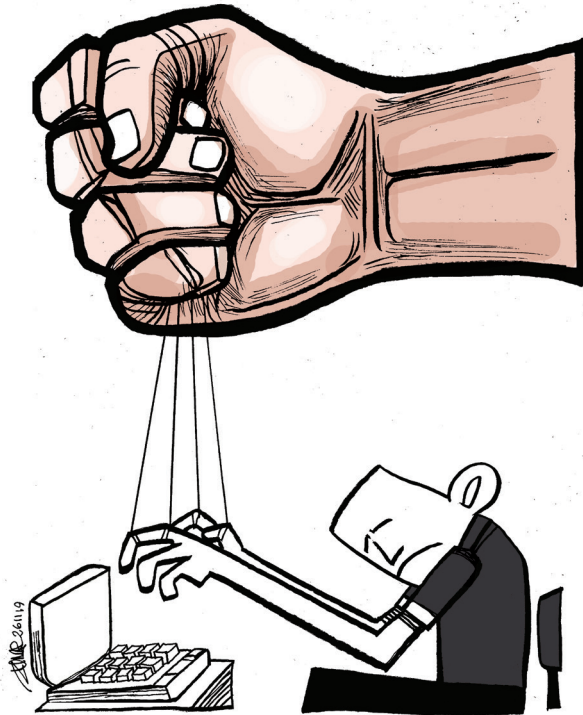


Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia



In similar cases:

From 26 November 2019, at least eight other individuals have been sentenced to prison for their activities online.³⁴²

Myanmar

In Myanmar, the **Official Secrets Act 1923** ('OSA') – which bans the "collection" or "communication" of information deemed "prejudicial to the safety or interests of the State" – has been used to penalize journalists who were performing their professional duties,³⁴³ and there is a risk it could be used against others, including human rights defenders.

Section 3(1)(c) of the OSA penalizes the "obtaining, collection, recording, publishing or communication to any person of any ...document or information... calculated to be, directly or indirectly, useful to an enemy" with up to 14 years' imprisonment where the information is deemed "in relation to the naval, military or air force affairs of the State or in relation to any secret official code".³⁴⁴ Section 3(2) thereafter states that "it shall not be necessary to show that the accused person was guilty of any particular act" deemed prejudicial to the State and that "notwithstanding that no such act is proved against him, he may be convicted... if it appears his purpose was... prejudicial to the safety or interests of the State".³⁴⁵

Apart from overbroad provisions under the OSA which do not clarify who an "enemy" is and what "directly or indirectly being useful to an enemy" entails, the OSA lifts any burden of proof from the prosecution to substantiate a charge that a defendant has posed real risk of harm against the interests of the State. This fails to comply with international

2019, Available at: <https://the88project.org/profile/191/nguyen-ngoc-anh/>

342 Including Nguyen Chi Vung, Pham Van Diep, Vo Hoang Trung, Doan Viet Hoan, Ngo Xuan Thanh, Nguyen Dinh Khue, Huynh Thi To Nga and Huynh Minh Tam. ICJ communications with partners.

343 The OSA is one of a range of laws which have been misused to target journalists in Myanmar, including the abovenoted Telecommunications Law and Penal Code provisions which deliberately curtail freedom of expression, but also laws which do not pertain to freedom of expression at all, including, for example, the Unlawful Associations Act of 1908, the Aircraft Act of 1934 and the Import-Export Law of 2012. See Human Rights Watch, 'Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar', 31 January 2019, Available at: <https://www.hrw.org/report/2019/01/31/dashed-hopes/criminalization-peaceful-expression-myanmar>; OHCHR, 'The Invisible Boundary – Criminal prosecutions of journalism in Myanmar: Report by the Office of the United Nations High Commissioner for Human Rights (OHCHR)', 11 September 2018, Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23531&LangID=E>

344 English translation of Official Secrets Act 1923, Available at: <http://freexpressionmyanmar.org/wp-content/uploads/2017/07/Official-Secrets-Act-EN.pdf>

345 *Ibid.*

standards, which require that public authorities adequately demonstrate the legitimacy of any restriction of information, that the process of classification of information be made public, and that information be restricted only “as long as necessary” to protect a legitimate security interest.³⁴⁶

