



The Spectra of Authoritarianism in Southeast Asia

Edited by

**Azmi Sharom
Magdalen Spooner**



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This book is a collaboration between SHAPE-SEA and academics/experts to identify, understand, and analyse the impact of authoritarian regimes on the lives of Southeast Asians. It seeks to inform readers how human rights and fundamental freedoms are compromised, as well as how vulnerable peoples are pushed further to the margins. Moreover, this book aims to guide advocacies and action to further address and eliminate both current and potential abuses.

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THE SPECTRA OF AUTHORITARIANISM IN SOUTHEAST ASIA

Southeast Asia is a diverse region encompassing multiple cultures, languages, faiths, and ethnicities. The same can be said about the various forms of authoritarianism found here; hence, the title of this book. The brainchild of Sriprapha Petcharamesree, this volume contains chapters from eight experts on human rights in Southeast Asia, each exploring different but inter-related issues regarding authoritarianism.

Juan Linz distinguishes authoritarianism from totalitarianism. Whereas the latter means complete rule held by one power centre, the former refers to a system with a degree of political pluralism. It is, however, limited and power is largely held in the hands of one person or more usually a group of elites. Barbara Geddes refines the idea further by distinguishing three types of authoritarianism: personalist (where power is in the hands of one individual), military, single party, or a mixture of two or all of these characteristics. Regardless of the form, authoritarianism is an anathema to democracy as under authoritarian governments, free and fair elections, freedom of association, and freedom of expression (the fundamental ideals of democracy and human rights) will become remnants of the past.¹

In Southeast Asia, most countries fall under the category of authoritarianism. If not, they may more accurately be deemed totalitarian. Brunei, for example, makes no pretence of having a pluralist political system; all power and ultimate decision-making lies in the hands of an absolute monarchy. Nevertheless, it would be folly to simply paint the rest of the region with such broad brush strokes. There are nuances and differences along with similarities in the Southeast Asian experience of authoritarianism. In order to defend human rights and democracy by confronting authoritarianism fully and properly, one must understand these subtleties. Hence the need for this book.

International human rights treaties are generally well received in the region. As can be seen in the table below, Southeast Asian nations are well represented in the major human rights treaties. And yet paradoxically, those countries ratifying the largest number of treaties are frequently the ones with the poorest human rights records. Sriprapha Petcharamesree examines this phenomenon in the opening chapter. She explains why it is that countries ratify treaties they then go on to either not enforce or enforce poorly, thereby negatively implicating human rights nationally. It may also have a negative impact on any attempt to establish a regional human rights regime.

¹ Deasy Simandjuntak explores these theories far more exhaustively in her chapter.

Treaty	Ratified By	Ratification or Ascension (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)

Treaty	Ratified By	Ratification or Ascension (a) Date
1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Timor-Leste Vietnam	24 May 2006 (a) 15 Oct 1992 13 Sep 1984 14 Aug 1981 5 Jul 1995 (a) 22 Jul 1997 (a) 5 Aug 1981 5 Oct 1995 (a) 9 Aug 1985 (a) 16 Apr 2003 (a) 17 Feb 1982
1984 Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	Cambodia Indonesia Lao PDR Philippines Thailand Timor-Leste Vietnam	15 Oct 1992 (a) 28 Oct 1998 26 Sep 2012 18 Jun 1986 (a) 2 Oct 2007 (a) 16 Apr 2003 (a) 5 Feb 2015
1989 Convention on the Rights of the Child (CRC)	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Timor-Leste Vietnam	27 Dec 1995 (a) 15 Oct 1992 (a) 5 Sep 1990 8 May 1991 (a) 17 Feb 1995 (a) 15 Jul 1991 (a) 21 Aug 1990 5 Oct 1995 (a) 27 Mar 1992 (a) 16 Apr 2003 (a) 28 Feb 1990

Treaty	Ratified By	Ratification or Ascension (a) Date
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)

The agencies entrusted to oversee the implementation of these treaties are described as National Human Rights Institutions (NHRIs). Normally taking the form of commissions, these can be found in Indonesia, Malaysia, Myanmar, Timor-Leste, the Philippines, and Thailand. The Global Alliance for NHRIs (GANHRI) periodically reviews these agencies every five years, and based on their criteria, grades each accordingly. The NHRIs in Southeast Asia generally achieve good grades with most scoring the highest grades of ‘A’ or ‘B.’ Jonathan Liljeblad, however, questions this ranking system.

He argues that the overly legalistic analysis is too simplistic. In other words, just because laws protect an NHRI, for example, by guarding its independence, does not mean its work cannot be hindered by the government in one of several ways. The easiest method is simply to ignore the NHRI. Thus, for the first time since its introduction 20 years ago, the Malaysian human rights commission finally had its annual report debated in parliament in 2019. In the Philippines, requests for cooperation from its NHRI are simply ignored by Duterte’s government. The Filipino government has also used other methods to hamstring its NHRI, for example, by being clearly antagonistic to the point where its funding was cut so drastically, operations became impossible. Despite all this, the

Philippines human rights commission scored an 'A' in the GANHRI review. Examples from other states include legal action taken against commissioners and a reduction in the number of commissioners.

Co-option is another popular method used where NHRI members are selected for their pliability with the ruling government. Liljeblad studies this in detail, looking closely at the background of individual commissioners. He argues this meticulousness is necessary when trying to determine the true effectiveness of NHRIs. Therefore, in order to truly rate such institutions, one should not only examine the NHRI and the laws and policies creating them, but also the actual behaviour and attitude of states towards the bodies.

Civil society and its role against authoritarianism is discussed in Janjira Sombatpoonsiri's chapter. Although outright oppression against civil society, such as state sponsored killing and disappearances still occurs, she argues that governments have become more savvy and sensitive to the realities of the 21st century where such blatant actions can and will be disseminated at a tremendous pace. Therefore, tactics to control civil society now take subtler forms.

Authoritarianism today can be both "competitive" and "popular" where a veneer of respectability is attained via elections and the methods of quelling dissent are less obvious. Indeed, civil societies may even be co-opted to further the cause of governments. These normally take the form of conservative anti-liberal groups which are often used or supported by governments to act as counter points to more progressive elements of civil society. In addition, this conservatism can be religious in nature; reactive groups are ever ready to question anything deemed unholy, and as shown in later chapters by Deasy Simandjuntak and Azmi Sharom, such factions can be an extremely potent force.

Apart from using proxies, other tactics favoured by authoritarian governments include repressive laws on sedition, official secrets, and defamation. Information is also a key battleground. Traditional media is controlled by licencing laws which can be withheld or withdrawn, thus holding the media hostage to economics. New media, that is to say online news and social media which burst onto the scene 20 years ago, are now being controlled by specific laws that may easily be co-opted to enhance authoritarianism. This is achieved by surveilling social media platforms to identify dissenters and their activities and inflicting heavy penalties on offenders, thus contributing to a climate of fear. Here too, we can see the proxy role of reactionary conservative groups which use cyber space to reinforce anti-human rights and divisive opinions leading to a toxic atmosphere, effectively making any discourse difficult.

Despite this grim outlook, Deasy Simandjuntak contends the situation is not so cut and dried. Although Indonesia turned away from the authoritarian New Order of Suharto in the late nineties, now the Western (mainly Australian) media claims the tide is turning back

to the “bad old days.” However, could such claims be exaggerated? In 2019, Indonesia successfully carried out its fifth free election cycle since its “Reformation.” This was the largest one day election in the world totalling 196.5 million registered voters with multiple parties freely and vigorously campaigning. There can be no comparison with the time of Suharto.

Simandjuntak goes on to propose that perhaps the current government of Jokowi is merely behaving pragmatically as opposed to actively attempting to return to authoritarianism. In an era of volatility, especially religious volatility, the government needs to be “acceptable” to as broad a base as possible. This is not unusual in any democracy. In the case of Indonesia, however, this is often interpreted as pandering to the religious right.

At first glance, this does appear to be the case, with Jokowi choosing a religious conservative as his running mate and upon winning the elections, appointing his presidential rival, Prabowo (a former general with a less than stellar human rights record who ran a campaign based on religious intolerance) to his cabinet. Yet Jokowi’s government also banned the extremist Hizbut Tahir Islamist group. Thus, is the “pandering” really a slide backwards or a more pragmatic attempt to curb the undeniable growing religious extremism in Indonesia?

Extremist Islam is not the only issue in Indonesian politics. The military has long played a role in propping up authoritarian regimes of the past. The question is that in post Suharto Indonesia, do they still have a negative role to play? This question is posed by Muhammad Haripin’s chapter. It cannot be disputed that Indonesian armed forces (formerly a combination of the military and the police) under the New Order were extremely influential in politics, government, and business, and were often used as a surveillance agency to both detect dissent and brutally suppress it.

Accordingly, Haripin argues for a separation of civil government from the military with domestic security matters to be placed in the hands of the police. To a certain extent, such is now the case as the military and police are no longer part of the same machinery. However, the military’s considerable influence still persists albeit in a morphed and less overt manner.

The military is also the subject matter of Eakpant Pindavanija’s chapter, but in his work, it is the Thai military being examined, specifically in the context of the numerous *coups* which have taken place in the country. Pindavanija deals with the puzzle of why obvious authoritarian governments (in the case of Thailand, these generally take the form of direct or indirect military rule) are largely accepted by the populace. Indeed, the conundrum of “popular authoritarianism” is not limited to countries governed by the military. In the Philippines, Duterte, standing on a clearly anti-human rights platform, legitimately won the presidency. This after many years of the Philippines gradually moving further away from the authoritarianism of the Marcos regime.

Similarly, Pindavaniya's chapter studies Thailand's various *coups* and attempts to distil from history how they occur and the reasons underlying minimal resistance to such governments. The 'how' is fairly predictable; a "strongman" takes charge via a *coup*, ostensibly to protect the nation from some danger, then proceeds to legitimize that power via legislative means, often through the creation of a new self-justifying constitution. The 'why' is more elusive. He suggests societies steeped in patriarchal and hierarchical structures will be more inclined to simply accept undemocratic but stable leaderships. Moreover, the control of information further perpetuates notions of patriotism and loyalty. Thus, authoritarian rule becomes not only normalised but virtuous.

The control of information is therefore key to maintaining control. As such, the role of a free press is also crucial to ensure voices speak the truth to power. Unlike the other authors, Pravit Rojanaphruk is not an academic. He is a journalist and his chapter is replete with journalistic illustrations of grotesque abuse of power (the detention of dissidents in Thailand for "attitude adjustments" brings to mind visions of dystopian science fiction) and determined (sometimes amusing) displays of defiance. Be that as it may, the underlying theme of this chapter is clearly about the importance of the press and the role it plays both in opposing and legitimising authoritarian regimes.

Reporters Without Borders ranks press freedom around the world and Southeast Asia does not fare well. Out of 180 countries, of which North Korea is number 180, the highest ranked Southeast Asian country is Indonesia at 124 and the worst is Vietnam at 175. The reasons for this are numerous, but the majority of the blame can be placed on oppressive legislation. Although control of traditional media is common, control of new media is now also widespread with all countries in the region introducing new laws to curb online freedom. While the spread of false and malicious information is problematic, Rojanaphruk contends that cyber space plays a vital role in circumnavigating the more easily controlled traditional media; hence, such "cyber laws" threaten the supervisory role of the fourth estate.

The oppressive power of laws is compounded by the attitude of the press itself. Since the Thai press enjoyed a measure of freedom before the 2014 *coup*, Rojanaphruk believes they will resist losing this. Nevertheless, on the other end of the spectrum lie members of the press who pander to the junta. By not being critical and accepting the government narrative unquestioningly, they effectively legitimize the regime.

Another interesting angle looked at in this chapter is the relationship between Thailand's *lèse majesté* laws (which criminalize any criticism of the royal family, be they real or perceived, serious or trivial) and freedom of speech. This in itself is an affront to the latter, but when combined with the narrative of loyalty to one's leaders and by equating dissent with treason, its chilling effect on politics is palpable.

The final chapter ends on a cautionary note as Azmi Sharom casts an eye on the latest “great hope” for democracy and human rights in Southeast Asia. In 2018, the Malaysian electorate peacefully ousted the ruling party which had been in power since independence in 1957. This was done peacefully and with an ordinariness that stood in stark contrast to the mass mobilisation of protest seen in Indonesia’s “*Reformasi?*” of the late nineties and the Philippine’s “people power” movement of the eighties. But its effect was as profound.

The election was won by the opposition in spite of what were then deemed insurmountable odds. Gerrymandering, malapportionment, a cowed media, and numerous oppressive laws suggested the ruling party’s eventual victory. Yet they did not win and the euphoria in the country was tangible. In the region, Malaysia was held up as an example of how democracy, even a very flawed democracy, could still peacefully overthrow an authoritarian regime. Now, after almost two years, Sharom analyses if such expectations and hopes were warranted. The new-found freedoms of the country appear fragile amid the backsliding of a government seemingly beholden and fearful of right wing religious sentiments and this seems set to ensure that whatever victory could have been claimed for human rights and democracy two years ago may be short-lived.

Authoritarianism and the erosion of liberal democratic practices is a worldwide phenomenon but it is not a homogenous one. The experience of Southeast Asia clearly exemplifies this. It is only with a true understanding of the issues and problems, including their variety and similarities, simplicity and complexities, can positive movements arise to obtain the rights and ideals that were once held or never held at all.

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AUTHORITARIANISM IN SOUTHEAST ASIA AND ITS IMPACTS ON THE RATIFICATION AND IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS TREATIES

*Sriprapha Petcharamesree**

Introduction: State of the art of authoritarianism in Southeast Asia

Erica Franzt pointed out in her book, *Authoritarianism: What Everyone Needs to Know*,¹ that

*despite the spread of democratization following the Cold War's end, all signs indicate that we are currently seeing a resurgence of authoritarianism. Around forty percent of the world's people live under some form of authoritarian rule, and authoritarian regimes govern about a third of the world's countries.*²

This affirmation mirrors the state of political regimes in ASEAN/Southeast Asia (SEA) as well. The decline of democratic governance, the rule of law, and human rights is becoming more evident in the region leading a well-known political scientist from Thailand, Thitinan Pongsudhirak, to write in 2018 that “the China model is winning at the expense of liberal values.”³ He further stated that:

*the year 2018 will mark the start of a period in which outright authoritarianism and illiberal quasi-democracy are likely to be Southeast Asia's prevailing norms. With few exceptions, liberal values and fundamental freedoms and rights will be manipulated and curtailed, even where elections continue to take place. Where authoritarianism holds sway, rights and freedoms will be suppressed altogether.*⁴

And this still holds true in 2020. Only a few States—Indonesia, Malaysia (after the 2018 elections) and Timor-Leste—in SEA can now be considered practicing democratic exercises. Instead, a more sophisticated form of authoritarianism has been introduced and reinforced in the region.

There are different types and shades of authoritarianism. This paper aims first to provide conceptual clarifications of the term (at least in this chapter) by unpacking its concepts and examining its definitions in the context of political regimes in the region. In the second section, this introduction will serve as a stepping stone toward an analysis of the record of (some) State ratifications of international human rights treaties in Southeast Asia and discuss whether a common conclusion in international relations theory suggesting that states participating in the international human rights system do so with an intention to comply is correct. This paper then demonstrates that although the record of SEA

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¹ Franzt, E, *Authoritarianism: What Everyone Needs to Know*, New York: Oxford University Press, 2018.

² Franzt (see note 1 above).

³ Pongsudhirak, T, ‘Authoritarianism is accelerating in Southeast Asia’ *Nikkei Asian Review*, 1 January 2018, available at <https://asia.nikkei.com/Editor-s-Picks/Looking-ahead-2018/Authoritarianism-is-accelerating-in-Southeast-Asia>, accessed on 18 December 2019.

⁴ Pongsudhirak (see note 3 above).

countries with authoritarian leanings is better than states exhibiting more democratic tendencies, their implementation thereof is questionable. Through empirical analysis, the study continues to reveal that States have various reasons to accede to international human rights laws and in actual fact, authoritarian regimes are *more* likely to ratify treaties than those allowing more democratic space. Indeed, some authoritarian states use the signing of treaties to prolong their power and many have been successful at the expense of the protection of human rights. As discussed in the conclusion, this seriously impacts not only the human rights situation in individual countries but also the establishment of a credible human rights system in the ASEAN/SEA region.

Unpacking authoritarianism in ASEAN/Southeast Asia

Whilst some believe that ‘democracy’ is first and foremost a concept before it becomes a fact, authoritarianism seems to indicate the reverse. It is a fact because Southeast Asian peoples have been living with it for decades. Especially at the end of the 1990s, the whole of Asia, including Southeast Asia, seemed to be transiting to democracy leading Sam Rainsy, the then Chairman of the Council of Asian Liberties and Democracy, to comment that “we witness the resurgence of democracy in the region.”⁵ However, at the end of 2019, an exiled leader of the opposition was denied boarding to a Thai Airways flight to Cambodia while another opposition leader (Kem Sokha) although released from house arrest, was prevented from leaving the country or participating in politics. At the same time, treason charges against him remain.⁶

Admittedly, countries in SEA reached some democratic milestones: the victory of the People Power Revolution in the Philippines (1986) which led to the fall of the Marcos regime and the rise of democratic governance; the adoption of a people’s Constitution in Thailand (1997) when ordinary Thais actively participated in constitutional design; the *Reformasi* in Indonesia (1998) where the autocratic government of President Suharto resigned and direct presidential elections were introduced; and in Myanmar, the landslide victory of Daw Aung San Suu Kyi’s National League for Democracy (NLD) in the elections of November 2015. Unfortunately, democratic transitions did not occur in all States in the region, and for the most part, wherever democracy has arisen, it is now in decline. In other words, Southeast Asia is fast transiting from democratic to authoritarian regimes.

One has to recognize that authoritarian regimes in the region differ and do not seem to hold similar characteristics as each reflects different degrees of the use/abuse of political power. In this paper, authoritarianism will simply refer to regimes with limited political pluralism including restrictions on the exercise of rights and freedoms, low levels of popular participation, and weak governance. Similarly, it also points to political structures

⁵ Johannan, U, and Gomez, J, *Democratic Transitions in Asia*, Singapore: Select Publishing and FNF, 2001.

⁶ Hunt, L, ‘Counting the costs of Sam Rainsy’s failed return to Cambodia’ *The Diplomat*, 13 November 2019, available at <https://thediplomat.com/2019/11/counting-the-costs-of-sam-rainsys-failed-return-to-cambodia/>, accessed on 18 December 2019.

and practices that threaten human rights, freedom, and the rule of law. To varying degrees, authoritarian states in ASEAN/SEA seem to possess some common features including the degrees of oppression they impose upon citizens, the amount of force, repression, and violence they use to achieve their goals, enforced public conformity through such means as suppression of freedoms, and the degrees of public support they enjoy.

Although debates about the typology of authoritarianism abound, this section does not attempt to discuss the different types of regimes in trying to unpack authoritarianism in the region. Instead, for the sake of analysis and to avoid ‘dicholomizing’ the political regimes between democracy and autocracy, the classification of regimes has been borrowed from a study conducted in 191 countries around the globe between 1972-2003. In this study, Axel Hadenius and Jan Teorell⁷ provide a new “typology of authoritarian regimes” classifying each into three general types based on their modes of political power maintenance: (1) hereditary succession or lineage; (2) the actual or threatened use of military force; and (3) popular election.⁸ The three modes of power maintenance correspond to three generic types of regime: monarchy, military regimes, and electoral regimes, none of which are mutually exclusive.⁹

In ASEAN/SEA, Brunei Darussalam appears to fit the first type. In this country, a person of ‘royal descent’ inherits the position of head of state in accordance with accepted practice and/or the constitution and exercises real political power. In Thailand and Myanmar, military officers are the major or predominant political actors by virtue of their actual or threatened use of force, with armed forces exercising political power either directly or indirectly.¹⁰ By contrast, electoral regimes form a heterogeneous set with three types of regime advanced, namely: (1) no party regimes where elections are held but all political parties or at least candidates representing certain parties are prohibited¹¹ (for example, in its July 2018 election, Cambodia’s main opposition parties were arbitrarily dissolved and their leaders intimidated or detained); (2) one-party regimes (with only sole communist parties allowed to run for elections, Lao PDR and Vietnam are notable examples of such regimes although competition among candidates from the same party may be allowed); and (3) limited multiparty regimes in which candidates from different parties may ostensibly participate in elections. As regards the latter, Singapore elections permit a degree of competition from different parties but the process favours a particular party (the Chinese dominated People’s Action Party (PAP)) which is invariably declared the winner. Similarly, Thailand serves as another example as during its 2019 election, even though many political parties competed, the institutional design and the way elections

⁷ Hadenius, A, and Teorell, J, ‘Authoritarian regimes: Stability, change, and pathways to democracy 1972-2003’ Working Paper #331, The Helen Kellogg Institute for International Studies, November 2006, available at <https://pdfs.semanticscholar.org/3be1/2b38cf9f72049b0bb3ea08773a2bc404e83f.pdf>, accessed on 18 December 2019.

⁸ Hadenius and Teorell (see note 7 above), at 5.

⁹ Hadenius and Teorell (see note 7 above), at 5.

¹⁰ Hadenius and Teorell (see note 7 above), at 6.

¹¹ Hadenius and Teorell (see note 7 above), at 6.

were conducted meant the process could not be deemed fair as some parties were only established to support the military government. In both countries, while elections may have been free, they were not necessarily fair. In Singapore, the regime remains stable and responsive to the needs of the people. The rule by law is effective. However, this may not be the case in Thailand.

As already mentioned, the above three types are not always exclusive as demonstrated by the hybrid regimes currently governing Thailand and Myanmar. While Thailand is a constitutional monarchy, the military plays a dominant role in politics despite multiparty elections. Without the military's support, civilian governments are likely to fail. The latest elections in Myanmar (2015) and Thailand (early 2019) reveal the hybrid nature of their political structures. In Myanmar, despite the landslide victory of the NLD, the military still rules behind the civilian government. Likewise, in Thailand, the full force of the military continues to control the government. And in the Philippines, despite its relatively free and fair elections, a leader with dictatorial leanings has run the country since 2016 using populist policies to conduct a war on drugs to win more popular support. In all these countries, human rights and freedom are constantly under threat. Similarly, Brunei, Lao PDR, and Vietnam retain regimes that do not allow space for rights and freedoms while Cambodia offers an example of blatant dictatorship. Other countries such as Myanmar, Thailand, and the Philippines are authoritarian regimes behind a façade of democracy where space for democratic exercise is fast shrinking. Thus, in SEA, the democratic form is constantly under threat. All countries except one hold elections and have court systems but at the same time lack the ability to actually change their power structures. Hence, with only a few exceptions, in the span of a few decades, in one form or another, many SEA States have developed sophisticated authoritarian regimes.

How does this state of affairs affect the ratification and implementation of international human rights treaties?

Southeast Asian countries' ratification of international human rights treaties: Reflections of authoritarianism

Beth A Simmons conducted one of the first quantitative studies on the relationship between the ratification of human rights treaties and actual human rights outcomes. Her “rationally expressive commitment” theory maintains that, “Governments are more likely to ratify rights treaties they believe in and with which they can comply at a reasonable cost than those they oppose or find threatening.”¹² In her book,¹³ she further argues that by advancing that “most countries were sincere ratifiers or non ratifiers [...], democracies

¹² Simmons, B, as quoted in Posner, EA, ‘Some skeptical comments on Beth Simmons’s mobilizing for human rights’ *New York University Journal of International Law and Politics*, 2012, Vol 44, pp 819-831, in Hadenius and Teorell (see note 7 above), at 64.

¹³ Simmons, BA, *Mobilizing for Human Rights: International Law in Domestic Politics*, New York: Cambridge University Press, 2009.

tended much more readily to ratify human rights agreements than did autocracies.”¹⁴ In addition, she proposed that

*autocratic governments were more likely to ratify treaties toward the end of their hold on power than were democratic governments, consistent with a theory of appeasing a domestic audience for short-term political gain.*¹⁵

In a nutshell, she predicts that “liberal democracies will enter human rights treaties, while authoritarian states will not [*or hesitate to*] enter human rights treaties.”¹⁶

Simmons also attempts to address why states comply with human rights treaties. Here, she proposes a “domestic politics” theory of compliance where “treaties are causally meaningful to the extent that they empower individuals, groups, or parts of the state with different rights preferences that were not empowered to the same extent in the absence of the treaties.”¹⁷ Simmons identifies three mechanisms:

- (1) For most countries, the creation of a treaty is exogenous so sets the agenda, forcing a government to take a stand on a potentially embarrassing issue;
- (2) Treaties create litigation opportunities for domestic groups; and
- (3) Treaty ratification encourages domestic groups to lobby for reform by revealing to them that some in government support their commitments, and thus their probability of prevailing in domestic politics is higher than they had previously thought.¹⁸

Although it is true that groups, especially civil society, refer to treaties in their attempts to lobby, pressure, or hold governments accountable for the wrongs States have committed, they are far from actually being able to force those governments to take a stand on human rights issues.

¹⁴ Simmons (see note 13 above).

¹⁵ Simmons (see note 13 above).

¹⁶ Posner (see note 12 above), at 820.

¹⁷ Simmons, B, as quoted in Posner (see note 12 above), at 822.

¹⁸ Simmons, B, as quoted in Posner (see note 12 above), at 822.

Table 1: Status of Ratifications of International Human Rights Instruments in Southeast Asian Countries¹⁹

HR Treaties	Countries											Timor-Leste
	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam		
(1) ICCPR ^a	-	26 May 1992	23 Feb 2006 (a)	25 Sep 2009	-	-	23 Oct 1986	-	29 Oct 1996 (a)	24 Sep 1982 (a)	18 Sep 2003 (a)	
ICCPR-OP1 ^b	-	27 Sep 2004 (s)	-	-	-	22 Aug 1989	-	-	-	-	-	
ICCPR-OP2 ^c	-	-	-	-	-	20 Nov 2007	-	-	-	-	18 Sep 2003 (a)	
(2) ICESCR ^d	-	26 May 1992 (a)	23 Feb 2006 (a)	13 Feb 2007	-	6 Oct 2017	7 Jun 1974	-	5 Sep 1999 (a)	24 Sep 1982 (a)	13 Apr 2003 (a)	
ICESCR-OP ^e	-	-	-	-	-	-	-	-	-	-	28 Sep 2009 (s)	
(3) CEDAW ^f	24 May 2006 (a)	15 Oct 1992 (a)	13 Sep 1984	14 Aug 1981	5 Jul 1995 (a)	22 Jul 1997 (a)	5 Aug 1981	5 Oct 1995 (a)	9 Aug 1985 (a)	17 Feb 1982	16 Apr 2003 (a)	
CEDAW-OP ^g	-	13 Oct 2010	28 Sep 2000 (s)	-	-	-	12 Nov 2003	-	14 Jun 2000	-	16 Apr 2003	
(4) CRC ^h	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)	28 Feb 1990	16 Apr 2003 (a)	
CRC-OP-AC ⁱ	17 May 2016 (a)	16 Jul 2004	24 Sep 2012	20 Sep 2006 (a)	12 Apr 2012 (a)	27 Sep 2019	26 Aug 2003	11 Dec 2008	27 Feb 2006 (a)	20 Dec 2001	2 Aug 2004 (a)	
CRC-OP-SC ^j	21 Nov 2006 (a)	30 May 2002	24 Sep 2012	20 Sep 2006 (a)	12 Apr 2012 (a)	16 Jan 2012 (a)	28 May 2002	-	11 Jan 2006 (a)	20 Dec 2001	16 Apr 2003 (a)	
CRC-OP-CP ^k	-	-	-	-	-	-	-	-	25 Sep 2012	-	-	
(5) ICERD ^l	-	28 Nov 1983	25 Jun 1999 (a)	22 Feb 1974 (a)	-	-	15 Sep 1967	27 Nov 2017	28 Jan 2003 (a)	9 Jun 1982 (a)	16 Apr 2003 (a)	

¹⁹ Office of the United Nations High Commissioner for Human Rights. Available at www.ohchr.org, accessed on 26 December 2019.

HR Treaties	Countries										
	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	Timor-Leste
(6) CAT ^m	22 Sep 2015 (s)	15 Oct 1992 (a)	28 Oct 1998	26 Sep 2012	-	-	18 Jun 1986 (a)	-	2 Oct 2007 (a)	5 Feb 2015	16 Apr 2003 (a)
CAT-OP ⁿ	-	30 Mar 2007	-	-	-	-	17 Apr 2012 (a)	-	-	-	16 Sep 2005 (s)
(7) ICRMW ^o	-	27 Sep 2004 (s)	31 May 2012	-	-	-	5 Jul 1995	-	-	-	30 Jan 2004 (a)
(8) CRPD ^p	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	-
CRPD-OP ^q	-	1 Oct 2007 (s)	-	-	-	-	-	-	2 Sep 2016 (a)	-	-
(9) CED ^r	-	27 Jun 2013 (a)	27 Sep 2010 (s)	29 Sep 2008 (s)	-	-	-	-	9 Jan 2012 (s)	-	-

^a International Covenant on Civil and Political Rights

^b Optional Protocol to the ICCPR

^c Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty

^d International Covenant on Economic, Social and Cultural Rights

^e Optional Protocol to the ICESCR

^f Convention on the Elimination of all Forms of Discrimination Against Women

^g Optional Protocol to the CEDAW

^h Convention on the Rights of the Child

ⁱ Optional Protocol to the CRC on the involvement of children in armed conflict

^j Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography

^k Optional Protocol to the CRC on a communications procedure

^l International Convention on the Elimination of All Forms of Racial Discrimination

^m Convention against Torture

ⁿ Optional Protocol to the CAT

^o International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

^p Convention on the Rights of Persons with Disabilities

^q Optional Protocol to the CRPD

^r Convention for the Protection of All Persons from Enforced Disappearance

The above table demonstrates that the first theory advanced by Simmons is far from being plausible in the case of SEA where countries with authoritarian tendencies are often able to boast more than acceptable records in the ratification of international human rights treaties. However, utilizing this second theory to assess the compliance of SEA States to international human rights treaties reveals a mixed answer. As Table 1 above shows, all 11 SEA countries have ratified two conventions – the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), as well as the Optional Protocol to the CRC on the involvement of children in armed conflicts. All ASEAN Member States have also ratified the Convention on the Rights of Persons with Disabilities (CRPD) with Timor-Leste standing out as one of the few democratic countries in the region yet to ratify. The table also indicates that three countries, namely Cambodia, Indonesia, and the Philippines, hold the best records for the ratification of international human rights treaties. Thus, Cambodia has ratified eight out of nine major international human rights instruments. In addition, it signed but has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Likewise, the Philippines has also ratified eight treaties with the exception of the Convention for the Protection of All Persons from Enforced Disappearance (CED). Similarly, Indonesia has ratified eight international human rights treaties, even signing the CED. It is also worth noting that Lao PDR, Thailand, and Vietnam have each ratified seven international human rights laws. Both Laos and Thailand have signed the CED but none of the three have signed or ratified the ICRMW. By contrast, Brunei, Malaysia, Myanmar, and Singapore have only ratified three treaties, namely the CRC, CEDAW, and CRPD with Myanmar also ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2017.

It can already be seen that the ratification record of countries with authoritarian leanings and those considered democratic (or more democratic) are extremely similar. For example, Cambodia and Indonesia have the same record of ratification. Lao PDR and Vietnam, both one party states lacking freedoms, have the same ratification record as Thailand. Before making assumptions, however, we may need to delve deeper and consider when states ratified treaties and the reservations each made thereof. Thus, while Cambodia ratified five out of eight instruments²⁰ in 1992 when the country was under the direct administration of the United Nations Transitional Authority in Cambodia (UNTAC)—a United Nations peacekeeping operation in Cambodia between 1992-93 following the 1991 Paris Peace Accords—the remaining treaties, the International Convention on the

²⁰ The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Elimination of All Forms of Racial Discrimination (ICERD)²¹, the CRPD²² and CED,²³ were signed and ratified under Hun Sen's administration. Therefore, in Cambodia's case, the type of regime seemed not to be the determining factor especially considering it is the only country that has not made reservations to the treaties it ratified. Likewise, Lao PDR and Vietnam also rarely make reservations. In the case of Indonesia, only two human rights instruments (the CRC and CEDAW) were ratified under Suharto's regime whilst the rest were acceded to under directly elected presidents. As for Myanmar, three instruments (the CRC, CEDAW, and CRPD) were ratified by the military regime. In Malaysia, the CRC and CEDAW were ratified by Mahathir bin Mohamad's government which some deemed undemocratic despite regularly held elections. Such is also the case for Brunei Darussalam and Singapore. Most if not all major treaties were ratified by Timor-Leste under successive UN administrations.²⁴ Thailand offers a rather mixed picture as the country has seen many highs and lows with frequent *coup d'états* and the concomitance of more democratic and authoritarian governments. The above seems to suggest that in the case of SEA states, authoritarian regimes appear *more* willing to enter into human rights instruments. It is also interesting to note that regardless of political structure, all countries were willing to be a party to the CRC, CEDAW, and CRPD albeit with varying degrees of reservations.

Thus, the nature of Southeast Asian political regimes may not explain accession to rights treaties. Perhaps a government's decision to accede to international human rights instruments could be better elucidated by the permission provided by international law for States to make reservations upon signature or ratification. By law and practice, States have channels to avoid international legal obligations where consequences may arise. As Koremenos put it, "[r]eservations are a tool for increasing flexibility in treaty design."²⁵ This tool has been used widely by most SEA States except Cambodia, Timor-Leste,²⁶ and the Philippines²⁷ which have not included reservations to any of the main treaties they ratified.

²¹ Opened for signature/ratification in December 1965 and entered into force in January 1969.

²² Opened for signature/ratification in March 2007 and entered into force in May 2008.

²³ Opened for signature/ratification in February 2007 and entered into force in December 2010.

²⁴ The United Nations Mission in East Timor (UNAMET) (June-October 1999), the United Nations Transitional Administration in East Timor (UNTAET) (October 1999-May 2002), the United Nations Mission of Support in East Timor (UNMISET) (May 2002-May 2005), and the United Nations Office in Timor-Leste (UNOTIL) (May 2005-August 2006); see details in 'United Nations Integrated Mission in Timor-Leste' available at <https://peacekeeping.un.org/mission/past/unmit/background.shtml>, accessed on 18 December 2019.

²⁵ Koremenos as cited by Hill, DW, 'Avoiding obligation: Reservations to human rights treaties' *Journal of Conflict Resolution*, 2015, Vol 60, No 6, pp 1129-1158.

²⁶ Cambodia and Timor-Leste only made declarations to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

²⁷ The Philippines only made reservations to the following international human rights instruments it ratified or acceded to: the Declaration to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In his study entitled, *Avoiding Obligation: Reservations to Human Rights Treaties*,²⁸ Daniel W Hill finds that governments are more likely to use such tools when “ratification entails adopting a higher legal standard of rights protection and when governments expect enforcement by domestic courts.”²⁹ He concludes that “governments are more likely to enter reservations when domestic legal standards are lax compared to those in the treaty and when judiciaries are likely to enforce treaty-based obligations.”³⁰ The arguments as advanced by Hill help to shed light upon the ratification and reservation behaviour of many SEA States. For example, in most cases Brunei Darussalam and Singapore have made ‘blanket’ reservations to all the rights treaties they signed or ratified. In these two countries, national laws and practices regarding human rights are strict and judiciaries also appear to strongly enforce such laws. Brunei’s common practice is to make reference to the beliefs and principles of Islam and its constitution (its reservations to the CEDAW, CRC, and CRPD) whilst religious or personal laws, customs, values and religion, national security, public safety, public order, the protection of public health, or the protection of the rights and freedoms of others, the constitution and domestic laws have been cited in Singapore’s reservations to the CEDAW, CRC, and CRPD. Singapore also made reservations to Arts 2, 6, and 22 upon ratification of the ICERD. While the city-state was more specific than Brunei in describing the reasons behind its decisions, it also equally rendered the treaty provisions non-applicable.

Malaysia also made substantial reservations to both the CEDAW and CRC by referring to its Constitution, national laws, and national policies. Upon entering into the CRC, Thailand similarly made reservations to a few articles (7, 22, and 29) by referring to national laws, policies, regulations, and prevailing practices, but later withdrew all reservations with the exception of Art 22. Thailand is the only country in SEA to have ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and to have withdrawn its reservation to Art 29 due to confidence that its laws on child protection would meet international standards.

By contrast, Indonesia, Lao PDR, Myanmar, and Vietnam could be considered moderates in the making of reservations. Interestingly, most if not all States ratifying the ICESCR and ICCPR have made either interpretative declarations or reservations to common Art 1 of the two Covenants (regarding the right to self-determination). Thus, most ASEAN States made reservations to relevant provisions pertaining to the recognition of the jurisdiction of the International Court of Justice either in treaty interpretation or to address possible disputes. It can therefore be seen that the sense of respect for State sovereignty is very strong in SEA.

Examination of the interpretative declarations or reservations made by SEA States indicates that countries, especially Brunei and Singapore where law enforcement is

²⁸ Hill (see note 25 above).

²⁹ Hill (see note 25 above).

³⁰ Hill (see note 25 above).

more efficient, tend to take ratification of human rights treaties seriously as treaty-based obligations are likely to be enforced. The implication is that “where enforcement mechanisms are strong, states may take their commitment more seriously and join only if they intend to comply.”³¹ Countries uncomfortable with compliance either make reservations or do not ratify treaties. The ‘sharia reservations’ as applied by a few States in the region comprise the most striking example of the political sensitivity of such subjects as women’s rights, gender equality, or even child rights. As explained above, Cambodia and Timor-Leste’s lack of reservations can also be understood by the fact both countries were under UN administration upon ratification. In addition, their very weak judicial systems mean international rights treaties are unlikely to go implemented. This supports Hill’s argument “that full adoption of international human rights treaties is more likely when treaties will not create genuine domestic legal constraints.”³² Hill offers another clear observation on the decision to ratify international human rights instruments, linking it to “the specific legal institutions that relate to domestic enforcement rather than broad distinctions between democratic/autocratic political institutions.”³³

Another reason for States to ratify international human rights law was provided by Yvonne M Dutton.³⁴ Her empirical and quantitative study posits that

*where treaty enforcement mechanisms are too weak for states to view them as a credible threat to their sovereignty, even states with the worst practices will regularly and readily commit to treaties designed to promote better human rights practices.*³⁵

By “treaty enforcement mechanisms” Dutton was referring to existing charter and treaty bodies at the UN level. In applying the “threat theory,” Dutton “finds that a State’s human rights ratings do not influence ratification of international human rights treaties with the weakest enforcement mechanisms, such as those that only require the state to self-report its compliance.”³⁶ Generally speaking, the finding may be credible to explain the behaviour of most countries in the world but may not plausibly explain ratification of the Rome Statute which created the International Criminal Courts (ICC) of Cambodia and Timor-Leste. Cambodia was, in fact, the first member State (of ASEAN) to accede to the statute. In the case of Timor-Leste, ratification was made under UN administration.

As is often the case in SEA, Cambodia has not shown much intention to honour its commitments to the treaties it so quickly ratified. Indeed, it continues to abuse human rights. Therefore, even if treaties were structured with stronger enforcement mechanisms, it is likely Cambodia would still have ratified. The process and procedures of being

³¹ Hill (see note 25 above).

³² Hill (see note 25 above).

³³ Hill (see note 25 above).

³⁴ Dutton, YM, ‘Commitment to international human rights treaties: The role of enforcement mechanisms’ *University of Pennsylvania Journal of International Law*, 2012, Vol 34, No 1. Also available at <http://www.corteidh.or.cr/tablas/r31682.pdf>, accessed on 18 December 2019.

³⁵ Dutton (see note 34 above), at 1.

³⁶ Dutton (see note 34 above), at 1.

held accountable may be too difficult to enforce due to the politics behind the existing mechanisms including the ICC. In fact, various studies have shown that “states join international human rights treaties somewhat indiscriminately and perhaps as window dressing only.”³⁷ This conclusion is especially true of Cambodia. Another theory which emphasises “reward-for-ratification” looks at the increased international aid, economic agreements, and public praise and recognition following ratification of human rights treaties.³⁸ However, this cannot be applied to Cambodia or other SEA States, as many (especially Cambodia and Lao PDR) rely on support from China. Moreover, the public is usually unaware of the ratifications entered into by their governments.

The ratification behaviour of States in SEA may be also explained by Oona A Hathaway’s study which argues that “the effect of a treaty on a state—and hence the state’s willingness to commit to it—is largely determined by the domestic enforcement of the treaty and the treaty’s collateral consequences.”³⁹ One prediction claims that “states with less democratic institutions will be no less likely to commit to human rights treaties if they have poor human rights records, because there is little prospect that the treaties will be enforced.”⁴⁰ With very little to no “collateral consequences” of non-compliance, most countries with authoritarian systems in the region appear comfortable ratifying human rights laws. Further, Hathaway predicts that “conversely, states with more democratic institutions will be less likely to commit to human rights treaties if they have poor human rights records – precisely because treaties are likely to lead to changes in behaviour.”⁴¹ Malaysia after the 2018 general election constitutes a clear example of this prediction. In September 2018, democratically elected Prime Minister Mahathir announced to the United Nations General Assembly that “Malaysia would ratify all the human rights conventions left for it to adopt, a total of six, including the racial discrimination measure.”⁴² A mere two months later, the Malaysian government backtracked from its ratification of the ICERD as “[m]any feared that its implementation may undermine some of the privileges enshrined in the Federal Constitution and dilute privileges for majority ethnic Malays.”⁴³ With more democratic space, Malaysia would have been forced by ratification to change the Bumiputera policy designed to favour ethnic Malays.

³⁷ Dutton (see note 34 above), at 5.

³⁸ Nielsen, RA, and Simmons, BA, ‘Rewards for ratification: Payoffs for participating in the international human rights regime?’ *International Studies Quarterly*, 2015, Vol 59, pp 197-208, available at https://scholar.harvard.edu/files/bsimmons/files/nielsensimmons_rewards_isq_2015.pdf, accessed on 18 December 2019.

³⁹ Hathaway, OA, ‘Why do countries commit to human rights treaties?’ *Journal of Conflict Resolution*, 2007, Vol 51, No 4, pp 588-621.

⁴⁰ Hathaway (see note 39 above).

⁴¹ Hathaway (see note 39 above).

⁴² ‘Malaysian government will not ratify international convention against racial discrimination’ CNA, 23 November 2018, available at <https://www.channelnewsasia.com/news/asia/malaysian-government-will-not-ratify-international-convention-10962146>, accessed on 18 December 2019.

⁴³ CNA (see note 42 above).

Despite being dominantly authoritarian regimes or governments merely mimicking democratic forms, many sovereign SEA States apparently voluntarily decided to ratify international human rights agreements that would create legal obligations to protect and provide for the human rights of their people. The preceding discussion suggests a few reasons why including weak enforcement of international mechanisms, little collateral consequences, and no causal relationship between ratification and material reward. The practice of ratification may be, in fact, be

*driven by intangible benefits: belonging, praise, acceptance, respect, inclusion. Governments ratify human rights agreements, in this last view, because ratification ushers a state into the circles of the most respected countries in the world.*⁴⁴

Thus, it seems that the general principle of law including international law that resides in *pacta sunt servanda* or that treaties are to be obeyed⁴⁵ can hardly be applied to SEA States. In addition, strong adherence to the principle of respect for state sovereignty and non-interference mean “realists [were] correct when they asserted that no state had a real interest in enforcing human rights within the jurisdiction of other states.”⁴⁶ While international scrutiny exists, it is somehow selective and ineffectual. Finally, the decision to ratify international human rights instruments may be more linked to other reasons including “the specific legal institutions that relate to domestic enforcement rather than broad distinctions between democratic/autocratic political institutions.”⁴⁷ And, obviously, authoritarian countries in SEA do not really hesitate to ratify international human rights conventions. In the words of Marco Bunte, a scholar at Monash University Malaysia, SEA States have increasingly committed to the most important human rights treaties; “[y]et, Southeast Asian states also bring forward a number of reservations which illustrate that the commitment is primarily strategic”⁴⁸ implicating actual implementation and compliance.

From ratification to implementation of international human rights treaties in ASEAN/SEA

As already demonstrated by the previous section, authoritarian systems as practiced by States in ASEAN/SEA do not constitute the determining factor of rights treaty

⁴⁴ Nielsen and Simmons (see note 38 above).

⁴⁵ Hollyer, JR, and Rosendorff, BP, ‘Domestic politics and the accession of authoritarian regimes to human rights treaties’ September 2009, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.515.3099&rep=rep1&type=pdf>, accessed on 20 December 2019.

⁴⁶ Hollyer and Rosendorff (see note 45 above).

⁴⁷ Hill (see note 25 above).

⁴⁸ Bunte, M, ‘Southeast Asia’s human rights crisis: When illiberal states meet weak national human rights commissions’ *Hiroshima Peace Research Journal*, 2019, Vol 6, pp 21-43, available at https://www.researchgate.net/profile/Marco_Buente/publication/332751947_Human_Right_Issues_Southeast_Asia's_Human_Rights_Crisis_When_Illiberal_States_meet_weak_National_Human_Rights_Commissions/links/5cc7e6144585156cd7bbc3ef/Human-Right-Issues-Southeast-Asias-Human-Rights-Crisis-When-Illiberal-States-meet-weak-National-Human-Rights-Commissions.pdf, accessed on 20 December 2019.

ratification behaviour. With a few exceptions (Brunei, Malaysia, Myanmar, and Singapore), the ratification records of international human rights instruments of SEA States are impressive or even very impressive in the case of Cambodia and the Philippines. Implementation is much more problematic and this clearly reflects the nature of the political regimes in these countries. A brief examination of the state of human rights in each country in the region follows.

Brunei

Brunei made headlines in April 2019 when Reuters published that the “UN slam[med] Brunei’s Islamic laws as [a] violation of human rights.”⁴⁹ As far back as 2013, Brunei adopted a Sharia penal code to punish sodomy, adultery, and rape with death by stoning while theft was penalised with amputation. Therefore, “[t]he code imposes a wide range of restrictions that discriminate against women and sexual and gender minorities, and violates freedom of expression and religion.”⁵⁰ The law entered into force in April 2019 amidst international outcry whilst ASEAN voices were noticeably silent. It is worth reiterating that upon ratification of the CEDAW and CRC, Brunei effectively made ‘blanket’ reservations to the two conventions stating:

*The Government of Brunei Darussalam expresses its reservations regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam and, without prejudice to the generality of the said reservations, expresses its reservations regarding paragraph 2 of Article 9 and paragraph 1 of Article 29 of the Convention.*⁵¹

A similar reservation was made to the CRC:

*The Government of Brunei Darussalam expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the State religion, and without prejudice to the generality of the said reservations, in particular expresses its reservations on Article 14, Article 20 paragraph 3, and Article 21 subparagraphs b, c, d and e of the Convention.*⁵²

By making these reservations, Brunei exploited its freedom to avoid international legal obligations thereby rendering the treaties meaningless.

⁴⁹ Nicholas, M, ‘UN slams Brunei’s Islamic laws as violation of human rights’ Reuters, 4 April 2019, available at <https://www.reuters.com/article/us-brunei-lgbt-un/u-n-slams-bruneis-islamic-laws-as-violation-of-human-rights-idUSKCN1RF2ED>, accessed on 18 December 2019.

⁵⁰ ‘Brunei: New report on abusive penal code’ Human Rights Watch, 22 May 2019, available at <https://www.hrw.org/news/2019/05/22/brunei-new-report-abusive-penal-code>, accessed on 18 December 2019.

⁵¹ Reservations made by Brunei to CEDAW, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en, accessed on 18 December 2019.

⁵² Reservations made to CRC, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en, accessed on 18 December 2019.

Cambodia

In September 2019, a number of civil society groups urged the UN to help address the human rights crisis in Cambodia. The statement outlined key human rights issues ranging from crackdowns on political opposition, charges against and the arrest of human rights defenders and peaceful protestors, and attacks on journalists, and control of the media.⁵³ One should also not forget the serious human rights issues arising from the practice of land grabbing. In November 2019, “a UN human rights expert [therefore called] on the Cambodian Government to respect its citizens’ rights of freedom of opinion, expression and assembly, amid concerns over escalating tensions and a political crackdown across the country.”⁵⁴ In a statement, Rhona Smith, the newly appointed UN Special Rapporteur on the situation of human rights in Cambodia, sounded the alarm:

*[M]ore than 200 cases of harassment and judicial action against members or supporters of the outlawed Cambodia National Rescue Party (CNRP) have been reported since January. 89 people were charged with “plotting against the State” and more than 50 have been arrested. Besides the arrests, civil society groups in Cambodia also have reported increased surveillance and monitoring by local authorities. There has also been a significant increase in the deployment of armed forces at border checkpoints and various villages.*⁵⁵

As already revealed in the previous section, Cambodia has ratified and signed all the major international human rights treaties without reservation. Despite the continued mandate (since 2009) of the Special Rapporteur on the situation of human rights in Cambodia, Hun Sen’s government has shown no intention of honouring its international human rights commitments.

