



**Submission to the Thematic Report of the Special Rapporteur on Freedom of Opinion and Expression to the UN Human Rights Council: “Freedom of Opinion and Expression and Sustainable Development – Why Voice Matters”**

*To inform the Special Rapporteur’s thematic report to be presented to the HRC, 53rd session*

**Prepared By:**

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## **Covid-19 and the Implications for Freedom of Expression in Southeast Asia**

In the months following the outbreak of the covid-19 pandemic in March 2020, the number of new infections grew exponentially ([WHO, 2022](#)). Consequently, governments worldwide responded with political measures to keep the virus at bay that implied limiting people's freedoms to some extent, including freedom of expression. Southeast Asia reported 60.5 million infections as of November 2022 or 10% of the infections globally ([ibid](#)). In the region, most governments mimicked China's zero-covid approach and imposed strict measures that limited people's freedoms to control the spread of the virus ([Bardsley, 2021](#); [Kelter, 2022](#); [The Economist, 2021](#)).

The executives in Southeast Asian countries could impose harsh restrictions because Article 4 of the International Covenant on Civil and Political Rights ([1966](#)) allows governments to derogate their obligations to ensure certain fundamental rights to their people in emergency situations, only if that contributes to returning to normalcy ([McGoldrick, 2004](#)). However, certain rights cannot be derogated (Article 4(2)), such as the right to life (Art. 6), freedom from slavery and servitude (Arts. 8(1) and (2)), or the freedom of thought, conscience and religion (Art. 18). Initially, by using Article 4 and limiting some rights, political measures to contain the spread of the virus were effective in Southeast Asia, if the number of new infections is considered. Still, using legal measures to control an issue of public health curbed freedom of expression in the region, thus posing a new challenge to sustainable development.

Governments used the state of emergency (SoE), temporary laws, and temporary powers invoked under existing health legislation on infectious diseases to reduce the number of new infections. Freedom of expression was limited because with the use of legal measures, people's right to assembly and protest was limited, electoral integrity decreased, and surveillance increased.

*First*, strict lockdowns that forced people to stay home were one of the initial measures imposed by most governments. This measure was different from country to country and affected people's right to travel internationally and also domestically to other states and provinces in their own countries. As a result of the adoption of mobility restrictions, other rights, including freedom of expression, were also affected. Lockdowns were used as a pretext to limit people's freedom of assembly, including the right to protest and express their views in demonstrations. In some cases, anti-covid measures were also used to silence dissenting voices defending human rights or those disagreeing with governmental narratives ([CIVICUS, 2022](#)). In Cambodia, the Law on Preventive Measures Against the Spread of COVID-19 affected workers wanting to defend their labour rights since freedom of protest

declined ([Hanung, 2022](#)). In Phnom Penh, the police challenged the right to freedom of expression of union activists participating in a strike to defend the rights of several employees who had been discharged alleging that they violated anti-COVID-19 measures and obstructed the state's efforts to contain the pandemic ([Human Rights Watch, 2022](#); [Mech & Dickinson, 2022](#)).

**Second**, anti-covid-19 measures affected the quality of elections during the pandemic since limitations of freedom of expression challenged how certain political parties and citizens engaged with one another. Celebrating elections during the pandemic was a cause of concern among many groups. On the one hand, the virus' transmissibility raised debates concerning whether elections should be celebrated. On the other hand, altering the course of electoral cycles could also affect the quality of multiparty elections. Therefore, the primary challenge was how to allow people to vote without putting them in jeopardy because of the virus. Cases like the Myanmar one show that elections were celebrated during the pandemic mostly to serve the interests of political elites. However, commissions were celebrated with strict anti-covid measures that challenged freedom of expression.

Myanmar imposed travel restrictions in the early stages of the pandemic ([MoHS, 2020](#)). Given the number of infected people two months before the elections in August 2020, the opposition party Union Solidarity and Development Party (USDP) called to put off GE2020. On the other end, the National League for Democracy (NLD) was against it, reasoning that a power vacuum was not desirable since the Constitution did not contemplate extending the mandate of the incumbent government ([Lidauer & Saphy, 2021](#)). Although elections were celebrated, stay-at-home orders in some townships were imposed that affected people's opportunities to express their views before the elections. Campaigning activities were limited ([Lidauer & Saphy, 2021](#)) and attendees to political rallies were capped to fifteen ([MoHS, 2020](#)). However, it was reported that NLD's political campaigning was excessive, indicating that limitations on freedom of expression were selective and mostly affected members of the opposition, thus limiting members of certain political groups to express their views on the elections in the country.

**Third**, limitations on freedom of expression resulted in the criminalisation of policy criticism. Given the number of new infections and the fact that the pandemic was lasting longer than expected, governments imposed new measures to keep the virus at bay. New measures tackled online information flows, which decreased freedom of expression in the digital sphere. Some governments added fake news provisions to control the spread of inflammatory content regarding the state of the pandemic. Nonetheless, these legal measures were reportedly used to curtail freedom of expression ([Wiseman, 2020](#)).

In Thailand, the government used anti-fake news to control the narrative concerning the pandemic, resulting in damaged freedom of expression in the country. The Thai Authorities used the Emergency Decree to identify comments from the media deemed as threatening for the government ([HRW, 2020](#)). However, the decree was widely used to target critics, thus shrinking the space for freedom of expression. For example, Thai artist Danai Usama express his dissatisfaction with the anti-covid measures at Bangkok airport via Facebook. Later, he was arrested and accused of violating section 14(2) of the Computer-Related Crime Act which could have resulted in the spread of panic among people ([Article19, 2020](#)). This exemplifies how regulating the spread of false information was used to target comments regarding the governmental management of the pandemic, which put freedom of expression in jeopardy.

Given these developments, several recommendations can be made to improve freedom of expression and sustainable development in Southeast Asia. Governments should sign and ratify the ICCPR (including its first Optional Protocol (ICCPR OP-1) to institute an individual complaints mechanism) if they have not done so yet. In case of future emergency situations, they should ensure that all measures are justified and proportional. Additionally, provisions in legal frameworks should be more specific and avoid vague terms that can be used to justify crackdowns on freedom of expression. Working closely with civil society organisations in creating a rights-friendly legal framework is essential.

International organisations should lobby governments so they sign and ratify the ICCPR/OP-1 to ensure freedom of expression and sustainable development in the region. Furthermore, international organisations should also have a more relevant role in assisting governments in the implementation of derogatory measures to avoid unnecessary limitations on people's fundamental rights like freedom of expression.

Finally, civil society organisations should keep monitoring infringements of freedom of expression in their countries and inform governments and the international community about any limitations to such fundamental rights. They should also reinforce their commitment to providing educational opportunities to the population to increase awareness of fundamental rights so reduce the chances of freedom of expression being curtailed by governments in emergency situations.

*These inputs are drawn from the policy paper “Moving Beyond COVID-19 Restrictions in Southeast Asia: Pushing Back Against Authoritarian Pandemic Governance”, produced by Asia Centre in partnership with the International Center for Not-for-Profit Law (ICNL). The full policy paper is annexed to this submission.*

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# MOVING BEYOND COVID-19 RESTRICTIONS IN SOUTHEAST ASIA

PUSHING BACK AGAINST AUTHORITARIAN PANDEMIC GOVERNANCE



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**MOVING BEYOND COVID-19  
RESTRICTIONS IN SOUTHEAST ASIA:**  
Pushing Back Against Authoritarian Pandemic Governance

2023

Asia Centre

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# ABBREVIATIONS

<b>ADB</b>	Asia Development Bank
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CSO</b>	Civil Society Organisation
<b>DOH</b>	Department of Health (Philippines)
<b>EIU</b>	Economist Intelligence Unit
<b>GDP</b>	Gross Domestic Product
<b>GE</b>	General Election
<b>IATF-EID</b>	Inter-Agency Task Force on Emerging Infectious Diseases (Philippines)
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICCPR</b>	(I)NGO HRC Human Rights Committee of the ICCPR
<b>IMF</b>	(International) Non-Governmental Organisation
<b>KPU</b>	International Monetary Fund
<b>PSBB</b>	General Elections Commission (Indonesia)
<b>LRSU</b>	Large-Scale Social Restrictions (Indonesia)
<b>MERS</b>	Labor Rights Supported Union (Cambodia)
<b>MCO</b>	Middle East Respiratory Syndrome
<b>NLD</b>	Movement Control Order (Malaysia)
<b>PAP</b>	National League for Democracy (Myanmar)
<b>PM</b>	People's Action Party (Singapore)
<b>PoE</b>	Prime Minister
<b>SARS</b>	Proclamation of Emergency
<b>SoE</b>	Severe Acute Respiratory Syndrome
<b>UN</b>	State of Emergency
<b>USDP</b>	United Nations
<b>WHO</b>	Union Solidarity and Development Party (Myanmar)
<b>YDPA</b>	World Health Organisations
	Yang di-Pertuan Agong (Malaysia)

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# EXECUTIVE SUMMARY

During the COVID-19 pandemic, Southeast Asian governments misused emergency powers, enacted temporary laws, and invoked powers found in infectious diseases special provisions to implement strict lockdowns, restrict people's freedom of assembly and movement, and track citizens' whereabouts. Consequently, protest and policy criticism opportunities decreased, electorates were partly disenfranchised during electoral processes, and state surveillance increased on the grounds of increased safety and public health.

