

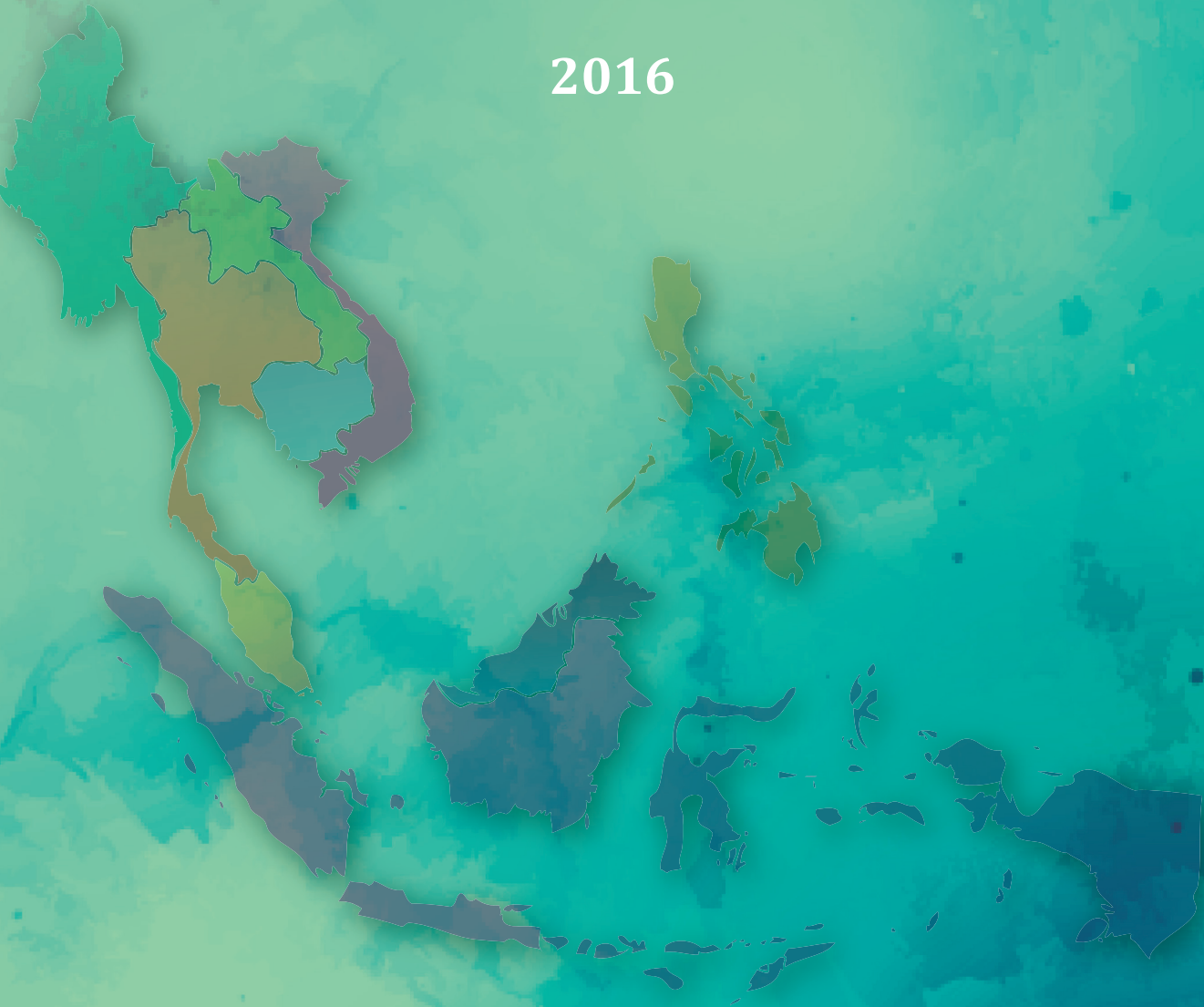


SHAPE
SEA



Human Rights Outlook in Southeast Asia

2016





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

Human Rights Outlook in Southeast Asia: 2016

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Foreword

Despite a global recession, economically, ASEAN/Southeast Asia has progressed well over the last year, making it a source of envy around the world. At the same time, however, the region is also facing a drastic regression of human rights. As such, significant decline in democratic processes has been recorded in a majority of countries around the region, from Cambodia to the Philippines and Thailand where leaders now wield absolute power to curtail human rights especially pertaining to freedom of expression and assembly. Moreover, a number of countries have begun to use criminal charges and special legislation, including security and sedition laws, to restrict and silence academics and activists, as well as political opponents. Indeed, academic freedom has come under attack not only by political leaders but also by university administrations.

In addition, much like other parts of the world, populism has become the norm leaving accountability, transparency, and participation, the basic principles of human rights, hardly able to find a voice in governance. In the meantime, conflicts in the Southern Philippines and Thailand have continued alongside ethno-religious conflicts in Myanmar's Rakhine State, resulting in a massive exodus of Rohingya refugees into neighbouring countries including some in Southeast Asia. As a result, the world has witnessed, and is still witnessing, this human tragedy unfold with no prospective solutions on the horizon. Constricted by ASEAN's working principles, its two human rights commissions—the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)—have also been unable to deal with any human rights issues in the region.

It is in this toxic climate that the *2016 Human Rights Outlook in Southeast Asia*, as the second of its kind, was produced by SHAPE-SEA academics and researchers from within the region to compile country reports from eleven countries, ten of whom are members of ASEAN and Timor-Leste. For the first Outlook, we were able to put together seven country reports. For this second edition, the team led by Azmi Sharom, a law professor at the University of Malaya who serves as editor, was able to compile ten country reports out of eleven, a major achievement. However, for the second consecutive year, Cambodia's report is missing, the country's academics and researchers remaining reluctant to participate. This has also been a major cause for delay in producing the current edition of Outlook.

It is important to note the objective of this series is not to make general judgements on human rights situations but to reflect on the state of human rights by the use of sound methodology and evidence-based research, and to raise awareness that it is also

the collective responsibility of the region's inhabitants to protect and promote human rights; relying on individual states or existing ASEAN human rights regimes is no longer enough. As Chair of SHAPE-SEA, it is my great pleasure to see the organisation continuing to help shape the human rights agenda in ASEAN/Southeast Asia through this series. In particular, the report reminds us that the threats facing us today are not just state authorities and economic powers but an increasingly pervasive moral deficit. If we care little for one another's rights on an individual level, I fear this moral deficit will soon become a moral disaster, a situation that is already apparent amongst the leaders of Southeast Asia.



Sriprapha Petcharamesree, PhD

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February 2018

Introduction

Azmi Sharom*

Anyone who cares about the development of human rights in Southeast Asia will also realise the challenges it presents. So it would appear to be the same when compiling a book on human rights in the region. Human rights academics and activists in Southeast Asia are frightfully busy; understandably so with the constant threats to freedoms assailing this part of the world. Therefore, it can come as no surprise that chasing authors and trying to uphold deadlines is fraught with cajoling and pleading! However, with perseverance, success is possible and it is with great pleasure that I write the introduction to this second volume of the Human Rights Outlook in Southeast Asia series.

Supported by the Swedish International Development Cooperation Agency (SIDA) and the Norwegian Centre for Human Rights (NCHR), and a product of the Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia project (SHAPE-SEA), this series is also a collaboration between two regional networks, the ASEAN Universities Network-Human Rights Education (AUN-HRE) and the Southeast Asian Human Rights Studies Network (SEAHRN).

A key SHAPE-SEA objective is to disseminate human rights knowledge through publications; the Outlook series comprises one such endeavour. In this volume, we cover the years 2015-2016, examining and analysing human rights on a country-by-country basis within this specific time period. As such, we hope the work taken in its entirety will not merely provide a snapshot of human rights, but will also record the evolution, indeed perhaps even the devolution of human rights in Southeast Asia.

Our first volume covered seven countries, namely: Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. In this edition, we are happy to add Brunei, Lao PDR, and Timor-Leste to the list. However, the philosophy remains the same; we aim to provide not just a factual and data heavy report of the human rights situation in these countries, but also the writer's own opinion and analysis. This will not only give the chapters greater flavour and colour but will also provide a more nuanced examination of the issues. To this end, as far as possible, our writers are experts who actually hail from the respective countries or have had significant experience there.

A few factors unite the countries in this study. First, Brunei aside, they all claim to be democracies although some assertions are more credible than others, e.g. Timor-Leste,

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the newest independent nation in Southeast Asia, was declared the most democratic in the region by the 2016 Democracy Index. Its neighbour, Indonesia, too shows key traits of being a vibrant democracy. However, while Malaysia and Singapore appear democratic, in reality, one-sided electoral laws and general suppression of civil liberties make the countries semi-democratic at best. Similarly, nations like Laos may hold elections but as a one-party state, can hardly be labelled a true democracy. Yet, most of these countries cling to the idea that they are indeed democracies. Even Thailand which is currently under military rule, continues to promise a return to a democratic state of being.

Second, all these countries have written constitutions. Further, again with the exception of Brunei, these constitutions even contain provisions appearing to protect human rights (although the actual term may not be used). Along with a universal acceptance of the ASEAN Human Rights Declaration 2012 (see Appendix) and with varying levels of membership to a slew of international human rights treaties (see Table 1 below), at the very least, there appears to be an acknowledgement of the values and aspirations of human rights and democracy.

Table 1: Ratification Status of International Instruments – All Countries¹

Treaty	Ratified By	Ratification or Accession (a) Date
1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Indonesia Lao PDR Philippines Thailand Timor-Leste Vietnam	25 Jun 1999 (a) 22 Feb 1974 (a) 15 Sep 1967 28 Jan 2003 (a) 16 Apr 2003 (a) 9 Jun 1982 (a)
1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)	Indonesia Lao PDR Philippines Thailand Timor-Leste Vietnam	23 Feb 2006 (a) 13 Feb 2007 7 Jun 1974 5 Sep 1999 (a) 16 Apr 2003 (a) 24 Sep 1982 (a)
1966 International Covenant on Civil and Political Rights (ICCPR)	Indonesia Lao PDR Philippines Thailand Timor-Leste Vietnam	23 Feb 2006 (a) 25 Sep 2009 23 Oct 1986 29 Oct 1996 (a) 18 Sep 2003 (a) 24 Sep 1982 (a)

¹ Data retrieved from United Nations Office of the High Commissioner at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 5 February 2018.

Treaty	Ratified By	Ratification or Accession (a) Date
1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Brunei Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Timor-Leste Vietnam	24 May 2006 (a) 13 Sep 1984 14 Aug 1981 5 Jul 1995 (a) 22 Jul 1997 (a) 5 Aug 1981 5 Oct 1995 (a) 9 Aug 1985 (a) 16 Apr 2003 (a) 17 Feb 1982
1984 Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	Indonesia Lao PDR Philippines Thailand Timor-Leste Vietnam	28 Oct 1998 26 Sep 2012 18 Jun 1986 (a) 2 Oct 2007 (a) 16 Apr 2003 (a) 5 Feb 2015
1989 Convention on the Rights of the Child (CRC)	Brunei Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Timor-Leste Vietnam	27 Dec 1995 (a) 5 Sep 1990 8 May 1991 (a) 17 Feb 1995 (a) 15 Jul 1991 (a) 21 Aug 1990 5 Oct 1995 (a) 27 Mar 1992 (a) 16 Apr 2003 (a) 28 Feb 1990
1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	Indonesia Philippines Timor-Leste	31 May 2012 5 Jul 1995 30 Jan 2004 (a)
2006 Convention on the Rights of Persons with Disabilities (CRPD)	Brunei Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	11 Apr 2016 30 Nov 2011 25 Sep 2009 19 Jul 2010 7 Dec 2011 (a) 15 Apr 2008 18 Jul 2013 29 Jul 2008 5 Feb 2015
2010 Convention for the Protection of All Persons from Enforced Disappearance (CED)	N/A	

But as this volume will show, there is a disconnect between the image governments seek to project and the reality on the ground. It is precisely this disconnect which makes the chapters in this edition fascinating as they differ from nation to nation in terms of nature as well as degree. Therefore, although almost every chapter identifies suppression of freedom of expression as a key concern, the manner and degree to which this occurs may differ.

Brunei, Malaysia, and Singapore can thank their former British colonial masters for the existence of sedition laws which make it an offence to raise discontent, be it against royal rulers, the government, or even between different ethnic groups. The vagueness of these laws makes them invaluable to any government keen to suppress freedom of expression. These countries also have strong laws controlling the media; although Singapore has been more innovative in this respect especially regarding the internet. For example, the Broadcasting Act imposes a licence requirement (necessitating payment of a SG\$50,000 bond) on any website with 50,000 unique monthly visitors and which contains on average one Singapore news programme per week. In effect, this ensures even personal blogs are subject to control as long as they are popular and just faintly political.

The government of Laos too is concerned with criticism in cyberspace. As such, its Penal Code covers many types of “cybercrimes,” including those occurring in other countries. For instance, three nationals working in Thailand were sentenced to 12–20 years’ imprisonment upon returning home to renew their passports for Facebook postings critical of the Laotian government whilst abroad.

Similarly, in Myanmar, defamation is a criminal offence under the Telecommunications Act. In 2016, a surge in the use of this law helped to point out the dangers of deeming defamation a criminal rather than a civil offence. Also, it appears the offence is often prosecuted selectively. Further, bail is granted in most cases where ‘ordinary’ people are allegedly defamed, whereas in cases involving powerful personages, bail is frequently denied.

Even Indonesia with its laws guaranteeing press freedom, has not been exempt from threats to freedom of expression. Although what happens there is not necessarily state-driven as the danger can and often does come from powerful private individuals threatening the press, either via lengthy and expensive court proceedings or physical threats to life and limb usually at the hands of hired thugs.

Other issues are unique to certain places for historical reasons. For example, Laos and Vietnam, both former communist nations, are currently experiencing difficulties transitioning from communist economic ideologies to capitalist ones. For example, in accordance with communist thinking, land in Laos has always been the property of

the state. However, with the introduction of a market economy via the New Economic Mechanism and the need for land ownership by industry (as the policy encourages), cases of 'land grabbing' combined with poor compensation and the suppression of protests, are on the rise.

Likewise, expansion of industrial activities in Vietnam has led to a similar suppression of protests and dissent regarding compensation for environmental damage cases. Furthermore, the government seems to find itself in a quandary; how to support industry whilst still maintaining a modicum of respect for a key foundation of communist ideology, the labour movement. In Vietnam, however, this loyalty to past values is now strained with the need to industrialise within the context of a market economy. Thus, laws are no longer favourable to unions and striking legally has become increasingly difficult.

Timor-Leste suffers from analogous issues to its Southeast Asian neighbours with the added problem of not only being the poorest country in the region, but also the newest (its independence was restored as recently as 2002). This effectively means second generation or social rights take precedence over civil and political rights. Thus, it is hardly surprising that, e.g. the relatively poor education system (as reflected in Timor-Leste's low literacy rate of 64%) and the problems of child labour and domestic violence against women, are seen as more pressing concerns than such idealistic notions as press freedom.

It would be trite to say that despite similarities, the status and urgency of human rights in each country differs. Instead, it is submitted that specific concerns are serious enough to demand individual analysis. In the case of Brunei, the introduction of Sharia law (including penalties such as amputation, stoning, and flogging for the offences of theft, adultery, and alcohol consumption) is of particular concern. Moreover, a total lack of constitutional protection and a blanket ban on judicial review means this absolute monarchy is clearly in breach of some fundamental human rights principles, e.g. torture. Although a signatory (but not yet a ratified party) to the Convention Against Torture and Other Cruel Inhuman or Degrading Punishment, nevertheless, these regressive laws look set to stay.

The plight of the Rohingyas in Myanmar was covered in our last volume and here we see the situation has only worsened. Having faced laws removing citizenry rights from this ethnic group, persistent physical attacks on their person and property, and a general demonising of the community, a reaction of some sort was inevitable. And so in late 2016, hundreds of Rohingya men attacked a military post in Rakhine state. Despite being poorly armed and easily subdued, this incident gave the Myanmar government justification to cry international terrorism triggering a reaction so harsh, over 100,000 people were displaced and an unknown number killed. As a result,

the current situation in Myanmar can be described as nothing less than a grave humanitarian crisis.

Since the coup in 2014, Thailand remains under military rule. Governed by the National Council for Peace and Order, this has led to widespread suppression of dissent. Any hope for change was dashed when the process for constitutional amendment was hamstrung by a variety of non-democratic conditions. Thus, laws were passed to forbid critical discussion of the proposed new constitution prior to the referendum seeking to approve it. Hundreds of people were arrested for breaching this law alone. In addition, *lèse-majesté* laws were liberally used to suppress dissent against the military. Further, concern about the law's selective use—it is usually aimed against political activists for seemingly innocuous statements or internet postings as well as their family members—and the use of military courts to try such cases raises doubts as to the accessibility of fair trials in Thailand.

In the Philippines, the people democratically elected populist candidate, Rodrigo Duterte, as president for his hard stance on crime. Predictably, his victory has seen the erosion of human rights especially in the context of the criminal justice system. As such, the government's anti-drug policy as implemented by the National Police is extremely loose, making it easy for suspected drug dealers to be “identified,” “evaluated,” and “monitored.” Moreover, once suspicion is cast, proving oneself innocent is difficult. This being the case, it would be an understatement to say due process in the Philippines is questionable. Coupled with the high number of extra-judicial killings, the Philippines has therefore gone from being one of the few Southeast Asian countries with aspirational human rights ambitions to one which has become an international poster boy for human rights violations.

On the other hand, there have been positive developments in the field of legislation: Malaysia ratified the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Myanmar repealed the State Protection Act and the Emergency Provisions Act (previously used to detain political dissidents) and began introducing laws to protect the individual freedoms of citizens; and Thailand's gender Equality Act now defines “unfair gender discrimination” as discrimination based on a person's sex including their apparent sex which may differ from their gender at birth. In addition, the Singaporean government, although still fundamentally authoritarian in nature, has shown signs of loosening its iron grip by allowing a degree of freedom of expression, e.g. by permitting screening of a documentary detailing a spate of 1987 arrests for supposed Marxist activities which also depicted the perspectives of detainees.

However, it remains to be seen whether these changes may be regarded as meaningful in the long run. In particular, one wonders whether legislative changes will be substantial

or merely cosmetic, whether signs of greater tolerance really do indicate progress, or whether they should be narrowly construed as isolated incidents based on little more than the whims of various governments. Whatever the case, since the last edition of Outlook, clearly the human rights situation in Southeast Asia remains as diverse and in need of urgent attention and activism as ever before.

BRUNEI DARUSSALAM

BRUNEI DARUSSALAM

*Harpreet Kahlon**

Part 1: Overview of Brunei Darussalam

A. Country Background

Brunei Darussalam Facts	
Geographical size	5,765 sq km ¹
Population	423,196 ²
Ethnic breakdown ³	Main ethnic groups: Malay – 66% Chinese – 10.1% Other (includes indigenous groups, e.g. Dusun, Belait, Kedayan, Murut, and Bisaya, and Iban (or Sea Dayak)) – 23.9%
Official language	Malay
Literacy rate (aged 15 and above)	96.4% ⁴
Life expectancy	77.07 ⁵
GDP	US\$11.4 billion (per capita US\$26,938) ⁶
Government	Absolute monarchy with a constitution; unitary and Islamic state
Political and social situation	Governed by the Constitution and Melayu Islam Beraja (MIB) which emphasises the Malay language, Islam, and the monarchy. His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah is head of state, holding full executive powers. Officially adopted Islamic Sharia law in 2014. No elections held since 1962 when a state of emergency was declared.

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¹ 'Country facts' Permanent Mission of Brunei Darussalam to the United Nations, available at <https://www.un.int/brunei/brunei/country-facts>, accessed on 21 July 2017.

² Data from 2016. 'Brunei Darussalam' The World Bank, available at <https://data.worldbank.org/country/brunei-darussalam>, accessed on 21 July 2017.

³ Data from 2016. 'Population' Economic Planning and Development, Prime Minister's Office, available at <http://www.depd.gov.bn/SitePages/Population.aspx>, accessed on 22 July 2017.

⁴ Data from 2015. 'Brunei Darussalam' United Nations Development Program (UNDP), Human Development Reports, available at <http://hdr.undp.org/en/countries/profiles/BRN>, accessed on 22 July 2017.

⁵ Data from 2015. The World Bank (see note 2 above).

⁶ Data from 2016. The World Bank (see note 2 above).

Brunei Darussalam is a small, independent sultanate separated into two parts by Malaysia. The country's official name is Negara Brunei Darussalam which translates as State of Brunei, the Abode of Peace. Sharing a 266km border with Malaysia, Brunei lies on the northwest coast of Borneo island where it faces the South China Sea. With a land area of 5,765km² and a coastline of 161km, it shares a common border with Sarawak, an east Malaysian state which divides the country into two – Temburong district in the east, and Brunei-Muara, Tutong and Belait districts to the west.

Brunei Darussalam has a population of 423,196 people.⁷ Official statistics report 66% of the population to be Malay, 10% to be Chinese, while 24% are designated as 'Other'.⁸ The official language of the country is Malay as laid out in the Melayu Islamic Beraja or Malay Islamic Monarchy (MIB) philosophy. Other languages spoken include English and Chinese.

Brunei is a government-sector driven economy; the petroleum industry currently makes up close to 67% of its gross domestic product, representing close to 90% of the government's revenues and accounting for 96% of its national exports.⁹

Brunei Darussalam ranks 30 on the United Nations Development Programme (UNDP) Human Development Index (HDI). Between 1990 and 2015, its HDI value increased from 0.782 to 0.865, an increase of 10.6%.¹⁰ The country's ranking is based on a strong welfare system which provides free healthcare, subsidised housing, and a minimum of 12 years of compulsory education to its citizens. Public universities in the country are also free and students are paid a monthly allowance throughout the duration of their studies.¹¹ In addition, citizens of Brunei Darussalam do not pay any income tax to the government.

System of governance

Brunei Darussalam is an absolute monarchy albeit with a constitution.¹² Succeeding his father in 1967, His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah is head of state and government, and concurrently, the Prime Minister, Defence Minister,

⁷ 72% of the population resides in Brunei Muara, 11% in Tutong, 15% in Belait, and 2% in Temburong. See, 'Brunei at a glance: Fast facts' in Borneo Bulletin Yearbook 2016, Brunei: Brunei Press Sdn Bhd, 2016, available at <http://2016.borneobulletinyearbook.com.bn/files/assets/basic-html/page-42.html>, accessed on 1 September 2017, at 42.

⁸ Borneo Bulletin (see note 7 above).

⁹ 'Economic diversification' in Borneo Bulletin Yearbook 2016, Brunei: Brunei Press Sdn Bhd, 2016, available at <http://2016.borneobulletinyearbook.com.bn/files/assets/basic-html/page-34.html>, accessed on 1 September 2017, at 34.

¹⁰ 'Briefing note for countries on the 2016 Human Development Report: Brunei Darussalam' UNDP, available at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/es/BRN.pdf, accessed on 1 September 2017.

¹¹ 'Higher education' in Borneo Bulletin Yearbook 2016, Brunei: Brunei Press Sdn Bhd, 2016, available at <http://2016.borneobulletinyearbook.com.bn/files/assets/basic-html/page-163.html>, accessed on 1 September 2017, at 163.

¹² However, Art 4(1) of the Constitution vests executive authority to the Sultan.

Finance Minister, and the Minister of Foreign Affairs and Trade. He also presides over the Council of Ministers. His Majesty is assisted by the Privy Council (whose members he appoints under Art 4(2) of the Constitution), the Council of Succession, the Religious Council, and the Legislative Council.

Political and social situation

Since 1984, Brunei Darussalam has adopted the three pillars of MIB philosophy as its foundation, consisting of: (1) the Malay language, (2) Islam, and (3) loyalty to the institution of absolute monarchy. MIB philosophy, including its culture and customs, Islamic laws and values, and the traditions of monarchy are protected by the Constitution¹³ and must be respected and practiced by all.

In 2014, Brunei became the first East Asian country to officially adopt Islamic Sharia law, introducing punishments such as stoning for adultery, amputation for theft, and flogging for the consumption of alcohol. The first phase of Sharia law was enforced on 1 May 2014 but the second and third phases have yet to be imposed. As a result, international rights groups such as Human Rights Watch and Amnesty International have condemned the move as a step backwards for human rights in the country.

B. International Human Rights Commitments and Obligations

Brunei Darussalam has accepted neither individual complaints mechanisms nor the inquiry procedures related to any of the conventions. It has yet to even ratify the Convention against Torture and Other Cruel Inhuman or Degrading Punishment. For the treaties it has ratified, the country holds reservations to any provisions deemed contrary to the Constitution or to the beliefs and principles of Islam.

¹³ Article 3(1) of the Constitution enshrines Islam as the official religion of the country. Article 4 vests executive authority in the Sultan. Article 82(1) declares Malay to be the official language of Brunei Darussalam.

Table 1: Ratification Status of International Instruments – Brunei¹⁴

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	22 Sep 2015	
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		24 May 2006 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		27 Dec 1995 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		17 May 2016 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		21 Nov 2006 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	18 Dec 2007	11 Apr 2016

¹⁴ 'Ratification status for Brunei Darussalam' United Nations Office of the High Commissioner on Human Rights, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 25 August 2017.

CEDAW: Brunei Darussalam maintains its reservations regarding Art 9(2) on the nationality of children and Art 29(1) on disputes between State Parties.¹⁵ Under the Brunei Nationality Act, only fathers can confer nationality to their children, thus discriminating against the rights of women.

CRC: the government has attached reservations to Art 14 on freedom of thought, conscience, and religion, Art 20(3) on alternative care for children, and Arts 21(b) to 21(e) on inter-country adoption.¹⁶ However, in its national report presented to the Human Rights Council (HRC) for the Universal Periodic Review (UPR) of 2014, the country withdrew its reservations to Arts 20(1) and (2) relating to the protection of children without families, as well as Art 21(a) pertaining to adoption.

CRPD: although no reservations have been attached to specific articles, a blanket reservation covers any provisions contradicting either the Constitution or the Islamic religion.¹⁷

Brunei Darussalam has submitted two national reports to the HRC for its UPR, the first in 2009, and the second in 2014. The country accepted 33 recommendations and submitted responses to 25 others at the 13th Session of the HRC on 19 March 2010. The 2014 National Report notes that human rights achievements in the country have occurred through inter-agency consultative mechanisms in co-operation with non-governmental organisations.¹⁸

Although human rights are not covered by specific legislation, laws have been passed for the protection of the rights of citizens such as the Adoption of Children Act, the Births and Death Registration Act, the Brunei Nationality Act, the Child Care Centre Act, the Children and Young Persons Act, the Compulsory Education Act, the Criminal Procedure Code, the Education Act, the Employment Order, the Geneva and

¹⁵ Article 9(2) of CEDAW states Parties shall grant women equal rights with men as regards the nationality of their children. Article 29(1) maintains any disputes between Parties not settled by negotiation shall, at the request of one of them, be submitted to arbitration or failing that, the International Court of Justice. See, 'Declarations, reservations and objections to CEDAW' UN Women, available at <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>, accessed on 10 October 2017.

¹⁶ Articles 14(2) and 14(3) also urge Parties to respect the rights and duties of parents in this matter but limits the freedom to those prescribed by law and which are necessary to protect public safety, order, health/morals, or the rights of others; Art 20(3) deals with a child's alternative care if its parents/guardians are unable to look after him or her; and Arts 21(b)-(e) ensure that the safeguards/standards of inter-country adoption are equivalent to those existing in national adoptions, that measures will be taken to ensure no one gains financially from the adoption, and that agreements may be made to ensure the adoption is carried out competently.

¹⁷ 'Declarations and reservations: Brunei Darussalam' United Nations Treaty Collection, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&lang=en#EndDec, accessed on 10 October 2017.

¹⁸ 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brunei Darussalam' United Nations General Assembly (UNGA), HRC, 30 January 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/106/65/PDF/G1410665.pdf?OpenElement>, accessed on 10 October 2017.

Red Cross Act, the Geneva Convention Order, the Guardianship of Infants Act, the Immigration Act, Islamic Family Law, the Marriage Act, the Married Women Act, the Mental Health Order, the National Registration Act, the Offenders Act, the Old Age and Disability Pensions Act, the Penal Code, the Pensions Act, the Retirement Age Order, the Unlawful Carnal Knowledge Act, and the Workplace Health and Safety Act. Further, in its second report to the HRC, Brunei Darussalam claimed the enactment of Sharia law was “aimed at providing basic human rights.”¹⁹

Part 2: Outstanding Human Rights Issues

A. National Laws Threatening Human Rights

Sharia law

Brunei Darussalam became the first country in Southeast Asia to adopt Sharia law in 2014 when the Sultan declared, “Theory states that Allah’s law is cruel and unfair but Allah himself has said that his law is indeed fair.”²⁰ As per the announcements, this law will be implemented in three phases through the Sharia Penal Code²¹ with the first phase taking effect on 1 May 2014.²²

Among the punishable sections in the first phase, ss.94(1) and (2) cover Muslim women giving birth out of wedlock, and Muslim women giving birth to a fully-developed child within a period of less than six months from the date of their marriage. In both cases, women would be subject to a fine up to BN\$8000 and imprisonment depending on the offender’s age. Any man impregnating a woman out of wedlock would also be guilty of an offence and both may be fined up to BN\$8000 and a maximum of two years’ imprisonment under s.94(5).

Although the second and third phases have not yet been implemented, punishments for certain offences have already been laid out in the Sharia Penal Code. Thus, penalties for proven offences related to ‘sariqah’ or stealing under s.55, range from amputation of the right hand from the wrist joint for a first offence, amputation of the left foot up to the ankle for a second offence, and imprisonment for a term not exceeding 15 years for a third or subsequent offence. Proven offences under ‘hirabah’ or taking another person’s property by force or threat under s.65 or attempting such an act will be punishable by a maximum of 15 years’ imprisonment and whipping (not to exceed 30 strokes). Similarly,

¹⁹ UNGA HRC (see note 18 above), at 3.

²⁰ ‘Sultan of Brunei unveils strict Sharia penal code’ The Guardian, 30 April 2014, available at <http://www.theguardian.com/world/2014/apr/30/sultan-brunei-sharia-penal-code-flogging-death-stoning>, accessed on 4 September 2017.

²¹ Sharia Penal Code 2013, available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/s069.pdf, accessed on 3 September 2017.

²² Parts I-III, s.94, ss.184-185, ss.189-205, and ss.207-220. Sections 228-253, s.254 (except references to ss.172, 194, and 195 of the Religious Council and the Kadis Courts Act (Ch 77)) were also enforced.

a person guilty of abetting hirabah may be imprisoned for a term not exceeding 30 years and whipping (not to exceed 40 strokes). In addition, under s.68, proven offences of 'zina' (a man and a woman engaging in sexual intercourse out of wedlock) may be punishable by stoning to death as witnessed by a group of Muslims. Underage Muslims guilty of the same offence may be punished by whipping (100 strokes) as witnessed by a group of Muslims and a year in prison. In addition, Muslims guilty of drinking liquor or intoxicating drinks may be punished by whipping (40 strokes for a first offence, 80 strokes for the second, and 80 strokes and imprisonment for a term not to exceed 2 years for a third or subsequent offence) under s.104. Moreover, non-Muslims may also be subject to the same punishments under conditions laid out in the Code.

In an open letter to the Sultan, the International Commission of Jurists (ICJ) stressed that Sharia Penal Code Order 2013 was explicitly incompatible with international human rights law and standards. Viewing its adoption as a regression, it stated that:

*if implemented, the code would lead to serious human rights violations by reintroducing the death penalty and imposing other cruel and inhuman punishments including stoning [...] for conduct that should not even be considered criminal.*²³

Death penalty

Prior to the adoption of the Sharia Penal Code, the Criminal Procedure Code also prescribed the death penalty as punishment for certain crimes such as murder, offences resulting in death, terrorism-related charges, and treason to name but a few. But as noted by the ICJ, the last time Brunei actually implemented it was as far back as 1957.²⁴ With the introduction of the Sharia Penal Code, more offences would be liable to the death penalty including denouncing Islam as a religion and homosexual acts, thus reversing what many considered a de facto abolition of the practice.

Sedition Act

In Brunei Darussalam, the Sedition Act²⁵ applies to all materials with the intent of inciting dissatisfaction towards the monarch, the royal family, religion, the laws of the land, and the administration of justice. All offences under the Act are punishable – the

²³ 'Brunei: New penal code a blueprint for human rights violations' International Commission of Jurists, 27 January 2014, available at <https://www.icj.org/brunei-new-penal-code-a-blueprint-for-human-rights-violations/>, accessed on 3 September 2017.

²⁴ '59th Session of the UN Committee on the Elimination of Discrimination against Women' International Commission of Jurists, 3 October 2014, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BRN/INT_CEDAW_NGO_BRN_18687_E.pdf, accessed on 4 September 2017.

²⁵ Sedition Act (Ch 24 of 1951), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap024.pdf, accessed on 5 September 2017.

first offence with a fine of BN\$5,000 and 2 years' imprisonment, and any subsequent offence by a fine and 3 years' imprisonment. In certain cases, any police officer with the rank of inspector or above can arrest suspects without a warrant. In addition, journalists can face up to 3 years in prison if found guilty of reporting false or fabricated news.

Homosexuality

Under s.82 of the Sharia Penal Code, homosexuality or 'liwat' is illegal and punishable by stoning; however, as of 2016, the provision has not yet been implemented.²⁶ Likewise, cross-dressing is banned in the country under s.198. Prior to 2014, homosexuality was also illegal under secular law (based on British common law) although only punishable by up to 10 years' imprisonment and/or commensurate fines. Considered as contravening public morals and the country's social values, depictions of homosexuality deemed to incite public sympathy towards the practice are banned from broadcast by the media and internet sites under the Broadcasting Act 2000. Further, the Act also cautions against depicting any information or themes about homosexuality, lesbianism, and bisexuality, particularly those glamorising such lifestyles, while any explicit homosexual scenes are prevented from being broadcast at all. Accordingly, concerns for the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) community have been raised in Brunei Darussalam. Among the human rights violations faced by the LGBTQI community are discrimination in amenities and services, both for personal and professional purposes, and intimidation by the police and religious authorities.²⁷

B. Recent Court Cases Relating to Human Rights

Currently, no listed cases specific to human rights have come to trial in Brunei.²⁸ Indeed, as per the United States Department of State Bureau Report (2016), to date, the country has no specific provisions allowing individuals or groups to bring civil suits for human rights violations against the government; nor are there customary practices permitting individuals to present written complaints about rights violations directly to the Sultan for review.²⁹ However, secular law, which is based on English common law, provides for the right to a fair trial and the judiciary has generally enforced this right.

C. Other Human Rights Issues

The Constitution (enshrining MIB philosophy) and other legislation in the country limit political and civil rights as will be examined in the following section.

²⁶ 'Liwat' is a broader term for sodomy and includes sex between a man and a woman.

²⁷ 'Brunei 2016 Human Rights Report' US Department of State: Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/documents/organization/265534.pdf>, accessed on 5 September 2017.

²⁸ 'Judgements' Prime Minister's Office of Brunei Darussalam, Judiciary, available at <http://www.judiciary.gov.bn/Lists/Judgments/AllItems.aspx>, accessed on 10 October 2017.

²⁹ US Department of State (see note 27 above).

Elections and political participation

Brunei's last Legislative Council elections were held as far back as 1962. Even so, the results were annulled and a state of emergency declared when the Brunei People's Party, whose campaign had advocated internal democratic reform and the rejection of a proposal that Brunei join a Malaysian federation as opposed to a Borneo federation, won almost all the seats.³⁰ This led to armed rebellion which was suppressed by the Sultan who then ruled by decree, a state of emergency that exists to this day. Moreover, political parties, including the Brunei National Democratic Party (BNDP) and the Brunei National Solidarity Party (BNSP), which had been legalised by the government in 1985 and 1986, were banned in 1988. The former advocated free elections and an end to emergency rule but was de-registered for failing to conform with the requirements of the law. Although the BNSP was allowed to operate again in 1995, it remained inactive. In fact, the only legal and registered political party at the moment is the National Development Party.³¹ However, all members of the Legislative Council are still appointed by the Sultan.

Lack of judicial review

Article 84C(1) of the Constitution states explicitly that the remedy of judicial review shall not be available in Brunei Darussalam for any suit or action relating to or arising out of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of, or refusal or omission to exercise any power, authority or discretion conferred on His Majesty the Sultan.³²

Right to assemble

Section 141 of the Public Order Act designates an assembly of five or more persons an "unlawful assembly" if the common object of the persons composing that assembly is to use criminal force to overawe any public servant or the government. As such, permits are required for meetings and processions in public spaces, which can be denied if the Minister believes it may jeopardise public safety.³³ It is also unlawful for such assemblies to resist the execution of any law or any legal process. Punishments can include both imprisonment and a fine. In addition, harbouring persons who have participated in an "unlawful assembly" is also punishable by jail time and a fine.

Freedom of the press and media

While the Sedition Act prevents anyone from releasing information opposing the monarchy and the government, other laws set parameters for the press and media.

³⁰ Lea, D, and Milward, C (eds), *A Political Chronology of South-east Asia and Oceania*, London: Europa Publications, 2001, at 19.

³¹ 'Brunei Darussalam: Constitution and politics' The Commonwealth, available at <http://thecommonwealth.org/our-member-countries/brunei-darussalam/constitution-politics>, accessed on 10 October 2017.

³² Constitution of Brunei Darussalam (Rev Ed 2011), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/constitution_i.pdf, accessed on 30 August 2017.

³³ Public Order Act 2013 (Ch 148 of 2013), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap148.pdf, accessed on 3 September 2017.

Launched in 1955, the Borneo Bulletin is published by Brunei Press Sdn Bhd and is the country's leading source of information. It is, however, mostly owned or controlled by the Sultan's family. Likewise, the country's daily Malay newspaper, Media Permata, was launched by Brunei Press Sdn Bhd and Pelita Brunei in 1995 and is printed three times a week by the Prime Minister's Office.³⁴ In 2006, the Brunei Times, which was launched by a businessman with permission from the Sultan, was shut down in November 2016, when (according to the UK's Independent) it published an article on 26 October "reportedly [suggesting] that economic problems in Saudi were the reason for a hike in the price of visas for the Hajj and Umrah to Mecca." Following which, the newspaper abruptly closed down.³⁵ As a result, Brunei ranks 155 out of 180 countries³⁶ in the Reporters Without Borders 2016 World Press Freedom Index.³⁷ In addition, no legislation exists to facilitate the right to access official information in Brunei.

Media is regulated through the Broadcasting Act 2000³⁸ which also covers the internet. Section 3(3)(c) of the former entrusts the Minister of Broadcasting to ensure nothing against public interest or national harmony or which is offensive to good taste or decency shall be included in any broadcast service. As such, subsidiary legislation³⁹ specifying service guidelines, requires programmes take into account issues like national security (s.1), racial and religious harmony (s.2), and public morals and social values (s.6).⁴⁰ Also, depictions of antisocial and improper behaviour (s.7), sex and nudity (ss.9 and 10), gambling (s.12), crime and violence (s.8), the supernatural (s.11), and even hypnotism (s.16) are restricted or prohibited, while factual programmes (i.e. news, current affairs, and documentaries) must present information in an objective, fair, accurate, and balanced manner taking care not to portray "distinguished individuals" in a denigratory way (s.13). In addition, all programmes must be promoted through the values laid out in the MIB concept which can be corrected by the government at any time. Any person broadcasting material contravening the above stipulations will be guilty of an offence and may face imprisonment.

³⁴ Other newspapers, e.g. Malaysia's Borneo Post, Berita Harian, New Straits Times, Sin Chiew Daily, See Hua Daily, United Daily, and Singapore's Straits Times are also available in Brunei with the permission of the Sultan.

³⁵ 'The Brunei Times suddenly closes after criticising Saudi Arabia's Mecca visa price-hike' Independent, 8 November 2016, available at <http://www.independent.co.uk/news/world/asia/brunei-times-newspaper-close-saudi-arabia-mecca-visa-hajj-economy-a7404616.html>, accessed on 5 September 2017.

³⁶ Brunei Darussalam was ranked 121 in the Reporters Without Borders 2015 Report.

³⁷ 'Brunei' Reporters Without Borders, available at <https://rsf.org/en/brunei>, accessed on 3 September 2017.

³⁸ Broadcasting Act (Ch 180 of 2000), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/Chp.180.pdf, accessed on 5 September 2017.

³⁹ Subsidiary Legislation Notification Under Section 9 Broadcasting (Code of Practice) Notification, available at [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/Chp.180\(subN1\).pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/Chp.180(subN1).pdf), accessed on 3 September 2017.

⁴⁰ Other provisions seek to defend the public against such social problems as divorce (s.6(a)), homosexuality, single motherhood (by choice), and multiple or free sexual relations (s.6(b)) including scenes depicting kissing or sexual physical intimacy (s.6(f)). In addition, programmes portraying and/or promoting discrimination against people on a variety of grounds including disability, old age, low income or status, race, nationality, colour, or religion should be avoided unless a documentary, a current affairs programme, or dramatic work done without malice (s.6(e)).

Similarly, under powers conferred by s.9 of the Broadcasting Act, the Internet Code of Practice 2001⁴¹ demands all internet service providers and internet content providers be licensed under the Broadcasting (Class License) Notification 2001 and comply with the Code of Practice to the satisfaction of the Minister. As such, licensees must use their “best efforts” to ensure content will not: incite hatred or contempt of, e.g. the Sultan, the government, or the administration of justice (s.2(a)); incite hatred between the races, denigrate any race or Islam, or preach any religion aside from the Shafeite sect of Islam (s.2(b)); permit broadcast of any material depicting promiscuity, violence, pornographic or any acts of “sexual perversion” including homosexuality and paedophilia (s.2(c)). Thus, the government ran an awareness campaign “aimed at warning citizens about the misuse and social ills associated with social media, including the use of social media to criticise Islam, Sharia, or the monarchy.”⁴²

Freedom of expression

The 2016 Freedom of Thought Report by the International Humanist and Ethical Union (IHEU)⁴³ listed three grave violations of freedom of expression and the advocacy of humanist values in Brunei: (1) expression on democracy, freedom, and human rights is brutally repressed; (2) it is illegal to advocate secularism or church-state separation, or such advocacy is suppressed; and (3) it is illegal or unrecognised to identify as an atheist or non-religious. Thus, under Sharia law, any Muslim declaring him or herself no longer a Muslim (apostasy) may be imprisoned for up to 30 years, whipped, or even executed.⁴⁴ Blasphemy is also a punishable crime in Brunei Darussalam.

Part 3: Conclusion

Brunei Darussalam is a small country, rich in oil resources whose inhabitants enjoy an exceptionally high standard of living. For example, the government invests in welfare services and no income taxes are levied on its people. This has enabled the country to attain high-literacy levels for both men and women, substantially reduce infant mortality, and generally perform extremely well on performance indicators measuring quality of life. However, as reflected in the current political and social situation, a different side to the country also exists. Because MIB is integral to the way of life in Brunei Darussalam, the Constitution enshrines the Malay language, Islam, and the monarchy as three pillars under which the country is governed. Therefore, speaking standard and Bruneian Malay is integral to procuring citizenship and attaining an education. Islam is also a way of life that is propagated from the top down, ensuring

⁴¹ Broadcasting Act – Internet Code of Practice Notification 2001, available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2001/EN/s012.pdf, accessed on 4 September 2017.

⁴² US Department of State (see note 27 above).

⁴³ ‘Brunei Darussalam’ The Freedom of Thought Report, available at <http://freethoughtreport.com/countries/asia-south-eastern-asia/brunei-darussalam/>, accessed on 4 September 2017.

⁴⁴ See, Sharia Penal Code 2013, ss.112(1) and (2).

its influence seeps deep into all spheres of life. Accordingly, any deviation from life as prescribed by the state in terms of prayers, compulsory religious education, or religious wear may result in punishment.

Moreover, following the adoption of Sharia law, Brunei Darussalam has moved a step closer towards aligning religion with not only a way of life but, more disturbingly, a way of justice for both Muslims and non-Muslims alike. As such, crimes which were once punishable by imprisonment and fines under the Criminal Code, are now also punishable by whipping, amputations, and even stoning to death. This implementation of Sharia law has caused Brunei Darussalam to regress in its obligations to international human rights standards. Though criticised internationally, the Sultan, who serves all key executive positions in the country, believes it to be the way forward alongside economic development. Further, the Sultan's exalted position leaves little to no room for the advocacy of political and civil rights, boding ill for human rights in the years to come.

INDONESIA



INDONESIA

Herlambang P Wiratraman

Part 1: Overview of Indonesia

A. Country Background

Indonesia Facts	
Geographical size	1,919,440 sq km
Population	261.12 million ¹
Ethnic breakdown ²	Main ethnic groups: Javanese (40.2%) Sudanese (15.5%) Malay (2.3%) Batak (3.6%) Madurese (3%)
Official language	Indonesian (Bahasa Indonesian)
Literacy rate (aged 15 and above)	95.38% ³
Life expectancy	69.04 ⁴
GDP	US\$932.26 billion (per capita US\$3,570) ⁵
Government	A republic with a unitary system of government led by the President who appoints all members of the cabinet. The People's Consultative Assembly is the highest representative body and comprises the People's Representative Council and the Regional Representative Council.
Political and social situation	By decentralising political authority, Indonesia's post-Suharto regime is more democratic with direct elections choosing the President and Vice-President, as well as local governments. Governmental power is also limited by a newly established Constitutional Court.

¹ Data from 2016. 'Indonesia' The World Bank, available at <https://data.worldbank.org/country/indonesia>, accessed on 20 October 2017.

² Data from 2010. Taken from the 2010 Census, available at http://www.bps.go.id/website/pdf_publicasi/watermark%20_Kewarganegaraan,%20Suku%20Bangsa,%20Agama%20dan%20Bahasa_281211.pdf, accessed on 15 October 2016.

³ Data from 2016. 'Literacy rate, adult total (% of people aged 15 and above)' The World Bank, available from <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=ID>, accessed on 20 October 2017.

⁴ Data from 2015. The World Bank (see note 1 above).

⁵ Data from 2016. The World Bank (see note 1 above).

The Republic of Indonesia is the world's fifteenth largest country in terms of land mass, and the seventh largest in terms of combined sea and land area. Strategically positioned between the Indian and Pacific oceans, it is made up of 18,000 islands of which Sumatra is the largest and Java the most populous.

Indonesian or Bahasa Indonesian is the official language and is a standardised register of Malay, an Austronesian language that has been used as a lingua franca in the Indonesian archipelago for centuries. Most Indonesians also speak one of more than 700 indigenous languages including Javanese and Sudanese, both of which have millions of native speakers.

As the largest economy in Southeast Asia and the world's tenth largest economy in terms of purchasing power, Indonesia's GDP per capita has risen from US\$780 in 2000 to US\$3,570 in 2016, a rise of 457%. However, despite this overall improvement, out of a population of 261 million, some 28 million still live below the national poverty line with approximately 40% of the country hovering marginally above it.⁶ It also only ranks in the medium category (113 out of 188 countries) of the United Nations Development Programme's Human Development Index in 2016.

System of governance

Indonesia is a republic with a unitary system of government led by a president who appoints all members of the cabinet and/or ministers. Following President Suharto's fall in 1998, the executive, judicial, and legislative branches were revamped by four amendments to the 1945 Constitution, expanding it from 37 articles to 73.⁷ As a result, the People's Consultative Assembly (MPR) is now the highest national representative body and comprises two houses: the People's Representative Council (DPR) and the Regional Representative Council (DPD). Moreover, under the third amendment, parliament may even impeach a president through the process stipulated in Art 7A:

*The President and/or the Vice-President may be dismissed from his/her position during his/her term of office by the MPR on the proposal of [the DPR], both if it is proven that he/she has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President.*⁸

⁶ 'The World Bank in Indonesia' The World Bank, available at <http://www.worldbank.org/en/country/indonesia/overview>, accessed on 24 October 2017.

⁷ Harijanti, SD, and Lindsey, T, 'Indonesia: General elections test the amended Constitution and the new Constitutional Court' *International Journal of Constitutional Law*, 2006, Vol 4, No 1, pp 138-150.

⁸ Second amendment of the 1945 Constitution, Art 18B(2).

Further, according to Art 7C of the Constitution, the President may not freeze and/or dissolve the DPR.

The Republic of Indonesia is divided into 34 provinces (provinsi) which in turn are divided into regencies (kabupaten) and municipalities or cities (kota), each of which are governed by separate regional authorities. The state recognises and respects each of these units which are considered special and distinct. However, it must also be noted that the government recognises and respects traditional communities and their customary rights too in so far as they are “still alive” and in accordance with the societal development and principles of the Unitary State of the Republic of Indonesia.

Political and social situation

Aside from President Joko ‘Jokowi’ Widodo changing his Minister Coordinator of Politics, Law and Security and his Chair of Presidential Staff in a cabinet reshuffle (indicating a strategy to consolidate executive power to bring about governmental reform), no significant political changes took place in Indonesia in 2015.

However, the politics of security has been heavily influenced by a number of terrorist attacks in the country⁹ leading the Indonesian Police Special Forces to implement more serious and systematic anti-terrorism policies. While necessary to defend society from terrorist attacks, this use of arbitrary detentions and other unnecessary actions to fight the growing trend is worrying. Accordingly, questions have been raised as regards the Indonesian Police Special Forces’ responsibility to the public in general and terrorism suspects and their families in particular.

One decision to end such impunity was taken by the Aceh House of People’s Representatives (Dewan Perwakilan Rakyat Aceh or DPRA) which appointed commissioners for an Aceh Truth and Reconciliation Commission (TRC) in 2015. As a stepping stone to address impunity for past human rights abuses committed during the Aceh conflict, this move is particularly significant. Thus, on 21 November, Aceh’s provincial parliament announced the appointment of five members of the TRC selection team, most of whom are prominent human rights activists including Ifdhal Kasim, Faisal Hadi, Samsidar, Surayya Kamaruzzaman, and Nurjannah Nitura. Mandated to propose 21 candidates as commissioners to the Aceh parliament within a month, 7 of whom will eventually be selected, the Aceh TRC is expected to operate between 2016 and 2021.

⁹ According to the US Department of State, several terrorist incidences took place in 2015 including Mujahidin Indonesia Timur (MIT) attacks leading to the deaths of three civilians, a member of the Indonesian military, and a member of the Police Mobile Brigade: see, ‘Country reports on terrorism 2015’ US Department of State, available at <https://www.state.gov/j/ct/rls/crt/2015/257515.htm>, accessed on 20 October 2017. In 2016, 5 small scale attacks throughout the country killed at least 5 and injured many, including a series of explosions in Jakarta claimed by so-called Islamic State: see, ‘Country reports on terrorism 2016’ US Department of State, available at <https://www.state.gov/j/ct/rls/crt/2016/272230.htm>, accessed on 20 October 2017.

However, some provisions of the Aceh TRC by-law fall short of international law and the standards set therein and should therefore be strengthened to ensure effective operation. For example, the definition of human rights violations or abuses is currently limited to those guaranteed by Law No 39/1999 on Human Rights – these should be expanded to expressly include violations of human rights as laid out in the Universal Declaration of Human Rights and other treaties Indonesia has ratified. In other words, the definition of “serious human rights abuses” should not be limited to genocide, crimes against humanity, and war crimes but should be widened to embrace other crimes under international law such as torture, extrajudicial executions, and enforced disappearances. In addition, the by-law should also clarify that perpetrators of such crimes cannot, as a result of non-judicial processes (prohibited by international law), claim amnesty before national courts.

The establishment of a truth commission was a key element of the 2005 Helsinki peace agreement which finally ended the 29-year conflict in Aceh. Victims of the conflict and their families had to wait almost two years for the Aceh TRC by-law (Qanun No 17/2013 regarding the Truth and Reconciliation Commission, Aceh¹⁰) to be passed by parliament on 27 December 2013. The authorities must now ensure this opportunity to deliver on truth and reparation is fully met to once again avoid dashing the hopes of victims and their families.

B. International Human Rights Commitments and Obligations

Over the course of more than two decades, Indonesia has ratified the majority of international human rights treaties; the last one it ratified, protecting migrant workers and their families, was signed in 2012 (as seen in Table 1 below). However, it has not accepted any of the individual complaints procedures attached to the conventions. Similarly, most inquiry procedures have also not been accepted with the exception of the convention against torture.

¹⁰ See, Qanun No 17/2013 regarding the Truth and Reconciliation Commission, Aceh, 25 August 2013, available at <https://jdih.acehprov.go.id/qanun-aceh-nomor-17-tahun-2013-tentang-komisi-kebenaran-dan-rekonsiliasi-aceh>, accessed on 20 October 2017.

Table 1: Ratification Status of International Instruments – Indonesia¹¹

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	23 Oct 1985	28 Oct 1998
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		23 Feb 2006 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)	27 Sep 2010	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	29 Jul 1980	13 Sep 1984
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		25 Jun 1999 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		23 Feb 2006 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	22 Sep 2004	31 May 2012
Convention on the Rights of the Child (CRC)	26 Jan 1990	5 Sep 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	24 Sep 2001	24 Sep 2012
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	24 Sep 2001	24 Sep 2012
Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	30 Nov 2011

¹¹ 'Ratification status for Indonesia' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 20 October 2017.

