Journal of Current Southeast Asian Affairs

Rathgeber, Theodor (2014), Human Rights and the Institutionalisation of ASEAN: An Ambiguous Relationship, in: *Journal of Current Southeast Asian Affairs*, 33, 3, 131–165.

URN: http://nbn-resolving.org/urn/resolver.pl?urn:nbn:de:gbv:18-4-8099

ISSN: 1868-4882 (online), ISSN: 1868-1034 (print)

The online version of this article can be found at:
<www.CurrentSoutheastAsianAffairs.org>

Published by
GIGA German Institute of Global and Area Studies, Institute of Asian Studies and Hamburg University Press.

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Documentation: International Legal Human Rights Framework

Human Rights and the Institutionalisation of ASEAN: An Ambiguous Relationship

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Abstract: While the ASEAN Charter of 2007 heralded an era of improved democracy, human rights protection and good governance in accordance with the rule of law, the reality on the ground tells a different story. While all of the trappings of a human rights mechanism are in place, the normative and protective capacity of the regime is ambiguous at best. The adoption of core international human rights treaties by ASEAN member states presents an ambiguous picture, one which reveals significant variations between the ten countries. The purported institutionalisation of international human rights standards since 2007 in the region via the creation of an ASEAN human rights mechanism in that year is betrayed by the poor condition of actual protection of human rights at the national and regional level. The article analyses the situation on the ground in light of the normative obligations and aspirations of the states.

■ Manuscript received 19 October 2014; accepted 12 December 2014

Keywords: Southeast Asia, ASEAN, member states, human rights, international monitoring mechanisms

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Introduction

The Association of Southeast Asian Nations (ASEAN), formed in 1967,[1] is a political and economic organisation with the purported aims of accelerating economic growth and social progress, protecting regional peace, discussing differences peacefully, as well as maintaining political stability. ASEAN as a single entity would rank among the largest economies in the world, behind the United States, China, Japan, India and Germany; Indonesia alone contributes approximately 40 per cent of the population and two-thirds of the Gross National Product (GNP). ASEAN as a whole as well as each individual country is highly heterogeneous in terms of economy, level of institutionalisation, culture, religion and ethnicity.

Since the 1980s, a number of countries in Southeast Asia have transitioned from authoritarian rule or dictatorship into a type of governance more orientated towards democratic procedures and the rule of law. Civil society organisations gained hope in light of the increasing political spaces, believing that this might enable them to more easily promote participation and transparent decision-making and to ensure complaint mechanisms are put into place, and that societal changes would take place, as well. Despite this general trend, there are obvious variations in the domestic development of human rights standards in relation to and depending on a) the historically based type of governance (whether or not the government traditionally has a rather extensive influence on legal and public life), b) the development or empowerment of civil society stakeholders (their ability to self-organise, to protest and to use institutional or legal pressure), c) the government's access to and aspiration to gain international support (positively correlated with its progress in democratisation and extending the rule of law), d) the involvement of United Nations (UN) agencies in the country, such as the Office of the High Commissioner for Human Rights (OHCHR), the Office of the High Commissioner for Refugees, the UN Development Programme (UNDP) and so on, and f) the level of regional institution-building in terms of human rights. While there is no causal relationship between any given

1 The Association of Southeast Asian Nations (ASEAN) was formed in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. Later, ASEAN expanded its membership to include Brunei Darussalam, Cambodia, Laos, Myanmar and Vietnam. Papua New Guinea and Timor-Leste function as observer states. ASEAN covers approximately 4.5 million km² of land, comparable to the territorial extension of the European Union. Its total population is estimated to be approximately 600 million people.

factor and better human rights performance, the combination of all factors affects the conduciveness of governance to improve human rights standards and extend the process of democratic transition.

The actual changes on the ground did not meet the expectations in terms of democratic reforms, but there was some movement at the regional institutional level. In November 2007, the member states signed the ASEAN Charter, a constitution governing relations among the member states that was meant to strengthen the ASEAN community in general and turn the association into a body more similar to the European Union (EU), but under Asian conditions. Article 2 of the Charter aims to establish democracy, constitutional guarantees, rule of law, human rights, good governance and an acknowledgement of international law. All elements are recognised by each of the member states. Because the transition processes comprise different levels of development based on the domestic political situations and regime types, authoritarian regimes found themselves facing larger challenges. Inversely, while ASEAN member states have started to pay greater attention to the organisation's institutional process in terms of human rights, the endorsement of international human rights laws and protocols remains fragmentary. The gap between strengthening the international human rights standards by formal ratification, on the one hand, and the actual protections provided, including the institutional ambiguity, on the other hand, will be the focus of this article.

This article will provide a brief overview of to what extent member states of ASEAN have lived up to expectations regarding human rights, in particular light of the adoption of the Charter. It concentrates on international human rights standards and examines the progress made in the adoption and implementation of those standards. The article will mainly refer to the documentation provided by UN human rights mechanisms, particularly by the Universal Periodic Review (UPR), a country-review procedure established at the UN Human Rights Council (HRC). The UPR documentation can be considered as a highly accurate and succinct collection of data regarding a country's human rights situation, including the political handling of it by the government. While there are a large number of documents available to the UPR, the article focuses on the critical assessments made by UN institutions ("Compilation") and civil society organisations ("Summary"). The information provided by the Summary has additionally been counter-checked by further reliable sources on the human rights situation of the given country. Thus, the article analyses the situation on the ground against the normative obligations and aspirations of the states. The findings will be further reflected

in the context of ASEAN's goal of creating an institutionalised framework on human rights, and I will focus particularly on the reflections, observations and recommendations on the part of relevant civil society organisations. Finally, the article will discuss the current institutionalising process at the ASEAN level with a view to the future and its actors. The conclusion centres on the condition of ambiguity, given that ASEAN member states have ratified a number of human rights standards but failed to effectively implement them, and remain hesitant to recognise the international character of such rights as represented by the UN and other international bodies.

Universal Periodic Review

The UPR is a state-driven mechanism of the UNHRC which aims to improve the human rights situation on the ground of any given country.[2] ASEAN states participate in the UPR.

This acknowledgement of an international review mechanism on human rights is particularly interesting, as Asian states in general explicitly insist on the principles of sovereignty and Asian values, which can controvert the universality of human rights and the corresponding international involvement. In terms of principles, there should be no question on universality and international involvement within the human rights' context. International cooperation and external involvement in human rights are intrinsic parts of the recognised international human rights system since the UN Charter and the Universal Declaration of Human Rights (UDHR) and subsequently the UN treaties on human rights were adopted and later affirmed by the Vienna Declaration and Programme of Action in 1993 (unanimously adopted).[3] Every state that is a party to one of the UN treaties must accept international monitoring by independent experts. Finally, the UPR procedure, established in consensus by the emerging HRC in 2007, provides a mechanism to assess the human rights situation in a country through a procedure within an international

2 Each member state of the United Nations is supposed to declare what actions the state has taken to fulfil its human rights obligations. The UPR was launched in 2008. Each of the current 193 UN member states are supposed to periodically report on its human rights situation to a Working Group of the HRC and undergo a process of scrutiny carried out predominantly by peers. Currently, no other mechanism of this kind exists. By October 2011, the human rights records of all 193 UN member states had been reviewed.

