government of Taiwan also ensures information transparency by continuously broadcasting and updating data on how the virus is transmitted and how it can be controlled. As a result, Taiwanese people became less prone to speculation and rumours since they had been adequately informed.

While these practices have proved effective, they are still open to criticism. For instance, the way the two countries have tracked down the trail of infections may have involved violations of the right to privacy.

Further, ASEAN could also learn to handle COVID-19 from previous health crises, for instance HIV/AIDS, by involving communities from the beginning, removing all stigma and discrimination based on contact and profession. Restriction to protect the public health should also be limited in duration, kept proportional, fact-based and always reviewed by the court. Countries must work together so that the principle of no one gets left behind may be implemented.

UN Special Rapporteur on Rights to Freedom of Peaceful Assembly and Association Clement Voule in the webinar said that several countries had adopted policies that violate human rights in mitigating the COVID-19 crisis.

The state, said Clement Voule, has the right to declare an emergency to manage COVID-19. Many countries, including ASEAN nations in this emergency times restricted the rights to freedom of expression and peaceful in violation of international standards. He said that state policies during emergency must continue to be based on the laws, answer to the public needs and remain proportional, including refraining from putting the economic interest of the people at a disadvantage whenever possible.

Clement Voule added that, emergency notwithstanding, the police must refrain from beating people who are considered to be rulebreakers, as was done in India, or putting them in dog cages the way they did it in the Philippines. Such practices should be shunned since they are unlawful and undermine human dignity. He agreed with the view that many of the policies adopted to mitigate COVID-19 crisis had disadvantaged vulnerable groups such as refugees and asylum seekers.

The government, Voule said, has to be transparent to the public with regards to their policies, to ensure that the people understand the policies and the intentions behind them. Often, the public do not understand the information provided by governments since it was written in a language they do not understand. He hoped human rights advocates would be able to influence state policy in the times of the pandemic by means such as the internet. "Human rights advocates and civil society organisations must strive to monitor the law, transparency, and vulnerable groups," he said.

Summary

- The COVID-19 pandemic has impacted all ASEAN Member States. Some states initially were dismissive of the threat by attempting to cover up the number of infected cases;
- Part of the responses made by ASEAN governments to curb the spread of the outbreak have violated human rights such as freedom of expression and the right to privacy;
- Some states have been less transparent on COVID-19 issues, such as Laos, Myanmar, and Indonesia;
- Countries like the Philippines and Malaysia have used a militaristic approach to manage the spread of the disease and their law enforcement agencies have resorted to violence in imposing government measures;
- Efforts to mitigate the pandemic, are coupled with policies that restrict freedom of expression, for instance in Cambodia, Indonesia and Vietnam;
- South Korea and Taiwan governments have taken efficient measures in responding to the pandemic while mostly respecting and protecting human rights.

Recommendations

- Governments must ensure that information related to the COVID-19 pandemic, its impacts and efforts to control it, can be made transparent and accessible for public, including civil society and human rights defenders;
- Government laws, orders, policies and practices taken in response to COVID-19 should respect international human rights law, refrain from violating non-derogable human rights and be proportional, necessary, non-discriminatory, temporary and subject to periodic review. Specifically, such measures must not restrict the right to freedom of expression.
- Human rights defenders must continue to engage in monitoring, documenting and where warranted criticising the state to ensure that responses to the pandemic accord with respect, protection and fulfilment of rights, especially those of groups made vulnerable, or more vulnerable, by the pandemic;
- ASEAN governments need to learn from the experience of other countries who have been successful in their management of the pandemic while continuing to respect human rights.

Chapter II:

ASEAN Community Responses to Governments' Measures during the COVID-19 Pandemic

Excerpts from Webinar II:
The ASEAN Community and COVID-19: An Assessment of an Infected Region's Present and Future Conditions
13 April 2020

The government of a number of ASEAN Member States have deployed not only the police but also the military to enforce the regulations that they put in place to prevent the spread of COVID-19. The situation created a climate that favors securitization and risks violence in law enforcement. The pandemic has also led to a rise in racism, especially against races and ethnicities considered unjustifiably to be responsible for causing and spreading the disease. Civil society, academia, and related stakeholders have responded to these worrying developments, and some have criticised various institutions in ASEAN for failing to monitor human rights violations in the region during the pandemic.

Dr. Sriprapha Petcharamesree, Programme Chair, SHAPE-SEA and former representative of Thailand in the ASEAN Intergovernmental Commission on Human Rights (AICHR) stated during the webinar that the way these laws and lockdowns have been implemented in practice had fed into the rise of authoritarianism.

Thailand' Prime Minister Prayut Chan-o-cha declared a country-wide emergency on 24 March 2020, invoking the draconian Emergency Decree on Public Administration in Emergency Situation of 2005.[44] It provides the government with vast powers, including to impose curfews, travel bans, and building shutdowns without warrant. Human rights organisations considered these restrictions to be excessive and to violate human rights. Take for instance the stipulation that: "to report or spread information about COVID-19 that is untrue and can potentially incite public fear, as well as to deliberately twist the information so as to cause misunderstanding and therefore undermine peace and order or public mood, shall be prohibited."

Human Rights Watch documented incidents where Thailand officials selectively used public health as justification for oppressing peaceful dissent, by targeting anti-government movements. On 22 May 2020, Bangkok police arrested renowned pro-democracy activists Anurak Jeantawanich and Tosaporn Serirak on allegation of breaking the prohibition against gathering. The arrest was prompted by a commemorative event the two had been involved in on the same day, along with supporters of the Unified Front for Democracy against Dictatorship—also known as the Red Shirts—marking the sixth anniversary of the 2014 military coup.[45]

While thermoscanners were used during the events to detect fever and the participants were wearing masks, the activists were charged with not practicing social distancing and engaging in ways that might spread the virus; allegations that are punishable with two years in prison and a US$ 1,250 fine. The Thai authorities had also arrested Anurak on 13 May 2020 on similar charges, when attending a commemorative event to demand justice for those who were killed or wounded by the violence during the Red Shirts rallies in 2010.[46]

Six other protesters were arrested for violating the prohibition on gatherings in the Emergency Decree. They demanded an investigation into the case of Wanchalerm Satsaksit, a Thailand activist in exile in Cambodia, believed to have been a victim of enforced disappearance on June 4, 2020.[47] The six faced a maximum punishment of two years in prison for their alleged offences. The National Police also said that between 3 April, when curfews were imposed and J14 June, when they were lifted, up to 36,000 people were arrested for breaking them.[48]

---

44 Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005), 16 July 2005, http://web.krisdika.go.th/data/document/ext810/810259_0001.pdf.

45 Human Rights Watch, Thailand: State of Emergency Extension Unjustified, May 27, 2020, https://www.hrw.org/news/2020/05/27/thailand-state-emergency-extension-unjustified.

46 *Ibid*.

47 FORUM-ASIA [joint statement], Thailand: Government should commit towards locating missing activist and protecting human rights defenders, June 17, 2020, https://www.forum-asia.org/?p=31988.

48 Hathai Techakitteranun, "Coronavirus: Thailand to extend state of emergency to July 31 despite lockdown easing," *The Straits Times*, June 29, 2020, https://www.straitstimes.com/asia/se-asia/coronavirus-thailand-to-extend-state-of-emergency-to-july-31-despite-lockdown-easing.

In the Philippines the military use unnecessary forces in ensuring public compliance with the lockdown policy in the country's capital Manila starting 12 March 2020. Lockdowns were swiftly enforced in Manila and other regions in Luzon by the military and the police. The Philippines Army Commander, Lieutenant General Gilbert I. Gapay posted on social media that "since the country's fight against COVID-19 is estimated to disrupt government services, the Philippines Army has been projected to carry out functions outside of its main duties.".[49]

The military has also been involved in pandemic mitigation in Indonesia. Indonesian President Joko Widodo had chosen a military officer to lead the task force against COVID-19, instead of appointing Minister of Health Terawan Agus Putranto, who also came from military background. President Joko Widodo appointed Lieutenant General Doni Monardo, Head of the National Disaster Mitigation Agency, as head of the COVID-19 task force on 13 March 2020.

In addition to Doni Monardo, the task force also involves Minister of Defense Prabowo Subianto, Coordinating Minister of Maritime Affairs and Investment Luhut Binsar Pandjaitan, Minister of Religious Affairs Fachrul Rozi and the President's Chief of Staff Moeldoko. The inclusion of these military figures rendered the coronavirus response to be less transparent and securitised from the beginning. One of the impacts of securitization is the tendency for non-disclosure of COVID-19 data.[50]

Deasy Simandjuntak, Associate Fellow at ISEAS—Yusof Ishak Institute Singapore-said during the webinar that the Indonesian government had imposed restrictions on information due to fear of that unchecked rumours would cause social unrest and political instability. In fact, such information restriction only serves to create a false sense of security. "In Indonesia, the government even uses the police to arrest those who are vocal in their criticism of the government."

Deasy Simandjuntak believed that the government of Indonesia was taking advantage of the pandemic to pass unpopular or repressive laws. These include the Omnibus Law on Job Creation with its clauses that will have significantly negative impact on the workers, and the revised the Criminal Code, which among other things would criminalise cohabitation and consensual sex outside of marriage. "We need to be on the alert about for the government's use of COVID-19 response as a ruse to pass repressive laws and abuse the emergency powers to violate human rights," she said.

Rising Racism and Islamophobia

Another issue that came to the fore during the COVID-19 pandemic is growing stigmatization, xenophobia, racism and islamophobia. Thet Swe Win, Executive Director of Synergy - Social Harmony Organization, and Co-Founder of Myanmar COVID-19 Response Center. He said that the public in Myanmar could upload any information on people infected with COVID-19 on Facebook, ranging from photographs and videos to their full names. People in Myanmar tend to ostracised these people for carrying the virus, especially those who had recently been abroad. "This situation stems from the public's unease, apprehension, and suspicion of others," he said.

Victim-blaming had led many migrant workers who have recently returned to Myanmar to be hesitant about disclosing their actual travel history to the medical workers. This is of course risky since it may lead to an increased number of infections. ILO data showed that as of 2014, over two million Myanmar nationals worked overseas, with around 70 in Thailand and smaller numbers in Malaysia, China and Singapore.[51]

---

49 Michael Vatikiotis, "Coronavirus is paving the way for a return to military rule in Asia," *South China Morning Post* April 4 2020, https://www.scmp.com/week-asia/opinion/article/3078346/coronavirus-paving-way-return-military-rule-asia.

50 Tempo.co, *Pemerintah Indonesia Dianggap Gunakan Pendekatan Militer Untuk Tangani COVID-19* (Indonesian government viewed as using military approach to control COVID-19), June 26, 2020.

51 ILO, Labour migration in Myanmar. https://www.ilo.org/yangon/areas/labour-migration/lang--en/index.htm.

Much racism during the COVID-19 pandemic has been levelled at people of Chinese descent. They are accused of being the cause of the outbreak since the first cases were identified in China.

In Malaysia people went on social media, urging for a ban on Chinese tourists to the country. Others signed a petition on the website Change.org to call for immediate government ban on Chinese tourists. The petition was titled "Ban citizens of the People's Republic of China from entering Malaysia!" the initiator of the petition argued: "The new virus had spread around the world because of [Chinese'] unhygienic lifestyle." Setting a goal of 300,000 signatures, the petition ended with over 400,000 supporters by 27 January 2020. The petition was made when then Malaysian Prime Minister Tun Dr Mahathir Mohamad declared that the government would not ban Chinese tourists from entering Malaysia.[52]

In the Philippines, Adamson University President Fr. Marcelo Maimtim issued a memorandum requiring Chinese students to self-quarantine until February 14 to prevent an outbreak. Following criticism, the quarantine was extended to all students and staff who had travelled to countries with confirmed COVID-19 cases. Trade Union Congress of Philippines (TUCP) condemned the campus policy and called it blatant racism. Chinese-Philippines Federation of Chamber of Commerce and Industry also called for an end to racism against Chinese nationals.[53] On 3 February, President Rodrigo Duterte called on Filipinos to stop spurring anti-China xenophobic sentiments simply because coronavirus was first discovered in China. "China has been kind to us, we can only show them the same kind of compassion. Stoll all this xenophobia," he was quoted as saying.[54]

Racism took various disguises in different countries. In Singapore, over 125,000 people had signed a petition to ban Chinese nationals from entering the city-state[55]. A bar in Ho Chi Minh City, Vietnam, put up a sign banning Chinese patrons from entering to "protect the health of our customers."

Racist sentiment was also fuelled by a series of Facebook posts by a Singaporean cleric which claimed that coronavirus was God's punishment on the Chinese for their oppressive treatment of the Uighur Muslims in Xinjiang Province, China. Following reports that coronavirus might have been transmitted via faecal matter, the cleric, in a separate personal comment said that the Chinese are not as hygienic as Muslims. The cleric's statements were condemned by the public and the Ministers of the Interior and Law.[56]

Racism against Chinese nationals was also in evidence in Indonesia. A group of people who referred to themselves as the people of West Sumatra came to the House of Representatives to protest the continued arrival of Chinese tourists in the province. The protesters demanded the ban for tourists coming from mainland China until the coronavirus pandemic is over and the situation is safe. In response to the protest, the local government cancelled all the Chinese tourists' visits to West Sumatra.[57]

---

52 Farah Solhi, Some Malaysians calling for ban on Chinese tourists," *New Straits Time*, January 26, 2020, https://www.nst.com.my/news/nation/2020/01/559942/some-malaysians-calling-ban-chinese-tourists.

