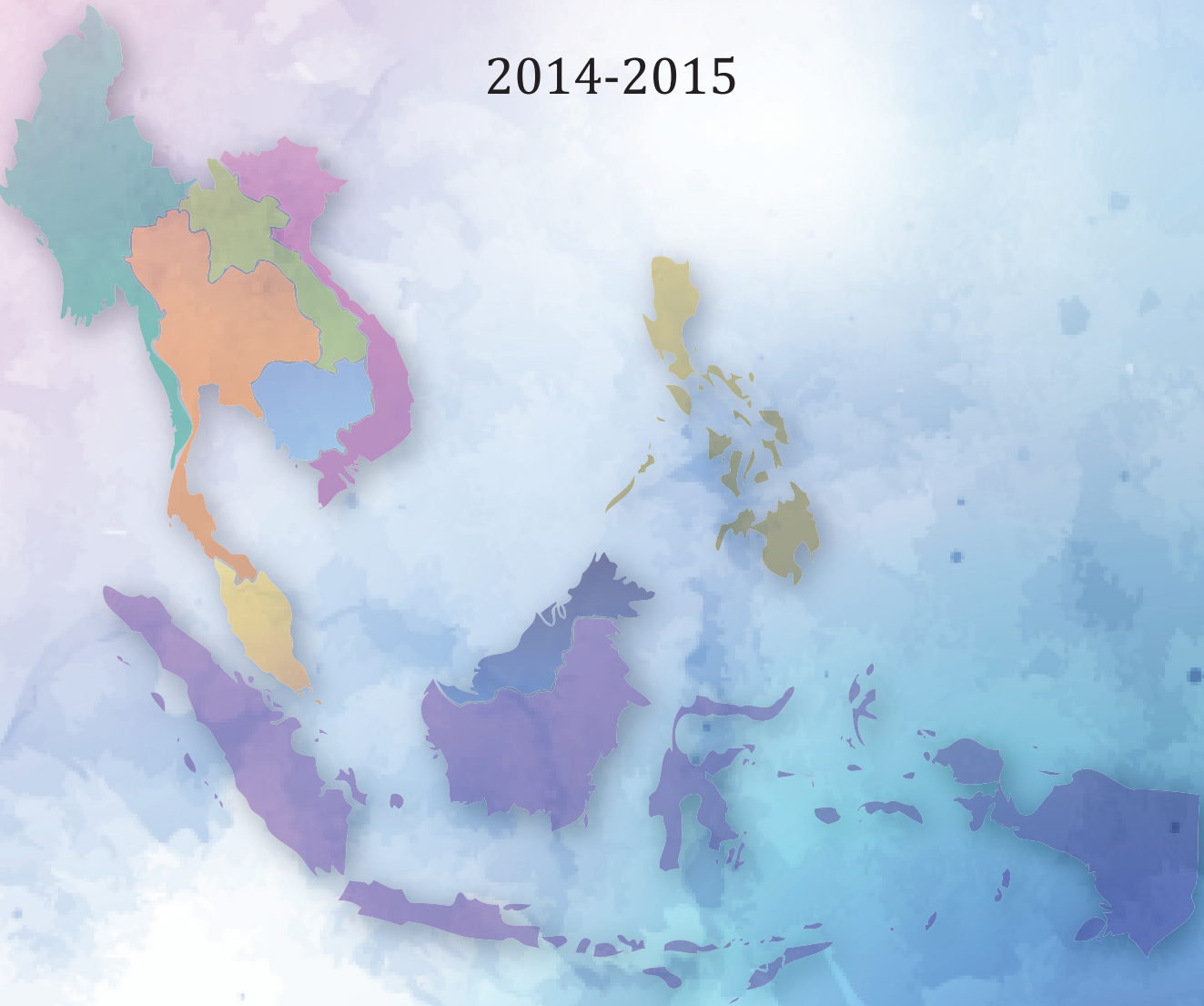




Human Rights Outlook in Southeast Asia

2014-2015





SHAPE
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Strengthening Human Rights and Peace Research and Education in ASEAN–Southeast Asia project (SHAPE–SEA) is a collaboration between two regional networks, the ASEAN University Network–Human Rights Education (AUN–HRE) and the Southeast Asian Human Rights Studies Network (SEAHRN). This programme is supported by the Swedish International Development Cooperation Agency (SIDA), and the Norwegian Centre for Human Rights (NCHR).

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Contents

Foreword	vii
Introduction	ix
Country	xiv
Indonesia	1
Malaysia	17
Myanmar	39
Philippines	57
Singapore	75
Thailand	101
Vietnam	115
Appendix	131
About SHAPE-SEA	139

Foreword

In November 2015, the ten leaders of ASEAN adopted the ‘ASEAN Community Vision 2025; which

resolved to consolidate our Community, building upon and deepening the integration process to realise a rules-based, people-oriented, people-centred ASEAN Community, where our people will enjoy human rights and fundamental freedoms, a higher quality of life and the benefits of community building, reinforcing our sense of togetherness and common identity, guided by the purposes and principles of the ASEAN Charter.

