



Human Rights Outlook in Southeast Asia

2018





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

Human Rights Outlook in Southeast Asia: 2018

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Foreword

Sriprapha Petcharamesree, PhD

The general election which changed Malaysia's political landscape in May 2018 represents one of a scant few steps towards positive human rights development in the Southeast Asian region this year. Two months later, rather than bringing change to the country, another election in Cambodia saw reinforcement of the absolute power of one of the world's longest serving prime ministers. The opposition was effectively prevented from participating in the process with several opposition leaders being placed in custody while others were obliged to leave the country. Moreover, some opposition parties were even dissolved. These two contrasting cases comprise the highlights of the year 2018.

These two events reveal the dynamism and challenges of human rights and peace in Southeast Asia. From the country reports, we could conclude that all states in the region have already adopted international human rights concepts as exemplified by an increasing number of ratifications of international human rights standards, as well as by active participation in UN human rights systems such as the Universal Periodic Review. Individually, however, the human rights situation remains challenging. In some countries such as Cambodia and the Philippines, human rights abuses continue behind the mask of democracy and without accountability while in others such as Thailand, Lao PDR, and Vietnam which are ruled by military regimes and a one-party system, critics of the prevailing systems are targeted and politically motivated arrests and detentions remain the norm.

The use of cyber laws, sedition acts, and legal harassment to silence human rights defenders are also far too frequent in the region while non-nationals (such as migrant workers, refugees, and asylum seekers) continue to suffer from various forms of exploitation and human rights abuses, again without access to remedies. With constant violations occurring in the region, the human rights regime in ASEAN, namely the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), have not only been unable to address the violations but also appear unwilling to do so out of respect for state sovereignty and non-interference in the internal affairs of member states.

The 2018 Outlook highlights the issues mentioned above. Whilst we agree that human rights issues should first be dealt with at the national level, we cannot ignore that critical issues such as the plight of the Rohingyas (which continues unabated with no solution in sight) also requires regional solutions. However, effective national and regional human rights governance seems to be missing as of yet. Both need to be strengthened if human rights violations are to be properly addressed – this is the

aspiration of the Outlook. Therefore, I thank all contributors to the national reports and the regional team led by Azmi Sharom, Magdalen Spooner, and Diana Hussain for their contributions to the 2018 Outlook. Finally, we appreciate the continued support of Sida to implement SHAPE-SEA, especially as regards this and all the other Outlooks in the series.



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Introduction

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After an eventful and at times frustrating five years, we come to the fourth volume of *Human Rights Outlook in Southeast Asia*, a series supported by the Swedish International Development Cooperation Agency (SIDA) and the Norwegian Centre for Human Rights (NCHR). A product of the Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia project (SHAPE-SEA), the series is also a collaboration between two regional networks, the ASEAN Universities Network-Human Rights Education (AUN-HRE), and the Southeast Asian Human Rights Studies Network (SEAHRN).

Once again, the fourth volume includes all eleven nations in the region, and once again, under the auspices of SHAPE-SEA, it seeks to disseminate such knowledge by analysing the developments (or lack thereof) of human rights in the various countries of Southeast Asia. Thus, as far as possible, experts on the ground were asked to prepare chapters on the topic, and in particular, to document their personal insights and opinions. In addition, as part of a series dating back to 2014, Outlook provides a valuable insight into the progression or regression of human rights while the standardization of its format from year to year and country to country enables easy comparison between nations and across time. That said, each volume is also a vital source of information in and of itself.

The protection and promotion of human rights in Southeast Asia is as diverse as the region itself. In this, our fourth Outlook, we find several similarities throughout the region. On a positive note, there appears a general concern in the countries studied to take action against human trafficking. And effort has also been made by many governments to honour international obligations regarding the rights of disabled persons, at least on the legislative front. However, where civil and political rights are concerned, the situation is not so hopeful with most countries performing poorly. But even here, it would not do to generalise. Both Indonesia and Timor-Leste have a relatively healthy press, largely free from government intervention, and Malaysians have succeeded in removing a regime that has persevered for sixty-one years through the peaceful means of the humble ballot box. In studying human rights in Southeast Asia, it is unwise to paint with broad strokes; instead, it is necessary to examine each state as a unique entity with unique problems as only with this depth of understanding can we advocate for meaningful change.

Brunei continues with its implementation of Islamic criminal laws. Much has been said about this, specifically as regards the harshness of the penalties which quite conceivably amount to torture. A point perhaps less explored is how these Islamic laws may have an adverse effect on the victims of crime. For example, the punishment for a

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false accusation of rape is eighty strokes of the whip. Taking into account the difficulty of proving such crimes, this may well deter actual survivors of rape to report the matter to law enforcement agencies.

Notwithstanding the above, civil liberties in Brunei are difficult to achieve anyway because of its status as an absolute monarchy. The position of the Sultan has been strengthened in the year studied as amendments to sedition laws have created a *lèse majesté* type scenario similar to Thailand. However, there have been some positive developments. Youth Against Slavery Brunei, an organisation of young people successfully held a conference entitled, 'Combatting Trafficking in Persons' and it was well received. If the youth of Brunei are showing concern about human rights issues, albeit politically 'safe' issues, it is hopeful their concern will grow to encompass more uncomfortable areas in the future.

Cambodia has ratified eight major human rights treaties (see Table 1 below), which in the region, is second only to Indonesia. And they have recently been subject to a Universal Periodic Review during which the government concurred they have been lacking in some areas of human rights, principally in economic, social, and cultural rights. Moreover, while they have also taken steps to combat trafficking, no executions have taken place in Cambodia since 1988. Furthermore, the tribunal created to try offenders accused of international crimes during the regime of the Khmer Rouge has been generally regarded as successful.

Unfortunately, the government's attitude towards civil and political rights remains that of despotic authorities everywhere, that is to say, human rights are considered fine so long as they do not undermine national security and public order. Accordingly, the Cambodian government asserts that human rights defenders "get it wrong" because they fail to understand this "philosophy." Following this line of thought has led to widespread repression of dissent. In Cambodia's case, such repression is mainly achieved through legislation. For example, the 1997 law governing political parties has been used to disband opposition parties and laws administering non-governmental organizations have such onerous bureaucratic requirements, it is consequently easy to find reasons to ban groups. This has led to what is effectively a one-party state. Thus, seemingly progressive and pro-human rights actions like the releasing of human rights defenders and political players from imprisonment, take on a cynical hue when viewed in the light of the fact that such acts were only done after the government emerged victorious in the elections.

Table 1: Ratification Status of International Instruments – All Countries¹

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

¹ ‘UN treaty body database’ United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 7 June 2019.

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

Indonesia, like many countries around the world, is facing a rise in a form of conservatism and orthodoxy which is an affront to human rights. Religion, namely Islam, is becoming a major political factor, so much so that identity and religious politics has become the norm. For example, this has led President Jokowi, a moderate and arguably progressive Muslim leader, to select a right wing conservative as his running mate for the 2019 presidential elections. This is presumably to counter the religious stance taken by his opponent, ex-general, Prabowo Subianto, who has actively courted Islamic political parties to ally with him.

2018 was a difficult year for Indonesia. May and June saw several deadly terrorist attacks led by the Jamaah Ansharut Daulah, an extremist Islamic body. At least twenty innocent lives were lost, including young children. This has pushed the government to draft stricter new laws such as anti-hate speech laws and to make more aggressive use of existing laws (such as the Electronic Information and Transaction Law (EIT)) to counter terrorism. The fear is these laws could also be used to counter dissent. Regrettably, this fear appeared to be well-founded when a lecturer was charged under the EIT for singing a parody of the Indonesian military anthem as part of a presentation warning against the return of militarism.

Although it can't be empirically proven at this point in time, there also appears to be a reaction to the growing conservatism in Indonesia by a certain harshness in how the government treats people in religious and religion-related cases. For example, followers of the Ahmadiyah school of thought and the Shia branch of Islam (both deemed deviant by conservatives) have been forcibly displaced from their homes. Moreover, a Chinese Buddhist woman who complained about the volume of the call to prayer from a mosque was found guilty of blasphemy by a court thereby giving the term an extremely broad definition. Despite this harsh treatment, extremists still attacked Buddhist houses of worship.

Nevertheless, Indonesia is still a vibrant democracy and their recent human rights record distinguishes them from their less progressive neighbours. However, they are now facing a very challenging point in their history where the ideals of the Reformation movement which overthrew the Suharto dictatorship are in danger of being lost in the struggle against extremism.

By contrast, Laos is a one-party state and, accordingly, a less than satisfactory human rights record is to be expected. Thus, any criticism of the government is criminalised leading to a worrying number of enforced disappearances. Dissidents such as civil society player, Sombath Somphone, are still missing as well as a number of the Hmong ethnic minority. With regard to ethnic minorities, other alleged acts targeting them have also been reported such as extrajudicial killings, bombings, torture, and the use of landmines and chemical weapons. This along with the displacement of such communities and the loss of traditional lands and livelihoods therefore mean the issue of minority rights remains a serious one. Any hope for progress via academia is unlikely as all research is vetted by the government and research teams must allow a government official on board.

In contrast to this bleak analysis, Malaysia saw dramatic changes in 2018 which brought along with it, hope for greater human rights. The defeat of the sixty-one year old Barisan Nasional regime was achieved not because of Malaysia's strong democracy, but in spite of years of erosion of democratic principles and institutions. Hence, it is acknowledged that systemic and institutional reform is necessary to preserve these new-found freedoms.

The new government, a coalition of political parties called Pakatan Harapan (or the Alliance of Hope (PH)) recognised this and made it part of their manifesto. However, by the end of 2018, seven months after their victory, progress has been slow. Repressive laws such as the Sedition Act remain. Perhaps it is too early to expect major developments, but events such as the government backtracking on their promise to repeal the repressive Official Secrets Act does not bode well.

Apart from this, old problems such as the poor treatment of migrants and refugees continue. Malaysia is not a party to the refugee convention and therefore such persons are subject to the Immigration Act which treats them like illegal migrants with all the harsh penalties such a classification implies. Deaths in custody are another issue, but it is hoped that if the PH government keeps its promise of setting up an independent police commission to oversee complaints, eventually this will no longer be an issue. As it is,

Malaysia is in transition and it remains to be seen whether this transition will help or hinder human rights in the country.

Myanmar is another country where it was hoped that elections (held in 2011) would herald a new era of peace and respect for human rights. Indeed, there were some encouraging developments such as the introduction of a policy supporting universal healthcare and a firming up of laws to protect the disabled making it compulsory for companies to hire one disabled employee for every fifty able-bodied employees. Despite these improvements, many human rights infringements have also been recorded. The detention of journalists and human rights defenders continue, for example, in April/May, fifty people were arrested for protesting about the armed conflict against the Kachin Independence Army. The plight of the Rohingya in Rakhine state is well documented and continues, but abuses against ethnic minorities in the northern Shan states and Kachin have also been noted.

All the countries examined in the 2018 Outlook have experienced either slight improvements or have remained static with regard to human rights. All except the Philippines which is noticeably moving backwards. President Duterte is instrumental in this slide. His personal agenda is evident in the withdrawal of the Philippines from the International Criminal Court. It too was clear in the shoddy treatment meted out to the Philippine Commission of Human Rights. After the President attacked the body, Congress awarded it a budget of US\$19.11 for the entire year of 2018.

Further, the age of criminal responsibility has been lowered to 12 (clearly in breach of the Convention on the Rights of the Child). This is especially worrying in the light of the President's unrelenting "war on drugs" which has conservatively taken the lives of over 5,000 people (many through extrajudicial killings). Human rights defenders estimate that the number could be as high as two to four times more.

In this climate, dissent is not tolerated. One of the more critical sources of news in the country is the online news portal, Rappler. Its head, Maria Ressa, has been charged (wrongly, many claim) under numerous tax laws to essentially silence her. This is because, if found guilty, she may be imprisoned. Likewise, the Chief Justice was declared an enemy by the President and, shortly after, was removed from office via a *quo warranto* plea (whereby the government accused the Chief Justice of being unfit for duty) even though many declared this method unconstitutional as the Constitution provides for an impeachment process via the legislature. Due process and the rule of law is therefore being dramatically eroded in the Philippines. Although, it may be inaccurate to plant all the blame for the loss of hard-earned human rights at the foot of the President, it is undeniable he remains a major force in these unfortunate developments.

The wealthiest country in Southeast Asia continues as it has done for many years. Singapore is still making regular use of its defamation laws (both criminal and civil – the former being subject to harsh penalties while the latter may incur damages large enough to bankrupt the average defendant) to silence critics of the government. For example, a man was found guilty of defamation for simply posting an article suggesting the Singapore Prime Minister,

Lee Hsien Loong, was in cahoots with the then Malaysian Prime Minister, Najib Razak, in money laundering (Najib Razak was and continues to be embroiled in a massive financial scandal involving the misuse of a national sovereign fund). This is significant because the individual only posted an article and did not comment in any way. Similarly, the editors of Online Citizen (a net-based news portal) were also sued for defamation for accusing the government of corruption.

In 2018, Thailand remains under military rule, a situation strengthened by the 2017 Interim Constitution which allows it to continue until the 2019 election. The situation is exacerbated by the fact that said elections are heavily weighted in its favour guaranteeing as it does a high number of seats in any resulting government to the military. At the same time, the government has been using sedition laws to quell dissent. While the large scale demonstrations that have come to typify politics in Thailand have stopped, demonstrations still occur. A protest of 300-500 people saw 49 summoned by the authorities and seven charged with sedition. Members of the Pheu Mai Thai political party were also charged with sedition for organising a press briefing critical of the military government.

The outlook is brighter in the region's newest nation, Timor-Leste. Although still facing issues resulting from an unsatisfactory attempt at transitional justice, continued gender violence, and poor standards of child education, there is much to be positive about here. The Timorese successfully held elections without UN involvement and changed government peacefully. They have seen themselves rise in the World Press Freedom Index (it boasts the freest press in Southeast Asia) and they are one of the few countries in the region to permit an open LGBTI (lesbian, gay, bisexual, transgender, and intersex) pride march.

Finally, Vietnam has been moving away from a communist to a market economy and this has had a profound effect on its human rights. On the one hand, its eagerness to join the world economy has encouraged it to be party to free trade agreements leading it to agree to certain stipulations such as labour conditions. This has caused the government to affirm some International Labour Organization conventions. Such an improvement has not, however, spread to trade union laws. Although trade unions are permitted, they are still subject to stringent regulations effectively disempowering them. Another underlying problem in Vietnam is the disconnect between laws and policies and the reality on the ground. So although there is a move for greater freedom of information, mechanisms to ensure its actual occurrence remain lacking.

One objective of Outlook is to produce a continuous record of human rights in Southeast Asia. As such, each volume is formatted incorporating not just data but also the opinions of local experts. In this way we can see whether the situation has improved or worsened over a period of time. However, it should be borne in mind that change, especially sustainable change, does not happen overnight. Rather, it takes time but as this series shows, there are reasons to be optimistic. Although progress is slow and there is a stubborn resistance to civil and political rights in particular, with the exception of the Philippines, the human rights situation appears to be at worse static or at best (as in the case of Malaysia and Timor-Leste) moving forward.

BRUNEI DARUSSALAM

BRUNEI DARUSSALAM

Harpreet Kahlon*

Part 1: Overview of Brunei Darussalam

A. Country Background

Brunei Darussalam Facts	
Geographical size	5,765 sq km
Population	422,678 ¹
Ethnic breakdown ²	Main ethnic groups: Malay – 65.7% Chinese – 10.3% Others (includes indigenous groups, e.g. Dusun, Belait, Kedayan, Murut, and Bisaya) – 24%
Official language	Malay
Literacy rate (aged 15 and above)	96.1 ³
Life expectancy	77.4 years ⁴
GDP	US\$12.13 billion (per capita US\$28,290) ⁵
Government	Constitutional monarchy, unitary state, Islamic state. His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah is the head of state and prime minister, and continues to wield full executive power under a long-standing state of emergency imposed in 1984. ⁶
Political and social situation	Political rights are minimal as a result of the Sultan's absolute authority and a lack of elections, thereby leaving people with few avenues for genuine and autonomous political participation. ⁷ The national philosophy of Melayu Islam Beraja (MIB), or Malay Islamic Monarchy was officially declared at independence in 1984. Accordingly, the Malay language, Islam, and the monarchy are all constitutionally protected. In 2014, Brunei became the first Southeast Asian country to officially adopt Islamic Sharia law thereby introducing such punishments as whipping, amputations, and death by hanging or stoning into its penal system.

* Independent researcher.

¹ Data from 2018. 'Fast Facts' Borneo Bulletin Yearbook 2018, available at <http://borneobulletinyearbook.com.bn/2018/files/assets/basic-html/page-36.html#>, accessed on 1 February 2019.

² Borneo Bulletin Yearbook 2018 (see note 1 above).

³ Data from 2018. 'Human Development Reports: Brunei Darussalam' United Nations Development Program (UNDP), available at <http://hdr.undp.org/en/countries/profiles/BRN#>, accessed on 2 February 2019.

⁴ UNDP (see note 3 above).

⁵ Data from 2017. 'Brunei' The World Bank, available at <https://data.worldbank.org/country/brunei-darussalam>, accessed on 3 March 2019.

⁶ 'Freedom in the World 2018: Brunei profile' Freedom House, available at <https://freedomhouse.org/report/freedom-world/2018/brunei>, accessed on 4 March 2019.

⁷ Freedom House (see note 6 above).

The official name for the country is Negara Brunei Darussalam, where ‘Negara Brunei’ translates as the state of Brunei and ‘Darussalam’ is the Abode of Peace. With a land area of 5,765 square kilometres and a coastline of 161 kilometres, Brunei Darussalam is a small, independent sultanate separated into two parts by Malaysia with which it shares a 266 kilometre border. The official language of the country is Malay as laid out in its Melayu Islamic Beraja (MIB) philosophy. Other languages commonly spoken include English and Chinese.

In 2018, according to the Brunei Bulletin Yearbook, the population stands at 422,678 with 69.2% of people living in the Brunei-Muara district. Just over half the population is male. The racial composition of the country is 65.7% Malay, 10.3% Chinese, while 24% are of other ethnicities. As regards age distribution, 22.3% of the population are 0-14 years of age, 18% are 15-24 years of age, 45.8% are 25-54 years of age, 8% are 55-64 years of age, and only 5.9% are 65 or over.⁸ The population break-down of the country shows that 86.1% of people are under the age of 55, creating implications for future government programs and spending.

Brunei Darussalam’s economy is heavily dependent on the oil and gas sectors which, in turn, greatly affects its GDP. This connection is apparent from the GDP figures published by the Department of Economic Planning and Development for the first three quarters of 2018: BND4,392.0 billion in the first quarter; BND4,581.9 billion in the second quarter; and BND4,499.5 billion in the third quarter. While higher production and prices drove the growth of Brunei’s GDP by 2.8% for the first quarter of 2018, decreases of 2.8% in the first to second quarters and 1.2% in the second to third quarters were also clearly evident. This decline can be explained by lower oil and gas production although no specific reasons were given for the lowered production.⁹ Perhaps as a result of fluctuating oil prices, over the past few years, Brunei Darussalam has sought to diversify its portfolio to move away from its dependence on oil and gas.

In 2017, the Department of Economic Planning and Development (JPKE) reported the unemployment rate to be 9.3%. The total number of unemployed persons is 19,200 of which 18,200 are locals. Among the unemployed, about 8,500 are aged 15 to 24 years, amounting to an unemployment rate of 28.9% of which 47.9% are women.¹⁰ As a result, the country has been investing in its infrastructure and technology with the goal of providing training in technical skills.

⁸ Borneo Bulletin Yearbook 2018 (see note 1 above).

⁹ See, Wong, A, ‘Brunei GDP declines 2.8% in Q2 2018’ Biz Brunei, 7 November 2018, available at <https://www.bizbrunei.com/2018/11/brunei-gdp-declines-2-8-in-q2-2018/>, accessed on 30 January 2019.

¹⁰ ‘Labour Force Survey 2017’ Department of Economic Planning and Development (JPKE), available at http://www.depd.gov.bn/DEPD%20Documents%20Library/DOS/Labour%20force%20survey_KTK/2017/Sum_Findings_LFS2017.pdf, accessed on 30 January 2019.

2018 marked strengthened bilateral ties with China. Both the Hengyi Petrochemical project on Pulau Muara Besar and the Guangxi-Brunei economic corridor are currently in development with the help of Chinese companies as are the Pulau Muara Besar bridge, the Telisai-Lumut highway, and the Ulu Tutong dam. Consequently, at the invitation of His Majesty Sultan Haji Hassanal, President of the People's Republic of China, Xi Jinping, made his first state visit to Brunei Darussalam from 18 to 20 November 2018. At the meeting, the two leaders reaffirmed their mutual respect for sovereignty, territorial integrity, and non-interference in each other's internal affairs.¹¹

Based on the 2018 Human Development Index (HDI) of the United Nations Development Program (UNDP), Brunei Darussalam was ranked 39th with a HDI of 0.853 in 2017.¹² A country's HDI is assessed by observing three basic dimensions of human development: life-expectancy, education, and per capita income. Between 1990 and 2017, Brunei Darussalam's life expectancy at birth increased by 4.5 years, mean years of schooling increased by 1.6 years, and expected years of schooling increased by 2.4 years. However, Brunei Darussalam's gross national income (GNI) per capita decreased by about 10.2% between 1990 and 2017.¹³ With no taxes incurred, the country follows a welfare system which ensures free health care, subsidized housing, and a minimum of twelve years of compulsory education. Accordingly, with these provisions ensured by the State, alongside Singapore, Brunei Darussalam ranks highly in the HDI.

System of governance

A constitutional monarchy,¹⁴ Brunei Darussalam has been ruled by His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah for almost 50 years. His Majesty is the twenty-ninth sultan and succeeded his father in 1967. The Sultan wears many hats including head of state and government. He is also concurrently Defence Minister, Finance Minister, and Minister of Foreign Affairs and Trade. Moreover, he also presides over the Council of Ministers. His Majesty is assisted by the Privy Council, the Council of Succession, the Religious Council, and the Legislative Council. At the same time, however, the Sultan appoints all members of the Privy Council as laid out in s.4(2) of the Constitution.

Political and social situation

Since 1984, Brunei Darussalam has recognized the three pillars of the Malay language, the Islamic religion and the institution of absolute monarchy, cumulatively known

¹¹ 'Full text of China-Brunei joint statement' Xinhua Net, 19 November 2018, available at http://www.xinhuanet.com/english/2018-11/19/c_137617362.htm, accessed on 5 January 2019.

¹² 'Human development indices and indicators: 2018 Statistical Update' UNDP, available at <http://hdr.undp.org/en/2018-update>, accessed on 30 January 2018.

¹³ 'Briefing note for countries on the 2018 Statistical Update' UNDP, available at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/BRN.pdf, accessed on 3 March 2019.

¹⁴ Section 4(1) of the Constitution vests executive authority to the Sultan.

as the MIB philosophy, as the foundation of the country. As such, the Constitution¹⁵ protects all aspects of the MIB philosophy including culture and customs, Islamic laws and values, and the traditions of monarchy which must be respected and practiced by all in the country.

In 2014, Brunei became the first Southeast Asian country to officially adopt Islamic Sharia law. The first phase was enforced on 1 May 2014. As regards the next phase to implement the Sharia Penal Code Order 2013, a draft Criminal Procedures Code on Sharia has already been approved by the Brunei Islamic Religious Council with the Sultan giving his consent on March 2018.¹⁶ The order to implement the second phase was passed on 29 December 2018 with the date set for implementation scheduled for 3 April 2019.¹⁷

B. International Human Rights Commitments and Obligations

Table 1: Ratification Status of International Instruments – Brunei Darussalam¹⁸

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	22 Sep 2015	
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		24 May 2006 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		

¹⁵ 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) declares Malay to be the official language of Brunei Darussalam.

¹⁶ Mahmud, R, ‘New phase of Sharia Code underway’ Borneo Bulletin, 11 March 2018, available at <https://borneobulletin.com.bn/next-phase-of-Sharia-penal-code-underway/>, accessed on 31 January 2019.

¹⁷ See, Sharia Penal Code Order 2013 (S69/2013), 29 December 2018, available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2018/S068.pdf, accessed on 14 January 2019.

¹⁸ ‘Ratification status for Brunei Darussalam’ UN Office of the High Commissioner on Human Rights, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 25 January 2019.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
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

Brunei Darussalam continues to reject any individual complaint mechanisms and inquiry procedures related to any of the conventions. It has also yet to ratify the CAT. For the treaties Brunei Darussalam has acceded to, it continues to hold a blanket reservation to any provision it deems contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam.

CEDAW: Brunei Darussalam maintains its reservations to Arts 9(2) and 29(1) of the Convention.¹⁹ Under the Brunei Nationality Act, only fathers can confer nationality to their children, thus discriminating against the rights of women.

CRC: the government holds reservations to Arts 14, 20(3), and 21(b)-(e) of the Convention.²⁰ In the National Report presented to the Human Rights Council for its Universal Periodic Review (UPR) of 2014, Brunei Darussalam withdrew its reservations to Arts 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.

¹⁹ Article 9(2) of CEDAW states parties shall grant women equal rights with men as regards the nationality of their children. Article 29(1) concerns arbitration between two states. See, 'CEDAW: Brunei Darussalam – Declarations and Reservations' United Nations Treaty Collection, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en#EndDec, accessed on 3 March 2019.

²⁰ Article 14 of the CRC and its subsections recognize and respect the right of children to freedom of thought, conscience, and religion. Article 20(3) deals with the alternative care of a child when the parents/guardians of the child are unable to fulfil their obligations. Articles 21(b)-(e) concern inter-country adoption. See, 'CRC: Brunei Darussalam – Declarations and Reservations' United Nations Treaty Collection, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en#EndDec, accessed on 3 March 2019.

CRPD: although the country holds no reservations to specific articles, it maintains a blanket reservation to any article contradicting its Constitution or Islam.²¹

Brunei Darussalam has submitted two national reports to the Human Rights Council for its UPR, the first in 2009 and the second in 2014. The country accepted 33 recommendations and submitted responses to a further 25 at the 13th Session of the Human Rights Council on 19 March 2010.²² The 2014 National Report notes that human rights achievements in Brunei Darussalam occurred through inter-agency consultative mechanisms in co-operation with non-governmental organizations.

Although there are no specific human rights laws in the country, other legislation protects the human rights of its citizens such as the Adoption of Children Act 2010 (Cap 205), the Births and Death Registration Act 2013 (Cap 79), the Brunei Nationality Act 2011 (Cap 15), the Child Care Centres Act 2012 (Cap 218), the Children and Young Persons Act 2012 (Cap 219), the Compulsory Education Act 2011 (Cap 211), the Criminal Procedure Code 2016 (Cap 7), the Education Act 2011 (Cap 210), the Employment Order 2009 (S 37/2009), the Geneva and Red Cross Act 1984 (Cap 86), the Geneva Convention Order 2005 (S 40/2005), the Guardianship of Infants Act 2000 (Cap 191), the Immigration Act 2014 (Cap 17), the Islamic Family Law 2012 (Cap 217), the Marriage Act 2013 (Cap 76), the Married Women Act 2014 (Cap 190), the Mental Health Order 2014 (S 25/2014), the National Registration Act 2002 (Cap 19), the Offenders (Probation and Community Service) Act 2012 (Cap 220), the Old Age and Disability Pensions Act 2017 (Cap 18), the Penal Code 2016 (Cap 22), the Pensions Act 2014 (Cap 38), the Retirement Age Order 2010 (S 4/2010), the Unlawful Carnal Knowledge Act 1984 (Cap 29), and the Workplace Safety and Health Order 2009 (S 44/2009). Notably, in its second report to the Human Rights Council, the country asserted that it considered the enactment of Sharia law to constitute a step *towards* the protection of human rights.²³

C. National Laws Threatening Human Rights

Sharia law

Brunei Darussalam adopted Sharia law in 2014, becoming the first country in Southeast Asia to do so. As per the announcements, Sharia law will be implemented in three

²¹ 'CRPD: Brunei Darussalam – Declarations and Reservations' United Nations Treaty Collection, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec, accessed on 3 March 2019.

²² 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Brunei Darussalam (A/HRC/WG.6/19/BRN/1)' United Nations General Assembly, Human Rights Council, available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=53e0de7f4&skip=0&query=16/21&coi=BRN>, accessed on 3 March 2019.

²³ A/HRC/WG.6/19/BRN/1 (see note 22 above), at 3.

phases through the Sharia Penal Code Order 2013 (S69/2013).²⁴ While the first phase was implemented in May 2014,²⁵ the second will not be in force until April 2019 as announced on 29 December 2018 by the order which pinpointed 3 April 2019 as the date of commencement of the following: Part IV, Chapter I (excluding s.94); Chapter 11; Sections 186 to 188; Section 206; Sections 221 to 227; and Part V, s.254 (with respect to ss.172, 194, and 195 of the Religious Council and Kadis Courts Act (Cap 77)). Earlier in the year, the Sharia Courts Criminal Procedure Code Order 2018 (S 9/2018) was also passed on 5 March 2018 with the approval of His Majesty the Sultan and Yang Di-Pertuan detailing implementation of phase two including procedures on the execution of punishments.

Among the laws to be enforced, Chapter I includes the offences of *sariqah* (s.55), *hirabah* (s.65), *zina* (s.68), *zina bil-jabar*, *liwat* (s.82), *qazaf* (s.98), drinking intoxicating drinks (s.104), and *irtidad* (s.113). A non-bailable offence, if found guilty of *sariqah* (or stealing), punishments for a first offence are amputation of the right hand from the joint of the wrist; for a second offence, amputation of the left foot up to the ankle; and for a third or subsequent offence, imprisonment not exceeding 15 years.

For the offence of *hirabah* (or taking another person's property by force or threat), punishments include strokes of the whip, imprisonment, amputation, and death depending on the nature of the offence.²⁶ *Zina* refers to a man and a woman engaging in sexual intercourse without being married to one another. If a Muslim commits *zina* and is proved by *ikrar* of the accused or *syahadah* of at least four *syahid*, he or she can be arrested without warrant. The offence is punishable by stoning to death as witnessed by a group of Muslims if *muhshan*²⁷, or whipping with 100 strokes as witnessed by a group of Muslims and imprisonment for one year if *ghairu muhshan*²⁸. Moreover, the punishment for non-Muslims committing *zina* with Muslims is the same. Again, the punishments range from whipping, fines, and imprisonment to stoning and death.

²⁴ Sharia Penal Code Order 2013, available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/s069.pdf, accessed on 25 January 2019.

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 Section 63(1)(a) states that the offence of *hirabah* as "proved by *ikrar* of the accused or *syahadah* of at least two *syahid* and if, during the commission of *hirabah*, *qatl* has been committed" is punishable by death. Section 63(1)(b) (i) states that the offence of *hirabah* as "proved by *ikrar* of an accused or *syahadah* of at least two *syahid* and if, during the commission of *hirabah*, the value of property taken amounts to or exceeds *nisab*" is punishable by amputation of the right hand from the wrist and of the left foot from the ankle. Section 63(1)(b)(ii) states that the offence of *hirabah* as "proved by *ikrar* of an accused or *syahadah* of at least two *syahid*, and when the offence of *hirabah* has been committed jointly by more than one person and the value of the share of each one of them amounts to or exceeds *nisab*" is punishable by amputation of the hand and foot. In addition, commissioning or abetting *hirabah* is punishable by strokes and imprisonment. See, 'Sharia Courts Criminal Procedure Code Order 2018' available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2018/S009.pdf, accessed on 3 March 2019, at 591.

²⁷ A person who has been married and has had sexual intercourse in that marriage and who commits *zina* is referred to as *muhshan*.

²⁸ A person who has not married or has married but has not yet had sexual intercourse in that marriage and who commits *zina* is referred to as *ghairu muhshan*.

Likewise, *liwat* (or sodomy) is liable to the same punishments as *zina*. The harshest punishment for *qazaf* (or a false accusation of rape) is whipping with 80 strokes.

In addition, Muslims who are guilty of drinking liquor or intoxicating drinks can be punished with 40 strokes for a first offence, 80 strokes for a second offence, and 80 strokes and imprisonment for a term not exceeding 2 years for a third or subsequent offence. Non-Muslims can be fined up to BND8,000 (app US\$5,923) and be imprisoned for a term not exceeding 2 years or both for drinking any intoxicating drink in a public place.

Death penalty

Prior to the adoption of the Sharia Penal Code Order, the Criminal Procedure Code also recognized the death penalty as punishment for certain crimes such as murder, offences resulting in death, terrorism-related charges, and treason amongst others. The second phase of the Order to be implemented in April 2019 hands out the death sentence for offences committed under *qatlul-'amd*, *hirabah*, *zina*, *zinabil-jabar*, *liwat*, or *irtidad*. The death sentences must be handed unanimously by two Sharia High Court judges, one Muslim judge of the Supreme Court, and be presided over by one of the Sharia High Court judges as the Chief Syar'ie judge.²⁹ Subsequently, the sentences must be submitted to his Majesty the Sultan and Yang Di-Pertuan who holds the power of leniency and can commute the death sentence.

Section 164(1) of the Sharia Penal Code (Amendment) Order 2018 (S 35/2018) prescribes death by hanging or by using any other method which can cause immediate, painless, and a respectable death unless the punishment has been prescribed by another method. If a pregnant woman is convicted of an offence punishable by *had* (or punishments mandated by God), *qisas* (or retaliation in kind), death, or whipping, the Sharia court must postpone execution of the sentence during the pregnancy and for 2 years after she has given birth. During that time, the woman may be granted bail if the courts are satisfied or she may be detained in a suitable place. If the woman miscarries, Sharia courts are ordered to postpone execution of the sentence until 105 days after the miscarriage and she is in good health to undergo the sentence (to be determined by the medical officer).

Sedition Act (Amendment) Order 2018

The Sedition Act (Amendment) Order was passed on 24 April 2018. As regards seditious intention, amendments made to s.3 of Cap 24 include adding the word “hatred” so s.3(1)(e) now reads “to promote feelings of ill-will and hostility or hatred between different classes of the population of Brunei Darussalam.”

²⁹ Sharia Courts Criminal Procedure Code Order 2018 (see note 26 above).

In addition, stricter rules were added for the offence of

*question[ing], or ... directly or indirectly lower[ing] or adversely affect[ing], or otherwise bring[ing] into derogation, the rights, status, position, discretion, powers, privileges, sovereignty or prerogatives of His Majesty the Sultan and Yang Di-Pertuan or Her Majesty Duli Raja Isteri.*³⁰

This applies to all persons who do, attempt to do, prepare to do, or conspire to do any act with seditious intent by printing, publishing, selling, offering for sale, distributing or reproducing any seditious publication, or by importing or propagating any seditious publication. Those found guilty of an offence may be imprisoned for a maximum of fifteen years.

D. Recent Court Cases Relating to Human Rights

No cases specific to human rights have been heard in Brunei Darussalam's courts.³¹ However, in January 2018, the deputy director of the Royal Brunei Police Force, who is also a prince in Brunei's royal family, filed a complaint on behalf of Sultan Hassanal Bolkiah with the Jakarta police force over a post on an Indonesian Instagram account which he said "harmed and defamed" the monarch. The post was said to have contained photos of Sultan Bolkiah alongside text that was thought to be defamatory. Accordingly, Jakarta police investigated but the post had been deleted. Nevertheless, the police announced they would investigate who created the account.³²

Part 2: Outstanding Human Rights Issues

A. Political Rights

Under the Freedom in the World Report 2018, Brunei Darussalam scored a dismal 6 out of 7 on its political rights, where '7' indicates 'least free.' While 2017 marked the Sultan's 50th year of rule, political pluralism and participation remain limited in the country. In particular, Legislative Council appointments are made entirely by the Sultan. As the report states: "The dominance of the Sultan and lack of elections leaves people with few avenues for genuine and autonomous political participation" with people having "very limited ability to challenge unpopular policies through the organization of social movements."³³

³⁰ Sedition Act (Amendment) Order 2018, available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2018/S022.pdf, accessed on 2 February 2019.

³¹ 'Judgements 2018' Government of Brunei Darussalam, Judiciary of Brunei, available at <http://www.judiciary.gov.bn/SJD%20Site%20Pages/Judgment%20Search.aspx>, accessed on 16 February 2019.

³² 'Indonesia investigates online insults of Brunei's sultan' AP News, 22 January 2018, available at <https://www.apnews.com/0385b5d4922a458fa1684e97f6077048>, accessed on 20 January 2019.

³³ Freedom House (see note 6 above).

Lack of judicial review

Section 84C(1) of the Constitution states explicitly that the remedy of judicial review is and shall not be available in Brunei Darussalam for any suit or action relating to or arising out of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion conferred on His Majesty the Sultan.³⁴

Right to assemble

The right to assemble is controlled by the government and this was further tightened by the Public Order Act (Amendment) Order (S 21/2018) passed on 24 April 2018. As such, Cap 148 prescribes the parameters of assembly for Bruneians.³⁵ In 2018, the amended order deleted earlier imposed fines on any person convicted of the offence, instead increasing the number of years of imprisonment. Previously, depending on the offence, jail times ranged from 8-10 years but under the new amendment, imprisonment cannot exceed 15 years.³⁶ In case of offences related to His Majesty, offences on conviction are now liable to imprisonment for a term of not less than 3 years and not exceeding 15 years.³⁷

Freedom of the press and media

Brunei Darussalam jumped three positions to rank 153rd in the 2018 World Press Freedom Index³⁸ despite, as the report states, “self-censorship [being] the rule for journalists.” In addition to the Sedition Act, other legislation including the Broadcasting Act (Cap 180)³⁹ also sets parameters for press, media, and the internet.⁴⁰ For example, a subsidiary legislation notification of the Broadcasting Act specifies a broadcast code of practice which aims to protect, e.g. national security, racial and religious harmony, public morals, and social values. In addition, all programs must promote the values set by the MIB Philosophy which may be corrected by the

³⁴ Constitution of Brunei Darussalam, available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/constitution_1.pdf, accessed on 30 January 2019.

³⁵ Public Order Act 2013 (Cap 148), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap148.pdf, accessed on 3 January 2019.

³⁶ As regards s.31 of the Public Order Act, this was amended by deleting “a fine of not less than \$8,000 and imprisonment for 8 years” and substituting “imprisonment for a term not exceeding 15 years.” Section 32 was amended by deleting “a fine of not less than \$10,000 and imprisonment for 10 years” and substituting “imprisonment for a term not exceeding 15 years.” Section 33 of the Act was amended by: (a) in s.33(1), deleting “a fine of not less than \$8,000 and imprisonment for 8 years” and substituting “imprisonment for a term not exceeding 15 years;” and (b) in s.33(2), by deleting “a fine of not less than \$8,000 and imprisonment for 8 years” and substituting “imprisonment for a term not exceeding 15 years.”

³⁷ Any person who commits an offence under ss.31, 32, or 33 of Cap 148 will be imprisoned.

³⁸ Brunei ranked 156th in 2017. See, ‘Brunei’ Reporters with Borders, available at <https://rsf.org/en/brunei>, accessed on 3 March 2019.

³⁹ See, Broadcasting Act 2000 (Cap 180), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/Chp.180.pdf; and Broadcasting Act, Internet Code of Practice Notification, available at http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2001/EN/s012.pdf, both accessed on 3 March 2019.

⁴⁰ All internet service providers and internet content providers must be licensed under the Broadcasting (Class License) Notification 2001 and are required to comply with the Code of Practice to the satisfaction of the Minister. Content is controlled to protect the monarchy, national security, public interest, the religion of Islam, and public and social morals, and to prevent piracy and discrimination.

government at any time. Thus, all broadcasting material requires approval and any person violating the conditions of the Act may be imprisoned.

Freedom of expression

The 2018 Freedom of Thought Report by the International Humanist and Ethical Union (IHEU)⁴¹ rates Brunei Darussalam 187th out of 196 countries citing grave violations. The report rates countries on four thematic areas: (1) constitution and government; (2) education and children's rights; (3) society, community, and family; and (4) freedom of expression and advocacy of humanist values.

Islam is the official religion of the country as laid out in the MIB philosophy, but as the Freedom of Thought Report 2018 puts it: "State legislation is largely or entirely derived from religious law or by religious authorities [with the] non-religious ... barred from holding government office."⁴² Further, religious education remains mandatory in all state-funded schools. Similarly, one cannot advocate for secular thought or declare oneself an atheist or non-religious. Indeed, under Sharia law, any Muslim who declares himself a non-Muslim (apostasy) is punishable by law with whipping to a maximum sentence of death for his or her crime.⁴³ Blasphemy is also a punishable crime in Brunei Darussalam.

B. Social Security

Prior to 2018, it was difficult to find statistics on both unemployment or the informal sector which in Brunei largely consists of domestic help. In 2017, the Department of Economic Planning and Development (JPKE) conducted a survey of the labour force, and found 14,500 persons (7.8% of those in employment) employed in the informal sector.⁴⁴ At 78.7%, females formed a majority of such employees with 66.1% being nonlocal workers. Moreover, it was discovered that 46.7% of employees in the informal sector worked without social security coverage, paid sick leave, or paid annual leave.⁴⁵ This is in stark contrast to Bruneians who enjoy a high standard of living and have access to government-provided free social security coverage.

C. Human Trafficking

As per the US Department of State's Office to Monitor and Combat the Trafficking of Persons, the government has made some significant efforts in this regard but remains at Tier 2 as it still fails to meet the minimum standards of the Trafficking Victims

⁴¹ 'Ranking Index' Humanists International, 2018, available at <https://fot.humanists.international/ranking-index-2018//>, accessed on 4 February 2019.

⁴² 'Brunei Darussalam' The Freedom of Thought Report, 2018, available at <https://fot.humanists.international/countries/asia-south-eastern-asia/brunei-darussalam/>, accessed on 4 February 2019.

⁴³ See, s.112 of the Sharia Penal Code Order 2013.

⁴⁴ The informal sector comprises all unregistered private business enterprises not keeping a record of their accounts and includes domestic workers engaged by households. See, Labour Force Survey 2017 (note 10 above).

⁴⁵ Labour Force Survey 2017 (see note 10 above).

Protection Act 2000 (TVPA).⁴⁶ For example, it expanded measures to prevent trafficking through migrant worker outreach, accommodated more victims at its shelters, and carried out victim screening procedures while strengthening investigations into alleged labour abuses potentially amounting to trafficking.⁴⁷ Although the number of trafficking cases in 2018 has not yet been reported, the human trafficking unit working upon referrals from the Royal Brunei Police Force (RBPF), investigated 28 cases of potential trafficking in 2017, of which two alleged cases were passed to the Attorney General's Chambers. Both were eventually prosecuted for non-trafficking offences due to insufficient evidence.⁴⁸

In response to the Tier 2 ranking, Youth Against Slavery Brunei (YAS Brunei) hosted a 'Combating Trafficking in Persons' conference in 2018. The conference covered topics such as the identification of victims of trafficking and labour violations, the prevention of human trafficking by the use of technology, IT awareness, and cybersecurity, in addition to the protection of child rights. The seriousness of the issue was reiterated at the conference, as was the country's commitment to fight trafficking by raising public awareness and training frontline law enforcers to better detect such cases.

The Acting Director of the Criminal Investigation Department of the RBPF, Assistant Commissioner of Police, Dato Paduka Haji Muhammad Hassan bin Pehin Penyurat Haji Awang Ahmad, spoke of the measures taken by the government to improve investigation and prosecution. He said:

After the establishment of the Human Trafficking Investigation Unit, a specialised investigation unit under the Criminal Investigation Department in August 2011, and the constitution of the National Ad Hoc Committee to combat human trafficking, Brunei Darussalam has prosecuted and convicted four offenders involved in sexual exploitation under the TIP legislation.⁴⁹

At the same conference, the Acting Head of the Human Trafficking Investigation Unit, Assistant Superintendent Ivy Han, shared that:

⁴⁶ 'US laws on trafficking in persons' US Department of State, available at <https://www.state.gov/j/tip/laws/>, accessed on 3 March 2019.

⁴⁷ 'Country narratives: Brunei' in *Trafficking in Persons Report 2018*, Office to Monitor and Combat Trafficking of Persons, US Department of State, available at <https://www.state.gov/documents/organization/282800.pdf>, accessed on 23 January 2019.

⁴⁸ US Department of State (see note 47 above), at 111.

⁴⁹ Kon, J, 'Brunei intensifying efforts to better detect TIP cases' Borneo Bulletin, 26 August 2018, available at <https://borneobulletin.com.bn/brunei-intensifying-efforts-to-better-detect-tip-cases/>, accessed on 4 February 2019.

several cases classified by the police as human trafficking crimes have not been charged in the court as the cases did not satisfy the requirement, or [failed to garner] enough evidence to be charged under the Human Trafficking Order, or fell under other legislation such as the Penal Code, the Labour Violation Order, and the Women and Girls Protection Act.⁵⁰

Though human trafficking is not rampant in Brunei Darussalam as it is in other countries in Southeast Asia, most cases involve trafficking for work with low or no wages or compelling victims to work in the country illegally.

As such, the conference highlighted the role of society in fighting human trafficking in Brunei Darussalam and encouraged workers such as medical practitioners, national security forces, border patrol agents, teachers and those in the transportation and hospitality industries who are most likely to come in contact with trafficked persons, to raise a red flag to the relevant authorities if they have witnessed cases of exploitation and trafficking.⁵¹

Part 3: Conclusion

Brunei Darussalam is a country of contrasts. On the one hand, with citizens paying no taxes, the oil-rich state ranks highly on the HDI by providing a high standard of living for its people. On the other, the MIB philosophy, which is enshrined as its core philosophy, influences governance and the everyday lives of Bruneians. However, as a result of shifting economic concerns, Brunei Darussalam is increasingly moving away from its dependence on the oil sector and diversifying its portfolio as well as strengthening partnerships with countries such as China. Alongside economic diversification, Brunei Darussalam has made progress in some areas such as human trafficking. Although the country is not a hub of human trafficking, it is encouraging to see it making efforts to raise awareness on the issue especially reaching out to those who may come directly in contact with trafficked persons.

Aside from already imposing severe restrictions on the political rights of its citizens, Brunei Darussalam became the first country in Southeast Asia to implement Sharia law in 2014, further degrading their rights because implementation of the second phase of the Sharia Penal Code will bring with it the harsher punishments of whipping, amputations, and for some crimes, death by hanging or stoning. This is of grave concern to human rights advocates because while Brunei Darussalam remains very progressive in fulfilling the social and economic needs of its people, it is regressing in the fulfilment of their political rights.

⁵⁰ Hayat, H, 'Society has key role in fighting human trafficking' Borneo Bulletin, 25 August 2018, available at <https://borneobulletin.com.bn/society-has-key-role-in-fighting-human-trafficking/>, accessed on 14 February 2019.

⁵¹ Hayat (see note 50 above).

CAMBODIA

A decorative graphic consisting of several parallel diagonal stripes in varying shades of gray, extending from the right edge of the dark horizontal band towards the center.

CAMBODIA

Anonymous*

Part 1: Overview of Cambodia

A. Country Background

Cambodia Facts	
Geographical size	181,035 sq km
Population	16.45 million ¹
Ethnic breakdown ²	Main ethnic groups: Khmer (97.6%), Cham (1.2%), Chinese (0.1%), Vietnamese (0.1%), Other (0.9%)
Official language(s) ³	Khmer
Literacy rate (aged 15 years and above)	80.5 ⁴
Life expectancy	64.9 ⁵
GDP	US\$22.16 billion (per capita US\$10,721) ⁶
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	After a tumultuous battle with political opponents and the imposition of draconian laws and policies, Cambodian leader, Hun Sen, sought a public mandate for another term of office. He and his party, the Cambodian People's Party, eventually achieved a landslide victory in 2018 showing the country has yet again proven itself to be a broken society led by a long-standing authoritarian regime. Human rights violations against the political opposition, vulnerable groups, and dissenting voices are still a staple occurrence. On top of this, Cambodia remains a developing country with a gross national income of only US\$1,075. ⁷

* The author wishes to remain anonymous for reasons of security.

¹ Data from 2017 (est). 'Cambodia population' Index Mundi, available at <https://www.indexmundi.com/cambodia/population.html>, accessed on 19 February 2019.

² Data from 2013 (est). 'The World Factbook' available at <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>, accessed on 19 February 2019.

³ Data from 2008 (est). The World Factbook (see note 2 above).

⁴ Data from 2015. '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=KH>, accessed on 19 February 2019.

⁵ Data from 2016. 'Cambodia' The World Bank, available at <https://data.worldbank.org/country/cambodia>, accessed on 19 February 2019.

⁶ Data from 2017. The World Bank (see note 5 above).

⁷ 'Least developed country profile: Cambodia' UN Economic Analysis and Policy Division, available at <https://www.un.org/development/desa/dpad/least-developed-country-category-cambodia.html>, accessed on 3 February 2019.

Bordered by Vietnam to the east, Lao PDR to the northeast, Thailand to the west, and the Gulf of Thailand to the southwest, the Kingdom of Cambodia consists of 25 provinces and autonomous municipalities, with Phnom Penh being the seat of government and economic centre. Cambodia is considered a top destination amongst tourists from the region and around the world. The “Kingdom of Wonder” received a total of 6.2 million foreign visitors in 2018, making it the fourth most visited country in Southeast Asia, next to Thailand, Malaysia, and Singapore. This is mainly due to its plethora of exotic attractions paired with well-organized tourism schemes, and a low cost of living.⁸

Cambodia can perhaps be regarded as a classic case of a ‘small country that could have been.’ Having risen from the ashes of French colonial rule and the wrath of the Khmer Rouge, this country of about 16 million had much potential for growth. Indeed, the government believes the country is still on track to develop its economy, stating:

prospects for Cambodia have greatly improved in [recent] years ... Agriculture, tourism, and the garment industries [have] bolstered the country’s positive performance. Growth is expected to be sustained in the coming years ... Potential in agriculture is driven by Cambodia’s geographical location (being in the dynamic and rapidly integrating Mekong Sub-Region), vast fertile land, a huge rural population, and access to a number of rivers and water bodies.⁹

Descendants of the Angkor Empire could already have reaped these benefits, if not for systemic corruption, human rights violations, and deficient democratic processes. However, based on the current situation, Cambodians can only dream of a return to a dominant, robust, and prosperous society.

In 2018, Cambodia made headlines throughout the world as it embarked on a public vote that eventually led to the victory of the Cambodian People’s Party (CPP), headed by Southeast Asia’s longest ruling “democratically elected” head of government, Lord Prime Minister Supreme Military Commander Hun Sen. Many argue the elections were the culmination of deliberate efforts to silence and purge (real and imagined) threats to the ruling regime. A United Nations member since 1955 and a full member of the Association of Southeast Asian Nations (ASEAN) since 1999, Cambodia is marked by a glorious ancient history, an oppressive political past, and is currently driven by elements that continue to ravage prospects for sustainable growth and peace.

⁸ Vannak, C, ‘Cambodia 3rd in ASEAN for tourist growth’ Khmer Times, 22 January 2019, available at <https://www.khmertimeskh.com/50570963/cambodia-3rd-in-asean-for-tourist-growth/>, accessed on 5 February 2019.

⁹ ‘Cambodia’ Invest in ASEAN, available at <http://investasean.asean.org/index.php/page/view/asean-member-states/view/709/newsid/794/cambodia.html>, accessed on 3 February 2019.

