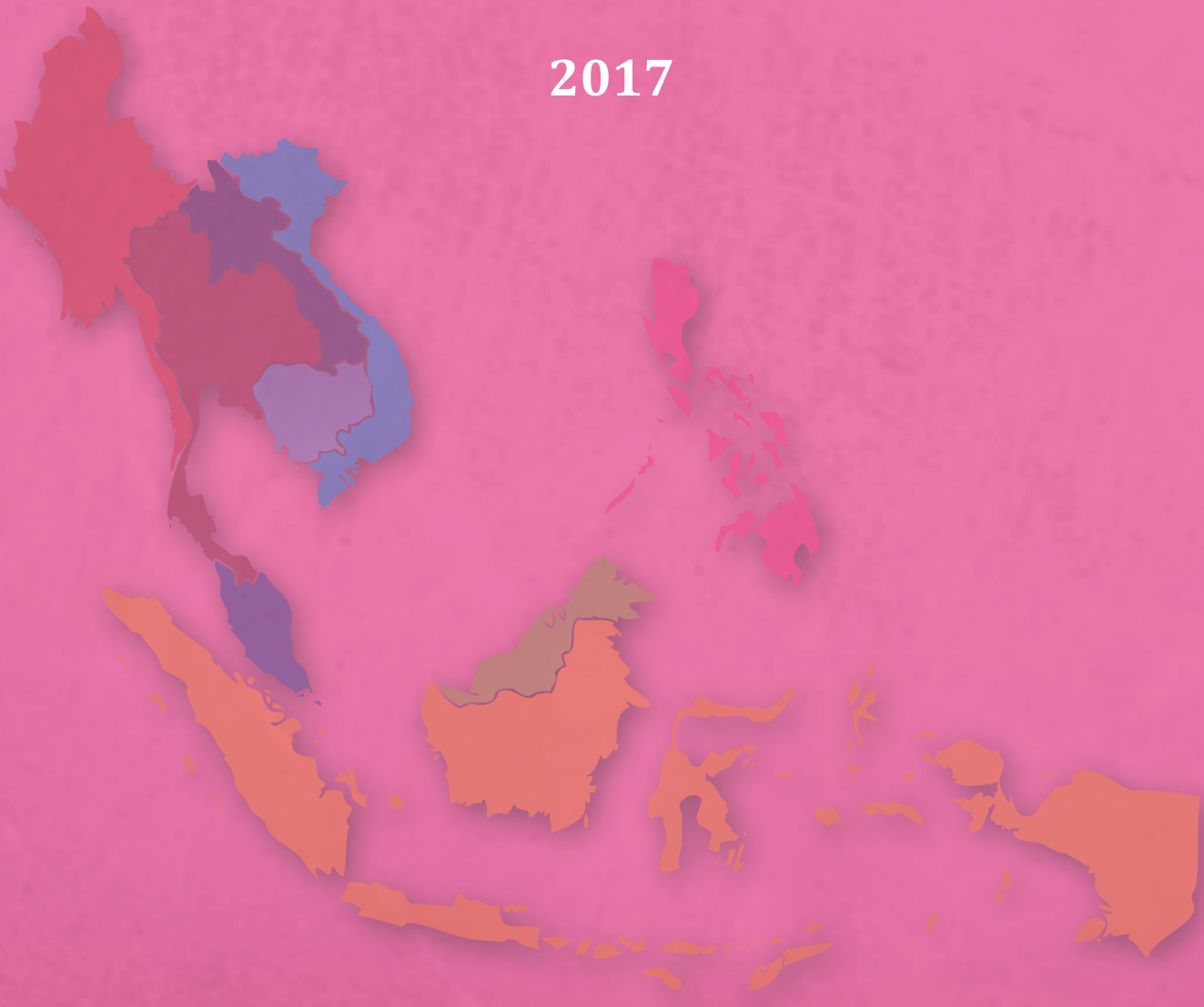




Human Rights Outlook in Southeast Asia

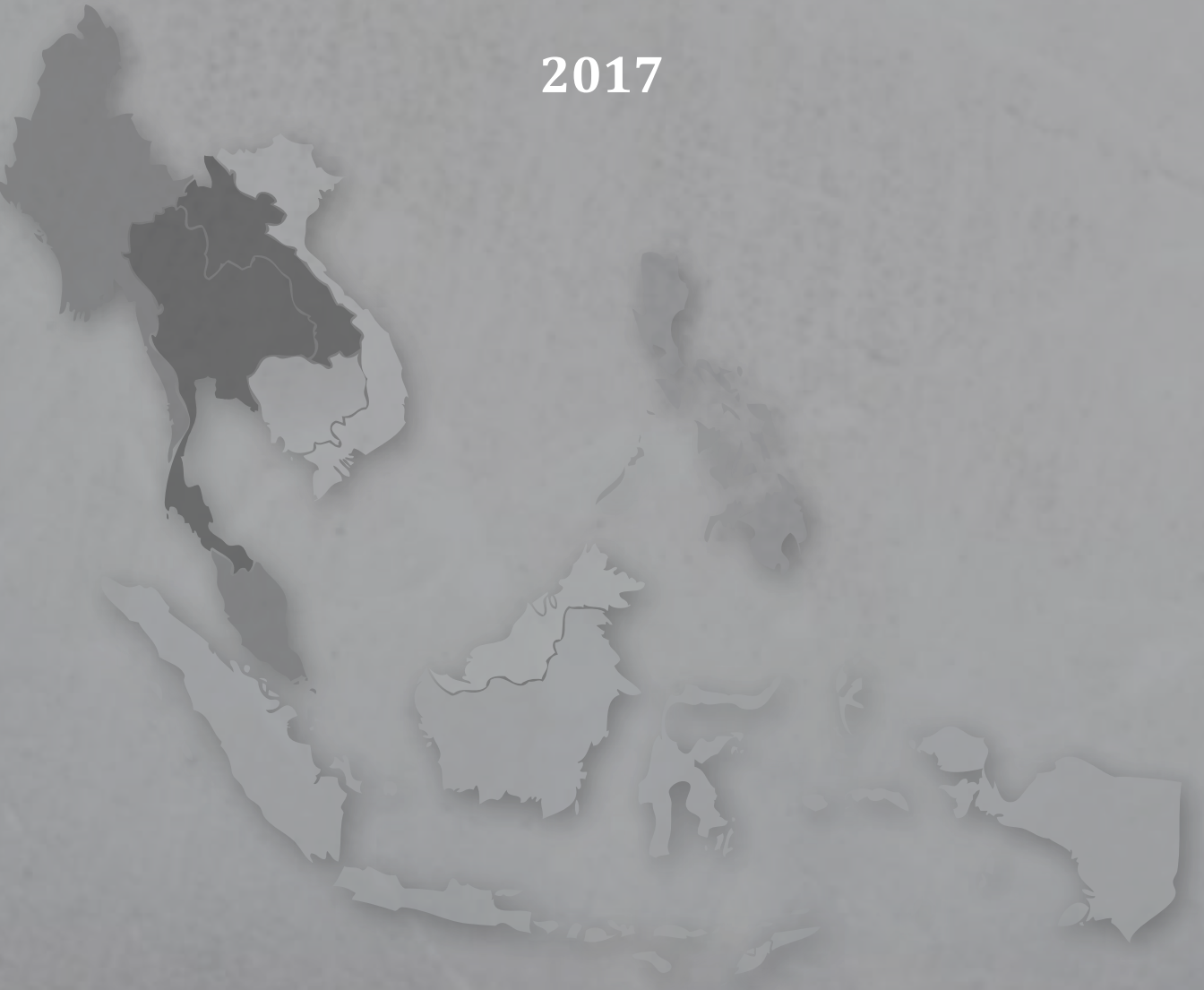
2017





Human Rights Outlook in Southeast Asia

2017



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Foreword

On 25 August 2017, just two days after the Advisory Commission on Rakhine State chaired by former UN Secretary General, Kofi Annan, issued its final report, ‘Towards a Peaceful, Fair, and Prosperous Future for the People of Rakhine,’ attacks were waged by a “Rohingya insurgent group” against Myanmar’s border guard. Retaliation in the form of a military crackdown as well as vigilante responses were violent, driving almost 700,000 Rohingyas to flee Myanmar and seek refuge in Bangladesh. As a result, more than a million Rohingyas now find themselves packed into Cox’s Bazar and its environs. Indeed, it is considered to be the fastest growing refugee movement in the world.

At the same time, the war on drugs is intensifying in the Philippines under elected President, Rodrigo Duterte, as part of his policy to “clean up the Philippines and root out ... crime and drugs.” Thousands of people have been killed including high school student, Kian Loyd Delos Santos, and two other teenagers, incidents which sparked large protests against the President. Despite the public outcry, Duterte remains unrepentant, declaring “it will be a policy until the dying days of my presidency or my life.”

While UN agencies and the international community condemned the above, ASEAN leaders have remained steadfastly silent with the exception of the Malaysian Prime Minister and his government who called on ASEAN to intervene as the plight of the Rohingya was no longer an internal affair of Myanmar but a regional issue requiring a regional response. Despite this, no concrete action to stop the violence or alleviate the plight of the refugees has been taken by ASEAN thus far. Increasing human rights violations and the retreat of liberal democracy in Southeast Asia is likely to continue without regional reaction from existing human rights mechanisms in ASEAN.

Outlook 2017, which, for the first time after three years of publications, now includes a complete picture of all 11 countries in the region, highlights the situation outlined above. The report continues to remind us that human rights violations are ongoing, insecurity is omnipresent, and democratic institutions are weakening, all of which leaves advocates frustrated. It is these shared frustrations that should mobilise and unite us to challenge those in power to address the situation. Only then will Southeast Asia be a “peaceful, fair, and prosperous society.”



Sriprapha Petcharamesree, PhD

Chair of SHAPE SEA

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

Nakornpathom, Thailand

September 2018

Introduction

Azmi Sharom*

This is the third volume of the *Human Rights Outlook in Southeast Asia* series and we are very pleased to announce that for the first time, it includes all eleven nations in the region. This series, or as we fondly call it, the Outlook, is a product of the Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia programme (SHAPE-SEA) – a collaboration between the ASEAN Universities Network–Human Rights Education (AUN-HRE) and the Southeast Asian Human Rights Studies Network (SEHRN), with support from the Swedish International Development Cooperation Agency (SIDA).

SHAPE-SEA has many objectives, one of which is to disseminate human rights knowledge through publications. The Outlook is one such effort. With it, we attempt to achieve two effects. First, to introduce an avenue through which to examine and analyse the developments (or regressions) of human rights in the individual countries of Southeast Asia. This was achieved by asking experts to prepare chapters, not simply by writing factual reports which one could glean from any number of sources, but also by providing their own personal insights and viewpoints. This is why, as far as possible, our experts actually hail from or have lived in the countries they write about.

The second objective is to produce a body of work from a temporal perspective. As such, all chapters follow a set template and each volume covers a different time period: 2014-2015, 2016, and now 2017. This means the authors, although given freedom to explore areas they consider to be of the greatest concern, were asked to do so within certain boundaries, thus allowing easy comparison from year to year, which, when taken as a whole (a 2018 Outlook is already in the works), will constitute a five-year analysis of human rights in Southeast Asia. This does not mean, however, that each Outlook is not a good source of reference in and of itself!

In this volume, we see the problems normally associated with human rights in Southeast Asia still persisting throughout the region, the most common being the suppression of civil and political rights. In particular, the use of colonial age laws, such as those outlawing sedition, still exist in Malaysia and Singapore, along with a slew of home-grown laws in all countries which together pose a serious threat to the freedoms of expression, assembly, and association.

There are obvious similarities in all the countries studied, but there are also some key differences. Some of these result from a nation's unique situation. For example,

* Chairperson, SHAPE-SEA Publications Committee.

Timor-Leste is a young country and its birth was a painful one, marred as it was by serious conflict and loss of life. As such, the Commission for Reception, Truth, and Reconciliation of East Timor (CAVR) was established to uncover human rights violations during the period of conflict (1974-1999) between the Timorese and the Indonesian government. They have done so and recommendations have been made. Yet progress to achieve transitional justice for survivors of the conflict has been slow, despite creation of the National Centre – From Memory to Hope which was convened to facilitate CAVR's recommendations. It is hardly surprising that activities such as the building of memorials have failed to satisfy survivors more concerned with justice and reparations. This is leading to a loss of faith in the legal system which may very well result in a trust deficit potentially causing future problems.

Elsewhere, issues found in the first two Outlooks unfortunately still endure. In Thailand, the military continues to rule and there seems to be no end in sight despite the promise of elections which, at the time of writing, remain unfulfilled leaving the country once again without a democratically elected government. The so-called war on drugs in the Philippines continues almost unabated with even children being caught up in the maelstrom. In the one year period between 2016 and 2017, fifty-four minors were killed. And of course the humanitarian crises engulfing the Rohingya and other internally displaced persons in Myanmar, is another ongoing human rights disaster still in search of a solution.

Religion remains a factor in the Southeast Asian human rights discourse. In Vietnam, religious groups are seen as a threat to the reigning Communist party because their activities are oft intertwined with more general human rights claims. Thus, they are demonised by the authorities as well as investigated, arrested, and generally harassed. Even more troubling is the use of private players to attack such groups. For example, the Red Flag Association is a frequent instigator of assaults on activists and religious communities. Yet while ostensibly a private group, it is seemingly protected by the government which condones or at least turns a blind eye to its activities.

Similarly, in Indonesia, several churches have been bombed by Muslim extremists which is clearly a concern for religious minorities. Naturally, the state was also troubled about such crimes which led to developments in the country's anti-terror laws (giving rise to a whole host of other human rights concerns). Moreover, other provisions such as anti-blasphemy legislation have been used to suppress religious minorities, thus helping to legitimise and focus the force of extremist activities.

Brunei is pressing ahead with its implementation of Sharia law although progress has slowed with no further developments to report in this period but the potential for gross human rights violations resulting from amputations, floggings and other forms of brutal punishment obviously classifiable as torture, remain. While Brunei planned

to introduce Sharia law in stages, and stage one is now complete, stages two and three have stalled, as a result, the chapter argues, of concerns over foreign investment.

The effect of the wider world on Southeast Asian countries cannot be underestimated either. Like Brunei, trade and economic relations with foreign countries also impact Vietnam. However, it is still open to debate whether the country’s involvement with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership will be a boon for human rights, in the form of internationally imposed labour rules, or a bane in the form of foreign interference with laws passed to protect the people (for example, environmental laws) which may be perceived as anti-free trade.

More directly, we see almost all writers placed importance on international human rights law. All the countries are party to at least three international human rights treaties (see Table 1 below), with the Philippines even going so far as to ratify the Rome Statute of the International Criminal Court (ICC), and newcomer to the series, Cambodia, ratifying a remarkable eight, including the Convention against Enforced Disappearances which no other country in the region is a party to. However, the Philippine’s ratification of the Rome Statute also resulted in a challenge to the anti-drug actions of President Duterte in the ICC. What will become of this challenge remains to be seen.

Table 1: Ratification Status of International Instruments – All Countries

Treaty	Ratified By	Ratification or Accession (a) Date
1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Cambodia	28 Nov 1983
	Indonesia	25 Jun 1999 (a)
	Lao PDR	22 Feb 1974 (a)
	Philippines	15 Sep 1967
	Singapore	27 Nov 2017
	Thailand	28 Jan 2003 (a)
	Timor-Leste	16 Apr 2003 (a)
	Vietnam	9 Jun 1982 (a)
1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)	Cambodia	26 May 1992
	Indonesia	23 Feb 2006 (a)
	Lao PDR	13 Feb 2007
	Myanmar	6 Oct 2017
	Philippines	7 Jun 1974
	Thailand	5 Sep 1999 (a)
	Timor-Leste	16 Apr 2003 (a)
	Vietnam	24 Sep 1982 (a)

Treaty	Ratified By	Ratification or Accession (a) Date
1966 International Covenant on Civil and Political Rights (ICCPR)	Cambodia Indonesia Lao PDR Philippines Thailand Timor-Leste Vietnam	26 May 1992 23 Feb 2006 (a) 25 Sep 2009 23 Oct 1986 29 Oct 1996 (a) 18 Sep 2003 (a) 24 Sep 1982 (a)
1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Timor-Leste Vietnam	24 May 2006 (a) 15 Oct 1992 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)	Cambodia Indonesia Lao PDR Philippines Thailand Timor-Leste Vietnam	15 Oct 1992 (a) 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 Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Timor-Leste Vietnam	27 Dec 1995 (a) 15 Oct 1992 (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)

Treaty	Ratified By	Ratification or Accession (a) Date
2006 Convention on the Rights of Persons with Disabilities (CRPD)	Brunei	11 Apr 2016
	Cambodia	20 Dec 2012
	Indonesia	30 Nov 2011
	Lao PDR	25 Sep 2009
	Malaysia	19 Jul 2010
	Myanmar	7 Dec 2011 (a)
	Philippines	15 Apr 2008
	Singapore	18 Jul 2013
	Thailand	29 Jul 2008
	Vietnam	5 Feb 2015
2010 Convention for the Protection of All Persons from Enforced Disappearance (CED)	Cambodia	27 Jun 2013 (a)

While direct submission to a higher judicial body is rare, the writers still found other mechanisms such as the international review process of their countries' human rights records to be significant. Authors on the Philippines, Vietnam, Myanmar, Cambodia, Timor-Leste, and Indonesia all made reference to the Universal Periodic Reviews (UPR) conducted in their respective countries. Even without a UPR, individual human rights treaty regimes may instigate their own review processes as occurred in Malaysia and Cambodia.

None of the writers were so naïve as to suggest that such reporting mechanisms could actually engender immediate change, but their emphasis on the processes indicates a belief that international law and institutions do, nevertheless, have a role to play in a nation's domestic human rights, at the very least as an avenue to publicise human rights abuses and perhaps even to lobby on the national scene.

This continued faith in the international human rights regime is encouraging, as are some developments in several countries. In Brunei, legislation was passed to reclassify 'consensual' sexual activity as rape if the man involved exerted influence and authority over the woman. Although a potentially innovative method to approach the issue of sexual harassment and abuse occurring as a result of power imbalances and which therefore may not actually involve physical force, the punishment of whipping does rather discourage complete acceptance of this law.

Likewise, the disabled and aged in Singapore have been given the added protection of the Vulnerable Adults Act which was drafted and passed after a spate of abuse cases. Similarly, in the Philippines, legislation was passed making discrimination on the grounds of sexual orientation and gender identity and expression (SOGIE) unlawful. And Timor-Leste also appears to be heading in this direction with the government

proclaiming that anti-discriminatory laws on the grounds of SOGIE as recommended by the United Nations would soon be enacted.

Therefore, it can be seen that some progress has been made across the region although the problems we saw in the very first Outlook have not entirely disappeared. Still, anyone believing such deeply entrenched problems could be solved in so short a period of time would be optimistic in the extreme. However, despite threats to human rights, degrees of advancement are possible and the continued involvement of Southeast Asian nations in international human rights laws and institutions is encouraging, if for no other reason than to provide an effective avenue for activism aside from the purely national.

It must be noted, however, that human rights violations are not limited to openly authoritarian states such as Brunei, Vietnam, Laos, and Cambodia. So-called democratic nations too suffer from civil liberty violations. In particular, it is disappointing to see a country like Indonesia slipping backwards in human rights matters after making such impressive progress in the first decade of the 21st century following its reformation movement in the late 1990s that ousted former strongman, Soeharto. Likewise, the Philippines, long seen as one of the strongest democratic nations in the region, is suffering a setback stemming from popular authoritarianism in the person of President Duterte. And finally, the hope that surrounded Myanmar after it democratically elected its first government following decades of pure military rule is fast dissipating. Together, these act as a poignant reminder that democracy, although a key human right and often a necessary gateway to greater rights protection, is not always the panacea everyone assumes it will be. Thus, as the region moves towards more democratic systems of government, we must not allow ourselves to forget this.

BRUNEI DARUSSALAM

BRUNEI DARUSSALAM

Harpreet Kahlon*

Part 1: Overview of Brunei

A. Country Background

Brunei Darussalam Facts	
Geographical size	5,765 sq km
Population	443,593 ¹
Ethnic breakdown ²	Main ethnic groups: Malay – 66% Chinese – 10.1% Other (includes indigenous groups, e.g. Dusun, Belait, Kedayan, Murut, and Bisaya) – 23.9%
Official language	Malay
Literacy rate (aged 15 and above)	96.4 ³
Life expectancy	79 ⁴
GDP	US\$11.4 billion (per capita US\$28,290) ⁵
Government	Constitutional monarchy, unitary state, Islamic state
Political and social situation	The national philosophy of Melayu Islam Beraja (MIB) or Malay Islamic Monarchy was officially declared at the independence of Brunei in 1984. ⁶ In 2014, it became the first East Asian country to officially adopt Islamic Sharia law. His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah has been the Sultan since 1967.

* Researcher, Mahidol University, Thailand.

¹ Data from 2017. 'Brunei Darussalam' CIA: The World Factbook 2017, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bx.html>, accessed on 30 April 2018.

² Data from 2017. 'Statistics' Economic Planning and Development, Prime Minister's Office, available at <http://www.depd.gov.bn/SitePages/Population.aspx>, accessed on 27 April 2018.

³ Data from 2016. 'Human Development Reports: Brunei Darussalam' United Nations Development Program (UNDP), available at <http://hdr.undp.org/en/countries/profiles/BRN>, accessed on 28 April 2018.

⁴ Data from 2015. 'Human Development Index and its components' Human Development Reports, available at <http://hdr.undp.org/en/composite/HDI>, accessed on 28 April 2018.

⁵ Data from 2016. 'Brunei Darussalam' The World Bank, available at <https://data.worldbank.org/country/brunei-darussalam?view=chart>, accessed on 28 August 2018.

⁶ 'Diversity' Borneo Bulletin Yearbook 2016, available at <http://2016.borneobulletinyearbook.com.bn/files/assets/basic-html/page.html>, accessed on 22 June 2018.

The country's official name is Negara Brunei Darussalam, where 'Negara Brunei' translates as the 'State of Brunei' and 'Darussalam' is the 'Abode of Peace.' Having a land area of 5,765 sq km, Brunei lies on the northwest coast of Borneo island where it faces the South China Sea. This small country is separated into two parts by Malaysia to the east (the Temburong District) and Brunei-Muara, Tutong, and Belait districts to the west.

Brunei Darussalam has a population of 443,593,⁷ and almost 77% of it is aged 54 and under.⁸ Official statistics report 66% of the population as Malay, 10% as Chinese, and 24% as Others.⁹ The official language of the country is Malay as laid out in its Melayu Islamic Beraja (MIB) philosophy. Other languages in use are English and Chinese.

In 2017, the World Bank named Brunei Darussalam the most improved economy in the world for the third year in a row.¹⁰ Measuring the "efficiency and regulatory environment of domestic businesses of 190 economies," its 'Doing Business Report 2018'¹¹ noted that the country jumped an impressive 16 places to rank 56 worldwide placing it fourth in ASEAN behind Singapore (2), Malaysia (24), and Thailand (26); followed by Vietnam (68), Indonesia (72), the Philippines (113), Cambodia (135), Laos (141), and Myanmar (171).¹²

Brunei Darussalam ranks 30 on the United Nations Development Programme's (UNDP) 'Human Development Index' (HDI). Between 1990 and 2015, Brunei Darussalam's HDI value increased from 0.782 to 0.865, an increase of 10.6%.¹³ This is mainly based on its strong welfare system which provides free healthcare, subsidized housing, and a minimum of 12 years compulsory education. In addition, public universities are free and students are even paid a monthly allowance throughout the duration of their

⁷ 72% of the population resides in Brunei Muara, 11% in Tutong, 15% in Belait, and 2% in Temburong (Borneo Bulletin 2016, at 42).

⁸ The age breakdown is 0-14 years: 23.12% (male 52,862/female 49,717); 15-24 years: 17.05% (male 37,637/female 38,005); 25-54 years: 46.75% (male 99,203/female 108,198); 55-64 years: 8.23% (male 18,537/female 17,974); 65 years and over: 4.84% (male 10,440/female 11,020) (2017 est), CIA Factbook, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bx.html>, accessed on 30 April 2018.

⁹ 'Fast facts' Borneo Bulletin Yearbook 2016, available at <http://2016.borneobulletinyearbook.com.bn/files/assets/basic-html/page-42.html>, accessed on 1 May 2018.

¹⁰ 'Brunei named most improved economy for third year in a row' Business Inquirer 2017, available at <http://business.inquirer.net/239713/brunei-named-improved-economy-third-year-row#ixzz5EQqXSKCL>, accessed on 27 April 2018.

¹¹ The areas measured were: starting a business; dealing with construction permits; getting electricity; registering property; getting credit; protecting minority investors; paying taxes; trading across borders; enforcing contracts; and resolving insolvency. Brunei Darussalam saw an improvement in 8 out of the 10 indicators.

¹² *Doing Business 2018: Reforming to Create Jobs*, Washington, DC: International Bank for Reconstruction and Development/World Bank Group, 2018, available at <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf>, accessed on 10 August 2018.

¹³ 'Human development for everyone: 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 April 2018.

studies.¹⁴ Moreover, the citizens of Brunei Darussalam do not pay income tax to the government.

System of governance

Brunei Darussalam is a constitutional monarchy.¹⁵ October 2017 marked the golden jubilee for his Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, the twenty-ninth Sultan. Now seventy-one years of age, the Sultan succeeded his father, Sultan Haji Omar Ali Saifuddien Sa'adul Khairi Waddienin, in October 1967. In the course of his 50 year reign, the country has gone through seismic changes: from being a full protectorate of Britain to introducing amendments to the Constitution giving the Sultan control over all internal matters in 1971, to full independence in 1984.

The Sultan has been the head of state and government, Prime Minister, and Finance Minister since 1984. Additionally, he has served as the Defence Minister since 1986, and the Minister of Foreign Affairs and Trade since 2015. He also presides over the Council of Ministers. While His Majesty is assisted by the Privy Council, the Council of Succession, the Religious Council, and the Legislative Council, the Sultan appoints all members of the Privy Council as laid out in s.4(2) of the Constitution.

Political and social situation

Brunei Darussalam's national ideology, known as Melayu Islam Beraja (MIB), stands on the three pillars of: (1) the Malay language, (2) Islam, and (3) the institution of absolute monarchy. Instituted by the Sultan in 1984, the MIB philosophy is protected by the Constitution¹⁶ and must be respected and practiced by all.

In 2014, Brunei became the first East Asian country to officially adopt Islamic Sharia law, with possible punishments to include stoning for adultery, amputation for theft, and flogging for alcohol consumption. While the first phase was enforced on 1 May 2014, the second and third phases have yet to be applied. Predictably, international rights groups such as Human Rights Watch and Amnesty International have condemned the move as a big setback for human rights in the country.

¹⁴ 'Higher education' Borneo Yearbook 2016, available at <http://2016.borneobulletinyearbook.com.bn/files/assets/basic-html/page-163.html>, accessed on 1 May 2018.

¹⁵ Section 4(1) of the Constitution of Brunei Darussalam vests executive authority to the Sultan.

¹⁶ Section 3(1) of the Constitution enshrines Islam as the official religion of the country. Section 4 vests executive authority in the Sultan. Section 82(1) lists Malay as the official language.

B. International Human Rights Commitments and Obligations

Table 1: Ratification Status of International Instruments – Brunei¹⁷

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		
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

¹⁷ 'Ratification status for Brunei Darussalam' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 25 April 2018.

Brunei Darussalam has yet to ratify CAT. In addition, the country has not accepted the individual complaint mechanisms and inquiry procedures related to any of the conventions. For the treaties Brunei Darussalam has ratified, it holds reservations to any provisions contrary to its Constitution and the beliefs and principles of Islam.

CEDAW: Brunei Darussalam maintains its reservations regarding Art 9(2) and Art 29(1) of the Convention.¹⁸ Under the Brunei Nationality Act, only fathers can confer nationality to their children, thus discriminating against the rights of women.

CRC: the government retains reservations on Art 14, Art 20(3), and Art 21(b)-(e) of the Convention.¹⁹ In its Universal Periodic Review (UPR) of 2014, Brunei Darussalam withdrew its reservations to Art 20(1) and (2) relating to the protection of a child without a family, as well as Art 21(a) pertaining to the law on adoption.

CRPD: although there are no reservations to specific articles, a blanket reservation was retained to any article contradicting its Constitution or Islam.²⁰

Regionally, Brunei Darussalam joined ASEAN in 1984 and adopted the ASEAN Human Rights Declaration in 2012. In the Declaration, Brunei Darussalam reaffirmed its respect for the promotion and protection of human rights and freedoms as well as the principles of democracy, the rule of law, and good governance. In addition, it reaffirmed its commitment to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Program of Actions, and other international human rights instruments ASEAN member states are party to, whilst reaffirming its promotion of specific women's rights. Further, Brunei asserts that the Declaration will help to establish a framework for human rights cooperation in the region and contribute to ASEAN's community-building process.

To fulfil its international commitments, Brunei Darussalam has submitted two national reports to the Human Rights Council (HRC) for its UPR. The first report was submitted in 2009 and the second in 2014. It accepted 33 recommendations and submitted responses to another 25 at the 13th Session of the HRC on 19 March 2010.²¹ The 2014 National Report notes that human rights achievements in Brunei occurred

¹⁸ Article 9(2) of CEDAW states parties shall grant women equal rights with men with respect to the nationality of their children. Article 29(1) concerns arbitration between two states. See, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

¹⁹ Article 14 of CRC and subsections recognize and respect the right of the child to freedom of thought, conscience, and religion; Article 20(3) deals with alternative care of the child when parents/guardians of the child are unable to do so; Articles 21(b),(c),(d), and (e) cover inter-country adoption. See, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec.

²⁰ 'Reservations' OHCHR, available at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=_en, accessed on 3 May 2018.

²¹ 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Brunei Darussalam' United Nations General Assembly, Human Rights Council, available at <https://documents-dds.un.org/doc/UNDOC/GEN/G14/106/65/PDF/G1410665.pdf?OpenElement>, accessed on 3 May 2018.

through inter-agency consultative mechanisms in co-operation with non-government organizations. In its second report to the HRC, the country asserted that it considered the enactment of Sharia law to constitute a step towards the protection of human rights.²²

Part 2: Outstanding Human Rights Issues

Amnesty International notes a lack of transparency in the country, making it difficult to independently monitor the human rights situation in the country.²³

A. National Laws Threatening Human Rights

Sharia law

Brunei Darussalam adopted Sharia law in 2014, becoming the first country in Southeast Asia to do so. The legitimacy of the law, which many consider “cruel and unfair” was declared in the name of Allah by the Sultan.²⁴ The first phase²⁵ of the Sharia Penal Code²⁶ was implemented on 1 May 2014 with the other two phases to follow at a later date. A plethora of acts are liable to be punished under Sharia law by such methods as flogging,²⁷ amputations,²⁸ and in some cases, death by stoning.²⁹ While the implementation of Sharia law was widely criticized by the international community and organizations,³⁰ the backlash did nothing to revoke it. However, there have been delays in the implementation of the second and third phases. No explicit reasons were offered but an unlikely influencer, speculation economics, could be responsible. For example, Brunei Darussalam has suffered economic setbacks due to a decrease in oil prices because despite diversifying its portfolios, its economy is still heavily reliant on oil. This led Mustafa Izzuddin, a fellow at Singapore’s ISEAS-Yusof Ishak Institute, to state, “The oil prices have been a real wake-up call.”³¹ On a similar note, Bowie posits

²² See, the section on domestic legislation below.

²³ See, ‘Brunei Darussalam 2017/2018’ Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/brunei-darussalam/report-brunei-darussalam/>, accessed on 10 August 2018.

²⁴ ‘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 May 2018.

²⁵ Parts I-III, s.94, s.184, s.185, ss.189 to 205, ss.207 to 220. Sections 228 to 253 and s.254 (except references to ss.172, 194 and 195 of the Religious Council and Kadis Courts Act (Cap 77)) of the Sharia Penal Code were enforced.

²⁶ ‘Sharia Penal Code 2013’ Government of Brunei Darussalam, available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/s069.pdf, accessed on 3 May 2018.

²⁷ See, Sharia Penal Code, ss.65 and 104.

²⁸ See, Sharia Penal Code, s.55.

²⁹ See, Sharia Penal Code, s.68.

³⁰ In an open letter to the Sultan, the International Commission of Jurists (ICJ) dubbed the Sharia Penal Code Order 2013 regressive and explicitly unharmonious with international human rights law and standards. See, ‘Brunei: New penal code a blueprint for human rights violations’ International Commission of Jurists Advocacy, 27 January 2014, available at <https://www.icj.org/brunei-new-penal-code-a-blueprint-for-human-rights-violations/>, accessed on 3 May 2018.

³¹ Peel, M, ‘Sultan of Brunei grapples with new oil realities’ Financial Times, 3 September 2017, available at <https://www.ft.com/content/d8e074fe-80e6-11e7-a4ce-15b2513cb3ff>, accessed on 3 May 2018.

the role of China in the delay,³² the speculation being that the Sultan is “sensitive to outside perceptions,” including China which has invested an estimated \$4.1 billion in the country.³³ As the argument goes, the implementation of harsher Sharia laws could deter Chinese nationals from living in the country to conduct business. Only time will tell if phases two and three will be implemented.

Death penalty

The death penalty is recognized by both the Criminal Procedure Code and the Sharia Penal Code as punishment for such crimes as murder, offences resulting in death, terrorism-related charges, drug-related charges, moral offences (homosexuality, pre-marital sex), and treason among others. Despite this, only one death sentence was handed out in 2017.³⁴

Sedition Act

The monarch, the royal family, religion, laws of the land, and the administration of justice in Brunei Darussalam, are all protected by the Sedition Act.³⁵ All offences are punishable with fines and imprisonment.³⁶ Any police officer with the rank of inspector or above can arrest a suspect without a warrant under the Sedition Act. In addition, journalists can face up to three years in prison if found guilty of reporting false or fabricated news. One civilian was charged under the Sedition Act in 2017.³⁷

Homosexuality

Homosexuality is illegal in Brunei Darussalam and is punishable under s.377 of the Criminal Penal Code with 30 years in prison and death by stoning under Sharia law. However, as of 2017, Sharia law has still not been implemented although homosexuality is included in s.82 of the Sharia Penal Code as *liwat*.³⁸ Cross-dressing is also banned in the country for contravening the country’s public morals and social values. Other laws prevent the media and internet from depicting any information on homosexuality which may show or incite public sympathy towards the behaviour and/or glamorize it.

³² Bowie, N, ‘How Islamic does Brunei want to be?’ Asia Times, 23 April 2018, available at <http://www.atimes.com/article/islamic-brunei-want/>, accessed on 30 May 2018.

³³ “Beijing’s investments in Brunei’s shipping, telecommunications and agriculture sectors, currently estimated at around US\$4.1 billion and growing, have set the stage for Bandar Seri Begawan to become a regional outpost for Chinese businesses.” From Bowie, N (note 32 above).

³⁴ See, ‘Recent Court Cases Related to Human Rights’ for details.

³⁵ Sedition Act, Revised Edition 2010, Government of Brunei Darussalam, available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap024.pdf, accessed on 5 May 2018.

³⁶ First offences are punished with a fine of BN\$5,000 and imprisonment for 2 years, while subsequent offences will be subject to a fine and imprisonment for 3 years.

³⁷ See, ‘Recent Court Cases Related to Human Rights’ for details.

³⁸ *Liwat* is a broader term for sodomy which also includes sex between a man and a woman.

B. Recent Court Cases Relating to Human Rights

Sedition Act

In July 2017, a government employee was charged with violating the Sedition Act. On July 16, Shahiransheriffuddin bin Shahrani Muhammad under the names Shahiran S Leong and Shahiran S Leong (on his Facebook page) vented his frustration over new regulations on Halal certification released by the Ministry of Religious Affairs. The post, which can no longer be accessed online, “contained words that insulted ministry officials aside from asking Bruneians to dissent.” Shahiransheriffuddin bin Shahrani Muhammad was charged under s.4(1)(c) of the Sedition Act but was released on court bail of BN\$5,000 (US\$3,700), or one local surety, with the additional condition that he abstain from posting hostile comments against the Brunei government on social media. However, when the defendant denied the allegation, his bail was extended and the case was adjourned to 11 October. This case illustrates the government’s intolerance of personal opinions especially those critical of official policies.

Death penalty

After a month-long trial, the High Court convicted a 26-year-old Malaysian man, who had been adopted by a Bruneian family, for drug-related offences. Muhammad Mustaqim Mustofa bin Abdullah was caught by the Narcotics Control Bureau carrying over 6kg of cannabis.³⁹ The court sentenced him to death by hanging for the first charge (possession), and five years’ imprisonment and five lashes of the whip for the second (trafficking of drugs).⁴⁰ Muhammad Mustaqim Mustofa appealed against the conviction and the sentence on “the grounds that the High Court judges were wrong in ignoring the delay between the NCB obtaining the drugs and sending them for analysis.”⁴¹ However, the Court of Appeal disagreed, stating the judges had considered his case in detail and had sentenced the defendant to death with clear evidentiary support.

C. Other Human Rights Issues

While Brunei Darussalam has a questionable record on political and civil rights,⁴² 2017 brought to light its progression on the issues of women and child rights.

Women’s rights

Since the 1990s, the female literacy rate has risen from 73% to 95% with women now outnumbering men in higher education.⁴³ Bringing together forty young women from all

³⁹ Possession of cannabis of more than 600 grams is punishable by the death sentence.

⁴⁰ Fadley, F, ‘Man sentenced to be hanged for drug possession’ Borneo Bulletin, 14 February 2017, available at <https://borneobulletin.com.bn/man-sentenced-hanged-drug-possession/>, accessed on 30 May 2018.

⁴¹ Fadley, F, ‘Death row convict’s appeal dismissed’ Borneo Bulletin, 28 November 2017, available at <https://borneobulletin.com.bn/death-row-convicts-appeal-dismissed/>, accessed on 30 May 2018.

⁴² The last Legislative Council elections were held in 1962, the results of which were annulled when a state of emergency was declared allowing the Sultan to rule by decree.

⁴³ ‘Human development for everyone: 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 April 2018.

ASEAN member countries, the progression of female education in Brunei Darussalam was reiterated at the US-ASEAN Women's Leadership Academy for Young Southeast ASEAN Leaders Initiative (YSEALI) for which the US Embassy in Brunei nominated three local young Bruneian women, Aiminorhiza binti Ramlee (co-founder of Tyne Solutions Sdn Bhd), Malai Adila Surya binti Malai Haji Abdullah (Vice-secretary and Deputy Director of Administration at Society for the Management of Autism Related issues in Training, Education, and Resources (SMARTER) Brunei), and Ain Bandial (an entrepreneur). Although Ain noted that a high percentage of undergraduates were women (70%), she thought there was still a need to promote female leadership because "when we talk about women issues, if it is the men making the decisions ... it can be an unbalanced way to look at things." However, she also pointed out that gender equality cannot be achieved by women alone without men joining the narrative. Their shared opinion was that women have "the upper hand and the right capabilities to help empower fellow women, not just in the country, but also beyond."⁴⁴ The group unanimously agreed that although work on gender equality was progressing, more work was necessary to truly achieve the goal.

While all three women highlighted the importance of education, the premier speech of the 2017 Knowledge Convention also shed light on the role of faith in Bruneian women's lives. Dr Hajah Ummi Fa'izah binti Haji Abdul Rahman noted that several women held the posts of attorney general, Legislative Council member, permanent secretary, and deputy permanent secretary. Moreover, women made up 50.4% of the civil service.⁴⁵ She also pointed out that "the position of women [was] dependent on the piety and faith of the nation's leadership in granting their rights as required by Islam."⁴⁶ Further, she attributed the intellectual development or mindset (Sakhsiah) of women to educational developments and Islamic teachings under the Sultan. Additionally, she praised Islam for bestowing dignity on women whilst crediting formal Islamic education with helping to put men and women on the same footing, thus allowing them "equal opportunities to enjoy the benefits of health services, education, housing, jobs, and business opportunities."

Dr Rahman's talk also pointed out the state's protection mechanisms to safeguard women, one of which was amended on 24 July 2017 by the Penal Code (Amendment) Order 2017 to broaden the definition of rape to cover 'consensual' sex instigated by men in positions of power and authority. The Amendment eventually became s.375 of Chapter 22, substituting ss.376 and 377, and subsequently amending the Schedule to

⁴⁴ Hakim, H, 'Brunei women lucky, but still need more work to raise gender equality' Borneo Bulletin, 20 December 2017, available at <https://borneobulletin.com.bn/brunei-women-lucky-but-still-need-more-work-to-raise-gender-equality/>, accessed on 30 May 2018.

⁴⁵ Hakim (see note 44 above).

⁴⁶ Rokiah Mahmud, 'Talk highlights progress of Brunei Women' Borneo Bulletin, 10 November 2017, available at <https://borneobulletin.com.bn/talk-highlights-progress-of-brunei-women/>, accessed on 30 May 2018.

Chapter 4.⁴⁷ As such, the definition of rape in s.375 was changed to include situations “where a woman consents to sexual intercourse with a man who is in a position of trust or authority towards the woman or is a person with whom the woman is in a relationship of dependency.”⁴⁸ Further, such consent cannot be used as a defence in a court of law. Moreover, the punishment for rape was extended to a possible 30 years in prison and whipping. In addition, any person voluntarily causing hurt, frightening a victim, raping a woman under 14 years of age, or in a position of authority, will be subject to a minimum sentence of not less than 10 years’ and not more than 30 years’ imprisonment and not less than 12 strokes of the whip. Punishments are further enhanced in circumstances involving the aggravated rape of females under 14 years of age where the offender voluntarily causes hurt to her or to any other person, or puts her in fear of death or hurt to herself or any other person, or where the offender is in a position of trust or authority towards her or is a person with whom she is in a relationship of dependency. This enhanced punishment includes imprisonment for a term not less than 15 years and not less than 12 lashes of the whip.⁴⁹ Repeat offenders may be punished with 20 to a maximum of 50 years’ imprisonment and not less than 20 strokes of the whip.

Conversely, women may also be punished for sexual autonomy and giving birth in non-traditional circumstances. For example, Muslim women who give birth out of wedlock, or who give birth to a fully-developed child within a period of less than six months from the date of the marriage are subject to fines and imprisonment depending on her age.⁵⁰ However, men can also be punished for impregnating women out of wedlock with fines and imprisonment.⁵¹ For proven zina offences (a non-married man and woman engaging in sexual intercourse (s.68)), Muslims can be stoned to death as witnessed by a group of other Muslims. For the same offence, Muslim minors may be punished with 100 strokes as witnessed by a group of Muslims and imprisonment for one year. Non-Muslims may also be liable to the same punishments if proven under the conditions set out in the Sharia Penal Code.

In a nutshell, while women’s rights have progressed through education and economic opportunities, which, it must be said, is generally not true of other countries where Sharia law exists (e.g. Saudi Arabia), women’s rights concerning sexual autonomy, birthing rights, political participation, and freedom of religion are still largely controlled by the state.

⁴⁷ See, Penal Code (Amendment) Order 2017, available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2017/EN/S061.pdf, accessed on 30 May 2018.

⁴⁸ Faisal, F, ‘Rape laws tightened’ Borneo Bulletin, 29 July 2017, available at <https://borneobulletin.com.bn/rape-laws-tightened/>, accessed on 28 May 2018.

⁴⁹ See, Penal Code (Amendment) Order 2017, available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2017/EN/S061.pdf, accessed on 24 August 2018.

⁵⁰ Sections 94(1) and (2) of the Sharia Penal Code impose a maximum fine of BN\$8000.

⁵¹ Section 94(5) imposes a maximum fine of BN\$8000 and maximum of two years in jail.

Children's rights

Brunei Darussalam takes the protection of its children very seriously and has introduced a plethora of laws in this regard including the Adoption of Children Act, the Births and Deaths Registration Act, the Brunei Nationality Act, the Child Care Centre Act, the Children and Young Persons Act, the Compulsory Education Act, and the Education Act. In addition, education is free and compulsory for all children. As a signatory to the CRC and its two optional protocols, Brunei Darussalam has ensured its laws are aligned to protect the young from sexual abuse, exposure, and exploitation. For example, the Children and Young Persons Act (Cap 219) protects all children and considers a child to be sexually abused if he/she participated and/or observed any pornographic, obscene, or indecent material in any medium. Other punishable acts include possessing child pornography, commercial sex with anyone under 18, coercing a person under 16 to watch a sexual act, and sexual grooming. In addition to the law, the state employs a child helpline to aid the reporting of child abuse.

Moreover, in 2017, Brunei Darussalam took proactive measures to make the internet a safer space, moves which were recognized by Marianne Clark-Hattingh (the United Nations Children's Fund (UNICEF) representative to Malaysia and special representative to Brunei Darussalam at the 'Brunei Darussalam Children Forum') who named Brunei a "leader in child rights" within the region. The two-day forum was held by the Community Development Department (JAPEM) with the cooperation of the Ministry of Education and the Authority for Info-Communications Technology Industry (AiTi) to enhance children's awareness of the CRC and provide them with an opportunity to voice their views. Clark-Hattingh said:

*Brunei is the first country in the region to establish a Child Online Protection Framework built upon the International Telecommunications Union – [the] Child Online Protection Initiative. You led the way in 2013, when many countries were still grappling with the situation.*⁵²

In addition, she emphasized that Brunei Darussalam could make an enormous impact in the region and beyond in realizing child rights. Nevertheless, despite impressive progress on women's and child rights, concern is growing about freedom of the press and media, freedom of expression, and the rights of the LGBTIQ community.