53 "Groups decry racism against Chinese amid coronavirus outbreak," *CNN Philippines,* February 1, 2020, https://www.cnnphilippines.com/news/2020/2/1/groups-decry-racism-coronavirus-china.html.

54 Karen Lema, "Philippine leader Duterte says xenophobia against Chinese must stop," February 3, 2020, https://www.reuters.com/article/us-china-health-philippines/philippines-duterte-says-xenophobia-against-chinese-must-stop-idUSKBN1ZX21L.

55 USA Today, Coronavirus is spreading. And so is anti-Chinese sentiment and xenophobia, February 3, 2020

56 Athira Nortajuddin, "Hate And Discrimination In A Pandemic World," *The ASEAN Post*, May 12, 2020, https://theaseanpost.com/article/hate-and-discrimination-pandemic-world.

57 Suara.com, *Turis China Diusir di Sumbar, Sentimen Rasis Berkedok Virus Corona* (Chinese tourists expelled from W. Sumatra, racist sentiment under the guise of coronavirus), January 27, 2020.

Apart from anti-Chinese sentiments, the pandemic has also been used to foment Islamophobia. In particular, gathering of the Jemaat Tabligh Islamic missionary movement in Malaysia and India were was accused of being breeding grounds for COVID-19 transmission. Jemaat Tabligh gathering was held in Malaysia on 27 February through 1 March, 2020 in Kuala Lumpur, attended by some 16,000 participants, 14,500 of them from Malaysia. Almost 600 coronavirus cases in Southeast Asia was linked to that gathering including 513 in Malaysia, 61 in Brunei, 22 in Cambodia, and at least five in Singapore and two in Thailand.

Yet another impact of the pandemic was rising hostility against and stigmatization of foreigners, a trend that the UN High Commissioner on Human Rights Michelle Bachelet warned about on March 6, 2020. She emphasised that to effectively combat the pandemic means to ensure that everyone has access to treatment, and no one is turned away because they cannot afford it or because of stigma. "I also urged the authority in countries affected by COVID-19 to take all necessary steps to stop incidents of xenophobia and stigmatization," she added.[58]

Absence of Human Rights Monitoring

Dr Sriprapha Petcharamesree regretted the absence of an ASEAN initiative to launch systematic monitoring of human rights violations in the region. Prior to the pandemic, she had observed a political trend that was taking many ASEAN states in an undemocratic direction. With the declaration of emergency and adoption of extraordinary measures, these countries showed an even stronger authoritarian tendency. "While these countries had taken actions in response to COVID-19, the worrying trend is the use of repressive laws," she said.

Dr Sriprapha Petcharamesree said ASEAN bodies must cooperate better and use COVID-19 as an entry point for AICHR and other ASEAN institutions to work together to protect human rights, especially the rights to health and education. "When the COVID-19 crisis is over, ASEAN is predicted to be the region worst hit by the pandemic. But with a policy that is driven by collaboration and fulfilment of basic rights, the region can flourish again," she said.

Lee Edson P. Yarcia, Health Law and Policy Reform Consultant from the Philippines, agreed with Petcharamesree views during the webinar. He said that monitoring and documentation of abuse of authority during the pandemic is critical to the enforcement of justice at the transition phase ahead. "We need to urge the government to be accountable. More efforts should be made to take issue with the government." he said. In the current situation, civil society and the public need to speak up to stop the government from perpetrating further violations.

He reminded ASEAN Member States to return to the ASEAN Post-2015 Health Development Agenda[59] which sought to promote a resilient health system to respond to transmissible diseases, emerging infectious diseases, and overlooked tropical diseases. "The framework of right to health should be at the core of every response against COVID-19 in ASEAN countries. The right to health implies the right to freedom, and the state has to uphold, protect and fulfil it during the times of the pandemic," he said.

---

58 UN News, "Coronavirus: Human rights need to be front and centre in response, says Bachelet," March 6, Maret 2020. https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E. .

59 ASEAN Post-2015 Health Development Agenda (2016-2020), adopted by the 13th ASEAN Health Ministers Meeting, Brunei Darussalam, 2017, https://asean.org/storage/2018/12/16-ASEAN-Post-2015-Health-Development-Agenda.pdf.

Yuyun Wahyuningrum, Indonesian Representative to the AICHR, admitted that the lack of transparency was a challenge for ASEAN during the pandemic. Governments of ASEAN Member States have been dishonest about their situation to avoid appearing incompetent. Consequently, any government information on this issue has been found to be unreliable. "Countries are reluctant to share information transparently. This complicates ASEAN's efforts as a regional entity to move forward in overcoming COVID-19," she said.

Yuyun Wahyuningrum added that ASEAN has started the effort in designing their pandemic response. The ASEAN pandemic response is aligned with the Post-2015 Health Development agenda in two ASEAN communities: the ASEAN Political-Security Community (APSC) and the ASEAN Socio-Cultural Community (ASCC). ASEAN 2025: Forging Ahead Together,[60] based on a blueprint that was published by APSC, seeks to develop ASEAN capacity to tackle transnational crime and challenges across borders such as trafficking, haze pollution and pandemics. The ASCC document is focused on empowering and strengthening institutions to prepare them for challenges like disasters, pandemic and climate change.

Yuyun Wahyuningrum said measures against the pandemic are included in the ASEAN Post-2015 Health Development Agenda and ASEAN Health Cluster 2. The documents listed two programs for this contingency: first is ensuring the highest capability, collaboration and capacity to detect, investigate and manage transmissible diseases, and secondly to improve laboratory capacity in preparation for a pandemic or other public health emergency.

60 ASEAN 2025: Forging Ahead Together, adopted by the ASEAN Summit, November 22, 2015, https://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf.

Summary

- Policies made by some ASEAN governments to combat COVID-19 through military involved have resulted in securitization. As a result, there is tendency for lack of transparency in management of the pandemic;
- COVID-19 pandemic has triggered a trend for stigmatization, racism and islamophobia due to public perception that certain race or religion is at the root of coronavirus pandemic and its spread;
- There is as yet no initiative on the part of ASEAN to more systematically monitor human rights violation during the COVID-19 pandemic. However, ASEAN has actually a strong base for pandemic response in an action blueprint and the health development agenda of 2015.

Recommendations

- There is a need for an ASEAN initiative to systematically monitor human rights violations, in particular during the pandemic. Monitoring and documenting abuse of authority during the pandemic are crucial for justice to be served in the coming transitional phase;
- ASEAN bodies must cooperate better to use COVID-19 as an entry point for ASEAN and AICHR to work together institutionally.
- The ASEAN Post-2015 Health Development Agenda is a useful tool, containing detailed guidelines for promoting a resilient health system to tackle infectious diseases, emerging transmissible diseases and overlooked tropical diseases;
- Civil society and the public need to speak up to prevent the government from further committing human rights violations in the times of the pandemic, including in tackling the issue of xenophobia, stigmatization, racism and islamophobia, and to demand the government's accountability and to ensure access to remedy for those who are affected.

Chapter III:

Poverty and Gender Aspects of the ASEAN Responses to COVID-19

Excerpts from Webinar III:
A Feminist Assessment of the ASEAN Response to the COVID-19
21 April 2020

Efforts by governments of ASEAN Member States to manage the COVID-19 pandemic has had wide-ranging impacts beyond the health-related issues, including economic and social ones. The hardest downstream blow has certainly been to the economy. Among the groups most affected by government policies to curb COVID-19 are the poor, women, and LGBTIQ communities.

ARROW (Asian-Pacific Resource & Research Centre for Women) Executive Director Sivananthi Thanenthiran quoted International Labour Organization (ILO) forecast that as many as 25 million jobs will be lost globally due to the pandemic. The number is estimated to be the highest job loss in history. In comparison, the 2008-9 financial crisis increased global unemployment figure by 22 million.

ILO also forecasted a massive increase in disguised unemployment as cutbacks in work hours and wages are expected to be yet another economic consequence of the pandemic. Entrepreneurs in developing countries that often serve to buffer the impact of a crisis may not be fully functional this time around due to movement restrictions imposed on people and goods.

Plummeting number of jobs also leads to loss of income for workers. ILO studies estimate a loss of USD 860 million to USD 3.4 trillion by the end of 2020. The follow-up impact to that is a decline in goods and services consumption, which in turn will affect business and economic prospect. The ILO predicted an additional 8.8 - 35 million people worldwide would fall under poverty line, despite its start of year projection that 2020 would see a 14 million drop in number of poor people in the world[61].

Sivananthi Thanenthiran also said the garment and textile industry would be hardest hit by the pandemic, followed with tourism and civil aviation, as many large corporations around the world are cancelling orders. These sectors make a large contribution to the economy of many ASEAN countries. At least 2.5 million Vietnamese are dependent on the garment and textile industry. In Indonesia and Cambodia the number is estimated to be 750,000 workers. The majority of workers in this sector are women.[62]

The poor are also particularly vulnerable in times of pandemic. Those living in sub-standard, crowded housing are at risk contracting infection from others due to challenges in implementing physical distancing. Low and medium-income ASEAN countries are especially vulnerable. World Bank data from 2014 indicated that, 38%, 55% and 22% of urban populations in the Philippines, Cambodia and Indonesia respectively were living in slums.

Even in developed countries such as Singapore, the poor experienced similar problems. The country had its COVID-19 cases tripled since early April with most of the new cases discovered among migrant workers from India and Bangladesh who lived in cramped dormitories and were unable to self-quarantine or practice physical distancing.

Over 200,000 migrant workers live in dormitories in Singapore, often with 10-20 men sharing a single room. Built to accommodate workers who work in the construction and cleaning industries as well as other major industries, the utilitarian complexes at the fringes of the city-state had turned into dens of infection. As of April 28, the dormitories accounted for 85% of Singapore's 14,951 COVID-19 cases.[63]

61 ILO, Almost 25 million jobs could be lost worldwide as a result of COVID-19, says ILO, 18 March 2020.

62 The ASEAN Post, Garment industry hit hard by COVID-19, April 2, 2020.

63 Time.com, Singapore Was a Coronavirus Success Story—Until an Outbreak Showed How Vulnerable Workers Can Fall Through the Cracks, April 29, 2020.

Domestic Violence

Another growing impact of the pandemic is an increase in cases of domestic violence. This increase, Sivananthi Thanenthiran said, was reflected for instance in the growing number of calls made to domestic violence hotline in Malaysia. After movement restrictions were put in place in the country, the number of calls went up by 57% in March 2020.

In a bid to address the rise in cases of domestic violence, Malaysia's Ministry of Women, Family and Community Development issued a series of tips. One of the tips suggested women mimic the voice of the cartoon character Doraemon instead of nagging their husbands. The announcement was met with uproar by the country's civil society. The ministry had since withdrawn their suggestion.[64]

Malaysia also reopened the *Talian Kasih* (Love Line) hotline to deal with and act on domestic violence cases under the 1994 Domestic Violence Act. The hotline had been closed due to the partial lockdown in the country. Following massive backlash from women politicians and organisations, the government then had the hotline reopened.[65]

In Singapore, calls to the AWARE Women's Helpline rose by 33% in February 2020 compared to the same month in the previous year. The police also recorded increasing reports on the issue. Out of 476 reports filed with the police between 7 April and 6 May 2020, the majority of cases were related to domestic violence. This indicates an increase of 22 percent compared to the monthly average of 389 similar cases prior to the lockdown in Singapore.

Other Pressures on Women and Vulnerable Groups

According to Sivananthi Thanenthiran, before the pandemic, women in Asia Pacific spent four times more time on caretaking duties than men. For example, women who work from home also take care of their family and others at the same time. COVID-19 pandemic only widened the disparity in caretaking job distribution.

The pandemic's economic repercussions also brought about greater pressure on women. On April 1, 2020 the residents of San Roque, a city in Quezon, Philippines, including women and children, took to the streets to ask for food aid. Instead of addressing their demand, the authorities arrested and detained 21 of them, including five women. They were charged with four offences. Women were also arrested for breaking the quarantine, as the government only allowed one member of each household to leave the house. To exceed this number meant risking arrest and detention.

On March 27 Juliet Espinosa, a 55-year-old schoolteacher, was arrested for posting criticism over the lack of appropriate response by the local government to the public health crisis that led to the residents going hungry. "We believe it's an uncommon criminal charge since many people were already voicing their criticisms of unfavorable government policies," Maria Sol from Tanggol Bayi (Defending Women) said.

Maria Victoria Beltran, a Cebu-based actress and businesswoman was arrested for posting her opinion on social media, which was construed as misinformation. Maria had written: "There are 9000 new COVID-19 cases in Cebu in one day, all from Zapatera. We are at the epicentrum of the solar system."

Teresita Naul, member of the Regional Council for North Mindanao was arrested on 15 March 2020

64 Nadia Setianto, "The disproportionate effect of COVID-19 on South East Asian Women: Case studies from Malaysia and Indonesia," *Australian Outlook*, May 6, 2020, http://www.internationalaffairs.org.au/australianoutlook/the-disproportionate-effect-of-covid-19-on-southeast-asian-women-case-studies-from-malaysia-and-indonesia/.

65 *Ibid*.

from her relative's residence in Lala, Lanao Del Sur. According to to Maira Sol Taule, she was falsely charged with kidnapping, unlawful confinement and destructive arson. "We are currently calling for the release of 609 detainees who have been arrested during the pandemic. Some 100 of them are women, 63 were ill or had young children to look after, and 47 of them were at the age group most vulnerable to COVID-19," Maria Sol Taule said.

Homeless women become victims of the enforced curfew. For instance, 69-year-old Dorothy Espejo Papel,[66] a homeless woman, was asleep on Leveriza Street, Manila, at 8.30 pm on 16 March 2020. She was reprimanded by security officers for not following curfew. She shouted in response and was arrested for breaking curfew and resisting the authority.

