

10

Children's Human Rights

Childhood is understood differently today than how it was understood in the past. The rights a child should have, and what they should be protected from, was very different in Southeast Asia as little as one or two generations ago.

10.1 The Rights of Children

While parents may always love their children, opinions on how they should be protected, what rights they should have, and what type of work they can do, change according to how society views children and childhood. Centuries ago, some children could be forced into hard labour, face criminal charges as adults, and were often married as adults. Throughout Southeast Asia, it was common for children to labour in the fields from as young as five, while European children of the same age worked in mines and factories. There was no minimum age for marriage, and many girls forced to marry adult men commonly gave birth at the age of fourteen or fifteen. A child committing a crime could be found guilty, jailed, or even executed. Why were children treated this way? Not because society disliked them, but because they were seen as adults, and treated as adults. It was not until the seventeenth century that, in a sense, the idea of childhood was invented and children were seen as different to adults, and they should be treated differently.

It is only in the last few decades that improvements have been made in the treatment of and protection given to Southeast Asian children. A range of special services, from education to health, are now given specifically to children. For example, harsh labour has been forbidden (though children are permitted to, and often do, work), and much effort has been put into protecting children from abuse and neglect. Worldwide, these changes occurred over a long period of time, starting in eighteenth century Europe, but they were only implemented in Southeast Asia in the years following independence. These changes result from the values society gives to the idea of childhood. While this concept varies between different cultures, some similar features are that childhood should be a period of safety and security, meant for play, learning, and development during which children should be protected from violence and abuse. It was the acceptance of these ideas that led to the introduction of children's human rights.

No other set of rights has been as universally ratified, nor as widely accepted, as the *Convention on the Rights of the Child (CRC)*. Having said this, gaps in protection still exist, especially in Southeast Asia where child labour, sexual exploitation, and denial of access to healthcare and education are still problems. This chapter will detail the key elements of children's rights by examining their history before reviewing how these are dealt with in the CRC. The remainder of the chapter will explore important areas of protection such as violence against children, rights to education, juvenile justice, child labour, child soldiers, and child reproductive health.

Table 10-1: Ratification of Child Rights Treaties by Southeast Asian States

	CRC	OP-AC	OP-SC	OP-Complaints
Brunei DS	27 Dec 1995	2016	21 Nov 2006	-
Cambodia	15 Oct 1992	16 July 2004	30 May 2002	-
Indonesia	5 Sep 1990	24 Sep 2012	24 Sep 2012	-
Laos PDR	8 May 1991	20 Sep 2006	20 Sep 2006	-
Malaysia	17 Feb 1995	12 Apr 2012	12 Apr 2012	-
Myanmar	15 Jul 1991	-	16 Jan 2012	-
Philippines	21 Aug 1990	26 Aug 2003	28 May 2002	-
Singapore	5 Oct 1995	11 Dec 2008	-	-
Thailand	27 Mar 1992	27 Feb 2006	11 Jan 2006	23 Sep 2012
Timor Leste	16 Apr 2003	2 Aug 2004	16 Apr 2003	-
Vietnam	28 Feb 1990	20 Dec 2001	20 Dec 2001	-

10.1.1 Background to Children's Rights

In the 1800s, a few industrial European countries began to recognize some children's rights, for example, by passing labour laws to protect children (1833 in England, and 1841 in France). At the same time, laws on compulsory education were introduced first in Prussia in 1764, and much later in England in 1870, with other European countries sometime in-between. The international instruments on children's rights evolved from mere statements of recognition of the rights of the child as can be seen in the League of Nations' Geneva *Declaration of the Rights of Children* (1924), to legally binding documents in the form of the CRC. The English woman, Eglantyne Jebb, who was involved in drafting the Declaration on the Rights of the Child, also established Save the Children in 1919 as the first humanitarian organization dedicated exclusively to children, and now one of the largest humanitarian organizations in the world. Alongside these developments came changes to laws relating to children in court and the introduction of juvenile justice systems (around the early 1900s) when many European nations outlawed corporal punishment for children. These changes were only to reach Southeast Asia in the twentieth century (mostly after 1945) during early periods of independence. At the same time, labour laws began changing in the 1950s, although the process would not be complete until the 1990s. Compulsory education followed in the 1960s, but some countries did not develop juvenile justice systems until after 2000.

All these changes reflect changing social attitudes to children. Once seen as small adults, children were treated exactly the same in work and law until the 1700s when childhood was seen as a different and special period of life, one in which children were more vulnerable and would need support to learn and develop into responsible adults. Many reasons are given for these changing attitudes including lower childhood mortality rates due to improvements in healthcare and the invention of the vaccinations which resulted in smaller families. Another is mechanization in the industrial revolution which meant child labour was no longer as necessary in farms and factories. Alongside these changes, strong advocates worked tirelessly for the better treatment of children so that by the 1920s most children in wealthy countries had been removed from factories and battlefields and were relatively free of severe health concerns. In addition, welfare systems developed, particularly for orphans and

single mothers – although the treatment they received would be deemed harsh today, such systems did recognize that children needed extra protection and care.

As demonstrated by the size of the Geneva Declaration which lists only five rights and takes up less than half a page, children's rights in this period were limited. The result is that by the time universal human rights are recognized in the UDHR, only a small number of children's rights exist. The UDHR itself only gives one right: Art. 25 (on livelihood). Applying directly to children (and motherhood), this stated that both were "entitled to special care and assistance." As will be discussed in the next section, these early rights focused almost exclusively on children as subjects of welfare who needed to be fed or protected from exploitation. Under the CRC, children's rights were expanded to recognize children as holders of rights, and not just recipients of assistance.

10.2 Convention on the Rights of the Child (CRC)

The CRC entered into force in 1990 and is now the most widely ratified human rights treaty in history. International laws in existence before the CRC included the 1924 Geneva Declaration and the ILO labour laws from 1919. In addition, a Declaration on the Rights of the Child was adopted by the UN in 1959, and 1979 was declared the Year of the Child. With numerous governments supporting the idea of children's rights, and coordinated efforts from UNICEF and WHO, the CRC was rapidly drafted and adopted, coming into force in 1990. The rapidity with which it became international law shows the universal acceptance of children's rights at this time. For most treaties, the period from drafting to enforcement can last as long as 30 years (like the ICCPR, ICESCR, and ICMW) but for CRC, the entire process took less than ten.

The CRC is the most ratified treaty in history, with every country but the USA ratifying it. A variety of reasons are given for this non-ratification. There are political reasons because the government is reluctant to agree to any international treaties. Further challenges to ratification included the difficulties of a Federal government changing State laws, as some States allowed children to be given the death penalty which CRC would not permit, although this has been disallowed in the USA since 2005. Finally, there is a strong family values movement who fear child rights would undermine existing parental rights. Throughout Southeast Asia, all States ratified the convention soon after its adoption, with Singapore, Malaysia and Brunei being the last to ratify a mere five years after the others.

Coming at a revolutionary time, the CRC is an important treaty because it marked a change in human rights. With the breaking up of the Soviet Union and the end of the Cold War, the world was rapidly changing. This led to a fundamental restructuring of human rights as seen in the new understanding and approach brought about by the Vienna Declaration and Program of Action in 1993 (as discussed in Chapter One). What sets the CRC apart is that it treats human rights as indivisible so that civil and political rights are alongside economic and social rights. Significantly, the convention incorporated participation as a right. Another major difference to previous treaties is that it moves away from a legalistic approach of defining rights and violations to a more rights-based approach. The CRC sees human rights as a method to address and ultimately solve problems using the 'best interests of the child' as a guiding principle.

Summary of CRC Rights

Article 1	Definition of the child as anyone under the age of 18
Article 2	Right to non-discrimination, and protection from discrimination
Article 3	Best interests of the child
Article 4	Governments should implement children's rights
Article 5	Parental rights and responsibilities
Article 6	Child's right to life, and the importance of the survival and development of the child.
Article 7	Child must get birth registration, and given a name and nationality
Article 8	A child's identity must be protected and can't be taken away
Article 9	Children must not be separated from their parents unless it is in the best interests of the child
Article 10	When families are in separate countries, Governments should support family reunification
Article 11	Protection from illegal transfer of children
Article 12	Children's right to participate
Article 13	Child's freedom of expression.
Article 14	Right for Children have freedom of religion, and parents input to the child when choosing a religion.
Article 15	Freedom of association and assembly
Article 16	Child's right to privacy
Article 17	Child's right to access information, and duty to provide media for children.
Article 18	Parents have the main responsibility to bring up the children, which should be done in the child's best interests, and governments must assist parents to do this.
Article 19	Children's freedom from abuse and violence, and government's duty to protect children from this.
Article 20	Right to special care when removed from families
Article 21	Rights during adoption
Article 22	Rights for refugee children

Article 23	Rights for children with disabilities
Article 24	Rights to health
Article 25	Right to review of treatment while in care
Article 26	Right to social security
Article 27	Right to an adequate standard of living
Article 28	Right to education
Article 29	The aim of education is to develop every child's personality, talents and abilities to the full, and to teach them about human rights and respect for others
Article 30	Right to learn about or practise minority cultures
Article 31	Right to play
Article 32	Right to protection from child labour
Article 33	Right to protection from drug abuse
Article 34	Right to protection from sexual exploitation
Article 35	Right to protection from abduction
Article 36	Right to protection from all forms of exploitation
Article 37	Right to be free from torture, avoiding detaining children, and keeping detained children separate from adults.
Article 38	Right to protection in conflict situations; right to avoid being recruited as a child soldier
Article 39	Right to rehabilitation if a child has been abused in any way.
Article 40	Right to a fair juvenile justice system
Article 41	If national standards are better than CRC standard, then use the national standards
Article 42	Children must know their rights

The CRC brought together rights found in existing treaties like the UDHR, ICESCR, and ICCPR but it also introduced some new ones, such as protection from various abuses, rights to protection in conflict, and rights during adoption. The CRC is slightly different from other treaties in that it placed rights among three parties:

1. States, who have duties and obligations to meet children's rights;
2. Children who are the right holders; and
3. Parents who have various duties towards their children, for example, to provide protection and access to education and healthcare, but who are also *rights holders*, for example, the right to influence a child's religion and education, rights to services like childcare, and to protection from having their children removed.

The treaty describes the family as a natural and fundamental unit of society which is entitled to protection and assistance, as was also noted by the UDHR, ICCPR and ICESCR. As mentioned in Chapter Nine on women's rights, there is much debate on the meaning of a 'natural unit.' Does 'natural' imply something biological? If this is the case, what of adopted children or step parents? Would they not be considered as real or true as biological parents or children?

There are three optional protocols to the CRC. Two were introduced on the same day (25 May 2000) to address child soldiers (the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, OP-CRC-AC) and the sexual exploitation of children (the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, OP-CRC-SC). A third optional protocol which allows the CRC treaty body to accept individual complaints (see Chapter 5 for further details about how treaty bodies take complaints) entered into force in April 2014 – but in the region only Thailand ratified this. The treaty and optional protocols aside, other mechanisms on children at the United Nations include a Special Rapporteur on the sale of children, child prostitution and child pornography (active since 1990)—of which a Thai representative was the first rapporteur—and a position for a Special Representative of the Secretary General on violence against children. The latter was set up in response to a UN study on violence against children in 2002, and will be discussed in section 10.3 below.