3 See in particular Operative Paragraphs 1.2, 4, 5; at <www.ohchr.org/en/professionalinterest/pages/vienna.aspx> (8 January 2015).

monitoring system. Nevertheless, Asian countries continue to emphasise their caveats regarding international involvement, in particular when this issue turns into a political statement. I will address this issue below.

According to the founding document of the HRC,[4] the review shall assess to what extent states respect and implement the human rights obligations contained in the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), the core human rights treaties ratified by the state concerned, pledges and commitments voluntarily made by the state, along with international humanitarian law, where applicable.[5] The human rights situation in a country is currently reviewed every four-and-a-half years.[6] The UPR process ensures equal treatment for every country when its human rights situation is assessed. The UPR is conducted primarily on the basis of three documents: a twenty-page national report by the state under review; a so-called "Compilation" containing information from UN Treaty Bodies, mandate holders of the UN Special Procedures[7] and UN agencies such as the UNDP; and a so-called "Summary" containing information from "other relevant stakeholders" (civil society). The Compilation and the Summary comprise a maximum of ten pages each, and both are prepared by the OHCHR.

Civil society stakeholders are particularly appreciative of the UPR process and its utility in assessing the human rights situation on the ground. The UPR procedure comprises several stages: First, the reports are sent to the OHCHR in advance of the working group session and made publicly available in the official UN languages. Second, the state under review presents its national report to a working group that is formed by all 47 member states of the HRC and chaired by the acting HRC President. The presentation is followed by an interactive dialogue during which all states, HRC members as well as observers, are entitled to take the floor to ask questions and make recommendations on the human rights situation in the country concerned. The recommendations,

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4 See resolution [document No.] A/HRC/RES/5/1, 18 June 2007.

5 After an evaluation of the HRC's mechanisms and instruments in 2010, some smaller changes were introduced into the UPR. Acknowledged by resolution A/HRC/RES/16/21 in March 2011 and decision A/HRC/DEC/17/119 in June 2011.

6 Each year, 42 states are scrutinised during three sessions of the HRC dedicated to 14 states each. These three sessions are usually held in the months of January or February, May or June and October or November. See McMahon 2012 and Rathgeber 2013.

7 Details of these UN institutions and their functions can be accessed through corresponding websites listed at the website of the Office of the High Commissioner on Human Rights via <www.ohchr.org> and further links.

which can be of varying natures and cover diverse issues, can be either accepted or rejected by the state under review. At the end, the state under review presents its concluding remarks. This segment of oral assessment is exclusively reserved for states (no input from civil society) and reflected in a so-called "outcome report", which, among other things, lists all recommendations. Third, the outcome report is then presented for adoption at the next regular plenary of the HRC. The final document of the UPR process contains an addendum in which the state under review explains in writing its position on each received recommendation. During the session for adoption, oral contributions by non-state actors may also be made. Fourth, on the basis of the adopted document, the state concerned is required to implement the accepted recommendations and any voluntary pledges it has made. The period before the next review is called the "follow-up", during which the state is encouraged to involve civil society as well. The follow-up is considered to be the most critical step of the UPR process, as it determines the efficacy of the UPR in improving the human rights situation on the ground. Likewise, the follow-up demonstrates the state's engagement with human rights. Fifth, after four-and-a-half years, the next UPR cycle starts, which focuses primarily on the implementation of the accepted recommendations and pledges as well as the development of the human rights situation in general since the previous review. States are encouraged to provide the HRC a midterm update on the follow-up (for further details on the UPR procedure, see McMahon 2012 and Rathgeber 2013).

Although the UPR interactive dialogue is reserved for states only, there are opportunities through which non-state actors can actively take part in the UPR. In addition to their entitlement to make written submissions to the Summary (by the OHCHR), NGOs with consultative status at the ECOSOC (UN Economic and Social Council) are also entitled to take the floor during the process of adoption at the HRC plenary. Beyond the institutional provisions, civil society stakeholders can provide a shadow midterm report and take the floor during each regular session of the HRC to report on the human rights situation in the country. A special provision is reserved for national human rights institutions (NHRIs) with "A" status according to the Paris Principles (1993), a set of international standards which frame and guide the work of NHRIs and qualify, among other things, their level of independence.[8] Those NHRIs are entitled to have a special section within the Summary, and are given the

8 See details at <www.ohchr.org/EN/NewsEvents/Pages/ParisPrinciples20yearsguidingtheworkofNHRI.aspx> and further links.

floor directly after the state under review during the adoption process at the HRC plenary session. Finally, states are encouraged to conduct broad consultations with all relevant stakeholders before the national report is finalised as well as after it is adopted by the HRC in the follow-up. NGOs and NHRIs have widely used the UPR to provide briefings on the human rights situations and indicate the policy of the state concerned. In addition, as all the sessions at the HRC are transmitted via webcast, civil society organisations have used this opportunity to organise media and public events parallel to the sessions in Geneva.

Core International Human Rights Standards in the Context of ASEAN

This section provides an overview of the core international human rights standards ratified by the member states of ASEAN along with concerns, conclusions and recommendations expressed by the supervising UN Treaty Bodies[9] as well as by UN Special Procedures[10] with regard to the implementation process. This information will be expanded to include civil society's assessments submitted to the UPR process. Obviously, the UPR cannot exclusively explain the current stage of the human rights situation, but its documents and procedural results usefully condense the analysis.

International law experts note that there are currently nine UN treaties which are considered as core international human rights instruments. Each of these treaties is monitored by a committee of independent experts whose job it is to assess the state's implementation of those treaties. Some of the treaties are supplemented by optional protocols dealing with specific concerns, among them an individual complaint procedure. These core standards are (in chronological order of coming into force): the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD; adopted by the UN General Assembly in 1965 / in force since 1969, ratified by 177 UN member states as of August 2014); the International Covenant on Civil and Political Rights (ICCPR; respectively, 1966/1976, 168), the International Covenant on Economic, Social and Cultural Rights (ICESCR; respectively, 1966/1976, 162), the Convention on the Elimination of All Forms of Discrimination against

9 For a general overview on treaty bodies, see OHCHR at <www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx> (8 January 2015)..

10 For a general overview on Special Procedures, see OHCHR at <www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> (8 January 2015)..

Women (CEDAW; respectively, 1979/1981, 188), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT; respectively, 1984/1987, 155), the Convention on the Rights of the Child (CRC; respectively, 1989/1990, 194), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW; respectively, 1990/2003, 47), the Convention on the Rights of Persons with Disabilities (CRPD; respectively, 2006/2008, 148), and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED; respectively, 2006/2010, 43).[11] Once a state ratifies one or more of these treaties, it is obliged to take steps to ensure that everyone in the state can enjoy the rights set out in the respective treaty.