This report shows how the misuse of powers made democracy backtrack in Southeast Asia. The first half of this document reviews emergency laws, temporary measures, and existing health laws that governments used and implemented during the pandemic to contain the spread of the virus. The second part assesses how that impacted freedom of assembly, electoral integrity, policy criticism, and surveillance point to a democracy backsliding in the region. This report is part of a comprehensive study assessing how government misuse of the emergency legislation impacted civic freedoms and democracy across the Indo-Pacific, including South, East, and Southeast Asia.

International frameworks, including ICCPR, permit the derogation of certain rights if there is a public emergency. Its Article 4 allows for the derogation of rights under strict conditions that narrow the scope, effect, and period or use of such measures. The aim of derogating certain rights is to gain control over the emergency. Under no circumstances should derogating rights be the basis for governments to amass new powers. This report shows that the derogation of rights in Southeast Asia led to the latter scenario. Governments used legal measures beyond what was necessary to ensure public health, resulting in people's civil liberties being curtailed and a democratic erosion in the region. International democracy indexes provided by reports such as Freedom in the World (Freedom House) and the EIU Democracy Index (The Economist) confirm Southeast Asia's democratic backslide.

This report reviews three legislative measures governments used to contain the spread of the pandemic. *First*, the invocation of the state of emergency (SoE) and proclamation of emergency orders. Ordinances and sub-decrees issued under SoE powers gave government officials the power to restrict civic freedoms, thus granting executives new powers that often lacked checks and balances. *Second*, enacting temporary laws. Southeast Asian governments relied on fast-tracked COVID-19 temporary measures with limited checks & balances, even if these laws went through a legislative process. *Third*, using existing health and infectious disease laws, which granted executives and health authorities emergency-like powers. Those supplemented the efforts made with movement restrictions and fake news laws. This strategy was also used as an alternative to invoking the SoE - the latter would result in tighter restrictions and limit governments' capacity to manoeuvre?

These legislative measures were partially effective in mitigating the effects of the pandemic. Nonetheless, the emergency and temporary powers that these laws granted were the basis for a comprehensive derogation of civil freedoms that curbed democracy in the region on at least four fronts. *First*, with the implementation of strict lockdowns, inter-state and cross-border travel restrictions, and freedom of assembly limitations with restrictions imposed on group gatherings, governments quelled protests. Consequently, activists were prevented from organising public demonstrations to voice their concerns over policy mismanagement concerning COVID-19-related issues and other political developments. In 2022, workers in a luxury hotel and casino in Cambodia went on strike to defend their labour rights. In organising protests, some of them were arrested and accused of violating anti-COVID measures since a large group of workers gathered outside the hotel where they worked.

*Second*, carefully planning electoral timings and limiting campaigning activities, especially face-to-face and physical gatherings, partially disenfranchised voters from the electoral process. This ultimately allowed

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# EXECUTIVE SUMMARY

incumbents to remain in power. During the 2021 elections in Myanmar, anti-COVID-19 measures reportedly targeted campaigning acts of opposition parties. The Singaporean snap election and commissions celebrated in Indonesia, both in 2020, also served to ensure the ruling elites relative ease in their electoral victories despite repeated calls for postponement, also served to ensure the ruling elites relative ease in their electoral victories.

*Third*, governments criminalised policy mismanagement criticism, especially regarding the COVID-19 pandemic. Cabinets used emergency laws provisions to crack down on political dissent and silence government critics. In Vietnam, Thailand, and Brunei, the use of ‘fake news laws’ was prominent. Governments incorporated such provisions in their COVID-19 emergency and temporary laws to avoid spreading false information about the health crisis. However, these laws were also used to silence government critics and protesters.

*Fourth*, online and offline surveillance increased dramatically to track the spread of the virus. A tighter control of the population generated large amounts of data that governments gathered to prosecute individuals who transgressed the law, challenging people’s right to privacy. The digitalisation of the measures to protect public health was epitomised by tracking apps, which accommodated government efforts to increase surveillance. In Singapore, data provided by TraceTogether, the national tracing app, was used by the country’s police force to monitor people’s actions. In Laos and the Philippines, cybercrime laws were used with similar purposes, further challenging people’s right to privacy in the region.

In safeguarding civic freedoms and democracy, this report contains a set of recommendations for governments, international organisations, and civil society organisations. These recommendations focus on promoting adherence to international human rights principles to protect citizens from the abuse of the legislation in emergencies. Government must abide by the standards set out by the ICCPR and work closely with CSOs to ensure that laws and measures during emergencies have limited negative impacts on its population. International Organisations have the responsibility to lobby and assist governments in accepting international standards while also providing a platform for CSOs to pass their concerns to relevant stakeholders. It must also increase its monitoring capacity to have an overview of civic freedoms situations across the world. CSOs should continue serving as watchdogs; meanwhile, they should engage the population by reinforcing their informative and educational commitments.

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# 1. Introduction

To curb the number of COVID-19 infections and deaths, Southeast Asian governments relied on emergency powers granted by States of Emergencies (SoEs) and emergency decrees, temporary COVID-19 laws introduced during the pandemic and existing health ordinances to implement strict quarantine rules. However, the same laws were also used by the ruling political elites to restrict civic freedoms surrounding freedom of assembly, elections, the articulation of criticism and privacy. This report examines the laws and measures that Southeast Asian governments invoked to control the spread of the pandemic against international requirements and principles regarding the derogation of rights in emergency situations, reviewing how the authoritarian management of COVID-19 resulted in emergency powers used to restrict civic freedoms and democracy.

## 1a. Methodology

This report is based on desk research undertaken between August and November 2022. Documents reviewed concern the domestic legislation of Southeast Asian countries that governments used to enforce quarantines, such as their constitutions, state of emergency decrees, and temporary COVID-19 laws. Reports from the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR HRC) and documents produced by international democracy watchdogs including Freedom House and the Economist Intelligence Unit (EIU) were analysed. Additionally, the report includes a review of news reports by local and international media outlets. The Asia Centre research team internally reviewed the data collection process, analysis, and elaboration of this report.

## 1b. The COVID-19 Pandemic in Southeast Asia

The number of new COVID-19 infections increased rapidly after the pandemic outbreak in March 2020 ([WHO, 2022](#)). Consequently, governments worldwide acted swiftly to implement bold political measures hoping to keep the virus spread at bay. In the west, countries such as the United States imposed lockdowns and reasonable social control to curb the number of infections ([Jeong et al., 2021](#)), thus balancing public health, economy, and social life. Yet, anti-COVID-19 measures in other countries were less strict. Sweden, for example, imposed more lax restrictions to achieve herd immunity and allowed its citizens to continue their daily lives almost normally ([Jonsdottir, 2021](#)). In Southeast Asia, a region that reported 10% of the global infections with 60.5 million confirmed cases and nearly 800,000 deaths as of November 2022 ([WHO, 2022](#)), governments took ideas from China's zero-COVID approach ([Bardsley, 2021](#); [Kelter, 2022](#); [The Economist, 2021](#)). Strict and often draconian measures were implemented at the discretion of the Executive after invoking the State of Emergency.

