

4

Protecting human rights in Southeast Asia

The previous chapter reviewed the main human rights treaties and their content; it also examined how these standards are understood in Southeast Asia. This chapter assesses how these rights are protected and enforced in Southeast Asia countries.

To protect human rights is to ensure that anyone who is entitled to a right is actually able to get those rights. For example, a child who has a right to attend school can indeed go to school, or a journalist can freely write the news. Protecting human rights is done by various organizations in a number of different ways. At the national level police, judges, courts, and lawyers work to enforce human rights, as do civil society organizations and government officers. They can protect human rights by enforcing laws, promoting tolerance, educating people, providing services, and so on. In a similar way, institutions at the regional level also work to protect human rights. Protection means more than just ensuring a government does not violate human rights; it can also mean ensuring that a company or a school follows the law so that individuals rights are protected from any violation.

Another way to think about protection is to consider why most people in Southeast do not face human rights violations in their daily lives? Whether going to school or work, their rights remain intact. Most readers of this textbook do not face severe human rights violations. They were not abused, insulted, mistreated, forced into slavery or tortured. Why? Because human rights protection is working. For these people, the government's protection system of police (who keep law and order) is working; people in that society have values which uphold human rights and individuals do not violate one another's rights. In addition, people know their rights and do not allow violations to occur. In order to ensure a situation like this, both the government and its people have many tasks to complete. They need to: have laws which make violations illegal; educate people so they know their rights; train government officials (such as police officers) so they do not violate human rights; and put in place a system to monitor and identify violations and fix the problems.

This chapter discusses protection at the national level, where human rights should be protected by the police, court systems, government bodies, and by people living in the society, and the regional level where ASEAN is developing a mechanism to protect human rights. Finally, this chapter examines human rights NGOs which are, for this region at least, one of the most widespread and successful mechanisms to protect human rights.

4.1 Status of Human Rights Protection in Southeast Asia

In order to determine how effective protection is, it is necessary to discuss the current status of human rights protection in the region. However, this question poses difficulties. How is it possible to determine if a country has a good human rights record or a bad one? This is challenging because there is no simple way to measure human rights. A country's wealth or development can be measured relatively easily; for example, the World Bank or the UNDP releases the ranking of countries by wealth or development every year. But trying to determine the status of human rights is complex. Whereas some rights like crime and hunger can be measured, other rights such as freedom of expression or political participation are much harder to determine. There is the problem of which rights to measure (given that there are hundreds of rights), how they can be measured, how the severity of the violation is measured, and who will do the measuring?

It is more common to examine each country separately, which is done by organizations such as Amnesty International, Human Rights Watch, and the US State Department. All

of these reports are available on the internet. These studies are called annual country reports, and they view each country uniquely and do not make much comparison between the countries. However, some organizations do try to grade human rights standards. For example, Freedom House, a US based INGO, gives an annual grading to the level of democracy and political freedom in a country; countries are graded from 1 (the most free) to 7 (the least free), in terms of their civil and political freedoms. Article 19, an NGO examining freedom of expression, also ranks worldwide media freedom. By examining the rankings, and also by looking at the comments made in the country reports, it is possible to get an idea of how human rights compares between ASEAN countries, and how responsive ASEAN states are to human rights. The following table brings together some of the rankings done of ASEAN states.

Table 4-1 - Status of Human Rights Protection

| Country | Freedom Ranking* | Human Development Index** | Press Freedom Ranking*** | Human Rights Ratifications# |
|-------------|------------------|---------------------------|--------------------------|-----------------------------|
| Brunei | Not Free | Very High | Difficult | 3/22 |
| Cambodia | Not Free | Medium | Difficult | 11/22 |
| East Timor | Partly Free | Medium | Satisfactory | 11/22 |
| Indonesia | Partly Free | Medium | Difficult | 11/22 |
| Laos | Not Free | Medium | Very Serious | 9/22 |
| Malaysia | Partly Free | High | Difficult | 5/22 |
| Myanmar | Not Free | Low | Difficult | 4/22 |
| Philippines | Partly Free | Medium | Difficult | 14/22 |
| Singapore | Partly Free | Very High | Difficult | 3/22 |
| Thailand | Partly Free | High | Difficult | 11/22 |
| Vietnam | Not Free | Medium | Very Serious | 7/22 |

* Freedom House's 2014 ranking of Freedom in the World. Three rankings are awarded: Free, Partly Free or Not Free.

** From the UNDP's 2014 Human Development Index, States can have very high, high, medium or low human development.

*** From Reporters Without Borders' 2014 World Press Freedom Index. The situation can be good, satisfactory, noticeable problems, difficult, or very serious.

How many of the nine human right treaties, nine optional protocols, and four complaints procedures the state has ratified or agreed to. The full list can be found in the appendix.

From the above table, the status of human rights protection is mixed. For example: ASEAN's richest country has the worst treaty ratification record; countries with high ratifications also have many concerns; countries with poor civil freedom have good development; low corruption does not mean a good human rights record. Most countries in ASEAN may have areas where human rights are good, and other areas with significant shortcomings. Some issues are common to most Southeast Asia countries, such as migrant workers and indigenous rights. Other issues like poverty, freedom of expression, education, and health, vary greatly across the region. What a region-wide overview does show, is that human rights status is often specific to a country, and it is difficult and not very useful to attempt to rank or rate countries by their human rights standards. Each country's unique economy, ethnic make-up, geography, political history, and so on, all contribute to the status of human rights in that country.



Discussion and Debate

Are human rights, development, and democracy connected?

By looking at the table, are there connections between high development, good democracy, and the protection of human rights? There are two potential arguments:

1. Human rights, Democracy, and development all support each other:

It is assumed that rich countries should find it easier to protect human rights as they have better trained police and lawyers, and more money for government services. Is this connection true from the table above? Is it true in your country?

2. There is no connection, and human rights protection depends on the State.

Rich countries and poor countries, or democracies and non democracies, all have the same ability to protect human rights. The investment in human rights protection is a choice the State makes. Also civil society can often determine its commitment to human rights. Is this seen in the table? Is it true in your country?

What are the reasons for the very mixed record of human rights protection in Southeast Asia?

4.2 Domestic Implementation of Human Rights

In order to understand how human rights are protected within States, this chapter will first look at what human rights exist in the country as law. There are a three main ways human rights appear in domestic laws:

- Firstly, many human rights are automatically a part of domestic law. Laws protecting people from violence and theft, or laws for providing education for example, occur in most Southeast Asian countries. This chapter is not going to detail where all the laws related to human rights can be found, rather it focuses on the most important laws, and how they are protected.
- Secondly, human rights treaties can be incorporated into law. The treaties are important because they keep a country's laws up to date with human rights, and they expand the protection of people. For example, laws giving women equal rights at work and marriage, or protecting children from violence were not common in Southeast Asia twenty years ago. But as countries have agreed to women and children's rights, they can be found in nearly all Southeast Asian countries.
- Thirdly, human rights commonly (but not always) appear in the constitution. Because constitutions are the fundamental legal document of a country, this gives human rights the highest order of protection.

The section firstly looks at these methods of incorporating human rights in Southeast Asia countries. Next, this section will examine National Human Rights Commissions, which are bodies whose main task is to ensure that States are protecting the human rights which they have agreed to.