Indonesia

By contrast, Indonesia’s Ministry of Foreign Affairs published a special issue on its website in April 2019 entitled ‘Indonesia and Human Rights Protection’⁵⁶ confirming that its

*efforts to promote and protect human rights constitute the mandate of the 1945 Constitution, which must be realized by the Government and all stakeholders in Indonesia, including the Indonesian Ministry of Foreign Affairs. Indonesian diplomacy in the field of human rights at the international forum is fully dedicated to Indonesia’s national interests, builds Indonesia’s reputation as a democratic country and upholds human rights and contributes to Indonesia’s global efforts to promote and protect human rights.*⁵⁷

⁵³ ‘UN resolution needed to help address human rights crisis in Cambodia’ CIVICUS, 2 September 2019, available at <https://www.civicus.org/index.php/media-resources/news/4023-un-human-rights-council-should-address-human-rights-crisis-in-cambodia-at-its-42nd-session>, accessed on 18 December 2019.

⁵⁴ ‘UN human rights expert alarmed at rise in Cambodia arrests’ UN News, 8 November 2019, available at <https://news.un.org/en/story/2019/11/1050971>, accessed on 18 December 2019.

⁵⁵ UN News (see note 54 above).

⁵⁶ Ministry of Foreign Affairs of Indonesia, ‘Indonesia and human rights protection’ 7 April 2019, available at https://kemlu.go.id/portal/en/read/97/halaman_list_lainnya/indonesia-and-human-rights, accessed on 18 December 2019.

⁵⁷ Ministry of Foreign Affairs of Indonesia (see note 56 above).

Moreover, the paper highlighted Indonesia's contribution and leadership at the international level to promote and protect human rights. Indonesia was elected to the UN Human Rights Council for 2020-2022. Indeed,

*nearly two decades have passed since a new chapter largely based on the Universal Declaration of Human Rights was inserted into the Indonesian Constitution in 2000. One year earlier, the landmark 1999 Human Rights Law was passed, which strengthened the role and function of the National Commission on Human Rights (Komnas HAM). Nearly all pieces of legislation passed since 1998 contain at least a discursive commitment to human rights.*⁵⁸

Indonesia has also ratified and signed eight out of nine international human rights treaties without many reservations. Written in January 2019 during the latest presidential election campaign, Stanley Widiyanto highlighted that despite promises made by President Joko Widodo to push for land reform, resolve past human rights violations, address decades of army abuse, authoritarian overreach, and suppression of minority rights, little tangible progress has materialized.⁵⁹ In fact, some progress has been made by Indonesia regarding human rights protection with “[c]ivil society manag[ing] to overcome [its] past fear of authoritarianism and [it has] been very vocal and vibrant, including the media, in what has been called a democratic opening.”⁶⁰ However, Indonesia has also failed to address some human rights challenges especially in Papua where “[t]ensions around the longstanding separatist movement [have] been further exacerbated by economic and social gaps in the community, with recent violence drawing widespread attention.”⁶¹ Religious and gender minorities also continue to face harassment. Likewise, authorities continue to arrest, prosecute, and imprison people under the blasphemy law. Further, Indonesian security forces continue to pay little price for committing abuses, including unlawful killings of Papuans, and authorities continue to place far-reaching restrictions on foreign journalists seeking to report from Papua and the West Papua provinces. Additionally, environmental rights continues to be a serious issue in Indonesia.⁶² Hence, despite increased democratic space and the formal recognition of human rights at the international, regional, and national levels, Indonesia clearly still has a long way to go.

⁵⁸ Indonesia at Melbourne, ‘Do Indonesians still care about human rights?’ University of Melbourne, 8 February 2019, available at <https://indonesiaatmelbourne.unimelb.edu.au/do-indonesians-still-care-about-human-rights/>, accessed on 18 December 2019.

⁵⁹ Widiyanto, S, ‘Indonesia’s rights struggle: Deciding which candidate is the ‘lesser evil’ The Atlantic, 18 January 2019, available at <https://www.theatlantic.com/international/archive/2019/01/indonesia-president-human-rights-jokowi-subianto/580762/>, accessed on 18 December 2019.

⁶⁰ Azhar, H, ‘The human rights struggle in Indonesia’ *International Journal on Human Rights*, June/December 2014, posted in Connectas, Issue 20, available at <https://sur.connectas.org/en/the-human-rights-struggle-in-indonesia/>, accessed on 18 December 2019.

⁶¹ Zulfikar Rakmat, M, Valentine, R, and Permadi, D, ‘With a UN Human Rights Council seat, Indonesia has a choice’ Interpreter, 29 October 2019, available at <http://www.lowyinterpreter.org/the-interpreter/with-un-human-rights-council-seat-indonesia-has-choice>, accessed on 18 December 2019.

⁶² ‘Indonesia: Events of 2018’ Human Rights Watch, available at <https://www.hrw.org/world-report/2019/country-chapters/indonesia>, accessed on 18 December 2019.

Lao PDR

As already mentioned in the previous section, Lao PDR's record of ratification of international human rights laws is demonstrably good having ratified seven out of nine rights instruments. However, whilst the government has become more open to engagement with the UN system, the human rights situation remains worrying. Space for civil society is limited to non-existent. Enforced disappearances, the lack of freedom of expression and assembly, as well as of popular participation constitute serious human rights issues in the country. For example, regional rights organisations such as Manushya, CIVICUS, and Forum-Asia have expressed their concern over:

the pervasive control exercised by the government over civil society, and the severe restrictions faced as a result. Extensive surveillance, reprisals and the criminalisation and enforced disappearance of human rights defenders have created an environment in which it is all but impossible to speak out. The right to freedom of expression, peaceful assembly and association are guaranteed in the Constitution of Lao PDR, and its obligations under the ICPPR. However, the legal framework—including broadly formulated, restrictive and conflicting provisions in the Constitution, the Penal Code, and other laws, as well as government decrees passed without oversight—serves to limit any independent action or information, and criminalise any expression perceived as critical of the government.⁶³

The right to information is also limited:

All actions taken and information shared must undergo a lengthy process of State approval and organisations are forced to maintain close ties with the State, making independent human rights organisations virtually non-existent.⁶⁴

In addition, while the government of Laos signed the International Convention for the Protection of all Persons from Enforced Disappearances more than 10 years ago, ratification has yet to follow.

Malaysia

Not only has Malaysia been able to maintain its parliamentary democracy with regularly held elections since its independence in 1957, since the latest election, it has also recorded an improvement in its human rights situation. Eric Paulsen, Malaysia's appointed representative to the ASEAN Intergovernmental Commission on Human Rights, took stock of the human rights situation in his country and confirmed this general observation. In particular, he recorded the repeal of the Anti-Fake News Act 2018 which was passed by the previous government in a desperate attempt to control dissenting views termed

⁶³ 'Laos: Government must live up to human rights obligations ahead of UN review' CIVICUS, 9 August 2019, available at <https://www.civicus.org/index.php/media-resources/media-releases/3983-laos-government-must-live-up-to-human-rights-obligations-ahead-of-un-review>, accessed on 18 December 2019.

⁶⁴ CIVICUS (see note 63 above).

“fake news” prior to the 2018 election.⁶⁵ Its abolition was part of a wider improvement in freedom of speech and expression in Malaysia, including freedom of the press.⁶⁶ Other laws remain giving arbitrary power to the authorities such as the Sedition Act, the Security Offences (Special Measures) Act 2012 (SOSMA), the Prevention of Crime Act 1959 (POCA), and the Prevention of Terrorism Act (POTA) 2015 which “allows for a show trial that will almost inevitably lead to conviction, as the procedural law excludes fundamental safeguards found in the Criminal Procedure Code, Evidence Act, and other laws.”⁶⁷ He also advocated for the abolition of capital punishment in the country saying, “Any democratic and liberal society which respects human rights should not retain the death penalty in any form.”⁶⁸

SUARAM, a local human rights NGO, noted that “there is a difference between Malaysian foreign policy regarding human rights and what is done nationally.” It also pinpointed child marriage, issues surrounding land rights associated with the Orang Asli (indigenous peoples in the country), the disadvantages of persons with disabilities, deaths in custody, and the exploitation of migrant workers as some serious human rights concerns in Malaysia.⁶⁹ Sexual orientation and gender equality, freedom of religion, the rights of refugees, asylum seekers, and victims of trafficking also remain problematic. In addition, calls to reform “Malaysia[’s] institutionalised politics of racism and racial discrimination”⁷⁰ are becoming louder. Since Pakatan Harapan won the election, Malaysia’s human rights record has progressed but has yet to reach the stage of being fully “respected by the world.”⁷¹ Moreover, the progress made has been slower than originally promised.

Myanmar

Myanmar has been in the world’s spotlight since 2017. While the NLD won a landslide victory in the 2015 elections, it remains without real power to rule. Further, it has been frequently condemned by UN human rights bodies. For example, in December 2019, the UN General Assembly approved a resolution condemning human rights abuses against the Muslim Rohingya and other minorities in Myanmar. The resolution also called upon Myanmar to stop the incitement of hatred against the Rohingya and other minorities and highlighted the findings of an independent international mission “of gross human rights violations and abuses suffered by Rohingya Muslims and other minorities” by Myanmar’s

⁶⁵ Paulsen, E, ‘Comment: Looking back on Malaysia’s 2019 human rights record’ *The Star*, 29 December 2019, available at <https://www.thestar.com.my/news/focus/2019/12/29/comment-looking-back-on-malysias-2019-human-rights-record>, accessed on 18 December 2019.

⁶⁶ Paulsen (see note 65 above).

⁶⁷ Paulsen (see note 65 above).

⁶⁸ Paulsen (see note 65 above).

⁶⁹ Kaur, K, ‘Malaysia’s human rights violations that we keep ignoring’ *Rakyatpost*, 10 December 2019, available at <https://www.therakyatpost.com/2019/12/10/the-true-victims-of-malysias-human-rights-violations/>, accessed on 18 December 2019.

⁷⁰ Kaur (see note 69 above).

⁷¹ As elucidated by Promise 26 of Pakatan Harapan’s 2018 election manifesto; see, Pakatan Harapan, ‘Buku harapan: Rebuilding our nation, fulfilling our hopes’ available at https://kempen.s3.amazonaws.com/manifesto/Manifesto_text/Manifesto_PH_EN.pdf, accessed on 25 December 2019.

security forces, which the mission described as “the gravest crimes under international law.”⁷² As a result, Myanmar’s leaders are being brought to the UN International Court of Justice by Gambia for persecuting Rohingyas and committing “genocide” against this religious and ethnic minority. Earlier, in March 2019, the UN Human Rights Council released a report on Myanmar’s human rights situation, expressing⁷³

*grave concern at continuing reports of serious human rights violations and abuses in Myanmar, including sexual and gender-based violence and violations and abuses against children, in particular in Rakhine, Kachin and Shan States [...] about the recent escalation of violence in Rakhine State between the armed forces of Myanmar, the Tatmadaw and the Arakan Army, causing loss of life, displacement and further human suffering [...] about reports of new internal and cross-border displacements of civilians due to the ongoing conflict with the Arakan Army in Rakhine State, and similar displacements in the Chin State due to a spill over of the conflict, bearing the risk of further large-scale displacement from these two States towards international borders if the conflict continues.*⁷⁴

Philippines

Human rights issues in the Philippines constitute one of the most serious concerns in the world today despite a democratically elected government and an impressive record of human rights instrument ratification. Since Rodrigo Duterte won the presidency in June 2016, he continues to challenge the international community with his “war on drugs” which has already claimed 5,526 suspects according to the Philippines National Police.⁷⁵ As part of the same initiative, drug testing school children violates a child’s right to bodily integrity. Not only are extrajudicial killings rampant, human rights defenders remain under serious threat. For example, former chair of the human rights commission and senator, Leila de Lima has been imprisoned since February 2017. Moreover, attacks and harassment of journalists has impacted media freedom.⁷⁶ In addition, filing perjury charges against religious and activist groups for lying in their petitions to seek judicial protection from state security constitute an attack on civil society.⁷⁷ Furthermore, campaigns for the re-imposition of the death penalty in the country continue to receive popular support. As of 17 March 2019, the Philippines is also no longer member of the ICC after notifying its withdrawal from the Rome Statute. The country had been under preliminary examination for its killings in the war on drugs:

⁷² ‘Myanmar Rohingyas: UN condemns human rights abuses’ BBC, 28 December 2019, available at <https://www.bbc.com/news/world-asia-50931565>, accessed on 18 December 2019.

⁷³ Human Rights Council, ‘Situation of human rights in Myanmar (A/HRC/40/L.19)’ United Nations General Assembly, 19 March 2019, available at https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_40_L.19_E.pdf, accessed on 18 December 2019.

⁷⁴ Human Rights Council (see note 73 above).

⁷⁵ ‘Philippines: Events of 2019’ Human Rights Watch, available at <https://www.hrw.org/world-report/2020/country-chapters/philippines>, accessed on 18 December 2019.

⁷⁶ ‘Philippines: Events of 2018’ Human Rights Watch, available at <https://www.hrw.org/world-report/2019/country-chapters/philippines>, accessed on 18 December 2019.

⁷⁷ Human Rights Watch (see note 76 above).

In July 2019, the United Nations Human Rights Council adopted a resolution asking the Office of the High Commissioner for Human Rights to submit a report in June 2020 on the human rights situation in the Philippines, bringing to bear international pressure for accountability. The Duterte administration responded by ordering the suspension of all negotiations for financial assistance from the 18 countries that endorsed the resolution.⁷⁸

Singapore

In January 2019, a group of UN rights experts urged the government of Singapore to ensure fundamental freedoms of expression and assembly for all after the conviction of human rights defender, Jolovan Wham. Wham was found guilty on 3 January for organizing an assembly without a permit. He was charged against the Public Order Act after a public discussion in November 2016 on civil disobedience and democracy. He was also convicted on a separate charge after refusing to sign a statement to the police having, he said, not received a copy of it.⁷⁹ Similarly, in April 2019, the government rejected criticisms by Human Rights Watch pertaining to excessive restrictions of online freedom⁸⁰ and introduced the Protection from Online Falsehoods and Manipulation Bill on 1 April 2019. The Law Ministry, in tabling the Bill, said it was intended to protect society from the damage caused by deliberate online falsehoods and the fake accounts used to spread such falsehoods, and to protect against malicious actors who knowingly spread harmful falsehoods, or offer disinformation tools and services, by the imposition of criminal sanctions.⁸¹ Further,

[t]he government maintains strict restrictions on the right to peaceful assembly through the Public Order Act, requiring a police permit for any “cause-related” assembly if it is held in a public place, or in a private venue if members of the general public are invited. Singapore also continues to detain individuals without trial under the Internal Security Act. There is little publicly available information about the number of people detained, their identities, or the basis for their detention.⁸²

Additionally, the rights of the LGBT community are severely curtailed: sexual relations between men remains a criminal offence, and there are no legal protections against discrimination on the basis of sexual orientation or gender identity.⁸³ While Singapore

⁷⁸ Human Rights Watch (see note 76 above).

⁷⁹ ‘Singapore must ensure fundamental rights for all after conviction of Jolovan Wham, say UN experts’ OHCHR, 29 January 2019, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24126&LangID=E>, accessed on 18 December 2019.

⁸⁰ ‘Singapore government rejects Human Rights Watch’s criticisms of new law targeting online falsehoods’ CNA, 3 April 2019, available at <https://www.channelnewsasia.com/news/singapore/singapore-government-rejects-human-rights-watch-criticisms-false-11409226>, accessed on 18 December 2019.

⁸¹ Kwang, K, ‘Singapore proposes multi-pronged law to combat online falsehoods’ CNA, 1 April 2019, available at <https://www.channelnewsasia.com/news/singapore/singapore-proposes-multi-pronged-law-to-combat-online-falsehoods-11400614>, accessed on 18 December 2019.

⁸² ‘Singapore: Events of 2018’ Human Rights Watch, available at <https://www.hrw.org/world-report/2019/country-chapters/singapore>, accessed on 18 December 2019.

⁸³ ‘Singapore’ Human Rights Watch, available at <https://www.hrw.org/asia/singapore>, accessed on 18 December 2019.

received a number of recommendations through the UPR process to consider ratifying the human rights treaties to which it is not yet party, these recommendations were noted but not supported by the city-state.⁸⁴

Thailand

Five years after the *coup d'état* in May 2014, Thai citizens finally cast their votes in May 2019 only to see the return of former junta chief and *coup* leader, Prayut Chan-o-cha, as Prime Minister with many other familiar faces in the cabinet. Despite making “human rights a national agenda,” the Thai government has failed to improve the human rights situation or restore democracy. Although the ban on public assemblies was lifted in December 2018, at least 130 opposition politicians, academics, and pro-democracy activists in Bangkok and other provinces faced charges for illegal assembly in 2019 under the Public Assembly Act and/or sedition for the holding of peaceful rallies.⁸⁵ The report released by Human Rights Watch further states that “the government routinely enforced censorship, blocking and punishing opinions they deemed critical of the monarchy and the government” using the *lèse-majesté* provisions, sedition, cybercrime activities, illegal assembly, and criminal association laws. As in many other countries in the region, human rights defenders are threatened and harassed physically and legally both by the government and private companies which frequently retaliate against people for reporting allegations of abuse by filing criminal defamation and computer crimes lawsuits against them.⁸⁶ Neither torture nor enforced disappearance are recognized as criminal offences in Thailand. Not surprisingly, such abuses continue, including the use of secret detention by anti-narcotics units and secret military detentions of national security suspects and suspected insurgents in the southern border provinces.⁸⁷ Censorship and restrictions against free expression remain serious. Violence and abuse in the three southernmost provinces continue to claim lives on a daily basis. Refugees, asylum seekers, and migrant workers residing in Thailand without proper documentation are at constant risk of being arrested and deported. Thus, while Thailand engages actively with UN human rights mechanisms and has a good record of ratifications, it is failing to fulfil its legal obligations.

Timor-Leste

Although Timor-Leste may be deemed one of the few ‘democratic’ countries in SEA with an excellent record of ratification, it is not free from human rights violations. According to the UN Human Rights Office of the High Commissioner:

⁸⁴ ‘Database of recommendations’ UPR Info, available at https://www.upr-info.org/database/index.php?limit=0&f_SUR=154&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly, accessed on 18 December 2019.

⁸⁵ ‘Thailand: No end to rights crisis’ Human Rights Watch, 14 January 2020, available at <https://www.hrw.org/news/2020/01/14/thailand-no-end-rights-crisis>, accessed on 18 December 2019.

⁸⁶ Human Rights Watch (see note 85 above).

⁸⁷ Human Rights Watch (see note 85 above).

*Timor-Leste is slowly recovering from the security and humanitarian crisis caused by the unrest during April and May 2006. However, the absence of durable solutions for thousands of internally displaced people living in camps, and the presence of a small but well-armed group of ex-military and police operating in the countryside are sources of instability. Poverty, high unemployment, especially among youth, and inadequate access to basic services are priority issues requiring concerted action by both the Government and the international community. State and civil society institutions are still faced with serious capacity problems.*⁸⁸

Moreover, issues of land displacement continue to haunt the Timorese government. Competing land claims have been a source of community friction in the country since its independence in 2002. Urban migration to Dili and fears of eviction have also increased. However, Timor-Leste continues to work toward women's access to justice and land and to achieving gender equality.

Vietnam

In early 2020, 28 NGOs sent a letter to the EU Parliament urging postponement of consent to EU-Vietnam Trade deals⁸⁹ until Vietnam agrees to address labour rights and human rights issues in the country.⁹⁰ However, the Vietnamese government has little tolerance for freedom of expression as noted by Human Rights Watch which stated that:

*At least 30 activists and dissidents were sentenced to prison in Vietnam in 2019 simply for exercising their fundamental rights to freedom of expression, association, and religion.*⁹¹

The one-party state has also severely limited all basic civil and political rights and banned any activities the ruling Communist Party deems a threat to its monopoly on power. Activists and bloggers, in particular, suffer from surveillance, travel bans, physical assault, interrogation, and arrest, and if convicted, are often sentenced to long prison terms.⁹²

In June, Vietnam ratified International Labour Convention (ILO) 98 on collective bargaining and the right to organize while in November, the National Assembly passed a revised labour code, which will be effective in January 2021. However, the new law does not mention independent labour unions.⁹³ Despite being a socialist state where one would expect labour rights to be upheld, independent trade unions are prohibited.

⁸⁸ 'OHCHR in Timor-Leste' OHCHR, available at <https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/TLSummary0809.aspx>, accessed on 18 December 2019.

⁸⁹ On 21 January, a large majority of the International Trade Committee (INTA) voted in favour of granting swift consent to the agreements.

⁹⁰ 'NGOs urge European parliament to postpone consent to EU-Vietnam trade deals' Human Rights Watch, 4 February 2020, available at <https://www.hrw.org/news/2020/02/04/ngos-urge-european-parliament-postpone-consent-eu-vietnam-trade-deals>, accessed on 18 December 2019.

⁹¹ 'Vietnam: Crackdown on rights' Human Rights Watch, 14 January 2020, available at <https://www.hrw.org/news/2020/01/14/vietnam-crackdown-rights>, accessed on 18 December 2019.

⁹² Human Rights Watch (see note 91 above).

⁹³ Human Rights Watch (see note 91 above).

Similarly, the authorities ban religious activities arbitrarily deemed contrary to “national interest,” “public order,” or “national unity.” Followers of unapproved religious groups are therefore criticized, forced to renounce their faith, detained, interrogated, tortured, and imprisoned.⁹⁴ In addition, violent clashes over land disputes persist between grass roots protests and the Communist Party-run authorities because of its centrally imposed development plans that frequently lay claim to villager claimed land. These human rights issues constitute clear evidence of the government’s failure to uphold its international human rights commitments.

The above examination of the human rights situation in the 11 countries of SEA perhaps reveals that issues tend to overlap (with the exception of Timor-Leste). Civil and political rights, especially freedom of expression and the media, and threats to human rights defenders seem common whilst torture and enforced disappearances are widely utilized in a number of countries, especially the Philippines and Thailand. Similarly, since 2016, extrajudicial killings have been a serious matter in the Philippines while mass atrocities continue to be committed against ethnic groups in Myanmar. From this brief study, little evidence of correlation exists between ratification of the core human rights conventions with improvements in human rights situation and practice in the region. The impact of ratification of most human rights instruments has been limited except in a few countries such as Timor-Leste and to certain extent, Malaysia. As Dutton rightly said, “States continue to abuse human rights and commit mass atrocities even though for the past several decades they have overwhelmingly ratified a host of international human rights treaties.”⁹⁵ Whilst it is true that ratification has shaped the language of human rights used by governments and civil society in the region by increasingly referencing conventions and engaging with UN human rights mechanisms, international human rights regimes are plainly too weak to monitor proper implementation of the treaties. By most measures, the impact of international human rights law ratification in SEA has therefore been minimal because, quite simply, the national and regional rights regime lacks the power to live up to international standards.

Conclusions: Authoritarianism and the (South) Eastphalian

To begin, it is useful to reiterate that the Association of Southeast Asian Nations or ASEAN was formed in August 1967 by five founding members: Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Thus, it would be hard for any ASEAN leader to claim the association was established by member States embracing liberal democratic regimes since by then, Indonesia and Thailand were under military rule with President Suharto of Indonesia staging a *coup* to seize power from President Sukarno in 1965 and General Thanom Kittikachorn overthrowing Thailand’s civilian government in 1957. Both countries were known as staunch anti-communists. The Philippines remained under Ferdinand Marcos. Singapore had just separated from Malaysia and was ruled by the

⁹⁴ Human Rights Watch (see note 91 above).

⁹⁵ Dutton (see note 34 above).

leader of the People's Action Party and founding father of the country, Prime Minister Lee Kuan Yew, who served for three decades espousing 'the Singaporean ideology' based on

*the formation of a new man in a multiracial island society which can serve as an example to all of the SEA; the formation of a tightly organised society characterized by resolution, discipline, and determination; and the inculcation of the virtue of public-spiritedness designed to extend personal loyalty beyond the family to the process of nation building.*⁹⁶

Only Malaysia, since its independence in 1957, through its 'federal representative democratic constitutional monarchy' has held regular elections albeit under the leadership of Tonku Abdul Rahman, another founding father, for more than 10 years, and Dr Mahathir Mohamad for more than 20 years. Amidst increasing communal polarization based on ethnicity (especially between 1964-1969), a pro Malay policy was introduced and control measures applied through the Internal Security Act enacted in 1960 and the Sedition Act of 1948. Until this day, the pro Malay policy is still in force.

Currently, eight out of ten members of ASEAN are not democratic states.⁹⁷ As already demonstrated, human rights issues in ASEAN continue to raise concern. However, ASEAN lacks the infrastructure to press members to uphold human rights. The ASEAN Charter committed to "adher[e] to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms"⁹⁸ and espoused the purpose of the organization to "strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN."⁹⁹ The ASEAN Charter also prescribes in paragraph 2 of Art 2 that:¹⁰⁰

- (h) adherence to the rule of law, good governance, the principles of democracy and constitutional government;
- (i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice; [and]
- (j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States

Article 2 also promotes:

- (a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;

⁹⁶ Chan, HC, *The Politics of Survival, 1965-1967*, New York: Oxford University Press, 1971.

⁹⁷ Timor-Leste remains an observer to ASEAN.

⁹⁸ ASEAN, 'ASEAN Charter' available at <https://www.asean.org/wp-content/uploads/images/archive/21069.pdf>, accessed on 18 December 2019, at Preamble.

⁹⁹ ASEAN Charter, Art 1.

¹⁰⁰ ASEAN Charter, Art 2.

and

- (e) non-interference in the internal affairs of ASEAN Member States;
- (f) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion; [and]
- (g) enhanced consultations on matters seriously affecting the common interest of ASEAN

The long list of ‘principles’ in Art 2 reveals that ASEAN was actually designed as a “principled reinforcing organization” and one which ensured non-interference. Thus, integration of ASEAN was primarily based on economic and security concerns. Human rights and fundamental freedoms although included in the Charter were considered low priority and were further hampered by concerns about sovereignty. This seems to contrast with the concept of international/regional integration which tends to erode rather than strengthen sovereignty. Since its inception, ASEAN has formed a sovereignty reinforcing group of States based on the classic ‘Westphalian’ notion now transformed into a (South) Eastphalian¹⁰¹ concept which is dominated by the sovereignty of member States. This is evident in the establishment of two regional human rights commissions: the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). Neither can lay claim to independence and neither has the power to investigate human rights violations in the region. Moreover, they are further hampered by a lack of legally binding human rights instruments.

In this climate, civil society continues to push for a stronger and more effective human rights regime in ASEAN. In particular, there is a fear that standards may be watered down and any “law shaped by authoritarian governments is likely to be strongly focused on executive governments, and will be strong on sovereignty and weak on institutions.”¹⁰² For example, the association favours “consultation over binding dispute settlement, and will have an emphasis on principles over rules providing general guidance about how things should be done.”¹⁰³ Further

¹⁰¹ The term ‘Eastphalian’ was introduced by Tom Ginsburg.

¹⁰² Ginsburg, T, ‘Democracies and international law: The trials of liberalism’ (2019 Hersch Lauterpacht Memorial Lectures, Part 3) in Guilfoyle, D, ‘The future of international law in an authoritarian world’ EJIL: Talk!, 3 June 2019, available at <https://www.ejiltalk.org/the-future-of-international-law-in-an-authoritarian-world/>, accessed on 18 December 2019.

¹⁰³ Ginsburg (see note 102 above).

*Ginsburg also sees in a more authoritarian international realm a stalling of institution building and predicts that China may work to undermine regional organizations. For example, ASEAN takes decisions by consensus, so any one state can block an initiative, and China has effectively bought Cambodia's vote. This has blocked ASEAN from taking a collective stance on the South China Sea question. Thus, a weakness he points to is that a strong emphasis on sovereign equality inside regional organizations can be used against them by wealthy outside actors, at least where those organizations operate by consensus, and every member state has a veto.*¹⁰⁴

This is exactly the practice in ASEAN whereby if one State openly objects, the others must conform. Consensus in itself constitutes a democratic process as it proceeds through consultations but when this 'democratic process' is used by authoritarian states to interfere, it is clearly a concern. Finally, formal state commitments to international human rights have not contributed to better protection of rights at the national level nor has it served to strengthen the human rights regime within the region.

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¹⁰⁴ Ginsburg (see note 102 above).

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UNDERSTANDING ASEAN STATE STRATEGIES AGAINST NHRIS: IDENTIFYING A TYPOLOGY OF TOOLS BY WHICH STATES WORK TO COUNTER NHRIS

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Introduction

This analysis reviews state actions against national human rights institutions (NHRIs) in ASEAN countries and seeks to identify potential trends in the strategies to counter the work of NHRIs, then organizes such actions into categories. Next, the analysis draws implications from the trends and suggests ways to better fulfil the aspiration of NHRIs to serve as agents of the United Nations (UN) system of human rights within their domestic contexts. The scope of this analysis centres around events tied to the following NHRIs in ASEAN as of 2018: Indonesia's Komisi Nasional Hak Asasi Manusia (Komnas HAM), Malaysia's Suruhanjaya Hak Asasi Manusia (SUHAKAM), the Myanmar National Human Rights Commission (MNHRC), Komisyon sa Karapatang Pantao in the Philippines (Philippines Commission on Human Rights, or PCHR), Thailand's National Human Rights Commission (TNHRC), and Timor-Leste's Provedoria dos Direitos Humanos e Justice (Provedor for Human Rights and Justice, or PDHJ).

Instead of dedicating sections to individual institutions, a typology of strategies is generated to encompass the scale of state efforts to negate NHRI work. Following, the discussion observes the significance of strategies serving to counter the work of NHRIs as institutional agents of the UN human rights system. These state strategies were identified by drawing upon secondary sources from scholarly studies, the public statements of government offices and international organizations, civil society organization (CSOs) materials, and news media commentaries.

Background

The concept of NHRIs predates much of the modern UN human rights system, being articulated by the Economic and Social Council in 1946 before the Universal Declaration of Human Rights (UDHR).¹ As entities, NHRIs first appeared in the 1960s and 1970s with a small number of states located primarily in Europe but gradually proliferated globally over the following decades, with the Office of the High Commissioner for

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¹ Office of the High Commissioner for Human Rights (OHCHR), 'A brief history of NHRIs' OHCHR, 2018, available at <https://nhri.ohchr.org/EN/AboutUs/Pages/HistoryNHRIs.aspx>, accessed on 25 July 2019.

Human Rights (OHCHR) in February 2018 counting 120 around the world.² The concept of NHRIs is set forth in the 1993 United Nations General Assembly Resolution 48/134 entitled ‘Principles Relating to the Status of National Institutions (The Paris Principles).’³ Generally truncated to the ‘Paris Principles,’ the resolution defines NHRIs as entities that play a role in “promoting and monitoring the effective implementation of international human rights standards at the national level”⁴ whilst also working to “bridge the implementation gap between the international human rights obligations and actual enjoyment of human rights on the ground.”⁵ This incorporates promoting the UN human rights system within a country, including international human rights treaties and its institutions such as human rights treaty bodies, the Human Rights Council, and the OHCHR.⁶ Additional roles include engagement with the Global Alliance for NHRIs (GANHRI), regional bodies for NHRIs (such as the Southeast Asia NHRI Forum, or SEANF), other national NHRIs, and international and national NGOs and CSOs.⁷ As such, individual NHRIs act as a nexus to nurture what Louis Bickford describes as a “convergence towards the global middle” of two complementary trends: international NGOs seeking proximity with human rights issues in local contexts often located in the Global South, and local NGOs seeking more direct engagement with the international human rights system.⁸ Although created and maintained by states, NHRIs are intended to be independent institutions acting autonomously from their associated states and societies.⁹

To monitor the performance of NHRIs, GANHRI maintains an accreditation system. Accreditation is conducted through a periodic review mechanism that evaluates each NHRI every five years, with different cohorts of NHRIs being considered by a twice

² Cardenas, S, *Chains of Justice: The Global Rise of State Institutions for Human Rights*, Philadelphia: University of Pennsylvania Press, 2014; Goodman, R, and Pegram, T (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, New York: Cambridge University Press, 2012; Pegram, T, ‘Diffusion across political systems: The global spread of national human rights institutions’ *Human Rights Quarterly*, 2010, Vol 32, No 3, pp 729-760; OHCHR, ‘GANHRI Sub-Committee on Accreditation’ OHCHR, 2018, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>, accessed on 25 July 2019.

³ OHCHR, ‘Principles relating to the status of national institutions (the Paris Principles)’ OHCHR, available at <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>, accessed on 25 July 2019.

⁴ OHCHR, ‘OHCHR and NHRIs’ OHCHR, 2015, available at <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>, accessed on 25 July 2019 [hereinafter cited as OHCHR 2015a].

⁵ OHCHR, ‘International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Sub-Committee on Accreditation: General observations’ OHCHR, 2013, available at <https://nhri.ohchr.org/EN/AboutUs/Governance/Documents/ICC%20SCA%20General%20Observations.pdf>, accessed on 25 July 2019 [hereinafter cited as OHCHR 2013a].

⁶ OHCHR 2013a (see note 5 above).

⁷ OHCHR 2013a (see note 5 above).

⁸ Amparo, T, ‘Convergence towards the global middle: Who sets the global human rights agenda and how?’ *SUR International Journal on Human Rights*, 2014, Vol 11, No 20, pp 475-479.

⁹ Smith, A, ‘The unique position of national human rights institutions: A mixed blessing?’ *Human Rights Quarterly*, 2006, Vol 28, No 4, pp 904-946 [hereinafter cited as Smith 2006].

annually convened GANHRI Sub-committee on Accreditation.¹⁰ At the end of each NHRI review, the institution is awarded one of three possible accreditations: an 'A' rating indicating full compliance with the Paris Principles; a 'B' rating marking partial compliance; and a 'C' rating representing non-compliance.¹¹

Assessment is achieved according to six criteria under the Paris Principles: (1) a broad mandate to advance universal human rights; (2) autonomy from the state; (3) statutorily or constitutionally guaranteed independence; (4) a pluralist composition in membership and activities; (5) adequate resources; and (6) adequate powers of investigation.¹² Against these criteria, the majority of ASEAN NHRIs appear to fare well, with GANHRI accreditation ratings as of 2018 showing that four out of the six ASEAN NHRIs have 'A' ratings and two have 'B' ratings. The trend in rankings exists despite differences in institutional age, composition, and accreditation status under GANHRI.

The youngest NHRI in ASEAN is the MNHRC, which was formed by presidential decree in 2011 and then reconstituted by a 2014 Enabling Law.¹³ The MNHRC underwent accreditation review in 2015, with the next review scheduled for 2020.¹⁴ In its inaugural 2015 review, it was awarded a 'B' rating due to questions over a lack of transparency in its appointment process, a lack of gender diversity, uncertain independence from the government, inadequate efforts to monitor human rights violations, insufficient engagement with the international human rights system, and limited distribution of its report.¹⁵

The next youngest ASEAN NHRI is Timor-Leste's PDHJ which was created under parliamentary legislation in 2004 in accordance with a requirement in the 2002 Constitution for an ombudsman office with a mandate over human rights and good governance in the country.¹⁶ The PDHJ had its first accreditation review in 2008 and another in 2013. In its most recent review of 2018, it maintained an 'A' rating.¹⁷

¹⁰ Global Alliance of National Human Rights Institutions (GANHRI), 'GANHRI Sub-Committee on Accreditation (SCA)' GANHRI, 2018, available at [https://nhri.ohchr.org/EN/AboutUs/GANHRI Accreditation/Pages/default.aspx](https://nhri.ohchr.org/EN/AboutUs/GANHRI%20Accreditation/Pages/default.aspx), accessed on 25 July 2019 [hereinafter cited as GANHRI 2018a].

¹¹ GANHRI 2018a (see note 10 above).

¹² GANHRI 2018a (see note 10 above).

¹³ GANHRI 2018a (see note 10 above).

¹⁴ 'Report and recommendations of the session of the Sub-Committee of Accreditation (SCA) – November 2015' OHCHR, 2015, available at [https://nhri.ohchr.org/EN/AboutUs/GANHRI Accreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRI%20Accreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf), accessed on 25 July 2019 [hereinafter cited as OHCHR 2015b].

¹⁵ OHCHR 2015b (see note 14 above).

¹⁶ Provedoria dos Direitos Humanos e Justica (PDHJ), 'History' PDHJ, 2018b, available at <http://pdhj.tl/about/history/?lang=en>, accessed on 25 July 2019.

¹⁷ GANHRI, 'Chart of the status of national institutions – accreditation status as of 21 February 2018' GANHRI, 2018, available at [https://nhri.ohchr.org/EN/AboutUs/GANHRI Accreditation/Documents/Status%20Accreditation%20Chart.pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRI%20Accreditation/Documents/Status%20Accreditation%20Chart.pdf), accessed on 25 July 2019 [hereinafter cited as GANHRI 2018b].

The THRC and SUHAKAM were roughly formed around the same time. The THRC was convened by a 1999 parliamentary act made pursuant to the requirements of the 1997 Constitution, but was reformed in the wake of the 2014 military *coup* and the 2017 Constitution with a new 2017 parliamentary act.¹⁸ Following accreditation reviews in 2004, 2008, 2013, 2014, and 2015, it was recently downgraded to ‘B.’ The latter three reviews reflected deferrals made in connection with extended consideration of complaints regarding the Commission’s delays in addressing human rights violations, failures to implement recommendations from prior accreditation reviews, and larger uncertainties about the status of the Commission as a result of the country’s 2014 military *coup*.¹⁹

Since its inception via parliamentary legislation in 1999, Malaysia’s SUHAKAM has enjoyed a better record.²⁰ SUHAKAM has undergone several accreditation reviews in 2002, 2008, 2009, and 2010 in consideration of complaints over its performance and with regards to reforms made to its founding legislation, then on a regular periodic basis in 2015.²¹ Despite multiple reviews, it still currently holds an ‘A’ rating.

The two oldest NHRIs among ASEAN states are Komnas HAM and the PCHR. Komnas HAM was established by presidential decree in 1993 but this was replaced by a 1999 legislative act and amended by subsequent laws in 2000 and 2008.²² Because of its institutional age, Komnas HAM has undergone the largest number of accreditation reviews in ASEAN with a total of seven in 2000, 2007, 2012, 2013, twice in 2014, and most recently in 2017. The frequency of reviews were tied to issues related to the Commission’s anaemic performance, internal divisions, a lack of safeguards in autonomy and independence, and insufficient pluralism in representation among its commissioners.²³

¹⁸ Thai PBS, ‘NLA passes NHRC Bill’ Thai PBS, 14 September 2017, available at <http://englishnews.thaipbs.or.th/nla-passes-nhrc-bill/>, accessed on 25 July 2019.

¹⁹ OHCHR, ‘Accreditation report – March 2014’ OHCHR, 2014, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAaccreditation/Documents/SCA%20MARCH%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf>, accessed on 25 July 2019 [hereinafter cited as OHCHR 2014].

²⁰ Human Rights Commission of Malaysia (SUHAKAM), ‘History’ SUHAKAM, 2018, available at <http://www.suhakam.org.my/about-suhakam/sejarah/>, accessed on 25 July 2019.

²¹ Renshaw, C, ‘National human rights institutions and civil society organizations: New dynamics of engagement at domestic, regional, and international levels’ *Global Governance*, 2012, Vol 8, pp 299-316; OHCHR, ‘Accreditation report – March 2009’ OHCHR, 2009, available at https://nhri.ohchr.org/EN/AboutUs/GANHRIAaccreditation/Documents/2009_March%20SCA%20REPORT.pdf, accessed on 25 July 2019.

²² Hadiprayitno, I, ‘Defensive enforcement: Human rights in Indonesia’ *Human Rights Review*, 2010, Vol 11, pp 373-399 [hereinafter cited as Hadiprayitno 2010]; Setiawan, K, ‘From hope to disillusion: The paradox of Komnas HAM, the Indonesian national human rights commission’ *Bijdragen Tot De Taal-, Land- En Volkenkunde*, 2016, Vol 172, pp 1-32 [hereinafter cited as Setiawan 2016].

²³ OHCHR, ‘Accreditation report – March 2017’ OHCHR, 2017, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAaccreditation/Documents/SCA%20Final%20Report%20-%20March%202017-%20English.pdf>, accessed on 25 July 2019; OHCHR 2014 (see note 19 above); OHCHR, ‘Accreditation report – November 2013’ OHCHR, 2013b, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAaccreditation/Documents/SCA%20NOVEMBER%202013%20FINAL%20REPORT%20ENGLISH.pdf>, accessed on 25 July 2019.

Despite its multiple reviews, Komnas HAM has managed to maintain an ‘A’ rating.²⁴

By contrast, the PCHR is the oldest NHRI in ASEAN, predating even the accreditation system itself with a commencement date of 1987 via an executive order made attendant to clauses providing for the creation of an NHRI in the 1987 Constitution.²⁵ The GANHRI accreditation system commenced in 1995 and accorded the PCHR its first review in 1999, with subsequent reviews in 2007, 2012, and most recently in 2017. The PCHR currently holds an ‘A’ rating.²⁶

Despite the generally favourable appearance given by GANHRI accreditation ratings, caution should be noted as they lack detail about the condition of NHRIs. In particular, while it is not specified by the Paris Principles, in evaluating NHRIs, the GANHRI Sub-Committee on Accreditation extends its attention beyond the NHRI to also encompass the context within which it operates.²⁷ As a result, it is relevant to consider other factors connected to an NHRI’s context in its performance. The present analysis contributes to this component of NHRI assessment by describing how states can create a hostile context inimical to the work of such organizations.

ASEAN state actions against NHRIs

The experience of NHRIs in ASEAN has not been entirely positive and includes struggling against state actions directed at curbing or eliminating their powers. Drawing upon recent and current cases, it is possible to identify a range of state approaches that reflect varying degrees of confrontation against NHRIs. The nature of such confrontations becomes apparent when organized according to a typology of state strategies reflecting variations of disregard, co-optation, or outright antagonism. The following subsections distinguish and clarify each of these individual strategies.

Disregard

Disregard refers to a lack of engagement by states with NHRIs, whether as a result of disinterest or resistance to their work. The Philippines under President Duterte serves as an example of this, with the state exhibiting an ambivalent or even hostile attitude towards its NHRI. Upon commencement of his presidency in 2016, Duterte initiated an anti-drugs campaign that disregarded due process and human rights to advance an agenda condoning an escalation of state and non-state violence to eliminate suspected drug

²⁴ GANHRI 2018b (see note 17 above).

²⁵ Philippines Human Rights Commission (PHRC), ‘About us’ PHRC, 2018, available at <http://chr.gov.ph/about-us/>, accessed on 25 July 2019.

²⁶ GANHRI 2018b (see note 17 above).

²⁷ Liljeblad, J, ‘The efficacy of national human rights institutions seen in context: Lessons from the Myanmar National Human Rights Commission (MNHRC)’ *Yale Human Rights & Development Law Journal*, 2017, Vol 19, pp 95-132 [hereinafter cited as Liljeblad 2017].

dealers.²⁸ In response to allegations of extra-judicial killings, discriminatory police tactics, politically motivated attacks, and violations of evidentiary rules, the PCHR attempted to exercise its mandate to conduct investigations of potential human rights violations by the state. As such, it submitted requests to the government, particularly the Philippines National Police (PNP), for information with respect to the claims being made against it.²⁹

However, the government's response was desultory; while Director General Ronald Dela Rosa (the PNP chief) indicated a willingness to cooperate with PCHR investigations, the PNP only provided cursory lists of police actions and attendant killings with little information directly addressing PCHR concerns.³⁰ For example, in August 2017, PCHR Chair, Chito Gascon, sent specific requests to the PNP for spot, forensic, and inventory reports related to the Duterte administration's anti-drugs campaign, but in September 2017, Interior Undersecretary Catalino Cuy stated that Duterte had ordered the PNP not to share documents with the PCHR.³¹ Subsequent to that declaration, in November 2017, PNP Chief Ronald Dela Rosa indicated a willingness to share spot reports while retaining the case records, but by March 2018, the PCHR declared it had not received the promised documents.³² Moreover, it also expressed suspicions that the PNP had distorted information in the few documents it had shared with human rights investigators.³³

The conduct of Duterte's government is not confined to the PCHR as an institution. At the beginning of his presidency, he expressed a desire to comply with the country's obligations to international treaties.³⁴ Such statements, however, were contradicted by his attacks against the UN system and his refusal to engage not just with the PCHR but also the Philippines judiciary human rights investigations.³⁵ Further, Duterte's government

²⁸ 'Philippines President Rodrigo Duterte urges people to kill drug addicts' *The Guardian*, 1 July 2016, available at <https://www.theguardian.com/world/2016/jul/01/philippines-president-rodrigo-duterte-urges-people-to-kill-drug-addicts>, accessed on 25 July 2019 [hereinafter cited as *Guardian 2016*]; Mogato, M, and Baldwin, C, 'Special report: Police describe kill rewards, staged crime scenes in Duterte's drug war' *Reuters*, 18 April 2017, available at <https://www.reuters.com/article/us-philippines-duterte-police-specialrep/special-report-police-describe-kill-rewards-staged-crime-scenes-in-dutertes-drug-war-idUSKBN17K1F4>, accessed on 25 July 2019.

²⁹ Gavilan, J, 'Evading probes? The many times Duterte admin didn't give drug war documents' *Rappler*, 6 March 2018, available at <https://www.rappler.com/newsbreak/iq/197453-list-duterte-administration-reject-drug-war-documents-request>; Gavilan, J, 'Puro Dribble': CHR hits PNP for not cooperating in drug war probes' *Rappler*, 24 August 2017, available at <https://www.rappler.com/nation/179928-chr-hits-pnp-failure-cooperate-probes-drug-war-killings>; Talabong, R, 'Duterte ordered police not to share files with CHR – DILG' *Rappler*, 8 September 2017, available at <https://www.rappler.com/nation/181519-duterte-order-pnp-chr-refuse-share-case-folders>, all accessed on 25 July 2019.

³⁰ See note 29 above.

³¹ See note 29 above.

³² See note 29 above.

³³ Quintos, P, 'Are #realnumbers real? Rights defenders question state data on drug war' *ABS-CBN News*, 6 April 2018, available at <https://news.abs-cbn.com/focus/04/06/18/are-realnumbers-real-rights-defenders-question-state-data-on-drug-war>, accessed on 26 July 2019.

³⁴ *Guardian 2016* (see note 28 above).

³⁵ *Guardian 2016* (see note 28 above).

has been criticized by the UN Human Rights Council for failing to cooperate with international assessments of human rights in the country.³⁶ As much as it may be possible that the PNP's behaviour towards the PCHR may reflect a transferal of state ambivalence about the international human rights system or human rights in general, the net result is a disregard for the PCHR and the impairment of its activities as an institution.

For other NHRIs, the implication is that despite the possible provisions regarding a mandate, NHRIs are susceptible to the discretion of states for engagement. As can be seen in the case of the PCHR, while a NHRI can exercise its powers of investigation, a state can simply choose to disregard it, either by ignoring the NHRI's directives or furnishing disinformation in response to its requests. Such an outcome is made possible because NHRIs are not supported by powers to compel states to comply and so, like the PCHR, are left to the indulgences of states to follow such orders. As demonstrated by the Duterte regime, states are not always amenable to the work of NHRIs.

Co-optation

Beyond such base disregard, other examples in ASEAN illustrate state efforts to co-opt NHRIs in terms of influencing their composition to nurture alignment with state interests. A number of activities are encompassed within this category: judicialization, where NHRI members are drawn from the judicial profession; politicization, which involves an appointment process subject to legislative politics; and administrative infiltration, where NHRI staff are composed of civil servants controlled by the government. Each activity is described below.

Judicialization

Judicialization constitutes a trend among the majority of ASEAN NHRIs, with most exhibiting a prevalence of members hailing from the judiciary or having other legal backgrounds. The Philippines, Thailand, and Timor-Leste illustrate this trend. For example, the majority of members of the TNHRC can claim a background in the law. For the Philippines, four out of five commissioners (Jose Luis Martin Gascon, Gwendolyn Pimental-Gana, Leah Tandora-Armamento, and Roberto Eugenio Cadiz) have legal backgrounds, with Karen Gomez-Dumpit being the sole exception (her background is in education although she also has experience in politics and public administration).³⁷

To a slightly lesser degree, the current composition of the TNHRC includes four out of seven commissioners holding legal backgrounds: Chairperson What Tingsamit, Chatusda Chandeeying, and Prakairatana Thontiravong all have experience as judges while Chartchai

³⁶ '38 UNHRC member-states urge PH to cooperate in human rights assessment' ABS-CBN News, 23 June 2018, available at <https://news.abs-cbn.com/news/06/23/18/38-unhrc-member-states-urge-ph-to-cooperate-in-human-rights-assessment>, accessed on 25 July 2019.