Impact on LGBTIQ People

Yen Nguyen, ASEAN SOGIE Caucus Programme Manager explained the impact of the pandemic on LGBTIQ people. An online survey by ASEAN SOGIE Caucus of members in Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam in early April 2020 clearly showed that the pandemic has left a significant impact on these communities. Part of the effect was cancellation, postponement or redesigning of activities to reflect the shifting focus to providing the public with essential necessities. Funding became more limited. Volunteer capacity was declining. The other impact was on access to information and medical supplies such face masks, alcohol, hand sanitizers, ARV medications and hormone replacement therapy (HRT).

The ASEAN SOGIE Caucus also received a lot of reports on transwomen being cast out in big cities such as Ho Chi Min City. Shunned by the community, these impoverished women were forced to work on the street or remain unemployed. As a result, they spent a lot of time in public spaces, often unable to practice social distancing or isolation, or even to wash their hands with soap.

Access to food has also become more problematic. As their income dropped, many LGBTIQ people have become incapable of buying adequate food supplies and other necessities while their area was on lockdown. Some local government provided basic supplies, but there were still a lot of challenges. "For instance, in Indonesia transwomen are not receiving direct government aid. In the Philippines, the provision of basic supplies by the government was very limited and this has come to our collective attention," Yen Nguyen said.

Most of ASEAN SOGIE Caucus members work part-time as freelancers, in the informal sector, or running small business. They were certainly impacted by the serious repercussions of COVID-19. Local LGBTIQ business-owners had trouble paying off loans since their businesses were closed. Many members who work in the entertainment industry, or as sex workers, beauty salon employees, and freelancers were unable to carry out their work were not supported by government economic aid. Some organisations expressed concerns that the crisis would force members to focus on making a living and lose the motivation to work for their organisation.

In addition to the economic impact, ASEAN SOGIE Caucus also recorded mental health problems faced by LGBTIQ people. Anxiety, depression, moodiness, problems with sleeping, exhaustion, negative health habits, and a feeling of helplessness were some of the reported symptoms. Some members were also experiencing domestic violence. "For instance, in Singapore we learned that cases of domestic violence have been on the rise during the pandemic. But LGBTIQ individuals have little trust in the authority/government, so they do not report the violent treatment that they experience," Yen Nguyen said.

66 Inquirier.net, Old woman sleeping on street in Manila nabbed for curfew violation, March 17, 2020.

Summary

- Women, people with diverse SOGIESC, and those who are living in poverty are forced to live in a precarious situation, as the measures related to COVID-10 have brought disproportionate impact to their lives and wellbeing;
- Some government policies to contain the outbreak with quarantine have disproportionally affected women, including leading to an increase in cases of domestic violence, for instance in Malaysia, Indonesia and Singapore;
- Like women, the LGBTIQ community has been disproportionately affected by the pandemic. Among other things, the economic crisis brought on by the pandemic has limited the access of some LGBTIQ people even to basic supplies such as food.

Recommendations

- States must ensure that women and girls have access to reproductive health services, including contraceptives, abortion, prenatal and post-partum care during the pandemic regardless of their background, age, sexual orientation, marital and COVID-19 status;
- ASEAN governments and ASEAN institutions must ensure that the needs of women and girls, LGBTIQ people and other at-risk groups are at the centre of COVID-19 response plan. This includes equitable, accessible and discrimination-free processes establishing eligibility for aid programs; help in getting gender-friendly hygiene supplies; adequate response to cases of violence through access to the police, counselling services, and safe houses;
- ASEAN institutions and ASEAN governments must implement women and children protection policies against all kinds of gender-based and age-based violence;
- ASEAN governments must respond positively to the UN High Commissioner for Human Rights Michelle Bachelet call for release of detainees, including women and other rights advocates.

Chapter IV:

COVID-19 through the Lens of Youth and Children

Excerpts from Webinar IV:
Children and Youth during COVID-19 – Their Rights and as Human Rights Defenders
29 April 2020

Laws, policies and practices by governments of ASEAN Member States to tackle the COVID-19 pandemic have dealt a blow to the economy of every state in the region, with real repercussions for the youth community. Parents with less than sound economic situations have chosen to stop their children's education. The crisis had dried out job opportunities and shrunk the chances of the young generation entering into the workforce. The closing down of schools has forced children to spend more time at home where internet access presents its own challenges for online schooling.

Impact on Young Workforce

Ruthra Mary Ramachandran, Southeast Asian Studies activist from the University of Malaya in MalaysiaAktivis Studi Asia Tenggara, Universitas Malaya, Malaysia, said that the pandemic has had a real impact on the young generation in Malaysia. With a population of 31 million, Malaysia now has 6 million citizens aged 15-29 in the workforce. The pandemic, which has crippled the economy, has further reduced young people's chances of finding employment. They face the greatest risk of becoming unemployed.

According to Ruthra Mary Ramachandran, studies have showed that youth aged 15-20 are 1.7 times more likely to be unemployed than young adults (aged 20-24). 15-20 year-olds are also five times more likely to remain unemployed than the workforce in general. Most of these youth have dropped out of schools and were forced to work. "The widening gap will only serve to create a lifelong persistent effect on these youth," she said.

Ruthra Mary Ramachandran said that the COVID-19 pandemic has exacerbated existing problems including disparity between skilled workers and unskilled ones, due to the plummeting job opportunities. "Even worse for certain youth demographics, including youth with disabilities, immigrants, those from geographically remote communities, or those without digital access, who had been thrust into more dire difficulties. This is why Malaysia needs to think ahead on how to ensure addressing, without discrimination, youth professional training needs in the wake of the pandemic," she said.

The current situation has added to the region's youth's vulnerability. Financial insecurity has resulted in increased family conflicts and reduced access to housing. These in turn could undermine the youth's mental health and contribute to other social problems. "The consequences are not limited to individuals but have a significant impact on national and regional socio-economic and political stability," said Ruthra Mary Ramachandran.

Mueda Nawanat, a Thai youth rights advocate, said that the pandemic has also impacted the youth as a consequence of their parents' economic hardship. The pandemic has cost many parents their jobs and income. "In Thailand, when people lose their job and income, they cannot afford to put their children through school," she said.

Ruthra Mary Ramachandran's observation that migrant youth also experienced a major impact of the pandemic was elaborated by Mueda Nawanat. In Thailand, some young migrant workers chose to return to their home countries, while other opted to stay. "When they lost their jobs, they could not support their family financially, they don't have enough to eat, and they may not be able to afford school for their children. The kids dropped out of school and we are concerned that they will become child laborers or be victims of child trafficking," said Mueda Nawanat.

In Thailand, those without citizenship - migrant workers, refugees - and homeless people are often deprived of access to aid. Meanwhile, during the lockdown, they still have to spend money on rent and food. "Thailand has recently rounded up homeless people for living outdoors. I believe it is our duty to protect them, but the laws are not on their side. In difficult situations they get rounded up instead," Mueda Nawanat said.

Mueda Nawanat added that the Thai government had issued an order to shut down schools until July in a bid to curb the spread of coronavirus. The order has meant that classes were now held online. "But we know what the situation is in the villages. Not everyone has access to the internet or even electricity. This is a huge challenge not only for Thailand but also our neighboring ASEAN countries," she went on.

Challenges to Youth Political Activity

Apart from the economic effects, the pandemic has also impacted the youths right to freedom of expression. According to Mueda Nawanat, prior to the lockdown in Thailand that started on March 26, 2020, university students were organizing two-hour daily flash mobs to express their opinions on political issues. These kinds of activity automatically came to end once lockdown was put in place. "Discussions on political issues are still being held for limited participants in Thailand. While gathering is prohibited, we could still express our opinion and share our ideas online. We need to be extra careful in expressing our ideas though, since we could get arrested by the government for doing so," Mueda Nawanat said.

Mueda Nawanat said that some youth have taken to raising public awareness on the COVID-19 pandemic by explaining what it is, how to stay healthy and safe, how to prevent and avoid the disease, and how to protect oneself. "Unfortunately, in Myanmar, young people who had tried to provide such information were met with little trust from their elders and the authorities, who claimed that these people are young and therefore inexperienced."

Astried Permata, General Coordinator of Indonesian youth group Pamflet Indonesia, said that the pandemic has had a tremendous impact on marginalised communities including women and the youth in the country. Data from the Ministry of Protection of Women and Children revealed that 30 percent of female workforce have been laid off during the pandemic. There are also indications of increased domestic violence against women and children.

The COVID-19 pandemic, said Astried Permata, has affected human rights defenders as well. They could no longer take to the streets of Jakarta due to the lockdown imposed by the decree of the governor Jakarta. "For instance, the *Kamisan* [Thursday commemorative sit-in] in front of the [presidential] palace cannot be performed as usual on Thursdays," she said. The *Kamisan* was a forum for human rights activists to demand that the government to deliver on their promise to investigate unsolved cases of human rights violations.

Lockdowns have also impacted activities, particularly in terms of consolidation and meetings. Digital communications are riddled with challenges. Nevertheless, Astried Permata said, human rights defenders remain active and have adapted to the new situation by taking advantage of digital platforms. Discussions are held as webinars while meetings are organised on Zoom and similar platforms. "The situation forces us to think harder and more creatively on how to push for social changes from home," she added.

The migration of activism to digital platforms is not without its own set of problems. According to Astried Permata, a number of activists have voiced concerns over data security and privacy protection. The news that Zoom had sent its user data to Facebook as well as suspicion of trading of private data, was a particular concern, on top of fear of repression and physical and digital assault on human rights activists.

Hazel Bitana, Children's Rights Coalition (CRC) Asia Program Manager, said that adults are responsible for supporting children and youth. They have to provide space for the youth to express themselves, facilities where they can have peer discussions, youth-friendly platforms, as well as the opportunity for them to be heard by the public without causing them any fear or putting them in danger.

The youth, said Hazel Bitana, have the right to seek and receive information on what is going on around them. "Children and adolescents are more than just beneficiaries; they are also active citizens. Throughout the pandemic they also want to be involved in protecting themselves, their families and their friends. They want to continue their advocacy and be publicly involved," she said.

Fatimah Zahra, ASEAN Youth Forum coordinator, said that the current situation should remind us of the power of solidarity and joint collaboration in the limited space available. Now is the time to work together and reach out for one another in the new normal that is equal and free from discrimination, inclusive, and community oriented. "The lesson to learn from the pandemic is regional solidarity and action on the local level," she said.

Yuyum Fhahni Paryani, Indonesian representative to ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) said that the governments of ASEAN Member States have agreed on a number of commitments to protect vulnerable communities, especially children, women and people with disabilities. These commitments include the Vientiane Declaration on Transition from Informal Employment to Formal Employment towards Decent Work Promotion in ASEAN[67], strengthening of education system for dropouts among children and the youth[68], and the Declaration on the elimination of violence against women and children[69]. "ASEAN has signed many declarations on children and the youth, but these are not binding," said Yuyum Fhahni Paryani.

It should be noted that all ten ASEAN Member States have ratified the UN Convention on the Rights of the Child,[70] as well as the UN Convention on the Elimination of All Forms of Discrimination against Women.[71] Unlike the ASEAN declarations, these are both international treaties which states parties are legally bound to implement.

Youth Involvement Initiatives

Roshni Basu, UNICEF Regional Advisor on Youth Development and Participation said there are three principles of youth participation according to UN CRC and the UNICEF. These are the the rights to freedom of expression (including to seek, receive and impart information), and the right to freedom of thought, conscience and religion, which have to be considered.

Roshni Basu cited an example from Palu, Indonesia, an area that had been devastated by the September 28, 2018 earthquake and tsunami that claimed the lives of over 1,900 people. Children and youth were involved in the emergency response, taking part in workshops to identify issues and solutions together with the general public and local government. "Meaningful youth participation must include a safe and inclusive opportunity for the youth to form and express their views. Furthermore, the expression of these views must be freely facilitated," said Roshni Basu in conclusion.

---

67 Vientiane Declaration on the transition Transition from Informal Employment to Formal Employment towards Decent Work Promotion in ASEAN, adopted by the ASEAN Summit, 6 September 2016, https://asean.org/storage/2016/09/Vientiane-Declaration-on-Employment.pdf.

68 https://asean.org/storage/2016/09/ASEAN-Declaration-on-OOSCY_ADOPTED.pdf

69 https://www.asean.org/storage/images/2015/November/27th-summit/ASCC_documents/ASEAN%20Regional%20Plan%20of%20Action%20on%20Elimintation%20of%20Violence%20Against%20WomenAdopted.pdf

70 UN Convention on the Rights of the Child (CRC), adopted by UN General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990.

71 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by UNGA resolution 34/180 of 18 December 1979, entry into force 3 September 1981.

Summary

- The economic crisis spurred by COVID-19 has cut down on the number of jobs, further reducing youth's chances of getting access to the job market.
- The pandemic has adversely affected the right of youth to express themselves and put them under particular strain. However, there are other positive avenues that may be explored.
- Lockdowns put a hindrance on youth consolidation and participation. Some youth circumvented the issue by moving their activism online.
- ASEAN has a number of commitments to address issues relating to women and children. In addition, all ASEAN Member States are bound by international treaties protecting women's rights and children's rights.

