

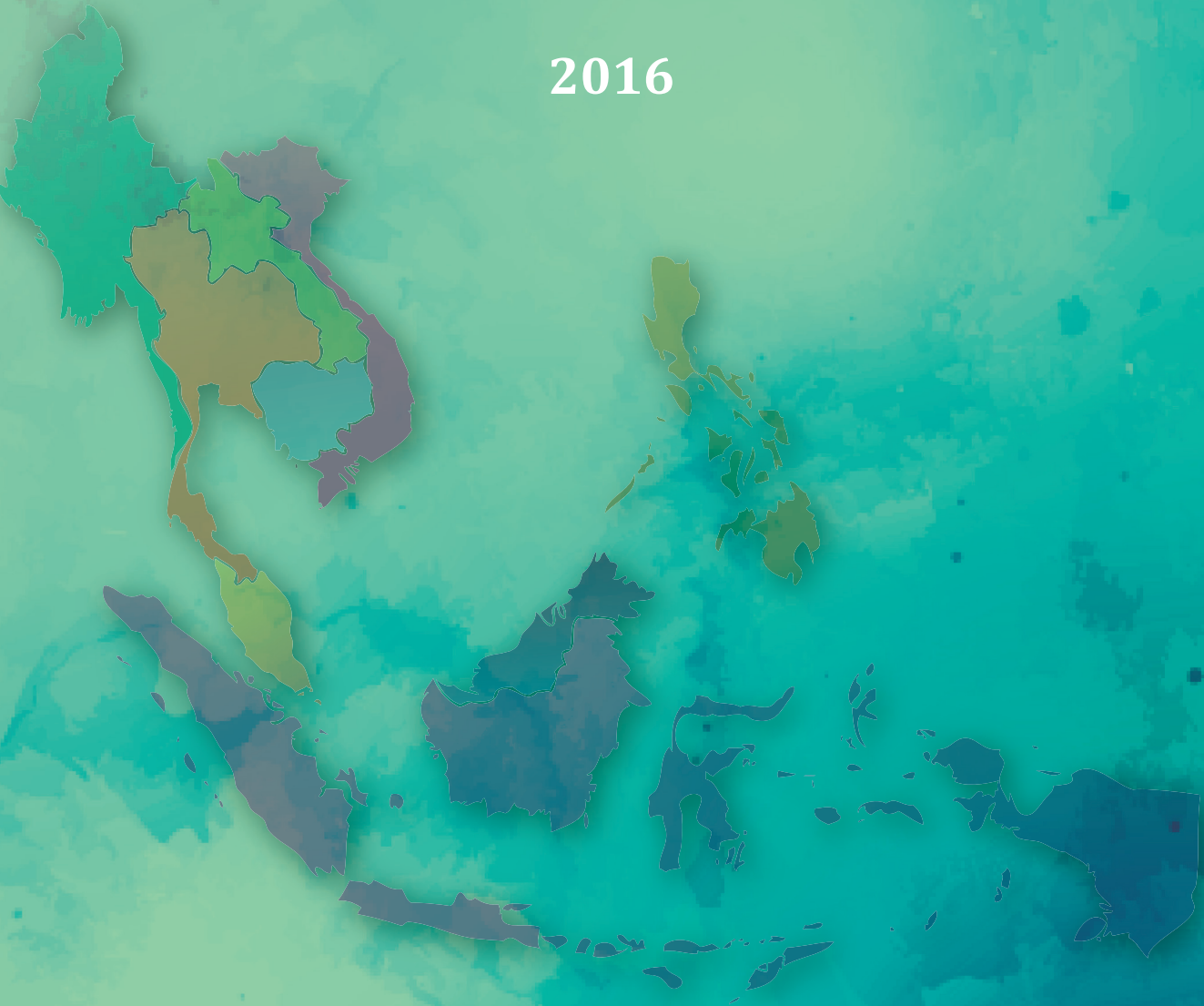


SHAPE
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Human Rights Outlook in Southeast Asia

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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SHAPE-SEA Secretariat

Institute of Human Rights and Peace Studies (IHRP)

Panyaphipat Building | Mahidol University

999 Phuttamonthon 4 Rd., Salaya, Nakhon Pathom 73170, Thailand

Tel: (66) 2-441-0813-5

Fax: (66) 2-441-0872-3

Website: www.shapesea.com

Email: shape.seasec@gmail.com

Facebook: <https://www.facebook.com/groups/shapesea>

Twitter: https://twitter.com/SHAPE_SEA

Chief Editor: Azmi Sharom

Sub-editor/additional research: Magdalen Spooner

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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

Chair of SHAPE SEA

Institute of Human Rights and Peace Studies (IHRP), Mahidol University
Nakornpathom, Thailand
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,

* Chairperson, SHAPE-SEA Publications Committee.

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.