

# An Introduction to Human Rights in Southeast Asia

1

**Volume**

Revised Second Edition



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# An Introduction to Human Rights in Southeast Asia : Volume 1

Revised Second Edition, 2024

By

ASEAN University Network - Human Rights Education (AUN-HRE)  
and Institute of Human Rights and Peace Studies (IHRP), Mahidol  
University

With support of Norwegian Centre for Human Rights (NCHR),  
University of Oslo

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# **An Introduction to Human Rights in Southeast Asia: Volume 1**

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# Acknowledgments

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# Introduction

At the time the ASEAN University Network - Human Rights Education (AUN-HRE) was formed in 2009, one of its overarching objectives was to develop textbooks to facilitate human rights learning in Southeast Asia. In parallel with the formation of AUN-HRE, the Southeast Asian Human Rights and Peace Studies Network (SEAHRN), an independent network, was established. At that time, there were not many human rights textbooks available that were written with a focus on the Southeast Asian context. Responding to lecturers' frustrations of not having appropriate materials for their human rights courses, in 2011, the SEAHRN took an initiative to prepare human rights textbooks for students and lecturers in the region. This is one of the first initiatives made by the SEAHRN with the financial support of the Raoul Wallenberg Institute (RWI), Lund University. After having published *An Introduction to Human Rights in Southeast Asia: Volume 1 and 2*, SEAHRN decided to transfer this project to AUN-HRE in order to reach a wider audience and to ensure that the textbooks prepared received a formal recognition from ASEAN and ASEAN relevant bodies. With funding from the Norwegian Centre for Human Rights (NCHR) at the University of Oslo, AUN-HRE has continued the textbook project until now.

The publication of the first two volumes of *An Introduction to Human Rights in Southeast Asia* was enthusiastically welcomed by lecturers and the volumes have since been translated into Burmese, Khmer and Thai languages. While the primary target of the textbooks were undergraduate students, the two volumes have been used as reference materials for graduate and even post-graduate students in universities across the region. In 2019, AUN-HRE and SHAPE-SEA (Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia Program) jointly published Volume 3 of the introductory textbook along with a *Teaching Manual on Human Rights* to guide and facilitate the effective use of the textbooks themselves.

In October 2018, at the 13th ASEAN Senior Officials Meeting on Education held in Nay Pyi Taw, Myanmar, updating existing teaching materials on the fundamentals of human rights and peace was endorsed as a priority action. Following this, AUN-HRE conducted a survey amongst lecturers in Southeast Asia on the usage of the first two volumes of the textbooks. Feedback was also taken from participants of the AUN-HRE regional lecturer training workshops. The textbooks have been reportedly used both as mandatory reading material and recommended reference readings for students. The respondents also indicated that they found specific chapters from both volumes of the textbooks useful including: Fundamentals of Human Rights, International Human Rights Standards, International Human Rights Treaties, Protecting Human Rights in Southeast Asia, Women's Human Rights and Children's Human Rights. In order to improve the textbooks further, the respondents suggested that more case studies from Southeast Asia can be added along with discussion on human rights issues with respect to Covid-19 pandemic; discussion on recent developments in human rights theory and practice; as well as more illustrative case studies to facilitate discussions and debates in class.

It should be noted that since their publications, all the textbooks including the translated versions and the teaching manual have been made available through the SHAPE-SEA website which could be freely downloaded. The process of reviewing and updating the textbooks *An Introduction to Human Rights in Southeast Asia: Volume 1 and 2* themselves began in earnest in 2021. Scholars and academics had been invited to review and contribute to the updating of the textbooks with new information, knowledge and case studies. The editorial team has tried to ensure that each chapter is consistent and contains as up-to-date information as possible. The original order of the chapters in the first edition has also been reorganised in the revised second edition to reflect a progression from core concepts, standards and mechanisms to cross cutting issues of gender and children's rights; to human rights of specific groups; to human rights in relation to specific themes of development, business and human rights, environment and democracy; ending with an overview of human rights in the history of southeast Asia. The revised and updated second edition of the textbooks contain 15 chapters and are divided in two volumes.

Volume 1 contains seven chapters covering fundamental concepts of human rights; the two core covenants; key human rights mechanisms at different levels; and the two main cross-cutting themes of women's and children's human rights that also set out an understanding of important human rights principles.

- Chapter 1 provides a critical understanding of the meaning of human rights. It further discusses the evolution of human rights standards, the Universal Declaration of Human Rights; the different categories of rights and the fundamental concepts underlying human rights.
- Chapter 2 introduces international human rights law, its different sources and the process of making it. It also briefly discusses the mechanisms for protection and promotion of human rights that exist at the international level and the reasons why States agree to ratify treaties and accept human rights obligations.
- Chapter 3 introduces the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Using examples of human rights issues in the Southeast Asian region and beyond, it discusses the rights guaranteed under the two instruments and the corresponding State obligations. While discussing the scope of rights and obligations, it refers to the General Comments issued by the two treaty bodies, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.
- Chapter 4 examines existing human rights mechanisms at the international level. It examines the functions and scope of powers of the charter-based mechanisms and the human rights treaty bodies. The purpose of the chapter is to provide the readers with an understanding about the dynamics through which human rights compliance can be strengthened at the national level.
- Chapter 5 provides an understanding of the mechanisms that exist at the national and regional levels to strengthen protection and promotion of human rights. In doing so, it outlines the main elements of strong human rights protection and promotion systems at the national level and discusses human rights elements in Constitutions, human rights specific legislations and the powers of judiciary and national human rights institutions. Further, it discusses existing mandates of the regional human rights systems in Europe, the Americas, Africa and ASEAN.
- Chapter 6 discusses women's human rights. Every human rights treaty underlines the principle of non-discrimination on the grounds of sex (and gender), while the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) specifically focuses on elimination of discrimination in different spheres so that women can realise their civil, political, economic, social and cultural rights. This chapter discusses the root causes of discrimination against women and the concept of equality strengthened under CEDAW. It also discusses the protection mechanism for women's rights existing at the international and regional level. And lastly, it discusses some contemporary concerns in relation to women's human rights. It is hoped that the chapter would provide a framework for analysis of gender dimensions of different human rights issues and concerns.
- Chapter 7 provides an understanding of the UN Convention on the Rights of the Child (CRC), the fundamental principles underlying it and its optional protocols. Specific thematic areas of violence against children, right to education, juvenile justice, child labour, children in armed conflict and the right of adolescents to reproductive health are also discussed.

Volume 2 of the revised second edition focuses on human rights of specific groups; the interconnecting issues of development, business and human rights and environment; the linkages between democracy and human rights; and ends with discussion on human rights in Southeast Asian history.

- Chapter 8 discusses the rights of two categories of non-citizens: migrant workers and victims of human trafficking. In doing so, using case studies, it first discusses the nature of migration and its various forms to highlight the issues faced by migrants in the countries of origin, transit and destination that make them vulnerable to rights violations. Next, it discusses the human rights frameworks that exist at international and regional level to protect and promote rights of migrant workers and victims of human trafficking.

- Chapter 9 focuses on the rights of two other categories of non-citizens: refugees and stateless persons.
- Chapter 10 discusses the rights of LGBTI (lesbian, gay, bisexual, transgender and intersex) communities. It first discusses the nature of discrimination faced by them, the causes underlying such discrimination, and human rights standards that have been adopted to strengthen protection and promotion of their rights. Lastly, it discusses the distinct rights issues faced by transgender and intersexual people.
- Chapter 11 focuses on human rights and development. It provides an overview of the different development approaches adopted since the end of World War II; post-war reconstruction; modernisation theory; basic needs approach to development; neoliberalism; and integration of human rights and development. The latter theme also explores gender and development, the right to development, concept of sustainable development, the human security approach and the human development and capabilities approach. Lastly, the chapter discusses the human rights-based approach to development and its basic principles.
- Chapter 12 discusses the principles of business and human rights and the different frameworks that exist to protect rights from being violated by business actors. These different frameworks include the labour rights protection framework, self-regulation by businesses and the framework provided under the United Nations Guiding Principles on Business and Human Rights (UNGPs). It also provides a critical perspective by examining the ten years review of the adoption and implementation of the UNGPs. Lastly, the chapter examines some different strategies that have been adopted in Southeast Asia to secure accountability from business actors.
- Chapter 13 focusing on environment and human rights, provides a critical overview of the evolution of the human rights to a clean, healthy and sustainable environment. It discusses the normative content of the human right to a clean, healthy and sustainable environment, and the corresponding obligations on States. Lastly, the chapter discusses the challenges of climate change.
- Chapter 14 explores the links between democracy and human rights. It begins by building an understanding of the concept of democracy before examining the ways in which civil and political rights lay the foundations of a strong democratic system. Finally, it examines the nature of democracies existing in Southeast Asia.
- Chapter 15 examines historical development of human rights and democracy in Southeast Asia and reflects on how the history of human rights in the region can be open to critical interpretation.

References to human rights documents such as General Comments, reports of UN Special Rapporteurs and other UN mechanisms, reports of non-governmental organisations, news reports, and other reliable sources as well as illustrative case studies have been used throughout the revised second edition. They have been used not only to highlight the human rights problems existing in the Southeast Asian region and beyond, but also to illustrate the ways in which different actors contribute to the strengthening of human rights protection and promotion at different levels. It is hoped that through analysis of diverse information, readers are able to critically assess the dynamics of human rights work and practice.

## Features of the Textbooks, Revised Second Edition

- **Case Studies** are provided in some chapters and are accompanied by questions for further reflection and analysis by the readers.
- **Chapter Summary and Key Points** are given at the end of each chapter.
- **Figures** that include statistical information and diagrams are presented where appropriate.
- **Further Readings** containing a list of readings and references are provided at the end of each chapter.
- **Key Terms** in each chapter highlight important concepts and clarify their meanings.
- **Reader's Guide** is provided at the beginning of every chapter to introduce key themes and contents.
- **Reflection and Discussion** include excerpts from news clippings, statements by stakeholders, human rights reports, news items, etc., along with questions to facilitate reflection on the issues concerned.
- **Spotlight** presents in-depth information on particular issues.
- **Tables** present information in a systematic and succinct form.
- **Typical Exam or Essay Questions** are given as examples at the end of each chapter.

## Use of the Textbooks, Revised Second Edition

The revised second edition of the textbook Volume 1 & 2 have creative commons copyright. Adaptations of the revised second edition of the textbooks must attribute AUN-HRE and IHRP as original authors in addition to SEAHRN and SHAPE-SEA. Readers can make copies of the textbooks with suitable acknowledgement. The textbooks cannot be sold for profit.

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# Chapter

# 1

## Fundamentals of Human Rights\*

### Reader's Guide

The chapter begins by outlining three situations involving deprivations of human rights to nudge the learner to reflect upon the meaning of human dignity. The chapter also discusses the meaning of human rights, its significance and unique characteristics. Further, it traces the evolution of human rights standards and gives an introduction to the Universal Declaration of Human Rights (1948). Lastly, it explores some reasons as to why the study of human rights is important. This chapter intends to build the foundations for further learning on human rights. It not only clarifies the fundamentals of human rights but also provides case studies for analysing the basic concepts and principles. The concepts and principles discussed in this chapter are further explored in subsequent chapters of the sourcebooks.

### 1.1 Introduction

*Situation 1:* The day begins normally until the sound of gunshots and a man yelling breaks the silence. You and your family race outside to find armed men and women in the streets. They tell you to grab anything important and leave the house. When you do, your family and neighbours are herded through the streets. Word starts to spread that the entire city is being evacuated. Then,

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the news breaks; the Khmer Rouge is evacuating all major Cambodian cities to “protect” people from American bombs. However, they also say people should be able to return home in a couple of days after the bombing has ceased. Dressed in black and heavily armed, the soldiers insist they will take care of everything. However, in the coming days, you slowly begin to realize you will never return home. You later learn evacuation day (17 April 1975) was the start of what the international media called “Year Zero.” As the weeks and months pass, your new way of life becomes evident. The Khmer Rouge tells you that your new purpose in life is to serve ‘Democratic Kampuchea’ and submit to ‘Angkar,’ a higher ruling power. You are also advised not to question this new state of affairs, or talk about life before the Khmer Rouge. Your house and possessions now belong to Democratic Kampuchea. Personal possessions of any kind are prohibited. Hospitals, factories, and schools are shut down. Religion is also outlawed, and marriage is no longer a matter of personal choice. The educated are separated from your group and simply disappear, never to be seen again. You are forced to work in the rice fields all day, only occasionally receiving your daily ration of two small bowls of rice and some fish paste. Helplessly, you watch as people around you die from starvation and disease. Why, you ask yourself, is this death and destruction happening? Why are Cambodians killing other Cambodians?

*Situation 2:* On your way to university you pass a young mother and child begging on the street. A policeman approaches and tells her to move along. The woman tries to protest but is unable to speak his language. Eventually, he uses physical force to push them off the pavement. You talk to the woman and come to know that she is begging on the street with her child because she and her family came to the city in search of a better life. But because her husband could not find work, he started drinking heavily and beating her. Eventually, for her own safety and that of her child, she fled, leaving her little choice but to sleep on the streets and beg for a living. As the woman and child walk away, you wonder if this setback will be the worst of her troubles today. You’ve heard stories of local gangs offering ‘protection’ to beggars—a ‘service’ which usually includes taking over half their daily earnings—and you wonder if the woman will face retribution for failing to earn enough today. What if her child falls ill and she is unable to pay his medical bills? After all, she barely earns enough to buy him adequate food. Although she hopes to return home soon, you question whether her family will accept her back now she has left her husband.

*Situation 3:* In response to the global outbreak of coronavirus and the rise of COVID-19 cases in the country, the government declares a lockdown as a result of which schools, colleges, factories, offices, public transport, shopping malls, and markets, etc, are indefinitely closed. For many, it amounts to an unexpected holiday. But for others dependent on a daily income (such as taxi drivers, labourers, people selling street food or fresh fruit and vegetables), it soon becomes a question of survival. How will they feed their families and pay their rent?

These three situations illustrate a range of human rights issues. While many young people may not be aware of the destruction of Cambodian society by the Khmer Rouge in the 1970s, most will have come across beggars on the streets, and recognise the crippling impact COVID-19 had on daily life. But how are these situations connected to human rights? What are the fundamental concepts and principles involved and why are they important?

## **1.2 What are Human Rights?**

The answer to this question can be both simple and complex. In short, human rights are the rights every person possesses because they were born as human beings. In other words, all human beings, irrespective of who they are, where they live, how much they earn, what they do, or what they believe in, have certain inherent rights. What is the significance of these rights and what do they imply?

## Brainstorming

Consider the following questions:

- What qualities characterize the human species?
- What does it mean to be fully human?
- What is needed in order to protect, enhance, and fully develop the qualities of human beings?

### **1.2.1 What qualities characterize the human species?**

The process of evolution resulted in some distinct human characteristics: a large brain and the ability to stand up and walk which led to improved dexterity in the hands. With these physical changes, humans also developed the following abilities: rational thinking and expression; the wherewithal to move far and wide; the means to provide for basic needs, protect their interests, and experience a range of emotions including love, empathy, care, greed, lust for power, anger, etc. As human beings are social animals, these abilities were developed and exercised whilst living in communities. Thus, while living together with others human beings also practiced governing their affairs as a group, mediating conflicting interests within the community, protecting the community against strangers, etc.

### **1.2.2 What does it mean to be fully human?**

One way of understanding what it means to be ‘fully human’ is to imagine the alternative. Not being fully human limits one’s ability to express human characteristics and realize the capabilities or potentialities inherent in human beings. This could impact one’s ability to provide the basic needs of food, clothing, and shelter for oneself and one’s family, being able to live freely and safely in a community with others, and being able to work for one’s own self advancement or growth in terms of one’s mind, body, and spirit.

Referring back to the case studies presented at the beginning of the chapter, it would not be wrong to say the Cambodians whose lives were torn apart by the Khmer Rouge, the young mother begging on the streets, or the daily wage earner powerless to find work during the pandemic, were not fully able to enjoy their lives as humans. It could also be said that this inability to enjoy certain freedoms marks the difference between ‘being just alive’ and ‘being fully human.’ These freedoms were articulated by President Roosevelt in his State of the Union address in 1941:

- Freedom from want or deprivation of adequate food, housing, health, education, etc.
- Freedom from fear including fear of being killed, being forcefully subjected to the sexual lust of another, being detained upon the whims of another, being tortured, not being able to protect oneself when accused of a wrongdoing, not being able to marry according to one’s choice, and not being able to travel freely, etc.
- Freedom of speech including being able to express oneself and share one’s opinion on any subject without fear of reprisal, and
- Freedom of worship which entails being able to freely practice one’s faith, religion, or belief.

In other words, to truly live lives of dignity, people require a system enabling the enjoyment of such freedoms – human rights provide the tools to help create these systems.

### 1.2.3 Significance of human rights

Rights are claims or demands to a certain type of behaviour which are justified in nature (as opposed to claims that can have no justification such as a claim to sexually violate another). The term ‘rights’ is used often in everyday conversation as seen in the following examples:

- A spouse might say to his/her busy partner: “*Don’t I have a right to your time as well?*”
- A consumer finding a cockroach in a frozen food package could say: “*I’ll sue your company – I have rights, you know!*”
- An employee who has been unexpectedly fired could say: “*Can they do that? Don’t I have any rights?*”

Note that in each of these cases, there is an expectation of behaviour, another actor or actors from whom such behaviour is expected, and a relationship justifying the expectation. The individual holding these expectations is the **rights holder**, and the entities against which such claims are made are known as **duty bearers**.

**Table 1-1: Expectations of Rights Holders and Duty Bearers**

<b>Rights holder</b>	<b>Duty bearer</b>	<b>Expectation/claim</b>	<b>Relationship giving justification to the expectation</b>
Spouse	Other spouse	Spouse to give time or companionship to the other	Marriage
Consumer	Producer	Producer will adhere to food quality and safety standards	Manufacturer producing goods for the consumer
Employee	Employer	Employer to provide fair working conditions	Employer – employee

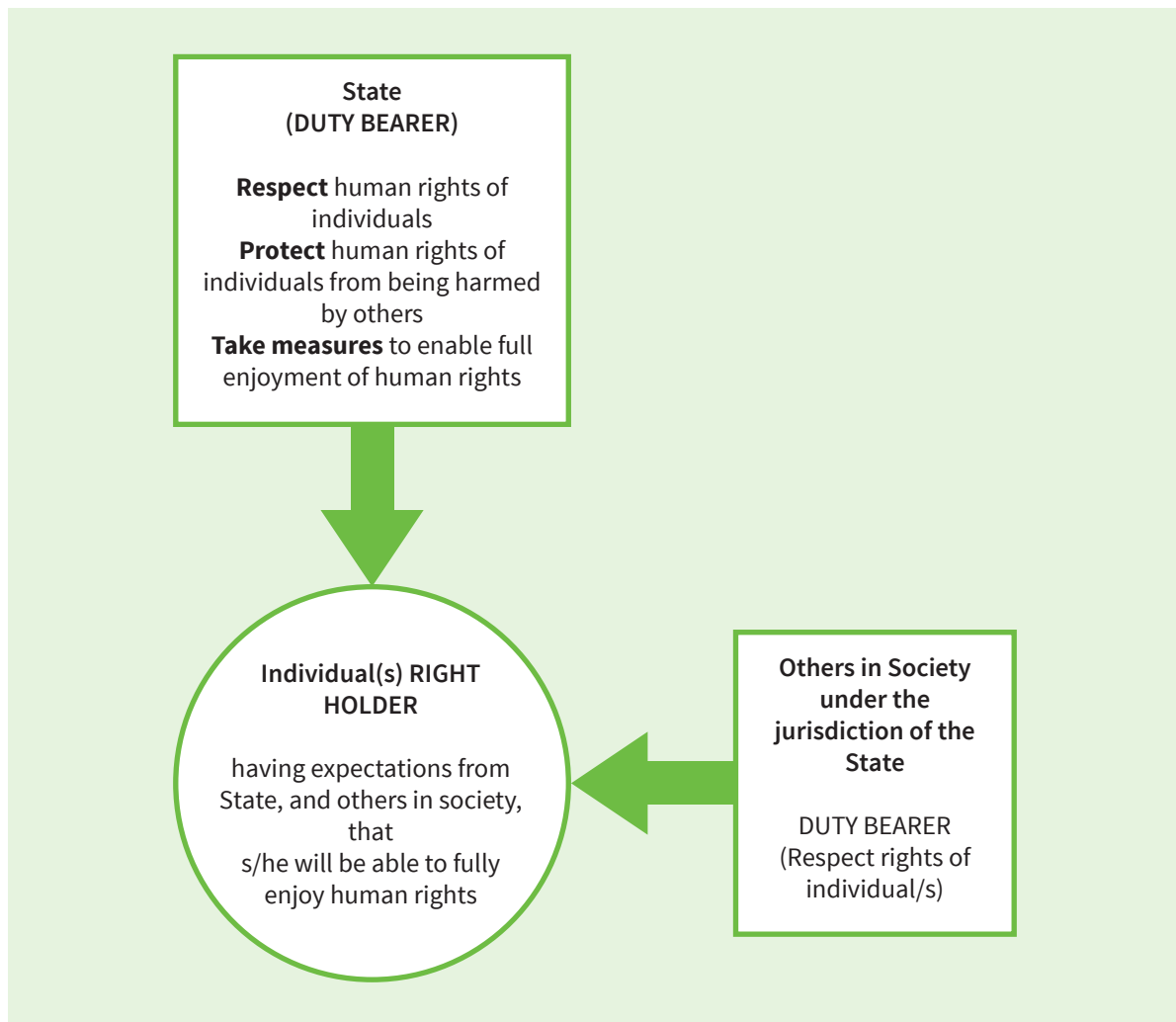
Human rights present a unique dynamic in this matrix. As discussed previously, human rights are inherent in every person by virtue of their status as human beings. Therefore, human rights need no justification. The right not to be killed is not dependent on any promise because individuals simply have a right to life. Also as discussed, human rights are claims to a system enabling a person to live with human dignity. But against whom are these claims made? Or, to put it another way, which entity ensures people are able to enjoy their human rights? To answer this question, one must picture individuals as living in societies and ask, who are the other actors? Or who, broadly, do individuals live with?

The answer could include: the family; communities or groups of people sharing particular interests such as ethnicity, religion, language, belief, gender, sexual orientation, etc; religious leaders; business people; political leaders and parties; media including journalists; and most importantly, **the State** having the authority to govern the territory and people living within it. The State is comprised of government entities and includes executive or administrative structures, the legislature, and the judiciary.

In this broad framework of society, human rights claims are made by individuals against:

- (a) Other non-State actors in society – implying an expectation that other actors in society should respect one’s right to live in human dignity; and
- (b) The State – implying an expectation that the State itself should respect the rights of individuals, protect such rights from being taken away by others, and develop the conditions enabling full enjoyment of said rights.

Figure 1-1: The Relationship Between Rights Holders and Duty Bearers



Thus, with respect to human rights:

- Rights holders are individual(s);
- Duty bearers are the State and other non-State actors living in society; and
- Rights generate an expectation that individuals will be able to enjoy their human rights.

The expectations discussed earlier do not arise in a vacuum but are anchored in law and codes of behaviour such as moral or social codes. Further, note the multiple layers of rules in Table 1-2: social norms, legal agreements between the two parties directly concerned, and laws governing relationships of a similar nature. These sources and their relation to human rights will be discussed later in this chapter. The sources of human rights are discussed in the next section.

**Table 1-2: Source of Relationships Between Rights Holders and Duty Bearers**

Rights holder	Duty bearer	Expectation	Relationship giving rise to the expectation	Sources
Spouse	Other spouse	Spouse gives time or companionship to the other	Marriage	Moral/social codes and laws relating to marriage
Consumer	Producer	Producer will adhere to food quality and safety standards	Manufacturer produces goods for the consumer	Moral code of duty of care between producers and consumers  Law relating to the safety of goods and services
Employee	Employer	Employer will provide fair working conditions	Employer – employee	Contract between employers and employees  Labour laws

### 1.3 Evolution of Human Rights Norms

The idea of human rights developed slowly over centuries and did not originate in any one geographical area. They also did not necessarily form as human rights *per se*. Rather, they were expressed through ideas of justice, fairness and protection against abuses of power, rights and duties, the rule of law, etc. In most cases, however, the rules evolved from processes to protect individuals against abuses of power.

#### Spotlight: Human Rights in Ancient History

*The Code of Hammurabi in Babylonia* (Iraq, c.2000 BCE): The first written legal code was established by the King of Babylon and contained criminal, commercial, and civil law provisions, as well as principles espousing the rule of law and protection for all classes of people in society including women, widows, orphans, the poor, and slaves.

*The Charter of Cyrus* (Iran, c.539 BCE): Upon conquering the city of Babylon, Cyrus the Great (the King of Persia) freed the slaves and recognised rights to liberty, security, and religious tolerance. Recorded on a baked clay cylinder in the Akkadian languages, the decrees have since been recognised by the United Nations and translated into all its official languages.

*Teachings of Confucius* (China, c.500 BCE): Ancient Chinese philosopher, Confucius, stressed the importance of responsible behaviour, not out of fear of punishment, but a desire to behave to the best of human capacity, saying, “*What you do not wish for yourself, do not do to others.*” His teachings led Dr Peng Chun Chang, an expert on Confucianism who also played an active role in the drafting of the Universal Declaration of Human Rights, to state he believed Confucianism could provide a groundwork for human rights ideals.

*Ashoka’s edicts* (India, c.304-232 BCE): King Ashoka issued rock edicts, where, for example, he stressed the duty of rulers was to serve the welfare of people.

Some historical experiences and philosophers shaping the idea of human rights can be found in:

***The Great Charter of Liberties (Magna Carta), England:*** In 1215, the King of England agreed to the Magna Carta to protect the rights of nobles (a privileged class). However, it was also the first document to put into writing that the king and his government were not above the law.

***The English Bill of Rights:*** In 1689, the Bill of Rights was passed to restrain the monarch from suspending laws without Parliament's consent, to specify free elections for members of Parliament, and to declare freedom of speech within Parliament.

***Huig de Groot (1583-1645):*** His book, *On the Laws of War and Peace*, proposed a system of general principles based on natural law that he believed should bind all nations. De Groot's work contributed significantly to the development of international law.

***John Locke (1632-1704):*** In *Two Treatises of Government*, Locke refuted the idea that under God, all persons are subject to a monarch, arguing men were by nature, free and equal. Accordingly, they had rights, including to life, liberty, and property and such rights were derived from nature, rather than a government or its laws. Thus, he considered the legitimacy of governments in light of natural rights. Moreover, since people, as a result of social contracts, transferred some of their rights to governments to facilitate comfortable enjoyment of their lives, any government failing to protect the rights of its people, could not be considered legitimate and should therefore be replaced.

***The US Declaration of Independence (1776):*** When 13 colonies in America declared independence from the British Empire, their Declaration was undeniably influenced by John Locke. The preamble stated:

*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.*

***The Declaration of the Rights of Man and of the Citizen (1789), France:*** In 1789, the people of France overthrew the monarchy and established the first French Republic. Their Declaration was influenced by ideas of individualism, social contract as propounded by Jean-Jacques Rousseau, and the separation of powers as theorized by Montesquieu. In its preamble and 17 articles, it therefore recognized that men had "*natural and inalienable*" rights such as rights to liberty, property, safety, and resistance to oppression. It also recognized equality before the law, the justice system, and the separation of powers.

***Mary Wollstonecraft, England (1759-1797), Olympe de Gouges, France (1748-1793):*** The equal rights of women was first put forward by Mary Wollstonecraft in *A Vindication of the Rights of Women* (1792) which argued for the empowerment of women in education, politics, society, and marriage. Notwithstanding, the year before in France, Olympe de Gouges published her *Declaration of the Rights of Women and of the Female Citizen* as an alternative to the 1789 French Declaration which made no reference to women. It took another 100 years for women to gain the right to vote in elections and many more decades for women's rights to be recognized as human rights (women's suffrage was only adopted in 1893 in New Zealand, 1917 in the Netherlands and Russia, 1920 in the United States, and 1928 in the United Kingdom).

**The First Geneva Convention (1864):** The suffering of the wounded in the Battle of Solferino in northern Italy (1859) had such a profound effect on Henri Dunant (a young Swiss citizen) that he wrote, *Un souvenir de Solferino* (1862), in which he suggested that national societies should be created to take care of the sick and wounded in wartime irrespective of their race, nationality, and religion. Together with friends, he set up the International Committee for Aid to the Wounded (soon renamed as the International Committee of the Red Cross). Subsequently, similar national societies were set up in other countries. Finally, in 1864, at a diplomatic conference in Geneva, delegates of 16 European countries adopted the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (also known as the First Geneva Convention), acknowledging the principle that war had its limits and measures needed to be taken to regulate their conduct to protect non-participants, as well as wounded soldiers and prisoners of war. The First Geneva Convention was later amended to adopt additional conventions and protocols on humanitarian law.

**The International Labour Organisation (1919):** The International Labour Organisation (ILO) was created in 1919 as part of the Treaty of Versailles that ended World War I. Against the backdrop of the exploitation of workers in industrializing nations, the founders believed that universal and lasting peace could only be accomplished if based on social justice.

**The League of Nations (1920):** The rights of minorities became an issue in the years after the end of World War I following the large-scale displacement of people and the redrawing of national boundaries. The League of Nations was established in 1920 by the victorious Allies as a forum for resolving international disputes and to prevent the recurrence of wars. Though the League was unable to meet such expectations and was formally disbanded in April 1946, its creation was an important milestone in the field of international relations. Indeed, the League is often referred to as the predecessor of the United Nations.

As these historical experiences show, the idea that men are born with rights emerged out of the philosophy of ‘natural law’ (a body of rules prescribed by an authority higher than that of States). Philosophers held that man-made laws were valid only if they conformed to natural law, and that States contravening natural law could be overthrown. This understanding gave power to the people to fight against wrongful or unjust governmental actions. Such ideas also inspired the Universal Declaration of Human Rights.

The need for universal human rights standards emerged strongly after World War II. Voices across the globe urged the need to adopt standards and mechanisms to hold States accountable for their treatment of those living within their borders. These voices played a critical role in drafting the United Nations Charter in 1945, the preamble of which read:

*WE THE PEOPLES OF THE UNITED NATIONS DETERMINED*

*to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and*  
*to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and*  
*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and*  
*to promote social progress and better standards of life in larger freedom [...]*

In other words, the Charter recognized that one of the purposes of the United Nations was to promote and encourage respect for the human rights and fundamental freedoms of all without distinction as to race, sex, language, or religion (Article 1.3). Accordingly, the Commission on Human Rights was established to draft an international bill of rights in 1946 leading eventually to

the adoption of the Universal Declaration of Human Rights (UDHR) by the General Assembly on 10 December 1948. This marked the first step in the codification of natural rights.

## 1.4 Universal Declaration of Human Rights, 1948

As previously mentioned, in 1946 the United Nations Commission of Human Rights under the leadership of Eleanor Roosevelt was entrusted with the responsibility of elaborating on human rights standards and drafting an international bill of rights. The Drafting Committee was composed of representatives from Australia, China, Chile, France, Lebanon, the United States, the United Kingdom, and the Union of Soviet Socialist Republics. The drafting itself was done by first compiling a set of rights from national constitutions, laws, declarations, religious and philosophical commentary, and other expert input from around the world. The final document was presented as a declaration to the UN General Assembly and contained 30 articles which today form the backbone of human rights. Thus, with the adoption of the UDHR, a universally accepted list of rights which States must recognize as universal human rights, was introduced.

### Spotlight: Rights as Outlined in the UDHR

- Article 1: Everyone is born equal
- Article 2: Freedom from discrimination
- Article 3: Right to life, liberty, and personal security
- Article 4: Freedom from slavery
- Article 5: Freedom from torture and degrading treatment
- Article 6: Right to recognition as a person before the law
- Article 7: Right to equality before the law
- Article 8: Right to remedy by a competent tribunal
- Article 9: Freedom from arbitrary arrest, detention, and exile
- Article 10: Right to a fair public hearing
- Article 11: Right to be considered innocent until proven guilty
- Article 12: Freedom from interference with one's privacy or reputation
- Article 13: Right to freedom of movement
- Article 14: Right to asylum
- Article 15: Right to a nationality and the freedom to change it
- Article 16: Right to marriage and family
- Article 17: Right to own property
- Article 18: Freedom of belief and religion
- Article 19: Freedom of expression and information
- Article 20: Right of peaceful assembly and association
- Article 21: Right to participate in government and in free elections
- Article 22: Right to social security
- Article 23: Right to work and to join trade unions
- Article 24: Right to rest and leisure
- Article 25: Right to adequate living standards, including healthcare, food, and housing
- Article 26: Right to education
- Article 27: Right to participate in the cultural life of a community
- Article 28: Right to a world where human rights are protected
- Article 29: Community duties essential to the free and full development of one's personality
- Article 30: Duty not to use rights to interfere with any other right enshrined in the UDHR

## 1.5 Categories of Rights

The rights recognized in the UDHR can be divided into the following categories: civil, political, social, economic, and cultural.

**Civil rights:** Protects an individual's right to live in human dignity free from arbitrary interference by other individuals or the State and includes: the right not to be discriminated against on the basis of one's sex, nationality, race, ethnicity, political opinion, etc; rights to life and liberty; freedom from torture; the right to privacy; the right to marry and form a family; rights to freedom of expression, religion, and to form associations; and the right to protect one's rights and to secure adequate remedies.

**Political rights:** Enables individuals to freely participate in the political processes of society and includes the right to vote, the right to stand as a candidate in elections, the right to participate in the conduct of public affairs, and the right to access public services.

**Economic rights:** Enables a person to provide for the basic necessities of life and to live in dignity and includes rights to an adequate standard of living, the right to work and rights in work, and the right to an education. These are closely related to social rights.

**Social rights:** Includes the rights to food, adequate housing, adequate healthcare, and social security.

**Cultural rights:** Enables individuals to practice their culture freely and without discrimination.

## 1.6 Nature of Human Rights Obligations

As mentioned in the preceding section, rights have corresponding duties or obligations. In the case of human rights, obligations can be either horizontal or vertical (ref to Figure 1-1).

Horizontal level duties refer to the duties every individual, group, or organization has towards others in society. For example, individuals must respect the rights of others in society, including one's own family members. Similarly, groups such as organized faith-based groups, legal entities including corporations, and schools have a duty to respect the rights of their affiliates and those impacted by their functioning.

Duties at the vertical level refer to the duties held by States towards individuals living under their jurisdiction. These can be broadly classified into:

- (a) *Obligations to respect:* States have a duty to not take action that curtails the enjoyment of rights such as not torturing suspects to obtain confessions. The requirement to respect is known as a negative obligation as it calls upon States to refrain from taking certain actions.
- (b) *Obligations to protect:* States must take all necessary measures to prevent human rights abuses by non-State actors. For example, in a case where the right to life of one person is threatened by another, the State (in the form of the police) has an obligation to intervene to protect the right and take action against the perpetrator.
- (c) *Obligations to fulfil:* States have an obligation to implement general and structural measures to facilitate the enjoyment of rights including adopting laws to criminalize torture, or setting up an efficient court system to ensure equal access to justice. The obligations to fulfil and protect are positive obligations as they require States to act or to take some form of action.

Other obligations are specific to different human rights instruments or treaties and will be discussed in subsequent chapters.

## Reflection and Discussion: Identifying Human Rights Violations

- A spouse saying to his/her busy partner: “*Don’t I have a right to your time as well?*”
- A consumer finding a cockroach in a frozen food package could say: “*I’ll sue your company – I have rights, you know!*”
- An employee who has been unexpectedly fired could say: “*Can they do that? Don’t I have any rights?*”

These three examples were discussed in section 1.2.3 and the nature of expectations, relationships giving rise to such expectations, the rights holder and duty bearer were discussed. **Do these examples highlight a human rights violation?**

The first case involves the relationship of marriage. The complaint made by the spouse - that the other does not give time, involves love, expectation of care, etc. In this situation, there is no human rights issue involved as yet - as there is no need for the State (duty bearer in case of human rights) to step in.

The second case is about a consumer who has found a cockroach in his food, and wants to sue the company. Frozen food with cockroaches can violate a person’s health and life. Thus, the rights to health and life are threatened. The State (duty bearer) has the obligation to protect the consumer from actions of third parties such as the manufacturer. The State discharges this obligation by: enacting laws such as laws on food safety standards; and establishing mechanisms such as consumer courts making access to justice available and affordable to consumers. The case becomes a human rights problem when the State has not established the laws and mechanisms that protects the rights of consumers.

Similarly, the third case is about fair working conditions involving the right to work. The State (duty bearer) has the obligation to: enact laws that protect rights of workers and establish mechanisms that enable workers to access justice, such as establishing labour inspectors or labour tribunals. In this case, if the worker who has been fired can access justice under the legal framework, then there is no human rights problem. However, if the worker is not able to take any action for the arbitrary dismissal, because of absence of law that protects the rights of workers, or because the mechanisms to access justice is out of reach of the worker, then it would be a human rights violation.

Thus, while analysing or assessing whether or not there is a violation of human rights in a specific case, it is not only important to identify the rights that are under threat, but also whether or not the State failed to discharge its obligations, and if there was failure(s) on part of the State then the nature of such failure(s).

## 1.7 Fundamental Concepts in Human Rights

The fundamental characteristics of human rights are that they are universal in nature, inherent in every person, inalienable, indivisible, and interdependent. Finally, human rights are held by all persons on the basis of equality and non-discrimination.

### 1.7.1 Universal

Every person by virtue of their birth has human rights regardless of where they were born or to which religion, culture, political system, etc, they belong. Thus, the values underlying human rights are universal in nature, even though the legal recognition granted to some human rights may vary from society to society.

### 1.7.2 *Inherent*

Human rights are inherent in every person by virtue of their human dignity. Individuals need not earn such rights as all persons possess them on an equal basis.

### 1.7.3 *Inalienable*

Since human rights are inherent in every person, no entity 'gives' human rights, nor can they be taken away.

#### **Reflection and Discussion: Universal, Inherent, Inalienable**

***An owner of a fruit orchard offers employment to a group of migrant workers for a period of three years on a wage of \$2 per day including food and housing. The workers agree. Consequently, their passports are taken, the employer saying he will return them at the end of the contract. After a year, the workers are made aware of laws regarding minimum wages, maximum hours of work, and overtime. As such, they realise that \$2 a day is less than the prescribed minimum wage. They ask the employer to increase their wage and pay for overtime to which he points to their agreed terms of employment, saying he is under no obligation to pay them more. He also refuses to return their passports. Did the migrant workers lose their rights when they agreed to the unjust working conditions offered by the employer?***

The right to just working conditions includes being paid a minimum wage, payment for overtime work, and safe working conditions, all of which are human rights. These rights are inherent in every person even if they are unaware of them. They are also inalienable. In other words, the migrant workers cannot be said to have lost these rights despite agreeing to the unfair working conditions offered by the employer. Therefore, upon learning about their inherent rights, the workers can demand enforcement of said rights from their employer.

***Under criminal laws, individuals are sent to jail when convicted of a crime. In such cases, does not the State take away their rights to freedom?***

While it is true every individual possesses human rights, people also have a duty to respect both the rights of others and the laws of the society they reside in. When individuals fail in this duty and violate the laws of the land, States can take action against them. In other words, if a person is found guilty, he or she may be punished accordingly. The key point here is that the State is not acting arbitrarily in restricting rights as laws expressly stipulate the parameters of an offence, procedures when an offence is committed, and the quantum of punishment. Such laws are publicly available and it may be assumed every individual is aware of them. Thus, to protect the rights of others, States can act to restrict individual rights.

***Does a person committing the heinous act of raping a woman give away his human rights? In other words, does an imprisoned person give up his / her human rights?***

A person can enjoy their human rights till his / her action infringes upon rights of others. By committing rape, the rapist has harmed another's ability to enjoy their rights. As such, he deserves appropriate punishment. This punishment is decided by the judicial mechanisms according to the existing law. The punishment, imprisonment or even death penalty, does restrict the rights of the person judged guilty. However, notice that in such cases, rights to freedom (imprisonment) or right to life (death penalty) is being restricted by the judiciary

according to established law. The guilty person is not “giving away” his rights to freedom or right to life. Rather, they have been restricted by the State because the person has been judged by law to have committed an offence.

Also note, that a person accused of crime may be taken into custody by law enforcement (right to freedom is restricted). But such persons continue to enjoy their other human rights such as the right not to be arbitrarily detained, right not to be tortured and rights to fair trial. Similarly, a person judged guilty by the courts of law and given the punishment of imprisonment continues to enjoy rights such as the right to humane conditions of imprisonment.

A question may arise that when the State restricts the rights of the person guilty of rape, does it not go against the principle of inalienability, meaning no one can take away rights of another? The answer is - no, restriction of rights through due process of law does not go against the principle of inalienability. As mentioned in the beginning, rights are not absolute. Restrictions can be imposed on rights such as when a person violates rights of another (Restrictions on rights is discussed in chapter 3). However, first, such restrictions have to be written down in law and second, the process of restricting the rights must also be written in law (both these conditions are together known as due process of law).

The idea that “no one gives rights and no one can take them away” should be understood in the context of arbitrariness. A person / ruler does not “give” rights according to their whims and fancies, nor can they similarly “take away” rights.

***The Prime Minister of Country X makes the following statement: “We have given many rights to people. People should not ask the government for more. Rather, they should ask what can I, as a citizen, give to my country?” Can a government ‘give’ human rights to its people? Is there a correlation between human rights and a person’s duty towards his/her country?***

Human rights are inherent in every person and are inalienable. Therefore, governments or States cannot be said to ‘give’ rights *per se*. They can only give legal recognition to the natural rights/human rights a person is born with. For example, as mentioned earlier, women in the United States gained the right to vote in 1920 but under the philosophy of natural law, they were *born* with equal rights including the right to vote. However, because it was not recognized under US law, they could not practice it. After many decades of protests, the 19th Amendment to the Constitution was adopted finally recognizing women’s right to vote. As a result, women’s right under natural law was also recognized as a legal right.

Every person has duties towards the country they reside in, for example, to pay taxes or to obey its laws. However, such duties and human rights are distinct from one another. Human rights are inherent and inalienable and States have an obligation to respect, protect, and fulfil them irrespective of their duties as citizens. To put it another way, States must discharge their human rights obligations even if citizens are not adequately performing their duties.

#### **1.7.4 Indivisible**

The different categories of rights such as civil, political, economic, social, and cultural, make an indivisible whole. No one category of right is more important than another. All rights are of equal value.

### **1.7.5 Interdependent and interrelated**

Another dimension of the indivisibility of rights is that they are independent and inter-related. Therefore, the enjoyment of one right depends upon the fulfilment of other rights. For example, the right to freedom of opinion is interrelated with the right to an education. Having access to a good education will ensure a better ability to exercise freedom of speech and opinion. Similarly, the right to freedom of opinion is also dependent on the right to liberty. If someone can be arrested and detained upon the whims of the powerful, they will be afraid to speak out for fear of losing their liberty.

#### **Reflection and Discussion: Indivisible and Interdependent**

Noted economist, Amartya Sen, famously remarked that diverse political freedoms in a democratic state such as regular elections, free newspapers, and freedom of speech, are the real force behind the elimination of famines.

What are your views? Explain how regular elections, freedom of speech, and a free press helps to eliminate famines.

### **1.7.6 Equality and non-discrimination**

All persons are equal by virtue of their human dignity. This implies that no person can be discriminated against and denied enjoyment of their rights on the basis of race, gender, colour, ethnicity, language, religion, political opinion, origin, etc. The Universal Declaration of Human Rights echoes this in Article 1:

*All human beings are born free and equal in dignity and rights ...*

## Reflection and Discussion: Equality and Non-discrimination

***On 15 August 2021, the Taliban entered the city of Kabul (Afghanistan's capital) and took over the country. Since then, it has systematically excluded women and girls from public life. Women cannot participate in government, girls and women have been restricted from accessing secondary and higher education and healthcare, and women have also been barred from working outside the home. Further, the Taliban ordered women to cover their faces in public and prohibited them from traveling long distances without a close male relative. Such policies are in accordance with its vision of a society wrapped in Islamic Sharia values.***

***Under Taliban rule, Afghan women are not able to enjoy their rights. In such cases, can we still say that human rights are universal and inalienable?***

It is to be noted that until the 1970s, women in Afghanistan enjoyed the same freedoms as their counterparts from other parts of the world. They gained the right to vote in 1919, a year before women in the US. However, their rights have slowly been eroded due to the conflict starting in the 1970s and the consequent rise of fundamentalist groups.

Because the Taliban hold a particular view of society, it removed the legal recognition granted to these rights and imposed restrictions on their exercise. However, the moral force of human rights as natural rights remains; human rights continue to be universal and inalienable. It is this moral force that encourages Afghan women and men to gather and protest against the Taliban's restrictions. Further, it is the idea of universal, inalienable, interdependent, and inter-related rights that enables human rights organizations and other States to also seek accountability from the Taliban.

## 1.8 The Rule of Law and Human Rights

The situation discussed at the beginning of the chapter constitutes a prime example of a society without the rule of law. On 17 April 1975, the Khmer Rouge took control of Phnom Penh. Almost immediately it started changing the existing rules governing society. Ownership of private property, the practice of religion, and even the country's currency was abolished. People were sent to rural areas to work in agrarian labour camps. Schools and universities were closed. Subsequently, to protect their regime, the Khmer Rouge took action against anybody it deemed traitorous. As a result, thousands were arrested and tortured in prisons, the most infamous being S-21 in Phnom Penh. As documented, out of an estimated 15,000 prisoners sent to S-21, only seven survived. By holding all the power (law making, law enforcement and adjudication) and being totally unaccountable, the Khmer Rouge regime brought uncertainty and unpredictability to the lives of Cambodians.

What does the rule of law concept mean? At a basic level, it refers to a system where no one is above the law; individuals and governments are bound by the law and accountable under it. It is important to note here that 'law' is distinct from 'legislation.' Fukuyama has explained that law is understood as a superior body of law such as the constitution that represents a social consensus on the rules of justice while legislation refers to ordinary law that is established under such superior body of law.<sup>1</sup> (Fukuyama, 2011). Referring back to Cambodia, the Khmer Rouge overturned the *rule of law*, and started ruling *by* legislation.

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<sup>1</sup> Fukuyama, F. (2010) 'Transitions to the Rule of Law,' *Journal of Democracy*, Volume 21(1), pp. 31-44.

The concept of the rule of law is not new and can be traced back to the works of the Greek philosophers, Plato and Aristotle. Modern understandings can be found in the works of British constitutional lawyer Professor AV Dicey, in the German notion of *Rechtsstaat* (defined in opposition to absolutist States with unlimited powers conferred on the executive), and the French ideal of *Etat de droit* (which connotes constitutional review of ordinary legislation).

### **Key Term: The Rule of Law**

The United Nations Secretary General has **described the rule of law** as:

*a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of the supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.* ('Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)' UN Security Council, 23 August 2004, available at <https://www.refworld.org/docid/45069c434.html>, accessed on 27 July 2023).

In contemporary States, it is constitutions that establish rule of law standards and institutions. Thus, constitutions: establish the framework for the separation of powers between the legislature, executive, and judiciary; provide guarantees of fundamental rights; establish the norm that all laws and regulations be in accordance with fundamental rights; provide the guarantee of rights to access remedies; and establish an independent and impartial judicial system and other mechanisms to protect human rights. Compliance with these rule of law standards and institutions strengthens the protection of human rights in the State.

Reflecting back on the different sources of expectations discussed earlier, it is significant to note that in a rule of law-based society, constitutions comprise the supreme law. In cases of conflict between the rights guaranteed in constitutions and moral/social/religious or other societal codes, it is constitutions that should ultimately prevail. In other words, recognition of human rights creates the expectation that all moral, social, and religious codes, as well as other legal agreements, rules, and regulations should be respectful of the rights and freedoms of others recognised in constitutions.

In subsequent chapters of the textbook, it will be discussed that when States agree to accept the obligations under international human rights treaties, they also agree to modify the legal framework within the country so that they are in compliance with their commitments under international human rights law. Thus, States are under the obligation to ensure that their Constitutions and other laws are in consonance with human rights norms and standards.

## **1.9 Why Study Human Rights?**

The study of human rights is vital today for a number of reasons. This chapter introduced the theoretical, political, and philosophical basis for rights and explained some of its central concepts. Still, the question needs to be asked, why should we study it at all and is it a useful or even legitimate topic for university research? The answer to all these questions is a resounding yes. To understand why some fail to receive the same protection and freedoms as others requires a greater understanding of how human rights work. This knowledge relies on a better understanding of how society works including its values and belief systems, and the political and economic

context to demanding and receiving rights. Because universities are tasked with contributing to national development, and skilled people are required to resolve society's problems, the study of human rights can contribute to the effectiveness of many professions, whether the law, teaching, anthropology, political science, or social work. Reasons for the study of human rights at universities are summarized below:

*Human rights education is a human right*

Education on human rights is a human right in and of itself and governments are expected to educate their citizens accordingly. As will be detailed throughout this textbook, a significant weakness in the protection of human rights is a general lack of public awareness. As an example, very few university students graduate with any sense of what human rights actually are. Even fewer high school students are exposed to them. Knowledge about human rights can help students integrate them into their personal and later their professional lives whether in the private or public sectors.