Recommendations

- ASEAN and its Member States should strengthen public-private collaboration to recruit, retain and train young employees, as well as develop the capacity of young workers trapped in low paying jobs;
- ASEAN and its Member States must provide guidance and support to allow the youth, particularly those with different abilities in the region, to acquire more information on career choices, access to development, and guidance from legitimate source;
- ASEAN governments should to follow best practices to manage young workforce and formulate the necessary strategies to promote rewarding and fulfilling jobs for the youth on the regional and national levels, even in this particularly challenging time;
- Civil society organisations need to push their respective governments to respect their obligations under the CRC and CEDAW as well as implement ASEAN declarations relevant to children, and youth.

Chapter V:

COVID-19 and its Repercussions for Migrants, Refugee, Internally Displaced Peoples and Ethnic Groups

Excerpts from Webinar VI:
Seeing the Invisible and Forgotten Amidst the COVID-19 Crisis
15 May 2020

The COVID-19 outbreak has not only led many economies close to paralysis. It has also significantly hampered human mobility, which has especially affected vulnerable groups such as refugees fleeing conflict or war, stateless people, asylum seekers, internally displaced persons (IDPs), and undocumented migrants. Groups who, even before the pandemic, were already facing discrimination and abuse.

Several ASEAN Member States have used the COVID-19 pandemic as an excuse to close their borders and turn away those fleeing conflict, war and persecution in their home countries. At the same time, those who have succeeded in crossing the borders are not safe either. Instead, they are still prone to harassment, discrimination and violence from the government as well as local residents.

They have also faced difficulties getting access to basic needs such as food and healthcare during the pandemic. According to UNHCR, as of the end of 2019 there were 79.5 million forcibly displaced people: Refugees 26 million (including 5.6 million Palestinian refugees); IDPs 45.7 million; Asylum seekers 4.2 million; and Venezuelan who fled their country 3.6 million.[72]

More than two-thirds of 20.4 million refugees under UNHCR's mandate originated from five countries: Syria (6.6 million), Venezuela (3.7 million), Afghanistan (2.7 million), South Sudan (2.2 million), and Myanmar (1.1 million). Most of the Rohingya refugees who were forced out of Rakhine State by Myanmar military forces' violence are now living in overcrowded refugee camps in Cox's Bazar, Bangladesh. Aside from Bangladesh, according to UNHCR, as much as 101,280 Rohingyas are registered in Malaysia.[73]

Sanam Amin, Programme Officer for the Asia Pacific Forum on Women, Law, and Development (APWLD), said that the ASEAN region currently does not face any international wars. However, it is still dealing with internal armed conflicts, extremist groups and fundamentalism. Internal armed conflicts are ongoing in Myanmar, as are conflicts such as in West Papua, where groups within the local population are demanding independence from Indonesia.

On 1 July, the UN Security Council called for a global ceasefire to reduce conflict escalation and allow countries to focus on addressing the pandemic.[74] The resolution demands "a general and immediate cessation of hostilities in all situations on its agenda," making an exception in the cases of fighting against designated terrorist organisations.[75] It followed an earlier appeal by UN Secretary-General António Guterres on March 23, 2020, urging warring parties to refrain from hostilities and start forming coalitions and dialogues to face "a common enemy."[76]

At present, armed conflicts still raged in Afghanistan, Yemen, Libya and elsewhere.

"This is a significant challenge for humanity because there are political elements at play. A ceasefire will certainly lay a great impact on women and vulnerable groups, especially those living in conflict areas," Sanam Amin said.

During this pandemic, Malaysia has seen a upward trend in Xenophobia. Rachel Tan, Programme Officer at the Asia Pacific Refugee Rights Network (APRRN), said that one of the most serious manifestations of this trend followed Malaysia's decision to close its maritime borders and safeguard

72 UNHCR, Figure at a glance. https://www.unhcr.org/figures-at-a-glance.html

73 UNHCR, Figure at a glance, https://www.unhcr.org/figures-at-a-glance-in-malaysia.html.

74 Resolution 2532 (2020), adopted by the Security Council on July 1 2020, https://undocs.org/en/S/RES/2532(2020).

75 *Ibid.*, paragraphs 1, 3.

76 UN.org, Secretary-General's Appeal for Global Ceasefire, March 23, 2020. https://www.un.org/sg/en/content/sg/statement/2020-03-23/secretary-generals-appeal-for-global-ceasefire

its territories as a response to COVID-19. During April 2020, Malysia refused entrance to boats carrying Rohingya refugees in April, even when they had been adrift for weeks.

On 16 April, the Malaysian navy intercepted a boat with approximately 200 Rohingya refugees on board off the coast of Malaysia and prevented it from entering its territorial waters. The fate of the vessel is still unknown. A day earlier, Bangladesh coastguard officials intercepted another boatload of Rohingya refugees that had been turned away from Malaysian waters almost two months previously. [77]

As many as 382 starving Rohingya refugees were taken off the boat. Survivors reported that at least 30 passengers had died before Bangladesh officials rescued them. The Malaysian government claimed that their action was out of fear that the foreigners would bring COVID-19.

The Malaysian government's refusal to rescue and allow in the Rohingya refugees drew criticisms from human rights activists. "Under international law, public health measures must be proportionate, non-discriminatory, and based on available scientific evidence [...] The pandemic does not justify [...] turning away boats in distress, risking the right to life of those on board. Malaysia's pushback policy also violates international obligations to provide access to asylum and not to return anyone to a place where they would face a risk of torture or other ill-treatment," Human Rights Watch reported.[78]

On the other hand, the event also triggered anti-Rohingya sentiments on Malaysian social media. "In the last few months, there have been much xenophobia in Malaysia targeting Rohingya, especially after the government pushed Rohingya boats back into the sea," said Rachel Tan.

Within a short time after the incident, Malaysian social media was filled with anti-Rohingya comments and petitions calling for the deportation of the refugees. This also coincided with the emergence of a video where a Rohingya activist is depicted as demanding citizenship and other rights for asylum seekers and refugees in Malaysia. This highly circulated video was hugely attacked. "We Malaysians do not want new troublemaking Rohingya refugees in Malaysia," said a user in a comment section of an online article on Rohingya in a local media.[79]

To neutralise the situation, 17 Rohingya groups in Malaysia published a joint statement apologizing for the video, while the man who was seen talking in the video demanding citizenship said that the recording was fake. He also said that he is now living in fear due to the flood of threats against him and other Rohingya.[80]

Rachel Tan added that Xenophobia in Peninsular Malaysia was mostly caused by a lack of understanding and false information. Such hateful sentiments are usually expressed through social media-including Facebook, where countless new groups have emerged spreading false rumours and further worsening prejudice.

However, Xenophobia has not stopped at social media. Some hateful comments were also made in public speeches, not only targeting Rohingya but also other refugees. According to UNHCR, aside from refugees from Myanmar, it had also registered in Malaysia approximately 24,740 refugees and asylum seekers from other countries, including 6,650 Pakistanis, 3,640 Yemenis, 3,270 Somalians, 3,270 Syrians, 2,650 Afghans, 1,760 Sri Lankans, 1,230 Iraqis, and 770 Palestinians.[81]

---

77 Human Rights Watch, Malaysia: Allow Rohingya Refugees Ashore, April 18, 2020, https://www.hrw.org/news/2020/04/18/malaysia-allow-rohingya-refugees-ashore.

78 *Ibid*.

79 Ray Sherman and Nisha David, "In Malaysia, A Haven for Refugees, Anger Grows against Rohingya," *Benar News,* April 27, 2020, https://www.benarnews.org/english/news/malaysian/Rohingya-refugees-04272020185533.html.

80 Benar News, In Malaysia, A Haven for Refugees, Anger Grows against Rohingya, April 27, 2020.

81 UNHCR Malaysia, Figure at a glance. https://www.unhcr.org/en-my/figures-at-a-glance-in-malaysiahtml?fbclid=IwAR1qB1psssb4DobWHLgWrj9mTFQxvoqibKu0QFlDNvr0TZSGhhJ3Ay04x10

In addition to refugees, those who helped or voiced Rohingya's aspirations also became targets. For example, in early May South China Morning Post correspondent Tashny Sukumaran was interrogated by Royal Malaysian Police following her reporting on mass raids by the authorities targeting Rohingya and other refugees.[82]

In the article, the South China Morning Post described the arrest of hundreds of migrants and refugees by police and immigration officials in three buildings in Kuala Lumpur known to host refugees, Selangor Mansion, Malayan Mansion, and Menara City One. The buildings were under surveillance as they were located inside a red zone, where people were discouraged from entering or exiting the area as a measure to contain the Coronavirus pandemic. Children were among those arrested, and the detainees were arrested and held in conditions that placed them at high risk of being infected.[83]

The European Rohingya Council's ambassador to Malaysia, Tengku Emma Zuriana Tengku Azmi, has received a lot of hate texts and threats for defending the Rohingyas. She even had to file a report to the Malaysian Communication and Multimedia Commission (MCMC) after receiving online threats--including rape threats, since April 21, when she called for Malaysia to review its policies after denying Rohingya refugees[84].

Unfortunately, the Malaysian government has not shown any reaction to the problem of Xenophobia. "The Malaysian government still sees the COVID-19 issue and its relationship with refugees as black and white," said Rachel Tan. "Inequality, injustice, corruption, and racism are fundamental structural problems related to the challenges faced by refugees and migrants," she added.

Interestingly, even though Xenophobia is rife in Peninsular Malaysia, the Sabah region seemed to be unaffected by it. According to Dr Ayesah Abubakar, Head of Ethnography & Development Research Cluster Head at Borneo Institute for Indigenous Studies, Sabah is different from the rest of peninsular Malaysia because there have been no arrests or detentions of those with no legal documents. "So they can still receive health checks at a health clinic," Dr Ayesah Abubakar said.

Sabah's government also launched "Hasanan Spesial Grant" funding that can support not only Sabah residents but also refugees and other vulnerable people. Even though no detailed information has so far been provided on how successful the funding has been. Dr Ayesah Abubakar said that the challenge for undocumented migrants in Sabah is three-fold: access to food, employment, and healthcare facilities since most of them are now unemployed. "Not being able to access food supplies, health care, and loss of livelihood, are major challenges for the immigrant community," said Abubakar.

The Myanmar government, for its part, has been criticised not only for their atrocities against the Rohingyas. They have been under scrutiny for blocking internet access in Rakhine State and Chin State. The Myanmar military has got themselves covered when the pandemic came as they already have a system and economic prowess in handling the situation. "However, when the pandemic became too much trouble, Myanmar military received weapons assistance from China, as the conflict in Rakhine and Chin State heat up," said Sam Sai Kham, Former Executive Director of METTA Development.

82 ABC.net.au, On World Press Freedom Day, Malaysia investigates journalist over 'provocation'. May 4, 2020.

83 South China Morning Post, Coronavirus: hundreds arrested as Malaysia cracks down on migrants in COVID-19 red zones, May 1, 2020.

84 Malaysiakini, Activist lodges MCMC report after receiving online rape threat, April 28, 2020.

Sam Sai Kham also said that after negotiations, the government and armed Myanmar ethnic groups finally agreed on a ceasefire. The truce was announced by Myanmar military (Tatmadaw) on May 9 and applied to the whole country with one exception: the Arakan Army (AA)'s area of operation in Rakhine and Chin States,[85] Where violence continues to rage.

Furthermore, the Myanmar government's move to declare the Arakan Army a terrorist on March 23 had made it more difficult for humanitarian assistance deployment in managing COVID-19 in the area. The curb on internet access exacerbated the situation. "The internet blackout has led to a lack of information and public health education for internally displaced people (IDPs) in Rakhine State. There are approximately 163,000 IDPs in Rakhine State and more than 6,000 ethnic Chin group members," said Sam Sai Kham.

The internet access blackout was also accompanied by harsh measures against those trying to peacefully voice criticism of the government. At least 560 freedom of expression cases have led to prosecutions. "A total of 67 cases targeted journalists. Eight were charged with anti-terrorism offences, including media belonging to ethnic groups that frequently cover human rights violations and conflicts in Rakhine State," said Sam Sai Kham.

Even though the treatment of vulnerable groups has been far from ideal, there have been initiatives by communities, local NGOs, and even armed groups to help those facing the COVID-19 pandemic. In Sabah, Malaysia, for example, community groups collaboratively helped undocumented migrants by providing food assistance. The Sabah government also conducted intensive tests in areas with a high concentration of undocumented migrants to contain the COVID-19 outbreak.

In Myanmar, armed ethnic groups have been working together with the government in managing the pandemic. A team representing the government met with representatives of 10 armed ethnic groups and signed a National Ceasefire Agreement on March 5 in Yangon to discuss cooperation to manage the outbreak. According to the Myanmar Times, most of the armed ethnic groups operated in Myanmar's borders with Thailand and China.

The government's Peace Negotiation team also invited the Arakan Army to work together against COVID-19. They sent out information materials about the pandemic, including posters, so that they can share the information on how to keep themselves safe from COVID-19 infection. "The Myanmar government has requested the armed ethnic groups to collaborate in managing the outbreak, but [the relationship] remains fragile as they already labeled the Arakan Army as a terrorist group. The goodwill is there, but it remains difficult," said Sam Sai Kham.

Sanam Amin said that the COVID-19 pandemic and the difficulty for refugees to gain access to health facilities have indirectly created the impression that access to healthcare is limited to citizens. "It is time we have access to more reliable health facilities that can treat anyone irrespective of which country they came from. COVID-19 proved that leaving one person behind with no access to healthcare can endanger others," kata Sanam said.

Sanam Amin also recommended that policymakers involve refugees more in planning and putting in place policies and regulations that may impact them. "We have to be creative and involve those people, who are also facing this pandemic," Tan added. Momentum from managing the outbreak can be used to increase solidarity and reconnect, to find the best solutions for all of the challenges that we are currently facing.