Case of **Wa Lone** and **Kyaw Soe Oo**

In December 2017, Reuters journalists **Wa Lone** and **Kyaw Soe Oo** were arrested in northern Yangon under section 3 of the ISA, following investigative work and reporting the journalists had engaged in to uncover human rights violations committed by the Myanmar military’s security forces in Rakhine state.³⁴⁷ Their report documenting the military’s killing of ten Rohingya men in Inn Dinn village was published online on Reuters news website on 8 February 2018.³⁴⁸

Wa Lone and Kyaw Soe Oo were detained incommunicado for nearly two weeks before charges were brought against them.³⁴⁹

In April 2018, police officer Capt. Moe Yan Naing testified during pre-trial hearings that he had been instructed to ‘frame’ the journalists by planting on them documents related to security operations in Rakhine state.³⁵⁰

In July 2018, Yangon Northern District Court made a decision to extend the journalists’ detention term, even as ICJ Legal Advisers monitoring the case noted that through six months of hearings, the prosecution had failed to provide credible evidence to substantiate a conviction.³⁵¹

In September 2018, Wa Lone and Kyaw Soe Oo were convicted and sentenced to seven years’ imprisonment.³⁵²

346 Tshwane Principles, Principles 4, 11, 16.

347 The Irrawaddy, ‘Reuters Reports Arrested in Yangon Under Official Secrets Act’, 13 December 2017, <https://www.irrawaddy.com/news/burma/breaking-reuters-reporters-arrested-yangon-official-secrets-act.html>; See ICJ, ‘Reuters journalists detained in Myanmar: respect their rights, end their incommunicado detention’, 18 December 2017, Available at: <https://www.icj.org/reuters-journalists-detained-in-myanmar-respect-their-rights-end-their-incommunicado-detention/>

348 Wa Lone, Kyaw Soe Oo, Simon Lewis, Antoni Slodkowski, ‘Reuters Special Report: Massacre in Myanmar’, Filed 8 February 2018, Available at: <https://www.reuters.com/investigates/special-report/myanmar-rakhine-events/>

349 ICJ, ‘Myanmar: Reuters convictions a massive blow to the rule of law’, 3 September 2018, Available at: <https://www.icj.org/myanmar-reuters-convictions-a-massive-blow-to-the-rule-of-law/>

350 Capt. Moe Yan Naing thereafter was sentenced to one year in prison under the Police Disciplinary Act and his family evicted from the police dormitory in which they had been living. See Eli Meixler, ‘Myanmar Police Officer Who Said That Detained Reuters Reporters Were Set Up Has Been Jailed’, *TIME*, 30 April 2018, Available at: <https://time.com/5259232/myanmar-jail-police-whistleblower-reuters-reporters/>

351 ICJ, ‘Myanmar: officials must drop charges against Reuters journalists’, 9 July 2018, Available at: <https://www.icj.org/myanmar-officials-must-drop-charges-against-reuters-journalists/>

352 Kyaw Phyto Tha, ‘Calls Mount for Official Secrets Act to Be Amended in Wake of Reuters Case’,

In May 2019, the journalists were released pursuant to a presidential amnesty.³⁵³

v. Laws which aim to protect the courts

Laws enacted or promulgated to protect certain aspects of the courts or judicial authority have also been wielded to curtail freedom of expression online. In *Singapore* and *Malaysia*, the instrument of “contempt of court” has been expanded to disproportionately extend powers of the court beyond a narrow legitimate aim of ensuring integrity and good order in court proceedings. In *Thailand*, contempt of court has been increasingly used in recent years to target independent individuals expressing disfavoured public comment.

