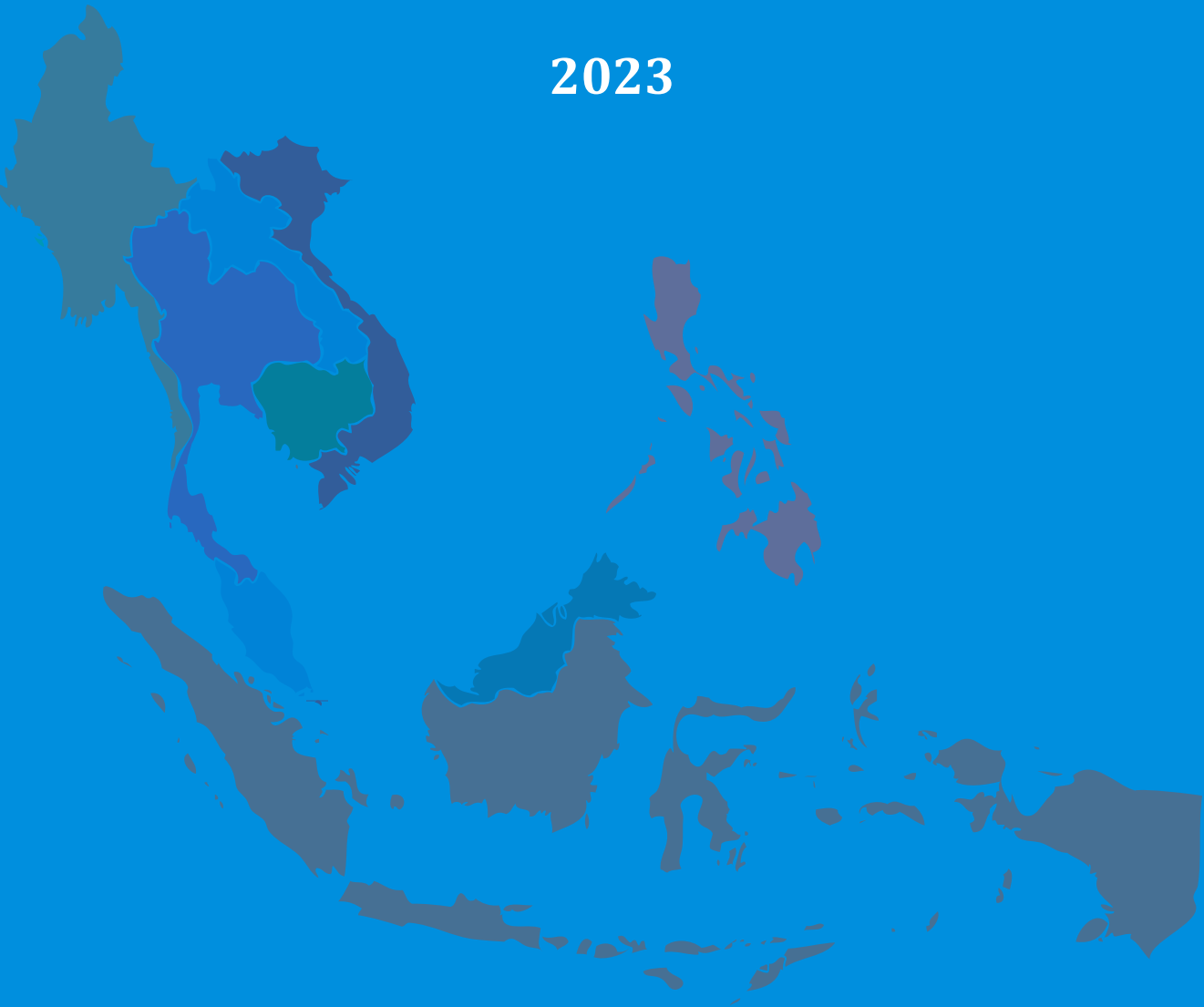




Human Rights Outlook in Southeast Asia

2023





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Foreword

As Southeast Asia continues its journey towards a new normal in the wake of the COVID-19 pandemic, the region's human rights landscape remains precarious, fraught with challenges and setbacks. Published five years after its last edition, the much-anticipated 2023 Human Rights Outlook in Southeast Asia offers a timely and comprehensive overview of the human rights situation across the region's eleven countries. This volume, although long overdue, reflects the rich insights of scholars who bring a wealth of local expertise to their respective country chapters and documents developments since 2019 whilst also highlighting the persistent obstacles to advancing human rights in Southeast Asia.

From the reports, it is evident that all Southeast Asian nations have formally embraced international human rights norms, as shown by their ratifications of key treaties and their continued active participation in United Nations mechanisms such as the Universal Periodic Review. Yet these commitments remain largely symbolic with many countries demonstrating limited political will to actually implement the provisions therein. As such, the authors detail various challenges, such as the enforcement of Sharia law in Brunei, persistent human rights violations masked by democratic facades, and the systematic detention of regime critics in a number of countries in the region. In addition, it is worrying to see sedition acts and cyber laws being frequently weaponized to suppress human rights defenders across the region. Meanwhile, vulnerable groups, including migrant workers, refugees, and asylum seekers, continue to endure systemic exploitation and abuse, often without access to justice or adequate remedies. Moreover, the human rights of LGBTQI+ communities remains vulnerable, albeit with some exceptions such as the passing of the same-sex marriage bill in Thailand.

This edition of the Outlook also delves into additional critical themes affecting the region: academic freedom, the human rights implications of the COVID-19 pandemic, and the intersection of climate change with environmental issues. While addressing human rights challenges at the national level remains a priority, certain crises—such as the deteriorating situation in Myanmar, the human rights abuses of military backed regimes, and escalating climate-related threats—demand urgent regional cooperation. Unfortunately, ASEAN's human rights mechanisms continue to fall short, exemplified by the regional body's inability to formulate a unified response to the Myanmar crisis since 2021.

SHAPE-SEA's Human Rights Outlook in Southeast Asia series aspires to serve as a platform for critical analysis and dialogue, shedding light on pressing human rights issues while fostering collaboration among scholars, policymakers, and advocates. In this collective endeavour, I extend my gratitude to the contributors of the eleven country chapters and the regional editorial team led by Dr Azmi Sharom and Magdalen Spooner, whose tireless efforts have made this edition possible. Finally, I am deeply appreciative of SIDA's steadfast support in sustaining the SHAPE-SEA program and enabling the publication of this and other editions of the Outlook series.

Vachararutai Boontinand, PhD

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Introduction

Azmi Sharom

The *Human Rights Outlook in Southeast Asia* series is one of the products of the Strengthening Human Rights and Peace Research and Education in ASEAN-Southeast Asia project (SHAPE-SEA); a collaboration between the Southeast Asian Human Rights and Peace Studies Network (SEAHRN) and the ASEAN University Network – Human Rights Education (AUN-HRE), supported by the Swedish International Development Cooperation Agency (SIDA). It has been five years since the last *Human Rights Outlook in Southeast Asia*. The long gap is due to a variety of factors, chief amongst them being a global pandemic and the necessary administrative work that had to be done to shift from Phase One to Phase Two of the SHAPE-SEA project. I am very pleased that, despite the long wait, we have managed to get this series back on track.

The objective of the *Human Rights Outlook in Southeast Asia* series is to provide an annual snapshot of the human rights situation in all the Southeast Asian countries. As far as possible, the aim was to obtain writers who were from the country itself. This was not always easy as some nations were less open to criticism than others. Be that as it may, we endeavoured to get local human rights academics and activists because it is important to give Southeast Asian scholars and activists a voice and to hear their perspective. When we first started, it was a challenge to achieve this as we had difficulties in getting writers for every country. However, this seems to be a problem for the past as this volume as well as the preceding one, has the full complement of eleven nations.

In the past five years there have been many developments in the region with regard to human rights. Some are positive. For example, Timor Leste ratified the Convention on the Rights of Persons with Disabilities 2006, in January 2023; and Thailand ratified the Convention for the Protection of All Persons from Enforced Disappearance 2010, in May 2024. Unfortunately, in general, Southeast Asia appears to be suffering the same malaise that is being experienced the world over, and that is the shift away from liberal democratic ideals towards more authoritarian forms of government.

Countries which have been under military rule, remain that way; either directly or via the façade of elections which are structurally flawed. Countries which have been under governments that have moved away from human rights ideals, have been staying on the same course. Even when there appear to be reasons for optimism, caution is called for. In the last five years, Malaysia has seen several changes in government. On the surface, this may be a testament to the strength of their electoral system, but the writers of the Malaysian chapter bemoan the fact that this has not necessarily translated into greater human rights protection. Indonesia, for many years deemed as the shining example of the shift from authoritarianism to democracy has shown worrying signs. A controversial court decision which inexplicably allowed for a candidate to stand for

Vice President even when the explicit laws ruled him out on the grounds of age, caused many to wonder if nepotism was behind this seeming erosion of the wall between the judiciary and executive wishes. Timor Leste, the newest of Southeast Asian sovereign states however, has continued to generally develop in both democratic practices and human rights protection. Thus perhaps there is no need to be too pessimistic.

In previous Outlooks, there has been a standard structure which writers were asked to abide by. This was in order to allow for easier comparisons between years when reading the different volumes. This structure remains the same but for this volume of the *Outlook*, we have decided to add two specific sections; one regarding Covid 19 and how it has affected human rights in the respective countries and another for academic freedom.

With regard to academic freedom in general, it is an area which is lacking in positive developments. However, there are nuances as there are various levels of problems with regard to academic freedom in the region. At its worse, governments are directly in control of academic institutions, down to curricula setting. In some situations, there are specific laws which deal with activities on campus however, more often than not, control comes in the forms of more general laws dealing with the freedom of expression, or lack thereof. Even when there are specific laws protection academic freedom, the open ended and vague nature of those provisions means that suppression still occurs.

These nuances between nations can be seen more clearly in how Covid 19 affected us. All countries had to endure the same type of restrictions, mainly to do with the loss of the freedom of movement and association. There was also the concern felt by many writers for the loss of privacy as technology was used for tracking and monitoring purposes. Nevertheless, it is interesting to note the different issues that the various writers chose to highlight. In Vietnam, corruption with regard to the pricing of Covid testing kits is discussed. In Brunei, it was the rise in illegal activities such as unsanctioned gold mining which was the result of high unemployment. The writer for Thailand emphasised how Covid restrictions affected the most vulnerable in society such as women, migrant workers and the LGBTQ community. The Philippines saw an upsurge in violent militaristic behaviour in the name of disease control and in Cambodia the opportunity was taken to have laws that controlled assembly as a means to further suppress political opposition. The complaints from Myanmar is unique due to their current situation. Even at the height of a health crisis, politics still came into play as medical staff associated with the Civil Disobedience Movement (CDM) were prevented from working.

It is true, there are many common human rights problems throughout the region, but as the brief description of the Covid pandemic above shows, there are many differences too. The whole region cannot be generalised. It is therefore up to the academics and activists in all eleven countries, often to some risk to themselves, to keep speaking and writing about their own situations and it is for publications like the *Outlook*, to give them the platform to do so.

BRUNEI DARUSSALAM

BRUNEI DARUSSALAM

*Bidyalaxmi Salam**

Part 1: Overview of Brunei Darussalam

A. Country Background

Brunei Darussalam Facts	
Geographical size	5,765 sq km
Population ¹	440,715
Ethnic breakdown ²	Main ethnic groups: Malay – 73.8% Chinese – 9.6% Others (includes indigenous groups, e.g. Dusun, Belait, Kedayan, Murut, and Bisaya) – 16.6%
Official language	Malay
Literacy rate (aged 15 and above) ³	97.59%
Life expectancy ⁴	75 years
GDP ⁵	US\$15.13 billion (per capita US\$33,430)
Government ⁶	Constitutional monarchy, unitary state, Islamic state. Hereditary Sultan, His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah is the head of state and Prime Minister of Brunei. The Sultan continues to wield full executive power under a long-standing state of emergency imposed in 1962, which has since been renewed every two years. Two judicial systems run in parallel: a secular system and one operating under Sharia law.

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¹ Data from 2023. 'Fast Facts' Borneo Bulletin Yearbook 2023, available at <https://borneobulletinyearbook.com.bn/2023/#34>, accessed on 2 June 2024.

² Borneo Bulletin Yearbook (see note 1 above).

³ Data from 2021. 'Brunei literacy rate 1981-2024' Macrotrends, available at <https://www.macrotrends.net/global-metrics/countries/BRN/brunei/literacy-rate>, accessed on 11 November 2024.

⁴ Data from 2022. 'Brunei Darussalam' World Bank, available at <https://data.worldbank.org/country/brunei-darussalam?view=chart>, accessed on 11 November 2024.

⁵ World Bank (see note 4 above).

⁶ 'Freedom in the World 2022: Brunei profile' Freedom House, available at <https://freedomhouse.org/country/brunei/freedom-world/2022>, accessed on 11 November 2024.

Political and social situation	<p>Under an absolute monarchy and an absence of elections, political rights remain minimal in Brunei. Only a few restricted avenues for genuine and autonomous political participation exist. Melayu Islam Beraja (MIB) or the Malay Islamic Monarchy was officially declared as the national philosophy of Brunei Darussalam at its independence in 1984, the three pillars of which are Malay culture, Islamic laws, and monarchical rule, all of which are constitutionally protected.</p> <p>In 2014, Brunei became the first Southeast Asian country to officially adopt Islamic Sharia law thereby introducing such punishments as whipping, amputations, and death by hanging or stoning into its penal system The Sharia Penal Code Order 2013 came into effect on 3 April 2019.⁷</p>
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A small independent sultanate, Brunei or Brunei Darussalam is located on the northern coast of the island of Borneo and is separated into two parts by Malaysia with which it shares a 266 kilometre border. While Malay is its official language as laid out in the Melayu Islamic Beraja (MIB), English and Chinese are also commonly spoken.

Brunei’s economy continues to depend heavily on the oil and gas sector, which significantly affects its GDP due to price fluctuations and production rates. However, it has also worked towards diversification of its economy by fostering such industries as financial services, tourism, and fishing, in addition to science and technology.

Bilateral ties between Brunei and China have only grown stronger since 2018 culminating in the November 2018 visit of the President Xi Jinping, the first state visit ever to be made, during which the two leaders reaffirmed their mutual respect for sovereignty, territorial integrity, and non-interference in each other’s internal affairs, whilst initiating several projects (the Hengyi Petrochemical project on Pulau Muara Besar, the Guangxi-Brunei economic corridor, the Pulau Muara Besar bridge, the Telisai-Lumut highway, and the Ulu Tutong dam). The Hengyi project alone is said to strengthen Brunei’s energy security and economic growth, directly contributing over US\$3.3 billion to its GDP which amounts to about 9.4% of its total national GDP.⁸

In the 2023 Human Development Index (HDI), Brunei Darussalam was ranked 55th with an HDI of 0.823 in 2022, falling under the category of “very high.” With no taxes levied on its citizens, the government operates as a welfare system which ensures free healthcare, subsidised housing, twelve years of compulsory education, and tuition free

⁷ ‘Freedom in the World 2020: Brunei profile’ Freedom House, available at <https://freedomhouse.org/country/brunei/freedom-world/2020>, accessed on 6 January 2024.

⁸ ‘Brunei-China joint venture signs phase 2 of petrochemical project deal’ The Star, 9 November 2023, available at <https://www.thestar.com.my/aseanplus/aseanplus-news/2023/11/09/brunei-china-joint-venture-signs-phase-2-of-petrochemical-project-deal>, accessed on 14 November 2024.

public universities where students are even given a monthly allowance. As a result, Brunei ranks highly in the HDI alongside countries such as Singapore in the region.

System of governance

A British protectorate from 1888, Brunei declared itself a self-governing state in 1959 although foreign affairs, security, and defence remained under British control until 1984 when it gained full independence. Section 4(1) of the 1959 Constitution vests full executive authority to the Sultan.⁹ Thus, Sultan Haji Hassanal Bolkiah is the head of state and government, becoming the Prime Minister in 1984, the Minister of Foreign Affairs in 2015, the Minister of Finance and Economy in 1977, and the Minister of Defence in 1986, as well as the Commander-in-Chief of the Royal Brunei Armed Forces.

Although the Sultan presides over the Council of Ministers and is assisted by the Privy Council, the Council of Succession, the Religious Council, and the Legislative Council, the first two councils are his appointees as laid out in s.4(2) of the Constitution. Following a cabinet reshuffle in 2022, Romaizah Mohd Salleh became the first appointed female minister (holding the portfolio of Minister of Education)¹⁰ albeit two female deputy ministers were appointed prior to this.¹¹

Political and social situation

Enshrined in the first codified Constitution of Brunei in 1984, MIB is officially recognized as the country's national philosophy, comprising the Malay Language (s.82(1)), the Islamic Religion (s.3(1)), and the Institution of Monarchy (s.4). As such, a constitutional mandate protects all aspects of the MIB philosophy, and any act or intent to disrespect, discourage, or harm it is considered a punitive offence.

Significantly, Brunei became the first Southeast Asian country to officially adopt Islamic Sharia Law in 2014.¹² Five years later, the Sharia Penal Code Order (SPCO) 2013 came into full effect on 3 April 2019. In its first phase, acts such as “indecent behaviour” and “failure to attend Friday prayers” were deemed punitive offences punishable by fines, jail terms, or both. Full implementation introduced more punishments such as whipping, amputation, and the death penalty by hanging or stoning. Indeed, the death penalty can be imposed for a broad range of acts including but not limited to extramarital

⁹ Constitution of Brunei Darussalam, available at <https://www.icj.org/wp-content/uploads/2013/04/Brunei-Constitution-1959-eng.pdf>, accessed on 2 June 2024.

¹⁰ Azahari, I, ‘Women play critical role in educating future leaders: Minister’ Borneo Bulletin, 14 June 2022, available at <https://borneobulletin.com.bn/women-play-critical-role-in-educating-future-leaders-minister/>, accessed on 14 November 2024.

¹¹ See, ‘Brunei makes history with two new female Deputy Ministers’ SFA Sandbox, 30 January 2018, available at <https://sfasandbox.wordpress.com/2018/01/30/brunei-makes-history-with-two-new-female-deputy-ministers/>, accessed on 14 November 2024.

¹² ‘Brunei Darussalam implements Syariah law’ Department of Information, Prime Minister’s Office, May 2014, available at <https://www.information.gov.bn/Brunei%20Today%20PDF%20Library/2014/BD%20MEI.pdf>, accessed on 13 November 2024.

sexual relationships and consensual sex between adults of the same gender.¹³ However, following widespread international outrage and criticism, the Sultan issued a *de facto* moratorium on the death penalty in May 2019.¹⁴

The effect of the COVID-19 pandemic on human rights and peace

Statistics report a total of 270,199 confirmed cases in Brunei from February 2020 to December 2022, with 225 deaths in total.¹⁵ The pandemic's impact, which was moderate in comparison to other countries in the region, was attributed to its strict SOPs¹⁶ and was reportedly one of the most effective responses to COVID-19 in Asia. However, it included regulations such as mandatory self-quarantine for two weeks for any individuals arriving in Brunei with a penalty of up to 6 months in prison, up to BND10,000 in fines, or both. Further restrictions included the blocking of all foreign entrants and restaurants closures in March 2020. At the same time, a dedicated website disseminated information about the pandemic.

Also in 2020, the Temburong Bridge (a project funded by China) was opened after which the local media reported “gathered congestion” around the area seemingly undermining COVID-19 protocols. Many speculated the step was undertaken to showcase Bruneian-Chinese relations amid its early restrictions on flights from several Chinese cities. It is significant to note that besides the growing economic ties between the two countries due to development projects, Chinese tourists also play a significant part in the country's tourism sector.

As reported by the Global Organised Crime Index, as a result of increased unemployment during the pandemic, more people engaged in illegal gold mining given the low barriers to entry in the sector and the abundance of valuable minerals in the country.¹⁷ While many were shut down by the authorities, the underground networks orchestrating the illegal trade were more difficult to control. However, more details on COVID-19's impact on, for example, Brunei's vulnerable populations including migrant workers, stateless people, or asylum seekers is not available leaving Freedom House to report in 2021 that while the country had adopted one of the most effective responses to

¹³ ‘Brunei Darussalam baseline assessment of R2P implementation of 2019’ Asia Pacific Centre for the Responsibility to Protect, 2019, available at https://r2pasiapacific.org/files/3886/Brunei_annex_combined.pdf, accessed on 14 November 2024.

¹⁴ ‘Brunei's de facto moratorium on death penalty will continue under Syariah: HM’ The Scoop, 5 May 2019, available at <https://thescoop.co/2019/05/05/bruneis-de-facto-moratorium-on-death-penalty-will-continue-under-syariah-hm/>, accessed on 14 November 2024.

¹⁵ ‘Brunei Darussalam’ Worldometer, available at <https://www.worldometers.info/coronavirus/country/brunei-darussalam/>, accessed on 14 November 2024.

¹⁶ ‘How Brunei beat COVID-19’ The Diplomat, 22 June 2020, available at <https://thediplomat.com/2020/06/how-brunei-beat-covid-19/>, accessed on 23 December 2023.

¹⁷ ‘Global Organized Crime Index: Brunei’ Global Initiative against Transnational Organized Crimes, 2023, available at https://ocindex.net/assets/downloads/2023/english/ocindex_profile_brunei_2023.pdf, accessed on 14 November 2024, at 3.

COVID-19, issuing clear guidelines and information, such transparency was lacking when it came to other areas of governance.¹⁸

B. International Human Rights Commitments and Obligations

Table 1: Ratification Status of International Instruments – Brunei Darussalam¹⁹

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	22 Sep 2015	
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		24 May 2006 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		
International Covenant on Economic, Social, and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		27 Dec 1995 (a)

¹⁸ ‘Freedom in the World 2021: Brunei Darussalam’ Freedom House, available at <https://freedomhouse.org/country/brunei/freedom-world/2021>, accessed on 14 November 2024.

¹⁹ ‘Ratification status for Brunei’ UN Office of the High Commissioner on Human Rights, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN, accessed on 5 December 2023.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		17 May 2016 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography		21 Nov 2006 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	18 Dec 2007	11 Apr 2016

Since acceding to the Optional Protocol to the CRC on the involvement of children in armed conflict in 2016, Brunei has shown little progress towards ratification of more core UN conventions. As seen in Table 1 above, it has only ratified CEDAW, the CRC, the CRPD, and signed but not ratified the CAT. Similarly, in 2018, Brunei signed the Treaty on the Prohibition of Nuclear Weapons (TPNW) but has yet to ratify the treaty.²⁰ As regards trafficking in persons, Brunei has ratified the ASEAN Convention against Trafficking in Persons and acceded to the United Nations Trafficking in Persons Protocol.²¹ However, it continues to reject any individual complaint mechanisms and inquiry procedures related to any of the above conventions.²²

CEDAW: Brunei continues to maintain reservations to Arts 9(2) and 29(1), stating the provisions may be contrary to its Constitution and the beliefs and principles of Islam. Article 9(2) grants women equal rights with men as regards the nationality of their children, and Art 29(1) concerns arbitration between two States.²³ Under the Brunei Nationality Act (2011), only fathers can confer nationality to their children, therefore discriminating against the rights of women.

CRC: The government also holds reservations to Arts 20(3), and 21(b) to (e). However, in its National Report presented to the Human Rights Council for its 2014 Universal Periodic Review (UPR), Brunei withdrew reservations to Arts 20(1) and (2) relating to the protection of a child without a family, as well as Art 21(a) pertaining to the law on adoption.

²⁰ 'Ratification Status: Brunei Darussalam' International Coalition to Abolish Nuclear Weapons (ICAN), available at <https://www.icanw.org/brunei>, accessed on 19 June 2024.

²¹ Freedom House (see note 18 above).

²² OHCHR 'UN Human Rights Treaty Body Database', available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN, accessed on 4 January 2024.

²³ 'CEDAW: Brunei Darussalam – Declarations and Reservations' United Nations Treaty Collection, available at https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en#EndDec, accessed on 2 January 2024.

CRPD: Although holding no reservations to specific articles, Brunei continues to maintain a blanket reservation to any article contradicting its Constitution or the beliefs and principles of Islam.

CAT: In its third UPR cycle (2019), Brunei received 16 recommendations to ratify the CAT (signed in 2015) and partially accepted two additional recommendations to do the same.²⁴ The report also pointed out that the government had described itself as “taking steps towards the ratification of the [CAT]” although no steps had been taken. The fourth UPR cycle will be discussed in November 2024. No recommendations to modify the Sharia Penal Code (2013), specifically as regards eliminating or mitigating its most severe punishments, have been accepted by Brunei.

Despite having no specific human rights legislation or agencies in Brunei, the government states it protects human rights in the country “through an inter-agency consultative mechanism in cooperation with various NGOs as partners.” Such inter-agencies consist of the Prime Minister’s Office; various ministries including defence, foreign affairs, education, and religious affairs; the Attorney General’s Chambers; the Royal Brunei Police Force; the Narcotics Control Bureau; the Department of Immigration and National Registration; the Department of Labour; and the Department of Economic Planning and Development.

While specific human rights legislation is lacking in Brunei, protection for human rights of citizens can be found in the Adoption of Children Act 2010 (Cap 205), the Births and Death Registration Act 2013 (Cap 79), the Brunei Nationality Act 2011 (Cap 15), the Child Care Centres Act 2012 (Cap 79), the Children and Young Persons Act 2012 (Cap 219), the Compulsory Education Act 2011 (Cap 211), the Criminal Procedure Code 2016 (Cap 7), the Education Act 2011 (Cap 210), the Employment (Minimum Wage) Order 2023, the Employment Order 2009 (S 37/2009), the Geneva and Red Cross Act 1984 (Cap 86), the Geneva Convention Order 2005 (S 40/2005), the Guardianship of Infants Act 200 (Cap 191), the Immigration Act 2014 (Cap 17), the Islamic Family Law 2012 (Cap 217), the Marriage Act 2013 (Cap 76), the Married Women Act 2014 (Cap 190), the Mental Health Order 2014 (S 25/2014), the National Registration Act 2002 (Cap 19), the Offenders (Probation and Community Service) Act 2012 (Cap 220), the Penal Code 2016 (Cap 22), the Pensions Act 2014 (Cap 38), the Retirement Age Order 2010 (S 4/2010), the Unlawful Carnal Knowledge Act 1984 (Cap 29), the Women and Girls Protection Act 1984 (Cap 120), and the Workplace Safety and Health Order 2009 (S 44/2009).²⁵ Recent legislative measures related to human rights can be found in

²⁴ ‘Brunei Darussalam: Joint Stakeholder Report for the United Nations Universal Periodic Review – The death penalty’ The Advocates for Human Rights, 8 April 2024, available at <https://www.theadvocatesforhumanrights.org/Res/Brunei%20UPR%20DP%20Final.pdf>, accessed on 4 August 2024.

²⁵ Although not up-to-date, the list of legislations in Brunei can be found in the website of Attorney General’s Chambers, Prime Minister’s Office, Brunei Darussalam, Available at <https://www.agc.gov.bn/AGC%20Site%20Pages/The%20Laws%20of%20Brunei%20-%20A.aspx>, accessed on 12 December 2023.

the Anti-trafficking in Persons Order 2019 (S 17/2019), the Old Age and Disability Pensions Act (Amendment) Order 2021(S 29/2021), and the Persons with Disabilities Act 2021 (S 27/2021).

On implementation of the Sharia law in Brunei, the country asserted in its second UPR report that it considered the enactment to constitute a step towards “providing basic human rights.”²⁶ Likewise, in its third UPR report, it asserted that the law strengthens human rights

*by providing better protection of society particularly against serious criminal offences, through the mechanism of deterrence and at the same time adequate judicial protection of the accused, including through higher standards of proof. The objectives of Syariah are to protect faith, life, lineage, intellect and property.*²⁷

Also in its third UPR cycle, Brunei noted recommendations from many countries to create a National Human Rights Institution (NHRI) in compliance with the Paris Principles. However, as of yet, no progress has been made.

C. National Laws Threatening Human Rights

Sharia law

In 2014, Brunei Darussalam became the first country in Southeast Asia to adopt Sharia law which was implemented in phases through the SPCO.²⁸ On 3 April 2019, the Sharia Penal Code 2013 (SPC) finally came into full effect. While the first phase enacted provisions punishable by fines or imprisonment, subsequent phases included punishments such as amputation, whipping, or stoning to death.²⁹ In the first phase, only Parts I-III, s.94, s.184, s.185, ss.189 to 205, ss.207 to 220, ss.228 to 253, and s.254 (except references to ss.172, 194 and 195 of the religious Council and Kadis Courts Act (Cap 77)) were enforced. For example, ss.94(1) and (2) covers Muslim women giving birth out of wedlock, and Muslim women giving birth to a fully-developed child within a period of less than six months from the date of their marriage, both of which are liable to punishments of up to BN\$8000 and imprisonment depending on the offender’s age. Further, any man impregnating a woman out of wedlock would also be guilty of an offence and both may be fined up to BN\$8000 and a maximum of two years’ imprisonment under s.94(5).

²⁶ ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brunei (A/HRC/WG.6/19/BRN/1)’ Human Rights Council, 30 January 2014, available at <https://documents.un.org/doc/undoc/gen/g14/106/65/pdf/g1410665.pdf>, accessed on 14 November 2024, at 3.

²⁷ A/HRC/WG.6/19/BRN/1 (see note 26 above).

²⁸ Sharia Penal Code Order 2013, available at <https://www.agc.gov.bn/AGC%20Images/LAWS/BLUV/Syariah%20Penal%20Code%20Order,%202013.pdf>, accessed on 4 November 2023.

²⁹ ‘Brunei: New penal code imposes maiming, stoning’ Human Rights Watch, 3 April 2019, available at <https://www.hrw.org/news/2019/04/03/brunei-new-penal-code-imposes-maiming-stoning>, accessed on 26 November 2023.

Subsequent phases (second and third) commenced the following: Part IV, Chapter I (excluding s.94); Chapter II; Sections 186 to 188; Section 206; Sections 221 to 227; and Part V, s.254 (with respect to ss.172, 194, and 195 of the Religious Council and Kadis Courts Act (Cap 77)). In addition, the Sharia Courts Criminal Procedure Code Order 2018 (S 9/2018), passed on 5 March 2018, detailed implementation of Phase II including procedures on the execution of punishments.³⁰ Part IV, Chapter I of the SPCO includes the offences of *sariqah* (s.55) meaning stealing; *hirabah* (s.65) meaning taking another person's property by force or threat; *zina* (s.68) meaning a man and a woman engaging in sexual intercourse without being married to one another; *zina bil-jabar* and *liwat* (s.82) meaning sodomy; *qazaf* (s.98) meaning false accusations of rape; drinking intoxicating drinks (s.104); and *irtidad* (s.68) meaning apostasy.

Sariqah is a non-bailable offence and punishment for a first offence is amputation of the right hand from the joint of the wrist; for the second, amputation of the left foot up to the ankle; and for a third or subsequent offence, imprisonment not exceeding 15 years. Punishments for the offence of *hirabah* include strokes of the whip, imprisonment, amputation, and death depending on the nature of the offence. Similarly, if a Muslim commits *zina* and is proved by *irkar* of the accused or *syahadah* of at least four *syahid*, he or she can be arrested without warrant. *Zina* is punishable by stoning to death as witnessed by a group of Muslims if 'muhshan' (a person who has been married and has had sexual intercourse in that marriage, and who commits *zina*); or whipping with 100 strokes as witnessed by a group of Muslims and imprisonment for one year if 'ghairu muhshan' (a person who has not married or has married but has not yet had sexual intercourse in that marriage, and who commits *zina*).

For non-Muslims committing *zina* with Muslims, the punishment for the offence is the same as Muslims, ranging from whipping, fines, imprisonment, to death by stoning. Likewise, *liwat* (or sodomy) is liable to the same punishments as *zina*, whereas the harshest punishment for *qazaf* is whipping with 80 strokes. While Muslims found guilty of consuming liquor or intoxicating drinks can be punished with 40 strokes for a first offence, 80 strokes for the second, and 80 strokes and imprisonment for a term not exceeding 2 years for a third or subsequent offence; non-Muslims guilty of consuming intoxicating drinks in a public place can only be fined up to BND8,000 (approximately US\$ 5,923) and imprisoned for a term not exceeding 2 years or both.

The Sharia Penal Code and common law courts operate in parallel. In cases such as murder, rape, and theft, involving offences covered by both the SPC and secular law, an assessment committee will determine whether the case will be referred to the secular or Sharia court. Notably, the country's legal framework does not provide for an independent judiciary and is under the purview of the Prime Minister's Office with the

³⁰ Sharia Courts Criminal Procedure Code Order 2018, available at https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2018/S009.pdf, accessed on 2 November 2023.

Sultan as the head and the crown prince as senior minister. Furthermore, the Sultan appoints all judges in the higher courts who serve at his pleasure.³¹

Death penalty

The death penalty was stipulated as punishment for a number of offences prior to full implementation of the SPCO in 2019 (e.g. the Criminal Procedure Code, the Penal Code of 1951 (revised in 2001), and the Misuse of Drugs Act 2001). The Criminal Procedure Code prescribes the death penalty for crimes such as murder, offences resulting in death, terrorism-related charges, and treason. However, under Sharia law, the scope of such offences so punishable has expanded and is no longer limited to the most serious crimes. Thus, the death penalty can be handed out for offences committed under *qatlul-'amd*, *hirabah*, *zina*, *zinabil-jabar*, *liwat*, or *irtidad*. In addition, offences such as kidnapping, suicide, abetting the suicide of a person unable to give legal consent, participation in a gang robbery during which a murder takes place, illegal possession of firearms and explosives, drug trafficking and possession of drugs among others are punishable by death by hanging, whereas, adultery, sodomy, rape, apostasy, blasphemy, and insulting Islam are all punishable by death by stoning.

According to the law, death sentences must be handed unanimously by two Sharia High Court judges, one Muslim judge of the Supreme Court, and be presided over by one of the Sharia High Court judges. Subsequently, sentences must be submitted to the Sultan who can commute the death sentence. However, amid widespread criticism, the Sultan issued a *de facto* moratorium on the death penalty in May 2019.³² In Brunei, no death sentence has been carried out since 1957, but since the third cycle of its 2014 UPR, two foreign nationals have been sentenced to death, one for murder and one for a drug offence.³³ In its 2014 UPR, Brunei received a total of nine recommendations calling on it to abolish the death penalty (or maintain the moratorium on its application with a view to abolishing it)³⁴ to which Brunei stated that its general approach to criminal justice issues (including the death penalty) was to “preserve and protect religion, life, intellect, lineage, and property” and that such provisions were applicable to all regardless of gender in line with religious and cultural norms.

Sedition Act (Amendment) Order 2018

Changes brought about by the latest amendment in Brunei’s Sedition Act heighten existing concerns regarding the protection and promotion of human rights. The Sedition Act (Amendment) Order passed on 24 April 2018 included amendments of

³¹ ‘Brunei 2023 human rights report’ US Department of State, 2023, available at https://www.state.gov/wp-content/uploads/2024/02/528267_BRUNEI-2023-HUMAN-RIGHTS-REPORT.pdf, accessed on 14 November 2024.

³² ‘Last phase of sharia law implemented in Brunei’ Outright International, 2019, available at <https://outrightinternational.org/insights/last-phase-sharia-law-implemented-brunei>, accessed on 26 November 2023.

³³ ‘Summary of stakeholders’ submissions on Brunei Darussalam (A/HRC/WG.6/33/BRN/3)’ Human Rights Council, 21 February 2019, available at <https://documents.un.org/doc/undoc/gen/g19/046/94/pdf/g1904694.pdf>, accessed on 14 November 2024, at 3.

³⁴ A/HRC/WG.6/33/BRN/3 (see note 33 above).

s.3; substitution of s.4; insertion of a new section 4B; amendment of ss.5 and 6; and substitution of ss.7 and 8.³⁵ Section 3(e) on seditious intent was amended by replacing “and hostility” with “hostility or hatred” to now read “to promote feelings of ill-will and hostility or hatred between different classes of the population of Brunei Darussalam.” Section 3(f) was repealed and replaced – thus, the line “his Successors, His Consort or other members of the Royal Family” was removed and the paragraph now reads:

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

Moreover, stricter rules are now applicable. Section 4(c) adds “causes to be published” alongside “publishes” so the provision currently reads “any person who [...] prints, publishes or causes to be published [...] is guilty of an offence [...]” Likewise, s.4(d), prior to the amendment read “imports any seditious publication, unless he has no reasons to believe that it is seditious” was replaced with “imports or propagates any seditious publication.” Section 5 provides grounds for a search “without” a warrant being issued by a magistrate; and s.6 allows for arrests also “without” a warrant. More concerning, under s.4B(6), the amendment empowers *any* police officer with the authority to search and arrest; prior, such searches could only have been carried out by a police officer “not below the rank of Inspector.”

Accordingly, any person found guilty of a seditious offence may be imprisoned for a maximum of 15 years, but an offence under subsection (1) or (2) involving seditious intent under s.3(1)(a) or (f) relating to “His Majesty the Sultan and Yang Di-Pertuan or Her Majesty Duli Raja Isteri” is punishable by imprisonment for a term not less than 3 and not exceeding 15 years. Criminalising criticism of the Sultan, royal family, and the MIB aside, the Sedition Act provides only a vague definition of seditious intention. As such, a wide-range of acts can be deemed seditious offences, leading to severe punishments and giving extraordinary powers to the authorities therefore making misuse of the law and human rights violations ever more likely.

Internal Security Act (Amendment) Order 2006 (Cap 133)

Although the Internal Security Act is secular law, it also allows for preventative detention in cases of subversion and organised violence “establishing significant exceptions to the rights granted in secular law.”³⁶ While individuals detained under the Act are not presumed innocent and generally do not have the right to legal counsel, they are “entitled to make representation against a detention order to an advisory board, either personally or through an advocate or attorney.” Further, authorities can detain persons

³⁵ Sedition Act (Amendment) Order, 2018, available at https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2018/S022.pdf, accessed on 23 December 2023.

³⁶ US Department of State (see note 31 above).

without a hearing in cases of detention or arrest with the government even permitted to detain suspects without trial for renewable two-year periods.³⁷

D. Recent Court Cases Affecting Human Rights

Brunei has no provisions allowing individuals or groups to bring civil suits for human rights violations against the government. The United States Bureau Report (2022) found no route for individuals or organisations to seek civil remedies for human rights violations and also no provisions for judicial review of any government action. However, under customary practice, individuals may present written complaints about rights violations directly to the Sultan for review.³⁸ Further, while secular law provides for the right to a fair and timely trial which is generally enforced by the judiciary;³⁹ Sharia procedures do not specifically also so provide. As a result, no listed cases specific to human rights have come to trial. Listed cases could include offences under the Prevention of Corruption Act (amended in 2015); the Unlawful Carnal Knowledge Act (Cap 29); Section 377 of the Penal Code; and the Misuse of Drugs Act (Cap 27) among others.

However, two cases under the Sedition Act did reach the courts in 2007 and 2017. In 2007, three Bruneian men pleaded guilty to circulating a “satirical, computer-generated video clip by mobile phone depicting members of the royal family” leading the Attorney General to advise internet providers to monitor content themselves.⁴⁰ The other case involved a civil servant criticising the Ministry of Religious Affairs regarding the Halal certification policy in a Facebook post, claiming that a new policy disadvantaged small businesses, and calling on Bruneians to “dissent.” Consequently, the civil servant fled the country and obtained asylum in Canada but was convicted in absentia and sentenced to 18 months in prison, making the defendant the first to be convicted under the Sedition Act. In the court’s verdict, Senior Magistrate Lailatul Zubaidah Hj Mohd Hussain concluded that the defendant had the intent to “bring about hatred or contempt, or excite dissatisfaction against the Sultan and the government” further going on to say that:

³⁷ A/HRC/WG.6/33/BRN/3 (see note 33 above).

³⁸ ‘Brunei 2022 human rights report’ US Department of State, available at https://www.state.gov/wp-content/uploads/2023/02/415610_BRUNEI-2022-HUMAN-RIGHTS-REPORT.pdf, accessed on 14 November 2024.

³⁹ With the exception of the Internal Security Act which allows for preventative detention in cases of subversion and organised violence.

⁴⁰ Taggart, C, ‘Brunei’ Free Speech and Free Press Around the World, available at <https://freespeechfreepress.wordpress.com/brunei/>, accessed on 14 November 2024.

There is no doubt in my mind that in the use of profanity directed towards the Ministry of Religious Affairs, the publicising of a baseless allegation against religious teachers on a social media platform about highly sensitive issues concerning religion, knowing full well or having ought to have known, that His Majesty the Sultan and Yang Di-Pertuan is the head of religion in Brunei Darussalam, the comments as a whole did carry seditious intention.

The Senior Magistrate added:

Bearing in mind the limits placed on free speech and expression, I entertain no doubt that the posting has gone beyond what is sanctioned by law [...] There is no constitutional right to freedom of expression in the Brunei Constitution. There is no room for political comment [...] The court must send a message that such actions should not be followed.⁴¹

In addition, amendments to the Prevention of Corruption Act in 2015 strengthened Brunei's anti-corruption framework by establishing new conflict of interest rules for public officials, among other provisions. Consequently, in recent years, a number of officials have been prosecuted including some high-level cases. For example, two former judges, who were indicted in 2018 for alleged fund embezzlement, were convicted in 2020 and in 2021 had their convictions upheld by the Court of Appeal which also lengthened their prison sentences.⁴²

Part 2: Outstanding Human Rights Issues

A. Judicial Review

There are no provisions for judicial review in Brunei. Under Art 8B of the Constitution, the Sultan is immune from suit with Art 85(1) even permitting the Sultan to freely change or revoke any provisions of the Constitution.⁴³ Further, Art 84B(1) states that the

Sultan and Yang Di-Pertuan can do no wrong in either his personal or any official capacity [and] shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to have been done by him during or after his reign in either his personal or any official capacity.

⁴¹ Bandial, A, 'Ex-civil servant convicted on sedition charge, sentenced to 18 months' The Scoop, 13 December 2019, available at <https://thescoop.co/2019/12/13/ex-civil-servant-convicted-on-sedition-charge-sentenced-to-18-months/>, accessed on 14 November 2024.

⁴² 'Freedom in the World 2022: Brunei' Freedom House, available at <https://freedomhouse.org/country/brunei/freedom-world/2022>, accessed on 14 November 2024.

⁴³ 'Southeast Asian countries law: Brunei' University of Melbourne, available at <https://unimelb.libguides.com/c.php?g=930183&p=6721966>, accessed on 14 November 2024.

Accordingly, Art 84C specifies that

the remedy of judicial review shall not be available in Brunei for any suit or action relating to or arising out of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of, or refusal or omission to exercise any power, authority or discretion conferred on His Majesty the Sultan.

These articles came into effect with a constitutional amendment in 2004.

B. Rights of Assembly

Brunei has been under a state of emergency since 1962. Moreover, this is renewed every two years giving the Sultan absolute authority. As such, for five decades, Bruneians have had their rights to freedom of assembly severely restricted. Laws were further tightened with the passing of the Public Order Act (Amendment) Order (S 21/2018) in 2018 which prescribes the parameters of assembly in Brunei and includes restrictions on using or associating with or initiating use of any form of political symbols such as badges, uniforms, emblems or flags by an individual or groups other than those authorised by the government; and organising or participating in illegal drilling or quasi military organisations.⁴⁴ Moreover, punishments are harsher since the last amendment with fines being removed in favour of increased prison terms – offences involving the Sultan now attract prison terms of not less than 3 years and not exceeding 15 years.⁴⁵ In addition, public gatherings of 10 or more persons for any purpose require a government permit (from the Minister of Home Affairs). However, police are also authorised to disband unofficial assemblies of five or more persons deemed likely to cause a disturbance of the peace. Although the government routinely issued permits for annual events, in recent years, they have occasionally used this power to disrupt gatherings deemed politically or otherwise sensitive.⁴⁶

C. Freedom of the Press and Media

Ranked 117th out of 180 countries,⁴⁷ the World Press Freedom Index noted in 2024 that “press freedom is virtually non-existent in Brunei.” Under laws such as the Sedition Act and the Broadcasting Act (Cap 180) and emergency powers, freedom of expression, including for the media, is severely restricted.⁴⁸ Accordingly, the only television station in the country is state-owned (Radio Television Brunei), and the main

⁴⁴ Public Order Act 2013 (Cap 148), available at https://aipalync.org/storage/documents/main/chapter-148-public-order_1717492177.pdf, accessed on 13 November 2024.

⁴⁵ See, ss.31, 32, 33, 33(1), and 33(2) of the Public Order Act 2013.

⁴⁶ ‘2022 country reports on human rights practices: Brunei’ US Department of State, 2022, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/brunei/>, accessed on 14 November 2024.

⁴⁷ Brunei ranked 142nd in 2023. See, ‘Brunei’ Reporters Without Borders, available at <https://rsf.org/en/country/brunei>, accessed on 15 November 2024.

⁴⁸ ‘Brunei 2023 human rights report’ US Department of State, available at https://www.state.gov/wp-content/uploads/2024/02/528267_BRUNEI-2023-HUMAN-RIGHTS-REPORT.pdf, accessed on 14 November 2024.

English-language daily newspaper (Borneo Bulletin) is also controlled by the royal family. Moreover, local newspapers including foreign publications and distributors are restricted from reporting directly on foreign or domestic subjects deemed sensitive.⁴⁹ Newspaper publishers, proprietors, and/or editors publishing anything with seditious intent can also face prosecution. Further, the authorities can shut down any media outlets without cause, and fine and imprison journalists for up to three years for reporting information deemed “false and malicious.”⁵⁰ Consequently, self-censorship is often practiced by media individuals and groups amid the controlled and restricted environment, and particularly since the full implementation of Sharia law in 2019.⁵¹ In addition, the Internet Code of Practice limits “any [online] content deemed subversive or encouraging of illegitimate reform efforts” thus enabling authorities to censor online content and monitor private online communications.⁵²

D. Freedom of Expression

There are no such provisions in Brunei causing Humanists International to put freedom of expression in the country as facing “grave violations.”⁵³ As such, expressions of core humanist principles on democracy, freedom, and human rights are brutally repressed. While the Constitution allows for the practice of religions other than Islam (the official religion), its laws are “entirely derived from religious law or by religious authorities” carrying severe implications for Muslims, non-Muslims, or the non-religious ranging from religious-based discrimination to capital punishment for non-adherence or offences under the law. For example, it is an offence to challenge the standing of MIB (or the national philosophy) and the authority of the royal family. The 2005 Sedition Act Amendment further strengthens these prohibitions and the punishments for offences committed under the Act. Moreover, any act, matter, or word intended to promote “feelings of ill will or hostility” between classes of persons or “to wound religious feelings” is similarly criminalised. Under Sharia law, however, apostasy and blasphemy are punishable by death. It is also illegal to advocate secularism or such advocacy is suppressed.⁵⁴

⁴⁹ US Department of State (see note 48 above).

⁵⁰ ‘Brunei’ Reporters Without Borders, available at <https://rsf.org/en/country/brunei>, accessed on 14 November 2024.

⁵¹ Reporters Without Borders (see note 50 above).

⁵² ‘The freedom of thought report 2023’ Humanists International, available at <https://fot.humanists.international/wp-content/uploads/2023/11/FOTR-2023-FINAL.pdf>, accessed on 14 November 2024.

⁵³ Humanists International (see note 52 above).

⁵⁴ Humanists International (see note 52 above).

E. Academic Freedom

Self-censorship on topics deemed sensitive is a common practice in academia with some authors releasing scholarly work under pseudonyms in foreign publications.⁵⁵ Government funding and its tight oversight of the educational system greatly impacts academic independence and autonomy in the country. Accordingly, government approval is required to organise any public lectures, academic conferences, and to host visiting scholars, thereby, limiting the free exchange of ideas and hindering academic progress.⁵⁶ A US Department of State Report in 2023 reported that two academics faced government scrutiny of proposed research papers on what the authorities perceived sensitive topics, while one academic who published overseas faced government surveillance upon returning to Brunei.⁵⁷

F. LGBTQI+ Rights

Under s.377 of the Penal Code, homosexuality is a criminal offence punishable by up to 10 years' imprisonment. The human rights situation of the LGBTQI community in Brunei is further aggravated since full enforcement of the Sharia Code in 2019. Currently, not only is cross-dressing an offence punishable with fines, imprisonment, or both; corporal and death penalties are also applied to "offences" such as consensual sexual relations between adults of the same gender.⁵⁸ In addition, punishment for sex between men is death by stoning or whipping with 100 strokes and imprisonment for one year; punishment for women amounts to a fine not exceeding BND40,000, imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes, or a combination of any two of these.⁵⁹

In 2019, during its third UPR cycle, Brunei received five recommendations relating to the decriminalisation of homosexuality and the enhancement of LGBTQI rights. Unfortunately, the Brunei government did not note or accept any of the recommendations justifying its denial on the grounds of "religious beliefs, cultural identity, and defence of sovereignty."⁶⁰ Accordingly, the heavily controlled and restricted environment poses a significant challenge for civil society groups as they cannot assemble openly and/or express themselves freely, instead tending to hold meetings in private rather than apply for permits, or practice self-censorship at public events.⁶¹

⁵⁵ 'Freedom in the World 2021: Brunei Darussalam' Freedom House, available at <https://freedomhouse.org/country/brunei/freedom-world/2021>, accessed on 14 November 2024.

⁵⁶ 'Freedom in the world 2023: Brunei Darussalam' Freedom House, available at <https://freedomhouse.org/country/brunei/freedom-world/2023>, accessed on 14 November 2024.

⁵⁷ US Department of State (see note 48 above).

⁵⁸ A/HRC/WG.6/33/BRN/3 (see note 33 above).

⁵⁹ Humanists International (see note 52 above).

⁶⁰ A/HRC/WG.6/33/BRN/3 (see note 33 above).

⁶¹ US Department of State (see note 48 above).

G. Climate Change and Environmental Issues

A small coastal country rich in natural resources and biodiversity, Brunei is also vulnerable to global climate and environmental issues. One vulnerability assessment showed it had medium to high climate change exposure given that coastal areas are low-lying, increasing the country's susceptibility to rises in sea levels⁶² and other events such as flooding, landslides, and strong winds. Further, a loss of forestry and biodiversity would result in food insecurity and public health impacts from the resurgence of diseases.⁶³ Marginalised groups, particularly the poor, will be disproportionately affected as they will be “more exposed and sensitive to such impacts and with lower capacity and fewer resources to adapt.”⁶⁴

Consequently, Brunei ratified the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol in 2007 and 2009 respectively; an Environment Impact Assessment for Development Projects in 2010; the Hazardous Waste (Control of Export, Import and Transit) Order in 2013⁶⁵; and the Paris Agreement on 21 September 2016. It also launched its National Climate Change Policy (BNCCP) in 2020, and submitted its first Nationally Determined Contributions (NDCs) in the same year indicating its commitment to reduce greenhouse gases by 20% relative to business-as-usual levels by 2030. Also in the pipeline is establishment of the ASEAN Centre for Climate Change in Brunei, which will serve as a think tank for climate research in the region.⁶⁶ Given the fact that the marginalised are more vulnerable to climate change, the Climate Watch Data report 2021 called upon Brunei to

*support the inclusion of the poor in planning and implementing adaptation actions and ensuring that a greater share of adaptation funding reaches local communities [to] improve their readiness to adapt to climate change and reduce poverty.*⁶⁷

Such action is particularly vital to Brunei given the lack of data available regarding the impact of such catastrophic events on different communities and strata of society.

⁶² ‘Brunei Darussalam: Nationally Determined Contribution (NDC) 2020’ available at <https://policy.asiapacificenergy.org/sites/default/files/Brunei%20Darussalam%27s%20NDC%202020.pdf>, accessed on 14 November 2024.

⁶³ ‘Brunei Darussalam’ Climate Change Knowledge Portal, available at <https://climateknowledgeportal.worldbank.org/country/brunei-darussalam>, accessed on 14 November 2024.

⁶⁴ ‘Brunei’ Climate Watch Data, available at, https://www.climatewatchdata.org/countries/BRN?end_year=2021&start_year=1990, accessed on 15 August 2024.

⁶⁵ ‘Climate and health country profile 2015: Brunei’ WHO, available at <https://iris.who.int/bitstream/handle/10665/254618/WHO-FWC-PHE-EPE-15.50-eng.pdf?sequence=1>, accessed on 14 November 2024.

⁶⁶ ‘Brunei pledges \$2.1 million for ASEAN Climate Change Centre’ The Scoop, 7 March 2023, available at <https://thescoop.co/2023/03/07/brunei-pledges-2-1-million-for-asean-climate-change-centre/>, accessed on 14 November 2024.

⁶⁷ Climate Watch Data (see note 64 above).

H. Stateless Persons, Minorities, and Indigenous Peoples

Brunei is not a signatory to the 1954 Convention relating to the Status of Stateless Persons. Under the Brunei Nationality Act 1961 (Cap 15), non-nationals including stateless people who are permanent residents have to fulfil certain criteria to become citizens including a period of domicile, fluency in the Malay language, and knowledge of Bruneian culture and tradition. Excluded from the groups considered indigenous to Brunei as listed in the Nationality Act, ethnic Chinese who make up the largest non-Malay population in the country, also comprise a sizeable portion of the stateless population (estimated at around 20,524 in 2019⁶⁸). Indeed, a number of populations do not fall within the “seven indigenous groups of the Malay race” or the groups specified in the First Schedule.

Although the government issues some stateless persons permanent residency including a certificate of identity, a sizable number remain outside of this category. The certificate allows its holders to travel internationally albeit without all the visa exemptions enjoyed by Brunei citizens. Stateless persons not registered as permanent residents are deprived of access to government services including education, healthcare, and employment in the formal economy. They are also not entitled to government issued identity documentation or to own property, land, or businesses. Further, sponsorship by a Brunei citizen is mandatory. Such barriers make it challenging for the stateless to acquire the Malay dialect which is required for citizenship, thereby creating a systemic barrier to citizenship.⁶⁹

In addition, the Nationality Act contains provisions that are discriminatory in nature⁷⁰ on the basis of gender, race, place of birth, and to those born before, on, or after 1 January 1962. To acquire citizenship by operation of law, various criteria must be met including belonging to one of seven “indigenous groups of the Malay race” and having a father who is either a Brunei citizen or who belongs to one of the seven aforementioned groups. Persons born either outside or inside Brunei Darussalam, irrespective of when the person was born, can only be citizens if both their father and mother were born in Brunei Darussalam and “were members of groups specified in the First Schedule” of the Nationality Act 1961 (which includes 15 additional groups to those listed as seven of the “indigenous groups of the Malay race”). All other persons, irrespective of their links to Brunei Darussalam and regardless of whether their mother alone is a citizen, must apply for citizenship by registration or naturalisation. Moreover, the Act does not allow female citizens to confer nationality to their children or foreign husbands on an

⁶⁸ A/HRC/WG.6/33/BRN/3 (see note 33 above).

⁶⁹ A/HRC/WG.6/33/BRN/3 (see note 33 above), at 7.

⁷⁰ ‘Joint submission to the Human Rights Council at the 33rd session of the Universal Periodic Review’ Statelessness Network Asia Pacific, Global Campaign for Equal Nationality Rights, The Brunei Project, and the Institute on Statelessness and Inclusion, 4 October 2018, available at https://files.institutesi.org/UPR33_Brunei_Darussalam.pdf, accessed on 14 November 2024.

equal basis as male citizens. Finally, s.6 of the Act allows the registration of minors in any circumstances that His Majesty deems fit.

Part 3: Conclusion

It is indeed a serious concern that Brunei Darussalam continues to regress as regards human rights. As such, the oil-rich state which levies no taxes, provides subsidised housing, and free education and healthcare to its citizens, only does so for a segment of society leaving thousands as “permanent residents” or stateless. For the whole country, under the Constitution and continued emergency decrees, civil and political rights remain unrecognised. The MIB philosophy influences governance, policies, and the everyday lives of Bruneians even to the extent of legitimising discriminatory laws on the basis of gender, race, and ethnicity leaving no room for political contestation or remedies for human rights violations. Advancements made in the last five years have also been undermined by full enforcement of the Sharia Penal Code Order in 2019 and the fact that ratification of core conventions on human rights is still pending.

In addition, the first National Plan of Action on Women (2023) pertaining to the promotion and protection of women’s rights, stands in contradiction to existing laws that prescribe jail terms, corporal punishment, or even the death penalty for such acts as adultery and same-gender sex act. Furthermore, although Brunei was applauded for its COVID-19 pandemic measures, restrictions came with serious punishments including jail terms and hefty fines. Moreover, the human rights situation particularly for religious, ethnic, and gender minorities has further deteriorated leading to degrading treatment and punishment by the authorities, unlawful and arbitrary interference of privacy, and restricted freedom of expression. Other issues include an absence of fair and free elections and restrictions on political participation. All of the above is made worse because a true reflection of the human rights situation in Brunei is hindered by a lack of transparency and unavailable and inaccessible data. So much so, one cannot but question the accuracy and reliability of any authority claiming Brunei to be a peaceful society.

CAMBODIA



CAMBODIA

Joel Mark Barredo* and Casey Anne Cruz**

Part 1: Overview of Cambodia

A. Country Background

Cambodia Facts	
Geographical size	176,520 sq km
Population ¹	17,708,840
Ethnic breakdown ²	Main ethnic groups: Khmer (95.4%), Cham (2.4%), Chinese (1.5%)
Official language(s) ³	Khmer
Literacy rate (aged 15 years and above) ³	83.78%
Life expectancy ⁴	70 years
GDP ⁵	US\$31.77 billion (per capita US\$1,875)
Government	<p>A unitary state and multi-party democracy with a parliamentary constitutional monarchy. The King, as head of state, holds a largely ceremonial role and is chosen by the Royal Council of the Throne. The Prime Minister as head of government and leader of the ruling party, holds most executive power and is appointed by the King with the National Assembly’s approval.</p> <p>The legislative branch is bicameral, consisting of the National Assembly (Radhsaphea Ney Preah Recheanachakr Kampuchea or lower house) and the Senate (Protsaphea Ney Preah Recheanachakr Kampuchea or upper house). The former holds more legislative power and is directly elected, while the latter has an advisory role.</p>

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¹ Data from 2024. ‘Cambodia population 2024 (live)’ World Population Review, available at <https://worldpopulationreview.com/countries/cambodia>, accessed on 5 November 2024.

² Estimated data from 2019-2020. ‘Cambodia: Country factsheet’ The World Factbook, available at <https://www.cia.gov/the-world-factbook/countries/cambodia/factsheets/>, accessed on 5 November 2024.

³ Data from 2022. ‘Cambodia literacy rate 1998-2024’ Macrotrends, available at <https://www.macrotrends.net/global-metrics/countries/KHM/cambodia/literacy-rate>, accessed on 5 November 2024.

⁴ Data from 2022. ‘Cambodia’ World Bank, available at <https://data.worldbank.org/country/cambodia?view=chart>, accessed on 5 November 2024.

⁵ Data from 2023. World Bank (see note 4 above).

Political and social situation	<p>The socio-political landscape from 2019 to 2023, has been regressive under Prime Minister Hun Sen. While critical elections have taken place, civil society organizations report they barely met democratic standards. Issues include the systematic disqualification of the Candlelight Party and the purging of dissenting voices. As such, the Cambodian Peoples' Party (CPP) retains an overwhelming grip on power by dominating nearly all aspects of governance and public life. Further, the transition of power in 2023 from Hun Sen to his son, Hun Manet, is merely perpetuating those structures of control.</p> <p>The COVID-19 pandemic, as well as protracted challenges related to development projects, displacement, and multiple facets of injustice have exacerbated the marginalization of the poor and powerless.⁶</p>
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The Kingdom of Cambodia is nestled in the Mekong Region, bordered by Thailand to the west and northwest, Laos to the north, Vietnam to the east, and the Gulf of Thailand to the southwest. Predominantly a rural country, Cambodia is one of the most ethnically and religiously homogeneous populations in Southeast Asia.

Soon after decolonization in 1953, the genocidal rule of the Khmer Rouge (1975-1979) practiced forced labour, mass executions, and the compulsory relocation of people with devastating results to both the social fabric and economic infrastructure of the country, the trauma of which is still felt today.

In 2024, the country's political context is characterized by a complete absence of any truly democratic process in which the Cambodian Peoples' Party (CPP) continues to maintain an iron grip on power whilst maintaining close economic and political ties to China as a result of its Belt and Road Initiative – enabling it to be much less reliant on western development aid. Thus, despite enshrining human rights principles in its 1993 constitution, the CPP appears to emphasize stability, economic development, and national sovereignty over liberal democratic values.

Current political and social situation

Despite its history of atrocities which led to the deaths of approximately 1.7 million people through forced labour, starvation, and executions, Cambodia has seen notable developments in various sectors, specifically, tourism, infrastructure, and technology, and its human development index (HDI) now stands in the “medium” category, having increased by 56.9% since 1990 bringing it to a ranking of 146th among 191 countries in 2023.⁷ On the political front, after nearly 38 years in office, Prime Minister Hun Sen

⁶ ‘Cambodia country report 2024’ BTI, available at <https://bti-project.org/en/reports/country-report/KHM>, accessed on 5 November 2024.

⁷ ‘2024 Regional Human Development Report – Making our future: New directions for human development in Asia and the Pacific, Cambodia focus’ UNDP, 2024, available to download at <https://www.undp.org/cambodia/publications/2024-regional-human-development-report-cambodia-focus>, accessed on 6 November 2024.

announced his decision to step down in 2023 and transfer power to his eldest son, Hun Manet, although he still wields significant influence.

However, while the country had conducted semi-competitive elections in the past, polls are now held in a severely repressive environment. Consequently, despite the CPP's landslide victory in the 2023 election, observers pointed to an erosion of democratic norms including an environment devoid of genuine competition, biased electoral commissions, limited press freedom, and intimidation of opposition candidates and activists.

The effect of the COVID-19 pandemic on human rights and peace

The COVID-19 pandemic revealed vulnerabilities in the nation's public health system while exacerbating existing human rights concerns. For example, a state of emergency (later formalized in the Law on the Management of Nation⁸) in 2021 granted the government broad surveillance and control mechanisms under the guise of public health⁹ including imposing strict lockdowns in areas with high infection rates, restricting travel between provinces, and increasing penalties for violations of health regulations. Further, the law enabled enhanced surveillance to monitor compliance with health directives, imposed control over media coverage of the pandemic, limited critical reporting, and prevented dissemination of misinformation in contravention of the civil liberties outlined in the International Covenant on Civil and Political Rights.¹⁰

Moreover, increased human rights violations, including arbitrary arrests and police brutality against activists, journalists, and opposition figures were noted during the pandemic leading to concerns about State-sanctioned violence. The government's use of the Law on Counter Terrorism¹¹ (2015) further exacerbated the situation as its broad and vague definitions of "terrorism" allowed authorities to justify crackdowns on dissent by labelling peaceful protests and opposition activities as acts of terrorism.

As an aside, while a decline in civil society engagement during the pandemic hindered efforts to advocate for human rights, the pandemic also created a unique opportunity

⁸ 'Law on the Management of the Nation in Emergencies' [Unofficial translation], AKP Phnom Penh, 10 April 2020, available at https://www.covidlawlab.org/wp-content/uploads/2020/06/Cambodia_state-of-emergency.pdf, accessed on 6 November 2024.

⁹ 'Human rights defenders at risk as Cambodia proposes draconian emergency law' Civil Rights Defenders, 8 April 2020, available at <https://crd.org/2020/04/06/human-rights-defenders-at-risk-as-cambodia-proposes-draconian-emergency-law/>, accessed on 6 November 2024.

¹⁰ 'Cambodia: Civil society organizations call for the Royal Government of Cambodia to amend the State of Emergency Law to protect human rights' Asian Human Rights Commission, 13 May 2020, available at <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-003-2020/>, accessed on 6 November 2024.

¹¹ 'Law on counter-terrorism: Cambodia' International Commission of Jurists, 2007, available at <https://www.icj.org/wp-content/uploads/2013/04/Cambodia-Law-on-Counter-Terrorism-2007-eng.pdf>, accessed on 6 November 2024.

for such groups to emphasize the importance of public health as a human right, aligning their work with broader social justice movements.

The government's nationwide vaccination campaign included mandatory vaccination policies and the introduction of digital vaccine passports which restricted access of public spaces only to vaccinated individuals. Other control measures included decrees mandating mask-wearing, social distancing, and limitations on gatherings. In other words, the government's securitization of COVID-19 meant it was able to enforce health regulations through increased patrols, surveillance, and the heavy involvement of security forces leading to widespread reports of police brutality and arbitrary arrests.

In addition, the government is pushing ahead with its draft cybercrime law which has the potential to further restrict freedom of expression by the use of enhanced government surveillance over online activities. Indeed, the use of digital surveillance tools during the pandemic to track the spread of COVID-19 raised significant privacy concerns as seen by the government's "Stop COVID-19" QR code system that aimed to assist with contact tracing but which also lacked privacy protections for personal data. As Human Rights Watch noted, together with enhanced online surveillance, this put government critics and activists at even greater risk.¹²

B. International Human Rights Commitments and Obligations

Despite being elected to the UN Human Rights Council for the 2023-2025 term, Cambodia's own human rights record is still under scrutiny. Although the government has stated its intention to engage with civil society and relevant stakeholders, observers note its actions often fall short of genuine engagement or reform. Furthermore, while Cambodia has expressed interest in signing and ratifying additional international human rights conventions, progress has been slow.

¹² 'Cambodia: "Stop Covid-19" system raises privacy concerns' Human Rights Watch, 6 April 2024, available at <https://www.hrw.org/news/2021/04/06/cambodia-stop-covid-19-system-raises-privacy-concerns>, accessed on 6 November 2024.

Table 1: Ratification Status of International Instruments – Cambodia¹³

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		15 Oct 1992 (a)
Optional Protocol of the Convention against Torture	14 Sep 2005	30 Mar 2007
International Covenant on Civil and Political Rights (ICCPR)	17 Oct 1980	26 May 1992
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		27 Jun 2013 (a)
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)	27 Jun 2013	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	17 Oct 1980	15 Oct 1992
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	12 Apr 1966	28 Nov 1983
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	17 Oct 1980	26 May 1992
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	27 Sep 2004	
Convention on the Rights of the Child (CRC)		15 Oct 1992 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	27 Jun 2000	16 Jul 2004
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography	27 Jun 2000	30 May 2002
Convention on the Rights of Persons with Disabilities (CRPD)	1 Oct 2007	20 Dec 2012

¹³ 'Ratification status for Cambodia' United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN, accessed on 1 November 2024.