4.2.1 International Standards into Domestic Laws

The first step in examining if a government is implementing human rights is to see how the international standards have been agreed to, in law, by the country. The number of human rights treaties which Southeast Asia countries have ratified range from nearly all the treaties for some countries, to only three for others. Yet ratifications alone are not a good indicator if a country is meeting its human rights commitments. Human rights should be available to the people in the country to use. This occurs in a process called the domestic implementation of rights which occurs after the ratification process. Implementation includes modifications to national laws, and the writing of new laws to ensure human rights are legal in the country. The implementation process itself is often specific to both the country and the type of rights. The challenge in Southeast Asia is that many countries do not have clear rules and regulations about how treaties are implemented. For some (like Cambodia, Thailand and Vietnam) the rules may exist in the constitution. For others it is a process of the government. However, there tends to be three main ways rights are implemented as domestic law:

1. A country may incorporate the treaty as a whole, and the treaty itself becomes law in the country. This occurs in few, mainly European, countries; no Southeast Asian State follows this system. In this process the treaty itself becomes the new law
2. The treaty may become domestic law by introducing a bill (or a set of bills) which reproduces the standards in the treaty. The treaty can be re-written as a Act of national law, which can be presented as one bill: for example, the People With Disability treaty has become a single bill in the Philippines (the Republic Act No. 7277, otherwise known as the “Magna Carta for Disabled Persons”).

Rights in the treaty can be broken into separate bills, for example children’s rights in the Philippines are divided into such bills as the Juvenile Justice and Welfare Act, child education laws, and children’s labor laws, all of which put Philippines national laws in compliance with CRC standards. Similarly, Thailand has divided the ICPRD treaty into three acts: the Persons with Disabilities Empowerment Act, the Persons with Disabilities’ Quality of Life Promotion Act, and the Persons with Disabilities Education Act.

3. The country may undertake legal modifications. In this case, laws relating to the treaty (which may come from many different areas of the law) are updated to reach the standard of the treaty. This may be the case, for example, in CEDAW, where family laws (such as divorce), labor laws (such as equal pay), and citizenship laws are all changed to comply with CEDAW.

Regarding the above methods, one is not necessarily better than the other. There are advantages to having a separate act because all the laws are found in one place making it easy for people to know about these laws. However, introducing modifications across different areas of the law ensures that the national laws are up to date and there will be no conflict between different sections of the law. Of course the existence

of laws does not mean the laws are upheld. There are still many challenges to ensure the protection of human rights. It needs to be enforced by the relevant authorities. People need to know about the law so they can follow it. Judges need to understand the law so they can make decisions based on it. And governments may need to develop national action plans or national policies so that people who should be protected by the law are protected.

4.2.2 Human Rights in Southeast Asian Constitutions

International human rights standards can appear in many places within a State's legal system apart from national laws and policies (as has just been discussed). They can also occur as part of the country's constitution. Constitutional rights are considered strong and fundamental, and all Southeast Asia constitutions do have elements of rights in them (though Brunei's constitution does not have a human rights section it does acknowledge that people have rights).

A constitution is a document that outlines how a government must govern a country. It details how the government is structured, how laws are made, how politicians are elected, and what they must do. Further, it outlines the duties of the State towards its people, and the duties of people towards their state. This section looks at the current constitutions of Southeast Asian States to detail their human rights content. However, even though a constitution may have human rights in it, it is not common for people in Southeast Asia to discuss their 'constitutional rights' because not many people know of them or whether their constitutional rights are effectively protected. There are many reasons for this: some countries' constitutional rights are often weaker than the international standards, so it is better to use the international treaty for protection; the constitution may have changed recently so people may not be aware of rights in the latest version and schools may not have started teaching it; or there may be a greater awareness of international human rights. However, the main reason is that frequently, people simply do not know what is in their constitution because it was not taught in schools and they are not made publicly aware. Southeast Asian States are poor in teaching people their constitutional rights.



Discussion and debate

Knowledge of your constitution

Do you know what rights you get from your constitution? Have you ever had a class on your constitution? Do any of your friends and family know about the constitution?

For most students in Southeast Asia the answers to these questions will be no. Why do you think this is? Why doesn't the government more actively teach people about their constitution? Maybe it is because teachers and parents think that math, science, and writing are more important. Maybe there is no class to teach them. Or perhaps governments are not that active in teaching their citizens what their rights are.

CASE STUDY

Philippine Supreme Court use of the UDHR and ICCPR

The Philippines incorporated customary international law by virtue of Article II, Section 2 of their constitution, entitled “Declaration of Principles and State Policies,” and also by Article VII, Section 21, which says every treaty or international agreement the Philippines ratifies is transformed into a law of the land, with the same force and effect as a statute.

The application of the UDHR and other ratified international treaties is found in several cases decided by the Philippines Supreme Court. In the case, *Kant Kwong and Yim Kam Shing v Presidential Commission on Good Government* (GR No L-79484, December 7, 1987), which is about the right to travel and move freely, the Supreme Court stated: “...the right to travel and to freedom of movement is a fundamental right guaranteed by the 1987 Constitution and the Universal Declaration of Human Rights,” and “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.”

In another case (*Ferdinand E Marcos, et al v Raul Manlapus, et al*, GR No 88211, September 15, 1989), the Supreme Court cited both the UDHR and the ICCPR underlining that even if the right to return to one’s country is not among the rights specifically guaranteed in the Philippines Bill of Rights, this right should be considered as a generally accepted principle of international law and, under the Philippines Constitution as part of the law of the land.

As can be seen from the Table on constitutions, most postcolonial constitutions in Southeast Asia have incorporated a variety of human rights norms and principles. Over time, constitutions have been altered or re-written to keep them in line with international human rights standards. As was detailed above, when States become parties to human rights instruments, they are required to alter existing legal frameworks and systems to be in line with those standards. In some cases, if possible, this means making adjustments to constitutions. The adjustment may be an amendment (for example, amendments were made to the Indonesian constitution to support political rights); or it may also be done by changing the interpretation of the constitution to comply with international standards. This may be achieved by incorporating some existing human rights standards into a new constitution (as Thailand did for both their 1998 and 2007 constitutions). The Philippines 1987 constitution already identifies various human rights and says that ratified treaties must be incorporated into domestic law. This is a good example showing how a constitution defines how treaties can be implemented at the domestic level. The result is that the Philippines Supreme Court has applied the UDHR as part of the Philippine legal system. Unfortunately, however, the Philippines application of international human rights law is the exception, rather than the rule of using international law in Southeast Asia.