As emphasized by the UN Human Rights Committee, where limitations to freedom of expression are adopted even for a legitimate purpose, such as to maintain public order, contempt of court proceedings and penalties imposed for exercising the right to free expression must be strictly necessary and proportionate to that end. This means they must be specifically “warranted in the exercise of a court’s power to maintain orderly proceedings” and must not infringe upon the legitimate exercise of the rights of the defence.³⁵⁴

Where contempt proceedings are brought against lawyers, as in some cases highlighted below, they may serve to violate basic tenets governing the legal profession and protections to which lawyers are entitled and reflected in international standards. The UN Basic Principles on the Role of Lawyers makes clear that lawyers must “enjoy civil and penal immunity

10 September 2018, Available at: <https://www.irrawaddy.com/news/burma/calls-mount-official-secrets-act-amended-wake-reuters-case.html>; In a similar case, in July 2014, the Chief Executive Officer and four journalists with Unity Journal newspaper were sentenced to ten years in prison with hard labour for publishing a report alleging a Myanmar military facility had been used to manufacture chemical weapons. In April 2016, they were released pursuant to a presidential amnesty. See Zarni Mann, ‘Unity Journalists Sentenced to 10 Years Imprisonment With Hard Labor’, *The Irrawaddy*, 10 July 2014, Available at: <https://www.irrawaddy.com/news/burma/unity-journalists-sentenced-10-years-imprisonment-hard-labor.html>; PEN International ‘Myanmar: Five journalists released following presidential pardon’, 22 April 2016, Available at: <https://pen-international.org/news/myanmar-five-journalists-released-following-presidential-pardon>

353 BBC, ‘Wa Lone and Kyaw Soe Oo: Reuters journalists freed in Myanmar’, 7 May 2019, Available at: <https://www.bbc.com/news/world-asia-48182712>; In April 2019, the ICJ and 19 other organizations urged a parliamentary committee formed to review Myanmar’s 2008 Constitution to amend the Constitution to guarantee the rights to free expression and information and media freedom in line with international human rights law. See ICJ, ‘Joint statement: constitutional reform must guarantee the right to freedom of expression in Myanmar’, 11 April 2019, Available at: <https://www.icj.org/joint-statement-constitutional-reform-must-guarantee-the-right-to-freedom-of-expression-in-myanmar/>

354 CCPR/C/GC/34, paras 24, 31.

for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority” (Principle 20) and that they are, like other individuals, entitled to the rights to free expression and association and “have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights” (Principle 23).³⁵⁵

Singapore

In Singapore, contempt of court proceedings have been used to curtail freedom of expression and information under the guise of ‘maintaining orderly proceedings’, particularly in cases of online criticism touching upon politically sensitive matters.

In October 2017, the **Administration of Justice (Protection) Act 2016** (AJPA) came into force in Singapore, despite well founded concerns raised by multiple organizations that its vague provisions could result in abusive interpretation and implementation, given existing trends of use of contempt of court under **common law** to limit freedom of expression.³⁵⁶ Prior to the coming into force of the AJPA, contempt of court cases could be brought under common law by Singapore’s High Court and Court of Appeal pursuant to section 7 of the Supreme Court of Judicature Act.³⁵⁷

The AJPA lowers the threshold for contempt in what is referred to as “scandalizing the Court”, expanding judicial powers to punish such contempt with increased and onerous penalties. Section 3(1) criminalizes the “scandalizing of court” through (i) “impugning the integrity, propriety or impartiality” of judges by “intentionally publishing any matter or doing any act that... poses a *risk* that public confidence in the administration of justice would be undermined” (section 3(1)(a)); and (ii) “intentional” publishing of any material which interferes with pending court proceedings, or *sub judice*

355 UN Basic Principles on the Role of Lawyers 1990, Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

356 FORUM Asia, Think Centre, ‘Singapore: New Contempt of Court Law Further Curtails Limited Freedom of Expression’, 20 August 2016, Available at: <https://www.forum-asia.org/?p=21369>; AWARE, ‘AWARE statement on the Administration of Justice (Protection) Bill’, 10 August 2016, Available at: <https://www.aware.org.sg/2016/08/aware-statement-on-the-administration-of-justice-protection-bill/>; Human Rights Watch, ‘Singapore: Reject Overly Broad Contempt Law’, 8 August 2016, Available at: <https://www.hrw.org/news/2016/08/08/singapore-reject-overly-broad-contempt-law/>; Amnesty International, ‘Singapore: Contempt of court bill is a threat to freedom of expression’, 16 August 2016, Available at: <https://www.amnesty.org/en/latest/news/2016/08/singapore-contempt-of-court-law/>

357 This section is now repealed from the Supreme Court of Judicature Act (Chapter 322) Rev. Ed. 2007.

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