³⁷ 'New members appointed to Commission on Human Rights' Asia Pacific Forum, 2018, available at <http://www.asiapacificforum.net/news/philippines-new-members-appointed-commission-human-rights/>, accessed on 25 July 2019.

Suthiklom worked for the Ministry of Justice. Only Surachet Satitniramai, Tuenjai Deetes, and Angkhana Neelapaijit can claim credentials outside the law.³⁸ Similarly, two out of three members of Timor-Leste's PDHJ have legal backgrounds (Silverio Pinto Baptista and Horacio de Almeida) with only Jesuina Maria Ferreira Gomes tracing her roots to public administration.³⁹

Half of Indonesia and Malaysia's commissioners come from the law. Indonesia's Komnas HAM boasts four commissioners with legal backgrounds (Sandrayati Moniaga, Hairansyah, Mohammad Choirul Anam, and Munafrizal Manan) and four without (Ahmad Taufan Damanik, Beka Ulung Hapsara, Amiruddin, and Tasdiyanto).⁴⁰ Similarly, Malaysia has four commissioners with legal experience (Dato' Mah Weng Kwai, Dr Dato' Aishah Bidin, Dr Nik Salida Suhaila Nik Saleh, and Francis Johen) and four claiming other backgrounds (Tan Sri Razali Bin Ismail, Datuk Lok Yim Pheng, Datuk Godfrey Gregory Joitol, and Jerald Joseph).⁴¹

In Southeast Asia, only Myanmar and Timor-Leste host a minority of commissioners with legal backgrounds; of the former's eleven members, only U Soe Phone Myint, U Sein Than, and Dr Tin May Htun worked in the legal profession.⁴²

Whilst possession of a legal background is not necessarily an issue in terms of qualifications for an NHRI member, the prevalence of legal perspectives does pose an issue in that it raises the probability of legal approaches in NHRI decision-making. Critics observe that the treatment of human rights as a legal matter fosters an interpretation of human rights as legal rights. Interpreting human rights through a legal framework exposes consideration of human rights to philosophies of legal positivism that see the law and legal rights as being creations of the state, making human rights subject to recognition and control by the state.⁴³ Such interpretations contradict perspectives that seek to hold human rights as universal and inalienable for all, such that states can be held accountable for their treatment of human beings.⁴⁴

³⁸ National Human Rights Commission of Thailand (TNHRC), 'Profiles of Commissioners' TNHRC, 2018, available at <http://www.nhrc.or.th/AboutUs/The-Commission/Profiles-of-Commissioners/3/%E0%B8%99%E0%B8%B2%E0%B8%A2%E0%B8%A7%E0%B8%B1%E0%B8%AA-%E0%B8%95%E0%B8%B4%E0%B8%87%E0%B8%AA%E0%B8%A1%E0%B8%B4%E0%B8%9-5%E0%B8%A3.aspx?lang=en-US>, accessed on 25 July 2019.

³⁹ 'Current ombudsman' PDHJ, 2018, available at <http://pdhj.tl/about/meet-the-ombudsman-and-deputies/?lang=en>, accessed on 25 July 2019.

⁴⁰ 'Profile of leadership and members' Komnas HAM, 2018, available at <https://www.komnasham.go.id/index.php/commissioner/>, accessed on 25 July 2019.

⁴¹ 'Present Commissioners' SUHAKAM, 2018, available at <http://www.suhakam.org.my/about-suhakam/ahli-suruhanjaya/>, accessed on 25 July 2019.

⁴² 'Commissioners' Myanmar National Human Rights Commission (MNHRC), 2018, available at <http://www.mnhrc.org.mm/en/about/commissioners/>, accessed on 25 July 2019.

⁴³ Lettinga, D, and van Troost, L (eds), *Can Human Rights Bring Social Justice*, Netherlands: Amnesty International Netherlands, 2015.

⁴⁴ Lettinga and Troost (see note 43 above).

The implication of such critiques is that NHRIs hosting a dominant majority of members holding legal perspectives may be more susceptible to interpretations of human rights as being a function of state *discretion*, and that to counter these risks, NHRIs should seek balance with members capable of thinking about human rights outside the law. This reasoning suggests that the PCHR, THRC, and PDHJ may be exhibiting tendencies favouring state interpretations of human rights thereby decreasing expectations of state accountability for such violations.

Politicization

Politicization occurs when NHRI members are selected on the basis of their political beliefs. As demonstrated by Komnas HAM, it can arise as a result of the appointment process being controlled by legislative mechanisms. Komnas HAM's appointment process involves a first selection committee (comprised largely of NGO representatives, academics, and retired judges) which chooses an initial slate of candidates, supplemented by candidates chosen by a second selection committee (comprised of Komnas HAM incumbents).⁴⁵ The combined shortlist is sent to a parliamentary commission which conducts a fit-and-proper test and a question-and-answer session, with the results of both being used by said commission to vote on the new members.⁴⁶

Ideally, the process works to avoid presidential control and allows more vetting of candidates.⁴⁷ The desire for some measure of oversight is understandable to ensure Komnas HAM fulfils its mandate, particularly since past incidents have given the appearance of commissioners being too focused on entitlements.⁴⁸ In practice, however, the process resulted in a number of issues: (1) a pattern emerged of candidates being elected on the basis of political loyalties and pedigrees despite having little or no human rights experience; (2) the questions used to evaluate candidates frequently had no connection to human rights, exacerbating perceptions of political favouritism by the legislature; and (3) the process allowed *quid pro quo* and conflict-of-interest scenarios.⁴⁹ The possibility of such risks was realized in 1998 when Komnas HAM members conducted investigations into the army despite being affiliated with the military. Likewise, in 2005, Komnas HAM investigated a religious organization even though an investigating commissioner had an affiliation with the organization.⁵⁰

The danger of politicization is that the presence of individuals chosen for their adherence to particular political interests fosters internal political divisions within NHRIs. In

⁴⁵ Paat, J, 'Concern over caliber, political affiliation of Komnas HAM Commissioner candidates' Jakarta Globe, 3 July 2017, available at <https://jakartaglobe.id/news/concern-caliber-political-affiliation-komnas-ham-commissioner-candidates/>, accessed on 25 July 2019.

⁴⁶ Paat (see note 45 above).

⁴⁷ Paat (see note 45 above).

⁴⁸ 'Editorial: Restoring faith in Komnas HAM' Asian News Network, 18 May 2017, available at <http://annx.asianews.network/content/editorial-restoring-faith-komnas-ham-46077>, accessed on 25 July 2019.

⁴⁹ Setiawan 2016 (see note 22 above).

⁵⁰ Setiawan 2016 (see note 22 above).

the case of Komnas HAM, critics argued that it was frequently diverted from making coherent decisions as a result of continuous internecine conflicts between nationalists who opposed the universal application of human rights versus humanists who supported universal human rights norms.⁵¹ Such behaviour harms more than the institution and facilitates a perception about the nature of human rights in general as a juncture in political struggles rather than as an ideal of human conduct. Authoritarian states seeking to suppress public support for human rights can exploit political struggles over human rights to incite public disapproval, and hence resistance, to their implementation.⁵²

Administrative infiltration

Administrative infiltration refers to a state's actions to increase its influence over an NHRI through the appointment of administrative staff. NHRIs, as institutions, may feature human rights commissioners having human rights mandates but their efforts are supported by staff who sustain the office's daily operations. As much as states may seek to control NHRIs by directing the appointment process of its members, they can also manipulate the appointment process of NHRI staff. For example, Komnas HAM is charged with lacking independence in part because its administrative personnel, particularly its general secretary and attendant secretariat, are officially civil servants and hence part of the larger state bureaucracy.⁵³ The risk to NHRIs of administrative infiltration is that while NHRI members may be sincere in their commitment to hold a state accountable for human rights violations, its staff who are part of the state bureaucracy, may hold loyalties to the state or at minimum may hold conflicts of interest that disincentivize them from monitoring the conduct.

Antagonism

The categories of state disregard and co-optation reflect intentions to ignore or influence an NHRI, but in some cases states may even act to impair or eliminate an NHRI altogether. Expressions of such antagonism include tactics such as state disciplinary actions against NHRIs, decrease of NHRI finances, or outright reduction or dissolution. Each of these is summarized below.

Disciplinary actions

Disciplinary actions encompass a range of potential options that include the censure, suspension, or replacement of commissioners. To a degree, disciplinary actions are attendant with oversight mechanisms in that they provide a means of curbing institutional violations of codes of conduct. An issue arises, however, in situations where they serve

⁵¹ Setiawan 2016 (see note 22 above).

⁵² Barrette, R, 'The excessive politicization of Filipino human rights' UCA News, 3 October 2017, available at <https://www.ucanews.com/news/the-excessive-politicization-of-filipino-human-rights/80349>, accessed on 26 July 2019; Hadiprayitno 2010 (see note 22 above).

⁵³ Setiawan 2016 (see note 22 above); Muntarborn, V, *Unity in Connectivity? Evolving Human Rights Mechanisms in the ASEAN Region*, Martinus Nijhoff, 2013, at 48; Herbert, J, 'The legal framework of human rights in Indonesia' in Lindsay, T (ed), *Indonesia: Law and Society*, 2nd ed, Federation Press, 2008, at 463.

as tools in political power struggles between states and NHRIs. For example, in 2016, the MNHRC found itself at the centre of a public controversy over alleged human rights violations made by business owners towards housekeeping staff.⁵⁴ Critics charged that the MNHRC, in the course of fulfilling its mandate to negotiate a conciliation between accused abusers and their victims, had obstructed criminal law procedures to defend the abusers in contradiction of international human rights standards.⁵⁵ The public furore led to a parliamentary debate in Myanmar's lower house as to whether to pursue disciplinary actions against the MNHRC, with 374 MPs voting in favour of such action against only one no vote and eight abstentions.⁵⁶ The options proposed for later selection included sanctions, replacing commissioners, and even outright dissolution of the MNHRC as an institution.⁵⁷ The controversy surrounding the MNHRC illustrates how disciplinary actions can be tied to political processes operating in the absence of due process, hence rendering an NHRI vulnerable not on the basis of oversight but as a result of political fortune.

Decrease in finances

An additional way states act against NHRIs is to simply reduce their funding allocations. NHRIs, while expected under the Paris Principles to be independent and autonomous,

⁵⁴ Mon, Y, and Naing, S, 'President's office to investigate rights body following botched child abuse case' Myanmar Times, 23 September 2016, available at <https://www.mmtimes.com/national-news/22698-president-s-office-to-investigate-rights-body-following-botched-child-abuse-case.html> [hereinafter cited as Mon and Naing 2016a]; Mon, Y, and Naing, S, 'Police to file charges after revelations of girls' abuse, payout spark outcry' Myanmar Times, 21 September 2016, available at <https://www.mmtimes.com/national-news/yangon/22648-police-to-file-charges-after-revelations-of-girls-abuse-payout-spark-outcry.html> [hereinafter cited as Mon and Naing 2016b]; Phyo, T, and Naing, S, 'Journalist honoured, calls for re-organisation of MNHRC in wake of child maids revelation' Myanmar Times, 26 September 2016, available at <https://www.mmtimes.com/national-news/yangon/22724-journalist-honoured-calls-for-reorganisation-of-mnhrc-in-wake-of-child-maids-revelation.html> [hereinafter cited as Phyo and Naing 2016]; Thant, H, 'Lawmakers vote in favour of disciplining MNHRC over child maids abuse case' Myanmar Times, 27 September 2016, available at <https://www.mmtimes.com/national-news/22746-lawmakers-vote-in-favour-of-disciplining-mnhrc-over-child-maids-abuse-case.html> [hereinafter cited as Thant 2016a]; 'Myanmar activists express outrage over maid-abuse scandal' Radio Free Asia, 21 September 2016, available at <http://www.rfa.org/english/news/myanmar/myanmar-activists-express-outrage-over-maid-abuse-scandal-09212016164059.html>, all accessed on 25 July 2019.

⁵⁵ See note 54 above.

⁵⁶ Thant, H, 'MP tables urgent proposal for action against MNHRC' Myanmar Times, 23 September 2016, available at <https://www.mmtimes.com/national-news/yangon/22699-mp-tables-urgent-proposal-for-action-against-mnhrc.html> [hereinafter cited as Thant 2016b]; Mon, Y, 'MP submits urgent proposal to take action against MNHRC' Myanmar Times, 22 September 2016, available at <https://www.mmtimes.com/national-news/22678-mp-submits-the-urgent-proposal-to-take-action-against-mnhrc.html>; 'Myanmar national human rights commissioners resign in maid abuse scandal' Radio Free Asia, 6 October 2016, available at <http://www.rfa.org/english/news/myanmar/myanmar-national-human-rights-commissioners-10062016153158.html/>; 'Myanmar President's office investigates maid-abuse case' Radio Free Asia, 22 September 2016, available at <http://www.rfa.org/english/news/myanmar/myanmar-presidents-office-investigates-maid-abuse-case-09222016160550.html>, all accessed on 25 July 2019.

⁵⁷ See note 56 above.

receive their financial resources from states. As a result, they are vulnerable to state actions to curtail such funding to limit their operations. For example, in September 2016, the Philippines Congress voted to reduce the PCHR's budget to PHP1,000 (app US\$20)⁵⁸ in response to its criticism of President Duterte's anti-drugs campaign.⁵⁹ Although this was eventually raised to PHP624 million (app US\$12.2 million), it was still less than half the PCHR's original request for PHP1.72 billion (app US\$33.7 million).⁶⁰ As it was, the funding was granted only after PCHR agreed to look beyond the anti-drugs campaign and investigate all forms of human rights abuses,⁶¹ and so represents an award made in exchange for a concession. Thus, states may seek to retain power over NHRIs through financial control and may exploit this control to curtail their operations.

Reduction or dissolution

Finally, states may work against NHRIs by reducing the number of commissioners or dissolving the institutions altogether. The process of reduction or dissolution varies according to the enabling laws creating NHRIs, but it is not without precedent. Indonesia's Komnas HAM, for example, was accorded 35 commissioners by its 1999 Human Rights Law but this number was later reduced to thirteen and then to seven commencing in 2017.⁶² Similarly, in Myanmar, the MNHRC's usual eleven commissioners was reduced to seven following the scandal of 2016 which forced the resignation of four.⁶³ While in Indonesia, the decision to reduce the number of commissioners was ostensibly to accommodate a lack of qualified candidates, in Myanmar, the reduction was as a result of political pressure from the state seeking to apply disciplinary action against the MNHRC.⁶⁴ The threatened actions were not limited to individual commissioners, with MPs in parliamentary debates even proposing complete dissolution of the MNHRC as an institution.⁶⁵ As a result, the potential for states to act in ways inimical to NHRIs is undeniable especially if enabling laws permit them to impose a reduction in the number of NHRI commissioners or dissolution of an NHRI altogether.

⁵⁸ Agerholm, H, 'Philippines cuts its human rights budgets to £15' Independent, 13 September 2017, available at <https://www.independent.co.uk/news/world/asia/philippines-human-rights-budget-cut-rodrigo-duterte-war-drugs-isis-marawi-a7944086.html>, accessed on 25 July 2019.

⁵⁹ 'Philippine lawmakers restore human rights commission budget to US\$12.2 million after shock cut' South China Morning Post (SCMP), 21 September 2017, available at <https://www.scmp.com/news/asia/southeast-asia/article/2112213/philippine-lawmakers-restore-human-rights-commission-budget>, accessed on 25 July 2019 [hereinafter cited as SCMP 2017].

⁶⁰ Agerholm 2017 (see note 58 above); SCMP 2017 (see note 59 above).

⁶¹ SCMP 2017 (see note 59 above).

⁶² Aritonang, M, 'House approves proposal on fewer Komnas HAM commissioners' Jakarta Post, 20 February 2017, available at <http://www.thejakartapost.com/news/2017/02/20/house-approves-proposal-on-fewer-komnas-ham-commissioners.html>, accessed on 25 July 2019.

⁶³ Liljeblad 2017 (see note 27 above).

⁶⁴ Thant 2016a (see note 54 above); Thant 2016b (see note 56 above).

⁶⁵ See notes 54 and 56 above.

Implications

In viewing NHRIs, scholars such as Andrew Wolman assert their effectiveness at promoting international human rights standards to domestic contexts as a result of their proximity to actors at multiple levels, independence, pluralism, and capacity to address issues in depth.⁶⁶ In contrast, other figures like Sonia Cardenas observe more complex scenarios, noting that states create NHRIs either as a strategic calculation to appease critics or as an expression of commitment to international human rights norms.⁶⁷ In addition, voices like Peter Rosenbaum argue a need for a more critical perspective, noting that in the time after their initial creation, NHRIs may face backlash from powerful opponents seeking to undermine them.⁶⁸ The typology of the state actions presented above align more closely with Rosenbaum's perspective.

Contrary to Wolman, it is clear from the preceding sections that while an NHRI may have proximity in terms of familiarity with a state and a society, proximity also exposes NHRIs to the machinations of hostile states and hence fail to address questions as regards their institutional survival. Moreover, the exercise of multiple state strategies to counter NHRIs demonstrates a lack of independence, with NHRIs subject to the power of states based on the terms of their enabling laws, control of finance, arrangements in staffing, processes of appointments, and availability of governmental disciplinary actions. Further, the extent of diversity among commissioners on an NHRI is a function of those who control the process or who draft the process of appointments. Finally, the depth of an institution's research is constricted by the willingness of governments to provide information.

With respect to Cardenas, the preceding sections indicate that the motivations of states in forming NHRIs do not necessarily correlate with the actions of states towards NHRIs after their formation. While states may form NHRIs to appease critics or to express commitment to international human rights norms, they may later move towards more hostile positions inimical to NHRIs. As a result, the status of NHRIs involves complexities that go beyond the motivations of states to form them and extend to include the means of interaction between states and NHRIs.

The nature of the typology constructed in the preceding sections is more consistent with Rosenbaum in that the various categories identified represent a range of strategies used by ASEAN states to undermine their NHRIs. Moreover, the strategies illustrate the diversity of methods available to states to work against such institutions. Hence, whilst

⁶⁶ Wolman, A, 'National human rights commissions and Asian human rights norms' *Asian Journal of International Law*, 2013, Vol 3, pp 77-99.

⁶⁷ Cardenas, S, 'National human rights institutions and state compliance' in Goodman, R, and Pegram, T (eds), *Human Rights, State Compliance, and Social Change*, New York: Cambridge University Press, 2012.

⁶⁸ Rosenblum, P, 'Tainted origins and uncertain outcomes: Evaluating NHRIs' in Goodman, R, and Pegram, T (eds), *Human Rights, State Compliance, and Social Change*, New York: Cambridge University Press, 2012.

it is possible for a state to be responsible for the creation of an NHRI, the above cases demonstrate how those self-same states can shift to a more hostile posture, thus showing states have discretion to choose the nature of their relationship with an NHRI.

Returning to the question of GANHRI accreditation and its integration of context, the record of ASEAN state actions against NHRIs is not entirely reflected in the GANHRI accreditation ratings. GANHRI accreditation reviews ostensibly account for context in evaluating NHRIs,⁶⁹ but with respect to the ASEAN NHRIs discussed in preceding sections, the ratings are not indicative of the tenor of state actions against NHRIs. To a degree, the MNHRC and THRC present cases with accreditation ratings that can be construed as consistent with their experiences, with the 'B' rating for the MNHRC conceivably encompassing its trials with the disciplinary debates launched by the Myanmar parliament and THRC's 'B' downgrade arguably tied to the country's military *coup* and constitutional redrafting. Such connections, however, overlook that the MNHRC's 'B' rating was awarded prior to its 2016 confrontation with the Myanmar parliament, and the THRC's 'B' downgrade occurred before its re-composition under Thailand's new constitution.

The disconnect between GANHRI accreditation and state relations with NHRIs is also apparent as regards Malaysia and Indonesia where the frequency of SUHAKAM and Komnas HAM reviews were driven by concerns over issues reflecting each NHRI's difficulties with their respective states, but the number of such reviews belies their 'A' ratings. Similarly, despite the efforts of the Philippines government to reduce the PCHR's budget, it has consistently maintained an 'A' rating.

For GANHRI accreditation ratings to better represent the contextual challenges of these institutions, the status of ASEAN NHRIs would need to be more indicative of the state actions described in previous sections. Such contextual sensitivity suggests MNHRC and THRC should have accreditations higher than 'B.' At a minimum, the desire for contextual sensitivity would also imply that the experiences of SUHAKAM, Komnas HAM, and the PCHR should yield accreditations lower than 'A.'

It is possible to defend the GANHRI accreditations by arguing that the ratings are merely meant to be indicators on NHRI performance rather than measures of state behaviour. Such an argument is supported by the content of the criteria set forth by the Paris Principles which do not specify attention to state conduct. Instead, requirements stipulate a broad mandate to advance universal human rights, autonomy from the state, statutorily or constitutionally guaranteed independence, a pluralist composition in membership and activities, adequate resources, and adequate powers of investigation.⁷⁰ But an interpretation of GANHRI accreditations as being an NHRI-focused indicator instead of a state-focused indicator means that ratings are not truly context-sensitive,

⁶⁹ Liljeblad 2017 (see note 27 above).

⁷⁰ Liljeblad 2017 (see note 27 above).

since inattention to state conduct towards NHRIs removes a major element of the context surrounding such institutions. In which case, GANHRI accreditation would be vulnerable to accusations of reductionism in ignoring forces responsible for impairing the existence of NHRIs.

For the accreditations to be context-sensitive, GANHRI would have to do more to adjust the system to truly address the factors, including the types of state behaviour already presented which impede NHRI performance or those actually threatening their existence. Potential options might include a change in the criteria used by GANHRI to evaluate NHRIs. Doing so might be problematic in terms of contradicting the Paris Principles, but such an issue can be mitigated by expanding the number of criteria considered in the review process rather than editing each one individually. Another potential option is to retain existing ratings but denote them as only indicative of NHRI performance, then employ a separate measure to indicate state action towards NHRIs. Such a bifurcation in measures would reduce exposure to claims of reductionism by offering a greater accounting of the contextual complexities affecting NHRIs. It would, however, require a clarification in GANHRI procedures and records, both past NHRI accreditations as well as with respect to the evaluation process going forward.

Conclusion

The preceding discussion sought to provide a review of state actions against NHRIs in ASEAN countries with the purpose of organizing them into a typology to better understand the range of strategies states employ to counter the work of NHRIs. This typology was then used to draw out implications with respect to NHRI theories and to the nature of the GANHRI accreditation process.

It should be noted that the various categories in the typology (state disregard, state co-optation, or state antagonism towards NHRIs) represent strategies that stayed within the law of these countries. The apparent disregard by the Philippines government of PCHR requests for information was not absolute, but instead involved a partial provision of cursory documents, excuses based on deference to authority, and assurances of cooperation in what was effectively a perfunctory observation of the PCHR's exercise of its mandate. Likewise, the co-optation through judicialization of the PCHR, THRC, PDHJ, Komnas HAM, and SUHAKAM commissioners was entirely within the NHRI appointment procedures enacted by the Philippines, Thailand, Timor-Leste, Indonesia, and Malaysia, respectively. The same can also be said for the appointment of administrative staff occurring in Indonesia's Komnas HAM. Similarly, the politicization of Komnas HAM via legislative mechanisms was also enabled by Indonesian law. Even in cases of antagonistic behaviour directed against the MNHRC and PCHR involving disciplinary action, reduction of finances, and reduction or dissolution of the NHRIs, such actions were advanced through powers accorded to states by the NHRI laws of Myanmar and the Philippines.

As a result, the typology presented in the analysis demonstrates that states do not have to resort to illegal actions to further hostile intentions towards their NHRIs, not when they have entirely legal means at their disposal. Such capability allows ASEAN states to work against NHRIs whilst avoiding the potential domestic and international opprobrium that might result from appearances of illegality. In addition, by exercising purely legal mechanisms to address their concerns with NHRIs, it also allows ASEAN states to maintain adherence to the rule of law.

It is possible to counter such exercise of law through the use of international institutions which view ASEAN state activity through the global frameworks that set international standards for state conduct. GANHRI is ostensibly the international institution recognized by the global community as having authority over NHRIs. However, the above analysis has found that, at least with respect to its accreditation system, GANHRI is more focused on NHRI performance and less on state conduct. If GANHRI is to fulfil its aspiration of mitigating potential state actions against NHRIs, it must adjust its focus to direct attention to the behaviour of states. In particular, GANHRI must devote more of its concerns to the legal strategies used by states to impair the operation or threaten the existence of NHRIs.

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CIVIL SOCIETY UNDER STRESS: AUTOCRATIC REPRESSION AND DIVIDED CIVIC SPACES IN SOUTHEAST ASIA

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Introduction

In its 2017 report, the global network of civil society, CIVICUS warned that the political spaces of civil societies were either closed, repressed, or shrinking in more than 170 countries, leaving only 20 countries in the world where civic spaces remain open. Civil society in almost every country in Southeast Asia faces threats and constraints.¹ Statistics aside, those living in the region have felt and are still feeling this growing repressive atmosphere all too well. From Thailand to the Philippines, Vietnam to Malaysia, Cambodia to Indonesia, and Myanmar to Singapore, opposition activists, journalists, academics, and outspoken citizens have been sentenced, threatened, and assaulted by strongmen political leaders and increasingly autocratic governments.

Although authoritarianism in Southeast Asia is not a completely novel experience, its recent development, characterized by increasingly sophisticated tactics of repression and autocratic alignment with conservative segments of civil society, has made dissent in this part of the world extremely difficult and even dangerous to express. This chapter seeks to examine the trend by first situating Southeast Asia's shrinking civic spaces in the global context wherein autocracy has gathered pace amidst growing civic mistrust in liberal democracy. Further, 'legal repression' has been instrumental to silencing contentious voices. Second, drawing on the existing databases of CIVICUS and Freedom House, the chapter elucidates recent patterns of repression, especially in cyberspace. Third, it shows how civil society repression carried out by its conservative segments help the government to monitor and harass dissidents. This point will be illustrated by using the example of 'cyber troops' in Thailand and the Philippines. Finally, the chapter concludes by offering recommendations on how civil society can push back despite these distressing trends.

Autocratic evolution, repression, and divided civic spaces: Global and regional contexts

Global overview

The spectre of autocracy is, once again, haunting the world. The end of the Cold War followed by the "third wave of democratization" in Eastern Europe, Asia, Latin America, and Africa generated optimism that we had arrived at the "End of History."²

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¹ 'People power under attack' CIVICUS, April 2017, available at http://www.civicus.org/images/People_Power_Under_Attack_Findings_from_the_CIVICUS_Monitor.pdf, accessed on 1 October 2018.

² See, Huntington, SP, *The Third Wave: Democratization in the Late Twentieth Century*, Norman: University of Oklahoma Press, 1991; Fukuyama, F, *The End of History and the Last Man*, New York: Free Press, 1992.

As dozens of countries were democratized and their economies liberalized, the world seemed to march toward one direction: liberal democracy in the globalized world led by the United States. The US, in particular, spearheaded democratization campaigns across the globe, raising questions of its neo-imperial mission.³ Regardless, democratization in one place tended to influence others to follow in its footsteps. This ‘democratic wave’ paved the way for growing civic spaces enabling civil society freedom. Civil society in this context was understood as a progressive force contributing to democratic breakthroughs and democratic consolidation.⁴ Defined as a domain autonomous from the state, the contemporary notion of civil society was heavily shaped by the 1980s Eastern European experience when civil society movements opposed dictatorial states in pursuit of democratic change.⁵ Civil society checks and balances of governmental powers are central to consolidating fledgling democratic institutions.⁶ Due to this relationship between civil society and democratic progress, the suppression of political spaces where civil society can independently operate is considered a threat to democracy. The concept of ‘repressed, closing, and shrinking space’ implies the way in which governments apply a myriad of methods to curtail the critical activism of civil society groups as well as international support for them. Although both democratic and authoritarian governments apply these repressive methods, the scale, depth, and impact of limitations on civic activism tends to be more extensive and profoundly harsher under authoritarian regimes.⁷

As civil society groups have mushroomed across the globe, autocrats and authoritarian regimes have set upon a steep learning curve, and evolved.⁸ Non-democratic leaderships no longer seize power through military *coups* (except in countries like Thailand), but often rise to power through electoral processes. Once in power, autocrats who hold the majority of parliamentary seats tend to undermine the independent institutions serving as checks and balances, manipulate and monopolize the media, curtail freedom of expression, and violate human rights in defence of the ‘nation.’ All these steps are taken through legal and parliamentary processes, gradually killing liberal democracy. As

³ Petras, J, and Veltmeyer, H, ‘Imperialism and democracy: Convergence and divergence’ *Journal of Contemporary Asia*, 2012, Vol 42, No 2, pp 298-307.

⁴ Diamond, L, *Developing Democracy: Toward Consolidation*, Baltimore: Johns Hopkins University Press, 1999, at 239.

⁵ Gellner, E, ‘The importance of being modular’ in Hall, JA (ed), *Civil Society: Theory, History, Comparison*, Oxford: Polity, 1995, at 42; Grugel, J, *Democratization: A Critical Introduction*, New York: Palgrave, 2002, at 96.

⁶ Diamond, L, ‘Toward democratic consolidation’ *Journal of Democracy*, 1994, Vol 5, No 3, pp 4-17.

⁷ Brechenmacher, S, ‘Civil society under assault: Repression and responses in Russia, Egypt, and Ethiopia’ Carnegie Endowment for International Peace, 18 May 2017, available at <http://carnegieendowment.org/2017/05/18/repression-and-responses-cross-cutting-themes-pub-69961>, accessed on 1 October 2018.

⁸ Frants, E, and Ezrow, N, *The Politics of Dictatorship: Institutions and Outcomes in Authoritarian Regimes*, Boulder, CO: Lynne Rienner, 2011; Svobik, M, *The Politics of Authoritarian Rule*, New York: Cambridge University Press, 2012; and Frantz, E, and Kendall-Taylor, A, ‘The evolution of autocracy: Why authoritarianism is becoming more formidable’ *Survival: Global Politics and Strategy*, 2017, Vol 59, No 5, pp 57-68.

Levitsky and Ziblatt put it, the evolution of authoritarianism implies the slow death of democracy, rather than its sudden and dramatic destruction.⁹

Evolving authoritarian regimes and autocrats do not necessarily seek bloody crackdowns on civic activism as they have learned such action could draw domestic and international outcry, thereby generating a crisis of legitimacy. Instead, civic activism is curbed through the application of sophisticated methods such as legal and financial restrictions of NGOs, official registration, criminalization of public assemblies, infliction of harsh sentences on government critics so as to inflict a ‘chilling effect,’ cyber surveillance, defamation through cyber bullying, and the use of digital technology to turn public opinion against progressive agendas.¹⁰ Securitizing a political issue also enhances the effect of mass mobilization for autocratic support. Autocrats potentially tarnish the image of dissidents as violent troublemakers, threatening their well-being. In addition to curtailing ‘domestic’ civic groups, governments have increasingly targeted international agencies and donors by hindering their material support of domestic activists, introducing legal hurdles, pressing charges against international workers, and in some cases, even expelling these organizations.¹¹ Many autocrats transferred this tactical knowledge across borders, or some have simply been inspired by the recalibrated repression of their counterparts.¹²

In understanding the causes of this autocratic pushback, it is necessary to look beyond the illiberal behaviours of the autocrats in power. This phenomenon can be linked to three main reasons. First, on the global level, growing autocratic pushback is a response to increasing regime change. Waves of democratization, including the “colored revolutions” in the former Soviet spaces and the so-called ‘Arab Spring’ generated anxiety among the

⁹ Levitsky, S, and Ziblatt, D, *How Democracies Die*, New York: Crown, 2018.

¹⁰ Bradshaw, S, and Howard, PN, ‘Troops, trolls and troublemakers’ Working paper no 2017.12, Computational Propaganda Research Project, Oxford University, 2017, available at <http://blogs.ox.ac.uk/politicalbots/wp-content/uploads/sites/89/2017/07/Troops-Trolls-and-Troublemakers.pdf>, accessed on 30 April 2018.

¹¹ See, for example, Carothers, T, and Brechenmacher, S, *Closing Space: Democracy and Human Rights Support Under Fire*, Washington DC: Carnegie Endowment for International Peace, 2014; ‘State of civil society report’ World Alliance for Citizen Participation, 2015, available at <https://www.civicus.org/images/StateOfCivilSocietyFullReport2015.pdf>; Unmüßig, B, ‘Civil society under pressure: Shrinking – closing – no space’ Berlin: Heinrich Boll Foundation, May 2016, available at https://www.boell.de/sites/default/files/uploads/2015/12/20160601_civil_socieity_under_pressure_shrinking_spaces_englisch.pdf, both accessed on 15 August 2019; Puddington, A, and Roylance, T, ‘Populists and autocrats: The duel threat to global democracy’ Freedom House, 2017, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2017>; and Hayes, B, et al, ‘On ‘shrinking space’: A framing paper’ Transnational Institute, April 2017, available at https://www.tni.org/files/publication-downloads/on_shrinking_space_2.pdf, both accessed on 2 October 2018.

¹² Puddington, A, ‘Breaking down democracy: Goals, strategies, and methods of modern authoritarians’ Freedom House, June 2017, available at <https://freedomhouse.org/report/modern-authoritarianism-civil-society>, accessed on 17 July 2018.

elites and allied businesses that had captured state power and resources.¹³ Especially in major non-democratic countries such as China and Russia, globalized protests aiming for regime change are perceived as a threat to their sovereignty and global influence. This fear of non-violent threats to non-democratic regimes was further aggravated when the US, under the Bush administration, launched its global war on terror, using the rhetoric of democratization and human rights to oust the Afghan and Iraqi regimes in 2001 and 2003 respectively.¹⁴ Owing to this reactionary fear, non-democracies have coalesced to curtail international campaigns supporting democracy in their countries.¹⁵

Second, constituents, not only in young democracies but also democratic footholds, have become increasingly disillusioned with liberal democracy. Economic inequality precipitated by money politics and weak checks and balances, underpins this disenchantment.¹⁶ Liberal values, including freedom of expression, human rights, and multiculturalism have been disparaged as elite-imposed norms. As a result, resistance against these liberal stances has deepened polarization in Europe, the US, Latin America, and Asia.¹⁷

Lastly, in this most divisive of political struggles, the strongman emerges and promises the silent majority that their voices (often regarded as ‘politically incorrect’ by the so-called liberal elites) will be heard. The rise of right-wing populists in Europe and the US raises concern over the erosion of liberal institutions and government encroachment of civic spaces.¹⁸ Because of substantive popular support for the strongman, crackdown on dissidents is embraced and even aided by parallel civic groups. In England and Germany, social movements such as the English Defence League and Pegida (respectively) work side-by-side with right-wing populist parties.¹⁹ Similarly, in Turkey, President Tayyip Erdoğan’s supporters have sought to harass critics online.²⁰ In sum, civic spaces have not

¹³ Finkel, E, and Brudny, YM, ‘No more colour! Authoritarian regimes and colour revolutions in Eurasia’ in Finkel, E, and Brudny, YM (eds), *Coloured Revolutions and Authoritarian Reactions*, New York: Routledge, 2013, at 1-14.

¹⁴ Carothers, T, and Brechenmacher, S, *Closing Space: Democracy and Human Rights Support Under Fire*, Washington, DC: Carnegie Endowment for International Peace, 2014.

¹⁵ The context of the war on terror also contributed to shrinking civic spaces. Due to American pressure on its allies, anti-terrorism laws were adopted, setting the stage for the restriction of civic activism. See, Howell, J, Ishkanian, A, Obadare, E, Seckinelgin, H, and Glasius, M, ‘The backlash against civil society in the wake of the Long War on Terror’ *Development in Practice*, 2008, Vol 18, No 1, pp 82-93.

¹⁶ Brechenmacher, S, ‘Comparing democratic distress in the United States and Europe’ Carnegie Endowment for International Peace, 21 June 2018, available at <https://carnegieendowment.org/2018/06/21/comparing-democratic-distress-in-united-states-and-europe-pub-76646>, accessed on 2 October 2018.

¹⁷ Somer, M, and McCoy, J, ‘Déjà vu? Polarization and endangered democracies in the 21st century’ *American Behavioral Scientist*, 2018, Vol 62, No 1, pp 3-15.

¹⁸ Galston, WA, ‘The populist challenge to liberal democracy’ *Journal of Democracy*, 2018, Vol 29, No 2, pp 5-19.

¹⁹ Caiani, M, and della Porta, D, ‘The radical right as social movement organizations’ in Rydgern, J (ed), *The Oxford Handbook of the Radical Right*, Oxford: Oxford University Press, 2018.

²⁰ Bulut, E, and Yoruk, E, ‘Digital populism: Trolls and political polarization of Twitter in Turkey’

only been repressed, but divided along the fault lines of pro- and anti-liberal democracy. Meanwhile, the line that separates civil society from the state has become blurred.²¹

Southeast Asia

Following this global trend, the shrinking civic spaces of Southeast Asia correspond with the latest upgrades in authoritarianism. The regional emergence of authoritarianism corresponds with the processes of decolonization and state-building most Southeast Asian countries underwent in the early twentieth century through to the post-World War II era. Authoritarian rule was justified on the basis that these emerging countries needed economic development first and foremost, and democracy was a luxury.²² The Cold War accelerated this developmental authoritarianism. Weak democracies, such as the Philippines and Indonesia, were replaced with dictatorships so as to contain the communist domino effect. These developmental states demobilized civil society, crushed challengers, and implemented mass massacres of innocent citizens.²³ In response, armed guerrillas rose up against government repression, filling Southeast Asia with scenes of endemic violence and counterviolence.²⁴ Accordingly, there was limited room for nonviolent civil society to manoeuvre.

However, Southeast Asia's state-led development also led to a growing economy, which gave rise to the middle classes. At the end of the 1980s and the 1990s, this group was at the forefront of democratization in Thailand, the Philippines, and Indonesia. Consequently, numerous civil society groups and social movements sprang up, countering government policies and corporate practices deemed unjust and abusive. They advocated for progressive ideas such as human rights and sustainable development, which often pitted them against the government. However, Southeast Asia's civil society is not monolithic. Parts of it represent local communities, ethnic groups, and religions, while others work in tandem with state agencies and the government regarding humanitarian policies.²⁵ In contrast to a dominant approach shaped by various European experiences, Southeast Asia's civil society is not necessarily autonomous from the state.

International Journal of Communication, 2017, Vol 11, pp 4093-4117.

²¹ See, for instance, Heydemann, S, 'Upgrading authoritarianism in the Arab world' Analysis paper no 13, October 2007, Saban Center for Middle East Policy, Brookings Institution, available at <https://www.brookings.edu/wp-content/uploads/2016/06/10arabworld.pdf>, accessed on 2 October 2018; Hsu, C, 'Beyond civil society: An organizational perspective on state-NGO relations in the People's Republic of China' *Journal of Civil Society*, 2010, Vol 6, No 3, pp 259-277.

²² Ichimura, S, and Morley, JW, 'Introduction: The varieties of Asia-Pacific experiences' in Morley, JW (ed), *Driven by Growth: Political Change in the Asia Pacific*, New York: ME Sharpe, 1993, at 3-34.

²³ Boudreau, V, *Resisting Dictatorship: Repression and Protest in Southeast Asia*, Cambridge: Cambridge University Press, 2004.

²⁴ Robinson, G, 'Mass violence in Southeast Asia' in Abraham, I, Newman, E, and Weiss, ML (eds), *Political Violence in South and Southeast Asia: Critical Perspectives*, Tokyo: United Nations University Press, 2010, at 69-90.

²⁵ Lee, HG, 'Introduction: Civil society in Southeast Asia' in Lee, HG (ed), *Civil Society in Southeast Asia*, Singapore: Institute of Southeast Asian Studies, 2004, at 1-26.

Southeast Asia's political opening in the 1990s did not imply democratic consolidation. Indeed, the majority of Southeast Asian countries sustained different forms of non-democratic governance, ranging from single party, monarchy, military dictatorship, to personalist rule. In fact, the long shadow of authoritarian legacy still casts a long shadow over those actually undergoing democratic transition.²⁶ In the 2000s, a 'populist surge' disrupted both Thailand and the Philippines' young democracies. The traditional elites and members of the old regime moved quickly to put down populist challengers through mass mobilization and *coups*, eventually toppling the elected executives. In Thailand particularly, this trend kickstarted a decade of political struggle. Feudal elites were involved in the 2006 and 2014 military *coups* and the 2008 and 2010 judicial *coups*.²⁷

Determined to preserve the palace-led feudal order, Thai elites turned the country back to the dark age of military dictatorship. Elsewhere the situation is similarly dire. As of 2018, the regimes in Singapore, Brunei, Cambodia, Vietnam, and Laos have retained a firm grip over politics and their societies. By contrast, Myanmar seemed to welcome political reforms in 2011. But it has since become entangled with the Rakhine ethnic conflict, generating militarization and an autocratic atmosphere. Malaysia, up until June 2018, had been controlled by the ruling party, UMNO. Although Indonesia seems to be the only hopeful case for democratization in Southeast Asia, intensifying Islamic fundamentalism has thus far undermined the democratic value of pluralism.²⁸

Nonetheless, it would be misleading to assume that Southeast Asia's current tide of authoritarianism is identical to that of the 1970s. The regimes have become increasingly hybrid, leaning towards competitive authoritarianism. The democratic façade, especially elections, is preserved as a way of gaining political authority because it accords regimes with three advantages. First, elections provide a way to gather knowledge concerning citizens' genuine support for such regimes. Second, these elections function to legitimize ruling governments, fostering apparent bottom-up commitments to the regimes. Internationally, this legitimation can deflect western criticism. Finally, regimes employ elections to facilitate clientelism, undertake co-optation, forge solidarity, and guarantee succession.²⁹ Despite its existence, the basic principles of democratic elections are often violated to create "an uneven playing field between government and opposition."³⁰

²⁶ Slater, D, *Order Power: Contentious Politics and Authoritarian Leviathans in Southeast Asia*, Cambridge: Cambridge University Press, 2010.

²⁷ Mériéau, E, 'Thailand's deep state, royal power and the constitutional court (1997-2015)' *Journal of Contemporary Asia*, 2016, Vol 46, No 3, pp 445-66.

²⁸ Thitinan, P, 'Authoritarianism is accelerating in Southeast Asia' *Nikkei Asian Review*, 1 January 2018, available at <https://asia.nikkei.com/Editor-s-Picks/Looking-ahead-2018/Authoritarianism-is-accelerating-in-Southeast-Asia>, accessed on 13 July 2018.

²⁹ Morgenbesser, L, *Behind the Façade: Elections Under Authoritarianism in Southeast Asia*, New York: State University of New York, 2016, at 2.

³⁰ Levitsky, S, and Way, LA, 'The rise of competitive authoritarianism' *Journal of Democracy*, 2002, Vol 13, No 2, at 53. See also, Case, W, 'Southeast Asia's hybrid regimes: When do voters change them?' *Journal of East Asian Studies*, 2005, Vol 5, No 2, pp 215-237.

For example, regimes tend to manipulate the electoral process and results, abuse state resources, deny oppositions adequate media coverage, and harass opposition candidates and their supporters. Similarly, journalists, opposition politicians, and other government critics may be surveilled, intimidated, assaulted, or arrested. Likewise, members of the opposition may be put behind bars, exiled, or sometimes even murdered. Moreover, protests critical of the regimes are cracked down upon and participants sentenced. While Thailand, Vietnam, Laos, and Brunei currently do not fall in the category of competitive authoritarianism, ruling elites share with other competitive authoritarian countries (e.g. Malaysia, Singapore, Cambodia) the determination to drown out the opposition so as to bolster regime leverage.³¹

Following the global trend, regime repression of dissent is sometimes endorsed and facilitated by parts of civil society. As discussed earlier, Southeast Asia's civil society spaces can overlap with those of the state. Civil society works considered to be apolitical, i.e. humanitarian activism or service delivery, may be permitted and even sanctioned by state agencies.³² The Thai junta's notion of 'state-society cooperation' (*pracharat*) reflects this aspect of the state's preference for a 'tame' civil society. At the same time, certain NGOs may view the state as a resource-rich agency and thereby the best ally available to them. This approach enables the state co-optation of civil society. In this sense, Southeast Asian regimes do not only rely on 'sticks' in reining in critical civil society, but also utilize 'carrots' to reward cooperative civic groups.³³ This divide and rule tactic is at play when regimes mobilize supporters to side-line critical civic groups. The platform can be on the street where regime supporters demonstrate their support for the authoritarian leadership, while voicing disdain of the 'liberal' civil society. It can also be on social media sites where regime trolls and genuine supporters are assigned to praise government policies and condemn those disagreeing with them. Regime supporters are not just 'puppets' misled to endorse the autocrats, but may also reflect the ambiguous characteristic of civil society that is not necessarily progressive. More importantly, popular support for authoritarianism mirrors a deep mistrust of liberal institutions, the impact of nationalism, and the legacy of past authoritarian regimes or the 'habit of the hearts' in Southeast Asia. The current surge of authoritarianism shrinks civic spaces, but also divides them into those for or against liberal democracy.³⁴

³¹ Levitsky, S, and Way, LA, *Competitive Authoritarianism: Hybrid Regimes After the Cold War*, Cambridge: Cambridge University Press, 2010, at 309-338.

³² Lewis, D, 'Society and the authoritarian state: Cooperation, contestation, and discourse' *Journal of Civil Society*, 2013, Vol 9, No 3, at 332.

³³ Schedler, A, *Electoral Authoritarianism: The Dynamics of Unfree Competition*, Boulder, CO: Lynne Rienner, 2006; Giersdorf, S, and Croissant, A, 'Civil society and competitive authoritarianism in Malaysia' *Journal of Civil Society*, 2011, Vol 7, No 1, at 4.

³⁴ See, Slater, D, and Arugay, A, 'Polarizing figures: Executive power and institutional conflict in Asian democracies' *American Behavioral Scientist*, 2018, Vol 62, No 1, pp 92-106.

Repression and shrinking civic spaces in Southeast Asia

Drawing from CIVICUS and Freedom House databases on civic spaces,³⁵ this section demonstrates a variety of repressive tactics used by Southeast Asian regimes. While less inclined to rely solely on brute force to silence dissent, they increasingly opt for legal and financial crackdowns to impose censorship and drain resources. In particular, old colonial laws punishing critics with harsh jail sentences have proved useful legal instruments of repression. In the age of technology and international democracy promotion, new laws are also enforced to curb cyber activism and undercut international donations of domestic NGOs.

Draconian laws: Sedition, defamation, the internet, and public assembly

The combination of upgraded colonial laws and new censorship laws have consolidated the autocrats' grip on Southeast Asia's civil society. Transmitted from their colonial masters, defamation, sedition, and security laws have long been used to hinder public criticism of ruling governments. For instance, Malaysia's 1948 Sedition Act was instrumental to the British to combat the independence movement. Those found guilty faced up to three years in prison, and could be fined up to MYR5,000 (app UD\$1,300) or both for their first offence. Those convicted of subsequent offences could face up to five years in jail.³⁶ In modern times, the ruling party (UMNO) used the law to imprison political rivals and critics. In 2015 alone, at least 91 individuals were arrested, charged, or investigated for sedition. Likewise, in Brunei Darussalam, the colonial Sedition Act was updated in 2005, to increase penalties for people found guilty of insulting the head of state.³⁷

Security-related laws, mostly enacted in the initial period of state-building, also remain in use. For instance, until its repeal in 2016, Myanmar's 1950 Emergency Provisions Act had been widely applied under past military regimes to stifle dissent. Those found guilty of treason could face penalties including a lifetime in prison or the death sentence.³⁸ The 1923 Official Secrets Act, which is still active, specifies up to 14 years in prison for anyone who obtains, records, or communicates documents or information for any

³⁵ A data sheet was compiled based on information retrieved from country reports on the CIVICUS website. These reports were crosschecked with those of Freedom House (for the years, 2017 and 2018). See, 'Newsfeed' CIVICUS, available at <https://monitor.civicus.org/newsfeed/>; 'Populists and autocrats: The dual threat to global democracy' Freedom in the World 2017, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2017>; and 'Democracy in crisis' Freedom in the World 2018, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2018>, all accessed on 9 October 2019.

³⁶ Sedition Act 1948, available at <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%2015.pdf>, accessed on 18 July 2018.

³⁷ Sedition Act 1948 (Chapter 24), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap024.pdf, accessed on 18 July 2018.

³⁸ 'Parliament votes to scrap Emergency Provisions Act' Myanmar Times, 5 October 2016, available at <https://www.mmtimes.com/national-news/22913-parliament-scrap-emergency-provisions-act.html>, accessed on 21 July 2019.

purpose deemed “prejudicial to the safety of interests of the state.”³⁹ As such, in February 2018, two Reuter journalists covering the genocide in Rakhine state were arrested and subsequently charged under the Official Secrets Act.⁴⁰ Similarly, Singapore’s Internal Security Act, which was adopted from Malaysia’s 1960 Internal Security Act grants the government considerable powers of extended detention without trial, including on grounds of preventing terrorism. These laws have been used to detain civil society activists and human rights defenders.