System of governance

Governed by a civil law system, Cambodia is one of three constitutional monarchies in ASEAN.¹⁰ His Excellency Norodom Sihamoni, son of former King and Cambodian Prime Minister Norodom Sihanouk, is currently the ceremonial head of state, while Prime Minister Hun Sen has been elected, yet again, as head of government. The Prime Minister, members of the National Assembly, and senators have the power to initiate laws, which must pass through both houses of parliament before promulgation by the King. As of 2018, all 125 National Assembly and 62 Senate seats are held by CPP members.¹¹

The court system comprises of first instance courts at the provincial and municipal levels, the Appeal Court, and the Supreme Court. There is also a separate military court system. Courts, however, have no power of judicial review. While the Constitutional Council, comprised of nine appointees, has the power to interpret the Constitution and laws, the Supreme Council of the Magistracy oversees the functioning of the court system.¹²

Political and social situation

Political repression and socio-economic oppression have become staple realities pre- and post- elections in Cambodia. In fact, events in 2018 only brought about more challenges to marginalized sectors, especially those who continue to work for democracy, freedoms, and human rights. As the CPP strengthened its grip on power, human rights defenders were put at risk throughout 2018, which also happens to be the twentieth anniversary year of the adoption of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).¹³

¹⁰ The other two are Thailand and Malaysia.

¹¹ 'Cambodia election: Ruling party claims landslide in vote with no main opposition' BBC News, 30 July 2018, available at <https://www.bbc.com/news/world-asia-44999358>, accessed on 3 February 2019.

¹² 'Rule of law and human rights on Cambodia' Forum Asia, available at <https://humanrightsinasean.info/cambodia/rule-law-human-rights.html>, accessed on 27 July 2018.

¹³ Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Cambodia' 2018, available at http://cambodia.ohchr.org/sites/default/files/Annual-reports/Annual%20Report%202018%20of%20SR%20-%20A_HRC_39_73_EN.pdf, accessed on 5 February 2019.

Table 1: Relevant Indices Relating to Human Rights in Cambodia in 2018

Index	Rating
Freedom in the World Report ¹⁴	26/100 (Not Free) Freedom rating: 5.5/7* Political rights: 6/7* Civil liberties: 6/7* <i>*Note: 1=most free, 7=least free</i>
Commitment to Reducing Inequality (CRI) ¹⁵	CRI score: 0.254 121 st of 157 countries Spending on health, education, and social protection: 0.132 Progressivity of tax policy: 0.491 Labour rights and minimum wage: 0.253
Democracy Index ¹⁶	3.59/10

Cambodia still lags behind its ASEAN neighbours and the international community in terms of addressing social and economic inequalities as well as the protection and promotion of rights and freedoms. In fact, both the Freedom in the World and Democracy Index reports reveal that the socio-political situation has worsened in the country compared to previous years. In terms of addressing inequalities, the government has made small insignificant efforts to help ease the economic burden from its people. Oxfam revealed that “Cambodia’s otherwise strong performance on reducing inequality is let down by its very low social spending.”¹⁷

Cambodia remains a least developing economy (LDE), together with Southeast Asian neighbours, Lao PDR, Myanmar, and Timor-Leste, having a gross national income of US\$1,075 in 2018.¹⁸ This brief snapshot proves that Cambodia remains a poster child for a deprived and failing, if not failed, post-colonial nation.

B. International Human Rights Commitments and Obligations

Based on human rights treaty signatures and ratifications, Cambodia has proven victorious compared to most of its ASEAN neighbours. It has signed all nine and ratified eight international human rights conventions. However, it must be noted that no progress has been made in terms of its international commitments to human rights

¹⁴ ‘Cambodia’ Freedom House, 2019, available at <https://freedomhouse.org/report/freedom-world/2019/cambodia>, accessed on 3 February 2019.

¹⁵ ‘Commitment to Reducing Inequality Index 2018’ Oxfam, 2018, available at https://www.oxfamamerica.org/static/media/files/The_Commitment_to_Reducing_Inequality_Index_2018.pdf, accessed on 3 February 2019.

¹⁶ ‘The Economist Intelligence Unit Democracy Index’ The Economist, 2019, available at <https://infographics.economist.com/2019/DemocracyIndex/>, accessed on 3 February 2019.

¹⁷ Oxfam (see note 15 above).

¹⁸ ‘Least developed country profile: Cambodia’ UN Economic Analysis and Policy Division, available at <https://www.un.org/development/desa/dpad/least-developed-country-category-cambodia.html>, accessed on 3 February 2019.

since 2013, when it ratified the Convention for the Protection of All Persons from Enforced Disappearances (CED).

Table 2: Ratification Status of International Instruments – Cambodia¹⁹

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

¹⁹ '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 24 February 2019.

As a UN member-state, Cambodia is mandated to report to the Universal Periodic Review (UPR). After two cycles (2009 and 2015), it embarked on its third UPR in January 2019. The 20-page national report mainly highlighted Cambodia's achievements in terms of signing nine and ratifying eight human rights conventions, as well as improving its judicial system to address human rights issues. As with any other UPR national report, the government highlighted its achievements on the human rights front. In particular, it focused on improving human rights education throughout the country, efforts to eliminate discrimination and sexual harassment in places of work, combatting trafficking in persons, and reducing poverty, especially in rural areas.²⁰

The government also outlined challenges in implementing human rights policies and programmes in the report. Six paragraphs were dedicated to expose weaknesses in terms of human development (e.g. education still requires dramatic improvement), administrative and judicial services, and public health services. In terms of human rights understanding, the government asserted:

The views on human rights, duties, responsibilities and laws are not consistent between rights demanders, rights users, and rights defenders. For instance, the exercise of freedom of expression, in which the demanders, the users, and the watchdogs of the right have no consistent point of view, both in the scope of domestic laws and international human rights laws.

Such a statement is telling as it demonstrates that the state has a tendency to blame the public and rights actors for disrupting the country's human rights situation.²¹

Interestingly, the government included two issues that have been major sources of human rights violations in the country: freedom of expression and land reform. In terms of the former, Cambodia insists that:

the regulations in the criminal code do not mean to restrict freedom of expression, but [are intended] to protect the honour and reputation of persons and institutions ... Freedom of expression or freedom of expression in professions are not offences, but using freedom of speech or freedom of expression in professions as a way to commit any acts prohibited by the law is an offence, such as taking to public forums to exaggerate, alleging other people, or using freedom of expression in professions as a shield to hide any crimes.²²

²⁰ 'National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Cambodia' UN Human Rights Council, 2019, available at https://www.upr-info.org/sites/default/files/document/cambodia/session_32_-_january_2019/e.pdf, accessed on 5 February 2019.

²¹ UN Human Rights Council (see note 20 above), at 17-18.

²² UN Human Rights Council (see note 20 above), at 12.

This is consistent with its position to facilitate such freedoms only to the extent that they do not disturb peace and social order. As for the latter, the government insists, “there is no enforced revocation or expulsion of citizens from where they are living and where they are legally occupying.” Further, it claimed to have taken steps to provide land concessions in rural areas.²³

As a result, several NGOs submitted shadow reports on the human rights situation in Cambodia to rebut government claims. Human Rights Watch focused on how the situation has worsened since the second UPR report. It asserted that:

*the government has intensified its onslaught on Cambodia’s political opposition, civil society, and independent media, with the aim of dismantling, silencing, and exiling them in the lead-up to the general election on July 29, 2018.*²⁴

This was echoed by the International Commission on Jurists (ICJ) which expressed its immense concern over the regime’s twisted application of the rule of law, stating that:

*... under the pretext of upholding the ‘rule of law,’ the Royal Government of Cambodia (RGC) has rapidly and deliberately misused legislation and other forms of legal harassment to attack, harass, and silence members of the political opposition, critical media, civil society organizations, and human rights defenders.*²⁵

Rhona Smith, Special Rapporteur on the situation of human rights in Cambodia, stepped down from her mandate in 2018. The relationship between the RGC and the Special Rapporteur has never been congenial, colliding on issues Ms Smith had raised during her mission and visits to the country. In her end of mission statement in March 2018, she raised the need for accountability and transparency in the name of human rights and freedoms, reiterating that:

²³ UN Human Rights Council (see note 20 above), at 14.

²⁴ ‘Submission to the Universal Periodic Review of Cambodia’ Human Rights Watch, 2018, available at https://www.upr-info.org/sites/default/files/document/cambodia/session_32_-_january_2019/hrw_upr32_khm_e_main.pdf, accessed on 5 February 2019.

²⁵ ‘Submission of the International Commission of Jurists to the Universal Periodic Review of Cambodia’ International Commission of Jurists, 2018, available at https://www.upr-info.org/sites/default/files/document/cambodia/session_32_-_january_2019/icj_upr32_khm_e_main.pdf, accessed on 5 February 2019.

... restricting Cambodians' voices could ultimately threaten the very stability that the Government and the people have worked hard to build. Freedoms of association, expression, and peaceful assembly should be protected and developed, not restricted, in a multi-party liberal democracy.

She ended by reminding the government that:

human rights are crucial for durable peace, stability, and development. They cannot be selectively respected or ignored and they must not be sacrificed. Peace without justice is unsustainable; development without freedom leaves people behind.²⁶

On the ASEAN front, Polyne Hean, Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR), finished her first term of office in 2018. She will remain commissioner for the next three years. In September 2018, she hosted the ASEAN Youth Debate on Human Rights, a programme to promote an understanding of human rights amongst young people in the region.

C. National Laws Affecting Human Rights

Considered a regional model in terms of the recognition of human rights and freedoms, the 1993 Constitution, which was amended in 2018, is enriched with legal safeguards to guarantee the promotion and protection of human rights and democratic processes. A full section in the Constitution is dedicated to “The Rights and Obligations of Khmer Citizens (Chapter III)” and contains strong provisions on political, economic, social, and cultural rights (Arts 32-48). The chapter mandates the state’s commitment to human rights principles 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.” Furthermore, it provides for the elimination of discrimination based on “race, colour, sex, language, religious belief, political tendency, national origin, social status, wealth or other status.” However, it is interesting to note these provisions only apply to Khmers with other nationalities and ethnicities barely mentioned.²⁷

Further, Art 32 states that “capital punishment is prohibited” in Cambodia. In fact, the government has not carried out any executions since 1988. The RGC also voted

²⁶ Smith, R, ‘End of mission statement’ 2018, available at <https://cambodia.ohchr.org/sites/default/files/End%20of%20Mission%20statement%2014%20March%202018.pdf>, accessed on 3 February 2019.

²⁷ Cambodian Constitution 1993, available at https://www.constituteproject.org/constitution/Cambodia_2008.pdf?lang=en, accessed on 4 February 2019.

in favour of five UN General Assembly Resolutions on moratoriums on the use of the death penalty in 2007, 2008, 2010, 2012, and 2014.²⁸

Cambodia's 2019 UPR National Report highlighted a number of laws designed to increase human rights protection in the country as shown below.

Protection of judicial independence

Laws have been put in place: (1) to enable courts to operate smoothly and independently (Law on the Organization of the Court); (2) to “spiritually strengthen” judges and prosecutors to perform in the judicial hierarchy thereby ensuring the process of case resolutions will be undertaken responsibly (Laws on the Status of Judges and Prosecutors); and (3) to establish judicial authority under the presidency of the Majesty of the King and to guarantee judicial independence through the appointment, supervision, and punishment of judges and prosecutors who commit professional ethics offences (Law on Organization and Functioning of the Supreme Council of the Magistracy).²⁹

Juvenile justice

The Law on Juvenile Justice was created to stipulate “the criminal procedure process for minor perpetrators by [the use of] measures [to divert] minors from court procedures ... by establishing rehabilitation centers to separate minors from adults” (Law on Juvenile Justice).³⁰

Rights of persons with disabilities

In congruence with the Convention on the Rights of Persons with Disabilities (CRPD), the government pursued a law

protecting the rights and freedoms of persons with disabilities; protecting the interests of persons with disabilities; preventing, reducing and eliminating discrimination against persons with disabilities; and rehabilitating their fitness, intellect, and profession to ensure the full and equal participation of persons with disabilities in social activities.

The law is also paired with a National Action Plan to provide resources and strategies to enable full implementation of its provisions.³¹

²⁸ ‘Ratification kit: Cambodia’ World Coalition Against the Death Penalty, available at <http://www.worldcoalition.org/media/resourcecenter/Cambodia-EN.pdf>, accessed on 4 February 2019.

²⁹ UN Human Rights Council (see note 20 above), at 14.

³⁰ UN Human Rights Council (see note 20 above), at 14.

³¹ UN Human Rights Council (see note 20 above), at 14.

Trafficking in persons

The Law on the Suppression of Kidnapping, Trafficking, and Exploitation of Human Persons (1996) aims to protect human dignity and the welfare and health of people by taking action against any form of exploitation and trafficking against any person in Cambodia.³² It contains strong provisions against the procurement of child prostitution (Art 28), the purchase of child prostitution (Art 34), the solicitation of child prostitution (Art 35), pornography and pornographic material involving children (Art 41), sexual intercourse with a minor under 15 years (Art 42), and indecent acts against a minor under 15 years (Art 43).

Legal measures are also underway to enable the full visibility and experience of human rights and fundamental freedoms in the country.

National human rights institution

The government, through the Cambodian Human Rights Committee (the national body tasked with handling human rights issues) is currently working with relevant agencies and civil society organizations to establish a human rights institution in accordance with the Paris Principles.³³

The right to access information

Cambodia has partnered with the Swedish government, relevant agencies, and civil society organizations to establish a law to provide the public with the right to seek and access public documents.³⁴ At the time of writing, those provisions and mechanisms have yet to be finalized.

D. National Laws Threatening Human Rights

Cambodia seemingly has a love-hate relationship with the notion of human rights. Despite its seeming acceptance of the principles, legal measures restricting, repressing, or resisting advocacy, activism, and defence for human rights and fundamental freedoms have found their place in the Khmer kingdom. In fact, 2018 amendments to the Constitution “have deteriorated its integrity and commitment towards human rights for all.” For example, Arts 34 and 42 of the Constitution require every Cambodian to “defend the motherland” and empower the government to take action against political parties if they do not “place the country and nation’s interest first.”³⁵

³² Law on the Suppression of Kidnapping, Trafficking, and 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 4 February 2019.

³³ UN Human Rights Council (see note 20 above), at 8.

³⁴ UN Human Rights Council (see note 20 above), at 6.

³⁵ ‘Cambodia: Events of 2018’ Human Rights Watch, 2019, available at <https://www.hrw.org/world-report/2019/country-chapters/cambodia#>, accessed on 7 February 2019.

Law on Political Parties 1997

The 2018 general elections were directly affected by the Law on Political Parties which was used to silence, purge, and derail any political pursuit by political parties and individuals thought to incite discord in Cambodian society. It had the effect of eventually disabling/disqualifying opposition parties, particularly Sam Rainsy's Cambodian National Rescue Party (CNRP), from running for any political seat, leading to Hun Sen's massive landslide victory.

Law on Associations and Non-Government Organizations 2015

NGOs operating within Cambodia have also been targeted under the Law on Associations and Non-Government Organizations (LANGO). According to the ICJ, it imposes onerous obligations on associations and NGOs, including requiring excessive documentation to be submitted to various ministries to enable registration, some activities, and finance reports. It further allows the Ministry of the Interior (MoI) and the Ministry of Foreign Affairs and International Cooperation (MFAIC) to deny registration, and suspend or dissolve associations on arbitrary grounds, such as “national unity, traditions, and customs,” and on purported “public order” grounds.³⁶

Criminal Code 2009

Cambodia's 2009 Criminal Code contains provisions that serve to frustrate the very principles of human rights and fundamental freedoms. One relates to defamation, specifically against the monarchy (*lèse-majesté*), which recently became a serious offence in the country. It also covers public insults and slanderous denunciation. Such provisions constitute a direct attack on the freedom to voice dissent against the government or anyone attached to it. Under Art 437, punishments for “insulting the King” range from KHR2,000,000-10,000,000 (app US\$500-2,500) in fines and from one to five years' imprisonment, while legal entities face KHR10,000,000-50,000,000 (app US\$2,500-12,500) in fines and possible dissolution.³⁷

Indeed, the Criminal Code is a gift that keeps on giving. As regards peaceful assemblies, law enforcers have used it to punish those deemed to have disrupted and/or damaged public order and properties. Articles 423 and 424 of s.2 on threats to destroy, damage or deteriorate have also been used to punish peaceful protests, and are even easier to interpret broadly as actual damage need not result.³⁸

Press Law 1995

Press freedom is a pillar of democracy that enables full access to information and freedom of expression. In many countries in Southeast Asia, news agencies and media

³⁶ International Commission of Jurists (see note 25 above).

³⁷ Forum Asia, *Instruments of Repression: A Regional Report on the Status of Freedoms of Expression, Peaceful Assembly, and Association in Asia*, Bangkok: Forum Asia, 2018, at 29.

³⁸ Forum Asia (see note 37 above), at 105.

outfits have increasingly found themselves in shrinking and repressive spaces. Cambodia is no exception. The Press Law of 1995 places strict constraints on journalists' ability to criticize the government and comment on sensitive issues. While the government provides rights to journalists to access public information, it also restricts them from reporting on issues that "may affect national security and political stability."³⁹ A penalty of US\$370 and suspension for 30 days awaits those who violate the law. Forum Asia, a regional human rights organization, found this challenging because the phrase "may affect" is extremely general and could apply to a wide variety of information and could empower the government to shut down entire publications, rather than merely ordering the retraction of a particular article.⁴⁰

E. Recent Court Cases Relating to Human Rights

Justice delayed yet served: The conviction of Khmer Rouge leaders

From 1977-1979, about 1.7 million Cambodians perished under the twisted rule of Pol Pot and his comrades. After nearly forty years and millions of dollars spent on what is known as Cambodia's "Nuremberg moment,"⁴¹ Noun Chea (who was Second-in-Command) and Khiue Samphan (who was Head of State), the last two remaining Khmer Rouge leaders, were found guilty of genocide and crimes against humanity; both were sentenced to life imprisonment. The Extraordinary Chambers of the Court in Cambodia, or the Khmer Rouge Tribunal, in November 2018, "declared both men responsible for murder, extermination, enslavement, deportation, imprisonment, torture, persecution on religious, racial and political grounds, enforced disappearances, and mass rape through the state policy of forced marriages."⁴²

Bittersweet release of land rights activist, Tep Vanny

Less than a month after the general elections, Tep Vanny, who spent two and half years in prison, was released after being charged with participating in an alleged violent protest in 2013 and in the Black Monday Protest to support detained members of the Cambodian Human Rights and Development Association (ADHOC).⁴³ Her struggle is just one example of politically motivated acts to silence human rights defenders.

Unfounded charges against labour union leaders

Cambodia has become a prime choice for foreign industries requiring cheap unskilled labour and low production costs. While businesses take advantage of these perks, local labourers have long suffered from poor working conditions and extremely low wages.

³⁹ Press Law 1995, Art 12.

⁴⁰ Forum Asia (see note 37 above), at 12-13.

⁴¹ Wexler, L, 'Unpacking Cambodia's Nuremberg moment' Justia, 27 November 2018, available at <https://verdict.justia.com/2018/11/27/unpacking-cambodias-nuremberg-moment>, accessed on 16 March 2019.

⁴² Meixler, E, 'Cambodian court convicts former Khmer Rouge leaders of genocide in historic ruling' Time, 2018, available at <http://time.com/5456749/cambodia-khmer-rouge-genocide-verdict/>, accessed on 8 February 2019.

⁴³ 'Tep Vanny convicted again as para-policy attack supporters' LICADHO, 2017, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=418>, accessed on 3 August 2018.

As such, labour unions have repeatedly petitioned the government and the business sector for better labour standards. Those emboldened to take bigger steps against current labour policies and practices have often faced serious consequences. For example, in December 2018, six union leaders (Ath Thorn, Chea Mony, Yang Sophorn, Pav Sina, Rong Chhun, and Mam Nhim) were convicted on charges of instigating intentional acts of violence with aggravating circumstances, intentionally causing damage with aggravating circumstances, threatening to destroy property following an order, and blocking public traffic during a minimum wage protest for garment and footwear workers in Phnom Penh on December 2013 and January 2014. At the time of writing, both NGOs and labour groups lodged appeals based on the assertion that “prosecutors failed to produce any evidence to establish that the six had committed the crimes charged, nor were any witnesses produced to prove the accused had acted violently during the protests.”⁴⁴

Part 2: Outstanding Human Rights Issues

*Don't make war by using what is called democracy and human rights as democratic countries did when they made the mistake of supporting Lon Nol's coup (Hun Sen, December 2018).*⁴⁵

The general election was the centrepiece of the Cambodian narrative in 2018 although as regards democracy and human rights, it came with a hefty price tag. As such, it reaffirmed the authoritarian regime's ability to orchestrate

*the forced dissolution of the main opposition, the Cambodia National Rescue Party (CNRP), the banning of over a hundred of its leaders and activists from politics, and attacks on human rights defenders, civil society organisations and media outlets aimed at silencing dissent before the general election.*⁴⁶

⁴⁴ '95 groups call for end to criminalization of Cambodian union leaders' International Labor Rights Forum, 2018, available at <https://laborrights.org/releases/95-groups-call-end-criminalization-cambodian-union-leaders>, accessed on 3 February 2019.

⁴⁵ 'Cambodia strongman Hun Sen derides in fiery speech' Straits Times, 29 December 2018, available at <https://www.straitstimes.com/asia/se-asia/cambodia-strongman-hun-sen-derides-democracy-in-fiery-speech>, accessed on 2 February 2019.

⁴⁶ Cambodian League for the Promotion and Defense of Human Rights (LICADHO), *Human Rights 2018: The Year in Review*, Cambodia: LICADHO, 2019, at 2.

A. Recipe for Political Disaster

Behind what was considered a “peaceful and successful democratic vote” in Cambodia was a well-calculated attack against political parties and their members whose vision and agenda contradict the CPP. This led to a noticeable absence of the opposition at the national and sangkat levels. For example, the Cambodian National Rescue Party (CNRP) was banned by the Supreme Court for five years, while many politicians were disqualified, imprisoned or, like Sam Rainsey, forced into exile. As such, the Special Rapporteur on the Situation of Human Rights in Cambodia stated in her final report to the UN Human Rights Council that:

the commune/sangkat elections were orderly and peaceful, with some 90 per cent of the electorate casting votes. Unfortunately, subsequent events meant that the results of these elections were changed dramatically, albeit in accordance with new laws.⁴⁷

Thus, the Cambodian League for the Promotion and Defence of Human Rights (LICADHO) branded the country as being run by a “One-Party State.” Aside from legal measures attacking political parties, a string of other problems emerged during the elections such as: a lack of fair and equal access to the media; a pro-government national election commission; and the surveillance, intimidation, detention, and politically motivated prosecution of key opposition members.⁴⁸ Moreover, a lack of credible election observers also meant that the high turnout of 83% claimed by the CPP-controlled National Election Committee (NEC) could not be independently verified.⁴⁹

In a surprising turn of events, the newly “elected” government relaxed its grip on a number of political figures to, it is assumed, appease harsh scrutiny by the international community. For instance, Cambodia’s most prominent political prisoner, the president of the disbanded CNRP, Kem Sokha, was granted bail although the court imposed harsh restrictions on his liberty.⁵⁰ Likewise, CNRP lawmaker, Um Sam An, was given a royal pardon and released on 25 August, while on 28 August, eleven CNRP activists charged with insurrection, together with three more CNRP members sentenced separately on the same charges, were also pardoned and released.⁵¹

B. Purging of Human Rights Defenders

In recent years, Cambodia has become one of the most dangerous countries to be a human rights defender (HRD). Law enforcement and judicial systems are frequently

⁴⁷ Human Rights Watch (see note 35 above).

⁴⁸ Human Rights Watch (see note 35 above).

⁴⁹ LICADHO (see note 46 above), at 2.

⁵⁰ LICADHO (see note 46 above), at 2.

⁵¹ Human Rights Watch (see note 35 above).

used by the government to silence and purge activists and dissenting voices. According to Frontline Defenders, HRDs faced threats, physical attacks, arrest, judicial harassment, and arbitrary detention for peacefully carrying out human rights work. Intimidation, judicial harassment and heavy surveillance caused several to leave the country in fear for their safety. Peaceful protests continue to be hampered by the authorities.⁵²

The purging of defenders and the corresponding shrinking of civic spaces were much felt in the lead up to the general election. In January 2018, a Phnom Penh investigating judge charged labour rights advocate, Moeun Tola (director of the Center for the Alliance of Labor and Human Rights (CENTRAL)), free media advocate, Pa Nguon Teang (director of the Cambodian Center for Independent Media (CCIM)), and social activist, Venerable But Buntenh (a Buddhist monk) with embezzlement in retaliation for being members of the funeral committee for Kem Ley, a popular political commentator assassinated in 2016.⁵³

LICADHO, an independent Cambodian human rights organization, revealed that a total of 25 persons of interest had been imprisoned during the election period whilst land rights activists, like Tep Vanny, were even more at risk of arrest and detention in 2018. Land grabbing has always been a sensitive issue in Cambodia, with HRDs facing threats of enforced disappearance and extrajudicial killing. Most defenders worked on issues linked to decades-old sugar economic land concessions in Koh Kong, Preah Vihear, Kampong Speu, and Oddar Meanchey provinces owned by politically connected tycoons, many of whom forced thousands off their land without compensation.⁵⁴

Labour rights activists were also purged in 2018. Aside from the case of the six labour union leaders mentioned previously, the independent labour movement also faced an existential crisis as Cambodia's Trade Union Law made independent unions, collective bargaining, and lawful strike action virtually impossible, thus impeding improvements to the working conditions of Cambodia's estimated 600,000-700,000 garment and shoe workers.⁵⁵

C. Requiem for the Loss of a Free and Independent Media

In 2018, both traditional and social media were regulated and curtailed, which greatly injured freedom of expression and access to free and independent information. LICADHO reported there were zero independent newspapers in circulation and zero critical radio stations on the air at year's end.⁵⁶ The Phnom Penh Post, the only

⁵² 'Cambodia: UPR 32' Frontline Defenders, 2018, available at https://www.upr-info.org/sites/default/files/document/cambodia/session_32_-_january_2019/fld_upr32_khm_e_main.pdf, accessed on 7 February 2019.

⁵³ Human Rights Watch (see note 35 above).

⁵⁴ LICADHO (see note 46 above), at 5.

⁵⁵ LICADHO (see note 46 above), at 5-6.

⁵⁶ LICADHO (see note 46 above), at 9.

remaining independent newspaper company, was reportedly sold to a Malaysian businessman in May.⁵⁷ In the same month, the RGC ordered the Ministries of the Interior, Information, and Posts and Telecommunications to remove content on social media outlets and websites which could result in “incitement, breaking solidarity, discrimination and wilfully creating turmoil that [could] undermine national security, public interest, and social order.”⁵⁸ Reporters without Borders revealed that in June 2018, the National Election Commission (NEC) unveiled a code of conduct for the following month’s elections under which journalists could face fines of up to 7,500 dollars for conducting interviews near polling stations, using their “own ideas to make conclusions” or publishing news that “affects political and social stability” or causing “confusion and loss of confidence” in the electoral process.⁵⁹

Part 3: Where do you go from here, Cambodia? An Open-Ended Conclusion

In a 2011 documentary entitled, *Enemy of the People*, Khmer Rouge second-in-command, Nuon Chea, who was recently convicted on charges of genocide and crimes against humanity, insisted that those who did not abide by the rules and principles of the Angkar (the Organization) were enemies within the system.⁶⁰ It took the Khmer Rouge Tribunal nearly 40 years to denounce such a claim, and declare that the real enemy of the people was and is the Angkar (the Khmer Rouge) and its masterminds.

2018 saw the conclusion of a long and winding chapter in history that has changed/ disrupted the fabric of modern-day Cambodian society. It was also the year when a more sophisticated political organization took total control of the country, relentlessly crushing existing and potential enemies threatening its existence.

In today’s more globalized Cambodia, foreign tourism is booming and investments are pouring in. However, China, a superpower also known for its disappointing human rights record, is the country’s biggest aid donor from which it has received about US\$5.3 billion in investment and loan agreements between 2013 and 2018.⁶¹ It seems likely the relationship will thrive even further in the coming years. Despite these developments, poverty is rife throughout the country, especially in rural areas. Moreover, as evidenced by this report, human rights and democratic values have been greatly compromised, its proponents silenced and condemned, and in many cases, even killed.

⁵⁷ International Commission of Jurists (see note 25 above).

⁵⁸ Human Rights Watch (see note 35 above).

⁵⁹ ‘Contribution by Reporters without Borders on the press freedom situation in Cambodia’ Reporters without Borders, 2018, available at https://www.upr-info.org/sites/default/files/document/cambodia/session_32_-_january_2019/rsf-rwb_upr32_khm_e_main.pdf, accessed on 8 February 2019.

⁶⁰ Brussat, F, and Brussat, MA, ‘*Enemies of the People*’ (film review) available at <https://www.spiritualityandpractice.com/films/reviews/view/20117/enemies-of-the-people>, accessed on 8 February 2019.

⁶¹ Human Rights Watch (see note 35 above).

Cambodia has indeed gone full circle. The ‘Enemy of the People’ has never left the country. Indeed, despite appearances, it refuses to leave and has been resisting defeat. Further, the way the nation is progressing or regressing, it seems the enemy within shall keep its throne for some time to come.

INDONESIA



INDONESIA

Deasy Simandjuntak*

Part 1: Overview of Indonesia

A. Country Background

Indonesia Facts	
Geographical size	5,180,053 sq km
Population	268.67 million ¹
Ethnic breakdown ²	Main ethnic groups: Javanese (40.05%), Sundanese (15.50%), Malay (3.70%), Batak (3.58%), Madurese (3.03%)
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 five-year term, the President heads the executive branch and appoints all members of the Cabinet. As the legislative branch, the People’s Consultative Assembly (MPR) consists of the People’s Representative Council (DPR) and the Regional Representative Council (DPD). Judges of the Supreme Court (the highest judicial branch) are appointed by the President. The Constitutional Court reviews laws for their constitutionality and is authorised to resolve disputes over the power of state institutions.
Political and social situation	Comprising almost 193 million voters, the simultaneous presidential and legislative elections in April 2019 will comprise one of the largest single-day elections in the world. However, identity politics rather than the economy will likely prove the deciding factor in the presidential election with Islamist groups mobilizing against the incumbent government.

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¹ ‘Indonesia population 2019’ World Population Review 2019, available at <http://worldpopulationreview.com/countries/indonesia-population/>, accessed on 7 March 2019.

² Data from 2010. Ananta, A, 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. ‘Indonesia’ The World Bank, available at <https://data.worldbank.org/country/indonesia>, accessed on 12 August 2018.

⁵ Data from 2017. The World Bank (see note 4 above).

⁶ Data from 2017. ‘GDP per capita (constant 2010 US\$)’ 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 two thirds 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 (bordering Papua New Guinea in the east). Java, the home of 57% of Indonesia's total population, is the country's most populous island. In 2017, partly as a response to growing tensions in the South China Sea, Indonesia counted and registered the 17,504 islands under its sovereignty with the United Nations.⁷ In addition, to further assert its sovereignty and protect its offshore natural resources, Indonesia renamed the exclusive economic zone (EEZ) bordering the South China Sea, the North Natuna Sea. This area also overlaps its so-called 'nine-dash-line'.⁸

Indonesia is home to more than 300 ethnic groups of which the largest 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 the 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 the home.

With an economic growth of around 5% under President Joko 'Jokowi' Widodo'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 (PPP), Indonesia relies on its domestic market, government spending, and state-owned enterprises. Its largest sectors are services, industry, and agriculture. The country's GDP per capita, although still below the world average, has increased from US\$780 in 2000 to US\$4,130 in 2018, a rise of 529.5%. Indonesia's unemployment rate is 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 the 2018 UNDP's Human Development Index, Indonesia ranked 116th out of 189 countries having dropped 3 notches from 2016, placing it firmly in the medium category below Malaysia (ranked 57) and Thailand (ranked 83).⁹

⁷ '16,000 Indonesian islands registered at UN' Jakarta Post, 21 August 2017, available at <http://www.thejakartapost.com/news/2017/08/21/16000-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?' Lowy Institute, 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.

⁹ '2018 Human Development Index' United Nations Development Programme, available at <http://hdr.undp.org/en/2018-update>, accessed on 5 March 2019.

System of governance

Beginning in 1998, post-Soeharto Indonesia was marked by democratization and decentralization resulting in the direct elections of president/vice-president, governors, and district-heads. Moreover, regional autonomy gave provinces and districts authority to govern their administrative territories, create local ordinances, and manage their own finances. However, the central government still assists in local budgets by the use of inter-governmental transfers.

Since 1999, many new political parties have been established, indicating a widespread aspiration to participate in more open and representative politics. Among them were the National Awakening Party (PKB) which was established by Abdurrahman Wahid (Indonesia's fourth president from 1999-2000)—a prominent Islamic scholar and cleric who had previously led Indonesia's largest moderate organization, the Nahdlatul Ulama (NU)—and the Democratic Party for Struggle (PDIP), a nationalist party led by former President Soekarno's daughter and Indonesia's fifth president (2001-2004), Megawati Soekarnoputri. Retired General Soesilo Bambang Yudhoyono (SBY) founded the Democrat Party in 2001 and became the country's sixth president as well as its first directly elected president in 2004. Meanwhile, the party of the past authoritarian government (Golkar) survives as one of the largest parties in the current Parliament.

At present, 12 political parties in various coalitions are represented in Parliament. Led by PDIP, the biggest coalition supports the government of President Jokowi. The nationalist, Great Indonesia Movement Party (Gerindra), and the Islamist, Prosperous Justice Party (PKS), comprise the opposition, with Soesilo Bambang Yudhoyono's Democrat Party holding the balance of power.

In June 2018, Indonesia held its first-ever simultaneous direct elections for governor and district heads in 171 regions across the archipelago. Likewise, in April 2019, it will hold its first concurrent presidential and parliamentary elections. In addition to the existing 12 parties in Parliament, four new parties as well as four local parties from the Aceh province, are now seeking to reach the required 4% parliamentary threshold.

Political and social situation

Simultaneous local elections in June 2018 and presidential and legislative elections in April 2019 mean that key events in Indonesia were or will be directly or indirectly related to its political situation and/or influenced by electoral political interests.

*The 2018 simultaneous local elections.*¹⁰ Indonesian voters in 171 regions voted for the positions of governor, district-head, and mayor on 27 June 2018. With 152 million

¹⁰ Simandjuntak, D, 'The 2018 Indonesian local elections results: Rehearsal for party machinery and mobilization of identity politics' ISEAS Commentary, 6 July 2018, available at <https://iseas.edu.sg/medias/commentaries/item/7898-the-2018-indonesian-local-elections-results-rehearsal-for-party-machinery-and-mobilization-of-identity-politics-by-deasy-simandjuntak>, accessed on 28 February 2019.

voters and a turnout of 69% comprising 98.6 million votes, the 2018 election was one of the largest one-day elections in the world. Moreover, due to its proximity to the 2019 presidential election, many observers consider it a political bellwether to gauge the popularity of political parties and President Joko Widodo.

In the end, the main government party, PDIP, won only 6 out of 17 provinces, losing in the populous provinces of West Java, East Java, and North Sumatra leading to concerns that the President's popularity may be waning. However, for several reasons, the 2018 elections might not be a good barometer of the 2019 presidential election.

First, party coalitions at the local level do not necessarily correspond to those at the national level. At the national level, the government's coalition led by PDIP directly competes with the opposition coalition of Gerindra and PKS but in local government, parties may form coalitions with the opposition, for example, PDIP coalesced with Gerindra in 48 regions, PKS in 33 regions, and with both in 21 regions. North Sumatra's gubernatorial election winner, for instance, was backed by a mixed-coalition of opposition and government parties, making it difficult for either to claim triumph.

Second, local elections tend to reflect the appeal of local candidates rather than party appeal. As such, since the first local elections in 2005, parties have functioned merely as candidate nominators. Parties are therefore inclined to nominate already popular figures such as incumbent governors and mayors as opposed to their own cadres. The newly elected governor of West Java, for example, was a popular mayor of Bandung, West Java's capital city. Central Java was also won by an incumbent governor. Likewise, East Java was won by the former Minister of Social Affairs with her running-mate, a charismatic district leader.

Nevertheless, this does not mean the 2018 election results will have no bearing on their 2019 counterparts. To begin with, the political preference of new governors can influence voting patterns in their provinces. For example, in the 2014 presidential election, the governors of West Java, West Sumatra, and West Nusa Tenggara, appear to have swayed the electorate towards Prabowo Subianto, President Jokowi's rival. Thus, it is good news for Jokowi that the 2018 winners in the three largest provinces have openly professed support for his candidacy in 2019.

Next, if one sees the 2018 elections as a 'rehearsal' for party machineries, the fact the less popular candidates backed by Islamist party, PKS, emerged as runners-up in West Java, and only lost by a small margin in Central Java, means the party's machinery and its religious campaigning is working well. The 2018 elections also showed the prevalence of identity-politics mobilization, such as in North Sumatra and West Kalimantan, where the winners benefitted from PKS-Gerindra's Islamic-charged campaigning. In North Sumatra, Muslim-dominated regions overwhelmingly voted

for the all-Muslim gubernatorial ticket, while Christian-dominated regions voted for the Muslim-Christian mixed ticket.¹¹ Having proven itself effective, such mobilization will likely continue in 2019.

Identity politics approaching the 2019 presidential election. Indonesia will conduct its simultaneous presidential and parliamentary elections on 17 April 2019. Comprising almost 193 million voters, the next elections will again be one of the largest one-day elections in the world.

In August 2018, President Jokowi appointed a senior Muslim cleric as his running-mate for 2019. The appointment of Ma'ruf Amin was surprising because, first, he is a religious conservative, which seems to contradict Jokowi's personal stance on religious tolerance and pluralism. For example, Ma'ruf, also the head of Indonesia's Ulema Council (MUI), has helped issue edicts against religious minorities such as the Shi'ite and Ahmadiyah, as well as against the LGBT community.¹² Moreover, Ma'ruf was a key witness in the trial sending Jokowi's ally, Basuki Tjahaja Purnama (Ahok), a Chinese-Christian former governor of Jakarta, to prison on blasphemy charges. MUI's actions became the *raison d'être* for a massive mobilization against the former governor which eventually foiled Ahok's re-election in the 2017 Jakarta gubernatorial race and pressured the court to imprison him on blasphemy charges.¹³

Second, Ma'ruf was not the first choice for Jokowi's vice-presidential candidate. Even at the eleventh hour, Jokowi's choice for running mate had been Mahfud MD, a former chief justice of the Constitutional Court, also known as a religious moderate and reputable statesman. However, Indonesia's largest Islamic organization and a vital part of Jokowi's support-base, Nahdlatul Ulama (NU), rejected his choice as Mahfud was not considered close enough to the organization. Moreover, other political parties in Jokowi's coalition such as the National Awakening Party (PKB), also opposed his decision fearing Mahfud would launch his own bid for presidency in 2024 thus hindering the vice-presidential prospects of PKB's young leader, Muhaimin Iskandar.

Notwithstanding the above, Jokowi had another reason to appoint Ma'ruf Amin as his running-mate; to shield himself from a possible Islamist campaign. Having witnessed Ahok's downfall in 2017, the President likely realised that avoiding similar sectarian

¹¹ Simandjuntak, D, 'North Sumatra's 2018 election: Identity-politics ruled the day' ISEAS Perspective, 1 October 2018, available at https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_60@50.pdf, accessed on 4 March 2019.

¹² 'Ma'ruf Amin jadi cawapres Jokowi: Akan seperti apa nasib minoritas di Indonesia?' (Ma'ruf Amin becomes Jokowi's running-mate: What's the fate of minorities in Indonesia?), Deutsche Welle, available at <https://www.dw.com/id/maruf-amin-jadi-cawapres-jokowi-akan-seperti-apa-nasib-minoritas-di-indonesia/a-45035159>, accessed on 8 March 2019.

¹³ 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 4 March 2019.

campaigns against himself might be the key to success. However, whether or not Ma'ruf will attract conservative votes remains to be seen.

At the same time, Jokowi's sole opposition, Prabowo Subianto, has a track-record of relying on Islamist forces. In the 2017 Jakarta election, Prabowo's party, Gerindra, and the Islamist groups, launched a bitter campaign against the Chinese-Christian governor and succeeded in placing Anies Baswedan, Ahok's sole opposition, in the governor seat. For the 2019 election, Prabowo, a populist whose campaign is filled with ultra-nationalist messages, again sought Islamist backing, even signing a political contract promising to prioritize Islamic interests as president. Ultimately, whose tactics will win Muslim votes remains to be seen. However, polls in January 2019 showed Muslim voter support for Jokowi had dwindled from 52.7% in 2018 to 49.5%.¹⁴ Approaching April 2019, it is once again unfortunately identity-politics and not economic issues which may be the deciding factor in the presidential election.

Consolidation of anti-government forces. Islamist groups sought to further consolidate the mobilization triggered by the Ahok case in 2016-2017. These loose groups, dubbed the '212 movement'—taken from the date of a large anti-Ahok demonstration on 2 December 2017—have since organized several massive street rallies for various causes to display a show of force against the government. In October and November 2018, thousands attended a series of rallies in several cities, protesting an incident of flag-burning done by a member of the paramilitary wing of the NU, an Islamic organization supporting Jokowi. These rallies were planned by the organizers of the anti-Ahok demonstrations in 2016-2017. On 2 December 2018, those self-same groups facilitated a “reunion” of the 212 movement. Attended by Jokowi's rival, Prabowo, this rally encouraged such messages as it is forbidden “to vote for parties that support blasphemers,”¹⁵ referring to those parties supporting Jokowi. Furthermore, it is these groups with whom Prabowo signed a political pact promising to prioritize Islamic interests as president.¹⁶ The 212 movement has indeed become a semi-consolidated Islamist force against Jokowi's government.

In April 2018, a politician from the Islamist Prosperous Justice Party (PKS) initiated the #2019GantiPresiden (#2019ChangePresident) movement which many believe has

¹⁴ 'Pemilih Muslim Jokowi merosot: Faktor Ma'ruf Amin atau hoaks lawan' (Jokowi's Muslim voters dwindle: Caused by Ma'ruf Amin or opposition's hoaxes?), Tirta, 10 February 2019, available at <https://tirto.id/pemilih-muslim-jokowi-merosot-faktor-ma039ruf-amin-atau-hoaks-lawan-dgq6>, accessed on 5 March 2019.

¹⁵ Temby, Q, 'Islamist mobilization and cryptic campaigning in Indonesia' ISEAS Commentary, 11 December 2018, available at <https://www.iseas.edu.sg/medias/commentaries/item/8697-islamist-mobilization-and-cryptic-campaigning-in-indonesia-by-quinton-temby>, accessed on 5 March 2019.

¹⁶ '17 poin pakta integritas Ijtima Ulama II yang disetujui Prabowo' (17 points of the integrity pact in the congregation of Ulemas that are agreed upon by Prabowo), Tempo, 16 September 2018, available at <https://nasional.tempo.co/read/1127048/17-poin-pakta-integritas-ijtima-ulama-ii-yang-disetujui-prabowo>, accessed on 5 March 2019.

now become Jokowi's strongest faceless enemy in his 2019 bid for re-election.¹⁷ The movement has quickly gained momentum, unifying detractors of the government across the political spectrum. However, it was reported in August 2018 that the police prohibited some rallies organized by the movement in the belief that political campaigns could only begin in September 2018. Notwithstanding, the Election Monitoring Body (Bawaslu) disagreed saying it did not consider the movement a political campaign as it had not mentioned any presidential candidate's name. Due to these restrictions, some observers have questioned the police's neutrality in handling Indonesia's political polarization.

*A string of terrorist attacks.*¹⁸ A grisly string of terrorist attacks took place in May-June 2018. To begin with, several convicts staged a riot in a high-security detention centre in Jakarta killing five policemen. A few days later, a family of suicide bombers (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 40.¹⁹ This was followed by a bomb blast at Sidoarjo which also killed the perpetrating family. Another family suicide-bombing took place the next day at Surabaya police headquarters, killing the perpetrators and injuring ten bystanders. These incidents marked the first time terrorist attacks were perpetrated by family units.

In Riau, an attempt to bomb a police-headquarters failed yet still killed a policeman and the four perpetrators. The above attacks were connected to Jamaah Ansharut Daulah (JAD), a group linked to ISIS. JAD's leader, Aman Abdurrahman, also masterminded the attack in the high-security detention centre in Jakarta in May 2018. He was sentenced to death in June 2018 for his role in inciting others to commit terrorist attacks.²⁰

These attacks were preceded by similar attacks in 2016-2017 in Jakarta and Samarinda, East Kalimantan. In January 2016, explosives were detonated around the area of a Starbucks in Jakarta's city centre, killing seven and destroying a nearby police post. This incident was claimed by ISIS.²¹ Likewise, in September 2016 in Samarinda, a bomb

¹⁷ Dewi, SW, and Swaragita, G, 'Why an anti-Jokowi hashtag could be his strongest foe so far' Jakarta Post, 1 May 2018, available at <https://www.thejakartapost.com/news/2018/05/01/why-an-anti-jokowi-hashtag-could-be-his-strongest-foe-so-far.html>, accessed on 5 March 2019.

¹⁸ Simandjuntak, D, 'Indonesia' in Azmi Sharom (ed), *Human Rights Outlook in Southeast Asia 2017*, Bangkok: SHAPE-SEA, at 36-37.

¹⁹ 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.

²⁰ Soeriaatmadja, W, 'Indonesian cleric Aman Abdurrahman sentenced to death for inciting terror attacks' 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 Chan, F, and Soeriaatmadja, W, 'ISIS officially claims responsibility for Jakarta blasts: Report' 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.

was detonated at a church, killing a toddler and injuring three children.²² Similarly, in May 2017, twin suicide bomb blasts at a bus terminal in Jakarta killed three policemen and wounded dozens.²³ The perpetrator, who was a former student of JAD's Aman Abdurrahman, was sentenced to 9 years' imprisonment in April 2018.²⁴

The attacks precipitated debates on the anti-terrorism law revisions which had been proposed in 2016 yet whose deliberation had been 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 for longer periods based only on preliminary leads. However, this has led to concerns that the legislation is open to abuse. For example, Art 13(a) regulating hate speech could be misused to target critics and longer detention times could increase the risk of torture in custody.

There were also worries the revisions would enable the military's permanent involvement in law enforcement. It had already participated in the successful 2016 Tinombala operation in Central Sulawesi to kill Santoso—the leader of East Indonesia Mujahidin (Mujahidin Indonesia Timur or MIT), an ISIS-affiliated group involved in the Maluku religious riots of 1999-2002—for repeatedly attacking police headquarters in Poso, Central Sulawesi.²⁵ Strengthening military territorial command of specific areas where operations take place over long periods of time also poses risks as deployment of military personnel and resources may influence state-society relations, as has occurred 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 on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) in 2012 (see Table 1 below). It has, however, not accepted any of the individual

²² 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-attackchildren/>, accessed on 13 August 2018.

²³ 'Jakarta shocked by deadly bombings days before Ramadhan' Jakarta Post, 25 May 2017, available at <https://www.thejakartapost.com/news/2017/05/25/jakarta-shocked-by-deadly-bombings-days-before-ramadhan.html>, accessed on 28 February 2019.

²⁴ 'Indonesia jails bus terminal mastermind for nine years' Reuters, 9 April 2018, available at <https://www.reuters.com/article/us-indonesia-security/indonesia-jails-bus-terminal-bombing-mastermind-for-nine-years-idUSKBN1HG160>, accessed on 28 February 2019.

²⁵ 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.

complaints procedures attached to the conventions, and most inquiry procedures have also not been accepted 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 – Indonesia²⁶

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 Jul 1980	13 Sep 1984
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		25 Jun 1999 (a)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)		23 Feb 2006 (a)
International 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
Convention on the Rights of Persons with Disabilities (CPRD)	30 Mar 2007	30 Nov 2011

²⁶ '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.

Also mentioned in the previous edition, Indonesia introduced several national laws to protect human rights and enforce its 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 (Komnasham). Nonetheless, some consider that it has failed to adequately protect human rights defenders despite containing provisions on them (Chapter VIII, ss.100-103).²⁷

C. Recent Court Cases Relating to Human Rights

In August, the district court of Tanjung Balai, North Sumatra, sentenced Meiliana, a Chinese-Buddhist woman, to 18-months' imprisonment on blasphemy charges, because she had complained about the noise levels of a local mosque's loudspeaker in 2016. Her complaint triggered a racially-charged rampage in Tanjung Balai, leading to the ransacking of more than ten Buddhist and Confucianism places of worship and other Chinese-related buildings. Her appeal was rejected by the high court in Medan, North Sumatra in October. Meanwhile, the perpetrators of the rampage were only sentenced to 2 months or less in prison.

In July 2018, the Supreme Court dismissed a legal challenge to the blasphemy law filed by the Ahmadiyah religious minority. Both the Ahmadi and the Shi'ite communities have long faced severe persecution, in many cases leading to their displacement. For example, the displaced Ahmadiyahs have been living in a shelter in Mataram, West Nusatenggara since 2006, while the Shi'ite community were relocated to Sidoarjo, East Java in 2012. These conditions show that although the President has made great strides in economic policy and infrastructure development, he has been less successful in safeguarding freedom of religion especially regarding religious minorities.²⁸

In March, the Supreme Court rejected former Jakarta Governor Basuki Tjahaja Purnama (Ahok)'s judicial review (or PK in Indonesian). Ahok's PK was based on Buni Yani's guilty verdict for uploading a clip of one of Ahok's speeches in Jakarta during which he cited a verse from the Quran, thus leading to the governor's blasphemy charges. Buni Yani was sentenced in November for spreading hate speech by sharing 30 minutes of the nearly 2-hour long speech. The provocative clip triggered massive anti-Ahok protests eventually leading to the governor's defeat in the election and his subsequent imprisonment.

²⁷ Wiratraman, HP, 'Indonesia' in Azmi Sharom (ed), *Human Rights Outlook in Southeast Asia 2016*, Bangkok: SHAPE-SEA, 2017, at 20.

²⁸ Burhani, AN, 'Joko Widodo and the issue of minorities: His only blemish?' ISEAS Commentary, 8 January 2019, available at <https://iseas.edu.sg/medias/commentaries/item/8852-iseas-commentary-joko-widodo-and-the-issue-of-minorities-his-only-blemish-by-ahmad-najib-burhani>, accessed on 5 March 2019.

Part 2: Outstanding Human Rights Issues

A. Freedom of Expression

Article 28 of the 1945 Constitution guarantees freedom of expression, but to exercise such freedom, one must also respect the human rights of others in accordance with laws to acknowledge and respect the rights and freedom of others (explanation to Art 28J). This restriction, however, should also not contradict international human rights legal instruments such as the ICCPR. Thus, Indonesia faces some challenges in its commitment to uphold freedom of expression.

Freedom of the press

Indonesia's Alliance of Independent Journalists (AJI) found at least 64 cases of violence against journalists in 2018, ranging from physical to non-physical violence, expulsion, restrictions, and criminalization. Although the number of incidents rose from last year (60 cases), it is still lower than 2016 which saw 81 such cases. 2009 marked the best year for press freedom with only 39 instances of violence against journalists reported.²⁹

Accordingly, Indonesia is ranked 124th out of 180 countries in Reporters Sans Frontières' (RSF) 2018 Press Freedom Index. Whilst low, its ranking is still better than most Southeast Asian countries with the Philippines at 133, Myanmar at 137, Cambodia at 142, Malaysia at 145, Brunei at 153, Laos at 170, and Vietnam at 175. Timor-Leste, despite being the youngest country in Asia, is ranked 95th.

