



**Human Rights
in the time
of COVID-19:**

Towards a Better Partnership Between Civil Society Organisations, National Human Rights Institutions, and ASEAN Human Rights Mechanisms to Address the Pandemic's Impact on the Human Rights Crisis in Southeast Asia

Outcome Document from the Virtual Conference on 'Human Rights in
the Time of COVID-19: Addressing the Crisis in Southeast Asia'

FORUM-ASIA

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About FORUM-ASIA:

The Asian Forum for Human Rights and Development (FORUM-ASIA) is a Bangkok based regional network of 81 member organisations across 21 Asian countries, with consultative status with the United Nations Economic and Social Council, and consultative relationship with the ASEAN Intergovernmental Commission on Human Rights. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity development and solidarity actions in Asia and beyond. It has sub-regional offices in Geneva, Jakarta, and Kathmandu.

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Background

COVID-19 continues to wreak havoc throughout Southeast Asia. The health crisis has also catalysed the rise of authoritarianism, the over-securitisation of societies, and systemic efforts to suppress democracy, human rights, and fundamental freedoms in the region. Hence, it is critical to activate, strengthen and protect spaces and mechanisms for civil society to defend human rights and fundamental freedoms, as well as to monitor and hold duty bearers, especially governments, accountable. In such a worrying situation, coordination between civil society and mechanisms to protect human rights—at the national, regional, and international levels—is essential to ensure the protection and fulfilment of human rights and the State's accountability to it.

From 9 to 10 August 2021, the Asian Forum for Human Rights and Development (FORUM-ASIA) conducted a two-day conference entitled, '*Human Rights in Times of Pandemic: Ways Forward to Address the Crisis in Southeast Asia.*' The conference aimed at highlighting and examining the situation of human rights while the COVID-19 pandemic rages in Southeast Asia. It sought to explore ways of collaboration amongst civil society organisations (CSOs), national human rights institutions (NHRIs), and ASEAN human rights mechanisms (AHRMs) in pursuit of sustainable and rights-based solutions. The conference brought together representatives from civil society organisations across the region, commissioners from the national human rights institutions of Indonesia, Malaysia, the Philippines, Thailand, and Timor Leste, as well as representatives from ASEAN human rights mechanisms, namely the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

Status of Human Rights Fulfilment during COVID-19 in Southeast Asia

The human rights crisis in Southeast Asia during COVID-19 is getting worse and worse. The pandemic has proven to facilitate a rise of authoritarianism, with governments repressing their citizens in both physical and digital spaces, leading to a **further shrinking of civic space and violation of human rights and fundamental freedoms across the region.**

Under the pretext of combating 'fake news' during the pandemic, Thailand,¹ Malaysia,² Cambodia,³ and Indonesia⁴ have imposed restrictions and reprisals against people who have criticized the governments' handling of the pandemic, in violation of their right to freedom of expression. Furthermore, Malaysia,⁵ the Philippines,⁶ and Thailand⁷ have imposed states of emergency in which they restricted the movement of protesters, violating their right to peaceful assembly. Protesters who violate these restrictions are criminalised, and police have used excessive force against them, legitimised by COVID-19 protocols. The prolonged restrictions of fundamental freedoms have proven ineffective and do not align with the principle of proportionality and necessity.

As the civic space was further restricted, the governments of Southeast Asia utilised the momentum for their own political gain, including through passing laws and policies that further repressed human rights and fundamental freedoms⁸ and impeded the work of democratic parliaments,⁹ instead of putting serious effort into addressing the COVID-19 situation. In the Philippines, the government passed an Anti-Terror Law at the height of the pandemic, broadly targeting 'terrorists,' including dissenters, activists, human rights defenders and even opposition politicians.