Similarly, the imposition of defamation laws has effectively restricted media freedom and citizens’ rights to access information. In Singapore, Cambodia, and Laos, for example, published opinions or news considered a threat to national well-being, or insulting to government leaders can land journalists in jail.⁴¹ In Thailand, Art 112 or the *lèse majesté* law, which was enacted in 1908, punishes those found guilty of defaming, insulting, or threatening the king, the queen, the heir-apparent, or the regent with imprisonment of between 3 and 15 years. Between 2007 and 2017, more than 700 cases were recorded,⁴² and in 2017, only 16% of those charged were granted bail.⁴³ The increase in Art 112 charges reflects the acute political conflict in Thailand and the elite’s attempt to sustain the status quo through legal repression.

A novel innovation in this area is the enactment of laws to monitor and control the flow of information in cyberspace. Virtually every country in Southeast Asia (except Brunei) has recently passed internet-related laws. Cambodia’s 2012 Cyber Law, Indonesia’s 2008 Electronic Information and Transaction Law, Laos’ 2015 Law on Prevention and Combating Cyber Crimes, Malaysia’s 2018 Fake News Law, Myanmar’s 2013 Telecommunications Law, Singapore’s 2013 Internet Code of Practice, Thailand’s 2016 amended Computer Crime Act, and Vietnam’s 2018 Cyber Security Bill were all designed to achieve three goals.⁴⁴

³⁹ Burma Official Secrets Act (India Act XIX) 1923, available at http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar_code/2015/06/19-1923%20THE%20BURMA%20OFFICIAL%20SECRETS%20ACT.pdf, accessed on 18 July 2018.

⁴⁰ Thu Thu Mung, ‘Reuters reporters arrested under Myanmar Secrets Act denied bail’ Reuters, 1 February 2018, available at <https://www.reuters.com/article/us-myanmar-journalists/reuters-reporters-arrested-under-myanmar-secrets-act-denied-bail-idUSKBN1FK3C2>, accessed on 2 October 2018.

⁴¹ Defamation Act 1954 (Chapter 75), amended in 2014, available at <https://sso.agc.gov.sg/Act/DA1957>, accessed on 21 July 2019.

⁴² Wongwat, M, ‘One decade of 112, Chapter 1: Statistics and the political characteristics of *lèse majesté* lawsuits’ Prachatai, 14 November 2017, available at <https://prachatai.com/journal/2017/11/74108>, accessed on 2 October 2018.

⁴³ ‘Interesting statistics of *lèse majesté* lawsuits, 2014–2017’ iLaw, 3 January 2018, available at <https://freedom.ilaw.or.th/Thailand-Lese-Majeste-Statistics-Until-2014-2018%20>, accessed on 2 October 2018.

⁴⁴ The Philippine 2012 Cyber Crime Prevention Act has had a limited impact on civic spaces due to the democratic nature of the government. However, threats to civic spaces in cyberspace exist in a different form as shall be discussed later. See ‘Philippines: country profile’ Freedom on the Net 2017, Freedom House, available at <https://freedomhouse.org/report/freedom-net/2017/philippines>, accessed on 2 October 2018.

First, due to civic movements' increasing use of various social media platforms for mass mobilization, the cyber laws allow governments to effectively surveil these movements as well as the general public's opinions as posted on these sites. Online press, internet providers, and companies relying on social media platforms are also compelled to register and make user data available to the authorities if requested. Second, the laws tend to cost alleged violators hefty penalties. Jail sentences are long, fines are high, and getting bail is difficult. Even if bailed out, activists must spend large sums of money and enormous amounts of time fighting their court cases. This potentially prevents them from meaningfully engaging in activism for long periods. Finally, the harsh sentences serve to generate a 'chilling effect,' instilling fear and self-censorship among the populace, thus enabling effective governmental control of potentially subversive acts.⁴⁵ Moreover, cyber laws are typically vague and thereby open to abuse by the authorities, which unsurprisingly has resulted in a skyrocketing number of cases. In Myanmar, since 2013, over 100 cases have been litigated under the Telecommunications Law, and in 2016 alone, 54 people have been prosecuted and eight imprisoned for "dissension on social media."⁴⁶ In Vietnam, the new Cyber Security Bill will be applied in tandem with other penal codes to target online activists, bloggers, and journalists. In 2017, the penal codes alone have already put more than 20 activists behind bars.⁴⁷ Meanwhile, in Thailand, government critics often face a cocktail of legal charges combining the Computer Crime Law with other draconian laws. Consequently, jail sentences are harsher than ever before.⁴⁸

In addition, over the course of the last few years, a host of Southeast Asian governments have enacted a series of public assembly laws, the effect of which is to micro-manage potential protests. While demonstrations in countries such as Brunei, Malaysia, Singapore, Myanmar, and Vietnam have long been criminalized, old laws have been updated to further hinder the organisation of public assemblies. For instance, in Singapore, the Public Order Act and the Vandalism Act require permits for any public gathering. Staging a one-person protest without a permit is accordingly illegal. Thus, in November 2017, an activist was charged with Public Order Act violations for organizing a peaceful and silent gathering of four persons on an underground train.⁴⁹ In Myanmar, the Peaceful

⁴⁵ Yangyue, SL, *Competitive Political Regimes and Internet Control: Case Studies of Malaysia, Thailand and Indonesia*, Cambridge: Cambridge Scholars Publishing, 2014; Coca, N, 'The rapid rise of censorship in Southeast Asia' *The Diplomat*, 19 January 2018, available at <https://thediplomat.com/2018/01/the-rapid-rise-of-censorship-in-southeast-asia/>, accessed on 2 October 2018.

⁴⁶ 'Burma: Letter on section 66(d) of the Telecommunication Law' Human Rights Watch, 10 May 2017, available at <https://www.hrw.org/news/2017/05/10/burma-letter-section-66d-telecommunications-law>, accessed on 2 October 2018.

⁴⁷ 'Vietnam: Renewed crackdown on rights bloggers, activists' Human Rights Watch, 18 January 2018, available at <https://www.hrw.org/news/2018/01/18/vietnam-renewed-crackdown-rights-bloggers-activists>, accessed on 2 October 2018.

⁴⁸ 'Thoughtless posts may destroy your life' Thai Lawyers for Human Rights, 6 December 2017, available at <http://www.thlr2014.com/th/?p=5795>, accessed on 2 October 2018.

⁴⁹ 'Singapore: Drop case against peaceful protester' Human Rights Watch, 29 November 2017, available at <https://www.hrw.org/news/2017/11/29/singapore-drop-case-against-peaceful-protester>, accessed on 2 October 2018.

Assembly and Procession Law was amended in March 2018. A notification letter must now be submitted to the authorities at least 48 hours in advance of any public assembly. Moreover, organizers must also inform the authorities of the approximate number of attendees, an estimated budget, and the protest's source of funds upon submission. In Thailand, a Public Assembly Law was passed for the first time in 2015. Aside from requiring compliance with permit application and other logistics regulations, protesters are not allowed to gather in places such as the government complex, the airport, hospitals, and other sites identified in the Prime Ministerial Order.⁵⁰ Similarly, the Philippine Congress passed a new public assembly law in February 2018 to replace the Public Assembly Act of 1985. The new law empowers city and municipal majors to decide on the legality of protests; thus, potentially violent (the definition of which is not clear) or protests held contrary to the time and place approved by the majors may be deemed unlawful.⁵¹

Official registration and financial restrictions

Bureaucratic hindrances and financial restriction of civil society groups is a common tactic among Southeast Asia's contemporary autocratic regimes. Regimes in Brunei, Singapore, Laos, and Vietnam have at their disposal laws restricting the formation of civil associations. Criteria for establishing associations or NGOs are normally vague, deliberately facilitating official denial of the registration of such organizations. At the same time, only official and 'tame' civic associations such as state-backed labour unions are allowed to operate. In the wake of growing international support for democracy, regimes became nervous that these international efforts would threaten their very existence, and accordingly enacted laws curbing international financing of NGOs.

Cambodia's 2015 Law on Associations and Nongovernmental Organizations (LANGO), Laos' 2017 New Decree on Associations, Malaysia's security and counterterrorism laws, Myanmar's 2014 Association Registration Law, and Vietnam's 2012 Decree of the Registration and Operation of Foreign Non-Governmental Organizations all seek to monitor, control, and hinder western funding of local NGOs. As domestic NGOs are obliged to register with state agencies, those supported by international organizations will likely be denied registration. As such, their activism will also be illegal.

The Laotian government's reason for enacting this law reflects the overall anxiety of Southeast Asia's autocrats: civil society groups (receiving western donations) "could destroy our country through nonviolent means."⁵² Although praised as a beacon of

⁵⁰ Public Assembly Act, s.63, Royal Gazette, 14 July 2015, available at <http://demonstration.police.go.th/law140758.pdf>; and 'Public Assembly Act: Charges for no notification and no compliance' iLaw, 1 February 2018, available at <https://www.ilaw.or.th/node/4733>, both accessed on 2 October 2018.

⁵¹ Nonato, VF, 'Bill on rallies: No permit needed but tougher penalties' Philippine Daily Inquirer, 7 February 2018, available at <http://newsinfo.inquirer.net/966773/bill-on-rallies-no-permit-needed-but-tougher-penalties>, accessed on 2 October 2018.

⁵² 'Civil society groups in Laos delayed funding, forced to disband under new law' Radio Free Asia, 24 January 2018, available at <https://www.rfa.org/english/news/laos/csos-01242018122715.html>, accessed on 2 October 2018.

democratic hope in Southeast Asia, Indonesia's 2013 law on mass organizations requires all civic and religious NGOs to register with the government and submit regular reviews of their activities. International support for issues such as ethnic and gender diversity is restricted under the law to avoid triggering "social anxiety."⁵³ While Thailand does not have a specific law curbing international funding of local NGOs, the junta has moved to control state agencies that are key donors of domestic civic groups, especially the Thai Health Promotion Foundation. Rules on grants have also been revised supposedly to enhance transparency, but actually to reduce the financing of critical civic organizations.⁵⁴ For example, online media, Prachatai used to receive the majority of its annual budget from the Thai Health Promotion Foundation. However, because of its opposition to military rule, this budget has been "downsized" over the past few years.⁵⁵

Media ban and the harassment of journalists

Three crucial patterns help to illustrate stricter control of the media in Southeast Asia. First, regulations concerning media licences are getting ever more stringent, and are often politically utilized to revoke rather than grant licences. In Cambodia, the new media regulations led to the closure of 15 independent radio stations in August 2017. These stations were alleged to have violated their contract with the Ministry of Information.⁵⁶ Consequently, the government closed the Cambodia Daily (one of the country's leading independent outlets) the following month, claiming that the Daily had not paid its tax bills. In the same vein, Malaysia's Printing Presses and Publications Act retains the Home Minister's authority to suspend or revoke publishing licences. Due to this law, licences of critical press such as the FZ Daily and Heat were suspended in 2014.⁵⁷ The Philippine's Rappler similarly experienced cancellation of its licences allegedly because of its extensive report on President Duterte's war on drugs that has so far killed 12,000 suspects.⁵⁸

Second, for those able to maintain their licences, governments ensure that the content of such publications are supervised to stay in line with official narratives. For instance, amidst growing online criticism of the ruling Sultan, Brunei's 2013 Islamic penal code

⁵³ Sciortino, R, 'Wielding the purse strings of Southeast Asian civil society' New Mandala, July 2018, available at <http://www.newmandala.org/wp-content/uploads/2018/07/FOR-WEBSITE-SCIORTINO-CSO-FINANCE-1.pdf>, accessed on 18 July 2018, at 3; 'Indonesia: Amend law on mass organizations. New law restricts rights to association, expression and religion' Human Rights Watch, 17 July 2013, available at <https://www.hrw.org/news/2013/07/17/indonesia-amend-law-mass-organizations>, accessed on 2 October 2018.

⁵⁴ Sciortino (see note 53 above), at 2-3.

⁵⁵ Private online conversation with a Prachatai editor, 24 May 2018.

⁵⁶ Dara, M, and Baliga, A, 'Government closes 15 radio stations' Phnom Penh Post, 25 August 2017, available at <https://www.phnompenhpost.com/national/government-closes-15-radio-stations>, accessed on 2 October 2018.

⁵⁷ 'Malaysia: Freedom of the press' Freedom House, 2015, available at <https://freedomhouse.org/report/freedom-press/2015/malaysia>, accessed on 2 October 2018.

⁵⁸ 'Philippine news website Rappler has licence revoked by SEC' BBC News, 15 January 2018, available at <https://www.bbc.com/news/world-asia-42692723>, accessed on 2 October 2018.

limits the use of certain words and expressions deemed to be sacred to Islam in print, speech, or public statement.⁵⁹

Third, contentious journalists are penalized, if not physically harmed, for violating such laws. The 2018 arrest of two Reuters reporters covering the Rohingya massacre is especially telling. Under the colonial-era Official Secrets Act, they can be sentenced up to 14 years in prison for breaching national security.⁶⁰ In addition, Myanmar's 2014 Printing and Publishing Enterprise Law, which prohibits the publication of matters that have the potential to undermine national security, the rule of law, and community peace, creates difficulties for international journalists wishing to obtain a visa.⁶¹ The press in Vietnam is in a similarly dire situation. In 2017, a 22 year old citizen-journalist was sentenced to seven years in prison for reporting on the protests against a Taiwanese steel plant's alleged illegal disposal of toxic waste in a small town.⁶²

Forcible crackdown of protesters, forced disappearances, and assassinations

To avoid the backlash of a bloody crackdown, sweeping arrests and post-protest legal harassment have increasingly been common responses to civic demonstrations. Nonetheless, Southeast Asia's regimes still resort to the use of force to suppress protests when necessary. Under the military junta, Thailand saw rising numbers of detained and arrested protesters seeking redress for a wide range of grievances, ranging from a lack of political freedom, corruption, abuse of power, to corporate grabbing of resources.⁶³ Protests in Bangkok are normally followed by arrests and lawsuits, while in the country's peripheries, the police have at times responded to demonstrations with a display of force.⁶⁴ Similarly, when opposition activists took to the street after the 2012 elections in Malaysia, the police used indiscriminate and excessive force to quell protests, in addition to later filing criminal charges and civil lawsuits against protest leaders.⁶⁵

⁵⁹ 'Brunei introduces tough Islamic penal code' BBC News, 30 April 2014, available at <https://www.bbc.com/news/world-asia-27216798>, accessed on 2 October 2018.

⁶⁰ Slodkowski, A, 'Myanmar court files Secrets Act charges against Reuters reporters' Reuters, 9 July 2018, available at <https://www.reuters.com/article/us-myanmar-journalists-ruling/myanmar-court-charges-reuters-reporters-under-official-secrets-act-idUSKBN1JZ095>, accessed on 2 October 2018.

⁶¹ Dickinson, E, 'How Myanmar is cracking down on press freedom during the Rohingya crisis' Mumbrella Asia, 21 December 2017, available at <https://www.mumbrella.asia/2017/12/reporting-rohingya-crisis-myanmar-cracking-press-freedom>, accessed on 2 October 2018.

⁶² 'Nguyen Van Hao jailed for seven years' Frontline Defenders, 29 November 2017, available at <https://www.frontlinedefenders.org/en/case/nguyen-van-hoa-jailed-seven-years>, accessed on 2 October 2018.

⁶³ 'Law shows statistics of political lawsuits under the four year old military rule' Prachatai, 21 May 2018, available at <https://prachatai.com/journal/2018/05/77035>, accessed on 2 October 2018.

⁶⁴ 'Seven days after junta declare "human rights" as national agenda, police crackdown on protesters against power plant construction' BBC News, 28 November 2017, available at <https://www.bbc.com/thai/thailand-42152982>, accessed on 2 October 2018.

⁶⁵ 'Malaysia: Freedom in the world' Freedom House, 2013, available at <https://freedomhouse.org/report/freedom-world/2013/malaysia>, accessed on 2 October 2018.

In contrast to autocracies, Southeast Asia's dictatorial regimes are less reluctant to resort to violent suppression and the murder of challengers. In Cambodia, for example, police opened fire using live ammunition on garment factory workers demanding a higher minimum wage. The incident killed five and wounded nearly 40 in January 2014. Meanwhile, in Myanmar's Rakhine state, police again fired live ammunition at 4,000 Buddhist protesters gathered at an annual historical ritual. At least seven people were killed, and 12 injured.⁶⁶ Moreover, individual activists spearheading political movements may face violence or even murder at the hands of non-state assailants. Thus, in July 2016, prominent activist, Kem Ley was assassinated in Cambodia.⁶⁷ In Laos, the disappearance of renowned activist, Sombath Somphone, in 2012 remains unexplained by the government despite persistent international condemnation.⁶⁸ Likewise, Vietnam's communist government was allegedly behind around 30 attacks on activists between January 2015 and April 2017. Although most were seemingly carried out by local "thugs," there is evidence that some beatings took place in the presence of uniformed officers.⁶⁹

Cyber trolling and a divided civil society

Cyber trolling

State repression of civil society is not the only factor hindering civic activism in Southeast Asia. Rather, segments of civil society are now playing an increasingly important role in promoting illiberal agendas and facilitating autocratic government policies many of which violate human rights. At times defined as "uncivil society"⁷⁰ or conservative civil society,⁷¹ these civic segments have a historical root in countries such as Thailand, the Philippines, and Indonesia where right wing elites mobilized civil society for the Cold War

⁶⁶ Lee, Y, Naing, S, and Aung, TT, 'Myanmar police shoot dead several Buddhist demonstrators and injure 12 as celebration in Rakhine turns violent' *The Independent*, 17 January 2018, available at <https://www.independent.co.uk/news/world/asia/myanmar-buddhist-demonstrators-shot-rakine-mrauk-u-arakan-police-violence-a8163941.html>, accessed on 2 October 2018.

⁶⁷ 'UN rights experts condemn killing of Cambodian political analyst and activist, Kem Ley' United Nations Human Rights Office of the High Commission, 13 July 2016, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20264&LangID=E>, accessed on 2 October 2018.

⁶⁸ 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 2 October 2018.

⁶⁹ Viet, T, 'No country for human rights activists: Assaults on bloggers and democracy campaigners in Vietnam' Human Rights Watch, 18 June 2017, available at <https://www.hrw.org/report/2017/06/18/no-country-human-rights-activists/assaults-bloggers-and-democracy-campaigners>, accessed on 2 October 2018.

⁷⁰ See, Pawakapan, PR, *State and Uncivil Society in Thailand at the Temple of Preah Vihear*, Singapore: ISEAS, 2013.

⁷¹ See, Sombatpoonsiri, J, 'Conservative civil society in Thailand' Carnegie Endowment for International Peace, 4 October 2018, available at <https://carnegieeurope.eu/2018/10/04/conservative-civil-society-in-thailand-pub-77373>, accessed on 15 August 2019.

Table 1: Checklist of Southeast Asian autocrats' repressive instruments

Country	Legal repression							Official registration & financial restriction of NGOs	Forcible repression	
	Cyber laws & internet censorship	Defamation laws	Media ban & harassment of journalists	Specific public assembly laws	Security-related laws	Sedition laws	Arrests/ detentions, forced disappearances, imprisonments, murder of leading dissidents		Violent crackdown of protesters	
Brunei Darussalam	X	X	X	X	X	X	X	N/A	N/A	
Cambodia	X	X	X	X	-	X	X	X	X	
Indonesia	X	X	-	-	X	X	X	X	X	
Laos	X	X	X	-	-	-	X	X	X	
Malaysia	X	X	X	X	X	X	X	-	X	
Myanmar	X	X	X	X	X*	X	X	X	X	
Singapore	X	X	X	X	X	X	X	X	-	
Thailand	X	X	X	X	X	X	-	X	X	
Philippines	X	X	X	X	X	X	-	X	X	
Vietnam	X	X	X	X	-	X	X	X	X	

* The Emergency Act was repealed in 2016

counter-insurgency campaigns.⁷² These segments of civil society have lately re-emerged in response to the legitimacy deficit of liberal democracy in Thailand, the Philippines, and Indonesia. Presently, the battlefield is cyberspace where governments have sworn to defend the traditional political order from forces embracing liberal governance and cosmopolitan values. Autocratic regimes may recruit, train, and deploy these segments of civil society to quell cyber subversion. However, many regime supporters genuinely volunteer to do so fundamentally because they disagree with the new political order advocated by the other side. This phenomenon is mostly virulent in Thailand and to a lesser degree, the Philippines, where civil society is divided into supporters and contenders of ruling regimes. In particular, regime supporters have been known to ‘cyber troll’ or verbally abuse and harass social media users who express disagreement with the elites they endorse. This online activism can even extend to offline spaces where such activists mobilize to physically assault their critics.

Further, in Thailand and the Philippines, security force units, party machinery, and civic groups have openly engaged in trolling critics. Common tactics range from surveillance and the reporting of legal breaches to the authorities, to online and offline bullying, and the use of fake accounts to shape public opinion. As such, Thailand’s police force and the Ministry of Communication and Technology (now known as the Ministry of Digital Economy) developed the Cyber Scout Programme in 2010 to indoctrinate the younger generation in royalist values and to create a youth-based network of online surveillance of *lèse majesté* activities. Accordingly, training workshops have been offered to high school and university students across Thailand. As of 2016, 112 schools committed to the programme. More than 120,000 students have been recruited as cyber scouts so far, with that number expected to double in the near future.⁷³

Other groups are initiated by citizens (although aided by individual security elements) seeking to defend the monarchy from offline and online offences. Between 2010 and 2013, the Social Sanction (SS) group monitored *lèse majesté* postings on various social media platforms, especially Facebook, typically exposing the personal profiles of transgressors on the SS Facebook and YouTube pages for public bullying. Targets often faced serious consequences such as the loss of their jobs or being denied places at educational institutions. Likewise, the Rubbish Collection Organization (RCO) was founded in 2013

⁷² Kongkiati, P, ‘Counter-movements in democratic transition: Thai right-wing movements after the 1973 popular uprising’ *Asian Review*, 2008, Vol 19, pp 101-134; ‘Bad blood: Militia abuses in Mindanao, the Philippines’ Human Rights Watch, 1 April 1992, available at <https://www.hrw.org/report/1992/04/01/bad-blood-militia-abuses-mindanao>, accessed on 18 July 2018; and Ryter, L, ‘Pemuda Pancasila: The last loyalist free man of Suharto’s order?’ in Anderson, B (ed), *Violence and the State in Suharto’s Indonesia*, New York: Southeast Asia Program Publications, Cornell University, 2001, at 124-155.

⁷³ Schaffar, W, ‘New social media and politics in Thailand: The emergence of fascist vigilante groups on Facebook’ *Austrian Journal of South-East Asian Studies*, 2016, Vol 9, No 2, pp 223-229; ‘Rose shocked by 112 case filed by her parents’ Matichon, 20 April 2014, available at <http://m.matichon.co.th/readnews.php?newsid=1397978153>, accessed on 18 July 2018.

during the yellow shirt protests to rid Thailand of “social rubbish” and to “eradicate *lèse majesté* offenders completely.”⁷⁴ The RCO’s *modus operandi* consists of exposing *lèse majesté* infractions and notifying the police. If no legal action is taken, the group discloses an offender’s private address and encourages mobs to harass them at home.⁷⁵

There are also similarly minded, though less visible, Facebook pages, such as the Network of Volunteer Citizens to Protect the Monarchy on Facebook and the Anti-Ignorance Association, which also monitors and reports online *lèse majesté* cases to the police. Such efforts have led to charges being pressed against red shirt activists. Since the *coup*, the number of royalist Facebook pages has multiplied. They usually share doctored images, which sometimes contain obscene and sexist captions that seek to demonise dissidents. They also misquote activists’ interviews or speeches in order to highlight their political partisanship with red shirts and their disloyalty towards the palace. Right wing and anti-liberal online media, including the Thai-language, T-News, Chaopraya News, and Deeps News, and the English language, New Atlas, Alt Thai News Network (ATNN), and New Eastern Outlook (NEO), also tend to align their rhetoric with these cyber troops and the junta.

While Duterte’s viral social media campaign trails set the stage for post-election cyber activism, in the Philippines, pro-government cyber troops also comprise party campaigners, volunteers, and paid trolls. Alongside Duterte’s aides, who are savvy in new media communication and political marketing, around 400-500 volunteers were recruited for campaign trails. Dubbed ‘influencers’ (trend setters on social media), these volunteers increased their presence by connecting with their own social media networks to amplify the messages. ‘Hashtagging’ and reposting were instrumental to popularizing short and catchy presidential campaign messages. These volunteers tended to retaliate against those deemed disrespectful to Duterte with online bullying, such as issuing threats of rape (against female critics) and physical assault. Duterte’s key campaigner admitted that, at times, their reactions veered out of control. This pattern of cyber activism continues today because it helps sustain the public perception that the government is widely supported.⁷⁶

⁷⁴ Sombatpoonsiri, J, ‘Conservative civil society in Thailand’ Carnegie Europe, 4 October 2018, available at <https://carnegieeurope.eu/2018/10/04/conservative-civil-society-in-thailand-pub-77373>, accessed on 21 July 2019.

⁷⁵ Kummetha, T, ‘Witch hunts at rally sites and on the internet’ Prachatai, 23 January 2014, available at <https://prachatai.com/english/node/3837>; Kummetha, T, ‘Misunderstanding the internet, misunderstanding the users: Cases from Thailand’ *Kyoto Review of Southeast Asia*, 2016, Vol 20, available at <https://kyotoreview.org/yav/misunderstanding-internet-thailand/>; and Rojjanametakul, S, ‘Steady rise of fascism here is terrifying’ Bangkok Post, 28 April 2014, available at <https://www.bangkokpost.com/print/406983/>, all accessed on 18 July 2018.

⁷⁶ Gavilan, J, ‘Duterte’s P10M social media campaign: Organic, volunteer-driven’ Rappler, 1 June 2016, available at <https://www.rappler.com/newsbreak/rich-media/134979-rodrigo-duterte-social-media-campaign-nic-gabunada>, accessed on 18 July 2018.

Online content manipulation persists despite the government's denial of its involvement. Cyber trolling can be the act of a lone-wolf or an organized act. Duterte has a strong support base and his popularity among Filipinos remains high, crossing both class and demographic backgrounds. Indeed, his supporters are ready to defend him against what they see as the liberal elite plot to overthrow him.⁷⁷ Individual social media postings echo Duterte's rhetoric, justifying the war on drugs, condemning human rights organizations, and denouncing government criticism as fake news. They also accuse critics of being, *inter alia*, "shameless liberal organizations," "presstitutes" (an insult for allegedly 'sell-out' journalists), "criminal sympathisers," and "immoral evil."⁷⁸ Moreover, groups such as Duterte's Die Hard Supporters and the Overseas Filipino Workers Global Movement carry out organized trolling both online and offline, fact-checking and falsifying NGO reports critical of the government. In May 2017, in New Zealand, a group of members physically disrupted an NGO panel discussing the human cost of the war on drugs.⁷⁹

Likewise, approximately 300 to 500 'keyboard warriors' have reportedly been paid between PHP1,000 (app US\$19) and PHP10,000 (app US\$190) a month to repost and circulate distorted news and online information about adversaries, pick fights online, negatively label dissidents, and create fake social media accounts (i.e. bots) to circulate automated key campaign messages and influence public perception as to what is true and untrue. Moreover, these bots work in tandem with human trolls and genuine supporters to maintain the perceived popularity of Duterte and discredit the opposition.⁸⁰

A divided civil society

Online bullies are instrumentalized by both state apparatus and government supporters to silence dissent. The former reflects the autocratic backlash against civil society; the latter, a deeper crisis of social polarisation. The cases of Thailand and the Philippines reveal the interwoven relationship between these two aspects – autocratic and illiberal regimes can exploit existing social divides to consolidate power.

⁷⁷ Villa, P, 'Duterte's continuing paranoia and the erosion of Philippine democracy' Democratic Erosion, 20 March 2018, available at <https://www.democratic-erosion.com/2018/03/20/dutertes-continuing-paranoia-and-the-erosion-of-philippine-democracy-by-patricia-villa-university-of-the-philippines-diliman/>, accessed on 18 July 2018.

⁷⁸ Sombatpoonsiri, J, 'Manipulating civic space: Cyber-trolling in Thailand and the Philippines' GIGA Focus/Asia, No 3, June 2018, available at https://www.giga-hamburg.de/en/system/files/publications/gf_asien_1803_en.pdf, accessed on 21 July 2019.

⁷⁹ Stansfield, L, 'Human rights advocacy in a context of extreme securitisation: Amnesty International and the war on drugs in the Philippines (July 2016-May 2017)' Master's thesis, Faculty of Humanities, Utrecht University, 2017, available at <https://dspace.library.uu.nl/handle/1874/353553>, accessed on 18 July 2018.

⁸⁰ Ong, JC, and Cabanes, J, 'In the Philippines, political trolling is an industry – this is how it works' Open Democracy, 20 February 2018, available at <https://www.opendemocracy.net/digitaliberties/jonathan-corporus-ong-jason-cabanes/in-philippines-political-trolling-is-industry-this>, accessed on 18 July 2018.

Thailand's political struggle was fought between those wishing to preserve the traditional political order and those aspiring to change it. In cyberspace, constituents of both sides tend to insult one another. For instance, the Anti-Social Sanction group emerged to counter the Social Sanction group by similarly exposing group members' personal data to online bullies. A number of anti-traditional elite websites have also reportedly engaged in generating 'misinformation.' Nonetheless, in Thailand the traditional political order and its supporters have the upper hand; it permeates the state structure, the security establishment, and bureaucracy, thereby guaranteeing the surveillance and state-sanctioned punishment of challengers. The junta's use of cyber repression and manipulation has shed light on this pattern. Meanwhile, political discourse popularizing the dominant order influences the public to legitimize and defend it when questioned. Citizen cyber bullying of dissidents labelled as 'un-Thai' epitomises this. The effects of this state-society nexus on shrinking civic space are twofold. First, the junta can rely on patriotic citizens to monitor others, report dissidents, and impose popular compliance with its political order. Second, this conduct breeds mistrust and exacerbates existing polarisation, thus hindering effective mass mobilization to contest the incumbent regime.

Likewise, the Philippines shows signs of social bifurcation. Duterte secured a landslide electoral victory because his rhetoric symbolized a diversion from the post-1986 political order. The general perception was that this order perpetuated the domination of land-based liberal elites who had failed to deliver policies to improve the livelihood of Filipinos. Nonetheless, there remains a liberal segment of society which struggles to understand how their fellow citizens elected Duterte. Expressing their frustration on social media, they often refer to Duterte supporters as 'Dutertards' (derogatory shorthand for 'Duterte retards'). In response, Duterte supporters refer to them as 'Yellowtards' (yellow being the colour associated with the past government). 'Yellow armies' reportedly troll on social media to tarnish the President's image domestically and internationally. Despite this, Duterte has managed to hold on to power due to the continuing endorsement of the middle class and the poor and his co-optation of the security forces. In this power equation, pro-government trolls have the advantage of aligning themselves with the government apparatus to fan propaganda and discredit civil society critics. As evidenced by the ongoing lawsuits against Rappler, the government may also choose to crack down on critical media while tolerating regime-supportive online bullies. Just as in Thailand, cyber trolling in the Philippines is damaging to the social fabric and reflects an emerging global trend – the shrinking of civic space occurs not only in autocracies but also in illiberal democracies where governments employ cyber manipulation to camouflage repression.

Conclusion

This chapter has demonstrated the interlinkage of Southeast Asia's evolving authoritarianism, shrinking civic spaces, and its political polarization. As democracy has unravelled in the region, regimes have pushed back against critical civil society. Civic groups advocating a progressive agenda such as human rights, gender diversity, freedom

of expression, and economic justice have been cornered, often finding themselves entangled in a string of lawsuits. Many organizations struggle to register or mobilize funding, while the number of members is dwindling due to the pervasive effects of draconian laws. Moreover, the rise of conservatism among their fellow citizens may convince progressive civil society organizations that society has been blinded by authoritarian regimes, turning to the 'right' because of political ignorance. Under these circumstances, it is understandable why many civil society organizations feel victimized and isolated in their own societies.

However, as much as civic space has shrunk due to the authoritarian tide, the dire situation of Southeast Asia's civil society is also due to the legitimacy deficit of civic groups in their polities. The key reason for this is civil society's heavy reliance on rhetoric deemed by fellow citizens as 'Western.' As such, the rhetoric of freedom, rights, and diversity needs to be vernacularized so as to boost local ownership of these seemingly alien concepts. Thus, norms, histories, and religious beliefs embedded in Southeast Asian societies need to be reinterpreted to show the populace that their regime's disparagement of civil society agenda as western is wholly invalid.

This normative repositioning of civil society organizations would help create a mass base for them. At present, civil society organizations, particularly NGOs, operate without broad-based movements large enough to pressure regimes. This failure to build movements is partly due to NGO mandates that tend to focus on a single issue, rather than connecting the corners of their work with others and society at large. Viewing political parties in a negative light, NGOs often refuse to work with them and consequently lose the constituent bases of parties. In addition, the deep attachment of NGOs with principles makes it difficult to compromise their stances, and form alliances with other social and political actors. Such isolation can be addressed through the re-politicization of civil society organizations in a way that they are made aware of the importance of coalitional power. This power lies in the ability to generate coalitions across political aisles so as to form alliances large enough to isolate regimes from their pillars of support. This can only be done when civil society organizations undergo strategic recalibration and further invest in cultivating legitimacy at home. The Malaysian opposition's latest electoral strike shows that this reinvention of civil society is possible, and if successful, may yield some profoundly rewarding results.

Lastly, civil society organizations tend to blame ruling elites for intensified repression. Nevertheless, as this chapter has elucidated, political divides increase the effectiveness of regime crackdown. Civil society groups can bridge this divide through a shift of narrative. Regimes typically frame progressive civic groups as a threat to national security, order, and peace. Accordingly, concerned citizens are driven to oppose civic activism they deem threatening to the nation and thereby their well-being. Meanwhile, groups of citizens identifying themselves as progressive tend to embrace civil society's agenda. Civil society organizations are usually inclined to communicate with these groups of citizens,

while making little effort to change their narrative to invite the ‘unconverted’ on board. In so doing, critical civil society segments possibly reinforce the existing political divide, confirming the regime narrative which separates patriotic citizens from ‘anti-nationals.’ Such a narrative is used to encourage public acceptance of a crackdown on dissidents. Bridging this divide is possible through the reconstruction of a narrative that associates concerns of civil society groups with those on the conservative side and one which suggests that a way out could lie in collective action for a better future. This better future is defined by the distribution, rather than the concentration of power in the hands of a few.

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AUTHORITARIANISM OR (NON-IDEOLOGICAL) PRAGMATISM: CURRENT CHALLENGES TO INDONESIA'S DEMOCRACY

Deasy Simandjuntak

Has Indonesia really reverted to authoritarianism? An introduction

Not many observers of Southeast Asian politics would doubt that Indonesia's electoral democracy has exhibited resilience at a time when democracy is in major retreat elsewhere in the region. While Cambodia's 2018 election did not accommodate the main opposition party and Thailand's 2019 election preserved the military government, Indonesia successfully held the world's largest, free and fair, simultaneous elections in 2019, to which 157 million voters flocked to the ballots to vote for the presidential and parliamentary candidates of their choice.¹ Many also rejoiced that the incumbent President Joko "Jokowi" Widodo, who ran on a more "pluralist" platform (i.e. less reliant on Islamist sentiments compared to his rival, Prabowo Subianto), won the election.² Yet democracy concerns more than mere elections; recent government policies have shown some distinctly "undemocratic" qualities, demonstrated by, for example, the issuance of laws weakening civil society and efforts to eradicate corruption. Is Indonesia's democracy still truly resilient? How can we explain the current "authoritarian" challenge to Indonesia's democracy? Is the country experiencing a democratic regression, or are these policies mere consequences of a governance approach which prioritizes "pragmatism" amid post-election political polarization?

Western analysts of Indonesian politics were quick to categorize Jokowi's government as "authoritarian" or undergoing an "authoritarian turn."³ Dubbed with a myriad of terminologies ranging from "authoritarian," taking an "illiberal" turn, "illiberal tendencies" to "statist-nationalist ideological orientation,"⁴ the current situation, according to these observers, is exemplified by, for example, the President's reliance on Pancasila and the principle of "unity in diversity" to curb his Islamist enemies (a policy reminiscent of the harsher tactics used by Soeharto's authoritarian regime), his growing closeness to the

¹ Simandjuntak, D, 'The state of democracy in Southeast Asia' Heinrich Böll Stiftung Southeast Asia, 19 October 2018, available at <https://th.boell.org/en/2018/10/19/state-democracy-southeast-asia>, accessed on 9 October 2019.

² Simandjuntak, D, 'Jokowi's triumph in the 2019 presidential election and the future of binary politics' Heinrich Böll Stiftung Southeast Asia, 6 June 2019, available at <https://th.boell.org/en/2019/06/06/jokowis-triumph-2019-presidential-election-and-future-binary-politics>, accessed on 9 October 2019.

³ Mostly Australian observers of Indonesian politics, although recently some Australian-educated Indonesian scholars also seem to have joined the ranks. See, for example, Warburton, E, and Aspinall, E, 'Explaining Indonesia's democratic regression: Structure, agency and popular opinion' *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2019, Vol 41, No 2, pp 255-285; Power, T, 'Jokowi's authoritarian turn and Indonesia's democratic decline' *Bulletin of Indonesian Economic Studies*, 2018, Vol 54, No 3, pp 307-338.

⁴ For example, see Power (note 3 above); Baker, J, 'The middle class president' *New Mandala*, 5 August 2016, available at <https://www.newmandala.org/comfortable-uncomfortable-accommodations/>, accessed on 11 November 2019; and Warburton, E, 'Jokowi and the new developmentalism' *Bulletin of Indonesian Economic Studies*, 2016, Vol 52, No 3, pp 297-320.

military, and Jokowi's choice of Ma'ruf Amin, a conservative senior Muslim cleric, as his running-mate for the 2019 presidential election.

Yet coining a democratically elected government as "authoritarian" is not without its problems. Indonesia had its fair share of "real" authoritarianism under the thirty-two years of Soeharto's repressive centralized developmentalist regime (1966-1998). Back then, Indonesian presidents were not directly elected by the people and were instead appointed by members of the People's Consultative Assembly (MPR), the legislative branch of the country's political system. Soeharto's Golkar party had won all elections since 1971 and in return the MPR kept him in the presidential seat until 1998, when he was forced to resign by a prolonged student protest. During Soeharto's era, the military swarmed parliament and the executive, making it impossible for any observer, Indonesian or Western, to criticize the government let alone dub it "authoritarian." Thus, compared to this past regime, the current government, led by a president who *was* directly elected by the people in a *free and fair* election, seemed like a significant democratic triumph. However, recent episodes have signalled the decline of Indonesia's democratic values and indicated that these Western observers' allegations of an "authoritarian turn" may not have completely missed the mark.

In October 2019, just inaugurated President Jokowi decided to appoint former rival in the presidential election, Prabowo Subianto, as his defence minister. The latter is a former general whom many believe was involved in atrocities during the *Reformasi* movement in 1998, including racial riots and the killing of students. Unsurprisingly, Jokowi's decision has therefore bewildered and disappointed human rights activists. Many of the President's pluralist supporters voted for him in order to curb the political manoeuvres of Prabowo, who had relied on a rancorously Islamist campaign. Yet to their chagrin, the President not only welcomed him in his new cabinet, but also gave the former general the strategic position of defence minister.

In September 2019, tens of thousands of university students and activists gathered in several cities to express serious concerns over some new laws and bills, one of which was an amended law weakening the anti-graft agency, the Corruption Eradication Commission (KPK). The law positions KPK under executive powers and established a supervisory body, whose permission the anti-graft agency must seek before proceeding with investigations. In addition to this law, students were also concerned with proposed revisions to the Penal Code. Beleaguered by many controversial clauses,⁵ the bill penalizes the promotion of contraceptives and abortion, as well as consensual extra-marital sex and same-sex relations. It also criminalizes the act of insulting the president and vice-president, retains the death penalty for treason while leaving the definition of "treason" unclear, and reduces penalties for corruption.

⁵ Debora, Y, 'Daftar pasal kontroversial dan bermasalah dalam RKUHP' [List of the revised Criminal Code's controversial and problematic clauses], Tirto, 24 September 2019, available at <https://tirto.id/daftar-pasal-kontroversial-dan-bermasalah-dalam-rkuhp-eiED>, accessed on 9 October 2019.

In August-September 2019, riots and protests broke out in Papua, Indonesia's most eastern province, in the aftermath of the arrest of 43 Papuan students in the East Java province. The arrest was precipitated by reports that an Indonesian flag had been damaged outside the building they lived in.⁶ Reportedly, civil militias such as the notorious Islamic Defenders Front (FPI) and Pancasila Youth were present during the arrest and attacked the students physically and verbally, with some hurling racist insults.⁷

However, recent political setbacks aside, the government is also known to have made gains on its welfare programs. Unemployment in February 2019 was recorded to be the lowest in more than a decade,⁸ while in 2018 the National Statistical Bureau (BPS) recorded a single digit poverty rate of 9.82%, its lowest ever.⁹ Moreover, Indonesia introduced universal health coverage in 2014, and although the equality of education and learning outcomes are still low, the government improved access to education by providing free or subsidized education to children from poor families, and announced the introduction of pre-employment training for underprivileged school graduates in the president's second term. A survey released in November 2019 indicated that society's satisfaction rate with the government's performance stands at 71.8%, an increase from 53.4% in 2015.¹⁰ Most notably, the above qualities denote that, aside from fulfilling the requirements of a "procedural" democracy with free and fair elections, the government is also attempting to attain the qualities of a "substantive" democracy, which Adam Przeworski lists as:¹¹ the capacity to generate equality in the socioeconomic realm; the capacity to make people feel their political participation is effective; the capacity to ensure governments do what they are supposed to do; and the capacity to balance order and non-interference, albeit not always successfully.

Western academia's persistent drive to categorize countries deemed less democratic into a linear "spectrum of regime types" may have led these observers to understand "authoritarianism" and "democracy" by their formulaic (thus, Western) definitions, when in reality both terms have been embellished by different preceding adjectives which makes

⁶ Papua became an Indonesian province after the controversial 1969 "act of free choice," yet insurgency is still widespread on the island.

⁷ Associated Press, 'Violent protests in Papua leave at least 20 dead' New York Times, 23 September 2019, available at <https://www.nytimes.com/2019/09/23/world/asia/papua-protests.html>, accessed on 12 November 2019.

⁸ Nur, Y, 'Indonesia records lowest unemployment rate in last decade, though gender pay gap remains' Jakarta Globe, 7 May 2019, available at <https://jakartaglobe.id/context/indonesia-records-lowest-unemployment-rate-in-last-decade-though-gender-pay-gap-remains/>, accessed on 12 November 2019.

⁹ 'Poverty in Indonesia fell to the lowest level ever in March 2018' Indonesia Investments, 17 July 2018, available at <https://www.indonesia-investments.com/news/news-columns/poverty-in-indonesia-fell-to-the-lowest-level-ever-in-march-2018/item8899>, accessed on 12 November 2019.

¹⁰ 'Survei isi kepercayaan rakyat terhadap Jokowi paling tinggi pada 2019' [Survey on society's trust in Jokowi is highest in 2019], Kompas, 3 November 2019, available at <https://nasional.kompas.com/read/2019/11/03/18513441/survei-lsi-kepercayaan-rakyat-terhadap-jokowi-paling-tinggi-pada-2019>, accessed on 12 November 2019.

¹¹ Przeworski, A, *Democracy and the Limits of Self-Government*, Vol 9, Cambridge University Press, 2010, at 1.

them, especially the term “democracy,” “mean different things to different people.”¹² Most importantly, both notions should be understood in terms of *practices* in different *contexts*. An observation on Indonesian politics, as with that of other countries, must take into consideration the country’s historical and recent *contexts* as well as the personality of the policy maker(s). A policy does not emerge from a vacuum, on the contrary, it is a reaction to the political situation or context as understood by policy makers. Barbara Farnham, a prominent scholar of political decision-making, defines “context” as “an area of activity having its own distinctive goals” and suggests that

*an approach to decision making which is influenced by contextual imperatives [author’s emphasis], therefore, will be focused on achieving effective action with respect to those particular objectives, just as analytical decision-making is directed at maximizing utility generally.*¹³

However, this chapter does not seek to legitimize Jokowi’s “authoritarian” policies, it merely aims to highlight the contextual basis leading to them to provide an analytical insight into the cruciality of political situations as understood by policy maker(s) which causes the introduction of “illiberal” policies. As part of its analysis, the chapter explores the concept of “pragmatism” to explain the basis of Indonesia’s current policy-making process, in order to go beyond a mere criticism of current government policies to provide a more nuanced understanding of “undemocratic” policies rather than rigidly labelling them as “authoritarian.” “Pragmatism” has not been adequately used to describe Indonesia’s current policy-making trend, certainly not by Western researchers who prefer the familiar binary of democracy vs authoritarianism,¹⁴ yet this has been widely used by Asian scholars to describe policies in Asian countries such as Singapore.

This chapter thus seeks to answer the following questions: first, which factors underlie the government’s recent illiberal policies? Second, which *contextual imperative*, in terms of post-election political polarization, has been influential in the making of such policies? Third, to what extent has “pragmatism” in governance been influential amid such polarization?

The chapter begins with an exploration of the connection and disconnection between the concepts of “pragmatism” and “authoritarianism,” and emphasizes the importance of “context” in policy-making in Indonesia. Next, it proceeds with an elaboration of Indonesia’s recent policies and examines protests from different societal elements.

¹² Davidson, J, *Indonesia: Twenty Years of Democracy*, Cambridge University Press, 2018, at 4.

¹³ Farnham, B, ‘Political cognition and decision-making’ *Political Psychology*, 1990, Vol 11, No 1, pp 83-111, at 96-97.

¹⁴ The reader of the author’s panel at an international conference in 2019 (a Western scholar of Malaysian politics) was sternly critical of the use of the words “pragmatism” and “authoritarianism” in this author’s analysis of Indonesia’s current policy-making claiming “they are not the same fruits!” This disregards the fact that “pragmatism” has been widely used by Asian scholars to describe policy-making in Asian countries such as Singapore and China.

Subsequently, the chapter provides an analysis on current policies using relevant concepts, and ends with a concluding section which answers the above questions.

Authoritarianism and pragmatism

It was generally understood that “authoritarianism” first gained traction as a category in between totalitarianism and democracy in Juan Linz 1975’s seminal work, *Totalitarian and Authoritarian Regimes*.¹⁵ Here, he treats authoritarianism as a shortfall of democracy as well as an umbrella concept whose real definition depends on its many subcategories.¹⁶ According to Linz, authoritarian systems are:

*political systems with limited, not responsible, political pluralism, without elaborate and guiding ideology, but with distinctive mentalities, without extensive nor intensive political mobilization, except at some points in their development, and in which a leader or occasionally a small group exercises power, within formally ill-defined limits, but actually quite predictable ones.*¹⁷

Although this is generally considered the most accepted definition of the concept, Barbara Geddes, recognizing that “different kinds of authoritarianism differ from each other as much as they differ from democracy,” draws a classification of authoritarian regimes as personalist, military, single-party, or amalgams of the above.¹⁸ In military regimes, a group of officers rule and exercise power on policy-making. In single party regimes, one party controls access to political office and policies, although other parties may legally exist and compete in elections. In personalist regimes, an individual leader, who may or may not be an officer or a party leader, controls access to office and policies. Both military and parties in personalist regimes do not exercise decision-making power independent from the preferences of the leader. Of the three categories, military regimes tend to have the shortest duration as they “carry within themselves the seeds of their own disintegration.”¹⁹ Geddes mentions that officers tend to return to their barracks when elite rivalries or political differences become severe. In contrast, individual single party leaders seek to remain in power even in the most unfavourable situations as their careers depend on their retaining power.

¹⁵ Linz, JL, *Totalitarian and Authoritarian Regimes*, Lynne Rienner Publishers, 2000.

¹⁶ These categorizations have invited much debate. See, for example, Geddes, B, Wright, J, and Frantz, E, ‘Autocratic breakdown and regime transitions: A new data set’ *Perspectives on Politics*, 2014, Vol 12, No 2, pp 313-331; Cheibub, JA, Gandhi, J, and Vreeland, JR, ‘Democracy and dictatorship revisited’ *Public Choice*, 2010, Vol 143, Nos 1-2, pp 67-101; Hadenius, A, and Teorell, J, ‘Pathways from authoritarianism’ *Journal of Democracy*, 2007, Vol 18, No 1, pp 143-157.