Brunei Darussalam

Among the various treaties listed above, Brunei Darussalam has only ratified the CRC (1995) and the CEDAW (2006)[12] – no optional protocols on complaint procedures and inquiries, nor any further core human rights standards. Brunei had reservations[13] about CEDAW, in particular regarding the provisions in paragraph 2 of Article 9 (nationality of children) and in paragraph 1 of Article 29 (dispute arbitration) as well as in general with regard to the principles of Islam. In addition, the Committee on the Elimination of Discrimination against Women was very critical of the provisions in the Syariah Penal Code Order in October 2013

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11 The monitoring UN Committees for the treaties are identified with acronyms integrating the entire or part of the treaty's acronym; such as the Committee monitoring ICESCR is usually abbreviated CESCR (Committee on Economic, Social and Cultural Rights), or the Committee on the Elimination of Racial Discrimination as CERD. Some other Committees' acronyms are identical with the acronyms of the corresponding treaty; such as the Committee against Torture (CAT), the Committee on the Elimination of Discrimination against Women (CEDAW), or the Committee on the Rights of the Child (CRC) and subsequently used in this text; all acronyms are explained at <www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> (14 January 2015).

12 See the meaning of the acronyms of the treaties in the previous paragraph or at <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (8 January 2015)..

13 "Having reservations" means that a state party to a human rights treaty does not formally recognise certain legal provisions of that treaty and considers itself exempt from implementation and reporting. The Treaty Bodies are nevertheless entitled and free to include such legal provisions under reservation into their inquiry procedure.

that discriminate against women. In the same way, a number of laws (such as the Islamic Family Law Order 2000, the Married Women Act and the Women and Girls Protection Act) and state rulings were addressed by the Committee, which argued that the state had failed to criminalise all forms of (domestic) violence against women, to participate in and consult with women's organisations, to guarantee equal voting rights in terms of making women eligible to vote as well as to be candidates, to prohibit polygamy, and to allow NGOs to register that would generate a conducive legal environment for said NGOs' activities.[14] UNESCO observed that Brunei had been party to the 1960 UNESCO Convention against Discrimination in Education since 1985, but there has never been any report on the measures taken towards its implementation. The UN Special Procedures simply reported that there has been no cooperation at all.[15]

Amnesty International (London) and the Institute on Religion and Public Policy (Washington, DC) have noted that Brunei Darussalam has not ratified a number of the core international human rights standards (see above), including conventions put forth by the International Labour Organisation (ILO) relating to freedoms of association and collective bargaining (Conventions 87 and 98), the elimination of forced and compulsory labour (Conventions 29 and 105), the elimination of discrimination in respect to employment and occupation (Conventions 100 and 111) and the abolition of child labour (Convention 138). Together with the Global Initiative to End All Corporal Punishment of Children (London), all NGOs concluded that in Brunei the status of freedom is poor and limited; trafficking in persons and exploitation of foreign workers are prevalent human rights problems; and economic, social and cultural rights in general are arbitrarily allocated. It is noteworthy that no NGO from inside Brunei submitted a report.[16] It is also worth noting that Brunei Darussalam has been ruled by the same family for more than 600 years under long-standing emergency powers.

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14 CEDAW, list of issues and questions in relation to the combined initial and second periodic reports of Brunei Darussalam, [UN document] CEDAW/C/BRN/Q/1-2 (2014).

15 See [UN document] A/HRC/WG.6/19/BRN/2 (February 2014), chapters A, B and C; see also CRC Concluding observations (2003) CRC/C/15/Add.219.

16 See A/HRC/WG.6/6/BRN/3 (July 2009), annex; A/HRC/WG.6/19/BRN/3 (February 2014); US Department of State 2014a.

Cambodia

Cambodia has ratified the following standards: the ICERD (1983), ICCPR (1992), ICESCR (1992), CEDAW (1992), CAT (1992), CRC (1992), CRPD (2012) and ICPED (2013). In 2004, Cambodia also signed onto the Migrant Workers Convention, which meant it accepted a corresponding policy. The Committees of the CRC, CAT and CERD encouraged the Cambodian government to finally ratify the CMW as well as to accept the individual complaint procedure of the ICERD in accordance with the latter's Article 14. The Committees of the CRC and the CERD further recommended that the government establish an independent NHRI in accordance with the Paris Principles. In addition, UNESCO called on Cambodia to ratify the Convention against Discrimination in Education.[17] In his reports to the HRC from 2012 to 2014, the UN Special Rapporteur on Cambodia[18] concluded that the separation of powers, the function and administrative organisation of the tribunals, and thus the independence of judges, all remained deficient. The Special Rapporteur also observed that the draft law on NGOs may considerably and disproportionately restrict activities by civil society, including human rights defenders.[19] Cambodian cooperation with the UN human rights mechanisms was considered to be improving, though there was and is no standing invitation to the thematic mandate holders of the UN Special Procedures, and the country mandate holder was publicly blamed and shamed by Cambodia for his critical assessments of the human rights situation there.

17 See A/HRC/WG.6/18/KHM/2 (November 2013) paragraphs 1–2, 8; see further CEDAW Concluding observations (2013) CEDAW/C/KHM/CO/4-5; CRC Concluding observations (2011) CRC/C/KHM/CO/2; CAT Concluding observations (2011) CAT/C/KHM/CO/2; CERD Concluding observations (2010) CERD/C/KHM/CO/8-13; CESCR Concluding observations (2009) E/C.12/KHM/CO/1; Human Rights Committee Concluding observations (1999) CCPR/C/79/Add.108.

18 Country mandate established by the then-UN Commission on Human Rights in February 1993 by resolution E/CN.4/RES/1993/6 as a Special Representative of the UN Secretary-General. As the HRC emerged in 2006 and 2007 as the successor of the Commission, the country mandate required a formal decision to continue the mandate with the new body, and the HRC did so in this case via resolution A/HRC/RES/9/15, which designates a Special Rapporteur.

19 See A/HRC/WG.6/18/KHM/2, op.cit., supra footnote 17, paragraphs 3–7; reports of the Special Rapporteur on the situation of human rights in Cambodia A/HRC/27/70, A/HRC/24/36, A/HRC/21/63.

A number of NGOs, some domestic organisations even joining forces,[20] indicated several shortcomings in the Cambodian human rights situation, such as a flawed electoral process; a politicised, weak and ineffective judiciary; and restrictions on the freedoms of press and assembly. The government interfered with freedom of assembly. Reports by media outlets were favourable towards the ruling party. The judiciary sometimes failed to provide due process and a fair trial, and a large portion of society was unable to receive fair adjudication in legal matters. The courts lacked human and financial resources and were subject to corruption and political influence. Members of the security forces reportedly committed arbitrary killings. Prison guards and police abused detainees in order to extract confessions. Arbitrary arrests and prolonged pre-trial detentions were also reported. Trafficking in men, women and children persisted. Domestic violence and child abuse occurred. Systematic expropriation of land in the form of land-grabbing deteriorated the right to life in particular of indigenous people and peasants. Corruption remained pervasive. Impunity and most human rights abuses mentioned above persisted.[21]

Indonesia

Indonesia has ratified the following standards: the CEDAW (1984), CRC (1990), CAT (1998), ICERD (1999), ICESCR (2006), ICCPR (2006) and CRPD (2011). It had reservations regarding, among other sections, Article 1 of the ICCPR and ICESCR (on self-determination) with a view to independence movements in the Moluccas and Papua. The CMW (2004) and ICPED (2010) were signed but have not been ratified. Despite this framework of legal institutions, a number of concerns were transmitted to the government. The CAT expressed its concern about the absence of appropriate penalties applicable to acts of torture in Articles 351 to 358 of the Penal Code. Further, the CAT recommended that Indonesia include a definition of torture in its penal legislation and draw attention to

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20 Such as the Cambodian League for the Promotion and Defence of Human Rights (Phnom Penh) together with Amnesty International; the Cambodian Human Rights Action Committee (Phnom Penh) together with the Asian Legal Resource Centre (Hong Kong); and the Advocacy and Policy Institute (Phnom Penh), endorsed by a further 30 Cambodian NGOs; see A/HRC/WG.6/18/KHM/3 (November 2013).