As mentioned in a previous edition of this series, in addition to the international instruments listed above, several national laws were also introduced to either protect human rights or to enforce international obligations in Indonesia, including the Human Rights Act (Law No 39/1999). While this Act was useful in many regards, e.g. it reinforced the creation of the National Commission on Human Rights (Komnas HAM),¹² some consider it lacking in others. In particular, although it contains several provisions on human rights defenders (Chapter VIII, ss.100-103), it fails to adequately protect them. In 2015-2016, this led to activists being persecuted, criminalised, and even assassinated.¹³

However, in the spirit of International Human Rights Day on 10 December 2014, President Widodo granted clemency to Indonesian human rights defender and land rights activist, Eva Bande, who had been sentenced to 4 years' imprisonment for peacefully defending farmers' rights against a national palm oil company in Central Sulawesi. Having been arrested and charged in 2011, her conviction sparked local, regional, and international campaigns calling for her release.

Part 2: Outstanding Human Rights Issues

A. Attacks on Freedom of Expression, Academic Freedom, and Sexual Orientation Rights

Freedom of expression

In Indonesia, the perceived threat from freedom of expression can be seen from the increasing number of violations of this right, not only in conventional or offline mediums, but also online. Under Art 28 of the Indonesian Constitution, freedom of expression is guaranteed, although the formulation of such expression may be limited by law. For example, freedom of expression may be restricted to respect the rights or reputations of others, or to protect national security or public order. However, it is contended any restrictions should refer to international human rights legal instruments such as the International Covenant on Civil and Political Rights, which Indonesia ratified in 2005 (Law No 12/2005).

The Institute for Policy Research and Advocacy (ELSAM) suggests that freedom of expression violations in 2015 were dominated by several topics including the events of

¹² Initially established under Presidential Decree No 50/1999.

¹³ For example, activists, Indra Pelani and Jopi Teguh Lesmana Perangin-angin were both murdered. Other activists were questioned by the police and/or prosecuted under various controversial regulations, e.g. Dodi Sutanto was convicted for criminal defamation under Law No 19/2016 on Information and Electronic Transactions (ITE) after being tagged on an article concerning the arrest of a local businessman by the Corruption Eradication Commission on Facebook. See, 'Indonesia: Human rights defenders remain unprotected' Asian Legal Resource Centre, available at <http://alrc.asia/indonesia-human-rights-defenders-remain-unprotected/>, accessed on 20 October 2017.

1965 (when an estimated 500,000 to one million people were killed after an attempted coup¹⁴), forced dissolution of demonstrations, and LGBT (lesbian, gay, bisexual, transgender) issues.¹⁵

Based on ELSAM's records, in addition to 20 cases relating to the events of 1965 (including 7 where discussions were banned), there were 6 cases of forced dissolution of discussions, 6 of arbitrary arrests, and one each of intimidation, banning, and deportation. The arbitrary arrest occurred in Lamongan, East Java, where a street musician was detained by military personnel from Koramil 0812/19 for wearing a T-shirt emblazoned with a hammer and sickle while walking in a public area.

Regarding the perpetrators of these attacks, the culprits hailed from various groups. Of the 23 cases, 14 involved the police, 3 involved the military, 6 involved organisations, 3 involved academic institutions, 5 involved residents, and 2 involved state agencies.

Moreover, the government has even tried to prevent activities related to the arts. For example, district police prohibited discussion of the song, *Genjer-genjer*, in Banyuwangi. Similarly, as part of the Ubud Writers and Readers Festival (2015), a discussion on the mass killings of 1965 was banned in Bali. Likewise, Joshua Oppenheimer's films on the same issue, *Jagal* (The Act of Killing) and *Senyap* (The Look of Silence), were banned in many places throughout Indonesia despite Komnas HAM hailing the films as invaluable tools for confronting the country's poisonous legacy.

Hard-line groups have targeted screenings of other films too, and repeatedly, the government has allowed the intimidation tactics and attacks to stand. Thus, the premiere of documentary, *Pulau Buru: Tanah Air Beta*, that was scheduled to show at the Goethe Institute, Central Jakarta, was moved to a much smaller venue because police refused to guarantee the security of the event against protesters. In the end, another screening had to be scheduled to cater for the overwhelming numbers. The film itself follows the daughter of an ex-political prisoner of Buru Island going on a pilgrimage to the same place her father had been held captive for years due to his Indonesian Communist Party or PKI connections.

Sexual orientation rights

Regarding LGBT issues, several bans and prohibitions at various places have taken place in 2015-2016. For example, in November 2015, LGBT discussions were banned at the University of Diponegoro in Semarang and the Brawijaya University in Malang. In

¹⁴ The authorities quickly blamed the *coup* on the Indonesian Communist Party or PKI leading to a purge of this group from all areas of life. See section on 'Recent court cases relating to human rights' for further details.

¹⁵ 'Elsam: Kasus 1965 dominasi pelanggaran kebebasan berpendapat' CNN Indonesia, 17 March 2016, available at <https://www.cnnindonesia.com/nasional/20160317113253-20-118002/elsam-kasus-1965-dominasi-pelanggaran-kebebasan-berpendapat/>, accessed on 20 October 2017.

addition, the International Youth Forum (2015) entitled, ‘The rights of minorities in a globalized world’ was also banned. Likewise, in December, the rector of the University of Lampung in Bandar Lampung, Hasriadi Mat Akin, said staff and students involved in LGBT activities would be dismissed. These examples reflect the weak connection between academia and society at large.

A final example reveals that the prejudice against the LGBT community stems from the highest echelons of Indonesian society. As a result of complaints from students after an LGBT support centre distributed pamphlets at the University of Indonesia, the Research, Technology, and Higher Education Minister, Muhammad Nasir, declared that members of the LGBT community should be barred from campus because as guardians of morality, universities should uphold the “noble values” of Indonesia. These reactionary views were echoed by legislator and Prosperous Justice Party (PKS) politician, Nasir Djamil, who stated that the LGBT community was a serious threat to the nation.¹⁶

B. Recent Court Cases Relating to Human Rights

International People’s Tribunal 1965

Because it seemed the courts and judicial processes in Indonesia were unable or unwilling to unravel the human rights abuses of 1965, civil society itself tried to seek justice by establishing a people’s tribunal which addressed past human rights abuses and the issue of impunity. As a result, an international people’s tribunal convened at The Hague from 10-13 November 2015 to gather testimony and other evidence linking the Indonesian government to the anti-communist mass killings in 1965.

Although expunged from Indonesian history for a generation, it is now widely known that the mass killings of 1965 targeted suspected members and sympathisers of the PKI. At least half a million people—some human rights groups claim the number of victims could be more than a million—were killed in a wave of violence that lasted for several months between 1965 and 1966 (although the Suharto regime continued to arrest, harass, and persecute hundreds of thousands of suspected communists into the early 1970s). The public expected President Widodo to heal the wounds of the past, e.g. by apologising to the victims of military abuse. However, much to the disappointment of many, Jokowi backtracked on the commitments he made during his 2014 electoral campaign, ignoring appeals to finally end the half-century of impunity as regards the nation’s fractious history.

The international people’s tribunal (or IPT65) was therefore a political action aimed at making the Indonesian government accountable for the alleged mass crimes. It

¹⁶ ‘LGBT not welcome at university: Minister’ The Jakarta Post, 25 January 2016, available at <http://www.thejakartapost.com/news/2016/01/25/lgbt-not-welcome-university-minister.html>, accessed on 20 October 2017.

also sought to “break down the vicious cycle of denial, distortion, taboo and secrecy” around the killings.¹⁷ Involving more than 20 witnesses, 6 international prosecutors, and 7 judges, the IPT65 sought to: (1) ensure national and international recognition of the genocide; (2) stimulate sustained attention to the genocide and to the continued inaction of the state to bring the perpetrators to justice; (3) contribute to the healing process by creating a political climate that would prevent recurrence of such an event; (4) provide a public record of the atrocities; and (5) affirm the hope that justice was still possible. Although not a criminal court and as such powerless to offer justice and/or compensation to victims, the IPT65 was nonetheless a significant political process designed to uncover the truth about a dark and rarely discussed episode in Indonesia’s modern history.

Having examined all the findings in the field, the IPT65 eventually concluded there was enough “adequate initial evidence” to believe the following crimes against humanity had occurred: killings, exterminations, enslavement, enforced evictions or the banishment of populations, arbitrary deprivation of freedoms, torture, rape, persecution, and enforced disappearances. It further concluded the “widespread and systematic” acts were part of an attack aimed directly at the civilian population “as a consequence of the policy of the authorities in power.” It also called for certain individuals and military officers to be called to account and recommended the Attorney General take over the investigations under Law No 26/2000 on Human Rights Courts, perhaps effecting resolution through non-judicial mechanisms.¹⁸

It is unfortunate, although perhaps unsurprising that in response, Coordinating Political, Legal and Security Affairs Minister, Luhut Pandjaitan, told press that Indonesia was a great nation with its own legal system, that no external party could dictate the way it solved its problems, and that the government would not bow to the IPT65’s recommendations.¹⁹

Having pointed out the IPT65’s importance, it must be noted that prior to 2015, the military’s systematic and massive abuses of 1965 could also have been read in Komnas HAM’s 2012 report.²⁰ Lasting 4 years, the organisation interviewed 349 witnesses and victims of the purge, concluding that the brutal acts were carried out with the

¹⁷ ‘Indonesia’s 1965 massacre: Unveiling the truth, demanding justice’ International People’s Tribunal 1965, 10 April 2015, available at <http://www.tribunal1965.org/en/international-peoples-tribunal-ipt-1965/>, accessed on 20 October 2017.

¹⁸ ‘Final report of the IPT 1965: Findings and documents of the IPT 1965’ International People’s Tribunal 1965, available at <http://www.tribunal1965.org/en/final-report-of-the-ipt-1965/>, accessed on 20 October 2017.

¹⁹ Perry, J, ‘Tribunal finds Indonesia guilty of 1965 genocide; US, UK complicit’ CNN, 22 July 2016, available at <http://edition.cnn.com/2016/07/21/asia/indonesia-genocide-panel/index.html>, accessed on 20 October 2017.

²⁰ ‘Statement by Komnas HAM on the results of its investigations into grave violations of human rights during the events of 1965-1966’ (unofficial translation), 16 August 2012, available at <http://thelookofsilence.com/wp-content/uploads/Komnas-HAM-1965-TAPOL-translation.pdf>, accessed on 20 October 2017.

purpose of destroying the PKI which was hugely popular at the time with a following of around 26 million. Although a government agency, the Commission recommended the prosecution of army officials involved in the killings. More significantly, it too found “adequate initial evidence” that state forces committed various crimes against humanity including exterminations, enslavement, banishment of populations, arbitrary deprivation of freedoms, torture, rape, persecution, and enforced disappearances. Sadly, but again predictably, Komnas HAM’s legal and political recommendations were not acted upon by the government.

C. Other Human Rights Issues

Papua/West Papua

Papua and the violence against its people remains a significant blight on Indonesia’s human rights record. One such incident involved the Widodo administration’s attempt to revive and expand the Merauke Industrial Food and Energy Estate Project (MIFEE), a development that will have disastrous consequences for local Papuans. As such, police and state apparatuses assaulted human rights activists and Papuan students in the Timika area, killing one. Further, the Defence Minister announced plans to resume recruiting paramilitaries in certain areas, including West Papua, where there is a long tradition of the military deploying nationalist thugs to intimidate local populations. At the same time, investigations into the attacks of several Papuans remain unresolved.

As mentioned previously in this series, the International Coalition for Papua (ICP) released an urgent call to action to counteract the violence, reporting that three men had attested to being beaten and burnt with cigarettes while in detention. On 20 May 2015, four political activists from the West Papua National Committee (KNPB), Nopinus Humawak (also known as Narko Murib), Alex Nekenem, Maikel Asso, and Yoram Magai were arrested with around 70 others at a peaceful rally in Manokwari, West Papua province to support pro-independence umbrella group, the United Liberation Movement for West Papua (ULMWP). According to witnesses, dozens of protesters were beaten by police with rifle butts during the rally. While the majority of demonstrators were subsequently released, four men were charged with “incitement” under s.160 of the Criminal Code and could face up to six years’ imprisonment.

On the issue of press freedom, President Widodo has stressed the need for this particular right in West Papua/Papua, reiterating his policy of allowing foreign journalists unfettered access to conduct their journalistic duties.²¹ However, despite the rhetoric, this policy is openly restricted by Indonesia’s military who accompany foreign journalists wherever they go under the orders of Armed Forces Chief, General

²¹ ‘We must have mutual trust as foreign journalists enter Papua, President says’ West Papua Daily, 12 May 2015, available at <http://tabloidjubi.com/eng/we-must-have-mutual-trust-as-foreign-journalists-enter-papua-president-says/>, accessed on 11 November 2017.

Moeldoko, ostensibly to protect them from harm, or as the general put it, “I consider the foreign journalists might need guards.”²² Further, the fact journalists have been denied visas for previously authoring pieces focusing on pro-independence sentiments highlights the disconnect between the President’s words and the reality facing journalists blocked from reporting there.²³ Indeed, Widodo’s statement has been openly contradicted by several of his senior government officials. For example, Minister of Defence, Ryamizard Ryacudu, went so far as to say foreign media access would be conditional on producing “good reports,” and although he left the term undefined, he explicitly equated negative reporting with sedition.²⁴ As a result of the aforementioned factors, the state of human rights in Papua remains unsatisfactory and may be ranked among the worst in Indonesia.²⁵

Freedom of expression

While state apparatus continues to stifle discussion of 1965, in the age of social media, this task has become more difficult. Following the end of Suharto’s authoritarian regime in 1998, books, memoirs, and seminars about 1965 largely escaped censorship. However, 2015 marked the 50th anniversary of the killings, perhaps explaining concerted efforts to censor any further discussions on the topic. Ironically, a rise in censorship occurred under the presidency of Joko Widodo whose election campaign had previously mobilised a large number of civil society activists and volunteers. Although the country has yet to hear the President express his views on the bans, significantly, he has taken no real action to prevent them.

A case in point concerns the banning of the Ubud Writers and Readers Festival which had planned to discuss the 1965 atrocities at some events. The banning occurred during a troubling fortnight when, *Lentera*, an Indonesian language magazine published at the Christian University in Central Java, was banned for discussing 1965. Likewise, a Swedish citizen of Indonesian background, 77 year old, Tom Iljas, was deported on 16 October for visiting his father’s grave in West Sumatra. He was accused of trying to make a film about the massacre. Similarly, three students from *Lentera* were interrogated on 16 October and copies of the magazine were destroyed after they published an edition entitled, ‘Salatiga Red City,’ discussing the anti-communist pogroms in the area which included locations of the killings and their impact on the university.

²² See, Manan, A, *Under the Crisis Shadows: AJI Annual Report 2015* (Di Bawah Bayang-Bayang Krisis), Jakarta: Independent Journalist Alliance, 2015, at 9.

²³ For example, France 24 TV journalist, Cyril Payen, was denied a visa in January 2016 for previous “biased and unbalanced” reporting; the government even threatened to extend the ban to the entire channel. See, Kine, P, ‘Indonesia’s Papua reporting paranoia’ Human Rights Watch, 22 January 2016, available at <https://www.hrw.org/news/2016/01/22/indonesias-papua-reporting-paranoia>, accessed on 20 October 2017.

²⁴ Kine (see note 23 above).

²⁵ Wiratraman, HP, *Press Freedom, Law and Politics: A Socio-Legal Study*, Leiden: Meijer Institute, 2014.

Events like those scheduled at the Ubud Writers and Readers Festival (including ‘Prison Songs’ in which songs written and sung in Denpasar’s Pekambangan prison—where 400 people accused of trying to overthrow the government were imprisoned—were recovered and eventually recorded by professional musicians) sought to open dialogue about the previously taboo subject.²⁶ It is contended the organisers of the festival should have defended their freedom of programming and, thus, the democratic space that had opened up since the fall of the Suharto regime because it is through events like these that Indonesians must speak out against the violence and intimidatory tactics used to suppress freedom of expression in the country. Fortunately, new technology, the rise of social media, and growing transnational activism will mean Widodo’s administration will no longer be able to bury debate around 1965 as Suharto’s regime once did so effectively.

Police accountability

As reported by Komnas HAM, in Indonesia, human rights violations are often perpetrated by those from the highest sectors of society including the police. For example, in December 2015, special forces unit, Densus 88, was castigated for several wrongful arrests and the use of torture. In a counterterrorism operation, agents searched for evidence after raiding a house allegedly used as a hideout by suspected militants in Mojokerto, East Java and arrested 7 men suspected of planning Christmas or New Year attacks. These, as it turned out, wrongful arrests concerned not only Muslim organisations, but also a member of the House of Representatives²⁷ when it was discovered the detainees had been physically and psychologically tortured before release.

Significantly, despite having made similar mistakes on numerous occasions, Densus 88 has never issued a single public apology. As such, the lawmaker demanded the National Police publicly apologise to the families of those wrongfully arrested, stressing that accusations of terrorism, especially public accusations, were a serious matter.²⁸ However, many contend this is not enough, advocating instead for a complete review of police accountability and an overhaul of the procedures governing the arrest of suspected terrorists in order to avoid repetition of past mistakes.

²⁶ Hearman, V, ‘Indonesians should be able to talk about 1965 massacres without fear of censorship’ *The Conversation*, 26 October 2015, available at <https://theconversation.com/indonesians-should-be-able-to-talk-about-1965-massacres-without-fear-of-censorship-49729>, accessed on 12 November 2015.

²⁷ Saleh Partaonan Daulay, a member of House Commission III and the National Mandate Party (PAN).

²⁸ ‘Densus 88 castigated for wrongful arrests, torture’ *The Jakarta Post*, 2 January 2016, available at <http://www.thejakartapost.com/news/2016/01/02/densus-88-castigated-wrongful-arrests-torture.html>, accessed on 20 October 2017.

Part 3: Conclusion

The issues of human rights in Papua, freedom of expression (especially concerning the 1965 atrocities), and the lack of police accountability, are interrelated and therefore, should be considered together. Such problems are rarely confined to one area – for example, human rights violations occurring in Papua and West Papua should not merely be considered a regional issue because demands for basic human rights as outlined in the Constitution are universal. The fact Papua suffers from ‘separatism’ stigmatisation or has been labelled an ‘anti-unitary state’ should not be used to excuse the human rights violations its people have suffered at the hands of the authorities. Peaceful expression of political aspirations and demanding basic livelihood rights such as freedom of expression—a right security forces have systematically trampled on with impunity—should not put an entire region at a disadvantage; yet, the prospect of justice for Papuans remains a distant dream.

Hence, one cannot examine the human rights situation in Indonesia as a whole without also paying equal regard to Papuan issues such as the sustained attacks on their freedom of expression and the police force’s role in the many miscarriages of justice that occurred in 2015-2016, a role confirmed and condemned by the nation’s very own National Human Rights Commission. As the IPT65 pointed out, “overall implementation of progressive legal and institutional changes [in Indonesia] has been poor” meaning despite President Widodo’s rhetorical support for human rights, there is still much work to be done.

**LAO PEOPLE'S
DEMOCRATIC REPUBLIC**



LAO PEOPLE'S DEMOCRATIC REPUBLIC*

*Anonymous***

Part 1: Overview of Lao PDR

A. Country Background

Lao PDR Facts	
Geographical size	236,800 sq km
Population	6.76 million ¹
Ethnic breakdown ²	Main ethnic groups: Lao (53.2%) Khmou (11%) Hmong (9.2%) Phouthay (3.4%) Tai (3.1%) Makong (2.5%) Katang (2.2%)
Official language	Lao-Tai
Literacy rate (aged 15 and above)	79.9% ³
Life expectancy	66.6 ⁴
GDP	US\$15.90 billion (per capita US\$2,353) ⁵
Government	One party communist republic led by Lao People's Revolutionary Party (LPRP). President is head of state, general secretary of LPRP, and leader of the country. The elected National Assembly generally espouses the will of the party.
Political and social situation	As the main actor in development, the government has a monopoly on political power. Together with the politburo, it defines the country's economic orientation, strategies, and policies, with little input from civil societies. ⁶

* Also known as Lao PDR or Laos.

** Due to security concerns, the author prefers to remain anonymous.

¹ Data from 2016. 'Lao PDR' The World Bank, available at <https://data.worldbank.org/country/lao-pdr>, accessed on 14 October 2017.

² 'Results of population and housing census 2015' Lao Population and Housing Census, available at http://lao.unfpa.org/sites/default/files/pub-pdf/PHC-ENG-FNAL-WEB_0.pdf, accessed on 18 October 2017, at 37.

³ Data from 2016. 'Human development report 2016' United Nations Development Programme (UNDP), available at http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf, accessed on 14 October 2017.

⁴ Data from 2016. UNDP (see note 3 above).

⁵ Data from 2016. The World Bank (see note 1 above).

⁶ 'Joint context analysis: Lao PDR' 9 October 2015, available at <http://www.vliruos.be/media/6407508/laos.pdf>, accessed on 14 October 2017.

A landlocked nation in Southeast Asia, Lao PDR shares its borders with China to the north, Cambodia to the south, Vietnam to the east, Thailand to the west, and Myanmar to the northwest. Of its 236,800 sq km, three-quarters consists of mountains and plateaux. The capital, Vientiane, is located on the Mekong River which runs along the western border and serves as a vital artery of the transportation network.

Although Laos ranks amongst the bottom third of countries (138 out of 188) in the United Nations Development Programme's Human Development Index of 2016, it is also one of the fastest growing economies in the region, having expanded by around 7% in 2015 due mostly to increased growth in the power generation, manufacturing, construction, and agricultural sectors.⁷

System of governance

According to the 2015 Constitution, the National Assembly (NA) is the highest organisation of state power with control over fundamental issues such as law-making; thus, it has the ability to amend the Constitution itself and supervise and oversee the activities of administrative and judicial bodies. Elected by Lao citizens, NA members, in turn, elect the President to five-year terms. The NA also has the procedural duty of appointing and dismissing the posts of Vice President, Prime Minister, Deputy Prime Minister, President of the People's Supreme Court (the highest court in the land), and President of the Office of the Public Prosecutor (OPP). The OPP exercises the right of public prosecution and ensures laws and regulations are implemented correctly and uniformly by all including ministries, government and social organisations, civil servants, and citizens.⁸ Political power is controlled by the Central Committee (an eleven-member politburo directing the country's affairs) while the government implements the directives of the party including its economic policies. As head of state, the President is commander-in-chief of the Lao People's Army and is also responsible for the stability of the national governmental system and the country's independent and territorial integrity. Local administration is divided into three levels: provinces, districts, and villages.

Political and social situation

Lao PDR is a one-party state with the LPRP as the only legal political party. Coming to power in 1975 as a Marxist-Leninist regime, it has maintained its hold on power ever since. Indeed, the 2015 Constitution defines the party as the "nucleus" of the political system.⁹ Although the Constitution outlines a formal separation of powers between the

⁷ 'The World Bank in Lao PDR: Overview' The World Bank, September 2017, available at <http://www.worldbank.org/en/country/laos/overview>, accessed on 10 November 2017.

⁸ Constitution of Lao PDR (No 63/NA), 8 December 2015, available at http://www.na.gov.la/index.php?option=com_content&view=category&id=35%3Aconstitution-of-lao-pdr&Itemid=186&layout=default&lang=en, accessed on 14 October 2017, at Art 86.

⁹ Constitution of Lao PDR 2015, Art 3.

NA, administrative, and judicial bodies, in practice, such regulations are not enforced and all remain subject to the ruling LPRP and its leader who can and does override constitutional provisions at will. For example, the State Inspection Organisation (SIO) is supposed to act independently and play the role of government auditor by monitoring state budgets – in practice, again this organisation is under the LPRP’s control. Consequently, no body checks or acts as a counterpoint to the party; neither is there a constitutional court to judge the validity of NA pronouncements.¹⁰

B. International Human Rights Commitments and Obligations

Lao PDR has been a member of the UN since 14 December 1955 and has ratified many of the core human rights instruments. It is now in the process of translating international human rights law into national laws, policies, and programmes.

Table 1: Ratification Status of International Instruments – Lao PDR¹¹

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	21 Sep 2010	26 Sep 2012
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)	7 Dec 2000	25 Sep 2009
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)	29 Sep 2008	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	17 Jul 1980	14 Aug 1981
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		22 Feb 1974 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	7 Dec 2000	13 Feb 2007

¹⁰ Bertelsmann Stiftung, *BTI 2016: Laos Country Report*, Gütersloh: Bertelsmann Stiftung, 2016, available at https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Laos.pdf, accessed on 17 October 2017.

¹¹ ‘Ratification status for Lao PDR’ United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 7 October 2017.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		8 May 1991 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		20 Sep 2006 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		20 Sep 2006 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	15 Jan 2008	25 Sep 2009

However, although the country has participated in the first two rounds of the Universal Periodic Review (UPR), “its compliance and engagement with other UN human rights mechanisms has been very limited.” As a report by Civil Rights Defenders puts it, “This low level of cooperation is particularly worrying given the lack of meaningful access to domestic remedies for human rights violations, which continue to take place with impunity.”¹² In addition, the country has only been reviewed by three treaty bodies (CEDAW, ICERD, and CRC) and all expressed concern that its national laws were not fully in line with treaty provisions.¹³

The UPR of 2015 made 196 recommendations to Lao PDR of which it accepted 116, e.g. to promote inclusive growth, review existing land concessions, cancelling or sanctioning those violating the law, revise the Penal Code to comply with international standards, and investigate the disappearance of Sombath Somphone (a community development worker who was abducted in 2012). Further, most of the country’s reports to treaty bodies are long overdue.¹⁴ In general, UPR recommendations deemed unacceptable relate to freedom of expression, association, and peaceful assembly.¹⁵

¹² ‘Laos’ international human rights obligations and commitments’ Civil Rights Defenders, 31 August 2016, available at https://www.civilrightsdefenders.org/files/Laos-international-human-rights-obligations-and-commitments_CRD_final.pdf, accessed on 17 October 2017, at 1.

¹³ Civil Rights Defenders (see note 12 above), at 2.

¹⁴ ‘Country analysis report: Lao PDR’ United Nations, 11 November 2015, available at http://www.la.one.un.org/images/Country_Analysis_Report_Lao_PDR.pdf, accessed on 17 October 2017.

¹⁵ Civil Rights Defenders (see note 12 above).

C. National Laws Protecting Human Rights

Although Lao PDR has no specific human rights legislation, several national laws were introduced to ensure compliance with international obligations to represent and protect human rights, including: Chapter 4 of the 2015 Constitution on the fundamental rights and obligations of citizens; the Law on Anti-Trafficking in Persons (2015); the Law Protecting the Rights of Children (2006); the Law on the Development and Protection of Women (2004); the Penal Law (2005); and the Law on Gender Based Violence (2015). As the Constitution is the highest law in the land, the more contentious rights will be explained based on its provisions:

- **Article 34 (new):** “The state acknowledges, respects, protects, and secures the human rights and basic rights of citizens according to the laws.”
 - In practice, this provision is rarely enforced leading to countless human rights violations.
- **Article 35:** “Lao citizens are all equal before the law irrespective of their gender, social status, education, beliefs, and ethnic groups.”
- **Article 37:** “Citizens of both genders enjoy equal rights in the political, economic, cultural, and social fields, and in family affairs.”
- **Article 41 (new):** Lao citizens have the right to lodge complaints and petitions and to propose ideas to relevant state organisations regarding issues pertaining to the public interest or to their own rights and interests.
 - However, implementation of this law is very slow-moving despite the fact human rights abuses generally happen to the vulnerable, most of whom have limited access to the justice system and lawyers.
- **Article 42 (new):** The rights of Lao citizens as relating to their bodies, honour, and houses, are inviolable. Further, Lao citizens cannot be arrested or searched without an order of the Public Prosecutor or the people’s courts, except otherwise provided by law.
- **Article 43:** Lao citizens have the right and freedom to believe or not to believe in religions.
- **Article 44:** Lao citizens have the rights to freedom of speech, press, and assembly; and the right to set up associations, and to stage demonstrations not contrary to law.

Based on the above articles, it appears most human rights are protected by the Constitution and national laws. However, as will be seen in the following section, other legislation may contradict these provisions.

D. National Laws Threatening Human Rights

Article 17 (new) of the 2015 Constitution and land rights

Under the previous Constitution (2003), Art 17 stated that:

The State protects the property rights (such as the rights of possession, use, usufruct, and disposition) and the inheritance rights of organisations and individuals. Land is a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws.

Article 17 of the 2015 Constitution, however, adds a further paragraph, that “land, mineral, water, non-timber forest products and so on is national heritage ...” The term, “national heritage” is controversial as it limits public access to land and natural resources, even when such resources comprise a community’s livelihood. In practice, it also means that all land and natural resources belong to the government leaving citizens little redress when the state needs said lands for lucrative project developments.

Civil rights abuse of this kind disproportionately affects vulnerable people in rural areas, where foreign companies, particularly those from Vietnam and China, obtain land concessions from either central or provincial authorities for plantation, agriculture, or hydropower projects. Following such acquisitions, affected populations will usually have little choice except to relocate, often with unfair compensation.¹⁶

Death penalty and the right to life (Penal Code, 2005)

Lao PDR is one of the remaining 58 countries in the world that still harbours the death penalty¹⁷ as evidenced by s.32 of the Penal Code (2005) which states that such penalties will be carried out by shooting.¹⁸ It is also mentioned in many other sections including 56, 57, 58, 60, 61, 62, 67, 68, 88, 101, 128(4), 134, and 146. In its defence, the government claims capital punishment is aimed at reducing and preventing crime, not to cause physical suffering or to outrage human dignity.¹⁹

Freedom of expression, assembly, and association

Despite Art 44 of the 2015 Constitution, individuals are unable to criticise the government or engage in political activities. In addition, media organisations are

¹⁶ Bertelsmann Stiftung (see note 10 above).

¹⁷ Smith, O, ‘Mapped: The 58 countries that still have the death penalty’ The Telegraph, 1 September 2016, available at <http://www.telegraph.co.uk/travel/maps-and-graphics/countries-that-still-have-the-death-penalty/>, accessed on 21 August 2017.

¹⁸ Penal Code 2005, s.32.

¹⁹ Penal Code 2005, s.27.

controlled by the LPRP through the Ministry of Information and Culture.²⁰ Section 65 of the Penal Code states:

Any person conducting propaganda activities against and slandering the Lao People's Democratic Republic, or distorting the guidelines of the Party and policies of the government, or circulating false rumours causing disorder by words, in writing, through print, newspapers, motion pictures, videos, photographs, documents or other media which are detrimental to the Lao People's Democratic Republic or are for the purpose of undermining or weakening State authority, shall be punished by one to five years of imprisonment and shall be fined from 500,000 Kip to 10,000,000 Kip.

Thus, it is clear that publicly expressing one's critical views of the government is not acceptable and will fall foul of the law. Additionally, s.72 of the Penal Code states that:

Any person organising or participating in the gathering of groups of persons to conduct protest marches, demonstrations and others with the intention of causing social disorder, shall, where such action causes damage to the society, be punished by one to five years of imprisonment and shall be fined from 200,000 Kip to 50,000,000 Kip.

Similarly, assembly and association are not permitted if such activities aim to protest or demonstrate against the government.

Part 2: Outstanding Human Rights Issues

Because Lao PDR operates as a single-party system and the LPRP's stated purpose is to build a nation-state along communist principles, criticism of political activities and the human rights situation are discouraged. For the purposes of this section, some major issues regarding land concession including land rights, freedom of expression, and human rights abuses (i.e. human trafficking) will be discussed below.

A. Land Rights

Upon gaining independence in 1975, Lao PDR became a communist country, after which it sought to control the economy through centralised planning, nationalised

²⁰ Bertelsmann Stiftung (see note 10 above).

fiscal, industrial, and foreign trade policies, including the introduction of communal collective and agriculture sectors. However, in the period immediately after (1975-1980), the government was unable to achieve economic growth due to economic mismanagement, an unskilled labour force, and limited funds.²¹ As a result, the government introduced the 'New Economic Mechanism' to transition from a centrally planned economy to one governed by the market. It was hoped that promoting the development of private sectors and implementing open door policies would attract foreign direct investment (FDI) and international aid.²²

One particular way the government seeks to attract FDI is by peddling its natural resources. Since opening up its land policy, commercial pressure to allow large-scale investments in agriculture, mineral mining, and hydropower has increased. However, whilst undoubtedly contributing to government revenue, these concessions have also had a negative impact on rural livelihoods and the environment.²³ This is made easier by Art 17 of the 2015 Constitution which stipulates that land and natural resources fall under the category of "national heritage," thus, giving the government unlimited powers to grant land concessions to investors (especially those from Vietnam and China).

As regards land concessions, the problem of 'unfair' compensation looms large in Lao PDR. For example, in Champasak province, more than 100 families refused to move from their homes to a site they considered unsuitable for farming. Also, the rate of compensation was deemed unfair compared to the value of their lands and crops. These families are now facing forcible removal,²⁴ despite rarely enforced legislative and regulatory safeguards.²⁵ However, the cost of Lao PDR's economic growth has not gone unnoticed by the government. In 2017, Prime Minister Thongloun Sisoulith said the government recognised the issues caused by its concession policies and was seeking to begin "the process of correcting them."²⁶

Likewise, when a Vietnamese rubber company "grabbed" land in Thateng district, Sekong province with the permission of the authorities, the villagers fought for

²¹ Hatthachan, P, 'Economic reform and regional development of Laos' *Modern Economy*, 2012, Vol 3, pp 179-186.

²² St John, RB, 'The political economy of Laos: Poor state or poor policy?' *Asian Affairs*, 2006, Vol 37, No 2, pp 175-191.

²³ Hett, C, et al, 'Land deals in Laos: First insights from a new nationwide initiative to assess the quality of investments in land' paper presented at Land Grabbing, Conflict, and Agrarian-Environmental Transformations: Perspectives from East and Southeast Asia, May 2015, available at https://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/MOSAIC/CMCP_18-_Hett_et_al.pdf, accessed on 21 August 2017.

²⁴ 'Lao villagers face eviction from dam sites after refusing 'unfair' compensation' Radio Free Asia, available at <http://www.rfa.org/english/news/laos/eviction-03292017143705.html>, accessed on 21 August 2017.

²⁵ 'Lao officials not doing enough to enforce land concession regulations' Radio Free Asia, available at <http://www.rfa.org/english/news/laos/lao-officials-not-doing-enough-to-enforce-land-concession-regulations-05042017153447.html>, accessed on 21 August 2017.

²⁶ 'Lao government should grant concession leases based on investment: Former officer' Radio Free Asia, available at <http://www.rfa.org/english/news/laos/leases-04262017142704.html>, accessed on 21 August 2017.

alternative land and fair compensation. When local government failed to resolve the problem, the villagers submitted a petition against the Vietnamese company to central government but were later arrested in 2012 by the local authorities for chopping down rubber trees in protest. Local police denied the villagers had been arrested, claiming they had only been invited to the station for questioning.²⁷ This well-publicised case served as a lesson to Lao citizens, encouraging many to fight for their rights. Additionally, this case also warned local civil society organisations (CSOs) and non-governmental organisations (NGOs) to focus more on land issues.

B. Freedom of Expression, Association, and Assembly

Media is tightly controlled by the government through the Ministry of Information, Culture, and Tourism – therefore, political dissent is not allowed in any public forum.²⁸ In other words, despite Art 44 of the Constitution, the State is clearly failing in its duty to protect freedom of speech, press, and assembly because such activities are deemed contrary to “national interests” or “traditional culture and dignity” as stipulated by s.65 of the Penal Code.²⁹ Further, in order to prevent growing online criticism, the government enacted the 2015 Law on Prevention and Combating Cyber Crime, criminalising vaguely defined web content that “distorts the truth,” thus, giving it even more arbitrary power to silence critics.

In 2015, many critics of the government were arbitrarily detained for expressing themselves. For example, on 21 May, authorities detained a woman from Xayaburi province without an arrest warrant after she posted a photo of a police officer on Facebook extorting money from her brother for a traffic violation. Likewise, on 25 June, the government also detained a civil servant after she posted a letter to a Chinese investor granting approval for lucrative land concessions in the Khuangxi waterfalls (Luang Prabang province), claiming it was confidential.³⁰ In the same year, on 18 September, a court in Vientiane sentenced a Lao-born Polish citizen for criticising the government on Facebook vis-à-vis its corruption and human rights record.³¹

²⁷ ‘Lao villagers arrested in 11 year old land dispute in Sekong Province’ Radio Free Asia, available at <http://www.rfa.org/english/news/laos/lao-authorities-arrested-in-11-year-old-land-dispute-in-sekong-province-08012017155944.html>, accessed on 21 August 2017.

²⁸ Bertelsmann Stiftung (see note 10 above).

²⁹ ‘Australia-Lao human rights dialogue’ Human Rights Watch, May 2017, available at https://www.hrw.org/sites/default/files/supporting_resources/australia_laos_human_rights_dialogue.pdf, accessed on 21 August 2017.

³⁰ Human Rights Watch (see note 29 above).

³¹ ‘Freedom of expression severely repressed’ International Federation for Human Rights, available at <http://www.sombath.org/wp-content/uploads/2016/08/2016-08-31-Freedom-of-Expression-FIDH.pdf>, accessed on 21 August 2017.

However, the government does not only monitor citizens inside the country but also those living abroad.³² For example, in May 2016, three workers were arrested after returning to Vientiane to renew their passports in circumstances that may constitute enforced disappearance. Whatever the case, the government confirmed their arrest.³³ Following a secret trial, the men were eventually fined and sentenced to prison terms of between 12 and 20 years for the offence of criticising the government on Facebook while working in neighbouring Thailand.³⁴ Consequently, few individuals or organisations dare to speak out for fear of the consequences which could include enforced disappearance as in the case of Sombath Somphone in 2012.

For all the reasons mentioned above, it is hardly surprising Laotian civil society organisations or CSOs are limited to NGOs or non-profit organisations.³⁵ Even so, most CSO activity is controlled by the government which restricts freedom of assembly, protests, or any other activities potentially causing “turmoil or social instability.”³⁶ Thus, CSOs are limited in their areas of work and in how they receive and spend international development funds. Additionally, in 2016, the Laotian administration refused to host the ASEAN People’s Forum as such occasions generally provide platforms for civil society members and activists to highlight human rights issues. When the venue moved to Timor-Leste, the Ministry of Home Affairs handpicked its representatives and warned them to avoid politically sensitive issues.^{37, 38}

Moreover, local NGO staff have been told all their activities will be controlled by the government through compulsory Memorandums of Understanding (MOU),³⁹ while CSO and international NGO activities would need approval especially concerning work in the community. Any CSOs or NGOs working outside their MOUs would, thus, be suspended or withdrawn and local staff may even be prosecuted.

C. Trafficking in Persons

Human trafficking is a serious crime and one in which the exact number of victims may never be known. In East Asia alone, it is estimated between 250,000-400,000 people are

³² ‘Laos: No progress on rights’ Human Rights Watch, 17 July 2017, available at <https://www.hrw.org/news/2017/07/17/laos-no-progress-rights>, accessed on 21 August 2017.

³³ ‘Laos: Three Lao activists held incommunicado’ Amnesty International, 3 August 2016, available at <https://www.amnesty.org/en/documents/asa26/4603/2016/en/>, accessed on 21 August 2017.

³⁴ ‘Three jailed Lao workers were also fined, sources say’ Radio Free Asia, available at <http://www.rfa.org/english/news/laos/fined-06292017173030.html>, accessed on 21 August 2017.

³⁵ ‘Joint context analysis: Lao PDR’ 9 October 2015, available at <http://www.vliruos.be/media/6407508/laos.pdf>, accessed on 14 October 2017.

³⁶ ‘Laos’ Freedom House, available at <https://freedomhouse.org/report/freedom-world/2016/laos>, accessed on 21 August 2017.

³⁷ Human Rights Watch (see note 29 above).

³⁸ ‘Lao government muted representatives to ASEAN People’s Forum’ Radio Free Asia, available at <http://www.rfa.org/english/news/laos/lao-government-muted-08092016165754.html>, accessed on 21 August 2017.

³⁹ This information was revealed by a local NGO which preferred to remain anonymous for reasons of security.

trafficked per year⁴⁰ leading the Laotian government to issue legislation and a national action plan to address the issue. However, many contend it is still failing to respond adequately to the problem;⁴¹ Laos is considered a major source, transit point, and destination for human trafficking victims (mainly women and girls under 18 forced to work in the commercial sex industry or being sold as brides in China).⁴²

According to the Trafficking in Persons Report in 2016 (TIP report), “The Lao government does not fully meet the minimum standards for the elimination of trafficking [which are generally consistent with the Palermo Protocol]”⁴³ although it is making significant efforts to do so. Thus, the US State Department placed Laos on its Tier 2 Watch List for a third consecutive year.⁴⁴ Being placed in Tier 3 would not only lead to embarrassment for the government and international criticism, but could also result in restrictions on US assistance.

Accordingly, the TIP report outlined three major challenges to Lao PDR, indicating in particular, that the country is failing in its law enforcement efforts.

- *Prosecution:* Under s.134 of the Penal Code, all forms of human trafficking are prohibited with penalties ranging from 5 years to life imprisonment, fines ranging from 10 to 100 million Kip (US\$1,230 to US\$12,300), and the confiscation of assets. In 2015, the authorities reported investigating 41 individuals, prosecuting 9 for suspected trafficking offences, and convicting 13 traffickers, a decrease from 31 prosecutions and 21 convictions in 2014, and 24 prosecutions and 35 convictions in 2013. The government reported all convictions were secured under s.134 but provided little specific detail. In fact, local NGOs reported Laotian officials may have accepted payments to facilitate the immigration and/or transportation of girls to Thailand. Despite this, there were no reported prosecutions or convictions of officials for human trafficking.⁴⁵

⁴⁰ Meier, Z, ‘A critical analysis of the legal framework for human trafficking in Lao PDR’ Village Focus International, 28 July 2009, available at http://rightslinklao.org/wp-content/uploads/downloads/2014/05/7.-Zoe-Meier_Exercise-2_Legal-Framework-Anti-Trafficking.pdf, accessed on 21 August 2017.

⁴¹ Meier (see note 40 above).

⁴² ‘Trafficking in persons report 2016’ US Department of State, available at <https://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>, accessed on 21 August 2017.

⁴³ US Department of State (see note 42 above), at 237.

⁴⁴ The Tier 2 Watch List refers to countries not fully meeting the minimum standards of the US’s Trafficking Victims Protection Act of 2000 but are making significant efforts to do so, and for which: (a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; (b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking, e.g. increased investigations, prosecutions, and convictions; and (c) the determination that a country is making significant efforts to meet the minimum standards was based on commitments to take additional steps over the next year. See, US Department of State (note 42 above), at 39 and 237.

⁴⁵ US Department of State (see note 42 above), at 238.

- *Protection:* The report specifically mentioned the government's inadequate victim identification efforts among those exploited within the country and deported from other countries, stating also that it assisted fewer victims than the previous year. Moreover, local experts reported provincial authorities were not applying accepted procedures, often leaving victims of international trafficking largely unidentified.⁴⁶
- *Prevention:* The report accepted the government had made efforts to raise awareness of trafficking through media campaigns, by distributing materials to provincial leaders and local community members, and increasing funding for anti-trafficking activities as part of its national action plan. However, "the lack of transparency, active planning, and resources, made it difficult to coordinate activities with all ministries and international parties [including CSOs and NGOs]."⁴⁷

Part 3: Conclusion

As a signatory to many international treaties, Lao PDR has an obligation to uphold certain human rights. As such, provisions in the 2015 Constitution safeguard the rights of expression, association, and assembly. However, despite its written laws, in reality the government has failed to take serious action to promote human rights, especially freedom of expression, thereby curtailing public criticism of its actions. Another issue where the government has failed to live up to expectations is human trafficking, where again, it needs to take a serious stance, for example, by increasing collaboration among its ministries and international partners. In addition, it needs to address the issue of land rights and lucrative land concessions for development projects in the agricultural, mining, and hydropower sectors, all of which have the power to negatively impact rural livelihoods especially when compensation is low and entire villages are evicted from their ancestral lands.

In conclusion, the LPRP as the only legal political party in Lao PDR, has made discussion of human rights issues and by extension, any criticism of itself, taboo in public arenas with the ban extending to individuals and organisations (such as CSOs and NGOs) alike. Unless the government improves its record on human rights and makes more of an effort to conform to international standards, the outlook for Lao PDR's citizens will continue to be bleak.

⁴⁶ US Department of State (see note 42 above), at 238.

⁴⁷ US Department of State (see note 42 above), at 239.

MALAYSIA



MALAYSIA

Tan Jo Hann*

Part 1: Overview of Malaysia

A. Country Background

Malaysia Facts	
Geographical size	329,758 sq km
Population	31.19 million ¹
Ethnic breakdown ²	Main ethnic groups: Bumiputera (Malays and other non-Malay indigenous peoples) – 68.6% Chinese – 23.4% Indian – 7% Other – 1%
Official language	Bahasa Malaysia
Literacy rate (aged 15 and above)	94.6% ³
Life expectancy	75.2 ⁴
GDP	US\$296.36 billion (per capita US\$9,502) ⁵
Government	Federal representative democratic constitutional monarchy modelled on the Westminster parliamentary system. Bicameral parliament consists of the House of Representatives and the Senate.
Political and social situation	Supposed separation of powers of the executive, judicial, and legislative branches is counteracted by executive influence over the appointment of court judges and the Election Commission, thus precluding free and fair elections.

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¹ Data from 2016. 'Malaysia' The World Bank, available at <https://data.worldbank.org/country/malaysia>, accessed on 7 November 2017.

² Data from 2016. 'Current population estimates, Malaysia 2014-2016: Ethnic composition' Department of Statistics Malaysia, Official Portal, available at https://www.dosm.gov.my/v1/index.php?r=column/cthem&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09&bul_id=OWlxdEVoYlJCS0hUZzJyRUcvZEYxZz09, accessed on 7 November 2017.

³ Data from 2015. 'Human development reports' United Nations Development Programme, available at <http://hdr.undp.org/en/countries/profiles/MYS#>, accessed on 7 November 2017.

⁴ Data from 2015. The World Bank (see note 1 above).

⁵ Data from 2016. The World Bank (see note 1 above).

System of governance

Malaysia was established in 1963 and consists of eleven states on the Peninsular, two states in East Malaysia (Sarawak and Sabah), and three Federal Territories, occupying a total landmass of 329,758 square kilometres.⁶ The country is both a federation of states and a representative democratic constitutional monarchy with the King (or Yang di Pertuan Agong) as its head of state and the Prime Minister as its head of government. Malaysia's parliamentary system is modelled after the Westminster parliamentary system consisting of a bicameral parliament with a House of Representatives and a Senate. The House of Representatives comprises 222 members elected from single member constituencies in general elections that are held every 5 years.⁷

Under the Federal Constitution, the government adopts the principle of separation of powers; those powers being the executive, judiciary, and legislature. Federal legislative power is divided between federal and state legislatures. In theory, the judiciary is independent of the executive and the legislature but in reality, the former can influence the appointment of court judges as the Judicial Appointments Commission assists the Prime Minister in advising the King on such matters. Ultimately, the Prime Minister, as part of the executive, has the power to decide or approve appointment of every Superior Court judge, the Chief Justice, the President of the Court of Appeal, and the Chief Judge. The executive also influences the Election Commission, which although theoretically free and independent, is actually appointed by the King upon the advice of the Prime Minister.⁸

Population, ethnic groups, and language

In Sabah and Sarawak, indigenous people or bumiputeras make up about two-thirds and over half of the total populations respectively. In Peninsular Malaysia, Orang Asli aboriginal groups are smaller in number, only accounting for about 205,000 members. Indigenous peoples in Sarawak constitute about 1,899,600 or 70.1% of the state's total population while indigenous peoples in Sabah make up about 2,203,500 or 60% of the region's total population.⁹

At the beginning of 2015, 29.6% of Malaysia's total population were below 15 years of age, 5% were above 64 years of age, and the rest were within the 15-64 age range. As

⁶ 'Malaysia' Nations Encyclopedia, 2016, available at <http://www.nationsencyclopedia.com/economies/Asia-and-the-Pacific/Malaysia.html>, accessed on 24 May 2016.

⁷ 'My constitution: Judges and the judiciary' The Malaysian Bar, 30 December 2010, available at http://www.malaysianbar.org.my/constitutional_law_committee/my_constitution_judges_and_the_judiciary.html, accessed on 28 May 2016.

⁸ 'Executive summary: Human rights and elections' The Malaysian Bar, 16 August 2011, available at http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_view&gid=3314, accessed on 28 May 2016.

⁹ Nah, A, 'Recognising indigenous identity in post-colonial Malaysia law: Rights and realities of the Orang Asli (Aborigines) of Peninsular Malaysia' White Rose University Consortium, United Kingdom, 2008, available at http://eprints.whiterose.ac.uk/79092/1/22134379_164_02_03_s03_text.pdf, accessed on 29 May 2016.

of 31 December 2015, the total male population stood at 15,502,561, while females numbered 15,069,905. The sex ratio of the total population was 1.029 meaning there were 1,029 males for every 1,000 females.¹⁰

The national and official language of Malaysia is Bahasa Malaysia; other languages or dialects spoken include English, Mandarin, Cantonese, Hakka, Hainan, Foochow, Tamil, Telugu, Malayalam, and Punjabi. Other languages spoken include the native languages of the Orang Asli and the indigenous populations of Sabah and Sarawak.¹¹ Malaysia is also reported to have an impressive 94.6% literacy rate among those 15 years and older.¹²

Economic development

In 2014, Malaysia's gross domestic product (GDP) grew at a rate of 6.0% with a GDP per capita of US\$11,062. However, GDP dropped to 4.5% in the final quarter of 2015.¹³ The unemployment rate was reported at 3.1% as of June 2015, and 3.4% as of December,¹⁴ while inflation was pegged at 2.1% in 2015.¹⁵

The poverty rate in Malaysia stood at 0.6% in 2014, its lowest level since independence in 1957, registering 0.1% for Chinese, 0.6% for Indians, 0.8% for bumiputeras, and 0.9% for others.¹⁶ Although it would appear poverty levels have decreased across the board, the United Nations Millennium Development Goals (MCG) report for Malaysia (2015) stated that in general, non-Malay bumiputeras did not fare as well with the poverty rates of Orang Asli households at 34%, and the Sabah and Sarawak indigenous communities at 20% and 7.3% respectively.¹⁷

Political and legal situation

Malaysia has been governed by the same ruling coalition for almost six decades since independence in 1957. The Barisan Nasional (BN) or National Front coalition which is dominated by Malay ethnic party, the United Malays National Organization (UMNO), has a track record of utilising suppressive laws and enactments to maintain its hold

¹⁰ 'Malaysia population' Trading Economics, 2016, available at <http://www.tradingeconomics.com/malaysia/population>, accessed on 28 May 2016.

¹¹ 'Languages of Malaysia' Wikipedia, 14 May 2016, available at https://en.wikipedia.org/wiki/Languages_of_Malaysia, accessed on 28 May 2016.

¹² 'Field listing: Literacy' The World Fact Book, CIA, available at https://www.cia.gov/library/publications/the-world-factbook/fields/print_2103.html, 2016, accessed on 20 May 2016.

¹³ 'Malaysia GDP growth weakest in 2-1/2 years' Trading Economics, 18 February 2016, available at <http://www.tradingeconomics.com/articles/02182016053943.htm>, accessed on 20 May 2016.

¹⁴ 'Key indicators: Unemployment rate' Department of Statistics, Malaysia Official Portal, 2015, available at <https://www.statistics.gov.my/#>, accessed on 20 May 2016.

¹⁵ The World Bank (see note 1 above).

¹⁶ 'The measure of poverty' Economic Transformation Program, 18 May 2015, available at http://etp.pemandu.gov.my/Transformation_Unplugged-@-The_measure_of_poverty.aspx, accessed on 20 May 2016.

¹⁷ 'Malaysia millennium development goals report 2015' Economic Planning Unit, Prime Minister's Department Malaysia, January 2016, available at http://un.org.my/upload/undp_mdg_report_2015.pdf, accessed on 25 May 2016.

over the nation. For example, some of these laws (the Internal Security Act 1960 (ISA), the Emergency (Public Order and Prevention of Crime) Ordinance (EO), the Printing Presses and Publications Act (PPPA), the Sedition Act 1984, the Police Act 1967, and the Societies Act 1966) were used in the 1980s and 1990s to suppress dissent.¹⁸ In the 1960s and 70s, the government used the ISA to crack-down on dissidents and critics including members of opposition political parties, e.g. the Democratic Action Party (DAP) and the Parti Sosialis Rakyat Malaysia (PSRM). Reports indicate about 3,000 persons were administratively detained under the ISA since its enactment in 1960 up until 1981 when former Prime Minister Tun Mahathir Mohamed took power. He then launched a nationwide crackdown codenamed 'Operation Lalang' in October and November 1987, jailing a further 106 political opponents and human rights activists.