Freedom of the press and media

While the Sedition Act criminalizes the release of any unfavourable information against the monarchy and the government, other legislation oversees both the press and media. As such, the state-owned Borneo Bulletin comprises the main source of information

⁵² Kon, J, 'Brunei's cyber protection of children draws UN applause' Borneo Bulletin, 16 November 2017, available at <https://borneobulletin.com.bn/bruneis-cyber-protection-of-children-draws-un-applause/>, accessed on 20 May 2018.

in the country. Brunei is ranked 156 out of 180 countries⁵³ on the Reporters Without Borders '2017 World Press Freedom Index'.⁵⁴ According to the report, "self-censorship is the rule for journalists working for state-owned Radio Television Brunei and for the leading daily newspapers, which belong to the Sultan's family."

In general, other countries in Southeast Asia fare much better than Brunei Darussalam with the exception of Laos (170) and Vietnam (175). For example, the media remains strictly regulated through the Broadcasting Act (Cap 180)⁵⁵ and the Internet Code of Practice. Further, a subsidiary legislation notification⁵⁶ specifies a broadcast code of practice which aims to protect, e.g. national security, racial and religious harmony, public morals, and social values.⁵⁷ In addition, all programs must promote the values set by the MIB Philosophy which can be corrected by the government at any time. Thus, all broadcasting material requires approval and any person violating the Act will be guilty of an offence and could be imprisoned.

Freedom of expression

Brunei Darussalam was noted to have committed grave violations in the '2017 Freedom of Thought Report' in the categories of: (1) constitution and government; (2) family, community, society, religious courts, and tribunals; and (3) freedom of expression, advocacy, and humanist values. Under the first category, violations arose from the fact that (i) state legislation was largely derived from religious law or by religious authorities, and (ii) the non-religious were barred from holding government office. In the second category, the report noted marginalization and harassment by government figures and agencies against the non-religious. Finally, in the third category, the report documented (i) an absence of secularism, (ii) that the principles of democracy were repressed, and (iii) the lack of religious freedom leading to severe and systemic discrimination in areas related to religion.⁵⁸

⁵³ Brunei Darussalam is ranked 155 in the Reporters Without Borders 'World Press Freedom Index 2017'.

⁵⁴ 'World Press Freedom Index 2017' Reporters Without Borders, available at <https://rsf.org/en/brunei>, accessed on 28 June 2018.

⁵⁵ Broadcasting Act, Ed 2000, Government of Brunei Darussalam, available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/Chp.180.pdf, accessed on 30 May 2018.

⁵⁶ Subsidiary Legislation Under Section 9 Broadcasting (Code of Practice) Notification, Government of Brunei Darussalam, 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 30 May 2018.

⁵⁷ The sanctity of marriage should be defended and divorce should not be treated casually; fornication, homosexuality, single motherhood (by choice) and multiple or free sexual relations should not be treated in a way that shows or incites sympathy or attraction towards such behaviour; programs portraying and/or promoting discrimination against people on account of their handicap (physical or mental), old age, low income or status, race, nationality, colour or religion should be avoided unless a documentary, current affairs, or public interest story; kissing scenes or sexual physical intimacy should be avoided.

⁵⁸ See, 'Freedom of Thought Report 2017' International Humanist and Ethical Union (IHEU), available at <https://freethoughtreport.com/countries/asia-south-eastern-asia/brunei-darussalam/>, accessed on 4 June 2018.

As such, the above restrictions and legal obstacles made it difficult for reporters to present a fair picture of occurrences in the country especially in relation to individual political and civil rights. As noted in the aforementioned ‘Facebook trial,’ posting so much as an opinion that conflicts with the official line will be met with legal action, consequent fines, and imprisonment.

LGBTIQ community

In June 2017, Matthew Wolfe and an unnamed Bruneian free speech advocate, spoke at a round table at the Human Rights Campaign headquarters in Washington DC. As founder of the Brunei Project, Matthew Wolfe is banned from Brunei Darussalam. The Brunei Project provides a social media platform to raise awareness about human rights including LGBTIQ issues in Brunei and ASEAN. Starting in May 2015, the group has close to five thousand followers on Facebook.

Advocates at the roundtable raised concerns for the LGBTIQ community because of the introduction of phase one of Sharia law in the country in 2014 which punishes same sex acts with up to 10 years’ imprisonment. However, since the roundtable, the situation has worsened – under the new Penal Code (Amendment) Order of July 2017, prison sentences for such offences now stand at 30 years with the added threat of whipping for “unnatural offences.”⁵⁹ If introduced, the second phase would make floggings and prison mandatory for same-sex acts, while the third phase could advocate death by stoning. This would make Brunei one of 10 countries in the world that could impose the death penalty for same-sex acts.⁶⁰

As noted by the ASEAN SOGIE Caucus, Brunei did not even acknowledge its LGBTIQ community in its international report on human rights. Thus, freedom of opinion and expression is suppressed by limiting LGBTIQ advocacy amidst threats made to human rights defenders.⁶¹ In a published interview, activist, Aziq Azman, who identifies as bisexual, revealed the legal discrimination felt by the community who, he claimed, do not enjoy the same rights and protections as everyone else. Conversely, he also noted that despite the legal discrimination and criminalization, punishments were rarely enforced. However, since the introduction of Sharia law, the community has disappeared further underground. As Azman put it, while policies make it difficult to advocate for LGBTIQ rights, the biggest challenge lies in dealing with people “raised [for] decades ... in a traditional mindset and culture.”⁶²

⁵⁹ Penal Code (Amendment) Order 2017, s.377(1).

⁶⁰ Thapa, SJ, ‘Brunei LGBTQ advocates visit HRC headquarters in Washington DC’ Human Rights Council, 14 June 2017, available at <https://www.hrc.org/blog/brunei-lgbtq-advocates-visit-hrc-headquarters-in-washington-d.c>, accessed on 14 June 2018.

⁶¹ ‘Revealing the rainbow: The human rights situation of Southeast Asia’s LGBTIQ communities and their defenders’ Destination Justice, 2018, available at <https://aseansogiecawcus.org/images/resources/publications/20180531%20REVEALING%20THE%20RAINBOW%20Destination%20Justice.pdf>, accessed on 10 August 2018.

⁶² Destination Justice (note 61 above). See the full interview with Aziq Azman at 35-40.

Part 3: Conclusion

In 2017, Bruneians celebrated a golden jubilee and enjoyed a royal procession as throngs of supporters celebrated fifty years of the Sultan's rule. Indeed, the government continues to ensure a high standard of living for its citizens with easy access to such services as education, health, housing, and employment. However, MIB ideology remains enshrined in the Bruneian way of life. Accordingly, while social and economic rights are enjoyed by citizens, political and civil rights remain limited directly contradicting the country's commitments to the Universal Declaration of Human Rights and its ASEAN equivalent. Likewise, Brunei Darussalam continues to affirm its commitments to international human rights whilst maintaining its reservations on religion and culture.

In 2017, however, Brunei Darussalam is beginning to face some new realities. In a time of rapidly advancing technology and readily available information, 40% of its population is under 24 years of age. Thus, while the state imposes strict restrictions on freedom of expression, social media has given voice to human rights concerns in the country. Although Brunei Darussalam leads the region in protecting and providing for its children, all the vulnerable are not treated equally. In particular, the LGBTIQ community continues to be threatened by both religious and legal authorities; further, a lack of acknowledgement by society as a whole puts them at enhanced risk of rights violations. In addition, criminalizing homosexual acts pushes the group deeper underground leaving them even more vulnerable because as Nelson Mandela once put it, "to deny people their human rights is to challenge their very humanity."

CAMBODIA



CAMBODIA

Anonymous*

Part 1: Overview of Cambodia

A. Country Background

Indonesia Facts ¹	
Geographical size	176,520 sq km
Population	16,204,486
Ethnic breakdown ²	Main ethnic groups: Khmer (97.6%) Cham (1.2%) Chinese (0.1%) Vietnamese (0.1%) Other (0.9%)
Official language	Khmer
Literary rate (aged 15 years and above)	77.2% ³
Life expectancy	64.9
GDP	US\$20.02 billion (per capita US\$1,384) ⁴
Government	A unitary state, Cambodia is a constitutional monarchy with the King as the ceremonial head of state and the Prime Minister as head of government. Governed by a civil law system, legislative power is vested in a bicameral legislature composed of the National Assembly and the Senate.
Political and social situation	2017 witnessed the nineteenth year of Hun Sen's rule, the longest reign of a 'democratically elected' leader in Southeast Asia. The political system is dominated by the Cambodia Peoples' Party. The run-up to the 2018 elections was marked by a purging of opposition political parties and a massive crackdown on human rights defenders and progressive media.

* The author wishes to remain anonymous for security reasons.

¹ 'Cambodia demographics profile 2018' Index Mundi, available at https://www.indexmundi.com/cambodia/demographics_profile.html, accessed on 28 July 2018.

² Data from 2013 (est). Index Mundi (see note 1 above).

³ Data from 2015 (est). Index Mundi (see note 1 above).

⁴ Data from 2016. 'Cambodia' The World Bank, available at <https://data.worldbank.org/country/cambodia>, accessed on 9 August 2018.

The Kingdom of Cambodia is bordered by Vietnam to the east, Lao PDR to the northeast, Thailand to the west, and the Gulf of Thailand to the southwest. Its capital is Phnom Penh. The national language is Khmer, but French, Vietnamese, and English are also spoken in the country. Theravada Buddhism is the state religion and is practiced by over 90% of the population. Other faiths include Islam, Hinduism, and Christianity. Cambodia has been a member of the United Nations (UN) since 14 December 1955.⁵ It is also a member of the Association of Southeast Asian Nations (ASEAN) which it recently chaired in 2011.

At the time of writing, the Cambodian Peoples' Party (CPP) led by the country's long-time leader, Hun Sen, had just won the general election although his victory seems more borne of the systemic ills plaguing the country than as a result of a democratic election. In an unambiguously titled piece by Human Rights Watch ('Cambodia: July 29 Elections Not Genuine'), the NGO revealed the factors, some of which transpired in 2017, that led to the victory: "The Cambodian government over the past year has systematically cracked down on independent and opposition voices to ensure that the ruling party faces no obstacles to total political control." Moreover, "serious problems with the electoral process include: arbitrary dissolution of the main opposition party, the Cambodia National Rescue Party, and surveillance, intimidation, detention, and politically motivated prosecution of key opposition members."⁶

It is no secret that Cambodia is a land with both a tumultuous past and present. On the surface, it seems to have risen from the ashes of colonial rule, genocide, and immense deprivation. Indeed, when we actually think of Cambodia, we are immediately reminded of three things: the grandeur of the Angkor Empire, the wrath of the Khmer Rouge, and its thriving tourism industry. But, all these realities intertwine to create a façade of a progressive society possessing a rich heritage, strong resilience, and an undying commitment toward nation-building. But on closer examination, it appears Cambodia may have become trapped in a web of misfortune driven by a suppression of freedoms, corruption, nepotism, and poverty. As such, one should reflect how events from 2017, and even earlier, greatly affect the way democracy is perceived, freedoms are enjoyed, and human rights are protected in Cambodia today.

System of governance

Cambodia is a constitutional monarchy, with the King as the ceremonial head of state, and the Prime Minister as head of government. It is governed by a civil law system. The Prime Minister, members of the National Assembly and Senators have power to

⁵ 'Cambodia' Human Rights in ASEAN Online Platform, available at <https://humanrightsinasean.info/cambodia/general-information.html>, accessed on 27 July 2018.

⁶ 'Cambodia: July 29 elections not genuine' Human Rights Watch, 25 July 2018, available at <https://www.hrw.org/news/2018/07/25/cambodia-july-29-elections-not-genuine-0>, accessed on 1 August 2018.

initiate laws which must pass through both houses of parliament before promulgation by the King. The court system comprises of first instance courts at the provincial and municipal levels, the Appeal Court, and the Supreme Court. A separate military court system also exists. While the courts have no power of judicial review, the Constitutional Council, which is comprised of nine appointees, does have the power to interpret the Constitution and laws. The Supreme Council of the Magistracy oversees functioning of the courts.⁷

Political and social situation

In 2017, Cambodia was governed by Lord Prime Minister Supreme Military Commander Hun Sen. A former Khmer Rouge cadre, he has been the country's 34th prime minister since 1998, and is also President of the Cambodian People's Party. His party holds the majority in both houses of congress. His Excellency, Norodom Sihamoni, son of the former King and Cambodian Prime Minister Norodom Sihanouk, is the country's monarch and head of state.

During preparations for the 2018 general elections, political and social controversies arose including crackdowns against the opposition party, human rights defenders, and progressive media. As such, according to the 2017 Democracy Index, Cambodia is ranked 124 out of 167 countries, falling 12 points since 2016. It stated: "Cambodia scored poorly in electoral process and pluralism following the forced dissolution of the main opposition party in November 2017, which turned the country into a de facto one-party state."⁸

Celebrating its tagline, the "Kingdom of Wonder," tourism (in addition to manufacturing and agriculture) has invigorated Cambodia's economy for many years. In 2017 alone, according to the Ministry of Tourism, the country earned US\$3.6 billion from 5.6 million tourists.⁹ Still, it is considered a least developed country, with a human development index of 0.563 and a ranking of 143 out of 188 countries in 2016.¹⁰

B. International Human Rights Commitments and Obligations

On the international stage, and compared to most of its ASEAN neighbours, Cambodia actually has an outstanding record of international human rights commitments. Aside

⁷ Human Rights in ASEAN (see note 5 above).

⁸ Handley, E, 'Cambodia plunges in democracy survey after CNRP dissolution' Phnom Penh Post, 1 February 2018, available at <https://www.phnompenhpost.com/national/cambodia-plunges-democracy-survey-after-cnrp-dissolution>, accessed on 27 July 2018.

⁹ Vanack, C, 'Tourism sector worth \$3.6 billion in 2017' Khmer Times, 14 February 2018, available at <https://www.khmertimeskh.com/50108419/tourism-sector-worth-3-6-billion-2017/>, accessed on 27 July 2018.

¹⁰ United Nations Development Programme (UNDP), *United Nations Human Development Index 2016*, New York: UNDP, 2016, available at http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf, accessed on 27 July 2018.

from the Philippines, Cambodia is the only country in Southeast Asia to have ratified or acceded to almost all international human rights treaties and optional protocols (see Table 1 below).

Table 1: Ratification Status of International Instruments – Cambodia¹¹

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		15 Oct 1992 (a)
Optional Protocol of the Convention against Torture	14 Sep 2005	30 Mar 2007
International Covenant on Civil and Political Rights (ICCPR)	17 Oct 1980	26 May 1992
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 Jun 2013 (a)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	17 Oct 1980	15 Oct 1992
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	12 Apr 1966	28 Nov 1983
International Covenant on Economic, Social and Cultural Rights (ICESCR)	17 Oct 1980	26 May 1992
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	27 Sep 2004	
Convention on the Rights of the Child (CRC)		15 Oct 1992 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	27 Jun 2000	16 Jul 2004
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	27 Jun 2000	30 May 2002
Convention on the Rights of Persons with Disabilities (CRPD)	1 Oct 2007	20 Dec 2012

¹¹ 'Ratification status for Cambodia' United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 15 August 2018.

As a member-state of the United Nations, Cambodia is mandated to conduct periodic reviews of its human rights record (otherwise known as its Universal Periodic Review or UPR). It has already undergone two cycles of review: in November 2009 and again in February 2014. Apart from boasting the ratification/accession of two human rights treaties (CRPD in 2012 and CED in 2013) and the Optional Protocol of CEDAW in 2010, the Cambodian UPR report also covered a number of issues being addressed by the government such as land rights, freedom of expression, the elimination of gender violence, corruption, and the steps it has taken towards the establishment of a National Human Rights Commission. However, a number of concerns were raised by participating member-states such as Cambodia's lack of judicial independence, restriction of freedom of expression through its draft Cyber Law, the banning of peaceful assemblies, and violence towards peaceful protestors.

Cambodia will undergo its next cycle of review in January 2019. At the moment, civil society organizations are preparing their shadow reports for submission to the UN Human Rights Council. Issues to be covered by these reports include gender/women/LGBTIQ/sexual rights, children's rights, access to justice, minority and indigenous rights, labour rights, land and natural resources, and elections.¹²

Cambodia is one of two ASEAN member-states¹³ with a designated Special Rapporteur mandated by the UN Human Rights Council to follow and report on the human rights situation in the country. Since 2008, six experts have assumed the position. Rhona Smith, a British academic, is the current Special Rapporteur. Issues such as economic land concessions, elections, impunity, the administration of justice and vulnerable groups have been covered by this mechanism over the years. However, it could be said the government's relationship with the Rapporteur has not been entirely 'amicable.' In fact, in 2017, the Cambodian Ministry of Foreign Affairs and International Cooperation criticised Ms Smith for belittling Cambodia's tragic past when she said, "The time to blame the troubles of the last century for the situation today is surely over." Amongst other matters, the government viewed this as a "campaign of disinformation led by some governments and organizations."¹⁴

At the regional level, Cambodia has signed the ASEAN Human Rights Declaration, an official yet non-binding document for the promotion and protection of human rights in the area. It was unanimously adopted by all ASEAN member-states in November 2012 in the Cambodian capital of Phnom Penh.

¹² 'Activity report: Cambodia (CSO submission follow-up workshop)' 9-10 May 2018, available at https://www.upr-info.org/sites/default/files/cambodia_activity_report_step_1.1.pdf, accessed on 3 August 2018.

¹³ The other ASEAN member-state with a designated special rapporteur is Myanmar.

¹⁴ Cambodian Ministry of Foreign Affairs and International Cooperation, 'Cambodia, democracy and human rights: To tell the truth' 11 April 2017, available at <https://www.mfaic.gov.kh/wp-content/uploads/2017/04/Ministry-of-Foreign-Affair-201704-385.pdf>, accessed on 28 July 2018.

C. National Laws Affecting Human Rights

The 1993 Cambodian Constitution, which was amended in 2008, contains strong provisions on the respect for democracy and the protection of human rights. As a starter, its Preamble states the people of Cambodia,

*... having awakened to stand up with resolute determination and commitment to strengthen our national unity ... to build the nation up, to again be an “Island/Oasis of Peace” based on a liberal multi-party democratic system, to guarantee human rights and the respect of law, and to be responsible for progressively developing the prosperity and glory of our nation.*¹⁵

Further, a full section in the Constitution is dedicated to “The Rights and Obligations of Khmer Citizens (Chapter III).” Article 31 declares that:

The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women’s rights and children’s rights.

Moreover, Art 31 also promotes the elimination of discrimination based on “race, color, sex, language, religious belief, political tendency, national origin, social status, wealth, or other status.” One must be mindful, though, that most provisions pertain to the rights of Khmer citizens only. Aside from Art 31, there is little mention of the protection of the rights of non-Khmers such as migrants or those from other ethnicities.

Chapter III continues with a laundry list of political, economic, social and cultural rights (Arts 32-48) ending with obligations as regards respect of the Constitution and laws and the duty to serve for the protection of the nation (Arts 49 and 50).¹⁶

With respect to equal opportunities, several laws protect some vulnerable groups from prejudice or intolerance. For example, Art 12 of the Labour Law (1997) provides women and other vulnerable groups better access to and conditions for employment. Likewise, the Law on the Protection and the Promotion of the Rights of Persons with Disabilities (2009) was passed to fully eliminate all forms of discrimination against persons with disabilities.

¹⁵ Cambodian Constitution 1993, available at https://www.constituteproject.org/constitution/Cambodia_2008.pdf?lang=en, accessed on 28 July 2018.

¹⁶ See note 15 above.

Cambodia and the Philippines are the only ASEAN member-states to legally eliminate the death penalty from their judicial systems with the highest law of the land providing for its abolition in Cambodia (Art 32 of the Constitution specifically states that “capital punishment is prohibited”). In fact, no executions have been carried out since 1988. The Cambodian government also voted in favour of five UN General Assembly’s resolutions on moratoriums on the use of the death penalty in 2007, 2008, 2010, 2012, and 2014.¹⁷

The following select national laws were passed to fulfil certain human rights and freedoms in Cambodia:

- *Law on Juvenile Justice (2016)*: aims at safeguarding the rights and best interests of minors. It also provides for the rehabilitation and integration of minor offenders back into society.¹⁸
- *Law on Anti-Corruption (2010)*: passed to maintain “integrity and justice” in the delivery of public services and implementation of the rule of law. It also contains provisions on the criminal accountability of officials found guilty of corrupt practices.¹⁹
- *Law on the Prevention of Domestic Violence and the Protection of Victims (2005)*: contains a comprehensive list of provisions to help eliminate domestic violence and preserve a culture of non-violence in Cambodian society.²⁰
- *Law on the Suppression of Kidnapping, Trafficking, and Exploitation of Human Persons (1996)*: aims to protect human dignity and the health and welfare of the people by taking action against any form of exploitation and trafficking against any person in Cambodia.²¹

D. National Laws Threatening Human Rights

Despite seemingly advanced constitutional safeguards, Cambodia has still managed to craft and sustain laws which make it difficult for human rights defenders, the media, political opposition, and the general public to sustain democratic values and claim their rights and freedoms.

¹⁷ ‘Ratification kit: Cambodia’ World Coalition Against the Death Penalty, available at <http://www.worldcoalition.org/media/resourcecenter/Cambodia-EN.pdf>, accessed on 3 August 2018.

¹⁸ Law on Juvenile Justice (unofficial English translation), available at <http://www.sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf>, accessed on 3 August 2018.

¹⁹ ‘Anti-corruption’ Open Development: Cambodia, 8 December 2015, available at <https://opendevelopmentcambodia.net/topics/anti-corruption/>, accessed on 2 August 2018.

²⁰ Law on the Prevention of Domestic Violence and the Protection of Victims (unofficial English translation), available at <http://www.sithi.org/admin/upload/law/LAW%20on%20the%20prevention%20of%20domestic%20violence%20and%20the%20protection%20of%20victims.pdf>, accessed on 3 August 2018.

²¹ Law on the Suppression of Kidnapping, Trafficking, and the Exploitation of Human Persons (unofficial English translation), available at <http://www.sithi.org/admin/upload/law/Law%20on%20Suppression%20of%20Kidnapping,%20Trafficking,%20Sale%20and%20Exploitation%20of%20Human%20Persons%201996.ENG.pdf>, accessed on 3 August 2018.

The Law on Associations and Non-Governmental Organizations or LANGO (2015) was intended to “safeguard the right to freedom of establishing associations and nongovernmental organizations in the Kingdom of Cambodia in order to protect their legitimate interests and to protect the public interest.” The law allows the government to monitor and control organizations working mainly on human rights. Furthermore, it imposes requirements and restrictions on such associations and NGOs to operate within the country. In 2017, the director of the Cambodia Centre for Human Rights stated that LANGO

has had a severe chilling effect on Cambodian civil society ... [I]ts broad and ambiguously worded provisions—such as the infamous ‘neutrality’ requirement in Article 24—combined with draconian sanctions, mean NGOs and associations must constantly operate in the shadow of possible legal action and even being shut down.²²

Similarly, the Law on Political Parties was amended by a majority of the Cambodian National Assembly in 2017. According to the Amnesty International Report on Cambodia for 2017/2018, the Law gave the Ministry of the Interior and courts power over political parties and barred individuals convicted of a criminal offence from holding leadership positions.²³ Tagged as the “Anti-Sam Rainsy Law” by the opposition, amendments were expedited mainly to attack Mr Rainsy and disqualify him from contesting in the 2018 elections. Accordingly, the law was passed urgently without proper consultation with concerned parties or civil society. Nevertheless, the Ministry of Foreign Affairs and International Cooperation defended the amendment stating that it was

imperative to revise the law to reflect the legal evolution related to elections ... [I]t aims to protect the liberal multi-party democratic system, constitutional monarchy, and Cambodia’s sovereignty from foreign interference.²⁴

Likewise, in terms of controlling collective human rights actions, the Law on Trade Unions (2016) and the Law on Peaceful Demonstrations (2009) both contain provisions restricting groups from meaningfully bargaining for their rights. The Trade Union Law was passed mainly to

²² Retka, J, “Two years on, NGO laws remain ‘ambiguous’” The Cambodia Daily, 13 July 2017, available at <https://www.cambodiadaily.com/news/two-years-on-ngo-law-remains-ambiguous-132456/>, accessed on 2 August 2018.

²³ ‘Cambodia 2017/2018’ Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/cambodia/report-cambodia/>, accessed on 2 August 2018.

²⁴ Cambodian Ministry of Foreign Affairs and International Cooperation (see note 14 above).

*protect the legitimate rights and interests of all persons who fall within the provisions of the labor law and personnel serving in the air and maritime transportation, ensure collective bargaining and promote harmonious industrial relations.*²⁵

Like LANGO, the law contains restrictions towards groups through stringent registration processes and guidelines for operations. The Law on Peaceful Demonstrations, while promoting public “freedom of expression,” is grounded on the fact that protests or demonstrations should not disturb public order and national security. 2017 witnessed increased use of these draconian laws, especially LANGO and the amended Law on Political Parties. As such, they helped to ensure potential disturbances during general elections were either silenced or eliminated while also heightening fear amongst opponents of the present regime and those simply siding with oppressed Cambodians.

E. Recent Court Cases Relating to Human Rights

Tep Vanny

Tep Vanny, a land rights defender and Boeng Lake community representative, was sentenced to two years and six months for participating in an alleged violent protest in 2013, which, according to the plaintiffs, ended “in a severely violent crackdown by police, military police and para-police against the community, leaving five individuals injured, including some with broken bones.” The court seems to have sided with the plaintiffs, apparently reaching its verdict without solid evidence. She was also arrested for participating in the Black Monday protest to support detained members of the Cambodian Human Rights and Development Association (ADHOC), for which she had already been detained for 192 days.²⁶ Her case reflects how the judicial system is used to legitimise the outright suppression of human rights defenders in pursuit of “national security and public order.”

The pending cases of Koh Kong economic land concessions

Since 2006, thousands of farmers in Koh Kong Province have been forcibly stripped of their lands due to concessions awarded to local and foreign sugar companies. Court cases have been filed demanding cancellation of the contracts or compensation for damages.²⁷ However, most petitions have yet to be granted. After seven years of waiting for amenable solutions, 120 community members travelled to Phnom Penh to seek redress from concerned authorities and Prime Minister Hun Sen. At the end of 2017, they are still waiting to hear from the Cambodian government.

²⁵ Law on Trade Unions (unofficial English translation), available at http://www.sithi.org/admin/upload/law/trade_union_law_eng.pdf, accessed on 3 August 2018.

²⁶ “Tep Vanny convicted again as para-policy attack supporters” Licadho, 23 February 2017, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=418>, accessed on 3 August 2018.

²⁷ “Koh Kong Sugar Plantation (re Cambodia)” Business & Human Rights Resource Centre, available at <https://www.business-humanrights.org/en/koh-kong-sugar-plantation-lawsuits-re-cambodia>, accessed on 2 August 2018.

The bigger issue is how economic land concessions reflect the unequal distribution of land and resources in Cambodia. These concessions favour the local elite and foreign investors allowing them to easily deliver profits for a select few. As such: “20-30% of Cambodia’s land resources are now held by only 1% of the population, mostly at the expense of the weakest and most marginalised rural people.”²⁸

The pending case of the murder of Kem Ley

Political analyst, Kem Ley, was shot dead in broad daylight in the heart of Phnom Penh in July 2016.²⁹ His murder is considered to be an attack against human rights defenders and the political opposition. Members of civil society fearlessly protested on the streets, calling for justice. On March 2017, Oeuth Ang was convicted of Kem Ley’s murder, but his lawyers insisted that the killing was not simply the work of one man. Appeals for an independent and impartial commission of inquiry to investigate his case were therefore made. However, the case is still pending at the Phnom Penh Municipal Court.³⁰

Part 2: Outstanding Human Rights Issues

On April 2017, the government, through the Ministry of Foreign Affairs and International Cooperation, released a report entitled, ‘Cambodia, Democracy, and Human Rights: To Tell the Truth’ in response to reports and accounts released on the state of human rights in the country. It asserted that:

Cambodia has been submerged, month after month, year after year by reports from opposition media, biased NGOs, and misinformed institutions, which [twist] historical facts and events in an attempt to portray a negative image of Cambodia and to lay the blame on the Government.

In short, the government refuted the contention that such reports constituted attempts to destabilize it. Its reaction echoes the declarations of other authoritarian regimes which attack human rights groups and foreign states for “disturbing national peace and security” and “interfering with internal affairs.”³¹ Based on the most recent reports of Amnesty International and Human Rights Watch, human rights organizations, progressive media, and the political opposition comprise the main targets of a crackdown instigated by the government in 2017.

²⁸ ‘Cambodia’s devastating economic land concessions’ East Asia Forum, 29 June 2016, available at <http://www.eastasiaforum.org/2016/06/29/cambodias-devastating-economic-land-concessions/>, accessed on 2 August 2018.

²⁹ Chheng Niem, ‘Kem Ley case remains open two years on’ Phnom Penh Post, 10 July 2018, available at <https://www.phnompenhpost.com/national/kem-ley-case-remains-open-two-years>, accessed on 2 August 2018.

³⁰ ‘Joint letter on investigation into killing of Kem Ley: Request for Cambodian government to create a Commission of Inquiry’ Human Rights Watch, 7 July 2017, available at <https://www.hrw.org/news/2017/07/07/joint-letter-investigation-killing-kem-ley>, accessed on 3 August 2018.

³¹ Cambodian Ministry of Foreign Affairs and International Cooperation (see note 14 above).

A. Crackdown on the Cambodian National Rescue Party³²

The urgent amendment of the Law on Political Parties paved the way for the slow and painful death of CPP's main opponent, the Cambodian National Rescue Party (CNRP). Its leader, Sam Rainsy, remained in exile throughout 2017 to avoid two years' imprisonment for a defamation case in 2008. He was also convicted of "defamation and incitement to commit a felony" when he declared that Kem Ley's murder was an act of state-sponsored terrorism. On September 2017, Kem Sokha, CNRP's new leader, was also arrested and charged with "conspiracy with a foreign power." This was related to a speech he gave concerning democratic changes in Cambodia. In addition, he was stripped of parliamentary immunity by a majority of the Cambodian National Assembly. As a final nail in CNRP's coffin, after Prime Minister Hun Sen's threat against its members, the main opposition party was shut down through a Supreme Court Order, which also banned 118 members from any political activity for five years. Deemed a "death to democracy," this landmark case marks "a new era of de facto one-party rule in Cambodia."³³

B. Crackdown on the Media³⁴

Progressive media took a massive beating in 2017 as a worrying number of outfits were either threatened, silenced, or shut down. As such, Cambodia's General Department of Taxation shut down Cambodia Daily due to unpaid tax bills amounting to US\$6.3 million. Its owners were also charged with criminal offences. Similarly, according to Amnesty International, about 30 FM radio frequencies were silenced due to their relations with Radio Free Asia and Voice of America. It was also reported that two RFA reporters were charged for espionage that could result in sentences of up to 15 years in jail.

C. Crackdown on Human Rights Organizations and Defenders³⁵

For years, the government has been critical of local and international human rights organizations and defenders. As the sensational murder of Kem Ley demonstrates, human rights defenders faced continued threats and direct arrest in 2017. For example, four senior members of ADHOC and a former member of the National Election Committee (NEC) were arrested in 2016 and still face charges of up to 10 years in prison. Moreover, in August 2017, the Ministry of Foreign Affairs called for the closure

³² Information for this section was mostly taken from two sources: Amnesty International (see note 23 above) and 'Cambodia events of 2017' Human Rights Watch, available at <https://www.hrw.org/world-report/2018/country-chapters/cambodia>, accessed on 2 August 2018.

³³ Sokhean, B, Dara, M, and Baliga, A, 'Death of democracy: CNRP dissolved by Supreme Court ruling' Phnom Penh Post, 17 November 2017, available at <https://www.phnompenhpost.com/national-post-depth-politics/death-democracy-cnarp-dissolved-supreme-court-ruling>, accessed on 28 July 2018.

³⁴ Information for this section was taken from two sources: Amnesty International (see note 23 above) and Human Rights Watch (see note 32 above).

³⁵ Information for this section was taken from two sources: Amnesty International (see note 23 above) and Human Rights Watch (see note 32 above).

of US-funded NGO, National Democratic Institute. Likewise, in September, members of Mother Nature, an NGO working on illegal smuggling, were charged with felony offences. Similarly, in October 2017, the land rights organization, Equitable Cambodia, was suspended by the Ministry of Interior for violating regulations. Three members were also arrested for social media posts “insulting” the Prime Minister. Finally, in November, the Cambodian Centre for Human Rights faced threats of closure but was able to continue operating after a government investigation.

It is disheartening to note that the three major pillars of democratic society suffered greatly in an attempt to impose the “rule of law” and protect “national security” in Cambodia. In 2018, these actions bore fruit, allowing the present regime to paint a picture of a peaceful and united Khmer society driven by a functioning liberal democracy, thus legitimising the result of the 2018 elections.

Part 3: Conclusion

On a lighter note, 2017 also allowed audiences around the world to finally witness the atrocities suffered by the Cambodian people during the Khmer Rouge regime. The film, *First They Killed My Father*, directed by Hollywood actress, Angelina Jolie, told the tragedy of a middle class Khmer family through the eyes of a young girl. Jolie stated that she

*wanted this country to have some closure in some way to say ‘that’s what it was like.’ It’s amazing that they let me in, but it was amazing that they allowed the history to be re-created on the streets. Every Cambodian person in this film knew someone who was affected by the war, and they came back to do this for their loved ones.*³⁶

Ironically, around the time this film was launched in September 2017, human rights defenders, the political opposition, and members of the media were once again experiencing a crackdown. This, despite the fact the government frequently returns to its tragic past to regain legitimacy and reinstate its authority over Khmer society. Moreover, it insists that “Cambodia’s recent history illustrated by default how limited a time and space the country has to work on its state-building and democratization process.”³⁷

While Cambodia is still recovering from its tumultuous past, its present leaders, most of whom experienced the wrath of the Khmer Rouge, should bear in mind that

³⁶ Ramos, D-R, ‘Angelina Jolie, Loung Ung talk *First They Killed My Father* and honoring Cambodian history – The contenders’ Deadline Hollywood, 4 November 2017, available at <https://deadline.com/2017/11/angelina-jolie-loung-ung-first-they-killed-my-father-netflix-the-contenders-1202202056/>, accessed on 3 August 2018.

³⁷ Cambodian Ministry of Foreign Affairs and International Cooperation (see note 14 above).

struggles can never be resolved through the deployment of iron fists, intimidation, and misinformation. Further, all should remember that the Constitution enshrines the principles of human rights and freedoms for a purpose; which is never again to allow such destructive and inhumane regimes to take root in Cambodian soil.

INDONESIA



INDONESIA

Deasy Simandjuntak

Part 1: Overview of Indonesia

A. Country Background

Indonesia Facts	
Geographical size	5,180,053 sq km
Population	267.21 million ¹
Ethnic breakdown ²	Main ethnic groups: Javanese (40.05%) Sundanese (15.50%) Malay (3.70%) Batak (3.58%)
Official language	Indonesian (Bahasa Indonesia)
Literacy rate (aged 15 and above)	95.38% ³
Life expectancy	69.19 ⁴
GDP	US\$1015.54 billion ⁵ (per capita US\$4,130.7) ⁶
Government	A unitary constitutional republic with three branches of government (executive, legislative, and judicial). Elected for a 5 year term, the President appoints all members of the cabinet. The People's Consultative Assembly consists of the People's Representative Council and the Regional Representative Council. Supreme Court judges are appointed by the President. The Constitutional Court may review laws for their constitutionality and resolve disputes over the power of state institutions.
Political and social situation	The post-Soeharto democratization era is marked by decentralization with local governments being given more autonomy. Direct elections were also introduced for the posts of president, vice-president, governors, and district-heads.

¹ Data from 2018. 'Indonesia population 2018' World Population Review, available at <http://worldpopulationreview.com/countries/indonesia-population/>, accessed on 12 August 2018.

² Data from 2015. Based on the 2010 Population Census. Ananta, Aris, et al. *Demography of Indonesia's Ethnicity*, Institute of Southeast Asian Studies, 2015, at 78.

³ Data from 2016. 'Literacy rate, adult total (% of people aged 15 and above)' The World Bank, available at <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=ID&view=chart>, accessed on 12 August 2018.

⁴ Data from 2016. 'Life expectancy at birth, total (years): Indonesia' The World Bank, available at <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=ID&view=chart>, accessed on 12 August 2018.

⁵ Data from 2017. 'GDP (current US\$): Indonesia' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=ID&view=chart>, accessed on 12 August 2018.

⁶ Data from 2017. 'GDP per capita: Indonesia' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?locations=ID&view=chart>, accessed on 12 August 2018.

A transcontinental unitary state located between the Indian and Pacific oceans and sprawling over more than 17,000 islands, the Republic of Indonesia is the world's largest archipelagic nation. In terms of combined sea and land area, it is the world's seventh largest country, with inland waters comprising 2/3 of its total geographical size. It is comprised of six main islands, namely Java, Sumatra, Kalimantan (which borders Malaysia in the north), Sulawesi, and Papua (which borders Papua New Guinea in the east). Java, the home of 57% of Indonesia's total population, is the most populous island. In 2017, partly as a response to the growing tension in the South China Sea, Indonesia counted and registered the 17,504 islands under its sovereignty with the United Nations.⁷ To further assert its sovereignty and protect its offshore natural resources, to China's dismay, Indonesia also renamed the exclusive economic zone (EEZ) area bordering the South China Sea as the North Natuna Sea – the sea overlaps with China's so-called “nine-dash-line.”⁸

Indonesia is home to more than 300 ethnic groups of which the most numerous are Javanese, Sundanese, Malay, Batak, and Madurese. Bahasa Indonesia, a standardized register of Malay, is the official language that is used in formal education, governance, and mass media. In addition to the official language, most Indonesians are also fluent in any of the more than 700 indigenous languages that are mostly used in local communities and at home.

With an economic growth rate of around 5% under President Joko Widodo (Jokowi)'s government, the country has been able to prioritize its infrastructure development which had been neglected in the “New Order” authoritarian era of Soeharto, resulting in wide economic inequality between Java and the outer regions. The largest economy in Southeast Asia and the world's tenth largest economy in terms of purchasing power parity, Indonesia relies on its domestic market, government spending, and its state-owned enterprises. Its largest sectors are industry, agriculture, and service. Its GDP per capita, although still below the world average, increased from US\$780 in 2000 to US\$4,130 in 2018, a rise of 529.5%. The country's unemployment rate stands at 5.13%, a decrease from 5.50% in 2017. Despite such improvement, 10% of its 267 million population still live below the national poverty line. In UNDP's ‘2016 Human Development Index,’ Indonesia ranked 113 out of 188 countries or in the medium category, lower than both Malaysia (ranked 59) and Thailand (ranked 87).

System of governance

Post-Soeharto Indonesia, which began in 1998, was marked by democratization and decentralization. In the democratization period, many new political parties were

⁷ ‘16,000 islands registered at UN’ The Jakarta Post, 21 August 2017, available at <http://www.thejakartapost.com/news/2017August/21/16000-indonesian-islands-registered-at-un.html>, accessed on 13 August 2018.

⁸ Connolly, AL, ‘Indonesia's new North Natuna Sea: What's in a name?’ The Interpreter, 19 July 2017, available at <https://www.lowyinstitute.org/the-interpreter/indonesia-s-new-north-natuna-sea-what-s-name>, accessed on 13 August 2018.

established, indicating people's aspiration to participate in more open and representative politics. Among them was the National Awakening Party (PKB) established by Abdurrahman Wahid, a prominent Islamic scholar and cleric who also led Indonesia's largest moderate organization, the Nahdlatul Ulama (NU). Wahid became Indonesia's fourth president in 1999-2000. Another new party was the nationalist Democratic Party for Struggle (PDI-P) which was led by former President Soekarno's daughter, Megawati Soekarnoputri. She became the country's fifth president in 2001-2004. Following establishment of the Democratic Party (in 2001), retired general, Soesilo Bambang Yudhoyono, became Indonesia's sixth and first directly-elected president in 2004.

Currently, 12 political parties are represented in Parliament. Having divided themselves into coalitions, the largest, led by PDI-P, supports President Jokowi's government. Gerindra Party (nationalist) and the Prosperous Justice Party (Islamist) comprise the main opposition. Presently, Soesilo Bambang Yudhoyono's Democratic Party holds the balance of power.

Decentralization also resulted in the direct elections of the president/vice-president, governors, and district-heads. In addition, regional autonomy allowed provinces and districts to govern administrative territories, create local ordinances, and manage their own finances. However, the central government still assists in local budgeting by the use of inter-governmental transfers.

Political and social situation

2016-2017 marked a crucial juncture in Indonesian politics. Some of the most important events were: the imprisonment of a former Jakarta governor for "blasphemy;" the involvement of the speaker of parliament in a major graft case; the attacks on the Corruption Eradication Commission (KPK); the ratification of a new law on mass organizations; and finally, a string of terrorist attacks.

Imprisonment of former governor for blasphemy. The two rounds of Jakarta's gubernatorial elections in 2016 and 2017 were overwhelmingly marked by rancorous sectarian campaigning launched by Islamist groups such as the Islamic Defender Front (FPI) which stood against incumbent Chinese-Christian governor, Basuki Tjahaja Purnama (also known as Ahok). FPI has long been known for discriminatory tactics such as forcing the closure and ransacking of minority religions' places of worship. Despite Ahok's relatively successful government programs and 'clean' image,⁹ a massive mobilization calling for his imprisonment on blasphemy charges ultimately prevented his re-election. Accordingly, in May 2017, under Art 156(a) of the Criminal Code, the

⁹ Simandjuntak, D, 'Faced with a troubling blasphemy verdict, Ahok at least left Jakarta a legacy of reform' Channel News Asia, 11 May 2017, available at <https://www.channelnewsasia.com/news/asia/commentary-ahok-left-jakarta-legacy-of-reform-8836708>, accessed on 13 August 2018.

North Jakarta court sentenced Ahok to 2 years' imprisonment. To many observers, the former governor's electoral defeat and subsequent imprisonment mark the triumph of sectarianism in Indonesian politics, highlighting the frailty of its legal system against pressure from Islamist groups.¹⁰

The many scandals of Setya Novanto. Speaker of Parliament, Setya Novanto, resigned in December 2015 due to alleged misuse of the names of President Jokowi and Vice-President Jusuf Kalla to extort a 20% stake from Freeport, the US mining giant operating in West Papua. Despite this, in November 2016, to the dismay of many, he was reappointed as Speaker. In the same month, Novanto was examined by anti-graft agency, KPK, as a witness in a major case involving electronic identity cards, or E-KTP. Incurring state losses of IDR2.3 trillion (US\$157.4 million), the E-KTP case is one of the largest graft cases ever handled by the agency.¹¹ In January 2017, fourteen people, many of whom were members of parliament, returned a total amount of IDR30 billion (US\$2.05 million) which they had allegedly received from the project. In July 2017, Novanto became a suspect in the mega graft-case, but was cleared in September after winning a pretrial motion challenging his suspect status.¹² After repeatedly missing KPK's summons and dodging arrest by engineering an accident and hospital internment, Novanto was finally charged in December 2017 for allegedly receiving IDR100.4 trillion (US\$7.3 million) in kickbacks from funds earmarked for the E-KTP project.¹³ He was sentenced to 15 years' imprisonment in April 2018.¹⁴

Attacks on the KPK. However, KPK's pursuit of the co-conspirators in the E-KTP case has opened a Pandora's box. In retaliation, Parliament mounted an inquiry against the anti-graft agency under Law No 17/2014 in July 2017 by requesting an audit of

¹⁰ Cochrane, J, "Rot at the core": Blasphemy verdict in Indonesia dismays legal experts' The New York Times, 11 May 2017, available at <https://www.nytimes.com/2017/05/11/world/asia/indonesia-blasphemy-governor-jakarta-ahok.html>, accessed on 13 August 2018.

¹¹ 'E-KTP case goes to trial' The Jakarta Post, 5 March 2017, available at <http://www.thejakartapost.com/news/2017/03/05/e-ktp-case-goes-to-trial.html>, accessed on 13 August 2018. Prior to this, another KPK case involved the Hambalang Sport Centre which incurred IDR1.2 trillion (US\$48.28 million) in state losses. See also, 'BPK: Kerugian negara proyek Hambalang Rp706 miliar' CNN Indonesia, 31 March 2016, available at <https://www.cnnindonesia.com/nasional/20160330205132-12-120654/bpk-kerugian-negara-proyek-hambalang-rp706-miliar>; and the procurement of driving licence simulators which squandered IDR128 billion (US\$8.4 million) of state money in 2012: 'Corruption SIM simulator, IDR121.8 billion loss country' [in Indonesian], Tempo.co, 19 July 2013, available at <https://nasional.tempo.co/read/498017/korupsi-simulator-sim-negara-rugi-rp-1218-miliar>, both accessed on 13 August 2018.

¹² 'Setya cleared as suspect after winning pretrial motion against KPK' The Jakarta Post, 29 September 2017, available at <http://www.thejakartapost.com/news/2017/09/29/setya-cleared-as-suspect-after-winning-pretrial-motion-against-kpk.html>, accessed on 13 August 2018.