21 See A/HRC/WG.6/18/KHM/3, op.cit., supra note 20; Human Rights Watch 2014: 313–318; Human Rights Watch 2013: 293–299; Human Rights Watch 2012: 307–313; US Department of State 2014b.

torture in detention. The CAT also addressed local regulations insofar as they breached the Convention, sometimes relating to the introduction of sharia law. Subnational authorities had established more than 1,000 local laws and policies that were not in accordance with the agreed-upon international standards. Further concerns related to violence against Ahmadiyyah and other minorities, trafficking of and violence against migrant workers, and violence against human rights defenders. The CAT further expressed concerns about the restrictions imposed on the NHRI known as Komnas HAM which prevented that organisation from challenging a decision made by the Indonesia's attorney-general to not prosecute a particular case, even though it was in connection with investigations of gross violations of human rights. The government is supposed to ensure the effective functioning of Komnas HAM by strengthening its independence, mandate, resources and procedures, and by reinforcing the independence and security of its members. In 2009 the CERD brought up the issues of indigenous peoples, land resources and property rights over traditional lands in relation to the implementation of the programme Reducing Emissions from Deforestation and Forest Degradation (REDD), but to date, no satisfactory response by the government has been received.[22]

With respect to cooperation with treaty bodies and Special Procedures, Indonesia was commended for allowing country visits by the Special Procedures mandate holders on torture (2007), human rights defenders (2007) and migrants (2006). Only one recent visit was conducted by the Special Rapporteur on adequate housing (2014).[23] At the same time, the government was reminded that since November 2007, no further visits by Special Procedures had been agreed upon or allowed, despite requests by the mandate holders on freedom of religion (since 1996), freedom of expression (since 2002), summary executions (since

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22 A/HRC/WG.6/13/IDN/2 (March 2012), paragraphs 1–11, chapter III; see also CESCR Concluding observations (2014) E/C.12/IDN/CO/1; CRC Concluding observations (2014) CRC/C/IDN/CO/3-4; Human Rights Committee Concluding observations (2013) CCPR/C/IDN/CO/1; CEDAW Concluding observations (2012) CEDAW/C/IDN/CO/6-7; CAT Concluding observations (2008) CAT/C/IDN/CO/2.

23 See report of the Special Rapporteur on adequate housing – Mission to Indonesia, A/HRC/25/54/Add.1; see also further reports by the Special Representative of the Secretary-General on the situation of human rights defenders A/HRC/7/28/Add.2; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/HRC/7/3/Add.7; Special Rapporteur on the human rights of migrants A/HRC/4/24/Add.3; Special Rapporteur on the independence of judges and lawyers E/CN.4/2003/65/Add.2.

2004), disappearances (since 2006) and health (2011). The Working Group on Enforced Disappearances lamented that the Indonesian government did not respond to the 162 cases retransmitted to the government. The Working Group expressed particular concern over the situation of human rights defenders in the province of Papua.[24]

Despite Indonesia being a multiparty democracy with free and relatively fair elections, a number of concerns remained. Several NGOs and domestic NGO networks[25] urged Indonesia to further complete its institutional and normative framework by acceding to the Rome Statute of the International Criminal Court and by ratifying the ICPED as well as a large number of optional protocols dealing with the individual complaint mechanisms of several treaties, including the ICCPR, ICESCR, CMW, CEDAW, CAT and CRC. Although Indonesia ratified the CAT in 1998, the government did not criminalise torture in the national military and civilian penal codes. NGOs drew additional attention to the poor protection for religious and social minorities – in particular, the Ahmadiyyah and other religious groups in certain hot spots in Sumatra and Java. There, the situation for religious minorities had actually worsened compared to the previous decade. Local and provincial administrations refused to apply sentences handed down by the Supreme Court on freedom of religion and belief. At the district and province levels, there were 154 discriminatory by-laws in 2009 and 189 in 2010 specifically targeting women – by-laws still fully in force today. Furthermore, there is the looming legacy of killings by the military in the 1960s; few people have thus far been held accountable for those atrocities. A certain culture of impunity among the security forces prevails, and credible investigations into allegations of extrajudicial killings by security forces today have simply not been conducted – something sorely needed in, for instance, Papua. NGOs also addressed failures to enforce labour standards and workers' rights. Most of the NGOs stated that based on the assessments

24 A/HRC/WG.6/13/IDN/2, op.cit., supra footnote 22, chapter II, part B and chapter III.

25 Such as the Civil Society Coalition for the Protection of Human Rights Defenders, National Coalition for the Elimination of Commercial Sexual Exploitation of Children, Indonesia's NGO Coalition for International Human Rights Advocacy, Indonesia's NGO Coalition for Women and Children Rights (an ad hoc coalition for the UPR reporting in 2012), and the Commission for the Disappeared and Victims of Violence (KontraS) together with the International Center for Transitional Justice (ICTJ; New York); see A/HRC/WG.6/13/IDN/3 (March 2012).

and recommendations they made during the first UPR cycle in 2008, only little progress had been made as of 2012.[26]

Lao People's Democratic Republic

The Lao People's Democratic Republic (hereafter: Laos) has ratified the following standards: the ICERD (1974), CEDAW (1981), CRC (1991), ICESCR (2007), ICCPR (2009), CRPD (2009) and CAT (2012). The ICPED was signed in 2008, whereas the CMW was neither signed nor ratified. The government of Laos was commended for its increased engagement with the international framework in light of the improvements made since 2007. Nevertheless, some committees urged the government to bolster its institutional framework by ratifying the optional protocols related to the individual complaint mechanisms. The CEDAW, CERD and CRC recommended that the government accelerate the adaptation of domestic legislation to the international conventions ratified. For instance, the rate of enforcement of sentences following legal judgements against people and/or state institutions remains very low, and the legal complaints system to ensure that women, especially ethnic minorities, have access to justice is still ineffective. The CERD noted the absence of legislative provisions criminalising acts of violence and incitement to violence committed or promoted for reasons relating to race. There is no comprehensive definition of discrimination in Lao law. The CRC addressed the insufficient measures Laos has taken to ensure access to education and health services and to protect against exploitation. Although freedom of religion and belief is guaranteed by the constitution, all religious communities beyond the three official Christian churches and members of the national religion of Buddhism need permission by local governments to meet, build places of worship and even practise their religion, which goes against the provisions set out by the ICCPR.