For example, the PPPA and the Sedition Act were used on DAP parliamentarian, Lim Guan Eng, in 1994 when he was jailed for 18 months under s.8A(1) of the PPPA for "maliciously printing" a pamphlet containing allegedly false information, and under s.4(1)(b) of the Sedition Act for causing "disaffection with the administration of justice in Malaysia." Lim then went on to criticise the government's handling of rape charges involving a high-ranking UMNO leader. Another high-profile case involved the late Irene Fernandez (the then director of a women's and migrant rights organisation, Tenaganita) who was charged with "false reporting" under the PPPA in connection with a report she published on the mistreatment of migrant workers in Malaysia's immigration centres. The trial, which lasted for almost seven years, ended in a guilty verdict when she was sentenced to a year in prison.¹⁹

Similarly, the Police Act was used to control the holding of rallies and peaceful assemblies as it required organisers to apply for permits from the police who were also authorised to use force to break up "illegal assemblies or gatherings." This provision was used regularly to ban and stop opposition political party rallies or non-governmental organisation (NGO) activities. In July 2001, the government announced a ban on all political rallies, stating they would undermine the country's security.²⁰

In 2003, Mahathir relinquished the premiership after 22 years to his deputy, Abdullah Ahmed Badawi, during which Malaysians continued to be haunted by a repressive atmosphere and a culture of fear. For example, the Malaysian Communications and Multimedia Commission (MCMC) ordered internet services to block online news

¹⁸ Human Rights Watch, *Creating a Culture of Fear: The Criminalisation of Peaceful Expression in Malaysia*, 26 October 2015, available at https://www.hrw.org/report/2015/10/26/creating-culture-fear/criminalization-peaceful-expression-malaysia#_ftn2, accessed on 21 May 2016.

¹⁹ 'Update (Malaysia): Irene Fernandez sentenced to jail for 12 months' Asian Human Rights Commission, Malaysia Update, 19 October 2003, available at <http://www.humanrights.asia/news/urgent-appeals/UP-44-2003/?searchterm>, accessed on 22 May 2016.

²⁰ Human Rights Watch (see note 18 above).

portal, Malaysia Today, for printing “slandorous statements that threaten public order.” Likewise, the government also: detained critics, including the editor of Malaysia Today and opposition politician, Teresa Kok, under the ISA; suspended several opposition party newspapers from publication for three months under the PPPA; and refused to grant Bersih 2.0 (an NGO coalition advocating clean, free, and fair elections) a permit for a rally demanding electoral reform and later arrested many who proceeded to organise or participate in the peaceful rally anyway. However, in his farewell speech to the UMNO annual general assembly, Badawi vehemently expressed a need for the ruling government and UMNO to change their ways in order to regain the people’s trust, saying, “[S]adly, there are still those who feel that we do not need to pursue reforms. They believe that UMNO will regain its glory if we revert to the old ways, the old order, by restricting the freedom of our citizens and by silencing their criticism.”²¹

In 2008, the 12th General Election saw a dramatic shift in the political landscape when the opposition party coalition, Pakatan Rakyat (PR), won 5 out of 13 state governments, 10 out of 11 parliamentary seats in the Kuala Lumpur Federal Territory constituency, while also managing to deny the ruling coalition a two thirds majority in parliament. In response, the BN government, realising its appeal was fast declining, embarked on a strategy to improve its image among the masses. Thus, when Najib Razak took over the premiership in April 2009, he took care to project an image of a liberal prime minister, even promising reforms and changes to his administration through economic measures (including 11 gifts to the rakyat (people) and liberalisation measures).²² In addition, he lifted bans on opposition party newspapers and released 13 people held under the ISA, while pledging to review it and other repressive security laws. Najib then took steps to reform and repeal some laws such as the EO in 2011 and the ISA in 2012. His government also passed the controversial Peaceful Assembly Act (PPA) in December 2010 which eliminated the need for a police permit and some of the more draconian elements of the Police Act. Similarly, the government eliminated the annual renewal of printing licences requirement in the PPPA and lifted the ban on student participation in politics through amendments to the 1971 University and University Colleges Act. In the run-up to the 2013 election, Najib even promised to repeal the Sedition Act and replace it with a “National Harmony Act.” Despite these measures, although the BN government maintained its parliamentary majority, it won only 47.38% of the popular vote with the opposition coalition capturing 50.97% of the popular vote.²³

²¹ ‘Southeast Asia’ Asia Times Online, 28 March 2009, available at http://www.atimes.com/atimes/Southeast_Asia/KC28Ae03.html, accessed on 21 May 2016.

²² ‘Najib’s first 100 days: Long on form, short on substance’ East Asia Forum, 20 July 2009, available at <http://www.eastasiaforum.org/2009/07/20/najibs-first-100-days-long-on-form-short-on-substance/>, accessed on 4 October 2017.

²³ ‘Malaysian general elections results’ Wikipedia, 26 May 2016, available at https://en.wikipedia.org/wiki/Malaysian_general_election,_2013, accessed on 29 May 2016.

Notwithstanding Najib's promises of reform and his efforts to respect civil liberties after being appointed Prime Minister in 2009, repressive measures and restrictions on civil society activities, media, opposition party activities, and public assemblies soon continued. For example, the police refused to issue a permit for Bersih's 'Walk for Democracy' on 9 July 2011, threatening to take stern action against any participants. The Home Affairs Minister also declared Bersih an "illegal organisation" under the Societies Act, and prior to the rally, the police used the Sedition Act, the Police Act, the Societies Act, and the PPPA to arrest 270 supporters for selling, wearing, or being in possession of Bersih's yellow T-shirts or any other Bersih paraphernalia such as posters, pamphlets or other items promoting the rally and its aims. The police also raided Bersih's office, arrested staff, seized computers and other items, and summoned rally organisers for questioning. During the rally itself, police used baton charges and tear gas to break up the peaceful gathering and arrested nearly 1,700 people.²⁴

Matters came to a head in 2015 when Najib found himself at the centre of a serious political controversy. Involving almost MYR2.6 billion discovered in his personal bank account from an undisclosed source, the Prime Minister came under intense pressure to resign from forces within his own political party, opposition party politicians, and many civil society organisations despite claiming the funds were not for his personal enrichment but had been channelled to politicians or projects to help the ruling party win the 2013 election. While the origin of the funds remains unclear, different sources reported that hundreds of millions of dollars were used in unreported political spending to ensure Najib's UMNO party stayed in power. For example, he was believed to have funnelled at least US\$140 million to charity projects such as schools and low-cost housing. Moreover, many also believe funds were channelled through government agencies, banks, and companies linked to the 1Malaysia Development Berhad (1MDB) fund which, as a result, has been the focus of probes in at least six countries, including Malaysia itself.²⁵

B. International Human Rights Commitments and Obligations

Since achieving independence in 1957, Malaysia has signed and ratified only a handful of core human rights treaties (as seen in Table 1 below). Moreover, the government attached reservations, many of which have been described as unjustified, thus, negating the significance of treaty ratification in the first place.²⁶

²⁴ Human Rights Watch (see note 18 above).

²⁵ In Malaysia, the probe was carried out by the nation's anticorruption body, its central bank, the Auditor General, and a parliamentary committee. See, '1MDB and the money network of Malaysian politics' The Wall Street Journal, 28 December 2015, available at <http://www.wsj.com/articles/the-money-network-of-malaysian-politics-1451355113>, accessed on 30 May 2016.

²⁶ Malaysia is also a non-permanent member of the United Nations Security Council (UNSC) for the term 2015-2016, having been elected to sit on the Council for the fourth time on 16 October 2014. See, 'Resolution 2225 (2015): Children and armed conflict' UNSC 2015-2016, 2015, available at <http://malaysiaunsc.kln.gov.my/index.php/news-documents/unsc-resolutions/item/192-resolution-2225-2015-children-and-armed-conflict>, accessed on 28 May 2016.

Table 1: Ratification Status of International Instruments – Malaysia²⁷

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		5 Jul 1995 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention on the Rights of the Child (CRC)		17 Feb 1995 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		12 Apr 2012 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		12 Apr 2012 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	8 Apr 2008	19 Jul 2010

²⁷ 'Ratification status for Malaysia' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN, accessed on 29 May 2016.

The Malaysian Bar welcomed the government's ratification of the CRPD in 2010 but also criticised it for attaching reservations to Art 3 (general principles), Art 5 (equality and non-discrimination), Art 15 (freedom from torture or cruel, inhuman, or degrading treatment/punishments), Art 18 (liberty of movement and nationality), and Art 30 (participation in cultural life, recreation, leisure, and sport). Thus, this was deemed a "hollow ratification since such reservations take away from [the] fundamental principles that underpin CRPD."²⁸

Malaysia also withdrew reservations to Arts 1, 13, and 15 of the CRC but it continues to attach five others, namely, Art 2 on non-discrimination, Art 7 on name and nationality, Art 14 on freedom of thought, conscience, and religion, Art 28(1)(a) on free and compulsory education at the primary level, and Art 37 on torture and deprivation of liberty. The government also withdrew reservations to Arts 5(a), 7(b), and 16(2) of CEDAW but continued to keep five other reservations as regards: equal rights for women to pass their nationality onto their children (Art 9(2)); equal rights to enter into marriage (Art 16(1)(a)); equal rights and responsibilities during marriage and at its dissolution (Art 16(1)(c)); equal rights and responsibilities as regards guardianship, wardship, trusteeship, and the adoption of children (Art 16(1)(f)); and the same personal rights in a marriage, including the right to choose a family name, one's profession, and an occupation (Art 16(1)(g)).²⁹

In its 2015 annual report, SUHAKAM's (Malaysian Commission on Human Rights) Law Reform and Treaties Division, which monitors the country's implementation of CEDAW, CRC, and CRPD, clearly reiterated calls to the government "to expedite the submission of the State Reports to the relevant Treaty bodies and the withdrawal of the remaining reservations to the three treaties rectified." SUHAKAM has also consistently engaged the government in round table discussions on ICESCR and CAT but to no avail. More disappointingly, despite the fact the Human Rights Commission of Malaysia Act (HRCMA) granted SUHAKAM statutory powers to advise and assist the government in formulating legislation, it was not consulted during the government's review of preventative laws such as the Prevention of Terrorism Act 2015 (POTA), the National Security Council Act 2015 (NSC), and the proposed amendments to the Child Act 2001, all of which directly affect public safety and the protection of human rights.³⁰

²⁸ 'Press release: Time to remove all reservations and sign the Optional Protocols' The Malaysian Bar, 8 July 2010, available at http://www.malaysianbar.org.my/press_statements/press_release_time_to_remove_all_reservations_and_sign_the_optional_protocols.html, accessed on 29 May 2016.

²⁹ 'Perbincangan meja bulat reservasi terhadap konvensyen antarabangsa CEDAW, CRC, dan CRPD' (Round table discussion on reservations to the international conventions, CEDAW, CRC, and CRPD), SUHAKAM, 2015, available at <https://drive.google.com/file/d/0B6FQ7SONa3PRaDF2bkDWanJWSDQ/view>, accessed on 28 May 2016.

³⁰ 'SUHAKAM annual report 2015' SUHAKAM, available at http://drive.google.com/file/d/0B_iu0JnQlclBQW5OZTRhTF9XTnc/view?pref=2&pli=1, accessed on 29 May 2016.

The ICESCR, which was adopted by the United Nations General Assembly on 16 December 1966, came into force on 3 January 1976 and was acceded to by 164 countries, although 6 have signed but not ratified it. Malaysia is one of 27 countries to have taken no action regarding the ICESCR.³¹ Another vital treaty is the ICCPR which strongly emphasises freedom of expression and the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives. For example, Art 19 clearly spells out the right to a free press and media, enabling commentary on public issues without censorship or restraint, including the right to seek, receive, and impart information and ideas of all kinds including the activities of elected bodies and their members. However, Malaysia has yet to sign and ratify this covenant.³²

Likewise, Malaysia has also not signed or ratified the International Convention on the Elimination of Racial Discrimination³³ (ICERD) which was adopted by the UN on 21 December 1965, entering into force on 4 January 1969. Malaysian civil society organisations have been advocating and campaigning for this treaty to be ratified for the past 6 years but again to no avail, although ironically Malaysia accepted in full recommendations to improve national unity and social cohesion in the country during the 2nd cycle of its Universal Periodic Review (UPR) in 2013.³⁴ These mainly focused on non-discrimination, and the strengthening of mutual respect, tolerance, and social cohesion among the country's diverse cultural and religious social reality.³⁵

In addition, Malaysia has also reaffirmed the ASEAN Human Rights Declaration (AHRD) in which Provisions 2, 3, 9, 22, and 31(3) clearly outline the rights and freedom of every person in accordance to the principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation, and the avoidance of double standards, and politicisation.³⁶ Although the AHRD details ASEAN nations' commitments to human rights, it has been criticised by civil society organisations for failing to consult with ASEAN civil society during its drafting process and for its lack of transparency.³⁷

³¹ 'A modest proposal: A call for Malaysia to sign on to the ICESCR' Malay Mail Online, 16 December 2015, available at <http://www.themalaymailonline.com/malaysia/article/a-modest-proposal-a-call-for-malaysia-to-sign-on-to-the-icescr#sthash.6j8E2Him.04zjRDvB.dpuf>, accessed on 30 May 2016.

³² 'International Covenant on Civil and Political Rights' UN Human Rights Office of the High Commissioner, 2016, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, accessed on 29 May 2016.

³³ 'International Convention on the Elimination of All Forms of Racial Discrimination' UN Human Rights Office of the High Commissioner, 2016, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>, accessed on 27 May 2016.

³⁴ Recommendation Nos 146.87, 146.88, 146.89, 146.90, 146.91, 146.92, and 146.93.

³⁵ 'Malaysia racial discrimination report 2015' Pusat KOMAS, 21 March 2016, available at <http://komas.org/v2/wp-content/uploads/2013/06/Malaysia-Racial-Discrimination-Report-2015.pdf>, accessed on 30 May 2016.

³⁶ 'ASEAN Human Rights Declaration (AHRD) and the Phnom Penh statement on the adoption of the AHRD and its translations' The ASEAN Secretariat, 2013, available at <http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20%287.%20Jul%29%20-%20ASEAN%20Human%20Rights%20Declaration%20%28AHRD%29%20and%20Its%20Translation.pdf>, accessed on 29 May 2016.

³⁷ 'ASEAN Human Rights Declaration' Wikipedia, 10 September 2015, available at https://en.wikipedia.org/wiki/ASEAN_Human_Rights_Declaration#cite_note-2, accessed on 30 May 2016.

A unique process, the UPR involves a periodic review of the human rights records of all 193 UN member states.³⁸ In terms of Malaysia's second cycle in 2013, the country accepted 150 recommendations in full, in part, and in principle, while rejecting 82, representing 64.66% of the total made. However, many recommendations were not specific, measurable, attainable, realistic, and time-bound (SMART). In fact, only 64 of the accepted recommendations were measurable, with 17 calling for specific actions to be taken by the government.

C. National Laws Threatening Human Rights

The Federal Constitution

*Article 10 (1)*³⁹ provides that: (a) every citizen has the right to freedom of speech and expression; and (b) all citizens have the right to assemble peaceably and without arms. However, as regards freedom of assembly, the Constitution also allows parliament to impose "such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof of, public order or morality." As such, some have argued that constitutional protection for these rights is inadequate and inconsistent with international law as it allows parliament to impose restrictions and determine what is considered "expedient" to protect national security, public order, public health or morals, or the rights and reputations of others.⁴⁰

Article 153: while this provision spells out the special position of bumiputeras, it also includes protection for other ethnic communities, stating:

It shall be the responsibility of the Yang di-Pertuan Agong [i.e. the King] to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.

In addition, Art 153(2) stipulates that the King shall ensure this special position for Malays and the natives of Borneo (since 1963) in:

³⁸ 'Malaysia's 2016 UPR mid-term review' Coalition of Malaysian NGOs, 16 May 2016, available at <http://www.suaram.net/wordpress/wp-content/uploads/2016/05/COMANGO-2016-UPR-Mid-Term-Review.pdf>, accessed on 29 May 2016.

³⁹ Federal Constitution 2010, Government of Malaysia, 18 September 2010, available at <http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20%28BI%20text%29.pdf>, accessed on 28 May 2016.

⁴⁰ Human Rights Watch (see note 18 above).

such proportion as he may deem reasonable of positions in the public service ... and of scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government and ... any permit or license for the operation of any trade or business as required by federal law ...

But Art 153(4) clearly states that:

*In exercising his functions under this Constitution and federal law ... the Yang di-Pertuan Agong shall not deprive any person of any public office held by him or of the continuance of any scholarship, exhibition or other educational or training privileges or special facilities enjoyed by him.*⁴¹

Moreover, the scope of Art 153 is limited by Art 136, which requires civil servants be treated impartially regardless of race. Furthermore, Art 153(5) specifically reaffirms this by specifying that all persons of whatever race in the same grade of service shall, subject to the terms and conditions of their employment, be treated impartially. In particular, Art 153(9) affirms that parliament cannot restrict business or trade solely for the purpose of Malay reservations.

While such provisions appear contrary to the notion of equality, the Reid Commission insisted they were only temporary and would be reviewed after 15 years with the findings presented to parliament to determine whether to retain, reduce, or discontinue the quotas entirely. However, following the 13 May 1969 riots, the New Economic Policy was introduced to eradicate poverty irrespective of race in order to divide the economic pie more fairly, that is, to give Malays a 30% equity share in the economy, as opposed to the 4% they had held in 1970. Again, although this policy was supposed to expire in 1991, because it was believed targets had not yet been reached, it was continued under the new name of the National Development Policy.

Security Offences (Special Measures) Bill 2012

The Security Offences (Special Measures) Bill 2012 or SOSMA provides special measures to combat security offences for the purpose of maintaining public order and security, and all related matters. Created under Art 149 of the Federal Constitution to handle internal security issues including public order, acts of terrorism, sabotage, and espionage, a police officer may, without warrant, arrest and detain any person he has reason to believe is involved in security offences but he cannot do so solely by

⁴¹ Federal Constitution 2010, Art 153(4).

reason of the person's political belief or political activity. As such, individuals may be detained for 24 hours for investigation purposes, a period which may be extended by not more than 28 days. At the same time, bail shall not be granted to those charged with security offences and all such cases shall be tried by the High Court. Further amendments were introduced in April 2015 covering, e.g. the seizure of documents and the interception of communications. Despite strong protest from civil society organisations and opposition party parliamentarians, the government rationalised the changes would strengthen POTA and five other related bills, including one combating terrorist activities conducted by Malaysians on foreign soil.⁴²

In 2015, there were 20 documented cases of persons charged under this Act. One such case involved the arrest and detention of Dato' Sri Khairuddin Abu Hassan, a politician and vocal critic of 1MDB, who was remanded on 18 September 2015 under s.117 of the Criminal Procedure Code (CPC) for six days. Initially alleged to have committed an offence under s.124C of the Penal Code (i.e. attempting to commit activities detrimental to parliamentary democracy) for lodging reports of alleged financial impropriety relating to 1MDB with law enforcement authorities in Switzerland, United Kingdom, France, Singapore, and Hong Kong, Dato' Sri Khairuddin was subsequently released by the Magistrates Court on 23 September 2015 without charge. However, he was immediately re-arrested under s.4 of SOSMA and detained for up to 28 days for alleged offences under ss.124K (sabotage) and 124L (attempt to commit sabotage) of the Penal Code.⁴³

Prevention of Terrorism Act 2015

The Prevention of Terrorism Act 2015 or POTA is an anti-terrorism law passed on 7 April 2015 to enable Malaysian authorities to detain terror suspects without trial for a period of 59 days to two years. Further, instead of having access to judicial review, detainees would be subject to a special Prevention of Terrorism Board. Thus, the Act was accused of being a new incarnation of the notorious Internal Security Act 1960 which had been revoked in 2012. The Act was justified by the government as necessary to prevent actions, both inside and outside the country, deemed prejudicial to the security of Malaysia or any part of Malaysia.⁴⁴ For example, dozens of citizens were arrested in 2014-2015 for suspected links to 'Islamic State (IS).' However, many fear that POTA, like the ISA, gives the police and the appointed board too much power to detain suspects without warrant or judicial review for extended periods of time.

⁴² 'SOSMA amendments passed despite stiff opposition' The Rakyat Post, 8 April 2015, available at <http://www.therakyatpost.com/news/2015/04/08/sosma-amendments-passed-despite-stiff-opposition/>, accessed on 30 May 2016.

⁴³ 'Press release: SOSMA must not be misused to silence critics of 1MDB' The Malaysian Bar, 2 October 2015, available at http://www.malaysianbar.org.my/press_statements/press_release_-_sosma_must_not_be_misused_to_silence_critics_of_1mdb.html, accessed on 4 October 2017.

⁴⁴ 'Prevention of Terrorism Act 2015' Wikipedia, 27 April 2016, available at https://en.wikipedia.org/wiki/Prevention_of_Terrorism_Act_2015, accessed on 28 May 2016.

Prevention of Crime Act 1959

The Prevention of Crime Act 1959 or POCA was designed to control and prevent organised crime by targeting “criminals, members of secret societies, terrorists, and other undesirable persons” by granting police power to arrest and detain individuals without trial for a period of up to 60 days. Consisting of a preliminary arrest period of 24 hours, the Act also allows extensions of 21 and 38 days to enable further investigation. After the detention period, cases will be heard before a Prevention of Crime Board which may sentence detainees for a period of not more than two years, a period which may be extended if further detention is deemed necessary to protect public order, public security, or to prevent crime. The Board can either issue a restraining order or discharge the detainee. In 2015, POCA was amended to include terrorism as an offence.⁴⁵ In that same year, according to the Inspector-General of Police, 808 people were arrested for various POCA offences. Of that number, 188 were subject to detention orders and 403 to restraining orders. 257 of the 403 detainees were required to wear electronic monitoring devices while the rest are still under action. 57 cases involved gambling, 18 were pimps, and 42 were held under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007.⁴⁶

Sedition Act 1948

Originally enacted by the Malayan British colonial authorities in 1948, the Sedition Act criminalised speech with “seditious tendenc[ies]” including words bringing into “hatred or contempt or to excite disaffection against” the government or engender “feelings of ill-will and hostility between different races.” Seditious tendency includes the questioning of certain portions of the Constitution, namely, Art 153 covering special rights for the bumiputera. The 2015 amendments added a new s.3(a)(ea), making expression with a tendency “to promote feelings of ill will, hostility or hatred between persons or groups of persons on the grounds of religion” part of the definition of seditious tendency. The amendments caused concern as it was feared many government critics would fall within the catchall areas of race or religion; indeed, it was felt even economists could become targets of the Sedition Act. Those charged prior to the 2015 amendments faced the possibility of up to three years in prison and a fine of MYR5,000 for a first offence, and up to five years in prison for any subsequent offence. Post amendment charges will face a minimum sentence of three years’ and a maximum of seven years’ imprisonment.⁴⁷

⁴⁵ ‘The Prevention of Crime Act 1959’ SUARAM, available at http://www.suaram.net/?page_id=8000, accessed on 27 May 2016.

⁴⁶ ‘IGP: 808 held under Prevention of Crime Act in 2015’ Malay Mail Online, 5 January 2016, available at <http://www.themalaymailonline.com/malaysia/article/igp-808-held-under-prevention-of-crime-act-in-2015#sthash.KjjdVZGU.dpuf>, accessed on 28 May 2016.

⁴⁷ ‘Malaysia: Sedition Act upheld in further blow to free expression’ Article 19, 6 October 2015, available at <https://www.article19.org/resources.php/resource/38131/en/malaysia:-sedition-act-upheld-in-further-blow-to-free-expression>, accessed on 29 May 2016.

On 6 October 2015, Malaysia's apex court ruled the 1948 Sedition Act constitutional. The legal challenge was brought by Professor Azmi Sharom who was then facing criminal prosecution for comments he made in a Malay Mail interview regarding a political crisis in the state of Selangor.⁴⁸ This decision meant other sedition cases involving opposition party politicians, academics, and civil society members could also go ahead. Some of the more prominent cases included: political cartoonist, Zunar; Bersih chairperson, Maria Chin; human rights lawyer, Eric Paulsen; and opposition parliamentarians, Tian Chua, Teresa Kok, and Nurul Izzah. In 2015 alone, at least 91 individuals were arrested, charged, or investigated for sedition – almost five times as many as during the law's first 50 years of existence.⁴⁹ Further, the Sedition Act is often used together with the Communications and Multimedia Act (CMA) 1998 when a “seditious” work is made available online, carrying a penalty of RM50,000 and/or one year in prison.⁵⁰

Peaceful Assembly Act 2012

The Peaceful Assembly Act 2012 or PAA has been used by the government to crackdown on participants of peaceful public assemblies, especially civil society members and opposition party politicians. Although the PAA, which replaced s.27 of the Police Act 1967, no longer requires police permits for mass assemblies, organisers must now notify the officer in charge of the police district within 10 days of the gathering date, or be found guilty under s.9(5) and face a maximum fine of MYR10,000. Under s.10(c), a copy of the consent letter from the owner or occupier of the place of assembly must also be acquired. In addition, the PAA bans any street protests and any gatherings within 50 meters of “prohibited places” such as hospitals, petrol stations, airports, railway stations, places of worship, and schools.⁵¹ In 2015, several high profile cases included the charging of Bersih chairperson, Maria Chin for organising the 2-day Bersih 4 rally on 29 August 2015,⁵² and PKR opposition party politician, Nik Nazmi Nik Ahmad, for failing to notify authorities of the ‘Black 505’ rallies protesting alleged electoral fraud in the 2013 General Election.⁵³

⁴⁸ In February 2016, the Attorney-General discontinued its prosecution of Azmi Sharom. See, ‘AG drops sedition case against Azmi Sharom’ Malay Mail Online, 12 February 2016, available at <http://www.themalaymailonline.com/malaysia/article/ag-drops-sedition-case-against-azmi-sharom#sthash.ySW8hzyI.dpuf>, accessed on 30 May 2016.

⁴⁹ ‘Malaysia: End unprecedented crackdown on hundreds of critics’ Amnesty International, 11 March 2016, available at <https://www.amnesty.org/en/press-releases/2016/03/malaysia-end-unprecedented-crackdown-on-hundreds-of-critics-through-sedition-act/>, accessed on 29 May 2016.

⁵⁰ ‘Sedition Act 1948’ Wikipedia, 27 April 2016, available at https://en.wikipedia.org/wiki/Sedition_Act_1948, accessed on 29 May 2016.

⁵¹ ‘Peaceful Assembly Act 2012’ Wikipedia, 27 April 2016, available at https://en.wikipedia.org/wiki/Peaceful_Assembly_Act_2012, accessed on 29 May 2016.

⁵² ‘Bersih 2.0 chief claims trial to breach of Peaceful Assembly Act’ Malay Mail Online, 3 November 2015, available at <http://www.themalaymailonline.com/malaysia/article/bersih-2.0-chief-claims-trial-to-breach-of-peaceful-assembly-act#sthash.mqKdO7uX.dpuf>, accessed on 29 May 2016.

⁵³ ‘Nik Nazmi again to stand trial for breach of Peaceful Assembly Act’ Malay Mail Online, 3 November 2015, at <http://www.themalaymailonline.com/malaysia/article/nik-nazmi-again-to-stand-trial-for-breach-of-peaceful-assembly-act#sthash.PXYVAlU.dpuf>, accessed on 29 May 2016.

Penal Code (s.124 amendments)

The Penal Code amendments were tabled by then de-facto Law Minister, Nazri Aziz, on 10 April 2012, entering into effect on 31 July 2012. The new sections were meant to deal with offences previously governed by the ISA, albeit with modifications. The section empowers authorities to take action not only against individuals but also against print and electronic media practitioners. Moreover, s.124B affirms anyone involved in an “activity detrimental to parliamentary democracy” can be imprisoned to a term that may extend to 20 years while those attempting to do so may be imprisoned up to 15 years.⁵⁴ However, in reality, the Act has been arbitrarily used against peaceful protestors. For example, 17 persons (16 of whom were university students) were arrested and detained for merely participating in a peaceful sit-in outside parliament on 25 August 2015. Critics felt s.124B was devised to cover violent offences such as the assassination of a head of state, a coup d'état, an armed insurgency, guerrilla warfare, and breaches of constitutional provisions. In particular, it was felt the Act should not be misused to reduce the power of constitutional rights enshrined in Arts 10(1)(b) and 10(2)(b) guaranteeing the right to assemble peaceably without arms. There were also worries that abuse of s.124B would cause fear or anxiety amongst members of the public.⁵⁵

Printing Presses and Publications Act 1984

The Printing Presses and Publications Act 1984 or PPPA gives absolute discretion to the Home Affairs Minister to grant or revoke a licence for the possession or use of a printing press. It can also restrict or ban publications likely to endanger national security interests or create social unrest. Violators can be imprisoned for up to three years and/or fined up to MYR20,000. Permits are normally granted for a one-year period, and cannot be transferred without permission of the Minister. In 2012, the PPPA was amended removing the requirement for annual printing permits but the Home Minister continues to hold absolute power to suspend and revoke licences of media outfits and printing houses. It must be said the Malaysian government continues to use the PPPA to control the media and publishing houses and to ban materials critical of the government. For example, in July 2015, the Act was evoked to suspend two publications under The Edge Media Group for their reporting of the controversial state-owned firm, 1MDB. The courts later overturned the order declaring the Home Ministry had acted irrationally and illegally. Similarly, in 2013, the government ordered the suspension of news weekly, The Heat, due to its front page story on excessive spending by Prime Minister Najib Razak. It wasn't until January 2016 that this suspension was lifted.⁵⁶

⁵⁴ 'Azmi Sharom: University students risk expulsion over vague law protecting 'parliamentary democracy'' HAKAM, 20 May 2016, available at <http://hakam.org.my/wp/index.php/2016/05/20/azmi-sharom-university-students-risk-expulsion-over-vague-law-protecting-parliamentary-democracy/#more-7238>, accessed on 30 May 2016.

⁵⁵ 'Don't use section 124B of Penal Code to curb freedom' Malaysiakini, 28 August 2015, available at <https://www.malaysiakini.com/news/310323>, accessed on 30 May 2016.

⁵⁶ 'Printing Presses and Publications Act' Wikipedia, 11 May 2016, available at https://en.wikipedia.org/wiki/Printing_Presses_and_Publications_Act_1984, accessed on 29 May 2016.

Trade Union Act 1959 and Industrial Relations Act 1967

Although the Constitution guarantees the right of all Malaysians to form and join trade unions, such rights are regulated by the Trade Unions Act 1959 (TUA) and the Industrial Relations Act 1967 (IRA). The TUA does not permit general unions for workers; rather membership is confined to employees of a particular industry, establishment, trade, or occupation. Although temporary and contract (including foreign) workers may join unions, most are afraid to do so for fear their work permits or contracts may be cancelled or revoked. Managerial, executive, confidential, and security employees cannot be members of a non-executive union and they cannot be represented by a union for the purpose of collective bargaining.

Under the IRA, employers are allowed to prohibit management, executives, and those working in a confidential or security capacity, from joining a union, but definitions of such classifications are left to the employer's discretion. In reality, many consider all clerical staff to work in a confidential capacity and all production workers to be working in a security capacity (since they oversee their machines). Such measures and the fact government policies segregate trade unions have kept the movement under constant scrutiny and control. Accordingly, only 3% of private sector workers are trade union members and less than 2% are covered by collective agreements. The increase in the number of trade unions in the country is largely due to the formation of in-house unions which often comprise less than 100 members.⁵⁷

The 28,000 member strong National Union of Bank Employees (NUBE)⁵⁸ serves as a classic example of managements' union busting tactics. For the past 5 years, NUBE has battled with the country's prominent Maybank Berhad, challenging registration of the bank's in-house union, the Mayneu (Maybank Non-Executives Union). On 17 September 2014, the Court of Appeal quashed the decision of the Director-General of Trade Unions (DGTU) dated 3 January 2011 pursuant to s.12(1) of TUA, setting aside the registering of Mayneu as an in-house union because the decision had been made without consulting NUBE. Thus, the Court of Appeal allowed NUBE's appeal with costs of MYR20,000 to be paid by the DGTU and Mayneu respectively.^{59, 60}

⁵⁷ 'Trade unions in Malaysia' Wikipedia, 26 October 2014, available at https://en.wikipedia.org/wiki/Trade_unions_in_Malaysia, accessed on 30 May 2016.

⁵⁸ 'National Union of Bank Employees' NUBE, 2015, available at <http://nube.org.my/membership/>, accessed on 30 May 2016.

⁵⁹ 'Yellow union at Maybank: Registered by government (2012)' ITUC CSI IGB, 2013, available at <http://survey.ituc-csi.org/Yellow-union-at-Maybank.html>, accessed on 29 May 2016.

⁶⁰ 'NUBE hails appellate court decision on Mayneu' Malaysiakini, 22 September 2014, available at <https://m.malaysiakini.com/letters/275331>, accessed on 30 May 2016.

Part 2: Outstanding Human Rights Issues

A. Racism and Non-Discrimination

Combating racism and xenophobia in a multi-racial and multi-religious country like Malaysia is a mammoth challenge, involving multiple stakeholders. As part of its efforts to confront this issue, the government established the National Unity Consultative Council (NUCC)⁶¹ in 2013 to prepare a blueprint for national unity and social cohesion. Comprised of selected representatives from different government agencies, members of academia, and civil society organisations, the group conducted many consultations and dialogues on sensitive topics such as the use of the word ‘Allah’ by non-Muslims, housing issues, Sabah and Sarawak, and constitutional matters including Art 153 (protecting the special privileges of both Malay and non-Malay bumiputeras). Unfortunately, the NUCC’s recommendations to the Prime Minister were never made public and the Council disbanded after completing its tasks with no clear indication of whether their recommendations would be acted upon.⁶²

Civil society organisations combating racism and xenophobia have urged the government to seriously and genuinely address this urgent issue by adhering to and ensuring the non-discrimination principles spelled out in the Federal Constitution, as well as universally accepted documents such as the UDHR and the ICERD. Thus, it was seen as a positive step forward when the government agreed to fulfil recommendations strengthening national unity and social cohesion made by other member states in the second cycle of its UPR in 2013.

B. Indigenous Peoples’ Land Rights

It is estimated indigenous peoples accounted for 13.9% of Malaysia’s total population of 31 million in 2015. Indigenous people’s customary land rights on the Peninsular and in Sarawak and Sabah have always been the cause of much tension in the country. Many claim the government tends to favour plantation and logging company owners who often encroach on their ancestral lands. Further, the Malaysian National Land Code does not clearly mention the customary land rights of indigenous people. It is interesting to note that Malaysia voted for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁶³ and endorsed the Outcome Document of

⁶¹ ‘10 things to know about the NUCC’s Harmony Bills’ Poskod.my, 2010, available at <http://poskod.my/cheat-sheets/national-unity-consultative-council/>, accessed on 29 May 2016.

⁶² ‘Malaysia racial discrimination report 2015’ Pusat KOMAS, 21 March 2016, available at <http://komas.org/v2/wp-content/uploads/2013/06/Malaysia-Racial-Discrimination-Report-2015.pdf>, accessed on 29 May 2016.

⁶³ ‘United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)’ United Nations, 8 August 2008, available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, accessed on 30 May 2016.

the World Conference on Indigenous Peoples, but has still not ratified ILO Convention 169 on Indigenous Peoples Right to Land.⁶⁴

The principal act governing Orang Asli land and welfare issues is the Aboriginal Peoples Act 1954 (Act 134). This Act gives supreme powers to state authorities to gazette and revoke lands as “aboriginal reserves” (s.7), “aboriginal areas” (s.6), or “aboriginal inhabited places.” Thus, state authorities have the power to order any aboriginal community to leave Malay Reservations Land (s.10), or to excise, alienate, grant, lease, or otherwise dispose of land aboriginal communities have used – with compensation being limited to fruit and rubber trees (s.11). In addition, s.12 allows state authorities to grant compensation for losses if land is excised from aboriginal areas or reserves; this may be paid to the Director General of the JHEOA (Department of Orang Asli Affairs) to be held in a common fund.⁶⁵

For many years, indigenous peoples, both in Peninsular and East Malaysia, have been locked in legal battles and mass actions against local government agencies and business companies encroaching on their ancestral land. One significant case involved headman, Nohing, of the Bukit Rok community, who in 2007 filed a claim against the Director of the State Land and Mines Office, the state government, the Director-General of the Department of Orang Asli Development (JAKOA), and the federal government seeking to find the state authority had failed to administratively gazette 2,023 hectares of their traditional lands which, he claimed, had been approved for gazetting in 1974. Instead the state had awarded a significant portion of this land to FELCRA Berhad (Federal Land Consolidation and Rehabilitation Authority, a fully government-owned company) for development as an oil palm plantation. After 5 years of litigation, the court ruled in the Orang Asli’s favour, upholding the pre-existing native title rights of the Semelai people. It also held they had native title rights to their customary lands as long as those lands had been settled, planted, occupied, and controlled by the Semelai people. However, ‘roaming lands’ (kawasan rayau) which they did not occupy or exercise control over were not considered part of their tanah adat or customary lands.⁶⁶

Similar trends are happening in Sarawak and Sabah. On 9 September 2015, the Federal Court heard the Sarawak government’s appeal that pre-existing rights under native laws and customs (governed by common law) should not go beyond felled and cultivated lands, and therefore should not include rights to land, trees, hunting, fishing, grazing areas and other uncultivated areas to gather food and forest produce within broader territorial domains or communal areas. It also argued that the legislative or executive

⁶⁴ ‘Indigenous and tribal peoples’ ILO, available at <http://www.ilo.org/global/topics/equality-and-discrimination/indigenous-and-tribal-peoples/lang--en/index.htm>, accessed on 29 May 2016.

⁶⁵ Nah (see note 9 above).

⁶⁶ ‘Indigenous peoples in Malaysia’ IWGIA, 19 May 2016, available at http://www.iwgia.org/images/stories/sections/regions/asia/documents/IW2016/Malaysia_IW2016_web_redu.pdf, accessed on 29 May 2016.

arms of the Sarawak state government need not apply the force of the law to these “non-codified native customs.” Sarawak government’s legal counsel, JC Fong, said the government did not recognise these areas as native customary lands as they failed to satisfy the legal requirement of continuous occupation. The case is ongoing as the Federal Court deferred its decision without setting a date to consider the arguments presented.

Indigenous peoples have also fought against the building of hydroelectric dams in East Malaysia – successfully, when Sarawak’s Chief Minister was forced to shelve the proposed 1,000 MW Baram dam in 2015 after two years of protests and blockades by the Baram community, and less successfully as regards the 1,200 MW Baleh dam which is due to start construction in 2018. Likewise, construction of the Kaiduan dam in Sabah continued to be the focus of local protests throughout 2015 with the government insisting it would bring an end to state water shortages. Despite the protests, in November 2015, it was announced the dam project would go ahead as planned.⁶⁷

C. Refugees, Asylum Seekers, and Human Trafficking

Malaysia’s immigration law does not recognise asylum seekers or refugees and the government is not party to the International Refugee Convention. Accordingly, it is not responsible or compelled to provide education, health services, or housing facilities to refugees or migrant children; nor is it required to give them legal permission to work. Matters came to a head in May 2015 when thousands of refugees and migrants from Myanmar and Bangladesh attempted to land on Langkawi Island in Malaysia. Although initially reluctant to receive them or provide aid, the government later agreed, in conjunction with Indonesia, to provide humanitarian assistance and temporary shelter for up to 7,000 refugees and migrants for up to one year.

As regards human trafficking, the United States government demoted Malaysia to Tier 3 in its ‘Trafficking in Persons’ report in 2014,⁶⁸ but upgraded it to Tier 2 a year later. The full horror of the practice was laid bare in May and August of 2015 when more than 100 mass graves were found on the Thai-Malaysian border. As such, many claim the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 fails to meaningfully protect victims of trafficking.

Several months before the discovery of the mass graves, the UN Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, officially visited Malaysia in February 2015. While complimentary in her preliminary

⁶⁷ IWGIA (see note 66 above).

⁶⁸ ‘World report 2015: Malaysia’ Human Rights Watch, 2015, available at <https://www.hrw.org/world-report/2015/country-chapters/malaysia>, accessed on 29 May 2016.

findings report⁶⁹ for Malaysia's "resolve to fight against trafficking in persons, as reflected by the country's ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)," she also outlined areas for improvement including the introduction of treatment and support services for victims of trafficking and several other measures such as the need to "fast track the amendment of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act and other relevant regulations" to set up "a comprehensive anti-trafficking legal framework in compliance with the requirements of the Protocol." She also noted the need for amendments to allow victims in shelters to move outside the facilities and the right to stay and work while awaiting the outcome of legal proceedings and beyond; compensation during criminal procedures that are not dependent on conviction; victims' non-criminalisation for actions undertaken in relation to their status as victims; and the possibility of permitting NGOs to contribute more to anti-trafficking work by allowing them into MAPO (i.e. the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, a multi-sectoral committee with members drawn from relevant line ministries and government departments, chaired by the Secretary-General of the Ministry of Home Affairs).

As a result, parliament passed an amendment to the country's anti-trafficking law in July 2015 to improve conditions for victims. This new measure will provide better protection to victims by allowing NGOs to shelter them, giving victims the freedom to move and work while in government shelters, and extending the period investigators have to determine the veracity of human trafficking claims. Victims would also be given transitional housing for one month, a living allowance, and convicted traffickers would be forced to pay court-ordered damages. Moreover, formalisation of a "high-level" government committee to work on trafficking issues was also advocated.⁷⁰

D. Persecution or Criminalisation of Persons

Gender identity and sexual orientation discrimination

State and societal discrimination against lesbian, gay, bisexual, and transgender (LGBT) people is very prevalent in Malaysia. In particular, transgender persons constantly face arbitrary arrest, physical and sexual assault, imprisonment, discriminatory denial of healthcare and employment, and other abuses. Malaysian law currently penalises homosexual acts involving either men or women with whipping and imprisonment for up to 20 years. For example, s.377A describes offences committed against the "order

⁶⁹ 'Preliminary findings, UN Special Rapporteur on Trafficking in persons, especially women and children, Maria Grazia Giammarinaro visit to Malaysia (23-28 February 2015)' UN-OHCHR, 2 March 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15631&LangID=E>, accessed on 30 May 2016.

⁷⁰ 'Facing pressure ahead of trade deal, Malaysia actually takes steps to improve human trafficking record' Huff Post Politics, 18 June 2015, available at http://www.huffingtonpost.com/2015/06/18/malaysia-human-trafficking_n_7616702.html, accessed on 28 May 2016.

of nature” as “[a]ny person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person ...” Sections 377B, C, and D spell out the punishments for such offences including imprisonment of not less than 5 but no more than 20 years and whipping. Under Sharia penal law, penalties for sodomy (liwat) and lesbian relations (musahaqat) include fines of MYR5,000, three years’ imprisonment, and six lashes of the whip.⁷¹

Prosecution of Anwar Ibrahim

Former Deputy Prime Minister, Anwar Ibrahim, who later became head of the opposition party coalition, was first charged with corruption and sodomy in 1998. In 2000, he was sentenced to nine years’ imprisonment for engaging in sodomy with his 19-year-old male chauffeur and his former male speech writer. After serving four years in prison, the Federal Court acquitted him of all charges. Domestically and abroad, the persecution and jailing of Anwar Ibrahim was seen as a government conspiracy to end his political career. Indeed, a mere four months after the opposition party coalition, Pakatan Rakyat, gained control of five states from BN in the 12th General Election of March 2008, Anwar was again arrested and charged with committing sodomy, this time with his male former aide. Acquitted by the High Court, he later won his former seat in parliament and became leader of the opposition,⁷² but at the beginning of 2015, Anwar was again arrested when the Court of Appeal overturned the acquittal and he was sentenced to five years in prison. Although the UN Working Group on Arbitrary Detention determined Ibrahim had been jailed illegally and called for his immediate release, concluding his imprisonment to be “arbitrary” because he had been denied a fair trial and was jailed for political reasons, the Federal Court upheld the decision and reaffirmed his sentence.⁷³

Lena Hendry charged under the Film Censorship Act 2002

On 19 September 2013, Lena Hendry of the NGO, Pusat Komnas, was charged under s.6 of the Film Censorship Act 2002 for organising a screening of the documentary, No Fire Zone: The Killing Fields of Sri Lanka about alleged human rights violations committed by the Sri Lankan military during the 2009 civil war. As such, she became the first human rights defender in Malaysia to be charged under a law criminalising the act of possessing or exhibiting films not approved by the Film Censorship Board of Malaysia, carrying a penalty of up to three years’ imprisonment, a fine not exceeding MYR30,000, or both. It was believed the charges brought against Lena Hendry were

⁷¹ ‘Anti-LGBTI laws: Malaysia’ Erasing 76 Crimes, available at <https://76crimes.com/anti-lgbt-laws-malaysia/>, accessed on 28 May 2016.

⁷² ‘Anwar Ibrahim’ Wikipedia, 28 May 2016, available at https://en.wikipedia.org/wiki/Anwar_Ibrahim, accessed on 28 May 2016.

⁷³ ‘United Nations determines detention of Malaysia’s Anwar Ibrahim ‘arbitrary’ and political’ ABC News, 2 November 2015, available at <http://www.abc.net.au/news/2015-11-02/un-determines-detention-of-malysias-anwar-ibrahim-arbitrary/6905994>, accessed on 29 May 2016.

directly linked to her work exposing human rights violations in Sri Lanka.⁷⁴ In March 2016, the Kuala Lumpur Magistrates Court acquitted the activist but authorities are appealing this decision.

Death penalty

In Malaysia, the death penalty continues to be the mandatory punishment for drug trafficking, murder, and the discharge of firearms with intent to kill or harm in certain circumstances. In November 2015, however, the government announced that legislative reforms to review the mandatory death penalty laws would be debated in parliament in early 2016. With 1,043 death row inmates nationwide as of May 2015,⁷⁵ many consider the debate long overdue especially as the authorities also announced that 33 executions had been carried out between 1998 and 2015. In response, Amnesty International urged the government to ensure the proposed amendments were “in line with international human rights law and standards, pending full abolition of the death penalty.”⁷⁶

Part 3: Conclusion

The Malaysian government depends heavily on its laws to check and control its people, often justifying questionable behaviour by the rationale of protecting “national security” and “maintaining racial harmony.” This alarming trend has resulted in the restriction, suppression, and violation of basic human rights, even those protected by the Constitution. Furthermore, many of these laws are not clearly or specifically defined, leaving implementation and interpretation to law enforcement officers and government ministers. Accordingly, many human rights defenders, government critics, and opposition party politicians have become its victims. The recently passed POTA is a case in point.⁷⁷

The ruling government has also used the time-tested colonial strategy of ‘divide and rule’ on its citizens by punishing or rewarding different ethnic groups. Accordingly, the government often turns a blind eye to obviously racist or bigoted remarks and acts by extremist groups in the country, thus, indirectly condoning such behaviour. For example, the infamous 16 September 2015 ‘Merah169’ or ‘red shirt’ rally—during which several thousand Malays marched in the streets, hurling racial insults at the Chinese whilst trying to enter Petaling Street (Chinatown)—is a clear case in point.

⁷⁴ ‘Case history: Lena Hendry’ Front Line Defenders, 14 March 2016, available at <https://www.frontlinedefenders.org/en/case/case-history-lena-hendry>, accessed on 29 May 2016.

⁷⁵ ‘Cornell Center on the death penalty worldwide’ Cornell Law School, 21 July 2015, available at <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=malaysia#f4-2>, accessed on 31 May 2016.

⁷⁶ ‘Malaysia must now act on death penalty reforms’ Amnesty International, 24 November 2015, available at <http://www.amnesty.org.au/news/comments/38470/>, accessed on 31 May 2016.

⁷⁷ ‘HRW slams Malaysia’s new ‘repressive’ anti-terrorism law’ Human Rights Watch, 7 April 2015, available at <https://www.hrw.org/news/2015/04/07/hrw-slams-malysias-new-repressive-anti-terrorism-law>, accessed on 29 May 2016.

Several high-ranking government officials, including the Prime Minister and his party, UMNO, were even suspected of backing the event. In fact, Najib was reported to have defended the rally saying “Malays also have rights” after being “slapped” four times.⁷⁸

Racial politics continue to prevail over the country’s political landscape and is often exploited by political parties on both sides of the divide. This decades old trend has created massive divisions within Malaysia’s multi-racial and multi-religious society and has made race-centric politics a mantra for many political parties and their members. Furthermore, the government often uses this clever but dangerous tactic to steer the country’s attention away from Prime Minister Najib and his alleged involvement in the 1MDB scandal.⁷⁹

As evidenced by the alleged involvement and convictions of various government officials, high-ranking ministers, and elected representatives, corruption in Malaysia is rife. For example, former Selangor State Chief Minister, Mohamad Khir Toyo, was convicted of corrupt practices in September 2015 and sentenced to 12 months by the Federal Court for misusing his position as Menteri Besar to obtain two plots of land and a bungalow in Shah Alam, worth MYR6.5 million. Despite this, after serving only 6 months, he was released on parole in March 2016.⁸⁰ This incident and others like it have led Malaysia to drop to 54 in Transparency International’s 2015 Corruption Perception Index, compared to its ranking of 50 in 2014, placing it behind other developing countries such as Jordan (45), Namibia (45), and Rwanda (44).⁸¹

Education and information play a vital role in the advocacy of human rights. Therefore, it is imperative citizens be informed and educated in the meaning and core values of basic human rights. Social media has become an important tool in this fight with 68% of Malaysians or 20.63 million people using the internet in 2015.⁸² However, the real challenge involves expanding this reach to the country’s rural hinterlands to ensure this population too is made aware of its basic rights.

⁷⁸ The Prime Minister was referring to the four Bersih rallies of 2007, 2011, 2012, and 2015. See, ‘The Economist: Malaysia ‘playing with fire’ with red-shirt rallies’ Malay Mail Online, 25 September 2015, available at <http://www.themalaymailonline.com/malaysia/article/the-economist-malaysia-playing-with-fire-with-red-shirt-rallies#sthash.K9ThVTED.dpuf>, accessed on 29 May 2016.

⁷⁹ ‘The big read: On Malaysia Day, a reminder of racial politics at play’ TODAY, 29 May 2016, available at <http://www.todayonline.com/world/asia/big-read-malaysia-day-reminder-racial-politics-play-0>, accessed on 29 May 2016.

⁸⁰ ‘Khir Toyo to be released from parole this Friday’ New Straits Times, 29 May 2016, available at <https://www.nst.com.my/news/2016/05/147810/khir-toyo-be-released-parole-friday>, accessed on 29 May 2016.

⁸¹ ‘Malaysia slides four rungs, at 54th spot in 2015 Corruption Index, behind Rwanda’ Malay Mail Online, 27 January 2016, available at <http://www.themalaymailonline.com/malaysia/article/malaysia-slides-four-rungs-at-54th-spot-in-2015-corruption-index-behind-rwa#sthash.Glj5Hmq0.dpuf>, accessed on 29 May 2016.

⁸² ‘Malaysia internet users’ Internet Live Stats, available at <http://www.internetlivestats.com/internet-users/malaysia>, accessed on 29 May 2016.

While a free flow of information and freedom of expression are vital to change, responsive and proactive attitudes also play a crucial role in the sustainability of human rights. As such, civil society organisations and concerned citizens must continue to be vigilant and steadfastly stand as countervailing forces to ensure human rights remain a top priority. For example, the Bersih 4 rally on 29-31 August 2015—which saw 200,000 people gathering for 3 days in the capital city to assert their right to clean, fair, and free elections—is a shining example of such vigilance. The event also called for government transparency, accountability, and much-needed institutional reforms to ensure people's civil liberties.⁸³

It is also imperative for the Malaysian government to make clear and genuine commitments to international human rights treaties to demonstrate its seriousness in ensuring that the universally accepted and constitutionally guaranteed rights of its people are recognised, respected, and upheld, e.g. by ratifying ICERD and acceding to ICESCR and ICCPR and their related protocols.⁸⁴ Finally, the government should immediately reveal the findings of the NUCC (which had previously compiled the thoughts and views of Malaysians on unity and social cohesion). Containing nine key outcomes, a proposal to enact a National Harmony Law, and another to establish a Reconciliation Commission, the report was submitted to Prime Minister Najib in 2015 without any further progress being made.⁸⁵

⁸³ 'Bersih 4.0 protest enters final hour ahead of National Day' Channel News Asia, 31 August 2015, available at <http://www.channelnewsasia.com/news/asiapacific/bersih-4-0-protest-enters/2086202.html>, accessed on 29 May 2016.

⁸⁴ 'A modest proposal: A call for Malaysia to sign on to the ICESCR' Malay Mail Online, 16 December 2015, available at <http://www.themalaymailonline.com/malaysia/article/a-modest-proposal-a-call-for-malaysia-to-sign-on-to-the-icescr>, accessed on 27 May 2016.

⁸⁵ 'G25: Time to consider NUCC recommendations' The Star Online, 23 July 2015, available at <http://www.thestar.com.my/news/nation/2015/07/23/g25-nucc-recommendations/>, accessed on 30 May 2016.

