

# 15

## Political Rights, Democracy, and the Media in Southeast Asia

Political rights—which include the right of individuals to participate in the politics of their country—are a small but vital category of rights outlined in the ICCPR.

## 15.1 Introduction

While many countries in the region do not fully recognize this, some people in all countries actively use them to participate in politics, meet, discuss, and publicly express their political views. Political rights also include the rights to vote, to use government services, and to stand for public office. Because political rights are about participation, democracy, and government service, and no two States have the same political system, the understanding of these rights varies greatly. The consequence is that political rights are very much open to debate. This chapter will examine the main elements of political rights, focusing particularly on democracy and freedom of expression, and consider how Southeast Asian countries are interpreting and fulfilling them.

The human right to politics has a long history. Because every political system throughout history has experienced conflicts of power there is a need for rules and rights. Many countries in Southeast Asia have written political rights into their constitutions, but even before these came into effect disputes over political recognition during colonialism and self-determination occurred in all countries in the region (discussed in Chapter 8). While the disputes were not understood in terms of human rights, it was generally recognized that participating in public life and engaging in political activities is a right. Some of these ideas come from outside the region, for example, many of the established standards for political rights emerged during the 18th century Enlightenment in Europe. For the first time, the idea that the government should represent the **'will of the people'** was written into various declarations of rights and constitutions. These often came about through people's revolutions such as the French Revolution against absolute monarchy and the American Revolution against English control in the 1700s; both of which resulted in bills of rights recognizing political participation. This does not mean political rights were invented at this time, for various political units and States have recognized subjects' or citizens' rights to participate in politics throughout history. The right to petition, for example, is found in many systems throughout history, but political rights and freedoms before human rights were often extremely limited.

### Will of the People

A government based on people's choice or popular sovereignty. First used in the 17th century Enlightenment, and also found in the UDHR (1948).

The European revolutions and the fight for self-determination in Southeast Asia provide key starting points because they incorporated the idea that politics should be participatory and that participation should be a right. Two important values which ground political human rights are, firstly, that the system is chosen by the people, and secondly, that any political system, whether democratic, communist, monarchic, or religious, must recognize that people have a right to express their political views and participate in political activities. These views have been supported by people in Southeast Asia to challenge colonial governments, military dictators, corrupt leaders, and more recently to express concerns that the ASEAN organization, while declaring itself a representative of "the peoples of ASEAN," favours governments at the expense of popular participation. Many in the region have been jailed for exercising their political rights and some of the largest social movements have occurred as a result of people expressing their political rights.

Southeast Asia has undergone a slow process of democratization, often involving conflict, which has improved people's political rights. Recent discussions in the region have focus on democratic rights and freedom of expression (both of which will be discussed in this chapter). This chapter will firstly detail the elements of political rights as found in international treaties. It will then assess the relationship

between democracy and human rights, and examine how Southeast Asia gradually democratized. Finally, the vital roles played by freedom of expression and the media in this area will be discussed. In conclusion, this chapter will argue that while facing many challenges, democracy can be an ideal model for human rights.

## 15.2 Political Human Rights

Human rights as they relate to politics were first outlined in the UDHR, Arts 20-21, though, as discussed later, Art 19 or freedom of expression is also sometimes considered a political right. Before the UDHR, political rights could be found in a small number of national constitutions but were often limited to citizens. Political rights as granted by the UDHR are codified in the ICCPR and can also be found in other treaties such as CEDAW and the Migrant Worker Convention which both include rights to political participation.

One common limitation of political rights is that some of them only apply to citizens, leaving non-citizens without the some of their rights such as the right to take part in public affairs or to vote. Most human rights are based on being in the territory of the State, but political rights are slightly different. Non-citizens cannot vote in another country's election, nor become a politician, as this is almost always restricted to citizens. This does not mean that non-citizens lose their political rights, but they only have these rights in their country of citizenship. Whether non-citizens can use their political rights outside the territory of their country of citizenship depends on the country itself. For example, while many do allow overseas citizens to vote, others do not. This section will examine these rights before focusing on the rights around democracy.

**Table 15-1: Political Rights in the UDHR and ICCPR**

Human Right	Elements	Treaty Articles
The right to peacefully assemble	Right to meet publicly and discuss politics	UDHR, Art 20 ICCPR, Art 21
The right to peaceful association	Right to form groups Right to join a trade union	UDHR, Art 20 ICCPR, Art 22
The right to take part in public affairs	Right to take part in government Right to elect a politician Right to be elected	UDHR, Art 21 ICCPR, Art 25
The right to work in the government	Right to access government service Right to be an officer of the government	UDHR, Art 21 ICCPR, Art 25
The right to vote	Right to a participatory political system Right to vote in elections Right to choose a government by election Right to be voted in an election	UDHR, Art 21 ICCPR, Art 25

### 15.2.1 Right to Peaceful Association and Assembly (Articles 21, 22 of ICCPR)

The right to associate enables people to form groups. While the main focus is on groups of a political nature (for example, political parties), the right extends to, for instance, student groups and those interested in specific issues such as women's rights or sport. The right to associate in order to form political parties is contentious in some Southeast Asian countries. For example, Vietnam and Laos it may not be legal

to form political parties. Although Vietnam’s Constitution and law does not explicitly prohibit political parties, the Constitution states,

The Communist Party of Vietnam [is] the faithful representative of the interests of the working class, labourers and the whole nation. [It] is the leading force of the State and society (Art 4).

Similarly, Singapore does not allow unregistered public meetings and can disband parties receiving money from overseas. As can be seen, the trend in Southeast Asia seems to be for States to limit rights to form civil society groups—see the new **Laws of Association** in Cambodia and the similar restrictions planned for Vietnam—due to increasing fears about political opposition and vocal dissent.



## Concept

### Laws of Association

If a group is to have a legal identity, it must comply with a State’s laws of association. Sometimes a legal identity is necessary to enable a group, whether a political party or a NGO, to open a bank account, hire people, pay bills, or raise revenue. Recently, in some Southeast Asian countries, new laws of association have been proposed and passed making it difficult to establish and run associations. These laws can ask for excessive and unnecessary documentation and reporting. They can also require associations to be politically neutral and avoid supporting opposition groups, or criticizing the government, which will especially impact human rights NGOs whose main purpose is to monitor government activity.

The right to peaceful assembly is the right to meet publicly. The main political purpose of this is for people to meet and talk about politics, to protest, or to advocate for specific issues. It also covers non-political meetings such as cultural activities or funerals. In Southeast Asia, some States have severely restricted the freedom to assemble although not all these limitations contravene human rights. Laws which are reasonable and objective may also ensure assemblies are peaceful. In practice, these restrictions have severely limited the ability of people to assemble in public. All countries require authorities to be notified beforehand, and many have broad powers to deny an assembly. Countries with the strictest regulations in the region are Singapore and Vietnam, where protestors are regularly arrested or jailed.

The right to assemble can be abused by States with some groups even being arrested for performing symbolic activities in public. The cover of this textbook illustrates two examples of assembly. The top picture shows a symbolic political protest against the Thai military government’s attempt to limit public freedom of expression, which involves the reading a peace and human rights book in public. The second picture shows a group protest against the Laos government’s inaction over the disappearance of civil society activist, Sombat Somphone (who was last seen at a roadblock in Vientiane in 2012). The activities in both these pictures is a human right.

In recent years, the right to assemble has been tested to its limits. For example, massive protests across Arab countries (called the Arab Spring) in 2011-2013 led to the fall of many governments in the region. Likewise, Southeast Asian countries have seen large assemblies of people protest against their governments, for example, in Bangkok and the **Bersih** movement in Malaysia. These protests test the rights to assemble when, for example, protesters in Bangkok seized the international airport, stopping travellers from entering or leaving the country. This caused disruption to tens of thousands of people. Similarly, when protestors close off streets, a person's ability to travel to work may be restricted or denied. The question is how to balance this right against the potential disruption and violations caused by the assembly. In the ICCPR, limits to these rights are defined, for example, activities must be peaceful. But if States introduce limitations, they must be in law, and necessary for specific reasons such as public morality, safety, or to prevent interference with another's rights (also discussed in Chapter 3).

### **Bersih**

Bersih is Malaysian for 'clean.' This social movement protests corruption and 'dirty' politics in Malaysia and calls itself the Bersih movement.



## **DISCUSSION AND DEBATE**

### **Limiting Rights to Assemble**

In 2008, protestors seized Bangkok international airport, stranding thousands of travellers and tourists. The occupiers chose this form of action because they claimed closing the airport gave international recognition to their concerns. Although caught up in the affair, the stranded tourists knew little about the government and were unable to return home to their work and families.

#### **Question**

- Should this kind of assembly be allowed, or should the State limit such protests?

Although the people were expressing their right to assemble and actively putting pressure on the government, their ongoing action also affected the rights of others to return home.

### **15.2.2 Right to Take Part in Public Affairs**

This right is expressed in a couple of different ways: the right to stand for office, and to be elected. Citizens have a right to be part of an elected government. It is debatable whether there is a **right to be a politician**, but the right to be elected into a government position is valid. Taking part in public affairs could include participating in referendums or public assemblies. The right to be elected can be subject to reasonable and objective limitations which are common to all countries. Some common limitations include citizenship, age, and residence restrictions. Other limitations are more questionable, such as the need to be a graduate (as was previously the case in Thailand), a member of a political party (Vietnam), follow a certain religion (Brunei), or to be in the military (Myanmar, for 25% of the government). The question is when are limitations justified, and when can they be considered discriminatory?



## DISCUSSION AND DEBATE

### Is there a right to be a politician?

While the rights to participate in government and to be voted into government are accepted, an individual's right to be a politician is debatable. Under the ICCPR, one has the right to participate in the "conduct of political affairs." This wording is deliberately vague to fit the varieties of political systems around the world. While international standards imply the right exists as everyone has the right to stand for office, how a State defines political office has been left up to individual countries. In some systems, many government offices are open for election (for example, party head, mayors, or judges) but not the offices of politicians or political leaders. No wording insists the head of State must be elected, only that a State's authority must come from the people, or that those in political power be somehow validated by election. This is the case in many parliamentary systems where the Prime Minister is not directly elected by the people, but by the party winning the election.