At the regional level, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was established in April 2010 (discussed in Chapter 9). Like AICHR, it is an intergovernmental commission consisting of two representatives from each ASEAN State. The ACWC does not have a protection mandate, so it does not take, or address complaints from individuals. Rather, its work is focused on the promotion and protection of the rights of women and children, aiming to develop cooperation, policies, and activities in pursuit of these goals.

10.2.1 General Principles of the CRC

The CRC is guided by four overarching principles set out in General Comment No. 12 (2009). The principles in themselves are not new, as they did exist before the CRC. However, they are intended to strengthen both the understanding of children's rights, and to influence how children's rights are protected by State and families. The four principles in the Focus on box. These principles will now be investigated.



FOCUS ON

General Principles of the CRC General Comment No. 12 (2009)

1. Non-Discrimination (Art 2): children should not be denied their rights because of discrimination.
2. Best Interests of the Child (Art 3): when making decisions about children, the best interests of the child should be the most important criteria.
3. Survival and Development of the Child (Art 6): the life and survival of the child should be of the utmost importance to States in their activities, and they are obligated to ensure children develop into healthy adults.
4. Respect of the views of the child, or rights to participate (Art 12): children should be able to participate in decisions that concern them according to their age and maturity.

10.2.2 Survival and Development of the Child

In societies around the world, ensuring the survival of children is always given high priority. If there is a famine, organizations will work to feed children first; if a boat is sinking, women and children will be called to board the lifeboats first. While these principles are widely held, in practice this does not always occur. As late as 100 years ago, a sizeable proportion of the population still died as children (child mortality rates were as high as 30%), and even if children survived their first five years of life, they would likely still face hunger, conscription to the military, or harsh labour.

As a result, the first principle directed States to ensure a child's survival by reducing child mortality, protecting children from violence, and investing in healthcare. Because the State is responsible for a child's right to life, the CRC insists that these concerns should take priority over other government affairs. Governments reducing spending on maternal health, only to increase spending on the military, would clearly be in violation of this principle. This principle is particularly important in cultures where a preference for boys often results in the termination of female foetuses, or where girls are not given the same rights as boys. The same principle also ensured that children cannot face the death penalty, while giving them special protection in areas of armed conflict (additional protection is also offered under international humanitarian law, as discussed in section 10.7 below).

Included in this principle is the right to development, because obligations go beyond merely keeping a child alive; they also require children are able to develop into healthy, educated adults. The right to development covers rights to health which enables children to grow into healthy adults, the right to education which teaches children how to be responsible adults, and freedom of expression which develops a child's knowledge. Development is challenging for Southeast Asian governments as it requires them to devote precious government resources to the health and education of children. As later sections of this chapter will show, as regards the education of children, there is still much room for improvement in this region.

10.2.3 Best Interests of the Child

The principle of the best interests of the child is novel. While not actually defined, it means that decisions concerning a child should give the child's interests priority over other interests like the parents, the government, the culture, the economy, and so on. What is a 'best interest' of the child is not defined, though obviously things like their rights, their survival and development would be important. The flexibility around 'best interests' can be beneficial as it allows this principle to operate in a variety of settings, whether they are court rooms, schools, hospitals, or in the family. This principle was in use before the CRC, as it appeared in many State laws, particularly in family law, adoption and custody judgments. In international human rights law, the principle is mentioned in the 1959 *Declaration on the Rights of the Child*, and in CEDAW (Arts 5 and 16). In the CRC, best interests are mentioned in relation to separating children from parents, parental responsibility, adoption, and court hearings.

This principle requires that decisions about children should prioritize the child's interests above all others. For example, when deciding if a child should be separated from its parents, the fact the parents are violent and abusive must take priority over the parent's rights to look after their child, and the government's economic interest in avoiding paying for the child's relocation.

DISCUSSION AND DEBATE

Best Interests of the Child

The following case details the best interests of the child, and what actions should be taken. Best interests are subjective though, and it must be noted that discussions are open to disagreement and different interpretations.

Case Study

A brother and sister, aged five (female) and seventeen (male), appear in a Thai refugee camp after walking in from Myanmar. Escaping from a conflict zone, they were separated from their parents when the military attacked their village. Their parents cannot be found, but the children have an aunt in the camp. The boy wants to return to the conflict zone to find his parents, and he wants his sister to come with him. The sister wants to be with her brother. What should camp officials do? They know the conflict area is unsafe, but the children desire to be reunited with their parents. While the boy has shown he can safely cross the zone with his sister, the camp can offer food, healthcare, and education for the girl (but not the boy), a place to live with the aunt, and other children to play and socialize with.

Discussion

This situation was not uncommon in Thai-Burmese refugee camps during the 1990s and 2000s. In each case, camp officials had to make decisions based on the child's best interests. In this case, the best interests for the five year old girl would be to stay inside a safe camp where she could also access healthcare and education. In addition, the camp would offer better food, shelter, and water than the conflict zone. Although staying with her brother is important, it should not be at the risk of her safety.

The best interests of the brother differ from the sister. Because he is older and more mature, he should be able to participate in decisions that concern him. Considered too old for education, he can travel through the conflict zone relatively safely but



should not be able to do so with his sister. Ideally, he should wait with her in the camp until their parents are found, or until he turns eighteen when he can make the decision as an adult. Whether the children stay or go should not depend on space or resources (these are economic issues, and nothing to do with their best interests); it should also not depend on a parent's desire to see his/her children (which are the parent's interests); and finally, it should not depend on the law managing the camps (which are legal interests, and not the child's interests).

Questions

- Is keeping both children in the camp the best solution?
- Considering the boy is so adamant to go, should you let him?
- How would you rank the best interests of the girl from most to least important (including interests like survival, health, education, food, leisure and play, reuniting with parents, and staying with her brother)?

10.2.4 Non-Discrimination

All human rights treaties give prominence to non-discrimination and the CRC is no different. This principle does not cover discrimination against children as a group (for example, treating children differently from adults), but discrimination against specific groups of children. Some groups of children face constant discrimination. For instance, girls in many countries have less rights than boys. They are forced to leave school earlier, or do not receive the same education as their brothers. This situation is seen more in East and South Asia, where there is a saying, "sending your daughter to school is like watering your neighbour's garden," or in other words, doing something to benefit others and not yourself. Disabled children also face discrimination. Across the region, they rarely get the same access to education while governments offer little support to their parents, and they are made fun of in the community. Other groups facing discrimination may also include ethnic minority children, the children of migrant workers, and child migrants (discussed later in this chapter).

10.2.5 Right to Participate

Participation is a widely recognized human right and commonly associated with rights to development. Although not directly mentioned in treaties before the CRC, rights to participate in politics and freedom of expression are rights to participation. Strictly speaking, there is only one use of the word 'participation' in the CRC in relation to children with a disability being able to participate in the community, so it is not about all children. The general principle is about the views of the child being taken seriously, as found in Art. 12, which essentially means the right to participation. By being included as a general principle, it may be argued that the right to participation put children's rights on a higher level. So according to this new standard, children should firstly be seen as active subjects in the process, meaning that they should have a say in how their rights are met. The aim is to get away from the so-called 'charity' approach where, as passive recipients of charity, responding to the needs of children is entirely decided by the charity givers. Viewing children as rights holders who are able to contribute to decisions about them, fits into the 'rights-based' approach (as discussed in Chapter 12). A second objective of participation is to ensure children have a say in how their rights are delivered. This is particularly important as regards rights to religion, education, and media.

A child's right to participate in decisions concerning them has been noted in many areas including adoption, education, judicial decisions, custody, development, and policies relating to children. For example, courts should hear the views of children alongside their parents in a custody case. The participation of the child is weighted according to the age and maturity of the child. An example of this is allowing children to participate in decision about education. All high school systems in the region let students elect subjects to study in addition to various compulsory courses. Five year olds, on the other hand, would not be given a choice because they lack maturity and knowledge to decide their education. As the term 'best interests' is not defined, neither are 'maturity' and 'age.' Instead, it is usually left up to governments and parents to make the final decision, taking into account the child's views.

The principle of participation clashes with more traditional and patriarchal social views which assume that parents, or in some cases, only the father, should have final say on their children's lives. The right for children to choose their own religion and to have access to their own media is not widely accepted in some communities. It is mainly for this reason that rights to participation are poorly institutionalized in Southeast Asia. Most legal systems recognize the right of children to participate in decisions concerning them, but this may not actually occur in courts. Likewise, children are given few opportunities to provide input in their education.

These four general principles are important throughout the convention, as they influence the way children's rights are met while also providing solutions to some problems facing children. The rest of this chapter will examine five areas where children need special services, or are vulnerable to exploitation and threats: protection from violence, education, work, armed conflict, and reproductive health.

10.3 Protection of Children against Violence

Protecting children from violence is one of the most important duties of both State and family, and constitutes a major problem in Southeast Asia. In fact, it has been argued that the institutions which should protect them (the family and the State) are frequently complicit in this violence. As stated in Art. 19 of the CRC, every child has a right to protection from abuse, neglect, violence, and exploitation:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has care of the child. Art. 19.1

Importantly, this article defines violence as physical or mental, injury, abuse, neglect and so on. The definition was further expanded in the CRC's General Comment No 13 (2011) on Art. 19. The full definition includes other forms of violence such as corporal punishment, forced marriages, and initiation rites. Art. 19 noted that to prevent violence, governments should ensure appropriate educational programmes, laws, and government agencies are in place. It also recognizes that although caregivers should protect children from violence, they can also be the perpetrators of it. As such, the General Comment emphasized the importance of these duties and obligations because the "extent and intensity of violence exerted on children is alarming" and that "no violence against children is justifiable; all violence against children is preventable." Further, it demanded States provide proper forms of prevention, investigation, and follow-up of instances of child maltreatment or exploitation.

A UN study which starts in 2002 and is published as the Secretary General’s Study on Violence Against Children (2006) is important because it recognized violence against children as a mostly hidden global phenomenon, but whose impacts are serious. In most Southeast Asian societies children face violence everywhere: from parents and teachers disciplining naughty children to violence in detention, orphanages, and the workplace. Communities often ignore such violence, accepting it as a parent’s right or acceptable cultural practice. Many societies even see the hitting of children as good parenting. For example, the saying “spare the rod and spoil the child,” although originally adapted from a biblical proverb, has equivalent phrases in the region. As such, no laws exist against parents hitting their children although they do in many other countries. For instance, Sweden was one of the first countries to ban domestic corporal punishment. Similarly, teachers are still permitted to hit children in most Southeast Asian countries, as are employers, although striking an adult in the workplace is a criminal offence. Children or teenagers being hit or slapped at work, while not being seen as a good thing, would rarely be seen as a criminal offence whereas to hit an adult in the workplace is a crime. These examples show there is still much tolerance in society for violence against children. This section will address three main areas of violence faced by children: domestic violence or violence at home, corporal punishment at school, and sexual violence.

