



Joint Statement of Civil Society Organisations to the 'AICHR High Level Dialogue on Managing Freedom of Expression in the Information Age'¹

Medan, 12 April 2018

We, the undersigned civil society organisations with a consultative relationship with the ASEAN Intergovernmental Commission on Human Rights (AICHR), welcome the initiative of the representatives of the AICHR from Indonesia and Malaysia on organising the 'AICHR High Level Dialogue on Managing Freedom of Expression in the Information Age', and thank them for the invitation to joining the public event.

Freedom of opinion and expression is critically important to hold those in power accountable. There should be no limitations on the freedom of opinion and expression, and any limitations that are imposed should only be implemented in extreme situations, as they inevitably cause more human rights violations.

Unfortunately, each and every ASEAN Member State has been ranked poorly by international observers when it comes to the state of freedom of expression and freedom of the press. This is attributed to the wide range of repressive laws that have been introduced, passed and used to violate the freedom of expression and undermine the freedom of the press, both off and online platforms. In other words, we already have many limitations and do not need more.

The situation right now is as such, several new laws being introduced or being considered by Governments that will likely further curb freedom of expression and opinion in the region through online and offline media, such as the Anti Fake News Law in Malaysia, the Law on Electronic Information and Transaction in Indonesia, and the Law on Deliberate Online Falsehoods in Singapore. Those laws fail to reflect international human rights standards and the ASEAN Human Rights Declaration (AHRD).

¹ The dialogue is a high-level initiative co-organised by representatives of the AICHR from Indonesia and Malaysia on 11-12 April 2018 in Medan, Indonesia. The event is sponsored by US Progress, Swiss Embassy in Indonesia, Indonesian Ministry of Foreign Affairs, and UNESCO). The purpose of the dialogue is to address issues, challenges and ways forward to respond the issue of freedom of expression in the area of information in ASEAN countries. This joint statement is a response from the delegation of civil society organisations with a consultative relationship with the AICHR, who attended this meeting.

We are grievously concerned that these laws are inappropriate for the concerns raised by States, and can be abused due to the ambiguity of the definitions contained therein, like 'fake news' and how authorities will identify and declare 'fake news' as it is given or to be given. We are equally concerned that this authority lies solely with the Government, who might easily use the justification of threats to national security to impose legislative restrictions and processes. This has been and can be done without further examination of the 'fake news'. These limitation measures can be easily utilised for political interests. We would like to recall that these new developments would highly impact the current standing of each Member State in international fora.

Given the already limited space for freedom of expression in ASEAN, and the extreme interest expressed to curb online 'fake news', we are concerned about the pace at which these discussions are taking place, without the necessary research and consultations, and the negative impact it may have on journalism and press freedoms in the region.

'Fake news' is just another name for what we know as misinformation and disinformation. Sometimes, it takes the form of propaganda, and at other times, it adds to the stigmatisation of already vulnerable and marginalised peoples. We already have the means to counter the harms that can result from such misinformation and disinformation. What we lack is the rule of law and the political will to be non-prejudicial. Public education is critical for both children and adults to be better able to discern 'lies' on the Internet and on social media, or to refrain from potentially prejudicial judgments and attacks that can direct or add harm to an individual or entity.

What we require are multi-stakeholder approaches, where civil society is treated as an equal stakeholder and partner, in addressing the arising issues as a result of the proliferation of social media. If laws are to be made, they should be appropriate laws, such as the enactment of Anti-Harassment Act, Anti-Sexual Harassment Act, Anti-Discrimination Act, Anti-Hate Speech Act, or Gender Equality Act.

We recall the joint declaration of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, together with his counterparts from the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS), and the African Commission on Human and Peoples' Rights (ACHPR), issued on 3 March 2017, which stated that 'the human right to impart information and ideas is not limited to 'correct' statements, that the right to also protects information and ideas that may shock, offend and disturb'.

We note that non-restrictive regulations should be in place to promote and protect the freedom of expression and opinion, especially in the era of vastly growing Internet and social media where human rights defenders and women human rights defenders are at risks of intimidation.

Governments should show more concern for the accountability of power, as checks and balance lie at the core of modern Governments. The emphasis should be on protecting its people in exercising their right to freedom on opinion and expression, and to ensure that its peoples are better aware and educated against the perpetration of hate speech, violence and stigmatisation; and grossly malicious content.

The stance taken by ASEAN Governments so far, represented by the manifestation of laws in the ASEAN region, show the contrary, that is the efforts of the Governments to manage content by curbing dissenting opinions and criticisms. Managing freedom of expression should be aimed at providing an enabling environment for people to exercise their fundamental freedoms and liberties, which includes providing constructive criticisms as an essential part of democracy.

Under the AHRD, it is recognised that 'every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information whether orally, in writing or through any other medium of that person's choice' (Article 23). It is indeed the responsibility of the AICHR to promote and protect fundamental freedoms as enshrined in the its own Terms of Reference.

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