### 15.2.3 Right to Access Public Services

This covers the right to work for the government or to take up a public office. Ideally, these jobs (for example, judges, policemen, government broadcasters, teachers, civil servants, and so on) should be accessible to everyone although the government can introduce reasonable restrictions. Violations may arise if States demand that certain positions only be filled by members of the main political party, or by a particular gender. Most violations in this area occur when people lose government jobs because of their political beliefs. This right seeks to prevent elite groups from controlling jobs in **public service** because government employees should be representative of the society they work for, avoiding the exclusion of, for example, minorities or indigenous groups (who are rarely government officers). Countries like India have attempted to remedy such discrepancies by reserving public service positions for people from scheduled castes and tribes, or the most marginalized groups.

#### Public Service

Public service can refer to both services provided by the government, such as hospitals or schools, or jobs within the government. Public service positions include teachers or the police. Some countries use terms like 'civil servant' or 'government officer.'

### 15.2.4 Right to Vote

Fundamental to democracy is the assumption that governments serve the people and that people choose how to be governed, resulting in governments that represent the 'will of the people,' a term originating from the European Enlightenment but which has been picked up and used around the world. The 'will' is therefore based on the well known and important political right, the right to vote. However, the right to vote for exactly who is interpreted differently by States. Because there is a great variety of political systems which vote for different positions, this right does not specify which positions should be up for election. Some systems vote for the head of State and some not. Mostly, politicians in the **legislature** are voted in.

#### Legislature

The body in government, normally filled by elected politicians, which writes, debates, and passes laws. Depending on the political system, the legislature can be known as a senate, an assembly, a house of representatives, or an upper or lower house.

The right to vote requires that voting be 'genuine' meaning voting should be done at a fair election. The elements of this right detailed in the ICCPR, are discussed below. Voting rights can be compromised when elections are considered unfair because of restrictions and discrimination on the right to vote. Other examples of violations are more straightforward such as when people's voting rights are removed by undemocratic governments or military dictatorships. While all States place limitations on voting rights, usually relating to age and citizenship, debate is ongoing in many countries as to whether people living overseas or prisoners should be able to vote. This right will be discussed in more detail in the section on democracy below.

## 15.3 Understanding Democracy

Democracy attracts much debate as it is assumed to be the best political system, but it faces many problems and challenges. Before trying to understand the relationship between democracy and human rights, it is useful to examine why democracy is considered such an important political concept. Throughout Southeast Asia, people argue about the meaning and value of democracy. Does it just entail holding elections? Or should it also fulfil people's civil and political rights? Is democracy really the best political system? Within this region, States have redefined democracy by using such terms as 'guided democracy' (in Indonesia) or the 'roadmap to democracy' (in Myanmar), both of which were used to justify limitations on democracy.

### CASE STUDIES

#### Southeast Asian Versions of Democracy

##### Guided Democracy

While the term was first used by political scientist, Walter Lippman in the 1920s, it has more recently been associated with the military government in Indonesia, and more recently, in Russia. Guided democracy refers to situations where strong vested interests, for example, the military and business in Indonesia, can hold on to power by weakening the democratic system through modifying the powers of government and reducing people's political rights. Those in power argue that democracies must be guided to avoid conflict and chaos.

##### Roadmap to Democracy

The Myanmar government used this term to justify delaying handing over power to democratic forces, insisting that seven steps be achieved first. Announced in 2003, the steps included activities like holding a national convention, writing a constitution, and holding an election. The roadmap was used to justify the continuing rule of the military government. Despite the fact the seven steps had been completed as of 2015, the military has still not fully left government.

All actors in human rights accept the positive relationship between human rights and democracy. Democracy is considered the best system to protect human rights because it ensures voices are heard and interests are represented in the political system. This implies individuals know their needs, concerns, and values best and that participation and representation will prevent those in power from imposing their will on the masses. In addition, the presence of opposing voices in a political process ensures that no one person or group can control the agenda because when voices are silenced and people are unrepresented, repression and oppression of human rights is often the result.

There are two methods of understanding how a democracy works. The first is a comparative method which details the different categories or types of democracy. The second method is critical, which assesses if a democracy meets the requirements of being representative of people. In the comparative method, there are many ways



### Pluralism

To acknowledge and accept diversity. Political pluralism means to ensure people from different genders, ethnicities, classes, regions and so on, can participate in politics.

to categorize democracies. The simple versions include the ‘minimalist’ model, often called the ‘Schumpeterian model’ (after Joseph Schumpeter who was more famous for his economic theories). Minimalist models argue that popular participation should be limited to people voting in experts to run their governments. Other more expansive and detailed models look at the amount and mode of participation of the people, or the distribution of power, the amount of **pluralism** the key features of democracy. Deliberative and participatory theories (see the box below) consider people have a role not only in the election, but also in popular participation in the decisions of government. Their inclusion is one of the vital aspects of democracy People’s ability to argue and make decisions is the purpose of democracy, in this model. A variety of titles are used for these different models including electoral, consensus, deliberative, or liberal.

Many studies on democracy focus on quality, but how should this be judged? Common forms of measurement include levels of participation, accountability, inclusion of the rule of law, and competition. Under these types of studies, human rights may frequently be used as a measurement. As a whole, human rights do support democracy which is participatory in nature even if the specific right to democracy (as will be detailed next) is more minimalist and procedural.

## DISCUSSION AND DEBATE

### Models of democracy in Southeast Asia–minimalist or participatory democracy?

*Minimalist Democracy* assumes that a simple competition (most commonly an election) is all that is required to form a democracy. What people say, think, and argue is not important because many people don’t know enough, or are driven by individual interest and not the interests of society as a whole. As such, it is best to leave politics up to the professionals.

*Participatory and Deliberative Democracy* prefers people to play an active role in democracy. People should be involved in deliberations and be able to contribute ideas to the running of the country. An example is Robert Dahl’s theory of *polyarchy*, or the rule (‘archy’) of many (‘poly’) which occurs when a State is ruled by many people. In a *polyarchy*, the government is “completely or almost completely responsive to all its citizens.” Deliberation is the main activity of the democracy, where people are expected to meet, discuss, and debate decisions made by the government.

*Representative Democracy* is where people elect others to represent them with governance primarily done by representatives. People can be active in the process of choosing representatives, but must trust them to govern in their interest.

### Questions

- Which model is better?
- Are people generally interested and intelligent enough to inform government?
- Is it possible for governments to listen to the views of its entire population before deciding what to do?





- Will deliberation lead to long slow debates and deadlocked decisions or higher levels of consensus in the community?
- Is it dangerous to leave all decisions up to politicians, or are they really the best people to do the job?
- Which model respects people's human rights the most?

It is possible to identify a functioning democracy by searching for certain features and practices. Many forms of democracy exist such as presidential or parliamentary systems, but all are based on a particular set of ideals. While most democracies do not reach these ideals, they do influence how people are governed. One ideal is popular participation, allowing people to discuss, debate, and criticize the functions of government. In a good democracy, governments should allow for dissent. Similarly, democracies should foster, rather than inhibit, the flow of ideas, information, and opinion. Democratic institutions depend on an informed electorate, enabling more pluralistic viewpoints and contrasting perspectives. An uninformed electorate will be unable to fulfil its democratic role to decide what is best for the community and country.

Another ideal covers the fair distribution of power. Democracies feature separations of power which work as checks and balances to ensure power does not become centralized into one branch, party, or individual. Separation of power should not only occur within the government, but should also apply to different parts of the country and different groups of people, for example, business, government officers, and civil society. In this respect, an independent judiciary is both a feature of the separation and also a means to monitor it. Without an independent judiciary capable of enforcing the rule of law, human rights will be unprotected. It is important to note that while human rights are better safeguarded in democracies, they can and should be respected and protected in any political system. The next section will examine the process of democratization.

### 15.3.1 Democratization

Until fairly recently, many Southeast Asian States questioned if democracy is the best method of government and instead claimed that military-led governments are the better political system. The current view that democracy is the best method of government only occurred after a long process of **democratization** which took place both at the domestic level, where people challenging for their political rights, and the international level where other States and international organizations pressured or encouraged Southeast Asian governments to become democratic.

This has had two significant implications. First, the process of democratization has been applauded by the international community including States and international organizations. Indeed, the international community has been very keen to provide support to democratizing countries in the form of aid, political and economic relations, and even military assistance. As an example, Myanmar has recently attracted a lot of support and aid because of its democratization. Second, most countries in the world associate themselves with democracy as a source of their legitimacy, as even North Korea calls itself the Democratic People's Republic of Korea. This is possible because democracy has no single meaning and few, if any, countries openly reject democracy because every country wants to be seen as working in the interests of its people.

#### Democratization

Democratization is the process of becoming a democracy. Democratization can take many forms, from sudden regime changes through revolution to slow and gradual transitions.

Democracy in the region is a fairly recent trend. As covered in Chapter 8, though there have been democracies and elections from the 1940s, it was not until the People's Power protests of the 1980s and 1990s that democracy became established in most Southeast Asian countries. But the governments which called themselves democratic did not necessarily improve human rights in their countries. For a start, some were not actually democratic despite claims to the contrary. Second, the process of democratization can be difficult and at times violent. States moving from the relative political stability of military dictatorship to the competition of forces vying for election to power often experience a period of protest and conflict. While democracies can become less violent than dictatorships, this is not always guaranteed during the transition.

### **15.3.2 Current Status of Democratization in Southeast Asia**

The democratization of Southeast Asia has already been discussed in Chapter 8 using Huntington's theory of democratic waves. Democratization was rapid. Southeast Asia went from two democracies in the mid-1980s to seven in the early 2000s. In other regions, democratization moved at a much slower pace. One way to assess the status of democracy is by using the categories proposed by Larry Diamond: electoral democracies, liberal democracies, pseudo-democracies, and non-oppositional authoritarianism.