MYANMAR

MYANMAR^{*}

*Nyi Nyi Kyaw^{**}*

Part 1: Overview of Myanmar

A. Country Background

Myanmar Facts ¹	
Geographical size	676,577 sq km
Population	51.49 million ²
Ethnic breakdown ³	Main ethnic groups: Burman (68%) Shan (9%) Karen (7%) Arakanese or Rakhine (4%) Mon (2%)
Official language(s)	Myanmar or Burmese
Literacy rate (aged 15 and above)	89.5%
Life expectancy	66.8
GDP	US\$67.43 billion (per capita US\$1,275) ⁴
Government	A presidential republic with nominal or quasi-federal features. Executive power is limited by military prerogatives written into the highly undemocratic Constitution, e.g. military appointees fill 25% of parliamentary seats.
Political and social situation	Although the civilian NLD won the 2015 general election by a landslide, a brutal crackdown on Rohingya Muslims in Rakhine State and ongoing conflict between the military and ethnic groups led to massive displacement. Despite some reforms, the growth of Buddhist extremist groups also adversely affected intercommunal relations between the Buddhist majority and the Muslim minority.

^{*} Also known as the Republic of the Union of Myanmar or Burma.

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¹ Data from 2014. Ministry of Immigration and Population, The 2014 Myanmar Population and Housing Census: The Union Report – Census Report, Volume 2, Nay Pyi Taw: Ministry of Immigration and Population, 2015, at 1-2.

² Census figures include only estimates of certain populations in Rakhine (mainly Rohingya) and Kayin States: see, Ministry of Immigration and Population (note 1 above), at 3.

³ 'The world factbook: Burma' Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>, accessed on 3 December 2017. However, these ethnic breakdowns are highly contested with many arguing that the government consistently underestimates the size of non-Burman communities. Official figures are also likely to be flawed in border areas which remain inaccessible to government and international agencies alike.

⁴ Data from 2016. 'Myanmar' The World Bank, available at <https://data.worldbank.org/country/myanmar>, accessed on 3 December 2017.

System of governance

Myanmar is a presidential republic with nominal or quasi-federal features. The President is head of state whilst executive powers are limited by military prerogatives enshrined in the 2008 Constitution (which was drafted at the military's behest in the 1990s and 2000s). These prerogatives include occupancy of a quarter of all parliamentary seats by unelected military representatives directly nominated by the Commander-in-Chief, a provision effectively prohibiting any constitutional amendments unfavourable to the military.⁵ Further, the Commander-in-Chief also nominates the three important ministerial positions of defence, home affairs, and border affairs.⁶ Moreover, the military is free from civilian oversight⁷ and even possesses the power to influence or remove civilian rule in times of national emergencies.⁸ Aside from being highly undemocratic, the Constitution has also been criticised for being insufficiently federalist due to the lack of equal and proportional devolution of powers from the Union to ethnic states as reflected in the Union Legislative List,⁹ the Region or State Legislative List¹⁰ and the List of Legislation of the Leading Body of Self-Administered Divisions or Self-Administered Areas.¹¹

Although the National League for Democracy (NLD) party won by a landslide in the general election of 8 November 2015, its chair, Aung San Suu Kyi, was not eligible for the presidency as Art 59(f) of the Constitution bars anyone with a parent, spouse or child who is a foreign national from holding the post – Aung San Suu Kyi's children are British nationals. In the months following the election preceding formation of the executive, a serious debate raged over whether to amend or suspend the section to allow her to become president.¹² However, constitutional reform for this purpose failed to materialise; instead, the NLD-dominated parliament created the position of State Counselor giving Aung San Suu Kyi de facto head of government powers.¹³ The NLD government has been in power since March 2016.

⁵ Constitution of the Republic of the Union of Myanmar, ss.109 (b), 141(b).

⁶ Constitution of the Republic of the Union of Myanmar, s.232(b)(ii).

⁷ Constitution of the Republic of the Union of Myanmar, s.338.

⁸ Constitution of the Republic of the Union of Myanmar, ss.40(c), 417-9.

⁹ Constitution of the Republic of the Union of Myanmar, Schedule I.

¹⁰ Constitution of the Republic of the Union of Myanmar, Schedule II.

¹¹ Constitution of the Republic of the Union of Myanmar, Schedule III.

¹² 'Bill Committee member hints at charter change' Myanmar Times, 10 February 2016, available at <https://www.mmmtimes.com/national-news/nay-pyi-taw/18897-bill-committee-member-hints-at-charter-change.html>, accessed on 17 February 2016; 'Nationalists warn NLD on constitution' Myanmar Times, 29 February 2016, available at <https://www.mmmtimes.com/national-news/nay-pyi-taw/19224-nationalists-warn-nld-on-constitution.html>, accessed on 1 March 2016.

¹³ 'State counsellor' bill approved despite military voting boycott' Myanmar Times, 5 April 2016, available at <https://www.mmmtimes.com/national-news/19844-military-protests-but-parliament-passes-state-counsellor-bill.html>, accessed on 5 April 2016.

B. International Human Rights Commitments and Obligations

As shown in Table 1 below, although Myanmar is a party to four major international human rights treaties—the ICESCR, CRDP, CRC, and CEDAW—it has been slow to put into place domestic legislation and instruments to comply with treaty obligations and duties, albeit with a few exceptions. For example, following ratification of the CRC in 1991, Myanmar enacted the Child Law (1993) and its rules (2001) with the express aim of implementing the rights enshrined in the CRC.¹⁴ Further, at the end of 2016, a new child law was drafted by the Ministry of Social Welfare Relief and Resettlement with the support of UNICEF for submission to parliament in 2017.¹⁵ Likewise, the 2015 Rights of Persons with Disabilities Law was enacted to comply with the CRPD.

However, it also attached reservations to certain conventions including Art 29 of CEDAW (on dispute resolution and interpretation of the Convention), Arts VI and VIII of the Convention on the Prevention and Punishment of the Crime of Genocide (on immunity from prosecutions), and Art 16(1) of the Convention Against the Taking of Hostages (on dispute resolution).

Table 1: Ratification Status of International Instruments – Myanmar¹⁶

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		22 Jul 1997 (a)

¹⁴ Child Law, s.3(a).

¹⁵ UNICEF Myanmar, ‘Delivering results for children 2016: Programme of cooperation between the Government of the Union of Myanmar and UNICEF’ available at [https://www.unicef.org/myanmar/Delivering_results_for_children_2016_Final_preview_version\).pdf](https://www.unicef.org/myanmar/Delivering_results_for_children_2016_Final_preview_version).pdf), accessed on 3 December 2017, at 9.

¹⁶ ‘Ratification status for Myanmar’ United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 7 October 2017.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)	16 Jul 2015	6 Oct 2017
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		15 Jul 1991 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	28 Sep 2015	
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		16 Jan 2012 (a)
Convention on the Rights of Persons with Disabilities (CRPD)		7 Dec 2011 (a)

C. National Laws Threatening Human Rights

As mentioned above, several undemocratic, unfederal provisions in the Constitution, in terms of doctrinal text and implementation, continue to have an adverse impact on human rights, affecting both the population in general, and diverse ethnic and religious communities in particular. For example, the three ministries of defence, home affairs, and border affairs are under the Commander-in-Chief's control effectively meaning all internal and external defence and security matters are in the hands of one person. Further, the government is unable to exert direct influence on the decisions and actions of the military or police.

Religiously motivated legislation

Four religiously motivated laws demanded by Ma Ba Tha (the Organisation for the Protection of Race and Religion) were enacted by August 2015: the Health Care Law Relating to the Adjustment of Population Growth, the Law Relating to Religious Conversion, a Special Law Relating to the Marriage of Myanmar Buddhist Women, and the Law Relating to the Practice of Monogamy.

The population growth law requires a presidential order and has never been invoked. The Buddhist women's special marriage law has not been popular despite anecdotal evidence that it is becoming increasingly difficult, if not impossible, to register

marriages between non-Buddhist men and Buddhist women due to cumbersome requirements. Although concerns were initially expressed that the four laws would target religious minorities, especially Muslims, the Buddhist majority has taken the brunt of the monogamy law as many Buddhist women have taken advantage of it to sue their Buddhist husbands for extramarital and/or polygamous relations.¹⁷ Finally, despite the religious conversion law prescribing punishment for forced conversion, in May 2016, Ma Ba Tha converted 71 people to Buddhism (8 Christians, 5 Hindus, and 58 Muslims) in Meiktila, Mandalay Region,¹⁸ an area which also saw the occurrence of serious interreligious violence in March 2013.

Citizenship Law 1982

To Myanmar's Rohingya population, the text and implementation of the Citizenship Law 1982 still poses an unsurmountable obstacle to the recognition, respect, protection, and fulfilment of nationality rights. The law creates two classes of citizens with different rights: citizens of indigenous ancestry and citizens of non-indigenous ancestry.¹⁹ Indigenous citizens are treated as a privileged class of citizenry whereas other types of citizens, including the Rohingya, are granted a lesser status. Since the government and military began negotiations with indigenous armed groups for nationwide peace, this structural discrimination has become more entrenched in recent years, further eroding the status of non-indigenous citizens.²⁰ In addition, non-native citizens are classified as citizens, associate citizens, and naturalised citizens, all of which may be revoked in the interests of the state. The Rohingya have been subject to this discriminatory text since the early 1990s, with the result that they are almost totally undocumented despite claiming roots in the region going back centuries.²¹

D. Recent Court Cases Relating to Human Rights

Several defamation cases in 2016 filed by individuals, members of parliament, and other groups under s.66(d) of the Telecommunications Act (2013) illustrate the growing threat to freedom of expression.

¹⁷ Crouch, M, 'Promiscuity, polygyny, and the power of revenge: The past and future of Burmese Buddhist law in Myanmar' *Asian Journal of Law and Society*, 2016, Vol 3, No 1, pp 85-104; 'The monogamy law's unintended consequences' *Frontier*, 11 November 2015, available at <https://frontiermyanmar.net/en/opinion/the-monogamy-laws-unintended-consequences>, accessed on 12 November 2015; 'More cases filed under Monogamy Law' *Myanmar Times*, 19 February 2016, available at <https://www.mmmtimes.com/national-news/yangon/19081-more-cases-filed-under-monogamy-law.html>, accessed on 20 February 2016.

¹⁸ 'Residents critical of large-scale religious conversion in Meiktila' *Myanmar Times*, 24 May 2016, available at <https://www.mmmtimes.com/national-news/mandalay-upper-myanmar/20465-residents-critical-of-large-scale-religious-conversion-in-meiktila.html>, accessed on 2 December 2017.

¹⁹ Kyaw, NN, 'Alienation, discrimination, and securitization: Legal personhood and cultural personhood of Muslims in Myanmar' *Review of Faith & International Affairs*, 2015, Vol 13, No 4, pp 50-59.

²⁰ Cheesman, N, 'How in Myanmar 'national races' came to surpass citizenship and exclude Rohingya' *Journal of Contemporary Asia*, 2017, Vol 47, No 3, pp 461-483.

²¹ Kyaw, NN, 'Unpacking the presumed statelessness of Rohingyas' *Journal of Immigrant & Refugee Studies*, 2017, Vol 15, No 3, pp 269-286.

Yangon Region Government v Eleven Media Group

On 5 November 2016, well-known journalist-cum-publisher, Than Htut Aung, CEO of Eleven Media Group, wrote an article in English accusing the Chief Minister of Yangon Region, Phyo Min Thein, of taking a Patek Philippe watch worth US\$100,000 from prominent businessman, Maung Weik, as a bribe.²² Although naming neither individual by name, sufficient clues were provided to pinpoint the two. The same article in Burmese also appeared on the same day in the Daily Eleven (published by Eleven Media Group) while its English version was likewise posted online.²³ Further, Htut Aung went on to share the story on his personal Facebook wall.²⁴

The Yangon Region government asked Htut Aung and the Eleven Media Group for an explanation; both refused to comply, citing freedom of the press but responded that Htut Aung's piece was an op-ed based on social media sources so should not be taken as a regular news story. Nevertheless, the regional government sued him for his Facebook post under the defamation clause (s.66(d) of the Telecommunications Act). In addition, for printing the story, the government filed another complaint with the Myanmar Press Council which led to the arrest and imprisonment of Htut Aung and Eleven Media's chief editor, Wai Phyo, on 11 November.²⁵

When both failed to secure bail even after Than Htut Aung suffered a heart attack on 23 November,²⁶ the newspaper published an official apology to Phyo Min Thein on 27 December stating that the accusations had been "wrong and groundless."²⁷ Saying it was "completely unacceptable" for journalists to be detained because of what they publish, Reporters Without Borders (RSF) called on the Myanmar authorities to release the duo.²⁸ The high-profile case led to heightened debate on s.66(d) within and without

²² 'Myanmar: A year after the Nov 8 polls' The Straits Times, 5 November 2016, available at <http://www.straitstimes.com/asia/se-asia/myanmar-a-year-after-the-nov-8-polls>, accessed on 1 October 2017.

²³ An English version with the title slightly altered was also posted on the Eleven Media Group website on 5 November: 'Myanmar, one year after the Nov 8 polls' Eleven, available at <http://www.elevenmyanmar.com/opinion/6470>, accessed on 1 October 2017.

²⁴ 'Yangon govt sues Eleven over story implying Chief Minister took bribe' Myanmar Times, 3 December 2017, available at <https://www.mmmtimes.com/national-news/yangon/23583-yangon-govt-sues-eleven-over-story-implicating-chief-minister-took-bribe.html>, accessed on 25 July 2017.

²⁵ 'Eleven Media CEO, chief editor taken to Insein on defamation charges' Frontier Myanmar, available at <https://frontiermyanmar.net/en/eleven-media-ceo-chief-editor-taken-to-insein-on-defamation-charges>, accessed on 26 July 2017.

²⁶ 'Bail denied for Eleven Media CEO, editor' Myanmar Times, 23 December 2016, available at <https://www.mmmtimes.com/national-news/24348-bail-denied-for-eleven-media-ceo-editor.html>, accessed on 18 August 2017.

²⁷ 'Eleven issues apology over defamation case' Frontier Myanmar, 28 December 2016, available at <https://frontiermyanmar.net/en/eleven-issues-apology-over-defamation-case>, accessed on 17 August 2017.

²⁸ 'RSF calls for release of Eleven Media CEO and chief editor' Mizzima, 24 November 2016, available at <http://www.mizzima.com/news-domestic/rsf-calls-release-eleven-media-ceo-and-chief-editor>, accessed on 1 June 2017.

Myanmar focusing on freedom of expression, social media, defamation, the role of the Myanmar Press Council, and criminal action against media by powerholders.²⁹

Military v NLD Central Research Team Secretary

Ex-political prisoner and prominent member and secretary of the Central Research Team of the NLD party, Myo Yan Naung Thein, was arrested on 3 November 2016 after the Yangon Region Command filed a case against him under s.66(d) of the Telecommunications Act³⁰ for a 14 October Facebook post criticising Commander-in-Chief, Senior General Min Aung Hlaing.³¹

As such, this high-profile political case pitted the National League for Democracy or NLD against the military. While the NLD pledged legal support to their member,³² the complainant, Lin Tun (Deputy Director General of the Yangon Cantonment Area), denied higher command had asked him to file the case.³³ Myo Yan Naung Thein was repeatedly denied bail until late December.³⁴ As of late December 2016, the case is still pending.

E. Some Positive Developments

Repeal of the State Protection Act

Once convened, the NLD-dominated parliament moved to repeal the Law Safeguarding the State from the Danger of Subversive Elements in April 2016.³⁵ Commonly known as the State Protection Act, it was enacted in 1975 by the Burma Socialist Programme

²⁹ 'Eleven Media case puts 66(d) in the media spotlight, again' Frontier Myanmar, 4 December 2016, available at <https://frontiermyanmar.net/en/eleven-media-case-puts-66d-in-the-media-spotlight-again>, accessed on 1 August 2017; 'Govt avoiding public scrutiny, says new PEN Myanmar chair' Frontier Myanmar, 5 December 2016, available at <https://frontiermyanmar.net/en/govt-avoiding-public-scrutiny-says-new-pen-myanmar-chair>, accessed on 1 August 2017.

³⁰ 'NLD member appears in court for telecommunications charges' Irrawaddy, 4 November 2016, available at <https://www.irrawaddy.com/news/burma/nld-member-appears-in-court-for-telecommunications-charges.html>, accessed on 5 November 2016.

³¹ 'NLD researcher formally charged with defamation over Facebook critique' Myanmar Times, 18 November 2016, available at <https://www.mmtimes.com/national-news/yangon/23764-nld-researcher-formally-charged-with-defamation-over-facebook-critique.html>, accessed on 18 November 2016.

³² 'NLD pledges to support party member accused of defaming Tatmadaw commander-in-chief' Myanmar Times, 7 November 2016, available at <https://www.mmtimes.com/national-news/23510-nld-pledges-to-support-party-member-accused-of-defaming-tatmadaw-commander-in-chief.html>, accessed on 8 November 2016.

³³ 'NLD researcher's defamation case not coming from military higher-ups: Complainant' Myanmar Times, 28 November 2016, available at <https://www.mmtimes.com/national-news/23931-nld-researcher-s-defamation-case-not-coming-from-military-higher-ups-complainant.html>, accessed on 28 November 2016.

³⁴ '66(d)-pyin ta-ya-swè-kan-ya-thi U Myo Yang Naung Thein-e a-ma-kan shauk-ta-hmu pè-kya-kan-ya' (Bail denied for Myo Yang Naung Thein sued under section 66(d)), 7 Day Daily, 28 December 2016, available at <http://www.7daydaily.com/story/84599>, accessed on 29 December 2016.

³⁵ 'Parliament eyes revocation of 'oppressive' security law' Irrawaddy, 28 April 2016, available at <https://www.irrawaddy.com/news/burma/parliament-eyes-revocation-of-oppressive-security-law.html>, accessed on 29 April 2016; 'Parliament to debate axing junta-era law' Myanmar Times, 3 May 2016, available at <https://www.mmtimes.com/national-news/nay-pyi-taw/20075-parliament-to-debate-axing-junta-era-law.html>, accessed on 4 May 2016.

Party (BSPP) government to maintain law and order and protect the rights of citizens. However, it has also been used by the State Law and Order Restoration Council/State Peace and Development Council (SLORC/SPDC) to repress political opposition, e.g. it was repeatedly used to put Aung San Suu Kyi under house arrest.³⁶ Moreover, in 1991, the SLORC enacted the Law Amending the Law Safeguarding the State from the Danger of Subversive Elements (SLORC Law 11/91), extending permissible periods of detention from not exceeding 180 days at a time up to a total of 3 years, to not exceeding one year at a time up to a total of 5 years. The amendment also deleted s.21 of the previous law (granting judicial rights of appeal against extensions of state orders), effectively giving the SLORC discretionary powers to detain any person up to 5 years. Commonly known as the State Protection Law, it was repealed by the NLD-dominated parliament by the Law Repealing the Law Safeguarding the State from the Danger of Subversive Elements (Pyidaungsu Hluttaw Law 27/2016, dated 26 May 2016).³⁷

Repeal of the Emergency Provisions Act

In 2016, the NLD government also repealed the Emergency Provisions Act which had been used by the SLORC/SPDC government in the 1990s and 2000s to imprison hundreds of political dissidents. Enacted in 1950 by the Anti-Fascist People's Freedom League (AFPFL) government to control a raging civil war, this law had in turn repealed its predecessor, the Emergency Provisions Act 1948.

The NLD-dominated Hluttaw set out to repeal the law in August 2016 when the Lower House Bill Committee submitted its draft bill,³⁸ leading to the Law Repealing the Emergency Provisions Act (Pyidaungsu Hluttaw Law 39/2016) in October.³⁹ The Act was notorious among ex-political prisoners, many of whom had been arrested and imprisoned under its provisions, and many of whom went on to become members of parliament after the 2015 November general elections.

Move to enact a law to protect individual freedoms and the personal security of citizens

In September 2016, the Lower House Bill Committee submitted another bill to protect individual citizens' fundamental rights, privacy, and security. Bill Committee Chair, Tun Tun Hein, said about the proposed bill:

³⁶ Placed under house arrest three times, she was finally released in November 2010: 20 July 1989 to 10 July 1995; 23 September 2000 to 6 May 2002; and 30 May 2003 to 13 November 2010.

³⁷ 'Hluttaws revoke oppressive state protection law' Myanmar Times, 26 May 2016, available at <https://www.mmtimes.com/national-news/nay-pyi-taw/20512-hluttaws-revoke-oppressive-state-protection-law.html>, accessed on 26 May 2016.

³⁸ 'Bill committee moves to abolish controversial Emergency Provisions Act' Irrawaddy, 2 August 2016, available at <https://www.irrawaddy.com/news/burma/bill-committee-moves-to-abolish-controversial-emergency-provisions-act.html>, accessed on 3 August 2016.

³⁹ 'Parliament abolishes Emergency Provisions Act' Democratic Voice of Burma, 5 October 2016, available at <http://www.dvb.no/news/parliament-abolishes-emergency-provisions-act/71356>, accessed on 5 October 2016.

Our lives need to have safety. In the past, we used to live under anxiety ... when our doors would be knocked on, or when we would be arrested. So the state has to be held responsible for the safety of its citizens. In the past, our phones were always being tapped and private correspondences were being stealthily read. These behaviours very much aggravated security of life.⁴⁰

Accordingly, based on Art 357 of the Constitution, the new bill reads:

The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.

The bill was approved in the lower house on 20 September amidst objections by members of the quarter-strong military bloc.⁴¹ It was then sent to the upper house which amended ten points on 10 October before once again being submitted to the lower house. Still awaiting a decision at the pending Union Parliament, the bill has yet to become law at the end of 2016.⁴²

Part 2: Outstanding Human Rights Issues

A. Statelessness and the Rohingya

The statelessness of the Rohingya remained the most serious human rights issue throughout 2016. First arising in the late 1970s following the first Rohingya exodus to Bangladesh, this group's plight became an issue amidst heavy-handed immigration checks conducted by the socialist military-dominated regime.⁴³ This was followed by a second exodus in the 1990s caused by militarisation in Rakhine State.⁴⁴ All who fled on these two occasions were eventually repatriated.⁴⁵ As previously mentioned, throughout

⁴⁰ 'Bill committee submits law to protect citizens' Myanmar Times, 9 September 2016, available at <https://www.mmtimes.com/national-news/22419-bill-committee-submits-law-to-protect-citizens.html>, accessed on 7 September 2016.

⁴¹ 'Bill on personal freedoms, security passes Pyithu Hluttaw' Myanmar Times, 22 September 2016, available at <https://www.mmtimes.com/national-news/nay-pyi-taw/22657-bill-on-personal-freedoms-security-passes-pyithu-hluttaw.html>, accessed on 23 September 2016.

⁴² 'Pyidaungsu Hluttaw to decide on bill to protect citizens' freedom, security' Myanmar Times, 17 February 2017, available at <https://www.mmtimes.com/national-news/nay-pyi-taw/24981-pyidaungsu-hluttaw-to-decide-on-bill-to-protect-citizens-freedom-security.html>, accessed on 18 February 2017.

⁴³ Kyaw (see note 21 above).

⁴⁴ Kyaw (see note 21 above).

⁴⁵ Kyaw (see note 21 above).

the 1990s and 2000s, the Rohingya were arbitrarily and intentionally rendered undocumented by the government which failed to grant citizenship or naturalise the group according to the 1982 Myanmar Citizenship Law.⁴⁶ This law classifies citizens into native and non-native citizens, with both holding different rights.⁴⁷ Further, citizenship of non-native citizens may be revoked for unspecified reasons⁴⁸ regardless of how long they have lived in Myanmar.⁴⁹ Instead of colour-coded identity cards known as Citizenship Scrutiny Cards (CSCs) given to other peoples, many, if not most Rohingya were given temporary identity certificates known as the 'white card' from the 1990s onwards.⁵⁰

Despite this, those Rohingya only holding temporary identity certificates were still allowed to vote and establish political parties in both the 1990 and 2010 general elections.⁵¹ However, following the interreligious violence of 2012 in Rakhine State that pitted Rohingya and non-Rohingya Muslims against Rakhine Buddhists, the Rohingya's citizenship status sparked more heated debate.⁵² Without more permanent CSCs, the Rohingya were and are extremely vulnerable in terms of social and political identity. In particular, their rights to vote and establish political parties were questioned because the general population felt such rights should only apply to fully fledged citizens.⁵³ Following a Presidential Order in 2015,⁵⁴ the Rohingya were asked to exchange their white cards for another temporary identity document known as the Identity Card for National Verification (ICNV).⁵⁵ Lacking permanency and official standing, these cards were not welcomed by the Rohingya.⁵⁶ Nonetheless, the NLD government proceeded with the project originally initiated by Thein Sein's administration. As of 23 December 2016, 397,497 white cards had been returned in Rakhine State but only 6,077 ICNVs had been issued⁵⁷ meaning that state-wide, about half of Rohingya were still holding on to their now invalid white cards and only 1.5% of Rohingya returning their white cards were in possession of ICNVs at the end of 2016.

⁴⁶ Kyaw (see note 21 above).

⁴⁷ Kyaw (see note 19 above).

⁴⁸ Kyaw (see note 19 above).

⁴⁹ Kyaw (see note 19 above).

⁵⁰ Kyaw (see note 21 above).

⁵¹ Kyaw (see note 21 above).

⁵² Kyaw (see note 21 above).

⁵³ Kyaw (see note 21 above).

⁵⁴ Kyaw (see note 21 above).

⁵⁵ 'Myanmar officials issue green cards to Muslims in Rakhine State' Radio Free Asia, 15 June 2015, available at <http://www.rfa.org/english/news/myanmar/officials-issue-green-cards-to-muslims-in-rakhine-state-06152015145915.html>, accessed on 15 June 2015.

⁵⁶ 'New 'green cards' meet resistance' Myanmar Times, 18 June 2015, available at <https://www.mmtimes.com/national-news/15082-new-green-cards-meet-resistance.html>, accessed on 20 June 2015.

⁵⁷ 'Identity card for national verification in Rakhine to return' Global New Light of Myanmar, 27 December 2016, at 1.

In October and November 2016, hundreds of Rohingya men led by Harakah al-Yaqin (Faith Movement, HaY), attacked several border guard posts in Rakhine State with knives, slingshots, and a few firearms, killing nine police. Most likely caused by chronic statelessness since at least the 1990s and the protracted displacement of Muslims since 2012—as of December 2016, about 120,000 people remained displaced in 36 camps or camp-like settings in eight townships around Rakhine State—the attack led to an immediate military backlash.⁵⁸ Deemed a Muslim insurgency with Saudi and Pakistani funding by the International Crisis Group⁵⁹ and terrorists by the Myanmar government,⁶⁰ the violence quickly resulted in a security clearance operation which caused the deaths of an unknown number of people, displacement of 93,000 Muslims (24,000 in Rakhine State and 69,000 who fled to Bangladesh), and the burning down of hundreds of homes and buildings.⁶¹ All these old and new dynamics adversely affected human rights and peace in Rakhine State, a crisis that, as of December 2016, has not yet been resolved.

B. Freedom of Expression and Defamation Cases

Another serious human rights issue relates to freedom of expression which was increasingly curtailed in 2016 by a series of defamation cases filed under s.66(d) of the Telecommunications Act 2013. This provision was used by individual citizens, the government, the military, and media organisations alike. While only 7 cases were filed during Thein Sein's administration,⁶² during NLD's nine-month rule from April to December 2016, 38 were initiated. Moreover, bail was only granted in 20 cases where civilians had allegedly been defamed. In cases where powerful persons such as President Htin Kyaw, State Counselor Aung San Suu Kyi, Commander-in-Chief Min Aung Hlaing, and the Yangon Region Chief Minister were allegedly defamed, bail was not forthcoming with judges reportedly being pressured by their superiors to deny applications.⁶³

⁵⁸ 'Humanitarian response plan: Monitoring report – January-December 2016' United Nations Office for the Coordination of Humanitarian Affairs (OCHA) Myanmar, available at <https://reliefweb.int/report/myanmar/2016-humanitarian-response-plan-monitoring-report-january-december-2016>, accessed on 13 July 2017.

⁵⁹ International Crisis Group, *Myanmar: A New Muslim Insurgency in Rakhine State*, Brussels: International Crisis Group, 2016.

⁶⁰ '14 violent attackers, 17 terrorist trainees arrested in Maungtau' Global New Light of Myanmar, 15 November 2016, available at <http://www.globalnewlightofmyanmar.com/14-violent-attackers-17-terrorist-trainees-arrested-in-maungtau/>, accessed on 4 December 2017.

⁶¹ International Crisis Group (see note 59 above).

⁶² 'Journalists launch campaign, call for termination of article 66(d)' Irrawaddy, 6 June 2017, available at <https://www.irrawaddy.com/news/burma/journalists-launch-campaign-call-termination-article-66d.html>, accessed on 7 July 2017.

⁶³ '66(d): The defamation menace' Frontier Myanmar, 13 January 2017, available at <https://frontiermyanmar.net/en/66d-the-defamation-menace>, accessed on 14 January 2017.

While these high-profile cases heightened public debates on s.66(d),⁶⁴ the NLD government was also criticised for doing little to hasten its demise.⁶⁵ As such, a civil society network known as the Committee for Amending the Telecommunications Act was formed in September 2016.⁶⁶ Due to increased public interest, Shwe Mann—ex-speaker of the Lower House and chair of the Commission for the Assessment of Legal Affairs and Special Issues at the Union Parliament—joined the debate, asking for public input.⁶⁷ However, strong political will to repeal the legislation appears lacking as both the NLD and the military are involved in such cases having also allegedly been defamed.

Faced with intense pressure, lower house speaker Win Myint responded: “It [the Telecommunications Act] was necessary to promulgate originally. That kind of law is promulgated in every country. There is no country where that kind of law is not promulgated. When diplomats, international guests discuss that law with me, I respond as I have just now.”⁶⁸ Significantly, Win Myint’s comment that freedom of expression must be subject to truth and evidence, illustrates NLD’s belief that freedom of expression and defamation are two distinct issues. Thus, the debate to amend or repeal s.66(d) remains on Myanmar’s agenda, both in the NLD-dominated parliament and government and amongst the general public as well.

C. Anti-Minority Trends and Religious Freedom

In 2012, 2013, and 2014, violence broke out between Rohingya and non-Rohingya Muslims and Buddhists in Rakhine State, and between Buddhists and Muslims in other parts of Myanmar resulting in an unprecedented nationwide campaign against Islam and Muslims in general. Led by nationalist Buddhist monk networks and organisations such as 969 and Ma Ba Tha, the movement was active from 2013 through 2015 when its legal campaign resulted in the enactment of four race and religion laws (all passed

⁶⁴ Chan, D, ‘Memo to Myanmar’s leaders: Thick skins, not defamation suits, further free speech’ Myanmar Times, 18 November 2016, available at <https://www.mmmtimes.com/opinion/23768-memo-to-myanmar-s-leaders-thick-skins-not-defamation-suits-further-free-speech.html>; ‘Section 66(d), the newest threat to freedom of expression in Myanmar?’ Myanmar Times, 23 November 2016, available at <https://www.mmmtimes.com/national-news/23843-section-66-d-the-newest-threat-to-freedom-of-expression-in-myanmar.html>, both accessed on 24 November 2016; ‘Section 66(d) illogical: Experts’ Eleven, 15 December 2016, available at <http://www.elevenmyanmar.com/local/7045>, accessed on 12 June 2017.

⁶⁵ ‘Freedom of speech remains illusory in the new Burma’ Irrawaddy, 8 November 2016, available at <https://www.irrawaddy.com/opinion/commentary/freedom-of-speech-remains-illusory-in-the-new-burma.html>, accessed on 8 November 2016; ‘A gauge for democracy: Media freedoms under fire in the new Myanmar’ Myanmar Times, 7 November 2016, available at <https://www.mmmtimes.com/opinion/23520-a-gauge-for-democracy-media-freedoms-under-fire-in-the-new-myanmar.html>, accessed on 7 November 2016.

⁶⁶ ‘Activists launch campaign to reform telecoms law’ Myanmar Times, 19 October 2016, available at <https://www.mmmtimes.com/national-news/23164-activists-launch-campaign-to-reform-telecoms-law.html>, accessed on 23 October 2016.

⁶⁷ ‘Ex-Speaker asks for public input on telecoms defamation clause’ Myanmar Times, 16 November 2016, available at <https://www.mmmtimes.com/national-news/23697-ex-speaker-asks-for-public-input-on-telecoms-defamation-clause.html>, accessed on 17 November 2016.

⁶⁸ ‘Speaker not speaking out on telecoms law defamation’ Myanmar Times, 22 December 2016, available at <https://www.mmmtimes.com/national-news/24337-speaker-not-speaking-out-on-telecoms-law-defamation.html>, accessed on 5 December 2017.

by August 2015): the Health Care Law Relating to Adjustment of Population Growth, the Law Relating to Religious Conversion, the Special Law Relating to the Marriage of Myanmar Buddhist Women, and the Law Relating to the Practice of Monogamy.

Accordingly, Ma Ba Tha and its nationwide network, launched an unprecedented anti-Islam/Muslim discourse that adversely affected intercommunal relations between the Buddhist majority and the Muslim minority.⁶⁹ The movement also increasingly targeted the democratic opposition led by the NLD because the latter had failed to lend support to their campaign. Consequently, in the months and weeks preceding the general election on 8 November 2015, several Ma Ba Tha monk leaders blatantly encouraged Buddhists not to vote for the NLD and implicitly to vote for the United Solidarity and Development Party (USDP) chaired by President Thein Sein.⁷⁰

When the NLD won the election anyway, Ma Ba Tha found itself in a difficult position. However, because its anti-Muslim message had successfully indoctrinated significant sections of the majority Buddhist community, to further challenge the NLD government, Ma Ba Tha and like-minded groups such as the Myanmar National Network and the Patriotic Myanmar Monks Union, proceeded with their anti-Rohingya and anti-Muslim campaign. As such, they continued to invade Muslim religious buildings and private homes, thus, affecting the religious freedom of Muslims. For example, on 2 April 2016, they protested the appointment of Henry Van Thio (an ethnic Chin Christian) as Vice President of the NLD-dominated parliament.⁷¹ Likewise, in mid-April, Buddhist monks from the Patriotic Myanmar Monks Union forcibly removed Muslim vendors near the Shwe Dagon Pagoda in Yangon,⁷² and protested the use of the controversial ethnonym 'Rohingya' as used by a US embassy condolence statement on 20 April.⁷³ Similarly, in July, the Patriotic Myanmar Monks Union questioned a Buddhist religious goods seller at the Shwe Dagon Pagoda over alleged acquisition of supplies from a Muslim.⁷⁴

⁶⁹ McCarthy, G, and Menager, J, 'Gendered rumours and the Muslim scapegoat in Myanmar's transition' *Journal of Contemporary Asia*, 2017, Vol 47, No 3, pp 396-412; van Klinken, G, and Su Mon Thazin Aung, 'The contentious politics of anti-Muslim scapegoating in Myanmar' *Journal of Contemporary Asia*, 2017, Vol 47, No 3, pp 353-375; Kyaw (see note 19 above); Kyaw, NN, 'Islamophobia in Buddhist Myanmar: The 969 movement and anti-Muslim violence' in Crouch, M (ed), *Islam and the State in Myanmar: Muslim-Buddhist Relations and the Politics of Belonging*, Delhi: Oxford University Press, 2016, at 183-210.

⁷⁰ 'Ma Ba Tha: NLD is the party of 'Islamists'' Irrawaddy, 21 September 2015, available at <http://www.irrawaddy.com/election/news/ma-ba-tha-nld-is-the-party-of-islamists>, accessed on 22 September 2015; 'Support incumbents, Ma Ba Tha leader tells monks' Irrawaddy, 23 June 2015, available at <https://www.irrawaddy.com/news/burma/support-incumbents-ma-ba-tha-leader-tells-monks.html>, accessed on 24 June 2015.

⁷¹ 'Nationalists rally against both vice presidents' Myanmar Times, 5 April 2016, available at <https://www.mmtimes.com/national-news/19820-nationalists-rally-against-both-vice-presidents.html>, accessed on 6 April 2016.

⁷² 'Peace activists call on authorities to intervene over Shwedagon incidents' Myanmar Times, 27 April 2016, available at <https://www.mmtimes.com/national-news/yangon/19976-peace-activists-call-on-authorities-to-intervene-over-shwedagon-incidents.html>, accessed on 28 April 2016.

⁷³ 'Nationalists rally against US embassy's use of term 'Rohingya'' Myanmar Times, 29 April 2016, available at <https://www.mmtimes.com/national-news/yangon/20031-nationalists-rally-against-us-embassy-s-use-of-term-rohingya.html>, accessed on 30 April 2016.

⁷⁴ 'Patriotic monks union' interrogates Shwedagon vendor over origin of goods' Irrawaddy, 22 July 2016, available at <https://www.irrawaddy.com/news/burma/patriotic-monks-union-interrogates-shwedagon-vendor-over-origin-of-goods.html>, accessed on 22 July 2016.

On 23 June in Thuye Thamain village, Waw township, Bago Region, a quarrel between a Muslim man and his Buddhist neighbour resulted in the destruction of the village mosque, a building being constructed by the Muslim man allegedly as another mosque, his shop, and a few other Muslim households. Although the man was also attacked, no official action was taken.⁷⁵ On 1 July, in Lone Khin village, Hpakant township, Kachin State, a Buddhist mob burned down a prayer hall used by Muslims⁷⁶ that was later said by the Ministry of Religious Affairs and Culture to have been illegally built by a Muslim engineer in 2014.⁷⁷

Most probably because Christians typically belong to government-recognised ethnic minority groups such as the Kachin and Chin, on the whole, Christian-Buddhist relations have been unproblematic. However, the religious freedom of Christians was also challenged and violated by a stupa-building spree on the grounds of Baptist and Anglican churches in 2015-2016. The ethnic Kayin patron and spiritual leader of the Democratic Kayin Buddhist Army (DKBA),⁷⁸ Myaing Gyi Ngu Sayadaw U Thuzana, and his team built a stupa within the compounds of a Baptist church in Mi Zine village, Hpa-an township, Kayin State on 21 August 2015.⁷⁹ Religious affairs minister, Soe Win, intervened but in vain.⁸⁰ Again in 2016, U Thuzana first erected a Buddhist statue, planted a Buddhist flag, and built another stupa within the compounds of St Mark's Anglican church in Kondawgyi village, then built a stupa near a mosque on 25 April.⁸¹ In an attempt to break the deadlock, NLD-appointed religious affairs minister, Aung Ko, met with church leaders but still no official action was taken against the monk.⁸² Condemnations by non-Kayin Buddhist monks and Ministry of Religious Affairs and

⁷⁵ 'Mosque destroyed in Myanmar village as tensions flare between Muslims and Buddhists' Radio Free Asia, 24 June 2016, available at <http://www.rfa.org/english/news/myanmar/mosque-destroyed-in-myanmar-village-as-tensions-flare-between-muslims-and-buddhists-06242016155224.html>, accessed on 25 June 2017.

⁷⁶ 'Mob burns down Muslim prayer hall in Hpakant' Myanmar Times, 4 July 2016, available at <https://www.mmmtimes.com/national-news/21172-mob-burns-down-muslim-prayer-hall-in-hpakant.html>, accessed on 5 July 2016.

⁷⁷ 'Govt to take action against those behind 'illegal' Hpakant mosque' Irrawaddy, 4 August 2016, available at <https://www.irrawaddy.com/news/burma/govt-to-take-action-against-those-behind-illegal-hpakant-mosque.html>, accessed on 5 August 2016.

⁷⁸ 'Myaing Gyi Ngu Sayadaw-ka Sangha Maha Nayaka-yè-auk-hma-ma-shi-lo kaing-twè ma-ya-bu' (Myaing Gyi Ngu Sayadaw is not under Sangha Maha Nayaka so uncontrollable) Democratic Voice of Burma, 4 May 2016, available at <http://burmese.dvb.no/archives/148270>, accessed on 4 May 2016.

⁷⁹ 'Minister promises Christians removal of dream-inspired stupa' Myanmar Times, 8 September 2015, available at <https://www.mmmtimes.com/national-news/16360-minister-promises-christians-removal-of-dream-inspired-stupa.html>, accessed on 9 September 2015.

⁸⁰ 'Sayadaw refuses to halt stupa construction' Myanmar Times, 17 September 2015, available at <https://www.mmmtimes.com/national-news/16516-sayadaw-refuses-to-halt-stupa-construction.html>, accessed on 18 September 2015.

⁸¹ 'Myanmar Buddhist monk erects another pagoda on disputed land' Radio Free Asia, 4 May 2016, available at <http://www.rfa.org/english/news/myanmar/myanmar-buddhist-monk-erects-another-pagoda-on-disputed-land-05042016154223.html>, accessed on 5 May 2016.

⁸² 'Provocations mount in stupa saga' Myanmar Times, 5 May 2016, available at <https://www.mmmtimes.com/national-news/20127-provocations-mount-in-stupa-saga.html>, accessed on 5 May 2016.

Culture officials seemed to have little effect either.⁸³ However, most likely due to the controversies, Myaing Gyi Ngu Sayadaw eventually abandoned his stupa building spree.

D. Lack of Progress in the Peace Process

Fuller enjoyment of civil, political, economic, social, and economic rights by ethnic minorities and other non-minority communities across Myanmar largely depends on whether a nationwide ceasefire agreement between all ethnic armed groups (EAGs), the government, and the military can be reached. As such, President Thein Sein offered an olive branch to the EAGs, suggesting a two-step process on 18 August 2011: a state/region-level peace agreement followed by a union-level pact.⁸⁴ Union-level peace negotiations were thus held between the government-formed Myanmar Peace Centre (MPC), EAGs, the government, and the military, resulting in the signing of a Nationwide Ceasefire Agreement (NCA) on 15 October 2015 by 8 EAGs, the government, and parliament with other EAGs abstaining.⁸⁵ The NLD government inherited this unfinished peace process.

Aung San Suu Kyi convened the first round of the Union Peace Conference–21st Century Panglong Conference (UPC) in Nay Pyi Taw from 31 August to 3 September 2016 which was attended by representatives of the government, the military, and 17 EAGs including both signatories and non-signatories.⁸⁶ Three other non-signatories, the Arakan Army (AA), the Myanmar National Democratic Alliance Army (MNDAA), and the Ta'ang National Liberation Army (TNLA), were not invited.⁸⁷ The United Wa State Army (UWSA), the largest and most well-equipped ethnic army, walked out on the second day because they were only allowed to observe, not participate.⁸⁸ In the end, the lauded peace conference failed to result in any significant agreements.⁸⁹

⁸³ 'Myanmar religious officials decry Buddhist monk's pagoda-building spree' Radio Free Asia, 11 May 2016, available at <http://www.rfa.org/english/news/myanmar/myanmar-religious-officials-decry-buddhist-monks-pagoda-building-spre-05112016155932.html>, accessed on 11 May 2016.

⁸⁴ Government of the Republic of the Union of Myanmar Announcement No 1/2011, 18 August 2011, New Light of Myanmar, 19 August 2011, at 1.

⁸⁵ 'Myanmar signs historic cease-fire deal with eight ethnic armies' Radio Free Asia, 15 October 2015, available at <http://www.rfa.org/english/news/myanmar/deal-10152015175051.html>, accessed on 1 January 2016.

⁸⁶ 'Union Peace Conference – 21st century Panglong begins' Mizzima, 31 August 2016, available at <http://www.mizzima.com/news-domestic/union-peace-conference—21st-century-panglong-begins>, accessed on 1 September 2016.

⁸⁷ 'Three armed groups barred from peace conference' Irrawaddy, 29 August 2016, available at <https://www.irrawaddy.com/news/burma/three-armed-groups-barred-from-peace-conference.html>, accessed on 30 August 2016.

⁸⁸ 'Wa delegation walks out of Panglong conference' Frontier, 1 September 2016, available at <https://frontiermyanmar.net/en/wa-delegation-walks-out-of-panglong-conference>, accessed on 2 September 2016.

⁸⁹ 'Not without wrinkles, peace conference lauded for taking landmark 'first steps'' Myanmar Times, 5 September 2016, available at <https://www.mmtimes.com/national-news/22313-not-without-wrinkles-peace-conference-lauded-for-taking-landmark-first-steps.html>, accessed on 6 September 2016.

On the first anniversary of the NCA, Aung San Suu Kyi and Commander-in-Chief, Senior General Min Aung Hlaing once again encouraged non-signatories to sign the pact.⁹⁰ On the same day, the government also announced a seven-step roadmap for national reconciliation and union peace to: review and amend the political and dialogue framework; convene the UPC in accordance with the former; sign the union agreement agreed at the UPC; amend the Constitution accordingly; hold multi-party elections under the new rules; and build a democratic federal union in accordance with the election results.⁹¹ The government also began negotiations with the United Nationalities Federal Council (UNFC) composed of non-signatories.⁹²

With no peace in sight, the Northern Alliance (a combined alliance of the Kachin Independence Army (KIA), the AA, the MNDAA, and the TNLA) launched an attack in Shan State on 20 November causing casualties and injuries.⁹³ After the Myanmar military regained control, the Alliance demanded a group peace talk to be attended by China and observed by UWSA but Myanmar's peace commission instead insisted on one-to-one negotiations.⁹⁴ With nothing decided, a peace march was held in Yangon in December⁹⁵ leading the government to offer a peace talk with the Alliance⁹⁶ which in turn, demanded said talks be genuine and equal.⁹⁷ Thus, there were both developments and drawbacks throughout the peace process of 2016. At the end of the year, the process is still pending.

⁹⁰ 'Ceasefire anniversary prompts calls for more signatories' Myanmar Times, 17 October 2016, available at <https://www.mmtimes.com/national-news/23122-ceasefire-anniversary-prompts-calls-for-more-signatories.html>, accessed on 18 October 2016.

⁹¹ 'The government's roadmap for national reconciliation and Union peace' New Light of Myanmar, 16 October 2016, at 1.

⁹² 'UNFC to meet with govt peace commission' Myanmar Times, 14 October 2016, available at <https://www.mmtimes.com/national-news/nay-pyi-taw/23088-unfc-to-meet-with-govt-peace-commission.html>, accessed on 14 October 2016.

⁹³ 'Ethnic armed groups launch attack near Muse' Myanmar Times, 21 November 2016, available at <https://www.mmtimes.com/national-news/23800-ethnic-armed-groups-launch-attack-near-muse.html>, accessed on 21 November 2016.

⁹⁴ 'Kunming ceasefire foray quickly falls apart' Myanmar Times, 6 December 2016, available at <https://www.mmtimes.com/national-news/24058-kunming-ceasefire-foray-quickly-falls-apart.html>, accessed on 6 December 2016.

⁹⁵ 'White flag' marchers in Yangon urge end to conflict' Myanmar Times, 7 December 2016, available at <https://www.mmtimes.com/national-news/yangon/24083-white-flag-marchers-in-yangon-urge-end-to-conflict.html>, accessed on 7 December 2016.

⁹⁶ 'Burma government invites Northern Alliance to peace talks' Irrawaddy, 20 December 2016, available at <https://www.irrawaddy.com/news/burma/burma-government-invites-northern-alliance-to-peace-talks.html>, accessed on 20 December 2016.

⁹⁷ 'Northern Alliance renews call for dialogue to end Shan State conflict' Myanmar Times, 23 December 2016, available at <https://www.mmtimes.com/national-news/24345-northern-alliance-renews-call-for-dialogue-to-end-shan-state-conflict.html>, accessed on 23 December 2016.

Part 3: Conclusion

Human rights and the peace process remained contentious and power-laden issues in Myanmar throughout the reporting period of 2016. More importantly, these issues were particularly susceptible to politicking between the NLD government and its supporters on the one hand, and other powerful groups mainly consisting of military factions, on the other. Since democratic transition in Myanmar—spanning from 1988 when the previous military regime grabbed power in a coup through 2016 when the popular NLD party was elected—is fairly recent, it is hardly surprising the quality of its ensuing democracy is still relatively poor.

Despite this, since forming a government and dominating parliament from March 2016 onwards, the NLD has tried to initiate significant legal reforms to respect, protect, and fulfil human rights. However, at the same time, one can scarcely deny it has inherited a chronic repressive past. For example, the number of s.66(d) cases (many of which tried to restrict freedom of expression) significantly increased after the NLD came to power, providing solid evidence that human rights have yet to be realised in transitional Myanmar.

Another grave issue is the unfinished peace process between the government and EAGs whose legacy the NLD inherited from Thein Sein's administration. Accepting its predecessor's previous efforts, the NLD also attempted several new initiatives such as the UPC that have yet to bear fruit. Peace was also disturbed by fighting between the military and the Northern Alliance which felt excluded from the process. Likewise, the emergence of a poorly-armed yet violent Rohingya insurgency exacerbated the situation. Mainly caused by chronic arbitrary deprivation of Rohingya rights, growing numbers of this population have become radicalised, thus affecting the future of human rights and peace in Rakhine State and potentially the whole country.

For all these old and new problems, many of which await resolution by legal and governmental reforms or actions, 2016 proved to be a difficult year for human rights and peace in Myanmar. Indeed, only now is the NLD-led government beginning to learn the difficulties of running a country such as Myanmar with its repressive past and problematic present still plagued by entrenched power structures dominated by a constitutionally and socio-politically sanctioned military complex.

PHILIPPINES



PHILIPPINES

*Maria Patricia R Cervantes-Poco**

Part 1: Overview of the Philippines

A. Country Background

Philippines Facts	
Geographical size	300,000 sq km
Population	100.98 million ¹
Ethnic breakdown ²	Main ethnic groups: Tagalog – 28.1% Cebuano – 13.1% Ilocano – 9% Bisaya/Binisaya – 7.6% Hiligaynon Ilonggo – 7.5%
Official language(s)	Filipino and English ³
Literacy rate (aged 15 and above)	96.4% ⁴
Life expectancy	69.01 ⁵
GDP	US\$304.9 billion (per capita US\$2951) ⁶
Government	Democratic and republican state. Presidential form of government where power is divided among the legislative, executive, and judicial branches.
Political and social situation	Elections are held regularly but voting is not mandatory. Multi-party system consists mostly of political figures/leaders with little grassroots membership. Problems include electoral violence in areas controlled by political dynasties, and corruption leading to voter disenfranchisement and poverty-induced piece-meal vote buying and selling. Rodrigo R Duterte was elected President in 2016. ⁷

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¹ Data from 2015. 'Population and housing' Philippine Statistics Authority, available at <https://psa.gov.ph/statistics/census/population-and-housing>, accessed on 14 November 2017.

² Data from 2010. 'The world factbook: Philippines' Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html>, accessed on 14 January 2018.

³ 1987 Philippine Constitution, Art XIV, s.7.

⁴ Data from 2013. 'Philippines' The World Bank, available at <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=PH>, accessed on 14 January 2018.

⁵ Data from 2015. The World Bank (see note 4 above).

⁶ Data from 2016. The World Bank (see note 4 above).

⁷ Duterte was previously the mayor of Davao City in Southern Philippines, serving 7 terms. His Vice President, Maria Leonor Geron Robredo, was formerly a member of the House of Representatives and a human rights lawyer. However, an election protest has been filed by her closest rival, former Senator Ferdinand Marcos, Jr, which is still being heard by the Supreme Court (sitting as the Presidential Electoral Tribunal).

The Philippines is an archipelagic state in Southeast Asia with an area of 300,000 square kilometres. It is made up of 7,107 islands; Luzon, Visayas, and Mindanao being its main island groups. The country is further divided into 17 regions,⁸ 80 provinces, 143 cities, 1,491 municipalities, and 42,028 barangays.^{9, 10} Based on figures published by the National Statistics Office, the population rose from 92,337.9 million in 2010 to 100.98 million in 2015.¹¹

System of governance

The 1987 Philippine Constitution provides that “[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.”¹² In addition, the country enjoys a presidential form of government where power is divided amongst three co-equal branches (the legislature, executive, and judiciary) following the principle of separation of powers with the Constitution mandating the limits of each.

The executive department is composed of the President and the Vice President who are elected by direct popular vote, each serving a term of six years.¹³ The Constitution further provides that the President shall not be eligible for any re-election¹⁴ and grants him or her authority to appoint a Cabinet to act as head of the executive departments.¹⁵

The legislative department makes laws, alters, and repeals them through the power vested in the Philippine Congress. The Congress consists of the Senate (composed of 24 senators who are elected at large by qualified voters¹⁶) and the House of Representatives

⁸ The National Capital Region (NCR), Ilocos Region (Region 1), Cordillera Autonomous Region (CAR), Cagayan Valley (Region 2), Central Luzon (Region 3), CALABARZON (Region 4-A), Southwestern Tagalog Region or MIMAROPA (Region 4-B), Bicol Region (Region 5), Western Visayas (Region 6), Central Visayas (Region 7), Eastern Visayas (Region 8), Zamboanga Peninsula (Region 9), Northern Mindanao (Region 10), Davao Region (Region 11), SOCCSKARGEN (Region 12), Caraga Region (Region 13), and the Autonomous Region in Muslim Mindanao.

⁹ As of 2013.

¹⁰ The barangay is the smallest political unit into which cities and municipalities are divided.

¹¹ See, ‘Philippines in figures 2014’ Philippine Statistics Authority, available at https://psa.gov.ph/sites/default/files/2014%20PIF_0.pdf; ‘Philippines in figures 2015’ Philippine Statistics Authority, available at https://psa.gov.ph/sites/default/files/2015%20PIF_0.pdf, both accessed on 14 January 2018.

¹² 1987 Philippine Constitution, Art II, s.1.

¹³ 1987 Philippine Constitution, Art VII, s.3.

¹⁴ 1987 Philippine Constitution, Art VII, s.4.