*Protecting the vulnerable*

Most people in society live relatively safe lives. Their homes are protected from others breaking and entering and they rarely face threats or violence. Moreover, they have enough to eat and drink. This is especially true of most university students. However, groups of people within Southeast Asia lack this kind of protection such as refugees, migrant workers, or other minority groups facing discrimination. Consequently, people who live fairly safe well-off lives may not see the need to study human rights. To put it another way, people often do not recognize the protection they receive because it is invisible, and they may assume everyone is entitled to it. A common perception is that such protection is normal, but in reality it is only normal for some in certain situations. It may only be when a crisis arises, for example, a natural disaster or political conflict, that people may become interested in human rights because *their* safety (and rights) may suddenly be at stake. Crucial questions to ask are why do some people get protection and others do not? How can those who are threatened be protected? In most wealthy societies, it can be a challenge to urge people to consider why others go hungry, lack a roof over their heads, or lack access to clean water. Knowledge about human rights can help students to explore these questions and identify measures to address them.

*Understanding the importance of agency*

As this chapter has shown, human rights norms evolved in response to collectives of people raising their voices against abuse of power, inequality, discrimination, and injustice. Studying human rights aids understanding of the role civil society plays in bringing about social change and in strengthening the protection and promotion of human rights.

*Human rights education adds value to other knowledge*

The study of human rights is multidisciplinary and provides students with a basic knowledge in a number of university disciplines.

*Law:* Human rights cover the legal protection of people and is based in international law. It also relates to the national laws of Southeast Asian countries.

*Political science:* Human rights describe how States should work, their duties, and the activities they should be doing in order to be effective.

*Sociology:* The study of human rights aids understanding of the dynamics of societies which is necessary to both protect communities and work against discrimination by changing values and beliefs (such as the inferiority of women).

*Philosophy:* Human rights arise from ideas on morality and goodness. While there is no scientific proof that the current concept of human rights is correct, various philosophical ideas on justice, ethics, and morals support the notion and explains why people should treat each other with respect.

*International relations, peace studies, psychology, and anthropology:* Studying this subject offers students a greater understanding of how people relate to governments and communities. They will also gain a greater understanding of the different members of their society and the challenges faced by some. Finally, it is hoped such students will eventually realise the necessity of analysing and contributing to the evolution of human rights in the region.

### **Reflection and Discussion: The Rule of Law**

Do you live in a State where the rule of law is respected? What are some signs that the rule of law is *not* being upheld? Who suffers when the rule of law is not respected?

## **A. Chapter Summary and Key Points**

- Human rights are the rights a person has just by being born human.
- Each right has corresponding obligations. Human rights cast obligations on the State to respect, protect, and fulfil rights. Human rights also impose an obligation on others living in society to respect the rights of each other.
- Human rights can be divided into economic, social, cultural, civil, and political rights which are indivisible and interdependent on each other.
- Human rights are inherent in every person. Every human possesses such rights regardless of their political viewpoint, belief, social and economic status, ethnicity, sexual orientation, nationality, etc.
- Every person has human rights. No one can be excluded from the enjoyment of such rights because of their race, colour, sexual orientation, language, religion, political or other opinion, national or social origin, social or economic status.
- Human rights are universal. These rights are inherent in every person across the globe.
- Human rights are inalienable. No entity can give such rights to a person, nor can they be taken away. By adopting laws, a State merely gives legal recognition to human rights.
- Human rights norms evolved over the ages as people responded to suffering, injustice, and abuse of power. Agency or a person's capacity to act, has an important role in the implementation of human rights norms.
- The principle of the rule of law is a vital check and balance on the powers of the State and helps to ensure it does not act above the law, that all laws, rules, regulations, etc, promulgated by it are in consonance with human rights standards, and there is an independent and impartial judiciary to hear complaints about human rights violations.

## B. Typical Exam or Essay Questions

- What are the differences between human rights and other types of rights such as citizen or student rights?
- Should other communities and cultures have different rights, or are all people's rights the same?
- Explain horizontal and vertical protection. Why is horizontal protection needed?
- How are human rights indivisible, interdependent, and inter-related? Provide some examples.

## C. Further Reading

A number of English textbooks are available, some for free. A simple internet search using keywords will find the texts listed below.

### **Available free on the internet**

Benedek, W (ed), *Understanding Human Rights: Manual on Human Rights Education*, Graz: European Training and Research Centre for Human Rights and Democracy, 2012. Available at [https://www.etc-graz.eu/wp-content/uploads/2020/08/Manual\\_2012\\_Eng\\_FINAL.pdf](https://www.etc-graz.eu/wp-content/uploads/2020/08/Manual_2012_Eng_FINAL.pdf), accessed on 24 July 2023.

Sepulveda, M, van Banning, T, Gudmindsdóttir, GD, Chamoun, C, and van Genugten, WJM, *Human Rights Reference Book*, Costa Rica: University for Peace, 2004. Available at <https://www.corteidh.or.cr/tablas/23861.pdf>, accessed on 24 July 2023.

Office of the High Commissioner for Human Rights (OHCHR), *Human Rights: A Basic Handbook for UN Staff*, Geneva: OHCHR and the UN Staff College Project, 2001. Available at <https://www.ohchr.org/sites/default/files/Documents/Publications/HRhandbooken.pdf>, accessed on 24 July 2023.

### **Available to purchase**

Alston, P, and Goodman, R, *International Human Rights*, Oxford: Oxford University Press, 2013.

Clapham, A, *Human Rights: A Very Short Introduction*, Oxford: Oxford University Press, 2007.

Ishay, MR (ed), *The Human Rights Reader: Major Political Essays, Speeches, and Documents from the Bible to the Present*, New York: Routledge, 1997.

Ishay, MR, 2004, *The History of Human Rights*, Berkeley: University of California Press, 2004.

Novak, M, *Introduction to the International Human Rights Regime*, Boston: Martinus Nijhoff Publishers, 2004.

Rahman, J, *International Human Rights Law: A Practical Approach*, London: Longman, 2003.

Smith, R, *International Human Rights*, Oxford: Oxford University Press, 2007.

### ***Useful websites***

The Office of the High Commissioner for Human Rights (OHCHR) contains a number of useful texts and documents. However, it also includes many official UN documents which are not always easy to read. Available at <https://www.ohchr.org>, accessed on 27 July 2023.

The Human Rights Education Association (HREA) also possesses a huge online library of texts on human rights issues. Available at <https://hrea.org/>, accessed on 27 July 2023.

All the major treaties mentioned in this chapter are available online and can be found at the OHCHR (available at <https://www.ohchr.org/en/treaty-bodies>, accessed on 27 July 2023) and the University of Minnesota Human Rights Library (available at <http://hrlibrary.umn.edu/>, accessed on 27 July 2023).

# Chapter 2

## Introduction to International Human Rights Law\*

### Reader's Guide

Chapter 2 provides an introduction to international human rights law. It first discusses the traditional understanding of international law before delving into the differences that arose following the development of international human rights law. Next, the sources of international human rights law are examined together with a brief exploration of the international human rights treaty-making process, the mechanisms for its protection and promotion, and the three generations theory of rights. Finally, this chapter will assess some of the reasons why States agree to become part of and subject to the international human rights law framework. Thus, the aim of this chapter is to build the foundations of a deeper understanding of international human rights law.

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\* The chapter for the first edition was prepared by Azmi Sharom, Faculty of Law, Universiti Malaya, and Eko Riyadi, Faculty of Law, Universitas Islam, Indonesia. It has been updated by Kalpalata Dutta, ASEAN University Network - Human Rights Education (AUN-HRE).

## 2.1 International Law

International law or public international law was defined by Brierly in 1928 as “*the body of rules and principles of actions which are binding upon civilised states in their relations with one another.*”<sup>1</sup> Traditionally, States were considered to be the only subjects of international law, with the implication being that only States could claim violations of international law. As listed in Art 38 of the International Court of Justice, the sources of international law are: (1) International conventions or treaties establishing rules and standards; (2) Customary international law, as evidence of a general practice accepted as law; (3) General principles of law recognized by civilized nations; and (4) Judicial decisions and teachings of highly qualified publicists of various nations.

## 2.2 International Human Rights Law and Its Sources

The establishment of the United Nations led to a sea change in the world’s understanding of international law. Traditionally, the subject only encompassed the claims sovereign States raised against each other. By contrast, the subjects of international human rights law are the individuals living within a State’s jurisdiction. As discussed in Chapter 1, the principal obligation holder under international human rights law is always the State. Similar to international law, the sources of international human rights law are the international agreements or treaties adopted by UN Member States, customs, general principles of law, judicial decisions, and the teachings of qualified experts, all of which are briefly explored in the next section.

### 2.2.1 International human rights treaties

Treaties, conventions, or covenants are all legally-binding international agreements adopted by States. Human rights treaties are adopted by the UN General Assembly. Upon ratification of a treaty, States agree to be bound by its obligations. There are nine core human rights treaties (as shown in Table 2-1) some of which have optional protocols setting out additional provisions written after the adoption of the treaty. Optional protocols are therefore also treaties in their own right.

**Table 2-1: The Core International Human Rights Treaties and Their Optional Protocols**

	Treaty/Convention/Covenant	Date of Adoption	Entry into Force
1	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	21 Dec 1965	4 Jan 1969
2	International Covenant on Civil and Political Rights (ICCPR)	16 Dec 1966	23 Mar 1976
2.1	OP1: Optional Protocol to the ICCPR	16 Dec 1966	23 Mar 1976
2.2	OP2: Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty	15 Dec 1989	11 Jul 1991
3	International Covenant on Economic, Social and Cultural rights (ICESCR)	16 Dec 1966	3 Jan 1976
3.1	Optional Protocol to the ICESCR	10 Dec 2008	5 May 2013
4	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	18 Dec 1979	3 Sep 1981
4.1	Optional Protocol to CEDAW	6 Oct 1999	22 Dec 2000
5	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	10 Dec 1984	26 Jun 1987

<sup>1</sup> Brierly, JL. (1949) ‘The origins of international law,’ in *The Law of Nations: An Introduction to the International Law of Peace*, 4th Edition. Oxford University Press, p. 1.

5.1	Optional Protocol to CAT	18 Dec 2002	22 Jun 2006
6	Convention on the Rights of the Child (CRC)	20 Nov 1989	2 Sep 1990
6.1	Optional Protocol to CRC on the involvement of children in armed conflict	25 May 2000	12 Feb 2002
6.2	Optional Protocol to CRC on the sale of children, child prostitution, and child pornography	25 May 2000	18 Jan 2002
6.3	Optional Protocol to CRC on a communications procedure	19 Dec 2011	14 Apr 2014
7	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW)	18 Dec 1990	1 Jul 2003
8	International Convention for the Protection of All Persons from Enforced Disappearances (CPED)	20 Dec 2006	23 Dec 2010
9	Convention on the Rights of Persons with Disabilities (CRPD)	12 Dec 2006	3 May 2008
9.1	Optional Protocol to CRPD	13 Dec 2006	3 May 2008

### 2.2.2 Customary international law

Article 38 of the Statute of the International Court of Justice defines custom as a “*general practice accepted as law.*” The two elements of customary international law are: (1) Widespread practice by States over time, and (2) Acceptance of such practices as law which are legally-binding. Examples of customary international law include: the immunity granted to visiting heads of State; the rule that parties to a conflict must at all times distinguish between civilians and combatants and only attack combatants; and the principle of non-refoulement which forbids a country from returning an asylum seeker to a country where he or she could face threats to their life, liberty, and security. The Universal Declaration of Human Rights (UDHR) has also gained recognition as international customary law.

### 2.2.3 General principles of law

General principles of law refer to the legal norms accepted by most nations. Some examples can be seen in norms relating to impartiality of judges, the doctrine of good faith, and the principles of fair trial and estoppel. Such general principles can be found in the decisions of international and national courts, and in the teachings of legal scholars. When no other source offers guidance, these principles take precedence.

Some general principles of law are accepted and recognised by the international community of States as norms from which no derogation is permitted. Such principles are also known as peremptory norms or *jus cogens*. Examples of these include the prohibition of torture and genocide.

### 2.2.4 Judicial decisions and the writings of qualified experts

Another important source of international human rights law are the decisions of judicial bodies including courts at the international, regional, and national levels such as the International Court of Justice, the European Court of Human Rights, or the highest courts at the national level. Also included in this category are quasi-judicial bodies such as the treaty bodies monitoring the implementation of human rights treaties.

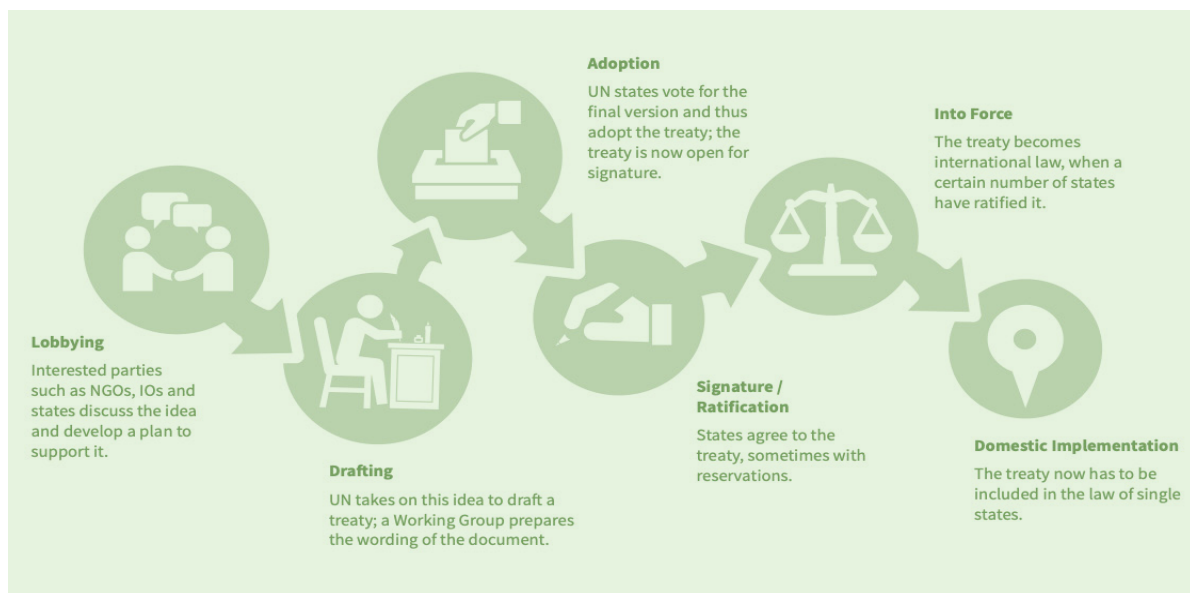
Likewise, the writings of qualified experts are an accepted source of international law and may be in the form of general comments by treaty bodies, declarations, guidelines, and principles adopted at the international level – all of which contribute to the understanding of international human rights standards as enumerated by the treaties. Some examples are: the Basic Principles

on the Independence of the Judiciary, 1985; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990; and the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 1987.

## 2.3 The Treaty-making Process

The first stage in the international human rights treaty-making process is the drafting of a document which occurs after a process of lobbying involving interested parties (often a mixture of States, international organisations, and civil society). For example, before the treaty on children’s rights was introduced, various States supporting the idea alongside organisations such as Save the Children and UNICEF, lobbied for broader support. Following this, the UN must agree to take on the project of creating the treaty. Then begins the drafting of the treaty contents through discussion and dialogue with States, concerned UN mechanisms, civil society organisations, experts, and other stakeholders.

Figure 2-1: The Treaty Making Process – From Lobbying to Implementation



The treaty-making process culminates when it enters into force after a minimum number of ratifications by States.

### Key Terms: Treaty Making Process

**Adoption by the United Nations General Assembly:** Refers to the formal act by which the form and content of a proposed treaty text are established. As a general rule, adoption of the text of a treaty takes place through the expression of consent of the States participating in the treaty-making process.

**Signature:** Once a treaty is adopted, it is opened for signature. When Member States sign a treaty, they are indicating the process required by their government for ratification has begun and that henceforth, they are also agreeing to refrain from acts contrary to the objectives of the treaty.

**Ratification:** Refers to the act whereby a State signifies its intention to comply with the treaty's provisions and obligations. Thus, it takes on the responsibility to ensure its national laws are in agreement with the convention. At the same time, States can also indicate reservations or make declarations about specific articles. Once ratification of a treaty has occurred, its provisions become applicable to all those under the State's jurisdiction and as a result, the State becomes accountable for implementation of the treaty. (Implementation at the national level will be discussed in Chapter 5.)

**Accession:** Refers to the act whereby a State accepts the offer or opportunity to become a party to a treaty already negotiated and signed by other States. It has the same legal effect as ratification. Accession usually occurs after a treaty has already entered into force.

**Reservations:** Refers to declarations made by a State to exclude or limit the effect of certain treaty provisions as they apply to that State. Reservations therefore permit a State to accept multilateral treaties as a whole by enabling it to opt out of certain provisions with which it does not wish to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved, or acceded to. However, reservations must not be incompatible with the object and the purpose of the treaty and can subsequently be withdrawn.

An example of the above can be seen when, at the time of its accession to CEDAW in 1985, Thailand made a reservation, amongst others, to Art 16 (instructing governments to ensure the equal rights of men and women in all aspects of family life), stating that the government did not consider itself bound by it. However, some States, such as Germany and the Netherlands, raised objections stating it was incompatible with the objects and purposes of the Convention. The body responsible for monitoring implementation of CEDAW, the Committee on the Elimination of Discrimination against Women, also expressed concern at Thailand's reservation to Art 16. In its report to the Committee in 1997, Thailand stated that while efforts had been made to amend laws to allow for the withdrawal of its reservations, traditional attitudes were proving a barrier (see, Thailand's combined second and third periodic reports before the CEDAW Committee in 1997<sup>2</sup>). At long last in 2012, Thailand finally withdrew its reservation.

**Declarations:** Sometimes States make 'declarations' as to their understanding of some matter or regarding the interpretation of a particular provision. Unlike reservations, declarations merely clarify a State's position rather than seeking to exclude or modify the legal effect of a treaty. Usually, declarations are made at the time of signature, ratification, or accession.

**Entry into Force:** A multilateral human rights treaty enters into force only after it has received a minimum number of ratifications from States.

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<sup>2</sup> Committee on the Elimination of Discrimination against Women. (1997). *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Second and Third Periodic Report of Thailand*. CEDAW/C/THA/2-3.

## Reflection and Discussion: Legal Status of UDHR

At the risk of sounding obvious, the Universal Declaration of Human Rights (UDHR) is a *declaration*, not a treaty. As such, it did not require State ratification as in the case of the nine core human rights treaties. The question then arises – is it legally-binding on Member States?

The UDHR laid the foundations of international human rights law and has gained the status of customary international law. As will be discussed in Chapter 3, UDHR rights were subsequently divided into two binding international human rights treaties: the ICCPR and the ICESCR. Taken together, the UDHR, ICCPR, and ICESCR are also known as the International Bill of Human Rights. Moreover, the Universal Periodic Review that is applicable to all UN Member States is based on the UDHR. Thus, despite not undergoing a ratification process, the UDHR has essentially become binding on all UN Member States.

**Table 2-2: Human Rights Monitoring Mechanisms at the United Nations**

Treaty-based Bodies	Charter-based Bodies
9 Committees and 1 Sub-Committee monitoring implementation of the nine core international human rights treaties.	Special Procedures (46 thematic mandates and 14 country mandates as of November 2023)
	Universal Periodic Review
	Independent Investigations
	Complaints Procedures

## 2.4 Enforcement of International Human Rights Law

While Chapter 4 will focus on international human rights mechanisms specifically, this section only seeks to provide a brief introduction to the subject.

At the national level, laws are enforced through domestic legal systems but significantly, there is no global police force as such. At the international or UN level, enforcement takes place through a system of dialogue, and in some cases, sanctions. The two different monitoring mechanisms within the UN system are treaty bodies and mechanisms under the UN Charter or the charter-based bodies.

Treaty bodies monitor implementation of the human rights treaties. At the time of ratification, a State makes a commitment to submit periodic reports to the treaty body concerned as regards enjoyment of the rights contained therein and its progress in implementing those provisions. Following input from civil society organisations at the national, regional, and international levels, a treaty body will consider a State Party's report and enter into a constructive dialogue on ways to further strengthen such rights. At the end of the process, the treaty body issues recommendations to the State which is then expected to take appropriate measures as needed.

Similarly, under the Universal Periodic Review process before the Human Rights Council, a UN Charter-based body, Member States undergo a peer review of their human rights record every four and a half years. The UDHR provides the basis for such reviews. Under this process other Member States may give recommendations to the State under review.

Other Charter mechanisms such as Special Rapporteurs with thematic and country mandates can make country visits to examine specific issues of concern and issue reports with recommendations. However, such visits can only take place by invitation of the State concerned.

Some UN treaty bodies can receive individual complaints. As will be discussed in Chapter 5, regional human rights mechanisms in Europe, the Americas, and Africa, can receive complaints from non-governmental organisations and/or individuals about specific cases of human rights violations. However, two conditions must first be fulfilled: (1) The State must have accepted jurisdiction of the mechanism to receive individual complaints, and (2) Remedies at the domestic level must have been exhausted. If such conditions are satisfied, the human rights mechanism may look into the complaint, ask the State for more information where necessary, and at the end of the process, issue a ruling. Finally, the mechanism may also enter into a dialogue with the State to ensure implementation of the ruling as required.

As will be examined in Chapter 4, the UN Security Council also has a mandate to intervene in cases of gross and systematic human rights violations. In such cases, the Security Council may issue binding resolutions or sanctions such as the complete severance of domestic relations and/or the imposition of economic sanctions. As a last resort, if the violations threaten international peace and security, the Security Council may even consider the use of armed forces.

To conclude, international human rights law is mainly enforced through a process of constructive dialogue with the State which will be assessed further.

### **Key Terms: Enforcement of Human Rights at International Level**

**Constructive dialogue<sup>2</sup>:** Refers to the practice, adopted by all treaty bodies, of inviting a State to send a delegation to the session at which its report will be considered to enable it to respond to Members' questions and provide additional information on its efforts to implement the relevant treaty provisions. The notion of constructive dialogue emphasizes the fact that treaty bodies are not judicial bodies (even if some of their functions are quasi-judicial), but were created to review treaty implementation.

**Exhaustion of domestic remedies<sup>3</sup>:** Refers to the general requirement that victims first use the judicial or administrative complaint procedures available under national law before bringing a complaint at the international level. This requirement gives the country allegedly responsible for a human rights violation the opportunity to provide reparation of its own volition. However, this prerequisite (that such bodies will reject a complaint if the complainant cannot show that he or she pursued domestic remedies to their final conclusion) is subject to several exceptions. Generally, complainants are not required to pursue or exhaust domestic remedies where, for example, none exist, the procedure is unduly delayed, the procedure is unfair, or the available remedy cannot actually redress the alleged violation.

<sup>3</sup> Adapted from: OHCHR. (n.d.-a). *Glossary of technical terms related to the treaty bodies*. <https://www.ohchr.org/en/treaty-bodies/glossary-technical-terms-related-treaty-bodies#cd>, accessed on 6 October 2023.

<sup>4</sup> Adapted from: *Exhaustion of domestic remedies*. (2021, October 12). International Justice Resource Center. <https://ijrcenter.org/exhaustion-of-domestic-remedies/>, accessed on 6 October 2023.

## 2.5 Three Generations Theory of Human Rights

International human rights are often divided into three generations of rights, a division that was formally established by Karel Vasak, a Czech jurist, in 1977.<sup>5</sup> The first refers to civil and political rights. Emerging in the 17<sup>th</sup> and 18<sup>th</sup> centuries, such rights were mainly based on ideas of personal liberty and sought to protect the individual from the power of the State. Civil and political rights are today recognised in the ICCPR. The second generation of rights (which rose to prominence during the period of early industrialisation and the rise of the working class) covers access to social and economic goods, services, and opportunities. The third generation of rights goes beyond the individual to focus on the collective rights of society and are often known as solidarity human rights. These include the right to sustainable development and the rights to a safe, clean, and healthy environment, etc.

However, the idea of three generations of human rights gives the false impression that some categories are more important than others but as subsequent chapters will show, rights are interconnected. Recognition of economic, social and cultural rights contribute to strengthening civil and political rights, and vice versa. Likewise, solidarity rights are strengthened following recognition of civil, political, economic, social and cultural rights.

Another basis to distinguish between the first and second generations of rights is by evaluating State obligations. It was generally believed that the first generation of rights required States to refrain from taking certain actions (negative obligations) while the second required States to take positive action, thereby involving policy-making which many saw as a State's prerogative. However, as Chapter 3 will show, civil and political rights impose positive obligations on States in much the same way as economic, social and cultural rights impose negative obligations. For these reasons, the three generations theory is now considered flawed.

## 2.6 Why States Ratify Treaties that Burden Them with Legal Obligations

It may seem odd that a State would voluntarily agree to a treaty that may limit its power. An obvious question arises – why would they do this? There are a number of reasons:

1. *States consist of individuals who prefer to have their rights protected.* It is frequently forgotten that States are run by people who also want to enjoy their rights, or who may rely on civil society support to run for office. Indeed, pressure from such groups (which may organise events to encourage or pressure States) constitutes a significant force in persuading States to agree to treaties.
2. *A State may already agree with a treaty's object and purpose.* As such, it may create little extra commitment as regards changes to its domestic law. This is especially the case for disability rights which many States already recognize. In Europe, agreement to join the regional convention (the European Convention on Human Rights, 1950) was not particularly onerous as many European States were already legally bound by the ICCPR and/or CEDAW.
3. *States are concerned about their global image.* Reputation matters in the international arena, and States opposing or violating human rights are often publicly named and shamed. Thus, even States presumed to disagree with human rights may sign such treaties. For example, North Korea, which many consider one of the worst violators of human rights, has ratified five human rights treaties (the ICCPR, ICESCR, CRC, CEDAW, and CRPD).

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<sup>5</sup> Vasak, K. (1977). *A 30-year struggle: The sustained efforts to give force of law to the Universal Declaration of Human Rights*. UNESCO Courier. pp. 29-32. <https://unesdoc.unesco.org/ark:/48223/pf0000074816>. nameddest=48063, accessed on 6 October 2023.

4. *International pressure.* States can be encouraged (or even forced) to agree to human rights treaties by other States or international organisations. For example, it may be in a State's best interests to agree in order to receive aid or to become a member of groups such as the World Trade Organization (WTO).
5. *No intention to comply anyway.* Believing ratification will improve their image, some States may be insincere when agreeing to a treaty, having little or no real intention to comply. However, as research has shown, in the long term, a false agreement may ironically result in States complying anyway, for the people upon learning of their rights, may force States to comply.
6. *Following the herd.* Many States agree to (or reject) treaties to stay in line with their regional and political partners. For example, most States in the European Union have ratified the same treaties while in South Asia, no State has agreed to the Refugee Convention. However, Southeast Asian countries appear not to subscribe to this regional collective view of human rights treaties as the number of ratifications varies greatly. Another type of herd behaviour occurs when treaties hold near universal support, such as women's rights (with only eight countries not agreeing) and children's rights (only the US has yet to ratify); States may agree to avoid being part of a very small group of non-complying countries. The Convention on the Rights of Persons with Disabilities is following such a path with over 75% of the world already having signed on.

### **Reflection and Discussion: Do human rights conflict with State sovereignty?**

Prior to the development of international human rights law, international law mostly regulated relations between sovereign States. This principle is still strong in international politics, and can be found in the UN Charter (Art 2.7) which states:

*Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State.*

By ratifying international human rights treaties, States accept not only the obligations of such treaties, but also the obligation to submit periodic reports to the treaty monitoring bodies. Moreover, many States also accept provisions allowing individuals and non-governmental organisations to submit complaints of human rights violations. By accepting, States agree to have their human rights records monitored by international mechanisms which acknowledge that the framework can only work with the co-operation of Member States. Hence, the requirement of "exhaustion of domestic remedies" for the submission of complaints. Similarly, a constructive dialogue approach with Member States is taken by both treaty bodies and international mechanisms. As will be explained in Chapter 4, tools such as the doctrine of margin of appreciation developed by the European Court of Human Rights give Member States a degree of discretion in taking legislative, administrative, and judicial action.

In these ways, a delicate balance is maintained by international and regional human rights mechanisms between State sovereignty and the protection of human rights.

## A. Chapter Summary and Key Points

Traditionally, international law governed relations solely between sovereign States and so the subjects comprised the claims States had against each other. Significant change occurred with the development of international human rights law when the subjects became those living in the jurisdiction of States. As a result, States not only acquired obligations to ensure the full realisation of treaty rights, they also committed to report to the UN on the measures taken by it to strengthen the promotion and protection of such rights in its jurisdiction.

International law differs from law at the domestic level as it lacks a global police force to enforce it. Enforcement is instead achieved through a mixture of mechanisms at the UN level such as committees of experts monitoring the implementation of treaties (known as treaty bodies), the Universal Periodic Review process before the Human Rights Council, Special Rapporteurs, and other complaint mechanisms. In general, UN mechanisms use the strategy of constructive dialogue to review the human rights records of States. The requirement that domestic remedies must be exhausted before complaints can be filed before international mechanisms ensures States have ample opportunity to provide redress beforehand. Such practices help to maintain a balance between State sovereignty and the protection of human rights.

## B. Typical Exam or Essay Questions

- What is the difference between international law and international human rights law?
- Name the different sources of international human rights law. Describe these sources and provide some examples.
- How does a treaty enter into force? Describe the process from the drafting of a treaty to its entering into force.
- Why do States ratify treaties?
- The Universal Declaration of Human Rights (UDHR) is a 'declaration' and not a treaty. Is it therefore legally-binding on States?

## C. Further Reading

### International law

Brierly, JL, *The Law of Nations: An Introduction to the International Law of Peace*, 6<sup>th</sup> ed, Waldock, H (ed), Oxford: Clarendon Press, 1963.

### International human rights

Levin, L, 'Human rights: Questions and answers (6<sup>th</sup> ed)' UNESCO, 2012, available to view and download at <https://unesdoc.unesco.org/ark:/48223/pf0000219091>, accessed on 6 October 2023.

Mathias, S, 'Treaty-Making at the United Nations: The View from the Secretariat' in Chesterman, S, Malone, DM, and Villalpando, S (eds), *The Oxford Handbook of United Nations Treaties*, New York: Oxford University Press, 2019, pp 51-69.

To view which countries have ratified the human rights treaties, see the 'UN Treaty Body Database' OHCHR, at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/treaty.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/treaty.aspx), accessed on 6 October 2023.

# Chapter

# 3

## ICCPR and ICESCR\*

### Reader's Guide

The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights or ICCPR (1966), and the International Covenant on Economic, Social and Cultural Rights or ICESCR (1966) are collectively known as the International Bill of Human Rights. This chapter offers an introduction to the ICCPR and ICESCR by elaborating on the nature of State obligations under each covenant and the different rights contained therein. To give an understanding of the usefulness of the General Comments in the interpretation of such rights, it will make constant reference to those issued by the two treaty bodies (the Human Rights Committee and the Committee on Economic, Social and Cultural Rights). While discussing the rights and corresponding State obligations, reference will also be made to the reports issued by human rights organizations and other stakeholders, media reports, and the work of human rights defenders, thereby highlighting the role of such actors in strengthening, protecting, and promoting human rights. It is hoped this chapter will not only build a foundation for learning about international human rights standards but also open the minds of students to the dynamics of human rights work

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### 3.1 Introduction

In 1947, the Commission on Human Rights established a committee to formulate a preliminary draft of an international bill of human rights. The drafting committee had two views – while some representatives were of the opinion that the proposed bill should take the form of a declaration or manifesto (having moral weight but no legal obligation), others felt it should be a convention (binding to the members accepting it). Thus, the drafting committee submitted two documents: a working paper on a draft declaration, and a working paper outlining a draft convention.<sup>1</sup> Finally, a non-binding instrument, the Universal Declaration of Human Rights was adopted in 1948 with the understanding that a binding international bill of rights would be adopted soon after.

The drafters acknowledged that an international bill of rights should include both civil political and economic, social and cultural rights. They also acknowledged that the two sets of rights could involve different methods of implementation and having two sets of obligations in one covenant could result in confusion and misunderstandings.<sup>2</sup> In these circumstances, the General Assembly in its 6th session (1952) affirmed that the enjoyment of civil and political freedoms and economic, social and cultural rights were interconnected and interdependent and that “*when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of the free man.*” It thus passed a resolution requesting the Commission on Human Rights to draft two covenants, one containing civil and political rights, and the other covering economic, social and cultural rights so they could be simultaneously approved and opened for signature.<sup>3</sup>

Taking almost 15 years, the two covenants finally opened for signature and ratification in 1966 as the ICCPR and ICESCR. Ten years later in 1976, both covenants at long last came into force. Article 2 of both reflects the differences in obligations and their approaches to implementation.

However, any understanding of the history of this process would be incomplete without a corresponding grasp of the political context in which the covenants were drafted. This period saw the beginning of the Cold War between the United States and its western European allies, and the Soviet Union and its allies. As a result, polarization between the two sides was reflected in discussions concerning the international bill of rights. For many western States, political rights and freedom of expression were considered vital, while the Soviet bloc advocated for duties regarding health, education, and the rights of workers. These ideological differences greatly impacted both treaty negotiations and the adoption and ratification process.

### 3.2 The International Covenant on Civil and Political Rights (1966)

The ICCPR entered into force on 23 March 1976. To date, 173 countries have ratified it including in Southeast Asia, Vietnam (1982), followed by the Philippines (1986), Cambodia (1992), Thailand (1996), Laos PDR (2000), and Indonesia (2006). It has not been ratified by Brunei, Malaysia, Myanmar, or Singapore.

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<sup>1</sup> United Nations Economic and Social Council. (1947). *Report of the Drafting Committee on an International Bill of Human Rights, Commission on Human Rights*. E/CN.4/21

<sup>2</sup> United Nations Economic and Social Council. (1951). *Report of the Commission on Human Rights, Resolutions of 29 August 1951*. 384 (XIII).

<sup>3</sup> United Nations General Assembly. (1952). *Preparation of two Draft International Covenants on Human Rights*. 375th plenary meeting, 5 February 1952

### **3.2.1 Obligations under the ICCPR**

Articles 2 and 3 lay down the obligations of State parties as elaborated upon by the Human Rights Committee in General Comment No 31 (2004). The main elements are:

- a. The obligations are binding upon all branches and agencies of the State such as the executive, legislature, and judiciary. The term 'State' also includes public institutions or government authorities at all levels (national, regional, or local) carrying out its functions or responsibilities.
- b. Article 2(1) places an obligation on States to respect and ensure the enjoyment of all rights in the Covenant without distinction of any kind including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- c. The obligations under Art 2 are both negative and positive in nature. State parties must respect rights and refrain from taking any action that undermines their enjoyment. As per Art 2(2), States also have a positive obligation to adopt laws and take other necessary measures to give effect to the rights recognized in the Covenant. For example, with respect to the right to peaceful assembly, while the negative obligation requires States not to interfere with its exercise, positive obligations require States, amongst others, to also provide training to law enforcement officials on effective methods of crowd control.
- d. Article 2(3) stresses the obligation of States to provide effective remedy to any person whose rights and freedoms have been violated. Thus, States have an obligation to establish appropriate judicial and administrative mechanisms and ensure they are easily accessible to victims. For example, with respect to Art 7, States have the obligation to adopt laws prohibiting torture and provide mechanisms to investigate complaints of torture and remedies for any violation caused by the State and its agents.
- e. Another important element of State obligations is to ensure no discrimination on the basis of sex or gender in the enjoyment of the civil and political rights recognised in the Covenant (Art 3).

### **3.2.2 Rights guaranteed in the ICCPR**

Article 1 of the ICCPR (which is similar to Art 1 of the ICESCR) recognizes the right to self-determination. Articles 6 to 27 guarantee rights and freedoms. The Office of the High Commissioner of Human Rights and the Human Rights Committee has grouped the rights and freedoms recognized in the ICCPR as follows: (1) The right to life, liberty, and physical security of individuals; (2) Judicial protection; (3) Protection against unjustified external interference; (4) Rights related to the family and children; (5) Political participation; and (6) The rights of minorities. The following section will provide an overview of these groups of rights.

### 3.2.2.1 Right to life, liberty and physical security of individuals (Articles 6-13)

#### **Spotlight: Rights to Life, Liberty and Physical Security of Individuals**

- Right to life (Art 6)
- Prohibition of torture (Art 7)
- Prohibition of slavery and slavery-like practices (Art 8)
- Right to liberty and security of the person (Art 9)
- Rights of persons deprived of their liberty (Art 10)
- Prohibition of imprisonment for an inability to fulfil a contractual obligation (Art 11)
- Freedom of movement (Art 12)
- Prohibition of the arbitrary expulsion of aliens (Art 13)

#### *Right to life*

Article 6(1) recognizes that every human being has an inherent right to life. It further states that this should be protected by law and no person should be arbitrarily deprived of their life. Implicit in the wording is the recognition that the right to life is not absolute; however, deprivation of life should not be arbitrary. The Human Rights Committee in its General Comment No 36 (2018) clarified that the notion of arbitrariness should be understood in terms of the principle of legality and taking into account elements of reasonableness, necessity, and proportionality (discussed in section 2.3).

Extrajudicial executions (EJE) and enforced disappearances are two examples of arbitrary deprivations of life. The former occurs when someone acting in an official capacity or with the tacit approval of the State deliberately kills another outside of the legal framework. EJE includes unlawful killings by the police, deaths in military or civilian custody, and killings of civilians in armed conflict in violation of humanitarian law. Another example can be seen in so-called honour killings (killings by private individuals not adequately investigated and prosecuted by the authorities). Political opponents, suspected offenders, and human rights activists including environmental activists are also often targets of EJE.

#### **Reflection and Discussion: Extra Judicial Executions**

A mayor launches an anti-crime campaign with the purpose of ridding the city of what he refers to as “weeds” or suspected petty criminals, drug dealers, small-time thieves, and children living or working on the streets. Under this campaign, a special force acting under the police are given power to shoot to death any person suspected of being involved in a criminal activity. The intent of these shootings is to send an anti-crime message to the general population. Nearly 300 people are killed over a period of two years including a nine-year-old boy, a judge, a journalist, a tribal leader, local politicians, and businessmen. Following this, the crime level in the city dropped significantly.

- Do you agree with the policy? Give reasons for your answer.**
- Similar policies have been implemented by governments in the region. Critically research one of these policies and present your findings.**

In simple terms, enforced disappearances refer to the actions of the State and its agents by which a person is made to disappear. Notorious instances in Southeast Asia can be seen in the cases of Somchai Neelapaijit in Thailand who vanished in 2004 and Sombath Somphone who disappeared in Laos in 2012. Victims of enforced disappearances often vanish without a trace after being arrested, detained, or abducted from the street, their home, and places of work.

### **Reflection and Discussion: Enforced Disappearances of Human Rights Defenders**

Somchai Neelapaijit was chairman of Thailand's Muslim Lawyers Association and vice-chairman of the Human Rights Committee of the Law Society of Thailand. At the time of his disappearance, he had a high profile role in defending individuals arrested for alleged involvement in the violence affecting Thailand's four southern provinces that began with an attack on an army camp in Narathiwat on 4 January 2004. The attack claimed the lives of at least 50 soldiers, police, Buddhist monks, and civilians.

Sombath Somphone was a development worker and prominent member of civil society in Laos. In 1996, he established his own organisation, Padetc, which trained young people and local government officials in community-based developments. Prior to his abduction, Sombath had challenged several massive land deals negotiated by the government under which land was offered to wealthy foreign investors in exchange for investment capital leaving thousands of rural people homeless with little compensation.

***Do you know of other activists/lawyers/media persons who have been disappeared? Suggest some possible reasons for their disappearance.***

The Human Rights Committee in its General Comment No 36 elaborated upon the obligations of States with respect to the right to life including:

- a. Adopting laws to control the use of force and firearms by police and security forces.
- b. Adopting measures to prevent extrajudicial killing and enforced disappearances such as establishing effective procedures to investigate such cases, prosecute and punish perpetrators, and providing victims with effective remedies.
- c. Taking measures to protect people against reasonably foreseeable threats and life-threatening situations. Moreover, the Human Rights Committee in General Comment No 36 recognized that environmental degradation, climate change, and unsustainable development constitute serious threats to the ability of present and future generations to enjoy the right to life.

Article 6 does not abolish the death penalty but enumerates the conditions that should govern its imposition including: that it should only be awarded for the most serious crimes; that it should only be carried out after a final judgement given by a competent court; that the convicted person should have the right to seek a pardon; that it cannot be imposed on persons less than 18 years of age or on pregnant women.

## Reflection and Discussion: Death Penalty in ASEAN Countries

With regard to the death penalty, countries can be classified into abolitionists, partial abolitionists, abolitionists *de facto*, and retentionists.

The laws of abolitionist countries do not recognise the death penalty for any crime. As of 2021, 109 countries including **Cambodia, the Philippines** and **Timor-Leste** fall into this category.

Partial abolitionist countries still retain laws allowing the death penalty for exceptional crimes such as those committed under military law or in exceptional circumstances.

Abolitionist *de facto* countries have also retained the death penalty but have not executed anyone in at least 10 years. **Brunei** and **Laos** fall into this category. Until July 2022 when four democracy activists were executed, **Myanmar** could also claim membership to this group.

Retentionist countries retain the death penalty in both law and practice. **Indonesia, Singapore, Thailand, Malaysia,** and **Vietnam** fall under this category. However, in 2023, Malaysia adopted the Abolition of Mandatory Death Penalty Act which removed a mandatory death penalty for 12 offences including murder, treason, and terrorism but retained it for drug trafficking under the Dangerous Drugs Act of 1952.

***Arguments for and against the death penalty are based on deterrence, retribution, innocence, arbitrariness and discrimination, and human dignity. Reflect on these and build up arguments for or against it.***

### *Right to liberty and security of person (Article 9)*

The right to liberty and security of a person is recognized in Art 9 and is another crucial right. The Human Rights Committee in its General Comment No 35 (2014) clarified that liberty of the person as protected under Art 9 concerns freedom from confinement of the body rather than a general freedom of action. It also elucidated that the security of person concerns freedom from injury to the body and mind or “*bodily and mental integrity.*”

However, the right to liberty and security of person is not absolute. Article 9 stipulates that deprivation of liberty must not be arbitrary but based on grounds and procedures established by law.

Article 9 also provides certain safeguards against arbitrary arrest and detention which are as follows:

- a. A person deprived of liberty must be informed of the reasons for their arrest and any criminal charges filed against them (Art 9.2). This enables the arrested person to seek release if they believe the grounds to be invalid or without basis.
- b. A person arrested or detained under a criminal charge must be promptly brought before a judicial officer and be given a fair trial (Art 9.3), a vital safeguard against custodial torture and enforced disappearances. Article 9.3 also stresses the importance of bail stating that detention until the trial is complete should not be the general rule. Instead, the accused should be released on bail subject to guarantees to appear at trial or other stages of judicial proceedings.
- c. An arrested or detained person should also be entitled to challenge the lawfulness of the detention before a court (Art 9.4).

- d. Finally, a victim of unlawful arrest or detention should have the right to compensation (Art 9.5).

### *Right to freedom of movement (Article 12)*

Article 12 protects the right of every person to move freely within their country, to choose their place of residence, enter one's country, and leave any country including one's own. Again, these rights are not absolute and a State may place restrictions on their exercise (Art 12.3). However, such restrictions can be imposed only under exceptional circumstances such as to protect national security, public order, public health or morals, and the rights and freedoms of others. Additionally, such restrictions must be: (1) written in law, (2) necessary in a democratic society, and (3) be consistent with all other rights recognized in the Covenant.

### **3.2.2.2 Judicial protections (Articles 14-16)**

#### **Spotlight: Right to Judicial Protections**

- Right to a fair trial (Art 14)
- Prohibition of retroactive jurisdiction (Art 15)
- Right to be recognized as a person before the law (Art 16)

### *Right to a fair trial*

Article 14 guarantees the right to a fair trial and public hearing by a competent, impartial, and independent tribunal in both civil and criminal cases. The Human Rights Committee in General Comment No 32 stated that the right to access courts and tribunals must be available to all individuals under the State's jurisdiction, irrespective of their nationality, statelessness, or any other status. An essential guarantee under Art 14 is that of equality of arms, meaning that in principle, the same procedural rights should be provided to both the prosecution and the defendant. The minimum guarantees specified by Art 14 in a criminal trial are:

- a. Presumption of innocence (Art 14.2)
- b. Prompt information on the nature and cause of criminal charges in a language understood by the defendant (Art 14.3a)
- c. Adequate time and facilities to prepare a defence and the right to legal assistance of one's own choosing (Art 14.3b)
- d. Trial without undue delay (Art 14.3c)
- e. Presence of the accused during the trial (Art 14.3d)
- f. Legal aid and assistance (Art 14.3d)
- g. Examination of witnesses (Art 14.3e)
- h. Free assistance of an interpreter (Art 14.3f)
- i. No compulsion to testify against oneself or to confess guilt (Art 14.3g)
- j. Review of sentences by a higher tribunal (Art 14.5)
- k. Compensation in case of a miscarriage of justice (Art 14.6)
- l. Double jeopardy (Art 14.7)

### *Prohibition of retroactive jurisdiction (Article 15)*

Article 15 prohibits retroactive jurisdiction and implies that:

- a. A person cannot be held guilty of a crime that did not constitute a criminal offence under national law at the time of committing it; and
- b. A heavier penalty than that applicable at the time the offence was committed cannot be imposed. However, the offender should benefit from a lighter penalty if such is provided for by law subsequent to the commission of the offence. An illustrative example can be seen when the State, after protests over rising crime rates against children, imposes a mandatory death penalty on those convicted of raping children. This punishment would not be applicable to those convicted of such a crime before the amendment.

### *Right to a legal personality (Article 16)*

Article 16 recognizes the right of everyone to be recognized as a person before the law. This includes the right to register the births of children born in State territory and the right to access personal identity documents. This right is key as it facilitates access to many other rights.

## **Reflection and Discussion: Statelessness and Right to Legal Personality**

*Rights campaigner fights for Thailand's stateless peoples*

Johanna Roldan

10 September 2018

Available at <https://www.unhcr.org/news/stories/rights-campaigner-fights-thailands-stateless-peoples>, accessed on 12 August 2023

Natee grew up with no nationality, like thousands of hill tribe children in northern Thailand. Statelessness can compound poor living conditions, preventing access to health services and education, leading to discrimination and, often, a lifetime of uncertainty.

Natee's life was transformed with the help of Tuenjai Deetes, who came to her village as a volunteer in 1973 to teach the Thai language.

"Tuenjai helped everyone in my village, and other hill tribe communities," Natee says. "She helped us to acquire Thai nationality, to have basic rights that everyone is entitled to."

Tuenjai has been nominated as the regional finalist for Asia in the 2018 UNHCR Nansen Refugee Award. The annual award celebrates those who have gone to extraordinary lengths to support refugees and asylum seekers, stateless persons, and the internally displaced.

It is named in honour of Norwegian explorer and humanitarian, Fridtjof Nansen, the first High Commissioner for Refugees appointed by the League of Nations in 1921.

Tuenjai was 20 when she began her work with poor hill tribes in Chiang Rai province. Over the next four decades, she came to understand the severe difficulties they face because of their lack of nationality, and worked to overcome them.

“When I first started working, around 40 years ago, there were not many people in Thailand who understood the issue and gave importance to resolving statelessness successfully,” Tuenjai, now 66, told UNHCR, the UN Refugee Agency. “I dreamt of an inclusive society where diversity is embraced, and all people can fully exercise their rights and develop their potential.” She co-founded the Hill Area Development Foundation (HADF), which works to develop self-reliant communities, promoting education, sustainable agricultural practices, and leadership.

Since then, she has received numerous awards and accolades. She was elected as a senator for Chiang Rai Province in 2000 and was then appointed as a member of the National Legislative Assembly in 2006. As a legislator, she has worked to implement two vital laws concerning nationality and civil registration. This paved the way for hundreds of thousands of stateless people in Thailand to apply for nationality.

At least 10 million people worldwide are denied a nationality. As a result, they often are not allowed to attend school, visit a doctor, get a job, or even marry. However, over the years, statelessness in Thailand has declined considerably and, since 2008, more than 90,000 people have acquired nationality. Thanks to Tuenjai, Natee is one of them.

“If we don’t have Thai nationality, we don’t have rights, we are invisible,” says Natee, now aged 42. “After I acquired nationality, I had rights like others do, I felt confident, I was no longer disadvantaged. I had a better quality of life, I had education, health care, and I felt safe when I travelled.”

Tuenjai became a National Human Rights Commissioner in 2015 and continues to campaign for the stateless, working to improve conditions for hill tribe communities.

***Do other countries in the region also have groups who are stateless? What has been the response of States to this problem?***

### **3.2.2.3 Protections against unjustified external interference (Articles 17-22)**

#### **Spotlight: Protections Against Unjustified External Interference**

- Right to privacy (Art 17)
- Freedom of thought, conscience, and religion (Art 18)
- Freedom of opinion and expression (Art 19)
- Prohibition of propaganda for war and advocacy of hatred (Art 20)
- Right of peaceful assembly (Art 21)
- Right to freedom of association (Art 22)

The rights in this group are also not absolute in nature. However, while limitations or restrictions can be imposed, such restrictions should not be arbitrary. Section 2.3.1 on limitations discusses the scope of permissible restrictions.

### *Right to privacy (Article 17)*

Article 17 protects the right to privacy against unlawful or arbitrary interference from State authorities and private actors as clarified by the Human Rights Committee in General Comment No 16. Unlawful interference refers to interference having no basis in law. Arbitrary interference refers to interference failing to meet the criteria for permissible restrictions: the interference as provided by law should be in accordance with the aims and objectives of the Covenant and the interference or restriction should be necessary and proportionate to the particular circumstances.