Table 4-2: Constitutions in Southeast Asia

| Country | First Constitution | Number of Constitutions | Current Constitution | HR Section and Example of HR Laws |
|-------------|--------------------|--|----------------------|--|
| Brunei DS | 1959 | 1 (with amendments) | 2008 | No section on human rights |
| Cambodia | 1993 | 1 (with amendments) | 1999 | Chapter 3: The rights and obligations of Khmer citizens (Arts 31-50) |
| Laos PDR | 1991 | 1 (with amendments) | 2003 | Chapter 4: Fundamental rights and obligations of citizens (Arts 34-51) |
| Indonesia | 1945 | Amended 4 times 1955 temporary constitution | 1945/2002 | Chapter X(A): On the right to work, religion, education and social security (Arts 28-28(J); Arts 27, 28, 31, 32, 34) |
| Malaysia | 1957 | 1 | 1957 | Part 2: Fundamental liberties (equality, movement, speech, assembly) |
| Myanmar | 1948 | 3 | 2008 | Chapter 8: Citizen, fundamental rights and duties of the citizen |
| Philippines | 1935/1987 | 4 | 1987 | Art. 3: Bill of Rights on Art. 13: Social justice and human rights |
| Singapore | 1965/1963 | 1 (3 amendments) | 1991 | Part IV: Fundamental liberties (Arts 9-16) |
| Thailand* | 1932 | 19 | 2007 | Chapter 3: Rights and liberties of Thai people |
| Vietnam | 1946 | 5 (1 amendment) | 2013 | Chapter II: Human Rights, Basic Civil Rights and Civic Duties (Arts 14-49) |
| East Timor | 2002 | 1 | 2002 | Part II: Fundamental rights, duties, liberties and guarantees (Arts 16-28) |

* The current Thai constitution was annulled after a military coup in 2014. A new constitution is being drafted.

The incorporation of human rights into constitutions is a relatively recent event. Most countries' original constitutions did not have human rights. Rights were incorporated later as amendments or they appeared in re-written constitutions. And what could be considered human rights equivalent to international standards are even more recent. For Indonesia it was in 2002, Thailand was in 1997, and 2008 for Myanmar. In Southeast Asia, there are many cases where constitutions limit rather than ensure rights. Constitutions tend to focus more on the sovereignty and development of the State, rather than the rights of its people. Examples exist where a right is guaranteed

but only with qualifications and other limitations. Most commonly, this is done by referring to citizen's duties which is seen in nearly all the constitutions. By considering only rights that come with duties goes against the fundamental principles that rights are inherent and inalienable. There should be no duty necessary to deserve a right. Another common limitation is the right is limited by domestic laws. This is a curious move as it implies that the constitution, the highest law of the country, must obey domestic law. Finally, rights are limited by criminalizing anything that is seen to be against the integrity of the State. So the State has a power to limit or refuse a right if it is considered a threat to the State (and a threat could be interpreted very broadly). Obvious examples are the Internal Security Acts (ISA) of Singapore and Malaysia, which give both governments rights to arrest and preventively detain individuals without trial (in Singapore for up to two years, under s 8(1)(a)).

Southeast Asian constitutions are also notable for giving priority to certain religious or ethnic groups. For instance, Art 29 of the Indonesian constitution declares that the State should be based upon the belief in the one and only God. In the Brunei, Myanmar and Malaysian constitutions only a limited number of religions are recognized, thus limiting religious freedom.

Discuss and Debate

Myanmar Constitution

Look at the following two articles from the English version of the Myanmar Constitution.

351. Mothers, children and expectant women shall enjoy equal rights as prescribed by law.
352. The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.

What are the limitations to rights in these articles? Do you think they fully respect the rights of equality between men and women? There are a number of problems:

1. According to Art 351 equal rights are only those which are "prescribed by law." So if there is no law giving women equal rights in divorce, for example, then they don't get equality.
2. Notice how the Art 351 is for any mother, child, and expectant women, but Art 352 is only for citizens. So workplaces can discriminate against non-citizens?
3. There are jobs reserved only for men in Art 352. What could these be? What is a job that only a male could do? The article is vague enough to allow the government to discriminate against women by arbitrarily deciding what is 'unsuitable' for women.



4.3 National Human Rights Institutions

A national human rights institution (NHRI) is an official State institution that is established by law to promote and protect human rights in a country. The NHRI serves to complement other government institutions such as the courts, but it is unique in that it acts as an important bridge between the government and the community, and between its country and the UN human rights system. Another feature of the NHRI is that it is autonomous from government. Its independence is critical to the effective performance of its functions.

4.3.1 The Birth of NHRIs

The first NHRIs were established in the 1970s and 1980s mainly in Commonwealth countries such as Canada, Australia, and New Zealand. However, 1993 was the watershed year for the NHRI movement when the Vienna Declaration and Programme of Action gave the first global endorsement of NHRIs. It reaffirmed the “important and constructive role played by national institutions for the promotion and protection of human rights,” and it encouraged each state to establish a NHRI (in Part I, para 36 of the Declaration). Second, the UN General Assembly adopted the “Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights” (commonly referred to as the Paris Principles) as the international minimum standards for NHRIs. Third, 1993 also saw the establishment of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC – not to be confused with the International Criminal Court, also called the ICC) as the international NHRI network. Since 1993, there has been a rapid growth in the number of NHRIs. In 1990, there were fewer than 10 NHRIs worldwide. There are now over 100, close to 70 of which meet the standards set out in the Paris Principles. As of 2014, six Southeast Asian countries had a NHRI: Indonesia, Malaysia, Myanmar, the Philippines, Thailand and Timor-Leste.

4.3.2 Types of NHRIs and Their Functions

While a country can only have one official NHRI, it is free to decide on the particular roles it should play. This decision will be informed by a number of considerations, including the country’s existing human rights protection framework, the legal, political, and cultural systems, and the availability of human and financial resources. Further, the particular roles that a country decides to give its NHRI will determine the type of NHRI that is most appropriate. There are four main types of NHRI:

Human rights commissions

Human Rights Commissions are the most expansive type of NHRI, both in terms of size and function. Their structure comprises of having a number of Commissioners (and the number varies from five in Philippines to fifteen in Myanmar), who are experts that have a number of duties around the protection and promotion of human rights. The Commission on Human Rights of the Philippines is the largest NHRI in Southeast Asia, with over 600 staff members.

Human rights commissions are generally headed by one or more full time commissioners who are appointed for a fixed term. Commissioners are the public face and voice of the NHRIs. The appointment of commissioners should be a transparent process that involves community consultation. It is equally important to ensure

diversity in the appointment of commissioners; as a group, they should reflect the different segments of society as well as its gender balance and this means including lawyers, academics, civil society activists, government officers, and so on.

Advisory and consultative bodies

Advisory and consultative bodies are NHRIs that provide in-depth advice and recommendations to governments on a range of human rights issues. Advisory and consultative bodies also contribute to the work of regional and international human rights mechanisms. They do not investigate complaints or assist in court procedures. They are more common in Europe and are not found in Southeast Asia.

Research bodies

Research bodies are human rights “think tanks.” They often have an academic focus, which enables them to make expert contributions to the study of particular human rights issues. Like advisory and consultative bodies, research bodies generally lack the ability to receive human rights-related complaints from individuals. There is no research body NHRI in Southeast Asia

Hybrid institutions

Some NHRIs combine different types of roles and do not therefore fall neatly into a single category. These are known as hybrid institutions. Some combine an ombudsman-like mandate (where a person can arbitrate or investigate a dispute about human rights, for example discrimination at the workplace) with some or all of the functions of a human rights commission. The Timor-Leste Office of the Provedor for Human Rights and Justice is an example of a hybrid NHRI. Its roles include investigating and resolving complaints from individuals, providing human rights advice to its government, visiting places of detention, and appearing before the courts, arbitration tribunal, and administrative inquiry commission. As the UN points out, hybrid institutions can provide a “one-stop” service. They also allow resources to be concentrated into a single institution rather than spread across multiple ones.

As can be seen from the table below, most NHRIs in Southeast Asia are commissions.