As shown in Table 1 above, Cambodia's ratification of various core human rights treaties ostensibly reflects its commitment to upholding international human rights norms. However, numerous reservations and the ongoing non-signature of several key covenants starkly highlight the significant disconnect between its international commitments and domestic realities. These reservations, often justified by the government on the grounds of cultural or legal incompatibility, effectively dilute the intended protection of such treaties, raising questions about the sincerity of Cambodia's human rights pledges.

For example, the government has made reservations to Art 18 (freedom of thought, conscience, and religion) and Art 19 (freedom of expression) of the ICCPR due to concerns about national security and public order. Likewise, while Cambodia ratified the ICESCR in 1992 without any reservations, implementation of such rights has been inconsistent, highlighting a disconnect between its treaty commitments and the actual situation on the ground leading to limited improvements in healthcare, education, and labour rights.

Similarly, its ratification of the CRC in 1992 was subject to significant reservations including Art 28(1)(a) mandating free and compulsory primary education, and Art 37 which prohibits the torture and degrading treatment of children. While introducing the Child Law in 2002, its legislative efforts fall short of the standards outlined in the CRC leading to the persistence of child labour and inadequate access to quality education. In point of fact, some reservations relate to provisions that may conflict with existing national laws, particularly concerning the minimum ages pertaining to marriage and work.

In the same way, Cambodia's 1992 ratification of CEDAW has also not led to specific laws to fully incorporate the treaty into domestic law. Further, it maintained reservations to Art 2 (on non-discrimination) and Art 16 (on marriage and family relations) again indicating a reluctance to challenge cultural norms. Consequently, women in Cambodia still experience systemic discrimination, and their rights are not well protected.

Cambodia's ratification of the ICERD in 1992 was also tempered by reservations to affirmative action provisions. Again, the government seems to prioritize national unity over measures that could improve the rights and representation of marginalized groups. Moreover, Cambodia's reservation to Art 20 of the CAT (concerning examination of allegations of torture) indicates a reluctance to fully implement oversight mechanisms that would allow outside scrutiny of its law enforcement practices.

Moreover, Cambodia's failure to sign the CRPD emphasizes its shortcomings in protecting the rights of vulnerable populations. Specifically, it lacks a strong legal framework for disability rights leaving such individuals marginalized although some progress was made by the 2009 Law on the Protection and Promotion of the Rights of Persons with Disabilities. However, the language and certain provisions of this law are in contrast with the human rights-based approach of CRPD. For example, the very

definition of persons with disability focuses on the (medical) situation of persons rather than on barriers to inclusion.¹⁴

Accordingly, during Cambodia's Universal Periodic Review (UPR) in 2019,¹⁵ particular concern was raised about freedom of expression, political freedoms, and the treatment of civil society and human rights defenders.¹⁶ It is also worth noting that Cambodia is only one of two ASEAN member states¹⁷ with a designated Special Rapporteur on the situation of human rights (mandated by the UN Human Rights Council) with which it has a strained relationship as demonstrated by the press statement of the Ministry of Foreign Affairs expressing the government's utter dismay at Vitit Muntarbhorn's End of Mission statement in 2022.¹⁸

Cambodia's commitment to human rights treaties is therefore compromised by reservations, inadequate legislation, and weak implementation with cultural norms, political priorities, and economic constraints hindering its progress in this regard.

Part 2: Outstanding Human Rights Issues

A. Media Freedom

Table 2 below shows Cambodia's ranking on the Press Freedom Index from 2019 to 2023. During these years, Cambodia consistently ranked around 144th out of 180 countries (although it recently dropped to 147th), reflecting serious issues regarding media freedom. The drop in the global score from 54.1 in 2019 to 42.02 in 2023 suggests that conditions for press freedom are steadily worsening indicating ongoing restrictions on journalists and independent media outlets.

¹⁴ 'Situational analysis of the rights of persons with disabilities: Cambodia' UNPRPD, 2021, available at https://unprpd.org/new/wp-content/uploads/2023/12/CR_Cambodia_2021-cd7.pdf, accessed on 6 November 2024.

¹⁵ 'Report on Cambodia's Universal Periodic Review 2019' OHCHR, available at <https://cambodia.ohchr.org/en/news/report-cambodia%E2%80%99s-universal-periodic-review-2019>, accessed on 6 November 2024.

¹⁶ 'National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: Cambodia (A/HRC/WG.6/46/KHM/1)' Human Rights Council, 15 February 2024, available at <https://www.ohchr.org/en/hr-bodies/upr/kh-index>, accessed on 6 November 2024.

¹⁷ The other being Myanmar.

¹⁸ 'Cambodia dismayed at UN special rapporteur's statement' 27 August 2022, available at <https://www.information.gov.kh>, <https://www.information.gov.kh/articles/84759>, accessed on 6 November 2024.

Table 2: Cambodia's Press Freedom Index (2019-2023)¹⁹

Year	Ranking (out of 180 countries)	Global Score
2019	143	54.1
2020	144	54.54
2021	144	53.16
2022	142	43.48
2023	147	42.02

As can be seen in the steady decline of its ranking, Cambodia is failing to make any real progress on press freedom raising questions about its commitment to respecting media rights and indicating deliberate efforts to control what people can say and see. In other words, increased government censorship, intimidation, and restrictive laws have made it harder for independent media to operate which can also lead to self-censorship.

Although State-controlled media dominates Cambodia's media landscape, independent outlets such as the Cambodia Daily and VOD (Voice of Democracy) continue to provide critical reports on government actions and social issues. This proliferation makes it difficult for the public to access unbiased information, further entrenching the government's grip. Often using legal and extra-legal means, the government's crackdown on independent media outlets led it to accuse the Voice of America and Radio Free Asia of spreading misinformation in 2020. Despite the State's assertion that there were no violations of freedom of expression and no journalists had been killed in the past 20 years, a member of the Human Rights Committee on the implementation of the ICCPR described the state of press freedom in 2022 as being at "crisis level," referencing 17 attacks on journalists recognized by the government from 1994 to 2020 which they attributed to journalists "not taking appropriate precautions."²⁰

The rise of so-called fake news and disinformation poses additional challenges to press freedom. Although the government has employed laws and regulations to combat it, these measures are frequently misused to target critical voices rather than to protect the public from misinformation which not only undermines trust in legitimate journalism but also restricts freedom of expression.

As previously mentioned, Cambodia's lack of improvement in the Press Freedom Index reflects a political strategy aimed at silencing dissent often leading to self-censorship.

¹⁹ 'World Press Freedom Index' Reporters Without Borders, available at <https://rsf.org/en/index>, accessed on 6 November 2024.

²⁰ 'Cambodia: State party and Committee must "agree to disagree" on fundamental freedoms' Center for Civil and Political Rights, 25 March 2022, available at <https://ccprcentre.org/ccprpages/cambodia-state-party-and-committee-must-agree-to-disagree-on-fundamental-freedoms>, accessed on 6 November 2024.

For example, after Mech Dara's arrest in 2024 on charges of inciting social disorder, the award-winning journalist has announced his retirement from journalism.²¹ Such strategies also include legal action. Thus, the Cambodian Journalists Association (CamboJA) which monitors incidences of harassment and restrictions on journalists, recorded in 2023, 35 cases of harassment against 54 journalists including legal action encompassing lawsuits, licence revocation, arrests or threats of legal action.²²

Even Cambodian journalists operating outside the country may find themselves targeted as can be seen in the case of Taing Sarada who now lives in the USA. As chief correspondent for Cambodia Daily (an independent exiled media outlet established after the original publication was shut down in 2017), Taing hosts the Khmer-language video show, *Idea Talk*, and uses the platform to criticize the Cambodian government. In 2023, Taing received death threats and threats of sexual violence against his family from a well-known social media commentator, highlighting the trend of authoritarian regimes to exert transnational repression against dissidents outside their borders.²³

Independent media outlets are a particular target. As a consequence, in August 2023, the government ordered internet service providers to block access to the websites and social media accounts of The Cambodia Daily, Radio Free Asia (RFA), and Kamnotra citing a directive from July 2023 which mandates the blocking of sites deemed to disseminate misleading news that could harm the reputation of the government and which fail to meet the Ministry of Information's requirements. This followed adoption of the Inter-Ministerial Prakas in May 2018 which requires internet service providers to install surveillance software to monitor online content and grants the Post and Telecommunications Ministry authority to block or close web pages and social media containing content considered illegal or a threat to national security and public order.²⁴

Similarly in September 2023, Cambodia's Ministry of Agriculture, Forestry and Fisheries (MAFF) threatened legal action against the independent news outlet, CamboJA, over a report that allegedly defamed government officials including Agriculture Minister, Dith Tina. The report covered an assault on farmer entrepreneur, Ny Nak, and his wife, who were attacked by a group of motorbike riders near Phnom Penh with the

²¹ The Phnom Penh Municipal Court accused Dara of "provocative" and "false" posts about a rock quarry on a sacred mountain. See: 'Award-winning Cambodian reporter quits journalism after arrest' The Star, 5 November 2024, available at <https://www.thestar.com.my/aseanplus/aseanplus-news/2024/11/05/award-winning-cambodian-reporter-quits-journalism-after-arrest>, accessed on 6 November 2024.

²² Chansamnang, S, 'Report: Legal harassment of Cambodian journalists increasing' VOA News, 9 April 2024, available at <https://www.voanews.com/a/report-legal-harassment-of-cambodian-journalists-increasing/7563905.html>, accessed on 6 November 2024.

²³ Scott, L, 'Far-reaching threats a worry for Cambodian American journalist' VOA News, 6 December 2024, available at <https://www.voanews.com/a/far-reaching-threats-a-worry-for-cambodian-american-journalist/7387197.html>, accessed on 6 November 2024.

²⁴ 'Cambodia: Criminalisation of activists and the opposition continues following sham elections and transfer of political power' Civicus, available at <https://monitor.civicus.org/explore/cambodia-criminalisation-of-activists-and-the-opposition-continues-following-sham-elections-and-transfer-of-political-power/>, accessed on 6 November 2024.

victim asserting that the attack was politically motivated due to his criticism of the government. In response, MAFF dismissed his claims as “baseless” and criticized CamboJA for serious breaches of journalistic ethics.

Therefore, it can be seen that the political landscape in Cambodia plays a huge role in media freedom. The ruling CPP uses various tactics to control the narrative, including harassing journalists and shutting down independent media outlets. This manipulation limits access to diverse perspectives, which is essential for a functioning democracy because when media freedom is suppressed, public discussion and the ability of citizens to hold the government accountable are vastly reduced. This environment of fear hinders transparency and democratic governance and allows human rights abuses to continue unchecked.

In addition, the government introduced stricter regulations on media licensing, making it more difficult for new outlets to operate. Ostensibly aimed at professionalizing and regulating journalism throughout the country, the 1995 Press Law²⁵ was criticized for granting the government excessive control over media activities. Cambodia’s poor ranking fits into a larger trend in Southeast Asia, where several countries are also experiencing declines in press freedom. The lack of regional support for media rights worsens Cambodia’s situation as authoritarian governments often work together to stifle independent journalism. As previously mentioned, the government has also intensified efforts to control online content as illustrated by its 2021 draft cybercrime law.

Overall, Table 2 illustrates a troubling picture of the state of Cambodia’s press freedom from 2019 to 2023. The stagnant ranking and declining global score show that significant changes are needed to protect journalists. For real democratic governance and respect for human rights to take root, Cambodia must adopt policies to support press freedom thereby allowing civil society to flourish. Without these changes, the cycle of repression is likely to continue, further undermining democracy in Cambodia.

²⁵ ‘Law on the Press 1995’ World Trade Organization, Compendium of Cambodian Laws, Vol 2, available at https://www.wto.org/english/thewto_e/acc_e/khm_e/wtacckhm3a3_leg_36.pdf, accessed on 6 November 2024.

B. Freedom of Assembly, Expression, and Association

Table 3: Freedom in the World and Net Indices

Year	Freedom in the World Index by Freedom House7	Freedom on the Net Index by Freedom House8
2019	26/100	43/100
2020	25/100	43/100
2021	24/100	43/100
2022	24/100	43/100
2023	24/100	44/100

As shown in Table 3 above, between 2019 and 2023, Cambodia’s scores in both the Freedom in the World Index and the Freedom on the Net Index paint a concerning picture. In the former, its score fluctuates only slightly from 24 to 26 indicating ongoing challenges to political rights and civil liberties. By contrast, the Freedom on the Net Index shows a very modest upward trend, with scores increasing from 43 in 2019 to 44 in 2023. While this improvement suggests some advancements in digital rights, it must be contextualized within the government’s persistent efforts to control and censor online content. For example, in 2020 it reiterated its commitment to maintaining “law and order” through the enforcement of restrictive laws such as the Law on the Management of Quality of Goods²⁸ and Services and the Law on Telecommunications.²⁹ The latter includes provisions allowing for broad censorship of online content and the monitoring of communications whilst also lacking transparent implementation guidelines or timelines for reform.

The continuous entrenchment of these legal restrictions has resulted in a severely obstructed civic space, as noted by organizations like Civicus, a global civil society alliance. This has significantly hampered freedom of expression and assembly in Cambodia, leading to increased intimidation and harassment of activists and

²⁶ ‘Freedom in the World 2023: Cambodia’ Freedom House, available at <https://freedomhouse.org/country/cambodia/freedom-world/2023>, accessed on 5 November 2024. Other years of the index can also be accessed through the links.

²⁷ ‘Freedom on the Net 2023: Cambodia’ Freedom House, available at <https://freedomhouse.org/country/cambodia/freedom-net/2023>, accessed on 6 November 2024. Other years of the index can also be accessed through the links.

²⁸ ‘Law on the Management of Quality and Safety of Products and Services’ Council for the Development of Cambodia, 2021, available at https://cdc.gov.kh/wp-content/uploads/2022/04/LAW-ON-THE-MANAGEMENT-OF-QUALITY-AND-SAFETY-OF-PRODUCTS-AND-SERVICES_000626.pdf, accessed on 6 November 2024.

²⁹ ‘Cambodia’s Law on Telecommunications: Legal analysis’ LICADHO, 2016, available at https://www.licadho-cambodia.org/reports/files/214LICADHOTELECOMSLAWLegalAnalysis_March2016ENG.pdf, accessed on 6 November 2024.

independent journalists.³⁰ In October 2023, Civicus and Forum-Asia submitted a report to the UN Human Rights Council ahead of Cambodia's UPR in May 2024, highlighting concerns over excessive restrictions on association due to the Law on Associations and Non-Governmental Organizations, suppression of protests, and increased online surveillance.³¹ The submission documented numerous cases of human rights defenders, activists, and journalists facing conviction and detention under the auspices of vague legal charges.³²

Additionally, legislation such as the 1997 Law on Political Parties³³ and the 2009 Law on Peaceful Assembly³⁴ impose stringent conditions on the formation of political parties and the organization of public gatherings, making it challenging for opposition voices to mobilize and for citizens to express dissent. Reports indicate that peaceful protests are often met with force, and individuals exercising their rights to free speech could face legal repercussions.

Despite government assurances, tangible improvements remain elusive. In particular, the continued use of surveillance and intimidation tactics against activists and civil society organizations exacerbates a climate of fear and repression. Human Rights Watch and Reporters Without Borders have both documented significant human rights violations, underscoring the government's ongoing efforts to consolidate power and eliminate opposition voices. In conclusion, while there are signs of improvement in internet freedom reflected in the Freedom on the Net Index, the overall situation for political rights and civil liberties in Cambodia remains dire.

*Article 495 of Criminal Code (or the Sedition Law)*³⁵

Criminalizing acts that incite violence, rebellion, or disobedience against the government, including speech or actions perceived to undermine State authority, the government often uses Art 495 to target opposition figures, activists, and journalists, leading to charges of sedition for those who criticize the ruling party or advocate for political change. This broad interpretation of sedition has raised concern among

³⁰ Thlang, K, 'The protection of rights to freedom of expression in Cambodia' thesis, Master of Peace Studies and Diplomacy, Bangkok: Siam University, 2021.

³¹ 'Joint submission for the Universal Periodic Review: Cambodia' Civicus and Forum Asia, 11 October 2023, available at https://www.civicus.org/documents/upr-submissions/UPR46_JointSubmission_Cambodia.pdf, accessed on 6 November 2024.

³² 'Cambodia: Ahead of upcoming UN review, Hun Manet's government continues targeting activists and critics' Civicus Monitor, available at <https://monitor.civicus.org/explore/cambodia-ahead-of-upcoming-un-review-hun-manets-government-continues-targeting-activists-and-critics/>, accessed on 6 November 2024.

³³ 'The legal framework for political parties in Cambodia' International Center for Not-for-Profit Law, 2019, available at https://www.icnl.org/wp-content/uploads/Cambodia_polipartcam.pdf, accessed on 6 November 2024.

³⁴ 'Law on Peaceful Assembly' LICADHO, 2011, available at <https://www.licadho-cambodia.org/delusion2011/laws/DemonstrationLaw-English.pdf>, accessed on 6 November 2024.

³⁵ 'Criminal Code of Cambodia' Kingdom of Cambodia, 2017, available at <http://www.skpcambodia.com/storage/uploads/files/Criminal%20and%20Criminal%20Procedure%20Laws/criminal-code%20Eng.pdf>, accessed on 6 November 2024.

human rights organizations which argue it is often used to suppress dissent and restrict freedom of expression.³⁶

In the midst of the COVID-19 pandemic in 2020, the Cambodian government intensified its crackdown on dissent, using sedition charges against activists involved in peaceful protests. Notably, Rath Rott Mony, a prominent activist, was arrested for organizing demonstrations against government policies. He was charged with incitement and sentenced to two years' imprisonment. Likewise, on 17 March 2022, a Cambodian court sentenced 20 former politicians and activists to prison terms of up to 10 years for sedition. This sentencing appears part of a larger crackdown on opposition groups with even Sam Rainsy, the exiled founder of the now-disbanded Cambodia National Rescue Party (CNRP), among those convicted for remarks deemed to incite the overthrow of the government. Over the past few years, more than 100 opposition members and supporters have faced charges of treason and incitement.³⁷

Few people were exempt from the crackdown including former CNRP leader, Kem Sokha, who was arrested in September 2017 and sentenced to 27 years in prison in a 2023 trial widely criticized for its lack of transparency and fairness.³⁸ Likewise, Chhim Sithar, a former employee of the CNRP, was arrested in September 2020 and charged with incitement under the sedition laws for online posts criticizing the government. Other incidences include the monitoring of approximately 50 individuals in 2023 from grassroots organizations and unions who gathered outside Correctional Centre 2 to demand the release of Chhim Sithar.³⁹

The list goes on. On 23 March 2023, former opposition activists, Yim Sinorn and Hun Kosal, were arrested and charged with incitement and insulting the King under Arts 437, 494, and 495 of the Penal Code. Their Facebook posts suggested that Prime Minister Hun Sen wielded more power than King Norodom Sihamoni, with Sinorn explicitly stating that the Prime Minister had overshadowed the King. The court ordered both activists to be placed in pretrial detention at Prey Sar prison. Ros Sotha, the executive director of the Cambodian Human Rights Action Committee, which consists of 22 local NGOs, contended that the activists were simply expressing their opinions and

³⁶ 'Cambodia: Mass convictions of opposition politicians and human rights defenders deepen rule of law crisis and must be reversed' International Commission of Jurists, 15 June 2022, available at <https://www.icj.org/cambodia-mass-convictions-of-opposition-politicians-and-human-rights-defenders-deepen-rule-of-law-crisis-and-must-be-reversed/>, accessed on 6 November 2024.

³⁷ 'Cambodia jails more opposition politicians for sedition' Reuters, 17 March 2022, available at <https://www.reuters.com/world/asia-pacific/cambodia-jails-more-opposition-politicians-sedition-2022-03-17/>, accessed on 6 November 2024.

³⁸ 'Cambodia: Opposition leader Kem Sokha sentenced to 27 years on fabricated treason charge' Amnesty International, 3 March 2023, available at <https://www.amnesty.org/en/latest/news/2023/03/cambodia-kem-sokha-conviction/>, accessed on 6 November 2024.

³⁹ Camps, F, 'Cambodian trade union leader Chhim Sithar faces two years in prison over strike action' Equal Times, 11 October 2024, available at <https://www.equaltimes.org/cambodian-trade-union-leader-chhim>, accessed on 6 November 2024.

should not face criminal charges. Sinorn was released on bail on 28 March 2023, after he posted a video from prison apologizing to Hun Sen and requesting forgiveness from the King. Hun Kosal did not apologise and remained incarcerated.⁴⁰

On 24 March 2023, the Phnom Penh Municipal Court found Seam Pluk, co-founder of the Cambodia National Heart Party (CNHP), and 12 others guilty of using forged documents under Arts 626, 627, and 628 of the Criminal Code. Pluk received a sentence of two years and six months in prison along with a fine of 5 million riel (around US\$1,250), while the other 12 were sentenced to two years in prison with the same financial penalty.⁴¹ Additionally, on 12 April 2023, authorities arrested two Candlelight Party members on forgery charges related to candidate lists that had been approved almost a year prior.⁴²

During protests in early 2023, demonstrators were once again met with arrest under sedition laws. Activists such as Thun Saray were detained for participating in peaceful gatherings to demand political reform. According to Human Rights Watch, the attacks typically involve helmet-wearing assailants on motorbikes using extendable metal batons to bludgeon their victims, with police failing to seriously investigate or arrest any perpetrators. Accordingly, the combination of these violent assaults, the closure of the Voice of Democracy and other independent media outlets, and the bureaucratic blocking of the main opposition Candlelight Party from fielding candidates led many to claim that the national election of 2024 could not “even be considered to be an election.”⁴³

On 13 July 2023, the UN Working Group on Arbitrary Detention declared the detention of Cambodian American lawyer and human rights defender, Theary Seng, to be arbitrary, politically motivated, and in violation of international law. Theary Seng had been sentenced to six years in prison on treason charges related to failed attempts in 2019 to facilitate the return of opposition leader, Sam Rainsy, to Cambodia⁴⁴ causing the US Senate in August 2023 to move forward with an appropriations package that included an amendment to sanction Cambodian officials responsible for her imprisonment. On 23 September 2023, she was transferred from the remote Preah Vihear prison to one

⁴⁰ ‘Cambodians face rare royal insult charge’ Bangkok Post, 23 March 2023, available at <https://www.bangkokpost.com/world/2534679/cambodians-face-rare-royal-insult-charge>, accessed on 6 November 2024.

⁴¹ ‘Appeal Court upholds forgery convictions of opposition members and supporters’ LICADHO, 30 November 2023, available at <https://www.licadho-cambodia.org/flashnews.php?perm=354>, accessed on 6 November 2024.

⁴² ‘Cambodia: Ongoing assault on civic space including physical attacks, criminalisation of the opposition, as election draws near’ Civicus Monitor, available at <https://monitor.civicus.org/explore/cambodia-ongoing-assault-on-civic-space-including-physical-attacks-criminalisation-of-the-opposition-as-election-draws-near/>, accessed on 6 November 2024.

⁴³ ‘Cambodia: Two years of relentless onslaught on political opposition and civil society’ Human Rights Watch, 12 October 2023, available at <https://www.hrw.org/news/2023/10/10/cambodia-two-years-relentless-onslaught-political-opposition-and-civil-society>, accessed on 6 November 2024.

⁴⁴ ‘Could Cambodia’s new prime minister release Theary Seng?’ The Diplomat, 3 October 2023, available at <https://thediplomat.com/2023/10/could-cambodias-new-prime-minister-release-theary-seng/>, accessed on 6 November 2024.

near Phnom Penh as requested by her lawyer and supporting NGOs enabling her to collaborate more effectively with her defence team and visit her family.⁴⁵

It can therefore be seen that Cambodia has clearly been employing a deeply embedded legalist approach to suppress dissent and control public conversation through sedition laws. And although international censure has persisted, its actual impact remains minimal raising questions regarding the impact of international advocacy on changing State conduct especially where authoritarian tools are deeply enshrined in the cause of national policy. Events in Cambodia suggest that sustained international pressure must be coupled with strategic sanctions or incentives for real legislative reform to take place.

C. Human Rights Defenders and Civil Society

Both morale and the lived experiences of Cambodian civil society continue to undergo systematic and sustained erosion through a mix of legal and extra-legal measures with legislation such as the Law on Associations and Non-Governmental Organizations (LANGO)⁴⁶ and criminal defamation laws severely hampering the boundaries within which civil society actors can operate, mobilize, or even exist without fear of retributive action. In practice, these laws grant governments discretion to arbitrarily dissolve organizations, limit funding opportunities, and scrutinize activities, a growing and seemingly insurmountable obstacle for those attempting to advocate on behalf of human rights, transparency, or democratic reform.

A number of human rights defenders have become the main targets of judicial harassment and political attacks. For example, during the first wave of COVID-19 in 2020, the government arrested Kak Komphear and Heng Chansothy of the Cambodian National Rescue Party on charges of incitement drawing criticism for harassment and a lack of due process.⁴⁷ Despite government crackdowns, organizations like the Cambodian League for the Promotion and Defence of Human Rights (LICADHO) have continued to document abuses and provide legal assistance to victims of human rights violations such as Kong Saron who was sentenced to three years for defamation, incitement, and insulting the King after criticizing the CPP during a Facebook livestream.⁴⁸

⁴⁵ 'Cambodia: Criminalisation of activists and the opposition continues following sham elections and transfer of political power' Civicus Monitor, available at <https://monitor.civicus.org/explore/cambodia-criminalisation-of-activists-and-the-opposition-continues-following-sham-elections-and-transfer-of-political-power/>, accessed on 6 November 2024.

⁴⁶ 'Cambodia: The dangers of LANGO' International Federation for Human Rights, 8 July 2015, available at <https://www.fidh.org/en/region/asia/cambodia/cambodia-the-dangers-of-lango>, accessed on 6 November 2024.

⁴⁷ 'Cambodia: End crackdown on opposition' Human Rights Watch, 17 June 2020, available at <https://www.hrw.org/news/2020/06/17/cambodia-end-crackdown-opposition>, accessed on 6 November 2024.

⁴⁸ 'Appeal Court upholds Kong Saron's imprisonment' LICADHO, 15 February 2024, available at <https://www.licadho-cambodia.org/flashnews.php?perm=372>, accessed on 6 November 2024.

Notably, Cambodian authorities have recently expanded their longstanding campaign against dissent beyond its national borders – a former maid now faces a possible five-year prison sentence for criticizing Prime Minister Hun Manet’s government while employed in Malaysia. Nuon Toeun had been working legally in Malaysia for several years but was arrested in October 2024 by Malaysian authorities at the request of the Cambodian government, sparking outrage from human rights organizations that allege collusion among certain ASEAN countries.⁴⁹ The Khmer Movement for Democracy, composed of exiled opposition leaders, stated that Toeun had merely expressed her views and her deportation without due process represented a “blatant violation of international law and a serious infringement on human rights.”⁵⁰

Notwithstanding, the right to justice in Cambodia is significantly undermined by a lack of judicial independence, political repression, and systematic human rights abuses. The judiciary is heavily influenced by the executive branch, undermining its independence. Many judges are perceived as loyal to the ruling CPP, leading to biased rulings in politically sensitive cases. At the same time, reports indicate that judges often face pressure to conform to government directives further compromising the integrity of the judicial process.⁵¹ As a result, the environment for justice remains perilous, reflecting a broader pattern of authoritarian governance. This has severe implications not just internally within Cambodia but also in the regional dynamics of Southeast Asia, where the struggle for democratic space is very real. While international support is crucial, it is invariably circumscribed by government resistance to foreign intervention and the limits of diplomacy. Hence, the marginalization of civil society in Cambodia points towards the fragile character of civic freedoms in authoritarian states and the necessity for critical solidarity strategies at both domestic and international levels.

D. Migrants and Refugees

Migrants

Cambodia lacks a comprehensive legal framework to specifically address the rights of migrants and refugees. While it is a signatory to several international treaties, including the 1951 Refugee Convention, its implementation has been inconsistent. Consequently, although migrant workers have some protections under Cambodian labour law, enforcement is often weak and can lead to exploitation, particularly in

⁴⁹ ‘Cambodia extends crackdown on criticism to workers abroad’ UCA News, 4 October 2024, available at <https://www.ucanews.com/news/cambodia-extends-crackdown-on-criticism-to-workers-abroad/106615>, accessed on 6 November 2024.

⁵⁰ Khmer, RFA, ‘Malaysia deports Cambodian Worker for calling Hun Sen “despicable”’ Radio Free Asia, 1 October 2024, available at <https://www.rfa.org/english/news/cambodia/nuon-toeun-cambodia-malaysia-hun-sen-criticism-deported-arrested-10012024164645.html>, accessed on 6 November 2024.

⁵¹ ‘Justice versus corruption: Challenges to the independence of the judiciary in Cambodia’ International Bar Association, September 2015, available at https://ticambodia.org/library/wp-content/files_mf/1443694998JusticevcorruptioninCambodiaAug2015.pdf, accessed on 6 November 2024.

low-wage sectors like construction and agriculture.⁵² Migrants, particularly those from neighbouring countries such as Vietnam and Thailand, are especially vulnerable to human trafficking, labour exploitation, and abuse by employers. For example, Vietnamese workers in Cambodia's garment factories have reported working over 60 hours a week for minimal pay, with little recourse to grievance mechanisms. Research also indicates that communities residing in remote areas often struggle to access information and services, making them more susceptible to recruitment scams.⁵³ Fragmented and complex recruitment and labour migration pathways contribute to this vulnerability, complicating the process for prospective migrants who must navigate licensed recruitment agencies, brokers, family, friends, and social media methods, often relying on a mix of these sources to find work. Further, many lack access to legal recourse due to their immigration status. As such, individuals who migrate through formal channels are seldom viewed as victims of trafficking; criminal actions are usually only recognized when the migration occurs via irregular methods. Moreover, widespread discrimination against migrants and refugees has been recorded and is often based on ethnicity or nationality potentially limiting their access to essential services such as healthcare and education.

Refugees

Cambodia's asylum system is limited. The government has been criticized for its handling of refugee claims, often resulting in prolonged detention without adequate legal recourse. Indeed, Cambodia has accepted very few refugees for resettlement, and there are reports of pressure being brought to bear on refugees to return to their home countries, even in cases where they may face persecution. Although a signatory to the 1951 Refugee Convention and its 1967 Protocol, Cambodia's lack of a specific national asylum law hinders effective implementation. For example, the United Nations High Commissioner for Refugees (UNHCR) has reported that asylum seekers often face long waiting periods without adequate legal support, leading to uncertainty and vulnerability. Consequently, refugee children, particularly those from ethnic minority backgrounds such as the Cham and Vietnamese communities, often face barriers to education. A report by UNICEF noted that these children are frequently marginalized within the Cambodian education system and face discrimination and difficulties in accessing quality education due to language barriers and economic constraints.⁵⁴

⁵² Jespersen, S, Alffram, H, Denney, L, and Domingo, P, 'Labour migration in Cambodia, Laos, Thailand and Vietnam: Migrants' vulnerabilities and capacities across the labour migration cycle' ODI Global, December 2022, available at https://media.odi.org/documents/Thematic_brief_4_FINAL_MR.pdf, accessed on 6 November 2024.

⁵³ Jespersen et al (see note 52 above), at 11.

⁵⁴ 'Analysis of the situation of children and adolescents in Cambodia 2023' UNICEF, March 2023, available at <https://www.unicef.org/cambodia/reports/analysis-situation-children-and-adolescents-cambodia-2023>, accessed on 6 November 2024.

Furthermore, the Cambodian government has undertaken crackdowns on undocumented migrants and refugees.⁵⁵ For instance, in 2021, authorities arrested and deported hundreds of Vietnamese migrants during a crackdown on illegal immigration. Many were detained in overcrowded conditions without proper legal representation. It can therefore be seen that while some protections are in place for migrants and refugees in Cambodia, significant gaps remain. Although advocacy efforts have continued to push for better legal protections, enforcement of existing laws, and improved conditions for these vulnerable populations, the situation requires the ongoing attention of both the Cambodian government and the international community.

E. Gender and Sexuality

Despite commitments to international standards on gender, Cambodian society remains highly patriarchal, whereby traditional conservative customary laws reinforce strict gender roles and grant men sole authority over decisions regarding the family and community. This severely reduces the control women have over major aspects of their life, such as marriage, education, and employment. For example, in many rural areas, marriages are usually governed under customary practices rather than formal legal processes insinuating that the rights of sexual minorities are poorly protected, particularly with regards to property and inheritance. The practice of utilizing bride prices and dowries (which tangibly perpetuates the notion of women as property rather than autonomous individuals) has further led to the vulnerability of women and serves to reinforce systemic gender inequality.⁵⁶

While the decriminalization of homosexuality marked a milestone in the advancement of LGBTQI+ rights across the region, legal protections have yet to be passed based on sexual orientation and gender identity as of the end of 2023. Traditional gender identities remain taboo across most communities, and individuals with non-traditional gender expressions often experience discrimination and exclusion from their social circles. Significantly, a lack of legal recognition for same-sex marriages impinges on the rights of queer couples and limits access to the legal benefits and protections accorded to heterosexual couples. As a result, activists have called for the formalization of LGBTQI+ rights, whilst demanding anti-discrimination laws and more social inclusion.⁵⁷

To raise awareness among the general public, events such as the Cambodian Pride Fest, which occurred in 2023 after the COVID-19 pandemic, are therefore vital to the

⁵⁵ Pearson, E, 'Cambodia is not safe for refugees' Human Rights Watch, 28 October 2020, available at <https://www.hrw.org/news/2014/05/22/cambodia-not-safe-refugees>, accessed on 6 November 2024.

⁵⁶ Robertson, H, and Leng, L, 'Shaking up the patriarchy' Southeast Asia Globe, 1 November 2017, available at <https://southeastasiaglobe.com/taking-a-stand/>, accessed on 6 November 2024.

⁵⁷ Kann, V, 'LGBTIQ community reiterates call for protections against discrimination in Cambodia' VOA Khmer, 10 December 2019, available at <https://www.voacambodia.com/a/lgbtiq-community-reiterates-call-for-protections-against-discrimination/5199963.html>, accessed on 6 November 2024.

visibility and activism of LGBTIQ+ people.⁵⁸ Although support services and advocacy are provided at a local level by organizations, societal stigma prevents many from accessing healthcare, and intolerance (which can turn violent). All of the above is exacerbated by the lack of sex education in schools including issues related to LGBTIQ+. Thus, international support, combined with the work of younger generations utilizing social media, play a crucial role in the advancement of sexuality rights.

F. The Environment, Human Rights, and Climate Justice

In Cambodia, environmental degradation and climate change pose significant threats to the rights of communities, particularly regarding access to clean air, land, and resources.⁵⁹ Deforestation, driven largely by illegal logging, agricultural expansion, and infrastructure development, continues to infringe upon the populace's right to a healthy environment. The government must therefore hold corporations and non-state actors accountable for environmental exploitation to prevent further harm to both the ecosystem and local communities. However, this is rarely the case and it is often land right activists who actually find themselves targeted.

For example, in May 2023, a Cambodian court charged three activists from the Coalition of Cambodian Farmer Community (CCFC) with plotting and incitement and accused them of instigating a “peasant revolution.” Following extensive protests, the Interior Ministry suspended the CCFC pending conclusion of the court investigation but dropped the charges after Prime Minister Hun Sen advocated for the coalition's reinstatement, urging the organization to focus on petitioning rather than holding protests.⁶⁰

Likewise, environmental journalist, Ouk Mao, who was well-known for exposing a land grab by Lin Vatey (a mining company linked to high-ranking officials in the Cambodian military) was charged with illegally clearing a State-owned forest and incitement, which could result in prison sentences of 10 and two years respectively, along with fines amounting to tens of thousands of dollars.⁶¹

⁵⁸ ‘Pride Month 2023: Heinrich Böll Foundation's contribution towards promoting visibility and inclusivity for LGBTQ+ communities in Cambodia’ Heinrich Böll Foundation, 12 August 2023, available at <https://kh.boell.org/en/2023/08/12/pride-month-2023-heinrich-boll-foundations-contribution-towards-promoting-visibility>, accessed on 6 November 2024.

⁵⁹ Pry, N, ‘Cambodia's land grab endangers people, forests, and the climate’ Earth Journalism Network, 20 October 2022, available at <https://earthjournalism.net/stories/cambodias-land-grab-endangers-people-forests-and-the-climate>, accessed on 6 November 2024.

⁶⁰ ‘Cambodia: Ahead of elections, civil society and journalists face threats and criminalisation while restrictions on the opposition escalate’ Civicus Monitor, available at <https://monitor.civicus.org/explore/cambodia-ahead-of-elections-civil-society-and-journalists-face-threats-and-criminalisation-while-restrictions-on-the-opposition-escalate/>, accessed on 6 November 2024.

⁶¹ Flynn, G, and Pry, N, ‘Reporter who revealed deforestation in Cambodia now charged with deforestation’ Mongabay, 27 September 2024, available at <https://news.mongabay.com/2024/09/reporter-who-revealed-deforestation-in-cambodia-now-charged-with-deforestation/>, accessed on 6 November 2024.

Environmental policies and governance

While Cambodia has made strides in environmental policy, including formulation of the National Climate Change Strategic Plan, again the implementation of effective legislation remains inconsistent. Accordingly, efforts to establish comprehensive legal frameworks, such as the long-anticipated Environmental Code, have faced delays, hampering a coordinated response to pressing environmental challenges, such as deforestation, flooding, and land disputes.

Impact on Indigenous communities and land rights

Indigenous peoples and local communities often find themselves at the forefront of environmental struggles with many facing forced evictions and harassment for defending their land rights against commercial interests. A notable example is the ongoing conflict involving the Bunong indigenous community in Mondulkiri province. This community continues to resist land encroachments by rubber plantations and mining operations but despite international recognition of their land rights, have been left vulnerable to exploitation.

In another case, indigenous communities in the northern region protested against land concessions granted to large agricultural companies, which often occur without proper consultation or informed consent. Activists have reported intimidation and harassment by the authorities in response to efforts to protect their ancestral lands, with some facing criminal charges. As the climate crisis intensifies, disputes over natural resource governance are expected to rise, particularly regarding hydropower projects in vulnerable areas already burdened by extractive industries. Cases such as LS2 and Areng Valley demonstrate that methods of contestation and ideological framing significantly influence the effectiveness of resistance against hydropower dominance. As grassroots mobilization faces repression and tensions over resources grow, NGOs may increasingly adopt reformist approaches, potentially diverting attention from core governance issues and promoting corporate over State accountability.⁶²

Legal intimidation and strategic litigation against public participation (SLAPP)

Environmental human rights defenders in Cambodia frequently encounter legal intimidation tactics designed to silence dissent. For instance, in 2021, local activists from the NGO, Mother Nature Cambodia, faced legal action for raising concerns about illegal sand dredging operations along the Mekong River.⁶³ These operations have not only devastated local ecosystems but have also threatened the livelihoods of communities dependent on the river's resources. The government's response included harassment and intimidation aimed at discrediting the activists.

⁶² Barter, D, and Sar, M, 'Hydropower hegemony: Examining civil society opposition to dams in Cambodia' *Journal of Development Studies*, 2023, Vol 59, No 7, pp 961-979.

⁶³ Flynn, G, and Srey, V, 'Mining the Mekong: Land and livelihoods lost to Cambodia's thirst for sand' Mongabay, 29 August 2023, available at <https://news.mongabay.com/2022/08/mining-the-mekong-land-and-livelihoods-lost-to-cambodias-thirst-for-sand/>, accessed on 6 November 2024.

The ongoing struggles for environmental justice in Cambodia highlight the critical need for stronger legal frameworks to protect the rights of indigenous peoples and local communities.⁶⁴ As deforestation and climate change continue to threaten the environment and their livelihoods, it is imperative for the government to prioritize environmental governance, enforce existing laws, and hold corporations accountable for their actions. Strengthening the capacity of civil society and supporting grassroots movements is essential to promoting sustainable development and ensuring that communities have a voice in decisions affecting their land and resources.

G. Academic Freedom

Academia is a crucial pillar of any democratic society. In Cambodia, the academic community is expected to serve as a critical space for intellectual engagement, where students and scholars can explore pressing issues, challenge the status quo, and contribute to a more informed society. However, increasing restrictions on academic freedom between 2019 and 2023 have impeded this essential function.⁶⁵ The recent landscape of academic freedom in Cambodia has been marked by increasing restrictions and a hostile environment for dissenting voices with the government's focus on maintaining political stability overshadowing its need for genuine academic discourse and critical inquiry. To foster a culture of academic freedom, it is crucial for stakeholders, including civil society and international partners, to advocate for policies that protect the rights of students and academics to engage in meaningful discussions about the country's political and social challenges.

Academic freedom remains a contentious issue, influenced by various laws and government policies that restrict free expression within educational institutions. The Cambodian government has emphasized the need for “political stability” and “social order” inevitably leading to heightened scrutiny of academic activities perceived as dissenting which has led to an almost pervasive environment of self-censorship among academics and students.⁶⁶

⁶⁴ Camps, F, ‘In the interest of the climate? How forest conservation in Cambodia poses a further threat to indigenous peoples’ Welthungerhilfe, August 2024, available at <https://www.welthungerhilfe.org/global-food-journal/rubrics/climate-resources/cambodian-climate-deals-drive-out-indigenous-peoples>, accessed on 6 November 2024.

⁶⁵ Heng, K, ‘Academic freedom in Cambodia is limited, but to what extent?’ The Phnom Penh Post, 5 August 2020, available at <https://www.phnompenhpost.com/opinion/academic-freedom-cambodia-limited-what-extent>, accessed on 6 November 2024.

⁶⁶ Heng (see note 65 above).

Part 3: Conclusion

The socio-political and economic situation in Cambodia can be seen as a fitting representative of the broader Southeast Asian trend of populist, authoritarian entrenchment largely assisted by economic pragmatism and strategic geopolitical alliances, particularly with China. But although western countries have increasingly chastised its human rights abuses and erosion of democratic principles, the regime has held its ground on the development-first agenda, prioritizing stability and national sovereignty above western models of democratization.

The COVID-19 pandemic accelerated existing human rights problems in Cambodia, with the highly centralized government using the crisis to further curtail basic liberties. Public health measures often had a darker purpose – the suppression of dissent and civic participation including laws restricting freedom of expression and peaceful assembly under the guise of pandemic control. This underscores the need for an essential reshaping of the relationship between the State and its citizens, whereby human rights are perceived as entitlements rather than privileges.

To move ahead, the following recommendations are offered:

- *Improve human rights framework and stance* – The Cambodian government needs to be committed to ensuring that international human rights standards are upheld by revisiting laws that infringe on civil liberties and by ensuring fundamental rights and freedoms are taken into consideration as part of public health measures.
- *Improve protection of human rights defenders and civil society* – This will go a long way to motivating active engagement on the part of civil society organizations and grassroots movements to bring about a culture of accountability. The government should ensure an enabling environment for citizens to express their views freely and organize without fear of repressive measures.
- *Ensure and commit to legal reforms* – Wholesale legal reforms are necessary to secure freedom of expression, assembly, and access to justice. Such reforms would provide for the application of the law in a fair and non-discriminatory manner by independent bodies.
- *Cultivate economically diversifying partnerships* – While Cambodia has indeed benefited from a close relationship with China, there is a dire need for more diverse economic partnerships. Engagement with a wider set of international partners opens up avenues for development and would require no compromising on democratic principles.
- *Accommodate and sustain critical international support* – The international community needs to engage constructively with Cambodia, continue to support its human rights initiatives, and hold the government to account bearing in mind that diplomatic pressure can be conducive to initiating reforms that align with international standards.

INDONESIA



INDONESIA

Patricia Rinwigati Waagstein*

Part 1: Overview of Indonesia

A. Country Background

Indonesia Facts	
Geographical size	5,180,053 sq km
Population	278,759,023
Ethnic breakdown ²	Main ethnic groups: Javanese (41%), Sundanese (15.50%), Sulawesi (3.22%), Batak (3.58%), Madurese (3.03%)
Official language	Indonesian (Bahasa Indonesia)
Literacy rate (aged 15 and above)	96%
Life expectancy	69.19 ⁴
GDP	US\$1.37 trillion (per capita US\$4,940)
Government	A unitary constitutional republic with three branches of government – executive, legislative, and judicial. Elected for a five-year term, the President heads the executive branch and appoints all members of the cabinet. As the legislative branch, the People's Consultative Assembly (MPR) consists of the People's Representative Council (DPR) and the Regional Representative Council (DPD). Despite acting independently, judges of the Supreme Court (the highest judicial branch) are appointed by the President. The Constitutional Court reviews laws for their constitutionality and is authorised to resolve disputes over the power of State institutions.

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

² Data from 2010. Ananta, A, et al, *Demography of Indonesia's Ethnicity*, Institute of Southeast Asian Studies, 2015, at 78.

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

⁴ Data from 2016. 'Indonesia' The World Bank, available at <https://data.worldbank.org/country/indonesia>, accessed on 12 August 2018.

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

Indonesia Facts	
Political and social situation	President Joko ‘Jokowi’ Widodo’s second and final term (2021-2025) saw further consolidation of Indonesia’s political landscape effectively eliminating any meaningful opposition to his administration for the upcoming elections in 2024. Due to a controversial Constitutional Court decision, his son, (Gibran Rakabuming Raka) was picked as the vice presidential candidate of Prabowo Subianto (former opponent, now a Jokowi cabinet minister and the leading candidate to replace him) causing some to speculate that Jokowi is attempting to build a family dynasty and remain close to the centre of power. ⁶

Consisting of over 17,000 islands (including Sumatra, Java, Sulawesi, and parts of Borneo and New Guinea), Indonesia is located off the coast of mainland Southeast Asia in the Indian and Pacific oceans. Spanning a distance equivalent to one-eighth of the earth’s circumference, it is the most populous country in Southeast Asia and the fourth most populous in the world.

System of governance

Since gaining independence in 1945, Indonesia’s governance has evolved to balance democratic principles with strong national unity. The system is structured around three independent arms: the executive, legislative, and judicial branches. The former is led by the President and Vice President who are directly elected for five-year terms. The legislative branch is a bicameral body known as the People’s Consultative Assembly (MPR), which consists of the Regional Representative Council (DPD) and the People’s Representative Council (DPR). The DPR holds most legislative powers, including passing laws and overseeing the executive branch. The judicial branch is independent, with the Supreme Court serving as the highest legal authority. Additionally, the Constitutional Court plays a critical role in interpreting the Constitution and reviewing laws.

A key feature of Indonesia’s governance is decentralization which grants substantial autonomy to regional governments. This enables local governments to address specific needs while upholding national cohesion.

Inherited from the Dutch, Indonesian law is based on the civil law or continental law legal tradition. One feature of most civil law systems is the absence of a formal system of precedent. Accordingly, judicial decisions are generally not considered a formal source of law and judges are usually not required to follow the prior decisions of judges in courts of the same level or even courts of a higher level than their own.

⁶ Sulaiman, Y, ‘Jokowi’s complex legacy and the future of democracy in Indonesia’ Global Asia, 2023, Vol 18, No 4. Available at https://www.globalasia.org/v18no4/feature/jokowis-complex-legacy-and-the-future-of-democracy-in-indonesia_yohanes-sulaiman, accessed on 13 November 2024.

Political situation

As Indonesia's founding father, Sukarno's rule ended in 1967 when General Suharto overthrew him in a coup following a period of near-total economic collapse. Suharto's rule, which lasted for three decades, was marked by authoritarianism until he was forced to step down in 1998 due to an economic and societal crisis. This event ushered in a period of significant political transformation known as the Reformation era which led to a more democratic governance structure and the introduction of direct presidential elections. In 2014, Joko Widodo, popularly known as 'Jokowi,' was elected as Indonesia's seventh president, marking the first time a president was chosen from outside the traditional political elite. His term is set to end in 2024, making 2023 a crucial year as the country prepares for the upcoming presidential, parliamentary, as well as local government elections in 2024.

Indonesia's political landscape has evolved dramatically since 1999, expanding from a restrictive three-party system to encompass numerous new political parties, reflecting a growing public demand for more democratic and inclusive governance. Several significant parties emerged during this transition. The National Awakening Party (PKB) was founded by Abdurrahman Wahid, Indonesia's fourth president (1999-2000). Wahid, a respected Islamic scholar and former leader of Nahdlatul Ulama (NU), Indonesia's largest moderate Muslim organization, established PKB as a progressive Islamic party. The Indonesian Democratic Party of Struggle (PDIP), a nationalist party, was led by Megawati Soekarnoputri, daughter of Indonesia's founding president, Sukarno. Megawati later served as the nation's fifth president (2001-2004). In 2001, retired General Susilo Bambang Yudhoyono established the Democratic Party, which propelled him to become Indonesia's first directly elected president in 2004. Similarly, Prabowo Subianto founded the Great Indonesia Movement Party (Gerindra). Notably, Golkar, the former ruling party during Indonesia's authoritarian era, maintained its influence and remains one of the largest parties in parliament. Other small parties have also contributed to the political landscape in Indonesia. In total, 24 political parties met the requirements for the next election in 2024.

Similar to his first term, President Jokowi's second term (2021-2025) saw significant consolidation of Indonesia's political landscape. While 16 political parties participated in the 2021 election, only nine secured parliamentary seats through various coalitions. The Indonesian Democratic Party of Struggle (PDIP) which emerged as the leading party, formed a broad government coalition that included the Great Indonesia Movement Party (Gerindra), the Golkar Party, the Prosperous Justice Party (PKS), and the Democratic Party. This extensive coalition effectively eliminated any meaningful opposition to the Jokowi administration.

2023 as a political year leading up to the 2024 elections

As in 2021, the intertwined elements of local elections, presidential dynamics, identity politics, Islamist movements, and security challenges will shape Indonesia's intricate political landscape as it approaches the 2024 elections.⁷ Final registration of presidential candidates and campaign were concluded by November 2023.

In a recent controversial decision, the Constitutional Court⁸ approved changes to the minimum age requirement for candidates outlined in the Law on Elections (No 7/2017) from 40 to 35. It allows candidates who have been previously elected, regardless of their age, to run for president or vice-president. The decision opened the door for Jokowi's son, Gibran Rakabuming Raka, who was just 36 to be the vice presidential candidate of Prabowo. The situation was further complicated by the fact that the Chief Justice of the Constitutional Court was Jokowi's brother-in-law – he was later unseated for an ethical violation over the ruling.⁹ Notwithstanding, the ruling itself cannot be unwound as it is final and binding, and almost immediately after it, Gibran became Prabowo's running mate, creating what was seen by many as an attempt by Jokowi to build a family dynasty and remain close to the centre of power.¹⁰ Consequently, this decision was seen to jeopardise the independence of the Constitutional Court, weakening democracy in Indonesia.

B. International Human Rights Commitments and Obligations

Indonesia has ratified most of the international human rights treaties over the course of more than two decades, the earliest being the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984 and the last one being the International Covenant on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) in 2012 (see Table 1 below). It has, however, not accepted any of the individual complaints procedures attached to the conventions, and most inquiry procedures have also not been accepted with the exception of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT).

⁷ Sulaiman (see note 6 above).

⁸ Case No 90/PUU-XXI/2023.

⁹ 'Anwar Usman diberhentikan dari Ketua MK karena Pelanggaran Berat [Anwar Usman dismissed as Chief Justice of the Constitutional Court for serious violations]' Kompas, 7 September 2023, available at https://nasional.kompas.com/read/2023/11/07/18264471/anwar-usman-diberhentikan-dari-ketua-mk-karena-pelanggaran-berat#google_vignette, accessed on 13 November 2024.

¹⁰ Sulaiman (see note 6 above).

Table 1: Ratification Status of International Instruments – Indonesia¹¹

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	23 Oct 1985	28 Oct 1998
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		23 Feb 2006 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)	27 Sep 2010	
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	29 Jul 1980	13 Sep 1984
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		25 Jun 1999 (a)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)		23 Feb 2006 (a)
International Covenant on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)	22 Sep 2004	31 May 2012
Convention on the Rights of the Child (CRC)	26 Jan 1990	5 Sep 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	24 Sep 2001	24 Sep 2012

¹¹ 'Ratification status for Indonesia' United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx, accessed on 13 November 2024.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography	24 Sep 2001	24 Sep 2012
Convention on the Rights of Persons with Disabilities (CPRD)	30 Mar 2007	30 Nov 2011

The Indonesian government has taken steps toward ratifying the CED, responding to both Parliament's recommendations regarding the 1997-1998 enforced disappearances and specific recommendations from its 2017 Universal Periodic Review (UPR) under the Human Rights Council. This commitment was initially incorporated into the National Action Plan on Human Rights for 2011-2014 and 2014-2018 and discussions did occur in Commission I of the National Parliament (DPR). Held on 24 February and 19 June 2023, the legislative process included two public hearings (RDPU) involving experts, academics, and civil society organizations.¹² However, despite a public commitment to ratify the CED during the World Human Rights Day commemoration on 10 December 2022, ratification remains pending.

At the national level, Indonesia upholds human rights through its Constitution and has enacted several laws to protect human rights and fulfil its international obligations. Thus, the 1945 Constitution of Indonesia addresses various human rights, including the right to life, freedom of religion, the right to education, the right to work, freedom to assemble and form associations, the right to a fair trial, the right to equal treatment before the law, protection from violence and discrimination, and respect for cultural identity and the rights of traditional communities.¹³

In addition, Indonesia adopted the Human Rights Act (Law No 39/1999) which was instrumental in establishing the National Commission on Human Rights (Komnas HAM), and Law No 26/2000 concerning the Human Rights Court. Furthermore, the government's national action plan on human rights and its strategic plan on business and human rights¹⁴ form part of an accelerated program aimed at addressing persistent challenges in specific human rights areas. However, some issues remain unresolved and require further attention.¹⁵

¹² *Catatan Hari HAM 2023 – HAM dalam Manipulasi Cenkraman Hegemoni Kekuasaan [Notes on Human Rights Day – 2023]*, Jakarta: Kontras, 2023, at 14.

¹³ Articles 28A to 28J of the Constitution.

¹⁴ Presidential Regulation No 60/2023 on the National Strategy for Business and Human Rights, 2023.

¹⁵ Wiratraman, HP, 'Indonesia' in Sharom, A, and Spooner, M (eds), *Human Rights Outlook in Southeast Asia 2016*, Bangkok: SHAPE-SEA, 2017, at 20.

Part 2: Outstanding Human Rights Issues

The human rights challenges outlined below represent some of the most pressing concerns facing Indonesia in 2023. While this overview highlights significant issues demanding immediate attention and resolution, it should be noted that these cases represent only a portion of the human rights challenges that emerged this year. Moreover, although the complexity and scope of such issues in Indonesia extend beyond these documented cases, they illustrate critical areas where focused intervention and reform are particularly needed.

A. Death Penalty

The death penalty has long been available under the old Criminal Code (1946) for a variety of offences, including premeditated murder, and under specific legislation, for terrorism, corruption, and drug crimes. Under the new Criminal Code (Law No 1/2023),¹⁶ the death penalty has been reclassified from a primary to an alternative punishment. This significant change introduces a 10-year probationary period during which factors such as the defendant's remorse and potential for rehabilitation, along with their role in the crime, are considered.¹⁷ Moreover, the law establishes an assessment process to evaluate possible commutation of death sentences to life imprisonment. However, should the convict not display such attitudes and conduct, the Attorney General can order the execution to go ahead.

¹⁶ 2023 saw the adoption of Law No 1/2023 on the Criminal Code replacing the 1946 Criminal Code after 54 years of drafting and represents a significant departure from the colonial-era legal system. During the Dutch occupation, the archipelago was governed by various laws and separate legal jurisdictions. In 1867, the Dutch administration issued a criminal code that applied exclusively to Europeans due to the complexity of legal matters. Subsequently, in 1872, a criminal code for natives was introduced, based on the European code.

In 1918, the Dutch enacted a new legal framework known as the 'Wetboek van Strafwet Nederlandsch Indie' (WvS), which applied to all ethnic groups. This code remained in effect until Indonesia's independence in 1945 when it was adopted by the new government with minimal alteration, leading to the passage of Law No 1/1946 on Criminal Law. Consequently, the WvS was renamed the KUHP (Kitab Undang-undang Hukum Pidana or Criminal Code), with references to the "Dutch East Indies" replaced by "Indonesia." Today, the KUHP serves as Indonesia's primary source of substantive criminal law, defining various criminal acts and the associated penalties. The procedural aspects of criminal law, including rules governing police investigations, prosecution, and trials, are covered by the Criminal Procedural Code or KUHP.

Over time, the KUHP underwent several amendments, such as the inclusion of an additional article on immigration offences in 1955, heightened penalties for gambling in 1974, regulations concerning criminal activities on aircraft in Indonesian airspace in 1976, and provisions related to crimes against state security in 1999. Finally, the KUHP was replaced by the new Criminal Code, enacted through the passage of Law No 1/2023.

The law is not without controversy. Adoption of the bill was delayed in 2019 to get public input due to some contentious issues particularly as regards restrictions on freedom of expression, the criminalisation of cohabitation, and the unclear distinction between critique and defamation. While the new law addressed some issues of concern, it also left much for the government to deal with. See: Butt, S, 'Indonesia's new criminal code: Indigenising and democratising Indonesian criminal law?' *Griffith Law Review*, 2023, Vol 32, No 2. Available at <https://www.tandfonline.com/doi/full/10.1080/10383441.2023.2243772#d1e374>, accessed on 13 November 2024.

¹⁷ Article 100 of Law No 1/2023 on the Criminal Code.

This modification of the death penalty's status represents a distinctively Indonesian approach – a compromise between retentionist and abolitionist positions. However, several critical issues remain unresolved. The first concerns the law's applicability. With the 2023 Criminal Code taking effect on 1 January 2026, questions arise about its beneficiaries: will it apply only to those sentenced after 2026, or will it include those convicted before? Legal scholars are divided. Some argue that the principle of non-retroactivity limits application to post-2026 cases, while others advocate for broader application based on the *in favor reo* principle¹⁸ – a fundamental criminal law doctrine that recommends interpreting ambiguities in favour of the accused which would mean extending the probationary period to pre-2026 cases.

A second critical issue concerns the procedural framework for the 10-year probationary period. The law stipulates that judges may impose death sentences with a probationary period considering three factors: the defendant's remorse, rehabilitation potential, and his or her role in the crime. However, the law fails to specify whether this probationary period is automatically granted or remains at judicial discretion. Legal experts advocate for automatic application of the probationary period to ensure legal certainty and consistent application of the law.

A third concern relates to the ambiguity surrounding key evaluative criteria for sentence commutation, particularly the concepts of "remorse" and "potential for rehabilitation." Clear, objective definitions and assessment standards for these criteria are essential to prevent arbitrary interpretation by prison authorities and to minimize opportunities for corruption in the evaluation process.

Finally, the death penalty moratorium has raised some cause for concern. While the new Criminal Code does not explicitly declare a moratorium, an informal suspension of executions is evident. This creates a problematic situation for the 2023-2026 transition period, which should logically serve as a complete moratorium on both death sentences and executions. However, the reality is rather different: the Institute for Criminal Justice Reform (ICJR) reported that 2023 saw 218 new criminal cases involving 242 defendants who were prosecuted and/or sentenced to death (drug-related offences constitute the majority of such cases), marking the highest number of new death penalty cases in five years.¹⁹

These issues underscore the urgent need for detailed implementing regulations regarding death penalty provisions in the new Criminal Code and their implications for future capital punishment decisions. The absence of such regulations creates significant legal uncertainty for death row inmates and potentially compromises their

¹⁸ *Laporan Situasi Kebijakan Pidana Mati di Indonesia 2023: Pengubahan Pidana Mati Secara Otomatis Mandat KUHP Baru*, Jakarta: Institute for Criminal Justice Reform, 2023.

¹⁹ See note 18 above.

fundamental right to life. This regulatory gap must be addressed to ensure that the new Criminal Code's reform intentions are properly implemented and the constitutional protection of the right to life is upheld.

B. Freedom of Expression

Freedom of expression remains a critical concern in Indonesia despite constitutional protections. Amnesty International Indonesia noted that 2023 saw the highest number of attacks against human rights defenders,²⁰ women, the environment, and indigenous communities in the context of freedom of expression.²¹ Out of a total of 127 cases, there were 97 attacks on human rights defenders, involving 268 victims.²² These included criminalization by the police, such as arrests and attempted murder, as well as intimidation and physical assaults against journalists, students, indigenous rights activists, and other critical voices. The majority of these attacks were carried out by State actors, primarily police officers and law enforcement personnel who were supposed to serve and protect the community.

Civil society organizations have long urged the government and the House of Representatives (DPR) to revise Law No 11/2008 concerning Electronic Information and Transactions (ITE), as amended by Law No 19/2016. This revision is crucial as several vague and overly broad articles of the ITE Law have been used to silence freedom of opinion and expression. Unfortunately, this second revision process to the ITE Law in the DPR took place behind closed doors with limited public participation.²³

The revised law, which was passed on 5 December 2023 and registered as Law No 1/2024, contains several controversial provisions including those related to defamation, indecency, hate speech through electronic means, and fake news, which may be used to wrongfully criminalize and restrict free expression in online spaces. This will be further discussed in the Outlook 2024 report.

²⁰ Fatia Maulidiyanti and Haris Azhar have been on trial for defamation at the East Jakarta District Court since 3 April 2023. They were charged under Art 27(3) in conjunction with Art 45(3) of Law No 19/2016, which amended Law No 11/2008 on ITE. The charges stem from a video they posted discussing alleged military involvement in the mining industry in Papua. Legal proceedings were initiated based on a report filed by the Coordinating Minister for Maritime Affairs and Investment.

²¹ Another example can be seen in the case involving Budi Pego, an environmental activist who objected to plans for gold mining in Tumpang Pitu, Banyuwangi, East Java. See: '25 years of Reformation: Freedom of expression increasingly repressed' Amnesty International, 20 May 2023, available at <https://www.amnesty.id/kabar-terbaru/siaran-pers/25-tahun-reformasi-kebebasan-berekspresi-semakin-mengalami-represi/05/2023/>, accessed on 13 November 2024.

²² Amnesty International (see note 21 above).

²³ Muzaki, AF, 'Alarm krisis kebebasan sipil: Serangan terhadap pembela HAM naik 63% tahun 2023 [Civil liberties crisis alarm: Attacks on human rights defenders to rise by 63% in 2023]' Ruman Pemilu, 1 February 2023, available at <https://rumahpemilu.org/alarm-krisis-kebebasan-sipil-serangan-terhadap-pembela-ham-naik-63-tahun-2023/>, accessed on 13 November 2024.

Despite these concerning developments, the government's approval of the revised ITE Law can be seen as a step forward. However, the State must not continue to repress protests and criticism under the guise of development, security, and political order for the sake of investment. Without a guaranteed right to freedom of expression, Indonesia's democratic society remains in jeopardy.

C. Freedom of the Press

In the context of press freedom, the country's ranking (108th out of 180 countries in 2023) as assessed by Reporters Without Borders (RSF), reflects persistent challenges.²⁴ While this represents an improvement from 117th in 2022 and 113th in 2021, it still indicates significant room for improvement.²⁵ In the regional context, Indonesia's press freedom situation, though concerning, surpasses several of its Southeast Asian neighbours with the Philippines ranking 132nd, Brunei 142nd, Cambodia 147th, Laos 170th, Myanmar 173rd, and Vietnam 178th. Notably, Timor-Leste stands out as a regional leader, securing a position in the global top 10.²⁶

The Alliance of Independent Journalists (AJI) corroborate these international assessments. In 2023, AJI documented 89 cases of press freedom violations—the highest number in a decade—affecting 83 individual journalists, 5 journalist groups, and 15 media outlets.²⁷ This marks a significant increase from 61 cases in 2022 and 41 cases in 2021/2022. These violations encompassed threats and intimidation, physical violence, digital attacks, coverage restrictions, content deletion, equipment damage or confiscation, sexual violence, and legal harassment through criminal or civil proceedings.²⁸ Significantly, the AJI identified State actors as the primary perpetrators of these violations.

D. Academic Freedom

Academic freedom in Indonesia exists within a complex legal framework. While the Constitution does not explicitly address it, two constitutional provisions indirectly do: freedom of association, assembly, and expression of opinions, alongside the right to education and to benefit from scientific, technological, cultural, and artistic developments for individual and collective welfare.²⁹ In addition, Law No 12/2012 on Higher Education provides more explicit protection through the implementation of

²⁴ 'Index' Reporters Without Borders, available at <https://rsf.org/en/index>, accessed on 13 November 2024.

²⁵ Reporters Without Borders (see note 24 above).

²⁶ Reporters Without Borders (see note 24 above).

²⁷ Marsiela, A, et al, *Krisis Kebebasan Pers di Tengah Darurat Iklim dan Erosi Demokrasi: Laporan Situasi Keamanan Jurnalis Indonesia 2023*, Jakarta: Aliansi Jurnalis Independen, 2023. See also, Thompson, JD, and Muller, D, 'Freedom of speech is not freedom from ethics: The 2019 Israel Folau Media controversy as a case study' *Media International Australia*, 2021, Vol 2, No 181, pp 87-102.

²⁸ See note 27 above.

²⁹ 'Indonesia's Constitution of 1945, reinstated in 1959, with amendments through 2002' Constitute Project, available at https://www.constituteproject.org/constitution/Indonesia_2002.pdf?lang=en, accessed on 13 November 2024.

tridharma (or the three pillars of higher education). This law mandates that academic freedom be exercised by members of the academic community under their personal responsibility and with protection from university leadership.³⁰ In particular, the law's elucidation of Art 8 defines "academic platform freedom" as scientific and theoretical pursuits within higher education institutions that remain independent from practical political influences.

However, two significant challenges emerge in the current framework. First, the protection of academic freedom lacks clarity in its scope, beneficiaries, and applicability. Second, while universities are tasked with implementing and protecting academic freedom, many institutional regulations and campus autonomy policies conflict with this mandate, making practical implementation problematic. In reality, Indonesia is experiencing a concerning deterioration in academic freedom, drawing parallels to the restrictions seen during the authoritarian New Order regime.³¹ This has led scholars to increasingly argue that this regression, alongside broader constraints on freedom of expression, reflects a wider decline in democratic values.

Accordingly, under President Joko Widodo's administration, members of academia have faced mounting pressure when expressing critical views on government policies. Lecturers, professors, and students have encountered various forms of repression, from professional intimidation and dismissal to legal consequences for their academic expressions. Recent data compiled by Amnesty International Indonesia and the Indonesian Caucus on Academic Freedom (KIKA) documents this troubling pattern. Throughout 2023-2024, they recorded at least 27 cases of academic freedom violations affecting lecturers, students, and other academic community members with the violations falling into four main categories: suppression of student movements;³² retaliation against academics critiquing public policies;³³ retaliation against critiques of

³⁰ Law No 12/2012 on Higher Education, Arts 8 and 9.