*Liberal democracies* are the closest to full democracies. In this category, apart from regular competitive contests for power through elections, no political force including the military has privileged access to power. Political participation goes beyond regular elections and there are checks and balances to government power, including the rule of law. Countries such as the Philippines, East Timor, and Indonesia may be considered liberal democracies.

*Electoral democracies* (also known as formal or procedural democracies) are a minimalist form of democracy characterized by regular elections where parties and candidates compete for power, but popular participation is mostly limited to elections, and the elections themselves are no guarantee of democracy. Countries like Malaysia and Singapore may be considered electoral democracies.

*Pseudo-democracies* are political systems where regimes mask their authoritarian character by adopting formal democratic institutions and processes. Cambodia and Myanmar may be considered pseudo-democracies because either single parties have control like the CPP in Cambodia, or the military maintains significant power as they do in Myanmar (by controlling 25% of the elected positions in government).

*Non-oppositional authoritarian regimes* are political systems based on the repression of political opposition, laws which outlaw or greatly limit popular participation in politics, and where there is commonly no strong opposition movement. These regimes may have an appearance of democratic institutions and processes but lack the building blocks of even minimal democracy, such as independent opposition parties. Thailand, Laos, Brunei DES, and Vietnam may be considered non-oppositional authoritarian regimes. In other words, liberal democracy cannot be said to exist in countries where there is single party control (Vietnam and Laos), military control (Thailand), or absolute monarchy (Brunei).

Merely democratizing is not enough to ensure a democratic system because transition does not necessarily lead to the consolidation of democracy. A combination of the failure to consolidate democracy in countries that have experienced democratic

### Paris Peace Accords (1991)

A peace agreement between the warring factions to stop the decade's long conflict in Cambodia. It was signed by the State of Cambodia and three main opposition groups including Funcinpec and the Khmer Rouge.

transitions and the inability of non-democratic regimes to change has led to a pessimistic view of democratization. For example, less than five years after the introduction of democracy to Cambodia, a coup restored power to the CPP party under Prime Minister Hun Sen, breaking the shared power arrangement as outlined in the **Paris Peace Accords** in 1991. Hun Sen assigned King Norodom Sihanouk of the opposition party only a ceremonial role making Cambodia a country with a single ruling party. In Thailand, the military has interfered in politics a number of times in the past decades, despite the adoption of a democratic constitution in 1997. Twice since democracy was restored in 1992, the military seized power from democratically elected governments. Only the Philippines and Indonesia have not suffered setbacks in their process of democratization although extrajudicial killings in the Philippines and accusations of corruption in Indonesian politics show these democracies are not as robust as they could be.

The transition to democracy in Southeast Asia did not have a contagious effect. The democratization that took place in Indonesia in 1998, spectacular as it was, did not influence its neighbouring countries. After almost three decades since the first transition to democracy in the Philippines, the principle has still not been adopted by all Southeast Asian countries. For example, despite the recent election of the opposition party to government in Myanmar, the military still has not totally relinquished control and the country only has limited democratic characteristics. Neither did the seeds of democracy emerge in other Southeast Asian countries. Brunei Darussalam remains an absolute monarchy while Vietnam and Laos are still under single party communist rule. Formally, Singapore and Malaysia have adopted democratic institutions and processes but beyond formal institutions and procedures, it is difficult to classify the two countries as genuine democracies as the ruling parties are dominant and political rights limited. As such, both ruling parties have won every election since independence, and opposition parties still find it extremely difficult to operate.

Some changes have occurred though, particularly at the regional level. During their 13th Summit in Singapore (2007), ASEAN countries adopted the ASEAN Charter which explicitly established democracy as a principle, even stating that one of its purposes was to promote democracy. The adoption of the Charter can be seen as a radical shift in ASEAN's position. While ASEAN countries have tended to be hostile towards democracy, the adoption of the Charter acknowledges that ASEAN is a collective based on the principle of democracy. Despite their accommodation to this principle, most Southeast Asian States still find democracy a challenge to reach.

## 15.4 Human Right to Democracy

The object of political rights is to create democratic societies where human rights can be enjoyed. While the word 'democracy' does not appear in the UDHR or the ICCPR, throughout human rights treaties, the term 'democratic society' is used when noting that reasonable limitations are ones acceptable to a democratic society. While there is a clear relationship between human rights and democracy, this does not necessarily equal a human right to democracy. Like the debates around rights to a clean environment or peace, they share a common goal, but this does not imply they are human rights. In addition, democracy is not a necessary condition for human rights because they should be respected regardless of a country's political system. In other words, even in non-democratic situations, for example, a public emergency or an armed conflict, human rights should be protected.



## DISCUSSION AND DEBATE

### Human Right to Democracy?

The right to a democracy is stated in the UDHR as “The will of the people shall be the basis of the authority of government” (Art 21.3).

#### Question

- Does this constitute a right to democracy?
- Is it possible to have the government based on the will of the people, but for the government to not be democratic?
- Is there any other way to determine the will of the people apart from elections?

Human rights are both a cause and an effect of democracy. Increasing human rights will lead to a more democratic country, which will in turn improve people’s rights. Many of the important principles of human rights are also vital to democracy such as the rule of law, participation, equality, and self-determination. In many ways, human rights and democratization share similar goals. As mentioned in Chapter 1, the VDPA (1993) created a global consensus on a number of human rights debates. Of relevance here is the agreement that democracy and human rights are related. The VDPA states:

Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.... The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world. (Art 8)

This article both restates existing ideas about the relationship of human rights to democracy and also proposes new ones. That democracy is based on the will of the people is already expressed in the UDHR, but the article also adds that human rights and democracy are interdependent and mutually reinforcing. That is, one cannot exist without the other.

*Interdependent* means that democracy depends on the existence of human rights and vice versa. States cannot propose to have human rights unless they also support democracy. In a sense, this argues for the universal recognition of democracy as the only political system. Article 8 does not, however, define democracy apart from the general points that it is based on the will of the people to decide their own system and economy. The interdependent relationship between human rights and democracy applies to all human rights. If a group’s economic or cultural rights go unprotected, that is a failure of democracy. When democratic institutions fail, this will undermine both civil and political rights, and economic, social, and cultural rights. The VDPA makes democracy, development, and human rights equally important.

*Mutually Reinforcing* means that human rights can only be strengthened by encouraging democratization, and vice versa. With a democratic voice, people will be able to articulate the rights they need and desire. In addition, leaving minority groups out of democratic processes will undermine other human rights. Throughout Southeast Asia, many politically marginalized groups are also marginalized socio-

economically. Human rights can reinforce democracy because, for example, the right to education, women's rights, and freedom to associate make democracies more effective by producing informed citizens. In particular, education can lead to higher levels of political inclusion for groups such as women. Further, by teaching people more about the political process and ensuring the right to associate, political parties can be more active. In practice, the human rights and democracy movements often overlap and share common goals.

Numerous articles in the VDPA mention the importance of democracy, especially to developing countries. The Declaration notes that the process of democratization should be supported by the international community through developmental assistance, and that the UN, civil society, and other organizations need to support democratization throughout the world. The VDPA is the global consensus on human rights and democracy because of its near universal support at the UN.

#### 15.4.1 Key Elements of the Right to Vote

As previously mentioned, the right to vote is the most well-known, and maybe the most important political right. This right is procedural, meaning that it is understood mainly through the process of choosing a government by election. The process is detailed as:

*Periodic and genuine elections which shall be by universal and equal suffrage, and shall be held by secret vote, or by equivalent free voting procedures.*

The procedure has a number of elements. First, elections must be periodic in that they should occur at regular intervals. While no timescale is given, most countries hold elections every 3-6 years. The election must be genuine, meaning that the results must reflect the will of the people. Non-genuine elections occur when there is no opposition or when a government considers a **referendum** an election. A referendum is not a genuine election because it is not competitive. For example, although voters may be asked to support a president in a referendum, the opposition has no opportunity to gain power. This was a tactic used by Philippines president, Marcos, in the 1970s. Rules governing the right to vote (or suffrage) should be based on every person getting a vote (or universal **suffrage**) excepting reasonable limitations such as age and citizenship. Further, each person's vote should be counted equally, preventing some from gaining more than one vote or having more influence. Finally, voting should be secret to keep political views private and keep the voter safe from repercussions. Examples are that wives should vote separately from their husbands, or villagers from their village leaders, so they both have a free choice and will not be coerced to vote a specific way. Secrecy also protects the voter from being punished for voting a particular way.

#### Referendum

Where the population is asked to vote on a proposal, for example, to accept a new constitution or to change the political system.

#### Suffrage

Suffrage is the right to vote. The term has been used in women's political rights when women activists were called 'suffragettes.'

#### 15.4.2 Free and Fair Elections

Although the procedural aspects of democracy are important, in reality, elections are only the start of securing democracy. Elections provide the first step towards democracy because they allow people to vote according to their interests, but elections alone do not make a democracy. Many elections in Southeast Asia do not reach the standard of a free and fair election. The basic definition of democracy as a political system based on the choosing of representatives through popular elections still leaves room for questions about how people choose the system, if the system is fair, and if the choice was genuine. Elections can be abused. Officials can lie, steal, or cheat. They can also withhold information from the people, arrest and silence opposition groups, and manipulate conditions, making fair elections very difficult

indeed. For example, voting for the local member of the communist party counts as democracy in Vietnam, and in Malaysia, although the opposition often wins more than half the votes, this success is not reflected in its number of parliamentary seats. These situations question whether elections really are free and fair.

While there have been elections in most Southeast Asian countries since the 1940s, many were not fully representative, especially during colonialism. In addition, not all politicians were elected as governments frequently reserved seats for special groups. Currently, Myanmar reserves 25% of its seats for the military, and Thailand has at various times in its history. Appointed unelected senators. Further, elections under dictatorships (for example, in Indonesia, Thailand and the Philippines from the 1960s to the 1980s) are rarely free and fair. The famous People’s Power movement in the Philippines (discussed in Chapter 8) initiated protests against an election rigged by President Marcos. Likewise, Indonesian elections from the 1960s to the 80s were widely recognized to be seriously flawed as there was no freedom of association or expression, criticism of the government was banned, opposition parties were banned or forced to merge, and some voters, such as government officers, were pressured to vote for the ruling party. Finally, the voting process itself, from collecting the ballots to counting the votes, was questionable with suggestions of **ballot stuffing**. Despite this, the standard of elections in Southeast Asia has improved dramatically with most (although not all) recent elections now considered free and fair. Table 15.1 details the variety of elected positions in Southeast Asian countries from the Philippines which has over eight elected offices from the presidential level down to local councillors, to Brunei where there are no elected officials.