¹⁵ 1987 Philippine Constitution, Art VII, s.16 provides:

The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

¹⁶ 1987 Philippine Constitution, Art VI, s.2.

(which shall be composed of not more than 250 members, representing each district around the country, 20% of whom must be party-list representatives^{17, 18}). The purpose of the party-list system of electing congressional representatives is to enable Filipino citizens belonging to marginalised and under-represented sectors, organisations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that could benefit the nation as a whole, to become members of the House of Representatives.¹⁹

The judiciary holds the power to settle controversies involving rights that are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to a lack or an excess of jurisdiction on the part of any branch or instrument of government.²⁰ The judicial department consists of a Supreme Court and other lower courts as established by law.²¹ The Supreme Court is composed of a Chief Justice and 14 Associate Justices.²² Appointments to the judiciary are made by the President based on a list submitted by the Judicial and Bar Council under supervision of the Supreme Court.²³ Members of the Supreme Court and judges of lower courts shall hold office until they reach the age of 70 or become too incapacitated to discharge the duties of their office.²⁴

B. International Human Rights Commitments and Obligations

The 1987 Philippine Constitution declares as one of its principles that “[t]he State values the dignity of every human person and guarantees full respect for human rights.”²⁵

¹⁷ 1987 Philippine Constitution, Art VI, s.5.

¹⁸ 1987 Philippine Constitution, Art VI, s.5(2) provides:

The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

¹⁹ Republic Act No 7941, s.2 or An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor (1995). The application of the law was challenged in *Ang Ladlad LGBT Party v Commission on Elections* (GR No 190582, 8 April 2010). Ang Ladlad, a party-list representing the LGBT community, was denied accreditation by the Commission on Elections. In deciding in favour of the accreditation of Ang Ladlad, the Supreme Court cited non-establishment of religion, equal protection, freedom of expression and association, and non-discrimination as its reasons. Although the petitioners cited the Yogyakarta Principles, the Supreme Court treated the document merely as a declaration not giving rise to binding State obligations.

²⁰ 1987 Philippine Constitution, Art VIII, s.1.

²¹ 1987 Philippine Constitution, Art VIII, s.1.

²² 1987 Philippine Constitution, Art VIII, s.4(1).

²³ 1987 Philippine Constitution, Art VIII, s.9.

²⁴ 1987 Philippine Constitution, Art VIII, s.11.

²⁵ 1987 Philippine Constitution, Art II, s.11.

This is complemented by a whole article dedicated to social justice and human rights,²⁶ including the creation of an independent national human rights institution.²⁷

The Constitution further provides that the Philippines “adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations.”²⁸ This is what is known as a principle of incorporation, where, by mere constitutional declaration, international law is deemed to have the force of domestic law.²⁹

The Constitution provides another method through which international law can become part of the sphere of domestic law – through transformation. The transformation method provides that “[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all members of the Senate.”³⁰ Thus, treaties or conventional international law must go through a process prescribed by the Constitution before they can become municipal law; only then may their provisions be applied to domestic conflicts.³¹

Table 1: Ratification Status of International Instruments – Philippines³²

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		18 Jun 1986 (a)
Optional Protocol of the Convention against Torture		17 Apr 2012 (a)
International Covenant on Civil and Political Rights (ICCPR)	19 Dec 1966	23 Oct 1986
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	20 Sep 2006	20 Nov 2007
Convention for the Protection of All Persons from Enforced Disappearance (CED)		

²⁶ 1987 Philippine Constitution, Art XIII.

²⁷ 1987 Philippine Constitution, Art XIII, s.17(1) provides for the creation of “an independent office called the Commission on Human Rights.” Subsequent provisions lay down its powers and functions.

²⁸ 1987 Philippine Constitution, Art II, s.2.

²⁹ *Pharmaceutical and Health Care Association of the Philippines v Health Secretary Francisco Duque III, et al*, GR No 173034, 9 October 2007, available at <http://sc.judiciary.gov.ph/jurisprudence/2007/october2007/173034.htm>, accessed on 14 November 2017.

³⁰ 1987 Philippine Constitution, Art VII, s.21.

³¹ See note 30 above.

³² ‘Ratification status for the Philippines’ United Nations Human Rights Office of the High Commissioner, available at tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN, accessed on 14 November 2017.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	15 Jul 1980	5 Aug 1981
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	7 Mar 1966	15 Sep 1967
International Covenant on Economic, Social and Cultural Rights (ICESCR)	19 Dec 1966	7 Jun 1974
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	15 Nov 1993	5 Jul 1995
Convention on the Rights of the Child (CRC)	26 Jan 1990	21 Aug 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	8 Sep 2000	26 Aug 2003
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	8 Sep 2000	28 May 2002
Convention on the Rights of Persons with Disabilities (CRPD)	25 Sep 2007	15 Apr 2008

Following the internationally accepted principle of *pacta sunt servanda*, the Philippines—in adhering to the Universal Declaration on Human Rights and having ratified eight core human rights treaties, six optional protocols, and many other key human rights and humanitarian conventions and treaties—is bound to bring its laws and practices into accord with accepted international obligations and is prevented from introducing new laws or practices at variance with such obligations. Table 1 (above) provides an overview of the international instruments the Philippines has ratified.

Of the nine core human rights treaties, the 2006 International Convention for the Protection of All Persons from Enforced Disappearances is the only one not yet ratified by the Philippines. Notwithstanding, in December 2012, the Philippines passed a law defining and criminalising such disappearances, and which also adopts the Convention's definition of enforced or involuntary disappearances.³³

Aside from the above human rights treaties, the Philippines has also accepted individual complaints procedures to the optional protocols of the ICCPR and CEDAW, and the inquiry procedures under CAT, Art 20, and Arts 8-9 of CEDAW.

³³ Republic Act No 10353, An Act Defining and Penalizing Enforced or Involuntary Disappearance.

Moreover, the Philippines has endeavoured to uphold its commitment to submit periodic reports to human rights treaty bodies, albeit with some delays (see Table 2 below). In addition, civil society has been robust in submitting shadow reports, which have also been considered by treaty bodies in their recommendations. Recommendations from human rights treaty bodies have in turn resulted in the creation of several pieces of domestic legislation, a demonstration of the country's commitment to its international human rights obligations.

Table 2: Reporting Cycles and Actual Submissions Made by the Philippines

Treaty	Reports	
	Reporting Cycle	Session (Year)
Convention against Torture and other Cruel, Inhuman and Degrading Punishment	III II I	57 (2016) 42 (2009) 2 (1986)
International Covenant on Civil and Political Rights	V IV IV II-III I	106 (2012) 104 (2012) 79 (2003) 35 (1989) I
International Covenant on Economic, Social and Cultural Rights	V-VI II II-IV I I I I	59 (2016) WG (1984) (1984) 41 (2008) WG (1980) (1980) 4 (1990) 12 (1995)
Convention on the Rights of the Child	V-VI III-IV II I	52 (2009) 39 (2005) 9 (1995)
Convention on the Elimination of All Forms of Discrimination against Women	VII-VIII V-VI IV III II I	64 (2016) 36 (2006) 16 (1997) 16 (1997) 10 (1991) 3 (1984)

Treaty	Reports	
	Reporting Cycle	Session (Year)
International Convention on the Elimination of All Forms of Racial Discrimination	III	
	II	20 (2014)
	II	16 (2012)
	I	10 (2009)
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	I	
Convention on the Rights of Persons with Disabilities	N/A	N/A
Convention for the Protection of All Persons from Enforced Disappearance		

The Philippines is due to submit its reports to the UN committees against torture, the elimination of discrimination against women and children, and on economic, social and cultural rights in 2016.

C. National Laws Affecting Human Rights

The Bill of Rights³⁴ embedded in the 1987 Philippine Constitution essentially follows the Universal Declaration of Human Rights, and serves to limit the omnipotence of government through the protection of individuals. The article covers fundamental human rights such as, e.g. the right to life, liberty, and security (s.1), freedom of speech, expression, and of the press, and the right of people to peaceably assemble (s.4), freedom of religion (s.5), the right to information (s.7), and the rights of persons under investigation (s.12) and those accused of offences (ss.13-22).

A number of laws have also been drafted or amended to promote the protection of human rights, following recommendations from human rights treaty bodies. Examples of these include the Anti-Violence Against Women and their Children Act (2004),³⁵ the Magna Carta of Women (2008),³⁶ the Anti-Torture Act (2009),³⁷ the Expanded Anti-Trafficking in Persons Act (2012),³⁸ the Juvenile Justice and Welfare Act (2012),³⁹ and the Anti-Enforced or Involuntary Disappearance Act (2012).⁴⁰

³⁴ The Bill of Rights is embodied in Art III of the 1987 Philippine Constitution and contains 22 sections.

³⁵ Republic Act No 9262, approved on 8 March 2004.

³⁶ Republic Act No 9710, approved on 28 July 2008.

³⁷ Republic Act No 9745, approved on 27 July 2009.

³⁸ Republic Act No 9208, approved on 23 July 2012.

³⁹ Republic Act No 10630, approved on 23 July 2012, which amended Republic Act No 9344, or the Juvenile Justice and Welfare Act of 2006.

⁴⁰ Republic Act No 10353, approved on 23 July 2012.

While most of these newer laws promote progress in the realisation of economic and social rights, particularly of marginalised sectors, Philippine domestic law has not neglected to protect civil and political rights. This can be observed in the moratorium on the imposition of capital punishment, and the reparation and recognition of victims of human rights violations.

Death penalty moratorium

The Philippines became the first Asian country to abolish the death penalty for all crimes. It is also the first country in Asia to totally abolish the death penalty, only to directly reintroduce it later on.⁴¹

During the 1971 Constitutional Convention, the question was asked whether capital punishment was banned by the cruel and unusual punishment clause. The response made clear there was no intention to pass judgment on capital punishment as being cruel or unusual. Instead, it was stressed the matter should be left to legislative discretion.⁴²

However, the 1986 Constitutional Commission took a different position. Rather than wait for legislative discretion to abolish the death penalty, the Commission went ahead and abolished it whilst leaving the door open for Congress to revive capital punishment at its discretion “for compelling reasons involving heinous crimes.”⁴³ However, current formulation under the 1987 Philippine Constitution prohibits imposition of the death penalty.⁴⁴ Moreover, death penalties already imposed before ratification of the new provision were assumed to have been commuted without the need for any presidential action.⁴⁵ However, since commutation is an executive prerogative, the provision now reads, “[a]ny death penalty already imposed shall be reduced to reclusion perpetua,” where such reduction is not a description of some future act but a command that is immediately executory.⁴⁶

However, the Philippines re-imposed the death penalty through Republic Act No 7659,⁴⁷ which listed a total of 46 crimes punishable by death, including some under the Revised Penal Code such as treason, piracy, qualified piracy, qualified bribery, parricide, murder, infanticide, kidnapping, robbery with violence against persons, destructive

⁴¹ Commission on the Human Rights of the Philippines, ‘The Philippine experience in ‘abolishing’ the death penalty,’ January 2007.

⁴² Bernas, JG, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, Manila: Rex Book Store, 2009, at 574.

⁴³ Bernas (see note 42 above) at 575.

⁴⁴ 1987 Constitution, Art III, s.19 provides: “Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.”

⁴⁵ Bernas (see note 42 above) at 577.

⁴⁶ Bernas (see note 42 above) at 577.

⁴⁷ An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as amended, other Special Penal Laws, and for Other Purposes, approved on 13 December 1993.

arson, rape, in addition to special penal laws such as plunder,⁴⁸ certain offences under the Dangerous Drugs Act (including possession and sale),⁴⁹ and carnapping.

Eventually, Republic Act No 7659 was repealed by Republic Act No 9346,⁵⁰ which explicitly prohibited imposition of the death penalty. In lieu of capital punishment, the penalty of reclusion perpetua or life imprisonment shall be imposed, depending on the nomenclature of the law violated. Currently, this moratorium on the imposition of the death penalty still stands.

Reparation and recognition of victims of human rights violations

During the regime of deposed President Ferdinand Marcos, the Philippines underwent a period of martial law spanning from 21 September 1972 to 25 February 1986. During this time, scores of Filipinos fell victim to summary execution, torture, enforced or involuntary disappearance, and other gross human rights violations.

Consistent with state policy valuing the dignity of every human person and guaranteeing full respect for human rights,⁵¹ the constitutional prohibition against the use of torture, force, violence, threat, intimidation, or any other means vitiating free will,⁵² and its international obligation to provide effective remedy for violations of rights and freedoms,⁵³ the Philippines enacted the Human Rights Victims Reparation and Recognition Act of 2013.⁵⁴ In its Declaration of Policy, the law:

acknowledges [the State's] moral and legal obligation to recognize and/or provide reparation to victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime.

Similarly, the State also acknowledges:

⁴⁸ Republic Act No 7080, An Act Defining and Penalizing the Crime of Plunder, approved on 12 July 1991.

⁴⁹ Republic Act No 6425, The Dangerous Drugs Act of 1972, approved on 4 April 1972, repealed by Republic Act No 9165, An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, Providing Funds Therefor, and for Other Purposes, approved on 7 June 2002.

⁵⁰ Republic Act No 9346, An Act Prohibiting the Imposition of Death Penalty in the Philippines, approved on 24 June 2006.

⁵¹ 1987 Philippine Constitution, Art II, s.11.

⁵² 1987 Philippine Constitution, Art III, s.12.

⁵³ Universal Declaration of Human Rights, Art 8.

⁵⁴ Republic Act No 10368, approved on 23 July 2012.

the sufferings and damages inflicted upon persons whose properties or businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted, and/or such other victims of the violations of the Bill of Rights.

Through this law, an independent and quasi-judicial body known as the Human Rights Victims' Claims Board (HRVCB) was created to receive and investigate claims made under the Act.⁵⁵ The law provides that the HRVCB shall be attached to, but not under, the Commission on Human Rights.⁵⁶ Thus, those whose rights are violated under the Act will be entitled to receive compensation and other non-monetary reparation from the State.⁵⁷ The law identifies funds adjudged as Marcos's ill-gotten wealth as forfeited by the Republic of the Philippines to be the principal source of funds for its implementation.⁵⁸

D. National Laws Threatening Human Rights

In no less than its Constitution, the Philippines declared the value of the dignity of every person and guaranteed full respect for human rights.⁵⁹ Thus, this declared policy is deemed written into all laws and issuances by the State. Despite this, the Philippines still finds itself in the predicament of enacting laws that carry the intent of protecting an individual's human rights but which violate those self-same rights in proposed or actual implementation. Two examples are the Human Security Act of 2007 and the Cybercrime Prevention Act of 2012 which have both been challenged in the Supreme Court.

Human Security Act of 2007

The Philippines has upheld the constitutionality of Republic Act No 9372, otherwise known as the Human Security Act of 2007.⁶⁰ Under the Act, any person may be charged with terrorism if he or she commits an act punishable under various provisions of the Revised Penal Code and other related laws that tend "to sow and create a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand."⁶¹

⁵⁵ Republic Act No 10368, s.8.

⁵⁶ See note 55 above.

⁵⁷ Republic Act No 10368, ss.4 and 5.

⁵⁸ Republic Act No 10368, s.7.

⁵⁹ 1987 Philippine Constitution, Art II, s.11.

⁶⁰ Signed into law on 6 March 2007.

⁶¹ Republic Act No 9372, s.3.

Under s.18 of said law, warrantless arrests of terror suspects and temporary detention without charge are permitted under certain circumstances. Nevertheless, the law establishes certain safeguards by reiterating the rights of persons under custodial investigation against torture and coercion, and prescribing penalties for authorities found to have violated such rights.

Cybercrime Prevention Act of 2012

The Supreme Court of the Philippines had the opportunity to rule on the constitutionality of certain provisions of the Cybercrime Prevention Act of 2012⁶² including violations of the right to freedom of expression, the right to privacy, and for giving government the authority to restrict or block access to computer data without judicial warrant.

Thus, in *Jose Jesus Disini v Executive Secretary, et al*,⁶³ the Supreme Court held that while the questioned Act had been adopted to regulate access to and use of cyberspace in order to enable the government to track down and penalise violators, several provisions went beyond permissible regulation and impinged on the rights and freedoms of individuals.

In particular, the Supreme Court declared that s.4(c)(3) of the Act violated the right to freedom of expression by prohibiting the electronic transmission of unsolicited commercial communications.⁶⁴ It also found s.12 violated the right to privacy because it lacked sufficient specificity and definiteness in collecting real-time computer data.⁶⁵ Finally, the court also struck down s.19 for giving the government authority to restrict or block access to computer data without judicial warrant.

E. Recent Court Cases Relating to Human Rights

*Mary Grace Natividad S Poe-Llamanzares v Comelec and Estrella C Elamparo*⁶⁶

This case clarified the rights of foundlings, or a “deserted or abandoned infant or child whose guardian or relatives are unknown; or a child committed to an orphanage

⁶² Republic Act No 10175, approved on 12 September 2012.

⁶³ GR No 203335, 11 February 2014.

⁶⁴ Section 4(c)(3) prohibits the transmission of unsolicited commercial electronic communications or ‘spam’ seeking to advertise, sell, or offer for sale products and services unless the recipient affirmatively consents, or when the purpose of the communication is a service or administrative announcement from the sender to its existing users, or “when the following conditions are present: (aa) The commercial electronic communication contains a simple, valid, and reliable way for the recipient to reject receipt of further commercial electronic messages (opt-out) from the same source; (bb) The commercial electronic communication does not purposely disguise the source of the electronic message; and (cc) The commercial electronic communication does not purposely include misleading information in any part of the message in order to induce the recipients to read the message.”

⁶⁵ Section 12 authorises law enforcement without a court warrant “to collect or record traffic data in real-time associated with specified communications transmitted by means of a computer system.”

⁶⁶ GR No 221697, 8 March 2016.

or charitable or similar institution with unknown facts of birth and parentage,”⁶⁷ particularly, the right to be elected into the country’s highest public office, i.e. the Presidency.

In October 2015, Mary Grace Natividad Poe-Llamanzares filed a Certificate of Candidacy (COC) for the Presidency for the May 2016 elections. In her COC, Poe-Llamanzares—a foundling who had been adopted by celebrity spouses, Fernando Poe, Jr and Susan Roces, and was married to someone holding dual Filipino and US citizenship—declared she was a natural-born citizen of the Philippines, a necessary qualification for presidential candidates under the 1987 Constitution. Her candidacy was contested because as a foundling, it was argued she could not be considered a natural-born Filipino and international law could not confer such a status upon her.

However, the Supreme Court ruled that as a matter of law, foundlings, as a class, are natural-born citizens. Further, it found no intent or language in the law permitting discrimination against the group. On the contrary, the history of the Philippine Constitution reveals a common guarantee to the right to equal protection of the law. The case also cited the right to a nationality enshrined in the Universal Declaration on Human Rights as enforced through the Convention on the Rights of the Child. Moreover, the Supreme Court alluded to the principle that foundlings are presumed born of citizens of the country in which they are found as enshrined in the 1961 UN Convention on the Reduction of Statelessness.

*Juan Ponce Enrile v People of the Philippines, Hon Amparo M Cabotaje-Tang, Hon Samuel R Martires, and Hon Alex J Quiroz of the Third Division of the Sandiganbayan*⁶⁸ This case sought to hold a public official accountable for the offence of plunder. Given the political nature of the case, the dissenting opinion provides as much insight into human rights as the majority opinion.

Plunder is defined in Philippine law as the amassing, accumulation, or acquisition of ill-gotten wealth through a combination or series of overt or criminal acts in the aggregate amount or total value of at least PHP50 million⁶⁹ by a public officer by himself or in connivance with members of his family, relatives, business associates, subordinates, or other persons.⁷⁰

Ill-gotten wealth, on the other hand, is defined as any asset, property, business enterprise, or material possession through any combination or series of schemes, which include, among others: misappropriation; malversation of public funds; receiving commissions

⁶⁷ AM No 02-6-02-SC, or The Rule on Adoption, issued by the Supreme Court on 2 August 2002.

⁶⁸ GR No 213455, 11 August 2015.

⁶⁹ Approximately US\$1,000,000.

⁷⁰ Republic Act No 7080, s.2, or An Act Defining and Penalizing the Crime of Plunder, as amended.

or kickbacks in connection with any government contract or project; illegal or fraudulent disposition of assets belonging to the national government; establishing agricultural, industrial or commercial monopolies; or taking undue advantage of an official position to unjustly enrich one's self at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.⁷¹ In essence, the law on plunder constitutes a tangible means to exact accountability for violations of socio-economic rights committed by public officers.

In this case, Juan Ponce Enrile, then a sitting senator charged with plunder along with several others, questioned the sufficiency of the information against him. As such, he sought details as to the alleged overt acts that constituted the series of schemes leading him and his co-accused to amass ill-gotten wealth, in order to properly answer them in his defence.

In deciding that the Sandiganbayan⁷² acted with grave abuse of discretion in denying Enrile's bill of particulars, the Supreme Court held that a person who stands charged of a criminal offence has the right to be informed of the nature and cause of the accusation against him, in order for the accused to meet the charges head on.

In his dissenting opinion, however, Supreme Court Associate Justice Marvic MVF Leonen denied there was insufficiency in the information, saying the details Senator Enrile needed to clarify could have been clarified during pre-trial or by the use of discovery procedures. He also stressed that while the Constitution protects an accused's right to due process, the very same document unequivocally mandates that public office is a public trust⁷³ and a public officer's temporary occupation of their office "is not a right vested in them but a privilege from the sovereign."⁷⁴ Thus, they are at all times required to be accountable to the people. The opinion stressed that:

the impact of the malfeasances of government officers is far-reaching and long-lasting. Plunder of the public coffers deprives the poor, destitute, and vulnerable from the succour they deserve from their government. Economic resources that are diverted to private gain do not contribute to the public welfare. Plunder weakens and corrupts governance, thus resulting in incalculable costs for future generations [...].⁷⁵

⁷¹ See, Republic Act No 7080, s.1(d).

⁷² A special court that exercises jurisdiction over criminal and civil cases involving graft and corrupt practices committed by public officers and employees.

⁷³ 1987 Philippine Constitution, Art IX, s.1.

⁷⁴ Dissenting opinion of Associate Justice Marvic Leonen in GR No 213455.

⁷⁵ Leonen (note 74 above).

Part 2: Outstanding Human Rights Issues

A. Implementation of Sexual and Reproductive Health Rights

Alarmed by the increasing maternal mortality rate, infant mortality and under-five mortality ratios (as it is said that a woman's life and well-being are inextricably linked to that of her child's), unplanned teenage pregnancies, and the high incidence of unsafe induced abortions,⁷⁶ discussions on family planning and reproductive health care were introduced in Congress.

Over a decade since it was first filed, the Philippines finally enacted a law in 2012 funding the distribution of free contraceptives, requiring government hospitals to provide reproductive health services, and mandating public schools to teach sex education.⁷⁷ Before this law, the State, through the Local Government Code of 1991 (LGC), decentralised and delegated responsibility for people's health and safety to local authorities. Section 17 of the LGC provided that local government units "shall be responsible for the provision of basic services and facilities, including health services, family planning services and population development services." This led to cities discouraging, to the point of barring access to, the use of artificial methods of contraception.⁷⁸ A national law on reproductive health was proposed precisely to ensure budgetary support for the comprehensive, integrated, and sustainable delivery of such initiatives across all local government units, regardless of the religious and personal convictions of their leaders.

The passage of such measures was the subject of intense and divisive debate in the predominantly Catholic country, which states in its Constitution that it "shall equally protect the life of the mother and the unborn from conception."⁷⁹ Advocates saw the need for a reproductive health law to guarantee the rights to health and sustainable human development, in addition to gender equality, female empowerment, and

⁷⁶ Especially if performed in unsafe clandestine clinics by untrained personnel, or induced by the woman herself, or through the services of a traditional practitioner (or 'hilot').

⁷⁷ Republic Act No 10354 or the Responsible Parenthood and Reproductive Health Act of 2012. It is said that the first step taken towards the enactment of a reproductive health law in the Philippines was House Bill 8110 or the Integrated Population and Development Act of 1999, filed on 16 August 1999. See generally, Fonbuena, C, 'Reproductive health law: The long and rough road,' Rappler News, 30 December 2012, available at <https://www.rappler.com/newsbreak/18730-rh-law-the-long-and-rough-road>, accessed on 1 December 2017.

⁷⁸ One such local government unit was the City of Manila. This led to the joint submission by three non-governmental organisations to the Committee on the Elimination of Discrimination against Women of a request to conduct an inquiry under Art 8 of the Optional Protocol on alleged systematic and grave violations of rights guaranteed in the Convention. See, 'Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' 22 April 2015, CEDAW/C/OP.8/PHL/1, available at https://www.escr-net.org/sites/default/files/CEDAW_C_OP-8_PHL_1_7679_E_0.pdf, accessed on 1 December 2017. This request is significant as it was considered by the Committee as only the second inquiry conducted under Art 8 of the optional protocol and the first on sexual and reproductive health rights.

⁷⁹ 1987 Philippine Constitution, Art II, s.12.

dignity.⁸⁰ As such, they believed there was an urgent need to safeguard the right of women to space or limit their children, as well as to ensure all children receive proper care and nutrition, and protection from all forms of abuse,⁸¹ particularly as 26.3% or about 26.48 million Filipinos were living below the poverty line.⁸²

For advocates, the enactment of a reproductive health law finds its basis in the Constitution which provides that:

*[t]he State shall adopt a comprehensive approach to health development which shall endeavour to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children.*⁸³

In addition,

*[t]he State shall protect and promote the right to health of the people and instil health consciousness among them.*⁸⁴

Further, it is consistent with the provisions of other national laws such as the Magna Carta of Women of 2009.⁸⁵

Apart from being consistent with domestic law, the passage of a law on reproductive health would fulfil the State's obligations under international human rights law, such as the Convention on the Elimination of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, as well as the 1994 International Conference on Population Development, the Beijing Declaration and Platform for Action adopted at the 1995 Fourth World Conference on Women, and the Millennium Development Goals.

Since its passage in 2012, the law has yet to achieve full implementation. In fact, in 2014, the constitutionality of the law and its implementing rules and regulations were

⁸⁰ See generally, Republic Act No 10354, s.2.

⁸¹ Republic Act No 10354, s.2.

⁸² Yap, DJ, '12M Filipinos living in extreme poverty' Inquirer.net, 18 March 2016, available at <http://newsinfo.inquirer.net/775062/12m-filipinos-living-in-extreme-poverty>, accessed on 1 December 2017.

⁸³ 1987 Philippine Constitution, Art XIII, s.11.

⁸⁴ 1987 Philippine Constitution, Art II, s.15.

⁸⁵ Republic Act No 9710.

questioned on the grounds that they violated: (a) the right to life of the unborn;⁸⁶ (b) the right to health and to protection against hazardous products;⁸⁷ and (c) the right to religious freedom, particularly the right to object on conscientious grounds.⁸⁸ In that case, the Supreme Court, while upholding the law's constitutionality and its core provisions,⁸⁹ struck down eight of its provisions.⁹⁰

⁸⁶ In violation of 1987 Philippine Constitution, Art II, s.12.

⁸⁷ Petitioners posited that contraceptives are hazardous to one's health as they cause cancer and other health problems. See, *Imbong v Ochoa*, GR No 204819, 8 April 2014.

⁸⁸ Petitioners contended that the law violates the constitutional guarantee respecting religion as it authorises the use of public funds for the procurement of contraceptives. See, *Imbong* (note 87 above).

⁸⁹ The core provisions of Republic Act No 10354 as identified by advocates, are:

- (1) Section 3(a) on the mandate of the government to provide and distribute for free to marginalised acceptors reproductive health services and supplies;
- (2) Section 9 on the Philippine National Drug Formulary which shall include hormonal contraceptives, intrauterine devices, injectables and other safe, legal, non-abortionifacient and effective family products and supplies as determined by the FDA;
- (3) Section 10 on the procurement and distribution of family planning supplies by the Department of Health (DOH) for distribution to local government units;
- (4) Section 14 on the provision on age- and development-appropriate reproductive health education to adolescents in all schools;
- (5) Role of local government units in the implementation of the reproductive health law as provided in various sections of the law; and
- (6) Section 20 on public awareness and nationwide multimedia campaigns for the protection and promotion of reproductive health and rights.

⁹⁰ The provisions struck down as unconstitutional were:

- (1) Section 7, and the corresponding provision in the Implementing Rules and Regulations of the Reproductive Health Law (RH-IRR) insofar as they: (a) require private health facilities and non-maternity specialty hospitals and hospitals owned and operated by a religious group to refer patients, not in an emergency or life-threatening case, as defined under Republic Act No 8344, to another health facility which is conveniently accessible; and (b) allow minor-parents or minors who have suffered a miscarriage access to modern methods of family planning without written consent from their parents or guardian/s;
- (2) Section 23(a)(1) and the corresponding provision in the RH-IRR, particularly s.5.24 thereof, insofar as it punishes any health care provider who fails or refuses to disseminate information regarding programs and services on reproductive health regardless of his or her religious beliefs;
- (3) Section 23(a)(2)(i) and the corresponding provision in the RH-IRR insofar as they allow a married individual, not in an emergency or life-threatening case, as defined under Republic Act No 8344, to undergo reproductive health procedures without consent of their spouse;
- (4) Section 23(a)(3) and the corresponding provision in the RH-IRR, particularly s.5.24 thereof, insofar as they punish any health care provider who fails and/or refuses to refer a patient not in an emergency or life-threatening case, as defined under Republic Act No 8344, to another health care service provider within the same facility or one which is conveniently accessible regardless of his or religious beliefs;
- (5) Section 23(b) and the corresponding provision in the RH-IRR, particularly s.5.24 thereof, insofar as they punish any public officer who refuses to support reproductive health programs or shall do any act that hinders the full implementation of a reproductive health program, regardless of his or her religious beliefs;
- (6) Section 17 and the corresponding provision in the RH-IRR regarding the rendering of pro-bono reproductive health services, insofar as they affect the conscientious objector in securing PhilHealth accreditation;
- (7) Section 3.01(a) and (j) of the RH-IRR insofar as it uses the qualifier "primarily" for contravening s.4(a) of the Reproductive Health Law and violating s.12, Art II of the Constitution; and
- (8) Section 23(a)(2)(ii) insofar as it penalises a health service provider who will require parental consent from the minor in not emergency or serious situations.

After hurdling this initial challenge before the Supreme Court, full implementation of the reproductive health law met another roadblock: in June 2015, the Supreme Court issued a temporary restraining order to the Department of Health (DOH), including the Food and Drug Administration (FDA) and its agents, to temporarily stop “procuring, selling, distributing, dispensing or administering, advertising and promoting the hormonal contraceptive Implanon and Implanon NXT,” as the products allegedly fell within the definition of “abortifacient” under s.4(a) of the reproductive health law.⁹¹

The temporary restraining order further required the FDA to suspend certification or re-certification of all contraceptives until it had revised all the relevant procedures under the implementing rules and regulations, conducted hearings on proposed revisions, and decided on all applications under the revised procedure.⁹² The conditions on which the lifting of the temporary restraining order depend thus restrains the FDA from performing its regulatory function, necessary for the release of contraceptives to the market in a timely and efficient manner,⁹³ leading to little progress in the implementation of this law.

B. Rights to Life and Due Process in Light of the All-Out War on Drugs

During the campaign leading to the May 2016 presidential election, Rodrigo R Duterte, mayor of Davao City for seven terms or over 22 years, was a reluctant⁹⁴ yet popular candidate. His popularity can be attributed to his campaign slogan, ‘Change is Coming’ – a response to the perception that the previous administration had been disengaged from the conditions and needs of the poorest Filipinos. Duterte’s campaign promised swift and bold solutions to their problems, foremost of which was the social menace of drug abuse and the violent crimes committed by those under its influence.

During his campaign, Duterte promised to rid the country of crime, drugs, and corruption in government within the first three to six months of his term.⁹⁵ In order to do this, he proposed “to raise the level of the drug threat into a national security issue,”⁹⁶ and to involve the military and police to pursue criminals and drug lords. He further elaborated that if said criminals would “resist with violence, kill them.”⁹⁷

⁹¹ *Alliance for the Family Foundation Philippines, Inc v Dr Janette L Garin, et al*, GR No 217872.

⁹² Food and Drug Administration, ‘Press aide memoire on the SC TRO on contraceptives’ 31 July 2017, available at <http://www.fda.gov.ph/attachments/article/451712/PRESS%20MEDIA%20AIDE%20MEMOIRE%20SC%20TRO%20on%20Contraceptives.pdf>, accessed on 1 December 2017.

⁹³ Food and Drug Administration (see note 92 above).

⁹⁴ Duterte did not file his Certificate of Candidacy (COC) for president on the last prescribed day. Instead, he filed his COC for mayoral re-election in Davao City, and his party-mate, Martin Diño, filed as the presidential bet of PDP-Laban. Weeks later, Duterte withdrew his COC for the mayoral position and substituted himself in place of Diño as the PDP-Laban presidential candidate. His daughter, Sara, replaced him as mayoral candidate in Davao City.

⁹⁵ Ranada, P, ‘Duterte bares details of 3-to-6-month anti-crime plan’ Rappler News, 14 April 2016, available at <https://www.rappler.com/nation/politics/elections/2016/129520-rodrigo-duterte-anti-crime-plan>, accessed on 1 December 2017.

⁹⁶ Ranada (see note 95 above).

⁹⁷ Ranada (see note 95 above).

Duterte's simple and hard-hitting program seemed to replicate his actions in Davao City as mayor. In 2008, United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, investigated then Mayor Duterte about an alleged "Davao Death Squad," a group of vigilantes which targeted criminals, gang members, and street children. In his report, Alston pointed out that over 500 people had been killed by the death squads since 1998 when civil society organisations first began keeping records.⁹⁸ The fact these vigilantes were able to perform their street executions without fear of sanction led Alston to conclude they must have been officially sanctioned.⁹⁹ Duterte's attitude was also very telling. According to the report, "[w]hile repeatedly acknowledging that it was his 'full responsibility' that hundreds of murders committed on his watch remained unsolved, he would perfunctorily deny the existence of a death squad and return to the theme that there are no drug laboratories in Davao."¹⁰⁰ Further, "the mayor's positioning is frankly untenable: He dominates the city so thoroughly as to stamp out whole genres of crime, yet he remains powerless in the face of hundreds of killings committed by men without masks in view of witnesses."¹⁰¹

Within the first month of Duterte's presidency, the Philippine National Police (PNP) issued CMC No 16-2016 or its Anti-Illegal Drugs Campaign Plan, 'Project Double Barrel.' Double Barrel refers to the two-tiered approach of the campaign: Project Tokhang and Project HVT or 'High Value Target.' The circular illustrates the blight of drug abuse in the country: "[a]ccording to the [Dangerous Drugs Board]'s 2015 National Household Survey, there are around 1.8 million drug users in the country wherein 38.36% of which are unemployed. As of February 2016, the [Philippine Drug Enforcement Agency] reported that 26.91% or 11,321 out of the country's 42,065 barangays were 'drug affected' (mostly in urban areas)."¹⁰²

According to the circular, Project HVT targets illegal drug personalities and drug syndicates, focusing on trafficking at the national, regional, and international levels. However, as of yet no drug personalities have been arrested on this basis. At the same time, Project Tokhang utilises house-to-house visitations in coordination with local government units, "to persuade suspected illegal drug personalities to stop their illegal drug activities," supposedly by progressing through the following five stages: (1) collection and validation of information; (2) coordination; (3) house-to-house visitations; (4) processing and documentation; and (5) monitoring and evaluation.¹⁰³

⁹⁸ 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston' A/HRC/8/3/Add.2, UN General Assembly, Human Rights Council, 16 April 2008, available at www.karapatan.org/files/English_Alston_Report_Mission_to_the_Philippines_HRC8.pdf, accessed on 3 December 2017, at 17.

⁹⁹ Human Rights Council (see note 98 above), at 16.

¹⁰⁰ Human Rights Council (see note 98 above), at 16.

¹⁰¹ Human Rights Council (see note 98 above), at 16.

¹⁰² According to CMC No 16-2016, a barangay is said to be drug affected when there is proven existence of a drug user, pusher, manufacturer, marijuana cultivator, or other drug personality, regardless of the number, in the area.

¹⁰³ See, CMC No 16-2016, PNP Anti-Illegal Drugs Campaign Plan – Project: Double Barrel, 1 July 2016.

Despite this, PNP statistics showed that a total of 192 drug suspects were killed between 10 May to 10 July 2016.¹⁰⁴ Although the circular provides that in the collection and validation of information, the “identity and criminal activities of each target must be properly documented and verified with all possible sources to equip the team with accurate and solid proof when confronting suspects during house to house visitations,”¹⁰⁵ there are no clear guidelines as to the standard of proof required to verify the identity and activities of these suspects, other than the “watch lists” prepared by barangay officials. Worse, there are no clear guidelines on how to remove someone’s name from the list, except by signing a “surrender form”¹⁰⁶ which basically requires the person to admit either he or she is a drug user or a drug pusher. This forced choice violates the right to be presumed innocent until proven guilty by a competent court.

The Comprehensive Dangerous Drugs Act of 2002¹⁰⁷ draws a distinction between the culpability of a drug user from that of a drug pusher.¹⁰⁸ Consistent with its policy to “provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation,”¹⁰⁹ s.15 provides that a person apprehended or arrested, who is found positive for use of any dangerous drug after a confirmatory test, shall be imposed a penalty of a minimum of six months’ rehabilitation in a government centre for the first offence. For a second offence, the penalties rise to imprisonment and a fine. Yet victims of the vigilante implementation of Oplan Tokhang are denied this opportunity for rehabilitation, as well as their rights to due process and, most importantly, to life.

Since Oplan Tokhang’s early stages of implementation, it became clear that the killing of drug suspects only seemed to target the poor. For example, one drug suspect in the City of Manila was shot dead in his sleep,¹¹⁰ contrasting with the grandchild of a late congressman and brother of the former First Gentleman, who was arrested as a high value target through a drug buy-bust operation, but was eventually released

¹⁰⁴ ‘PNP statistics show 192 dead in war on drugs from May 10 to July 10’ GMA News, 14 July 2016, available at <http://www.gmanetwork.com/news/news/nation/573708/192-dead-in-war-on-drugs-from-may-10-to-july-10/story/>, accessed on 3 December 2017.

¹⁰⁵ CMC No 16-2016.

¹⁰⁶ Gavilan, J, ‘On a drug list and innocent? Here’s what you should do’ Rappler News, 2 September 2016, available at <https://www.rappler.com/newsbreak/iq/144882-drug-list-innocent-to-do>, accessed on 3 December 2017.

¹⁰⁷ Republic Act No 9165 (2002), which repealed Republic Act No 6425 or the Dangerous Drugs Act of 1972.

¹⁰⁸ Section 3(ff) of the Comprehensive Dangerous Drugs Act (2002) provides that a pusher is “any person who sells, trades, administers, dispenses, delivers or gives away to another, on any terms whatsoever, or distributes, dispatches in transit or transports dangerous drugs or who acts as a broker in any of such transactions, in violation of this Act.”

¹⁰⁹ Comprehensive Dangerous Drugs Act of 2002, s.2.

¹¹⁰ Balagtas See, A, ‘Drug suspect shot dead in sleep in Manila’ Inquirer.net, 9 October 2016, available at newsinfo.inquirer.net/823495/drug-suspect-shot-dead-in-sleep-in-manila, accessed on 3 December 2017.

upon recommendation of the prosecutor.¹¹¹ Tokhang visits are also rarely permitted in “posh” villages and subdivisions.¹¹² Worse, as of yet, no meaningful investigation into the killings—particularly those committed during legitimate police operations—has been undertaken.

Part 3: Conclusion

In the past, the Philippines has positioned itself as a regional leader in terms of recognising, promoting, and protecting human rights. Indeed, the Philippines enjoys a Constitution that explicitly mandates the recognition of each human person’s dignity and the protection of each individual’s human rights, mirroring most of its international human rights obligations. This has facilitated the creation of domestic laws that are intended to further give life to and concretise the experience of human rights by all.

However, the Philippines is now confronted by a different set of challenges. First is the effective implementation of its laws as shown by its difficulties putting into practice the reproductive health law and the status of foundlings. Human rights cannot be trapped only in the realm of notions and words; to be meaningful, the words must be lived out, implemented, and zealously protected. Second, the country must recognise new frontiers of human rights. While the Philippines is still struggling with more traditional threats to civil and political rights (e.g. violations of the rights to due process and life), it has also begun to recognise the equal importance of socio-economic and cultural rights, particularly in light of the mass violations committed by corrupt public officials. It has likewise explored possible violations in the realm of information and communications technology as demonstrated by its new laws on human security and cybercrime prevention. In the same vein, it must continue to accept that human rights are not static but a living concept that will grow and develop along with the human race.

¹¹¹ Espina, MP, ‘Iggy Arroyo’s grandson, village chief nabbed for drugs in Bacolod’ Rappler News, 29 November 2016, available at <https://www.rappler.com/nation/153948-iggy-arroyo-grandson-drugs-arrested-bacolod>, accessed on 3 December 2017.

¹¹² Orias, E, ‘No drug users in posh Makati villages?’ Malaya, 10 August 2016, available at <http://www.malaya.com.ph/business-news/news/no-drug-users-posh-makati-villages>, accessed on 3 December 2017. See also, Villamente, J, ‘No Tokhang in QC posh subdivisions’ The Manila Times, 16 September 2016, available at <http://www.manilatimes.net/no-tokhang-in-qc-posh-subdivisions/286069/>, accessed on 3 December 2017.

SINGAPORE



SINGAPORE

Ryan Nicholas Hong

Part 1: Overview of Singapore

A. Country Background

Singapore Facts ^{1, 2}	
Geographical size	719.1 sq km
Population	5,535,000
Ethnic breakdown ³	Main ethnic groups: Chinese (76.2%) Malay (15.0%) Indian (7.4%) Other (1.4%)
Official language(s)	English (working language) Malay (national language) Chinese Tamil
Literacy rate (aged 15 and above)	96.8%
Life expectancy	82.8
GDP (at current market prices in SG\$)	SG\$101,989 million (per capita SG\$72,711)
Government	Republic with a unicameral Westminster parliamentary system of government, but with no clear demarcation between the executive and legislative branches.
Political and social situation	'Soft authoritarian' form of governance which marginalised rights protection in early years although elections have been held regularly in Singapore since 1948 with voting made compulsory in 1959. The People's Action Party (PAP) won the 1959 election by a landslide as it has won every general election ever since. While PAP's political hegemony appeared to be threatened in 2011 when it suffered its worst results since independence, in the 2015 election, it captured nearly 70% of the votes and won 83 out of 89 seats.

¹ Figures relate to 2015 unless otherwise stated.

² 'Latest data' Department of Statistics Singapore, available at <http://www.singstat.gov.sg/statistics/latest-data>, accessed on 20 April 2016.

³ 'Population in brief 2015' National Population and Talent Division, Prime Minister's Office, September 2015, available at <https://www.strategygroup.gov.sg/docs/default-source/Population/population-in-brief-2015.pdf>, accessed on 20 April 2016.

System of governance

Singapore is a parliamentary republic with a unicameral Westminster system of governance, based on the 'first-past-the-post' system. The government is divided into three branches, with parliament serving as the legislature, executive power residing with the cabinet, and courts exercising judicial power. However, there is no clear demarcation of powers between the executive and legislative branches.⁴

Singapore's system of governance has often been described as "soft authoritarian."⁵ Its early years saw the marginalisation of rights protection, with the use of a rather instrumentalist and 'thin' rule of law emphasising Fullerian procedural requirements, to the detriment of substantive values which are rights-oriented. A framework that had as its focus, developmentalist priorities, such as economic growth, was strongly supported in turn by official state adherence to pragmatism and communitarianism, which elevated statist interests over those of the individual.⁶

That the electorate supports concrete 'performance legitimacy'⁷ and eschews political abstractions like 'democracy' or 'human rights,' is evident in how the ruling People Action's Party (PAP) has wielded political hegemony since 1959.⁸ It continues to do so today, winning 69.9% of the vote, and securing 83 out of 89 parliamentary seats in the recent General Election of 2015.⁹ Such continued one-party dominance in parliament also means the Constitution can be easily amended, especially since the ruling party will always be able to meet the two-thirds supermajority requirement under Art 5(2)¹⁰ to effect constitutional amendments, thus, entrenching the legislature's dominance over other branches of government.

Political and social situation

Singapore has seen advancements in the field of civil-political rights in recent years, with the government seemingly beginning to relax the rigid rules under which civil society operates, whilst also allowing political space to open up to embrace a wider

⁴ 'The Singapore legal system' Singapore Academy of Law, available at <https://web.archive.org/web/20110603225639/http://www.singaporelaw.sg:80/content/LegalSyst1.html#Section6>, accessed on 15 April 2016.

⁵ Means, G, 'Soft authoritarianism in Malaysia and Singapore' *Journal of Democracy*, 1996, Vol 7, No 4, pp 103-117.

⁶ Thio, L, *A Treatise on Singapore Constitutional Law*, Academy Publishing, 2012, at 109 and 121.

⁷ Means (see note 5 above).

⁸ Chua, BH, *Communitarian Ideology and Democracy in Singapore*, Routledge, 1995, at 1.

⁹ Tan, S, 'GE2015: PAP vote share increases to 69.9%, party wins 83 out of 89 seats including WP-held Punggol East' *The Straits Times*, 12 September 2015, available at <http://www.straitstimes.com/politics/ge2015-pap-vote-share-increases-to-699-party-wins-83-of-89-seats-including-wp-held-punggol>, accessed on 20 April 2016.

¹⁰ Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint), Art 5(2).

plurality of views and alternative voices.¹¹ This chapter will survey recent trends in rights protection in Singapore and point out some particularly problematic areas.

The absence of a strong rights culture may perhaps be attributed to Singapore's early constitutional history when its supreme law was a mere modification of the pre-existing state constitution dating back to the time Singapore was still part of the Malaysian Federation, and no constituent assembly was convened.¹² Therefore, at its very beginning, citizens had no opportunity to "shape the basic law," breeding an "affective detachment from the fundamental law."¹³

Despite its colonial heritage, autochthonous institutions independent of the Westminster system have been developed. The first is the 1984 Non-Constituency Member of Parliament (NCMP) Scheme which ensures minimum opposition representation of up to nine parliamentary seats,¹⁴ with candidates chosen from among the "best losers" of the opposition candidates.¹⁵ This was followed by the 1988 Group Representation Constituency (GRC) scheme, which mandates that at least one individual within a 3-6 person team must be a member of a minority community.¹⁶ Third, the 1990 Nominated Member of Parliament (NMP) scheme provides for independent and non-partisan views in parliament, gleaned from diverse sectors like business, arts and culture, and the labour movement.¹⁷ Last, the office of Elected Presidency (EP) was introduced in 1991.¹⁸ The President, who serves as head of state, exercises limited veto powers over issues such as key civil service appointments,¹⁹ and safeguarding the country's past financial reserves.²⁰

¹¹ Shahannaz Habib, 'Signs of political maturity' (Interview with Dr Gillian Koh), The Star, 1 May 2011, available at http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/04/Star_Signs-of-political-maturity_010511.pdf, accessed on 20 April 2016.

¹² Thio, L, 'In search of the Singapore Constitution: Retrospect and prospect' in Thio, L, and Tan, K (eds), *Evolution of a Revolution: Forty Years of the Singapore Constitution*, Routledge-Cavendish, 2009, at 325.

¹³ Thio (see note 12 above).

¹⁴ Thio (see note 6 above), at 281.

¹⁵ 'Glossary' Parliament of Singapore, available at [https://www.parliament.gov.sg/parliamentary-business/glossary/Details/non-constituency-member-of-parliament-\(ncmp\)/Non-Constituency%20Member%20of%20Parliament%20\(NCMP\)](https://www.parliament.gov.sg/parliamentary-business/glossary/Details/non-constituency-member-of-parliament-(ncmp)/Non-Constituency%20Member%20of%20Parliament%20(NCMP)), accessed on 20 April 2016.

¹⁶ 'Glossary' Parliament of Singapore, available at [https://www.parliament.gov.sg/parliamentary-business/glossary/Details/group-representation-constituency-\(grc\)/Group%20Representation%20Constituency%20\(GRC\)](https://www.parliament.gov.sg/parliamentary-business/glossary/Details/group-representation-constituency-(grc)/Group%20Representation%20Constituency%20(GRC)), accessed on 20 April 2016.

¹⁷ 'Glossary' Parliament of Singapore, available at [https://www.parliament.gov.sg/parliamentary-business/glossary/Details/nominated-member-of-parliament-\(nmp\)/Nominated%20Member%20of%20Parliament%20\(NMP\)](https://www.parliament.gov.sg/parliamentary-business/glossary/Details/nominated-member-of-parliament-(nmp)/Nominated%20Member%20of%20Parliament%20(NMP)), accessed on 20 April 2016.

¹⁸ Thio (see note 6 above), at 280.

¹⁹ Constitution of the Republic of Singapore, Art 22(1).

²⁰ Constitution of the Republic of Singapore, Art 148A.

B. International Human Rights Commitments and Obligations

Of the major international human rights treaties, Singapore has only acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CPRD), as can be seen in Table 1 below.

Table 1: Ratification Status of International Instruments – Singapore²¹

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		5 Oct 1995 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	19 Oct 2015	
International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		5 Oct 1995 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	7 Sep 2000	11 Dec 2008
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		
Convention on the Rights of Persons with Disabilities (CPRD)		18 Jul 2013

²¹ 'Ratification status for Singapore' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 7 October 2017.

However, the country also often attaches extensive reservations, attracting objections from other states on grounds of incompatibility with the objects and purposes of the conventions.²² Notably, the government has not ratified the International Convention for the Protection of Migrant Workers and Members of their Families, the International Labour Organization's Domestic Workers Convention,²³ the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.²⁴

Singapore judges have espoused an adherence to dualism,²⁵ hence preserving the bifurcation between the separate legal orders of municipal and international law. Further, Singapore contends it only accedes to international agreements when it has the intention of ratifying them, and when it possesses the confidence that full compliance with all requirements and obligations can be achieved.²⁶

Developments in 2015

CEDAW: Singapore's Ministry of Social and Family Development and the Singapore Council of Women's Organisations jointly consulted women's groups and women parliamentarians before submitting its Fifth Periodic Report in October 2015.²⁷ The report covered key initiatives undertaken to facilitate the progress of women, such as the increase in paternity leave in 2015 to two weeks, which was introduced to encourage greater shared parental responsibility, and to enhance work-life support.²⁸ In addition, the government announced that it intended to withdraw its reservation to Art 11(1) of *CEDAW*. While this reservation was originally entered into to "safeguard the welfare of women and their unborn children from certain hazardous occupations," the government considered it was no longer necessary as national workforce and human

²² See, Linton, S, 'ASEAN states, their reservations to human rights treaties and the proposed ASEAN Commission on Women and Children' *Human Rights Quarterly*, 2008, Vol 30, No 2, at 476. For a fuller exposition of reservations and interpretive declarations to these conventions, see, Chang, Ya Lan's chapter on Singapore in the 2015 edition of this Outlook.

²³ 'Majority of migrant workers are happy, says Singapore in its 2nd UPR Review. HOME responds ...' Independent, 29 January 2016, available at <http://www.theindependent.sg/majority-of-migrant-workers-are-happy-says-singapore-in-its-2nd-upr-review-home-responds/>, accessed on 16 April 2016.

²⁴ 'Human Rights Day 2015 – MARUAH statement' MARUAH (Working Group for an ASEAN Human Rights Mechanism, Singapore), 10 December 2015, available at <https://maruah.org/2015/12/10/human-rights-day-2015-maruah-statement/>, accessed on 16 April 2016.

²⁵ See, e.g. the judgment of Chief Justice Menon in *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129; [2015] SGCA 11 at [29], where it was stated that "it is clear from our jurisprudence that Singapore, like most other common law jurisdictions, subscribes to the dualist school of thought." This case is further examined below.

²⁶ Tan, E, and Lim, E, *The Effect of Treaties in Singapore's Domestic Law*, unpublished, 2013, at 17.

²⁷ 'International obligations: Convention on the Elimination of All Forms of Discrimination Against Women' Ministry of Social and Family Development, available at <https://www.msf.gov.sg/policies/Women-Celebrating-Women/International-Obligations/Pages/default.aspx>, accessed on 10 April 2016.

²⁸ Ministry of Social and Family Development (see note 27 above).

resource policies had “progressed to flexibly accommodate and support people’s life-cycle needs.”²⁹

ICERD: Singapore has also illustrated a greater willingness to be held up to international standards in the areas of racial discrimination and human trafficking. On 19 October 2015, it signed the ICERD with a view to ratification in 2017.³⁰ The Ministry of Culture, Community, and Youth has also pledged to join with stakeholders in fulfilling obligations under this pact.³¹

Finally, on 28 September 2015, Singapore also acceded to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention against Transnational Organized Crime.³²

C. National Laws Affecting Human Rights

Fundamental liberties

Fundamental liberties are guaranteed under Part IV of the Constitution.³³ However, it is noteworthy that while most fundamental liberties apply to all persons, specific rights are only available to Singapore citizens. These include the rights to freedom of speech, expression, assembly, and to form associations,³⁴ non-banishment and freedom of movement,³⁵ and non-discrimination on the grounds of religion, race, descent, or place of birth.³⁶ Local commentators have also observed that although the Constitution passes the Diceyan criteria for supremacy in form, vestiges of parliamentary supremacy predominate in practice,³⁷ especially given the fact that the judiciary is strongly deferential to the legislature, and often expresses the sentiment that the latter is better placed to “decide what is best for Singapore society.”³⁸ Some of the more contentious articles will now be considered.