10.3.1 Children and Domestic Violence

The family should be a place where a child’s physical and emotional safety is guaranteed. Yet, children do experience violence at home, often committed by family members. Frequently, children experience cruel or humiliating punishment, or neglect. In addition, they may be harshly disciplined. Insults, name-calling, isolation, rejection, threats, emotional indifference and belittling are all forms of violence which children may face and which they should be protected from.

There are many challenges to preventing domestic violence against children. First, such behaviour is deeply embedded in Southeast Asian culture – it is widely believed that good parents discipline their children. Second, how parents treat their children is largely regarded as a private matter. For anyone to get involved, including neighbours or the police, would be seen as an invasion of privacy. Third, domestic corporal punishment is not considered a serious issue. Not only is hitting a child not a crime, it is not even considered particularly bad for that child – in fact, many children would prefer a quick smack over sitting alone in a room or giving up something they like. Finally, parents are often unaware of other ways to discipline children, or they simply don’t have the energy to design an appropriate program of discipline.

UN bodies such as UNICEF and the Committee on the Rights of the Child have argued for a ban on **corporal punishment** at home, urging countries to change their laws. However, only about a quarter of countries in the world have done so, the majority in Europe. In fact, South Korea is the only Asian country to ban domestic corporal punishment, and these laws were not introduced until 2015 and are limited to Seoul. While corporal punishment is mostly legal, all countries have laws limiting the punishment a child can face – normally in the form of laws prohibiting sexual violence and child abuse. Considered more serious than corporal punishment, child abuse normally entails harsh physical punishment, sexual violence, or severe neglect, all of which can have long term effects on the child.

Corporal Punishment

Corporal punishment is punishment against the body (the corpus) which is intended to cause pain. Corporal punishment includes a parent smacking a child, a teacher using a cane, or whipping as a court sentences. establishing power.



DISCUSSION AND DEBATE

When is it acceptable for a parent to hit a naughty child?

When can a parent hit a naughty child? Will hitting the child serve a purpose? In most societies in the region, hitting children is tolerated because it is considered a valid way to teach them. The arguments for corporal punishment are:

- It is educational as the child learns not to be naughty again
- It is quick and effective, as it links the naughty action with an immediate negative response
- It is a parent's right to choose how to discipline their child
- Hitting does not harm the child
- Children won't behave properly unless they are hit

Questions

Are these arguments logical? When parents hit children, are they doing this because they have rationalised it as the best method to educate the child, or were they just angry at the child?

- If it is an effective method of education, why isn't it acceptable to hit adults as well? If a husband or a worker has behaved badly, why can't we hit them?
- Why don't husbands have similar rights to hit their wives? Why are such acts criminalized? If husbands are unable to choose how they treat their wives because such acts are criminal laws, why shouldn't there be laws to protect children from parental violence?

10.3.2 Children and Violence at School

Violence in schools and educational settings is widespread in the region. Recent surveys of high school students in Thailand found that over 60% had experienced it. Teachers are allowed to hit students in three of the ten Southeast Asian countries. In other countries, although unlawful, it is not specifically prohibited. In addition, children under institutional care in shelters, orphanages, the workplace, or in custody can also face physical violence. Staff may discipline children with beatings, restraints, or by imprisoning them. In some institutions, children with disabilities face violence under the guise of treatment, for example, by being subjected to electric shocks to control their behaviour, or by being forced to take drugs to encourage obedience. A similar problem can be seen in playground bullying which often takes the form of violence. Bullying especially affects children from minority and vulnerable groups and can include the children of migrant workers, ethnic minorities, and gay, lesbian, and transgender children. This section will focus on the use of corporal punishment in schools.



CASE STUDY

Types of Corporal Punishment and Abuse in Southeast Asia

Across the region, children are disciplined in many ways. Officially approved corporal punishment includes striking with a cane or slapping, but unofficial or non-approved punishments are also common, many of which may be illegal. These may not be defined as corporal punishment but different forms of abuse. The punishments detailed below are taken from national and regional reports from the website, Global Initiative to End All Corporal Punishment of Children.

Acceptable methods of corporal punishment include:

- Hitting with wooden rods, canes, rulers
- Slapping of legs and buttocks
- Physical restraint (holding down)

Unacceptable but used forms of punishment include:

- Kicking, punching, face slapping, hair, eyebrow or ear pulling
- Standing for long periods in the sun
- Whipping with electrical cords
- Rubbing chilli pepper in the eyes
- Stomach pinching
- Burning with cigarettes
- Shaving of heads
- Twisting arms and legs, pulling or twisting of joints,
- Shocking with electric batons (or electroshock weapons)
- Painful physical exercises
- Throwing dirty water
- Withdrawal of food

While the CRC does not explicitly state that corporal punishment should be banned, many articles imply it. Art. 28 declares that States should “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.” Likewise, Art. 19 called for an end to all violence and freedom from torture, while General Comment No 8 asserted the right of a child to protection from corporal punishment. Although 102 countries have banned corporal punishment in schools, often this ban is not adequately enforced. From the table below, it can be seen that the protection of children from corporal punishment in school has some way to go before it is universally enforced. Some protection is gender-based (for example, only girls in Brunei DS are protected), some is based on policy and not law (for example, Thailand), or is badly defined (for example, what does “such force as is reasonable” mean in Singaporean law?). Regardless of the existence of such laws, it is likely that corporal punishment is still frequently used.

Corporal punishment is still used in schools for a variety of reasons because many parents and teachers still believe the most effective way to teach naughty children is by hitting them. Corporal punishment, many believe, instils discipline, prevents laziness or disrespectful behaviour, and helps children stay interested – which is why sparing the rod is widely believed in Southeast Asia to spoil the child.

Table 10-2: Is Corporal Punishment (CP) Outlawed in Southeast Asia?

Country	Violence Laws
Brunei DS	CP is lawful at home, at schools (boys only), in penal institutions, and as sentencing for crimes provided it does not cause “substantial and observable” injury. Caning is used as punishment for boys in schools, juvenile correctional institutions, and as a sentence for juvenile offenders for certain crimes, but is prohibited for girls in the same settings. CP is prohibited in childcare centres. No explicit prohibition in alternative care settings.
Cambodia	CP is lawful at home, in alternative care settings, and day care. CP is unlawful in public and private schools, penal institutions, and crime sentencing.
Indonesia	CP is lawful at home and in schools, although there are laws to protect children from abuse in these settings. CP is unlawful in penal institutions and for crime sentencing. No explicit prohibition for alternative care settings and day care. CP is legal in all settings. There are laws to protect children from violence at home, in school and in penal institutions, but these laws do not specifically prohibit CP. Although CP is unlawful as a criminal sentence, it is unclear if this also applies to Sharia law.
Laos PDR	The Law on the Protection of the Rights and Interests of Children seeks to end violence against women and children in all settings. CP is unlawful in early childhood education but no such prohibition applies to older children. CP is unlawful as a criminal sentence but not explicitly prohibited in penal institutions.
Malaysia	The Child Act of 2001 integrates all laws on children. However, CP is legal in the home, alternative care settings, and day care centres for children under 12 years of age. It is also legal in schools (for boys) and penal institutions in the form of caning. Caning can be used as a criminal punishment for men and boys under secular law; whipping men and women over the age of puberty is acceptable under Islamic law. Under both secular and Islamic law, caning or whipping must be performed according to guidelines.
Myanmar	CP is legal for children under the age of 12 in the home, although new legislation is now being drafted which may change this. No explicit prohibition of CP in schools. Lawful as a disciplinary measure in penal institutions. CP is prohibited as a criminal sentence for children below the age of 16.
Philippines	The relevant legislation, <i>Laws on Worst Forms of Child Labor, and Special Protection of Children Against Abuse, Exploitation and Discrimination Act (1992)</i> , makes CP lawful at home, but unlawful in alternative care settings, day care, in public and private schools, in penal institutions, and for crime sentencing.
Singapore	CP is lawful at home with caning authorized in children’s homes. CP is prohibited in some but not all day care centres. CP is lawful in schools but only for male pupils and only in the form of caning. CP is lawful in juvenile penal institutions and can be used as a sentence for crime. However, only juveniles tried by the High Court may be sentenced to CP. CP in the form of caning is also allowed as punishment for boys during compulsory military service.

Country	Violence Laws
Timor Leste	CP is lawful at home. CP is unlawful in penal institutions and for crime sentencing. No explicit prohibition in alternative care settings, day care, or schools.
Thailand	The Child Protection Act of 2003 and the National Policy Strategy on domestic violence and trafficking prohibits CP in schools, penal institutions and for crime sentencing. CP is lawful at home, in early childhood and day care.
Vietnam	Under the Revised Law on Protection, Care, and Education for Children (2004), CP is unlawful in schools, in penal institutions, and for crime sentencing. CP is lawful at home, and there is no explicit prohibition for alternative care settings or day care.

Corporal punishment is still used in schools for a variety of reasons because many parents and teachers still believe the most effective way to teach naughty children is by hitting them. Corporal punishment, many believe, instils discipline, prevents laziness or disrespectful behaviour, and helps children stay interested – which is why sparing the rod is widely believed in Southeast Asia to spoil the child.

This culture is also reflected in the fact that teachers are often not taught alternative ways to discipline students, and in any case may view it as a successful method of dealing with naughty children. Such attitudes mean that for many teachers the only way they know how to deal with a naughty child, and the only way they see as successful, is corporal punishment. While corporal punishment may be banned, some teachers will quietly use it or ignore when other teachers use it. The use of corporal punishment is not the teacher’s fault alone. In some cases, parents may ask teachers to discipline their children because even though they believe corporal punishment is needed, they prefer someone else to do it. Finally, students themselves may be complicit in the use of corporal punishment. Faced with a choice of a week’s detention or six lashes, some students would prefer getting it over and done with quickly. Because of these reasons, corporal punishment continues to be regularly used in all Southeast Asian countries despite being banned in some.

The ambition to end corporal punishment is challenging, but a number of measures have been introduced to reduce its prevalence. Measures include retraining teachers to use alternative ways to discipline children, educating parents and teachers about its negative effects, and increasing the participation of parents and children in decisions on educational standards.



DISCUSSION AND DEBATE

How to Stop Corporal Punishment?

How can cultural and institutional support of corporal punishment be stopped? How effective will the following measures be?

1. Legal reform: Criminalise corporal punishment with harsh penalties.
2. Re-educate teachers to use alternative methods of discipline (for example, detention instead of caning).
3. Increase public awareness of the negative effects of corporal punishment including the psychological impact on children which could lead to anti-social behaviour, lower grades, increased aggression, increased aversion to education, and higher dropout rates.
4. Increase school inspections and anonymous reporting systems for students.
5. Educate parents against using violence at home.

Questions

- Which of these solutions is the best and why?
- Name some challenges to implementing these solutions

10.3.3 Children and Sexual Abuse

Sexual abuse is a particularly disturbing form of violence against children. The World Health Organization in 2002 reported that there were around 150 million female and 73 million male child victims of sexual violence worldwide (see Further Reading at the end of the chapter). More recent studies in 2011 found nearly 33% of girls in Africa and 23% of girls in Asia had faced sexual abuse. While the rate for boys is lower, it was still estimated (in 2011) that nearly 10% of boys had faced sexual abuse. Most incidents were at the hands of someone they knew, often a member of their own family. They also estimated that between 100 and 140 million girls and women had undergone some form of female genital mutilation/cutting (FGM), including 3 million a year in Sub-Saharan Africa alone, especially Egypt, Sudan, Somalia and Sierra Leone.