85 Myanmar Times, Myanmar military declares truce, except in parts of Rakhine, Chin, May 9, 2020.

Summary

- Some of the most vulnerable groups during the COVID-19 pandemic have been refugees, asylum seekers, , stateless people, and undocumented migrants.
- Several ASEAN Member States have used the need to control the outbreak to justify the arbitrarily close their borders before migrants and asylum seekers denying shelter and protection from those looking fleeing conflict, war and persecution as experienced by the Rohingya.
- There has been an increase in Xenophobic attacks, both verbal and physical, on foreigners, for instance towards the Rohingya refugees in Malaysia.
- The difficulty for refugees accessing health facilities during the COVID-19 pandemic has created the impression that access to healthcare is restricted to citizens.

Recommendations

- Civil society needs to urge ASEAN to declare and in practice reach a region-wide ceasefire so that governments can focus more on protecting human rights while halting the COVID-19 spread.
- Need to urge governments to improve private economic sectors by involving disadvantaged immigrant groups on the agenda.
- States should involve refugees in planning and implementing all policies that impact them.
- Governments should support in assisting disadvantaged groups including refugees and asylum seekers and undocumented migrants, and allow NGOs, international institutions (e.g. UNHCR) to assist them.
- Human rights principles, especially non-discrimination must be adhered to when facing the current health and economic crisis.

Chapter VI:

Will Human Rights Survive COVID-19 in Southeast Asia?

Excerpt sfrom Webinar V:
Will Human Rights survive COVID-19? Navigating human rights during and after the pandemic
8 May 2020

Warfare-like or military approaches, including the emergency laws and measures, by some countries in managing the COVID-19 outbreaks have shown to be misused in order to impede the legitimate work and further endanger the safety of human rights defenders. Such approaches have involved arrests of people who violate curfews or defy lockdown orders, but also of people speaking up or commenting on the government's actions in dealing with the pandemic, or just criticising governments in other contexts. The government's move to use technology-based surveillance to monitor outbreaks may be helpful in containing them but can also be abused and pose a threat to human rights defenders. These measures disproportionately target community-based human rights defenders, among others are the land and environmental human rights defenders as well as indigenous people's rights defenders.

The Philippine Experience

One of the countries that utilise the warfare approach in managing the COVID-19 outbreak has been the Philippine Government. Philippine President Rodrigo Duterte, who was elected in June 2016, has used his notorious "war on drugs" campaign to overcome the pandemic. "The use of war as a framework or metaphor in combating COVID-19 is very dangerous," said Dr. Nymia Pimentel Simbulan, the Executive Director of PhilRights, a human rights institute.

She highlighted President Duterte's policies that saw COVID-19 as a matter of law and order, thus stressing that the pandemic can only be defeated when the people followed the country's rules and regulations. The drug war experience was dangerous because the state had used rampant killings and other violence, threats, and harassment. There was no room for citizens to question and criticise. Compliance with the State is the norm.

In the "war on drugs", President Duterte mobilised the police and the army to hunt persons suspected of being drug dealers, have them executed on the spot through mechanisms categorised as extrajudicial killings. The Philippines had declared the COVID-19 pandemic as a national emergency and had expanded law enforcement and military powers. These two institutions play a vital role in a state of emergency.

Duterte's "drug war" had drawn international censure and criticism. In a March 2019 report, the United Nations High Commissioner for Human Rights said that around 27,000 people[86] were executed, without anyone being brought to justice except in one major case. The Police denied this figure but admitted to killing more than 6,600 people[87]. The International Criminal Court (ICC) conducted an initial investigation into allegations that President Duterte and Philippine government officials had committed mass killings and crimes against humanity in his crackdown on drugs. Subsequently, the Philippines officially left the ICC[88].

In managing the pandemic, President Duterte also said that he had given orders to the police and military to shoot down anyone who created "problems" during a temporary quarantine period/ lockdown. Police have also conducted patrols to ensure people's compliance with curfews. Some of those who were caught allegedly violating the curfew were thrown into a dog kennel. In her presentation, Dr. Nymia Pimentel Simbulan showed a photo of a group of people confined in a cage similar to those used for pet dogs.

86 OHCHR, High Commissioner Bachelet calls on States to take strong action against inequalities, March, 2019, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24265

87 Human Rights Watch, UN Needs to Act Now to End Philippines Killings, June 24, 2019.

88 New York Times, Philippines Officially Leaves the International Criminal Court, March 17, 2019.

Health workers have not received adequate protection. They have also suffered attacks and harassment from members of the community—as well as inadequate appropriate Personal Protective Equipment (PPE). According to media reports, health workers were expelled from their homes, refused entry on bus rides, as well as thrown out from restaurants as people became worried that they may contract the virus from them.[89]

Looking at the fact, Dr. Nymia Pimentel Simbulan believed that human rights defenders are facing a great challenge and therefore need to campaign continuously according to their competence and expertise. Other essential tasks are lobbying Congress members, monitoring and documenting human rights violations during the pandemic, reporting on human rights violations, and working towards building international solidarity.

The Myanmar Experience

Rin Fujimatsu, Advocacy Director for Progressive Voice, Myanmar, shared the Myanmar experience during the pandemic. In contrast to other countries, many of the human rights violations in Myanmar occurred in the context of civil wars that have brought more deaths compared to COVID-19, which so far has caused a relatively small number of casualties in the country. Hundreds of thousands of Rohingya, for example, were forced out of Myanmar and sought protection in other countries, especially Bangladesh but also Malaysia and others.

A series of ethnic conflicts began shortly after the country, then known as Burma, and later Myanmar, became independent from Britain in 1948. The conflict have been described as the longest civil war in the world. Armed conflicts, waged by several ethnic groups against the authorities in Naypyidaw, have been responsible for the exodus of at least 1 million Burmese from the country.

Even though the country did not announce its first COVID-19 case until the end of March, in January, Myanmar's President Office announced the formation of a special committee to tackle the virus chaired by the Union Minister for International Cooperation and the Minister of Health and Sports.[90] Its first and second case were announced on March 23, and Myanmar issued a lockdown of a community in a Chin State village the next day.

President U Win Myint, on March 31, 2020 formed an inter-ministerial committee to coordinate the response to COVID-19 in the country, which had reportedly infected 15 people at the time, including one death. Among the functions of the Committee were to oversee investigations into those who had contacts with people infected with the disease and ensure that they arrested and quarantined as soon as possible.

While the country was facing the outbreak, according to Rin Fujimatsu, Myanmar's press freedom had also been steadily declining for the past three years.[91] According to a national survey of journalists in the Myanmar media, journalists felt that they lacked the freedom to express themselves and had received many injustices. A lot of independent media outlets also had to let go of staff due to a lack of financial resources.

The victory of the National League for Democracy under the leadership of Aung San Suu Kyi in the 2012 elections had briefly brought hope to journalists in Myanmar. They thought that they would no longer fear being arrested or imprisoned for criticizing the government or the military.

---

89 VOA News, Philippine Health Workers Battle Coronavirus, Harassment, April 7, 2020

90 https://en.wikipedia.org/wiki/COVID-19_pandemic_in_Myanmar

91 According to the RSF (Reporters without Borders), the 2020 Myanmar ranked 139 out of 180 states for press freedom, down from138 in 2019,, and 137 in 2018.

However, soon enough it became apparent that press freedom was not one of the priorities of Aung Sun Suu Kyi, who has been the head of the civilian government since 2016.[92]

Attempt to imprison journalists also occurred during the pandemic. On March 30, police arrested Voice of Myanmar (VOM) editor-in-chief Nay Myo Lin under sections of the Anti-Terrorism act for interviewing a spokesperson of the rebel group Arakan Army (AA) in Rakhine. Further, The Chief Editor of the Dae Pyaw, Zaw Ye Htet, was arrested on April 13 for allegedly publishing a false report on a death caused by COVID-19 in eastern Karen state.

Aside from imprisoning journalists, the Myanmar government also tried to block media that are considered critical towards it, using combatting fake information as an excuse. At the end of March 2020, the Ministry of Transportation and Communication ordered four cell phone operators to block 230 websites. However, the list included more than 60 critical media sites such as the Voice of Myanmar and Narinjara News, that frequently reported on the situation in Rakhine State.

The government argued that the restriction was a move to combat the spread of false reports about the Coronavirus pandemic. However, a study by the Open Observatory of Network Interference (OONI) in early May investigated the claim. It compared the blocked sites with a list of "fake news" sites created by the Myanmar Press Council. The comparison made it clear that not only sites that spread false news that was blocked, but also news sites that critically report on the government or conflicts from the perspective of ethnic minorities.[93]

Myanmar, a country with a population of 53 million people, is also holding a large number of political prisoners. Based on an April 2019 data, there were 331 political prisoners. The number almost doubled a year later to 587 prisoners. Amnesty International had called for the release of all prisoners of conscious, calling off all charges against peaceful protesters and immediately amending or revoking repressive laws used to imprison human rights defenders, activists, and other peaceful critics.[94]

Challenges for Human Rights Defenders

As an outlook, from February to July 2020, FORUM-ASIA documented over 80 cases of violations against human rights defenders (HRDs) related to COVID-19, affecting more than 220 HRDs, including family members, communities, NGOs and its staff, across 16 countries monitored in Asia. In Southeast Asia, The Philippines, Cambodia, and Thailand were the countries with the highest number of incidents recorded. Judicial harassment - oftentimes resulting in arrest; intimidation and violence; and the authorities' abuse in the enforcement of emergency law and/or other COVID-19 related measures are the most common attacks experienced by the defenders. Media workers, community-based (including environmental and indigenous people's rights defenders) and pro-democracy defenders were the most targeted groups.

The Head of Geneva Office at the World Alliance for Citizen Participation (CIVICUS) Susan Wilding said that Human Rights defenders, the media, and civil society have faced serious challenges during the pandemic. She called it "difficult times." The COVID-19 pandemic has also created many questions regarding the reach of human rights norms, including the right to freedom of expression on the Internet.

92 https://rsf.org/en/myanmar

93 Deutsche Welle, Press freedom in Myanmar regresses, May 29, 2020.

94 Amnesty International, Myanmar: Release jailed rights defenders and activists, 13 April 2020.

According to Susan Wilding, several governments have used technology-based surveillance to trace the movement of persons and monitor the spread of the deadly virus. This strategy is indeed needed to contain the outbreak. However, it can also potentially endanger human rights defenders. "This is a serious concern," Wilding said.

It is unfortunate that the some governments of ASEAN, namely Indonesia, Malaysia, Singapore, Thailand, Philippines, and Vietnam have adopted contract tracing applications that act as surveillance for the people's movement, data storage, and media files with minimal permission to perform its contact-tracing functions[95]. The utilization of these contact-tracing apps are done without necessarily ensuring that the principles of necessity and proportionality in any infringement of the right to privacy have been adequately met. In fact, most government In ASEAN have not adhered to the 17 principles on utilising digital tracking for COVID-19 as issues by the World Health Organisations.[96] 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's Mor-Chana apps utilise camera and record apps history with limited information for the users on what type of data will be collected.

CIVICUS also noted that during the pandemic, there has been an increase in censorship of information, activist arrests, repression of human rights defenders, and violations of the right to privacy. She observed that some governments have used the pandemic as an opportunity to stifle human rights defenders and the media. The lack of government transparency and accountability in managing the outbreak has contributed to these violations.

Joseph Cannataci, the UN Special Rapporteur on the right to privacy emphasised that COVID-19 should not be used as an excuse to carry out any form of oppression, including in the digital world and to legitimate 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.

Joseph Cannataci has warned the international community, during the launching of the UNSR's report on the recommendation on the protection and use of health-related data[97] in October 2019, about the enormous threats to privacy as a result of technology utilisation in health industry. In the report, he explained that health-related data is sensitive and has high commercial value. "There is a largely-hidden industry that is already collecting, using, selling, and securing health data—this has a major impact on our privacy," he added.[98] The UNSR called on all countries to adopt set of international standards on how to use and protect health-related data in the report, which is relevant to the current situation of COVID-19 pandemic.

At the webinar Joseph Cannataci added that during the pandemic, governments have used contact-tracing to monitor the spread of the Coronavirus including through smartphones. The majority of people also voluntarily submit their data. Therefore, he urged governments to use clear measures in using surveillance on the grounds of implementing a public health emergency mechanism.

---

95 Shepherdson, How intrusive are contact-tracing apps in ASEAN? Tech in Asia, June 2020, https://www.techinasia.com/intrusive-asean-contacttracing-apps

96 WHO, Ethical considerations to guide the use of digital proximity tracking technologies for COVID-19 contact tracing, May 2020, https://apps.who.int/iris/rest/bitstreams/1278803/retrieve

97 OHCHR.org, Recommendation on the Protection and Use of Health-related Data, October 2019, https://www.ohchr.org/Documents/Issues/Privacy/SR_Privacy/UNSRPhealthrelateddataRecCLEAN.pdf

98 OHCHR.org, UN expert warns of enormous privacy concerns over health data as he unveils international protection standards, 29 October 2019.

In the current situation, Joseph Cannataci continued, civil society has a crucial role in reminding governments of what needs to be done, increasing awareness on the importance of human rights protection, and pushing for a better democratic climate. CSOs have to ensure that their country has a clear policy on protecting personal data that complies with international law and standards.

He also urged governments to maximise the security of their encryption and of the private data of every person under their jurisdiction. In a pandemic situation, private data protection and medical services have to go hand-in-hand. Private data have an important role to play during the pandemic and needed to be appropriately managed. “Politicians have power and must be urged to provide solutions,” Joseph Cannataci said, adding that as UN Special Rapporteur on the right to privacy he had helped states in designing and providing solutions for policies on personal data to make them human rights compliant.