- 1 Human Rights Watch, 'Thailand: Immediately Repeal Emergency that Threatens Online Freedoms,' 3 August 2021, <https://www.hrw.org/news/2021/08/03/thailand-immediately-repeal-emergency-regulation-threatens-online-freedoms>.
- 2 ARTICLE 19, 'Malaysia: Emergency Fake News Ordinance has Severe Ramifications for Freedom of Expression,' 23 June 2021, .
- 3 FORUM-ASIA, 'Cambodia: Stop Silencing Critical Commentary on COVID-19,' 25 May 2021, <https://www.forum-asia.org/?p=34920>.
- 4 The Commission for the Disappeared and Victims of Violence (KontraS), 'Briefing Note on Selected Human Rights Issues in Indonesia,' 25 May 2021, <https://kontras.org/en/2021/05/25/briefing-note-on-selected-human-rights-issues-in-indonesia/>.
- 5 Patrick Lee, 'Malaysians stage anti-government protest despite COVID-19 curbs,' The Jakarta Post, 1 August 2021, <https://www.thejakartapost.com/seasia/2021/08/01/malaysians-stage-anti-govt-protest-despite-covid-19-curbs-.html>.
- 6 'Philippines: President Duterte gives 'shoot to kill' order amid pandemic response,' Amnesty International, 2 April 2020, <https://www.amnesty.org/en/latest/news/2020/04/philippines-president-duterte-shoot-to-kill-order-pandemic/>.
- 7 'Thai protesters clash with police as Covid-19 cases continue to surge,' CNN, 19 July 2021, <https://edition.cnn.com/2021/07/19/asia/thailand-protests-covid-intl-hnk/index.html>.
- 8 FORUM-ASIA, 'Indonesia: Repeal the Omnibus Law on Job Creation, abide to human rights obligations,' 6 October 2021, <https://www.forum-asia.org/?p=33092>.
- 9 'Malaysia suspends parliament session citing risk of COVID infection,' Reuters Asia Pacific, 31 July 2021, <https://www.reuters.com/world/asia-pacific/malaysia-suspends-parliament-session-citing-risk-covid-infection-2021-07-31/>.

Although the world is combating the same COVID-19 pandemic, vulnerable groups are experiencing a disproportionate impact due to their pre-existing vulnerabilities.

These groups include but are not limited to women, children, youth and adolescents, the elderly, persons with disabilities, indigenous people, the lesbian, gay, bisexual, trans, and/or intersex (LGBTI) community, migrants, as well as refugees and asylum seekers.

Difficulty in obtaining access to healthcare exacerbated by a securitised approach in handling COVID-19 has subjected the LGBTI community in Southeast Asia to inhumane and degrading treatment. Government officials in Southeast Asia often manipulate existing prejudices against vulnerable communities as scapegoating tactics to cover up for their mismanagement of COVID-19.¹⁰ The governments have also utilised a xenophobic narrative against migrants, refugees and asylum seekers in Singapore, Malaysia, and Thailand to avoid accountability. Recently, civil society condemned the Government of Malaysia's act to deport around 1,000 refugees and asylum seekers from Myanmar—a move clearly in violation of the non-refoulement principles and a Malaysian court order a day before.¹¹ Instead of attempting to ensure access to COVID-19 testing and healthcare for the refugees and asylum seekers, the Malaysian government chose to send them back to Myanmar, which is currently in political turmoil, putting their lives in imminent danger.

The Myanmar military junta has been utilising the COVID-19 pandemic to curb resistance and negotiate legitimacy from the international community. Since the attempted coup in February 2021, the military junta has been exercising its power to confiscate and delay humanitarian relief aid to punish populations who are in the proximity of those who dare to resist.¹² The military has been weaponising COVID-19 to crack down on civic space and undermine health services by ethnic organisations even before the attempted coup. While the junta confiscated COVID-19 relief aid, the confirmed cases in Myanmar spiralled to 306,354 with 10,061 deaths (as of 3 August 2021).

These examples illustrate how COVID-19 has brought not only a crisis of health, but also human rights, and threats against human rights defenders and democracy in the region.