Within the region, initially, citizens, migrants and other residents were required to remain at home under strict lockdown restrictions, reducing their mobility to travel domestically and internationally ([Al Jazeera, 2021](#); [Scarr, 2020](#)). Given the high transmissibility of the disease, governments also imposed social distancing measures to prevent new COVID-19 cases, which had shrunk the public sphere. In countries such as Singapore, public gatherings outside work and schools were limited to ten people ([Tan, 2020](#)). Businesses were also greatly affected by these measures and numerous factory shutdowns were reported across the region almost immediately after the outbreak. The Boten Special Economic Zone in Luang

Namtha, Laos, suspended all construction and closed shops and restaurants ([Chan, 2020](#)). In Cambodia, thousands of factory workers were laid off after the closure of several factories ([Ibid.](#)). The zero-COVID approach also intensified offline and online state surveillance with intrusive contact tracing technology to identify, isolate, and monitor potential new cases ([Chock, 2020](#)). In the Philippines, then-President Rodrigo Duterte ordered police officers and the military to patrol the streets and ensure that everyone complied with the regulations, giving an order to “shoot to kill” ([VOA, 2020](#)) if necessary to maintain public order. In the online sphere, information was highly monitored. Thailand, Cambodia, the Philippines, Myanmar, and Vietnam quickly declared new powers to monitor people’s online activity and their expressions concerning the pandemic under the pretext of combating fake news ([CSIS, 2020](#)).

Later, the economic turmoil caused by strict lockdowns and the deployment of vaccines in the second quarter of 2021 were crucial in making governments reconsider their zero-COVID approach. The overall production output of Southeast Asia decreased by 4% ([ADB, 2022](#)). The economic impact was especially harsh in the Philippines, Singapore, Thailand, and Malaysia. In 2020, their growth output was -9.6%, -5.4%, -6.1%, and -5.6%, respectively ([Ibid.](#)), making the approach unsustainable. In late 2020, millions of citizens started receiving COVID-19 inoculations. Singapore was the first country to administer the first dose to its citizens in December 2020, followed by Indonesia in mid-January 2021 ([Tan & Lin, 2021](#)). By April 2021, all Southeast Asian countries had started their nationwide vaccination programmes ([Ibid.](#)). Although the initial vaccine rollout was relatively slow ([Buck and Dann, 2021](#)), the number of those inoculated people kept increasing. As of November 2022, at least 80% of the population in seven Southeast Asia countries (Brunei, Cambodia, Laos, Malaysia, Singapore, Thailand, and Vietnam) has received two doses of the vaccine. The percentage of those who have been fully vaccinated in the other four countries (Indonesia, Myanmar, the Philippines, and Timor-Leste) ranged between 64% and 75% in November 2022 ([Holder, 2022](#)).

Therefore, given the increasing economic pressure due to the anti-COVID measures, the rollout of COVID-19 vaccination programmes, and infection and death rates dropping significantly from the second half of 2021 ([Our World in Data, 2022](#)), governments realised that the zero-COVID strategy was unsustainable. They started cautiously relaxing some of their anti-COVID measures to revive their economies. Ending lockdowns and easing precautionary measures that were limiting people’s mobility were among the first measures to be reviewed. Although there were still thousands of new infections at the time, Malaysia ended the SoE ([Tan, 2021](#)) and eased national and international travel restrictions in October 2021 after strict mobility measures started to spark dissent among citizens ([Mogul, 2021](#)). Then Prime Minister Ismail Yaakob also took an oath not to bring Malaysia under lockdown if cases started to rise again ([Ibid.](#)). In Cambodia, the government ended highly restrictive measures that prevented people from leaving their homes for medical emergencies ([Tatum, 2021](#)), contributing to opening the country to foreign visitors, too, hoping to revive its economy. Other countries in the region, such as the Philippines and Thailand, adopted similar strategies to allow increased mobility while keeping the virus at bay ([CSIS, 2022](#)).

Yet, governments would not necessarily relinquish all the tools for political and social control they had invoked or acquired along the way. Particularly concerning, some of the emergency and temporary legal provisions that had granted governments extraordinary powers to combat the pandemic persisted. As demonstrated by previous regional crises, Southeast Asia governments tend to maintain these tools and strengthen authoritarianism after a crisis ends ([Asia Centre, 2020](#)). In Cambodia, governmental control over the flow of information did not cease after quarantine measures were relaxed, and Civil Society Organisations (CSOs) expressed their concern over the fact that keeping certain anti-COVID-19 laws, which are often vaguely defined, creates fertile ground for broad repression ([OHCHR, 2020](#)). For example, in May 2021, the government banned reporting from Phnom Penh’s red zones – localised city areas under lockdown – to avoid echoing the voices of people experiencing food shortages ([Lee & Natalegawa, 2021](#)). Protracting and weaponising emergency laws, even after governments started leaving “zero-COVID”

behind, can become a strategy to meet their political ends, including derailing political movements and silencing dissent questioning policy decisions ([AP News, 2021](#); [Reuters, 2021](#)).

The next section analyses the international principles that allowed governments to derogate people's rights in an emergency situation – as well as strict requirements for when and how such powers can be used.

### 1c. International Principles on the Derogation of Rights in the State of Emergency

Governments must protect the rights and liberties of those residing in their country. However, in times of crisis, governments may derogate certain rights to address pressing concerns that require emergency powers to manage. In such scenarios, which rights can be derogated and for what period is highly subjective and debatable. The analytical framework to assess rights restrictions can be built using two sources. First and foremost, the International Covenant on Civil and Political Rights (1966), particularly Article 4. Second, the Siracusa Principles, a document developed by non-governmental organisations (NGOs) adopted by the United Nations Economic and Social Council in 1984 ([Trody et al., 2013](#)), expanded the provisions under Article 4.

The ICCPR lays out the obligations states must comply with to protect individuals' civic and political rights. General Comment No. 29 of the ICCPR HRC on Article 4 (2001) is particularly relevant. By invoking Article 4 of the Covenant, states may derogate from their obligations under the ICCPR Covenant to cope with the needs of an emergency situation, as long as they are not inconsistent with other international law obligations and do not discriminate solely based on race, colour, sex, language, religion or social origin. Thus, in an emergency situation, derogation of rights permits the suspension of certain rights only for the purpose of returning to normalcy ([McGoldrick, 2004](#)).

Article 4(1) outlines five cumulative preconditions that justify the derogation of rights. *First*, a public emergency threatening "the life of the nation" must occur, meaning its magnitude must be threatening the existence of the population. *Second*, the public emergency must be officially proclaimed, emphasising the strict maintenance of the rule of law even in times of uncertainty to comply with the pertinent legal provisions. Declarations notify the public of the shift of the governance system into an emergency – but temporary – mode. Without official declarations, the orders and decrees risk not being repealed once the emergency ends. *Third*, derogation is permitted only to the extent strictly required by the exigencies of the situation. Accordingly, all specific measures being taken must have a realistic justification, requiring an examination of each provision that is likely to be affected and whether Article 4 is truly necessary. *Fourth*, derogating measures must be consistent with the state's obligations under international law. Therefore, a derogation of rights that could result in a breach of a state's international obligations should not be permitted. *Fifth*, derogating measures must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

To be sure, certain rights remain non-derogable even in situations of emergency, as Article 4(2) – and other international principles – provide. These rights include the right to life (Art. 6), freedom from torture or cruel, inhuman and degrading treatment or punishment; freedom from medical or scientific experimentation without consent (Art. 7), freedom from slavery and servitude (Arts. 8(1) and (2)), freedom from imprisonment for inability to fulfil a contractual obligation (Art. 11), the prohibition against the retrospective operation of criminal laws (Art. 15), right to recognition before the law (Art. 16), and freedom of thought, conscience and religion (Art. 18).

Article 4(3), accountability to other state parties, states that when rights derogation occurs, the state must communicate so to other state parties immediately. It must also indicate how long the derogation of such a right will last. This step increases accountability since the extent to which rights should be derogated must be justified ([Taylor, 2020](#)). The treaty has been respected by almost every UN member (173) and stands as a key human rights document creating a set of norms respected by all members. Still, four Southeast Asian countries, Brunei, Malaysia, Myanmar, Singapore, and Timor-Leste, have not ratified the Covenant ([Human Rights Committee, n.d](#)).