CIVICUS has made several recommendations to governments in the present context. Among other things, states should safeguard the right to freedom of expression during the pandemic, in line with international human rights law and standards. States are also obliged to provide essential information during the pandemic, prevent using violence in implementing their policies, and ensure the protection of private data. States must also guarantee that there is no discrimination based on race, sexual identity, gender orientation, nationality, religion or other status in the measures they take against the pandemic.

Summary

- Several ASEAN Member States used warfare-like or military approaches in managing the COVID-19 outbreak. Such approached, have involved human rights violations.
- During the pandemic, some countries, such as Myanmar, recorded an escalating trend in human rights violations in the form of restrictions on freedom of expression. This was marked by arrests of journalists and activists who had been critical of the government, including its management of the pandemic.
- Several states have utilised surveillance technology in managing the pandemic. One of the challenges is how to ensure that measures to control the disease respect human rights in the digital world, including having their personal data protected securely.

Recommendations

- Civil society needs to continuously advocate to counter the adverse effects of the pandemic on human rights. This may be done through lobbying parliament and governments to ensure laws, policies and practices comply with international human rights law and standards, document and report human rights violations, and build national, regional and international solidarity among human rights defenders.
- Civil society needs to ensure that governments have clear policy ensuring the protection of personal data and compliance with their legal obligation to protect and respect the right to privacy. In the pandemic situation as in 'normal' times, private data security and health care need to go hand-in-hand.
- Civil society should exert continuous efforts to push the state to protect freedom of expression of its people and media, to commit to avoiding violence in implementing anti-COVID-19 policies, avoiding discrimination, ensuring the safety of human rights defenders and allowing them to work free of harassment, intimidation and criminalisation.

Chapter VII:

COVID-19 and Disability Rights

Contribution from ASEAN Disability Forum and AGENDA

ASEAN's Commitments and Challenges during the COVID-19 Pandemic and Beyond

Over the years, ASEAN has strongly supported its disability community. It rallied all ten ASEAN Member States to ratify the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) so as to create a shared commitment to realizing the rights of its disability community. It has furthered this commitment by working with all Member States to meet the 17 sustainable development goals (SDGs); to leave no one behind. ASEAN has also brought together all its human rights commitments, achievements, and vision into one breakthrough regional disability rights action plan, which was adopted in 2018, the ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities[99] (Enabling Masterplan).

The current global health crisis caused by the COVID-19 pandemic has increasingly magnified the challenges the region has faced in promoting and protecting the rights of every person with disabilities in ASEAN. In less than six months, many of ASEAN's more than 90 million people with disabilities have lost access to routine healthcare, medical and non-medical countermeasures and treatments because of poorly designed containment measures that are often not consulted, coordinated or communicated with people with disabilities and their organisations. These poorly designed containment measures have disproportionately disrupted the disability community's way of life – from education to employment, access to information and social protection.

This chapter discusses the challenges that the disability community in ASEAN face; how people with disabilities and their organisations are coordinating, collaborating, and communicating with various state and non-state stakeholders; and how ASEAN can use its Enabling Masterplan to support the development of inclusive policies for COVID-19 response and recovery.

Navigating the Pandemic Landscape from ASEAN's Disability Community's Perspective

People with disabilities in ASEAN, like other marginalised groups, have been profoundly affected by the emergency response to the COVID-19 pandemic. People with disabilities who identify with other marginalised groups, such as on the basis of age, displacement, ethnicity, gender, religion or sexuality, can experience additional barriers to inclusion in emergency responses, and in some of these cases may be at a greater risk of contracting COVID-19. To reduce rapid and widespread viral transmission, governments have responded with containment policies, such as community lockdowns and self-quarantine orders. To maximise the protection given through these public health emergency responses while minimizing the negative effects, governments must adopt inclusive approaches that uphold the rights of ASEAN's people with disabilities.

The COVID-19 pandemic has resulted in an infodemic – an overwhelming volume of information on the crisis that can make it difficult for people to differentiate facts from fake news. Even while the global health crisis has prompted ASEAN Member States to ensure public awareness of the pandemic, much of this information has not been accessible to people with disabilities, or failed to target them specifically. Accessible information uses sign language interpretation and/or closed captioning to make it possible for people who are deaf or hard-of-hearing to watch television announcements. It makes it possible for viewers who are blind or have low vision to read infographics flashed on the screen with the help of audio description, and it makes it possible for people with intellectual disabilities to synthesise complex data and statistics by using easy-to-understand explanations and terms. Organisations in Indonesia, Malaysia, and Myanmar have reported that information remains inaccessible to many in the disability community despite governments efforts to make COVID-19-related information publicly available through television and radio. To amplify the reach of the limited accessible information available, the disability community has been using popular communication

99 ASEAN Secretariat, ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities, Singapore 2018, https://asean.org/storage/2018/11/ASEAN-Enabling-Masterplan-2025-Mainstreaming-the-Rights-of-Persons-with-Disabilities.pdf

platforms, such as Facebook and WhatsApp, to keep the community up-to-date with the health crisis. People with disabilities and their organisations from across ASEAN have reported that pandemic containment measures have negatively affected their economic condition, from loss of employment to restrictions on business and entrepreneurship. Moreover, many people with disabilities working in the formal sector have lost their jobs as a result of businesses being forced to downsize, relocate to areas offering cheaper operating costs, or close entirely because of bankruptcy. Meanwhile, those working in the informal sector have also felt the impact of large-scale social restriction policies. Organisations in Thailand and Vietnam have reported that many people with visual disabilities working in the massage industry have lost their customers during the pandemic. In Indonesia, traders and small business owners with disabilities have found it difficult to run their businesses while public transportation has been restricted. These emergency measures have prevented them from transporting their production materials or finished goods to their customers. Challenges are further compounded for an estimated eighty percent of people with disabilities working in the informal economy where they lack protection under national labor laws.[100] As a result, they do not have basic labor rights; they also lack access to quality infrastructure, services or markets. In general, these informal sector workers do not have access to an economic safety net, such as unemployment insurance, when they lose their jobs during health crises.

Pandemic containment measures have also disproportionately disrupted education for many children with disabilities, often coming from poorer communities. Distance learning policies pose numerous challenges for children with disabilities and their parents. Education has often failed to be sufficiently inclusive of children with disabilities in the past, and the pandemic has magnified this problem. According to organisations in the Philippines and Thailand, quarantine measures and learning from home have amplified the inaccessibility of education and discrimination against learners with disabilities. Such challenges include: inaccessible learning platforms and devices used by the schools; little-to-no access to reliable internet connections; untrained educators expected to teach children with disabilities using universal design for learning principles within the virtual remote learning setting; the scarcity of multiple formats of learning materials and the unavailability of assistive learning tools; and the insufficient learning support services like health services, physiotherapy, behavioral and speech therapy.

Indonesia, Myanmar and Singapore, with elections scheduled in 2020 and early 2021, have election plans that have been (or are likely to be) impacted by the pandemic. According to people with disabilities and their organisations in these countries, people with disabilities have likely learned, or will learn, about changes to the election timeline or procedures through online and social media. In Myanmar, people with disabilities and their organisations are concerned about maintaining accessibility of voter registration procedures and voter education campaigns while keeping all stakeholders safe; however, the Union Election Commission has not yet come up with any guidance related to COVID-19 precautions. The Elections Department of Singapore (ELD) has recently released information on safely conducting elections during the COVID-19 pandemic, which includes providing election officials with PPEx and ensuring that all voters wear masks. Further, campaigning and election nomination processes in Singapore are likely to include online, including social platforms to minimise large crowd settings where the virus could spread. While the ELD has released information regarding additional measures being taken to safeguard the health of people 65 and older, they have not released any information regarding measures being taken to protect people with disabilities, who obviously are also at risk of contracting COVID-19. Many older people acquire disabilities as a result of age, so some of the approaches to ensure the safety and meaningful participation of older voters also promote inclusion of voters with disabilities.

As containment measures have disrupted economic and social activities, they have also restricted people with disabilities and their organisations from conducting conventional advocacy activities, which before the pandemic were held mostly in-person. Many organisations have been forced

100 ASEAN Secretariat, *Regional Study on informal Employment Statistics to Support Decent Work Promotion in ASEAN*, Jakarta, Indonesia, December 2019, https://asean.org/storage/2012/05/13-Regional-Study-on-Informal-Employment-Statistics-to-Support-Decent-Wo....pdf.

to close their offices and have their staff work from home. These organisations have also had to restructure their programs and activities to adapt to the current situation and effectively advocate for disability rights within the context of the global health crisis, including modifying coordination and communication strategies.

Showcasing ASEAN's Disability Community's Innovation: Responding to the Pandemic

For many people with disabilities, the exclusion they experience as a result of containment measures is not novel. Exclusions caused by inaccessible workplaces, schools, information, and processes have been barriers long before COVID-19 and these have only been intensified by the crisis. Because several of these challenges are familiar, so are several of the actions needed to overcome them. However, COVID-19 has required this inclusive agenda to have a new sense of urgency and scale. Action taken will have a multiplier effect: many of the solutions offered by people with disabilities and their organisations are based on universal design principles that lift the living conditions of all, even as they specifically lower barriers faced by those with disabilities.

As the global health crisis increases barriers to inclusion of people with disabilities in ASEAN, their organisations have shifted gears to continually advocate for disability-inclusive COVID-19 responses to governments, UN agencies and international human rights and aid organisations, while initiating direct interventions at the grassroots level. Organisations such as the ASEAN Disability Forum (ADF) and the General Elections Network for Disability Access (AGENDA) have held virtual meetings to share information on the most recent developments and good practices that could strengthen ASEAN's and the disability community's health crisis response. This on-going work simultaneously highlights the major challenges faced and the combined creativity and resilience demonstrated by people with disabilities and their organisations. Beyond the immediate developments, these conversations have begun to explore opportunities for inclusion in longer-term pandemic recovery.

The COVID-19 pandemic has shifted advocacy strategies of people with disabilities and human rights defenders across ASEAN. People with disabilities and their organisations are maximizing traditional and emerging communication tools such as telephones, emails and Voice over Internet Protocol (VoIP) platforms. They have also started organizing online meetings, workshops, and webinars – gradually replacing in-person group activities while containment measures are in place. In Myanmar, disability rights leaders have formed the COVID-19 Emergency Response Committee for Persons with Disabilities, composed of 31 national organisations of people with disabilities in collaboration with the Ministry of Social Welfare, Relief, and Resettlement to raise funds and increase awareness of the pandemic. In Malaysia, disability rights leaders are developing economic strategies to shift the disability community from government dependence to self-reliance and sustainable livelihoods. They have started to develop post-pandemic health and safety standard protocols for people with disabilities working in the massage industry. Malaysian organisations have also produced easy-to-read guides on navigating the pandemic and post-pandemic landscape. Currently, they are working with other advocacy partners to develop a multimedia version with audio description, cartoons and other formats of this guide. Malaysian disability rights leaders have also engaged with the country's Social Welfare Ministry to allow children with disabilities, including children with autism, to leave their homes for their regular walks with their guardians.[101] In areas where access to food is more limited, such as informal settlements, disability leaders have collaborated with non-governmental organisations to facilitate the distribution of food supplies.

Disability rights advocates are using accessible information and communication technologies to coordinate and communicate their efforts. For example, the ASEAN Intergovernmental Commission on Human Rights (AICHR) Indonesia is using social media to promote accessible healthcare and universal health coverage under the theme of "Fighting COVID-19: Human Rights Way." Indonesian and Philippine disability rights leaders have been closely working with their respective Ministries of

101 International Foundation for Electoral Systems, "Advocacy Success for Disability-Inclusive Responses to COVID-19 in Southeast Asia," *AFES*, April 17 2020, https://www.ifes.org/news/advocacy-success-disability-inclusive-responses-covid-19-southeast-asia.

Social Welfare in ensuring that social protection measures reach people with disabilities as well as in evaluating the effectiveness of social assistance. In Indonesia, Malaysia, Myanmar, Thailand and Vietnam, people with disabilities and their organisations have been exploring social media platforms and mobile communication applications to fill the information gap experienced by the disability community. Thai disability rights leaders have taken a step further by establishing an accessible hotline, a live channel that provides COVID-19 updates, and an accessible website that guides users with disabilities on how to access COVID-related social security schemes.

Persons with disabilities, COVID-19 and international human rights law

The prohibition of discrimination, including on the basis of disability, is a general (customary) rule of international law which all states must comply with.[102] In 2006, the UN adopted the UN Convention on the Rights of Persons with Disabilities (CRPD),[103] which all ASEAN Member States have subsequently ratified and are legally obligated to implement its provisions.

Among other things, the CRPD recognises that "persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability,"[104] and stipulates that "States Parties shall… Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons."[105] The CRPD specifically stipulates that "States Parties shall take… all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters."[106]

In early April 2020, responding to the COVID-19 pandemic, the Chair of the UN Committee on the Rights of Persons with Disabilities, the expert body charged with overseeing the Implementation of the CRPD, and the Special Envoy of the UN Secretary-General on Disability and Accessibility issued a joint statement. Among other things, the statement calls on states to "ensure the safety and integrity of persons with disabilities and accelerate measures of deinstitutionalisation of persons with disabilities from all types of institutions," to "adopt measures to appropriately respond to the COVID-19 pandemic, ensuring inclusion and the effective participation of persons with disabilities," and to "ensure that priority be given to address situations of poverty, and deprivation of persons with disabilities in their crisis management plans."[107]

In May 2020, the UN Secretary-General issued a policy brief on "A Disability-Inclusive Response to COVID-19."[108] Among other things the brief calls for "mainstreaming of disability in all COVID-19 response and recovery together with targeted actions," ensuring "accessibility of information, facilities, services and programmes in the COVID-19 response and recovery," ensuring "meaningful consultation with and active participation of persons with disabilities and their representative organisations in all stages of the COVID-19 response and recovery," and "establish[ing] accountability mechanisms to ensure disability inclusion in the COVID-19 response."

