

Legal systems used to silence bloggers, suppress freedom of expression

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In the space of three weeks, three cases of bloggers being arrested and charged for incongruous offences relating to public security and defamation in three Asian countries were reported by the Asian Human Rights Commission. On 30 September 2008, the regional rights group documented the arrest and detention of Raja Petra in Malaysia, on September 29 that of Gopalan Nair in Singapore, and on September 12, of Nay Phone Latt in Burma. All three countries are ruled by varying degrees of authoritarianism, to which all three individuals posed threats and dissent.

The freedom of opinion and expression is clearly essential to a healthy democratic society. Precisely for this reason, it is a freedom that is lacking in many countries in the region. In fact, even countries that previously upheld this right are starting to slowly restrict it, such as South Korea, where the new offence of ‘insult in cyberspace’ will soon haunt the country’s vibrant citizen media. Earlier reports from Sri Lanka and Thailand also indicate restrictions on freedoms enjoyed by the media.

Within the last decade, alternative media has flourished in numerous Asian countries, largely through the improved telecommunications infrastructure and the dominance of the internet. With traditional media outlets controlled by governments or corporations supporting governments, alternative media—from community radio stations to online news websites to personal blogs—has become the popular source of not only factual news, but also of policy criticism and unorthodox views. In countries such as Burma, it is also the only way for the international community to learn what is happening inside its closed borders. This was particularly the case during the Saffron Revolution of 2007, as well as in the aftermath of cyclone Nargis in May of this year. Contributing to such alternative media has become a way for ordinary individuals to voice out their grievances against unjust systems; a way to participate in the governance of their society by identifying and critiquing its faults.

Ways of dealing with this organic growth of alternative media varies from country to country in the region, although there is a disturbing trend towards suppression. Countries such as Malaysia, Singapore and Thailand find themselves in a quandary, having promoted technology as their economic future. Malaysia for instance, has been actively promoting internet access even in remote villages. The ‘side effects’, if you will, of this promotion—the new found freedom of speech and expression not available through conventional media—has unsettled these governments, who are now attempting to introduce new regulations governing alternative media.

In addition to new controls, such as Thailand’s Computer Crime Act of 2007 and South Korea’s requirement that individuals register their national identification numbers with websites before publishing material on them, governments are increasingly resorting to penalizing individuals. Journalists, bloggers, radio/television hosts face charges of defamation, sedition, ‘threat to public order’ and so forth. The cases of the three bloggers reported by the Asian Human Rights Commission are in the same vein.

Raja Petra Kamaruddin, editor of *Malaysia Today*, a blog popular for its political postings and critiques of alleged wrongdoing by public officials, was arrested on September 12 under section 73(1) of the colonial-era Internal Security Act 1960 (ISA) for allegedly being a threat to security, peace and public order. He was arrested one day after a two-week block on his website was lifted. The block, the first official clampdown on a local website, drew much criticism from Malaysian bloggers and journalists, who use their websites and blogs to offer alternative views to those presented by the mainstream media, which are closely affiliated with the ruling political parties.

Petra was given a two-year detention order under section 8(1) of the ISA on September 23, which states that *“If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.”*

Those arrested under the ISA have no right to defend themselves, nor are they given fair and open trials. The government also has no obligation to justify or prove the allegations levied against the persons detained under this law. Since the amendments to the ISA in 1989, judicial review has been limited to questions of procedural requirement. Despite the local and international criticism of the law, including concern expressed by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the government has taken no steps to repeal it.

According to his wife Marina Abdullah, who was allowed to see her husband with their two children at the Bukit Aman police headquarters on September 16, Raja Petra spoke very softly and looked weak, pale and had lost weight. He complained to her that he was suffering from lack of sleep because he had been harassed on an hourly basis by officers the night before, who recorded statements from him. Raja Petra's lawyers filed a habeas corpus application at the Kuala Lumpur High Court on September 16, seeking his immediate release.

Petra has been sent to the Kamunting Detention Centre in Perak where he will be detained for two years or more, depending on the discretion of the Home Minister.

On September 12, besides Raja Petra, two others were also arrested under the ISA, who have since been released. Ms Tan Hoon Cheng, a reporter of Sin Chew Daily News was arrested at her home at 8:40pm and taken to the Bandar Perda Police Station in Seberang Jaya where she was detained under section 73(1) of the ISA. She was released on the following day. Ms Teresa Kok, an opposition parliament member was arrested at 11:18pm on her way back from her constituency office in Kuala Lumpur. She was also detained under section 73(1), and was later released on September 19. It is reported that at least 66 individuals are currently detained under the ISA at the Kamunting Detention Centre in Perak.