Many cases involving violence are political in nature. For example, in 2018, a journalist from Kumparan.com found herself on the receiving end of threats on social media after publishing coverage on the legal issues faced by the leader of the Islamic Defenders Front (FPI), a group notorious for their intolerance against religious minorities. In particular, she was accused of being disrespectful for not putting the title, 'Habib' before the leader's name. Another journalist from Detik.com was persecuted for writing a story quoting the 212 Alumni Association's spokesperson and FPI member, Novel Bamukmin, allegedly telling a group of women to vote for Prabowo Subianto and his running-mate, Sandiaga Uno, to gain rewards in the afterlife.³⁰ Finally, another Detik.com journalist was harassed when he took photos of garbage during the 'Aksi Bela Tauhid' (Defend the Tauhid) action. He was accused of trying to paint a bad picture of the rally.

²⁹ 'From our member Alliance of Independent Journalist (AJI), Indonesia – 2018 Year-end note: Persecution and violence threaten journalists' Asia Forum for Human Rights and Development, 8 January 2019, available at <https://www.forum-asia.org/?p=27974>, accessed on 5 March 2019.

³⁰ Asia Forum for Human Rights and Development (see note 29 above).

AJI also recorded cases of criminalization in 2018. The editor-in-chief of Serat.id was accused by the rector of Semarang State University of violating the 2008 Electronic Information and Transactions Law (UU ITE) for the crime of covering the rector's alleged plagiarism. Similarly, another journalist from Tirto.id was threatened with censure by the special staff to the Minister of Research, Technology and Higher Education for reporting on a syndicate that helped people to buy or sell university certificates and fake university programs.³¹ In yet another incident, Abdul Manan, co-founder of IndonesiaLeaks.id and AJI president, was reported to the police for an investigative piece exposing the spoliation of evidence allegedly involving the police.³²

As for intimidation, AJI recorded that supporters of PDIP protested against a story published by Radar Bogor which mentioned PDIP's chairperson, Megawati Soekarnoputri. As a result, some staff members were hit by an angry mob.³³ Likewise, during an incident in March 2018, Islamic Defenders Front (FPI) members went to the offices of Tempo demanding an apology for a cartoon allegedly depicting FPI's leader.³⁴ Further, in February 2019, Detik.com reported that some journalists had suffered intimidation and beatings, allegedly at the hands of FPI members, for covering a prayer rally of the 212 movement in Jakarta.³⁵

A more serious incident took place in June 2012, when a South Kalimantan journalist who had been detained by the police for more than a month, died in custody. He had been charged with defamation for writing articles about an oil-palm plantation company owned by a local coal tycoon.³⁶

³¹ Tahar, AP, 'Mempertanyakan peran staf khusus lewat ijazah bodong' (Questioning the role of special staff through the fake certificate case), Tirto, 27 November 2018, available at <https://tirto.id/mempertanyakan-peran-staf-khusus-lewat-kasus-ijazah-bodong-dauY>, accessed on 5 March 2019.

³² 'Kasus Buku Merah, Polri tak akan usut internal kepolisian' (The Red Book case, Indonesian police will not conduct internal police investigation), CNN Indonesia, 15 October 2018, available at <https://www.cnnindonesia.com/nasional/20181015130052-12-338546/kasus-buku-merah-polri-tak-akan-usut-internal-kepolisian>, accessed on 5 March 2019.

³³ Gumilang, P, 'Massa PDIP marah di kantor Radar Bogor, staf dipukul' (PDIP mass got angry at Radar Bogor's office, hit staff), CNN Indonesia, 31 May 2018, available at <https://www.cnnindonesia.com/nasional/20180531054745-20-302388/massa-pdip-marah-di-kantor-radar-bogor-staf-dipukul>, accessed on 5 March 2019.

³⁴ Himawan, A, 'AJI Jakarta kecam aksi FPI di kantor Tempo ancam kebebasan pers' (AJI Jakarta condemned FPI's action at Tempo office as a threat to press freedom), Suara, 17 March 2018, available at <https://www.suara.com/news/2018/03/17/155857/aji-jakarta-kecam-aksi-fpi-di-kantor-tempo-ancam-kebebasan-pers>, accessed on 5 March 2019.

³⁵ 'Detik laporkan penganiayaan wartawan di munajat 212 ke polisi' (Detik reported the assault of journalists at Munajat 212 to the police), Detik, CNN Indonesia, 22 February 2019, available at <https://www.cnnindonesia.com/nasional/20190222131659-20-371790/detik-laporkan-penganiayaan-wartawan-di-munajat-212-ke-polisi>, accessed on 5 March 2019.

³⁶ Abdi, N, 'South Kalimantan journalist dies while being detained on defamation charges' Jakarta Post, 12 June 2018, available at <https://www.thejakartapost.com/news/2018/06/12/south-kalimantan-journalist-dies-while-being-detained-on-defamation-charges.html>, accessed on 5 March 2019.

Despite the string of cases involving violence, there was some good news. President Jokowi recently withdrew his earlier pardon to convicted journalist killer, I Nyoman Susrama, following an online petition signed by 44,000 people. Susrama had been convicted for life for murdering a Radar Bali journalist who had covered corruption cases in a district branch of the Education Ministry in Bali.³⁷

Electronic Information and Transactions Law 2008

According to the Institute for Policy Research and Advocacy (ELSAM), the provisions on online defamation and hate speech in Law No 11/2008 on Electronic Information and Transactions (Undang-Undang Informasi dan Transaksi Elektronik or UU ITE), amended into Law No 19/2016, have been regularly used to restrict freedom of expression. For example, throughout 2017, ELSAM found at least 87 reports of the UU ITE law being used to breach freedom of expression.³⁸ Likewise, the freedom of expression watchdog, Southeast Asia Freedom of Expression Network (SAFE-net), recorded 245 incidents of the law's use in 2008-2018.³⁹

SAFE-net also mentioned that such reports mostly related to Art 27 on defamation and Art 28 forbidding people from spreading information inciting hatred based on ethnicity, religion, race, and other group identities. In addition to the UU ITE, Arts 310 and 311 of the Criminal Code regulate intentional defamation and Art 156 outlaws hate speech; both are often used for the same purpose. From all the reports, however, only 16.73% resulted in a guilty verdict.⁴⁰ Significantly, SAFE-net mentioned that 35.92% of reports were filed by government officials, including district-heads, ministerial department heads, ministers, and the police.⁴¹ One of the most prominent cases involved former Jakarta governor, Ahok, whose recorded speech in 2016 was deemed blasphemous. He was charged under Art 156 of the Criminal Code for hate speech and Art 28(2) of the UU ITE.

Recently, a university lecturer and activist from Jakarta was charged with propagating hate for singing a parody of the Indonesian military anthem during a human rights protest, a crime punishable by up to two years' imprisonment under UU ITE, and with defaming a government institution, punishable by up to 1.5 years in jail under the

³⁷ Adyatama, E, 'Jokowi batalkan remisi pembunuh wartawan Bali' (Jokowi annulled remission for the murderer of a Balinese journalist), Tempo, 9 February 2019, available at <https://nasional.tempo.co/read/1173865/jokowi-batalkan-remisi-pembunuh-wartawan-bali/full&view=ok>, accessed on 5 March 2019.

³⁸ 'Membesarnya potensi ancaman terhadap kebebasan sipil dan memudarnya peran negara dalam perlindungan HAM' Human Rights Report 2017, ELSAM.

³⁹ Gerintya, S, 'Betapa kecilnya peluang untuk lepas dari jerat UU ITE' (How small is the chance to escape the legal snare of UU ITE), Tirto, 30 August 2018, available at <https://tirto.id/betapa-kecilnya-peluang-untuk-lepas-dari-jerat-uu-ite-cVUm>, accessed on 5 March 2019.

⁴⁰ Gerintya (see note 39 above).

⁴¹ Gerintya, S, 'Jerat UU ITE banyak dipakai oleh pejabat negara' (The UU ITE legal snare is mostly used by government officials), Tirto, 18 October 2018, available at <https://tirto.id/jerat-uu-ite-banyak-dipakai-oleh-pejabat-negara-c7sk>, accessed on 5 March 2019.

Criminal Code.⁴² The activist had warned against the prospect of revising Indonesia's 2004 military law, which would, he said, have the effect of inserting military men into civilian roles, a situation too reminiscent of the New Order's authoritarian years.

UU ITE has also been criticised recently for its failure to protect sexual harassment victims. In August 2018, a female activist was reported by the municipal police in Surabaya, East Java, for defamation under Art 27(3) because she had posted about being sexually harassed by a member of the municipal police on social media.⁴³ She had been attending a film screening and student discussion on human rights violations in Papua when a group of municipal police and the authorities attempted to halt the proceedings. She and other activists were forcefully dragged away, during which time she was allegedly sexually harassed. Although it was she who had been the victim of an alleged crime, her post led *her* to being reported for defamation.

Similarly, in September 2018, the Supreme Court surprisingly overturned a 2017 acquittal from a lower court in Mataram, West Nusa Tenggara, and in so doing convicted a female teacher of recording and spreading indecent material under UU ITE. The teacher, Baiq Nuril, had claimed that she had been repeatedly sexually harassed by the school's principal in face-to-face and phone conversations. She later recorded one of his phone calls which another teacher then took to the local branch of the Ministry of Youth and Sport. Ironically, the principal later reported Nuril to the police for contravening the UU ITE. Although the Mataram court acquitted Nuril, the Supreme Court sentenced her to six-months' imprisonment and a IDR500 million (US\$35,440) fine. She has since filed for judicial review (or PK) at the Supreme Court.

B. Freedom of Religion

Article 29(2) of the Constitution states that "all persons have freedom of worship, each according to his/her own belief." However, this freedom is restricted by Art 29(1), that "the State is based upon the belief in the One and Only God" and also the first principle of its Pancasila ideology leading to the assumption that only monotheistic religions are so protected. Further, the elucidation of Law No 1/PNPS/1965 on blasphemy declares that the state only recognizes Islam, Christianity, Catholicism, Buddhism, Hinduism, and Confucianism as the religions of its people. Again, this leads to the assumption that the state does not sanction other beliefs falling outside these six categories.

⁴² Arnaz, F, 'Is that you Orde Baru? Indonesia detains human rights activist for singing anti-military anthem' Jakarta Globe, 7 March 2019, available at <https://jakartaglobe.id/context/is-that-you-orde-baru-indonesia-detains-human-rights-activist-for-singing-antimilitary-anthem>, accessed on 8 March 2019.

⁴³ Widhana, DH, 'Korban pelecehan seksual dijerat UU ITE oleh satpol pp Surabaya' (Victims of sexual harassment lured by the ITE Law by Satpol PP Surabaya), Tirta, 23 August 2018, available at <https://tirta.id/korban-pelecehan-seksual-dijerat-uu-ite-oleh-satpol-pp-surabaya-cUkX>, accessed on 9 March 2019.

Instead of ensuring freedom of religion, the Indonesian government has strengthened legislation and regulations subjecting minority religions to official discrimination. Such acts render minorities extremely vulnerable to majority groups who may use the laws to practice discrimination. Article 156a of the Criminal Code which regulates blasphemy and defamation of religion especially poses a serious problem to religious freedom in Indonesia. This article states:

It is penalized with imprisonment for as long as five years whoever intentionally in public expresses a sentiment or commits an act: (a) that essentially has the nature of hostility against, abuse or desecration of a religion that is adhered to in Indonesia; (b) with the intention to prevent a person from adhering to any religion that is predicated upon Belief in the One God.

The fact that the article does not contain clear parameters of “hostility against a religion,” “abuse of a religion,” or “defamation of a religion” makes it extremely subjective and hence vulnerable to misuse. It is therefore not surprising that this law has often been used by intolerant groups to penalize minorities.

The prominent human rights NGO, KontraS, has stated that when sentencing defendants of blasphemy charges, judges tend to interpret blasphemy broadly, from the issuance of statements insulting a religion to the spreading of deviant beliefs.⁴⁴ Numerous people have been charged and sentenced under Art 156a including: Lia Eden (leader of God’s Kingdom), Tajul Muluk (a Shi’ite leader), Ahmad Musadeq (founder of Gafatar), Yusman Roy (for leading multilingual prayers), Mangapin Sibuea (leader of a doomsday sect), and its most high-profile recent victim, Basuki Tjahaja Purnama (Ahok), the Christian-Chinese former governor of Jakarta for citing the Quran in a campaign speech. Ahok’s blasphemy case was also highly politicized and became an anchor for a massive Islamist mobilization which not only pressured the trial but also led to Ahok losing his bid for re-election.

Since the beginning of Jokowi’s presidency in 2014, 23 people have been charged and sentenced under the blasphemy law. The most recent trial involved Meiliana, a Chinese-Buddhist woman in Tanjung Balai, North Sumatra, who received an 18 month sentence for complaining about the noise levels of a local mosque’s loudspeaker. Thus, complaining about the volume of a loudspeaker now constitutes a new precedent for actions deemed to be blasphemous.⁴⁵ In addition to Meiliana, five other people were sentenced under the blasphemy law in 2018, namely, Riano Jaya Wardhana (a local

⁴⁴ ‘Kontras sebut bebasnya Ahok momentum hapus pasal 156a’ (Kontras states that Ahok’s release a momentum to erase article 156a), CNN Indonesia, 25 January 2019, available at <https://www.cnnindonesia.com/nasional/20190125133616-12-363795/kontras-sebut-bebasnya-ahok-momentum-hapus-pasal-156a>, accessed on 7 March 2019.

⁴⁵ Rafiqha Qurrata A’yun, ‘Blasphemy on the rise’ Inside Indonesia, 20 January 2019, available at <https://www.insideindonesia.org/blasphemy-on-the-rise>, accessed on 7 March 2019.

parliamentarian for issuing a statement defending Ahok on social media), Firdaus (for writing the name of God and the Prophet on his sandals), Arnoldy Bahari (a goat-herder cum spiritualist), Abraham Moses (a Christian priest), and Christian student, Martinus Gulo (for the crime of issuing statements considered religiously deviant or insulting on social media).⁴⁶

United Nations human rights experts and groups such as the Indonesian Legal Aid Foundation have repeatedly criticized application of the blasphemy law. However, instead of scrapping it, the Ministry of Religious Affairs and Parliament is seeking to expand its scope through its “religious rights bill.” Thus, while Art 156a of the Criminal Code defines blasphemy as “showing hostility, abuse, or desecration” toward a religion, the bill expands it into seven criteria.⁴⁷ Article 31 allows a five-year jail term for those persuading others to convert from their original religion. Article 32 proposes six-months in prison for those who “purposefully mak[e] noises near places of worship where people are conducting religious ceremonies.” Likewise, Art 34 recommends a five-year jail term for those “illegally tainting, destroying or burning a holy book, a worship house, or ritual tools” without adequately explaining what constitutes “tainting.” In addition, the bill also reinforces existing discriminatory “administrative and technical requirements” which unfairly restrict the construction of religious minorities’ places of worship. Accordingly, there are concerns that hard line groups will use this law to further discriminate against minorities.

C. Sexual Orientation Rights

In January 2018, police in Aceh detained 12 transgender women, cut their long hair, closed down the beauty salons where they worked, and forced them to wear men’s clothes. In October 2018, the municipal police in West Sumatra arrested ten people it suspected of being lesbians following the arrest of another eight lesbians and transgender people earlier that month.⁴⁸ Similarly, in November 2018, the municipal police of Lampung raided a beach and arrested three people they suspected were transgender women in an operation said to “provide safety and maintain public order.” The three women were brought to the municipal police office and hosed down in public with water from a fire truck.⁴⁹ Finally, in October, West Java police arrested two men for administering a Facebook group catering to gay people in Bandung.

⁴⁶ Harsono, A, ‘The human cost of Indonesia’s blasphemy law’ Indonesia at Melbourne, 25 October 2018, available at <http://indonesiaatmelbourne.unimelb.edu.au/the-human-cost-of-indonesias-blasphemy-law/>, accessed on 7 March 2019.

⁴⁷ ‘Indonesia: ‘Religious rights’ bill would harm minorities’ Human Rights Watch, 20 July 2017, available at <https://www.hrw.org/news/2017/07/20/indonesia-religious-rights-bill-would-harm-minorities>, accessed on 9 March 2019.

⁴⁸ ‘Moral panic targets Indonesia’s LGBT community’ France 24, 18 November 2018, available at <https://www.france24.com/en/20181118-moral-panic-targets-indonesias-lgbt-community>, accessed on 7 March 2019.

⁴⁹ ‘Indonesia: Crackdowns on LGBTI people hit alarming level’ Amnesty International, 6 November 2018, available at <https://www.amnesty.org/en/latest/news/2018/11/indonesia-crackdowns-lgbti-people-hit-alarming-level/>, accessed on 7 March 2019.

They were charged under the draconian UU ITE “for distributing electronic information which contains violations of decency.”

A criminal code bill (Kitab Undang-Undang Hukum Pidana) to update the current 100-year-old law has undergone several rounds of deliberation and revision in Parliament. Regrettably, while the current Art 495 only criminalized same-sex relationships involving individuals under 18 years of age, the new bill seeks to expand it to include consensual same-sex relationships between adults which would then incur a prison term of up to 9 years. Moreover, the government seeks to broaden the legislation even further to include heterosexual consensual relationships between unmarried couples. Article 488, for example, will criminalize co-habitation between unmarried couples incurring imprisonment of up to 1 year or a fine of up to IDR50 million (US\$3,424). This will particularly affect people who cannot afford to get married or whose marriages are not officially recognized, such as those living in indigenous communities. Concerns have also been raised that such a provision could lead to a possible increase in early marriages resulting in girls leaving school and falling pregnant which could be harmful to both mother and baby, and economic difficulties.

D. Other Human Rights Issues

Sexual violence bill

Parliament is now deliberating a sexual violence bill, which, if ratified, would constitute the first legal basis for sexual abuse cases in Indonesia. The bill protects the rights of victims and their families and lays out punishments for perpetrators including imprisonment and rehabilitation. It also presides over specific cases including forced abortion, marriage, or contraception. As such, the bill categorizes the following as sexual violence: sexual harassment, sexual exploitation, forced use of contraceptives, forced abortion, rape, forced marriage, forced prostitution, sexual slavery, and sexual torture.⁵⁰ The bill is in keeping with Indonesia’s commitments to end discrimination against women, including its ratification of the United Nations’ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The bill was first proposed in 2016 after the gang rape and murder of a 14-year old girl in Bengkulu. The prominent women’s rights NGO, Komnas Perempuan, recorded in 2018 that the total number of reported cases involving violence in 2017 reached 348,446, of which most were domestic violence cases.⁵¹ However, the most recent high-profile incident involved the rape of a university student in Yogyakarta which drew

⁵⁰ ‘PKS rejects anti-rape bill because it has liberal perspective’ Jakarta Post, 5 February 2019, available at <https://www.thejakartapost.com/news/2019/02/05/pks-rejects-antirape-bill-because-it-has-liberal-perspective.html>, accessed on 7 March 2019.

⁵¹ ‘Violence against women increased 25% last year: Komnas Perempuan’ Jakarta Globe, 8 March 2018, available at <https://jakartaglobe.id/context/violence-against-women-increased-25-last-year-komnas-perempuan>, accessed on 7 March 2019.

public backlash after the university announced the case had been settled without the perpetrator suffering legal repercussions.

Nevertheless, the bill has harvested protests from mainly Islamic conservative groups. A university lecturer whose online petition garnered 150,000 signatures maintained that the sexual violence bill violates Indonesia's social norms, and encourages, for example, premarital (albeit consensual) sex, prostitution, and homosexuality.⁵² Similarly, the Islamic-oriented PKS party opposed the bill for its "liberal perspective" and because it "promote[s] free sex and deviant sexual behaviour."⁵³ By contrast, larger parties such as the Indonesian Democratic Party of Struggle (PDIP) and the Great Indonesia Movement Party (Gerindra) support the bill.

Child marriage

Significantly, the Constitutional Court has ordered Parliament to revise the 1974 Marriage Law, stating that the current minimum age of 16 for women to marry was unconstitutional. In doing so, the court mentioned the 2017 data from the Central Statistical Bureau that as many as 25% of marriages in 23 provinces of Indonesia were child marriages.⁵⁴ According to UNICEF, 14% of girls in Indonesia marry before the age of 18 and 1% before the age of 15.⁵⁵

Accordingly, the court granted a judicial review petition filed by three child bride survivors and their lawyer challenging Art 7 of the 1974 law setting the minimum age requirement for women to marry at 16. At the same time, however, the court refused to grant the plaintiff's demand to raise the minimum age for women to match that of men (which stands at 19) arguing that that authority lay with Parliament. As such, the court was reluctant to make a decision which could prevent future revisions to the law.⁵⁶

In April 2018, President Jokowi declared that he was preparing a presidential decree to ban child marriage without mentioning a timetable for its abolition.

⁵² 'Indonesian sexual violence bill faces religious opposition' VOA News, 11 February 2019, available at <https://www.voanews.com/a/indonesian-sexual-violence-bill-faces-religious-opposition/4781451.html>, accessed on 7 March 2019.

⁵³ Jakarta Post (see note 50 above).

⁵⁴ Safitri, E, 'MK: Indonesia darurat perkawinan anak' (The Constitutional Court: Indonesia in emergency situation regarding child marriage), Detik, 13 December 2018, available at <https://news.detik.com/berita/d-4342214/mk-indonesia-darurat-perkawinan-anak>, accessed on 8 March 2019.

⁵⁵ Harsono, A, 'Indonesian President Jokowi to ban child marriage' Human Rights Watch, 23 April 2018, available at <https://www.hrw.org/news/2018/04/23/indonesian-president-jokowi-ban-child-marriage>, accessed on 8 March 2019.

⁵⁶ Sapiie, MA, 'Breaking: Court orders revision of minimum age for women to marry' Jakarta Post, 13 December 2018, available at <https://www.thejakartapost.com/news/2018/12/13/breaking-court-orders-revision-of-minimum-age-for-women-to-marry.html>, accessed on 8 March 2019.

Papua and West Papua

In early December 2018, the West Papuan liberation army claimed responsibility for the shooting of dozens of construction workers. Justifying the attack, the group claimed the workers were not civilians, maintaining instead that they were Indonesian military.⁵⁷ Further, they contended the armed forces were photographing the area as an exercise in surveillance. Conversely, some survivors of the attack said they were all civilians with no connection to the military, and they were all non-Papuans. Papua police spokesman, Suryadi Diaz, said in a statement that the attack was led by Egianus Kogoya, the leader of a splinter group with 50 members connected to the Free Papua Movement (OPM).⁵⁸

The construction workers had been building bridges as part of the larger Trans Papua project, which is part of President Jokowi's grand infrastructure project to improve the connectivity of Papuan regions. This recent shooting shows that problems in Papua cannot be solved solely by taking an economic approach.

The plight of the Uighur Muslims

The Indonesian government has pledged to not interfere in the Chinese government's arbitrary detention of more than one million Uighur Muslims in "re-education" camps in China's Xinjian region. However, the Indonesian Ulema Council (MUI)'s advisory council leader and former chairman of the country's second largest Islamic organization (Muhammadiyah), Din Syamsuddin, said the crackdown was an outright violation of basic human rights and demanded the government take firm action to advocate for the Uighur people.⁵⁹

Interestingly, in the run up to the presidential election in April 2019, the Uighur issue has been taken up by Islamist opponents of the government. In December 2018, it was possible to see that many of the hundreds of pro-Uighur protesters outside the Chinese Embassy had also attended the 212 movement reunion rally earlier that month. This movement consists of anti-government groups, many of whom had masterminded and attended the anti-Ahok rallies in 2016-2017.

⁵⁷ Davidson, H, 'West Papua: Conflicting reports surround attack that killed up to 31' The Guardian, 5 March 2018, available at <https://www.theguardian.com/world/2018/dec/05/west-papua-fears-of-spiralling-violence-after-attack-leaves-up-to-31-dead>, accessed on 8 March 2019.

⁵⁸ 'Indonesia says Papua separatists suspected of killing at least 24 workers' Reuters, 4 December 2018, available at <https://uk.reuters.com/article/uk-indonesia-papua/indonesia-says-papua-separatists-suspected-of-killing-at-least-24-workers-idUKKBN1O30DW>, accessed on 9 March 2019.

⁵⁹ Septiari, D, 'China responds to Indonesia's question about alleged abuse of Xinjiang's Muslims' Jakarta Post, 20 December 2018, available at <https://www.thejakartapost.com/news/2018/12/20/china-responds-to-indonesias-question-about-alleged-abuse-of-xinjiangs-muslims.html>, accessed on 8 March 2019.

Part 3: Conclusion

Throughout the political manoeuvrings of 2018 and the beginning of 2019, many human rights issues were connected to the growing binarism of the country's politics, particularly the connection between Islamist and pluralist forces. Despite President Jokowi's overall stance on religious tolerance, his appointment of Ma'ruf Amin—a conservative cleric notorious for issuing statements against religious minorities and the LGBT community, and for his connection to the anti-Ahok movements of 2016-2017—as running-mate in the next election, demonstrates how the current president seeks to shield himself from possible sectarian 'attacks' by his conservative opponents.

In relation to this, the blasphemy law has gained traction because it has been used to prosecute members of minority religions. A Chinese-Buddhist woman from Tanjung Balai, North Sumatra, named Meilana became the most recent victim of the blasphemy law when she was sentenced to 18 months for complaining about the noise levels at a local mosque. Likewise, throughout 2018, six more people were sentenced under its auspices. Meanwhile, the Supreme Court dismissed a legal challenge to the blasphemy law filed by the Ahmadiyah religious minority. On a similar note, the government rejected 58 human rights recommendations by UN member countries in 2017, including demands to scrap the blasphemy law. Indeed, Parliament is seeking to expand its scope through the "religious rights bill" which could potentially be used by conservative groups to further discriminate against minority religions.

Moreover, the draconian UU ITE has garnered protests from human rights activists, journalists, and members of the general public alike. For example, the recent arrest of an activist for singing a parody of the military anthem demonstrates how loopholes in the law are vulnerable to misuse by those in positions of authority to intimidate and silence their opponents. Furthermore, the UU ITE has proved itself unable to protect the victims of crimes, in particular, victims of sexual harassment. Thus, while a female teacher was sentenced to prison for recording a phone call to prove she had been sexually harassed, the perpetrator walked free. Hence, such cases increased demands for a judicial review of the law.

**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	6.86 million ¹
Ethnic breakdown ²	Main ethnic groups: Lao (53.2%), Khmou (11%), Hmong (9.2%), Phouthay (3.4%), Tai (3.1%), Makong (2.5%), Katang (2.2%), Lue (2%), Akha (1.8%)
Official language	Lao-Tai
Literacy rate (aged 15 and above)	79.9% ³
Life expectancy	67.02 ⁴
GDP	US\$16.85 billion (per capita US\$2,457) ⁵
Government	One party communist republic led by the Lao People's Revolutionary Party (LPRP). The president is the head of state, general secretary of the LPRP, and leader of the country. The elected National Assembly generally espouses the will of the party.
Political and social situation	2018 has been a difficult year for Lao PDR as it remains one of the poorest and most constrained countries in terms of human rights promotion and protection in Asia. Despite economic improvements, human rights violations (e.g. enforced disappearances, corruption, impunity, and attacks against political freedoms) prevail. As such, many see the collapse of the Xe-Pian Xe-Namnoy dam in July 2018 as symbolic of the government's inability to protect the welfare and rights of its most marginalized peoples.

* Also known as Lao PDR or Laos.

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

¹ Data from 2017. 'Lao PDR' The World Bank, available at <https://data.worldbank.org/country/lao-pdr>, accessed on 30 April 2019.

² Data from 2015. Although the Lao government officially recognizes only 49 ethnic groups, the total number of ethnic groups is estimated to be well over 200. '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 30 April 2019, at 37.

³ Data from 2015. '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 30 April 2019.

⁴ Data from 2017. The World Bank (see note 1 above).

⁵ Data from 2017. The World Bank (see note 1 above), and 'GDP per capita (current US\$)' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=LA>, accessed on 30 April 2019.

Despite being less popular to tourists compared to its Southeast Asian neighbours, Lao People's Democratic Republic possesses some unique characteristics. For example, bordered by China to the north, Vietnam to the east, Myanmar and Thailand to the west, and Cambodia to the south, it is the only landlocked country in the region. Although mainly an agricultural society, Lao PDR is also fast emerging as a viable tourist destination in the area. Moreover, a significant rise in infrastructure development projects are currently occurring throughout the nation directly affecting its economy, societies, and culture. This "economic boom is driven primarily by foreign direct investment in natural resource extraction and hydropower."⁶

Like their Mekong neighbours, Laotians have experienced the wrath of colonialism and civil wars. It was occupied by the French for more than half a century (1893-1954) and briefly by the Americans (1955-1973). During this time, Lao PDR was ruled by a monarchy and supported by an elite group of families until an uprising in 1975 instigated by the communist, Pathet Lao, or the Lao People's Revolutionary Party (LPRP) sought to gain independence. This was achieved on 2 December 1975 prompting the country to change its name from the Kingdom of Lao to Lao PDR.⁷

Branded by the government as "Simply Beautiful," on the one hand, Lao PDR is indeed an exotic uncharted land full of picturesque landscapes and brimming with warm hospitality, but beyond the surface, the country is unfortunately paralyzed by an exploitive political regime, economic deprivation, and social uncertainties.

2018 has proven to be a challenging year for Lao PDR and one which greatly tested its resiliency and endurance as a struggling nation. On 23 July 2018, the collapse of the Xe-Pian Xe-Namnoy dam in Attapeu Province led to the deaths of 43 people and the displacement of thousands, not just in the country itself, but also in neighbouring Cambodia. This social and natural disaster is a reflection of the government's inability to regulate substandard construction of multinational development projects throughout the country.⁸ Another matter highlighting Lao PDR's shortcomings can be found in the case of Sombath Somphone who has become the face of enforced disappearances in Southeast Asia. After six years of searching, this internationally acclaimed community development worker (who was abducted from a Vientiane street in 2012) has not yet been found. Such failure is indicative of the rapidly shrinking space for civil society, academics, and dissenting individuals.

⁶ 'About Lao PDR' UNDP, available at <http://www.la.undp.org/content/laopdr/en/home/countryinfo.html>, accessed on 29 April 2019.

⁷ UNDP (see note 6 above).

⁸ 'Cause of dam disaster still a mystery' The Nation, 24 October 2018, available at <http://www.nationmultimedia.com/detail/opinion/30357045>, accessed on 29 April 2019.

Thus, existing data collected and analysed by reputable organizations continues to prove that the country still has a long way to go as regards achieving international standards to combat poverty and facilitate the full enjoyment of rights and freedoms.

Table 1: Select 2018 Data on the Political, Social, and Economic Realities of Lao PDR

Index	Rating
Freedom in the World 2019 ⁹	Not Free Aggregate Freedom: 14/100 Freedom Rating: 6.5/7* Political Rights: 7/7* Civil Liberties: 6/7* <i>*Note: 1=most free, 7=least free</i>
Transformation Index 2018 ¹⁰	Status Index: 3.85/10 (106 th of 129 countries) Political Transformation: 2.92/10 (118 th of 129 countries) Governance Index: 3.89/10 (95 th of 129 countries) Economic Transformation: 4.79 (86 th of 129 countries)
UNDP Human Development Report 2018 ¹¹	0.601 (ranked 139 th) Inequality Adjusted Index: 0.445 Gender Development Index: 0.934

Significantly, according to the UNDP:

as of 2018, Lao PDR has achieved eligibility to graduate from Least Developed Country status. While the threshold for the Economic Vulnerability Index is yet to be passed, Lao PDR meets the criteria in terms of Gross National Income per capita and the Human Assets Index.

Regardless of this ‘achievement,’ the country of nearly seven million inhabitants is still far from being synonymous with the promotion and protection of human rights.

⁹ ‘Freedom in the World 2019: Laos’ Freedom House, available at <https://freedomhouse.org/report/freedom-world/2019/laos>, accessed on 25 April 2019.

¹⁰ ‘BTI 2018, Lao country report’ BTI Project, available at <https://www.bti-project.org/en/reports/country-reports/detail/itc/LAO/>, accessed on 25 April 2019.

¹¹ ‘Lao People’s Democratic Republic: Human development indicators’ UNDP Human Development Reports, available at <http://hdr.undp.org/en/countries/profiles/LAO>, accessed on 25 April 2019.

B. International Human Rights Commitments and Obligations

Like its ASEAN neighbours, Lao PDR has been a member of the United Nations since 14 December 1955. It also has an outstanding record of signing and ratifying ten International Human Rights treaties and Optional Protocols.

Table 2: Ratification Status of International Instruments – Lao PDR¹²

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

¹² 'Ratification status of Lao PDR' United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 29 April 2019.

As seen in Table 2 above, Lao PDR has ratified the majority of international human rights instruments meaning it has a legal obligation to respect, protect, and fulfil all human rights by translating or complying its national laws with international standards in order to ensure accountability and ready access to remedies for human rights violations. To date the government has been reviewed by only three conventions (the CAT, ICCPR, and ICESCR) and all its reports are overdue. In addition, the government only invited two UN special rapporteurs namely 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.¹³ A third visit by Philip Alston, Special Rapporteur on Extreme Poverty and Human Rights, was conducted in March 2019. His mission exposed a number of human rights violations related to development projects, poverty, and the suppression of indigenous peoples in the country.¹⁴

As a UN Member-State, Lao PDR is also mandated to submit a Universal Periodic Review (UPR). However, it has been more than four years (its second cycle took place in January 2015) since the country has been examined. Various civil society organizations (CSOs) and non-governmental organisations (NGOs) have already raised grave concerns regarding issues of enforced disappearances, torture, the right to personal security, impunity, and violations against rights to public participation in the country.¹⁵ Lao PDR is scheduled for its third cycle of reporting in 2020.

In terms of regional participation, Lao PDR also signed the ASEAN Human Rights Declaration (AHRD) in 2012. In 2018, Phoukhong Sisoulath, who served as its representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR), completed the Thematic Study on the Right to Peace, focusing on ways to implement Art 38 of the AHRD on the right to peace and United Nations Sustainable Development Goal 16 on peaceful and inclusive societies for sustainable development at the national and regional levels. However, after serving two terms in the Commission, he left his post at the end of the year.¹⁶

¹³ 'Laos' international human rights obligation and commitments' Civil Rights Defenders, 2016, available at <https://www.sombath.org/wp-content/uploads/2016/08/2016-08-31-International-HR-Obligations-CRD.pdf>, accessed on 24 February 2019.

¹⁴ 'Statement by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights on his visit to Lao PDR on 18-28 March 2019' United Nations Human Rights Office of the High Commissioner, 28 March 2019, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24417&LangID=E>, accessed on 29 April 2019.

¹⁵ 'Alternative report submitted to the UN Committee on the Elimination of Discrimination against Women: Lao People's Democratic Republic' Unrepresented Nations and Peoples Organization (UNPO) and Congress of World Hmong People (CWHP), 4 October 2018, available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LAO/INT_CEDAW_CSS_LAO_32669_E.pdf, accessed on 2 May 2019.

¹⁶ 'Press release: AICHR workshop on the thematic study on the right to peace, 7 December 2018, Lao PDR' AICHR, 21 December 2018, available at <https://aichr.org/news/press-release-aichr-workshop-on-the-thematic-study-on-the-right-to-peace-7-december-2018-lao-pdr/>, accessed on 28 April 2019.

C. National Laws Threatening Human Rights

Penal Code (2017)

Article 34 of the (new) Lao Constitution stipulates that: “the State acknowledges, respects, protects and secures the human rights and basic rights of citizens according to the laws.” Notwithstanding, Lao PDR adopted the Penal Code in May 2017 which enumerates a list of punishable acts and activities deemed criminal within the jurisdiction. Significantly, Lao PDR is also among the remaining 58 countries in the world still harbouring the death penalty. While it has been operating under a *de facto* moratorium on executions since 1989, concerns remain that the country’s courts are continuing to impose death sentences, mostly for drug-related offences.¹⁷ Article 51 of the Penal Code states that “the death penalty is the specific punishment to be imposed on offenders in especially serious cases ... [and that] the death penalty is carried out by shooting.” The government claims that the death penalty is aimed at reducing and preventing crime rather than to cause physical suffering or to outrage human dignity.¹⁸

Ominously, Art 112 (the last paragraph) declares that:

the acts of Lao citizens in gathering intelligence or State or official documents of a confidential nature for the purpose of relaying [them] to a foreigner or foreign organizations for the purpose of damaging or undermining the Lao PDR shall be considered treason against the nation and shall be punished as provided under Article 110.

Hence, any person, even those engaged in human rights work who provide information to foreign organizations such as NGOs may be vulnerable to being charged with treason and, as a result, be subject to the death penalty.

In addition, Art 124 of the Penal Code prohibits “Gatherings Aimed at Causing Disorder” defined as “any person organizing or participating in [a] 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 LAK200,000 (app US\$23) to LAK50,000,000 (app US\$5,757). Such harsh penalties are seen as evidence of the government’s intent to stifle activities related to criticisms of its performance, an assumption that has led to international concern.

¹⁷ ‘Concluding observations on the initial report of the Lao People’s Democratic Republic (CCPR/C/LAO/CO/1)’ Human Rights Committee of the ICCPR, 23 November 2018, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuzZlUkOYm4YH3ex106smajDZPxlFH115xH5WJUsqkim%2bR2%2bfRTxy%2bNj46sXeVweWy54b34nW6Ei5NuuKNitGNAXrrtV1tgph2VZCwhePok8>, accessed on 28 April 2019.

¹⁸ Penal Code (2017), Art 43.

Accordingly, Human Rights Watch urged the Australian government to focus on the issues of freedom of speech, association, and assembly during the Australia-Laos Human Rights Dialogue in 2017.¹⁹

While a number of fora have given children increasing opportunities to make their voices heard, not all are able to participate in public life. For example, while the Law on Juvenile Criminal Procedure stipulates that children have the right to participate in legal proceedings, in practice, such provisions are not always followed. This led the UN Committee on the Rights of the Child to recommend the establishment of systems and/or procedures to ensure staff such as law enforcement officials, teachers, and social workers comply with this principle.²⁰

Part 2: Outstanding Human Rights Issues

A. Enforced Disappearances

Although Lao PDR has signed the Convention for the Protection of All Persons from Enforced Disappearance (CED) in 2008, it has not yet ratified the treaty and has opted out of all the individual complaint mechanisms under these treaties, thus denying victims access to international remedies.²¹

Six years on from the enforced disappearance of civil society leader, Sombath Somphone, there has been a noticeable lack of progress in the investigation by Lao authorities.²² In its most recent pronouncement made during its review of the initial report by the Human Rights Committee (CCPR) in July 2018, the government stated they were still “trying very hard” to investigate Sombath’s fate and whereabouts, a pronouncement that has been contradicted by its consistent refusal to accept international assistance in conducting the investigation and to provide any details about its progress.²³

In addition, governmental persecution of the Hmong ethnic minority group has also been reported recently as were allegations of detentions and enforced disappearances.

¹⁹ ‘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.

²⁰ ‘Concluding observations on the combined third to sixth periodic reports of the Lao People’s Democratic Republic (CRC/C/LAO/CO/3-6)’ Committee on the Rights of the Child, 1 November 2018, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjoIp9%2bBUyBidOx37YsSa%2bsT2aKip8Yoy0Wn%2bgUh3qdPqP3UxPKgDE3jJjOT4uq83Ra1tkLhipHtB%2f4f9QQMBKfIsTMZ%2b7XnpG5BYof3B94X>, accessed on 28 April 2019.

²¹ ‘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.

²² ‘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.

²³ ‘UN slams violations of civil and political rights after landmark review’ Worldwide Movement for Human Rights, 2 August 2018, available at <https://www.fidh.org/en/region/asia/laos/un-slams-violations-of-civil-and-political-rights-after-landmark>, accessed on 28 April 2019.

This led the Human Rights Committee of the ICCPR to demand that all persecution of this community should cease, the perpetrators be brought to justice, and reparations be made.²⁴ For example, Hmong in the Phou Bia region have been subject to “acts of extreme violence such as bombing, extrajudicial killings and torture, as well as use of landmines and chemical weapons and substances that have caused the victims to experience symptoms such as nausea and dizziness.”²⁵

B. Restricted Participation in Political Affairs

As exemplified by the constitutionally-defined leading role of the Lao People’s Revolutionary Party or LPRP, the country’s authoritarian one-party system forms a definite barrier to genuine and autonomous political participation. While Laos has electoral laws and frameworks, and principles and procedures to govern the nomination of candidates for elections, restrictions on the freedoms of expression, assembly, and association compromise the right of citizens to genuinely participate in the conduct of public affairs including the rights to vote and to be elected. For example, all candidates must be approved by assembly-appointed committees although, in practice, almost all lawmakers are members of the LPRP alongside only a handful of party-vetted independents. Moreover, persons with intellectual and/or psychosocial disabilities and prisoners serving their sentences are denied the right to vote and stand for elections. As the Human Rights Committee of the ICCPR put it, together with the country’s blanket denial of prisoners’ rights to vote, these provisions fail to meet the standards espoused by the ICCPR.²⁶

C. Rights of Minorities and Indigenous Peoples

Incidences of forced relocations of some ethnic minority communities as a result of land grabbing and land concessions to development projects (e.g. the building of hydropower stations, extractive activities, and the establishment of economic special zones) have been reported in the last year. Many traditional lands were reportedly converted into development projects (especially for the construction of dams and a Laos-China railway) without adequately consulting the affected communities or providing adequate compensation or relocation sites, significantly affecting their livelihood and lifestyle. In addition, Amnesty International noted several occurrences of the arbitrary arrest and detention of farmers and villagers protesting against land leases and concessions, such as the farmers from Yeup village, Thateng District.²⁷ The prevalence of such incidences led Prime Minister Thongloun Sisoulith in April 2018 to acknowledge that there were indeed problems with the implementation of land concession regulations. Activists

²⁴ Human Rights Committee of the ICCPR (see note 17 above).

²⁵ ‘The situation of Laos’s Hmong in the Phou Bia region’ Congress of World Hmong People, Unrepresented Nations & Peoples Organization, available at https://www.ohchr.org/Documents/Issues/EPoverty/Lao/UNPO_CWHP.pdf, accessed on 3 May 2019.

²⁶ Human Rights Committee of the ICCPR (see note 17 above).

²⁷ ‘Laos 2017/2018’ Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/laos/report-laos/>, accessed on 2 May 2019.

have also expressed concern about damage to livelihoods and the environment caused by the construction of hydropower dams.²⁸

D. Gender-based Violence and Violence Against Women and Girls

Gender-based discrimination and abuse are widespread in Lao PDR. In particular, discriminatory traditions and religious practices have contributed to women's limited access to education, employment opportunities, and worker benefits.²⁹

In its concluding observations (adopted at its seventy-first session from 22 October to 9 November 2018), the CEDAW Committee stated that Lao PDR had implemented measures to combat discriminatory gender stereotypes and harmful practices against women and girls through, for example, public awareness campaigns and capacity-building programs for civil servants and the judiciary. However, the persistence of discriminatory gender stereotypes regarding the roles and responsibilities of women and men in family and society continue to contribute to the perpetuation of harmful practices, such as child marriage and high levels of gender-based violence against women and girls.³⁰

In addition, the establishment of employment agencies and resource centres, as well as institutional mechanisms including a designated steering committee within the Ministry of Labour and Social Welfare and labour attachés in embassies, to support migrant workers has also been a positive step forward. However, a large number of Lao women who migrate to other countries through informal channels in search of employment remain vulnerable to exploitation. Furthermore, returning migrant women do not receive adequate reintegration support from the relevant public agencies.³¹

E. Freedom of Expression, Association, and Assembly

According to Lao PDR legislation, while there are provisions for freedom of expression, including for the press, the government restricts political speech and writing and prohibits most public criticism it deems harmful to national security. Furthermore, it has also failed to protect the rights to freedom of expression, association, and assembly. As such, the government controls all the media in Lao PDR, including radio, TV, and

²⁸ Amnesty International (see note 27 above); Human Rights Committee of the ICCPR (see note 17 above); and 'Laos pushes ahead with Mekong dams despite environmental risks' Asian Correspondent, available at <https://asiancorrespondent.com/2018/01/laos-pushes-ahead-mekong-dams-despite-environmental-risks/>, accessed on 3 May 2019.

²⁹ Human Rights Committee of the ICCPR (see note 17 above).

³⁰ 'Concluding observations on the combined eighth and ninth periodic reports of the Lao People's Democratic Republic (CEDAW/C/LAO/CO/8-9)' Committee on the Elimination of Discrimination against Women, 14 November 2018, available at <https://undocs.org/CEDAW/C/LAO/CO/8-9>, accessed on 2 May 2019.

³¹ Committee on the Elimination of Discrimination against Women (see note 30 above).

print publications.³² Moreover, the Constitution and national laws such as the Penal Code and the Law on Prevention and Combating Cyber Crimes criminalize criticism of government performance, slandering the state, distorting party or state policies, inciting disorder, or propagating information or opinions that could weaken the state.³³ As a result, a number of Lao citizens have been arrested for criticising government performance through social media including three Lao workers who were sentenced to terms of up to 20 years after a closed-door trial leading the Federation of International Human Rights to condemn their sentences as “a shocking reminder of Vientiane’s [the Lao capital] intolerance for any form of peaceful dissent.”³⁴

The government has routinely used laws to restrict its citizens’ rights to assemble, e.g. political groups other than mass organizations approved by the LPRP, are prohibited.³⁵ Moreover, the government also restricts rights to associate by law and has power to influence associations to change their names by insisting on the removal of sensitive words such as ‘rights’ or ‘human rights.’³⁶ Similarly, in clear contravention of ICCPR provisions, Lao PDR issued a new decree on association (No 238 of 2017³⁷) to control such groups as the Non-Profit Association (NPA) and other civil society organizations³⁸ leading many international organizations to express concern. The new decree also affected associations already registered under the 2009 decree which were required to undergo further renewals.³⁹ To date, there has been no change in the number of registered associations since 2015,⁴⁰ but the future of associations and social movements in Lao PDR remains unpredictable to say the least.

F. Academic Freedom

While the law provides for academic freedom, in practice, it is severely restricted. For example, all research projects require government approval and government officials must be allowed to join the research team. This greatly restricts researcher independence since the government may legally control and monitor studies. In addition, the authorities also impose regulations on travel, access to information, and publication.⁴¹ Likewise, university professors cannot teach or write about politically sensitive topics,

³² ‘United Nations Human Rights Committee (CCPR) – 123rd session. Joint shadow report: Lao PDR’ Lao Movement for Human Rights (LMHR), International Federation 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.

³³ ‘Laos 2017 human rights report’ US Department of State, available at <https://www.state.gov/documents/organization/277337.pdf>, accessed on 17 July 2018, at 7.

³⁴ ‘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.

³⁵ US Department of State (see note 33 above), at 10.

³⁶ US Department of State (see note 33 above), at 10.

³⁷ Decree on Association No 238, available at <http://laoofficialgazette.gov.la/kcfinder/upload/files/0619577.pdf>, accessed on 18 August 2018.

³⁸ Joint Letter and Legal Brief on Decree on Associations (No 238 of 2017), available at <http://www.omct.org/statements/lao/2017/12/d24639/>, accessed on 18 August 2018.

³⁹ Decree No 238 of 2017 (see note 38 above).

⁴⁰ US Department of State (see note 33 above), at 10.

⁴¹ US Department of State (see note 33 above), at 9.

although Laos has invited select foreign academics to teach courses in the country, and some young people have been given permission to study at universities abroad.⁴²

Part 3: Conclusion

As a landlocked nation and the poorest in ASEAN, Lao PDR continues to face many human rights challenges, including enforced disappearances and extrajudicial killings, gender-based violence and violence against women and girls, exclusion from electoral participation, and weak political institutions to name but a few. Further, the country lacks an organized opposition and a truly independent civil society. Similarly, the ongoing threats felt by communities on the ground are many but due to a lack of government reporting, the repression of domestic media, and limited available data on violations, the issues are rendered invisible attracting minimal international attention. Shrinking civic spaces are hastened by curtailments on freedom of expression, association, and assembly, all of which are prohibited by the Constitution and other national laws. Likewise, enforced disappearances and extrajudicial killings have a chilling effect on the participation and practice of rights. Further, international assistance to conduct independent, impartial, and thorough investigations of e.g. Sombath Somphone's disappearance, according to international laws and standards continue to be disallowed.

Accordingly, a culture of impunity exists which not only deepens democratic deficits but also leads to uncertainty leaving citizens reluctant to express dissent and dissatisfaction. To effectively address these human rights issues, the international community must urge the government to act because under such treaties as the International Covenant on Civil and Political Rights and the Convention against Torture, Laotian authorities are legally obligated to conduct such investigations and to bring the persons responsible for serious violations to justice.

Above all, the government must immediately change its ways of imagining, viewing, and actualizing progress and development for its people. Fresh from his mission in Lao PDR, Phillip Alston perfectly captured the miserable plight of human rights in the country when he said:

Far from providing an answer to poverty, Lao PDR's economic growth strategies have too often destroyed livelihoods, created, or exacerbated vulnerability [leading] to impoverishment for many groups. Some approaches to poverty alleviation have instead prejudiced the human rights of poor and marginalized people.⁴³

⁴² 'Freedom in the World 2018: Laos' Refworld, available at <https://www.refworld.org/docid/5b2cb8644.html>, accessed on 2 May 2019.

⁴³ United Nations Human Rights Office of the High Commissioner (see note 14 above).

MALAYSIA

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

MALAYSIA

Fadiah Nadwa Fikri*

Part 1: Overview of Malaysia

A. Country Background

Malaysia Facts	
Geographical size	329,758 sq km
Population	32.4 million ¹
Ethnic background ²	Main ethnic groups: Bumiputera (Malay and non-Malay indigenous peoples) – 69.1%, Chinese – 23%, Indian – 6.9%, Other – 1%
Official language	Bahasa Melayu
Literacy rate (aged 15 and above)	94.64% ³
Life expectancy	75 ⁴
GDP	US\$314.71 billion ⁵ (per capita US\$9,951) 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 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 Although Barisan Nasional's 61-year rule was finally brought to an end in 2018, the repressive laws it had used to suppress dissent remain in force given the new government's failure to formulate a clear and concrete roadmap to repeal them.

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¹ Data from 2018. 'Current population estimates, Malaysia, 2017-2018' Department of Statistics Malaysia, Official Portal, available at <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=c1pQInFjb29HSnNYNUpiTmNWZHARDz09>, accessed on 10 February 2019.

² Data from 2018. Department of Statistics Malaysia (see note 1 above).

³ Zulita Mustafa, 'Boosting the reading habit' New Straits Times, 25 July 2018, available at <https://www.nst.com.my/education/2018/07/394232/boosting-reading-habit>, accessed on 10 February 2019.

⁴ Data from 2018. 'Abridged life tables, Malaysia, 2016-2018' Department of Statistics Malaysia, Official Portal, available at <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=aDV6TWxoU0NINVBYN1hXMIY0L2Jadz09>, accessed on 10 February 2019.

⁵ Data from 2017. 'Malaysia' The World Bank, available at <https://data.worldbank.org/country/Malaysia>, accessed on 27 February 2019.

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 27 February 2019.

⁷ Federal Constitution, Art 3(1).

⁸ Federal Constitution, Art 3(1).

System of governance

Situated by the South China Sea, Malaysia is divided into two regions: Peninsular Malaysia (also known as West Malaysia) and East Malaysia. There are eleven states in the former, two in the latter, and three Federal Territories (two on the peninsular and one in East Malaysia).⁹

As a constitutional monarchy with a parliamentary democracy, the King (known as the 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 (known as Dewan Rakyat) and the Senate (known as Dewan Negara). The House of Representatives consists of 222 elected members¹² and the Senate consists of 44 appointed and 26 indirectly elected senators.¹³

Elections in Malaysia are covered by Part VIII of the Federal Constitution (Arts 113 to 120) which spells out matters related to the conduct of elections (including elections to the House of Representatives and state legislative assemblies and the preparation and revision of electoral rolls for said elections), the constitution of the Election Commission (EC), assistance to the EC, federal and state constituencies, methods to challenge elections, methods to question election petitions of no return, qualifications of electors, and direct elections to the Senate.