¹³ 'Former Indonesian Parliament Speaker, Setya Novanto, charged for taking kickbacks' The Straits Times, 13 December 2017, available at <https://www.straitstimes.com/asia/se-asia/indonesian-speaker-setya-novantos-corruption-trial-delayed-by-his-diarrhoea>, accessed on 13 August 2018.

¹⁴ 'Jail for top Indonesian politician 'turning point' in war on graft, say observers' The Straits Times, 27 April 2018, available at <https://www.straitstimes.com/asia/se-asia/jail-for-top-indonesia-politician-turning-point-in-war-on-graft-say-observers>, accessed on 13 August 2018.

its budget and threatening to reduce its 2018 allocation of the state budget.¹⁵ KPK also had to disclose documents related to the E-KTP probe. Significantly, this was not Parliament's first attempt to curb the anti-graft agency as it had pushed to revise the 2002 anti-graft law in 2010. This was postponed due to public protests.

Upon mounting its inquiry in 2017, Parliament therefore claimed the investigation could form a basis from which to revise the 2002 anti-graft law. Protests by 132 legal experts led by former Chief Justice of the Constitutional Court, Mahfud MD, could not even deter it. As a result, in February 2018, Parliament made several recommendations including the creation of an independent body to monitor KPK's activities. The anti-graft agency "respected" yet rejected some of the recommendations, including the call for a monitoring body.¹⁶

Law on mass organizations. In October 2017, Parliament passed a stricter law on mass organizations (Law No 16/2017, amending Law No 17/2013). Under the original decree, Government Regulation No 2/2017 had allowed the government to disband groups opposing the state ideology of Pancasila. The new law was signed by President Jokowi in July, two months after Islamist groups succeeded in their campaign to imprison former Jakarta governor, Basuki Tjahaja Purnama. As such, the government was able to disband Hizbut Tahrir Indonesia, a local branch of the international Islamist group which aimed to establish a caliphate.¹⁷ The law expands the power of the government in three ways. First, it gives the government sole power to assess whether a civil society organization (CSO) opposes Pancasila. While Law No 17/2013 identified atheism, communism, and Marxism-Leninism as ideologies contradicting Pancasila, the new Law No 16/2017 added "other ideologies which aim to challenge Pancasila and the 1945 Constitution" to the list (Explanation to Art 4(c)).

Second, Law No 16/2017 drops the need for court approval before the government may disband an offending organization. By contrast, the 2013 law had required the government to issue multiple warnings, suspend subsidies, and impose a 6-month freeze on the organization's activities, among other measures, before it could revoke its legal status with the approval of the court. The new legislation only requires the Minister of Law and Human Rights to issue one written warning, after which he can

¹⁵ Simandjuntak, D, 'The Indonesian House of Representatives confronts the Corruption Eradication Commission (KTK): Will it blink?' ISEAS Commentary, 7 July 2017, available at <https://www.iseas.edu.sg/medias/commentaries/item/5708-the-indonesian-house-of-representatives-confronts-the-corruption-eradication-commission-kpk-will-it-blink-a-commentary-by-deasy-simandjuntak>, accessed on 23 August 2018.

¹⁶ 'KPK tolak rekomendasi pansus soal pembentukan lembaga pengawas' Liputan 6, 14 February 2018, available at <https://www.liputan6.com/news/read/3287004/kpk-tolak-rekomendasi-pansus-soal-pembentukan-lembaga-pengawas>, accessed on 13 August 2018.

¹⁷ Simandjuntak, D, 'Jokowi's ban on radical groups and Pancasila's uncomfortable past' Channel News Asia, 22 July 2017, available at <https://www.channelnewsasia.com/news/asia/commentary-jokowi-s-ban-on-radical-groups-and-pancasila-s-9047670>, accessed on 13 August 2018.

subsequently freeze the organization's activities for seven days, and move to revoke its legal status should it fail to comply with the suspension (Art 62).

Third, while the 2013 law ruled that members of the organization involved in criminal or civil offences be prosecuted under existing laws, the new law introduces criminal penalties for members committing acts of violence, vigilantism, vandalism, or hostility (Art 82A). In addition, it broadly defines acts of hostility as any speech, statement, attitude, or aspiration, conveyed either through verbal or written forms, via electronic or non-electronic media, that stirs up hate against a group or a person, including Indonesia's state administration (Explanation to Chapter I: General, at 4). As such, the decree gave rise to many protests. For example, the National Human Rights Commission (Komnas HAM) expressed concern that the decree could be used by the government to restrict freedom of association as regulated by the ICCPR, Law No 15/2005, and Art 29 of the 1945 Constitution.¹⁸

Terrorist attacks. 2016-2017 marked a string of terrorist attacks in the capital city of Jakarta and Samarinda in East Kalimantan. The attacks began in Jakarta in January 2016 when militants reportedly detonated explosives around the area of a Starbucks at a mall in the city centre. A nearby police post was also destroyed. The incident, which killed seven, was claimed by ISIS.¹⁹ The mastermind of the attack was Aman Abdurrahman, the leader of Jamaah Ansharut Daulah, a group linked to ISIS. Aman was sentenced to death in June 2018 for his role in inciting others to commit terrorist attacks.²⁰ Likewise, in September 2016, a bomb was detonated at a church in Samarinda, killing a toddler and injuring three other children.²¹ In May 2017, twin suicide bomb blasts at a bus terminal in Jakarta killed three policemen and wounded dozens. The perpetrator, who was formerly a student of JAD's leader, Aman Abdurrahman, was sentenced to 9 years in April 2018.²²

A more gruesome string of terrorist attacks began in May 2018, when several terrorism convicts in a high-security detention centre in Jakarta staged a riot which killed five

¹⁸ 'Komnas HAM rejects the provision of dissolution of mass organizations' [in Indonesian], VOA, 15 July 2017, available at <https://www.voaindonesia.com/a/komnas-ham-tolak-perppu-pembubaran-ormas/3945435.html>, accessed on 14 August 2018.

¹⁹ 'ISIS officially claims responsibility for Jakarta blasts: Report' The Straits Times, 14 January 2016, available at <https://www.straitstimes.com/asia/se-asia/isis-officially-claims-responsibility-for-jakarta-blasts-report>, accessed on 13 August 2018.

²⁰ 'Indonesian cleric Aman Abdurrahman sentenced to death for inciting terror attacks' The Straits Times, 22 June 2018, available at <https://www.straitstimes.com/asia/se-asia/indonesian-cleric-aman-abdurrahman-sentenced-to-death-for-inciting-terror-attacks>, accessed on 13 August 2018.

²¹ Kwok, Y, 'A terrorist attack at an Indonesian church has killed a toddler and wounded three others' Time, 14 November 2016, available at <http://time.com/4569333/indonesia-terrorism-church-east-kalimantan-attack-children/>, accessed on 13 August 2018.

²² 'Indonesia jails bus terminal mastermind for nine years' Channel News Asia, 9 April 2018, available at <https://www.channelnewsasia.com/news/asia/indonesia-jails-bus-terminal-bombing-mastermind-for-nine-years-10119944>, accessed on 13 August 2018.

policemen. Several days later, suicide bombers in the form of a family (a father, mother, two adult boys, and two girls under twelve years of age) launched concerted attacks at churches in Surabaya, killing 14 and injuring more than 40.²³ This was followed by a bomb blast at Sidoarjo which killed the perpetrating family. Another family suicide bombing took place the next day at Surabaya's police headquarters in which the perpetrators were killed and ten people in the vicinity were injured. In Riau, a failed attempt to bomb a police-headquarters killed one policeman and the four perpetrators.

The attacks precipitated debate on the anti-terrorism law revisions which were proposed in 2016 yet whose deliberation was put on hold following disagreement on the definition of terrorism and the extent of military involvement in combatting it. In May 2018, Parliament finally passed a new anti-terrorism law allowing authorities to make pre-emptive arrests and detain terror suspects longer based on preliminary leads. As with any expansion of state power, there are concerns of potential abuse, such as Art 13(a) regulating hate speech as this could be misused to target critics. Similarly, longer detention times could increase the risk of torture in custody.

Concerns have also been voiced about the involvement of the military in combatting terrorism. To be fair, even before the new law was enacted, the military had already participated in the successful 2016 Tinombala operation in Central Sulawesi which killed Santoso, the leader of East Indonesia Mujahidin (Mujahidin Indonesia Timur or MIT). MIT was an ISIS-affiliated terror group involved in the religious riots of Maluku in 1999-2002 which also repeatedly attacked police headquarters in Poso, Central Sulawesi.²⁴ Some observers are concerned that the law would seal the military's permanent involvement in the sphere of law enforcement. Another risk concerns strengthening military territorial command of specific areas where operations take place over a long period of time. Accordingly, deployment of military personnel and resources may influence state-society relations in such areas, as happened in Aceh and Papua.

B. International Human Rights Commitments and Obligations

As mentioned in a previous edition of this series, Indonesia has ratified most of the international human rights treaties over the course of more than two decades, the earliest being the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984 and the last one being the International Covenant

²³ Simandjuntak, D, 'The Surabaya bombings highlight urgency to ratify the revisions to Indonesia's anti-terrorism law' ISEAS Commentary, 17 May 2018, available at <https://www.iseas.edu.sg/medias/commentaries/item/7615-the-surabaya-bombings-highlight-urgency-to-ratify-the-revisions-to-indonesias-antiterrorism-law-by-deasy-simandjuntak>, accessed on 13 August 2018.

²⁴ Zenn, J, 'East Indonesian Islamist militants expand focus and area of operations' Terrorism Monitor XI, 11 May 2013, available at https://jamestown.org/wp-content/uploads/2013/05/TM_011_Issue11_04.pdf?x87069, accessed on 23 August 2018.

on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) in 2012 (see Table 1 below). However, it has not accepted any of the individual complaints procedures or most inquiry procedures attached to the conventions – with the exception of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT).

Table 1: Ratification Status of International Instruments – Indonesia²⁵

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or 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 July 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 Covenant 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

²⁵ ‘Ratification’ status for Indonesia’ United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 14 August 2018.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention on the Rights of Persons with Disabilities (CPRD)	30 Mar 2007	30 Nov 2011

Also mentioned in a previous edition, Indonesia introduced several national laws to protect human rights and enforce international obligations, including the Human Rights Act (Law No 39/1999), which played a crucial role in the creation of the National Commission on Human Rights (Komnas HAM). However, some consider it fails to adequately protect human rights defenders despite containing provisions on them (Chapter VIII, ss.100-103).²⁶

C. Recent Court Cases Relating to Human Rights

In July, the Constitutional Court rejected a judicial review petition to strike down the blasphemy law. This petition was filed by followers of the Ahmadiyah group who claimed that the law violated their constitutional right to freedom of religion. The court ruled that the blasphemy law did not violate the Constitution and that complaints were “merely a matter of implementation and not a matter of the constitutionality of the law’s norms.”²⁷

Part 2: Outstanding Human Rights Issues

A. Attacks on Freedom of Expression

Although Art 28 of the 1945 Constitution guarantees freedom of expression, exercise of such freedom should respect the human rights of others and be in accordance with the law so as to acknowledge and respect the rights and freedom of others (Explanation to Art 28J). However, this restriction should not contradict provisions of international human rights instruments such as the ICCPR.

Mass organizations. In July 2017, President Jokowi issued a decree on mass organization, which was later passed into Law No 16/2017. The Legal Aid Institute and its fifteen branches across the archipelago launched an immediate stern protest, highlighting six problems surrounding the decree.²⁸ First, that its issuance did not fulfil the necessary conditions of, e.g. “an urgent situation” requiring a quick solution to

²⁶ Wiratraman, HP, ‘Indonesia’ in Sharom, A (ed), *Human Rights Outlook in Southeast Asia 2016*, Thailand: SHAPE-SEA, 2017, at 20.

²⁷ ‘Blasphemy law’s victory’ The Jakarta Post, 27 July 2018, available at <http://www.thejakartapost.com/academia/2018/07/27/blasphemy-laws-victory.html>, accessed on 14 August 2018.

²⁸ ‘LBH se-Indonesia Sebut Perppu Ormas Mengandung 6 Kesalahan’ Hukum Online.com, 14 July 2017, available at <http://www.hukumonline.com/berita/baca/lt596751c1608b5/lbh-se-indonesia-sebut-perppu-ormas-mengandung-6-kesalahan>, accessed on 13 August 2018.

a legal problem or “legal vacuum,” due to an absence of applicable law which cannot be solved by a normal procedure of law-making, as stipulated in the decision of Constitutional Court No 38/PUU-VII/2009.

Second, the decree restricts freedom of association, which is one of the citizen rights stipulated in the 1945 Constitution and other laws, and which should be protected by the government. Article 22(2) of the ICCPR stipulates that “no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”²⁹

Third, the decree neglects legal process in the disbanding of offending organizations. Fourth, the decree introduces “religious blasphemy” (penistaan agama) in the penal provisions despite the absence of such terminology in either Art 156(a) of the Criminal Code or Law No 1/PNPS/1965 on the “desecration of religion” (penodaan agama) from which Art 156(a) is derived. Fifth, the decree could perpetuate the misuse of laws by intolerant and radical groups. Sixth, the decree increases jail-terms for the misuse and desecration of religion offences from a maximum of five years to a minimum of five years and a maximum of twenty years.

Hate speech law. According to the Institute for Policy Research and Advocacy (ELSAM), the article on online defamation and hate speech in Law No 11/2008 on Electronic Information and Transactions (ITE), amended into Law No 19/2016, has been used to restrict freedom of expression. Throughout 2017, ELSAM found at least 87 reports of the ITE law being used thus, indicating numerous breaches of the right to free speech.³⁰

In December 2016, on the morning of the ‘212’ Islamist mobilization against former Jakarta governor, Ahok, the police arrested 11 people, charging eight with planning to commit treason, including retired Major General Kivlan Zen and Megawati Soekarnoputri’s sister, Sukmawati Soekarnoputri, two under the ITE Law, and one for defamation. The police claimed they were inciting the crowd to call for the impeachment of President Jokowi by marching toward Parliament in order to occupy the building.³¹ Following a police investigation, all the suspects were released.

²⁹ ‘International Covenant on Civil and Political Rights’ OHCHR, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>, accessed on 23 August 2018.

³⁰ ‘Membesarnya potensi ancaman terhadap kebebasan sipil dan memudarnya peran negara dalam perlindungan HAM’ Human Rights Report 2017, ELSAM.

³¹ ‘Polri duga sejumlah orang ingin belokkan aksi 212 jadi aksi makar’ DW, available at <https://www.dw.com/id/polri-duga-sejumlah-orang-ingin-belokkan-aksi-212-jadi-aksi-makar/a-36639736>, accessed on 14 August 2018.

In September 2017, the Indonesian Democratic Party of Struggle (PDI-P) reported journalist, Dandhy Dwi Laksono, for online defamation. The charge involved a Facebook post in which he intimated that PDI-P chairwoman and former president, Megawati Sukarnoputri, had mishandled conflicts in Papua by claiming that arrests of Papua residents had increased since Megawati regained power (through the victory of President Jokowi).³²

Blasphemy. In March 2017, the East Jakarta court sentenced three leaders of banned religion, Gafatar, to jail for blasphemy. The group blends Islamic, Christian, and Jewish doctrine.³³ In 2016, a mob ransacked and burnt the residence of followers of this group. Likewise, in May 2017, the North Jakarta District court sentenced former Chinese-Christian governor, Basuki Tjahaja Purnama, to two years in jail for blasphemy. The five-month trial took place during a gubernatorial election, in which the incumbent ran against a candidate supported by Islamist groups. The case stemmed from an incident in September 2016 when the governor cited verses from the Quran, thereby angering some conservative Islamic leaders.³⁴

The 1965-1966 massacres. In August 2017, police forced the cancellation of a public workshop for planning events related to the 1965-66 massacres (in which military-backed militias allegedly killed an estimated 500,000-1 million people as suspected communists or members of the banned Communist Party of Indonesia (PKI)). Similarly, in September 2017, authorities prevented a seminar about the massacres hosted by the Jakarta Legal Aid Institute due to a lack of the requisite permits. The organizing committee admitted the offence, claiming they believed permits to be unnecessary as the planned event had been a closed seminar attended by less than 50 people.³⁵ Media reports indicated that hard-line groups in the mob had also disrupted events.³⁶ Significantly, the disruptions took place in the aftermath of President Jokowi's statement that he would "clobber" the Communist Party of Indonesia in response to concerns about the party's possible resurrection.³⁷

³² 'Dandhy dwi laksono dipolisikan oleh repdem' *tirto.id*, 6 September 2017, available at <https://tirto.id/dandhy-dwi-laksono-dipolisikan-oleh-repdem-cv7H>, accessed on 14 August 2018.

³³ 'It was stated that the religion of the ex-Gafatar figure was sentenced to 3-5 years' BBC, 7 March 2017, available at <https://www.bbc.com/indonesia/indonesia-39189909>, accessed on 14 August 2018.

³⁴ Lamb, K, 'Jakarta governor Ahok sentenced to two years in prison for blasphemy' *The Guardian*, 9 May 2017, available at <https://www.theguardian.com/world/2017/may/09/jakarta-governor-ahok-found-guilty-of-blasphemy-jailed-for-two-years>, accessed on 14 August 2018.

³⁵ 'The police and mass organizations prevented the 1965 seminar at LBH Jakarta' BBC, 16 September 2017, available at <https://www.bbc.com/indonesia/indonesia-41290897>, accessed on 14 May 2018.

³⁶ 'The reason for the police disbanding the 1965 seminar at LBH Jakarta' [in Indonesian], *Rappler*, 17 September 2017, available at <https://www.rappler.com/indonesia/berita/182427-alasan-polisi-bubarkan-seminar-1965>, accessed on 14 August 2018.

³⁷ 'Jokowi: Show me where the PKI is, I will break!' [in Indonesian], *detik news*, available at <https://news.detik.com/berita/3519225/jokowi-tunjukkan-pada-saya-mana-pki-saya-akan-gebuk>, accessed on 14 August 2018.

B. Attacks on Sexual Orientation Rights

While homosexuality is not illegal at the national level, many local regulations across the country criminalize same-sex sexual activity. For example, in South Sumatra province a local law on “eradication of immorality” categorizes same-sex sexual activity as immoral akin to prostitution, gambling, and the consumption of alcohol. Likewise, in Padang Panjang municipality, West Sumatra province, a local ordinance was passed to prevent, eradicate, and enforce action against “social diseases,” which again had the effect of criminalizing homosexuals and lesbians.³⁸

Similarly, Art 63 of Aceh province’s Sharia Penal Code criminalizes homosexual activities which are punishable by up to 100 lashes, a 100-month jail term, or a fine of up to 1,000 grams of pure gold. In May, two gay men, aged 20 and 23, were found in bed together by people who entered their home. The Sharia court of Banda Aceh sentenced the men to 83 strokes of the cane.³⁹ This constituted the first instance of individuals being punished for their sexuality and was also the first time gay men had been caned in Indonesia. Indeed, research conducted by LGBTIQ organizations, Arus Pelangi and Outright Action International Plan, from October 2015-March 2016 indicated that 56% of LGBT people had experienced violence against their bodies or property. A researcher noted that positive trends at the international level had not improved the situation in Indonesia.⁴⁰ In addition to violence, this community also experiences discrimination at work. Around 80% of the group were of working age, yet only 24% worked in the formal sector; 45% could only find odd jobs. The research also showed that only 38% of the group had an income of IDR1-2.5 million (US\$69-171) per month and 31% earned less than IDR1 million (US\$69) a month. Meanwhile, 41% did not even have health insurance.

Transgenders also experience multiple problems relating to the procurement or use of identity-cards which are vital to access public services, seek employment, own property, etc. Aside from basic personal data, the cards also contain such information as gender, religion, employment, and address. As such, transgenders are forced to choose between male or female identities which may not coincide with their personal preferences. In addition, due to the difference between their physical appearance and the data on their ID cards, or between data in different personal documents, their ID cards have, at times, been deemed invalid. As a result, many transgenders do not even own ID cards.⁴¹

³⁸ ‘Stop homophobia in Indonesia from now on’ [in Indonesian], Kompas.com, 17 May 2015, available at <https://megapolitan.kompas.com/read/2015/05/17/13460721/Stop.Homofobia.di.Indonesia.Mulai.Sekarang>, accessed on 14 August 2018.

³⁹ ‘First in Aceh, gay couples were punished with 85 lashes’ [in Indonesian], BBC, 17 May 2017, available at <https://www.bbc.com/indonesia/indonesia-39944910>, accessed on 14 August 2018.

⁴⁰ ‘Researchers find 2016 published 40 regulations on violating the rights of women and LGBTIQ’ [in Indonesian], KBR, 12 January 2017, available at http://kbr.id/nasional/01-2017/peneliti_temukan_2016_terbit_40_perda_langgar_hak_perempuan_dan_lgbtiq/88116.html, accessed on 14 August 2018.

⁴¹ Siti Kurnia Widiastuti, Farsijana Adeney-Risakotta, and Siti Syamsiyatun, *Discourses and Practices of Muslim Transgenders in Yogyakarta and Central Java, Indonesia*, dissertation, Universitas Gadjah Mada, 2017.

C. Blasphemy Law

In September 2017, Indonesia rejected 58 human rights recommendations by UN member countries to improve its human rights record as part of its Universal Periodic Review before the UN Human Rights Council. Recommendations which were rejected included demands to scrap the blasphemy law and the death penalty.

Parliament is also deliberating on a bill to protect religious freedom. While some praise the government's aspiration to protect a citizen's right to practice his/her religion, others are wary due to the formulation of some of its articles. First, it does not scrap the blasphemy law. Article 156(a) of the Criminal Code defines blasphemy as "showing hostility, abuse, or desecration" toward a religion. The Bill expands this into seven criteria. Article 31 sentences those persuading others to convert from their original religion to five years' imprisonment. Article 32 penalizes those who "purposefully mak[e] noises near places of worship where people are conducting religious ceremonies" to six months in jail. Likewise, Art 34 punishes those "illegally tainting, destroying or burning a holy book, a worship house, or ritual tools" with five years' imprisonment. There are concerns these articles could be used by hard-line groups to pressure the court to prosecute religious minorities.

D. Criminal Code Bill

Currently, Parliament is deliberating the Criminal Code Bill (Kitab Undang-Undang Hukum Pidana) to update the 100-year-old law. Both the President and Parliament have reiterated a need to pass the Bill before the 2019 election. However, law-makers have been unable to reach consensus on two important articles.

Criminalization of couples who are not legally married. Article 495 of the current Criminal Code criminalizes same-sex relationships involving individuals under 18 years old. The new Bill expands this provision to include consensual same-sex relationships between adults. Such an offence will incur a prison-term of up to 9 years. In addition, Art 488 will criminalize co-habitation without legal marriage, incurring imprisonment of up to 1 year or a fine of up to IDR50 million (US\$3,424). Concerns have been voiced over people who either cannot afford to get married or whose marriages are not recognized, such as those involving indigenous communities. In addition, it is possible the proposed law could increase the likelihood of early marriages which could result in girls leaving education at a young age, early pregnancies which could be harmful to both mother and baby, and economic difficulties.

Defamation of the president and vice president. Under Arts 262, 263, and 264, defamation is punishable by up to five years' imprisonment and a fine of up to IDR500 million (US\$34,030). A similar provision in the existing Criminal Code was revoked in 2006 by the Constitutional Court as it was deemed to create legal uncertainty. However, it was

reintroduced in 2015. The article is contrary to the principle of equality before the law and may well restrict freedom of expression.

E. Papua and West Papua

In March, the government allowed a visit to Papua by Dainius Puras, the UN Special Rapporteur on the right to health, easing its tight control on visits by foreign observers. However, foreign journalists seeking to report from Papua continue to face problems and deportation even after Jokowi's May 2015 commitment to reduce restrictions.⁴² For example, in March, authorities deported French journalists from Timika while in May, Japanese journalists were deported from Wamena. However, on a more hopeful note, in September, a police ethics panel found four police officers guilty of "improper conduct" for deliberately firing on Papuan protesters in Deiyai district. They were demoted, relocated, and obliged to make public apologies.⁴³

F. Rohingya Crisis

In July, the government took the initiative of providing humanitarian aid to ethnic Rohingya refugees. President Jokowi stated that he deplored the violence against the Rohingya and saw a need for action, not merely statements of condemnation.⁴⁴ As such, the President sent Foreign Minister, Retno Marsudi, to discuss the situation with Myanmar State Counsellor, Aung San Suu Kyi.

Part 3: Conclusion

Throughout 2017, human rights issues were prominently interlinked with the political interests of various groups. This was particularly evident in the case of Basuki Tjahaja Purnama, a former Chinese-Christian governor of Jakarta, who failed to win an election due to his double-minority background. Thus, the Islamists succeeded in using blasphemy to dispatch a political rival, first, by preventing his re-election, and second, by pressurizing the court to imprison him. As such, the case paved the way for sectarianism in Indonesia's mainstream politics, triggering the government to retaliate by passing a new Law on Mass Organization allowing it to ban organizations deemed to oppose Pancasila and the Constitution. As a result, the government was able to ban the Islamist group, HTI. While the situation also prompted deliberation of a new bill on the "protection of religious rights," it is unfortunate that the blasphemy law will

⁴² 'Indonesia's 'opening' of Papua still needs to bridge the gap between reality and rhetoric' The Conversation, 17 November 2015, available at <https://theconversation.com/indonesias-opening-of-papua-still-needs-to-bridge-the-gap-between-reality-and-rhetoric-50399>, accessed on 14 August 2018.

⁴³ 'Penembakan di deiyai, empat polisi divonis minta maaf' CNN Indonesia, 31 August 2017, available at <https://www.cnnindonesia.com/nasional/20170831162855-12-238698/penembakan-di-deiyai-empat-polisi-divonis-minta-maaf>, accessed on 14 August 2018.

⁴⁴ Read more at: 'Indonesian President Jokowi deplores violence against Rohingya' Channel News Asia, 4 September 2017, available at <https://www.channelnewsasia.com/news/asia/indonesian-president-jokowi-deplores-violence-against-rohingya-9182930>, accessed on 14 August 2018.

not be scrapped. Further, Indonesia rejected 58 recommendations from UN members to improve its human rights record by, for example, repealing the blasphemy law and providing better legal protection to LGBT people. Meanwhile the 2016-2018 terrorist attacks hastened deliberation of an anti-terrorism law. However, the possibility of direct military involvement in counterterrorism operations is not universally supported with many objecting to the military's greater role in law enforcement.

**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%)
Official language	Lao-Tai
Literacy rate (aged 15 and above)	79.9% ³
Life expectancy	66.6 ⁴
GDP	US\$15.81 billion (per capita US\$2,457) ⁵
Government ⁶	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 society.

* 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 25 July 2018.

² Data from 2015. 'Results of population and housing census 2015' Lao Population and Housing Census, available at <https://www.lsb.gov.la/pdf/PHC-ENG-FNAL-WEB.pdf>, accessed on 15 August 2018, 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 15 August 2018, at 232.

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: <https://docplayer.net/31869338-Joint-context-analysis-lao-pdr.html>, accessed on 15 August 2018.

System of governance

According to the 2015 Constitution, the National Assembly (NA) is the highest organ of state power with control over fundamental issues such as law-making; thus, it has the ability to amend the Constitution itself, 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 organizations, civil servants, and citizens.⁷ 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

As mentioned in a previous edition, 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.⁸ Although the Constitution outlines a formal separation of powers between the 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 Organization (SIO) is supposed to act independently and play the role of government auditor by monitoring state budgets – in practice, again this organization 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.⁹

In 2016, HE Thongloun Sisoulith was elected as the new Prime Minister and while his administration actively sought to address social issues, especially the impact of environmental destruction, human rights issues have not been taken into account and the government continues to restrict freedom of speech, association, and assembly.¹⁰

⁷ The Constitution of Lao PDR (No 63/NA), 8 December 2015, available at <http://www.na.gov.la/index.php?r=site/detailcontent&id=50&left=87>, accessed on 15 August 2018, at Art 86.

⁸ Constitution of Lao PDR 2015, Art 3.

⁹ 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 15 August 2018.

¹⁰ '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 15 August 2018.

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
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

¹¹ 'Ratification status for Lao PDR' United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 15 August 2018.

As seen in Table 1 above, Lao PDR has ratified the majority of international human rights treaties. Thus, according to principles of international law, the state has an obligation to report to the United Nations any changes in its national laws, especially regarding human rights issues, and not to violate international laws. The Ministry of Foreign Affairs plays a key role in the preparation of these reports in collaboration and in coordination with line ministries, concerned organizations, and other stakeholders. By contrast, technical team reports are compiled by representatives from line ministries and mass organizations with little participation from civil society organizations.

To date, the government has been reviewed by only three conventions (CAT, ICCPR, and ICESCR) which all expressed concern that its domestic laws were not fully in line with treaty provisions. Further, the government has only invited the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography (1999) and the Special Rapporteur on Freedom of Religion (2010) to visit the country.¹²

As mentioned previously, Lao PDR's constitution only permits one political party, the purpose of which is to build a nation-state along communist principles. The state also controls the media and is especially protective of issues that could harm national security. As a result, human rights issues are strictly prevented from entering the public arena and investigations, either by insiders or outsiders, are discouraged. The following section will mainly discuss provisions in Lao PDR's national legislation that violate human rights.

C. National Laws Threatening Human Rights

Penal Code (2005)

Despite Art 34 (new) of the Constitution which stipulates that: “the state acknowledges, respects, protects and secures the human rights and basic rights of citizens according to the laws,” in practice, the government has failed to adequately protect human rights by, for example, retaining the death penalty in many sections of its penal code.¹³ Further, to date, no official report has been released revealing the number of cases subjected to the death penalty. However, according to its national report to the UN on the ICCPR, while the death penalty is provided for in the Penal Code for serious offences such as rape and brutal acts of murder, there is also a right of appeal and many sentences are eventually reduced to life imprisonment.¹⁴ Indeed, during a debate on a new draft of the Penal Code in 2017, many NA members spoke in favour of retaining the death penalty

¹² ‘Laos’ international human rights obligation and commitments’ Civil Rights Defenders, available at <https://www.sombath.org/wp-content/uploads/2016/08/2016-08-31-International-HR-Obligations-CRD.pdf>; accessed on 15 August 2018.

¹³ Penal Code 2005, ss.56, 57, 58, 60, 61, 62, 67, 68, 88, 101, 128(4), 134, and 146.

¹⁴ United Nations Human Rights Committee, ‘Initial reports of States parties due in 2010: Lao People’s Democratic Republic (CCPR/C/LAO/1)’ 27 April 2017, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsuzZlUkOYm4YH3ex106smajNen4I6qyF5Odr1%2BWCifMPXZrZk5yeWjghOPBjprWpMmNtIL9TyrBu8BCc3FzkuDi3Na%2Fg64Z8MVHQ28apCSz>, accessed on 15 August 2018.

pointing to the serious harm caused to the state by such crimes as drug trafficking.¹⁵ However, although offenders may have the right to appeal, the process is unpredictable and prison conditions in Laos fail to meet international standards. In addition, the government does not release up-to-date information on its prison population.¹⁶

Moreover, the Penal Code also limits freedom of expression, especially criticism of the government. Article 65 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 [US\$58] to 10,000,000 Kip [US\$1,171].

Similarly, Art 72 prohibits “any person [from] organizing or participating in the gathering of groups of persons to conduct protest marches, demonstrations and others with the intention of causing social disorder.” Violators face one to five years’ imprisonment and fines ranging from 200,000 Kip [US\$23] to 50,000,000 Kip [US\$5,855]. Such draconian provisions led Human Rights Watch to urge the Australian government to focus on the right to free speech, association, and assembly during its human rights dialogue with Laos in 2017.¹⁷

Sexual orientation rights

Although homosexuality is legal in Lao PDR, current levels of acceptance towards the lesbian, gay, bisexual and transgender (LGBT) community are difficult to gauge. However, it is generally believed they are not fully accepted by society despite the lack of reports to the contrary. In addition, the government discourages or restricts people from organizing LGBT activities by withholding approval for such events¹⁸ leading to a lack of information about LGBT issues.

The group is also restricted by high levels of social stigma based on their physical appearance. As such, LGBT also face discrimination in the employment market¹⁹ even

¹⁵ Vientiane Times, ‘National Assembly remains in favour of death penalty’ J&C Services, 18 May 2017, available at <http://jclao.com/national-assembly-remains-in-favour-of-death-penalty/>, accessed on 23 August 2018.

¹⁶ ‘Lao Movement for Human Rights’ FIDH, available at https://www.fidh.org/IMG/pdf/fidh-lmhr_joint_shadow_report_ccpr_123__lao_pdr_june_2018.pdf, accessed on 15 August 2018.

¹⁷ Human Rights Watch (see note 10 above).

¹⁸ ‘Laos 2017 Human Rights Report’ US Department of State, available at <https://www.state.gov/documents/organization/277337.pdf>, accessed on 17 July 2018.

¹⁹ US Department of State (see note 18 above).

though Art 39 (new) of the Constitution insists that “Lao citizens have the right to work and engage in occupations which are not contrary to the laws.” In practice, however, many LGBT are hindered from achieving their full potential, especially transgenders who, it is reported, face the highest levels of discrimination and society stigma.²⁰

Further, the LGBT population, especially transgender women, report difficulty accessing justice. According to one local activist,²¹ the police failed to take any serious action after a transgender woman reported a crime, judging she may have caused it herself. This discrimination violates national law, especially the Criminal Procedure Law. Another case occurred in a rural area when a transgender woman having sex with her boyfriend was arrested by a community member. While the boyfriend was released, it is contended the transgender woman was not because she had violated village norms. Society then proceeded to punish her by publicly exposing her shame.²²

Finally, the government does not recognize same-sex marriages, and indeed, prohibits such unions under Art 10, s.1 (new) of the Family Law 2008.²³ This is in contrast to the 1990 Family Law which had no such provision – the previous Art 10²⁴ contained no words prohibiting same-sex marriage. Moreover, Art 37 of the Constitution states that: “Citizens of both genders enjoy equal rights in the political, economic, cultural, and social fields, and in family affairs.” However, no clear explanation of “family affairs” is offered. In addition, no significant movement advocates for same-sex marriage because of the aforementioned societal stigma.

Part 2: Outstanding Human Rights Issues

A. Freedom of Expression, Association, and Assembly

As mentioned in the section on the Penal Code, Lao PDR fails to protect rights to freedom of expression, association, and assembly, and little progress has been made from previous editions of this chapter. As such, the government still controls all the main media outlets in the country including radio, TV, and printed publications²⁵ as defined in national laws such as the Constitution, the Penal Code, and the Law on the Prevention and Combating of Cyber Crimes which criminalizes such acts as criticism of government performance, slandering the state, distorting party or state policies, inciting disorder, or propagating information or opinions that may weaken the state.²⁶

²⁰ US Department of State (see note 18 above).

²¹ Informal interview with local activist, May 2018.

²² Informal interview with local activist, May 2018.

²³ Family Law 2008, Art 10 (new), available at <http://www.na.gov.la/>, accessed on 18 August 2018.

²⁴ Family Law 1990, Art 10, available at http://www.ilp.gov.la/lao_law/family_law.pdf, accessed on 18 August 2018.

²⁵ FIDH (see note 16 above).

²⁶ US Department of State (see note 18 above).

Accordingly, the government arrested a number of Lao citizens for criticising the government on social media.²⁷

In addition, the government also restricts a citizen's right to associate and has even used its power to force associations to remove sensitive words such as 'rights' or 'human rights' from their names.²⁸ Moreover, in 2017, it issued Decree on Associations No 238 of 2017²⁹ to control non-profit associations (NPA) and other civil society organizations in violation of international treaties such as the International Covenant on Civil and Political Rights (ICCPR) which requires states to respect the rights of freedom of opinion, expression and association.³⁰ This decree led a number of international organizations including Amnesty International, the International Commission of Jurists, and the World Organization Against Torture to call for its repeal. Rights to associate were also restricted by burdensome registration requirements. For example, Art 48 allows for dissolution of an association if "it does not apply for registration" which further expands the grounds for dissolution set out in the 2009 Decree.³¹ As such, no one can predict the future of the right to association in Lao PDR.

B. Enforced Disappearances

Although Lao PDR has signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), it has not yet ratified the treaty.³² Thus, as the notorious case of Sombath Somphone (a civil society leader who disappeared in 2012) demonstrates, the government fails to adequately investigate³³ such cases despite pleas from international organizations to do so.³⁴ To prevent this specific case disappearing from international view, on the fourth anniversary of his enforced disappearance, civil society called for individuals, institutions, and governments around the world to sign a statement demanding to know "Where is Sombath Somphone?"³⁵

²⁷ Quinn, A, 'The issue of human rights in Laos' Borgen Magazine, 20 September 2017, available at <http://www.borgenmagazine.com/issue-human-rights-in-laos/>, accessed on 18 August 2018.

²⁸ US Department of State (see note 18 above).

²⁹ The Decree on Association No 238, available at <http://laoofficialgazette.gov.la/kcfinder/upload/files/0619577.pdf>, accessed on 18 August 2018.

³⁰ 'Lao People's Democratic Republic: 9 NGOs call for the repeal of Decree on Associations No 238 of 2017' OMCT, 13 December 2017, available at <http://www.omct.org/statements/lao/2017/12/d24639/>, accessed on 18 August 2018.

³¹ OMCT (see note 30 above).

³² 'Laos: 5 years since civil society leader's 'disappearance' Human Rights Watch, 15 December 2017, available at <https://www.hrw.org/news/2017/12/15/laos-5-years-civil-society-leaders-disappearance>, accessed on 15 August 2018.

³³ 'Joint context analysis: Lao PDR' (see note 6 above).

³⁴ 'Lao PDR: On 4th anniversary of enforced disappearance, civil society demands to know: 'Where is Sombath Somphone?' OMCT, 15 December 2016, available at <http://www.omct.org/human-rights-defenders/urgent-interventions/lao/2016/12/d24115/>, accessed on 15 August 2018.

³⁵ 'Joint statement on Sombath Somphone' Human Rights Watch, 15 December 2016, available at <https://www.hrw.org/news/2016/12/15/joint-statement-sombath-somphone>, accessed on 15 August 2018.

Part 3: Conclusion

Lao PDR is a small country under the rule of one political party, the LPRP. Although HE Thongloun Sisoulith expressed a desire to address social issues, it appears human rights issues are still considered too sensitive to discuss in public especially political activities critical of government performance, which, it claims, damages national interest and national security. Freedom of expression, association, and assembly are thus prohibited by both the Constitution and national legislation leaving many citizens reluctant to express dissatisfaction.

Other serious human rights issues concern the right to life and LGBT discrimination, the former because the government and policymakers still strongly support the death penalty despite having signed and ratified international treaties to the contrary, and the latter because of prevailing social norms in the country which stigmatize certain ways of life. Consequently, discrimination and fear of discrimination prevent LGBT from fully exercising their rights to either legally marry or work. More importantly, forced disappearances remain a problem in Laos as are the rights to a free and fair trial and the right not to be arbitrarily arrested.

In conclusion, it is argued that the government is still failing to provide full human rights protection to all its citizens, particularly as it seeks to prevent citizens from exercising and participating in certain activities prohibited by national legislation. Thus, there is a need for outsiders and international organizations to pressure the government on its human rights record.

MALAYSIA

A decorative graphic consisting of several parallel diagonal stripes in shades of gray, located on the right side of the dark horizontal band.

MALAYSIA

Fadiah Nadwa Fikri

Part 1: Overview of Malaysia

A. Country Background

Malaysia Facts	
Geographical size	329,758 sq km
Population	32 million ¹
Ethnic background ²	Main ethnic groups: Bumiputera (Malay and non-Malay indigenous peoples) – 68.8% Chinese – 23.2% Indian – 7% Other – 1%
Official language	Bahasa Melayu
Literacy rate (aged 15 and above)	94.6% ³
Life expectancy	74.8 ⁴
GDP	US\$296.54 billion ⁵ (per capita US\$9,944) ⁶
Government	Constitutional monarchy and parliamentary democracy. Modelled after the British Westminster parliamentary system, Malaysia's parliament consists of the House of Representatives and the Senate. Malaysia practices the doctrine of separation of powers to ensure that the legislative, executive, and judicial branches of government are kept distinct to prevent abuse of power. The powers assigned to these three bodies are spelled out in the Federal Constitution.
Political and social situation	Malaysia is a multi-racial country whose official religion is Islam. ⁷ The Federal Constitution also states that other religions may be practiced in peace and harmony. ⁸

¹ Data from 2017. 'Current population estimates, Malaysia, 2016-2017' Department of Statistics Malaysia, Official Portal, available at <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=a1d1UTFZazd5ajjiRWFHNDduOXFFQT09>, accessed on 2 April 2018.

² Data from 2017. Department of Statistics Malaysia (see note 1 above).

³ Data from 2016. 'Human Development Reports' United Nations Development Programmes, available at <http://hdr.undp.org/en/indicators/101406#>, accessed on 2 April 2018.

⁴ Data from 2017. 'Abridged life tables, Malaysia, 2015-2017' Department of Statistics Malaysia, Official Portal, available at <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=dkdvKzZ0K1NiemEwNlJteDBSUGorQT09>, accessed on 2 April 2018.

⁵ Data from 2016. 'Malaysia' The World Bank, available at <https://data.worldbank.org/country/malaysia>, accessed on 2 April 2018.

⁶ Data from 2017. 'GDP per capita (current US\$): Malaysia' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=MY>, accessed on 1 September 2018.

⁷ Federal Constitution, Art 3(1).

⁸ Federal Constitution, Art 3(1).

System of governance

Malaysia is divided into two regions by the South China Sea: Peninsular Malaysia (also known as West Malaysia) and East Malaysia. There are eleven states in Peninsular Malaysia, two in West Malaysia, and three Federal Territories (two in Peninsular Malaysia and one in West Malaysia).⁹ As a constitutional monarchy with a parliamentary democracy, the King (known as Yang di-Pertuan Agong) is the supreme head of state¹⁰ and the Prime Minister is the head of government.¹¹

Modelled after the British Westminster parliamentary system, Malaysia's parliament consists of the House of Representatives (or Dewan Rakyat) and the Senate (or Dewan Negara). The House of Representatives consists of 222 elected members¹² and the Senate comprises 44 appointed and 26 indirectly elected senators.¹³

Elections in Malaysia are provided for under Part VIII of the Federal Constitution (Arts 113 to 120). Part VIII governs the conduct of elections (to the House of Representatives and State Legislative Assemblies, and the preparation and revision of electoral rolls for such elections), the constitution of the Election Commission (EC), assistance to the EC, federal constituencies, state constituencies, methods to challenge elections, methods to question election petitions of no return, qualifications of electors, and direct elections to the Senate.

It is noteworthy that Malaysia practices the doctrine of separation of powers in its governance. In affirming the application of this doctrine as a form of check and balance in Malaysia, Justice Abdul Hamid Mohamad noted that the doctrine of separation of powers is a political doctrine devised to ensure that the legislative, executive, and judicial branches of government are kept distinct in order to prevent abuse of power.¹⁴ The powers assigned to these three distinct bodies are spelled out under the Federal Constitution.¹⁵

Population, ethnic groups, and language

In 2017, Malaysia's population stood at 32 million (28.7 million of whom are citizens, leaving 3.3 million non-citizens),¹⁶ with males outnumbering females (107 males per

⁹ 'State governments' Office of the Prime Minister, 2017, available at <http://www.pmo.gov.my/home.php?menu=page&page=1671>, accessed on 3 April 2018.

¹⁰ Federal Constitution, Art 32.

¹¹ Federal Constitution, Art 43.

¹² Federal Constitution, Art 46.

¹³ Federal Constitution, Art 45.

¹⁴ Mahaletchumi Balakrishnan 'The judiciary and the lost doctrine of separation of powers' *The Malaysian Bar*, 2010, available at http://www.malaysianbar.org.my/constitutional_law_committee/the_judiciary_and_the_lost_doctrine_of_separation_of_powers.html, accessed on 13 June 2018.

¹⁵ Federal Constitution, Chapters 3, 4, 5.

¹⁶ Data from 2017. Department of Statistics Malaysia (see note 1 above).

100 females).¹⁷ In terms of age structure, 24% of the population was aged 0-14 years while 69.7% of the population was aged 15-64 years.¹⁸

In reference to Malaysia's major ethnic composition, Bumiputera (Malay and non-Malay indigenous peoples) made up 68.8% of the total population¹⁹ with ethnic Chinese lagging far behind at 23.2% and ethnic Indians at 7%.²⁰ The Malay language is the national language of Malaysia.²¹ Other languages spoken by diverse communities include English, Mandarin, Cantonese, Hakka, Hainan, Foochow, Tamil, Telugu, Malayalam, Punjabi, Iban, and Bidayuh.

Economic development

Malaysia's economic growth in 2017 stood at 5.8%, the country's highest annual growth rate since 2014,²² while its gross domestic product (GDP) grew rapidly in the first three quarters of 2017.²³ As of December 2017, the unemployment rate stands at 3.3%.²⁴ Malaysia's inflation rate in 2017 rose to 3.5% as compared to 1.7% in 2016.²⁵

Political and legal situation

Malaysia has been ruled by the same coalition of three race-based parties known as Barisan Nasional (BN) for 60 years since it gained independence in 1957. BN's six decade rule has resulted in endemic corruption and abuse of power. Repressive laws such as the Sedition Act 1948, the Official Secrets Act 1972, the Printing Presses and Publication Act 1984, and the Multimedia and Communications Act 1998 have been selectively used against dissidents, opposition members, and human rights defenders to silence criticism of the government. These repressive laws have had a chilling effect on the exercise of free speech, contributing to a shrinking space for civil society.

