



President Barack Obama
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Dear Mr. President,

ARTICLE 19 welcomes your decision to visit Southeast Asia and its leaders from 17th to 20th November. We are particularly concerned about the serious threats to the rights to freedom of expression and freedom of information in the region, and the risks to democracy and the enjoyment of all other fundamental rights. Your visit is a timely opportunity to stand with the people of Southeast Asia in calling for states to respect, promote and protect human rights.

This is a critical moment for Southeast Asia, as the leaders of the Association of Southeast Asian Nations (“ASEAN”) are in the process of finalising the ASEAN Human Rights Declaration. Below we outline our key concerns regarding violations of the right to freedom of expression and freedom of information in the region, and put forward recommendations to address these concerns. We urge you to raise these concerns and recommendations with the leaders of Burma, Thailand, Cambodia and ASEAN.

Burma

Despite positive steps initiated by the Government, the majority of laws and practices that have violated the right to freedom of expression for decades remain: the constitution fails to protect free speech, private daily newspapers remain illegal, opposition and criticism are dealt with harshly, and the judiciary is opaque and biased. Recent legal reforms have been conducted in secrecy and without consultation with key stakeholders, including journalists and civil society.

Constitutional provisions – Burma’s constitution undermines the government’s promises for a shift towards democracy and human rights. The constitution fails to protect freedom of expression, freedom of information or freedom of the media, but instead provides for extremely wide and arbitrary limitations. Parliament cannot amend the constitution without the permission of the military, who are automatically awarded 25 per cent of parliamentary seats.

Freedom of the media – Despite the end of pre-publication censorship in 2012, Burma’s media environment remains stifled. All daily newspapers are government-owned and run, and private dailies remain illegal. Private weekly journals remain under substantial legal and extra-legal pressure from government. The promised new press law, due originally in June 2012 and now in its seventh version, remains clouded in secrecy and the media itself has not been involved or consulted. Organisations that have seen the drafts have flagged that the law fails to meet international standards.

Freedom of peaceful assembly – Burma’s law regarding the right to peaceful assembly and the regulations governing its procedures do not comply with international human rights standards. Those people seeking to assemble or protest must apply for permission and the local police may refuse such permission without needing to give any grounds. No judge or court is involved and no appeals process exists. Those who do not obey the law’s provisions face grossly disproportionate penalties.

Imprisonment – An estimated three hundred political prisoners continue to languish in detention around the country. The government has announced a general amnesty in anticipation of your visit.

Advocacy to incitement to violence and discrimination – The Burmese government has failed to address calls for ethnic cleansing of Muslims and ethnic Rohingya, and in the worst cases, some government officials at national and local levels have advocated violence, discrimination and forced displacement.

ARTICLE 19 urges you to recommend that the Burmese government:

1. Accedes to the International Covenant on Civil and Political Rights (“the ICCPR”), to the first optional protocol, which provides the authority for individual complaints to the Human Rights Committee, and to other key human rights treaties;
2. Immediately publishes the draft press law and consults with media and civil society to further develop it. Allows all private press and ends all licensing schemes for the printed press and journalists themselves to enable a free, independent and diverse media;
3. Revises legislation on the Right to Peaceful Assembly and Peaceful Procession in accordance with international standards;
4. Releases all political prisoners;
5. Addresses incitement to violence and discrimination against Muslims and the Rohingya, to include issuing clear public statements against such advocacy;
6. Extends standing invitations to the UN Special Rapporteurs on Freedom of Opinion and Expression, Freedom of Peaceful Assembly and Association, and Human Rights Defenders.

Thailand

Restrictions on the rights to freedom of expression and freedom of information, both online and in other telecommunication networks, remain a serious concern in the country. The 2007 Computer Crime Act and the *lèse-majesté* law both allow for violations of the rights to freedom of expression and freedom of information, rights guaranteed by the Thai Constitution and the ICCPR to which Thailand is a party.

Computer Crime Act (CCA) – The CCA severely undermines the right to freely provide and receive information on the Internet and contradicts Thailand’s domestic and international freedom of expression obligations. Many of the provisions are vague and overly broad, conferring too much discretion on state officials when suppressing dissent. The CCA also imposes liability on Internet service providers for content generated by their users, which encourages private censorship and seriously threatens the rights to freedom of expression and freedom of information online. It is estimated that by the end of 2011, 690 new URLs were being blocked every day.

Lèse-majesté law – The *lèse-majesté* law is classified under Offences Relating to the Security of the Kingdom in the Penal Code and carries a maximum of 15 years of imprisonment if one is “to defame, insult or threaten the King and his family” (Art. 112). The law is frequently used to silence oppositional voices in the name of protecting the Royal Family, and discussion of the law itself can amount to a violation of *lèse-majesté*. The number of cases has drastically increased from 33 in 2005 to 478 in 2010, and 2011 saw the heaviest penalty handed down in a *lèse-majesté* case - a 20-year prison sentence given to Amphon Tangnoppaku (also known as ‘Ar Kong’) for sending four text messages deemed to have insulted the Queen of Thailand.