Malaysia practices the doctrine of separation of powers to ensure the legislative, executive, and judicial branches of government are positioned apart to prevent abuse of power. The powers assigned to these three distinct bodies are provided for under Chapters 3, 4, and 5 of the Federal Constitution.

Population, ethnic groups, and language

In 2018, Malaysia's population stands at 32.4 million.¹⁴ The sex ratio in 2018 remains at 107 males per 100 females.¹⁵ In terms of age structure, 23.8% of the population is aged 0-14 years and 69.7% are aged 15-64 years.¹⁶ As regards major ethnic composition, the Bumiputera (Malays and non-Malay indigenous peoples) dominate at 69.1% of the total population¹⁷ while 23% are ethnic Chinese and 6.9% are ethnic Indian.¹⁸

⁹ 'State governments' Office of the Prime Minister, 2017, available at <http://www.pmo.gov.my/home.php?menu=page&page=1671>, accessed on 10 February 2019.

¹⁰ Federal Constitution, Art 32.

¹¹ Federal Constitution, Art 43.

¹² Federal Constitution, Art 46.

¹³ Federal Constitution, Art 45.

¹⁴ Department of Statistics Malaysia (see note 1 above).

¹⁵ Department of Statistics Malaysia (see note 1 above).

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

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

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

The Malay language or Bahasa Melayu is the national language of Malaysia.¹⁹ Other languages spoken by diverse communities include English, Mandarin, Cantonese, Hakka, Hainan, Foochow, Tamil, Telugu, Malayalam, Punjabi, Iban, and Bidayuh.

Economic development

Following the cancellation of several infrastructure projects and lower than expected export growth, the World Bank cut Malaysia's economic growth forecast in 2018 to 4.9%²⁰ although it also revised up the country's GDP forecast to 5.4% from the previous year.²¹ As of December 2018, the unemployment rate stands at 3.3%.²² In addition, Malaysia's inflation rate in 2018 fell to 1.3% as compared to 3.8% in 2017.²³

Political and legal situation

Until recently, Malaysia had been ruled by the same coalition of three race-based parties known as Barisan Nasional (BN) for 61 years since independence was declared in 1957. BN's six decade rule resulted in endemic corruption and abuse of power with repressive laws arbitrarily used against dissidents, opposition members, and human rights defenders to silence criticism and instil fear. It is hardly surprising therefore that the chilling effect of repressive laws on the exercise of civil and political rights contributed to self-censorship and a shrinking space for civil society.

On May 9th, the BN government was defeated in Malaysia's 14th general election. Three days after the new Pakatan Harapan (PH) government was sworn in, it announced that it would implement the proposed reforms embodied in its election manifesto. One of the commitments made in relation to human rights was to repeal or amend the following laws:

- (1) Security Offences (Special Measures) Act 2012 (SOSMA)
- (2) Prevention of Crime Act 1959 (POCA)
- (3) Prevention of Terrorism Act 2015 (POTA)
- (4) Dangerous Drugs (Special Preventive Measures) Act 1985
- (5) Sedition Act 1948

¹⁹ Federal Constitution, Art 152.

²⁰ Tan Xue Ying, 'World Bank cuts Malaysia's 2018 GDP growth forecast to 4.9%' The Edge Markets, 5 October 2018, available at <http://www.theedgemarkets.com/article/world-bank-cuts-malysias-2018-gdp-growth-forecast-49>, accessed on 12 February 2019.

²¹ The Edge Markets (see note 20 above).

²² 'Key statistics of labour force in Malaysia' Department of Statistics Malaysia, Official Portal, 30 December 2018, available at https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=124&bul_id=Wks0L3pvKzJySVdrMUhoUG1VNTlRdz09&menu_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09, accessed on 12 February 2019.

²³ Bernama, 'MIDF expects inflation rate to average at 1.3pct' New Straits Times, 26 October 2018, available at <https://www.nst.com.my/business/2018/10/425245/midf-expects-inflation-rate-average-13pct>, accessed on 12 February 2019.

- (6) Sections 211 and 233 of the Communications and Multimedia Act 1998 (CMA)
- (7) Peaceful Assembly Act 2012 (PAA)
- (8) Printing Presses and Publications Act 1984 (PPPA)
- (9) Anti-Fake News Act 2018 (AFNA)
- (10) Official Secrets Act 1972 and s.203A of the Penal Code
- (11) Universities and Universities Colleges Act 1971
- (12) Chapter VI of the Penal Code on activities detrimental to parliamentary democracy
- (13) All provisions carrying a mandatory death penalty
- (14) National Security Council Act 2016

To realize its reform agenda, the new government proceeded to form a five-member committee known as the Institutional Reform Committee (IRC) to examine the above issues and submit its findings and recommendations to the Council of Eminent Persons (CEP). The CEP was formed by the Prime Minister on May 12th to advise the government on economic and financial matters.

Accordingly, the IRC initiated a consultation process by inviting various interested individuals and groups to submit their recommendations on institutional reforms. Human rights groups jointly submitted two documents recommending institutional reforms which essentially proposed that the government:

- (1) immediately impose a moratorium on all repressive laws which violate human rights pending repeal or amendments; and
- (2) abolish all laws allowing detention without trial such as SOSMA, POCA, POTAs, and the Dangerous Drugs (Special Preventive Measures) Act 1985.

B. International Human Rights Commitments and Obligations

To date Malaysia has only ratified three core human rights treaties (see Table 1 below) and with numerous reservations. It is important to note that Promise No 26 of the PH election manifesto clearly stated the government's commitment to fulfil its human rights obligations at the international level. It further spelled out government measures to realise its obligations such as the immediate ratification of the remaining core international human rights treaties. Indeed, this promise was reaffirmed by Foreign Minister Saifuddin Abdullah on July 2nd.

However, after announcing its plan to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the government

backpedalled following right-wing opposition on the grounds that such a move would undermine Malay rights and the monarchy.

Table 1: Ratification Status of International Instruments – Malaysia²⁴

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 (ICMW)		
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

²⁴ '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 10 February 2019.

Malaysia is party to three core human rights treaties namely the CEDAW, CRC, and CRPD. The ratification of these treaties however came with a number of reservations which were deemed to contradict the existing provisions of the Federal Constitution, Islamic, and other national laws.

Convention on the Rights of the Child

Malaysia ratified the CRC in 1995 but it continues to hold reservations to the following provisions:²⁵

- (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; and
- (5) Article 37 on torture and the deprivation of liberty.

To fulfil its commitment to implement the CRC, treaty provisions were translated into the Child Act 2001 which was enacted to provide for the care, protection, rehabilitation, and development of children in society.²⁶ Other protections accorded to children may also be found in the Penal Code (which criminalizes incest) and the Domestic Violence Act 1994 (which shields children from violence within the family).

Convention on the Elimination of All Forms of Discrimination Against Women

As part of its efforts to fulfil its obligations under CEDAW, Malaysia amended its Federal Constitution in July 2001 to include gender as a basis to prohibit discrimination. While the amendment is commendable, concerns in relation to the full realization of the essence of CEDAW remain given the absence of any definition in the Federal Constitution as to what actually constitutes gender discrimination. It is also significant to note that despite the fact 22 years have passed since CEDAW was ratified, Malaysia has yet to enact specific legislation to incorporate its provisions. Full realization of CEDAW is also impeded by Malaysia's reservations which remain firmly in place:²⁷

- (1) Article 9(2) on equal rights with men regarding the nationality of a couple's children;
- (2) Article 16(1)(a) on equal rights to marriage;

²⁵ 'CRC reservations' UNICEF, available at https://www.unicef.org/malaysia/childrights_crc-reservations-malaysia.html, accessed on 9 February 2019.

²⁶ Child Act 2001, Preamble.

²⁷ '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 10 February 2019.

- (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 the adoption of children; and
- (5) Article 16(1)(g) on equal personal rights as husband and wife.

Convention on the Rights of Persons with Disabilities

A domestic law covering persons with disabilities (Persons with Disabilities Act) was enacted in 2008. This followed Malaysia's 2010 ratification of 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 concerns 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 due to insufficient comprehensive monitoring, penalties, or remedy mechanisms.²⁸

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) inconsistent with it shall be void.²⁹ Part II spells out provisions dealing 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 education (Art 12); and
- (9) The right to property (Art 13).

²⁸ 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 12 February 2019.

²⁹ Federal Constitution, Art 4(1).

As regards the rights to free speech, assembly, and association, clause 2 of Art 10 allows for these rights to be limited by law. The grounds for limiting rights to free speech are:³⁰

- (a) in the interests of the security of the country;
- (b) in the interests of friendly relations with other countries;
- (c) to maintain public order; or
- (d) to uphold morality.

As regards the right to freedom of assembly, this right can be limited on the following grounds:³¹

- (a) in the interests of the security of the country; or
- (b) to maintain public order.

Grounds for limiting the right to freedom of association are:³²

- (a) in the interests of the security of the country;
- (b) to maintain public order; or
- (c) to uphold morality.

However, it must be noted that the constitutional rights to freedom of speech, assembly, and association are only accorded to citizens unlike the right 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 which are guaranteed to all persons regardless of status.

The Human Rights Commission of Malaysia Act 1999

The Human Rights Commission of Malaysia Act 1999 was enacted, among other reasons, to provide for the establishment of the Human Rights Commission of Malaysia (the Commission) and to set out its powers and functions which are aimed at protecting and promoting human rights in Malaysia.³³ It is tasked with the following functions:³⁴

- (1) To promote human rights awareness and provide human rights education;

³⁰ Federal Constitution, Art 10(2)(a).

³¹ Federal Constitution, Art 10(2)(b).

³² Federal Constitution, Art 10(2)(b).

³³ Human Rights Commission of Malaysia Act 1999, Preamble.

³⁴ Human Rights Commission of Malaysia Act 1999, s.4(1).

- (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's main drawback is that it 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 effective protection and promotion of human rights in Malaysia and is further aggravated by the fact that parliamentarians have failed to debate the Commission's annual reports despite its yearly submissions,³⁵ 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 was a colonial-era law passed in 1948 to deal with the communist insurgency; despite this, it is still in place today. Although then Prime Minister Najib Razak pledged to repeal the law in the run up to the 2012 election, in the next few years, the BN government went on to not only justify its continued usage (by stressing the need to address threats against peace, public order, and the security of Malaysia),³⁶ it also strengthened the Act through a number of significant amendments in April 2015. In particular, the word “publish” was amended to also include the words “cause to be published,” a change clearly designed to target social media users.

By deeming certain acts seditious, amendments to s.3, among other provisions, effectively removed the right to criticize the government and judiciary. Thus, s.3 criminalizes expression containing “seditious tendency” or acts with a tendency to cause hatred, contempt, dissatisfaction, discontent, feelings of ill will, hostility, hatred against a group of people namely the Ruler, subjects of the Ruler or the King, inhabitants in a particular territory, or different races or classes of the Malaysian population. Further, the new s.3(ea) also criminalizes tendencies “to promote feelings of ill will, hostility, or hatred between persons or groups of persons on the ground of religion.”

In addition, s.10 was amended to empower the Sessions Court to issue prohibition orders against publications which

³⁵ Chu, MM, ‘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 February 2019.

³⁶ Lim, I, ‘What you need to know about the amended Sedition Act’ 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 10 February 2019.

would likely lead to bodily injury or damage to property; appears to be promoting feelings of ill will, hostility or hatred between different races or classes of the population of Malaysia; or appears to be promoting feelings of ill will, hostility or hatred between persons or groups of persons on the ground of religion.

Note the legislature's use of the words "likely" and "appears" which will be discussed below.

Other amendments to the Act abolished fines or imprisonment for terms not exceeding three years for a first offence and the introduction of a *minimum* of three years and a maximum of seven years' imprisonment for convictions under the legislation.³⁷

Moreover, the Act was amended to introduce a new offence (s.4A) on aggravated sedition, carrying a minimum of three years and a maximum of twenty years' imprisonment upon conviction. In addition, another amendment also empowers the court to issue an order to prohibit a person charged with sedition from leaving the country.³⁸ Due to use of the word "shall," upon an application filed by the public prosecutor, it will therefore be mandatory for the court to grant an order prohibiting the accused from leaving the country.

While the amendments themselves are enough to give cause for concern, the ambiguity and broadness of the words, "seditious tendency" in s.3 and "likely" and "appears" in s.10 leave the door wide open for abuse. Likewise, the absence of clearly demarcated harm under ss.3, 4, and 4A is severely disproportionate as these provisions fail to demonstrate the Act's protective function and the interests it intends to protect.

Furthermore, amendments to s.4(1), which abolished fines or imprisonment for terms not exceeding three years for a first offence and introduced a minimum of three years and a maximum of seven years' imprisonment, are in breach of the principle of proportionality under international human rights law which should be observed by judicial bodies because such provisions compel judges to apply the heavier punishments upon conviction.

In addition, s.5A of the Act makes it mandatory for the court to grant an order prohibiting individuals charged with sedition from leaving the country. This provision similarly violates the principle of proportionality which should be observed by judicial bodies as it strips the court of judicial discretion when deciding the proportionality of restrictions.

³⁷ Sedition Act 1948, s.4(1).

³⁸ Sedition Act 1948, s.5A.

Finally, the Sedition Act criminalizes expression made against, among others, the Ruler. The Act defines such a person as the Yang di-Pertuan Agong or Yang di-Pertua Negeri of any state in Malaysia. As a democratic country that practices constitutional monarchy and a parliamentary system, criminalization of expression directed at public and political figures including rulers clearly breaches the spirit of the right to free speech.

The Communications and Multimedia Act 1998

Section 3(3) of the Communications and Multimedia Act 1998 or CMA prohibits any censorship of the internet. However, despite this guarantee, ss.211 and 233 are widely worded and preclude “indecent, obscene, false, menacing, or offensive” communications published or communicated with the “intent to annoy, abuse, threaten or harass any person.” However, what constitutes “indecent, obscene, false, menacing, or offensive” and “intent to annoy, abuse, threaten or harass any person” under ss.211 and 233 are not clearly defined. The harm these provisions intend to target is also not specified. Thus, ss.211 and 233 are overly ambiguous and broad, leaving both open to abuse, consequently undermining full realization of the right to freedom of expression.

Individuals convicted under ss.211 and 233 of the CMA are liable to heavy punishments – a fine not exceeding MYR50,000 (app US\$12,300) or imprisonment for a term not exceeding one year. Additionally, a person convicted under s.233 shall also be liable to a further fine of MYR1,000 (app US\$246) for every day the offence continues after conviction. It is therefore argued the heavy punishments imposed by ss.211 and 233 plainly violate the principle of proportionality which should be observed by judicial bodies applying the law as the very existence of such penalties compels judges to apply them upon conviction.

The Printing Presses and Publications Act 1984

The Printing Presses and Publications Act 1984 or PPPA was enacted to regulate the use of printing presses and the printing, importation, production, reproduction, publishing, and distribution of publications.³⁹ Accordingly, s.3(1) requires anyone using or owning a printing press to first acquire a licence. Section 3(3) empowers the Minister to grant, refuse any application for such a licence, revoke, or suspend said licences at any time indefinitely.

Section 5 requires a permit to print, import, publish, sell, circulate or distribute any newspaper. Further, under s.6, the Minister is granted power to issue, revoke, or suspend said permit. Significantly, following amendments to the Act in 2012, licences and permits no longer need to be renewed annually meaning licences need only be granted once.

³⁹ Printing Presses and Publications Act 1984, Preamble.

In addition, s.7 of the PPPA grants the Minister absolute power to ban any publication which he/she deems undesirable. Section 7 describes an undesirable publication as:

... any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest ...

Finally, in reference to imported publications, s.9 empowers the Minister to refuse the importation of publications deemed undesirable on the grounds of public order, morality, security, public interest, or national interest.

The absolute power given to the Minister to grant, refuse any application for a licence to possess or use a printing press, revoke, or suspend such licence at any time for an indefinite period of time is clearly disproportionate to the harm the Act seeks to address. Moreover, the power given to the Minister to ban any publication which he/she deems undesirable and the absence of judicial oversight to review the exercise of such a power violates one of the conditions set out in international human rights law prohibiting legislation which restricts the right to freedom of expression from conferring absolute discretion to impose said restrictions.

The absence of a clear definition or explanation as to what constitutes an undesirable publication and the failure of ss.7 and 9 to plainly demonstrate the stipulated threats which the restrictions intend to address also offend the requirement under international human rights law that legislation restricting freedom of expression be proportionate to achieve its protective function and the interest it intends to protect.

The Peaceful Assembly Act 2012

The Peaceful Assembly Act 2012 or 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 to give advance notice to the police. This stands in stark contrast to the onerous conditions imposed under s.27 of the Police Act 1967 which was repealed the same year the PAA was enacted. It is to be noted, however, that requiring notice to be given 10 days before a proposed assembly and making the failure to do so a criminal offence still imposes an unreasonable burden on those wishing to exercise the right to peaceful assembly. It also serves as an impediment to urgent and spontaneous assembly.

Section 4(1) further undermines the right to peaceful assembly by forbidding certain groups from exercising the right, making its full realization illusory. Thus, the PAA prohibits non-citizens (from attending any assemblies), children (in relation to

gatherings other than those specified in the Second Schedule), and citizens below the age of 21 (in relation to organizing assemblies) from exercising the right to peaceful assembly. This prohibition 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 is its criminalization of street protests. Similarly, the PAA allows for the imposition of unreasonable conditions on the date, time, duration, place, or manner of the proposed assembly further restricting the rights of those wishing to meaningfully participate in peaceful assemblies.

Security Offences (Special Measures) Act 2012

The Security Offences (Special Measures) Act 2012 or SOSMA is an administrative detention law which came into being to replace the notorious Internal Security Act 1961 – an Act which allowed detention without trial that was used to silence criticism levelled against the government. SOSMA was enacted to provide for special measures in connection with security offences deemed to threaten public order and the security of the country.⁴⁰

The application of SOSMA raises a number of concerns as regards the right to due process. For example, the definition of security offences is overly vague and wide, leaving open the likelihood of abuse as any act can easily be deemed prejudicial to public order or security. Similarly, SOSMA allows for the detention of a person up to 28 days with no judicial oversight and said person may be denied access to legal representation or family members for up to 48 hours.

Although SOSMA allows for trials to take place after an investigation is complete, the format of such trials fall short of international standards. Simply put, SOSMA departs radically from basic rules of evidence which serve to ensure every person is accorded a fair trial. Thus, persons accused of committing an offence under SOSMA are denied the right to cross-examine prosecution witnesses as their identities are kept secret. Another alarming aspect of a trial under SOSMA lies in the fact that the prosecution is allowed to use information against the accused without disclosing its sources.

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

⁴⁰ The Security Offences (Special Measures) Act 2012, Preamble.

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 complimentary 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.⁴¹

Prevention of Terrorism Act 2015

The Prevention of Terrorism Act 2015 or POTA was enacted in 2015 to, among other reasons, prevent the commission of or support of acts of terrorism involving listed terrorist organizations in a foreign country and to control those involved in such acts.⁴² POTA drew flak from human rights groups as it permits detention without trial. In particular, it was noted that some key provisions of POTA mirror the abolished Internal Security Act 1960 which had previously been used to silence dissenting voices. In response to the introduction of POTA, 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.⁴³

While s.4(3) provides that “no person shall be arrested and detained under this section solely for his political belief or political activity,” and s.4(6) defines “political belief or political activity” as a lawful activity through the expression of opinion or the pursuit of a course of action in accordance with the principles subscribed by a political party registered under the Societies Act 1966, the requirement that political activities be “lawful” effectively renders protection of the right to freedom of speech obsolete

⁴¹ ‘Resolution 2178 (S/RES/2178 (2014))’ UN Security Council, 24 September 2014, available at https://www.un.org/sc/ctc/wp-content/uploads/2015/06/SCR-2178_2014_EN.pdf, accessed on 23 February 2019.

⁴² The Prevention of Terrorism Act 2015, Preamble.

⁴³ Robertson, P, ‘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-malaysias-new-repressive-anti-terrorism-law>, accessed on 21 June 2018.

given the existence of numerous laws permitting the government to restrict activities, particularly public assemblies⁴⁴ and associations,⁴⁵ as unlawful.

Sections 13(1) and (2) of POTA empower the Prevention of Terrorism Board (the Board) to issue detention or restriction orders against individuals believed to have been or are involved in terrorist activities. Accordingly, the Board has the power to issue a detention order for a period not exceeding 2 years. Further, under s.13(3), restriction orders may be issued to control and supervise any individuals whom the Board believes do not warrant detention for a period not exceeding 5 years. Moreover, the Board has the power to renew the detention or restriction order indefinitely. Finally, POTA shields the Board from accountability as its decisions are not subject to judicial review.

Section 377A of the Penal Code

Section 377A of the Penal Code criminalizes homosexuality and sodomy with punishments of 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 already living on the margins of Malaysian society.

Anti-Fake News Act 2018

The Anti-Fake News Act 2018 or AFNA was passed on 3 April 2018 to address the issue of “fake news” and related matters.⁴⁶ According to s.2, fake news

... includes any news, information, data and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or any other form capable of suggesting words or ideas ...

Reference to the AFNA’s Explanatory Statement shows that the Act’s intent is to address issues surrounding fake news by introducing measures to curb its dissemination, deal with the misuse of publication media, and protect the public from the proliferation of fake news.

Not only does the AFNA criminalize the act of creating, offering, publishing, printing, distributing, circulating, or disseminating fake news,⁴⁷ it also criminalizes the act of providing financial assistance for the creation, offer, publication, printing, distribution,

⁴⁴ See the provisions of the Peaceful Assembly Act 2012 (Act 736) restricting public assemblies, and Chapter VIII of the Criminal Procedure Code with regard to unlawful assemblies (s.83 empowers police officers to order any assembly of 5 or more persons “likely to cause a disturbance of the public peace” to disperse).

⁴⁵ Persons forming any association of more than 7 people, which is not registered under Malaysia’s Societies Act 1966, are subject to criminal sanctions (s.6). Also see the definition of a “society” in s.2. A society that is registered may be deregistered or declared unlawful at the Minister’s absolute discretion (s.5).

⁴⁶ Anti-Fake News Act 2018, Preamble.

⁴⁷ Anti-Fake News Act 2018, s.4.

circulation, or dissemination of fake news.⁴⁸ Accordingly, individuals convicted of creating, offering, publishing, printing, distributing, circulating, or disseminating fake news are liable to a fine not exceeding MYR500,000 (app US\$123,000) or imprisonment for a term not exceeding six years or both. Conviction for these offences also carries a further fine not exceeding MYR3,000 (app US\$738) for every day the offence continues to be committed after conviction.

As for those convicted of providing financial assistance for the creation, offer, publication, printing, distribution, circulation, or dissemination of fake news, such persons will be liable to a fine not exceeding MYR500,000 (app US\$123,000) or imprisonment for a term not exceeding six years or both.

Section 6 requires individuals who possess, control, or have in custody materials containing fake news to remove such materials failing which they will be liable to a fine not exceeding MYR1,000 (app US\$246) and a further fine not exceeding MYR3,000 (app US\$738) for every day the offence continues to be committed after conviction.

Moreover, s.3(1) provides for extra-territorial application of the legislation and empowers the government to criminalize such acts committed outside Malaysia. Section 3(2) provides that said acts must concern Malaysia or a Malaysian citizen.

Significantly, a joint declaration was adopted in March 2017 by the international special rapporteurs working on freedom of expression and/or the media to address issues surrounding restrictions on the right to freedom of expression. The joint declaration states that:

*General prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information,” are incompatible with international standards for restrictions on freedom of expression ... and should be abolished.*⁴⁹

⁴⁸ Anti-Fake News Act 2018, s.5.

⁴⁹ The declaration was signed by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE), the Representative on Freedom of the Media, the Organization of American States (OAS), the Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights (ACHPR), and the Special Rapporteur on Freedom of Expression and Access to Information. See, 'Joint declaration on 'fake news,' disinformation, and propaganda' OSCE.org, 3 March 2017, available at <https://www.osce.org/fom/302796?download=true>, accessed on 1 March 2019, at para 2(a).

E. Court Cases Relating to Human Rights

Freedom of expression

The right to freedom of expression continued to be under assault in 2018. For example, Fadiyah Nadwa Fikri⁵⁰ and Kadir Jasin⁵¹ were both investigated under the Sedition Act 1948 for expressing their views on the monarchy. On 11 October 2018, in response to public outcry over the continued use of the repressive law, the Minister of Communications and Multimedia announced that the government had decided to impose a moratorium on its use pending repeal. This commitment was reaffirmed by the government on 11 November 2018 at its United Nations Universal Periodic Review.

Unfortunately, the government has since backtracked on this commitment when it issued a statement saying the Cabinet had decided to lift the moratorium on the Sedition Act 1948 following the Seafeld temple riot on 27 November 2018. Notably, the conviction against Wan Ji Wan Hussin (for issuing seditious statements against the Sultan of Selangor) under the Act was allowed to stand despite SUARAM's demand that the Attorney General withdraw the case against him.⁵²

Moreover, s.233 of the Communications and Multimedia Act 1998 (CMA) continued to be used in 2018 when 11 individuals were recorded to have been investigated for expressing opinions online.⁵³ Two individuals were jointly charged under s.233 on 13 April 2018 for posting Facebook comments on the seizure of 74 containers containing beef, lamb, and pork last year.⁵⁴ Similarly, in 27 October 2018, a fish delivery worker was charged under the same provision and subsequently sentenced to 6 months' imprisonment for making comments deemed insulting to the police force on Facebook.⁵⁵

⁵⁰ Ida Nadirah Ibrahim, 'Activist under sedition probe defends article critical of royalty' Malay Mail Online, 11 July 2018, available at <https://www.malaymail.com/news/malaysia/2018/07/11/activist-under-sedition-probe-defends-article-critical-of-royalty/1651266>, accessed on 10 February 2019.

⁵¹ Kumar, M, 'IGP: Kadir Jasin to be investigated for sedition' The Star Online, 7 June 2018, available at <https://www.thestar.com.my/news/nation/2018/06/07/igp-kadir-jasin-to-be-investigated-for-sedition/>, accessed on 10 February 2019.

⁵² 'SUARAM's human rights overview: Report on Malaysia 2018' SUARAM, available at <https://www.suaram.net/wp-content/uploads/2018/12/HR-Overview-2018-28-Nov.pdf>, accessed on 10 February 2019. See also, Rafidah Mat Ruzki, 'Penang CM's Office staff jailed for seditious statements against Selangor Sultan [NSTTV]' New Straits Times, 9 April 2018, available at <https://www.nst.com.my/news/crime-courts/2018/04/355163/penang-cms-office-staff-jailed-seditious-statements-against>, accessed on 8 May 2019.

⁵³ SUARAM (see note 52 above).

⁵⁴ Maizatul Nazlina, 'Two charged for fake news ... but under CMA, not new fake news law' The Star Online, 13 April 2018, available at <https://www.thestar.com.my/news/nation/2018/04/13/two-charged-for-fake-news-but-under-cma-not-new-fake-news-law/>, accessed on 10 February 2019.

⁵⁵ Chew, MD, 'Lawyers decry charge against fish delivery worker for insulting cops' Free Malaysia Today, 27 October 2018, available at <https://www.freemalaysiatoday.com/category/nation/2018/10/27/lawyers-decry-charge-against-fish-delivery-worker-for-insulting-cops/>, accessed on 10 February 2019.

Due process and fair trial

Detention of juveniles under the repressive security laws remains a cause for concern. For example, the fate of juveniles already detained under SOSMA and POCA is laden with uncertainty as no further action has been taken by the government to address their predicament.

Despite strong objections put forward by civil society organisations and a failure to answer and account for the arrest and detention of juvenile offenders under security laws designed to address security threats, the new Pakatan Harapan government has so far failed to take concrete steps to provide appropriate redress. This inaction is unacceptable given the fact that those detained under POCA could have had their detention orders or house arrest orders reviewed by the Ministry of Home Affairs. Further, the existence of appropriate rehabilitation programmes (e.g. reintegration into schools enabling those detained to start new lives) have also been ignored.

Part 2: Outstanding Human Rights Issues

A. Police Immunity

Promise No 20 of PH's election manifesto had committed the new government to ensuring police accountability by establishing an oversight body known as the Independent Police Complaints and Misconduct Commission (IPCMC) to examine complaints specifically related to police misconduct. The Prime Minister announced on 22 September 2018 that the IPCMC would duly be established. However, putting in place an independent oversight body is key to ensuring the body operates effectively and with accountability. This step is vital to ensure the IPCMC functions with the highest degree of independence.

The independence of the IPCMC may be ensured by, for example, empowering it to instigate investigations on its own initiative and allowing it to order any action it deems fit, including the ability to discharge, suspend allowances and increments, and demote offenders in the event a member of the police force is found guilty of wrongdoing. As regards appointment of the IPCMC's commissioners, the recommendation put forth by the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police in 2005 should be adopted. It suggested that seven commissioners should be appointed by the King for three-year terms, and such appointments should consist of people from legal backgrounds rather than current or former members of the police force.

While the move was a step in the right direction, it is worth noting that no clear roadmap was provided by the government to clearly spell out the steps it intended to take to ensure effective implementation of the oversight mechanism.

B. Right to Information

Promise No 14 of PH's election manifesto outlined the government's pledge to revise laws curtailing the right to access information such as the Whistleblower Protection Act 2010, the Official Secrets Act 1972 (OSA), and the Witness Protection Act 2009. In addition, the government also proposed to enact a freedom of information law at the federal level.

However, in this regard, the Prime Minister's subsequent announcement that the OSA would remain in force is undoubtedly a step backwards. Additionally, the Prime Minister stated that the reports submitted by the CEP to the government would not be made public. This development is a patent affront to the right to freedom of information. Malaysia's culture of secrecy also stands in stark contrast to global progress towards the right to freedom of information. It bears reiterating that this right is key to increasing transparency and accountability in the administration of any country. Without it, members of the public will be prevented from holding governments accountable for abuse of power. Further, in the event the Malaysian government moves to enact a freedom of information law, the continued use of OSA would gravely undermine the Act's provisions, making the right to freedom of information illusory.

C. Deaths in Custody

Deaths in custody remain one of Malaysia's major problems as regards its commitment to human rights. Torture, ill-treatment, and neglect have been widely reported as some causes of death in custody. The lack of oversight mechanisms to ensure accountability greatly contributes to emboldening the culture of impunity which continues to allow such deaths to occur. In its report of 31 October 2018, SUARAM reported 6 cases of custodial death.⁵⁶ At the same time, it also cautioned that a low number of documented custodial deaths at this juncture cannot be presumed to be an improvement as the known incidents or reported cases of custodial deaths may not necessarily be an accurate representation of the situation until official figures are released later.⁵⁷

D. Violation of Refugee Rights

Malaysia is not party to the 1951 Refugee Convention and its 1967 Protocol and thus, there are no legislative or administrative provisions to deal with the plight of refugees and asylum seekers, leaving both groups at perpetual risk of serious human rights abuses. As a result, refugees and asylum seekers in Malaysia are deemed "illegal immigrants" as the Immigration Act 1959 makes no distinction between either category and undocumented migrants. Refugees and asylum seekers are therefore subject to arrest, detention, and prosecution for immigration offences and on conviction are liable to imprisonment, whipping, and sometimes deportation.

⁵⁶ SUARAM (see note 52 above).

⁵⁷ SUARAM (see note 52 above).

Whipping was made mandatory for a person found guilty of being in the country illegally following a 2002 amendment to the Immigration Act 1959.⁵⁸ The Immigration Act 1959 also criminalizes employers hiring undocumented persons and if found guilty, are liable to a fine of not less than MYR10,000 (app US\$2,460) but not more than MYR50,000 (app US\$12,300), or imprisonment not exceeding 12 months, or both for each employee. Employers who hire more than 5 undocumented employees at the same time are liable to imprisonment of not less than 6 months but not 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 do work illicitly to support themselves, the absence of legal status lays such individuals open to exploitation and victimisation by unscrupulous employers whilst also preventing them from seeking legal recourse to assert employment rights. Criminalizing the act of hiring undocumented persons leaves refugees and asylum seekers out in the cold as, lacking any source of income, they have little choice but to seek employment to support themselves while trapped in a prolonged state of legal limbo. Potential employers' reluctance to hire illegal immigrants for fear of being hauled up by the authorities only worsens their plight. As a consequence, this absence of legal status exposes refugees and asylum seekers to such dangers as human trafficking.

E. Statelessness

Malaysia is not a party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. As a result of this lack of nationality, stateless persons in Malaysia risk being denied basic human rights. However, international instruments aside, it must be pointed out that the Federal Constitution itself provides a legal safeguard against statelessness. Part II, s.1(e) of the Second Schedule states that a person born in Malaysia, who is not born a citizen of any other country, is a citizen of Malaysia by operation of law. Despite this legal safeguard, however, cases which have been litigated in court show that the burden imposed on stateless persons to prove their statelessness is so onerous, it consequently impedes them from being accorded the protection of s.1(e).⁵⁹

⁵⁸ Immigration Act 1959, s.6(3).

⁵⁹ Rodziana Mohamed Razali, 'Addressing statelessness in Malaysia: New hope and remaining challenges' Statelessness Working Paper Series No 2017/9, Institute of Statelessness and Inclusion, 2017, available at http://www.institutesi.org/WP2017_09.pdf, accessed on 23 February 2019, at 9.

F. Freedom of Assembly

The right to freedom of assembly continued to be severely undermined given the unceasing investigations carried out against activists for participating in public assemblies. For example, 18 cases where activists were called in for investigation under the Peaceful Assembly Act 2012 were documented in 2018.⁶⁰

Part 3: Conclusion

The new Pakatan Harapan government's wavering commitment to human rights is beginning to raise serious concern. The urgent need for immediate reforms and interventions in several pressing human rights issues such as the abolition of draconian laws that violate human rights has further been compromised given the government's failure to formulate a clear and concrete roadmap which is key to ensuring effective implementation of the proposed institutional reforms. In particular, the direction of the new government's reform agenda in relation to human rights remains uncertain. Delays and inaction in addressing the pressing human rights issues mentioned in this report run the risk of inflicting permanent or irreparable damage on those affected. Moreover, backpedalling on its commitments to abolish oppressive laws infringing on human rights and its promise to ratify the remaining core human rights treaties raise serious questions concerning the government's political will to fulfil its responsibility to protect, promote, and implement human rights.

⁶⁰ SUARAM (see note 52 above).

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	
Geographical size	676,577 sq km
Population	51.48 million ¹
Ethnic breakdown ^{2,3}	Main ethnic groups: Burman (68%), Shan (10%), Rakhine (4%)
Official language(s)	Myanmar or Burmese
Literacy rate (aged 15 and above)	89.5% ⁴
Life expectancy	66.8 ⁵
GDP	US\$67.07 billion (per capita US\$1,256) ⁶
Government	Unitary presidential republic since 2011. Government is led by State Counsellor Aung San Suu Kyi and President Win Myint and is divided into three branches (executive, legislative, and judiciary). However, the military significantly limits the power of all three.
Political and social situation	Efforts to achieve peace by launching a series of Panglong peace conferences were set back after the third conference in October when the Karen National Union (KNU), and the Restoration Council of Shan State (RCSS) suspended participation. ⁷ For 4 months, the military's unilateral cease-fire announcement on 21 December 2018 raised hopes for peace. Although the public may have expected to gain more freedom of information and expression in 2018, progress has been barely perceptible.

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

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¹ Department of Population, *Overview of the Results of the 2014 Population and Housing Census*, Nay Pyi Taw: Ministry of Labour, Immigration, and Population, 2017, at 7.

² There are some controversial elements to the 2014 census, e.g. religious and ethnic data was withheld until recently. The census allowed respondents to choose from 135 officially recognised ethnic groups, a classification Human Rights Watch described as deeply flawed. Additionally, in Rakhine State, it was decreed that nobody would be allowed to enter 'Rohingya.' 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.

³ 'Myanmar population 2019' World Population Review, available at <http://worldpopulationreview.com/countries/myanmar-population/>, accessed on 19 February 2019.

⁴ Data from 2014. 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 18.

⁵ Republic of the Union of Myanmar (see note 4 above), at 25.

⁶ Data from 2017. 'Myanmar' The World Bank, available at <https://data.worldbank.org/country/myanmar>, accessed on 19 February 2019.

⁷ Naw Eh Htoo He and Saw Tha Wah, 'How to revive Myanmar's peace process' Myanmar Times, 30 November 2018, available at <https://www.mmtimes.com/news/how-revive-myanmars-peace-process.html>, accessed on 13 January 2019.

With a population of approximately 51.5 million,⁸ the Republic of the Union of Myanmar is home to 135 ethnic groups practicing different religions, languages, cultures, and traditions. The country is composed of seven regions, seven states, six-administered zones and self-administered divisions,⁹ and one union territory including the capital, Nay Pyi Taw, and surrounding townships. Regions and states are constitutionally equivalent.

System of governance

Since 2011, Myanmar has been a unitary presidential republic. However, the role of president has largely been ceremonial as NLD leader, Aung San Suu Kyi, has effectively run the government as State Counsellor since 2016.¹⁰ While the government is divided into three distinct branches (legislative, executive, and judiciary), the commander-in-chief's power to appoint the three vital ministerial positions of defence, home affairs, and border affairs¹¹ and the reserving of a quarter of parliamentary seats (in both the House of Nationalities and the House of Representatives) for military representatives¹² under the 2008 Constitution has severely limited operation of the government. Further, although it is the highest judicial forum in the land, the Union Supreme Court is not empowered to review the decisions of military courts.

Current political situation

Since development, 'peace' and 'democracy' have comprised the main themes of the government's reform agenda. Its economic development policy of July 2016 covered most sectors and sought to support individual and national economic development by improving infrastructure and introducing policies to enhance human capacity.¹³ However, according to Asia Development Bank statistics, Myanmar's GDP was downgraded from 6.8% in 2017 to 6.6% in 2018.¹⁴ Despite some legal and policy developments,¹⁵ no significant improvement was found in the foreign investment sector, an area which could potentially create millions of jobs and greatly expand economic

⁸ *The 2014 Myanmar Population and Housing Census: The Union Report*, Myanmar: Republic of the Union of Myanmar, May 2015, at 29.

⁹ The six self-administered territories are Naga in Sagaing Region, Danu, Pa-O, Palaung, Kokaung, and the self-administered Division of Wa (all in Shan State).

¹⁰ Tin Htet Paing, 'Military MPs boycott as lower house passes 'State Counselor' bill' Irrawaddy, 6 April 2016, available at <https://www.irrawaddy.com/news/burma/military-mps-boycott-as-lower-house-passes-state-counselor-bill.html>, accessed on 29 August 2018.

¹¹ Constitution of the Republic of the Union of Myanmar 2008, s.232(b)(ii).

¹² Constitution of the Republic of the Union of Myanmar 2008, ss.109(b) and 141(b).

¹³ Aye Thidar Kyaw, 'Government reveals 12-point economic policy' Myanmar Times, 19 July 2016, available at <https://www.mmmtimes.com/business/21664-nld-12-point-economic-policy-announcement.html>, accessed on 27 December 2018.

¹⁴ 'Myanmar: Economy' Asian Development Bank, available at <https://www.adb.org/countries/myanmar/economy>, accessed on 20 February 2019.

¹⁵ The Investment Law (2016) places foreign investors in a better position to invest in Myanmar. Although the NLD has disappointed on the peace process and the economy, more than halfway through its term in office, it does deserve praise for trying to combat corruption.

development. In 2018, the Human Development Index ranked Myanmar 148th out of 189 countries.¹⁶

As regards peace, the 21st century Panglong peace conferences were held from 2016 onwards. However, following the third conference in October 2018, process has regressed somewhat. Instead of finding a consensus among parties over the critical issues of federalism, equality, self-determination, and a federal army, the KNU and the RCSS announced they were suspending participation in formal discussions.¹⁷

Despite being fundamental to democracy, the rights to freedom of expression and information and the space given to civil society have shrunk through the use of oppressive laws. Regrettably, the government seems to have forgotten its commitment to a new era of openness, transparency, and the expansion of democratic space, ideals it claimed to support in the early days of its administration.¹⁸

By-elections for 13 vacant parliamentary seats across the national and state legislatures were successfully and smoothly held on 3 November 2018.¹⁹ Of the 13 seats, NLD parties won 7 while the Union Solidarity and Development Party (USDP) won 3. Other ethnic parties shared the remaining seats.²⁰

Towards the end of 2018, the military unilaterally announced a four month cease-fire in all parts of Myanmar except Rakhine.²¹ In addition, it also declared it would shift control of the General Administration Department from the military-led Ministry of Home Affairs to the civilian-led Ministry of the Union Government²² to appease the population as regards democratic space and the peace process in the year ahead.

¹⁶ United Nations Development Programme (UNDP), *Human Development Indices and Indicators: 2018 Statistical Update*, New York: UNDP, 2018, at 90.

¹⁷ Si Thu Aung Myint, 'The NLD government: A work in progress' *Frontier Myanmar*, 31 December 2018, available at <https://frontiermyanmar.net/en/the-nld-government-a-work-in-progress>, accessed on 6 January 2019.

¹⁸ '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 20 February 2019; see also, 'Report of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC-37-70)' 24 May 2018, available at <https://undocs.org/en/A/HRC/37/70>, accessed on 17 March 2019, at para 12.

¹⁹ '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.

²⁰ Ei Ei Toe Lwin, 'By-elections: A wakeup call for the NLD' *Myanmar Times*, 5 November 2018, available at <https://www.mmtimes.com/news/elections-wakeup-call-nld.html>, accessed on 28 December 2018.

²¹ Aung Naing Oo, 'After unilateral ceasefire, seizing the moment for peace' *Frontier*, 28 December 2018, available at <https://frontiermyanmar.net/en/after-unilateral-ceasefire-seizing-the-moment-for-peace>, accessed on 20 February 2019.

²² 'GAD chief appointed deputy govt office minister' *Myanmar Times*, 3 January 2019, available at <https://www.mmtimes.com/news/gad-chief-appointed-deputy-govt-office-minister.html>, accessed on 8 February 2019.

B. International Human Rights Commitments and Obligations

Myanmar has ratified only four out of the nine core human rights treaties and only one out of the nine optional protocols (as shown in Table 1 below). No individual complaint mechanisms have been accepted. Aside from several reservations such as Art 29 of CEDAW on dispute resolution and the interpretation of the Convention, and Art 1 of ICESCR on self-determination, Myanmar has literally committed to implement the provisions of all treaties. However, it is usually late submitting both its initial and periodic country reports to the relevant treaty bodies.²³

Myanmar partially withdrew cooperation with UN human rights mechanisms when it prevented the visit of UN special rapporteur, Yanghee Lee, in December 2017, alleging bias. Thus, there was little evidence of compliance with special rapporteur recommendations. During the second cycle of the UPR Working Group Review in 2015/6, Myanmar received 281 recommendations, of which 166 were accepted and 15 were noted. Recommendations to ratify the ICCPR and CAT have as yet been not been fulfilled.²⁴

Table 1: Ratification Status of International Instruments – Myanmar²⁵

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)		

²³ '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 20 February 2019.

²⁴ 'Universal periodic review: Second cycle (2015-2020) mid-term report' Burma/Myanmar UPR Forum, February-May 2018, available at <http://equalitymyanmar.org/wp-content/uploads/2018/06/Universal-Periodic-Review-Mid-Term-report-April-2018.pdf>, accessed on 20 February 2019.

²⁵ United Nations Human Rights Office of the High Commissioner (see note 23 above).

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

Legal framework to protect human rights

Neither minimum standards of child or women's rights articulated in the CRC and CEDAW have yet to be fully realized in Myanmar. Two specific new laws, the Protection of Violence Against Women Law and the Child Rights Law, are still being drafted, debated, and revised by the Ministry of Social Welfare, Relief, and Resettlement with the support of international and domestic NGOs.²⁶

The decriminalization of prostitution and the removal of a minimum marriageable age were both discussed extensively in Parliament and among human rights activists. In December 2018, the government passed the Maternal and Child Welfare Association Law to provide necessary assistance to the public as regards health and social affairs. Pursuant to recommendations²⁷ of the CRC Committee, the government also introduced universal birth registration and launched a manual on the subject utilizing simplified procedures to allow responsible persons to issue free birth

²⁶ 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.

²⁷ 'Consideration of reports submitted by States parties under Article 44 of the Convention. Concluding observations: Myanmar (CRC/C/MMR/CO/3-4)' UN Committee on the Rights of the Child, 14 March 2012, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/MMR/CO/3-4&Lang=En, accessed on 19 February 2019, at para 44.

certificates to unregistered children up to 10 years of age in all parts of the country,²⁸ regardless of their parent's nationality, ethnicity, or citizenship status, and without mentioning the father's name.²⁹

In addition, other agendas are also being continuously developed and adopted. For example, it issued a notification³⁰ to increase the minimum wage from MMK3,600 (app US\$2.35) to MMK4,800 (app US\$3.13), an action plan on forced labour (2018), and launched a fair trial guide book³¹ covering, for example, the right to remain silent, the right to be free from arbitrary detention, the right to be present at all stages of one's trial, and the right to counsel. The government also adopted its first ever Water, Sanitation and Hygiene for All Strategy and Investment Plan (2016-2030), and the National Health Plan (2017-2021) to focus on universal health coverage.

Specific laws, rules, and a strategic plan (2016-25) to protect the rights of persons with disabilities were also enacted and adopted from 2015 to 2017. Further, necessary working committees and sub-committees at different levels were formed to effectively implement the strategy, laws, and rules.³² To ensure the right to work, a quota system together with penalties was introduced by the Regulations for the Rights of Persons with Disabilities of 2017. As a result, private companies or government organizations with at least 50 employees must now employ one person with a disability. Failure to do so will result in a MMK100,000 (app US\$65) or MMK200,000 (app US\$130) monthly fine. If an employer fails to follow the regulations on employing the disabled, their fine will be equal to the amount of wages paid to the minimum number of disabled people they should have employed under the quota system.³³

²⁸ 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, e.g. 'Launch of vital registration manual – A critical step towards fulfilling the rights of every child in Myanmar' UNICEF, available at https://www.unicef.org/myanmar/media_27098.html, accessed on 19 March 2019.

²⁹ In 2012, the CRC Committee recommended that free birth registration should cover all non-registered children up to 18 years of age: see, UN Committee on the Rights of the Child (note 27 above), at para 44.

³⁰ In March 2018, the National Committee for Setting the Minimum Wage imposed a new minimum wage for all employees. See, Nyan Linn Aung and Pyae Thet Phyto, '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.

³¹ 'Fair Trial Standards Guidebook launched in Nay Pyi Taw' Global New Light of Myanmar, 26 May 2018, available at <http://www.moi.gov.mm/npe/nlm/?q=content/26-may-18>, accessed on 20 February 2019.

³² 'Vice President U Henry Van Thio addresses IDPD ceremony' The Republic of the Union of Myanmar President's Office, 12 April 2018, available at <http://www.president-office.gov.mm/en/?q=briefing-room/news/2018/12/04/id-9148>, accessed on 20 February 2019.

³³ Pyae Thet Phyto, '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.

C. National Laws Threatening Human Rights

Telecommunications Law 2013, s.66(d)

The greatest threat to journalists, activists, or citizens seeking to practice freedom of expression is s.66(d) of the Telecommunication Law 2013 because its wording allows virtually anyone to be charged for defamation whether in written, verbal, or any other form of expression. Hence, s.66(d) deems “extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person by using any telecommunications network” to be an offence.

As such, this law is frequently used as a weapon to suppress critics of the government and its officials, members of parliament, and the security forces. Although amended in 2017, the provision merely shortened jail sentences from three to two years and recognized the defendant’s right to bail. It failed to address the section’s controversial wording. According to one study, by March 2018, 118 criminal actions had been taken under s.66(d).³⁴ As a result, the continuous existence of said provision has led many journalists to self-censor their reports both in print or online.

Penal Code, ss.505(b) and 377(a)

Some provisions under the Penal Code of 1860 have been used by the government to threaten human rights. Most notorious is s.505(b) which states that:

whoever makes, publishes or circulates any statement, rumour or report, with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against public tranquillity shall be punished with imprisonment which may extend to two years, or with a fine, or with both.

The vague wording of “against the State or against public tranquillity” means the provision can be frequently applied to suppress opposition politicians and journalists. A notorious example happened in 2018 when three journalists from Eleven Media were arrested for reporting on the controversial business ventures of Yangon region’s Chief Minister.³⁵

Another provision deemed contrary to international standards is s.377 which, by criminalizing “sodomy” effectively prohibits homosexuality. Though not actively used in practice, its existence casts a long shadow over LGBTI people across Myanmar as homophobic social attitudes and unsympathetic police remain commonplace. Similarly,

³⁴ ‘Total numbers of 66(d) cases’ Say No To 66d, 8 March 2018, available at <https://www.saynoto66d.info>, accessed on 20 February 2019.

³⁵ Myatt Kyaw Thu, ‘Three Eleven media journalists facing incitement charges: Executive editor’ Frontier, 10 October 2018, available at <https://frontiermyanmar.net/en/three-eleven-media-journalists-facing-incitement-charges-executive-editor>, accessed on 20 February 2019.

same sex marriages are also outlawed. Thus, while there were positive developments in the literal recognition of LGBTI by the government (e.g. by inclusion of an LGBTI role in its National Youth Policy in January 2018, and when it implied public support of gay relationships within the community), an amendment to s.377 is still necessary to actually confer legal rights. Otherwise, legal marriage for same sex couples remains impossible together with other related family rights. As a result, due to the possibility of prosecution, many gay couples in Myanmar are understandably reluctant to expose their relationships.³⁶

Unlawful Association Act 1908

The existence of ss.17(1) and 17(2) of the Unlawful Associations Act serves to continuously harm public participation in the peace process because they can be applied to arrest individuals interacting with ethnic armed groups as well as those involved in religious organizations, political associations, trade unions, student associations, and a wide array of other activist groups. As such, people in conflict areas are frequently in danger of being arrested for suspicious ties to the Arakan Army, Kachin Independent Army, or the Ta'ang National Liberation Army.³⁷ While some may have been recruited to join the armed groups, others may simply have been forced to supply food or money.³⁸ As a result, dozens of people in conflict zones across the country have been charged in recent months under this Act.³⁹

The law is especially threatening to journalists trying to access data in conflict areas. Due to denial of access to conflict zones and the limited availability of official data, journalists must inevitably attend events in such places or contact ethnic armed organizations. The government may interpret such actions as support or relations with unlawful associations.⁴⁰ For example, in 2017, three journalists were charged⁴¹ for attending a drug-burning ceremony hosted by the Ta'ang National Liberation Army (TNLA).⁴² In another case in the same year, a Kachin Baptist pastor and youth leader was convicted for facilitating a trip for three journalists to the region.

³⁶ Glauert, R, 'This activist can explain what life is really like for LGBTI people in Myanmar' Gaystarnews, 16 November 2018, available at <https://www.gaystarnews.com/article/this-activist-can-explain-what-life-is-really-like-for-lgbti-people-in-myanmar/#gs.Uzc00nx5>, accessed on 20 February 2019.

³⁷ 'Unlawful Associations Act must be withdrawn: Kachin leaders' BNI multimedia group, 9 November 2018, available at <https://www.bnionline.net/en/news/unlawful-associations-act-must-be-withdrawn-kachin-leaders>, accessed on 21 January 2019.