### Ballot Stuffing

One way of cheating in elections is to fill the ballot box with votes for a particular candidate. Known as stuffing because these extra votes are stuffed inside the ballot, this has been known to occur in elections throughout Southeast Asia.

**Table 15.2: Elected Positions in Southeast Asia (from 2016)**

	Legislators	Head of State	Town, city or State level
<b>Brunei DS</b>	None: 36 appointed members	No	No
<b>Cambodia</b>	Lower house: elected Upper house: appointed	Indirectly elected: appointed by winning party	Yes: local communes (council)
<b>Indonesia</b>	Yes: all seats in the lower and upper house	Yes	Yes: local elections
<b>Laos PDR</b>	Yes: National Assembly is elected, but it’s a one party State	No	No
<b>Malaysia</b>	Lower house: elected Upper house: 44 appointed and 26 elected by state assemblies	Indirectly elected: appointed by winning party	Yes: State assemblies, but not local governments
<b>Myanmar</b>	Lower and Upper Houses: 75% elected, 25% military appointed	Indirectly elected: appointed by winning party	Yes: State assemblies, local wards (village level)
<b>Philippines</b>	Both lower and upper houses	President and vice president	Yes: governors, mayors, councillors, and local officials
<b>Singapore</b>	Yes	Yes, but mostly uncontested	No
<b>Thailand</b>	Yes	Yes	Yes: local councils
<b>Timor Leste</b>	No	No	Yes
<b>Vietnam</b>	Yes: National Assembly is elected, but it’s a one party State	No	Yes: people’s (local) council

## Election Monitoring

The process of observing all phases of an election, including preparation, the election itself, and post-election procedures to ensure they are conducted according to national legislation and international standards. The task is done by one or more national or international independent organizations, most commonly NGOs.

Given the problems in ensuring free and fair elections, many activities are involved in **election monitoring**. Monitoring can be done by a national body, such as an election commission, although it is common to use international monitors to ensure compliance. Because countries tend to have their own regulations there is no single universal standard, but rather a set of principles and practices. While obviously open to debate, many **standards of a free and fair election** are widely accepted. International standards are outlined in the *Declaration of Principles for International Election Observation* (2005), and more locally, the *Bangkok Declaration on Free and Fair Elections* (2012) offers an exhaustive list including legal standards, universal suffrage, voter education, voter registration, campaign rules, campaign finances, the management of polling stations, counting votes, and complaints mechanisms. As can be seen, there are many elements to a free and fair election.

## Concept Standards of Free and Fair Elections

Because elections involve many people, regulations, and interests, there is no uniform way to define a free and fair election. Although certain elements are necessary, the vital ones and their precise definition will vary depending on the political system in question. Some of these elements include:

**Universal suffrage:** to ensure everyone can register to vote, and that voter records are accurate. There are limitations found in Southeast Asia including: prisoners, those living overseas, unregistered people, and monks.

**Secret ballot:** to ensure people can vote in secret and will not face repercussions because of who they voted for

**Freedom of information:** to allow people to gain accurate information on political parties and their policies. In places where a government owns the newspapers and television stations, monitors can see if the opposition is given similar coverage to the government

**Fairly structured electorate:** to ensure electorates are divided equally so everyone's vote counts the same, and that whoever receives the most votes wins. Problems in some Southeast Asian countries are that parties winning most of the votes have still lost the election

**Transparent counting of votes:** to prevent cheating in vote counting. Monitors will look for ballot stuffing, or ballot boxes disappearing from areas where the opposition is likely to win

**Periodic election:** to ensure elections occur at regular intervals, normally around 3-6 years

**Campaigning:** to enable all parties to campaign and talk to the public about their policies and ideas, and to ensure rules for campaign finances are fair and transparent

**Complaints:** to ensure there is a body that will receive and act on complaints from the electors and political parties.



*Independent election body:* to ensure there is an independent body, such as an election commission, to manage the election according to the above standards, and that will possibly re-run an election if it is not considered free and fair

*Independent monitoring:* to ensure elections are open to independent and international monitors

ANFREL, the main regional monitoring organization behind the Bangkok Declaration, is active in most, if not all, national elections in the region. Other international monitoring organizations include the United Nations, the European Commission, and the US based, Carter Centre. In some instances, individual governments (for example, the United States, United Kingdom, or Sweden) have previously sent observers to the region.

The monitors have many things to observe. Monitors should arrive months before the actual election to observe the campaigning process and the organization of the election. The election body, commonly called an election commission, should also play a role here. In addition, the voter registration process has to be monitored to ensure legitimate voters are not kept off the rolls, or false voters included. On election day observers should ensure ballots are secret and there is no threat or intimidation of voters or candidates. Further, they should also look out for election frauds such as the payment of voters, ballot stuffing, and miscounting. After the election, monitors commonly release a report assessing the freeness and fairness of the election. For example, in the 2015 Myanmar national election, ANFREL widely supported the election process and the work of the Election Commission, but did note that activities such as voting by the police and the military, which were conducted on bases and not open to monitoring, could have allowed for fraud or misconduct.

## FOCUS ON

### ANFREL (Asian Network for Free Elections)

The first NGO in Asia working on election monitoring, ANFREL was established in November 1997. ANFREL's activities include to observe pre and post-electoral processes, and to train civil society groups actively working on democratization in their home countries. Developing the capacity of these organizations is one of the most important elements of democratization. ANFREL also carries out research and advocacy on good governance issues in Asia. Its long-term aim is to build expertise on elections and governance in the region, ensuring a culture of democracy that is both locally developed and integrated with internationally recognized standards.

ANFREL has observed more than 40 elections in 15 countries across Asia, including Nepal, Sri Lanka, Papua New Guinea, Afghanistan, Myanmar, and Thailand. Election observers working for ANFREL come from civil society organizations in Asia, and these observers may be posted to observe the election for weeks before and after the actual election.





## 15.5 Freedom of Expression

Freedom of expression is one of the more famous human rights. It has a long history, with earlier versions appearing in the US Constitution and the French *Declaration of the Rights of Man*. It also appears in many constitutions around the world and is a right most people know they have. Freedom of expression has limitations. Most people know they cannot say anything to anyone, anywhere. For example, one cannot cry 'fire' in a crowded theatre, nor do people have the freedom to abuse each other, or express views which may be considered violent, pornographic, or discriminatory. These limitations make freedom of expression open to debate. This section will detail the main elements of freedom of expression, and consider legitimate limits to this right before looking more closely at how it relates to media.

### 15.5.1 Elements of Freedom of Expression

Freedom of expression is in Art 19 of both the UDHR and the ICCPR. The UDHR simply states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers (Art 19).

Though the UDHR clearly outlines the right, ambiguity still exists as to its elements. First, opinions and expressions are considered distinct in this article but no clarity is provided as to the meaning of either. If opinions cover what one believes, and expression covers what one says, does this mean these rights are the same? Importantly, nothing is said on the limitations to this right, (although Art 29 of the UDHR clearly states that all rights have their limits). In the process of codifying this right into the legally binding ICCPR, modifications to the article were made, fixing some of these concerns. The first two sub-paragraphs detailing the elements of the right state:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Freedom of opinion is now separate from expression. The ability to interfere with someone's opinion, or forcing people to change opinion, is difficult as they concern private thought processes. It is only when opinions are given expression that rights are violated. While there have been cases on freedom of opinion at the UN level – on different treatment given to prisoners holding certain political opinions - because violations of this right are rare, they will not be addressed here. Rather, the focus will be on freedom of expression.

Second, Art 19.2 outlines the main elements of freedom of expression: people have a freedom to express, and also a right to seek, receive and impart information, and this is not limited by the kind of expression.



## Concept

### Standards of Free and Fair Elections

*Opinions* are beliefs or values that are mostly internal and involve what a person thinks. It can be difficult to determine someone's political opinions just by looking at them.

*Expression* is any form of communication that a person engages in, whether speaking, writing, dancing, painting, sign language, or dress.

### 15.5.2 Right to Seek, Receive, and Impart Information

Freedom of expression can be divided into three rights: to seek, to receive, and to impart information. The right to seek information implies that States should not prevent people from accessing available information. This could be as simple as offering access to libraries, newspapers, books, radio, or television. Information about government services is also something people should have access to, including how to obtain a driver's license, vote, or start a business. There are limitations on the access to private and secret information. This right obligates States to not interfere with people accessing information, which is known as a negative duty or a duty to not act. Blocking the media, censoring the internet, or banning radio or television channels could be seen as a violation of this right. An important recent question is: **is access to the internet a human right?** Given that most, if not all, information is available on the internet, should governments ensure people have access to it? Debate is still ongoing on this issue.

## DISCUSSION AND DEBATE

### Is the Internet a human right?

In 2011, the Special Rapporteur on Freedom of Information argued that the internet is the “key means by which individuals can exercise their right to freedom and expression.” While this does not say that the internet itself is a human right, others have interpreted it this way.

### Questions

- If essential government services like registering to vote were only available on the internet, does this mean States would have to ensure universal access to it?
- Should it be the duty of States to ensure universal access to the internet, or should it be considered a commercial service which people must buy?
- Do people with access to the internet have more freedom of expression than those without access?



The right to receive information implies a right to receive certain types of information, for example, warnings about the weather if a cyclone is coming, or health information to help people avoid diseases. Such rights could also include political information

enabling people to know when and how to vote, or receiving information about their political choices. But what are States obligated to tell people? One example is sex education (as discussed in Chapter 10). For some, sex education is a reproductive right, but the religious and moral values of some countries may prohibit teaching people about sex. Another example can be found in the field of healthcare. Should people be informed about healthy and unhealthy activities? Should governments inform people that sugary drinks are bad for their health? Similarly, should people receive information about government hospitals and schools? Closely linked to this right are freedom of information laws which ensure public access to government information (as discussed below).

