

Fake News Legislations and the Impact on Freedom of Expression in Southeast Asia

Dr. Robin Ramcharan, Executive Director



Freedom of Expression (SEA) Project 2019-2021

Over period of 4 years, the project examines the impact of fake news, hate speech, disinformation and propaganda on Freedom of expression in the region

Research - Baseline studies, policy briefs, commentaries
Regional (1) and Country (10)

Activities

1. National seminars
2. Interregional conference
3. International conferences

Fake News and Elections in Asia (10 – 12 Jul. 2019)

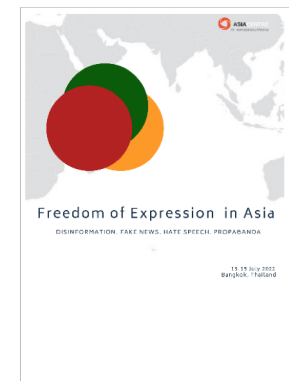
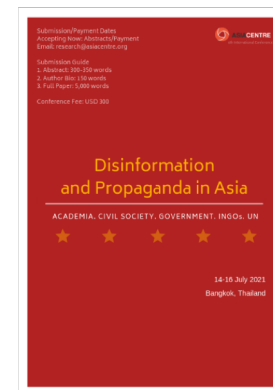
Hate Speech in Asia: Challenges and Solutions (8 – 10 Jul. 2020)

Authoritarian Disinformation and Propaganda in Asia (14 – 16 Jul. 2021)

Freedom of Expression in Asia (13 – 15 Jul, 2022)

Advocacy

Media engagement
Speaking engagement



Challenges of Information Disorder in ASEAN

- Since the introduction of internet in Southeast Asia in 1995, **incumbent regimes have used legislation to negate the democratic potential of the internet**
- Fake News Laws are latest installment since 2017

Fake News - Definition



- “Deliberate presentation of false or misleading claims as news, where the claims *are misleading by design*.” [Axel Gelfert](#) (2018)
- It has to be false, **intentionally designed to be false**.
- It must be disseminated in a **volume equivalent to that of news** (i.e. attending wide circulation).
- A **degree of impact or success** in materializing the objective of dissemination and uptake, which serve as a catalyst for further action.

Fake News - Definition

“Deliberate presentation of false or misleading claims as news, where the claims are misleading by design.”

Axel Gelfert (2018)

Fake news conflates three subsets of information disorder:

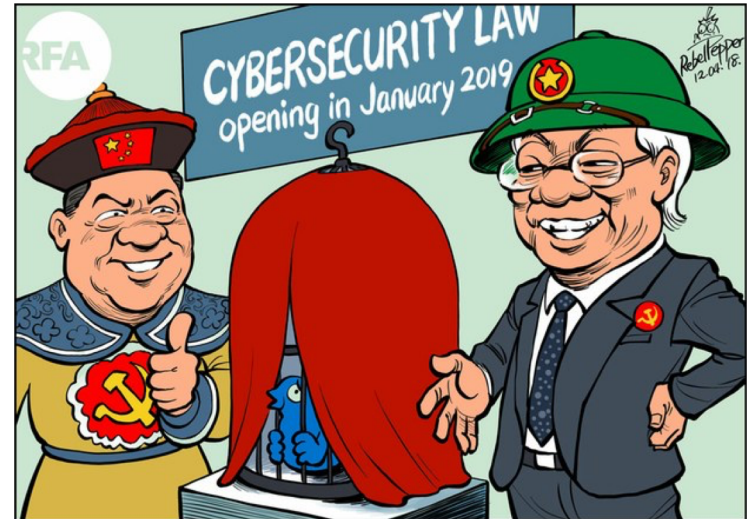
- Disinformation - Information that is false and deliberately created to harm a person, social group, organization or country
- Misinformation - Information that is false, but not created with the intention of causing harm.
- Malinformation - Information that is based on reality, used to inflict harm on a person, organization or country.