Imprisonment - Tragically, Ar Kong died in prison in May 2012 after serving only three months of his sentence. Magazine editor Somyot Prueksakasemsuk was arrested in April 2011 after launching a petition to abolish the *lèse-majesté* law. He is currently charged with *lèse-majesté* and is in pre-trial detention for publishing two allegedly defamatory articles written by someone else. Mr. Prueksakasemsuk faces up to 30 years in prison if convicted. According to the Office of the

Human Rights Commission of Thailand, there are currently 9 lèse-majesté prisoners in the kingdom.

ARTICLE 19 urges you to recommend that the Thai government:

1. Releases all those currently imprisoned for the peaceful and legitimate expression of their opinions or for disseminating information, including Somyot Prueksakasemsuk;
2. Reviews all laws affecting freedom of expression for compliance with the 2007 Thai Constitution and Thailand's international human rights treaty obligations. Those that fail to meet the standards should be repealed or amended as necessary;
3. Reforms the CCA in accordance with international standards on the right to freedom of expression and the right to freedom of peaceful assembly;
4. Repeals the lèse-majesté law;
5. Extends standing invitations to the UN Special Rapporteurs on Freedom of Opinion and Expression, Freedom of Peaceful Assembly and Association, and Human Rights Defenders.

Cambodia

ARTICLE 19 is seriously concerned by the escalating severity and frequency of human rights violations seen in Cambodia since the start of 2012. The right to freedom of expression, freedom of information and freedom of assembly and association are all under grave threat. The Cambodian government continues to plunder land and natural resources for large commercial entities without any form of accountability to the Cambodian people.

Freedom of expression and freedom of assembly – The Cambodian press and civil society largely exercise self-censorship. Individuals and groups reporting on issues of government corruption are particularly vulnerable to intimidation tactics and legal charges. This has led to a chilling effect across the country and a culture of self-censorship. For example, independent radio station owner and director, Mam Sonando, was sentenced to 20 years in prison for reporting on the Khmer People Power Movement. Public demonstrations are often dealt with by riot police or hired security guards, and protestors are frequently beaten and/or arbitrarily detained. At the end of 2011, the Cambodian government shelved a highly restrictive draft Law on Associations and Non-Governmental Organisations. While ARTICLE 19 welcomes this move, we remain concerned that it has not yet been officially terminated.

Violence against human rights defenders – The use of violent tactics against human rights defenders and activists has become widespread. Chut Wutty was shot and killed in April 2012 and Hang Serei Oudom, a journalist reporting on illegal logging, was found murdered in the back of his car in September 2012. These incidents are just two examples from many in a year where increased violence and heavy-handed tactics have been used to restrict activism and freedom of expression in the country. The culture of impunity for human rights violations has become deeply entrenched.

Access to information and corruption– A draft Law on Access to Information was initially submitted to the National Assembly in December 2010 and was subsequently rejected. ARTICLE 19's analysis of the Draft Law revealed that it contained all the features expected in an effective right to information law. The need for Cambodia to pass this draft law is paramount. For example, large communities, including the Boeung Kak Lake and Borei Keila communities, continue to be forced out of their homes in a devastating manner, without adequate notice or information, and are often left uninformed about how and where to seek suitable relocation. The Cambodian government has made use of the lack of formal accountability mechanisms and a corrupt judiciary to carry out human rights violations with complete impunity over decades.

ARTICLE 19 urges you to recommend that the Cambodian government:

1. Fully investigates the murders, attacks, and threats made against all activists reported in recent years, including the murders of Chut Wutty and Hang Serei Oudom, and brings the perpetrators and instigators to justice;
2. Revises the draft Law on Associations and Non-Governmental Organisations, including and consulting with civil society, so that it is in accordance with international standards. Alternatively, it should finally terminate the draft law;
3. Releases all human rights defenders and activists detained for the peaceful expression of their views or work, including Mam Sonando, and drops all charges against them;
4. Ceases all forcible evictions and ensures that those who are displaced are given adequate access to information regarding durable solutions to their displacement;
5. Immediately adopts the Draft Law on Access to Information;
6. Extends standing invitations to the UN Special Rapporteurs on Freedom of Opinion and Expression, Freedom of Peaceful Assembly and Association, and Human Rights Defenders.

ASEAN

Asean Human Rights Declaration ("AHRD") – The current draft of the AHRD, which was developed largely in secret, does not reflect international human rights standards on the rights to freedom of expression and freedom of information. All rights in the Declaration are “guaranteed” in so far as they are “balanced with the performance of duties” (General Principle 6) with due considerations of “national and regional contexts” and “different cultural, religious and historical backgrounds” (General Principle 7). Both principles violate the spirit and letter of international human rights law and could, in effect, justify abuses of universal rights.

ARTICLE 19 urges you to recommend that the ASEAN leaders:

1. Postpone the adoption of the Draft Declaration and return it to the ASEAN Intergovernmental Commission on Human Rights (AICHR) for redrafting, to ensure that the final version is in accordance with international human rights standards.
2. Ensure that the AICHR’s revision process is defined by transparency and the inclusion of civil society, with regular consultations at national, regional and international levels.

The people of Southeast Asia are looking to you for leadership in promoting their fundamental and universal human rights. We urge you to take the opportunity of this visit to stand alongside those working tirelessly in the region for democratic reforms, and to make robust demands of national leaders so that they live up to their international human rights obligations.

Sincerely,

Agnes Callamard
Executive Director
ARTICLE 19