## DISCUSSION AND DEBATE

### How much information should the government tell you about smoking?

Research clearly proves that smoking causes cancer and most people are aware of this, but how far should governments go to prevent people smoking? Cigarettes are not illegal to buy or sell. While cigarette advertising is either banned or limited in all Southeast Asian countries, it is still permitted in certain situations. Some countries, like Thailand and Singapore have banned all forms of cigarette advertising. Others, like Indonesia, permit it in cinemas, billboards, and at the point of sale.

#### Questions

- Do cigarette companies have freedom of expression to advertise their products?
- Is it the government's duty to inform people that cigarettes are unhealthy, or should that be left up to the consumer?
- Does banning advertising make a difference when people are still free to decide whether or not to smoke?
- If advertising influences children to start smoking, should it be banned?
- Given that banning advertising does reduce the number of smokers, is this enough evidence for a ban?
- Given that smokers will fall ill and the government will have to spend money on their health services, does this justify an advertising ban?

The last element is the right to impart information, which basically is the freedom of expression. This allows people to express anything, whether ideas, views, or just talking. Most commonly, violations of freedom of expression involve politics and morality. The right to impart information mainly requires negative duties on States, that is the duty not to not interfere, but there are positive duties as well, including to educate people enough to express their views, for example, by teaching people how to read and write. States should also provide venues where people can talk, for example, by having a media that allows for public participation, or even public spaces where people can simply express themselves. Expression can take many forms beyond writing and speaking. Art is a form of expression, as is film, dance, theatre, music, and dress.



### 15.5.3 Limiting the Freedom of Expression

It is generally agreed that limits to freedom of expression are necessary. Even though censorship is controversial, many consider it necessary to protect groups such as children from violent and sexually explicit material. Similarly, others believe speech which may insult or incite violence should be prohibited. The challenge is where to draw the line between the artistic or political and something which is considered pornographic or dangerous. These are noted as 'special duties and responsibilities' in Art 19.3.

19.3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

In order to limit freedom of expression, three criteria must be met. First, limitations must be written in the law and cannot be based simply on a person's or a State's opinion or belief. Second, there must be a valid reason for the law beyond personal or State preference. In other words, the law must serve a purpose in society. Third, these necessary limits must be for one of five reasons:

- **To ensure the rights of others:** expression cannot interfere with someone's privacy or publicly defame them. People cannot talk or write about others if it damages their image (for example, by wrongly calling them a criminal)
- **To protect national security:** State secrets and peace in society must be maintained. As such, treasonous speech is prohibited (for example, by calling for the violent overthrow of a government)
- **To maintain public order:** expression cannot incite people to disorder or threaten the safety of others (for example, by asking people to riot)
- **To maintain public health:** spreading information that may create health problems is prohibited (for example, by claiming that sleeping with a virgin will cure AIDs)
- **To maintain public morals:** laws on morality must be respected (for example, the distribution of pornography is prohibited)

These limitations are based on the rule of law, preventing States from arbitrarily limiting expression, and are only acceptable if all three conditions have been met. These limitations also apply to other rights such as association, assembly, and movement (detailed in Chapter 3).

### 15.5.4 Freedom of Expression in Southeast Asia

Every country in Southeast Asia has debates on freedom of expression. Laws setting limits on freedom of expression include libel, defamation, slander, treason, pornography and other indecency laws, intellectual property, and copyright. Some Southeast Asian countries have a reputation for being liberal in this area, while others are considered much stricter, but all have some limitations on expression. The next section will explore these limitations and the ensuing debates in Southeast Asian States.

Across Southeast Asia, the production and sale of pornography is illegal, although many States do not enforce this law. The strongest pornography laws can be found in Indonesia where the Bill on Pornography was passed in 2008 (a modified version of the 2006 Bill against Pornography and Porno-Action). While many of the harsher laws in the 2006 version were dropped, the law still criminalized a wide range of activities. Debate over this bill was heated because it could be used to criminalize fairly innocuous activities which most people do not consider to be pornography, such as kissing in public or dancing in a night club. The debate mainly took place between conservative religious groups who supported the bill and wanted stricter moral standards in society, and opposing them were women's groups, artists, and supporters of freedom of expression. The concerns were not so much about 'hard' pornography which may be downloaded from the internet, but about social activities such as dress and dancing. The concept of 'porno-action,' which remains in the Bill, expands the definition of pornography from media and images to behaviour. Cases on this law include the imprisonment of the editor of *Playboy* (who was released on appeal) and another resulting in the arrest of four night club dancers. Examining the limitations which a State can put on freedom of expression, it is questionable if the law is needed. While the State justifies the law as necessary for public morals, it does not represent the standards of morals for society in general, but only for a smaller group of religious conservatives. It cannot be argued that there is a human right to pornography, yet there is a right not to be treated as a criminal because clothes of behaviour is not considered socially by a religious group. Other countries in Southeast Asia have pornography laws, mainly on sale and distribution, and on personal use (though personal use is criminalized in Malaysia). There are few, if any, cases of people being jailed for pornography, though seizures of pornographic movies are common perhaps due to copyright or illegal sales and not necessarily the content. Similarly, most countries have public obscenity laws which criminalize public nudity, though these laws are rarely used. One example was the fining of three young women who danced topless at the Songkhran festival in Bangkok. They were fined 500 baht and told they were tarnishing the image of the festival.

## DISCUSSION AND DEBATE

### Pornography and Freedom of Expression

The Indonesian "Bill on Pornography" has been criticized for having too wide a scope. In particular, some definitions of pornography have caused ambiguity. For example, pornography is defined as:

Images, sketches, illustrations, photographs, writings, voice, sounds, images of movements, animation, cartoons, speech, body movements, or other messages transmitted by various communication media and/or performances before the public that contain obscenity or sexual exploitation and violate moral decency within society.

#### Question

Under this definition, discuss whether the following can be defined as pornographic?

- A sexually explicit joke
- A kiss in public



- Information on family planning such as how to use a condom
- A tourist sunbathing topless on a public beach
- Arabic belly dancing
- A hip hop video featuring dancers wearing bikinis

One of the most draconian laws challenging freedom of expression can be found in Thailand's **Lese Majeste** laws. Intended to protect members of the Thai Royal Family from abuse and thereby the stability of the country. The law is similar in effect to Malaysia's sedition laws or Singapore's ISA laws which criminalize some anti-government messages. Laws like Lese Majeste have existed in many monarchies around the world, but most have since fallen out of use or been repealed, as in England and Japan. Since 2006, over 400 cases a year under Lese Majeste have been heard in Thailand because it is mainly used as a political weapon by governments or politicians. Insulting the monarchy in Thailand has resulted in jail sentences of over 30 years, even though the law states a maximum penalty of 15 years. Similarly, Malaysia's **sedition laws** have been used against political opponents, or even people merely expressing political opinions which were interpreted as critical of the government. Up to 2015, nearly 50 people were charged with sedition for expressing political or legal views which the government disagreed with.

**Lese Majeste**  
The crime of offending the dignity of a Monarch, or in some cases, a head of State.

Similar laws can be found in Vietnam where **Art 88 of the Penal Code** makes a crime of "conducting propaganda against the Socialist Republic of Viet Nam." Propaganda is often defined broadly as can be seen by the number of bloggers and political commentators who have been jailed (there are around 100 prisoners of conscience in Vietnam). These three laws, Sedition, Lese Majeste, and Art 88, all demonstrate how States use laws to criminalize political opinions while justifying limits to freedom of expression.

## CASE STUDIES

### Laws Criminalizing Anti-Government Expression

#### Malaysia's Sedition Laws:

Sedition is the action of trying to incite a revolution or insurrection. The Malaysian Sedition Act was originally written by the British colonizers but has since been taken on by the Malaysian government. It defines sedition as creating "hatred or contempt or to excite disaffection" against the government. It can also mean to incite race riots, to own a seditious publication, or to excite disaffection against the government. Given the broad nature of these definitions it can be easy for the government to define criticisms of the government as sedition, as has frequently done in recent years. People have been charged for saying "damn UMNO" (the ruling party), or for a law academics to write an accurate legal analysis which criticized a Sultan.

#### Singapore's ISA (Internal Security Act) laws

Singapore's ISA laws were originally used by the Colonial British government to fight the communist insurgency in the 1950s. They have been kept and updated to be use as anti-terrorism laws, though for much of their history they have been used to jail political opponents. There have been around 2,400 people arrested under the ISA law,



and in some cases such as Operation Spectrum in 1987 a number of social workers were accused of planning a communist insurgency and arrested. They claimed they were coerced into signing confessions while in detention. Political arrests under ISA have not occurred in recent decades.

### **Vietnam's Penal Code, Art 88**

Art 88 of the criminal code prohibits the distribution of 'anti-government propaganda.' This has been broadly defined by the government as any criticism of government activities. It has been used to jail government critics, land rights activists, bloggers, pro-democracy activists and human rights defenders. A number of bloggers writing on corruption, environmental damage caused by mining, and Chinese activities in the South China Sea were arrested and jailed for between 5-15 years. Vietnam is only second to China in the number of online activists it jails.

Another trend in the region is the use of defamation laws by companies and individuals to limit criticism. Previously, such opinions had been protected under freedom of expression. Recent cases have included a woman in Indonesia complaining about bad hospital service who was sued by the hospital (the charges were eventually dropped); a student complaining about Jogjakarta who was sued by the city (and found guilty); Thai human rights defenders who were sued by a Thai mining company for alleging human rights violations; and a researcher in Thailand who was sued by a fruit canning company when his research alleged migrant workers violations.