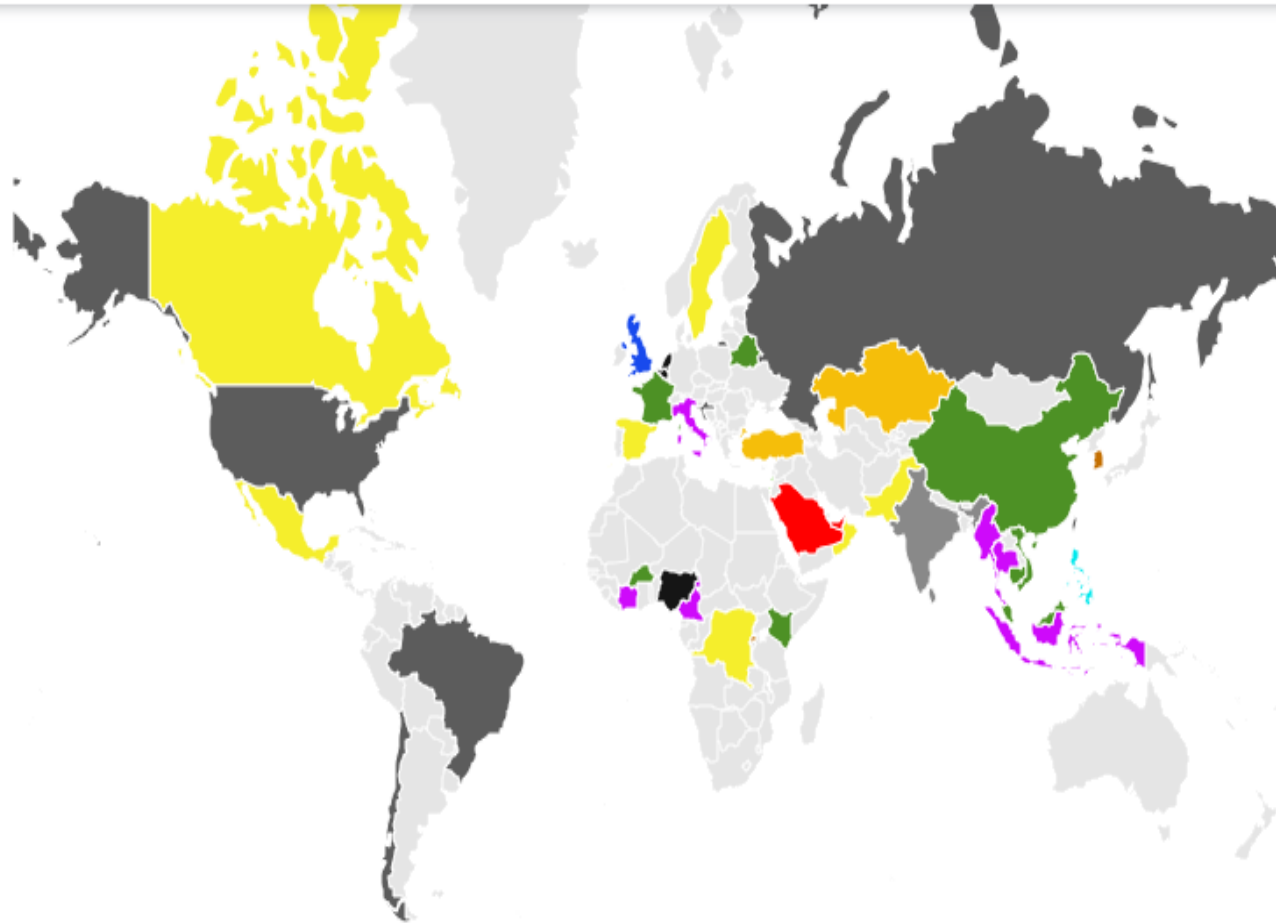
Council of Europe's Information Disorder Report

Types of Legislation Proposes/ Used

- Types of legislation proposed
 - Anti-fake news law (M'SIA, SG, ...PH?)
 - Cybersecurity law (INDO, TH, VN)

- Types of existing laws use
 - Criminal defamation (CAM, MM)
 - Computer Crime Act (TH, MM)
 - Sedition Act (BRU, M'SIA)
 - Propaganda against the state (LAOS, VN)
- Penalties:
 - 1 - 20 year imprisonment
 - Fines from US\$62 to US\$ 724,000





- Law ● Media literacy ● Bill ● Internet shutdowns ● Law enforcement ● Failed legislation ● Proposal ● Task force ● Report ● Investigation ● Threats ● Court ruling