The problem of child sexual abuse has led to the introduction of laws on the age of consent (see Table 10.8 in section 10.8), child sex, and rape laws to name but a few. The last two crimes, in particular, face harsh penalties but despite this, the sexual abuse of children is still prevalent in all Southeast Asian countries. Laws on these crimes only came into force in the 1960s, with many countries in the region either having no legislation against child sex, or ignoring the ones they did have. Child marriages and underage sex workers were especially common in Southeast Asia in the early 1900s and before.

Unfortunately, some forms of child sexual abuse (like child marriage) have escaped legal intervention. Child marriages are prevalent in South Asia with girls as young as twelve being married off by their parents in Pakistan, Afghanistan, and Bangladesh. Many women in rural India are married before they reach adulthood. Within Southeast Asia child marriage is not so prevalent but does occur in some regions. For example, Indonesia has a high number of teenage brides, with UNICEF estimating that 17% of

girls are married before eighteen. Attempts to raise the legal age to marry in Indonesia from sixteen (with parental consent) to the global norm of eighteen have consistently failed with the Indonesian Constitutional Court as late as 2015 refused to increase the age arguing that it has little impact on social problems or divorce rates. Indeed, they considered that such an increase could create a rise in extramarital sex. Likewise, in Malaysia and the Philippines, child marriages may be prevalent in some rural areas.

Child abuse is closely linked with the abuse of authority, as most cases involve someone known to the child. This can be a family member or relative, or a teacher, or boss at work. Sexual abuse is a particularly serious problem because of its long term negative effects, both physical and mental, which can result in a range of psychological disorders including depression, drug addiction, and anxiety. Recent research has also found that those who commit gender-based violence are often themselves a victims of child abuse. For example, Partners for Prevention (see Further Reading) in a study across six Asian countries, found that around a third of those who had committed sexual abuse had themselves been abused as children.

Another troubling issue addressed by the Optional Protocol on the sale of children concerns the commercial exploitation of children, which often takes the form of child prostitution or pornography. Some Southeast Asian countries have reported particular problems with child prostitution – for example, in 2007, ECPAT (see Further Reading) estimated there were around 60,000 child prostitutes in Philippines. Thailand, Indonesia, and Malaysia also have similar problems although not on the same scale as the Philippines.

In many cases, child prostitution can be linked to tourism, where sex tourists travel specifically to certain countries to exploit children. Source countries of sex tourists include Canada, Australia, and USA, all of which have now enacted extra territorial laws against it (laws that can be enforced outside the territory of the country), meaning sex tourists may be arrested and charged for their crimes in their home countries, even though the crime was not committed there. Other areas of sexual exploitation include child pornography.

FOCUS ON

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (CRC OPSC)

This optional protocol (OP) was adopted in 2000, and came into force two years later in 2002. It now has over 170 ratifications, including all of Southeast Asia except Singapore.

The main purpose of the OP was to: (1) define the crimes of selling children, child prostitution, and child pornography; (2) to criminalize these activities; and (3) to better protect children from these crimes by empowering States to prosecute the perpetrators.

The OP has many uses in Southeast Asia. One major use is to prevent online child pornography as many developing countries in Southeast Asia at the time the OP was adopted had no such laws because they only recently gained access to the internet. The OP defines and criminalizes the hosting of child pornography sites, making it



easier for States to prosecute perpetrators. Another use is with child prostitution laws. It makes child sex an extraditable offence and the law has extraterritorial scope, which allows people to be charged even if the crime was committed outside their own country. In this case they are under the jurisdiction of the State based on their citizenship and not because use they are in the territory of the State. Finally the OP is one of a number of laws introduced in the early 2000s to stop trafficking including the Palermo Protocol on trafficking which came out in the same year (and discussed in Chapter 7 on trafficking).

10.4 The Right to Education

The right to education is a critical human right relevant to all children, and is found in Art. 28 of the CRC, as well as in other treaties such as the ICESCR, MWC, and CEDAW. All these say that primary level education must be available to all children, regardless of their nationality, gender, or any other category. But just getting children into school is not enough as quality and safety standards must also be met. This section will only address a child's right to primary and high school education as university education almost always only applies to adults.

10.4.1 Elements of the Right to Education

The right to education depends on the stage and type of education and can be divided into three stages: the right to primary education (for children aged between around 5-12), the right to secondary or high school education (for children aged around 12-18), and the right to tertiary, university, or vocational education (for those over 18). Primary education must be free and compulsory. That is, every child aged between 5-12 (although the age varies slightly throughout the region), must have access to free primary education. Children cannot be denied primary education because they do not speak the language, or they are children of migrant workers, or they are refugees. Every child must have a free primary education.

In addition, high school education must be available and accessible to every child but it does not have to be compulsory or free. Having said this, the majority of Southeast Asian countries have both compulsory and free high schools although the amount of compulsory education in the region does vary between States. The levels of compulsory education can be as little as only six or primary education being compulsory, such as in Myanmar. It can be up to nine years, or primary school plus the first three years of high school until the student reaches about fifteen. Many countries aim for twelve years which includes high school as well. In Southeast Asia, most countries provide nine years of compulsory education although Myanmar and Cambodia have limited this to six, making eleven or twelve the average school leaving age. Schooling is particularly important because it reduces child labour. If children can leave school at eleven, the chances are they will look for work. An additional problem is that an eleven year old but may not be able to legally work until they are fourteen or fifteen, so the child will face three years of unprotected labour. Obviously, the answer should be, not to lower the minimum working age, but to increase the years of compulsory education.

Rights to education encompass many different issues and activities, from simply getting an education, to the quality of education itself. Laws and policies on compulsory education will not necessarily ensure children get access to schools, nor

if they get access they receive a decent education. State duties have been summarized in the 4A framework, which was devised by the Special Rapporteur on education, Katarine Tomascvski, and may also be found in ICESCR General Comment 13. The rest of this section will examine the right to education in the region by examining the 4A standards.

FOCUS ON

Right to Education, the 4As

Availability: education is available to everyone, requiring sufficient schools, rooms, and seats.

Accessibility: education should be accessible to all, and no one should be denied it due to distance, expense or discrimination.

Acceptability: education should be relevant, up-to-date, appropriate, and of necessary quality, with properly trained teachers and adequate facilities.

Adaptability: education should be able to keep up with new innovations such as computers, adaptable to suit specific groups such as children with disabilities or from minority groups, and be able to address challenges such as gender or racial discrimination.

10.4.2 Availability and Accessibility of Education in Southeast Asia

While primary schooling may be widely available in the region, this does not mean all children will go to school. The availability of education - which basically translates to enough school places for all children in the country - requires governments to allocate resources to build enough schools and to train enough teachers. Accessibility seems to be the main reason children miss out on school, in that places in the class may be available but something like the cost, distance, the need to work, or language issues prevents a child from attending. As Table 10.3 shows, schools are available in all Southeast Asian countries, and most have high enrolment rates, but the number of children not finishing primary school (the dropout rate) is very high among less developed countries, with the exception of Vietnam. For developing countries, this dropout rate can mainly be attributed to poverty (children forced to leave school to work), or cost (the school is too expensive to attend), or quality (teaching standards



are so low, children don't want to go). The exception is Vietnam, which has not only made primary school available and accessible but also succeeded in keeping these children in school. Compare their success to the Philippines where one in four primary school children do not graduate despite near full enrolment rates. These numbers clearly show that the problem is not so much availability but inaccessibility for whatever reason.

Table 10-3: Percentage of Children in Primary Schools in Southeast Asia

	Enrolment rate in primary schools [#]	Primary school dropout rate	Enrolment rate in high schools [#]	Spending on education [†]
Brunei DS	94%	3.6	106%	3.8
Cambodia	125%	36%	45%	2.6
Indonesia	109%	11%	83%	3.6
Laos PDR	121%	27%	50%	2.8
Malaysia	101%	0.9%	71%	5.9
Myanmar	114%	25.2%	50%	0.8
Philippines	106%	24.2%	85%	3.4
Singapore ^{**}	-	1.3%	-	2.9
Thailand ^{***}	93%	-	87%	7.6
Timor Leste	125%	16%	57%	9.4
Vietnam ^{****}	105%	5.5%	-	6.3

The figures are all taken from the *Human Development Report 2015*

[#] % population of children of primary/secondary school age

[†] Spending as % of GDP

^{**} Singapore provides no figures on education participation

^{***} Though Thailand does not measure dropout rates, given that 87% of students go on to high school, it can be assumed the rate is low (less than 5%)

^{****} Vietnam does not measure high school participation rates, but as the dropout rate is low and university participation is 25%, it may be assumed they are high

The reasons children do not finish school vary. A major factor is economic – some parents are so poor, they cannot afford to send children to school even if they're free as additional costs, such as uniforms, books, lunch, travel, and pencils, may add up. As such, governments should ensure education is accessible by also providing free uniforms, food, and transport. There are also cases where the family is so poor, the child must work to help support the family.

Discrimination constitutes a further reason why schools may not be accessible to some children. Globally, the most common form of discrimination in education targets girls. Many societies believe a girl's main role in life will be to look after her husband and children, making an education pointless. Fortunately, this view is not widely held in Southeast Asia, and while girls may have less schooling than boys on average, the gap has been reduced in most countries to less than a year. In some countries like Thailand, according to recent studies girls may now expect to get more education than boys.

Other groups facing discrimination in the region are the children of ethnic minorities and migrant workers. In countries such as Malaysia and Thailand which have large

numbers of migrant workers, many children cannot access primary education at all. In Malaysia, undocumented children are not allowed to attend school. And although Thailand made it legal for them to do so in 2005, many migrant worker children do not because they fear discrimination in the classroom and playground, they fear being detained by police on the way to and from school, and because they don't speak the language. As a response, some organizations established schools specifically for this group, but while these may offer an acceptable education, many challenges arise. First, their curriculums may not be recognized by the government so disqualifying the child from attending high school. Second, some children may choose to stay at home and help their parents so attendance may be a problem. This is especially common in situations where parents do 'piece work,' and are paid by the number of pieces they produce (for example, shirts sewed, prawns peeled, or products boxed). In these cases, children can help to produce more pieces increasing the family income.

For the reasons stated above, accessibility is a significant problem in the region, with poor Southeast Asian countries only managing to send around 25% of their population to high school. In order to fix this, governments should increase accessibility by making education cheaper or free, and by making schools more accessible to minority and vulnerable populations. But just getting children to attend school is not enough – they must also be able to learn there. The quality of education, or acceptable and adaptable education, will be examined next.

10.4.3 Acceptable and Adaptable Education in Southeast Asia

The UDHR defines the quality of education as the “full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.” This view is also found in the ICESCR (Art. 13), and was further expanded in Art. 29 of the CRC to include respect for a child's parent's culture and values, responsible social views, and respect for the environment. Quality of education covers elements such as the curriculum, the standard of schoolrooms and other facilities, and the quality of teachers.