Indeed, since 2009, ASEAN leaders have established two ASEAN human rights mechanisms, the ASEAN Intergovernmental Commission on Human Rights and the ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children, to promote and protect the rights of all ASEAN peoples. In addition, the adoption of the ASEAN Human Rights Declaration in November 2012 further raised expectations of ASEAN peoples that their human rights situation, in one way or another, would be addressed. Consequently, the people now expect human rights issues will be dealt with; at the very least, that a human rights situation (assessment) report will be regularly released to inform the authorities and public, but ...

Under the Strengthening Human Rights and Peace Research and Education in Southeast Asia/ASEAN or SHAPE SEA Program run by a network of academic institutions, members of the ASEAN University Network–Human Rights Education (AUN–HRE) and the Southeast Asian Human Rights Studies Network (SEAHRN)—all of which have the ultimate goal to ensure better promotion and protection of human rights through research and education—a number of activities have been initiated and implemented since 2015. One of the activities identified as part of our priorities is to produce a Human Rights Outlook in Southeast Asia, the first human rights assessment report ever produced by scholars within the region. Although the first edition focuses on 2014-2015, it could not cover all eleven Southeast Asian countries; but the seven under assessment were examined using solid methodological and objective regional human rights reporting under an international and regional legal framework.

The intention of the report is not only to inform the public of Southeast Asia, but also to encourage decision makers to pay attention to particular human rights issues critical to peoples in the region. We hope our efforts to prepare an indigenous human rights situation report will contribute to raising awareness and draw more attention to the human rights of peoples in the region.

A handwritten signature in black ink, appearing to read 'Petchara S.', with a stylized flourish at the end.

Sriprapha Petcharamesree
Chair, SHAPE-SEA
Bangkok, December 2016

Introduction

Azmi Sharom

This book is the first in what we hope will be a continuing series examining human rights in the Southeast Asian region. A product of the Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia project (SHAPE-SEA), which, in turn, is a collaboration between two regional networks, the ASEAN Universities Network–Human Rights Education (AUN–HRE) and the Southeast Asian Human Rights Studies Network (SEAHRN), this programme is supported by the Swedish International Development Cooperation Agency (SIDA), and the Norwegian Centre for Human Rights (NCHR).

One of SHAPE-SEA's main objectives is to publish works to further disseminate human rights research to a wider audience. This book aims to achieve that goal by providing not only an objective analysis of international and national legal human rights obligations in Southeast Asian countries, but also by offering more subjective expert opinions on key human rights issues particular to their respective nations.

Because each volume of the Outlook will focus on a specific time period, such an exercise will also provide a valuable insight into the evolution or even devolution of human rights protection in the region, and over time should offer a useful and structured record. Covering seven countries (Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam), this first volume will examine the period, 2014-2015. Future volumes should include more, if not all countries in Southeast Asia.

All the above-mentioned countries are party to international human rights treaties, although some have deliberately kept their international obligations to a minimum (see chart below). There is, however, one document which all are party to – the ASEAN Human Rights Declaration 2012 (see Appendix). Although merely soft law and therefore not legally binding, the Declaration does lay down aspirational obligations which signatories should strive to achieve.

The Declaration covers civil and political rights, economic, social and cultural rights, the right to development, and the right to peace. As such, it is relatively thorough, with some particularly encouraging elements. For example, under the heading, 'General Principles' which asserts the right to equality, non-discrimination, the rights of vulnerable communities, and the right to access remedies in the event one's freedoms are infringed, distinctions on the basis of nationality were deliberately omitted. All

persons are entitled to these rights, a distinction sometimes lacking in individual national constitutions. However, loopholes are provided in sections 7 and 8 which read respectively:

At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal social, cultural, historical, and religious backgrounds.

and

The exercise of human rights and fundamental freedoms shall be subject to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedom of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.

Major Human Rights Treaties and Parties

	Indonesia	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
International Covenant on the Elimination of all Forms of Racial Discrimination	X			X		X	X
International Covenant on Civil and Political Rights	X			X		X	X
International Covenant on Economic, Social and Cultural Rights	X		X	X		X	X
Convention on the Elimination of All Forms of Discrimination Against Women	X	X	X	X	X	X	X
Convention Against Torture	X			X		X	X
Convention on the Rights of The Child	X	X	X	X	X	X	X
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	X			X			
Convention on the Rights of Persons with Disabilities	X	X	X	X	X	X	X

It would appear that even in a non-binding document, the Member-States of ASEAN still felt it necessary to expressly insert an escape clause to circumnavigate the aspirational standards within. Furthermore, when it comes to civil and political rights, no express mention of aspiring to achieve said standards (such as can be found in the section on economic, social and cultural rights) is mentioned.