The government continues to act with impunity as state institutions that were established to act as checks and balances to avert government excess fail to act independently to uphold the rule of law. For example, the judiciary fails to check the arbitrary and disproportionate use of existing repressive laws violating Malaysia's constitutional guarantee of fundamental liberties. Judicial independence continues to deteriorate as a

¹⁷ Data from 2017. Department of Statistics Malaysia (see note 1 above).

¹⁸ Data from 2017. Department of Statistics Malaysia (see note 1 above).

¹⁹ Data from 2017. Department of Statistics Malaysia (see note 1 above).

²⁰ Data from 2017. Department of Statistics Malaysia (see note 1 above).

²¹ Federal Constitution, Art 152.

²² 'Malaysia's economic growth accelerates to 5.8 percent in 2017' The World Bank, 14 December 2017, available at <http://www.worldbank.org/en/news/press-release/2017/12/14/malaysia-economic-growth>, accessed on 18 June 2018.

²³ The World Bank (see note 22 above).

²⁴ 'Key statistics of labour force in Malaysia' Department of Statistics Malaysia, 9 February 2018, available at <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=b0E2TzErRllva0sxamhUMHFJdGh2QT09>, accessed on 18 June 2018.

²⁵ 'Inflation in Malaysia' Focus Economics, available at <https://www.focus-economics.com/country-indicator/malaysia/inflation-eop>, accessed on 21 June 2018.

result of political interference in the appointment of judges. Section 26 of the Judicial Appointments Commission Act 2009 (JAC) provides that the Judicial Appointments Commission shall submit recommendations for the appointment of judges to the Prime Minister. The Prime Minister, however, is not obliged under the JAC to accept the Commission's recommendations effectively creating a gap that allows the Prime Minister to meddle with the appointment of judges.

BN's power has further been fortified by elections that have been marred with gross irregularities, cheating, and corruption. The absence of free and fair elections has created an uneven playing field, thus giving the ruling party a huge advantage in elections. As a response to this alarming state of affairs, Bersih 2.0 (a coalition of civil society organizations for free and fair elections) was formed in 2006 to advocate for electoral and institutional reforms.²⁶ In its fight, Bersih 2.0 has been subjected to incessant harassment and intimidation. As such, the police used excessive force to disperse peaceful protesters participating in rallies organized by Bersih 2.0.²⁷ The Home Minister also declared Bersih 2.0 illegal under the Societies Act 1966.²⁸ Draconian laws such as the Sedition Act 1948 and the Printing Presses and Publication Act 1984 were used against Bersih 2.0 supporters who participated in its activities.²⁹ The intimidation and harassment continued to intensify culminating in a police raid on the organization's office during which staff were arrested and hauled up for investigation.³⁰

It is important to note that the People's Tribunal on Malaysia's 13th General Elections (People's Tribunal)—an initiative set up by Bersih 2.0 in 2013 to investigate claims of gross irregularities, cheating, and corruption in the conduct of the 13th General Elections (GE13)—concluded that GE13 violated standards of free and fair elections and that many of the issues surrounding Malaysia's electoral system were both systematic and systemic.³¹ Significantly, it also observed that some funds from 1Malaysia Development Berhad (1MDB)—the world's biggest financial scandal³²—were used to finance Prime Minister Najib Razak's campaign in GE13.³³ As a result, BN won GE13 and continued to occupy positions of power.

²⁶ 'Background' Bersih 2.0, available at <http://www.bersih.org/about/background/>, accessed on 20 June 2018.

²⁷ 'Creating a culture of fear: The criminalization of peaceful expression in Malaysia' Human Rights Watch, 26 October 2015, available at <https://www.hrw.org/report/2015/10/26/creating-culture-fear/criminalization-peaceful-expression-malaysia>, accessed on 20 June 2018.

²⁸ Human Rights Watch (see note 27 above).

²⁹ Human Rights Watch (see note 27 above).

³⁰ Human Rights Watch (see note 27 above).

³¹ 'Findings of the People's Tribunal on Malaysia's 13th General Elections' Bersih, 25 March 2014, available at <http://www.bersih.org/wp-content/uploads/2014/03/Peoples-Tribunal-on-GE13-Findings-Report.pdf>, accessed on 17 June 2018.

³² Ramesh, R, '1MDB: The inside story of the world's biggest financial scandal' The Guardian, 28 July 2016, available at <https://www.theguardian.com/world/2016/jul/28/1mdb-inside-story-worlds-biggest-financial-scandal-malaysia>, accessed on 21 June 2018.

³³ 'WSJ: Najib used 1MDB's funds for GE13' Malaysiakini, 19 June 2015, available at <https://www.malaysiakini.com/news/302433>, accessed on 21 June 2018.

B. International Human Rights Commitments and Obligations

To date, Malaysia has only ratified three core human rights treaties (see Table 1 below), albeit with numerous reservations. If allowed to remain in place, such reservations would inevitably undermine the essence of those self-same treaties, ensuring their full realization will be nothing short of an impossibility.

Table 1: Ratification Status of International Instruments – Malaysia³⁴

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or 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

³⁴ '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 4 June 2018.

Malaysia is party to three core human rights treaties namely CEDAW, CRC, and CRPD, albeit with a number of reservations deemed to contradict existing provisions of the Federal Constitution, Islamic, and national laws.

CRC: Malaysia ratified the CRC in 1995 with the following reservations:³⁵

- (1) Article 2 on non-discrimination;
- (2) Article 7 on name and nationality;
- (3) Article 14 on freedom of thought, conscience, and religion;
- (4) Article 28(1)(a) on free and compulsory education at the primary level;
- (5) Article 37 on torture and deprivation of liberty.

To fulfil its commitment to the CRC, the treaty provisions were translated into the Child Act 2001 which, e.g. provides for the care, protection, rehabilitation, and development of children in society.³⁶ Other protections accorded to children can also be found in the Penal Code which criminalizes incest, and the Domestic Violence Act 1994 which shields children from violence within the family.

CEDAW: As part of its efforts to fulfil its obligations under CEDAW, Malaysia proceeded to amend the Federal Constitution in July 2001 to include gender based anti-discrimination laws. Given the absence of a definition of gender-based discrimination in the Federal Constitution, while the amendment is commendable, concerns as to whether the essence of CEDAW have been fully realised remain. It is also important to note that despite 22 years having passed since Malaysia's ratification of CEDAW, it has failed to enact specific domestic law to incorporate its provisions. A full realization of CEDAW is also impeded by Malaysia's reservations:³⁷

- (1) Article 9(2) on equal rights with men pertaining to the nationality of their children;
- (2) Article 16(1)(a) on equal rights to marriage;
- (3) Article 16(1)(c) on equal rights and responsibilities during marriage and at its dissolution;
- (4) Article 16(1)(f) on equal rights and responsibilities with regard to guardianship, wardship, trusteeship, and adoption of children;
- (5) Article 16(1)(g) on equal personal rights as husband and wife.

³⁵ 'CRC reservations' UNICEF, available at https://www.unicef.org/malaysia/childrights_crc-reservations-malaysia.html, accessed on 20 June 2018.

³⁶ Preamble to the Child Act 2001.

³⁷ 'NGO CEDAW Shadow Report' for the Malaysian government's review by the CEDAW Committee at the 69th CEDAW session in February 2018, Women's Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG), 29 January 2018, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_NGO_MYS_30011_E.pdf, accessed on 20 June 2018.

CRPD: The Persons with Disabilities Act was enacted in 2008. In 2010, Malaysia ratified the CRPD, albeit with reservations to Arts 15 and 18. Article 15 deals with freedom from torture or cruel, inhuman or degrading treatment or punishment while Art 18 deals with liberty of movement and nationality. In its observation on the realization of the rights of persons with disabilities, the Human Rights Commission of Malaysia noted that persons with disabilities continue to face inequalities as a result of omissions in the Act as regards sufficient comprehensive monitoring, penalties, or remedy mechanisms against violations of their rights.³⁸

C. National Laws Protecting Human Rights

The Federal Constitution

The Federal Constitution is the supreme law of Malaysia; thus, any law passed after Merdeka Day (31 August 1957) which is inconsistent with it shall be void.³⁹ Part II deals with the protection of fundamental liberties which are as follows:

- (1) The right to life or personal liberty (Art 5);
- (2) The right not to be subjected to slavery (Art 6);
- (3) The right not to be subjected to retrospective criminal laws and repeated trials (Art 7);
- (4) The right to equality and non-discrimination (Art 8);
- (5) The right to freedom of movement (Art 9);
- (6) The right to free speech, assembly, and association (Arts 10(a), (b) and (c) respectively);
- (7) The right to freedom of religion (Art 11);
- (8) The right to an education (Art 12); and
- (9) The right to property (Art 13).

As regards rights to free speech, assembly, and association, Clause 2 of Art 10 allows these rights to be limited by law. The grounds for limiting rights to free speech are:⁴⁰

- (1) In the interests of national security;
- (2) To safeguard friendly relations with other countries;
- (3) To maintain public order; or
- (4) To maintain morality.

Rights to freedom of assembly can be limited on the following grounds:⁴¹

- (1) In the interests of national security; or
- (2) To maintain public order.

³⁸ 'International Day of Persons with Disabilities' Human Rights Commission of Malaysia, 3 December 2017, available at <http://www.suhakam.org.my/press-statement-no-45-of-2017-international-day-of-persons-with-disabilities-pwd/>, accessed on 20 June 2018.

³⁹ Federal Constitution, Art 4(1).

⁴⁰ Federal Constitution, Art 10(2)(a).

⁴¹ Federal Constitution, Art 10(2)(b).

The grounds for limiting the right to freedom of association are:⁴²

- (1) In the interests of national security;
- (2) To maintain public order; or
- (3) To maintain morality.

Significantly, constitutional rights to freedom of speech, assembly, and association are only accorded to citizens unlike the rights to life or personal liberty, the right not to be subjected to slavery, the right not to be subjected to retrospective criminal laws and repeated trials, the right to equality and non-discrimination, the right to freedom of religion, and the right to property, all of which are guaranteed to every individual regardless of status.

The Human Rights Commission of Malaysia Act 1999

The Human Rights Commission of Malaysia Act 1999 was enacted to provide for the establishment of the Human Rights Commission of Malaysia (the Commission) and to set out its powers and functions in order to protect and promote human rights in Malaysia.⁴³ It is tasked with the following functions:⁴⁴

- (1) To promote human rights awareness and provide human rights education;
- (2) To advise and assist the government in formulating legislation and procedures concerning human rights;
- (3) To make recommendations to the government regarding accession to international human rights instruments; and
- (4) To inquire into complaints as regards violations of human rights.

However, the Commission merely acts as an advisory body and lacks enforcement and prosecution powers to compel the government to implement its recommendations or hold it accountable for human rights violations. This limitation poses an obstacle to the effective protection and promotion of human rights and is further aggravated by the fact parliamentarians have failed to debate the Commission's annual reports,⁴⁵ making the promotion and protection of human rights in Malaysia an uphill battle.

D. National Laws Threatening Human Rights

The Sedition Act 1948

The Sedition Act 1948 is a colonial-era law passed in 1948 to deal with the communist insurgency. Its use continued after Malaysia gained independence in 1957 to stifle dissenting views. The Sedition Act is deemed arbitrary given its wide and ambiguous definition of what constitutes "seditious," the lack of intent as an element that ought

⁴² Federal Constitution, Art 10(2)(b).

⁴³ Preamble to Human Rights Commission of Malaysia Act 1999.

⁴⁴ Human Rights Commission of Malaysia Act 1999, s.4(1).

⁴⁵ 'Suhakam: Parliament has to 'own' human rights in Malaysia' The Star, 4 April 2017, available at <https://www.thestar.com.my/news/nation/2017/04/04/suhakam-parliament-has-to-own-human-rights-in-malaysia/>, accessed on 12 June 2018.

to be proven, and its selective use against critics. The government justified its use to counter threats against peace, public order, and the security of Malaysia.⁴⁶ Significantly, the Sedition Act 1948 went through a series of amendments in April 2015 which, e.g. removed criticism against the government and the judiciary as seditious acts. A closer look at other amendments, however, granted the government more power to suppress the right to free speech. One of the amendments was even clearly aimed at social media users. This can be seen in amendments to the word “publish” which now also includes the words “cause to be published.”

The Sedition Act 1948 was also amended to give more power to the Sessions Court to issue prohibition orders for publications likely to lead to bodily injury or damage to property, appearing to promote feelings of ill will, hostility or hatred between races or classes of persons, or appearing to promote feelings of ill will, hostility or hatred between people on grounds of religion. Use of the words “likely” and “appears” means the threshold to determine whether publications should be thus prohibited is low. Other alarming amendments were the abolition of fines and the introduction of harsher punishments – a minimum of three years’ and a maximum of seven years’ imprisonment under s.4 of the Sedition Act 1948. The amendment also introduced a new offence, aggravated sedition, which carries a minimum of three years’ and a maximum of twenty years’ imprisonment upon conviction.

Amendments to the Sedition Act 1948 also empower courts to issue orders to prohibit persons charged with sedition from leaving the country. Upon an application filed by the public prosecutor, it is mandatory for the court to grant an order prohibiting the accused from leaving the country as the word “shall” is used in the amendment, essentially stripping the court of judicial discretion.

Not only do these amendments further restrict the right to free speech, they also undermine the independence of the judiciary as they remove the court’s discretionary power to decide certain matters including sentencing. In response, the United Nations High Commissioner for Human Rights warned that “the new provisions ... seriously undermine ... freedom of expression and opinion in the country, in breach of Malaysia’s Federal Constitution and its international human rights obligations.”⁴⁷ However, there was a significant decline in the use of the Sedition Act 1948 in 2017 as compared to 2015 – only nine cases were reported.⁴⁸

⁴⁶ ‘What you need to know about the amended Sedition Act’ The Malay Mail, 10 April 2015, available at <https://www.malaymail.com/s/875651/what-you-need-to-know-about-the-amended-sedition-act>, accessed on 6 June 2018.

⁴⁷ ‘Malaysia: Draft anti-terror and sedition laws seriously undermine freedom of expression and opinion – Zeid’ United Nations Human Rights Office of the High Commissioner, 9 April 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15810&LangID=E>, accessed on 6 June 2018.

⁴⁸ ‘Malaysia Human Rights Report 2017’ SUARAM, available at <https://www.suaram.net/wp-content/uploads/2018/02/HR-Overview-2017-Digital-Edition.pdf>, accessed on 6 June 2018.

The Communications and Multimedia Act 1998

The Communications and Multimedia Act 1998 (CMA) was enacted to regulate the converging communications and multimedia industries.⁴⁹ Used to specifically target critics, s.233 deals with the improper use of network facilities or network services to transmit communications deemed obscene, indecent, false, menacing, or offensive in character. Offences under s.233 carry heavy punishments – a fine not exceeding MYR50,000 (US\$12,145) or imprisonment for a term not exceeding one year. A person convicted under s.233 shall also be liable to a further fine of MYR1,000 (US\$243) for every day the offence continues after conviction. However, what amounts to “obscene, indecent, false, menacing, or offensive” under s.233 is not clearly defined, leaving it open to abuse, thus, further undermining the right to free speech.

The Printing Presses and Publications Act 1984

The Printing Presses and Publications Act 1984 (PPA) was enacted to regulate the use of printing presses and the printing, importation, production, reproduction, publication, and distribution of publications.⁵⁰ It has been used to limit the number of printed newspapers and suspend the publication of others. The PPA serves to restrict press freedom by requiring the annual renewal of newspaper licences. This leaves the door open for abuse as the Minister is given absolute power to grant, revoke, or suspend licences while his/her decision is invulnerable to judicial scrutiny. As such, it is unsurprising that in 2017, Malaysia’s press freedom was ranked 144 out of 180 countries in the ‘2017 World Press Freedom Index.’⁵¹

The Peaceful Assembly Act 2012

The Peaceful Assembly Act 2012 (PAA) was enacted to limit the right to peaceful assembly which is guaranteed under Art 10(b) of the Federal Constitution. One positive aspect of the PAA is the introduction of a requirement for notice to be given to the police. This stands in stark contrast to the onerous requirement to obtain a police permit under s.27 of the Police Act 1967 which was repealed in the same year the PAA was enacted. However, the requirement of 10 days’ notice before the proposed assembly and making the failure to do so a criminal offence imposes an unreasonable burden on those wishing to exercise the right to peaceful assembly. It also serves as an impediment to urgent and spontaneous assemblies.

Section 4(1) of the PAA further undermines the right to peaceful assembly as it forbids certain groups from exercising their rights, making the full realization of such rights illusory. As such, the PAA prohibits non-citizens, children (other than assemblies

⁴⁹ Preamble to the Communications and Multimedia Act 1998.

⁵⁰ Preamble to the Printing Presses and Publications Act 1984.

⁵¹ ‘2017 World Press Freedom Index’ Reporters Without Borders, available at <https://rsf.org/en/ranking/2017#>, accessed on 7 June 2018.

specified in the Second Schedule), and citizens below the age of 21 years (who may not organize assemblies) from exercising the right to peaceful assembly. This clearly violates the principle of non-discrimination which is not only recognized under international human rights law but also the Federal Constitution. Another problematic aspect of the PAA lies in its criminalization of street protests. The PAA also allows for the imposition of unreasonable conditions – date, time, duration, place, or manner of the proposed assembly. This long list of conditions further restricts the rights of those who intend to meaningfully participate in peaceful assemblies.

Security Offences (Special Measures) Act 2012

The Security Offences (Special Measures) Act 2012 (SOSMA) is an administrative detention law which was enacted to replace the Internal Security Act 1961 – an Act which allowed detention without trial and was used to silence criticism against the government. Further, SOSMA was also enacted to provide for special measures in connection with security offences threatening public order and the security of the country.⁵²

Application of SOSMA raises a number of concerns relating to the right to due process especially as the definition of such offences is overly vague and wide, leaving open the likelihood of abuse as virtually any act can be deemed prejudicial to public order or security. SOSMA also allows for detention of a person up to 28 days with no judicial oversight. Further, the person can be denied access to legal representation or family members up to 48 hours.

Although SOSMA allows for a trial to take place after the investigation is complete, it falls short of international standards as to what constitutes a fair trial. For example, SOSMA departs radically from the basic rules of evidence, and individuals accused of committing an offence under this Act are denied the right to cross-examine prosecution witnesses whose identities are kept secret. Another alarming aspect of trials under SOSMA is that the prosecution is permitted to use information against the accused without disclosing its sources.

The application of SOSMA clearly contravenes United Nations Security Council Resolution 2178 (2014) which was unanimously adopted on 24 September 2014. The Resolution provides that:

⁵² Preamble to Security Offences (Special Measures) Act 2012.

Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law, underscoring that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort and notes the importance of respect for the rule of law so as to effectively prevent and combat terrorism, and noting that failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization and fosters a sense of impunity.⁵³

Prevention of Terrorism Act 2015

The Prevention of Terrorism Act 2015 (POTA) was enacted in 2015 to prevent, among other issues, the commission or support of acts of terrorism involving listed terrorist organizations in a foreign country, and to control those involved in such acts.⁵⁴ The POTA drew censure from human rights groups as it too allows detention without trial. Sections 13(1) and (2) empower the Prevention of Terrorism Board (the Board) to issue detention or restriction orders for a period not exceeding two years against individuals believed to have been or are involved in terrorist activities. Moreover, even if not detained, under s.13(3), restriction orders may be issued to control and supervise individuals for a period not exceeding 5 years. The Board also has the power to renew detention or restriction orders indefinitely. In addition, POTA shields the Board from accountability as its decisions are not subject to judicial review.

Some of the key provisions of POTA mirror the abolished Internal Security Act 1960 which was previously used to silence dissenting voices. In response to POTA's introduction, Human Rights Watch observed that:

POTA is like a legal zombie arising from the grave of the abusive Internal Security Act (ISA) and Emergency Ordinance (EO) that were revoked in 2012. The ISA and EO were established respectively to combat communist insurgency and to control racial and religious tension, but were repeatedly misused by successive Malaysian governments to arrest political opponents and hold them indefinitely, and intimidate and silence those raising concerns about government rights abuses or corruption. So there is a great deal of justifiable concern that bringing back detention without trial could preface renewed crackdowns on civil society.⁵⁵

⁵³ Resolution 2178 (2014), Security Council, 24 September 2014, S/RES/2178 (2014).

⁵⁴ Preamble to Prevention of Terrorism Act 2015.

⁵⁵ '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 21 June 2018.

Section 377A of the Penal Code

Section 377A of the Penal Code criminalizes homosexuality and sodomy with punishments up to 20 years in prison and whipping. This archaic provision further aggravates the discrimination suffered by the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community who are already living on the margins of Malaysian society.

E. Recent Court Cases Relating to Human Rights

Freedom of speech

The Star newspaper was investigated under the Sedition Act 1948 for publishing a controversial front page banner containing a photo of Muslims performing prayers coupled with the headline, “Malaysian Terrorist Leader.”⁵⁶ Two editors were suspended pending investigation over the controversial front page.⁵⁷

Deputy Communications and Multimedia Minister, Jailani Johari, revealed in Parliament that the CMA investigated 269 cases between January and September 2017.⁵⁸ Out of those, 146 were investigated under s.233 of the CMA criminalizing the use of network facilities or services to transmit communications deemed offensive, leading to 56 investigation papers being submitted to the Attorney General’s Chambers.⁵⁹ As a result, Premesh Chandran, Chief Executive Officer of news portal Malaysiakini was charged under s.244 of the CMA for airing a video entitled, ‘Khairuddin: Apandi Ali is not fit to be AG and he should quit immediately.’⁶⁰ Also, the book, *Breaking the Silence: Voices of Moderation – Islam in a Constitutional Democracy*, by civil society group, G25, was banned under the PPA for being prejudicial to public order.⁶¹ The ban was issued by the Deputy Prime Minister on 14 June 2017 but no reasons were given to justify it. Although G25 filed a judicial review application in court to challenge the legality of the decision, their attempt to seek an explanation for the ban failed.⁶²

⁵⁶ ‘Police probing The Star under Sedition Act: IGP’ New Straits Times, 30 May 2017, available at <https://www.nst.com.my/news/crime-courts/2017/05/244100/police-probing-star-under-sedition-act-igp>, accessed on 7 June 2018.

⁵⁷ ‘The Star suspends 2 top editors over controversial May 27 front page’ New Straits Times, 30 May 2017, available at <https://www.nst.com.my/news/nation/2017/05/244167/star-suspends-2-top-editors-over-controversial-may-27-front-page>, accessed on 7 June 2018.

⁵⁸ Parliament Hansard, 13th Parliament, 5th Session, 3rd Meeting, available at www.parlimen.gov.my/files/hindex/pdf/DR-06112017.pdf, accessed on 7 June 2018, at 25.

⁵⁹ Parliament Hansard (see note 58 above).

⁶⁰ ‘Mkini CEO charged over AG videos’ Malaysiakini, 15 May 2017, available at <https://www.malaysiakini.com/news/382234>, accessed on 7 June 2018.

⁶¹ ‘Govt bans book authored by G25, deems it prejudicial’ The Sun Daily, 27 July 2017, available at <http://www.thesundaily.my/news/2017/07/27/govt-bans-book-authored-g25-deems-it-prejudicial>, accessed on 8 June 2018.

⁶² ‘Malaysian moderate group G25 takes legal action to challenge Home Ministry’s book ban’ The Straits Times, 16 October 2017, available at <https://www.straitstimes.com/asia/se-asia/malaysian-moderate-group-g25-takes-legal-action-to-challenge-home-ministrys-book-ban>, accessed on 8 June 2018.

Right to peaceful assembly

Forty-four Rohingyas were arrested on 30 August 2017 for protesting in front of the Myanmar Embassy in Kuala Lumpur.⁶³ The protest was in response to the escalating violence committed against the Rohingyas in Rakhine state, Myanmar⁶⁴ and contravened s.4(2)(a) of the PAA criminalizing non-citizens participating in peaceful assemblies. Likewise, two activists from Bersih 2.0 and a member of parliament were charged on 4 October 2017 under s.4(2)(c) of the PAA⁶⁵ which criminalizes those organizing or participating in street protests.

Right to due process and fair trial

In May 2017, the Inspector General of Police (IGP) issued a statement that several Turkish nationals had been arrested under SOSMA for alleged involvement in activities threatening the security of Malaysia.⁶⁶ CCTV footage showed one Turkish national, Turgay Karaman, being surrounded by plainclothes men and taken away in an unmarked vehicle.⁶⁷ It was also reported that on the same night, another Turkish national, Ihsan Arslan, had also disappeared.⁶⁸ The Home Minister later announced that the two Turkish nationals were being investigated for involvement with the Islamic State.⁶⁹ The reason given by the Home Minister for the arrest and detention therefore stood in contradiction to the IGP's earlier statement. In expressing concern over the arrest and detention of the trio, the United Nations Office of the High Commissioner for Human Rights stated that "There are concerns that these men may have been targeted over their suspected links to the Gulen movement which is accused of being behind a coup attempt in Turkey in July 2016."⁷⁰ It is noteworthy that the third Turkish national, Izmet Ozcelik, was registered with the United Nations High Commissioner for Refugees as an asylum seeker.⁷¹ Further, while in detention, the trio had been denied the right to legal representation and access to their family members,⁷² raising serious

⁶³ 'The plight of Rohingyas in Malaysia' The Diplomat, 1 September 2017, available at <https://thediplomat.com/2017/09/the-plight-of-rohingyas-in-malaysia/>, accessed on 8 June 2018.

⁶⁴ The Diplomat (see note 63 above).

⁶⁵ 'Bersih duo, MP charged again with unlawful assembly' The Malaysian Insight, 4 October 2017, available at <https://www.themalaysianinsight.com/s/17122>, accessed on 8 June 2018.

⁶⁶ 'IGP: Detained Turkish men 'threat' to Malaysia' The Star, 4 May 2017, available at <https://www.thestar.com.my/news/nation/2017/05/04/igp-khalid-two-turkish-men-threat-to-malaysia/>, accessed on 8 June 2018.

⁶⁷ 'Amnesty International launches urgent action for 3 Turkish nationals arrested in Malaysia' Stockholm Center for Freedom, 8 May 2017, available at <https://stockholmcf.org/amnesty-international-launches-urgent-action-for-3-turkish-nationals-arrested-in-malaysia/>, accessed on 8 June 2018.

⁶⁸ Stockholm Center for Freedom (see note 67 above).

⁶⁹ 'Abducted' Turkish nationals arrested for alleged IS links' The Star, 4 May 2018, available at <https://www.thestar.com.my/news/nation/2017/05/04/turkish-nationals-arrested-over-alleged-is-links/>, accessed on 8 June 2018.

⁷⁰ 'UN Human Rights Office concerned by arrests of three Turkish nationals in Malaysia on security related charges' Office of the High Commissioner for Human Rights, 5 May 2017, available at <http://bangkok.ohchr.org/news/press/Malaysia%20Turkish%20Arrests.aspx>, accessed on 8 June 2018.

⁷¹ '2 Turkish men detained in Malaysia to seek judicial review: Lawyer' Channel News Asia, 9 May 2017, available at <https://www.channelnewsasia.com/news/asia/2-turkish-men-detained-in-malaysia-to-seek-judicial-review-8831194>, accessed on 8 June 2018.

⁷² Stockholm Center for Freedom (see note 67 above).

concerns over their safety. It was subsequently reported that the trio had been deported to Turkey.⁷³

Part 2: Outstanding Human Rights Issues

A. Continued Use of the Death Penalty

Malaysia continues to retain a mandatory death penalty for various crimes including drug trafficking, murder, and discharge of firearms with intent to kill or harm a person. Decisions to carry out executions are shrouded in secrecy, leaving those sentenced to death and their family members in a state of uncertainty. Human Rights Watch reported that as of 2017, nearly 1000 people are estimated to be on death row.⁷⁴ However, in November 2017, Parliament removed the mandatory death penalty for drug offences by amending the Dangerous Drugs Act 1952 (DDA)⁷⁵ to give judges discretionary power to sentence individuals convicted under the DDA.⁷⁶

B. Deaths in Custody

Deaths in custody (e.g. from torture, ill-treatment, or neglect) remain a major problem in Malaysia. A general lack of oversight mechanisms to ensure accountability has greatly contributed to emboldening the culture of impunity which allows such deaths to occur. While the Malaysian Bar has persistently called on the government to form an Independent Police Complaints and Misconduct Commission to investigate cases of police misconduct and abuse of power to end the culture of impunity,⁷⁷ this call continues to fall on deaf ears. As of October 31, 15 cases of custodial death were reported in 2017.⁷⁸

C. Violation of Indigenous People's Land Rights

Article 8(5)(c) of the Federal Constitution guarantees special rights governing the protection, well-being, and advancement of indigenous peoples in Malaysia. However, indigenous peoples continue to face marginalization and discrimination despite the constitutional guarantee. One of the struggles they face concerns the recognition of their customary land rights. In particular, logging activities, which continue to be carried

⁷³ 'Malaysia deports three Turks amid UN fears of widening Turkish crackdown' Reuters, 12 May 2017, available at <https://uk.reuters.com/article/uk-turkey-malaysia-idUKKBN1880PE>, accessed on 8 June 2018.

⁷⁴ 'Malaysia: Events of 2017' Human Rights Watch, 2017, available at <https://www.hrw.org/world-report/2018/country-chapters/malaysia>, accessed on 11 June 2018.

⁷⁵ 'Parliament removes mandatory death penalty for drug offences, judges to get discretion' The Malay Mail, 22 November 2017, available at <https://www.malaymail.com/s/1522297/parliament-removes-mandatory-death-penalty-for-drug-offences-judges-to-get>, accessed on 11 June 2018.

⁷⁶ Malay Mail (see note 75 above).

⁷⁷ 'Press release: Establishment of IPCMC is crucial in halting deaths in police custody' The Malaysian Bar, 22 February 2017, available at http://www.malaysianbar.org.my/press_statements/press_release_%7C_establishment_of_ipcmc_is_crucial_in_halting_deaths_in_police_custody.html, accessed on 11 June 2018.

⁷⁸ SUARAM (see note 48 above).

out on their land, threaten the full and effective enjoyment of a range of human rights especially the rights to self-determination, land and natural resources, and culture.

On 23 January 2017, 5 indigenous rights activists from the Temiar tribe were arbitrarily arrested by the Kelantan Department of Forestry for erecting a blockade to protect their customary land from logging activities.⁷⁹ On 24 January 2017, 16 more indigenous activists and 2 journalists were arbitrarily arrested for respectively defending the blockade and reporting the incident.⁸⁰ In this case, it can clearly be seen that the Department of Forestry abused their power as the law does not grant them the power of arrest.

D. Violation of Refugee Rights

Malaysia is not party to the 1951 Refugee Convention and its 1967 Protocol and it also lacks legislative or administrative provisions dealing with refugees and asylum seekers which leaves these groups at perpetual risk of serious human rights abuses. Thus, refugees and asylum seekers in Malaysia are deemed “illegal immigrants” as the Immigration Act 1959 makes no distinction between refugees, asylum seekers, and undocumented migrants. They are therefore subject to arrest, detention and prosecution for immigration offences and on conviction are liable to imprisonment, whipping, and sometimes deportation.

Furthermore, whipping was made mandatory for persons found guilty of being in the country illegally following an amendment to the Immigration Act 1959 in 2002.⁸¹ The Immigration Act 1959 also criminalizes employers who hire undocumented persons, who if found guilty, are liable to a fine of not less than MYR10,000 (US\$2,429) but no more than MYR50,000 (US\$12,145), or imprisonment not exceeding 12 months, or both for each employee. Employers hiring more than 5 undocumented employees at the same time are also liable to imprisonment of not less than 6 months but no more than 5 years, and are also liable to whipping of not more than 6 strokes.

The absence of legal status denies refugees and asylum seekers basic economic and social rights including the right to work, the right to adequate housing, the right to healthcare, and the right to education. While significant numbers of refugees and asylum seekers work illicitly to support themselves, the absence of legal status exposes them to exploitation and victimization by unscrupulous employers who are fully aware that such workers will be unable to seek legal recourse to assert their employment rights.

⁷⁹ ‘Ruckus again at Gua Musang. Authorities break Temiar blockades, held journalists released’ The Star, 25 January 2017, available at <https://www.thestar.com.my/news/nation/2017/01/25/ruckus-again-at-gua-musang-authorities-break-temiar-blockades-held-journalists-released/>, accessed on 12 June 2018.

⁸⁰ The Star (see note 79 above).

⁸¹ Immigration Act 1959, s.6(3).

However, it could be argued that criminalizing the act of hiring undocumented persons is unfair to refugees and asylum seekers who desperately need to find employment to support themselves. The absence of legal status also exposes refugees and asylum seekers to human trafficking.

E. Statelessness

Malaysia is not party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. According to the United Nations High Commissioner for Refugees, there are 12,400 stateless persons in West Malaysia as of December 2017.⁸² As regards stateless populations in East Malaysia, particularly the state of Sabah, it is estimated there are nearly 30,000 stateless children.⁸³

As a result, stateless persons risk being denied basic human rights. Significantly, although the Federal Constitution provides a legal safeguard against statelessness (s.1(e) of Part II of the Second Schedule provides that a person born in Malaysia who is not born a citizen of any country is a citizen of Malaysia by operation of law), cases which have been litigated in court show that the burden imposed on stateless persons to prove their statelessness is extremely onerous, effectively impeding them from being accorded the right to a nationality.⁸⁴

F. Violation of the Right to Freedom of Movement

Article 9 of the Federal Constitution guarantees all citizens the right to freedom of movement. The full realization of this right, however, remains illusory given numerous cases where movements of rights activists' and opposition politicians have been arbitrarily curtailed. In May 2017, Maria Chin Abdullah, the chairperson of Bersih 2.0, filed an application for judicial review to challenge the legality of a travel ban imposed on her.⁸⁵ The High Court dismissed her application ruling that the right to travel overseas was a privilege and not a right, further stating that s.59A of the Immigration Act 1959 under which the travel ban had been imposed was not reviewable.⁸⁶ The government's move to restrict the right to movement also extends to foreign activists. In 2017, three prominent foreign activists were barred from entering Malaysia.⁸⁷

⁸² 'Ending statelessness in Malaysia' The United Nations High Commissioner for Refugees, available at <http://www.unhcr.org/en-my/ending-statelessness-in-malaysia.html>, accessed on 12 June 2018.

⁸³ '30,000 stateless kids in Sabah' 20 July 2017, The Borneo Post, available at <http://www.theborneopost.com/2017/07/20/30000-stateless-kids-in-sabah/>, accessed on 12 June 2018.

⁸⁴ Rodziana Mohamed Razali, 'Addressing statelessness in Malaysia: New hope and remaining challenges' Working Paper Series No 2017/9, 2017, available at http://www.institutesi.org/WP2017_09.pdf, at 9.

⁸⁵ 'Court dismisses Maria Chin's bid to challenge travel ban' The Star, 18 May 2017, available at <https://www.thestar.com.my/news/nation/2017/05/18/court-dismisses-maria-chin-bid-to-challenge-travel-ban/>, accessed on 13 June 2018.

⁸⁶ The Star (see note 85 above).

⁸⁷ SUARAM (see note 48 above).

Part 3: Conclusion

In his first speech as Prime Minister in 2009, Najib Razak committed to undertake a comprehensive review of the Internal Security Act 1960 (ISA) which allowed detention without trial.⁸⁸ He also announced that the suspensions imposed on Harakah and Suara Keadilan (newspapers belonging to opposition parties) would be lifted.⁸⁹ In reaffirming his reform agenda, the Prime Minister in his speech on Malaysia Day 2011, concluded that:

In closing, I wish to emphasize that, free of any suspicion and doubt, the Malaysia that we all dream of, and are in the process of creating, is a Malaysia that practices a functional and inclusive democracy where public peace and prosperity is preserved in accordance with the supremacy of the Constitution, the rule of law, and respect for basic human rights and individual rights.⁹⁰

Accordingly, in 2012, the government proceeded to abolish the ISA and s.27 of the Police Act 1967 (requiring permits for public assemblies). However, the government's reform agenda appeared to be little more than a sham when the abolished ISA and s.27 of the Police Act were respectively replaced with the repressive Security Offences (Special Measures) Act 2012 and the Peaceful Assembly Act 2012. Moreover, the government continued to tighten its grip on power by using repressive laws to silence dissent and instil fear. Use of such legislation has contributed greatly to a shrinking space for civil society, further undermining rights guaranteed by the Federal Constitution.

⁸⁸ 'Najib releases 13 ISA detainees' The Nut Graph, 4 April 2009, available at <http://www.thenutgraph.com/najib-releases-13-isa-detainees/>, accessed on 21 June 2018.

⁸⁹ The Nut Graph (see note 88 above).

⁹⁰ 'Prime Minister's message for Malaysia Day 2011' 15 September 2011, available at <https://www.najibrazak.com/en/official-addresses/perutusan-khas-hari-malaysia/>, accessed on 21 June 2018.

MYANMAR

A decorative graphic consisting of several parallel diagonal stripes in varying shades of gray, located on the right side of the dark horizontal band.

MYANMAR*

May Thida Aung**



Part 1: Overview of Myanmar

A. Country Background

Myanmar Facts ¹	
Geographical size	676,577 sq km
Population	51.48 million ²
Ethnic breakdown ³	Main ethnic groups: Burman (68%) Shan (10%) Karen (7%) Rakhine (4%) Mon (2%)
Official language(s)	Myanmar or Burmese
Literacy rate (aged 15 and above)	89.5% ⁴
Life expectancy	66.8 ⁵
GDP	US\$63.23 billion ⁶ (per capita US\$1,298) ⁷
Government	Unitary presidential republic since 2011. The government is now led by the civilian NLD party. Executive and legislative power is limited by unelected military representatives nominated by the Commander-in-Chief.
Political and social situation	Although the public may expect to gain more freedom on the rights to information and expression, progress in other areas has been less visible.

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

** National researcher.

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

² Data from 2014. Ministry of Immigration and Population (see note 1 above).

³ Data from 2018. ‘Myanmar population 2018’ World Population Review, available at <http://worldpopulationreview.com/countries/myanmar-population/>, accessed on 5 September 2018. There are some controversial elements to the 2014 census. For example, religious and ethnic data was withheld until recently: see, Ye Mon Tun, ‘Ethnic data from 2014 census to be released’ Myanmar Times, 3 January 2017, available at <https://www.mmtimes.com/national-news/24393-ethnic-data-from-2014-census-to-be-released.html>, accessed on 5 August 2018.

⁴ Data from 2014. Ministry of Immigration and Population, *Overview of the Results of the 2014 Population and Housing Census*, Nay Pyi Taw: Department of Population, 2017, at 7.

⁵ Data from 2014. Republic of the Union of Myanmar, *The 2014 Myanmar Population and Housing Census: The Union Report. Highlights of the Main Results, Census Report, Volume 2-A*, Myanmar: Republic of the Union of Myanmar, May 2015, at 25.

⁶ Data from 2016. ‘Myanmar’ World Bank, available at <https://data.worldbank.org/country/myanmar>, accessed on 5 September 2018.

⁷ Data from 2017. ‘GDP per capita (current US\$): Myanmar’ The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=MM>, accessed on 5 September 2018.

Myanmar has been a unitary presidential republic since 2011. The government's first term (2011-2015) was led by Thein Sein of the quasi-civilian Union Solidarity and Development Party (USDP) but in the 2015 general election, Aung San Suu Kyi's National League for Democracy (NLD) won the majority vote in both houses of parliament. Thus, in its second term (2016-2020), Myanmar is currently being administered by the civilian NLD party. In March 2018, Parliament elected Win Myint as President to replace Htin Kyaw who reportedly resigned because of health issues.⁸ However, since March 2016, the role of President has largely been ceremonial as NLD leader, Aung San Suu Kyi, effectively heads the government as State Counsellor.⁹ The government is divided into the executive, legislative, and judicial branches.

Despite changes in leadership, the government has limited operational powers due to the military's dominant role in the executive and legislature. For example, the 2008 Constitution grants power to the Commander-in-Chief to appoint the three central ministerial posts of Ministry of Defence, Home Affairs, and Border Affairs.¹⁰ In addition, 25% of the seats in the House of Nationalities and the House of Representatives must be reserved for military representatives nominated by the Commander-in-Chief.¹¹

In the early months of its administration, the NLD committed to a new era of transparency and an expansion of democratic space citing a broad program of legislative reform including the rights to freedom of expression and information.¹² Moreover, current President Win Myint's inaugural speech reiterated the need to uphold human rights and freedom of the press, whilst also promising to tackle corruption and constitutional issues.¹³ Accordingly, the NLD took some positive steps by ratifying the International Covenant on Economic, Social and Cultural Rights, engaging in efforts to resolve past land confiscation cases, and enacting minor reforms to regulate the rights to free speech and assembly. However, at the same time, the government increasingly used repressive laws to prosecute journalists, activists, and critics for peaceful expression deemed critical of the government or military.¹⁴

⁸ Slow, O, 'Myanmar's new president prepared for crucial role' VOA News, 9 April 2018, available at <https://www.voanews.com/a/myanmar-new-president/4338469.html>, accessed on 29 August 2018.

⁹ Tin Htet Paing, 'Military MPs boycott as Lower House passes 'State Counsellor' bill' Irrawaddy, 6 April 2016, available at <https://www.irrawaddy.com/news/burma/military-mps-boycott-as-lower-house-passes-state-counsellor-bill.html>, accessed on 29 August 2018.

¹⁰ Constitution of the Republic of the Union of Myanmar, s.232(b)(ii).

¹¹ Constitution of the Republic of the Union of Myanmar, ss.109(b), 141(b).

¹² 'Myanmar: HRC must address deteriorating environment for free expression' Article 19, 23 February 2018, available at <https://www.article19.org/resources/myanmar-hrc-must-address-deteriorating-environment-free-expression/>, accessed on 6 September 2018. See also, 'Report of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC-37-70)' 9 March 2018, at para 12.

¹³ Slow (see note 8 above).

¹⁴ 'Burma: Events of 2017' Human Rights Watch, available at <https://www.hrw.org/world-report/2018/country-chapters/burma>, accessed on 29 August 2018.

Sixty-nine candidates, representing 24 political parties, registered for the upcoming 3 November by-election contesting 13 vacant parliamentary seats across national and state legislatures, with four seats open in the Lower House of Parliament, one in the Upper House, and eight across state and regional legislatures.¹⁵

B. International Human Rights Commitments and Obligations

Despite many calls by UN Human Rights Council member nations during its Universal Periodic Review (UPR)¹⁶ and special rapporteurs on its human rights situation to ratify more core treaties, Myanmar has only ratified four out of the nine core human rights treaties, and accepted only one out of three optional protocols under the Convention on the Rights of the Child as shown in Table 1 below. On the other hand, it made few reservations to said treaties upon accession. Thus, aside from Art 29 of CEDAW (on dispute resolution and interpretation of the Convention) and Art 1 of ICESCR (on self-determination), Myanmar has committed to implement all treaty provisions.

Table 1: Ratification Status of International Instruments – Myanmar¹⁷

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)
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

¹⁵ 'Nearly 70 candidates register for November by-election' DVB, 12 July 2018, available at <http://www.dvb.no/news/nearly-70-candidates-register-for-november-by-election/81233>, accessed on 30 August 2018.

¹⁶ Following its UPR in 2011, it was recommended Myanmar ratify ICCPR and CAT.

¹⁷ 'Ratification status for Myanmar' United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 4 August 2018.

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)		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)

Further, Myanmar is doing relatively well in terms of submitting its periodic reports to the relevant treaty bodies although they are invariably late. After submission of an initial report, its next offering usually entails a combined report covering the next two cycles, e.g. its third and fourth cycle reports on child rights were submitted in 2009. In the case of women's rights, Myanmar submitted combined reports for the second and third cycles in 2006 and the fourth and fifth cycles in 2015 respectively but limited itself to addressing such issues as the root causes of trafficking in women and girls and the rehabilitation of victims by the provision of shelters, in addition to legal, medical, and psychosocial assistance. More contentious topics, such as amendment of the citizenship law as previously recommended by the CEDAW and CRC committees were not addressed.¹⁸ Most recently, Myanmar submitted its initial report on CRPD in 2017.¹⁹

C. National Laws Protecting Human Rights

During the second cycle of its UPR in 2015/2016, Myanmar received 281 recommendations, of which 166 were accepted and 15 noted.²⁰ Although implementation was not as recommended by the relevant treaty bodies, the government has nevertheless demonstrated its commitment by either reforming old laws or drafting new legislation/ other agendas. Because the enactment of new legislation is more time-consuming than the preparation of agendas, no specific new laws relating to the rights of children and women have been adopted since 2013 although a bill to protect women against violence was drafted by the Ministry of Social Welfare, Relief, and Resettlement with

¹⁸ CEDAW/C/MMR/CO/4-5 (25 July 2016).

¹⁹ CRPD/C/MMR/1 (6 October 2017).

²⁰ See, 'Report of the Working Group on the Universal Periodic Review: Myanmar (A/HRC/31/13)' 23 December 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>, accessed on 6 September 2018.

the support of international and domestic NGOs.²¹ Discussion on a child rights bill is still ongoing.²²

At the same time, several agendas were developed and adopted. For example, pursuant to a recommendation²³ of the CRC Committee, the government launched a manual on birth registration in 2017. Adopting simplified procedures, the new manual allows responsible persons to issue free birth certificates to unregistered children up to 10 years of age in all parts of the country²⁴ regardless of the parents' nationality, ethnicity, and citizenship status.²⁵ In a similar vein, a National Youth Policy was launched in November 2017 to realize the rights of children.