Gopalan Nair, an American citizen and a former Singaporean lawyer was sentenced to three months imprisonment on September 18, for ‘insult’ under article 228 of Singapore’s criminal code. He was initially arrested on May 31 under article 13D of the Miscellaneous Offences Act. Four days after his arrest, he was charged with ‘sedition’ for criticizing two judges on his blog. He was released on bail on June 4.

Nair’s criticism was directed at judge Belinda Ang Saw Ean, who handled a lawsuit which Prime Minister Lee Hsien Loong and his father, former Prime Minister Lee Kuan Yew, brought against Chee Soon Juan, the secretary general of the Singapore Democratic Party (SDP) and his sister, Siok Chin. Nair wrote on his blog that Ang was “prostituting herself during the entire proceedings, by being nothing more than an employee of Mr Lee Kuan Yew and his son and carrying out their orders”.

It is widely accepted that decisions made by judges can be commented upon. In fact, this is a necessity for a healthy democracy. In Singapore however, opinions and expression, particularly those touching upon politics, race and religion, are tightly regulated, and criminal defamation has been widely used to limit criticism. In fact, a week before Nair’s sentence was handed down, the attorney general initiated contempt of court proceedings against the publisher of the Asian edition of the *Wall Street Journal* and two of its editors. According to him, their editorials “impugn the impartiality, integrity and independence of the

Singapore judiciary”. Similarly, Mr Chee Soon Juan and his sister were sentenced to jail terms of 12 and 10 days respectively for contempt of court on 3 June 2008.

The case of Burmese blogger Nay Phone Latt is perhaps the most surreal. Unlike Raja Petra and Gopalan Nair, Nay Phone Latt was not arrested on the basis of anything he wrote or published on his blog, but for the contents of his email inbox, which included defaced images of national leaders, writing and cartoons that he received from elsewhere. He has been accused of distributing these ‘in order to upset public tranquility’, although there is no evidence of this. After arresting him at the end of January 2008, the police have further accused him of meeting political activists on his trip to Singapore in December 2007, where he also went to see the ‘Four Fruits’ (Thi Lay Thi) entertainment troupe, whose CDs of performances he copied and passed to others. Needless to say, these facts constitute no crime under domestic law and are irrelevant to the charges made against Nay Phone Latt.

Two further absurdities underline his case: Firstly, the two ‘witnesses’ identified as having been present for the search of Police Major Ye Nyunt on Nay Phone Latt’s premises are not independent. They have appeared in other cases for this police officer and their continued use is obviously a sham to have his people witness events for the sake of records. Secondly, the investigating officer admitted during his testimony to the court that Nay Phone Latt had been interrogated and detained at an army camp, which is a flagrant violation of the law. In fact, his case was also heard in a closed court inside the Insein Prison, rather than in an open court.

The circumstances these three individuals find themselves in are far from unique. A recent report ‘Saffron Revolution imprisoned, law demented’, discusses numerous cases where ordinary Burmese were arrested and charged with absurd offences for doing the most ordinary of things, among them helping with the cyclone relief effort and complaining about the lack of chairs and teaching materials at certain universities. It is thus necessary to consider how the rule of law is being misused in so many Asian countries. None of the three bloggers committed grave criminal offences, and yet faced the wrath of law enforcement agencies in their respective countries, most harshly in the case of Raja Petra and Nay Phone Latt.

The development of legal systems and the establishment of rule of law are primary to a society’s economic and social success. International discourse has steadily encouraged the promotion of these concepts, and Asia has dutifully moved in this direction in its post-colonial age. Unfortunately, there has also been a movement towards deliberate perversions of legal systems and the consequent malfunctioning of rule of law institutions, as seen in Burma, Sri Lanka, the Philippines or Cambodia. Among other things, the legal system is the key to the realization and protection of human rights and freedoms. When the system is perverted, not only does it offer no protection, but it becomes a means for corrupt government officials and politicians to further their own ends and punish those who dare to question them. One of the first freedoms to be restricted is inevitably the freedom of opinion and expression, affecting the media and individual members of society. It is particularly troubling when this occurs in democratic countries such as South Korea. Its government’s harsh response to the recent mass protests there prompted regional groups to comment that “Asia’s benchmark has been lowered”.

The numerous groups and persons throughout Asia who continue to speak out against injustice despite their government’s brutality and suppression are to be applauded. Without them, the fight for genuine freedom for all peoples would be much further behind than it is. All those concerned with improving human rights and democracy should be listening to them and taking notes on how legal and institutional means are being used to perpetuate injustice.