¹⁷ Linz, JJ, ‘An authoritarian regime: Spain’ in Allardt, E, and Littunen, Y (eds), *Cleavages, Ideologies and Party Systems: Contributions to Comparative Political Sociology*, Helsinki: Transactions of the Westermarck Society, Vol 10, 1964, pp 291-342, at 297.

¹⁸ Geddes, B, ‘What do we know about democratization after twenty years?’ *Annual Review of Political Science*, 1999, Vol 2, No 1, pp 115-144.

¹⁹ Geddes (see note 18 above), at 131.

By contrast, personalist regimes are less susceptible to internal splits than military ones, yet are less durable than single-party systems due to the following factors:²⁰ first, their dependence on an individual leader means they tend to perish after the death of the leader, as such persons are inclined to eliminate followers showing capacity and ambition to protect themselves from potential rivals; second, personalist regimes have a relatively narrow support base as they only distribute benefits and offices to a smaller proportion of citizens compared to single-party systems; third, personalist regimes are susceptible to fluctuations in the international economy – thus, economic reform curbing access to rent-seeking weakens regime support. Geddes admits that Soeharto’s Indonesia, like Pinochet’s Chile, are hard to classify, as their military regimes retained power even as individuals gradually took power over access to policy and positions. She therefore treats both as “intermediary” cases. It would have been even harder for Geddes to classify Indonesia’s current government into any of these types, as the President, despite his current closeness to former military generals, comes from a non-political and non-military background, does not lead any political party, and was elected directly by the people and not by parliament members. Moreover, Indonesia is no longer a single-party regime, although the multitude of political parties do not really have clear ideological platforms.

Geddes’ above classification shows that authoritarianism is treated as the direct opposite to democracy. Thus, following this reasoning, authoritarianism is what democracy is not. Robert Dahl’s “procedural minimal” lists conditions which modern political democracies (polyarchies) should have:²¹

- (1) Control over government decisions about policy is constitutionally vested in elected officials.
- (2) Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon.
- (3) Practically all adults have the right to vote in the election of officials.
- (4) Practically all adults have the right to run for elective offices in the government, though age limits may be higher for holding office than for suffrage.
- (5) Citizens have a right to express themselves without danger of severe punishment on political matters broadly defined as the criticism of officials, the government, the regime, the socioeconomic order, and the prevailing ideology.
- (6) Citizens have a right to seek out alternative sources of information. Moreover, alternative sources of information exist and are protected by law.
- (7) To achieve their various rights, including those listed above, citizens also have a right to form relatively independent associations or organizations, including independent political parties and interest groups.

²⁰ Geddes (see note 18 above), at 132.

²¹ Dahl, RA, *Dilemmas of Pluralist Democracy: Autonomy vs Control*, Vol 31, Yale University Press, 1982, at 11.

It is not difficult to discern that Indonesia's current system fulfils all the above qualities, making its polity a democratic one. This is especially evident when compared to other nations in Southeast Asia, for example, Cambodia and Thailand, whose election results maintained the power of those regimes.

Yet countries regularly holding elections may still portray authoritarian qualities. In fact, authoritarianism allowing moderate competition or what Larry Diamond termed *hybrid regimes*,²² is substantively parallel to Linz's early definition of "authoritarianism" above. On the congruity between the two concepts, Jason Brownlee recognized that "the advent of the category of hybrid regimes may have marked the long-needed recognition of the "actually quite predictable" limits in which many autocracies operate, boundaries that can be quite durable."²³ With regard to such "in-between-ness," the term has indeed been given many preceding adjectives, such as semi-authoritarianism,²⁴ competitive authoritarianism,²⁵ electoral authoritarianism,²⁶ or bureaucratic authoritarianism.²⁷

Beyond looking at elections, it has become difficult to find an example of a "working" democracy. For example, the US, where populism has increasingly become the most significant marker of governance, is certainly not one. Categorizing (non-western) countries into regime types is thus not a simple matter. More importantly than merely classifying systems into the spectrum of regime types, therefore, is to explore how governments decide to do what they do in specific contexts. Farnham states that "since each context poses different sorts of problems in attaining the ends toward which activity within it is directed, each requires different sorts of strategies to solve those problems."²⁸

In both democratic or authoritarian societies, power and *acceptability* are important elements of effective policies. Farnham notes that

²² Diamond, L, 'Elections without democracy: Thinking about hybrid regimes' *Journal of Democracy*, 2002, Vol 13, No 2, pp 21-35.

²³ Brownlee, J, *Authoritarianism in an Age of Democratization*, Cambridge: Cambridge University Press, 2007, at 27.

²⁴ Ottaway, M, and Olcott, MB, 'Challenge of semi-authoritarianism' Carnegie Endowment for International Peace, October 1999, available at <https://carnegieendowment.org/1999/10/01/challenge-of-semi-authoritarianism-pub-142>, accessed on 9 December 2019.

²⁵ Levitsky, S, and Way, LA, 'The rise of competitive authoritarianism' *Journal of Democracy*, 2002, Vol 13, No 2, pp 51-65.

²⁶ Schedler, A, 'Electoral authoritarianism' in Landman, T, and Robinson, N (eds), *The SAGE Handbook of Comparative Politics*, London: Sage Publications, 2009, pp 381-394.

²⁷ O'Donnell, G, McGuire, J, and Flory, R (transl), *Bureaucratic Authoritarianism: Argentina, 1966-1973 in Comparative Perspective*, University of California Press, 1988.

²⁸ Farnham (see note 13 above), at 93.

*even in a democratic society the need for consensus does not spring solely from a democratic ethos or a constitutional requirement ... On the other hand, even in extreme forms of authoritarian government, in so far as any groups or individuals (e.g. political elite, the military, or the bureaucracy) command a measure of power, the desire to act effectively will necessitate at least a minimal concern with acceptability.*²⁹

Note that Farnham's interpretation of authoritarian government follows Geddes' typology of military, single party, and personalist regimes.

More significantly, Farnham's understanding of "acceptability" is essentially analogous to Gramscian "consensus" whereby he treats state legitimacy as relying on the entanglement between coercion and consent.³⁰ According to Gramsci, the state exercises coercion as a last resort and that consensus must be won at the civil society level. Reciprocity between the former and latter facilitates the reproduction of a hegemonic form of political domination under whose pervasive influence the general populace internalizes the ideas, values, and norms of the dominant social grouping, thus legitimizing their rule by accepting as normal the formation of authority and leadership.³¹ State power rests in a hegemonic equilibrium with alternated moments of force (as exercised by the state, bureaucracy, the military, the police, and the courts) and consensus yet with the predominance of consensus over coercion.

Further, Farnham believes that the decision-maker's dominant concern with acceptability leads to behaviours which will be driven by the search for transcendent solutions, or a quintessential policy strategy aiming to serve all values and sacrifice nothing.³² Alexander George dubs it the strategy of "seeking multiple payoffs," that is "... the individual tries to invent a single policy or option that will yield some satisfaction for all or most of the salient stakes and motivations involved."³³ In the current context of Indonesia, Jokowi's decision to appoint Prabowo, his former electoral contender and military general could be considered a "transcendent" strategy. The absence of a political trade-off or keeping Prabowo completely out of the government, could have meant taking the risk that the latter would continue to mobilize sectarian sentiments which he had already efficaciously manipulated to create deep polarization in society, a situation unfavourable to Jokowi's main concern, economic development.

Pragmatism, thus, seems to be the driving force behind Indonesia's current policies. According to Chua Beng-huat, taking Singapore as a case study, pragmatism is "governed

²⁹ Farnham (see note 13 above), at 97.

³⁰ Gramsci, A, *Selections from the Prison Notebooks* (edited and translated by Hoare, Q, and Nowell Smith, G), London: Lawrence & Wishar, 1971.

³¹ Carnegie, P, *The Road from Authoritarianism to Democratization in Indonesia*, Springer, 2010, at 66.

³² Farnham (see note 13 above), at 100.

³³ George, AL, 'Adaptation to stress in political decision making: The individual, small group, and organizational contexts' in Coelho, GV, Hamburg, DA, and Adams, JE (eds), *Coping and Adaptation*, New York: Basic Books, 1974, pp 176-245, at 184-185.

by *ad hoc* contextual rationality that seeks to achieve specific gains at particular points in time and pays scant attention to systematicity and coherence as necessary criteria for action”³⁴ which makes it an *operant*, instead of a *utopian*, concept. Pragmatism is thus *non-ideological*. Sartori juxtaposes ideology with pragmatism as the former is a political belief-system that is closed, dogmatic, strongly felt, and firm while the latter consists of flexible elements that are feebly felt, open to argument and evidence, and changeable for the sake of convenience.³⁵ Pragmatism, according to Tan, who also takes Singapore as a case study, takes pride in its capacity to “change and adjust when things no longer appear to be working,” absconding policies that no longer work or adapting them to changing circumstances which aim to respond quickly to unexpected threats and opportunities, regarding this to be a valuable quality in a fast-changing world.³⁶ Tan also sees that Gramscian hegemony resembles the conjunctive and adaptive processes of pragmatism, without denying the power relations undergirding them.³⁷

Pragmatic leaders, more importantly, do not subscribe to either liberal or statist ideology, because they can use both to secure national interest, which is ultimately *rapid economic growth*.³⁸ Pragmatic authoritarianism, as in the case of China, also aims at delivering

*robust economic growth through the state’s mobilization of economic resources and its pursuit of economic reform. In addition, the state provides economic aid to disadvantaged segments of the population. The objective is to defuse popular discontents, ward off popular upheavals and bolster legitimacy.*³⁹

Politically, however, pragmatic authoritarianism limits channels of expression and political participation although will not entirely obstruct them, to dissuade pressure for democratization.

“Undemocratic” vestiges of a democratically elected government

In September 2019, university students and activists gathered across the archipelago in the largest simultaneous rallies of the post-reform era to express serious concern over some recent government policies, one of which was the amended law significantly clipping the powers of the anti-graft agency, the Corruption Eradication Commission or KPK. Established in 2002 to facilitate clean governance, the KPK was an independent agency feared by all government branches for its astonishing 100% conviction rate, having put hundreds of corrupt officials in jail and improved Indonesia’s position in Transparency

³⁴ Chua, BH, *Communitarian Ideology and Democracy in Singapore*, Psychology Press, 1997, at 58.

³⁵ Sartori, G, ‘Politics, ideology, and belief systems’ *American Political Science Review*, 1969, Vol 63, No 2, pp 398-411.

³⁶ Tan, KP, ‘The ideology of pragmatism: Neo-liberal globalisation and political authoritarianism in Singapore’ *Journal of Contemporary Asia*, 2012, Vol 42, No 1, pp 67-92, at 76.

³⁷ Tan (see note 36 above), at 83.

³⁸ Austin, I, *Pragmatism and Public Policy in East Asia: Origins, Adaptations and Developments*, Singapore: Fairmont International, 2001.

³⁹ Lai, H, *China’s Governance Model: Flexibility and Durability of Pragmatic Authoritarianism*, Routledge, 2016.

International's Corruption Index from a position of 122 in 2003 to 89 in 2018.⁴⁰ Yet the new law ended its much revered independence. The agency is now placed under the executive branch and must seek permission of a supervisory body (soon to be established, with members chosen by the President) to conduct aspects of their tasks, such as wiretapping a suspect, something the agency used to be able to do autonomously. In addition, parliament also swore in an ex-police chief as the new head of the anti-graft agency despite concerns over his dubious track record regarding ethical misconduct.

At the time of writing, the revised law is undergoing a judicial review at the Constitutional Court. Concurrently, some legal experts and civil society organizations are pressurizing the President to issue a presidential regulation in-lieu-of-law (*perppu*) to directly revoke the revised law and preserve the powers of the anti-graft agency.⁴¹ The President, however, refused to do so, stating that he respects the judicial review process. This reaction has unsurprisingly disappointed many experts, students, and civil society. The weakening of the anti-graft agency has indeed raised questions over the government's commitment to eradicate corruption.⁴²

However, the President's controversial move to support the revision can be considered "pragmatic." Prior to the revision, there were indications that Jokowi was averse to KPK's emphasis on the prosecution, and not prevention, of graft cases. On several occasions, he mentioned that the success of anti-graft efforts should not be measured by the number of convictions but how many instances potential crimes were prevented and how much state resources were saved.⁴³

At the same time, it is no secret that the KPK has been "at war" with parliament, whose members are believed to be involved in many corruption cases, the largest of which was the E-ID case involving many parliamentarians, including former speaker, Setya Novanto, who was also chairman of the Golkar party, one of the parties supporting the government.⁴⁴ To retaliate, the KPK came under fire in parliament, including from

⁴⁰ 'Corruption Perceptions Index 2018' Transparency International, available at <https://www.transparency.org/cpi2018>, accessed on 9 October 2019.

⁴¹ '15 tokoh datangi KPK beri dukungan keluarnya perpu KPK' [15 experts visit KPK to push for the issuance of a presidential regulation in-lieu of law for the KPK], Tempo, 15 November 2019, available at <https://nasional.tempo.co/read/1272610/15-tokoh-datangi-kpk-beri-dukungan-keluarnya-perpu-kpk>, accessed on 18 November 2019.

⁴² Dewayanti, A, and Simandjuntak, D, 'So much for eradicating corruption in Indonesia' Channel News Asia, 27 September 2019, available at <https://www.channelnewsasia.com/news/commentary/indonesia-protest-joko-widodo-law-corruption-code-graft-11948856>, accessed on 18 November 2019.

⁴³ Bernie, M, 'Cara KPK mengabaikan sindiran Jokowi: Gelar 3 OTT dalam 2 malam' [The way KPK ignores Jokowi's quip: Conducting 3 sting operations in 2 nights], Tirto, 4 September 2019, available at <https://tirto.id/cara-kpk-mengabaikan-sindiran-jokowi-gelar-3-ott-dalam-2-malam-chvE?source=CopyLink&medium=Share>, accessed on 18 November 2019.

⁴⁴ 'Jail for top Indonesia politician turning point in war on graft, say observers' Straits Times, 27 April 2018, available at <https://www.straitstimes.com/asia/se-asia/jail-for-top-indonesia-politician-turning-point-in-war-on-graft-say-observers>, accessed on 18 November 2019.

the government's main party (the PDIP) which enacted its "inquiry right" as to the anti-graft agency in 2018. In 2017, a KPK commissioner working on a corruption case which would allegedly have implicated some police officers suffered an acid attack partially blinding him. Back in 2015, the KPK also thwarted the President's plan to make General Budi Gunawan (who was endorsed by the PDIP) the national police chief, by launching a corruption probe on him. Despite these setbacks, concerning the revised KPK law, some experts still hope the President will eventually issue the *perppu* and return the powers of the anti-graft agency.

Also high on the list of students' grave concerns was the bill revising the Criminal Code. Due to massive protests, the President suspended issuance of this law, to be further deliberated by the newly inaugurated parliament in October. A legal expert commented that this bill was suspended while the revised KPK law was not because the former would not directly implicate politicians.⁴⁵

Jokowi's decision to appoint controversial figures into his new cabinet also shows the President's pragmatism. As mentioned above, he appointed former electoral rival, General Prabowo Subianto, as his new defence minister. It has been speculated that this decision was taken due to the latter's ability to mobilize sectarian sentiments which had already successfully created a deep schism within society. This pragmatic decision disappointed many, as the President seemed to neglect the dubious human rights record of the former military general. Moreover, Jokowi's "consolidative" and transactional approach to politics neglects the significant shrinkage of the opposition camp which in turn impedes the check and balance mechanisms necessary for good governance.

On the other hand, the new government put a stop to transactional politics concerning the position of Attorney General. In 2014, the President appointed a cadre of the National Democratic party, one of his main supporting parties, as Attorney General, raising concerns that the office "would pursue the President's detractors while "protecting" regional leaders who were members of the National Democrat party. However, this year, the President promoted a former deputy attorney general for civil and state administrative cases to the position of Attorney General, thereby minimizing the link between the office to political parties although some have speculated that this was to put a check on the National Democrat party's growing influence in the outer regions.

Back in 2017, the government issued a new law prohibiting organizations deemed against the state's ideology of Pancasila. Although Pancasila itself generally promotes religious tolerance and upholds diversity, using it to 'silence' dissenting voices is reminiscent of the punitive tactics of the New Order regime, in which the state's ideology was used to

⁴⁵ 'Beda sikap Jokowi tentang RKUHP dan Revisi UU KPK' [The difference in Jokowi's stances on the Criminal Code bill and the revised KPK law], Merdeka, 21 September 2019, available at <https://www.merdeka.com/peristiwa/beda-sikap-jokowi-tentang-rkuhp-dan-revisi-uu-kpk.html>, accessed on 18 November 2019.

repress differing opinions in the name of preserving social cohesion. Indeed, the new law was used to disband Hizbut Tahrir Indonesia (HTI), an Islamist organization aiming to establish a caliphate. Although HTI itself does not subscribe to democratic values, its disbandment raised concerns that this law could also be used against those that do, such as human rights organizations. Yet this decision was also pragmatic, as the government might have calculated the potential detriment of not outlawing a political organization which, despite being non-violent, was anti-democratic and religiously intolerant with a growing impact among the young due to intense proselytizing. The Hizbut-Tahrir has similarly been banned in Germany and many other Islamic countries.

Indonesia's banning of HTI, which took place after the sentencing of former governor, Basuki Tjahaja Purnama (Ahok), to imprisonment for blasphemy, can also be considered as a pragmatic decision to retaliate against anti-government Islamist forces. With a Chinese-Christian background, Ahok was the governor of Jakarta. HTI flags could be seen in massive anti-Ahok protests accusing the governor of blasphemy against Islam in 2016-2017. Questions remain, however, why the government banned HTI, yet not the notoriously violent Islamic Defenders Front (FPI), whose main activities included repressing minority religious rights by forcing the closure and ransacking of churches and temples, and the burning of homes and the mosques of Ahmadiyah and Syiah adherents, in addition to moral racketeering such as compelling the closure of restaurants and bars during the Muslim fasting month. Thus, the FPI, which poses a bigger challenge to human rights, still continues its activities relatively unchecked. Again, the answer perhaps lies in the pragmatism of FPI's *raison d'être* in 1998 which portrayed its previous close connection to the military.⁴⁶ Thus, we can discern here that human rights or religious rights were not the main concerns behind the decision to ban an Islamist organization.

Pragmatism also explains why Jokowi, despite his large pluralist support base, decided to appoint a conservative Islamic scholar as his running mate. Ma'ruf Amin, now the vice-president, is the chairman of Indonesia Ulema Council (MUI), an organization which issues religious edicts (or *fatwa*) including ones against "secularism, liberalism, and pluralism," and the Ahmadiyah, an Islamic movement considered deviant by mainstream Indonesian Islam.⁴⁷ Ma'ruf Amin was also a key expert witness in a trial that sent Ahok to jail for blasphemy. His appointment was therefore a pragmatic decision by the President to shield himself from sectarian "attacks" launched by the opposition camp. The 2019 presidential election turned out to be the most divisive in Indonesia's electoral history, with Prabowo's Islamist onhangers mobilizing bitter sectarian sentiments against Jokowi's allegedly "pluralist" stance. Yet Jokowi's pragmatic strategy of running with a conservative Muslim as his vice-presidential candidate apparently worked. Despite

⁴⁶ Wilson, ID, 'Resisting democracy: Front Pembela Islam and Indonesia's 2014 elections' *ISEAS Perspective*, 2014, Vol 10.

⁴⁷ Ahmad Najib Burhani and Simandjuntak, D, 'The Ma'ruf Amin vice-presidential candidacy: Enticing or splitting conservative votes?' *ISEAS Perspective*, 4 September 2018, available at https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_51@50.pdf, accessed on 18 November 2019.

rumours questioning the President's "Islam-ness" during the campaign, according to an exit poll, 49% of Muslim voters and 97% of non-Muslim voters voted for Jokowi.⁴⁸ By contrast, Prabowo's camp, which blatantly mobilized Islamist sentiments, only garnered 51% of Islamic votes.

Prior to the 2019 election, the police dissolved events connected to an anti-Jokowi group known under its Twitter handle of #2019gantipresiden ("2019 change the president") in several cities. Some observers saw this as Jokowi stifling opposition voices. This also led to the accusation that, instead of staying neutral, the police had sided with the incumbent government in the election. This accusation might not have completely missed the mark as Jokowi's growing closeness to the police was discernible to many observers. Again, this decision could also be considered pragmatic, considering the President lacks a military or political party background (unlike many of his predecessors) which could serve to protect him politically. In turn, the police readily backed the President's policies. The recent appointment of a former national police chief as the new home minister likewise shows Jokowi's appreciation of the police and his aspiration to check the growing influence of corrupt regional leaders.

Of course, not every policy should be seen as merely pragmatic. Implementation of the government's draconian Electronic Information and Transaction Law (ITE), for example, has on many occasions impeded freedom of speech and thereby poses a grave challenge to good governance. The law gained traction in 2019 when a university lecturer and activist from Jakarta (who sang a parody of the Indonesian military anthem during a human rights protest) was charged with propagating hate, a crime punishable by up to two years' imprisonment under the ITE law and with defaming a government institution, punishable by up to 1.5 years in jail under the Criminal Code.⁴⁹ The activist was in reality warning against the prospect of a revision of the 2004 military law, which would bring military personnel into civilian roles, a condition reminiscent of the New Order authoritarian regime.

Jokowi's non-ideological pragmatism

Although pragmatism is, unlike blatant authoritarianism, flexible and non-ideological, it still poses a grave challenge to democracy and good governance. Jokowi rose to the presidency in 2014 on a pluralist, anti-corruption, clean, and effective governance platform. Five years later, the intricacies of Indonesia's politics and entrenched elites could explain his transformation into a profoundly developmentalist president who

⁴⁸ Wijaya, C, 'Siapa saja yang memilih Jokowi dan Prabowo berdasarkan exit poll dan quick count?' [Who voted for Jokowi and Prabowo according to exit polls and a quick count?], BBC Indonesia, 24 April 2019, available at <https://www.bbc.com/indonesia/indonesia-48019930>, accessed on 4 June 2019.

⁴⁹ Arnaz, F, and Bisara, D, '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.

prioritizes the economy, infrastructure, and welfare developments more than other concerns such as freedom and human rights. Among the many *contextual imperatives*, the polarization resulting from the divisive presidential election in 2019 seems to now govern Jokowi's policy-making, leading to some pragmatic policies as mentioned above.

Despite these setbacks, however, compared to the legacy of his predecessors, especially that of former President Soeharto, who systematically suppressed critics and oppositional voices and did not accommodate free and fair elections, the current government still shows traces of democratic triumph. Current shrinkage of the formal opposition camp in parliament signals the necessity for academics and activists to continue being vigilant to ensure good governance in Indonesia prevails.

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**REMNANTS OF AUTHORITARIANISM:
THE MILITARY IN INDONESIA***Mubamad Haripin****Introduction**

After twenty years of political liberalization, Indonesia is generally considered a successful democratic state. Free elections at the national level have been held since 1999, and civil society groups are flourishing at an unprecedented rate. Nevertheless, this does not mean that democratization is running smoothly. The transition from authoritarianism to democracy, as scholars have meticulously discussed, entails a set of institutional rearrangements within the body of the once-authoritarian state. In particular, institutions substantially upholding the regime have now become the subject of reform. Given the institutional strength and political power of such institutions, we would expect civilian disobedience and internal resistance, either direct or otherwise, to occur in response. The following analysis will address this problem using the Indonesian military as a case study.

Forming the backbone of the New Order regime (1966-1998), the Indonesian armed forces, formerly known as ABRI (Angkatan Bersenjata Republik Indonesia) are a unified force consisting of the army, navy, air force, and police. Since the downfall of President Suharto in May 1998, the army has become the main target of criticism due to its past human rights violations, abuse of power, and brutal violence. Responding to the aspirations of various social movements, military elites self-initiated reforms normatively aimed at depoliticizing military institutions. However, one problem remains having continued throughout the democratic transition (1999-2009) and consolidation period (2009-present), namely, mobilization of the army's territorial command. Formerly, the structure had been used to silence the opposition and intimidate dissidents. This article aims to discuss the military's efforts to maintain the army's territorial command, specifically, how it justified the presence of a massive domestic military structure located throughout the archipelago during the democratic consolidation period, and what this tells us about the state of military reform in Indonesia. Further, this story is reflected against the political dynamic of other Southeast Asian countries. As regards methodology, inspiration was taken from the work of the late French philosopher, Michel Foucault, on "the history of the present" by examining how past events resonate into this current epoch of democratic regression, and what can be done to liberate the situation and improve it.¹

The discussion will be addressed as follows. First, the history of the army's territorial command in Indonesia is explored. Second, the peacekeeping mission is examined to demonstrate the military's efforts to justify the presence of *koter*. To summarise, it is

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¹ For a more detailed discussion, see, Fuggle, S, Lanci, Y, and Tazzioli, M (eds), *Foucault and the History of Our Present*, Basingstoke: Palgrave Macmillan, 2015.

argued that communication and intelligence skills are imperative to peacekeeping personnel, and such capabilities may be acquired through territorial assignments. Next, the formulation and dissemination of *bela negara* (or 'defend the state' ideology) informs us about the relationship between patriotism and territorial command. *Koter* thus provides the personnel and facilities to teach non-combatants about 'defend the state' values and their expected roles during such crises. Fourth, the Indonesian experience is considered against political developments in Southeast Asia where a worrying trend of authoritarian-repressive politics in, for example, Thailand, Myanmar, and the Philippines, has been noted. Do such developments indicate anything about the future of democracy and human rights in the region? Last but not least, a summary is provided and a common platform for democratization in Southeast Asia will be set.

Territorial command

New Order's Indonesia was one of the most infamous authoritarian states in Southeast Asia. Since its rise to power in the aftermath of mass killings of communist party members and sympathizers between 1965-1969, the New Order evolved into a hyper-draconian regime that consistently nurtured its power through intimidation, terror, and violence. Over the 32-year rule of former Army General Suharto, thousands of political prisoners were beaten, interrogated, and then detained without trial for long periods of time. How did the regime manage to maintain political control over the general population? What instruments did Suharto and his allies exploit to suppress opposition blocs, be they students, peasants, worker movements, religious groups, the politically savvy urban middle classes, or unorganized and spontaneous popular gatherings?

It is argued that territorial command, or *komando teritorial* (*koter*), played a significant role in ensuring the political durability of the New Order. In particular, many point out the difficulty in maintaining the integrity of a regime that controls and intimidates the opposition and society in general without a nationally available coercive apparatus. In Indonesia's case, this was achieved via ten army divisions across the archipelago, from central command at army headquarters to the provincial (military area command, or *kodam*), regency (military regency command, or *keorem*), district (military district command, or *kodim*), and sub-district levels (military sub-district command, or *koramil*).²

It should be noted here that the *koter* system has two-interrelated strategic roles. First, as a political machine to conduct surveillance and control the general population. Upon the emergence of a viable opposition, terror and violence are used interchangeably to prevent the escalation of protests into mass movements. Similarly, local territorial commands regularly monitor the activities of union leaders, student activists, and scholars. Second, given the post-colonial setting of Indonesia, in which economic resources are distributed informally among diverging state apparatus, territorial command is also exploited to

² For more on territorial command and the Indonesian military under the New Order, see, Crouch, H, *The Army and Politics in Indonesia* (revised ed), Ithaca, New York: Cornell University Press, 1988.

generate income from at least three sources: the provision of security services for the private sector, direct or indirect benefits from illegal activities, and the running of formal business entities. In practice, these roles were mutually reinforcing and thus, in effect, the army's *koter* during the New Order fulfilled multiple field operative roles for the regime.

Following the downfall of President Suharto's autocratic leadership, criticism against the military began to grow exponentially demanding the abolition of officer roles in politics and the economy, effectively bringing the status of its territorial command under scrutiny. In particular, civil society organizations, notably those working on human rights and security sector reform issues, expressed their concern over the authoritarian legacy's continuity. In the early years of transition, popularly dubbed as "*Reformasi*," some of the military's more troubling areas of authority were officially revoked. For instance, members of the ABRI (consisting of the army, navy, air force, and police) were no longer allowed to be assigned as public officials in non-defence bodies. Further, the police were dispatched from ABRI and became a separate force (national police, or Polri) in 1999. As a result, the military now stands up individually and comprises the army, navy, and air force (National Armed Forces, or TNI). This rearrangement was conducted under the mission of professionalizing the security sector in newly democratic Indonesia.

However, popular demand to liquidate territorial commands has fallen on deaf ears. Serving officers have also failed to appreciate reports published by defence affairs experts on the issue, many of which pointed out the problems associated with the *koter's* enduring presence in a post-authoritarian setting.³ Although in the minority, officers whose contributions on internal reform have been widely acknowledged include the late Lt Gen Agus Wirahadikusumah who was probably the only high-ranking officer seriously contemplating such concerns. Known for his radical approach (such as suggesting full-fledged military reform and investigating corruption within the military's special division, Wirahadikusumah), he was reported to have had a close relationship with the fourth Indonesian President, Abdurrahman Wahid. However, this also inevitably led to open confrontation with his compatriots.

Army elites argue that territorial command is vital to protect the country from foreign intruders, domestic provocateurs, threats against state sovereignty, territorial integrity, and the social cohesion of Indonesia. All these threats, it is said, are waiting for the right moment to erupt and destabilize the country. Indeed, following the resignation of Suharto, security disturbances, including separatist movements, ethnic and inter-religious conflicts, exploded in several areas (e.g. Aceh, Papua, Central Sulawesi, and Maluku). New threats, such as suicide bombings in addition to arms, drugs, and people smuggling, have also emerged, threatening the social fabric of Indonesian society.

³ For example, see, Riefqi Muna, M (ed), *Likuidasi Komando Teritorial dan Pertahanan Nasional* [National Defence and the Liquidation of Territorial Command], Jakarta: The Ridep Institute, 2002.

Nonetheless, in terms of containment strategy, this does not mean the military must be at the forefront of stifling those tensions. Rather, it is the national police who are now responsible for maintaining law and order, and preserving domestic security. Moreover, Polri personnel have also been trained to handle such crises. TNI elites, however, insist that the mobilization of territorial commands would rapidly ease tensions. Why was the army seemingly willing to sacrifice anything for the continuity of its territorial command system in the democratization period? The answer lies in the delicate topic of the territorial command's political economy.

As mentioned above, territorial commands all over the archipelago generate income for local officers and the institution as a whole. It is difficult to precisely measure how much money they gain from territorial command-related legal and illegal economic activities. Suffice to say that such profit-oriented pursuit greatly contributes to its day-to-day needs, e.g. building maintenance, and the wealth of high-ranking soldiers. The department's meagre budget has been pinpointed as an issue since the authoritarian era of the New Order and continues to this day.⁴ But more importantly, the structure is criticised for sustaining the military's "khaki capitalism"⁵ which refers to the tentacle of business ventures either owned, managed, or protected by the army in various lucrative sectors, particularly logging, mining, palm oil plantations, and transportation.

Notwithstanding, the Law on TNI (2004) specifically asserts that such endeavours are prohibited. As such, by 2009, the TNI were required to report their assets enabling the government to evaluate whether items came under the direct or indirect management of military headquarters. However, this legal constraint has not prevented the army establishment from participating in business affairs. Take for example the case of South Kalimantan where a former special forces commander (Kopassus) of the army apparently still holds the strategic position of director at a major mining company allegedly upon orders from Jakarta to establish cooperatives associated with Kopassus and Kostrad, two prestigious army divisions.⁶ Members of these special forces have been dispatched to protect the company's facilities. This type of protection service run by TNI personnel is not unusual even in Indonesia's current democratic period. To a large extent, military and business seem to have developed a somewhat symbiotic relationship.

⁴ Rieffel, L, and Pramodawardani, J, *Out of Business and on Budget: The Challenge of Military Financing in Indonesia*, Washington, DC: Brooking Institution Press, 2007, at 50-52.

⁵ Honna, J, 'The politics of securing khaki capitalism in democratizing Indonesia' in Chambers, P, and Waitookiat, N (eds), *Khaki Capital: The Political Economy of the Military in Southeast Asia*, Copenhagen: NIAS Press, 2017, at 316.

⁶ Purnomo, WA, et al, 'Cokelat di kebun sawit, loreng di ladang tambang' [Police in palm oil plantations, military in mining fields], *Tempo*, 9-15 April 2018, available at <https://majalah.tempo.co/read/155275/cokelat-di-kebun-sawit-loreng-di-ladang-tambang>, accessed on 15 August 2019, at 30-34.

To summarise, this section assessed the role of territorial command in the authoritarian New Order and in the post-authoritarian *Reformasi*. In addition, the range of activities that used to be carried out under the aegis of territorial institutions was discussed. To maintain its political influence, the New Order regime imposed rigid limitations on alternative political expression and criticism under the control of the army's territorial command. Established at every level of government administration (from provincial to village), this structure became the eyes and ears of government in identifying opposition movements and individual dissidents. This same structure was also mobilized to coercively repress labour protests and student movements and to enrich the army by utilizing territorial command business interests.⁷ Supplying protection services is also apparently a lucrative sector. While some profits were allocated to cover the daily needs of command headquarters, high-ranking officers benefitted monetarily too. Against this backdrop, it becomes obvious why the army fiercely resists the idea of territorial command liquidation.

Accordingly, the question of how the army elite justifies the continuity of territorial command must be asked. In what ways should the structure remain in place? Thus, this analysis will discuss the two case studies of Indonesian peacekeeping deployments and its 'defend the state' (*bela negara*) ideology, both of which have been advocated forcefully by the army in the last five years.⁸ These topics were chosen because peacekeeping missions and Indonesia's "defend the state" ideology are rarely discussed in relation to territorial command. The former is often associated with defence diplomacy affairs, while the latter is commonly perceived as a state-originated ideology.⁹ Both will now be discussed especially how they are used practically and shaped by the army's interests to maintain territorial command.

Peacekeeping operations

To begin with, it is important to acknowledge the normative principles of Indonesian peacekeeping missions. First, it is stated in the preamble of the national constitution (Undang-undang Dasar, 1945) that Indonesia is committed to uphold the world order based on the principles of freedom, peace, and social justice. These principles have become the basis of its 'independent and active' (*bebas aktif*) foreign policy. Formulated during a turbulent period of world politics, the first vice president, Mohammad Hatta, articulated the basic tenets of Indonesia's foreign policy in the early 1950s. In this regard, Indonesia

⁷ One study argued that a greater portion of incomes came from gifts and procurement commissions. See, Rieffel and Pramodawardani (note 4 above), at 54.

⁸ At this point, "defend the state," or "*bela negara*," can be understood as a national civic education program initiated by the government. In particular, the Ministry of Defence played a major role in promoting this initiative to the public. The *bela negara* ideology will be critically assessed later in this paper.

⁹ Hutabarat, LF, 'Indonesian participation in UN peacekeeping as an instrument of foreign policy: Challenges and opportunities' *Global & Strategis*, 2014, Vol 8, No 2, pp 183-199. For a critical discussion about the *bela negara* or "defend the state" program, see Muhamad Haripin, 'Bela negara: Ideologi, aparatus, dan kritik' [Defend the state: Ideology, apparatus, and critiques] *Jurnal Indoprogres*, 2016, Vol 1, No 5, pp 57-77.

has long been a loyal member of the United Nations peacekeeping missions dating back to 1957 when its “Garuda” contingent was dispatched along with the military from several other countries (Brazil, Canada, Colombia, Denmark, Finland, India, Norway, Sweden, and Yugoslavia) to ease the escalation of armed conflict in Egypt. The New Order regime continued this tradition. Despite intense domestic opposition, Suharto’s administration was apparently able and willing to deploy personnel for such international assignments. For instance, during the 1990s, Indonesia also sent reinforcements to support the United Nations Transitional Authority in Cambodia. Furthermore, President Suharto ordered Garuda troops to join the UN mission in Bosnia Herzegovina and visited Sarajevo to meet with President Alija Izetbegovic. This demonstrates how peacekeeping has become engrained within Indonesia’s military establishment.

Examining the nature of peacekeeping missions, which are often portrayed in terms of a moral duty, it is easy to overlook the political rationales that may drive states to involve their armed forces. In a post-authoritarian country, where the army was or probably remains influential in domestic affairs, it is argued that international assignments have the potential to divert the military’s focus towards external and defence-related missions. Peacekeeping could become “a way of keeping ‘the armed forces occupied outside of the country rather than meddling in domestic affairs’ or that of rehabilitating them after a period of authoritarian rule.”¹⁰ By providing the opportunity and resources for the military to actualize their potential, a civilian administration could gradually establish a new framework of civilian-military relations in line with democratic values. The Indonesian experience, however, tells a different tale.

First, what it takes for the military to participate in UN peacekeeping missions shall be discussed. Peacekeeping deployment constitutes a vital component of concerted efforts to maintain territorial commands. As required by the mission, assigned personnel must have rigorous military knowledge, exceptional mediation skills, and be able to undertake their duties professionally based on UN official mandates. Thus, social communication expertise, specifically referring to an ability to engage in a non-hostile manner with both local civilian communities and belligerents, is not only necessary but imperative. In certain cases where locals may perceive peacekeeping troops as the enemy, members of the UN multinational team have been the target of violence perpetrated either by militias or armed gangs. To avoid such incidents, troops should be equipped with advanced intelligence capabilities to identify dangers and security threats possibly affecting the mission or which may even compromise their safety. Intelligence gathering, therefore, is an essential task that must be conducted carefully. Reliable sources and accurate information are hard to acquire, and it takes maximum effort to ensure the success of missions. The question is how do personnel acquire these sets of abilities, particularly social communication and intelligence skills?

¹⁰ Bellamy, AJ, and Williams, PD, ‘Introduction: The politics and challenges of providing peacekeepers’ in Bellamy, AJ, and Williams, PD (eds), *Providing Peacekeepers: The Politics, Challenges, and Future of United Nations Peacekeeping Contributions*, Oxford: Oxford University Press, at 20.

Different countries may take different approaches to prepare for peacekeeping missions. But the essentials should be identical since all troop-contributing countries must conform with UN standards. During the presidency of Susilo Bambang Yudhoyono (2004-2009 and 2009-2014¹¹), participation in peacekeeping missions gained special attention from the government. The numbers of personnel, consisting of troops, civilian police, and military observers, increased at an unprecedented rate from 204 in 2004 to 1,611 a decade later (monthly average calculation).¹² In other words, Indonesia has become one of the biggest Southeast Asian contributors. Note also the recent composition of UN peacekeepers as of 30 June 2018: Indonesia contributed 2,679 personnel, Malaysia 854, Cambodia 799, Thailand 32, Brunei Darussalam 30, the Philippines 10, Viet Nam 8, and Myanmar only one.¹³

Recent government efforts to boost Indonesia's peacekeeping credentials include establishing a new training centre on the outskirts of Jakarta. As such, the Indonesia Peace and Security Centre (IPSC) was launched on 7 April 2014, comprising seven major facilities: the TNI Peacekeeping Mission Centre (PMPP TNI), the Standby Force Headquarters, the National Disaster Management Agency (BNPB), the National Counter-Terrorism Agency (BNPT), the Indonesian Defence University (IDU), a language centre, and the National Committee for Military Sports.

The IPSC is the largest peacekeeping and counter-terrorism training centre in Southeast Asia leading President Yudhoyono to assert, "This centre is proof of Indonesia's commitment to maintaining global peace, as stipulated in the 1945 (National) Constitution."¹⁴ Clearly, the government is attempting to professionalize the governance of peacekeeping training. Members of Indonesia's contingent (i.e. the military, police, or civilians) are therefore equipped with a standardized training regime. The long term objective of these efforts is not only to sustain Indonesia's presence on the global scene but also to boost TNI's image internationally.

In addition to peacekeeping-oriented training programs, the military elite also claims TNI prepares its members to be socially adept. As such, it points to the fact territorial officers stationed in regional and local army commands (e.g. *babinsa*) are trained to maintain relations with community leaders and the general public. Thus, such personnel are knowledgeable about local culture, political dynamics, and the economic development of

¹¹ Yudhoyono served two periods in office.

¹² These figures were prepared based on data from the UN's official website. Available at <https://peacekeeping.un.org/en>, accessed on 21 July 2019.

¹³ 'Contributors to UN peacekeeping operations by country and post. Police, UN, military experts on mission, staff officers and troops 30/06/2018' United Nations Peacekeeping, 30 June 2018, available at https://peacekeeping.un.org/sites/default/files/1_summary_of_contributions_4.pdf, accessed on 21 July 2019.

¹⁴ Perdani, Y, 'SE Asia's biggest peacekeeping, anti-terror training camp opens' Jakarta Post, 8 April 2014, available at <http://www.thejakartapost.com/news/2014/04/08/se-asia-s-biggest-peacekeeping-antiterror-training-camp-opens.html>, accessed on 21 July 2019.

certain areas. It could be argued the TNI assumes this situation from its self-proclaimed identity as the “people’s army” (*tentara rakyat*) in which it asserts responsibility to maintain domestic stability and public order, and to blend in with civilian polity. For example, local military command often involves itself in infrastructure development projects such as the building of bridges, irrigation systems, and sanitary facilities. In the education sector, officers assigned in remote areas may also take roles as teachers in local schools. During the New Order, this type of activity was called “ABRI develops village” (AMD). It is now known as “TNI and the people develop village” (TMMD). With this extensive experience of civic missions in hand, there is consequently reason to assert that the TNI is indeed equipped with the organizational and technical capabilities to conduct international peacekeeping missions.

Furthermore, cultural traits also play a vital role in justifying the deployment of Indonesian contingents. Currently, the majority of Indonesian peacekeepers are stationed in UNIFIL, Lebanon (United Nations Interim Force in Lebanon) and UNAMID, Darfur (the African Union-United Nations Hybrid Operation in Darfur). As of April 2018, Indonesia has even become the biggest troop-contributing country of the UNIFIL mission (1,268 personnel).¹⁵ Significantly, as the largest Muslim country in the world, it is regarded to possess the necessary social credentials to become involved in these countries’ peacebuilding processes. In other words, locals may have more positive feelings toward foreigners or peacekeepers holding the same religious belief as they do. As such, Al Manar, Hezbollah’s television channel, reported that Indonesia’s Garuda was the most popular peacekeeping contingent in UNIFIL.¹⁶

Indonesia’s case demonstrates an interesting parallel between domestic control and international missions especially TNI’s strategic reshaping of territorial command’s role. Not long ago, *koter* was a target of constant criticism from civil society. Rather than losing its relevance, under new international-oriented missions, the army structure has apparently regained its position and status as a fundamental part of Indonesia’s military. By carefully synchronizing the military’s institutional interests with Yudhoyono’s internationalist vision, critics found it difficult to push further security sector reform because an attack against territorial command could invite backlash from proponents of peacekeeping. Indonesia has therefore committed to dispatch up to 4,000 UN peacekeepers around the world and has set a target of becoming one of the top five troop-contributing countries.¹⁷ In addition to training at peacekeeping centres, personnel chosen to join peacekeeping forces are also expected to possess exceptional social communication and intelligence gathering skills learned from previous territorial duties. Here, the promotion of

¹⁵ ‘UNIFIL fact sheet’ United Nations Peacekeeping, available at <https://peacekeeping.un.org/en/mission/unifil>, accessed on 21 July 2019.

¹⁶ This report is based on an Al Manar public opinion poll. See, Haseman, JB, and Lachica, E, *The US-Indonesia Security Relationship: The Next Steps*, The United States-Indonesian Society, 2009, at 89.

¹⁷ Capie, D, ‘Indonesia as an emerging peacekeeping power: Norm revisionist or pragmatic provider?’ *Contemporary Southeast Asia*, 2016, Vol 38, No 1, at 8.

international missions could be considered in tandem with the preservation of the military's authoritarian legacy. Without eliminating its basic tenet, which is the massive deployment of army personnel in domestic settings during peace time, TNI elites have basically been able to neutralize democratic pressure, thus giving territorial command a new lease of life as a critical aspect of peacekeeping's pre-deployment training.

Defend the state (*bela negara*)

In democratic countries, the military is supposed to be apolitical and non-ideological. In the words of Indonesia's current president, Joko Widodo, "TNI politics is the state's politics, not practical politics."¹⁸ Further, the current Governor of the National Resilience Institute (Lemhanas), Let Gen (Ret) Agus Widjojo, once stated that, "TNI is an instrument deployed based on political decision ... TNI should never undertake any mission for its own interests."¹⁹ In contrast with official narratives, it is difficult to overlook the fact that politics and ideology remain at the heart of Indonesia's military. Currently, the military has the opportunity to shape public discourse and an open channel to manifest its interests. This situation will be explored in a later discussion on "defend the state" or *bela negara*, a socio-political doctrine initiated and promoted by the military establishment (i.e. the Ministry of Defence and TNI Headquarters) to instil patriotism among citizens. The purpose of such ideology is to enable it to live through and, subsequently, empower territorial commands to survive public criticism. Territorial officers play a crucial role in promoting this state-driven doctrine throughout the nation.

The historical background of the *bela negara* ideology originates from Indonesia's historical trauma. The country has been under constant threat from multiple sources, notably foreign infiltration and domestic instability. Bitter experience of Dutch and Japanese colonialism has taught Indonesians about the imperative need for shared feelings of patriotism among its citizens. A series of local rebellions motivated by political-economic resentments and religious values in the post-revolutionary period (1940-1960s) provided a stark reminder of Indonesia's volatile social cohesion. Following the end of Suharto's presidency in 1998, ethnic and inter-religious conflict erupted almost simultaneously in Maluku, Sulawesi, and Kalimantan.

Military elites were also sceptical about the democratic project brought about by student movements and civil society. Liberal political orders as implemented in western countries were argued to be incompatible with Indonesian society and culture; instead, rather than majority rules, it was contended that consensus, meaning a collective agreement reached through negotiation, should become the principal norm in decision-making processes.

¹⁸ See the official Twitter account of President Joko Widodo, 18 July 2018.

¹⁹ As one of the few reform-minded officers, Agus Widjojo set out an outline for internal military reform. His statement was originally written in Bahasa Indonesian. See Widjojo, A, *Transformasi TNI. Dari Pejuang Kemerdekaan menuju Tentara Profesional dalam Demokrasi: Pergulatan TNI Mengukuhkan Kepribadian dan Jati Diri* [The Transformation of TNI. From Freedom Fighters to Professional Military in Democracy], Jakarta: Kata Hasta Pustaka, 2015, at 654.

Reflecting upon Indonesia's liberal democracy experience in the 1950s, the army worried that civilian politicians would fight among themselves and compete for their own interests, neglecting public needs. Indeed, signs of political rupture and no-holds-barred rivalries among democratic proponents were already visible even in the early years of *Reformasi*. To protect the country from democracy's original sin, it was decided public awareness and an understanding of patriotism and national values should be promoted intensively throughout the country.

Strategically speaking, the notion of *bela negara* can also be traced to Indonesia's total defence doctrine, or "*sisbanrata*" (*sistem pertahanan keamanan rakyat semesta*) meaning that the right and responsibility to defend the country are similarly in the hands of civilians. As the first line of defence, TNI is the main component (*komponen utama*), whereas non-combatant civilians are regarded as the reserve component (*komponen cadangan* or *komcad*). The main role of the latter is to support the military during peace time or war by providing expertise, technology, and instruments. To serve this purpose, *komcad* should be nurtured continuously as a part of Indonesia's national identity, principal values, and public interests.

However, concern has arisen that such principles have been eroded by the liberal western values of materialism and self-interest. In addition, religious conservatism and intolerance have gradually become the new normal amongst younger generations, challenging Indonesia's multicultural identity. As a result, the military maintains it has become difficult for the state to consolidate the main and reserve components described above. Accordingly, *bela negara* was implemented to address the lack of national unity amongst all segments of Indonesian society. Consequently, President Yudhoyono decided to declare 19 December the National Day of Bela Negara, a date that marks a particularly special moment in Indonesian history. On 19 December 1948, the Emergency Government of the Republic of Indonesia (PDRI) was established in Bukittinggi, West Sumatra as a result of the Dutch-Allied forces' occupation of Yogyakarta, Central Java. The central figure was Syafruddin Prawiranegara who was granted special authority to run Indonesia's government in exile, and to pursue its revolutionary and diplomatic struggle in Sumatra. This courage has been portrayed as an act of selfless devotion to the country, and it is argued the revolutionary spirit shown by Prawiranegara and other patriots of the time should similarly be continued elsewhere.

How does ideology promotion help to maintain the territorial command structure? *Bela negara* requires an agency that could be mobilized to nurture a collective consciousness on patriotism. Any grand narrative of national pride needs to be translated into an easily accessible discourse that can be simply disseminated to the public including those living in big cities, small towns, and villages. Given the importance of reserve components in Indonesia's defence posture, it becomes almost natural to assign the TNI and the Ministry of Defence as the leading actors to undertake such crucial tasks. The army's territorial command provides an available structure and deployable officers to promote *bela negara*

and national values for public consumption. In Banten, West Java province, for instance, Kodim 0603/Lebak (a military command at the district level) appoints *babinsa* (army officers stationed in village areas) to support this agenda.²⁰ Officers receive instructions to make the dissemination of *bela negara* their priority and to build relationships with local officials and public figures. There are 280 *babinsa* officers under the auspices of Kodim 0603/Lebak who conduct such duties regularly.²¹ It is maintained that the success of *bela negara*, the indicators of which are academically ambiguous, is determined by the ability of individual territorial officers to mainstream patriotism and uphold national vigilance. In this context, the army has positioned its territorial command as an integral part of the collective solidarity and national identity it considers essential to the state's defence capacity.