Examples include surveillance, interception of telephone communications, wire-tapping, recording of conversations, and the gathering or holding of personal information, etc.

### *Freedom of thought, conscience, and religion (Article 18)*

Article 18(1) has two components: the right to freedom of thought and belief, and the right to practice one's religion and beliefs. The Human Rights Committee in General Comment No 22 (1993) stated that Art 18(1) covers freedom of thought on all matters of personal conviction and commitment to religions or beliefs practiced either individually or collectively. It also protects the right to change one's religion or belief without coercion and the right *not* to profess any religion or belief.

Article 18(2) states that the right to adopt a belief or religion is absolute, and no restrictions can be placed on its exercise. In this aspect, the Human Rights Committee clarified that no one can be compelled to reveal their thoughts or adherence to a religion or belief system.

Article 18(3) protects against unjustified interference with the freedom to practice one's beliefs or religion, laying down the criteria for permissible limitations. As elaborated in General Comment No 22, such limitations must be prescribed by law and include only those purposes mentioned in Art 18(3) whilst meeting the test of proportionality. Further, they should not be discriminatory in nature.

## **Reflection and Discussion: Right to Freedom of Religion**

### **New report shows that national laws threaten religious diversity and freedoms in Southeast Asia**

ASEAN Parliamentarians for Human Rights

17 November 2022

Available at <https://aseanmp.org/tag/freedom-of-religion/>, accessed on 12 August 2023.

JAKARTA – Southeast Asian countries must do more to truly guarantee freedom of religion, protect minorities, and stop using “public order” and “harmony” as justifications for imposing unwarranted restrictions on this fundamental right, a new report from ASEAN Parliamentarians for Human Rights (APHR) found.

*“This report shows that many laws that inhibit, restrict, and repress religious freedoms remain on the books and are implemented throughout Southeast Asia. This report is a reminder that, despite all achievements to maintain coexistence in a plural Southeast Asia, there are still many problems that remain to be solved and situations that should be improved,”* said APHR member and Indonesian MP, Taufik Basari.

The report, titled, 'Restricting diversity: Mapping legislation on freedom of religion or belief in Southeast Asia' was launched on 7 November 2022 and provides an overview of the laws and regulations regarding the right to freedom of religion or belief in the region. One of the key findings in the report is that, while many constitutions of Southeast Asian countries formally guarantee the right to freedom of religion, in practice the laws related to religion contain ambiguities and restrictions that do not conform with international standards.

***The report issued by the ASEAN Parliamentarians for Human Rights highlights that not all groups in Southeast Asia are able to enjoy the freedoms guaranteed in Art 18. Based on your knowledge and understanding:***

- ***Which groups in Southeast Asia face restrictions in the exercise of their right to freedom of religion?***
- ***What is the nature of such restrictions?***
- ***What is the rationale given by States for imposing such restrictions?***
- ***In your opinion, do such restrictions meet the international human rights standards prescribed in Article 18 of ICCPR and corresponding General Comment? Explain giving reasons.***

### *Freedom of opinion and expression (Article 19)*

Similar to Art 18, the right to freedom of opinion and expression has two components: the right to hold an opinion or opinions (Art 19.1) and the right to freedom of expression (Art 19.2).

The right to hold an opinion is absolute with no limitations permitted. In its General Comment No 34, the Human Rights Committee held that the harassment, intimidation, and stigmatization of a person for opinions held by them would violate Art 19.1.

Article 19(2) protects all forms of expression and their means of expression. The Human Rights Committee has held that the right includes communication of every form of idea including political discourse, canvassing, discussion on human rights, cultural and artistic expression, teaching, religious discourse, and even commercial advertising. The means of expression includes books, newspapers, pamphlets, posters, banners, dress, and legal submissions.

Article 19(3) lays down the scope of permissible limitations. Restrictions can only be imposed in the interests of: (a) Respecting the rights and reputations of others, and (b) National security, public order, public health or morals. However, the Committee also observed that freedom to enjoy the right is the general rule and any restrictions must be in the nature of exceptions. Thus, State-imposed restrictions cannot be such that they jeopardize the right itself.

## **Reflection and Discussion: Freedom of Expression**

Article19's annual 'Global Expression Report' examines the right to free expression and information across 161 countries.

Examine the latest 'Global Expression Report' and consider the following questions:

- (a) How does the right to freedom of expression and information rank in your region and country?
- (b) What are the issues of concern?

### *Right to peaceful assembly and association (Articles 21 and 22)*

The right to peaceful assembly and association is recognized as indispensable in democratic societies as it facilitates political participation and enables the public to express its views and opinions.

Peaceful assembly can be in the form of demonstrations, meetings, processions, strikes, rallies, sit-ins, and flash mobs. States have an obligation not only to refrain from imposing unjustified restrictions on the right, but also the duty to create an enabling environment for its exercise. This includes arranging for traffic control, police protection, and similar measures to facilitate the holding of peaceful gatherings. Both the rights to assemble and to associate (to form groups) can be limited by law.

## **Reflection and Discussion: Freedom of Assembly and Association**

### **BERSIH MOVEMENT in Malaysia: Freedom of Assembly and Association**

(Excerpt adapted from Khoo, BT, 'The profound impact of the BERSIH movement since 2007' *Perspective*, Vol 2021, No 167, available at [https://www.iseas.edu.sg/wp-content/uploads/2021/11/ISEAS\\_Perspective\\_2021\\_167.pdf](https://www.iseas.edu.sg/wp-content/uploads/2021/11/ISEAS_Perspective_2021_167.pdf), accessed on 12 August 2023)

The Coalition for Clean and Fair Elections, best known by its Malay acronym, BERSIH, is a movement formed in 2005-6 that is dedicated to the reform of Malaysia's electoral system. In its Joint Communiqué of 23 November 2006, BERSIH expressed a goal of correcting structural flaws, institutional biases, and administrative malpractices in the electoral system that systematically and disproportionately favoured the ruling coalition over opposition parties. As such, there could not be "clean and fair elections" Bersih reasoned, unless the Election Commission (EC) removed such obstructions to democratic politics as extensive gerrymandering, constituency malapportionment, restricted media, unequal access to public facilities, and resources, etc.

In pursuit of its cause, BERSIH organised five massive rallies, each attended by tens of thousands of participants, in Kuala Lumpur between November 2007 and November 2016. These rallies became internationally famous for dramatically challenging successive regimes which tried in vain to suppress them. The first rally, BERSIH 2007, launched by the main opposition parties with the support of 32 non-governmental organizations (NGOs), carried a slate of four points of electoral reform. In 2010, a committee of civil society members rebranded the coalition 'BERSIH 2.0' under which they led four rallies, namely, BERSIH 2.0 in 2011, BERSIH 3 in 2012, BERSIH 4 in 2015, and BERSIH 5 in 2016. At these rallies, BERSIH 2.0 raised more demands for reform, added NGO allies, diversified the social composition of its marchers, and extended its geographical reach.

Do you know of any similar movements also holding demonstrations which advocate for rights in the ASEAN region? If yes, briefly describe the movement and the rights issues it raises.

#### **3.2.2.4 Rights related to the family and children (Articles 23-24)**

### **Spotlight: Rights Related to Family and Children**

- Protection of the family, the right to marriage, and equality of spouses (Art 23)
- Rights of the child (Art 24)

The Human Rights Committee in General Comment No 19 (1990) elaborated upon the rights guaranteed in Art 23 stating that the obligations of State parties include providing for: equality of rights and responsibilities in all aspects of a marriage such as entering into a marriage, the education of children, the administration of assets during marriage, and child custody and maintenance, etc, upon its dissolution.

The Convention on the Rights of the Children provides the framework for the protection and promotion of the rights of children. Article 24 stresses two important elements of such rights: the right of every child to be registered immediately after birth and the right to acquire nationality.

#### **3.2.2.5 Rights to political participation (Article 25)**

Article 25 protects the political rights of every citizen, particularly: the right to take part in the conduct of public affairs, the right to vote and be elected, and the right to have access to public services. A point to note is that while no distinction is made with respect to other rights guaranteed in the Covenant, the right to political participation is only guaranteed to citizens of the State.

The Human Rights Committee in General Comment No 25 (1996) clarified that the conduct of public affairs is a broad concept relating to the exercise of political power, in particular, the exercise of legislative, executive, and administrative powers. The Human Rights Committee has further elaborated that citizens can directly participate in the conduct of public affairs in multiple ways such as: by exercising power as members of legislative bodies; by holding executive offices; by choosing or changing the constitution; by deciding public issues through a referendum or other such process; and by participating in assemblies that have the power to determine local issues, or in bodies established to offer consultation to the government. In addition, the Committee noted that citizens can also take part in the conduct of public affairs by influencing public debate and dialogue; thus, rights to freedom of expression, assembly, and association are directly linked to political participation rights.

#### **3.2.2.6 Rights of minorities (Article 27)**

Article 27 protects the rights of ethnic, religious, and linguistic minorities to enjoy their own culture, to profess and practice their own religion, and to use their own language. The Human Rights Committee in General Comment No 23 (1994) noted that this protection extends to all minority persons in the State, even if *not* nationals, citizens, or permanent residents of the State. Therefore, these protections also apply to migrant workers or visitors.

#### **3.2.3 Derogations (Article 4)**

Article 4 recognizes situations of public emergencies when States may not be able to guarantee some Covenant rights. Article 4 allows States to temporarily adopt measures derogating some obligations under the Covenant. General Comment No 29 (2001) clarifies that such measures must meet two fundamental conditions: the situation of public emergency must threaten the life of the nation, and the State must have officially proclaimed a state of emergency as per the constitution and other provisions of law.

Apart from these fundamental requirements, the State must also ensure that measures derogating from its obligations are proportionate to the nature of the emergency (strictly required by the exigencies of the situation). Nevertheless, under Art 4(2), no derogations can be made from the following articles: Art 6 (right to life); Art 7 (prohibition of torture or cruel, inhuman, or degrading punishment); Arts 8(1) and (2) (prohibition of slavery, the slave-trade, and servitude); Art 11 (prohibition of imprisonment because of an inability to fulfil a contractual obligation); Art 15 (the principle of legality in the field of criminal law); Art 16 (recognition of everyone as a person before the law); and Art 18 (freedom of thought, conscience, and religion). Another mandatory requirement as per Art 4(1) is that the measures must not be discriminatory on grounds of race, colour, sex, language, religion, or social origin. In General Comment No 32, the Human Rights Committee added the right to a fair trial recognized in Art 14 to the list of non-derogable rights, deeming this necessary for the protection of the non-derogable rights mentioned in Art 4.

### **Reflection and Discussion: Permissible Derogations in States of Emergency**

At the beginning of 2014, the Thai Government announced a State of Emergency for Bangkok and its surrounding areas in response to increasing political protests which were blocking roads, government offices, and transportation. The Emergency Decree was for a period of 60 days and gave authorized officials extra powers.

***Looking at the following powers, do you think these derogations were justified to maintain public order? (Note that this is by no means the full list of derogations)***

- a. Arresting and detaining persons suspected of having a role in causing the emergency situation – derogating freedom from arbitrary arrest and detention.***
- b. Inspecting letters, books, printed matter, telephone communications, or any other means of communication – derogating the right to privacy.***
- c. Prohibiting the obstruction and closure of transportation routes – derogating the right to assemble.***
- d. Prohibiting anyone from leaving the kingdom where reasonable grounds exist to believe they are supporters or have caused the emergency situation – derogating the right to leave any country.***
- e. Ordering aliens to leave the kingdom where reasonable grounds exist to believe they are supporters or have caused the emergency situation – derogating freedom from expulsion.***

#### **3.2.4 Limitations on rights**

Rights guaranteed in the ICCPR are not absolute and allow limitations to be imposed, the parameters of which can be found in the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. The Human Rights Committee in its jurisprudence and General Comments also provides a framework for testing the validity of limitations which must satisfy the following conditions:

1. *Test of permissible grounds:* Restrictions can only be imposed for the purposes mentioned in various articles of the Covenant. These generally include national security, public order, public health, public safety, public morals, or respect for the rights and reputation of others.
2. *Test of legality:* Restrictions must be provided for in the law of the State party to protect against arbitrary State action. Moreover, the State cannot act on a whim but only according to existing law. Another underlying assumption is that the law-making process in a rule of law-based

democratic society has various checks and balances and thus its laws would be respectful of its human rights commitments.

3. *Test of necessity*: Restrictions must be necessary to achieve the desired purpose but if it can be shown that the desired purpose can be achieved another way not resulting in restriction of the right, such measures would not pass the test.
4. *Test of proportionality*: Restrictions should not be overly broad but must be carefully designed to achieve the desired objective without causing undue harm to the rights holder. Restrictions on the right should therefore be proportionate to the interest to be protected.

### **Reflection and Discussion: Permissible Limitations on Rights**

Country A adopts a Law on Associations and Non-Governmental Organizations under which associations and NGOs are required to register before the prescribed authority to do their work. However, the government can withdraw this registration if their activity is found to:

- a. Endanger national security, stability, national unity, culture and traditions, and public order; and
- b. Be biased towards any particular political party in the country. All associations and NGOs have an obligation to be neutral.

***Do these limitations meet the criteria laid down by the ICCPR and its General Comments? Discuss giving reasons.***

### **3.3 International Covenant on Economic, Social and Cultural Rights (1966)**

For a long time, the dominant approach to addressing issues of poverty or deprivation has been through the use of charity or simply by the fulfilment of basic needs. In other words, it has generally been through the donations of religious organizations, the affluent, or charitable institutions that the needs of the poor have been met. However, charity alone cannot bring about real change in the lives of the vulnerable. Once donations are exhausted, the vulnerability remains. It was the new human rights framework that finally brought about a sea change. Consider the case of the mother and child discussed in the introduction to the first chapter. What would be the response of actors under the charity and needs-based approaches?

*Charity-based approach*: Compassionate passers-by may give money or food to the mother but many others will simply ignore them. In other words, the mother and child are dependent on the benevolence of others to meet their basic needs of food, clothing, and shelter.

*Needs-based approach*: A public-spirited individual asks the mother about her needs. The mother requests access to regular meals, shelter, and work. The individual puts her in touch with a temple that provides meals and shelter to the needy, and occasional work. However, the temple is dependent on funds received from the local public. If funds are scarce, it will be forced to reduce the number of meals it provides to the poor.

An approach based on rights would address the issue differently as it would recognise that every person has rights enabling them to live a life of human dignity. A rights-based approach would therefore help the mother and child access their economic and social rights including to adequate nutrition, education, shelter, social security, and primary health care. If mechanisms enabling the enjoyment of such rights are not available, these groups would advocate the State to provide

them. In some cases, petitions could also be filed with the judiciary requesting it to order the State to take immediate action (for example, by providing shelters in extreme weather conditions). Moreover, the rights-based approach would examine homelessness as a human rights issue and identify possible causes and measures the State could take to prevent it, thereby ensuring the homeless gain access to basic rights.

The following section discusses the rights and obligations recognised in the ICESCR which came into force on 3 January 1976. In Southeast Asia, State parties to the treaty include Cambodia, Laos, Indonesia, the Philippines, Myanmar, Thailand, Timor-Leste, and Vietnam. As yet, Brunei, Malaysia, and Singapore have not ratified. The first State to do so was the Philippines, which indeed was one of the very first States in the world to ratify in 1976.

### **3.3.1 Rights in the ICESCR**

Part III enumerates economic, social and cultural rights (ESCR) including the right to work (Art 6), the right to just and favourable conditions of work (Art 7), the right to form trade unions and for such groups to function freely (Art 8), the right to social security (Art 9), the right of families to protection and assistance, especially mothers and children (Art 10), the right to an adequate standard of living including adequate food, clothing, housing, and to continuous improvement of living conditions (Art 11), the right to the highest attainable standard of physical and mental health (Art 12), the right to education (Art 13), the right to compulsory primary education (Art 14), and the right to culture (Art 15).

In the years after the ICESCR was adopted, one criticism levelled at it was that the rights recognized were too vague, making it difficult for governments to show compliance. The Committee on Economic, Social and Cultural Rights (CESCR) addressed this issue and in various General Comments not only elaborated on the scope and content of such rights but also clarified the nature of corresponding State obligations. Moreover, the Committee even provided what is known as the AAAQ (Availability, Accessibility, Adaptability, Quality)<sup>4</sup> framework to identify the content of said rights.

**Availability:** Implies that goods or services should be available in adequate numbers. For example, there should be an adequate number of schools for primary education.

**Accessibility:** Implies that the goods and services should be accessible to all. Accessibility has four overlapping dimensions:

- a. *Non-discrimination:* Goods and services should be accessible on the basis of non-discrimination. For example, no child should be denied access to primary education because of gender, ethnicity, nationality, etc.
- b. *Physical accessibility:* Goods and services should be within the safe physical reach of all sections of the population. For example, children should live within a safe physically accessible distance from primary schools, even those living in remote areas.
- c. *Economic accessibility:* Goods and services should be affordable to all. For example, Art 13 recognizes the right to free primary education. However, hidden costs such as the cost of books and uniforms may place the right beyond the reach of some. For this reason, the CESCR has suggested that free primary education should include provision of textbooks and uniforms as well.

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<sup>4</sup> The Committee on Economic Social and Cultural Rights first used the framework of availability, accessibility, affordability and habitability (aspect of quality) in General Comment No. 4 (1991) to elaborate upon the right to adequate housing. Subsequently, this framework was used by the Committee to elaborate upon other ESCRs as well.

- d. *Information accessibility*: Information about the goods and services must be easily accessible. For example, with respect to the right to education, information about vocational training programs must be easily accessible to target groups.

**Adaptability**: Implies that the goods and services provided should respond to the needs of target communities. For example, primary education in agricultural communities could follow the agricultural calendar so students are not forced to miss school because of the busy schedule of their parents.

**Quality**: Implies that goods and services should be of reasonable quality and culturally appropriate. For example, primary education should be in a form culturally appropriate to students.

Similarly, the different dimensions of ICESCR rights can be broken into these elements for better understanding and analysis. A point to note is that some rights, such as the right to adequate housing, may also involve specific elements in addition to the AAAQ framework, for example, security of tenure and location, which should be adhered to.

**Table 3-1: Rights in the ICESCR and Corresponding General Comments**

<b>Rights</b>	<b>General Comments</b>
Art 6: Right to work	General Comment No 18 (2005) on the right to work
Art 7: Right to just and favourable conditions of work	General Comment No 23 (2016) on just and favourable conditions of work
Art 8: Right to form trade unions and to function freely as trade unions	
Art 9: Right to social security	General Comment No 19 (2008) on the right to social security
Art 10: Right of families to protection and assistance, especially mothers and children	
Art 11: Right to an adequate standard of living including adequate food, clothing, housing, and continuous improvement in living conditions	General Comment No 12 (1999) on the right to adequate food General Comment No 7 (1997) on forced evictions General Comment No 4 (1991) on the right to adequate housing
Art 12: Right to the highest attainable standards of physical and mental health	General Comment No 22 (2016) on the right to sexual and reproductive health General Comment No 14 (2000) on the right to the highest attainable standard of health
Art 13: Right to education	General Comment No 13 (1999) on the right to education
Art 14: Right to compulsory primary education	General Comment No 11 (1999) on plans for primary education

Rights	General Comments
Art 15: Right to culture	<p>General Comment No 25 (2020) on science and technology and the right to culture</p> <p>General Comment No 21 (2009) on the right of everyone to take part in cultural life</p> <p>General Comment No 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production of work</p>
<b>Interconnected rights</b>	
Use and control of land essential to eradicate poverty, hunger, and to guarantee the right to an adequate standard of living as guaranteed by Art 11	General Comment No 26 (2022)
State obligations under the ICESCR in the context of business activities	General Comment No 24 (2017)
Non-discrimination in economic, social and cultural rights	General Comment No 20 (2009)
The equal right of men and women to the enjoyment of all economic, social and cultural rights (Art 3)	General Comment No 16 (2005)
The right to water as part of Arts 11 and 12	General Comment No 15 (2002)
The role of national human rights institutions in the protection of economic, social and cultural rights	General Comment No 10 (1998)
Domestic application of the Covenant	General Comment No 9 (1998)
The relationship between economic sanctions and respect for economic, social and cultural rights	General Comment No 8 (1997)
The economic, social and cultural rights of older persons	General Comment No 6 (1995)
Persons with disabilities	General Comment No 5 (1994)
The nature of State party obligations (Art 2)	General Comment No 3 (1990)
International technical assistance measures (Art 22)	General Comment No 2 (1990)
Reporting by State parties	General Comment No 1 (1989)

### 3.3.2 State obligations under the ICESCR

While State obligations are outlined in Art 2, the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights adopted in 1986 define their scope and nature. Further guidance was offered ten years later in 1997 when the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights were adopted on the nature of acts and omissions constituting violations of such rights. These principles and guidelines along with various general comments of the CESCR now provide a strong body of knowledge on the nature of State obligations.

Article 2.1 states:

*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

The main elements are:

*Undertaking to take steps:* In General Comment No 3, the CESCR clarified that such steps include legislative measures, policies, and targeted programs to protect those most at risk. In other General Comments, the CESCR recommended the adoption of national plans and strategies to aid full realization of such rights which should follow not only fundamental principles (that is, participation, accountability, the rule of law, and transparency) but also set clear targets and benchmarks against which the performance of States can be measured.

*Maximum available resources:* The Limburg Principles clarified that the term “*maximum of its available resources*” implies States have an obligation, regardless of economic development, to ensure minimum subsistence rights for all. Additionally, States should not take retrogressive measures (for example, by reducing the budgets of policies and plans adopted to implement a right) impeding the full realization of rights. Moreover, “*available resources*” refers to both resources within the State and from the international community through international cooperation and assistance.

*Achieve progressively:* The Covenant recognizes that it may not be possible for States, upon ratification, to immediately ensure the full enjoyment of economic, social and cultural rights or ESCR. Thus, the obligation to achieve progressively requires States to act in a planned manner for the eventual full realization of rights, for example, by introducing national plans and strategies with clear targets and benchmarks. Removing or rolling back legislation that safeguards a right would therefore be considered a breach of the obligation.

*Full realization of rights:* It is now well understood that the right to work does not require States to reach a 100% employment rate. Nor does the right to health mean States must ensure everyone is healthy. Rather, a minimum level of protection for everyone is the goal, and States must take all steps necessary to ensure everyone has access to the tools required for the full enjoyment of the rights guaranteed in the Covenant.

*Minimum level of protection or minimum core:* Every right has certain elements that are considered essential or the minimum core that must be immediately catered to or realized by the State. This minimum core must be guaranteed to all individuals in all situations. In its General Comments, the CESCR identified the minimum core for different rights and the corresponding State obligations as seen in Table 3-2.

**Table 3-2: Minimum Core of ESCR and Corresponding State Obligations as summarised from the General Comments and relevant articles of ICESCR**

Right	Minimum core	State Obligations
Right to work	Protection against forced labour and unlawful dismissal; guarantee of a minimum wage.	Enact laws against forced labour and unlawful dismissal; enact laws to guarantee a minimum wage.
Right to social security	Adequate protection from social risks and contingencies.  Social security schemes to provide a minimum level of benefits to enable access to essential health care, basic shelter and housing, water and sanitation, food, and basic education.	Establish shelters for the homeless and ensure equal access to all; provide access to free/low cost meals.  Enact laws to provide for social security. For example, in India, in July 2023, the Rajasthan state legislature passed the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Bill (2023) which provides for the creation of a “Platform-Based Gig Workers Fund and Welfare Fee” to establish a social security and welfare fund.

Right	Minimum core	State Obligations
Right to adequate housing	Protection from forced evictions.	Enact laws/guidelines to regulate the eviction of people from land and homes.  Enact laws to provide security of tenure over land and homesteads, especially to indigenous groups.
Right to adequate food	Access to minimum essential levels of food as required to be free from hunger and starvation; ensure food is available and free of adverse substances.	Enact laws to guarantee minimum essential levels of food are available through a public distribution system; enact food safety standards.
Right to water	Equal access to minimum essential amounts of water and ensuring the supply is sufficient and safe for personal and domestic use.	Enact laws/policies to provide equal access to essential supplies of water; regulate pricing when water is distributed by private actors to ensure it is affordable by all.
Right to health	Equal access to primary health care.  Equal access to essential drugs.  Equal access to emergency health care for all.	Enact a law on the right to health care.  Adopt a drug policy ensuring equal access to essential drugs.  Issue guidelines to hospitals to ensure emergency health care is provided to accident survivors without delay.
Right to education	Access to compulsory and free primary education.	Enact a law to guarantee the right to free primary education for all.
Right to take part in cultural life	Right of everyone to engage in their own cultural practices.	Enact a law to recognize the right of everyone to engage in their own cultural practices; refrain from taking any action that interferes with cultural practices.

Under the ICESCR, States do not only have the obligation to achieve progressively the full realization of rights, they also have immediate obligations which can be understood under the following categories:

- a. An obligation *not to discriminate* between different groups in the realization of the rights guaranteed in the Covenant.
- b. An obligation to *prioritize* the achievement of the minimum essential level of each right and to target the most dis-advantaged groups.
- c. An obligation to *take steps* deliberately targeted towards the full realization of rights by, for example, adopting national plans and strategies with benchmarks.

Moreover, in addition to the obligations discussed under Art 2, the CESCR in several General Comments also identified the obligation to respect, protect, and fulfil (as discussed in Chapter 1) ESCR.

The obligation to respect requires States to refrain from taking any action interfering with the existing enjoyment of a right making it a negative and immediate obligation.

By contrast, the obligations to protect and fulfil are positive, requiring States to take actions of a legislative, administrative, judicial, budgetary, or educative nature. Specifically, the obligation to protect requires States to take measures to prevent third parties from interfering with the enjoyment of a right, while the obligation to fulfil necessitates States take appropriate steps for the full realization of rights. Applying these principles to cases where a private actor is responsible

for the distribution of water for domestic use: the obligation to fulfil requires States to enact laws regulating the provision of public services by private actors to ensure, for example, the fees charged are affordable by all; while the obligation to protect demands States monitor compliance by the private actor and take effective action in cases of non-compliance.

A useful way of understanding the scope and content of such rights and the corresponding State obligations is to delineate the different elements. The matrix provided in Table 3-3 offers one way of doing so with respect to the right to adequate housing.

**Table 3-3: Aspects of the Scope and Content of the Right to Adequate Housing, Article 11 (as summarized from General Comment Nos 7 and 4)**

Aspect of the right	Obligation to respect	Obligation to protect	Obligation to fulfil
<p>Freedom aspect of the right to adequate housing:</p> <ul style="list-style-type: none"> <li>- Protection against forced eviction</li> <li>- Protection from arbitrary interference with one's home privacy and family</li> <li>- Right to choose one's place of residence</li> </ul>	<p>States should:</p> <ul style="list-style-type: none"> <li>- Refrain from carrying out forced evictions</li> <li>- Refrain from any action that infringes on the right to privacy and protection of the home</li> <li>- Refrain from discriminating against particular groups in the allocation of housing</li> </ul>	<p>Access to redressal mechanisms should be available in case a house owner forcibly evicts a tenant from their housing, or threatens/intimidates the tenant</p>	<p>Enact laws/regulations to protect tenants from forcible evictions by house owners</p>
<p>Security of tenure guaranteeing legal protection against eviction and other threats</p>	<p>States should refrain from practices that limit women's access to and control over housing</p>		
<p>Availability of services, materials, facilities, and infrastructure such as safe drinking water, adequate sanitation, energy for cooking, heating, and lighting, etc</p>	<p>States should refrain from taking any action that impairs access to the facilities and infrastructure essential for adequate housing</p>	<p>Access to redressal mechanisms should be available in case private actors developing housing projects do not provide the services essential for adequate housing or abruptly withdraw such services</p>	<p>States must progressively provide the physical infrastructure for adequate housing: access to electricity, safe drinking water, adequate sanitation, etc</p> <p>State should enact laws making it mandatory for developers of housing projects to provide for connectivity to essential services such as electricity, safe water for domestic use, sanitation, etc</p>

<b>Aspect of the right</b>	<b>Obligation to respect</b>	<b>Obligation to protect</b>	<b>Obligation to fulfil</b>
Housing should be affordable and costs should not threaten or compromise the enjoyment of other human rights	Housing projects initiated by the State should be affordable to all		<p>State should provide housing subsidies/low cost housing to enable low income groups to also realise the right to adequate housing</p> <p>States should take measures enabling banks and financial institutions to provide housing finance at low interest rates</p>
Accessible housing should take into account the specific needs of disadvantaged or marginalized groups	States should refrain from closing homeless shelters		States should develop policies to provide adequate housing needs to those living on the margins
Housing should be provided in suitable locations ensuring the availability of employment opportunities, health care services, schools, and other social services			While providing housing under resettlement schemes, States should take into account location needs such as the availability of employment opportunities, schools, and health care services, etc
Cultural adequacy requires respect for and adherence is paid to cultural identity and cultural ways of life			While providing housing under resettlement schemes, States should take into account cultural aspects and develop housing designs and plans that are respectful of cultural ways of life

## Spotlight: Strengthening Promotion and Protection of ESCRs

The Committee on Economic, Social and Cultural Rights monitors the compliance of the ICESCR by States Parties. In cases where a State has not ratified the ICESCR, enjoyment of economic, social and cultural rights can be assessed through the Universal Periodic Review Process. Special Rapporteurs on thematic issues can also use their mandate to raise ESCR issues. For example, although Malaysia and Singapore have not ratified the ICESCR, the Special Rapporteur on Extreme Poverty and Human Rights made a country visit to Malaysia in August 2019. While his statement before the Human Rights Council, appreciated the country's achievements with regard to reducing poverty, he also highlighted issues of concern such as low expenditure on social protection, the challenges in accessing health care services, medicines, and vaccines in rural areas, the inability of low income groups to afford the costs of education, the negative impact from the loss of land on indigenous groups, the exploitation faced by migrant workers, and the discrimination and obstacles faced by people with disabilities in providing for their needs, etc.<sup>5</sup> Similarly, on her mission to Singapore in 2017, the report of the Independent Expert on the enjoyment of human rights by older persons<sup>6</sup> made some insightful comments on the enjoyment of civil political, economic, social and cultural rights by older persons in Singapore.

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<sup>5</sup> OHCHR. (2019). *Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, on his visit to Malaysia, 13-23 August 2019*. <https://www.ohchr.org/en/statements-and-speeches/2019/08/statement-professor-philip-alston-united-nations-special-rapporteur#:~:text=Statement>

<sup>6</sup> Kornfeld-Matte, Rosa. (2017). *Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Singapore*. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/148/16/PDF/G1714816.pdf?OpenElement>

## Reflection and Discussion: Economic Social Rights

1. *When did your country last submit a report before the CESCR? Examine it, any alternative reports submitted by civil society, and the concluding observations of the CESCR. Briefly present your country's achievements with respect to these rights together with the challenges and recommendations of the CESCR.*
2. *If your country has not ratified the ICESCR, examine its last report submitted for the Universal Periodic Review (UPR). Briefly present a report on any issue relating to economic, social and cultural rights raised during the review and the corresponding recommendations made by the UPR working group.*
3. *The government of State A is successful in getting the Minimum Income Guarantee Act passed by the legislature. The law provides a minimum pension to the elderly, women, and people with disabilities. Earlier, it had also passed a minimum wage rate and universal access to health care. Opposition parties in State A, as well as some business and civil society leaders, criticize these as populist measures or freebies that will ultimately prove too big a burden on State finances. They argue such initiatives were taken only to win elections and will prove detrimental to State interests in the long run as they would deplete the country's finances, demotivate businesses, and encourage people to be lazy and dependent. What is your analysis of such government policies with regard to guaranteeing a minimum pension, increasing the minimum wage, and providing universal access to health care? Do you agree with the view of the critics? Give reasons for your answer.*

To answer the question, it is key to examine the social and economic status of the targeted groups. If their social and economic conditions are such that they are unable to live with human dignity, States will be obliged to take appropriate measures. For example, if the current minimum wage is insufficient to meet the needs of food, clothing, housing, and health care, the State must pass measures to increase it.

### 3.3.3 Justiciability

Rights will cease to have teeth if they cannot be enforced or if in the event of non-compliance of rights, rights holders are unable to file a complaint before an independent and impartial body to request adequate remedies.

In the decades following adoption of the ICESCR, a constant criticism levelled was the non-justiciability of such rights, particularly that their vagueness made an adequate definition of ESCR difficult. Another argument was that ESCR involved policy decisions requiring budgetary allocations which were beyond the scope of judicial review.

However, as the General Comments and other principles have substantially clarified the scope of ESCR, they can no longer be dismissed as vague. Moreover, the General Comments and other UN mechanisms have also established that some ESCR impose negative obligations on States (for example, not to discriminate, to refrain from impairing enjoyment of existing rights or in the case of the right to housing, to refrain from undertaking forced evictions). Such negative State obligations do not involve policy decisions and are therefore justiciable in nature.

Another determinative factor for the justiciability of ESCR lies in their recognition within domestic legal systems. While civil political rights are recognized as fundamental and enforceable in some countries, ESCR are often only seen as principles of good governance providing mere guidance to governments and are therefore unenforceable. However, courts in many States have given

expansive interpretations to, for example, the right to life, holding that it includes all elements enabling a person to live with human dignity. In this way, over the years, particularly through the lens of the right to life, ESCR have gained justiciability.

### 3.4 Right to Self-determination

The ICCPR and ICESCR have a common article, the right to self-determination (Art 1), which states all peoples have the right to self-determination, to freely determine their political status, and to freely pursue their economic, social and cultural development. Further, it guarantees the right of all peoples to dispose of their natural wealth and resources. The point to note is that the rights holder in this case is “*peoples*” indicating that self-determination is a collective right. Initially, the right was understood to be held by peoples from colonized territories who could exercise the right to secede from the colonial power to establish new states. Later, the Committee on the Elimination of Racial Discrimination in its General Recommendation No 21 (1996) observed that the right to self-determination was both internal and external. The external aspects imply that all peoples have a right to freely determine their political status and seek liberation from colonial powers and alien domination and exploitation. The internal aspect refers to the right of all peoples to freely pursue their economic, social and cultural development without outside interference which links with the right to take part in the conduct of public affairs at every level of governance. This right has been used by indigenous groups in Southeast Asia to advocate for their rights.

## A. Chapter Summary and Key Points

The rights contained in the International Covenant on Civil and Political Rights or ICCPR (1966) can be divided into the following categories for understanding and analysis: (1) Right to life, liberty and physical security of individuals; (2) Right to judicial protection; (3) Right to protection against unjustified external interference; (4) Rights related to the family and children; (5) Right to political participation; and (6) Rights of minorities.

Article 4 of the ICCPR allows States the possibility of derogating from some obligations under the Covenant when the life of the nation is threatened by a public emergency although derogations are only permissible following an official proclamation of such. Further, the State must ensure derogations are proportional to the nature of emergency and not discriminatory in nature. No derogations can be made with respect to: the right to life (Art 6); rights against torture, or cruel, inhuman, or degrading punishment (Art 7); the prohibition of slavery, the slave trade, and servitude (Art 8); the prohibition against imprisonment because of an inability to fulfil a contractual obligation (Art 11); the principle of legality in criminal law (Art 15); the right of every person to be recognized before law (Art 16); freedom of thought, conscience, and religion (Art 18), and the right to a fair trial (Art 14).

Rights guaranteed in the ICCPR are not absolute and States may impose limitations on their enjoyment. However, the State should respect certain conditions while imposing limitations which must be for the purposes mentioned in the ICCPR article guaranteeing the right. Moreover, the limitation must be prescribed by law, necessary to achieve the desired objectives, and proportional in nature.

The International Covenant on Economic, Social and Cultural Rights or ICESCR (1966) covers the right to work, to have just and favourable conditions at work, the right to form trade unions, the right of families to protection and assistance, the right to an adequate standard of living (including adequate food, housing, and water), the right to the highest attainable standards of physical and mental health, the right to education including the right to compulsory primary education, and the right to culture. The AAAQ framework (Availability, Accessibility, Adaptability, and Quality)

developed by the Committee on Economic, Social and Cultural Rights (CESCR) provides a useful tool to identify the content of each right. In its General Comments, the CESCR also identified minimum cores within each right.

The difference in implementation of the ICCPR and ICESCR is reflected in how each articulates Art 2 which specifies State obligations. Article 2 of the ICESCR requires States to progressively achieve the full realization of economic, social and cultural rights to the maximum of its available resources. These elements are not mentioned in Art 2 of ICCPR. The general obligations to respect, protect, and fulfil are common to both covenants. While the obligation to respect is a negative one requiring States to refrain from taking steps curtailing the enjoyment of a right, the obligations to protect and fulfil are positive requiring States to take measures to prevent non-states from infringing upon rights, and to facilitate the enjoyment of rights.

Article 1 of the ICCPR and ICESCR guarantees the right to self-determination. The right to self-determination has both external and internal elements. The external element refers to the right of peoples to free themselves and their territories from colonial rule. The internal element refers to the right of citizens to take part in the conduct of public affairs at every level of governance.

Some countries in ASEAN have not ratified the ICCPR or ICESCR, and are thus not obligated to submit reports before the treaty bodies. However, the status of such rights as covered by the ICCPR and ICESCR in these countries can be reviewed by the United Nations Human Rights Council through Universal Periodic Reviews and thematic procedures such as Special Rapporteurs. While Special Rapporteurs can make country visits only with the permission of the State, every member State of the United Nations must submit themselves to the Universal Periodic Review process.

Civil society organizations and activists strengthen the promotion and protection of human rights through advocacy, campaigning, fact-finding, compiling documentation, and public education.

## B. Typical Exam or Essay Questions

- When did your country ratify the ICCPR and/or ICESCR? Can you find the reasons why it chose to ratify the conventions?
- OR
- Why has your country not ratified the ICCPR and/or ICESCR? What arguments were given by the government, and how valid were its reasons?
- Look for reservations or understandings your government imposed on the ICCPR or ICESCR. Are these reservations necessary? Has your country dropped any reservations?
- What situations or issues most concern people's civil and political and/or economic, cultural and social rights in your country?
- Considering the death penalty, is there any public debate about this topic in your home country? Why has your country chosen to use or abolish the death penalty, and do you consider these reasons to be valid?
- Has there ever been a public emergency in your country? Examine a period when one was declared and detail the rights derogated. Were these derogations necessary to restore order?
- Detail examples in your home country where the government is working strongly towards the progressive realization of an economic, social and cultural right. What policy, plans, and results has it achieved?
- Are any cultural rights in your country not being respected? What are the reasons for these violations?

## C. Further Reading

### ICCPR and ICESCR

All introductory textbooks on human rights contain an overview of the ICCPR and ICESCR. The texts given at the end of Chapter 1 are good starting points, some of which will be available in university libraries.

### The International Covenant on Civil and Political Rights

Resource books include:

- Joseph, S, Schultz, J, and Castan, M, *International Covenant on Civil and Political Rights: Cases, Commentary and Materials*, Oxford: Oxford University Press, 2000.
- Novak, M, *UN Covenant on Civil and Political Rights: CCPR Commentary*, NP Engel, 2005.
- *Reporting Under the International Covenant on Civil and Political Rights: Training Guide, Professional Training Series No 23*, New York and Geneva: Office of the United Nations High Commissioner for Human Rights (OHCHR), 2021. Available at <https://www.ohchr.org/sites/default/files/Reporting-ICCPR-Training-Guide.pdf>, accessed on 12 August 2023.
- ICCPR General Comments (available to download at <https://ccprcentre.org/ccpr-general-comments>, accessed on 13 August 2023) and details of monitoring compliance (available at <https://www.ohchr.org/en/treaty-bodies/ccpr>, accessed on 13 August 2023) are issued by the Human Rights Committee.
- Information on UN Special Procedures can be found on the OHCHR website. Available at <https://www.ohchr.org/en/special-procedures-human-rights-council>, accessed on 12 August 2023.

### The International Covenant on Economic, Social and Cultural Rights

Resource books include:

- Eide, A, Krause, C, and Rosas, A (eds), *Economic, Social and Cultural Rights: A Textbook*, Dordrecht: Martinus Nijhoff, 2001.
- Ssenyonjo, M, *Economic, Social and Cultural Rights in International Law*, Hart Publishing, 2009.
- de Schutter, O (ed), *Economic, Social and Cultural Rights as Human Rights*, Edward Elgar, 2013.
- *Circle of Rights: Economic, Social and Cultural Rights Activism – A Training Resource*, International Human Rights Internship Program (IHRIP) and the Asian Forum for Human Rights and Development, 2000.
- International Commission of Jurists, *The Justiciability of Economic, Social and Cultural Rights: National, Regional, and International Experiences*, 2008.
- OHCHR, *Economic, Social and Cultural Rights. Handbook for National Human Rights Institutions*, New York and Geneva: United Nations, 2005. Available at <https://www.ohchr.org/sites/default/files/Documents/Publications/training12en.pdf>, accessed on 12 August 2023.
- ICESCR General Comments (available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11), accessed on 13 August 2023) and details of monitoring compliance (available at <https://www.ohchr.org/en/treaty-bodies/cescr>, accessed on 13 August 2023) are issued by the Committee on Economic, Social and Cultural Rights.
- Information on UN Special Procedures can be found on the OHCHR website. Available at <https://www.ohchr.org/en/special-procedures-human-rights-council>, accessed on 12 August 2023.



# Chapter

# 4

## The International Human Rights Protection System\*

### Reader's Guide

This chapter examines the human rights mechanisms at the United Nations (UN) by first introducing the main organs and exploring their role in strengthening, protecting, and promoting human rights. It next introduces the treaty and charter-based mechanisms and discusses their mandates. Finally, it will consider the role of civil society organizations and human rights defenders in the UN system. The aim of this chapter therefore is to offer a brief outline of the various human rights mechanisms to enable readers to confidently reference their work whilst reading subsequent chapters of this and other textbooks.

### 4.1 Introduction

Membership of the UN marks a State's first crucial step towards recognizing human rights because by signing the UN Charter, a State agrees to promote human rights and abide by international human rights law. Notably, all Southeast Asian States are members of the UN. Some can even boast a long and active role in UN processes, especially the Philippines, Thailand, and Indonesia. Indeed, the Philippines is the only Southeast Asian nation which can claim to being a founding member of the UN, although Thailand and Myanmar joined soon after.

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\* The chapter for the first edition was prepared by Hadi Rahmat Purnama, Universitas Indonesia; Mathew Mullen and Michael (Mike) Hayes, Institute of Human Rights and Peace Studies, Mahidol University. It has been updated by Kalpalata Dutta, ASEAN University Network - Human Rights Education (AUN-HRE).

Although the UN has a mandate to strengthen, promote, and protect human rights, it cannot be denied that the dynamics of international relations between member States has a direct bearing on the way some UN mechanisms function. Thus, it is imperative to note that while voting on resolutions concerning human rights issues, States are guided not only by their commitment to human rights values, but also by their real-world interests as nation States. Understanding this dynamic is vital in any analysis of the UN's role in strengthening, promoting, and protecting human rights.

## 4.2 Human Rights in the Broader United Nations System

The UN has 6 important organs. Though none have a specific human rights mandate, they all deal with such issues on a regular basis. Five are briefly discussed here (the Trusteeship Council is no longer active since the last trusteeship territory became a country in the 1990s):

- Security Council (UNSC);
- General Assembly (UNGA);
- International Court of Justice (ICJ);
- UN Secretariat led by the UN Secretary General (UNSG); and
- Economic and Social Council (ECOSOC).

### 4.2.1 Security Council

The UN Security Council or UNSC consists of 15 members: 5 permanent members (China, France, the Russian Federation, the United Kingdom, and the United States of America), and 10 non-permanent members elected for a two-year term by the General Assembly. The UNSC's mandate under the UN Charter is to maintain international peace and security in accordance with its principles and purposes. Its powers include investigating any dispute or situation that may lead to international friction, recommending methods for addressing such situations, calling on members to apply economic and other sanctions to stop aggression, and to take military action against aggressors.

Although under the Charter, the UNSC's functions do not specifically include addressing human rights violations, after 1990, it did begin to review cases of gross and systematic violations by interpreting such actions as threats to international peace and security. This interpretation gave the UNSC authority to intervene in situations of gross and systematic human rights violations as occurred in Iraq, Somalia, and the former Yugoslavia (all in the early 1990s) and to use military force. This change in approach was only possible after the Cold War ended thereby lifting the earlier paralysis in decision-making due to the Soviet Union and USA consistently using their powers of veto against each other. The ensuing change was so dramatic, the UNSC was more active in the 5 years after the Cold War (from 1991-1996) than in the entire 45 years of the Cold War itself. Nevertheless, the UNSC's actions were not always successful. For example, in Yugoslavia and Somalia, it failed to establish peace and protect civilians. Similarly, its response to the genocide in Rwanda was wholly inadequate to save the lives of many hundreds of thousands. More recently in February 2022, the Security Council also failed to adopt a resolution to end the Ukraine crisis as the Russian Federation vetoed the move. Submitted by Albania, the US called upon the Russian Federation, amongst others, to immediately cease its use of force against Ukraine and withdraw all its military forces immediately, completely, and unconditionally. While receiving support from 11 members of the UNSC, it was unsurprisingly vetoed by the Russian Federation itself.

As can be seen from the example above, the UNSC expresses its opinion or will in the form of resolutions which can only be adopted if 9 or more of the 15 members of the Council vote in its favour, *and* if it is not vetoed by any of the 5 permanent members. However, when passed, the resolutions are binding on all UN members.

### **Spotlight: Resolution Adopted on Myanmar (December 2022)**

On 21 December 2022, the UNSC adopted a resolution calling for an immediate end to all forms of violence in Myanmar, de-escalation of tensions, and the release of all prisoners including President Win Myint, and State Counsellor, Aung San Suu Kyi. The resolution also called for the effective and full implementation of ASEAN's Five-Point Consensus and was adopted despite 3 abstentions (China, India, and the Russian Federation) with 12 votes in favour.

Thomas Andrews, Special Rapporteur on the situation of human rights in Myanmar, in a statement issued on 22 December 2022, observed that the resolution adopted by the UNSC was insufficient as it lacked action. He stated that:

*[D]emanding that certain actions be taken without any use of the Security Council's Chapter VII authority, will not stop the illegal Myanmar junta from attacking and destroying the lives of the 54 million people being held hostage in Myanmar.<sup>1</sup>*

Part VII of the UN Charter deals with actions that can be taken by the Security Council with respect to threats to peace, breaches of peace, or acts of aggression. These can include complete or partial interruption of both economic relations and any means of communication in addition to severing diplomatic relations. As a last resort, the UNSC may even consider the use of armed force as necessary to maintain or restore international peace and security. Moreover, the UNSC can refer cases to the International Criminal Court (ICC) which has the power to try those committing serious crimes such as genocide, war crimes, or crimes against humanity. Further, as will be detailed in a later chapter, the UNSC can order the ICC to investigate serious crimes during conflicts.

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<sup>1</sup> Andrews, T. (2022, December 22). Myanmar: Action needed to stop carnage, says UN expert after adoption of Security Council resolution. *OHCHR*, <https://www.ohchr.org/en/press-releases/2022/12/myanmar-action-needed-stop-carnage-says-un-expert-after-adoption-security>, accessed on 24 August 2023.

## Spotlight: United Nations Security Council Resolution 1325<sup>2</sup>

UNSC Resolution 1325 on women, peace and security was adopted unanimously on 31 October 2000. It marked the first time the Security Council addressed the disproportionate and unique impact armed conflict can have on women. Its key provisions are: the increased participation and representation of women at all levels of decision-making; the protection of the rights of women and girls in conflict; incorporating a gender perspective into post-conflict processes; incorporating a gender perspective into UN programming, reporting, and Security Council missions; and incorporating a gender perspective into the training of UN peace support operations.

In 2004, the UNSC encouraged national level implementation of UNSCR 1325<sup>3</sup> through National Action Plans (NAP) developed in collaboration with civil society, particularly local women's networks and organizations. National Action Plans are strategy documents outlining a government's approach and course of action, in this particular case, localizing action on the Women, Peace and Security Agenda.

In the Philippines, two initiatives were adopted to localize implementation of the NAP on UNSCR 1325. The first was a government initiative spearheaded by the Office of the Presidential Adviser on the Peace Process (OPAPP) and the Philippine Commission on Women (PCW). The second was a civil society-led localization program known as 'From NAP to LAP to BAP (from National Action Plan to Local Action Plan to Barangay Action Plan)' from which a good practice emerged.

Localization workshops held in 2012 contributed to a shift in the perception of gender roles and to the greater participation of women in governance, peace, and justice mechanisms. This was best exemplified in Kalinga Province. During workshops held in 2012 in Tabuk (the province's capital), community women, government officials, and tribal elders questioned why no woman had ever sat on the Bodong Council (the 24-member all-male, century-old peace and justice council appointed by tribal elders ruling on peace and justice issues in Kalinga). Calling on the participation pillar of UNSCR 1325, women participants pointed out that a large number of local women leaders were highly qualified for the role so lack of qualifications or capacity could not be cited as an excuse for their exclusion from this formally recognized mechanism. This led to a review of the appointment criteria, and consequently, to the inclusion of women in the Bodong Council beginning in 2012. Women now hold four official and two unofficial seats on the Council. Since their appointment, these women have raised gender concerns, such as the need to establish a women's desk in all barangays (villages) and to appoint a woman representative in the Sanggunian Panglungsod (or City Council).

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<sup>2</sup> United Nations Security Council Resolution 1325, 4213th meeting on 31 October 2000.