³⁸ Macgregor, F, and Thu Thu Aung, '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.

³⁹ Macgregor and Thu Thu Aung (see note 38 above).

⁴⁰ '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 20 February 2019.

⁴¹ U Aye Naing and U Pyae Bone Naing of the Democratic Voice of Burma (DVB) and U Thein Zaw of Irrawaddy were arrested.

⁴² '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.

Official Secrets Act 1923

Sections 3 and 5 of the Official Secrets Act 1923 criminalizes anybody who collects, publishes, or communicates information that may be useful to any enemy and anyone who has, controls, communicates, uses, retains or receives information classified as secret under the law. Such an act can be penalized by imprisonment for a term of two years.

Such overbroad provisions endow the government with broad unilateral powers to categorize information as secret, and is continuously used to prevent journalists and other human rights defenders from disseminating official information or documents. Consequently, these two sections directly hinder the right to information of the public as well as access to information for journalists particularly when they are forbidden from entering conflict zones where most human rights violations occur.⁴³

This can clearly be seen in the arrest of two reporters (Wa Lone and Kyaw Soe Oo) from Reuters News Agency for possessing sensitive documents regarding ten Muslim people who were killed in August 2017 during a government security force clearance operation.⁴⁴ The question here should concern whether a journalist's actions threaten national security or merely his or her own private personal security because freedom of information should only be limited when a clear intent to harm the former exists. In Myanmar, however, where there is no right to information law and government officials remain reluctant to provide data and interviews to journalists,⁴⁵ all are open to harassment and prosecution by the Official Secrets Act.

D. Recent Court Cases Relating to Human Rights

Media

The two Reuters journalists mentioned above (Wa Lone and Kyaw Soe Oo) were sentenced to seven years' imprisonment on 3 September 2018 for violating the Official Secrets Act. The journalists had been investigating the complex issue of Inn Din village in Rakhine State and were discovered to be in possession of sensitive government documents relating to the death of ten Muslims killed in August 2017 during a clearance operation carried out by security forces. A Yangon northern district judge ruled that the two men had obtained confidential documents with the intent to threaten national security.⁴⁶

⁴³ '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 15 January 2019.

⁴⁴ 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 22 January 2019.

⁴⁵ '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 22 January 2019.

⁴⁶ Naw and Chau (see note 44 above).

Peace activists

Approximately 50 human rights defenders were arrested, charged, and convicted for exercising their right to peaceful assembly for participating in protests in April and May 2018 over the escalation of armed conflict between the military and the Kachin Independence Army. They also called for safe passage for the thousands of internally displaced persons still caught in armed conflict zones. The protests started in Myitkyina and spread to Yangon, Mandalay, and Bago. In addition, three Kachin ethnic activists were sentenced to 6 months in prison for publicising the plight of civilians trapped by fighting between the Tatmadaw (or the armed forces) and a Kachin armed group and for defaming the military under s.500(b) of the Penal Code.⁴⁷

Conviction of a former child soldier

Aung Ko Htwe, a former child-soldier, was arrested on 18 August 2017, and charged under s.505(b) of the Penal Code, a provision arbitrarily used to restrict freedom of expression in Myanmar. The charge related to his media interview with Radio Free Asia about his experiences as a child soldier. In the interview, the boy described how the military abducted and forcibly recruited him when he was just 13 years old. It was broadcast in early August 2017. In March 2018, he was sentenced to two years' imprisonment.

All these cases are seen as a further setback to freedom of speech in Myanmar. In particular, the jail sentences reflect a pattern of continued attacks, intimidation, threats, and prosecutions against human rights defenders, journalists, and community leaders peacefully speaking out in defence of civilian victims of military operations.

Part 2: Outstanding Human Rights Issues

A. Internal Armed Conflicts Leading to Human Rights Violations

In December 2018, before the military unilaterally announced a cease-fire in prolonged conflict areas except Rakhine, the fighting between the military and ethnic armed groups as well as between different ethnic groups intensified in Kachin, the northern Shan States, and Rakhine. Both parties in the conflicts committed wide-ranging human rights violations against civilians, including extrajudicial executions, other unlawful killings, enforced disappearances, arbitrary detentions, torture and other ill-treatment, and forced labour. It has been frequently reported that the military regularly fired mortar and artillery shells during the conflicts some of which exploded in civilian areas. Likewise, ethnic armed groups laid anti-personnel landmines or landmine-like weapons leaving many displaced people afraid to return to their homes.

⁴⁷ Janmar, E, 'Kachins protest jailing of peace activists convicted of defaming Myanmar military' RFA, 11 December 2018, available at <https://www.rfa.org/english/news/myanmar/kachins-protest-jailing-of-peace-activists-12112018145821.html>, accessed on 1 January 2019.

Clashes between the Ta'ang National Liberation Army and the Restoration Council of Shan State in northern Shan State as well as with the military in 2018 led to the temporary displacement of civilians from Monewi, Namtu, and Hsipaw.⁴⁸ Similarly, clashes between the military and the Karen National Liberation Army in March 2018 caused the displacement of more than 2,400 civilians.⁴⁹ More conflicts mean more displaced people desperately in need of government and NGO support for their basic needs. Despite this, humanitarian organizations were only allowed limited access to such areas in 2018.⁵⁰

B. Corporate Accountability

All businesses investing in Myanmar should conduct rigorous human rights due diligence in accordance with international standards. They should pay special attention to the potential impact of their activities on the human rights of individuals who may be at a heightened risk of vulnerability or marginalization, and the different risks faced by women and men.⁵¹ Issues related to forced evictions, loss of farmland due to land grabbing to set up special economic zones and copper mines remain unresolved. Although the current government has tried to address the issue by investigating claims and recommending compensation or the return of land by adopting the National Land Use Policy in early 2016 and forming the Central Reinvestigation Committee for Confiscated Farmlands and Other Lands in June 2016, large numbers of farmers are still in need of aid.

Conversely, actually returning land to small farmers and villagers has proven complicated, leaving land and villagers in limbo.⁵² Many land cases are extremely complicated, as confiscations were usually followed by sales to corporations and businesses with additional sales to others, making the possibility of a fair outcome to all parties (original owners, subsequent tenants, and those later buying the land in good faith) difficult to say the least.⁵³ Thus, thirty-three farmers who had worked part of the land for many years, and who held their ground in and around the Thilawa special economic zone, were convicted of criminal trespass under the Penal Code in May 2018.⁵⁴

⁴⁸ 'Situation of human rights in Myanmar: Note by the Secretary-General (A/73/332)' UN General Assembly, 20 August 2018, available at <https://undocs.org/A/73/332>, accessed on 20 February 2019, at para 45.

⁴⁹ A/73/332 (see note 48 above), at para 46.

⁵⁰ 'Amnesty International Report 2017/18: The state of the world's human rights' Amnesty International, available at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>, accessed on 30 December 2018.

⁵¹ A/73/332 (see note 48 above), at para 27.

⁵² 'Nothing for our land: Impact of land confiscation on farmers in Myanmar' Human Rights Watch, 17 July 2018, available at https://www.hrw.org/report/2018/07/17/nothing-our-land/impact-land-confiscation-farmers-myanmar?fbclid=IwAR1h_e1xzGf3vRBtgPzSkEQZxp3LMr4R1IJ71jTyTdBTLGLWwv3dN6vMs, accessed on 28 December 2018.

⁵³ 'Myanmar: Farmers seek return of seized land, reform laws to protect rights of small landowners' Human Rights Watch, 17 July 2018, available at <https://www.hrw.org/news/2018/07/17/myanmar-farmers-seek-return-seized-land>, accessed on 28 December 2018.

⁵⁴ A/73/332 (see note 48 above), at para 22.

Environmental impact assessments and social impact assessments carried out for the jade mining sector were heavily criticized by media and academia alike in 2018. Flooding regularly occurs in the rainy season due to the dumping of waste soil from mine operators. This also causes water pollution thereby violating the right to a clean environment of nearby residents.⁵⁵ At least three times in January 2018, landslides of accumulated dumping soil led to the death of several miners in Hpakant.⁵⁶ Similar tragedies occurred in May causing 20 more deaths.⁵⁷ Indeed, such deaths have repeatedly occurred since 2015.⁵⁸ According to one report, a total of 33 landslides has resulted in as many as 807 deaths.⁵⁹ It is up to the State to manage the situation by, e.g. relocating migrant miners living in at-risk areas to safer places and ensuring mining companies dump their waste in accordance with safety regulations.

C. Human Trafficking

In 2005, Myanmar enacted its Anti-Trafficking in Persons Law, which outlined penalties of between five years and life in prison for the offence. While many assumed government involvement in the issue must have resulted in a reduction of trafficking cases from 2016 to 2018, the reality is that the trafficking of women and girls as domestic workers, pleasure women, or second wives in China continues, as does trafficking for organ transplantation and forced work on fishing boats where victims also face torture.

The lack of job opportunities and development in the country, as well as the effect of natural disasters and general inequality, has led to a high volume of trafficking cases in Myanmar. Such is the extent of the crime, every three weeks, a case is reported.⁶⁰ Indeed, 185 cases were reported in the first half of 2018 alone.⁶¹ Of these, 22 were related to forced labour including one case of domestic servitude and 21 cases involving

⁵⁵ Mann, Z, 'Soil dumping worsens impact of flooding in mining areas, activists say' *Irrawaddy*, 3 July 2018, available at <https://www.irrawaddy.com/news/burma/soil-dumping-worsens-impact-flooding-mining-areas-activists-say.html?fbclid=IwAR0UhbyhdrcMyxzPONmGub6buGHTROrDzohqEKmPI5JkS5HF2NP9eK9IGx4>, accessed on 19 December 2018.

⁵⁶ On 4 January, six people died during a landslide at the Hmaw won Ward Janae mine. Two days later, a landslide occurred in Wai Khar Village. Also, ten people were buried after a landslide on 10 January at the Yadanar San Shon Jade mine. See, Zaw Zaw Htwe, 'At least 15 people killed in landslides in Hpakant' *Myanmar Times*, 12 January 2018, available at <https://www.mmtimes.com/news/least-15-people-killed-landslides-hpakant.html>, accessed on 20 February 2019.

⁵⁷ Ei Ei Toe Lwin, 'Death toll in Hpakant landslide rises to 20' *Myanmar Times*, 7 May 2018, available at <https://www.mmtimes.com/news/death-toll-hpakant-landslide-rises-20.html>, accessed on 19 December 2018.

⁵⁸ The incident in November 2015 resulted in at least 113 deaths. See, Chan Mya Htwe, 'Companies not at fault in deadly Hpakant landslide, says ministry official' *Myanmar Times*, 26 November 2015, available at <https://www.mmtimes.com/business/17818-companies-not-at-fault-in-deadly-hpakant-landslide-says-ministry-official.html>, accessed on 19 December 2018.

⁵⁹ Petley, D, 'Hpakant, Myanmar: The on-going tragedy of landslides from jade mining' *AGU100*, 28 September 2018, available at <https://blogs.agu.org/landslideblog/2018/09/28/hpakant-1/>, accessed on 25 December 2018.

⁶⁰ *Burma/Myanmar UPR Forum* (see note 24 above), at 25.

⁶¹ '50 human trafficking cases in 2018' *Myanmar Times*, 7 March 2018, available at <https://www.mmtimes.com/news/50-human-trafficking-cases-2018.html>, accessed on 29 December 2018.

“fishing, manufacturing, palm oil farming, and jade and precious stone mining.” A further seventy-nine cases concerned forced marriage in China.

Human trafficking most severely impacts women and girls, many of whom remain vulnerable to the practice, although increasing cases of male organs being trafficked have also been reported.⁶² Consequently, in its 2018 Trafficking in Persons Report, the US State Department downgraded Myanmar to the bottom tier of countries, placing it among North Korea, Syria, and South Sudan. The report said Myanmar had “not fully [met] the minimum standards for the elimination of trafficking and is not making significant efforts to do so.”⁶³

Part 3: Conclusion

Although the Myanmar people may have expected human rights to be better protected under the current government, little progress was visible in 2018. Instead, the democratic space of activists, journalists, and politicians to practice freedom of expression and assembly has actually narrowed with the government, military, and officials revealing a disturbing over-sensitivity to criticism. Accordingly, instead of amending laws conflicting with international human rights standards, s.66(d) of the Telecommunication Law, s.500(b) of the Penal Code, the Unlawful Association Act, and the Official Secrets Act have increasingly and effectively shut the mouths of journalists and activists.

While most violations of human rights involved freedom of expression and assembly, other serious human rights also being flouted include the right to a clean environment and the right to a livelihood. At the same time, irresponsible business practices are still running rampant reiterating the need for business accountability and the need to combat human trafficking. Overall, to achieve adequate development, peace, and democracy in Myanmar, more attention needs to be paid not only to civil and political rights, but also to economic and social rights.

⁶² Burma/Myanmar UPR Forum (see note 24 above), at 26.

⁶³ Win Zar Ni Aung, ‘The human trafficking scourge’ *Frontier Myanmar*, 17 October 2018, available at <https://frontiermyanmar.net/en/the-human-trafficking-scourge>, accessed on 16 December 2018.

PHILIPPINES

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PHILIPPINES

Jean Linis-Dinco*

Part 1: Overview of the Philippines

A. Country Background

Philippines Facts	
Geographical size	300,000 sq km
Population	104.92 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\$313.6 billion ⁶ (per capita US\$2,988) ⁷
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 Duterte actively campaigned to federalise the government, signing 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	The Philippines operates on a multi-party system consisting mostly of political figures/leaders with little or no grassroots membership. In 2018, President Duterte's "supermajority" coalition in Congress ⁹ led to a shrinking of democratic space with individuals and groups shut down and democratic checks and balances incapacitated. Despite his continued war on drugs, the President's popularity remains high.

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¹ Data from 2017. 'Philippines' The World Bank, available at <https://data.worldbank.org/country/Philippines>, accessed on 17 February 2019.

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 17 February 2019.

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 17 February 2019.

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 17 February 2019.

⁸ 'Executive Order No 10, creating a consultative committee to review the 1987 Constitution' Official Gazette, 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 [the author's emphasis]." 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."

⁹ Cabacungan, GC, '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.

System of governance

The Philippines is a unitary, presidential constitutional republic; hence, the president acts as both the head of state and government.¹⁰ Three equal branches (the legislative, executive, and judiciary) lie at the heart of the system. Ideally, by conferring separate equal and exclusive powers to each, no branch of government will take precedence over another. Thus, in this edifice of checks and balances, diverse thoughts and voices may participate in the implementation of national policies.

Elected in 2016, the current head of the executive branch is Rodrigo Roa Duterte. The 16th President of the Philippines, he is also the 6th President of the Philippine Fifth Republic¹¹ which was established after the People Power Revolution of 1986 ousted Marcos and his 21-year old authoritarian regime.

The legislative branch is composed of two chambers: the Senate (Upper House) and the House of Representatives (Lower House). The Philippines has not always enjoyed a bicameral legislature. Prior to its current constitution, the country abolished both houses under Marcos in 1972,¹² resulting in a unicameral rubber-stamp assembly in 1978. In its present bicameral system, different methods exist to elect members of the Senate and the House of Representatives.

Although the Philippine Senate is comprised of 24 senators,¹³ only half are contested in senatorial elections which use a plurality-at-large voting system, i.e. the entire country acts as a large district. Thus, a voter can choose up to twelve candidates, with each candidate receiving one vote. In the end, the top twelve will be deemed elected.¹⁴

In terms of electing members of the Lower House, the Philippines has adopted a mixed system comprising two types of congressperson: those representing districts and those serving marginalised sectors.¹⁵ District members of Congress are selected using simple plurality voting or a 'winner takes all' system whereas sectoral representatives are elected via a party-list method. As stated in the 1987 Constitution, sectoral representatives should consist of 20% of all seats.

¹⁰ 'About the government' gov.ph, available at <https://www.gov.ph/philippine-government>, accessed on 20 January 2019.

¹¹ 'Executive branch of government' Official Gazette, available at <https://www.officialgazette.gov.ph/about/gov/exec/>, accessed on 20 January 2019.

¹² 'History of the Senate' Senate of the Philippines, available at <http://www.congress.gov.ph/about/?about=history>, accessed on 20 January 2019.

¹³ 'The legislative branch' Official Gazette, available at <https://www.senate.gov.ph/about/history.asp>, accessed on 20 January 2019.

¹⁴ 'Composition of the Senate' Senate of the Philippines, available at <https://www.senate.gov.ph/senators/composition.asp>, accessed on 20 January 2019.

¹⁵ Reilly, B, 'PH party list: Making it more representative' Rappler, 1 July 2016, available at <https://www.rappler.com/nation/politics/elections/2016/127800-philippines-party-list-more-representative>, accessed on 1 February 2019.

The fiscally autonomous third branch of the government is the judiciary (Art VIII, s.3 of the Constitution) entailing the Supreme Court of the Philippines, other collegiate courts such as the Courts of Appeal, and the Sandiganbayan and municipal courts.¹⁶

Since adopting the 1987 Constitution, four presidents have attempted to change the nation's chief document including Duterte who seeks to amend the entire text thus paving the way for federalism. As such, the House of Representatives has already approved a second reading of Resolution of Both Houses No 15¹⁷ penned by House speaker, Gloria Macapagal-Arroyo and 21 other legislators.¹⁸

B. International Human Rights Commitments and Obligations

The Convention for the Protection of All Persons from Enforced Disappearances (CED) remains the only core human rights treaty the Philippines has yet to ratify. Notwithstanding, in 2012, the Fifteenth Congress of the Philippines passed Republic Act No 10353¹⁹ (also known as the Anti-Enforced or Involuntary Disappearance Act) which makes the crime punishable by *reclusion perpetua* or 20 to 40 years' imprisonment.²⁰

Additionally, a majority of individual complaint procedures—aside from the optional protocols of the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the enquiry procedures of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Art 20), and CEDAW (Arts 8-9)—have still not been ratified.²¹

¹⁶ 'The judicial branch' Official Gazette, available at <https://www.officialgazette.gov.ph/about/gov/judiciary/>, accessed on 25 January 2019.

¹⁷ Tomacruz, S, 'Past charter change attempts and why they failed' Rappler, 17 January 2018, available at <https://www.rappler.com/newsbreak/flashback/193825-past-attempts-charter-change-philippines-failed>, accessed on 25 January 2018.

¹⁸ Gloria-Macapagal Arroyo was president of the Philippines from 2001 to 2010.

¹⁹ Republic Act No 10353, available at <https://www.officialgazette.gov.ph/2012/12/21/republic-act-no-10353/>, accessed on 10 January 2019.

²⁰ 'People of the Philippines v Conrado Lucas y Briones' The LawPhil project, available at https://www.lawphil.net/judjuris/juri1995/jan1995/gr_108172_1995.html, accessed on 10 January 2019.

²¹ 'Ratification status for Philippines' United Nations Human Rights Office of the High Commissioner (UNOHCHR), available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN, accessed on 9 January 2018.

Table 1: Ratification Status of International Human Rights Treaties – Philippines²²

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

Committee on the Elimination of Racial Discrimination

During the seventy-fifth session of the Committee on the Elimination of Racial Discrimination in 2009, the Committee enunciated its concerns over reports of continuing human rights violations against indigenous peoples who remain

²² UNOHCHR (see note 21 above).

disproportionately affected by armed conflict.²³ During the Aquino administration, a total of 71 indigenous leaders were killed and 95 cases of attacks against schools for indigenous children were reported.²⁴ Additionally, in 2015, UN Special Rapporteurs on the rights of indigenous peoples and on the situation of human rights defenders called on the Philippine government to launch a full and independent investigation on the killings of three indigenous human rights defenders in Surigao del Sur, Mindanao.²⁵

Since President Duterte's rise to power, at least 60 tribal people have been killed.²⁶ Moreover, the Katawhang Lumad of Mindanao claim that the number of political killings on the second-largest island in the country has increased considerably since the proclamation of martial rule in 2017.²⁷ In July 2017, Duterte threatened to bomb Lumad²⁸ schools for, he said, spreading subversive ideas and communism.²⁹ In 2018, the UN Committee on the Elimination of Racial Discrimination³⁰ urged the Philippines to remove from its petition list indigenous leaders and defenders as well as human rights defenders, including incumbent and former UN mandate holders.³¹

Committee on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities has applauded the measures taken by the Philippines since it ratified the CRPD in 2018.³² For example, it adopted two national laws: Republic Act No 10524³³ in 2012 which reserves 1% of all government

²³ 'Concluding observations' CERD, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/PHL/CO/20&Lang=En, accessed on 15 January 2019.

²⁴ Alamon, A, 'Wars of extinction: The Lumad killings in Mindanao, Philippines' Kyoto Review, available at <https://kyotoreview.org/issue-21/lumad-killings-philippines/>, accessed on 16 January 2019.

²⁵ 'Philippines: UN experts urge probe into killings of three indigenous peoples' rights defenders' UNOHCHR, 22 September 2015, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16481>, accessed on 16 January 2019.

²⁶ Chandran, R, 'Driven from home, Philippine indigenous people long for their land' ABS-CBN News, 19 April 2018, available at <https://news.abs-cbn.com/focus/04/19/18/driven-from-home-philippine-indigenous-people-long-for-their-land>, accessed on 16 January 2019.

²⁷ Layug, MC, 'Political killings, atrocities in Mindanao multiplied under martial law – Lumad group' GMA News, 24 May 2018, available at <https://www.gmanetwork.com/news/news/regions/654369/political-killings-atrocities-in-mindanao-multiplied-under-martial-law-lumad-group/story/>, accessed on 16 January 2019.

²⁸ Living mostly on the island of Mindanao, the Lumad are the largest indigenous group in the Philippines.

²⁹ Lingao, A, 'Duterte threatens to bomb Lumad schools' CNN Philippines, 17 November 2017, available at <http://cnnphilippines.com/news/2017/07/25/Duterte-threatens-to-bomb-Lumad-schools.html>, accessed on 16 January 2018.

³⁰ 'The Philippines: UN experts urge further action to remove names on government's 'terror list'' UNOHCHR, 20 August 2018, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23466&LangID=E>, accessed on 20 January 2018.

³¹ Such persons include UN Special Rapporteur on the rights of indigenous peoples, Victoria-Tauli Corpuz, former member of the UN Permanent Forum on Indigenous Issues, Joan Carling, and former members of the UN Expert Mechanism on the Rights of Indigenous Peoples.

³² 'Concluding observations on the initial report of the Philippines' Committee on the Rights of Persons with Disabilities, 16 October 2018, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/PHL/CO/1&Lang=En, accessed on 20 January 2019.

³³ Republic Act No 10524, Department of Health, available at <https://www.doh.gov.ph/node/4133>, accessed on 19 January 2019.

positions for persons with disabilities; and Republic Act No 10700³⁴ in 2009 which establishes institutional mechanisms to implement programmes for persons with disabilities at the local level. Further, the Committee also commended the Philippines for being the first country in the western Pacific region to implement the World Health Organization's Model Disability Survey and for joining the Asia-Pacific region in endorsing the Asian and Pacific Decade of Persons with Disabilities (2013-2022).³⁵

Nevertheless, in its recommendations, the Committee expressed its concerns about the prevalence of medical and charity approaches in the State party's legislation and policies concerning persons with disabilities, many of which stressed impairment, medical treatment, and social care. It also mentioned that the Philippines seemed to overemphasize the prevention of impairment rather than following an inclusion or human rights-based approach. Further, the Committee expressed concern over the allocation of public resources in the country dedicated to annual events reinforcing the medicalisation of disabilities.³⁶ Additionally, it recommended³⁷ that the Philippines should recognise equal representation before the law and the full legal capacity of persons with disabilities by reviewing the following articles in its legal codes and Constitution:

- Articles 37-39 of the Philippine Civil Code on the judicial role of persons;
- Article III, s.11 of the Philippine Constitution³⁸ limiting free access to courts; and
- Republic Act No 940644 creating the Public Attorney's Office, and the principle office of the government which only gives free legal assistance to indigenous persons in criminal, labour, and administrative cases.

The Committee correspondingly raised alarms³⁹ about the country's inadequate sexual reproductive health education services and rights available to women and girls with disabilities on account of ineffective implementation of the controversial Responsible Parenthood and Reproductive Health Act of 2012.⁴⁰ The lack of disaggregated data was also put forward with the Committee pointing out the need for the government

³⁴ Republic Act No 10700, Official Gazette, available at <https://www.officialgazette.gov.ph/2015/11/20/republic-act-no-10700/>, accessed on 19 January 2019.

³⁵ CRPD Committee (see note 32 above).

³⁶ CRPD Committee (see note 32 above).

³⁷ CRPD Committee (see note 32 above).

³⁸ '1987 Constitution of the Republic of the Philippines' Official Gazette, available at <https://www.officialgazette.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-vi/>, accessed on 20 January 2019.

³⁹ CRPD Committee (see note 32 above).

⁴⁰ Republic Act No 10354, Department of Health, available at https://www.doh.gov.ph/sites/default/files/policies_and_laws/ra_10354.pdf, accessed on 22 January 2019.

to consult persons with disabilities through their representative organisations and establish a system for the collection of said data.⁴¹

Rome Statute of the International Criminal Court

Before his administration was overthrown by the Second People Power Revolution, President Joseph Estrada signed the Rome Statute on 28 December 2000. Notwithstanding the long delay, Aquino took the lead in 2011 and ratified the treaty establishing the International Criminal Court (ICC). Seven years later, Duterte's administration proclaimed it would be withdrawing from the Rome Statute⁴² effective 17 March 2019 in the context of its war on drugs.

Accordingly, Duterte released a 15-page statement⁴³ in March 2018 announcing the Philippines' immediate withdrawal from the ICC. The 73-year old President noted that under Philippine domestic law, laws need to be published in the Official Gazette⁴⁴ or in a newspaper of general circulation to ensure validity and enforceability. He therefore declared the Rome Statute ineffective and inapplicable because such a publication had not occurred; for this reason, he claimed the ICC could not acquire jurisdiction over any person in the Philippines as the acts complained of were committed before its effectivity.⁴⁵

Human Rights Council

The Philippines was elected for another term on the UN Human Rights Council (UNHRC)⁴⁶ in 2018, a move extensively opposed by numerous human rights groups including Human Rights Watch (HRW). HRW stressed that Philippine election to the Council risked undermining the body's credibility and effectiveness.⁴⁷ Unsurprisingly, the Philippine government hailed this as a victory and averred it as a 'repudiation' of the critics of Duterte's war on drugs.⁴⁸ Numerous opposition lawmakers, however, denounced the current government's declaration that called the triumph a living

⁴¹ CRPD Committee (see note 32 above).

⁴² Mateo, J, 'Philippines disengages itself from ICC deliberations' PhilStar, 9 December 2018, available at <https://www.philstar.com/headlines/2018/12/09/1875477/philippines-disengages-itself-icc-deliberations>, accessed on 10 January 2019.

⁴³ 'Duterte's statement on Int'l Criminal Court withdrawal' Rappler, 14 March 2018, available at <https://www.rappler.com/nation/198171-full-text-philippines-rodriigo-duterte-statement-international-criminal-court-withdrawal>, accessed on 23 January 2019.

⁴⁴ Executive Order No 200, s.1987, Official Gazette, available at <https://www.officialgazette.gov.ph/1987/06/18/executive-order-no-200-s-1987/>, accessed on 12 February 2019.

⁴⁵ Rappler (see note 43 above).

⁴⁶ Gutierrez, J, 'Philippines wins new term on UN Rights Council, drawing outrage' New York Times, 13 October 2018, available at <https://www.nytimes.com/2018/10/13/world/asia/philippines-united-nations-rights-council.html>, accessed on 10 January 2019.

⁴⁷ 'UN: Philippines, Eritrea don't belong on Rights Council' Human Rights Watch, 11 October 2018, available at <https://www.hrw.org/news/2018/10/11/un-philippines-eritrea-dont-belong-rights-council>, accessed on 1 January 2019.

⁴⁸ 'Philippines wins seat on UN Human Rights Council' ABSCBN News, 13 October 2018, available at <https://news.abs-cbn.com/overseas/10/13/18/philippines-wins-seat-in-un-human-rights-council>, accessed on 1 January 2019.

testimony of the international community's confidence in the President. Senator Risa Hontiveros stated that Duterte's government could not claim "winning a seat" on the Council when all UN member-states had agreed to take turns to do as such.⁴⁹ Speaking to reporters, Congressperson Gary Alejandro went as far as to say that the Philippines had no right to be part of the Council because of its war on drugs, asking, "How will the Philippines fulfil its responsibilities which come with this seat at the Human Rights Council when killings and violations are widespread in her own backyard?"⁵⁰

During the third Universal Periodic Review (UPR) of the Philippines, Malacañang⁵¹ rejected 154 of 257 recommendations made by the UNHRC, including a request to allow UN Special Rapporteur Agnes Callamard to probe alleged cases of extrajudicial killings and summary executions associated with the drug war. The Philippines upheld its decision by underscoring the notion that it had the "prerogative" to accept or reject recommendations from the UN body as part of its "independent foreign policy."⁵² Having discarded over half the recommendations, Iceland and 38 other countries slammed the "climate of impunity" associated with the government's war on drugs.⁵³

At the 38th session of the UNHRC, Iceland once again took the lead in calling out the Philippines over human rights violations in Duterte's so-called war on drugs. Together with 37 other states, it urged the government to cooperate with the UN system, including the UNHRC and the mandate holders of its special procedures, without precondition or limitation.⁵⁴

Regional human rights mechanisms

In February 2017, the Philippines ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)⁵⁵ becoming the sixth ASEAN

⁴⁹ 'Hontiveros: This is not a lottery, countries don't win seats on the UN human rights council' Senate of the Philippines, 15 October 2018, available at www.senate.gov.ph/press_release/2018/1015_hontiveros1.asp, accessed on 10 January 2019.

⁵⁰ Valente, CS, 'PH re-elected to UN Human Rights Council' Manila Times, 14 October 2018, available at <https://www.manilatimes.net/ph-reelected-to-un-human-rights-council/451932/>, accessed on 10 January 2019.

⁵¹ The official residence of the current Philippine president.

⁵² Romero, A, 'Palace: Rejecting UN rights recommendations a Philippine prerogative' Philstar, 25 September 2017, available at <https://www.philstar.com/headlines/2017/09/25/1742760/palace-rejecting-un-rights-recommendations-philippine-prerogative>, accessed on 15 January 2019.

⁵³ 'PHL human rights condition 'of serious concern' to 39 countries' GMA News, 29 September 2017, available at <https://www.gmanetwork.com/news/news/nation/627679/phl-human-rights-condition-of-serious-concern-to-39-countries/story/>, accessed on 15 January 2019.

⁵⁴ Navallo, M, 'Iceland urges UN body to further investigate Philippine drug war' ABS-CBN News, 27 February 2018, available at <https://news.abs-cbn.com/overseas/02/27/18/iceland-urges-un-body-to-further-investigate-philippine-drug-war>, accessed on 15 January 2019.

⁵⁵ 'Philippines deposits instrument of ratification on anti-trafficking convention' ASEAN, 6 February 2017, available at <https://asean.org/%E2%80%8Bphilippines-deposits-instrument-of-ratification-on-anti-trafficking-convention>, accessed on 10 January 2019.

member-state to do. This convention seeks to prevent and fight trafficking in persons while also guaranteeing the just and effective punishment of traffickers.⁵⁶

C. National Laws Affecting Human Rights

The rights of every Filipino are enshrined in 22 sections of Art III of the Philippine Constitution; nonetheless, the concept of human rights in the Philippines principally focuses on individual civil and political rights and do not overtly include economic, social, and cultural rights.⁵⁷ As such, the government cannot be held accountable if the economic, social, and cultural rights of Filipinos are not attained.

The ratification of the 1987 Constitution provided for the establishment of a Commission on Human Rights (CHR), an independent office mandated to investigate country-wide human rights violations. However, it also derives mandates from relevant domestic laws and the eight core international treaties the Philippines is a party to. Notwithstanding, under the current administration, the CHR has faced and continues to face constant attacks from the President himself, the most recent of which was during his 2017 State of the Nation address and in the press conference afterwards when Duterte threatened to abolish the Commission entirely.⁵⁸ Two months later, the House of Representatives voted 199-32 to award it a budget of PHP1000 (app US\$19.11) for the entire year of 2018.⁵⁹

TRAIN Law

The Tax Reform Acceleration and Inclusion (TRAIN) Act (RA 10963⁶⁰) is the first package of President Duterte's Comprehensive Tax Reform Program⁶¹ (CTRP). A prominent feature exempts Filipinos earning PHP21,000 (app US\$398) or less monthly from paying personal income tax (PIT).⁶² Meanwhile, those earning more than PHP21,000 monthly will be liable to tax rates following a set PIT schedule.⁶³ While TRAIN does indeed decrease taxes on personal income, it also increases taxes on certain passive profits and goods including petroleum products, minerals, and

⁵⁶ Pilapil, J, 'PH ratifies convention vs human trafficking' Manila Times, 13 February 2017, available at <https://www.manilatimes.net/ph-ratifies-convention-vs-human-trafficking/312034/>, accessed on 10 January 2019.

⁵⁷ 'Committee on Economic, Social and Cultural Rights reviews report of the Philippines' UNOHCHR, available at <https://www.ohchr.org/EN/newsEvents/Pages/DisplayNews.aspx?NewsID=20613&LangID=E>, accessed on 25 January 2019.

⁵⁸ 'Duterte threatens to abolish CHR' PhilStar, 25 July 2017, available at <https://newsinfo.inquirer.net/917250/duterte-threatens-to-abolish-chr>, accessed on 28 January 2019.

⁵⁹ Morallo, A, 'House gives CHR a P1000 budget' PhilStar, 12 September 2017, available at <https://www.philstar.com/headlines/2017/09/12/1738419/house-gives-chr-p1000-budget>, accessed on 28 January 2019.

⁶⁰ Republic Act No 10963, Official Gazette, available at <https://www.officialgazette.gov.ph/2017/12/27/republic-act-no-10963/>, accessed on 29 January 2019.

⁶¹ 'What is comprehensive tax reform?' Department of Finance, available at <http://www.dof.gov.ph/taxreform/>, accessed on 28 January 2019.

⁶² 'Passage of TRAIN, 2018 GAA to further development agenda – NEDA' NEDA, available at <http://www.neda.gov.ph/2017/12/19/passage-of-train-2018-gaa-to-further-development-agenda-neda/>, accessed on 29 January 2019.

⁶³ Dimagiba, D, and Mercado-Tamayo, KA, 'Insight: Philippines tax reform continues in 2019' Bloomberg, 21 August 2018, available at <https://www.bna.com/insight-philippines-tax-n73014481879/>, accessed on 2 February 2019.

cigarettes.⁶⁴ A price rise in oil-based products and inputs such as fertilisers, machine fuel, and transportation costs means there will be an inevitable increase in the price of food, including the country's staple of rice.⁶⁵ Accordingly, this new tax reform will compromise the economic and social rights of ordinary Filipinos.

Extension of martial law in Mindanao

In December 2018, the 17th Congress of the Philippines approved the request of President Duterte, under House Concurrent Resolution No 24,⁶⁶ to extend martial law in Mindanao for another year, i.e. until the end of 2019,⁶⁷ in response to recommendations by the armed forces, the police force, and the Department of National Defence.⁶⁸ In 2017, President Duterte declared martial law and suspended *habeas corpus* on the island after government troops came to blows with militants affiliated with Islamic State, including Maute and the Abu Sayyaf Salafi jihadist group.⁶⁹ Significantly, local human rights groups have claimed a “marked increase in human rights violations”⁷⁰ on the island since the declaration. UN experts have also warned that militarisation has led to the displacement of thousands of indigenous peoples (the Lumads) in Mindanao.

Divorce law

The Philippines is the only country in the world, aside from Vatican City, where divorce remains illegal. Currently, the only option to end a marriage is annulment,⁷¹ an expensive and lengthy process requiring proof that the marriage was null and void in the first place. Arguably, women are the group most affected by this status quo especially those in abusive relationships.⁷² However, in an historic first, the Lower House of the Philippines approved on a third and final reading House Bill 7303⁷³ which provides for divorce and dissolution of marriage.⁷⁴ According to the Gabriela Party-list group, the

⁶⁴ Dimagiba and Mercado-Tamayo (see note 63 above).

⁶⁵ ‘TRAIN violates people’s economic and social rights’ Inquirer, 23 January 2018, available at <https://opinion.inquirer.net/110472/train-violates-peoples-economic-social-rights>, accessed on 2 February 2019.

⁶⁶ ‘House Concurrent Resolution No 24’ House of Representatives, available at http://www.congress.gov.ph/legisdocs/basic_17/HCR0024.pdf, accessed on 2 February 2019.

⁶⁷ Cervantes, FM, ‘Congress grants martial law extension until end of 2019’ Philippine News Agency, 12 December 2018, available at <http://www.pna.gov.ph/articles/1056438>, accessed on 3 February 2019.

⁶⁸ Cervantes (see note 67 above).

⁶⁹ Proclamation No 215, s.2017, Official Gazette, available at <https://www.officialgazette.gov.ph/2017/05/23/proclamation-no-216-s-2017/>, accessed on 4 February 2019.

⁷⁰ ‘Martial law extension would put human rights at risk in Mindanao, say regional MPS’ ASEAN Parliamentarians for Human Rights, 12 December 2018, available at <https://aseanmp.org/2018/12/12/martial-law-extension-threatens-human-rights-in-mindanao/>, accessed on 2 February 2019.

⁷¹ ‘Legalizing divorce in the Philippines’ ASEAN Post, 23 June 2018, available at <https://theaseanpost.com/article/legalising-divorce-philippines>, accessed on 2 February 2019.

⁷² ‘Philippines moves closer to allowing divorce’ BBC, 19 March 2018, available at <https://www.bbc.com/news/world-asia-43457117>, accessed on 2 February 2019.

⁷³ House Bill 7303, House of Representatives, available at http://www.congress.gov.ph/legisdocs/third_17/HBT7303.pdf, accessed on 3 February 2019.

⁷⁴ Meixler, E, ‘The Philippines is moving toward allowing divorce. It’s one of only two countries where the process is illegal’ Time, 20 March 2018, available at www.time.com/5206607/philippines-divorce-legalization-bill-duterte/, accessed on 3 February 2019.

bill was filed “in response to the clamour of women trapped in abusive relationships and the need for the government to provide another option for irreparable marriages.”⁷⁵

Press freedom

Early in 2018, the Press and Public Affairs Bureau of the House of Representatives sought to revoke reporters’ accreditation if they are proven to, for example, “besmirch the reputation of the House, its officials or members.”⁷⁶ Other violations include “gross misconduct,” making “false claims,” violating House policies, and abuse of privilege. This draft rule was introduced after Malacañang Palace (the president’s official residence and principal workplace) banned all Rappler reporters from covering any event attended by Rodrigo Duterte.⁷⁷ Consequently, the Philippines fell from 127th to 133rd on Reporters Without Border’s 2018 World Press Freedom Index.⁷⁸

Age of criminal responsibility

With a vote of 146-34-0, the Philippine House of Representatives approved House Bill 8858⁷⁹ on its third and final reading to lower the minimum age of criminal responsibility from 15 to 12 years old.⁸⁰ While the bill initially proposed to reduce the minimum age to 9, the Lower House agreed to only raise it to 12 due to stiff resistance from opposition lawmakers and rights groups.⁸¹

Carlos Conde of HRW said the “Philippine government should be looking for ways to improve the rehabilitation of children who have broken the law, not putting more and younger children in horrible detention facilities out of the public view.” Likewise, UNICEF’s representative to the Philippines, Lotta Sylwander, insisted that the country’s current Juvenile Justice System Welfare Law was a “solid law” and that the main problem lay in its implementation. In particular, she mentioned local government units’ lack of accountability to implement the policies.⁸² UNICEF further reminded the Philippines

⁷⁵ de la Cruz, JM, ‘House ignores Palace, okays divorce bill’ Business Mirror, 19 March 2018, available at <https://businessmirror.com.ph/2018/03/19/house-ignores-palace-okays-divorce-bill/>, accessed on 2 February 2019.

⁷⁶ Colcol, E, ‘Reporters who ‘besmirch’ solons’ reputations will lose accreditation – draft rules’ GMA News Online, 26 April 2018, available at <https://www.gmanetwork.com/news/news/nation/651414/reporters-who-besmirch-house-reputation-may-lose-accreditation-draft-rules/story/>, accessed on 2 February 2019.

⁷⁷ ‘PH lawmakers seek to ban reporters who ‘besmirch’ them’ Rappler, 27 April 2018, available at <https://www.rappler.com/nation/201170-batasan-house-representatives-new-media-rules>, accessed on 2 February 2019.

⁷⁸ ‘2018 World Press Freedom Index’ Reporters Without Borders, available at <https://rsf.org/en/ranking>, accessed on 2 February 2019.

⁷⁹ House Bill 8858, House of Representatives, available at http://www.congress.gov.ph/legisdocs/third_17/HBT8858.pdf, accessed on 5 February 2019.

⁸⁰ ‘House oks on final reading of bill lowering age of responsibility of children to 12’ House of Representatives, 29 January 2019, available at <http://www.congress.gov.ph/press/details.php?pressid=11239&key=8858>, accessed on 5 February 2019.

⁸¹ Cepeda, M, ‘Highlights of House bill lowering criminal liability age to 12’ Rappler, 24 January 2019, available at <https://www.rappler.com/newsbreak/iq/221818-highlights-house-bill-lowering-minimum-age-criminal-responsibility>, accessed on 5 February.

⁸² Ager, M, ‘UNICEF on age of criminal responsibility: Problem lies in implementation of law’ Inquirer, 25 January 2019, available at <https://newsinfo.inquirer.net/1077508/unicef-on-age-of-criminal-liability-problem-lies-in-implementation-of-law>, accessed on 5 February 2019.

that, as a signatory to the UN Convention on the Rights of the Child,⁸³ the government must “ensure that children grow up in a safe environment protected from crime and violence.”⁸⁴

D. Recent Court Cases Affecting Human Rights

People of the Philippines v Rappler/Maria Ressa

On 28 November 2018, a warrant of arrest was issued⁸⁵ by Pasig City Regional Trial Court judge, Danilo Buemio, against Rappler’s chief executive officer, Maria Ressa, for allegedly violating s.255 of the National Internal Revenue Code (NIRC) of 1997⁸⁶ penalising a “failure to file a return, supply correct and accurate information, pay tax withhold and remit tax and refund excess taxes withheld on compensation.” Such an offence is punishable with a fine of not less than PHP10,000 (app US\$190) and imprisonment of not less than a year but not more than ten years.⁸⁷

This is one of five tax-related cases filed by the Philippine government against Rappler and Ressa. Ressa turned herself into the authorities and posted PHP60,000 (app US\$1,135) bail without waiving her right to question the court’s jurisdiction over the case.⁸⁸ Aside from the tax cases, the government is also investigating Maria Ressa for cyber libel⁸⁹ and alleged violations of Commonwealth Act No 108,⁹⁰ punishing “evasion of the laws on the nationalisation of certain rights, franchises and privileges.”

UN Special Rapporteur on freedom of expression, David Kaye, called on the government to drop its charges against Rappler and Maria Ressa, saying that the allegations of tax evasion constituted an attempt to silence the news outlet’s independent reporting.⁹¹

⁸³ ‘Convention of the Rights of the Child’ UNOHCHR, available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, accessed on 6 February 2019.

⁸⁴ ‘Lowering age of criminal responsibility an ‘act of violence against children,’ says UNICEF’ GMA News Online, 18 January 2019, available at <https://www.gmanetwork.com/news/news/nation/681964/unicef-if-9-is-age-of-discernment-then-why-is-the-legal-age-to-enter-contract-get-married-at-18/story/>, accessed on 5 February 2019.

⁸⁵ ‘Rappler’s Maria Ressa posts bail, avoids arrest’ ABSCBN News, 3 December 2018, available at <https://news.abs-cbn.com/news/12/03/18/rappers-maria-ressa-posts-bail-avoids-arrest>, accessed on 7 February 2019.

⁸⁶ Tax Code, Bureau of Internal Revenue, available at <https://www.bir.gov.ph/index.php/tax-code.html>, accessed on 7 February 2019.

⁸⁷ Bureau of Internal Revenue (see note 86 above).

⁸⁸ ABSCBN News (see note 85 above).

⁸⁹ Roperio, G, ‘DOJ indicts Rappler, Maria Ressa, reporter for cyber libel’ ABSCBN News, 5 February 2019, available at <https://news.abs-cbn.com/news/02/05/19/doj-indicts-rappler-maria-ressa-reporter-for-cyber-libel>, accessed on 11 February 2019.

⁹⁰ ‘An Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges’ Corpusjuris.com, available at <https://www.thecorpusjuris.com/legislative/commonwealth-acts/ca-no-108.php>, accessed on 7 February 2019.

⁹¹ ‘UN expert calls on the Philippines to drop charges against Rappler’ UNOHCHR, 6 December 2018, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23984&LangID=E>, accessed on 5 February 2019.

The quo warranto case against Chief Justice Sereno

The Supreme Court, voting 8-6, ousted Maria Lourdes Sereno as Chief Justice of the Philippines through a *quo warranto* plea.⁹² A *quo warranto*⁹³ is a “legal proceeding during which an individual’s right to hold an office or government privilege is challenged.” Solicitor General Jose Calida filed the petition after Sereno failed to file her statements of assets, liabilities, and net worth and submit them to the Judicial and Bar Council in 2012. Prior to this, an impeachment trial against Sereno had already been ongoing in the House of Representatives.⁹⁴ While Art XI of the 1987 Constitution states that the House of Representatives has exclusive power to remove impeachable officers from office, in a 153-page decision⁹⁵ penned by Associate Justice Tijam, the court cited the language of s.2, Art XI of the Constitution. In particular, it emphasized the provision’s use of the word, ‘may’ as seen below:

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment [author’s emphasis].

As such, the court pointed out that the permissive term ‘may’ was indicative of a mere possibility, an opportunity, or an option.⁹⁶ Although acknowledging that impeachment was, in fact, the method of removal stated in the Constitution, Tijam went on to say that a *quo warranto* procedure could exist simultaneously with an impeachment process.⁹⁷ In other words, the ruling effectively sealed Sereno’s fate even if Congress were to attempt to intervene.⁹⁸

In response, UN expert on the independence of judges and lawyers, Diego García-Sayán, said that the unprecedented decision of the Supreme Court seemed to be unswervingly related to threats made against the Chief Justice *vis-à-vis* her professional activities in defence of judicial independence. As he put it: “the decision of the Supreme

⁹² *Republic of the Philippines v Maria Lourdes PA Sereno*, Supreme Court of the Philippines, 11 May 2018, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/may2018/237428.pdf>, accessed on 6 February 2019.

⁹³ Latin for ‘by what warrant or authority.’

⁹⁴ ‘House panel oks impeachment vs Sereno’ House of Representatives, 19 March 2018, available at <http://www.congress.gov.ph/press/details.php?pressid=10581&key=impeachment%20Sereno>, accessed on 5 February 2019.

⁹⁵ *Sereno* (see note 92 above).

⁹⁶ *Sereno* (see note 92 above).

⁹⁷ Buan, L, ‘Explainer: How SC majority tried to close all doors for ousted Sereno’ Rappler, 12 May 2018, available at <https://www.rappler.com/newsbreak/in-depth/202339-sereno-main-decision-explainer-supreme-court-quo-warranto>, accessed on 20 March 2019.

⁹⁸ Buan (see note 97 above).

Court was issued two days after the President of the Philippines publicly threatened the Chief Justice by saying that she was his enemy and that she should be removed from her job or resign.”⁹⁹

Petitions against the Bangsamoro Organic Law

On 26 July 2018, President Duterte signed Republic Act No 11054 or the Bangsamoro Organic Law (BOL)¹⁰⁰ to replace the Autonomous Region in Muslim Mindanao (ARMM). This law will permit the region to exercise its right to self-governance whilst also bestowing the Bangsamoro government authority over its trade and industry and fiscal management. BOL constitutes one of the requisites under the peace agreement¹⁰¹ signed in 2014 between the government and the Moro Islamic Liberation Front (MILF).

A group of constitutional experts and framers, however, filed a 37-page petition¹⁰² questioning the constitutionality of RA 11054. Thus, the Philippine Constitution Association or PHILCONSA’s plea

*seeks to avert the destruction of the Republic of the Philippines, the dismemberment of its territory, the fragmentation of its people, the despoliation of its natural resources, and the wreckage of its tripartite system of government.*¹⁰³

As such, it argued that the 1987 Constitution (Art X, s.1) only recognises one autonomous region in Muslim Mindanao.¹⁰⁴

*The passage and approval of RA 11054 by the legislative and executive departments creating a new and distinct territorial and political subdivision, Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), enacting its organic law and abolishing the ARMM, constitute not only a blatant violation of the Constitution but also a grave abuse of discretion tantamount to a lack of and/or in excess of jurisdiction.*¹⁰⁵

⁹⁹ ‘Judicial independence in Philippines is under threat, says UN human rights expert’ UNOHCHR, 1 June 2018, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23163&LangID=E>, accessed on 5 February 2019.

¹⁰⁰ Republic Act No 11054, Official Gazette, available at <https://www.officialgazette.gov.ph/2018/07/27/republic-act-no-11054/>, accessed on 5 February 2019.

¹⁰¹ ‘Comprehensive agreement on the Bangsamoro’ PCIJ, available at <https://pcij.org/blog/wp-content/uploads/2014/03/Comprehensive-Agreement-on-the-Bangsamoro.pdf>, accessed on 12 February 2019.

¹⁰² ‘Philconsa petition vs BOL’ Institute for Autonomy and Governance, 26 December 2018, available at <http://iag.org.ph/index.php/news/1794-full-text-philconsa-petition-vs-bol>, accessed on 12 February 2019.

¹⁰³ Institute for Autonomy and Governance (see note 102 above).

¹⁰⁴ Institute for Autonomy and Governance (see note 102 above).

¹⁰⁵ Institute for Autonomy and Governance (see note 102 above).

Governor Abdusakur Tan II of the province of Sulu also filed a petition challenging the constitutionality of BOL in October 2018.¹⁰⁶ The petition for *certiorari* asked the Supreme Court to issue a temporary restraining order to prevent implementation of the law arguing that the automatic inclusion of the present geographic area known as ARMM in the newly-created BARMM violated Art X, s.18 of the Constitution.¹⁰⁷ Furthermore, provisions in BOL failed to afford the constituents of the Province of Sulu the option of whether or not to join BARMM. Thus, he argued, BOL violates the right to suffrage and the population's right to local autonomy.¹⁰⁸

Part 2: Outstanding Human Rights Issues

A. War on Drugs

The Philippine Drug Enforcement Agency (PDEA)'s official death toll reveals that 5,050 lives¹⁰⁹ have so far been lost in the war on drugs, mainly at the hands of the police. However, the official figures fall far short of estimates offered by human rights groups which suggest the numbers may vary from 12,000 to 20,000. Further, they claim many undocumented killings were carried out by "death squads."¹¹⁰ Chairman Gascon of the Commission on Human Rights even noted that the toll could be as high as 27,000.¹¹¹ Nevertheless, in July 2018, the President renewed his pledge that the war on drugs would continue until 2022, and it would be "as relentless and chilling as on the day it began."¹¹²

B. Agrarian Conflict

Nine sugarcane farmers, including four women and two children, were found dead while having dinner in an improvised tent on a farmstead in Sagay, Negros Occidental on 20 October 2018.¹¹³ Police reports revealed that the fatalities were members of a leftist labour group, the National Federation of Sugarcane Workers (NFSW), who had joined 'bungkalan' (or the practice of occupying and cultivating idle land) that day.