Bela negara mainstreaming has gone even further under Defence Minister Ryamizard Ryacudu (2014-present). To this end, former army chief, Ryamizard exploits popular means (such as video broadcasting, bulletins, and social media) to reach younger generations. As such, the Ministry of Defence sponsored the making of a commercial movie entitled *Seteru* (or Contender) to disseminate the spirit of unity in diversity (*bhinneka tunggal ika*) and patriotism. The Ministry has also worked with other state agencies, e.g. the Ministry of Education and Culture, to insert more elaborate *bela negara* teaching materials into the formal curriculum including in-class and outdoor activities, and military and physical training for high school students to build self-discipline and strong feelings of patriotism. Further, the Ministry also offers opportunities to both the public and private sector to become involved in such projects. Ministerial staff, professionals in state-owned enterprises, local officials, and white collar employees, among others, are all encouraged to enrol in *bela negara* training as well. The training usually takes place at local army headquarters. Territorial officers, including *babinsa*, play an important role as trainers and counsellors. Ryamizard has stated that the target of this national project is to cultivate a hundred million *bela negara* cadres across the nation. These civilians are trained to be ready and willing to defend the country from any threat, and to implement *bela negara* values in their everyday lives.

Nevertheless, the inclusive nature of *bela negara* is not without problem. For example, it has opened up opportunities for street vigilante and state-sponsored militia groups to participate in training thus allowing such groups to benefit from the army's strategic manoeuvring.²² These violent groups have flourished rapidly in the wake of democratization. Lacking sustainable legitimate sources of income, they are dependent

²⁰ Herdiansah, AG, Ummah, KC, and Simandjuntak, S, 'Peran dan fungsi pembinaan teritorial TNI AD dalam perbantuan pemerintah daerah: Studi di Kabupaten Lebak' [The role and function of the army's territorial management in supporting local government: Case study of Lebak District], *Jurnal Ilmu Pemerintahan*, 2017, Vol 3, No 1, at 76-77.

²¹ Herdiansah, Ummah, and Simandjuntak (see note 20 above).

²² Reza, BI, 'The total people's defense and security system: Issues related to state-sponsored militia in Indonesia' *Indonesian Law Review*, 2017, Vol 7, No 2, at 165-166.

on protection racketeering and extortion practices. Meanwhile, the Indonesian military has extensive experience in the covert operation of arming such militias. Following the referendum of East Timor in 1999, TNI personnel trained and encouraged pro-integration militias to intimidate and commit violence against Timorese pro-independence groups and innocent civilians.²³ In the contemporary period, the possibility that history could repeat itself looms large.

An interesting case can be found in Kodim 0603/Lebak's *bela negara* training of members of the self-proclaimed Islamic Defender Front (FPI) in January 2017. When civil society objected, the government was forced to re-evaluate its training.²⁴ More interesting were the conflicting views within the military establishment regarding this issue. Ministry of Defence officials stated that all social organizations have the right to participate in *bela negara* training, including FPI.²⁵ Moreover, the state has a responsibility to educate the members of such organizations. This suggests that the Ministry and TNI were more concerned with their legal status as Indonesian citizens, rather than as supporters or high ranking leaders of the FPI. As the public debate continues, military spokesperson Maj Gen Wuryanto (currently, Commander of Diponegoro Military Command in Semarang, Central Java) clarified the situation by saying that *bela negara* training should not have been given to FPI meaning Kodim 0603/Lebak had committed a violation.²⁶ However, Defence Minister Ryamizard Ryacudu and TNI Commander Gen Gatot Nurmantyo were later reported to have reasserted the inclusive nature of *bela negara*,²⁷ indicating there should be no restrictions on FPI members to participate in the training sessions.

The above discussion illustrates the intricate relationship between ideology promotion and territorial command structure, and how it evolved through Indonesia's early independence years and how it has remained vibrant throughout the democratization process. What does this tell us? Democratization and military reform have done little to change the territorial command structure, the military's basic instrument to maintain political power. Instead of losing its relevance, local army structures have gained new standing, revitalizing its function in the democratic consolidation period. In addition,

²³ For a detailed discussion on this horrendous event, see, Tanter, R, van Klinken, G, and Ball, D (eds), *Masters of Terror: Indonesia's Military and Violence in East Timor*, Lanham: Rowman & Littlefield, 2006.

²⁴ 'Jokowi urged to evaluate bela negara following FPI training' Jakarta Post, 9 January 2017, available at <http://www.thejakartapost.com/news/2017/01/09/jokowi-urged-to-evaluate-bela-negara-following-fpi-training.html>, accessed on 21 July 2019.

²⁵ Saraswati, PD, 'Kemhan: FPI dilatih berkarakter Indonesia, bukan Islam Arab' [MoD: FPI is trained to have Indonesian character, not Arabic Islam], CNN Indonesia, 10 January 2017, available at <http://www.cnnindonesia.com/politik/20170109205650-32-185126/kemhan-fpi-dilatih-berkarakter-indonesia-bukan-islam-arab/>, accessed on 21 July 2019.

²⁶ Aritonang, MS, 'State defense training for FPI not allowed: TNI' Jakarta Post, 10 January 2017, available at <http://www.thejakartapost.com/news/2017/01/10/state-defense-training-for-fpi-not-allowed-tni.html>, accessed on 21 July 2019.

²⁷ Aritonang, MS, 'FPI may join military training: TNI commander' Jakarta Post, 11 January 2017, available at <http://www.thejakartapost.com/news/2017/01/11/fpi-may-join-military-training-tni-commander.html>, accessed on 21 July 2019.

it plays a pivotal role as the operator and source of knowledge of the government's "defend the state" ideology. Next, Indonesia's experiences will be reflected against political-security developments in Southeast Asia.

Southeast Asia: A shrinking democratic space

Indonesia's democratic experience demonstrates that the political legacy of authoritarianism is resilient. After twenty years of liberalization, civilian politicians still struggle to strictly impose a degree of control on the TNI. Indeed, it seems ahistorical to place all the burden on them. In other words, the lesser capability of civilians together with their pragmatism as regards electoral politics, among other issues, has complicated the military reform process. At the same time, the TNI was quickly able to reconsolidate its internal cohesion and political influence within the public sphere. As a result, the territorial command structure's role in non-defence affairs has actually increased in recent years. Thus, it has become the new normal to see, for instance, soldiers monitoring the price of daily needs at market or involving themselves in law enforcement missions. While the return of fully fledged authoritarianism seems implausible, the future of democracy in Indonesia is also uncertain. Indonesia's situation will now be discussed in the broader context of Southeast Asian politics.

Several Southeast Asian countries have recently experienced rapid political change. For example, Myanmar (or Burma) is moving toward a post-junta political arrangement. Elections were held for the first time in 2010 and the elected president, Thein Sein, a retired military officer, introduced policies to incrementally pave the way for civil society to flourish. The succeeding election took place in November 2015 bringing the National League for Democracy (NLD) to the centre of power. Htin Kyaw, NLD leader and friend of Aung San Suu Kyi, was elected as president in March 2016. In spite of this heartening development, the Tatmadaw (or the military) maintains a pivotal role in domestic security arrangements. Thus, it is still the army that determines the country's national security.

Meanwhile, Thailand has entered a new period of political turbulence following two military *coups* against Prime Minister Thaksin Shinawatra in September 2006 and his sister, Yingluck Shinawatra's administration, in May 2014. Competition between elites resulted in a social division that tore apart Thai society, notably the "yellow shirts" (depicted as supporters of the monarchy) versus the "red shirts" (the pro-Thaksin camp), the result of which brought the country to a seemingly unresolvable crisis. Consequently, the Thai army felt it was necessary to stabilize the situation by taking direct control of the government.

Likewise, in the Philippines, the military has been at the forefront of the war against terrorism. President Rodrigo Duterte mobilized the army and launched strikes against terrorists in the southern Philippines. Moreover, he also declared martial law to neutralize Mindanao from the Islamic State-affiliated group holding effective control of the city of Marawi. As the threats escalate, so does the Filipino military's position in the decision-

making process.²⁸ Combined with the uncompromising leadership style of President Duterte, the Philippines can no longer take democracy for granted.

Thus, in general, Southeast Asians have a problematic relationship with their armed forces. Socio-cultural, ideological, and economic factors have impeded the growth of liberal democratic values in the region, as argued by Sorpong Peou.²⁹ However, he further claimed that none of the above factors fully explain the extent of the democratic regression the region faces today. The problem actually lies within the weak institutional basis of democratic institutions in these countries thereby enabling the armed forces to maintain their position as viable political players against civilian rule instead of merely playing an apolitical role as a professional military. This situation shows that “the transition from authoritarian rule to electoral democracy in Southeast Asia did not lead to a full-scale civilian control.”³⁰

The problem of establishing strong civilian control derives from various factors. First, as discussed previously, civilians tend to lack adequate technical and managerial knowledge to manage military institutions. Second, civilians are often entangled in political divisions leading them to ignore their democratic agendas. Third, declining public support for ruling civilian governments will seemingly inevitably encourage the military to seize executive power. These failures will have consequences upon democratization in the national context and on regional efforts to uphold democratic principles and protect human rights. Minorities, the opposition, and student groups in several Southeast Asian countries are thus desperately in need of protection due to systematic threats or the use of military force. Myanmar and Thailand, in particular, exemplify this situation.

Political change in Southeast Asia in recent years has indeed transformed civilian-military relations in many respects. But such relations occurred under restricted conditions where military power often exceeded the civilian government’s capacity to initiate a reform agenda. Thus, armed forces could take direct action (as in Indonesia, Thailand, and Myanmar), or indirect action (as in the Philippines) to influence domestic politics. This suggests that democratization has not entirely depoliticized the military. How does one explain such resiliency? In spite of historical differences, the militaries in Southeast Asia share a common trait. They all have a strong internal security orientation rather than one geared to external defence. Separatist movements or rebellions motivated by either ideological values or religious and ethnic sentiments have also occurred across the region. As a result, these hostile circumstances have been fully exploited to justify the military’s role in domestic security. The armies in Indonesia, Thailand, and Myanmar are excellent

²⁸ Heydarian, RJ, ‘Not Duterte’s personal army’ New York Times, 14 June 2017, available at <https://www.nytimes.com/2017/06/14/opinion/rodrigo-duterte-philippines-military.html>, accessed on 21 July 2019.

²⁹ Peou, S, ‘How solid are ASEAN’s democracies?’ East Asia Forum, 19 March 2016, available at <http://www.eastasiaforum.org/2016/03/19/how-solid-are-aseans-democracies/>, accessed on 21 July 2019.

³⁰ Croissant, A, ‘Southeast Asian militaries in the age of democratization: From ruler to servant?’ in Case, W (ed), *Routledge Handbook of Southeast Asian Democratization*, London: Routledge, 2015, at 327.

examples of such practices. For example, the Thai army has been fighting the Pattani rebel group in its southern region for years. Thaksin Shinawatra employed harsh methods which had the effect of rapidly escalating the violence. However, such strategies invariably have a detrimental effect on conflict resolution in the long run. Indeed, excessive violence may even prolong conflict as it hinders dialogue and negotiation among belligerents.³¹ Thus, military deployment should not be regularly used as an approach to deal with rebel groups.

The lessons learned from the Southeast Asian experience are somewhat depressing with democratic practices being severely challenged by authoritarian-repressive politics. The armed forces in several countries have maintained their political power by means of coercive and persuasive instruments. On the other hand, civilians seem overwhelmed by the extent of the military's capability to deter reform. It can therefore be seen that civilian-military relations in several Southeast Asian countries are truly problematic and furthermore, it appears as if the region is running out of best practices that could set democratic standards therein.

Conclusion

The above discussion clearly demonstrates the ability of Indonesia's military to maintain its territorial command structure during the post-authoritarian period. First, army command provides opportunities for personnel to shape their technical skills as regards social communication and intelligence-gathering, whilst also encouraging the building of relations with community leaders, and the collection of relevant information to ensure the success of overseas missions. The practical function of territorial command, nevertheless, has come at the cost of military professionalism and public liberty. Territorial command reflects the sustainability of authoritarian politics in contemporary Indonesia. In particular, it has been mobilized to nurture the military's political influence at the local level. Given the massive scale of *koter*, this army network represents an example of mass surveillance politics, one which puts society under continuous scrutiny. Peacekeeping missions, in this sense, have been subverted by the military to support its corporate interests.

Second, the proliferation of *bela negara* ideology has ensured that turbulent security in the region has been reframed as a direct threat toward Indonesia's national security allowing the military establishment to reconceptualise the role of civilians in crisis situations. Further, in order to strengthen its defence capabilities against non-traditional threats, e.g. terrorism and drugs smuggling, these non-combatants must undertake 'defend the state' training, comprising of indoor lessons and outdoor physical training with the military providing both materials and instructors to boost participant morale and patriotism. *Bela*

³¹ See, for example, Barter, SJ, 'Strong state, smothered society: Explaining terrorist violence in Thailand's deep south' *Terrorism and Political Violence*, 2011, Vol 23, No 2, pp 213-232; and Cline, LE, 'Thailand and the insurgency in the south' *Small Wars & Insurgencies*, 2007, Vol 18, No 2, pp 275-287.

negara asserts the importance of the territorial command structure in harnessing this relationship between the TNI and the people. Therefore, this ideology can be seen as the latest incursion of the military into public life. Surprisingly, no major protests have been mobilized against its inexorable march.

The return of authoritarian politics is also trending in other countries in Southeast Asia. For example, in the last fifteen years, Thailand's army has taken a decisive role in distorting the country's political dynamics. Successive *coups* against civilian leadership in 2006 and 2014 effectively eliminated democratic channels enabling conflicting parties to settle their differences. Meanwhile, the Tatmadaw has also shaped political contestation in Myanmar and strategic policy prerogatives continue at the hands of military seniors. Likewise, following the siege of Marawi, the Philippines military reasserted its strategic role in the decision-making process. Moreover, President Duterte's promise to restore stability in the south has had the effect of empowering the military further on the national political scene.

These Southeast Asian experiences have been explained in various ways. One could argue that cultural values and political-economic factors helped to determine these disheartening developments. However, the origins of this problem may be found more in the trajectory of the military's political interests. That said, there is no easy way to immediately reverse this worrying trend. Suggestions include encouraging sustainable advocacy on human rights and democracy at the national and regional levels, and fostering the sharing of reform experiences among Southeast Asian countries with the aim of setting a regional platform on security sector reform.

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MILITARY COUPS D'ETAT, THE 2019 ELECTION, AND POPULAR ACCEPTANCE OF AUTHORITARIANISM IN THAILAND*

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This chapter was written a few months after the 24 March 2019 general election in Thailand following almost five years of military rule since the *coup d'etat* of May 2014. Although this raised a modicum of social resistance, the vast majority of Thais appear to support the military and its junta government. The general election in Thailand was first scheduled for 24 February 2019 before being moved to March 24 of the same year, the sixth postponement thus far. While the junta government's confirmation of this election gave hope to many Thais who have been waiting since 2011 for a successful general election, not everyone enjoys the same rights to participate in politics despite this being one of the defining principles of democratic countries. Indeed, a large number of Thais support the military regime and fear elections will let in the same "troublemaker" politicians who many consider to have ruined the country. Much of these beliefs emanate from junta government discourse which points to political institutions, especially political parties, as the ostensible troublemakers of Thai society. In this scenario, it was therefore the National Council for Peace and Order (NCPO), which, acting meritoriously, emerged as the country's hero and saviour.

Accordingly, the majority of people do not object to the military removing their basic rights and exercising excessive power for the sake of national security and stability especially as other authoritarian regimes have acted similarly in Thailand's recent past. What is most interesting, however, is the way Thais have taught generations of their children to accept the abusive power of authorities. This chapter explores the history of military regimes since the political revolution of 1932 to the 2019 general election and analyses some shared characteristics of such governments, particularly how they communicate to uphold the values of authoritarianism. This analysis not only reveals the lessons that can be learnt from history, but also enables a reassessment of the current situation, allowing the country to move forward to a more democratic environment.

Authoritarian leaders who have seized power from past to present

Thailand's 1932 political revolution marked a significant change to its political structure from an absolute monarchy (which had governed the country and its people for centuries) to a parliamentary monarchy. Since then, political power has been in the hands of various governments, many of which were military dictatorships. Under their influence, most Thais continue to live their lives seemingly unconcerned about the importance of individual rights in a democracy. Accepting of such power structures, Thais therefore admit to the

* Based on Pindavanija, E, 'Dictatorships in Thailand' in Pindavanija, E, *Thai Social Transformation Under the Influence of Capitalism*, Inter-European doctoral dissertation, Universitat Jaume I, 2009.

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unchangeable differences ascribed at birth which are used to justify differences in power levels. In the same way, the powerful are deemed to merit their achievements not merely by dint of past actions but also as a result of acts done in previous existences. In other words, inequalities may be justified as a consequence of ‘past lives’ without ever referring to anything tangible.

In addition, the ‘patron-client’ system strongly influences individual perceptions – this system assumes the powerful will protect the less fortunate to maintain the peace. This is why most military dictators portray themselves as heroes and saviours of the nation and its people. In the same vein, belief in the leader is a must and benefits the country as a whole. However, while such beliefs may breed consensus, most military dictators hail from purely military backgrounds and have little knowledge of economics or business affairs. Consequently, they may be unable to successfully manage all the functions of society which is often why dictated power is usually split into groups comprising of the military, aristocrats, elites, and business persons.

As far back as 1979, Thuk Chaleomtiarana¹ described the military dictatorship in Thailand and the power of dictators as “despotic paternalism.” Thailand had previously been governed as a paternal monarchy with the king adopting the role of father to his citizens, a clear expression of hierarchy since in certain cultures, a father is considered the supreme leader of his family – as such, the father of a nation would also be considered the supreme leader of that country.

From the 1932 political revolution until the late 1970s, the military played a significant role in Thai politics, often as a result of power changes which were rarely achieved utilizing civilian methodologies. By contrast, others point to the military as a major force in governmental change from 1932 to post October 1973. While numerous governments operated under the influence of military power in Thailand, the following list comprises the most significant, all of which seized power by *coup d’etat*.

Field Marshal Phibul (1938-1943, 1948-1957)

Field Marshal Phibul held the post of premier from 1938-1943 and again from 1948-1957 until he was deposed in the *coup* of 1957. As such, he was Thailand’s Prime Minister during World War II, and formulated several significant policies that affected the country during the war and in the period immediately after. As a key member of the 1932 *coup*, Phibul therefore played a major role in Thai politics at the beginning of its political revolution.² Coming from a military background, he accumulated political influence easily particularly as the majority of Thais are uneducated about democracy and accustomed to authoritarianism.

¹ Chaleomtiarana, T, *Thailand: The Politics of Despotic Paternalism*, Bangkok: Social Science Association of Thailand and Thai Khadi Institute, Thammasat University, 1979.

² Chaleomtiarana (see note 1 above).

Before the end of the decade, political division resulted in a return to authoritarianism. In 1942, the relationship between the state and its people shifted when Phibul initiated a “leader saves the nation” policy ostensibly to encourage development and modernize the nation’s image. Thus, as the country’s protector, his decisions became unassailable requiring strict compliance, and government machinery became synonymous with the state itself, elevating its representatives to higher positions of respect, both politically and socially. In the same way, the significance of Thai nationals was also devalued; no longer deemed the quintessence of state, instead people were required to prove their loyalty by serving the nation’s progress and prosperity. In this climate, Phibul was regarded as the most suitable person to lead the country.³

One could say that authoritarianism returned quickly to government following the demise of absolute monarchy, with power merely changing hands from the monarchy and feudal nobles to the military and politicians. During World War II, the rise of nationalism, as introduced by Phibul, was largely supported by the population to balance the influences of western power. Phibul’s objective was to preserve neither the British nor French colonial empires although he adopted a particularly aggressive policy towards the latter. Neither did he intend to support an expanding American economic empire. Nor, finally, did he subscribe to Japan’s ‘Greater East Asia Co-Prosperity Sphere’ or its notion of ‘Asia for Asians’ which he might well have believed to mean ‘Asia for the Japanese.’ Instead, Phibul’s objective was to preserve the independence of the kingdom formerly known as Siam but whose governing National Assembly he had persuaded to rename ‘Thailand.’⁴

In general, Phibul’s authoritarian practices were tolerated because of the perceived necessity for a strong government to maintain national security from the threat of foreign invasion; many believed him to be the only person capable of providing said protection and security. However, following Japan’s defeat and its declining influence, his public nationalism campaign likewise decreased and by the end of World War II, Phibul was forced to resign as a result of internal and external pressure. Consequently, Thailand had a civilian government for a short period of time (1944-1947). Nevertheless, these administrations were not long-lasting and the military regained power after a 1947 *coup*, again organized by Phibul.

It was during the Field Marshall’s second period of rule that the most change occurred.⁵ Specifically, a significant portion of his military power devolved to other commanders but despite this loss of control, Phibul attempted to portray himself as a democratic leader whilst ordering the police and the remaining military forces under his influence to violate human rights.⁶ As such, severe political suppression was the norm under his administration as he often used the police force to eliminate political opposition in

³ Chaleomtiarana (see note 1 above), at 31.

⁴ Cooper, DF, *Thailand: Dictatorship or Democracy?* London: Minerva Press, 1995, at 11.

⁵ Cooper (see note 4 above).

⁶ Cooper (see note 4 above).

secret missions. Concurrently, however, other segments of the military were also gaining rapidly in power, leading eventually to Phibul's government being seized in a *coup* by Field Marshal Sarit.

Field Marshal Sarit (1957-1963)

Considered the great dictator of Thai modern politics, Sarit likewise built his powerbase from a military background. He gained influence from various positions prior to actually gaining control of the government, such as Supreme Commander of the military and Minister of Defence in Phibul's government, whilst gradually taking control of the Lottery Bureau. Sarit was also deputy chief of Phibul's political party, Seri Manangkhasila, and in 1957, seized power in a *coup*, charging the previous government with corruption and holding dirty elections.

Owing to the inability of Phibul's government to gain the trust of the people by maintaining peace and order, the military group led by Field Marshal Sarit assumed the role of Special Military Administrator for Bangkok and issued a proclamation to ask for peace as well as requesting all government servants to follow Sarit's instructions. This proclamation was of vital importance to the Field Marshall as it legitimized his overthrow of an elected government, albeit one accused of holding dirty elections. In practice, it was his only claim to legitimacy.⁷

Some have argued that Sarit was the most extreme authoritarian in modern Thai history as "he introduced absolute rule to a degree beyond anything previously experienced."⁸ As such, he placed all military and police power into the hands of his cronies and replaced parliament and the national assembly with an appointed constitutional assembly. However, at the first instance, he refused to take supreme control of the government instead appointing Phot Sarasin as the civilian interim prime minister. Similarly, when Sarit's political party won the election at the end of 1957, again he did not take the premiership, this time allowing Thanom to take the post.

In fact, Sarit did not take the premiership until 1958 when Thanom's government ran into trouble. It is only at this time, therefore, that the real Sarit revolution can be said to have begun. Calling his *coup d'état* the 'Revolutionary Party,' he "then reaffirmed that it would abide by the United Nations General Assembly Declaration on Human Rights, only deviating from it to protect the nation."⁹ It would also, he declared, abide by all international agreements and treaty obligations. Sarit then established a constituent assembly to draft a new constitution giving dictatorial power to the authorities. For example, Art 17 of the 1959 Constitution gave extreme power to the prime minister (as paternal leader), who was then able to grant absolute power to the authorities.

⁷ Cooper (see note 4 above), at 178.

⁸ Cooper (see note 4 above), at 178.

⁹ Cooper (see note 4 above), at 185.

Further, under this constitution, the prime minister could suppress any form of harmful act or attempts to instigate social unrest within or without the territory, and any harm to the nation and monarchy. Thus, any actions originated by the prime minister were considered lawful, legitimate, and protected by law with he/she only needing to inform parliament after the action was taken.¹⁰ Commonly known as Art 17, this provision was the most ominous law in operation at that time and could effectively have suppressed the Thai people under Sarit's regime for many years.

Characterised by extreme authoritarianism and emanating from his paternalistic style of dictatorship, the Field Marshall claimed a 'neo-classic' style of revolution.¹¹ As members of the Revolutionary Party were composed mostly of locally educated military leaders, it is unsurprising their perspectives did not focus on democracy as a major objective. Sarit himself claimed to be building a new political pattern for the country called 'Thai style democracy,' a theory that has confused some scholars because in a western context, the characteristics of Sarit's revolution and development appear contradictory as he also aimed to maintain the traditional Thai value of respect towards the government and authority in the form of paternal patronage.¹²

As their paternal leader, Sarit thus came to the rescue of dependent Thais, promising them security and other benefits if they acted according to his commands. Several examples demonstrate Sarit's attempts to play the role of 'father' to his Thai 'family.' For example, he reduced taxes immediately after taking the premiership, lowered electricity prices, and provided free access to water to those living in areas lacking sufficient supplies.¹³ Moreover, he also set up many types of public funds for the under-privileged and opened up reduced-price markets to offer consumer products at cut rate prices. As a result, he gained massive popularity as the so-called father to the nation. At the same time, as an authoritative father figure, he propagated himself as protector of the nation by reserving the right to exercise excessive power to maintain peace and stability.¹⁴

Chaloemtiarana describes Sarit's additional dictatorial characteristics as follows. The excessive power of his paternal authority was bestowed by the Constitution whose drafting committee he had dominated. Thus, it reflected his belief that stability could only be maintained by integrating all the roles of a father and applying them at the national level. As such, society must be disciplined to obey his commands and orders because he above all, as its father, had the good will of the nation at heart. His own personality as regards the use of decisive force can be seen when, seeing gangsterism as a social problem, he shot three perpetrators dead as a young lieutenant. Cleanliness was another of Sarit's major concerns as he equated it with higher levels of civilization.

¹⁰ Chaloemtiarana (see note 1 above), at 263-264.

¹¹ Chaloemtiarana (see note 1 above).

¹² Chaloemtiarana (see note 1 above), at 34-36.

¹³ Chaloemtiarana (see note 1 above).

¹⁴ Chaloemtiarana (see note 1 above).

Hence, he demanded all roads and public areas be clean and well-maintained and the removal of all obstructing objects.¹⁵

As father of the nation, his dependents were required to adhere to the rules as a father lays down the law to his children. In addition, he also believed the root of any civilized nation emanated from a good education which included morality and ethics according to traditional customs. Further, as major causes of social unrest, he commanded the arrest of all hooligans and gangsters to bring peace and stability to society. Arrested hooligans were then imprisoned and rehabilitated through education.¹⁶

Moreover, again in the role of father, he prohibited all kinds of inappropriate entertainment such as rock 'n' roll and dancing the twist. Those violating the order were arrested and some were even sent to rehabilitation camps or imprisoned. According to statistics from 1958-1963, 7,539 were arrested, 2,743 were imprisoned, and 4,738 were sent to rehabilitation camps.¹⁷ On occasion, Sarit investigated crimes himself, and having found the culprits, would even pass sentence. For example, in one instance, Sarit looked into several cases of arson in the capital city of Bangkok. The suspects were Thai of Chinese origin, an oppressed group at that time. Sarit took the opportunity to claim that the perpetrators were "originally handled by the communist party," aimed to destabilise the nation, and declared "those convicted criminals [of] Chinese origin would be executed."¹⁸ It is remarkable that not only were all the convicted criminals of Chinese origin (the object of hatred of many racist Thais), but also that communism was neatly set up as another enemy, both of which gained Sarit extreme popularity despite his authoritarian methods.

The prohibition of opium was another tactic used by Sarit to increase his popularity. According to his statement on the day a law banning the selling and consumption of opium was activated, those disobeying the law would be deemed enemies of national stability because he, as father of the nation, demanded respect and obedience from his children. Thus, his order was irrevocable¹⁹ and there was no need for any further explanation as to why the new law had originally been passed.

¹⁵ Chaloeontiarana (see note 1 above), at 250-251.

¹⁶ Chaloeontiarana (see note 1 above).

¹⁷ Chaloeontiarana (see note 1 above), at 250-251.

¹⁸ Chaloeontiarana (see note 1 above), at 256.

¹⁹ Chaloeontiarana (see note 1 above).

Now the time has come ... [on] the first minute of 1 July 1960, I command that all activities in ... relation to [the] selling and [consumption] of opium are now prohibited. Today is a historical day [-] Thailand will be a fully civilized nation, and our good reputation will be reaffirmed. [...] I [declare] that selling and consuming opium is a serious crime, [and that] those who are convicted of such a crime will be considered as traitors to the nation and its stability and that [such] people do not wish to cooperate with me personally. Therefore, [this forces me] to exercise suppressive methods. I would sacrifice myself in order to maintain the stability of the nation, and I strongly believe that opium is a threat to the stability of our nation.²⁰

The above examples illustrate the mentality of the authoritarian who became leader of Thailand. Despite the effectiveness and the benefits arising from Sarit's policies, the abuse of power underlying his commands is clear even taking into account that the majority of Thai nationals were willing participants in the abuse.

Having taken on the role of father figure, Sarit spent a considerable amount of time visiting people in rural areas and remote villages to create an image of a caring father which would, he believed, strengthen the nation's unity.²¹ Further, he saw that openly traveling to different areas to learn and understand the cultural disparities of each region would help to enhance this image of someone who understood their difficulties, so instead of staying in hotels, he spent nights in tents, again to give off the semblance of someone who wished to commune with the people.²²

Therefore, in the form of paternal leadership, a dictator's oppressive rule becomes acceptable in exchange for patronage. A father figure exercising suppressive methodologies in ruling the country can also gain popularity by offering benefits to the under privileged who are generally less concerned with human rights than security and a sufficient means of living. Sarit in the role of paternal leader stimulated government agencies (utilizing additional funds from the Lottery Bureau's complimentary budget) to implement projects to support people's most fundamental needs especially in rural areas.²³ Local folklore often tells of heroes giving direct humanitarian aid to villagers, and as a result, such archetypes wield enormous power. Hence, allowing a hero father figure excessive authority becomes acceptable in this light because even a hero must be allowed the tools to bring peace, stability, and prosperity to people's lives.

The circumstances of Sarit's regime and other similar dictatorships can be explained by the right-wing authoritarianism scale (RWA scale) as described in Altemeyer's degrees of authoritarianism theoretical framework.

²⁰ Chaloehtiarana (see note 1 above), at 260-261.

²¹ Chaloehtiarana (see note 1 above).

²² Chaloehtiarana (see note 1 above).

²³ Chaloehtiarana (see note 1 above).

People who tend to authoritarian aggression have higher agreement on the following statements:

The way things are going in this country, it is going to take a lot of strong medicine to straighten out the troublemakers, criminals, and perverts.

The facts on crime, sexual immorality, and the recent public disorders all show we have to crack down harder on deviant groups and troublemakers if we are going to save our moral standards and preserve law and order.

Some of the worst people in our country nowadays are those who do not respect our flag, our leaders, and the normal ways things are done.

In these troubled times, laws have to be enforced without mercy, especially when dealing with the agitators and revolutionaries who are stirring up things.

The biggest threat to our freedom comes from the Communists and their kind, who are out to destroy religion, ridicule patriotism, corrupt the youth, and in general undermine our whole way of life.

One reason we have so many troublemakers in our society nowadays is that parents and other authorities have forgotten that good old-fashioned physical punishment is still one of the best ways to make people behave properly.²⁴

The above statements display a high correlation to the acts of authoritarian dictatorships in Thailand, especially when compared to the statements of its most notorious modern military dictator, Sarit. And it could also explain why so many people consider the abuse of human rights as a legitimate means to eliminate troublemakers, thereby achieving social stability. Sarit died in 1963, but his pattern of despotic paternalism continued for years after his death.

General Suchinda Kraprayoon (7 April 1992-24 May 1992)

This military regime began as a result of a *coup d'état* organized by the Supreme Commander and leaders of the army, navy, and air force calling themselves the National Peace Keeping Council (NPKC), the purpose of which was to overthrow the elected government of General Chartchai Chunnawan following accusations of massive levels of corruption, and was the last regime to be protested by mass demonstrations, the largest since the military's suppression of student protesters in 1973-1976.

Allegations of corruption in the outgoing government were rife and were supposed to have reached spectacular heights even for Thailand. General Suchinda described the government as democratic on the surface but riddled with the crony-capitalism of deposed Philippines president, Marcos. To substantiate this claim, the Council ordered all banks to disclose details of the accounts of a number of members of the previous

²⁴ Altemeyer, B, *Enemies of Freedom: Understanding Right-Wing Authoritarianism*, San Francisco and London: Jossey-Bass, 1988, at 107-108.

government, including the Prime Minister himself. It then set up a kangaroo court to assess the movement of wealth through the hands of those under investigation.²⁵

Having promised they would appoint a civilian government to govern the country, the leaders of the NPKC selected Anan Panyarachun to fill the post of prime minister. Fortunately, he had the wisdom to select men of integrity to join his cabinet. Notwithstanding, members of the NPKC (primarily composed of military leaders) sought to retain their hold on power. After a new constitution was drafted and an election held, a political party under the sponsorship of the military leaders gained the most popular votes and set up a coalition government. Unsurprisingly, the leader of the party refused to become the new premier and agreed to invite General Suchinda, the leader of the NPKC, to take the post. Suchinda accepted, after which anti-government demonstrations began almost immediately. The demonstrations lasted for more than a month and led to many confrontations between the demonstrators and the military. Finally, the Prime Minister declared a state of emergency and ordered the military to suppress groups of demonstrators resulting in much bloodshed. It took King Bhumibol's intervention to save the country from further massive disruption. After only 47 days in the premiership, Suchinda resigned, following which parliament selected former Prime Minister Anan to head an interim government whilst a new election was arranged. Such comprised the last attempt of a military leader to seize political control of Thailand.

Significant evidence linking the successful *coup* to an understanding of Thai authoritarianism can be found in the honeymoon period following the seizure of power from the elected government as a consequence of the allegations of corruption which many Thais believed. As such, this segment of society welcomed military action and congratulated the 'hero' for rescuing them from an oppressive power, again demonstrating the high capability of Thais to submit to authoritarian power.

General Prayut Chanocha (22 May 2014-present)

Over the last few years, political conflict in Thailand has increasingly expanded in scope and violence. As such, a large number of people have been affected by conflict situations. When the military staged the *coup* in May 2014, they insisted force was necessary to stop such confrontations but this did not mean the end of political conflict. While not immediately obvious, for many, the effects of the violence continue to linger. Moreover, excessive use of the military and security forces to maintain peace and stability has further worsened the situation. Thus, it is possible that although currently latent, political conflict, if nurtured by enough anger, hatred, hostility, and fear, could once again explode. Additionally, the attempt at reconciliation by the National Council for Peace and Order (NCPO), which was formed after the 22 May 2014 *coup*, seemed undefined as it failed to promptly identify conflicted parties.²⁶

²⁵ Cooper (see note 4 above), at 341.

²⁶ Pindavanija, E, et al, 'Social healing factors and process that lead to reconciliation and forgiveness: The studies of Thailand socio-political violence conflict over a decade' Panel papers: Conflict transformation

The NCPO began exercising its power in much the same way as many other authoritarian regimes. The 2007 Constitution was terminated and replaced by the 2014 Interim Constitution which was active between 2014-2017. Article 44 has been criticised for allowing the NCPO to exercise absolute power constitutionally. Indeed, even after the 2017 Constitution was enacted, a transitional provision still permits the NCPO to exercise its power under Art 44 until a new cabinet assumes office. As stated by iLaw (an NGO monitoring human rights violations in Thailand) in 2017, more than 200 NCPO orders have been issued under Art 44 of this interim constitution, and most of them will remain active long after dissolution of the NCPO.

During General Prayut's five year authoritarian regime, human rights violations have risen to a peak, with numerous political opponents, democracy activists, human rights activists, academics, and villagers complaining of intimidation. Likewise, strategic law suits are commonly used by the security forces to combat public participation with many civilians charged and brought before military, rather than civilian, courts. Such individuals are seen as troublemakers by the regime. Simply put, in today's Thailand, the rule of law seems to have lost its place as repeatedly social mechanisms are forced to submit to the wishes of the powerful. In other words, authoritarianism is once again burgeoning in the country. The struggle under this authoritarian environment, which has affected many generations of Thais, shares certain roots and characteristics. Although the technology may have changed, the mentality of Thailand's leaders, despite some social, economic and political differences, remains tied to the cultural conventions of authoritarianism which will be discussed later.

From toleration of the abuse of power to authoritarian submission and conventionalism

To understand the characteristics of authoritarian regimes, it is necessary to reveal their shared values and behaviours and to classify these characteristics into groups. Accordingly, this article identifies nine such factors as seen in Table 1 below: (1) sources of power; (2) accession to political power; (3) claims of legitimacy; (4) taking of benefits; (5) maintaining power; (6) emphasis on the importance of people; (7) abrogation of human rights and freedoms; (8) control of social mechanisms; and (9) authoritarian submission to power.

The above characteristics of authoritarian regimes are mainly based on the theories of Altemeyer who argues that authoritarianism can be nurtured in all types of society. However, the degree depends on three key factors, namely, aggression, submission, and conventionalism. For example, some authoritarians exercise aggressive authority to achieve a particular target and will therefore not shirk from utilizing it. Altemeyer defines 'right-wing authoritarianism' as follows:

across socio-political divides, *13th International Conference on Thai Studies, 'Globalized Thailand?' Connectivity, Conflict, and Conundrums of Thai Studies*, Chiang Mai, Thailand, 15-18 July 2017.

- (1) Authoritarian submission – a high degree of submission to the authorities who are perceived to be established and legitimate in the society in which one lives.
- (2) Authoritarian aggression – a general aggressiveness, directed against various persons, that is perceived to be sanctioned by established authorities.
- (3) Conventionalism – a high degree of adherence to the social conventions that are perceived to be endorsed by society and its established authorities.²⁷

According to Altemeyer, this type of authoritarianism is not limited to the right-wing for such examples can also be found in left- and no-wing political camps.²⁸ Consequently, authoritarianism can be seen to exist in the very nature of mankind regardless of political belief. Generally, submission to authoritarianism emerges from early childhood and is nurtured throughout one's lifetime experiences both in society and the wider environment. From the outset, parental influence is apt to be the greatest influence on a person's life, and understandably, parents do not typically encourage their young children to scrutinize the dictates of authority. Thus, in most families, children are simply taught to obey legitimate authority unquestioningly or face punishment. Moreover, the other determiners of attitudes to the young (for example, teachers and extended family) usually reinforce this 'reflexive' submission. Subsequently, children might be expected to believe uniformly that they should obey authority figures. While conventionalism may vary more, depending on the content of teachings and the lifestyle of local authority figures, young children, with limited cognitive abilities and experience, typically hold conventional attitudes.²⁹

Altemeyer also argues that a person's cognitive perspectives toward submission to authoritarianism continue from childhood throughout one's lifetime. As such, society and one's environment play a significant role in shaping, understanding, and accepting authority. The various strong influences people experience comprise major factors in the development of authoritarian submission. For example, in many cases, religion is one of the most significant influences on an individual's life. Although it has not yet been proven that the religious are more likely to submit to authoritarianism, religions do often issue strong edicts and demand obedience which could engender certain attitudes correlating to a person's likelihood of submitting to authoritarian rule.³⁰

With the current situation in Thailand, especially the past five years under the military ruled government, saving the country from disastrous political failure has become a task of heroes. And, it is the armed forces which have been charged with rectifying the situation. Thus, the public's belief and trust in the military's good motives might be more of an indication of its success than its use of arms. The 'good' here refers to the merit

²⁷ Altemeyer (see note 24 above), at 2.

²⁸ Altemeyer (see note 24 above).

²⁹ Altemeyer (see note 24 above), at 56-57.

³⁰ Altemeyer (see note 24 above).

it holds as regards social status, and also its linkage to the pillars of the nation, namely, nationhood, religion (Buddhism), and the monarchy of which the military seems to be the protector. Such connections are the reasons behind its invisible legitimacy and justify its use of excessive power. Following this line of thought, staging a *coup d'état* does not violate the population's basic rights but rather secures them under the aforementioned pillars. The righteousness of such behaviour becomes a collective norm when repeated many times over multiple channels of communication.

One fundamental mechanism affecting people's development of authoritarian submission is education. As such, the relationship between instructors and pupils prompts respect for obedience and encourages agreement with particular ideas and certain textbooks. This system of education creates more of a tendency to accept authoritarianism than classes allowing teachers and students to discuss a variety of ideas and utilizing other textbooks. Thus, the cognitive processes developed as a result of the formal education system will tend to mould a particular perspective which will in turn affect a student's future social behaviour.³¹

Similarly, the first act of many military juntas is to take control of the media and establish special task forces to control the flow of information especially to target possible opponents. This is particularly significant because controlling the means of communication directly affects people's perceptions of the regime's actions. For example, photos of well-wishers distributing roses to the military during the period of the 2014 *coup* abound in Thailand. In addition, authoritarians spread fear in society by limiting the freedom of expression of those holding different values who may also be subject to severe punishments.

The cognitive process, which includes the utilization and consumption of news and media, plays a vital role in shaping public perception. In the event the media reports false information or is government-controlled, the populace's perception of information may lead them to submit more willingly to authoritarianism. In other words, public opinion regarding politics, economics, and social issues could be strongly influenced by media-released information.³²

The above offers a basic explanation of the relationship between public perception and the likelihood of submission to authoritarianism, as well as the influence of learning procedures on fundamental beliefs. This may be one reason why Thais tend towards the submission of authoritarianism. Further exploration of authoritarian aggression will now be discussed, first by examining Altemeyer's 1988 definition of the term.

Such aggressiveness could lie in a willingness to cause someone harm, either by physical injury, psychological suffering, financial loss, social isolation, or some other negative

³¹ Altemeyer (see note 24 above), at 56-57.

³² Altemeyer (see note 24 above).

state. Aggression may be deemed authoritarian when it is accompanied by the belief that established authority, at least tacitly, approves it or that it will help to preserve said authority. While this general aggressiveness appears in numerous contexts and situations, it may not necessarily apply to all.³³

The fear mentioned earlier emanates from the consequences meted out to those refusing to obey the rules laid down by authority. For example, physical abuse may be applied to non-conformists as an example to the public to reduce resistance to an authoritarian regime's unlawful actions. Altemeyer also elaborates on the authoritarian aggressiveness normally experienced in an average person's lifetime as follows. The perception of authoritative approval, either accurate or mistaken, extends beyond individual authorities (such as a police chief who is believed to sanction the beating of prisoners) to vaguer and greater powers (a government wishing to silence demonstrators or a god wanting to punish sinners). In addition, citizens who endorse police attacks on suspects and nonviolent demonstrators may also be deemed aggressively authoritarian, even though they may only have expressed approval or demonstrated a willingness to see victims harmed.³⁴

Whether governments are formed by election or the illegal seizure of power, there is generally a tendency for the public to participate in the stream of authoritarianism either by abusing others or by being on the receiving end of such abuse.³⁵ In other words, the exercise of abuse of power is easily learned and may quickly become the norm, eventually becoming part of society's collective values. This can be seen in the way many academics practice self-censorship in authoritarian regimes.

Under such administrations, the use of and submission to excessive abuses of power may clearly be justified by the terms, security and stability. Those who think otherwise will be labelled troublemakers and may be condemned or eliminated for the betterment of society. However, even in democratic societies, the seeds of authoritarianism could still be nurtured by, for example, ignoring the essence of human rights. Thus authoritarianism can even be nurtured in countries identifying as democratic. To summarise, in every society, some individuals will have a tendency to submit to authoritarianism, while others may develop high levels of authoritarian aggressiveness to the point where they believe society should be governed by essential force including using violence against those holding different beliefs.

Authoritarianism in Thai politics

Defining the scope of authoritarianism in Thailand depends on how one defines the word. This chapter has already discussed several characteristics of authoritarian dictators

³³ Altemeyer (see note 24 above), at 106.

³⁴ Altemeyer (see note 24 above), at 106.

³⁵ Altemeyer (see note 24 above).

in Thailand to explain both the similarities and differences to the term in general. The broader meaning of ‘authoritarianism’ as it applies to Thailand is defined as follows: (1) Thai society has been nurtured in an authoritarian environment since the nation took shape; (2) Society’s perception of authoritarianism occurs under the influence of cognitive processes shaped by religion and political education (in the form of hierarchical structures); and (3) Thai authoritarianism manages to convey the illusion of a democratic-like society whilst simultaneously allying with the elite to secure power.

Table 1: Characteristics of a Military Dictatorship³⁶

Characteristics	Military Dictatorships
Source of power	<ul style="list-style-type: none"> • Armed forces • Controls major military mechanisms
Accession to political power	<ul style="list-style-type: none"> • Seizes power by coup d’etat • Wins democratic-like election using dirty methods (such as intimidation)
Claims of legitimacy	<ul style="list-style-type: none"> • Abrogates the constitution • Establishes/utilizes martial law • Drafts a new constitution according to the leader’s commands • Gives excessive power to the military leader by means of the constitution
Taking of benefits	<ul style="list-style-type: none"> • Government projects utilize business connections and are rife with corruption • Benefits considered overheads of government budgets • Lack of knowledge in managing assets (external expertise required) • Assets-taking is uncomplicated and easily traced (but is not)
Maintaining power	<ul style="list-style-type: none"> • Mainly utilizes military support • Exercises excessive power to suppress opposition • Uses threats to suppress demonstrators and troublemakers

³⁶ Modified from Pindavaniya, E, *Thai Social Transformation Under the Influence of Capitalism*, Inter-European Doctoral dissertation, Universitat Jaume I, 2009, at 303-307.

Characteristics	Military Dictatorships
Emphasis on the importance of people	<ul style="list-style-type: none"> • Uses analogy of a ‘family’ with the leader as ‘father’ and the people (or followers) as his ‘children’ • People considered dependants of paternal patronage • Military leader plays role of father to people who, like children, have a duty to follow his orders
Abrogation of human rights and freedoms	<ul style="list-style-type: none"> • Elimination of troublemakers • Elimination of demonstrators and social activists supported by opponents
Control of social mechanisms	<ul style="list-style-type: none"> • By force and threats • Use of aggressive laws to instil fear in the population
Authoritarian submission to power	<ul style="list-style-type: none"> • Leader is portrayed as a hero and saviour in local novels so is therefore obeyed • Belief in excessive power (‘father’ should be given more power to maintain the ‘family’)

Thai authoritarian regimes have much in common with other similar governments in the world – for example, all seized power by force. Indeed, Thailand has experienced thirteen successful *coups* since 1932, all of which succeeded due to military involvement. As mentioned earlier, the number of successful *coups* in Thailand far outnumbers that of other Asian nations, and one reason for this could be the authoritarian environment in which Thais are nurtured. As a former Australian Ambassador to Thailand, James Wise, put it in 2019:

*You are constantly interacting with other people, and gauging what level you are, and what level they are. You are doing it all the time, like how to address a person, like whether you need the politeness marker or not, how courteous you have to be to them, how low you have to bow when you walk in front of someone. Everyone does it automatically, and they really don't think about it.*³⁷

The above environment nurtures a certain unawareness in perception that allows or even encourages Thais to submit to authoritarian structures. Thus, the cognitive process becomes a justified belief, and eventually a norm. And once it is justified and practiced through generations, such beliefs and norms will become an absolute truth. Authoritarians use these kinds of norms to identify ‘good’ citizens, defined as those who obey their orders. Accordingly, individuals who value democracy and freedom may

³⁷ Wise, J, *Thailand: History, Politics and the Rule of Law*, Singapore: Marshall Cavendish International, 2019, at 113.

likewise be labelled troublemakers. Such are the reasons why there is little resistance when military forces seize power from elected governments in Thailand.

The historical characteristics of Thailand's hierarchical society that influence and shape its political environment can be traced back to the Sukhothai era (1239-1438) during which "Dhammaraja" was considered to be the principle value of the court of Siam, and the Ayutthaya era (1350-1767) which was marked by "Devaraja" (translated as "Lord of Land" or "Lord of Life") as the principle value underlying its "Palace Law."³⁸ Both concepts form the basis of the hierarchical structures governing the ideology of authoritarianism in Thailand today.

Moreover, when political structures influence social mechanisms, such as religious education systems, acceptance of authoritarianism is even more likely. In Thailand, Buddhism (the country's principal religion) has a similar structure to the political domain in that both educate the masses through teaching and practice and both emphasise the importance of hierarchical structures and authoritarian principles.