Table 4-3: NHRIs in Southeast Asia

| Country | Name | Type | Year Established |
|-----------------|---|-------------------------|------------------|
| Indonesia | Indonesian National Commission on Human Rights (Komnas HAM) | Human Rights Commission | 1993 |
| Malaysia | Human Rights Commission of Malaysia (SUHAKAM) | Human Rights Commission | 1999 |
| Myanmar | Myanmar National Human Rights Commission | Human Rights Commission | 2011 |
| The Philippines | Commission on Human Rights of the Philippines | Human Rights Commission | 1987 |
| Thailand | National Human Rights Commission of Thailand | Human Rights Commission | 1999 |
| Timor-Leste | Provedoria for Human Rights and Justice | Hybrid institution | 2004 |

4.3.3 NHRIs Activities:

The objective of an NHRI is the promotion and protection of human rights at the national level. They should have the powers to undertake this in the law which establishes them. In order to promote and protect rights the NHRI will have a broad range of roles, which may include:

- Working with the government and the community to promote human rights education and awareness;
- Working with the government to help develop human rights policies and programs;
- Working with the legislature to help ensure drafts, existing laws, and regulations are compatible with the country's human rights obligations;
- Contributing to court proceedings that raise human rights questions (*amicus curiae*);
- Undertaking investigations or inquiries into systemic human rights issues;
- Receiving and resolving human rights-related complaints from individuals, including through mediation and conciliation;
- Observing and monitoring places of detention; and
- Contributing to the work of the UN's human rights mechanisms.

Each NHRI has a specific list of what activities it can do. These are detailed in the Act which establishes it, which is sometimes part of the Constitution and sometimes an independent Act. The activities which can be done by the NHRI can be limited by its resources and by the demands upon it. If the NHRI is small and underfunded, it will be difficult to achieve its objectives. Or if it works in a country where there are many human rights issues to address, it will be overworked. From the table below it can be seen that all NHRIs are involved in human rights education, research, investigations, and receiving complaints. Some NHRIs have special powers to enter prisons or work on court cases.

Table 4-4: Powers of Southeast Asian NHRIs

| | Komnas HAM National Commission on Human Rights (Indonesia) | SUHAKAM The Human Rights Commission of Malaysia | Myanmar National Human Rights Commission | Commission on Human Rights of the Philippines | National Human Rights Commission of Thailand | Provedoria for Human Rights and Justice Timor-Leste |
|--------------------------------------|--|--|---|--|---|--|
| Receive complaints | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Conduct investigations/ inquiries | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Call witnesses | ✓ | ✓ | ✓ | | ✓ | ✓ |
| Enter prisons | | ✓ | ✓ | ✓ | | ✓ |
| Mediation | ✓ | | | ✓ | ✓ | ✓ |
| Assist in court proceedings | | | | ✓ | | ✓ |
| Advise government | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Conduct research | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Human rights education | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

In addition to their domestic responsibilities, NHRIs also act as an important bridge between their countries and the UN human rights system. NHRIs enjoy observer status and participation privileges with a number of UN human rights mechanisms, including the Human Rights Council and the UN’s human rights treaty monitoring bodies (discussed in the next chapter). Importantly, most of these participation opportunities, which include the ability to attend and address UN meetings, are restricted to “A” status (or Paris Principles-compliant, which is outlined in the next section) NHRIs. As independent bodies with national-level expertise, NHRIs transmit important information and perspectives to the UN’s work and to its decision-making processes. By promoting awareness and implementation of UN decisions in their societies, NHRIs also help to translate UN decisions into positive change.

4.3.4 Monitoring NHRI Standards

Despite the flexibility associated with NHRI roles, they must all comply with the minimum international standards contained in the Paris Principles which address the status, structure, mandate, composition, powers, and methods of operation of NHRIs. They require NHRIs to:

- Have a broad and clearly defined mandate based on universal human rights standards;
- Be independent from and autonomous of their government;
- Be pluralistic, with a membership that broadly reflects the different groups in society;

- Have adequate resources provided by their government
- Have adequate powers of investigation.
- Be accessible to the people and should cooperate with civil society.

Each NHRI is periodically assessed by a committee in the ICC, with support from the OHCHR, against the requirements of the Paris Principles and given an accreditation status. Civil society organizations are invited to submit reports and information toward the accreditation reviews of NHRIs. Southeast Asian human rights organizations have been particularly active in submitting information toward reviews, particularly under the leadership of the Asian NGO Network on NHRIs (ANNI).

NHRIs compliant with the Paris Principles are granted an “A” status. NHRIs assessed as “not fully compliant” with the Paris Principles are granted a “B” status. Non-compliant NHRIs are granted a “C” status. At the time of publication, five of the six Southeast Asia NHRIs had an “A” status; the exception being the Myanmar National Human Rights Commission, which as a relatively new NHRI had yet to be assessed (as of 2014). An important secondary role in this process is the development of “General Observations” which are interpretive statements of the Paris Principles. General observations provide clarity and detail on each principle. Through the inclusion of good practice examples they also provide guidance to NHRIs and States on the substance of NHRI roles and functions, thereby ensuring the Paris Principles remain a dynamic, living document.

In addition to the ICC, there are four regional NHRI coordinating bodies, covering Africa, the Americas, Asia and the Pacific, and Europe. The Asia Pacific Forum of National Human Rights Institutions (APF) is the Asia Pacific’s regional coordinating body. The APF provides its member NHRIs with a wide range of training and capacity building services to support and strengthen their work. It also serves as a regional network for cooperation on human rights issues, and works with governments and civil society in the region to support the establishment of NHRIs in countries where they do not yet exist.

4.3.5 Limitations of NHRIs

NHRIs play a very important role in ensuring that international standards are promoted and protected within countries. They can often be the first point of contact for people in addressing a human rights situation. However, NHRIs also have a range of limitations, including the following:

- **Legal mandate:** NHRIs are established by law and must therefore operate within the confines of their legal mandate. The legal mandates of the Southeast Asian NHRIs vary. For example, some are able to examine a wide range of human rights issues from a variety of treaties, while others are restricted to a smaller set of human rights standards. The powers provided to each NHRI to perform their mandate also vary, with some facing restrictions in what they can and cannot do. As a general rule, however, NHRIs are not courts and they do not have the power to make legally binding decisions. Rather, they have the power to make recommendations about actions that need to be taken. Regarding

recommendations made to governments, these may be rejected or ignored.

- **Independence:** The independence of a NHRI is critical for its effective operation. Governments can negatively impact a NHRI's independence in two key areas: appointments and budgets. In terms of appointments, it is important that the head of the NHRI and its commissioners are appointed in a transparent manner and act impartially. Some NHRIs have been criticized because the head of State personally appoints commissioners, and they are not independent from the government. In terms of a NHRI's budget, there are examples in the Asia Pacific region of NHRIs having their budgets reduced by governments as a way of hampering their independence and effectiveness.
- **Resources:** NHRIs are not generally well-resourced institutions in terms of either staff or finances especially when compared against the roles they are expected to perform. A lack of resources restricts the ability of a NHRI to be proactive. This also impacts its reactive work, particularly in responding to complaints of human rights violations, often resulting in a backlog of cases. This is the case for the Myanmar NHRI, which has received a huge number of complaints but as yet does not have the time or resources to investigate them all.