---

102 See for instance Article 7 of the Universal Declaration of Human Rights (UNGA res. 217 A(III), adopted 10 December 1948.) Article 2 of both the ICCPR and the UN International Covenant on Economic, Social and Cultural Rights (IESCR).

103 Adopted by the General Assembly resolution 61/106 on 13 December 2006, entered into force 3 May 2008.

104 Article 25.

105 Article 25(a).

106 Article 11.

107 Office of the UN High Commissioner for Human Rights, "Joint Statement: Persons with Disabilities and COVID-19 by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility," 1 April 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25765&LangID=E.

108 *UN Secretary-General's Policy Brief: A Disability-Inclusive Response to COVID-19, the UN,* May 2020, https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/05/sg_policy_brief_on_persons_with_disabilities_final.pdf.

Towards Resilience: Creating an Enabling Environment in ASEAN

As ASEAN recovers from the health security, political, economic, and socio-cultural impacts of the COVID-19 pandemic, it is important that it continues to coordinate, collaborate, and communicate with its disability community through their organisations. ASEAN is well-positioned to create a more resilient, crisis-ready and disability-inclusive region by using the Enabling Masterplan. With the Enabling Masterplan's 76 action points,[109] ASEAN is equipped to foster a multi-stakeholder approach in responding to and recovering from a health emergency crisis and establishing a more resilient region. These action points call on all stakeholders, including ASEAN, its Member States, people with disabilities and their organisations and others, to embody the principles of universal design and building back better.[110] The COVID-19 recovery period is a key opportunity not only to strengthen resilience in the face of future crises, but also to develop new inclusive approaches, tools and systems.

ASEAN, through key institutional bodies and organs such as AICHR, the ASEAN Senior Officials Meeting on Health Development, ASEAN Senior Officials Meeting on Social Welfare and Development, the ASEAN Emergency Operations Centre and the ASEAN Humanitarian Assistance Centre could collaborate with people with disabilities and their organisations' networks to collect and analyze data and other information on disability to identify gaps in government actions at all levels. This information will also support evidence-driven resilience plans to address future health crises, reducing the disproportionate impact on people with disabilities. ASEAN could also develop technical guidance, together with people with disabilities and their organisations, on ensuring the rights of people with disabilities in emergency response related to sectors such as healthcare, education, employment, social protection and political participation.

The Enabling Masterplan calls for coordination among all stakeholders, which Member States could implement by working with national and local governments in national and regional policy responses. Further, it empowers state actors to collaborate with coalitions of people with disabilities and their organisations to use universal design principles to make hospitals, healthcare facilities, protective equipment and containment measures accessible to people with disabilities. For example, protective equipment, such as face masks used by medical professionals and government officials, could be made more accessible to people who are deaf or hard-of-hearing if they are made from a transparent material that allows for lip reading. Such design considerations are much more likely to be improved when people with disabilities and their organisations are involved in the development process. To strengthen its coordination and communication efforts, the ASEAN Secretariat (ASEC) could partner with disability rights networks, such as ADF, to establish a centralised warning system and communication channel with the ASEAN disability community. ASEC could also use this channel to share good practices with national governments and ASEAN sectoral bodies to improve their response and recovery efforts.

The Enabling Masterplan also recognises the critical importance of accessible information. National and local governments could work with people with disabilities and their organisations to make information available in multiple formats. This would include information on essential public goods, services, and processes, such as how to reach authorities with any feedback or assistance regarding COVID-19; what local health regulations there are regarding the disease; or how to safely access medical products or services while observing containment measures. Importantly, these new systems of distributing information can become institutionalised, ensuring that all ASEAN people receive information on events that impact their lives.

---

109 ASEAN Secretariat, ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities, Singapore 2018, https://asean.org/storage/2018/11/ASEAN-Enabling-Masterplan-2025-Mainstreaming-the-Rights-of-Persons-with-Disabilities.pdf

110 World Bank, Disability Inclusive Disaster Recovery, April, 2020, http://documents1.worldbank.org/curated/en/559111587448620405/pdf/Disability-Inclusive-Disaster-Recovery-Guidance-Note.pdf

Additionally, the Enabling Masterplan encourages learning institutions, employers, and entrepreneurs to take advantage of innovative technologies that many people with disabilities have been using for decades to better navigate otherwise inaccessible physical and digital environments. Technologies, such as screen readers, speech-to-text, and artificial intelligence (AI), can be used by mainstream users with disabilities in schools and workplaces. AI that can identify objects for people with visual disabilities has already been used to conduct Internet searches for images. Teachers can now use voice commands to send messages to students – a form of speech-to-text technology. Employers can easily review the transcript from a virtual meeting, generated from closed captioning – another technology that was originally designed for people with auditory disabilities.

The Enabling Masterplan also empowers stakeholders such as national human rights institutions (NHRIs), media, and civil society organisations (CSOs) to synergise efforts on issues that intersect with disability rights. The COVID-19 pandemic presents a critical opportunity for redesigning healthcare, educational institutions, workplaces and electoral processes to build back more inclusive systems. National Human Rights Institutions (NHRIs), CSOs and media entities, working closely with people with disabilities and their organisations, can monitor the impacts of the COVID-19 pandemic and evaluate new approaches to learning and work environments that can not only increase accessibility for people with disabilities but enable everyone in society to participate.

A year-and-a-half after its adoption, the Enabling Masterplan stands as one of the most comprehensive regional action plans of ASEAN, which embodies its strong commitment to promoting and protecting disability rights. ASEAN's 2018 adoption of the Enabling Masterplan can be seen as a remarkably timely regional policy achievement, giving ASEAN and its disability community a ready tool to help face the challenges of pandemic and recession. The true test of the Masterplan, however, is in its implementation. It is up to ASEAN and each member state to internalise the relevant Enabling Masterplan action points and shape an inclusive COVID-19 recovery. As the region takes this step forward, regional and national officials will find strong support and partners in ASEAN's people with disabilities and their organisations. Indeed, ASEAN's inclusive vision statement for its 2025 regional development agenda of "Forging Ahead Together"[111] remains a fitting banner for the people-centered responses needed in these most challenging of times.

About ADF and AGENDA

AGENDA and ADF advocate for disability rights in ASEAN, including for the implementation of the Enabling Masterplan. ADF serves as a platform to coordinate disabled people's organisations (DPOs) in Southeast Asia. AGENDA, founded by the International Foundation for Electoral Systems (IFES) in 2011, is a creative partnership of DPOs and CSOs in Southeast Asia working toward strengthening inclusive political processes. ADF and AGENDA are supported by the Australian Department of Foreign Affairs and Trade and the U.S. Department of State, Bureau of Democracy, Human Rights and Labor. The views expressed in this article are the authors' alone and are not necessarily the views of the Australian or U.S. Government. For more information, please contact ADF Chairman Lim Puay Tiak (puaytiaklim@gmail.com), AGENDA Program Manager Erni Andriani (eandriani@ifes.org) and AGENDA Disability Rights Advisor Tolhas Damanik (tolhas@agendaasia.org).

111 ASEAN 2025: Forging Ahead Together, adopted by the ASEAN Summit, November 22, 2015, https://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf.

COVID-19 and its impact on Business and Human Rights

Contribution from Business and Human Rights Resource Centre

Leadership is needed so that recovery efforts by governments and business ensure human rights protection

Four months after the first ASEAN Member States went into lockdown, governments in the region are starting to combine emergency response measures with more long-term recovery plans. However, restrictions imposed on movement and public gatherings, while unavoidable in the circumstances, have also been abused as justifications for measures that violate the human right to freedom of speech and further restricted civic space. As ASEAN governments contemplate re-opening borders and jumpstarting measures towards economic recovery, leadership is critical to ensure that instead of a further rolling back of human rights, ASEAN governments and businesses put human rights at the centre of its recovery efforts to build back in the right direction. Three immediate acts of leadership are critical.

First, ASEAN must ensure synergy of actions between business, government, and civil society in order to effectively recover from the pandemic's social and economic impact.

ASEAN should escalate efforts to mitigate the negative human rights impacts of the ASEAN Economic Blueprint 2025 in its integration across the Political-Security and Socio-Cultural communities. ASEAN must also revive sidelined efforts to develop a Regional Action Plan to implement the UN Guiding Principles on Business and Human Rights[112] and let businesses, civil society, and government participate effectively in its finalisation and implementation. Support is also much needed in pushing forward the Action Agenda on Mainstreaming Women's Economic Empowerment (WEE) in ASEAN[113] because women have become disproportionately burdened by the impact of the pandemic on their work status and face the additional challenge of increased care work. Finally, ASEAN governments must develop comprehensive national action plans on business and human rights, using the effects of the pandemic as one of the basis for deeper commitment to protect, respect and fulfil human rights.

Second, ASEAN must lead with flexibility and decisiveness, first addressing the urgent needs of vulnerable groups that depend on inclusive and effective responses from governments and businesses for their survival.

ASEAN governments can address massive layoffs and unemployment with relief packages that include all workers, regardless of the status of their employment contracts as some governments in the region have started to do. Informal workers must not be made invisible in relief and emergency responses. Governments can also undertake massive pivoting of business operations towards the production of PPE and other much-needed supplies so that unemployment becomes the last resort. Salary subsidies, financial support and stimulus packages for micro, small and medium enterprises (MSMEs) that employ a significant portion of the ASEAN worker population, and tax reliefs are also some of the much-needed responses.

The COVID-19 Action tracker[114] launched by Business & Human Rights Resource Centre (BHRRC) in May 2020 monitors 35 global apparel brands' reactions to the pandemic and the impact on garment workers around the world. Out of 35 global brands, 28 brands source from five ASEAN countries: Indonesia, Cambodia, Myanmar, Philippines, and Vietnam. While the tracker reveals that 42% of

112 Human Rights Council, UN Guiding Principles on Business and Human Rights, UN Doc. A/HRC/17/31, March 21, 2011, Annex, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

113 Action Agenda on Mainstreaming Women's Economic Empowerment (WEE) in ASEAN, adopted by the ASEAN Summit in Manila, Philippines on 17 November 2017, https://asean.org/wp-content/uploads/2017/11/Action-Agenda-on-Mainstreaming-Women-Economic-Empowerment.pdf.

114 Business and Human Rights Resource Centre, COVID-19 Action Tracker, https://covid19.business-humanrights.org/en/tracker/

2020	Country			Sector		
	1	2	3	1	2	3
Jan-June	Philippines	Myanmar	Indonesia	Mining	Agriculture	Palm Oil

companies sourcing from ASEAN Member States are committed to pay for all in-production and completed orders, implementation of these commitments remains questionable as cancellations of orders have been used by the suppliers to lay off workers without proper compensation.[115]

Home to more than 650 million people, ASEAN is one of the most dynamic economies in the world, ranked the world's fifth largest economy in 2018. ASEAN received USD 154.7 billion of foreign direct investment (FDI) flows in 2018, accounting for 12 per cent of global FDI flows[116]. However, the International Monetary Fund (IMF)[117] projects sharp declines in ASEAN's economic growth as a result of the pandemic. ASEAN's high dependence on trade, investment, export, and tourism and supply chain disruptions are considered the major factors contributing to this economic shock.

Another group made especially vulnerable are migrant workers. ILO estimated in 2019 that 6.9 million migrant workers have migrated within the region[118]. Singapore and Malaysia, for example, greatly depend on migrant workers to fill local labour deficiencies, especially in low-wage and informal parts of the economy such as agriculture, construction, and domestic work. While their contribution to the region's economic growth is significant, COVID-19 response measures at the national and ASEAN levels have failed to be inclusive of migrant workers, leaving them and their families at greater risk of exploitation and hardship. Governments and businesses must work together to ensure safe and fair repatriations for migrant workers and create assurances against employment bans for those who choose to go home while business operations are halted.

Third, ASEAN must effectively address the widespread abuses of human rights by state and business actors and the alarming threats against free civic space that is critical in ensuring sustainable economic growth.

ASEAN must lead the conversations about the protection of civic space and human rights defenders in the region, and commit to ensuring effective remedies for violations of their rights. These commitments must be present even in its trade and investment agreements like the Regional Comprehensive Economic Partnership.

BHRRC has monitored[119] the implications of the outbreak for business and human rights around the world, drawing specific attention to five in-depth areas: government and business response, supply chain workers, migrant workers, human rights defenders and civic freedoms, and surveillance, censorship and privacy.

---

115 https://cleanclothes.org/news/2020/live-blog-on-how-the-coronavirus-influences-workers-in-supply-chains.

116 ASEAN Political-Security Community, APSC Outlook Volume 1 (2019), ASEAN and Beyond, December 2019, https://asean.org/storage/2020/01/ASEAN-Political-Security-Community-Outlook_2019_No2.pdf.

117 International Monetary Fund, World Economic Outlook, April 2020: The Great Lockdown, April 2020, https://www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020.

118 International Labour Organisation, 12th ASEAN Forum on Migration, 25-26 September 2019, https://www.ilo.org/asia/events/WCMS_713644/lang--en/index.htm#:~:text=Current%20labour%20market%20trends%20show,have%20migrated%20within%20the%20region..