Without a doubt, the outbreak of COVID-19 translated into a large-scale crisis that forced governments to take action and try to contain all of its effects. Southeast Asia's zero-COVID approach proved relatively effective if the number of new COVID-19 infections is considered. Yet, as mentioned in Section 1b., it involved derogating fundamental civil liberties, fuelling an intense debate on the balance between public health and civic freedoms. To understand the legal measures that governments relied upon – and their potential abuse – the next chapter outlines the emergency and temporary laws Southeast Asian countries employed to contain the spread of the virus.

## 2. Emergency and Temporary Laws & Measures

During the pandemic, Southeast Asian governments enforced different sets of legislation and executive regulations to contain the coronavirus spread and curb the number of new infections and deaths. Legal measures used by state authorities included invoking a state of emergency (SoE), enacting temporary laws after the coronavirus outbreak, and using temporary powers invoked under existing health legislation on infectious diseases to contain the outbreak. This section unpacks and examines these three categories of laws.

### 2a. State of Emergency and Emergency Orders

When a national threat emerges, the executive branches of government can declare a State of Emergency (SoE). It allows governments to assume an exceptional amount of political power to deal with exceptional circumstances ([World Atlas, n.d.](#)). Still, as noted in [Section 1c.](#) of this report, Article 4 of the ICCPR protects certain rights to be non-derogable even in emergencies, while imposing a strict condition of how the governments must declare an SoE.

Conceptually, an SoE does not vary much from country to country. Yet, procedures to declare an SoE do vary from case to case. In some countries, its Magna Carta stipulates who and under what circumstances the SoE can be declared, as well as what legal provisions regulate its declaration. While other countries' SoE procedures may be stipulated in other subordinate legal documents.

On 31 March 2020, the Jokowi government issued Presidential Decree No. 11 ([2020](#)) and declared a public health emergency, citing Law No. 6 ([2018](#)), the Health Quarantine Law. The decree imposed large-scale social restrictions (PSBB) in regions with high infection rates ([Anugerah et al., 2021](#)), including restrictions on religious activities, gatherings in public places and the closure of schools and workplaces. The government also introduced Regulation No. 21 ([2020](#)) to confer more power to local authorities in implementing PSBB. Further, the Regulation of the Minister of Health No. 9 ([2020](#)) allowed the military and police to assist in implementing restrictions.

Malaysia initially relied on Movement Control Orders (MCOs), allowing the government to prohibit mass gatherings and close business premises, hoping to contain the spread of the disease ([Tang, 2022](#)). Nonetheless, as the infection rate skyrocketed, the Yang di-Pertuan Agong (YDPA), on the authority of Art. 150(1) of the Malaysian Constitution ([Constitute Project, n.d.](#)) issued the Proclamation of Emergency (PoE) in January 2021, which would last until August 2021. With the PoE, the YDPA can promulgate ordinances on any issue the Malaysian Parliament can legislate on that are not inconsistent with the constitutional provisions ([Baker McKenzie, 2021](#)). A number of emergency ordinances were proclaimed under the PoE, including the Emergency (Prevention and Control of Infectious Diseases) (Amendment) Ordinance ([2021](#)) and the Emergency (Essential Powers) (No.2) Ordinance ([2021](#)). The first amended the Prevention and Control of Infectious Diseases Act (1988) to grant the government more power and give room for the government to use its discretion in determining who must wear a tracking device. The latter ordinance empowers the courts to remove what it deems as 'fake news' and grants the police access to personal data ([Malaysiakini, 2021](#)).



In the Philippines, the Duterte administration declared a state of public health emergency in May 2020 with Proclamation 922 (2020), empowering government agencies to take the necessary measures to respond to the health emergency and urged people to comply with COVID-19 directives and advisories that followed the Proclamation to contain the virus. Under Article 15(2) of the Constitution, the Philippine National Police assisted in coping with the emergency situation ("Proclamation 922", 2020). One week later, the government issued Proclamation No. 929 (2020), declaring a state of calamity for six months, enhancing community quarantine throughout Luzon and Manila. Additionally, armed forces could take any measures necessary to ensure order. The state of calamity ended in January 2023 (Abasola, 2023).

The Thai government declared an SoE under the Executive Decree in Public Administration in Emergency Situations (2005) in March 2020, establishing a COVID-19 task force. The SoE was extended every two months until September 2022 (Bangprapha, 2022). During the span of two years and a half, Section 9 of the Decree granted the PM the power to issue emergency orders to resolve the emergency situation. Regulation No. 27 (2021) invoked Sections 9(1) and (2), setting up curfews in large cities and banning gatherings of five individuals or more. Regulation No. 29 invoked the power under Section 9(3) to "prohibit the publication which may instigate fear amongst the people or ... distort information". Regulation No. 29 (2021) ordered internet providers to cut off internet access to those who commit the aforementioned act of proliferation. Moreover, Section 17 of the Decree allowed officials to not be subject to civil, criminal or disciplinary liabilities arising from their duties under the act if performed in good faith.

Using Presidential Decree No. 29 (2020), Timor Leste's president declared the SoE in March 2020, suspending the right to assembly and limiting people's freedom of movement (ICNL, 2020). It also stated that active and passive resistance to orders is punishable by law. The Decree was supplemented by Government Decree No. 3 (2020) on the measures for the implementation of the SoE. This Decree established a 14-day quarantine period for international travellers, as well as limited freedom of movement within the country, and banned gatherings of five people or more.

Other governments established Executive Orders and laws that contained elements, and in lieu of, the emergency, thus not officially declaring the SoE but equally strengthening the role of the Executives through the justification of the exigency as a result of the pandemic. Instead of declaring the SoE, the Vietnamese government banned gatherings of more than ten people and resorted to several directives to impose restrictions, and Directive Directive No. 16/CT-TTg (2020) required people to self-isolate at home. With Decree 15/2020/ND-CP, the government could fine people who posted false or misleading news about the pandemic online - fines ranged from VND 10-20 million (USD 425-850). In Cambodia, the Hun Sen regime vowed not to declare an emergency (The Khmer Times, 2020). However, the parliament legislated an SoE-specific law to supplement Art. 22 of the Cambodian Constitution (Constitute Project, n.d) on emergency provisions in April 2020. The law, which consists of twelve articles, "lists twelve measures the government has the right to take in a state of emergency" that would give state authorities broader powers when an SoE is declared. Powers include measures of surveillance, telecommunications, and mobilisation (ICNL, 2020). In Laos, Order No.06/PM (2020) had a similar prohibitive nature and restricted people's movement, including lockdowns and inter-regional travel, and prohibited gatherings of ten people or more in public places. Additionally, the order also increased people's surveillance to curb the spread of false information that could lead to misunderstandings and panic among citizens.

Although different in nature, declaring SoEs and establishing emergency orders hand special powers to executive branches at the same time compromising certain civic freedoms. These special measures come with limited checks and balances, with the justification that rigorouslyness would defeat the purpose of emergency management. As a result, these emergency measures grant governments remarkable leeway to interpret how they should address the emergency situation at hand.

### 2b. Temporary COVID-19 Laws

Apart from invoking the SoE and issuing executive orders to manage emergency situations, Southeast Asian governments also relied on laws that were in effect for a limited time span and were enacted to face the COVID-19 health crisis specifically. Unlike emergency laws, which were already at the executive branch's disposal, temporary laws needed approval from the legislation before enforcement. Although, they were fast-tracked due to the severity of the situation. In effect, they serve as ways in which the Executive amassed more temporary powers during the pandemic.

Singapore provides some examples of laws and government efforts to combat coronavirus without invoking a state of emergency. The People's Action Party (PAP) refused to declare an SoE ([Lee, 2020](#)) and, instead, passed the COVID-19 (Temporary Measures) Act ([2020](#)). The Act granted Singapore's health minister the power to impose movement and assembly restrictions. Its non-compliance would come with a maximum penalty of SGD 10,000 (USD 6,950) and/or a 6-month prison sentence. Reoffence would double the penalty. The government also introduced the COVID-19 (Temporary Measures) (Control Order) Regulation ([2020](#)) to supplement the Act. It was under the Control Order that the 'circuit breakers' came into effect, imposing quarantines and limiting the number of group sizes and venue capacity. In March 2022, the COVID-19 Temporary Act was extended and will expire in April 2023. The government noted the reason for its effect while the country builds resiliency against possible new variants ([Kurohi, 2022](#)).