¹⁰⁶ 'Sulu gov's petition on the constitutionality of BOL' Institute for Autonomy and Governance, 26 December 2018, available at <http://iag.org.ph/index.php/news/1793-full-text-sulu-gov-s-petition-on-the-constitutionality-of-bol>, accessed on 12 February 2019.

¹⁰⁷ Institute for Autonomy and Governance (see note 106 above).

¹⁰⁸ Institute for Autonomy and Governance (see note 106 above).

¹⁰⁹ '#RealNumbers social cards as of November 2018' Philippine Drug Enforcement Agency, available at <http://pdea.gov.ph/2-uncategorised/279-realnumbersph>, accessed on 3 February 2019.

¹¹⁰ Ellis-Peterson, H, 'Duterte's Philippines drug war death toll rises above 5,000' The Guardian, 19 December 2018, available at <https://www.theguardian.com/world/2018/dec/19/dutertes-philippines-drug-war-death-toll-rises-above-5000>, accessed on 3 February 2019.

¹¹¹ Ellis-Peterson (see note 110 above).

¹¹² Lema, M, and Morales, NJ, 'Philippines' Duterte to keep up 'relentless and chilling' drugs war' Reuters, 23 July 2018, available at <https://www.reuters.com/article/us-philippines-duterte/philippines-duterte-to-keep-up-relentless-and-chilling-drugs-war-idUSKBN1KD133>, accessed on 4 February 2019.

¹¹³ Peralta, J, '9 killed including two minors in Negros Occidental sugar plantation' CNN Philippines, 22 October 2018, available at <http://cnnphilippines.com/news/2018/10/21/nine-killed-negros-occidental-sugar-plantation.html>, accessed on 5 February 2019.

According to police reports, the killers were possibly “hired goons of the hacienda owner, fellow claimants of the land, or communist rebels.”

Human Rights Watch researcher, Carlos Conde, notes that agrarian violence in the Philippines is not a new occurrence in the country, which is still “grappling with the landlessness that has been blamed for massive poverty that in turn has fuelled a half-century-long communist insurgency.”¹¹⁴

C. Opposition Arrests

Senator Antonio Trillanes IV is the second opposition senator to be arrested under the regime of Rodrigo Duterte. On 31 August, President Duterte signed Proclamation No 572¹¹⁵ declaring Trillanes’ amnesty *void ab initio* or invalid from the start on grounds of his alleged failure to file an official application form.¹¹⁶ This claim was debunked by the senator who, in a privileged speech before the Senate, presented a 2011 video report by Radio dzRH which included an interview with him after he had filed his amnesty application.¹¹⁷ Notwithstanding, twenty-one days after Duterte voided the amnesty, Makati Regional Trial Court (RTC) Branch 150 issued an arrest warrant against Trillanes over the 2007 Manila Peninsula siege.¹¹⁸ The senator posted PHP200,000 (app US\$3,793) bail at the Makati City Central Police Station on the same day as his arrest.¹¹⁹

The Manila Pen Siege of 2007 occurred when Senator Trillanes, a former member of the Navy, walked out of a hearing for the 2003 Oakwood mutiny case before the Makati RTC. In 2010, then-president, Benigno Aquino III, signed Proclamation No 50 granting amnesty to active and former AFP members and their supporters taking part in the two mutinies and the 2006 marine standoff. A month later, Aquino issued Proclamation 75 superseding the former proclamation, and it was concurred by both Houses of Congress.

The rebellion charges against Trillanes comprise just one of the cases and complaints the senator is facing. The naval officer-turned-lawmaker is also facing a separate *coup d’état*

¹¹⁴ ‘Philippine sugar plantation massacre’ Human Rights Watch, 22 October 2018, available at <https://www.hrw.org/news/2018/10/22/philippine-sugar-plantation-massacre>, accessed on 4 February 2019.

¹¹⁵ Proclamation No 572, s.2018, Official Gazette, available at <https://www.officialgazette.gov.ph/2018/08/31/proclamation-no-572-s-2018/>, accessed on 4 February 2019.

¹¹⁶ Proclamation No 572 (see note 115 above).

¹¹⁷ Carag, K, ‘Trillanes presents video evidence in the Senate, proof that he filed his amnesty application’ DZRH News, 4 September 2018, available at dzhnews.com.ph/trillanes-presents-video-evidence-in-the-senate-proof-that-he-filed-his-amnesty-application/, accessed on 3 February 2019.

¹¹⁸ Requejo, RE, Zurbano, JE, and Ramos-Araneta, M, ‘Trillanes arrested, posts bail’ Manila Standard, 26 September 2018, available at <http://manilastandard.net/news/top-stories/276450/trillanes-arrested-posts-bail.html>, accessed on 5 February 2019.

¹¹⁹ Requejo, Zurbano, and Ramos-Araneta (see note 118 above).

case for his involvement in the 2003 Oakwood Mutiny.¹²⁰ A group of lawyers calling themselves Volunteers Against Crime and Corruption (VACC) likewise filed sedition, proposal to commit *coup d'état* charges, and graft complaints against the senator in 2017.¹²¹ Similarly, Labour Undersecretary Jacinto Paras filed a grave threat complaint against Trillanes for allegedly threatening to kill him during a confrontation inside the Philippine Senate.¹²² Finally, in September 2018, Duterte's son also filed libel complaints against the lawmaker after the latter reportedly accused him of corruption.¹²³

Part 3: Conclusion

In 2018, the already shrunken democratic space in one of Asia's oldest democracies is once again having to fend off blows after a series of shameless and blatant violations of human rights occurring in her own backyard. The President's popularity remains high despite the number of corpses on the streets and his utter disrespect for the rule of law, an example of how adept the administration has become at silencing dissenters. As more and more individuals and groups are shut down, by either branding them as protectors of drug peddlers, yellowtards (supporters of the previous administration), and/or fake news propagators, democratic checks and balances are being increasingly incapacitated.

From the unconstitutional and unprecedented ousting of a Supreme Court Chief Justice to the clear curtailment of freedom of the press, the Philippines has taken a nose-dive in its human rights record since the fall of Marcos in the 80s. Philippine-branded democracy is considered one of the most complicated in the world as it is constantly derailed by "guns, goons, and gold."¹²⁴ The lives lost in Duterte's so-called war on drugs is a symbol of the Philippine government's abandonment of its obligation to protect, promote, and fulfil human rights. With all these failures, it is clear that the democratic obelisk that the Philippines claims to be is nothing more than a delusion.

¹²⁰ Requejo, Zurbano, and Ramos-Araneta (see note 118 above).

¹²¹ Rey, A, 'Cases, complaints filed vs Trillanes under Duterte administration' Rappler, 8 September 2018, available at <https://www.rappler.com/nation/211526-cases-complaints-against-trillanes-duterte-administration>, accessed on 4 February 2019.

¹²² Rey (see note 121 above).

¹²³ Rey (see note 121 above).

¹²⁴ This phrase was coined by the media to describe the violence and vote-buying characterizing political campaigns in the Philippines. See, for example, 'Elections 2007: 3Gs rear hideous head on campaign's day 3' GMA News Online, 15 February 2007, available at <https://www.gmanetwork.com/news/news/nation/30780/elections-2007-3gs-rear-hideous-head-on-campaign-s-day-3/story/>, accessed on 23 February 2019.

SINGAPORE

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

SINGAPORE

Joana Maria Cassinerio*

Part 1: Overview of Singapore

A. Country Background

Singapore Facts	
Geographical size	721.5 sq km
Population	5.64 million ¹
Ethnic breakdown ²	Main ethnic groups: Chinese (76.3%), Malay (15.2%), Indian (7.3%), Other (1.2%)
Official language(s)	English (working language) Malay (national language)
Literacy rate (aged 15 years and above)	97.3% ³
Life expectancy	83.1 ⁴
GDP	SG\$487,087.5 (per capita SG\$86,383) ⁵
Government	Republic with a unicameral Westminster parliamentary system of government. Although there are three branches of government—judiciary, legislature and executive—no clear demarcation exists between the latter two.
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 November 2018, the People’s Action Party chose Finance Minister Heng Swee Keat to run for prime minister in the next election. Issues include an ever-widening inequality gap, the government’s increasing use of defamation laws and capital punishment, and the continuing denial of the rights of speech, association, and assembly.

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¹ Data from 2018. ‘Population in brief 2018’ Strategy Group, Prime Minister’s Office, Department of Statistics Singapore, September 2018, available at <https://www.strategygroup.gov.sg/images/PublicationImages/population-in-brief-2018.pdf>, accessed on 3 April 2019, at 4. The total population comprises both Singapore residents and non-residents.

² Data from 2018. Strategy Group (see note 1 above), at 19.

³ Data from 2018. Department of Statistics Singapore, available at <https://www.singstat.gov.sg/find-data/search-by-theme/population/education-language-spoken-and-literacy/latest-data>, accessed on 3 April 2019.

⁴ Data from 2017. Department of Statistics Singapore, available at <https://www.singstat.gov.sg/find-data/search-by-theme/population/death-and-life-expectancy/latest-data>, accessed on 3 April 2019.

⁵ Data from 2018. ‘National accounts’ Department of Statistics Singapore, available at <https://www.singstat.gov.sg/find-data/search-by-theme/economy/national-accounts/latest-data>, accessed on 3 April 2019.

ASEAN chairmanship 2018

Under the slogan, “Resilient and Innovative,” Singapore succeeded the Philippines as ASEAN Chair for the year 2018. As explained on the ASEAN website, the slogan

encapsulates [Singapore’s] vision for ASEAN to be united in the face of growing uncertainties in the global strategic landscape. ASEAN must also be adaptable and forward-looking, so that [it] can harness opportunities and manage challenges from disruptive digital technologies, equip [its] citizens with skills to build a future-ready ASEAN and boost [its] capabilities to make [its] cities smarter.⁶

This reflects the country’s efforts to be the first Southeast Asian member state to build a “smart nation.” Initiating a technology revolution a few years ago, Singapore 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. In addition, 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 the Personal Data Protection Act (PDPA) of 2012. Since Prime Minister Lee Hsien Loong announced Singapore’s aspiration to become the world’s leading tech-country, several proposals have been made to amend the PDPA in favour of realising an effective Privacy Law. In early 2018, for example, Singaporean authorities released guidelines for companies to anonymise personal data.⁷

As of 2018, several foreign and local companies, including GrabCar, were either warned or fined by the Singapore Data Protection Commission for failing to protect or for misusing the private information of citizens and residents.⁸ Under the country’s legal framework, Grab was sued for its merger with Uber for breaching the Competition Law as authorities claimed the merger could lead to a significant decrease in competition as prohibited by the city-state.⁹

⁶ ‘Welcome to Singapore’ ASEAN Singapore 2018, available at <https://www.asean2018.sg/About/ASEAN-2018>, accessed on 8 January 2019.

⁷ For more information, see, ‘Privacy and data security blog’ BNA, available at <https://www.bna.com/singapore-gives-data-b73014474820/>, accessed on 10 January 2019.

⁸ For more information and articles related to data and personal privacy issues, see, Aw, C, ‘Singapore Data Protection Commission fines carpooling service and LAN gaming centre’ mondaq, available at <http://www.mondaq.com/x/743838/data+protection/Singapore+data+protection+commission+finer+carpooling+service+and+LAN+gaming+centre?type=related>, accessed on 10 January 2019.

⁹ For more information, see, ‘Singapore’s competition watchdog not notified about Grab-Uber deal’ Channel NewsAsia, available at <https://www.channelnewsasia.com/news/singapore/grab-uber-deal-competition-watchdog-not-notified-10077256>, accessed on 10 January 2019.

Also, on 5 February 2018, the Cybersecurity Law¹⁰ entered into force on 31 August of the same year, prompting various stakeholders to cite concerns as to the costliness of such a program as well as issues related to incident reporting, investigation requirements, and personal privacy rights.

Economic progress

Compared to 2017, Singapore's economy has continued to grow. According to the Monetary Authority of Singapore, overall GDP growth stood at around 3.5% in 2018¹¹ despite regional and international trade conflicts, mostly stirred by issues concerning high inflation as well as protectionist measurements by and between the United States, the European Union, China, and Russia.

Besides its focus on regional collaboration within ASEAN, Singapore has also stepped up efforts to deepen ties with India, another country on the rise in terms of innovation, technology, and digitalisation. The already existing Singapore-India Comprehensive Economic Cooperation Agreement is therefore set to forge even closer ties between the two 'lion' countries in the upcoming future.

Singapore Summit 2018

Besides its taking over of the chairmanship, a noteworthy event in 2018 was the 33rd ASEAN Summit (or Singapore Summit) in September. Attended by politicians and leaders throughout the globe, including US Vice President Mike Pence, the summit's themes revolved around multilateral cooperation and trade opportunities between ASEAN member states and the world. The most significant event, however, was the historic meeting between US President, Donald Trump, and North Korean President, Kim Jong-Un. Despite hostilities exchanged between both countries prior to the summit, both leaders—allegedly with the involvement and under the influence of China's Xi Jinping—sought to close the gap between the West and the isolated Asian nation, especially in terms of nuclearization.

Political situation

In late November 2018, Singapore's ruling party, the People's Action Party (PAP) elected Finance Minister, Heng Swee Keat, to run for the office of prime minister in the next election. Current Prime Minister, Lee Hsien Loong, appeared pleased with the nomination. A country in which prime ministers usually retire at 70, Mr Lee, himself turning 70 in February 2022, has served in the position since 2004 suggesting that

¹⁰ For more information, see, Cramer, S, Ang, W, Olds, D, and Lua, J, 'Singapore's new Cybersecurity Act comes into force: Here's what you need to know' Norton Rose Fulbright, 6 September 2018, available at <https://www.dataprotectionreport.com/2018/09/singapores-new-cybersecurity-act-come-into-force-heres-what-you-need-to-know/>, accessed on 10 January 2019.

¹¹ For more information, see, Sen, SL, 'Singapore's economic growth to remain steady in 2018 despite rising trade friction: MAS chief Ravi Menon' Business Times, 4 July 2018, available at <https://www.businesstimes.com.sg/government-economy/singapores-economic-growth-to-remain-steady-in-2018-despite-rising-trade-friction>, accessed on 10 January 2019.

elections could take place as early as 2019. Mr Heng was also appointed first assistant secretary-general at the same party meeting.

*Singaporean society in 2018*¹²

Aside from an impending change in political leadership, an increase in innovative technologies and an expanding GDP, the city-state has been struggling with an ever-widening inequality gap. In October this year, Oxfam slammed its commitment to reducing inequality, specifically in terms of taxation practices, low public social spending (in, e.g. education, health), a lack of equal pay or minimum wage provisions, and non-discrimination laws for women. As a result, Oxfam gave it a ranking of 149 out of 155 countries, placing it immediately next to less developed nations such as Bangladesh, Madagascar, Sierra Leone, Haiti, and Nigeria.¹³ As such, Singapore is considered one of the ten worst countries in the world as regards efforts to bridge the gap between rich and poor.

As a direct result, an increase in negative sentiments within Singaporean society was revealed in 2018.^{14,15} The third assessment of its kind (the first two were conducted in 2012 and 2015) reflected a common negative perception of Singaporean society amongst its residents. The 2018 National Values Assessment revealed that seven of the top ten values perceived by Singaporeans to reflect their society today were predominantly negative, i.e. 'kiasu',¹⁶ complaining, competitiveness, materialistic, blame, 'kiasi',¹⁷ and self-centredness. While Singaporeans complimented efforts to improve educational opportunities, care for the elderly, and effective healthcare, it is clear the government must also tackle the aforementioned predominantly negative attitudes.

B. International Human Rights Commitments and Obligations

In August 2018, the Singaporean human rights NGO, MARUAH, submitted a collective mid-term report to the Office of the United Nations High Commissioner for Human Rights. The country's Universal Periodic Mid-Term Report (UPR) 2018 focused on various topics covered by international human rights instruments, such as elections,

¹² For more information, see, Huang, J, 'In a Singapore full of crazy rich foreigners, inequality is becoming ingrained' South China Morning Post, 29 September 2018, available at <https://www.scmp.com/comment/insight-opinion/united-states/article/2160954/singapore-full-crazy-rich-foreigners>, accessed on 11 January 2019.

¹³ 'The Commitment to Reducing Inequality Index' Oxfam International, available at <https://www.oxfam.org/en/research/commitment-reducing-inequality-index-2018>, accessed on 11 January 2019.

¹⁴ For more information, see, Wong, PT, 'Singapore society: 'Kiasu' and 'complaining', but one that cares for the elderly' Today, 30 July 2018, available at <https://www.todayonline.com/singapore/singapore-society-kiasu-and-complaining-one-cares-elderly>, accessed on 11 January 2019.

¹⁵ For more information, see, 'Press release: 2018 National Values Assessment provides update on Singaporeans' views about society and their workplace' a-advantage consulting, available at <http://www.aadvantage-consulting.sg/Press-Release:-2018-National-Values-Assessment-Provides-Update-on-Singaporeans-Views-about-Society-and-their-Workplace>, accessed on 11 January 2019.

¹⁶ 'Kiasu' describes a selfish person.

¹⁷ 'Kiasi' describes a fear of death.

politics, the freedoms of expression, peaceful assembly and association, and censorship. For example, the government was once again criticised for its strict regulations regarding the registration processes of news outlets in Singapore. As an example, UK-based, New Naratif, sought to register a Singaporean subsidiary which was denied in early 2018 despite the director and editor-in-chief both being Singaporeans. To justify the rejection, the government reasoned that the publication was “being used by foreigners to pursue a political activity in Singapore.” Similarly, in terms of freedom of expression, assembly and association, famous Singaporean artist, Seelan Palay, was charged in mid-May 2018 for performing an art piece. Refusing to pay the fine of SG\$2,500 (app US\$1,848), Palay was imprisoned for two weeks. Lastly, in terms of censorship, the Singaporean government passed a bill in March 2018 allowing authorities to enter premises without a search warrant to confiscate films deemed damaging to the public interest.¹⁸

As illustrated in Table 1 below, Singapore has so far ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2008, the Convention on the Rights of Persons with Disabilities (CRPD) in 2013, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 2017. While there are no new developments in terms of Singapore’s ratification of the remaining international human rights instruments, its mid-term UPR offered five important recommendations. For example, it emphasised the significance of recognising the needs of disabled persons and the need to ratify the International Covenant on Civil and Political Rights (ICCPR). Additionally, it requested the Singaporean government acknowledge and respect its obligations to the CRC, CRPD, and CEDAW while requesting the removal of remaining reservations to the latter. Finally, it recommended creation of a National Action Plan including the setting up of a National Human Rights Commission.

Table 1: Ratification Status of International Instruments - Singapore¹⁹

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)		

¹⁸ ‘Universal periodic review mid-term report’ Maruah, 2018, available at <https://maruah.org/upr/>, accessed on 11 January 2019.

¹⁹ ‘Singapore – Status of Ratification’ 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
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		
Convention on the Rights of Persons with Disabilities (CRPD)		18 Jul 2013

Although not a signatory to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, it is disturbing to note Singapore's continuous support for the death penalty. While in 2012 and 2013, no executions took place,²⁰ 2018 saw the execution of nine persons (all for drug offences) sparking an international outcry from human rights defenders and governments. MARUAH, in its mid-term periodic review, also criticised the country's practice of decreasing the time between a death row inmate's rejected appeal for clemency and the scheduling of his or her execution. As a result, some prisoners on death row were even executed on the same day their clemency appeal was rejected.

The nation continues to hold reservations towards global human rights instruments including the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Convention for the Protection of All Persons from Enforced

²⁰ For more information, see, 'Death penalty database' Death Penalty Worldwide, available at <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Singapore>, accessed on 11 January 2019.

Disappearance, and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Singapore's negative position towards the ICCPR corresponds to its stand on the ICESCR—one covers the right to speak freely and gather, the other covers basic citizen rights—both sets of rights have seen a steady decline in the city-state throughout 2018.

Regarding CED, the country is one of many not yet ratifying or signing this Convention. As of 2018, only 59 state parties have ratified the CED while 98 are signatories.²¹ This is particularly worrying because as one commentator put it:

*the reluctance of states to ratify the Convention is concerning. It is concerning because it shows a flagrant lack of interest by states in the victims of enforced disappearances perpetrated by non-state actors (and inadequate action in response). It is also concerning as it may suggest that states are unwilling to ratify the Convention because they are complicit in this practice (and fear the consequences for failure to uphold the duties under the Convention if ratified).*²²

Non-approval of the ICMW can be traced back to an apparent disconnect between the Singaporean government's national goals on the one hand, and the general population's rights and state obligations as depicted in the ICMW on the other.

It has additionally not marked or endorsed any of the discretionary conventions, such as the Optional Protocol to the Convention against Torture, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, as well as the Second Optional Protocol to the International Covenant on Civil and Political Rights pertaining to the annulment of capital punishment. While the last can be understood through Singapore's maintenance of its death penalty, reservations to other referenced conventions for the most part relate to its reluctance to undertake any responsibilities it believes may destabilise harmony within the city-state.

Developments in 2018

In the wake of having signed the ICERD on 19 Oct 2015, Singapore confirmed the Convention on 27 November 2017. The endorsement was a legitimate advance for the government since it is in accordance with the nation's lasting mission to maintain harmony and congruity among its heterogeneous populace, which, other than the four principle ethnic networks, is home to numerous minor ethnicities. Be that as it may,

²¹ See, 'United Nations Treaty Collection' available at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-16&chapter=4&clang=_en, accessed on 14 February 2019.

²² See, Ochab, EU, 'The International Day of the Victims of Enforced Disappearances' Forbes, 29 August 2018, available at <https://www.forbes.com/sites/ewelinaochab/2018/08/29/the-international-day-of-the-victims-of-enforced-disappearances/#14a8e821b42e>, accessed on 14 February 2019.

Singapore's reservation to the Convention (concerning Art 6) made in 1965 must be noted in which it

*interprets the requirement of the Convention concerning 'reparation or satisfaction' as being fulfilled if one or other of these forms of redress is made available and interprets 'satisfaction' as including any form of redress effective to bring the discriminatory conduct to an end.*²³

Ratification of the ICERD aside, there were no visible positive developments in terms of human rights instruments in 2018.

C. National Laws Affecting Human Rights

Being the most developed of all ten ASEAN member states in such categories as GDP and life expectancy,²⁴ Singapore's Constitution addresses many fundamental rights and freedoms of its citizens²⁵ with Part IV (entitled, "Fundamental Liberties") mapping out some human rights-related liberties.

Liberty of the person

No person shall be deprived of his life or personal liberty save in accordance with law (Art 9): Whilst this article appears to respect one of the most important, non-derogable rights, i.e. the right to life, it also simultaneously imposes conditions on the right through the addition of the condition, "in accordance with law." As mentioned earlier, Singapore carries out one of the highest numbers of executions of any country in the world, and therefore disregards the right to life in its entirety. However, it must be acknowledged that deprivation of personal liberty must be in accordance with law as is the case in any country, e.g. to face imprisonment for crimes against society.

Prohibition of banishment and freedom of movement

No citizen of Singapore shall be banished or excluded from Singapore (Art 13): This article is specifically interesting due to the words "banished" and "excluded." Although upon first examination, it seems to secure the right of Singaporean citizens to freely enter and leave the country at any point, it is also important to look at Part X of the Constitution where the government maps out its right to deprive Singaporeans of their citizenship, effectively rendering these individuals stateless. This directly violates the right to nationality as stated by the United Nations Human Rights Office of the High

²³ See, 'United Nations Treaty Collection' available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en#EndDec, accessed on 14 February 2019.

²⁴ For further reading, see, Brent, T, 'How Southeast Asian countries compare on growth and development' Southeast Asian Globe, 2 February 2018, available at <http://sea-globe.com/how-southeast-asian-countries-compare-growth-development/>, accessed on 12 January 2019.

²⁵ The Constitution of the Republic of Singapore, available at <https://sso.agc.gov.sg/Act/CONS1963>, accessed on 12 January 2019.

Commissioner.²⁶ As such, Art 129(3)(a)(i) (on the deprivation of citizenship), Art 130 (on depriving a child of a person losing citizenship of their citizenship), and Art 135(1)(c)(i) (on depriving citizenship following the exercise of the right of foreign nationals to live abroad) are very clear on the government's right to deprive individuals of their citizenship.

Therefore, the prohibition against banishment and freedom of movement are fragile rights in Singapore as citizens are subject to the illegal practice of losing their citizenship, which may also eventually prohibit them from remaining in or returning to the country.

Freedom of speech, assembly, and association

Freedom of expression is a right manifested in some of the most important human rights instruments, i.e. the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights. However, many ASEAN countries challenge the basic rights of freedom of speech, assembly, and association. While Singapore has not ratified the ICCPR, it is a signatory party of the UDHR, and as such should be committed to respecting these freedoms.

The Constitution addresses the freedoms in Art 14 as follows:

- (a) every citizen of Singapore has the right to freedom of speech and expression (Art 14a);
- (b) all citizens of Singapore have the right to assemble peaceably and without arms (Art 14b);
- (c) all citizens of Singapore have the right to form associations (Art 14c).

However, rights related to freedom of speech, assembly, and association are subject to two clauses as follows:

(2) Parliament may by law impose:

- (a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;

²⁶ 'Right to a nationality and statelessness' OHCHR, available at <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>, accessed on 12 January 2019.

- (b) on the right conferred by clause (1)(b), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order; and
 - (c) on the right conferred by clause (1)(c), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, public order or morality.
- (3) Restrictions on the right to form associations conferred by clause (1)(c) may also be imposed by any law relating to labour or education.

With such conditions, the Singaporean government secures its right to neglect human rights whenever it wishes to do so.

Besides various critical points in the Singaporean Constitution—Outlook 2017 described more detailed challenges as regards citizenship—other provisions, such as s.377A of the Penal Code, also contain discriminatory language.²⁷ This determines that:

any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.

Therefore, s.377A outlaws the practice of men having sex with men and is in direct violation of the rights of the LGBTQ+ community in Singapore. This is in stark contrast to the commitment made by Singapore at the 70th anniversary of UDHR, in which the delegation said: “We treasure, and will protect every Singaporean against any threat, regardless of their race, language, religion, gender or sexual orientation.”²⁸

Accordingly, when the Indian Supreme Court decided in early September 2018 to strike down national laws criminalising sexual relations between men, human rights activists in Singapore took the occasion to challenge their government to do the same. For example, former Singaporean ambassador to the United Nations, Tommy Koh, applauded the Indian government for its efforts to respect gay rights, and urged the Singaporean LGBTQ+ community to similarly challenge s.377A of the Penal Code.²⁹

²⁷ ‘Penal Code: 377A outrages on decency’ Singapore Statutes Online, available at <https://sso.agc.gov.sg/Act/PC1871?ProvIds=pr377A->, accessed on 12 January 2019.

²⁸ ‘Statement by the delegation of the Republic of Singapore at the high-level panel on the 70th anniversary of UDHR and 25th anniversary of VDPA, Permanent Mission of the Republic of Singapore, 28 February 2018’ available at https://www.mfa.gov.sg/content/mfa/overseasmission/geneva/speeches_and_statements-permanent_mission_to_the_UN/2018/201802/press_20180228.html, accessed on 12 January 2019.

²⁹ Yahya, Y, ‘Tommy Koh’s Facebook comment reignites debate on Singapore’s gay sex law’ Straits Times, 7 September 2018, available at <https://www.straitstimes.com/politics/tommy-kohs-facebook-post-on-gay-sex-law-reignites-debate-on-singapores-penal-code>, accessed on 12 January 2019.

This led many government officials, the Singapore Islamic Scholars and Religious Teachers Association (Pergas), and the Catholic Archbishop of Singapore to also weigh into the topic, calling upon Singaporeans to “reject the repeal for the future of our families, humanity, and society.”^{30,31}

D. National Laws Threatening Human Rights

*Defamation Law*³²

The defamation law poses a continuous threat to people’s right to express themselves and hold an opinion. As such, Human Rights Watch (HRW) has criticised the government on various occasions for its lack of respect for freedom of expression.³³ For instance, Terry Xu and Daniel Augustin De Costa, editor and writer of the online news outlet, The Online Citizen, were charged with criminal defamation in December 2018 when De Costa, the alleged author of the letter, accused the Singaporean government’s highest officials of corruption. This letter was subsequently published on The Online Citizen website, leading officials to not only prosecute De Costa but also Xu as editor. Being among the very few existing alternative news sources in the country, human rights defenders fear further restrictions on press freedom in general and The Online Citizen in particular.

Proposed amendments to the Criminal Law (Temporary Provisions) Act^{34,35}

In early 2018, HRW and other civil society organizations urged the Singaporean government to drop plans to amend its Criminal Law Act. As of now, it is “an Act to make temporary provisions for the maintenance of public order, the control of supplies by sea to Singapore, and the prevention of strikes and lock-outs in essential services.” Since being enacted in 1955, the proposed amendment would be the fourteenth of its kind, and would continue to limit the rights of people while enhancing government power to detain a person without trial indefinitely. Bearing in mind the many limitations that people living in the city-state already face, further restraints on their rights to freedom and a fair trial would be highly undesirable.

³⁰ ‘Section 377A should not be repealed under present circumstances: Archbishop of Singapore’ Today, 18 September 2018, available at <https://www.todayonline.com/singapore/section-377a-should-not-be-repealed-under-present-circumstances-archbishop-singapore>, accessed on 12 January 2019.

³¹ Choo, C, ‘Muslim scholars, religious leaders say repeal of Section 377A has ‘worrying implications,’ a threat to family values’ Today, 19 September 2018, available at <https://www.todayonline.com/singapore/muslim-scholars-religious-leaders-say-repeal-section-377a-has-worrying-implications-threat>, accessed on 12 January 2019.

³² ‘How powerful people use criminal-defamation laws to silence their critics’ 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 12 January 2019.

³³ ‘Singapore: Drop defamation charges against editor’ Human Rights Watch, 13 December 2018, available at <https://www.hrw.org/news/2018/12/13/singapore-drop-defamation-charges-against-editor>, accessed on 12 January 2019.

³⁴ ‘Singapore: End detention without trial’ Human Rights Watch, 5 February 2018, available at <https://www.hrw.org/news/2018/02/05/singapore-end-detention-without-trial>, accessed on 12 January 2019.

³⁵ ‘Criminal Law (Temporary Provisions) Act 2000’ available at <https://sso.agc.gov.sg/Act/CLTPA1955?ProvIds=legis#legis>, accessed on 12 January 2019.

Contempt Law^{36,37}

Under the Contempt Law, criticism of Singapore's judiciary is prohibited. Thus, in April 2018, when prominent Singaporean activist, Jolovan Wham, wrote a Facebook post stating that "Malaysia's judges are more independent than Singapore's for cases with political implications," he was subsequently charged by the Attorney-General's Chambers for "scandalising the judiciary." John Tan, vice-chairman of the Singapore Democratic Party, concurred and was similarly charged when he commented on his Facebook page that Wham's prosecution confirmed the truth behind court bias towards the government. Again, this law showcases the government's hostility towards free speech, and hence poses a significant threat to the legal rights of anyone being tried by Singaporean courts. In October 2018, both Wham and Tan were found guilty of all charges.

Likewise, the Sedition Act also violates freedom of speech and expression. In an interview with CNN in June 2018, Prime Minister Lee Hsien Loong assured Singaporeans that they were free to say or publish whatever they wanted as long as it was in line with the country's regulations on "sedition, libel, and contempt."³⁸ Common to all ten ASEAN member states, while these countries may grant many freedoms and rights to their citizens, such rights are generally tempered by various conditions and rules, often considered part of the "ASEAN Way."

The Public Order and Safety (Special Powers) Act^{39,40}

This Act was passed by Parliament in March 2018 and approved by President Halimah Yacob one month later. It seeks to:

extend police powers to better prevent and respond to any incident or likely incident involving serious violence or large-scale public disorder in Singapore, to repeal the Public Order (Preservation) Act (Chapter 258 of the 1985 Revised Edition), and to make consequential and related amendments to certain other Acts.

³⁶ 'Singapore: Drop charges for criticizing judiciary' Human Rights Watch, 16 May 2018, available at <https://www.hrw.org/news/2018/05/16/singapore-drop-charges-criticizing-judiciary>, accessed on 13 January 2019.

³⁷ 'Singapore: First convictions under 'contempt of court' law confirms fears over muzzling critics' Amnesty International, 9 October 2018, available at <https://www.amnesty.org/en/latest/news/2018/10/singapore-first-convictions-under-contempt-of-court-law-confirms-fears-over-muzzling-critics/>, accessed on 13 January 2019.

³⁸ 'CNN interview with PM Lee Hsien Loong' Prime Minister's Office Singapore, 11 June 2018, available at <https://www.pmo.gov.sg/newsroom/cnn-interview-pm-lee-hsien-loong>, accessed on 13 January 2019.

³⁹ 'Public Order and Safety (Special Powers) Act 2018' Government of Singapore, available at <https://sso.agc.gov.sg/Act/POSSPA2018>, accessed on 13 January 2019.

⁴⁰ 'Singapore: Reject sweeping Public Order Bill' Human Rights Watch, 12 March 2018, available at <https://www.hrw.org/news/2018/03/12/singapore-reject-sweeping-public-order-bill>, accessed on 13 January 2019.

Article 6 confers “additional powers to the police” while imposing “new obligations on other persons, relating to the prevention of, and the response to serious incidents occurring or likely to occur in Singapore.” Bearing in mind the country makes extensive and excessive use of its defamation, sedition, and contempt laws, applying this legislation would likely be a simple matter, further endangering human rights in Singapore.

LGBTQ+ related rights

Under s.377A of the Penal Code, Singapore criminalized the act of men engaging in sexual intercourse with men. Singaporean activists petitioning for the repeal of this provision in 2018 were starkly criticised by the Catholic Church as well as religious representatives of the Muslim community despite the fact s.377A is in direct violation of Art 9 of the Singaporean Constitution granting every citizen the right to personal liberty.

E. Recent Court Cases Relating to Human Rights^{41,42}

Singapore’s Court of Appeal and High Court recently ruled on cases relating to political issues and capital punishment, both topics garnering much interest in the country.

Capital punishment

Singapore has a mandatory death penalty which it makes ample use of. In the High Court and the Court of Appeal, many judgments handed down to both Singaporean nationals and foreigners relating to drug offences in 2018 resulted in a significant number of death penalties. Harm Reduction International (HRI), an organisation working on drug-related societal challenges, found in a recent report that among 33 countries carrying the death penalty for drug abuse, Singapore was amongst the top five countries actually applying capital punishment, placing it immediately after China, Iran, Saudi Arabia, and Malaysia.^{43,44} With the latter set to abolish the death penalty entirely, this would make Singapore one of the top 4 deadliest countries in which to be convicted of drug crimes. In fact, recent years have seen an increase in executions on Singaporean soil. While a few years ago, annual executions ranged between 0 and 4, 2017 and 2018 saw 8 and 9 people, respectively, being executed.

⁴¹ See, ‘High Court’ Singapore Law Watch, available at <https://www.singaporelawwatch.sg/Judgments/High-Court>.

⁴² See, ‘Court of Appeal’ Singapore Law Watch, available at <https://www.singaporelawwatch.sg/Judgments/Court-of-Appeal>.

⁴³ ‘Death Penalty for Drug Offences: Global Overview 2017 report’ Harm Reduction International, available at <https://www.hri.global/the-death-penalty-for-drug-offences>, accessed on 11 January 2019.

⁴⁴ For further information, see, Han, K, ‘The last man executed in Singapore, until the next’ Interpreter, 29 October 2018, available at <https://www.lowyinstitute.org/the-interpreter/singapore-death-penalty>, accessed on 11 January 2019.

The country's legal database showcases judgements at the Court of Appeal, the High Court, as well as the Intellectual Property Office of Singapore, and the Personal Data Protection Commission. The focus of this chapter reflects the government's increasing use of the death penalty.

Political cases

Leong Sze Hian v Lee Hsien Loong: One of the most prominent cases of 2018 concerned the defamation lawsuit filed by Singapore's Prime Minister Lee Hsien Loong against local activist and blogger, Leong Sze Hian. In early December 2018, Leong shared an article on his private Facebook page that was picked up and published by a Malaysian news outlet claiming that Prime Minister Lee and Malaysia's then-Prime Minister Najib Razak were involved in a money laundering scandal. Though Leong merely shared the article (no personal comments were made by him), he was nonetheless sued for defamation. In late December 2018, Leong counter-sued the Prime Minister, writing on his Facebook page: "I have today filed my defence to the Prime Minister's defamation suit against me. I have also filed a counterclaim against him for abusing the process of the court in bringing the claim against me."⁴⁵ The Prime Minister's brother, Lee Hsien Yang, gave financial assistance to Leong to cover his legal fees, a step that was unsurprising to many as the Prime Minister and his two siblings have been engaged in personal disagreements ever since their father and also the country's founding father, Lee Kuan Yew, died.⁴⁶

The Online Citizen case: Another case that occurred shortly before the Leong lawsuit involved the editors, Terry Xu and Daniel Augustin De Costa, who both worked for the news website, The Online Citizen. In December 2018, De Costa wrote and published a letter on the outlet describing the Singaporean government as corrupt. Both he and Xu were charged with defamation.

Han Hui Hui: Albeit not strictly legal, it is also worth mentioning the case of political activist, Han Hui Hui. While attending the final day of a hearing held by the Select Committee on Deliberate Online Falsehood on 29 April, Han held up an image of a book cover entitled, *Authoritarian Rule of Law-Legislation, Discourse, and Legitimacy in Singapore*. Regarded as provocation by parliamentary members and staff, Han was asked to leave the venue. When she refused to do so, she was violently removed by staff members.^{47,48}

⁴⁵ Stolarchuk, J, 'Leong Sze Hian is suing PM Lee for 'abusing the process of the court'' The Independent, 26 December 2018, available at <http://theindependent.sg/breaking-leong-sze-hian-is-suing-pm-lee-for-abusing-the-process-of-the-court/>, accessed on 13 January 2019.

⁴⁶ 'Blogger Leong Sze Hian fights back against Singapore PM Lee Hsien Loong's libel suit, wins support from leader's brother Lee Hsien Yang' South China Morning Post, 27 December 2018, available at <https://www.scmp.com/news/asia/southeast-asia/article/2179689/singaporean-blogger-fights-back-against-prime-ministers>, accessed on 14 January 2019.

⁴⁷ 'Singapore: Freedom of expression undermined in hearings on 'fake news'' Amnesty International, 3 April 2018, available at <https://www.amnesty.org/en/documents/asa36/8160/2018/en/>, accessed on 13 January 2019.

⁴⁸ Sim, R, 'Han Hui Hui removed from Select Committee hearing for 'creating a disturbance:' Parliament spokesman'

Part 2: Outstanding Human Rights Issues⁴⁹

A. Labour Exploitation of Migrant Workers^{50,51}

Although a tiny nation of roughly 5.6 million inhabitants, Singapore's consistent progress as a finance and technology hub has also led to a rise in construction requiring the labour of migrant workers. Additionally, Singapore is a common workplace destination for foreign domestic workers (FDW). According to the Ministry of Manpower (MOM), in 2018, there were a total of 250,000 FDW and 280,400 foreign construction workers in the city-state.⁵² While most FDW hail from Indonesia and the Philippines, the majority of construction workers are South Asian, Burmese, and Chinese nationals. However, as Singapore is one of many countries without a regulated minimum wage based on the belief that "employers should pay their employees (whether local or foreign), based on their skills, capabilities, and competencies,"⁵³ migrant workers remain underpaid and highly exploited.

Responding to a 2017 report about the exploitation of foreign domestic workers in Singapore published by Research Across Borders (RAB), an independent research consultancy, the Ministry denied such claims, responding with its own survey which stated that:

MOM's survey of 1,000 FDWs in 2015 found that 97% were satisfied working here, would continue working here, and had no issues with workload. In fact, as of Sep 2017, about 2 in 3 (160,000) FDWs have worked in Singapore for over two years, and about 1 in 2 (110,000) have worked here for over four years. As can be seen, the RAB survey painted a misleading picture of the employment of FDWs here.⁵⁴

Straits Times, 29 March 2018, available at <https://www.straitstimes.com/politics/han-hui-hui-removed-from-select-committee-hearing-for-creating-a-disturbance-parliament>, accessed on 14 January 2019.

⁴⁹ 'Singapore – Events of 2017' Human Rights Watch, available at <https://www.hrw.org/world-report/2018/country-chapters/singapore>, accessed on 14 January 2019.

⁵⁰ 'Population and population structure' Department of Statistics Singapore, available at <https://www.singstat.gov.sg/find-data/search-by-theme/population/population-and-population-structure/latest-data>, accessed on 14 January 2019.

⁵¹ Han, K, 'Singapore's migrant workers struggle to get paid' CNN, 24 February 2018, available at <https://edition-m.cnn.com/2018/02/24/asia/singapore-migrant-workers-intl/index.html?r=https%3A%2F%2Fwww.google.com&rm=1>, accessed on 14 January 2019.

⁵² 'Foreign workforce numbers' Ministry of Manpower, available at <https://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers>, accessed on 14 January 2019.

⁵³ 'Is there a prescribed minimum wage for foreign workers in Singapore?' Ministry of Manpower, available at <https://www.mom.gov.sg/faq/work-permit-for-foreign-worker/is-there-a-prescribed-minimum-wage-for-foreign-workers-in-singapore>, accessed on 14 January 2019.

⁵⁴ 'Is it true that over 60% of foreign domestic workers here are exploited?' Ministry of Manpower, available at <https://www.gov.sg/factually/content/is-it-true-that-over-60-per-cent-of-foreign-domestic-workers-here-are-exploited>, accessed on 14 January 2019.

Despite such findings, it would likely be wise to question whether migrant workers without access to a minimum wage would indeed be satisfied with their working conditions.

B. Gender Identity and Sexual Orientation

The LGBTQ+ community continues to face harassment and discrimination at the hands of the Singaporean government particularly as s.377A of the Penal Code still criminalises men for having sex with men. Despite various protests and petitions against this Code in recent years, as well as the annual Pink Dot rally, the government has made no attempt to de-criminalise gay sex.

C. Capital Punishment

As already discussed, 2018 has seen a deterioration in terms of the right to life in Singapore. According to data provided by Cornell Law School's Cornell Center on the Death Penalty Worldwide,⁵⁵ 2018 saw the highest number of people being executed in the country. At the same time, the government has shortened the time between rejection of a defendant's last appeal and his or her execution date. While this often happens in the same week, in some cases, it may even occur on the same day.

D. Ratification of International Human Rights Instruments

Singapore's recent ratification of the International Convention on the Elimination of All Forms of Racial Discrimination was a praiseworthy step towards realising the rights of diverse groups. At the same time, however, it is also argued the government needs to recognise that the term "racial discrimination" should not only apply to "race, colour, descent, or national or ethnic origin"⁵⁶ but also to people of different sexual orientations. As the Washington Post stated:

Many people have argued that sexual orientation discrimination should be treated like race discrimination. Sexual orientation and race, the argument goes, are both characteristics that are almost entirely irrelevant to a person's ability to do certain things, and are outside the person's control.⁵⁷

⁵⁵ 'Cornell Center on the Death Penalty Worldwide' Cornell Law School, 4 April 2011, available at <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Singapore>, accessed on 14 January 2019.

⁵⁶ 'International Convention on the Elimination of All Forms of Racial Discrimination' 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 14 January 2019.

⁵⁷ Volokh, E, 'Is sexual orientation discrimination like discrimination based on race? sex? religion? politics? appearance?' Washington Post, 23 July 2014, available at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/07/23/is-sexual-orientation-discrimination-like-discrimination-based-on-race-sex-religion-politics-appearance/?utm_term=.ae6d63e96e15, accessed on 14 January 2019.

Hence, when committing to the prohibition of racial discrimination, the rights of the LGBTQ+ community should also simultaneously have been recognised. Additionally, the Singaporean government should do more to recognise the whole gamut of rights including civil, political, economic, social, cultural, and migrant worker rights, to name but a few.

Finally, it is important to recognise Singapore's recent ratification of the UNESCO 2003 Convention for the Safeguarding of Intangible Cultural Heritage in February 2018, showcasing the country's efforts and commitments towards preserving its heritage.⁵⁸

Part 3: Conclusion

In conclusion, while it may be the wealthiest of the eleven ASEAN countries, Singapore's human rights record remains unsatisfactory. Although there have been some positive developments (such as the recent discussions on s.377A of the Penal Code) offering hope to the rights of marginalised groups, the government needs to take many more steps to respect, protect, and promote human rights.

One of the most serious and urgent issues remains the ongoing and extensive use of capital punishment. The years 2017 and 2018 saw a significant rise in executions, mostly related to drug offences. In addition, as many human rights activists have pointed out, the time between rejection of a defendant's last appeal and his or her execution has decreased from several weeks to a few days to even the same day. Such haste must be decelerated as this shrinking time frame not only affects the mental health of the person to be executed but may also affect their families who could be deprived of a last opportunity to say farewell.

Many laws continue to restrict the freedoms of speech, association, and assembly. Moreover, new bills were passed by Parliament in 2018 targeting access to personal data under the guise of transforming Singapore into a global technology hub. Additionally, the government tightened its grip on so-called "fake news," actively curtailing freedom of expression.

⁵⁸ Baker, JA, 'Singapore ratifies UNESCO convention in bid to preserve intangible cultural heritage' Channel News Asia, 8 March 2018, available at <https://www.channelnewsasia.com/news/singapore/singapore-ratifies-unesco-convention-in-bid-to-preserve-10024592>, accessed on 14 January 2019.

Furthermore, a steep increase in inequality has become more apparent in the city-state, a development that will likely become a top government priority. Prime Minister Lee Hsien Loong reminded Singaporeans that “we want people to interact freely and comfortably as equals and we must have regard and respect for one another, regardless of income or status.”⁵⁹ This rising inequality was also reflected in a 2018 national assessment which revealed Singaporeans’ ongoing negative perception of their own society with some describing their fellow countrymen as complaining, materialistic, and self-centred. This is a clear indication of the dissatisfaction of Singaporeans which the government urgently needs to tackle.

Another issue requiring effective government action is the ongoing discrimination against migrant workers. Finally, while Singapore’s ratification of the International Convention on the Elimination of All Forms of Racial Discrimination in 2017 was a significant step towards the continuous realisation of human rights in the city-state, the government must further commit itself to the cause by ratifying other international instruments.

⁵⁹ Yusof, A, “We must not allow social stratification to harden in Singapore:’ PM Lee’ Channel News Asia, 23 October 2018, available at <https://www.channelnewsasia.com/news/singapore/lee-hsien-loong-social-stratification-inequality-singapore-10853828>, accessed on 12 January 2019.

THAILAND

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

THAILAND

Maya Dania*

Part 1: Overview of Thailand

A. Country Background

Thailand Facts	
Geographical size	513,000 sq km
Population	69 million ¹
Ethnic breakdown	Main ethnic groups: Thai, Tai, Thai-Laos, and Chinese-Thai (of Chinese descent) – 92% Other (Malay, Khmer, Burmese, other ethnic minorities) – 8%
Official language	Thai
Literacy rate (aged 15 and above)	92.9% ²
Life expectancy	75.5 ³
GDP	US\$450,035 million (per capita US\$6,519) ⁴
Government	Since 1932, Thailand has been a constitutional monarchy and parliamentary democracy. In 2014, following a military coup, a council of military leaders (as the NCPO) took power installing an interim prime minister and the Interim Constitution. General elections are expected to be held in March 2019 followed by local administrator elections. The coronation of King Rama X is also expected to take place in May 2019.
Political and social situation	After exercising power via a series of orders that bypassed regular laws and regulations, the NCPO approved the partial lifting of a ban on political activities and eased restrictions enabling political parties to resume certain selected activities. However, during that period, media outlets also faced intimidation, punishment, and closure for publicizing or raising issues considered sensitive to national security.

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¹ Data from 2018. 'Human Development Index: Thailand' United Nations Development Program (UNDP), 2018, available at <http://hdr.undp.org/en/countries/profiles/THA>, accessed on 5 February 2019.

² Data from 2018. UNDP (see note 1 above).

³ Data from 2018. UNDP (see note 1 above).

⁴ Data from 2017. 'General profile: Thailand' United Nations Conference on Trade and Development (UNCTAD), 2017, available at <https://unctadstat.unctad.org/CountryProfile/GeneralProfile/en-GB/764/index.html>, accessed on 5 February 2019.

Thailand is situated in the heart of the Southeast Asian mainland and covers a wide area of 513,000 square kilometres. It shares borders with Laos to the northeast, Myanmar to the north and west, Cambodia to the east, and Malaysia to the south. Thailand's 76 provinces are spread across six regions: North, East, Northeast, West, Central, and South. In 2018, Thailand was populated by an estimated 69 million people with Thai Buddhists comprising the major ethnic group (92%). The country is also home to a substantial number of minority ethnic groups such as the Malay Muslims mainly concentrated in the southern province (4.3%), the hill tribes occupying mountainous areas in the north (3.6%), and other ethnicities including Burmese, Khmer, and Nepali.

According to the World Bank, Thailand has made remarkable progress in social and economic development, rising from a low to an upper income country in less than a generation.⁵ As such, in 2018, the United Nations Development Program categorized Thailand fairly highly (83rd out of 188 countries) in its Human Development Index. In the education sector, literacy rates among adults (aged 15 and older) stand at 92.9% with no significant difference between the genders.⁶ In the health sector, life expectancy at birth has reached an admirable 75.5 years, with an average of 10.5 infant mortalities per 1,000 live births, and only 20 maternal mortalities per 100,000 live births.⁷ In terms of economic development, Thailand is planted firmly in the upper middle-income level with its GDP increasing 3.91% in late 2017. It now stands at US\$450,035 million (per capita US\$6,519).⁸

System of governance

Thailand is governed by a constitutional monarchy with the coronation of King Rama X expected to occur in May 2019. Prior to 2014, power was exercised by a bicameral National Assembly, the Council of Ministers, and the courts in accordance with the 2007 Constitution. Following a military *coup* in 2014, official power now resides with an interim prime minister under s.44 of the Interim Constitution. Military rule allows the NCPO chairman to wield absolute power (with only limited accountability) over the country's administrative affairs. After repeatedly delaying a vote since 2014, the military-appointed Prime Minister finally set the next general election for March 2019, to be followed by local administrator and representative elections at the sub-district, district, municipal, and provincial levels.

Political and social situation

Currently, Thailand remains under the junta-backed 2017 Constitution which endorses the continuance of NCPO power by guaranteeing unaccountability for rights violations to both the NCPO and officials acting under its orders. The NCPO limits freedom

⁵ 'The World Bank in Thailand' The World Bank, 2018, available at <https://www.worldbank.org/en/country/thailand/overview>, accessed on 20 March 2019.

⁶ UNDP (see note 1 above).

⁷ UNDP (see note 1 above).

⁸ UNCTAD (see note 4 above).

of expression for both media and public through strict censorship, although certain minor restrictions have recently been eased to enable political discussion ahead of the promised vote, for example, to facilitate party member recruitment and leader selection. As such, it is expected political parties will soon be able to begin campaigning, gather in public, and receive contributions.

B. International Human Rights Commitments and Obligations

Still under military rule, Thailand implements restrictions on political activities and prohibits media criticism. However, in terms of international human rights commitments, the country is performing moderately well, having ratified most of the key international human rights treaties (see Table 1 below).