The Special Rapporteurs on the rights of indigenous peoples as well as on the right to food expressed concern about forced displacement and relocation of indigenous peoples within the framework of economic modernisation – for instance, in connection with the construction of the Nam Theun 2 Dam (Khammouane Province), land-grabbing and mining. The CERD noted that the government of Laos had resettled members

26 See A/HRC/WG.6/13/IDN/3, op.cit., supra note 25, paragraphs 11–18, chapter II segment C; Human Rights Watch 2014: 342–349; Human Rights Watch 2013: 323–329; Human Rights Watch 2012: 334–340; US Department of State 2014c.

of ethnic groups from the mountains and highland plateaus to the plains. Laotian cooperation with Special Procedures was rather poor, as only two visits had been conducted, in 1999 and 2010, and a large number of reports to treaty bodies were overdue. Some of the state reports have been missing since 2006, covering two cycles of reporting.[27]

In their contributions to the UPR stakeholder report in 2010, independent NGOs – in contrast to government-organised NGOs called GONGOs – identified Laos as (still) being an authoritarian state ruled by one party. Despite the legal provisions, the government frequently infringes on freedoms of speech, press, assembly and association, as well as the right to privacy. Members of the security forces were involved in human rights abuses but acted with impunity. Abuse of prisoners and detainees by police and security forces, as well as harsh conditions in prisons, were reported. Police corruption and judiciary obstacles that prevent due process created the space for arbitrary arrest and detention. There are reports of local restrictions on religious freedom, discrimination based on sexual orientation and against persons with HIV/AIDS, restrictions on worker rights and trafficking in persons. The Lao Women's Union (LWU) subsequently recommended the dissemination of international conventions concerning the rights and interests of women and children and regarding human trafficking and violence against women. Amnesty International in particular called on the government to accede to the Rome Statute. Other submissions noted that the Lao government has failed to apply the international treaties it has signed or ratified.[28]

Malaysia

Malaysia has ratified the following standards: the CEDAW (1995), CRC (1995) and ICRPD (2010). However, it has had reservations about a number of articles in each of the treaties, such as on the nationality of children, marriage, divorce, guardianship and property rights for spouses. The other human rights standards have not been ratified, including both of the optional protocols on individual complaint mechanisms. Although Malaysia underwent a larger legal reform in 2011, UN committees and

27 A/HRC/WG.6/8/LAO/2 (January 2010), paragraphs 1–12, chapter II, segment B; see also CERD, Concluding observations (2012) CERD/C/LAO/CO/16-18; CRC, Concluding observations (2011) CRC/C/LAO/CO/2; CEDAW, Concluding observations (2009) CEDAW/C/LAO/CO/7.

28 A/HRC/WG.6/8/LAO/3 (January 2010), paragraphs 1–8, chapter II segment B; US Department of State 2014d.

mandate holders of the Special Procedures continued to recommend that Malaysia become a party to main international instruments on human rights, particularly the ICCPR, ICESCR, CAT, ICERD, ICRMW, the 1951 Geneva Convention relating to the Status of Refugees and the 1961 protocol thereto, the Convention relating to the Status of Stateless Persons, and the Rome Statute. During the first UPR cycle in 2009, the Malaysian government announced it would consider ratifying the ICCPR and CAT but has yet to do so. It was further recommended that Malaysia withdraw the reservations made to the CRC, CEDAW and ICRPD. The CEDAW and CRC reminded the government that the periodic reports had been pending since 2010 and 2011, respectively. UNESCO recommended that Malaysia ratify the Convention against Discrimination in Education and adopt measures (for example, special laws) to combat discrimination in education, protecting minority groups and promoting gender equality in education. The government was commended for having established the national Human Rights Commission of Malaysia (Suhakam) in accordance with the Paris Principles, and was called upon to take all measures necessary to ensure that Suhakam maintains its "A" status – meaning, its continuing independence from government is a must. Although the Special Rapporteur on arbitrary detention visited the country in 2010, Malaysian government cooperation with committees as well as with a large number of thematic mandate holders of the Special Procedures was generally poor.[29]

NGOs welcomed the parliamentary system of government and the periodic, multiparty elections. Nevertheless, no opposition party succeeded in competing on equal terms with the ruling coalition. According to submissions to the OHCHR,[30] such circumstances are closely related to the restrictions on freedoms of speech, assembly, association and religion and on freedom of the press, which manifested in book-banning, censorship and denying printing permits. The Prime Minister has great influence in the selection of the members of the Judicial Appointments Commission and in the appointment of judges, which undermines the independence of the judiciary. The government also intimidates lawyers by summoning them for questioning and by requesting them to furnish documents, written statements and information relating to their clients.

29 A/HRC/WG.6/17/MYS/2 (July 2013), paragraphs 1–6, chapter II and chapter III; see also CRC Concluding observations (2007) CRC/C/MYS/CO/1; CEDAW Concluding observations (2006) CEDAW/C/MYS/CO/2.

30 Among other submissions, a joint one by 54 domestic organisations, and one by the Indigenous Peoples Network of Malaysia (Jaringan orang Asal Semalaysia); see annex at A/HRC/WG.6/17/MYS/3 (July 2013).

The Minister of Home Affairs has absolute discretion to declare any organisation or group unlawful if he believes it would threaten the "security of Malaysia" or "public order or morality"; his level of power facilitates human rights abuses committed by security forces. There are allegations of detentions without trial and deaths occurring during arrest or while in police custody. Criminal and sharia courts impose caning as a form of punishment. Submissions noted that the penal legislation lacks a definition and prohibition of torture, which would be needed to adequately investigate, prosecute and punish such acts. Non-Muslim religious groups suffer from restrictions on proselytising and changing their religion, as well as other bans. Women, lesbian, gay, bisexual and transgender persons experience a wide range of discrimination. Human rights defenders regularly receive hate mail and death threats. Indigenous people continue to suffer from a lack of recognition of their land, rights and culture. They are continuously subjected to forced relocation and assimilation policies. Indigenous leaders appointed by their communities are replaced by government-appointed representatives. The government restricts union and collective-bargaining activities. Reports claim that child labour and forced labour also exist, especially among migrant workers.[31]

Myanmar

Myanmar has ratified only the CRC (1991), the optional protocol to the CRC on the sale of children, child prostitution and child pornography (2012), the CEDAW (1997) and the CRPD (2011), but has not acceded to any optional protocol with regard to individual complaint mechanisms or inquiry procedures. The committees on CEDAW and CRC both called upon Myanmar to ratify the optional protocols of each of the pertinent conventions as well as the ICESCR, ICCPR, CERD, CAT, ICRMW and ICPED, along with corresponding optional protocols, the 1951 Geneva Convention relating to the Status of Refugees and its 1967 optional protocol, and the 1954 Convention relating to the Status of Stateless Persons and its optional protocol. These recommendations were endorsed by the UN General Assembly, the UN Secretary-General,

31 See A/HRC/WG.6/17/MYS/3, op.cit., supra note 30, chapter II; Human Rights Watch 2014: 350–355; Human Rights Watch 2013: 330–335; Human Rights Watch 2012: 341–346; US Department of State 2014e.