As regards the curriculum, children should be educated to enable them to contribute to society. Although the exact content of curricula will vary between countries, basic literacy and numeracy are considered vital, as are science and social science. More widely contested are subjects such as history, nationalism, sex education, and religion. As can be seen in the Discussion and Debate box below, States may assign nationalistic or religious objectives to education. As discussed in Chapter Eight, most national curricula do not teach accurate histories of their countries. Common omissions include gross violations of human rights, the negative role of the military, and animosity with neighbouring countries. For example, Thailand still teaches its wars with Burmese empires, even though the last conflict happened around 250 years ago.



DISCUSSION AND DEBATE

Should nationalism be an objective of education?

The objectives of education in many Southeast Asian countries include patriotism and religious beliefs. For example, Indonesia's Education For All (2003) policy states that education should ensure students are "faithful and pious to the one and only God," while Laos' constitution claims education should "raise the ... patriotic spirit, the spirit of cherishing the People's Democratic Regime." Finally, Vietnam's Education Law states the objective of education is to ensure students are "loyal to the ideology of national independence and socialism; to shape and foster the personality, quality and capacity of citizens."

While nationalism can lead to discrimination, conflict, and war, it may also hold a country together and encourage people to work towards a common good or shared goal. For example, people often cheer their national sports teams or feel pride when a fellow citizen wins a famous award. On the negative side, nationalism can also instill a sense of superiority while teaching students of the threat posed by other nations.

Questions

- How should nationalism be taught?
- When is teaching nationalism a good idea, and when is it a bad one?

Curriculum aside, other factors which define the quality of education include:

- School facilities: adequately sized classrooms with tables, chairs, blackboards, and other facilities such as playgrounds, toilets, and shelter from the weather
- Qualified teachers: teachers have the necessary training
- Access to information: a library, books to assist education, and other sources of information
- A safe and non-discriminatory learning environment: children should feel safe from bullying, be able to reach school safely, and girls should not feel threatened by boys or male teachers
- Inclusive teaching methods: children should be encouraged to ask questions and be curious. They should be allowed to participate in all activities and their education should include activities which encourages their learning and socializing.

There are many more elements to a quality education than the ones given above, but these are some core elements in the quality of education.

A common problem throughout Southeast Asia concerns the language of instruction, particularly when teaching children from ethnic and linguistic minorities. As already mentioned, education should be acceptable in terms of quality and adaptability to be inclusive of to children from different backgrounds. Given that most lessons are taught in the national language, the cultural and linguistic diversity in Southeast Asia is problematic, many children do not speak their national language at home. For example, Indonesia, the most linguistically diverse country with about 700 languages

and much less than half the population speak Bahasa as their mother tongue, still uses Bahasa exclusively in its government schools. The debate is that children may not speak their national language, how will they be able to understand their teachers or read textbooks? For this reason, it is argued that all children should be taught their national language so they will be able to attend high school and university, and as a result, get good jobs.

DISCUSSION AND DEBATE

Language of Instruction for Ethnic Minority Children

Throughout the region, many ethnic minority children do not speak the national language. Southeast Asia has hundreds, if not thousands of ethnic minorities, all of whom speak their own language (such as the Chin, Katchin, and Naga of Myanmar, the Akka and Hmong hill tribes of Thailand and Laos, and the Dyak and Papuan people of Indonesia). What should the language of instruction for these children be: the national language or the language they speak at home? Advantages and disadvantages for both options are:

Learning in the National Language

- If a child plans to attend high school and university, they will need to learn the national language as this is the language of instruction
- Most workplaces use the national language
- Government services (such as a driver's licence test) normally use national languages
- Most teachers only speak the national language, and it may be difficult to find and train teachers who can speak ethnic languages
- Children able to speak the national language are also able to socialize with a much broader group of people, watch soap operas, listen to music, sing karaoke, and text each other

Learning in One's Ethnic Language

- If children don't understand their teachers they cannot learn in the classroom.
- Children need to be able to communicate with their families at home
- Ethnic cultures should be respected, and if children no longer speak their mother tongue, they will lose touch with their cultural roots

Questions

- What language should be used in schools?
- Is it preferable that all children speak the national language so they can go on to attend high school and university?
- But shouldn't governments respect local cultures? If children stop speaking their ethnic language, culture and traditions may be lost



Another area where discrimination stops a child's access to school involves disabled children. While it is estimated that about 3-5% of children have a disability, the number of disabled children in school in Southeast Asia is much smaller. Not only are schools generally not equipped to teach them, teachers may also not, for example, understand sign language or have Braille texts readily available. Further, parents may be too embarrassed to take their disabled children to school, or they may worry about bullying. As a result, very few disabled children get access to education.

The examples of education for ethnic minority and disabled children are examples of groups of children who will either not get access to education or will receive substandard teaching due to government failures to provide accessible, acceptable, and adaptable education. This section has addressed the right to education through the 4A model to show how to measure if the right to education is being met for children. The next section will briefly examine the rights of children of ethnic and indigenous minorities.

10.4.4 Protecting Minority and Indigenous Children in Southeast Asia

It is relevant at this point to note how States treat children from ethnic and indigenous minorities by examining how they are schooled or otherwise protected by laws and policies. The CRC states:

a child belonging to such a minority who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language (Art. 30).

Article 30 should be read alongside other rights mentioned in the CRC, including the principle of non-discrimination, the rights of the child to education, and access to healthcare found in other treaties.

Although most States do not have any specific laws on the rights of ethnic and indigenous children, all recognize the principle of non-discrimination, but not specifically around ethnicity or indigeneity. States which have passed laws include Indonesia and Malaysia. Indonesia's Constitution protects national cultures and gives children the right "to protection from violence or discrimination." Similarly, in Malaysia, the Constitution recognizes that "there shall be no discrimination against citizens on the ground only of religion, race, and descent, place of birth or gender in any law."

The governments of Laos and Vietnam go even further. In a 1992 policy entitled, Resolution of the Party Central Organization Concerning Ethnic Minority Affairs in the New Era, Laos recognizes it is a "multi-ethnic country" so seeks to (i) improve the living conditions of ethnic minorities, (ii) expand the cultural heritage and ethnic identity of each group through formal primary education and a revival of 'ethnic youth schools' in mountainous areas, (iii) research the writing systems of the Hmong and the Khmou, and (iv) to allow study of these systems together with the Lao language and alphabet. Likewise, Vietnam has formally recognized ethnic equality and offers full citizenship to ethnic minority peoples through both the old 1992 Constitution, and the more recent 2013 Constitution. Rights are found in Art. 5 which states that "all ethnicities are equal," allowing every ethnic group to use its own language, and Art. 58 which gives minorities priority in healthcare and education. Further, Vietnam has created ethnic minority boarding schools (like Laos) while offering lower entry requirements and quotas for minority children to enter schools.

This brief overview of the rights of children from ethnic minorities and indigenous groups shows that while their rights have been recognised to a certain extent, in reality, much discrimination still exists. This is found in the fact that ethnic and indigenous children get less education, face greater health risks, and are more likely to be stateless. Clearly, these children are not getting full access to their rights. The next section turns to the problem of juvenile justice and children in detention.

10.5 Juvenile Justice

States face many challenges when dealing with children who are in conflict with the law. According to Art. 40 of the CRC, children in the justice system should have their rights protected in line with the CRC General Principles, by promoting certain practices to ensure children's rights while in the justice system. These are:

- Diversion: keeping children out of the juvenile justice system and avoiding juvenile detention should be a priority
- Restorative justice: making the objective of justice the restoration of peace and human rights to the victim, perpetrator, and community
- Community-based rehabilitation: reintegrating the child back into the family and community to avoid further conflicts with the law

Other relevant international standards include the UN Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines'), the UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') and the UN Rules for the Protection of Juveniles Deprived of their Liberty. Though juvenile justice is a relatively small concern in absolute numbers, broader implications about the safety and security of children in the community make it a significant one. Though in some cases children should face justice, they are too often incarcerated for minor offences or otherwise institutionalised, often leading them to commit more crimes. According to the General Principles on the development of the child, the justice system should be concerned about the impact of punishment has on a child's development. The next section will provide an overview of the topic by examining the laws and court processes governing juvenile justice, before looking at the detention of children.

10.5.1 Laws of Juvenile Justice

Juvenile justice systems in Southeast Asia are still undergoing development. Countries such as Singapore and Malaysia have had juvenile justice systems for decades. The systems in Myanmar, Vietnam, and Cambodia are either very recent, or still under development. The system itself consists of the laws recognizing crimes and punishments for minors, the police and courts which apprehend juveniles and put them on trial, and the detention centres which incarcerate them. Across Southeast Asia, the number of juvenile offenders is relatively small. Reports estimate that around 70,000 children are charged with a crime a year leading to about 20,000 incarcerations. As a comparison, USA (which has about half the population of Southeast Asia) detains 5 times as many juveniles. Not only do juveniles in Southeast Asia commit less crimes, the crimes tend to be minor such as such as robbery and vagrancy.



Concept

Child in Conflict With the Law

The term ‘in conflict with the law’ tends to be used rather than ‘breaking the law’ or ‘committing a crime’ because often children do not deliberately attempt to break the law. They may be compelled to steal food because they are hungry. They may be homeless so they are considered a vagrant. They may not have enough understanding of the law to know that what they did was a crime. In these cases it is not only the child’s fault that the law has been broken, as the State has some responsibility because they are not providing food, housing, or education to the children to prevent them from breaking the law.

A central element of juvenile justice laws concerns the age of criminal responsibility, that is, the age at which a person can face criminal punishment. Though CRC General Comment 10 considers above twelve children may be responsible, though international standards tend to use fourteen as the minimum standard. In many Southeast Asian countries the age lower than this. In Brunei DS, Singapore, and Myanmar, the age is seven; eight in Indonesia, and ten in Malaysia and Thailand. In Vietnam, a twelve year old can face administrative punishment but will not be considered a criminal until fourteen. It must be noted that although the age of criminal responsibility is set at seven in Brunei, no one below twelve has ever actually faced criminal charges. In all States there is flexibility in applying criminal law, with police in most cases not treating young children as criminals even if they are above the minimum age.

Table 10-4: Laws on Juvenile Justice*

	Juvenile justice laws	Age of criminal responsibility	Number of children in detention	Most common juvenile offence
Brunei DS	Children and Young Persons Act, Chapter 29	7	1	Theft
Cambodia		14	342	Unknown
Indonesia		12	5,549	Theft
Laos PDR		15	Unknown	Theft
Malaysia	Child Act 6111	10	7,043	Property Crimes
Myanmar	State Law and Order Restoration Council Law No. 9/93	7	960	Theft
Philippines		15	484 in jail 1,484 in community programs 583 in special institutions	Theft
Singapore		7	322 in juvenile homes	Unknown

Thailand	Act of Juvenile and Family Court Procedure B.E. 2553 (2010)	10	7,024	Drug-related crimes
Timor Leste		16	10	Theft
Vietnam		14	1,073	Theft

*Data extracted from Raoul Wallenburg's report on the *Current Status of Juvenile Justice in ASEAN* (see Further Reading for more details)

The age range and criteria for criminal responsibility varies throughout Southeast Asia. Those countries that set the age of responsibility under fifteen must first consider the child to have “sufficient maturity of understanding to judge ... the nature and consequences of his conduct on that occasion” before prosecution. Other States like Vietnam have gone even further by claiming administrative responsibility (where the child can be put into a home) before criminal responsibility. Age should be considered as it is argued that a ten year old would have a different understanding of the consequences of a crime than a seventeen year old. Regardless, many countries in Southeast Asia have 10-14 year olds in detention.