³¹ Moshman, D, 'Academic freedom as the freedom to do academic work' *AAUP Journal of Academic Freedom*, 2017, Vol 8.

³² Examples include: the investigation of the student council of Politeknik Perkapalan Negeri Surabaya; the criminalisation of Tariq, a student of Riau University; the termination of a student from Sekolah Tinggi Agama Islam Masjid Syuhada (STAIMS), Yogyakarta. See, 'KIKI catat daftar kasus pelanggaran kebebasan akademik di 2023-2024 [KIKI records list of academic freedom violation cases 2023-2024]' *Tempo*, 16 July 2024, available at <https://www.tempo.co/politik/kika-catat-daftar-kasus-pelanggaran-kebebasan-akademik-di-2023-2024-39658>, accessed on 13 November 2024.

³³ Examples include: the involvement of critical academics in the Law Reform Team of the Coordinating Ministry for Political, Legal, and Security Affairs, Advocacy on regional language issues; the suppression of academic criticism during the 2024 election; the dismissal of Budi Santoso, also known as Prof BUS, as Dean of the Faculty of Medicine at Airlangga University after he criticized the Foreign Doctor Program, a result of the Omnibus Law in the health sector.

natural resource management;³⁴ and challenges to professorial integrity.³⁵ These recent cases mirror similar incidents that have occurred since 2015, suggesting a persistent pattern of academic repression. Despite the recurring nature of these violations, effective preventive measures remain notably absent from the country's institutional and legal frameworks. Furthermore, its Academic Freedom Index (AFI) score has witnessed a decline, dropping from 0.64 in 2022 to 0.69 in 2023 as reported by Friedrich-Alexander-Universität (FAU) and the V-Dem Institute³⁶ which places Indonesia in the bottom 40% of countries worldwide in terms of academic freedom.

E. Freedom of Religion

Article 29(2) of the Indonesian Constitution affirms “freedom of worship” for all individuals as non-derogable rights – without limitation. Thus, all persons have the right to worship according to their own religion or belief, and that right shall not be discriminated against.

Six religions are officially recognised, namely Islam, Christianity, Catholicism, Buddhism, Hinduism, and Confucianism with Islam being followed by the overwhelming majority (87%). In addition to religion, belief is also recognised³⁷ of which there are 187 different *aliran kepercayaan* communities throughout the archipelago. However, the incorporation of some of these beliefs into existing religious faiths does not constitute a separate and distinct religious group identity and their existence must be registered in the Ministry of Home Affairs and the Ministry of Law.

Nevertheless, official recognition of only six religions creates systemic discrimination against adherents of other faiths, despite the absence of explicit prohibitions on their practice. This limitation manifests concretely in civil registration procedures, where individuals must select from only these six recognized religions, effectively marginalizing followers of other faiths. The education system further reinforces this discrimination by offering religious education exclusively in these six official religions, compelling students to study a faith that may not align with their beliefs.

Beyond these structural limitations, specific religious communities face explicit restrictions through ministerial regulations. A 2008 joint ministerial decree issued

³⁴ Examples include: the Haris-Fatia case against the Coordinating Ministry on Maritime and Investment due to their comments about the Ministry; the ban on foreign researchers studying orangutans in opposition to the Ministry of Environment and Forestry; the suppression of faculty members helping local people to advocate against big companies in Wadas, Rempang, Pakel, Boven Digoel, and Mendol Island.

³⁵ Examples include various cases of plagiarism against academic members as well as controversial professorships awarded to certain politicians.

³⁶ Malhotra, R, Massoudi, M, and Jindal, R, ‘An alumni-based collaborative model to strengthen academia and industry partnership: The current challenges and strengths’ *Education and Information Technologies*, 2023, Vol 28, No 2, pp 1-18.

³⁷ Pengujian Undang-undang Nomor 1/pnps/tahun 1965 Tentang Pencegahan Penyalahgunaan Dan/atau Penodaan Agama, Putusan Mahkamah Konstitusi Nomor 140/PUU-VII/2009 (Constitutional Court, 2009).

by the Ministry of Religious Affairs, the Ministry of Home Affairs, and the Attorney General's Office illustrates this targeted discrimination by simultaneously prohibiting the Ahmadi Muslim community from proselytizing while also forbidding vigilante actions against them. Similarly, another joint ministerial decree restricts the Fajar Nusantara movement (Gafatar) from conducting religious activities, proselytizing, or disseminating their interpretations of Islam. Violations of these restrictions can result in blasphemy charges carrying potential prison sentences of up to five years.

Multiple interpretations of blasphemy

Indonesia's legal framework on blasphemy has evolved through multiple legislative instruments, beginning with Law No 1/PNPS/1965. The 1946 Criminal Code expanded these restrictions by prohibiting "deviant interpretations" of religious teachings and blasphemous organizations, specifically protecting the six officially recognized religions from public insult or defamation, as well as actions preventing individuals from practicing these faiths.³⁸

The 2023 Criminal Code replacing the 1946 Criminal Code maintains and strengthens these prohibitions. It introduces specific penalties for insulting individuals practicing their religion or beliefs, including imprisonment up to one year or fines up to 50 million rupiah.³⁹ This new code also criminalizes religious-based hate speech with enhanced penalties ranging from two to five years' imprisonment. Additionally, the Electronic Information and Transaction (ITE) Law extends these prohibitions to digital spaces, imposing up to six years' imprisonment for electronic dissemination of blasphemous content.

The application of these blasphemy laws has been marked by inconsistency and selective enforcement, often disadvantaging religious minorities and serving as a political instrument. In particular, the handling of blasphemy cases in Indonesia has been criticized for being inconsistent. The contrasting treatment of two cases in 2023 illustrates this problematic implementation: Lina Mukherjee, a Muslim, received a two-year prison sentence and a 250 million rupiah fine for posting a TikTok video of herself eating pork,⁴⁰ while Wawan Kurniawan, also Muslim, received only probation for disrupting a Christian prayer service and was charged with the lesser offence of coercion rather than blasphemy.⁴¹

³⁸ Law No 1/2023 on the Criminal Code, Art 156(a).

³⁹ Law No 1/2023 on the Criminal Code, Art 304.

⁴⁰ 'Perjalanan kasus Lina Mukherjee, buat konten makan babi hingga divonis 2 tahun penjara [Lina Mukherjee's case journey, creating pork eating content to being sentenced to 2 years in prison]' Kompas, 20 September 2023, available at <https://regional.kompas.com/read/2023/09/20/154500178/perjalanan-kasus-lina-mukherjee-buat-konten-makan-babi-hingga-divonis-2?page=all>, accessed on 13 November 2024.

⁴¹ 'Ketua RT di Lampung yang bubarkan ibadah gereja divonis 8 bulan pidana percobaan [RT head in Lampung who disbanded church service sentenced to 8 months probation]' Metro TV, 21 September 2023, available at <https://www.metrotvnews.com/read/KdZCVnGM-ketua-rt-di-lampung-yang-bubarkan-ibadah-gereja-divonis-8-bulan-pidana-percobaan>, accessed on 13 November 2024.

Prohibition of interfaith marriage

A July 2023 Supreme Court circular letter recommending district courts cease approving interfaith marriages⁴² marks a significant shift from the Court's 1986 ruling that had established legal pathways for such unions. While the 1986 ruling enabled interfaith marriages through court orders, its implementation has been inconsistent across district courts, with couples already facing substantial bureaucratic and religious institutional barriers in formalizing their unions.

Although Supreme Court circulars are not legally binding, their strong persuasive authority has created additional obstacles for interfaith couples. This development has sparked a divided response within Indonesian society – some religious leaders support the circular, viewing it as protection for religious integrity and individual faith. However, numerous activists and religious figures have criticized it as a regression in civil rights protection, arguing it undermines the rights of citizens from diverse religious backgrounds and contradicts the progressive spirit of the 1986 ruling. Consequently, interfaith couples increasingly face a stark choice: marry abroad, convert, or abandon their marriage plans altogether.

Abuses involving the ability of individuals to engage in religious activities alone or in a community with others

According to religious groups and NGOs, government officials and law enforcement have continued to fail to prevent religious groups from violating the religious freedoms of others through intimidation, including the destruction of houses of worship and residential properties. As such, the Setara Institute documented 65 cases of worship disturbance in 2023, with 40 incidents targeting churches, 17 cases affecting mosques, 5 cases involving Hindu temples, and 3 cases targeting Buddhist temples.⁴³ These cases represent a persistent pattern of violations over the past seven years.

The establishment of new houses of worship remains challenging throughout 2023, particularly due to stringent community consent requirements. Several notable cases have highlighted these ongoing obstacles. In March 2023, authorities blocked the construction of the Jawi Wetan Christian Church (GKJW) in Malang Regency, East Java.⁴⁴ The following month saw the forced closure of the Simalungun Protestant Church (GKPS) in Purwakarta, West Java.⁴⁵ In June 2023, officials temporarily shut down the Javanese Christian Church in Banjarsari, Solo, Central Java.⁴⁶ Later that year,

⁴² Circular of Supreme Court No 2/2023 on the Guidelines for Judges to Address Registration of Inter-faith and Beliefs Marriage, 17 July 2023.

⁴³ 'Setara Institute catat 329 pelanggaran KBB sepanjang 2023 [Setara Institute records 329 KBB violations throughout 2023]' Setara Institute, 2023, available at <https://setara-institute.org/setara-institute-catat-329-pelanggaran-kbb-sepanjang-2023/>, accessed on 13 November 2024.

⁴⁴ Setara Institute (see note 43 above).

⁴⁵ Setara Institute (see note 43 above).

⁴⁶ Setara Institute (see note 43 above).

authorities prevented the construction of a monastery in Cimacan, Cianjur, West Java, and blocked development of the Taqwa Muhammadiyah Mosque in Bireun, Aceh Darussalam.⁴⁷

These incidents highlight three critical issues. First, while Christian minorities (both Catholic and Protestant) constitute the majority of victims, even Muhammadiyah, one of Indonesia's largest Islamic organizations, has faced similar challenges. Second, the current regulation requiring signatures from 90 members of the religious community and 60 members of other religious communities to build or renovate a house of worship creates a significant barrier to religious freedom. Third, the government's failure to protect religious freedom stems from both insufficient preventive measures and an inadequate response to societal abuses with law enforcement typically only becoming involved after physical confrontations occur.

F. Lack of Public Participation in Regulatory Processes

The right to participate in public affairs stands as a cornerstone of effective democratic governance. Public participation enriches decision-making processes by incorporating diverse perspectives and viewpoints, enabling the development of policies and programs to better address varied needs and priorities within society. Moreover, participatory governance strengthens government accountability to its constituents. True meaningful participation extends beyond merely hearing affected voices; it requires genuine consideration of and consultation with these stakeholders throughout the decision-making process.

However, Indonesia has faced significant challenges in implementing robust public participation, particularly in regulatory processes. These shortcomings in public engagement have often led to subsequent human rights concerns, as illustrated in the Law on Job Creation (Law No 11/2020). Under President Jokowi's administration, economic development has taken clear precedence over other considerations particularly after the pandemic, as evidenced by the controversial Job Creation Law. Despite the Constitutional Court's Decision No 91/PUU-XVIII/2020 declaring the law conditionally unconstitutional and mandating revisions, the government responded by issuing the Government Regulation in Lieu of Law (Perppu) 2/2022 on 30 December 2022. The situation was further complicated when the Indonesian House of Representatives (DPR RI) ratified this Perppu into law on 21 March 2023. The law's primary objective was to stimulate foreign investment and job creation by streamlining contradictory regulations that had previously deterred investors. Its scope is extensive, encompassing licensing across multiple sectors, monitoring mechanisms, labour and

⁴⁷ 'Pembangunan masjid Taqwa di Bireuen Aceh dihalangi, LBH PP Muhammadiyah: Kami prihatin [Construction of Taqwa mosque in Bireuen Aceh obstructed, LBH PP Muhammadiyah: We are concerned]' Tempo, October 2022, available at <https://www.tempo.co/politik/pembangunan-masjid-taqwa-di-bireuen-aceh-dihalangi-lbh-pp-muhammadiyah-kami-prihatin-264558>, accessed on 13 November 2024.

environmental standards, and the decriminalization of various business activities. However, this pursuit of economic efficiency has come at the cost of social protections. The law's legitimacy has been compromised from its inception due to significant procedural and substantive flaws. Moreover, the legislative process, which amended or revoked more than 70 existing laws, lacked meaningful public participation and transparency. Further, its provisions heavily favour industry interests at the expense of social and environmental protections.

Particularly concerning are the law's labour provisions, which cover foreign labour utilization, fixed-term employment agreements, outsourcing, wages, employment termination, and various compensation schemes including severance pay, entitlements compensation, and long-service recognition pay. These provisions have effectively reduced worker protections by emphasizing contractual flexibility between employers and employees. Given the inherent power imbalance in employer-employee relationships, this approach significantly disadvantages workers in negotiations. The law's continued contestation in the Constitutional Court, resulting in the striking down of its labour provisions, underscores these fundamental issues.⁴⁸

In terms of the environment, the Job Creation Law's environmental provisions exemplify how this omnibus legislation prioritizes investment facilitation over environmental protection and indigenous rights. As such, the law significantly weakens environmental safeguards by modifying the rigorous requirements previously established under Act 32/2009 on Environmental Protection and Management. Prior to this law, project developers were required to submit comprehensive Environmental Impact Assessment (EIA) reports for activities potentially causing significant environmental impact. Regular environmental management performance reports to the government were also mandatory. The Job Creation Law, however, has substantially relaxed these requirements, viewing them as costly impediments to business development.

Under the new framework, business licence applicants can therefore bypass EIA requirements if their projects align with land utilization policies and zoning plans. This modification poses serious environmental risks, particularly given that only 10% of Indonesia's cities and regencies have established detailed zoning plans. The situation is further exacerbated by the general absence of environmental considerations in existing spatial planning frameworks.

These changes to environmental regulations, coupled with the previously discussed labour provisions, illustrate the law's fundamental tension between economic development and social-environmental protections. In particular, its prioritization

⁴⁸ 'Kabulkan sebagian, MK Minta UU ketenagakerjaan dipisahkan dari UU Cipta Kerja [Partially approving, Constitutional Court asked to separate labour issue from Law on Job Creation]' Mahkamah Konstitusi, 31 October, 2024, available at <https://testing.mkri.id/berita/kabulkan-sebagian,-mk-minta-uu-ketenagakerjaan-dipisahkan-dari-uu-cipta-kerja-21782>, accessed on 18 November 2024.

of business interests over environmental sustainability and indigenous land rights represents a significant shift in Indonesia's regulatory landscape, raising serious concerns about long-term environmental and social consequences.

G. Human Rights in Development

National Strategic Projects (PSN) represent the majority of Indonesia's major infrastructure initiatives and are designed to generate substantial economic impact across multiple sectors. These projects extend beyond traditional infrastructure development to encompass a comprehensive approach to national development. The scope of PSN includes fundamental infrastructure such as roads, ports, railways, airports, and dams, while also addressing critical development areas including energy distribution, healthcare services, and telecommunications networks. Furthermore, the initiative aims to advance broader development objectives including economic equity, food security, border region development, technological advancement, tourism growth, and educational improvement.⁴⁹

Significantly, PSN represents a continuation of infrastructure development policies from previous administrations. Under President Yudhoyono's leadership, a similar initiative operated under the name Masterplan 'Percepatan dan Perluasan Pembangunan Ekonomi Indonesia' (MP3EI), or the Acceleration and Expansion Program on Indonesian Economic Development, sharing fundamental concepts with current PSNs.

Despite the government's reported success in completing 37 projects across various sectors by 2023, including water management, maritime infrastructure, transportation networks, and social infrastructure developments, PSN implementation has encountered significant challenges that undermine its effectiveness.⁵⁰ Several structural issues plague the program's execution. First, PSN lacks integration with other planning including Indonesia's Midterm Development Plan, resulting in scattered and uncoordinated projects. Second, numerous projects face regulatory hurdles, particularly regarding licensing and environmental impact assessments. Third, financial constraints affect at least 15 projects, stemming from national budget limitations, insufficient investment, and inadequate funding mechanisms.⁵¹ Fourth, many projects struggle with construction-related challenges, including access to workforce and materials. Finally, land acquisition remains a persistent obstacle, with many projects embroiled

⁴⁹ 'Program Strategis Nasional [National Strategic Programs]' Komite Percepatan Penyediaan Infrastruktur Prioritas [Committee for the Acceleration of Priority Infrastructure Provision], available at <https://kppip.go.id/proyek-strategis-nasional/program-strategis-nasional/>, accessed on 13 November 2024.

⁵⁰ 'KPPIP ungkap 5 isu permasalahan pembangunan PSN [KPPIP reveals 5 issues concerning PSN development problems]' Kontan, 2022, available at https://nasional.kontan.co.id/news/kppip-ungkap-5-isu-permasalahan-pembangunan-psn#google_vignette, accessed on 13 November 2024.

⁵¹ 'Perlunya pengusutan pelanggaran HAM berat Proyek Strategis Nasional [The need for investigation of serious human rights violations in National Strategic Projects]' Tempo, 27 September 2024, available at <https://www.tempo.co/kolom/pelanggaran-hak-asasi-manusia-pada-psn-454104>, accessed on 13 November 2024.

in ownership disputes.⁵² While State-owned enterprises follow special land acquisition procedures, private companies must negotiate directly with landowners, although in practice, landowners often face implicit pressure to surrender their property.

The PSN program's top-down approach has created particular concerns regarding public participation and human rights. The absence of meaningful community engagement and failure to observe the principle of free, prior, and informed consent has led to numerous conflicts. For example, the National Commission on Human Rights (Komnas HAM) documented 1,675 land-related conflicts over the past three years involving PSN projects, including the new capital city development⁵³ encompassing land grabbing, environmental degradation, and forced evictions. The recent Rempang Eco-City development in Batam exemplifies how the government continues to prioritize security measures over participatory dialogue in land acquisition for PSN projects.⁵⁴ It also exemplifies a broader pattern of systemic human rights concerns inherent in PSN implementation. Rather than viewing it as an isolated incident, the Rempang case illustrates the structural deficiencies within the PSN framework that consistently prioritize rapid development over human rights considerations.

The recurrence of similar conflicts across various PSN initiatives suggests a fundamental policy flaw rather than mere implementation issues. Hence, a comprehensive policy review of the PSN framework is necessary to prioritize human rights safeguards, meaningful public participation, and environmental protection alongside development objectives. Without substantial reform to integrate these fundamental rights protections into the PSN framework, similar conflicts and rights violations are likely to persist in future.

H. Past Gross Violations of Human Rights

Indonesia continues to grapple with unresolved gross human rights violations from its past. The government has officially acknowledged 13 major cases that have remained unaddressed through the judicial system. These include the 1965-1966 mass killings following the September 30 Movement, the “Petrus” extrajudicial killings (1982-1985), the Talangsari incident (1989), the Rumoh Geudong and Pos Sattis incidents in Aceh (1989), the forced disappearance of activists (1997-1998), and the May 1998 riots. Additional acknowledged violations include the Trisakti and Semanggi (I and II) shootings (1998-1999), the witch hunt and murder of dukuns (traditional healers accused of black magic) in 1998-1999, the Simpang KKA incident in Aceh (1999), the

⁵² Tempo (see note 51 above).

⁵³ ‘Komnas HAM: Konflik PSN Rempang Eco City terindikasi kuat terjadi pelanggaran HAM [Komnas HAM: PSN Rempang Eco City conflict strongly indicates human rights violations]’ Kompas, 22 September 2023, available at <https://nasional.kompas.com/read/2023/09/22/23563601/komnas-ham-konflik-psn-rempang-eco-city-terindikasi-kuat-terjadi-pelanggaran>, accessed on 13 November 2024.

⁵⁴ Kompas (see note 53 above).

Wasior incident in Papua (2001-2002), the Wamena incident in Papua (2003), and the Jambo Keupok Aceh incident (2003).⁵⁵

Despite the existence of Law No 26/2000 on Human Rights which provides a legal framework for addressing such violations, meaningful resolution has been hampered by insufficient political will. Moreover, prosecution of these cases would face numerous technical challenges, including difficulties in identifying victims and perpetrators, inadequate judicial procedures, varying interpretations of criminal elements, and limited available evidence.

Nevertheless, in 2023, President Jokowi took a significant step by signing a Presidential Decree establishing a Team for Non-Judicial Settlements of Past Gross Human Rights Violations (PPHAM), demonstrating the government's commitment to addressing these historical injustices.⁵⁶ This initiative focuses on providing relief to survivors and victims' families through non-litigation measures. Rather than pursuing criminal prosecution, the approach emphasizes socio-economic support, including financial compensation, healthcare access, and pensions. It also addresses bureaucratic barriers by restoring victims' legal rights and offering citizenship reinstatement to those living in exile after the 1965 atrocities.

While this social approach may disappoint those seeking criminal justice and accountability, it offers practical benefits to survivors, particularly in providing essential financial support and restoring political rights. This assistance could be especially valuable for victims living in remote areas outside Java. However, concerns persist about the initiative's longevity as the incoming administration in 2024 may establish different priorities, potentially affecting the continuity of such reconciliation efforts.

Part 3: Conclusion

2023 was marked by intense political activity in Indonesia as the nation prepared for both national and local elections, including the highly anticipated presidential election. This year also marked the final chapter of President Jokowi's administration as he completed his second term in office.

A significant political development occurred in October 2023 when Defence Minister Prabowo Subianto, who had previously lost two presidential bids to Jokowi, announced his selection of Gibran Rakabuming Raka, President Jokowi's eldest

⁵⁵ 'Inilah 12 pelanggaran HAM berat yang diakui Presiden Jokowi [Here are 12 serious human rights violations admitted by President Jokowi]' Tempo, 13 January 2023, available at <https://www.tempo.co/hukum/inilah-12-pelanggaran-ham-berat-yang-diakui-presiden-jokowi-229945>, accessed on 13 November 2024.

⁵⁶ Presidential Decree No 17/2022 on the Establishment of a Team for the Non-Judicial Settlement of Past Gross Violations on Human Rights, 2022.

son, as his vice-presidential running mate. Gibran's candidacy was made possible through a controversial Constitutional Court ruling that modified the minimum age requirement for presidential and vice-presidential candidates. The Court's decision to allow candidates under 40 who have held elected office to run raised considerable controversy, particularly given that Chief Justice Anwar Usman is President Jokowi's brother-in-law. This ruling sparked intense debate about nepotism, political fairness, and the independence of Indonesia's judicial system, with many viewing it as a threat to the country's democratic principles.

On the human rights front, several pressing issues remained unresolved during Jokowi's administration. These included concerns about freedom of expression, the press, and academic freedom, religious liberty, and limited public participation in governance. Additionally, the administration failed to adequately address past cases of gross human rights violations. Of particular concern was the deterioration of academic freedom, press freedom, and religious liberty throughout 2023. Moreover, the systematic limitation of public participation in decision-making processes has created conditions conducive to further human rights violations. This pattern of governance, coupled with the administration's inability to effectively address these challenges, may significantly tarnish President Jokowi's legacy and cast doubt on his commitment to protecting fundamental human rights.

**LAO PEOPLE'S
DEMOCRATIC REPUBLIC**



LAO PEOPLE’S DEMOCRATIC REPUBLIC*

*Khonsavanh Vongvannaxay***

Part 1: Overview of Lao PDR

A. Country Background

Lao PDR Facts	
Geographical size	236,800 sq km
Population	7.4 million
Ethnic breakdown ²	Main ethnic groups: Lao (62.4%), Mon-Khmer (23.7%), Hmong-lu (9.7%) , Chine-Tibetan (2.9%)
Official language	Lao
Literacy rate (aged 15 and above) ³	87.52%
Life expectancy ⁴	67 years
GDP ⁵	US\$15.84 billion (per capita US\$2,075)
Government	A one-party parliamentary socialist republic. The only legal political party is the Lao People’s Revolutionary Party (LPRP) which makes all major decisions through its 61-member Central Committee led by an 11-member Politburo. While National Assembly members have the power to elect the president and prime minister, all candidates for the National Assembly election are pre-screened by the LPRP.
Political and social situation	Since 2021, President Thongloun Sisoulith has been LPRP General Secretary and head of state, which also makes him the supreme leader of Laos. Prime Minister Sonexay Sipandone is head of government. Lao PDR has managed to maintain political stability and public order despite the COVID-19 pandemic which adversely affected its socio-economic development resulting in high fuel prices and inflation thereby influencing the price of goods and the livelihoods of Laotians.

* Also known as Lao PDR or Laos.

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¹ Data from 2022. ‘Lao statistics bureau in 2022, update population in 2023’ LAOSIS, available at <https://laosis.lsb.gov.la>, accessed on 13 January 2024.

² Data from 2024. ‘Results of Population and Housing Census 2024’ LAOSIS, available at <https://laosis.lsb.gov.la>, accessed on 13 January 2024.

³ Data from 2022. ‘Lao PDR literacy rate 1995-2024’ Macrotrends, available at <https://www.macrotrends.net/global-metrics/countries/LAO/lao-pdr/literacy-rate>, accessed on 28 October 2024.

⁴ Data from 2022. ‘The main indicator’ LAOSIS, available at <https://laosis.lsb.gov.la/majorIndicators.do?paramGrpId=all>, accessed on 28 October 2024.

⁵ Data from 2022. ‘Lao PDR’ World Bank, available at <https://data.worldbank.org/country/lao-pdr>, accessed on 28 October 2024.

Lao People's Democratic Republic is a landlocked country located in the northern part of the Mekong region in Southeast Asia. At the heart of the Indochinese Peninsula, Laos is bordered by Myanmar and China in the northwest, Vietnam to the east, Cambodia to the southeast, and Thailand to the west and southwest.

Led by a one-party government, it is considered a “least developed country” by the United Nations.⁶ However, according to the UNDP, it is in the “medium” human development category, ranking it 139th out of 193 countries in 2022.⁷ Prior to the COVID-19 pandemic, Lao PDR enjoyed three decades of rapid economic expansion, with its poverty rate dramatically declining from 46% in 1993 to 18% in 2019⁸ putting it on track to transition out of least developed country status by 2026.

For nearly 400 years, Laotians were deprived of basic rights, dignity, freedom, and equality as a result of foreign occupying forces. However, the founding of the Lao People's Democratic Republic on 2 December 1975 marked a new era. Finally, as masters of their own destiny, the Lao people chose a political system to align with the historical, social, and cultural realities of their new nation and one that would reflect their political will and aspirations. Consequently, Laotians now enjoy basic rights in addition to the right to development.

Access to justice and the right to a fair trial is another area that has been continuously developed and improved through laws and secondary legislation. As such, court systems and judicial bodies have been comprehensively established and enhanced to enable fair and just prosecutions to take place. Thus, the People's Supreme Court instructed and encouraged local courts to establish mobile units in remote areas to settle disputes on the spot whilst educating people to respect and comply with the law as a lesson learned from foreign countries.⁹

Following the COVID-19 outbreak, the government concentrated its efforts on various priorities. In April 2023, central and local sectors were ordered to focus on the following: collecting revenue for the budget and solving inflation; building foundations and maintaining peace and security in critical matters; preparing a summary to implement the two national agendas; solving social injustices; evaluating, analysing, and solving the problems of forest fires with specific solutions in the short and long terms, as well as learning lessons from implementation in the past, in addition to educating society to

⁶ ‘UN list of least developed countries’ UN Trade and Development (UNCTAD), available at <https://unctad.org/topic/least-developed-countries/list>, accessed on 28 October 2024.

⁷ ‘Lao PDR's human development placed in medium category’ ASEAN Laos, 4 April 2024, available at <https://kpl.gov.la/asean2024/En/detail.aspx?id=81769>, accessed on 7 November 2024.

⁸ ‘Lao PDR poverty profile and poverty assessment 2020’ World Bank Group, 20 October 2020, available at <https://www.worldbank.org/en/country/lao/publication/lao-pdr-poverty-profile-and-poverty-assessment-2020>, accessed on 28 October 2024.

⁹ Report on human rights implantation in Lao PDR to Australian delegates, the Department of Treaty and Law, Ministry of Foreign Affairs, April 2023.

be aware of and understand the consequences of forest encroachment, forest clearing, and forest burning for production.¹⁰

In accordance with the ninth Five-Year National Economic-Social Development Plan (NSED) for 2021-2025, many original targets were adjusted due to fuel shortages, high fuel prices, inflation, climate change, and natural disasters including the COVID-19 outbreak which affected the price of goods and therefore the livelihood of Laotians all over the country.

Current political situation

In January 2021, former Prime Minister Thongloun Sisolith was appointed as the LPRP Secretary-General. By March of the same year, the National Assembly also named him as State President, while former Vice President Phankham Viphavanh assumed the role of Prime Minister. However, in December 2022, Phankham resigned for health reasons and was replaced by his deputy, Sonexay Siphandone.¹¹

B. International Human Rights Commitments and Obligations

To achieve its economic and social development goals, Lao PDR asserts that it pursues a policy of open cooperation with all countries regardless of their political systems taking into account its own internal principles to serve the national interest. The country is a party to seven of the nine core UN conventions on human rights (see Table 1 below) but while it signed the Convention for the Protection of All Persons from Enforced Disappearance (CED) in 2008, it has not yet ratified it. In addition, it has neither signed nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW). As regards both, the government avers it is still in the process of studying the treaties in detail and creating awareness among responsible officials to ensure consistency with its internal laws.

Currently, Lao PDR is a party to 735 bilateral treaties, 195 multilateral treaties, 244 ASEAN regional treaties, and seven human rights treaties and has expressed an intention to focus on implementing these treaties effectively and efficiently. In late 2022, it also ratified ILO Conventions No C155 (on occupational safety and health) and C187 (on the promotional framework for occupational safety and health).

¹⁰ 'The Sustainable Development Goals in Lao PDR' UN Lao PDR, available at <https://laopdr.un.org/en>, accessed on 29 October 2024.

¹¹ 'Laos' Freedom House, available at <https://freedomhouse.org/country/laos/freedom-world/2023>, accessed on 29 October 2024.

Table 1: Ratification Status of International Instruments – Lao PDR¹²

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	21 Sep 2010	26 Sep 2012
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)	7 Dec 2000	25 Sep 2009
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)	29 Sep 2008	
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	17 Jul 1980	14 Aug 1981
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		22 Feb 1974 (a)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	7 Dec 2000	13 Feb 2007
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		8 May 1991 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		20 Sep 2006 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography		20 Sep 2006 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	15 Jan 2008	25 Sep 2009

To fulfil its UN commitments, the country therefore submitted its 10th periodic report under CEDAW and submitted a follow up of the concluding observations (Nos 20,

¹² ‘Ratification status of Lao PDR’ United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 29 October 2024.

38, and 40) to the Human Rights Committee. At the moment, it seeks to submit all pending reports in 2024 such as its initial report to the CAT, its 7th periodic report under the CRC, and its 19th-25th periodic reports to the ICERD in 2025. In addition, it has scheduled to submit its response to the list of issues made by the ICESCR Committee in 2024.

Moreover, in 2020, Lao PDR participated in the 3rd cycle of its Universal Periodic Review (UPR) and supported 160 out of 226 UPR recommendations. Implementation occurred when the country was in the process of adopting its 9th National Socio-Economic Development Plan (NSED) to achieve its Sustainable Development Goals (SDGs) as many of the UPR recommendations were interrelated and mutually supportive and reinforcing. Although most were already consistent with existing laws, regulations, and policies in the fields of economic, social, cultural, civil and political rights, it also adopted a plan of action to implement the recommendations. The national report for the 4th cycle of its UPR will be submitted at the beginning of 2025.¹³

At the regional level, Laos actively participates in the ASEAN Inter-Governmental Commission on Human Rights¹⁴ (AICHR), the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), the ASEAN Committee on Women (ACW), and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).¹⁵

As a party to a number of international human rights treaties, Lao PDR has adopted legislative, administrative, judicial, and other measures to implement its treaty obligations. Accordingly, since July 2022, the National Assembly adopted the Law on Passports (29 Dec 2022), the Law on Lawyers (amended 2022), and the Law on Prevention and Control of Infectious Diseases (amended 2022).¹⁶

C. National Laws and Measures Protecting Human Rights

Freedom of expression: This right was guaranteed in the 2015 Constitution under Art 44. The Law on Media (amended 2016) and other legislation also protects the right to criticize persons through the media in a creative manner, the right to express opinions about current affairs, both domestic and international, and the right and freedom to

¹³ 'Plan of action on the implementation of the 3rd cycle of the UPR recommendations by Lao PDR' MOFA, 2023.

¹⁴ This involves responsibility for implementation of AICHR's 5-year plan activities which include the following: (1) ASEAN report on the right to peace; (2) Workshop on sharing the best practices to implement the treaties to which all ASEAN Member States are parties; (3) Workshop on poverty eradication and economic, social, and cultural rights in the context of the ASEAN Human Rights Declaration (AHRD) and the UN 2030 Agenda for Sustainable Development Goals; (4) Regional workshop on the dissemination of the outcomes of the thematic study on the right to education: Promotion of access to tertiary education in ASEAN; and (5) Workshop on sharing the best practices to implement accepted UPR recommendations.

¹⁵ Report on human rights implantation in Lao PDR to Australian delegates, the Department of Treaty and Law, Ministry of Foreign Affairs, April 2023.

¹⁶ 'National Assembly of the Lao PDR' available at <https://na.gov.la/>, accessed on 29 October 2024.

access information. Any violation of a person's rights and freedom to lawful expression in speech or writing is a criminal offence under Art 221 of the Penal Code 2017.

Gender equality: In the last 5 years, several policies on gender equality promotion have been put in place. Article 37 of the Constitution provides for the equality of Lao citizens of all genders in terms of political, economic, social, cultural, and family rights. In addition, anyone who discriminates, divides, obstructs, or limits women from participation in political, economic, scientific, cultural, social, and family activities will be committing a criminal offence under Art 224 of the Penal Code. Furthermore, the government has adopted numerous measures to protect, develop, and promote women including the Law on Gender Equality (2019) and the fourth Five Year National Plan of Action on Gender Equality (2021-2025).¹⁷

Child rights to education: To address the issue of children abandoning their education, policies have been implemented to reduce education costs for parents including subsidies to help with school management costs from kindergarten to upper-secondary schools across the country. Moreover, textbooks and subsidies have been provided as well as scholarships for students from poor families, and 75 new high schools have been constructed. Likewise, the government has also adopted special measures, for example, to waive school fees.

Children and health: Adoption of the National Strategic Plan on Reproductive Health, Services for Mothers and New-borns, and Child Healthcare 2016- 2025, and a National Plan of Action on Mothers and Children 2016-2020 helped to reduce the child mortality rate and malnutrition rates of under-fives. Accordingly, childbirth is now free of charge as is treatment for children aged below 5 across all healthcare or public health services. Likewise, the capacity of serving midwives has been strengthened. Overall, such measures have done much to reduce the infant mortality rate from 47.2 in 2012 to 32.7 in 2022.¹⁸

Child labour: New legislation was introduced to prevent child labour in line with ILO Convention No 138 on the minimum age for employment and No 182 on the worst forms of child labour. Thus, the amended Labour Law of 2007 prohibits the employment of children under 14 and bans the involvement of children under 18 in sectors that are dangerous to their health, such as mining, the production of chemicals or toxic substances, work involving gambling or alcohol, and overtime work. The law also limits the hours children aged 14 to 18 can work to eight hours per day and prohibits night work for those under 18. Additionally, Laos issued the Guideline Order on Light Work List, and the Hazardous Work List to protect labourers also in accordance with ILO provisions.

¹⁷ It also approved the National Action Plan and the Periodic National Women's Development Plan. Further, the government ensures the cooperation, financial, and technical support of the public sector, and enables international organizations and development partners to assist in implementing the programs.

¹⁸ Figure refers to the number of deaths per 1,000 live births. 'Laos: Infant mortality rate from 2012 to 2022' Statista, available at <https://www.statista.com/statistics/806970/infant-mortality-in-laos/>, accessed on 29 October 2024.

Birth registration: Article 3 of the Law on Protection of the Rights and Interests of Children clearly stipulates that all children have the fundamental right to birth registration and that a birth certificate should be issued within 5 working days of a filed request. To reach more remote areas, it has therefore included awareness-raising tasks on the importance of birth registration into its National Plan Of Action on Mothers and Children 2016-2020. Furthermore, the Ministry of Home Affairs has implemented a free of charge mobile birth registration initiative.

Part 2: Outstanding Human Rights Issues

A. Enforced Disappearances

Regarding the case of Sombath Somphone (and in response to UPR recommendations 121.96, 98, 99 and 100), an Investigation Committee was convened to examine all aspects of the case by compiling and analysing any pertinent information and evidence. The Head of the Committee also meets with members of the Diplomatic Corps and family members of the disappeared person to brief them of the progress of the investigation.¹⁹

B. Electoral System

Elections for the National Assembly take place every five years. In the February 2021 election, the LPRP won 158 of 164 seats, with the remainder going to carefully vetted independents. Although ‘independent’ candidates can theoretically run for seats in the National Assembly, they must first be screened and approved by committees appointed by the Assembly. This process prevents the formation of a genuine opposition capable of providing checks and balances or challenging the LPRP’s dominance. Furthermore, electoral laws and frameworks (such as Law on Election of the National Assembly (2010) and the People’s Provincial Assemblies) are designed to ensure that the LPRP, the only legal party, maintains control in every election.

C. Freedom of Expression and the Media

As previously mentioned, freedom of expression is protected under several provisions uppermost of which is Art 44 of the 2015 Constitution but which also includes Art 221 of the 2017 Penal Code and the Law on Media. While freedom of expression is promoted in many forms (including seminars, conventional media, and social media²⁰), it is also limited – thus, one must also take into account the reputation and dignity of others, national security, social order, social harmony, and other values as outlined by the ICCPR, Art 19(3). In addition, further limitations are defined in the Law on Media and the Law on Combating and Preventing Cyber Crime which seeks to prevent the media from promoting violence for the purposes of war, distorting information or releasing

¹⁹ ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Lao People’s Democratic Republic (A/HRC/WG.6/35/LAO/1)’ Human Rights Council, 11 November 2019, available at <https://documents.un.org/doc/undoc/gen/g19/321/71/pdf/g1932171.pdf>, accessed on 29 October 2024, at 9.

²⁰ There are 2.5 million registered users of Facebook alone.

disinformation, slandering or libelling the reputation and dignity of individuals, legal entities, and organizations, prohibiting advertisements of allurements which could lead to ruin, together with anything damaging to national security, peace, social order, or the culture and traditions of the country.²¹

As more Laotians use social media to express criticism of the authorities over corruption, human rights violations, and the lack of democracy, the government has stepped up its surveillance of online activities. Since the previous UPR, four individuals have been sentenced to prison terms of up to 20 years for legitimate criticism of the government online. For example, in November 2019, a young woman known as Mouay, was sentenced to five years for using Facebook to criticize the government's delayed response to floods that had hit the southern provinces of Champassak and Salavan leaving many villagers stranded.²² Moreover, no independent media outlets are allowed to exist in the country and foreign news organizations that wish to report from Lao PDR are routinely subjected to restrictions and controls.²³

D. Persons with Disabilities

While Laos ratified the Convention on the Rights of Persons with Disabilities in 2009 and adopted the Law on Persons with Disabilities in 2019²⁴ to strengthen protection of the rights and interests of persons with disabilities, eliminate discrimination, and provide enabling conditions for self-development, self-reliance, and access to social activities, at the same time, ideally the government should also have published detailed guides on how to access such social services in addition to clarifying their political, economic, cultural, social and family rights. Further, the government should be encouraged to build a national plan specifically designed to protect the rights of people with disabilities.

²¹ See: 'Citizen Engagement for Good Governance, Accountability and the Rule of Law (CEGGA): Filling good governance in Lao PDR with life' GIZ, available at https://www.giz.de/en/downloads_els/2021_CEGGA%20Factsheet_ENG.pdf, accessed on 29 October 2024. This gap analysis was conducted by an international law expert from the Citizen Engagement for Good Governance, Accountability and the Rule of Law (CEGGA) program of which a report was presented on 27 June 2018.

²² 'Laos: Activists and rights groups demand release of Mouay' International Federation of Journalists, 16 September 2020, available at <https://www.ifj.org/media-centre/news/detail/article/laos-activists-and-rights-groups-demand-release-of-mouay>, accessed on 29 October 2024. Likewise, as also mentioned in the same report, three young Lao workers who criticised the government in Facebook posts while living in Thailand, disappeared in March 2016 after returning to Laos to renew their passports.

²³ 'Laos' circle of cronies' keeps a tight lid on country's news outlets, report says' Radio Free Asia Lao Service, 5 June 2022, available at <https://www.rfa.org/english/news/laos/press-freedom-05062022182437.html>, accessed on 29 October 2024. As a result, Reporters without Borders has said that the country is an information "black hole" from which little reliable information emerges – see, 'Laos' Reporters Without Borders, available at <https://rsf.org/en/country/laos>, accessed on 4 November 2024.

²⁴ 'Disability monograph of Lao PDR' UNFPA, 2020, available at https://lao.unfpa.org/sites/default/files/pub-pdf/1.disability_monograph_laos_en_final_29_nov_2020_print.pdf; See also, 'Towards better inclusion of people with disability rights in Lao PDR' Lao News Agency, 16 December 2020, available at <https://kpl.gov.la/en/detail.aspx?id=56808>, accessed on 29 October 2024.

E. Human Trafficking

Notwithstanding the laws already in place to combat human trafficking (such as the 2015 Law on Anti-Human Trafficking²⁵ and Art 215 of the Penal Code), and the government's National Plan of Action on Anti-Trafficking in Persons Phase III 2021-2025²⁶, it is still a significant problem which Laos is addressing by the use of extensive awareness campaigns especially in border regions and high risk villages²⁷. While the scale of the crime is difficult to track and statistics documenting its prevalence in Laos are poor, as primarily a source country, it is estimated that 200,000 to 450,000 people are being trafficked annually within the greater Mekong Sub region²⁸ mainly due to a lack of economic opportunities, income uncertainty, and poverty in home communities. Thus, in 2022, 95 victims of trafficking received treatment at the Centre for Counselling and Protection of Women and Children.²⁹ Likewise, a temporary shelter for more victims was opened in Luang Namtha Province.³⁰ However, coordination between the public sector and civil society organizations responsible for this type of work needs to be improved to ensure effectiveness.

F. Women and Children's Rights

An interview with the Lao Women's Union³¹ (an organization responsible for the promotion and protection of women and children's rights, gender equality, and female empowerment) about the progress of gender equality over the past five years revealed that the government has consistently implemented policies to promote and protect the rights of Lao citizens without discrimination, particularly the rights of women and children (as defined in the Constitution, other legislation and the Periodic National Socio-Economic Development Plan). However, human resources are still limited as is the awareness and experience of those working in these fields. In addition, budgets to carry out the actual work are limited. Also, it is significant that while women made

²⁵ This ensures the definition of human trafficking is in line with the Convention and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2003), and supplements the United Nations Convention against Transnational Organized Crime (2020) and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (2015) to which Lao PDR is a party. It also cooperates multilaterally at the sub-regional, regional, and international levels in victim rescue efforts.

²⁶ 'National Plan of Action on Anti-Trafficking in Persons Phase III 2021-2025' Lao PDR, available at <https://laopdr.iom.int/sites/g/files/tmzbd1906/files/National%20Plans%20of%20Actions%20on%20Anti-Trafficking%20in%20Persons%20%28NPA%29%20Phase%20III%20%282021-2025%29.pdf>, accessed on 29 October 2024.

²⁷ To date, multi-media campaigns have reached 83 target areas, covering 451 villages, amounting to 17,274 people including 8,805 women. See: 'Observation (CEACR) – adopted 2023, published 112nd ILC session' ILO, available at https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_COUNTRY_ID:4353803,103060, accessed on 29 October 2024. Trainings were also organized for the media to enhance the effectiveness of advertisements against human trafficking and illegal migration, and annual events were held on the World Day Against Trafficking in Persons with the participation of stakeholders, government agencies, and civil society.

²⁸ 'Human trafficking in Laos' Sengsavang, available at <https://sengsavang.org/en/human-trafficking-in-laos/>, accessed on 29 October 2024.

²⁹ '2023 trafficking in persons report: Laos' US Department of State, 2024, available at <https://www.state.gov/reports/2023-trafficking-in-persons-report/laos/>, accessed on 11 November 2024.

³⁰ 'Govt opens shelter to house female trafficking victims' Vientiane Times, 9 May 2023, available at https://www.vientianetimes.org.la/freeContent/FreeContent87_Govt_y23.php, accessed on 11 November 2024.

³¹ Interview with the Lao Women Unions, 3 May 2024.

up 32.5%³² of the entire government workforce in 2018, they were generally not in positions of power. For example, only 7.35% were at minister level and 12.63% were at vice minister or vice governor level. At the same time though, women made up 32% of the members of People's Provincial Assemblies (hitting the target of 30%).

Violence, discrimination, and obstacles to women's development as a result of ethnic traditions, customs, and cultures are also an issue. Measures to counter this include awareness raising on the dangers and ill effects of old traditions, mindsets, and behaviours and dissemination of the National Plan of Action on Combating and Elimination of Violence Against Women and Children (2014-2020) which for the first time prohibited all forms of violence against women and children (physical, sexual, and emotional) in all settings.

G. The Environment and Climate Change

Although Laos has embraced its strategic central location and hydropower resources, transforming itself into the 'battery of Southeast Asia,' success has been achieved with some cost to the environment, heritage, and segments of the community especially at the heart of the Mekong region where the risks of climate change to people's lives and livelihoods is most noticeable including changes in temperature, wind patterns, rainfall, and an increase in floods and other dangerous weather events. As such, the government is introducing measures to improve water management, agriculture, and disaster preparedness. However, the current economic growth model (which is heavily reliant on natural resource extraction) remains incompatible with sustainability ambitions. For example, the annual cost of environmental degradation was estimated at 19.3% of the country's GDP in 2017.³³

Moreover, economic and financial difficulties have aggravated unsustainability. As such, the government must take necessary steps to conserve the environment by conducting studies on the environmental impacts of foreign investment projects. In addition, companies, including foreign companies investing in Lao special economic zones or the hydropower and mining sectors, should follow an ongoing human rights due diligence process to identify, prevent, and mitigate their impact on human rights, as well as a method for providing remedies where appropriate. Such companies should cooperate fully with judicial and non-judicial grievance mechanisms in Lao PDR and those based in other countries should also seek to address human rights abuses and other harm linked to their work.³⁴

³² 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Lao People's Democratic Republic (A/HRC/WG.6/35/LAO/1)' Human Rights Council, 11 November 2019, available at <https://documents.un.org/doc/undoc/gen/g19/321/71/pdf/g1932171.pdf>, accessed on 30 October 2024, at 10.

³³ Sánchez-Triana, E (ed), 'Environmental challenges for green growth and poverty reduction: A country environmental analysis for the Lao People's Democratic Republic' World Bank Group, 2021, available at <https://documents1.worldbank.org/curated/en/646361631109058780/pdf/Environmental-Challenges-for-Green-Growth-and-Poverty-Reduction-A-Country-Environmental-Analysis-for-the-Lao-People-s-Democratic-Republic.pdf>, accessed on 29 October 2024.

³⁴ Guest speaker from the Ministry of Foreign Affairs, Faculty of Law and Political Science, 13 June 2024.

H. Academic Freedom

Academic freedom in Laos is still limited due to a lack of personnel and resources for effective implementation. Moreover, the government's stance on academic freedom is contradictory. While legislation guarantees this right, restrictions are imposed on its implementation – for example, the Ministry of Education exercises strict control over curricula, even in private institutions. Similarly, both citizen and non-citizen academic professionals conducting research in the country may be subject to restrictions on travel, access to information, and publication. The government also requires exit stamps for State-employed academic professionals to travel abroad for research or to obtain study grants.³⁵

Part 3: Conclusion

Between 2019 and 2023, there was a noticeable increase in awareness of the importance of human rights in Lao PDR accompanied by efforts to further highlight these issues at the national level and to cooperate with international organizations and other countries to address such challenges.

Currently, it appears the government has made the promotion and protection of the rights of its multi-ethnic communities a priority and has focused on exploring the untapped potential of these communities and empowering them to exercise their rights and freedoms as prescribed in the Constitution and other legislation. Consequently, Lao PDR has sought to develop many policies and measures consistent with the realities of these communities and fulfils its responsibilities through bilateral, regional, and international cooperation.

However, insufficient funding to organize activities according to the work plan has led to slow progress in some areas. Additionally, a lack of awareness and understanding of human rights among staff and officials at various levels, from central to local, as well as in the private sector, poses a significant obstacle to human rights implementation. The country also acknowledges its limited capacity for rapid socio-economic development as it is still considered a least-developed country. Despite starting from a very low baseline, some progress has been made, although challenges remain such as the provision of social services to remote areas. For example, unexploded ordnances continues to hinder economic development, directly and indirectly affecting people's ability to enjoy their rights. Furthermore, Lao PDR is prone to natural disasters such as prolonged droughts and floods. Additionally, low levels of education, local beliefs, and cultural restrictions have further hindered efforts to disseminate human rights.

³⁵ '2021 country reports on human rights practices: Laos' US Department of State, 2021, available at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/laos>, accessed on 29 October 2024.

To counter these obstacles, the Ministry of Foreign Affairs has published a compilation of human rights treaties and a handbook on basic human rights information for distribution to officials, law enforcement officers, National Assembly members, judicial officials, lawyers, and law students. The Ministry of Justice, along with the National Commission for the Advancement of Women, Mothers, and Children (NCAWMC) and the Ministry of Public Security (MPS), has also taken initiatives to disseminate brochures on the protection of children's rights and interests, distributing them free to the public. To promote and raise awareness, understanding, and respect for human rights, Lao PDR celebrates International Human Rights Day every December and organizes guest lectures on human rights at various educational institutions. Other relevant international commemorations include International Women's Day and Children's Day.

MALAYSIA



MALAYSIA

Khoo Ying Hooi* and Lau Li Yang**

Part 1: Overview of Malaysia

A. Country Background

Malaysia Facts	
Geographical size	329,960 sq km
Population size ¹	33.7 million (of which 90.5% are citizens and 9.5% are non-citizens)
Ethnic background ²	Bumiputera (Malay and non-Malay indigenous peoples): 70.1% Chinese: 22.6% Indian: 6.6% Other: 0.7%
Official language	Malay
Literacy rate (aged 15 and above) ³	94.71%
Life expectancy ⁴	74.8 years
GDP	US\$399.65 billion (per capita US\$11,648) ⁵
Government	<p>A constitutional monarchy and parliamentary democracy. Modelled after the British Westminster parliamentary system, Malaysia's parliament consists of the House of Representatives (Dewan Rakyat) and the Senate (Dewan Negara). As the head of government, the Prime Minister leads the executive branch. Playing a largely ceremonial role, the Ruler or Yang Di-Pertuan Agong is the head of state.</p> <p>Malaysia practices the doctrine of separation of powers to ensure the legislative, executive, and judicial branches of government are kept distinct. The powers assigned to each are spelled out in the Federal Constitution. It also practices a dual legal system, divided into secular civil and Islamic laws.</p>

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¹ Data from 2023. 'Demographic statistics Malaysia fourth quarter 2023' Ministry of Economy, Department of Statistics Malaysia, 14 February 2024, available at https://www.dosm.gov.my/uploads/release-content/file_20240213191112.pdf, accessed on 9 May 2024.

² Data from 2023. Department of Statistics Malaysia (see note 1 above).

³ Estimated data from 2019. 'Malaysia population' Country Meters, available at <https://countrymeters.info/en/Malaysia#literacy>, accessed on 21 October 2024.

⁴ Data from 2023. 'Malaysia' World Bank, 2023, available at <https://data.worldbank.org/country/malaysia>, accessed on 31 October 2024.

⁵ Data from 2023. World Bank (see note 4 above).

Malaysia Facts

Political and social situation	<p>Malaysia is a multi-racial country whose official religion is Islam. The Federal Constitution also states that other religions may be practiced in peace and harmony.</p> <p>Dynamic shifts occurred in the political landscape between 2019 and 2023 with an unprecedented turnover of three prime ministers leading to the election of opposition stalwart, Anwar Ibrahim, in 2022, and the formation of a unity government which includes the former ruling alliance.</p>
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Electoral and political change in Malaysia

Between 2019 and 2023, Malaysia's political landscape experienced dynamic shifts and active popular participation. For over sixty years, the Barisan Nasional (BN) coalition had held power, expanding executive control at the expense of judicial independence and legislative authority which gradually limited civil liberties. Former Prime Minister, Najib Razak, presently serving a sentence for corruption, oversaw the BN government's failure to secure a majority in the pivotal 2018 14th General Elections (GE14). This marked a significant turning point in Malaysia's democratic history, signalling the end of BN's prolonged rule. GE14 was celebrated as transformative and ushered in a new era with Pakatan Harapan (PH) at the helm which then promised reform for the nation.⁶

The emergence of a new government fuelled optimism among civil society members, who anticipated substantial reforms to both institutions and socio-economic policies. Hopes were high for the introduction of fresh faces committed to shaping a "New Malaysia."⁷ However, this initial enthusiasm quickly waned in February 2020 with the collapse of the PH government. Since 2018, Malaysia has witnessed an unprecedented turnover of four prime ministers: Mahathir Mohamad, Muhyiddin Yasin, Ismail Sabri, and the current officeholder, Anwar Ibrahim. This rapid succession of leadership changes has left the populace disillusioned, casting doubt on the likelihood of substantive reform.⁸

The election of Anwar Ibrahim in 2022, a longstanding figure in Malaysia's opposition, as the nation's tenth prime minister ignited widespread expectations for reform and was hailed as a significant triumph for democracy. The aftermath of the 15th General Election (GE15) unveiled an unprecedented scenario—a hung parliament⁹—requiring Anwar to navigate unconventional political alliances, notably partnering with the

⁶ Hutchinson, FE, and Lee Hwok, A, *The Defeat of Barisan Nasional: Missed Signs or Late Surge?* Singapore: ISEAS-Ishak Yusof Institute, 2019.

⁷ Loh, F, and Netto, A, *Regime Change in Malaysia: GE14 and the End of UMNO-BN's 60-Year Rule*, Petaling Jaya: SIRD, 2018.

⁸ Loh and Netto (see note 7 above).

⁹ 'GE15 ends in hung parliament, without clear winner' Astro Awani, 20 November 2022, available at <https://www.astroawani.com/berita-malaysia/ge15-ends-hung-parliament-out-clear-winner-392677>, accessed on 9 May 2024.

United Malays National Organization (UMNO), a longstanding force in Malaysian politics since the nation's inception.

Anwar's elevation to the prime ministerial role holds deep emotional resonance, particularly among his unwavering supporters who have patiently awaited his return to governance for over two decades following his removal in 1998. Throughout this extended period, he predominantly operated as an opposition stalwart, except for a brief tenure in government from 2018 to 2020, before reclaiming his position in 2022 and assuming the mantle of prime minister. Anwar Ibrahim took the oath on 24 November 2022, marking the conclusion of a turbulent series of events that resulted in the formation of a unity government. This coalition included the former ruling alliance BN, Gabungan Parti Sarawak (GPS), Gabungan Rakyat Sabah (GRS), Parti Warisan, and the PH coalition. Despite the reform-minded image associated with Anwar's coalition, UMNO—a historically influential Malay-centric party—has been embroiled in multiple controversies, notably the extensive 1 Malaysia Development Berhad (1MDB) corruption scandal that led to the incarceration of former UMNO leader and prime minister, Najib Razak. Despite the aspirations for change accompanying Anwar's leadership, lingering challenges in upholding human rights persist within Malaysia's evolving political landscape.

The effect of the COVID-19 pandemic on human rights and peace

The onset of the COVID-19 pandemic coincided with political upheavals in Malaysia. As the country grappled with the virus's emergence following the detection of the first case on 25 January 2020, internal rifts within the ruling PH coalition under Prime Minister Mahathir Mohamad's leadership, began to fracture. This led to the formation of a new government, Perikatan Nasional (PN), comprising elements of the old BN regime, notorious for its 60-year history of authoritarian governance which often disregarded human rights principles.¹⁰ Initially, in March 2020, COVID-19 cases remained relatively contained. However, this changed drastically following a religious gathering at Sri Petaling, Kuala Lumpur, triggering a rapid infection surge.¹¹ As the outbreak intensified, the newly formed Malaysian PN government, helmed by Prime Minister Muhyiddin Yassin, implemented a Movement Control Order (MCO) on 18 March 2020 in a bid to curb the spread of the virus. Subsequently, Malaysia underwent multiple phases of MCOs as part of its comprehensive strategy to combat the escalating threat.¹²

¹⁰ '3 coronavirus cases confirmed in Johor Baru' New Straits Times, 25 January 2020, available at <https://www.nst.com.my/news/nation/2020/01/559563/breaking-3-coronavirus-cases-confirmed-johor-baru>, accessed on 9 May 2024.

¹¹ Barker, A, 'Coronavirus COVID-19 cases spiked across Asia after a mass gathering in Malaysia. This is how it caught the countries by surprise' ABC News, 19 March 2020, available at <https://www.abc.net.au/news/2020-03-19/coronavirus-spread-from-malaysian-event-to-multiple-countries/12066092>, accessed on 9 May 2024.

¹² Ain Umaira Md Shah, Syafiqah Nur Azrie Safri, Rathedevi Thevadas, Nor Kamariah Noordin, Azmawani Abd Rahman, Zamberi Sekawi, Aini Ideris, and Mohamed Thariq Hameed Sultan, 'COVID-19 outbreak in Malaysia: Actions taken by the Malaysian government' *International Journal of Infectious Diseases*, 2020, Vol 97, pp 108-116.

The imposition of movement restrictions aimed at curbing the outbreak ignited discourse concerning human rights, particularly regarding the freedoms of movement, assembly, and expression. While some assert that these restrictions encroach upon fundamental rights, an opposing viewpoint underscores their necessity in a health crisis context. Studies underline that the efficacy of such pandemic control measures hinges significantly on public cooperation and adherence.¹³ Factors like an individual's knowledge, attitudes, and behaviour crucially influence a willingness to embrace behavioural changes.¹⁴ This underscores the vital link between COVID-19 restrictions and the principles of good governance.

The COVID-19 pandemic instigated changes that adversely affected democracy and governance, compromising human rights principles. For Malaysia, a nation historically challenged by human rights issues, the pandemic further strained the country's dedication to upholding these rights, especially amid unavoidable measures to curtail individual freedoms. Notably, restrictions on inter-state movement aimed at stemming COVID-19 transmission illustrate a clash between curtailed liberties and health imperatives. Simultaneously, the suspension of parliament in January 2021, invoked under the pretext of the pandemic emergency, lasted a prolonged seven months.¹⁵ This hiatus significantly curtailed the forum for elected representatives to deliberate on COVID-19 policies profoundly impacting democratic discourse and decision-making processes.

Various legislative measures and control orders have been implemented in response to the COVID-19 crisis. Notably, the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) Regulations 2020 established the legal framework for enforcing movement control orders. Additionally, the COVID-19 Act 2020, which was ratified by the Dewan Negara on 22 September 2020, and enacted the following day, facilitated amendments to existing laws to accommodate pandemic-related changes. Furthermore, legislation such as the Police Act 1967, criticised by human rights organisations for granting expansive powers to law enforcement and curbing freedom of movement, was also utilised during the pandemic. Despite intense scrutiny, this law was deemed vital to curtail viral transmission by regulating people's movements.¹⁶

¹³ Spadaro, A, 'COVID-19: Testing the limits of human rights' *European Journal of Risk Regulation*, 2020, Vol 11, No 2, pp 317-325.

¹⁴ Azlan, AA, Rezal Hamzah, M, Jen Sern, T, Hadi Ayub, S, and Mohamad, E, 'Public knowledge, attitudes and practices towards COVID-19: A cross-sectional study in Malaysia' *PloS One*, 2020, Vol 15, No 5. Available at <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0233668&type=printable>, accessed on 9 May 2024.

¹⁵ Kumar, PP, 'Malaysia Parliament battle resumes with Muhyiddin in hot seat' *Nikkei Asia*, 26 July 2021, available at <https://asia.nikkei.com/Politics/Malaysia-in-transition/Malaysia-parliament-battle-resumes-with-Muhyiddin-in-hot-seat>, accessed on 9 May 2024.

¹⁶ 'Health DG: Movement control can boost Ministry's fight against COVID-19' *The Star*, 17 March 2020, available at <https://www.thestar.com.my/news/nation/2020/03/17/health-dg-movement-control-can-boost-ministry039s-fight-against-covid-19>, accessed on 9 May 2024.

Similarly, the Malaysian Emergency (Essential Powers) (No 2) Ordinance 2021 was enacted in March 2021, granting the government authority to prosecute individuals disseminating misinformation regarding COVID-19 or the concurrent state of emergency. Implemented without parliamentary consent and utilising COVID-19 as justification, the Ordinance drew substantial backlash, particularly from civil society and human rights groups. Its introduction during the tenure of Muhyiddin Yassin, amidst ongoing political turbulence, raised public suspicion that the government was exploiting the pandemic to consolidate power and stifle political opposition. Significantly, this Ordinance resurrected the Anti-Fake News Act 2018, previously repealed by the PH administration in October 2019 due to human rights concerns. The revived Act imposes severe penalties, including fines up to RM100,000, imprisonment for three years, or both.¹⁷ Additionally, parties offering financial aid for creating or facilitating such “fake news” face penalties of up to RM500,000 and six years’ imprisonment.¹⁸ Moreover, the Act criminalised suspected creation, publication, or dissemination of purported “fake news” related to COVID-19 or the emergency declaration.¹⁹

The Ordinance also poses a significant threat to privacy rights as it grants the police access to traffic data and “computerised data.” Moreover, it permits the admission of documents gathered by a police officer regardless of how they were obtained. Additionally, prosecutors are only required to submit a list of documents without the obligation to produce them in court for verification. This leniency raises concerns about potential abuses in the administration of justice as it allows unverified admission of statements from any source, irrespective of the circumstances. Furthermore, the absence of provisions for notifying individuals whose communications are decrypted denies them opportunity for redress in cases where their rights have been violated. This lack of transparency and recourse undermines fundamental rights and legal safeguards.²⁰

Legislation like the Penal Code and the Peaceful Assembly Act were also invoked during the pandemic, portraying protestors negatively and claiming that their “mass gatherings” might spur new COVID-19 clusters. However, these assertions lacked substantiated evidence, a point affirmed by the Director-General of the Ministry of Health.²¹ These instances highlight how certain government responses during a pandemic can impede the enjoyment of specific human rights. Such actions demand rigorous scrutiny to prevent jeopardising the future of democracy and human rights, especially in semi-authoritarian or emerging democratic nations.

¹⁷ ‘Malaysia imposes emergency law to clamp down on COVID-19 fake news’ The Straits Times, 11 March 2021, available at <https://www.straitstimes.com/asia/se-asia/malaysia-imposes-emergency-law-to-clamp-down-on-covid-19-fake-news>, accessed on 9 May 2024.

¹⁸ Teoh, S, ‘Malaysian government criticised for “draconian” use of emergency powers to outlaw fake news’ The Straits Times, 12 March 2021, available at <https://www.straitstimes.com/asia/se-asia/malaysian-government-criticised-for-draconian-use-of-emergency-powers-to-outlaw-fake>, accessed on 9 May 2024.

¹⁹ ‘Malaysia: Revoke ‘fake news’ ordinance’ Human Rights Watch, 13 March 2021, available at <https://www.hrw.org/news/2021/03/13/malaysia-revoke-fake-news-ordinance>, accessed on 9 May 2024.

²⁰ Human Rights Watch (see note 19 above).

²¹ ‘No COVID-19 clusters from #Lawan demonstration, says DG’ Malaysiakini, 13 August 2021, available at <https://www.malaysiakini.com/news/587086>, accessed on 9 May 2024.

B. International Human Rights Commitments and Obligations

As shown in Table 1 below, Malaysia has ratified three core human rights treaties but with several reservations. These treaties are CEDAW, the CRC, and the CRPD. However, Malaysia's ratification of these treaties also carried reservations that were seen as conflicting with provisions within the Federal Constitution, Islamic laws, and other national regulations. Elected to the UN Human Rights Council for the 2022-2024 term, Malaysia pledged to engage with pertinent stakeholders regarding the prospect of signing and ratifying additional international human rights conventions saying, "Malaysia is engaging closely with the relevant stakeholders on the possibility of signing and ratifying the outstanding international conventions related to human rights."²² However, as of 2024, there has been no observable progress toward fulfilling this commitment.

Table 1: Ratification Status of International Instruments – Malaysia²³

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		
Optional Protocol to the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the ICCPR aiming to the abolition of the death penalty		
International Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		5 Jul 1995 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		

²² 'Note Verbale dated 4 June 2021 from the Permanent Mission of Malaysia to the United Nations addressed to the President of the General Assembly (A/76/83)' General Assembly, 9 June 2021, available at <https://documents.un.org/doc/undoc/gen/n21/146/47/pdf/n2114647.pdf>, accessed on 9 May 2024.

²³ 'Ratification status for Malaysia' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN, accessed on 9 May 2024.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		17 Feb 1995 (a)
Optional Protocol to the CRC on the involvement of children in armed conflict		12 Apr 2012 (a)
Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography		12 Apr 2012 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	8 Apr 2008	19 Jul 2010

Malaysia ratified the CRC in 1995 but maintains reservations on several provisions: Art 2 regarding non-discrimination; Art 7 addressing name and nationality; Art 14 covering freedom of thought, conscience, and religion; Art 28(1)(a) concerning free and compulsory primary education; and Art 37 on torture and the deprivation of liberty. Efforts to adhere to CRC commitments led to the translation of treaty provisions into the Child Act 2001. This legislation was enacted to cater to the care, protection, rehabilitation, and development of children within society.

Despite two decades since CEDAW ratification, Malaysia has yet to enact specific legislation directly encompassing its provisions. Full actualization is further impeded by Malaysia's firmly held reservations, which persist concerning: Art 9(2) concerning equal rights with men regarding children's nationality in a couple; Art 16(1)(a) addressing equal rights to marriage; Art 16(1)(c) regarding equal rights and responsibilities during marriage and its dissolution; Art 16(1)(f) covering equal rights and responsibilities concerning guardianship, wardship, trusteeship, and child adoption; and Art 16(1)(g) on equal personal rights as husband and wife.

In 2008, Malaysia implemented the Persons with Disabilities Act, a domestic law aimed at addressing individuals with disabilities and occurred subsequent to its ratification of the CRPD in 2010, which was accompanied by reservations to Arts 15 and 18. Article 15 focuses on freedom from torture or cruel, inhuman, or degrading treatment or punishment, while Art 18 pertains to liberty of movement and nationality.