Governments also use defamation to silence critics. For example, an author of a book on the death penalty in Singapore was charged with criminal defamation because the book claimed that in some cases, the courts were not free and fair. He was jailed for 5 weeks. In another case, two journalists from the Thai newspaper, *Phuket Times*, were sued by the Royal Thai Navy for reporting on their treatment of the Rohingya. In a number of countries such as Singapore, Malaysia, and Thailand, defamation is a criminal offence subject to jail time as opposed to civil cases where the guilty are mostly fined. Human rights bodies argue in General Comment 34 to the ICCPR that defamation should not stifle freedom of expression and that defamation should be heard in civil court. Such an argument was directly pointed out to the Philippines in 2012 when an individual complaint was made to the Human Rights Committee, which is the treaty body of the ICCPR, by a journalist who was jailed for two years for writing a story about an alleged adulterous politician.

Early use of defamation laws can also be found in Singapore where politicians sued the media for defamation. Some famous cases include Singapore president, Lee Kuan Yew's actions against international magazines like the *Far Eastern Economic Review* and the *International Herald Tribune*; both of which he won. Similarly, Thailand's Prime Minister, Thaksin Shintawat sued human rights defenders for, among other claims, accusing him of corruption. Generally speaking, the use of **defamation, libel or slander** has been an effective economic measure to silence the media. These cases can award huge amounts of money, effectively bankrupting media organizations. The use of defamation by companies is worrisome because it can limit people's rights to express their views about the quality of service, or the activities of the company. Preventing people from expressing their views limits a consumer's rights. The final section of this chapter will examine the relationship between the media and human rights.



## Concept

### Defamation, Libel, and Slander

An untrue statement which harms someone's reputation is known as defamation. Importantly, the right to be protected against attacks on one's honour and reputation is also a human right (as found in both the UDHR, Art 12 and ICCPR, Art 17). In some places, spoken comments are known as slander, and written statements as libel.

## 15.6 Human Rights and the Media

A vital component of freedom of expression is freedom of the press, more generally known as media freedom. This is distinct from Art 19 which is a human right protecting individual expression. Media, as for example a magazine or website, is not an individual. But these rights are mutually re-enforcing: a free media is necessary to uphold human rights, and violations of media freedom will involve human rights violations of journalists, bloggers, readers, and so on. Media freedom relates to the right of journalists or media owners, and also impacts the public which has a right to receive credible information. Attempts to adopt press freedom and media rights at the UN in the past decades have faced much difficulty because they are considered controversial. Most States like to keep their power to limit press freedom. As a result declarations and treaties have not gained the necessary agreement to become legally binding. Yet, media freedom is still seen as a necessary component for a fully functioning democracy.

Media has always provided the strongest responses to dictatorships, non-functioning democracies, and human rights violations. Media freedom is vital to the development of liberal democracy. As a social institution, the press continues to play an important role in informing the public, shaping public opinion, and checking abuses of government power. Sometimes called the 'Fourth Estate,' ideally, the press should act as a fourth, 'unofficial check' on the three official branches of State (that is, the executive, judiciary, and legislature). The press also helps to express public views on the economy, development, and political change. All these activities relate directly to the status of human rights in a country. The better the media is at reporting on society, the more chance there will be of improving human rights standards.

This freedom has contemporary resonance because of profound changes to the media through the developing technology of digital media, social media, and widespread access through mobile technology. And now anyone can post information on the web, media freedom should not only cover journalists or publishers, but also individuals. The following section will look at the history of media freedom and the censorship regimes that limited them in Southeast Asia, before examining human rights challenges in new media, and freedom of information laws and their importance to a democratic society.

### 15.6.1 Traditional Media in Southeast Asia

Traditional media, meaning newspapers, radio, and television, has an important role to play in society. As mass media, they are particularly effective at distributing information and monitoring governments, although with the rise of the internet,



social media, and smart phones, this role has been somewhat diminished. Despite this, traditional media does continue to play a vital role. In particular, the press in Southeast Asia has been crucial in monitoring government activities.

In most countries, the first media were newspapers but these were often more concerned with shipping news and other commercial interests (hence, the Straits Times was about shipping arrivals in the Straits) than political engagement. Some media took on highly political roles during the battles for independence, for example, the Indonesian press and radio strongly supported independence, while other media did not debate political issues. The development of media is considered a crucial component of a country's development, to the extent that the UN and UNESCO supported projects to develop the media, believing in the need for a strong national media. In the 1980s and 1990s, concerns over media imperialism, or the power of western media to influence public views and values, led to the development of national media and programming. At this time, 'foreign' cultural values, especially around sexuality and individuality, were considered a threat. Governments were concerned about creating rising consumerism through the influence of American TV shows where everyone owned expensive cars and houses, and parents were concerned that their children were listening to western music. Mostly though, States worried about political news in the foreign press which could encourage people to demand a change of government or more democracy. Countries like Burma, Vietnam, and Singapore responded by placing severe restrictions on foreign media. Southeast Asian countries were not unique in their response to foreign media as most States in the world were active censors.

After independence, most traditional media throughout Southeast Asia became either government-owned or very sympathetic to the ruling party. The major newspapers and television stations in Singapore, Malaysia, Laos, Vietnam, and Cambodia can all be described as pro-government. Opposition or critical media was limited, banned, or pushed outside the country. Traditional media commonly does not play a significant role in monitoring governments, the reasons for this will be examined later. As Table 15.2 shows, Southeast Asia has a poor record in terms of media freedom. No country is considered fully free with even the best rated countries still in the bottom half of worldwide rankings.

**Table 15-3: Ranking of Media Freedom**

Ranking in Press Freedom Index (out of 180 countries)*	Freedom House: Freedom of the Press Marks out of 100**
99: Timor Leste	35: Timor Leste (Partly free)
128: Cambodia	44: Philippines (Partly free)
130: Indonesia	49: Indonesia (Partly free)
136: Thailand	67: Malaysia (Not Free)
138: Philippines	67: Singapore (Not Free)
143: Myanmar	69: Cambodia (Not Free)
146: Malaysia	73: Myanmar (Not Free)
154: Singapore	76: Brunei DS (Not Free)
155: Brunei DS	77: Thailand (Not Free)
173: Laos PDR	84: Laos PDR (Not Free)
175: Vietnam	85: Vietnam (Not Free)

\* The Press Freedom Index is a ranking done by Reporters Without Borders which looks at the amount of freedom journalists and online media have. It is based on a questionnaire sent to experts.

\*\* The Freedom of the Press Index is compiled by Freedom House. This ranks countries according to a range of indicators from legal context to civil rights and expert opinions. The countries are measured from 0 (totally free) to 100 (no freedom). These are grouped as: 'Free' (0 to 30), 'Partly Free' (31 to 60), or 'Not Free' (61 to 100).

### 15.6.2 Censoring Traditional Media in Southeast Asia

The dominance of pro-government media in Southeast Asia can be linked to three causes. First, from the beginning, media was nationalized. Once independence had been gained, governments invariably established television stations, banning or only giving limited rights to non-government television. Only in recent decades has non-government television been allowed. Second, while many newspapers predated the establishment of the newly independent States, newspapers critical of the government faced harsh punishment, forcing many to shut down. Finally, given the technology at the time, the variety of media available was limited to television, radio, and print media such as newspapers, magazines, and books. Only print media, and to a lesser extent radio, was accessible to poorer socio-economic groups. Radio and television stations were more commonly found in cities, and large parts of rural Southeast Asia did not get electricity till the 1970s. Only governments had the resources to run television stations.

Freedom of the media in Southeast Asia is limited, most commonly, by censorship. All Southeast Asian countries have media censorship laws. Often these laws are written vaguely enough to ensure States can fine newspapers for 'anti-government' viewpoints. Examples of these laws (as detailed above) are the Sedition Law in Malaysia, Art 88 in Vietnam, and criminal defamation laws. Places like Myanmar

had even stricter controls where all publications had to be read and approved by censorship boards before publication. This meant there could be no daily newspapers as the censorship board often took a couple of days to review and edit the news, so newspapers tended to be weekly. Under this kind of censorship, anything could be cut. For example, news about Hilary Clinton and Condaleeza Rice was frequently censored because these stories featured a strong and effective female leader, which could be interpreted as being supportive of (the then) female opposition leader Aung San Su Kyi.

Many journalists have been jailed for expressing their views in the region; in 2015, an estimated 200 journalists were jailed, and of these 11 came from Southeast Asia (Myanmar, Vietnam, and Thailand). A typical way censorship works is through journalists who do not want to risk losing their jobs by publishing something which may be interpreted as anti-government or politically sensitive, as the repercussions for them, and for the newspaper, could be severe. States can also punish newspapers after publishing a story, resulting in fines or even a jail sentence for writers. This situation has been called **self-censorship**, and can be found in the media throughout the region.

### Self-Censorship

Where a journalist chooses to censor their own work without State pressure for fear of repercussions to them and their workplace.

Media freedom can also be limited through intimidation and threats. In some countries, being a journalist can be a very dangerous job. While not all deaths of media figures are due to intimidation, many did result from reporting on corruption or government abuses of power. Sometimes, the intimidation comes from paramilitary groups or the private security groups. Further, journalists can be killed while reporting in conflict situations. In Southeast Asia, the Philippines is recognized as being the most dangerous country for journalists, with seven being killed in 2015 and 34 in the **Maguindanao massacre**, the single greatest massacre of journalists in the world. Such intimidation can very easily stop media reporting on topics like corruption or human rights violations which, in turn, can hinder democratization.

## CASE STUDY

### The Maguindanao Massacre

In 2009, during a mayoral election for the town of Ampatuan, one candidate called on journalists and supporters to travel into town to file the certificate for his candidacy. On the way, the convoy of cars (including journalists, lawyers, and family members) was stopped by armed men from the rival Ampatuan faction, who then murdered and buried them. A total of 58 people were murdered. The alleged organizer of the massacre is in jail facing murder charges, but he claims the massacre was committed by the MILF – an assertion that has been widely rejected. Of the 198 suspects, currently only a small number are in jail and no one as of 2016 has been found guilty of the massacre.