10.5.2 Juvenile Courts and Detention Centres

Children in conflict with the law enter a process of justice which starts with the arrest, interrogation, and court appearance of the child, followed by the sanction if found guilty. A number of problems can occur during the process. Firstly, many children are arrested for relatively minor crimes throughout the region. As Table 10.4 shows, the most common crime is theft, which many have argued, is a survival crime – in that, a child who is poor and hungry must steal in order to eat. The same can be said for other survival crimes such as vagrancy where homeless children are arrested for living on the streets. Following arrest, children may be vulnerable to violence and mistreatment while in police detention, sometimes by the police themselves, particularly those suspected of being gang members or repeat offenders. There are situations where authority figures such as teachers and police administer corporal punishment to children. Child Protection Units, or police specially trained to deal with children, are unfortunately not used much in Southeast Asia. While some States such as the Philippines have introduced protection units, the levels of protection offered in other States are basic or almost non-existent. For example, Myanmar has only 2-3 specialist officers in the main cities, while Malaysia has none at all.

A feature of a juvenile justice system is the juvenile court. Ideally, juvenile courts should be separate from the adult system with residing judges ideally expected to have experience in dealing with minors during both trial and sentencing. In most countries, these courts are closed to the public and juvenile records are often sealed once the child reaches adulthood. But this is not the case in all Southeast Asian countries. Cambodia has no separate court system for children (though children are tried under a different law to adults), and less developed countries may simply not have invested in the necessary resources to establish separate court systems and specially trained judges and lawyers. Other problems may include:

- *Access to legal aid:* ensuring children will be adequately defended by competent lawyers
- *The separation of children and adults during the process:* ensuring children are not incarcerated with adults who may threaten them

- *Avoiding the use of corporal punishment on children:* Malaysia and Singapore permit the use of caning as a punishment for children
- *Adequate training for legal professionals:* ensuring those working with children receive training in areas like counselling and child psychology
- *Disallowing the death penalty or life imprisonment:* no State in Southeast Asia permits children to face the death penalty

Once arrested, charged and convicted, the final concern of the juvenile system will be the sanction the child faces. International best practice recommends diversion as the most suitable response. Diverting a child from detention will not only ensure compliance with the child's rights but also ensures their safety with the aim of reintegrating them into society and reducing their recidivism (or the child committing another crime). Examples of diversion practices include releasing children to the supervision of their family, releasing them on parole, or the use of alternative sanctions like community service or counselling. It should be noted that diversion is not only used in sentencing, but can be used throughout the whole justice process. Diversion can occur at the time of arrest, so police avoid arresting the child. Court appearances can be diverted from, so a child can face a panel which finds justice without the need to sentence the child.

Some States prefer to avoid jailing children on the basis of cost and also because it achieves better results. In Thailand, the most common sentence given is probation which is used in over half of all juvenile court cases. However, diversion from detention still remains an underused option. Instead, the use of training or residential centres, similar to boarding schools, is common in many countries despite being the equivalent of jail. It is argued that the objective of punishment should be the rehabilitation and reintegration of the child offender into society. Such aims are challenging as they will necessarily involve child welfare organizations, counselling and education facilities, and the willing involvement of the child itself.

As yet, no State in Southeast Asia has managed to develop a functioning juvenile justice system based on CRC principles, although developments have been made. The best interests of the child are often not the priority, with contrary views—such as punishment as a deterrent—taking precedence. Further, for whatever reason, a government may simply be unwilling to develop a separate justice system for children. As a result, the principles of diversion and restorative justice are adhered to unevenly throughout the region so while significant developments have occurred in recent decades, there is still much work to be done.

10.6 Children and Labour

Child labour can be seen as a violation which must be stopped, or a useful, educational and productive activity for older children. The difference depends on the age of the child, the type of labour, and the effect the labour has on other parts of the child's life. Child labour can be due to the level of development in a child's community, as children of poorer families will labour more than the children of rich parents. It can also be where they live as in urban centres children may help with housework, keep their rooms clean, or do chores around the home while rural children may have to feed animals or do agricultural work. Culture plays a role, too as labour can be defined by the gender of the child, which girls having to do housework, or boys helping with agricultural labour.

A duty of States is to protect children from unacceptable working conditions. Article 32 of the CRC defines this as being “free from economic and social exploitation.” As such, States should prevent children from performing any work that is bad for their health, development, and education. A child who cannot go to school because they work all day in a factory is being exploited. Not only must they miss school, their work may be unsafe, preventing them from growing and developing as other children. A child who goes unpaid or who is forced to work is exploited. It is these conditions that need to be eliminated.

These goals can be achieved by introducing a minimum age of employment, regulating work conditions, and banning certain types of labour to name but a few options. It should be noted though that not all child labour is bad – many teenagers like working part time to earn extra money for a new phone or go to the movies, and experience work which may help them to learn and develop new skills. The next section will examine definitions of child labour in international and national laws, then detail how child workers are protected by regulations on minimum wage and work conditions. Finally, some cases of child labour in the region will be outlined.

10.6.1 International Law on the Protection of Working Children

Most international laws on minimum wage and working conditions were introduced by the International Labour Organization (ILO). From 1919, the earliest ILO conventions included sections on child labour as can be seen in ILO Conventions 5 (1919), 7 (1920), and 10 (1921) on minimum working ages in industry, seafaring, and agriculture respectively. Each convention gives 14 as the minimum age. There were about twelve conventions on minimum wage which were replaced by the *Convention Concerning Minimum Age for Admission to Employment, or Convention 138* (1973), which is one of the eight core conventions of the ILO (as discussed in Chapter Seven). In Southeast Asia all but two States have ratified it, although mostly it took around twenty-five years before agreeing to it.

Table 10-5: Ratification of Main ILO Conventions by Southeast Asian States

	Convention 138 (minimum age): date of ratification	Minimum age stated by Govt.	Convention 182 (worst forms of child labour): date of ratification
Brunei DS	17 Jun 2011	16	09 Jun 2008
Cambodia	23 Aug 1999	14	14 Mar 2006
Indonesia	07 Jun 1999	15	28 Mar 2000
Laos PDR	13 Jun 2005	14	13 Jun 2005
Malaysia	09 Sep 1997	15	28 Nov 2000
Myanmar	Not Ratified	13/15*	18 Dec 2013
Philippines	04 Jun 1998	15	28 Nov 2000
Singapore	07 Nov 2005	15	14 Jun 2001
Thailand	11 May 2004	15	16 Feb 2001
Timor Leste	Not Ratified	15	16 Jun 2009
Vietnam	24 Jun 2003	15	19 Dec 2000

*children aged 13-15 cannot work more than 4 hours a day. Children of 13 or 14 years of age can only be employed in certain industries

ILO Convention 138 requires States to progressively increase the minimum age of employment. They must also declare the minimum age upon ratification. The Convention established fifteen as the minimum age, but also allowed for different ages to apply under certain circumstances. For example, the age is raised to eighteen where work is hazardous, and this includes work done in mines or on fishing boats. Developing countries can also reduce the minimum age to fourteen if justifiable, and it may even be set at twelve for 'light work,' or work that does not interfere with education, health, or social development. Examples of light labour may be washing dishes at the family restaurant, domestic work, or feeding animals on a farm.

Table 10-6: ILO Minimum Age

	Convention 138 (minimum age): date of ratification	Minimum age stated by Govt.
Light work	13-15	12-14
Basic minimum wage	15	14
Hazardous work	18	18

The 1999 Worst Forms of Child Labour Convention (No 182) is another of the eight Core Conventions. It is ratified by all Southeast Asian countries, and its purpose is to keep children out of the worst forms of child labour. The convention lists the labour, which includes slavery, trafficking, debt bondage, commercial sex work, and criminal activities, while also permitting States to define their own worst forms of labour. ILO Recommendation 190 on The Worst Forms of Child Labour (1999), which is not legally binding like a convention, assists States to understand their duties and obligations, and gives details on some worst forms. It says that work can be considered the worst forms if it is:

- Work in dangerous places, such as underground or at a height;
- Work with dangerous machinery;
- Work in an unhealthy environment; and
- Work for long hours or during the night.

The recommendation also asked States to give special attention to work done by girls, particularly hidden work situations, such as domestic work.

According to the international standards outlined above, child labour is prohibited when done by children under a certain age (which, although varying between countries, should generally not be lower than fourteen), and if the work is deemed dangerous (categorized as the worst forms of labour). This labour is considered damaging because children may miss out on education, be physically and psychologically damaged, be injured, all of which may inhibit their overall development because they will also lack the education or social skills of other children. Child labour has long term negative impacts and may be detrimental not only to the child, but also to the society that will miss out on the contribution the child could make to their community. Resources will also have to be spent to rehabilitate that child into society.

10.6.2 Violations of Child Labour Laws in Southeast Asia

The ILO estimates that around 15% of children in Southeast Asia are currently working. Of these, 9% work enough to be classified as child labourers, with a further 4% in hazardous jobs. Some industries in Southeast Asia are known to use more child labour because of the need to keep costs low. Examples of such industries include the

fishing and fish processing industries, and agriculture where children work in palm, rubber, and sugar plantations in Malaysia, Indonesia, Thailand, and the Philippines. Child beggars are also widespread. Begging is considered a form of labour because children are often recruited into the job and only get to keep a small amount of the money they raise from begging. In addition, many young girls work as domestic labourers, while others are recruited by restaurants or other entertainment venues to either service customers or wash. Still others may be involved in scavenging and garbage picking which is not only low-paid but dangerous. The worst forms of child labour often occur as a result of child trafficking and are found in many countries in the region. Though the numbers involved may be small, such exploitation comprises one of the worst forms of child labour.

CASE STUDY

Some of the Worst Form of Child Labour in the Region

Child beggars

Child beggars are found in large urban centres throughout the region. Most child beggars are not allowed to keep the money they raise. Once brought to the site, they are watched over and given tips on how to collect more money which is then returned to their minders. Child beggars are generally brought in from other regions (for example, beggars in Bangkok tend to come from Cambodia or Myanmar, while in Jakarta, they may be transported in from rural Java). In some cases, the child's minder may even be a parent who knows that a young child will collect more money than an adult. Begging can be lucrative. It is estimated that a child begging in a busy city centre could raise about \$US 50 a day, and up to \$US100 on a busy day.