Regarding overall improvement of economic, social, and cultural rights, the NLD launched its first ever Water, Sanitation and Hygiene for All Strategy and Investment Plan (2016-2030), a National Health Plan (2017-2021) focusing on universal health coverage, an action plan on forced labour, and a notification²⁶ for an increase in the minimum wage from MMK3,600 (US\$2.35) to MMK4,800 (US\$3.10) in 2018.

To ensure persons with disabilities also have the right to work, a quota system, together with the use of penalties, was applied by the Regulations for the Rights of Persons with Disabilities 2017. Accordingly, private companies or government organizations with at least 50 employees must now employ one person with a disability. Those failing to do so will be subject to a MMK100,000 (US\$65) or MMK200,000 (US\$130) monthly fine. In addition, any employer failing to follow the regulations will be subject to a fine equal to the amount in wages of the minimum number of disabled people they should have employed under the quota system.²⁷

²¹ San Yamin Aung, 'New law to protect women, girls against violence' Irrawaddy, 17 October 2017, available at <https://www.irrawaddy.com/news.com/news/burma/new-law-protect-women-girls-violence.html>, accessed on 10 August 2018.

²² See, Pyidaung Su Hluttaw, available at <https://pyidaungsu.hluttaw.mm/second.bills>. See also, Chau, T, 'Children's Rights Bill inconsistent over child labour regulations' Myanmar Times, 23 August 2017, available at <https://www.mmmtimes.com/news/childrens-rights-bill-inconsistent-over-child-labour-regulations.html>, accessed on 10 August 2018.

²³ CRC/C/MMR/CO/3-4, at para 44.

²⁴ Free birth registration was launched in October 2014 jointly with the Ministries of Immigration and Population, National Planning and Economic Development, Health, Home Affairs, UNICEF, and the European Union. See, 'Government and UNICEF to strengthen birth registration system in Myanmar' UNICEF, 2014, available at https://www.unicef.org/myanmar/media_23117.html, accessed on 6 September 2018.

²⁵ The CRC Committee recommended development of a policy to allow free birth registration covering children up to 18 years of age. See, 'UNICEF and Telenor join hands to introduce mobile birth and death registration in Myanmar' UNICEF, 2018, available at https://www.unicef.org/myanmar/media_27871.html, accessed on 6 September 2018.

²⁶ In March 2018, the National Committee for Setting the Minimum Wage set up a new minimum wage for all employees. See, Nyan Linn Aung and Pyae Thet Phyo, 'Government sets new daily minimum wage at K 4800' Myanmar Times, 6 March 2018, available at <https://www.mmmtimes.com/news/government-sets-new-daily-minimum-wage-k4800.html>, accessed on 12 August 2018.

²⁷ Pyae Thet Phyo, 'After delay, disability rights rules and regulations published' Myanmar Times, 13 July 2018, available at <https://www.mmmtimes.com/news/after-delay-disability-rights-rules-and-regulations-published.html>, accessed on 12 August 2018.

However, it could be argued the government selectively prioritized the above-mentioned issues over other civil and political rights. For example, the right to free speech was not so comprehensively tackled although the controversial 2013 Telecommunications Law was amended in August 2017 to counter strong criticism of governmental misuse. As such, jail sentences were reduced from three to two years and a defendant's right to bail was recognized. Nevertheless, the amendment failed to address the law's most controversial provision, s.66(d), which remains unchanged.

D. National Laws Threatening Human Rights

Under the NLD, the following two laws still pose a threat to journalists, human rights defenders, and ordinary people living in conflict zones.

Official Secrets Act 1923

The Official Secrets Act was formulated by the British colonial government in 1923 to criminalize the sharing of almost any kind of official information. Section 3 criminalizes any person who collects, publishes, or communicates information that may be useful to any enemy. Section 5 also criminalizes any person who has, controls, communicates, uses, retains, or receives information classified as secret under the law, with a prison term of two years. This effectively means the State can classify any information or evidence as an official secret especially in cases of corruption and/or government wrongdoing. Such overly broad provisions allow the State wide discretion to deem any information secret and has been utilized to prevent journalists and other human rights defenders from disseminating material critical of the government.

Further, the above two sections directly hinder the public's right to access information particularly when journalists are restricted admission to conflict zones where many human rights violations occur.²⁸ A clear example can be seen in the arrest of two Reuters News Agency reporters, Wa Lone and Kyaw Soe Oo, for possessing sensitive documents relating to the killing of ten Muslims in August 2017 during a clearance operation by government security forces.²⁹ Thus, it can be seen that even the democratically-elected NLD has sought to control information which is vital for public scrutiny of officials, to enable effective participation in decision-making, and for society to exercise its rights and responsibilities in an informed manner.³⁰ Similarly, in February 2014, four journalists and the CEO of daily newspaper, Unity Journal, were arrested and charged

²⁸ 'Burma: Allow access to investigate abuses in Rakhine State' Human Rights Watch, 17 November 2016, available at <https://www.hrw.org/news/2016/11/17/burma-allow-access-investigate-abuses-rakhine-state>, accessed on 4 September 2018.

²⁹ Naw, BH, and Chau, T, 'Govt's use of 'draconian' law against journalists throttles press freedom: Media corps' Myanmar Times, 15 December 2017, available at <https://www.mmtimes.com/news/govts-use-draconian-law-against-journalists-throttles-press-freedom-media-corps.html>, accessed on 4 September 2018.

³⁰ Nderi, A, 'Freedom of information is democracy's cornerstone' Pambazuka News, 18 September 2008, available at <https://www.pambazuka.org/governance/freedom-information-democracy-cornerstone>, accessed on 4 September 2018.

under the Official Secrets Act for publishing a story on an undisclosed chemical weapons plant allegedly being constructed in central Myanmar.³¹ In short, the scope of the legislation means any individual can be harassed and/or prosecuted by the Official Secrets Act. However, it is argued freedom of information should only be limited when there is a clear intent to harm national security. Moreover, despite the reluctance of government officials to provide information and interviews to journalists, Myanmar lacks a right to information law.³²

Unlawful Association Act 1908

To stifle public opinion and political dissent, ss.17(1) and 17(2) of the Unlawful Associations Act continue to be used by the current administration to arrest, detain, and incarcerate people involved in religious organizations, political associations, trade unions, student associations, and a wide array of other activist groups. In 2017, as many as 60 Arakanese men were arrested under s.17(1) for alleged ties to the Arakan Army.

The Act also poses a threat to journalists and ordinary people living in conflict zones. Denial of access to individual journalists and independent observers in conjunction with limited rights to receive official government information has adversely affected the media's ability to cover such areas.³³ For example, in June 2017, three journalists³⁴ were charged for attending a drug-burning ceremony hosted by the ethnic armed organization (EAO), Ta'ang National Liberation Army (TNLA).³⁵ Likewise, in October 2017, a court in Shan State convicted Kachin men, Dumdaw Nawng Lat and Langjaw Gam Seng (a Baptist pastor and youth leader respectively), under the Unlawful Associations Act for facilitating a journalist's trip to the region.

Moreover, the Act can also be used to threaten inhabitants of conflict zones who may be forced to help outlawed armed groups. Thus, villagers may be forcibly recruited into armed groups, asked to supply food, or generally interact with EAOs on a regular basis.³⁶ In 2016, dozens of people living in conflict zones across the country were charged under the Act,³⁷ and according to the report of the Special Rapporteur on the

³¹ 'Submission to the UN Universal Periodic Review 23rd session of the UPR Working Group' CIVICUS, 23 March 2015.

³² 'Access to information: A major challenge in Myanmar' Fondation Hirondelle, 15 September 2017, available at <https://www.hirondelle.org/en/our-work/news/296-access-to-information-a-major-challenge-in-myanmar>, accessed on 4 September 2018.

³³ Human Rights Watch (see note 28 above).

³⁴ U Aye Naing and U Pyae Bone Naing from the Democratic Voice of Burma (DVB) and U Thein Zaw from Irrawaddy were arrested.

³⁵ 'Myanmar: Authorities must immediately release and drop charges against three detained journalists' Amnesty International, 14 July 2017, available at <https://www.amnesty.org/en/documents/asa16/6739/2017/en/>, accessed on 20 August 2018.

³⁶ Macgregor, F, and Aung, TT, 'A reluctant association' Myanmar Times, 8 July 2016, available at <https://www.mmtimes.com/home-page/in-depth/21422-a-reluctant-association.html>, accessed on 20 August 2018.

³⁷ Macgregor and Aung (see note 36 above).

human rights situation in Myanmar, at least twenty young people were arrested and detained for allegedly associating with armed groups in 2017.³⁸

E. Recent Court Cases Relating to Human Rights

The above two cases reflect the connection between freedom of expression and government accountability as regards the misuse of power engendering human rights violations. Moreover, the first demonstrates the difficulty journalists and reporters face uncovering the social injustices experienced by inhabitants of conflict zones or NLD-initiated human rights abuses.

The case of the two Reuters reporters

Following an invitation to meet the police for dinner in Yangon, Wa Lone and Kyaw Soe Oo were arrested on 21 December 2017 on suspicion of violating the Official Secrets Act. During the meeting, they were handed rolled up papers allegedly linking to security force operations in northern Rakhine State.³⁹ At the time of their arrest, the two reporters had been investigating events in the village of Inn Din, Maungdaw Township, including the killing of 8 Muslim men and 2 high school-aged boys during a security force clearance operation.⁴⁰ The Myanmar Police Force publicly announced the journalists had been arrested for “illegally obtaining and possessing government documents” with the intent “to send them to a foreign news agency.”⁴¹ As such, they were held incommunicado for two weeks before appearing in court on 27 December 2017 when they were remanded for another two weeks. After six months of preliminary hearings, on 9 July 2018, they were charged under s.3(1)(c) which carries a maximum sentence of 14 years.⁴² The two reporters were eventually sentenced to seven years in prison on 3 September 2018.⁴³ This landmark case has drawn much criticism for its egregious attack on press freedom and its attempt to intimidate journalists reporting on official crimes.

Accountability for human rights violations in conflict zones

Although major human rights violations such as torture, extrajudicial killing, and arbitrary arrest frequently occur in conflict zones, most victims are unwilling to report crimes due to fear, a lack of trust in the legal system, a lack of funds to pursue a case, and

³⁸ A/HRC/37/70, at para 37.

³⁹ Adams, B, ‘Myanmar: Free Reuters journalists, drop case’ Human Rights Watch, 1 July 2018, available at <https://www.hrw.org/news/2018/07/01/myanmar-free-reuters-journalists-drop-case>, accessed on 28 August 2018.

⁴⁰ Thant, AM, and McPherson, P, ‘Reuters journalists face verdict next week on Myanmar secrets charges’ Reuters, 20 August 2018, available at <https://www.reuters.com/article/us-myanmar-journalists/reuters-journalists-face-verdict-next-week-on-myanmar-secrets-charges-idUSKCN1L50F2>, accessed on 28 August 2018.

⁴¹ Adams (see note 39 above).

⁴² Naw, BH, and Chau, T, ‘Ruling deals ‘hammer blow’ to press freedom, judiciary: Rights experts’ Myanmar Times, 10 July 2018, available at <https://www.mmtimes.com/news/ruling-deals-hammer-blow-press-freedom-judiciary-rights-experts.html>, accessed on 4 September 2018.

⁴³ Naw, BH, ‘Reporters’ jail sentence draws criticism’ Myanmar Times, 4 September 2018, available at <https://www.mmtimes.com/news/reporters-jail-sentence-draws-criticism.html>, accessed on 4 September 2018.

a general lack of awareness of their rights.⁴⁴ This is partly due to the fact national courts have no jurisdiction over military cases and immunity provisions in the Constitution enable human rights violators to evade accountability for criminal acts. In response to international criticism on its impunity, the government set up multiple committees⁴⁵ to investigate in 2016/2017, particularly in Rakhine State. However, having repeatedly denied the existence of unlawful killings based on their committees' findings, the government refused independent investigators access to the region, including the UN Fact-Finding Mission and the UN Special Rapporteur for human rights in Myanmar.⁴⁶ It was under these circumstances that the two reporters discussed in the previous section were arrested in December 2017 for allegedly investigating human rights violations in Inn Din village.

In January 2018, the government announced it was investigating the killings of “10 Bengali terrorists” also in Inn Din.⁴⁷ As a result, four officers were denounced and permanently dismissed from the military and sentenced to 10 years of hard labour in a remote prison. For their involvement in the massacre, three other soldiers were demoted to the rank of ‘private,’ permanently dismissed from the military, and sentenced in April to 10 years of hard labour in a remote prison.⁴⁸ The case is significant because it constitutes the military’s first admission of crimes perpetrated by security forces during clearance operations. However, in a recent report, ND-Burma documented a further 50 human rights violations from 2014 to 2017 for which victims failed to seek justice,⁴⁹ indicating that government accountability in conflict zones is still a serious concern.

Part 2: Outstanding Human Rights Issues

A. Freedom of Expression/Assembly

Since 2011, Myanmar has transformed itself politically, economically, and socially. Under the USDP, one remarkable change that occurred was the liberalization of freedom of expression and access to information (albeit with some limitations) after

⁴⁴ *Report on the Human Rights Situation in Burma, January-December 2017*, Burma: Network for Human Rights Documentation, 2018, at 14. See also, ‘Burma: Military burned villages in Rakhine State’ Human Rights Watch, 13 December 2016, available at <https://www.hrw.org/news/2016/12/13/burma-military-burned-villages-rakhine-state> and Solomon, F, ‘Violence escalates in Western Burma as army launches air strikes near Rohingya villages’ Time, 14 November 2016, available at <http://time.com/4569242/burma-myanmar-rohingya-arakan-rakhine-hrw-wfp-islamic-militants/>, both accessed on 6 September 2018.

⁴⁵ Since 2011, the government has commissioned several inquiries into allegations of human rights violations such as the Investigation Commission on Sectarian Violence in Rakhine state (2011), the Letadaung Taung Investigation Commission (2012), and the Rakhine State Investigation Committee (2016).

⁴⁶ Human Rights Watch (see note 14 above).

⁴⁷ Adams (see note 39 above).

⁴⁸ Shoon Naing and Thu Thu Aung, ‘Seven Myanmar soldiers sentenced to 10 years for Rohingya massacre’ Reuters, 11 April 2018, available at <https://www.reuters.com/article/us-myanmar-rohingya-military/seven-myanmar-soldiers-sentenced-to-10-years-for-rohingya-massacre-idUSKBN1HH2ZS>, accessed on 27 August 2018.

⁴⁹ *Report on the Human Rights Situation in Burma, January-December 2017*, Burma: Network for Human Rights Documentation, 2018.

decades of military dictatorship. When the NLD came to power in 2016, the government was expected to further liberalize freedom of expression as promised in its electoral campaign and the inaugural commitments of its two Presidents.⁵⁰ However, press freedom and the general public's right to free speech is still prohibited with offenders even being imprisoned due to increased use of s.66(d) of the Telecommunication Law 2013 and the Peaceful Assembly and Peaceful Procession Law 2012 (PAPPL).

Although the Telecommunication Law was enacted in 2013, regular application of s.66(d) to counter criticism of either the government or the military in any media did not gather speed until late 2015.⁵¹ Of 106 identified criminal complaints brought under s.66(d) between November 2015 and November 2017, 90% occurred under the NLD-led government.⁵² In response to severe international criticism,⁵³ the Telecommunications Law was amended in 2017 to shorten prison sentences from three to two years and to recognize the defendant's right to bail. Nevertheless, s.66(d) remained unchanged with President Win Myint and the Military Chief even reiterating its importance, citing that victims of defamation needed legal protection because the Penal Code's defamation clause was inadequate in this regard.

In the meantime, the government has also restricted the right to protest which is crucial for the population to express itself, collectively defend human rights, and raise public awareness about vital issues. As Myanmar has a long history of suppressing protests, the promulgation of the PAPPL in 2012 marked a positive step towards protecting the rights of protestors. However, its vague provisions have also been used arbitrarily to restrict freedom of expression and criminalize protestors. Thus, in November 2017, the Yangon Region Security and Border Affairs Minister instructed police to refuse permission to peaceful assemblies in 11 townships to "avoid public annoyance and anxiety" and traffic disturbance contrary to the PAPPL. This broad and arbitrary measure contradicts the right to freedom of peaceful assembly.⁵⁴ Similarly, in January 2018, five ethnic Karenni men were convicted of violating the PAPPL and sentenced to 20 days' imprisonment for organizing a protest in Loikaw calling for military accountability following the execution of unarmed Karenni soldiers.⁵⁵

⁵⁰ Both President Htin Kyaw and his replacement, President Win Myint, made public commitments to reform the media sector.

⁵¹ 'Myanmar: HRC must address deteriorating environment for free expression' Article 19, 23 February 2018, available at <https://www.article19.org/resources/myanmar-hrc-must-address-deteriorating-environment-free-expression/>, accessed on 4 September 2018, at 1-4.

⁵² Kean, T, 'Myanmar's Telecommunications Law threatens its democratization process' ISEAS YUSOF ISHAK Institute, 11 July 2017, No 50, available at https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2017_50.pdf, accessed on 5 September 2018, at 2.

⁵³ See, 'Myanmar: HRC must address deteriorating environment for free expression' Article 19, 23 February 2018, available at <https://www.article19.org/resources/myanmar-hrc-must-address-deteriorating-environment-free-expression/>, accessed on 5 September 2018.

⁵⁴ 'Burma: Withdraw protest ban in Yangon' Human Rights Watch, 15 November 2017, available at <https://www.hrw.org/news/2017/11/15/burma-withdraw-protest-ban-yangon>, accessed on 20 August 2018.

⁵⁵ Zue Zue, '5 Karenni men sentenced under Peaceful Assembly Law' Irrawaddy, 15 January 2018, available at <https://www.irrawaddy.com/news/burma/5-karenni-men-sentenced-peaceful-assembly-law.html>, accessed on 18

Recent amendments to the PAPPL (approved in March 2018) now constitute an even greater cause for concern. Under s.4, a notification letter must be submitted to the authorities at least 48 hours in advance of any public assembly together with the approximate number of attendees, its estimated budget, and the source of its funds. However, it is suggested these requirements are unnecessarily burdensome and may prevent civil society from exercising its rights. Under the PAPPL, one may also receive a three-year prison sentence and an unspecified fine if found guilty of provoking, persuading, or urging anyone to join a peaceful assembly or procession through the provision of money or assets or other means, with the intent of shattering state security, law, and order. Thus, in principle, this law could allow the police to arrest and charge individuals for simply offering a bottle of water to protestors.

In April and May 2018, numerous participants joining peace rallies in Myitkyina, Yangon, Mandalay, and Bago were arrested and charged under s.19 of the PAPPL. In total, approximately 50 human rights defenders were arrested, charged, and convicted for giving speeches at rallies and for peace activism in general.⁵⁶

The above examples demonstrate the deterioration of freedom of expression in Myanmar under the democratically elected NLD government.

B. Internal Displaced Persons in Conflict Zones

Ongoing conflict in Kachin, Northern Shan State, and Rakhine has displaced many people in the region, both internally and across the border. As of 31 July 2018, the total number of internally displaced persons (IDP) is 96,727 in Kachin State, 8,815 in Shan State, and 128,141 in Rakhine State.⁵⁷ Due to lost homes and livelihoods as a result of man-made disasters, IDP are intensely vulnerable as a group. As such, their rights to enjoy minimum standards of human rights should be upheld including the right to physical protection, shelter, food, clothing, basic health, work, the integrity of the person, and the right to family as the most fundamental of social units. The responsibility of providing assistance to IDP rests first and foremost with the national government which is also obliged to accept international cooperation if unable to provide such aid itself. Nevertheless, since 2016, the government has only permitted limited access to international humanitarian organizations to deliver food or other relief supplies into conflict zones despite calls from the UN-Secretary-General and other senior UN officials to allow unhindered humanitarian access.⁵⁸

August 2018.

⁵⁶ 'A month-in-review of events in Burma' Burma Bulletin, 23 August 2018, at 4.

⁵⁷ 'Myanmar: IDP sites in Kachin State (as of 31 July 2018)' OCHA, 21 August 2018, available at <https://m.reliefweb.int/report/2751884/myanmar/myanmar-idp-sites-kachin-state-and-northern-shan-states-31-july-2018>, accessed on 5 September 2018.

⁵⁸ 'Myanmar: Humanitarian Bulletin, Issue 3, 2017 (23 September-13 November 2017)' OCHA, at 2.

Currently, in Kachin, about 43% of displaced people are located in areas beyond government control, where international actors have limited humanitarian access but local humanitarian organizations continue to operate, despite mounting constraints.⁵⁹ A similar situation can be found in northern Rakhine where many humanitarian organizations have also proved unable to adequately meet the needs of populations they normally assist. The UN World Food Programme (WFP), Red Cross, World Health Organization, and the ASEAN Coordinating Center for Humanitarian Assistance have all provided support to IDP in Rakhine State through the government's responsible ministries. In addition, the government established a new "Union Enterprise for Humanitarian Assistance, Resettlement, and Development in Rakhine" to support cooperation between the Union government, the people, the private sector, local and international NGOs, CSOs, partner nations, and UN agencies in order to implement projects across all sectors of Rakhine State.⁶⁰ Thus, many IDP now rely almost exclusively on community-based mechanisms. Nonetheless, local organizations also face increasing difficulties, for example, as a result of long processing times to obtain permission from the authorities to access camps. Accordingly, delivery of items is often delayed.⁶¹ Such disruptions have affected life-saving activities, e.g. health services, including access to sexual and reproductive health services for women and girls, and nutritional assistance for malnourished children and the elderly.⁶² Education remains inadequate at all levels, from early childhood to secondary school, limiting opportunities to access higher education in particular and diminishing growth and learning opportunities for young people in general.⁶³

C. Protection of Survivors of Child Rape

The increase in the number of child rape cases in Myanmar without adequate victim support systems to mitigate the effects on both victim and community threatens not only the livelihood of survivors but also the future of Myanmar. Based on official statistics, there were 671 reports of girls under the age of 16 being raped in 2016 rising to 879 in 2017, an increase of 226.⁶⁴ These shocking statistics raise questions about public security and the rule of law, with some even calling for the death penalty to

⁵⁹ Since 2016, the government and military have not permitted international humanitarian organizations to take food or other relief supplies into areas beyond government control. Even in government controlled areas, international humanitarian organizations have experienced unprecedented delays in obtaining travel authorizations for staff and this has affected the delivery of assistance and the quality of humanitarian operations: UN and Partners, *Humanitarian Needs Overview: Myanmar*, Myanmar: OCHA, 2017, at 9 (col 2).

⁶⁰ OCHA (see note 59 above), at 2.

⁶¹ Tasmiah Nuhiya Ahmed, 'Internally displaced peopled in Myanmar' *The Independent*, 19 December 2017, available at <http://www.mmpeacemonitor.org/conflict/idps-and-refugees>, accessed on 22 August 2018. See also: OCHA, 'Humanitarian Bulletin: Myanmar (23 September-13 November 2017)' Issue 3, 2017, at 7.

⁶² UN and Partners (see note 59 above), at 9 (col 1).

⁶³ Myanmar National Human Rights Commission Statement No 7/2018, available at <http://www.mnhrc.org.mm/myanmar-national-human-rights-commission-statement-no-7-2018/>, accessed on 5 September 2018.

⁶⁴ Ministry of Home Affairs, *Myanmar Alin*, 15 February 2018.

be applied to rapists.⁶⁵ As such, the National Strategic Plan for the Advancement of Women (NSPAW) 2013-2022 was introduced to eliminate all forms of violence against women and girls and to respond to the needs of victims. Further, the core law on the Prevention and Protection of Violence against Women was also drafted to approach the issue from a holistic and more comprehensive viewpoint.

CSOs providing direct psychosocial, material, and financial support, temporary shelter,⁶⁶ and referrals to other institutions include the Myanmar Maternal and Child Welfare Association (MMCWA) and the Myanmar Women Affairs Federation (MWAF).^{67,68} However, measures to provide effective counselling and shelter for victims are less visible.⁶⁹ Another problem can be seen in the fact that few survivors seek help from the police and courts which tend to minimise gender-based violence. Similarly, aside from the provision of forensic examinations, medical facilities have limited capacity to deal with such cases whilst also lacking referral mechanisms to other support services.⁷⁰ A final issue is illustrated by an article that appeared in a state-owned newspaper calling on girls to dress appropriately and to avoid going out alone at night,⁷¹ indicating that in Myanmar, the societal tendency of victim-blaming is still very much in evidence. As a result, there may be an increase in HIV, unwanted pregnancies, unsafe abortions, traumatic fistula, and even death. At the same time, few medical support services or safe shelters are available to aid victims of gender-based violence.⁷²

⁶⁵ Thein, C, 'The sexual abuse of children is widespread in Myanmar but attempts to increase the penalty for child rapists have twice ended in failure' *Frontier*, 18 October 2016, available at <https://frontiermyanmar.net/en/lifting-the-lid-on-child-sex-abuse>, accessed on 4 September 2018. See also, Tan, ZX, 'Rising child rape cases in Myanmar show desperate need for action' *ASEAN Today*, 21 December 2016, available at <https://www.aseantoday.com/2016/12/rising-child-rape-cases-in-myanmar-show-desperate-need-for-action/>, accessed on 4 September 2018. See also, 'Stop sexual violence against children' *Global New Light of Myanmar*, 3 June 2018, available at <http://www.globalnewlightofmyanmar.com/stop-sexual-violence-children/>, accessed on 4 September 2018.

⁶⁶ There are only 9 shelters offering basic counselling, legal services, and health care (GenMyanmar).

⁶⁷ According to the government's report to CEDAW in 2007, 54 counselling centres have been established in various states, regions, and districts.

⁶⁸ Gen Myanmar, *Service Provision for Gender-Based Violence Survivors in Myanmar*, Myanmar: Gender Equality Network, 2018, available at http://www.genmyanmar.org/system/research_and_publications/rap_file_engs/000/000/028/original/Service_Provision_for_Gender-Based_Violence_Survivors_in_Myanmar_-_English_Version.pdf, accessed on 6 September 2018.

⁶⁹ 'Dateline Irrawaddy: Sexual abuse and stigma' *Irrawaddy*, 16 December 2017, available at <https://www.irrawaddy.com/datetime/datetime-irrawaddy-sexual-abuse-stigma.html>, accessed on 29 August 2018.

⁷⁰ See, GenMyanmar (note 68 above), at 38-39.

⁷¹ Maung Thaug Win, 'Rising rape cases threatening young girls' *Global News Light of Myanmar*, 20 February 2018, available at <http://www.globalnewlightofmyanmar.com>, accessed on 23 August 2018.

⁷² Aye Thiri Kyaw, 'Violence against women: A hidden public health crisis in Myanmar' *Teacircleoxford*, 5 February 2018, available at <https://teacircleoxford.com/2018/02/05/violence-against-women-a-hidden-public-health-crisis-in-myanmar>, accessed on 25 August 2018.

Part 3: Conclusion

Before 2010, when Myanmar was under direct military rule, freedom of expression, the right to information, and other human rights were strictly curtailed. Post 2010, progress was made under the quasi-civilian government – for example, the notorious pre-censorship system was abolished and press-related laws and an assembly law (although flawed) were enacted. Following election of the civilian NLD government, those rights, especially as relating to inhabitants of conflict zones, were expected to markedly improve in comparison to previous administrations but such an assumption has proved too optimistic. Instead, different laws were applied to restrict journalists and individuals seeking to educate the public and international communities on Myanmar's human rights situation. In conclusion, it is argued that not only do such arrests undermine Suu Kyi's commitment to freedom of expression, they also undermine her progress towards economic growth because curbing press freedom also limits the ability of journalists to report on mismanagement, illegal business practices, and corruption.

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% Bikol – 6% Waray – 3.4%
Official language(s)	Filipino and English ³
Literacy rate (aged 15 and above)	96.3% ⁴
Life expectancy	69.1 ⁵
GDP	US\$304.89 billion ⁶ (per capita US\$2,988) ⁷

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¹ Data from 2016. 'Philippines' The World Bank, available at <https://data.worldbank.org/country/Philippines>, accessed on 4 September 2018.

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 4 September 2018.

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

⁴ Data from 2015 (est). 'Philippines literacy' Index Mundi, available at <https://www.indexmundi.com/philippines/literacy.html>, accessed on 4 September 2018.

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

⁶ Data from 2016. The World Bank (see note 1 above).

⁷ Data from 2017. 'GDP per capita (current US\$): Philippines' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=PH>, accessed on 4 September 2018.

⁸ Executive Order No 10, Creating a Consultative Committee to Review the 1987 Constitution, available at <http://www.officialgazette.gov.ph/downloads/2016/12dec/20161207-EO-10-RRD.pdf>, accessed on 25 May 2018. Section 1 provides that a Consultative Committee shall be formed under the Office of the President, which "shall study, conduct consultations, and review the provisions of the 1987 Constitution including ... the provisions on the structure and powers of the government, local governance, and economic policies." Further, s.2 provides that all Committee Members, who shall, "as far as practicable, represent the different sectors of the country" be "appointed or designated by the President."

Philippines Facts	
Government	Democratic and republican state. Presidential form of government where power is divided among the legislative, executive, and judicial branches. In a bid to decentralize executive power, President Rodrigo R Duterte actively campaigned to federalise the government. To this end, he signed Executive Order No 10 on 7 December 2016 which mandated the creation of a consultative committee to review the 1987 Philippine Constitution. ⁸
Political and social situation	National elections are held every six years, with a midterm election on the third year. The Philippines operates on a multi-party system consisting mostly of political figures and leaders with little or no grassroots membership. However, upon election of President Duterte, a vast majority of legislators joined PDP-Laban, the political party Duterte is a member of, creating a “supermajority” coalition in Congress. ⁹

B. International Human Rights Commitments and Obligations

With the exception of the 2006 International Convention for the Protection of All Persons from Enforced Disappearances, the Philippines has ratified eight of the nine core human rights treaties. Nevertheless, it passed a law in December 2012 which defined and criminalized disappearances, thus, adopting the Convention’s definition of enforced or involuntary disappearances.¹⁰

Table 1: Ratification Status of International Instruments – Philippines¹¹

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)		

⁹ From 3 to 300, PDP-Laban forms ‘supermajority’ in House’ Inquirer.net, 26 May 2016, available at <http://newsinfo.inquirer.net/787547/from-3-to-300-pdp-laban-forms-supermajority-in-house>, accessed on 25 May 2018.

¹⁰ Republic Act No 10353, An Act Defining and Penalizing Enforced or Involuntary Disappearance.

¹¹ ‘Ratification status for the Philippines’ United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN, accessed on 25 May 2018.

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

Convention against Torture and Other Cruel, Inhuman or Degrading Punishment

In considering the Philippines' third periodic report, the Committee against Torture welcomed developments in its domestic legislation including: enactment of the Anti-Torture Act 2009; amendment of the Anti-Trafficking in Persons Act 2003 by adoption of the Expanded Anti-Trafficking in Persons Act 2012; enactment of the Anti-Enforced or Involuntary Disappearance Act 2012; enactment of the Recognizance Act 2012 which institutionalized recognizance as a mode of granting the release of an indigent person in custody as an accused in a criminal case; and amendment of the Juvenile Justice and Welfare Act 2006 by adoption of the Republic Act No 10630¹² in 2013.¹³ Likewise, the Committee hailed domestic measures giving effect to the Convention, including establishment of the Human Rights Affairs Office under the Directorate for Inmate Welfare and Development, and of a human rights desk staffed by a designated official in every jail; issuance of Administrative Order No 35, creating the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and other Grave Violations of the Right to Life, Liberty and Security of Persons in 2012; and issuance of

¹² An Act Strengthening the Juvenile Justice System in the Philippines, Amending for the Purpose Republic Act No 9344, otherwise known as the 'Juvenile Justice Act of 2006' and Appropriating Funds Therefor, approved on 3 October 2013.

¹³ United Nations Committee against Torture (UNCAT), 'Concluding observations on the third periodic report of the Philippines (CAT/C/PHL/CO/3)' 2016, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fPHL%2fCO%2f3&Lang=en, accessed on 25 May 2018.

Executive Order No 138 which adopted the Comprehensive Program Framework for Children in Armed Conflict, Strengthening the Council for the Welfare of Children and for other Purposes in 2013.¹⁴

Despite welcoming these developments, however, the Committee expressed its concern that a “de facto situation of impunity” for acts of torture prevails in the country as a result of ineffective implementation of legislation. The Committee was also concerned that despite a rise in the number of cases of torture reported to the Commission of Human Rights since adoption of the Anti-Torture Act, only one person had been convicted to date in 2016, more than six years after the Act was adopted.

Convention on the Elimination of All Forms of Discrimination against Women

Upon considering the Philippines’ combined seventh and eighth periodic reports, the Committee on the Elimination of Discrimination against Women noted the country’s legislative achievements, including adoption of the Expanded Anti-Trafficking in Persons Act 2012, the Domestic Workers Act 2013, the Responsible Parenthood and Reproductive Health Act 2012, and the Magna Carta of Women. Similarly, the Committee hailed the Philippines’ efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and the promotion of gender equality, including adoption of the Women’s Empowerment, Development, and Gender Equality Plan, covering the period 2013-2016; adoption of the National Action Plan on Women and Peace and Security, covering the period 2010-2016 which aimed to implement Security Council Resolutions 1325 and 1820; establishment of the Philippine Commission on Women mandated to advance women’s legislative agenda and monitor implementation of the Women’s Empowerment, Development and Gender Equality Plan; and designation of the Commission on Human Rights as the Gender Ombud.¹⁵

In its recommendations,¹⁶ the Committee emphasized the need to harmonize national legislation with the Magna Carta including the introduction of relevant amendments to the Family Code, the Revised Penal Code, the Anti-Rape Law 1997, the Anti-Sexual Harassment Act 1995, and the Code of Muslim Personal Laws. It further recommended adoption of legislative bills necessary to implement the Convention, including a bill on divorce,¹⁷ a bill recognizing repeated abuse as grounds for legal separation, a bill

¹⁴ UNCAT (see note 13 above).

¹⁵ United Nations Committee on the Elimination of Discrimination against Women (UNCEDAW), ‘Concluding observations on the combined seventh and eighth periodic reports of the Philippines (CEDAW/C/PHL/CO/7-8)’ 2016, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPHL%2fCO%2f7-8&Lang=en, accessed on 29 May 2018.

¹⁶ UNCEDAW (see note 15 above).

¹⁷ To date, the Philippines remains the only UN-member state without a legal provision for divorce. The only exception is with respect to Muslims, who are permitted to divorce according to their religion. However, for the predominantly non-Muslim population, the law only allows for annulment of marriages and legal separation.

expanding the definition of sexual harassment,¹⁸ and a magna carta bill for workers in the informal economy.

As to the elimination of gender-based violence against women, the Committee expressed concern over the low reporting of incidents of violence due to victim stigmatization and discrimination; the limited scope of the Anti-Violence against Women and Children Act 2004 which focuses on domestic violence by intimate partners; the fact that statutory rape under the Anti-Rape Law 1997 is limited to cases in which the victim is under 12 years of age; increasing incidences of online sexual exploitation and abuse of children; and intensified gender-based violence against women in conflict zones and in areas of large-scale development.

Rome Statute of the International Criminal Court

Apart from the core human rights treaties, in 2011, the Philippines also ratified the Rome Statute, which establishes the International Criminal Court's (ICC) function, jurisdiction, and structure. Under the Rome Statute, the ICC can investigate and prosecute four core international crimes (genocide, crimes against humanity, war crimes, and the crime of aggression) where states are unable or unwilling to do so themselves.

On 24 April 2017, lawyer Jude Sabio filed a complaint against President Duterte and eleven other senior government officials before the ICC, accusing Duterte of being a “mass murderer” and asking the international court to prosecute him over his involvement in the so-called Davao Death Squad, an unidentified vigilante group tagged with the extra-legal killing of suspected criminals in Davao since 1988, the year Duterte first sat as mayor of the city. The complaint accused Duterte of “repeatedly, unchangingly, and continuously” committing crimes against humanity and that under him, killing drug suspects and other criminals had become “best practice.”¹⁹ At the time of filing the complaint, almost 9,000 people had been killed²⁰ as a result of Duterte's anti-drug policy. The complaint alleged that the reported incidents involved extra-judicial killings in the course of police anti-drug operations. The Prosecutor of the ICC, Fatou Bensouda, has since released a statement announcing that the ICC will undertake a preliminary examination of the situation.²¹

¹⁸ Section 3 of the Anti-Sexual Harassment Act 1995 limits coverage of the law to harassment committed by an “employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence, or moral ascendancy over another in a work or training or education environment.”

¹⁹ ‘Lawyer for Philippines hit-man files complaint against Duterte at ICC’ Reuters, 24 April 2017, available at <https://www.reuters.com/article/us-philippines-duterte-icc/lawyer-for-philippines-hit-man-files-complaint-against-duterte-at-icc-idUSKBN17Q0P1>, accessed on 25 May 2018.

²⁰ Reuters (see note 19 above).

²¹ ‘Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and Venezuela’ 2018, available at <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat>, accessed on 29 May 2018.

C. National Laws Affecting Human Rights

The 1987 Philippine Constitution was a direct response to the massive human rights abuses of the Martial Law era.²² As such, its drafters ensured that the document contained language that would engender respect for, and bring protection of human rights to the forefront.

In its Declaration of Principles and State Policies,²³ the Philippine Constitution immediately defines the relationship between the government and the governed, such that “the prime duty of the Government is to serve and protect the people” (s.4). Further, the promotion of social justice “in all phases of national development” (s.10), the value of the dignity of every human person, and the guarantee of full respect for human rights (s.11) are all enshrined as state policies.

Fundamental liberties are covered by the Bill of Rights²⁴ and mirror provisions of the Universal Declaration of Human Rights. As such, the Bill of Rights serves to protect individuals from the omnipotence of government. The article covers such rights 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), the rights of persons under investigation (s.12), and those accused of offences (ss.13-22).

The Constitution likewise provides for the protection of the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.²⁵ The Philippines is a culturally diverse country with an estimated 14-17 million indigenous peoples belonging to 110 ethno-linguistic groups.²⁶ The Constitutional mandate to protect the rights of indigenous peoples is further embodied in the Indigenous Peoples Rights Act 1997.²⁷

Article XIII of the Constitution is devoted to “Social Justice and Human Rights,” the provisions of which are complemented by implementing laws and mechanisms.

²² Through Proclamation No 1081, then President Ferdinand E Marcos placed the entire country under martial law, which took effect from 23 September 1972 until 17 January 1981. Marcos continued to rule the country until 1986. Amnesty International estimated that about 70,000 people were imprisoned, 34,000 were tortured, and 3,240 killed by the end of Marcos’ 20-year rule.

²³ Philippine Constitution, Art II.

²⁴ The Bill of Rights is embodied in Art III of the Philippine Constitution and contains 22 sections.

²⁵ Article XII on National Economy and Patrimony, s.5.

²⁶ United Nations Development Programme, ‘Fast facts: Indigenous peoples in the Philippines’ available at http://www.ph.undp.org/content/philippines/en/home/library/democratic_governance/FastFacts-IPs.html, accessed on 28 May 2018.

²⁷ Republic Act No 8371, approved on 29 October 1997.

- The protection of labour, local and overseas (s.3): the Migrant Workers and Overseas Filipinos Act 1995;²⁸ the Anti-Trafficking in Persons Act 2003;²⁹ the Philippine Overseas Employment Administration Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers 2002 and of Seafarers 2003; Executive Order No 51³⁰ on Implementing Article 106 of the Labor Code of the Philippines, as amended, to Protect the Right to Security of Tenure of All Workers based on Social Justice in the 1987 Philippine Constitution, prohibiting illegal contracting and subcontracting
- Agrarian reform (s.4): the Comprehensive Agrarian Reform Program Extension with Reforms³¹
- Health (ss.11-13): the Responsible Parenthood and Reproductive Health Act 2012;³² the National Health Insurance Act 1995;³³ the Magna Carta for Persons with Disabilities;³⁴ the Anti-Hospital Deposit Law 2017³⁵ which strengthens the provision of emergency healthcare service to patients by prohibiting medical practitioners from demanding advance payments from patients needing immediate care
- Women (s.14): the Anti-Violence against Women and their Children Act;³⁶ the Anti-Rape Law 1997³⁷ which is currently being changed to increase the age of sexual consent;³⁸ the Rape Victim Assistance and Protection Act 1998;³⁹ the Anti-Sexual Harassment Act 1995;⁴⁰ the Anti-Trafficking in Persons Act;⁴¹ and the Magna Carta of Women⁴² and its implementing rules and regulations

The Constitution also provides for the establishment of an independent office called the Commission on Human Rights (CHR).⁴³ Among the Commission's mandates (s.18) are: to investigate all forms of human rights violations involving civil and political rights; to provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad; to recommend to Congress effective measures to promote human rights and to provide compensation to

²⁸ Republic Act No 8042, as amended by Republic Act No 10022, approved on 8 July 2010.

²⁹ Republic Act No 9208, as amended by Republic Act No 10364, approved on 6 February 2013.

³⁰ Series of 2018.

³¹ Republic Act No 9700, approved on 7 August 2009.

³² Republic Act No 10354, approved on 21 December 2012.

³³ Republic Act No 7875, as amended by Republic Act No 10606, approved on 19 June 2013.

³⁴ Republic Act No 7277, as amended by Republic Act No 10754, approved on 23 March 2016.

³⁵ Republic Act No 10932, approved on 3 August 2017.

³⁶ Republic Act No 9262, approved on 8 March 2004.

³⁷ Republic Act No 8353, approved on 20 September 1997. This law amends the offence of rape as punished by the Revised Penal Code, recognizing both marital rape and rape by sexual assault.

³⁸ Currently, the age of sexual consent in the Philippines is 12 years old.

³⁹ Republic Act No 8505, approved on 13 February 1998.

⁴⁰ Republic Act No 7877, approved on 14 February 1995.

⁴¹ Republic Act No 10364 (see note 29 above).

⁴² Republic Act No 9710, approved on 14 August 2009.

⁴³ Philippine Constitution, Art XIII, s.17.

victims of violations of human rights, or their families; and to monitor the Philippine government's compliance with international treaty obligations on human rights.

In 2012, the Philippine Congress passed a law convening a Human Rights Victims' Claims Board (HRVCB) to provide for the reparation and recognition of victims of human rights violations during the Marcos regime.⁴⁴ The HRVCB is an attached agency of the CHR (s.8).

LGBT rights

In September 2017, the Philippine House of Representatives⁴⁵ unanimously approved, on its third reading, an act prohibiting discrimination on the basis of sexual orientation, gender identity, or expression (SOGIE).⁴⁶ The SOGIE Equality Bill penalizes discriminatory acts based on SOGIE, including: denying access to public services; refusing admission or expelling a person from any educational or training institution; imposing disciplinary sanctions or penalties harsher than customary or similar punishments; denying a person access to public or private medical or other health services open to the general public; including SOGIE as a criteria for hiring, promotion, transfer, work assignments, or other human resource movements or actions; or denying an application for or revoking a professional licence, clearance, or certification. A similar measure is pending with the Senate.

D. Recent Court Cases Affecting Human Rights

Rights of the accused in drug-related offences

Duterte's unrelenting campaign against drugs has cast attention on the implementation of existing legislation penalizing drug offences. In *Salvador Estipona, Jr v Hon Frank Lobrigo and the People*,⁴⁷ the petitioner, who was accused of selling drugs, questioned the constitutionality of a provision in the Comprehensive Dangerous Drugs Act 2002⁴⁸ prohibiting plea bargaining⁴⁹ in drug-related offences (s.23). He posited that the provision encroached on the exclusive constitutional power of the Supreme Court to promulgate rules of procedure.⁵⁰

While the Supreme Court acknowledged that the Philippines' illicit drug problem had reached "epidemic," "monstrous," and "harrowing" proportions,⁵¹ the tribunal equally noted that

⁴⁴ Republic Act No 10368, approved on 25 February 2013.

⁴⁵ Lower House of the Philippine Congress. The Senate is the Upper House.

⁴⁶ House Bill No 4982.

⁴⁷ GR No 226679, 15 August 2017.

⁴⁸ Republic Act No 9165, approved on 23 January 2002.

⁴⁹ The rules permit the accused to enter a plea of guilty to a lesser offence which is necessarily included in the offence charged, with the conformity of the trial prosecutor.

⁵⁰ Plea bargaining forms part of the Rules on Criminal Procedure, particularly Rules 116 and 118. However, plea bargaining is only found in said rules, and not in any statute.

⁵¹ GR No 226679 (see note 47 above).