²⁹ ‘Singapore’s Fifth Periodic Report to the UN Committee for the Convention on the Elimination of All Forms of Discrimination Against Women’ Ministry of Social and Family Development, Republic of Singapore, 2015, at 45.

³⁰ Sim, W, ‘Singapore signs pact against racial discrimination’ *The Straits Times*, 21 October 2015, available at <http://www.straitstimes.com/singapore/singapore-signs-pact-against-racial-discrimination>, accessed on 20 April 2016.

³¹ Sim (see note 30 above).

³² Mohandas, V, ‘Singapore accedes to UN Trafficking in Persons Protocol’ *Channel NewsAsia*, 29 September 2015, available at <http://www.channelnewsasia.com/news/singapore/singapore-accedes-to-un/2157570.html>, accessed on 20 April 2016.

³³ Constitution of the Republic of Singapore, Part IV.

³⁴ Constitution of the Republic of Singapore, Art 14.

³⁵ Constitution of the Republic of Singapore, Art 13.

³⁶ Constitution of the Republic of Singapore, Art 12(2).

³⁷ Neo, J, and Lee, Y, ‘Constitutional supremacy: Still a little dicey’ in Thio, L, and Tan, K (eds), *Evolution of a Revolution: Forty Years of the Singapore Constitution*, Routledge-Cavendish, 2009, at 155.

³⁸ Tsen-Ta Lee, J, ‘According to the spirit and not to the letter: Proportionality and the Singapore Constitution’ *Vienna Journal on International Constitutional Law*, 2014, Vol 8, at 282.

Article 9 (liberty of the person): Article 9(1) states that “no person shall be deprived of his life or personal liberty save in accordance with law.”³⁹ Although Singapore’s highest court has called the right to life “the most basic of human rights,”⁴⁰ the term has eluded expansive judicial definition, the right having been narrowed instead to freedom from unlawful incarceration or detention.⁴¹ While Art 9(3) allows for an arrested person to “consult and be defended by a legal practitioner of his choice,”⁴² such right to counsel may be delayed within a reasonable time,⁴³ and further, there is currently no right to be informed of one’s right to counsel.⁴⁴

Article 12 (equal protection): Article 12(1) states that “all persons are equal before the law and entitled to the equal protection of the law.”⁴⁵ In determining the constitutionality of the impugned legislation, Singapore courts have utilised a “reasonable classification” test, which requires the fulfilment of an “intelligible differentia which [bears] a rational relation to the object sought to be derived by the legislation.”⁴⁶ Such differentia underlying a piece of legislation just has to be “broadly effective” to achieve the legislation’s object, and a court will only intervene where the differentia was not “broadly proportionate” to the object.⁴⁷

Article 14 (freedom of speech, assembly, and association): While Art 14⁴⁸ guarantees freedom of speech, assembly, and association, Art 14(2)⁴⁹ serves as a limitation, according parliament a wide remit, since it confers the power to impose restrictions

³⁹ Constitution of the Republic of Singapore, Art 9(1).

⁴⁰ *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 at [84].

⁴¹ *Lo Pui Sang v Mamata Kapildev Dave* [2008] 4 SLR (R) 754 at [6]. For an exemplar of judicial reluctance to read Art 9 broadly, consider, *Public Prosecutor v Mazlan bin Maidun* [1992] 3 SLR (R) 968 at [15], where the Court of Appeal refused to read into Art 9 the right to silence as a constitutional right. It reasoned that since such a right was not explicitly provided for in the Constitution, elevating it would have required “a degree of adventurous extrapolation which we do not consider justified.”

⁴² Constitution of the Republic of Singapore, Art 9(3). Section 236 of the Criminal Procedure Code (No 15 of 2010) similarly provides for the right to counsel. Of note is the recent case of 14 year old schoolboy, Benjamin Lim, who committed suicide after being questioned by police over allegations of outrage of modesty. This led to public debates over accused persons’ rights to early access to counsel in general, and in particular, whether minors should be accompanied by parents or guardians when interviewed by the police. This also prompted comments by Singapore Law Society President, Thio Shen Yi SC, that the police should have taken a “less intimidating way” of approaching the investigation: Koh, V, “Less intimidating approach’ should have been taken in Benjamin Lim case: Law Society President’ Today Online, 17 February 2016, available at <http://www.todayonline.com/singapore/less-intimidating-approach-should-have-been-taken-investigation-yishun-teen-law-society>, accessed on 25 April 2016.

⁴³ The Court of Appeal in *Jasbir Singh v Public Prosecutor* [1994] 1 SLR (R) 782 at [49], held that on the facts of the case, it was reasonable to deny the appellant this right for up to two weeks from the time of his arrest.

⁴⁴ *Rajeevan Edakalavan v Public Prosecutor* [1998] 1 SLR (R) 10 at [19].

⁴⁵ Constitution of the Republic of Singapore, Art 12(1).

⁴⁶ *Lim Meng Suang and another v Attorney-General* [2013] SGHC 73 at [45]-[46].

⁴⁷ *Lim Meng Suang* at [95].

⁴⁸ Constitution of the Republic of Singapore, Art 14.

⁴⁹ Constitution of the Republic of Singapore, Art 14(2).

that it considers “necessary and expedient” in the interests of security, public order, or morality.⁵⁰

Article 15 (freedom of religion): Article 15(1) provides for the right of every person to profess and practice his religion and to propagate it.⁵¹ However, it does not authorise acts contrary to any general law relating to public order, public health, or morality.⁵²

Although Singapore’s model is one of “accommodative secularism,” where constitutional protection of religious freedom is “premised on removing restrictions to one’s choice of religious belief,”⁵³ courts have sidestepped a judicious balancing approach in favour of a categorical approach that prioritises statist considerations⁵⁴ which will be further explored in Part 2 below.

Workplace discrimination laws

In countering workplace discrimination, Singapore relies on a set of guiding principles⁵⁵ formulated by the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP). TAFEP works in partnership with employer organisations, unions, and the government, and helps promote awareness by educating the public on fair employment practices.⁵⁶ In 2015, the government revealed that complaints over discrimination based on race, language, or religion have remained fairly stable, with only nine companies taken to task by the Ministry of Manpower in 2014.⁵⁷ Instead, discrimination towards foreign workers has manifested itself as the key issue. The Manpower Minister recently announced plans to give the watchdog more “teeth” to tackle companies lacking a strong Singaporean core by suspending work pass privileges, thus affecting the number

⁵⁰ Courts have read this as providing parliament “an extremely wide discretionary power and remit that permits a multifarious and multifaceted approach towards achieving any of the purposes specified in (the clause).” See, *Chee Siok Chin v Minister for Home Affairs* [2005] SGHC 216 at [49].

⁵¹ Constitution of the Republic of Singapore, Art 15(1).

⁵² Constitution of the Republic of Singapore, Art 15(4).

⁵³ *Nappalli Peter Williams v Institute of Technical Education* [1992] 2 SLR 569 at [28G].

⁵⁴ Thio, L, ‘Courting religion: The judge between Caesar and God in Asian courts’ *Singapore Journal of Legal Studies*, 2009, at 74.

⁵⁵ Known as the Tripartite Guidelines on Fair Employment Practices, they include: (1) Recruiting and selecting employees on the basis of merit (such as skills, experience, or ability to perform the job), regardless of age, race, gender, religion, marital status, family responsibilities, or disability; (2) Treating employees fairly and with respect and implementing progressive human resource management systems; (3) Providing employees with equal opportunities for training and development based on their strengths and needs to help them achieve their full potential; (4) Rewarding employees fairly based on their ability, performance, contribution, and experience; and (5) Abiding by labour laws and adopting Tripartite Guidelines to promote fair employment practices. Available at <https://www.tafep.sg/publication/tripartite-guidelines-fair-employment-practices>, accessed on 27 April 2016.

⁵⁶ ‘About us’ TAFEP, available at <https://www.tafep.sg/about-us>, accessed on 27 April 2016.

⁵⁷ Seow, J, ‘Parliament: Complaints of discrimination over race, language or religion ‘fairly stable’ The Straits Times, 17 August 2015, available at <http://www.straitstimes.com/singapore/parliament-complaints-of-discrimination-over-race-language-or-religion-fairly-stable>, accessed on 20 April 2016.

of foreign workers such companies will be able to hire.⁵⁸ However, Singapore continues to lack dedicated legislation against workplace discrimination.⁵⁹

Human trafficking laws

Singapore's parliament passed the Prevention of Human Trafficking Act in November 2014, which came into force on 1 March 2015,⁶⁰ bringing it closer in line with international standards. The Act provides harsh punishments, including maximum fines of up to SG\$100,000, jail terms of up to 10 years, as well as a maximum of six strokes of the cane.⁶¹ Crucially, Part 4 provides for victim protection and assistance, which encompasses the protection of victims' privacy,⁶² and the provision of temporary shelter and counselling services.⁶³

Foreign worker legislation

While Singapore has no dedicated legislation protecting the rights of foreign migrant workers, improvements were made in 2015 when it passed the Foreign Employee Dormitories Act⁶⁴ which aims to ensure minimum accommodation standards are observed. It also promotes the sustainability and continuous improvement of such services as the provision of dormitories under a licencing regime.⁶⁵ However, the often cramped and squalid living conditions of these dormitories continues to be an issue, and is often regularly highlighted in the media.⁶⁶

Separately, Singapore's Employment Act⁶⁷ was amended in 2015 to require employers to issue itemised payslips and key employment terms to minimise disputes between employers and employees, thus, preventing the exploitation of foreign workers. These changes have been in force since 1 April 2016.⁶⁸

⁵⁸ 'Singapore parliamentary debates: Official report' 8 April 2016, Committee of Supply – Head S (Ministry of Manpower), Vol 94, at Col 1128 (Lim Swee Say, Minister for Manpower).

⁵⁹ Ostensibly because the experience of other countries with such legislation has shown that it is "difficult for victims to prove discrimination," and that such legislation may "introduce market rigidity due to protracted disputes between employers and employees." See, 'Singapore parliamentary debates: Official report' 7 March 2014, Committee of Supply – Head S (Ministry of Manpower), Vol 91, at Col 1256 (Hawazi Daipi, Senior Parliamentary Secretary to the Acting Minister for Manpower).

⁶⁰ 'Prevention of Human Trafficking Act to take effect from 1 March 2015' Ministry of Home Affairs, Republic of Singapore, available at <https://www.mha.gov.sg/Newsroom/press-releases/Pages/Prevention-of-Human-Trafficking-Act-to-take-effect-from-1-March-2015.aspx>, accessed on 18 April 2016.

⁶¹ Section 4(1)(a). See, Prevention of Human Trafficking Bill (No 39/2014), available at <https://www.parliament.gov.sg/docs/default-source/Bills-Introduced/prevention-of-human-trafficking-bill-39-2014.pdf>, accessed on 18 April 2016.

⁶² Prevention of Human Trafficking Bill, Art 18.

⁶³ Prevention of Human Trafficking Bill, Art 19.

⁶⁴ Foreign Employees Dormitory Act (No 3 of 2015).

⁶⁵ Foreign Employees Dormitory Act, Art 4.

⁶⁶ See, e.g. Aw, CW, 'ST reporter's taste of life in an 'HDB-style' dorm for workers' The Straits Times, 27 March 2016, available at <http://www.straitstimes.com/singapore/st-reporters-taste-of-life-in-an-hdb-style-dorm-for-workers>, accessed on 20 April 2016.

⁶⁷ Employment Act (Cap 91, 2009 Rev Ed Sing).

⁶⁸ 'Amendments to Employment Act' Ministry of Manpower, Republic of Singapore, available at <http://www.mom.gov.sg/employment-practices/employment-act/amendments-to-the-act>, accessed on 29 April 2016.

D. National Laws Threatening Human Rights

National security

The Internal Security Act⁶⁹ and the Criminal Law (Temporary Provisions) Act⁷⁰ continue to be in force, and both allow for detention without trial. Of particular significance is a 1988 decision wherein the Court of Appeal asserted its judicial powers by holding that detention orders issued pursuant to the Internal Security Act were subject to judicial review.⁷¹ This was swiftly followed by a series of constitutional amendments a year later which limited such judicial review.⁷²

Penalties and the presumption of innocence

The Misuse of Drugs Act⁷³ creates certain presumptions. For instance, persons found to be in possession of a certain amount of drugs are deemed to have them for the purposes of trafficking,⁷⁴ a death penalty offence.⁷⁵ Other offences such as repeated drug consumption attracts caning.⁷⁶

Revisions to the Penal Code and the Misuse of Drugs Act were made by parliament in 2012⁷⁷ abolishing the mandatory death penalty for certain cases of murder where there is no intention to kill,⁷⁸ and drug offences respectively. As regards drug offences, the death

⁶⁹ Internal Security Act (Cap 143, 1985 Rev Ed Sing). In the last two months of 2015, the Act was used to detain 27 Bangladeshi construction workers in Singapore. Allegedly a terror cell which had supported the ideologies of Al-Qaeda and the Islamic State in Iraq and Syria, the group had planned to wage armed jihad overseas. See, Lee, MK, '27 radicalised Bangladeshis arrested in Singapore under Internal Security Act: MHA' The Straits Times, 20 January 2016, available at <http://www.straitstimes.com/singapore/courts-crime/27-radicalised-bangladeshis-arrested-in-singapore-under-internal-security-act>, accessed on 7 October 2017.

⁷⁰ Criminal Law (Temporary Provisions) Act (Cap 67, 1985 Rev Ed Sing).

⁷¹ *Chng Suan Tze v Minister of Home Affairs* [1988] 2 SLR (R) 525. The court here promulgated the application of an objective test. Further, at 156E, it held that the "accountability of Parliament" was not an "alternative safeguard."

⁷² Such review was truncated and limited "only to issues of non-compliance with statutory procedure." See, Thio (note 6 above), at 674.

⁷³ Misuse of Drugs Act (Cap 185, 2001 Rev Ed Sing).

⁷⁴ Misuse of Drugs Act, s.17. See also, ss.18 to 22.

⁷⁵ Recently, Singapore's Home Affairs and Law Minister, K Shanmugam SC, defended the continued use of the death penalty as a good deterrent which has kept Singapore safe. Speaking at a special session of the United Nations General Assembly, he explained how this was important for Singapore, given the number of visitors through its borders every year, and its proximity to the 'Golden Triangle' which is the second largest heroin production centre in Asia. He further disputed claims there was a medical basis for cannabis use, and explained Singapore's "calibrated approach" to young abusers, which includes counselling and rehabilitation. See, Cheong, D, 'Drug situation is under control. Why should we legalise drugs? K Shanmugam' The Straits Times, 1 May 2016, available at <http://www.straitstimes.com/singapore/drug-situation-is-under-control-why-should-we-legalise-drugs>, accessed on 2 May 2016.

⁷⁶ Misuse of Drugs Act, ss.33 and 33A.

⁷⁷ Penal Code (Amendment) Act 2012 (No 32 of 2013) and Misuse of Drugs (Amendment) Act 2012 (No 30 of 2012).

⁷⁸ Singapore executed convicted murderer, Muhammad bin Kadar, on 17 April 2015 by hanging. He had stabbed a 69 year old woman in 2005 while robbing her. See, 'Convicted murderer, who stabbed victim more than 110 times, executed' Channel NewsAsia, 17 April 2015, available at <http://www.channelnewsasia.com/news/singapore/convicted-murderer-who/1790984.html>, accessed on 10 April 2016.

penalty is no longer automatically imposed on ‘drug mules’ merely playing the role of a courier if that person was not involved in the distribution or dealing of drugs. He or she must also have cooperated with the Central Narcotics Bureau in a substantive way, or have a mental disability substantially impairing his or her appreciation of the gravity of the act.⁷⁹ Yet, evidential problems remain. For instance, it would not be realistic to expect drug mules to have information on kingpins, and further, what constitutes “substantial assistance” is left solely to the discretion of the Public Prosecutor, whose decision can only be judicially reviewed on the grounds of bad faith or malice.⁸⁰

Equality

Courts have upheld the constitutionality of s.377A of the Penal Code,⁸¹ criminalising homosexual sex between men, despite challenges to the legislation on the grounds that it infringes the constitutional right to equality.⁸²

Protection from harassment

Singapore’s Protection from Harassment Act⁸³ came into force in November 2014. While intended primarily to protect individuals, the government sought to invoke the Act in 2015 against five administrators of a socio-political blog,⁸⁴ for publishing an interview with an individual who had allegedly made false statements of fact against a government ministry. The Attorney-General thus sought a court order that the statement in question should not be published unless accompanied by a notification bringing attention to the falsehood and the true facts.⁸⁵ While the High Court held that the Act does not apply to the government,⁸⁶ the case is currently pending before the Court of Appeal.⁸⁷

Freedom of expression and assembly

Freedom of expression and assembly continue to be some of the most regulated

⁷⁹ See, Misuse of Drugs (Amendment) Act 2012, s.33B.

⁸⁰ Misuse of Drugs (Amendment) Act 2012, s.33B(4). For a more in-depth examination of the legislative amendments, see, Hong, RN, ‘The death penalty in Singapore: Revisions and alternatives’ SGCrimLaw Articles, 5 January 2015, available at <http://nuslawclub.com/CLWP/the-death-penalty-in-singapore-revisions-and-alternatives/>, accessed on 10 April 2016.

⁸¹ Penal Code (Cap 224, 2008 Rev Ed Sing). Section 377A reads: “Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.”

⁸² See, *Lim Meng Suang* (note 46 above).

⁸³ Protection from Harassment Act (Cap 256A, 2015 Rev Ed Sing).

⁸⁴ *Attorney-General v Lee Kwai Hou Howard, Xu Yuen Chen, Loh Hong Puey Andrew, Choo Zheng Xi, Lee Song Kwang, and Ting Choon Meng* [2015] SGDC 114.

⁸⁵ Such court orders can be made under s.15(2) (see note 83 above).

⁸⁶ See, *Ting Choon Meng v Attorney-General and another appeal* [2016] 1 SLR 1248; [2015] SGHC 315, from [31] to [43].

⁸⁷ ‘Anti-Harassment appeal: A-G Chambers gets court’s nod’ The Straits Times, 11 February 2016, available at <http://www.straitstimes.com/singapore/courts-crime/anti-harassment-appeal-a-g-chambers-gets-courts-nod>, accessed on 30 April 2016.

fundamental freedoms in Singapore. In its earliest years, political discussions were influenced by governmental ‘out of bounds’ or ‘OB’ markers which delineated the boundaries of acceptable political discourse, with the then Minister for Information and the Arts explaining that these could not be defined with exact precision or in advance. Instead, the government exhorted those wanting to engage in political discourse to first join a political party.⁸⁸ Political space has progressively opened up over the years, particularly in the wake of the 2011 General Election in which PAP saw its worst electoral result since 1965 in terms of the popular vote, and in which the government lost a GRC to the opposition for the first time.⁸⁹ Consequently, the Prime Minister pledged to allow an “inclusive dialogue on making policies and governing Singapore,”⁹⁰ and a ground-up, year-long national dialogue between the government and the people. As such, he initiated the “Our Singapore Conversation.”⁹¹

Nevertheless, free speech continues to be restrained by a multiplicity of laws. For instance, the Sedition Act criminalises acts, speech, words, or publications which, *inter alia*, promote “feelings of ill-will and hostility between different races or classes of the population of Singapore.”⁹² The threshold for the offence is low as such seditious speech is based solely on anticipated potential harm; no actual harm is required.⁹³ Second, the government does not believe in the notion of the press as the ‘Fourth Estate,’ and indeed, the press continues to be subject to the Newspaper and Printing Presses Act,⁹⁴ under which publications require a ministerial permit.⁹⁵ Third, PAP politicians commonly avail themselves of defamation lawsuits against their political opponents and because local case law accords higher damages to senior government officials and prominent public figures, this has often resulted in the bankruptcy of opposition politicians.⁹⁶

⁸⁸ ‘Minister Yeo on OB markers and internet’ Singapore Window, 26 May 1999, available at <http://www.singapore-window.org/sw99/90526st.htm>, accessed on 30 April 2016.

⁸⁹ Banyan, ‘Singapore’s election: A win-win election?’ The Economist, 8 May 2011, available at http://www.economist.com/blogs/banyan/2011/05/singapores_election, accessed on 10 April 2016.

⁹⁰ ‘Speech by Prime Minister, Lee Hsien Loong, at the swearing-in ceremony held in the State Room, Istana, on 21 May 2011’ Prime Minister’s Office, Singapore, available at <http://www.pmo.gov.sg/mediacentre/speech-prime-minister-lee-hsien-loong-swearing-ceremony-held-state-room-istana-21-may>, at para 11, accessed on 20 April 2016.

⁹¹ See, ‘Our Singapore conversations survey findings’ Our SG Conversations, available at <https://www.reach.gov.sg/oursgconversation>, accessed on 7 October 2017.

⁹² Sedition Act (Cap 290, 1985 Rev Ed Sing), s.3(1)(e). This subsection has been the most commonly used: see, *Public Prosecutor v Koh Song Huat Benjamin* [2005] SGDC 272; and *Public Prosecutor v Ong Kian Cheong* [2009] SGDC 163. Other grounds included in s.3(1) include: (a) to bring into hatred or contempt or to excite disaffection against the government; (b) to excite the citizens or residents of Singapore to attempt to procure in Singapore, the alteration, otherwise than by lawful means, of any matter as by law established; (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Singapore; (d) to raise discontent or disaffection amongst the citizens or residents of Singapore.

⁹³ Thio (see note 6 above), at 789.

⁹⁴ Newspaper and Printing Presses Act (Cap 206, 2002 Rev Ed Sing).

⁹⁵ Newspaper and Printing Presses Act, s.21.

⁹⁶ For example, in *Goh Chok Tong v Chee Soon Juan* (No 2) [2005] 1 SLR 573; [2005] SGHC 3; and *Lee Kuan Yew v Chee Soon Juan* (No 2) [2005] 2 SLR 552; [2005] SGHC 2, the plaintiffs were awarded SG\$300,000 and SG\$200,000 in damages respectively. Chee, an opposition politician and Secretary-General of the Singapore Democratic Party, was subsequently declared bankrupt by the High Court in 2006 after failing to pay the damages.

In addition, the government sought to regulate the new wave of socio-political websites in 2013. Under the Broadcasting Act,⁹⁷ internet content providers and service providers are licenced by the Media Development Authority of Singapore, and must comply with the Class Licence Conditions and the Internet Code of Practice. In revisions made in 2013, the Act now subjects online sites attracting at least 50,000 unique monthly visitors on average, over any period of two consecutive months, and containing at least one Singapore news programme per week on average,⁹⁸ to the same licencing regime. To qualify for a licence, such sites are required to fork out a SG\$50,000 bond and agree to remove prohibited content within 24 hours of notification from the authorities.⁹⁹

Similarly, freedom of assembly continues to be restricted by the Public Entertainments and Meeting Act, which makes it an offence to give a public talk, lecture, address or discussion without a licence.¹⁰⁰ While the government introduced a Speakers' Corner in 2000 as a limited geographical space for the exercise of free speech, this is subject to obtaining a police permit, and is further limited by three different sets of regulations.¹⁰¹ Likewise, the Miscellaneous Offences (Public Order and Nuisance) Act¹⁰² has been used against peaceful protestors conducting a silent protest.¹⁰³

Freedom of religion and association

The government can ban religious publications under the Undesirable Publications Act,¹⁰⁴ and can de-register religious associations under the Societies Act.¹⁰⁵ These have been applied to Jehovah's Witnesses, a group deemed to be a threat to public order due to their opposition to compulsory national service.¹⁰⁶ Other de-registered groups include the Christian Conference of Asia and the Unification Church.¹⁰⁷

Moreover, religious free speech rights are implicated under the Maintenance of Religious Harmony Act,¹⁰⁸ as the government can issue renewable, pre-emptive 'restraining orders' for up to two years, against irresponsible proselytisation. This

⁹⁷ Broadcasting Act (Cap 28, 2012 Rev Ed Sing).

⁹⁸ Broadcasting (Class Licence)(Amendment) Notification 2013, s.3A.

⁹⁹ 'Fact sheet – Online news sites to be placed on a more consistent licensing framework as traditional news platforms' Media Development Authority, 28 May 2013, available at <http://www.mda.gov.sg/AboutMDA/NewsReleasesSpeechesAndAnnouncements/Pages/NewsDetail.aspx?news=4>, accessed on 20 April 2016.

¹⁰⁰ Public Entertainments and Meeting Act (Cap 257, 2001 Rev Ed Sing).

¹⁰¹ These are the Public Entertainments and Meetings (Speakers' Corner) (Exemption) Order 2008 (S 426/2008), the Public Order (Unrestricted Area) Order 2009 (S 491/2009), and the Parks and Trees Regulations (Cap 216, Rg 1, 2006 Rev Ed Sing). Permits for assemblies or processions are also required under the Public Order Act 2009 (Act 15 of 2009), and the police can prohibit or disperse assemblies seriously disturbing or seriously threatening public order under the Public Order (Preservation) Act (Cap 259, 1985 Rev Ed Sing).

¹⁰² Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed Sing).

¹⁰³ *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR (R) 582.

¹⁰⁴ Undesirable Publications Act (Cap 338, 1998 Rev Ed Sing).

¹⁰⁵ Societies Act (Cap 311, 1985 Rev Ed Sing).

¹⁰⁶ Thio (see note 6 above), at 915. The Jehovah's Witnesses were de-registered as a society in 1972.

¹⁰⁷ Thio (see note 6 above), at 915-916.

¹⁰⁸ Maintenance of Religious Harmony Act (Cap 167A, 2001 Rev Ed Sing).

includes fomenting hatred between different religious groups, and the mixing of politics and religion – broad terms which afford the government significant discretion since it is the final arbiter of what constitutes these categories,¹⁰⁹ and judicial review is effectively precluded.¹¹⁰

E. Recent Court Cases Relating to Human Rights

Yong Vui Kong v Public Prosecutor¹¹¹

The appellant in this case was sentenced to life imprisonment and 15 strokes of the cane for drug trafficking. The Court of Appeal upheld the constitutionality of caning as Singapore was held to be a ‘dualist’ jurisdiction which requires enabling legislation to give effect to international law norms. Based on this, the court reasoned that caning would not be unconstitutional even if it were torture and prohibited by a peremptory international law norm of *jus cogens*.¹¹² Further, it held that caning was an exception to the Art 9 right to life and personal liberty,¹¹³ and in any event, caning did not amount to torture.¹¹⁴

Attorney-General v Au Wai Pang

Alex Au, a local blogger with a following in the gay community, was convicted by the High Court on 21 January 2015 for contempt of court and fined SG\$8000. Au had published an article online which was held to have posed “a real risk of undermining public confidence in the administration of justice in Singapore.”¹¹⁵ The article had imputed partiality on the part of the Chief Justice,¹¹⁶ and alleged improper manipulation of the Supreme Court’s hearing calendar and the composition of the bench, with regard to cases concerning the constitutionality of s.377A of the Penal Code.¹¹⁷ The Court of Appeal dismissed the appellant’s appeal against his conviction on 30 November 2015.¹¹⁸

¹⁰⁹ Maintenance of Religious Harmony Act, ss.8-9. Four grounds are specified under Art 8: (1) causing feelings of enmity, hatred, ill-will, or hostility between different religious groups; (2) carrying out activities to promote a political cause, or a cause of any political party while, or under the guise of, propagating or practicing any religious belief; (3) carrying out subversive activities under the guise of propagating or practicing any religious belief; or (4) exciting disaffection against the President or the government while, or under the guise of, propagating or practicing any religious belief. See also, Thio (note 6 above), at 916.

¹¹⁰ Maintenance of Religious Harmony Act, s.18. Such judicial review was precluded as the point was raised in parliament that it would be “explosive” for “a secular court [to decide] on religious disputes.” See, ‘Singapore parliamentary debates: Official report’ 22 February 1990, Maintenance of Religious Harmony Bill, Vol 54, at Col 1128 (John Chen, Member of Parliament (Hong Kah GRC)).

¹¹¹ *Yong Vui Kong v Public Prosecutor* [2015] SGCA 11; [2015] 2 SLR 1129.

¹¹² *Yong Vui Kong*, at [26] to [38].

¹¹³ *Yong Vui Kong*, at [16] to [23].

¹¹⁴ *Yong Vui Kong*, at [83] to [99].

¹¹⁵ *Attorney-General v Au Wai Pang* [2015] SGHC 16; [2015] 2 SLR 352.

¹¹⁶ *Attorney-General v Au Wai Pang*, at [84].

¹¹⁷ *Attorney-General v Au Wai Pang*, at [76]. Section 377A of the Penal Code criminalises homosexual sex between men.

¹¹⁸ *Au Wai Pang v Attorney-General* [2015] SGCA 61; [2016] 1 SLR 992.

*Lee Hsien Loong v Ngerng Yi Ling Roy*¹¹⁹

The defendant in this case was sued by the Prime Minister for defamation. Ngerng had written a blog post which suggested that the Prime Minister was guilty of misappropriating monies paid by Singaporeans to the Central Provident Fund (Singapore's state-administered pension fund). The High Court held that the mode of publication (i.e. the internet) was particularly aggravating given the "potential for vast and rapid spread and the risk of future damage."¹²⁰ Substantial damages of SG\$100,000 in general damages and SG\$50,000 in aggravated damages were awarded to the Prime Minister.

*Quek Hock Lye v Public Prosecutor*¹²¹

The applicant, who had been sentenced to death for criminal conspiracy to traffic drugs, brought a constitutional challenge against recent amendments to the Misuse of Drugs Act – a first since the amendments were only finalised in 2012. He contended that the amendments were inconsistent with the Art 12 constitutional right to equality as it retroactively placed some drug traffickers in a better position by allowing them to avail themselves of exceptions to the mandatory death penalty. The Court of Appeal dismissed the application, finding the amendments satisfied the "reasonable classification" test – the differentia related to the requirements the offender had to prove; either that he was a mere courier, suffering from substantial impairment of mind, or that he had received a certificate of co-operation.¹²² Further, these intelligible differentia bore a rational relation to the social object of the Act, which was to prevent the spread of drug addiction in Singapore by rooting out the illegal drug trade.¹²³

*Tan Seet Eng v Attorney-General and another matter*¹²⁴

The appellant had been detained without trial under the Criminal Law (Temporary Provisions) Act (CLTPA) since September 2013, for allegedly playing a substantial role in international football match-fixing activities. Tan contended that his detention was illegal. The Court of Appeal agreed and ordered he be freed. In a decision widely regarded as "groundbreaking,"¹²⁵ the court reasoned that since the allegedly fixed matches all took place beyond Singapore's boundaries and had little connection to the country, there was little risk to the "public safety, peace and good order" of Singapore itself.¹²⁶

¹¹⁹ *Lee Hsien Loong v Ngerng Yi Ling Roy* [2015] SGHC 320; [2016] 1 SLR 1321.

¹²⁰ *Lee Hsien Loong*, at [49].

¹²¹ *Quek Hock Lye v Public Prosecutor* [2015] SGCA 7; [2015] 2 SLR 563.

¹²² *Quek Hock Lye*, at [29] to [31].

¹²³ *Quek Hock Lye*, at [32] to [38].

¹²⁴ *Tan Seet Eng v Attorney-General and another matter* [2015] SGCA 59; [2016] 1 SLR 779.

¹²⁵ Ng, H, 'Dan Tan case: 'Ground-breaking' judgment raises question about Act' *The Straits Times*, 27 November 2015, available at <http://www.straitstimes.com/singapore/courts-crime/dan-tan-case-groundbreaking-judgment-raises-question-about-act>, accessed on 20 April 2016.

¹²⁶ *Tan Seet Eng* (note 124 above), at [146].

Significantly, the court prefaced its judgment¹²⁷ with a reiteration of principles from the earlier case of *Chng Suan Tze v Minister of Home Affairs*¹²⁸ where the same court held that “the notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power.” Yet, just as strong assertions of judicial power were curtailed by constitutional amendments in the wake of *Chng*¹²⁹ in 1988, the government moved swiftly to defend its use of CLTPA. Tan was subsequently re-arrested less than a week after his release. However, the Minister for Law clarified that the decision of the court would be respected, and any further detention orders would be laid out in full and comply with the court decision.¹³⁰

Part 2: Outstanding Human Rights Issues

A. Freedom of Speech

Freedom of speech continues to remain an issue in Singapore, with watchdog, Reporters Without Borders, ranking the city-state 153 out of 180 countries in its 2015 World Press Freedom Index – a decline in three places from its 2014 ranking.¹³¹

In April 2015, Singapore’s Media Development Authority (MDA) ordered the shutdown of The Real Singapore (TRS), an alternative socio-political news site, for allegedly contravening the Internet Code of Practice by fabricating articles, spreading falsehoods, and for committing plagiarism. Its former editors were charged with sedition, with one sentenced to 10 months’ imprisonment in March 2016;¹³² the second trial is still underway. More prominently, 16 year old teen blogger Amos Yee was charged under the Penal Code¹³³ for wounding religious feelings and obscenity. Yee uploaded a video in March 2015 criticising Singapore’s founding Prime Minister, Lee Kuan Yew, in the wake of Lee’s death, comparing him unfavourably to Jesus. Yee also uploaded a caricature of Lee and Margaret Thatcher engaging in sexual intercourse. Yee was subsequently sentenced to a four-week backdated jail term, after having already

¹²⁷ *Tan Seet Eng* (note 124 above) at [2].

¹²⁸ *Chng Suan Tze* (note 71 above).

¹²⁹ In its wake, the government amended the Constitution such that judicial review would be limited to procedural issues; the appellants were subsequently re-arrested.

¹³⁰ Lum, S, ‘Grounds to be set out in full if Dan Tan is detained: Shanmugam’ The Straits Times, 2 December 2015, available at <http://www.straitstimes.com/singapore/crime/grounds-to-be-set-out-in-full-if-dan-tan-is-detained-shanmugam>, accessed on 20 April 2016.

¹³¹ ‘Latest World Press Freedom Index shows ‘drastic decline;’ Singapore ranked at No 153’ The Straits Times, 12 February 2015, available at <http://www.straitstimes.com/world/africa/latest-world-press-freedom-index-shows-drastic-decline-singapore-ranked-at-no-153>, accessed on 7 October 2017.

¹³² ‘Ai Takagi sentenced to 10 months’ jail for sedition’ Today Online, 23 March 2016, available at <http://www.todayonline.com/singapore/ai-takagi-sentenced-10-months-jail-sedition>, accessed on 7 October 2017.

¹³³ Penal Code, s.298, which makes “uttering words with deliberate intent to wound the religious or racial feelings of any person” to be an offence punishable by three years’ imprisonment and a fine; and s.292(1)(a), which refers to the offence of “transmitting obscene materials.”

spent about 50 days in remand at a mental health institute.¹³⁴ This drew condemnation from groups like Amnesty International, which, in a public statement, declared Yee a prisoner of conscience, calling for his immediate and unconditional release.¹³⁵

The MDA also moved to effectively ban a 15-second pre-event promotional advertisement for Pink Dot, an annual gay-pride event. The video was submitted on 12 May 2015 and was intended to be screened in cinemas in the weeks leading up to the event. However, the MDA held it was not in the “public interest to allow cinema halls to carry advertising on LGBT issues.”¹³⁶ Despite such decisions, progress has been made. For example, civil society expressed surprise at the MDA’s decision in November 2015 to allow the screening of a documentary on detainees arrested for an alleged Marxist plot against the Singapore government in 1987, albeit with an R21 rating, doubtless for featuring interviews with political exiles and ex-detainees.¹³⁷ Separately, the National Arts Council withdrew a SG\$8,000 publishing grant awarded to a graphic novel entitled, *The Art of Charlie Chan Hock Chye*, over some “sensitive content” deemed to have potentially undermined the authority or legitimacy of the Singapore government.¹³⁸ The novel covered controversial chapters in Singapore’s history, including the aforementioned Marxist conspiracy.¹³⁹

Further examples of censorship include the MDA’s ban on a song and music video by a Taiwanese star¹⁴⁰ which contained lyrics on homosexuality and featured the singer and another actress sharing a kiss in a wedding setting. Both the song and video were withdrawn from broadcast on television and radio as they were deemed in breach of

¹³⁴ Feng, Z, ‘Amos Yee’s long remand was lawful, says his lawyer’ The Straits Times, 16 August 2015, available at <http://www.straitstimes.com/singapore/courts-crime/amos-yees-long-remand-was-lawful-says-his-lawyer>, accessed on 25 May 2016.

¹³⁵ See, ‘Singapore: Free 16-year-old prisoner of conscience Amos Yee’ Amnesty International, 3 July 2015, available at <https://www.amnesty.org/en/documents/asa36/2014/2015/en/>, accessed on 20 May 2016. Amnesty International also called for the Singaporean authorities to ensure Yee was safe from any security threats, ill-treatment, and torture, and invoked the Convention on the Rights of the Child. For a fuller treatment of Amos Yee’s case, see Chang Ya Lan’s chapter on Singapore in the 2015 edition of this Outlook.

¹³⁶ Manjur, R, ‘MDA bans Pink Dot SG ad’ Marketing, 15 June 2015, available at <http://www.marketing-interactive.com/mda-bans-pink-dot-sg-ad/>, accessed on 20 May 2016.

¹³⁷ The government had detained 22 people in 1987 under the Internal Security Act under a crackdown known as ‘Operation Spectrum.’ See, Nur Asyiqin Mohamad Salleh, ‘Documentary on Marxist conspiracy detainees given R21 rating’ The Straits Times, 14 November 2015, available at <http://www.straitstimes.com/lifestyle/documentary-on-marxist-conspiracy-detainees-given-r21-rating>, accessed on 25 May 2016.

¹³⁸ Yong, C, ‘NAC pulled grant from comic as it ‘potentially undermines the authority of the government’ The Straits Times, 3 June 2015, available at <http://www.straitstimes.com/singapore/nac-pulled-grant-from-comic-as-it-potentially-undermines-the-authority-of-the-government>, accessed on 26 May 2016.

¹³⁹ ‘NAC withdraws grant for graphic novel publisher due to ‘sensitive content’ Today, 29 May 2015, available at <http://www.todayonline.com/singapore/national-arts-council-revokes-grant-for-graphic-novel-Sonny-Liew>, accessed on 7 October 2017.

¹⁴⁰ Taiwanese singer, Jolin Tsai’s song was entitled, *We’re all different, yet the same*. However, it should be noted that the ban did not extend to sales of the song in Singapore. The decision was reached after consultation with MDA’s Publications Consultative Panel, which ostensibly comprises Singaporeans from a “wide cross-section of society.” See, Ng, G, ‘Jolin Tsai’s same-sex marriage music video and song banned on TV and radio, MDA clarifies’ The Straits Times, 26 May 2015, available at <http://www.straitstimes.com/lifestyle/entertainment/jolin-tsais-same-sex-marriage-music-video-and-song-banned-on-tv-and-radio>, accessed on 25 May 2016.

the MDA's Free-to-Air Television and Radio Programme Codes. In another instance, the MDA moved to classify a video released by an opposition party as part of its online campaign during the 2015 General Election as a "party political film" as defined in the Films Act.¹⁴¹ The video, entitled, 'Pappy Washing Powder,' featured a fictional brand of washing powder which alluded to the ruling PAP, and showed a woman using the powder to 'whitewash' transparency, accountability, and democracy. While party political films are no longer subject to a blanket ban,¹⁴² the Films Act renders it an offence to import, make, reproduce, distribute, or exhibit a "party political film,"¹⁴³ broadly defined in s.2(1) as a film made by any person and directed towards any "political end in Singapore (my emphasis),"¹⁴⁴ which is in turn defined as a film "intended or likely to affect voting in any election or national referendum"¹⁴⁵ or which contains, wholly or partly, references or comments on any political matter which are "partisan and biased."¹⁴⁶ Insofar as these are vague, broad, and open-ended terms, this provides great scope for the suppression of free speech. Moreover, the responsibility and discretion for determining whether these criteria are met lies solely with the Board of Film Censors,¹⁴⁷ potentially excluding judicial review.

Away from the world of virtual media, restrictions concerning physical demonstrations and protests continue to be strictly enforced. For instance, an application for a 14 February rally at Speakers' Corner which intended to campaign for making Thaipusam (a Hindu festival) a public holiday in Singapore, was rejected by police in 2015 on the grounds that the event ran "a significant risk of public disorder and could incite feelings of hostility between different racial and religious groups in Singapore."¹⁴⁸ Thus, given the sensitivities inherent in a multiracial society like Singapore, freedom of speech is likely to remain curtailed.

¹⁴¹ Films Act (Cap 107, 1998 Rev Ed Sing). The MDA stated that it had consulted the Political Films Consultative Committee in so classifying the video. The classification drew protests from the opposition party in question (the Singapore Democratic Party) with its Secretary-General, Chee Soon Juan, describing the move as a "naked attempt to stop the SDP's effective use of social media to communicate our message to the people." Beyond the classification, however, the MDA did not take further action, but instead issued a reminder to all political parties to ensure adherence to the Films Act. It also extended an invitation to parties to freely consult the MDA should there be any doubts over the regulations. See, 'MDA strongly disagrees with SDP over 'Pappy Washing Powder' video' Channel NewsAsia, 20 August 2015, available at <http://www.channelnewsasia.com/news/singapore/mda-strongly-disagrees/2063338.html>, accessed on 18 May 2016.

¹⁴² This was lifted in 2009, with amendments to the Films Act. See also, the legislative debates on the : 'Singapore parliamentary debates: Official report' 23 March 2009, Films (Amendment) Bill, Vol 85, at Col 3363ff.

¹⁴³ Films Act, s.33. Anyone convicted under this section is potentially liable to a fine not exceeding SG\$100,000 or imprisonment for a term not exceeding two years.

¹⁴⁴ Films Act, s.2(1).

¹⁴⁵ Films Act, s.2(2)(a).

¹⁴⁶ Films Act, s.2(2)(b).

¹⁴⁷ See, Films Act, s.2(2).

¹⁴⁸ 'Police reject activist Gilbert Goh's application for Speakers' Corner permit' The Straits Times, 13 February 2015, available at <http://www.straitstimes.com/singapore/police-reject-activist-gilbert-gohs-application-for-speakers-corner-permit>, accessed on 15 May 2016.

Similarly, in October 2015, a group of blogger-activists were charged for public nuisance and for organising demonstrations without approval. The group had organised the protest to demand transparency and accountability over the government's management of the Central Provident Fund, Singapore's compulsory social security savings scheme. During the demonstration, the group disrupted a community event being held in the vicinity, by shouting, chanting slogans, waving flags, holding placards, blowing whistles, and beating drums.¹⁴⁹ In another case, prominent local activist, Jolovan Wham, a member of non-governmental group, Community Action Network, and executive director of HOME, a migrant workers advocacy group, was issued a police warning in lieu of prosecution for an offence under the Public Order (Unrestricted Area) Order 2013.¹⁵⁰ Wham had organised a candle light vigil in October 2014 to support protestors in Hong Kong challenging election restrictions, and had inadvertently breached conditions stipulating that organisers of demonstrations had to ensure foreigners and permanent residents would not participate in the vigil without a permit.¹⁵¹ Wham's 2015 judicial review application sought to quash the warning failed, and he was subsequently ordered by the High Court to pay SG\$6,063 in costs to the Attorney-General.¹⁵²

B. Human Rights Policy and Institutions

Singapore submitted its second national report to the United Nations under the Universal Periodic Review (UPR) in December 2015, having already earlier participated in the first cycle of the UPR in May 2011.¹⁵³ In its second report,¹⁵⁴ Singapore noted it takes a practical and not an ideological approach to the realisation of human rights, and reinforced its views on relativism, stating that "human rights exist in specific cultural, social, economic, and historical contexts."¹⁵⁵

Singapore's defence of its decision to uphold s.377A of the Penal Code¹⁵⁶ at the 24th session of the Periodic Review in Geneva drew some controversy and sparked debates. Ambassador-at-large, Professor Chan Heng Chee, who presented Singapore's views on the matter, explained the law's retention in view of its conservative society and its

¹⁴⁹ The trial continues for accused, Han Hui Hui, although some of her co-accused have already pleaded guilty. See, Chelvan, VP, 'Han Hui Hui and 3 others go on trial over Hong Lim Park protest' Channel NewsAsia, 13 October 2015, available at <http://www.channelnewsasia.com/news/singapore/han-hui-hui-and-3-others/2187202.html/>, accessed on 15 May 2016.

¹⁵⁰ Public Order (Unrestricted Area) Order 2013 (S 30/2013).

¹⁵¹ Public Order (Unrestricted Area) Order 2013, para 4(1)(b). Paragraph 4(2) of the same provides that contravention of para 4(1)(b) will result in an offence.

¹⁵² *Wham Kwok Han Jolovan v Attorney-General* [2015] SGHC 324; [2016] 1 SLR 1370.

¹⁵³ 'Singapore Universal Periodic Review' Ministry of Foreign Affairs Singapore, available at http://www.mfa.gov.sg/content/mfa/media_centre/special_events/upr.html, accessed on 26 April 2016.

¹⁵⁴ 'Singapore UPR National Report' available at: [http://www.mfa.gov.sg/content/dam/mfa/images/media_center/special_events/upr/Singapore%20UPR%20National%20Report%20\(2015\).pdf](http://www.mfa.gov.sg/content/dam/mfa/images/media_center/special_events/upr/Singapore%20UPR%20National%20Report%20(2015).pdf), accessed on 7 October 2017.

¹⁵⁵ Singapore UPR National Report, at para 4.

¹⁵⁶ Penal Code, s.377A.

stance of not proactively enforcing the law, faced calls by some Yale-NUS students to relinquish her position on the school's governing board, while another student group issued a statement of concern.¹⁵⁷

Singapore has also rejected calls to institutionalise rights protection through the establishment of an Ombudsman, an Equal Opportunities Board, or a Women's Rights Ministry.¹⁵⁸ Notably, unlike some of its ASEAN counterparts, the city-state still lacks a national human rights commission.¹⁵⁹

C. Judicial Doctrine and Freedom of Religion

Judicial review in Singapore remains almost truncated given prevailing judicial attitudes, which is one of strong deference towards the legislature.¹⁶⁰ Instead of strong rights protection, courts utilise weaker forms of review and deference doctrines¹⁶¹ such as the test of a mere connection or nexus, in which a government measure will be held valid so long as there exists a “nexus between the object of the impugned law and one of the permissible subjects stipulated in [the Constitution],”¹⁶² and also the “Wednesbury reasonableness” test, which subjects judicial review to an exceedingly high threshold in order for an applicant's constitutional challenge to succeed.¹⁶³

Early decisions in Singaporean jurisprudence were antithetical to rights since they evinced a judicial reluctance to engage in any form of balancing in rights adjudication under the Constitution. Indeed, rather than follow the Dworkian concept of rights as trumps,¹⁶⁴ courts have traditionally found in favour of public order considerations instead, particularly in cases concerning freedom of religion. For instance, in a 1995 case concerning the rights of possession of Jehovah's Witnesses over their religious tracts, to which a blanket ban applied, the Chief Justice, while noting that religious

¹⁵⁷ Professor Chan was responding to delegates from countries like France and Norway, who had proposed that Singapore repeal s.377A. See Qi, X, ‘Yale-NUS admin speech sparks debate’ *Yale News*, 5 February 2016, available at <http://yaledailynews.com/blog/2016/02/05/yale-nus-admin-speech-sparks-debate/>, accessed on 7 October 2017.

¹⁵⁸ Thio (see note 6 above), at 591.

¹⁵⁹ For more on human rights and ASEAN, see, Thio, L, ‘Implementing human rights in ASEAN countries: ‘Promises to keep and miles to go before I sleep’ *Yale Human Rights and Development Journal*, 1999, Vol 2, No 1.

¹⁶⁰ Judges do not see themselves as defenders of fundamental liberties. For instance, in *Jabar bin Kadermastan v Public Prosecutor* [1995] 1 SLR (R) at [52], the court rejected judicial review as being based on the standards of whether laws were “fair, just and reasonable,” holding instead that “any law ... is valid and binding so long as it is validly passed by Parliament.” In *Chee Siok Chin* (see note 50 above), the High Court held that “the court's sole task, when a constitutional challenge is advanced, is to ascertain whether an impugned law is within the purview of any of the permissible [constitutional] restrictions” (my emphasis).

¹⁶¹ See, Sweet, AS, and Mathews, J, ‘Proportionality balancing and global constitutionalism’ *Columbia Journal of Transnational Law*, 2008, Vol 47, at 78.

¹⁶² See, *Chee Siok Chin* (note 50 above).

¹⁶³ An applicant will only be successful in his constitutional challenge of an authority's decision if the decision was “so unreasonable that no reasonable authority could ever have come to it.” See, *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, at 234.

¹⁶⁴ Dworkin, R, *Taking Rights Seriously*, Harvard University Press, 1977, at 157.

beliefs deserve “proper protection,” nonetheless went on to hold that the “sovereignty, integrity and unity of Singapore are undoubtedly the paramount mandate of the Constitution” (my emphasis), and that all else running counter to these objectives must be restrained.¹⁶⁵ Statist priorities were therefore held as determinative trumps, and balancing did not figure in the adjudicative exercise.

However, a modicum of improvement is discernible, with courts now giving individual rights a greater measure of due consideration. In the 2015 case of *Vijaya v Public Prosecutor*,¹⁶⁶ the applicants alleged that the government’s 42-year-old music ban¹⁶⁷ on a traditional Hindu Thaipusam foot procession hindered their religious practice, which was constitutionally protected under Art 15. Though the court applied the deference doctrine of *Wednesbury* reasonableness,¹⁶⁸ it also struck an eminently fair balance: that the court accepted the playing of musical instruments was an “essential part”¹⁶⁹ of the Thaipusam procession, showed it gave proper recognition to the rights of the applicants whilst acknowledging the importance of culture. This is enough to differentiate *Vijaya* from prior cases which did not consider rights favourably. Moreover, in balancing freedom of religion rights against public order considerations (a legitimate restriction under Art 15(4) of the Constitution¹⁷⁰), the court carefully weighed the three factors of scale, duration, and the religious element of the procession, which raised the potential for public order issues, especially since the event was spread over three kilometres and “lasted some 26 hours at the fringe of the city centre.”¹⁷¹

In addition, the court gave greater effect to religious rights by placing emphasis on the fact that the police measures did not prohibit music altogether but merely confined the extent to which music could be used.¹⁷² Moreover, the court held that the police had shown due regard for the applicants’ rights by adopting a calibrated approach in response to dialogue with the Hindu community: from a blanket ban in 1973, religious hymns were allowed to be sung in 2011, a public audio system for the transmission of music was set up in 2012, and in 2015, the police allowed a third music point, which could transmit hymns for more than 12 hours each day.¹⁷³ Such a judicial

¹⁶⁵ *Chan Hiang Leng Colin and others v Public Prosecutor* [1994] 3 SLR (R) 209; [1994] SGHC 207, at [64]. Note also the similarity in language used in the decision of *Nappalli Peter Williams v Institute of Technical Education* [1999] 2 SLR 569, which also implicated the freedom of religion rights of the Jehovah’s Witnesses under Art 15 of the Singapore Constitution. Here, the same Chief Justice noted that Art 15, read as a whole, “demonstrates that the paramount concern of the Constitution is a statement of the citizen’s rights framed in a wider social context of maintaining unity as a nation” (my emphasis).

¹⁶⁶ *Vijaya Kumar s/o Rajendran and others v Attorney-General* [2015] SGHC 244.

¹⁶⁷ The ban was implemented over fears of communal disturbance.

¹⁶⁸ *Vijaya Kumar* (note 166 above), at [42].

¹⁶⁹ *Vijaya Kumar* (note 166 above), at [19].

¹⁷⁰ Constitution of the Republic of Singapore, Art 15(4).

¹⁷¹ *Vijaya Kumar* (note 166 above), at [35].

¹⁷² *Vijaya Kumar* (note 166 above), at [38].

¹⁷³ *Vijaya Kumar* (note 166 above), at [38].

examination suggests a tailoring of government measures, thus maximising enjoyment of fundamental rights and liberties.

D. Subaltern Singapore: The Rights of Sex Workers

Certain aspects of sex work such as soliciting in a public place,¹⁷⁴ pimping and running a brothel,¹⁷⁵ and the use of migrant sex workers¹⁷⁶ are criminalised in Singapore. Most sex workers also contravene Singapore's employment laws when they partake in commercial sex work, as they often visit the country on short-term visit passes, not entitling them to work.¹⁷⁷ It has been noted that treating these workers as immigration offenders makes it difficult for them to return home, or to seek gainful and legal employment while police investigations are ongoing, which only serves to incentivise a return to the sex trade.¹⁷⁸ Such measures may also be unduly harsh on workers who may themselves be victims of human trafficking.

According to advocacy group, Project X,¹⁷⁹ when law enforcement is unable to utilise the aforementioned legislation against sex workers, recourse is sometimes made to Penal Code offences such as committing obscene acts in public places¹⁸⁰ or outrages to decency.¹⁸¹ Further, the police conduct frequent bag searches on the streets, often deeming condoms found in the course of these searches as evidence of soliciting.¹⁸² This results in a fear amongst sex workers of carrying condoms, exposing them to the dangers of unprotected sex.