Philosophically, the notion of hierarchy was built on karma and results in a deeply held conviction that one's social status is determined by the merit accumulated in previous lives, or in one's current life. Under traditional Buddhist cosmology, karma "gives order and regularity to the universe much as Newtonian laws of Western science give order and regularity to the physical universe." In addition, karma "informs behaviour in a way that makes hierarchical social relations seem normal, natural, and rational." Further, "the primary goal of politics is to contain as many people as possible in a single hierarchy. This validates the karmic superiority of officials, and ultimately of the king." Accordingly, the king has the most karma, owns all the land and, critically, all the manpower.³⁹

When karma is conceptualised in an individual's social status, the ramifications appear beyond human explanation and continue beyond one's lifetime. Much is in the hands of those controlling the religious domain and therefore religious teaching. For example, Thailand's class structure is based on a historical emphasis on hierarchical structures which exuberantly nurtured authoritarianism such as the status of *chao* (members of the royal family), *nai* (feudal lords), *phrai* (commoners or *corvee*), and *that* (slaves). Indeed, this structure still influences Thai society today. Furthermore, it is vital to remember that these statuses were, at some point, related to the merit each person accumulated in his/her past lives, and as such are predestined even before birth.⁴⁰

Finally, aside from the cognitive processes engendered through generations, social structures such as patron-client systems, and especially paternal patronage, play a significant role in forming alliances to authoritarianism in Thai society. Arguably, without

³⁸ Wise (see note 37 above), at 115.

³⁹ Wise (see note 37 above), at 118-119.

⁴⁰ Pindavanija (see note 36 above).

a hierarchical social structure, such adherence would be far less acceptable to all the classes. Moreover, the leader of the regime would not be able to maintain his or her position without the support of others generally deemed the elite (often referred to in the collective as an elite coalition, support group, leadership group, or winning coalition). The term ‘elite’ has many different connotations but in this context refers especially to an individual who is part of the leader’s support group. Consequently, the leader’s tenure is contingent on the backing of this group. By contrast, the masses comprise ordinary citizens living under an authoritarian regime, at least some of whose support the regime will also need to remain viable.⁴¹

It can therefore be seen that the military’s seizure of power in 2014 falls squarely under the category of authoritarians who acquire power by force (see Table 1 above) and who must also maintain stability by creating support networks involving elite groups, while simultaneously providing sufficient political and economic capital to other supporters. While elites are vital to a regime’s longevity, ordinary citizens who support the administration also play a part. Opposition groups will invariably fare less well with abuse of power, human rights violations, and the use of illegitimate laws increasingly utilized. For example, this can be seen in the regime’s support of certain political parties in Thailand’s recent general election (March 2019) at the expense of their opponents.

Thus, it becomes clear that Thai people have been living in an authoritarian society for generations, leaving many unaware of just how it has shaped their lives. Indeed, it could be said most Thais feel a certain familiarity with authoritarianism. However, the majority fail to recognise these attitudes were nurtured by their environment and are not the result of nature or an absolute unchangeable truth. Hence, questioning the system and one’s own behaviour might help Thais to escape the confines constructed in previous generations.

Conclusion

The path of authoritarian regimes in Thailand is complex and has been nurtured throughout its development as a nation state. At its current crossroads, it is debatable which direction the country will take as the divisions run deep. The authoritarian aggression of those in power will only cause more divisions in Thai society, their actions serving to further implant hatred, fear, and hostility, especially as past experience has shown that repressing individual rights has a tendency to breed violence. While it is disappointing that Thais have not yet realised the most effective way to prevent violence is through democracy, it may be that the people will have to rise above their comfort zones in order to hear the voices of others – only then will the way be paved for a more resilient society.

⁴¹ Frantz, E, *Authoritarianism: What Everyone Needs to Know*, New York: Oxford University Press, 2018, at 21.

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THE MEDIA AND AUTHORITARIANISM IN THAILAND AND BEYOND*Pravit Rojanaphruk***Introduction¹**

As ASEAN celebrates its 51st anniversary in August 2018, it is questionable whether freedom of expression and press freedom can ever become part of its values. Looking around, the signs are not very promising. According to the 2018 World Press Freedom Index, all ASEAN member states rank poorly straggling at the bottom third of the list.² Of the 180 countries included, Indonesia is ranked 124th while the Philippines lags behind at 133rd. The rest of Southeast Asia fares even more poorly with Myanmar at 137, Juntaland-Thailand at 140, Cambodia at 142, followed by Malaysia at 145, Singapore at 151, Brunei at 153, and Laos at 170. At 175, Vietnam (where the press is state-owned and political bloggers are routinely arrested) ranks just two places above Syria. The poorest performing country, according to the Paris-based organization, is North Korea at 180. As Los Angeles Times journalist, David Lamb, put it:

In other developing countries where I'd worked, local journalists often turned out to be my best sources of information and most useful contacts. Vietnam was different. Reporters, who were licensed by the government, generally had chosen journalism because they wanted the security of a state job, not because they were curious about the world around them or had a calling to pluck a kernel of truth from a sack of lies.³

Lamb added that when he asked a reporter what her idea of a good story was, the journalist replied, "A story that is in harmony with the people."⁴ He concluded, "Like her colleagues, she had bought the official line that to question or criticize was to undermine the spirit of nationalism."⁵

In Cambodia, strongman, Hun Sen's long rule is casting an even longer shadow on the press and freedom of expression in general. Sebastian Strangio, a former reporter and editor at the Phnom Penh Post, put it this way:

As Hun Sen's power grew and violence receded, the opposition Khmer-language press was brought to heel in the courts, where accusations of defamation or incitement were leveled by powerful people and then rubber-stamped by pliant judges.⁶

¹ Much of the following section is adapted from an article published by the author in Khaosod English: Rojanaphruk, P, 'Can ASEAN netizens guarantee greater freedom of expression' Khaosod English, 25 August 2018, available at <http://www.khaosodenglish.com/opinion/2018/08/25/can-asean-netizens-guarantee-greater-freedom-of-expression/>, accessed on 23 July 2019.

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

³ Lamb, D, *Vietnam Now: A Reporter Returns*, New York: Public Affairs, 2002.

⁴ Lamb (see note 3 above).

⁵ Lamb (see note 3 above).

⁶ Strangio, S, *Hun Sen's Cambodia*, New Haven and London: Yale University Press, 2014.

He went on:

With no chance of winning, the threat of jail or insurmountable fines fostered self-censorship and, by 2010, had forced the closure or co-optation of most significant opposition outlets.

In September 2017, after two decades, the Cambodia Daily finally shut down as a result of political pressure. Of this, Thomas Beller of *The New Yorker* wrote:

The days ticked down to the Monday, Sept 4 deadline. There were many news items about the threat to the Daily and the authoritarian turn away from democracy. On Sunday, Sept 3, the leader of the opposition party was arrested in the middle of the night, charged with treason, and taken to a remote prison.

The following edition of the paper carried the headline “Descent into Outright Dictatorship,” above the fold. At the bottom was an article titled “Cambodia Daily Faces Immediate Closure Amidst Threats.”⁷

That was the last issue. The closure was to be prophetic, for by May 2018, the Phnom Penh Post was sold to pay a mounting tax bill to a new owner, Sivakumar Ganapathy, which led to the firing and resignations of several senior journalists. A BBC news story described the sale as coming “amid an increasing crackdown on independent media outlets”⁸ while Reporters Without Borders accused the Hun Sen government of launching “an all-out war on independent media outlets with the aim of ensuring victory in the general elections scheduled for July.”⁹ However, the government denied this, adding that the sale was a normal business transaction. Similarly, the Philippines’ vibrant media must do their work knowing that local journalists are often the targets of assassination attempts. And in Indonesia, god continues to be a taboo topic. Accordingly, it appears ASEAN values are more often about non-interference and consensus rather than critical expression. The question is can disruptive technologies such as social media be a boon for press freedom and freedom of expression in ASEAN? It is possible the spread of social media is already making a difference, particularly if used responsibly.

In Thailand, critical discussion of certain topics, such as the monarchy, is largely untouched by the majority of mainstream media. As such, discussion has moved to social media which tends to bypass self-censorship despite the risks of being charged with *lèse majesté* and/or breaching the Computer Crimes Act. While a few may have been arrested, their compatriots on social media have continued to spread the word. The same is true of Vietnam where control of the traditional press has become increasingly irrelevant as younger generations seek to learn about their country’s politics and society

⁷ Beller, T, ‘The devastating shutdown of the Cambodian Daily’ *The New Yorker*, 12 September 2017, available at <https://www.newyorker.com/news/news-desk/the-devastating-shutdown-of-the-cambodia-daily>, accessed on 21 July 2019.

⁸ ‘Phnom Penh Post: Firing and resignations after sale of Cambodian daily’ BBC News, 7 May 2018, available at <https://www.bbc.co.uk/news/world-asia-44027032>, accessed on 21 July 2019.

⁹ BBC News (see note 8 above).

through the internet and social media. This, despite the arrest of vocal bloggers. Although 10 journalists continue to be detained as of October 2018, according to the New York-based, Committee to Protect Journalists (CPJ), influential Vietnamese blogger, Nguyen Ngoc Quynh (aka Mother Mushroom)—who was arrested in 2016 for defaming Vietnam’s Communist Party by blogging about human rights and industrial pollution—was unexpectedly released in October 2018 despite being sentenced to 10 years in prison. This example shows the power of social media users as citizen journalists and commentators and the importance of continued pressure by western nations and international organizations like Amnesty International and the CPJ.

In Myanmar, however, the ugly side of online freedom of expression can be seen in the form of anti-Rohingya hate speech. As such, Facebook has been used by netizens to spread hate and incite violence against the minority group. While few would argue that more and more people accessing censored information and instantly being able to talk to others in new public spheres is of vital importance, to use German philosopher, Jurgen Habermas’ term, it cannot guarantee that freedom of expression will advance and expand tolerance. Instead, such freedom could result in people becoming trapped in the respective ghettos of their own narrow-mindedness, speaking only to like-minded people, and virtually trapped in a cyber world where everyone shares the same political or social views instead of learning and conversing with those holding opposing views.

Other naysayers include Stanford academic, Larry Diamond, who while in Bangkok to give a lecture at Chulalongkorn University in August 2018, argued that the spread of social media leads to polarization, because: (1) a common media space with established mass media as gatekeeper and filter to ensure civility and factuality is removed; (2) the decline of transitional press denotes a loss of a common public sphere; (3) opinions are merely reinforced through “echo chambers”; (4) outrageous and extreme posts go viral; and (5) it empowers extreme views. In other words, intense opinions and less tolerance leads inexorably to polarization. Notwithstanding, the rise of social media and its challenges is a reality that will not go away.

While social media is akin to a new public sphere, on the positive side, across Southeast Asia, citizens have been using the medium, mostly via smartphones, to increasingly connect with others and to bypass state censorship, restricted press, pro-government media, and state-generated propaganda. The proliferation of the use of social media, particularly the popularity of Facebook, Twitter, and Line means Southeast Asians are more connected than ever and hegemonic discourse in various member ASEAN states is increasingly being challenged if not undermined.

Statistics point to the birth of a hard-to-control and hard-to-censor new public sphere which will likely grow ever larger and become more influential in the region especially as many countries in Southeast Asia, such as Thailand, the Philippines, Indonesia, and Vietnam, are among the most prolific social media users in the world.

The attempted restriction of social media

ASEAN member states have not merely been passively watching the explosion of social media, however. On the contrary, they have been trying to rein in freedom of expression on the new medium under the guise of protecting national security, harmony, and eradicating so-called “fake news.” As such, different ASEAN countries have imposed different kinds of restrictions. In Thailand, for example, the Computer Crimes Act outlaws introducing anything deemed “false” information into the computer system and could lead to a criminal charge and a maximum sentence of five years. Likewise, in Malaysia, an anti-fake news law was rushed through parliament and passed in April 2018 before the general election and was the first such law in ASEAN. However, Mahathir Mohamed’s new government repealed it in 2018.

In the Philippines, the Social Media Regulation Bill is currently being discussed as of 2018. If passed, it may require social media companies to verify the real identity of users before registration in order to prevent the creation of fake accounts to spread fake news. On the other hand, such a move could also violate the privacy of users and discourage others from expressing their political views freely for fear of possible negative repercussions.

As of October 2018, Thailand’s Cyber Security Act is being debated by the junta-appointed rubber-stamp parliament. If passed, it may enable the state to confiscate computer hardware without a court order to protect cyber security and national security. The 2016 amended Computer Crimes Act already stipulates a 5 year maximum prison term for any offender introducing false information into the computer system, and was often used in tandem with the *lèse majesté* law under military rule. The latter, together with the sedition law, protects the monarchy from defamation and incurs a maximum sentence of 15 years. Sedition carries a maximum of 7 years’ imprisonment.

Similarly, Laos saw the passing of the Cyber Crime Law in 2015 which criminalized the spread of false and misleading information. In Cambodia, freedom on the internet is suppressed by sedition and defamation laws. However, as of 2018, a Personal Data Protection Bill is also being drafted. In Vietnam, the National Assembly passed the Cyber Security Law in June 2018 to strictly regulate cyberspace in the name of protecting national security. Accordingly, attempting to mobilize people on social media against the government has been outlawed. Thus, internet companies operating in Vietnam can be forced to provide the personal data of internet users. Moreover, these laws are often used in tandem with the penal code to prosecute internet crimes including Art 258 which forbids the abuse of freedoms to “infringe upon the interests of the state,” and Art 88 which forbids the spread of anti-state propaganda.

Even ASEAN as an entity has attempted to rein in freedom of expression on social media. Malaysia-born, James Gomez, chair of the Asia Centre, notes that ASEAN drafted a fake news declaration without mentioning state propaganda. Gomez sees the

latest move by ASEAN, which was made in a declaration on 10 May 2018 by ASEAN ministers responsible for information, as a deliberate attempt to neglect “the harmful effects of partisan propaganda of the member States.”¹⁰ He said:

*[G]overnments in the region, even before the days of the internet, have historically been the purveyors of “fake news,” which includes partisan propaganda. They are the ones rolling out one-sided agenda-setting and socialization programmes via state-owned media fenced in by a highly regulated media environment.*¹¹

Gomez also rightly argued that the

*ability of ASEAN governments to monopolistically peddle this one-sided propaganda changed with the arrival of the internet into the region in 1995. It spawned web-based chat rooms or forums, mailing lists, alternative news sites and online advocacy groups that collectively challenged partisan state propaganda and delivered alternative economic, political and social narratives.*¹²

Moreover, Gomez claimed the declaration affirmed that member states agreed to share policy experiences related to social media, promote media literacy and public awareness, whilst also adopting laws and regulations for their respective nations to minimize the harmful effect of fake news. He added that the proposed framework also planned to use civil society groups to run media literacy campaigns and mobilise citizens to proactively report fake news to enable governments to clarify their positions. In reality, Gomez concluded that the ASEAN joint declaration on fake news was “an attempt to determine what is true and what can be widely disseminated. However, that duty belongs to all the citizens, no matter how much governments try to scuttle citizens’ search for the truth.”¹³

This is particularly apparent now social media has become the new and latest battleground for freedom of expression and press freedom as more citizens take to social media to express themselves with some even becoming ‘influencers.’ At the same time, traditional media is also increasingly going online and becoming more dependent on social media platforms to maintain if not spread their influence.

Press freedom and freedom of expression in Thailand

The May 2014 military *coup* in Thailand had the effect of dragging the country deeper into a cycle of censorship: self-censorship for the press and restricted freedom of expression for ordinary citizens. Immediately after the *coup* which ousted the Pheu Thai government, soldiers were dispatched to “guard” major television stations. Further, the military issued an order banning criticism of the junta by the press, political assemblies of five or more people, and politicians, while critics of the *coup* (including academics and journalists)

¹⁰ Gomez, J, ‘ASEAN’s fake news declaration neglects state propaganda’ Asia Centre, 15 August 2018, available at <https://asiacentre.org/asean-fake-news/>, accessed on 21 July 2019.

¹¹ Gomez (see note 10 above).

¹² Gomez (see note 10 above).

¹³ Gomez (see note 10 above).

were ordered to report to the government where they were detained for up to seven days without charge in a program euphemistically designed to engender “attitude adjustment.”

As a result, Paris-based, Reporters Without Borders, described Prime Minister Prayuth as a “predator of press freedom” in 2015.¹⁴ The past four years since mid 2018 (which is the time this article was penned) have seen an increasing militarization of Thai society, marked by the imposition of junta orders lacking accountability and prioritizing superficial peace and order. This is reflected in the official name of the junta – the National Council for Peace and Order (NCPO). However, the peace and order are superficial and even *ersatz* because its semblance is achieved through repression, including any voices of dissent. Even on social media platforms such as Facebook, some of those mocking junta leader cum Prime Minister Gen Prayuth Chan-ocha have been charged with sedition and violations of the Computer Crimes Act (e.g. the so-called Facebook Eight¹⁵).

On the militarization of Thai society, Bangkok Post columnist, Sanitsuda Ekachai, pointed out several issues including: the relentless threats and detention to silence critics; the indoctrination of Thailand’s children utilizing elementary school and even kindergarten military training all of which stress conformity whilst blaming parents for being weak; and the promotion of ultra-nationalism and an authoritarian school culture.¹⁶

As this author wrote in an opinion piece entitled, “Thailand is turning into Juntaland – And we are resisting,”¹⁷ deep down, Thailand’s military junta leaders are probably aware of their illegitimacy. As such they have become increasingly paranoid and repressive and now crackdown against any form of resistance, both on- and offline. On 30 March 2016, the self-styled NCPO, having robbed millions of their rights, also denied me permission to travel to Helsinki to attend the UNESCO-organised World Press Freedom Day. Colonel Piyapong Klinpan, one of the junta spokesmen, was quoted as saying, “He still keeps posting [online] and attacking the work of the NCPO,” and “[h]e keeps violating the orders of the NCPO in many ways, so his travel is not approved.” As such, the right

¹⁴ Ismail, B, ‘Media hounded by junta since 2014 coup’ Reporters Without Borders, available at https://www.reporter-ohne-grenzen.de/uploads/tx_ifnews/media/Bericht_Thailand_RSf.pdf, accessed on 23 July 2019.

¹⁵ Natthika Worathaiyawich, Harit Mahaton, Noppakao Kongsuwan, Worawit Saksamutnan, Yothin Mangkhangsanga, Thanawat Buranasiri, Supachai Saibut, and Kannasit Tangboonthina were charged with sedition under Art 116 of the Penal Code for being involved in the making and dissemination of comments on the parody Facebook page “We Love General Prayut.” See, “Thailand: 8 charged for mocking junta leader on Facebook’ Human Rights Watch, 9 May 2016, available at <https://www.hrw.org/news/2016/05/09/thailand-8-charged-mocking-junta-leader-facebook>, accessed on 23 July 2019.

¹⁶ Ekachai, S, ‘Militarization of Thai society after 2014 coup’ Bangkok Post, 22 June 2017, available at <https://www.bangkokpost.com/learning/learning-news/1273529/militarization-of-thai-society-after-2014-coup>, accessed on 23 July 2019.

¹⁷ Much of the following section is adapted from an article published by the author in The Guardian: Rojanaphruk, P, ‘Thailand is turning into Juntaland – and we are resisting’ The Guardian, 5 April 2016, available at <https://www.theguardian.com/commentisfree/2016/apr/05/thailand-juntaland-military>, accessed on 23 July 2019.

to freely travel outside Thailand has been taken away from me and I was detained without charge in secret locations for a total of 10 days in May 2014 and September last year. Before being released I had to sign, under duress, a “memorandum of understanding” saying that I would seek the junta’s permission before leaving the kingdom.¹⁸

Other conditions included agreeing not to participate, aid, or lead an anti-junta movement. If these conditions were not maintained, the junta reserved the right to freeze all my bank accounts and prosecute me. It must be stressed that nothing in the agreement forbade me from scrutinising and criticising the military dictatorship and this is one condition I will never agree to. And I have been criticising them continually for nearly two years now since the *coup*, both through my work as a journalist and on Facebook and Twitter.¹⁹

This is what happens to Thai journalists who refuse to accept the military junta’s legitimacy. Accordingly, when Prayuth joked that journalists opposing him should be executed, his logic was that he was accountable to no one because, unlike elected politicians, voters could not oust him from power. According to iLaw (a Bangkok-based human rights documentation centre), since the *coup* in May 2014, 900 people have been summoned by the junta for “attitude adjustment,” which in some cases, involved detention without charge for up to seven days. 1,886 civilians were or are being tried at military courts, 99 were charged with *lèse majesté* offences, 117 with sedition, and 421 were prosecuted for violating the junta’s ban on political gatherings of five or more persons.²⁰

I am not alone in resisting the militarisation of Thailand. Others refusing to silence themselves have also paid a price and more will continue to do so. Some face military tribunals while others have had their bank accounts frozen and/or their passports revoked. Despite the crackdown, many people are still trying to make their voices heard on social media because the pursuit of liberty is what makes us human as opposed to becoming the pets of a military dictatorship. This rebellious nature has led the junta to toy with the idea of building a firewall to censor the internet. In the end, the junta knows that its power rests not on legitimacy but in the barrel of guns and the threat of arbitrary detention. It is an attitude that is increasingly turning Thailand to Juntaland. That said, it must be pointed out that the decline in press freedom and freedom of expression in Thailand is not entirely the doing of the military.

More recently, the newly appointed Army Chief Gen Apirat Kongsompong declared in October 2018 that he could not rule out another *coup* (which would be likely orchestrated by himself) as a response to political unrest. Such a declaration is akin to hearing the head of security at a condominium saying he would seize control of the building if those paying his salary refuse to behave. Absurd as it may sound, it is argued that the

¹⁸ Rojanaphruk (see note 17 above).

¹⁹ Rojanaphruk (see note 17 above).

²⁰ Figures correct as of 21 May 2019. See, ‘Latest statistics’ iLaw, 21 May 2019, available at <https://freedom.ilaw.or.th/en/content/latest-statistic>, accessed on 23 July 2019.

Thai people should heed Apirat's words. After all, in the Juntaland version of Thailand, *coups* are common. Indeed, one was led by his late father, Gen Suthorn Kongsompong, in 1991.

The Thai army is a state within a state and has staged a dozen 'successful' *coups* over the past 86 years since the 1932 revolt ending absolute monarchy. This roughly amounts to a *coup* every seven years so statistically speaking, since the most recent was four years ago, another might not be too far away. The concept of civilian supremacy is still rather alien in the country, not only among rogue generals but also among the media and public. Accordingly, Thai Post newspaper columnist, Pakkardhom, placed the blame on politicians when he wrote, "If politicians didn't cheat, soldiers wouldn't have an excuse to stage *coups*."²¹ As illustrated by a following comment to the journalists covering him, it is therefore no wonder Apirat feels he can rely on the press: "Army-beat reporters are like an army unit although you may wear civilian clothes."²²

Indeed, Apirat, like many *coup* makers in the past, resorted to the tried-and-trusted discourse of the noble altruistic soldier versus the self-serving politician when he said, "We are not politicians. We do not seek anything in return. We do not want people whom we helped to choose us."²³ Aside from presenting itself as free of vested interests, the military is also quick to cite its undying loyalty to the throne as can be seen from the following statement Apirat made during his first press conference as army chief.

*Some soldiers might have forgotten this, so let me remind them their supreme commander is the monarch. The army is a servant whose duty and heart are for protecting the monarchy. ... [T]he army will use all of its capabilities and capacity to defend the monarchy.*²⁴

Unlike politicians who claim a mandate from voters, the *coup*-maker's claim to alternative and, often parallel, legitimacy is two-pronged: first, the military is supposedly incorruptible unlike selfish politicians; and second, the institution is loyal to the monarchy unlike some politicians who have been painted as anti-monarchist. Under these two claims, the seemingly absurd act of staging a *coup* is made 'sensible' in the eyes of some Thais, and the army's mafia-like threats made acceptable if not actually palatable. It could be argued that Apirat's statements are at least more honest than junta leader, Gen Prayuth's utterings, who as army chief in the months leading up to the 2014 *coup*, repeatedly denied a *coup* was likely before initiating one. As such, Apirat is bold enough to be non-committal when it comes to accepting civilian supremacy over the military, thus laying bare the rogue nature of the Thai army.

²¹ As reported by this author in Rojanaphruk, P, 'Opinion: Understanding the Thai army' Khaosod English, 20 October 2018, available at <http://www.khaosodenglish.com/opinion/2018/10/20/opinion-understanding-the-rogue-thai-army/>, accessed on July 2019.

²² Rojanaphruk (see note 21 above).

²³ Rojanaphruk (see note 21 above).

²⁴ Rojanaphruk (see note 21 above).

It is unclear whether Thailand should welcome such candid admissions. At the very least, the words should serve as an advance warning to remind the world how far Thailand must go before it can truly relegate the army to its barracks. To return to a former metaphor, rogue generals are akin to condominium guards who have forgotten just who pays their salaries. They have also become too used to taking control of the building and are no longer content to remain mere security guards. Instead, they wish their employers to continue paying them whilst they, the employees, call the shots.

Reflecting on the role of the Thai press and its role in enabling the military dictatorship²⁵

At the 6th Thailand @Harvard Lecture in 2016, this author argued that the press cannot be truly accountable if it fails to analyse and question the current militarization of Thai society because such societies are antithetical to democratic and pluralistic societies. Journalists must try to hold the junta accountable despite the difficulty in doing so given its absolute power. Further, if media organizations refuse to question the militarization of Thai society and censorship, individual journalists who care about freedom and democracy should strive to do what they can as individuals.

A militarized view of the world denotes an attitude where those who think differently are seen less as a source of social and political enrichment and more as threats to be contained if not suppressed or even eliminated. The military values national security over human security and as such, a militarized society values the opinion of one army general over the voices of millions of its citizens.

On a personal note, the arbitrary nature of the junta's absolute power under Art 44 of the provisional charter was such as to deter this writer from announcing the Harvard lecture on social media prior to boarding the flight from Bangkok for fear the junta would forbid me from leaving. This despite a lifting of its ban on critics travelling abroad in June 2016. The question is, in the long run, what will become of a society addicted, if not jaded, to the repeated use of unaccountable absolute power?

The military method denotes a top-down command and is all about control – it most definitely does not support a horizontal participatory decision-making process through public debate and deliberation. Thus, the military regards those who disagree as being disobedient and sees such persons as a threat and potential, if not actual, enemy, rather than as a source of diverse views that enrich society. Without genuine freedom of expression for both the public and the press enabling debate and deliberation, society

²⁵ Much of the following section is adapted from the author's sixth annual Thailand@Harvard Lecture at Harvard's Kennedy School of Government on 20 September 2016 which was partly reproduced in Khaosod English: Rojanaphruk, P, 'Thai press must try to speak truth to military power' Khaosod English, 1 October 2016, available at <http://www.khaosodenglish.com/opinion/2016/10/01/thai-press-must-try-speak-truth-military-power/>, accessed on 23 July 2019.

can neither be democratic nor free. This is what, in my view, the Thai press must be responsible for at present.

In a militarized society, obeying and not questioning unaccountable and illegitimate orders is the norm. It is the opposite of democratic societies where people may debate and deliberate freely on what is best for society as a whole. Moreover, the military expects citizens to behave like soldiers, holding unquestioning loyalty to the commander and obeying his orders without a second thought. This, despite the fact, that junta leader Gen Prayuth was never elected by the people and has in fact robbed people of their electoral rights by staging the *coup*.

It is in such a context, which will at least last until February 2019 (the month Prayuth promised to hold elections) if not longer, that the Thai press must try to be responsible to the public and hold the military government accountable, no matter how daunting, by defending the little press freedom we still have left and continuing to resist the militarization of Thai society.

However, Gen Prayuth is not the worst of Thailand's military dictators. The country has seen far worse. For example, military dictators such as Field Marshal Sarit Thanarat, supported by the US during the Cold War, ordered political opponents executed and threw journalists in jail for years. Although Prayuth still holds absolute and arbitrary power, times have changed, and along with it, people's expectations of what the military can and should not do.

The same can be said of the press, which has become accustomed to relative freedom (minus the *lèse majesté* law which forbids any critical reporting or analysis on the monarchy). As such, the Thai press has accrued sufficient social and political capital to act relatively freely over the past few decades, and in the end, this writer argues they are unlikely to totally surrender to Prayuth's dictum; a number continue to scrutinize and criticize the general.

Absolute power is no longer absolute, for the world is increasingly borderless, particularly as regards information flow, and social media increasingly bypasses mainstream mass media's self- and state censorship. A good journalist is a permanent critic, ever inquisitive, sceptical, and committed to unravelling the complexity that is truth, freedom, and equality. Accordingly, journalists must speak the truth to the powerful or risk becoming irrelevant, and this includes speaking the truth, not just to politicians, but also to military power.

In societies under repressive rule such as Thailand, the true calling of journalism is therefore not just to report events but to also play a role in making society more free, reasonable, and equal. Consequently, it falls upon committed journalists to not just call a spade a spade when it comes to the limits of press freedom but also to confront the innate structural constraints of the press in presenting the complexities of reality.

Unfortunately, it is a fact that many Thai journalists actually support military rule. In a country where *coups* are common occurrences, the mass media are more than just victims of repression. All too often, they serve as admirers, supporters, collaborators, and even spin doctors for the junta. Instead of holding the *coup*-makers' feet to the fire, some media in Thailand serve to normalize what is an otherwise unpalatable, illegitimate, and anti-democratic regime. For example, the kingdom's best-selling tabloid, Thai Rath, often refers to the junta leader's dictatorial power under Art 44 of its provisional charter as *phisacet* (the Thai word for 'special'²⁶), which denotes a much more positive meaning than it holds in English. However, this writer would argue that there is nothing special about absolute dictatorial power. Instead, the proper adjective should be autocratic, illegitimate, or both.

Such practices may be subtle, but they're also insidious, as they influence uncritical readers into accepting the junta's power as normal, or even truly 'special.' Indeed, at one newspaper, by order of the editor, the term "military government" has effectively been banned. And one cannot deny that a number of newspapers effectively acted as *coup* apologists through editorials in the aftermath of the May 2014 *putsch*, as others did immediately following the 2006 *coup*. More blatant was the picture of many Government House beat reporters at a 2016 New Year party hosted by Thailand's junta leader-cum-prime minister, Gen Prayuth. Partaking in such a 'party' with the dictator was embarrassing enough, but photographs showed these reporters were elated, ecstatic and even flattered to be included in group selfies with the dictator.

Moreover, many of these young journalists later changed into schoolchildren's uniforms to greet Prayuth, mimicking the National Children's Day celebration, a move that caught some junta leaders by surprise. The photos suggest these young reporters were rather too cosy and comfortable with the military dictator.²⁷ One would expect these mostly young reporters to be embarrassed by such a *faux pas* but they were not. Indeed, a number of newspapers proudly published the photos with no hint of irony or self-awareness. By the same yardstick, one wonders whether it would be wise to entrust these journalists to scrutinize the dictator and his regime. Cosying up to power has, unsurprisingly, not brought any benefits to the public or the state of Thai journalism.

Barely a week has passed without some scandalous photos being flaunted by the media. Accordingly, the junta's appointed charter drafters proposed writing media censorship into the next constitution, to be enabled whenever a state of emergency or martial law is invoked, thus extending such powers beyond the current junta's lifespan.

²⁶ The word "special" is used in the context of special occasions, special prices, or special editions.

²⁷ The photograph is available to view at <https://twitter.com/zenjournalist/status/685500778279079936>, accessed on 23 July 2019. The writer recalls an incident during which a foreign correspondent and former president of the FCCT expressed astonishment at the pictures of journalists dressed as school children which he described as "amazing."

However, young reporters cannot entirely be blamed for being too chummy and clueless with a dictator when some of their seniors, including two past presidents of the Thai Journalists Association (the kingdom's premier reporter's guild) openly collaborated with the current military regime. For example, soon after the *coup*, Pradit Ruangdit (then sitting president of the association) accepted appointment to the now-defunct National Reform Council to, he said, defend journalists' interests. Still working hard for the junta is Phatarakhamphitak, another former president of the association, who is currently a member of the junta-appointed Constitution Drafting Committee.

Given the wide range of collaboration, support, and outright admiration between a substantial number of media organizations and journalists with the military junta, it would therefore be wrong to say the Thai media were victims or opponents of the *coup* makers. Indeed, some were willing to be co-opted in exchange for political appointments as mentioned above. Therefore, while some may have censored themselves out of fear, others did so to support and express admiration for military rule. Other sections of the media support Prayuth as the lesser of two evils (the second evil being the Shinawatras). Yet others have simply forgotten or abandoned their role as watchdogs and have instead been reduced to lapdogs.

No matter the reason, or however unknowingly, a good proportion of Thailand's media has helped to normalize and legitimize a military dictatorship and perpetuated the vicious cycle of *coups* that has stunted and continues to stunt development of a free and democratic Thailand.

The Thaksin-Yingluck Shinawatra factor

One of the major reasons why a large portion of Thailand's mainstream mass media was willing to support, if not accommodate the military junta twice after the *coups* in 2006 and 2014, was for their political opposition to Thaksin and Yingluck Shinawatra.

In their book, *Thaksin: The Business of Politics in Thailand*, Pasuk Phongpaichit and Chris Baker describe how Thaksin, who was ousted in the 2006 *coup* but whose political party managed to return to power and whose sister was removed by the Constitutional Court before the *coup* in 2014, changed the course of Thai politics. Fearing Thaksin and Yingluck were monopolizing Thai politics, particularly its relationship with the majority of the electorate, a significant section of the educated public and a large swath of the mainstream mass media saw the two as a threat to the existing socio, political, and economic order, as well as a threat to the monarchy. Whilst any critical discussion on the monarchy is taboo with the draconian *lèse majesté* law making it a crime to defame the monarchy carrying a maximum sentence of 15 years (this will be discussed in greater detail below), some were willing to publicly note that Thaksin and Yingluck were ambitious enough to seek to compete with the monarchy. Such a situation even caused well-known musician, Saek Loso, to go on a five-day Facebook Live marathon in August 2018 to condemn and

accuse Thaksin of being in opposition to the king. This was both widely watched on Facebook Live and reported by the local press.

Such fears, whether valid or not, explain why a large section of the mainstream Thai press were willing to accept, if not accommodate, the military junta twice in 12 years. Thus, how people regard the institution of the monarchy and how this perceived relationship and the *lèse majesté* law affect the climate of freedom of expression and press freedom must be examined.

From censorship to self-censorship: The *lèse majesté* law²⁸

In 2013, this author, while openly condemning and challenging the *lèse majesté* law for shutting the eyes and ears of the Thai public, also sought to cooperate by not speaking or writing as frankly as would otherwise have been necessary. Similarly, every weekday evening at 8pm, all major free television networks in Thailand broadcast “royal news activities” for thirty minutes. Bookstores stock titles praising the king as a genius at practically everything from music and painting to irrigation, invention, and more. Large posters praising the king and queen adorn the fronts of buildings throughout the kingdom, and many citizens adorn their homes with portraits of the royal couple. The giant revolving LCD panel atop Thailand’s tallest building, Baiyoke Tower II, in the heart of Bangkok’s tourism district (akin to New York’s Times Square) repeats the messages “Long Live the King” and “Long Live the Queen” in Thai and English, every night, in between advertisements for phone companies and a hotel, the perfect marriage of commercialism and the cult of personality.

In other words, both military and elected governments, such as the one under Prime Minister Yingluck Shinawatra, were unwilling to touch the law or amend it to bring it in line with international standards of freedom of speech and expression although it must be said that a large percentage of the population seems to possess an insatiable appetite for positive information glorifying their king and queen.

If Buddhism doesn’t have a god, it could be said Thais who claim to be Buddhists will invent one to worship, and indeed, the current king has almost become a god-like figure to them. It is as if the population yearns to be proud of someone beyond any doubt or reason. And to counteract uncertainty, the very act of doubting the king and queen in public must be made illegal and be subject to severe punishment. For example, a prominent leader of the royalist movement was recently sentenced to two years in prison for verbally reproducing the defamatory remarks of an anti-monarchist. Moreover, even wearing insignia suggesting support of a republican ideology is a crime in Thailand, clearly limiting freedom of expression.

²⁸ Much of the following section is adapted from an article published by the author in Narratively: Rojanaphruk, P, ‘All the king’s men’ Narratively, 11 October 2013, available at <https://narratively.com/all-the-kings-men/>, accessed on 23 July 2019.

The Streisand effect²⁹

In mid 2018, the crackdown on alleged Thai Federation supporters was able to claim one immediate success – that of raising the profile of the formerly fringe group to public attention. Ironically the move helped to promote the underground group to many Thais who had never seen its flag or even heard about the group until it rose to prominence in the media.

The arrests and detention of people for merely possessing or selling T-shirts bearing the obscure white and red insignia of the federation can therefore be seen as a disproportionate response. For instance, a 30 year old mother of two by the name of Wannapha was detained for seven days on a military base under the junta's authority before being turned over to the Crime Suppression Division of the police for possessing some of the shirts. She was granted bail on a THB200,000 (app US\$6,470) bond after being charged with sedition. Human rights lawyer, Sorawat Wongsaranon, said three others were also arrested.

The Thai Federation's goal is believed to be secession of northeast Thailand for the creation of a federal republic. Part of a statement it posted on social media in retaliation to the arrests stated that: "Ultimately, the people of the Thai Federation do not have fear or waver in the face of the assault by evil soldiers who arrest those who possess the black T-shirts with the red and white flag." The military regime now seeks to hunt down the leader, who writes under the *nom de plume* of "Uncle Sanam Luang" and is believed to be hiding somewhere in Laos. While it is debatable whether the arrests were a gross overreaction on the part of the military regime—little credible intelligence exists to show they constituted a credible threat to the kingdom—it cannot be denied that the move succeeded in making the movement much more widely known.

Although current and past constitutions refer to Thailand as an "indivisible kingdom" and a legal basis exists to charge and try anyone expressing a wish to effectively balkanize Thailand, it is not so much the ever-malleable laws that make the idea unfathomable to many Thais. One also has to consider the deeply entrenched and dominant royalist ideology Thais have been taught from early childhood, both at home and in school. This deeply entrenched ideology is what makes the issue so taboo for many. It is interesting to note that a number of major mainstream Thai-language newspapers chose not to report on the ongoing crackdown that featured prominently in English-language Thai publications. Is this also a form of self-censorship stemming from a feeling of unease that a number of Thais may wish to see the nation a republic?

²⁹ Much of the following section is adapted from an article published by the author in Khaosod English: Rojanaphruk, P, 'Thai Federation and the limits of free expression' Khaosod English, 16 September 2018, available at <http://www.khaosodenglish.com/opinion/2018/09/16/opinion-thai-federation-and-the-limits-of-free-expression/>, accessed on 23 July 2019. Note that the term "Streisand effect" refers to the phenomenon whereby an attempt to hide, remove, or censor information (especially on the internet) has the unintended consequence of publicizing said information more widely.

However, it is not just Thailand that is trapped in this deep ideological cage. In countries such as Malaysia, the cage manifests itself as an illiberal interpretation of Islam that makes public displays of same-sex love a crime, as seen in the country's 2018's sentencing of two women to six lashes of the cane by a Shariah High Court in Terengganu. Also in Malaysia, oral and anal sex are deemed against the laws of nature with civil law stipulating a prison term of up to 20 years, alongside caning and fines. Similarly, in Myanmar, the deep ideology binding the country is ethnic nationalism which seeks to bind frays in the national fabric by otherizing the Rohingya as the enemy.

Such beliefs are often unconscious, seemingly natural, and therefore insidious. As such, they lock down what expression or acts are permitted or considered acceptable. Like language, which is situated in cultural and historical contexts and shapes, our perceptions and expression, ideology, and religion cage us as well. For example, social hierarchy is built into the Thai language much more so than in English. This makes Thai speakers more conscious of it when conversing in Thai.

On the Rohingya issue, Thai activists supporting democracy in Myanmar have repeatedly expressed disappointment in many of the student activists crushed in the 1988 uprising who have since become prominent figures but now take a distinctly anti-human rights stance when it comes to the Rohingya people due to their deeply entrenched ethno-nationalism.

In Thailand where people have been brought up to love and revere the monarchy and where they have been fed a constant diet of positive-only information, republican wannabes seem ungrateful and evil. This naturally leads not only to censorship and self-censorship, but to outright vilification of those holding different ideas about what Thailand ought to be.

Dictator's complex: The case of Gen Prayuth Chan-ocha³⁰

Junta leader Gen Prayuth is climbing his way up Maslow's pyramid³¹, or so it seems. Four years after illegitimately seizing and attaining absolute power, the hierarchy of his needs has risen from basic survival to desiring respect and honour.

In mid 2018, news photographers covering him as prime minister were told to bow before and after snapping photos whilst maintaining a distance of at least five metres. Then, old regulations were brought back into force, banning journalists covering Government

³⁰ Much of the following section is adapted from an article published by the author in Khaosod English: Rojanaphruk, P, 'Gen Prayuth: Respect is earned, not coerced' Khaosod English, 18 August 2018, available at <http://www.khaosodenglish.com/opinion/2018/08/18/gen-prayuth-respect-is-not-coerced-but-earned/>, accessed on 23 July 2019.

³¹ Maslow's hierarchy of needs is a theory in developmental psychology used to study how humans partake in behavioural motivation. Basic needs are represented at the bottom of the pyramid. From bottom to top, they read: physiological, safety, love/belonging, esteem, and self-actualization.

House from wearing jeans and round neck T-shirts. Such rules have not been enforced for over a decade since 2006, when Thaksin Shinawatra was ousted in an earlier *coup*.

Sitting next to the top of Maslow's five-level pyramid is 'esteem' – Prayuth and his men likely hope that enforcing respect will boost his esteem. However, one could argue that respect cannot be forced but must be earned. Thus, forcing journalists to comply will only generate compliance, not respect. Hearts can only be won; coercion achieves little.

While it is understandable that Prayuth—who has achieved almost everything in life including absolute power (some are even encouraging him to become prime minister for life)—may now crave respect and honour, forcing journalists to act deferentially can only produce a mirage of respect, if not outright laughter. Although forcing people to comply against their wishes may have the desired immediate effect, in fact, those self-same journalists may end up becoming more disgruntled and disillusioned. Accordingly, some, who previously handed Prayuth a blank check by consistently defending the *coup*, have now become disillusioned by his repeated postponement of the promised elections.

Those who believed Prayuth would enhance press freedom now realize that press freedom has become more restricted, if not threatened, under the junta. And now Prayuth, or at least his men, insist journalists at Government House act respectfully towards him.

To be fair, the writer is of the sartorial opinion that jeans and collarless T-shirts are not particularly polite. But neither is staging a *coup* or making oneself prime minister polite or respectful. What does Prayuth's insistence on others bowing and taking pictures respectfully say about him? Is he suffering from respect-deficiency syndrome? Is it possible that, deep down, he is still aware that he is an illegitimate ruler and that despite four years of seeking to normalize his military rule, he feels that something is amiss, or could it be that Prayuth is actually aware that some regard him as an illegitimate ruler unworthy of respect? It is a junta-leader complex.

The author contends forcing people to display respect never works. Respect is earned, it cannot be forced, be it through a military *coup* or other coercive means. Respect is a two-way street. If you don't respect the people, how can you expect the people to respect you in return?

As much as we may need rules on appropriate dress codes and behaviour for journalists covering the prime minister, rules on how army generals should conduct themselves and respect civilian supremacy are also required. Thus, while journalists at Government House are banned from wearing jeans and T-shirts to show respect to the prime minister and junta leader, Prayuth is still not banned from being prime minister or showing respect to the people. As long as military respect for civilian supremacy is an elusive dream in Juntaland, Prayuth should not expect to accrue any genuine respect from those forced to display it to him.

Gen Prayuth's quest for esteem is also incongruous with the constant threats he makes such as when he threatened to punch critics in the mouth in July 2018.³² And for over four years since the 2014 *coup*, his regime has threatened opponents with detention without charge (euphemistically called "attitude adjustment"), sedition, and the Computer Crime Act.

However, it is not just the press and general public who are under threat, political parties have also come under fire. The nascent Future Forward Party was charged in 2018 with violating the Computer Crime Act for posting "false information" online via two affiliated Facebook pages, one called "The Future We Want" and another for its leader, Thanathorn Juangroongruangkit. While the alleged violations have yet to be disclosed, it is well known that the party, particularly billionaire Thanathorn, opposes the junta and has repeatedly vowed to end the cycle of military *coups* once and for all. In July 2018, the party issued a statement which effectively declared the junta, formally known as the National Council for Peace and Order, as illegitimate. "The NCPO is an organization that was formed as a result of a *coup* which stole power from the people," read part of a statement released after the junta filed charges.

It would be wrong to say people have no freedom of expression under the junta. The truth is, they have all the freedom they want to praise Prayuth and his regime. However, calling it illegitimate and opposing it is another matter entirely. Another exception is the *lèse majesté* law which jails people for expressing anything deemed critical of the monarchy. The majority of the Thai press does not cross the line and declare the military regime illegitimate. Actually, few even doubt the junta's legitimacy. Indeed, most of Thailand's mass media regards the military regime as akin to another elected administration. While this is advantageous to the retired general, he seems unable to accept criticism of any kind. As the dictator himself said on 23 July 2018 when he complained of being "tormented" by criticism: "Now, if someone criticizes me and it doesn't sound good to my ears I will punch them in the mouth. I have my rights too."

However, Prayuth and the junta are not the only ones to blame for this decline in freedom of expression. As long as the press and public fail to value this right, it will remain difficult to maintain. For example, in mid 2018, a Channel 3 TV newscaster, Peerapol 'Champ' Euariyakul, was suspended from all programming after he criticized fellow dictator, Turkish president, Recep Erdoğan, and was forced to personally apologize to the Turkish ambassador. Some in the public supported the move.

It seems freedom of expression and press freedoms are too quixotic and abstract to fight for, not to mention to die for. If it is true that we get the society we deserve, when it

³² Much of the following section is adapted from an article published by the author in Khaosod English: Rojanaphruk, P, 'We're all to blame when freedom slips away' Khaosod English, 4 August 2018, available at <http://www.khaosodenglish.com/opinion/2018/08/04/were-all-to-blame-when-freedom-slips-away/>, accessed on 23 July 2019.

comes to freedoms, it may be that the Thai people do not deserve much for it seems we care too little. In this scenario, blaming the junta alone is, thus, too simplistic.

The rise of social media as the new public sphere³³

Given the situation, social media has become an empty mirror reflecting the junta's popularity or its lack thereof. If Thailand's junta is truly sincere in its twisted claim that it is working hard toward democratizing Thailand, its ban on campaigning online should be lifted immediately. Every day it remains in place deprives citizens of their right and opportunity to learn about each political party and their policies and to participate in a democratic decision-making process including interactive online debate and deliberation. Political communication through social media is very economical and can reach a large swath of voters instantaneously. Social media bypasses the traditional gatekeeping role of the mainstream mass media as well as state-controlled media. According to the Electronic Transactions Development Agency's internet user profile 2017, as much as 82% of the Thai population (57 million of 69.1 million) is connected to the internet. Further, 74% or 51 million people are active social media users. As a matter of fact, the number of mobile phone subscriptions is even higher than that of the Thai population, at 93.6 million, which means a substantial number of Thais use more than one phone. Line and Facebook are the two most popular social media platforms with Twitter trailing in eighth place. Moreover, Thais aged 16 to 64 spend an average of 9 hours and 38 minutes online every day, the longest in the world, according to the agency.

Spending an average 3 hours and 10 minutes on social media each day, the same age group ranks 4th globally after the Philippines (3 hours, 57 minutes), Brazil (3 hours, 39 minutes) and Indonesia (3 hours, 23 minutes). These figures make it clear that social media has become the new public sphere, a new marketplace of communication enabling users to learn about many issues including politics, democracy, and human rights. The junta, despite its supposed absolute power and laws such as the Computer Crime Act, can do little to stop social media users learning from one another and criticizing its performance. This explains why the junta has always been paranoid about social media and put an artificial lid on political campaigning in that space, despite its own deployment of state- and private-controlled media through traditional and new channels including social media to promote itself in the run-up to elections promised for February 2019.

In September 2018, after Gen Prayuth tentatively declared his interest in being a civilian candidate for prime minister, some mainstream mass media outlets surveyed the public online as to his chances of success. Contrary to traditional pollsters, three media outlets, The Nation, Khaosod, and TV Channel One, found Prayuth failed to obtain even 13%

³³ Much of the following section is adapted from an article published by the author in Khaosod English: Rojanaphruk, P, 'Social media is Prayuth's empty mirror' Khaosod English, 30 September 2018, available at <http://www.khaosodenglish.com/featured/2018/09/30/social-media-is-prayuths-empty-mirror-opinion/>, accessed on 23 July 2019.

support on all three surveys. For example, more than 350,000 voted in the TV Channel One poll with 88% saying they wouldn't support Prayuth.