*as urgent as the campaign against the drug problem must be, so must we as urgently, if not more so, be vigilant in the protection of the rights of the accused as mandated by the Constitution ... who, because of excessive zeal on the part of the law enforcers, may be unjustly accused and convicted.*⁵²

The Supreme Court ruled that “it is towards the provision of a simplified and inexpensive procedure for the speedy disposition of cases in all courts” that the rules on plea bargaining were introduced,⁵³ and that it

*avoids much of the corrosive impact of enforced idleness during pretrial confinement for those who are denied release pending trial; it protects the public from those accused persons who are prone to continue criminal conduct even while on pretrial release; and, by shortening the time between charge and disposition, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned.*⁵⁴

Issuance of the writ of amparo in favour of Tokhang⁵⁵ victims

In January 2016, the Center for International Law (CenterLaw) filed a petition on behalf of the families of four drug suspects killed in Quezon City in August 2016, asking the Supreme Court to issue a writ of amparo⁵⁶ and to suspend Tokhang operations in areas covered by the Quezon City Police District Station 6.⁵⁷ The writ is a remedy available to “any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.”⁵⁸ The writ covers incidents of extra-legal killings, enforced disappearances, or threats thereof. The filing of the petition was prompted by the surviving families’ fear for their own lives because of the repeated return of the perpetrators to the community to intimidate and harass them into silence.⁵⁹

A week after the petition was filed, the Supreme Court issued a temporary protection order prohibiting respondent police officers from entering within a one-kilometer

⁵² GR No 226679 (see note 47 above).

⁵³ GR No 226679 (see note 47 above).

⁵⁴ GR No 226679 (see note 47 above), citing *Santobello v New York*, 404 US 257, 261 (1971).

⁵⁵ The anti-drugs campaign in the Philippines is called Oplan Tokhang, the latter being a made-up word and an amalgam of the Visayan words ‘toktok’ (knock), and ‘hangyo’ (request/plead). The operations were envisioned to be a series of house visitations, where the police, accompanied by barangay officials, would ask drug users to voluntarily submit themselves to rehabilitation. However, as the campaign progressed, ‘tokhang’ evolved to mean having been killed in a drug-related police operation.

⁵⁶ AM No 07-9-12-SC, promulgated by the Supreme Court on 24 October 2007.

⁵⁷ ‘1st petition v Oplan TokHang filed at the SC’ Rappler, 26 January 2017, available at <https://www.rappler.com/nation/159549-first-petition-oplan-tokhang-filed-supreme-court>, accessed on 1 June 2018.

⁵⁸ ‘SC issues writ of amparo favoring anti-Oplan TokHang petitioners’ Rappler, 31 January 2017, available at <https://www.rappler.com/nation/160105-supreme-court-writ-amparo-anti-tokhang-petition>, accessed on 1 June 2018.

⁵⁹ Rappler (see note 58 above).

radius of the petitioners.⁶⁰ The Supreme Court then remanded the case to the Court of Appeals, to determine the propriety of the suspension of the police operations as asked for. In February 2017, having found irregularities in the police operation, including the planting of drug evidence, which led to the death of four persons, the Court of Appeals issued a decision making permanent the writ of amparo issued by the Supreme Court, suspending Oplan Tokhang in the area, and ordering the police officers named in the petition to be reassigned outside Quezon City.⁶¹

In October 2017, CenterLaw filed a similar petition, seeking the issuance of a writ of amparo to protect certain individuals and the residents of 26 barangays in San Andres Bukid, Manila, where 35 people were killed in drug raids.⁶²

*Curfew for minors*⁶³

A youth organization⁶⁴ and several individual minors petitioned the Supreme Court to strike down curfew ordinances for being contrary to the Juvenile Justice and Welfare Act,⁶⁵ and violating the constitutional rights of minors to liberty and travel, as well as the right of parents to rear their children. In partially upholding the curfew ordinances, the Supreme Court ruled that parents only have a superior right over the state in the upbringing of their children, and that “in cases in which harm to the physical or mental health of the child or to public safety, peace, order, or welfare is demonstrated, legitimate state interests may override the parents’ qualified right to control the upbringing of their children.”⁶⁶ The tribunal held that the curfew ordinances are but examples of legal restrictions designed to “aid parents in their role of promoting their children’s well-being,” and emphasized that the ordinances apply only when minors are not accompanied by their parents.⁶⁷

While the Supreme Court recognized the youth’s right to travel, it held that such a right is not absolute, and that “grave and overriding considerations of public interest justify restrictions even if made against fundamental rights.” In its decision, the court said that the stated purposes of the curfew ordinances, specifically the promotion of juvenile safety and the prevention of juvenile crime “inarguably serve the interests of public safety.” That the curfew ordinances only apply to minors was upheld by the court,

⁶⁰ Rappler (see note 58 above).

⁶¹ ‘CA issues permanent amparo writ for Payatas ‘tokhang’ victims’ ABSCBN News, 10 February 2017, available at <https://news.abs-cbn.com/news/02/10/17/ca-issues-permanent-amparo-writ-for-payatas-tokhang-victims>, accessed on 1 June 2018.

⁶² ‘Second petition v TokHang filed at SC’ Rappler, 18 October 2017, available at <https://www.rappler.com/nation/185683-families-drug-war-victims-manila-petition-tokhang-sc>, accessed on 1 June 2018.

⁶³ GR No 225442, 8 August 2017.

⁶⁴ Samahan ng mga Progresibong Kabataan (SPARK) is a political organization for the youth.

⁶⁵ Republic Act No 9344, approved on 28 April 2006.

⁶⁶ GR No 225442 (see note 63 above).

⁶⁷ GR No 225442 (see note 63 above).

stating that while minors do possess and enjoy constitutional rights, the exercise of these rights “is not co-extensive as those of adults,” citing that minors are always subject to the authority or custody of another, such as their parents, guardians, and the state.

*Marcos burial at the Libingan ng mga Bayani*⁶⁸

In November 2016, the Supreme Court voted 9-5 to allow the burial⁶⁹ of late dictator, Ferdinand Marcos, at the Libingan ng mga Bayani, otherwise known as the National Heroes’ Cemetery, the final resting place of soldiers, national artists, authors, and scientists, and some of the country’s past presidents. Marcos’ burial in the complex was heavily opposed by human rights groups and activists, citing the many abuses and human rights violations committed under his regime which, they claimed, rendered him unfit to be buried among the valiant and honourable.

The main decision ratiocinates that despite Marcos’ alleged human rights abuses and corrupt practices, the Supreme Court could not deny his right to be acknowledged based on the other positions he held and the awards he had received. Therefore, being a former president, military personnel, and recipient of the Medal of Valor would, they said, have satisfied the public requirement. However, in his dissenting opinion, Associate Justice Marvic Leonen said Marcos ceased to be qualified to lie among the heroes at Libingan when he was ousted in 1986, citing that his ousting through a bloodless revolution was the “strongest form of dishonorable discharge from office since it [was] meted out by the direct act of the sovereign people.”⁷⁰

Further, in her dissenting opinion, Chief Justice Maria Lourdes Sereno said that in allowing the burial, President Duterte acted with grave abuse of discretion because such an act violated the Philippines’ obligation to do justice for human rights victims. Aside from monetary remedies, the government was bound to provide “non-symbolic” reparation to the victims, including legislative and judicial recognition of Marcos as a “plunderer and human rights violator.”⁷¹

⁶⁸ GR No 225973, 8 November 2016.

⁶⁹ After Marcos was ousted in the 1986 EDSA People Power Revolution, he flew to Hawaii, where he lived in exile until his death in 1989. In 1993, his body was flown back to his hometown in northern Philippines where it was displayed in a refrigerated glass coffin. The return was subject to the condition that the body would be flown straight to Batac, Ilocos Norte, and would remain there, per the agreement between the Marcos family and former President Fidel V Ramos. The Marcos family has since petitioned the transfer of his remains to the heroes’ cemetery, which was opposed. In 2016, just a few months after his election, President Duterte announced his decision to allow the burial of the late dictator at the Libingan ng mga Bayani.

⁷⁰ Dissenting opinion of Associate Justice Marvic Leonen, GR No 225973.

⁷¹ Dissenting opinion of Chief Justice Sereno, GR No 225973.

Part 2: Outstanding Human Rights Issues

A. Violation of the Rights to Life and a Fair Trial in the War on Drugs

In his first year in office, President Duterte instigated⁷² a murderous “war on drugs,” characterized by anti-narcotics operations portrayed to have gone awry,⁷³ designed to “paint a veneer of legality over extrajudicial executions.”⁷⁴ Human Rights Watch found that police “routinely kill drug suspects in cold blood and then cover up their crime by planting drugs and guns at the scene.”⁷⁵

Among victims of the bloody campaign was Rolando Espinosa, mayor of the town of Albuerca, who was shot inside a jail cell in November 2016. Espinosa was arrested for illegal possession of drugs and firearms.⁷⁶ He pleaded not to be taken to the Leyte sub-provincial jail, saying he feared for his life, but his plea was ignored. Under the command of Supt Marvin Marcos, a team conducted a predawn operation to serve a search warrant on Espinosa whom they suspected of keeping a gun and drugs inside his cell.⁷⁷ Espinosa and another inmate were killed in the operation. The police claimed the deaths were due to the two exchanging shots with the police. Following the incident, Supt Marcos and all policemen involved in the death of the mayor were relieved of their posts,⁷⁸ only to be reinstated in July 2017.⁷⁹

Other high profile victims of the drug purge were Samsudin Dimaukom, mayor of Saudi Ampatuan, who was killed in a gun battle at a police checkpoint on suspicion that he and his security personnel were transporting illegal drugs; and Reynaldo Parojinog, mayor of Ozamiz city, who perished with his wife during a pre-dawn anti-drug raid.⁸⁰ Parojinog was among the more than 160 officials Duterte publicly linked to drugs as a part of a shame campaign.⁸¹

⁷² See, ‘Rodrigo Duterte: ‘I don’t care about human rights’ Al Jazeera, 8 August 2016, available at <https://www.aljazeera.com/news/2016/08/rodrigo-duterte-human-rights-160806211448623.html>, accessed on 10 June 2018.

⁷³ ‘Nanlaban’ is the Filipino term for resisting lawful arrest, often used as justification by the police for drug operations that end in the suspect’s death.

⁷⁴ ‘Philippines: Duterte’s first year a human rights calamity’ Human Rights Watch, 28 June 2017, available at <https://www.hrw.org/news/2017/06/28/philippines-dutertes-first-year-human-rights-calamity>, accessed on 10 June 2018.

⁷⁵ ‘Philippines: Police deceit in drug war killings’ Human Rights Watch, 2 March 2017, available at <https://www.hrw.org/news/2017/03/02/philippines-police-deceit-drug-war-killings>, accessed on 10 June 2018.

⁷⁶ ‘What went before: Mayor Rolando Espinosa Sr slay’ Inquirer, 7 December 2016, available at <http://newsinfo.inquirer.net/851391/what-went-before-mayor-rolando-espinosa-sr-slay>, accessed on 10 June 2018.

⁷⁷ Inquirer (see note 76 above).

⁷⁸ Inquirer (see note 76 above).

⁷⁹ ‘Duterte has brazenly reinstated 19 police who murdered a Philippine mayor last year’ TIME, 14 July 2017, available at <http://time.com/4858028/rolando-espinosa-police-murder-philippines-duterte/>, accessed on 12 June 2018.

⁸⁰ ‘Police kill Reynaldo Parojinog and wife in drug raid’ Al Jazeera, 30 July 2017, available at <https://www.aljazeera.com/news/2017/07/police-kill-reynaldo-parojinog-wife-drug-raid-170730045938954.html>, accessed on 12 June 2018.

⁸¹ ‘Philippine president names top officials allegedly linked to drug trade’ CNN, 8 August 2016, available at <https://edition.cnn.com/2016/08/07/asia/duterte-war-on-drugs-officials-named/>, accessed on 12 June 2018.

An official document⁸² issued by the Duterte administration shows 3,967 “drug personalities” have been killed after allegedly resisting arrest during police operations.⁸³ Another 16,355 homicide cases⁸⁴ have been classified as “under investigation.” The government claimed most killings were committed by vigilantes or rival drug gangs, but no one has been meaningfully investigated or prosecuted for any of the killings.⁸⁵ To date, the campaign has mostly killed the urban poor including children.⁸⁶

According to a report by the Children’s Legal Rights and Development Center, 54 minors were killed from July 2016 to August 2017 during the administration’s war on drugs.⁸⁷ For example, a 17 year old high school student, Kian Loyd Delos Santos, was shot by police officers in August 2017, allegedly for being a drug courier.⁸⁸ Police said the boy drew a firearm which prompted them to fire back.⁸⁹ However, CCTV footage showed men in civilian dress dragging a boy, presumed to be Kian, to a place where his body was later found. Witnesses also said Kian was unarmed, but was “forced to hold a gun, fire, and run.”⁹⁰ Investigations led the Philippine National Police Internal Affairs Service to admit lapses in the operation resulting in Kian’s death.⁹¹ The Department of Justice eventually found probable cause to file charges of murder and the planting of illegal drugs and a firearm against the police officers involved in the operation.⁹²

Despite these findings, along with others involving minors stabbed or shot at close range,⁹³ Duterte and his justice secretary, Vitaliano Aguirre II, have dismissed the children’s deaths as “collateral damage,” most children having been shot while in the company of adults who were the apparent targets of the shootings.⁹⁴ Likewise, Aguirre

⁸² *The Duterte Administration Year End Report: 2017 Key Accomplishments*, Presidential Communications Operations Office, 2017, available at <https://www.slideshare.net/sonniesantos/duterte-year-end-report-2017>, accessed on 12 June 2018.

⁸³ Between 1 July 2016 and 27 November 2017.

⁸⁴ From 1 July 2016 to 30 September 2017.

⁸⁵ ‘Philippines: Events of 2017’ Human Rights Watch, available at <https://www.hrw.org/world-report/2018/country-chapters/philippines>, accessed on 12 June 2018.

⁸⁶ See, ‘The Philippines: When the police kill children’ Al Jazeera, 2 December 2017, available at <https://www.aljazeera.com/indepth/features/2017/12/philippines-police-kill-children-171201095145571.html>, accessed on 12 June 2018.

⁸⁷ ‘54 children killed in drug war’ The Manila Times, 6 April 2018, available at <https://www.manilatimes.net/54-children-killed-in-drug-war/390655/>, accessed on 10 June 2018.

⁸⁸ ‘What we know so far about Kian’s death’ CNN Philippines, 29 January 2018, available at <http://cnnphilippines.com/news/2017/08/24/timeline-kian-delos-santos-death.html>, accessed on 12 June 2018.

⁸⁹ CNN Philippines (see note 88 above).

⁹⁰ ‘Kian Loyd Delos Santos, 17, killed in drug crackdown’ Al Jazeera, 18 August 2017, available at <https://www.aljazeera.com/news/2017/08/kian-loyd-delos-santos-17-killed-drug-crackdown-170818131943660.html>, accessed on 12 June 2018.

⁹¹ CNN Philippines (see note 88 above).

⁹² CNN Philippines (see note 88 above).

⁹³ ‘Kian, Carl, ‘Kulot’ slays: Only 5 cops on trial; chiefs promoted’ Inquirer, 16 August 2018, available at <http://newsinfo.inquirer.net/1021841/kian-carl-kulot-slays-only-5-cops-on-trial-chiefs-promoted>, accessed on 16 August 2018.

⁹⁴ ‘Philippines: Abusive drug war targets children’ Human Rights Watch, 9 September 2017, available at <https://www.hrw.org/news/2017/09/09/philippines-abusive-drug-war-targets-children>, accessed on 12 June 2018.

claimed that the deaths could not be considered ‘extrajudicial killings’ (EJK) because they were not covered by the definition of extrajudicial killings under an administrative order⁹⁵ creating an inter-agency committee to investigate such incidents.⁹⁶

B. Attacks Against Human Rights Defenders

Human rights defenders who have criticized the abusive methods of President Duterte’s anti-drug campaign and are thus regarded to be threats to its full implementation, have also come under attack. In February 2017, senator and staunch critic of Duterte’s war on drugs, Leila de Lima,⁹⁷ was arrested by law enforcement agents after charges were filed in court alleging that she received money from drug dealers inside the country’s prisons.⁹⁸ With the anti-drug drive tallying more than 7,000 deaths over suspected drug links, de Lima led a series of Senate investigations over allegations that “police officers were involved in the killings, and that hired killers were operating under orders from police.”⁹⁹ She continues to remain in detention, and faces between 12 years and life imprisonment, if convicted. She maintains her innocence and insists that the charges were politically motivated.

De Lima called for foreign intervention to put an end to the killings, but even the United Nations Special Rapporteur on extralegal killings, Agnes Callamard, and ICC prosecutor, Fatou Bensouda, have not been spared from Duterte’s ire. As the UN and ICC launched their respective investigations into Duterte’s alleged extrajudicial killings, Callamard and Bensouda found themselves at the receiving end not only of sexist and racist remarks,¹⁰⁰ but also Duterte’s threats.¹⁰¹

Attacks against the Commission on Human Rights also intensified, as Duterte pronounced in August 2017 that security forces should “shoot CHR personnel” if they were found to be “obstructing justice.”¹⁰² Indeed, Duterte threatened to have the CHR investigated for conspiracy following the independent body’s investigations into the

⁹⁵ Administrative Order 35, series of 2012, includes in its definition of EJK that “the victim was a member of, or affiliate with an organization, to include political, environmental, agrarian, labor, or similar causes, or an advocate of the above-named causes; or a media practitioner or person apparently mistaken or identified to be so.”

⁹⁶ ‘Aguirre: Slays of Kian, Carl, Kulot not considered EJKs’ GMA News, 15 October 2017, available at <http://www.gmanetwork.com/news/news/nation/629571/aguirre-slays-of-kian-carl-kulot-not-considered-ejks/story/>, accessed on 12 June 2018.

⁹⁷ Prior to her election as senator, de Lima held the positions of Justice Secretary and Chair of the Commission on Human Rights.

⁹⁸ ‘Senator Leila de Lima arrested in the Philippines’ Al Jazeera, 24 February 2017, available at <https://www.aljazeera.com/news/2017/02/leila-de-lima-arrested-philippines-170224003808389.html>, accessed on 1 June 2018.

⁹⁹ Al Jazeera (see note 98 above).

¹⁰⁰ ‘Duterte attacks rights officials, Callamard and Bensouda’ Al Jazeera, 9 March 2018, available at <https://www.aljazeera.com/news/2018/03/duterte-attacks-rights-officials-callamard-bensouda-180309091927105.html>, accessed on 8 June 2018.

¹⁰¹ ‘Duterte threatens to slap UN rapporteur if she probes drug war’ Rappler, 9 November 2017, available at <https://www.rappler.com/nation/187899-duterte-threat-slap-un-rapporteur-callamard>, accessed on 8 June 2018.

¹⁰² ‘Duterte: Shoot CHR personnel if they obstruct justice’ PhilStar, 17 August 2017, available at <https://www.philstar.com/headlines/2017/08/17/1729880/duterte-shoot-chr-personnel-if-they-obstruct-justice>, accessed on 8 June 2018.

deaths of drug suspects. In a statement, the CHR stressed it was merely carrying out its constitutional duty to probe potential rights violations by government personnel. In an effort to further clip the wings of the rights body, Congress voted to slash CHR's request for a budget of PHP1.72 billion (US\$32.2 million) to a meagre PHP1,000 (US\$20),¹⁰³ after first threatening the agency with a zero budget. Pantaleon Alvarez, Speaker of the lower house of Congress, said the rights body deserved the pittance for being "useless" and "for defending criminals."¹⁰⁴ The Senate, assuring the CHR of its support, has since approved a PHP678 million (US\$12.7 million) budget.¹⁰⁵

C. Children's Rights

President Duterte pledged to lower the minimum age of criminal responsibility from 15 years¹⁰⁶ to as low as nine years old, even as most Filipinos preferred to keep the minimum age at 15, according to a Pulse Asia survey,¹⁰⁷ generating widespread condemnation from local and international children's rights organizations. Duterte said the Juvenile Justice and Welfare Act, passed in 2006, allowed youth offenders to walk free if below 15 years old "regardless of the gravity of the offense."¹⁰⁸ A presidential spokesman added that young people were being used by criminals as frontline perpetrators for criminal acts because of their said immunity (including as runners for narcotics dealers), and that lowering the age of criminal responsibility would protect children from such abuse.¹⁰⁹ However, Duterte's remarks did not reflect the amendment made to the law in 2013.¹¹⁰ The amendment allows child offenders (12 to 15 years old) to be detained in youth centres for serious crimes (s.20-A). It also provides that a child above 15 years old but below 18 years old shall be exempt from criminal liability and placed in an intervention program, unless he or she has acted with discernment (s.3). These minors are also not exempt from civil liability (s.3).

¹⁰³ 'Philippines cuts its human rights budget to £15' The Independent, 13 September 2017, available at <https://www.independent.co.uk/news/world/asia/philippines-human-rights-budget-cut-rodriago-duterte-war-drugs-isis-marawi-a7944086.html>, accessed on 8 June 2018.

¹⁰⁴ The Independent (see note 103 above).

¹⁰⁵ Roxas, PAV, 'Senate Committee approves P678M CHR budget' Inquirer, 11 September 2017, available at <http://newsinfo.inquirer.net/929578/senate-committee-approves-p651-9-m-chr-budget>, accessed on 8 June 2018.

¹⁰⁶ As provided by the Juvenile Justice Act 2006, RA No 9344.

¹⁰⁷ 'Duterte's stance on lowering age of criminal liability unchanged – Palace' ABSCBN News, 6 May 2017, available at <https://news.abs-cbn.com/news/05/06/17/dutertes-stance-on-lowering-age-of-criminal-liability-unchanged-palace>, accessed on 8 June 2018.

¹⁰⁸ ABSCBN News (see note 107 above).

¹⁰⁹ ABSCBN News (see note 107 above).

¹¹⁰ Through RA No 10630, approved on 3 October 2013.

Part 3: Conclusion

While human rights was the centrepiece of the Aquino administration,¹¹¹ resulting in the passage of several key human rights legislation over his six year term, respect for and the protection of human rights in the Philippines has taken several steps backwards under the Duterte administration. Instead, Duterte has focused his attention and resources on crushing criminality, particularly the illicit drug trade, and has bludgeoned everything that stands in the way of his campaign's success – significantly, human rights and those advocating for them. Thus, Duterte's supporters have unceasingly stoked the misperception that human rights protects “only the rights of criminals,” creating the false dichotomy that those who support human rights care little for the safety and welfare of the general population, or worse, that those who check for human rights abuses coddle criminals and encourage criminal activity. With key government posts filled by Duterte supporters (leadership positions in both houses of Congress, justices of the Supreme Court, the Office of the Solicitor General, the Office of the Ombudsman), there exists a concerted effort from all branches of government to do Duterte's bidding, making it difficult and even downright dangerous for human rights activists and civil society to speak out about abuses and violations. Activists face threats of trumped up charges, bodily harm, and even death in the time of Duterte. Despite the threats, the human rights community in the Philippines— activists, educators, lawyers, and even the youth—remain steadfast in pushing back and directly engage with government forces perpetuating the abuse.

¹¹¹ Benigno C Aquino III served as the 15th President of the Philippines from 2010 until 2016.

SINGAPORE

A decorative graphic consisting of several parallel diagonal stripes in shades of gray, located to the right of the word 'SINGAPORE'.

SINGAPORE

Joana Cassinerio*

Part 1: Overview of Singapore

A. Country Background

Singapore Facts ^{1,2}	
Geographical size	719.9 sq km
Population ³	5,612,300
Ethnic breakdown ⁴	Main ethnic groups: Chinese (76.4%) Malay (15.2%) Indian (7.3%) Other (1.2%)
Official language(s)	English (working language) Malay (national language) Chinese Tamil
Literary rate (aged 15 years and above)	97.2%
Life expectancy	83.1
GDP	SG\$447,283,500 (per capita SG\$79,697)
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 since 1948 with voting made compulsory in 1959. In January 2016, the government amended its Constitution to allow only Malay candidates to run for the presidency. ⁵ Of several candidates, only one met all the qualifications. In September 2017, Mdm Halimah Yacob became Singapore's first female president in the third of five presidential elections without contest.

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¹ Figures relate to 2017 unless otherwise stated.

² Information has been taken from the Department of Statistics Singapore, available at <https://www.singstat.gov.sg/whats-new/advance-release-calendar>, accessed on 10 June 2018.

³ The total population comprises both Singapore residents and non-residents.

⁴ 'Population in brief 2017' Strategy Group, Prime Minister's Office, Department of Statistics Singapore, September 2017, available at <https://www.strategygroup.gov.sg/docs/default-source/.../population-in-brief-2017.pdf>, accessed on 10 June 2018.

⁵ 'Presidential election 2017' available at <http://www.singapore-elections.com/presidential-election/2017>, accessed on 10 June 2018.

Economic progress^{6,7,8}

The most developed ASEAN nation in terms of economic development, Singapore had a reported GDP per capita of US\$57,714 in 2016, similar to that of Denmark (US\$53,578) and Sweden (US\$51,844) based on data provided by the World Bank. Through the provision of high-quality education and high literacy rates, developed sea ports, and a booming financial sector, the city-state has long established its reputation as a global hub inside and outside ASEAN. Furthermore, with a median age of 34.6, Singapore is among the very few highly-developed countries with a relatively young population, almost twice as young as Monaco's population, a European city-state.⁹ As a result, in 2017, Singapore was globally ranked second in the World Bank's Ease of Doing Business Index based on various indicators, such as starting a business, acquiring construction permits, registering property, trading across borders, and labour market regulation.¹⁰ However, despite its continuing economic success, human rights violations have increasingly been observed by civil society organizations. Accordingly, as it takes over the ASEAN chairmanship in 2018, the government faces clear challenges and opportunities ahead.

Political and social situation

While in recent years, Singapore's social situation has shown significant progress for its populace, 2017 saw a drastic change in its political situation due to tighter restrictions on public assemblies and the freedom of speech, both of which deteriorated following amendments to Singapore's Public Order Act.¹¹ At the same time, more limitations were placed upon both foreigners living in the country to participate in public gatherings and foreign-funded media sources.¹² As part of this development, the government-sanctioned Speakers' Corner allows only Singapore citizens to hold public speeches without a licence or police permit, further tightening its control of such activities. The main reasons stated by the Singaporean government for these restrictions was to maintain social and religious harmony, and national and public interest. As such, being a culturally diverse nation, the government continues to maintain a tight grip on any activities threatening the peaceful cohabitation of its main ethnicities (Chinese, Malay, and Tamil) and smaller minority groups, e.g. the local LGBTIQ community for

⁶ 'Ministry of Foreign Affairs: Recent activities' Singapore Government, available at <https://www.mfa.gov.sg/content/mfa/overseasmission/asean.html>, accessed on 12 June 2018.

⁷ 'Singapore' Invest in ASEAN, available at <http://investasean.asean.org/index.php/page/view/asean-member-states/view/709/newsid/788/singapore.html>, accessed on 12 June 2018.

⁸ 'GDP per capita (current US\$)' The World Bank, available at https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?view=map&year_high_desc=false, accessed on 12 June 2018.

⁹ 'The World Factbook' Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sn.html>, accessed on 12 June 2018.

¹⁰ 'Doing business' The World Bank, available at <http://www.doingbusiness.org/rankings>, accessed 14 June 2018.

¹¹ 'Singapore: Authorities given broad new powers to police protests' Amnesty International, available at <https://www.amnesty.org/en/latest/news/2017/04/singapore-authorities-given-broad-new-powers-to-police-protests/>, accessed on 11 June 2018.

¹² 'Singapore: Events of 2017' Human Rights Watch, available at <https://www.hrw.org/world-report/2018/country-chapters/singapore>, accessed on 11 June 2018.

which the Pink Dot 2017 event (that aimed to raise awareness of and acceptance for the group) was accessible to citizens only. Regular surveillance of social media and an increase in arrests at peaceful assemblies, e.g. of Singaporean activist, Jolovan Wham, also comprise significant developments in 2017.

Simultaneously, an increase in defamation lawsuits by government officials against the public and the opposition was seen in 2017. For example, siblings and a nephew of Prime Minister Lee Hsien Loong, who criticised the government, were charged over allegations made against Singapore's founding father and deceased leader, Lee Kuan Yew. In August that same year, the government initiated court proceedings against Lee's nephew, Li Shengwu, for private Facebook posts criticising the government's "pliant court system." Several requests by the government for an apology were rejected by Li Shengwu who currently lives abroad.

Moreover, in a controversial move, the government made use of a law allowing it to deprive naturalized citizens of citizenship. In December 2017, the government revoked the citizenship of naturalized citizen, Gaye Alassane, following accusations of match-fixing (a criminal offence under Art 133(1) of the Constitution).¹³

The 2017 presidential elections saw an unprecedented move by the government to be more inclusive of minority groups. As such, it amended its Constitution to allow only candidates of certain ethnic communities to run for the presidency. Upon enforcement, it was decided only candidates from the Malay community should be permitted to stand – however, only one candidate was deemed eligible in 2017, thus, negating the need for an election. As the first female and second Malay president in the country's history, Mdm Halimah Yacob became the city-state's president effectively because no candidate was deemed eligible to stand against her. However, the amendment is somewhat controversial with several members of parliament calling it unconstitutional.

As one of ASEAN's economic powerhouses, the government also was keen to maintain a focus on political and economic stability; as a result, civil rights were often overruled. As chair of ASEAN in 2018, Prime Minister Lee Hsien Loong announced the country's aspiration to "promote and uphold a rules-based regional order," and that ASEAN was a "lifeboat" for its 10 member states, ensuring regional stability and prosperity.¹⁴

¹³ Noor Farhan, 'What next for former S-League footballer, Gaye Alassane?' Channel News Asia, 7 December 2017, available at <https://www.channelnewsasia.com/news/sport/what-next-for-former-s-league-footballer-gaye-alassane-9477942>, accessed on 14 June 2018.

¹⁴ Lian Buan, 'Singapore's ASEAN 2018 chairmanship to focus on 'resilience and innovation' Rappler, 15 November 2017, available at <https://www.rappler.com/world/regions/asia-pacific/188530-singapore-lee-hsien-loong-speech-closing-ceremony-asean>, accessed on 11 June 2018.

B. International Human Rights Commitments and Obligations

Singapore's ratification of major international human rights instruments extended beyond 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), with its recent ratification of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in November 2017, as can be seen in Table 1 below.

Table 1: Ratification Status of International Instruments - Singapore¹⁵

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	27 Nov 2017
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		

¹⁵ 'Ratification status for Singapore' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=157&Lang=EN, accessed on 10 June 2018.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention on the Rights of Persons with Disabilities (CRPD)		18 Jul 2013

The country continues to hold reservations towards major international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT), the Convention for the Protection of All Persons from Enforced Disappearance (CED), and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW). Singapore's negative stance towards the ICCPR and the ICESCR can be traced back to its stance on freedom of speech, assembly, and other civilian rights which have deteriorated since 2017.

CAT: Singapore's reservations mostly revolve around the establishment of an independent body (the Committee against Torture) which may consider interstate and individual allegations of torture and other inhuman or degrading punishments.

ICMW: Non-ratification is justified by the perceived disconnect between Singapore's national interests and migrant rights and state duties as described in the ICMW. Singapore's commitment towards the re-structuring of non-compliant immigration policies to acknowledge, respect, and protect migrant worker rights has therefore been challenged by the ICMW.¹⁶

Singapore has also not signed or ratified any of the optional protocols, including the Optional Protocol of CAT, the Optional Protocol to CRC on the sale of children, child prostitution and child pornography, and the Second Optional Protocol to ICCPR which aims to abolish the death penalty. While the latter can be explained by the country's upholding of capital punishment, reservations to other protocols mostly revolve around the city-state's fear that such commitments may impact negatively on its sovereignty.

Developments in 2017

ICERD: Having signed in 2015, Singapore eventually ratified the convention on 27 November 2017. The ratification was a logical step since it aligns with the city-state's permanent mission to maintain peace and harmony among its heterogeneous population, which, aside from the four main ethnic communities, is home to many smaller minor ethnicities. However, Singapore's reservation to the Convention made

¹⁶ Su, Z, 'National interests and migrants' rights: The non-ratification of the ICMW by Singapore and Canada' MigrantWorkersRights, available at <http://www.migrantworkersrights.net/tl/resources/national-interests-and-migrants-rights-the-non-rati>, accessed on 11 June 2018.

in 1965 must be noted, for example with regards to Arts 2 and 22. Article 2 “reserves the right to apply its policies concerning the admission and regulation of foreign work pass holders, with a view to promoting integration and maintaining cohesion within its racially diverse society” and Art 22 “states that before any dispute to which the Republic of Singapore is a party may be submitted to the jurisdiction of the International Court of Justice under this Article, the specific consent of the Republic of Singapore is required in each case.”¹⁷ ICERD ratification aside, there were no visible positive human rights developments in the country in 2017.

C. National Laws Affecting Human Rights

*Part X on Citizenship*¹⁸

Part X of the Constitution defines the requirements and rights of persons to obtain and maintain citizenship as Singaporean nationals. However, the government also preserves the right to deprive and cancel such citizenship, effectively rendering these individuals stateless. This is in direct violation of the right to nationality as stated by the United Nations Human Rights Office of the High Commissioner.¹⁹ The past years have seen both an increase in government threats to deprive individuals of their citizenship and active discrimination against non-Singaporeans.

Article 129(3)(a)(i) (deprivation of citizenship): This article states that “The Government may, by order, deprive of his citizenship any person who is a citizen of Singapore by naturalisation if the Government is satisfied that he has shown himself by act or speech to be disloyal or disaffected towards Singapore.” This is a blatant attack on the freedom of speech as the government can at any point deprive individuals of their citizenship.

Article 130 (deprivation of citizenship of the child of a person losing citizenship): Based on Art 129, Singapore also holds the right to deprive the children of those losing Singaporean nationality of their citizenship: “... the Government may, by order, deprive of his citizenship any child of that person under the age of 21 years who has been registered as a citizen of Singapore pursuant to this Constitution and was so registered as being the child of that person or of that person’s wife or husband.”

Article 135(1)(c)(i) (deprivation of citizenship following exercise of the right of foreign nationals to live abroad): The government “may, by order, deprive a citizen of Singapore of his citizenship if the Government is satisfied that he is of or over the age of 18 years

¹⁷ United Nations Treaty Collection, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-2&chapter=4&clang=_en#EndDec, accessed on 17 June 2018.

¹⁸ Constitution of the Republic of Singapore, available at <https://sso.agc.gov.sg/Act/CONS1963>, accessed on 20 June 2018.

¹⁹ ‘Right to a nationality and statelessness’ OHCHR, available at <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>, accessed on 20 June 2018.

and has, whether before or after attaining the age of 18 years, been ordinarily resident outside Singapore for a continuous period of 10 years (including any period of residence outside Singapore before 2nd January 1986) and has not at any time during that period or thereafter entered Singapore by virtue of a certificate of status or travel document issued by the competent authorities of Singapore.”

Vulnerable Adults Act: This Act²⁰ aims to protect mentally and physically disabled persons and the elderly from abuse. First announced in 2014 by Singapore’s Ministry of Social and Family Development, it will be implemented in 2018. The Vulnerable Adults Act was initiated after several incidents including the abuse and torture of a mentally disabled woman and an elderly disabled man, leading to the death of the former. Implementation of this law will involve the collaboration of several ministries and agencies including charities, hospital, and courts.²¹

Mediation Act: Passed by Parliament in early 2017 and entering into force on November 2017, this Act allows conflicting parties to enter into a process of mediation to settle disputes, and recognizes such settlements as if they were court judgments. Further, the Act is currently enforceable in at least 38 countries, either under the 2005 Hague Convention or specific Commonwealth countries referred to under the Reciprocal Enforcement of Commonwealth Judgments Act.²² This mechanism serves as a tool for dispute resolution whilst also offering a clear legislative framework to safeguard the confidentiality and enforceability of mediation agreements.²³

National rape law amendments: In *Ng Kean Meng Terence v Public Prosecutor*, a Singaporean court recently updated its rape sentencing framework. In opposition to the old framework which was laid down in *Public Prosecutor v NF* (2007), a two-step sentencing band was introduced, consisting of offence classifications based on different types of rape and the calibration of appropriate sentences. This new law enables courts to both identify and sentence different rape cases more effectively, thereby providing much needed clarity and coherence to Singapore’s rape laws which will lead to improved justice for victims.²⁴

²⁰ Goy, P, ‘New laws to protect the weak’ *The Straits Times*, 30 December 2016, available at <https://www.straitstimes.com/singapore/new-laws-to-protect-the-weak>, accessed on 11 June 2018.

²¹ Tan, T, ‘2017 year-ender: Keeping vulnerable adults safe from abuse’ *The Straits Times*, 29 December 2017, available at <https://www.straitstimes.com/singapore/keeping-vulnerable-adults-safe-from-abuse>, accessed on 11 June 2018.

²² Sim, C, ‘The international reach of the Singapore Mediation Act’ *Kluwer Mediation Blog*, 17 December 2017, available at <http://mediationblog.kluwerarbitration.com/2017/12/17/international-reach-singapore-mediation-act/>, accessed on 20 June 2018.

²³ ‘Summary of Mediation Act’ *Straits Law*, 14 June 2017, available at <http://straitslaw.com.sg/summary-mediation-act/>, accessed on 20 June 2018.

²⁴ ‘Rape’ *Gloria James-Civetta & Co*, available at <https://www.singaporecriminallawyer.com/rape/>, accessed on 20 June 2018.

D. National Laws Threatening Human Rights^{25,26,27}

Monitoring of telephones and other private communications

In its efforts to build a “Smart Nation” and initiate a technology revolution, the city-state has made significant changes to some of its laws. Various legal frameworks have been amended, including the Privacy Law, Copyright Law, Patent Law, Competition Law, and Cybersecurity Law.

Privacy Law

The Privacy Law aims to give companies more access to private data in order to carry out big data analyses of individuals’ data without the need for consent, and as such, directly clashes with Singapore’s Personal Data Protection Act (PDPA) of 2012,²⁸ which seeks to protect citizens’ data. Since Prime Minister Lee Hsien Loong announced Singapore’s aspiration to become the world’s leading tech-country, several proposals were made to amend the PDPA in favour of realising an effective Privacy Law.

Freedom of expression in the press and online

In a recent crackdown on political and social unrest, the government introduced several laws on sedition, contempt, and public order. For example, the Administration of Justice (Protection) Act came into effect on October 2017 forbidding any attempt to “scandalis[e] the judiciary,” hence criminalising any discussion of pending court proceedings. Further, the Act’s restrictions are very broad leading to uncertainty as to what can or cannot be said. Moreover, Singapore has made increasing use of its sedition laws to combat certain speech on race, religion, and criticism of the government itself.

Public Order Act

Throughout 2017, application of this Act has seen a visible increase. Whilst mostly covering public assembly, it also includes the handing out of leaflets considered to be hurtful to different races and religions. In severe cases, the government retains its right to seek capital punishment. Additionally, public assemblies are regulated by a requirement to obtain a police permit beforehand. Moreover, in many instances such as the Speakers’ Corner in Hong Lim Park, only Singaporean citizens are permitted to assemble, severely restricting the rights of non-citizens, residents, and non-residents, ostensibly to ensure national political discourse will not be influenced by foreigners and foreign interests. Likewise, in mid-2017, the government amended the Public Order

²⁵ ‘Singapore 2017 Human Rights Report’ United States Department of State, available at <https://www.state.gov/documents/organization/277359.pdf>, accessed on 21 June 2018.

²⁶ ‘Singapore’ Human Rights Watch, available at <https://www.hrw.org/world-report/2017/country-chapters/singapore#07310e>, accessed on 10 June 2018.

²⁷ ‘Kill the chicken to scare the monkeys’ Human Rights Watch, available at <https://www.hrw.org/report/2017/12/12/kill-chicken-scare-monkeys/suppression-free-expression-and-assembly-singapore>, accessed on 15 June 2018.

²⁸ ‘Data protection laws of the world: Singapore’ DLA Piper, available at <https://www.dlapiperdataprotection.com/index.html?t=law&c=SG>, accessed on 21 June 2018.

Act, giving authority to the Police Commissioner to deny permits, further limiting the freedom of speech and assembly of both Singaporeans and non-Singaporeans. Also, in April 2017, the Act was specifically amended to authorise the Police Commissioner to deny permits for “cause-related” assemblies if non-citizens are involved in any way.²⁹

Newspaper and Printing Presses Act

While not a new law, the Newspaper and Printing Presses Act (NPPA) continues to limit media freedom despite the fact most media outlets are already closely aligned to the government. As such, both foreign and local newspapers require a yearly licence to be issued by Singaporean authorities. Moreover, such licences are also a prerequisite for high traffic websites which are again closely monitored.

*Defamation Law*³⁰

To silence its critics, the government made extensive use of its defamation laws against civilians in 2017. As such, cases of politicians suing both Singaporeans and non-Singaporeans saw an unprecedented increase. The government was even prepared to sue certain family members of Prime Minister Lee Hsien Loong for accusing him of influencing the country’s political agenda for his own benefit, and disrespecting their late father’s wish of demolishing his house upon his death. In a widely discussed and public case, the Prime Minister eventually decided not to pursue his family for the allegations made, explaining that it would have caused unnecessary damage to the country.

LGBTIQ-related rights

Under s.377a of the Penal Code, Singapore criminalised the act of men engaging in sexual intercourse with men. Even though this law has yet to be enforced, it nonetheless demonstrates the government’s stance on gay and LGBTIQ rights in general. If found guilty, individuals would face heavy fines as well as prison terms of up to two years.

Criminal laws

In line with a general deterioration of human rights, Singapore has reformed its criminal justice system to allow police to arrest and detain persons without charge or judicial review.

E. Recent Court Cases Relating to Human Rights

Jolovan Wham

In 2017, Singaporean civil rights activist, Jolovan Wham, faced seven charges of organizing peaceful assemblies over a one year period, including a vigil protesting the

²⁹ Human Rights Watch (see note 27 above).

³⁰ ‘How powerful people use criminal-defamation laws to silence their critics’ The Economist, 13 July 2017, available at <https://www.economist.com/international/2017/07/13/how-powerful-people-use-criminal-defamation-laws-to-silence-their-critics>, accessed on 15 June 2018.

execution of Malaysian national, Prabakaran Srivijayan, in July 2017. If found guilty, he could face up to 3 years' imprisonment and a maximum fine of SG\$11,000 (US\$8,100). In late November 2017, Wham was taken into custody before being released on bail the following day. He was accused of seven charges, including three related to the Public Order Act, three under the Penal Code, and one under the Vandalism Act. Wham had peacefully assembled for various causes, ranging from publicly expressing support for Hong Kong independence (including allegedly chairing a Skype conversation with a Hong Kong student activist), to holding a vigil for hanged Malaysian, Prabakaran Srivijayan. In another incident, Wham held a peaceful protest on Singapore's Mass Rapid Transit to commemorate those arrested and detained in the city-state without charge or trial under the Internal Security Act (ISA).^{31,32}

Eugene Thuraisingam

Shortly before Singaporean drug trafficker, Muhammad Ridzuan Md Ali, was hanged at Changi Prison in May 2017, his lawyer, Eugene Thuraisingam, published a self-penned poem on his Facebook page, criticising the country's death penalty as well as government officials and the political elite. Ali, who had been convicted four years earlier of trafficking pure heroin in contravention of the Misuse of Drugs Act, had appealed against his conviction in 2014, 2015, and 2016 but to no avail. Thuraisingam's poem about his execution was deemed in contempt of court (a criminal offence) and he was eventually fined S\$7,000 (US\$5,122).

In a similar incident related to freedom of speech, US-based Singaporean and grandchild of Singapore's founding father, Lee Kuan Yew, Li Shengwu, published a post on his Facebook page alluding to the corrupt and dependent nature of Singapore's courts, for which he was charged with contempt of court. Finally, in September 2017, visual artist and activist, Seelan Palay, was arrested under the Public Order Act (POA) for commemorating Chia Thye Poh (the longest-serving political detainee in the world, having been imprisoned for 23 years without charge or trial and subsequently placed under house arrest for another nine years until his eventual release in May 1989). While Palay had been granted an official permit to protest at Hong Lim Park's Speakers' Corner, he failed to acquire similar permits for the National Gallery Singapore and Parliament House where he continued his silent protest. At the end of 2017, legal court procedures against Palay are ongoing.

³¹ 'Police to charge activist, Jolovan Wham, in court; Charges include organising public assemblies without permit' The Straits Times, 28 November 2017, available at <https://www.straitstimes.com/singapore/police-to-charge-civil-activist-jolovan-wham-in-court-charges-include-organising-public>, accessed on 12 June 2018.

³² 'AGC goes after civil activist and opposition politician for contempt of court' Today, 11 May 2018, available at <https://www.todayonline.com/singapore/agc-proceeds-contempt-court-case-against-civil-activist-jolovan-wham>, accessed on 12 June 2018.

Prabakaran Srivijayan

Similar to the aforementioned case of Muhammad Ridzuan Md Ali who was hanged in 2017 for drug-related offences, Malaysian national, Prabakaran Srivijayan, shared the same fate in July 2017. The latter case carried specific weight for two reasons. First, in Srivijayan's home country of Malaysia, a case had already been lodged at the Court of Appeal against the execution of its citizen in Singapore. In such circumstances, international law states that death penalties must be halted. While Srivijaya's lawyers informed the Singapore Court of Appeal of the case, this was dismissed on grounds of abuse of process. Second, the execution of Srivijayan was announced and conducted at the last minute – his family only received notification of the execution 8 days prior. Thus, his execution – was widely viewed to have disregarded international laws.

Part 2: Outstanding Human Rights Issues³³

A. Further Restrictions on Freedom of Speech and Freedom of Assembly

With the amendment of the Public Order Act in mid-2017, Singapore continued to limit civil rights related to freedom of speech and assembly. Authorities are now able to ban public meetings and virtually exclude all non-Singaporeans from attending, participating, or observing public gatherings deemed to threaten political harmony.