In the Philippines, citing the skyrocketing infection rate, the Duterte government introduced Bayanihan to Heal as One Act (also known as Bayanihan Act 1). It expanded the President's power, among others, to rearrange the national budget and turn private premises into quarantine facilities ([Department of Political Science, University of the Philippines Diliman, 2020](#)). Spreading false information on COVID-19 also became punishable by the Act.

In Cambodia, the Hun Sen government crafted the 'Law on Measures to Prevent the Spread of COVID-19 and other Deadly Infectious Diseases'. It was fast-tracked through the National Assembly, taking only a total of six days for the Assembly to examine and adopt the law. Under the Law, the government had the power to restrict travel and business activities, prohibit gatherings, cordon off and impose lockdowns in targeted areas, and impose the mandatory use of facemasks ([Aun, 2021](#)). Individuals defying the temporary measures faced different forms of punishment, such as people's businesses being shut down. Not complying with self-quarantine measures was punishable by up to 3 years in prison, and those who evaded treatment or escaped medical facilities could be jailed for up to ten years ([Ibid.; Smith et al, 2021](#)).

### 2c. Existing Health and Infectious Disease Laws

Sub-regulations were also issued under pre-established laws to assist and supplement in situations where emergency laws do not cover them. These decrees and orders, while already in place before the pandemic was invoked, served as a legal tool under which governments issued ancillary laws in response to the outbreak. Pre-established laws used in Southeast Asia varied from country to country and focused on different agents or concerns, like police forces or natural disasters.

Throughout 2020, Malaysia relied heavily on the Prevention and Control of Infectious Diseases Act (1988) and the Police Act (1967). Under these two laws, the Malaysian government can impose restrictive measures to contain the virus. As a result, the government issued a Movement Control Order to curb the spread of the disease, which limited people's movement (Tang, 2020) and also imposed mandatory health

examination procedures before proceeding for immigration clearance upon return to Malaysia. Additionally, state authorities could also control public gatherings and the flow of information, requiring people to comply with officers' requests to provide any relevant information that could help prevent the spread of COVID-19 ([SKRINE, 2020](#)). Disobeying MCO can result in a fine of up to RM 1,000 (USD 218) or imprisonment not exceeding 6 months or both.

In Indonesia, the legal basis to address diseases like COVID-19 has been in place since 1984 with the Law No. 4 of 1984 concerning Infectious Diseases, which stipulates how to overcome the spread of highly infectious diseases and regulates sanctions for those who prevent the implementation of health measures ([Siwu & Rahman, 2020](#)). Law No. 6 of 2018 concerns health quarantines and plays a key role in limiting people's mobility during health emergencies. Law No. 24 on Disaster Management ([2007](#)) is also crucial in addressing infectious diseases since it regulates how to overcome the risks triggered by a disaster, thus focusing on the post-event. The Jokowi government promulgated Presidential Decree No. 12 ([2020](#)), which declared COVID-19 as a natural disaster. The Decree consolidated the federal government's power in managing the crisis by ordering that every policy from regional COVID-19 task forces led by governors, regents, and mayors must comply with the federal government's policies ([Yahman & Setyagama, 2020](#)).

Vietnam's previous experiences with infectious diseases such as bird flu outbreaks in 2005, cholera in 2007, severe acute respiratory syndrome (SARS) and Middle East respiratory syndrome (MERS) in 2013 allowed the country to develop specific health legislation to protect the country against future diseases with similar characteristics. Laws included the Law on Prevention and Containment of Infectious Diseases (03/2007/QH12), Decree 176/2013/ND-CP on administrative penalisation in the health sector, Decree 89/2018/ND-CP (guiding the implementation of the 2007 Law) on the prevention and containment of transmissible diseases in border gates, Decision 3796/QD-BYT of the Ministry of Health to establish the Vietnam Public Health Event Emergency Response Centre (PHEOC) and regional PHEOC Offices to enhance information sharing. These became central to Vietnam's health strategy after the Government Office issued Dispatch No. 441 ([2022](#)) to warn local authorities of the health risk that COVID-19 supposed and requested the implementation of strong medical quarantine at transportation hubs like airports and ports ([Nguyen, 2022](#)). Existing health legislation was also the basis for issuing several directives limiting public gatherings, imposing lockdown measures, and suspending social events ([Ibid.](#)). Furthermore, Vietnam used its Law on Cybersecurity ([2018](#)) to target cases of false information regarding COVID-19. In April 2020, the government issued [Decree 15/2020/ND-CP](#), stipulating fines for posting and disseminating false information ranging from VND10m to VND20m (\$425-\$850) for posting or sharing fake news online ([Harb, 2020](#)).

The exceptional situation during the pandemic required a rapid response from all governments to contain the crisis. Policy responses ranged from invoking an SoE, emergency orders, temporary COVID laws, and using provisions in pre-existing legislation to guide policy and restriction measures under the pandemic. To some extent, all these measures mitigated the threats derived from the pandemic. Yet, emergency powers can potentially result in the abuse of laws to crack down on civil and political liberties for political benefit. In the next chapter, this report analyses the impact of emergency powers on civic freedoms and democracy in countries across Southeast Asia.

## 3. Restriction on Civic Freedoms and its Impact on Democracy

After outlining the legal measures that Southeast Asian governments adopted to contain the pandemic, this section analyses how emergency and temporary laws affected limited civic freedoms and democracy in Southeast Asia. It first shows that the derogation and abuse of anti-COVID-19 laws limited people's liberties. Then, it shows that such limitations affected democracy in Southeast Asia negatively, which has contracted since the COVID-19 outbreak. Below, freedom of assembly and protest, the disenfranchisement of the electorate, freedom of expression, and state surveillance are examined.

### 3a. Blocking Websites

Initially, political measures to contain the spread of COVID-19 consisted of controlling people's movements within the country and within international borders. Virtually all in-country residents were under some type of lockdown, and borders with neighbouring countries were closed. In many countries, inter-provisional or inter-state travel was also disallowed. Although limiting people's movement was a legitimate strategy to prevent people from contracting the disease, the misuse of such powers minimised people's opportunities to defend their rights.

Malaysian PM Muhyiddin Yassin implemented the Movement Control Order (MCO) in response to the pandemic in March 2020 ([Ahmad, 2020](#)), restricting people's right to movement. Although the Malaysian Constitution (Art. 9) ensures freedom of movement, Art. 9(2) Section 2 states that the executive can restrict such freedom when public health and order are threatened. With COVID-19 spreading rapidly, people's movements were limited and only essential workers could go out to work. Police officers ensured that people would stay home, and roadblocks were formed to ensure that those going out had no alternative ([Lee, 2020](#)). Limiting people's movement also curtailed their freedom of assembly and protest to defend their rights. Sarasvathy Muthu, a human rights defender who protested peacefully with four other activists from the National Union of Workers in Hospital Support and Allied Services and Parti Sosialis Malaysia in June 2020, was arrested under the Prevention and Control of Infectious Diseases Act (1988) and Sections 186 and 269 of the Malaysian Criminal Procedure Code. They were accused of participating in a negligent act likely to spread COVID-19 when showing their support for cleaners working in state-run hospitals in Ipoh ([Frontline Defenders, 2020](#)). All five protesters were charged and released on bail days later ([Chua, 2020](#)).

In Cambodia, the Law on Preventive Measures Against the Spread of COVID-19 was adopted in March 2021 and institutionalised sentences of up to twenty years in prison for those violating national measures to contain the virus. The preventive measures affected workers wanting to defend their labour rights since freedom of assembly and protest declined ([Hanung, 2022](#)). Nagaworld is a luxury hotel and casino in Phnom Penh. In early 2022, the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU) called a strike to protest employees being discharged. As a result, union activists were arrested under the pretext that they violated anti-COVID-19 measures and obstructed the state's efforts to contain the pandemic ([Human Rights Watch, 2022](#); [Mech & Dickinson, 2022](#)). Nagaworld union activists struggling to defend workers' rights has not been an isolated case. Anti-COVID-19 legislation has also been used to stifle activists protesting other human rights violations related to land rights and dissenting voices like journalists whose ideas are not aligned with the government's ([CIVICUS, 2022](#)).