In 2018, Malaysia took initial steps towards ratifying the ICERD. However, the government faced significant opposition from right-wing factions. These opponents argued that ratification would jeopardise the rights of the Malay community and the monarchy. This backlash resulted in a reversal of the government's stance, halting any progress towards ratification. The controversy surrounding the ICERD has since

led to a conspicuous silence regarding its ratification in subsequent years, reflecting the lingering complexities and challenges in addressing racial discrimination within Malaysia’s political and social landscape.

Part 2: Outstanding Human Rights Issues

A. Media Freedom

Table 2: Malaysia’s Press Freedom Index (2019-2023)²⁴

Year	Index (out of 180 countries)	Global Score
2019	123	63.26
2020	101	66.88
2021	119	60.53
2022	113	51.55
2023	73	62.83

As seen in Table 2 above, the Press Freedom Index for Malaysia from 2019 to 2023 shows a notable fluctuation in the country’s ranking and global score. In 2019, Malaysia held the 123rd position with a score of 63.26, suggesting a relatively restricted press freedom environment. However, by 2020, there was significant improvement as Malaysia reached a score of 66.88 and jumped to 101st, reflecting a positive shift in press freedom.

However, subsequent years (2021 and 2022) saw a regression in press freedom. Malaysia’s ranking fell to 119th in 2021 with a score of 60.53 and further declined to 113th in 2022 with a score of 51.55. These drops indicate a reversal or challenges to the earlier positive trend. However, in 2023, Malaysia made a remarkable leap forward, securing the 73rd position, suggesting considerable improvement, a notable rebound from the declining trend witnessed in the previous two years. These fluctuations may reflect the dynamic nature of Malaysia’s media landscape, potentially influenced by changes in governmental policies, legal reforms, or shifts in public discourse.

Despite the improvement, Malaysia’s media scene remains intertwined with politics, marked by a consolidation of ownership among media conglomerates. This trend has led to various mainstream outlets aligning themselves with specific political groups or alliances, prompting apprehension about biased reporting and selective coverage. Although the post-GE14 period initially raised hopes for reform within the media sector, the anticipated shift in reporting practices has not fully materialised, impacting the trajectory of media freedom in subsequent years.

²⁴ ‘Press Freedom Index’ Reporters Without Borders, available at <https://rsf.org/en/index>, accessed on 9 May 2024.

The evolving atmosphere permitted State-controlled media to adopt a more transparent approach, showcasing a wider spectrum of viewpoints and granting visibility to government and opposition figures. Independent outlets such as Malaysiakini found increased liberty to delve into investigative journalism and critical public interest narratives as censorship regulations relaxed. A pivotal moment arrived in October 2019 when the controversial Anti-Fake News Act 2018 was officially repealed, marking the culmination of the second attempt. An opposition-dominated Senate defeated the initial bill in its first attempt at repeal,²⁵ but it was later revived during COVID-19 under the Malaysian Emergency (Essential Powers) (No 2) Ordinance 2021.

The PH government deliberated on abolishing the Printing Presses and Publications Act (PPPA), an outdated and suppressive law that vests the Home Minister with authority to close or revoke press licences, control media content, and stifle public discourse on sensitive or contentious topics. Simultaneously, the government initiated discussions to establish an independent, self-regulating Malaysian Media Council, envisioning a landscape fostering increased press freedom and ethical journalism standards. Despite these strides, laws constraining media freedom and stifling freedom of expression persist within Malaysia's legal framework.

In 2020, the government transition resulting from parliamentary defections posed further obstacles to reform progress in Malaysia. According to a report by Suara Rakyat Malaysia (SUARAM), a prominent human rights organisation, freedom of the press significantly declined under the PN government. Journalists and news portals faced heightened scrutiny and investigations, particularly when reporting critically on government actions that attracted public attention and potentially affected its image.²⁶

Accordingly, the media operated within an increasingly uncertain environment. For instance, a senior minister threatened severe action against news portals for publishing what was deemed “confusing and inaccurate” content related to official statements.²⁷ Additionally, in July 2020, authorities raided Al Jazeera's Kuala Lumpur office and probed seven of its journalists due to a documentary entitled, ‘Locked up in Malaysia's lockdown.’ The documentary detailed the mass arrests of migrant workers as part of the government's COVID-19 containment measures.

During that period, the PN administration persisted in suppressing independent media by employing legal harassment and issuing threats. For example, Malaysiakini and its editor-in-chief, Steven Gan, faced charges under s.114A of the Evidence Act.

²⁵ ‘Malaysia finally scraps anti-fake news act’ Free Malaysia Today, 19 December 2019, available at <https://www.freemalaysiatoday.com/category/nation/2019/12/19/malaysia-finally-scraps-anti-fake-news-act/>, accessed on 9 May 2024.

²⁶ ‘Malaysia human rights report 2020’ SUARAM, 2021, available at https://www.suaram.net/_files/ugd/359d16_2f2fd39de42740a9adebee244cbbf785.pdf, accessed on 9 May 2024.

²⁷ Palansamy, Y, ‘Senior minister warns action against news outfits over “inaccurate” reports on govt remarks’ Malaymail, 11 April 2020, available at <https://www.malaymail.com/news/malaysia/2020/04/11/senior-minister-warns-action-against-news-outfits-over-inaccurate-reports-o/1855731>, accessed on 9 May 2024.

These charges stemmed from alleged contempt of court due to comments posted by five readers criticising a court ruling following an article published on Malaysiakini.²⁸

This trend was reinforced when the Federal Court found Malaysiakini guilty of contempt of court, resulting in a fine of RM500,000. This verdict established a precedent concerning online expression and shifted the burden of proof, placing legal responsibility on platforms to actively oversee and regulate third-party comments. Such a decision holds platforms accountable for user-generated content, triggering significant apprehension about preserving press freedom.²⁹

Throughout the pandemic, the government wielded emergency powers³⁰ to introduce the Fake News Ordinance, characterised by a vague definition of ‘fake news’ and accompanied by substantial fines upon conviction. Between March 2021 and October 2021, SUARAM recorded 30 instances under investigation using the Ordinance, leading to 12 charges and five guilty verdicts.³¹ Further, journalists faced threats when covering topics unfavourable to the government, including revelations from the former inspector-general of the Royal Police Force, a hefty fine imposed on a street vendor for breaching COVID-19 regulations, and the documentation of a strike by junior doctors within a quarantine centre.³²

Moreover, authorities initiated an investigation into two Malaysiakini journalists reporting on a custodial death raising concerns about potential motives related to the allegations of police brutality. The demise of Ganapathy, a 40-year-old milk trader, triggered public outrage, prompting demands for police accountability and establishing the Independent Police Complaints and Misconduct Commission (IPCMC).³³

Ganapathy, as per the autopsy report, sustained severe injuries during his 12-day detention. His family asserted that he was healthy beforehand and alleged he had been beaten with a rubber hose.³⁴ These instances underscore the challenges journalists faced

²⁸ ‘Malaysian editor Steven Gan charged with contempt of court over reader comments’ Committee to Protect Journalists, 6 July 2020, available at <https://cpj.org/2020/07/malaysian-editor-steven-gan-charged-with-contempt-of-court-over-reader-comments/>, accessed on 9 May 2024.

²⁹ Reduan, H, and Rashid, A, ‘Malaysiakini fined RM500,000 for contempt of court’ Malaysiakini, 19 February 2021, available at <https://www.malaysiakini.com/news/563554>, accessed on 9 May 2024.

³⁰ Ratcliffe, R, ‘Malaysia declares COVID state of emergency amid political turmoil’ The Guardian, 12 January 2021, available at <https://www.theguardian.com/world/2021/jan/12/malaysia-declares-covid-state-of-emergency-amid-political-turmoil>, accessed on 9 May 2024.

³¹ ‘Malaysia human rights report 2021’ SUARAM, 2022, available at https://www.suaram.net/_files/ugd/359d16_a65ec707b2c745bd8f4aeb7630a3f2fb.pdf, accessed on 31 October 2024, at 8.

³² SUARAM 2021 (see note 31 above), at 60.

³³ Kaur, M, ‘Social media outrage over Ganapathy’s death in police custody’ Free Malaysia Today, 30 April 2021, available at <https://www.freemalaysiatoday.com/category/nation/2021/04/30/social-media-outrage-over-ganapathys-death-in-police-custody/>, accessed on 9 May 2024.

³⁴ Kumar, BN, ‘Autopsy confirms Ganapathy died of severe injuries – lawyer’ Yahoo News, 30 April 2021, available at <https://malaysia.news.yahoo.com/autopsy-confirms-ganapathy-died-severe-234200624.html>, accessed on 9 May 2024.

while reporting contentious issues during the pandemic, with government actions and investigations posing a significant threat to press freedom.³⁵

Since Prime Minister Anwar Ibrahim assumed office, the unity government has reversed its earlier commitments to safeguard press freedom. Instead, it has resorted to employing methods reminiscent of past authoritative regimes, utilising oppressive laws and regulatory bodies like the Malaysian Communications and Multimedia Commission (MCMC) to suppress dissenting voices and political opposition. For example, in August 2023, reports emerged that online media platforms UtusanTV and MalaysiaNow faced temporary blocks preceding state elections.³⁶ The government has also shown an active stance in monitoring and regulating content across both mainstream and social media, especially regarding sensitive topics related to race, religion, and royalty, commonly known as the 3Rs.³⁷

B. Freedom of Assembly and Expression

Table 3: Freedom in the World and Net Indices 38 39

Year	Freedom in the World Index by Freedom House38	Freedom on the Net Index by Freedom House39
2019	52/100	57/100
2020	52/100	58/100
2021	51/100	58/100
2022	50/100	59/100
2023	53/100	61/100

Between 2019 and 2023, Malaysia’s scores in both the Freedom in the World Index and the Freedom on the Net Index (reported by Freedom House) as shown in Table 3 above, depict a nuanced picture of the country’s rights landscape. In the former, Malaysia’s score fluctuates slightly over the years, showing a modest decline from 52 to 50 between 2019 and 2022, before rising to 53 in 2023. Conversely, the latter displays a consistent upward trend, with scores ascending from 57 in 2019 to 61 in 2023. These

³⁵ ‘Ganapathy’s death: Cops summon two Mkini journalists for statements’ Malaysiakini, 18 May 2021, available at <https://www.malaysiakini.com/news/575071>, accessed on 9 May 2024.

³⁶ ‘Malaysia: RSF denounces arbitrary suspension of news websites critical of the government’ Reporters Without Borders, 2023, available at <https://rsf.org/en/malaysia-rsf-denounces-arbitrary-suspension-news-websites-critical-government>, accessed on 9 May 2024.

³⁷ ‘Malaysia human rights report 2022’ SUARAM, 2023, available to download at <https://www.suaram.net/human-rights-reports?pgid=kvex92wb-f2436c47-2d06-4aaa-95ec-68f47ae77031>, accessed on 31 October 2024.

³⁸ The Freedom in the World Index assesses the condition of political rights and civil liberties globally. See, ‘Freedom in the world’ Freedom House, available at <https://freedomhouse.org/report/freedom-world>, accessed on 9 May 2024.

³⁹ The Freedom on the Net Index measures internet freedom within countries. Data for 2023 and past years is available to download at <https://freedomhouse.org/report/freedom-net>, accessed on 11 May 2024.

divergent trends indicate a complex scenario – while there’s an improvement in digital rights, as evidenced by the Freedom on the Net Index, overall freedom, as assessed by the Freedom in the World Index, witnessed minor fluctuations. These changes could signify that civil liberties are influenced by a variety of factors, indicating a need for deeper analysis to understand the specific drivers behind such shifts in Malaysia’s rights landscape over this period.

In particular, over the past half-decade, Malaysia’s efforts to enhance freedom of assembly and expression have been stymied by the persistence of broadly phrased laws such as s.233 of the Multimedia and Communications Act 1998 (CMA) and the Sedition Act 1948. Despite assurances and endeavours to amend these laws in line with human rights standards, specifically outlined in the election manifestos of the PH coalition in both 2018 and 2022, tangible progress has been limited. Even in 2020, the PN government articulated its commitment to “enhancing” security laws like the Sedition Act 1948 and the Security Offences (Special Measures) Act 2012 (SOSMA) without taking measurable steps or indicating timelines. This continuous entrenchment of legal restrictions has resulted in an obstructed civic space, as noted by CIVICUS, a global civil society alliance, hampering the freedom of expression and assembly in Malaysia.⁴⁰

Table 4: Number of Investigations Under the Sedition Act 41 42

Year	Number of Investigations Under the Sedition Act 1948 ⁴¹
2019	46
2020	117
2021	84
2022	54
2023 ⁴²	17
TOTAL	384

The data in Table 4 above highlights a fluctuating trend in investigations conducted under the Sedition Act 1948 over the past five years. In 2020, there was a significant spike in cases, more than double the number of investigations compared to the previous year. However, following this surge, subsequent years witnessed a decline, notably dropping to 17 cases by 2023. This downward trajectory might suggest a possible shift in enforcement priorities or alterations in legal strategies. Despite these fluctuations,

⁴⁰ ‘Malaysia – Civicus Monitor’ Civicus, available at <https://monitor.civicus.org/country/malaysia/>, accessed on 10 May 2024.

⁴¹ The number of cases SUARAM documented in 2022 corroborates with data released by the Malaysian government. See, SUARAM 2022 (see note 37 above), at 44.

⁴² Based on SUARAM’s own documentation, see, ‘Human rights report Malaysia 2023 overview’ SUARAM, available at https://www.suaram.net/_files/ugd/359d16_d6fa6ad677894bbda54b12f2dee787ed.pdf, accessed on 10 May 2024, at 27-29.

the consistent application of the Sedition Act warrants scrutiny, indicating a continued governmental focus on curbing dissent and controlling freedom of expression during this period.

Amid escalating societal divisions and an increase in conservative ideologies, the government's approach is leaning towards stricter monitoring of discussions encompassing the 3Rs (race, religion, and royalty). This stance has resulted in crackdowns on various individuals, including human rights advocates, political figures, and journalists, across both digital and physical platforms. Utilisation of the Sedition Act by penalising speech deemed to have a “seditious tendency” has fostered a climate of fear, leading to self-censorship and censorship in discussions related to the 3Rs. The Act's ambiguous terminology encompassing terms such as “hatred,” “contempt,” and “discontent” fails to align with international human rights norms. Such loosely defined language poses risks of undue interference with freedom of expression and could lead to potential misuse by authorities. Additionally, the Multimedia and Communications Act (CMA) mirrors this ambiguity, extending its jurisdiction to online communications aiming to “annoy, abuse, threaten, or harass another person.”

Criticism directed towards royal institutions and religion remains a highly sensitive issue in Malaysia due to their revered status in society. The fear of severe repercussions under the Sedition Act, carrying potential jail sentences of up to three years, and penalties under the CMA effectively prevent critics from openly addressing these subjects. A notable case in 2019 involved preacher, Wan Ji Wan Hussin, whose sentence was extended from nine months to a year by the High Court due to comments about the Sultan of Selangor on Facebook in 2014. Another significant incident occurred in July 2020, resulting in a 26-month sentence for an individual who insulted the Prophet Muhammad and Islam on social media.⁴³

The controversy continued when the Universiti Malaya Association of New Youth (UMANY) faced an investigation in November 2020 for a statement discussing the role of the ruler within the framework of the Federal Constitution. This investigation led to the Sedition Act and CMA charges against six UMAN Y students, with one member's residence being raided by the police. This episode incited widespread public outcry and targeted cyberbullying, including death threats towards the involved students, highlighting the contentious criminalisation of those who question royalty despite their public figure status. Once again, notwithstanding pledges in 2023 to amend the Sedition Act, the government defended its retention and use of the legislation, citing protection for the institution of Rulers without acknowledging its abusive nature and contradiction of international free speech standards.⁴⁴

⁴³ ‘Man gets 26 months’ jail for insulting Islam, Prophet Muhammad’ Malaymail, 17 July 2020, available at <https://www.malaymail.com/news/malaysia/2020/07/17/man-gets-26-months-jail-for-insulting-islam-prophet-muhammad/1885419>, accessed on 10 May 2024.

⁴⁴ Lim, I, ‘Azalina cabinet agrees to restrict Sedition Act to only royalty issues’ Malaymail, 25 July 2023, available at <https://www.malaymail.com/news/malaysia/2023/07/25/azalina-cabinet-agrees-to-restrict-sedition-act-to-only-royalty-issues/81670>, accessed on 10 May 2024.

Some other examples include the case of Fahmi Reza, a graphic artist and political activist who faced multiple arrests and charges due to his satirical work challenging the government. In 2022, he was charged under s.233 of the CMA for sharing caricatures of the former Health Minister, Adham Baba, and questioning his privilege in observing a shorter quarantine period post his overseas return.⁴⁵ Similarly, in response to a government decision allowing all factories to operate as essential services during the COVID-19 lockdown in 2021, Fahmi Reza depicted a can of Carlsberg beer in a manner resembling the logo of the Malaysian Islamic Party (PAS). This depiction led to another charge in the same year, citing an allegedly “offensive graphic.”

In July 2021, the Freedom Film Network (FFN) and SUARAM jointly organised an online screening and subsequent panel discussion featuring the animated documentary, *Chili Powder and Thinner*. This powerful film sheds light on the real-life experiences of a teenager who was subjected to torture while in police custody, and advocates for an independent police oversight commission. However, the government retaliated by leveraging s.233 of the CMA to investigate six human rights defenders associated with the documentary’s production and screening. SUARAM’s 2021 Human Rights Report highlighted a concerning trend from 2020 to 2021, indicating the widespread use of s.233 of the CMA as a broad tool for prosecuting alleged internet-related offences, raising alarms about its potential misuse.⁴⁶

During the pandemic and the 2022-2023 election period, hate speech surged, notably targeting refugees and migrants with xenophobic and hostile narratives. Authorities often depict these groups as threats to national security and economic progress.⁴⁷ Regrettably, racial and religious narratives are often exploited in political campaigns to garner support, perpetuating divisive discourse.⁴⁸ Paradoxically, while the government actively censors and criminalises inciteful speech, particularly on sensitive topics like the 3Rs, it engages in selective censorship, notably concerning LGBTQI+-related content. For example, Gay Star News and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) websites remain blocked by the Malaysian Communications and Multimedia Commission (MCMC), as reported by

⁴⁵ Fahmi Reza was granted a discharge not amounting to an acquittal (DNAA) in 2022.

⁴⁶ SUARAM 2021 (see note 31 above), at 66.

⁴⁷ Santa Maria Chin, E, ‘On Facebook, Immigration Department endorses, shares post that says Rohingya migrants “unwelcomed” here: Gets chastised by Amnesty International’ Malaymail, 11 June 2021, available at <https://www.malaymail.com/news/malaysia/2021/06/11/on-facebook-immigration-department-endorses-shares-post-that-says-rohingya/1981486>; See also, ‘Malaysia: End hateful rhetoric against Rohingya refugees’ Article 19, 28 April 2022, available at <https://www.article19.org/resources/malaysia-end-hateful-rhetoric-against-rohingya-refugees/>, both accessed on 10 May 2024.

⁴⁸ Surin, JA, and Ismail, IA (eds), *Social Media Monitoring of Malaysia’s 15th General Elections*, Kuala Lumpur: Centre for Independent Journalism, University of Nottingham Malaysia, Universiti Sains Malaysia, and Universiti Malaysia Sabah, March 2023. Available at <https://cijmalaysia.net/wp-content/uploads/2023/05/GEM-Report-ENG.pdf>, accessed on 10 May 2024. See also, ‘Race and religion at the forefront of PRN 2023 politics’ Centre for Independent Journalism, 2 August 2023, available at <https://cijmalaysia.net/press-statement-race-and-religion-at-the-forefront-of-prn-2023-politics/>, accessed on 10 May 2024.

the Open Observatory of Network Interference.⁴⁹ In December 2022, the MCMC established a specialised task force to counter fake news and content deemed “sensitive or provocative” regarding the 3Rs. However, there is a notable absence of human rights-centred guidelines governing hate speech moderation and the procedures for requesting social media content removal. Consequently, the protection of minorities from discrimination and hate speech are at risk of censorship, impinging upon expressions permitted under international law.⁵⁰

In particular, Malaysia’s entertainment and creative industry has faced persistent challenges due to government interference and censorship. For example, the Film Censorship Act 2022 mandates that all films and associated publicity materials intended for public viewing must receive approval from the Film Censorship Board of Malaysia (LPF) which has the authority to ban or censor content not aligning with the Home Ministry Film Censorship Guidelines 2010. However, the LPF operates opaquely and lacks accountability, as the Act grants the Minister power to appoint LPF members and its appeals committee. This lack of transparency further reinforces barriers to artistic freedom. In a recent incident in September 2023, the locally-produced independent film, *Mentega Terbang*, faced a ban due to its exploration of topics surrounding faith and Islam, marking another instance of censorship stifling creative expression.

Furthermore, public protests and gatherings are regulated by the Peaceful Assembly Act 2012 (PAA). Amendments in 2019 removed the term “street protest” broadening the scope for freedom of assembly to include processions, marches, and other peaceful demonstrations. Additionally, the notice period for assembly was reduced from ten to five days, although this still falls short of the international standard of a maximum of 48 hours’ notice.⁵¹ However, criminal penalties for organising or participating in peaceful assemblies persist. Moreover, certain groups, such as children and non-citizens, are not afforded the same rights, and spontaneous or urgent assemblies remain prohibited.

Amidst the abrupt power shift by the PN coalition following political upheaval, civil society activists organised a spontaneous ‘Save Malaysia’ protest in Kuala Lumpur to express discontent with the “backdoor” government. Investigations were initiated under the PAA against 19 activists involved in this protest. Additionally, the MCO during the pandemic significantly constrained freedom of assembly via the Prevention and Control of Infectious Diseases Regulations 2020. For instance, five hospital union members faced charges for violating MCO rules when they picketed outside a hospital in Ipoh, advocating for improved working conditions and fair treatment for hospital cleaners. While 41 investigation papers were opened under the PAA in 2020 without

⁴⁹ ‘Measurement aggregation toolkit’ Open Observatory of Network Interference (OONI) Explorer, 2023, available at https://explorer.ooni.org/search?probe_cc=MY&since=2022-06-01&until=2023-05-05&failure=false&only=confirmed&category_code=LGBT, accessed on 10 May 2024.

⁵⁰ Elumalai, N, ‘Malaysia: An inclusive policy measure is needed to end hate speech and discrimination’ Article 19, 16 June 2023, available at <https://www.article19.org/resources/malaysia-inclusive-policy-measure-needed-to-end-hate-speech/>, accessed on 10 May 2024.

⁵¹ ‘Malaysia: Assembly bill reforms fall short’ Human Rights Watch, 2 July 2019, available at <https://www.hrw.org/news/2019/07/02/malaysia-assembly-bill-reforms-fall-short>, accessed on 10 May 2024.

resulting in charges, the following year, as COVID-19 restrictions eased, nationwide protests erupted, reflecting widespread dissatisfaction with the government's handling of the pandemic. Subsequently, there was an uptick in investigations, along with instances of police intimidation and assaults targeting protest organisers and speakers.

The police persisted in employing the PAA and other stringent laws to apprehend, investigate, and intimidate peaceful protestors and organisers involved in events such as the Undi18 Protest, the #BukaPuasaBuka Parlimen assembly, the Protes Keluar dan Lawan assembly, and the candlelight vigil for COVID-19 victims held in August 2021. A civil society report monitoring the Lawan Assembly in July 2021 highlighted instances where the police impeded freedom of assembly through pre-protest investigations, arrests, raids, public warnings, road blockades, closures, surveillance, and an excessive presence of law enforcement personnel during the protest. These heavy-handed measures contradicted the State's obligation to facilitate peaceful demonstrations per international human rights law.⁵² Additionally, in 2023, a lack of disclosure regarding the identities of those investigated posed challenges for the human rights groups attempting to monitor and advocate for their rights.⁵³

C. Right to Justice

Police violence and fatalities in custody remain a grave human rights concern in Malaysia. Compounded by inadequate conditions within detention centres, these circumstances often lead to treatment classified as “cruel, inhuman, or degrading.” The absence of accountability for corruption and criminal activities further perpetuates a culture of impunity, significantly diminishing public confidence in the Royal Malaysia Police.

Consequently, both civil society and political opposition have pushed for police reform. A significant moment occurred when the PH government introduced the IPCMC bill in 2019, aiming to replace the ineffective Enforcement Agency Integrity Commission (EAIC) as part of its electoral promise. However, the bill faced delays due to multiple rounds of revisions for enhancements and was subsequently halted following a change in government. In 2020, a revised iteration of the IPCMC bill emerged under the name of the Independent Police Conduct Commission (IPCC), proposed by the PN government. Although the Act was ratified by Parliament in 2022 and took effect on 1 July 2023, the commission has yet to be established.

The new IPCC has faced widespread criticism and is generally perceived as lacking significant authority as it only possesses limited investigative powers allowing inspection visits without prior notice, and lacks the ability to enforce disciplinary actions. Additionally, a provision prevents the police from providing documents or

⁵² Human Rights Organisations Working on Freedom of Expression, ‘#LAWAN protest monitoring report’ Justice for Sisters, Centre for Independent Journalism, Kryss Network, and Amnesty International Malaysia, 31 July 2021, available at <https://cijmalaysia.net/wp-content/uploads/2021/09/LAWAN-Protest-Monitoring-Report-AUG-2021.pdf>, accessed on 10 May 2024.

⁵³ SUARAM 2023 (see note 42 above).

evidence if they fall under the Official Secrets Act 1972 or are deemed “prejudicial to national security or national interest.” These limitations significantly weaken the IPCC, undermining its role as an independent oversight body and creating avenues to shield police misconduct. This development marks a significant setback to the pursuit of justice in Malaysia.

Table 5: Deaths in Custody – Case Statistics 2019-2022⁵⁴

Year	Police	Prison	Immigration	Total
2019	6	3	55	64
2020	13	13	37	63
2021	46	9	29	84
2022	24	9	153	186
TOTAL	89	34	274	397

Under international law, torture and ill-treatment are unequivocally prohibited. States carry the responsibility to investigate incidents, prosecute perpetrators, and offer redress to victims and their families. In Malaysia, custodial deaths persist as a significant concern, often without adequate justice, although recent signs suggest some improvement.⁵⁵ While not all fatalities stem from torture or police brutality, the frequency of such occurrences and the grievances expressed by victims’ families indicate systemic issues in the country.⁵⁶ As shown in Table 5, there were 397 recorded cases of deaths in custody between 2019 and 2022. Remaining consistently high, the numbers notably surged during the pandemic, particularly in 2021, before nearly halving in 2022.

Access to justice faces obstacles due to the lack of transparency concerning the causes of deaths in custody, presenting a particular challenge to demanding proper inquests. Although the government established the Death in Custody Investigation Unit (USJKT) in 2021, information disclosure remains an ongoing concern especially as the USJKT only issues public statements at the time of death, withholding further updates on ongoing case investigations.⁵⁷

⁵⁴ Data documented from SUARAM 2023 (see note 42 above), at 17.

⁵⁵ Only 9 police officers have been charged with negligence or causing injury or death to detainees in the 8 years between 2010 and February 2018. See ‘Malaysia human rights report 2018’ SUARAM, available at https://9276d4dd-287e-4464-bafb-a43a3fe21d36.filesusr.com/ugd/359d16_0828f4586020403aafb7335031704f27.pdf, accessed on 10 May 2024. Out of 19 cases investigated by the Death in Custody Investigation Unit, only two police officers were prosecuted. See also, Tan, R, ‘SUARAM: 21 custodial deaths this year; four from police shootings’ Malaymail, 6 December 2022, available at <https://www.malaymail.com/news/malaysia/2022/12/06/suaram-21-custodial-deaths-this-year-four-from-police-shootings/43813>, accessed on 10 May 2024.

⁵⁶ ‘Deaths in police custody: A thematic study on lock-up conditions and factors contributing to the death’ Human Rights Commission of Malaysia, 2016, available at https://drive.google.com/file/d/0B6FQ7SONa3PRM1JNUGRvbmRqX3M/view?usp=sharing&resourcekey=0-umkOtHwYt8mFv_duTMszwg, accessed on 10 May 2024.

⁵⁷ SUARAM 2023 (see note 42 above), at 24.

Moreover, the government has curtailed the release of additional details, now solely citing physiological causes for these deaths.⁵⁸ Further, SUARAM's data compiled from parliamentary responses has revealed inconsistencies, raising doubts about the accuracy of reported cases of death in custody.⁵⁹ One such instance can be seen in the death of A Ganapathy who was allegedly beaten while in police custody in 2021.⁶⁰ To date, no one has been held accountable.

Additionally, Malaysia grapples with problematic procedural laws, including the SOSMA, alongside other security legislation such as the Prevention of Crime Act 1959 (POCA) and the Prevention of Terrorism Act (POTA), which authorise detention without trial. These laws facilitate the misuse of the remand process, allowing authorities to re-arrest individuals once the court-granted remand period has lapsed. Prolonged detention under these laws exposes detainees to a heightened risk of torture, custodial death, and widespread incidents of mental and physical abuse. For example, disturbing reports surfaced in May 2021, detailing the alleged abuse of 22 Indian men detained under SOSMA, who were reportedly subjected to physical assault and had pepper sprayed on their genitals.⁶¹

Malaysia's stance on the death penalty has seen notable shifts despite not fully adhering to its 2019 commitment to complete abolition. In 2023, a progressive move was made by eliminating mandatory death sentences and instituting discretionary sentencing for all offences. Despite this, death penalties are still being issued by Malaysian courts. However, the moratorium in place since 2018 has prevented any new executions from actually taking place. Significantly, the death penalty persists for 27 offences, predominantly in cases of drug trafficking and murder.⁶² A significant turning point emerged in November 2023 when the Federal Court commuted the sentences of 11 death row inmates, altering their punishment to 30 years' imprisonment for each. This move signifies a pivotal shift in Malaysia's approach to capital punishment, indicating a step towards more humane sentencing practices.⁶³

D. Migrants and Refugees

Malaysia's legal framework lacks provisions for granting asylum or refugee status, leaving migrants, refugees, and stateless individuals without official government support. While the UNHCR and NGOs offer aid, the government's collaboration with the former has been inconsistent. Accordingly, these vulnerable populations often live

⁵⁸ SUARAM 2021 (see note 31 above), at 26.

⁵⁹ SUARAM 2023 (see note 42 above), at 23.

⁶⁰ SUARAM 2021 (see note 31 above), at 30.

⁶¹ Thomas, J, 'Probe claims detainees beaten, genitals sprayed with chilli, NGOs tell cops' Free Malaysia Today, 1 May 2021, available at <https://www.freemalaysiatoday.com/category/nation/2021/05/01/probe-claims-detainees-beaten-genitals-sprayed-with-chilli-ngos-tell-cops/>, accessed on 10 May 2024.

⁶² 'Death penalty: Key facts and figures' Amnesty International Malaysia, available at <https://www.amnesty.my/abolish-death-penalty/#keyfacts&figures>, accessed on 10 May 2024.

⁶³ Latiff, R, 'Malaysia commutes death penalty, life terms of 11 drug convicts – report' Reuters, 14 November 2023, available at <https://www.reuters.com/world/asia-pacific/malaysia-commutes-death-penalty-life-terms-11-drug-convicts-report-2023-11-14/>, accessed on 10 May 2024.

within communities and receive assistance from humanitarian organisations without significant interference from the government. However, the government's support for refugees and asylum seekers remains limited, with the UNHCR primarily responsible for activities like registration and status determination due to the absence of a dedicated legal framework for their management within the country.

Malaysia faced extensive criticism for its handling of migrant workers and refugees amid the pandemic. In response to this scrutiny, the government adopted a defensive stance, evident in its investigation of journalists. For instance, Tashny Sukumaran, a Kuala Lumpur correspondent for the Hong Kong-based, South China Morning Post, was investigated due to her reporting alongside colleague, Bhavan Jaipragas, on 1 May 2020. Their coverage highlighted the arrests of hundreds of undocumented individuals in COVID-19 red zones, where the authorities had leveraged movement restrictions for immigration checks.⁶⁴

Similarly, Heidy Quah, founder of the Refuge for the Refugees organisation, faced charges under s.233(1)(a) of the Communications and Multimedia Act 1998 due to a Facebook post she made in June 2020. During a period of heightened criticism of government actions against undocumented migrants amid the country's initial surge in COVID-19 cases, Quah's post shed light on the situation of a former detainee at an immigration detention centre – a woman held with her new-born baby. The intent was to draw attention to the dire conditions in these centres, known for overcrowding and poor hygiene while underscoring the potential harm posed by further mass detentions in such facilities.⁶⁵

Amid Malaysia's treatment of refugees and asylum seekers, there persisted alarming allegations of human rights violations within immigration detention facilities. An incident in April 2022 highlighted the severity of the situation when six individuals lost their lives during a breakout by Rohingya refugees from a temporary immigration detention centre in Sungai Bakap, Penang. Held indefinitely, the detainees faced dire circumstances leading to this desperate act. Despite widespread calls urging the government to conduct a thorough investigation into the tragic incident, transparency remained elusive, leaving unanswered questions regarding accountability for the deaths.

This unfortunate event not only underscores the critical state of immigration detention centres but also highlights a pressing need for comprehensive measures to address the rights and safety of detained individuals, especially refugees and asylum seekers. The lack of clarity surrounding accountability and the broader neglect of humane treatment

⁶⁴ Sukumaran, T, and Jaipragas, B, 'Coronavirus: Hundreds arrested as Malaysia cracks down on migrants in COVID-19 red zones' South China Morning Post, 1 May 2020, available at <https://www.scmp.com/week-asia/politics/article/3082529/coronavirus-hundreds-arrested-malaysia-cracks-down-migrants>, accessed on 10 May 2024.

⁶⁵ 'Activist to be charged over posting about immigration depot conditions' Free Malaysia Today, 26 July 2021, available at <https://www.freemalaysiatoday.com/category/nation/2021/07/26/activist-to-be-charged-over-posting-about-immigration-depot-conditions/>, accessed on 10 May 2024.

in these detention settings raise serious concerns about the treatment and protection of vulnerable populations within Malaysia's borders.

E. Sexuality Rights

All consensual same-sex sexual conduct is considered illegal under both federal law and state Sharia provisions in Malaysia. The law classifies sodomy and oral sex acts as “carnal intercourse against the order of nature,” subjecting individuals to severe penalties. While the federal penal code stipulates a sentence of up to 20 years in prison and mandatory caning for such acts, enforcement is not consistently applied. Sharia provisions at the state level, enforced by Islamic religious departments and applicable only to Muslims, allow for caning as punishment for consensual same-sex relations. Additionally, these provisions penalize a man posing as a woman, although federal law does not extend this regulation to a woman posing as a man.

LGBTQI+ individuals in Malaysia continue to endure widespread discrimination and persecution, both through legal restrictions and societal treatment. Further, cultural content featuring “LGBT elements” has faced censorship, leading distributors to withdraw affected films from local cinemas. An incident on 29 October 2022 highlighted the harsh reality faced by the community when authorities, including the Kuala Lumpur City Council, Federal Territories Islamic Department (JAWI), and the police, conducted a raid during a ticketed Halloween event in Kuala Lumpur. The attendees, many identifying as LGBTQI+, were subject to identity card checks, with JAWI officers separating those identified as Muslim from non-Muslims. Twenty individuals identified as male Muslims were detained under accusations of wearing women's attire in public for alleged immoral purposes. Despite claims of prior police approval for the event, the detainees were released on bail following intervention by the Malaysian Bar Council. However, they were required to attend questioning and “counselling” on 31 October 2022. This incident drew condemnation from local human rights activists who viewed the raid as an act of intimidation against the LGBTQI+ community. Some speculated that the raid aimed to rally conservative Muslim support ahead of the general elections on 19 November 2022.⁶⁶

F. Environmental and Climate Change

In Malaysia, the persistent issue of transboundary haze pollution has long infringed upon the populace's right to breathe clean air, particularly when palm oil and paper plantations resort to burning to clear land. It is imperative for the government to hold both non-State actors and corporations accountable for environmental exploitation, preventing further harm. Although Malaysia demonstrated progress in environmental policy through initiatives like the National Energy Transition Roadmap (NETR) aimed at achieving net-zero targets by 2050, the decision to halt the enactment of the Transboundary Haze Pollution Act (THPA) in November 2023 was disappointing.

⁶⁶ Bureau of Democracy, Human Rights, and Labor, ‘2022 country reports on human rights practices: Malaysia’ US Department of State, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/malaysia/>, accessed on 10 May 2024.

Additionally, the postponement in tabling the National Climate Change bill presents a concerning delay in establishing an essential integrated policy framework for environmental governance. This legislation urgently requires addressing critical issues such as deforestation and floods, demanding coordinated efforts among various State bodies, ministries, and stakeholders.

Indigenous peoples, land rights activists, and environmental human rights defenders continue to face forced evictions, strategic litigation against public participation (otherwise known as SLAPPs)⁶⁷ and other forms of harassment for protecting the environment against exploitation. A striking case in 2019 involved the Temiar people residing in the forest between Gerik and Sungai Siput in Perak. These indigenous communities were in conflict with a logging company authorised by the Perak state government to clear land.⁶⁸ Villagers protested by setting blockades to impede the loggers, highlighting the lack of informed consent or prior consultation with village representatives. In response to their activism, authorities arrested individuals from three Temiar villages. However, following a federal government directive, they were later released.⁶⁹

Similarly, the Mah Meri indigenous community in Selangor were given 30 days to clear the area or face legal action. This notice aimed to pave the way for expanding an eco-tourism project, infringing upon their ancestral land rights. In response, the indigenous community pursued legal action through a judicial review against the eviction notice imposed by the Selangor government. These instances underscore the ongoing struggles faced by indigenous groups fighting for their land rights in the face of development initiatives that disregard their consent and ancestral connections to the land.⁷⁰

Another example occurred in March 2021 when human rights lawyer, Charles Hector, encountered a SLAPP lawsuit. The civil suit alleged that he breached an injunction order through a letter sent to an officer from the Jerantut Permanent Forest Reserve as part of trial preparations. This legal intimidation arose due to Hector's role as legal counsel representing eight villages suing two logging companies, Beijing Million Sdn Bhd and Rosah Timer & Trading Sdn Bhd. The eight defendants hailed from communities affected by potential logging activities proposed by these private companies. However,

⁶⁷ SLAPP suits are a form of legal harassment employed by corporations and alleged human rights violators to silence and intimidate critics. By initiating unnecessary legal suits, they compel targets to make significant financial investments, with the aim of draining their resources and intimidating them into abandoning their challenges.

⁶⁸ Radu, A, 'The Orang Asli: Fighting for ancestral land in Malaysia' *The Diplomat*, 13 August 2019, available at <https://thediplomat.com/2019/08/the-orang-asli-fighting-for-ancestral-land-in-malaysia/>, accessed on 10 May 2024.

⁶⁹ 'Minister to cops: Release Temiar villagers, stop siding with loggers' *Malaysiakini*, 20 July 2019, available at <https://www.malaysiakini.com/news/484693>, accessed on 10 May 2024.

⁷⁰ Donald, R, 'They safeguarded nature, but now Malaysia's Mah Meri face eviction for an eco-resort' *Mongabay*, 20 August 2021, available at <https://news.mongabay.com/2021/08/they-safeguarded-nature-but-now-malysias-mah-meri-face-eviction-for-an-eco-resort/>, accessed on 10 May 2024.

within a month, the two corporations withdrew their lawsuit against Hector and the eight villagers.⁷¹

In a separate incident in 2023, the grassroots environmental non-profit, SAVE Rivers, faced SLAPP tactics initiated by Samling Plywood (Miri) Sdn Bhd and Samling Plywood (Baramas) Sdn Bhd. The companies filed a defamation claim against SAVE Rivers following the non-profit's reports regarding alleged illegal logging outside the companies' concession areas. Additionally, SAVE Rivers highlighted the violation of indigenous rights by a failure to seek informed consent and further promoted a petition to halt the project.⁷² These instances of legal harassment create significant hurdles for environmental human rights defenders, obstructing their ability to raise concerns about corporate activities. The lack of adequate legal mechanisms further heightens the risks associated with such advocacy work.

G. Academic Freedom

The Universities and University Colleges Act 1971 (UUCA) stands as a legislative framework overseeing the establishment and operations of universities, but its impact on academic freedom has long fuelled debate and controversy. Notably, the 2019 amendment striking down s.15(2)(c) was a pivotal moment aimed at expanding student involvement in political activities within university confines and broader social engagement. Despite ongoing discussions and calls for change, the government reiterated its commitment to preserving the UUCA during a recent parliamentary session on 16 March 2020. Emphasising its relevance and functionality, the government retained the act, signalling a preference for amending its provisions rather than scrapping it entirely.⁷³

Between 2019 and 2023 in Malaysia, academic freedom issues were evident through the legal actions taken against individuals expressing dissent or organising protests within university settings. For instance, in July 2022, Muhammad Aliff Naif, the student union president at the International Islamic University of Malaysia (IIUM), faced police charges for failing to provide five days' notice before organising a protest addressing the issue of rising inflation. Additionally, a former civil engineering graduate from Universiti Malaya (UM), Wong Yan Ke, faced legal consequences for a protest staged during UM's 59th convocation in October 2019. Wong was fined RM5,000 and risked three months in jail for holding up a banner accusing an individual of racism

⁷¹ 'Lawsuit (SLAPP): Charles Hector' Business and Human Rights Resource Centre, available at <https://www.business-humanrights.org/my/latest-news/charles-hector-2/>, accessed on 10 May 2024.

⁷² Keeton-Olsen, D, 'Sarawak indigenous NGO squeezed by defamation case, silenced from reporting alleged logging' Mongabay, 16 May 2023, available at <https://news.mongabay.com/2023/05/sarawak-indigenous-org-squeezed-by-defamation-case-silenced-from-reporting-alleged-logging/>, accessed on 10 May 2024.

⁷³ Tan, T, Rahimy, R, and Carvalho, M, 'No plans to abolish still relevant UUCA, says Dep Higher Education Minister' The Star, 16 March 2023, available at <https://www.thestar.com.my/news/nation/2023/03/16/no-plans-to-abolish-still-relevant-uuca-says-dep-higher-education-minister>, accessed on 10 May 2024.

and calling for their resignation while receiving his scroll on stage. This act of protest incurred the university's disapproval, resulting in legal repercussions for the graduate.⁷⁴

Part 3: Conclusion

Between 2019 and 2023, the interpretation and application of human rights have encountered ongoing challenges amid a centralized state structure. The discourse surrounding human rights within the country must be re-evaluated, particularly in light of policies that seem to counter these fundamental principles. In particular, the pandemic highlighted the government's use of excessive authority to curtail civic space, impeding rights like peaceful protest and freedom of expression.

To move forward, it is essential to delve into how power dynamics influence the space available for civic engagement and human rights advocacy. The pandemic period illuminated the vulnerabilities within the Malaysian framework, revealing how State powers could be leveraged to suppress dissent and limit fundamental freedoms. This demands a reinvigorated conversation on the protection and promotion of human rights to ensure policies and practices align with these core principles. Amid these challenges, a more nuanced understanding of power structures is vital. It calls for a comprehensive re-examination of the State-citizen relationship, emphasising the importance of safeguarding civic space as a cornerstone of a rights-respecting society. Strengthening public awareness and support for human rights becomes crucial, requiring robust dialogue, education, and advocacy efforts to foster a culture that upholds these values

⁷⁴ 'Ex-UM civil engineering graduate fined RM5,000 for convocation protest' New Straits Times, 9 October 2023, available at <https://www.nst.com.my/news/crime-courts/2023/10/964713/ex-um-civil-engineering-graduate-fined-rm5000-convocation-protest>, accessed on 10 May 2024.

MYANMAR

Part 1: Overview of Myanmar

A. Country Background

Myanmar Facts	
Geographical size	676,577 sq km
Population ¹	51.48 million
Ethnic breakdown	Major ethnic groups: Kachin, Karenni, Karen, Chin, Bamar, Mon, Rakhine, Shan
Official language(s)	Bamar
Literacy rate (aged 15 and above) ²	89.1%
Life expectancy ³	Women: 73.3 years, Men: 66.5 years
GDP ⁴	US\$64.82 billion ⁵ (per capita US\$ 1,187)
Government	Myanmar’s electoral system consists of the House of Nationalities and the House of Representatives. As per the constitution, 440 seats are contested, of which 110 are allocated to the military. Win Myint of the National League for Democracy (NLD) won a decisive victory in the general election of 2020 but was quickly deposed by General Min Aung Hlaing. ⁶ Following the coup d’état, the State Administration Council was formed. A few months later, the National Unity Government (a shadow civilian government) was convened by members of the deposed elected parliament. In some areas of Myanmar, this now rules in parallel with the long-established ethnic armed organizations. Hence, at the time of writing, two governments compete in terms of controlled territories, mandates, and powers.

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

¹ Data from 2019. ‘2019 Inter-Censal Survey Report’ Department of Population, December 2022, available at https://dop.gov.mm/sites/dop.gov.mm/files/publication_docs/ics_key_finding_mm_0_0.pdf, accessed on 26 November 2023.

² Department of Population (see note 1 above).

³ Department of Population (see note 1 above).

⁴ Data from 2023. ‘GDP per capita (current US\$) – Myanmar’ World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=MM>, accessed on 18 September 2024.

⁵ Data from 2023. ‘GDP (current US\$) – Myanmar’ World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=MM>, accessed on 18 September 2024.

⁶ Prem, A, ‘The 2021 Myanmar military coup’ London School of Economics, 7 March 2023, available at <https://blogs.lse.ac.uk/lseupr/2023/03/07/a-guide-to-the-2021-myanmar-military-coup/>, accessed on 17 September 2024.

Myanmar Facts	
Political and social situation	Disapproval of the coup led to widespread riots and protests nationwide including the “Pot-banging Movement” of Yangon, labour strikes, and boycotts of military run services leading to a brutal crackdown that has so far taken 5,350 civilian lives and displaced 3.3 million. ⁷ The violence has also had a great impact on people’s mental health and has resulted in a regression in social and economic rights.

System of governance and political situation⁷

From 2015 to 2020, Myanmar’s march towards democracy together with some remarkable human rights improvements were abruptly halted by the military coup on 1 February 2021 which alleged widespread fraud in the 2020 election (won by Aung San Suu Kyi’s National League for Democracy in a landslide victory) and led to the collapse of its burgeoning democracy and human rights situation.

On the day following the coup, an 11-member State Administration Council (SAC) was formed led by coup leader, General Min Aung Hlaing. Declaring a one-year state of emergency and promising to hold a new election at the end of it, he went on to seize control of executive, legislative, and judicial powers.⁸ Notwithstanding, the state of emergency was extended until 2023 despite the SAC being seriously opposed by the majority of the public including established ethnic armed forces either openly or impliedly. Indeed, the SAC has struggled to gain both national and international recognition or support.⁹

In response and using the Federal Democracy Charter as a roadmap, the National Unity Government (NUG) was established as a parallel government on 16 April 2021 by the elected parliamentarians of the National League for Democracy (NLD) alongside some ethnic groups.¹⁰ Receiving strong cooperation from pro-democracy supporters and ethnic armed organizations (EAOs),¹¹ the NUG (using “People’s Administrations”) runs public administration in most ethnic controlled and central areas of the country, providing services such as education and healthcare.

⁷ ‘Over 5,000 civilians killed since Myanmar military coup’ UN News, 17 September 2024, available at <https://news.un.org/en/story/2024/09/1154436>, accessed on 28 September 2024.

⁸ Tun, HMM, Thuzar, M, and Montesano, M, ‘Min Aung Hlaing and his generals: Data on the military members of Myanmar’s State Administration Council Junta’ ISEAS Perspective 2021/97, 23 July 2021, available at <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective-/2021-97-min-aung-hlaing-and-his-generals-data-on-the-military-members-of-myanmars-state-administration-council-junta-by-htet-myet-min-tun-moe-th-uzar-and-michael-montesano/>, accessed on 29 November 2023.

⁹ Stalin, AS, ‘Inclusive national dialogue only respite for ASEAN’s solution in the ongoing Myanmar strife’ Modern Diplomacy, 14 November 2023, available at <https://moderndiplomacy.eu/2023/11/14/inclusive-national-dialogue-only-respite-for-aseans-solution-in-the-ongoing-myanmar-strife/>, accessed on 14 November 2023.

¹⁰ Hossain, D, ‘The National Unity Government in Myanmar: Role and challenges’ Modern Diplomacy, 11 May 2021, available at <https://moderndiplomacy.eu/2021/05/11/the-national-unity-government-in-myanmar-role-and-challenges/>, accessed on 14 November 2023.

¹¹ “People’s Administrations’ supplant junta rule in Myanmar’s remote border regions’ Radio Free Asia, 15 February 2022, available at <https://www.rfa.org/english/news/myanmar/administration-02152022035938.html>, accessed on 18 September 2024.

On a domestic level, people showed unacceptance of the coup through various forms of non-violent resistance including peaceful street protests, banging pots and pans, withholding their taxes, refusing to pay electric bills, silent strikes, and by not participating in social and religious gatherings arranged by the SAC in the early months of the coup. However, due to a brutal crackdown involving arrests, torture, and killings by the SAC's police and military forces, the non-violent movement quickly transformed into an armed resistance resulting in the formation of various 'people's defence forces'¹² (PDFs). Generally larger armed units formed or recognized by the NUG, these PDFs are supported by established EAOs which train and arm them.¹³ Together, these groups have attacked many SAC military bases and locations across the country since 27 October 2023. Emboldened by public support, such PDFs have therefore gained in strength.¹⁴

In the international sphere, aside from four exceptions (Russia, China, India, and Thailand), all countries have condemned the coup and rejected recognition of the SAC government. Consequently, the United Nations, the European Union, together with individual countries such as the US, the UK, and France have imposed a number of sanctions to overturn the situation. On a regional level, ASEAN managed to negotiate a Five-Point consensus with the coup leader in April 2021 although he repudiated it within a few days. Had it stood, this would have led to an immediate cessation of violence and constructive dialogue to find a peaceful solution.¹⁵ Since then, ASEAN has decided not to invite the coup leader or any SAC political appointees to ASEAN summits.

The effect of the COVID-19 pandemic on human rights and peace

At the time of the coup, Myanmar had one of the highest COVID-19 death rates in the ASEAN region with 3,100 deaths and 140,600 confirmed cases. This was exacerbated by healthcare workers' participation in the civil disobedience movement (CDM) against the military coup which suddenly resulted in the closure of public hospitals. Though those CDM healthcare workers were ready to provide volunteer services to COVID-19 affected people through private hospitals, community healthcare centres, or volunteer

¹² The People's Defence Force is an umbrella term for three types of armed groups that have emerged since the coup: PDFs, Local Defence Forces (LDFs) and People's Defence Teams (PaKhaPha/ PDTs). See: Ye Myo Hein, 'Understanding the People's Defence Forces in Myanmar' United States Institute of Peace, 3 November 2023, available at <https://www.usip.org/publications/2022/11/understanding-peoples-defense-forces-myanmar>, accessed on 26 November 2023.

¹³ Khine, NK, 'The repression and erosion of independent media in Myanmar since the military coup' Rosa-Luxemburg-Stiftung, November 2021, available at https://www.rosalux.de/fileadmin/rls_uploads/pdfs/sonst_publicationen/14-21_Onl-Publ_Repression_and_Erosion.pdf, accessed on 18 September 2024; See also, 'Counting Myanmar's dead: Reported civilian casualties since the 2021 military coup' Relief Web, 13 June 2023, available at <https://reliefweb.int/report/myanmar/counting-myanmars-dead-reported-civilian-casualties-2021-military-coup>, accessed on 18 September 2024.

¹⁴ Horsey, R, 'A new escalation of armed conflict in Myanmar' International Crisis Group, 17 November 2023, available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/new-escalation-armed-conflict-myanmar>, accessed on 18 September 2024.

¹⁵ Maung, M, and Jeannerod, B, 'Myanmar's junta benefits from weak international response' Human Rights Watch, 6 February 2023, available at <https://www.hrw.org/news/2023/02/06/myanmars-junta-benefits-weak-international-response>, accessed on 18 September 2024.

groups, the SAC forced them to return to public hospitals by arrest, intimidation, and/or revoking their licences. Nonetheless, more than half re-joined the CDM seriously affecting COVID-19 vaccination and protection plans.¹⁶ In the earliest days of the coup, the SAC provided vaccinations through community healthcare centres across the country. However, many boycotted its vaccination support.¹⁷ Around July 2021, the pandemic soon reached every corner of the country, devastating families and communities especially as many hospitals lacked sufficient oxygen supplies and intensive care services.¹⁸ Under such circumstances, the SAC effectively denied the peoples' right to health by detaining CDM medical workers¹⁹ who were volunteering to provide private services, by blocking community and civil society COVID initiatives, preventing private hospitals from hiring CDM medical staff, restricting access to oxygen to places other than the public hospitals,²⁰ and by confiscating or monopolizing oxygen tanks. Additionally, NGOs were placed in a difficult position because the SAC forbade them from contacting opposition groups while the revolutionaries argued that any cooperation with the SAC through its Ministry of Health effectively resulted in legitimization of the military coup.²¹

B. International Human Rights Commitments and Obligations

Apart from being party to four human rights treaties (as seen in Table 1 below), the implementation of Myanmar's obligations after 2018 can definitely be described as a period without significant progress. Between 2018 and December 2020, the Aung San Suu Kyi-led democratic government ratified one optional protocol to the Convention on the Rights of Child on the involvement of children in armed conflict, enacted a long debated child rights (draft) law following only the minimum standards of the international child rights convention,²² and sought to teach a culture of human rights among ethnic diversities and make it indispensable in formal tertiary education. Nevertheless, these changes aside, the democratic government failed to strengthen peoples' rights including freedom of expression and assembly. It also failed to take action

¹⁶ Han, SM, Lwin, KS, Swe, KT, Gilmour, S, and Nomura, S, 'Military coup during COVID-19 pandemic and health crisis in Myanmar' *BMJ Global Health*, 2021, Vol 6, No 4. Available at <https://gh.bmj.com/content/bmjgh/6/4/e005801.full.pdf>, accessed on 18 September 2024.

¹⁷ Rocha, IC, Cedeno, CD, Palayo, MG, Ramos, K, and Victoria, HOH, 'Myanmar's coup d'état and its impact on COVID-19 response: A collapsing healthcare system in a state of turmoil' *BMJ Military Health*, 2023, Vol 169, No 2, p 103. Available at <https://militaryhealth.bmj.com/content/169/2/103>, accessed on 18 September 2024.

¹⁸ 'Number of COVID-19 cases reported to WHO' World Health Organization, updated regularly, available at <https://data.who.int/dashboards/covid19/cases?m49=104&n=c>, accessed on 18 September 2024.

¹⁹ CDM medical workers were former public servants under the Ministry of Health (MoH). By joining the CDM, they chose not to work in the MoH under the SAC. As a result, in that period, most public hospitals could not operate efficiently due to a lack of human resources. Consequently, the SAC placed those CDMs on blacklists and sent them to every township and department to monitor their movements within and across the border.

²⁰ 'Myanmar's COVID catastrophe requires an unprecedented international response' Myanmar Now, 13 July 2021, available at <https://myanmar-now.org/en/news/myanmars-covid-catastrophe-requires-an-unprecedented-international-response/>, accessed on 18 September 2024.

²¹ 'Medical Action Myanmar: Activity report' Medical Action Myanmar, January-December 2022, available at https://mam.org.mm/assets/mam_annual-activity-report_2022.docx_final-website.pdf, accessed on 18 September 2024.

²² Pyidaungsu Hluttaw, Child Rights Law 2019, Law No 22/2019.

against human rights violators and the military for their treatment of the Rohingya in western Rakhine State.²³

Since the coup, Myanmar’s human rights situation has significantly deteriorated because civil rights have been increasingly controlled including, but not limited to, freedom of movement, assembly, expression, and rights to privacy for security purposes. Moreover, many coup opponents have been arrested, detained, and, sometimes even tortured to death. Fundamental rights, including the right to constitutional writs (under the 2008 Constitution) were derogated by declaring and then extending states of emergency. Further, the Myanmar National Human Rights Committee abides by SAC instructions and neglects the voice of the people, essentially becoming its puppet. As such, cooperation with the UN human rights system is absolutely lacking. In addition, Myanmar has failed to submit its human rights implementation progress reports for CEDAW (6th reporting cycle) and the ICESCR (1st reporting cycle) in 2020 respectively.²⁴ To derogate these fundamental rights, a number of laws were amended which will be discussed in the next section.

Table 1: Ratification Status of International Instruments – Myanmar²⁵

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

²³ ‘Myanmar: Crimes against Rohingya go unpunished’ Human Rights Watch, 22 August 2019, available at <https://www.hrw.org/news/2019/08/22/myanmar-crimes-against-rohingya-go-unpunished>, accessed on 18 September 2024.

²⁴ ‘Reporting status for Myanmar’ UN Treaty Body Database, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MMR&Lang=EN, accessed on 18 September 2024.

²⁵ ‘Ratification status for Myanmar’ UN Treaty Body Database, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Lang=en, accessed on 2 November 2024.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		22 Jul 1997 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)	16 Jul 2015	6 Oct 2017
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		15 Jul 1991 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	28 Sep 2015	27 Sep 2019
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography		16 Jan 2012 (a)
Convention on the Rights of Persons with Disabilities (CRPD)		7 Dec 2011 (a)

Part 2: Outstanding Human Rights Issues

A. Gender and the Environment/Climate Change

The situation before 2021

A few studies and reports have already identified the impacts of climate change on gender in Myanmar.²⁶ However, under the current complex political situation and the escalation of armed conflict across the nation, it has become even more difficult to accurately monitor, document, and determine. Rather, the burning issue now concerns the monitoring and recording of the military regime's human rights violations to ensure future accountability.

According to the 2021 Global Climate Risk Index, Myanmar is ranked the second most vulnerable country in the world to extreme weather events with 21 million (40%) people vulnerable to climate change, environmental degradation, and disaster risk. To address this and another pressing issue, prior to the coup the government adopted the Climate Change Policy and Myanmar Climate Change Strategy and Master Plan (2018-2030) and the National Strategic Plan for the Advancement of Women (2013-2022) (NSPAW).²⁷

In line with the overall objective of the NSPAW, the specific objective dealing with women and the environment seeks to reduce gender inequality by ensuring systems, structures, and practices are in place to aid women's meaningful participation in the management and safeguarding of natural resources, the environment, and in adapting to climate change. However, the NSPAW notably contains no clear policies and procedures to ensure their participation in national, regional, local, or community decision-making.

²⁶ See, for example: Beute, S, 'Deconstructing gender in Myanmar's climate change policy: An analysis of gender equality language in Myanmar's climate change policy discourse' research paper, University of Ottawa, 25 November 2019, available at <https://ruor.uottawa.ca/server/api/core/bitstreams/3eacb687-8e6a-4fdc-8344-ed4c825d37d3/content>; and Dayo, MH, Barbon, WJ, Thant, PS, and Gonsalves, J, 'Integrating gender dimensions in the Myanmar climate-smart villages' CCAFS Working Paper No 375, 2021, available at <https://idl-bnc-idrc.dspacedirect.org/server/api/core/bitstreams/4ad4ae03-1424-4c27-bcf5-6edf5e8e0e79/content>, both accessed on 30 September 2024.

²⁷ Lo, A, and Hoy, ST, 'Conflicts intensify climate change risks in Myanmar' East Asia Forum, 9 November 2023, available at <https://www.eastasiaforum.org/2023/11/09/conflicts-intensify-climate-change-risks-in-myanmar/>, accessed on 18 September 2024.

Nonetheless, climate change-related gender issues and women's potential participation has been integrated into research,²⁸ awareness raising,²⁹ and implementation.³⁰ In practice, apart from conducting research on climate change impact on women and the food and livelihood security of women in rural and urban areas (representing the general situation), most activities focus on strengthening the capacity of focal ministries. Neither gender budgeting nor policies to develop laws or implement climate change-related activities are to be found.³¹ This oversight is probably due to limited political will on climate action and a lack of stakeholders working on the interconnection between gender and climate change. For example, one report³² found no national level quantitative or qualitative research on the role of gender or women in climate change adaptation and the adverse effects of climate change on women. However, the Myanmar Climate Change Alliance (MCCA) together with the Ministry of Natural Resources and Environmental Conservation (MoNREC) has focused on women's participation in decision-making processes in climate and environmental issues and increased their understanding and knowledge on climate resilience from 2013 to 2018. In this programme, Gender Equality Network (GEN) provided technical support to ensure gender equality in climate and disaster-related contexts. In particular, their assessment of the vulnerabilities in Chin State highlight the various impacts of climate change on gender.

Under the Myanmar Climate Change Policy (2019), the gender aspect is observed in the context of gender, women, girls, children, the elderly, and persons with disabilities. The vital role of women and girls is noticeably recognized as not only victims of climate change due to unequal access and the triple burdens of their families but also as catalysts for effective implementation of climate actions due to their enormous knowledge, skills, and their decision-making power.³³

²⁸ *Research and Surveys*: (1) Integration of the importance of gender issues in designated focal ministries on the management of natural resources, environmental conservation, and adaptation and responding to climate change; (2) Women's participation in departments, agencies, and committees; (3) Impact of climate and environmental changes on women; and (4) Development of the living standards of women in urban and rural areas including adequate living conditions, sanitation, electricity and water supplies.

²⁹ *Awareness Raising*: (1) To do awareness raising activities for male and female staff; (2) To provide training and awareness on community-based activities.

³⁰ *Implementation*: (1) Practical initiatives supported by designated focal ministries that focus on capacity-building, training, providing access to suitable technology and information; (2) Programmes to ensure women become competent in technologies related to natural resource management, environmental conservation, and adaption to climate change; (3) Equal participation of women and men in designated focal ministries and organizations.

³¹ *Budget and Policy*: (1) Allocation of budgets; (2) Review, development, and application of laws and policies related to environmental management and conservation that respond to the needs of women and ensure their equal rights; and (3) Increase in the participation of women in the development and implementation of these policies.

³² 'National Review on the implementation of the Beijing Declaration and Platform for Action' Myanmar National Committee on Women, 1995; and 'Outcomes of the twenty-third special session of the General Assembly' 2000, at p 85.

³³ Article 9(k).

Among the nine guiding principles to implement the climate change policy, inclusiveness, climate justice and equity, gender equality, and women's empowerment are vital to gender mainstreaming. Every action must be implemented by engaging all people without discrimination as to gender, ethnicity, and age under equal share of the benefits and opportunities derived from climate change adaptation, mitigation, and resilient development.

The situation after 2021

While a few studies and reports have already identified the impacts of climate change on gender in Myanmar, since the coup, the people's ability to mitigate, adapt, and respond to climate change has been severely hampered by armed conflict, over-extraction of natural wealth, and insufficient implementation by the SAC and the NUG in either of their controlled areas.³⁴ It has also been reported that the formal regulatory and environmental oversight mechanisms run by the previous Ministry of Environment have ceased while the informal monitoring system of civil society spaces has been limited.^{35,36} Further, essential international support for climate adaptation has also been halted to avoid recognition of the coup.³⁷ Accordingly, people are being exposed to climate risks more than ever as they become internally displaced,³⁸ for example, by staying at non-climate resistant shelters due to the destruction of whole villages by SAC forces. In 2023, Cyclone Mocha in Rakhine State exposed at least 105,000 people to devastating floods leading to more displaced people already suffering from pre-existing poverty and the after-effects of armed-conflicts.³⁹ According to the Office for the Coordination of Humanitarian Affairs (OCHA)'s situational analysis, the consequences of the cyclone reach far beyond the physical destruction of houses and public infrastructure – it is now also threatening the well-being of the affected population, particularly women and children, as many adult men are actively participating in revolutionary groups and

³⁴ Colom, JM, 'Tackling climate change after the coup' Rosa Luxemburg Stiftung, 14 March 2023, available at <https://www.rosalux.de/en/news/id/46138/tackling-climate-change-after-the-coup>, accessed on 18 November 2023.

³⁵ Kyed, HM, and Chambers, J, 'Climate change action in conflict-affected contexts' Relief Web, 30 March 2023, available at <https://reliefweb.int/report/myanmar/climate-change-actions-conflict-affected-contexts-insights-myanmar-after-military-coup>, accessed on 18 September 2024.

³⁶ Kyed, HM, and Chambers, J, 'Climate change action in conflict-affected contexts: Insights from Myanmar after the military coup' Danish Institute for International Studies, 6 March 2023, available at <https://www.diiis.dk/en/research/climate-change-actions-in-conflict-affected-contexts>, accessed on 18 September 2024.

³⁷ Kyungmee, K, 'How military rule makes Myanmar more vulnerable to climate change' The Third Pole, 23 June 2022, available at <https://dialogue.earth/en/climate/how-military-rule-makes-myanmar-more-vulnerable-to-climate-change/>, accessed on 18 September 2024.

³⁸ As of March 2023, there are more than 1.6 million internally displaced persons in Myanmar with an estimated 55,000 civilian buildings destroyed: 'More than two years on, impact of Myanmar military coup 'devastating' UN News, 16 March 2023, available at <https://news.un.org/en/story/2023/03/1134682>, accessed on 18 September 2024. Further, the number of internally displaced has increased since the 1027 resistance group operations in October 2023.

³⁹ 'Myanmar: Cyclone MOCHA 2023' IFRC, available at <https://go.ifrc.org/emergencies/6439/details>, accessed on 18 September 2024.

processes whilst other young men have migrated abroad. As a result, in some areas, only elderly men, women, and children remain.⁴⁰

Though the nexus of gender, peace, and security were broadly integrated into the Myanmar Climate Actions and the Climate Change Strategic Master Plan in terms of basic needs such as food, water, and energy security, implementation proved to be the major problem across all levels even during peaceful periods. All these measures totally ignored how climate change adaptation plans were going to be implemented in conflict zones and conflict-affected areas.⁴¹ On the other hand, it did offer the NUG's Ministry of Natural Resources and Environmental Conservation (MONREC) a good opportunity to plan the integration of gender consideration into its interim governance system.⁴²

B. Other Human Rights Issues

Since February 2021, the human rights situation in Myanmar has drastically deteriorated with serious violations recorded as the SAC has permitted its forces to commit arbitrary arrests, torture, and even mass killings.⁴³ Moreover, freedom of expression and movement, and the right to privacy have been consistently violated by the use of the Counter Terrorism Law, the Penal Code, the Law Protecting the Privacy and Security of the Citizens, and the Telecommunication Law. Similarly, the right to a fair trial has been firmly consigned if not to history then to the bookshelf with the Working Group on its Universal Periodic Review finding that

*the weakness and lack of independence of the judiciary remain[s] detrimental to the rule of law. The influence of the military over civilian court proceedings, widespread corruption, violations of basic fair trial rights, and the reluctance of the prosecution to accept petitions from victims of gross human rights violations to initiate criminal proceedings, affect[s] both minorities and the majority population.*⁴⁴

⁴⁰ Ide, T, Ensor, MO, Le Masson, V, and Kozak, S, 'Gender in the climate-conflict nexus: "Forgotten" variables, alternative securities, and hidden power' *Politics and Governance*, 2021, Vol 9, No 4, pp 43-52. Available at https://www.ssoar.info/ssoar/bitstream/handle/document/75572/ssoar-politicsgovernance-2021-4-ide_et_al-Gender_in_the_Climate-Conflict_Nexus.pdf?sequence=1&isAllowed=y, accessed on 18 September 2024.