In addition, the country has begun drafting a law on fake news which would encompass online and social media platforms such as Facebook and Whatsapp,³⁴ ostensibly to protect public harmony. Scheduled to be introduced in 2018, it is perceived to further limit the space for freedom of speech, markedly threatening the work of human rights activists and defenders.

B. Limitations on Foreigners Living in Singapore

In a recent and apparent crackdown on civil rights, the city-state proceeded in 2017 to further limit the rights of foreigners living in Singapore. While the country's print and digital media is already either largely owned by the government or tightly aligned to it, it nonetheless introduced additional regulations to prevent foreigners influencing its media outlets. At the same time, foreigners are not allowed to participate in public political discourses, assemblies, protests, and so on. Indeed, non-Singaporeans are often excluded from exercising such rights while simultaneously being subject to the same punishments as citizens. In particular, the acts of caning and capital punishment have often strained Singapore's relationships with other countries such as the Netherlands, Australia, the USA, and Malaysia.

³³ 'Singapore 2017/2018' Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/singapore/report-singapore/>, accessed on 13 June 2018.

³⁴ Chan, LE, 'New laws on fake news to be introduced next year: Shanmugam' Channel News Asia, 19 June 2017, available at <https://www.channelnewsasia.com/news/singapore/new-laws-on-fake-news-to-be-introduced-next-year-shanmugam-8958048>, accessed on 13 June 2018.

C. Exclusion of the LGBTIQ Community

As a conservative country, Singapore has a history of discriminatory and exclusive policies against the LGBTIQ community. For example, during the annual Pink Dot event of July 2017, local authorities required event organizers to set up barricades and conduct identity checks which had the effect of limiting the access of non-Singaporeans to the peaceful event, thus adversely affecting the community's right to freedom of assembly and speech.

D. Decent Housing for Migrant Workers

As Singapore is not a signatory to the ICMW, migrant workers remain vulnerable to governmental discrimination. For example, housing rights are extremely restrictive and migrant workers often must produce a variety of specific documents and fulfil onerous requirements to qualify. At the same time, decent housing is virtually inaccessible to migrant workers who may be forced to live in unhygienic conditions at the behest of their employers.

E. Steps Taken to Ensure National Security

By continuing to excessively apply its Internal Security Act (ISA), Singapore continues to breach international human rights law under the ICCPR and customary laws outlined in the United Nations Charter and the Universal Declaration of Human Rights (UDHR), both of which Singapore was obliged to accede to as a United Nations member in 1965. Under the ISA, individuals may be detained without charge or trial for indefinitely renewable two-year periods. The longest-serving political prisoner in the world, Chia Thye Poh, was detained in 1966 in Singapore.

Part 3: Conclusion^{35,36,37,38}

With ASEAN setting the stage for greater regional economic integration, as the wealthiest of the 10 member states, potentially Singapore could take the lead in pursuing this goal. Whilst tiny in size, the city-state has been able to boost its economic progress albeit at the expense of civil and political rights. A culturally diverse country with four main ethnicities and even more religions, Singapore has been applauded by many governments for its recognition of ethnic minority rights. Indeed, some saw the amendment of its Constitution in 2016/2017 to allow only specific minorities to run for the presidency as a visible step towards strengthening minority rights. However, its

³⁵ 'World report 2017: Singapore' Human Rights Watch, available at <https://www.hrw.org/world-report/2017/country-chapters/singapore>, accessed on 13 June 2018.

³⁶ Chia, B, 'Robbed of our right to elect our president' Youth.sg, 13 September 2017, available at <https://www.youth.sg/Our-Voice/Opinions/2017/9/Robbed-of-our-right-to-elect-our-president>, accessed on 10 August 2018.

³⁷ Han, K, 'How Singapore elected a president without a vote' CNN, 12 September 2017, available at <https://edition.cnn.com/2017/09/11/asia/singapore-race-presidential-election/index.html>, accessed on 20 June 2018.

³⁸ 'Anger in Singapore as first female president is elected without a vote' The Guardian, 13 September 2017, available at <https://www.theguardian.com/world/2017/sep/13/singapore-first-female-president-elected-without-vote>, accessed on 20 June 2018.

critics, particularly the political opposition, considered the amendments a violation of human rights, and a convenient way for the government to prevent a main opposition party member of Chinese ethnicity (Tan Cheng Bock)³⁹ from running for president. Tan, a former member of the ruling People's Action Party (PAP), claimed that the 2017 election, which restricted the electorate to Singaporean Malays only, was a blatant attempt to prevent his participation. Tan's opposition to the amendment found vast support among Singaporean political and civil society, many of whom regarded the action as unconstitutional. Reactions ranged from silent protests at Hong Lim Park to a trending hash tag on social media (#NotMyPresident) which was reminiscent of the reaction of many Americans following Donald Trump's election as US President. Likewise, the Workers' Party of Singapore made several attempts to raise the issue in Parliament to voice its concerns over an election that effectively prevented Singaporean citizens from having a say in the future political leadership of their city-state.

³⁹ *Tan Cheng Bock v Attorney-General* [2017] SGCA 50, available at <http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/court-of-appeal-judgments/22934-tan-cheng-bock-v-attorney-general>, accessed on 15 June 2018.

THAILAND

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THAILAND

Bencharat Sae Chua*

Part 1: Overview of Thailand

A. Country Background

Thailand Facts	
Geographical size	513,000 sq km
Population	66.18 million ¹
Ethnic breakdown	Main ethnic groups: Tai, Thai, Thai-Laos and Chinese-Thai (of Chinese descent) – 91.5% Other (Malay, Kamber, other ethnic minorities) – 8.5%
Official language	Thai
Literacy rate (aged 15 and above)	96.7% ²
Life expectancy	74.6 ³
GDP	US\$444.22 billion (per capita US\$6,593) ⁴
Government	Since 1932, mostly a constitutional monarchy and parliamentary democracy until the 2014 military coup. The country is now run by the National Council for Peace and Order (NCPO). No clear prospect of a return to civilian rule exists although the NCPO announced general elections will be held after the coronation of King Rama X (date TBA). Elections of local administrations have also been put on hold.
Political and social situation	The NCPO exercises absolute power via a series of orders that bypass regular laws and regulations. It strictly controls freedom of expression, association, and assembly, and limits public participation in policy-making. Dissidents or critics face judicial harassment and possible severe punishment.

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¹ Data from 2018. Department of Public Administration, Official Statistics Registration System, 2018, available at http://stat.dopa.go.th/stat/statnew/upstat_age_disp.php, assessed on 25 February 2018.

² Data from 2015. *Human Development Report 2016*, New York: United Nations Development Program (UNDP), 2016, at 231.

³ Data from 2015. UNDP (see note 2 above), at 199.

⁴ Data from 2017. 'GDP per capita: Thailand' The World Bank, available at https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=TH&year_high_desc=false, assessed on 22 July 2018.

Thailand is a mainland Southeast Asian country which borders Myanmar to the west, Laos and Cambodia to the east, and Malaysia to the south. In December 2017, the population was 66,188,503. 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, 71% of the 3.7 million population is Malay Muslim. Thailand is also home to more than 50 other ethnic minorities totalling 9.68% of the population.

Thailand is categorised fairly highly (87 out of 188 countries) in the United Nations Development Programme's (UNDP) 'Human Development Index 2016.' As such, Thai life expectancy at birth stands at 74.6 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 96.7% with no significant difference between the genders.⁵ In terms of economic development, Thailand stands firmly in the upper middle-income level – its GDP increased 3.6% in 2017 and now stands at US\$455.221 billion.⁶

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 when the military staged a coup d'état, however, Thailand has been under the military rule of an organization called the National Council for Peace and Order (NCPO) which controls the country's administrative affairs. It appointed the National Legislative Assembly (NLA) comprising 250 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. New members of local representative councils are appointed by a Selection Committee comprising of high level provincial officials from the Ministry of Interior.⁷

Political and social situation

The NCPO governs the country with minimal public participation. It strictly controls freedom of expression and rights to assembly, in particular those critical of the government or demanding democracy. 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

⁵ 'Thailand human development indicators' UNDP Human Development Reports, 2017, available at <http://hdr.undp.org/en/countries/profiles/THA>, assessed on 2 February 2018.

⁶ 'Thailand' The World Bank, available at https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=TH&year_high_desc=false, assessed on 22 June 2018.

⁷ Head of NCPO Order No 22/2559 on the process to temporarily acquire members of local representative councils in case of a dissolved local council, 4 May 2016, para 2.

constantly postponed. The 2017 Constitution that was drafted under strict control of the NCPO also paves the way for the military to remain influential in Thai politics for years to come.

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 – Thailand⁸

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)

⁸ '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 2 June 2018.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	29 Jul 2008

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). Discrimination in the name of national security or to ensure compliance with religious principles is permitted under s.17. The Act establishes a Gender-Based Discrimination Adjudication Commission to receive complaints from alleged victims and may order remedies and compensation if it deems discrimination to have occurred, or it may submit a law for constitutional review.

Thailand signed the Convention for the Protection of All Persons from Enforced Disappearance in January 2012 but despite the Cabinet approving the Ministry of Justice’s proposal to ratify it in May 2016, has yet to actually ratify it as of July 2018, claiming the incompatibility of its legal system.⁹ The National Legislative Assembly rejected the draft Torture and Enforced Disappearances Prevention and Suppression Bill, a legal tool proposed to enforce the CAT and CED, in early 2017. The Bill is now under revision by the Ministry of Justice according to the NLA’s comments.

C. National Laws Threatening Human Rights

In addition to regular laws passed by the legislative body, post 2014 Thailand is also ruled by a number of NCPO orders and announcements, many of which threaten or violate human rights. For example, to control dissident voices, the government uses both laws and NCPO orders to strengthen its hold on power.

⁹ Thailand has a dualist legal system and often amends domestic laws to ensure compliance with international standards before ratifying international human rights laws.

Constitution 2017

While the 2017 Constitution itself may not contain provisions seriously threatening human rights, it was designed to maintain the NCPO's influence in Thai politics after the formation of a civilian government. As such, Art 65 requires subsequent governments to follow the so-called 20-year National Strategic Plan drafted by the National Strategy Committee which was comprised of commanders of the security forces and NCPO-appointed politicians or officials. The National Strategic Plan Formulation Act 2017 also forces future government policies and national development plans, including national security plans, to be developed in accordance with the 20-year Strategic Plan (Art 5). Any failure to do so would be deemed illegal.

Moreover, Art 279 of the Constitution permits any NCPO announcement, order, or act, issued before or after the Constitution comes into effect, to remain intact and legitimate until the (new) government enacts legislation to revoke particular announcements/orders. Potentially, this could result in the continuing existence of human rights-violating orders (see below) before a strong enough political will is formulated to trigger the long legal process necessary to repeal them.

Particularly problematic is Art 265 upholding the NCPO's power and authority according to the 2014 Interim Constitution (drafted by the NCPO) until formation of a new cabinet. This power includes Art 44 which allows the Head of the NCPO to commit any act needed for reform, "national security," or national reconciliation.

Public Assembly Act (2015)

A major tool to control freedom of expression and assembly is the Public Assembly Act. This requires organizers to seek prior notification and permission for any public assembly activities or demonstrations and prohibits public assembly in the vicinity of a number of government offices. The Act is regularly used in conjunction with Head of NCPO Order No 3/2558 (2015) which prohibits political assemblies of more than 5 people (see discussion on Order No 3/2558 below). Those who demonstrate or engage in other activities may be doubly charged by orders such as NCPO Order 3/2558 or may even be arbitrarily detained by the military.

Interim Constitution (2014), Art 44

Despite promulgation of the 2017 Constitution, the NCPO still enjoys the power conferred on it by Art 44 of the 2014 Interim Constitution. Article 44 confers absolute power on the Head of the NCPO to act or prevent 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. Moreover, Art 44 also grants impunity to the NCPO, making it legally unaccountable for any actions and orders. Similarly, it has also been used to issue swift policies and implement a range of issues including the shuffling of government officials,

the recruitment of local administrative councils, provisions on human trafficking and 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 (see below for more details).

NCPO orders and announcements

By December 2017, about three and a half years into power, the NCPO has already issued 208 announcements, 127 orders, and 179 Head of NCPO orders.¹⁰ Many of these announcements/orders limit or violate civil and political rights. Examples include NCPO Announcement 7/2557 (2014) prohibiting political assembly, NCPO Announcement 49/2557 (2014) prohibiting support of political assemblies, Head of NCPO Order No 3/2558 (2015) on the maintenance of peace and national security, and NCPO Announcement 39-40/2557 (2014) prescribing criminal punishment for those breaking agreements not to involve themselves in political activities.¹¹ In particular, Head of NCPO Order No 3/2558 (2015) has often been used to silence opposition voices, resulting in the suppression of political rights and rights to a fair trial. As such, the order targets wrongdoings against the monarchy under *lèse-majesté*, wrongdoings against internal national security, armed crimes, and acts against the NCPO or any orders given by its Head. In addition, it prohibits political assemblies of more than 5 people (also criminalized by NCPO Announcement 7/2557 (2014))¹² and authorizes military officers to ban media and newspapers. Further, the order formalizes arbitrary detention in the name of “attitude adjustment training” for up to seven days as part of an alternative to legal charges if the accused voluntarily participates in the training. Violations are punished by prison terms of up to six months or a 10,000 baht (approximately US\$312) fine or both.

A number of NCPO Orders, many of which were issued under the auspices of Art 44 of the 2016 Interim Constitution, permit the NCPO to fast track development projects without public participation. For example, the NCPO exempts the demarcation of Special Economic Zones (SEZ)¹³ and the construction of factories related to energy production and waste management from following existing city plans or relevant laws on building control.¹⁴ As a result, such development projects may be constructed in otherwise protected areas. Under another order, the government may also reclaim public land and forests to be used as SEZ without allowing those living or using the

¹⁰ Compiled by iLaw (an NGO monitoring human rights violations in Thailand) in its campaign to revoke anti-human rights NCPO orders/announcements, available at <https://ilaw.or.th/sites/default/files/-คำสั่ง%20คตช..pdf> [in Thai].

¹¹ The NCPO summoned more than 1,000 people, many of whom had to sign an MOU promising not to get involved in political activities upon release.

¹² This announcement was issued on the day the NCPO staged the coup, in response to an on-going political demonstration at the time.

¹³ Head of NCPO Order No 3/2559 (2016) on exempting city-planning laws and building control laws in special economic zones.

¹⁴ Head of NCPO Order No 4/2559 (2016) on exempting city-planning laws for some businesses.

land or relevant government agencies owning the land to object.¹⁵ Similarly, Head of NCPO Order No 9/2559 (2016) allows the state to search for investors in transportation, irrigation, prevention of public danger, hospital or residential projects deemed to be of “highest urgency” before study of the Environmental Impact Assessment (EIA) is complete. In other words, these NCPO orders and announcements violate the public’s right to participate in policy-making and may potentially impact the right to livelihood of affected communities.

D. Recent Court Cases Relating to Human Rights

Freedom of expression and lèse-majesté

After more than 200 days in pre-trial detention, Jatupat Boonpattaraksa or Pai Dao Din, finally decided to plead guilty on the lèse-majesté charge of sharing King Rama X’s BBC News profile page on Facebook. He was sentenced to 5 years in prison which was reduced to 2 1/2 upon his confession.¹⁶ Before the sentence, Pai’s family requested bail more than ten times to no avail. Moreover, the trial was conducted mostly behind closed doors in the Military Court. Likewise, in January 2018, another pro-democracy activist was notified by police summons that she had been charged with lèse-majesté, also for sharing the same BBC profile page despite the fact that almost 3,000 people had also shared the page. Fearing Pai’s fate, the activist has since decided to apply for asylum abroad.¹⁷

Pai’s case not only amply demonstrates how lèse-majesté is used to harass human rights defenders, but also exposes the violation of rights to a fair trial under military rule. Accordingly, Pai comprises just one of many lèse-majesté charges in recent years, and one of many incidences of judicial harassment concerning freedom of expression. In addition, Pai also faces a couple more charges for participating in campaign activities to demand democracy (see the next section for a further discussion on freedom of expression in general).

State violence and impunity

Two court rulings in 2017 significantly impact the state’s responsibility for violence and its impunity. In the first, pro-democracy students, who were arrested while organizing activities to commemorate the first anniversary of the coup in May 2015, filed a law suit against the police bureau, the army, and the Prime Minister’s Office for using force to disperse them. In October 2017, the Civil Court dismissed the case arguing the arrests and detentions had been legitimate because Art 44 of the then Interim Constitution and

¹⁵ Head of NCPO Order No 17/2558 (2015) on reclaiming land to use in special economic zones.

¹⁶ ‘Thai activist gets prison for sharing king’s profile on Facebook’ BBC News, 15 August 2017, available at <https://www.bbc.com/news/world-asia-40938914>, accessed on 9 August 2018.

¹⁷ ‘Activist Chanoknan flees lese majeste summons’ Bangkok Post, 29 January 2018, available at <https://www.bangkokpost.com/news/politics/1403522/activist-chanoknan-flees-lese-majeste-summons>, accessed on 9 August 2018.

NCPO Order 3/2558 permitted certain limitations of the rights to assemble. As such, the court ruled that the damage caused had been as a result of the students' attempt to resist arrest and not due to any act of the authorities.

In another case, the Supreme Court dismissed murder charges against former Prime Minister Abhisit Vejjajiva (2008-2011) and Suthep Thaugsuban (the then head of the Centre for the Resolution of the Emergency Situation) for violently cracking down on the Red-Shirts protest in May 2010, killing several protesters, stating that Abhisit and Suthep had acted according to the Emergency Decree 2005 whilst holding political positions. Therefore, the acts were not of a criminal nature and the case should be decided by the Anti-Corruption Committee and the Supreme Court's Criminal Division for Political Office Holders. The Anti-Corruption Commission also dismissed the same charge against the two politicians in 2015 and has made no attempt to review its decision on the matter.¹⁸ Both cases perpetuate the idea that basic rights to life may be violated during times of emergency. They also exempt the state from accountability, thereby encouraging a culture of impunity in Thailand.

Again, in early 2017, in two separate incidents, two ethnic minority youths were shot dead by soldiers at a checkpoint in northern Thailand. The case of Chaiyaphum Pasae, a stateless youth activist shot dead in May 2017, particularly gained notoriety. The soldiers claimed Chaiyaphum had been carrying drugs, that he resisted arrest, and was potentially armed. No progress has been made in investigating the extra-judicial killings despite the fact an inquest has already identified the perpetrators. On the contrary, witnesses in the Chaiyaphum case were harassed and threatened by authorities.

Accountability over environmental rights

Significantly, in September 2017, a court ruling affirmed the rights of local communities to the management of their natural resources. Accordingly, the Kanchanaburi Province High Court¹⁹ forced a mining company to pay 36,050,000 baht (about US\$1.12 million) compensation to 150 Klity community members affected by lead-contamination of their water resources caused by the mining operation. The company was also required to rehabilitate the creek it had polluted.

The 19-year-long legal battle marks an unprecedented development in environmental rights lawsuits in Thailand. In its first environmental jurisdiction in 2013, the Supreme Administrative Court set the standard of government responsibility by ruling that the Department of Pollution Control was responsible for rehabilitating polluted creeks. By contrast, the decision in 2017 was remarkable for its recognition of the rights of

¹⁸ See, 'Murder charges against Abhisit and Suthep to be revived' Prachatai, 20 September 2017, available at <https://prachatai.com/english/node/7386>, accessed on 9 August 2018.

¹⁹ Kanchanaburi is a province in western Thailand.

the “traditional local community” in natural resources management (Arts 66-67 of the 2007 Constitution) and their rights to remedy.

Part 2: Outstanding Human Rights Issues

Existing under military dictatorship for more than three years, civil and political rights in general, and rights to free speech and assembly in particular, remain the key outstanding human rights issues in Thailand. Whilst charges against those involved in political activities or democracy movements in 2017 have declined since the years immediately following the coup, the downward trend remains clear with severe violation of civil and political rights becoming the norm and prospects for democracy still weak.²⁰ In addition, the public’s right to participate in policy-making has been reduced, leaving the people with little say in their own future. The following section will review Thailand’s political rights by first highlighting the issues of freedom of expression, judicial harassment, and the militarization of public policy, then analysing how they reflect the country’s democratic prospects.

A. Freedom of Expression and the Right to Assembly

The military maintains tight control over public perception of its government by tightly controlling those voices monitoring or criticizing the NCPO and the government. To achieve this, the NCPO has used legal controls, judicial processes, outright intimidation, and harassment to create an atmosphere of fear amongst the public. As a result, demonstrations against the government or state public policy are rare as such actions would attract harsh retaliation from the state.

In addition, the NCPO also utilises the laws and orders discussed in the previous section and extra-legal measures to threaten and intimidate its perceived enemies. Thus, military intervention in public activities, including public seminars, academic conferences, and art exhibitions, are common. At least 1,319 people were reportedly summoned or paid a visit by soldiers, both formally and informally, and at least 152 public activities were interfered with or forced to cancel (as of 30 June 2017).²¹ Similarly, the military refers to Head of NCPO Order No 13/2559 (2016) which aims to control “the person who commits certain criminal acts harmful to peace and order or undermine national, social, and economic systems,” to threaten and silence civil society groups (especially those working in the area of natural resources) by summoning vocal leaders of those movements to report to the military.²² As of August 2017, at least 66

²⁰ See more details at ‘Charges against individuals after 2014 coup’ Ilaw, 22 July 2018, available at <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup>, accessed on 9 August 2018.

²¹ Ilaw, ‘Latest statistic [sic]’ Ilaw, 22 May 2018, available at <https://freedom.ilaw.or.th/en/content/latest-statistic>, accessed on 15 June 2018.

²² ‘Verdicts on three computer crime cases – section 44 to control influential people, but summoning community members instead’ [in Thai], Ilaw, 2016, available at [https://freedom.ilaw.or.th/report/มีนาคม-2559-พิพากษาสามคดีพรบคอมพิวเตอร์ฯ-ใช้ม44-คุมผู้มีอิทธิพลแต่เริ่มเรียกชาวบ้านรายงานตัว](https://freedom.ilaw.or.th/report/มีนาคม-2559-พิพากษาสამคดีพรบคอมพิวเตอร์ฯ-ใช้ม44-คุมผู้มีอิทธิพลแต่เริ่มเรียกชาวบ้านรายงานตัว), accessed on 1 June 2018.

people have been accused of sedition (under s.116 of the Penal Code) with the majority prosecuted for criticizing the coup or the NCPO.²³

Even movements opting to use non-confrontational activities may face harassment. For example, peaceful protesters against the coal fire power plant in Krabi and Songkhla province have been arrested, charged, and detained many times throughout the year. In November, when the protesters marched to submit a petition to a mobile cabinet meeting, the state used force to disperse the demonstration. Sixteen activists were arrested, charged, and later released on bail.²⁴ Likewise, local communities affected by a gold mine in Phichit province in northern Thailand were charged for coercion (Art 309 of the Penal Code) and violations against the Public Assembly Act when they tried to stop the transportation of gold ore in their community. In September 2017, the court found members of the community guilty but suspended their sentences for one year.

Even minor criticism of the government may encounter a harsh response as exemplified by the so-called “academic conference is not a military barrack” case. In July 2017, during the 13th International Conference on Thai Studies held in Chiang Mai province, uniformed soldiers attended the conference without registering to monitor sessions discussing politics or democracy-related issues. A group of academics protested the interference by holding up placards reading, “Academic Conference is Not a Military Barrack” at the conference site and posted the photos online. The northern section of the army then pressed charges against the group for violating NCPO Order 3/2558 (2015) which prohibits any political assembly of more than five people. The case is still on-going.

Freedom of expression via online media has further been curbed through the Computer Crimes Act (entering into force in May 2017) and the closure of websites. The Act empowers the Ministry of Digital Economy and Society to demand internet service providers and social media administrators remove information without a court order. In the same month the law entered into force, the Ministry admitted it had closed down more than 6,300 website URLs. It also targeted 600 other URLs using overseas servers and which therefore could not be closed down from within Thailand. As reported by the Ministry, most of the affected URLs concerned national security while the rest were gambling and pornography websites.²⁵

²³ ‘Section 116: When ‘sedition’ is used as the obstruction of freedom of expression’ Ilaw, 2017, available at <https://freedom.ilaw.or.th/en/blog/section-116-when-%E2%80%98sedition%E2%80%99-used-obstruction-freedom-expression>, accessed on 2 June 2018.

²⁴ ‘More power plant project protesters face arrests’ ThaiPBS, 28 November 2017, available at <http://englishnews.thaipbs.or.th/power-plant-project-protesters-face-arrests/>, accessed on 9 August 2018.

²⁵ ‘Closed 6 thousands inappropriate websites’ [in Thai], Thansettakij, 4 May 2017, available at <http://www.thansettakij.com/content/146263>, accessed on 9 August 2018.

The Computer Crimes Act and the defamation law continue to be used by the state and business sectors in what could be called Strategic Litigation against Public Participation (SLAPP). Legal charges under those laws were brought against critics, human rights defenders, and civil society actors to silence opposition voices and prevent reports of human rights violations. One notorious case concerned defamation and computer crime charges brought by the Internal Security Operations Command (ISOC), the military's key internal security organization, against three human rights activists for alleging that the military had tortured people in southern Thailand.²⁶ Following negotiations, the military dropped the charges in March 2017 on condition that any report on human rights violations in Thailand's deep south must first be approved by a Fact Checking Committee which would be set up with representatives from the ISOC and civil society before going public. In October, the public prosecutor dismissed the case.

While the decision to drop the charges against the human rights defenders is commendable, the fact human rights reports must now acquire state approval is worrisome. Furthermore, the military continues to use judicial harassment to silence information on cases of alleged torture. In early 2018, the army also filed a defamation case against an alleged torture victim for discussing his experiences in a television program despite the fact that in 2016 the Supreme Administrative Court had already ordered the army to pay him compensation.²⁷

SLAPP is also used by companies against human rights defenders (usually without government interference) to ensure business rights are protected. Among some well-known cases are the defamation charges brought by a gold mining company against local community members and media for exposing the impact of gold mining in Loei province. A second concerns another gold mining company's charges against an academic working on the impact of a mine in Pichit province (as discussed earlier), whilst a third regards a chicken farm's charges against Burmese migrant workers who reported labour rights violations to the National Human Rights Commission of Thailand.

Up to May 2018, at least 421 individuals have been charged under NCPO Order No 3/2558 or NCPO Announcement No 7/2557.²⁸ Among these were more than 20 individuals charged for participating in campaign activities to raise awareness about rights to natural resources and healthcare. In other words, the NCPO is continuing to suppress not only those involved in democracy/political movements but also any

²⁶ 'Thai activists charged over 'military torture' report' BBC News, 26 July 2016, available at <https://www.bbc.com/news/world-asia-36894212>, accessed on 2 June 2018.

²⁷ 'Army sues deep south human rights defender for exposing torture on TV' Prachatai, 2018, available at <https://prachatai.com/english/node/7626>, accessed on 14 June 2018.

²⁸ See, 'Charges against individuals after 2014 coup' Ilaw, available at <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup>, accessed on 9 August 2018.

voices attempting to participate in policy-making. In cases where no formal charge is brought against civil society actors, authorities regularly refer to such laws/orders to threaten and prevent political assemblies or public activities that may criticize the government. For example, in 2015 alone, it was reported that the authorities and the NCPO threatened to use public assembly-related legal measures against at least nine groups working to protect natural resources or labour rights.²⁹

B. Political Rights and the Right to Participate in Decision-Making

Not only does the NCPO control the law and policy-making institutions to prevent access to formal channels and mechanisms to participate in public and political affairs, it has also expanded the role of the military in civilian affairs. Head of NCPO Order No 4/2558 (2015) authorizes law enforcement authorities to “ask for help” from the military to enforce any law seen as “protecting public interest and the common people,” including forest protection and the use of public roads. This overly broad definition leaves room for authorities to request military intervention in almost any affair.

In addition to a number of NCPO orders discussed throughout this chapter, the government’s forest protection policy best illustrates its militarization of public affairs. Although forest protection has been included in the military’s national security scheme for the past few decades, its role in prosecuting forest-related crimes was never formalized until the NCPO came to power. Head of NCPO Order No 64/2557 (2014) authorizes security forces, including the police and army, to participate in the suppression of deforestation. Under the NCPO’s so-called “Reclaiming the Forest” policy, many local communities living in the forest before the demarcation of protected areas in the process of negotiating forest use with local authorities, are now facing threats of eviction. Reports from local activists and NGOs claim the number of arrests of local community members is higher than it has ever been.³⁰

The military’s involvement has serious consequences on the right to self-determination as it strengthens its control over the design and implementation of policies without public participation. This is of particular concern in cases where such policies may impact livelihoods because limited space for public comment on policies or complaints can only adversely affect such rights.

The future is even more bleak when considering the prospect of a return to civilian rule. In November 2017, the government stated it would hold an election in 2018 but followed it with another announcement that the election would only occur after the King’s coronation. At the time of writing in August 2018, the date of the ceremony has

²⁹ ‘Using Public Assembly Act to threaten people. No demonstrations of any kind’ [in Thai], Ilaw, 2018, available at <https://ilaw.or.th/node/3991>, accessed on 15 June 2018. If political activity cases are included, the number is higher.

³⁰ See, e.g. Nanchanok Wongsamuth, ‘Forest clampdown hurts poor’ Bangkok Post, 11 September 2016, available at <https://www.bangkokpost.com/news/special-reports/1083356/forest-clampdown-hurts-poor>, accessed on 13 June 2018.

yet to be announced. In the meantime, the NCPO has gradually allowed the formation of political parties which may organize some activities. However, parties may not arrange meetings and may only organize general assemblies with NCPO approval.³¹ In this environment of restricted freedom of expression and violations of civil and political rights, undoubtedly election campaigns will also be tightly controlled by the NCPO.

Part 3: Conclusion

While many human rights cases and issues have not been discussed here, this chapter points to the state of civil and political rights as a basic requirement for the enjoyment of other rights. Thus, without an open democratic space, the exercise and protection of other rights will remain limited in Thailand.

Of hopeful significance was the NCPO's November 2017 announcement that human rights are now part of the National Agenda³² although what this means in practice remains a mystery. However, despite this, the military junta's human rights practices and policies seem relatively unchanged leaving the future of human rights and democracy in Thailand on virtual life support. Without enabling an environment that encourages free and fair elections and open political discussion, it is unlikely the coming election will herald genuine democratic change. Combined with the new government's obligation to follow the NCPO-drafted National Strategic Plan for the next 20 years, Thailand's political future remains in jeopardy.

³¹ Head of NCPO Order No 53/2560 (2017) on operations according to the Political Party Organic Act.

³² 'Cabinet raises profile of human rights with two-year national agenda plan' The Nation, 22 November 2017, available at <http://www.nationmultimedia.com/detail/politics/30332236>, accessed on 18 January 2018.

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 size	1,291,358 ¹
Ethnic breakdown ²	Main ethnic groups: Timorese (78%) Indonesian (20%) Chinese (2%)
Official language(s)	Tetum and Portuguese (national languages) Bahasa Indonesia and English (working languages)
Literacy rate (aged 15 and above)	67.5% ³
Life expectancy	68.88 ⁴
GDP	US\$2.52 billion (per capita US\$2,279) ⁵
Government	Unitary semi-presidential representative democratic republic whereby the prime minister is head of government and the president is head of state. It follows the 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 July 2017. 'The World Factbook: Timor-Leste' Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html>, accessed on 2 May 2018.

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 August 2018.

³ Data from 2016. 'Human Development Reports' United Nations Development Programme, available at <http://hdr.undp.org/en/countries/profiles/TLS>, accessed on 10 August 2018.

⁴ Data from 2016. 'Timor-Leste' The World Bank, available at <https://data.worldbank.org/country/timor-leste>, accessed on 10 August 2018.

⁵ Data from 2016. The World Bank (see note 4 above).

Timor-Leste is the youngest country in Asia and Southeast Asia; it is also the poorest. First colonised by Portugal from 1701 until 1975, it only achieved a nine day period of independence before Indonesian forces invaded. These remained for 24 years, during which time, it is estimated a third of the population died from various forms of abuse, e.g. execution, starvation, and disease. The turning point came in June 1998 when the Indonesian government under former president, Habibie, proposed a special autonomy status for Timor-Leste (known as East Timor at that time). A few months later in January 1999, the Habibie government unexpectedly agreed to a proposal by the United Nations (UN) to host a UN-sponsored popular consultation to allow the people of East Timor to decide whether to remain with Indonesia or to separate for full independence.

In the end, 78.5% of the East Timorese favoured separation from Indonesia. However, the process did not occur easily and led to severe violence, during which time hundreds of people were killed. At the same time, almost 70% of the country's buildings and physical infrastructure were destroyed and almost two-thirds of the population displaced, a problem that remains unresolved to this day. The wave of violence prompted deployment of an Australian-led multinational force (the International Force or INTERFET) to East Timor with the aim of restoring law and order. Subsequently, through UN Security Council Resolution 1272, a UN state-building mission known as the United Nations Transitional Administration in East Timor (UNTAET) was established to ensure political and social stability in the country, prevent any further violence, and restore order. The UN mission was vested with sovereign powers to prepare the territory for political independence and assist in creating democratic state institutions, thus enabling a smooth transition of independence. Finally, in 2002, UNTAET formally handed over administrative authority to the elected Timor-Leste government,⁶ paving the way for restoration of its independence in May 2002.

Current political situation

The March 20 presidential election and the July 22 parliamentary election in 2017 were the first elections held in Timor-Leste without assistance from the international community since the UN mission departed in 2012. Held in an orderly and peaceful manner (no major incidents were reported), they were considered a significant milestone and an unquestionable success for the young country. Indeed, its electoral processes have received praise from various international election observers demonstrating just how hard the Timorese have worked to win their democratic rights. On this point alone, the Timorese deserve credit for the country has shown that it is possible to move forward towards forgiveness and political stability despite a conflict-ridden past. This is particularly crucial for young democracies.⁷

⁶ Sahin, SB, 'Timor-Leste's foreign policy: Securing state identity in the post-independence period' *Journal of Current Southeast Asian Affairs*, 2014, Vol 33, No 2, pp 3-25.

⁷ Khoo, YH, 'Timor-Leste's personality politics' *The Diplomat Magazine*, 28 February 2018, available at <https://thediplomat.com/2018/02/timor-lestes-personality-politics/>, accessed on 10 August 2018.

After several rounds of negotiation over a number of months, the VII constitutional government was formed (winning a total of 30 out of 65 seats). It was composed of two political parties, the Revolutionary Front for an Independent East Timor (Fretilin) and the Partido Democratico (PD). Three parties formed the opposition: the National Congress for Timorese Reconstruction (CNRT) led by former revolutionary leader, Xanana Gusmao; the People's Liberation Party (PLP) led by former President, Taur Matan Ruak; and Kmanek Haburas Unidade Nasional Timor Oan (Khunto) formed by the opposition coalition or "parliamentary majority alliance" (AMP). Together, the AMP holds a 35-seat majority in Parliament. While the minority government hoped to maintain stability and peace with political inclusion, Fretilin Prime Minister Mari Alkatiri proved unable to pass any policy programs or budget bills after disagreeing with the AMP in parliamentary sessions.

Thus, the government struggled to function on its reserved budget of US\$1.2 billion left over from the previous administration. For six months, political uncertainty led to disturbances until finally on 26 January 2018, President Francisco Guterres (famously known as *Lú-Olo*) announced an early election on 12 May 2018, a decision that most Timorese celebrated.

In summary, the bloody struggle against Indonesian occupation (1975-1999) had the effect of uniting the East Timorese. Realising the 2006 political crisis essentially led to the deaths of over 100 and displaced more than 150,000, twelve years later, the Timorese sought to avoid a similar tragedy and instead, reasserted their belief in democracy. Thus, despite polarized opinions and differences in ideological beliefs, the country has remained united, appreciating that peace should not only mean the absence of conflict but also sustainable development.⁸

B. International Human Rights Commitments and Obligations

Timor-Leste's Constitution has adopted all the basic and fundamental human rights. For example, conventions advocating the right to life, the right to personal freedom, integrity, and security, and freedom of movement have all been ratified. Its Constitution also guarantees non-discrimination and equal treatment for all. Nationally, Timor-Leste has declared a commitment to the protection and development of human rights. In addition, the government has also established the National Human Rights Institution (NHRI) and the Office of the Provedor for Human Rights and Justice (PDHJ) to further promote human rights and good governance.

Based on an instruction from the Prime Minister (No 17/X/2014) and established in 2014, the National Directive Commission (KDN) was tasked to develop a national action plan for human rights. Headed by the Ministry of Justice, it comprises representatives

⁸ Khoo, YH (see note 7 above).

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 plan was drafted and developed for the period of 2014-2018. As of 2017, Timor-Leste has produced four thematic action plans on gender-based violence, zero-hunger, disabilities, and women, peace, and security.

Table 1: Ratification Status of International Instruments – Timor-Leste⁹

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 to 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)
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)		

⁹ '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 5 May 2018.

As shown above in Table 1, Timor-Leste has ratified seven international human rights instruments out of nine. Following its Universal Periodic Review (UPR) recommendations in 2011, the government adopted a national policy for the inclusion and promotion of individual rights in May 2012. However, limited action has been taken to implement the policy.¹⁰ Moreover, the government has not yet signed or ratified CRPD despite repeatedly promising to do so. At the same time, it has also not signed or ratified CED. Nevertheless, in its UPR of November 2016, the government did highlight a plan to ratify the Optional Protocol to CAT.

Of the 154 recommendations made by UN member states in November 2016, the government accepted 146 recommendations and noted the remaining eight. As of 2017, Timor-Leste has not requested a Special Procedure of the Human Rights Council. Notwithstanding, its Constitution has adopted the general and customary principles of international law and the treaties it has ratified. In addition, the government ensures its national legislation does not contradict international law. However, it has failed to adopt in full the general recommendations of certain treaty bodies, in particular, those of the Committees on CRC and CEDAW. Timor-Leste has also been late in presenting its reports under ICCPR, ICESCR, ICERD, and CAT.

At present, Timor-Leste has ratified six out of the eight fundamental International Labour Organization (ILO) Conventions. Significantly, although a party to the CRC, Timor-Leste is one of 18 ILO member countries that have yet to ratify the Convention concerning Minimum Age for Admission to Employment (C138) requiring countries to set a minimum work age. Timor-Leste is also one of 11 ILO member countries not to have ratified the Convention concerning the Abolition of Forced Labour (C105).¹¹ To rectify this, the government adopted a minimum working age based on Article 69 of the Labor Law. As such, the Labor Law established a minimum work age of 15 which allowed minors to perform light duties. This law prohibits children below the minimum age from performing work that could endanger their lives. A National Commission Against Child Labor under government resolution No 1/ 2014 has also been established to implement and monitor implementation of the ILO Convention.

Having ratified the Rome Statute of the International Criminal Court (ICC), Timor-Leste incorporated provisions into its national law criminalising actions against humanity, as laid out in the Penal Code. Be that as it may, the country has not yet

¹⁰ Dos Santos, J, and Morgan, E, 'Steps towards achieving inclusion for people with disabilities in Timor-Leste' State, Society & Governance in Melanesia, 2016/2018, available at <http://ssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2016-07/ib-2016-18-dossantosmorgan.pdf>, accessed on 18 May 2018.

¹¹ '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 2018.

enacted legislation allowing it to co-operate with the ICC.¹² 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.

Part 2: Outstanding Human Rights Issues

A. Impunity and Access to Justice

Following the long struggle for independence and the eruption of violence in 1999, as one of the poorest countries in the world, Timor-Leste is vulnerable due to its small size and because it suffered conflict prior to achieving independence. Similar to other post-conflict countries, debates about transitional justice and the effectiveness of its reconciliation mechanisms abound. Such discourse also triggered questions about the availability of comprehensive legal mechanisms for issues ranging from impunity to human rights violations in the state-building process.

In 2006, tensions between the national police and the armed forces resulted in open conflict between the two institutions and a breakdown of law and order that displaced more than 150,000 people. Efforts to resolve the conflict continued despite attacks on both the President and the Prime Minister in 2008. Although the country eventually recovered from the political crisis, realising that any failure of post-conflict reconstruction could come at a high cost and could potentially trigger new tensions or systemic fragility, the government moved to readdress its structural constraints to avoid, or at least minimize, the risk of new conflict.

Confronting the past has an ethical as well as a political purpose. As such, the Commission for Reception, Truth and Reconciliation of East Timor (CAVR) was mandated to establish the truth about human rights violations perpetrated by all sides in the context of the political conflict of 1974-1999. Accordingly, it documented the painful 1975 civil war that resulted in many hundreds of deaths and divided countless families and communities, the repercussions of which are still felt today. To a certain extent, it has to be said the existing transitional justice mechanism disappointed many war victims. This weakened the rule of law because it left some people unable to trust the justice system, either nationally or internationally.

¹² 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/3)' United Nations General Assembly, 17 August 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/00/PDF/G1618300.pdf?OpenElement>, accessed on 2 May 2018.

Through Decree Law No 48/2016, a new government body, the Chega! National Centre – From Memory to Hope (CNC) was established to facilitate the recommendations of CAVR (2005) and the bilateral Timor-Leste and Indonesia Commission of Truth and Friendship (2008). As such, its activities included the erection of memorials, education, the holding of events to demonstrate solidarity with victims of past human rights violations, and outreach. However, the centre lacked a mandate to address CAVR's recommendations on justice and reparations for victims of serious human rights violations,¹³ operating instead simply as a provider of programmes and activities.

Access to justice remains a challenge for large sections of the population in Timor-Leste. In 13 municipalities, there are only four permanent courts. Due to poor road conditions and the high cost of travel, access to justice is therefore limited. To overcome this, Timor-Leste introduced 'mobile courts' to increase access to the judicial system but so far, the effort has not proved successful. Primarily, the country lacks sufficient trained lawyers and judges for its courts to function on a regular basis. This limitation ensures courts only function sporadically outside Dili (the capital) encouraging many Timorese to resort to informal justice systems. However, customary justice does not always adhere to international human rights standards and is often applied less consistently than justice administered through the formal justice system. Nevertheless, most Timorese regard informal mechanisms as cheaper, more efficient, easier to understand, and less corrupt than their formal counterparts.

B. Women's Rights and Gender-Based Violence

The independence struggle left nearly half of all Timorese women widowed and the sole providers for their families. Currently, the main challenges for women remain domestic violence, poverty, and a lack of recognition of women's contribution to the political, economic, and social spheres. In particular, sexual, gender-based, and domestic violence are critical issues for women in post-conflict Timor-Leste. Indeed, cases of domestic violence are the most reported incidents to the Vulnerable Persons Unit of the National Police, a unit that was set up with assistance from the UN specifically to aid vulnerable people including women, children, and the elderly.

In addition, the policing and judicial processes for survivors of domestic violence seeking both justice and protection from their abusers were deemed lacking. In fact, due to fear of reprisals, victims often do not report abuse at all. Even when cases of domestic violence become known, such disputes are often solved using traditional customary laws and practices, either within the family or before community leaders. Concern was also expressed about the absence of legal provisions specifically criminalising marital rape and qualifying rape as a serious crime.

¹³ 'Timor-Leste 2017/ 2018' Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/timor-leste/report-timor-leste/>, accessed on 27 August 2018.

Early pregnancy is another major concern in Timor-Leste. One recent study in 2017 showed that almost a quarter of women in the country had given birth by the age of 20. Early pregnancies are often followed by marriage. Thus, 19% of girls are married by the time they are 18.¹⁴

Although Law No 10/2011 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. Moreover, the definition of discrimination in the Constitution and other legislation remains ambiguous. 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.

A recent amendment (Law No 9/2017 of 5 May 2017) to the Republication of Law No 6/2006 (Law on the Election of the National Parliament)¹⁵ stipulates that 33% of political parties must list women as candidates. As a result, 38% of seats in the national parliament are now occupied by women, the highest rate of any country in the Asia Pacific region. At the local level, there are currently 11 female village chiefs, two female sub-village chiefs, and six elders who function as traditional leaders. Under the amendment, each village council is also guaranteed three women representatives nationwide.

Signed in 2016, the Dili Declaration (DD), ‘Invest in Women and Children – Invest in Equality’ aimed to provide 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.

In April 2016, Timor-Leste officially launched its national action plan to implement United Nations Security Council Resolution (UNSCR) 1325 (2000) 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,

¹⁴ Cummins, D, *Teenage Pregnancy and Early Marriage in Timor-Leste: Research on the Decision-Making Pathways of Young Women in the Municipalities of Covalima, Aileu and Dili*, Dili: UNFPA, 2017, available at <http://timor-leste.unfpa.org/sites/default/files/pub-pdf/REPORTTPEMLOWRESOLUTIONFINAL.pdf>, accessed on 27 August 2018.

¹⁵ See, ‘Republication of Law No 6/2006 of 28 December’ La'o Hamutuk, available at <https://www.laohamutuk.org/Justice/2017/ElPar/Law%209-2017en.pdf>, accessed on 25 May 2018.

prevention, protection, and peace building,¹⁶ the plan calls for action to advance the participation and leadership of women in all aspects of decision-making and peace-building. Accordingly, it also 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.¹⁷

C. Children's Rights

As a follow-up to the UPR on Timor-Leste in 2016, the Ministry of Social Solidarity and the Commission on the Rights of the Child (KDL) established a National Action Plan for Children in Timor-Leste 2016-2020 (NAPC) to improve the lives of children and support the KDL's role in monitoring line ministries based on recommendations of the Convention of the Rights of the Child or CRC. The NAPC, as approved by the Council of Ministers on 31 January 2017, was a result of a government initiative to implement the CRC (which it ratified in 2003),¹⁸ although it also resonates with its sustainable development goals. In the next five years (2016-2020), these priorities, as drawn from the CRC's Concluding Observations, focus on four areas: child protection issues and concerns; child health and nutrition including adolescent health; pre-school education and basic education; and child and youth participation.