4.4 Regional Mechanisms

Regional Human Rights Regimes: Europe, Americas, and Africa

The UN has supported regional organizations working in development, security, and human rights since its inception in 1945. The belief is that the UN cannot respond to all the human rights concerns around the world, and it is better if they are dealt with at a national level (through NHRIs), or at the regional level. Regional organizations make sense because they better address the common concerns of human rights in that region. For example, Europe is wealthy and developed and its human rights concerns are going to be very different to the concerns in poorer and less developed Africa. The regional mechanisms can then develop special tools to respond to the local situations. Many features of human rights promotion and protection first emerged through regional systems. Currently, there are three developed human rights regional organizations, and a number of smaller sub-regional organizations. Each of these regions has developed their own sets of standards, and also their own protection mechanism. This section will briefly detail the standards and how they are protected, before turning to discuss the developing ASEAN standards and protection mechanisms. The three main regional organizations are:

Europe

Europe's standards began with the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) that came into force in 1953, which has been working for twenty years more than the ICCPR. The ECHR mainly covers civil and political rights. Europe has added a number of other standards including 15 protocols to the ECHR (some of which give additional rights), economic, social, and cultural rights in the European Social Charter (1961), as well as treaties on torture and minority rights.

The rights in these treaties are now protected through the European Court of Human Rights (ECtHR). The ECtHR was established in 1959 and went full time in 1998. It makes judgments on individual and inter-state complaints of alleged violations of the rights set by the ECHR. These complaints are filed directly to the court. The court covers 47 countries in Europe, and has recently become very busy as it receives around 100,000

cases a year – but it can only hear a small proportion of these. Many of these cases are declared inadmissible (that is, the court will not hear them), because they are not considered serious enough. This can be the case for someone complaining about a parking ticket or poor local government services.

The European system is managed by the Council of Europe (which is bigger and separate to the European Union), although the European Union and the Organization for Security and Cooperation in Europe (OSCE) have their own related human rights standards and protection mechanisms.

The Americas

The Organization of American States (OAS) is the intergovernmental organization which manages the regional human rights system of the Americas. These rights are based on the 1948 American Declaration on the Rights and Duties of Man and the legally binding American Convention of Human Rights (ACHR) which came into force in 1978. There are also treaties on refugees, torture, disappearances, violence against women, economic, social and cultural rights, persons with disability, indigenous people, and the environment. The rights in these treaties can be protected through either the Inter-American Commission on Human Rights (IACHR) or the Inter-American Court on Human Rights (IACtHR). The IACHR works to strengthen regional laws and institutions, and hear complaints, and the IACtHR develops jurisprudence on human rights. They cover about 19 countries in North and South America and the Caribbean.

The system in the Americas differs in many ways from the European system. Firstly, all complaints against the State must first go through the Commission (a body of seven people). The Commission is considered a ‘quasi-judicial’ body; that is, it is like a court but does not have the same legally binding power of a court. Assuming the State has ratified the necessary treaties, the Commission will attempt to find a ‘friendly settlement’ for both parties. Only once this has been completed can the case go to the Court if one of the parties is not happy with the outcome. Also, the case only reaches the court if the State gives permission. An obvious difference is that the IACtHR is much less busy than the European court. Rather than tens of thousands of cases, it has heard a couple of hundred (it has given 280 decisions as of 2014, but may have heard more cases).

Africa

The most recent regional system to be constructed was the African regional human rights system. This regional system is based on the 1981 African Charter on Human and Peoples’ Rights. The main mechanisms for the African Union are the African Commission on Human and Peoples’ Rights, established in 1986, with eleven members. It is very similar to the Inter Americas Commission in that it is a quasi judicial body with duties of promoting human rights, and also the powers to hear and investigate human rights violations. It has special rapporteurs and working groups (much like the UN). The African Commission also prepares cases for the newly established African Court on Human and Peoples’ Rights, which started in 2004 and completed its first case in 2009. The Court can make legally binding rulings on regional human rights violation complaints, though to date it has completed few cases (around thirty), compared to the Commission which has given around 170 findings. What makes the African system different is that it gives greater access for civil society to engage with the court by allowing NGOs to petition the court for advisory opinions, meaning that an NGO may ask the Court if a State’s policy or activities are in compliance with the

African Charter.

Overview of the regional Systems

Each regional human rights system is unique in terms of structure and substance. These three systems share some common features. First, all the regional systems include a court, conventions, and commissions or committees. In some regions, such as Europe, the court has been very active and has delivered verdicts on thousands of cases. Others, such as the African court, are very new and have only made a handful of decisions. The European treaty is strongly based on civil and political rights with its economic and social treaty (the European Social Charter) is not nearly as strong. This stands in contrast to the African treaty, which acknowledges “peoples” rights (note its title which includes the phrase, “human and peoples’ rights”). People’s rights include self-determination, peace and security, and development. Each region also differs in terms of the dominant human rights concerns. Because of Europe’s relative wealth and widespread democracy, there are many human rights cases about government administration or discrimination. The Americas, on the other hand, whose most common political system was once military dictatorship, has significant concerns with disappearances, arbitrary detention, and torture. Africa, the poorest region in the world, has many issues around poverty and development, but because the regional system is both young and weak, there have been few developments in this mechanism.

An obvious gap in regional mechanisms is Asia. There are many arguments why Asia has not developed a regional mechanism and most commonly the diversity of the countries making up Asia, its size, and the lack of a regional identity all contribute. There are a number of sub-regional initiatives, including ASEAN, which are a step towards creating human rights protection at the regional level. These include the Arab Charter on Human Rights, which is used by the League of Arab States (made up of 22 countries), but this has no organization to insure its protection. There are also treaties by the South Asian Association for Regional Cooperation (SAARC) such as the SAARC Convention on Combating and Prevention of Trafficking in Women and Children for Prostitution, and the Convention on Promotion of Welfare of Children. However, like the Arab charter there is no body specifically to ensure compliance with these treaties. The biggest development towards a regional mechanism in Asia is the ASEAN Intergovernmental Commission on Human Rights (AICHR).

Discussion and debate

What should an ASEAN system look like?

After reading through the basics of the European, Americas, and African system, what lessons can be learned from them in developing an ASEAN system? Should ASEAN take a more European approach and have a strong court which can hear all the cases but risks being swamped in a huge number of complaints? Or should it take an approach similar to Africa and the Americas where a commission first hears the dispute and tries to negotiate a settlement, and perhaps avoids having a court at all? The commission system may be easier and more favourable to States, but it may be weak and unable to make States comply to their human rights obligations.

What kind of violations should the body protect people from? Can these be addressed by a court, or is there a need for special investigators? A court can be too late to help if the violation has already occurred, it can do little to bring back someone who has lost their life. An investigator may be very helpful in bringing to light poor government



institutions (say prisons that torture or schools that don't work), but they have less power to enforce States to change their ways.

4.5 ASEAN Human Rights Mechanisms

There has been a push to establish a sub regional mechanism for human rights in Southeast Asia since the early 1990s. There was a renewed interest in human rights after the end of the cold war which was clearly articulated at the World Conference on Human Rights in Vienna, 1993. In the context of this world conference, ASEAN stated it would look into creating an intergovernmental body. It did, however, move very slowly towards this goal. As a response civil society founded the Working Group for an ASEAN Human Rights Mechanism in 1995, which was recognized by ASEAN in 1998. Over the next decade meetings and consultations were held by the Working Group with ASEAN, civil society groups, and international organizations. The interest from these civil society organizations and help from States sympathetic to the idea of a regional body eventually led to the establishment of a regional human rights body called the ASEAN Inter-governmental Human Rights Commission (AICHR) in 2009. This is the first governmental regional human rights body in Asia. The number of regional bodies across the world has slowly grown in the past fifty years. Most of these bodies start off relatively weak and develop their protection mechanisms as States and civil society invest more power and interest in them. In these early years there is much concern about the relative weak powers of ASEAN, while others claim there is much potential for growth for AICHR.