It is perhaps no surprise then, that civil and political rights, such as freedom of expression, are the common thread tying all seven chapters together. For example, concerns were raised in Singapore when teenager, Amos Lee was charged under the Penal Code and the Protection from Harassment Act for an expletive-laden video diatribe against former premier, Lee Kuan Yew; not least because Amos Lee was treated in a mental hospital for two weeks, raising the implication that dissenting views must be the result of madness. However, a report from his doctors affirmed the opposite; that he was not mad, that he was actually intelligent but had used his intelligence ‘incorrectly,’ a statement which cannot help but invoke shades of George Orwell’s 1984 and its idea of ‘thoughtcrimes.’

Orwell’s dystopian novel made a more tangible appearance in Thailand when a university student was arrested for reading the book whilst enjoying a sandwich in front of a department store. As farcical as this may sound, it is only one incident amongst many experienced by Thais under the rule of the military junta which considers any discussion of politics a threat to stability and national security. In Indonesia, although the Press Law of 1999 prohibits the censorship, banning and licensing of the press, extra-legal actions continue to pose a threat to free journalism. In fact, scores of press personnel have been physically attacked in the course of their profession. Moreover, the police, in contravention of the law protecting press freedom, still take it upon themselves to ban publications.

Discrimination is particularly an issue in countries with a multi ethnic make-up. In Malaysia, the constitutionally permitted affirmative action for ethnic Malays and natives of the states of Sabah and Sarawak has ceased to be merely a measure to enforce economic equity, having long since morphed into a justification for conservative and racist groups to espouse a philosophy of racial superiority. This thinking has been compounded by the fanning of racial incidents by groups and individuals, thereby threatening the rights of all ethnic groups to live in peace whilst normalising racist behaviour and language. Sadly, the situation in Myanmar is even more desperate with its blatantly racist laws aimed at ensuring racial and religious segregation, as well as outright prosecution of the Rohingya ethnic group. Indeed, such treatment has encouraged large segments of the Rohingya population to flee the country which in turn has led to other human rights abuses as a result of human trafficking.

In Vietnam and Singapore, economic issues are more the bone of contention, although from slightly different perspectives. In Vietnam, local workers frustrated with poor working conditions and faced with government limitations on 'lawful' union activities, often find themselves with no choice but to organise wildcat strikes. In addition, government efforts to improve worker conditions have been beset with problems of compliance and enforcement. In Singapore, it is the treatment of migrant workers, principally those involved in blue collar occupations who are granted work permits as opposed to the employment passes offered to professional and technical classes, which is a cause for concern. For this group, the law is heavily skewed in favour of the employer, leaving workers very much at their mercy, not the least because any change of employment requires the consent of the current employer. At the root of this treatment is the notion that migrant workers are of a 'lower' class, mere commodities in a capital driven economy, which to some, justifies denying them basic human dignity.

An interesting fact about this region is that although human rights issues are common, especially civil and political rights, some are very nation specific. Due to its Catholic nature, the Philippines is the only nation in Southeast Asia where the right to reproductive health has always been a contentious issue. Indeed, by encouraging street protests which denounced the Act as evil, and threatening to excommunicate the then President Aquino, the Church was influential in watering down the Responsible Parenthood and Reproductive Health Act 2012. As such, the separation of State and Church is blurred in this country, particularly as regards divisive matters.

Despite the above issues, it must be reiterated that all countries in this volume have acknowledged human rights. Consequently, as parties to human rights treaties, national laws have been introduced which appear to offer at least rudimentary rights protection. However, the level of protection differs from country to country for a variety of reasons. Thus, when analysing human rights in Southeast Asia, it would be wise to avoid generalisation, even in matters where a common thread seems obvious. Freedom of expression problems in Indonesia, for example, differ significantly from those in Thailand. Whereas the latter has specific laws restricting expression, the former does not, yet it also experiences a host of similarly serious extra-legal problems.

One underlying theme across much of the region concerns the threat to freedom of religion. In some cases, this is due to the acts of individuals and associations with the tacit support of government (Malaysia); in others, discrimination is actually enshrined in legislation (as in Myanmar where laws are expressly aimed against specific ethnic and religious groups). Freedom of religion is not usually covered in great depth in the field of international human rights, yet the problem many considered side-lined since the European Enlightenment is, unfortunately, alive and well in 21st century Southeast Asia.

It is hoped that this book and the ones to follow will paint a detailed picture of human rights in the region with analyses of the laws protecting and hindering human rights, as well as the valuable opinion of writers on the ground. Like the region itself, the human rights experience in Southeast Asia is varied; as such, any study purporting to understand its complex issues must also reflect this diversity.