the Special Rapporteur on the situation of human rights in Myanmar[32] and further thematic mandate holders on several occasions. They also recommended that Myanmar align its national legislation and practice with those welcomed commitments in the framework of the treaties it has already ratified. The UN experts noted that Myanmar's domestic courts cannot directly invoke the provisions of global or regional human rights instruments and, therefore, urged the government both to incorporate international human rights law into national legislation and to introduce the pertinent legal provisions in order to allow for national norms to be interpreted through international standards. Furthermore, the Special Rapporteur on Myanmar drew attention to the provisions in the constitution that were applicable only to citizens, given that the restrictive requirements for citizenship would render some people stateless, such as the Rohingya ethnic minority. Despite the political opening process that began in 2011, only the CRPD (December 2011) and the optional protocol to the CRC (January 2012) have been ratified since then. It was further noted that Myanmar does not have an NHRI accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, while the Myanmar Human Rights Body, established by the government in 2007, did not meet the Paris Principles. The Special Rapporteur on Myanmar has been able to visit the country on formal missions, but other thematic mandate holders are still awaiting permission from the government to investigate and assess the country's status on issues such as arbitrary detention; extrajudicial, summary and arbitrary executions; freedom of religion and belief; torture; human rights defenders; and internally displaced persons.[33]

It has been acknowledged that the constitution, national legislation and national policy-making have been modified, and that Myanmar's human rights record has improved in terms of decreasing figures of

32 The country mandate was established in 1992 by the then-Commission on Human Rights via resolution E/CN.4/RES/1992/58. The mandate was continued by HRC resolution A/HRC/RES/7/32.

33 A/HRC/WG.6/10/MMR/2 (November 2010), paragraphs 4–10, chapter I segment A, and chapter II; see also CRC Concluding observations (2012) CRC/C/MMR/CO/3-4; CEDAW Concluding observations (2008) CEDAW/C/MMR/CO/3; and the most recent reports of the Special Rapporteur on the situation of human rights in Myanmar A/HRC/25/64, A/68/397, A/67/383, A/HRC/19/67, and A/66/365, as well as the reports of the UN Secretary-General on the situation of human rights in Myanmar A/66/267, A/65/367, A/63/356, and E/CN.4/2006/117.

systemic human rights abuses. Nevertheless, in 2012 NGOs[34] remained concerned in particular about reforming the national legislation in compliance with international human rights standards, reforming the judiciary in order to assure its independence and impartiality, releasing all prisoners of conscience and taking specific measures to generally subordinate the military and police forces to the civil rule of law. Politically motivated arrests, widespread societal discrimination and violence against minorities, and a general lack of rule of law are par for the course in Myanmar. The culture of impunity is supported by a judicial system that is neither impartial nor independent.

There are a number of elements in the constitution that undermine international human rights standards. The constitution still guarantees military control over fundamental rights, and active-duty military officers continue to wield authority at many levels of government. A number of laws restricting freedom of speech, press, assembly, association, religion and movement remained in place, although the enforcement of these laws was less rigorous in 2014 than it was previously. Up to 2014, NGOs noted that serious human rights violations continued in conflict zones in ethnic-minority border states, such as in eastern Myanmar and parts of western Myanmar, including extrajudicial executions, sexual violence against women and girls, forced displacement, torture (also endemic in interrogation centres and prisons), forced labour and the use of child soldiers. Civilians faced abuses by government and non-state armed groups. The Rakhine State with its Rohingya and other Muslim minority populations was the most troubling example of the continuing humanitarian and human rights crisis. Meanwhile, attacks on Muslim minorities spread to other parts of the country at various points throughout the year. Other non-Buddhist minorities also faced discrimination. Christians, particularly among the Chin, Kachin, Karen and Karenni, sometimes faced physical persecution in the form of being beaten, jailed or driven away from their families and communities for converting. Restrictions on movement resulted in increased impoverishment among those groups. Rohingya were virtually confined to their village tracts, which served to limit their access to markets, employment opportunities, health facilities and higher education. Thus, scarcity of food is reported in northern Rakhine State, Kayin State and northern and eastern Shan State. The

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34 Among them, domestic networks such as the joint submission by the Assistance Association for Political Prisoners (Burma) (AAPP-B), Arakan Rivers Network (ARN), Burma Fund UN Office, Burma Lawyers' Council (BLC), Chin Human Rights Organisation (CHRO), and others; see A/HRC/WG.6/10/MMR/3 (October 2010), annex.

areas with oil and gas development projects, such as the Yadana and Yetagun pipeline region, are militarised and require independent human rights monitoring along with further environmental as well as social impact assessments.[35]

The Philippines

The Philippines has ratified the following standards: the ICERD (1967), ICESCR (1974), CEDAW (1981), ICCPR (1986), CAT (1986), CRC (1990), ICRMW (1995), CRPD (2008) and the Rome Statute (2011). Not yet ratified are the ICPED and most of the complaint procedures, with the exception of the optional protocols on the ICCPR and CEDAW and the inquiry procedure on the CAT and CEDAW. Thus, several committees encouraged the Philippines to consider ratifying the ICPED and many of its optional protocols. The CERD recommended that the country adopt a comprehensive law on the elimination of discrimination that would cover all rights protected under the ICERD. The CAT, CRC, CESCR and CERD noted that the mandate of the Commission on Human Rights of the Philippines needs more power in order to prosecute cases on their own, as well as sufficient resources for conducting the corresponding investigations. The CERD noted as a positive that personnel of a certain level of the armed forces cannot be promoted unless they receive certification from the CHRP that there are no pending cases or past findings regarding human rights violations. While commending the Philippines for its periodic reports, which followed the guidelines for reporting, the CAT and CESCR encouraged the government to submit further reports more in line with the time schedules. The corresponding reports were submitted in 2009 (CAT) and 2008 (CESCR), at that time 16 and 11 years later than the due dates. In 2008 and again in 2010, the CERD considered the Subanon Mt. Canatuan case under its early-warning urgent action procedure. The Subanon people had informed the CERD that the mining operations would violate their sacred site. The CERD recommended that the government of the Philippines re-undertake the consultation process with the Subanon people in accordance with Article 19 of the UN Declaration on the Rights of Indigenous Peoples, which sets free, prior and informed consent as a prerequisite for

35 See A/HRC/WG.6/10/MMR/3, op.cit. supra footnote 34, paragraphs 1,4, 5–12, chapter II segment B; Human Rights Watch 2014: 305–312; Human Rights Watch 2013: 284–292; Human Rights Watch 2012: 300–306; US Department of State 2014f.

any clearance and land right certification.[36] A large number of mandate holders of the Special Procedures had requested, and some reiterated their requests, for permission to visit the country, but only the Special Rapporteur on trafficking in persons succeeded in conducting a mission, in 2013.[37] In 2012 the Working Group on Enforced or Involuntary Disappearances noted that since its establishment, it has relayed 782 cases to the government, 621 of which remained unaddressed. In contrast to the institutional framework, the cooperation with the UN human rights mechanisms in real terms was rather flawed.[38]

NGO submissions[39] underlined that the most significant human rights problems continued. Out of the long list of human rights violations, burning issues are the continued extrajudicial killings and enforced disappearances predominantly undertaken by security forces in the context of counter-insurgency operations. Although the government had accepted the recommendation to eliminate extrajudicial killings during the first UPR cycle (in 2008), the practice has continued – even increased – since 2010, and state agents are still significantly involved. Death

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36 See CERD/C/PHL/CO/20, para. 23.