The KDL also plays an important role in advocating and implementing interventions with the relevant ministries on such legal issues as the registration of births, the Draft Law on Punitive-Educational Measures for Minors (a special criminal regime for juveniles), and revision of Article 173 of the Penal Code to provide protection in cases of incest. However, there are gaps in the legislative and institutional framework. For instance, 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. As such, the Draft Law on Punitive-Educational Measures for Minors aimed at children aged 12-16 and a Draft Special Penal Regime for Minors aged 16-21 are currently in the drafting process.

Another immediate area of concern is the high number of children in the work force. In 2016, Timor-Leste made moderate efforts to eliminate the worst forms of child labor.

¹⁶ '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 18 May 2018.

¹⁷ '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 18 May 2018.

¹⁸ National Action Plan on Children in Timor-Leste 2016-2020, available at [https://www.unicef.org/timorleste/01062017_NAPC_2016-2020_Final_Version_English\(1\).pdf](https://www.unicef.org/timorleste/01062017_NAPC_2016-2020_Final_Version_English(1).pdf), accessed on 7 May 2018.

For instance, some children are trafficked from rural areas to the capital city, Dili, and subjected to commercial sexual exploitation, domestic work, or forced labor in the fishing industry. Children are also trafficked transnationally, including to Indonesia, for labor exploitation. Preliminary data from a child labour survey conducted in 2016 indicates that more than 26,000 children were engaged in “other service activities” such as domestic work; the survey also identified 588 children engaged in street work.¹⁹

Other advancements include the passing of the Law to Prevent and Fight Against Human Trafficking and the National Action Plan Against Child Labor, now being finalized by the National Commission against Child Labor. In addition, the government also re-established the Inter-Agency Trafficking Working Group. However, it has not approved a decree specifying which occupations and activities are prohibited for children, leaving the group still vulnerable to engagement in hazardous work. In addition, limited financial and human resources continue to hinder the authorities from effectively enforcing laws related to child labour, especially in remote areas.

D. Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Rights

Section 23 of the Constitution states that the interpretation of fundamental rights as enshrined in the Constitution must be in accordance with the Universal Declaration of Human Rights. In such case, one could argue that discrimination based on sexual orientation and gender identity and expression (SOGIE) should, in principle, also be prohibited. However, the Constitution lacks a specific section guaranteeing human rights for all as it does not explicitly include SOGIE. In the past, several prominent Timorese human rights activists advocated introducing sexual orientation into a draft of the Constitution but they were unsuccessful. Only 13 voted in favour, while 52 voted against its inclusion. A further 14 abstained. Those opposing the provision claimed it had the potential to create conflict with the church²⁰ – Timor-Leste is almost 98% Catholic.

Supported by the UN and international agencies such as the Asia Foundation, Timor-Leste held its first-ever pride parade in 2017. Hatutan, the main network for such initiatives, also conducted other programmes to combat discrimination and violence targeting members of the LGBTI community. As Asia’s youngest democracy, the event was considered a milestone for Timor-Leste. It was also momentous as it was organised at a time when LGBTI rights were under increasing attack in the region. Nevertheless, it was encouraging to note that former Prime Minister, Rui Maria de Araujo, recorded a video message ahead of the parade urging the Timorese to create an inclusive nation, one accepting of people with different sexual orientations and gender identities. His

¹⁹ ‘Child labor and forced labor reports: Timor-Leste’ US Department of Labor, 2016, available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/timor-leste>, accessed on 10 May 2018.

²⁰ Saeed, I, and Galhos, B, *A Research Report on the Lives of Lesbian and Bisexual Women and Transgender Men in Timor-Leste*, Timor-Leste: Rede Feto and ASEAN SOGIE Caucus, 2017.

action gave a boost to LGBTI rights supporters in Timor-Leste and the Southeast Asia region.

In March 2017, Timor-Leste informed the UN Human Rights Council in Geneva that it had accepted two recommendations on SOGIE: to strengthen the country's legal framework to ensure gender equality and ban discrimination on the grounds of sexual orientation and gender identity; and to develop and adopt legal and administrative measures to investigate and punish acts of discrimination, stigmatization, and violence against the LGBTI community.

While same-sex behaviour is not criminalized under Timor-Leste's laws, they also fail to offer protection against discrimination. Accordingly, LGBTI people regularly face social stigma and discrimination.²¹ Although statistical data on the scale of the problem is lacking, Hatutan has received reports on various forms of discrimination and abuse. Therefore despite legal protections and a political commitment to ban non-discrimination on the basis of SOGIE, inadequate support mechanisms and a lack of information available to LGBTI people have conspired to halt progress in this area.

E. Land Rights

Land rights are a huge problem in Timor-Leste, mainly due to the lack of a comprehensive legal basis for determining land ownership. 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 administrations.²² 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 laws 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.²³ Without legal land titles, such land rights will not be recognised under Law 1/2003.²⁴

After approximately eight years' of discussion and consultation, the Expropriations Law by means of Law 8/2017 was approved on 26 April 2017, coming into force the next day. Regarded as a vital part of the "Land Law Package" that has been discussed

²¹ Beh Lih Yi, 'Asia's youngest nation offers glimmer of hope for LGBT rights' Reuters, 20 July 2017, available at <https://www.reuters.com/article/us-timor-rights-lgbt-idUSKBN1A5005>, accessed on 10 May 2018.

²² 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 18 May 2018.

²³ Almeida and Wassel (see note 22 above).

²⁴ 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 18 May 2018.

for almost a decade, it includes a number of other significant statutes that are expected to be approved and/or gazetted in the near future.

F. Freedom of Expression and Assembly

Despite constitutional and legal protections, the rights to freedom of expression and assembly are not yet fully protected in Timor-Leste. Some of the issues include structural challenges, financial dependence, and political interference, all of which challenge media impartiality. Since late 2014, journalists have expressed concern about a new press law which many view as seriously damaging to press freedom. Protests aside, the Media Act was passed after several reviews. In particular, the Court of Appeal deemed some provisions unconstitutional; these were subsequently removed. The Act requires all journalists to undergo a six-month internship in a media organization and be accredited by the government-funded Press Council established in 2016; in other words, they must be licensed by a government-funded body. Further, the Council was also given power to grant, renew, suspend, and revoke journalists' credentials and administer disciplinary sanctions including fines for contraventions of the law.²⁵ However, concerns have arisen regarding the appointment process of members of the Press Council. In addition, unnecessarily restrictive rules regulating foreign journalists in the country have also been noted.²⁶

Freedom of assembly is explicitly protected in Art 42 of the Constitution which stipulates that all people "are guaranteed the freedom to assemble peacefully and unarmed." Ordinary Timorese, including human rights activists are therefore generally free to express themselves. However, a few incidences of threats and intimidation have been reported, especially against NGOs publicly raising human rights concerns or to prevent them publicising sensitive issues.

Part 3: Conclusion

Democracy is highly valued in Timor-Leste as reflected in the Timorese spirit during this period of political impasse. Ultimately, the real test for this young democracy's survival is whether tolerance and understanding of the different aspirations of its people can prevail for the betterment of the country. Moving beyond electoral democracy, Timorese society now requires a credible political force to clearly define national development processes and address the issues and challenges encountered by the population. Such a party or coalition must not only be able to compete in the political

²⁵ '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 22 May 2018, at 20-21.

²⁶ 'Expression' Monitor: Tracking Civic Space on Timor-Leste, 1 January 2017, available at <https://monitor.civicus.org/newsfeed/2017/01/01/expression-timor-leste/>, accessed on 22 May 2018.

arena, but also provide a space and opportunities for all Timorese to enjoy in the spirit of inclusivity.²⁷

²⁷ Khoo, YH (see note 7 above).

VIETNAM

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VIETNAM

Khuong Duy

Part 1: Overview of Vietnam

A. Country Background

Vietnam Facts	
Geographical size	332,698 km sq
Population	94.57 million ¹
Ethnic breakdown ²	Main ethnic groups: Kinh (85.7%) Tay (1.9%) Thai (1.7%) Muong (1.5%) Khmer Krom (1.5%)
Official language	Vietnamese
Literacy rate (aged 15 and above)	94.5% ³
Life expectancy	76.3 ⁴
GDP	US\$205.28 billion ⁵ (per capita US\$2,343) ⁶
Government	A one-party socialist republic exclusively led by the Communist Party of Vietnam which espouses Marxism–Leninism and Ho Chi Minh thought.
Political and social situation	Despite continuous economic growth and progress on social indicators, Vietnam's record on political and civil rights remains dismal with the ruling CPV maintaining a monopoly on political power and permitting no challenge to its leadership. However, recent additions to the 2013 Constitution and ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership may lead to more civil rights and liberties re-emerging on the law-making agenda.

¹ Data from 2016. 'Vietnam' The World Bank, available at <https://data.worldbank.org/country/vietnam>, accessed on 1 September 2018.

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 1 September 2018.

³ Data from 2015 (est). 'The World Factbook: Vietnam' Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/vn.html>, accessed on 1 September 2018.

⁴ Data from 2016. The World Bank (see note 1 above).

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

⁶ Data from 2017. 'GDP per capita (current US\$): Vietnam' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=VN>, accessed on 1 September 2018.

System of governance

A one-party socialist republic, Vietnam's current political system is composed of the Communist Party of Vietnam (CPV), the State, political organizations, socio-political organizations, socio-professional organizations, and mass associations. The 2013 Constitution defines the CPV as:

... the vanguard of the Vietnamese working class, concurrently the vanguard of labourers and of the Vietnamese nation, faithfully representing the interests of the working class, labourers and the entire nation, and acting upon the Marxist-Leninist doctrine and Ho Chi Minh thought ... [Further, it] is the leading force of the State and society[,] ... closely associated with the People, shall serve the People, shall submit to the supervision of the People, and is accountable to the People for its decisions ... [and it] shall operate within the framework of the Constitution and law.⁷

The CPV directs State and socio-political organizations by:

... deciding on political programs, strategies, and guidelines for national construction and defense; carrying out leadership through ideological work, personnel management, and supervision over the implementation of its political programs, guidelines, and strategies; consistently directing the personnel work and managing the contingent of cadres, at the same time promoting the responsibilities of organizations in the political system and their leaders in charge of personnel work; [and] introducing competent cadres for posts in State agencies and in socio-political organizations.⁸

To consolidate its mono-leadership, the CPV works through its affiliates as dictated by its Constitution and laws.⁹ These include State-leading agencies (e.g. the National Assembly (NA), People's Councils) and socio-political organizations at the central level, provinces/centrally-administered cities which are formed through elections, and same-level party committees and bodies composed of CPV members working for related organizations and those appointed by same-level party committees. Party bodies lead and ensure compliance with CPV guidelines and policies, whilst increasing the CPV's influence, improving its close relationship to the people, realizing its resolutions on organization and personnel management, and deciding matters of organization and personnel management in line with the duties assigned by the Politburo.

⁷ Constitution of the Socialist Republic of Vietnam 2013, Art 4, available at <http://vietnamlawmagazine.vn/the-2013-constitution-of-the-socialist-republic-of-vietnam-4847.html>, accessed on 1 September 2018.

⁸ 'About Vietnam: Political system' Socialist Republic of Vietnam Government Portal, available at <http://www.chinhphu.vn/portal/page/portal/English/TheSocialistRepublicOfVietnam/AboutVietnam/AboutVietnamDetail?categoryId=10000103&articleId=10001578>, accessed on 1 September 2018.

⁹ Vietnam Government Portal (see note 8 above).

Other affiliates include judicial and executive bodies (the government, ministries, courts, inspection agencies, etc) at the central level, in provinces/centrally-administered cities and same-level party committees and boards which are composed of CPV members working for related bodies and same-level party committee appointees, including the secretaries. Party boards ensure other members understand and implement CPV guidelines and policies whilst also advising party committees on their operations, duties, organization, and personnel management, making decisions within their competence, and observing implementation of CPV guidelines and policies.

Finally, the CPV also works through its security and armed forces with a network of central military committees and security party committees. With these bodies, the CPV controls a nationwide organizational system that stretches from the centre to grassroots. At the State level lies the National Assembly, the President, and the Government. The National Assembly is the highest representative body of the people, exercising constitutional and legislative powers. It also decides important issues for the country and conducts supreme oversight over State activities.¹⁰

As head of state, the President represents the country, both internally and externally,¹¹ and is elected by the NA from among its deputies to which he/she must also report. The President's term of office follows that of the NA.¹² The Government is the highest administrative body in the land and as the executive body of the NA, exercises executive power. However, it is also responsible to the NA and must report to it, the Standing Committee of the NA, and the President.¹³

Exercising judicial power are the People's Courts.¹⁴ Another judicial body can be found in the People's Procuracies which prosecute and supervise judicial activities.¹⁵ Local administration is composed of the People's Council and the People's Committee¹⁶ which are divided into provinces (and centrally-run cities), districts (including towns and provincial cities), and communes (including townships and wards). Furthermore, special administrative-economic units may be established by the NA.¹⁷

In addition to the CPV and State organs, Vietnam's political system also includes a number of political organizations of which the leading one is the Vietnam Fatherland Front (VFF). VFF is a political alliance and a voluntary union of political, socio-political, social organizations, and prominent individuals representing various classes,

¹⁰ Constitution of the Socialist Republic of Vietnam 2013, Art 69.

¹¹ Constitution of the Socialist Republic of Vietnam 2013, Art 86.

¹² Constitution of the Socialist Republic of Vietnam 2013, Art 87.

¹³ Constitution of the Socialist Republic of Vietnam 2013, Art 94.

¹⁴ Constitution of the Socialist Republic of Vietnam 2013, Art 102.

¹⁵ Constitution of the Socialist Republic of Vietnam 2013, Art 107.

¹⁶ Constitution of the Socialist Republic of Vietnam 2013, Art 111.

¹⁷ Constitution of the Socialist Republic of Vietnam 2013, Art 110.

social strata, ethnicities, religions, and the Vietnamese diaspora.¹⁸ According to the 2013 Constitution, the VFF constitutes the political base of the people's administration. As such, it represents and protects their lawful and legitimate rights and interests; instils and promotes solidarity, exercises democracy and promotes social consensus; conducts social supervision and criticism; and participates in the building of both party and State, and contributes to national construction and defence.¹⁹

Under the VFF, the Trade Union of Vietnam, the Vietnam Peasants' Association, the Ho Chi Minh Communist Youth Union, the Vietnam Women's Union, and the Vietnam War Veterans' Association comprise voluntary socio-political organizations which represent and protect the lawful and legitimate rights and interests of their members; and, together with other member organizations of the VFF, coordinate and unify action within the country.²⁰

In general, Vietnam's current governance system is still characterized by previous models of former socialist states. As such, it is cumbersome, some features may overlap, and there may be a lack of clarity due to an emphasis on formalistic institutions and mechanisms.

Political and social situation

Despite significant economic achievements since Doi Moi (1986), Vietnam faces increasing political and social challenges. In particular, the relationship between the CPV, the State, and its population has deteriorated over the past decade, although, arguably, tension between the people and local government, as well as between social groups, is even higher. Such pressures have attributed to the absence of effective reform which is adversely affecting an economy already suffering from a macroeconomic imbalance. To many, this poses major questions about the capacity of Vietnam's political elite to rule the country effectively.²¹ Accordingly, negative economic development is stated by an increasing number of critics as evidence that urgent political reform is needed in the country.

In this climate, the CPV itself has been criticised by local elites and retired politicians with some even challenging the party to renounce Marxist-Leninist doctrine in favour of Western liberal democratic principles. Moreover, ordinary people are also increasingly moving away from socialist theories and have been pressuring the government to reform based on principles of good governance and anti-corruption.

¹⁸ Constitution of the Socialist Republic of Vietnam 2013, Art 9.

¹⁹ Constitution of the Socialist Republic of Vietnam 2013, Art 9.

²⁰ Constitution of the Socialist Republic of Vietnam 2013, Art 9.

²¹ Fforde, A, 'Light within the Asian gloom: Vietnam's economy since the Asian financial crisis' *Southeast Asian Affairs*, 2002, pp 357-377.

For the mass of Vietnamese, issues of national sovereignty are closely related to domestic sovereignty. In particular, they regard China’s rising power in the world as deeply worrying with many expressing concern at the government’s easy acceptance of Chinese investment.²² However, it could be argued that Vietnam’s central issue is not the external threat posed by China but the need for political and economic reform at home,²³ and specifically whether the current leadership is capable of such reform. In this regard, although the 2013 Constitution provides valuable opportunity for civil society engagement and advocacy which could lead to increased civil liberties and an expansion of political space, the slow and difficult process of drafting human rights laws is indicative of the CPV’s lack of consistency which perhaps shows it is not yet ready to relinquish its authoritarianism.

B. International Human Rights Commitments and Obligations

Vietnam is a party to most important international human rights treaties. As a member of the United Nations since 1977, it has also agreed to adhere to international obligations under the UN Charter and the Universal Declaration of Human Rights. Furthermore, it has accepted the legal obligations to respect, protect, and fulfil human rights and the fundamental freedoms as outlined by said treaties.

Table 1: Ratification Status of International Instruments – Vietnam²⁴

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	7 Nov 2013	5 Feb 2015
Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		
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

²² Fforde (see note 21 above).

²³ Fforde (see note 21 above).

²⁴ ‘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 1 September 2018.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
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

However, Vietnam also made a number of reservations to the above treaties upon accession. Regarding the ICERD, reservations were made to Arts 17(1) and 18(1) on the fact accession is limited to certain states, and Art 22 on the use of the International Court of Justice for dispute settlement. Vietnam also made reservations to: Art 48(1) of the ICCPR and Art 26(1) of the ICESCR; Art 8(2), Arts 20 and 30(1) of the CAT; and Art 29(1) on the use of arbitration and the International Court of Justice in CEDAW.

As regards the effect of Vietnam's commitments under international treaties in general, the 2005 Law on the Conclusion and Implementation of International Treaties stipulates the overriding effect of international obligations over national laws in cases of conflict. A number of domestic laws also make specific and direct reference to international treaties and their effects, e.g. the Civil Code (Art 827), the Commercial Code (Art 4(1)), the Maritime Code (Art 23), and the Law on Environmental Protection (Arts 24 and 25). Similarly, Art 827(2) of the Civil Code provides that international agreements shall prevail over local laws.

However, Vietnam's practice in this regard has not been clear and consistent. Concerning the incorporation and transformation of concluded international agreements, the law does not "clearly specify whether a treaty that has been ratified is self-executing or requires the enactment of legislation to incorporate the treaty

obligations into Vietnamese domestic law.”²⁵ Vietnamese law enforcement and State practice suggests that treaty provisions contrary to pre-existing laws will need to be ‘transformed’ into domestic law, and will not be effective until the relevant laws have been amended or repealed. However, treaty provisions not yet included in existing laws will be automatically incorporated into domestic law when the treaty comes into effect.

Along with Vietnam’s deepening integration into the world economy, the government has increased its engagement with international human rights mechanisms. Remarkably, in 2009, Vietnam subjected itself to the Human Rights Council’s Universal Periodic Review (UPR). Following this, Vietnam accepted as many as 93 out of a total of 123 recommendations made by other countries. Similarly, it accepted 182 out of 227 recommendations after the second UPR process in 2014. Of particular note was the first-time participation of NGOs in the process. In June 2013, after careful preparation and consultation, more than 60 local NGOs submitted a ‘shadow report’ under the UPR to the UN Human Rights Council.²⁶

The government has made great efforts to codify international human rights norms and standards into national laws as demonstrated by Chapter II of the newly revised 2013 Constitution. Progress can also be seen in the increasing acceptance of international norms as revealed by the number of revised and new laws incorporating such standards including the Penal Code, the Criminal Procedures Code, the Civil Code, the Civil Procedures Code, the Labor Law, the Law on the Protection and Care of Children, and the Land Law.

Moreover, legal drafting processes now involve more public and proactive consultation than ever before, particularly with non-State stakeholders, e.g. sex workers and drug users were offered a chance to meet with the drafting committee to discuss administrative sanctions. Likewise, during the Land Law amendment process, the Economic Committee of the National Assembly organized a workshop with Vietnamese NGOs to hear the voices of farmers. The 2013 revised Land Law placed tighter restrictions on compulsory land acquisition by the State and proposed more accountable ways to agree on compensation. It also increased the period of farmers’ land use rights to 50 years. And during revisions to the Law on Marriage and Family, the drafting committee conducted surveys and workshops with lesbian, gay, bisexual, and transgender groups to consider, e.g. the rights and issues of same-sex couples.

Despite tremendous efforts to develop legislation and strengthen the judicial system over recent decades, various loopholes in the formal legal rules guaranteeing human

²⁵ Bryant, T, and Jessup, B, ‘Fragmented pragmatism: The conclusion and adoption of international treaties in Vietnam’ in Gillespie, J, and Nicolson, P (eds), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform*, Canberra: ANU Press, 2011, at 299.

²⁶ Bui, T, ‘Vietnam’s civil society’ East Asia Forum, 5 September 2013, available at <http://www.eastasiaforum.org/2013/09/05/vietnams-civil-society-undergoing-vital-changes/>, accessed on 18 October 2016.

rights still exist. Further, considerable discrepancies between legal rules/practices and their enforcement can also be seen. Notably, limited access to justice and the relative weakness of the judicial system pose a large obstacle to the protection of human rights. It is also often noted that some important rules on human and citizens' rights in the Constitution, particularly such civil and political rights as freedom of speech, the press, assembly, and the right to form associations and to demonstrate, have not been institutionalized into laws.

Part 2: Outstanding Human Rights Issues

A. Civil and Political Rights

The process of implementing human rights in Vietnam was marked by several significant events in 2017. According to the US Department of State, human rights violations in 2017 related to issues of arbitrary and unlawful deprivation of life; torture and cruel, inhuman, and degrading treatment; arbitrary arrest and detention of persons peacefully expressing dissent; systemic abuses in the legal system, including denial of access to an attorney, visits from family, and the lack of fair and expeditious trials; government interference with privacy, family, home, and correspondence; limits on freedom of speech, assembly, association, movement and religion, including censorship of the press, and restrictions on internet freedom.²⁷

Unlawful or politically motivated killings, torture, and other cruel or degrading treatment
Vietnam signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 7 November 2013, ratified it on 28 November 2014, and in December 2017, submitted its initial report on the Convention's implementation. Despite this, in 2017, there were several reports of deaths in custody, e.g. on July 18, Luu Ngoc Hai died while in custody at Dak Po district police station (Gia Lai Province) where he was being held for an on-going investigation into drug charges.²⁸ In all cases, the provincial police departments implicated denied the alleged violence or ill-treatment and their responsibility for the deaths. Instead, suicide was generally put forward as an alternative explanation.

Although physical abuse of detainees is prohibited under Vietnamese law, some suspects reported mistreatment and torture by policemen, plainclothes security officials, and compulsory drug-detention centre personnel during arrest, interrogation, and detention. For example, on April 13, in Quang Binh province, plainclothes security officials reportedly abducted two activists, Tran Hoang Phuc and Huynh Thanh Phat, robbing and beating them before releasing them in a remote area in central Vietnam.

²⁷ 'Vietnam 2017 Human Rights Report' US Department of State, available at <https://www.state.gov/documents/organization/277375.pdf>, accessed on 2 September 2018, at 1.

²⁸ US Department of State (see note 27 above), at 1-2.

Later, they also arrested Phuc for “storing, making, (and) posting videos to the Internet, which convey messages against the State,” and therefore continued to detain him.²⁹

The oppression of religious minorities and activists

In an attempt to maintain the legitimacy and dominance of the communist ideology, the Vietnamese government regularly harasses, oppresses, and uses violence against certain ethnic groups and activists. It also uses vague legislative provisions on belief and religion and discriminatory language to exploit religious groups, such as the Montagnard Christians, Hoa Hao Buddhists, Khmer Krom Buddhists, and Cham Muslims. As such, it attacks and threatens people who question its authority and legitimacy, especially targeting those advocating for democracy, human rights, and religious freedom.³⁰

In June 2017, An Giang province authorities set up a barrier to block people from attending the Quang Minh Pagoda celebrations on the founding day of Hoa Hao Buddhism. Religious and pro-democracy activists, Ngo Hao and Nguyen Cong Chinh, were abused by prison officials, held in solitary confinement, and tortured for prolonged periods. Likewise, on May 3, Nguyen Huu Tan, a follower of Hoa Hao Buddhism, died while in custody at Vinh Long provincial police station after his May 2 arrest on charges of committing “propaganda against the State.”

Non-state actors, such as the “Red Flag Associations,” have also been mobilized to harass and assault activists and independent religious communities across the country. This government-supporting group is characterized by its violent behaviour. For example, on the evening of May 30, over 1,000 individuals claiming to be Red Flag Association members, wearing red T-shirts and carrying red flags, surrounded Van Thai Sub-Parish of the Song Ngoc Parish, insulted the Catholic parishioners, threw bricks and rocks to damage their vehicles and a number of houses, and beat parishioners as they went home after mass. Although these terror tactics continued for days, the authorities took no action to protect the victims. Nor did they respond to written requests to investigate these unlawful and violent acts.

Indeed, the authorities have used many measures to limit or block activists advocating for human rights and other political matters. For example, to prevent critical speech and peaceful activism, the police arrested at least 21 people for sweeping “national security” offences.³¹ In addition, they prohibited activists from attending meetings with the US Consulate, further threatening their freedom of expression. On 16 November 2017, authorities in Hanoi detained three popular bloggers (Pham Doan Trang, Nguyen Quang A, and Bui Thi Minh Hang) for several hours after they met with representatives

²⁹ US Department of State (see note 27 above), at 2-3.

³⁰ Ngo, TH, ‘Human rights situation in Vietnam: 2017-2018 report’ Office of Senator Thanh Hai Ngo, 2018, available at <http://senatorngo.ca/wp-content/uploads/2012/08/HR-Report-English.pdf>, accessed on 2 September 2018.

³¹ ‘Vietnam: Events of 2017’ Human Rights Watch, available at <https://www.hrw.org/world-report/2018/country-chapters/vietnam>, accessed on 2 September 2018.

of the EU to discuss human rights in Vietnam. Furthermore, several human rights activists have had their passports confiscated by the authorities to prevent them from attending international conferences or human rights training abroad.³²

Restriction of freedom of expression

In 2017, Vietnam recognized cyberspace as a “new battleground” and in response, the government established a special force consisting of 10,000 military “cyber soldiers” called “Force 47” (named after Directive No 47 authorizing its foundation) with the mission of “combating wrongful information and anti-State propaganda.” Realising that about 62.7% of Vietnam’s 90 million population have access to the internet, the Central Party Committee of the People’s Army of Vietnam therefore decided to focus on the task of building a special force to deal with the “information war.”³³ After 14 revisions, the Draft Cyber Law of Vietnam, compiled by the Ministry of Public Security, was submitted to the NA for comment. Slated to be made official law in 2018, it includes many provisions which could violate international human rights standards. This is hardly surprising as the government’s aim had always been less to protect network security than to preserve the CPV’s monopoly. As such, the draft law targets freedom of expression and access to information and will constitute one more government weapon against dissenting voices.

Land ownership

Since the 1980 Constitution, private land ownership has not existed in Vietnam. Citizens only have the right to use land; the government retains control of the management of all lands. This mechanism of entire-people land ownership alongside the inevitable corruption resulted in obstinate conflicts between citizens and authorities, such as Dong Tam in 2017. On April 15, the farmers of Dong Tam village rose in open defiance against the Communist Party to protest disputed land evictions and the alleged corruption of state officials. Following this, the aging leader of the village was detained and violated by police. In retaliation, the farmers held 38 policemen hostage for nearly a week. Eventually, a written hostage-release agreement was reached in exchange for a guarantee that none of the perpetrators would be criminally prosecuted and that an investigation on police brutality during the incident would be launched. Despite this, on June 13, the party broke its promise and began a criminal investigation against the villagers.³⁴

In general it would be safe to say that civil and political rights in Vietnam were brutally violated in 2017. Indeed, the above cases prove that the Vietnamese government has

³² ‘Report to the Human Rights Committee for its consideration for the adoption of the List of Issues in relation to the review of the third periodic report of Vietnam – Submission from the Vietnam Coalition Against Torture (CCPR/C/VNM/3)’ ICCPR, 25 April 2018, available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VNM/INT_CCPR_ICO_VNM_30980_E.pdf, accessed on 2 September 2018.

³³ ICCPR (see note 32 above).

³⁴ Ngo (see note 30 above).

a tendency to nurture and support violence within its ranks. As such, it encourages officers to use violence and assault to oppress suspects, activists, and religious minorities, especially in cases relating to national security and the legitimacy of the Communist Party. Along with the lack of judicial independence, this tends to result in a general ignorance of rights and the abuse of power of authorities in Vietnam. Accordingly, the authorities did not hesitate to ignore international human rights standards and used vague and inadequate provisions to justify ill-treatment and violence for their own political ends.

B. Economic, Social, and Cultural Rights

Economic, social, and cultural rights were also under fire in 2017. These problems stemmed from various aspects of Vietnam's socio-economic reality, but fall into three main issues: ongoing marine life disasters, prohibition of independent unions, and restriction of academic freedom and cultural events.

Ongoing marine life disasters

As mentioned in a previous edition of this series, the Formosa Ha Tinh Steel environmental disaster of 2016 had a detrimental effect on Vietnam. In April of that year, the company discharged toxic industrial waste into the ocean through illegally built drainage pipes, polluting more than 200 km of coastline and killing more than 80 tonnes of fish. Vietnamese authorities denied all responsibility and defended the foreign corporation, prompting public uproar and widespread civil unrest. Despite ongoing protests, Formosa has since decided to further expand its investment in Vietnam and is expected to start production on a new facility at the end of June 2017.³⁵ A year after Vietnam's worst environmental disaster, marine life has still not recovered and far from being sympathetic to the affected population, the government continues to crack down on protesters seeking compensation.

The mass killing of fish not only caused long-term harm to Vietnam's ecosystem, it also adversely affected the lives of close to 200,000 locals and those dependent on the fishing industry. As such, fishermen in the four most affected provinces must also deal with the fallout from a seafood safety scare as the toxic spill contained harmful chemicals such as phenol, cyanide, and iron hydroxide. With customers still worried about the safety of seafood, many villagers have now been forced to find new employment in different fields. Indeed, some have even gone overseas, putting centuries old cultural and fishing traditions at risk of extinction.³⁶

The Formosa incident is a sensitive topic for the Vietnamese government as it pits several competing forces directly against each other: political stability, environmental protection, and foreign direct investment, the latter being one of its key economic growth

³⁵ Ngo (see note 30 above).

³⁶ Ngo (see note 30 above).

drivers. As Formosa is one of Vietnam's largest foreign investors, it is hardly surprising the government took the stance it did despite the heavy cost to the environment. As such, this issue is a prime example of the government's one-sided economic development policy that values foreign investment at the expense of environmental protection as in many cases, to avoid the high cost of proper waste treatment, companies often discharge waste directly into the country's rivers and streams. Meanwhile, Vietnam's inadequate environmental laws and policies governing business practices are often not properly enforced, leaving companies unaccountable for violations and manmade environmental disasters, all of which could lead to the serious degradation of Vietnam's environment over time.

Prohibition of independent unions

Under national law, workers are prohibited from forming independent unions. Instead, all unions must be registered and affiliated with the Vietnam General Confederation of Labor (VGCL), an official labour confederation controlled by the Communist Party. Anyone who joins or attempts to establish an independent union can be targeted and prosecuted. However, conflicts of interest are often much in evidence within a factory's managerial structure, where union officials are chosen by factory managers without any worker input. As a result, workers may receive unfair and harsh treatment.

Consequently, labour activists and representatives of independent (non-VGCL) worker organizations often face anti-union discrimination. In addition, independent labour activists seeking to form unions separate from the VGCL or informing workers of their rights sometimes face government harassment. Thus, on 15 June 2017, authorities prevented Do Thi Minh Hanh, chairwoman of the independent Viet Labor Movement (which advocates for labour rights in Vietnam) from traveling abroad. Authorities also stopped Hanh's sister, Do Ngoc Xuan Tram, from leaving the country two days later at Tan Son Nhat Airport in Ho Chi Minh City – however, authorities ultimately permitted her to leave on July 25. Border authorities stopped both sisters for “national security” concerns.³⁷

This was not the first time Do Thi Minh Hanh's rights had been violated. Due to her crusading and support of Vietnamese labour unions, in October 2010, the defender was found guilty of “disrupting national security” and sentenced to seven years' incarceration. She was released on 26 June 2014, after serving four years and four months of her seven year sentence. Since her release, Do Thi Minh Hanh has been a regular target of harassment by the authorities.³⁸

In another example, on 15 May 2017, Hoang Duc Binh, vice-president of the aforementioned Viet Labor Movement, was riding as a passenger in the car of Father

³⁷ Human Rights Watch (see note 31 above).

³⁸ 'Do Thi Minh Hanh subject to daily violent attacks' Front Line Defenders, available at <https://www.frontlinedefenders.org/en/case/do-thi-minh-hanh-subject-daily-violent-attacks>, accessed on 2 September 2018.

Nguyen Dinh Thuc, another human rights defender, when they were stopped by traffic police. Father Thuc wrote in a statement published on the Saigon Broadcasting Television Network website that a group of men in civilian clothes and police in uniform “suddenly appeared, jerked the door open, and forcefully dragged Hoang Duc Binh out of the car and took him away”³⁹ without an arrest warrant. That evening, the Nghe An television network broadcast the news of Hoang Duc Binh’s arrest and showed the arrest warrant on which he had written, “I do not agree [with the charges] because the Nghe An police have beaten me and arrested me illegally.”⁴⁰

The Communist Party opposes independent unions because they could represent competing centres of political power. While there is government resistance, there is also hope for labour rights reform as a result of international investment agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Vietnam-EU Free Trade Agreement (EVFTA).

Restriction of academic freedom and cultural events

Academic freedom was also curtailed in 2017. In particular, while foreign academics temporarily working at universities in the country could freely discuss non-political topics, government observers regularly attended classes taught by both foreigners and nationals. In addition, international and domestic organizations wishing to host conferences involving international sponsorship or participation, had to obtain government permits. Moreover, the government continued to prohibit any public criticism of the CPV or State policy even by independent scientific and technical organizations for purely academic audiences.⁴¹

Although the government allowed universities more autonomy over international exchanges and cooperation programs, visa requirements for visiting scholars and students remained onerous. Many reported that Ministry of Public Security officials threatened university leaders for not expelling activists from their respective universities and even pressured them and their family members not to attend certain workshops despite the peacefulness of their political activities. Multiple activists also reported that academic institutions refused to allow them to graduate due to their human rights advocacy.⁴²

The Vietnamese government also controlled art exhibits, music, and other cultural activities. For example, authorities restricted public art displays and musical

³⁹ ‘Bản tường trình của Linh Mục Nguyễn Đình Thục về sự việc công an bắt người trái phép ngày 15/05/2017’ Saigon Broadcasting Television Network, available at <http://www.sbtn.tv/ban-tuong-trinh-cua-linh-muc-nguyen-dinh-thuc-ve-su-viec-cong-an-bat-nguoi-trai-phep-ngay-15052017/>, accessed on 2 September 2018.

⁴⁰ Vietnam: Crackdown on rights activists’ Human Rights Watch, available at <https://www.hrw.org/news/2018/01/24/vietnam-crackdown-rights-activists>, accessed on 2 September 2018.

⁴¹ Human Rights Watch (see note 31 above).

⁴² Human Rights Watch (see note 31 above).

performances by use of substantial permission procedures, although Ho Chi Minh City authorities did permit the country's first-ever nude art exhibition in 2017. In another case, local authorities denied a permit to organizers of a women's march in Hanoi in April. In May, police used excessive force to disperse pro-environment marches in Hanoi and Ho Chi Minh City. Many protesters reported being beaten and detained for hours. Several protesters, including Vo Chi Dai Duong, Dang Ngoc Thuy, Cao Tran Quan, Xuan Dieu, and Nguyen Tan, were taken to administrative detention centres where they were kept for several days without access to legal counsel or due process.⁴³

On July 22, Hanoi officials ultimately permitted a concert by the group, Mai Khoi and the Dissidents, to continue in Tay Ho District, Hanoi, albeit with a heavy security presence and after several hours of negotiations. Mai Khoi subsequently shared on social media that security forces pressured her landlord to evict her following the concert.⁴⁴

Although academic activities and cultural events have little connection to politics, it is likely the Communist Party still sees them as possible opportunities to spread ideas that could threaten its power, thus compelling it to find ways to restrict the activities or events, regardless of their true purpose, meaning, and audience.

C. The Impact of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership on Human Rights in Vietnam

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is one of the largest free trade agreements in the world, representing nearly 13.5% of global gross domestic product. Officially signed on 8 March 2017 in Santiago, Chile, Vietnam became one of eleven signatories; the others included Australia, Brunei, Canada, Malaysia, New Zealand, and Singapore. With the intention of invigorating economic development, the agreement includes provisions to expand markets and enhance international commercial relations bringing about not only opportunities for economic growth, but also human rights impacts.

Based on the idea that human rights only flourish in well-governed markets, CPTPP concentrates mainly on human rights in a business context. For example, the CPTPP contains provisions to protect the proper functioning of market processes, rather than simply access to markets. Moreover, it includes provisions on “regulatory coherence” to ensure a common set of rules governs the way member states regulate markets. It also requires transparency in decision-making, the testing of regulations by reference to the goals set, and a form of cost-benefit assessment. Finally, the most common criticism levelled against the CPTPP is that Investor-State Dispute Settlement (ISDS) provisions infringe upon the “right to regulate” markets in the public interest.⁴⁵

⁴³ Human Rights Watch (see note 31 above).

⁴⁴ US Department of State (see note 27 above), at 22.

⁴⁵ Robertson, D, and Shore, L, “The Trans-Pacific Partnership and human rights’ Herbert Smith Freehills, 29 October 2015, available at <https://www.herbertsmithfreehills.com/latest-thinking/the-trans-pacific-partnership-and->

The CPTPP has several impacts on human rights. First, the CPTPP requires country members to adhere to fundamental rights as acknowledged by the International Labor Organization, including the right to freedom of association and collective bargaining, the elimination of child labour, forced labour or compulsory labour, and of discrimination with respect to employment and occupation.⁴⁶ It also has strong and enforceable environmental obligations. Article 20.15 appears to address the climate crisis obliquely by acknowledging that “transition to a low emissions economy requires collective action” and that the parties “shall cooperate to address matters of joint or common interest” such as “development of cost-effective, low emissions technologies and alternative, clean and renewable energy sources.” Therefore, it seems well aware of the important relationship between law, economic growth, and the environment.⁴⁷

It can therefore be seen that the CPTPP has both positive and negative impacts on human rights practices in Vietnam. For instance, the chapter concerning ISDS mechanisms are inadequate in that the provisions provide protection for investors but not for states or their populations. Accordingly, provisions in the agreement could create the “chilling effect” that intrusive ISDS awards have had when countries have been penalized for adopting regulations, for example, to protect the environment, food security, access to generic and essential medicines, reduce smoking (as required under the WHO Framework Convention on Tobacco Control), or to raise the minimum wage.⁴⁸ Further, Farida Shaheed, the UN Special Rapporteur in the field of cultural rights, points out that current laws have had the tendency of strengthening copyright protections with little consideration for their human rights implications which could harm rights to access science and culture by going far beyond prohibiting just literal copies, and making other activities such as translation, distribution, and modification illegal without the permission or licence of the holder.⁴⁹

human-rights, accessed on 2 September 2018.

⁴⁶ ‘What does the CPTPP mean for labour?’ Government of Canada, available at <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/sectors-secteurs/labour-travail.aspx?lang=eng>, accessed on 2 September 2018.

⁴⁷ Hailes, O, Menkes, D, Jones, R, et al, ‘Climate change, human health, and the CPTPP’ *The New Zealand Medical Journal*, 2018, Vol 131, No 1471, pp 7-12, at 7.

⁴⁸ ‘UN experts voice concern over adverse impact of free trade and investment agreements on human rights’ OHCHR, available at <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E>, accessed on 2 September 2018.

⁴⁹ Sutton, M, ‘UN experts say TPP and fast track threaten human rights’ Electronic Frontier Foundation, 7 May 2015, available at <https://www.eff.org/fr/deeplinks/2015/05/how-tpp-and-fast-track-threaten-human-rights>, accessed on 2 September 2018.

Part 3: Conclusion

Vietnam is currently transitioning from a socialist model of governance to a more democratic one. The transformation began after Doi Moi (1986) and is quickly gathering speed. However, compared to the transformation of economic institutions, progress is extremely slow. In Vietnam, there are both internal and external motives for such a process. Internally, Vietnamese people are increasingly aware of the limitations of socialist authoritarian regimes and as such, increasingly demand democratic reform. Externally, democratic influences and pressure from international institutions are forcing the CPV to pay more attention to improving democracy and human rights.

Due to internal pressure and the international community, democracy and human rights in Vietnam have generally improved since 1986. However, while economic, social, cultural, and some civil rights, (including the rights of some disadvantaged groups) have been on the receiving end of considerable improvement, political rights and other more sensitive civil rights have been strictly curtailed.

The fact that civil and political rights are still limited is largely due to the need to maintain the one-party political system in Vietnam. As such, the CPV believes that fully recognizing and respecting civil and political rights may threaten its mono leadership. In fact, the CPV is currently facing a dilemma. On the one hand, it is under increasing pressure from its populace and the international community to democratize; on the other, it still seeks to cling on to power. Following the aspirations of its people and the international community, it may very well lose its mono leadership role, instead becoming just one political party in a pluralistic society. However, desperately holding on to authoritarian power at any cost could lead to a revolution of sorts as Vietnamese society grows more prosperous, similar to the democratic transitions of South Korea, Taiwan, and other Asian nations in the 1980s and 1990s.

The human rights situation in Vietnam in 2017 and in recent years, reflects this new situation and the CPV's embarrassment surrounding the issues of democracy and human rights. While the party must restrain political and civil rights to retain its monopoly on power, it must also continue to improve economic, social, cultural, and group rights in order to relieve the pressure from its populace and the international community.

However, the above-mentioned state of affairs may continue for several more years to come. Landmark improvements in democracy and human rights will only occur with extensive political reform. Until this happens, any improvements in democratic, civil, or political rights will only be piecemeal and taken as countermeasures against greater change.

In 2017, the human rights situation in Vietnam also reflected an interesting characteristic of international affairs – that is, when international community pressure for change reduces, civil and political rights in countries resisting such change will correspondingly be more tightly controlled. Thus, in 2017, when the United States changed its foreign policy to focus on domestic issues, the CPV felt more able to suppress local dissent, illustrating both the complexity and the difficulty of improving human rights in Vietnam.

Vietnam's introduction of a market economy, the development of a socialist law-based State doctrine, and the exposure of its long-held socialist norms of human rights to liberal universalism, have paved the way for an evolving human rights regime. As can be seen from the 2011-2013 constitutional amendment debate, the discourse around human rights is dynamic and ever-changing. On the one hand, legal limits on the freedom of association and workers' rights, freedom of the press and peaceful assembly, including the right to demonstrate, and access to information, are apparent and have been used by the Party-State to control civil society and to prevent groups or individuals from potentially engaging in political advocacy. On the other hand, despite setbacks and restrictions in the regulatory framework on a number of human rights issues, it must be stressed that efforts to institutionalize a more effective and consistent legal-rational model of human rights has made some progress. This 'new thinking' on the rule of law and human rights has gradually been transplanted and developed while still drawing resistance from some conservative elements of the CPV. A number of reforms that have been proposed and considered seriously could truly open up substantive and constructive deliberations. Thus, it can be seen a more effective and consistent legal-rational model is beginning to take root in Vietnam.

The foregoing analysis aimed to shed clearer light on the right to associate and workers' rights in Vietnam. While the Vietnamese Party-State has accepted the universality of human rights at a high level of abstraction, in practice, it still disagrees with western countries and international institutions over the content, justification, interpretation, and implementation of these rights. The interim solution to this impasse is necessarily a syncretism that would enable "new and contradictory substantive ideas to enter and enlarge the range of values applied to new situations."⁵⁰ While the socialist legality doctrine is in decline and a law-based State is still embryonic, a dynamic and tolerant political model of human rights is likely to embrace such syncretism and adjust itself in the long-run.

⁵⁰ Gillespie, J, 'Concepts of law in Vietnam: Transforming statist socialism' in Peerenboon, R (ed), *Asian Discourses of the Rule of Law*, London: Routledge, 2004, at 172.

Appendix

A decorative graphic consisting of several parallel diagonal stripes in shades of gray, located on the right side of the dark horizontal band.

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

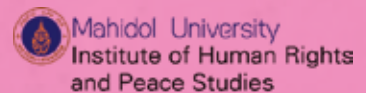
Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA) was launched in February 2015 in Bangkok, Thailand. It is a collaboration between the ASEAN University Network-Human Rights Education (AUN-HRE) which has thirty member-universities and the Southeast Asian 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 third in a series where we 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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