A final way to limit the media is by having strict rules on ownership and registration. In recent decades, obtaining a license to print a newspaper in Indonesia, Vietnam, Myanmar, and Laos has been very difficult, though laws in Indonesia and Myanmar have relaxed substantially. Further, private television stations are rare in the region,



mainly because of the cost but also due to government monopolies over television licenses. However, the introduction of cable television, satellites, and the internet have meant free-to-air television is not nearly the dominant media that it once was.

Some countries have outlawed or severely limited access to media technology. Fax machines and photocopiers had to be registered in Myanmar, and satellites were not readily available in many Southeast Asian countries. The rise of the internet has helped the situation though. Even in countries with highly restricted media such as Myanmar and Vietnam, States cannot stop access to long wave radio broadcasts which originate from abroad, or from internet sites. In the late 1990s, underground media through cheap CDs became a common way to distribute information. But thanks to the internet, the more physical forms of censorship, for example, preventing a newspaper from printing or blocking a radio broadcast, have disappeared with States now realizing the near impossibility of stopping information from crossing borders. Such developments have led to a new concerns around media freedom and human rights in the internet age.

### 15.6.3 Freedom of Information

Freedom of information can be seen both as a human right and a tool of democracy. It is a right through the right to seek information as detailed in Art 19, and it is a tool of democracy for requires governments to be more transparent by making information public. Governments with freedom of information laws are required to release information on certain budgets, policies, government decisions, and programs. They are not required to release information if it is considered related to national security or private concerns. In Southeast Asia, only Indonesia, the Philippines, and Thailand have these laws. The Philippines law is rather weak as it exists only as a small section of the constitution. A pending Freedom of Information Act has been debated in government for five years already. By making information available, governments become more accountable for the money they spend. This should make corruption more difficult. An example of this from outside the region can be seen in India's *Right to Information Act* (2005). Previously, local governments could receive public money for undertaking projects like building a road or dam. In some cases, government officers pocketed the money instead of doing the development. They were able to keep the money hidden because budgets were not publicly available and it was not feasible for central government to check thousands of small projects. It was only when this information finally became public that villagers realised they had been cheated of promised developments. Within two years there were around two million requests for information through the Act, and many cases of corruption were uncovered. It was hoped these kinds of actions would also occur in Indonesia after it introduced a freedom of information law and Freedom of Information Commission in 2008.



## CASE STUDY

### Thailand's Official Information Act (1997)

Thailand's freedom of information law, called the Official Information Act (1997) was first used by a mother of a student who asked to see the exam results when her daughter failed to qualify for a selective school run by a government university. The university refused, arguing the information was private. Suspecting it was awarding positions based on how much the parents were paying, and not on exam results as it claimed, the mother used the Act to request to see the exam results. The court agreed

the university was subject to the freedom of information laws and allowed the mother to see the results. As it turned out the mother was correct and her daughter should have been admitted, and further the practice was found to be common to many other university-run schools in Bangkok. As a result, universities changed their entrance requirements and now access to these schools is not influenced by cash payments.

Some governments see themselves as separate and above society and able to make decisions without public input. Although freedom of information laws encourage such governments to be more transparent and participatory in their activities, certain challenges must first be overcome. First, there are few freedom of information laws across the region. Second, existing laws tend to be weak and do not guarantee access to information. Third, the laws are underused, either because journalists are unaware of the laws, or they do not engage in the type of investigative journalism that requires accessing information, or the process is too difficult.

More recently, with the development of digital media, news agencies are now swamped with information, and the task has become not to access information, but to verify the information they receive. With most people carrying mobile phones which can record sound and video, it has become easier than ever to capture information. In conclusion, although freedom of information laws may be undeveloped in the region, they can still play an important role in the reduction of corruption and the increased accountability of governments.

#### **15.6.4 New Media Issues**

New media and human rights have a complicated relationship. New media refers to any form of digital media including websites, online newspapers, social media such as Facebook and Instagram, blogs, comments on web pages, videos on YouTube, and so on. The internet has done much to promote and protect human rights and it is an invaluable tool for human rights defenders to distribute information, raise awareness, and more effectively monitor State activities. On the other hand, the internet has also been a source of human rights violations, for example, when privacy is violated, reputations are attacked, and people unfairly persecuted or threatened online. The issue is complex because technology develops faster than the laws and protection can keep up. Social networks are only ten years old and apps such as Line are about five years old. Although States have introduced and experimented with new laws in recent decades, much development is still needed to better protect rights and criminalize activities on the internet. Another factor is that because the new media is global, information can be posted from anywhere and read anywhere so is not limited by national borders and State laws.

The news industry has transformed radically under new media. Previously, news came from media companies and was limited to newspapers, radio broadcasts, or the television. Now, news can be posted by anyone via a picture on Instagram, a Facebook comment, or an individual's blog. This **amateurization of the news** has both positive and negative aspects. It is positive because it allows citizens to easily complain about petty corruption or governments failing in their duties. It is now unusual for violations to occur in public and *not* be recorded on someone's telephone, so instances of officials abusing citizens or teachers slapping students quickly reach the public. Though at the same time the technology also allows for cases of individuals inciting racial hatred, encouraging violence, attacking gays, lesbians, Muslims, and sexist abuse of women.



## Concept

### Amateurization of the News

Previously, news reporting was a profession done by journalists who worked for newspapers, or television and radio stations. Nowadays, any individual can write their own blog and publish their own news without the need of a media corporation. Although, often a valuable alternative to the mainstream media, allowing for a diversity of views and citizen participation, amateur news can also be based more on personal opinions and biases than fact.

There are many issues around freedom of expression on the internet, and this section will briefly discuss just four of them: jurisdiction, defending **netizens**, privacy and cyberlaws. The debate about the jurisdiction of online media is a complex one. What law should govern the internet: the law of the country where the post was written, where it is read, or where the story is based? Or should it be the law of the country where the web site is hosted, where the writer holds citizenship, or the company that own the webpage or domain name? Most States consider the law where the post is read (which is their own country) to be the governing law. But this would mean a person in Europe posting a comment about a politician from, for example, Cambodia, would have to obey the censorship laws of Cambodia and not their home country's laws. In one such case, a US citizen posted material on Thai politics in the US which was legal there but not in Thailand. Later he was arrested and charged with Lese Majeste when he travelled to Thailand.

#### Netizens

A citizen active in the internet. A netizen can be a blogger, journalist, programmer, gamer, video poster, and so on. The term netizen is used in this textbook because it is broad enough to include anyone who should have freedom of expression on the internet.

## DISCUSSION AND DEBATE

### Jurisdiction on the Internet

Someone in country A posts a message on social media which criticizes a government in country B by quoting from stolen government documents. The government of country B considers that person to have committed a number of crimes: releasing stolen government documents, defamation, and criticism of the government. The blogger's post has been read in country B where he has broken laws, but he has not committed a crime in country A where he lives and which will not arrest him for the action. The problem is one of internet jurisdiction.

Jurisdiction refers to the region where a law is applicable (literally, *juris* – the law, *diction* – speaks with authority). The laws governing jurisdiction on the internet are complex and, at times, contradictory. If a State decides to initiate a case, it must demonstrate that the crime, or the person violated, was within its jurisdiction. But different States understand jurisdiction differently, for example, the jurisdiction can be:

- the territory of the sender
- the location of the servers
- the location of the internet company sending the message
- the location of the owners of the domain name or social media site
- the citizenship of the person sending the message



## Question

- Has a crime occurred?
- What should be the jurisdiction (from the list above)
- Should the government of country B be able to bring a case against the person using the stolen documents?
- What is your country's laws on internet jurisdiction?

One particular area for concern is the threat posed to netizens, or online media journalists such as bloggers. In Singapore, Vietnam, Thailand, and Malaysia, netizens have faced legal action by governments because of their comments. Some are individuals simply voicing their opinions, as is more the case in Vietnam, while others may work for established online news companies such as *Malaysiakini* in Malaysia. A problem arises in the monitoring comments on blogs and Facebook pages. Besides the content they post themselves, authors can also be liable for comments their audience posts onto their pages. In some cases bloggers have been arrested for comments made on their blog. The comments are not made by the blogger, they may not agree with the comment, and even if it quickly deleted it is not guaranteed the post will disappear. So are bloggers or web hosts responsible for the comments left on their pages, or would this be like to charging the owner of a wall for something written by a graffiti artist?

Another concern is the right to privacy. The internet can (and does) record a lot of information about its users such as a person's internet searches, web pages visited, photos taken, and any online communication. With smart phones, where a person has been, their call history, and even how they travel can be determined from the telephone, wifi, and phone reception. While much of this information is harmless, most people do not know that machines or people are keeping this data which leads to several questions. First, can the government monitor this information in the name of security? Some Southeast Asian countries have considered monitoring the location of tourists through phone GPS tracking to counter terrorist activities, but as yet none have formally done this. Linked to this is the ability of governments to read emails, listen to conversations, and track user's web use. The fact they had this ability first became known when Edward Snowden leaked information about the global surveillance of people's private information by many governments including the US, UK, Australia, and Canada.

People's data can also be used to target advertisements or to refine internet searches. Many young people input a lot of data into their social media accounts, recording their web searches, purchases, travel, location, likes and dislikes, all of which is useful information to advertisers. Social media companies can sell this information to potential advertisers or other vendors. Similarly, most people are aware that conducting a Google search will result in pop up advertisements that may be linked to that search or content they have previously written in emails. This is good business, as the advertisements are generally closely related to their interests, or is it a violation of privacy because their personal information was used for commercial purposes?



## DISCUSSION AND DEBATE

### How private should your Internet use be?

Should everything you post on the internet be available for all to see and use? Or should you be the only one to decide who has access? For example, after lunch at a restaurant, you post a picture of the food on social media because it was a good meal and you'd like your friends to know. The restaurant sees your picture and links to it, using it in an advertisement, but another group comments that the restaurant may have nice food but they are known for using child labour and paying their workers low wages. You get criticized for eating there.

#### Questions

- Is it wrong for the restaurant to repost your message?
- Is it wrong for people to criticize your choice of restaurant?
- Should you just accept the criticism and comments as part of being a netizen where anyone can comment on anyone else's post?
- Is it best to just not post pictures?