37 See report A/HRC/23/48/Add.3. The requests were made by mandate holders on freedom of expression (2004); toxic waste (2005); extreme poverty (2006); migrants (2006); food (2006, reiterated 2007); enforced disappearances (2006); terrorism (2005, reiterated 2007); independence of judges and lawyers (2006, reiterated 2011); human rights defenders (2008, reiterated 2010); cultural rights (2010); internally displaced persons (2009, reiterated 2011); health (2011); minorities issues (2011); freedom of peaceful assembly and association (2011); arbitrary detention (2011).

38 See A/HRC/WG.6/13/PHL/2 (March 2012), paragraphs 1–7, chapter II segments A and B; see further CMW Concluding observations (2014) CMW/C/PHL/CO/2; CRC Concluding observations (2013) CRC/C/OPSC/PHL/CO/1, Concluding observations (2009) CRC/C/PHL/CO/3-4, and Concluding observations (2008) CRC/C/OPAC/PHL/CO/1; Human Rights Committee Concluding observations (2012) CCPR/C/PHL/CO/4; CERD Concluding observations (2009) CERD/C/PHL/CO/20; CAT Concluding observations (2009) CAT/C/PHL/CO/2; CESCR Concluding observations (2008) E/C.12/PHL/CO/4; CEDAW Concluding observations (2006) CEDAW/C/PHI/CO/6; also reports of the Special Rapporteurs on extrajudicial, summary or arbitrary executions A/HRC/11/2/Add.8; on extrajudicial summary or arbitrary executions A/HRC/8/3/Add.2 and A/HRC/4/20/Add.3; on the situation of human rights and fundamental freedoms of indigenous people E/CN.4/2003/90/Add.3.

39 Among them the Philippine Coalition on the UN Convention on the Rights of Persons with Disabilities, Philippine NGO Coalition on the UNCRC, Alternative Law Groups, or the National Council of Churches in the Philippines; see A/HRC/WG.6/13/PHL/3 (March 2012), annex.

squads, composed of (retired) police and local government officials, continued to operate in particular in Davao City, General Santos City, Digos City, Tagum City and Cebu City. Despite the fact that the government had also vowed to eradicate torture, law enforcement personnel did not comply with this and rendered the Anti-Torture Act ineffective.

The criminal justice system is predominantly a tool of an exclusive state-security approach, making fair access to justice difficult and leading to and facilitating lengthy procedural delays and biased, sometimes trumped-up charges. Independence and impartiality of judges was the exception rather than the rule. There are significant numbers of warrantless arrests and lengthy pre-trial detentions. A large number of cases of violence and harassment against human rights defenders by security forces was reported. Authorities have failed to maintain effective control over the security forces. Journalists are harassed and killed. Children are abused and sexually exploited. Allegedly, the Philippines has turned into a major hub of sex tourism, particularly in relation to sexual acts with minors, exacerbated by corruption and impunity in favour of foreign sex tourists. In addition, submissions estimated over 25 million children between the ages of 5 to 17 live as child labourers; the majority worked to support the economic needs of their households.

The rights of indigenous people are frequently denied and ignored, in particular in areas where mining, forest or infrastructure projects are planned or conducted, or where the military is operating. Even according to official government figures, only a limited number of reported human rights abuses are prosecuted. Impunity persists. Muslim-separatist and communist insurgencies[40] continue carrying out armed conflict, which has led to restrictions of rights by the government, displacement of civilians, and killings on the part of security forces personnel.[41]

Singapore

Singapore has ratified the CEDAW (1995), CRC (1995) and CRPD (2013). No individual complaint procedure or inquiry procedure has been accepted. The CEDAW recommended that the government adhere to the other six major human rights standards, which would enhance women's fundamental rights and freedoms in all aspects of life. The

40 Abu Sayyaf Group, Jemaah Islamiya, New People's Army, Moro Islamic Liberation Front, Bangsamoro Islamic Freedom Fighters.

41 See report A/HRC/WG.6/13/PHL/3 (March 2012), chapter III segment C; Human Rights Watch 2014: 377–384; Human Rights Watch 2013: 356–361; Human Rights Watch 2012: 376–382; US Department of State 2014g.

CEDAW and CRC further recommended that Singapore ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The CEDAW drew attention to the fact that the Constitution of Singapore did not explicitly recognise equality on the basis of sex. Furthermore, the CEDAW noted that national law does not define what constitutes discrimination against women, which is required by Article 1 of the CEDAW. The Committee also requested that Singapore enact legislation criminalising marital rape and address any inconsistencies between civil law and sharia law. Singapore still lacks an NHRI that is both accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and independent, in accordance with the Paris Principles. With regard to Special Procedures, in recent years the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has visited the country only once (April 2010).[42]

NGOs[43] noted that Singapore had ratified a very small number of international human rights standards. NGO submissions addressed the broad powers of government that allow it to arbitrarily limit citizens' rights. It was reported that the judiciary did not function as a check on the executive branch, but instead largely affirmed the principles espoused by the government. The Criminal Law (Temporary Provisions) Act allowed detention without trial for up to 12 months, extendable indefinitely. The government could and did censor the media if it felt social harmony was undermined or the government unduly criticised. The intimidation by the government led to self-censorship among journalists. Subsequently, restrictions were reported on free speech and assembly, freedom of religion and labour rights. Concerns were expressed that the Internal Security Act permits preventive detention without a warrant or filing of charges. Reports stated that caning is used as a punishment for a broad range of offences, sometimes in addition to imprisonment.[44]

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42 Report of the Special Rapporteur A/HRC/17/40/Add.2; see further A/HRC/WG.6/11/SGP/2 (February 2011), paragraphs 1–9, chapter II segment B; CEDAW Concluding observations (2011) CEDAW/C/SGP/CO/4/Rev.1; CRC Concluding observations (2011) CRC/C/SGP/CO/2-3.

43 Among them, joint submissions by Think Centre, Singaporeans for Democracy, and others; MARUAH (Working Group for an ASEAN Human Rights Mechanism, Singapore) and Solidarity for Migrant Workers. See A/HRC/WG.6/11/SGP/2 (February 2011), annex.

44 See A/HRC/WG.6/11/SGP/2, op.cit., supra footnote 43, chapter II; Human Rights Watch 2014: 385f.; Human Rights Watch 2013: 362–367; Human Rights Watch 2012: 383–387; US Department of State 2014h.

Thailand

Thailand has ratified the following standards: the CEDAW (1985), CRC (1992), ICCPR (1996), ICESCR (1999), ICERD (2003), CAT (2007), CRPD (2008), ICPED (2012), the optional protocols on the complaint procedure with regard to the CEDAW and CRC, and the inquiry procedure of the CEDAW, CAT and CRC. The ICRMW has not been ratified. Comprising a nearly complete institutional framework, the committees concentrated on the implementation process in their inquiries, concluding observations and recommendations. The Human Rights Committee (ICCPR) noted that security legislation such as the Internal Security Act, martial law and the Emergency Decree have negative implications on the rule of law, including due process guarantees and freedom of expression. The CEDAW expressed concern at the persistence of strong stereotypical attitudes about the roles and responsibilities of women and men in the family and in society. The CEDAW was particularly concerned about the situation of Muslim women in the south, who lacked access to education, social security, health care and economic opportunities. They were subjected to early marriage due to cultural norms. The CRC drew attention to the persistence of discrimination against children, particularly girl children, children of indigenous, religious or ethnic-minority communities, children of refugees and asylum-seekers, children of migrant workers, street children, children with disabilities, children living in rural areas and children living in poverty. The Human Rights Committee noted the persistent allegations of serious human rights violations, such as widespread extrajudicial killings, torture and maltreatment by the police and members of the armed forces. The Committee addressed trafficking in persons for purposes of sexual exploitation and forced labour, child prostitution and the significant proportion of children who were engaged in labour and often victims of trafficking.