These results, though unscientific, are contrary to traditional pollsters (of dubious professional basis) who claim Prayuth consistently comes out on top compared to other candidates. While the accuracy of these media-sponsored surveys on social media can be debated, the results cast doubt on the level of support for Prayuth and suggest that social media users may not be as tame or impressed with the junta as those only watching state-controlled programs lauding the military regime and its leaders may expect.

Social media users appear to be more independent-minded and the feedback to the junta too brutal for the liking of the military regime. The situation seems unpredictable, and it explains why the junta is so apprehensive about allowing political campaigning to occur on social media anytime soon.

Authoritarianism in denial³⁴

At the international level, Thailand earned another ignoble distinction in 2018 when the United Nations named it among 38 “shameful” nations carrying out reprisals or intimidating human rights defenders. The government's flat denial was not only unconvincing but came just before it banned a panel discussing justice for the Rohingya and just after it forced a television channel to punish its staff for displeasing the regime. The listing came in an annual report released 13 September 2018 by UN Secretary General, Antonio Guterres.³⁵ It included allegations of ill treatment, surveillance, criminalization, and public campaigns targeting victims and human rights defenders. The regime's denial was met with disbelief and an insistence by noted human rights activist, Sunai Phasuk,³⁶ that the current situation had hit a decade low when he noted on a 16 September 2018 Facebook post, “Human Rights Watch has been working in Thailand for a decade but it has been threatened most severely during the era of NCPO dictatorship.” Since the *coup*, Sunai, himself a human rights defender, has lamented to this author that the military regime keeps a close eye on him, asking him what he is up to every now and then.

As a result, Thailand joins China, Russia, Japan, Rwanda, Saudi Arabia, South Sudan and in Southeast Asia, Myanmar, and the Philippines, in being named and shamed. The UN report went on to state that there exists a “disturbing trend in the use of national security

³⁴ Much of the following section is adapted from an article published by the author in Khaosod English: Rojanaphruk, P, ‘Named and shamed, Thailand locked in deep denial’ Khaosod English, 22 September 2018, available at <http://www.khaosodenglish.com/opinion/2018/09/22/opinion-named-and-shamed-thailand-locked-in-deep-denial/>, accessed on 23 July 2019.

³⁵ ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/39/41)’ Human Rights Council, 13 August 2018, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/247/10/PDF/G1824710.pdf?OpenElement>, accessed on 23 July 2019.

³⁶ Sunai Phasuk is a senior researcher for the Asia Division of Human Rights Watch.

arguments and counter-terrorism strategies by states as justification for blocking access by communities and civil society organizations to the United Nations.”³⁷

In Bangkok, national security has been cited to infringe on free expression repeatedly. Three days before the report was published, police showed up at the Foreign Correspondents’ Club of Thailand (FCCT) to demand it cancel a panel on how to deal with the Burmese Generals orchestrating the alleged genocide of the Rohingya. In other words, national security was conveniently cited to prevent people from publicly discussing a critical issue relating to neighbouring Myanmar. The club later put out a statement:

*In a letter ordering the FCCT to cancel the event, the Thai police stated that the discussion might be used by “third parties” to cause unrest and endanger national security. There are no grounds whatever for such suspicions. The club has regularly held orderly and informative panel discussions on current affairs [for] over 62 years, and these have never led to any unrest or subversion.*³⁸

The statement also said it was the sixth program they have been forced to cancel since the 2014 *coup*, adding that what happened “caused unnecessary further harm to the country’s already dented reputation for media freedom – Thailand was once one of the freest countries in Southeast Asia with a vibrant press.”³⁹

This is just the tip of the iceberg. Top universities such as Chulalongkorn and Thammasat have also been under similar surveillance and pressure. Some of their panels have been cancelled over the past four years due to pressure from the regime. One wonders how many other universities may simply have backed away from hosting controversial discussions of critical issues relating to Thailand or its troubled neighbours in order to spare themselves possible friction with the junta. This is how cultures of self-censorship blossom.

Back at the FCCT, the cancellation of the panels affected not just foreign and Thai journalists wishing to report on the issue but also FCCT members and the general public who planned to attend the event. Barely a week had passed since the UN published its list of shame when Voice TV announced the suspension of two leading political news hosts and commentators. Virote Ali and Sirote Klampaiboon were removed for a month from a morning news program in order to appease the state TV regulator, the National Broadcasting and Telecommunication Commission, which, couching its actions as “regulations,” acts as a censorship proxy. It accused them of violating anti-bias regulations, the station said.

³⁷ A/HRC/39/41 (see note 35 above), at 15.

³⁸ ‘FCC Hong Kong statement on cancellation of FCCT talk on Myanmar war crimes report’ FCC Hong Kong, 10 September 2018, available at <https://www.fcchk.org/fcc-hong-kong-statement-on-cancellation-of-fcct-talk-on-myanmar-war-crimes-report/>, accessed on 23 July 2019.

³⁹ FCC Hong Kong (see note 38 above).

Biased or not, the media should have the right to choose whether it wants to be partial or impartial. The irony is that while critical media such as Voice TV are punished, the pro-junta media is never accused of bias despite its incessant praise for the regime. Apparently, bias is only wrong when one is critical of the junta. The list goes on. In mid 2018, “national security” formed the absurd pretext for shutting down a concert at a private venue because the punk musicians involved were likely to be critical of the junta and its leaders. Apparently, junta security has now become a matter of national security.

Conclusion: Adapted dictatorship facing new media⁴⁰

In Thailand and other parts of the region, the battle on social media is far from over as witnessed by the early release of Nguyen Ngoc Nhu Quynh or ‘Mother Mushroom,’ an influential blogger in Vietnam. In Thailand, the battle between pro- and anti-junta elements has increasingly shifted onto the internet and social media in particular. Accordingly, in October 2018, junta leader Gen Prayuth opened Facebook and Twitter accounts to directly reach out to netizens. After two weeks, the Facebook page, Prayut Chan-o-cha, had more than 404,000 likes. Likewise, his Twitter account acquired 29,400 followers in less than two weeks.

Social media is about multi-way communication, or at least two-way communication. Alas, on Twitter, Prayuth follows no one. Similarly, his Facebook page is more akin to a fan page where the communication is strictly one-way (the old fashioned top-down junta way). However, the deputy secretary to the Prime Minister admitted to a foreign news agency that in the space of a week, several expletives had been removed from the comments on his Facebook page.

While it is essential for Prayuth to directly reach out to people by bypassing traditional mainstream mass media to communicate with a younger, more tech-savvy audience (as they could be voting for pro-junta political parties in general elections slated for February), social media and the internet in general are a wild west in this battle for the heart and soul of pro- versus anti-junta elements in Thailand. This was best illustrated by the latest anti-junta song released in October on YouTube which achieved more than 20 million views within two weeks. The group, Rap Against Dictatorship’s Thai-language song, ‘My Country’s Got’ went viral, becoming a top trending Thai Twitter hashtag soon after release. The song, a collaboration by 10 rappers (four of whom chose to cover their faces), is the latest online attack against the junta, which has been in power since 2014.

It took three days for the military regime to react, with deputy police chief, Pol Gen Srivara Ransibrahmanakul, finally saying there was a “50 percent chance” the song was a criminal offence which had violated an unspecified junta order. His men also suggested

⁴⁰ Much of the following section is adapted from an article published by the author in Khaosod English: Rojanaphruk, P, ‘Anti-junta battle on social media far from over’ Khaosod English, 27 October 2018, available at <http://www.khaosodenglish.com/opinion/2018/10/27/anti-junta-battle-on-social-media-far-from-over/>, accessed on 23 July 2019.

the 5-minute rap, which mocks the hypocrisy of junta rule, could violate the Computer Crimes Act for containing false information. Such a violation, if proven, carries a five year prison sentence and/or a fine of up to THB100,000 (app US\$3,235). Furthermore, those sharing the music video were also warned they could be prosecuted.

While the junta may be considered fickle and repressive, it is interesting to note that a day after the rap was released and two days before police said they would summon the rappers, Foreign Minister Don Pramudwinai returned from an official trip to Europe boasting to reporters that other countries were amazed the administration was “a *coup* government but [one which] gives [citizens] full freedom.”

The reality is that the junta wants to be on social media but only one it can influence and control. However, it also wants to achieve this the old-fashioned way by instilling a climate of fear over social media users. As if the Computer Crimes Act was not abused or absurd enough, the junta-appointed rubber-stamp parliament is also considering a draft Cyber Security Law which may allow authorities to seize computers, smartphones, and other electronic devices for up to 30 days without a court order. Days after the threat was made, the military regime recognized the song had gone viral and was wildly popular and so realised that arresting the young rappers would invite more resistance, if not outright opposition. As such, they relented and declared sharing the song to be legal.

The battle in cyberspace is the last bastion the junta has yet to exert total control over, unlike the streets of Bangkok and beyond, which have gone quiet due to its ban on political assemblies of more than five people. However, as this article goes to print, the junta is still attempting to encircle the resistance. Likewise, elsewhere in Southeast Asia, social media has also become the new battleground. But it won't be easy. Asked whether the regime should try to block the song on the internet, military government spokesman, Puttipong Punnakan, admitted the video could spread through a variety of channels and would not be easy to control. As the song's fame spread, a late night news anchor at the mainstream Thai Rath digital TV even reported on the song in late October, but said the station wouldn't broadcast the music loud enough to be heard. Mainstream media is apparently easier to restrict than social media. The battle on social media is far from over.

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DID THE GENERAL ELECTIONS OF 2018 SIGNAL THE END OF AUTHORITARIANISM IN MALAYSIA?

Dr Azmi Sharom

Introduction

9 May 2018 was a historic date for Malaysia. For the first time since independence in 1957, the ruling coalition was defeated at the polls. The opposition coalition known as Pakatan Harapan or the Alliance of Hope (PH), along with their Sabah state partner, Warisan, won 121 out of 222 parliamentary seats.¹ For the first time ever, Malaysia experienced a change of ruling party, or in this case, ruling coalition. Furthermore, it was done peacefully with no adverse violent reaction. Malaysia was held up as a shining beacon of democracy in Southeast Asia. The question remains, however, what has this victory truly meant for the country?

When Malaysia gained its independence on 31 August 1957, the first Prime Minister Tunku Abdul Rahman declared:

And whereas a constitution for the Government of the Persekutuan Tanah Melayu has been established as the supreme law thereof and whereas by the Federal Constitution aforesaid provision is made to safeguard the rights and prerogatives of Their Highnesses the Rulers and the fundamental rights and liberties of the people and to provide for the peaceful and orderly advancement of the Persekutuan Tanah Melayu as a constitutional monarchy based on Parliamentary democracy.²

Furthermore, 17 days later the Malaysian representative to the United Nations stated:

It is now my duty as the representative of the new independent Federation of Malaya, to affirm solemnly in the General Assembly the aim and object of the Government and people of the Federation of Malaya: with the grace of God to observe the principles and further the purpose of the United Nations Charter.³

These noble sentiments promised Malaya (as it was then known) would be a democratic country operating within the norms of international law. This is hardly surprising as no modern nation state ever begins its existence promising to be authoritarian and oppressive. Yet over the years, these elements did start to seep into the country, and it was not long before the process began.

¹ Election Commission of Malaysia, 'Keputusan terkini parlimen' PRU14, available at <http://pru14.spr.gov.my/#!/home>; and 'Results overview: GE14' Star Online, available at <https://election.thestar.com.my/>, both accessed on 15 October 2019.

² 'Speech by the Chief Minister at the proclamation of independence at Merdeka Stadium, Kuala Lumpur on 31st August, 1957' National Archives of Malaysia, available at <http://www.arkib.gov.my/documents/10157/ab093785-490a-419e-8110-11583649c0d8>, accessed on 13 December 2019.

³ As cited by Ismail, T, and Ooi, KB, *Malaya's First Year at the United Nations: As Reflected in Dr Ismail's Reports Home to Tunku Abdul Rahman*, Singapore: Institute of Southeast Asian Studies, 2009.

In 1960, the Internal Security Act (ISA)⁴ was introduced. It was ostensibly created to aid in the battle against Communist insurgents who, at the time, were using violent means to achieve their objectives. The power to detain without trial (or preventive detention as it was called) was designed to be used only when a substantial number of people used violence in order to unlawfully overthrow a government. However, use of the ISA spread to include political enemies and dissidents who had not endorsed violence in any shape or form.⁵ Moreover, in 1962, the Federal Constitution was amended to take away the power of drawing electoral boundaries from the Election Commission and place it into the hands of parliament,⁶ thus, ensuring decades of gerrymandering and malapportionment of voters in favour of whichever party held the majority in the House. As pointed out earlier, up until 2018, this constituted the same party.

While these are but two laws out of many which may be considered ill-suited for democracy, they are symbolic of the type of legislation that encourages authoritarianism; draconian laws giving power to the government without judicial oversight combined with the means to ensure that even if elections are clean, they are far from fair. These laws existed for decades and yet did not inspire any significant change in the political landscape. What then occurred prior to 2018 that created this political seismic (at least by Malaysian standards) shift?

Issues prior to the 2018 general elections

Several issues in the years leading up to the 2019 elections captured the imagination of Malaysians. Repressive laws were still being used to quell dissent. Although the ISA was repealed in 2012, other laws were passed which allowed for detention without trial on the basis they would only be used to counter terrorism. The Security Offences (Special Measures) Act 2012 (SOSMA)⁷ and the Prevention of Terrorism Act 2015 (POTA)⁸ comprised two such laws. These laws are procedural in nature, in that they confer powers for the arrest and detention of suspects. The actual substantive offences are provided by laws such as s.124B of the Penal Code (revised) 1997⁹ which make terrorism and acts detrimental to parliamentary democracy a crime. The problem is the Code fails to define what a parliamentary democracy is nor what can constitute an act “detrimental” to it.

SOSMA empowers the police to arrest individuals without a warrant and such persons can be remanded for up to 28 days without judicial oversight. According to the law, arrests may be made when a person is suspected of creating violence, causing disaffection towards the King, or is a threat to public order and national security. In a strange attempt

⁴ Laws of Malaysia, Act 82.

⁵ The most notorious use of the ISA was Operation Lalang in 1987 where 119 people (including many politicians and social activists) were arrested and detained without trial.

⁶ Laws of Malaysia, Act 14.

⁷ Laws of Malaysia, Act 747.

⁸ Laws of Malaysia, Act 769.

⁹ Laws of Malaysia, Act 574.

to placate public concern, SOSMA also states that individuals may not be arrested for their political beliefs and activities. To the author's knowledge no one has ever been arrested solely for their political beliefs and activities, such arrests are always made under different pretexts.

POTA is harsher in that a person who is arrested under this law can be detained without trial for up to 38 days. During this time, he or she may be subject to an investigation headed by an inquiry officer who is exempt from the normal rules of evidence, raising concerns about coercion and torture. Additionally, during this period the suspect is not allowed legal representation nor at the end of 38 days when the inquiry officer makes his or her recommendations before the Prevention of Terrorism Board. This could lead to a 2-year period of detention without trial that can theoretically be renewed *ad infinitum*. Moreover, the Board is not a court and the entire process is shrouded in secrecy.

Although these laws have indeed been used against people suspected of terrorist activities,¹⁰ they have also been employed against those with no history of violence. For example, in 2016, fifteen civil rights activists, including Maria Chin Abdullah (the head of Bersih, an organisation dedicated to clean and fair elections), were detained under SOSMA.¹¹ The fact Ms Abdullah was detained a few days before a planned Bersih rally made it appear the law had not been used just to counter terrorism efforts but also to control dissent.

Apart from the use of preventive detention laws, the government also went through a period of using an old colonial era law, the Sedition Act 1948,¹² against political opponents and those deemed to be a threat. The definition of what constitutes sedition is extremely broad and open to interpretation giving the authorities wide powers to charge a variety of people for activities ranging from the writing of a news report to the making of a satirical video, to calling for street demonstrations, mocking a prime minister through artwork, to even giving legal opinions to the press.¹³ The notable difference between the Sedition Act and the other laws mentioned above is that the former requires a trial. However, this does not detract from the fact that its use was an affront to freedom of speech and also

¹⁰ Even these detentions are not without problem especially with regard to the right to a fair trial. In 2014, the Court of Appeal held that Yazid Sufaat was to face trial for supposed terrorist activities. He was, however, detained under POTA and remains detained without trial at the time of writing. See, 'Release Yazid Sufaat from detention under POTA, a detention without trial law. Repeal detention without trial laws and immediately release all detained/restricted' MADPET (Malaysians Against Death Penalty and Torture), media statement, 19 October 2019, available at <http://madpet06.blogspot.com/2019/>, accessed on 13 December 2019.

¹¹ 'Case history: Maria Chin Abdullah' Front Line Defenders, available at <https://www.frontlinedefenders.org/en/case/case-history-maria-chin-abdullah>, accessed on 13 December 2019.

¹² Laws of Malaysia, Act 15.

¹³ 'Malaysia: Increasing use of the Sedition Act fosters a climate of repression' Amnesty International, 4 September 2014, available at <https://www.amnesty.org/download/Documents/8000/asa280082014en.pdf>, accessed on 21 October 2019.

arguably a useful tool to ensure the ever-present threat of legal action against opponents of (or at least those deemed to oppose) the government.

These repressive laws were used often, but another passed in 2016 has never been utilized. Still, its existence is a cause for grave concern. The National Security Council Act 2016 (NSC)¹⁴ effectively gave the prime minister power to declare martial law. While emergency provisions already existed in Malaysia's legal system,¹⁵ these required the (albeit symbolic) assent of the King before such an emergency could be declared. Under the NSC, the prime minister can declare any area a "security area." Within this designated security area, all normal rules of governance may be suspended and the government through the police and/or the military may impose curfews, take over private property, demolish private property, and move people to other areas. Furthermore, all judicial oversight over the use of force (even fatal use of force) were removed via an ouster clause.

This law was ostensibly designed to be used at times when the country was under threat, such as during foreign incursions into national territory. However, history has shown that the government was not averse to using its emergency powers for what were, to all intents and purposes, political problems.¹⁶ Accordingly, the spectre of this Act being used by the ruling coalition in times of political uncertainty hung over the nation. Moreover, the law allowed for a wide variety of reasons for its usage, including vague concepts such as "economic threats." Thus, the NSC signalled a government ready to descend into absolute authoritarianism.

Other laws such as the Printing Presses and Publications Act (PPPA) 1984¹⁷ ensured that mainstream newspapers were under constant threat of having their licences revoked and were therefore kept docile. Even though revocation of a license can be challenged in court, the time it took to settle a case and the subsequent loss of income, was enough to deter most publications from being overly critical.¹⁸ The PPPA could also be used to ban books. While an obvious affront to freedom of speech, the reasons books were banned made the situation even more ludicrous. *Islam Without Extremes: A Muslim Case for Liberty* by Mustaka Akyol was banned for, amongst other reasons, promoting "liberal ideas" and using "logical thought."¹⁹

¹⁴ Laws of Malaysia, Act 776.

¹⁵ Federal Constitution, Art 150.

¹⁶ In 1966, an emergency was declared in the state of Sarawak for what was fundamentally a constitutional *impasse*. A similar situation happened in the state of Kelantan in 1977. In both cases, there were no threats of violence. Both governments instead used emergency provisions to reinstate their powers.

¹⁷ Laws of Malaysia, Act 301.

¹⁸ In 2015, the Edge (a financial paper) was suspended for 3 months while challenging removal of its licence for publishing a critical piece on the government sovereign fund, 1MDB.

¹⁹ See, Azmi Sharom and Saw, TG, 'Political and religious hegemony via the suppression of expression: Book banning and film censorship in Malaysia' in Harding, A, and Shah, D (eds), *Law and Society in Malaysia: Pluralism, Religion and Ethnicity*, Oxford: Routledge, 2018.

University students had their own specific grievances as well. They were governed by the University and University Colleges Act 1971 (UCCA)²⁰ and although amendments were made during the rule of the previous government, giving students freedom to participate in party politics outside of campus, these amendments failed to deal with the crux of their unhappiness. The disciplinary rules made by individual universities under the auspices of UCCA were especially limiting giving university authorities the power to control all manner of student activities including barring particular speakers from appearing on campus²¹ and limiting students from expressing themselves. One particular rule often used against students participating in civil society activities was “bringing the university into disrepute.” The vagueness of this provision meant it was virtually impossible to defend oneself as the notion of bringing “disrepute” lies in the eye of the beholder.

Oppressive laws were not the only concern; institutions entrusted with maintaining democratic governance were also subject to criticism. The judiciary in particular were responsible for several decisions which were deemed either anti-human rights or anti-democracy.²² In *Public Prosecutor v Kok Wab Kuan* [2007],²³ the Federal Court (the highest court in the country) held that the separation of powers between the judiciary, the executive, and the legislature was subject to any parliamentary law. In this case, the issue revolved around whether the sentencing of a child convicted of murder could be at the discretion of the King (the executive) or whether sentencing, being a judicial power, should rest only with the courts. The Federal Court decided that because discretion was given to the King via a statute, namely the Child Act 2001,²⁴ and judicial power was determined by legislation as stated in Art 121(1) of the Federal Constitution, such a distinction was acceptable.²⁵ This Federal Court decision disregards the Basic Structure doctrine which states that a constitution cannot be amended in a manner which contravenes certain fundamental principles, such as the separation of powers.²⁶

It was even more disconcerting when the court stated that the separation of powers was not a constitutional provision as the Federal Constitution does not explicitly say it is. This despite the Constitution having three separate chapters for the Legislature, Executive, and Judiciary; each with its own clearly defined powers. The court went on to say:

²⁰ Laws of Malaysia, Act 30.

²¹ In April 2014, Ambiga Sreenevasan, a prominent lawyer, former Bar Council President, and civil rights activist, was barred from speaking to law students at the University of Malaya. The author himself was barred from speaking to students at the National University of Malaysia in October of the same year.

²² For a more in-depth discussion of the Malaysian judiciary and democracy see, Azmi Sharom, ‘Law and the judiciary: Divides and dissent in Malaysia’ *Southeast Asian Studies*, 2018, Vol 7, No 3, pp 391-413.

²³ 6 CLJ 341 [hereinafter cited as *Kok Wab Kuan*].

²⁴ Laws of Malaysia, Act 611.

²⁵ Article 121(1) was amended in 1988 to empower parliament to determine judicial powers via legislation.

²⁶ This issue was discussed again in a later case which will be examined in due course.

*The Constitution provides for elections, which is a democratic process. This does not make democracy a provision of the Constitution in that where any law is undemocratic it is inconsistent with the Constitution and therefore void.*²⁷

It is not encouraging when the highest adjudicating body in the country refuses to acknowledge that principles which are a bulwark against authoritarianism, namely the democratic process and the separation of powers, are not considered essential values of the nation. This literalist approach to constitutional interpretation (i.e. if it is not expressly provided for, it does not exist) makes a mockery of the protections the Constitution is supposed to provide.

The courts have equally not been supportive of basic human rights, such as the right to religious freedom. *Menteri Dalam Negeri & Ors v Titular Roman Catholic Archbishop of Kuala Lumpur* [2013]²⁸ illustrates this. The facts of the case were as follows. The Catholic Church published a newsletter called the Herald. Although primarily in English, it also contained a small Malay language section within which the terms “tuhan” (for the generic term, “god”) and “Allah” (for “Lord”) were used. According to the Church, both had been in usage for decades. Mindful of the constitutional prohibition against proselytising to Muslims,²⁹ each copy of the Herald displayed a clear warning against distribution to Muslims. Despite this, the government withdrew the newsletter’s licence because of its use of the expression, “Allah” which it deemed a supposed affront to Islam as according to it, only Muslims could use the term. Additionally, if Muslims were to see “Allah” used in a non-Muslim publication, it asserted they were likely to be spiritually confused. Thus, to allow usage of the term “Allah” would constitute a threat to national security.

In the High Court, the Catholic Church was successful in its challenge against the ban. The judge held that Art 3(1) of the Federal Constitution which reads:

Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation

meant the peaceful activity of the Church in publishing the Herald was clearly within its rights. Additionally, the court found no evidence at all that the Church had contravened limitations to the practice of its religion by proselytizing to Muslims. Unfortunately, this decision was overturned by the Court of Appeal whose reasoning was perplexing. It held that Art 3(1) should be given a far more complex meaning than an ordinary reading of the text which would simply confer freedom for all religious faiths to practice peacefully in the country. It therefore held:

²⁷ *Kok Wah Kuan* (see note 23 above), at 355, para 17.

²⁸ 6 MLJ 468 [hereinafter cited as *Menteri Dalam Negeri*].

²⁹ Article 11(4) of the Federal Constitution enables states to enact laws controlling the propagation of religious teachings to Muslims.

*that the purpose and intention of the words: “in peace and harmony” in Article 3(1) of the Federal Constitution is to protect the sanctity of Islam as the religion of the country and also to insulate against any threat faced or any possible and probable threat to the religion of Islam. It is also my judgment that the most possible and probable threat to Islam, in the context of this country, is the propagation of other religions to the followers of Islam.*³⁰

While constitutional interpretation is acceptable, this does not, however, give *carte blanche* to a judge to rule however he or she likes. To take the ordinary meaning of words in a law and give it a connotation that has no basis in anything but the imagination of the judge, makes a mockery of the law itself. It is difficult to find any logic for the progression of “peace and harmony” to “protect the sanctity of Islam,” aside perhaps from the judge imposing his own religious aspirations onto the Constitution. And it is surely laughable to claim the greatest threat to Islam is the propagation of other religions to Muslims, an assertion not only unfounded by empirical evidence, it was also groundless in this particular case as the High Court had already acknowledged the Church had done its duty in keeping the Herald away from Muslims. Furthermore, any objection to the publication and its use of the term “Allah” only came about when the government decided to make an issue of the matter. It hardly seems just that an organisation quietly going about its business should be penalised for the unreasonable acts of others. What this case indicates, and it is only one example of many such occurrences,³¹ is that the judiciary often suppresses the rights of non-Muslims using reasoning which, at the very least, can only be described as disingenuous. Such decisions added to a sense of oppression and the suppression of the fundamental human right to freedom of religion.

This is not to say the courts were the only agency responsible for the prevailing atmosphere of authoritarianism in the country. In another notorious case, the Malaysian Anti-Corruption Commission (MACC) was involved in the 2009 death of a witness. Teoh Beng Hock, a political aide to a Selangor state assemblyperson, was called into the MACC offices on 30 June 2009 in the city of Shah Alam as a witness to a supposed corruption case involving the purchase of flags amounting to a couple of thousand Malaysian ringgit. On the afternoon of 1 July 2009, he was found dead at the foot of the building, apparently as a result of suicide.³²

³⁰ *Menteri Dalam Negeri* (see note 28 above), at 490, para 33.

³¹ Other cases include: *Lina Joy v Majlis Agama Islam Wilayah Persekutuan* [2007] (where the right of a Muslim to convert to Catholicism was denied); *Subashini Rajasingham v Saravanan Thangathoray* [2007] (where a Hindu man converted to Islam and via Syariah Court, obtained a divorce and custody of his children despite the court having no jurisdiction over his Hindu wife. Thus, she was divorced and lost custody of her children via a court in which she had no right to appear. This was upheld by the civil courts); and *ZI Publications Sdn Bhd v Kerajaan Negeri Selangor* [2015] (where state religious law was allowed to supersede a constitutional provision that only Federal Parliament can make laws restricting freedom of expression).

³² ‘Pakatan Rakyat won Selangor state’ TBH Trust, 3 August 2019, available at <https://teohbenghock.org/chronology/>, accessed on 13 December 2019.

There were many questions regarding this case. For example, it was against normal operating procedure for a witness to be questioned past office hours into the early morning of the following day. It was also strange that after supposedly being released at 3.45am, Teoh decided to remain in the offices of the MACC. Moreover, the findings of the autopsy were contradictory concluding suicide on the one hand whilst also pointing to suspicious marks on Teoh's body which together with a lack of injury to his hands (defensive injuries consistent with someone leaping from a high place) suggested instead that he had not been conscious when he fell. On top of that, the Coroner's report and a Royal Commission of Inquiry decided his death had been the result of suicide. Accordingly, the officers interrogating him did not face any censure and continued with their careers; in fact, one was even promoted later leading to accusations of a whitewash and general anger at the supposed impunity of the government and its agents.

Another agency, the Elections Commission of Malaysia (EC), also faced great criticism. It was accused of being partisan in favour of the government of the day and although there was no evidence of direct government interference in its decision-making, certain incidences did encourage this perception. For example, in the 13th general election of 2015, the ruling coalition won despite losing the popular vote. Such a situation could be explained if there were multiple contenders; however, in what was essentially an election consisting primarily of two candidates, it was more likely the result of a malapportionment of rural seats (which, having far fewer voters than urban centres, tend to favour the ruling coalition). Another example occurred in the 14th general election where a marginal constituency was re-delineated to incorporate a local police headquarters, a significant move because the police and armed forces are traditionally seen as supporters of the previous government. This was deemed to be gerrymandering.³³

Amongst these constant challenges to democracy and human rights, a huge financial scandal reared its ugly head.³⁴ The 1 Malaysia Development Berhad (1MDB) was a sovereign fund created under the auspices of previous prime minister, Najib Razak. Amidst poor decision-making and investments, what really captured the public imagination was the MYR2.67 billion (app USD668 million) channelled from the fund into the personal bank account of the Prime Minister. This was an allegation of corruption on a scale never before seen in the country, or even perhaps the world. It also highlighted little transparency in relation to 1MDB which experienced frequent changes in its auditors. The scandal was so vast that Attorney General Ghani Patail was supposedly on the verge of bringing charges against the Prime Minister himself before suddenly being dismissed from his post. His replacement was personally chosen by the Prime Minister and soon after his appointment, unilaterally declared Najib innocent of all accusations of corruption.

³³ Ooi, KH, 'How Malaysia's election is being rigged' New Naratif, 19 March 2018, available at <https://newnaratif.com/research/malaysias-election-rigged/>, accessed on 13 December 2019.

³⁴ Rewcastle Brown, C, *The Sarawak Report: The Inside Story of the 1MDB Exposure*, SIRD, 2019.

The juxtaposition of such large-scale corruption against the challenges of rising costs of living (an unpopular Goods and Services Tax (GST) was introduced in 2015) made the previous Prime Minister disliked and a survey conducted by the Merdeka Centre in June 2018 supports this.³⁵ It found that 40% of people polled pointed to Najib Razak as a primary cause of the surprise election results; followed by the GST (22%) and 1MDB (14%) although the poll did not ask about such issues as democratic and human rights erosion. It cannot be denied that bread and butter issues such as the cost of living were major motivators for the electorate. At the same time, the underlying narrative was of a government determined to use its legislative powers and agencies to ensure efficient suppression of the people in order to stay in power and, one would suppose, to enable continuance of its enriching activities. In other words, an authoritarian state.

After May 2018

It would be churlish to deny many improvements have been made in relation to democracy and good governance in Malaysia since the general election of 2018. In 2019, Malaysia climbed 5 places up the World Justice Project's Rule of Law Index to 51 out of 126 countries.³⁶ For example, the government created several reform committees, namely the Institutional Reform Committee³⁷ and the Electoral Reform Committee³⁸ to review the necessary changes required to improve and democratise governance. High profile public figures, well known for their supportive stances on human rights and democracy, were appointed to important posts including Azhar Harun as chairperson of the Election Commission,³⁹ Latifah Koya as chairperson of the Malaysian Anti-Corruption Commission,⁴⁰ and Tommy Thomas as Attorney General.⁴¹

³⁵ 'Penolakan rakyat terhadap Najib Razak penyebab kekalahan PRU14 - ahli dan perwakilan UMNO' Merdeka Centre, available at http://www.merdeka.org/pages/02_research.html accessed on 31 October 2019.

³⁶ World Justice Project, *Rule of Law Index 2019 Insights*, Washington DC: World Justice Project, 2019. Available at https://worldjusticeproject.org/sites/default/files/documents/WJP-Insights-2019-Single%20Page%20View_0.pdf, accessed on 19 December 2019.

³⁷ 'New Malaysia committee to look into institutional reforms' Straits Times, 15 May 2018, available at <https://www.straitstimes.com/asia/se-asia/new-malaysia-committee-to-look-into-institutional-reforms>, accessed on 6 November 2019.

³⁸ 'Government sets up Electoral Reform Committee headed by Ab Rashid' Star Online, 16 August 2018, available at <https://www.thestar.com.my/news/nation/2018/08/16/government-sets-up-electoral-reform-committee>, accessed on 6 November 2019.

³⁹ Bedi, RS, 'Art Harun is new EC chairman (updated)' Star Online, 21 September 2018, available at <https://www.thestar.com.my/news/nation/2018/09/21/art-harun-is-new-ec-chairman/>, accessed on 6 November 2019. For the purpose of full disclosure, the author was appointed as Deputy Chairperson of the Election Commission of Malaysia on 26 February 2019.

⁴⁰ Malaysian Anti-Corruption Commission, available at <https://www.sprm.gov.my/en/arkib-berita-sprm/3342-latheefa-koya-angkat-sumpah-ketua-pesuruhjaya-sprm-ke-14>, accessed on 6 November 2019.

⁴¹ 'Agong consents to appointment of Tommy Thomas as Attorney-General' New Straits Times, 5 June 2018, available at <https://www.nst.com.my/news/nation/2018/06/376722/agong-consents-appointment-tommy-thomas-attorney-general>, accessed on 6 November 2019.

Moreover, the new Attorney General has initiated actions against previous leaders. Amongst others, the former Prime Minister,⁴² his wife,⁴³ the former Deputy Prime Minister,⁴⁴ and the former Federal Territory Minister⁴⁵ have all been charged with corruption and money laundering and are currently facing trial. In addition, the MACC has been very active in bringing to task those who have been accused of corruption as well as trying to regain unlawfully distributed funds. Its latest activity has been to compound 80 individuals and organisations receiving monies from 1MDB, totalling MYR420 million (app USD102.7 million).⁴⁶ Similarly, the Election Commission is actively working on reform and is now focused on cleaning up the electoral roll, creating a fairer standard operating procedure for delineation exercises, improving election offence laws, the electoral process, absentee voting, and its own governance.⁴⁷ Although the PPPA still exists, it has been acknowledged that its more draconian provisions are no longer utilized and the Malaysian press appears freer than before.⁴⁸ In addition, significant efforts are being made to at least abolish the mandatory death sentence.⁴⁹

The courts too have been making decisions more in line with democratic principles. In the case of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat* [2017],⁵⁰ it was held by the Federal Court that the decision to decide quantum for compensation is a judicial power which cannot be given to any other authority even via legislation. This is because according to the principle of separation of powers, the courts have judicial power precisely to curb the other two branches of government, namely the executive and the legislature. Therefore, allowing the legislature to make laws curbing judicial power would be in breach of the principle of separation of powers. Her Ladyship described it

⁴² Nurbaiti Hamdan, 'Najib charged with three counts under Anti-Money Laundering Act' Star Online, 8 August 2018, available at <https://www.thestar.com.my/news/nation/2018/08/08/najib-charged-with-three-counts/>, accessed on 7 November 2019.

⁴³ Sipalan, J, and Lee, L, 'Wife of Malaysia's former PM Najib charged with two counts of graft' Reuters, 15 November 2018, available at <https://www.reuters.com/article/us-malaysia-politics-rosmah/wife-of-malysias-former-pm-najib-charged-with-two-counts-of-graft-idUSKCN1NK0NL>, accessed on 10 January 2019.

⁴⁴ Nurbaiti Hamdan, 'Zahid slapped with seven more graft charges, making it 54 in total (updated)' Star Online, 26 June 2019, available at <https://www.thestar.com.my/news/nation/2019/06/26/zahid-slapped-with-another-seven-graft-charges>, accessed on 7 November 2019.

⁴⁵ 'Tengku Adnan claims trial' Star Online, 24 January 2019, available at <https://www.thestar.com.my/news/nation/2019/01/24/tengku-adnan-claims-trial/>, accessed on 7 November 2019.

⁴⁶ 'MACC compound list not exhaustive, focussing on big sums first – Latheefa' Malaysiakini, 10 October 2019, available at <https://www.malaysiakini.com/news/495217>, accessed on 7 November 2019.

⁴⁷ 'Pelan reformasi pilihan raya suruhanjaya pilihan raya Malaysia' Election Commission of Malaysia, available at <http://www.spr.gov.my/sites/default/files/Pelan%20Reformasi.pdf>, accessed on 7 November 2019.

⁴⁸ HE Priesner, S, UN Resident Coordinator for Malaysia, Singapore and Brunei, opening address on Human Rights Day 2019, 10 December 2019, Kuala Lumpur, organised by the Malaysian Commission for Human Rights.

⁴⁹ 'Extra time needed to review repeal of death penalty' The Star, 11 December 2019, available at <https://www.thestar.com.my/news/nation/2019/12/11/extra-time-needed-to-review-repeal-of-death-penalty>, accessed on 19 December 2019.

⁵⁰ 3 MLJ 561 [hereinafter cited as *Semenyih Jaya*].

in this way:

*The Judiciary is thus entrusted with keeping every organ and institution of the State within its legal boundary. Concomitantly, the concept of the Independence of the Judiciary is the foundation of the principle of the separation of powers. This is essentially the basis upon which rests the edifices of judicial power. The important concepts of judicial power, judicial independence and the separation of powers are as critical as they are sacrosanct in our constitutional framework.*⁵¹

By adhering to the Basic Structure doctrine, this case has in effect overruled the earlier case of *Public Prosecutor v Kok Wah Kuan* [2007].

What is to be noted here is that *Semenyih Jaya* occurred before the 2018 general elections. Alongside this case, others pushed back against the trend of courts neglecting democratic ideals. For example, *Kerajaan Malaysia v Shimizu Corporation, etc* [2018]⁵² refused to continue with the judicial tendency to permit the government to use “national security” as a reason to excuse itself from any oversight. As such, Justice Lee Swee Seng held:

*We have progressed very far from the days [...] where upon the slightest whiff of national security the Court will literally back off, deferring to the executive’s subjective opinion as they are the best judge of national or public security; having perhaps access to information and intelligence that cannot be disclosed to the Court.*⁵³

The judge then continued to assert that we ought to move in the direction of more mature democracies:

*The Court’s inherent identity under the Constitution is that it is the institution that decides on disputes between parties and when the government is a party to the dispute, it cannot dictate to the court that certain matters are out of bounds.*⁵⁴

It may be argued that in the period prior to the elections, members of the judiciary had already decided their role in curbing government power was in danger of becoming illusory and therefore felt the need to reassert themselves. Whilst merely conjecture, whatever the reason, it is still reassuring to see a more forceful judiciary.

Unfortunately, it is not all good news. The government made many promises, including on the world stage, regarding its dedication to international human rights law but fulfilling said promises is proving to be another matter entirely. At the 73rd United Nations General Assembly in September 2018, the Prime Minister, fresh from his victory, stated that Malaysia would ratify all the core international human rights conventions⁵⁵ including the

⁵¹ *Semenyih Jaya* (see note 50 above), at 593, paras 88-90.

⁵² 1 LNS 202 [hereinafter cited as *Kerajaan Malaysia*].

⁵³ *Kerajaan Malaysia* (see note 52 above), at para 17.

⁵⁴ *Kerajaan Malaysia* (see note 52 above), at para 19.

⁵⁵ New Straits Times, [Speech text] Dr Mahathir at 73rd UN General Assembly’ New Straits Times, 29 September 2018, available at <https://www.nst.com.my/news/nation/2018/09/415941/speech-text-dr-mahathir-73rd-un-general-assembly>, accessed on 11 December 2019.

International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD).⁵⁶ However, within a few months, he backtracked on this promise when race-based fearmongering led to a Malay backlash to the government's plan to ratify the ICERD.⁵⁷ This centred on falsehoods, namely the abolition of guarantees ensuring future prime ministers would be Malay (no such guarantee exists), the abolition of affirmative action for Malays (the ICERD allows for affirmative action and in fact requires it for the sake of substantive equality), and that Islam and the monarchy would be threatened (the ICERD makes no mention of these issues).⁵⁸

The same fate befell the Rome Statute of the International Criminal Court 1998.⁵⁹ A promise to ratify this law, thus making Malaysia subject to the International Criminal Court (ICC), were once again met by disingenuous cries that the Malaysian King and Sultans would be subject to this court. This was clearly untrue as the Malaysian Sultans do not hold any real power and would therefore not be subject to the ICC. Once again, the government backtracked and refused to ratify the Rome Statute.⁶⁰

At the time of writing (December 2019), promises to abolish the Sedition Act remain unfulfilled as were promises to amend or abolish preventive detention laws. Indeed, SOSMA was used to arrest 12 individuals suspected of being sympathetic to the Liberation Tigers of Tamil Elam (LTTE) and the Prime Minister supported this.⁶¹ All of which has given credence to the government returning to the days of authoritarianism. Other activities, such as their refusal to deport controversial Indian Muslim cleric, Zakir Naik, to India, despite the Indian government requesting his extradition, give the impression of a government pandering to the religious right.⁶² Moreover, this perception has been further enhanced by several government ministers, including the Prime Minister himself,

⁵⁶ United Nations Human Rights Office of the High Commissioner, International Convention on the Elimination of All Forms of Racial Discrimination, available at <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>, accessed on 11 December 2019.

⁵⁷ Khoo, YH, 'U-turn on ICERD, what went wrong?' Malay Mail, 24 November 2018, available at <https://www.malaymail.com/news/what-you-think/2018/11/24/u-turn-on-icerd-what-went-wrong-khoo-ying-hooi/1696653>, accessed on 13 December 2019.

⁵⁸ Azmi Sharom, 'Lies that keep inequality alive' Star Online, 7 November 2018, available at <https://www.thestar.com.my/opinion/columnists/brave-new-world/2018/11/07/lies-that-keep-inequality-alive-some-people-are-relying-on-false-arguments-to-whip-up-objection-to>, accessed on 11 December 2019.

⁵⁹ Rome Statute of the International Criminal Court, available at https://legal.un.org/icc/statute/99_corr/cstatute.htm, accessed on 11 December 2019.

⁶⁰ Carvalho, M, 'Govt u-turn raises doubt on reform promises' The Star, 8 April 2019, available at <https://www.thestar.com.my/news/nation/2019/04/08/govt-uturn-raises-doubt-on-reform-promises>, accessed on 13 December 2019.

⁶¹ Teoh, PY, 'Dr M defends use of SOSMA on LTTE-linked suspects' New Straits Times, 14 October 2019, available at <https://www.nst.com.my/news/nation/2019/10/529908/dr-m-defends-use-sosma-ltte-linked-suspects>, accessed on 11 December 2019.

⁶² 'Zakir Naik won't be sent back to India, any other country can have him: Malaysia PM' India Today, 14 August 2019, available at <https://www.indiatoday.in/india/story/zakir-naik-won-t-be-sent-back-to-india-says-malaysia-pm-1580692-2019-08-14>, accessed on 13 December 2019.

appearing and speaking at a “Malay Dignity Congress,” a supposed academic conference which was a thinly veiled excuse for what has been described as a racist gathering.⁶³

Conclusion

Change takes time. It is unreasonable to expect a new government to transform the nation from an authoritarian state into a true democracy in the space of one term, let alone two years. The issue here is the government is showing distinct signs of not living up to the ideals of democracy which could alienate their core support. The recent by-election in Tanjung Piai in the state of Johor is indicative of this loss of support. The seat was held by a government deputy minister who passed away. At the by-election, a narrow victory of slightly over 500 votes was overturned by more than 15,000 votes.⁶⁴ Significantly, the number of opposition votes did not meaningfully differ from its tally in the general election; more notable was the far reduced number of votes for the government.⁶⁵

As previously mentioned, two ingredients oft used in the creation of an authoritarian state are oppressive legislation and a means to control the choice of the people. Despite promises to change Malaysia’s laws and to reform the election system to be more democratic, this has yet to occur. Not surprisingly, perhaps due to the short amount of time since the election, although improvements have certainly occurred, and even assuming the government’s reformist agenda is still on the table, the question remains: will there be enough time? At this point, it is unclear whether the government will have the opportunity for a second term to make good their promises of reform. Accordingly, it is also uncertain whether the promise of a more democratic Malaysia after the 14th general election will actually transpire or whether it will simply die the next time Malaysia’s citizens go to the polls.

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⁶³ Tajuddin Rasdi, ‘What does the Malay Dignity Congress tell us about our universities and academia?’ *The Star*, 9 October 2019, available at <https://www.thestar.com.my/opinion/letters/2019/10/09/what-does-the-malay-dignity-congress-tell-us-about-our-universities-and-academia>, accessed on 13 December 2019.

⁶⁴ ‘P165 Tanjung Piai’ *Undi.info*, available at <https://undi.info/johor/r18/P165>, accessed on 13 December 2019.

⁶⁵ Zurairi Ar, ‘Three things we learnt about: The Tanjung Piai by-election’ *Malay Mail*, 17 November 2019, available at <https://www.malaymail.com/news/malaysia/2019/11/17/three-things-we-learnt-about-the-tanjung-piai-by-election/1810584>, accessed on 13 December 2019.

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ABOUT SHAPE-SEA

The Strengthening Human Rights and Peace Research/Education in ASEAN/SEA Programme (SHAPE-SEA)—supported by the Swedish International Development Cooperation Agency (SIDA) and the Norwegian Centre for Human Rights at the University of Oslo—launched in April 2015. This programme envisions a Southeast Asia where the culture and values of human rights, peace, and democracy are instilled through widespread research and teaching in higher education. It was premised on the assumption that such cooperation would contribute to the promotion and protection of human rights and sustainable peace for all peoples in Southeast Asia. We believe that the threats to human rights, whether from rising populism, shrinking civil society space, increased racism, or the impunity enjoyed by human rights violators, cannot be effectively addressed without evidence-based knowledge and a highly skilled network of regional experts (or champions).

Thus, the overarching objective is to improve the regional human rights and peace situation through applied research and education by directly involving and encouraging universities to contribute research and incorporate such topics into their syllabuses.

Through its many activities, SHAPE-SEA has indeed innovated the landscape of human rights promotion and peace-building through research and education in the region. As such, it invited a significant number of scholars (58 projects in total) to conduct studies on human rights and/or peace at the local, national and/or regional levels. Research projects were also initiated by programme including themes such as ‘Authoritarianism in Southeast Asia,’ ‘Human Rights and Peace Education,’ and ‘Technologies and Human Rights,’ all topics which were comprehensively tackled by both leading and emerging scholars based in the area. Furthermore, for the first time, through its annual publication, *Human Rights in Southeast Asia Outlook*, local scholars were given an opportunity to assess critical human rights and peace issues in all eleven Southeast Asian countries.

In summary, the following Programme Outputs from 2015 to 2019 were achieved:

- 58 research projects (from support for MA and PhD theses to regional level research) were supported and finished.
- 204 university-based scholars from 10 countries were trained on human rights and peace research design and methodology.
- 109 lecturers from 70 universities and two government institutions from 13 countries were trained to teach human rights.

- 1008 scholars, academics, and members of civil society participated in national seminars and regional dialogues on various critical human rights and peace issues.
- 6000+ joined the national seminars through live streaming.
- A SHAPE-SEA website was created to host open source materials, including the *Human Rights Textbook*, the *Human Rights Outlook* series, and research outputs including academic papers and policy briefs.
- 12 books were published and released with an open source licence on the SHAPE-SEA website.
- SHAPE-SEA books have been downloaded 10,000+ times. In addition, it also serves as a platform for the Southeast Asian Human Rights Studies Network (SEAHRN) series of books which have been downloaded 14,000+ times.
- 17 policy briefs were published on the website.
- Two international conferences were co-organized with SEAHRN on Human Rights and Peace in Southeast Asia in Bangkok (2016) and Manila (2018).
- 7 lecture tours were organized with academics from 10 universities.
- 7 high-level outreaches were conducted at the ASEAN level to promote human rights and peace research and education.
- Support was given to develop/refine new courses on human rights in partner universities, one of which (Human Rights in ASEAN) will now be offered yearly to the Master of Law students at Pannasastra University in Cambodia.

Authoritarian systems may display a semblance of political plurality, but in reality, power lies within a small group or individual. These are systems where the fundamental principles of human rights lie unfulfilled such as clean and fair elections, free speech, and the separation of powers to name a few. But within such generalities, a plethora of nuances must be understood before a true understanding of authoritarianism can emerge. This is particularly the case in Southeast Asia which has recently seen a rise in various forms of authoritarianism despite moving towards a greater respect for human rights and democracy a mere ten years ago when all countries in the region signed the ASEAN Human Rights Declaration.

This book attempts to lay bare the diverse weapons authoritarian regimes in Southeast Asia use to curtail freedom and analyses them through the perspective of international law, human rights monitoring, civil society, the military, the press, and more general state based overviews. The writers are all Southeast Asian and front liners in the regional fight for human rights in addition to being experts in their respective fields. As such, they provide a detailed examination of the diverse range or spectra of authoritarianism in Southeast Asia and its ensuing challenges. It is hoped this book will generate a deeper understanding of the issues and in so doing help to oppose the erosion of human rights and democracy in this part of the world.



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