The Omnibus Law sparked a wave of protests across Indonesia. The bill, which became law in October 2020, was created to stimulate the national economy severely damaged because of COVID-19 with the relaxation of the country's web of business, labour, and environmental laws. Nonetheless, it would also abolish sectoral minimum wages, reduce severance pay, allowable overtime would increase and allow business owners to only be required to give one week off for holiday to their workers instead of two (BBC, 2020). A coalition of fifteen activist groups called on workers to join mass protests and a national strike to demand the bill be revoked. During the course of the protests, the police arrested at least 400 participants under the pretext that they violated anti-COVID-19 measures (Firdaus, 2020).

These cases show that the measures to contain the pandemic based on limiting people's movements were exploited by governments. On the one hand, imposing lockdowns and travel bans within and to and from the countries aimed to curb the number of infections and deaths. Yet, on the other hand, the impact of such measures went beyond controlling people's physical movements and was used to justify a wider crackdown on protesters defending their rights.

### **3b. Electoral Integrity**

COVID-19 containment measures curbed the quality of elections during the pandemic. Debates on the celebration of elections during the health emergency amalgamated public health concerns and the quality of multiparty elections. One key question was whether elections should be celebrated due to the virus' transmissibility. Another vital issue was how to ensure not only the safety of the electorate but also the quality of elections. The cases of Myanmar, Indonesia, and Singapore show that elections were held during the pandemic primarily because of the elites' political interests; but more crucially, anti-COVID-19 measures curbed the quality of elections.

Myanmar imposed travel restrictions in the early stages of the pandemic like Malaysia and Cambodia. In August 2020, two months before GE2020, the infection rate in Myanmar soared. 359 infections were reported by 8 August and 1,610 by 8 September (MoHS, 2020). Consequently, the Union Solidarity and Development Party (USDP), the country's main opposition party, called to put off GE2020. However, Aung San Suu Kyi's National League for Democracy (NLD) was against it, reasoning that a power vacuum was not desirable since the Constitution did not contemplate extending the mandate of the incumbent government (Lidauer & Saphy, 2021). Elections went on and anti-COVID-19 measures affected the process with stay-at-home orders in some townships. Furthermore, MoHS SOP-1 (2020) capped the rally attendees to 50 and door-to-door campaigns to 15. Campaigning activities were also limited because new cases soared (Lidauer & Saphy, 2021). Yet, opposition parties reported that NLD campaign appearances were excessive, "pointing to an unlevel playing field" (Ibid.), highlighting the lack of transparency of the anti-COVID rules. Restrictions and limited freedom of assembly also hampered election scrutiny and information, challenging voter education and scrutiny and transparency. Additionally, the travel ban challenged the presence of international observers (Ibid.). This example shows that NLD's political opportunism to maintain its leadership prevailed, even if it meant limiting people's opportunities to engage fully with the electoral process due to ongoing COVID-19 restrictions.

In Indonesia, Law No. 10 (2016) outlines that the state must carry out simultaneous regional elections as part of its duty to ensure people's political rights. However, Indonesia's regional elections of 2020 were postponed from August to December with Presidential Instruction No. 6 (2020) on Maintaining Self-Discipline and Law Enforcement of Health Protocols in the Prevention and Control of COVID-19 and the provisions of Article 201A paragraph (2) of the Regional Election Law, which states that "*the postponed simultaneous voting as referred to in paragraph (1) shall be held in December 2020*" (Supriyadi et al., 2020;

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“Decision No. 92/PUU-XIV/2016”). Regardless of the electoral delay, the debate was similar to the Myanmar case with regard to balancing public health and political rights. The KPU argued that elections had to occur in 2020, while the Elections Supervisory Body (Bawaslu) proposed putting them off until 2021 ([Sukmajati, 2020](#)). The government argued that regional elections were part of its national strategic plan and, therefore, should not be further delayed ([Ibid.](#)). Commissions to elect 270 positions (nine governors, 224 regents, and 37 mayors) took place on 9 December 2020. According to KPU, the voter turnout was 76.13%. However, the National COVID-19 Task Force informed that less than half of the voting points were equipped with the measures to prevent COVID-19 infections. After voting day, KPU and Bawaslu reported thousands of new infections contracted by members who had been assisting at polling stations. Out of 46,539 people at voting points in Sukabumi Regency, 2,000 tested positive after the elections ([IFES, 2020](#)).

Indonesia further exemplifies how political elites gained the upper hand in the COVID-19 context to gain influence in the political scene. Political dynasty is a key concept in Indonesian politics. It is based on “power transfer from elected officeholders to their own family members [...]” ([Kenawas, 2020](#)). Therefore, “subnational elections do not only involve local dynasties – they also attract family members of national elites” ([Ibid.](#)). Ruling political elites had a special interest in putting elections ahead of public health. Yet, the reason was so they could ensure their political dominance. In 2020, the relatives of several political leaders in office were putting themselves forward for candidates, such as Widodo’s son, running for Surakarta Mayor, and Gibran Rakabuming Raka, Widodo’s son-in-law, running for Medan mayor ([Mulyanto, 2020](#)).

Elections were also held in Singapore in July 2020 during the first COVID-19 wave. Opposition leaders from the Singapore Democratic Party, Reform Party, and Progress Singapore Party criticised the PAP decision for a snap election since it would contribute to the spread of the virus ([Singh, 2020](#)). The government introduced the Parliamentary Elections (COVID-19 Special Arrangements) Bill to ensure the commissions could be celebrated safely. The bill allowed voters under quarantine to vote outside their electoral divisions ([Chew, 2020](#)). The introduction of temporary measures aimed at making political participation safe affected electoral campaigning. Yet, it came at a cost. For example, e-rallies replaced traditional mass gatherings ([Ibid.](#)). Additionally, candidates were not allowed to take part in parades or to make public speeches ([Ishak, 2020](#)). On voting day, voters had to cast their ballot in a previously allocated two-hour time slot, and those with COVID-19 symptoms were not allowed to enter the polling station – they could only do so during the last hour ([CNA, 2020](#)). Anti-COVID-19 measures resulted in long queues and a serious health risk to voters and organisers alike ([The Straits Times, 2020](#)).

The ruling party PAP obtained political capital from GE taking place within the first few months of the pandemic. On the one hand, elections had to take place by April 2021 at the latest. Since the pandemic was likely to last, celebrating elections sooner than later would avoid the ruling party facing elections amidst COVID-19’s impacts. On the other hand, the government’s management of the pandemic upon its outbreak was creditable and the role of the opposition was minimal, giving the PAP the upper hand in the elections ([Singh, 2020](#)).

The Myanmar, Indonesia, and Singapore cases demonstrate that balancing public health and electoral rights was a complex task. These examples also corroborate claims that celebrating elections in emergency situations like the pandemic is likely to compromise their integrity, making it necessary to evaluate the rising costs on voting day and the whole electoral cycle ([Garnett et al., 2022](#)). Celebrating elections in Myanmar, Indonesia, and Singapore amidst anti-COVID-19 regulations partially disenfranchised the electorate, not allowing them to engage with the process fully; meanwhile, it gave political elites the upper hand in reaching their political goals.

### **3c. Investigation and Prosecution**

As new COVID-19 variants appeared, governments developed new strategies to contain the health, social, and economic crisis. One of the new measures to curb the number of infections consisted in incorporating fake news provisions to silence inflammatory comments about pandemic policy management, serving to complement initial health provisions. While the responsibility of policy institutions in combating false information is undeniable ([Hasselbach, 2020](#)), fake news being used as a pretext to curtail freedom of speech cannot go unnoticed since it increases democratic challenges in times of crisis ([Wiseman, 2020](#)).