AICHR was established when its terms of reference (TOR) were agreed to by the Governments who are members of ASEAN. The reasons the governments agreed to its establishment partially comes from commitments made in the ASEAN Political-Security Community (APSC) Blueprint, which is a policy document about the future governance of ASEAN, but importantly because ASEAN citizens, through civil society, have called for a human rights body. Much of the AICHR TOR is standard for a regional commission in that it will undertake activities such as consult with governments, create human rights standards for ASEAN countries, and promote human rights in the region. Among the list of purposes of AICHR are to:

- To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;
- To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;
- To promote stability, harmony, friendship and cooperation among ASEAN Members
- To promote human rights within the regional context,
- To enhance regional cooperation; and
- To uphold international human rights standards

AICHR is made up of one appointed representative per government (making a body of ten representatives). These representatives serve for three years, and their appointment can be renewed once. The representatives themselves come from a

variety of backgrounds. Some are academics, others diplomats, and others from NGOs. One early task of the commissioners was to organize the drafting of an ASEAN Declaration of Human Rights. To do this they appointed an independent drafting body which delivered the Declaration in November 2012 when ASEAN members unanimously adopted the Declaration.

For some the development of AICHR is a significant step forward for human rights in the region. For others, though, there are still many weaknesses to overcome. There have been criticisms of the TOR. In particular, AICHR is to respect the principle of “non-interference in the internal affairs of ASEAN Member States,” which calls for the respect of sovereignty over international standards. The TOR reinforces this with the statement that AICHR should respect “the right of every Member State to lead its national existence free from external interference, subversion and coercion.” Another criticism is that inter-governmental human rights bodies are subjected to politicization. The independence of representatives is important. Non-independent Commissioners may be more interested in protecting their State from criticisms about their human rights record. The worst case scenario is that governments may use the regional body to protect themselves from scrutiny regarding human rights concerns. The release of the draft declaration also received a mixed response. To some it was a step towards greater protection at the regional level. The Declaration recognizes the rights of migrant workers, establishes voting as a right, and the right to peace, which expand people’s protection in many ASEAN States. To others it was a weakening of international standards. The draft declaration asked for a balancing of rights and duties, which goes against the core principles of human rights, and it gave more power to national laws to modify human rights, which weakens the international standards. Obviously there is much debate about how effective AICHR will be.



Discussion and Debate

How strong is the AICHR TOR?

The TOR for AICHR states that one of its purposes is:

1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;

Will this protect human rights? By saying AICHR must consider national particularities, and respect historical backgrounds, implies that human rights are not universal, but specific to each country. For example, will this article allow states to excuse themselves from protecting human rights because they were colonized? Or because they are poor? Further, what does the balance between rights and responsibilities mean? If human rights are inherent and inalienable people do not need to earn their human rights. Though, people must respect the rights of other and this can include obeying the laws of the country.

Promoting and protecting human rights requires a range of abilities, an important one being the ability to receive complaints from individuals who have had their

rights violated. AICHR currently is tasked with promoting human rights, but not their protection. It is not yet allowed to receive complaints. Without complaints, Commissioners cannot respond to violations by addressing systemic problems that leave people unprotected. The absence of such capabilities has led many to coin AICHR a 'toothless tiger.' Purely advisory bodies may or may not deter offenders and have a direct influence on human rights. However, nearly all human rights bodies, from those at the UN to other regional bodies, mostly start with promotion and work their way towards the protection of rights. As it is still young, AICHR may prove the skeptics wrong.

4.6 The Role of Non-Government Organizations (NGOs)

Perhaps the most internationally recognized organizations working on human rights are NGOs. All regions in the world have active NGOs, and they are often the first place people will go to when facing human rights violations. NGOs work at all levels, from international with large organizations like Amnesty International (AI) and Human Rights Watch (HRW), to grass roots organizations working inside communities. This section will overview the types of human rights NGOs and discusses what kind of work they do. The nature of civil society organizations (CSO) means that the things NGOs do are going to be diverse and difficult to categorize. They also vary a lot in structure. Regardless, human rights NGOs all have similar activities in the promotion and protection of human rights.

Firstly, it is important to distinguish an NGO from a CSO. All NGOs are CSOs, but many CSOs are not NGOs. A CSO is an organization which has these features:

- it is not part of the government,
- it is non-profit (hence, not a company or a business)
- its task is to contribute to society, civil, and social order (hence, not a criminal organization).

What makes NGOs distinct from other CSOs is that they work in areas of government interest. CSOs can be fan clubs, sports associations, art societies, or student groups which are doing work not related to the government. However, NGOs do work on government related issues such as providing services like health or education, protecting the environment, or assisting in community development. These are activities which the government has an interest or a role in.

There are no international standards on what constitutes an NGO or what requirements it must meet to be regarded as one. Some organizations claim to be NGOs when there is a lot of debate if this is true. For example, governments can set up bodies which they claim are NGOs, but are really part of the government. The same is true for businesses, which may have a lobby group to support them (say a tobacco smokers group), but they are part of the business and not civil society. Some organizations are difficult to categorize: is a church, an opposition party, or a trade union an NGO or a government

organization, or something else? Organizations like the UN have criteria for NGOs who want to gain recognition at the UN (and hence be able to participate in forums and discussions). While it is considered that an NGO must have some form of permanent structure and office, there is a debate about the level of regulation an NGO must have, how independent they must be from government, and how they are funded.

Discussion and Debate

How should NGOs be regulated?

Many countries in Southeast Asia are now introducing laws requiring NGOs to be registered with the government. There is some logic to this idea: Governments can keep track of how many NGOs are working in their country, and registration will stop unregulated and criminal activities. However, registration can act as a barrier to stop NGOs from undertaking their work, and the increased government scrutiny of NGOs can be used to prevent NGOs working in a country. Critics say this is one way for governments to control NGOs and stop them protecting people from the abuses of governments.

An example is Cambodia, which has around 3,500 NGOs working in the country. The large number pushes up salaries (as International NGOs can pay well). The NGOs can raise funds from their own country to run activities in Cambodia, but most of this money could go to pay their own salaries. On the other hand much valuable work in development and rights is done by the NGO sector. The Government developed a draft law on NGO registration which requires organizations to sign an agreement with the government in order to work in the country. NGOs are concerned that the law will be used to stop NGOs who help people in actions against the government, say in land disputes.

Is registration necessary? Will it help sort out the problems of an unmanaged NGO sector?

The key feature of an NGO is the sector or issue it works on. Some NGOs have broad mandates which cover all rights, for example HRW and Amnesty International, or they may work in specific areas, such as disability rights or indigenous rights. NGOs frequently are parts of larger networks where they are connected to similar organizations on a national or international level.