⁴¹ Aung, M, and Aung, MT, unpublished report for International Alert.

⁴² Kyed, HM, and Chambers, J, 'Climate change actions in conflict affected contexts: Insights from Myanmar after the military coup' DIIS Policy Brief, 6 March 2023, available at <https://www.diis.dk/en/research/climate-change-actions-in-conflict-affected-contexts>, accessed on 18 September 2024.

⁴³ 'Myanmar: Abysmal human rights and rule of law situation deteriorates further three years after the coup' International Commission of Jurists, 1 February 2024, available at <https://www.icj.org/myanmar-human-rights-and-rule-of-law-situation-increasingly-abysmal-three-years-after-the-coup/>, accessed on 28 September 2024.

⁴⁴ 'Crackdown on human rights defenders, opposition, and the right to a fair trial in Myanmar' Human Rights Institute, 2022, available at <https://www.ibanet.org/document?id=IBAHRI-Myanmar-Report-2022>; See also, Ochab, EU, 'How the military junta diminished the right to a fair trial and the rule of law in Myanmar' Forbes, 2 September 2022, available at <https://www.forbes.com/sites/ewelinaochab/2022/09/02/how-the-military-junta-diminished-the-right-to-a-fair-trial-and-the-rule-of-law-in-myanmar/?sh=6f3d8acb995c>, both accessed on 18 September 2024.

Though Myanmar has not ratified the ICCPR, articles related to due process and the right to a fair trial are reflected in customary international law. Hence, it still has an obligation to follow such provisions despite already denying these rights to certain marginalized groups such as the Rohingya who were persecuted even before the coup. During these periods, the SAC's amendment of laws were neither in line with international human rights standards nor did they promote human rights. Rather, they were intended to persecute its detractors. Consequently up to 31 October 2023, the SAC's forces have arbitrarily arrested 25,363 political prisoners, including 5,073 women. In addition, the total number of detainees killed in detention centres currently stands at 1,507.⁴⁵ Although little use was made of the death penalty subsequent to the late 1980s,⁴⁶ since 2022, the military regime has not hesitated to use it as a tool for repression to threaten political opponents. Thus, tribunals have sentenced 138 people to death up to October 2023, including 41 *in absentia*. For the first time in over 30 years, four well-known pro-democracy activists were sentenced to death and executed on 25 July 2022.⁴⁷ Neither the trial proceedings nor the judgements were made public.⁴⁸ Those arrested are often severely tortured or otherwise ill-treated resulting in many deaths in police or military custody including interrogation centres and prisons.⁴⁹ Methods of torture reported by the UN High Commissioner for Human Rights include beatings, mock executions with guns, burning with cigarettes, and rape or threats of rape.⁵⁰ As of 2024, the OHCHR reported at least 1,853 people have died in custody since the coup, including 88 children and 125 women.⁵¹ Since judicial proceedings were moved to prisons, rights to a fair trial and access to legal counsel have become major issues. In the same vein, judges are not independent and incapable of delivering justice in cases involving politically motivated charges. Further, political trials are usually held in private and are closed to defendants' families and the public.⁵² Compounding matters, lawyers are prohibited from communicating privately with clients before hearings and are often threatened, harassed, and surveilled to stop them participating

⁴⁵ 'Graphs of arrest and death data as of 31 October 2023, collected and compiled by the Assistance Association for Political Prisoners (AAPP) since 1 February 2021 military coup' Assistance Association for Political Prisoners, 1 November 2023, available at <https://aappb.org/?p=26621>, accessed on 18 September 2024.

⁴⁶ van der Borgh, E, 'Myanmar: First executions in decades mark atrocious escalation in state repression' Amnesty International, 25 July 2022, available at <https://www.amnesty.org/en/latest/news/2022/07/myanmar-first-executions-in-decades-mark-atrocious-escalation-in-state-repression/>, accessed on 18 September 2024.

⁴⁷ 'Myanmar: Regional union body condemns activist executions' International Federation of Journalists, 28 July 2022, available at <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/myanmar-regional-union-body-condemns-activist-executions>, accessed on 18 September 2024.

⁴⁸ 'Crackdown on human rights defenders, opposition, and the right to a fair trial in Myanmar' Human Rights Institute, August 2022, available at <https://www.ibanet.org/document?id=IBAHRI-Myanmar-Report-2022>, accessed on 18 September 2024, at 11.

⁴⁹ 'Myanmar: Death of activists in custody' Human Rights Watch, 13 Sep 2022, available at <https://www.hrw.org/news/2022/09/13/myanmar-death-activists-custody>, accessed on 18 September 2024.

⁵⁰ Human Rights Institute (see note 44 above), at 23.

⁵¹ 'Over 5,000 civilians killed since Myanmar military coup' UN News, 17 September 2024, available at <https://news.un.org/en/story/2024/09/1154436>, accessed on 18 September 2024.

⁵² Human Rights Institute (see note 44 above), at 25.

in political cases. Labelling defendants as criminals and convicts prior to the rendering of judgements again demonstrates how judgments are biased and predetermined.⁵³

Disproportionate attacks and indiscriminate air strikes by SAC military forces on non-military targets include a school in Let Yet Kone (Sagaing Region) which resulted in 13 casualties including 7 children;⁵⁴ another involved dropping 500 pound bombs on a Pazi Gyi village in April 2023 giving rise to 170 casualties;⁵⁵ and a further attack on a music concert in Hpakant (Kachin State) led to at least 80 deaths. Many have argued that such indiscriminate attacks on alleged terrorist targets could amount to crimes against humanity.⁵⁶

As previously mentioned, the following laws have been amended and used against insurgents:

(1) *Counter-Terrorism Law*:⁵⁷ A “Terrorist” is defined in s.3(u) as

any person who commits or attempts to commit unlawfully any act of terrorism⁵⁸ by any means directly or indirectly, or participates as an accomplice in an act of terrorism or directs or organizes others to commit an act of terrorism or intentionally contributes to commit an act of terrorism.

The amendment then expanded punishable activities to cover “acts of exhortation, persuasion, propaganda, recruitment of any person to participate in any terrorist group or activities of terrorism.” Since pro-democracy groups were defined and denounced as terrorists by the SAC, many journalists, politicians, and young

⁵³ Human Rights Institute (see note 44 above), at 25.

⁵⁴ ‘Myanmar army helicopters fire on school, killing 13, media and residents say’ Reuters, 20 September 2022, available at <https://www.reuters.com/world/asia-pacific/myanmar-army-helicopters-fire-school-killing-six-media-residents-2022-09-19/>, accessed on 18 September 2024.

⁵⁵ Yuzana, ‘Horror of Myanmar junta’s aerial massacre in Pazi Gyi’ The Irrawaddy, 20 April 2023, available at <https://www.irrawaddy.com/news/burma/horror-of-myanmar-juntas-aerial-massacre-in-pazi-gyi.html>, accessed on 18 September 2024.

⁵⁶ ‘Myanmar: Military abuses against civilians intensify’ Human Rights Watch, 30 January 2024, available at <https://www.hrw.org/news/2024/01/30/myanmar-military-abuses-against-civilians-intensify>, accessed on 28 September 2024.

⁵⁷ The Counter Terrorism Law was enacted in 2014 by the Pyidaungsu Hluttaw Law No 23, 2014 and was further amended on 1 August 2021.

⁵⁸ Eighteen actions or omissions amount to terrorism under s.3(b) of the Counter-Terrorism Law. Among these, the following are also deemed acts of terrorism: An offence against unmarked explosives; An offence against bombing; An offence against financing and providing material to terrorist groups; Acts which cause serious damage and loss to public security or life and property or important infrastructure facilities for public or individual or State-owned facilities, conveyance, machinery, and equipment; Acts to produce, transfer, maintain, provide or offer to provide weapons and ammunition; Acts which cause death or serious injury to a civilian or any other person not participating in hostilities in the situation of armed conflicts; Acts of exhortation, persuasion, propaganda, recruitment of any person to participate in any terrorist group or activities of terrorism; Acts to organize terrorist groups, to participate in any terrorist group knowingly and to operate by assigning; Acts of concealing or knowingly harbouring or granting to hide or granting to stay temporarily hidden by a terrorist or member of any terrorist group; and Acts of giving permission to use, to assemble in, to hold meetings in any building and place to train acts of terrorism or to arrange transportation to a terrorist or a member of any terrorist group.

people have been charged and convicted under s.52(a) of the amended law for assisting or participating in the activity of terrorism. Hence, any acts of organizing and providing logistical support to pro-democracy groups including giving minor amounts to internally displaced persons and CDMs have been interpreted as providing assistance to terrorist groups because there is no clear definition of a terrorist act. Similarly, due to the SAC declaring the NUG a terrorist group, anyone who teaches at their online and offline schools or who are even simply affiliated with it are alleged to be supporters of terrorists. Similar allegations extend to the parents of students enrolled in NUG schools.⁵⁹ By such labelling, the law allows, for example, confiscation of personal belongings. Moreover, the penalties for such alleged activities have significantly increased from three to seven years' imprisonment.⁶⁰ Additionally, it empowers authorities to intercept, block, and restrict mobile and electronic communications, or verify the location of a citizen's activities via surveillance to check affiliation with the NUG, PDFs, and CDMs. In other words, it effectively allows the military to not only furnish personal data from network providers on people's location, communications, and networks, but also to actively intercept their communications, emails, browsing history, or other activities online.⁶¹

- (2) *Penal Code*:⁶² The sections related to high treason, defamation, and statements causing public disorder are widely used by the SAC to curtail freedom of expression and stifle dissent. Accordingly, many have been detained under s.505-A⁶³ (a newly added paragraph to the Penal Code) that broadly penalizes “incitement” and “false news.” Due to interference in the judicial sector by the SAC's executive, judges can interpret any case or action related to politics, CDMs, and resistance to fall under the category of “incitement” and sharing “false news.” This powerful law enables the arrest of anyone expressing disagreement with the coup or the military, either on or offline. On the day following the bombing of Pazi Gyi, locals changed their Facebook profiles to black and posted messages of sympathy for the victims. As a result, a total of 68 people, including some celebrities were arrested for spreading propaganda, cooperating with the pro-democracy government,

⁵⁹ Dhevy, Wai Phyo Myint, and Meabh, ‘Myanmar’s “counter-terrorism” by-laws must be denounced for what they are – illegal’ Access Now, 19 April 2023, available at <https://www.accessnow.org/myanmar-counter-terrorism-law/>, accessed on 18 September 2024.

⁶⁰ ‘Myanmar: Note on the 2021 amendment to the Counter-Terrorism Law’ Centre for Law and Democracy, January 2023, available at <https://www.law-democracy.org/live/wp-content/uploads/2023/01/Myanmar-Counter-Terrorism-Amendment-Note.English.pdf>, accessed on 18 September 2024.

⁶¹ Dhevy et al (see note 59 above).

⁶² State Administration Council Law No 5/2021 Law Amending the Penal Code, available at https://cdn.digitalagencybangkok.com/file/client-cdn/gnlm/wp-content/uploads/2021/02/15_Feb_21_gnlm_1.pdf, accessed on 18 September 2024.

⁶³ This stipulates:

Whoever (a) causes or intends to cause fear to a group of citizens or to the public, (b) causes or intends to spread false news, knowing or believing that it is untrue, (c) causes or intends to commit or to agitate directly or indirectly a criminal offence against a Government employee, any kind of Government employees or Government employees; such a person shall be punished with imprisonment which may extend to three years or with fine or with both.

or public disturbance offences.⁶⁴ Indeed, many have been extensively surveilled by the military and threatened with arrest or arrested for writing one comment under a social media post, sharing news, or posting news.

- (3) *Amendment to the Law Protecting the Privacy and Security of the Citizens*:⁶⁵ This provides full power to the police and security forces to check and intercept the personal email, mobile phones, and Facebook of citizens, in addition to searching houses without a warrant. Thus, security forces can check household members and overnight guest registered lists at any time. Anyone failing to register overnight guests can be arrested if evidence of resistance is subsequently found during such a check. Additionally, citizens may be put under surveillance if they have any connection with the NUG, PDF, and CDMs. Moreover, the law empowers authorities to intercept, block, and restrict mobile and electronic communications, or to verify their locations at any time. At the same time, it effectively allows the military to not only order the furnishing of personal data from network providers on people's location, communications, and networks, but also to actively intercept their communications, emails, browsing history or other activities online.⁶⁶
- (4) *Amendment to the Telecommunication Law*:⁶⁷ This extends the coverage of punishable actions to cover “cyber- attacks” which means any type of attempt to commit, aid to commit, incitement to commit, or abetment of an attack, and/or using cyber sources with the intent of undermining the national administration, finance, economy, the rule of law, national security, public safety, or public livelihood within cyberspace. Under s.27-bis, personal data protection can be officially violated as the law allows authorities to search, enquire into, and investigate any suspects alleged to undermine national security or public safety even though the provision was initially intended to fight cyber-crime and secure online commerce. Section 38-bis(c) punishes anyone who creates misinformation or disinformation with the intent of causing public panic, distrust or social division in cyberspace with imprisonment of up to three years.⁶⁸

⁶⁴ Burgess, M, ‘They supported airstrike victims. Then they were doxed and arrested’ Wired, 17 October 2023, available at <https://www.wired.com/story/myanmar-doxxing-airstrike/>, accessed on 18 September 2024.

⁶⁵ State Administration Council Law No (4/2021), Global New Light of Myanmar, 13 Feb 2021, available at https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2021/02/14_Feb_21_gnlm.pdf, accessed on 20 November 2023.

⁶⁶ Dhevy et al (see note 59 above).

⁶⁷ State Administration Council (SAC) Law No 7/2021 of 15 Feb 2021; See also, ‘Amended law throws Myanmar back into media dark age’ Myanmar Now, 19 February 2021, available at <https://myanmar-now.org/en/news/amended-law-throws-myanmar-back-into-media-dark-age/>, accessed on 18 September 2024.

⁶⁸ Electronic Transactions Law (consolidated version as of 15 February 2021), unofficial translation, available at https://www.myanmar-responsiblebusiness.org/pdf/electronic-transactions-law_consolidated_2014-and-2021_en.pdf, accessed on 18 September 2024.

Part 3: Conclusion

While basic rights under Myanmar's current political situation are becoming ever more scarce, the people's belief in inalienable human rights are stronger than ever. Such is the legacy of human rights education and the freedom enjoyed during the previous democratic government. One of the greatest impacts of this legacy is a willingness to embrace diversity across the country and a desire to fight for freedom from military rule through a variety of different strategies including the use of arms. Hence, even amidst the current political crisis, investing in and expanding human rights education programs for all the levels of students can only benefit Myanmar and its future.

PHILIPPINES



PHILIPPINES

Ma Rhea Gretchen A Abuso*

Part 1: Overview of the Philippines

A. Country Background

Philippines Facts	
Geographical size ¹	300,000 sq km
Population ²	109,035,343
Ethnic breakdown	Main ethnic groups: Tagalog (26%), Bisaya/Binisaya (14.3%), Ilocano (8%), Cebuano (8%), Ilonggo (7.9%), Bikol/Bicol (6.5%), Waray (3.8%), Kapampangan (3%), Maguindanao (1.9%), Pangasinan (1.9%)
Official language(s)	Filipino and English
Literacy rate (aged 15 and above) ³	97%
Life expectancy ⁴	72 years
GDP ⁵	US\$437.15 billion (per capita US\$3,725)

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¹ ‘Philippines (9/04)’ US Department of State, available at <https://2009-2017.state.gov/outofdate/bgn/philippines/47535.htm>, accessed on 21 October 2024.

² Data from 2020. ‘2020 Census of Population and Housing’ Philippines Statistics Authority (PSA), available at https://psa.gov.ph/sites/default/files/infographics/2020_Census_of_Population_and_Housing_1123sdfsdf.pdf?width=950&height=700&iframe=true, accessed on 21 October 2024. The PSA estimates this figure will rise to 112 million by the end of 2023. See, Recuenco, A, ‘PH population to hit 112-M by end of 2023’ Manila Bulletin, 25 November 2023, available at <https://mb.com.ph/2023/11/25/ph-population-to-hit-112-m-by-end-of-2023>, accessed on 21 October 2024.

³ Data from 2020. ‘Literacy rate and educational attainment among persons five years old and over in the Philippines (2020 Census of Population and Housing)’ PSA, available at <https://psa.gov.ph/content/literacy-rate-and-educational-attainment-among-persons-five-years-old-and-over-philippines>, accessed on 21 October 2024. Translates to a 1.2% improvement in literacy compared to 2015. The literacy rate among women is 97.1% compared to males at 96.8%.

⁴ Data from 2022. ‘Life expectancy at birth, total (years) – Philippines’ World Bank, available at <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=PH>, accessed on 21 October 2024.

⁵ Data from 2023. ‘Philippines’ World Bank, available at <https://data.worldbank.org/country/philippines>, accessed on 21 October 2024.

Philippines Facts	
Government	<p>Republic with a presidential form of government wherein power is equally divided among its executive, legislative, and judicial branches. The system mandates the “separation of powers wherein legislation belongs to Congress, execution to the Executive, and settlement of legal controversies to the Judiciary.”⁶</p> <p>Uses a “plurality-rule electoral system”⁷ to elect the president where the candidate with the highest number of votes wins. Also allows for a “split-ticket” where presidential and vice-presidential candidates from separate political parties may run and win.⁸</p> <p>Elections allow for open competition among parties holding no clear ideological principles. Accordingly, politicians often switch political parties to join the dominant bloc or party of the sitting president.⁹</p>
Political and social situation	<p>In 2022, running mates, Ferdinand Marcos Jr and Sara Duterte-Carpio, won the presidential and vice-presidential posts, respectively, with an overwhelming majority of the vote. Marcos Jr is the son of late dictator, Ferdinand Marcos, while Duterte-Carpio is the daughter of former president, Rodrigo Duterte. Thus, this majority win indicates the continued dominance of political clans in Philippine politics.</p>

Located in the economically dynamic ASEAN region, as a result of its history as a former American colony, the Philippines is Asia’s oldest democracy. With a market-oriented economy, it is also rich in human and natural resources. However, it suffers from rebel insurgences in Mindanao, poverty, endemic corruption, and high crime rates.¹⁰

System of governance

The executive branch is comprised of the President and Vice President who each serve a single term of six years. Mandated to make, alter, and repeal laws, the Senate and the House of Representatives make up the legislative branch. As of 20 May 2024, ally of the president, Francis Escudero, became the Senate President while head of congress or Speaker of the House of Representatives, Martin Romualdez, is the president’s first cousin.

⁶ ‘Philippine government’ Official Gazette, available at <https://www.officialgazette.gov.ph/about/gov/>, accessed on 21 October 2024.

⁷ Choi, J, ‘Philippine democracies old and new’ Friedrich-Ebert-Stiftung, available at <https://library.fes.de/libalt/journals/swetsfulltext/14218793.PDF>, accessed on 21 October 2024.

⁸ Wong, AC, ‘Philippine elections and the politics behind it’ The Interpreter, 7 February 2022, available at <https://www.lowyinstitute.org/the-interpreter/philippine-elections-politics-behind-it>, accessed on 21 October 2024.

⁹ ‘Philippines’ Freedom House, available at <https://freedomhouse.org/country/philippines/freedom-world/2023>, accessed on 21 October 2024.

¹⁰ Freedom House (see note 9 above).

Judicial power rests with the Supreme Court and the lower courts which may settle disputes involving legally demandable and enforceable rights and decide on grave abuses of power tantamount to lack or excess of jurisdiction on the part and instrumentality of the government.¹¹ In addition, the Constitution explicitly grants the Supreme Court the power of judicial review to declare a treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation unconstitutional.¹²

Of the 15 members of the Supreme Court, the current Chief Justice, Alexander G. Gesmundo, was appointed by former president, Rodrigo Duterte, as were 13 of the associate justices. The remaining two were appointed by former president, Benigno Aquino III.

Political and social situation

Classified as a flawed democracy in 2023, the Philippines has slipped down to 53rd out of 167 countries, currently scoring 6.66 out of 10 in Economist Intelligence's Democracy Index indicating weaknesses in its functioning government and political culture.¹³ This resulted in Ferdinand Marcos Jr and Sara Duterte-Carpio winning an overwhelming majority of votes despite the former being the son of late dictator, Ferdinand Marcos which cannot help but point to the continued dominance of political clans in Philippine politics.

The effect of the COVID-19 pandemic on human rights and peace

Following announcement of the first COVID-19 case in the Philippines in January 2020, on March 8, then President Rodrigo Duterte declared a public health emergency for the entire country. Four days later, a community quarantine was declared in Metro Manila which placed 16 cities and one municipality in the capital region under strict lockdown beginning on March 15.¹⁴ Accordingly, all travel by land, air, and sea was suspended and social distancing was imposed on public transportation.¹⁵ The lockdowns were eventually expanded and on March 17, Duterte declared a country-wide state of calamity for a period of 6 months.¹⁶

During the early months of the pandemic, the government imposed varying levels of quarantine and lockdown. In its strictest version, residents were required to stay

¹¹ 'Philippine government' Official Gazette, available at <https://www.officialgazette.gov.ph/about/gov/>, accessed on 22 October 2024.

¹² Official Gazette (see note 11 above).

¹³ 'Democracy Index 2023' Economist Intelligence, available to download at <https://www.eiu.com/n/campaigns/democracy-index-2023/>, accessed on 22 October 2024.

¹⁴ 'UNICEF Philippines statement on COVID-19' UNICEF, 13 March 2020, available at <https://www.unicef.org/philippines/press-releases/unicef-philippines-statement-covid-19>, accessed on 23 October 2024.

¹⁵ Venzon, C, 'Manila lockdown cripples businesses big and small' Nikkei Asia, 16 March 2020, available at <https://asia.nikkei.com/Spotlight/Coronavirus/Manila-lockdown-cripples-businesses-big-and-small>, accessed on 23 October 2024.

¹⁶ Esguerra, DJ, 'Duterte: Philippines now under state of calamity due to COVID-19' Inquirer.net, 17 March 2020, available at <https://newsinfo.inquirer.net/1243774/duterte-philippines-now-under-state-of-calamity-due-to-covid-19>, accessed on 23 October 2024.

indoors and to present quarantine passes (issued per household) if they needed to go out and buy essential items. Less strict periods allowed certain businesses catering to essential services to open, but the elderly and the very young were forbidden to venture outdoors.¹⁷

As regards legislation, Congress approved the Bayanihan to Heal as One Act (RA No 11469 or the Bayanihan Act) in March 2020 which gave Duterte even more emergency powers for three months to optimize efforts in the pandemic response. Although the law expired in December 2020, appropriations made under its auspices were extended up to June 2021.¹⁸

While the lockdowns prevented hospitals from being overwhelmed, the livelihoods and personal lives of many ordinary Filipinos deteriorated as they were prevented from earning a living. A report described the impact to livelihoods as “sweeping and immediate” with unemployment levels hitting 17.7%, a figure not seen since the end of World War II. Although government figures placed the number of unemployed at 7 million, a survey by the Social Weather Station revealed that about 27.3 million Filipinos lost their jobs in 2020.¹⁹ To mitigate the economic impact of the quarantine measures at the household level, the government promised to distribute P5,000 to P8,000 each month for April and May 2020 to at least 18 million families. However, the assistance was slow to reach its beneficiaries and by August of 2020, over 900,000 families were still waiting for their cash aid.

Exacerbating the situation, human rights abuses were rampant at the height of the pandemic. Abuses, in the name of imposing COVID-19 restrictions were so severe, some of them bordered on the unbelievable. The following are actual cases documented by Human Rights Watch:²⁰ curfew violators were forced inside dog cages or made to sit for hours in the heat of the summer sun as a form of punishment; two minors who were arrested after curfew hours were placed inside a coffin by local officials; and three LGBT people were detained by authorities for violating the curfew and punished by being forced to dance and kiss each other in public. In many cases, those arrested for violating COVID-19 measures were confined into overcrowded detention facilities

¹⁷ ‘Rodrigo Duterte is using one of the world’s longest COVID-19 lockdowns to strengthen his grip on the Philippines’ Time, 15 March 2021, available at <https://time.com/5945616/covid-philippines-pandemic-lockdown/>, accessed on 23 October 2024.

¹⁸ Atienza, MEL, ‘The Philippines a year under lockdown’ Verfassungsblog, 26 April 2021, available at <https://verfassungsblog.de/the-philippines-a-year-under-lockdown/>, accessed on 23 October 2024.

¹⁹ Ofreneo, RE, ‘COVID-19 pandemic case study: Philippines’ Heinrich-Böll-Stiftung, December 2020, available at https://us.boell.org/sites/default/files/2020-12/20201209-HB-papers-A4-philippines-01_0.pdf, accessed on 23 October 2024, at 11.

²⁰ ‘Philippines: Events of 2020’ Human Rights Watch, 2021, available at <https://www.hrw.org/world-report/2021/country-chapters/philippines>, accessed on 23 October 2024.

where, ironically, social distancing was impossible thus increasing their risk of contracting the virus.²¹ By September 2020, 1,735 individuals had been detained in police stations for various quarantine violations.²²

Duterte also used his daily updates on government measures to launch verbal attacks against those criticizing his policies, and in one, ordered the police, military, and local officials to arrest and shoot unruly quarantine violators. Not long after, in two separate cases, quarantine violators were shot dead.²³ Thus, it was felt the government's response amounted to more than public health measures. Instead, the pandemic seemed to make it easier for Duterte to place the entire country under military rule with observers noting the high proportion of senior military figures advising the President on managing the pandemic.²⁴

B. International Human Rights Commitments and Obligations

The Philippines has ratified eight of the nine core international human rights instruments with the International Convention for the Protection of All Persons from Enforced Disappearance (CED) remaining the outlier. However, in 2012, it did pass a law criminalizing enforced disappearances (Republic Act No 10353²⁵), the first of its kind in Asia. Nevertheless, it has been essentially useless in preventing involuntary disappearances.²⁶ The Rappler²⁷ reports at least 2,078 documented cases of enforced disappearance in the country since the administration of Ferdinand Marcos Sr. Of this figure, 1,165 are still missing, 663 surfaced alive, and 280 were found dead.

²¹ Human Rights Watch (see note 20 above).

²² Talabong, R, 'Over 100,000 quarantine violators arrested in PH since March' Rappler, 8 September 2020, available at <https://www.rappler.com/philippines/arrested-quarantine-violators-philippines-2020/>, accessed on 23 October 2024.

²³ Talabong (see note 22 above). See also, Talabong, R, 'QC cop faces criminal probe for killing 'mentally challenged' lockdown violator' Rappler, 22 April 2020, available at <https://www.rappler.com/philippines/258708-quezon-city-cop-faces-criminal-probe-killing-mentally-challenged-coronavirus-lockdown-violator/>, accessed on 23 October 2024.

²⁴ Time (see note 17 above).

²⁵ An Act Defining and Penalizing Enforced or Involuntary Disappearance, available at <https://www.officialgazette.gov.ph/2012/12/21/republic-act-no-10353/>, accessed on 22 October 2024.

²⁶ Conde, CH, 'Enforced disappearances still a scourge in Philippines' Human Rights Watch, 11 October 2023, available at <https://www.hrw.org/news/2023/10/11/enforced-disappearances-still-scourge-philippines>, accessed on 22 October 2024.

²⁷ Gavilan, J, 'Families of the disappeared seek justice through implementation of landmark law' Rappler, 30 August 2023, available at <https://www.rappler.com/philippines/families-call-proper-implementation-anti-enforced-involuntary-disappearance-act-desaparacidos/>, accessed on 22 October 2024.

Table 1: Ratification Status of International Human Rights Treaties – Philippines²⁸

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		18 Jun 1986 (a)
Optional Protocol of the Convention against Torture		17 Apr 2012 (a)
International Covenant on Civil and Political Rights (ICCPR)	19 Dec 1966	23 Oct 1986
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	20 Sep 2006	20 Nov 2007
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	15 Jul 1980	5 Aug 1981
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	7 Mar 1966	15 Sep 1967
International Covenant on Economic, Social and Cultural Rights (ICESCR)	19 Dec 1966	7 Jun 1974
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	15 Nov 1993	5 Jul 1995
Convention on the Rights of the Child (CRC)	26 Jan 1990	21 Aug 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	8 Sep 2000	26 Aug 2003
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography	8 Sep 2000	28 May 2002
Convention on the Rights of Persons with Disabilities (CRPD)	25 Sep 2007	15 Apr 2008

²⁸ 'Ratification status for Philippines' United Nations Human Rights Office of the High Commissioner (OHCHR), available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN, accessed on 22 October 2024.

Article 17 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT)

Having ratified the Optional Protocol to the Convention against Torture in 2012, the Philippines was obligated to establish a national preventive mechanism and conduct regular visits to places where people are deprived of liberty. However, as of 2023, the country has yet to establish a national mechanism for torture prevention as required.²⁹

³⁰ In its own report on the state of the country's human rights, the Philippines proclaims that the Inter-Agency Committee mandated the Revised Operational Guidelines of AO35 to handle cases of enforced disappearances, torture, and other grave human rights violations against human rights.^{31,32}

Committee on the Elimination of Racial Discrimination

The 2020 national census documents about 9.84 million or 9.1% of the 108.67 million population are classified as indigenous peoples (IP). Of this group, the top 10 indigenous groups account for about 48.3% of the total indigenous peoples including the Subanens/Subanons, inhabiting mostly Western Mindanao (7.7%), the Manobo predominantly in the mountain highlands (6.6%), the Mandaya people of the Davao regions (5.3%), and the Muslim tribes (as identified by the National Commission on Muslim Filipinos and which comprise 6.5% of the population).

Prior to adopting the UN Declaration on the Rights of Indigenous Peoples (UN DRIPs) in 2004, the Philippines had already enacted the Indigenous Peoples Rights Act in 1997. Further progress can be seen in its mechanisms to guarantee the realization of indigenous peoples' rights taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains. According to its own human rights report, the government has issued a total of 257 Certificates of Ancestral Domain Title (CADTs) as of July 2022 thereby recognizing 1,363,342 indigenous peoples as rights holders.³³

However, indigenous people remain the most marginalized sector in Philippine society and face continued discrimination, often lacking access to social services and economic and political opportunities. In many cases, high levels of pervasive illiteracy and unemployment prevail and even accessing a birth certificate can be a challenge.³⁴ Whilst no specific laws discriminate against this group, the geographical remoteness

²⁹ 'UN torture prevention body to visit Philippines' OHCHR, 30 November 2023, available at <https://www.ohchr.org/en/press-releases/2023/11/un-torture-prevention-body-visit-philippines>, accessed on 22 October 2024.

³⁰ 'Non-compliance with Article 17' OHCHR, available at <https://www.ohchr.org/en/treaty-bodies/spt/non-compliance-article-17>, accessed on 22 October 2024.

³¹ 'Human rights: Philippines 2020-2022' OHCHR, available at <https://www.ohchr.org/sites/default/files/documents/countries/ph/2022-09-14/Philippines-Human-Rights-2020-2022.pdf>, accessed on 22 October 2024.

³² See also, 'Administrative Order No 35' Department of Justice, available at <https://www.doj.gov.ph/administrative-order-35.html>, accessed on 22 October 2024.

³³ OHCHR 2020-2022 (see 31 above), at 21.

³⁴ 'Towards inclusion for indigenous peoples in the Philippines' UN Office for Project Services (UNOPS), available at <https://www.unops.org/news-and-stories/stories/towards-inclusion-for-indigenous-peoples-in-the-philippines>, accessed on 22 October 2024.

of their homelands and cultural biases prevent their full integration into society. As a result, indigenous children often suffer from poor healthcare, education, and other basic services.³⁵ Consequently, armed groups frequently recruit from such populations and their lands often form the site of violent encounters related to resource extraction or intertribal disputes, occasionally resulting in displacement or killings.³⁶

In April 2023, the Philippines submitted itself for review to the combined 21st to 25th periodic review of the Committee on the Elimination of Racial Discrimination where experts discussed the plight of indigenous peoples in the country.³⁷ One of the main concerns raised was the enduring problem of displacement and the eviction of indigenous peoples from their ancestral lands due to “large-scale resource extraction projects” including “foreign and private large-scale projects for mining, hydropower dams, infrastructure, agribusiness, and logging” which threaten and undermine indigenous customary practices.³⁸ The Philippine delegation led by NCIP Chair, Allan Capuyan, said legislation already aided such groups in situations of armed indigenous conflict including through the Department of Social Welfare and Development (DSWD) which provided “food and other resources.”³⁹ The Philippines also enacted into law a ban on child marriages (Republic Act No 11596) in 2021 “to address the practice [of child marriage] among Indigenous cultural communities and Muslim Filipinos.”⁴⁰

Human Rights Watch also drew attention to the “harassment and attacks against Indigenous peoples” and that Philippine officials often tagged indigenous leaders and activists as rebel and rebel-sympathizers.⁴¹ Red-tagging occurred mostly in “ancestral lands with impending or existing [development] projects” such as the hydroelectric project at Kaliwa Dam in the Sierra Madre mountain range, the Gened Dam in Apayao province, and the Oceana Gold mining project in Nueva Vizcaya.⁴² Thus, red-tagging has been “used to harass, threaten, and sideline leaders and members of Indigenous

³⁵ UNOPS (see note 34 above).

³⁶ ‘Indigenous peoples in the Philippines’ Minority Rights Group, available at <https://minorityrights.org/communities/indigenous-peoples-5/>, accessed on 22 October 2024.

³⁷ ‘Experts of the Committee on the Elimination of Racial Discrimination commend the Philippines’ Law on HIV/AIDS, ask questions on the situation of indigenous peoples and on internally displaced persons’ OHCHR, 20 April 2023, available at <https://www.ohchr.org/en/news/2023/04/experts-committee-elimination-racial-discrimination-commend-philippines-law-hiv-aids>, accessed on 22 October 2024.

³⁸ ‘Experts of the Committee on the Elimination of Racial Discrimination Commend the Philippines’ Law on HIV/AIDS, ask questions on the situation of indigenous peoples and on internally displaced persons: Meeting summaries’ OHCHR, 20 April 2023, available at <https://www.ungeneva.org/en/news-media/meeting-summary/2023/04/examen-du-rapport-des-philippines-devant-le-cerd-la-situation>, accessed on 22 October 2024.

³⁹ OHCHR 2023 (see note 37 above).

⁴⁰ ‘Summary record of the 2970th meeting (CERD/C/SR.2970)’ Committee on the Elimination of Racial Discrimination, 5 May 2023, available at <https://documents.un.org/doc/undoc/gen/g23/085/08/pdf/g2308508.pdf>, accessed on 22 October 2024.

⁴¹ ‘Philippines: Officials ‘red-tagging’ indigenous leaders, activists’ Human Rights Watch, 26 January 2023, available at <https://www.hrw.org/news/2023/01/26/philippines-officials-red-tagging-indigenous-leaders-activists>, accessed on 22 October 2024.

⁴² Human Rights Watch (see note 41 above).

communities who oppose major projects” and creates lasting impact on Indigenous communities, often leading to deadly consequences.⁴³

Committee on the Rights of Persons with Disabilities

Since their visit to the Philippines in September 2018, the Committee on the Rights of Persons with Disabilities outlined their concerns and recommendations, as reported in the 2018 Outlook. Specifically, it highlighted the Committee’s recommendation to review Philippine laws to fully recognize the equal representation before the law and legal capacity of persons with disabilities.⁴⁴

Consequently, the Philippine Observatory on the Rights of Persons with Disabilities was established in 2020.⁴⁵ In 2019, then President Rodrigo Duterte signed into law RA 11228 (RA 11228) or “An Act Providing for the Mandatory PhilHealth Coverage for All Persons with Disability.” Prior to stepping down, Duterte also mandated establishment of a Learning Resource Center for Learners with Disabilities to provide free support and related services, such as alternative education, early intervention, and transition programs through RA No 11650 (enacted in 2022).⁴⁶

Rome Statute of the International Criminal Court (ICC)

Although party to the Rome Statute since 1 November 2011, the Philippines deposited a written notification of withdrawal on 17 March 2018 taking effect on 17 March 2019.⁴⁷ This move was prompted after numerous calls for the ICC to intervene following the brutality of the war on drugs presided by then President Rodrigo Duterte.⁴⁸ Throughout his term, Duterte was infamous for ordering police forces to kill *anyone* they believed to be connected to the drugs trade. State forces did not hesitate to follow through and did so ruthlessly.⁴⁹ The centrepiece of his anti-illegal drugs campaign was the infamous “Project *Tokhang*,” a term that combines two Filipino words, *toktok* meaning to knock and *hangyo* meaning to plead. *Tokhang* was designed to eradicate illegal drugs in the smallest local governance units in the country, the *barangays*, and in which the police conducted house-to-house visitations (“knock and plead”) to persuade suspects to stop

⁴³ Human Rights Watch (see note 41 above).

⁴⁴ Sharom, A, and Spooner, M (eds), *Human Rights Outlook in Southeast Asia*, Bangkok: SHAPE-SEA, 2018, at 108.

⁴⁵ ‘Philippine Observatory on the Rights of Persons with Disabilities’ Commission on Human Rights, available at <https://chr-observatories.uwazi.io/en/page/bm6wdiujhw9>, accessed on 22 October 2024.

⁴⁶ OHCHR 2020-2022 (see note 31 above), at 6.

⁴⁷ ‘Situation in the Republic of the Philippines: ICC Appeals Chamber confirms the authorisation to resume investigations’ International Criminal Court, 18 July 2023, available at <https://www.icc-cpi.int/news/situation-republic-philippines-icc-appeals-chamber-confirms-authorisation-resume>, accessed on 22 October 2024.

⁴⁸ ‘Philippines: ICC must examine ‘war on drugs’ crimes as child killings go unpunished’ Amnesty International, 4 December 2017, available at <https://www.amnesty.org/en/latest/news/2017/12/philippines-icc-must-examine-war-on-drugs-crimes/>, accessed on 22 October 2024.

⁴⁹ ‘More than 7,000 killed in the Philippines in six months, as President encourages murder’ Amnesty International, 18 May 2020, available at <https://www.amnesty.org.uk/philippines-president-duterte-war-on-drugs-thousands-killed>, accessed on 22 October 2024.

their illegal drug activities.⁵⁰ However, these house visitations did not require search or arrest warrants and could be based solely on a person's inclusion on a "drug watch list." A report from the United Nations Office of the High Commissioner for Human Rights (OHCHR)⁵¹ revealed that local officials were often pressured into compiling lists of suspected "drug personalities" in their communities for police use. Moreover, most whose names were included had no chance of legally challenging their inclusion. In the first year of the drug war, out of the 42,286 anti-illegal drugs operations conducted, only 1.2% or 507 had arrest warrants,⁵² and by the end of Duterte's term, they totalled 236,620. According to the Philippine Drug Enforcement Agency (PDEA), the official tally of deaths attributed to the war on drugs in the last 6 years amounted to 6,248.⁵³

Accordingly, ICC prosecutors took steps to investigate probable crimes committed in the campaign between 1 November 2011 and 16 March 2019 pursuant to Art 18 in 2021 and 2022.⁵⁴ However, when President Ferdinand R Marcos Jr took office, he reiterated that the ICC had no jurisdiction to conduct such an investigation, pointing instead to the Philippine's judicial system which was well-functioning enough to handle the case.⁵⁵

Human Rights Council

Upon ending its 51st session on 7 October 2022, the UN Human Rights Council failed to pass a resolution to ensure continued scrutiny of the country's rights situation despite numerous expressions of concern from the UN human rights office, civil society organizations, and the families of abuse victims. Despite a 2022 OHCHR report highlighting the dire human rights situation, council member states and donor countries that supported the 2020 resolution and the ensuing Philippine-UN Joint Program did not press for a resolution in 2022.⁵⁶

⁵⁰ 'PNP Anti-Illegal Drugs Campaign Plan Project: "Double Barrel"' PNP, Command Memorandum Circular No 16 – 2016, 1 July 2016, available at <https://www.didm.pnp.gov.ph/images/Command%20Memorandum%20Circulars/CMC%202016-16%20PNP%20ANTI-ILLEGAL%20DRUGS%20CAMPAIGN%20PLAN%2020PROJECT%20DOUBLE%20BARREL.pdf>, accessed on 22 October 2024.

⁵¹ 'Philippines: UN report details widespread human rights violations and persistent impunity' OHCHR, 4 June 2020, available at <https://www.ohchr.org/en/press-releases/2020/06/philippines-un-report-details-widespread-human-rights-violations-and>, accessed on 30 June 2022.

⁵² OHCHR 2020 (see note 51 above), at 4.

⁵³ Sarao, Z, 'Total drug war deaths at 6,248 as of April 30 – PDEA' Inquirer.net, 29 May 2022, available at <https://newsinfo.inquirer.net/1604009/total-drug-war-deaths-at-6248-as-of-april-30-pdea>, accessed on 22 October 2024.

⁵⁴ 'Information for victims: Republic of the Philippines' ICC, available at <https://www.icc-cpi.int/victims/republic-philippines>, accessed on 22 October 2024. See also, 'Situation in the Republic of the Philippines: ICC Appeals Chamber confirms the authorisation to resume investigations' ICC, 18 July 2023, available at <https://www.icc-cpi.int/news/situation-republic-philippines-icc-appeals-chamber-confirms-authorisation-resume>, accessed on 22 October 2024.

⁵⁵ 'PBBM reiterates ICC has no jurisdiction to conduct probe into former president Duterte's war on drugs' Presidential Communication Office, 24 November 2023, available at https://pco.gov.ph/news_releases/pbbm-reiterates-icc-has-no-jurisdiction-to-conduct-probe-into-former-president-dutertes-war-on-drugs/, accessed on 22 October 2024.

⁵⁶ 'Philippines: UN rights body fails to act' Human Rights Watch, 5 October 2022, available at <https://www.hrw.org/news/2022/10/05/philippines-un-rights-body-fails-act>, accessed on 22 October 2024.

In November 2022, the Philippines submitted itself to Universal Periodic Review (UPR) of the UN Human Rights Council (4th cycle).⁵⁷ 289 recommendations were made of which it accepted 215 for adoption, noting 74. As such, it declared its intention to take “concrete actions to protect human right defenders (HRDs) and journalists, combat discrimination and gender-based violence, develop new guidelines for the access to justice, combat human-trafficking, accelerate pandemic recovery, provide better access to healthcare and education, and criminalize child marriage.”⁵⁸

Regional human rights mechanisms

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in 2009 as the region’s main mechanism to facilitate human rights cooperation in the region.⁵⁹ Consequently, the Instrument of Ratification of the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) was introduced in 2017 of which the Philippines was the 6th country to ratify.

It continues to claim support of programs and efforts that “promote advocacies on the rights of children, women, and vulnerable groups; environment and climate change; and business and human rights, among others [whilst advocating] greater engagement between the UN human rights mechanisms and regional bodies such as ASEAN.”⁶⁰ The country also hosts a multi-year Annual ASEAN Dialogue with the Committee on the Rights of the Child, now in its third year, with a view to facilitating the strengthened implementation of general recommendations and concluding observations in relation to ASEAN Member States’ compliance with the CRC. Finally, the Philippines also noted that it would continue to seek opportunities for fostering greater trust and cooperation between ASEAN and the Special Procedures Mandate Holders.

C. National Laws Affecting Human Rights

The Philippine Constitution (1987) provides guarantees and a framework for human rights promotion and protection. Several laws have also been enacted to protect and promote human rights including the Migrant Workers Act (2021) that created the Department of Migrant Workers; a ban on child marriages (RA No 11596, 2021); and the Safe Spaces Act (RA No 11313, 2018) which penalizes catcalling, unwanted sexual advances, and other forms of sexual harassment in public places.⁶¹

However, a UN report pointed out several bills could further protect and further uphold human rights, but of 2023 are still pending namely: the Human Rights Defenders

⁵⁷ ‘Philippines’ OHCHR, available at https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/sessions/session41/ph/Philippines_Infographic_41.pdf, accessed on 22 October 2024.

⁵⁸ ‘UPR outcomes at the 52 session of HRC: Highlights’ UPR, 30 March 2023, available at <https://upr-info.org/en/news/upr-outcomes-52-session-hrc-highlights>, accessed on 22 October 2024.

⁵⁹ ‘Human rights: Overview’ ASEAN, available at <https://asean.org/our-communities/asean-political-security-community/rules-based-people-oriented-people-centred/human-rights/>, accessed on 22 October 2024.

⁶⁰ OHCHR 2020-2022 (see note 31 above), at 10.

⁶¹ Abad, M, ‘Fast facts: How does the Safe Spaces Act protect you?’ Rappler IQ, 28 October 2019, available at <https://www.rappler.com/newsbreak/iq/243538-things-to-know-about-safe-spaces-act/>, accessed on 22 October 2024.

Bill; the Sexual Orientation and Gender Identity and Expression (SOGIE) Bill; the Adolescent Pregnancy Prevention Bill; the Comprehensive Anti-Discrimination Bill; the Bill establishing a National Preventive Mechanism against Torture; the Commission on Human Rights Charter Bill; and the Rights of Internally Displaced Persons Bill.⁶²

With regards to RA No 11479 or the Anti-Terrorism Act of 2020, Amnesty International expressed concern that it grants excessive powers to the president and is “in violation of international standards on human rights and counter-terrorism risks.”⁶³

Divorce law

As reported in previous editions of *Outlook*, the Philippines is the only country aside from the Vatican that has yet to legalize divorce. However, as of 2024, House Bill 9349 aims to reinstitute absolute divorce, having hurdled the third and final reading in the country’s House of Representatives.⁶⁴ As of writing, the proposed law is expected to be debated in the Senate before passing into law.

D. Recent Court Cases Relating to Human Rights

Red-tagging declared unlawful by the Supreme Court

Finally, on May 2024 the Supreme Court issued a major ruling which declared “red-tagging, vilification, labelling, and guilt by association constitute threats to a person’s right to life, liberty, or security.” This may justify issuance of a writ of *amparo* (thereby allowing a person to seek various remedies from the courts, such as protection orders).⁶⁵ The decision stemmed from a petition for a writ of *amparo* filed in the local courts by Siegfred Deduro, after he was “repeatedly linked by the [Philippine] Army to the Communist Party of the Philippines-New People’s Army-National Democratic Front (CPP-NPA-NDF).”⁶⁶

Human Rights Watch⁶⁷ declared the ruling significant where “red-tagging—accusing individuals and groups of supporting the country’s communist insurgency” has been used by government officials “to harass, threaten, and at times assault or kill critics of the government.” Targeted individuals included “leaders and members of leftist activist groups and human rights organizations, as well as religious, Indigenous, and

⁶² ‘Common country analysis for the 2024-2028 Sustainable Development Cooperation Framework’ UN in the Philippines, June 2023, available at https://philippines.un.org/sites/default/files/2023-07/UN_PHL_Common_Country_Analysis_FINAL%28June-2023%29.pdf, accessed on 22 October 2024, at 47.

⁶³ ‘Anti-terrorism and human rights’ Amnesty International, available at <https://www.amnesty.org.ph/campaigns/anti-terrorism-and-hr/>, accessed on 22 October 2024.

⁶⁴ Cervantes, FM, ‘House approves absolute divorce bill on final reading’ Philippine News Agency, 22 May 2024, available at <https://www.pna.gov.ph/articles/1225339>, accessed on 22 October 2024.

⁶⁵ ‘SC: Red-tagging threatens right to life, liberty, and security’ Supreme Court, Republic of the Philippines, 8 May 2024, available at <https://sc.judiciary.gov.ph/sc-red-tagging-threatens-right-to-life-liberty-and-security/>, accessed on 22 October 2024.

⁶⁶ Marzan, J, ‘Ex-lawmaker hopes SC ruling frees activists from red-tagging’ Inquirer.net, 15 May 2024, available at <https://newsinfo.inquirer.net/1940840/ex-lawmaker-hopes-sc-ruling-frees-activists-from-red-tagging#ixzz8cNr8JqEE>, accessed on 22 October 2024.

⁶⁷ ‘Philippines: Supreme Court rejects ‘red-tagging’ Human Rights Watch, 8 May 2024, available at <https://www.hrw.org/news/2024/05/08/philippines-supreme-court-rejects-red-tagging>, accessed on 22 October 2024.

environmental groups.” This practice intensified during the presidency of Rodrigo Duterte, wherein the agency he created, the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) was particularly active in red-tagging various individuals.

Other court cases

In January 2023, a local trial court acquitted 10 human rights defenders of perjury as filed by Hermogenes Esperon who alleged untruthful declarations were made to the Securities and Exchange Commission.⁶⁸ According to the human rights groups, the case was filed in retaliation to complaints they made against Esperon and other military “in connection with the killings and harassment of activists and human rights defenders” during the Duterte regime.⁶⁹ In November 2023, the courts upheld their decision to acquit after Esperon and another former national security adviser, Eduardo Año, filed a petition in response to the earlier decision.

In October 2023, a regional trial court acquitted retired major general, Jovito Palparan, and five other soldiers for the kidnapping and serious illegal detention of Raymond and Reynaldo Manalo in 2006. At the time of promulgation, Palparan was already serving a life sentence having been found guilty in 2018 of the kidnapping of two students, Sherlyn Cadapan and Karen Empeno.⁷⁰ Ironically, during the term of former president, Gloria Macapagal Arroyo, Palparan had been hailed as an anti-communist fighter, but to his victims, he was known as “the butcher.” It was primarily the testimonies of the Manalo brothers that convicted Palparan for the kidnapping and torture of the two female students.⁷¹ For Amnesty International, the acquittal of Palparan formed just part of “a series of horrific cases where law enforcers and state forces operate above the law, with no consequence for their actions.”⁷²

Over the course of Duterte’s reign, there was no shortage of local and international groups voicing strong concerns and condemnation against the human rights abuses in his war on drugs. Locally, at the onset of Duterte’s term, the Philippine Commission on Human Rights (CHR) and newly elected Senator Leila de Lima were the most vocal critics for which they paid a high price. In August 2016, De Lima convened Senate hearings to investigate the alleged extrajudicial killings since the President took office a

⁶⁸ ‘Philippines: Court acquits 10 human rights defenders’ FIDH, 8 May 2024, available at <https://www.fidh.org/en/region/asia/philippines/philippines-court-acquits-10-human-rights-defenders>, accessed on 22 October 2024.

⁶⁹ Marcelo, E, ‘Quezon City court acquits 10 rights defenders of perjury’ Philstar, 10 January 2023, available at <https://www.philstar.com/nation/2023/01/10/2236471/quezon-city-court-acquits-10-rights-defenders-perjury>, accessed on 22 October 2024.

⁷⁰ Reyes-Estropé, C, ‘Malolos court acquits Palparan of kidnapping, illegal detention of Manalo brothers’ Inquirer.net, 6 October 2023, available at <https://newsinfo.inquirer.net/1842183/malolos-court-acquits-palparan-of-kidnapping-illegal-detention-of-manalo-brothers#ixzz8cNdbvNGh>, accessed on 22 October 2024.

⁷¹ Montalvan II, AJ, ‘Jovito Palparan and the missing of 17 years’ Rappler, 23 October 2023, available at <https://www.rappler.com/voices/thought-leaders/opinion-slingshot-jovito-palparan-missing-years/>, accessed on 22 October 2024.

⁷² ‘Palparan’s acquittal, a sorry milestone in the search for justice’ Amnesty International, 27 October 2023, available at <https://www.amnesty.org.ph/2023/10/palparans-acquittal-a-sorry-milestone-in-the-search-for-justice/>, accessed on 22 October 2024.

month earlier.⁷³ While she was eventually stripped of her Senate committees, De Lima continued to be the loudest voice against the war on drugs until she was imprisoned on February 2017 on trumped up drug charges. Her incarceration prompted calls from international human rights groups for her release,⁷⁴ and a US resolution banning entry to the US of Philippine officials involved in de Lima's continued imprisonment.⁷⁵ De Lima would remain in jail for 6 years, even enduring being taken hostage while in custody, until she was finally released in November 2023⁷⁶ at the age of 64.

Part 2. Outstanding Human Rights Issues⁷⁷

A. Drug War Under the Marcos Regime

During Duterte's term, over 236,620 drug-related related operations were conducted by the police. The official tally of deaths attributed to the war on drugs in the last 6 years is 6,248 according to the Philippine Drug Enforcement Agency (PDEA).⁷⁸ However, this does not include victims of vigilante-style killings, which human rights groups estimate to be between 27,000 and 30,000.⁷⁹ After being halted in 2021, the ICC announced in January 2023 that it would resume its investigations into possible unlawful killings that took place in the context of these operations.⁸⁰

Despite the change in government, when Marcos Jr took over, the drug-related killings have not stopped. At the University of the Philippines, the Dahas Project⁸¹ continues

⁷³ 'Philippines: Committee Chair ousted for death squad inquiry' Human Rights Watch, 19 September 2016, available at <https://www.hrw.org/news/2016/09/19/philippines-committee-chair-ousted-death-squad-inquiry>, accessed on 4 February 2024.

⁷⁴ Regencia, T, 'Rights groups demand release of Duterte critic, Leila de Lima' Al Jazeera, 22 February 2019, available at <https://www.aljazeera.com/news/2019/2/22/rights-groups-demand-release-of-duterte-critic-leila-de-lima>, accessed on 2 July 2022.

⁷⁵ Ramos, CM, 'Diplomatic push' eyed for De Lima's release as case reaches US Senate anew' Inquirer.net, 27 May 2022, available at <https://globalnation.inquirer.net/204204/fwd-diplomatic-push-eyed-for-de-limas-release-as-case-reaches-us-senate-anew>, accessed on 2 July 2022.

⁷⁶ de Lima, L, 'Leila de Lima: How I survived 2,454 days in arbitrary detention' Amnesty International, 2024, available at <https://www.amnesty.org/en/latest/campaigns/2024/03/leila-de-lima-philippines/>, accessed on 4 April 2024.

⁷⁷ '2022 country reports on human rights practices: Philippines' US Department of State, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices-philippines/>, accessed on 22 October 2024.

⁷⁸ Sarao, Z, 'Total drug war deaths at 6,248 as of April 30 — PDEA' Inquirer.net, 30 May 2022, available at <https://newsinfo.inquirer.net/1604009/total-drug-war-deaths-at-6248-as-of-april-30-pdea>, accessed on 30 June 2022.

⁷⁹ Jodesz, G, 'Duterte's violent war on drugs, as recorded by rights groups, int'l bodies' Rappler, 2022, available at <https://www.rappler.com/philippines/list-reports-documentation-rodrico-duterte-drug-war-killings/>, accessed on 3 June 2022.

⁸⁰ De Guzman, C, 'Where the ICC probe into former Philippine President Rodrigo Duterte's drug war stands' Time, 27 November 2023, available at <https://time.com/6339873/rodrico-duterte-drug-war-international-criminal-court-investigation/>, accessed on 22 October 2024.

⁸¹ See: 'Violence, human rights, and democracy in the Philippines' DAHAS, available at <https://dahas.upd.edu.ph/>, accessed on 22 October 2024.

to look at drug-related killings post Duterte.⁸² According to their data, since Marcos Jr was sworn into office in 2022, 342 drug-related killings have occurred with drug-related deaths per day logged at 0.9 as compared with 0.8 in the last year of Duterte's term.⁸³

B. Extrajudicial Killings

Aside from drug-related killings, other unlawful killings connected to political violence have continued unabated. One of the most high profile of these cases concerned the killing of Roel Degamo in March 2023. Degam who was a governor in central Philippines was gunned down by ex-military men, allegedly paid for by his political rival.

Killings linked to the communist insurgency have also risen according to Human Rights Watch, “particularly on the island of Negros, which has long been a hotbed of the communist movement.”⁸⁴

C. Continued Aggression Against Human Rights Advocates

In 2024, Human Rights Watch⁸⁵ expressed concern over the dire situation of human rights in the Philippines mainly due to “extrajudicial killings, attacks against political activists and journalists” and insurgency-related conflict. Prior to the Supreme Court decision on red-tagging, this practice was regularly used to attack “activists, unionists, environment defenders, Indigenous leaders, teachers, students, and journalists.” It also raised concern over cases of red-tagging that turned into “terrorist-tagging” wherein the government accuses civil society organizations of financing terrorists.

D. Press Freedom

The Maguindanao massacre, which occurred in November 2009, is considered the worst case of political violence in Philippine history, killing 58 people, 34 of whom were journalists, making it the single deadliest event for journalists in history. In December 2019, a local court finally sentenced the perpetrators, Andal Ampatuan Jr and his brother, Zaldy Ampatuan Jr (scions of a well-known political family in the Southern Philippines), to life in prison without the possibility of parole. However, of the 107 suspects that were tried for the massacre, only 28 were convicted of murder, receiving 40-year prison terms. Although another 15 were found guilty as accessories and 55 defendants were acquitted of all charges, up to 80 suspects are still at large.⁸⁶

⁸² Gavilan, J, ‘When Duterte left, this team kept on counting the dead’ Rappler, 23 October 2023, available at <https://www.rappler.com/newsbreak/in-depth/dahas-project-count-drug-war-deaths-bongbong-marcos-jr-rodrigo-duterte/>, accessed on 22 October 2024.

⁸³ ‘Drug-related killings in the Marcos administration: Year 1 (2022-2023)’ DAHAS, available at <https://drive.google.com/file/d/13H8QtAeSU5rs79zFg7pURLht3WwwRqQX/view>, accessed on 22 October 2024.

⁸⁴ ‘Philippines: Events of 2023’ Human Rights Watch, 2023, available at <https://www.hrw.org/world-report/2024/country-chapters/philippines>, accessed on 22 October 2024.

⁸⁵ Human Rights Watch (see note 84 above).

⁸⁶ Conde, CH, ‘Masterminds guilty in Philippines massacre’ Human Rights Watch, 19 December 2019, available at <https://www.hrw.org/news/2019/12/19/masterminds-guilty-philippines-massacre>, accessed on 22 October 2024.

Despite enduring critical and threatening comments from the Duterte regime, media in the country remains active, expressing a wide variety of views without restriction, including criticism of the government. However, two major media outfits were routinely at the receiving end of Duterte's wrath: online news website, Rappler, and broadcast giant, ABS-CBN. For its supposed biased reporting and foreign ownership, the Philippine SEC revoked Rappler's registration in 2022 although the Court of Appeals voided the order in 2024.⁸⁷ ABS-CBN, for its part, was accused of a number of alleged crimes, including failure to broadcast Duterte's political advertisements during the 2016 elections, violations of labour laws, foreign ownership, and financial irregularities.

As a result, ABS-CBN was forced to stop television broadcasting on May 2020 to comply with a cease-and-desist order issued by the National Telecommunications Commission following the network's failure to secure a broadcast franchise licence. Even before Duterte came to power, the network had tried and failed to renew their franchise. Without a licence to broadcast, the network was forced to shut down and lay off approximately 5,000 of its 11,000 employees by September 2020 at the height of the pandemic.⁸⁸ The closure of ABS-CBN created an information gap that has not been filled to this day since the network had an "outsize influence and reach, especially in far-flung rural areas."⁸⁹

Consequently, the 2024 World Press Freedom Index places the Philippines at 132 out of 180 countries, down from 134 in 2023, remaining a "difficult country" for journalists.⁹⁰ At the same time, the report also noted that since Duterte's departure and the election of Marcos Jr, there have been fewer and less violent attacks against journalists. Thus, the Philippines improved its score in terms of security as regards journalists.⁹⁰

E. Academic Freedom⁹¹

Academic freedom in all institutions of higher learning is guaranteed in the Philippines constitution.⁹² Thus, there are no restrictions on academic freedom in general although activists claim other tactics have been used in their stead. For example, in 2022, the signs and walls of two local bookshops (the Popular Bookstore in Quezon City and Solidaridad in Manila) and one publishing house were red-tagged or vandalized

⁸⁷ Ratcliffe, R, 'Philippines court voids order to shut down independent news site Rappler' The Guardian, 9 August 2024, available at <https://www.theguardian.com/world/article/2024/aug/09/philippines-court-voids-order-to-shut-down-independent-news-site-rappler>, accessed on 22 October 2024.

⁸⁸ 'Philippines 2020 human rights report' US Department of State, 2020, available at <https://www.state.gov/wp-content/uploads/2021/03/PHILIPPINES-2020-HUMAN-RIGHTS-REPORT.pdf>, accessed on 22 October 2024, at 18-19.

⁸⁹ Subingsubing, K, 'ABS-CBN's ordeal and its 'chilling effect' on media' Inquirer.net, 4 May 2021, available at <https://newsinfo.inquirer.net/1427319/abs-cbns-ordeal-and-its-chilling-effect-on-media#ixzz8cOWQ7GUo>, accessed on 22 October 2024.

⁹⁰ Mateo, J, 'Press Freedom Index: Philippines falls 2 notches to 134th' Philstar, 4 May 2024, available at <https://www.philstar.com/headlines/2024/05/04/2352458/press-freedom-index-philippines-falls-2-notches-134th>, accessed on 22 October 2024.

⁹¹ US Department of State (see note 88 above).

⁹² Article XIV, s.5(2).

with anti-communist messages. Some pointed to the National Task Force to End Local Communist Armed Conflict (NTF-Elcac) as the culprit and saw the acts as “an attack against academic and intellectual freedom.” Human rights organizations have accused the same group of intimidation tactics that have also prompted the removal of “progressive” books from some state university and provincial libraries in 2021.⁹³

In 2021, at the height of the COVID-19 pandemic, the Secretary of the Department of National Defense (DND), Delfin N Lorenzana, issued a letter terminating an agreement between the University of the Philippines (UP) and the DND (UP-DND Accord). Signed in 1989, it essentially restricted military and police access and activities inside the university. The abrogation of the UP-DND Accord was widely considered a threat to academic freedom since the police and military would now be able to interfere with university life. As Tiu put it, “Protest in UP is a way of life, and with the mounting and sustained resistance against the Anti-Terrorism Act of 2020 [...], there is a real threat of branding dissent as subversion.”⁹⁴

F. The Environment, Climate Change, and Gender

Climate change is emerging as a major challenge to the country’s human rights situation. While it is only responsible for 0.48% of greenhouse gas (GHG) emissions globally, the Philippines is among the most vulnerable to climate change and extreme weather events. Impacts could be felt in agriculture, forestry and fisheries, and result in the depletion of watersheds, the degradation of coastal ecosystems, while reducing hydropower production, damaging the infrastructure, and dislocating the population. The Philippines also ranks number one in the World Risk Index⁹⁵, meaning the country is most at “risk of humanitarian crisis and disaster that would overwhelm national response capacity and here again the country ranks 1st in natural hazards and exposure risk.”⁹⁶ In addition, because 70% of its cities are located along seas and rivers, large portions of its population will be vulnerable to highly destructive typhoons which frequently visit the country.⁹⁷

The Philippines ranks 19th out of 146 countries in terms of gender equality according to the 2022 Global Gender Gap Report.⁹⁸ Yet, women and girls in the Philippines continue

⁹³ ‘Bautista, J, and Andrade, JI, ‘Bookstores vandalized: Fingers pointed to NTF-Elcac’ Inquirer.net, 24 March 2022, available at <https://newsinfo.inquirer.net/1572750/bookstores-vandalized-fingers-point-to-ntf-elcac>; US Department of State (see note 82 above). Both accessed on 23 October 2024.

⁹⁴ Tiu Jr, MT, ‘The 1989 UP-DND Accord: Content and context’ College of Law, University of Philippines, available at <https://law.upd.edu.ph/faculty-portfolio/the-1989-up-dnd-accord-content-and-context/>, accessed on 23 October 2024.

⁹⁵ World Risk Index 2022. Available to download at <https://weltrisikobericht.de/worldriskreport/#downloads>, accessed on 23 October 2024.

⁹⁶ ‘Common country analysis for the 2024-2028 Sustainable Development Cooperation Framework’ UN in the Philippines, June 2023, available at https://philippines.un.org/sites/default/files/2023-07/UN_PHL_Common_Country_Analysis_FINAL%28June-2023%29.pdf, accessed on 23 October 2024, at 27.

⁹⁷ UN in the Philippines (see note 96 above), at 26.

⁹⁸ ‘2022 Philippine National Demographic and Health Survey (NDHS)’ Philippine Statistics Authority, June 2023, available at <https://dhsprogram.com/pubs/pdf/FR381/FR381.pdf>, accessed on 23 October 2024, at 277.

to experience discrimination, exclusion, marginalization, abuse, and violence in all spheres of life because of persistent gender-based discrimination and authoritarian structures.⁹⁹ This can be seen in the 2022 Philippine National Demographic and Health Survey (NDHS) which revealed that 13% of women aged 15-49 have experienced physical violence since the age of 15 and 4% have experienced sexual violence.¹⁰⁰ Women are also reluctant to seek help; thus, only 34% experiencing physical or sexual violence sought help to stop the violence.¹⁰¹

Part 3: Conclusion

The inauguration of Ferdinand Marcos Jr in 2022 marked the beginning of kinder rhetoric towards human rights with the government even expressing a commitment to affirming human rights and being more open to international human rights bodies. However, the war on drugs continues to claim lives and the new president has repeatedly stated that his government will not cooperate with the ICC investigation on Duterte's drug war.

Overall, the human rights situation in the Philippines is still poor due to unlawful killings, the threats to human rights defenders, its continued rejection of ICC investigations, and the threats to human life caused by climate change. However, the Supreme Court's declaration that red-tagging constitutes a threat to human life thereby enabling victims to seek protection through a writ of *amparo* is encouraging.

⁹⁹ UN in the Philippines (see note 96 above), at 10.

¹⁰⁰ NDHS (see note 98 above), at 297.

¹⁰¹ NDHS (see note 98 above), at 297.