Garbage scavengers

Garbage scavenging still occurs in some Southeast Asian countries. The Philippines, in particular, has a long history of scavenging with the famous 'Smokey Mountain' dump which operated for 40 years until its closure in the 1980s, leading many residents to move to a new dump called Payatas. Thousands of people, many of them children, live and work as scavengers in this dump collecting and selling recyclable material like plastic and glass to earn a few dollars a day. Working in garbage recycling is a health hazard because of fumes, pollution, and infection from contaminated water. Landslides have killed people. The government has responded by banning children under 14 from work, developing the recycling industry, and providing education and housing.

Tea shop workers of Myanmar

As one of Southeast Asia's poorest countries, Myanmar has many child labourers mainly due to the large number of agricultural families sending their children, some aged as young as ten, to work in the city. Many children work in the tea shops for as little as a \$1 a day. This may occur because the children have no school to attend in at their home village, and their families may be too poor to feed them. Some estimates have put the number of child labourers in Myanmar at close to one million.



10.7 Children in Armed Conflict

10.7.1 Protection of Children from Armed Conflict Under International Law

The main laws governing the conduct of armed conduct, including the protection of children in armed conflicts may be found in International Humanitarian Law (IHL). Although limited protection is offered by the Geneva Conventions (1949) and its protocols (1977), they only offer limited protection for children. The CRC and its Optional Protocol have since gone further. The reasons for this are partially historic as the Geneva Conventions predate the CRC by 40 years, and children's rights changed tremendously in that time. The new rules were also designed to change the practice in many countries which recruited soldiers from the age of sixteen.

The four Geneva Conventions (1949) asked for specific protection of children in times of armed conflict, whether the child is classified as a civilian, a victim, or a combatant. As a combatant, Art. 16 of the Third Geneva Convention states that if the child is a prisoner of war, this should be taken into account by the Detaining State to ensure that the child's good physical and mental state. As a non-combatant during the conflict, or even in times of peace, children are entitled to their rights. The Fourth Geneva Convention also required States to protect children from the effects of war by actions such as taking children from conflict areas and transferred to safety where they should receive assistance such as medicine, food or clothing.

Table 10-7: Relevant International Law on Child Soldiers

International Convention	Notes
Four Geneva Conventions (1949) and Additional Protocols – 1977	Specifies 15 as minimum age for a soldier Asks for special protection of children during conflict
CRC: Optional Protocol on the Rights of the Child on the involvement of children in armed conflict (OPAC) – 2002	Specifies 18 as minimum age for a soldier Prohibits recruitment by both State and non-State armed groups
Rome Statute (establishing the ICC) – 2002	Makes conscripting or enlisting of child soldiers (under 18 years) a war crime
ILO Worst Forms of Child Labour Convention 182 – 1999	Makes the forced or compulsory recruitment of child soldiers (under 18 years) a worst form of child labour
The Paris Commitments and Principles (Paris Principles) – 2007	Requires States to protect children (under 18 years) from unlawful recruitment by armed forces or armed groups

States should also protect children who are orphaned or separated from their families because of the conflict, which may entail taking them to a safe neutral country. Further, if a military occupies an area, the Occupying Power must ensure the education of children. The 1977 protocols to the Geneva Convention added provisions such as education and evacuation from conflict areas. Additional Protocol I is the first treaty to limit the use of child soldiers, stating:

Children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into the armed forces.

As can be seen by Table 10.7, one important limitation to the protections was that they were limited to children under the age of fifteen, but this was rectified by the CRC Optional Protocol (see 'Focus On' box below) which set the minimum age to eighteen. The strongest protection offered to children can be found in the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), which was adopted by the UNGA on 25 May 2000, and entered into force on 12 February 2002. OPAC is nicknamed the 'Straight 18' protocol because it requires States to set eighteen as the universal age for recruitment to take part in hostilities.

FOCUS ON

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC)

The main objective of OPAC is to prevent the conscription of children into the military, and to ensure they take no other part in armed conflicts. OPAC is necessary because the existing standards under IHL dating from the 1940s has fifteen as the minimum age for child soldiers. OPAC ensures that IHL complies with current child rights' standards. While OPAC does allow children to volunteer for the military, it also states they should be not allowed to take a "direct part in hostilities." The precise meaning of "direct" is not defined. Some armies may assume that as long as a child is not given a weapon, the law is not broken, while others may consider supplying troops or scouting as taking a direct part. In compliance with OPAC, volunteers under 18 may work as mechanics, cooks, or drivers, but not during conflict situations. OPAC applies to both national armies, and non-State armed groups. All Southeast Asian States but Myanmar have ratified OPAC.

10.7.2 Child Soldiers in Southeast Asia

All states in Southeast Asia have had to change their behaviours to comply with the new rules and regulations on child soldiers. For some States (such as Singapore), the problem concerns conscription and school cadets which could contravene the provision that no one under 18 should join the military. Other countries such as Myanmar and the Philippines have had to deal with the fact that their militaries or armed groups regularly used children as soldiers or porters. While it was estimated that there may have been over 100,000 child soldiers in armed forces in the 1990s, the estimated number now is much smaller, probably nearer 1,000.

Three Southeast Asian countries have a history of using child soldiers: Myanmar, the Philippines, and Cambodia. It was once estimated that Myanmar had up to 100,000 child soldiers serving in both the Tatmadaw (national army), and the many ethnic armed groups. Throughout the 1980s and 1990s many documented cases of children being forcibly recruited into the Tatmadaw became known. In some, children were abducted from the streets and forced to work as porters or labourers for the army, often for years at a time. Myanmar still has active disarmament, demobilization, and reintegration (DDR) programs for its former child soldiers.

Cambodia's problem with child soldiers is more historic. During the Khmer Rouge period (1975-1979), many child-soldiers were recruited, a fact that was noted in 1975



when Phnom Penh was first entered by the young soldiers of the Khmer Rouge. But following its defeat, this number dropped drastically and the end of the conflict, there are assumed to be few, if any, child soldiers in Cambodia. Lastly, in the Philippines, a number of non-state armed groups have admitted to recruiting and training children, including the Moro Islamic Liberation Front (MILF), the communist New People's Army (NPA), and the Abu Sayyaf Group in Sulu and Basilan. Though many different groups were involved, it seems the number of actual cases was small, with less than 200 being found in the past 4 years.

As these cases show, historically, the problem of child soldiers was significant in the region, but much has since been done to reduce or eliminate the problem. Many factors combined to ensure the elimination of child soldiers including changing cultural attitudes to children and stricter enforcement mechanisms. The first, and perhaps most significant, reason concerns the reduction of armed conflict in the region. During the 1960s and 1970s, nearly all Southeast Asian countries were involved in some form of ongoing conflict, resulting in many active armed groups. In recent years, these numbers have dropped drastically. A second reason concerns changing attitudes towards child soldiers. Previously, while not exactly supporting the idea of child soldiers, many armed groups did not make any attempts to stop children who wished to voluntarily join them. However, now that child soldiers is an international crime most armed groups do want to be seen as committing war crimes which are criminalized with the establishment of the International Criminal Court (ICC). While few Southeast Asian countries were actually signatories to the ICC, many armed groups believed such accusations would severely impact their support, especially if they claimed to be fighting for human rights and freedoms.

From 1990, the widespread ratification of the CRC led to changing attitudes towards children's rights. Given the universality of such rights, it became impossible for States to claim child soldiers were an unimportant issue. Concerted advocacy around child soldiers also played a vital role in bringing the problem to light. Efforts to rehabilitate child soldiers into the community named Disarmament, Demobilization, Reintegration (DDR) led to an increased monitoring of armed groups. While it is unlikely the problem of child soldiers will entirely disappear—as some teenagers will always want to join the military while other groups will continue to use children as cooks or entertainers—the problem is now much smaller than it was decades ago when Southeast Asia was seen as one of the worst places for child soldiers.

10.8 Right of Adolescents to Reproductive Health

One of the more challenging issues around child rights concerns children and sex. Though States may have strict laws protecting children from sexual violence, they have found it more difficult to address the issue of teenagers engaging in consensual sex. States can no longer ignore the fact that teenagers engage in sexual activity because the average age of a child's first sexual experience is getting younger in the region. As such, it becomes all the more imperative to educate teens about responsibility and safe sex. Though the data on this is inconclusive, because it is difficult to collect data on such a private issue, it is estimated that across the region about one third of children (more boys than girls) have sex before the age of eighteen. States would much rather pretend this does not exist, and they offer poor information and services for children regarding safe sex. The main laws that address teenage sex concern the age of consent – that is, the age a person can legally consent to having sex. If someone has sex with a person under this age, it is considered statutory rape.

Table 10-8: Age of Consent in Southeast Asia

Age of Consent	Country
12	Philippines (although having sex with a commercial sex worker under 18 is a crime)
14	Timor Leste (an adult having sex with a 14-15 year old is a crime) Myanmar
15	Indonesia Cambodia Laos PDR Thailand (although it is an offence for an adult to have sex with someone below 18)
16	Brunei Malaysia (but only for heterosexual sex) Singapore (but only for heterosexual sex) Vietnam

Increased teenage sexual activity can lead to many problems including the spread of sexually transmitted diseases, non-consensual sex, and poor reproductive health choices. Although the rate of HIV in Southeast Asian teenagers is very low, it is worrying that many sexually active teenagers have no access to contraception and are taking risks. In addition, other treatable sexually transmitted diseases may go untreated because of poor knowledge or embarrassment. As a result of this lack of information, there are concerns about rising levels of teenage sexual abuse, especially relating to the definition of consensual sex: is sex consensual if a girl is facing peer pressure or coercion? Another problem that must be addressed is the discrimination faced by lesbian, gay and transgender children.

States have shown the most concern on the issue of teenage pregnancy which is seen as a problem in some Southeast Asian countries (although compared to South Asia, the numbers are relatively small). Countries with high rates of teenage pregnancies include Thailand, Cambodia, Indonesia and Laos, where about 5% of female teenagers get pregnant. In contrast, Malaysia, Myanmar, and Singapore claim much lower rates. Singapore, in particular, puts their figure at closer to 0.5%. Teenage pregnancies occur for a variety of reasons. Girls may be married off young, as in the case of Indonesia. But lack of information and understanding about reproductive health must also take some of the blame as most Southeast Asian parents tell their children very little about sex and sexuality. As a result, many teenagers will not get access to contraception because it is either too embarrassing to ask for, illegal to buy, or simply unavailable. Other issues may arise from young males pressuring girls to engage in sex at an early age, or from teenage girls dating older males. Some reports have also claimed that the situation has been enhanced by the media because of internet pornography and the increased sexuality of pop culture, although these factors are difficult to prove.

The consequences of pregnancies on teenage mothers can be huge ranging from medical complications which are more likely when the mother is young, to social stigma which can be especially destructive if a girl is forced to leave school, to difficulties in finding employment later on in life. For these reasons, States now wish to reduce their teenage pregnancy rates. Of course, the most effective way to inform children of the risks would be through sex education but laws and policy and reproductive health in the region are either basic or non-existent.