There are some common structural features of human rights NGOs working in Southeast Asia. Most tend to be organized around “programs” or focus areas of their work. A program is a connected set of activities with a specific objective. Programs





can be around an issue or a theme (say human rights education, torture, women and the law), or it can be on a country (for example HRW has country programs – it also works on thematic issues too). Aside from these programs of activity, NGOs will have administrative sections, such as media and communications, where they release their findings or coordinate their advocacy with the media. Other sections may include finance, network outreach, and research.

CASE STUDY

FORUM-ASIA

FORUM-ASIA is a membership based regional human rights organization committed to the promotion and protection of all human rights through collaboration and cooperation among human rights organizations and defenders in Asia.

FORUM-ASIA was founded in 1991 in Manila, partially as a response to growing civil society interest in human rights, the increasing international coordination of human rights activities, and the need to support civil society working in undemocratic countries as Southeast Asia at the time there were few full democracies (perhaps only the Philippines which had recently ousted the Marcos dictatorship).

FORUM-ASIA is composed of 46 member organizations across Asia who are all NGOs in themselves. These are: Bangladesh (4), Burma (1), Cambodia (2), India (8), Indonesia (7), Japan (1), Malaysia (2), Mongolia (2), Nepal (3), Pakistan (3), Philippines (6), Singapore (1), South Korea (2), Sri Lanka (3), Taiwan (1), Thailand (1), Timor Leste (2).

The program structure at FORUM ASIA has

Thematic programs: ASEAN Advocacy Program; SAARC Advocacy; Human Rights Defenders Program; Human Rights Training Program; UN Advocacy Program

Country Programs: East Asia Country Program; South Asia Country Program.

4.6.1 NGO Activities

Human rights NGOs can undertake a number of activities. The ones listed below are not the only activities which are done by NGOs as they can be involved in advising on policy, monitoring legal systems, developing networks, and so on. Below are some of the more common activities:

Human rights education

Though States have taken on the task of human rights education (according to their commitments in ICCPR and CRC), knowledge of rights in the region is still basic. Because of this, many NGOs have education campaigns to make people aware of human rights; these could cover human rights in general, or involve specific rights for specific people (for example, women's rights or disability rights). Universities also play an important role in this activity although they cannot be called NGOs as they are part of the government. As an example, the Labour Protection Network (LPN) in

Thailand has activities which provides education to children of migrant works, and also educates migrant workers in their human rights.

Human rights advocacy

The term advocacy literally means to add a voice to, or to speak about something. NGOs can speak on behalf of a group who may not have the power or the resources to challenge the government. NGOs may also advocate for greater recognition or understanding about a right. An example of this is advocacy for refugee rights in Southeast Asia. Refugee organizations want the public and the government to be aware of the poor conditions of refugees who may be locked in detention, hiding in city centres in fear of being deported back to their country. By using advocacy they can change public opinions about refugees from being seen as a burden to people who need security and rights. They can advocate to government to stop detaining children, as having children behind bars looks bad for the government. Advocacy often uses the media, but it can be done through education, street theatre, social media such as Facebook campaigns, or making documentary films.

Monitoring and investigation

Some people are more vulnerable to human rights violations than others because traditional State protection mechanisms are either not present, or are not doing their job properly. This is the case for prisoners in jail, or indigenous groups living far away from city centers. Human rights NGOs can monitor and report on these situations, and ask for action to be taken to stop violations. NGOs doing this kind of work typically release reports and press releases to update the media and other interested parties on the situation. A widely known example of this is HRW, which annually releases around 50 reports on Asia. Some recent reports that have gained interest are:

- ‘Tell them that I want to kill them’: Two decades of impunity in Hun Sen’s Cambodia,
- Ad hoc and inadequate: Thailand’s treatment of refugees and asylum seekers,
- The government could have stopped this: Sectarian violence and ensuing abuses in Burma’s Arakan state,
- Torture in the name of treatment: human rights abuses in Vietnam, China, Cambodia, and Lao PDR.



FOCUS ON

HRW on Vietnam

Human Rights Watch Annual Reports

Established in 1978, HRW has monitored the situation around the world through its annual reports which comprise of analyses of the relevant events of the year related to human rights in each country of the world. The annual reports complement the numerous reports on specific events.

As an example the 2012 Annual Report covered many human rights violations in Vietnam including: the suppression of freedom of expression, association and peaceful assembly; intimidation, harassment and detention of protesters; government restriction of religious practices through legislation, registration requirement, or

surveillance. In particular, political and religious detainees frequently face police brutality including torture during interrogations, being held incommunicado prior to trial, the denial of family visits, access to lawyers, and fatal beatings.

Governments often dispute the findings of these annual reports and claim the NGO has not used accurate information or is biased against the government. While in some cases there may be elements of truth to these government accusations, they should allow people to read these reports and make up their minds themselves.

HR documentation

Victims of violations seeking justice must be able to prove that a violation has taken place. The process of collecting evidence of a violation is called documentation. This specific task entails collecting data accurately so it can be used in either advocacy or a court of law. Documents can be witness statements, medical reports, photographs of scenes, accounts of events, and so on. The documents collected need to be accurate and must show a clear violation has occurred. Many victims may not have any other recourse to a protection mechanism as their state may not have ratified the necessary treaties, agreed to individual complaints, or no regional body yet exists to listen to these complaints. In this case the documentation may not help in a court case, but can help in advocating for changing government practice, or for advocacy at the international level. Further, collecting a lot of documents can be useful to show patterns of violations. If the NGO can prove that a violation is occurring frequently by having many documents all showing a similar violation, say people are abused in prison or government services are not given to a minority, then they may be able to prove the violation is widespread and systematic, which can be used to encourage UN bodies to become involved.



CASE STUDY

Documenting systematic rape.

During the civil wars in Myanmar, many NGOs were concerned with the violence faced by women. Different organizations arranged reports, based on documentation, to prove that the Myanmar military was systematically raping women. Proving the rape was systematic could have significant importance to the protection of women. Systematic rape is an international crime. It also can justify the intervention of the UN Security Council, or the International Criminal Court (though in this case neither body got involved).

There are many reports on this violence including *School for Rape* (1998) by EarthRights international, and *License to Rape* in 2003 by the Shan Women's Action Network (SWAN) which documented 173 incidents. The documentation is proof that the rape of women in conflict situations is systematic and needs to urgently be addressed.

Complaints and litigation

NGOs can play a role in the legal process. Examples of these are NGOs who work in the area of access to justice, as public defenders, or providers of legal aid. NGOs have assisted individuals in making complaints against a government, and initiated what is known as 'strategic litigation' or winning a case which can be used to change laws and

government practice. A recent example of this involved a housing rights NGO called COHRE (which closed down in 2012), which initiated a number of cases on behalf of forcibly evicted people in Cambodia and the Philippines. The objective of the litigation was to ensure that it was illegal to force people out of their houses. Other famous cases include the UNOCAL case where Burmese villages displaced by a pipeline built by UNOCAL took the company to court in the US under the Aliens Claims Tort Act (which allows foreigners to make a civil complaint if they consider an American has violated their rights). The case was settled out of court and an undisclosed sum of money awarded to the displaced villagers.

4.6.2 NGOs in the Field

NGOs vary in terms of size and where they work. Small and local NGOs are often called “grassroots” NGOs, implying they work directly with people in their local environments.

Grassroots NGOs are largely made up of local people, speaking the local language, and familiar with the local context. They rarely deal with governments, but are more likely to interact with government officers in the local environment.