SINGAPORE



SINGAPORE

Naeemullah Bin Azeem Hassan*

Part 1: Overview of Singapore

A. Country Background

Singapore Facts	
Geographical size	721.5 sq km
Population ¹	5.92 million
Ethnic breakdown	Main ethnic groups: Chinese (75.6%), Malay (15.1%), Indian (7.6%), Other (1.7%)
Official language(s)	English (working language) Malay (national language)
Literacy rate (aged 15 years and above) ³	97.6%
Life expectancy ⁴	Women: 85.2 years, Men: 80.7 years
GDP ⁵	SG\$673,300.3 million (per capita SG\$113,779)
Government	Republic with a unicameral Westminster parliamentary system of government. Although there are three branches of government—judiciary, legislature and executive—no clear demarcation exists between the latter two.
Political and social situation	Following the May 2024 election, Singapore’s new prime minister, Lawrence Wong, continues the significant control the People’s Action Party (PAP) has over politics and society. Issues include an ever-widening inequality gap, the government’s increasing use of defamation laws and capital punishment, and its continuing denial of the rights of speech, association, and assembly.

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¹ Data from 2023. ‘Population in brief 2023’ Strategy Group, Prime Minister’s Office, Department of Statistics Singapore, September 2023, available at <https://www.population.gov.sg/files/media-centre/publications/population-in-brief-2023.pdf>, accessed on 17 September 2024, at 6. The total population comprises both Singapore residents and non-residents.

² Data from 2023. Strategy Group (see note 1 above), at 20. This breakdown only refers to the citizen population.

³ Data from 2021. ‘Education, language spoken, and literacy’ Department of Statistics Singapore, available at <https://tablebuilder.singstat.gov.sg/table/TS/M850001>, accessed on 17 September 2024.

⁴ Data from 2023. ‘Death and life expectancy’ Department of Statistics Singapore, available at <https://www.singstat.gov.sg/find-data/search-by-theme/population/death-and-life-expectancy/latest-data>, accessed on 17 September 2024. Figures refer to the resident population (i.e. Singapore citizens and permanent residents).

⁵ Data from 2023. ‘National accounts’ Department of Statistics Singapore, available at <https://www.singstat.gov.sg/find-data/search-by-theme/economy/national-accounts/latest-data>, accessed on 17 September 2024.

Singapore is a nation and city-state situated on an island in maritime Southeast Asia. Comprised of a primary island, 63 subordinate islands and islets, and one remote islet, and known for its high population density, it has undertaken substantial land reclamation operations, leading to a notable 25% expansion of its total area.⁶ Despite lacking natural resources, in the decades after its independence in 1965, Singapore rapidly developed through international trade and economic globalization and now boasts one of the highest GDP per capita rates in the world. A high-income economy built on a business-friendly regulatory environment, it has also strongly invested in its infrastructure, education system, healthcare, and public services making it a top performer in the World Bank's Human Capital Index in 2020.⁷ In February 2021, it also launched the "Singapore Green Plan 2030" to advance its sustainable development agenda in order to reach the UN's 2030 Sustainable Development Agenda and Paris Agreement to achieve net zero emissions by 2050.⁸

Current social and political situation

Since 1959 when it won its first general election, PAP has maintained uninterrupted dominance over Singaporean politics with new prime minister, Lawrence Wong, also having close ties to former premier, Lee Hsien Loong. However, fresh challenges have arisen in the sixth decade of its rule. According to the Citizen's Agenda 2024, some Singaporeans are now questioning the party's social and economic vision in addition to the unfair political landscape encompassing a lack of transparency and accountability, but by far the most mentioned phrase was "cost of living" especially related to housing, although low wages, unfair employment and immigration practices favouring rich foreigners were also touched upon.⁹ Another survey highlighted mental health issues which are often linked to the high pressure inherent in Singapore's fast paced society and exacerbated by the rising cost of living.¹⁰ However, several upcoming measures may help to deal with these and other problems currently affecting society including new classifications in housing and education, re-employment support, a workplace fairness law, and changes in leave and tax relief to support families.¹¹

⁶ Lim, TS, 'Land from sand: Singapore's reclamation story' BiblioAsia, 4 April 2017, available at <https://biblioasia.nlb.gov.sg/vol-13/issue-1/apr-jun-2017/land-from-sand/>, accessed on 26 September 2024.

⁷ 'The Human Capital Index 2020 update: Human capital in the time of COVID-19' World Bank, 2021, available at <https://documents1.worldbank.org/curated/en/45690160011156873/pdf/The-Human-Capital-Index-2020-Update-Human-Capital-in-the-Time-of-COVID-19.pdf>, accessed on 28 September 2024.

⁸ 'The World Bank in Singapore: Overview' World Bank, 2024, available at <https://www.worldbank.org/en/country/singapore/overview>, accessed on 30 September 2024.

⁹ The Citizens' Agenda is a survey that creates space for people to "voice their concerns and increase their political engagement" that also takes place in Malaysia and Indonesia. Thum Ping Tjin, 'The 25 most important issues facing Singapore in 2024' New Naratif, 12 June 2024, available at <https://newnaratif.com/the-25-most-important-issues-facing-singapore-in-2024/>, accessed on 26 September 2024.

¹⁰ 'Top social issues that Singaporeans cared about in 2023' Milieu, 7 March 2024, available at <https://www.mili.eu/my/insights/top-social-issues-that-singaporeans-cared-about-in-2023>, accessed on 26 September 2024.

¹¹ Liew, I, and Yi, TH, 'What's ahead for Singapore in 2024' 6 January 2024, available at <https://www.straitstimes.com/singapore/what-s-ahead-for-singapore-in-2024>, accessed on 30 September 2024.

The effect of the COVID-19 pandemic on human rights and peace

Although not mentioned in the survey and no longer an issue in 2024, Singapore's adept management of the COVID-19 virus¹² garnered much acclaim in 2020, resulting in comparatively low infection rates and fatalities. In addition to financial contributions to vaccine alliances and donations to neighbouring countries, the city-state made significant efforts to tackle global vaccine inequality. Notwithstanding, concerns arose regarding its commitment to human rights, specifically the treatment of migrant workers. Although urged to commit to international human rights treaties and repeal oppressive laws, Singapore continues to resist reform. Such failures led to migrant workers being disproportionately impacted by the virus as a result of overcrowded and unsanitary living conditions, significantly impacting both their physical and mental well-being. Further, the differential treatment of migrant workers compared to other residents intensified tensions and contributed to their further marginalization.

Then as now, many migrant workers in 2020 resided in densely populated dormitories where rooms were shared by as many as 25 individuals and communal bathrooms were the norm.¹³ Together with virus-related movement restrictions, in 2020 they therefore posed heightened risks of COVID-19 transmission. Despite early success in containing the outbreak, a surge in cases in August 2020 (94.52% of which could be attributed to migrant worker infections) highlighted this situation leading to measures to alleviate overcrowding including segregation, safe entry scans, and designated work times.¹⁴ Nevertheless, the stringent regulations on activity and the constrained social interaction had a significant impact on the mental health of workers which eventually encouraged the government to establish a task force to provide mental care support in November 2020.¹⁵ Despite this, much work is yet to be done to ensure the welfare and rights of migrant workers in Singapore are fully protected.

It is crucial for Singapore to prioritize the protection of human rights by ratifying the relevant treaties and improve living and working conditions for migrant workers. Therefore, the international community, particularly UN members, must place diplomatic pressure on Singapore to uphold such standards. Considering the possibility

¹² Abdullah, WJ, and Kim, S, 'Singapore's responses to the COVID-19 outbreak: A critical assessment' *The American Review of Public Administration*, 2020, Vol 50, Nos 6-7, pp 770-776.

¹³ Ching, SJ, "Dogs have better homes than us": Migrant worker complains about "overcrowded" dormitory in Jurong' *Asia One*, 23 February 2023, available at <https://www.asiaone.com/singapore/dogs-have-better-homes-us-migrant-worker-shares-what-its-sleeping-overcrowded-jurong-west-dormitory>, accessed on 26 September 2024.

¹⁴ Paulo, DA, and Grosse, S, 'A year since COVID-19, dorm life leaves migrant workers still hoping for better' *Channel News Asia*, 21 February 2021, available at <https://www.channelnewsasia.com/cnainsider/year-since-covid-19-dormitory-life-leaves-migrant-workers-hoping-365741>, accessed on 26 September 2024. See also, Dade Smith, J, and Sun, M, 'COVID-19 in migrant workers: Lessons from Singapore' *Insight Plus*, 16 November 2020, available at <https://insightplus.mja.com.au/2020/45/covid-19-in-migrant-workers-lessons-from-singapore/>, accessed on 26 September 2024.

¹⁵ Ng, KG, 'New task force to tackle mental health issues among migrant workers' *Straits Times*, 6 November 2020, available at <https://www.straitstimes.com/singapore/new-task-force-to-tackle-mental-health-issues-among-migrant-workers>, accessed on 26 September 2024.

of future pandemics, it is crucial for Singapore and other nations to learn from these experiences and prioritize the well-being and rights of every individual.

B. International Human Rights Commitments and Obligations

Singapore’s stance on various global human rights instruments is deeply concerning and affects its standing in the international community. Table 1 below illustrates its negative position towards such treaties as the covenants on civil and political rights and on economic, social, and cultural rights raising vital questions about its commitment to upholding human rights on a global scale. Stemming from its desire to preserve harmony at all costs, the city-state’s stubborn refusal to ratify or sign most of the conventions and optional protocols including the ones dealing with torture, migrant workers (of which there are almost 1.5 million in Singapore), and the death penalty remains unchanging. Although the government accepted, in full or in part, 230 (70%) of the 324 recommendations it received from UN member states in its 2021 Universal Periodic Review, it refused to support numerous other recommendations arguing they were “predicated on unfounded assertions, inaccurate assumptions, or erroneous information” while also rejecting the universality of human rights by claiming some recommendations were “not appropriate” in the country’s “national context.”¹⁶ Similarly, despite maintaining it was already “fully or largely in compliance” with treaty objectives, many of its current laws (such as the Public Order Act, the Internal Security Act, the Criminal Law (Temporary Provisions) Act, and the Protection from Online Falsehoods and Manipulation Act) refute this claim.¹⁷

Table 1: Ratification Status of International Instruments – Singapore¹⁸

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		

¹⁶ ‘Government fails to accept key human rights recommendations during UN review’ International Federation for Human Rights, 29 September 2021, available at <https://www.fidh.org/en/region/asia/singapore/government-fails-to-accept-key-human-rights-recommendations-during-un>, accessed on 30 September 2024.

¹⁷ FIDH (see note 16 above).

¹⁸ ‘Ratification status for Singapore’ United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=157&Lang=EN, accessed on 29 December 2023.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		5 Oct 1995 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	19 Oct 2015	27 Nov 2017
International Covenant on Economic, Social, and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		5 Oct 1995 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	7 Sep 2000	11 Dec 2008
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography		
Convention on the Rights of Persons with Disabilities (CRPD)	12 Nov 2012	18 Jul 2013

Singapore has been plagued by a myriad of human rights issues. For example, the government has a reputation for apprehending persons without adhering to standard legal procedures through a range of statutes.¹⁹ It has also faced significant scrutiny for its use of strict criminal laws and civil defamation suits to specifically target and prosecute

¹⁹ For example, the Internal Security Act 1960, the Criminal Law (Temporary Provisions) Act 1955, the Penal Code 1871, the Criminal Procedure Code 2010, the Prevention of Corruption Act 1960, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992.

individuals voicing dissent.²⁰ As such, while severely restricting the fundamental rights of assembly and expression, activists, bloggers, and journalists are further singled out for persecution. In addition, it has been heavily criticized on the global stage for its controversial choice to reinstate the practice of carrying out executions despite significant opposition. Although a few encouraging advancements have been made, the absence of legal safeguards against discrimination based on sexual orientation or gender identity remains a glaring issue, even after the repeal of an outdated law that criminalized same-sex relationships. Moreover, incidences of unauthorized surveillance on private electronic or telephone communications without a warrant have been credibly recorded.

C. National Laws Affecting Human Rights

The Constitution of Singapore

Not only does Singapore stand out as one of the most successful ASEAN member states in terms of GDP and life expectancy,²¹ its constitution also comprehensively covers a wide range of crucial fundamental rights and freedoms. Part IV, entitled “Fundamental Liberties” outlines several pertaining to human rights including the rights to liberty of the person, free speech, assembly, and association. While the right to life (Art 9(1)) holds immense significance as a non-negotiable right, it is simultaneously limited by the condition, “in accordance with law.” Thus, the restriction of personal freedom must align with legal standards (such as the imposition of imprisonment for offences committed against society) as is customary in all nations. However, Singapore’s high number of executions indicates a disregard for the fundamental right to life. As of November 2023, 16 were executed including Saridewi Djamani, the first woman to be put to death in the country in almost two decades.²²

The rights to freedom of speech, assembly, and association are prominently enshrined in key human rights documents including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights or ICCPR. Although Singapore has not ratified the latter, it is a signatory to the former which implies a certain level of commitment to upholding fundamental freedoms. Article 14

²⁰ For example, in 2014, Prime Minister Lee Hsien Loong sued blogger Roy Ngerng for defamation over a blog post criticizing the government’s handling of the Central Provident Fund (CPF). The post included charts comparing the CPF’s investments with those of a church prosecuted for financial fraud. Although Ngerng argued that his criticism was focused on transparency, the court awarded Lee damages totaling S\$150,000. Ngerng, who lost his job as a result of the suit, will be paying off the damages for the next 17 years. See: ‘Kill the chickens to scare the monkeys’ Human Rights Watch, 12 December 2017, available at <https://www.hrw.org/report/2017/12/13/kill-chicken-scare-monkeys/suppression-free-expression-and-assembly-singapore>, accessed on 25 September 2024.

²¹ ‘Southeast Asia quarterly economic review: Holding up strongly’ McKinsey, 3 September 2024, available at <https://www.mckinsey.com/featured-insights/future-of-asia/southeast-asia-quarterly-economic-review>, accessed on 25 September 2024.

²² ‘Singapore: Decade-high surge in executions’ Human Rights Watch, 11 January 2024, available at <https://www.hrw.org/news/2024/01/11/singapore-decade-high-surge-executions>, accessed on 19 September 2024.

of its constitution²³ guarantees citizens the fundamental right to freedom of speech and expression (Art 14(a)), the right to assemble peaceably without arms (Art 14(b)), and to form associations (Art 14(c)). Nevertheless, Art 14(2) gives parliament authority to enact legislation placing limitations on such rights to safeguard the security of Singapore or any of its regions, foster positive relations with other nations, maintain public order and morality, safeguard parliamentary privilege, or prevent contempt of court, defamation, or incitement to commit an offence.

Part 2: Outstanding Human Rights Issues

As previously mentioned, Singapore underwent a remarkable transformation, evolving from a humble port city into a thriving global hub through meticulous planning and the cultivation of foreign investment. Under the leadership of Prime Minister Lee Hsien Loong, the government indicated confidence in its ability to make decisions in the best interests of the people but displayed limited tolerance for political debate or dissent. Accordingly, it has put in place stringent laws and regulations, supported by severe penalties including fines, imprisonment, and even caning for grave offences. For example, the economic system is characterized by a form of capitalism where private ownership and free enterprise are promoted albeit with significant governmental control over most business activity. This level of control extends to its education system which conducts regular assessments and categorizes students into different schools based on their academic achievements. Similarly, the government's polarizing population control policies, first to encourage parents to have no more than two children,²⁴ and then to incentivize having more is indicative of its willingness to influence the reproductive

²³ 14. Freedom of speech, assembly and association

- (1) Subject to clauses (2) and (3) —
 - (a) every citizen of Singapore has the right to freedom of speech and expression;
 - (b) all citizens of Singapore have the right to assemble peaceably and without arms; and
 - (c) all citizens of Singapore have the right to form associations.
- (2) Parliament may by law impose —
 - (a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;
 - (b) on the right conferred by clause (1)(b), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order; and
 - (c) on the right conferred by clause (1)(c), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, public order or morality.
- (3) Restrictions on the right to form associations conferred by clause (1)(c) may also be imposed by any law relating to labour or education.

²⁴ 'Two child policy' National Library Board, available at <https://www.nlb.gov.sg/main/article-detail?cmsuuid=0613c852-aed1-4b29-81fb-faf7de447092>, accessed on 26 September 2024.

behaviour of its population.²⁵ Such control extends to its widespread use of censorship and the requirement of police permits for political gatherings under the Public Order (Amendment) Act 2017.²⁶ Thus, although Singapore offers its citizens a high standard of living and a clean and efficient environment in which to enjoy it, some individual freedoms and human rights have been compromised in the process.

A. Freedom of Assembly and Association

Freedom of assembly and expression have particularly been affected by the Foreign Interference (Counter-Measures) Act, 2021 and the Public Order Act, 2017 which bestow extensive authority upon the home minister to remove or disable online content, ban certain applications, and compel internet and social media companies to disclose information. For instance, under the former, the government has the authority to require “politically significant persons” to follow stringent rules as regards their funding and interactions with foreigners – measures that could be targeted at activists, journalists, and academics as well as politicians. In 2024, Singaporean businessman, Chan Man Ping Philip, became the first individual so designated because his activities were deemed “towards a political end” although the Registrar of Foreign and Political Disclosures declined to elaborate further.²⁷ Likewise, the Public Order Act mandates that police permits must be obtained for any assembly considered “cause-related” and failure to do so can lead to potential criminal charges. These limitations have been employed to specifically target individuals who voice dissent and media outlets expressing criticism towards the government, resulting in severe consequences such as fines, imprisonment, and defamation charges. For example, in June 2024 alone, 40 students and alumni of various higher education institutions were charged for gathering to deliver letters to the Ministry of Home Affairs to oppose amendments to the proposed Maintenance of Racial Harmony Bill, and three activists were also charged for allegedly organizing a pro-Palestinian procession without a permit.²⁸

B. Death Penalty and Caning

The use of the death penalty in Singapore’s criminal justice system has been a subject of intense scrutiny and debate, particularly in cases involving drug offences. It is crucial

²⁵ Yap, MT, ‘Fertility and population policy: The Singapore experience’ *Journal of Population and Social Security (Population)*, 2003, pp 643-658. Available at https://www.ipss.go.jp/webj-ad/webjournal.files/population/2003_6/24.yap.pdf, accessed on 26 September 2024.

²⁶ ‘Cornered: Repression of the right to freedom of peaceful assembly in Singapore’ FIDH, 2022, available at <https://www.fidh.org/IMG/pdf/singapore786ang.pdf>, accessed on 27 September 2024.

²⁷ Chan, R, ‘Singaporean businessman designated as “politically significant person” under foreign interference law’ Channel News Asia, 26 February 2024, available at <https://www.channelnewsasia.com/singapore/philip-chan-businessman-politically-significant-person-fica-mha-4149331>, accessed on 27 September 2024.

²⁸ ‘Singapore: New prime minister continues policy of silencing dissent by criminalising protesters and harassing critics’ Civicus, 2024, available at <https://monitor.civicus.org/explore/singapore-new-prime-minister-continues-policy-of-silencing-dissent-by-criminalising-protesters-and-harassing-critics/>, accessed on 27 September 2024.

to address the lack of transparency surrounding its implementation of executions,²⁹ especially when judges have the power to sentence those convicted of non-intentional murder and drug trafficking to life in prison and caning³⁰ thereby raising concern about the fairness and accountability of the judicial system. Following a two-year break, Singapore's decision to resume executions in 2022 sparked widespread international condemnation. All 16 executions in 2022-2023 related to low to mid-level drug offences including Saridewi Djamani (for possessing 30g of heroine), the first woman to be executed in 20 years.³¹ Moreover, lawyers representing inmates on death row have run into significant obstacles including punitive cost orders for filing "frivolous, vexatious, or an abuse of process" late-stage applications on behalf of their death-row clients encouraging 24 death row inmates to file an ultimately unsuccessful lawsuit against the Attorney General in 2022 for restricting access to their lawyers.³² Furthermore, it is worth noting that the practice of corporal punishment, specifically caning for medically fit males aged 16-50, is prevalent in Singapore despite being deemed a form of torture according to international law and can be used even for relatively minor offences such as vandalism, overstaying a visa, or entering Singapore illegally.³³ For example, in April 2024, an Indonesian man was caned for illegally swimming to Singapore from a small boat.³⁴

C. LGBTQI+ Rights

Notable advancements have been made in Singapore regarding the criminalization of individuals based on their sexual orientation, gender identity or expression, or sex characteristics.³⁵ Singapore's parliament recently took a significant step forward by voting to repeal s.377A of the Penal Code (1871) criminalizing sexual relations between men. This decision marks a significant milestone in the city-state's progress

²⁹ For example, the International Commission of Jurists (ICJ) noted that inmates and their families are often given very tight notice of execution (five days to a week) impacting their ability to file last minute appeals. In addition, public information on such cases is limited: See 'Singapore: Impending executions must be stopped' ICJ, 23 September 2020, available at <https://www.icj.org/wp-content/uploads/2020/09/Singapore-Impending-Executions-Press-Release-2020-ENG.pdf>, accessed on 19 September 2024.

³⁰ 'Cooperate or die: Singapore's flawed reforms to the mandatory death penalty' Amnesty International, 2017, available at https://www.amnesty.be/IMG/pdf/singapore_report_web.pdf, accessed on 19 September 2024.

³¹ 'Singapore announces plans to execute more death-sentenced prisoners convicted of non-violent drug offenses' Death Penalty Information Center, 14 August 2023, available at <https://deathpenaltyinfo.org/singapore-announces-plans-to-execute-more-death-sentenced-prisoners-convicted-of-non-violent-drug-offenses>, accessed on 19 September 2024.

³² 'Singapore: IBAHRI condemns rise in executions and calls for halt in enforcement' International Bar Association, 11 August 2022, available at <https://www.ibanet.org/Singapore-IBAHRI-condemns-rise-in-executions-and-calls-for-halt-in-enforcement>, accessed on 19 September 2024; See also, Tang, L, '24 death-row inmates' lawsuit against AG: Apex court rejects appeal and last-ditch stay of execution for prisoner' Today Online, 5 August 2022, available at <https://www.todayonline.com/singapore/24-death-row-inmates-lawsuit-apex-court-rejects-stay-execution-appeal-1961666>, accessed on 19 September 2024.

³³ 'Singapore' Freedom House, 2022, available at <https://freedomhouse.org/country/singapore/freedom-world/2022>, accessed on 19 September 2024.

³⁴ Loh, M, 'A man named Brick is being caned in Singapore for illegally sneaking into the country on a small boat: Local report' Business Insider, 9 April 2024, available at <https://www.businessinsider.com/man-named-brick-indonesia-caning-singapore-for-sneaking-boat-2024-4>, accessed on 27 September 2024.

³⁵ 'LGBT rights in Singapore' Equaldex, available at <https://www.equaldex.com/region/singapore>, accessed on 19 September 2024.

towards recognizing and respecting the rights and dignity of individuals regardless of their sexual orientation or gender identity. However, on the same day, it also passed a constitutional amendment to effectively prevent any legal challenges to the legalization of same-sex marriage.³⁶ Similarly, same-sex couples are excluded from opportunities to adopt children under s.4 of the Adoption of Children Act, 2022. Thus, the absence of legal safeguards against discrimination based on sexual orientation or gender identity remains a pressing concern as it undermines the principles of equality and human rights, perpetuates harmful stereotypes and prejudices, and exposes LGBTQI+ couples and their families to potential discrimination and exclusion from specific government services and benefits such as government housing. It is imperative that such oppressive practices are challenged and dismantled, and that Singapore strive towards a society that embraces diversity and inclusivity for all. However, the administration's stance on same-sex family units is a clear indication of its support for such discriminatory policies.

While the government's choice to revoke this law was driven by shifting societal perspectives and the potential violation of the constitutionality of the provision, it is worth mentioning that there have been no instances of violence against LGBTQI+ individuals. However, discrimination within Singapore's military is undeniable because while the ban on gays serving was lifted in 2000, all enlistees are asked about their sexual orientation and classified under the category of "302" should they identify themselves as gay or transgender. Soldiers labelled "302" are given non-commissioned positions and are disallowed from staying overnight³⁷ which can lead to threats, harassment, and social exclusion. Furthermore, the persistence of "conversion therapy" remains widespread despite the Singapore Psychological Society's denouncement of it in 2021 as ineffective and harmful.³⁸

When it comes to LGBTQI+ matters, freedom of expression, association, and peaceful assembly in Singapore remains limited. Concerns have also arisen regarding media censorship and the underrepresentation of the LGBTQI+ community. In addition, despite the repeal of s.377A, the Ministry of Communications and Information announced it would continue to restrict and classify media with LGBTQI+ themes in August 2022. Thus, Disney/Pixar's animated film, *Lightyear* was awarded a rating that limited audiences to 16 and

³⁶ 'Singapore lifts gay sex ban but blocks path toward marriage equality' The Guardian, 30 November 2022, available at <https://www.theguardian.com/world/2022/nov/30/singapore-lifts-gay-sex-ban-but-blocks-path-toward-marriage-equality>, accessed on 19 September 2024. Of the repeal, Prime Minister Lee Hsien Loong said, "Most Singaporeans do not want the repeal to trigger a drastic shift in our societal norms across the board, including how we define marriage, what we teach children in schools, what's shown on free-to-air television and in cinemas, or what is generally acceptable conduct in public ... If one side pushes too hard, the other side will push back even harder." See: Weiss, ML, 'A step forward for LGBTQ rights in Singapore, but a long journey remains' Australian Institute for International Affairs, 2 September 2022, available at <https://www.internationalaffairs.org.au/australianoutlook/a-step-forward-for-lgbtq-rights-in-singapore-but-a-long-journey-remains/>, accessed on 27 September 2024.

³⁷ Lee, J, 'How discrimination kills gay men in Singapore' New Naratif, 19 November 2017, available at <https://newnaratif.com/how-discrimination-kills-gay-men-in-singapore/>, accessed on 27 September 2024.

³⁸ '2022 country reports on human rights practices: Singapore' US Department of State, 2022, available at https://www.state.gov/wp-content/uploads/2023/03/415610_SINGAPORE-2022-HUMAN-RIGHTS-REPORT.pdf, accessed on 27 September 2024.

above due to a scene depicting a kiss between two female characters.³⁹ Ultimately, although the repeal of s.377A and the discouragement of “conversion therapy” is commendable, it is imperative for the government and society as a whole to address pressing concerns affecting the LGBTQI+ community such as housing, adoption, education, and mental health.

D. Migrant Worker Rights

The plight of migrant workers in Singapore is of grave concern, as they are subjected to various labour rights abuses and exploitation.⁴⁰ In addition, they are frequently housed in densely populated dormitories which meant that during the COVID-19 pandemic in 2020 when the number of cases in Singapore rose significantly to over 56,500, 94.52% were attributed to worker infections living in such dormitories.⁴¹ Indeed, the government even adopted an official strategy of “two separate infections,” one affecting this group and the other concerning infections circulating “in our community.”⁴² Other abuses include being burdened with exorbitant debts owed to recruitment agents, enduring non-payment of wages, restrictions on their freedom of movement, having their passports confiscated, and even violence. One such case led to the incarceration and fining of a married couple in 2019 for the abuse of their maid, Moe Moe Than, who was caned, forced to perform her chores in her underwear, force-fed after complaining of not being fed properly, then made to eat her own vomit after throwing up.⁴³ As can be seen, foreign domestic workers in particular seem highly susceptible to acts of violence. According to a 2023 report by the Humanitarian Organisation for Migration Economics (HOME), due to their precarious position, Singaporean employers often use the justice system to threaten and control domestic workers with more than 80% of police reports not leading to charges.⁴⁴ The current system of work permits for migrant workers is deeply flawed as accusations of even petty theft requiring little proof can bar them from future employment inflicting severe financial strain on workers and their families.⁴⁵ Likewise, tying work permits to specific employers means they are effectively trapped in a cycle of intimidation and exploitation.

³⁹ Shackleton, L, ‘Singapore to keep LGBTQ content restrictions although gay sex ban has been repealed’ *Deadline*, 23 August 2022, available at <https://deadline.com/2022/08/singapore-gay-sex-law-377a-repeal-1235098022/>, accessed on 27 September 2024.

⁴⁰ Rani, P, ‘Migrant workers’ rights from a human rights perspective’ *Asian Review*, 2021, Vol 34, No 2, pp 63-85. Available at <https://so01.tci-thaijo.org/index.php/arv/article/view/248750/168977>, accessed on 20 September 2024.

⁴¹ Sun, M, and Smith, JD, ‘COVID-19 in migrant workers: Lessons from Singapore’ *Insight Plus*, 16 November 2020, available at <https://insightplus.mja.com.au/2020/45/covid-19-in-migrant-workers-lessons-from-singapore/>, accessed on 20 September 2024.

⁴² Han, K, ‘Singapore is trying to forget migrant workers are people’ *Foreign Policy*, 6 May 2020, available at <https://foreignpolicy.com/2020/05/06/singapore-coronavirus-pandemic-migrant-workers/>, accessed on 22 September 2024.

⁴³ Alkhatib, S, ‘Couple sentenced to jail for abusing maid, who was caned and forced to eat own vomit’ *The Straits Times*, 18 March 2019, available at <https://www.straitstimes.com/singapore/courts-crime/couple-sentenced-to-jail-for-abusing-maid-who-was-caned-and-forced-to-eat-own-vomit>, accessed on 20 September 2024.

⁴⁴ Ming, TE, ‘Singapore employers using police to threaten domestic workers, report says’ *Aljazeera*, 21 August 2023, available at <https://www.aljazeera.com/economy/2023/8/21/singapore-employers-using-police-to-control-domestic-workers-report-says>, accessed on 20 September 2024.

⁴⁵ ‘Women migrant workers in the laws and policies of ASEAN member states’ *ASEAN*, 2022, available at https://asean.org/wp-content/uploads/2023/02/ASEAN_REPORT_Final.pdf, accessed on 20 September 2024.

E. Freedom of Speech

While the Constitution of Singapore allows for freedom of expression under Art 14(1) (a), Art 14(2) also permits restrictions in the interests of national security, public order, and morality. Specifically, the government imposes strict limitations on public discourse it deems potentially detrimental to social or religious cohesion, or which fails to protect the interests of the nation or its citizens. Moreover, in 2019, the government went further and enacted amendments to the Maintenance of Religious Harmony Act (MRHA) to restrict speech detrimental to “religious harmony.”⁴⁶ In 2022, this led to local film, *#LookAtMe*, being banned due to its potential to cause “enmity and social division” by unfairly attacking a religious figure (in this case, a pastor who was suggestive of a real person).⁴⁷ Similarly, politician, Charles Yeo, was charged over social media posts in 2022 that were deemed offensive to Christians and allegedly harassed a law enforcement officer.⁴⁸ Also in 2022, controversial Indian film, *The Kashmir Files*, was banned for its provocative and one-sided portrayal of Muslims, citing concerns over its “potential to cause enmity between different communities.”⁴⁹

In addition, the 2018 Public Order and Safety (Special Powers) Act provides for special police powers in case of a significant incident or threat, enabling the prohibition of specific actions that may jeopardize law enforcement operations. Displaying foreign national emblems has also been strictly prohibited since 1949 under the Foreign National Emblems (Control of Display) Act although rules were eased on the use of the Singaporean flag in August 2023 following passing of the National Symbols Act and Regulations and a stop order mechanism introduced for disrespectful use of the flag, national anthem, or national pledge.⁵⁰ However, public speeches are allowed without a permit under the Public Order (Unrestricted Area – Speakers’ Corner) Order 2023 but there are specific criteria that must be met and events must be pre-registered. Notably, in 2023, the police and the National Parks Board stated processions and assemblies in relation to the Israel-Gaza conflict would

⁴⁶ ‘Singapore 2022 international religious freedom report’ US Department of State, 2022, available at <https://www.state.gov/reports/2022-report-on-international-religious-freedom/singapore/>, accessed on 30 September 2024.

⁴⁷ ‘IMDA refuses classification for local film #LookAtMe for denigrating religious community’ Today Online, 17 October 2022, available at <https://www.todayonline.com/singapore/imda-refuses-lookatme-film-classification-2021791>, accessed on 23 September 2024.

⁴⁸ He called Christians who view homosexuality as contrary to their faith “radical and dogmatic” and “fake Christians.” The post referring to the police officer (who he named) condemned him as “a pathetic coward and collaborator with an authoritarian regime” who “should be tortured before execution.” See: Lam, L, ‘Charles Yeo charged with harassing police, wounding religious feelings of Christians’ Channel News Asia, 19 January 2022, available at <https://www.channelnewsasia.com/singapore/charles-yeo-charged-harassing-police-wounding-religious-feelings-christians-2444661>, accessed on 24 September 2024.

⁴⁹ ‘Singapore 2022 international religious freedom report’ US Department of State, 2022, available at <https://www.state.gov/reports/2022-report-on-international-religious-freedom/singapore/>, accessed on 30 September 2024.

⁵⁰ Ganesan, N, ‘Five key changes to regulations on the use of the Singapore flag’ Channel News Asia, 31 July 2023, available at <https://www.channelnewsasia.com/singapore/national-flag-symbols-changes-attire-stop-order-penalty-mccy-3666246>, accessed on 24 September 2024.

breach the order and would therefore require a police permit.⁵¹ Permits are also necessary for indoor public gatherings involving discussions on race or religion, whereas private events are exempt from such regulations.

Moreover, the government continues to target media free speech, especially internet outlets, through censorship and content limitation. It thus has the power to regulate publications promoting violence, advocating for lawlessness, or endangering national interests, national security, or public order. Furthermore, it exercises significant influence over print and electronic media through ownership, financial control, and regulatory safeguards. Most domestic broadcast television channels and radio stations are operated by government-linked companies, leaving only a few independent media outlets. As pointed out by Reporters Without Borders, “Harassment by the authorities has steadily silenced the few independent news websites, such as The Online Citizen which was forced to close at the end of 2021.”⁵² Defamation laws further serve to discourage public and journalistic criticism whilst also exerting pressure on opposition politicians as evidenced by the prosecution of Terry Xu of The Online Citizen in 2022 for publishing a letter alleging corruption among government ministers.⁵³ As a result, Singapore is ranked 126 out of 180 countries on the World Press Freedom Index in 2024.⁵⁴

Internet freedom is also limited as the government monitors online activities and has the authority to block websites seen as a threat to public security or social harmony. Accordingly, it only ranks as “Partly Free,” scoring 54 out of 100 in Freedom in the World 2024.⁵⁵ For example, the Protection from Online Falsehoods and Manipulation Act (POFMA), 2019 enforces correction orders and eliminates online information considered to be false or misleading. On top of this, under the Online News Licensing Scheme, news sites are obligated to acquire a licence and promptly remove any content deemed prohibited within a strict 24-hour timeframe. Additionally, smaller news sites focusing on political topics are required to comply with the Broadcasting Act and provide information about their sources of income. Since 2021, the Foreign Interference (Countermeasures) Act empowers the government to enforce the disclosure of information, removal of content, and blocking of user accounts by internet and social media service providers. It can therefore be seen that the government continues to exercise stringent control over the media, enforcing many limitations on freedom of expression.

⁵¹ ‘Advisory on the organisation of events and activities in relation to the Israel-Hamas conflict, and foreign participation, at the Speakers’ Corner’ Singapore Police Force, 30 April 2024, available at https://www.police.gov.sg/media-room/news/20240430_advisory_on_the_events_and_activities_to_the_israel_hamas_and_foreign_at_the_speakers#:~:text=The%20conduct%20of%20any%20such,need%20for%20a%20Police%20permit, accessed on 24 September 2024.

⁵² ‘Singapore’ Reporters Without Borders, available at <https://rsf.org/en/country/singapore>, accessed on 25 September 2024.

⁵³ ‘Freedom in the World 2024: Singapore’ Freedom House, available at <https://freedomhouse.org/country/singapore/freedom-world/2024>, accessed on 25 September 2024.

⁵⁴ Reporters Without Borders (see note 52 above)

⁵⁵ Freedom House (see note 53 above).

F. Academic Freedom

Singaporean universities have garnered impressive global rankings, thanks to the government's substantial investment in higher education. However, public institutions of higher education and political research operate within a framework that only allows for limited autonomy, potentially subjecting them to government influence although academics technically have freedom to express their thoughts, publish their work, and participate in intellectual discussions on various social and political matters. Nevertheless, restrictions on academic freedom to potentially question established political norms do impede research, teaching, and public engagement. Consequently, academics often self-censor due to the potential legal and career repercussions that can arise from expressing critical viewpoints. As a result, publications authored by local academics and research institutions tend to closely align with government perspectives.⁵⁶

According to a survey conducted among Singapore academics in 2021, 77.5% encountered at least moderate interference from non-academic entities in their decision-making processes.⁵⁷ Additionally, 19.3% of respondents in some disciplines reported consistent instances of censorship or self-censorship.⁵⁸ Nevertheless, the majority of scholars maintained they possessed autonomy to pursue their research and teach with only 15.7% of respondents saying they did not feel free to choose their research area and broad agenda.⁵⁹ Significantly, Singapore's position on the Academic Freedom Index places it in closer proximity to Vietnam, a communist country, than to the more liberal nations of Taiwan, South Korea, or Japan.⁶⁰ Furthermore, significant challenges were encountered by those conducting politically sensitive research and teaching (24% vs 9.1%),⁶¹ and several respondents mentioned a complex system of political vetting for employment and career advancement⁶². Moreover, limitations on public discourse further hinder intellectual exploration and academic freedom. The potential closure of Yale-NUS College, renowned for its vibrant student activism, could potentially be driven by a motive to isolate universities from political influences.⁶³

Notably, with its focus on safeguarding the government rather than prioritizing students, academic freedom in Singapore diverges from that of Western campuses. The government's approach has been to redirect focus from democratic politics towards economic development, leading to a culture of conformity, self-censorship, and co-optation. As such,

⁵⁶ 'Restrictions on academic freedom and cultural events' in 'Singapore 2022 human rights report' US Department of State, 2022, available at https://www.state.gov/wp-content/uploads/2023/03/415610_SINGAPORE-2022-HUMAN-RIGHTS-REPORT.pdf, accessed on 25 September 2024.

⁵⁷ 'Academic freedom in Singapore: Survey report' Academia SG, 2021, available at <https://www.academia.sg/wp-content/uploads/2021/08/Academic-Freedom-Survey-Aug-2021.pdf>, accessed on 25 September 2024, at 13.

⁵⁸ Academia SG (see note 57 above), at 12.

⁵⁹ Academia SG (see note 57 above), at 15.

⁶⁰ 'Academic freedom' V-Dem, available at <https://www.v-dem.net/our-work/research-programs/academic-freedom/>, accessed on 25 September 2024.

⁶¹ Academia SG (see note 57 above), at 15.

⁶² Academia SG (see note 57 above), at 28.

⁶³ 'Money woes or curbing dissent? Singapore's academic community bemoans Yale-NUS college closure' South China Morning Post, 5 September 2021, available at <https://www.scmp.com/week-asia/politics/article/3147619/money-woes-or-curbing-dissent-singapores-academic-community>, accessed on 25 September 2024.

the system has become deeply ingrained with Singapore's universities emerging as global leaders in faculty recruitment, student admissions, and research endeavours. Nevertheless, they have yet to endorse the Magna Charta Universitatum, a document highlighting that "Intellectual and moral autonomy is the hallmark of any university and a precondition for the fulfilment of its responsibilities to society."⁶⁴ Instead, university leaders place a strong emphasis on marketization and rankings, often at the expense of academic freedom and political control. The emphasis on commodification is in line with the neoliberal ethos and adds to the limitations that universities encounter. Despite the impressive rankings of its universities, there is a downside to consider. The system's incentives and disincentives have led to a decline in public-facing scholarship and a weakening of the humanities and social sciences. In other words, the sustainability of the system does not necessarily align with its social optimization. While Singapore's universities could enhance their scholarship production to effectively tackle crucial societal issues, the restrictions placed on academic freedom greatly impede their ability to make meaningful contributions to the intellectual landscape of the nation.

Such restrictions can be seen in the case of Sol Iglesias who was disinvited from a conference at the National University of Singapore (NUS) in 2023 without any official explanation although she understood it was because her spouse (Dr Thum Ping Tjin), who is a historian and democracy activist, had been previously "viciously" attacked by the Singaporean government. Thus, by being linked to her husband, she felt her academic freedom had been violated by NUS. She also highlighted other instances where the NUS had failed to respect academic freedom such as when the university president warned against criticizing the government in 2023 and when speakers (with a history of critical commentary) on a 2020 webinar were replaced. As such, she called for NUS faculty and staff to push back against these infringements on academic freedom and not to participate in political repression.⁶⁵

G. Women's Rights and Gender-Based Violence

Singapore has installed a comprehensive framework of laws⁶⁶ and measures to tackle the pressing concerns surrounding women's rights and the scourge of gender-based violence. Acts of rape and domestic violence are regarded as criminal offences, carrying significant consequences and the potential for corporal punishment. Accordingly, there is no such thing as marital immunity for rape, and the definition of rape applies to all genders. Moreover, offences committed by partners in close or intimate relationships are subject to more severe penalties under the law. Therefore, domestic violence is considered a serious offence, with consequences that can range from warnings and fines to imprisonment. Further, individuals who have been victimized have the ability to seek legal measures in order to safeguard themselves and limit the perpetrator's entry into their residence. The

⁶⁴ 'Magna Charta Universitatum 2020' Observatory, available at <https://www.magna-charta.org/magna-charta-universitatum/mcu2020>, accessed on 25 September 2024.

⁶⁵ Iglesias, S, 'On academic freedom and Singapore' Medium, 11 November 2023, available at <https://medium.com/@soliglesias/on-academic-freedom-and-singapore-41447ed200bd>, accessed on 25 September 2024.

⁶⁶ 'Sixth periodic report submitted by Singapore under Article 18 of the Convention, due in 2021 (CEDAW/C/SGP/6)' United Nations, 29 December 2021, available at <https://www.msf.gov.sg/docs/default-source/programmes-document/singapore-sixth-cedaw-periodic-report.pdf>, accessed on 25 September 2024.

authorities' commitment to upholding this law can be seen through the strict punishment imposed on a man who repeatedly raped a domestic worker in 2022. Sentenced to 24 years' imprisonment and caning, this serves as a clear example of the government's effective enforcement of these laws.⁶⁷

Furthermore, in 2023, Singapore took several steps to prioritize the safety and welfare of individuals experiencing sexual crimes and child abuse and implemented several measures to ensure the safety and well-being of survivors.⁶⁸ These included the issuance of identity protection orders, the option for video testimonies, closed-door hearings, and limitations on probing into a survivor's sexual history. Advocacy campaigns have effectively contributed to an increase in reported incidents of gender-based violence, with voluntary welfare organizations playing a vital role in providing support to survivors.

Singapore has also implemented legislation to address and penalize acts of sexual harassment, cyberbullying, and stalking, emphasizing the importance of upholding the law and ensuring the safety of individuals.⁶⁹ Recent amendments (from 1 January 2020) to the Penal Code have also led to increased penalties for offences involving insults to the modesty of women and voyeurism.⁷⁰ In addition, there have been concerted efforts to encourage the reporting of incidents of molestation and to tackle the issue of sexual harassment in the workplace.

In Singapore, there is a strong emphasis on upholding reproductive rights, ensuring that survivors of sexual violence have access to comprehensive sexual and reproductive health services. Access to contraceptives and sexual and reproductive health services is easily available with financial assistance provided to eligible couples. However, although women are legally granted equal rights as men in various aspects, workplace discrimination continues to be a persistent issue. Accordingly, in 2021, the government approved a white paper on women's development detailing action plans aimed at promoting equal opportunities, providing support for caregivers, and addressing violence to foster a shift in societal attitudes.⁷¹ Various measures have been put into place, such as creating a national helpline, expanding caregiver grants, and enforcing stricter penalties for sexual offences. In general, Singapore is making concerted efforts to tackle gender-based violence and advance gender equality. However, certain areas still require more attention and improvement.

⁶⁷ Lum, S, '24 years' jail for man who repeatedly raped maid while his wife, kids were not at home' *Straits Times*, 16 November 2022, available at <https://www.straitstimes.com/singapore/courts-crime/24-years-jail-for-man-who-repeatedly-raped-maid-while-his-wife-kids-were-not-at-home>, accessed on 25 September 2024.

⁶⁸ Iau, J, 'Police to launch priority queues for those reporting sexual crimes at neighbourhood centres' *Straits Times*, 14 April 2023, available at <https://www.straitstimes.com/singapore/police-to-launch-priority-queues-for-those-reporting-sexual-crimes-at-neighbourhood-centres>, accessed on 25 September 2024.

⁶⁹ 'Singapore parliament approves anti-harassment law to target cyberbullies' *Hospitality*, 31 October 2023, available at <https://www.hospitality.com/crawsec/read-article/singapore-parliament-approves-anti-harassment-law-to-target-cyberbullies-9881.html>, accessed on 25 September 2024.

⁷⁰ Penal Code, s.377BB.

⁷¹ 'White Paper on Singapore Women's Development' 2021, available at <https://www.scwo.org.sg/wp-content/uploads/2022/03/White-Paper-on-Singapore-Womens-Development.pdf>, accessed on 25 September 2024.

H. The Environment, Climate Change, and Climate Rights

Under the leadership of PAP, the government has played a crucial role in the city-state's remarkable transformation from a post-colonial entrepot to a fully developed nation with a thriving hi-tech knowledge economy. Classified as a “soft authoritarian state” or “development state,” geographers and social scientists have raised concern about the government's responsibility for shaping political, social, economic, and cultural outcomes, contending that it plays a significant role as a “major player” in shaping subjects through its policies and actions. The political landscape in Singapore is characterized by a dynamic interplay of strategies, discourses, and policies, which contribute to the actualization of power.

Singapore's spatial and environmental dynamics have also played a significant role. The government's ambitious spatial reorganization project sought to bring about a comprehensive transformation of housing and the streets, leading to a significant shift in the living arrangements of the population, with a staggering 90% now residing in public high-rises. A significant portion of the land was deforested to make way for development, resulting in less than 5% of the land remaining covered in vegetation. Nevertheless, the government has implemented comprehensive environmental policies aimed at establishing a pristine and eco-friendly city, exemplified by the planting of over 5 million trees and shrubs. The government's commitment to “sustainable development” prioritizes the implementation of gradual policy mechanisms to safeguard growth.⁷²

In recent years, there has been a surge of public interest in the preservation of Singapore's remaining green spaces with a corresponding rise in the establishment of environmental organizations and notable incidents of public outcry, such as the Chek Jawa case in 2001.⁷³ Earmarked for reclamation, this case shed light on the ongoing spatial conflicts occurring in the country and sparked inquiries into the procedural and ethical fairness of state-capitalist practices regarding land reclamation and utilization. In Singapore, the pursuit of environmental justice revolves around ongoing debates surrounding land utilization and the significance and function of green areas. The government's about-turn in Chek Jawa to defer the reclamation was proclaimed the first time that public opinion and public help in collecting field data had helped bring about a change in policy.

⁷² Hobson, K, ‘Enacting environmental justice in Singapore: Performative justice and the Green Volunteer’ *Geoforum*, 2006, Vol 37, No 5, pp 671-681. Available at <https://www.sciencedirect.com/science/article/abs/pii/S0016718506000030>, accessed on 24 September 2024.

⁷³ Teh Tiong Sa and Raju, K, ‘Conserving marine biodiversity and the role of individuals: A case study of Chek Jawa, Pulau Ubin’ paper presented at ‘Growth, equity and environment: Missing link between academic research and policy matters in marine park areas’ 15 April 2010, Universiti Malaya, Kuala Lumpur. Available at http://www.globalislands.net/userfiles/Singapore_4.pdf, accessed on 25 September 2024.

This rising public interest can further be seen by the 2023 SG Climate Rally (SGCR)⁷⁴ ‘Seas Are Rising, So Are We.’⁷⁵ Taking place on 23 September 2023,⁷⁶ it was inspired by global climate activist, Greta Thunberg and the youth-led Global Climate Strike. The need for immediate climate action is crucial with the United Nations’ Paris Agreement setting 2050 as the milestone year to achieve net-zero emissions. While Singapore has announced its intention to abide by the deadline, concerns have been raised about its lack of ambition and inclusivity.

In particular, civil society groups and climate-conscious individuals have criticized its carbon tax for falling short of scientific recommendations and for exceptions granted to the fossil fuel industry. The government’s decision to develop housing projects in green spaces, such as Dover Forest and Clementi Forest, has also faced backlash, with concerns about the loss of nature and the need for a social policy prioritizing environmental preservation. As such, the student population in Singapore has been actively involved in the fight for climate justice, playing a significant role in organizing the SGCR. Campus mobilization, including calls for institutional divestment from fossil fuels, continues to be a vital aspect of the climate movement in Singapore.⁷⁷

The SGCR aims to expand the concept of climate justice to include various socio-political issues. Accordingly, the rally has joined forces with other civil society groups, such as the Transformative Justice Collective and Migrant Mutual Aid, to highlight the intersectionality of climate change with issues of social justice, human rights, and migrant worker rights. Seeking to engage the government and corporations in meaningful dialogue, it calls for policies that will make Singapore a liveable city for individuals from diverse backgrounds and citizenship statuses. Overall, the SGCR and the growing civil society mobilization behind it aim to demonstrate that climate action is interconnected with various aspects of society, including the cost of living, human dignity, food security, and health. Thus, the rally serves as a platform for collective action and encourages attendees to become more active citizens and join the broader climate movement.

As such, the climate rally saw over 1,400 people gather to call for stronger climate ambitions and climate justice. It focused on ensuring that nobody is left behind in the city-state’s efforts to decarbonize thereby minimizing the unequal impacts of climate change on vulnerable groups. The attendees, mostly youth and young families, held placards highlighting the

⁷⁴ The SG Climate Rally (SGCR) is an annual event held in Singapore to raise awareness about climate change and advocate for climate justice.

⁷⁵ Vochelet, R, ‘Civil society groups to hold climate rally in Singapore’ *The Diplomat*, 21 September 2023, available at <https://thediplomat.com/2023/09/civil-society-groups-to-hold-climate-rally-in-singapore/>, accessed on 25 September 2024.

⁷⁶ Begum, S, ‘Widespread calls for climate justice at second in-person climate’ *Straits Times*, 25 September 2023, available at <https://www.straitstimes.com/singapore/widespread-calls-for-climate-justice-at-second-in-person-climate-rally>, accessed on 25 September 2024.

⁷⁷ Delgado, AL, ‘Singapore students call for universities to part ways with fossil fuels’ *Globe*, 10 February 2022, available at <https://southeastasiaglobe.com/singapore-students-call-for-universities-to-change-relationship-with-fossil-fuels/>, accessed on 25 September 2024.

need for action. The rally also saw the participation of several MPs and members of political parties, showing growing support for climate action within the government.

Part 3: Conclusion

Through meticulous planning and foreign investment, Singapore has undergone a remarkable transformation, evolving into a thriving global hub. However, under Prime Minister Lee Hsien Loong, the government has displayed limited tolerance for political debate or dissent and has implemented stringent laws and regulations. Its economic system is characterized by a form of capitalism albeit with significant governmental control. Concerns are restrictions on freedom of speech and the press through censorship and content limitations, and limited academic freedom due to government influence and self-censorship.

Furthermore, the government's willingness to use stringent laws to limit freedom of assembly and expression target individuals advocating for human rights, and its continued executions have sparked widespread international condemnation. Despite advancements such as the recent repeal of a law criminalizing same-sex relationships, substantial deficiencies remain in the legal safeguards provided to the LGBTQI+ community including limitations on freedom of expression and representation, discrimination, and exclusion from government services and benefits. Similarly, while significant advancements in women's rights and the fight against gender-based violence are undeniable with the government implementing comprehensive laws and measures criminalizing rape and domestic violence, introducing legal measures for victims, and imposing strict punishments on offenders, challenges remain, such as workplace discrimination against women.

In terms of climate rights, Singapore has implemented environmental policies and initiatives to create a sustainable and eco-friendly city. However, the loss of green spaces due to development projects is concerning and the government's carbon tax falls short of scientific recommendations leading civil society groups and students to actively advocate for stronger climate action and environmental preservation.

Finally, the ongoing plight of migrant workers in Singapore is a distressing reality that demands immediate attention. These individuals, who contribute immensely to the city-state's economy, are unfortunately subject to labour exploitation and abuse. It is disheartening to witness the limited access they have to crucial labour protections, leaving them vulnerable and without adequate support. This issue calls for a comprehensive reassessment of the existing system to ensure their fair treatment and well-being. The involvement of major global players, such as China and the United States, in upholding political and economic ties with Singapore brings a layer of intricacy to the situation at hand. In light of the prevailing human rights concerns, it is imperative for Singapore to take decisive action to safeguard the fundamental freedoms and rights of every individual within the nation.

THAILAND

Part 1: Overview of Thailand

A. Country Background

Thailand Facts	
Geographical size	513,000 sq km
Population ¹	71.8 million
Ethnic breakdown ²	Main ethnic groups: Ethnic Thai (75%), Thai Chinese (14%), Malay (3%), and other small minority groups including hill tribes, Khmers and Mons (8%)
Official language	Thai
Literacy rate (aged 15 and above) ³	93.98%
Life expectancy ⁴	79.9 years
GDP ⁵	US\$514.94 billion (per capita US\$7,171)
Government	Thailand functions as a constitutional monarchy with King Maha Vajiralongkorn reigning since December 2016. The political landscape is shaped by a history of military involvement, including a 2014 coup and a 2019 military-backed general election. In the May 2023 general elections, Move Forward won the most seats with a turnout of 75.22%. Real estate tycoon, Srettha Thavisin from the Pheu Thai party, became the prime minister, forming a coalition government after complex political negotiations.

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¹ Data from 2023. ‘World population dashboard: Thailand’ United Nations Population Fund, 2023, available at <https://www.unfpa.org/data/world-population/TH>, accessed on 15 November 2023.

² Data from 2023. ‘Thailand population 2023 (live)’ World Population Review, 2023, available at <https://worldpopulationreview.com/countries/thailand-population>, accessed on 15 November 2023.

³ Data from 2023. Thailand is ranked 118th in the world. ‘Literacy rate by country’ Wisevoter, 2023, available at <https://wisevoter.com/country-rankings/literacy-rate-by-country/#thailand>, accessed on 15 November 2023.

⁴ Data from 2023. ‘Demographic changes in Asia and the Pacific: Thailand’ Economic and Social Commission for Asia and the Pacific, 2023, available at <https://www.population-trends-asiapacific.org/data/THA>, accessed on 15 November 2023.

⁵ Data from 2023. ‘Thailand’ World Bank, available at <https://data.worldbank.org/country/thailand>, accessed on 1 November 2024.

Political and social situation	Thailand transitioned from military dictatorship to military-dominated, semi-elected governments in 2019 and 2023. Widespread demonstrations in 2020 and 2021 were triggered by concerns over democratic deterioration and the monarchy's role in governance, resulting in authoritarian tactics, including arrests, intimidation, and the harassment of activists. Press freedom is limited, due process is unreliable, and there is impunity for crimes against activists. In 2023, after failing to form a government due to Senate opposition, the Pheu Thai party dissolved its alliance with Move Forward and formed a coalition with pro-military parties.
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Thailand's strategic geographical location places it at the crossroads of Southeast Asia, sharing borders with Laos and Cambodia to the east, the Gulf of Thailand and Malaysia to the south, the Andaman Sea and Myanmar to the west, and Laos and Myanmar to the north, making it a central player in the region's geopolitics and trade dynamics.

Between 2018 and 2023, Thailand's GDP increased from US\$506 billion to US\$514 billion, indicating overall economic growth. However, potentially due to population growth, the per capita income decreased slightly from \$7,124 to \$7,171.⁶ Thailand's economic trajectory has seen remarkable progress over the past four decades, transforming it from a low to an upper-middle-income nation with growth and poverty reduction a consistent theme. However, the export-driven model that once fuelled its economic expansion is now grappling with productivity stagnation, dwindling investment, and a slowdown in global value chain participation. The COVID-19 pandemic further challenged the economy which significantly contracted in 2020 affecting household incomes, particularly in rural areas. Post-pandemic economic issues aside, the country also confronts education quality concerns, fiscal sustainability issues due to an aging population, and environmental challenges like plastic waste management and circular economy development.⁷

System of governance

Thailand is a constitutional monarchy with King Maha Vajiralongkorn ascending to the throne in December 2016 following the death of his father, King Bhumibol Adulyadej, in October of that year (although his formal coronation only occurred in 2019). The country has a history of military involvement, with the military seizing power 12 times since the end of absolute monarchy in 1932.⁸ Under Thailand's 2017 Constitution which was drafted following the 2014 military coup, both houses of parliament, the Senate,

⁶ World Bank (see note 5 above).

⁷ 'The World Bank in Thailand: Overview' World Bank, April 2023, available at <https://www.worldbank.org/en/country/thailand/overview>, accessed on 15 November 2023.

⁸ Burke, A, *The State of Conflict and Violence in Asia 2021: Identity-based Conflict and Extremism*, San Francisco: The Asia Foundation, 2021. Available at <https://asiafoundation.org/wp-content/uploads/2021/10/The-State-of-Conflict-and-Violence-in-Asia-2021.pdf>, accessed on 15 November 2023.

and MPs, voted to select a new prime minister.⁹ The 2017 Constitution has been widely criticized for allowing the Senate a five-year term and enabling senators to vote for the prime minister, with various parties expressing concern that democratic principles were being compromised due to the unelected nature of the former. Subsequently, the 2019 general election in Thailand was conducted under the influence of the National Council for Peace and Order (NCPO) which had governed the country following the 2014 coup, marking a transition towards a civilian government amid ongoing political tensions. Although the 2023 general elections saw Move Forward winning the most seats, Srettha Thavisin from the Pheu Thai party was elected prime minister following subsequent political manoeuvring involving coalitions and alliances. Such intricate political processes reflect the challenges and dynamics of Thai politics, where government formation often requires strategic negotiation and cooperation among diverse political factions.

Current political and social situation

Thailand's political and social situation experienced a transition from military dictatorship to a military-dominated, semi-elected government in 2019. Extensive protests that unfolded in 2020 and 2021 were primarily driven by growing apprehension regarding the decline of democratic values and increasing unease over the monarchy's influence on governance. These protests, in turn, led to the adoption of authoritarian measures such as arrests, intimidation, and the systematic harassment of activists. Additionally, this period also saw a significant curtailment of press freedom with media outlets facing restrictions and constraint in their reporting. At the same time, Pegasus spyware was used extensively against activists.¹⁰ During this period, due process was deemed unreliable, particularly in cases involving the use of the *lèse-majesté* law and the Computer Crime Act.¹¹ Moreover, during the COVID-19 pandemic up until its expiration, the Emergency Decree linked to it was also used to limit public assembly and quash dissent.¹² As a result, the general election in May 2023 demonstrated widespread public discontent with the military-backed government electing instead Pita Limjaroenrat, the Thai reformist leader. Notwithstanding, he was suspended as an MP and blocked from becoming prime minister.¹³

⁹ 'Constitution of the Kingdom of Thailand BE 2560 (2017): Synopsis' Bureau of Foreign Languages, Secretariat of the House of Representatives, 2017, available at https://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/download/article/article_20171031122616.pdf, accessed on 15 November 2023.

¹⁰ 'Thailand: Pegasus spyware found on phones of dissidents involved in mass protests' Amnesty International, 18 July 2022, available at <https://www.amnesty.or.th/en/latest/news/1017/>, accessed on 15 November 2023; Scott-Railton, J, Marczak, B, Poetranto, I, Razzak, BA, Chanprasert, S, and Deibert, R, 'GeckoSpy: Pegasus spyware used against Thailand's pro-democracy movement' Citizen Lab, 17 July 2022, available at <https://citizenlab.ca/2022/07/geckospy-pegasus-spyware-used-against-thailands-pro-democracy-movement/>, accessed on 15 November 2023.

¹¹ Smith, R, and Perry, M, "Fake news" legislation in Thailand: The good, the bad and the ugly' *Athens Journal of Law*, 2020, Vol 6, No 3, pp 243-264.

¹² '#WhatsHappeningInThailand: Government crackdown on the right to protest' Article 19, 25 October 2020, available at <https://www.article19.org/wp-content/uploads/2020/10/2020.10.25-Thailand-Protest-Briefing-final.pdf>, accessed on 15 November 2023.

¹³ Cai, D, and Dokson, T, 'Pita Limjaroenrat: Thai reformist leader who won election will not be PM' BBC News, 19 July 2023, available at <https://www.bbc.com/news/world-asia-66219602>, accessed on 5 June 2024.

Continuing political divisions underscored the election of Srettha Thavisin from the Pheu Thai party as prime minister, instead of Pita Limjaroenrat from Move Forward. This outcome reflects the former's more conciliatory stance towards the military, which contrasts sharply with Move Forward's call for significant military reforms, labelled "revolutionary" by Pheu Thai in parliament.¹⁴ While Pheu Thai's approach may appear to accommodate some changes, it largely maintains the status quo, avoiding drastic shifts that might provoke military opposition and risk the stability of their government, reminiscent of past outcomes for Thaksin-supported administrations. Significantly, Pheu Thai is closely linked to Thaksin Shinawatra, a former Prime Minister now in self-imposed exile, yet still influential in shaping the party's policies and strategies from afar. Moreover, his daughter, Paetongtarn Shinawatra, played a pivotal role in the latest election, leveraging her father's legacy to rally support for the party.¹⁵ This underscores the enduring impact of the Shinawatra family on Pheu Thai and Thai politics as a whole suggesting continued challenges in overcoming future political gridlock.

The effect of the COVID-19 pandemic on human rights and peace

The COVID-19 pandemic significantly impacted various dimensions of human security in Thailand, exacerbating existing challenges amid political polarization and numerous demonstrations. Initially, the government implemented Emergency Decrees to control the spread of the virus and manage public protests. For instance, in Chana district, Songkhla province, local communities observed that a public hearing scheduled for May 2020 was affected by the Emergency Decree, leading to restrictions on freedom of movement and public gatherings.¹⁶ The pandemic response, coupled with inappropriate government policies, has created downside risks, leading to economic imbalances and challenges in food and health security.¹⁷ Homeless individuals, penalized for non-compliance with COVID-19 curfew regulations, also faced additional challenges. With an estimated 2,700 homeless people in the country (likely an underestimate), those living on the streets faced harsh penalties and sometimes brutal enforcement for violating curfew regulations.¹⁸

¹⁴ Chambers, P, 'Pheu Thai's military reforms: Keeping the military onside' Fulcrum, 7 May 2024, available at <https://fulcrum.sg/pheu-thais-military-reforms-keeping-the-military-onside/>, accessed on 5 June 2024.

¹⁵ Inoue, K, 'Thaksin Shinawatra's daughter elected leader of Thailand's ruling party' Nikkei Asia, 27 October 2023, available at <https://asia.nikkei.com/Politics/Thaksin-Shinawatra-s-daughter-elected-leader-of-Thailand-s-ruling-party>, accessed on 5 June 2024.

¹⁶ 'JointUPRsubmissiontotheUNUniversalPeriodicReview39thsessionoftheUPRWorkingGroup:Armedconflicts and the human rights situation in the southern border provinces in Thailand' OHCHR, 25 March 2021, available to download at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8899&file=EnglishTranslation>, accessed on 22 December 2022.

¹⁷ Jumnianpol, S, Nuangjamnong, N, Chimmamee, M, and Buathong, T, 'Human security in Thailand during the COVID-19 pandemic' JICA Ogata Sadako Research Institute for Peace and Development, available at https://www.jica.go.jp/Resource/jica-ri/publication/booksandreports/l75nbg00001a3qm6-att/7_Aging_Gawao.pdf, accessed on 22 December 2022. This working report presents the interim outcomes of individual case studies within the ongoing research project on human security and practices of empowerment in East Asia.

¹⁸ 'Social impact assessment of COVID-19 in Thailand' Oxford Policy Management, 2020, available at <https://www.unicef.org/thailand/media/5071/file/SocialImpactAssessmentofCOVID-19inThailand.pdf>, accessed on 22 December 2022.

Similarly, the informal labour force in the tourism and service sectors also faced heightened disparities, compounded by the digital disruption of the 21st century, further exacerbating social inequality. Put plainly, the economic shock and mitigation measures prompted by COVID-19 posed increased risks of violence, exploitation, and abuse for several vulnerable population groups, especially women and migrants. As reported by the National Statistical Office in 2019, around 20 million informal sector workers, including 9 million women, encountered disruptions in jobs and working hours. Approximately 3 million migrant workers, both registered and undocumented, experienced income loss and precarious employment conditions with limited access to social security rights.¹⁹ Deprived of any means of income, they faced vulnerability to human trafficking and various types of exploitation, including sexual exploitation.

Similarly, the LGBTQI+ community is at an increased risk of violence and abuse due to discriminatory measures. The closure of entertainment venues disproportionately affected sex workers, rendering many unemployed and ineligible for government assistance. In 2019, a UNDP survey in Thailand revealed that despite increasing societal acceptance and visibility, many LGBTQI+ individuals faced discrimination, harassment, and violence in various aspects of their lives.²⁰ A subsequent COVID-19 impact survey in 2020 within the community indicated significant challenges, with 47% citing a loss of income or jobs and 36% reporting unsafe living conditions as major impacts.²¹ In May 2020, the Service Workers in Group Foundation (SWING) conducted a survey on the impact of COVID-19 on sex workers, revealing that the government's closure of entertainment venues left an estimated 100,000 sex workers unemployed. However, the study highlighted more severe socio-economic impacts on non-Thai sex workers, particularly those in Bangkok, with 6% experiencing stigma and discrimination, and 4% facing actual abuse from family and acquaintances, emphasizing the challenges and lack of recognition of sex work as legitimate labour.²²

Other major vulnerable groups included those in the deep south of Thailand. Scheduled peace talks between the Thai government, the BRN, and other conflict parties in March 2020 were indefinitely postponed due to the COVID-19 pandemic, leading to a temporary ceasefire by the BRN in April. However, violence persisted, resulting in the extra-judicial killing of three BRN armed forces members on April 30 and the death of two civilians in a subsequent Thai security forces raid in May, casting uncertainty on the future of the peace process.²³

¹⁹ Oxford Policy Management (see 18 above).

²⁰ 'Tolerance but not inclusion: A national survey on experiences of discrimination and social attitudes towards LGBT people in Thailand' UNDP, 2019, available at <https://www.undp.org/sites/g/files/zskgke326/files/publications/UNDP-TH-2019-LGBT-Tolerance-but-not-Inclusion.pdf>, accessed on 22 December 2022.

²¹ 'Joint survey with UNDP Thailand on the impact of COVID-19 on LGBTI communities: Findings' Asia Pacific Transgender Network and UNDP, 2020, available at <https://weareaptn.org/2020/06/30/joint-survey-with-undp-thailand-on-the-impact-of-covid-19-on-lgbti-communities-findings/>, accessed on 22 December 2022.