<sup>3</sup> The Global Network of Women Peacebuilders. (2013). *Implementing Locally, Inspiring Globally: Localizing UNSCR 1325 in Colombia, Nepal, The Philippines, Sierra Leone, and Uganda*.

### 4.2.2 General Assembly

The General Assembly or UNGA is the main policy-making organ of the UN. It comprises all member States and is the forum for discussion on human rights issues covered by the UN Charter. The Assembly makes recommendations on international issues within its competence with each of the 193 member States having an equal vote. For example, in September 2015, it agreed on a set of 17 Sustainable Development Goals contained in the outcome document of the UN Summit for the adoption of a post-2015 development agenda.<sup>4</sup> Taking another example, in 2022, the Assembly held a series of meetings to discuss the recommendations put forward by the Secretary-General in his report, 'Our Common Agenda'<sup>5</sup> which outlined possible solutions to address the gaps and risks that have emerged since 2015.

### 4.2.3 International Court of Justice

The International Court of Justice or ICJ, also known as the World Court, is the main judicial organ of the UN. The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by authorized UN organs and specialized agencies. The ICJ decides disputes between countries albeit based on the voluntary participation of the States concerned. However, if a State agrees to participate in a proceeding, it is obligated to comply with its decision.

Significantly, the ICJ has contributed to the understanding of human rights by deciding on, for example, self-determination issues. In one such case which reached a decision in 1995, Portugal (the colonial administrator of Timor-Leste), brought a case against Australia for entering into an agreement with Indonesia regarding its rights to gas fields in Timor-Leste's territory.<sup>6</sup> Portugal argued that the people of Timor-Leste (and Portugal) should be the ones to benefit from the gas fields, not Australia. Another case relating to human rights concerned the legality of Israel's wall around the Palestinian territory.<sup>7</sup> The ICJ found the wall a violation of various international obligations, including freedom of movement. Other cases of import can be found on the issues of genocide in Yugoslavia,<sup>8</sup> war crimes in the Congo,<sup>9</sup> and the legality of nuclear weapons<sup>10</sup>. Notably, the ICJ has been active in Southeast Asia on territorial claims, such as the temple on the border of

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<sup>4</sup> President of General Assembly, Sam K. Kutesa. (2015), *Outcome Document of the United Nations Summit for the adoption of the post-2015 development agenda*, available at [https://www.un.org/pga/wp-content/uploads/sites/3/2015/08/120815\\_outcome-document-of-Summit-for-adoption-of-the-post-2015-development-agenda.pdf](https://www.un.org/pga/wp-content/uploads/sites/3/2015/08/120815_outcome-document-of-Summit-for-adoption-of-the-post-2015-development-agenda.pdf), accessed on 23 August 2023.

<sup>5</sup> United Nations Secretary General. (2021). *Our Common Agenda - Report of the Secretary - General*. United Nations.

<sup>6</sup> East Timor (*Portugal v Australia*), ICJ Rep, available at <https://www.icj-cij.org/case/84>, accessed on 24 August 2023.

<sup>7</sup> ICJ, 'The question of Palestine' UN, 9 July 2004, available at <https://www.un.org/unispal/document/auto-insert-198759/>, accessed on 24 August 2023.

<sup>8</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*), ICJ Rep, available at <https://www.icj-cij.org/case/91>, accessed on 24 August 2023.

<sup>9</sup> Democratic Republic of the Congo, ICC Rep, available at <https://casebook.icrc.org/case-study/icj-democratic-republic-congouganda-armed-activities-territory-congo>, accessed on 24 August 2023.

<sup>10</sup> Legality of the Threat or Use of Nuclear Weapons, ICJ Rep, available at <https://www.icj-cij.org/case/95>, accessed on 24 August 2023.

Thailand and Cambodia (Pravihan to Thailand, Preah Vihear to Cambodia),<sup>11</sup> and on the disputed sovereignty over islands between Malaysia and Indonesia,<sup>12</sup> and between Malaysia and Singapore<sup>13</sup>.

### **Spotlight: The Case Against Myanmar in the International Court of Justice**

In November 2019, the Gambia with the backing of the Organisation of Islamic Cooperation, filed a case (*The Gambia v Myanmar*<sup>14</sup>) before the ICJ. The case alleged that Myanmar's actions against the ethnic Rohingya in Rakhine State violated provisions of the Convention on the Prevention and Punishment of the Crime of Genocide which Gambia had ratified in 1978. Article 9 allows disputes relating to the responsibility of a State for genocide and related acts to be submitted to the ICJ. Note that the case against Myanmar before the ICJ continued even after the military coup in Myanmar in 2021.

#### **4.2.4 The UN Secretariat**

The UN Secretariat is the body administering the UN as mandated by the General Assembly and other UN organs. The Secretary-General is the head of the Secretariat which is organized along department lines, with each department or office having distinct areas of responsibility.<sup>14</sup>

#### **4.2.5 The Economic and Social Council**

One of the main organs of the United Nations, the Economic and Social Council, focusses on advancing the three dimensions of sustainable development, namely, economic, social, and environmental. Therefore, it is the platform for fostering debate, forging consensus on the way forward, and coordinating efforts to achieve internationally agreed goals.

### **4.3 Human Rights Mechanisms at the United Nations**

There are two types of human rights monitoring mechanisms within the UN system: treaty-based bodies and charter-based bodies. The former monitor compliance of States only to the treaties ratified by them. Thus, if a State has not ratified a treaty such as the ICCPR, the Human Rights Committee will be unable to monitor the status of civil and political rights within it. However, the enjoyment of civil and political rights in the State can still be reviewed under the Universal Periodic Review (which is a charter body).

<sup>11</sup> Temple of Preah Vihear (*Cambodia v Thailand*), ICJ Rep, available at <https://www.icj-cij.org/case/45>, accessed on 24 August 2023.

<sup>12</sup> Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), ICJ Rep, available at <https://www.icj-cij.org/case/102>, accessed on 24 August 2023.

<sup>13</sup> Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks, and South Ledge (Malaysia/Singapore), ICJ Rep, available at <https://www.icj-cij.org/case/130>, accessed on 24 August 2023.

<sup>14</sup> Available at <https://www.icj-cij.org/public/files/case-related/178/178-20220722-JUD-01-00-EN.pdf>, accessed on 23 August 2023.

**Table 4-1: Human Rights Monitoring Mechanisms at the United Nations**

Treaty-based Bodies	Charter-based Bodies
9 committees and 1 sub-committee monitoring implementation of the 9 core international human rights treaties.	Special Procedures having 46 thematic mandates and 14 country mandates as of November 2023
	Universal Periodic Review
	Independent Investigations
	Complaints Procedure

**4.3.1 Treaty bodies**

The human rights treaty bodies are committees of independent experts monitoring the implementation of the core international treaties. There are 9 treaty bodies and a sub-committee as seen in Table 5-2 below:

**Table 4-2: Treaty Bodies**

Treaty Body	Monitoring Compliance of:
Committee on the Elimination of Racial Discrimination (CERD)	International Convention on the Elimination of All Forms of Racial Discrimination (1969)
Committee on Economic, Social and Cultural Rights (CESCR)	International Covenant on Economic, Social and Cultural Rights (1976) and its optional protocol
Human Rights Committee (CCPR)	International Covenant on Civil and Political Rights (1976) and its optional protocols
Committee on the Elimination of Discrimination against Women (CEDAW)	Convention on the Elimination of All Forms of Discrimination Against Women (1979) and its optional protocol
Committee Against Torture (CAT)	Convention Against Torture and Other Cruel Inhuman or Degrading Treatment (1987)
Committee on the Rights of the Child (CRC)	Convention on the Rights of the Child (1990) and its optional protocols
Committee on Migrant Workers (CMW)	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2003)
Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)	Established pursuant to the Optional Protocol of the Convention against Torture (2006); enables visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment, or punishment.
Committee on the Rights of Persons with Disabilities (CRPD)	International Convention on the Rights of Persons with Disabilities (2008)
Committee on Enforced Disappearances (CED)	International Convention for the Protection of All Persons from Enforced Disappearances (2010)

The main functions of the treaty bodies will be discussed below.

**4.3.1.1 Reviewing State party reports**

When a State ratifies a treaty, it not only enters into a legal obligation to implement the rights recognized therein, it also accepts to be monitored by the relevant treaty body on how such rights are being implemented within its jurisdiction. Compliance is monitored through a review process involving State party reports, reports of national human rights institutions, (NHRIs), international and national civil society organizations, professional groups, and academic institutions. Based on information received from all these sources, the treaty body examines State reports in the presence of the State party’s delegation. After a constructive dialogue with the State party, the treaty body

publishes its concerns and recommendations, referred to as ‘Concluding Observations.’ These become the reference point for the next periodic report to be submitted by the State party. Previously, each treaty body issued its own set of guidelines to assist the State party in developing its report which resulted in a confusing multiplicity of guidelines. To address this problem, the UN Secretary General at the request of the General Assembly in 2009 issued harmonized guidelines for reporting under the international human rights treaties including guidelines on a core document and treaty specific documents. In general, the process of State reporting before the treaty bodies comprises of:

- Submission of a ‘State Report’ (a large document of over 100 pages);
- The treaty body puts together a ‘List of Issues’ for the State to discuss, some of which may have been raised by reports of other actors such as the UN, civil society organizations, NHRIs, etc (normally around 10-20 issues);
- The State party responds to this list of issues;
- The treaty body releases a ‘Summary Record’ which details the meeting; and
- The treaty body releases its ‘Concluding Observations’ which may also include recommendations to the State.

#### **4.3.1.2 Individual complaints**

Eight treaty bodies (the CCPR, CERD, CAT, CEDAW, CRPD, CED, CESC, and CRC) can receive complaints from individuals. Any individual can submit a communication alleging that their rights under the treaty have been violated by a State party. However, two conditions have to be met before such a complaint is considered: the relevant State party must have recognized the competence of the treaty body to receive such complaints, and domestic remedies must have been exhausted. Once a complaint is accepted, it transmits the same to the State party and requests it to submit its observations within a set time frame. If a State party fails to respond to a complaint even after receiving several reminders, the Committee makes a decision on the case based on the information submitted by the complainant which is then considered an authoritative interpretation of the treaty concerned. Decisions are in the form of recommendations to the State party. The compliance of the State party to such decisions is monitored by the treaty body through follow-up procedures.

While some argue the complaints procedure is weak and ineffectual, treaty body findings *can* lead to amendments in the law to ensure human rights are protected. In one such instance, the Human Rights Committee, in *Toonen v Australia* (1992)<sup>15</sup> found that Tasmanian laws making consenting sex between adults in private a criminal offence punishable by up to 21 years in jail were in violation of Australia’s international human rights obligations. This finding comprised the first time the UN found that human rights protections extended to gay and lesbian people. As such, it led to law reform within and outside the country. For example, in Australia, new legislation was adopted prohibiting arbitrary interference with the sexual conduct of adults in private. Beyond Australia, the findings were used as a precedent to advocate for the protection of gay and lesbian people.

#### **4.3.1.3 General comments**

Another important function of treaty bodies is the publication of general comments or general recommendations (interpretations of the rights recognized in treaties) which comprise useful guides to understanding the scope and content of different rights.

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<sup>15</sup> *Toonen v Australia*, Communication No 488/1992, UN Doc CCPR/C/50/D/488/1992 (1994), available at <http://hrlibrary.umn.edu/undocs/html/vws488.htm>, accessed on 24 August 2023.

### **4.3.2 Charter bodies**

The Human Rights Council (HRC) is the UN body responsible for strengthening the promotion and protection of human rights around the globe. It was created by the General Assembly in 2006 replacing the earlier Commission on Human Rights. The HRC works with the special procedures, looks into independent investigations, and facilitates the universal periodic reviews.

#### **4.3.2.1 Special procedures**

Special procedures are independent experts (called ‘Special Rapporteurs’ or working groups) appointed by the HRC to monitor, examine, advise, and publicly report on thematic issues or situations of human rights concerns. Such independent experts and members of the working groups serve in their individual capacities.

In the early years of the UN, the Commission on Human Rights (which was replaced by the HRC in 2006 by resolution 60/251) lacked power to take any action with regard to complaints concerning human rights. However, in 1965, it received a number of individual petitions from South Africa leading it to establish an ad-hoc working group of experts in 1967 to investigate the human rights situation in South Africa. This working group was the first special procedure of the Commission on Human Rights. Likewise, after the 1973 coup in Chile, the Commission established an ad-hoc working group in 1975 to inquire into the human rights situation in Chile. This working group was replaced by a special rapporteur and two experts in 1979 to study the issue of enforced disappearances in Chile. This led to the establishment of the first thematic procedure in 1980 – the Working Group on Enforced Disappearances to examine the question of enforced disappearances throughout the world.

The scope of work of the experts and working groups include: undertaking country visits; considering individual cases of alleged violations and concerns of a broader, structural nature by sending communications to States; conducting thematic studies contributing to the development of international human rights standards; engaging in advocacy and raising public awareness and the provision of advice for technical cooperation. Special procedures report to the HRC annually. As of November 2023, there are 46 thematic and 14 country mandates.

Nevertheless, special procedures can make country visits only at the invitation of State parties. Some countries (such as Malaysia, Thailand, and Timor-Leste in the Southeast Asian region) have issued ‘standing invitations,’ (meaning they are prepared to receive a visit from any special rapporteur). At the end of such visits, the special rapporteurs will engage in a dialogue with the State on their findings and recommendations and present their report to the HRC.

Most special procedures receive information on specific allegations of human rights violations after which the mandate holders will communicate with the concerned States to seek information about legal policy or structural developments, submit their observations, and follow up on their recommendations. Further, at the request of the HRC, special procedures will prepare thematic studies and participate in expert consultations with a wide range of actors at the national, regional, and international levels.

### **Spotlight: Visit of the Special Rapporteur on the Rights of Indigenous Peoples to Timor-Leste<sup>16</sup>**

Victoria Tauli-Corpuz visited Timor-Leste from 8-16 April 2019 during which she met with the President, ministers, government functionaries, members of the judiciary, parliamentarians, officers of the national human rights institution, traditional elders, and a wide range of civil society organisations. The Special Rapporteur examined diverse issues affecting indigenous peoples, including customary justice systems, community land issues, education, and conservation and climate change adaptation including mitigation measures. After concluding her visit, she issued a report which included recommendations on: formal and customary justice systems; land, territories, and resources; conservation and climate change; free, prior, and informed consent; education and languages; development, poverty, and the right to food and health; and cultural heritage.

### **Spotlight: Visit of the Special Rapporteur on Extrajudicial Killings to the Philippines**

Philip Alston was the Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 - 2010. In 2007<sup>17</sup>, he conducted a mission to the Philippines. In his report a year later, he noted that since 2001 around 800 people, mainly leftist activists, have been killed including land reform advocates and human rights defenders. Many of these deaths can be attributed to military figures. The government responded that most of these deaths were done by the Communists as part of a purge or an elimination of spies, which Alston called “*a cynical attempt [by the government] to displace responsibility.*” Alston also noted that the courts were “*focused on prosecuting civil society leaders rather than their killers.*” As a result, there was a high level of impunity. After the report was published in 2008,<sup>18</sup> the number of extra-judicial killings of leftist activists dropped from over 220 in 2006 to 64 in 2008. Though 68 killings is still high, the drastic reduction does show the ability of special procedures to change the standard of human rights in some situations.

#### **4.3.2.2 Universal Periodic Review**

The Universal Periodic Review or UPR is a unique process under which the human rights records of all member States of the UN undergo a peer review every 4½ years. The review is based on: the UN Charter; the Universal Declaration of Human Rights; international human rights instruments ratified or acceded to by the State; voluntary pledges and commitments made by the States, and other applicable international humanitarian law instruments. The UPR is conducted with the participation of all relevant stakeholders including civil society organizations and NHRIs, and is based on the following three documents:

<sup>16</sup> Tauli-Corpuz, V. (2019). *Report of the special rapporteur on the rights of indigenous peoples*. United Nations. A/HRC/42/37/Add.2.

<sup>17</sup> Alston, Philip. (2008). *Report of the special rapporteur on extrajudicial, summary or arbitrary executions*. United Nations. A/HRC/8/3/Add.2.

<sup>18</sup> Alston, Philip. (2008). *Report of the special rapporteur on extrajudicial, summary or arbitrary executions: Follow up to country recommendations - Philippines*. United Nations. A/HRC/11/2/Add.8.

1. *Information prepared by the State under review:* Usually takes the form of a national report on the status of human rights in the country.
2. *Compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR):* This compilation, of not more than 10 pages, is based on reports of treaty bodies, special procedures, and other relevant official UN documents.
3. *Report containing credible and reliable information provided by other stakeholders such as non-governmental organizations, human rights defenders, academic institutions and research institutes, regional and international organizations, and national human rights institutions:* This report, not exceeding 10 pages, is prepared by the OHCHR based on written submissions from stakeholders.

The review process itself takes place at the HRC in Geneva. The State under review first sends a delegation to Geneva where the national report is presented, then receives a number of questions and statements from other States in a three hour session called an ‘interactive dialogue.’ This term implies the review is not meant to criticize or punish States, but rather to constructively discuss how to improve human rights. It is not uncommon for up to 50 countries to request to question some countries. Following the dialogue, an outcome document will offer recommendations to the State which although not binding, may carry political weight. The State may also choose to either accept or reject (called ‘noting’) the recommendation. Though civil society members may attend, they are not permitted to ask questions. However, they may participate by advocating with sympathetic States to take on their ideas and requests.

## Spotlight: The UPR in Action: A Study of Indonesia's Universal Periodic Review

Indonesia was one of the first countries to be reviewed. During the first cycle review in 2008, in its national report, Indonesia said it considered religious freedom an important and protected human right under the Constitution and the ICCPR (which they are a party to). Yet, in the report from the UN bodies, including the Special Rapporteur on the freedom of religion or belief, a number of concerns was noted, such as:

- laws stipulating that places of worship could only be established with the permission of the government;
- the difficulties faced by men and women of different religions in registering marriages;
- children of inter-religious marriages were not provided with birth certificates; and
- the attacks and threats against Ahmadiyyah families.

In addition, national and international organizations submitted reports which noted preferential treatment being given to official religions, documented use of the blasphemy law (which criminalized some religious activity), and which highlighted attacks on the Ahmadiyya. Further, religious discrimination was noted, facts of which were not mentioned in the State's report. Countries such as Italy noted gaps in the State report on the exercise of the right to freedom of religion and asked whether Indonesia would be willing to change its laws on religion to bring it in line with ICCPR standards. The United Kingdom also asked Indonesia to provide more information regarding attacks against the Ahmadiyyahs.

However, there was no specific recommendation on religious freedom in the outcome document. Instead, one recommendation said in brief: *"While acknowledging the efforts made by the Government of Indonesia, it was recommended that such efforts continue to ensure the promotion and protection of all the components of the Indonesian people."*<sup>19</sup>

Religious freedom or discrimination against people on the ground of religion was again raised as issues of concern during the 4th cycle of Universal Periodic Review of Indonesia in 2023. Governments of Cyprus, Ethiopia, Timor-Leste, Republic of Korea, Austria, Norway, United Kingdom of Great Britain and Northern Ireland, Germany and Australia issued recommendations to repeal laws that discriminate on grounds of religion and strengthen protection of human rights of religious minorities. The Government of Indonesia accepted all these recommendations.<sup>20</sup>

This shows that sometimes it takes time to bring in change. It may be useful to study as to the reasons why religious freedom is a contentious issue in the country, and the reasons why so many countries issued recommendations regarding it during the fourth cycle of reporting in 2023.

<sup>19</sup> 'Report of the Working Group on the Universal Periodic Review: Indonesia (A/HRC/8/23)' UNGA, 14 May 2008.

<sup>20</sup> See the matrix of recommendations, Fourth Cycle, UPR Indonesia, issued by the United Nations Human Rights Council available at <https://www.ohchr.org/en/hr-bodies/upr/id-index>

From this brief outline of the process, it can be seen that the UPR allows for the identification and discussion of human rights issues, and provides an incentive for governments to address these concerns. Nonetheless, the response can be weak, requiring as it does, no direct action due to the process being non-binding. However, despite its weaknesses, the UPR has some advantages. It provides a mechanism to raise questions about the status of human rights in a country and to monitor its progress as regards strengthening the enjoyment of said rights. For example, Indonesia, during its second country review, had to report on the issue of freedom of religion and demonstrate its progress towards achieving it. The UPR also provides civil society organisations with a tool to coordinate their efforts and identify priorities and strategies to strengthen the promotion and protection of human rights in the country.

#### **4.3.2.3 Independent investigations**

To promote accountability and counter impunity, the HRC can also establish investigative bodies to respond to situations of serious violations of international human rights law and humanitarian law. These investigative bodies may take different forms such as fact-finding missions, commissions of enquiry, and expert mechanisms, etc.

### **Spotlight: The Arrest, Torture and Death of Jina Mahsa Amini**

In September 2022, Jina Mahsa Amini was arrested and detained by the morality police in Iran for improperly wearing her hijab. She was tortured during detention and died while still in police custody. Her death sparked protests across Iran. The State retaliated by cracking down against the protestors.

Various special procedures (the Special Rapporteur on the rights to freedom of assembly and of association; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women and girls, its causes and consequences; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Working Group on arbitrary detention; the Working Group on discrimination against women and girls; the Working Group on enforced or involuntary disappearances; and the Special Rapporteur on extra judicial, summary or arbitrary executions) raised concerns about the situation in Iran before the HRC and urged it to take necessary action.

In response, the HRC established an international fact-finding mission on the Islamic Republic of Iran (24 November 2022) to investigate alleged human rights violations related to the protests that began in September 2022, especially with respect to women and children. The mandate of the fact-finding mission included: to establish the facts and circumstances surrounding the alleged violations; to collect, consolidate, and analyse evidence of such violations preserving the evidence; and to engage with all relevant stakeholders including UN mechanisms and civil society organizations.

Sara Hossain, Chairperson of the Independent International Fact-Finding Mission on the Islamic Republic of Iran, provided an oral update on their work to the Human Rights Council during its session in Geneva in July 2023.<sup>21</sup>

<sup>21</sup> Hossain, S, 'Oral update by Sara Hossain, Chairperson of the Independent International Fact-Finding Mission on the Islamic Republic of Iran' OHCHR, 5 July 2023, available at <https://www.ohchr.org/en/statements/2023/07/oral-update-sara-hossain-chairperson-independent-international-fact-finding>, accessed on 24 August 2023.

In conclusion, the work of the independent experts seeks to strengthen the protection of human rights in different ways. The missions help to gather and verify information, creating a historical record of events for further investigation. The investigative mechanisms also recommend measures to address the violations, thereby providing justice and reparation to victims by holding perpetrators to account. Reports of fact-finding missions have also triggered establishment of transitional justice mechanisms.

#### **4.3.2.4 Complaints procedure**

In 2007, the HRC established a confidential complaint procedure to address consistent patterns of gross and reliably attested human rights violations (replacing the 1503 procedure before the former Commission on Human Rights). The procedure is applicable to all member States whilst also permitting individuals and NGOs to submit complaints.

### **4.4 Role of Civil Society Organizations**

The offices of the United Nations are often located in distant cities such as New York, Geneva, or other capital cities. Moreover, the language of communication of its mechanisms is mostly English which is not the working language of, for example, most Southeast Asians. In such circumstances, these UN offices and mechanisms may often be outside the reach of many victims of human rights violations. Therefore, civil society organizations at the local, national, regional, and international levels, have a vital role in bridging this gap between the UN and victims or other rights holders.

#### **Reflection and Discussion: Role of Civil Society Organisations in Human Rights Monitoring**

Civil society organizations and human rights defenders have a key role in both human rights standard setting as well as effective monitoring by UN human rights mechanisms.

1. Do you agree with the above statement?
2. Giving examples, can you illustrate the role of civil society organizations and human rights defenders in human rights standard setting at the national and international levels?
3. Examine the working process of treaty- and charter-based human rights mechanisms. Giving examples:
  - a. Identify the spaces for civil society organizations and human rights defenders to participate in the monitoring process of these mechanisms;
  - b. Describe the ways in which the participation of civil society organizations and human rights defenders enhances effectiveness of the monitoring mechanisms; and
  - c. Identify the challenges that civil society organizations and human rights defenders may face in strengthening the promotion and protection of human rights.

## A. Chapter Summary and Key Points

The human rights protection system at the United Nations can be divided into two categories: treaty-based mechanisms and charter-based mechanisms.

Treaty-based mechanisms consist of treaty bodies or bodies of independent experts who monitor compliance by State parties. Some treaty bodies also consider individual complaints. Apart from monitoring compliance, the treaty bodies also issue general comments or recommendations on different articles of the treaties, and in so doing, elaborate on the scope and content of the rights contained therein.

Charter-based mechanisms consist of the special procedures, Universal Periodic Review, and independent mechanisms. All UN member States must submit themselves to the Universal Periodic Review by the Human Rights Council even though they may not have ratified the international human rights treaties.

Other UN organs which assist in strengthening the promotion and protection of human rights are the Security Council, the General Assembly, the International Court of Justice, the UN Secretariat led by the UN Secretary General, and the Economic and Social Council.

The process before the treaty bodies and the Universal Periodic Review by the Human Rights Council is also known as constructive dialogue, where committees of independent experts or member States enter into a dialogue with the States under review about human rights issues in the country. At the end of the process, the human rights mechanisms issue recommendations to the States for further action. Compliance with these recommendations are reviewed in the next cycle of the reporting process.

Civil society organizations and human rights defenders also play a crucial role in the protection and promotion of human rights at the UN by undertaking activities such as fact-finding and documentation, assisting victims of human rights violations to access justice mechanisms, and by providing advocacy and human rights education to help bridge the gap between UN mechanisms and victims of human rights violations. The UN has had to recognize the role of civil society organizations and human rights defenders with their participation now ensured in the treaty monitoring process, the Universal Periodic Review, as well as in the functioning of other mechanisms.

## B. Typical Exam or Essay Questions

- What are the main differences between charter bodies and treaty bodies?
- Describe the functions of the treaty- and charter-based human rights mechanisms at the UN. How do they contribute to strengthening human rights protection in member States?
- Is the Universal Periodic Review a strong mechanism for the promotion and protection of human rights? Would it be stronger than the reporting procedure at a treaty body? Can you give any recommendations to make the process stronger?

## C. Further Reading

The UN website is a rich source of information and includes:

- Web pages on the UN Security Council (available at <https://www.un.org/securitycouncil/>), the UN General Assembly (available at <https://www.un.org/en/ga/>), and the International Court of Justice (available at <https://www.icj-cij.org/home>, all accessed on 22 August 2023), all of which contain a whole repertoire of information about these organs.
- The OHCHR website holds information and reports on the Human Rights Council (<https://www.ohchr.org/en/hrbodies/hrc/home>), special procedures (available at <https://www.ohchr.org/en/special-procedures-human-rights-council>), investigative mechanisms (a list of which can be found at <https://www.ohchr.org/en/hr-bodies/hrc/list-hrc-mandat>) and the various treaty bodies (available at <https://www.ohchr.org/en/treaty-bodies>, all accessed on 22 August 2023).
- The UN Treaty Body Database (available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en), accessed on 22 August 2023) documents reports from the various treaty bodies. Every document can be searched by country and type of document, for example, State reports are listed, and individual complaints can be found under 'jurisprudence.' In addition, documents on the treaty body strengthening process can be found at <https://www.ohchr.org/en/treaty-bodies/treaty-body-strengthening> (accessed on 22 August 2023).
- Information on the UPR can be found at <https://www.ohchr.org/en/hr-bodies/upr/upr-home> (accessed on 23 August 2023) and includes the State, UN, and stakeholder reports, and lists of recommendations.

# Chapter

# 5

## The Human Rights Protection System at the National and Regional Level\*

### Reader's Guide

While previous chapters reviewed the international bill of rights, this one assesses how these rights are protected and enforced at the national level and through regional human rights mechanisms. Ideally, protecting human rights means every violation is investigated, the perpetrators are punished, and the victim receives adequate remedies. Such a system creates the exemplar envisioned by the human rights treaties. Accordingly, protection mechanisms at the national level include the judiciary and national human rights institutions (NHRIs). Regional mechanisms (present in Europe, the Americas, Africa, and in the sub-region of Southeast Asia) complement those at the national and international levels yet also focus attention on particular regional human rights concerns. The instruments adopted provide the normative framework for regional human rights mechanisms. A marked difference between the sub-regional system in Southeast Asia and other such systems is that whereas the latter focus on both protecting and promoting human rights, in Southeast Asia, the focus is solely on promotion. Thus, human rights defenders and civil society organizations (CSOs) have an ever more essential role in enabling victims to access the mechanisms at all levels and to facilitate their access to justice.

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\* The chapter for the first edition was prepared by Benjamin Lee, Asia Pacific Forum of National Human Rights Institutions; Mathew Mullen and Michael (Mike) Hayes, Institute of Human Rights and Peace Studies, Mahidol University. It has been updated by Kalpalata Dutta, ASEAN University Network - Human Rights Education (AUN-HRE)..

## **5.1 Human Rights Protection at the National Level**

Strong human rights protection and promotion systems at the national level include the following elements:

- a. International human rights standards are reflected in the national constitution and are incorporated in national legislation;
- b. A competent, independent, and impartial judiciary can exercise judicial review and enforce the human rights standards reflected in the constitution and national legislation;
- c. Specialized institutions, such as national human rights agencies, protect and promote such rights;
- d. Systems exist to monitor the human rights situation in the country, specifically with respect to vulnerable sections of the population; and
- e. Human rights education is taught at schools and other institutions of learning.

While some of the above involve the legislature, judiciary, and formal bodies such as NHRIs, others are usually addressed by non-State actors including non-governmental or CSOs and human rights defenders. Therefore, through their activities, non-State actors help to bring focus on issues of immediate concern, as well as systemic problems in society. These may include: urgent appeals, fact-finding missions, documentation, the publication of annual reports on human rights, and advocacy on various issues. In general, the work of human rights organizations and defenders are often not welcomed by States which may try to restrict their work. However, their work is just as vital as that of the judiciary and NHRIs, as they help to seek accountability from States by addressing impunity and creating an environment of respect for human rights.

### ***5.1.1 International human rights standards in domestic legal systems***

International human rights standards should be reflected in legal systems at the national level. Conventionally, it was understood that international law could be integrated into domestic frameworks through monist or dualist legal systems. In the former, international law is considered an integral part of the legal order of a State and international treaties automatically become part of the domestic legal system upon ratification by the State. By contrast, in a dualist legal system, international law must be incorporated through the legislative process. However, this strict distinction between monist and dualist legal systems is less relevant today as international law is now integrated in a variety of ways. For example, the executive and legislature may use it as a guide to frame laws, rules, and policies, as could the courts to interpret and review existing laws and their application.

#### ***5.1.1.1 Constitutions in Southeast Asia and human rights standards***

Constitutions are considered to be the supreme law of a country, elaborating upon the structure of the State (union or federalist), the branches of State (executive, legislature, judiciary), the election system, independent institutions, and on rights and duties. Most constitutions written after 1948 contain a section reflecting the rights recognized in the Universal Declaration of Human Rights. Table 5-1 below provides an overview of rights guarantees in the constitutions of Southeast Asian countries.

**Table 5-1: Constitutional Rights Guaranteed in Southeast Asia**

Country	Year Last Constitution was Adopted	Human Rights Guarantees
Brunei	1959	No section on human rights
Cambodia	1993	Chapter III: The Rights and Obligations of Khmer Citizens (Arts 31-50) Chapter VI: Education, Culture and Social Affairs (Arts 65-68; Arts 72-75)
Laos	1991	Chapter IV: Fundamental Rights and Obligations of Citizens (Arts 34-51) Chapter II: The Socio-Economic Regime
Indonesia	1945	Chapter X(A): Human Rights Chapter XIII: Education
Malaysia	1957	Part II: Fundamental Liberties
Myanmar	2008	Chapter VIII: Citizen, Fundamental Rights and Duties of the Citizens
Philippines	1987	Art II: Declaration of Principles and State Policies Art III: Bill of Rights Art XII: National Economy and Patrimony Art XIII: Social Justice and Human Rights Art XIV: Education, Science and Technology, Arts, Culture and Sports
Singapore	1945	Part 4: Fundamental Liberties
Thailand	2017	Chapter III, section 4: Rights and Liberties of Thai People Chapter VI: Directive Principles of State Policy
Vietnam	2013	Chapter II: Human Rights and Citizen's Fundamental Rights and Duties
Timor-Leste	Constitution adopted in 1945	Part II: Fundamental Rights, Duties, Liberties and Guarantees (Arts 16-28)

The above table shows that human rights guarantees and obligations can be spread over different sections or chapters of constitutions. In such cases, it will be important to understand the nature of the obligations under each chapter. For example, in the Philippines, Art II is titled Declaration of Principles and State Policies and enumerates the ideological principles and policies that should serve as a guide to all branches of the State. The Bill of Rights (under Art III) lists the constitutional rights of individuals and casts binding obligations on the State. Thus, if these are violated, legal remedies should be available. The rights guaranteed under Art III are mostly civil and political in nature. Articles XII (National Economy and Patrimony) and XIII (Social Justice and Human Rights) formulate the principles the State should keep in mind while making policies on development

issues such as industrialization, agricultural development, the use of natural resources, labour, health, etc. Section 1 of Art XIV requires the State to protect and promote the right of all citizens to quality education and lists the measures that should be adopted. However, it is crucial to note that while Arts II, XII, XIII, and XIV have a bearing on economic, social and cultural rights, they are not articulated as rights which can be enforced by rights holders. Rather, they elaborate upon the measures the State should take with regard to the national economy, patrimony, social justice, and human rights. The provisions of Arts II, XII, XIII, and XIV can therefore be used as a guide in the formulation of law, policies, rules, and regulations.

### **Reflection and Discussion: Assessing Human Rights Provisions in Constitutions**

1. Identify the sections of your Constitution that are relevant to human rights.
2. Are these categorized as ‘rights’ or ‘guidelines to the State/directive principles of State policy’?
3. Is the entire range of civil, political, economic, social and cultural rights recognized as rights in your Constitution?

#### **5.1.1.2 Human rights legislation**

One way in which human rights treaties become part of domestic law is by the adoption of legislation or amendments to existing legislation. A single law or a collection of laws may be adopted to incorporate treaty provisions into domestic law. For example, in the Philippines, the International Convention on the Rights of People with Disabilities was adopted in the form of a single law, the Republic Act No 7277 (also known as the ‘Magna Carta for Disabled Persons’). At the same time, in the Philippines, the Convention on the Rights of the Child has been incorporated into the Juvenile Justice and Welfare Act, child education laws, and labour laws. Similarly, Thailand has divided the International Convention on the Rights of Persons with Disabilities into three acts: the Persons with Disabilities Empowerment Act, the Persons with Disabilities Quality of Life Promotion Act, and the Persons with Disabilities Education Act.

Countries may also make amendments to existing law to recognize international human rights law. For example, in 2007, Thailand adopted an amendment to the criminal code expanding the definition of rape to cover marital rape to bring it in line with the Convention on the Elimination of All Forms of Discrimination Against Women.

### **Spotlight: Enacting a Law on Torture and Disappearances in Thailand**

#### ***Thailand adopts law to counter torture and disappearances***

(Adapted from the Association for the Prevention of Torture (APT), 12 October 2022, available at [https://www.apt.ch/en/news\\_on\\_prevention/thailand-adopts-law-counter-torture-and-enforced-disappearances](https://www.apt.ch/en/news_on_prevention/thailand-adopts-law-counter-torture-and-enforced-disappearances), accessed on 4 September 2023)

The APT welcomes the passage of Thailand’s Bill on the Prevention and Suppression of Torture and Enforced Disappearance, which was adopted on 24 August 2022. The legislation is expected to be endorsed by His Majesty The King and will come into force 120 days after publication in the Royal Gazette.

While the Bill has limitations, it is a very positive development in Thailand's efforts to prevent and provide redress for torture, ill-treatment, and enforced disappearances. It also enables Thailand to meet its human rights obligations under the UN Convention against Torture (ratified in 2007, and known as UNCAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (signatory in 2012).

*"The enactment of the Bill also complements our efforts with Thai authorities through the #SafeinCustody project, particularly in promoting safeguards to prevent incommunicado detention and forced confessions,"* said APT Secretary General, Barbara Bernath.

The Bill features welcome elements, including a provision criminalising cruel, inhuman, or degrading treatment or punishment and a provision acknowledging that the crime of enforced disappearance is a continuous crime. In addition, the Bill provides for the use of video and audio recordings during the arrest and detention of individuals; the absolute prohibition of torture in war and emergency situations; ensures the accountability of the authorities; and grants the Criminal Court for Corruption and Misconduct jurisdiction in all cases.

*"This Bill was adopted through the persistent efforts of victims and their families, civil society organisations, parliamentarians, experts, and authorities,"* said Pornpen Khongkachornkiet, Executive Director of Thailand's Cross Cultural Foundation. *"It may not fully translate all the provisions of the international conventions but it is a promising signal from the authorities,"* she said.

Originally rejected by the post-coup National Legislative Assembly, the Bill was submitted to the House of Representatives in 2021. While the initial draft law proposed by the Cabinet did not address the principal obligations under UNCAT, the ad hoc committee appointed by the House of Representatives successfully advocated to improve some key shortcomings,

The draft Bill was unanimously passed by the lower house on 23 February 2022, with the Senate passing the draft Bill during its first reading on 28 February 2022 and appointing an extraordinary committee to conduct a review of its provisions.

While civil society organisations called on the Senate to expedite passage of the legislation, an amended Bill was sent to the House of Representatives on 9 August for consideration. On 24 August 2022, the Senate-revised Bill was adopted by the House with 287 votes in favour, one against, and one abstention.

## **Reflection and Discussion: Enacting Human Rights Laws at the National Level**

- Note that civil society organisations or CSOs were involved in the adoption of the law in Thailand. The organisations mentioned in the press clip are a few of many who were involved in developing draft bills and advocacy efforts.
- Note the length of time taken from ratification of the international conventions on torture and disappearance to the passage of the bill in Thailand.
- Note the challenges faced by CSOs in getting the bill passed in Parliament.

### **5.1.2 National human rights mechanisms**

Another aspect of protection of human rights at the national level are the specialized mechanisms enforcing rights guaranteed in constitutions and legislation, and which can monitor their implementation. Such mechanisms include the judiciary and national human rights institutions or NHRIs.

#### **5.1.2.1 Independent judiciary**

An independent and impartial judiciary with powers to safeguard rights (guaranteed in the constitution) is vital for the protection of human rights. In many constitutions, the right of individuals to approach courts to seek remedies for violations of fundamental rights is also recognized as a fundamental constitutional right (e.g. Art 32, Constitution of India). Further, judiciaries may also have the power to review laws enacted by the legislature and determine whether they are in accordance with constitutional rights guarantees. However, such undertakings are only possible if courts are independent and impartial. Therefore, in 1985, the United Nations General Assembly endorsed the 'Basic Principles on the Independence of the Judiciary' to assist member States in securing and promoting judicial independence.

#### **5.1.2.2 National human rights institutions**

A NHRI is an official State institution established by law to promote and protect human rights in a country. The first were established in the 1970s and 1980s mainly in Commonwealth countries such as Canada, Australia, and New Zealand. A milestone occurred in 1993 when the UN General Assembly adopted the 'Principles relating to the Status of National Institutions' (commonly known as the Paris Principles) to lay down NHRI standards.

### **Spotlight: The Paris Principles**

#### ***National human rights institutions should:***

- Be independent from the government;
- Be established under a law or the constitution;
- Have a mandate that includes the promotion and protection of human rights;
- Be pluralistic in its composition such that it represents all sections of society;
- Have adequate resources and financial autonomy;
- Have freedom to address any human rights issue, initiate inquiries and investigations, gather the necessary evidence on human rights violations and give recommendations or opinions, and publicize their findings; and
- Have adequate resources so that NHRIs can have the funding, staffing, infrastructure, and institutional capacity to perform their functions and discharge their responsibilities.

Further, 1993 saw the establishment of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC – not to be confused with the International Criminal Court which is also called the ICC) as the international NHRI network. The ICC was established with the aim of strengthening the work of NHRIs. In 2016, the ICC was renamed the Global Alliance of National Human Rights Institutions (GANHRI). GANHRI, through its Sub-Committee on Accreditation (SCA), periodically evaluates NHRIs against the Paris Principles and accredits them with one of the following rankings:

- 'A' status: fully compliant with the Paris Principles
- 'B' status: partially compliant with the Paris principles
- 'C' status: not compliant with the Paris Principles

Each NHRI is periodically assessed by a committee in the ICC with support from the OHCHR against the requirements of the Paris Principles and given an accreditation status. Civil society organizations are invited to submit reports and information toward such reviews. Under the leadership of the Asian NGO Network on NHRIs (ANNI), Southeast Asian human rights organizations have been particularly active in this exercise. Significantly, opportunities to attend and address UN meetings and engage with UN actors are restricted to NHRIs having an 'A' status. In addition to the ICC, regional bodies coordinate the work of NHRIs in Africa, the Americas, Asia and the Pacific, and Europe. The Asia Pacific Forum of National Human Rights Institutions (APF) is Asia Pacific's regional coordinating body. The APF provides its member NHRIs with a wide range of training and capacity-building services to support and strengthen their work. It also serves as a regional network for cooperation on human rights issues, and works with governments and civil society in the region to support the establishment of NHRIs in countries where they do not yet exist.

### **Reflection and Discussion: Assessing NHRIs Against the Paris Principles**

- Choose the national human rights institution or NHRI of any country and identify the law under which it was established. Examine the law to assess:
- If members of the NHRI are elected in a fair and transparent manner.
- If the procedure of appointment of members is such to ensure a pluralistic representation of the social forces involved in the protection and promotion of human rights.
- If the NHRI has a broad mandate that includes examination of individual complaints and investigative functions.
- If the NHRI has functional independence (for example, do they have financial autonomy, stability of tenure or can a member be removed at the pleasure of the government?).
- Check the accreditation status of the NHRI. If the NHRI does not have an 'A' status, identify the reasons for this.

## **5.2 Regional Human Rights Mechanisms**

Regional instruments and mechanisms have an essential role in the promotion and protection of human rights. Not only do they help in strengthening the values of the rule of law and respect for human rights in the region, they also focus attention on issues and concerns particular to it, address structural issues at the national level, and provide people with accessible mechanisms for the protection of human rights. At present, regional human rights mechanisms exist in Europe, the Americas, and Africa. Though such systems face particular challenges, their evolution over the years indicates they are dynamic (not static) in nature, and responsive to challenges as regards functioning and ever-changing needs of society. Any assessment of regional systems should include an understanding of their historical development in the context of these challenges.

### **5.2.1 The European regional human rights system**

Europe has three layers of human rights mechanisms: the Council of Europe, the European Union, and the Organisation for Security and Co-operation in Europe.

*Council of Europe:* Founded in 1949 with a mandate to promote and protect the three core values of human rights, democracy, and the rule of law. As the principal human rights mechanism in Europe, it has 46 member States. The main instruments adopted by it are: the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) or ECHR, the European Social Charter (1961), and the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (also known as the Istanbul Convention). While the ECHR primarily focuses on

civil and political rights, the European Social Charter focuses on economic, social and cultural rights. The European Court of Human Rights is the principal mechanism monitoring compliance of the European Convention.

*European Union (EU):* A political and economic union of countries with 27 members, the Charter of Fundamental Rights (2000) is its main human rights instrument. This charter had to be adopted despite the existence of the ECHR because while the 27 EU members are parties to the ECHR, the EU itself is not, with the resulting implication being that the ECHR may not be binding on EU organs such as the European Council and the European Court of Justice. Therefore, the Charter of Fundamental Rights was adopted to give human rights a legal basis in the EU and to supervise compliance with the Charter.

*Organisation for Security and Cooperation in Europe (OSCE):* The world's largest regional security organization provides a forum for political dialogue on a wide range of security issues. It is also a platform for joint action to improve the lives of individuals and communities. Participating States hail from three continents: North America, Europe, and Asia. Its core instrument is the Helsinki Final Act (1975) and the Office for Democratic Institutions and Human Rights in Europe is its main human rights body. Moreover, it provides participating States with advice and assistance on human rights compliance, technical support to human rights bodies, and individuals and civil society with training and education.

The European Convention on Human Rights and Fundamental Freedoms (1950) which entered into force in 1953, was the first binding instrument on human rights, and was designed to promote human rights, democracy, and the rule of law in the region. Although the ECHR primarily focusses on civil and political rights, the European Court of Human Rights through a dynamic interpretation has given protection to components of economic, social and cultural rights as well. For example, it interpreted the right to life to include aspects of the rights to health and livelihood, etc.

At the time of its adoption in 1950, a tripartite system was established for monitoring compliance with the treaty: the European Commission on Human Rights, the European Court of Human Rights, and the Committee of Ministers. The European Commission was responsible for considering the admissibility of petitions and establishing the facts in each case. If the petition was considered admissible, the Commission had the task of promoting friendly settlements by entering into a dialogue with the applicant, State, and convention machinery. If a settlement was not reached, the Commission provided an opinion on the violations which although non-binding in nature did persuade some States to comply. Based on the opinion, the applicant and the State could also bring the case before the European Court whose decision was final and legally-binding. If the case was not so referred to, the Committee of Ministers would issue a final and binding decision based on the Commission's opinion.

However, in 1998, Protocol No 11 was adopted which dissolved the European Commission on Human Rights whilst retaining the European Court and the Committee of Ministers. Further, the Court was established as a permanent body, sitting all year round and it assumed most of the Commission's responsibilities as regards examining the admissibility of applications and establishing the facts of cases submitted to it. Moreover, it became mandatory for all members of the Council of Europe to become a party to the European Convention and accept the jurisdiction of the European Court. The Committee of Ministers was also retained, with the role of monitoring compliance with European Court decisions.

In early 2000, the European Court found itself overwhelmed by repetitive cases arising from systemic problems at the level of nation States. In order to address the huge number of pending cases, the Court developed a pilot judgment procedure allowing it to receive several petitions sharing a root cause to enable it to identify one or more cases for priority treatment. While considering this pilot

case(s), the Court could decide whether a violation of the European Commission had occurred, identify any systemic problems, and give the State clear recommendations regarding the type of remedial measures to be adopted in order to resolve the issue. At the same time, similar cases could be adjourned or frozen for a period of time on the condition that the State promptly adopts the measures recommended in the pilot judgment. The first pilot judgment was delivered in 2004 in *Broniowski v Poland*<sup>1</sup> and involved property rights beyond the Bug river. The structural deficiency in this case concerned 80,000 people and their right to peaceful enjoyment of their possessions.

### **Key Term: Margin of Appreciation Doctrine**

This refers to the space for flexibility the European Court gives to national authorities to fulfil their obligations under the European Convention. Given the diverse cultural and legal traditions present in each member State and the understanding that the consensus of States was required for a regional human rights mechanism to function, it was accepted that the process of realizing a 'uniform standard' of human rights protection needed to be gradual. This margin of appreciation enables the Court to balance the sovereignty of member States with their obligations under the European Convention. The doctrine recognizes the principle of subsidiarity, meaning regional mechanisms are secondary to the institutions of national legal systems in adjudicating claims of human rights violations and that national systems have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols. As can be seen from its jurisprudence, the European Court has given a narrow margin of appreciation in cases involving the protection of absolute rights, racial or ethnic discrimination, and the protection of private life. A wider margin of appreciation is given in cases involving national security, protection of morals, legislative implementation of social and economic policies as in situations where States have to strike a balance between competing interests or Convention rights.

#### **5.2.2 The inter-American human rights system**

At the end of World War II in 1945, American states gathered at the Inter-American Conference on Problems of War and Peace held in Mexico City and adopted a resolution on the international protection of fundamental rights. This set in motion the processes of establishing the inter-American system for the protection and promotion of fundamental rights. In April 1948, the Organisation of American States (OAS) adopted both its charter and the American Declaration on the Rights and Duties of Man. The latter preceded the Universal Declaration of Human Rights by seven months and enumerated both human rights that needed to be protected and the duties individuals have towards society.

Soon after the adoption of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966, the OAS also felt the need to adopt a binding treaty on human rights. The American Convention on Human Rights was adopted in 1969 and entered into force in 1978. The Convention established two organs for monitoring the fulfilment of commitments made by State parties: The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). The American Convention primarily protects civil and political rights, defining in more detail, rights contained in the American Declaration. As States in the region shed their military governments, the first action many took after returning to some form of democratic government was to ratify the Convention seeing it as a means to prevent future military coups. Other treaties on refugees,

<sup>1</sup> Case of *Broniowski v. Poland*, Application No 31443/96, European Court of Human Rights, Judgement date 22/6/2004.

torture, disappearances, violence against women, economic, social and cultural rights, persons with disabilities, indigenous people, and the environment have also been adopted by the OAS.

The IACHR receives individual complaints, monitors human rights situations in member States, holds thematic hearings on specific areas of concern, and adopts emergency precautionary measures to protect individuals at risk. In the 1990s, the Commission created ‘rapporteurships’ to give attention to specific issues and the rights of vulnerable groups with rapporteurs helping to propose reforms in areas of concern. In the early years of the Commission’s existence when the region was dominated by dictatorships, it prioritised onsite visits and documenting human rights abuses. For example, in 1979, it visited several sites of detention in Argentina and collected over 5,000 individual complaints in just over two weeks. These complaints formed the basis of its historic 1980 report on the human rights situation in Argentina.<sup>2</sup>

In 1988, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador) was adopted, coming into force in 1999. A rapporteurship on economic, social, cultural and environment rights was also created in 2014. With these initiatives, the inter-American system has started to look into economic, social and cultural rights as well.