119 Business and Human Rights Resource Centre, COVID-19 (Coronavirus) Outbreak, https://www.business-humanrights.org/en/company-response-rates.

Human rights defenders and communities, who raised concerns about adverse human rights impacts of business operation during the pandemic have been intimidated and harassed by both companies and states. The pandemic has been used to shutdown peaceful protests and intensify land grabs. Based on BHRRC's database of attacks on human rights defenders, the Philippines had the highest number of attacks and mining was the most dangerous sector to oppose. Land conflicts in many countries in Southeast Asia were a result of weak tenure and forest governance that was exploited by companies during the pandemic to continue with their operations.

From January to June 2020, BHRRC has sought 66 responses from companies from various sectors to allegations of human rights abuse taking place in Southeast Asia, with 37 responding.[120] The majority of the allegations were related to violations of labour rights, notably the right to freedom of association, and land rights.

COVID-19 has further magnified the extreme human rights challenges already faced by many in the region. It takes nothing less than bold leadership to ensure that economic recovery is grounded in sincere commitment of governments to protect and of businesses to respect human rights, and to engage in comprehensive due diligence efforts to prevent, mitigate, and address risks, vulnerabilities, and violations in an effective manner.

About Business and Human Rights Resource Centre

The Business & Human Rights Resource Centre (BHRRC) is an international non-profit organisation that strives to put human rights at the centre of business. Founded in 2002, BHRRC has become the main global source of information on business and human rights, enabling it to play a vital role in shaping and propelling forward this important field of human rights work. BHRRC is the only non-profit drawing attention to the social and environmental impacts of over 9,000 companies worldwide, promoting corporate accountability and transparency. www.business-humanrights.org/en

120 https://www.business-humanrights.org/en/company-response-rates.

Chapter IX:

Conclusions and Recommendations

Conclusions

It is too early at the time this report is published, in August 2020, to assess the full human rights impact of COVID-19 and the responses of ASEAN and its Member States to the pandemic. What is clear is that emergency measures had to be taken to prevent a virulent and lethal virus from spreading, to provide those with COVID-19 with the best treatment available and to start emerging from the multi-dimensional crisis that the pandemic has created. Unfortunately, it is equally clear that not all the measures that ASEAN governments took have been in good faith and strictly with a view to tackling the pandemic.

For several governments in the region, the COVID-19 pandemic provided yet another opportunity to deepen their already increasingly autocratic hold over their people. These governments used their emergency powers to stifle the media and freedom of expression, to crush peaceful dissent, and to harass, intimidate and arrest critics. Others used the crisis to clamp down on the most vulnerable populations, such as asylum seekers, refugees, internally displaced persons and undocumented migrants, while both encouraging and building on rising xenophobia.

The two essential elements of equality – non-discrimination on one hand and addressing the specific needs of specific groups on the other – have often been forgotten or neglected by governments during the pandemic. As a result, the poor, older persons, people on the move, children and youth, women, people with disability and LGBTIQ people have suffered a double-barrelled blow of risk of COVID-19 and disproportional economic hardship as a result of unemployment and the closure of businesses, the education facilities and other vital institutions. At times members of these groups have been brought to the brink of starvation.

Civil society in general and human rights defenders in particular have also been deeply affected by the COVID-19 pandemic and government responses to it. Human rights defenders have struggled to maintain their activities, especially with marginalised communities where internet access is limited. HRDs have also suffered from increased government repression and surveillance.

There is still hope that, alongside the horrendous loss of life, livelihoods and so much more, some good will also come out of this historic crisis. For that to happen, ASEAN institutions and government must abandon their top-down, authoritarian, 'need-to-know-basis' attitude towards their peoples. In its place, they should adopt an open, inclusive, informative, accountable, human rights-friendly approach, not least in planning and carrying out the next stages of emerging from the pandemic.

Collaboration between governments and all stakeholders, including macro, small and medium businesses, civil society, and in particular grassroots organisations and marginalised and disenfranchised communities, can create a truly "people-oriented, people-centred" and indeed people-*led* ASEAN, working for the interests and human rights of all its peoples. FORUM-ASIA and other civil society organisations will continue working for the achievement of this goal

Recommendations

To the governments of ASEAN Member States

- Ensure transparency on the COVID-19 pandemic, including providing the public with accessible, detailed information on measures to manage the outbreak;
- Ensure that all measures taken to tackle COVID-19 are compliant with international human rights law and standards. Place restrictions only on human rights that are non-derogable and only after ensuring that they are lawful, necessary, proportional non-discriminatory and subject to review;
- Learn from the experience of countries that have been successful in managing the outbreak while adhering to basic human rights such as Taiwan and South Korea;
- Ensure that gender perspective are considered and implemented within all responses related to COVID-19, including among other thing to ensure to sexual and reproductive health, including contraception, safe abortion, prenatal, and perinatal care;
- Help strengthen private-public sector partnerships and work collaboratively to recruit, retain, and train young people whose livelihoods have been impacted by the pandemic, with a view to providing them career opportunities.

To ASEAN Human Rights Institutions – AICHR and ACWC

- AICHR should carry out, as a matter of urgency, a thematic study on human rights during the COVID-19 pandemic involving field and desk research in each and all ASEAN Member States in accordance with Article 4.12 of its Terms of Reference. It should work in collaboration with the ACWC on gender and children-related aspects of the study;
- Work more closely with civil society organisations and turn the pandemic into an entry point to strengthen collaboration, including in the implementation of instruments, such as ASEAN Post-2015 Health Development Agenda— among other things to create a health system that is resilient in responding to infectious diseases;
- ACWC, with support from AICHR, should work to ensure that governments implement protection measures to tackle the increased risk of violence against women and children during the pandemic;
- Urge ASEAN governments to follow the call by UN High Commissioner on Human Rights Michelle Bachelet to free vulnerable prisoners;
- Urge ASEAN to protect the rights and improve the welfare of vulnerable groups such as refugees and asylum seekers, internally displaced persons, stateless, migrant workers, the stateless and the homeless;
- Urge governments of ASEAN Member States to protect the rights to freedom of expression, including media freedom, and avoid violence and discrimination in implementing their anti-COVID-19 policies;

- AICHR needs to call on ASEAN Member States to put in place clear laws, regulations and policies on personal data protection that are in line with international human rights law and standards on the right to privacy;

- AICHR and ACWC must increase collaboration with and openness to civil society organisations.

Civil Society

- Monitor state responses to the COVID-19 outbreak to ensure that they comply with international human rights law and standards;

- Find innovative means to engage the most marginalised groups, protecting their rights and ensuring that their voices are heard;

- Continuously urge ASEAN Member States to protect the right to freedom of expression, including of the media;

- Urge ASEAN Member States to expedite collaboration with other stakeholders to create a holistic COVID-19 response where the safety, rights and dignity vulnerable groups, including women, girls, LGBTIQ community, migrants and refugees, as well as human rights defenders are incorporated;

- Urge ASEAN Member States to commit to avoiding discrimination and violence in formulating and implementing their COVID-19-related policies, safeguard media freedom, and address specific needs of different groups;

- Lobby parliaments and governments to ensure that COVID-19-related laws and policies, especially regarding the gathering and use of data, do not enable the use of the pandemic to violate the right to privacy;

- Urge government to protect women's and children's rights to access to sexual and reproductive healthcare, including contraception, abortion, prenatal and perinatal care during the pandemic;

- Urge ASEAN, its human rights institutions and government to prevent, stop and where necessary punish stigmatization, xenophobia, racism, and Islamophobia;

- Urge ASEAN to declare a ceasefire in the region so that governments can focus more on the fight against COVID-19 while protecting and respecting human rights;

- Urge policymakers nationally and regionally to involve refugees and asylum seekers in planning and implementing policies that directly impact them.

Recommendations to ASEAN Governments specific to the protection of human rights defenders (HRDs):

- Ensure that HRDs can continue their work, in particular in monitoring the human rights situation and holding state and non-state actors accountable during periods of lockdown, state emergency and recovery without fear of intimidation, harassment or criminalisation. This includes:
    - Stop arbitrary detentions, criminalisation and other forms of judicial harassment of HRDs, and guarantee their right freedom of expression, including in scrutinising government responses to COVID-19;
    - Ensure access to information on COVID-19 to human rights defenders and the public at large. Rescind or amend emergency, media and any other laws that arbitrarily restrict the right to freedom of expression of HRDs, journalists and social media users;
    - Ensure transparency regarding the use of surveillance technology in tackling the pandemic, and that its use do not violate the right to privacy or are otherwise used against HRDs;
    - Ensure that full access to protection mechanisms for HRDs, including access to justice, do not cease under quarantine.

- Recognise the important role of HRDs in ensuring that states overcome the pandemic in a way that is inclusive and respectful of human rights and ensure transparency in decision making as well meaningful HRD input into decision-making processes;

- Release all HRDs arrested or detained solely for peacefully going about their work, rescind all convictions and withdraw all charges against them;

- Facilitate support, including from abroad, to grassroots and other local HRDs (e.g. funding, legal support, networks);

- Ensure, through judicial, administrative, legislative or other appropriate means that HRDs and those affected by business-related human rights abuses have access to effective remedy, even during and after the pandemic.

Recommendations to the private sector:

- Avoid using the pandemic to arbitrarily lay off staff, reduce wages, worker safety or environmental protections;

- In dealing with workers, always respect their right to unionise and negotiate collectively through their unions;

- In dealing with Indigenous Peoples, always comply with the principle of free, prior, and informed consent;

- Irrespective of whether or not there is an atmosphere of xenophobia, treat migrant workers on equal terms with workers who are citizens;

- Similarly, treat workers who are women, LGBTIQ or members of minorities on equal terms with all other workers.

Annex: Webinars – topics and speakers

Webinar I: Human Rights Situation under the COVID-19 Response in ASEAN
7 April 2020

Speakers:
Dr. Nymia Pimentel Simbulan, Executive Director, The Philippine Human Rights Information Center
Asfinawati, Chairperson, Indonesian Legal Aid Foundation
Themba Lewis, Secretary General, Asia Pacific Refugee Rights Network
Shamini Darshni Kaliemuthu, Executive Director, FORUM-ASIA

Moderator:
Cornelius Hanung, FORUM-ASIA

Webinar II: The ASEAN Community and COVID-19 – An Assessment of an Infected Region's Present and Future Conditions
15 April 2020

Speakers:
Dr. Sriprapha Petcharamesree, Former Thai Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR) and Programme Chair, SHAPE-SEA
H.E. Yuyun Wahyuningrum, Indonesian Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR)
Dr. Deasy Simandjuntak, Associate Fellow at ISEAS – Yusof Ishak Institute, Singapore, and Visiting Fellow at Academia Sinica, Taipei
Mr. Thet Swe Win, Executive Director Synergy – Social Harmony Organization, and Co-Founder of Myanmar COVID-19 Response Center
Dr. Lee Edson P. Yarcia, JD, Health Law and Policy Reform Consultant, Philippines.

Moderator:
Mr. Joel Mark Baysa-Barredo, Programme Director, SHAPE-SEA

Webinar III: A Feminist Assessment on the ASEAN response to the COVID-19
21 April 2020

Speakers:
Sivananthi Thanenthiran (Executive Director, ARROW)
Maria Sol Taule (Member of Tanggol Bayi)
Yen Nguyen (Programme Manager, ASEAN SOGIE Caucus)
Diah Satyani Saminarsih (Gender and Youth Advisor, World Health Organization – Geneva)

Closing remarks:

HE. Sri Danty Anwar (Indonesia representative for women's rights to the ACWC)
HE. Amb. Diedrah Kelly (Ambassador of Canada to the ASEAN)

Webinar IV: Children and Youth during COVID-19 – Their Rights and as Human Rights Defenders
28 April 2020

Speakers:
Roshni Basu (Regional Advisor on Adolescent Development and Participation, UNICEF)
Ruthra Mary Ramachandran (Young Scholar-Activist of Southeast Asian Studies in University of Malaya, Malaysia)
Astried Permata (General Coordinator, Pamflet)
Mueda Nawanat (Young Human Rights Defenders, Thailand).

Moderator:
Hazel Bitana (CRC Asia)

Webinar V: Will Human Rights survive COVID-19? Navigating human rights during and after the pandemic
11 May 2020

Opening remarks:
Prof. Joseph Cannataci, UN Special Rapporteur on the right to privacy

Speakers:
Susan Wilding (Head of Geneva Office, Civicus)
Dr. Nymia Pimentel Simbulan (Chairperson, PAHRA)
Rin Fujimatsu, (Advocacy Director, Progressive Voice)
Sandun Thudugala (Head of Programmes, Law and Society Trust)

Moderator:
Shamini Darshni Kaliemuthu (Executive Director, FORUM-ASIA)

Webinar VI: COVID-19 – Peace and Human Security: Seeing the Invisible and Forgotten amidst the COVID-19 Crisis
15 May 2020

Speakers:Dr. Ayesah Abubakar, Ethnography & Development Research Cluster Head, Borneo Institute for Indigenous Studies, Universiti Malaysia Sabah; and member of the ASEAN Women for Peace Registry (AWPR)
Sanam Amin, Programme Officer (Grounding the Global), APWLD – Asia Pacific Forum on Women, Law and Development
Sam Sai Kham, former Executive Director, METTA Development Foundation
Rachel Tan, Programme Officer, Asia Pacific Refugee Rights Network (APRRN)

Moderator:
Gus Miclat and Marc Batac, from the Initiatives for International Dialogue and the Global Partnership for the Prevention of Armed Conflict (GPPAC)-Southeast Asia.

This publication has been made possible
with generous support of

Sweden
Sverige