²² Oxford Policy Management (see note 18 above).

²³ OHCHR 2021 (see note 16 above).

B. International Human Rights Commitments and Obligations

Since the rise of the junta and pro-junta governments, including General Prayut Chan-O-Cha's regime (2014-2023) and the newly elected government led by Pheu Thai, Thailand's human rights record has raised concern as evidenced by persistent restrictions on freedom of expression, assembly, and association. Additionally, concerns regarding the treatment of marginalized communities, including refugees, LGBTIQ+ individuals, and human rights defenders are also ongoing.²⁴ Notwithstanding, Thailand has been a party to most international human rights instruments, indicating a relatively acceptable performance concerning its international human rights commitments (see Table 1 below).

Table 1: Ratification Status of International Instruments – Thailand²⁵

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		2 Oct 2007 (a)
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		29 Oct 1996 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)	9 Jan 2012	14 May 2024
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		9 Aug 1985 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		28 Jan 2003 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		5 Sep 1999 (a)

²⁴ 'Thailand: Commit to protect rights of refugees, LGBTI+ people, and human rights defenders' Fortify Rights, 11 May 2023, available at <https://www.fortifyrights.org/tha-inv-2023-05-11/>, accessed on 15 November 2023.

²⁵ 'Ratification status for Thailand' OHCHR, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN, accessed on 15 November 2023.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		27 Mar 1992 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC)		27 Feb 2006 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (CRC-OP-SC)		11 Jan 2006 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	29 Jul 2008

Thailand has ratified seven of the nine core international human rights instruments, including the ICCPR, ICESCR, CAT, CEDAW, ICERD, CRC, and CRPD. On 17 December 2015, along with 127 others, the country also co-sponsored the 1998 Declaration on Human Rights Defenders, a non-legally binding global agreement emphasizing the diverse roles of human rights defenders (HRDs) which urges UN member states to safeguard their well-being. However, Thailand's commitment to international human rights obligations is marred by consistent violations, particularly against such vulnerable groups as refugees, LGBTQI+ persons, HRDs, protesters, and civil society actors. The Thai government's crackdown on free expression and assembly, its arbitrary arrest of monarchy critics and pro-democracy activists, and its suppression of youth-led democracy protests are stark examples of these transgressions.

Thailand's non-ratification of the CED raises particular concern about its commitment to addressing enforced disappearances. In 2022, 76 unresolved cases of enforced disappearances were reported in Thailand according to the UN Working Group on Enforced or Involuntary Disappearances.²⁶ Crucial to preventing forced disappearances and holding perpetrators accountable, Thailand's reluctance raises questions about its dedication to ensuring accountability for such cases. Significantly, the decision to refrain from endorsing the interstate communication procedure outlined in Art 32 of the CED has the potential to impede collective initiatives to combat enforced disappearances.

Furthermore, Thailand's reluctance to ratify key international treaties, such as the Optional Protocol of the Convention against Torture and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, exposes a hesitancy to align with global efforts toward accountability and transparency in human rights matters. For example, NGO representatives and legal

²⁶ 'UN Human Rights Office welcomes Thailand's enactment of the Prevention and Suppression of Torture and Enforced Disappearances Act' United Nations Human Rights, Office of the High Commissioner (South-East Asia Regional Office), 31 October 2022, available at <https://bangkok.ohchr.org/thailand-antitorture-act/>, accessed on 15 November 2023.

entities reported instances of torture and physical assault by police and military officers to elicit confessions, and newspapers have uncovered numerous cases of police brutality towards citizens especially against peaceful protesters such as Payu Boonsophon who lost the sight in one eye during a demonstration against the Asia-Pacific Economic Cooperation (APEC) summit in 2022²⁷. Likewise, as of November 2021, seven soldiers who confessed to beating two brothers in Nakhon Phanom during a 2020 interrogation related to drug-trafficking charges have still not been indicted. Impunity as regards the security forces is also a problem, especially in the southern provinces where martial law remains in effect.²⁸

Despite hosting a significant number of refugees, Thailand is not a party to the 1951 UN Refugee Convention, exposing refugees to arbitrary arrests, detention, and forced return. Failure to ratify the 1990 ICRMW, despite signing the 1966 ICESCR, signals Thailand's reluctance in this regard, particularly considering their significant presence in the country which has impacted the economy. To address this, Thailand needs to access and ratify the 1990 ICRMW, the 1948 ILO Convention No 87 (C-87) on freedom of association and protection of the right to organise, and the 1949 ILO Convention No 98 (C-98) on the right to organise and collective bargaining to provide legal protection for the rights and obligations of migrant workers and their families. Further, non-ratification of the 2000 Optional Protocol to the CRC on the involvement of children in armed conflict and the 2000 Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography points to potential shortcomings in protecting children's rights, emphasizing the need for a more comprehensive approach to safeguard the rights of this most vulnerable of groups within Thailand.

To summarize from the global perspective, a nuanced scenario was presented in Thailand's Universal Periodic Review (UPR) outcome in the 49th regular session of the UN Human Rights Council in 2022.²⁹ Although it accepted 78% of the 278 received recommendations,³⁰ it was also criticised for rejecting crucial proposals, notably, dismissing recommendations regarding the legalization of marriage equality and revision of the *lèse-majesté* law, both of which cast doubt on the government's commitment to specific human rights advancements. Additionally, attention was drawn to Thailand's hesitancy to fully commit to signing and ratifying key international human rights treaties, including those addressing the death penalty and the safeguarding of migrant workers. Despite accepting suggestions to revise the draft NGO law, uncertainties

²⁷ Sasipornkarn, E, 'Thailand's cycle of police brutality concerns activists' DW, 12 July 2022, available at <https://www.dw.com/en/thailands-cycle-of-police-brutality-concerns-activists/a-64015625>, accessed on 27 September 2022.

²⁸ 'Thailand 2021 human rights report' US Department of State, 2022, available at https://www.state.gov/wp-content/uploads/2022/03/313615_THAILAND-2021-HUMAN-RIGHTS-REPORT.pdf, accessed on 15 November 2023.

²⁹ 'Thailand' OHCHR, 2022, available at https://www.ohchr.org/sites/default/files/2022-05/thailand_infographic.pdf, accessed on 15 November 2023.

³⁰ 'Thailand's third UPR outcome: We must not congratulate the Thai Government!' Manushya Foundation, 22 March 2022, available at <https://www.manushyafoundation.org/post/thailand-s-third-upr-outcome-we-must-not-congratulate-the-thai-government>, accessed on 15 November 2023.

persist about the genuine implementation of accepted recommendations and the tangible improvement of the human rights situation. In its previous UPR, Thailand garnered further disapproval by rejecting the majority of recommendations related to freedom of expression and peaceful assembly, including calls to review the *lèse-majesté* law, withdraw consideration of laws potentially restricting civic space, and to end the arrests and prosecution of children under Art 112 with regards to the CRC.³¹

C. National Laws Threatening Human Rights

2017 Constitution

The Constitution of the Kingdom of Thailand BE 2560 (2017) acknowledges and emphasizes the rights and vulnerabilities of human rights defenders or HRDs, recognizing their susceptibility to violations of fundamental rights, including the right to life, the judicial process, privacy, freedom of opinion, and assembly. This constitutional recognition reflects a commitment to safeguard the rights of individuals actively involved in promoting and protecting human rights. However, it should be noted that the constitution, formulated by a committee appointed by the National Council for Peace and Order (NCPO) military regime, gained approval through a tightly managed referendum in 2016. During the period from 2014 to 2018, Thailand's military government imposed a *de facto* ban on political party activities, but by late 2018, the NCPO eased many restrictions, permitting parties to engage in meetings, recruit members, select candidates, and interact with the public. This led to a surge in organizational and campaigning efforts by various political parties across the spectrum for the 2019 elections. Still, despite the 2019 transition to semi-civilian control, critics of the government, military, or monarchy face significant risks, including surveillance, arrest, imprisonment, harassment, and physical attack. The government that followed the junta in Thailand retained 140 laws³² from the NCPO, including those limiting freedom of expression such as the amendment of the Computer Crime Act in 2017.

Computer Crime Act

The Computer Crime Act (CCA) BE 2550 (2007) and its amendment in 2017 were maintained, providing authorities extensive abilities to control online expression, implement censorship, and conduct surveillance, extending the enforcement of *lèse-majesté* provisions to the digital sphere. In addition, the CCA allows authorities to block or remove websites and content deemed undesirable, posing a threat to freedom of expression. As such, the Act is often used to prosecute individuals or media expressing opinions against the establishment or monarchy, leading to self-censorship and harassment of internet users. Discussions about amending the CCA occurred in 2022 including the introduction of a single internet gateway, raising concerns about the

³¹ Chachavalpongpun, P, 'Thailand's lese-majeste law takes center stage at UN Rights Review' The Diplomat, 19 November 2021, available at <https://thediplomat.com/2021/11/thailands-lese-majeste-law-takes-center-stage-at-un-rights-review/>, accessed on 15 November 2023.

³² 'Freedom in the World 2022: Thailand' Freedom House, 2022, available at <https://freedomhouse.org/country/thailand/freedom-world/2022>, accessed on 15 November 2023.

potential impact on online political expression.³³ Likewise, the government's history of requests to major platforms like Google, YouTube, Twitter, and Facebook to remove content critical of the government highlights the ongoing challenges to online freedom of expression in Thailand.

Lèse-majesté laws

Lèse-majesté in Thailand, as per Art 112 of the 1956 Criminal Code, criminalizes defamatory, insulting, or threatening statements about the monarchy, with sentences ranging from three to 15 years in prison. Article 112 is often considered the world's most severe *lèse-majesté* law, punishing defamation, insults, and threats against the monarchy with a minimum of three and a maximum of 15 years in prison, while sedition, outlined in Art 116, carries a penalty of up to seven years' imprisonment. The heightened use of *lèse-majesté* laws, particularly in the wake of the 2020-2021 youth-led protests, is a cause for concern. As of February 2023, 1,895 individuals in 1,180 cases faced political prosecution, with 233 individuals charged under these laws, including one 14-year-old girl.³⁴

Anti-corruption legislation

Corruption is entrenched in Thailand, with weak enforcement of anti-corruption laws and widespread bribery an ongoing problem. While the National Anti-Corruption Commission (NACC) struggles to address the issue, the NCPO's vague legislative response has similarly failed to combat corruption, impacting fair governance and human rights. Significantly, while the Anti-Corruption Act criminalizes corruption in Thailand, official involvement in modern slavery persists. Indeed, 17 officials faced criminal and disciplinary actions for their alleged complicity in human trafficking in 2021, having accepted bribes from businesses exploiting victims or brokers along Thailand's borders.³⁵ Suspicions of corruption in COVID-19 vaccine procurement also underscores the direct link between corruption and public health concerns.

D. National Laws and Measures Protecting Human Rights

Thailand has implemented numerous legislative measures in response to the challenges faced by HRDs. In 2018, a Cabinet resolution set the stage when it acknowledged the National Human Rights Commission (NHRC)'s recommendations to introduce measures and guidelines to promote and protect HRDs.³⁶ This commitment continued

³³ 'Thailand Computer Crime Act: Restricting digital rights and silencing online critics' Engage Media and Asia Centre, 2022, available at <https://asiacentre.org/wp-content/uploads/Thailand-Computer-Crime-Act-Restricting-Digital-Rights-Silencing-Online-Critics.pdf>, accessed on 15 November 2023.

³⁴ Chachavalpongpun, P, 'An unreconciled gap: Thailand's human rights foreign policy versus its *lèse-majesté* crisis' *Journal of Indo-Pacific Affairs*, Jan-Feb 2024, pp 31-45. Available at <https://www.airuniversity.af.edu/JIPA/Display/Article/3606727/an-unreconciled-gap-thailands-human-rights-foreign-policy-versus-its-lse-majest/>, accessed on 17 September 2024.

³⁵ Data from the Global Slavery Index 2023. 'Modern slavery in Thailand' Walkfree, 2023, available at <https://www.walkfree.org/global-slavery-index/country-studies/thailand/>, accessed on 15 November 2023.

³⁶ 'Protection of human rights defenders in Thailand' United Nations Development Programme (UNDP), 2023, available at https://www.undp.org/sites/g/files/zskgke326/files/2023-09/hrd_study_eng_25sep.pdf, accessed on 15 November 2023.

to evolve with the 2019 amendment to the Criminal Procedure Code, s.161/1 which grants courts discretionary power to dismiss cases brought by private complainants, thereby discouraging and preventing strategic lawsuits against public participation (SLAPPs) targeting HRDs.³⁷ Concurrently, Thailand sought additional avenues for conflict resolution through the Dispute Mediation Act BE 2562 (2019).³⁸ The 4th National Human Rights Plan (2019-2022)³⁹ and the integration of HRD protection into the National Action Plan (NAP)⁴⁰ further underscore the country's ongoing dedication to fortify HRD safeguards. In December 2019, the 1st NAP on Business and Human Rights introduced a range of measures and legal amendments aimed at their protection and the thwarting of judicial harassment, specifically through the prevention of SLAPPs.⁴¹

Gaps in the framework

Despite ongoing initiatives, significant gaps persist in the legal framework. Thailand currently lacks a dedicated law for HRD protection, diminishing their roles and status. According to a desk review and in-depth interviews by the Protection of Human Rights Defenders project,⁴² stakeholders argue that simply adopting a specific law is insufficient, emphasizing instead the importance of a broader approach involving the public, the business sector, and civil society participation. In particular, calls for the development of a Memorandum of Understanding (MoU) among public agencies, the business sector, civil society, and HRDs to officially acknowledge and safeguard the crucial role played by the latter in advancing human rights has support from organizations such as the Rights and Liberties Protection Department (RLPD), the NHRC, and the academic sector.

Other notable instances include a lack of progress in investigating violent attacks on democracy activists in 2019 and reports of intimidation aimed at curbing activist involvement in protests.⁴³ This lack of accountability is evident in the ongoing failure to prosecute soldiers for the 2017 killing of ethnic Lahu activist, Chaiyaphum Pasae.⁴⁴

³⁷ 'Thailand: Act to prevent spurious lawsuits against human rights defenders' Article19, 12 June 2020, available at <https://www.article19.org/resources/thailand-act-to-prevent-spurious-lawsuits-against-human-rights-defenders/>, accessed on 15 November 2023.

³⁸ Pratheuangrattana, C., 'The public sector dispute mediation according to the Mediation Act in 2562 BE (AD 2019): Opportunities and challenges' *Journal of Thai Justice System*, 2021, Vol 14, No 3, pp 1-18.

³⁹ The 4th National Human Rights Plan (2019-2022) is only available in Thai at <https://asdd.mol.go.th/wp-content/uploads/sites/11/2020/11/แผนสิทธิมนุษยชนแห่งชาติฉบับที่-4-พ.ศ.-2562-2565.pdf>, accessed on 17 September 2024.

⁴⁰ 'First National Action Plan on Business and Human Rights (2019-2022): Summary' UNDP and Rights and Liberties Protection Department, Ministry of Justice, 2021, available to download at https://www.undp.org/sites/g/files/zskgke326/files/migration/bizhumanrights/UNDP_TH_NAP-booklet-EN_14-Sep-2021.pdf, accessed on 15 November 2023.

⁴¹ 'First National Action Plan on Business and Human Rights in Thailand' UNDP, 2019, available to download at <https://www.undp.org/asia-pacific/bizhumanrights/publications/first-national-action-plan-business-and-human-rights-thailand>, accessed on 15 November 2023.

⁴² UNDP (see note 41 above).

⁴³ 'Thailand: Events of 2022' Human Rights Watch, 2023, available at <https://www.hrw.org/world-report/2023/country-chapters/thailand>, accessed on 15 November 2023.

⁴⁴ 'Assessment of Thailand's follow-up actions for the implementation of the UN Human Rights Committee's recommendations' International Federation for Human Rights (FIDH), Union for Civil Liberty (UCL), and the Internet Law Reform Dialogue (iLaw), 27 April 2020, available at https://www.fidh.org/IMG/pdf/20200423_thailand_iccpr_follow-up_bp_en.pdf, accessed on 15 November 2023.

Moreover, although the National Action Plan on Business and Human Rights was adopted, HRDs still face reprisals, particularly through the misuse of SLAPPs. The challenges HRDs confront, including 27 legal cases filed against them, emphasize the need for a dedicated protective law.⁴⁵ The controversial Operations of Not-for-Profit Organizations Bill, tentatively approved in February 2021, has garnered significant opposition for its potential to restrict civil society and for imposing broad limitations on foreign funding for NGOs.⁴⁶ The proposed Draft Act was criticized by three UN special rapporteurs with concerns raised about its compatibility with international human rights standards⁴⁷ which are seen to pose a threat to the freedoms of expression and association guaranteed under international human rights law.

Advocating for strengthened human rights protections in Thailand necessitates a thorough examination of the measures used to safeguard HRDs and implementation of the legal remedies for those encountering intimidation, harassment, or assault. This involves a specific focus on aligning with the Declaration on HRDs and pertinent laws. As such, there is an urgent requirement to decriminalize defamation and dismiss unfounded charges against HRDs to halt persistent judicial harassment. Additionally, prompt action is essential to enact the Draft Act on the Prevention and Suppression of Torture and Enforced Disappearance, along with the Draft Amendment Act for the Witness Protection Act BE 2546 (2003). Despite constitutional protections for HRDs passed by the junta, frequent persecution highlights a significant contradiction in Thailand's human rights landscape. This gap between legislation and enforcement suggests that laws alone are insufficient without robust implementation and genuine political will. To bridge this gap, Thailand must enforce progressive laws, better train law enforcement, foster accountability, and engage with civil society.

Meanwhile, advancements in safeguarding the rights of marginalized communities, particularly LGBTQI+ individuals, have been witnessed in Thailand. The 2015 Gender Equality Act aimed to prevent gender-based discrimination against the LGBTQI+ community, but loopholes still permit justifications based on religious or national security grounds. Further, the absence of gender recognition laws hinders transgender and non-binary individuals from changing their title or gender on official records. In November 2021, Thailand's Constitutional Court affirmed existing marriage laws but urged lawmakers to draft legislation ensuring rights for gender-diverse individuals.⁴⁸

⁴⁵ UNDP (see note 41 above).

⁴⁶ International Commission of Jurists (ICJ), 'Re: Recommendations concerning the Draft Act on the Operation of Not-for-Profit Organizations BE' ICJ, 24 March 2022, available at https://icj2.wpenginepowered.com/wp-content/uploads/2022/03/FINAL_CLEAN_Thailand-230321-NPO-Draft-Act-letter.MSDHSISSZSS.SIGNED.pdf, accessed on 15 November 2023.

⁴⁷ 'Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders (OL THA 2/2021)' UN Human Rights Council, 26 March 2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26320&fbclid=IwAR0eHT77Rv7eWNBHytlaMnD7KxM58ulTLvOKZ9rn5fzQxROLSLl bq-1IIs>, accessed on 15 November 2023.

⁴⁸ 'Thailand: Historic same-sex marriage bills are moment of hope for LGBTI rights' Amnesty International Thailand, 21 December 2023, available at <https://www.amnesty.org/en/latest/news/2023/12/thailand-same-sex-marriage-law/>, accessed on 15 November 2023.

Key bills, including the Marriage Equality Bill and the Civil Partnership Act, were approved by the House of Representatives, but the suspension of Parliament's first session delayed such rights.⁴⁹ On 21 December 2023, Thai lawmakers overwhelmingly passed four draft bills on same-sex marriage on their first reading, with all but 11 out of 380 present lawmakers voting in favour, potentially making Thailand the third Asian country, after Taiwan and Nepal, to recognize same-sex marriage if enacted and receiving royal assent.⁵⁰

E. Recent Court Cases Relating to Human Rights

Freedom of expression

Over the past five years, court cases focusing on freedom of expression have highlighted the challenges faced by activists and democracy advocates. For example, despite the legislative amendment, the status and role of HRDs has not been consistently recognized by courts.⁵¹ HRDs have faced prosecutions, with at least 1,860 people charged for exercising freedom of expression and assembly since mid-July 2020.⁵² Government enforcement of the Emergency Decree during the COVID-19 pandemic led to further prosecutions, including charges related to democracy protests. Further, the resurgence of *lèse-majesté* prosecutions resulted in at least 215 people being charged,⁵³ exemplifying the government's willingness to use legal measures against critics. In addition to the draconian Emergency Decree, defamation remains a criminal offence, contributing to a climate of legal harassment against activists, journalists, and politicians. This complex legal landscape, coupled with criminal defamation cases filed by military and business figures, highlights an environment of legal intimidation and potential abuse against government critics, as seen in the Gulf Energy Development law suit against opposition member of parliament, Rangsiman Rome, in 2021.⁵⁴ As a result, internet freedom remains severely restricted, with State-sponsored disinformation campaigns discrediting opposition members ahead of the 2023 elections,⁵⁵ showcasing broader constraints on freedom of expression in the country.

State violence and impunity

Torture and enforced disappearance have long been issues in Thailand. Since 1980, the UN Working Group on Enforced or Involuntary Disappearances has recorded 76 cases of enforced disappearance.⁵⁶ Despite being a State party to the Convention against Torture, Thailand faces ongoing challenges. During the five years of military

⁴⁹ 'Thailand: Pass marriage equality bill, protect LGBTI+ rights' Fortify Rights, 16 September 2022, available at <https://www.fortifyrights.org/tha-inv-2022-09-16/>, accessed on 15 November 2023.

⁵⁰ Wongcha-um, P, 'Thailand edges closer to legalising same-sex marriage' Reuters, 21 December 2023, available at <https://www.reuters.com/world/asia-pacific/thailand-edges-closer-legalising-same-sex-marriage-2023-12-21/>, accessed on 22 December 2023.

⁵¹ UNDP (see note 41 above).

⁵² Human Rights Watch (see note 43 above).

⁵³ Human Rights Watch (see note 43 above).

⁵⁴ US Department of State (see note 28 above).

⁵⁵ 'Freedom on the Net 2023: Thailand' Freedom House, 2023, available at <https://freedomhouse.org/country/thailand/freedom-net/2023>, accessed on 22 December 2023.

⁵⁶ Human Rights Watch (see note 43 above).

rule after the 2014 coup, numerous cases of torture were documented especially related to counterinsurgency operations in the southern border provinces. In August 2021, police officers tortured a suspected drug trafficker to death in Nakhon Sawan province, resulting in the sentencing of the commanding officer and six subordinates to life imprisonment on murder charges in June.⁵⁷ The armed conflict in Thailand's Pattani, Yala, Narathiwat, and Songkhla provinces has resulted in more than 7,000 deaths since January 2004,⁵⁸ but subsided in the first half of 2022 due to the military and Barisan Revolusi Nasional (BRN) announcing a reduction in violence during Ramadan. However, insurgent attacks have increased since August, despite ongoing dialogue between the government and BRN. Significantly, in August 2022, the House of Representatives approved and passed the Prevention and Suppression of Torture and Enforced Disappearance Bill, the Act of which came into effect in February 2023. However, Thailand has not expressed support for the 2015 Safe Schools Declaration, a document that delineates a series of commitments aimed at enhancing the safeguarding of students, teachers, schools, and universities from the adverse impacts of armed conflict.

Amnesty International's July 2021 report⁵⁹ detailed the Thai police's disproportionate use of force during peaceful protests in late 2020 and early 2021, revealing its severe response to widespread demands for democratic reforms. Relying on videos, interviews, and on-the-ground monitoring, it outlined violations of the right to peaceful assembly, citing unnecessary force such as the use of chemical-laced water cannons and rubber bullets, as well as a failure to protect protesters from violence between groups. The Thai government's prolonged rule has therefore prompted a growing resistance movement, led by youth groups like Ratsadon and Free Youth which has been marked by widespread student protests. Similarly, the government's response to the COVID-19 pandemic included declaring a state of emergency and granting authorities broad powers to restrict crowded activities. The unjust use of force by police against demonstrators, including minors, even when subdued, constitutes torture or ill-treatment under international law.

Accountability over land rights

Significantly, existing forestry laws fail to address land rights or communities' customary land tenure rights, limiting references to user rights even in laws such as the Community Forestry Law (2019) and the National Park Law (2019).⁶⁰ For example, HRDs advocating for land rights, such as those involved in the Nam Daeng Pattana

⁵⁷ Boyle, G, 'Life imprisonment for police who tortured suspect to death' Bangkok Post, 8 June 2022, available at <https://www.bangkokpost.com/learning/advanced/2322522/life-imprisonment-for-police-who-tortured-suspect-to-death>, accessed on 1 October 2024.

⁵⁸ Human Rights Watch (see note 43 above).

⁵⁹ 'My face burned as if on fire: Unlawful use of force by Thailand's police during public assemblies' Amnesty International, 2021, available at https://www.amnesty.or.th/files/6416/2554/4226/ENG_Policing_briefing_final.pdf, accessed on 22 December 2023.

⁶⁰ Contant, A, 'Indigenous rights are land rights are human rights' Weave News, 15 September 2023, available at <https://www.weavenews.org/stories/2023/9/15/indigenous-rights-are-land-rights-are-human-rights>, accessed on 22 December 2023.

community and the Southern Peasants Federation of Thailand, encountered significant challenges in accessing justice. Exacerbating matters, although designed to assist HRDs in legal matters, the Justice Fund has been unable to consistently prevent their imprisonment as funding applications are often declined. Similarly, 14 village HRDs who were affected by the NCPO's Forest Reclamation Policy in Ban Sab Wai, including nine women, were sentenced to jail and fined up to one million baht (US\$28,352.70).⁶¹ Their appeals for financial assistance during the legal process were likewise rejected. This scenario reflects broader concerns among indigenous communities in Thailand regarding insufficient land tenure security and control over natural resources due to centralized government policies which focus on forest conservation whilst ignoring the social aspects of people's relationships with nature.

In addition, the State's conservation-oriented policies often result in conflict with indigenous communities, leading to the criminalization of traditional sustainable activities. The lack of recognition of customary land tenure rights aggravates these issues, with a reported 1,502 legal cases in 2022,⁶² encompassing various offences related to natural resource management. Moreover, as Thailand implements land conservation policies, there is a growing trend to displace indigenous communities, marked by territorialisation strategies. These policies not only label indigenous people as illegal residents but also criminalize their way of life, causing direct harm, hindering their cultural practices, and jeopardizing food security and sovereignty.

Part 2: Outstanding Human Rights Issues

Between 2019 and 2023, Thailand faced multifaceted human rights challenges. Widespread pro-democracy protests in 2020, led by youth groups, prompted a severe government crackdown marked by a disproportionate use of force, arrests, and restrictions on assembly. The suppression extended to curbing freedom of expression with censorship, the arrest of activists, and the controversial application of the *lèse majesté* law. Simultaneously, social media became a battleground for freedom of expression, reflecting the broader struggle for democratic values. The treatment of migrants and refugees also raised concern as marked by arbitrary arrests and a lack of legal protections, while the rights of forest hill tribe ethnic minorities also continued to face challenges. Academic freedom encountered restrictions, and discrimination against marginalized groups, including LGBTQI+ individuals, persisted despite legislative progress. The government's declaration of a state of emergency during the COVID-19 pandemic heightened fears of excessive power use, emphasizing the delicate balance between public health measures and human rights. Incidents of the unlawful use of force against children at protests underscored the challenges of protecting children's rights. The following section will delve into these human rights challenges in detail.

⁶¹ UNDP (see note 41 above).

⁶² Rattanakrajangsi, K, 'The indigenous world 2023: Thailand' International Work Group for Indigenous Affairs (IWGIA), 29 March 2023, available at <https://www.iwgia.org/en/thailand/5136-iw-2023-thailand.html>, accessed on 22 December 2023.

A. Freedom of Expression on Social Media

In 2022, 77% of Thailand's 70 million population were internet users and 81% were social media users. As such, the internet and social media played a significant role in youth-led political protests advocating for democracy and monarchy reform.⁶³ Leading up to the pro-democracy protests, social media platforms like Facebook and Twitter, as well as online messaging apps such as Telegram, played a crucial role in advocacy, information dissemination, and political organization.⁶⁴ As a consequence, the Thai government actively sought to tighten control over online civic space by pressuring and co-opting technology companies and online networks to censor expression and information. Influenced by the State's abuse of inadequate domestic laws and profit-oriented operations, some platforms complied with government demands by filing legal complaints against the likes of Facebook and Twitter for resisting such demands.

For example, on 30 June 2021, political artist, Thorpat Atanan, was arrested and charged with *lèse majesté* and violating the Computer Crimes Act by posting artwork critical of the monarchy. The arrest, conducted without a warrant, led to the confiscation of her computer, art materials, and mobile phone. Subsequently, she was released on bail with the condition of reporting to the police every 15 days. Likewise, on July 9 of the same year, the criminal court granted the government's request to block access to a YouTube video by political rap group, Rap Against Dictatorship, with the court agreeing that the song criticized both the monarchy and the prime minister.⁶⁵ Subsequently, the strict *lèse-majesté* laws in Thailand have led many internet users and journalists to practice self-censorship as regards discussions about the monarchy on public platforms. Despite this, social media still serves as a space for comparatively critical speech as evidenced by the popularity of several hashtags addressing the persistent denial of bail for individuals convicted of *lèse-majesté* and other political offences.⁶⁶

As previously mentioned, amid the COVID-19 pandemic, citing public health concerns and the need to combat "false information," the Thai government further curtailed freedom of expression and access to online information by employing measures that were deemed unnecessary and disproportionate according to international human rights law and standards.⁶⁷ During the post-pandemic era, Thailand's freedom of expression on social media continues to face challenges due to the dominance of a few major internet service providers such as the National Telecom Public Company Limited which holds 67.4% of the market. The planned merger of TRUE and DTAC, completed in March 2023, also raised concerns about a potential mobile-service

⁶³ Engage Media and Asia Centre (see note 33 above).

⁶⁴ 'Dictating the internet: Curtailing free expression and information online in Thailand' International Commission of Jurists, 2021, available at <https://www.icj.org/wp-content/uploads/2021/06/Thailand-Dictating-the-Internet-FoE-Publication-2021-ENG.pdf>, accessed on 22 December 2023.

⁶⁵ US Department of State (see note 28 above).

⁶⁶ Freedom House (see note 55 above).

⁶⁷ International Commission of Jurists (see note 64 above).

duopoly, prompting legal action and highlighting the close relationship between the authorities and private telecommunication companies.⁶⁸

B. Crackdown on Refugees, Asylum Seekers, and Illegal Migrants

Currently, Thailand relies on the UNHCR to determine refugee status as it lacks its own equivalent instrument. The government instituted the Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter the Kingdom and are Unable to Return to the Country of Origin BE 2562 on 25 December 2019, creating a National Screening Mechanism (NSM).⁶⁹ Although using the term “protected persons” rather than refugees, it essentially adopts a refugee screening mechanism via the Cabinet Resolution of 10 January 2017, becoming effective on 22 June 2020.⁷⁰ The creation of the NSM in 2023 seeks to identify individuals requiring international protection, including over half a million registered as “stateless.” Despite reforms supporting nationality restoration, hurdles endure in securing fundamental rights like freedom of movement and healthcare.⁷¹ The ongoing implementation of the NSM and additional initiatives aims to navigate the challenges confronted by refugees, asylum-seekers, and stateless individuals in Thailand. Nevertheless, the NSM remains in a preparatory stage with essential details such as a timeline for refugees to benefit from the protections awaiting clarification through criteria and guideline discussions. In addition, irregular migrants, especially those working on sugarcane plantations, often face exploitative conditions including low pay, lack of written contracts, exposure to health hazards, and precarious housing conditions.⁷²

As of 31 May 2023, Thailand accommodates 90,801 refugees from Myanmar in nine temporary shelters along the Thai-Myanmar border with an additional 4,998 urban refugees and asylum-seekers residing in different locations.⁷³ In particular, refugees along the Thai-Myanmar border, primarily of Karen and Karenni ethnicity, face limitations under the national legal framework, restricting their access to national institutions and preventing movement outside the camps for livelihood opportunities. Subsequently, such groups must rely on non-governmental humanitarian services for basic needs, with the UNHCR focusing on protection and solutions. However,

⁶⁸ Freedom House (see note 55 above).

⁶⁹ ‘Thailand: Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin BE 2562’ National Legislative Bodies of Thailand, 25 December 2019, available at <https://www.refworld.org/docid/5e675a774.html>, accessed on 22 December 2023.

⁷⁰ ‘Refugee Rights Network in Thailand: Joint Submission Universal Periodic Review of Thailand (Thailand Cycle 3, 39th Sessions)’ Asia Pacific Refugee Rights Network, Asylum Access Thailand, People Empowerment Foundation, and Refugee Rights Litigation Project, 2021, available at https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf, accessed on 22 December 2023.

⁷¹ ‘Thailand operational factsheet’ United Nations High Commissioner for Refugees (UNHCR), 30 September 2023, available at https://www.unhcr.org/th/wp-content/uploads/sites/91/2023/10/UNHCR-Thailand_Operational-Factsheet-July-September-2023.pdf, accessed on 22 December 2023.

⁷² ‘Climate change, migrant workers, and human rights: Insights for businesses in South-East Asia’ International Organization for Migration (IOM), 2023, available at <https://thailand.iom.int/sites/g/files/tmzbd11371/files/documents/2023-09/policy-brief-business-iom.pdf>, accessed on 22 December 2023.

⁷³ UNHCR (see note 71 above).

children born to refugees in Thailand are able to have their births registered resulting in a Recognition of Legal Personality which prevents statelessness and serves as evidence for temporary stay permits.⁷⁴ Nevertheless, communication issues in urban contexts have resulted in inaccuracies on birth certificates, with some government officers mistakenly categorizing refugee children as being born to migrant workers. More importantly, since the February 2021 coup in Myanmar, at least 45,000 additional refugees have sought shelter in Thailand. Although the Thai government permitted them to stay in makeshift temporary shelters near the border, there were intermittent repatriation attempts, and the new arrivals faced strict restrictions on movement and access to humanitarian aid.⁷⁵

C. Forest Hill Tribe Ethnic Minorities

As part of the rural population, hill tribes in Thailand are vulnerable due to a subsistence farming lifestyle, low-income employment, social isolation, and poverty.⁷⁶ More specifically, indigenous peoples predominantly confront challenges related to insufficient land tenure security and restricted control over the natural resources they have utilized for generations. Moreover, the government's emphasis on forest and biodiversity conservation in its centralized natural resource management policy overlooks the vital social connection between people and nature. As such, existing forestry laws lack provisions for land rights or customary land tenure rights, resulting in conflict and the criminalization of community members involved in traditional sustainable practices. Despite suggested remedies in the revised forestry laws of 2019, such as the introduction of community land-use surveys, indigenous peoples express significant reservations, as evident in the verification process of Huay E-kang village where residents stressed the importance of accurate information and meaningful participation to prevent adverse impacts on over 80% of the community, especially regarding the scarcity of agricultural land.⁷⁷

Furthermore, due to neoliberal developments which promoted access to agricultural debt, cash crop exports, off-farm employment, and labour migration, environmental legislation and the expansion of conservation areas resonated with this development discourse while blaming the “hill tribes” for environmental disasters.⁷⁸ The exclusion of upland ethnic minorities, commonly known as hill tribes, from legal forest areas in

⁷⁴ Permanent Mission of Thailand, letter to the OHCHR (No 52101/564), 3 October 2017, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/BirthRegistrationMarginalized/Thailand.pdf>, accessed on 22 December 2023.

⁷⁵ ‘Thailand: Recent refugees pushed back to Myanmar’ Human Rights Watch, 29 November 2023, available at <https://www.hrw.org/news/2023/11/29/thailand-recent-refugees-pushed-back-myanmar#:~:text=After%20the%20February%202021%20coup,also%20intermittently%20pushed%20them%20back>, accessed on 22 December 2023.

⁷⁶ Tongdhamachart, N, and Alwi, A, ‘The cultural identity of Mien ethnic group in a digital era’ *International Journal of Professional Business Review*, 2023, Vol 8, No 1, pp 1-17.

⁷⁷ Rattanakrajangsri (see note 62 above).

⁷⁸ Haenssger, MJ, Leepreecha, P, Sakboon, M, Chu, TW, Vlaev, I, and Auclair, E, ‘The impact of conservation and land use transitions on the livelihoods of indigenous peoples: A narrative review of the northern Thai highlands’ *Forest Policy and Economics*, 2023, Vol 157, p 103092.

Thailand has been justified through racialized stereotypes especially related to their traditional use of fire in slash-and-burn agriculture. The State has employed forceful tactics under the pretext of forest conservation, displacing populations, evicting villages, confiscating land and farming tools, and blocking development projects, mirroring strategies used by the military from the late 1960s to the early 1990s.⁷⁹ While there is a growing recognition of the role of smallholder farmers in forest fires due to the rising awareness of PM2.5 pollution over recent years, labelling these incidents a national crisis has led to highland ethnic minority farmers often being blamed, although it has to be said, some of that attention is shifting towards the alleged contribution of unregulated capitalism, with large agribusiness companies now implicated in the burning crisis.

D. Academic Freedom

Reports from university authorities, civil society organizations, and media indicates the consistent presence of security personnel on campuses to actively monitor lectures and participate in student political events or rallies. Consequently, students have been arrested for expressing freedom of speech, though such arrests typically occur off-campus, and formal charges are infrequent. Universities acknowledge instances of self-censorship among both students and academics, with virtual classes exacerbating concerns about security personnel monitoring academic activities, leading to ever more self-censorship. In 2021, the NGO, iLaw, documented 79 cases of harassment against high school and university students, involving both police and school administrators throughout the country.⁸⁰ Consequently, while major universities like Kasetsart, Silpakorn, Srinakharinwirot, and Chulalongkorn generally permit campus spaces for protests with prior approval, many high schools and universities explicitly prohibit protests advocating for monarchy reform.

Moreover, as previously mentioned, private entities also resort to defamation lawsuits (known as SLAPP cases) against HRDs, activists, journalists, and academia. For example, academic, Sarinee Achavanuntakul, faced a defamation lawsuit from Gulf Energy for her Facebook post discussing the rising cost of energy and power plant monopolies in Thailand. This legal action could result in a substantial financial penalty of 100 million baht (US\$2.8 million) against her.⁸¹ Further, the absence of a central law or standard for the protection of lecturers in autonomous universities has created challenges in ensuring academic freedom. Unlike other countries where clear guidelines and minimum standards exist, the management process of autonomous universities in Thailand lacks such provisions.⁸² Additionally, it is important to note that public

⁷⁹ Beaulieu, A, Leblond, JP, Déry, S, and Cao, H, 'Urban air pollution anxieties, forest conservation, and farmland expropriation: State territorialisation in the uplands and highlands of northern Thailand' *Land Use Policy*, 2023, Vol 131, p 106687.

⁸⁰ US Department of State (see note 28 above).

⁸¹ Freedom House (see note 55 above).

⁸² Wichaidist, R, 'The lecturer relationship of autonomous university impact on academic freedom' PhD dissertation, Graduate School of Law, National Institute of Development Administration, 2023, available at <https://repository.nida.ac.th/server/api/core/bitstreams/0d011d5c-6214-4dc0-8a08-f358a88329e8/content>, accessed on 22 December 2023.

universities, including autonomous ones, are obligated to adhere to government rules and regulations, which include requirements for staff to uphold beliefs supportive of the monarchy. This obligation aligns with broader regulations applicable to public agencies. The combination of these factors underscores the need for a central law to establish explicit legal measures to safeguard academic freedom in autonomous universities in Thailand.

E. Gender and the Environment/Climate Change

Gender and environmental issues intersect in Thailand, revealing challenges disproportionately affecting women. Thailand's commitment to reduce emissions by 20% from projected levels by 2030 raises human rights concerns, particularly in the context of the energy sector which is responsible for 73% of emissions. Challenges in renewable energy (RE) development, such as limited domestic resources and financial constraints, highlight potential disparities in clean energy access which especially impacts vulnerable communities. In the energy sector, women's representation at leadership levels is notably low with only 10.7% on energy company boards in Thailand.⁸³ Despite women constituting 55% of researchers, traditional gender roles impede their disaster recovery efforts, particularly as they bear a 4-times heavier burden of unpaid care and domestic work.⁸⁴

The mitigation strategy, while emphasizing RE technology and agricultural adaptation, also lacks a gender-inclusive approach, potentially neglecting the unique vulnerabilities faced by women in climate-related issues.⁸⁵ One report⁸⁶ in particular points to climate change as significantly impacting various economic and social sectors such as agriculture, which alone employs one-third of the labour force. The vulnerabilities to climate change are diverse, affecting poor and marginalized groups such as landless farmers and women in indigenous and ethnic minority communities.⁸⁷

Moreover, Thailand still grapples with significant gender-based violence issues, underscored by the limitations of the Domestic Violence Protection Act (2007). The act often prioritizes traditional family values over victim protection, reflecting deep-rooted cultural issues. Gender-based violence is pervasive, fuelled by societal stereotypes that

⁸³ Han, JY, Pross, C, Agarwal, R, and Torre, AR, *State of Gender Equality and Climate Change in ASEAN*, Jakarta: The ASEAN Secretariat Community Relations Division (CRD), 2022. Available at <https://asiapacific.unwomen.org/sites/default/files/2022-09/State-of-Gender-Equality-and-Climate-Change-in-ASEAN-2.pdf>, accessed on 22 December 2023.

⁸⁴ Han et al (see note 83 above).

⁸⁵ Han et al (see note 83 above).

⁸⁶ Suriyasarn, B, and Talerngsri, P, 'Social dimension of climate change impacts in Thailand: Analysis of risks, policy, planning and finance' UNDP Thailand, 2020. This report was presented at the inclusive, gender-responsive Climate Change Benefit Analysis (iCCBA) Workshop in September 2019 and was approved by the iCCBA Working Group in November of the same year.

⁸⁷ Suriyasarn, B, and Talerngsri, P, 'Integrating climate change (CC), gender, and social inclusion (GSI) into planning and budgeting in Thailand' UNDP and the Office of Natural Resources and Environmental Policy and Planning, 2020, available at https://www.undp.org/sites/g/files/zskgke326/files/2023-03/UNDP_CC-GSI%20Handbook_Eng_Final.pdf, accessed on 22 December 2023.

contribute to women's rights violations. The justice system's inadequacies in protecting women, coupled with a lack of accurate statistics on sexual violence, highlight the urgent need for improved support services and legal actions. The COVID-19 lockdown further aggravated domestic violence with cases surging by 34%.⁸⁸

Transgender individuals face distinct challenges related to legal recognition, impacting their social inclusion and ability to enjoy their human rights. Specifically, the absence of laws allowing gender changes on official documents creates barriers for transgender women. Finally, following a ground-breaking 2021 decision by Thailand's Constitutional Court that restricting marriage to only men and women was unconstitutional, comprehensive legislation was drafted addressing the rights and legal status of transgender and non-binary individuals. On 6 May 2024, the draft act was introduced after a public hearing. Clearly defining key terms such as "gender identity," "sexual characteristics," "intersex persons," and "people who do not define themselves within the binary gender system," the law would grant individuals fundamental rights revolving around their gender identities including the right to have their gender officially recognised and the right to determine their own gender characteristics.⁸⁹

Part 3: Conclusion

Thailand continues to grapple with a multifaceted human rights landscape. The impact of climate change, particularly on vulnerable populations in the agricultural sector, accentuates the imperative for comprehensive adaptation plans. The use of the *lèse-majesté* law and SLAPPs also highlights concerns about freedom of expression and political dissent. Additionally, the COVID-19 pandemic compounded issues as limited freedom of movement led to an increase in gender-based violence during lockdowns. On top of that, the use of disproportionate force against peaceful protesters, especially youth-led movements advocating for democratic reforms, remains a critical concern as is the inadequate protection and restrictive laws relating to refugees, asylum-seekers, and migrants. Moreover, restricted freedom of expression on social media, compounded by government pressure on technology companies, continues to raise alarms about the erosion of democratic values. Despite these challenges, the same-sex marriage bill does offer some hope and signifies a positive step towards recognizing LGBTQI+ rights in Thailand.

⁸⁸ 'Joint UPR submission to the UN Universal Periodic Review 39th Session of the UPR Working Group: The rights of marginalized women in Thailand' 25 March 2021, available at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=9028&file=EnglishTranslation>, accessed on 22 December 2022.

⁸⁹ The Legal Co, 'Thailand takes major step towards gender equality with proposed recognition act' Lexology, 8 May 2024, available at <https://www.lexology.com/library/detail.aspx?g=766885c3-cb4e-4cc7-8cd7-e9fab2839a54>, accessed on 1 October 2024.

TIMOR-LESTE



TIMOR-LESTE

Celso da Fonseca*

Part 1: Overview of Timor-Leste

A. Country Background

Timor-Leste Facts	
Geographical size	14,870 sq km
Population size ¹	1.3 million
Ethnic breakdown ²	Main ethnic groups: Tetum Prasa (30.6%), Mambai (16.6%), Makasae (10.5%), Tetum Terik (6.1%), Baikenu (5.9%), Kemak (5.8%), Bunak (5.5%), Tokodede (4%), Fataluku (3.5%)
Official language(s) ³	Portuguese and Tétum (national language) plus 15 local dialects English and Bahasa Indonesian (working languages)
Literacy rate (aged 15 and above) ⁴	69.90%
Life expectancy ⁵	69 years
GDP ⁶	US\$2.2 billion (per capita US\$1,648)
Government	A unitary semi-presidential representative democratic republic whereby the prime minister is head of government and the president is head of state. Follows systems of separation of powers and interdependence between organs of sovereignty.
Political and social situation	Parliamentary election in May 2023 saw the return of Xanana Gusmão (a key figure in the independence movement) to the country's premiership.

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¹ Data from 2023. 'Timor-Leste' World Bank, available at <https://data.worldbank.org/country/timor-leste>, accessed on 28 October 2024.

² Data from 2015. 'Timor-Leste' Minority Rights Group, available at <https://minorityrights.org/country/timor-leste/>, accessed on 28 October 2024.

³ 'About' Timor-Leste Government, available at <http://timor-leste.gov.tl/?p=547&print=1&lang=en>, accessed on 9 September 2023.

⁴ Data from 2020. 'Timor-Leste literacy rate 2001-2024' Macrotrends, available at <https://www.macrotrends.net/global-metrics/countries/TLS/timor-leste/literacy-rate>, accessed on 28 October 2024.

⁵ Data from 2022. World Bank (see note 1 above).

⁶ Data from 2023. World Bank (see note 1 above).

Situated 550km north of Australia, Timor-Leste is the smallest and most eastern island of the Malay Archipelago and includes the enclave of Oecussi-Ambeno, situated on the western (Indonesian) part of the island, and the islands of Ataúro and Jaco. It is the only Portuguese independent nation in Asia.

Current political situation

Timor-Leste experienced significant political deadlock in 2017 when the Governu Konstitusional da-VII (or the Seventh Constitutional Government) led by the Revolutionary Front for an Independent East Timor (Fretilin) and its allies, failed to secure enough parliamentary support for the proposed 2018 State budget. This failure, coupled with other political disagreements, led to the dissolution of both government and parliament. Consequently, President Francisco Guterres (popularly known as ‘Lu Olo’) called for early elections in 2018.

After the elections, a new coalition government, the Parliamentary Majority Alliance, established the Seventh Constitutional Government of Timor-Leste under the name, Alliance for Change and Progress (AMP). Led by Prime Minister Taur Matan Ruak, it held 34 out of 65 seats in the National Parliament.⁷ However, a mere two years later, the coalition collapsed when the National Congress for Timorese Reconstruction (CNRT) voted against the 2020 State budget, precipitating a political crisis and ultimately leading to its collapse. President Lu Olo initiated dialogue for a new coalition but a month later, following the emergence of COVID-19, the country’s need for stability became evident, prompting a government reorganization. Subsequently, all CNRT ministries voluntarily resigned. By the end of May, the government had secured the support of the majority of the National Parliament, including PLP, Khunto, and Fretilin.⁸ This situation created an opportunity for Fretilin to lend support to Prime Minister Matan Ruak’s government and form a coalition, thus solidifying its position as the primary supporting party. As a result, members of the Fretilin party voiced their endorsement of the new government (led by KHUNTO and PLP).

Over the past five years, Fretilin and CNRT have been major political rivals and together have shaped the political landscape. At one point, the CNRT accused President Lu Olo of favouring Fretilin and being partial, leading to debates, opposition, and conflicts over parliamentary seats. Despite Fretilin having the majority support, the CNRT continued to exert political pressure on the ruling parties in the eighth government and as such challenged constitutional recognition of the Fretilin-backed AMP coalition government. Political instability marked 2017-2022 with the two main political parties continuing to vie for power, until the parliamentary election in 2023 when the CNRT

⁷ ‘Timor-Leste’s Eighth Constitutional Government Governu Konstitusional VIII RDTL nian’ Laõ Hamutuk, 2018, available at <https://www.laohamutuk.org/misc/gov8/18VIIIGov.htm>, accessed on 25 October 2024.

⁸ ‘Timor-Leste’ Freedom in the World, 2022, available at <https://freedomhouse.org/country/timor-leste/freedom-world/2022>, accessed on 25 October 2024.

was able to form the ninth constitutional government in a coalition with the Democratic Party (PD) with Xanana Gusmão at its head.

The effect of the COVID-19 pandemic on human rights and peace

In early 2020, Timor-Leste was one many vulnerable countries that sought to quickly respond, mitigate, and prepare for the fast-approaching disaster. At the same time, the political crisis wrought by opposition parties, CNRT and Fretilin, contributed to tensions which affected the government's management of the crisis. Although facing twin pressures, both internal and external, with the CNRT condemning the unconstitutionality of the government led by Prime Minister Taur Matan Ruak (backed by Fretilin), the country saw no riots or massive protests.

To combat the outbreak, the government applied a state of emergency for almost three years and imposed a sanitary fence in all municipalities to prevent spread of the virus. Unsurprisingly, this affected the everyday lives of many Timorese leading to increased psychosocial pressure although those who suffered the most were vulnerable groups such as persons with disabilities, women, children, and LGBTQI communities. Similarly, policies restricting freedom of assembly and movement, access to schools and healthcare, and access to cultural and religious practices, became enormously challenging to navigate. In addition, the government's struggle to control the situation led in some cases to police brutality.⁹ The state of emergency and mandatory quarantine, in particular, created possibilities for the use of excessive force while people attempted to do crucial activities such as running small businesses, physical exercise, working in their gardens, and other activities to make a living.

One of the government's biggest challenges was to restore and maintain economic stability as a result of job losses or temporary job suspensions in the private sector and a lack of income in informal sectors. Consequently, subsidies became part of the government's support program and encompassed microbusiness loans, cash transfers, emergency food distribution, wage subsidies, a credit moratorium, and electricity and water utility subsidies.¹⁰

Whilst managing to prioritize humanitarian emergency assistance through social subsidies,¹¹ the government also rolled out the COVID-19 vaccination by relying on foreign assistance and multilateral funding because it could not procure enough

⁹ Interview with program manager of Asia Justice and Rights (AJAR), Timor-Leste, 4 December 2023.

¹⁰ 'Timor-Leste COVID-19 survey: Round 2' The Asia Foundation, July 2020, available at <https://asiafoundation.org/wp-content/uploads/2020/10/Timor-Leste-COVID19-Survey-July-2020.pdf>, accessed on 4 December 2023.

¹¹ Fonseca, C, 'Unpacking the COVID-19 vaccine transparency and accountability in Timor-Leste' in 'Vaccine equity, transparency, and accountability in Asia: Realities and dilemmas' Innovation for Change, East Asia, 2023, available at <https://eastasia.innovationforchange.net/wp-content/uploads/2023/08/VACCINE-EQUITY-TRANSPARENCY-AND-ACCOUNTABILITY-IN-ASIA.pdf>, accessed on 7 November 2023, at 151.

vaccines to ensure its resiliency by itself.¹² Consequently, to guarantee the right to life, the government provided free vaccines to everyone, including foreigners and immigrants. Overall, its social subsidies and free distribution of the vaccine contributed greatly to ensuring peace, prosperity, and resilience during the COVID-19 outbreaks.

Nevertheless, it must be said that in the midst of the political deadlock, the pandemic did much to undermine the government's ability to further develop multispectral areas such as education, access to healthcare, employment, food, and other basic social needs. As a result, the government imposed restrictions and introduced some policies and laws to limit various civil and political rights, including freedom of assembly and participation in political activities, considering such restrictions necessary to prevent spread of the virus. However, limited public participation affects the monitoring and controlling of government activities such as programs to fulfil the economic and social rights of citizens including the right to work and education. Citing its lack of experience as justification, the government neglected some fundamental rights and civil and political freedoms of its citizens as a strategy to prevent COVID-19. Nevertheless, some political rights, for example to political party elections and democratic governance, were successfully organized during the pandemic. Generally, it could be said that despite the outbreak and political impasse, the government and the political parties managed to contribute to political stability. Two national elections (presidential and parliamentary) were peacefully conducted with no political disputes and conflict. Consequently, the political scene remains stable and democracy in Timor-Leste has endured. As Freedom House reports, Timor-Leste achieved a 72/100 ranking in 2022.¹³ Compared to other Southeast Asian nations, Timor-Leste is still considered one of the most democratic countries in the world since it gained and restored its independence in 2002.

¹² Fonseca (see note 11 above), at 152.

¹³ Freedom in the World 2022 (see note 8 above).

B. International Human Rights Commitments and Obligations

Table 1: Ratification Status of International Instruments – Timor-Leste¹⁴

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		16 Apr 2003 (a)
Optional Protocol to the Convention against Torture	16 Sep 2005	
International Covenant on Civil and Political Rights (ICCPR)		18 Sep 2003 (a)
Second Optional Protocol to the ICCPR aiming to the abolition of the death penalty		18 Sep 2003 (a)
International Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		16 Apr 2003 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		16 Apr 2003 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		16 Apr 2003 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		30 Jan 2004 (a)
Convention on the Rights of the Child (CRC)		16 Apr 2003 (a)
Optional Protocol to the CRC on the involvement of children in armed conflict		2 Aug 2004 (a)
Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography		16 Apr 2003 (a)
Convention on the Rights of Persons with Disabilities (CRPD)		17 Jan 2023 (a)

¹⁴ 'Ratification status of Timor-Leste' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN, accessed on 2 November 2024.

Since independence (between 2003 and 2005), Timor-Leste has ratified 11 international human rights treaties and optional protocols thus providing reassurance to the international community of its commitment to human rights. Its recent ratification of the CRPD is a testament to the collective effort of a wide range of stakeholders and was the result of extensive advocacy by individuals, civil society groups, and international organizations. However, it has still not ratified the Convention for the Protection of All Persons from Enforced Disappearance.

Similarly, Timor-Leste has also ratified other international laws such as the International Labour Organizations (ILO) conventions. Since its membership to the ILO 20 years ago in 2003, it has ratified six out of ten ILO fundamental conventions on eliminating forced labour, freedom of association, collective bargaining, elimination of the worst forms of child labour, equal remuneration, and the elimination of discrimination.¹⁵ Although failing to ratify the other four (on violence and harassment, tripartite consultation, minimum age, and the abolition of forced labour) for 20 years, it carried out campaigns at both national and municipal levels to raise the awareness until finally ratifying them in 2023.

Part 2: Outstanding Human Rights Issues

A. Impunity and Transitional Justice

As a post-conflict country, Timor-Leste endured numerous human rights violations under the Indonesian occupation and the authoritarian regime of former president, Soeharto, from 1974 to 1999. Consequently, following independence, the Commission of Truth and Reconciliation (CAVR) was established to inquire into and register human rights violations committed on all sides. This eventually reported that the regime fully masterminded the violations from 1974-1999 with high-level military cooperation. Notwithstanding, the perpetrators seem never to have been charged and processed by the Indonesian Ad Hoc Human Rights Court established in Jakarta between 2002 and 2003 which was explicitly designed to deal with crimes against humanity as committed by the military. As such, the pro-Indonesia militia is considered to have failed to prosecute the criminal actors. Although a few have been charged with crimes against humanity, Human Rights Watch called the trials in Jakarta a whitewash as the prosecutors refused to indict senior leaders such as then-Chief of Staff General Wiranto (named by the Indonesian Human Rights Commission as being responsible for the 1999 violence). Moreover, the indictments only state that the accused “failed to control their subordinates” not that they actually planned and ordered the attacks.¹⁶ In

¹⁵ ‘Timor-Leste strengthens its reporting mechanism on ratified ILO Conventions’ ILO, 8 September 2023, available at <https://www.ilo.org/resource/news/timor-leste-strengthens-its-reporting-mechanism-ratified-ilo-conventions>, accessed on 2 November 2024.

¹⁶ ‘Indonesia’s Court for East Timor a “whitewash” Human Rights Watch, 20 December 2002, available at <https://www.hrw.org/news/2002/12/20/indonesias-court-east-timor-whitewash>, accessed on 27 October 2024.

reality, the violence was deemed a systematic process involving the highest levels of the Indonesian military and its cronies from Indonesia and Timor-Leste and included such atrocities as genocide, torture and assault, enforced disappearances, violence against women and children, forced deportations, and the wholesale destruction of property.¹⁷

As noted by Human Rights Watch during the court process, the Indonesian government proved itself reluctant¹⁸ to support the prosecution of these criminal actors, creating an atmosphere of impunity for the perpetrators. As a result, Timorese society has strongly advocated this issue with civil society groups and human rights defenders continuing to pledge to put legal mechanisms in place to prosecute the violators. However, impunity remains a no-action issue and there is still no clear path forward to fostering justice for victims and their families.

In particular, no political actors from Indonesia have even mentioned the issue. Indeed, the government of Timor-Leste itself has been reluctant pursue the matter since 2002. Rather, as noted by the AJAR report, the government seeks to preserve its national interest and “maintain positive relations with Indonesia.”¹⁹ Other pressures have added to the difficulty as, for example, female victims were often kept in sexual slavery by the Indonesian military and bore their children. However, post-independence, such women have no access to reparation or remedies to sustain their lives. Many were considered “soiled” and were rejected by East Timorese men for marriage and their children who were borne of rape also faced discrimination in society. To this day, many even find difficulty securing citizenship papers because local churches were often unwilling to issue baptism certificates without the father’s identity; although no specific regulation states such a certificate is required, it almost always is.²⁰

Other victims of human rights violations also lack access to reparation which is complex to navigate.²¹ As such, many live in the uncertainty of hope, lacking access to adequate livelihoods or any mechanisms to protect and promote their social rights. As noted by the Ombudsman for Human Rights and Justice of Timor-Leste,²² despite contributing

¹⁷ ‘Indonesia and Timor-Leste – Justice for Timor-Leste: The way forward’ Amnesty International and JSMP, 31 March 2004, available at <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa210062004en.pdf>, accessed on 27 October 2024.

¹⁸ ‘Justice denied for East Timor: Indonesia’s sham prosecutions, the need to strengthen the trial process in East Timor, and the imperative of UN action’ Human Rights Watch, available at <https://www.hrw.org/legacy/backgrounder/asia/timor/etimor1202bg.htm>, accessed on 27 October 2024.

¹⁹ ‘Transitional justice: Timor-Leste case study’ AJAR and Transitional Justice Asia Network, 2017, available at <https://asia-ajar.org/wp-content/uploads/2020/09/English-Timor-Leste-Case-Study.pdf>, accessed on 2 November 2024, at 8.

²⁰ Faludi, L, Pereira, N, Scrivner, A, and Wandita, G, ‘Timor-Leste’s children of war: A promise to heal’ CAVR, 2017, available at https://chegabaita.org/wp-content/uploads/2018/02/Final_Labarik-Funu_ENG_HighQuality_compressed.pdf, accessed on 27 October 2024, at 12.

²¹ Interview with staff of Lao Hamutuk, 29 November 2023. Lao Hamutuk is a local NGO focusing on development monitoring and analysis and is based in the capital city of Dili.

²² Interview with the Ombudsman of Human Rights and Justice, Timor-Leste/Provedor dos Direitos Umanus-PDHJ, 29 November 2023.

their lives to support the right to independence, women continue to suffer without any recognition or social assistance.

In 2005, the Chega! National Centre – From Memory to Hope (CNC) was established through Decree-Law No 48/2016 to implement recommendations made by the CAVR in 2005 and the bilateral Timor-Leste and Indonesia Commission of Truth and Friendship in 2008. As observed by Amnesty International in 2017/2018:

*The main planned activities of the CNC included memorialization, education, solidarity with victims of past human rights violations, and outreach. However, the CNC was not mandated to address the CAVR's recommendations on justice and reparations for victims of serious human rights violations.*²³

B. Women's Rights

Women's rights of particular concern in Timor-Leste include cross-cutting issues such as women and girls with disabilities and LGBTQI. In the eighth constitutional government (2018-2023), a Secretary of State for Equality and Inclusion was appointed to be later replaced by a Secretary of State for Equality. Thus, positive progress at the institutional level has been made as regards the promotion and advocacy of women's rights. Moreover, the promotion of gender equality and the empowerment of women and girls has also been slowly increasing in political decision-making at the national level including in the fields of technology, legislation, public policy, and other specific areas.²⁴

In the same way, a drive to promote gender equality in politics has also achieved progressive outcomes. Beginning with the introduction of a quota system in 2006 as part of the Law on the Election of the National Parliament (Law No 6/2006), political parties were required to nominate one woman for every four candidates on their election lists. Article 12 states:

The lists of effective and alternate candidates shall include at least 1 (one) woman candidate for every group of 3 (three) candidates, under penalty of rejection.

²³ 'Amnesty International report 2017/2018: The state of the world's human rights' Amnesty International, 2018, available at <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL1067002018ENGLISH.pdf>, accessed on 27 October 2024, at 362.

²⁴ Okoth, S, 'Government and development partners advocate for removal of technological barriers facing women and girls in Timor-Leste' UN in Timor-Leste, 10 March 2023, available at <https://timorleste.un.org/en/222600-government-and-development-partners-advocate-removal-technological-barriers-facing-women-and>, accessed on 27 October 2024.

Consequently, in 2023, 35.4% of the total number of 66 parliamentary members are female, and currently, the President of Parliament is also a woman.²⁵

Despite some progress in political life, however, the issues of gender-based violence, access to technology, and cultural barriers contributing to discrimination against women remain a challenge in Timor-Leste. Similarly, women are more vulnerable to and most affected by climate change, especially those who find their workload doubling to help their families during natural disasters.²⁶ For example, during Tropical Cyclone Seroja, the flash floods and landslides affected 31,337 households or approximately 178,621 people (including 13,099 households living below the national poverty line) across all 13 municipalities of Timor-Leste and caused 44 reported fatalities. As pointed out by the World Bank, the disaster exacerbated existing vulnerabilities washing away backyard economies and greatly increasing women and girls' unpaid household and care work.

C. Children's Rights

Two key values that lie at the heart of human rights are human dignity and equality. Human rights can therefore be understood as defining the basic standards necessary for a life of dignity and that in this respect, at least, all humans should be equal including, of course, children who like everyone else should have access to fundamental rights such as healthcare, education, and protection by the State. As such, Art 18 of the Constitution of Timor-Leste, clearly states that:

Children shall be entitled to special protection by the family, the community and the State, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse, and exploitation.

However, although it has been almost two decades since Timor-Leste ratified the CRC and all its protocols in 2003, only in 2023 did the government pass the Child and Youth Protection Law from Danger (Law No 6/2023), known in the national language as Lei Protesaun ba Labarik no Foinsae iha Perigu. This law protects children from physical, psychological, or sexual abuse, child pornography, domestic violence, or any other anticipated crime including activities such as work inappropriate to their age, dignity, and personal situation, or which is otherwise harmful to their training or development.

²⁵ 'Timor-Leste: National Parliament' IPU Parline, available at <https://data.ipu.org/parliament/TL/TL-LC01/>, accessed on 27 October 2024. See also: 'Who is Maria Fernanda Lay, TL's first female House Speaker?' Tatoli, 26 June 2023, available at <https://en.tatoli.tl/2023/06/26/who-is-maria-fernanda-lay-tls-first-female-house-speaker/15/>, accessed on 27 October 2024.

²⁶ 'Timor-Leste: Tropical Cyclone Seroja and Easter flood' World Bank, April 2021, available at <https://timorleste.un.org/sites/default/files/remote-resources/6b888a0f54218b8d441799900d09757b.pdf>, accessed on 27 October 2024.

Although Timor-Leste has yet to ratify the ILO Convention on the Minimum Age (138), a national legal framework indicates its commitment to comply with all international laws and recommendations in this regard. Nevertheless, some crucial challenges now require the State to expend more effort in confronting specific issues such as child labour. Previous research has already indicated it to be a problem in formal and informal sectors alike and in both rural and urban areas. For example, the 2016 National Child Labour Survey reported that “52,651 children, or 12.5% of children between the ages of 5 and 17, were engaged in child labour in Timor-Leste”²⁷ causing UNICEF and the ILO to call for urgent measures to halt the practice. This is especially relevant in 2023 as the economic impact of COVID-19 and rising inflation placed added strain on household incomes. Thus, the government must put more effort into protecting minorities from child labour, promoting access to justice and social integration, whilst expediting steps to develop a holistic system of juvenile justice.²⁸

D. LGBTIQ Rights

While the LGBTIQ movement in Timor-Leste is going strong having the support of human rights defender organizations and individual advocates, discrimination and stigmatization against such groups prevails. This gradually led human rights groups and LGBTIQ societies in Dili to start the country’s first pride march in 2017. From a small gathering six years ago, it has blossomed into an event attended by thousands in 2023 and demonstrates the community’s ongoing fight for acceptance.²⁹

As reported by UNFPA,³⁰ LGBTIQ groups often face discrimination in addition to physical and psychological abuse even at the hands of their own families. Such attitudinal barriers occur in both families and wider society and can occasionally lead to violence. It also affects LGBTIQ participation in social life such as access to education and work, and can consequently engender physiological or mental health issues. Moreover, such attitudes are prevalent in both urban and rural areas of Timor-Leste.

In this regard, President Jose Ramos Horta has emerged as a prominent human rights defender and one who actively supports and advocates for the rights of the LGBTIQ community. This has resulted in numerous policy and practical actions – for example, he and the UN representative in Timor-Leste joined the 2022 Pride Parade in Dili

²⁷ ‘ILO and UNICEF call for urgent measures to stop the worst forms of child labour in Timor-Leste’ UNICEF, 12 June 2023, available at <https://www.unicef.org/timorleste/press-releases/ilo-unicef-call-urgent-measures-stop-worst-forms-child-labour-timor-leste>, accessed on 27 October 2024.

²⁸ ‘Report of the Working Group on the Universal Periodic Review: Timor-Leste (A/HRC/50/12)’ Human Rights Council, 4 April 2022, available at <https://documents.un.org/doc/undoc/gen/g22/300/89/pdf/g2230089.pdf>, accessed on 27 October 2024.