In Indonesia, access to sexual and reproductive health services may only legally be given to married couples. As such, family planning is aimed solely at husbands

and wives (or future husbands and wives). Laos has no specific laws on adolescent reproductive health rights at all, but the National Population and Development Policy does “provide adolescents with reproductive health and sexuality education.” In spite of that, Laos has the highest teen pregnancy rate in the region so it appears this policy has been largely ineffective. Likewise, Malaysia has a National Adolescents Health Policy (2001) which oddly does not even mention the reproductive health of adolescents. In contrast, Thailand’s Public Health Ministry has been more active, believing that Thai citizens of all ages must have good reproductive health throughout their entire lives. Further, it has actually stated that one of its goals should be to address the issue of teen pregnancies. Finally, Vietnam does have reproductive health measures aimed at adolescents through education and counselling.

DISCUSSION AND DEBATE

How much did you learn about reproductive health at school?

Most children receive little information about sex and sexuality in school. Sex education should include sections not only on the biology of sex and how babies are formed, but also information on such topics as consensual sex, sexual health concerns, and non-heterosexual behaviours such as homosexuality. Though, the last three topics are rarely discussed especially as homosexuality may still be illegal in some countries.

Questions

- How much sex education was taught at your school?
- What were you taught about sex?
- At what age do you think children should be taught about sex?
- Where do young people now get information about sex? From friends? Books? The internet? How reliable do you think this information is?

Government policy and laws on child reproductive health often do not tell the whole story. In actual fact, most children in the region only get basic access to such information and few children understand how pregnancy occurs, or how to protect themselves from sexually transmitted diseases. Most information about sexuality tends to be received from friends or the internet, both of which are unreliable sources. As a result, both girls and boys may feel increasing pressure to be sexually active at an earlier age. In addition, boys may pressure girls to have sex, resulting in a disturbing number of rapes committed by children. A UN study (2010-2013) as part of the Partners for Prevention project (see ‘Further Reading’) found a very high prevalence of men admitting to rape, some even committed when they were children. About 10% of the men surveyed admitted to committing rape as a child, and while the reasons for this varied, one common claim was that as men they felt entitled to have sex with women. Consequently, the study recommended changing ideas around masculinity, making families safer, and educating boys earlier on sexual values.



The reality is that many children do have sex at an early age so States should plan accordingly by ensuring they know about safe sex and educating them on the meaning of consensual sex which will hopefully instil both boys and girls with enough confidence to wait until they feel ready before having sex.

10.9 Conclusion

This chapter has detailed the key elements of children's rights, and addressed specific areas such as education, work, armed conflict, and reproductive health. While nearly universal, there are still many areas where the understanding of children's rights, and the protection of children from violence and discrimination, could be improved. Some improvements to better protect children from violence and abuse will be legal. Other improvements like getting children to attend school and not labour are economic. Finally cultural changes forged at community level will allow children to participate more fully in their own futures, in particular, by contributing their own ideas and views.

A. Chapter Summary and Key Points

The Rights of Children

Children are given much more protection now than they have ever had in history. Previously, children were treated like adults but this changed over time. The passing of labour laws and compulsory education in the 1800s, and humanitarian protection in the early 1900s gave extra protection to children. More improvements have been made in the last few decades especially in the fields of education, health, and labour rights. Today, no other set of rights has been as widely accepted as children's rights, but protection gaps still exist.

Convention on the Rights of the Child (CRC)

Some children's rights exist in the UDHR and other declarations before 1990 when the CRC was introduced. The CRC is now the most widely ratified human rights treaty. It has a post-Cold War understanding of rights as indivisible, participatory, and rights-based. The CRC also differs in recognizing three parties: the State, children, and their parents. It is based on four general principles, set out in General Comment No. 12: (1) the survival and development of the child; (2) the best interests of the child (meaning that decisions concerning a child should give the child's interests priority); (3) non-discrimination against specific groups of children like girls or indigenous children; and (4) the child's right to participate.

Protection of Children Against Violence

Every child has a right to protection from abuse, neglect, violence, and exploitation, but violence against children is a hidden global phenomenon with serious impacts. Children experience violence at home (often committed by family members) or at schools or institutions (at the hands of teachers or other authority figures). Violence in schools and educational settings is widespread in the region because no specific prohibitions prevent it, and also parents and teachers often believe it is the most effective way to teach naughty children. Measures to reduce it include: alternative ways to discipline children; educating parents and teachers about its negative effects;

and involving parents and children in decisions about school. A disturbing form of violence against children is sexual abuse. Most incidents involve someone the child knows. Some forms of child sexual abuse like child marriage have escaped legal intervention. In Southeast Asia, the commercial sexual exploitation of children may occur in the form of child prostitution or pornography; the relevant international standard prohibiting this is the Optional Protocol on the Sale of Children.

The Right to Education

Primary education must be free and compulsory; high school education must be available and accessible. The standard used to determine the right to education is known as the 4As: available, accessible, acceptable and adaptable. Availability means ensuring there are enough places at school for all children. Accessibility means children should be able to reach school. Schools can be inaccessible because of cost (some parents cannot afford to send children to school) and discrimination (usually affecting such groups as girls, non-citizens, or children of ethnic minorities). Acceptable refers to the quality of education meaning it should be relevant, up-to-date, and help children develop into productive adults. Adaptable education ensures the inclusion of different groups and subjects in the learning process. Common problems in Southeast Asia involve the language of instruction as many children do not speak their national language at home, and also the education of children with a disability.

Juvenile Justice

The safety and security of children in conflict with the law is a concern. Juvenile justice systems in Southeast Asia are still undergoing development. Juvenile justice consists of: (1) the laws recognizing crimes and punishments for minors; (2) the police and courts which apprehend juveniles and put them on trial; and (3) the detention centres which incarcerate them. The justice system should be concerned about the impact of punishment on a child's development. The age of criminal responsibility in many countries is too low, and too often children are put into juvenile courts and detention centres without alternatives first being sought. Children are often arrested for relatively minor crimes and made vulnerable to violence and mistreatment in detention. Ideally, juvenile courts should be separate from the adult system. The child should also have access to legal aid, be protected against corporal punishment, and have access to counselling. The policy of diversion (to divert children from the justice system) is widely supported and involves alternatives to justice and detention.

Children and Labour

Although in some cases, it is reasonable for older children to work, labour which exploits children or stops them attending school violates their rights. Measures to protect children include: minimum age laws, regulations on work conditions, and laws banning certain types of labour. The first laws protecting children were introduced by the ILO in 1919; more recently, the convention on the Worst Forms of Child Labour has outlawed such situations as slavery, trafficking, and debt bondage. Violations of child labour in the region include hazardous jobs like fishing, begging, and garbage scavenging.

Children in Armed Conflict

The protection of children in armed conflicts can be found in International Humanitarian Law and the Optional Protocol on Children in Armed Conflict which sets the minimum age of a soldier at eighteen. Children should be protected in times of armed conflict, whether the child is a civilian, a victim, or a combatant. Protection can include being removed from conflict areas and providing humanitarian support.

In Southeast Asia, use of children as soldiers or porters in the 1980s and 1990s was once a significant problem with many in armed forces and in non-State armed groups. The number now is much smaller. Factors explaining this reduction include: changing attitudes to children, stricter enforcement mechanisms, and the reduction of armed conflict in the region. Child soldiers require special rehabilitation to integrate them back into the community.

Right of Adolescents to Reproductive Health

One of the more challenging issues around child rights concerns children and consensual sex. Although States may have strict laws protecting children from sexual violence, they have found it more difficult to address the issue of teenagers engaging in consensual sex. Although important, education on responsibility and safe sex tends to be poor. Problems of sexually transmitted diseases, non-consensual sex, and poor reproductive health choices can be especially damaging to young adults. Lack of access to contraception and social pressures (particularly on girls) may lead to teenage pregnancy, an issue which is a concern of many Southeast Asian States.

B. Typical exam or essay questions

- What laws for children has your government introduced on work, education, and violence?
- What is an example where the best interests of the child is in use by the government or an institution? Has it been used in court and government decisions concerning children?
- Does corporal punishment occur in schools? Why does it occur, and what has been done to stop it?
- Why do children drop out of school in your country? How can this be stopped?
- Select an indigenous or minority group of children in your country, and discuss the challenges in educating them.
- Does the juvenile justice system in your country use diversion to keep children from detention?
- What are the features of a good juvenile justice system?
- Are there any cases of child labour in your country? Where do children work, and why are they working?
- Which areas currently still use child soldiers, and why are children fighting in these conflicts?
- What information should children receive about reproductive health?

C. Further Reading

General Information

Websites with extensive information include:

- Child Rights Information Network (CRIN): many useful guides and introductions to child rights
- United Nations International Children’s Emergency Fund (UNICEF): a wide variety of studies on issues such as education, work, and health
- Save the Children International: research on child rights, development, and education
- Child Rights Connect: introductory materials
- Child Rights Coalition Asia (CRC Asia): a regional network of children’s rights and human rights organizations with the objective of mainstreaming children’s rights perspectives and agenda into regional and international advocacy processes

The Convention on the Rights of the Child (CRC)

- Information specific to the CRC can be found on the OHCHR website and the Committee on the Rights of the Child (the treaty body of the CRC). Links to the rapporteurs and studies on child violence, child soldiers, and the sale of children may also be found here
- For more specific information on child rights in ASEAN, the Institute for Human Rights and Peace Studies (Mahidol University) partnered with Save the Children International to produce ‘Regional Synthesis: Child Rights Situation Analysis within the ASEAN Region’ (2016)

Violence Against Children

The websites of the following NGOs have reports and studies on this:

- End Child Prostitution in Asian Tourism (ECPAT): studies of countries throughout Southeast Asia. This NGO also works in the areas of sex trafficking and child prostitution
- Global Initiative to End All Corporal Punishment of Children: database of the status of laws on corporal punishment and its use in many countries
- Global Partnership to End Violence Against Children
- Partners for Prevention: studies of sexual violence in many Asian countries although not specifically about children

Education

- United Nations Development Programme (UNDP): statistics on children in schools can be found in the UNDP’s Human Development Reports
- The World Bank also has extensive data on children in the areas of education and work.
- United Nations Educational, Scientific and Cultural Organization (UNESCO): material on the right to education, including its Education for All Global Monitoring Reports. First Language First is also a study on language and ethnic and indigenous children

- Katarina Tomasevski: searching for work by the first Special Rapporteur on education will uncover much material including a world education report, and various reports on the 4A system

Juvenile Justice

- Raoul Wallenberg Institute (RWI): A Measure of Last Resort: Juvenile Justice in ASEAN Member States reviews all the laws and practices of juvenile justice
- International Juvenile Justice Observatory (IJJO): includes relevant research
- Other bodies working on juvenile justice: the International NGO Council on Violence Against Children, the United Nations Interregional Crime and Justice Research Institute (UNICRI), and the United Nations Office on Drugs and Crime (UNODC)

Child Labour

- International Labour Organization (ILO): databases on child labour laws, and also research on child labour
- US Department of Labor, Bureau of International Labor Affairs: country studies on the worst forms of child labour including many Southeast Asian countries

Reproductive Health

- World Health Organization (WHO): has an adolescent reproductive health program which includes studies on this topic
- United Nations Population Fund (UNFPA): resources on this topic