10 ASEAN SOGIE Caucus, 'Strategic Steps Towards an Inclusive ASEAN Region: A Regional Statement of LGBTIQ+ Advocates from Southeast Asia,' 4 August 2021, <https://aseansogiecawcus.org/statements/asc-statements/175-strategic-steps-towards-an-inclusive-asean-region>.

11 FORUM-ASIA, 'Malaysia Defies Court Order, Putting Lives in Imminent Danger,' 1 March 2021, <https://www.forum-asia.org/?p=33984>.

12 FORUM-ASIA and Progressive Voice, 'Great Expectations: Analysis of the ASEAN Coordinating Center for Humanitarian Assistance on Disaster Management,' 2021, <https://www.forum-asia.org/uploads/wp/2021/08/Briefing-Paper-Great-Expectations-Analysis-of-ASEAN-Humanitarian-Response-to-Myanmar-Crisis.pdf>.

ASEAN Response to COVID-19

The Association of Southeast Asian Nations (ASEAN), in response to COVID-19, adopted in November 2020 the ASEAN Comprehensive Recovery Framework (ACRF)—the regional bloc's strategy to build the resilience of ASEAN as a community against the pandemic situation. It contains five broad strategies: (1) enhancing health systems; (2) strengthening human security; (3) maximising the potential of the intra-ASEAN market and broader economic integration; (4) accelerating inclusive digital transformation; and (5) advancing towards a more sustainable and resilient future. These strategies are deemed the most impactful way to take the region through the recovery process and its aftermath. In the drafting process of the ACRF, civil society called for the adoption of a human rights-based approach and gender justice in the COVID-19 recovery framework.¹³ Although it is accommodated under the strategy on human security, it is unclear how human rights were mainstreamed in the drafting process and the implementation of the document.

Further, the ASEAN Intergovernmental Commission on Human Rights (AICHR) issued a joint press release on COVID-19, known to be the first joint statement agreed by all 10 representatives of AICHR. The press release called on ASEAN sectoral bodies and entities and Member States to integrate human rights values and the principles of non-discrimination, participation, and inclusion in their responses to the crisis.¹⁴ Concerns remain as to what extent AICHR, with a weak protection mandate currently available, can influence ASEAN and address human rights violations on the ground. The AICHR terms of reference are known to have undergone a review process to include a more robust protection mandate. However, the process was stalled by six ASEAN Member States who have yet to appoint their representatives to the High-Level Panel—a pool of 10 experts representing their respective States—which was mandated by the ASEAN Foreign Ministers to review the AICHR terms of reference. Despite that gap, some of the practices that CSOs can utilise are the complaint mechanism and grievance mechanism developed by AICHR.

¹³ FORUM-ASIA, 'ASEAN: Adopt Human Rights Based Approach to Comprehensive Recovery Framework on COVID-19,' 12 November 2020, <https://www.forum-asia.org/?p=33330>.

¹⁴ AICHR, 'Press Release on Coronavirus Disease 2019 (COVID-19) by the ASEAN Intergovernmental Commission on Human Rights (AICHR),' 1 May 2020, <https://aichr.org/news/press-release-on-coronavirus-disease-2019-covid-19-by-the-asean-intergovernmental-commission-on-human-rights-aichr/>.

National Human Rights Institutions' Response to the COVID-19 Pandemic

National human rights institutions (NHRI) in Southeast Asia have adopted different responses to the COVID-19 situation in their respective countries.

The NHRI of Indonesia (Komnas HAM) documented the impact of COVID-19 and conveyed policy recommendations to the President of Indonesia, Joko Widodo, related to how to adopt a human rights perspective on COVID-19 management.¹⁵ These recommendations have been further refined and published as a guiding document by the institution in November 2020.