As mentioned previously, the IACHR can receive complaints from individuals or groups but will only take complaints satisfying the admissibility criteria. If it concludes a violation of rights has occurred, it may attempt to reach a friendly settlement but if this fails, it will issue a report and send it to the concerned State for compliance. If the State rejects the report, the Commission may send the case to the IACtHR but only if the concerned State party has accepted its jurisdiction. The IACtHR hears cases referred to it by the IACHR or from State parties accepting its jurisdiction. Individuals, however, cannot bring a case before it. It also gives advisory opinions on issues relating to the interpretation of inter-American human rights instruments at the request of member States or an organ of the OAS.

### **Spotlight: Impact of Some IACHR and IACtHR Decisions**

Some significant cases before the Inter-American Commission and the Court have involved amnesty laws as outlined below.

*Barrios Altos v Peru*<sup>3</sup>: In November 1999, members of the Colina Group affiliated with the Peruvian National Intelligence Service fired indiscriminately at residents living in the Barrios Altos neighbourhood in Lima, killing 15 people including one child, and injuring five others. After the incident, two amnesty laws were passed preventing further investigation into the incident. The American Commission submitted the case to the American Court requesting it to call upon Peru to revoke the amnesty laws, reopen judicial investigation into the facts, and grant damages to the victims. The Court after considering the facts of the case concluded that the amnesty laws were incompatible with the American Convention on Human Rights.

<sup>2</sup> Inter-American Commission on Human Rights. (1990). *Report on the situation of human rights in Argentina*.

<sup>3</sup> *Barrios Altos v Peru*, Inter-American Court of Human Rights, Judgement of May 14, 2001, <http://hrlibrary.umn.edu/iachr/C/75-ing.html>.

*La Cantuta v Peru*<sup>4</sup>: In 2006, the Inter-American Court held the Peruvian State to be responsible for the arbitrary deprivation of life, torture, and cruel, inhumane or degrading treatment of nine students and a professor at the National University of Enrique Guzmán y Valle (La Cantuta). The Court also held the State responsible for its failure to investigate and bring to justice those responsible for these crimes.

The ruling by the Inter-American Court in both cases had an impact on courts at the domestic level. In 2009, the Special Criminal Chamber of the Supreme Court of Justice in Peru, in a unanimous verdict, found former President Alberto Fujimori guilty of the serious injury, murder, and abduction of dozens of people. President Fujimori was sentenced to 25 years' imprisonment for these crimes, the maximum allowed for by the Criminal Code in force at the time the crimes were committed. The Supreme Court upheld the ruling a few months later. However, on 24 December 2017, President Pedro Pablo Kuczynski issued a resolution granting former President Fujimori a pardon on "humanitarian grounds." Following this, in a landmark judgement issued on 15 June 2018, the Inter-American Court held that the Peruvian courts must review whether the pardon granted to former President Alberto Fujimori constituted an unnecessary and disproportionate impact on the right of access to justice of the victims of the Barrios Altos and La Cantuta cases. Subsequently, the Supreme Court of Peru overturned the pardon granted to former President Alberto Fujimori and ordered him to complete his sentence for crimes against humanity committed by his administration in the 1990s. The Supreme Court found that the humanitarian pardon lacked a legal basis and contravened Peru's human rights obligations.

### **5.2.3 The African regional human rights system**

As in other regions, the African regional human rights system evolved over decades. The Organisation of African Unity (OAU), an inter-governmental organization, was established in 1963 in Addis Ababa to promote unity and solidarity amongst African states and eradicate all forms of colonialism from the region. Nevertheless, other than the focus on self-determination, the OAU did not have a strong focus on human rights with the African Charter on Human and Peoples' Rights (Banjul Charter) only being adopted in 1981.

The Banjul Charter enumerates the civil, political, economic, social and cultural rights of individuals, together with the collective right of people to self-determination. The right to self-determination includes the rights of peoples to: freely dispose of their wealth and natural resources; economic, social and cultural development; national and international peace and security; and an environment favourable to their development. In addition, the Charter enumerates the duties of individuals towards others in society, the family, community, and the nation. Further, the Charter established the African Commission on Human and Peoples' Rights with the mandate of promoting and protecting the rights guaranteed in the Charter. Subsequently, under a protocol, the African Court on Human and People's Rights was established in 1998.

The mandate of the African Commission includes undertaking research on African problems in the field of human and peoples' rights, disseminating information, giving recommendations to governments, formulating principles to address legal issues relating to human and peoples' rights, and ensuring the protection of rights laid down in the Charter. The Commission has also established several thematic working groups and special rapporteurs to analyse laws, policies, and practices,

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<sup>4</sup> *La Cantuta v Peru*, Inter-American Court of Human Rights, IACHR Series C No 162, 29 November 2006, <https://opil.ouplaw.com/display/10.1093/law:ihrl/3047iachr06.case.1/law-ihrl-3047iachr06>

and undertake country missions. Significantly, it can consider complaints of alleged human rights violations. By contrast, the African Court on Human Rights can only consider complaints of human rights violations if the concerned State party has accepted its jurisdiction. Such complaints can be referred to the Court by the African Commission, a State party, or an African inter-governmental organization.

Article 66 of the African Charter on Human and Peoples' Rights provides that special protocols or agreements may be adopted, if necessary, to supplement the provisions of the Charter. Accordingly, a number of other human rights instruments have also been adopted. These are the:

- *African Charter on the Rights and Welfare of the Child*: Adopted in 1990 and coming into force in 1999, the Charter was adopted because there was a feeling in the African continent that the UN Convention on the Rights of the Child had not captured the context and situation of the African child. Thus, it was thought necessary to adopt an African treaty. The African Charter on the Rights and Welfare of the Child addresses issues of the participation of children in armed conflict (child soldiers were a rampant phenomenon in Africa), poverty, child marriage, and other harmful practices. It also established the African Committee of Experts on the Rights and Welfare of the Child with the mandate of monitoring and supervising implementation of the treaty. The Committee has competence to receive complaints against States.
- *Protocol on the Establishment of an African Court on Human and Peoples' Rights*: Adopted in 1998 and coming into force in 2004, this court was established to complement the African Commission on Human Rights established under the African Charter.
- *African Protocol on the Rights of Women in Africa (Maputo Protocol)*: Adopted in 2003 and coming into force in 2005, the Protocol builds upon the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It has a strong focus on harmful cultural practices, rural women, the issue of abortion and the conditions under which it may be permitted, and polygamy. It came into force very quickly in 18 months, largely because of a strong advocacy campaign by CSOs.
- *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*: Adopted in 2009 and coming into force in 2012, this treaty is the world's first legally binding, continent wide Convention to protect internally displaced persons. It provides a comprehensive framework for response to internal displacement, whether such displacement is triggered by armed conflict, violence, disasters or climate change.
- *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons*: Adopted in 2016 but not yet in force.
- *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa*: Adopted in 2018 but not yet in force, this protocol was developed by Africa in response to developments at the UN level. It was felt that the UN Convention on the Rights of Persons with Disabilities did not address the African context adequately, such as issues of albinism and places of culture and the way it perpetuates stereotypes, attitudes, and the treatment of persons with disabilities in Africa.

The African Union (AU) was launched in 2002, replacing the OAU. One of its objectives as mentioned in its Constitution is to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant instruments. The emphasis on human rights in its Constitution helped to strengthen the promotion and protection of human rights in the region. In addition to its legislative, executive, and judicial organs, it has eight regional economic communities which are considered to be the building blocks of the AU. Although these communities primarily focus on trade, they have increasingly given attention to human rights issues. For example, the South African Development Community (SADC) adopted the Protocol on Gender and Development in 2008. Further, three regional economic communities (the Economic Community of West African States (ECOWAS), the SADC, and the Eastern African Community (EAC)) have even established judicial arms to examine human rights cases filed by individuals and non-governmental organisations on issues concerning slavery, violence against women, and

suspension of the internet, etc. However, these courts have faced political backlash from countries seeking to restrict their powers.

## **Spotlight: Landmark Judgements of the African Commission and the African Court**

### ***SERAC and CESR v Nigeria (1996)<sup>5</sup> – Decision of the African Commission***

*Failure of a State in its duty to protect civilians from the actions of a private company:* The complaint alleged that the military government of Nigeria, by facilitating operations of oil corporations in Ogoniland, was responsible for causing violations of the right to health, the right to dispose of wealth and natural resources, the right to a clean environment, and family rights.

The African Commission held that Nigeria had violated Arts 4, 14, 16, 18, and 24 of the African Charter by condoning and facilitating environmentally degrading and polluting practices of oil companies in traditional Ogoniland through military force. Articles 4, 14, 16, 18, and 24 of the African Charter recognize the African peoples' rights to life, property, physical and mental health, family and for women and children to be free of discrimination, and the right to a satisfactory environment for development, respectively. The Commission urged the Nigerian government to stop military attacks on Ogoni communities, provide access to the territory, conduct an investigation into the human rights violations found by it, provide compensation to the victims of these violations, undertake a comprehensive clean-up of the damage caused to the lands and rivers, prepare appropriate environmental and social impact assessments for any future oil development, and provide information on the health and environmental risks associated with such development to regulatory and decision-making bodies in communities likely to be affected by oil development.

The case is significant as the Commission elaborated upon the obligations of States under the Charter. The ruling also helped to highlight the issues faced by the Ogoni people. Furthermore, preparation of the case helped the Ogoni people to organize themselves as well.

### ***Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya (2003)<sup>6</sup>***

*Eviction of indigenous peoples from their traditional lands:* In the 1970s, with the purpose of creating a game reserve for tourism, the Kenyan government evicted hundreds of Endorois families from their traditional lands around the Lake Bogoria area in the Rift Valley. A complaint was filed by the Centre for Minority Rights Development with the assistance of Minority Rights Group International and the Centre on Housing Rights and Evictions on behalf of the Endorois community.

The African Commission held that the Kenyan government had violated the African Charter on Human and Peoples' Rights, specifically the rights to religious practice, property, culture, the free disposition of natural resources, and development. The case represents the first legal recognition of an African indigenous peoples' rights over traditionally-owned land and is also the first case globally which found a violation of the right to development.

<sup>5</sup> See, '155/96: *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)/Nigeria*' United Nations Environment Programme, available at [https://leap.unep.org/sites/default/files/court-case/achpr30\\_155\\_96\\_eng.pdf](https://leap.unep.org/sites/default/files/court-case/achpr30_155_96_eng.pdf), accessed on 4 September 2023.

<sup>6</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Application No 276/2003, available at [https://www.escr-net.org/sites/default/files/Endorois\\_Decision.pdf](https://www.escr-net.org/sites/default/files/Endorois_Decision.pdf), accessed on 4 September 2023.

***Institute for Human Rights and Development in Africa and Others v Democratic Republic of Congo (2016)***<sup>6</sup>

Private company helped the army to attack civilians: In October 2004, the town of Kilwa, Democratic Republic of Congo (DRC), was the site of fighting between the Congolese Armed Forces (FARDC) and a small group of rebels. The armed forces launched an attack to take control of the town following a short occupation by the rebels, committing serious human rights abuses against civilians, including summary executions, arbitrary arrest, rape, and torture. Witnesses alleged that Anvil Mining, who operated the Dikulushi copper mine nearby, provided transportation (planes and vehicles) to the Congolese Armed Forces during this event.

In November 2010, three NGOs brought a complaint to the African Commission on Human and Peoples' Rights on behalf of eight of the victims. In June 2017, the Commission found the DRC Government responsible for the Kilwa massacre and demanded that victims be awarded \$2.5 million as compensation. It also called on the government to "take all due measures to prosecute and punish agents of the State and Anvil Mining Company staff."

Large corporations often use or support security groups to act against local communities in furtherance of their own interests. This case is significant as the ruling of the Commission helped to advance corporate accountability. The International Commission of Jurists observed that the decision would open "opportunities for victims and their families to seek remedy and reparation, including prosecution against responsible State authorities and the company, Anvil Mining, or at least any responsible personnel or and executive officers."

***APDF and the Institute for Human Rights and Development in Africa v Republic of Mali (2018)***<sup>7</sup>

Violation of the Maputo Protocol and the African Charter on the Rights and Welfare of the Child: The Republic of Mali initiated law reform to codify the rights of individuals and families to bring them in line with evolving human rights law. However, such reforms were unsuccessful because of a widespread protest movement by Islamic organisations. The applicants alleged that the law which was finally adopted violated several provisions of the Maputo Protocol and the African Charter on Rights and Welfare of the Child with regard to the minimum age of girls to marry, the right of consent to marriage, rights to inheritance, and the obligation to eliminate traditional practices harming the rights of women and children. The Court ruled in favour of the applicants and observed that Mali's Persons and Family Code violated the regional human rights instruments and the Convention on the Elimination of All Forms of Discrimination Against Women. This was the first case in which the African Court applied provisions of the Maputo Protocol to strengthen protection of women's rights.

<sup>7</sup> Institute for Human Rights and Development and Others v Democratic Republic of Congo, African Commission on Human and Peoples' Rights, Communication No 393/10.

<sup>8</sup> Association Pour Le Progres et la Defense des Droits des Femmes Maltennes (APDF) and the Institute For Human Rights and Development in Africa (IHRDA) v Republic of Mali, African Court on Human and Peoples' Rights, Application No 046/2016.

#### 5.2.4 The ASEAN regional human rights system

The Association of Southeast Asian Nations (ASEAN) was founded in 1967 in Bangkok by Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Five more members joined later. ASEAN has agreed in principle to accept Timor-Leste as its eleventh member. A month after the Vienna World Conference of Human Rights (1993), ASEAN foreign ministers in a joint communique stated that “ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.” The Joint Communique was historic because for the first time in ASEAN history, a sentence on human rights was included in its official communications.

Use of the words “*appropriate regional mechanism*” indicated that at the time, ASEAN leaders themselves had no clear idea about its form and nature. Meanwhile, reacting to the momentum created by the communique, in 1995 the Human Rights Committee of LAWASIA<sup>9</sup> created the Working Group for an ASEAN Human Rights Mechanism with the primary goal of advocating for the creation of an inter-governmental human rights body in the region.<sup>10</sup> The Working Group had its first meeting with ASEAN foreign ministers in 1996 to discuss the issue of establishing an appropriate regional human rights mechanism. This marked the beginning of a constructive dialogue between ASEAN leaders and CSOs on the issue. Around 2005, ASEAN member States initiated discussions on the adoption of an ASEAN Charter to enable the regional group to acquire a legal entity. The Working Group took this opportunity to advocate for the inclusion of human rights in the Charter. The ASEAN Charter was adopted at the 13<sup>th</sup> ASEAN Summit in November 2007. Thus, strengthening democracy, enhancing good governance and the rule of law, and promoting and protecting human rights was recognized to be one of the purposes of ASEAN. The Charter also included a commitment to establish an ASEAN human rights body (Art 14). However, commitments to human rights made in Arts 1 and 14 were countered by the working principles enumerated in Art 2 that included respect for the independence and sovereignty of member States, non-interference in their internal affairs, and respect for the right of every member State to lead its national existence free from external interference, subversion, and coercion.

Amidst these contradictions, the terms of reference of the ASEAN Inter-governmental Commission on Human Rights (AICHR) were adopted in July 2009. One notable departure from other regional human rights mechanisms is the exclusion of an explicit protection mandate (Art 4). The mandate mostly includes promotional functions such as enhancing public awareness, promoting capacity-building, encouraging ASEAN member States to ratify international human rights treaties, promoting full implementation of ASEAN instruments on human rights, providing advisory services on human rights to ASEAN sectoral bodies, preparing studies on thematic issues of human rights concern in ASEAN, developing common approaches to matters of human rights interest in ASEAN, etc. The terms of reference also mention that the AICHR is to be guided by the principle of non-interference in the internal affairs of ASEAN member States (Art 2.1b). Further, they state that AICHR decision-making will be based on consultation and consensus (Art 6.1). These provisions have proved to be barriers for the inter-governmental body to take initiative on human rights. Given the principle of non-interference, it is very difficult to achieve consensus between ten member States with diverse records on human rights. In addition to the AICHR, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was established in April 2010. However, the mandate of the ACWC is also promotional in nature.

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<sup>9</sup> LAWASIA is a regional association of lawyers, judges, jurists and legal organisations. Its mission includes promotion of rule of law, respect for human rights and high standards of legal practice.

<sup>10</sup> Villacorta, W ‘*Inter-regional Cooperation in Democracy Building: Prospects for Enhanced ASEAN-EU Engagement*’ International IDEA.

The AICHR terms of reference included developing a human rights framework in the form of a declaration or convention. Consequently, the ASEAN Human Rights Declaration was adopted in November 2012. The ASEAN Declaration is largely based on the Universal Declaration of Human Rights with some significant differences. Article 7 of the ASEAN Declaration states that realization 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.*” This provision can be double-edged. It can be used to add meaning to rights guaranteed in the international bill of rights and reaffirmed in the ASEAN Declaration, for example, to elaborate on the meaning of the right to adequate and affordable food in the social and economic context of ASEAN. Or it can be used to develop a doctrine similar to that of the margin of appreciation in Europe. On the other hand, differences in political, economic, legal, cultural, historical, and religious backgrounds can also be used to justify *inaction* with regard to implementing human rights standards in the region. At the same time, the ASEAN Declaration also recognizes rights to development and peace which are not recognized in the Universal Declaration of Human Rights. ASEAN has also introduced other instruments such as the ASEAN Declaration on the Elimination of Violence Against Women (adopted in 2004) and the Declaration on the Protection of the Rights of Migrant Workers (adopted in 2007). Further, AICHR established the ASEAN Environmental Rights Working Group in 2022 with the purpose of developing a regional framework on environmental rights for adoption by ASEAN leaders.

### **5.3 Role of Human Rights Defenders and Civil Society Organizations**

The example of enactment of a law on torture in Thailand, highlighted the role that human rights defenders and human rights organisations play in strengthening enforcement of international norms and standards at the national level. By organising legal awareness programs, they help people to know about their rights, and the mechanisms that exist for their enforcement. Through fact-finding and documentation activities, human rights defenders and organisations compile evidence of human rights violations and such evidence forms the basis of campaign and advocacy on human rights issues. The barriers that victims of human rights violations have in accessing justice at the national level (such as lack of information, costs of accessing the mechanism, etc.) are compounded when human rights mechanisms are located at the regional level. Thus, while assessing regional human rights mechanisms, it is useful to enquire whether or not civil society organisations have space to participate in its functioning. As an illustration, non-government organisations can submit complaints before the European Court of Human Rights (Article 34 of the European Convention on Human Rights). Further, National Human Rights Institutions and Civil Society Organisations have the space to submit communications to the Committee of Ministers regarding the execution of judgements at the national level. At the ASEAN level, the AICHR engages with accredited civil society organisations. Such accreditation is provided by AICHR to civil society organisations having expertise on human rights issues through an application process.

## **A. Chapter Summary and Key Points**

Human rights are protected by a wide range of actors. While some are formal such as the legislature, judiciary, and national human rights institutions or NHRIs, others are informal including non-governmental human rights organizations and human rights defenders.

International human rights standards are incorporated into national legal systems through constitutions and human rights specific laws. The chapters on rights in constitutions reflect the rights guaranteed in the International Bill of Rights. The idea that economic, social and cultural rights need to be progressively realized is reflected as well. In many countries, chapters on rights focus solely on civil and political rights while economic, social and cultural rights issues may only

be included as directive guidelines to governments. However, this division is not uniform in the constitutions of Southeast Asia. In some, economic, social and cultural rights are also recognized in the chapters on rights.

National human rights institutions are specialized and independent bodies with mandates to strengthen the protection and promotion of human rights at the national level. However, they lack judicial powers and can only conduct investigations and issue opinions or recommendations to the State. The Paris Principles lay down the standards for NHRIs.

Many countries do not have one single law on human rights. Rather, laws and regulations on different issues such as gender equality, juvenile justice, sexual violence, air and water pollution, criminal procedure, the use of firearms by law enforcement, etc, reflect the standards in international human rights instruments.

Regional mechanisms protect human rights in countries within the geographic region. There are three regional bodies based in Europe, Africa, and the Americas. While ASEAN established a sub-regional body called the AICHR in 2009 to promote and protect human rights which oversaw the drafting of a declaration, and works with ASEAN governments to promote and protect human rights, it is the only such body lacking a protection mandate.

## **B. Typical Exam or Essay Questions**

- Are there any specific human rights issues or provisions missing in the constitution of your country?
- What activities are implemented by the NHRI in your country? Have they made a difference to the promotion and protection of human rights?
- How does the UN assess the effectiveness of NHRIs? Is the process accurate and fair?
- In what ways do regional human rights mechanisms strengthen the protection and promotion of human rights? In what ways do they complement international human rights mechanisms?
- Why is Asia the only region without a human rights regional system? In your opinion, is the AICHR a toothless tiger, or will it develop into a strong body like the European human rights bodies?

## **C. Further Reading**

- Annual Reports of the Asian NGO Network on Human Rights Institutions (ANNI) on the performance and establishment of NHRIs in Asia (available at <https://forum-asia.org/?s=annual+report>, accessed on 9 September 2023).
- Reports of the Asia Pacific Forum of National Human Rights Institutions (available at <https://www.asiapacificforum.net/resources/?keywords=reports>, accessed on 9 September 2023)
- Council of Europe website (available at <https://www.coe.int/en/web/portal>, accessed on 9 September 2023)
- Organization of American States website (available at <https://www.oas.org/en/>, accessed on 9 September 2023)
- African Union website (available at <https://au.int/>, accessed on 9 September 2023)
- ASEAN Intergovernmental Commission on Human Rights website (available at <https://aichr.org/>, accessed on 9 September 2023)



# Chapter

# 6

## Women's Human Rights\*

### Reader's Guide

Delivered at the Conference on African Women and Economic Development in Addis Ababa (1998), the words of former UN Secretary-General, Kofi Annan, that

*gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance[.]*

still rings true today. The world cannot protect and expand human welfare and human development, both intricately tied to international peace and security, without the active, effective, and *equal* partnership of women.

Women's rights are human rights. Every international human rights treaty stresses this point. Yet, women still fall behind in almost all areas of human life – education, economics, politics, health, the environment, sciences, information and communication technology, climate change adaptation and mitigation, and so on. But why is this invariably so? Making up more than half the human population, women and girls are still frequently only minor considerations in some of the most crucial decisions (such as medicine, climate change, and digital technologies) of our time, decisions that will impact human life for generations to come.

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Women have a tenuous hold on their rights especially in States demonstrating weak governance, which lack the rule of law, and are riddled by human insecurity issues. Women exercising their human rights in these countries are often faced with violence – both physical and psychological. Indeed, research points to gender inequality as a clear indicator of domestic conflict. Key is an asymmetry of power between men and women which permeates all aspects of life cutting across traditions, religions, cultures, and even geography, and it is especially relevant to gender inequalities and violations of women’s rights. Therefore, to create a more gender equal world, such disparity in power must be corrected by first asking, who holds it, and second, how that power is used. This is precisely what human rights treaties and other international instruments addressing rights violations aim to do. By understanding the root causes of inequalities and injecting appropriate interventions through treaties and other policies, the international community hopes to address the wrongs perpetrated against women.

## 6.1 Introduction

Women encounter discrimination in a number of ways. At the outset, women and girls are discouraged from attending school and higher education in some parts of the world. Further, they receive less pay than men for the same work whilst frequently having to face violence, again usually at the hands of men. Another less obvious form of discrimination can be seen in the way women’s role in history, traditions, and culture is continually undermined by men. Sadly, although extensive, this list is by no means exhaustive. In addition, women currently face new threats to their rights including disproportionate challenges under a new climate reality and violence in digital spaces. This chapter examines how societies discriminate against women and discusses the consequences of such inequity by first examining the construct of gender. It then addresses how international human rights instruments seek to prevent it, mostly by examining the *Convention on the Elimination of All Forms of Discrimination Against Women* or CEDAW. Next, important concerns for women are examined in the areas of: violence against women, non-discrimination in the workplace including economic rights, and women’s safety in digital spaces. Finally, the various ways in which the global pandemic exposed the world to the disproportionate suffering of women will be highlighted.

Notably, the Universal Declaration of Human Rights (UDHR) was drafted by a commission headed by a woman in 1948 – former First Lady of the United States, Eleanor Roosevelt. In the process, she played a key role in convincing the US State Department to expand its concept of human rights to include not only political and civil rights but also economic, social, and cultural rights. She concluded:

*[M]any of us thought that lack of standards for human rights the world over was one of the greatest causes of friction among the nations... and that recognition of human rights might become one of the cornerstones on which peace could eventually be based.*

Unfortunately, it must be noted that the UDHR itself has a problem with issues of equal representation of women, a reflection of the time of its conceptualisation. Despite its claims of gender advancement, the Declaration left much of the work undone and, in some cases, actually undercuts the more radical analyses necessary to address the depth of discrimination, inequality, and exclusion experienced by women across jurisdictions and cultures. For example, consider how ‘man’ and the related pronouns, ‘he,’ ‘his,’ and ‘him’ are used in the Declaration. Despite feminist arguments seeking to clarify these limitations, change has been slow to come.

This chapter attempts to take a broader look at women's rights and the reasons they are violated in different areas of life by introducing several key concepts to offer a better understanding of how and why they are violated, both consciously and unconsciously, by factors pervading nearly all societies and governments.

## 6.2 Brief History of Women's Rights

While the history of the women's rights movement tends to focus on two events (women's suffrage or the right to vote in early 1900s Europe and the rise of feminism), others argue such activism has occurred throughout much of human history. During the European Enlightenment when an early version of human rights emerged, women's rights were discussed by prominent thinkers such as John Locke and Thomas Paine but it was one of the most lauded women writers of the time, Mary Wollstonecraft (mother of Mary Shelley who authored the famous gothic novel, *Frankenstein*), who wrote the seminal text, *A Vindication of the Rights of Women* (1792). By the end of the 19<sup>th</sup> century, the first women's rights organizations had been founded in Western Europe and North America. Throughout the 19<sup>th</sup> and early 20<sup>th</sup> centuries, women held national and international conferences and lobbied around issues of war, equality, the right to vote, and the prohibition of alcohol. The Suffragettes, who advocated for women's right to vote, are probably the most famous of these early movements. Other lobbying successes in the areas of work and the protection of women include provisions enabling women to hold positions in the League of Nations (1919 Covenant, Art 7) and the International Labour Organization (1919 Constitution, Art 9). Moreover, the preamble of the ILO Constitution also endorsed the principle of equal pay for work of equal value. Likewise, Art 8 of the Charter of the United Nations (1945) stipulated women's right to participate in any of its organs. Indeed, the prohibition of discrimination on the basis of sex is stated no less than four times in the Charter. These successes show that women have been advocating for their rights at the international level for well over a century, and continue to do so.

However, it wasn't until the 1960s and 1970s that women's movements gained global momentum in no small part due to broad social activism in the West as evidenced by the 'Women's Liberation' movement. Although not solely a human rights movement, it called for women to be liberated from the unfair structures of society such as unequal partnerships in marriage and unfair labour laws. Contemporary prominent feminists included Simone de Beauvoir, Gloria Steinman, and Betty Friedan. Influential in the United Nations, these movements helped to proclaim 1975 as International Women's Year, and then the International Decade for Women. Also in this period, the UN adopted CEDAW which came into force in 1979. However, it is crucial to note that early women's rights movements were focused mainly on the rights of women of European ethnicities or origins. Such rights were not discussed in the context of non-European women, whose hardships and abuse were manifold as a result of race and ethnic biases. Today, women's socio-economic status could also be included as a 'criteria' for bias.

In the 1960s and 1970s (although some scholars argue this occurred earlier), women's organisations emerged in many Southeast Asian countries as well. While some were influenced by Women's Liberation, others were rooted in religious beliefs, social welfare, female education, and political participation movements but together they proved influential in changing laws, attitudes, and in providing opportunities to close the equality gap. Feminism is one of the oldest civil rights movements in the history of the world. As a range of socio-political movements and ideologies aiming to define and establish the political, economic, personal, and social equality of the sexes, feminism argues that societies prioritize the male point of view and as a result, treat women unjustly. Quite simply, feminism is about women, but also about all genders having equal rights and opportunities. It also advocates respecting diverse women's experiences, identities, knowledge and strengths, and strives to empower all women to realise their full rights. Feminism would also encompass other non-binary genders as well, but for this chapter, the focus will be on women and female children.

Feminism and the fight for women's equal rights is an age-old movement. For the sake of simplicity, and because there seems to be a distinct generational gap, feminism is often seen as occurring in 'waves' but this is contested by some. For those studying feminism and feminists alike, the wave analogy ignores the continuum of the movement, the distinct ups and downs in each 'wave,' the conflicts in belief systems and agendas, as well as the idea that the seemingly never-ending struggle for women's rights can be narrowed down into distinct periods. Considering all these very valid points, the defence of the wave analogy is that it is often used for simplicity; it merely helps to outline the growth of the movement. At the same time, however, it fails to tell the whole story because feminism's history cannot be captured in one perfect timeline. Further, it is mostly a story of Western construct, focusing mainly on the North American and/or Western European contexts, often neglecting views from non-Western orientations. Nevertheless, several feminists from non-Western regions do also subscribe to feminism as presented by the West. Therefore, it is crucial to be mindful that such 'stories' outlining the growth of feminism do not necessarily have a universal application. One should also be mindful that non-Western regions of the world, including Southeast Asia, have their own stories to tell.

## **Spotlight: Waves of Feminism**

### ***The first wave***

In the late 19<sup>th</sup> century, the first wave of feminism had a fairly simple goal – for society to recognize that women were human beings and not property. As mentioned earlier, however, such notions did not extend to actual 'human property,' i.e., female slaves. Whilst women were adamant about receiving equal treatment and devised resolutions outlining specific rights (such as the right to vote and reproductive rights), the dominant focus on women of European origin and the exclusion of women of non-European ethnicities would haunt feminism and the fight for equality for years to come.

### ***The second wave***

The second wave is said to have taken place in the 1960s and 1970s. While building on the work of its predecessors, it also focused on institutions holding women back such as traditional gender and family roles. Three types of feminism emerged at this time: mainstream/liberal, radical, and cultural feminism. While mainstream feminism focused on reforming institutions, radical feminist movements sought to reshape society, stressing that only an overhaul would liberate women. In addition to agreeing to some elements of the above, cultural feminism focused on the 'female essence' as being essentially distinct from men. Once again, it was still very much Western-oriented.

### ***The third wave***

Emanating from the late 1980s, third wave feminism became more conscious of race and the idea of intersectionality (where different types of oppression intersect). Thanks to the activism and work of second wave feminists, women enjoyed more rights and power going into the 1990s – it was an era of 'reclaiming' for feminists. As use of the internet became more widespread, it became even easier to hear perspectives from feminists around the world. Feminism was growing and taking on a more global stance.

### ***The fourth wave?***

Since no significant shifts have been noted, many scholars believe the world to still be in the midst of the third wave, noting instead an expansion of the movement. However, due to the influence of the #MeToo movement and renewed attacks on women's rights, others believe a fourth wave is evident. With the movement expanding into digital space, activists now fight for women's rights to be respected in both the digital and physical worlds. As intersectionality becomes more of an issue, notably, fourth wave feminists are now more critical of "white feminism." Fourth wave issues also include trans rights with the voices of trans women now increasingly insistent in the debate. To conclude, this is a complex time for feminism as it clashes and discovers complementarity with the ideals and belief systems of an equal world.

### **Key Terms: Women's Movement**

**The Suffragettes:** Activists working on women's right to vote. Most commonly involved women in early 19th century Europe and the United States.

**Women's Liberation:** Western social movement in the 1960s and 1970s advocating for women's equality and liberation from restrictive social values and norms.

**Feminism:** A range of socio-political movements and ideologies aiming to define and establish the political, economic, personal, and social equality of the sexes.

**Intersectionality:** Refers to how different kinds of oppression, like those against gender, race, age, socio-economic status, and ethnicity, intersect with each other and multiply the impact of discrimination.

## **6.3 Women's Activism in Southeast Asia**

A history of activism for women's rights in Southeast Asia can also be seen. Highly restrictive traditions in relation to women can be found throughout its history. For example, Indonesian feminist pioneer, Raden Adjeng Kartini, was born in 1879 in the polygamous household of the Regent of Jepara. Ignoring the usual practice of home-schooling girls, her father allowed her to attend a European primary school until the age of 12, at which time according to Javanese custom, she was kept secluded at home until marriage. Forced to consent to a polygamous marriage with the Regent of Rembang (who already had six children and three wives), even in her seclusion, she wrote about her situation and the importance of education for girls – these letters became an inspiration to feminists and nationalists in Indonesia. Another Indonesian, Dewi Sartika, advocated for the education of girls and founded one of the first schools for women in 1904. The Indonesian government acknowledged her as a national hero in 1966.

Similarly, many notable Filipino women advocated for women's rights in education, voting, and welfare. For example, Concepción Roque started one of the first women's organisations in the Philippines in 1905. Also an active humanitarian, she fought for the well-being of mothers and their children by, for example, seeking prison and labour reform. Similarly, in post-war Singapore, Che Zahara binte Noor Mohamed, a Malay activist, worked towards women's and children's rights from the 1950s. As one of the first Malay women in Singapore to advocate for modern women's rights, she was the founder of the first Muslim women's welfare organisation in Singapore, the Malay Women's Welfare Association (MWWA). Moreover, in 1961, she helped establish the Women's Charter of Singapore. Another Singaporean, Linda Chen Mong Hock, founded the Singapore

Women's Federation (SWF) in 1956 but was arrested and jailed that same year as a suspected communist in part because of her social work. By the 1960s, numerous organisations were calling for women's rights throughout the region.

However, it must be said that compared to other parts of the world, women faced less severe restrictions in Southeast Asia, especially as regards participation in the economy. The economic growth of Southeast Asia, both in historical and recent times, has always been on the backs of female workers. In pre-colonial times, female labour was highly valued. Historically, given the dependence of early societies in Southeast Asia on small-animal husbandry and rice cultivation (a highly labour-intensive activity), women's labour was as valued as that of their male counterparts. For example, in pre-colonial Sumatran rice cultivation, men were responsible for clearing jungles and felling trees and the women and children, whose work stretched out over longer periods, tended to the crops (including transplanting, growing, and harvesting). This economic value of women accounted for the low female infant mortality rates in the region, especially compared to other regions such as South and East Asia.

Furthermore, the role of women in trade and commerce in precolonial and colonial Southeast Asia is also notable and rarely explored. For instance, the trade of *Piper nigrum* or black pepper was common in Southeast Asia in the 16<sup>th</sup> and 17<sup>th</sup> centuries with the growing and marketing of the spice managed primarily by women. Trade in black pepper was common in Cambodia, Borneo, Western Java, and the Malay Peninsula while international trade in the spice was focused in Sumatra. As such, early European and Chinese merchants in Southeast Asia often dealt with women in this trade.

Unfortunately, with colonialism and the advent of liberal economic policies, women's active role in the economy drastically deteriorated. As a result, women disappeared from public spaces, such as the labour market, moving instead to private spaces (homes) and more traditional women's work. With countries in the region adopting neoliberal economic strategies in the 1970s and 1980s, many women with limited economic freedom and education/training, left their homes and went into factories for low wages and little opportunity for upward mobility in the workplace. Thus, while women continue to make headway in education and jobs in the region, notably, they still face economic discrimination.

## 6.4 Defining Discrimination

In order to understand discrimination, the concepts of 'sex' and 'gender' must be distinguished. In social practice, there is a tendency to confuse (biological) sex for gender, or *vice versa*. The result is the belief that inequality between men and women is a natural biological fact, and not a social construct. Distinguishing between these concepts will help reveal that belief in the perceived superiority of men is actually a cultural and not a biological fact.

### 6.4.1 Sex and Gender

Simply put, '**sex**' refers to the physical and biological features of men and women while '**gender**' refers to the social roles each plays in society. The sex of an individual is biologically determined according to one's physical characteristics and biological features. This too can be contested as scientific studies have shown a body is not always either male or female. While the majority of people have a clearly assigned sex, the biological sex of many others is unclear. Thus, the bodies of intersexuals may exhibit the physical features of both sexes or other biological conditions and their chromosomes or hormones may be closer to that of the opposite sex. Societies, however, tend to prefer a binary perception of sex where every human is either male or female, thereby forcing people into one of these two roles, even though biologically this may not be true.

Gender is the expected role a male or female plays (or is expected to play) in society, and includes demonstrating the values associated with that role. From birth and throughout their lifetime, males and females are assigned specific attributes, traits, roles, and tasks in society. These may be expected ideas such as men are physically and emotionally strong, and women are nurturers and caregivers. However, gender is a deeply cultural construct, and varies across cultures as to the roles and values assigned. Distinguishing ‘sex’ from ‘gender,’ and understanding the social construction of gender, shows that, first, if gender is socially constructed, so too must be the inequality that stems from those perceived gender differences. Second, if inequality is a social construct, it can be changed or eliminated through specific cultural, moral, or even legal interventions. This realization is key to addressing gender discrimination and realising women’s rights. Finally, to understand the unequal treatment of women demands an understanding of how society and its institutions construct gender, for example, how the gender role of women is enforced through both cultural and legal institutions including traditions, religions, courts, schools, businesses, education systems, and so on.

### **Key Terms: Sex, Gender and Social Construction**

**Sex:** Refers to the biological features, such as genitalia and reproductive systems, which distinguish men from women.

**Gender:** The roles and values given to a male or female in society. These change over time and space, and are culturally specific.

**Gender Norms/Normative:** Gender norms are social constructs or ‘rules’ that dictate and restrict the behaviour, and at times even the thinking, of girls, boys, women, and men into what is considered appropriate. If a role is socially constructed, it means society has invented it, and it has little basis in nature or biology. Roles are socially constructed through cultural, religious, educational, or even legal means. They can be covert or forcibly enforced. Such norms can be spatially, temporally, and culturally specific.

#### **6.4.2 Linking discrimination to ‘sex’**

A common assumption is that anyone born a particular sex will automatically fit the gender roles and rules assigned to it. This assumption is reinforced or **normalized** through social and cultural practices and institutional arrangements. Many of the values and beliefs are discriminatory from the outset such as the assumption that men have protective instincts, physical strength, and are capable of rational thinking. As such, they are expected to be breadwinners, protectors, leaders, and decision-makers. Consequently, their primary domain is public, attuned to the world of work outside the home and in the realm of politics. By contrast, women are assumed to have nurturing instincts meaning their assigned roles will be centred on relationships and caregiving. However, such views are disempowering as they restrict women to the domestic sphere whilst giving men freedom and privilege. As a result, patriarchal notions of power become inevitable. Assumptions about the perceived abilities of men and the perceived *inabilities* of women underpin patriarchy which is both a covert and obvious system of power that controls women. Patriarchal systems pervade cultural, religious, social, economic, and legal systems all over the world and have an overarching reach, including in international organizations and at different levels of global governance. Feminists contend that the patriarchal slant of all social, cultural, economic, and political systems is the reason women’s rights are regularly violated everywhere. Likewise, patriarchal forms of governance or control are the reason for both systemic and structural discrimination against women.

## Key Terms: Normalized, Patriarchy

**Normalized:** The process where a society re-enforces a belief or behaviour through social, political, and/or legal institutions. Gender roles are normalized by education, the media, and social values but can also be forcibly normalized by physically punishing individuals for not fitting in.

**Patriarchy:** A system of power where all aspects of socio-cultural, political, and economic lives in a society are led by, and based on a male perspective. In its simplest form, patriarchy is a system of society or government in which men hold the power and women are largely excluded from it. It must be noted that patriarchy is not about all men holding power, as men without resources or membership into the elite can also be excluded.

The assumptions behind gender roles are not only based on the physical but also on the mental or intellectual (that men are more rational or analytical, etc) differences between men and women. Again, these assumed differences, especially those based on the higher intellect and rationality of men, are still on display today, notably in the sciences, technology, engineering, and mathematics or STEM fields of education and careers.

Although girls and boys start out scoring equally well in mathematics and science subjects (girls sometimes scoring higher), they are often pushed into different paths when they are considering further education and jobs. Girls are often being steered away from STEM subjects (as too challenging) towards 'easier' humanities or social science courses. The result has been a dearth of women in STEM fields, which then results in the exclusion of women, for example, from the specialties of medical technology and practice as well as digital systems. This then leads to issues of income or economic insecurity with many women unable to find jobs resulting in both **sectoral** and **occupational** bias in labour markets. The jobs of the future lie in STEM fields and yet half the population of the world is not being actively trained for them. In addition, lack of inclusivity in these areas has resulted in the creation of products and services that do not necessarily meet the needs of women – for example, voice recognition technology is more attuned to recognise male voices, and facial recognition technology often has problems with female faces, especially those of non-European, or non-white females.

These perceived differences between both the physical and mental abilities of men and women have been shattered by several female leaders in sports, science, medicine, politics, academia, and many other industries. Yet, gender normative thinking is so entrenched, it is extremely challenging to eradicate. The point to take away is that gender is assigned based on cultural values and not biological sex. This has led to both **systemic** and **structural** discrimination against women.

## Key Terms: Bias, Systemic and Structural Discrimination against Women

**Sectoral bias:** Specific bias in particular industries that leans towards men, for example, in engineering or the armed forces.

**Occupational bias:** Within certain industries, women are relegated to particular duties – for example, women are not given combat duties in the military because of physical inferiority.

**Systemic discrimination:** Occurs when gender inequality is inherently built into society's policies. Systemic gender discrimination in a place of employment happens when an applicant is not hired because she is female. In education, systemic gender inequality may prevent a female student from being admitted into a prestigious university, or being awarded an engineering scholarship.

**Structural discrimination:** Structural gender discrimination ensures women are prejudiced and discriminated against just by the very nature of the rules, laws, and regulations in the institutions of society. Various institutions can also be corrupted such as the legal system, places of employment, political groups, healthcare providers, the education system, housing, etc.

The process of socially constructing gender should be confronted to eliminate discrimination and the various forms of bias discussed above. Institutions such as the family, schools, workplaces, religious institutions, governments, and the media play an important role in assigning gender roles, for example, perceived notions of what men and women should be good or bad at, or how they should look, and so on. Utilising both punitive and pastoral means, institutions socialise and normalise a person into the roles of male or female pressuring both to follow their assigned gender conventions.

Gender conventions ensure that an individual's social behaviour fits society's expectations. This process will produce someone who is gender normative but there can be negative impacts too. In the worst case scenario, women may be normalised to feel weaker, inferior, or more at risk than men, and men may be normalised not to show emotions and to act aggressively. Both men and women who fail to conform may be subject to various forms of discrimination, social pressure, shame, and abuse. Within such a setting, human rights violations can easily occur. A key task to eliminating this violation to women's rights is to re-evaluate gender norms and cast them in a different light to show how differences and diversity can benefit any community or organisation. The international human rights instrument attempting to achieve this outcome is CEDAW.

### 6.5 CEDAW

CEDAW constitutes a crucial development in the protection of women's human rights. Its key message is that women and men should have equal rights in all aspects of their lives. As such, it defines discrimination and how States could combat it. Moreover, it suggests the different areas governments should focus their efforts on to achieve equal rights for women. Further, countries ratifying CEDAW are committed to amend their national laws to guarantee women's equal rights, provide opportunities and remedies where gaps exist, and to submit a report every four years on its progress in implementing these obligations. In addition, the treaty established the *Committee on the Elimination of Discrimination against Women* to monitor State compliance. Thus, the Convention was an historical achievement for women around the world because it has become the main international standard to measure the treatment of women.

CEDAW, which came into force in 1979, is one of the earliest human rights conventions, taking 10 years of debate and negotiation at the UN before it was ready for adoption. Most opposition centered on rights which were seen to clash with culture and religion, especially around the family, marriage, and citizenship. Nearly all countries failed to recognise equal rights of women in divorce or inheritance, and laws in many countries did not even allow women to pass their citizenship on to their children. Considering this, the language, context, and assumptions of CEDAW at the time of its drafting and ratification reflect the patriarchal power dynamics of State parties and international organisations which were mostly represented by men. The adoption of CEDAW was only made possible through the collective efforts of women themselves who pushed their agenda at the League of Nations, then the UN. Some women, particularly those assuming leadership positions, played a significant role in advancing women's rights. As previously noted, the 1960s were a time of increased activity around women's equality and rights with a greater awareness of the discrimination confronting women in many parts of the world and a notable rise in organisations committed to fighting its effects.

In ratifying CEDAW, States have obligations to:

1. *Change laws or introduce new laws*: Incorporate the principle of equality and non-discrimination of men and women, abolish all discriminatory laws and practices, and adopt appropriate measures to prevent discrimination against women (Arts 2 and 15).
2. *Ensure access to justice*: Ensure effective protection against discrimination through the courts and similar institutions (Art 2).
3. *Develop programs to accelerate equality*: Implement temporary special measures such as **affirmative action** to help achieve equality (Art 4).
4. *Modify culture*: Change cultural and traditional practices and attitudes including the stereotypical roles of women and men (Art 5).

CEDAW creates obligations on States as duty bearers to work towards the equality of women. Through strong wording, it instructs governments to have programs and initiatives to stop or prevent discrimination from occurring. Further, the Convention requires governments to apply its principles to both the public and private sectors. Discrimination by any enterprise is to be prohibited and specifically in relation to bank loans and other forms of financial credit. In other words, CEDAW assumes that financial dependency stands in the way of women's empowerment and freedom. In addition, the Convention identifies at least 12 areas of discrimination directly: culture, law, trafficking, politics, international politics, nationality, education, health, economics, and traditional rural practices disadvantaging women including land ownership and inheritance, as well as marriage, family, and reproductive rights. For example, it supports giving women information and assistance on family planning and equal pay for work. However, while CEDAW was progressive at the time, it was also a product of its time. Drafted in the 1960s and 1970s, ideas around equality have developed much in the decades since. CEDAW is not a static document and developments have been added, enabled both by civil society and the CEDAW Committee, to expand upon these rights. An example, returned to later in the chapter, is that of domestic violence.

CEDAW has near universal ratification with the exception of six countries: Iran, Palau, Somalia, Sudan, Tonga, and the United States. CEDAW is also the only human rights instrument that points to culture and tradition as shaping gender roles and family relations (outlined in Art 5). But this also makes it controversial because it has far-reaching obligations for the State, as regards indirect discrimination. Another fact to note is that CEDAW is the human rights convention with the most number of reservations. Reservations enable States to specify the parts of conventions they will not be bound by. In other words, through reservations, States were saying 'yes, *but*' to women's equality. Notably, while all Southeast Asian countries are parties to CEDAW, several States have made reservations to some of the articles.

### 6.5.1 Non-discrimination in CEDAW

CEDAW defines discrimination as

*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (Art 1).*

Discrimination here is on the basis of sex. Feminists, however, note that discrimination against women is caused almost completely by attitudes and values towards gender roles, not their sex *per se*. The definition of discrimination in CEDAW has three elements:

- **A distinction, exclusion, or restriction.** Examples may be laws terminating employment of women on the basis of marriage or pregnancy, unequal retirement ages, unequal inheritance rights, or social norms and attitudes which prevent girls from attending school.
- **A distinction based on sex (or gender).** The distinction must be made against women. If the distinction is made for everyone (say a uniform dress code for males and females), then it is not based on sex.
- **As a result of women not having equal human rights to men,** or lacking access to human rights at all. For example, women may not have an equal right to divorce making it easier for men to divorce, or some children may only be entitled to receive their father's citizenship.

Discrimination can occur in two ways: as a product of laws (*de jure* discrimination) or discrimination in fact or reality (*de facto* discrimination). Laws that do not recognise rights of women to marry and form a family on the same footing as men, or laws that restrict women from applying for some jobs are examples of *de jure* discrimination. *De facto* discrimination occurs where even though no laws discriminate against women, the reality is women lack equality. For example, even though there are no laws restricting girls from going to school, fewer girls are able to attend school because of existing social codes. Similarly, though there are no laws prohibiting women from entering formal politics, fact is that existing cultural norms and patriarchal structure of political parties act as barriers for women interested in participating in politics.

### 6.5.2 Concept of equality under CEDAW

What does equality actually mean?

The **formal model of equality** is based on the argument that men and women are the same and should therefore be treated identically. Thus, for true equality, women must be allowed to do what men do. For example, if men are permitted to study, work, vote, or run for public office, then women must also be allowed the same rights. However, this view fails to take into account the imposed societal gender disparity between men and women. The formal model of equality considers that if differences/inequalities exist between women and men, State intervention is necessary to overcome them through legislative or other means. This may also include types of affirmative action.

The **protectionist approach to equality** means that women are restricted from doing certain types of work or activities for their own good or welfare. For example, they may be restricted from working on construction sites because they are considered too weak for hard physical labour, or male-oriented jobs such as being a soldier or sailor because of the fear they may be assaulted or harassed at predominantly male workplaces. Instead of preventing harassment or assault, this approach seeks to shield women from such situations. In other words, while this approach

recognises the differences between men and women, it views them as a result of weakness or inferiority.

The **substantive model of equality** stresses the importance of equality in terms of opportunity and results. The focus is not only on the provision of resources, entitlements, and benefits to women, and whether or not they are able to access these opportunities, but also on the positive results and changes to the status of women. Equality of opportunity can only be achieved by creating the necessary laws, policies, and social practices. Equality of results occurs when the changes bring about women's equality. For example, a policy that supports women going to university may offer opportunities, but the real measurement of success is the substantive result of an increased number of women actually graduating from university. This model recognizes that men and women may be treated differently in order to achieve equality of opportunities, results, and benefits. CEDAW promotes the substantive model of equality.