²⁹ ‘Timor-Leste’s Pride: A story of hope and activism’ Ljubljana Pride, 22 November 2023, available at <https://ljubljanapride.org/en/timor-lestes-pride-a-story-of-hope-and-activism/>, accessed on 27 October 2024.

³⁰ ‘Leaving no youth behind in Timor-Leste’ UNFPA, 2018, available at https://timor-leste.unfpa.org/sites/default/files/pub-pdf/04_LGBTI_ENG_PRINT.pdf, accessed on 27 October 2024.

where he publicly urged citizens to respect and not discriminate against the group.³¹ Similarly, the UN representative in Timor-Leste, Roy Trivedi, stated that discrimination against LGBTQI must be eliminated, primarily through inclusive education³² to ensure students can access education without discrimination and physical abuse from their friends, teachers, and society. Whilst no formal State or influential discrimination has been visible, the systemic problem of societal discrimination remains a challenge. However it must be said that LGBTQI rights are a significant and widely embraced issue in Timor-Leste, reaching all levels of society and gaining the support of diverse advocates and allies.

E. Freedom of Expression

Although the youngest country in Southeast Asia, Timor-Leste enjoys high levels of freedom of expression. As the popularity of social media continues to grow however, ASEAN Parliamentarians for Human Rights (APHR) noted in a 2023 fact-finding mission that some journalists have faced prosecution, intimidation, and harassment from law enforcement.³³ Also in 2023, cases involving citizens using Facebook to criticize politicians and to share photographs of injuries sustained from alleged encounters with the police could yet end up in court.

F. Academic Freedom

Academic freedom has become a topic of public concern, especially for young activists and students from public and private universities who face restrictions against protesting, particularly as regards individual lecturers with the threat of administrative penalties or other pressure being brought to bear on campuses. As one student from Universidade de Dili (UNDIL) put it:

*The promotion of human rights in the university environment is crucial. The campus should be a place where freedom of thought is encouraged. The university lecturers often have a lot of control over us, preventing us from expressing our ideas. It is a substantial element for us to learn critical and constructive thinking at the university.*³⁴

³¹ Dagur, R, 'Timor-Leste president supports LGBT rights' UCA News, 3 August 2022, available at <https://www.ucasnews.com/news/timor-leste-president-supports-lgbt-rights/98267>, accessed on 27 October 2024.

³² De Sa, JB, 'UN in TL calls on communities to prevent discrimination against LGBTI In Timor-Leste' Tatoli, 24 May 2022, available at <https://en.tatoli.tl/2022/05/24/un-in-tl-calls-on-communities-to-prevent-discrimination-against-lgbti-in-timor-leste/08/>, accessed on 27 October 2024.

³³ 'Timor-Leste: Government urged by regional body to maintain press and online freedoms' Civicus, 2023, available at <https://monitor.civics.org/explore/timor-leste-government-urged-by-regional-body-to-maintain-press-and-online-freedoms/>, accessed on 27 October 2024.

³⁴ Interview with student at Universidade de Dili (UNDIL), 2 December 2023.

Another pointed out that:

*Student freedom is minimal because most students are under pressure from the lecturers. We have experienced that when we criticize and convey our ideas about the poor facilities and services [...], the lecturers will make us fail the final exam.*³⁵

However, one of the most critical concerns is the sexual abuse of students on campus by academic staff. A recent viral case on social media in 2023 alleged that when a lecturer at a private university in Dili drove a student to her proposal defence, he attempted to sexually abuse her. Such incidences led the National University of Timor-Leste (Universidade Timor-Lorosa'e-UNTL) to collaborate with UN Women in 2020 to establish a safe campus within its academic environment. This initiative aimed to create a secure environment for students, faculty, and staff at UNTL, the primary objective of which was to foster academic freedom, enabling students to report any incidents of sexual harassment or abuse involving faculty or fellow students.³⁶

As regards the academic freedom of teachers and researchers in Timor-Leste, they are generally able to work without pressure or interference from the government or private institutions. Moreover, there are no restriction policies or laws criminalizing defamation. Thus, Timor-Leste fosters a solid environment for freedom of expression ranking 4 out of 4 in the Freedom in the World Index 2024.³⁷ However, cases like the Topu Honis scandal³⁸ which involved a priest's abuse of underage girls in a boarding house in Oecuse revealed that speaking out to criticize or defend victims could entail significant risks. Those choosing to speak up may face substantial pressure due to the protection of religious institutions which are often backed by high-ranking political and non-political influential figures including in this case, a former president.³⁹ Therefore, when a private institution provided legal assistance to the victims, a team from this institution was excluded and faced pressure and intimidation from a political figure.⁴⁰ This case shows that anyone criticizing a figure from a dominant religious institution

³⁵ Interview with student at Universidade da Paz (UNPAZ), 4 December 2023.

³⁶ 'National University of Timor Lorosa'e (UNTL) and UN Women set the standard in the safe campus initiative' UN Women, 2020, available at <https://asiapacific.unwomen.org/en/news-and-events/stories/2020/05/national-university-of-timor-lorosa-e-untl-and-un-women-set-the-standard>, accessed on 27 October 2024.

³⁷ 'Freedom in the World 2024: Timor-Leste' Freedom House, 2024, available at <https://freedomhouse.org/country/timor-leste/freedom-world/2024>, accessed on 28 October 2024.

³⁸ Richard Daschbach was convicted in Oecuse District Court on charges of having sexually abused many underage Timorese girls over decades while he was running the Topu Honis orphanage. Daschbach, who came from the USA as a priest nearly fifty years ago, was defrocked by the Catholic Church in 2018 after admitting the abuse during a Church investigation. The case, the first against a (former) priest in Timor-Leste, has become politicized with misinformation widely circulated over social media. See, Barrett, C, 'The disgraced priest, the children's shelter and a fight for justice in East Timor' Sydney Morning Herald, 7 June 2021, available at <https://www.smh.com.au/world/asia/the-disgraced-priest-the-children-s-shelter-and-a-fight-for-justice-in-east-timor-20210604-p57y2o.html>, accessed on 28 October 2024.

³⁹ See note 38 above.

⁴⁰ Dagur, R, 'Timor-Leste trial of the century plays out on social media' Lao Hamutuk, 23 June 2021, available at <https://www.ucanews.com/news/timor-leste-trial-of-the-century-plays-out-on-social-media/92995>, accessed on 28 October 2024.

in Timor-Leste may be judged, attacked, and discriminated against by the public. It can therefore be seen that academics cannot freely offer constructive criticism to high-level and powerful politicians or the religious institutions holding power in Timor-Leste.

G. Police Brutality

The frequency of reports concerning unnecessary physical aggression and the unlawful use of firearms has been an issue since 2018 with security watchdog Fundasaun Mahein calling it a “systemic problem.” That comment came after an off-duty police officer allegedly shot and killed three young man at a private party in Kuluhun, Dili on 18 November 2018.⁴¹

Similarly, during the COVID-19 outbreak, there were many reports of misuse of power by police officers and the use of excessive force. For example, in March 2021, an incident was widely shared on social media during which a police officer instructed two sanitation workers to slap each other for violating the COVID-19-related travel limitations.⁴² Similarly, firearms were used against citizens in the municipalities of Baucau and Lospalos in 2022, and in Viqueque in November 2023.

Referring to the brutal behaviour of the Indonesian occupying forces against the Timorese from 1975 to 1999, the national ombudsman noted that even after gaining independence, the mentality of its police force remained similar to that of the Indonesian police during Soeharto’s regime.⁴³ Nevertheless, it continues its mandate to assist citizens by bringing cases of human rights violations against the police with some cases even proceeding to court resulting in various outcomes including prison time or dismissal.⁴⁴

H. Migration and Human Trafficking

While restrictions on people travelling to Timor-Leste are few and discrimination against migrants or their children born inside the country are not an issue,⁴⁵ and the State guarantees the right of asylum as outlined in its Migration and Asylum Law

⁴¹ ‘Police accused of unnecessary violence and lack of gun control’ Fundasaun Mahein, 24 November 2018, available at <https://www.easttimorlawandjusticebulletin.com/2018/11/police-accused-of-unnecessary-violence.html>, accessed on 28 October 2024.

⁴² ‘2022 country reports on human rights practices: Timor-Leste’ US Department of State, 2022, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/timor-leste/>, accessed on 28 October 2024.

⁴³ See note 22 above.

⁴⁴ ‘Membru PNTL 324 komete irregularidade’ Tatoli, 24 September 2019, available at <https://tatoli.tl/2019/09/24/membru-pntl-324-komete-irregularidade/>, accessed on 28 October 2024.

⁴⁵ For example, as noted in its UPR national report in 2022, “The children of migrants who are born in the territory of Timor-Leste have the same rights as East Timorese to access registration when the child is born, and the registration process for the children of migrants is the same as for East Timorese.” See, ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Timor-Leste (A/HRC/WG.6/40/TLS/1)’ Human Rights Council, 9 November 2021, available at <https://documents.un.org/doc/undoc/gen/g21/320/29/pdf/g2132029.pdf?OpenElement>, accessed on 3 November 2021, at 7.

(No 11/2017), the United Nations country team noted a lack of policies or strategies to ensure that migrant detention would only be used as a measure of last resort. In addition, they noted progress towards implementation of the law had been slow. Similarly, as regards human trafficking and foreign labour issues, Timor-Leste also has an inaccurate prevention and identification mechanism to classify trafficking cases.⁴⁶ Thus, an adequate mechanism to regulate cases of foreign labour is required, including for immigrants working in the country.⁴⁷ However, this issue also affects Timorese individuals seeking to work in foreign labour markets under the supervision of labour agencies. For example, many Timorese travelled to other countries such as Portugal during the pandemic and as a result, faced serious visa issues – some were even abandoned homeless and hungry in Portugal without adequate financial support. As a consequence, the government of Timor-Leste introduced stricter controls for Timorese intending to travel to Portugal. In one case, it was alleged that the director of a private agency had also facilitated employment to the Middle East in circumstances amounting to human trafficking. That director was prosecuted under Arts 163 and 164 of the Criminal Code which criminalizes all forms of labour and sex trafficking.⁴⁸

Although the government and security services have made efforts to prevent human trafficking (including prosecuting more alleged traffickers and signing an agreement with a foreign government to streamline the migrant worker hiring process), the country remains vulnerable, having not yet reached the minimum standards for the elimination of trafficking. These standards were even more challenging to enforce during the COVID-19 pandemic. In addition, the government is struggling to design policies to combat the problem as many Timorese themselves travel abroad to seek work facilitated by such agencies. In conclusion as pointed out by the US Department of State, the main obstacles facing Timor-Leste include the following: law enforcement officials have an insufficient understanding of trafficking which inhibits victim identification, the Commission to Combat Trafficking in Persons (KLATU) lacks sufficient funding and resources, and the government has also failed to provide trafficking-specific services.⁴⁹

⁴⁶ Interview with a program manager at Yayasan HAK, 25 November 2023.

⁴⁷ 'Human trafficking in Timor-Leste: A serious and growing problem' Fundasaun Mahein, 16 January 2024, available at <https://www.fundasaunmahein.org/2024/01/16/human-trafficking-in-timor-leste-a-serious-and-growing-problem/>, accessed on 28 October 2024.

⁴⁸ 'Mahein Foundation appreciates PCIC's work in arresting suspects in human trafficking cases' Tatoli, 27 June 2022, available at <https://tatoli.tl/2022/06/27/fundasaun-mahein-apresia-serbisu-pcic-detein-suspeitu-kazu-trafiku-umanu/>, accessed on 28 October 2024.

⁴⁹ '2024 trafficking in persons report: Timor-Leste' US Department of State, 2024, available at <https://www.state.gov/reports/2024-trafficking-in-persons-report/timor-leste/>, accessed on 28 October 2024.

Part 3: Conclusion

In recent years, Timor-Leste has steadily shifted towards becoming a free society where all people can enjoy their freedom and dignity. Accordingly, the government's duty to protect, promote, and fulfil the civil and political rights of its citizens has significantly improved. However, other rights, such as access to social services, healthcare, quality education (and especially inclusive education), clean water, and other fundamental rights to a sustainable livelihood, must also be adequately provided.

In the same way, protection for marginalized groups, such as people with disabilities, LGBTQI, women, and children, needs to be strengthened. This involves not only protecting their rights but also promoting other social rights including the right to access justice. Further, the right to access reparations requires more government engagement and is especially vital for women survivors of past human rights violations and victims of gender-based violence.

Socio-economic and cultural rights necessitate the allocation of adequate State funds and requires an inclusive budget design. Thus, the government must be responsive to human rights in every public policy and program. Moreover, concerning political and civil rights, freedom of speech on campus and in academic settings must be improved and the rights of women, LGBTQI, and people with disabilities, be given more consideration. Finally, the State needs to intensify its role in the promotion and protection of children's rights against violations such as child labour and corporal punishment, and fight discrimination from families and the wider society including the school system.

VIETNAM

VIETNAM

Tran Thang Long and Le Thi Minh Phuong***

Part 1: Overview of Vietnam

A. Country Background

Vietnam Facts	
Geographical size	332,698 sq km
Population ¹	98,858,950
Ethnic breakdown ²	Main ethnic groups: Kinh (85.7%), Tay (1.9%), Thai (1.7%), Muong (1.5%), Khmer (1.5%)
Official language	Vietnamese
Literacy rate (aged 15 and above) ³	96.13%
Life expectancy ⁴	75 years
GDP ⁵	US\$429.72 billion (per capita US\$4,346)
Government	A one-party socialist republic led by the Communist Party of Vietnam (CPV) which espouses Marxist-Leninist and Ho Chi Minh thought. The unicameral National Assembly is the supreme legislative body. The National Assembly elects the President who is also the head of state.
Political and social situation ⁶	Although the CPV maintains a stranglehold on political power, recent amendments/proposed amendments to laws and increased public participation in decision-making have led to the inclusion of human rights into legislation. However, in some instances, an implementation gap exists between what the law preaches and what the government actually practices.

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¹ Data from 2023. 'Vietnam' World Bank, available at <https://data.worldbank.org/country/VN>, accessed on 1 February 2024.

² Data from 2009. 'The 2009 Vietnam population and housing census: Completed results' Central Population and Housing Census Steering Committee, 2010, available at http://portal.thongke.gov.vn/khodulieudanso2009/Tailieu/AnPham/KetQuaToanBo/3_Ketqua-toanbo.pdf, accessed on 19 November 2024.

³ Data from 2022. 'Vietnam literacy rate 1979-2024' Macrotrends, accessed on 21 October 2024.

⁴ Data from 2022. World Bank (see note 1 above).

⁵ Data from 2023. World Bank (see note 1 above).

⁶ Huong, N, 'Vietnam' in Sharom, A, and Spooner, M (eds), Human Rights Outlook in Southeast Asia 2018, Bangkok: SHAPE-SEA, 2018, at 169.

Located at the eastern edge of mainland Southeast Asia, Vietnam is bordered by China to the north, the South China Sea to the east and south, the Gulf of Thailand (Gulf of Siam) to the southwest, and Cambodia and Laos to the west.

Human rights perspective in Vietnam

Although the influence of western standards and values as regards democracy and human rights can be seen in Vietnam's 1945 Declaration of Independence (which includes references to the United States Declaration of Independence),⁷ it is also built on a foundation of Marxism-Leninism and Ho Chi Minh ideology and such factors as the nation's history of fighting against foreign invaders, the Vietnamese cultural identity and traditions, alongside international principles and standards on human rights and certain practical issues, all under the leadership of the CPV.

After a long process of development, Vietnam's perspective on human rights can therefore be summarized briefly as the common values of mankind taking into account inherent class divisions,⁸ which are both universal and specific albeit with the caveats of cultural relativism and the right to national self-determination (as also espoused by the ASEAN Human Rights Declaration, the UN Charter, and most basic UN international conventions⁹). At the same time, human rights should combine harmoniously with collective rights making it the responsibility of individual States to enhance such rights following the basic principles of international law, particularly the UN Charter, the results of which should be spread around the world through international dialogue and cooperation.¹⁰

The effect of the COVID-19 pandemic on human rights and peace

Vietnam was not greatly affected by the COVID-19 pandemic until 2021, when the total number of cases rose sharply to 1.3 million including more than 27,000 deaths. Moreover, in July of 2021, the unemployment rate increased to 2.52%¹¹ with the service sector most heavily affected leading to more than 70,000 business closures in the first

⁷ 'Declaration of Independence 1945' Embassy of the Socialist Republic of Vietnam, available at <https://vietnamembassy-usa.org/vietnam/politics/declaration-of-independence>, accessed on 10 November 2024.

⁸ Directive No 12/CT-TW, 12 July 1992, Party Central Committee Secretariat.

⁹ Article 1 of the International Covenant on Civil and Political Rights (ICCPR); and Art 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

¹⁰ See, Directive No 41/2004/CT-TTg, Ministry of Foreign Affairs, 2 December 2004, at 5. The CPV's 10th National Congress also affirmed the need to actively participate in the common struggle for human rights and to enter into dialogue with relevant countries and international and regional organizations on human rights issues.

¹¹ 'Press release on labor and employment situation in the fourth quarter of 2021 and Vietnam's human development index 2016-2020' General Statistics Office, available at <https://www.gso.gov.vn/du-lieu-va-so-lieu-thong-ke/2022/01/thong-cao-bao-chi-tinh-hinh-lao-dong-viec-lam-quy-iv-nam-2021-va-chi-so-phat-trien-cong-nguoi-viet-nam-2016-2020/#:~:text=S%E1%BB%91%20ng%C6%B0%E1%BB%9D%20th%E1%BA%A5t%20ngh%E1%BB%87p%20trong,v%E1%BB%9Bi%20khu%20v%E1%BB%B1c%20n%C3%B4ng%20th%C3%B4n>, accessed on 3 February 2024.

months of 2021 alone¹². However, basic rights were still protected and guaranteed, including access to necessities such as food, essential items, medical care, and online education.

To combat the pandemic, Vietnam successfully introduced policies and measures to minimize impact on the economy and people's lives by maintaining and restoring production and business to safeguard jobs whilst also ensuring social security, especially as regards the vulnerable. Other successes include its efforts to organize the repatriation of many of its citizens at the height of the pandemic. By early August 2020, Vietnam had organized more than 80 flights, bringing home more than 21,000 citizens from 50 countries and territories.¹³

As a result of COVID-19's potential to wreak havoc, many countries enacted emergency legislation to halt transmission of the virus including to restrict children's rights and by and large, these necessary practices did have the desired effect thereby ensuring, for example, the right to life, the only caveat being that such regulations needed to abide by the Siracusa Principles¹⁴. Thus, in the context of protecting public health, giving power to the executive branch or the government over the legislature was deemed entirely reasonable and necessary to provide urgent solutions to a potentially nation destroying event. Drastic measures the government was compelled to take included the use of third degree contact tracing, targeted lockdowns, quarantine for all overseas arrivals, widespread testing, and free vaccinations.

In particular, as recommended by the World Health Organization (WHO), Vietnam worked hard to increase the capacity of its healthcare system, providing free medical services to the infected, whilst supporting the medical costs of those in dire need. As a result, by 8 December 2021, Vietnam had injected nearly 130 million doses of the COVID-19 vaccine¹⁵ established the COVID-19 Vaccine Fund, and the Working

¹² Phuong, M, 'The number of businesses ceasing operations or temporarily suspending operations from the beginning of the year until now has increased sharply compared to the first 6 months of 2020' Thanh Nien, 29 June 2021, available at <https://thanhvien.vn/hon-70000-doanh-career-rut-retreat-from-thi-school-in-6-month-dau-nam-1851083736.htm>, accessed on 10 November 2024.

¹³ Dang, M, 'Vietnam has brought more than 21,000 citizens home amid the COVID-19 epidemic' Tuoi Tre, 8 June 2020, available at <https://tuoitre.vn/viet-nam-da-dua-hon-21000-cong-dan-Covid-19-2020080617373256.htm>, accessed on 10 November 2024.

¹⁴ See, 'Siracusa Principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights' International Commission of Jurists, 1985, available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>, accessed on 10 November 2024.

¹⁵ 'Vietnam injects nearly 130 million doses of COVID-19 vaccine' Ministry of Health, 8 December 2021, available at https://moh.gov.vn/tin-lien-quan/-/asset_publisher/vjYyM7O9aWnX/content/chieu-8-12-viet-nam-live-130-million-lieu-vaccine-prophylactic-covid-19-nha-hang-super-thieu-su-tri-how-when-there-are-people-suspicious-la-f0-, accessed on 10 November 2024.

Group on Vaccine Diplomacy¹⁶ to, for example, mobilize aid for vaccines, treatment drugs, and medical items.

Similar to many other countries, Vietnam applied travel restrictions to control the epidemic which necessarily limited freedom of movement. It also applied measures to regulate meetings during this period thereby affecting freedom of assembly. Significantly, while people's right to access information was generally not curtailed, some information about the pandemic could not be disclosed fully and transparently.

As regards corruption, although some was evident in this period, including that of Viet A Technology Joint Stock Company which artificially raised the price of test kits, government intervention was generally quick and decisive to ensure better protection of the nation's right to healthcare. In this case, dozens of health sector officials were swiftly prosecuted.¹⁷

By September 2020, 31.8 million people aged 15 and older had been negatively affected by COVID-19 (as a result of job losses, enforced leave, or having their hours reduced¹⁸) leading the government to introduce support packages of VND62,000 billion (in 2020) and VND26,000 billion (up to July 2021). In addition, to further protect public health, businesses were restricted to varying degrees especially those receiving foreign guests. Others producing and trading essential goods and services had to do so under stringent conditions.¹⁹ Thus, it can be seen that COVID-19 had the most direct impact on the right to work²⁰ with most issues revolving around labour contracts and the obligations of employers towards employees in the context of regulations determining, for example,

¹⁶ 'Establishment of the Government's Working Group on vaccine diplomacy' Government Office, 14 August 2021, available at <https://vpcp.chinhphu.vn/thanh-lap-to-cong-tac-cua-chinh-phu-ve-ngoai-delivery-vaccine-11526358.htm>, accessed on 10 November 2024.

¹⁷ 'Trial of 2 former ministers and 36 defendants in the Viet A Great Case' Policy and Law Making, 3 January 2024, available at <https://xaydungchinhsach.chinhphu.vn/dai-an-viet-a-truy-to-2-cuu-bo-truong-cung-36-bi-can-119230930184729463.htm>, accessed on 10 November 2024.

¹⁸ See, 'Reporting the impacts of the COVID-19 epidemic on the labour and employment situation in Vietnam in the third quarter of 2020' General Statistics Office, 6 October 2020, available at <https://www.gso.gov.vn/du-lieu-va-so-lieu-thong-ke/2020/10/how-to-tac-dong-cua-dich-covid-19-den-in-hinh-lao-dong-working-in-viet-nam-Quy-iii-2020/>, accessed on 10 November 2024.

¹⁹ In Vietnam, business freedom was partly limited to prevent the COVID-19 pandemic from spreading. See, Directive No 15/CT-TTg, 27 March 2020; Directive No 16/CT-TTg, 31 March 2020; and Directive No 19/CT-TTg. These all contained restrictions on freedom of business, such as the temporary suspension of business activities in specific areas except for establishments selling essential goods and services (Directive 15); limiting the operation of factories, business services, and essential goods providing food, medicine, medical services, and emergency services during social distancing periods (Directive 16); and the temporary suspension of non-essential service businesses (Directive 19).

²⁰ The Asia-Pacific Employment and Social Outlook Report 2020 estimated that the economic consequences of the pandemic would cause a loss of about 81 million jobs in 2020, an initial estimate of the regional unemployment rate. See, 'Asia-Pacific Employment and Social Outlook 2020: Navigating the crisis towards a human-centred future of work' ILO, 15 December 2020, available at <https://researchrepository.ilo.org/esploro/outputs/book/AsiaPacific-employment-and-social-outlook-2020/995219191502676#file-0>, accessed on 10 November 2024.

whether employers could unilaterally terminate labour contracts due to an epidemic,²¹ or employees be temporarily transferred to work not specified in their labour contracts. Other issues included responsibility for severance pay and dispute resolution.

B. International Human Rights Commitments and Obligations

Vietnam has ratified seven of the nine fundamental UN conventions on human rights as shown in Table 1 below. It has also ratified and joined 25 ILO conventions, including nine of the ten fundamental ones.²² Moreover, it was also the second country in the world and the first in Asia to join the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

Table 1: Ratification Status of International Instruments – Vietnam²³

Treaty	Signature Date	Ratification Date, Accession(a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)	7 Nov 2013	5 Feb 2015
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		24 Sep 1982 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art 32)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	29 Jul 1980	17 Feb 1982
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		9 Jun 1982 (a)

²¹ For example, Art 36(1)(c) of the 2019 Vietnamese Labor Code stipulates that an employer has the right to unilaterally terminate labour contracts in the case of a dangerous epidemic after finding all possibilities have been exhausted.

²² 'Ratifications for Vietnam' ILO, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103004, accessed on 10 November 2024.

²³ 'Ratification status for Vietnam' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 23 October 2024.

Treaty	Signature Date	Ratification Date, Accession(a), Succession (d) Date
International Covenant on Economic, Social and Cultural Rights (ICESCR)		24 Sep 1982 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)	26 Jan 1990	28 Feb 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	8 Sep 2000	20 Dec 2001
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography	8 Sep 2000	20 Dec 2001
Convention on the Rights of Persons with Disabilities (CRPD)	22 Oct 2007	5 Feb 2015

Vietnam's international commitments are reflected in its national legal documents.²⁴ From 2014 to present, it submitted numerous national reports including State party reports most recently on the CAT (2024), the ICCPR (2023), CEDAW (2023), and the ICERD (2021). Moreover, it published four national reports for its Universal Periodic Reviews or UPR (the last of which occurred in 2024), and has actively implemented most recommendations of the Human Rights Council in addition to participating in UN peacekeeping missions in South Sudan, the Central African Republic, Abyei, and the UN headquarters.

Elected as a non-permanent member of the Security Council in 2019, Vietnam served as president of the UN Security Council in January and April 2021 and was a member of the UN Human Rights Council from 2014-2016 during which it promoted a balanced, progressive, and people-centred approach. It will continue to hold this role in the 2023-2025 term.²⁵

²⁴ Kieu, H, 'Achievement of human rights in Vietnam: A never-ending journey' Tuyen Giao, 13 December 2021, available at <https://tuyen-giao.vn/thanh-tuu-ve-quyen-con-nguoi-o-viet-nam-hanh-trinh-khong-ngung-nghi-141697>, accessed on 10 November 2024.

²⁵ It should be noted that, to be elected to the UN Human Rights Council, candidate countries must have achieved outstanding progress in ensuring and protecting human rights domestically, whilst contributing to and creating many initiatives to actively promote human rights globally. See also, 'Vietnam wishes to continue making positive contributions to the United Nations Human Rights Council' Communist Party of Vietnam, 4 October 2022, available at <https://dangcongsan.vn/tieu-diem/viet-nam-mong-want-to-tuc-dong-gop-tich-cuc-voi-hoi-dong-nhan-quyen-lhq-621028.html>, accessed on 10 November 2024.

International cooperation on human rights in the region led to establishment of the ASEAN Intergovernmental Committee on Human Rights (AICHR) and the ASEAN Committee on the Protection and Promotion of the Rights of Women and Children (ACWC). Notably, it also approved the ASEAN Human Rights Declaration (AHRD) in 2012 and ratified the ASEAN Convention on preventing and combating trafficking in persons, especially women and children in 2016 before participating in the Bohol Action Plan on combating human trafficking (2017-2020), the Bali Process, and the COMMIT Process to prevent illegal migration across borders.

Significantly, Vietnam has also conducted bilateral and multilateral dialogues with countries and international organizations in the field of human rights, specifically the United States, Norway, Sweden, Switzerland, Australia, and the European Union and actively participates in other UN forums on human rights such as the ECOSOC and the Third Committee of the General Assembly.²⁶

C. National Laws Affecting Human Rights

*Constitution of Vietnam (2013)*²⁷

Containing 36 articles, Chapter II²⁸ stipulates the majority of provisions regulating the basic rights and obligations of citizens and is in line with the international conventions to which it is a member, as well as the constitutions of many other countries.²⁹ As detailed below, a whole range of political, social, and economic rights under the protection of the People's Court³⁰ were consolidated such as prohibitions against torture, cruel, inhuman, and degrading treatment; the right to a private life; the right to participate in state and social management and to vote in referendums; in addition to rights to a fair trial, private property ownership, social security, and a legal residence. Others include the right to complain and denounce; the right to compensation for material and mental damages; the right to social security; and the right to live in a healthy environment. However, there are two caveats: some rights only apply to citizens³¹; and under Art 14(2), the derogation of such rights is limited to national defence and national security, social order and security, social morality, and community well-being. Nevertheless,

²⁶ '2021: Vietnam continues to make its mark in ensuring human rights' Communist Party of Vietnam, 20 June 2021, available at <https://www.tapchicongsan.org.vn/web/guest/ngghien-cu/-/2018/823406/not-the-sophistication-in-process-of-viet-nam-in-milling-use%2C-hoan-thien-and-thuc-thi-phap-law-vehicles-child-person.aspx>, accessed on 10 November 2024.

²⁷ The Constitution of the Socialist Republic of Vietnam was adopted on 28 November 2013 and took effect on 1 January 2014.

²⁸ In terms of position, the section of the 1992 Constitution on citizen rights was moved to Chapter II in the 2013 Constitution, demonstrating the importance placed on human and citizen rights. See Tung, DT, 'Vietnam's achievements in building, perfecting and enforcing human rights laws cannot be denied' Communist Review, 20 June 2021, available at <https://www.tapchicongsan.org.vn/web/guest/ngghien-cu/-/2018/823406/not-the-phunhan-thanh-tuu-cua-viet-nam-trong-xay-dung%2C-hoan-thien-and-thuc-thi-phap-law-ve-law-children-people.aspx>, accessed on 2 February 2024.

²⁹ Tung (see note 28 above).

³⁰ Article 102 of the 2013 Constitution.

³¹ Many constitutions distinguish between citizen rights and non-citizen rights especially the right to vote which is usually only conferred on the former.

compared to international human rights standards, the 2013 Constitution still requires adjustment to ensure fully effective implementation.³²

Political and civil rights

Political rights are ensured and protected by Art 14(2) of the Constitution³³ which stipulates equality before the law, the right to vote of all adult (aged 18 and above) citizens regardless of gender, religion, or ethnicity, and the right to run for election (aged 21 and above) to the National Assembly and People's Councils.³⁴ Moreover, such rights are also confirmed by many other provisions including the Law on Complaints (2011),³⁵ the Law on Citizen Reception (2013),³⁶ the Law on the Election of National Assembly Deputies and People's Council Deputies (2015),³⁷ and the Law on Denunciations (2018).³⁸

Right to assemble and protest: Currently, in addition to Art 25 of the Constitution,³⁹ no legal provisions directly regulate or guide the exercise of the right to protest although a Law on Demonstrations and a Law on Associations are in the process of being drafted.

Economic, social and cultural rights

Right to life: Article 19 of the 2013 Constitution affirms the right to life which is protected by law and prevents anyone being illegally deprived of his or her life.⁴⁰ The right to life has also been further upheld by the 2015 Criminal Code which abolished the death penalty for embezzlement under certain circumstances and for juveniles, pregnant women, women raising children under 36 months old, and those 75 years old or older.

Moreover, the right to survival is supported by social security, improved access to healthcare services for mothers and new-borns, and emergency relief for those suffering from natural disasters and epidemics. For example, during the pandemic, government support of VND45,600 billion reached 36.5 million including 394,000 employers and 500,000 business households.

³² Dung, ND, 'Human rights and the protection and implementation of human rights under the 2013 Constitution' *Legislative Research*, 2015, Vol 11, No 291. Available at <http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=208419>, accessed on 3 February 2024.

³³ Article 14(1) of the 2013 Constitution.

³⁴ Articles 27, 28, and 29 of the 2013 Constitution.

³⁵ Law No 02/2011/QH13.

³⁶ Law No 42/2013/QH13 and Law No 25/2018/QH14.

³⁷ Law No 85/2015/QH13.

³⁸ Law No 25/2018/QH14.

³⁹ Article 25 specifies rights to freedom of speech, freedom of the press, access to information, assembly, association, and demonstration.

⁴⁰ Article 20(1) goes on to stipulate rights to physical inviolability, to be protected against torture, violence, persecution, and corporal punishment in terms of one's health, honour, and dignity.

Right to freedom of belief and religion: The right to freedom of belief and religion is affirmed in the 2013 Constitution and was concretized by the 2016 Law on Belief and Religion.⁴¹

Citizens' right to freedom of movement and freedom of residence: Article 23 affirms "Citizens have the right to freely travel and reside in the country, have the right to go abroad and return home from abroad" which ensures freedom of movement and the right of residence for citizens.⁴²

Freedom of the press and speech: This is protected under Art 25 of the Constitution. Consequently, by the end of 2022, Vietnam was able to boast 127 newspaper agencies, 670 magazine agencies, and 72 radio and television stations. Further, the number of internet users is also up to 72.1 million, accounting for about 73.2% of the population making Vietnam the 12th highest internet user in the world and ranking it sixth among the 35 countries and territories in Asia.⁴³

Women and children: Legislation to protect women and children includes the Law on Gender Equality 2006, the Law on Prevention and Control of Domestic Violence 2007, the Law on Marriage and Family 2014, the Criminal Code 2015 (amended and supplemented in 2017), the Law on Children 2016, the Law on Legal Aid 2017, and the Labor Code 2019.

People with disabilities: The Law on People with Disabilities (2010) defines the rights and obligations of people with disabilities, together with the responsibilities of the State, family, and society. No longer taking a charitable and humanitarian approach, legislation now follows a human rights-based approach, reflecting the spirit and content of the CRPD and clearly defines rights in areas such as medical care and rehabilitation, access to education, vocational training, job creation, and the right to access and use construction works, information and communication technology, and legal aid. However, persons with disabilities still encounter barriers and challenges in exercising their rights, especially when trying to access services such as transportation and cultural and sporting events.

⁴¹ Law No 02/2016/QH14. By 2022, Vietnam had recognized 43 organizations belonging to 16 different religions, with 26.7 million followers and over 29,000 places of worship. Many major religious festivals were organized, attracting tens of thousands of believers. In recent years, religious organizations have also been able to print, publish, and translate a large number of scriptures and religious materials, in addition to 12 newspapers and magazines related to religion. Moreover, most religious organizations have their own websites. See, 'Religion and religious policies in Vietnam' Government Committee for Religious Affairs, available at http://cms.btgcp.gov.vn/upload/documents/25_08_2023/-2023-08-25-18-52-04.pdf, accessed on 3 February 2024.

⁴² 'Ensuring and promoting human rights is Vietnam's consistent policy' National Defense Magazine, available at <http://tapchiquptd.vn/vi/phong-chong-dbbh-bao-ve-vung-chac-nen-tang-tu-Tuong-cua-dang/bao-dam-and-daily-rules-for-human-is-the-truong-nhat-quan-cua-viet-nam/21167.html>, accessed on 3 February 2024.

⁴³ 'Digital 2023: Vietnam' Datareportal, available at <https://datareportal.com/reports/digital-2023-vietnam>, accessed on 10 November 2024.

Ethnic minority rights: Many policies and resolutions deal with this issue including, for example, Decision No 2085/QĐ-TTg (2016) which supports the socio-economic development of ethnic minorities and mountainous areas from 2017 to 2020, Decision No 1719/QĐ-TTg (2021) approving the national target program for the socio-economic development of ethnic minorities and mountainous areas from 2021-2030, and Resolution No 10/NQ-CP (2022) on promulgation of the ethnic affairs strategy for the period 2021-2030. Despite this, for many reasons, implementation is lacking in practice leaving some ethnic minority groups still facing barriers and challenges to accessing their basic rights.

Elderly rights: Article 37(3) of the 2013 Constitution affirms that the elderly are respected, cared for, and promoted by the State, family, and society.⁴⁴ The rights of elderly people are also expressed in many legal documents⁴⁵ creating a solid legal framework that ensures the right not to be discriminated against, social security rights, the right to work, the right to participate in cultural and social life, the right to be cared for and have healthcare, and the right to promote one's role in society (the right to be respected). However, implementation still has many limitations and shortcomings and lacks a flexible mechanism to fully protect and promote the rights of the elderly.

In addition, all the above rights are protected by a whole series of institutions including the CPV (which takes the lead role), State agencies, law enforcement, the Human Rights Steering Committee (which was established to advise the CPV and government), the judicial system, and social institutions such as the Fatherland Front.

Part 2: Outstanding Human Rights Issues

A. Academic Freedom

A key concept in the higher education system and widely understood as a component of freedom of expression, academic freedom plays an essential role in the development of science, technology, and society and needs to be protected at all educational levels.⁴⁶ It includes freedom of training (or the school's right to self-determination in issues such as enrolment, training content, and quality assurance), freedom of research (or the right to choose research topics and methods and to publish the results without interference), freedom to teach without fear of punishment for infringing on, for

⁴⁴ Article 37 of the 2013 Constitution.

⁴⁵ See, for example, the Law on the Elderly 2009, the Law on Social Insurance 2014, the Law on Health Insurance 2008 (amended and supplemented in 2014), the Law on Medical Examination and Treatment 2009, the Law on Prevention and Control of Domestic Violence 2007, the Law on Employment 2009, and the Law on People with Disabilities 2010.

⁴⁶ See, Russo, CJ (ed), *Encyclopaedia of Law and Higher Education*, Sage, 2010; and Quyen, DTN, 'Autonomy and academic freedom in Vietnamese higher education' Tia Sang, 2019, available at <http://www.tiasang.com.vn/-Giao-duc/Tu-chu-va-tu-do-hoc-thuat-trong-Giao-duc-dai-hoc-Viet-Nam-18517>, accessed on 2 February 2024.

example, official points of view, and academic freedom (or the right of students to freely access information and participate in learning activities).

However, it must be said that the current state of academic freedom in Vietnam is limited and necessitates improvement to meet the country's development requirements. As regards the legal foundation, while not specifically covered by the 2013 Constitution, Art 25⁴⁷ covers the right to freedom of speech which as mentioned previously, encompasses the right to academic freedom. Similarly, although the 2012 Higher Education Law⁴⁸ emphasizes university autonomy, it does not specifically mention academic freedom primarily perhaps because the term is not common in Vietnamese law. Nevertheless, amendments and supplements to the Law on Higher Education in 2018 gave institutions "the right to autonomy in academics and professional activities"⁴⁹ and lecturers the right to "independence of professional opinions in teaching and scientific research"⁵⁰ albeit "on the principle of conformity with the interests of the State and society" which embodies the spirit of academic freedom. Likewise, the 2010 Law on Public Employees gives public employees the power to "decide on professional issues related to their assigned work or tasks"⁵¹ within CPV guidelines and policies, the State's laws, and other prohibitions stipulated in Art 19⁵².

Nevertheless, in practice limitations on research topics do exist, especially related to politics, history, and religion and many lecturers feel hesitant to express personal opinions contrary to the official viewpoint. Such views are often difficult for students to accept because critical thinking is not yet widespread plus they may have difficulty accessing materials and participating in learning activities on sensitive topics.

The above situation occurs for several reasons. The official viewpoint is that academic freedom should be implemented within the framework of Marxism-Leninism and Ho Chi Minh thought with some worrying that expanding academic freedom could affect national security. Such a lack of understanding regarding the fundamental importance of academic freedom has meant the legal system and mechanisms to protect it are as yet incomplete leading to limitations in the development of science, technology, and society whilst hindering innovation, independent thought, and the overall development of higher education. Ultimately, such attitudes affect Vietnam's reputation in the international arena. Therefore, in order for Vietnam to deeply integrate with the world and progress strongly in the future, forays into sensitive areas should be undertaken carefully.

⁴⁷ Article 25 states: "Citizens have the right to freedom of speech, freedom of the press, access to information, assembly, association, and demonstration."

⁴⁸ Law No 08/2012/QH13.

⁴⁹ Article 32(3).

⁵⁰ Article 55(7).

⁵¹ Article 11.

⁵² These include discrimination based on nationality, gender, social strata, beliefs and religions (Art 19(3)) and hurting the honour, dignity, and prestige of others (Art 19(5)).

Moreover, it is also necessary to specifically add the concept of academic freedom to the Constitution and other legal documents. Further, its importance to officials, lecturers, students, and society as a whole must be stressed to build an open academic environment. Additionally, the State should encourage critical thinking, academic debate, and respect for differences in opinion. Last, but not least, academic freedom is vital to strengthening cooperation and participation in international academic networks and would enable Vietnam to share experiences and learn from more advanced models of academic freedom.

B. Gender Equality

Gender equality is a matter of concern for every country and is one of the eight global Millennium Goals⁵³ as well as a topic of concern in bilateral and multilateral cooperation development programs and projects. While the 2006 Gender Equality Law achieved some positive results⁵⁴, limitations exist with some topics of concern including domestic violence and the sexual abuse of children and women especially in rural and mountainous areas; unreliable healthcare for mothers and new-borns, the prevalence of gender stereotypes, and a lack of learning and development opportunities for women as compared to men.

After more than 15 years of implementation, the position of women has gradually improved with legal documents being amended and supplemented to include gender equality provisions. Further, the State has strengthened its guidance, for example, by introducing various national strategies on the topic⁵⁵ especially focusing⁵⁶ on ensuring the participation, contribution, and benefits of women and men in all fields but with a particular emphasis on politics and women's roles in management and leadership therein whilst also stressing the importance of gender equality in other fields such as education and training, healthcare, culture and information, and the family.⁵⁷

However, despite the above improvements, gender stereotypes are still widely prevalent in society due to a deeply embedded feudal ideology which creates privileges for men and weakens women. Gender bias is particularly evident in fields such as economics, education, and employment, deeply affecting women's participation in economic

⁵³ 'Efforts to realize the Millennium Development Goals on a global scale' Vietnam Communist Party, 30 January 2011, available at <https://dangcongsan.vn/the-gioi/nhung-van-de-acid-cau/no-luc-current-effects-of-development-trien-thien-new-techniques-on-pham-micro-calculus-cau-57998.html>, accessed on 10 November 2024.

⁵⁴ For example, it recognised that gender equality is both a goal and a measure of progress in society.

⁵⁵ See, Decision No 2351/QĐ-TTg approving the National Strategy on Gender Equality for the period 2011-2020; Decision No 28/NQ-CP approving the National Strategy on Gender Equality for the period 2021-2030; Decision No 1696/QĐ-TTg of the Prime Minister on the Target Program for Gender Equality to 2015; and Decision No 2238/QĐ-TTg, of the Prime Minister on family development strategy to 2020 and vision to 2030.

⁵⁶ 'Overview of gender equality in Vietnam 2021' UN Women, 2021, available at https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEA/Docs/Publications/2021/10/vn-CGEP_Full-report_Tieng-Viet-ss.pdf, accessed on 10 November 2024.

⁵⁷ UN Women (see note 56 above).

activities in addition to creating barriers to those seeking leadership positions. As a result, the number of women in management and leadership roles is still low and uneven across all fields and regions.⁵⁸ For example, the proportion of women on boards of directors of publicly listed companies is low at 15.4% (vs Thailand at 20.4%), and 47% of listed companies in Vietnam have no women on their boards at all. Similarly, the proportion of women participating in urban planning, transport, construction, and energy at decision-making levels is very low as are those participating in government agencies⁵⁹ or holding key government positions⁶⁰. Further issues concern low levels of gender equality in mountainous areas, ethnic groups, and remote areas, all of which are exacerbated by several factors: staff working on gender equality are few and lacking in expertise; education on the issue is insufficient and often inappropriate; and most importantly, legal awareness is still quite low. Also it must be pointed out that eliminating the gender gap in education has not yet led to a narrowing of the same in job quality, income,⁶¹ or the number of women in decision-making roles due to a double burden caused by gender stereotypes and insufficient legal awareness about the position, role, and equal rights of women.

Moreover, intra-familial sexual abuse still exists in all social groups, especially in rural and underdeveloped economic regions. Domestic violence is also an issue and can include mental and social violence. As shown in a 2021 UN Report, this is caused by traditional gender norms, social stigma, and a widespread tendency to blame the victim.⁶²

Notably, the implementation of regulations for integrating gender equality issues has not achieved the desired effect due partly perhaps to the development of draft legal documents not strictly following gender mainstreaming processes and procedures. As such, gender issues have not been adequately analysed and identified and so lack acceptable impact assessments and measures during the project development and project appraisal stages. Worsening the situation further, some staff working to

⁵⁸ 'Many achievements from gender equality in Vietnam' Government Electronic Newspaper, 22 November 2021, available at <https://baochinhphu.vn/nhieut-thanh-tuu-tu-binh-dang-gioi-o-viet-nam-102304238.htm>; See also, 'Women's representation in leadership in Viet Nam' UNDP, 2012, available to download at <https://www.undp.org/vietnam/publications/womens-representation-leadership-viet-nam>, both accessed on 11 November 2024.

⁵⁹ For example, the proportion of female National Assembly deputies in the Xth term reached 26.2%, 27.3% in the XIth, 25.7% in the XIIth, and 30.26% in the XVth. See, Hien, DT, 'Developing a team of female officials to meet requirements and tasks in the new period' Communist Magazine, 2022, available at <https://www.tapchicongsan.org.vn/web/guest/nghien-cu/-/2018/824959/phat-trien-doi-ngu-can-bo-nu-dap-ung-yeu-cau%2C-responsibility-in-the-new-period.aspx>, accessed on 3 February 2024.

⁶⁰ Khiet, HT, 'Increasing women's participation in the political system at all levels in our country in the coming time' Tap chi Cong san, 14 October 2020, available at <https://www.tapchicongsan.org.vn/web/guest/chinh-tri-mill-use-dang/-/2018/819812/tang-cuong-su-participation-of-phu-nu-in-he-thong-chinh-tri-cap-o-water-we-in-time-toi.aspx>, accessed on 10 November 2024.

⁶¹ 'Country gender equality profile: Viet Nam 2021' UN Women, 2021, available at https://vietnam.un.org/sites/default/files/2021-12/CGEP_Full%20report_English.pdf, accessed on 10 November 2024, at 110.

⁶² UN Women (see note 56 above), at 181-183.

integrate gender equality into legal documents lack the required knowledge, skills, and experience.

Improving the effectiveness of said laws will take a better awareness of gender equality laws which would help to change traditional perceptions of gender equality but this can only occur through improved implementation of the legislation through specific programs and plans leading eventually to a universal understanding of such provisions.

C. Climate Change

As a result of rising sea levels, storms, floods, drought, saltwater intrusion, and increasingly extreme weather events, the effects of climate change on Vietnam are expected to be calamitous. While the right to live in a clean environment is a legal principle already enshrined in Vietnamese environmental law, it must be noted that climate change affects all human rights, including the right to life, the right to enjoy a clean living environment, the right to access clean water and food, the right to housing, and the right to education and healthcare.

Similarly, although it affects everyone, the poor, women, children, the elderly, people with disabilities, and ethnic minorities are particularly vulnerable to the catastrophic effects of climate change. For example, women, who must shoulder the responsibility of taking care of both family and community, may find their workloads vastly increased. Likewise, the health, education, and nutrition of children will be adversely effected, and the elderly may be at increased risk of infectious and chronic diseases. Affirming that environmental protection is the responsibility of the entire political system, society, and all citizens⁶³ the government therefore seeks to overcome the degradation by “economic development projects”⁶⁴ such as building strategies, perfecting the institutional system of management, using resources effectively, (for example, by developing a national water security strategy and building systems and mechanisms for monitoring the environment and climate change) and by forecasting and warning of natural disasters, pollution, environmental disasters, and epidemics. In all this, international cooperation is key.

As such, the National Assembly passed a new Environmental Protection Law in 2020⁶⁵ which prioritises environmental criteria (and human rights) above economic growth according to international treaties related to climate change to which Vietnam is a member. Consequently, it stipulates, “Environmental protection is harmoniously linked with social security, children’s rights, gender equality, ensuring everyone’s

⁶³ Resolution No 41, 15 November 2004 of the IXth Politburo on environmental protection during the period of promoting industrialization and modernization of the country, available at <https://tulieuvankien.dangcongsan.vn/he-thong-van-ban/van-ban-cua-dang/nghi-quyet-so-41-nqtw-ngay-15112004-cua-bo-chinh-tri-ve-bao-ve-moi-truong-trong-thoi-ky-day-manh-cong-nghiep-hoa-hien-dai-278>, accessed on 11 November 2024.

⁶⁴ ‘Political report of the 11th Party Central Committee at the 12th National Congress of the Party’ Communist Party of Vietnam, Ha Noi, 2012.

⁶⁵ Law No 72/2020/QH14.

right to live in a clean environment.” Therefore, barring State secrets, for example, the community has the right to provide and request information about climate change, and the climate change management agency is responsible for providing information, organizing activities to raise public awareness, and creating favourable conditions for the community to participate in activities to respond to climate change. Further, Vietnam has also introduced regulations on environmental protection planning, investment projects, and various other sustainable development projects regarding, for example, greenhouse gas emissions, environmentally friendly production and consumption, and the sustainable exploitation of natural resources.

At the international level, since 2014, Vietnam, Bangladesh, and the Philippines have introduced an annual resolution at the UN focusing on various aspects of climate change. Whilst progress has been made however, a closer coordination between the government, non-governmental organizations, businesses, and those actually implementing solutions on the ground is required.

D. Rights to Access Information, Freedom of Speech, and the Press

The right to access information during a state of emergency such as occurred during the COVID-19 pandemic is two-fold. Just as governments must respect and ensure privacy during data collection and do so in a fair and lawful manner (as detailed by the WHO’s International Health Regulations⁶⁶), the public also has a right to access information, all of which should be based on explicit principles. As such, Vietnam encouraged press agencies to disseminate information in a timely, accurate, and complete manner.

E. Vietnam’s Implementation of International Commitments on Human Rights in New-Generation Free Trade Agreements

As a participant of many free trade agreements⁶⁷ (FTAs) including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP),⁶⁸ the Vietnam-European Union Free Trade Agreement (EVFTA),⁶⁹ and the Regional Comprehensive Economic Partnership Agreement (RCEP),⁷⁰ Vietnam has further committed itself to protecting, for example, labour rights, environmental rights, and gender equality

⁶⁶ ‘International Health Regulations’ World Health Organization, 2nd edition, 2005, available at https://apps.who.int/iris/bitstream/handle/10665/43883/9789241580410_eng.pdf?sequence=1, accessed on 23 January 2024. In Vietnam, for example, current regulations are found in specialized laws and legislation such as the 2007 Law on Infectious Disease Prevention and Control (Art 21), the 2018 Cyber Security Law, and Decree No 15/2020/ND-CP stipulating penalties for administrative violations in the fields of postal, telecommunications, radio frequency, information technology, and electronic transactions for privacy infringements.

⁶⁷ FTAs that have been negotiated and signed recently have a wide scope and a strong degree of liberalization (namely, the CPTPP and the EVFTA). See, ‘What types of FTA are there?’ WTO Center, available at <https://wtocenter.vn/chuyen-de/22840-what-types-of-fta-are-there>, accessed on 10 November 2024.

⁶⁸ Effective as of 30 December 2018.

⁶⁹ Effective as of 1 August 2020.

⁷⁰ Signed on 15 November 2020.

rights.⁷¹ Such agreements tend to commit to respecting international principles and standards on human rights and often include specific commitments to ensure basic human rights, such as labour, environmental, gender equality, free speech, and freedom of assembly rights whilst establishing mechanisms to promote their enforcement and protection. Thus, FTAs can be said to promote and raise awareness of human rights, promote sustainable development, improve labour quality, enhance fair competition whilst strengthening a country's reputation. On the other hand, competition to produce cheap goods could lead to increased unemployment, business closures, and a rapid increase in imported goods from countries with cheaper prices, diverse quality and designs, all of which negatively impacts domestic manufacturing sectors. When tariff barriers are removed and technical barriers prove ineffective, Vietnam could easily become a market for poor-quality products, affecting consumers' health. In addition, opening markets could lead to fierce competition between domestic and foreign businesses resulting in staff reductions (especially of low-skilled workers), or even business closures in developing countries like Vietnam.

Moreover, intellectual property commitments (such as extended periods of copyright and patent protection for drugs⁷²) may also negatively impact health rights including access to basic medicines and vaccinations resulting in increased healthcare costs again predominantly in developing countries. In addition, compliance with regulations on labour standards may result in a loss of competitive advantage for developing countries with the requirement to allow the establishment of trade unions especially challenging as Vietnam's current Trade Union Law does not allow workers to establish and register organizations independent from the Vietnam General Confederation of Labor. Furthermore, environmental rights and environmental protection may prove challenging for developing countries due to limited capacities to implement such provisions. Accordingly, to implement such commitments, Vietnam needs to look at updating its legal system whilst increasing both its enforcement capacity and public awareness of human rights.

⁷¹ Chien, NQ, 'Human rights values through free trade agreements and challenges for Vietnam' *Journal of Legislative Studies*, 2019, Vol 8, No 384.

⁷² For example, the CPTPP requires member countries to extend the patent exclusivity period before the product is sold on the market at the generic price. It also enables pharmaceutical companies to restrict the production of generic drugs to member countries even when the patent exclusivity period has expired and introduces requirements that limit market access for generic drug companies.

F. Independent National Human Rights Institutions (NHRIs)

Due to its political model (which sees the protection of human rights to be the responsibility of the entire political system, including the CPV, state agencies, political organizations, social and professional organizations, and the mass media),⁷³ Vietnam lacks independent NHRIs.⁷⁴ In Southeast Asia, five countries already have NHRIs with several more preparing to follow this trend.⁷⁵ As previously mentioned, although several agencies and organizations already perform many NHRI functions and tasks within Vietnam,⁷⁶ for many reasons, including its UN commitments (especially the ICCPR and the ICESCR which specifically stipulate such agencies),⁷⁷ the establishment of NHRIs is currently an urgent necessity due to a pressing need for independent and objective institutions to act as intermediaries between Vietnam and the international community. Moreover, NHRIs can act as a focal point for human rights at the domestic level and again play an independent and objective role in assisting the State to protect and promote human rights.

Consequently, Vietnam has made strong political commitments to strengthen the protection and promotion of human rights, gradually creating a legal corridor to build an NHRI.⁷⁸ However, due to the characteristics of Vietnam's particular political model,

⁷³ Ho Chi Minh National Academy of Politics, *Textbook of Theory and Law on Human Rights*, Political Theory Publishing House, 2021, at 226.

⁷⁴ These exist in more than 120 countries around the world and must necessarily follow the Paris Principles. See, 'Paris Principles' GANHRI, available at <https://ganhri.org/paris-principles/>, accessed on 10 November 2024.

⁷⁵ Currently, in the Southeast Asia region, 6 out of 11 countries have established NHRIs, including 5 countries in ASEAN: Indonesia, Malaysia, the Philippines, Thailand, Myanmar, and East Timor. Most NHRIs in this region (five out of six countries) are established as human rights commissions (Indonesia, Malaysia, Philippines, Thailand, and Myanmar). See Vietnam Academy of Social Sciences, 'National human rights institutions in some Southeast Asian countries and experiences for Vietnam' 2016, available at <https://vass.gov.vn/hnht/pages/name-books-hoi-nghi-hoi-thao.aspx?ItemId=56&EventId=8#:~:text=Hi%E1%BB%87n%20nay%2C%20trong%20khu%E1%BB%20B1c,%2C%20Th%C3%A1i%20Lan%20v%C3%A0%20Myanma>, accessed on 20 January 2024.

⁷⁶ For example, the National Assembly's People's Committee, the Government's Ethnic Committee, the National Committee for the Advancement of Vietnamese Women, the National Committee for Children, the Vietnamese National Committee on the Aging, and the National Committee for People with Disabilities.

⁷⁷ The ICESCR and the ICCPR both stipulate that member states must implement all appropriate measures to ensure international human rights obligations are implemented at the national level. In 2019, the Human Rights Committee recommended that while noting the existence of domestic government agencies with human rights-related functions, it remained concerned about the absence of an independent body that complied with the Paris principles and regretted the lack of action and a firm timeframe for the establishment of such a body, affirming Vietnam must promptly establish an NHRI. See, 'Concluding observations on the third periodic report of Viet Nam (CCPR/C/VNM/CO/3)' Human Rights Council, 29 August 2019, available at <https://documents.un.org/doc/undoc/gen/g19/257/52/pdf/g1925752.pdf>, accessed on 11 November 2024.

⁷⁸ The White Paper on the protection and promotion of human rights in Vietnam clearly states in its priorities and commitments that it will consider establishing a national human rights agency. Thus, under Decision No 1975/QĐ-TTg (31 December 2019), the Ministry of Public Security in coordination with the Ministry of Justice and the Ministry of Foreign Affairs was assigned to study the building of a national human rights agency in Vietnam. This is demonstrated specifically through commitments made when Vietnam ran for membership to the UN Human Rights Council and its acceptance of recommendations made by several countries on the establishment of NHRIs in its 2014 UPR. See, 'Report of the Working Group on the Universal Periodic Review: Vietnam (A/HRC/26/6)' Human Rights Council, 2 April 2014, available at <https://documents.un.org/doc/undoc/gen/g14/129/10/pdf/g1412910.pdf>, accessed on 11 November 2024.

it is understood that NHRIs here will not replace the role of legislative, executive, judicial, and other institutions. Rather they would offer impartial and learned support to ensure and promote human rights due in part to their relative independence (although they would still be accountable to the State agencies establishing them) from other institutions of the political system. However, more research is necessary as NHRIs in Vietnam must necessarily be consistent with its political, social, and legal realities, and its cultural traditions.

Part 3: Conclusion

Having ratified many international human rights treaties, Vietnam has since made many efforts to improve its legal system as can be seen by its 2013 Constitution which serves as an solid foundation for the protection and promotion of human and citizen rights. Whilst achieving myriad socio-economic achievements including improved health indicators such as life expectancy, poverty reduction, and improved gender equality, Vietnam still faces many challenges due to incomplete, non-specific, and inconsistent legal provisions. This is exacerbated by erratic enforcement of human rights laws, a lack of awareness of such issues, and the insufficient capacity of law enforcement agencies to handle human rights issues.

In conclusion therefore, the following suggestions are offered:

- Complete the system of legal regulations on human rights to ensure compatibility with international legal principles and standards and the international conventions it is a party to by supplementing and concretizing several provisions already stipulated in the Constitution including specifying the obligations and responsibilities of central and local state agencies using a human rights based approach.
- Raise awareness of human rights, especially to those living in economically deprived areas with low educational levels through propaganda, dissemination, education, or other such activities. At the same time, provide legal aid tools to enable access to human rights protections.
- Innovate the organization and operation of the system of institutions including government agencies to ensure effective and feasible implementation of human rights. Also, promote the legislative role of the National Assembly and increase the independence of the judiciary.
- Consider forming a national human rights agency.

Appendix



Appendix

ASEAN HUMAN RIGHTS DECLARATION

WE, the Heads of State/Government of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as “ASEAN”), namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, on the occasion of the 21st ASEAN Summit in Phnom Penh, Cambodia.

REAFFIRMING our adherence to the purposes and principles of ASEAN as enshrined in the ASEAN Charter, in particular the respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance;

REAFFIRMING FURTHER our commitment to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties;

REAFFIRMING ALSO the importance of ASEAN’s efforts in promoting human rights, including the Declaration of the Advancement of Women in the ASEAN Region and the Declaration on the Elimination of Violence against Women in the ASEAN Region;

CONVINCED that this Declaration will help establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process;

HEREBY DECLARE AS FOLLOWS:

GENERAL PRINCIPLES

1. All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.
2. Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.
3. Every person has the right of recognition everywhere as a person before the law. Every person is equal before the law. Every person is entitled without discrimination to equal protection of the law.
4. The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.
5. Every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law.
6. The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms.
7. All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.
8. The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.

9. In the realisation of the human rights and freedoms contained in this Declaration, the principles of impartiality, objectivity, non-selectivity, non-discrimination, nonconfrontation and avoidance of double standards and politicisation, should always be upheld. The process of such realisation shall take into account peoples' participation, inclusivity and the need for accountability.
10. ASEAN Member States affirm all the civil and political rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following rights and fundamental freedoms:
11. Every person has an inherent right to life which shall be protected by law. No person shall be deprived of life save in accordance with law.
12. Every person has the right to personal liberty and security. No person shall be subject to arbitrary arrest, search, detention, abduction or any other form of deprivation of liberty.
13. No person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons, including for the purpose of trafficking in human organs.
14. No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.
15. Every person has the right to freedom of movement and residence within the borders of each State. Every person has the right to leave any country including his or her own, and to return to his or her country.
16. Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.
17. Every person has the right to own, use, dispose of and give that person's lawfully acquired possessions alone or in association with others. No person shall be arbitrarily deprived of such property.
18. Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.
19. The family as the natural and fundamental unit of society is entitled to protection by society and each ASEAN Member State. Men and women of full age have the right to marry on the basis of their free and full consent, to found a family and to dissolve a marriage, as prescribed by law.

20. Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honour and reputation. Every person has the right to the protection of the law against such interference or attacks.
21. (1) Every person charged with a criminal offence shall be presumed innocent until proved guilty according to law in a fair and public trial, by a competent, independent and impartial tribunal, at which the accused is guaranteed the right to defence.
(2) No person shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.
(3) No person shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each ASEAN Member State.
22. Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.
23. Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.
24. Every person has the right to freedom of peaceful assembly.
25. (1) Every person who is a citizen of his or her country has the right to participate in the government of his or her country, either directly or indirectly through democratically elected representatives, in accordance with national law.
(2) Every citizen has the right to vote in periodic and genuine elections, which should be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

26. ASEAN Member States affirm all the economic, social and cultural rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following:

27. (1) Every person has the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed.
- (2) Every person has the right to form trade unions and join the trade union of his or her choice for the protection of his or her interests, in accordance with national laws and regulations.
- (3) No child or any young person shall be subjected to economic and social exploitation. Those who employ children and young people in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education should be punished by law. ASEAN Member States should also set age limits below which the paid employment of child labour should be prohibited and punished by law.
28. Every person has the right to an adequate standard of living for himself or herself and his or her family including:
- (a) The right to adequate and affordable food, freedom from hunger and access to safe and nutritious food;
- (b) The right to clothing;
- (c) The right to adequate and affordable housing;
- (d) The right to medical care and necessary social services;
- (e) The right to safe drinking water and sanitation;
- (f) The right to a safe, clean and sustainable environment.
29. (1) Every person has the right to the enjoyment of the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to medical facilities.
- (2) The ASEAN Member States shall create a positive environment in overcoming stigma, silence, denial and discrimination in the prevention, treatment, care and support of people suffering from communicable diseases, including HIV/AIDS.
30. (1) Every person shall have the right to social security, including social insurance where available, which assists him or her to secure the means for a dignified and decent existence.
- (2) Special protection should be accorded to mothers during a reasonable period as determined by national laws and regulations before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits.
- (3) Motherhood and childhood are entitled to special care and assistance. Every child, whether born in or out of wedlock, shall enjoy the same social protection.

31. (1) Every person has the right to education.
- (2) Primary education shall be compulsory and made available free to all. Secondary education in its different forms shall be available and accessible to all through every appropriate means. Technical and vocational education shall be made generally available. Higher education shall be equally accessible to all on the basis of merit.
- (3) Education shall be directed to the full development of the human personality and the sense of his or her dignity. Education shall strengthen the respect for human rights and fundamental freedoms in ASEAN Member States. Furthermore, education shall enable all persons to participate effectively in their respective societies, promote understanding, tolerance and friendship among all nations, racial and religious groups, and enhance the activities of ASEAN for the maintenance of peace.
32. Every person has the right, individually or in association with others, to freely take part in cultural life, to enjoy the arts and the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or appropriate artistic production of which one is the author.
33. ASEAN Member States should take steps, individually and through regional and international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of economic, social and cultural rights recognised in this Declaration.
34. ASEAN Member States may determine the extent to which they would guarantee the economic and social rights found in this Declaration to non-nationals, with due regard to human rights and the organisation and resources of their respective national economies.

RIGHT TO DEVELOPMENT

35. The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognised human rights.

36. ASEAN Member States should adopt meaningful people oriented and gender responsive development programmes aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.
37. ASEAN Member States recognise that the implementation of the right to development requires effective development policies at the national level as well as equitable economic relations, international cooperation and a favourable international economic environment. ASEAN Member States should mainstream the multidimensional aspects of the right to development into the relevant areas of ASEAN community building and beyond, and shall work with the international community to promote equitable and sustainable development, fair trade practices and effective international cooperation.

RIGHT TO PEACE

38. Every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realised. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.

COOPERATION IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

39. ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, *inter alia*, cooperation with one another as well as with relevant national, regional and international institutions/organisations, in accordance with the ASEAN Charter.
40. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principles of ASEAN, or at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties.

Adopted by the Heads of State/Government of ASEAN Member States at Phnom Penh, Cambodia, this Eighteenth Day of November in the Year Two Thousand and Twelve, in one single original copy in the English Language.

About SHAPE-SEA

Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA) was launched in February 2015 in Bangkok, Thailand. It is a collaboration between the ASEAN University Network-Human Rights Education (AUN-HRE) which has thirty member-universities and the Southeast Asian Human Rights Studies Network (SEAHRN) which has twenty-two members.

The overall aim of SHAPE-SEA is to contribute to the improvement of the human rights and peace situation in ASEAN/Southeast Asia through applied research and education. The core themes of the Programme are: (1) ASEAN and Human Rights, (2) Business Accountability, (3) Peace and Security, (4) Governance and Justice, and (5) Academic Freedom. Its main areas of work are Research, Education, Capacity-Building and Outreach, and Publications and Public Relations.

The Programme focuses on supporting research on innovative and critical human rights and peace projects and on exploring ways this knowledge can be made accessible to university students throughout Southeast Asia/ASEAN. As such it is directly involved and engaged with universities in the Region to play a more significant role in the sustainability of human rights protection by contributing research, increasing knowledge on human rights and peace, and by incorporating these issues into university education. The Programme also creates spaces for knowledge-building and dissemination through the production and publication of research amongst the academic community and other human rights and peace stakeholders.

SHAPE-SEA Secretariat is hosted by the Institute of Human Rights and Peace Studies (IHRP) at Mahidol University. The programme is supported by the Swedish International Development Cooperation Agency (SIDA).

This Outlook is the fifth in a series where we examine the state of human rights in Southeast Asia. The chapters are a combination of hard data as well as the impressions of writers, all of whom are human rights academics or activists in their respective countries. Each book shall be a worthy source of information, but taken as a whole, it is hoped the series will provide an invaluable charting of the human rights journey in this region.



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