The Commission on Human Rights of the Republic of the Philippines (CHRP) issued 16 policy advisories related to human rights and COVID-19 in 2020. The topics ranged from women's rights, gender responsive intervention, persons with disabilities, the right to health of people deprived of liberty, and the human rights approach for vaccination, to name a few.¹⁶ The Commission has also communicated to the UN Human Rights Council its response to the High Commissioner's report on State responses to pandemics, which mentions the situation in the Philippines and its negative implications for human rights.¹⁷

However, other Southeast Asian NHRIs were not as proactive in responding to the effects of the pandemic on human rights. As of 2020, the Myanmar National Human Rights Commission (MNHRC) issued a statement on its inspection of prisons and lock-ups,¹⁸ but did not issue any statements on particular thematic concerns,¹⁹ beyond one on the reopening of schools.²⁰ It also continued to overlook human rights violations by the military during the pandemic,²¹ by not issuing any statements on its crimes and violence against civilians in conflict regions.²²

15 Komnas HAM Republik Indonesia, 'Tata Kelola Penanggulangan COVID-19 dalam Perspektif HAM,' 2020, <https://www.komnasham.go.id/files/20201012-tata-kelola-penanggulangan-covid-19-RNP.pdf>.

16 'Human Rights Advisory,' Commission on Human Rights, accessed 5 August 2021, <https://chr.gov.ph/5th-commission/>

17 Written Statement of the Commission on Human Rights of the Philippines on the High Commissioner's report on State response to pandemics,' Commission on Human Rights, 21 June 2021, chr.gov.ph/written-statement-of-the-commission-on-human-rights-of-the-philippines-on-the-high-commissioners-report-on-state-response-to-pandemics-res-44-2/.

18 MNHRC, 'Statement of the Myanmar National Human Rights Commission (MNHRC) on its inspection of prisons, jails and lock-ups in Myanmar In 2020,' 12 August 2020, <http://www.mnhrc.org.mm/en/state118855-132/>.

19 For the list of statements made by MNHRC, please visit <http://mnhrc.org.mm/en/statements-2/>.

20 MNHRC, 'The Statement of the MNHRC on the reopening of Schools in July Statement No. (5 / 2020),' 29 May 2020, <http://www.mnhrc.org.mm/en/s52020eng/>.

21 FORUM-ASIA, 'Myanmar: Myanmar National Human Rights Commission Must Ensure Human Rights are Protected amid COVID-19 Pandemic,' 27 May 2020, <https://www.forum-asia.org/uploads/wp/2020/05/Myanmar-National-Human-Rights-Commission-Must-Ensure-HumanRights-are-Protected-amid-COVID-19-PandemicENG.pdf>. Joint Statement.

22 Radio Free Asia, 'Myanmar Army Acknowledges Unlawful Interrogation Methods After Viral Rakhine Beating Video,' rfa.org, 12 May 2020, <https://www.rfa.org/english/news/myanmar/unlawful-interrogation-05122020184850.html>.

The National Human Rights Commission of Thailand (NHRCT), while issuing statements in 2020 regarding the COVID-19 pandemic, focussed on providing recommendations to the Government to raise awareness and to propose health and safety measures to be implemented.²³ However, while it stated that the human rights aspect of COVID-19 would be a top priority in its 2020 action plan,²⁴ it did not broaden the scope of its interventions to include human rights concerns and violations in the same year. It is only as recent as mid-2021 that the NHRCT has issued statements on particular groups, such as inmates²⁵ and police officers.²⁶

Overall, most of the NHRIs' interventions ignored the plight of human rights defenders (HRDs), even though there was a marked increase in the violations committed against them during the pandemic.²⁷ In particular, women human rights defenders did not receive much attention from NHRIs,²⁸ nor did journalists²⁹ or concerns about shrinking civic space.