Aside from mobility restrictions imposed by Vietnamese authorities ([Rödl & Partner, 2020](#)), the government has made considerable effort to disseminate accurate information about the pandemic and provide COVID-19 tests to its population. In parallel, authorities legislated to regulate the flow of information. Decree No. 15/2020/ND-CP, which replaced Decree 174, criminalises sharing false information, misinterpreting, slandering, and insulting governmental agencies, organisations, and the dignity of individuals, which can result in confusion among people. Furthermore, authorities can use the decree to request the removal of information deemed misleading, thus relentlessly tackling the spread of false information. If found guilty, individuals will face prison time and fines of up to 20 million dong or USD 850 ([Chung & Huong, 2020](#)). Human rights advocates have expressed their concerns since the new provision can contribute to worsening freedom of expression in the country, which is already very limited ([Nguyen & Pearson, 2020](#)). Facebook, the most widely used social media platform in the country, reflects the impact of the new information provisions on freedom of expression. In 2020, state-owned telecommunications companies cracked down on anti-state Facebook posts by slowing Facebook's local servers ([Pearson, 2020](#)). Other citizens have been fined after incorrectly posting on the same platform that COVID-19 was spreading around their community ([Nguyen & Pearson, 2020](#)) or arrested and accused of bad-mouthing the regime, citing Article 331 of the 2015 Penal Code. This was the case of a 28-year-old citizen, Ma Phung Ngoc Tu, who shared fourteen posts about the spread of the pandemic ([Amnesty International, 2020](#)).

The Thai government has also been in the spotlight for using anti-fake news in the context of the pandemic to curb freedom of expression. During the pandemic, the Emergency Decree has been used to target comments from the media and the public under the guise of protecting Thailand's public health ([HRW, 2020](#)), without impunity. Thai artist Danai Usama exemplifies how governmental provisions on fake news and information have been used to silence critics of the pandemic's state management and shrink free speech ([Article19, 2020](#)). Danai used Facebook to express his dissatisfaction with the lack of screening measures at a Bangkok airport to contain the spread of the virus. He was arrested and charged with violating section 14(2) of the Computer-Related Crime Act for "putting into a computer system false computer data in a manner that is likely to cause panic in the public" ([Ibid.](#)). Human Rights Watch ([Ibid.](#)) also reported cases whereby state authorities threatened to fire hospital staff or revoke their licences should they mention that hospitals across the country did not have enough medical supplies to combat the health crisis.

Examples of curtailed freedom of speech are also found in Brunei. The pandemic fuelled repression, and the government reminded citizens that spreading false information can result in generalised fear and can be reported under Section 34, Chapter 148 of the Public Order Act ([The Star, 2021](#)). In 2022, the Borneo Bulletin, which is controlled by the sultan's family, reported that Hajah Faizah binti Haji Abdul Gapar had been pressed with the charge under Section 34, Chapter 148 of the Public Order Act after allegedly "making a false statement in a video recording that was likely to cause public alarm" concerning the COVID-19 cases in the country. She denied the charges ([Borneo Bulletin, 2022](#)).

Paradoxically, in a scenario where enhanced communication was considered key to controlling the spread of the pandemic, the health crisis curtailed freedom of expression in Southeast Asia. Examples from Thailand, Vietnam, and Laos prove that false information has been used by governments to silence dissent, especially those voices that disseminated negative views on the evolution of the disease. The legislation implemented to curb the number of new infections was also used to crack down on those expressing their views on sensitive issues in protests and public acts, limiting people's freedom of expression in a broad range of topics that accommodated state authorities.

### **3d. Surveillance in Police States**

Using technology in public health to track and trace infected people allowed governments to analyse big data and learn more about the pandemic (virus exposure, outbreaks, or aggregate hospital data, for example) to lower the number of new COVID-19 infections. On the flip side, digital surveillance to criminalise people's actions unrelated to COVID-19 has accompanied track and trace technology from the beginning. As a result, people's right to privacy has been eroded because of the criminalisation of pandemic responses.

Singapore implemented the TraceTogether program to contain the spread of the virus. People could download an app or carry a token that worked with Bluetooth technology to collect data to monitor the progress of the pandemic. The government said that data would only be used if a citizen contracted COVID-19 ([Asher, 2020](#)). Participation in this program was not enforced by law. Yet, authorities "threatened social penalties for those who do not sign up" ([Pierson, 2021](#)). Privacy concerns over the use of data emerged rapidly as the government then announced that contact-tracing data could be used in criminal investigations, contradicting its initial intentions to use it only for public health matters. However, official sources confirmed that only authorised officers would access TraceTogether data while investigating criminal cases and that misusing information would result in hefty fines and prison time. That raised privacy concerns among human rights defenders, pointing out that anti-COVID measures increased surveillance and undermined people's right to privacy ([Heijmans, 2021](#)). In April 2022, the Singaporean government announced the end of TraceTogether. Still, data obtained in the previous two years would be retained ([Wei, 2022](#)), making Singapore an example of the long-lasting privacy concerns about using track and trace technology that were raised with the popularisation of such technology.

State surveillance has also threatened the right to privacy of Laotian people. In May 2021, seven human rights organisations issued a statement condemning the weaponisation of restrictive laws and the failure of the Lao PDR government to comply with its human rights obligations ([ASEAN Regional Coalition to #StopDigitalDictatorship, 2021](#)). The joint statement expressed its concern over the use of Sections 8 (offences regarding cybercrime) and 62 (criminal measures) of the 2015 Law on Prevention and Combating Cybercrime, which describes crimes vaguely and bestows almost unrestricted power to the state with harsh criminal measures for those breaking the law. The Media Law is seen as equally problematic ([Ibid.](#)) because it "tightens the government's control of reporters, ensuring that they disseminate the policies of the ruling communist party [...]" ([Gerin, 2016](#)). With restrictive legislation and a special task force, the government has criminalised what the government considers COVID-19 false information. To clamp down on it, policing of the online sphere has increased, especially to crack down on COVID-19 information deemed false ([ASEAN Regional Coalition to #StopDigitalDictatorship, 2021](#)). State policing is not a novelty in Laos, and have traditionally targeted government critics. In 2019, social media influencer Houayheuang Xayabouly used Facebook to question the government's response to floods caused by a dam collapse. She was arrested and sentenced to five years in prison. Therefore, the pandemic has increased policing of the online sphere and decreased people's right to privacy ([Whong, 2019](#)).



Amid the pandemic in the Philippines, President Duterte treated the pandemic as a security threat to crack down on people's privacy ([Aggjo, 2021](#)). Unlike the examples of Singapore and Laos, this case shows that state surveillance in the COVID-19 context also increased in the offline sphere. The Philippines National Police (PNP) was a vital mechanism for doing so and violated people's primary human rights. The PNP coordinated with the Inter-Agency Task Force on Emerging Infectious Diseases (IATF-EID) to implement public health measures to confront the virus ([Ibid.](#)). The Republic Act 11332 ([2018](#)), known as the Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act, "recognizes disease surveillance and response systems of the Department of Health (DOH) and its local counterparts, as the first line of defence to epidemics and health events of public health concern that pose risk to public health and security". Reuters ([Lema & Morales, 2020](#)) reported that the government used this law to justify doing house-to-house searches as a preventive measure to contain the virus. Human rights groups have warned that increased surveillance violates people's right to privacy and is more likely to affect the poorest communities, even if some members have just committed minor crimes.

The examples above outline a scenario where the pandemic has been used as a pretext to increase surveillance and limit people's right to privacy, giving an upper hand to authorities to monitor the population. The crackdown on privacy has been online and offline, with increased surveillance using health-related data to legitimately contain the coronavirus spread and, more crucially, to monitor citizens for other purposes deemed as sensitive or threatening to state authorities.

### **3e. Impact on Democracy**

So far, this chapter has shown that anti-COVID-19 measures granted through emergency powers have curbed civic freedoms in Southeast Asia. The analysis of each of the above civic freedoms, explored individually, draws a pessimistic political outlook in the region. Yet, the overall analysis of the impoverished state of civic freedoms also reveals a generalised democratic contraction in the region.

It must be stressed that voter turnouts in the commissions celebrated since the pandemic outbreak in 2020 have been high. Voter turnout in the Singapore GE in 2020 was 96% (mandatory voting) ([Banerjee, 2020](#)), 80% in Indonesia ([The Jakarta Globe, 2020](#)), and 70% in Myanmar ([The Irrawaddy, 2020](#)). Nonetheless, voter turnouts alone do not provide a comprehensive overview of the state of democracy since electoral democracy is just one of the elements of functioning democracies. Civic Freedoms, some of which have been analysed in this chapter, are equally important in examining democracy since they allow people to make informed choices, thus playing a key role in making elections meaningful. Evidence suggests that, despite high voter turnouts during the pandemic, democracy in Southeast Asia has declined since the outbreak of the pandemic, coinciding with the state of emergencies and extraordinary power granted to the government, without checks and balances.