Table 1: Ratification Status of International Instruments – Thailand⁹

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		2 Oct 2007 (a)
Optional Protocol of the Convention against Torture (OPCAT)		
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 (CCPR-OP2-DP)		
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)

⁹ 'Ratification status for Thailand' United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN, accessed on 5 February 2019.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		27 Feb 2006 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography		11 Jan 2006 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	29 Jul 2008

Thailand is a state party to seven (out of nine) international core human rights instruments, namely the ICCPR, ICESCR, CEDAW, CRC, ICERD, CAT, and CRPD. In 2018, Thailand was urged to fulfil its human rights obligations under treaty law as regards the ICCPR to counteract, for example, the separation of refugee children from their parents and the detaining of refugees. Accordingly, the United Nations Human Rights Committee issued more than 30 recommendations to the government to encourage compliance with the ICCPR, including the development of alternatives to detention to reduce overcrowding. However, many of these have yet to be implemented.

To date, Thailand has not ratified the OPCAT, CCPR-OP2-DP, and ICMW. Although the Office of the High Commissioner for Human Rights (OHCHR) advocated enactment of a law on anti-torture and anti-disappearance (CAT and CED) for which the cabinet sought approval in 2016, it was rejected by the National Legislative Assembly (NLA) as being incompatible with the country's legal system. Further, the government has since failed to clarify whether the bill will be reintroduced. Nevertheless, Thailand did demonstrate its cooperation by reviewing abolition of its death penalty. To this end, it postponed carrying out any death sentences for 9 years from 2009. In 2018, however, it executed 26 year old Theerasak Longji via lethal injection for aggravated murder.¹⁰

Following its 2016 Universal Periodic Review, the Ministry of Justice committed to developing an Action Plan on business and human rights and also started discussions on implementing the UN Guiding Principles on Business and Human Rights (UNGPs) as part of the National Human Rights Commission of Thailand's 2017-2022 strategies. Accordingly, amongst other actions, it hosted a national dialogue and regional consultations on business and human rights and co-hosted a side event at the 6th UN

¹⁰ 'Thailand: Country's first execution since 2009 a deplorable move' Amnesty International, 19 June 2018, available at <https://www.amnesty.org/en/latest/news/2018/06/thailand-country-s-first-execution-since-2009-a-deplorable-move/>, accessed on 20 March 2019.

Forum on Business and Human Rights in 2017 in Geneva, Switzerland, to promote implementation of the UNGPs.¹¹

Outside of business, several Thai domestic laws and amendments have been introduced to ensure compliance with international laws and standards, including: the Name Act (2005), the Domestic Violence Victim Protection Act (2007), the Persons with Disabilities Empowerment Act (2007), the Prevention and Suppression of Human Trafficking Act (2008), the Female Title Act (2008), the Civil Registration Act No 2 (2008), Civil Code amendments, and the Gender Equality Act (2015).

However, rising concern over defamation cases instigated by the government also emphasizes the need to ensure relevant authorities engage with human rights defenders constructively. In particular, international concern was raised over charges of criminal defamation and other offences aimed to silence human rights defenders in 2018 under the Computer Crime Act (CCA). Adopted in December 2016 by the NLA, this legislation gave broad powers to the government to restrict free speech, enforce surveillance and censorship, and retaliate against human rights activists.

C. National Laws Threatening Human Rights

Post-2014, Thailand was ruled by the NCPO which vested itself with executive and legislative powers, greatly impacting democratization and human rights progress in the country. Thus, while the 2007 Constitution of the Kingdom of Thailand fully guarantees the rights, freedoms, and equality of all people, a lack of enabling laws and mechanisms in 2018 severely hampers its effectiveness.

2017 Constitution, Arts 219, 265, 269, and 279

Effectively enacted on 6 April 2017, the 2017 Constitution is the twentieth such of the Kingdom of Thailand (since 1932) and includes substantive changes to sections pertaining to NCPO powers and mechanisms for resolving political crises by limiting the power of political parties during elections.

Although Art 25 references upholding rights and liberties and protects the public from laws threatening human rights explicitly, the NCPO still maintains its power over the country's politics even after formation of a civilian government. As such, Art 219 prescribes monitoring the morals or ethical standards of members of the lower house by the appointed upper house, based on the provisions laid out in Art 269.

Moreover, Art 265 allows the NCPO to retain its absolute powers as authorized by the Interim Constitution. Hence, Art 44 of the Interim Constitution (see below for further details) will remain in force until a new government is formed following an election,

¹¹ 'Thailand' National Action Plans on Business and Human Rights, available at <https://globalnaps.org/country/thailand/>, accessed on 21 March 2019.

giving the NCPO absolute power during said election and during formation of the new administration to commit any act needed to reform national security. In addition, Art 279 legalizes all NCPO orders even after formation of a new government.

2014 Interim Constitution, Arts 44, 46, and 48

The Interim Constitution granted the NCPO a wide range of powers and impunity to rule the country formally until the next election. Accordingly, it legalized all the military's actions since 2014 regardless of any human rights implications. For example, Art 44 permits the leader of the junta to take appropriate action (making them legal by default) to, first, protect the country from any threats to peace and order and, second, to strengthen public unity and harmony. Significantly, Art 46 allows the interim government, by consent of the junta-selected cabinet, to alter the referendum-approved constitution. Thus, the Prime Minister is able to pull the constitution, change, and resubmit it to the monarchy for approval. Finally, Art 48 exempts NCPO members and anyone acting on behalf of the NCPO from wrongdoing.

Despite utilizing the Constitution to justify prohibition of political gatherings of more than five people and halting the publication or presentation of any news considered to cause fear or distort information (by utilizing the Computer Crime Act, Art 14 (see below for more details)), the NCPO continues to claim the Interim Constitution was essential to restore electoral democracy and civilian rule in the country.

Public Assembly Act (2015)

This Act serves to systematically limit freedoms, by punishing public assemblies and forbidding any political gatherings of five or more persons if no preceding permission was granted by an authorized representative or the head of the NCPO. In conjunction with Head of NCPO Order No 3/2558 (2015), this Act thus prohibits political gatherings and is used as an excuse by the state to interfere with or limit freedom of expression. Most outlawed content related to those protesting the absolute power of the NCPO and included expressing opinions on the 2017 draft constitution or the public referendum, and calls for the NCPO to hold general elections.

Computer Crime Act (2007), Art 14

Articles 14(1) and (2) provide grounds for the government to prosecute anything the NCPO designates as “false” and, in the case of Art 14(1), “distorted” information, both terms which are likely to be open to abuse as past prosecutions have shown. Additionally, service providers such as social media platforms, will also be required to delete content upon government notification or face punishment for the content.¹²

¹² ‘Thailand: Cyber Crime Act tightens internet control’ Human Rights Watch, 21 December 2016, available at <https://www.hrw.org/news/2016/12/21/thailand-cyber-crime-act-tightens-internet-control>, accessed on 20 March 2019.

Under the newly amended Art 20(3) of the CCA, even perfectly legal online content can be banned and ordered deleted by the court based on a request from a computer data screening committee appointed by the Minister of Digital Economy and Society if considered to be against public order or the good morals of the people. As such, the CCA has been used to arrest, detain, and interrogate civilians without safeguards against abuse.¹³ As Brad Adams of Human Rights Watch put it, “Under this draconian law, Internet users will have to look over their shoulders when going online [as] the Thai military government has now given itself sweeping power to monitor, search, and acquire information, invading people’s privacy on a massive scale.”¹⁴

NCPO orders and announcements

From May 2014 to December 2018, at least 203 HNCPO orders were issued under Art 44 of the Interim Constitution. In addition, the NCPO has also issued at least 213 general orders and 129 announcements. The orders and announcements were declared immediately legal, constitutional, and final upon being proclaimed under authority of the interim and 2017 constitutions. Many of these provisions limit civil and political rights despite Thailand being a state party to the ICCPR. Examples include Art 6 of HNCPO Order No 3/2558 (2015)¹⁵ enabling military personnel with appropriate evidence to summon persons to report or give depositions. It also allows for the administrative detention of persons without charge.

Moreover, Art 12 of HNCPO Order No 3/2558 bans public assembly for political purposes unless permission has been granted. Similarly, HNCPO Order No 13/2559 (2016)¹⁶ permits military officials to take action to prevent and suppress 27 categories of crimes (e.g. contravening public peace, liberty, reputation, immigration, and human trafficking offences) against individuals viewed as influential who may pose a dangerous threat to peace and order. Accordingly, such people may be subject to surveillance. In addition, Art 4 grants the military authority to deprive the liberty of suspects for interrogation in a place not officially recognized as a place of detention without first requiring they be brought before a court. Finally, NCPO Announcement Nos 37/2557 (2014), 38/2557 (2014), and 50/2557 (2014)¹⁷ extend the jurisdiction of military courts to certain offences, including alleged violations of NCPO orders, sedition-like offences, possession and use of war weapons, and *lèse majesté*.

¹³ Human Rights Watch (see note 12 above).

¹⁴ Human Rights Watch (see note 12 above).

¹⁵ Srisod, S, and Abbott, K, ‘The constitutional and legal framework in Thailand since the 22 May 2014 *coup d’état* and Thailand’s international human rights obligations’ Asian Journal of Legal Studies, available at <https://asianjournaloflegalstudies.files.wordpress.com/2017/06/final-the-constitutional-and-legal-framework-in-thailand.pdf>, accessed on 5 February 2019.

¹⁶ ‘Thailand: Human rights groups condemn NCPO Order 13/2016 and urge for it to be revoked immediately’ Worldwide Movement for Human Rights, 5 April 2016, available at <https://www.fidh.org/en/region/asia/thailand/human-rights-groups-condemn-ncpo-order-13-2016-and-urge-for-it-to-be>, accessed on 5 February 2019.

¹⁷ ‘Martial law and the military court: Civil and political rights in Thailand’ Human Rights in ASEAN, available at <http://humanrightsinasean.info/>, accessed on 5 February 2019.

However, in December 2018, HNCPO Order No 22/2561 (2018) was promulgated to relax restrictions on civilian participation in politics ahead of the elections. Examples include Art 12 of HNCPO Order No 3/2558 specifically lifting the ban on political gatherings. Hence, political parties may now freely assemble, conduct political activities and financial transactions, and are no longer required to periodically report to the NCPO. In addition, the ban on travelling overseas or joining political activities for several Thai politicians has also been lifted.

D. Recent Court Cases Relating to Human Rights

Freedom of expression

Before HNCPO Order No 22/2561 was promulgated, media and public freedom of expression was severely limited by sedition laws and the CCA which effectively criminalized criticism. As an example, the Democratic Restoration Group (a political activist group) organized a protest on Ratchadamnoen Road to demand a general election in 2018. About 300 to 500 protesters took part. As a consequence, the police summoned 49 protesters under Head of NCPO Order No 3/2015 to the Nang Loeng Police Station including seven deemed to be leaders of the illegal gathering who were then also accused under Head of NCPO Order No 3/2015 and charged with sedition.

Furthermore, media outlets publicizing commentaries critical of the junta and monarchy may face closure. Several refused to fully comply, including Voice TV, Spring News Radio, Peace TV, and TV24, all of which were temporarily forced off the air until November 2018. They were allowed to resume broadcasting only after agreeing to practice self-censorship either by excluding certain commentators or by avoiding contentious political issues altogether.¹⁸

State violence and impunity

Military authorities may surreptitiously detain people for offences under NCPO Order Nos 3/2015 and 13/2016 for up to seven days without charge, access to lawyers, or any safeguards against mistreatment. Examples include the sedition charges against the Pheu Thai Party following its decision to organize a press briefing at its headquarters entitled, 'Four years of failure of government and NCPO leading to darkness and dangers.' However, the police banned the event deeming it to be a political gathering prohibited under Head of NCPO Order No 3/2015. As such, the party's committee decided not to participate; instead, three party members shared their personal opinions on stage. These three were later charged with sedition by the NCPO. Accusations under Head of NCPO Order No 3/2015 were also lodged against nine members of the party committee.¹⁹

¹⁸ 'World report 2018 – Thailand' Human Rights Watch, 18 January 2018, available at <https://www.refworld.org/docid/5a61ee19a.html>, accessed on 19 March 2019.

¹⁹ 'Sedition charges loom against Chaturon, 2 Pheu Thai men' Bangkok Post, 14 February 2019, available at <https://www.bangkokpost.com/news/politics/1629162/sedition-charges-loom-against-chaturon-2-pheu-thai-men>, accessed on 20 March 2019.

Accountability over land rights

As elections commence in Thailand, several political parties have already begun to promote land rights issues as part of their core policies due to a rising number of ethnic minority communities being violently evicted from their ancestral lands to resettlement villages.²⁰ For example, Karen forest dwellers lost their land rights as a result of being unable to produce official land documents. Also a hill tribe minority group, this community was accused in the Administrative Court of First Instance of being illegal forest encroachers in Kaeng Krachan National Park, the verdict of which permitted park officials to legally use violence to evict them under Operation Tenasserim. Further, according to Human Rights Watch, a grandson of the spiritual leader of the village (Ko-ee Mimee) named Porlajee ‘Billy’ Rakchongcharoen, a prominent Karen and environmental activist, disappeared in 2014 after last being seen in government custody.²¹ This is just one example of forest dwellers suffering crackdowns and imprisonment – however, as a result of their increasing activism, political parties have started to take up their cause.

Part 2: Outstanding Human Rights Issues

Thailand has been under the control of a military interim government for more than four years. After repeated promises to restore democratic rule, the government finally agreed to hold elections and ease certain restrictions on political activities ahead of the promised vote. Notwithstanding, it is undeniable that civil and political liberties are still being repressed. Moreover, the government also ordered crackdowns on illegal migrants, resulting in the arrest of over 200 refugees and asylum seekers from Vietnam, Cambodia, and Pakistan.²² While Thailand is a major destination country for such groups, regrettably, it is still not a signatory to the 1951 UN Convention relating to the Status of Refugees or its 1967 protocol.²³ As a consequence, increasing numbers of refugees and asylum seekers lack legal protection and may find themselves subject to indefinite detention.

The following section will review Thailand’s civil and political rights by highlighting the issue of freedom of expression on social media, and the problems facing refugees, asylum seekers, illegal migrants, and hill tribe ethnic minorities.

²⁰ Rujivanarom, P, ‘Political parties pledge to right land-rights wrongs’ *The Nation*, 19 November 2018, available at <http://www.nationmultimedia.com/detail/national/30358818>, accessed on 20 March 2019.

²¹ ‘Thai High Court upholds destruction of Karen Village located in National Park’ *Thailand Lawyer Blog*, 2 July 2018, available at <http://www.thailawforum.com/blog/thai-high-court-upholds-destruction-of-karen-village-located-in-national-park>, accessed on 5 February 2019.

²² ‘Thailand: Events of 2018’ *Human Rights Watch*, available at <https://www.hrw.org/world-report/2019/country-chapters/thailand>, accessed on 5 February 2019.

²³ Human Rights Watch (see note 22 above).

A. Freedom of Expression on Social Media

Freedom of speech was guaranteed in the 1997 Constitution with protections being continued in its 2007 counterpart. However, the interim government also approved amendments to the 2007 Computer Crimes Act or CCA which singled out journalists producing coverage critical of the government. Moreover, amendments to the CCA instead of improving freedom of expression in Thailand, extended official surveillance to the rest of society. As such, the amendment allows the government to spy on social media platforms, specifically targeting people suspected of being dissidents. As a consequence, several internet users have been convicted based on “defamatory” comments posted on social media.

Aside from being a tool of surveillance, the CCA may also be used as a tool for persecution. It is clearly stated in Art 14 of the amended CCA that anyone may be penalized for “entering any data on a computer system that damages the public, creates panic, or causes harm to national, public or economic security.”²⁴ Although ambiguous, it is clear the article may be used to press charges against any critic of the government or monarchy potentially leading to imprisonment. It has also been reported that prosecutions under the CCA have risen sharply since the interim government, indicating the Act is actively being used to silence critics and intimidate political enemies. Additionally, a new proposal to licence journalists and bloggers under a state-linked media association is set to reduce the diversity of information and viewpoints even further.²⁵

B. Crackdown on Refugees, Asylum Seekers, and Illegal Migrants

In 2018, the government launched its X-Ray Outlaw Foreigner campaign to identify and arrest illegal migrants or tourists overstaying their visas suspected of being involved in criminal activities. However, the provisions seem mostly targeted at dark-skinned people.²⁶ Since the Defence Minister ordered the arrest of all migrants without proper documentation or authorization, the raids have intensified. As regards security matters, the order aims to crack down on transnational criminals entering the country as tourists, resulting in the arrest of more than 1,000 people for overstaying their visas. Thai people involved or facilitating such criminals also face arrest.²⁷

²⁴ ‘Thailand cracks down on freedom of expression’ ASEAN Today, 4 February 2017, available at <https://www.aseantoday.com/2017/02/thailand-cracks-down-on-freedom-of-expression/>, accessed on 5 February 2019.

²⁵ ‘Freedom on the net 2017: Thailand’ refworld, 14 November 2017, available at <https://www.refworld.org/docid/5a547d03a.html>, accessed on 5 February 2019.

²⁶ ‘Thailand launches crackdown on ‘dark-skinned’ immigrants’ New Straits Times, 21 October 2018, available at <https://www.nst.com.my/world/2018/10/423416/thailand-launches-crackdown-dark-skinned-immigrants>, accessed on 5 February 2019.

²⁷ ‘Prawit orders crackdown on ‘illegal’ foreigners’ The Nation, 9 October 2018, available at <http://www.nationmultimedia.com/detail/national/30356060>, accessed on 5 February 2019.

The operation especially threatens migrant workers from Myanmar, thousands of whom have returned home for fear of being arrested, leading to numerous cases of refugees being arrested *en route* to a third country. Many of these, including 50 children, have been separated from their parents and detained indefinitely. To exacerbate matters, Thailand is not a signatory to the 1951 UN Convention and thus lacks a formal national asylum framework. However, due to the increasing intensity of ethnic conflicts and wars in neighbouring countries, this has not prevented it from becoming a major destination for refugees in Asia. As of 2018, there were 102,233 refugees and asylum seekers in Thailand, mostly ethnic minorities from Myanmar, e.g. Karen, Karenni, and Rohingya. Following arrest, some refugees even face deportation to the countries they once escaped. Indeed, there have been reports of hundreds of persecuted Uyghurs being deported back to China, as well as Christian Pakistanis being returned to Pakistan.²⁸

C. Forest Hill Tribe Ethnic Minorities

Currently, three categories of Cabinet resolutions and laws recognize forest hill tribe ethnic minorities in Thailand reflecting the level of State acceptance of their citizenship status.²⁹ In order to regulate the movement of hill tribes, the government employs a colour-card system (known as alien cards) to non-citizens. Presently, authorities issue pink cards (*bat chompuu*) to all categories of ethnic minorities residing in the country without Thai citizenship, but this system seems to exist mostly to identify Burmese displaced persons. However, in terms of development targets and citizenship rights for hill tribes, this policy is ineffective and unhelpful. In particular, hill tribes are restricted in their mobility. To travel beyond their borders, they must seek official permission and pay fees. Sanctions include fines between hundreds to thousands of baht, or worse, relocation out of areas designated as national parks, forest reserves, or wildlife conservation areas. Due to such limitations, these communities lack the ability to find job opportunities to improve their economic status or access the low-cost healthcare service reserved for Thai citizens (the thirty-baht-per-visit-scheme). Lack of citizenship also inhibits access to land ownership and leaves them subject to relocation at any time. This is the daily reality faced by many forest ethnic minorities without legal status, a situation that also puts certain members of that community at serious risk of exploitation and trafficking.³⁰

²⁸ Villadiego, L, 'Refugees: Collateral damage in Thailand's illegal migrant crackdown' South China Morning Post, 9 November 2018, available at <https://www.scmp.com/week-asia/geopolitics/article/2171481/refugees-collateral-damage-thailands-illegal-migrant-crackdown>, accessed on 5 February 2019.

²⁹ Forest Hill tribe ethnic minorities are defined as original highland people, born in Thailand from 10 April 1913 to 13 December 1972. These people and their descendants are entitled to Thai citizenship. Legal immigrants, who entered Thailand either before or on 3 October 1985, can also apply for citizenship through naturalization after living in the country for 5 consecutive years. If they have children born in Thailand, they too can apply for citizenship to the Interior Ministry. However, illegal immigrants who entered Thailand after 3 October 1985 cannot apply for any legal status and must be repatriated. If they have children born in Thailand, they too must be repatriated.

³⁰ Mukdawan, S, 'Controlling bad drugs, creating good citizens: Citizenship and social immobility for Thailand's hill ethnic minorities' in Coeli, B (ed), *Rights to Culture: Culture, Heritage and Community in Thailand*, Chiang Mai: Silkworm Books, 2013.

Part 3: Conclusion

Power dynamics still play a pivotal role in controlling the people of Thailand as reflected in several amendments to legislation such as the CCA and the 2017 Constitution. Although Thailand is a state party to the ICCPR, the restrictions on freedom of expression are concerning especially the rise in the number of prosecutions. Despite easing certain restrictions for minor political activities ahead of the promised election and the fact human rights are now part of the National Agenda, the exercise and protection of civil and political rights remains limited. Moreover, the government seeks to cling to power by introducing orders focused on national security, many of which are detrimental to human rights in other aspects and adversely affect many vulnerable groups including refugees, asylum seekers, and the country's forest ethnic minorities.

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	1,296,311 ¹
Ethnic breakdown ²	Main ethnic groups: Timorese (78%) Indonesian (20%) Chinese (2%)
Official language(s)	Tetum and Portuguese (official languages) Bahasa Indonesia and English (working languages)
Literacy rate (aged 15 and above)	58.3% ³
Life expectancy	68.88 ⁴
GDP	US\$2.95 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. Follows systems of separation of powers and interdependence between organs of sovereignty.
Political and social situation	While the economy is still underdeveloped as a consequence of the long fight to restore independence, Timor-Leste has since gone through three sets of highly competitive elections which have been universally recognised as free and fair. Notwithstanding, some ministries remain leaderless and human rights legislation has stalled due to the resulting political impasse.

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¹ Data from 2017. 'Timor-Leste' The World Bank, available at <https://data.worldbank.org/country/timor-leste?display=graph>, accessed on 12 January 2019.

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 17 February 2019.

⁴ Data from 2016. The World Bank (see note 1 above).

⁵ Data from 2017. The World Bank (see note 1 above); and 'GDP per capita (current US\$)' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=TL>, accessed on 1 April 2019.

Current political situation

Politically, 2018 was a challenging year for Timor-Leste. The presidential election on 20 March 2017 and the parliamentary election on 22 July 2017 were the first elections successfully held without assistance from the international community since the UN Mission departed in 2012. These elections were a significant milestone as they were held in a peaceful manner with no major incidents reported.⁶ Difficulties kicked in after the elections when political parties failed to achieve consensus in forming a viable government. The VII constitutional government was comprised of two political parties, the Revolutionary Front for an Independent East Timor (Fretilin) and Partido Democratico (PD) which together held a total of 30 seats out of the 65 seat house.

Three opposition parties, 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 the opposition coalition or "parliamentary majority alliance" (AMP). Together, the AMP held a 35 seat majority in Parliament. Although this Fretilin-led minority government sought to uphold stability and peace whilst being politically inclusive, it proved unable to pass policy programs or budgets after the AMP were ejected during parliamentary sessions in October and December of 2017.

For the reasons described above, in the months following the 2017 elections, Timor-Leste was marked by a period of political uncertainty. Finally, on 26 January 2018, President Francisco Guterres (famously known as *Lú-Olo*) of Fretilin dissolved Parliament and announced early elections on 12 May 2018. As reported by Fundasaun Mahein (FM), despite many reservations, the election passed by relatively peacefully. Electoral officials were able to conduct the process effectively enabling voters to participate freely and safely. Nevertheless, several uneasy incidents were reported including verbal attacks and criticisms of political opponents which tended to focus on long-standing conflicts between old leaders representing the armed and diplomatic fronts of the resistance.⁷

After a round of intensely competitive early elections, the coalition of opposition parties with Xanana Gusmao at its head emerged with a majority of parliamentary seats. The two parties comprising the outgoing minority government (Fretilin and PD) accepted the outcome and pledged to serve as a strong opposition. However, the political situation has not improved as expected. After six months, some ministries remain leaderless with analysts forecasting a rather gloomy future both politically and economically unless political parties manage to somehow unite to govern

⁶ Khoo Ying Hooi, 'Timor-Leste's personality politics' *Diplomat Magazine*, 28 February 2018, available at <https://thediplomat.com/2018/02/timor-lestes-personality-politics/>, accessed on 19 January 2019.

⁷ 'Observation report for parliamentary/early elections' Fundasaun Mahein (FM), 1 June 2018, available at <http://www.fundasaunmahein.org/2018/06/01/observation-report-for-the-2018-parliamentary-elections-may-12th-2018/>, accessed on 12 January 2019.

despite ideological differences. Related to this, in 2018, human rights legislation too is pending.

Emerging from decades of conflict, Timor-Leste became the newest sovereign state of the 21st century having restored its independence from Indonesia in May 2002 after 24 years of occupation (1975 to 1999) with the assistance of a referendum organised by the United Nations. However, as the Indonesians withdrew, they left devastation in their wake – almost the entire public infrastructure including roads, schools, water and sanitation systems, and government facilities was destroyed. In addition, ensuing shortages of human capital meant professional services or business were subsequently inadequately manned. Moreover, food security is also low with poverty and hunger continuing to be widespread. Coupled with this, various surveys indicate many children suffer from inadequate nutrition.

Such are the challenges facing Timor-Leste's institutional frameworks. However, it has managed to live up to its democratic ideals despite political challenges. In the latest Democracy Index 2018 released by the Economist Intelligence Unit (EIU), Timor-Leste has once again made it into the top ranks of the most democratic countries in Southeast Asia.⁸

Petroleum continues to be the country's main resource and it holds sizeable financial reserves to support development. Yet, the fledgling nation also faces risks. In particular, it must find a way round political disagreement to enable it to find a better way to support sustainable development.⁹

As the youngest country in Asia and Southeast Asia, its 2011 application to the Association of the Southeast Asian Nations (ASEAN) has not yet been accepted. Instead, it has been given observer status. Despite achieving independence in 2002, attention on Timor-Leste remains limited to the context of Southeast Asia. First colonised by Portugal from 1701 until 1975, it only achieved a nine day period of independence before Indonesian forces invaded. Those forces remained for 24 years, during which it is estimated a third of the population died from various forms of abuse such as execution, starvation, and disease.

The UN referendum, when it finally occurred, witnessed 78.5% of the East Timorese favouring separation from Indonesia. However, the process did not occur easily and led to severe violence, during which time hundreds were killed. At the same

⁸ See, 'Democracy Index 2018' The Economist, available at <https://www.eiu.com/topic/democracy-index>, accessed on 12 January 2019. Timor-Leste ranks 42nd of 167 countries, scoring 7.19/10 (with 10 being the highest score), and is listed as a "flawed democracy."

⁹ 'Timor-Leste systematic country diagnostic: Pathways for a new economy and sustainable livelihoods' The World Bank Group, March 2018, available at <http://documents.worldbank.org/curated/en/524131528837983427/pdf/TL-SCD-0228B-lowres-03212018.pdf>, accessed on 13 January 2019.

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. In addition, victims of serious human rights violations committed during the Indonesian occupation continue to demand justice and reparation.¹⁰

B. International Human Rights Commitments and Obligations

Due to its historical background and the heavy price paid for its restoration of independence, the notion of democracy is highly valued in Timor-Leste. As such, its Constitution adopted all the basic and fundamental human rights, e.g. the rights to life, personal freedom, integrity and security, and freedom of movement. It also guarantees non-discrimination and equal treatment for all. Thus, at the national level, Timor-Leste has declared a commitment to the protection and development of human rights. Upon achieving independence, the government also established the Ombudsman for Human Rights and Justice (PDHJ), a form of national human rights institution (NHRI) with a mandate to promote and protect human rights and good governance in Timor-Leste.

The National Directive Commission (KDN) was established in 2014 based on an instruction from the Prime Minister (No 17/X/2014). It remains in place and is the lead commission tasked to manage plans and policies related to human rights. A multi-stakeholder commission, it comprises representatives from UN agencies in Timor-Leste, the ombudsman, representatives of civil society, and human rights groups, with additional support from the Ministry of Justice. The plan was drafted and developed for the period, 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-Leste¹¹

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)

¹⁰ '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 17 January 2019.

¹¹ '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 17 January 2019.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
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)		

As regards human rights international treaties and conventions, Timor-Leste's ratification status has remained static for several years. As shown in Table 1 above, the government has ratified seven out of nine international human rights instruments. At present, the government has yet to sign or ratify the CRPD despite promising to do so. At the same time, it has also not signed or ratified the CED. However, in its Universal Periodic Review (UPR) of November 2016, the government highlighted its plans to accede to the Optional Protocol to the CAT, although, it must be said, progress has been particularly slow in 2018 due to the aforementioned on-going political uncertainty.

Other international commitments, such as its ratification of fundamental International Labour Organization (ILO) Conventions, have also remained static. As of 2018, Timor-Leste has ratified six out of eight fundamental ILO Conventions. Although it is party to the CRC, Timor-Leste is the only one of eighteen ILO member countries not yet ratifying the Convention concerning Minimum Age for Admission to Employment (C138) which requires countries to set a minimum work age. It is also the only one of eleven ILO member countries not to have ratified the Convention concerning

the Abolition of Forced Labour (C105).¹² To overcome this, Timor-Leste adopted a minimum work age as evidenced by Art 68 of its Labor Code which establishes a minimum work age of 15 allowing minors to perform light duties. Further, the National Commission Against Child Labor under government resolution 1/ 2014 was established to monitor implementation of the ILO Convention. Despite these laws, reports of child labour by local and international groups have not diminished.

Having ratified the Rome Statute of the International Criminal Court (ICC), Timor-Leste incorporated its provisions into national law, thus criminalising actions against humanity, as laid out in the Penal Code. Nonetheless, the country has not yet enacted legislation permitting it to co-operate with the ICC.¹³ 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 Transitional Justice

Similar to many other post-conflict countries, there has been much debate about transitional justice and adequate reconciliation mechanisms in Timor-Leste. 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.

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 however, it has to be said the existing transitional justice mechanism disappointed many war victims.

¹² 'Report for the Universal Periodic Review 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 19 January 2019.

¹³ 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 19 January 2019.

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 bi-lateral Commission for Truth and Friendship (CTF) (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, because the centre lacked a mandate to address CAVR's recommendations on justice and reparations for victims of serious human rights violations,¹⁴ it operated instead simply as a provider of programmes and activities.

As summarised by AJAR:

*Institutional reform that began with the establishment of a progressive constitution that guarantees democracy and human rights was not consistently implemented due to the intervention of veteran leaders. Despite CAVR's findings regarding crimes committed during the civil war and within the resistance, no systematic program has been established in Timor-Leste to screen security institutions for the persons responsible for those crimes. After the 2006 crisis revealed problems in both police and military institutions, greater attention was given to the security sector. However, efforts to vet and reform the security sector have remained limited. On a more positive note, the government with the support of key civil society leaders have initiated some long-term judicial and educational reforms that continue to develop.*¹⁵

In addition, some non-governmental groups such as Asia Justice and Rights (AJAR), have made attempts to trace and bring home “stolen children” from Indonesia, reuniting families separated for two to three decades. CAVR found that several thousand children were forcibly removed from the country to Indonesia in the conflict. Together with the CTF, it therefore recommended that the governments of Timor-Leste and Indonesia take more effective steps to find such individuals and facilitate reunions with their families.¹⁶

Access to justice as a whole remains a challenge for large parts of the population in Timor-Leste. In a total of 13 municipalities, there are only four permanent courts. Due to poor road conditions and the high cost of travelling from one place to another, access to justice is therefore limited. To overcome this, Timor-Leste implemented ‘mobile

¹⁴ Amnesty International (see note 10 above).

¹⁵ ‘Transitional justice fact sheet: Timor-Leste’ Asia Justice and Rights/Transitional Justice Asia Network, 2018, available at <https://asia-ajar.org/wp-content/uploads/2018/10/Timor-Leste-English-Transitional-Justice-Factsheet.pdf>. AJAR, accessed on 19 January 2019.

¹⁶ ‘Press release. Bringing them home: Fifteen stolen children reunited with their families in Timor-Leste’ Asia Justice and Rights, 27 November 2017, available at <https://asia-ajar.org/2017/11/press-release-bringing-home-fifteen-stolen-children-reunited-families-timor-leste/>, accessed on 1 April 2019.

courts' to increase access to the judicial system but so far, it has not been successful. In addition, the Ombudsman for Human Rights and Justice or PDHJ has, over the years, attempted to reach out to rural and isolated areas, albeit not very successfully. It has four regional offices in Baucau (covering Baucau, Lautem, Manatuto, and Viqueque districts), Oecusse (covering Oecusse district), Same (covering Manufahi, Ainaro, and Cova Lima districts), and Maliana (covering Bobonaro, Ermera, and Liquica districts) while its office in Dili also covers Dili and Aileu.

Accordingly, the customary justice mechanism (an informal justice system) is still the most preferable justice system for districts outside Dili. This is due to many reasons. For example, the area suffers from a lack of human capital. Too few trained lawyers and judges means courts are unable to function regularly and are therefore unable to ensure legal rights are protected. Moreover, despite efforts to decentralize, most courts function only sporadically outside of Dili. However, customary justice although more readily available, does not always adhere to international human rights standards, opening the system up to abuse and misinterpretation of justice. Nevertheless, for most Timorese outside Dili, the informal justice system is seen as cheaper, more efficient, and easier to understand than its formal counterpart.

One recent major concern is the high rate of undiagnosed mental health issues which is particularly common in post-conflict countries. Post-traumatic stress disorder (PTSD) is a mental health condition that occurs when a person witnesses a psychologically traumatic event. As a result of the Indonesian occupation and 2006 political crisis, it has been reported that about one in five people in Timor-Leste may have personally witnessed or experienced an incidence of conflict-related violence. This has led some to estimate that the country therefore must have one of the highest rates of undiagnosed PTSD in the world. For example, one study found 16.7% of the population suffers from PTSD, while another put the rate at 15.1%.¹⁷ However, it is important to note that no official government data exists to verify these assumptions. The situation is made worse due to the problem of social stigmatization. As a result, most people fail to seek treatment because they wish to avoid being seen as *bulak* (or crazy in Tetum).¹⁸

B. Women's Rights and Gender-Based Violence

A recent amendment to the electoral law states that 33% of political party lists must comprise of female candidates meaning 38% of seats in the National Parliament are now held by women, one of the highest rates in the Asia Pacific region. At the district level, there are currently 11 women village chiefs, 2 women sub-village chiefs, and six elders

¹⁷ See, 'Lingering trauma impact of Timor-Leste's violent past' reliefweb, 30 June 2014, available at <https://reliefweb.int/report/timor-leste/lingering-trauma-impact-timor-leste-s-violent-past>, accessed on 1 April 2019.

¹⁸ 'Recovering from war means healing from trauma' Fundasaun Mahein (FM), 6 August 2018, available at <http://www.fundasaunmahein.org/2018/08/06/recovering-from-war-means-healing-from-trauma/>, accessed on 16 January 2019.

functioning as traditional leaders. Other legislative measures coming into effect include the Law Against Domestic Violence of 2010 which categorizes domestic violence as a public crime. In the meantime, a National Action Plan on Gender-based Violence also provides a strategy of prevention and offers services to survivors of gender-based and domestic violence.¹⁹

Despite these efforts, women's rights and gender-based violence, particularly domestic violence, remains an issue in Timor-Leste. 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 officially report abuse at all, instead using traditional customary laws and practices, either within the family or before community leaders.

Early pregnancies are 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 meaning as a consequence, 19% of girls are married by the time they are 18.²⁰ These issues are particularly important as teenagers are twice as likely to die in childbirth than older women.

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.

In February 2018, UN Women in Timor-Leste signed a Memorandum of Understanding (MoU) with the country's Civil Service Commission (CSC) to advance gender equality in public administration. The MoU insists on zero tolerance of sexual harassment and equal opportunities for men and women in the civil service. Accordingly, to close its annual 16 Days of Activism to End Gender-Based Violence Campaign, the Guidelines for Addressing Sexual Harassment

¹⁹ 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*, Secretariat for Youth and Sports, United Nations Population Fund (UNFPA) and Plan International, May 2017, available at https://timor-leste.unfpa.org/sites/default/files/pub-pdf/TPEM%20REPORT_ENGLISH_LOW%20DEF%20-%2048%20pages.pdf, accessed on 1 April 2019.

²⁰ Cummins (see note 19 above).

in the Civil Service were launched on 11 December 2017.²¹ Another important milestone was achieved in August 2018 when the National Police of Timor-Leste (PNTL) officially launched their Gender Strategy of 2018-2022, a joint collaboration between PNTL and UN Women in Timor-Leste with additional support from the government of Japan. Australia's Timor-Leste Police Development Program (TLPDP) and the United Nations Development Programme (UNDP) are also part of this joint effort. Among the strategies included are efforts to increase female PNTL at the community level, and the provision of training to PNTL officers on gender equality, gender-based violence, and communication.²²

C. Children's Rights

Due to low literacy and high poverty levels, many children are deprived of the protection of their families and communities. At the same time, they are also exposed to violent acts. Although official statistics are limited, reports from local organizations show that sexual abuse is rife, especially involving young girls. Moreover, some practices contrary to the principles outlined in the CRC remain in practice, e.g. corporal punishment is common at home and in schools. As a result, in 2016, the National Action Plan for Children in Timor-Leste 2016-2020 (NAPC) was established by the Ministry of Social Solidarity and the Commission on the Rights of the Child (KDL) to provide guidance to improve the lives of children. The NAPC was established as a follow-up to the country's UPR and was based on recommendations from the CRC Committee which focused on four areas: child protection issues and concerns; child health and nutrition and adolescent health; pre-school education and basic education; and child and youth participation.

D. Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Rights

As mentioned in the 2017 Outlook, Timor-Leste held its first-ever pride parade supported by the UN and international agencies such as the Asia Foundation in 2017. Hatutan, the main network for such initiatives also conducted other programmes to combat the discrimination and violence targeting members of the LGBTI community. Further, Timor-Leste made history on LGBTI rights when former Prime Minister, Rui Maria de Araujo, recorded a video message urging the Timorese to create an inclusive nation, one accepting of people with different sexual orientations and gender identities. In March 2017, Timor-Leste also informed the UN Human Rights Council in Geneva that it had accepted two recommendations on SOGIE (sexual orientation and gender

²¹ 'UN Women and Civil Service Commission collaborate to promote equal opportunities and reduce sexual harassment in the workplace in Timor-Leste' UN Women, 9 February 2018, available at <http://asiapacific.unwomen.org/en/news-and-events/stories/2018/02/un-women-and-civil-service-commission-collaborate-to-promote-equal-opportunities>, accessed on 17 January 2019.

²² 'Press release: National Police of Timor-Leste is committed to promote gender equality in the institution by unveiling its first Gender Strategy for 2018-2022' UN Women, 20 August 2018, available at <http://asiapacific.unwomen.org/en/news-and-events/stories/2018/08/national-police-of-timor-leste-is-committed-to-promote-gender-equality>, accessed on 17 January 2019.

identity and expression) made during the November 2016 UPR of its human rights situation. On 20 July 2018, the LGBTI community organised its second Pride March and celebration calling for the inclusion of LGBTI people in the country's development. Youth group, Hatutan, joined forces with Fundasaun Codiva, Arco Iris, and other partners to hold the event.

Despite these positive developments, same-sex individuals, while not criminalized under Timor-Leste's laws, are offered little protection against discrimination. As a consequence, many suffer from social stigma and discriminatory practices. Although the Constitution enshrines human rights for all and its representative to the United Nations has enthusiastically signed a suite of recommendations and resolutions confirming the rights of the LGBTI community, efforts to explicitly guarantee equal rights for the group in the Constitution have yet to materialize.

E. Freedom of Expression and Assembly

In the 2018 World Press Freedom Index, Timor-Leste gained three ranking positions. Nevertheless, as Reporters Without Borders (RSF) points out:

*Various forms of pressure are used to prevent journalists from working freely, including intimidatory legal proceedings, police violence and, public denigration of media outlets by government officials or parliamentarians.*²³

With provisions contrary to international human rights laws and standards, the media law adopted in 2014 continues to be an element of concern although it is generally agreed that the freedoms of expression and assembly have been adequately provided for especially compared to other Southeast Asian countries. Freedom of assembly is explicitly protected under Art 42 of the Constitution, which states that all people “are guaranteed the freedom to assemble peacefully and unarmed.” The Constitution also sets out freedoms of the press and expression in Arts 40 and 41. As a result, ordinary Timorese, including human rights activists, are generally free to express themselves. Thus, the Freedom in the World Index 2018 lists the country's overall status as “free,” its freedom rating at 2.5/7 (where 1=most free and 7=least free), and its press freedom status as “partly free.”²⁴ However, a few incidents of threats and intimidation on freedom of expression and assembly were reported in 2018.

One reason for the above is a general lack of awareness of the Press Law, an ignorance that covers not only the public but also the PNTL (or police) and Defence Force members. The latter two groups, on encountering journalists in the field,

²³ ‘Timor-Leste’ Reporters Without Borders, 2018, available at <https://rsf.org/en/timor-leste>, accessed on 1 April 2019. Timor-Leste is currently ranked 95th in the 2018 Press Freedom Index.

²⁴ ‘Freedom in the World 2018’ Freedom House, 2018, available at <https://freedomhouse.org/report/freedom-world/2018/timor-leste>, accessed on 1 April 2019.

have been known to react aggressively. For example, on 8 January 2018, GMN TV reporters were shouted at by police officers at a checkpoint near the Palace of the Government. Another incident reported occurred on 24 February 2018 when the President of the Authority for the Special Region of Oecusse-Ambeno, Arsenio Paixao Bano, threatened and banned journalists from Suara Timor Lorosa'e (STL) daily newspaper from covering stories relating to a land dispute between the local authority and local residents.²⁵

On 9 November 2018, street protests involving several hundred students associated with Movimentu Universitariu Timor-Leste (MUTL) in front of Dili's Parliamentary Palace attracted a firestorm of controversy. The protests were organized to channel frustration against Parliament's decisions to purchase new cars for 48 recently elected members of parliament (MPs) and sell off old Toyota Prados to departing MPs at the artificially low price of \$8,000 per car. Rather than hearing out the students' complaints, the government responded to the peaceful demonstrations by using tear gas and physical force to disperse the crowd. Twenty-two students were also detained following the protest. Consequently, the conduct of police, in using violence and intimidation against anti-corruption protesters, including arresting and physically assaulting members of the MUTL, has been heavily criticised.²⁶

F. Police Brutality

Police brutality is another key concern in 2018. Multiple cases of excessive force during incident response or arrest have been reported including an off-duty officer in Manatuto escalating a verbal confrontation with a civilian in September.²⁷ Police abuse of power is a systemic problem affecting all districts in Timor-Leste and is one of the top human rights violations reported to the ombudsman every year.

Another case that made headlines and caused public outrage in 2018 was the case of a drunken police officer who allegedly shot and killed three teenagers and injured five others at a party in Kuloan on 18 November 2018. His actions prompted protests against police brutality, particularly protesting their lack of discipline. Although the suspected officer, Jose Mina, was arrested and police investigated the shooting, the incident further damaged the reputation of the PNTL. Furthermore, this incident

²⁵ 'Timor-Leste: Making self-regulation work' SEAPA, 4 May 2018, available at <https://www.seapa.org/timor-leste-making-self-regulation-work/>, accessed on 20 January 2019.

²⁶ 'Misuse of social media for inflammatory politics statements must end' Fundasaun Mahein (FM), 20 March 2018, available at <http://www.fundasaunmahein.org/2018/03/20/misuse-of-social-media-for-inflammatory-politics-statements-must-end/>, accessed on 20 January 2019.

²⁷ According to a security sector nongovernmental organization (NGO), in September 2018, "an off-duty police officer in Manatuto escalated a verbal confrontation with a civilian by changing into his uniform and returning with a squad car and two other officers. The three officers allegedly beat the civilian, placed him under arrest and beat him in the car while transporting him to the police station." See, 'Timor-Leste 2018 Human Rights Report' US Department of State, Bureau of Human Rights, Democracy, and Labor, 2018, available at <https://www.state.gov/documents/organization/289331.pdf>, accessed on 1 April 2019.

triggered much discourse about off-duty officers carrying their weapons and the reckless use of firearms by PNTL members, overall revealing a general lack of organization and enforcement of firearm regulations.²⁸

G. Migration and Human Trafficking

In 2017, counter-trafficking legislation (Law No 3/2017) was passed with the aim of providing stronger mechanisms to prevent and combat trafficking in persons. Although the legislation does provide for greater clarity on visa entry conditions with the aim of regulating migration more effectively, it has yet to be fully implemented. For instance, there is still an absence of policy to guide the process. In addition, because the only official version of this law is in Portuguese, access to it will be limited as most Timorese lack the proficiency to read legislation in Portuguese and other at-risk groups will most likely not understand the language at all.²⁹

Part 3: Conclusion

2018 was a challenging year for Timor-Leste, specifically regarding its national politics largely due to differences among political parties, and also between the president of Fretilin and the AMP government. While democracy continues to be highly valued with the country yet again achieving a high ranking in the EIU's Democracy Index of 2018, its economy and development have suffered. In particular, its Sustainable Development Goals (SDGs) are one key area the government must prioritize to safeguard the population's basic needs thereby avoiding such issues as malnutrition and poverty, both of which remain huge challenges for the young country.

²⁸ 'PNTL should regulate or limit the use of firearms' Fundasaun Mahein (FM), 26 November 2018, available at <http://www.fundasaunmahein.org/2018/11/26/pntl-should-regulate-or-limit-the-use-of-firearms/>, accessed on 20 January 2019.

²⁹ 'The impact of migration on Timor-Leste and its security sector' Fundasaun Mahein (FM), 31 July 2018, available at <http://www.fundasaunmahein.org/2018/07/31/the-impact-of-migration-on-timor-leste-and-its-security-sector/>, accessed on 20 January 2019.

VIETNAM

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

VIETNAM

*Ngo Huong**

Part 1: Overview of Vietnam

A. Country Background

Vietnam Facts	
Geographical size	332,698 sq km
Population	94.54 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)	97.3% ³
Life expectancy	75.9 ⁴
GDP	US\$223.78 billion (per capita US\$2,342) ⁶
Government	A one-party socialist republic led by the Communist Party of Vietnam (CPV) which espouses Marxist-Leninist and Ho Chi Minh thought. The unicameral popularly elected National Assembly is the supreme organ of government, electing the President who is head of state.
Political and social situation	Although the CPV maintains a stranglehold on political power, recent amendments/proposed amendments to laws and increased public participation in decision-making has led to the inclusion of human rights into legislation. However, in some instances, an implementation gap exists between what the law preaches and what the government practices.

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¹ Data from 2017. 'Vietnam' The World Bank, available at <http://data.worldbank.org/country/vietnam>, accessed on 10 February 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 20 October 2017.

³ Data from 2016. As announced by the Ministry of Education and Training. See, 'Vietnam's literacy rate reaches 97.3 percent' dtinews, 15 January 2016, available at <http://dtinews.vn/en/news/020/43462/vietnam-s-literacy-rate-reaches-97-3-percent.html>, accessed on 17 October 2017.

⁴ Data from 2017. The World Bank (see note 1 above).

⁵ Data from 2017. The World Bank (note 1 above) and 'GDP per capita (current US\$)' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=VN>, accessed on 22 February 2019.

History of human rights in Vietnam and its system of governance

Ideas about human rights and democracy were assimilated by pre-World War II nationalist elites who had been exposed to Western democratic norms and institutions. And indeed, during the anti-colonisation period, the acceptance of democratic norms proved a vital tactic in nationalist struggles for independence. Similar to other countries in Southeast Asia at the time, Ho Chi Minh made a unilateral declaration of independence from France in 1945, incorporating a quote from the American Declaration of Independence (1776).⁶ He went on to further incorporate human rights into the 1946 Constitution. Although this gave birth to a (self-proclaimed) new republic and supposedly democratic nation, Western concepts of human rights remain controversial in a nation where political control is based firmly in the realms of Marxist-Leninist ideology.

Buddhism and Confucianism, together with indigenous values, underpin the development of modern Vietnamese cultural identity. The corollary has been the reflection in law of humanist values similar to those defined in the Universal Declaration of Human Rights. It is doubtful whether 'Asian values' are embedded in the country's culture and law, although some connections may be made between Confucianism and the call to support Asian values by Lee Kuan Yew at the Bangkok Regional Preparatory Meeting to the Vienna World Conference on Human Rights in 1993. Since then, claims to the existence of Asian values have been advanced under the rubric of cultural relativism to attack the idea of universal human rights. Thus, Vietnam's leaders have evoked them to support their argument that Western ideas of human rights are incompatible with the Marxist-Leninist ideology and 'Ho Chi Minh thought' underpinning the Vietnamese State. Accordingly, Western ideals of individual rights, including political and civil rights, have been seen as toxic to an ideology prioritizing economic development, collectivism, and political stability.

Initiated in 1945, the August Revolution against French colonial rule led to the development of a highly centralised political and economic system in the northern region of the country. In 1946, the first constitution proclaimed a communist state in North Vietnam leading to three decades of war between North and South Vietnam; a conflict which finally ended in 1975. Underpinned by Marxist-Leninist ideology which pervades all aspects of social and political life, economics, and systems of governance, thereafter, the unified state was led by the Communist Party of Vietnam (CPV). Indeed,

⁶ 1946 Constitution, Chapter II, available at http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=536, accessed on 30 June 2015. This states: "Tất cả mọi người đều sinh ra có quyền bình đẳng. Tạo hóa cho họ những quyền không ai có thể xâm phạm được; trong những quyền ấy, có quyền được sống, quyền tự do và quyền mưu cầu hạnh phúc" (which translates as: "We are all born equal ... We all have non-derogable rights by nature including the right to life and the freedom and right to pursue happiness"). Compare this to the American Declaration of Independence 1776 which states: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness."

the revised constitutions of 1959 and 1980 were entirely socialist in nature, and to this day, Vietnam remains a socialist state governed under a one party system. After Doi Moi (or Economic Renovation) was proclaimed in 1986, and the contemporaneous collapse of socialism led to political fragmentation in the USSR, Vietnam shifted radically to an ‘open-door’ economic policy and pushed for economic integration on a global scale based on the principle of market economics. Thus, while the nation’s constitution and political ideology embrace Marxist-Leninist notions of justice—an idea of justice derived from collective production and distribution of welfare under socialism—these tenets are now being contested under condition of economic growth albeit without the addition of human rights, especially civil and political rights.

When Doi Moi was initiated, although political conservatives sought to attract investment funds and technology, they also feared pressures for political freedom, respect for human rights, the emergence of civil society, and wider concepts of governance, would undermine CPV dominance.⁷ However, in response to economic liberalisation, Vietnam has merely shifted from being a ‘centralised totalitarian state’ to a ‘decentralised authoritarian state.’ On the other hand, decentralisation also facilitated a distribution of power, and in its wake, pluralism in the political, social, and cultural spheres of society. While the concept of individual human rights is alien to communist ideology, human rights in Vietnam are also heavily influenced by the Chinese political-moral system under which Confucian values stress social duties, hierarchy, and obligations. Further complicating the mix, for decades, understanding of human rights in the region has been bound up with contested political positions.⁸ Economic liberalisation has had a positive effect on human rights and economic structure changes as regards state governance and state-society relations. The move away from central planning required a reform agenda, including the recognition and protection of private ownership of assets, especially private ownership of the means of production; this entailed changes to the national constitution and other legislation.

Current political and social situation

Of particular significance in 2016 was May’s National Assembly (NA) general election which followed the Communist Party Congress XII in January. Notably, a CPV resolution stipulated that Central Committee members should neither stand for election nor be nominated without personnel planning.⁹ Of more significance was

⁷ Dinh, QX, ‘The political economics of Vietnam’s transformation process’ *Contemporary Southeast Asia*, 2000, Vol 22, No 2, pp 360-388.