### Key Terms: Equality

**Formal model of equality:** Assumes men and women should be treated exactly the same way.

**Protectionist approach to equality:** Assumes women need special protection because they are weaker.

**Substantive model of equality:** Assumes equality is only reached when a law, policy, or action indicates equality of outcome and that the results of the action demonstrate equality for both men and women.

**Stereotypical roles:** Assumes the attributes or behaviour of particular groups of people. Stereotypes are commonly negative and may simplify or exaggerate some or all features of said group.

**Transformative approach:** Policies and actions which eliminate inequality by ensuring access to resources or through affirmative action in the hopes it will result in positive change.

**Corrective approach:** Corrects or modifies existing behaviour or beliefs to ensure women are treated equally.

**Affirmative action:** This refers to special allowances which increase access or benefits for particular groups of people, for example, reserving seats in government for women.

CEDAW uses a substantive equality approach based on both a *de jure* and *de facto* equality between women and men. It is not enough to ensure laws promote equality, but also that those laws and ensuing practice actually affect equality and non-discrimination. The Convention recognises that despite legal rights granted to women in most States, their rights continue to be challenged by social and customary practices based on a **stereotypical** understanding of a woman's role in society. CEDAW also recognises that violations occur in public and private spheres and that States have a duty to address both, an example of which is to criminalize marital rape.

In ensuring substantive equality between women and men, CEDAW adopts the corrective and transformative approaches. **Corrective approaches** are based on the premise that women are in an unequal position due to experiences of discrimination, past or present, or that they face social, cultural, and political restrictions that limit the exercise of their human rights. An example of the corrective approach is found in Art 5 which requires that socially constructed differences, such as

traditional practices perpetuating women's subordination and perceived inferiority to men, should be modified. This is one of the more debated articles, as it appears to say that certain traditional practices should be eliminated to ensure women's human rights. However, Art 5 actually implies that actions treating women as inferior, such as the belief girls should not go to school, be modified to allow girls equal access to education. Notwithstanding, it is easy to understand how corrective approaches may be seen as a threat to a society's way of life and accordingly, how easily States can 'jam the brakes' on such approaches through reservations. As examples around the world demonstrate, it is all too simple to place political considerations ahead of women's rights.

CEDAW also adopts a **transformative approach** to equality thereby enabling equality of results by ensuring equal access to resources and benefits. This can be achieved through laws or policies which create the conditions enabling women to enjoy their rights and by affirmative action or special temporary measures.

### **6.5.3 State obligations under CEDAW**

As mentioned in Section 6.5 State parties to CEDAW are obligated to ensure laws and activities relating to women result in the elimination of discrimination. Like all other human rights treaties, they are duty bearers and have a political and moral duty to *respect, protect* and *fulfil* women's human rights. The obligation to *respect* obliges States to ensure they do not violate women's rights. *Protect* refers to the obligation to prevent violations by non-State actors (such as companies, schools, and individuals including spouses) and the duty to investigate, punish, and redress violations when they do occur. The obligation to *fulfil* refers to the State obligation to create enabling conditions for all women to enjoy their human rights.

Even as duty bearers, States can apply the wrong approach to a situation of inequality. It should also be pointed out that women and children are often placed together in some countries' national narratives with departments or ministries covering 'women and children's affairs.' However, this infantilises women and negates the specific issues or problems they face. Accordingly, classifications such as these do little for both women's, and for that matter, children's rights. Most importantly, such 'twinning' forgets that women are adults! As a result, this approach merely emphasises victimhood, does little to empower women, and disregards their agency.

### **6.5.4 CEDAW challenges**

Although the Convention is strong and innovative and was ratified by all Southeast Asian States, equality for women has not been achieved in the region. By ratifying CEDAW, governments were essentially expressing support for women's rights, whether they do so in practice is another matter. The reasons are partially historical. When CEDAW was ratified in the 1980s, the *Asian Values* arguments had not yet emerged to challenge equal rights. Religious lobbies held little sway at the UN as the Roman Catholic Church was not directly involved, and interfaith cooperation between the Catholic Church, Muslim States, and Evangelical Christianity had yet to come into being. Moreover, controversial issues like female genital mutilation and rape as a war crime were not yet being discussed. In other words, women's rights in the early days were a relatively safe and depoliticized topic.

Even though CEDAW is strong, gaps still exist in the Convention such as violence against women (VAW). CEDAW was eventually able to address this through CEDAW Committee General Recommendation No 12 of 1989, the *Declaration on the Elimination of Violence against Women* in 1993, and with the appointment of a Special Rapporteur on Violence against Women in 1994. Another gap is issues of intersectionality or women who suffer discrimination on the basis of sex and additional factors such as race, sexual orientation, or disability. Thus, a woman from an ethnic minority with a disability may face discrimination because of her gender, ethnicity, and disability.

The phrase, empowerment of women, is standard language at the UN, and is often prominent when advocating for women’s rights – however, the term itself is not found in CEDAW. The original language emphasized equality with men (Art 3) although, in practice, CEDAW is not used primarily for this. Basing discrimination on the objective of equality with men necessitates a comparison to men, defining equality in general as ‘being like a man.’ Limitations become apparent in cases where there are no significant males to refer to, for instance, few, if any, male migrants seek domestic work as compared with their female counterparts. As a consequence, many women’s rights advocates do not use comparison or equivalence in rights as this simplistic understanding fails to take into account the differentiated conditions of women.

## 6.6 Protection Mechanisms for Women’s Rights

The UN has established a number of bodies to protect women’s rights. Mechanisms at the regional level also exist in ASEAN. The Optional Protocol allowing for complaints and investigations is one such example. Yet another is the Women, Peace and Security (WPS) agenda. The UN Security Council (UNSC) also passed Resolution 1325 on the WPS agenda in 2000, to protect women and girls in armed conflicts, insisting on the effective and sustained participation of women in all peace-building efforts and in relief and recovery efforts. Together with 10 subsequent resolutions (collectively forming the global WPS agenda), the UNSC made it very clear that women’s rights should be upheld and protected even during armed conflicts. For example, the body identified and labelled rape as a war crime (UNSC Resolution 1820) having been moved to do so by instances of the brutal rape of women and children in war zones. Similarly, in December 2022, ASEAN adopted the ASEAN Regional Plan of Action for Women, Peace and Security (ASEAN WPS RPA) in Phnom Penh, Cambodia.

### 6.6.1 Treaty body protection mechanisms: The Optional Protocol

An Optional Protocol to CEDAW (OP-CEDAW) was adopted in October 1999 and came into force just over a year later in December 2000. While not creating new rights, it outlines a procedure for people to claim their rights. As such, as the first gender specific complaints procedure adopted, it improves the existing protection mechanisms for women’s human rights. Currently, it has been ratified by 107 State parties. In Southeast Asia, only four have ratified the OP-CEDAW, as seen in Table 6.1 below.

**Table 6-1: CEDAW Optional Protocol Status**

State Parties	Date of Ratification
Brunei	-
Cambodia	13 October 2010
Indonesia	28 February 2000 (signed only)
Lao PDR	-
Malaysia	-
Myanmar	-
Philippines	12 November 2003
Singapore	-
Thailand	14 June 2000
Timor-Leste	16 April 2003
Vietnam	-

The OP-CEDAW establishes two procedures:

- A *communications procedure* through which the CEDAW Committee can review complaints filed by an individual or group of individuals seeking redress for specific violations resulting from an act of omission by the State party. As of 31 January 2020, 155 communications had been registered by the Committee, which had found violations of the Convention in 32 cases. The Optional Protocol allows the CEDAW Committee to recommend a range of remedies such as compensation and reparation for individual victims as well as more general recommendations to the State party for structural or systemic changes that should be implemented to prevent recurrence of the violation.
- An *inquiry procedure* through which the CEDAW Committee can issue comments and recommendations on grave or systematic violations of rights. A grave violation refers to violent or abusive violations. The term ‘systematic’ refers to the scale or prevalence of a violation, or to the existence of a scheme or policy causing the violations.

### **Spotlight: Security Council Resolution 1325 or the Women, Peace and Security (WPS) Agenda**

Gender equality has been recognised as a core principle of human rights in many foundational legal texts. In 1945, the UN Charter affirmed its faith in “*fundamental human rights’ including the equal rights of men and women.*” The Universal Declaration of Human Rights sets standards that explicitly apply to every human being

*without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

And as mentioned earlier, CEDAW went farther by defining gender-based discrimination. However, the Balkan and Rwandan crises drew international attention to the disproportionate suffering of women and girls during conflict and post-conflict situations. The widespread use of rape as a weapon of war saw women’s and humanitarian groups from across the world lobby leaders to do something to protect women and girls, in particular, demanding a role for women in peace negotiations and post-conflict actions. The strength of this advocacy coupled with increasing news of appalling and brutal conditions in war-torn regions, prompted the UN Security Council (the body responsible for international peace and security) to release a statement that “peace is inextricably linked with equality between men and women.” On 31 October 2000, this led it to pass Resolution 1325 on Women, Peace and Security which formally recognises the importance of gender equality in achieving international peace and security. Together with 10 subsequent resolutions, these became what is now known as the WPS agenda.

**Adapted from:** Oudraat, C, and Brown, M, ‘Gender and security: Framing the agenda’ in Oudraat, C, and Brown, M (eds), *The Gender and Security Agenda: Strategies for the 21<sup>st</sup> Century*, London and New York: Routledge, 2020, at pp 1-27.

## Reflection and Discussion: Individual Communications Procedure under Optional Protocol

In a case submitted to the CEDAW Committee under the individual communications procedure, Karen Vertido claimed the Republic of the Philippines violated her rights when the courts found her rapist innocent of rape charges because she did not escape from him. Karen Vertido filed rape charges in 1996 against Jose Bautista Custodio, but in 2005, he was acquitted. The court said Karen Vertido

*had the courage to resist the advances of the accused [and] does not appear to be a timid woman. The Court could not understand why she did not escape when she appeared to have had so many opportunities to do so.*

The court's decision, which blamed the victim for not escaping rather than punishing the rapist, is based on a stereotype that some women who are raped 'ask for it' by dressing seductively, or in this case, not escaping from her perpetrator. According to the Committee, Karen Vertido's rights to equal protection of the law and to an effective remedy were violated.

The case above highlights a vital distinction between educated and uneducated women. Karen Vertido was clearly an educated individual who was aware of the legal options available to her. Women who lack education, resources, and support from their communities will not be able to avail themselves of such international legal procedures.

**Question for reflection:** How can these forms of support be made available to the millions of women suffering twice over, once by the perpetrators of violence, and again by being denied equal protection in a court of law?

### 6.6.2 ASEAN mechanisms

ASEAN held a Women Leaders Conference in 1975 (during the UN's Year of the Woman), and established what is now the ASEAN Committee on Women the following year. In 1988, the ASEAN Foreign Ministers approved the *Declaration on the Advancement of Women in ASEAN* and in 2002, the *Declaration on the Elimination of Violence against Women*. An ASEAN High Level Meeting on Gender Mainstreaming in 2006 also adopted a *Joint Statement and Commitment to Implement Gender Mainstreaming*. Moreover, an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was formally established on 7 April 2010, some time after the first call for its establishment in the 2004 Vientiane Action Program. The ACWC is an intergovernmental commission made up of 20 representatives nominated from the ten member States in ASEAN (two representatives from each State, one in women's rights and another in children's rights). The ACWC's primary purpose is to promote the human rights of women and children in ASEAN. In other words, it lacks the ability to receive or investigate human rights violations, being basically a promotion, not a protection, body. But here too we see the coupling of women and children as if they face similar issues of rights violations. Thus, ASEAN itself is also guilty of placing women in a victim narrative and removing their agency thereby enabling a paternalistic attitude towards protecting women – another patriarchal method of operation.

As a result of decades of political engagement in the ASEAN region for the protection of women against violence, as expressed by the *Declaration on the Elimination of Violence Against Women in the ASEAN Region (2004)*, and the *ASEAN Regional Plan of Action on the Elimination of Violence against Women (2015)*, ASEAN leaders also adopted the *Joint Statement on Promoting WPS* in the region in 2017, focusing on violence against women in armed conflict and women's role in peacebuilding. In addition, the *ASEAN Ministerial Dialogue on Strengthening Women's Role for*

*Sustainable Peace and Security in 2020* further drove integration of the WPS agenda across the three ASEAN community pillars, which are: Political-Security Community, Economic Community, and Socio-Cultural Community. Along these lines, ASEAN also established the *ASEAN Women for Peace Registry or the AWPR*, in 2018. The ASEAN WPS RPA, mentioned earlier, is the latest regional effort to further acknowledge and increase sensitivity to the effect of conflicts on women and girls whilst also acknowledging women's role in conflict prevention and peacebuilding.

### **Spotlight: The ASEAN Women for Peace Registry (AWPR)**

ASEAN's 2017 *Joint Statement on promoting the Women, Peace and Security agenda* highlights its commitment to greater inclusion and consultation with women and is very welcome considering it is one of the last regional bodies to adopt this agenda. In particular, it recognised the disproportionate suffering of women in armed conflicts and acknowledged that the root causes of conflict are often social injustice, gender inequality, and the economic exclusion of some communities, especially vulnerable women. This could be linked to the underlying reasons for radicalisation and violent extremism. The ASEAN Women for Peace Registry was launched on 13 December 2018 in Cebu City, Philippines. The idea took root at an ASEAN Institute for Peace and Reconciliation (AIPR) workshop in 2015 which discussed the role of women in peace and peacebuilding. Participants recommended creating a peace registry made up of female peacebuilders and mediators which came to fruition three years later. The registry is a means to take stock of regional women experts in peace processes, in accordance with the purposes and principles of the ASEAN Charter. The registry is also in line with AIPR's pursuit of pooling expertise and supporting ASEAN bodies in larger efforts towards peacebuilding. The AWPR would be the latter's contribution towards ASEAN's goal of promoting the WPS agenda in the region. Built from regional expertise in social activism, academia, government, and the armed forces, the registry hosts women representatives from all 10 Member States, working as women peacebuilders, human rights defenders, and human rights and peace educators.

## **6.7 Women's Human Rights: Contemporary Concerns**

As this chapter so far has highlighted, there are many areas of concern for women's rights. The remainder of this chapter will discuss four: (1) violence against women; (2) women in politics; (3) women in the labour force; and (4) women in digital spaces.

### **6.7.1 Violence Against Women**

Women face violence at home, work, and in public at a much higher rate than men. Only in recent years has much of it even been considered a crime. Previously a husband beating his wife was considered a private matter and was socially acceptable in many cultures and communities. Similarly, there were no laws against a husband raping his wife (marital rape) in Southeast Asia. However, in recent years, the response to these violations in law and social behaviour has significantly changed. Although people and organizations in the late 1800s and early 1900s did provide shelters for 'battered women,' little was done to protect this group as a whole. With the coming into force of CEDAW, there was more recognition of the violations caused by **Violence Against Women (VAW)**, although again this term was not used in the Convention. Around this time too, the term **domestic violence** entered the public lexicon to replace such terms as battered women or wife abuse. More recently still, the term, **Gender-based Violence (GBV)**, is now commonly used. Such violence includes not only women but anyone on the basis of their gender. These three concepts will now be examined.

## Key Terms: Violence Against Women

**Violence against women (VAW):** Covers any form of violence directed at women simply because they are women.

**Domestic violence:** Occurs in the home and can include gender-based violence (GBV), VAW, and violence against children. Domestic violence is the term most commonly used in national laws.

**Gender-based violence or GBV:** Is defined as violence someone faces because of their gender, more commonly because they are not complying with gender normative roles, and is often based on an abuse of power between genders. While the group of concern is women, anyone can be a victim of GBV, including men or boys who, for example, are not considered masculine enough.

VAW appears in General Comments 12 and 19, and in the *UN Declaration on the Elimination of Violence Against Women* (1993) which defines VAW as:

*any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Art 1).*

As the preamble states, VAW is a result of

*a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions compared to men.*

In this sense, VAW is not an act of violence alone, but also a mechanism of disempowering women. However, it is important to note that although VAW is mostly committed by men, women also perpetrate violence against each other. When communities and cultures tolerate such behaviour, they are perpetuating women's inequality in society. Complicity can also be found in State and social institutions (such as the political leadership, police forces, educational institutions, society, and communities) which may do little to stop the violence.

Domestic violence may take many forms. While physical and sexual violence against women is significant, it can also include economic and emotional abuse. Economic abuse is when one partner controls the financial resources resulting in the other losing economic security and being coerced into activities against their will. The worst forms of domestic violence in Asia are honour killings, where a woman is killed for bringing 'dishonour' to the family by, for example: having a boyfriend; dowry deaths where a wife is murdered for the dowry promised to the groom's family; and acid attacks where acid is thrown over a victim's face to disfigure her, often because she has embarrassed a man or rejected his advances. All Southeast Asian countries except Brunei and Myanmar have specific domestic violence laws. Malaysia was first with its Domestic Violence Act of 1994 which protects both females and males, and covers either spouse, a former spouse, children and incapacitated adults, or any member of the family who is subject to violence in a domestic situation. The remedy of protection orders can be issued by the courts to restrain violence and other actions such as entering the protected person's place of residence, school or other institutions, and communicating with the protected person.

The 2004 Philippines' Violence Against Women and Their Children Act (RA 9262) covers domestic violence and updates the criminal code for crimes involving an intimate relationship. The legislation covers physical, sexual, psychological, and economic abuse. The victims of violence include a wife, former wife, or a woman with whom the person has or had a sexual or dating relationship with, or with whom he shares a child with, or her child whether legitimate or illegitimate. Under the law, VAW and children is considered a public offence, which means that a complaint may be filed by any citizen who has personal knowledge of the circumstances involved in the perpetration of the crime. Also in 2004, Indonesia enacted a *Domestic Violence Law* while most recently, legislation was passed in Thailand (2007) and Vietnam (2007).

The weaknesses of domestic violence acts often stem from the fact they fail to give full protection from different forms of violence. Some only cover marriages so exclude girlfriends, ex-wives, or gay people. The laws also vary in the kind of protection they offer. While some legislation provides shelters and counselling to victims, others do not. The other major concern is enforcement of the laws. Many cultures and communities still see domestic violence as a private issue, best left to the family to resolve. While a woman may go to the police for help, she could be sent back to her husband as the police may think domestic disputes are not within their purview, or they may consider protecting the wife will embarrass the husband and his family, or they could even judge the violence not severe enough to take further action. Unfortunately, these patriarchal and misogynistic responses are ill-considered in both fact and practice because most female victims are murdered not by strangers but by their husbands or intimate partners. While the rate varies across the region, the family home can be more dangerous for some women than public spaces. Nothing revealed this more than the COVID-19 pandemic when abused women were locked in with their abusers with little chance of fleeing to safe houses or making contact with the outside world.

### **Reflection and Discussion: Violence Against Women**

In March 2015, Farkhunda Malikzada was brutally killed outside a shrine in the centre of Kabul. Farkhunda, a religious studies student, had stopped at the shrine on her way home when she found the shrine's attendant selling charms she considered un-Islamic. After she criticized the attendant for selling the trinkets, he accused her of having burnt the Quran. A group of men who had gathered to watch the argument started beating and kicking Farkhunda and finally burnt her alive. Watching police did nothing to save her life.

#### **Discussion**

Afghanistan, where this incident occurred, is a party to CEDAW. It seems that the protection outlined in international human rights treaties and even national legislation (which Afghanistan had for the protection of women and girls) did little to protect Farkhunda.

How can States, as duty bearers, negotiate the terrain between "Western 'liberal' ideas" (as the origins for women's rights, as contended by many in the non-Western world), and deeply entrenched cultural misogyny to protect women?

#### **6.7.2 Women's political representation**

One of the top priorities at UN Women has been women's political representation. In 2011, the UN General Assembly passed a resolution calling on all countries to increase the number of women at all levels of political decision-making, including progress monitoring and trainings, and to improve media coverage on the issue. Data on women's participation shows their significant under-representation: in 2012, women constituted a mere 19.5% of elected parliamentarians in countries around the world. Only 21 women are heads of State or government out of around 200

governments. And only one in five (1 in 5) parliamentarians are female. Similarly, less than 10% of peace negotiators are women.

Even though few Southeast Asian women are represented in politics, they are beginning to take on more visible roles. For example, in Thailand, social commentators have noted more female district chiefs and provincial governors. Despite this, women face additional challenges when running for election across the region. Electoral systems are often biased in favour of men who can raise more campaign funds, travel more freely, and are better connected to the police and armed forces. Access to funds is a significant challenge because again male politicians are more likely than women to have connections to (often male) high-ranking senior executives in the corporate and finance worlds. Further, male politicians can raise their political profiles through strategies such as ownership of sports teams. While these options might technically be available to women, female candidates rarely venture into such areas. Moreover, female ownership of a popular team could very well lead to a violent backlash due to stereotypical thinking that women know nothing about sports. Also, in countries where the military plays a significant role in politics such as Thailand and Myanmar, women will be automatically excluded. Those who do reach positions of leadership more often than not boast some connection to prominent males, whether they be husbands, fathers, or brothers, etc. Myanmar's military-reserved seats are almost a *de facto* reservation for male politicians. Although voter reluctance to elect women is on the decline, it is still significant enough to impede the rise of female political leaders. Notwithstanding, female politicians climbing up the ranks may only be able to do so by toeing the party line and championing traditionally male leadership concerns such as finance, trade, unions, energy, and defence. It is highly unlikely that women championing social causes such as education or societal inequalities will win votes easily, especially in patriarchal systems of governance. At the same time, having women candidates can be a great optic for political parties seeking to win female votes.

### **Reflection and Discussion: Women's Political Participation**

In Southeast Asia, Indonesia and East Timor are the only countries maintaining electoral quotas for women in the lower house. By contrast, some political parties in Thailand and the Philippines voluntarily implement quotas. In South Asia, however, quotas are much more common. For example, a Women's Reservation Bill has been adopted in India that would reserve 33% of the seats in the Lok Sabha (lower house of parliament) and state legislative assemblies for women. Likewise, Bangladesh, Afghanistan, and Pakistan also reserve seats for women. The gender disparity in these countries is particularly glaring so some formal or legal intervention is likely necessary to reserve seats. However, it should be noted that such measures do not necessarily lift women up in terms of leadership as these women often end up being proxy representatives for more powerful men.

In Singapore's most recent (2020) election, an unprecedented number of female candidates (from both the ruling and opposition parties) won parliamentary seats. Although the city-state has no specific institutional mechanisms to increase the proportion of women in law enforcement agencies, the judiciary, the military, diplomatic missions, or international or regional organizations, increased female participation in politics may be the result of women reaching greater heights in education and being both more socially aware and cognizant of their rights as individuals. At the same time, it could be argued that Singaporean society itself is maturing and moving away from traditional mindsets, and is thus more willing to accept women as leaders – but how these women will fare remains to be seen. For now, they are not overtly fighting for women's rights, but are instead toeing party lines.

### **Question for discussion**

It has to be said that more elected female politicians does not necessarily result in greater representation of women's causes or rights. Often, they merely provide good optics to the parties they belong to. This being the case, a fundamental shift in understanding political representation is surely necessary. While increasing the numbers of female representatives may be relatively easy, the bigger struggle may be the fight for equality at higher levels of government.

Discuss this in light of female political leadership in Southeast Asia.

### **6.7.3 Women at work**

Equality for women in the realm of economic rights is still a long way off. While all Southeast Asian countries have enacted legislation against discrimination in the workplace, and equal pay for equal work is also protected in law, significant economic disparities between men and women still exist. Why? One reason could be that only men are generally considered 'heads of household' which some see as a form of economic violence against women. Indeed, the CEDAW Committee has called out States for this. Such patriarchal thinking merely implies women's earnings are supplementary to their husband's incomes as opposed to being seen as independent workers in the labour market. One key area for further investigation concerns the connection between VAW and women's economic insecurities. This was especially relevant in the global pandemic as lockdowns and the closure of economies revealed unprecedented adverse impacts on the working lives of women. Economic security can influence other kinds of human insecurities (such as health, food, political, and individual), all of which allow women a level of freedom. Moreover, economic security prevents further victimization through forced prostitution, slavery, human trafficking, and a host of other vile operations women may be forced into just to survive both during and after crises of this and lesser ilk. But the type of economic opportunities provided are also key for under the guise of financial independence and 'empowerment,' further violence may be perpetrated through skewed power relations in the workplace.

Although women's labour participation has increased in the last decades, their responsibilities at home have not lessened. The majority of women continue to assume multiple burdens in doing housework, and caring for children, the sick, and the elderly whilst also earning a living for the family. In most instances, they may also be involved in community work as an extension of their household responsibilities. Another reason is that women often work in lower paying and insecure jobs such as cleaners in the hospitality and service industries. For example, while many women may serve in convenience stores, few are owners or managers. Compounding these problems are other inequalities such as access to education and sexual harassment in the workplace.

Not surprisingly then, according to a 2022 UN Women's report, it will take 286 years for the world to achieve gender equality at the current rate of progress. Likewise, the World Economic Forum estimates it will take 132 years to close the global gender gap. Realising women's economic security and their human rights are not necessarily two distinct concepts helps to set the issue in a more useful light because women's economic rights *are* human rights and if their security is aligned towards a human-rights framework, wider conversations around women's insecurities become more likely. This bolsters the need for a comprehensive security perspective to help address such insecurities.

## Spotlight: COVID 19 and Women's Economic Security

*Note: The following segment is adapted from an article written in 2020 at the height of the COVID-19 pandemic.*

The global outbreak of COVID-19 is having a significant impact on the economic security of women. In the Asia-Pacific, 68% of employed individuals work in the informal sector including tens of thousands of women working in the domestic sector, for family members, or in seasonal agricultural work. Moreover, women are generally employed in industries most adversely affected by such crises like travel, hospitality, textile manufacturing, and retail sales. In addition to the gender wage gap and lack of advancement opportunities, the over-representation of women in these vulnerable forms of work also heightens their susceptibility to poverty. For example, in Thailand and Cambodia, more than 60% of women are either not covered or do not know if they are covered by health insurance, further increasing their health and economic insecurities. Thus, this lack of formal employment inhibits their access to social and legal protection mechanisms which is proving to be particularly concerning in the current pandemic. Moreover, the higher mortality rates of men has meant an increase in the number of female-led households in some areas. This can be especially impactful when issues of employment, access to resources, and land ownership are not easily transferred to women. While some governments have made efforts to bolster the economic impact of lockdown measures via stimulus packages, these may not be reaching all equally. Malaysia has unveiled substantial economic stimulus packages since COVID-19 including financial assistance for small and medium-sized enterprises (SMEs) amounting to MYR11.8 billion. However, only 30% of SMEs who obtained their financing from banks and government agencies were eligible. With women-owned SMEs only accounting for approximately 20.6% of the total, this assistance is obviously limited.

The COVID-19 outbreak also increases women's burden of unpaid care and domestic work. According to the International Labour Organization (ILO), women spend on average 4.1 times more time than men in the Asia-Pacific on unpaid care and domestic work. This figure is likely to have further increased in the COVID-19 era with the closure of schools, day-care, and eldercare homes. Moreover, in areas where healthcare systems are stretched, any extra care responsibilities relating to the family tend to be delegated to women. This in turn, further limits women's work opportunities and increases their economic insecurity. However, in a rather ironic twist, these measures also seem to be driving some amount of change in the unequal distribution of household domestic and care work. According to a survey by UN Women, men and boys have been taking on more responsibility at home since the start of the pandemic with more than half of women surveyed in all countries stating their partners had helped more at home. Overall, however, women and girls are still spending significantly more time on care and domestic work during this period. Exacerbating the situation, once the immediate health crisis is over, it is very likely the economic impacts will linger for years to come. The scarcity of jobs, unequal remuneration in times of hardship, and societal gender norms may lead women to feel obliged to give up paid employment for unpaid care and domestic work at home. As such, without broad support from policymakers, the pandemic may increase the risk of 'rolling back' the meaningful gains achieved by women as regards their participation in the formal labour force. As for the millions of female workers in the informal sector, life will remain difficult.

**Adapted from:** Nanthini, S, and Nair, T, 'COVID-19 and the impacts on women' NTS Insight, No IN20-05, Singapore: RSIS Centre for Non-Traditional Security Studies (NTS Centre), Nanyang Technological University Singapore, 2020.

## Reflection and Discussion: Equality at Work

Southeast Asia has recently seen some landmark rulings regarding women's rights.

In the Philippines, 600 flight attendants filed a suit challenging the legality of a policy mandating women flight attendants retire at the age of 55 as opposed to their male counterparts who could retire at 60. In July 2010, a Philippine trial court issued an injunction against the policy, deciding it was discriminatory towards women.

In Malaysia, a teacher was prevented from applying for a teaching post because she was pregnant. Her suit was heard in the High Court of Malaysia in July 2012 which based its judgment of gender-based discrimination on CEDAW, treating it as binding law. Therefore, the judges found that the restriction imposed on pregnant women was discriminatory and unjust.

### Question for reflection

Although the above cases were successful in redressing the balance, many women, including those serving at higher levels of both public and private sectors, do not receive equal remuneration with male counterparts. Do punitive measures against women for taking time off work for family/maternity leave/caregiving have any relevance to today's industries and economies which require more inclusive labour forces for greater growth and development?

## Key Term: Feminization of Labour

This refers to the structural changes in the economy and production leading to an increase in women in the labour force, mainly in factories.

Globalization has caused many changes to women's position in the labour force. However, the feminization of labour is a double-edged sword – whilst many more women have entered the labour force, they are often restricted to lower paying jobs. The increase of migrant labour has also meant more women are crossing boundaries to work, especially from the Philippines and Indonesia. While these changes can give women better access to economic resources, if access to credit and control over assets is unequal, women will continue to face economic challenges.

### 6.7.4 Women in digital spaces

The impact of digital technology and its connection to women's rights is a serious policy blind spot. As in the physical realm, the idea of women's equality and particularly their safety and well-being, has been vastly under-scrutinised. Again, just as they are in the physical realm, gender inequality and gender-based violence in the digital world are surely indicators of a more widespread social ill. Yet, a lack of governance in this area demonstrates little action has been taken to address it. Indeed, this gap in policy discussions has been left relatively untouched due in no small part to limited data on women's presence in, and usage of, digital spaces. How much do we know about women's usage and the types of obstruction and/or harassment they face there?

There are as many reports, blogs, articles, protests, and even laws against threats or harassment of women online as there are actual incidents of violence. Yet, such unlawful and hateful activities have not abated despite the clamour from women's groups or human rights advocates. This is evidenced by the suicides of several prominent female artists as a result of cyberbullying, incidents of 'revenge porn' being spread online by disgruntled former or current intimate partners, and

death threats and hate speech with a particular feminist slant, all directed at women for exercising freedom of expression on social media platforms. The online space, then, has become an extension of the physical world with inequality and discrimination now being diffused through technological boundaries. Thus, while we may assume technology to be gender neutral, it becomes obvious that it is in fact highly gendered and was from its very inception. The creators of current digital technologies did not create platforms with safety in mind simply because safety was never an issue in their predominantly male world. The social context within which such technologies are created and embedded is exactly where misogynistic behaviour resides and so it is unsurprising that women and girls continue to face old threats, albeit in new places.

VAW includes suppression of one's freedom of speech and expression, breach of dignity, and violation of privacy. Added to failures of law enforcement, that 74% of all countries despite passing or having passed legislation on cybercrimes, lack adequate mechanisms to effectively address online VAW is disappointing because examples of such violence abound in digital spaces.

## Reflection and Discussion: Women in Digital Spaces

### Case Study 1

With one of the highest COVID-19 counts in Southeast Asia, the Malaysian government also caused much hilarity and a serious public relations incident after the Ministry for Women, Family and Community Development advised women to help with the partial lockdown by not nagging their husbands, dressing up and wearing makeup when working from home, and to refrain from being “sarcastic” when asking for help with household chores. They did this by releasing a series of online posters on Facebook and Instagram with the hashtag #WomenPreventCOVID19. Needless to say, these posters promoted the concept of gender inequality and patriarchy.

**Adapted from:** Sullivan, M, ‘Don’t nag your husband during lockdown, Malaysia’s government advises women’ NPR, 1 April 2020, available at <https://www.npr.org/2020/04/01/825051317/dont-nag-your-husband-during-lock-down-malysias-government-advises-women>, accessed on 24 June 2023.

### Case Study 2

In recent years, local media in Singapore helped bring several high-profile incidences of sexual harassment to light, including a 2016 case when a 28-year-old woman was subjected to text messages containing sexual advances made by a senior officer with the Singapore Civil Defence Force. As a result of her police report, he lost his job and was later charged in court with one count under the Protection from Harassment Act or POHA.

Additionally, several articles appeared to feature an employee of MediaCorp, Singapore’s State-owned media conglomerate, who has since been dismissed for making inappropriate remarks to a producer. Such reporting helps increase awareness and accountability, but workplaces and institutions still need to be more proactive. The #MeToo movement has also prompted more companies in Singapore to take an interest in the topic of workplace harassment.

**Adapted from:** Amour-Levar, C, ‘The #MeToo movement in Asia: Is Singapore feeling the Weinstein effect?’ Forbes, 17 December 2017, available at <https://www.forbes.com/sites/christineamourlevar/?sh=50484a09a5e0>, accessed on 24 June 2023.

### Question for discussion

The use of digital media has been a democratising and whistleblowing tool as revealed by Case Study 2 above, as well as an instrument to perpetuate State-generated gender stereotypes and discrimination as seen by Case Study 1. Is it possible to govern this space so the rights of women users are not violated? Discuss.

## 6.8 Conclusion

This chapter examined the cultural and institutional reasons for discrimination against women. CEDAW is the main human rights treaty working to combat such discrimination, and its ratification throughout Southeast Asia would seem to indicate States *are* addressing the issue. However, the region is deeply entrenched in its (mostly patriarchal) cultural and traditional values meaning there is still much work to be done before women are treated equally. Although only the sectors of work, politics, and (physical and online) violence were discussed in this chapter, many other areas of concern were not mentioned including reproductive health, education, religion, and most currently, the impact of climate change.

### A. Chapter Summary and Key Points

#### Introduction

Women are rarely, if ever, given the same opportunities as men. Women face discrimination in many areas including work, education, culture, and health. The history of the women's rights movement focuses on women's suffrage and the rise of feminism in the 1960s, but the struggle for women's equality has a longer history. Since antiquity, through the European enlightenment, to contemporary times, women have been active members of society. In Southeast Asia, early activists worked on improving education, voting, and welfare rights. The modern women's liberation movement was influential in making 1975 the UN's International Women's Year and in hastening the adoption of CEDAW in 1979.

#### Defining Discrimination

Discrimination often confuses the concepts of sex (or a person's biology) and gender (or a person's societal role and expectations as a male or female). Sex is biologically determined, although recent scientific studies have shown a body is not always either male or female. Gender denotes the attributes and traits, many linked to traditional values, that men and women are expected to adhere to. There is a general assumption that people of a particular sex will automatically play the gender role associated with being male or female. This can be disempowering for women as they are expected to be nurturers and caregivers over being active in, for example, politics or business. Such roles are socially constructed and supported by institutions such as the family, schools, workplaces, and religion. Men and women failing to conform to these gender norms may be subjected to various forms of discrimination, social pressure, shame, or even abuse.

#### CEDAW

CEDAW defines discrimination and identifies where governments should focus their efforts to achieve equal rights for women. Most opposition to CEDAW concerns rights which are deemed to clash with culture and religion, especially as regards the family and marriage. CEDAW asks States to modify laws to incorporate the principle of non-discrimination in all fields including culture, women's access to justice, and to accelerate equality. Although CEDAW is widely ratified, it has more reservations than any other Convention. Discrimination in CEDAW comprises three elements: some kind of distinction, exclusion, or restriction, which is based on sex, with the result that a woman does not get equal human rights. Discrimination can occur in two ways: as a product of laws (*de jure* discrimination) or discrimination in fact or reality (*de facto* discrimination). State parties must ensure that actions and laws result in the elimination of discrimination.

#### Concept of Equality in CEDAW

The formal model of equality is based on the argument that men and women are the same and therefore, should be given the same treatment. The protectionist approach to equality means women are restricted from doing certain types of work or activities for their own protection.

The substantive model of equality (as used by CEDAW) sees equality in terms of opportunity and results. CEDAW also outlines some corrective approaches which requires States to correct practices perpetuating women's subordination and inferiority. However, CEDAW is somewhat weak in its provisions on violence against women, issues of intersectionality, and in promoting the empowerment of women.

### **Protection Mechanisms on Women's Rights**

The protection of women's rights at the international level is found in the Optional Protocol to CEDAW which outlines a communications procedure for individual complaints. A number of programs, offices, and agencies have been established within the UN such as UN Women in 2010, the Commission on the Status of Women founded in 1946, and the UN Inter-Agency Network on Women and Gender Equality.

While some goals of these women's organizations have been accepted, progress has been slow towards the goals of female empowerment, reproductive rights, and VAW.

### **Violence Against Women**

Women face violence at home, work, and in public at a much higher rate than men. The term, VAW, covers all forms of violence, although more recently, domestic violence has been used to refer to partner violence, and gender-based violence covers acts perpetrated against people not complying with their gender roles. VAW is both an act of violence and a mechanism for disempowering women. When communities and cultures tolerate VAW, they ensure women cannot gain equality in society. Violence is socially constructed and is often utilized as a punishment against those not conforming to gender values. Domestic violence may include physical, sexual, economic, and emotional abuse. While nearly all Southeast Asian countries have domestic violence laws, these are generally weak and lack full protection for all forms of violence. In addition, they are not strictly enforced. Other instruments seek to protect women and girls, prevent such violence, and encourage women's participation in peacebuilding and post-crises restoration efforts – all of which comprise the WPS agenda. Starting with Resolution 1325 in 2000, and with 10 more added in the years since, the WPS agenda looks to preserve women's rights and welfare in the context of conflicts and in rebuilding and recovery post-crisis situations.

### **Women's Political Representation**

Political representation is one of UN Women's top priorities as women are significantly underrepresented in Southeast Asian governments. The challenges include that men are able to raise more money, travel more freely, and are better connected to the police, armed forces and, private industry than women. While some countries retain electoral quotas for women, debate exists on their feasibility and outcome in terms of democratic representation.

### **Women at Work**

Women do not have equality in economic rights. They are paid less, work more, and do not get equal access to credit, income generating resources, and inheritances. Moreover, women tend to work in low paid and insecure jobs and also lack protection from sexual harassment in the workplace. Furthermore, women may be dismissed after getting pregnant, or be given insufficient maternity leave. Globalization changed the face of labour by encouraging more women to enter the workplace. In addition, an increasing number migrated for work, which has both positive and negative consequences.

### **Women in Digital Spaces**

Violence against women or VAW can and does occur in the digital world as it does in the physical realm. However, little attention is paid to this when dealing with cybersecurity policies. As such,

online spaces have become an extension of the physical world with gender inequality and violations of women's rights rampant there, breaching technological boundaries. Digital technologies are generally created by men, and as a result, fail to take the safety and security of women and girls into consideration. Thus, more women need to create digital technology to ensure such matters are not ignored.

## B. Typical Exam or Essay Questions

- Do you think the physical differences between men and women justify some different treatment? If yes, why?
- Are there any circumstances where gender normative behaviour is beneficial to women (and men) and society at large?
- Culture and religion are justifiable reasons to attach reservations to CEDAW provisions. Discuss. How then would you draw the line between the cultural relativism argument and protecting the fundamental human rights of women?
- The purpose of repealing penal codes that criminalise homosexuality is to prevent State intrusion into the private lives of citizens. Following this line of reasoning, is the crime of marital rape also an example of State overreach?
- Two reasons explain why cybercrime against women persists: the impunity and anonymity of perpetrators. Such crimes are difficult to convict due to jurisdictional concerns as targets and perpetrators may be located in different countries. Discuss how ASEAN could combat online VAW. Consider both legal and socio-cultural options.

## C. Further Reading

Many authors write about feminism but those concentrating specifically on women's human rights include:

- Charlotte Bunch
- Maria Tanyag
- Vandana Shiva
- Maria Mies
- Vera Mackie

### International organizations with programs and research on women's human rights

- UN Women: available at <https://www.unwomen.org/en>

### Asia-based organizations working on women's rights

- Asia Pacific Forum on Women, Law and Development (APWLD): available at <https://apwld.org/>
- Asian-Pacific Resource and Research Centre for Women: available at <https://arrow.org.my/>
- Human Rights Resource Centre, University of Indonesia: available at [hrrca.org](http://hrrca.org) and <https://www.facebook.com/people/Human-Rights-Resource-Centre/100067496001123/>
- International Women's Rights Action Watch Asia Pacific (IWRAP, Asia Pacific): available at <https://www.iwraw-ap.org/>
- ASEAN Institute for Peace and Reconciliation: available at <https://asean-aipr.org/>

### **Sites with a specific focus**

- Violence: Stop Violence Against Women (STOPVAW), a project of the Advocates for Human Rights (available at <https://www.stopvaw.org/#:~:text=Home&text=The%20Stop%20Violence%20Against%20Women,Information.>)
- Economics: EmpowerWomen.org, a global community advancing women's economic empowerment
- Women in STEM: <https://www.stemwomen.com/>, which hosts networking and careers events for STEM students
- Cybersecurity: Women in cyber security in the Middle East, which promotes and increases female participation in the field of cyber security (available at [www.womenincybersecurity.me](http://www.womenincybersecurity.me)); and Cyberwomen, a guide offering trainers the tools to provide training to human rights defenders from a gender perspective (available at <https://cyber-women.com>)

# Chapter

# 7

## Children's Human Rights\*

### Reader's Guide

This chapter provides an overview of children's rights at the international and regional levels with a special focus on Southeast Asia. Beginning with a history of children's rights in the 20<sup>th</sup> century, it offers an in-depth look at the UN Convention on the Rights of the Child (CRC) and its optional protocols. Attention is given to specific thematic areas: violence against children, the right to education, juvenile justice, child labour, children in armed conflict, and the right of adolescents to reproductive health. It then examines how Southeast Asian nations have initiated policy changes and incorporated legal reforms. In particular, the use of case studies and practical exercises examines how well States are fulfilling their commitments under the CRC. However, despite some progress over recent decades (especially around education and healthcare for children), the socio-economic, cultural, and political climates in many countries in the region mean the protection of children's rights has not been entirely straightforward.

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\* The chapter for the first edition was prepared by Elizabeth Aguilin-Pangalan, Faculty of Law, University of the Philippines and Michael (Mike) Hayes, Institute of Human Rights and Peace Studies, Mahidol University. It has been updated by Mark Capaldi, Institute of Human Rights and Peace Studies, Mahidol University.

## 7.1 The Rights of Children

While parents may always love their children, opinions on how they should be protected, what rights they should have, and what type of work they can do, change according to how society views the notion of childhood. Centuries ago, it was acceptable for young people to engage in hard labour, face criminal charges as adults, and enter into marriages. Throughout Southeast Asia, it was common for children as young as five to labour in the fields, while European children of the same age worked in mines and factories. There was no minimum age for marriage, and many girls entered into marriages with adult men, giving birth at the age of fourteen or fifteen. A child committing a crime could be found guilty, jailed, or even executed. Why were children treated this way? Not because society disliked them, but because they were seen as adults and therefore treated as such. It was not until the 17<sup>th</sup> century that, in a sense, the idea of childhood was invented and children were seen as distinct from adults and hence also began to be treated differently.

Despite this sea change, it is only in the last few decades that improvements were made in the treatment of and protection given to Southeast Asian children. A range of special services, from education to health, are now given specifically to children. For example, harsh labour has been forbidden (although children are permitted to work and often do), and much effort has been put into shielding children from abuse and neglect. Starting in 18<sup>th</sup> century Europe and then worldwide, these changes occurred over a long period of time, but were only implemented in Southeast Asia in the years following independence. These changes result from the values society gives to the idea of childhood. While this concept varies between cultures, some similar features are that it should be a period of safety and security meant for play, learning, and development during which children should be protected from violence and abuse. It was the acceptance of these ideas that led to the introduction of children's human rights.

No other set of rights has been as universally ratified, or as widely accepted, as the *Convention on the Rights of the Child (CRC)*. Having said this, gaps in protection still exist, especially in Southeast Asia where child labour, sexual exploitation, and denial of access to healthcare and education are still commonplace. This chapter will detail the key elements of children's rights by examining their history before reviewing how these are dealt with in the CRC and its optional protocols. The remaining sections will explore important areas of protection such as violence against children, rights to education, juvenile justice, child labour, child soldiers, and child reproductive health.

**Table 7-1: Ratification of Child Rights Treaties by Southeast Asian States**

States Parties	CRC	CRC-OPAC*	CRC-OPSC**	OP-Complaints***
Brunei	27 Dec 1995	17 May 2016	21 Nov 2006	
Cambodia	15 Oct 1992	16 July 2004	30 May 2002	
Indonesia	5 Sep 1990	24 Sep 2012	24 Sep 2012	
Lao PDR	8 May 1991	20 Sep 2006	20 Sep 2006	
Malaysia	17 Feb 1995	12 Apr 2012	12 Apr 2012	
Myanmar	15 July 1991	27 Sep 2019	16 Jan 2012	
Philippines	21 Aug 1990	26 Aug 2003	28 May 2002	
Singapore	5 Oct 1995	11 Dec 2008		
Thailand	27 Mar 1992	27 Feb 2006	11 Jan 2006	23 Sep 2012
Timor-Leste	16 April 2003	2 Aug 2004	16 Apr 2003	
Viet Nam	28 Feb 1990	20 Dec 2001	20 Dec 2001	

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

\*\*Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography

\*\*\*Optional Protocol to the CRC on a communications procedure

## 7.2 Background to Children's Rights

In the 1800s, a few industrial European countries began to recognize some children's rights, for example, by passing labour laws to protect children (1833 in England, and 1841 in France). Likewise, laws on compulsory education were introduced first in Prussia (a German state on the south coast of the Baltic Sea) in 1764, and much later in England in 1870, with other European nations passing similar legislation sometime in-between. In the 20<sup>th</sup> century, international instruments on children's rights evolved from mere statements of recognition as can be seen in the League of Nations' Geneva Declaration of the Rights of Children (1924), to legally-binding documents in the form of the CRC. The English woman, Eglantyne Jebb, who was involved in drafting the Declaration on the Rights of the Child, also established Save the Children (now one of the largest child rights organizations in the world) in 1919 as the first humanitarian organization dedicated exclusively to children. Alongside these developments came changes to laws relating to children in court and the introduction of juvenile justice systems (around the early 1900s) when many European nations outlawed corporal punishment for children. These changes were only to reach Southeast Asia in the 20<sup>th</sup> century (mostly after 1945) during early periods of independence. It was not until the 1950s that labour laws began changing too although the process would not be complete until the 1990s. Compulsory education followed in the 1960s, but it must be said some States did not develop juvenile justice systems until after 2000.

All these developments reflect changing social attitudes to children. Once seen as small adults, they were treated exactly the same in work and law until the 1700s when childhood began to be seen as a distinct and special period of life, one in which children were more vulnerable and would need support to learn and develop into responsible adults. Many reasons are given for these changing attitudes including lower childhood mortality rates due to improvements in healthcare and the invention of vaccinations which enabled people to have smaller families. Moreover, mechanization and the industrial revolution meant child labour was no longer as necessary in farms and factories. Alongside these changes, strong advocates worked tirelessly for the better treatment of children so that by the 1920s most children in wealthy countries had been removed from factories and battlefields and were relatively free of severe health concerns. In addition, welfare systems developed, particularly for orphans and single mothers – although the treatment they received would be deemed harsh today, such systems did recognize that children needed extra protection and care.

As demonstrated by the size of the Geneva Declaration which lists only five rights and takes up less than half a page, children's rights in this period were limited. The result was that by the time universal human rights were recognized in the UDHR, only a small number of children's rights existed. The UDHR itself only bestows one right: Art 25 (on livelihood). Applying directly to children (and motherhood), this stated that both were “entitled to special care and assistance.” As will be discussed in the next section, these early rights focused almost exclusively on children as subjects of welfare who needed to be fed or protected from exploitation. Under the CRC, these rights were expanded to recognize children as *holders* of rights, and not just as recipients of assistance.

## 7.3 Convention on the Rights of the Child

The Convention on the Rights of the Child or CRC entered into force in 1990 and is now the most widely ratified human rights treaty in history. International laws in existence before the CRC included the 1924 Geneva Declaration and the ILO labour laws of 1919. In addition, a Declaration on the Rights of the Child was adopted by the UN in 1959, and 1979 was declared the Year of the Child. With numerous governments supporting the idea of children's rights, and coordinated efforts from UNICEF and WHO, the CRC was rapidly drafted and adopted, coming into force in 1990. The rapidity with which it became international law shows the universal acceptance of children's rights at the time. For most treaties, the period from drafting to enforcement can last as long as 30 years (e.g. the ICCPR, ICESCR, and the ICMW) but the CRC took less than ten.

As previously mentioned, the CRC is the most ratified treaty in history, the USA being the only outlier. A variety of reasons are given for this disinclination, for example, political – in general, the US government is reluctant to agree to any international treaties. A further challenge includes the difficulties of a Federal government changing state laws – some US states even permitted minors to be given the death penalty which, of course, the CRC opposes, although this has since been disallowed (2005). Finally, a strong family values movement fears child rights would undermine existing parental rights. Notwithstanding the US’s reluctance, all States in Southeast Asia ratified the convention soon after its adoption, with Singapore, Malaysia, and Brunei being the last to agree a mere five years after the others.