The "Freedom in the World" Index and "EIU Democracy Index" quantify Southeast Asia's democratic contraction since the outbreak of the pandemic. The democratic measurements of both institutions coincide with two facts. *First*, in the 2019 and 2022 reports, the quality of democracy has fallen in seven countries: Brunei (Democracy Index does not evaluate Brunei), Cambodia, Laos, Myanmar, the Philippines, Thailand, and Vietnam. *Second*, there are discrepancies between the two reports on four countries. On the one hand, *Freedom in the World* indicates a democratic contraction in Indonesia, Malaysia, and Singapore, while Democracy Index sees a democratic expansion. On the other hand, *Freedom in the World* indicates a democratic expansion in Timor-Leste, while Democracy Index sees a contraction. Still, variations are minimal except in Myanmar due to the coup. Therefore, it is safe to say that democracy declined in seven Southeast Asian countries, while it improved slightly in four countries between 2019 and 2022.

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DEMOCRACY INDICES	Freedom in the World (out of 100)			Democracy Index (out of 10)		
	2019	2022	Change	2019	2022	Change
Brunei	29	28	-1	-	-	-
Cambodia	26	24	-2	3.53	2.90	-0.63
Indonesia	62	59	-3	6.48	6.71	+0.23
Laos	14	13	-1	2.14	1.77	-0.37
Malaysia	52	50	-2	7.16	7.24	+0.08
Myanmar	30	9	-21	3.55	1.02	-2.53
Philippines	61	55	-6	6.64	6.62	-0.02
Singapore	51	47	-4	6.02	6.23	+0.21
Thailand	30	29	-1	6.32	6.04	-0.28
Timor-Leste	70	72	+2	7.19	7.06	-0.13
Vietnam	20	19	-1	3.08	2.94	-0.14

(Freedom House, 2019; 2022; EIU, 2019; 2021)

In the COVID-19 context, Southeast Asia's democratic contraction has been influenced by the decline of civic freedoms in the region, a variable that both democracy measurements consider. The democratic measurements by Freedom House and the Economist Intelligence Unit (EIU) identify a decline in people's civic freedoms since the outbreak of the pandemic in parallel to the democratic contraction (Freedom House finds that civic freedoms contracted in all countries but Indonesia. On the other hand, EIU finds shows that the decline of civic freedoms was shared by all countries but Timor-Leste). The trends by these two sources coincide with the measurements of the BTI Transformation Index by Bertelsman Stiftung (2022), which also show that civic freedoms and democracy in Southeast Asia have declined since the first pandemic outbreak.

This chapter has shown that the derogation of rights in Southeast Asia during the emergency posed by COVID-19 beyond what was strictly and legally necessary to contain the spread of the virus impacted people's freedom of assembly, affected electoral integrity in several countries, increased controls on information flows and challenged people's rights to privacy. Altogether, these limitations have contributed to Southeast Asia's democratic erosion. To improve the state of democracy in the region, the next section outlines a set of recommendations for international organisations, governments, and civil society organisations.

## 4. Recommendations

This report has evaluated the use of emergency and temporary anti-COVID-19 measures across Southeast Asia and has put a special emphasis on assessing the impact of these measures on people's civil rights and the state of democracy. In broad terms, examples from the ten ASEAN countries show that civil rights have been impacted negatively due to the implementation of policy responses to the spread of the pandemic, preventing the implementation of democratic principles and contributing to the growth of authoritarianism in Southeast Asia. The final chapter of this report presents a set of recommendations for governments, international organisations, and civil society organisations to avoid the erosion of human rights and democracy in emergency situations like COVID-19.

### Governments

- Sign and ratify the ICCPR (including its first Optional Protocol (ICCPR OP-1) to institute an individual complaints mechanism) if they have not done so yet.
- Provide periodical and transparent data that justifies the adoption of ICCPR's General Comment No. 29: Article 4 on the derogation of rights during emergency situations so all measures are justified and proportional.
- Legislation should be worded concisely, avoiding vagueness leading to confusion, and should be as specific as possible so it cannot be used to justify broad crackdowns.
- Work more closely with civil society organisations to give voice to individuals from all backgrounds and identify people's concerns regarding the derogation of civic freedoms in emergency situations.

### International Organisations

- Lobby governments that have yet to sign and ratify the ICCPR/OP-1 to increase human rights protection and ensure people's civil and political rights.
- Assist governments in the draft and implementation of derogatory measures against civic freedoms to ensure that no state exceeds its power to limit people's rights in emergency situations.
- Increase their monitoring of emergency situations in countries where the implementation of human rights is not up to international standards to check the government authority in determining when emergency measures are no longer necessary.
- Work closely with domestic civil society organisations to obtain alternative state narratives on the outbreak and evolution of emergency situations and provide adequate assistance whenever possible.

### Civil Society Organisations

- Work closely with state authorities to inform the government about the concerns expressed by the people on the implementation and potential derogation of civic freedoms.
- Monitor the infringement of civic freedoms by state authorities and the backsliding of democracy and report their abuse to international bodies.
- Reinforce their informative and educational commitments to the population and inform citizens about their rights and civic duties, especially in emergency situations, to ensure that the derogation of rights is rightfully implemented and not abused.

## 5. Conclusion

In Southeast Asia, nearly 61 million cases have been reported and over 800,000 people have died because of COVID-19. Given the exceptionality of this situation, governments were forced to implement emergency regulations to contain the pandemic as it reflected a health, economic, and social crisis. Governments initially relied on the adoption of the zero-COVID strategy to stop the spread of the disease: strict lockdown measures and mobility limitations were imposed, electoral processes were restricted, information flows became increasingly controlled to tackle sources of false information, and state surveillance increased.

Although governments eventually started moving away from the zero-COVID approach, they did not limit their use of emergency powers granted by SoE-related or pandemic-related legislation nor did they fully relinquish using their new tools for social control. As a result, certain rights were derogated beyond what was provided for under international law. Freedom of assembly was severely restricted, limiting people's opportunities to defend their rights when injustices were being committed. Many voters were disenfranchised from electoral processes because of anti-COVID-19 measures that prevented people from participating in rallies, thus favouring the elite's political opportunism. Controlling information flows severely curtailed people's freedom of expression. Initially aimed at tackling the spread of false information, attempts to control people's narratives rapidly escalated into a broader crackdown on free speech targeting policy criticism. Using coronavirus as a pretext, state authorities also tended to increase surveillance, online and offline. However, governments have used public health to justify cracking down on people's privacy beyond health-related issues, especially to monitor political dissent.

The overall decline of civic freedoms as a result of the emergency and temporary anti-COVID-19 measures has curbed the state of democracy in Southeast Asia. Democracy indicators by democratic watchdogs such as Freedom House and the Economic Intelligence Unit show that both civic freedoms and democracy have declined since the outbreak. Analysing the COVID-19 crisis through the lens of democracy shows that the COVID-19 emergency situation gave authoritarian regimes in Southeast Asia an opportunity to strengthen their social and political dominance by applying emergency powers beyond what is strictly necessary. Even if the pandemic outbreak was an exceptional situation nobody was fully ready to manage, governments exceeding in their capacity to derogate certain liberties cannot be justified. Therefore, democracies must become stronger with a robust check and balance systems to ensure that no laws are abused and rights are not unnecessarily derogated.

International organisations must lobby all countries to sign, ratify, and implement human rights covenants, providing assistance to do so if necessary. Governments must increase transparency and accountability and must work together with civil society organisations to ensure that the voices of all social groups are heard and respected. The third sector also plays a key role in keeping governments accountable since they can bridge state authorities with citizens to promote multilateral dialogues. While emergency situations are naturally unpredictable, it is important that all agents – international organisations, government agencies, and civil society – carefully reflect on the wise choices adopted during the pandemic and, most crucially, on new possibilities to increase cooperation to strengthen democratic rule so no basic human rights can be derogated without a sound justification in the future.

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