¹⁷⁴ Miscellaneous Offences (Public Order and Nuisance) Act, s.19.

¹⁷⁵ Women's Charter (Cap 353, 2009 Rev Ed Sing), ss.146 and 148. See also, the relatively new s.146A of the Charter, which makes it an offence for a person in Singapore who, in the course of business, operates or maintains in Singapore a remote communication service that "offers or facilitates the provision by a woman or girl to another person of sexual services in return for payment or reward," or "organises, manages or supervises the provision of sexual services." Available at <http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%22f0897dd7-1f3a-45a9-b1e7-ba30fef2dbba%22%20Status%3Ainforce%20Depth%3A0;rec=0;whole=yes>, accessed on 30 May 2016.

¹⁷⁶ Immigration Act (Cap 133, 2008 Rev Ed Sing), ss.8(3)(e)-(f).

¹⁷⁷ Tan, SB, and Gill, A, 'Containing commercial sex to designated red light areas: An idea past its prime?' Lee Kuan Yew School of Public Policy, 2013, available at <http://lkyspp.nus.edu.sg/wp-content/uploads/2014/04/Containing-Commercial-Sex-to-Designated-Red-Light-Areas.pdf>, accessed on 26 May 2016, at 4.

¹⁷⁸ This can be contrasted to visa systems in other countries, such as Australia's witness protection visa, which allows victims of sex trafficking to remain in the country to find work. See, Toh, YC, and Tai, J, 'Study sheds light on sex trafficking in Singapore' The Jakarta Post, 10 February 2014, available at <http://www.thejakartapost.com/news/2014/02/10/study-sheds-light-sex-trafficking-singapore.html>, accessed on 20 May 2016.

¹⁷⁹ Ho, V, 'The right to sexual health: A case of streetwalkers in Singapore' Project X, available at <http://theprojectx.org/wp-content/uploads/2015/02/The-Right-to-Sexual-Health-full-article.pdf>, accessed on 20 April 2016.

¹⁸⁰ Penal Code, s.294(a), which is invoked against sex workers caught in a sexual act.

¹⁸¹ Penal Code, s.377A, which criminalises homosexual sex between males. This has also been used against pre-operative transgender sex workers.

¹⁸² Ho (see note 179 above), at 4.

However, a ‘yellow card’ system for sex workers in brothels serves as a *de facto* licence to work in the sex industry.¹⁸³ This system also mandates regular medical checks and provides immunity against the police.¹⁸⁴ Nevertheless, possession of such a card also means a loss of income, and potentially subjects workers to discrimination since their history of sex work would be on record.¹⁸⁵

Part 3: Conclusion

The death of Singapore’s founding father, Lee Kuan Yew, in 2015 represented a turning point in Singapore’s history, and marked the end of an era which some associate with authoritarianism. While improvements in rights protection is discernible, much more can be done in relation to the problematic areas highlighted in this chapter.

¹⁸³ Leong, WTL, ‘Decoding sexual policy in Singapore’ in Lian, KF, and Tong, CK (eds), *Social Policy in Post-Industrial Singapore*, Netherlands: Koninklijke Brill NV, 2008, at 300-301.

¹⁸⁴ Ho (see note 179 above), at 2.

¹⁸⁵ Ho (see note 179 above).

THAILAND

THAILAND

*Bencharat Sae Chua**

Part 1: Overview of Thailand

A. Country Background

Thailand Facts	
Geographical size	513,000 sq km
Population	68.86 million ¹
Ethnic breakdown ²	Main ethnic groups: Thai (91.5%) Khmer (2.3%) Malay (2.1%) Bamar (1.5%)
Official language	Thai
Literacy rate (aged 15 and above)	92.9% ³
Life expectancy	75.07 ⁴
GDP	US\$406.84 billion (per capita US\$5,907) ⁵
Government	Constitutional monarchy and parliamentary democracy until 2014 coup d'état by military junta. The country is now run by the National Council for Peace and Order (NCPO) but even following a general election, the military will still continue to wield significant political power by virtue of the 2017 Constitution.
Political and social situation	The military-run NCPO passed its draft Constitution after a referendum during which the rights to freedom of expression, association, and assembly were curtailed through repressive laws, leading to the arrest and detention of at least 120 politicians, activists, and journalists. ⁶

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¹ Data from 2016. 'Thailand' The World Bank, available at <https://data.worldbank.org/country/thailand>, accessed on 12 October 2017.

² 'Largest ethnic groups in Thailand' World Atlas, available at <http://www.worldatlas.com/articles/largest-ethnic-groups-in-thailand.html>, accessed on 12 October 2017.

³ Data from 2015. 'Literacy rate, adult total (% of people ages 15 or above)' The World Bank, available at <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=TH>, accessed on 25 October 2017.

⁴ Data from 2015. The World Bank (see note 1 above).

⁵ Data from 2016. The World Bank (see note 1 above); 'GDP per capita (current US\$)' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=TH>, accessed on 12 October 2017.

⁶ 'Thailand: Events of 2016' Human Rights Watch, 2016, available at <https://www.hrw.org/world-report/2017/country-chapters/thailand>, accessed on 12 October 2017.

Thailand is a mainland Southeast Asian country which borders Myanmar in the west, Laos and Cambodia in the east, and Malaysia to the south. In 2016, the population was 68,863,514. The majority of the population hails from the Tai ethnic group and is Buddhist, but in the southern areas of Yala, Pattani, and Narathiwat provinces and some districts of Song Khla province, 85% of the 3.4 million population is Malay Muslim. In addition, Thailand is home to more than 50 other ethnic minorities.

Thailand is categorised fairly highly (87 out of 188 countries) in the United Nations Development Programme (UNDP) Human Development Index 2016. As such, Thai life expectancy at birth stands at 75.1 years, with an average of 10.5 infant mortalities per 1,000 live births, and 20 maternal mortalities per 100,000 live births. Moreover, the literacy rate among adults (aged 15 and older) stands at an impressive 92.9% with no significant difference between the genders.⁷

In terms of economic development, Thailand stands firmly in the upper middle-income level although its GDP decreased slightly in the past two years (from US\$406.52 billion in 2014 to US\$406.84 in 2016) despite a sustained rise since 2002.⁸ Furthermore, the number of people living below the poverty line has decreased significantly since the 1980s, from 42.33% of the total population in 2000, to 16.37% in 2010, down to 10.84% in 2013.⁹

System of governance

Thailand is a constitutional monarchy with the monarch as head of state. Prior to 2014, power was exercised by a bicameral National Assembly, the Council of Ministers, and the courts in accordance with the 2007 Constitution. Since May 2014, however, when the military staged a coup d'état, Thailand has been under the military rule of an organisation called the National Council for Peace and Order (NCPO) which controls the country's administrative affairs. It appointed the National Legislative Assembly (NLA) comprising 200 members, mainly from the military and civil services, to act as a legislative body in lieu of parliament and the Senate Houses. In addition, the NCPO suspended all elections of local representatives at the sub-district, district, municipal, and provincial levels until further notice. Moreover, new members of local representative councils are appointed by a Selection Committee comprising of high level provincial officials from the Ministry of Interior.¹⁰

⁷ Data from 2015. The World Bank (see note 1 above).

⁸ The World Bank (see note 1 above).

⁹ Office of the Permanent Secretary, Ministry of Social Development and Human Security, Poverty, Income and Household Expenses, Bangkok, 2015, at 1.

¹⁰ Order of the Head of the National Council for Peace and Order No 22/2559, on the Process to Temporarily Acquire Members of Local Representative Councils in Case of Dissolved Local Council, 4 May 2016, para 2.

Political and social situation

Currently, with the junta still in full control of the government, there seems little prospect of the country returning to representative democracy as the NCPO's proposed roadmap towards a new general election has been constantly postponed despite the new Constitution already coming into effect.

In August 2016, the efforts of the NCPO-nominated Constitution Drafting Committee were passed in a referendum after being further amended according to the King's request; the ensuing Constitution has been in effect since 6 April 2017. However, the Constitution's legitimacy is in doubt because freedom of expression was curtailed during the referendum process, e.g. comments on the draft were strictly controlled and campaigning against it outlawed. Moreover, in many aspects it is not human rights friendly despite retaining some provisions on rights and liberties from its predecessor. For example, it allows the government to limit, restrict, and (in cases of emergency) even suspend some civil and political rights, including the rights to religion (Art 31), freedom of expression (Art 34), freedom of association (Art 42), and peaceful assembly (Art 44), if it suspects national security, public order, or the good morals of the people will be adversely affected or harmed.

Therefore, despite the new Constitution, the NCPO's power remains intact, its influence over the future elected government guaranteed. Indeed, Art 265 upholds the NCPO's power and authority according to the 2014 Interim Constitution (as drafted by the NCPO) until a new cabinet is formed. This power includes provisions under Art 44 granting absolute power to the head of the NCPO. Furthermore, the 2017 Constitution also permits the NCPO to continue holding power until a new government is established following a general election. Accordingly, any NCPO order, announcement, or action will remain enforceable until legislation is drafted to change it (Art 276). As such, in effect, even if Thailand's democracy were restored in the future, the repressive orders and regulations already enacted by the junta would remain in force.

B. International Human Rights Commitments and Obligations

Despite the restrictions it places on its people, Thailand is doing relatively well in terms of international human rights commitments, having ratified most of the key international human rights treaties (see Table 1 below).

Table 1: Ratification Status of International Instruments – Thailand¹¹

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		2 Oct 2007 (a)
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		29 Oct 1996 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)	9 Jan 2012	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		9 Aug 1985 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		28 Jan 2003 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		5 Sep 1999 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		27 Mar 1992 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		27 Feb 2006 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		11 Jan 2006 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	29 Jul 2008

¹¹ 'Ratification status for Thailand' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 12 October 2017.

Several laws and amendments have been introduced into the country's legal system to ensure compliance with international laws and standards, including:

- Name Act (2005): grants married women the right to choose a family name instead of being obligated to use their husband's family name
- Domestic Violence Victim Protection Act (2007)
- Persons with Disabilities Empowerment Act (2007)
- Prevention and Suppression of Human Trafficking Act (2008)
- Female Title Act (2008): allows a married or divorced woman to choose to use the title 'Miss' or 'Mrs' as desired
- Civil Registration Act No 2 (2008): allows all persons born in Thailand to be registered, irrespective of the origin or status of their parents
- Civil Code amendments: improves criminal justice practices
- Gender Equality Act (2015): "unfair gender discrimination" defined on two grounds (sex by birth (female/male), or the apparent sex of a person which may differ from his/her sex by birth)

Significantly, however, the Gender Equality Act (2015) permits discrimination in the name of national security or to ensure compliance with religious principles (s.17). Further, it should be noted this law does not criminalise discrimination or even directly protect a person from discriminatory violence; instead, it merely establishes two commissions, namely, a Gender Equality Promotion Commission and a Gender-Based Discrimination Adjudication Commission, to act as monitoring bodies. The latter receives complaints from alleged victims and may order remedies and compensation if it deems discrimination to have occurred, or it may submit a law for review by the Constitutional Court if it believes the law may potentially be discriminatory.

The cabinet also approved the draft Torture and Enforced Disappearances Prevention and Suppression Bill as a legal tool to enforce the CAT and CED but the NLA rejected it in early 2017 and is now in the process of revising it.

C. National Laws Threatening Human Rights

Public Assembly Act (2015)

After years of debate and contention, the Public Assembly Act was finally passed by the NCPO's National Legislative Assembly in 2015 with absolutely no public input. For the first time, the Act required organisers to seek prior notification and permission for any public assembly activities or demonstrations. However, some areas, including a number of government offices, including Government House and Parliament, are barred from being used for such purposes – this will prevent even non-obstructive protesters from symbolic acts such as handing petitions to politicians. Thus, concerns have been raised over the Act's potential to violate freedom of assembly rights. Indeed,

it is regularly used together with several NCPO orders to control political activities and peaceful assemblies.

Interim Constitution (2014), Art 44

In April 2015, the NCPO finally lifted martial law which had been enforced throughout the country since the coup, determining instead to derive its absolute power from a more legitimate source. Article 44 of the Interim Constitution confers absolute power on the Head of the NCPO to act or stop any act it deems necessary to proceed with the country's reform process, or to prevent and suppress any act that may undermine national security, the stability of the nation, the monarchy, or the national economy. Article 44 also grants impunity to the NCPO, making it legally unaccountable for any actions and orders.

Since its enforcement in lieu of martial law, Art 44 has been used in a range of issues including the shuffling of government officials, the recruitment of local administrative councils, human trafficking, deforestation, and to confiscate land for Special Economic Zones. Put simply, Art 44 allows the democratic process to be bypassed, effectively circumventing public participation in the policy-making process.

One key order issued under Art 44 severely affecting human rights is NCPO Order No 3/2558 (2015) which targets wrongdoings against the monarchy under lèse-majesté, wrongdoings against internal national security, armed crimes, any acts against the NCPO, or any orders given by its head. Moreover, it prohibits political assemblies of more than 5 people, whilst authorising military officers to ban media and newspapers, become involved in criminal procedures relating to such acts, and summon and detain suspected individuals for 7 days, essentially suppressing political rights and rights to a fair trial.

Amended Computer Crimes Act (2017)

In December 2016, the NLA also passed the amended Computer Crimes Act 2017 (entering into force as of May 2017) to further expand state control of online content, thus empowering the Ministry of Digital Economy and Society to demand internet service providers and social media administrators remove information without a court order. It also set up a Computerised Information Scrutiny Committee to monitor online content for material contradictory to public order and morals (s.20). In addition, the Committee may request court orders to erase or remove such content.

D. Recent Court Cases Relating to Human Rights

'Referendum' cases

In 2016, at least 120 activists, politicians, and journalists were charged for, e.g. criticising the proposed constitution, publicly announcing they would vote 'no,' or urging other voters to reject the draft, under such laws as the Constitutional Referendum Act, the Computer Crime Act, s.16 of the Penal Code (on sedition), and NCPO orders censoring the media and preventing public gatherings of more than 5 people.¹² For example, on 16 June 2016, charges were filed against 19 members of the political group, United Front for Democracy in Dictatorship, for violating a ban on political meetings. The group had attempted to hold an opening ceremony on 5 June at their headquarters to mark an initiative to monitor the referendum. Police stormed the offices, forced the group to stop their ceremony, and closed monitoring centres around the country.¹³

Lèse-majesté cases

Thailand has some of the world's strictest lèse-majesté rules against defaming, insulting or threatening the monarchy. As such, the offence has been used to judicially harass human rights defenders and their relatives. Among the key cases of 2016 was the charge against the mother of Siriwit Seritiwat, a leading pro-democracy student activist. Despite a lack of substantive grounds, the mother was brought to military court for simply sending a one word reply to an alleged lèse-majesté text message.¹⁴ While the police declined to proceed with the case, the military court admitted it. The mother has now been released on bail.

Another well-known case concerns Jatupat Boonpattaraksa (or Pai Dao Din), a student activist from the northeast. In addition to a couple of cases concerning his participation in pro-democracy activism, Pai was charged with lèse-majesté for sharing a BBC News profile page of the new King Rama X. However, almost 3,000 other people also sharing the page were not, indicating he had been specifically targeted for something other than his post. In August 2007, Pai was denied bail and sentenced to 5 years' imprisonment.

¹² Human Rights Watch (see note 6 above).

¹³ 'Thailand: 13 peaceful activists facing trial' Amnesty International, 4 July 2016, available at <https://www.amnesty.org/en/documents/asa39/4386/2016/en/>, accessed on 12 October 2017.

¹⁴ Burin Intin, the sender of the original message, was also charged with lèse-majesté and sentenced to 22 years and 8 months in prison in January 2017 but this was reduced to 11 years and 4 months after he pleaded guilty. See, Pasha-Robinson, L, 'Man jailed for 11 years for insulting Thai royal family on Facebook' Independent, 29 January 2017, available at <http://www.independent.co.uk/news/world/asia/man-jailed-11-years-thailand-insulting-royal-family-monarchy-burin-intin-bangkok-a7551096.html>, accessed on 9 November 2017.

Part 2: Outstanding Human Rights Issues

As mentioned above, at the end of 2016, Jatupat Boonpattaraksa (or Pai Dao Din) was charged by a military officer for sharing a BBC article deemed insulting to the new King Rama X on his Facebook page. This was clearly an indirect attack on his political activism as almost 3,000 other people also sharing the same page were not similarly charged. The public prosecutor took up the case. Although Pai was initially granted bail, the court later revoked it, claiming he was still posting about political issues on social media. Subsequently, Pai was denied further bail and was tried in a closed door trial. In August 2017, he was sentenced to 5 years' imprisonment which has since been reduced to 2.5 years after he admitted the crime.

Pai's case is not isolated and reflects how the issues of freedom of expression, the right to a fair trial, and the persecution of human rights defenders are interrelated in Thailand; and, indeed, how these rights are fast deteriorating under military rule. As a result, the populace has had to endure severe restriction of their political rights to participate meaningfully in government, in addition to the erosion of many other human rights, including economic, social, and cultural rights. This chapter identifies: (1) freedom of expression; (2) the right to access an impartial criminal justice system including the right to a fair trial; and (3) the problems facing human rights defenders, as three outstanding human rights issues in 2016, partly because these rights have been severely and openly curtailed, and partly because their demise may be the precursor of other human rights also falling by the wayside.

The following section will review the problems and analyse the trends and prospects of the above rights by examining how they interrelate and how they affect wider human rights issues.

A. Freedom of Expression and Peaceful Assembly

In recent years, the military junta attempted to claim some level of legitimacy by reforming Thai politics and society, ostensibly to remove power from the hands of corrupt politicians. As such, it has suppressed dissident voices and limited political space though the use of draconian laws and NCPO orders. While repressive measures may create an atmosphere of fear and help to control so-called undesirable behaviours, they have also given birth to an increasing chorus of voices protesting dictatorial rule. Freedom of expression has thus become an area of growing contention which has, in turn, helped to shape human rights discourse in recent years.

Generally, the NCPO uses the Computer Crime Act, lèse-majesté and sedition laws, and its repressive orders to keep the population in line. As reported by iLaw (an NGO monitoring political rights after the coup), at least 1,319 people were summoned or visited by soldiers, both formally and informally, and at least 152 public activities were

either interfered with or forced to cancel as of 30 June 2017.¹⁵ In addition, by mid-May 2017, 300 civilians¹⁶ were/are being prosecuted in military courts, with at least 64 individuals charged and prosecuted for sedition under s.116 of the Penal Code.¹⁷

Two key events in 2016 forced the issue of freedom of expression firmly into the limelight. First, political activists chose the referendum to approve the draft constitution in August as a platform to demand more say in the future of their country. However, their efforts to push the boundaries by campaigning against the draft constitution came to nought when the NCPO quelled many voices of protest, ensuring victory in the referendum. Coincidentally, the death of King Bhumibol in October 2016 helped the NCPO's cause as it provided more legitimate grounds for curbing freedom of opinion and expression under the guise of showing reverence to the passed King and securing a peaceful transition to his son.

Despite being the highest law in the land, the 2017 Constitution was, thus, drafted without genuine public participation. Moreover, the referendum was administered in such a way as to almost guarantee support for the NCPO's draft Constitution. The NCPO derived its suppressive measures from the Constitutional Referendum Act and its appointed NLA which criminalised any discussion on the draft that could influence the public to vote in a certain way, that could "cause confusion to affect [the] orderliness of voting," and the use of "offensive" or "rude" language to influence votes (s.61). By thwarting public discourse, the Constitutional Referendum Act was therefore used to suppress any opinions or campaigns, ensuring the success of the NCPO's one-sided campaign.

The Thai Lawyer for Human Rights (TLHR)—a lawyer group monitoring human rights after the 2014 coup—has reported more than 200 legal cases related to the referendum (brought under NCPO Order No 8/2558 (2015) prohibiting political gatherings or s.116 of the Penal Code on sedition), some of which involved dissemination of documents commenting on the draft, possession of 'Vote No' leaflets, organisation of public seminars to discuss the draft, and the setting up of 'Anti-Cheating in Referendum Centres.' As of April 2017, with the Constitution already in force, at least 104 individuals are still facing legal charges related to the referendum, with 92 being prosecuted in military courts. Among those whose cases have already been finalised, some were sentenced to prison while others agreed to receive "attitude adjustment training" from the military in exchange for having their cases dismissed.¹⁸

¹⁵ 'Latest statistics' iLaw, available at <https://freedom.ilaw.or.th/node/209/#>, accessed on 25 July 2017.

¹⁶ An individual may face more than one case.

¹⁷ 'Latest statistics' iLaw, 2017, available at <https://freedom.ilaw.or.th/en/content/latest-statistic>, accessed on 30 June 2017.

¹⁸ For more details, see, "TLHR's legal opinion on prosecutions of 'referendum suspects'" Thai Lawyer for Human Rights, 23 December 2016, available at <http://www.tlhr2014.com/th/?p=3095>, accessed on 22 February 2017; and 'New Constitution in use but more than 104 'referendum suspects' are still being prosecuted' (in Thai), Thai Lawyer for Human Rights, available at <http://www.tlhr2014.com/th/?p=3924>, accessed on 22 February 2017.

Such blatant suppression of discussion and campaigning on the draft Constitution not only violated citizens' basic rights to freedom of expression but also their rights to participate in the political affairs of state. This will have long-term implications on the country's democratic transition since the Constitution also includes provisions requiring subsequent governments to follow the so-called 20-year National Strategic Plan drafted by the NCPO, again, without popular participation.

Section 112 of the Criminal Code (or the *lèse-majesté* law) is another tool commonly used to control dissidents. Since the coup, at least 68 new *lèse-majesté* cases have been brought before the courts.¹⁹ Moreover, such defendants are usually denied bail and, in most cases, face harsh sentences. Worse, under NCPO Order No 37/2557 (2014), *lèse-majesté* cases may now be tried in military court where a fair trial cannot be guaranteed. Based on information received from the Office of the Judge Advocate General, Thai Lawyer for Human Rights report a striking number of cases charged under this law: between the May 2014 coup and 30 November 2016, 86 such cases were heard in military court.²⁰

Freedom of expression cases under the *lèse-majesté* law also rose significantly after the death of King Bhumibol on 13 October 2016. Less than 20 days later, the National Police Bureau reported 25 new cases alone.²¹ During this period, other means to limit freedom of expression were similarly strengthened. In particular, the internet came under strict scrutiny with many websites shut down after the King passed away. For example, the Deputy Prime Minister in charge of the Ministry of Digital Economy and Society reported that less than two weeks before the King's death (1-12 October 2016), 100 "inappropriate" websites were closed down. And in the period 13-31 October 2016, the NCPO exercised its authority under Order No 26/2557 (2014) to close a further 200 URLs, and even requested court orders to shut down 1,150 overseas-based URLs identified as inappropriate. To date, 700 of these have already been granted by the court.²²

¹⁹ 'Report of political charges after the coup' iLaw, 2016, available at <https://freedom.ilaw.or.th/politically-charged>, accessed on 31 October 2016.

²⁰ This Order was invoked September 2014.

²¹ 'Police found 25 violators of Article 112 – 10 arrested' (in Thai), INN News, 31 October 2016, available at <http://www.innnews.co.th/show/740246/%E0%B8%95%E0%B8%A3.%E0%B9%80%E0%B8%9C%E0%B8%A2%E0%B8%9E%E0%B8%9A%E0%B8%9C%E0%B8%B9%E0%B9%89%E0%B8%97%E0%B8%B3%E0%B8%9C%E0%B8%B4%E0%B8%94%E0%B8%A1.112%E0%B9%81%E0%B8%A5%E0%B9%89%E0%B8%A725%E0%B8%A3%E0%B8%B2%E0%B8%A2-%E0%B8%A3%E0%B8%A7%E0%B8%9A10%E0%B8%84%E0%B8%99>, accessed on 20 May 2017.

²² Kao Sod, 'Prajin reveals 900 URLs lese-majeste-security issues closed, mostly on YouTube' (in Thai), 2 November 2016, available at https://www.khaosod.co.th/breaking-news/news_80736, accessed on 20 May 2017.

B. Right to a Fair Trial

While martial law was lifted in April 2015, normal administration of justice was not fully restored as numerous NCPO orders remained in place. One such example which severely impacts the right to a fair trial is Order No 3/2558 (2015) stipulating the use of military courts to try civilians. Passed under Art 44, this provision was introduced soon after martial law was lifted, meaning in effect, it is a descendent of that law. Authorising military officers to censor a variety of media and arbitrarily detain individuals up to 7 days, and criminalising political meetings of more than 5 people and unapproved peaceful assemblies, the order also formalises “attitude adjustment training” as an alternative to detention if submitted to voluntarily.

Rights to a fair trial were further restricted under NCPO Order No 13/2559 (2016) which broadly identified some criminal activities “dangerous to the peace and order or undermining of national economic and social systems” to include, for example, crimes against or concerning reputation, immigration, narcotics, human trafficking, transportation regulations, child rights, and weapons. By endowing “Prevention and Suppression Officers” (who are recruited from the military) with extensive powers, this order, thus, denies individuals all rights to a fair trial and criminal justice. Appointed officers also have powers to arrest, detain, and search suspects without a warrant, and hold suspects in non-detention facilities for up to 7 days with impunity as such actions are not subject to judicial review.

Together with the use of Art 44 of the Interim Constitution, these orders permit the NCPO to bypass normal criminal justice procedures, thereby putting those they see as enemies of the state at a great disadvantage. For example, in early October 2016, under Art 44, 100 armed security force members raided a university in Bangkok and arrested 44 students. The authorities suspected the students of possessing arms in preparation of committing violent acts at a public event. Only 11 students were released immediately while the rest were detained for a couple more days. In the next few weeks, more were arrested and arbitrarily detained. This abuse of power, excessive use of force, and denial of just criminal procedures to large groups of innocent individuals clearly reveals the state’s dismissive attitude towards an impartial and fully functioning criminal justice system.

Significantly, the NCPO is now beginning to show signs that it cares about its international image. In September 2016, a few days before the Thai UPR report was about to be reviewed by the UN Human Rights Council, the NCPO used its authority under Art 44 to halt the use of military courts against civilians in lèse-majesté cases, international security provisions of the Criminal Code cases, and firearm-related offences from 12 September 2016 onwards. Nevertheless, the order does not have retroactive effect meaning pending military court cases and any alleged crimes committed before 12 September 2016 will remain before military courts which not

only operate behind closed doors (to avoid disclosure of sensitive national security information) and lack a right to appeal, but are also partial and often incompetent (only one of the three presiding judges is required to have legal knowledge). Thus, the number of civilians tried or being tried in such courts in the three years after the referendum is a cause for alarm. By 30 November 2016, the Judge Advocate General reported that 2,177 civilians were tried or are being tried in military court, with 416 cases pending.²³

The lack of a fair trial particularly affects the rights of human rights activists as will be discussed below.

C. Protection of Human Rights Defenders

As the Pai case and the above discussion on freedom of expression shows, human rights defenders have become particular targets of the repressive state, with judicial harassment being one of its main tactics. In the past three years, at least 170 have faced legal charges.²⁴ 2016 alone, witnessed a couple of key court cases filed against such groups by either the state or businesses using criminal defamation and/or the Computer Crime Act. Moreover, many cases are brought against local communities fighting to defend their natural resources from state or private encroachment. Among the most well-known are defamation complaints by mining companies against anti-mining movements in Pichette and Loei provinces involving huge compensation claims, and another case lodged by a poultry farming business against migrant workers from Myanmar complaining about labour rights issues on the farm. These law suits are both expensive and time-consuming, especially for local communities who may have limited financial support and access to legal advice. In addition, individuals may be placed under surveillance or face state harassment, e.g. by being summoned to meetings with the military.

NGO workers have also faced similar law suits filed by both businesses and the state. For example, in direct retaliation to a report on torture in the deep south provinces, the Internal Security Operations Command (ISOC) filed defamation and violation of Computer Crime Act suits against three NGO workers heading the organisations producing the report. Although the cases were settled through negotiation and the ISOC promised not to proceed,²⁵ the mere fact they were filed conveys a familiar and chilling message; that the military will tolerate no questions on its human rights record.

²³ See, 'Civilians still go to military court: Revealing the statistics of civilians in military court, 3rd year' (in Thai), Thai Lawyer for Human Rights, 2017, available at <http://www.tlhr2014.com/th/?p=3498>, 17 February 2017, accessed on 25 May 2017.

²⁴ '13 networks of human rights defenders complain to UN Special Rapporteur: Revealing hundreds of cases after the coup' (in Thai), Prachatai, 30 May 2017, available at <https://prachatai.com/journal/2017/05/71704>, accessed on 3 June 2017.

²⁵ Although at the time of writing, it has yet to formally withdraw the charges.

Physical attacks and intimidation towards human rights activists and community organisers are also widespread. For example, Sirawit Seritiwat, the student activist whose mother was charged with lèse-majesté for acknowledging a text message, was attacked and abducted by masked and uniformed security agents in January 2016, although he was quickly released by the military courts who refused to detain him further. Sirawit's case received public attention because he is a well-known activist but in rural areas where human rights defenders are less recognised, whether they would fare so well is doubtful. Consequently, many cases either go unnoticed or there may be scant attempt to bring the perpetrators to justice. For example, five land rights activists from the Southern Peasants Federation have either been assassinated or survived assassination attempts in the past six years, likely at the behest of the companies they are in conflict with. Even so, regrettably, the state has shown little will to either investigate or provide protection to these groups.

Part 3: Conclusion

With limited political space tolerated during the military junta's long rule, Thais face a grim human rights outlook. The NCPO uses both legal and extra-legal means to restrict popular freedom of expression, impacting the exercise of other rights and participation in vital policy-making processes. While freedom of expression, rights to a fair trial, and the protection of human rights defenders have been curtailed, other human rights issues pertinent in 2016 include those caused by development projects and policies, violence in the deep south, and the regression of universal health care schemes. At the base of these issues lies the need to affirm freedom of expression and assembly to enable every individual to speak out for his or her rights without fear of reprisal.

Thus, in Thailand's latest transition to democracy, there is an urgent need to expand these restricted boundaries to enable interaction, negotiation, and dialogue between the state and its people. Without this expansion of political space, clashes between the military junta and those promoting democracy and human rights will continue until democracy has been fully restored. Another challenge for human rights defenders is to document all current violations to enable the perpetrators to be brought to justice. Justice, however, is a rare commodity in a country as tightly controlled as Thailand where human rights violators are often allowed to act with impunity.

TIMOR-LESTE



TIMOR-LESTE

*Khoo Ying Hooi**

Part 1: Overview of Timor-Leste

A. Country Background

Timor-Leste Facts	
Geographical size	14,874 sq km
Population	1,268,671 ¹
Ethnic breakdown ²	Main ethnic groups: Timorese (78%) Indonesian (20%) Chinese (2%)
Official language(s)	Bahasa Indonesia and English (working languages) Tetum and Portuguese (national languages)
Literacy rate (aged 15 and above)	67.5% ³
Life expectancy	68.58 ⁴
GDP	US\$1.442 billion (per capita US\$1,161) ⁵
Government	Unitary semi-presidential representative democratic republic whereby the Prime Minister is head of government and the President is head of state. Follows systems of separation of powers and interdependence between organs of sovereignty.
Political and social situation	Economy is largely underdeveloped due to the long fight to restore independence. Since then, Timor-Leste has gone through three sets of highly competitive elections that have been universally recognised as free and fair.

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¹ Data from 2016. 'Timor-Leste' The World Bank, available at <http://data.worldbank.org/country/timor-leste>, accessed on 3 May 2017.

² Approximate figures listed as of 2002. See, 'East Timor' Encyclopedia.com, available at http://www.encyclopedia.com/places/asia/indonesian-political-geography/east-timor#ETHNIC_GROUPS, accessed on 10 October 2017.

³ Data from 2015. 'Human development reports' United Nations Development Programme, available at <http://hdr.undp.org/en/countries/profiles/TLS>, accessed on 7 November 2017.

⁴ Data from 2015. The World Bank (see note 1 above).

⁵ Data from 2015. The World Bank (see note 1 above).

Having restored its independence in 2002, the Democratic Republic of Timor-Leste is one of the newest nations of the 21st century. Located on the eastern edge of the Indonesian archipelago, the country consists of the eastern half of the island of Timor, the Oecussi enclave on the north-western portion of the island within Indonesian territory, and the islands of Atauro and Jaco. Timor-Leste is divided into 13 district areas. Situated in the north of the country, Dili is its capital city. The people are referred to as Timorese and include Austronesians (Malayo-Polynesians), Papuans, indigenous tribes, and a small group of ethnic Chinese.⁶ Tetum and Portuguese are both official languages. Bahasa Indonesia and English are defined as working languages, as stated in the Constitution.⁷ In terms of religious belief, over 90% of Timor-Leste's population are Roman Catholic; indeed, under the Portuguese regime, it was the Catholic church that was largely responsible for increasing literacy in the population.⁸

Struggle for independence

Prior to the Indonesian occupation from 1975-1999, Timor-Leste was colonised by Portugal from 1515 onwards when it was known as Portuguese Timor. Timor-Leste declared itself independent from Portugal in November 1975; however, a brief nine days later, it was invaded by the Indonesian military which continued to occupy it for a further 24 years. Finally, on 30 August 1999, a major independence referendum or 'Popular Consultation' was held (assisted by a United Nations mission) during which 78.5% of East Timorese favoured separation from Indonesia, paving the way for full independence. However, the result led to widespread violence instigated by pro-Indonesian groups that later required the intervention of UN peacekeepers. It is reported that as much as 70% of the country's infrastructure was destroyed. To restore order, a UN-administered transition government was affected through UN Security Council Resolution 1272, leading the way for a UN Transitional Administration in East Timor (UNTAET), after which Timor-Leste restored its full independence on 20 May 2002.

System of governance

Timor-Leste is a multiparty parliamentary republic, where the people or some significant portion thereof, have supreme control over the government, and where offices of state are elected or chosen by elected people. The Constitution establishes a semi-presidential system of governance, following the systems of separation of powers and interdependence between the organs of sovereignty, namely, the president, the National Parliament, the government, and the courts. The National Parliament represents all Timorese citizens and is vested with legislative, supervisory, and political decision-making powers. With a minimum of 52 and a maximum of 65 members, this organ is split into two sections:

⁶ Nguyen, JT, 'Timor-Leste' in Ness, D, and Chia, LL (eds), *International Education: An Encyclopaedia of Contemporary Issues and Systems, Volumes 1-2*, Oxon: Routledge, 2013, at 471.

⁷ Nguyen (see note 6 above), at 471.

⁸ Amaral, MA, Field, J, McLellan, J, and Barnard, R, 'Timor-Leste collaborative project: A short report' *New Zealand Studies in Applied Linguistics*, 2009, Vol 15, No 1, at 55.

the plenary and committees. Parliamentary committees are comprised of groups of members of parliament (MPs) from parliamentary factions or political parties. Each committee has between 7-12 members and discusses a range of issues. Article 97(1) of the Constitution empowers the National Parliament (consisting of MPs and parliamentary factions) and the government to commence the legislative process.⁹

Political and social situation

As a result of its long struggle to restore independence including an eruption of violence in 1999, Timor-Leste's economy has remained largely underdeveloped. As one of the poorest nations in the world, many international groups and agencies have offered assistance to rebuild its infrastructure or to support the country's development. Such assistance is necessary because in an increasingly globalised world, Timor-Leste is vulnerable, not only due to its size, but also because it suffered conflict prior to independence. For example, in 2006, tensions between the national police and the armed forces led to open conflict between the two institutions, which in turn led to a breakdown of law and order and the displacement of more than 150,000 people. Despite efforts to resolve the conflict, the violence continued with attempted attacks on both the President and the Prime Minister in 2008. However, following UN intervention, the country gradually recovered from the crisis and in 2012, presidential and parliamentary elections were held peacefully and fairly. The last UN peacekeeping mission withdrew at the end of 2012, finally removing Timor-Leste from the Security Council's agenda.

B. International Human Rights Commitments and Obligations

Timor-Leste's Constitution has adopted all the basic and fundamental human rights, for example, the right to life, the right to personal freedom, integrity, and security, and freedom of movement have all been ratified. In addition, the government also established the National Human Rights Institution (NHRI) and the Office of the Provider for Human Rights and Justice (PDHJ) to further promote human rights.

Nationally, Timor-Leste has declared a commitment to the protection and development of human rights. As such, Art 29(2) of the Constitution declares that the state recognises and protects the lives of all its citizens. Likewise, Art 32(1) limits sentences and state security measures, thus ensuring sentences and security measures will not last indefinitely.¹⁰ In 2014, based on an instruction from the Prime Minister (No 17/X/2014),

⁹ 'Democratic system and legislative process in Timor-Leste' Judicial System Monitoring Programme (JSMP), available at <http://jsmp.tl/en/parliamentary-watch-programme-pwp/democratic-system-and-legislative-process-in-timor-leste/>, accessed on 3 May 2017.

¹⁰ Human Rights Council, 'Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 and paragraph 5 of the Annex to Council Resolution 16/21 – Timor-Leste' A/HRC/WG.6/26/TLS/1, United Nations General Assembly, 22 August 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/185/42/PDF/G1618542.pdf?OpenElement>, accessed on 4 October 2017, at 4.

the National Directive Commission (KDN) was established, led by the Ministry of Justice. The KDN comprises representatives from UN agencies in Timor-Leste, the ombudsman, representatives of civil society, and human rights groups, with additional support from the Ministry of Justice's technical team. The KDN's main objective was to design and draft a workable action plan for human rights. Having completed its desk research, it now plans to conduct field research with the eventual aim of producing a quality National Action Plan on Human Rights.¹¹ Other action plans include policies to deal with gender-based violence, hunger,¹² and disabilities. Similarly, in 2016, the government launched an action plan on women, peace, and security.

Table 1: Ratification Status of International Instruments – Timor-Leste¹³

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		16 Apr 2003 (a)
Optional Protocol of the Convention against Torture	16 Sep 2005	
International Covenant on Civil and Political Rights (ICCPR)		18 Sep 2003 (a)
Second Optional Protocol to the ICCPR aiming to the abolition of the death penalty		18 Sep 2003 (a)
International Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		16 Apr 2003 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		16 Apr 2003 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		16 Apr 2003 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		30 Jan 2004 (a)
Convention on the Rights of the Child (CRC)		16 Apr 2003 (a)
Optional Protocol to the CRC on the involvement of children in armed conflict		2 Aug 2004 (a)

¹¹ Human Rights Council (see note 10 above), at 5.

¹² Human Rights Council (see note 10 above), at 5.

¹³ 'Ratification status of Timor-Leste' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN, accessed on 18 March 2017.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography		16 Apr 2003 (a)
Convention on the Rights of Persons with Disabilities (CRPD)		

Timor-Leste joined the UN in 2002. Thus far, the government has ratified seven international instruments (as listed above in Table 1). Nevertheless, it has not ratified the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance. Article 95(3)(f) of the Constitution declares ratification to be the competence of the National Parliament which must also approve and denounce agreements. For example, it is currently awaiting a government proposal on the CRPD and its Optional Protocol before ratification can occur; however, this may not be immediately forthcoming as the government has a policy of trying to create favourable conditions, and examining and considering all circumstances relating to human rights, including the financial impact of assuming all the consequences and responsibilities of any convention, before deciding on full or partial ratification.¹⁴

Of the 8 fundamental International Labour (ILO) Conventions, Timor-Leste has ratified 6; most recently, it acceded to Conventions C100 and C1113 in 2015. However, Timor-Leste is one of 18 ILO member countries not yet ratifying the Convention concerning Minimum Age for Admission to Employment (C138). Nevertheless, it is party to the CRC which requires countries to set a minimum work age. As such, Art 68 of the Labour Code sets the minimum age for employment at 15. Timor-Leste is also one of 11 ILO member countries not to have ratified the Convention concerning the Abolition of Forced Labour (C105) – despite this, its Constitution and the Labour Code both prohibit forced labour.¹⁵

Thus far, Timor-Leste has not requested a Special Procedure of the Human Rights Council although it did go through its second cycle of Universal Periodic Review (UPR) in 2016. Notwithstanding, the country's Constitution has adopted the general and customary principles of international law and the treaties it has ratified whilst ensuring its national legislation does not contradict international law. However, Timor-Leste has failed to adopt in full the general recommendations of certain treaty bodies, in particular, those of the Committee on CRC and the Committee on CEDAW. Timor-

¹⁴ Human Rights Council (see note 10 above), at 3.

¹⁵ 'Report for the Universal Periodic Review (UPR) of Timor-Leste' United Nations Country Team in Timor-Leste, November 2016, available at <https://www.laohamutuk.org/Justice/UPR/2016/UNCTUPRMar2016en.pdf>, accessed on 3 May 2017.

Leste is also late in presenting its reports under the ICCPR, the ICESCR, the ICERD, and the CAT.

Having ratified the Rome Statute of the International Criminal Court, Timor-Leste incorporated its provisions into its national law, thus, criminalising actions against humanity, as laid out by s.124 of the Penal Code. Accordingly, the offences of:

homicide, extermination, forcible deportation of a population, imprisonment or depriving a person of physical liberty in violation of international law, torture, rape, sexual enslavement, forced prostitution, forced sterilisation, any form of sexual violence of comparable seriousness, persecution against a group or a collective entity due to politics, race, nationality, ethnicity, religion, sex, enforced disappearances, apartheid, and inhumane acts that cause suffering, serious injury to body or to mental or physical health

are punishable with 15 to 30 years' imprisonment.¹⁶ Be that as it may, the country has not yet enacted legislation allowing it to co-operate with the International Criminal Court.¹⁷ In addition, the Penal Code has proved insufficient to challenge impunity for past crimes, and some aspects of it are neither consistent with the Rome Statute, other human rights treaties, nor customary international law. In particular, the Penal Code does not appear to include guarantees against national amnesties, pre-conviction pardons, or similar measures of impunity for crimes under international law.¹⁸

Part 2: Outstanding Human Rights Issues

A. Land Rights

Fifteen years after independence, a comprehensive legal basis for determining land ownership remains lacking. Originating from Timor-Leste's post-colonial and post-conflict legacies, these challenges, including landlessness and forced displacement, were caused by massive land occupation and have been exacerbated by the questionable legitimacy of formal land titles issued during the Portuguese and Indonesian

¹⁶ Human Rights Council (see note 10 above), at 4.

¹⁷ Human Rights Council, 'Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 and paragraph 5 of the Annex to Council Resolution 16/21 – Timor-Leste' United Nations General Assembly, A/HRC/WG.6/26/TLS/3, 17 August 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/00/PDF/G1618300.pdf?OpenElement>, accessed on 4 October 2017, at 3.

¹⁸ Human Rights Council (see note 17 above), at 6.

administrations.¹⁹ Although Art 54(1) of the Constitution states that every individual has the right to private property which is transferable during his or her lifetime or on death, most rural Timorese access and hold land through customary law and informal systems and schemes which lack legal recognition. For example, land occupation and informal arrangements are common in rural areas with many occupants failing to formalise acquisitions.²⁰ Without legal land titles, such land rights will not be recognised under Law 1/2003.²¹

Since the first UPR, the number of relocations and evictions has increased, particularly in Dili on the south coast and in the special administrative region of Oecusse, where large infrastructural projects have sprung up.²² In 2012, parliament approved a draft land law, establishing a set of criteria to determine initial ownership. However, this was vetoed by then-President Ramos Horta for failing to identify various land rights issues.²³ A package of three further land laws—the Special Regime for the Definition of Ownership of Immovable Property (also known as the ‘Land Law’), the Expropriation Law, and the Law on Spatial Planning—are still pending.

B. Women’s Rights and Domestic Violence

Timor-Leste operates under a relatively strong patriarchal system which, in some cases, prevents women from taking advantage of work opportunities, often leading to discrimination. Other concerns in this area include: the failure to prevent and provide redress for all crimes against women and girls; the low number of investigations, prosecutions, and convictions in cases of alleged rape and sexual abuse; the lenient sentences in domestic violence cases; the failure to issue protection orders; and the excessive use of mediation under informal justice systems in cases of domestic violence.²⁴

Although the Civil Code (Law No 10/2011) of 14 September 2011 acknowledges the equal rights of women and men in marriage, the fault-based divorce system puts women, including victims of domestic violence, at a disadvantage.²⁵ Moreover, neither

¹⁹ Almeida, B, and Wassel, T, ‘Can a new law help Timor-Leste’s land rights crisis?’ Asia Foundation, 18 January 2017, available at <http://asiafoundation.org/2017/01/18/can-new-law-help-timor-lestes-land-rights-crisis/>, accessed on 2 May 2017.

²⁰ Almeida and Wassel (see note 19 above).

²¹ Almeida, B, and Wassel, T, ‘Survey on access to land, tenure security and land conflicts in Timor-Leste’ Asia Foundation, December 2016, available at <https://asiafoundation.org/wp-content/uploads/2017/01/Survey-on-Access-to-Land-Tenure-Security-and-Land-Conflicts-in-Timor-Leste-1.pdf>, accessed on 4 October 2017.

²² Human Rights Council, ‘Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 and paragraph 5 of the Annex to Council Resolution 16/21 – Timor-Leste’ United Nations General Assembly, A/HRC/WG.6/26/TLS/2, 22 August 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/184/71/PDF/G1618471.pdf?OpenElement>, accessed on 4 October 2017, at 10.

²³ Almeida and Wassel (see note 19 above).

²⁴ Human Rights Council (see note 22 above), at 8.

²⁵ Human Rights Council (see note 22 above), at 8.

the Constitution nor its ordinary legislation includes a definition of discrimination against women in accordance with Art 1 of CEDAW.²⁶ While the Law against Domestic Violence (No 7/2010) criminalised domestic violence, including sexual violence, “even within a marriage,” it does not adequately meet the standards of CEDAW, e.g. it fails to implement necessary services and protection for indigenous women and girls. Further, concern was expressed about the absence of legal provisions specifically criminalising marital rape and qualifying rape as a serious crime.²⁷ In addition, the policing and judicial processes for survivors of domestic violence seeking both protection and justice from their abusers were deemed lacking. In fact, due to fear of reprisals, victims often prefer not to report abuse at all. Even when cases of domestic violence become known, such disputes are often solved using traditional laws and practices, either within the family or before community leaders.

To address the issue of inequality, a Dili Declaration (DD) entitled, ‘Invest in Women and Children – Invest in Equality’ was signed in 2016.²⁸ The DD provides comprehensive guidelines to achieve dynamic gender equality by ensuring: gender mainstreaming in national development plans; the development of gender sensitive budgets; the eradication of violence against women and children by the introduction of a funded implementation plan to treat domestic violence issues; the development of a mechanism to promote access to property and land rights; equal access to higher levels of education for women including scholarships in natural resource management; the promotion of gender sensitive health policies to prevent HIV/AIDS; the promotion of family planning and integrated community health services; and investment in women through a policy of decentralisation.²⁹

In April 2016, Timor-Leste officially launched its national action plan to implement United Nations Security Council Resolution (UNSCR) 1325 (2000)/NAP UNSCR 1325, on Women, Peace and Security, becoming the third country in Southeast Asia to adopt such a measure. Covering the four pillars of Resolution 1325, including women’s participation, prevention, protection, and peace building,³⁰ the plan calls for action to advance the participation and leadership of women in all aspects of decision-making and peacebuilding. Accordingly, it aims to increase the role of women in preventing and mediating conflicts to ensure they can live free from violence and feel the benefits of the country’s development.³¹

²⁶ Human Rights Council (see note 22 above), at 5.

²⁷ Human Rights Council (see note 22 above), at 6.

²⁸ Human Rights Council (see note 10 above), at 8.

²⁹ Human Rights Council (see note 10 above), at 9.

³⁰ ‘Investing in women for peace and future generations: Timor-Leste adopts a National Action Plan on Security Council Resolution 1325’ UN Women, 28 April 2016, available at <http://asiapacific.unwomen.org/en/news-and-events/stories/2016/04/adopts-a-national-plan-for-womens-security>, accessed on 3 May 2017.

³¹ ‘Timor-Leste officially launches its National Action Plan for United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security 2016-2020’ UN Women, 20 October 2016, available at <http://asiapacific.unwomen.org/en/news-and-events/stories/2016/10/timor-leste-officially-launches-its-national-action-plan>, accessed on 3 May 2017.

C. Children's Rights

In Timor-Leste, the abuse and neglect of children and the widespread sexual abuse of children, including incest, is a major concern. Another worry is the high number of children in work. As such, under s.68 of the Labour Law, Timor-Leste adopted a minimum working age of 15, although children between 13-15 are still permitted to do “light work” (defined in s.69). However, upon ratification of ILO Convention 182, under Art 9 of the Constitution, the Convention’s internal legal system should have applied, therefore setting the minimum working age at 18. Hence, Government Resolution No 1/2014 established the National Commission Against Child Labour to monitor implementation of the Convention.³² Although the government established internal regulations approving a list of prohibited activities for children under the age of 18 (to complement s.67(2)(d) of the Labour Law which prohibits children from performing work under dangerous conditions),³³ child labour is still common in Timor-Leste, primarily because children’s wages are necessary to support the family income or to settle outstanding debts. Consequently, labour is sometimes prioritised over education, especially in rural areas. The majority of children work in agriculture, fishing, construction, domestic service, street and market vending, and prostitution.³⁴

In addition to child labour, there are also important gaps in the legislative and institutional framework of child protection, including juvenile justice. For example, two draft laws relating to juvenile justice—a draft law on punitive-educational measures for minors 12 to 16 years of age, and the Special Penal Regime for 16 to 21 year-olds—have not moved forward within the Ministry of Justice with both requiring further consultation.³⁵ As a result, juveniles and adult prisoners are currently incarcerated together at Becora prison because of a lack of special juvenile facilities. Recognising this issue, the juvenile justice regime is currently undergoing significant review and reform although it suffers from limited investment. Limitations also exist in terms of capacity especially as regards the specialised training of personnel in child justice administration and the use of informal community mediation mechanisms.³⁶ As a result, a National Action Plan for Children is being drafted under the Commission on the Rights of the Child (KDL).³⁷

D. Persons with Disabilities

Articles 16 and 21 of the Constitution explicitly provide for non-discrimination and equal treatment for persons with mental or physical disabilities. While s.153 of the Penal Code classifies the mistreatment of a person with a disability by a caretaker as a crime

³² Human Rights Council (see note 10 above), at 11.

³³ Human Rights Council (see note 10 above), at 11.

³⁴ Human Rights Council (see note 22 above), at 7.

³⁵ Human Rights Council (see note 17 above), at 6.

³⁶ Human Rights Council (see note 22 above), at 8.

³⁷ Human Rights Council (see note 10 above), at 5.

punishable by up to 6 years' imprisonment, despite having ratified 7 international human rights instruments, Timor-Leste has yet to ratify the CRPD. However, the government has begun to implement measures to address some key aspects of disability rights as demonstrated by its National Policy for the Inclusion and Promotion of the Rights of Persons with Disabilities and its National Action Plan for Persons with Disabilities 2014-2018.³⁸

In 2015, the government drafted a Statute for the National Disability Council which will eventually lead to a Government Decree-Law.³⁹ For example, the National Action Plan for Persons with Disabilities provides a disability allowance through social security programs for persons with disabilities aged 17 and above, funding support to institutions (such as a centre for national rehabilitation for persons with disabilities), as well as equal opportunities for adults or children with disabilities to access school through inclusive and regular learning systems.⁴⁰ To ensure all people, including persons with disabilities, can gain access to fair justice, from 2016 onwards, the Sixth Constitutional Government began training magistrates, judges, prosecutors, and public defenders.⁴¹

E. Access to Justice

Access to justice remains a challenge for large parts of the population in Timor-Leste. In 13 municipalities, there are only 4 permanent courts. Due to poor road conditions and the high cost of travelling from one place to another, access to justice is therefore limited. To overcome this, Timor-Leste implemented 'mobile courts' to increase access to the judicial system but so far, it has not been successful.⁴² In addition, formal justice systems and legislation are mostly only available in Portuguese, posing a challenge because most Timorese speak Tetum with the majority not even understanding Portuguese. Moreover, many Timorese prefer traditional dispute resolution mechanisms owing to their familiarity and accessibility, despite these mechanisms not always adhering to international human rights standards, particularly regarding women's rights.⁴³

F. Law Enforcement

According to the 2015 Annual Report issued by the PDHJ, the state institutions committing most human rights violations are the National Police (PNTL) and military forces (F-FDTL), with the former committing about 70% of reported offences, 50%

³⁸ Human Rights Council (see note 10 above), at 4-5.

³⁹ Human Rights Council (see note 10 above), at 12.

⁴⁰ Human Rights Council (see note 10 above).

⁴¹ Human Rights Council (see note 10 above), at 8.

⁴² Human Rights Council (see note 17 above), at 2.

⁴³ Human Rights Council (see note 22 above), at 7.

of those involving inhuman and degrading treatment.⁴⁴ Moreover, the military are regularly involved in joint operations to address serious disturbances of law and order – since the restoration of independence in 2002, there have been many such police and military operations.