Coming at a revolutionary time, the CRC is an important treaty because it marked a change in human rights. With the breaking up of the Soviet Union and the end of the Cold War, the world was rapidly changing. This led to a fundamental restructuring of human rights as seen in the new understanding and approach brought about by the Vienna Declaration and Program of Action in 1993. What sets the CRC apart is its treatment of human rights as indivisible thereby placing civil and political rights alongside economic and social rights. Significantly, the Convention incorporated participation as a right. Another major difference to previous treaties is its move away from a legalistic approach of defining rights and violations to a more rights-based approach. Thus, the CRC sees human rights as a method to address and ultimately solve problems using the “best interests of the child” as a guiding principle.

### **Spotlight: Summary of CRC Rights**

- Article 1** Definition of the child as anyone under the age of 18
- Article 2** Right to non-discrimination, and protection from discrimination
- Article 3** Best interests of the child
- Article 4** Governments should implement children’s rights
- Article 5** Parental rights and responsibilities
- Article 6** Child’s right to life, and the importance of the survival and development of the child
- Article 7** Child must receive birth registration, and be given a name and nationality
- Article 8** A child’s identity must be protected and cannot be taken away
- Article 9** Children must not be separated from their parents unless it is in their best interests
- Article 10** When families are in separate countries, governments should support family reunification
- Article 11** Protection against the illegal transfer of children
- Article 12** Child’s right to participate
- Article 13** Child’s freedom of expression
- Article 14** Rights of children to freedom of religion, and the input of their parents when choosing one
- Article 15** Freedom of association and assembly
- Article 16** Child’s right to privacy

- Article 17** Child's right to access information, and a duty to provide media for children
- Article 18** Parents have the main responsibility to bring up children, which should be done in the child's best interests, and governments must assist parents to do this
- Article 19** Child's freedom from abuse and violence, and the government's duty to protect children from this
- Article 20** Right to special care when removed from families
- Article 21** Rights during adoption
- Article 22** Rights for refugee children
- Article 23** Rights for children with disabilities
- Article 24** Rights to health
- Article 25** Right to review of treatment while in care
- Article 26** Right to social security
- Article 27** Right to an adequate standard of living
- Article 28** Right to education
- Article 29** The aim of education is to develop every child's personality, talents, and abilities to the full, and to teach them about human rights and respect for others
- Article 30** Right to learn about or practise minority cultures
- Article 31** Right to play
- Article 32** Right to protection from child labour
- Article 33** Right to protection from drug abuse
- Article 34** Right to protection from sexual exploitation
- Article 35** Right to protection from abduction
- Article 36** Right to protection from all forms of exploitation
- Article 37** Right to be free from torture, that detaining children should be avoided, and detained children be separated from adults
- Article 38** Right to protection in conflict situations; right to avoid being recruited as a child soldier
- Article 39** Right to rehabilitation if a child has been abused in any way
- Article 40** Right to a fair juvenile justice system
- Article 41** If national standards are better than the CRC standard, national standards to take precedence
- Article 42** Children must know their rights

The CRC brought together rights found in existing treaties like the UDHR, ICESCR, and the ICCPR but it also introduced some new ones, such as protection against various abuses, rights to protection in conflict, and rights during adoption. The CRC is slightly different from other treaties in that it places rights among three parties:

- (1) States, who have duties and obligations to meet children’s rights;
- (2) Children, who are the right holders; and
- (3) Parents, who have various duties towards their children, for example, to provide protection and access to education and healthcare, but who are also *rights holders*, for example, the right to influence a child’s religion and education, rights to services like childcare, and to protection from having children removed from their care.

### **Reflection and Discussion: Concept of Family**

The Child Rights Convention describes the family as a natural and fundamental unit of society which is entitled to protection and assistance, as was also noted by the UDHR, ICCPR and the ICESCR.

Does “natural” imply something biological?

If this is the case, what of adopted children or step parents? Would they not be considered as real or true as biological parents or children?

There are three optional protocols to the CRC. Two were introduced on the same day (25 May 2000) to address child soldiers (the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, CRC-OPAC) and the sexual exploitation of children (the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, CRC-OPSC). A third optional protocol which allows the CRC treaty body to accept individual complaints entered into force in April 2014 – but in the region, only Thailand has ratified this. The treaty and optional protocols aside, other mechanisms on children at the United Nations include a Special Rapporteur on the sale of children, child prostitution, and child pornography (active since 1990)—of which a Thai representative was the first rapporteur—and a position for a Special Representative of the Secretary General on violence against children (active since 2009). The latter was set up in response to a UN study on violence against children in 2002, and will be discussed in section 7.4 below. Another relevant international mandate includes the Special Representative of the Secretary-General for Children and Armed Conflict (active since 1997).

At the regional level, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was established in April 2010. Like the AICHR, it is an intergovernmental commission consisting of two representatives from each ASEAN State. The ACWC does not have a protection mandate, so it does not take or address complaints from individuals. Rather, its work is focused on the promotion and protection of the rights of women and children, aiming to develop cooperation, policies, and activities in pursuit of these goals. In addition, ASEAN has also established several relevant declarations dealing with the rights of children in the region (e.g. the Declaration on the Commitment for Children in ASEAN adopted in 2001 or the ASEAN Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children adopted in 2013). However, most notable is the ASEAN Convention against Trafficking in Persons Particularly Women and Children (ACTIP) which is the only legally-binding regional instrument on children (entering into force in 2017).

### 7.3.1 General principles of the CRC

The CRC is guided by four overarching principles set out in General Comment No 12 (2009). The principles in and of themselves are not new, as they did exist before the CRC. Instead, their intention is to strengthen both the understanding of children's rights, and influence how such rights are protected by the State and families. These four principles will be investigated in more detail below.

#### **Spotlight: General Principles of CRC General Comment No 12 (2009)**

- (1) Non-discrimination (Art 2):** Children should not be denied their rights because of discrimination.
- (2) Best interests of the child (Art 3):** When making decisions about children, the best interests of the child should be the most important criteria.
- (3) Survival and development of the child (Art 6):** The life and survival of the child should be of the utmost importance to States in their activities, and they are obligated to ensure children develop into healthy adults.
- (4) Respect of the views of the child, or rights to participate (Art 12):** Children should be able to participate in decisions that concern them according to their age and maturity.

### 7.3.2 Survival and development of the child

In societies the world over, ensuring the survival of children is always a high priority. If there is a famine, organizations will work to feed children first; if a boat is sinking, women and children will be called to board the lifeboats first. While these principles are widely held, in practice this does not always occur. As late as 100 years ago, a sizable proportion of the population still died as children (child mortality rates were as high as 30%), and even if the first five years of life were survived, they would likely still face hunger, conscription to the military, or harsh labour.

Consequently, the first principle directed States to ensure a child's survival by reducing child mortality, protecting children from violence, and investing in healthcare. Because the State is responsible for a child's right to life, the CRC insists that these concerns should take priority over other government affairs. Governments reducing spending on maternal health, only to increase spending on the military, would clearly be in violation of this principle. Furthermore, it is particularly pertinent in cultures where a preference for boys often results in the termination of female fetuses, or where girls are not given the same rights as boys. The same principle also ensured that children should not face the death penalty, while giving them special protection in areas of armed conflict.

Included in this principle is the right to development, because obligations go beyond merely keeping a child alive; they also require youngsters to be able to develop into healthy, educated adults. The right to development covers rights to health which enables children to grow into healthy adults, the right to education which teaches them how to be responsible adults, and freedom of expression which develops a child's knowledge.

### 7.3.3 Best interests of the child

The principle of the "best interests of the child" is novel. While not actually defined, it means that decisions concerning a child should give its interests priority over that of its parents, the government, culture, and the economy, etc. While best interests are not defined, obviously issues such as a child's rights, survival, and development would be important. This flexibility around best interests can be beneficial as it allows the principle to operate in a variety of settings, whether courtrooms, schools, hospitals, or in the family. This principle was in use before the CRC and

appeared in many State laws, particularly in family law, adoption, and custody judgments. In international human rights law, the principle was mentioned in the 1959 *Declaration on the Rights of the Child*, and in CEDAW (Arts 5 and 16 respectively). In the CRC, best interests are mentioned in relation to separating children from parents, parental responsibility, adoption, and court hearings. The Committee on the Rights of the Child, General Comment No 14 (2013) reiterates a child's right to have his or her best interests taken as a primary consideration, and helps define such requirements, especially in judicial and administrative decisions as well as in other actions concerning the child as an individual. However, the General Comment did not further define the concept but reiterated its complexity, stating its content must be determined on a case-by-case basis.

This principle requires that decisions about children should prioritize their interests above all others. For example, when deciding if a child should be separated from its parents, the fact they are violent and abusive must take priority over their rights to look after the child, and the government's economic interest in avoiding paying for his/her relocation.

### **Reflection and Discussion: Best Interests of the Child**

The following case details the best interests of the child, and what actions should be taken. Best interests are subjective though, and it must be noted that discussions are open to disagreement and different interpretations.

#### **Case Study**

A brother and sister, aged five (female) and seventeen (male), appear in a Thai refugee camp after walking in from Myanmar. Escaping from a conflict zone, they were separated from their parents when the military attacked their village. Their parents cannot be found, but the children have an aunt in the camp. The boy wants to return to the conflict zone to find his parents, and he wants his sister to come with him. The sister wants to be with her brother. What should camp officials do? They know the conflict area is unsafe, but the children desire to be reunited with their parents. While the boy has shown he can safely cross the zone with his sister, the camp can offer food, healthcare, and education for the girl (but not the boy), a place to live with the aunt, and other children to play and socialize with.

#### **Discussion**

This situation was not uncommon in Thai-Burmese refugee camps during the 1990s and 2000s. In each case, camp officials had to make decisions based on the child's best interests. In this case, the best interests for the five-year-old girl would be to stay inside a safe camp where she can also access healthcare and education. In addition, the camp offers better food, shelter, and water than the conflict zone. Although staying with her brother is important, it should not be at the risk of her safety.

However, the best interests of the brother differ. Because he is older and more mature, he should be able to participate in decisions concerning him. Considered too old for education, he can travel through the conflict zone relatively safely but may not be able to do so with his sister in tow. Ideally, he should wait with her in the camp until their parents are found, or until he turns eighteen when he can make the decision as an adult. Whether the children stay or go should not depend on space or resources (these are economic issues, and nothing to do with their best interests); it should also not depend on a parent's desire to see his/her children (which are the parent's interests); and finally, it should not depend on the law managing the camps (which are legal interests).

### Questions

- (a) Is keeping both children in the camp the best solution?
- (b) Considering the boy is so adamant to go, should you let him?
- (c) How would you rank the best interests of the girl from most to least important (including interests such as survival, health, education, food, leisure and play, reuniting with parents, and staying with her brother)?

#### 7.3.4 Non-discrimination

All human rights treaties give prominence to non-discrimination and the CRC is no different. This principle does not cover discrimination against children as a group (for example, treating children differently from adults), but discrimination against specific groups of children. Some groups face constant discrimination. For instance, girls in many countries are not able to enjoy their rights on the same footing as boys. They are forced to leave school earlier or fail to receive the same education as their brothers. These situations are even more prevalent in East and South Asia where the saying, “sending your daughter to school is like watering your neighbour’s garden”<sup>1</sup> suggests that educating girls will only benefit others, meaning their future husbands. Children with disabilities also face discrimination. Across the region, they rarely get the same access to education while governments offer little support to their parents. Moreover, they are often made fun of in the community. Other groups facing discrimination include ethnic minority children, the children of migrant workers, and child migrants (discussed later in this chapter).

#### 7.3.5 Right to participate

Participation is a widely recognized human right and commonly associated with the right to development. Although not directly mentioned in treaties before the CRC, the right to participate in politics and freedom of expression may also be deemed rights to participation. The general principle refers to the views of the child being taken seriously, as found in Art 12, which is essentially the right to participation. By its inclusion as a general principle, it may be argued that the right to participation puts children’s rights on a higher level. So according to this new standard, children should firstly be seen as active subjects in the process, meaning they should have a say in how their rights are met. The aim is to escape the so-called ‘charity’ approach, where, as passive recipients of charity, the needs of children are entirely decided by charity givers. Viewing children as rights holders who are able to contribute to decisions concerning them, fits into the ‘rights-based’ approach. A second objective of participation is to ensure children have a say in *how* their

<sup>1</sup> Raynor, J. (2005). Educating girls in Bangladesh: watering a neighbour’s tree? In S. Aikman, and E. Unterhalter (Eds.), *Beyond Access: Transforming Policy and Practice for Gender Equality in Education* (pp 83 - 105). Oxfam.

rights are delivered. This is particularly important as regards rights to religion, education, and the media. In order to expand the concept of participation outlined in Art 12, the UN Committee on the Rights of the Child in its General Comment 12 (2009) defined child participation as an “ongoing process, which includes information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes.”

A child’s right to participate in decisions concerning them has been noted in many areas including adoption, education, judicial decisions, custody, development, and policies relating to children. For example, courts should hear the views of children alongside their parents in a custody case although the participation of the child is weighted according to his/her age and maturity. An example of this is allowing children to participate in decisions about their education. All high school systems in the region let older students elect subjects to study in addition to various compulsory courses. On the other hand, five-year-olds would not be given this choice because they lack the maturity and knowledge to make such decisions. However, it must be noted that as the term “best interests” is not defined, neither are “maturity” and “age.” Instead, it is usually left up to governments and parents to make the final decision, taking into account the child’s views.

The principle of participation clashes with more traditional and patriarchal social views which assume that parents, or in some cases, only the father, should have the final say on children’s lives. Hence, the right for children to choose their own religion and to have access to their own media is not widely accepted in some communities. It is mainly for this reason that rights to participation are poorly institutionalized in Southeast Asia. Most legal systems recognize the right of children to participate in decisions concerning them, but this may not actually occur in courts. Likewise, children are permitted little input in their education.

## **7.4 Protection of Children against Violence**

Protecting children against violence is one of the most important duties of both State and family, and constitutes a major problem in Southeast Asia. In fact, it has been argued that the institutions which should protect them (the family and the State) are frequently complicit in such violence. As stated in Art 19(1), every child has a right to protection from abuse, neglect, violence, and exploitation:

*State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any person who has care of the child.*

Significantly, this article defines violence as physical or mental including injury, abuse, neglect, and so on. The definition was further expanded in General Comment No 13 (2011) to Art 19. The full definition includes other forms of violence such as corporal punishment, forced marriages, and initiation rites. Article 19 noted that to prevent violence, governments should ensure appropriate educational programmes, laws, and government agencies are in place. It also recognizes that although caregivers should protect children from violence, they can also be the perpetrators of it. As such, it emphasized the importance of these duties and obligations because the “extent and intensity of violence exerted on children is alarming” and that “no violence against children is justifiable; all violence against children is preventable.” Further, it demanded States provide proper forms of prevention, investigation, and follow-up of instances of child maltreatment or exploitation.

A UN study which started in 2002 and was published as the Secretary General’s Study on Violence Against Children (2006) is significant because it recognized violence against children as a mostly hidden global phenomenon, but whose impacts are serious. In most Southeast Asian societies

children face violence everywhere: from parents and teachers disciplining naughty children to violence in detention, orphanages, and the workplace. Communities often ignore such behaviour, accepting it as a parent's right or acceptable cultural practice. Many societies even see the hitting of children as good parenting. For example, the saying "spare the rod and spoil the child," although originally adapted from a biblical proverb, has many equivalents in the region. As such, very few countries have enacted laws prohibiting parents from striking their children. Indeed, Sweden is one of very few nations to have banned domestic corporal punishment, and in most of Southeast Asia, teachers are still permitted to hit children. Accordingly, the following sections will address three main areas of violence faced by children: domestic violence or violence at home, corporal punishment at school, and sexual violence.

#### **7.4.1 Children and domestic violence**

The family should be a place where a child's physical and emotional safety is guaranteed. Yet, children do experience violence at home, often committed by family members including cruel or humiliating punishment, or neglect. In addition, they may be harshly disciplined. Insults, name-calling, isolation, rejection, threats, emotional indifference, and belittling are all forms of violence which children may face and from which they should be protected. The scale of the problem is clearly illustrated in the Global Status Report on Preventing Violence Against Children 2020 (see 'Further Reading' for more information). For example, in Thailand, 77% of boys aged up to 14 years reported experiencing violent discipline in the past month with 73% of girls saying the same.<sup>2</sup> In Vietnam, the rate was 72% for boys and 65% for girls.<sup>3</sup>

There are many challenges to preventing domestic violence against children. First, such behaviour is deeply embedded in Southeast Asian culture – it is widely believed that good parents discipline their children. Second, how parents treat their children is largely regarded as a private matter. The involvement of third parties, including neighbours or the police, is generally seen as an invasion of that privacy. Third, domestic corporal punishment is not considered a serious issue. Not only is hitting a child not a crime, it is not even considered particularly bad for them – in fact, many youngsters would prefer a quick smack over sitting alone in a room or giving up something they like. Finally, parents are often unaware of other ways to discipline children, or they simply don't have the energy to design an appropriate programme of discipline.

UN bodies such as UNICEF and the Committee on the Rights of the Child have argued for a ban on corporal punishment at home, urging countries to change their laws. However, only about a quarter of countries in the world have done so, the majority in Europe. In fact, South Korea is the only Asian country to ban domestic corporal punishment, and these laws were not introduced until 2015 and are limited to Seoul. Nonetheless, most countries do have laws that prohibit child abuse including sexual abuse, child exploitation and severe neglect, all of which can have long term effects on the child.

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<sup>2</sup> World Health Organisation (2020) *Global Status Report on Preventing Violence Against Children 2020*. p. 260.

<sup>3</sup> *Ibid*, at 262.

## Reflection and Discussion: Children and Domestic Violence

- In most societies in the region, hitting children is tolerated because it is considered a valid teaching method. The arguments for corporal punishment are:
- It is educational as the child learns not to be naughty again
- It is quick and effective as it links the action with an immediate negative response
- It is the parent's right to choose how to discipline their child
- Hitting does not harm the child
- Children will not behave properly unless they are so disciplined

### Questions

- (a) Are these arguments logical? When parents hit children, are they doing it because they have rationalised it as the best method to educate the child, or were they just angry?
- (b) If violence against adults is criminalised (such as domestic violence against spouse, or physical assault), then is it acceptable to hit a child?
- (c) Is the statement, "hitting does not harm the child" valid?

### 7.4.2 Children and violence at school

Violence in schools and educational settings is widespread in the region. A recently released (2020) survey conducted by the Network of Legal Advocates for Children and Youth found that as many as 92 % of schoolchildren in Thailand have been subjected to physical or psychological abuse in school and 13 % have clinical depression from bullying, with Thailand ranking second for the highest rate of bullying in the world.<sup>4</sup> In fact, teachers are allowed to hit students in three of the ten Southeast Asian countries. In other countries, although unlawful, it is not specifically prohibited. Additionally, children under institutional care in shelters, orphanages, the workplace, or in custody can also face physical violence. Staff may discipline children with beatings, restraints, or lock them in rooms or cupboards. A similar problem can be seen in playground bullying which often takes the form of violence. Bullying especially affects children from minority and vulnerable groups and can include the offspring of migrant workers, ethnic minorities, and gay, lesbian, and transgender children. The following section will focus on the use of corporal punishment in schools.

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<sup>4</sup> 'School bullying can't be ignored' Bangkok Post, 12 January 2020, available at <https://www.bangkokpost.com/opinion/opinion/1833724/school-bullying-cant-be-ignored>, accessed on 3 March 2023.

## Spotlight: Corporal Punishment

Corporal punishment is physical punishment against one's body (the corpus) which is intended to cause pain and includes a parent smacking a child, caning by a teacher, or whipping as a court sentence.

### Types of Corporal Punishment and Abuse in Southeast Asia

Across the region, children are disciplined in many ways. Officially approved corporal punishment includes striking with a cane or slapping, but unofficial or non-approved punishments are also common, many of which may be illegal. As such, these may actually be deemed forms of abuse rather than corporal punishment. The punishments detailed below are taken from national and regional reports from the website, Global Initiative to End All Corporal Punishment of Children.<sup>5</sup>

Allowed methods of corporal punishment include:

- Hitting with wooden rods, canes, and rulers
- Slapping of legs and buttocks
- Physical restraint (holding a child down)

Disallowed but used forms of punishment include:

- Kicking, punching, face slapping, hair, eyebrow, or ear pulling
- Standing for long periods in the sun
- Whipping with electrical cords
- Rubbing chilli pepper into the eyes
- Stomach pinching
- Burning with cigarettes
- Shaving of heads
- Twisting of arms and legs, pulling or twisting of joints
- Shocking with electric batons (or other electro-shock weapons)
- Painful physical exercises
- Throwing dirty water at the child
- Withdrawal of food

While the CRC does not explicitly state that corporal punishment should be banned, many articles imply it. Article 28 declares that States should “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”. Likewise, Art 19 calls for an end to all violence and freedom from torture, while General Comment No 8 asserts the right of a child to protection from corporal punishment. Although 128 countries have banned corporal punishment in schools, often such bans are not adequately enforced. Regardless, it is likely that corporal punishment is still frequently used in Southeast Asian educational establishments.

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<sup>5</sup> Available at <https://endcorporalpunishment.org/>, accessed on 3 March 2023.

**Table 7-2: Is corporal punishment outlawed in Southeast Asia?**

Country	Laws Permitting Corporal Punishment (CP) Against Children
Brunei DS	CP is lawful at home, at schools (boys only), in penal institutions, and as sentencing for crimes provided it does not cause “substantial and observable” injury. Caning is used as punishment for boys in schools, juvenile correctional institutions, and as a sentence for juvenile offenders for certain crimes, but is prohibited for girls in the same settings. CP is prohibited in childcare centres. No explicit prohibition in alternative care settings.
Cambodia	CP is lawful at home, in alternative care settings, and day care centres. CP is unlawful in public and private schools, penal institutions, and crime sentencing.
Indonesia	CP is lawful at home and in schools, although laws also protect children from abuse in these settings. CP is unlawful in penal institutions and criminal sentencing. No explicit prohibitions exist for alternative care settings and day care centres. CP is legal in all settings. While laws protect children from violence at home, in school, and in penal institutions, these laws do not specifically prohibit CP. Although CP is unlawful as a criminal sentence, it is unclear if this also applies to Sharia law.
Lao PDR	The Law on the Protection of the Rights and Interests of Children (2007) seeks to end violence against women and children in all settings. CP is unlawful in early childhood education but no such prohibition applies to older children. Prohibition has yet to be achieved in the home and alternative care settings. CP is unlawful as a criminal sentence but is not explicitly prohibited in penal institutions.
Malaysia	The Child Act (2001) integrates all laws on children. However, CP is legal in the home, alternative care settings, and day care centres for children under 12 years of age. It is also legal in schools (for boys) and penal institutions in the form of caning. Caning can be used as a criminal punishment for men and boys under secular law; whipping men and women over the age of puberty is acceptable under Islamic law. Under both secular and Islamic law, caning or whipping must be performed according to guidelines.
Myanmar	Myanmar adopted a new Child Rights Law in 2019 which included provisions that were reportedly intended to prohibit all CP of children. However, legal reform is still needed to achieve prohibition in the home, alternative care settings, day care centres, schools, and penal institutions.
Philippines	The relevant legislation (Laws on Worst Forms of Child Labor, and Special Protection of Children Against Abuse, Exploitation and Discrimination Act of 1992) makes CP lawful at home, but unlawful in alternative care settings, day care centres, in public and private schools, in penal institutions, and criminal sentencing. However, the Philippines expressed its commitment to prohibiting corporal punishment in the home and other settings by accepting recommendations to do so made during the Universal Periodic Review of the Philippines in 2012.
Singapore	CP is lawful at home with caning also authorized in children’s homes. CP is prohibited in some but not all day care centres. CP is lawful in schools but only for male pupils and only in the form of caning. CP is lawful in juvenile penal institutions and can be used in criminal sentencing. However, only juveniles tried by the High Court may be sentenced to CP. CP in the form of caning is also allowed as punishment for boys during compulsory military service.
Timor-Leste	CP is lawful at home but unlawful for criminal sentencing. Legislation is needed to prohibit CP as a disciplinary measure in all penal institutions. There is no explicit prohibition in alternative care settings, day care centres, or schools.
Thailand	The Child Protection Act (2003) and the National Policy Strategy on domestic violence and trafficking prohibits CP in schools, penal institutions, and criminal sentencing. CP is lawful at home, in early childhood, day care centres, and other alternative care settings.
Vietnam	Under the Revised Law on Protection, Care, and Education for Children (2004), CP is unlawful in schools, penal institutions, and for criminal sentencing. CP is lawful at home, and there is no explicit prohibition for alternative care settings or day care centres.

Teachers are often not taught alternative ways to discipline students, and in any case may view corporal punishment as a successful method of dealing with naughty children. Such attitudes mean many teachers may only know one way to deal with unruly behaviour. While banning corporal punishment is an option, such teachers will quietly use it or turn a blind eye when others resort to it.

However, the use of corporal punishment may not be the teacher's fault alone. In some cases, parents may ask teachers to discipline their children, preferring someone else to the act even though they themselves believe in its necessity. Finally, students may be complicit in its use. Faced with a choice of a week's detention or six lashes, some would prefer a quick punishment. Therefore, corporal punishment continues to be regularly used in all Southeast Asian countries despite being banned in some. The ambition to end corporal punishment is challenging, but a number of measures have been introduced to reduce its prevalence. Measures include retraining teachers in alternative ways to discipline children, educating parents and teachers about its negative effects, and increasing the participation of parents and children in decisions on educational standards.

### **Reflection and Discussion: How to Prevent Corporal Punishment**

1. How can cultural and institutional support of corporal punishment be stopped? How effective will the following measures be?
  - (a) Legal reform: Criminalise corporal punishment with harsh penalties.
  - (b) Re-educate teachers in alternative methods of discipline. Based on child development principles, such non-violent methods are often referred to as 'positive discipline' (for example, detention, assigning students chores around the school or extra homework, instead of caning).
  - (c) Increase public awareness of the negative effects of corporal punishment including the psychological impact on children which could lead to anti-social behaviour, lower grades, increased aggression, increased aversion to education, and higher dropout rates.
  - (d) Increase school inspections and anonymous reporting systems for students.
  - (e) Educate parents against using violence at home.
2. Which of these solutions is the best and why?
3. What are the challenges to implementing these solutions?

#### **7.4.3 Children and sexual abuse**

Sexual abuse is a particularly disturbing form of violence against children. The CRC refers to "*all forms of sexual exploitation and sexual abuse*" in Art 34, which elaborates on the requirement for States Parties to protect children from sexual exploitation and abuse as follows:

For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.

Sexual violence is seen as an umbrella term that includes both sexual abuse and sexual exploitation. Acts of sexual violence against children can range from direct physical contact to unwanted

exposure to sexual language and images. It can also include female genital mutilation (FGM) or some instances of child marriage. UNICEF's global database for 2022 estimates that in one-third of countries, at least 5% of young women reported experiences of sexual violence in childhood while levels are lower among men.<sup>6</sup> A 2013 academic review of 55 studies in 24 countries found that for predefined types of sexual abuse, prevalence estimates ranged from 8 to 31% for girls and 3 to 17% for boys.<sup>7</sup> However, data on child sexual abuse is extremely challenging to obtain and potentially the tip of the iceberg as it is a hidden crime, constrained by stigma and underreporting.

The problem of child sexual abuse has led to the introduction of laws on the age of consent and child sexual abuse, child pornography, to name but a few. These crimes face harsh penalties but despite this, the sexual abuse of children is still widespread in all Southeast Asian countries. Laws on these crimes only came into force in the 1960s, with many in the region either having no legislation against child sex or ignoring existing ones. Specific laws must be developed, implemented, and/or strengthened to combat the various manifestations of child sexual abuse. These laws must be reviewed and updated regularly to incorporate evolving forms of sexual abuse, such as grooming or viewing/accessing child sexual abuse materials online, and changes in the international legal framework. As well as enacting legislation that is compliant with international standards and obligations, national laws must be effectively enforced.

Although global statistics report that child marriage has been decreasing in recent decades, UNICEF in 2020 reported that 12 million girls annually still get married before the age of 18.<sup>8</sup> Whilst the highest levels of child marriage are found in Sub-Saharan Africa and South Asia, the practice remains common in many Southeast Asian nations. For example, recent national data (from national censuses and household surveys) collated by UNICEF shows that Laos has the highest prevalence of child marriages in the region at 33%. However, 11% of girls in Vietnam, 16% in Indonesia and 19% in Cambodia were also married before the age of 18.<sup>9</sup> Child marriage is a human rights violation and the most relevant United Nations treaties are the Convention on the Rights of the Child (CRC, 1989); the Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography (2000); the Convention on the Elimination of All forms of Discrimination against Women (CEDAW, 1979); the International Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966); and the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962). General Comments accompanying some of these international legally-binding treaties have also expanded on the issue of child marriage: see CEDAW General Recommendation No 21 (1994) on Equality in Marriage and Family Relations, and General Comment No 4 (2003) by the Committee on the Rights of the Child on adolescent health and development.

Child abuse is closely linked to the abuse of authority, as most cases involve someone known to the child. This can be a family member or relative, a teacher, or a boss at work. Sexual abuse is a particularly serious problem because of its long term negative effects, both physical and mental, which can result in a range of psychological disorders including depression, drug addiction, and anxiety. Recent research has also found that those who commit gender-based violence are themselves often victims of child abuse. For example, in a study across six Asian countries, Partners

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<sup>6</sup> 'Sexual violence' UNICEF, May 2022, available at <https://data.unicef.org/topic/child-protection/violence/sexual-violence/> accessed on 21 February 2023.

<sup>7</sup> Barth, J, Bermetz, L, Heim, E, Trelle, S, and Tonia, T, 'The current prevalence of child sexual abuse worldwide: A systematic review and meta-analysis' *International Journal of Public Health*, 2013, Vol 58, No 3, pp 469-83.

<sup>8</sup> UNICEF (2023) *Is an end to child marriage within reach?* p 3.

<sup>9</sup> Ounthavy, S. (2022) 'Lao Children Call Attention to the Issue of Child Marriage in New Short Film,' UNICEF, 23 May. <https://www.unicef.org/laos/stories/laos-children-call-attention-issue-child-marriage-new-short-film>.

for Prevention found that around a third (34%) of those who had committed sexual abuse had themselves been physically abused as children.<sup>10</sup>

Another troubling issue addressed by the Optional Protocol on the sale of children concerns their sexual exploitation. While no precise statistics exist on its scale and scope, the vulnerability of children has increased in recent years due to the massive expansion of the internet and mobile technology which coupled with the rise of inexpensive travel has allowed offenders unprecedented access to children.

The sexual exploitation of children can manifest in many ways – including prostitution especially as a result of sex tourism, sale and trafficking, forced child marriage, and in a variety of online forums. A disturbing trend cited by an increasing number of sources concerns the large proportion of child victims of sexual exploitation in the very young or pre-pubescent age groups, particularly in the case of online exploitation. Findings from a major study published in 2017 by the Canadian Centre for Child Protection indicated that the abuse of 56% of the survivors surveyed began before the age of four, and 87% were 11 years of age or younger.<sup>11</sup> In the midst of the Covid-19 pandemic, the Internet Watch Foundation (IWF) reported 2021 as its worst year on record for child sexual abuse online as it confirmed 252,000 URLs containing images or videos of children being sexually abused (compared with 153,000 in 2020).<sup>12</sup> The IWF believed the rise in cases was linked to COVID-19 lockdowns which required people to stay indoors and led to millions spending more time online. Similarly, ECPAT (a global network of civil society organisations fighting to end the commercial sexual exploitation of children) believe that the impact and scale of such occurrences cannot be overstated. Accordingly, the two groups are working together to prevent the online sexual exploitation of children and to remove online child sexual abuse imagery hosted anywhere in the world (for more resources, see ‘Further Reading’).

The adoption in September 2015 of the Sustainable Development Goals (SDGs) by all UN Member States represents an unprecedented opportunity to bring about a marked difference in global attention to the issue of sexual violence against children with new policies, programmes, and partnerships. The SDGs relevant for combating sexual violence against children by 2030 are:

**SDG target 5.2:** Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation;

**SDG target 5.3:** Eliminate all harmful practices, such as child, early and forced marriage, and female genital mutilation;

**SDG target 8.7:** Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms;

**SDG target 16.2:** End abuse, exploitation, trafficking, and all forms of violence against and the torture of children.

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<sup>10</sup> Fulu, E. et al. (2013) *Why do some men use violence against women and how can we prevent it?* UNDP, UNFPA, UN Women and UNV, p. 61.

<sup>11</sup> Canadian Centre for Child Protection (2017) *First of its Kind Data on the Role of the Internet and its Impact on Child Sexual Abuse*.

<sup>12</sup> Internet Watch Foundation (2021) *IWF Annual Report 2021*.

## **Spotlight: The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (CRC-OPSC)**

This CRC-OPSC was adopted in 2000, and came into force two years later in 2002. It now has over 178 ratifications, including every State in Southeast Asia except Singapore.

Its main purpose is to: (1) define the crimes of selling children, child prostitution, and child pornography; (2) criminalize these activities; and (3) better protect children by empowering States to prosecute the perpetrators.

The CRC-OPSC has many uses in Southeast Asia including to prevent online child pornography as many developing countries in the region at the time had no such laws having only recently gained access to the internet. Accordingly, it defines and criminalizes the hosting of child pornography sites, making it easier for States to prosecute perpetrators. Notably, the CRC-OPSC also requires States to pass criminal laws to make child prostitution an extraditable offence and for such legislation to have extraterritorial scope, allowing a perpetrator to be charged even if the crime was committed outside his or her own country. Thus, alleged perpetrators will also fall under the jurisdiction of their home State (under which they hold citizenship) in addition to the jurisdiction of the State where the offence was actually committed. Finally, the CRC-OPSC is one of a number of laws introduced in the early 2000s to stop trafficking including the Palermo Protocol on trafficking which was introduced in the same year.

## **7.5 The Right to Education**

The right to education is a critical human right relevant to all children, and is found in Art 28 of the CRC, as well as other treaties such as the ICESCR, MWC, and CEDAW. All these stipulate that primary level education must be available to all children, regardless of their nationality, gender, or any other category. But just getting children into school is not enough as quality and safety standards must also be met. This section will only address a child's right to primary and high school education as university education almost always only applies to adults.

### **7.5.1 Elements of the right to education**

The right to education depends on the stage and type of education and can be divided into three stages: the right to primary education (for children aged approximately between 5-12), the right to secondary or high school education (for children aged approximately 12-18), and the right to tertiary, university, or vocational education (for those over 18). Primary education must be free and compulsory. That is, every child aged between 5-12 (although the age varies slightly throughout the region) must have access to free primary education which cannot be denied even if they do not speak the language, or they are children of migrant workers or refugees. In short, every child, regardless of status, must have access to free primary education.

In addition, high school education must be available and accessible to every child but it does not have to be compulsory or free. Having said this, the majority of Southeast Asian countries have both compulsory and free high schools although the years of compulsory education vary between States. Many aim for twelve years which includes high school as well. Schooling is key as it helps to reduce child labour.

Rights to education encompass many issues and activities, from simply having enough schools to ensuring adequate teaching standards. Devised by the Special Rapporteur on education, Katarine Tomascvski, State duties were summarized in the 4A framework and are also found in ICESCR General Comment No 13. In addition, the Committee on the Rights of Persons with Disabilities

released General Comment No 4 (2016) on the right to inclusive education. The rest of this section will examine the right to education in the region through the lens of the 4A standards.

### **Spotlight: Right to Education, the 4As**

**Availability:** Education is available to everyone, and requires sufficient schools, rooms, and seats.

**Accessibility:** Education should be accessible to all, and no one should be denied it due to distance, expense, or discrimination.

**Acceptability:** Education should be relevant, up-to-date, appropriate, and of necessary quality, utilizing properly trained teachers and adequate facilities.

**Adaptability:** Education should be able to keep up with new innovations such as computers, be adaptable to suit specific groups such as children with disabilities or from minority groups, and be able to address challenges such as gender or racial discrimination.

#### **7.5.2 Availability and accessibility of education in Southeast Asia**

While primary schooling may be widely available in the region, this does not mean all children will be able to attend or complete their education. Data from the Asian Development Bank (ADB) released in 2022, showed that countries in the region have been spending on education for decades, with public education expenditure ranging from 2% to 7% of GDP.<sup>13</sup> Fortunately, school attendance is high in the region (even including straggler countries like Myanmar and Indonesia) at almost 90% primary school attendance with generally high literacy rates (see Fig. 10-1).<sup>14</sup> However, although primary school dropout rates in Southeast Asia are fairly low (with 88% of pupils finishing primary education), Cambodia, Timor-Leste, and Myanmar are the outliers with graduation rates of 72%, 80%, and 83% respectively.<sup>15</sup> For developing countries, this can mainly be attributed to poverty (children forced to leave school to work), or cost (the school is too expensive), or quality (teaching standards are so low, children do not want to attend). The exception is Vietnam, which has not only made primary school available and accessible but has also succeeded in keeping 97% of children in school.<sup>16</sup> In data released in 2020 as part of the Southeast Asia Primary Learning Metrics (SEA-PLM) programme, among the six participating countries (Vietnam, Laos, Cambodia, Malaysia, Myanmar, and the Philippines), primary school students in Vietnam ranked first in all three competencies surveyed, namely reading, writing, and mathematics.<sup>17</sup>

<sup>13</sup> 'The Quality of Basic Education in Southeast Asia' (2022) *ISEAS Yusof Ishak Institute*. <https://www.iseas.edu.sg/mec-events/the-quality-of-basic-education-in-southeast-asia/>, accessed on 24 February 2023.

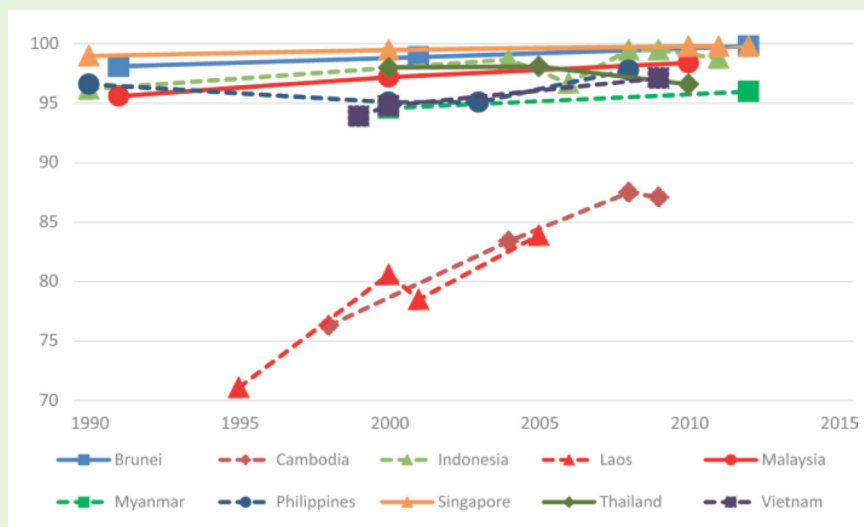
<sup>14</sup> Yeung, W. (2022) 'Education and youth unemployment in Southeast Asia,' in *Demographic and Family Transition in Southeast Asia*. Springer, pp. 77–98.

<sup>15</sup> UNESCO, Institute for Statistics (UIS) Database, available at <http://data.uis.unesco.org/>, accessed on 27 February 2023.

<sup>16</sup> *Ibid.*

<sup>17</sup> UNICEF and SEAMEO (2020) *SEA-PLM 2019 Main Regional Report :Children's learning in 6 Southeast Asian countries*.

**Figure 7-1: Youth Literacy Rates among Countries in Southeast Asia**



Source: Yeung, WJJ, 'Education and youth unemployment in Southeast Asia' in Yeung, WJJ, *Demographic and Family Transition in Southeast Asia*, Cham, Switzerland: Springer, 2022.

The reasons children do not finish school vary. A major factor is economic - some parents are so poor, they cannot afford to send children to school even if free as additional costs, such as that of uniforms, books, lunch, travel, and pencils, may add up to a considerable amount. As such, governments should ensure education is accessible *and* affordable by also providing free uniforms, books, meals, and transport. In other cases, the family may be so poor, the child must work to help support the family.

Discrimination constitutes another reason why some children may miss out on an education. Globally, the most common form targets girls. Many societies believe a girl's main role in life will always be to look after her husband and children, essentially, as thinking goes, making education pointless. However, this view is not widely held in Southeast Asia.

Other groups facing discrimination in the region are the children of ethnic minorities and migrant workers. In countries such as Malaysia and Thailand which have large numbers of migrant workers, such children are prevented from accessing primary education. For example, in Malaysia, undocumented children are not permitted to attend school. And although Thailand made it legal for them to do so in 2005, they have mostly stayed away for fear of discrimination in the classroom and playground, being detained by police on the way to and from school, and because they don't speak Thai (the language of instruction). As a response, some organisations established schools specifically for the children of migrant workers, but while these may offer an acceptable education, other challenges arise. First, their curriculums, though well-meaning, may not be recognised by the government, thereby reducing the child's ability to access higher education later on. Second, some children may choose to stay at home to help their parents instead of attending school. This is especially common in situations where parents do 'piece work' and are paid by the number of pieces they produce (for example, shirts sewed, prawns peeled, or products boxed). In these cases, children are often enlisted to help parents with their work, thereby increasing the family's income.

For the reasons stated above, accessibility is a significant problem in the region. In order to fix this, governments should increase accessibility by making education cheaper or free, and making schools more accessible to minority and vulnerable populations. But just enabling children to attend school is not enough – they must also be able to learn there. The quality of education, or schooling that is both acceptable and adaptable, will be examined next.

### 7.5.3 Acceptable and adaptable education in Southeast Asia

The UDHR defines the quality of education as the “full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.” This view is also found in the ICESCR (Art 13), and was further expanded in Art 29 of the CRC to include respect for a child’s parent’s culture and values, responsible social views, and respect for the environment. Consequently, quality of education covers elements such as the curriculum, the standard of schoolrooms and other facilities, and the quality of teachers.

As regards the curriculum, an adequate education should enable children to contribute to society. Although the exact content of curricula will vary between countries, basic literacy and numeracy are considered vital, as are science and social science. More widely contested are subjects such as history, nationalism, sex education, and religion. As can be seen in the ‘Reflection and Discussion’ box below, States may assign nationalistic or religious objectives to education. Most national curricula do not teach accurate histories of their countries. Common omissions include gross violations of human rights, the negative role of the military, and animosity with neighbouring countries.

#### **Reflection and Discussion: Nationalism as an Objective of Education**

The objectives of education in many Southeast Asian countries include to instil patriotism and religious beliefs. For example, Indonesia’s Education For All (2003) policy states that it should ensure students are “faithful and pious to the one and only God,” while the Laos Constitution claims education should “raise the ... patriotic spirit, the spirit of cherishing the People’s Democratic Regime.” Similarly, Vietnam’s Education Law states the objective is to ensure students are “loyal to the ideology of national independence and socialism; to shape and foster the personality, quality and capacity of citizens.”

While nationalism can lead to discrimination, conflict, and war, it may also hold a country together and encourage people to work towards a common good or shared goal. For example, people often cheer their national sports teams or feel pride when a fellow citizen wins a prestigious award. On the negative side, nationalism can also encourage a sense of superiority and persuade students of the threat posed by other nations.

#### **Questions**

- (a) How should nationalism be taught?
- (b) When is teaching nationalism a good idea, and when is it a bad one

Curriculum aside, other factors which define the quality of education include:

- *School facilities:* Adequately sized classrooms with tables, chairs, blackboards, and other facilities such as playgrounds, toilets, and shelter from the weather.
- *Qualified teachers:* Teachers should be adequately trained.
- *Access to information:* Could include a library, internet access, books to assist learning and other sources of information.
- *A safe and non-discriminatory learning environment:* Children should feel safe from bullying, be able to reach school safely, and girls should not feel threatened by boys or male teachers.
- *Inclusive teaching methods:* Children should be encouraged to ask questions, be curious, be allowed to participate in all activities, and their education should include activities enabling learning and socializing.

There are many more elements to a quality education than the ones offered above, but these are some of the core ones.

Southeast Asia has a rich cultural and linguistic diversity. However, in most countries across the region, the national language is used as the medium of instruction in schools. The problem is that many children do not speak the national language in their homes, making it difficult for them to follow the lessons in class. For example, while Indonesia has about 700 languages and less than half of the population speak the national language (Bahasa Indonesian), yet the national language is used exclusively as the medium of instruction in the government schools. While some argue that not speaking the national language will make it impossible for children to understand their teachers or read textbooks, States counter that teaching in a minority language will leave children unable to access higher and university education, therefore making themselves less eligible for skilled employment later on in life.

### **Reflection and Discussion: Language of Instruction for Ethnic Minority Children**

Throughout the region, many ethnic minority children do not speak the national language. Southeast Asia has hundreds, if not thousands of ethnic minorities, all of whom speak their own languages and dialects (such as the Chin, Katchin, and Naga of Myanmar, the Akka and Hmong hill tribes of Thailand and Laos, and the Dyak and Papuan people of Indonesia). What should the language of instruction for these children be: the national language or their mother tongue? Advantages and disadvantages for both options are:

*Learning in the national language:*

- High schools and universities all teach in the national language
- Most workplaces also use the national language
- Government services (such as the driver's licence test) normally use national languages
- Most teachers only speak the national language, and it may be difficult to find and train others who can speak ethnic languages
- Children who can understand and converse in the national language will be able to socialize with a much broader group of people and, e.g. watch soap operas, listen to music, sing karaoke, and text each other

*Learning in an ethnic language:*

- If children don't understand their teachers, they cannot learn in the classroom
- Away from school, children need to be able to communicate with their families at home
- Ethnic cultures should be respected, and children losing the ability to speak their mother tongue will lose touch with their cultural roots

#### **Questions**

- (a) What language should be used in schools?
- (b) Is it preferable for all children to speak the national language so they can go on to attend high school and university?
- (c) But shouldn't governments respect local cultures? If children stop speaking their ethnic languages, such cultures and traditions may eventually be lost to time.

Another group constantly facing discrimination with regard to accessing education is children with disabilities. It is estimated that about 3-5% of children in Southeast Asia have a disability. However, not all are enrolled in schools which are generally too ill-equipped to accept them. For example, they may lack adequate infrastructure (such as wheel-chair ramps and braille books, etc) or teachers with appropriate qualifications. Further, because of the social stigma still experienced by many with disabilities in the region, the parents of these children may be too embarrassed to send them to school, or the worry could be bullying. As a result, very few children with disabilities are able to access education.

#### **7.5.4 Protecting minority and indigenous children in Southeast Asia**

Article 30 of the CRC states:

a child belonging to such a minority who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

This should be read alongside other rights mentioned in the CRC, including the principle of non-discrimination, the right to education, and access to healthcare found in other treaties. Although most States do not have specific laws on the rights of ethnic and indigenous children, all recognise the principle of non-discrimination. States which have passed such laws include Indonesia and Malaysia. Thus, Indonesia's Constitution protects national cultures and gives children the right "to protection from violence or discrimination." Similarly, Malaysia's Constitution recognises that "there shall be non-discrimination against citizens on the ground only of religion, race and descent, place of birth or gender in any law."

The governments of Laos and Vietnam go even further. In a 1992 policy entitled, Resolution of the Party Central Organisation Concerning Ethnic Minority Affairs in the New Era, Laos recognises its status as a "multi-ethnic country" so seeks to (i) improve the living conditions of ethnic minorities, ii) expand the cultural heritage and ethnic identity of each group through formal primary education and a revival of "ethnic youth schools" in mountain areas, (iii) research the writing systems of the Hmong and the Khmou, and (iv) allow study of these systems together with the Lao language and alphabet. Likewise, Vietnam has also formally recognized ethnic equality and offers full citizenship to ethnic minority peoples through both the old 1992 Constitution, and its more recent 2013 counterpart. Such rights are found in Art 5 which states that "all ethnicities are equal." It goes on to say that although the national language is Vietnamese, every ethnic group has the right to use its own language. Additionally, Art 58 gives minorities priority in healthcare and education. At the same time, Vietnam also introduced ethnic minority boarding schools (as did Laos) and offers special admission and programmes in addition to scholarships and preferential admissions at the university level.

This brief overview of the rights of children from ethnic minorities and indigenous groups shows that their rights have been officially recognised to a certain extent. In reality however, much discrimination still exists. This may be seen in the fact that ethnic and indigenous children spend less years in education, face greater health risks, and are more likely to be stateless. Clearly, these children are not getting full access to their rights.

## **7.6 Juvenile Justice**

States face many challenges when dealing with children in conflict with the law. According to Art 40 of the CRC, by the promotion of certain practices, children in the justice system should have their rights protected in line with CRC General Principles. These are:

- *Diversion:* Keeping children out of the juvenile justice system and avoiding juvenile detention in the first place.

- *Restorative justice*: Making the objective of justice the restoration of peace and human rights to the victim, perpetrator, and community.
- *Community-based rehabilitation*: Reintegrating the child back into the family and community to avoid further conflicts with the law.

Other relevant international standards include the UN Guiding Principles for the Prevention of Juvenile Delinquency (the ‘Riyadh Guidelines’), the UN Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’), and the UN Rules for the Protection of Juveniles Deprived of Their Liberty. Though juvenile justice is a relatively small concern in absolute numbers, broader implications about the safety and security of children in the community make it a significant one. Children are too often incarcerated for minor offences or otherwise institutionalised, a situation that frequently leads to more law breaking. According to the General Principles on the development of a child, the justice system should concern itself with the impact the punishment has on a child’s development. At the global level, a UN Independent Expert on the Global Study on Children Deprived of Liberty was appointed in 2016 although owing to the sensitivity of the topic, the study encountered delays due to a lack of support (at least compared to two previous global studies).