⁸ Gammeltoft, T, and Hernø, R, ‘Human rights in Vietnam: Exploring tension and ambiguities’ in Jacobsen, M, and Brunn, O (eds), *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*, Democracy in Asia, Series No 6, London: Curzon Press and Nordic Institute of Asian Studies, 2000.

⁹ In December 2015, implementing Decision No 224 on voting procedures within the Communist Party, the CPV held a meeting to agree on the nomination process for high leadership positions to be voted at the Congress in January 2016. See, ‘The 12th National Party Congress from January 20 to 28, 2016’ [in Vietnamese], Tuổi Trẻ, 21 December 2015, available at <https://tuoitre.vn/dai-hoi-dang-toan-quoc-lan-thu-xii-tu-ngay-20-den-2812016-1024888.htm>, accessed on 22 February 2019.

the quinquennial leadership change that took place at the Congress.¹⁰ Following the election of Nguyen Phu Trong as CPV General Secretary for a second term, the Socialist Republic of Vietnam remains an authoritarian state ruled by the CPV and led by the General Secretary. When President Tran Dai Quan passed away, Nguyen Phu Trong was elected by the NA to be President cum CPV General Secretary on 23 October 2018 with a remarkable 99.79% of the votes. The NA also ratified the Comprehensive-Progressive Agreement for Trans-Pacific Partnership (CPTPP) on 12 November 2018. In addition, it organised the World Economic Forum on ASEAN with over 1000 participants from all over the world. Challenges facing the new government include an economic downturn and the need for institutional reform.

B. International Human Rights Commitments and Obligations

Vietnam started engaging in human rights discourse when Doi Moi was introduced in 1986, thus, signalling a modest opening of political space. Indeed, it has since acceded to a number of UN human rights instruments, although the Western ideal of human rights remains controversial there. For example, this ambiguity was reflected at the ASEAN level when Vietnam joined Singapore, among other member states, in upholding the principle of ‘non-interference’ in the internal affairs of states. Further highlighted was the “significance of national and regional particularities and various historical, cultural, and religious backgrounds.”¹¹

Table 1: Ratification Status of International Instruments – Vietnam¹²

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	7 Nov 2013	5 Feb 2015
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		24 Sep 1982 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		

¹⁰ On 28 January 2016, Congress Party XII voted out the party leaders of term XI including President Trương Tấn Sang, Prime Minister Nguyễn Tấn Dũng, Chairman of the Assembly Nguyễn Sinh Hùng, and others.

¹¹ ASEAN Human Rights Declaration, Art 7, available at https://www.asean.org/storage/images/ASEAN_RTCK_2014/6_AHRD_Booklet.pdf, accessed on 22 February 2019.

¹² ‘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 22 February 2019.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	29 Jul 1980	17 Feb 1982
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		9 Jun 1982 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		24 Sep 1982 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)	26 Jan 1990	28 Feb 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	8 Sep 2000	20 Dec 2001
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography	8 Sep 2000	20 Dec 2001
Convention on the Rights of Persons with Disabilities (CRPD)	22 Oct 2007	5 Feb 2015

Since Doi Moi, human rights have risen in Vietnam's national policy agenda. Although the country signed and ratified its first human rights treaties (ICCPR and ICESCR) in the early 1980s, a more consistent international engagement only began in 1993 when it attended the World Conference on Human Rights in Vienna.¹³ Prior to this, Vietnam joined ASEAN leaders in advocating 'Asian values' at an ASEAN meeting in Bangkok.¹⁴ Promoting non-interference by states, this concept is considered more appropriate to the region than Western democracy which emphasises individual freedoms rather than community, social unity, and individual duty.

Despite powerful economic pressures, the state has entered into many international human rights commitments (see Table 1 above), notably UN instruments, ICCPR and ICESCR, in 1982. After the CRC in 1990, Vietnam did not ratify another international convention until 2001, when optional protocols to the CRC were ratified. More recently, in 2015, Vietnam ratified conventions on the rights of persons with disabilities and against torture. Hence, it has acceded to the majority of human rights treaties with the exception of any attached optional protocols or individual complaints mechanisms. As

¹³ Vietnam ratified the International Convention on Economic, Social, and Cultural Rights (1982), the International Convention on Civil and Political Rights (1982), the Convention on the Elimination of all forms of Discrimination against Women (1982), and the International Convention on the Elimination of all forms of Racial Discrimination (1982) (OHCHR 2015).

¹⁴ Vietnam joined ASEAN in 1995.

of yet, Vietnam is not party to the conventions protecting the rights of migrant workers and their families or the convention shielding persons from enforced disappearance. In 2018, Vietnam reported its third cycle of the Universal Periodic Review (UPR), its first State report to the Committee Against Torture,¹⁵ and its 5th-6th State reports to the Committee to the Convention of the Rights of the Child. It also finally submitted its third report on the ICCPR in November 2017. Additionally, in 2018, Vietnam published a white book on human rights.¹⁶

Since 1994, the government has committed to ratifying a number of ILO conventions (five out of eight of the fundamental conventions) whereby labour rights would be recognised as human rights and adopted into domestic law.¹⁷ As of June 2018, the conventions yet to be ratified, are: Abolition of Forced Labour (C105); Freedom of Association and Protection of the Right to Organize (C87); Right to Organize and Collective Bargaining (C98); and Convention No 189 on decent work for domestic workers.

Pressure to adopt and retain commitments to human rights accordingly increased persuading top political leaders to publicly assert Vietnam's commitment to human rights¹⁸ as espoused in its Economic Development Strategy (2011-2020) which aims "to ensure human rights and citizen's rights for overall development."¹⁹

¹⁵ See, 'National report on the implementation of the UN Convention Against Torture' National Database on Laws, available at <http://bocongan.gov.vn/van-ban/van-ban-moi/bao-cao-quoc-gia-ve-thuc-thi-cong-uoc-cua-lien-hop-quoc-ve-chong-tra-tan-260.html>, accessed on 10 February 2019.

¹⁶ 'Vietnam's achievements in the protection and promotion of human rights' Socialist Republic of Vietnam Government Portal, available at http://www.chinhphu.vn/portal/page/portal/English/publications/publications_details?categoryId=100003069&articleId=10053604, accessed on 20 February 2019.

¹⁷ To date, Vietnam has ratified 21 ILO conventions. See, 'Ratifications for Vietnam' ILO, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:103004, accessed on 30 April 2015. Accordingly, labour, trade union, and insurance laws were amended to include labour conditions, gender, health and safety at work, and collective bargaining provisions.

¹⁸ Statement by former Prime Minister Nguyen Tan Dung for the year 2014. See, "Thủ tướng: Dân chủ là xu thế không thể đảo ngược" Vietnam Net, 17 October 2014, available at <http://vietnamnet.vn/vn/chinh-tri/202481/thu-tuong--dan-chu-la-xu-the-khong-the-dao-nguoc.html>, accessed on 18 October 2017.

¹⁹ See, 'Socio-Economic Development Strategy 2011-2020' which states "Phải bảo đảm quyền con người, quyền công dân và các điều kiện để mọi người được phát triển toàn diện." This translates as: "To ensure human rights, citizen rights, and other conditions for the comprehensive development of people." Available at <http://www.xaydungdang.org.vn/Home/vankientulieu/2011/3511/CHIEN-LUOC-PHAT-TRIEU-KINH-TEXA-HOI-20112020.aspx>, accessed on 18 October 2018.

Table 2: International and Regional Rules Affecting Vietnam’s Commitments and Requirements

Organization	Vietnam’s Commitments, Requirements, and Actions
United Nations	<ul style="list-style-type: none"> • Ratified 13 UN human rights conventions, including ICCPR and ICESCR in 1987 • Became a non-standing member of the Human Rights Council in 2012 • Committed to recognise human rights in UPR reports of 2008 and 2013 • Reported on ICESCR in 1993 and again in 2014 • Constitution amended in 2012 to incorporate a human rights chapter
International Labour Organization (ILO)	<ul style="list-style-type: none"> • Adheres to ILO framework and is an active participant • Ratified 17 ILO conventions (including Convention No 188 and 5 of the 8 fundamental conventions) between 1980 and 1985, and since 1992 • Has not ratified the ILO convention on freedom of association and collective bargaining and related human rights conventions • Ratified the Equal Remuneration Convention in 1997 • Ratified the Convention concerning Occupational Safety and Health and the Working Environment in 1994
World Trade Organization	<ul style="list-style-type: none"> • Member since 2005 • Sits on the ILO governing body as a party to bilateral and multilateral trade and investment agreements, some of which contain provisions dealing with labour matters, thus, mandating application of international labour and human rights standards
Trans-Pacific Partnership	<ul style="list-style-type: none"> • Aimed to provide market access for made-in-America goods and services • Would have required commitment to strong and enforceable labour and environmental standards, including independent trade unions • Postponed as US decided to withdraw from TPP • Replaced by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) which Vietnam ratified in November 2018

Organization	Vietnam's Commitments, Requirements, and Actions
Association of Southeast Asian Nations (ASEAN) ²⁰	<ul style="list-style-type: none"> • Under the ASEAN Declaration (1965), member nations committed to uphold the values of social harmony and consensus in political decision-making • Vietnam's representative became ASEAN Secretary General in 2012 • ASEAN launched the ASEAN Human Rights Declaration (AHRD) in 2012 (to which Vietnam is a party) but non-binding AHRD is flawed as it adheres to the 'ASEAN Way' and its principle of non-interference. During negotiations, Vietnam allegedly sided with states such as Singapore and Malaysia in advocating for derogations and exceptions on the basis of, e.g. public morality and national security
EU-Vietnam Free Trade Agreement	<ul style="list-style-type: none"> • Negotiations complete • Chapter 13 on Trade and Sustainable Development includes conditions for ILO core standards including independence of trade unions • EU Parliament hearing on 2018 but ratification delayed until 2020
Comprehensive-Progressive Agreement for Trans-Pacific Partnership (CPTPP)	<ul style="list-style-type: none"> • Ratified on 12 November 2018²¹ • Requires commitment on ILO standards and human rights including freedom of association, collective bargaining, elimination of child labour, forced labour, and discrimination in employment • Chapter on Investor-State Dispute Settlement (ISDS) covers environmental obligations • Regulates human rights in the business context and gives right to regulate markets in the public interest

Human rights in free trade agreements

Legal changes regarding human rights were triggered when Vietnam embraced global economic integration, via World Trade Organization (WTO) accession in 2005. This necessitated changes to domestic laws to meet WTO membership requirements. This

²⁰ The ASEAN Human Rights Declaration (2012) proclaims:

respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance, recognising freedom of peaceful assembly, the right to work, free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed, the right to an adequate standard of living for himself or herself and his or her family.

See, 'ASEAN Human Rights Declaration and the Phnom Penh statement on the adoption of the AHRD' available at [http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20\(7.%20Jul\)%20-%20ASEAN%20Human%20Rights%20Declaration%20\(AHRD\)%20and%20Its%20Translation.pdf](http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20(7.%20Jul)%20-%20ASEAN%20Human%20Rights%20Declaration%20(AHRD)%20and%20Its%20Translation.pdf), accessed on 18 December 2017.

²¹ See, 'Resolution No 72/2018/QH14' 12 November 2018, available at <https://thuvienphapluat.vn/van-ban/Thuong-mai/Nghi-quyet-72-2018-QH14-phe-chuan-Hiep-dinh-Doi-tac-Toan-dien-va-Tien-dien-bo-xuyen-Thai-Binh-Duong-400589.aspx>, accessed on 1 February 2019.

was when human rights really came to the fore, driving changes to many domestic laws. By complying with WTO rules, Vietnam also needed to implement human rights commitments. All these moves called for domestic reforms in managing workforces and worker rights.

Another opportunity to promote human rights occurred during negotiations on the Trans-Pacific Partnership or TPP,²² the Comprehensive and Progressive Agreement for Trans-Pacific Partnership or CPTPP, and other free trade agreement negotiations. Accordingly, Vietnam opted to adjust its domestic legislation and systems to explicitly recognise human rights. One condition imposed by the CPTPP was to recognise ILO core standards including freedom of association and trade unions. As the seventh country to ratify the CPTPP, Vietnam is now edging closer to realizing these standards.²³ However, these have yet to trigger changes in domestic laws and it remains to be seen whether they will now be adhered to. On the up-side, Vietnam's single trade union system may be on its way out. However, the government must first introduce mechanisms to manage the new organisations, including systems to enable new unions to register since under current laws they are still considered arms of the state. Accordingly, Vietnam opted to adjust its domestic legislation and systems to explicitly recognise human rights.

Inserting human rights commitments into sustainable development goals

Vietnam's sustainable development goals (SDGs) for 2030 adopted a human rights-based approach which were also affirmed in its 2011-2020 goals.²⁴ Pressure to adopt and retain commitments to human rights accordingly increased, thus persuading top political leaders to publicly assert Vietnam's commitment to human rights²⁵ as espoused in its Economic Development Plan (2011-2020) which aimed "to ensure human rights and citizen rights for overall development."²⁶ Vietnam submitted a progress report on its SDGs to the UN in February 2018, focusing on 6/17 SDGs.²⁷ However, there

²² The TPP imposed labour standards, requiring state commitments on labour rights protection and mechanisms. In Vietnam's case, the USA insisted on legal changes to ensure freedom of association and freedom to join trade unions. In addition, free trade agreements with the European Union (EVFTA) posited social and sustainability conditions including freedom of unions. However, the US government withdrew from the TPP in 2017.

²³ 'Congress approves CPTPP, Vietnam is closer to international labour standards' [in Vietnamese] ILO, available at https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_649444/lang--vi/index.htm, accessed on 10 February 2019.

²⁴ 'Decision approving Vietnam's Sustainable Development Strategy 2011-2020' No 432/QĐ-TTg, 12 April 2012, available at <http://chinhphu.vn/portal/page/portal/chinhphu/noidungchienluocphattrienkinhtexahoi?docid=1254&substract=&strutsAction=ViewDetailAction.do>, accessed on 22 February 2019.

²⁵ 'Prime Minister: Democracy is an irreversible trend' [in Vietnamese] Vietnam.net, 17 October 2014, available at <http://vietnamnet.vn/vn/chinh-tri/202481/thu-tuong--dan-chu-la-xu-the-khong-the-dao-nguoc.html>, accessed on 18 October 2017.

²⁶ Decision No 622/QĐ-TTg of the Prime Minister, 10 May 2017, in which 17 SDGs to 2030 were set including 115 specific goals corresponding with global targets. Goals 8 and 10 accord to targets in its National Action Plan (see, Targets 8.5, 10.1, and 10.4).

²⁷ 'Vietnam presents a voluntary National Report on SDG implementation' [in Vietnamese] VPG News, 17 July 2018, available at <http://baochinhphu.vn/Doi-ngoai/Viet-Nam-trinh-bay-Bao-cao-Quoc-gia-tu-nguyen-ve-thuc-hien-SDG/341558.vgp>, accessed on 1 February 2019.

were gaps in its awareness, capacity to deliver, and a lack of resources in the realization of those rights including in its efforts to achieve its SDGs and economic, social, and cultural rights. This necessary link between the country's commitment to human rights and implementation of its SDGs would be made much clearer in a national action plan.

C. National Laws Affecting Human Rights

Vietnam suffers from an 'implementation gap' in relation to human rights. Briefly described, this refers to states ratifying human rights treaties, establishing complying laws, yet failing to respect rights in practice. As noted, Vietnam has already ratified the majority of human rights treaties and inscribed such rights into its constitution and legislation, yet the government struggles to practice what the law preaches due, one must assume, to insufficient political will.

The 2013 Constitution

Vietnam's constitutions of 1946, 1959, and 1980 recognised human rights within the concept of citizen rights. The first constitution of 1946 had only 70 articles but citizen rights were provided for in 18 and were accorded priority in Chapter II under "Citizen Rights and Obligations." The 1959 Constitution was a step forward inasmuch as it contained 21 articles related to citizen rights and obligations. The 1980 Constitution of the reunified Vietnam inherited and built on its two predecessors with 29 articles specifying such rights. But it was the 1992 Constitution that for the first time provided a concept of human rights:

[A]ll citizens are equal before law, citizens have rights to participate in social affairs, and to participate in and discuss the general issues of society.

Other social, economic, and cultural rights were also provided for. Since Congress VII (1991) of the CPV, perception on human rights has been even more comprehensive with such rights viewed as human values which are aligned to nationalism (national rights and sovereignty). The instruction also recognised human rights as being a part of its history and tradition although dependant on the economic and cultural development of the nation. Accordingly, provisions cannot simply be copied from existing models.

Effective in 2013, Vietnam amended its constitution to include a separate chapter on human rights and the basic rights and duties of citizens.²⁸ Thus, the 2013 Constitution contained a separate chapter on human rights and the basic rights and duties of citizens.²⁹ It did not, however, give immediate effect to constitutional rights. For the first time, Art 14 states that human rights are natural and inherent values whilst also referring to the balance of economic, social, cultural, political, and civil rights. It states:

²⁸ Government of Vietnam 2013 Constitution, Chapter II.

²⁹ Government of Vietnam 2013 Constitution, Chapter II.

In the Socialist Republic of Vietnam, political, civic, economic, cultural and social human rights and citizen's rights are recognized, respected, protected, and guaranteed in concordance with the Constitution and the law.

Article 14, Chapter II nonetheless states that human rights shall be *restricted* on grounds of national defence, national security, social order and security, social morality, and community well-being.

Legislative reform

Following adoption of the 2013 Constitution, the NA embarked on a process of legislative reform. Chapter II of the 2013 Constitution provides for the recognition of human rights and consequent state obligations in law. Progress can also be seen in the increasing acceptance of international norms and in a number of revised and new laws including the Penal Code, the Criminal Procedure Code, the Civil Code, the Civil Procedure Code, the Labour Law, and the Law on Access to Information. These laws were formulated to realise the goals of Art 25 of the 2013 Constitution, that

citizens have freedom of expression, freedom of press, access to information, freedom of assembly, freedom of association, and freedom of demonstration. The realisation of these rights are provided by law.

Laws on demonstrations (freedom of assembly), access to information, the criminal code, criminal procedural code, and others, were to have been amended by the end of 2015. However, the NA delayed implementation of several laws³⁰ passed in 2015 affecting the rights of citizens (including a new penal code, criminal procedure code, and a law on custody and temporary detention) due to flaws in the amended Penal Code. As a result, the Penal Code 2015 was amended, finally coming into effect in January 2018. However, some of its provisions are vague, e.g. ss.79, 87, 88, 89, 91, 245, and 258.³¹

Thus, the CPV began its process of legal and institutional reform to keep up with the demands of economic integration including those required by free trade agreements, e.g. ratification of ILO conventions, conformity with certain labour and environmental standards, and changing the role of trade unions.³²

³⁰ For example, the Criminal Procedure Code, the Law on the Organization of Criminal Investigation Agencies, the Law on the Implementation of Custody and Temporary Detention, and the amended Penal Code itself.

³¹ Human Rights Watch recommended Arts 109, 116, 117, 118, 331, and 318 of the Penal Code be repealed to ensure conformity with the ICCPR. During the first six months of 2018, the government convicted and imprisoned 26 rights bloggers and activists. See, 'Submission to the Universal Periodic Review of Vietnam' Human Rights Watch, 23 July 2018, available at <https://www.hrw.org/news/2018/07/23/submission-universal-periodic-review-vietnam>, accessed on 20 February 2019.

³² 'Full text of Resolution 06, Course XII on international economic integration' [in Vietnamese] VOV.vn, 6 November 2016, available at <https://vov.vn/chinh-tri/dang/toan-van-nghi-quyet-06-khoa-xii-ve-hoi-nhap-kinh-te-quoc-te-566918.vov>, accessed on 20 February 2019.

The greatest challenge to such developments remains the conservative forces within the CPV which continue to resist the establishment and operation of institutions to control trade, especially their complicated nature. Thus, although the 2013 Constitution recognises many human rights including economic, social, and cultural rights, clear and effective legal mechanisms to protect them are still lacking. For example, no court exists to protect human rights, either constitutionally or otherwise. Currently, some cases touching on economic rights (e.g. regarding employment and social security) have been considered by district and provincial courts. Other cases on labour rights concerning violations by businesses of social insurance provisions have been denied access due to overlapping regulations and procedures.³³ For example, in the Formosa case where environmental resources were wantonly depleted for the sake of profit, a judicial mechanism allowing affected people to file a legal complaint at both local and national levels was lacking.³⁴

Access to information

The Law on Access to Information (a key human right) was passed by the NA in 2016.³⁵ Having taken many years to draft, it became effective on 1 July 2018, and now enables citizens to access information held by the public sector. As such, it facilitates participation by citizens in the monitoring of government activities, thereby increasing transparency. However, there are challenges to implementing the law, both from the provision of public sector services and as regards demand. Only 9.3% of respondents to a 2017 PAPI survey even knew about the law.³⁶ Conversely, many civil servants are still not fully aware of the public's right to information and their obligation/duty to provide it proactively. In addition, the law is limited to declassified documents and those created after it came into effect.³⁷

In June 2018, a new cyber security law was passed by the NA, tightening government control of information and silencing critics on the internet. This became effective on 1 January 2019,³⁸ and constitutes the most ambitious attempt of the CPV to wrest back control of the internet and thereby restrict freedom of expression. However,

³³ 'Social insurance debt: Difficult to sue because of law problems' [in Vietnamese], Baomoi.com, 25 August 2017, available at <https://baomoi.com/no-dong-bao-hiem-xa-hoi-kho-kien-vi-vuong-luat/c/23109514.epi>, accessed on 20 December 2017.

³⁴ 'The court returned more than 500 claims of Formosa Ha Tinh' [in Vietnamese] Phapluat, 8 October 2016, available at <http://plo.vn/phap-luat/toa-an-tra-lai-hon-500-don-kien-formosa-ha-tinh-657255.html>, accessed on 20 December 2017.

³⁵ Law on Access to Information (No 104/2016 / QH13), Socialist Government of Vietnam, Government Portal, available at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=184568, accessed on 10 February 2018.

³⁶ 'PAPI report and data' [in Vietnamese] PAPI, available at <http://papi.org.vn/bao-cao-va-du-lieu-papi>, accessed on 1 February 2019.

³⁷ Decree No 13/2018/ND-CP, Art 14(2).

³⁸ Law on Network Security, LuatVietnam, available at <https://luatvietnam.vn/an-ninh-quoc-gia/luat-an-ninh-mang-2018-luat-an-ninh-mang-so-24-2018-qh14-164904-d1.html#noidung>, accessed on 1 February 2019. See, 'NA passes Cybersecurity Law' Viet Nam News, 12 June 2018, available at <https://vietnamnews.vn/politics-laws/449739/na-passes-cybersecurity-law.html#QRT2JYlq7RYqfMf0.97>, accessed on 20 February 2019.

the new cyber security law places improper restrictions on freedom of expression in direct violation of international human rights laws.³⁹ For instance, press agencies must review all activities on, e.g. fan pages to prevent abuse of comments or distorted information from being posted.⁴⁰ Accordingly, Force 47 was set up to combat hostile forces on the internet.⁴¹ Several cases on internet usage have already been prosecuted in 2018 including that of Dr Hai Van Ho and Binh Duc Hoang, both of whom were imprisoned.⁴²

Meanwhile, civil society organisations in Vietnam alleged that Facebook was complying with the government to silence dissent in the country. A letter written and signed by nearly 50 civil society groups and addressed to Facebook CEO, Mark Zuckerberg, reported that the company's system of automatically pulling content if enough people complained could "silence human rights activists and citizen journalists in Vietnam."⁴³

Freedom of association, expression, and demonstration

A law on freedom of association was drafted in 2016 but was returned to government for quality improvement and to make it better reflect the goal of freedom of association.⁴⁴ In 2016, a law on public demonstrations was also postponed for further development. Despite being recognised in the 2013 Constitution, these laws have been pending for over 10 years.

The Penal Code and Penal Procedural Code were amended in 2015, taking effect in 2016.⁴⁵ The 2015 Penal Code replaced some provisions limiting freedoms and democratic

³⁹ Article 19 of the ICCPR which Vietnam acceded to on 24 September 1982, protects everyone's right to hold an opinion without interference and "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media. [Further] [p]ermissible restrictions on the internet are the same as those offline (A/HRC/17/27)." In addition, Arts 17 and 19 of the ICCPR are intimately connected as the right to privacy is often understood to be an essential requirement for realization of the right to freedom of expression (A/RES/68/167, A/HRC/27/37, A/HRC/23/40, A/HRC/29/32).

⁴⁰ Official Document No 779/CBC-TTPC.

⁴¹ Polit Buro Ordinance No 47.

⁴² On 1 February 2018, Dr Hai Van Ho was sentenced to 4 years in prison and 2 years' probation for publishing articles on the unjust situation in Vietnam on his Facebook accounts, Ho Hai and BS Ho Hai. Arrested on 2 November 2016, he was held until he was tried and sentenced on 1 February 2018. Thirty-six of 75 articles by Dr Ho were considered by the authorities to be anti-government in violation of Resolution 72/2013/NĐ-CP on the use of the internet. Similarly, on 6 February 2018, Binh Duc Hoang was sentenced to 14 years in prison for posting numerous articles and self-made short videos on Facebook covering demonstrations by victims in Nghe An anh Ha Tinh demanding compensation from Formosa following the environmental disaster of April 2016.

⁴³ 'Vietnamese activists question Facebook on suppressing dissent' New York Post, 10 April 2018, available at <https://nypost.com/2018/04/10/vietnamese-activists-question-facebook-on-suppressing-dissent>, accessed on 22 February 2019.

⁴⁴ See, 'QH backs the Law on Association' [in Vietnamese] Vietnam Net, 18 November 2016, available at <http://vietnamnet.vn/vn/thoi-su/quoc-hoi/qh-lui-thong-qua-luat-ve-hoi-340581.html>, accessed on 30 May 2017.

⁴⁵ For example, the amended law includes s.109 on "activities aimed at overthrowing the people's administration" and s.117 (replacing s.80(1)(c)) which defined the crime of spying as "collecting, supplying information and other materials against the Socialist Republic of Vietnam." Section 118 proscribes security disorder. See, Law No 100/2015/QH13, available at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=183216, accessed on 17 October 2017.

rights. New provisions relate to the infringement of freedom of expression and press activity, access to information, and the right of citizens to demonstrate (s.167).⁴⁶ However, the state is still able to prevent demonstrations under domestic law because freedoms of association and demonstration as constitutional rights have not yet been institutionalised into domestic law.⁴⁷ As a result, some human rights defenders have already been charged under the Penal Code for “propagandizing” against the state.⁴⁸

In other words, the Constitution supports the rights to associate and demonstrate but limits their exercise by, e.g. preventing workers from organising or joining independent unions of their choice. Whilst workers may choose whether to join a union and at which level (local, provincial, or national), the law requires every union to be established under the legal purview and control of the country’s only trade union confederation, the Vietnam General Federation of Labor Unions (VGCL). Further, while the amended Trade Union law (2013) stipulates that trade unions have the right and responsibility to organise and lead strikes, it also establishes certain substantive and procedural restrictions on such strikes. In contravention of international standards, the law also forbids strikes over ‘rights-based’ disputes. This includes strikes arising out of economic and social policy measures that are not part of collective negotiation processes, since such strikes are regarded as falling outside the law’s definition of protected ‘interest-based’ strikes.⁴⁹ A proposal to amend the 2013 Labour Code was made in 2016 and underscores the CPV’s instruction that it should align with ILO standards ensuring the establishment and operation of employee organizations in work places.⁵⁰

⁴⁶ Under the 1993 Penal Code, s.88 criminalized propaganda against the Socialist Republic of Vietnam and s.258 criminalised the abuse of democratic freedoms to infringe upon the interests of the State. Section 258 reads:

- (1) Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organisations and/or citizens shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and three years;
- (2) Serious offences shall be subject to a prison term of between two and seven years.

⁴⁷ Section 258 of the Penal Code criminalised the abuse of democratic freedoms to infringe upon the interests of the State. It reads:

- (1) Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedoms to infringe upon the interest of the State, the legitimate rights and interests of organisations and/or citizens shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and three years.
- (2) Serious offences shall be subject to a prison term of between two and seven years.

⁴⁸ For example, Nguyen Ngoc Nhu Quynh (Me Nam or Mushroom Mother) was convicted under Art 88 of the Penal Code on October 2016. She was finally released after being given a 10 year prison sentence and forced into exile in October 2018. See, ‘Nguyen Ngoc Nhu Quynh (Me Nam)’ CPJ, available at <https://cpj.org/data/people/nguyen-ngoc-nhu-quynh-me-nam/index.php>, accessed on 1 February 2019.

⁴⁹ In October 2015, the government issued Decree 88 regarding administrative sanctions for interference in trade union activities. It imposed fines of between VND3-10 million (app US\$135-\$450) for discrimination against employees establishing, joining a trade union, or carrying out trade union activities, and for any actions disadvantaging the operations of a trade union.

⁵⁰ Resolution of CPV Central Committee, November 2016. See, ‘Rừng bị phá, 80% cử nhân chạy Uber, Grab thì tăng trường đật ở đâu?’ Lao Dong, available at <http://laodong.com.vn/chinh-tri/toan-van-nghi-quyet-so-06nqtw-hoi-nghi-trung-uong-4-khoa-xii-608410.bld>, accessed on 17 October 2017.

Part 2: Outstanding Human Rights Issues

The expectations and assumptions that govern the notion of states as system-like units capable of acting symmetrically and reciprocally does not adequately reflect the diversity of states with respect to their capacity to achieve the consensus necessary to realise human rights. This is not an excuse for human rights violations, but a challenge to the assumptions underpinning the international system. Despite progress, it has to be said, frequent human rights violations still cloud the picture.

A. Corruption

Ranked 107th out of 180 in Transparency International's Corruption Perception Index 2017,⁵¹ the issue of corruption looms particularly large in Vietnam. Indeed, General Secretary Nguyen Phu Trong was elected on an anti-corruption platform. Considered one of the cleaner politicians in the country, it is generally agreed he makes a fitting figurehead for the drive against corruption.

Anti-corruption measures continue to be central to the reform process. Many cases and investigations into different sectors such as banking, petroleum, and oil, have thus been established.⁵² Mr Nguyen Xuan Son, former General Director of Ocean Bank, was even given the death penalty for intentional abuse of power to appropriate and embezzle property.

While corruption causing economic loss is not a human rights issue, the fact offenders may be sentenced to death is. It remains to be seen whether the country has the political will to really fight corruption, bearing in mind the power struggles plaguing the party. Further, Vietnam must find a way to deal with corruption without violating human rights. Although the law provides for judicial independence and lay assessors, in practice, the judiciary lacks strength of will and is vulnerable to influence by outside elements such as senior government officials and CPV leadership.

To meet certain requirements of the CPTPP, an amended law on anti-corruption was passed by the NA in 2018⁵³ and includes provisions more aligned with the UN convention on corruption.

⁵¹ 'Corruptions Perceptions Index 2017' Transparency International, available at https://www.transparency.org/news/feature/corruption_perceptions_index_2017?gclid=Cj0KCQiAzKnjBRDPARIsAKxfTRBsIk4doub5hIfkIRWhv3uwLbFA0wPE_G-Pd_cqdyyzC_owvuYALqMaAgvKEALw_wcB, accessed on 22 February 2019.

⁵² For example, Pham Cong Danh of the Construction Bank, Ha Van Tham of the Ocean Bank, and Minister Dinh La Thang and Trinh Xuan Thanh all faced corruption charges. See, "Waking up' court sessions in 2018' [in Vietnamese] VOV.vn, 30 December 2018, available at <https://vov.vn/phap-luat/nhung-phien-toa-day-song-du-luan-nam-2018-857797.vov>, accessed on 10 February 2019.

⁵³ Law on Anti-Corruption 2018 (Law No 36 of 2018/QH14) [in Vietnamese], available at <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Luat-Phong-chong-tham-nhung-322049.aspx>, accessed on 21 February 2019.

B. Business and Environmental Human Rights

Another notable case in 2018 involved demonstrations and mass protests against a draft law on special economic zones (SEZ), following previous mass protests in 2016 off the coasts of Nghệ An, Hà Tĩnh, Quảng Bình, Quảng Trị, and Thừa Thiên-Huế provinces. These occurred as a result of a disaster that was alleged to have been caused by Formosa-Taiwan Plastics Group which was said to have discharged toxic waste into the water.⁵⁴ However, when the victims rejected the proposed compensation, opting instead to protest, the government proved reluctant to respect their rights in this regard.⁵⁵ Indeed, several were convicted of abusing democratic freedoms and threatening state interests under s.258 of the Penal Code.⁵⁶ Similarly, citizens claiming remedies in other cases have also had their freedom of expression curtailed, purportedly for being harmful to public order.⁵⁷

C. Right to a Fair Trial

The Constitution states that all persons are equal before the law, that defendants are innocent until proven guilty, and that everyone has the right to a defence lawyer and a speedy public trial. Further, under Art 31, the Constitution guarantees the “adversarial principle in trials,” but in practice, courts have yet to introduce such procedures into the judicial system. The government is, however, in the process of amending the Penal

⁵⁴ ‘Formosa làm cá chết, bồi thường 500 triệu USD’ Vietnam Net, 30 June 2016, available at <http://vietnamnet.vn/vn/thoi-su/chinh-tri/cong-bo-nguyen-nhan-ca-chet-313134.html>, accessed on 17 October 2017.

⁵⁵ See, ‘Viet Nam 2016/2017’ Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>, and ‘Viet Nam: Crackdown on human rights amidst Formosa related activism’ Amnesty International, 8 November 2016, available at <https://www.amnesty.org/en/documents/asa41/5104/2016/en/>, both accessed on 17 October 2017.

⁵⁶ ‘Nghị phạm chủ mưu vụ bao vây trụ sở huyện Lộc Hà bị truy nã’ VN Express, 12 May 2017, available at <http://vnexpress.net/tin-tuc/phap-luat/nghi-pham-chu-muu-vu-bao-vay-tru-so-huyen-loc-ha-bi-truy-na-3583937.html>, accessed on 17 October 2017. Also, see the cases reported in ‘Vietnam’ US Department of State, 3 March 2017, available at <https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265386.htm>, accessed on 17 October 2017. From April to July, police officers and plainclothes security forces in multiple locations around the country reportedly assaulted individuals attending demonstrations related to an environmental disaster that had caused mass fish deaths along the central coastline. These demonstrations coincided with the period preceding NA elections and the visit to the country by a foreign leader. Likewise, on 1 May and 8 May, police in Ho Chi Minh City reportedly detained and assaulted dozens of activists attending or attempting to join environmental demonstrations.

⁵⁷ Land activist, Cấn Thị Thêu, was convicted under s.245 for “causing public disorder” by a court in the capital, Ha Noi, and was sentenced to 20 months’ imprisonment. She was accused of inciting protests against land reclamation in Duong Noi, Ha Dong district, Ha Noi, by posting photographs online. See, ‘Cấn Thị Thêu bị bắt tạm giam về hành vi gây rối trật tự công cộng’ 11 June 2016, available at <http://anninhthudo.vn/chinh-tri-xa-hoi/can-thi-theu-bi-bat-tam-giam-ve-hanh-vi-gay-roi-trat-tu-cong-cong/684295.antd>, accessed on 17 October 2017. Likewise, blogger, Tran Thi Nga, was convicted of anti-state propaganda on 25 July 2017 and sentenced to 9 years’ imprisonment for sharing articles and videos online highlighting rights abuses tied to environmental crises and political corruption. See, ‘Socialist Republic of Vietnam Joint Submission to the UN Universal Periodic Review, 32nd Session of the UPR Working Group’ Voice, Civicus, and Human Rights Foundation, 2018, available at <https://www.civicus.org/documents/JointCIVICUSUPRSubmissionVietnam.pdf>, accessed on 22 February 2019.

Code to implement these principles with the NA passing a new Criminal Procedure Code in November 2015 (although its implementation has been delayed until 2016).⁵⁸

The Criminal Procedure Code (Art 173, clause 5) stipulates that the Procurator of the People's Supreme Procuracy can decide to hold a suspect for violation of national security in detention until an investigation is concluded. Under Art 74, a detainee's access to legal counsel is also restricted.⁵⁹

Reporters Without Borders ranked Vietnam 175th out of 180 countries in its recent report on press freedom,⁶⁰ while Freedom House simply categorized it as a "not free" country. Likewise, its Freedom on the Net Index in 2017 gave Vietnam an internet freedom score of 76/100 with 100 being the *least* free.⁶¹ As such, during the first five months of 2018, the CPV-controlled courts prosecuted at least 26 rights defenders with several sentenced to more than ten years in prison.⁶²

D. Labour Rights

Some further concerns on labour rights include: (1) access to economic rights for workers, including rights of migrant workers in the informal sector; (2) gender inequality in the workforce; (3) forced labour; and (4) freedom of trade unions. These four matters were selected because they exemplify problems limiting the extent to which the government has been able to meet its obligations under UN human rights and ILO conventions.

In an informal economy, labour rights are vital. In Vietnam, this includes 40 million of a total 54 million workers.⁶³ In other words, two thirds of the country's total workforce

⁵⁸ Some pending cases include the arrest of Nguyen Van Dai in 2015 on the charge of "conducting propaganda against the Socialist State of Vietnam" (under s.88 of the Penal Code). On 30 March, at Ho Chi Minh City People's Court, the following were charged under s.88 of the Penal Code for "spreading anti-state propaganda:" (1) Blogger, Nguyen Dinh Ngoc (also known as Nguyen Ngoc Gia), was sentenced to 4 years in prison; and (2) 3 activists, Ngo Thi Minh Uoc, Nguyen Thi Tri, and Nguyen Thi Be Hai. Likewise, in October, well-known activist, Nguyễn Ngọc Như Quỳnh, known as blogger Mẹ Nấm (Mother Mushroom), was arrested under s.88 over blog postings criticising the government (see, 'Viet Nam: 2016/2017' Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/#endnote-4>, accessed on 18 October 2017). Section 88 carries a 3-20 year prison sentence. Similarly, Nguyen Huu Vinh (aka Anh Ba Sam) and Nguyen Thi Minh Thuy were sentenced to 5 and 3 years' imprisonment under s.258.

⁵⁹ Labour rights activists, Nguyen Van Dai and Le Thu Ha, were arrested in December 2015 and held for almost 2 years without access to lawyers. In April 2018, the two were convicted and sentenced.

⁶⁰ '2018 World Press Freedom Index' Reporters Without Borders, available at <https://rsf.org/en/ranking>, accessed on 22 February 2019.

⁶¹ 'Freedom on the Net 2017: Vietnam' Freedom House, available at <https://freedomhouse.org/report/freedom-net/2017/vietnam>, accessed on 22 February 2019. Other scores include: Obstacles to access (14/25); Limits on content (28/35); and Violations of user rights (34/40).

⁶² 'Vietnam: Withdraw problematic cyber security law' Human Rights Watch, 7 June 2018, available at <https://www.hrw.org/news/2018/06/07/vietnam-withdraw-problematic-cyber-security-law>, accessed on 22 February 2019.

⁶³ 'The growth rate of gross domestic product' [in Vietnamese] General Statistics Office, 2017, available at <http://www.gso.gov.vn/default.aspx?tabid=382&idmid=&ItemID=18667>, accessed on 22 February 2019.

are employed in the informal sector and are therefore not protected by laws. According to a survey conducted by M.net in 2017,⁶⁴ some 90% of migrant workers in the informal sector lack health insurance. A government report in 2017⁶⁵ showed that only 61% held voluntary social insurance. Thus, the government should amend the Labor Code to include informal workers to ensure their economic rights are equal to those of other groups. Further, it should ensure the rights of such vulnerable groups to access social protection by revising the Law on Social Insurance.

E. Freedom of Association, Freedom of Peaceful Assembly, and the Formation and Membership of Trade Unions

Vietnam does not subscribe to any ILO conventions concerning trade unions.⁶⁶ While an opportunity to promote human rights occurred during free trade agreement negotiations, a 2016 draft of a law on freedom of association was returned to government for quality improvement and to make it better reflect the goal of freedom of association.⁶⁷ A law on public demonstrations was also postponed for further development.

The 2013 Constitution supports rights to associate and demonstrate but limits their exercise by, for example, preventing workers from organising or joining independent trade unions of their choice. The right to organise strikes, including provisions for collective bargaining, was given to the VGCL in the 2012 Labor Code. Moreover, the amended Trade Union Law (2013) stipulates that while trade unions have the right and responsibility to organise and lead strikes, it also establishes certain substantive and procedural restrictions on strikes. Therefore, the government now proscribes workers from forming and joining unions outside of the VGCL framework. As such, although the amended Labour Code (2013) allows for labour strikes, organisation of such strikes requires compliance with a complicated regulatory procedure which

⁶⁴ M.net is a Vietnamese network of civil society organisations working to support the recognition of labour rights. The seven network members are: Institute for Development and Community Health (LIGHT); Center for Research and Integration (CDI); Center for Gender, Family, and Community Development (GFCD); Institute for Research on Policy, Law, and Development (PLD); Vietnam Justice Support Association for the Poor (VIJUSAP); Social Work and Community Development Research Centre (SDRC); and the Center for Family Support and Community Development (CFSCD). Other civil society partners include the Research Center for Gender, Family, and Environment in Development (CGFED) and Action for H'mong Development (AHD). Dr Huong Ngo founded the Center for Development and Integration (CDI).

⁶⁵ Report No 166/BC-CP, 10 May 2018, on the implementation of social insurance policies and the management and use of the social insurance fund in 2017.

⁶⁶ To date, Vietnam has ratified 21 ILO conventions but has not ratified the conventions on freedom of association and collective bargaining and related human rights conventions. See, 'Ratifications for Vietnam' ILO, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:103004, accessed on 9 July 2018.

⁶⁷ See, 'QH lùi thông qua luật về Hội' Vietnam Net, 18 November 2016, available at <http://vietnamnet.vn/vn/thoi-su/quoc-hoi/qh-lui-thong-qua-luat-ve-hoi-340581.html>, accessed on 30 May 2017. See also, 'Bộ trưởng Nội vụ xin lùi thông qua Luật về hội' Vietnam Net, 25 October 2016, available at <http://vnexpress.net/tin-tuc/thoi-su/bo-truong-noi-vu-xin-lui-thong-qua-luat-ve-hoi-3489204.html>; and 'Kiến nghị hoãn thông qua Luật về Hội' Wake It Up, available at <http://wakeitup.net/hoan-luat-hoi>, all accessed on 17 October 2017.

in 2016 had the effect of rendering many strikes illegal.⁶⁸ However, the government refrained from taking action against many strikers, and in some cases, actively mediated agreements in their favour.

Provision for collective bargaining between workers and employers is also included in the Labour Code. This law allows trade unions and employer organisations to facilitate and support collective bargaining, requiring companies to establish a mechanism to enable management and workforce to exchange information and consult on subjects affecting working conditions. For example, one regulation requires workplace dialogues to take place every three months. While some initial success in collective bargaining has been recognised,⁶⁹ nevertheless, the right to strike is still limited because under the current Labour Code, attempted dispute resolution via mediation and reconciliation must occur before the right to strike will be recognised.⁷⁰ As a result, several labour activists were convicted in 2018.⁷¹

Moreover, the government also tightened its control over civil society activities and operations. As a result, some groups found it difficult and even impossible to register for legal status.⁷² Accordingly, instead of being supportive, state agencies have blocked peaceful protests and gatherings in public places. Indeed, prior approval for public gatherings is a must, and permission for meetings, marches, or public assemblies may be refused if deemed politically unacceptable.⁷³

⁶⁸ In October 2015, the government issued Decree 88 regarding administrative sanctions for interference in trade union activities. It imposed fines of VND3-10 million (app US\$135-450) for discrimination against employees establishing or joining a trade union, carrying out trade union activities, and for any actions disadvantaging the operations of a trade union.

⁶⁹ On 19 June 2016, the Hai Phong Economic Zone Trade Union and five Korean manufacturing enterprises based in Trang Due Economic Zone signed the country's first multi-enterprise collective bargaining agreement negotiated between a group of foreign-investor enterprises and trade unions to decide basic work conditions, including recognition of union rights. The agreement will likely benefit nearly 2,500 workers through improved recruitment and female worker policies, increased base wages, better bonuses, allowances, leave, and rest time as well as conditions for ensuring trade union operations in the enterprises. See, 'Công đoàn Khu Kinh tế Hải Phòng: Lần đầu tiên thương lượng ký TULĐTT nhóm DN FDI' Lao Dong, 27 May 2016, available at <http://laodong.com.vn/cong-doan/cong-doan-khu-kinh-te-hai-phong-lan-dau-tien-thuong-luong-ky-tuldtt-nhom-dn-fdi-556250.bld>, accessed on 17 October 2017.

⁷⁰ The VGCL reported 177 strikes from January through July, approximately the same number as 2015. Of those strikes, 69% were in foreign direct-investment companies (mainly Korean, Taiwanese, and Japanese companies and in the three labour intensive sectors of the garment, footwear, and electronic industries) See, 'Vietnam' US Department of State, available at <https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265386.htm>, accessed on 17 October 2017.

⁷¹ For example, labour activist, Truong Minh Duc, was sentenced to 12 years and activist, Hoang Duc Binh, was sentenced to 14 years in February 2018. See, 'Vietnam: Events of 2018' Human Rights Watch, 2018, available at <https://www.hrw.org/world-report/2019/country-chapters/vietnam>, accessed on 22 February 2019.

⁷² 'The role of civil society in economic, social and cultural development' People's Participation Working Group, GPAR, Gencoment, 2016.

⁷³ In December 2018, PPGW's annual meeting was halted midway.

F. Human Rights and Academic Freedom

As mentioned previously, since the advent of Doi Moi in 1986, the state has engaged in international human rights discourse. This seminal event in the nation's post-independence history provided opportunities for the opening up of political space and coincided with the collapse of the Soviet Union. Consequently, Vietnam acceded to a number of UN human rights instruments, although Western notions of human rights remain controversial there.

Vietnam now recognizes the need to enhance citizen awareness of, and education about, human rights and other citizen rights, within the context of its own commitment to ratify international human rights conventions. Changes in Vietnamese society driven by its integration into the global economic system have led to increasing demands for human rights education especially at higher levels. The CPV responded by opening up educational institutions to ensure a greater understanding of human rights leading the Prime Minister to issue Decision No 1309/QĐ-TTg on 5 September 2017 approving mechanisms to integrate human rights into the national education system. This National Programme is aimed at learners, educators, and human rights administrators and sets a clear objective for 2017-2020 to train human rights experts, lecturers, teachers, and curriculum developers, whilst introducing adequate learning materials and text books into all levels of education.

Such teaching is seen as a coda to traditional content on human rights as articulated by Marxist-Leninist political ideology and is already entrenched in the education system. However, the government provides no practical guidance for developing human rights education in the higher education system. Instead, it is seen as a domain of State policy. Acknowledged as fundamental values, human rights are taught in formal education programmes and are even allowed relative freedom. But, there are limits to academic freedom in the informal and public spheres. In general, academics are restricted from participating in the public sphere, especially sharing and writing on human rights issues of public interest or expressing political opinions. Moreover, the government has even limited student freedom of expression.⁷⁴ For example, in June 2018, six universities and colleges in Vietnam issued a notice requesting students not to participate in mass demonstrations or post notices on the college's website.⁷⁵

⁷⁴ See, Circular No 17/2017/TT-BLĐTBXH. Article 5.5 prohibits students from disturbing order in public places and in schools. Article 5.9 prohibits students from posting, commenting, or sharing articles with content that is profane, debauched, violent, reactionary, infringes national security, attacks the Party and the State, is distorted, slanderous or hurts the prestige of the organization, or disturbs the honour and dignity of individuals on the internet. Under s.24 of Circular 10/2016/TT-BGDĐT, students who violate such prohibitions may face expulsion.

⁷⁵ 'Fact sheet no 14: Rights of youth and students – human rights space' GPAR and Partners, 2018.

G. National Human Rights Institution (NHRI)

Vietnam has still not yet set up a NHRI as required by the Paris Principles. However, it did accept five recommendations on the establishment of an NHRI during its 2nd UPR cycle in 2014 leading to the organization of several workshops in 2014-2017. It also set up several inter-agency mechanisms to oversee the rights of vulnerable groups such as the National Committee on People with Disabilities, the National Committee on Children, and the government's Steering Committee on Human Rights with the Secretariat under the Ministry of Public Security.

The problem is such mechanisms are neither permanent nor independent bodies with mandates and the capacity to promote and protect human rights. Therefore, Vietnam should establish a permanent and independent human rights monitoring body composed of independent members unaffiliated with the government or the CPV. Ideally, this body should be empowered by law and given resources to investigate, prosecute, and punish any law enforcement or government official for human rights violations.

Part 3: Conclusion

Under the concept of 'socialist democracy,' Vietnamese citizens participate in the law-making process through dialogue and debate. It is hoped the state will listen and respond to society's desire to include human rights in its legislation instead of limiting such rights. However, despite liberalisation and increasing levels of public participation, Vietnam is by no means a democracy. Yet, even this authoritarian government has had to respond to emerging issues, as exemplified by the corruption and environmental cases cited above. Moreover, claims for human rights have expanded to include wider casts of actors than those in official positions. However, it seems the CPV is not yet ready for a complete paradigm shift away from the state's founding Marxist-Leninist political philosophy. Nevertheless, the party appears swayed by the need for stronger legal reforms and greater community participation. As such, the punishment of corrupt public officials surely signals a more transparent government, arguably strengthening public trust in its mechanisms which could prove fruitful for the future of human rights in Vietnam.

Following the 2013 Constitution, legal reform is on-going in Vietnam with several laws on fundamental freedoms and human rights in development. However, tensions continue to rage around the widening of political space, and the freedoms of demonstration, association, and assembly. While some legislation is pending which could either contradict or violate constitutional rights without adequate oversight mechanisms, other major laws favouring human rights have already been passed, notably, the Penal Code and the Law on Access to Information. Conversely, other new laws, such as the Cyber Security Law, impact negatively on human rights.

Whilst still-born, the TPP, in attempting to link international relations to economic goals, pushed the CPV to make positive changes to the Labor Code such as accepting the public's right to discuss unionisation outside the VGCL system as regards freedom of association and assembly. To implement the CPTPP and other upcoming free trade agreements and international commitments, the government should also accelerate ratification of the following conventions: Abolition of Forced Labor (C105), Freedom of Association and Protection of the Right to Organize (C87), the Right to Organize and Collective Bargaining (C98), the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), Convention 189 on decent work for domestic workers, together with different optional protocols related to complaints and communication procedures.

Compared to other ASEAN states, Vietnam is relatively challenged in its legal framework to recognize and commit to economic, social, and cultural rights. Further, it is argued Vietnam faces special challenges arising from the particularities of its political, legal, and social systems. As affirmed by the author, guaranteed economic, social, and cultural rights are necessary to fulfil state obligations under international human rights laws and these need to be associated with the promotion of good governance principles. Addressing these challenges is urgent to deal with increasing demands for human rights domestically, regionally, and internationally. Therefore, such obligations must be met to progressively secure all fundamental rights including political, civil, economic, social, and cultural rights whilst ensuring development in a stable and sustainable manner.

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. 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.
21. (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.
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:

27. (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

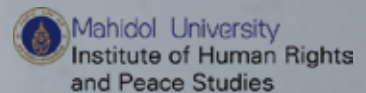
Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA) was launched in February 2015 in Bangkok, Thailand. It is a collaboration between the ASEAN University Network-Human Rights Education (AUN-HRE) which has thirty member-universities and the Southeast Asian 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 fourth 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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