However, even today, there remains much scope for NHRIs to extend their support to vulnerable groups who are still experiencing the effects of the pandemic even a year on. NHRIs can ensure that human rights concerns are addressed through regular follow-up on their proposed measures/actions by employing a proactive, rather than a reactionary, stance on human rights violations and concerns; by focussing on the challenges of HRDs, including women and children human rights defenders, and ensuring their protection; by conducting regular fact-finding missions; and by urging governments to include NHRIs in recovery and planning efforts in dealing with the continuing pandemic.³⁰

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- 23 NHRCT, 'Statement of the National Human Rights Commission of Thailand Regarding the Situation of the Disease Outbreak of COVID-19,' 10 March 2020, [http://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Statements/10แถลงการณ์คณะกรรมการสิทธิมนุษยชนแห่งชาติ-\(กสม\)-.asp](http://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Statements/10แถลงการณ์คณะกรรมการสิทธิมนุษยชนแห่งชาติ-(กสม)-.asp); NHRCT, 'Statement of the National Human Rights Commission of Thailand Regarding the Situation of the Disease Outbreak of COVID-19 (No. 2),' 24 March 2020, [http://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Statements/23แถลงการณ์คณะกรรมการสิทธิมนุษยชนแห่งชาติ-\(กสม\)-.asp](http://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Statements/23แถลงการณ์คณะกรรมการสิทธิมนุษยชนแห่งชาติ-(กสม)-.asp); NHRCT, 'The Chairperson of the NHRCT recommends public to keep their social distance while awaiting drugs or vaccines for COVID-19,' 30 March 2020, <http://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Press-Releases/ประธาน-กสม-ขอให้ประชาชนเว้นระยะห่างทางสังคม-เพื่อ-.aspx>; and NHRCT, 'The NHRCT's Chairperson points out the government to screen infected COVID-19 persons using the rapid test kit besides social distancing,' 3 April 2020, <http://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Press-Releases/ประธาน-กสม-ชี้-รัฐ-พึง-คัดกรอง-ผู้-ติด-เชื้อ-โรค-โควิด-19-.aspx>.
- 24 NHRCT, 'The NHRCT sets priority of human rights impacts regarding the outbreak of novel coronavirus (COVID-19) under its 2020 Action Plan,' 1 April 2020, <http://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Press-Releases/กสม-ยก-ประเด็น-ผลกระทบ-สิทธิ-มนุษยชน-ใน-สถานการณ์-โรค-โควิด-.aspx>.
- 25 NHRCT, 'NHRCT expressing concerns over the rights of prisons inmates and recommending government to expedite COVID-19 vaccination to prisons to prevent and reduce severity of pandemic,' 19 May 2021, <http://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Press-Releases/กสม-ห่วง-โควิด-19-กระทบ-สิทธิ-ผู้-ต้อง-ขัง-ใน-เรือน-จำ-นาย-.aspx>.
- 26 NHRCT, 'The NHRCT looking into the rights of inmates and prison officers during the covid-19 pandemic,' accessed 9 September 2021, <http://www.nhrc.or.th/News/Activity-News/the-spread-of-COVID-19-in-prisons.aspx>.
- 27 FORUM-ASIA, Asian HRDs Database, accessed 8 August 2021, [https://asianhrds.forum-asia.org/en/library/?q=\(from:0,limit:30,order:desc,sort:creationDate\)](https://asianhrds.forum-asia.org/en/library/?q=(from:0,limit:30,order:desc,sort:creationDate)).
- 28 FORUM-ASIA, National Human Rights Institutions' Responses to COVID-19: (February to October 2020), December 2020, <https://www.forum-asia.org/uploads/wp/2020/12/Report-ANNI.pdf>.
- 29 FORUM-ASIA, Asian HRDs Database.
- 30 FORUM-ASIA, National Human Rights Institutions' Responses to COVID-19: (February to October 2020).

Proposed collaboration between CSOs, NHRIs, and AHRMs

There is a need to build synergy between the AHRMs, NHRIs, and CSOs to address the deteriorating situation of human rights due to COVID-19 in the region. While each party has worked on their priorities and capacities, concrete and collaborative actions to ensure the protection of human rights in times of COVID-19 are essential. Therefore, representatives from CSOs who have attended the conference came up with the following collaboration that brings AHRMs, NHRIs, and CSOs together to address the human rights crisis in Southeast Asia due to the pandemic. The plan below includes, among other things, meaningful engagement from CSOs from diverse thematic issues and backgrounds and a regular annual interface meeting between CSOs, NHRIs and AHRMs to address the state of human rights in the region. Overall, the principle of engagement and meaningful participation should be respected and mainstreamed across other action plans below:

At the regional/sub-regional level

- Strengthen the collaborations between NHRIs and AHRMs in responding to human rights issues in the region by:
 - Establishing joint study and strategic action plans between NHRIs and AHRMs on the impact of COVID-19 to human rights, and exploring collaboration to ensure the protection of rights of the peoples in the region;
 - Organising regular coordination meetings to improve a referral system/ grievance mechanism and exchange of information to advance protection functions of the NHRIs and AHRMs; and
 - Meaningfully working with national and regional CSOs for the development, implementation, and evaluation of joint strategic action plans.
- Conduct joint reviews of the alignment of human rights in the implementation of ACRF together between NHRIs, AHRMs, and CSOs, by doing the following:
 - Ensuring the commitment to fulfil, respect, and protect human rights and fundamental freedoms in Southeast Asia are well-implemented;
 - Ensuring that the implementation of ACRF will provide full protection of human rights and fundamental freedoms, especially of vulnerable groups, in Southeast Asia. Particularly, the ACRF should align with the commitment and action plan enshrined in the ASEAN Enabling Masterplan 2025: Mainstreaming of the Rights of Persons with Disabilities, ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers, Regional Plan of Actions on EAW and EVAC, and other ASEAN documents concerning vulnerable groups;

- Collecting and disseminating regional gender-disaggregated data relating to COVID-19. Such data should provide information about issues of, and provide critical services and accommodation to, marginalised groups (*e.g.*, women and girls, children, people with disabilities, migrant workers, aging society and LGBTI-identifying individuals); and
- Presenting the impact of COVID-19 on human rights in various avenues, including in the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).
- Immediately address the situation of human rights in Myanmar due to the attempted coup and COVID-19 by:
 - Jointly developing and disseminating a statement which condemns systemic oppression and the attack on democratic institutions and values in Myanmar, as well as providing recommendations for short-term and long-term solutions; and
 - Exploring collaboration with international organisations and local grassroots organisations on delivering humanitarian relief aid related to COVID-19, particularly in the context of Myanmar.
- Strengthen the protection mandate of AICHR, particularly by instigating the revision process of AICHR's terms of reference and ensuring its robust implementation by:
 - Ensuring transparency on complaints that are being received by AICHR and how the body has responded accordingly;
 - Re-evaluating ways of meaningful engagement between AICHR and civil society organisations beyond consultative status;
 - Pushing for the immediate selection of members to the High-Level Panel from all ASEAN Member States; and
 - Pressuring the High-Level Panel to start the AICHR TOR review process.

At the national level

- Strengthen human rights violations documentation and grievance mechanisms at the national and sub-national level by:
 - Establishing joint action between NHRIs and CSOs as well as local grassroots organisations to document and address human rights violations related to COVID-19 at the national and sub-national level;
 - Utilising the AICHR complaint mechanism in submitting information and recommendations on human rights issues in their countries respectively;
 - Building strategic steps between AHRM and NHRIs in dealing with human rights violation complaints by vulnerable groups, such as the LGBTI community;
 - Addressing state-sponsored violence conducted by law enforcement apparatuses under the pretext of COVID-19; and
 - Ensuring protective mechanisms for civil society organisations in filing complaints or grievances against state officials.
- Develop general comments and guidelines and human rights checklists by NHRIs to implement human rights frameworks in handling the COVID-19 pandemic by:
 - Ensuring CSOs' engagement in the creation of general comments/standard norms and practices (SNP) for NHRIs on handling the impact of the pandemic on human rights;
 - Including experts on human rights, child rights, and women's rights in emergency coordinating bodies tasked with planning, implementing, monitoring and evaluating strategies to address the COVID-19 pandemic and future public health emergencies.
- Establish regular consultations at the national level among CSOs, NHRIs, and AHRMs to discuss the monitoring and implementation of the ACRF.



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