The next section will provide an overview of the topic by examining the laws and court processes governing juvenile justice, before looking at the detention of children.

### **7.6.1 Juvenile justice laws**

Juvenile justice systems in Southeast Asia are still undergoing development. While countries such as Singapore and Malaysia have had such systems for decades, the structures in Myanmar, Vietnam, and Cambodia are either very recent or still under development. The system still consists of the laws recognizing crimes and punishments involving minors, the police and courts apprehending juveniles and putting them on trial, and detention centres incarcerating them. Towards the end of 2019, the UN Global Study on Children Deprived of Liberty<sup>18</sup> was presented after three years of research. It estimated that more than 7 million children are deprived of liberty in the world annually. This includes 1 million children in police custody and 1.5 million detained on the basis of a judicial or court decision.

#### **Key Term: Child in Conflict with the Law (CICL)**

The term ‘in conflict with the law’ tends to be used rather than ‘breaking the law’ or ‘committing a crime’ because often children do not deliberately set out to break laws. For example, they may be compelled to steal food because of hunger. If homeless, they may be charged with vagrancy. At the same time, they may lack an understanding of the law and not realise a crime has even been committed. In such cases, the State should also shoulder some of the blame because of its failure to provide an adequate social security system to support children living in vulnerable situations.

<sup>18</sup> Nowak, M. (2019) *Global study on children deprived of liberty*. A/74/136. United Nations.

A central element of juvenile justice laws concerns the minimum age of criminal responsibility (MACR), that is, the age at which a person can face criminal punishment. Although CRC General Comment No 10 set this at 12, other international standards tended to favour 14. Indeed, with advancements in neuroscience, our understanding of child development as regards maturity and intellectual capacity has vastly improved resulting in General Comment No 24 in 2019 which also raised the MACR to 14. However, in many Southeast Asian countries, this age is set much lower (see Table 7-3). For example, in Brunei, Singapore, and Myanmar, the MACR is 7; in Indonesia, it rises to 8, and in Malaysia and Thailand, it currently stands at 10. In Vietnam, a 12-year-old can face administrative punishment but cannot be tried under criminal law until 14. Nevertheless, it must be noted that although the age of criminal responsibility is set at 7, in Brunei, no one under 12 has ever actually faced a criminal charge. In all States, criminal law can be applied flexibly, with police in most cases deciding not to treat young children as criminals even if above the MACR. Further, it should be pointed out that while the Committee on the Rights of the Child prescribed 14 in General Comment No 24 as an absolute minimum, States were encouraged to increase it. Thus, the Committee commended countries with higher MACR and those applying the juvenile justice system even to persons aged 18 and older.

Further, countries setting the age of responsibility under 15 must first consider the child to have “sufficient maturing of understanding to judge ... the nature and consequences of his conduct on that “occasion” before prosecution. Other States like Vietnam have gone even further by claiming administrative responsibility (where the child can be put into a home) before criminal responsibility. Age should be considered as it is argued that a 10-year-old would have a different understanding of the consequences of an act than a 17 year old. Regardless, many countries in Southeast Asia currently hold 10–14-year-olds in detention.

**Table 7-3: Laws on Juvenile Justice**

	Juvenile Justice Laws	Age of Criminal Responsibility
Brunei DS	Children and Young Persons Act, Chapter 29	7
Cambodia		14
Indonesia		12
Lao PDR		15
Malaysia	Child Act 6111 (2001) Child Act 2001 as amended in 2006 Act A1511 – Child Act as amended in 2016	10
Myanmar	State Law and Order Restoration Council Law No 9/93	7
Philippines	Republic Act No 9344 or the ‘ Juvenile Justice and Welfare Act of 2006’ Republic Act No 10630 of 2013 (amending RA No 9344)	15
Singapore		7
Thailand	Child Protection Act (2003) Act of Juvenile and Family Court Procedure BE 2553 (2010)	12
Timor-Leste		16
Vietnam		14

**Table 7-4: Treatment of Children Below Minimum Age of Criminal Responsibility in the Philippines, Malaysia and Thailand**

Philippines	Malaysia	Thailand
Children in conflict with the law (CICL) below 15 years of age, not a recidivist, and whose offence is not serious will be: (i) released to the custody of a parent/guardian; and (ii) subjected to a community-based intervention program.	Children under 10 who commit acts that are otherwise criminal in nature may be subject to a child protection intervention by the social welfare agency if necessary and in their best interests, but should not be subject to arrest, investigation, detention, trial, or liability under the justice system.	Children under the age of 12 shall not receive penalties for committing acts that are deemed to violate the law.
CICL between 12 and 15 who commit a serious crime will be referred to a youth care facility.		Children aged 12 to 15 will also enjoy the same, but courts can impose measures that may include placing the child in custody, rehabilitation, or a foster home.
CICL between 12 and 15 who commit a crime that is not serious but is a recidivist will be subjected to an intense intervention program, unless the best interests of the child requires referral to a youth care facility.		Courts can now require offending children aged under 18 to get training, attend school, or undergo psychiatric treatment.

Source: Agcacoili, MG, Best Interest of the Child in Juvenile Justice: Case studies of Malaysia, the Philippines and Thailand, forthcoming publication, 2023.

### 7.6.2 Juvenile courts and detention centres

Children in conflict with the law enter a process of justice which starts with the arrest, interrogation, and court appearance of the child, followed by sanctions if found guilty. A number of problems can arise during this process. First, many children are arrested for relatively minor crimes throughout the region. As Table 7-4 shows, the most common crime is theft, which many have argued is a survival crime – in that, a child who is poor and hungry must steal in order to eat. The same can be said for other survival crimes such as vagrancy where homeless children are arrested for living on the streets. Following arrest, children may be vulnerable to violence and mistreatment while in police detention, sometimes by the police themselves, particularly those suspected of being gang members or repeat offenders. In other situations, authority figures such as teachers, in addition to the police, may administer corporal punishment. Child Protection Units, or police specially trained to deal with children, are, unfortunately, little used in Southeast Asia. While some States, such as the Philippines, have introduced protection units, the levels of protection offered in other States are basic or almost non-existent. For example, Myanmar has only 2-3 specialist officers in the main cities, while Malaysia has none at all.

One vital feature of juvenile justice systems are juvenile courts. Ideally, these should be separate from their adult counterparts with presiding judges having experience in dealing with minors during both the trial and sentencing. In most countries, these courts are closed to the public and juvenile records are often sealed once the child reaches adulthood. But this is not the case in all Southeast Asian countries. Cambodia has no separate court system for children (although they are tried under a different law to adults). In other words, less developed countries may simply not have invested in the necessary resources to establish separate court systems with specially trained judges and lawyers. Other problems may include:

- *Access to legal aid:* Ensuring children will be adequately defended by competent lawyers.
- *The separation of children and adults during the process:* Ensuring children are not incarcerated with adults who may pose a risk to them.
- *Avoiding the use of corporal punishment on children:* Malaysia and Singapore permit the use of caning as a punishment for children.
- *Adequate training for legal professionals:* Ensuring those working with children receive training in areas such as counselling and child psychology.
- *Disallowing the death penalty or life imprisonment:* No State in Southeast Asia permits children to face the death penalty.

Once arrested, charged, and convicted, the final concern of the juvenile justice system will be the sanction the child faces. The first sentence of Art 37b of the CRC indicates that deprivation of liberty must be lawful and not arbitrary. At the same time, international best practice recommends diversion as the most suitable response. Diverting a child from detention not only ensures compliance with the child's rights but also ensures their safety. Instead, the aim is to reintegrate them into society and reduce recidivism (or the child committing another crime). Examples of diversion practices include releasing children into the supervision of their family, releasing them on parole, or the use of alternative sanctions such as community service or counselling. It should be noted that diversion is not only relevant to sentencing but the whole justice process. Diversion can occur at the time of arrest, so, for example, police could avoid arresting the child in the first place. Court appearances can also be diverted, so a child could face a panel which could find justice without imposing a sentence. Indeed, General Comment No 24 (2019) specifically states that deprivation of liberty should primarily be used to ensure appearance at court proceedings and if the child poses an immediate danger to others. Some States prefer to avoid jailing children as it tends to achieve better results. For example, in Thailand, the most common sentence given is probation (used in over half of all juvenile court cases). Nonetheless, diversion from detention remains an underused option and detention is still the most common form of punishment in most of Southeast Asia. For example, Malaysia did not include diversion in its amended Child Act of 2016. Moreover, even when States include diversion and alternative measures in their legislation, often they are not actually implemented. Rather, the use of training or residential centres, similar to boarding schools, is prevalent in many countries despite being the equivalent of jail. While some argue that the objective of punishment should be the rehabilitation and reintegration of the child offender into society, such aims are challenging as they will necessarily involve child welfare organizations, counselling and education facilities, and the willing involvement of the child itself. According to UNICEF's study on 'Diversion not Detention' (2018), root causes for the overuse of detention are a lack of effective child welfare systems and family support, "tough-on-crime" policies, excessive criminalization including status offences, low ages of criminal responsibility, discrimination, a lack of resources, and corruption.<sup>19</sup> Meanwhile, the UN Global Study on Children Deprived of Liberty (2019), which is informed by over 7,000 scientific articles, revealed that the particular circumstances of detention are directly harmful to the mental and physical health of children across all situations of deprivation of liberty.<sup>20</sup>

As yet, no State in Southeast Asia has managed to develop a functioning juvenile justice system based on CRC principles, although improvements have been made. The best interests of the child are often not the priority, with contrary views (such as punishment as a deterrent) taking

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<sup>19</sup> UNICEF East Asia and the Pacific Regional Office (2017) *Diversion not detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific*.

<sup>20</sup> Nowak, M. (2019) *Global study on children deprived of liberty*. A/74/136. United Nations, p.8.

precedence. Further, for whatever reason, a government may simply be unwilling to develop a separate justice system for children. As a result, the principles of diversion and restorative justice are adhered to unevenly throughout the region so while significant developments have occurred in recent decades, there is still much work to be done.

## **7.7 Children and Labour**

The ILO defines child labour as:

work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that:

- Is mentally, physically, socially or morally dangerous and harmful to children; and/or
- Interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessive long and heavy work.

States have a duty to protect children from unacceptable working conditions or as Art 32 of the CRC defines it, work that is “free from economic and social exploitation.” As such, States should prevent children from performing any work detrimental to their health, development, and education. A child who cannot go to school because he or she must toil all day in a factory is thus being exploited. Not only must school be missed, the work itself may be unsafe, potentially hindering a young person’s growth and development. And it goes without saying that a child who goes unpaid or is forced to work is a victim of exploitation. It is these conditions that must be eliminated. Globally, SDG Target 8.7 aims to eliminate child labour by 2025 and forced labour, human trafficking, and modern slavery by 2030. These goals can be achieved by a variety of measures including introducing a minimum age of employment, regulating work conditions, and banning certain types of labour.

The next section will examine definitions of child labour in international and national laws, then detail how child workers are protected by regulations on minimum wage and work conditions. Finally, some cases of child labour in the region will be outlined.

### **7.7.1 International law on the protection of working children**

Most international laws on minimum wage and working conditions were introduced by the International Labour Organization or ILO. From 1919, the earliest ILO conventions included sections on child labour as can be seen in ILO Conventions 5 (1919), 7 (1920), and 10 (1921) on minimum working ages in industry, seafaring, and agriculture respectively. In each one, 14 was designated as the minimum age. Nonetheless, the twelve conventions on minimum wage were eventually replaced by the Convention Concerning Minimum Age for Admission to Employment, or Convention 138 in 1973. As one of the eight core conventions of the ILO, all but two Southeast Asian States have ratified it over the course of around 25 years.

**Table 7-5: Ratification of Main ILO Conventions by Southeast Asian States**

	<b>Date of ratification of Convention 138 on minimum age</b>	<b>Minimum age as stated by governments</b>	<b>Date of ratification of Convention 182 on the worst forms of child labour</b>
<b>Brunei DS</b>	17 June 2011	16	9 June 2008
<b>Cambodia</b>	23 Aug 1999	14	14 Mar 2006
<b>Indonesia</b>	7 June 1999	15	28 Mar 2000
<b>Lao PDR</b>	13 June 2005	14	13 June 2005
<b>Malaysia</b>	9 Sep 1997	15	28 Nov 2000
<b>Myanmar</b>	Not Ratified	13/15*	18 Dec 2013
<b>Philippines</b>	4 June 1998	15	28 Nov 2000
<b>Singapore</b>	7 Nov 2005	15	14 June 2001
<b>Thailand</b>	11 May 2004	15	16 Feb 2001
<b>Timor-Leste</b>	Not Ratified	15	16 June 2009
<b>Vietnam</b>	24 June 2003	15	19 Dec 2000

\* Children aged 13-15 cannot work more than 4 hours a day. Children of 13 or 14 years can only be employed in certain industries.

ILO Convention 138 requires States to progressively increase the minimum age of employment and declare it upon ratification. While the Convention established 15 as the minimum age, it also enabled countries adopting different ages to apply under certain circumstances. For example, the age is raised to 18 where work is hazardous, and this work includes work done in mines and fishing boats. By contrast, developing countries can reduce the minimum wage to 14 if justifiable, and it may even be set at 12 for “light work” that does not interfere with education, health or social development. Examples include washing dishes at the family restaurant, domestic work or feeding animals on a farm.

**Table 7-6: ILO and Government Minimum Age Provisions**

	<b>Convention 138 on minimum age</b>	<b>Minimum age as stated by governments</b>
Light work	13-15	12-14
Basic minimum wage	15	14
Hazardous work	18	18

The 1999 Worst Forms of Child Labour Convention (No 182) is another of the eight core UN conventions which have been ratified by all Southeast Asian countries and its purpose is to protect children from the dangers of such work. While it lists some forms of labour including slavery, trafficking, debt bondage, commercial sex work, and criminal activities, it also permits States to define their own. In addition, ILO Recommendation No 190 on the Worst Forms of Child Labour (1999), although not legally binding like the Convention, assists understanding of the duties and obligations therein, as well as detailing some examples:

- Work in a dangerous place, such as underground or at dangerous heights;
- Work involving dangerous machinery;
- Work in an unhealthy environment; and
- Work involving long hours or during the night.

The recommendation also asked States to pay special attention to labour done by girls, particularly hidden situations such as domestic work.

According to the international standards outlined above, child labour is prohibited when done by young people under a certain age (which, although varying between countries, should generally not be lower than 14), and if the work is deemed dangerous (that is, categorized as a worst form of labour). This is considered damaging because children may miss out on an education, be physically and psychologically damaged, and/or injured, all of which may inhibit their overall development. In particular, not attending school could adversely impact the development of crucial social skills. In other words, child labour has long term negative impacts and may be detrimental not only to the child itself, but also to society as a whole which may miss out on the contribution he or she could have made to their community. Moreover, at some point, resources will also have to be spent to rehabilitate the youngster back into society.

### **7.7.2 Violations of child labour laws in Southeast Asia**

The ILO estimates that the Asia Pacific region is home to more working children than any other in the world; an estimated 122 million children aged 5-14 years are forced to work for survival or to support the family income.<sup>21</sup> UNICEF has estimated a probable 44 million child labourers specifically in Southeast Asian countries. Thus, child labour is obviously still an issue (affecting around 15% of children) and despite a decrease in numbers in the past few years, the COVID-19 pandemic is likely to have bucked this trend for the first time in over two decades. Some industries are known to be more frequent offenders because of the need to keep costs low including the fishing and fish processing industries, and agriculture where children often work in palm, rubber, and sugar plantations in Malaysia, Indonesia, Thailand, and the Philippines. Although not an industry *per se*, child beggars are also widespread. This is considered a form of labour because children are often recruited into the job and keep only a small percentage of the money they raise from begging. In addition, many young girls work as domestic labourers, while others are recruited by restaurants or other entertainment venues. Still others may be involved in scavenging and garbage picking which is not only low-paid but dangerous. However, the worst forms of child labour often occur as a result of trafficking and are found in many States in the region. Despite the relatively small numbers involved, such exploitation comprises one of the worst forms of child labour.

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<sup>21</sup> 'Child labour in Asia and the Pacific' ILO, available at <https://www.ilo.org/asia/areas/child-labour/lang--en/index.htm>, accessed on 22 February 2023.

## **Spotlight: Some of the Worst Forms of Child Labour in the Region**

### ***Child beggars***

Child beggars are found in large urban centres throughout the region. Most are not allowed to keep the money they raise. Once brought to the site, they are watched and given tips on how to collect more money which is then returned to their minders. Child beggars are generally brought in from other regions (for example, beggars in Bangkok tend to come from Cambodia or Myanmar, while minors from rural Java may be transported to Jakarta). Knowing youngsters will collect more money than adults, in some cases, the child's minder may even be his/her parent. Begging can, however, be extremely lucrative. It is estimated that a child begging in a busy city centre can raise about USD50 a day, and even up to USD100 on a busy day.

### ***Garbage scavengers***

Garbage scavenging still occurs in some Southeast Asian countries. The Philippines, in particular, has a long history of scavenging as evidenced by the famous 'Smokey Mountain' dump which operated for 40 years until its closure in the 1980s, to be replaced by Payatas. Thousands of people, many children, live and work as scavengers in this dump, collecting and selling recyclable material such as plastic and glass to earn a few dollars a day despite such health hazards as fumes, pollution, contaminated water, and landslides. As a result, the government banned children under 14 from such work and sought to develop the recycling industry while providing education and housing to those affected.

### ***Tea shop workers of Myanmar***

As one of Southeast Asia's poorest countries, Myanmar has many child labourers mainly due to the large number of rural families sending their children, some aged as young as 10, to work in the city. Many toil in tea shops for as little as USD1 a day. While seemingly harsh, such scenarios are common because villages often lack schools and families may be too poor to feed their offspring. Some estimates have even put the number of child labourers in Myanmar at close to one million.

## **7.8 Children in Armed Conflict**

In 2021, the provisions against children in armed conflict saw a high number of worldwide violations. Indeed, the United Nations Secretary General (in his annual report presented in 2022) verified 23,982 grave violations including the killing (2,515) and maiming (5,555) of 8,070 children, as well as the recruitment and use of 6,310 child soldiers.<sup>22</sup> While 70 % of children affected by grave violations are boys, the number of girls who were casualties of killing, maiming, or subjected to abduction and sexual violence also increased.<sup>23</sup>

### ***7.8.1 Protection of children from armed conflict under International Law***

The main laws governing armed conflict, including the protection of children in armed conflicts, may be found in International Humanitarian Law. Additionally, limited protection is offered by the Geneva Conventions (1949) and its protocols (1977). Since then, the CRC and its Optional Protocols have gone further. The reasons are partially historic as the Conventions predate the CRC by 40 years and understanding of children's rights have changed tremendously in that time. The new

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<sup>22</sup> United Nations General Assembly (2022) *Children and armed conflict: Report of the United Nations Secretary General*. A/76/871-S/2022/493, p. 2.

<sup>23</sup> *Ibid*, at 3.

rules designed to change the widespread practice of recruiting soldiers from the age of 16.

However, the four Geneva Conventions (1949) did seek specifically to protect children in times of armed conflict whether classified as civilians, victims or consultants. For example, as the latter, Art 16 of the Third Geneva Convention states that if captured as a prisoner of war, a child's age should be taken into account by detaining State. At the same time, they are also entitled to special respect and protection. As a non-combatant or even in times of peace, children are still entitled to certain rights. Thus, the Fourth Geneva Convention requires States to protect children from the effects of war by, for instance, removing them from conflict areas to places of safety where assistance such as medicine, food or clothing should be offered.

**Table 7-7: Relevant International Law on Child Soldiers**

International Convention	Notes
Four Geneva Conventions (1949) and Additional Protocols – 1977	Specifies 15 as the minimum age for soldiers. Asks for special protection of children during conflicts.
CRC Optional Protocol on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC) – 2002	Specifies 18 as minimum age for soldiers. Prohibits recruitment by both State and non-State armed groups.
Rome Statute (establishing the ICC) – 2002	Makes conscripting or enlisting of child soldiers (under 18 years) a war crime.
ILO Worst Forms of Child Labour Convention 182 – 1999	Makes the forced or compulsory recruitment of child soldiers (under 18 years) a worst form of child labour.
The Paris Commitments and Principles (Paris Principles) – 2007	Requires States to protect children (under 18 years) from unlawful recruitment by armed forces or armed groups.

States should also protect children orphaned or separated from their families due to conflicts which may entail relocation to a safe neutral country. Further, if an area is occupied, the occupying power must ensure the care and education of children continues. As regards any children caught up in armed conflicts, the 1977 Protocols to the Geneva Convention added provisions such as education and temporary evacuation from conflict areas. However, Additional Protocol I was the first treaty to limit the use of child soldiers, stating:

[C]hildren who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.

As can be seen by Table 7-7, one important limitation to the protections was that they were limited to children under the age of 15, but this was rectified by the CRC Optional Protocol (see Spotlight Box below) which set the minimum age at 18. The strongest protection offered to children can be found in the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC), which was adopted by the UN General Assembly on 25 May 2000, entering into force on 12 February 2002 and which currently has 173 ratifications (as of January 2023). CRC-OPAC is nicknamed the 'Straight 18' protocol because it requires States to set 18 as the universal age for recruitment to take part in hostilities.

## **Spotlight: Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict**

The main objective of CRC-OPAC is to prevent the conscription of children into the military, and to ensure they take no other part in armed conflicts. It is necessary because existing standards under IHL dating from the 1940s mandated 15 as the minimum age for recruitment. CRC-OPAC ensures IHL complies with current child rights' standards. While it does allow children to volunteer for the military, it also states they should not be allowed to take a "direct part in hostilities." However, the precise meaning of "direct" is left undefined. Some may assume that simply not arming a child is sufficient while others may consider supplying troops or scouting as direct participation. To comply with CRC-OPAC, it is therefore presumed volunteers under 18 may work as mechanics, cooks, or drivers, but not during conflict situations. Finally, the protocol applies to both national armies, and non-State armed groups. All Southeast Asian States have now ratified CRC-OPAC with Myanmar the last to do so in 2019.

### **7.8.2 Child soldiers in Southeast Asia**

To some extent, all States in Southeast Asia have had to change their behaviours to comply with the new rules and regulations. For some (such as Singapore), the problem concerns conscription and especially whether its school cadet programme contravenes the minimum age provision. Other countries such as Myanmar and the Philippines, which regularly used children as soldiers or porters, had greater difficulties to face. While an estimated 100,000+ child soldiers were in various Southeast Asian armed forces in the 1990s, this number is now much smaller, probably nearer 1,000.

Three Southeast Asian nations have a particular history in this regard: Myanmar, the Philippines, and Cambodia. It was once estimated that Myanmar alone had up to 100,000 child soldiers serving in both the Tatmadaw (national army) and its many ethnic armed groups. Throughout the 1980s and 1990s, many cases of children being forcibly recruited into the Tatmadaw were documented. Some were even abducted from the streets and forced to work as porters or labourers for the army, often for years at a time. As a consequence, Myanmar still has active disarmament, demobilization, and reintegration (DDR) programmes for its former child soldiers. Notwithstanding, in 2021, the United Nations verified the recruitment and use of 280 children in Myanmar (260 boys, 20 girls), some as young as 12 years old.<sup>24</sup>

Cambodia's problem with child soldiers is more historic. During the Khmer Rouge period (1975-1979), many were recruited, a fact that was noted in 1975 when young soldiers of the Khmer Rouge first entered Phnom Penh. But following its defeat, this number dropped drastically so by the time the conflict ended, there were few, if any, child soldiers in Cambodia. Finally, in the Philippines, a number of non-State armed groups have admitted to recruiting and training children, including the Moro Islamic Liberation Front (MILF), the communist New People's Army (NPA), and the Abu Sayyaf Group in Sulu and Basilan. In 2021, the United Nations verified the recruitment and use of 27 children (14 boys, 13 girls) in armed conflicts in the Philippines in both combat (1) and support roles (24).

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<sup>24</sup> United Nations General Assembly (2022) *Children and armed conflict: Report of the United Nations Secretary General*. A/76/871-S/2022/493, p. 19.

While, historically, the problem of child soldiers was significant in the region, much has since been done to reduce or eliminate the problem. Many factors combined to ensure compliance with the new provisions including changing cultural attitudes and stricter enforcement mechanisms. However, the first, and perhaps most significant reason concerns the reduction of armed conflict in the region. During the 1960s and 1970s, nearly all Southeast Asian countries were involved in some form of ongoing conflict, resulting in many active armed groups. In recent years, these numbers dropped drastically. Changing attitudes towards child soldiers also helped to turn the situation around. Previously, while not exactly supporting the idea, many armed groups took no active steps to stop children voluntarily joining their ranks. However, once it became an international crime, most baulked at committing war crimes especially with the establishment of the International Criminal Court (ICC). While few Southeast Asian countries were actually signatories to the ICC, these groups believed such accusations could severely impact their support, especially if they were supposedly fighting for human rights and freedoms.

From 1990, widespread ratification of the CRC led to changing attitudes towards children's rights. Given their universality, it became impossible for States to claim that the existence of child soldiers was an insignificant issue. Concerted advocacy also played a vital role in bringing the problem to light. As a consequence, efforts to rehabilitate child soldiers into the community named Disarmament, Demobilization, Reintegration (DDR) led to an increased monitoring of armed groups. While it is unlikely the problem of child soldiers will entirely disappear—as some teenagers will always want to join the military and other groups will continue to use children as cooks or entertainers—the issue is now much smaller than it was decades ago when Southeast Asian countries were seen as one of the worst offenders.

## 7.9 Right of Adolescents to Reproductive Health

One of the more challenging issues around child rights concerns children and sex. Though States may have strict laws protecting children from sexual violence, they have found it more difficult to address the issues of minors engaging in consensual sex. In the 21st century, States can no longer ignore the fact that teenagers engage in sexual activity because, even in Southeast Asia, the average age of a child's first sexual experience is getting younger. As such it becomes all the more imperative to educate teens about responsibility and safe sex. While the statistics are inconclusive because collecting data on such a private matter is notoriously difficult, it is estimated that, across the region, about one third of children (more boys than girls) have sex before the age of 18. States would much rather ignore this fact and as a consequence offer poor information and meagre services to minors regarding safe sex. Instead, most laws addressing teenage sex concern the age of consent – that is, the age a person can legally consent to having sex. Having sex with a person under this age is considered statutory rape.

**Table 7-8: Age of Consent in Southeast Asia**

Age of Consent	Country
14	Timor-Leste (adults having sex with 14–15-year-olds is a crime) Myanmar
15	Cambodia Lao PDR Thailand (although it is an offence for adults to have sex with anyone below 18)
16	Brunei Indonesia Malaysia (but only for heterosexual sex) Philippines (as of 2022) Singapore (but only for heterosexual sex)
18	Vietnam

Increased teenage sexual activity can lead to many problems including the spread of sexually transmitted diseases, non-consensual sex, poor reproductive health choices, and unplanned early pregnancies. Although the rate of HIV in Southeast Asian teenagers is very low, it is worrying that many sexually active teenagers have no access to contraception and are therefore engaging in risky behaviour. In addition, other curable sexually transmitted diseases may go untreated because of poor knowledge or embarrassment. As a result of this lack of information, many have expressed concern about rising levels of teenage sexual abuse, especially relating to the definition of consensual sex – for example, is sex consensual if a girl faces peer pressure or coercion? Another problem yet to be addressed is the discrimination faced by lesbian, gay, and transgender children.

In some Southeast Asian States, the issue of teenage pregnancy is garnering the most concern (although the numbers are relatively low compared to South Asia). Countries with high rates of teenage pregnancies include Thailand, Cambodia, Indonesia, and Laos, where about 5% of female teenagers get pregnant. In contrast, Malaysia, Myanmar, and Singapore admit to much lower rates. Singapore, in particular, puts its figure at closer to 0.6%.<sup>25</sup> Teenage pregnancies occur for a variety of reasons. For example, girls may be married off young, as in the case of Indonesia. But lack of information and understanding about reproductive health must also take some of the blame as most Southeast Asian parents tell their children very little about sex and sexuality. As a consequence, few teenagers will get access to contraception because it is either too embarrassing to ask for, illegal to buy, or simply unavailable. Other issues may arise from boys pressuring girls to engage in sex at an early age, or from teenage girls dating older males. Some reports also claimed the media has exacerbated the situation due to the prevalence of internet pornography and the increased sexuality of pop culture, although, again, these factors are difficult to prove.

The consequences of teenage pregnancies can be huge ranging from medical complications (which are more likely when the mother is young) to social stigma (which can be especially destructive if a girl is forced to leave school) to difficulties finding employment later on in life. For these reasons, States now seek to reduce teenage pregnancy rates. Of course, the most effective way to inform children of the risks would be through sex education but laws and policies on reproductive health in the region are either basic or non-existent.

In Indonesia, access to sexual and reproductive health services is legally restricted to married couples. As such, family planning is aimed solely at husbands and wives (or future husbands and wives). Laos has no specific laws on adolescent reproductive health rights at all, but the National Population and Development Policy does “provide adolescents with reproductive health and sexuality education.” Notwithstanding, Laos has the highest teen pregnancy rate in the region so the policy appears to have been largely ineffective. Likewise, Malaysia has a National Adolescents Health Policy (2001) which oddly fails to even mention the reproductive health of adolescents. By contrast, Thailand’s Public Health Ministry has been more active ensuring the good reproductive health of Thai citizens throughout their entire lives. Further, it has actually stated that one of its goals should be to address the issue of teen pregnancies. Similarly, Vietnam also has reproductive health measures aimed at adolescents in the form of education and counselling.

Finally, the views of different religions regarding sex, sexuality, and sexual morality have a significant impact on the right of adolescents to reproductive health. In general, the main religions in the region (Buddhism, Islam, and Christianity) all view sex as necessary solely for the purposes of procreation in adulthood. In such a context, religion plays a significant role in the policing and control of sex, sexuality, and sex education, more often than not, linking it to silence and feelings of shame across Southeast Asia.

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<sup>25</sup> Registry of Births and Deaths Singapore (2022) *Report on Registration of Births and Deaths, 2021*.

## Reflection and Discussion: Learning about Reproductive Health at School

Most children receive little information about sex and sexuality in school. While sex education should cover the biology of sex and how babies are conceived and born, other information is just as vital including consensual sex, sexual health concerns, and non-heterosexual behaviours such as homosexuality. However, the last three topics are rarely discussed particularly as homosexuality is still illegal in some countries.

### Questions

- (a) How much sex education was taught at your school?
- (b) What were you taught about sex?
- (c) To what extent does religion influence what is taught about sex and sexuality in your country?
- (d) At what age do you think children should be taught about sex?
- (e) Where do young people now get information about sex? From friends? Books? The internet?
- (f) How reliable do you think this information is?

Although government policy and laws on child reproductive health are paramount, often they do not tell the whole story. In actual fact, most children in the region only get basic access to such information and few understand how pregnancy actually occurs, never mind how to guard against sexually-transmitted diseases. Most information about sexuality tends to be received from friends or the internet, both of which are unreliable sources. As a consequence, both girls and boys may feel pressure to be sexually active at an early age. In addition, boys may feel pressure to have sex, resulting in a disturbing number of rapes committed by children. A UN study (2010 - 2013) as part of the Partners for Prevention project found a very high prevalence of men admitting to rape, some even committed during childhood. About 15 % of the men surveyed who admitted to committing rape did so for the first time when they were younger than 15, and while the reasons varied, one common claim was that they felt entitled to have sex with women.<sup>26</sup> Accordingly, amongst other recommendations, the study advocated changing ideas around masculinity to make families safer, and educating boys on sexual values earlier on in life.

The reality is that many children do have sex at an early age so States should plan accordingly by ensuring they're educated about safe sex and the meaning of consensual sex which will hopefully instil both boys and girls with enough confidence to wait until they are really ready to have sex.

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<sup>26</sup> Fulu, E. et al. (2013) *Why do some men use violence against women and how can we prevent it?* UNDP, UNFPA, UN Women and UNV, p. 99.

## **A. Chapter Summary and Key Points**

### **The Rights of Children**

During the 18<sup>th</sup> century, the lives of most children were characterized by poverty, hard labour, and exploitation which adversely affected their health and development. There was no qualitative difference in the way children and adults were portrayed and they did not enjoy special treatment in terms of care and protection. Attitudes started to change radically in mid-19th century Europe and especially following the two World Wars when regulations were passed reducing the number of hours children could do paid work and mandating compulsory mass education. Key milestones in the recognition of the rights of the child at the international level were the Geneva Declaration on the Rights of the Child (1924) and the Declaration of the Rights of the Child (1959) which contained 10 principles (primarily focused on welfare) leading to the decision in 1979 to turn it into a Convention on the Rights of the Child.

### **Convention on the Rights of the Child (CRC)**

Following the UN General Assembly's unanimous adoption of the CRC, it entered into force on 2 September 1990, thereafter with ratification continuing at an unprecedented pace. Today, 196 countries have ratified the CRC with only the USA declining to do so. The CRC consists of three sections: substantive articles (Arts 1-41); provisions related to the reporting and monitoring of implementation (Arts 42-45); and the ratification process. The substantive articles cover civil and political rights, as well as economic, social, and cultural rights, reflecting the comprehensive nature of the CRC and the interdependence of rights.

The four general principles (Art 2 on non-discrimination; Art 3 on the best interests of the child as a primary consideration in all actions concerning children; Art 6 on the inherent right to life and the right to survival and development; and Art 12 on the right to express views and have them taken into account) are crucial throughout the convention, as they influence the way children's rights are met whilst also providing solutions to some problems facing children. These general provisions should be taken into account when implementing other articles of the CRC. In order to provide guidance to State Parties and others, the CRC Committee also issued General Comments on Arts 12 and 3.

### **Protection of Children Against Violence**

It is generally accepted that the scale and scope of violence against children has increased globally in recent years. In 2017, it was estimated that violence affects over one billion children worldwide and manifests itself in various forms of abuse, neglect, maltreatment, and exploitation as clearly defined in Art 19 of the CRC which recognizes all forms of physical and mental abuse. Corporal punishment is the most common form of violence against children in schools although technology is now providing a new medium for abuse through cyber-bullying.

A particularly heinous form of violence against children is sexual exploitation for which an Optional Protocol on the sale of children came into force in 2002. Furthermore, in order to strengthen understanding and implementation of Art 19, the Committee on the Rights of the Child adopted General Comment No 13 (GC13) in 2011 which advances best practice approaches and technical resources for countries working to prevent violence against children. A more recent development is the recognition of the Sustainable Development Goals with a specific target (SDG 16.2) to end all forms of violence against children, as well as others addressing specific forms of violence (such as Target 5.3 to eliminate child marriage and FGM).

## The Right to Education

International human rights law guarantees the right to education. The Universal Declaration of Human Rights (1948) proclaims in Art 26 that “everyone has the right to education.” Since then, this right has been widely recognised and developed in a number of international instruments elaborated by the United Nations, especially the CRC (Arts 28 and 29). The right to education has also been reaffirmed in other treaties covering specific groups such as women and girls, persons with disabilities, migrants, refugees, stateless persons as well as indigenous and ethnic minorities, etc. Similarly, Art 31 of the ASEAN Human Rights Declaration states that every person has the right to an education. In Southeast Asia, UNICEF estimates that even before the COVID-19 pandemic, at least 35 million children were not attending school or had no access to quality education because of their socioeconomic status, geographical location, disability, ethnicity, language, and gender. While enrolment has improved in many countries across the region, even in school, millions of children are not adequately learning or are dropping out early.

## Juvenile Justice

Southeast Asia is experiencing many challenges in the field of juvenile justice. This is evident in the number of international standards issued, the continuing Concluding Observations on the subject, and the recent Global Study on Children Deprived of Liberty. Nevertheless, several national legal provisions are still not consistent with the CRC such as the low MACR in some countries, the prevalence of status offences, and institutionalization even for children below MACR. While material context is often cited as a reason for limited investment in juvenile justice systems, this fails to explain why wealthy States such as Brunei, Singapore, and Malaysia lag behind in these areas too. Rather, it appears the conflict between international standards and national context is largely due to differences in the conception of childhood, punishment, and justice as well as the view that the CRC is considered too western and individualistic by Southeast Asian societies.

## Children and Labour

UNICEF has estimated there are close to 44 million child labourers in Southeast Asia in, for example, fishing factories and such industries as mining, carpet weaving, and garment making. Its prevalence can be traced back to overwhelming poverty, social norms accepting of child labour, a general lack of social protection, and a failure to ensure quality education for all children. To counteract this rising tide, the ILO has championed two fundamental legal pillars of global action: the Minimum Age Convention, 1973 (No 138) and the Worst Forms of Child Labour Convention, 1999 (No 182). Furthermore, national level legal standards and mechanisms have also been developed or reformed. However, based on the recent rise in cases during the COVID-19 pandemic, such legal safeguards no longer seem adequate.

## Children in Armed Conflict

In 2021, the United Nations verified a total of 23,982 violations against children in conflict situations across the world.<sup>27</sup> Southeast Asia alone has seen much combat over the years mostly in Cambodia, Myanmar, and the Philippines. In fact, Aceh (in Indonesia), Myanmar, southern Thailand, and Mindanao in the Philippines are still seeing on-going conflict. In some countries, children are used not only as combatants, but as scouts, cooks, porters, guards, messengers, and more, meaning they can suffer widespread abuse including being killed, maimed, abducted, and sexually assaulted in addition to being denied humanitarian assistance. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (which came into force in February 2002) aims to protect children from recruitment and use in hostilities

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<sup>27</sup> United Nations General Assembly (2022) *Children and armed conflict: Report of the United Nations Secretary General*. A/76/871-S/2022/493, p. 2.

and consolidates existing international law on the protection of children against recruitment and participation in hostilities. However, not all Southeast Asian States have ratified this treaty.

### **Right of Adolescents to Reproductive Health**

Sexual and reproductive health and rights refers to the right of everyone, regardless of age, ethnicity, sexual orientation, or other aspects of identity, to make informed choices regarding their own sexuality and reproduction. However, religion, socio-cultural norms, socio-economic factors, and national laws all have a significant impact on the sexual and reproductive rights of adolescents. In particular, they are vulnerable to the risks associated with poor access to sexual and reproductive health education and services (especially contraceptives) which can result in teenage pregnancies, sexually transmitted diseases, non-consensual sex, female genital mutilation, and other poor reproductive health choices (such as early marriage). However, adolescent sexual activity and differing sexualities are generally taboo issues in Southeast Asia despite the vocal concern of some States about teenage pregnancy which is high and still rising in the region. Adolescent sexuality is clearly a reality, and in a modern world it is not an issue governments, teachers, or parents should shy away from.

## **B. Typical Exam or Essay Questions**

- Why do we need a special convention for children's rights?
- Do you think the Convention on the Rights of the Child undermines parental authority and diminishes children's respect for local values and cultures?
- Has your government introduced any laws on work, education, and violence to protect children?
- Name an example where the best interests of the child was used by your government or an institution? Has it been used in court and/or government decisions concerning children?
- Does corporal punishment occur in schools in your country? Why is it used and has anything been done to stop it?
- Why do children drop out of school in your country? How can this be stopped?
- Select an indigenous or minority group of children in your country and discuss the challenges in educating them.
- Does the juvenile justice system in your country use diversion to keep children from detention?
- What are the features of a good juvenile justice system?
- Are there any cases of child labour in your country? Where do children work, and why are they working?
- Do the Convention on the Rights of the Child and ILO conventions prevent children from helping their parents with chores?
- Which areas currently still use child soldiers, and why are they fighting in these conflicts?
- What information should children receive about reproductive health and why do they find it difficult to access?

## C. Further Reading

### General Information

- Child Rights Information Network (CRIN): Contains many useful guides including an introduction to child rights. Available at <https://home.crin.org/>, accessed on 28 February 2023.
- United Nations International Children’s Emergency Fund (UNICEF): Contains a wide variety of studies on issues such as education, work, and health. Available at <https://www.unicef.org>, accessed on 28 February 2023.
- Save the Children International: Includes research on child rights, development, and education. Available at <https://www.savethechildren.org/>, accessed on 28 February 2023.
- Child Rights Connect: Contains helpful introductory materials. Available at <https://childrightsconnect.org/>, accessed on 28 February 2023.
- Child Rights Coalition Asia (CRC Asia): A regional network of children’s rights and human rights organizations with the objective of mainstreaming children’s rights perspectives and agendas into regional and international advocacy processes. Available at <https://www.crcasia.org/>, accessed on 28 February 2023.
- United Nations Department of Economic and Social Affairs: Hosts the ‘17 Goals’ website containing detailed resources in support of the Sustainable Development Goals (SDGs). Available at <https://sdgs.un.org/goals>, accessed on 28 February 2023.

### The Convention on the Rights of the Child (CRC)

- Information specific to the CRC can be found on the OHCHR website including the Committee on the Rights of the Child (the treaty body of the CRC) and its various General Comments. Links to the rapporteurs and studies on child violence, child soldiers, children deprived of liberty, and the sale of children may also be found here. Available at <https://www.ohchr.org/en/topic/children-and-youth>, accessed on 28 February 2023.
- For more specific information on child rights in ASEAN, the Institute for Human Rights and Peace Studies (Mahidol University) partnered with Save the Children International to produce ‘Child rights situation analysis within the ASEAN region’ Mahidol University and Save the Children, Philippines, 2016, available at [https://resourcecentre.savethechildren.net/pdf/crsa-asean\\_region\\_250416.pdf](https://resourcecentre.savethechildren.net/pdf/crsa-asean_region_250416.pdf), accessed on 28 February 2023.
- UNICEF East Asia and Pacific Regional Office (UNICEF EAPRO): Contains updated thematic reports and information on children in the region. Available at <https://www.unicef.org/eap/>, accessed on 28 February 2023.

### Violence Against Children

The websites of the following NGOs have archives of extensive reports and studies on this issue:

- ECPAT International: Contains situational analyses and thematic and legal studies of countries throughout Southeast Asia. This global network of NGOs also works to combat all forms of child sexual exploitation. Available at <https://ecpat.org/>, accessed on 28 February 2023.
- Global Initiative to End All Corporal Punishment of Children: Contains a database of the laws on corporal punishment and its use in many countries. Available at <https://endcorporalpunishment.org/>, accessed on 28 February 2023.
- Global Partnership and Fund to End Violence Against Children. A platform for collective, evidence-based advocacy, and action focused on SDG 16.2. Available at <https://www.end-violence.org/>, accessed on 28 February 2023.

- Partners for Prevention: Although not specifically about children, contains studies of sexual violence in many Asian countries.
- Global Status Report on Preventing Violence Against Children, Geneva: World Health Organization, 2020. Available to download at <https://www.who.int/teams/social-determinants-of-health/violence-prevention/global-status-report-on-violence-against-children-2020>, accessed on 28 February 2023.
- Internet Watch Foundation (IWF): Contains up-to-date global data on the scale and scope of online child sexual abuse materials. Available at <https://www.iwf.org.uk/>, accessed on 28 February 2023.

### **Education**

- United Nations Development Programme (UNDP): The Human Development Reports contain global statistics on children's access to education. Available at <https://www.undp.org/>, accessed on 28 February 2023.
- World Bank: Contains extensive data on children in the areas of education and work. Available at <https://www.worldbank.org/en/home>, accessed on 28 February 2023.
- United Nations Educational, Scientific, and Cultural Organization (UNESCO): Contains material on the right to education, including Education for All Global Monitoring Reports and 'First Language First,' a study on language and ethnic and indigenous children (available at <https://unesdoc.unesco.org/ark:/48223/pf000014028>, accessed on 28 February 2023).
- Katarina Tomasevski: Contains material from the first Special Rapporteur on education including a world education report, and various reports on the 4A system. Available at <https://www.ohchr.org/en/special-procedures/sr-education>, accessed on 28 February 2023.

### **Juvenile Justice**

- Raoul Wallenberg Institute (RWI): Contains 'A measure of last resort? The current status of juvenile justice in ASEAN Member States' which reviews the laws and practices of juvenile justice systems in the region. Available at <https://rwi.lu.se/app/uploads/2015/04/Juvenile-Justice-Report.pdf>, accessed on 28 February 2023.
- International Juvenile Justice Observatory (IJJO): Contains much relevant research and an e-learning platform on various aspects of juvenile justice. Available at <https://www.oijj.org/en>, accessed on 28 February 2023.
- Other bodies working on juvenile justice include the International NGO Council on Violence Against Children (information on which is available at <https://archive.crin.org/en/home/rights/themes/violence/un-study/international-ngo-council-violence-against-children.html>), the United Nations Interregional Crime and Justice Research Institute (UNICRI, available at <https://unicri.it/>) and the United Nations Office on Drugs and Crime (UNODC, available at <https://www.unodc.org/>, all accessed on 28 February 2023).

### **Child Labour**

- International Labour Organization (ILO): Contains databases on child labour laws and research on child labour. Available at <https://www.ilo.org/global/topics/child-labour/lang--en/index.htm>, accessed on 28 February 2023.
- US Department of Labor, Bureau of International Labor Affairs: Contains country studies (including many in Southeast Asia) on the worst forms of child labour. Available at <https://www.dol.gov/agencies/ilab>, accessed on 28 February 2023.

## **Reproductive Health**

- World Health Organization (WHO): Contains studies on a variety of topics including sexuality education and adolescent pregnancy. Available at: [https://www.who.int/teams/sexual-and-reproductive-health-and-research-\(srh\)/areas-of-work/adolescent-and-sexual-and-reproductive-health-and-rights](https://www.who.int/teams/sexual-and-reproductive-health-and-research-(srh)/areas-of-work/adolescent-and-sexual-and-reproductive-health-and-rights), accessed on 28 February 2023.
- United Nations Population Fund (UNFPA): Contains many valuable resources including a data portal on sexual and reproductive health. Available at <https://pdp.unfpa.org/search?categories=sexual%20and%20reproductive%20health>, accessed on 28 February 2023.

## About ASEAN University Network - Human Rights Education (AUN-HRE)



**ASEAN University Network**  
Human Rights Education (AUN-HRE)

Recognizing that respect for human rights and fundamental freedoms is one of the key principles for ASEAN Community building, the ASEAN University Network - Human Rights Education (AUN-HRE) was established by the ASEAN University Network Board of Trustees in 2009 with the objective of building a culture of human rights and peace in the region. The specific objectives of AUN-HRE are:

- \* To further efforts by different bodies in promoting human rights and peace education in ASEAN/SEA;
- \* To mainstream human rights and peace education envisioned by ASEAN Vision 2025 and to support the realization of SDGs (4.7);
- \* To strengthen capacities of lecturers/ students on research and education;
- \* To provide platform for exchange and collaboration within and beyond SEA region; and
- \* To develop materials and human resources for human rights and peace education.

With these objectives AUN-HRE has been organising: training workshops for lecturers at regional and national levels; essay competitions amongst undergraduate students in the region; and colloquiums on issues of interest expressed by its network members. It has also been producing textbooks and teaching manuals on human rights and peace.

AUN-HRE has 30 members and 2 associate members. The secretariat of AUN-HRE is hosted by the Institute of Human Rights and Peace Studies at Mahidol University in Thailand.

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



**Institute of Human Rights  
and Peace Studies**  
Mahidol University

The Institute of Human Rights and Peace Studies (IHRP) was established in 2011 by the merging of two centres at the Mahidol University: Center for Human Rights Studies and Social Development and Research Center for Peacebuilding.

The Center for Human Rights Studies and Social Development (CHRSD) was established in 1998. For more than ten years, it served as an academic institution specialized in human rights, with a track record in providing postgraduate education as well as training programs to students, human rights workers, human rights defenders, members of civil society organizations and government

officials. The MA in Human Rights started by the CHRSD is the longest running graduate degree program in Human Rights in Asia.

The Research Center for Peacebuilding was founded in November 2004 as a research center with the impetus to be part of the peaceful solution to conflicts in Thailand especially the conflict in three southernmost provinces: Pattani, Yala, and Narathiwat. The Center developed and implemented considerable action and participatory research projects. These projects focussed on facilitating cooperative efforts to deal with the conflicts through opening space for dialogue at all levels and identifying needs of community and society. Also, the projects provided inputs to policy makers on transforming conflicts and building just and peaceful societies.

Combining the experience and perspective of both these centres, IHRP is uniquely interdisciplinary in its approach and is committed to the advancement of human rights and peace by: educating human rights and peace practitioners; promoting outreach programs to community and international organizations; and conducting cutting edge research on important issues. The four academic programs implemented by it are:

1. Ph.D Human Rights and Peace Studies (International Program)
2. M.A. Human Rights (International Program)
3. M.A. Human Rights and Democratisation (International Program)
4. M.A. Human Rights and Peace Studies (Thai Program)

IHRP also hosts the secretariat of ASEAN University Network - Human Rights Education (AUN-HRE) and Strengthening Human Rights and Peace Research and Education in ASEAN / Southeast Asia (SHAPE-SEA).

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## **About Norwegian Centre for Human Rights (NCHR), University of Oslo**



UiO : **Norwegian Centre for Human Rights**  
University of Oslo

The Norwegian Centre for Human Rights (NCHR) is a multi- and interdisciplinary centre. Through research, teaching, and dissemination, the Centre shall promote the subject of human rights as an academic field, and strengthen its international position as a central actor and attractive collaborative partner within the human rights field. The NCHR emphasizes the connection between research, education, and practical application, among other things through international projects and programmes.

Website:  
<https://www.jus.uio.no/smr/english/about/>