National NGOs may run programs in different locations, but may be headquartered in one of the main cities. It is likely these NGOs will also have a relationship with the government or government ministries in their area of expertise. However, a national NGO may undertake grass roots activity, or may be networked with a number of smaller grassroots NGOs.

Regional level NGOs tend to work across a number of countries and may run programs or advocate in more than one country. Within Southeast Asia, regional NGOs work on issues such as migrant workers or women’s rights. While they will have a central office, they may have offices in other countries as well. The usefulness of regional NGOs is that they can address human rights problems which are not specific to a location (such as issues around migration or refugees), and they can advocate more strongly at the regional and international level. Within Southeast Asia, a number of regional NGOs have taken on advocacy at ASEAN venues.

International level human rights NGOs undertake advocacy across different regions: they are active at the UN level, but also support grassroots and national level NGOs by assisting in their advocacy, or developing their capacities and can undertake work in numerous countries at the same time. The largest two are HRW (based in New York), and Amnesty International (based in London), although the FIDH, Article 19, Human Rights First, and Witness are also well known, and there are many more international NGOs than the few mentioned here. Governments in particular, often complain about these NGOs, saying they are western orientated and foreign, and insist they should not be allowed to work in the country. These criticisms are often misdirected and it is more likely that States are reluctant to have well-organized NGOs closely monitoring their human rights duties.

Human Rights Defenders

People who work at NGOs can be considered human rights defenders (HRD). A HRD

is defined as someone working on the promotion and protection of human rights which is a broad definition that includes human rights educators, government officers working in human rights, and human rights NGO workers. The work of a HRD, particularly in the Southeast Asia region, can be dangerous. Over the past five years, a number of HRDs have lost their lives or been jailed because of their work in human rights. Famous examples include the death of Munir, an Indonesia HRD, who was poisoned with arsenic on an airline flight on the way to Amsterdam in 2004. Three people linked to the government have been jailed for this murder. The Philippines has a particularly poor record of protecting HRDs with many being killed in recent years, particularly for protecting villages and indigenous groups from having their land taken by business interests.

The increased risk in this work has led to the UN adopting the Declaration on Human Rights Defenders. This declaration, while not binding, does set a standard that activities by HRD are protected by the freedom of expression and association. The declaration which was adopted in 1998 has been followed up in 2000 by a Special Rapporteur on HRDs. Regardless of this protection HRDs in Southeast Asia continue to be attacked, killed, jailed, and threatened by court cases for undertaking work on the protection of human rights.

A. Chapter Summary and Key Points

Human rights protection is done by a wide range of bodies, people, and other organizations who can protect people from violations. These may include police, courts, civil society, and international organizations. It is difficult to determine the status of a country's human rights performance as it may depend on the level of development, the political system, and how many human rights the State has recognized. In Southeast Asia most states have a mixed status, good in some areas and not in others.

Protection can be examined by seeing if the international standard of human rights exists within the country. This will occur as rights being a part of the law, or rights existing in the constitution. Currently all Southeast Asian States have human rights in their constitution, with the exception of Brunei. The legal systems of Southeast Asia will have human rights in them, but these are spread across numerous laws and acts.

An NHRI is an organization devoted to the protection of human rights at the domestic level. There are currently six NHRIs in Southeast Asia. These are based on the Commission model (except East Timor's hybrid model), which gives them a broad mandate to promote, protect, investigate, and monitor human rights situations. NHRIs can face challenges because they do not receive adequate funding or they are not independent from the government and these may limit their functions. NHRIs are assessed by a UN body, and those who meet the standards of an NHRI, based on the Paris Principles (a document outlining the function and activities of an NHRI) will be given access to UN activities. All Southeast Asian NHRIs (Except Myanmar) have an A status which recognizes them as compliant with the Paris Principles.

Regional mechanisms protect human rights in countries within the geographic region. There are three regional bodies, based in Europe, Africa, and the Americas. ASEAN

established a sub-regional body called AICHR in 2009 to promote and protect human rights. AICHR has overseen the drafting of a declaration, and works with ASEAN governments to promote and protect human rights. There is still much debate among civil society and governments about its strength and effectiveness.

NGOs are often seen as one of the main organizations working for the promotion and protection of human rights. Their numbers have constantly increased in the region. NGOs undertake activities such as human rights education, human rights advocacy, monitoring and investigation activities, human rights documentation, complaints and litigation, input into developing laws and policy. A recent concern is the protection of NGO workers, and other human right defenders from violence and attacks.

B. Questions

- What are the difficulties in measuring the human rights protection status in one country? Is it possible to measure how good or bad human rights are in a country?
- States can ratify a lot of treaties but have poor human rights protection, also States can ratify few treaties but have good protection. How is this so?
- Are there any specific human rights missing in the constitution of your country?
- What are the activities done by the NHRI in your country? Have they made a difference to the promotion and protection of human rights?
- How does the UN assess the effectiveness of a NHRIs? Is the process accurate and fair?
- Why is Asia the only region without a human rights regional system?
- Is AICHR a toothless tiger, or will it develop into a strong body like the European human rights bodies?
- What are the strengths and weaknesses of NGOs doing human rights promotion and protection?
- Find an example of an NGO activity or program in your country which promotes and protects human rights. Is this program successful? Why or why not?

C.1 Further Reading

Status of Human Rights

Information on the status of Southeast Asian countries can be found in:

- UNDP has an annual Human Development Report, listing countries in order of development.
- Freedom house has an annual report Freedom in the World

- Transparency International has its Corruption Perception Index.
- The OHCHR has a treaty body database which has up to date information on the status of ratifications.

All these reports can be found with a simple internet search, and are free on the internet.

All state's constitutions are available on the internet, all in English and the national language.

It can be difficult to search for information on the legal system of a country. It may not all be in English, and it may not all be on the internet. It is useful to look at non-governmental reports on the laws and their assessment on how they function.

NHRIs

For more information on NHRIs, including the UN body that manages accreditation search for:

- Asia Pacific Forum of National Human Rights Institutions,
- The International Coordinating Committee for National Human Rights Institutions (ICC)
- The Paris Principles: The United Nations General Assembly resolution 48/134, 20 December 1993

Each of these bodies has detailed reports on Southeast Asian NHRIs.

Authors to search for who write on NHRIs include:

- Brian Burdekin
- Catherine Renshaw
- Sonia Cardenas

ASEAN

The European, African, and Americas regional body have extensive web pages with information. For information on ASEAN human rights protection initiatives, start by searching for:

- ASEAN Inter-Governmental Commission on Human Rights
- Working Group on an ASEAN Human Rights Mechanism
- ASEAN Human Rights Declaration

- ASEAN Socio-Cultural Community (ASCC) Blueprint

Authors to search for whom write on the ASEAN mechanism include:

- Yuyun Wahyuningrum
- Dr. Sriprapha Petcharamesree
- Hsien-Li Tan

Southeast Asian Civil Society

There are many regional level NGOs in Southeast Asia. For a start you can look at the following to get an idea of their scope and activities:

- ASEAN People's Forum: APF
- Asia Indigenous Peoples Pact: AIPP
- Asia Pacific Forum on Women, Law and Development
- ASEAN Civil Society Conference
- ASEAN Youth Forum
- Asian Network for Free Elections: ANFREL
- FORUM-ASIA