Fake News and Other Legislations' Punishments by Country

Countries	Regulation	Penalty	Responsible agency
Brunei	Sedition Act – Article 4	3-year imprisonment and/or US\$ 4,500 fines.	Prime Minister's Office
Cambodia	Inter-ministerial Regulation – joint directive; Considering Fake New Legislation	2-year imprisonment and/or US\$ 1,000 fines.	Ministry of Information, Ministry of Interior, and Ministry of Post and Telecommunication
Indonesia	Revised Criminal Code – Article 309	6-year imprisonment and/or US\$ 3,500 fines.	National Cyber and Encryption Agency
Laos	1. Article 65 of the Criminal Code 2. Decree 327	1. Up to 5 year imprisonment and a fine of between US\$ 62 - 1,233 2. Not specify	Ministry of Public Security
Malaysia	Anti-Fake News Act 2018	6-year imprisonment and/or US\$ 123,000 fines.	Ministry of Communications and Multimedia
Myanmar	1. Telecommunication Law – Article 66(d) 2. Penal Code Article 505(b)	1. 3-year imprisonment 2. 2-year imprisonment	Ministry of Information Ministry of Transport
Philippines	Anti-False Content Act (proposed)	Up to 20 year imprisonment and a fine of up to US\$20,000	Cybercrime Office, Department of Justice
Singapore	Protection from Online Falsehoods and Manipulation Bill (POFMA)	Failure to comply with 'correction direction' will result to: 1. S\$ 20,000 for individuals and/or 1-year imprisonment at maximum 2. S\$ 1,000,000 for service providers	Ministry of Law and Home Affairs Ministry of Communications and Information
Thailand	1. Computer Crimes Act 2017 (Revised) 2. Cybersecurity Act	1. 3-year imprisonment and/or US\$ 6,000 fines. 2. Up to 3 year imprisonment and a fine of up to US\$ 3,000	Ministry of Digital Economy and Society Army Cyber Center Technology Crime Suppression Division – Royal Thai Police
Vietnam	1. Criminal Code – Article 117 (Revised) 2. Cybersecurity Law	1. 12-year imprisonment 2. Not specified yet	Ministry of Information and Communications Ministry of Public Security

Challenges of Legal Measures

Legal Measures

- Most of them are **vaguely-worded laws** leading to **over-criminalization**
- Does not necessarily detoxify the post-truth ecosystem, but monopolize coercive action
- Change in government's policy
 - Malaysia's repeal of anti-fake news law
 - Philippines' fake news legislation...?



Challenges of Legal Measures

- **Singapore:** [“Protection from Online Falsehoods and Manipulation Act”](#):
 - Anyone who makes available a false statement of fact can be punished (imprisonment for *maliciously* communicating)
 - What is “fake”? Vague Definition:
 - False or misleading, in whole or in part
 - Criminal if it affects **public interest**.

Challenges of Legal Measures

- Who determines fake news? Any Minister!
 - Can issue directions viz public interest
 - **Stop Communication Direction**
 - » Non compliance > criminal liability
 - » Even if still under review by courts
 - **Targeted Correction Direction**
 - » Allows Internet intermediary platforms to issue government corrections to all citizens
 - **Disabling Direction.**
 - » Intermediary eliminates access to false info
 - **General Correction Direction.**
 - » Declared for a period of time.

Challenges of Legal Measures

- **Malaysian** law repealed
- 2018 Law:
 - Anti-Fake News Act 2018 defines “fake news” as including “**any news, information, data and reports, which is or are wholly or partly false,** ...”

Challenges of Legal Measures

- Repeal: fake news can be dealt with under existing laws:
 - **Penal Code** (Act 574): defamation
 - **Printing Presses and Publications Act 1984** (Act 301): incitation to violence by news outlets, disobedience to law, promoting disharmony, etc.
 - **The Communications and Multimedia Act 1998** (Act 588): content intended to harm, abuse, threaten = offence (S. 233)
 - **Sedition Act 1948**: “seditious publications”, 2015 change > MCMC can “block electronic media that is deemed to be seditious.”[\[](#)

International Standards

- **FOO & FOE. HRCt GENERAL COMMENT 34 (2011)**
- FOO (Para 1):
 - **“All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion.”**
 - **Any form of effort to coerce the holding or not holding of any opinion is prohibited.**

International Standards

- FOE:
 - Paragraph 2 requires States parties to guarantee the right to freedom of expression, including the **right to seek, receive and impart information and ideas of all kinds... includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others**
 - **The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive,**
 - They include all forms of audio-visual as well as electronic and internet-based modes of expression.

International Standards

- **Limitations permitted**
 - **Reputations, national security or of public order (ordre public) or of public health or morals**
 - **Restrictions may not put in jeopardy the right itself**
 - **Must conform to the strict tests of necessity and proportionality.**
 - **A norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.**

International Standards

- **Restrictions must not be overbroad. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument** amongst those which might achieve their protective function; **they must be proportionate to the interest to be protected...**
 - *the value placed by the Covenant upon **uninhibited expression** is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain*

International Standards

- **The mere fact that opinions of public figures may be insulting is not enough to penalize such opinion**
- Laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.
- Restrictions on Internet based media: Permissible restrictions generally should be content-specific; not generic bans.

Impact on FOE & Way Forward

- Deeper chill! Southeast Asia government representatives seem focused on discrediting, or wrongfooting critics.
- Way Forward
 - Non legal measures (fact checking agencies, media literacy)
 - Consumer responsibility

Contact Details

For collaborations

Contact:

contact@asiacentre.org