Based on Government Resolutions No 8/2014 and No 9/2014 and Parliamentary Resolution No 4/2014 which sought to disband illegal groups such as the Popular Council for the Defence of the Democratic Republic of Timor-Leste (CPD-RDTL) and the Revolutionary Council of Maubere (KRM), the operations leading to the most serious human rights violations took place in 2014 and 2015. Amongst other issues, these groups demanded constitutional reforms and the election of a new government.⁴⁵ Thus, in 2015, Government Resolutions Nos 11/2015 and 12/2015 were passed to authorise joint military and police operations. These resolutions were then promulgated into Presidential Decree No 41/2015 which ultimately led to the Hanita Command Joint Operation to capture the leader of KRM, Mauk Moruk, and his followers.⁴⁶ As a result, many human rights violations occurred including deprivation of liberty, arbitrary arrest and detention, ill treatment during arrest and detention, torture, and arbitrary interference with privacy and the home, including the destruction of property.

According to data from the HAK Association, between 19-22 January 2016 in Baucau district, 35 community members were arbitrarily captured and brought to court. As there was scant evidence against them, all were unconditionally freed. The operation to capture Mauk Moruk continued between 24 March 2016 and 10 April 2016 during which time the number of community members arbitrarily captured and brought before court rose to 232, of whom 229 again were later unconditionally freed. It was also reported that community member, Luis Ramos, was unlawfully killed by the joint command on 16 June 2016 when following orders to act as a guide in the operation.⁴⁷

G. Human Trafficking

In 2016, the Ministry of Justice and the Office of the Prime Minister re-established a working group (comprised of members of the relevant ministries and representatives of civil society) to devise a national action plan to combat human trafficking. In addition, Timor-Leste also signed and adopted another plan to fight human trafficking among member states of the Community of Portuguese Speaking Nations (CPLP). In order to implement these policies, the government through the Ministry of Justice, drafted

⁴⁴ 'Provedoria's annual report 2015' available in Tetum at <http://pdhj.tl/wp-content/uploads/2014/06/RELATORIU-ANUAL-2015.pdf>, accessed on 21 April 2017.

⁴⁵ Pereira, J, 'Timor-Leste: Active response needed' in '2016 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia' FORUM-Asia, available at <https://www.forum-asia.org/uploads/wp/2016/11/3.-Timor-Leste-Final.pdf>, accessed on 4 October 2017, at 48.

⁴⁶ Pereira (see note 45 above), at 49.

⁴⁷ Pereira (see note 45 above), at 50-51.

laws on human trafficking which were approved by the Council of Ministers – these have now been submitted to the National Parliament for appraisal and approval. When passed, the legislation will complement s.163 of the Penal Code dealing with human trafficking and s.165 covering witnesses, trafficking in human organs, as well as the rights of victims to obtain compensation.⁴⁸

H. Freedom of Expression and Assembly

Citizens, including human rights defenders, are generally free to express themselves in Timor-Leste. However, occasional incidents of threats and intimidation have been reported, especially against staff of non-governmental organisations publicly raising human rights concerns or to prevent them speaking out on sensitive issues.⁴⁹ For example, the Law on Freedom of Assembly and Demonstration (No 1/2006) places unreasonable restrictions on freedom of assembly by prohibiting gatherings and demonstrations less than 100 metres from the offices of organs of sovereignty, residences of such officeholders, military and militarised installations, prison buildings, offices of diplomatic missions and consulates, and the offices of political parties. However, because of its coastal location and the fact government buildings and diplomatic missions are closely packed in the capital city of Dili, this requirement makes it virtually impossible for protestors to demonstrate within sight and sound of their target. Indeed, the PNTL continues to interpret the law narrowly, insisting protest organisers obtain permits which has had the effect of banning a number of peaceful gatherings linked to demands for accountability regarding past crimes and government corruption.⁵⁰

In January 2016, during the visit of Indonesian President, Joko Widodo, the police made harassing telephone calls to the Executive Director of HAK Association for helping to organise and participating in a peaceful demonstration demanding the two governments address the issue of past human rights violations. Further, on the day of the demonstration, two armed forces personnel visited the NGO's office and instructed a staff member wearing a 'Free West Papua' T-shirt to remove it. They also requested the use of its compound for security operations, but HAK refused.⁵¹

Freedom of the press came under attack in 2014 when the Media Act was passed after several reviews. In particular, some provisions were deemed unconstitutional by the Court of Appeal; these were consequently removed. The Act stipulated that to work as a journalist, individuals must first undergo a six-month internship in a media organisation and be accredited by the government-funded Press Council established in 2016. Further, the Press Council has the power to grant, renew, suspend, and revoke

⁴⁸ Human Rights Council (see note 10 above), at 18.

⁴⁹ Human Rights Council (see note 22 above), at 8.

⁵⁰ Human Rights Council (see note 17 above), at 7.

⁵¹ Pereira (see note 45 above), at 44-45.

journalists' credentials and administer disciplinary sanctions including fines for contraventions of the law.⁵² In addition, new journalists must be licenced by the Press Council and all journalists are required to defend public interest and the democratic order. Unsurprisingly, such provisions have been accused of stifling freedom of expression in the country. While breaches of the Act could trigger fines against journalists and media outlets, there is also concern the legislation's vague language could be used to prevent media outlets being critical of the government. Defamation is also criminalised under the Penal Code, punishable by a fine or imprisonment for up to three years.

The Press Council came into existence at a challenging time, just as current Prime Minister Rui Maria de Araújo asked the Prosecutor General (under s.285 of the Penal Code on defamatory false information)⁵³ to investigate an "inaccurate" article published in November 2015 by the Timor Post alleging that he manipulated procurement processes while an advisor in the Ministry of Finance to steer a contract, and that the newspaper intentionally falsified the information. On 11 April 2016, the prosecutor questioned both the reporter, Raimundos Oki, and the editor, Lourenco Vicente Martins, leading the latter to resign and the newspaper to apologise for the error.

Part 3: Conclusion

Timor-Leste's 15 years of independence have been marked by a mixed bag of progress and crisis. Over the past decade, Timorese politics has been notable for the dynamism of its democratic state as evidenced by the sheer number of political parties contesting its elections. Since independence was restored in 2002, Timor-Leste has gone through three sets of highly competitive elections that have been universally recognised as free and fair. Even when tensions were high in the wake of the 2006 political crisis, presidential and parliamentary elections were held in 2007, albeit not entirely without incident.

As a post-conflict small state, Timor-Leste has been widely praised as one of the standout democracies in Southeast Asia. Thus, as published by the Economist Intelligence Unit (EIU) in January 2017, the Democracy Index 2016 ranked Timor-Leste as the most democratic country in Southeast Asia based on five variables: (1) electoral process and pluralism; (2) functioning of the government; (3) political participation; (4) political culture; and (5) civil liberties. Overall, Timor-Leste's score was indeed impressive; besides being first in Southeast Asia, it was ranked fifth in Asia, and 43rd out of all the countries assessed by the EIU.

⁵² 'Timor-Leste's Second Universal Periodic Review (UPR)' Timor-Leste Civil Society Coalition, March 2016, available at <https://www.laohamutuk.org/Justice/UPR/2016/NGOUPRMar2016en.pdf>, accessed on 4 October 2017, at 20-21.

⁵³ 'Proposed law on media' La'o Hamutuk, 7 February 2014, available at <http://www.laohamutuk.org/misc/MediaLaw/14MediaLaw.htm>, accessed on 4 May 2017.

However, having emerged from war and internal conflict in the late 1990s, Timor-Leste still has a way to go, particularly regarding development issues which explains why human rights abuses in the country are generally driven by economic, social, and cultural concerns. Although an oil-rich country, the relationship between its democracy and development remains far from universally positive. Natural resources undoubtedly play a crucial role in the economies of countries and it is even more vital to post-conflict small states. Accordingly, Timor-Leste must carefully balance its resource dependency against the needs of its still developing democracy whilst ensuring the well-being of its citizens.

What remains lacking in Timor-Leste is more decentralisation of political power and its promotion thereof, aimed at empowering those at the grassroots level. Increasing levels of self-governance and self-reliance will thus enable more socio-economic development, which, in turn, will protect and secure its citizens' economic, social, and cultural rights. Therefore, Timor-Leste's political leaders must find solutions to move the country toward sustainable democracy in the midst of such challenges as poverty, uncertain land rights, illiteracy, low employment, corruption, and cronyism.

VIETNAM

VIETNAM

*Ngo Huong**

Part 1: Overview of Vietnam

A. Country Background

Vietnam Facts	
Geographical size	332,698 sq km
Population	92.70 million ¹
Ethnic breakdown ²	Main ethnic groups: Kinh (85.7%) Tay (1.9%) Tai (1.8%) Muong (1.5%)
Official language	Vietnamese
Literacy rate (aged 15 and above)	97.3% ³
Life expectancy	75.9 ⁴
GDP	US\$202.6 billion (per capita US\$2,185) ⁵
Government	A one-party socialist republic led by the Communist Party of Vietnam (CPV). The unicameral popularly elected National Assembly is the supreme organ of government, electing the President who is head of state.
Political and social situation	Although the CPV maintains a stranglehold on political power, recent amendments/proposed amendments to laws and increased public participation in decision-making, has led to the inclusion of human rights into legislation. However, in some instances, an implementation gap exists between what the law preaches and what the government practices.

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¹ Data from 2016. 'Vietnam' The World Bank, available at <http://data.worldbank.org/country/vietnam>, accessed on 18 October 2017.

² Data from 2009. 'The 2009 Vietnam population and housing census: Completed results' Central Population and Housing Census Steering Committee, 2010, available at http://portal.thongke.gov.vn/khodulieudanso2009/Tailieu/AnPham/KetQuaToanBo/3_Ketqua-toanbo.pdf, accessed on 20 October 2017.

³ Data from 2016. As announced by the Ministry of Education and Training. See, 'Vietnam's literacy rate reaches 97.3 percent' dtinews, 15 January 2016, available at <http://dtinews.vn/en/news/020/43462/vietnam-s-literacy-rate-reaches-97-3-percent.html>, accessed on 17 October 2017.

⁴ Data from 2015. The World Bank (see note 1 above).

⁵ Data from 2016. The World Bank (see note 1 above).

History and system of governance

Ideas about human rights and democracy were assimilated by pre-World War II nationalist elites who had been exposed to western democratic norms and institutions. And indeed, during the anti-colonisation period, the acceptance of democratic norms proved a vital tactic in nationalist struggles for independence. Similar to other countries in Southeast Asia at the time, Ho Chi Minh made a unilateral Declaration of Independence from France in 1945, incorporating a quote from the American Declaration of Independence (1776).⁶ He went on to further incorporate human rights into the 1946 Constitution. Although this gave birth to a (self-proclaimed) new republic and supposedly democratic nation, western concepts of human rights remain controversial in a nation where political control is based firmly in the realms of Marxist-Leninist ideology.

Initiated in 1945, the August Revolution against French colonial rule led to the development of a highly centralised political and economic system in the northern region of the country. In 1946, the first constitution proclaimed a communist state in North Vietnam leading eventually to three decades of war between North and South Vietnam; a conflict which finally ended in 1975. Underpinned by Marxist-Leninist ideology which pervades all aspects of social and political life, economics, and systems of governance, thereafter, the unified state of Vietnam was led by the Communist Party (CPV). Indeed, the revised constitutions of 1959 and 1980 were entirely socialist in nature, and to this day, Vietnam remains a socialist state governed by a one-party system. After Doi Moi (or Economic Renovation) was proclaimed in 1986, and the contemporaneous collapse of socialism led to political fragmentation in the USSR, Vietnam shifted radically to an ‘open-door’ economic policy and pushed for economic integration on a global scale based on the principle of market economics.

When Doi Moi was initiated, although political conservatives sought to attract investment funds and technology, they also feared pressures for political freedom, respect for human rights, the emergence of civil society, and wider concepts of governance, would undermine CPV dominance.⁷ However, in response to economic liberalisation, Vietnam has merely shifted from being a ‘centralised totalitarian state’ to a ‘decentralised authoritarian state.’ On the other hand, decentralisation also facilitated a distribution of power, and in its wake, pluralism in the political, social, and cultural spheres of society. While the concept of individual human rights is alien to communist

⁶ 1946 Constitution of the Democratic Republic of Vietnam, Chapter II states: “Tất cả mọi người đều sinh ra có quyền bình đẳng. Tạo hóa cho họ những quyền không ai có thể xâm phạm được; trong những quyền ấy, có quyền được sống, quyền tự do và quyền mưu cầu hạnh phúc” (which translates as: “We are all born equal ... We all have non-derogable rights by nature, including the rights to life, freedom, and the pursuit of happiness”). Compare this to the American Declaration of Independence (1776) which states: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness”.

⁷ Dinh, QX, ‘The political economics of Vietnam’s transformation process’ *Contemporary Southeast Asia*, 2000, Vol 22, No 2, pp 360-388.

ideology, human rights in Vietnam are also heavily influenced by the Chinese political-moral system, under which Confucian values stress social duties, hierarchy, and filial obligations. Further complicating the mix, for decades, understanding of human rights in the region has been bound up with contested political positions.⁸

Current political and social situation

Of particular significance in 2016 was May's National Assembly (NA) general election which followed Communist Party Congress XII in January. Notably, a CPV resolution stipulated that Central Committee members should neither stand for election nor be nominated without personnel planning.⁹ More notably was the quinquennial leadership change that took place at the Congress.¹⁰ The 500 seats were contested by 900 Communist Party members nominated by central or local authorities, plus 11 independent candidates, meaning only 4.2% of candidates were not affiliated with the CPV.¹¹

Following the election of Nguyen Phu Trong as CPV General Secretary for a second term, the Socialist Republic of Vietnam remains an authoritarian state ruled by the CPV and led by the General Secretary, Prime Minister Nguyen Xuan Phuc, President Tran Dai Quang, and Chairwoman of the NA, Nguyen Thi Kim Ngan. Challenges facing the new government include an economic downturn and the need for institutional reform, a process that will hopefully make the government more a 'servant' to its people than a 'regulatory' body.¹²

Trans-Pacific Partnership

Following Nguyen Phu Trong's visit to the US in 2015, another notable event of 2016 involved the visit of then US President Barack Obama who stressed the importance of

⁸ Gammeltoft, T, and Hernø, R, 'Human rights in Vietnam: Exploring tension and ambiguities' in Jacobsen, M, and Brunn, O (eds), *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*, Democracy in Asia, Series No 6, London: Curzon Press and Nordic Institute of Asian Studies, 2000.

⁹ In December 2015, following Decision No 224 on vote procedures within the Communist Party, the CPV held a meeting to agree on nomination processes for high leadership positions to be voted for at the January 2016 Congress. See, 'Đại hội Đảng toàn quốc lần thứ XII từ ngày 20 đến 28-1-2016' Tuổi Trẻ Online, 21 December 2015, available at <https://tuoitre.vn/dai-hoi-dang-toan-quoc-lan-thu-xii-tu-ngay-20-den-28-1-2016-1024888.htm>, accessed on 20 November 2017.

¹⁰ At Congress Party XII (8 January 2016), many term XI party leaders were ousted including President Trương Tấn Sang, Prime Minister Nguyễn Tấn Dũng, and Chairman of the National Assembly, Nguyễn Sinh Hùng.

¹¹ See, 'Đại biểu Quốc hội ngoài Đảng 'rất ít'' BBC, 8 June 2016, available at http://www.bbc.com/vietnamese/vietnam/2016/06/160608_national_assembly_non_party_members, accessed on 17 October 2017.

¹² In his inaugural speech in 2016, Prime Minister Nguyen Xuan Phuc said: "Tôi sẽ cùng tập thể Chính phủ kế thừa và phát huy những thành tựu của 30 năm đổi mới; tranh thủ tối đa thời cơ, thuận lợi; khắc phục hạn chế, yếu kém; vượt qua khó khăn thách thức; nỗ lực xây dựng Chính phủ kiến tạo phát triển, liêm chính, hành động quyết liệt, phục vụ Nhân dân" (which may be translated as: "As head of the highest public administration, together with the government, I will uphold the achievements of 30 years of Doi Moi, take advantage of opportunities, overcome limitations and weaknesses, and overcome difficulties and challenges, to create development with integrity and take decisive action to serve the people"). See, 'Lời tuyên thệ và phát biểu của Thủ tướng trước Quốc hội' VGP News, 26 July 2016, available at <http://baochinhphu.vn/Cac-bai-phat-bieu-cua-Thu-tuong-Loi-tuyen-the-va-phat-bieu-cua-Thu-tuong-truoc-Quoc-hoi/282500.vgp>, accessed on 17 December 2017.

having Vietnam as a strategic partner in the region, both to enhance security and to encourage speedy adoption of the Trans-Pacific Partnership (TPP) free trade agreement.

Some comment is necessary given the TPP's political importance to Vietnam and new American President, Donald Trump's cancellation of America's commitment to it in 2017. Over the course of a decade, the TPP became a focus for international relations between Vietnam, 11 other signatories, and the US. As such, it signalled a renewal of friendship 40 years after America withdrew its armed forces from Vietnam in 1975. Significantly, the TPP would have allowed for investor-state dispute settlement, an instrument granting corporations the right to sue a foreign government. Under the arrangement, Vietnam would also have been required to amend its labour laws to allow workers to form independent trade unions; a litmus test for a country where the Vietnam General Confederation of Labour (VGCL) is the only legal trade union representing all workers. In its January 2016 congress, the CPV approved the TPP, pending the NA's passage vote in May 2016. Nevertheless, opposition to the TPP argued for changes as regards freedom of association and trade union independence. However, because the TPP is now in limbo, the social and political outcomes it would have promoted in Vietnam, will need to be pursued by other means.

B. International Human Rights Commitments and Obligations

Vietnam began engaging in human rights discourse when Doi Moi was introduced in 1986, thus, signalling a modest opening of political space. Indeed, it has since acceded to a number of UN human rights instruments, even though the western ideal of human rights remains controversial there. For example, this ambiguity was reflected at the ASEAN level when Vietnam joined Singapore, among other member states, in upholding the principle of 'non-interference' in the internal affairs of states. Further highlighted was the "significance of national and regional particularities and various historical, cultural, and religious backgrounds."¹³

¹³ ASEAN Human Rights Declaration, Art 7.

Table 1: Ratification Status of International Instruments – Vietnam¹⁴

Treaty	Signature Date	Ratification Date, Accession(a), Succession(d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	7 Nov 2013	5 Feb 2015
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		24 Sep 1982 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	29 Jul 1980	17 Feb 1982
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		9 Jun 1982 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		24 Sep 1982 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)	26 Jan 1990	28 Feb 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	8 Sep 2000	20 Dec 2001
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	8 Sep 2000	20 Dec 2001
Convention on the Rights of Persons with Disabilities (CRPD)	22 Oct 2007	5 Feb 2015

Since Doi Moi, human rights have risen in Vietnam's national policy agenda. Despite powerful economic pressures, the state has entered into many international human rights commitments (see Table 1 above), notably UN instruments, ICCPR and ICESCR in 1982. After the CRC in 1990, Vietnam did not ratify another international

¹⁴ 'Ratification status for Vietnam' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 17 October 2017.

convention until 2001, when optional protocols to the CRC were ratified. More recently, in 2015, Vietnam ratified conventions against torture, and on the rights of persons with disabilities. Hence, Vietnam has ratified the majority of human rights treaties with the exception of any attached optional protocols or individual complaints mechanisms. Further, Vietnam reported to both cycles of the Universal Periodic Review (UPR) in 2009 and 2014, and has also reported in a timely fashion on all conventions it is party to, except the ICCPR. Since 1994, the government also committed to ratifying a number of ILO conventions whereby labour rights would be recognised as human rights and adopted into domestic law.¹⁵

As a result of strong political will in Vietnam's leadership, the nation became a non-standing member of the UN Human Rights Council in November 2013, for the term 2014-2017, and chair of the ASEAN General Secretariat, for the term 2013-2017. Pressure to adopt and retain commitments to human rights accordingly increased persuading top political leaders to publicly assert Vietnam's commitment to human rights¹⁶ as espoused in its Economic Development Strategy (2011-2020) which aims "to ensure human rights and citizen's rights for overall development."¹⁷

Although Vietnam signed and ratified its first human rights treaties (ICCPR and ICESCR) in the early 1980s, a more consistent international engagement only began in 1993 when it attended the World Conference on Human Rights in Vienna.¹⁸ Prior to this, Vietnam had joined ASEAN leaders in advocating 'Asian Values' at an ASEAN meeting in Bangkok.¹⁹ Promoting non-interference by states, this concept is considered more appropriate to the region than western democracy which emphasises individual freedoms rather than community, social unity, and individual duty.

¹⁵ To date, Vietnam has ratified 21 ILO conventions. See, 'Ratifications for Vietnam' ILO, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:103004, accessed on 30 April 2015. Accordingly, labour law, trade union law, and insurance laws were amended to include labour conditions, gender, health and safety at work, and collective bargaining provisions.

¹⁶ For example, in 2014, former Prime Minister Nguyen Tan Dung said, "Chúng tôi tin rằng nhân quyền, tự do, dân chủ là xu hướng không thể đảo ngược và là đòi hỏi khách quan của xã hội loài người. VN không phải ngoại lệ, không đứng ngoài xu thế này" (which may be translated as: "We believe that human rights, freedom, and democracy are an irreversible trend and an objective requirement of human society. Vietnam is no exception to this trend"): "Thủ tướng: Dân chủ là xu thế không thể đảo ngược" Vietnam Net, 17 October 2014, available at <http://vietnamnet.vn/vn/chinh-tri/202481/thu-tuong--dan-chu-la-xu-the-khong-the-dao-nguoc.html>, accessed on 18 October 2017.

¹⁷ The Socio-Economic Development Strategy 2011-2020: "Phải bảo đảm quyền con người, quyền công dân và các điều kiện để mọi người được phát triển toàn diện" (which may be translated as: "To ensure human rights, citizen rights, and other conditions for the comprehensive development of the people"), available at <http://www.xaydungdang.org.vn/Home/vankientulieu/2011/3511/CHIEN-LUOC-PHAT-TRIEU-KINH-TEXA-HOI-20112020.aspx>, accessed on 18 October 2014.

¹⁸ In 1982, Vietnam ratified the Convention on Economic, Social, and Cultural Rights, the International Convention on Civil and Political Rights, the Convention on the Elimination of all forms of Discrimination against Women, and the International Convention on the Elimination of all forms of Racial Discrimination.

¹⁹ Vietnam joined ASEAN in 1995.

The next generation of legal changes regarding human rights was triggered when Vietnam embraced global economic integration, via World Trade Organization (WTO) accession in 2005, thus, necessitating changes to its domestic laws to meet requirements for WTO membership.

Another opportunity to promote human rights occurred during TPP and other free trade agreement negotiations. Accordingly, Vietnam opted to adjust its domestic legislation and systems to explicitly recognise human rights.²⁰ One condition imposed by the TPP was to recognise rights to freedom of association and trade unions. However, these have yet to trigger changes in domestic laws and, as noted above, with the TPP's collapse, it remains to be seen whether they will now be adhered to. On the up-side, Vietnam's single trade union system may be on its way out. However, the government must also introduce mechanisms to manage the new organisations, including systems to enable new unions to register since under current laws they are still considered arms of the state.

Table 2: International and Regional Rules Affecting Vietnam's Commitments and Requirements

Organisation	Vietnam's Commitments, Requirements, and Actions
United Nations	• Ratified 13 UN human rights conventions • Became a non-standing member of the Human Rights Council in 2012 • Committed to recognise human rights in UPR reports of 2008 and 2013 • Reported on ICESCR in 1993 and again in 2014 • Constitution amended in 2012 to incorporate a human rights chapter
International Labour Organization	• Adheres to ILO framework and is an active participant • Ratified 17 ILO conventions (including Convention No 188, and 5 of the 8 fundamental conventions) between 1980 and 1985, and since 1992 • Has not ratified the ILO convention on freedom of association and collective bargaining and related human rights conventions • Ratified the Equal Remuneration Convention in 1997 • Ratified the Convention concerning Occupational Safety and Health and the Working Environment in 1994

²⁰ The TPP imposed conditions for labour standards, requiring state commitments on labour rights protection and mechanisms. In Vietnam's case, the US requested legal changes to ensure freedom of association and freedom to join trade unions. In addition, free trade agreements with the European Union posts conditions for compliance with international labour standards including freedom of unions.

Organisation	Vietnam's Commitments, Requirements, and Actions
World Trade Organization	• Member since 2005 • Sits on the ILO governing body as a party to bilateral and multilateral trade and investment agreements, some of which contain provisions dealing with labour matters, thus, mandating application of international labour and human rights standards
Trans-Pacific Partnership	• Aimed to provide market access for made-in-America goods and services • Would have required commitment to strong and enforceable labour and environmental standards, including independent trade unions
Association of Southeast Asian Nations (ASEAN) ⁵³	• Under ASEAN Declaration (1965), member nations committed to uphold the values of social harmony and consensus in political decision-making • Vietnam's representative became ASEAN Secretary General in 2012 • ASEAN launched the ASEAN Human Rights Declaration (AHRD) in 2012 (to which Vietnam is a party) but non-binding AHRD is flawed as it adheres to the 'ASEAN Way' and its principle of non-interference. During negotiations, Vietnam allegedly sided with states such as Singapore and Malaysia in advocating for derogations and exceptions on the basis of, e.g. public morality and national security

C. National Laws Affecting Human Rights

Vietnam suffers from an 'implementation gap' in relation to human rights. Briefly described, this refers to states ratifying human rights treaties, establishing complying laws, yet failing to respect rights in practice. As noted, Vietnam has already ratified the majority of human rights treaties and inscribed such rights into its constitution and legislation, yet the government struggles to practice what the law preaches due, one must assume, to insufficient political will.

²¹ The ASEAN Human Rights Declaration (2012) asserts:

respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance; recognising freedom of peaceful assembly, the right to work, free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed, the right to an adequate standard of living for himself or herself and his or her family.

See, ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD, Jakarta: The ASEAN Secretariat, ASEAN, 2013, available at [http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20\(7.%20Jul\)%20-%20ASEAN%20Human%20Rights%20Declaration%20\(AHRD\)%20and%20Its%20Translation.pdf](http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20(7.%20Jul)%20-%20ASEAN%20Human%20Rights%20Declaration%20(AHRD)%20and%20Its%20Translation.pdf), accessed on 18 December 2017.

The Constitution (2013)

Effective in 2013, Vietnam amended its constitution to include a separate chapter on human rights and the basic rights and duties of citizens.²² Notwithstanding, Chapter II, Art 14 permits human rights to be restricted on grounds of national defence, national security, social order and security, social morality, and community well-being.

The Penal Code and the Revised Penal Code

Moreover, as human rights NGOs have pointed out, the government also takes advantage of “vaguely worded and loosely interpreted provisions” in the Penal Code to crack down on dissent, e.g. s.79 (“activities aiming to overthrow the people’s administration”), s.87 (“undermining national unity policy”), s.88 (“conducting propaganda against the State of the Socialist Republic of Vietnam”), s.89 (“disrupting security”), s.91 (“fleeing abroad or staying abroad to oppose the people’s government”), s.245 (“causing public disorder”), and s.258 (“abusing rights to democracy and freedom to infringe upon the interests of the State and the legitimate rights and interests of organizations and citizens”).²³

Legislative reform

Following adoption of the 2013 Constitution, the NA embarked on a process of legislative reform. Laws on demonstrations (freedom of assembly), access to information, the criminal and criminal procedure codes, and others, were to have been amended by the end of 2015. However, the NA delayed implementation of several laws²⁴ passed in 2015 affecting the rights of citizens (including the new Penal Code, the Criminal Procedure Code, and a law on custody and temporary detention) due to flaws in the amended Penal Code.

Chapter II of the 2013 Constitution provides for the recognition of human rights and consequent state obligations in law. Progress can also be seen in the increasing acceptance of international norms and in a number of revised and new laws including the Penal Code, the Criminal Procedure Code, the Civil Code, the Civil Procedure Code, the Labour Law, and the Law on Access to Information. These laws were formulated to realise the goals of Art 25 of the 2013 Constitution, that “citizens have freedom of expression, freedom of press, access to information, freedom of assembly,

²² 2013 Constitution of the Socialist Republic of Vietnam, Chapter II.

²³ See, ‘World report 2016’ Human Rights Watch, available at https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf, at 638-641; and ‘Vietnam: Widespread ‘national security’ arrests’ Human Rights Watch, 19 November 2015, available at <https://www.hrw.org/news/2015/11/19/vietnam-widespread-national-security-arrests>, both accessed on 18 January 2017. Many activists and bloggers such as Nguyen Huu Vinh (also known as Anh Ba Sam) and Nguyễn Đình Ngọc (also known as Nguyen Ngoc Gia) have been in custody since 2014. Likewise, rights activists, Pham Minh Vu, Do Nam Trung, and Le Thi Minh Thy were arrested in 2015 and are now on trial for contravening s.258 of the Penal Code.

²⁴ For example, the Criminal Procedure Code, the Law on the Organization of Criminal Investigation Agencies, the Law on the Implementation of Custody and Temporary Detention, and the amended Penal Code itself.

freedom of association, and freedom of demonstration. The realisation of these rights is provided by law.”

Access to information: A key human right, the Law on Access to Information was passed by the NA in 2016.²⁵ Enabling citizens to access information held by the public sector, this law facilitates participation by citizens in the monitoring of government activities, thus, increasing transparency.

Freedom of religion: Previously covered by Parliamentary Ordinance No 21 of 2004, a new law on religion was passed on 18 November 2016. Section 24 states that: “citizens are free to pursue, or not to pursue, religions, and all religions are equal before law.” However, while government affiliated churches may hold services, other groups must, e.g. register their organisations and activities, acquire permits for building houses of worship, and inform authorities about the ordination of clergy, all of which led the Special Rapporteur on Religion or Belief to say in 2015 that “legal provisions [...] tend to give broad leeway to regulate, limit, restrict or forbid the exercise of freedom of religion or belief.”²⁶ Therefore, although the 2016 law was designed to improve on Ordinance No 21, it has to be said that it still restricts religious expression in organisations through complicated registration and operating procedures (ss.12, 16, 17, and Chapter IV).

Freedom of association: A law on freedom of association was drafted in 2016 but was returned to government for quality improvement and to make it better reflect the goal of freedom of association.²⁷ A law on public demonstrations was also postponed for further development. Despite being recognised in the 2013 Constitution, these laws have been pending for over 10 years. For example, in 2016, the public objected to a draft law imposing strict controls over association by the addition of a registration process and other clauses on the meaning of freedom of association; the proposed legislation was therefore postponed.²⁸

²⁵ See, Socialist Government of Vietnam, Government Portal, available at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=184568, accessed on 17 October 2017.

²⁶ See, ‘Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt’ Human Rights Council, 30 January 2015, A/HRC/28/66/Add.2, available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>; and ‘World report 2016’ Human Rights Watch, available at https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf, at 639, both accessed on 18 January 2018.

²⁷ See, ‘QH lùi thông qua luật về Hội’ Vietnam Net, 18 November 2016, available at <http://vietnamnet.vn/vn/thoi-su/quoc-hoi/qh-lui-thong-qua-luat-ve-hoi-340581.html>, accessed on 30 May 2017.

²⁸ See, ‘Bộ trưởng Nội vụ xin lùi thông qua Luật về hội’ Vietnam Net, 25 October 2016, available at <http://vnexpress.net/tin-tuc/thoi-su/bo-truong-noi-vu-xin-lui-thong-qua-luat-ve-hoi-3489204.html>; and ‘Kiến nghị hoãn thông qua Luật về Hội’ Wake It Up, available at <http://wakeitup.net/hoan-luat-hoi>, both accessed on 17 October 2017.

The Penal Code and Penal Procedure Code were amended in 2015, taking effect in 2016.²⁹ The 2015 Penal Code replaced some provisions limiting freedoms and democratic rights. New provisions relate to the infringement of freedom of expression and press activity, access to information, and the right of citizens to demonstrate (s.167).³⁰ However, the state still has the ability to prevent demonstrations under domestic law, because freedoms of association and demonstration as constitutional rights have not yet been institutionalised into domestic law.

The Constitution supports rights to associate and demonstrate but limits their exercise by, e.g. preventing workers from organising or joining independent unions of their choice. Whilst workers may choose whether to join a union and at which level (local, provincial, or national), the law requires every union to be established under the legal purview and control of the country's only trade union confederation, the VGCL. The amended Trade Union Law (2013) stipulates that trade unions have the right and responsibility to organise and lead strikes whilst also establishing certain substantive and procedural restrictions on strikes. In contravention of international standards, the law also forbids strikes over 'rights-based' disputes. This includes strikes arising out of economic and social policy measures that are not part of a collective negotiation process, since such strikes are regarded as falling outside the law's definition of protected 'interest-based' strikes.³¹ The proposal to amend the 2013 Labour Code was made in 2016 and underscores the CPV's instruction that it should align with ILO standards ensuring the establishment and operation of employees' organisations in work places.³²

²⁹ For example, the amended law includes s.109 on "activities aimed at overthrowing the people's administration," s.117 (replacing s.80(1)(c)) which defines spying as "collecting, supplying information and other materials against the Socialist Republic of Vietnam," and s.118 which proscribes security disorder. See more at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=183216, accessed on 17 October 2017.

³⁰ Under the 1993 Penal Code, s.88 criminalises the conduct of propaganda against the Socialist Republic of Vietnam and s.258 criminalises the abuse of democratic freedoms that infringe upon the interests of the state. Section 258 reads:

- (1) Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and three years;
- (2) Serious offences shall be subject to a prison term of between two and seven years.

³¹ In October 2015, the government issued Decree 88 regarding administrative sanctions for interference in trade union activities. It imposed fines of between VND3 and 10 million (US\$135-450) for discrimination against employees establishing, joining a trade union, or carrying out trade union activities, and for any actions disadvantaging the operations of a trade union.

³² Resolution of CPV Central Committee, November 2016. See, 'Rừng bị phá, 80% cử nhân chạy Uber, Grab thì tăng trưởng đạt ở đâu?' Lao Dong, available at <http://laodong.com.vn/chinh-tri/toan-van-nghi-quyet-so-06nqtw-hoi-ngghi-trung-uong-4-khoa-xii-608410.bld>, accessed on 17 October 2017.

Part 2: Outstanding Human Rights Issues

The expectations and assumptions that govern the notion of states as system-like units capable of acting symmetrically and reciprocally does not adequately reflect the diversity of states with respect to their capacity to achieve the consensus necessary to realise human rights. This is not an excuse for human rights violations, but a challenge to the assumptions underpinning the international system. Despite progress, it has to be said, frequent human rights violations still cloud the picture in Vietnam.

A. Corruption

Ranked 113th out of 176 in Transparency International's Corruption Perception Index, the issue of corruption looms particularly large in Vietnam. Indeed, General Secretary Nguyen Phu Trong was elected on an anti-corruption platform. Considered one of the cleaner politicians in the country, it is generally agreed he makes a fitting figurehead for the drive against corruption. Although not a common occurrence, corruption cases are occasionally reported in the media, e.g. the Vinalines case in 2014 during which head of company, Duong Chi Dung, was given the death penalty for mismanagement of state assets.³³ In another case, the former Minister of Commerce and Industry, Nguyen Huy Hoang, was sacked and stripped of all official titles for poor management of the oil sector³⁴ and may possibly face criminal charges.³⁵ In a related case, CEO of state oil company (PVC), Trinh Xuan Thanh (who was appointed by Vu Huy Hoang), was again deemed to have mismanaged state resources.³⁶ Although Thanh fled to Germany, he was abducted from Berlin and returned to Vietnam for investigation.³⁷

Corruption causing economic loss is not necessarily a human rights issue; the fact offenders may be sentenced to death is. It remains to be seen whether the country has the political will to really fight corruption, bearing in mind the power struggles plaguing the party. Further, Vietnam must find a way to deal with corruption without violating human rights. Although the law provides for judicial independence and lay assessors, in practice, the judiciary lacks strength of will and is vulnerable to influence by outside elements such as senior government officials and CPV leadership.

³³ See, 'Đương Chí Dũng bị y án tử hình, bồi thường 110 tỷ đồng' VN Express, 7 May 2014, available at <http://vnexpress.net/tin-tuc/phap-luat/duong-chi-dung-bi-y-an-tu-hinh-boi-thuong-110-ty-dong-2987389.html>, accessed on 17 October 2017.

³⁴ See, 'Ông Vũ Huy Hoàng bị xóa tư cách nguyên Bộ trưởng Công Thương' VN Express, 23 January 2017, available at <https://vnexpress.net/tin-tuc/thoi-su/ong-vu-huy-hoang-bi-xoa-tu-cach-nguyen-bo-truong-cong-thuong-3532753.html>, accessed on 18 January 2018.

³⁵ See, General Secretary Nguyen Phu Trong's statement on 6 December 2016: 'Tổng Bí thư: Ông Vũ Huy Hoàng nếu có sai phạm hình sự sẽ xử lý' Người Lao Động, 8 December 2016, available at <http://nld.com.vn/thoi-su-trong-nuoc/tong-bi-thu-ong-vu-huy-hoang-neu-co-sai-pham-hinh-su-se-xu-ly-20161206121936118.htm>, accessed on 17 December 2017.

³⁶ See, 'Bắt Trịnh Xuân Thanh 'phải có thời gian' BBC, 6 December 2016, available at <http://www.bbc.com/vietnamese/vietnam-38227142>, accessed on 17 October 2017.

³⁷ See the statement by a German Federal Foreign Office spokesperson at http://www.vietnam.diplo.de/contentblob/5129516/Daten/7838506/170922_Statement_TXT_229_EN.pdf, accessed on 17 December 2017.

B. Businesses, the Environment, and Human Rights

Another notable case in 2016 involved the death of huge numbers of fish off the coasts of Nghệ An, Hà Tĩnh, Quảng Bình, Quảng Trị, and Thừa Thiên-Huế provinces, affecting the livelihoods of 270,000 people. The disaster was alleged to have been caused by Formosa-Taiwan Plastics Group which was said to have discharged toxic waste into the water.³⁸ When the company publicly acknowledged responsibility and announced it would provide compensation of US\$500 million, the government investigated and mandated a remedy for victims of the pollution. However, when some rejected the proposed compensation, opting instead to protest, the government proved reluctant to respect their rights in this regard.³⁹ Indeed, several were convicted of abusing democratic freedoms and threatening state interests under s.258 of the Penal Code.⁴⁰ Similarly, citizens claiming remedies in other cases have also had their freedom of expression constrained, purportedly for being harmful to public order.⁴¹

C. Right to a Fair Trial

The Constitution states that all persons are equal before the law, that defendants are innocent until proven guilty, and that everyone has the right to a defence lawyer and a speedy public trial. Further, under Art 31, the Constitution guarantees the “adversarial principle in trials,” but in practice, courts have not yet introduced such procedures into the judicial system. The government is, however, in the process of amending the Penal

³⁸ ‘Formosa làm cá chết, bồi thường 500 triệu USD’ Vietnam Net, 30 June 2016, available at <http://vietnamnet.vn/vn/thoi-su/chinh-tri/cong-bo-nguyen-nhan-ca-chet-313134.html>, accessed on 17 October 2017.

³⁹ See, ‘Viet Nam 2016/2017’ Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>; and ‘Viet Nam: Crackdown on human rights amidst Formosa related activism’ Amnesty International, 8 November 2016, available at <https://www.amnesty.org/en/documents/asa41/5104/2016/en/>, both accessed on 17 October 2017.

⁴⁰ See, ‘Nghị phạm chủ mưu vụ bao vây trụ sở huyện Lộc Hà bị truy nã’ VN Express, 12 May 2017, available at <http://vnexpress.net/tin-tuc/phap-luat/ngghi-pham-chu-muu-vu-bao-vay-tru-so-huyen-loc-ha-bi-truy-na-3583937.html>, accessed on 17 October 2017. Also, see the cases reported in ‘Vietnam’ US Department of State, 3 March 2017, available at <https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265386.htm>, accessed on 17 October 2017. From April to July, police officers and plainclothes security forces in multiple locations around the country reportedly assaulted individuals attending demonstrations related to an environmental disaster that had caused mass fish deaths along the central coastline. These demonstrations coincided with the period preceding NA elections and a visit to the country by a foreign leader. Likewise, on 1 and 8 May, police in Ho Chi Minh City reportedly detained and assaulted dozens of activists attending or attempting to attend environmental demonstrations.

⁴¹ Land activist, Cấn Thị Thêu, was convicted under s.245 for “causing public disorder” by a court in Ha Noi and was sentenced to 20 months in prison. She was accused of inciting protests against land reclamation in Duong Noi, Ha Dong district, Ha Noi, by posting photographs online. See, ‘Cấn Thị Thêu bị bắt tạm giam về hành vi gây rối trật tự công cộng’ 11 June 2016, available at <http://anninhthudo.vn/chinh-tri-xa-hoi/can-thi-theu-bi-bat-tam-giam-ve-hanh-vi-gay-roi-trat-tu-cong-cong/684295.antd>, accessed on 17 October 2017.

Code to implement these principles with the NA passing a new Criminal Procedure Code in November 2015 (although its implementation has been delayed until 2016).⁴²

D. Labour Rights

The government now proscribes workers' rights to form and join unions outside of the VGCL framework. As such, the amended Labour Code (2013) allows for labour strikes but organisation of such strikes requires compliance with a complicated regulatory procedure which had the effect of making many strikes illegal in 2016. However, the government refrained from taking action against the strikers, and in some cases, actively mediated agreements in their favour. Provision for collective bargaining between workers and employers is also included in the Labour Code. This law allows trade unions and employer organisations to facilitate and support collective bargaining, requiring companies to establish a mechanism to enable management and workforce to exchange information and consult on subjects affecting working conditions. For example, one regulation requires workplace dialogues to occur every three months. Some initial success in collective bargaining has been recognised.⁴³ Nevertheless, the right to strike is still limited because under the current Labour Code, attempted dispute resolution via mediation and reconciliation must occur before the right to strike may be recognised.⁴⁴

⁴² Some pending cases include the arrest of Nguyen Van Dai in 2015 on the charge of "conducting propaganda against the Socialist State of Vietnam" (under s.88 of the Penal Code). On 30 March, at Ho Chi Minh City People's Court, the following were charged under s.88 of the Penal Code for "spreading anti-state propaganda:" (1) Blogger, Nguyen Dinh Ngoc (also known as Nguyen Ngoc Gia), was sentenced to 4 years in prison; and (2) activists, Ngo Thi Minh Uoc, Nguyen Thi Tri, and Nguyen Thi Be Hai were sentenced to prison terms of between 4 years and 3 months to 3 years. Likewise, in October, well-known activist, Nguyễn Ngọc Như Quỳnh, known as blogger, Mẹ Năm (or Mother Mushroom), was arrested under s.88 for blog postings criticising the government (see, 'Viet Nam: 2016/2017' Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/#endnote-4>, accessed on 18 October 2017). Section 88 carries a 3-20 year prison sentence. Similarly, Nguyen Huu Vinh (also known as Anh Ba Sam) and Nguyen Thi Minh Thuy were sentenced to 5 and 3 years' imprisonment under s.258.

⁴³ On 19 June 2016, the Hai Phong Economic Zone Trade Union and five Korean manufacturing enterprises based in Trang Due Economic Zone signed the country's first multi-enterprise collective bargaining agreement negotiated between a group of foreign-investor enterprises and trade unions to decide basic work conditions, including recognition of union rights. The agreement will likely benefit nearly 2,500 workers through improved recruitment and female worker policies, increased base wages, better bonuses, allowances, leave, and rest time, as well as conditions for ensuring trade union operations in the enterprises. See, 'Công đoàn Khu Kinh tế Hải Phòng: Lần đầu tiên thương lượng ký TULĐTT nhóm DN FDI' Lao Dong, 27 May 2016, available at <http://laodong.com.vn/cong-don/cong-don-khu-kinh-te-hai-phong-lan-dau-tien-thuong-luong-ky-tuldt-nhom-dn-fdi-556250.bld>, accessed on 17 October 2017.

⁴⁴ The VGCL reported 177 strikes from January through July, approximately the same number as 2015. Of those strikes, 69% were in foreign direct-investment companies (mainly Korean, Taiwanese, and Japanese companies and in three labour intensive sectors including the garment, footwear, and electronic industries) See, 'Vietnam' US Department of State, available at <https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265386.htm>, accessed on 17 October 2017.

Part 3: Conclusion

Following the 2013 Constitution, legal reform is on-going in Vietnam with laws on fundamental freedoms and human rights in development. However, tensions continue to rage around the widening of political space, and the freedoms of demonstration, association, and assembly. Some major laws have already been passed favouring human rights, notably, the Penal Code and the Law on Access to Information. In addition, whilst still-born, the TPP negotiation process, in attempting to link international relations to economic goals, pushed the CPV to make positive changes to the Labour Code such as accepting the public's right to discuss unionisation of industries outside the VGCL system.

Under the concept of 'socialist democracy,' Vietnamese citizens participate in the law-making process through dialogue and debate. It is hoped the state will listen and respond to society's desire to include human rights in its legislation instead of limiting such rights. However, despite liberalisation and increasing levels of public participation, Vietnam is by no means a democracy. Yet, even this authoritarian government has had to respond to emerging issues, as exemplified by the corruption and environmental cases cited above. Moreover, claims for human rights have expanded to include wider casts of actors than those in official positions. However, it seems the CPV is not yet ready for a complete paradigm shift away from the state's founding Marxist-Leninist political philosophy. Nevertheless, the party appears swayed by the need for stronger legal reforms and greater community participation. As such, the punishment of corrupt public officials surely signals a more transparent government, arguably strengthening public trust in its mechanisms which could prove fruitful for the future of human rights in Vietnam.

Appendix



Appendix

ASEAN HUMAN RIGHTS DECLARATION

WE, the Heads of State/Government of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as “ASEAN”), namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, on the occasion of the 21st ASEAN Summit in Phnom Penh, Cambodia.

REAFFIRMING our adherence to the purposes and principles of ASEAN as enshrined in the ASEAN Charter, in particular the respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance;

REAFFIRMING FURTHER our commitment to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties;

REAFFIRMING ALSO the importance of ASEAN’s efforts in promoting human rights, including the Declaration of the Advancement of Women in the ASEAN Region and the Declaration on the Elimination of Violence against Women in the ASEAN Region;

CONVINCED that this Declaration will help establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process;

HEREBY DECLARE AS FOLLOWS:

GENERAL PRINCIPLES

1. All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.
2. Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.
3. Every person has the right of recognition everywhere as a person before the law. Every person is equal before the law. Every person is entitled without discrimination to equal protection of the law.
4. The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.
5. Every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law.
6. The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms.
7. All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.

8. The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.
9. In the realisation of the human rights and freedoms contained in this Declaration, the principles of impartiality, objectivity, non-selectivity, non-discrimination, nonconfrontation and avoidance of double standards and politicisation, should always be upheld. The process of such realisation shall take into account peoples' participation, inclusivity and the need for accountability.
10. ASEAN Member States affirm all the civil and political rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following rights and fundamental freedoms:
11. Every person has an inherent right to life which shall be protected by law. No person shall be deprived of life save in accordance with law.
12. Every person has the right to personal liberty and security. No person shall be subject to arbitrary arrest, search, detention, abduction or any other form of deprivation of liberty.
13. No person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons, including for the purpose of trafficking in human organs.
14. No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.
15. Every person has the right to freedom of movement and residence within the borders of each State. Every person has the right to leave any country including his or her own, and to return to his or her country.
16. Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.

17. Every person has the right to own, use, dispose of and give that person's lawfully acquired possessions alone or in association with others. No person shall be arbitrarily deprived of such property.
18. Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.
19. The family as the natural and fundamental unit of society is entitled to protection by society and each ASEAN Member State. Men and women of full age have the right to marry on the basis of their free and full consent, to found a family and to dissolve a marriage, as prescribed by law.
20. (1) Every person charged with a criminal offence shall be presumed innocent until proved guilty according to law in a fair and public trial, by a competent, independent and impartial tribunal, at which the accused is guaranteed the right to defence.
(2) No person shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.
(3) No person shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each ASEAN Member State.
21. Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honour and reputation. Every person has the right to the protection of the law against such interference or attacks.
22. Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.
23. Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.

24. Every person has the right to freedom of peaceful assembly.
25. (1) Every person who is a citizen of his or her country has the right to participate in the government of his or her country, either directly or indirectly through democratically elected representatives, in accordance with national law.
- (2) Every citizen has the right to vote in periodic and genuine elections, which should be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

26. ASEAN Member States affirm all the economic, social and cultural rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following:
- (1) Every person has the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed.
- (2) Every person has the right to form trade unions and join the trade union of his or her choice for the protection of his or her interests, in accordance with national laws and regulations.
- (3) No child or any young person shall be subjected to economic and social exploitation. Those who employ children and young people in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education should be punished by law. ASEAN Member States should also set age limits below which the paid employment of child labour should be prohibited and punished by law.
28. Every person has the right to an adequate standard of living for himself or herself and his or her family including:
- (a) The right to adequate and affordable food, freedom from hunger and access to safe and nutritious food;
- (b) The right to clothing;
- (c) The right to adequate and affordable housing;
- (d) The right to medical care and necessary social services;
- (e) The right to safe drinking water and sanitation;
- (f) The right to a safe, clean and sustainable environment.

29. (1) Every person has the right to the enjoyment of the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to medical facilities.
- (2) The ASEAN Member States shall create a positive environment in overcoming stigma, silence, denial and discrimination in the prevention, treatment, care and support of people suffering from communicable diseases, including HIV/AIDS.
30. (1) Every person shall have the right to social security, including social insurance where available, which assists him or her to secure the means for a dignified and decent existence.
- (2) Special protection should be accorded to mothers during a reasonable period as determined by national laws and regulations before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits.
- (3) Motherhood and childhood are entitled to special care and assistance. Every child, whether born in or out of wedlock, shall enjoy the same social protection.
31. (1) Every person has the right to education.
- (2) Primary education shall be compulsory and made available free to all. Secondary education in its different forms shall be available and accessible to all through every appropriate means. Technical and vocational education shall be made generally available. Higher education shall be equally accessible to all on the basis of merit.
- (3) Education shall be directed to the full development of the human personality and the sense of his or her dignity. Education shall strengthen the respect for human rights and fundamental freedoms in ASEAN Member States. Furthermore, education shall enable all persons to participate effectively in their respective societies, promote understanding, tolerance and friendship among all nations, racial and religious groups, and enhance the activities of ASEAN for the maintenance of peace.
32. Every person has the right, individually or in association with others, to freely take part in cultural life, to enjoy the arts and the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or appropriate artistic production of which one is the author.

33. ASEAN Member States should take steps, individually and through regional and international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of economic, social and cultural rights recognised in this Declaration.
34. ASEAN Member States may determine the extent to which they would guarantee the economic and social rights found in this Declaration to non-nationals, with due regard to human rights and the organisation and resources of their respective national economies.

RIGHT TO DEVELOPMENT

35. The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognised human rights.
36. ASEAN Member States should adopt meaningful people oriented and gender responsive development programmes aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.
37. ASEAN Member States recognise that the implementation of the right to development requires effective development policies at the national level as well as equitable economic relations, international cooperation and a favourable international economic environment. ASEAN Member States should mainstream the multidimensional aspects of the right to development into the relevant areas of ASEAN community building and beyond, and shall work with the international community to promote equitable and sustainable development, fair trade practices and effective international cooperation.

RIGHT TO PEACE

38. Every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realised. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.

COOPERATION IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

39. ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organisations, in accordance with the ASEAN Charter.
40. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principles of ASEAN, or at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties.

Adopted by the Heads of State/Government of ASEAN Member States at Phnom Penh, Cambodia, this Eighteenth Day of November in the Year Two Thousand and Twelve, in one single original copy in the English Language.

About SHAPE-SEA

Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA) was launched in February 2015 in Bangkok, Thailand. It is a collaboration between the ASEAN University Network-Human Rights Education (AUN-HRE) which has thirty member-universities and the Southeast Asian Human Rights Studies Network (SEAHRN) which has twenty-two members.

The overall aim of SHAPE-SEA is to contribute to the improvement of the human rights and peace situation in ASEAN/Southeast Asia through applied research and education. The core themes of the Programme are: (1) ASEAN and Human Rights, (2) Business Accountability, (3) Peace and Security, (4) Governance and Justice, and (5) Academic Freedom. Its main areas of work are Research, Education, Capacity-Building and Outreach, and Publications and Public Relations.

The Programme focuses on supporting research on innovative and critical human rights and peace projects and on exploring ways this knowledge can be made accessible to university students throughout Southeast Asia/ASEAN. As such it is directly involved and engaged with universities in the Region to play a more significant role in the sustainability of human rights protection by contributing research, increasing knowledge on human rights and peace, and by incorporating these issues into university education. The Programme also creates spaces for knowledge-building and dissemination through the production and publication of research amongst the academic community and other human rights and peace stakeholders.

SHAPE-SEA Secretariat is hosted by the Institute of Human Rights and Peace Studies (IHRP) at Mahidol University. The programme is supported by the Swedish International Development Cooperation Agency (SIDA), and the Norwegian Centre for Human Rights (NCHR).

This Outlook is the second in a series where we shall examine the state of human rights in Southeast Asia. The chapters are a combination of hard data as well as the impressions of writers, all of whom are human rights academics or activists in their respective countries. Each book shall be a worthy source of information, but taken as a whole, it is hoped the series will provide an invaluable charting of the human rights journey in this region.



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