The protection of human rights in new media continues to be an area of complexity. Not only is international law struggling to keep up with the technology but countries across the region also have different views on the laws. The UN's Human Rights Council states that human rights which are applicable offline must also be protected online, although in the relevant resolution it only referred to freedom of expression. It may be assumed that such rights would also extend to work, association, and so on. For example there are cases of online assembly where avatars on massive multiplayer role playing games (like *Fantasy Westward Journey*, *World of Warcraft*, and *Second Life*) have assembled to protest. The reactions have differed. In some cases the company owning the game have blocked the subscribers so their avatars were shut down for some time, and in others the protests were respected and allowed to continue. The question here is, as the Human Rights Council notes, are the rights to assembly and express applicable to people playing these games? Or can the company, which owns the servers, codes, and rights to the game, also have the power to decide what rights the avatars get?

Similarly, in the near future it is possible that workers' rights of game players (for example, virtual real estate agents in *Second Life*) and 'gold farmers' (players who collect gold in games to sell for real currency as a form of employment) will need to be considered.

#### Cyber Law

The law regulating the internet, and covering issues such as use, censorship, privacy, jurisdiction, e-commerce, and cyber-crime..

The development of **cyber law** in the region has answered some of the above concerns although because there are a number of different laws governing the internet, they are not always in agreement. Concerns have been raised about the use of cyber crime laws to jail political opponents, conduct surveillance on government opponents or civil society activists, or to force content to be removed from the internet for political or moral reasons. Cyber law covers areas such as privacy (for example, personal data protection), online commerce (for example, managing electronic transactions), and security (for example, cyber security and cybercrime). To conclude, human rights legislation as it relates to the internet is still under development, requiring much infrastructure in terms of laws and user education before it can be considered truly effective.



## CASE STUDY

### Internet Laws in Southeast Asia

Most countries have a range of bills governing the internet. The following list is not exhaustive, as a number of e-commerce laws not related to human rights have been omitted. The only Southeast Asian country without a specific cyber law is Cambodia, although they have an updated 2009 penal code and a law being debated in government.

#### Brunei DES

- Electronic Transactions Act 2004 (revised in 2008)
- Computer Misuse Act (revised in 2007)

#### Indonesia

- Law on Information and Electronic Transactions 2008

#### Laos PDR

- Cybercrime Law 2015

#### Malaysia

- Electronic Commerce Act 2006
- Electronic Government Activities Act 2007
- Personal Data Protection Act 2010
- Communications and Multimedia Act 1998
- Computer Crimes Act 1997

#### Myanmar

- Computer Science Development Law 1996
- Electronic Transaction Law 2004

#### Philippines

- Cybercrime Prevention Act 2012 (R.A. 10175)
- Data Privacy Act 2012 (R.A. 10173)
- Electronic Commerce Act 2000 (R.A. 8792)

#### Singapore

- Computer Misuse and Cybersecurity Act 1993 (Revised in 2007, and to be revised in 2017)
- Electronic Transactions Act 1998 (Updated in 2010)
- Personal Data Protection Act 2012
- Spam Control Act 2007



### Thailand

- Electronic Transaction Act 2001
- Computer Crime Act 2007
- National Cybersecurity Bill 2015

### Vietnam

- Law of Information Technology 2007
- Law on E-transactions 2005
- Law on Protection of Consumers Rights 2010
- Law on Cyber-Information Security 2015

## 15.7 Conclusion

Politics and freedom of expression remains a sensitive issue within the region. While governments would like to appear democratic, in practice, their actions are not always based on the 'will of the people.' At some point, every State in the region has limited freedom of expression whether it be to quell political opposition or to incite racial hatred. This chapter has highlighted the relevant human rights standards, and outlined problems in defining and then protecting these standards. This task has perhaps is most difficult in the area of human rights and the internet where protection of rights has many challenges.

## A. Chapter Summary and Key Points

### Introduction

Political rights are a small but important category of rights. These include rights to political participation, meet, discuss and publicly express political views, vote, use government services, or stand for public office. All are in active use in the region. People have claimed political rights during colonialism, self-determination, anti-dictatorship movements. The concept of the 'will of the people' as the basis of government emerged during the 18th century European Enlightenment and still forms the basis of political rights.

### Political Human Rights

The human right to politics is found in the UDHR (Art 20-21), the ICCPR, national constitutions, and numerous other treaties. Key elements include the right to associate or to form groups which is challenged in the region by one-party political systems and laws of association which limit the freedom to form groups. The right to peaceful assembly covers the right to meet publicly, and is limited by the potential disruption caused by the assembly. Another element is the right to stand for office, and to be elected, meaning that citizens have the right to be a part of government, and to work for the government as judges, policemen, teachers, and so on. The right to vote is the most well-known political right, but which office gets voted in is unspecified.

## Understanding Democracy

Democracy is assumed to be the best political system, but it is much debated. Democracy is not considered the best system of governance by everyone. People question if it just elections, or if democracy means wider participation. Southeast Asian countries have tried to limit it by calling for guided or Asian style democracy. The different categories of democracy include: minimalist, pluralist, participatory, deliberative, and representative. A functioning democracy must include: participation, fair distribution of power, and effective monitoring of the government. Although Southeast Asian States are democratizing and some may be liberal democracies, many are not fully democratic. Failure to consolidate democracies is a problem, although the ASEAN organization explicitly promotes democracy.

## Human Right to Democracy

Although there is a clear relationship between human rights and democracy and they are considered interdependent and mutually reinforcing. Yet this does not mean there is a human right to democracy. Rights do lead to a more democratic society, and people's rights are mostly improved under democracy. The right to vote is the most recognized political right and comprises choosing a government through election. Further, elections should be genuine, periodic, and the votes of universal and equal value. Southeast Asia has a history of unfair elections where opposing politicians have been jailed, votes manipulated, and counting rigged. This conduct can be countered by election monitoring carried out by national and international bodies who assess the election's compliance with approved standards including the fair counting of votes, fair campaigning, and independent monitoring.

## Freedom of Expression

Freedom of expression dates back to the 1700s and includes the right to seek information (for example, by allowing access to libraries, newspapers, or the internet), the right to receive information (for example, on health, government, or safety information), and the right to impart information (or to express oneself). Limitations include that it must be: written in law, necessary to ensure the rights of others, and the expression must not go against public morality, health or safety. Every country in Southeast Asia has debated freedom of expression and has limited it through the use of libel laws, intellectual property laws, and national secrecy acts. Examples of strict laws include Thailand's *Lese Majeste* laws, Malaysia's sedition laws, and Vietnam's Art 88 in the Penal Code. Defamation laws have been used to limit expression to either criminalise the act or inflict high fines which, following conviction, can bankrupt individuals or media companies.

## Human Rights and the Media

Freedom of the press covers the right of journalists and media to express credible information. Though not clearly a human right, it is necessary for a functioning democracy. As a social institution, the media plays a vital role in informing the public, shaping public opinion, and checking abuses of government power. Throughout history, some media has played a political role during the battles for independence, although mass media in the region is no longer critical of government. Media is limited by censorship and can also be constrained by harsh penalties, intimidation, and violence. In some places, strict rules govern ownership and registration. The public's right to freedom of information refers to the duty of government to ensure public access to information on decisions, budgets, and government programs. These laws encourage governmental transparency.

## New Media issues

The internet has done much to promote and protect human rights. It is an invaluable tool for human rights defenders but can also be used to violate people's rights to privacy, safety, and reputation. New media (that is, any digital media) allows amateurs, bloggers, and netizens to be active on rights issues although many have been threatened with prosecution. The right to privacy is challenged when governments monitor people's information, movements, and internet use. Across the region, cyberlaw is still under development and is open to misuse by governments.

## B. Typical exam or essay questions

- What features of democracy are based on human rights, and which arise from a State's political history and culture?
- What are reasonable and objective limits to public protest? Have limitations been put on protests in Southeast Asia restricting people's rights to assemble?
- What has been more difficult to establish in the region: democracy or human rights?
- In what ways have groups tried to interfere with elections throughout history? Is such conduct more difficult to get away with nowadays?
- Should political speech ever be limited?
- How free is the media in your country? What are limitations on the media because of by political, economic, or moral issues?
- Analyse the main cyber security laws in your country and assess if they comply with human rights standards.
- Should access to the internet be a human right?
- What are the main concerns around privacy and the internet for university students?

## C. Further Reading

Theorists of democracy and democratization include:

- Robert Dahl
- Larry Diamond
- Samuel Huntington
- Jurgen Habermas
- Joseph Schumpeter
- Seymour Lipset
- Fareed Zakaria

Authors writing on the status of democracy in Southeast Asia include:

- Farish Noor
- Amit Acharaya
- Amek Laothamatus
- Duncan McCargo
- Kevin Hewison
- Mark Beeson
- Clive Keesler
- Donald Emmerson

Writers addressing the relationship between human rights and democracy include:

- David Beetham
- Daniel Bell
- John Donnelly

Organizations with rankings or measurements of democracy include:

- Freedom House
- The Economist: Democracy Index
- Democracy Ranking

Freedom of Expression, the following organizations have reports and other resources:

- Reports Without Borders
- Index of Freedom in the World
- Freedom House
- Article 19
- IFEX
- Southeast Asian Press Alliance (SEAPA)
- Southeast Freedom of Expression Network (SAFENET)

The following address the Media in Southeast Asia

- Shelton Gunaratne
- William Atkins
- Krishna Sen
- David Hill
- Yao Souchou
- Asian Media Information and Communication Centre (AMIC): includes many resources and also publishes the journal, Asian Journal of Communication

#### New Media and Human Rights

- Reports from UN's Special Rapporteur on freedom of expression
- Internet Society
- New Media Advocacy project
- Global Internet Freedom Consortium
- Centre for International Governance Innovation (CIGI): hosts the Global Commission on Internet Governance
- Speak Up, Speak Out website: includes a program on media, journalism, and human rights
- United Nations Educational, Scientific and Cultural Organization (UNESCO): includes programs on internet freedom with research publications