The Human Rights Committee was further concerned about the discrimination against minority communities and their way of life. They are disproportional victims of forced eviction, relocation, extrajudicial killings, harassment and confiscation of property related to, but not limited to, the war on drugs and the construction of the Thai–Malaysian gas pipeline and other development projects. All projects have been carried out with minimal consultation with the concerned communities; peaceful demonstrations have been suppressed with violence.[45] The cooperation

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45 See A/HRC/WG.6/12/THA/2 (July 2011), paragraphs 1–6, 9–10, chapter II segment B; CERD Concluding observations (2012) CERD/C/THA/CO/1-3; CRC Concluding observations (2012) CRC/C/THA/CO/3-4/CORR.1, Con-

with Special Procedures is not well developed either. In recent years, only the Special Rapporteur on the human right to safe drinking water and sanitation visited the country (2013).[46] Although Thailand acceded to the list of standing invitations to Special Procedures in 2011, there is still a long list of requested visits that have not been granted.[47]

Thailand was commended for its establishment of the National Human Rights Commission of Thailand, which was accredited with "A" status by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights in 2004 and reconfirmed as such in 2008. The 2007 Constitution empowered the National Human Rights Commission to take cases directly to court, in its own name and on behalf of those whose rights had been violated. Thailand hosts the regional office of the OHCHR for Southeast Asia, and has hosted seminars, regional briefings, training and capacity-building activities of the OHCHR and other human rights mechanisms.[48]

A number of NGO submissions underscored Thailand's long history of attempted and successful coups, whereas each coup not only breached the conventions but also had severe adverse effects on freedoms and rights and access to an impartial and independent judiciary, which was not all that impartial in the first place. Submissions referred to the Martial Law Act B.E. 2457 (1914), Administrative Decree on the State of Emergency B.E. 2548 (2005) and the Internal Security Act B.E. 2551 (2008) as suppressive laws which have given rise to human rights violations, in particular in conflict areas with separatist insurgency in the three southernmost provinces of Thailand. Reports were submitted on extrajudicial killings, enforced disappearances, arbitrary detentions and torture for obtaining confessions, while the state officials involved fre-

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cluding observations (2012) CRC/C/OPAC/THA/CO/1, Concluding observations (2012) CRC/C/OPSC/THA/CO/1; CEDAW Concluding observations (2006) CEDAW/C/THA/CO/5; Human Rights Committee Concluding observations (2005) CCPR/CO/84/THA; CAT Concluding observations (2014) CAT/C/THA/CO/1.

46 See report A/HRC/24/44/Add.3.

47 Special Rapporteur on the right to health (requested 2005); on freedom of opinion and expression (2004); on extrajudicial, summary or arbitrary executions (2005, reiterated in 2008 and 2010); independent expert on minority issues (2006, reiterated in 2007); Working Group on Arbitrary Detention (2008); on adequate housing (2008); on human rights and counter-terrorism (2008, reiterated in 2010); on migrants 2008, reiterated in 2010); on the right to food (2010); on human rights defenders (follow-up to 2004, requested in 2008 and 2010), see A/HRC/WG.6/12/THA/2 (July 2011), para. 10.

48 See A/HRC/WG.6/12/THA/2, op.cit., supra footnote 45, paragraphs 5–7.

quently remained above the law. Submissions reported at least 21 unofficial detention centres where detainees were held without access to the outside world and thus were particularly vulnerable to torture and other forms of maltreatment. Some submissions concluded that the conditions of detention often amounted to cruel, inhumane or degrading punishment, specifically when shackles were used. There was a lack of both judicial scrutiny and regular independent monitoring of detainees. Some reports highlighted that Malay Muslim women had been particularly affected by the violence in southern Thailand and faced the threat of trafficking, domestic violence and deterioration of health. The Islamic Human Rights Commission highlighted discrimination against Muslims practising their religion. Discrimination was further reported against women, persons with disabilities, minorities, hill tribes and foreign migrant workers.[49]

Vietnam

Vietnam has ratified the ICERD, ICESCR, ICCPR and CEDAW (all in 1982), along with the CRC (1990). The CRPD and CAT were signed but not ratified; the same is true of the ICRMW and ICPED. Vietnam has not accepted any complaint procedure or inquiry procedure. Thus, the committees recommended ratifying and implementing the corresponding human rights treaties and ratifying the optional protocols as well as the Rome Statute and certain ILO conventions. Though the CERD and CRC addressed the slow progress of the legal reform, both welcomed the establishment of several legislative measures, such as the Law on Gender Equality (2006), Law against Human Trafficking (2011), Law on People with Disabilities (2010), Law on Education (2005), Law on the Protection, Care and Education of Children (2004), and the Law on Vietnamese Nationality (2008), which will help reduce statelessness. The CERD expressed concerns over discriminatory provisions on ethnic and religious grounds in Articles 8 and 15 of the Ordinance on Belief and Religion (2004). They allow religious activities to be prohibited that are deemed to "violate national security" or that may "negatively affect the unity of the people or the nation's fine cultural traditions". State censorship of newspapers and other media still prevails.

49 A/HRC/WG.6/12/THA/3 (July 2011), chapter II; Human Rights Watch 2014: 393–398.; Human Rights Watch 2013: 374–381; Human Rights Watch 2012: 394–400; US Department of State 2014i.

The CERD was concerned with racial discrimination and inequality between ethnic groups, along with negative societal attitudes towards ethnic minorities. Customary norms and traditions often governed inheritance, succession and marital property relations, which regularly disadvantaged women. Discrimination also restricted religious practices faced by some Christian and Buddhist groups, among them the Khmer Krom, Montagnard and Hmong. The CRC dealt with widespread child labour, the relatively low minimum age for labour (12 years for light work) and the fact that child inmates in drug detention centres were subject to forced labour. The CERD and CRC encouraged Vietnam to establish an independent human rights institution, in compliance with the Paris Principles.[50] A number of Special Rapporteurs were recently able to undertake visits, such as the mandate holders on extreme poverty, minorities, foreign debt and health.[51] Further requests by other mandate holders are pending.[52]

NGO submissions drew attention to Vietnam as an authoritarian state ruled by a single party that continues to restrict citizens' political rights. Reports current as of 2014 said that the government had limited freedoms of assembly, association, movement, speech and the press, suppressed dissent, and surveilled dissidents. Access to the Internet was increasingly restricted, and websites containing criticism of the government were attacked. The police mistreated suspects during arrest and detention. Austere prison conditions along with arbitrary arrest and detention for those involved in political activities were reported. The right to a fair trial was often not guaranteed, this situation being compounded by endemic corruption and an inefficient judicial system. Some submissions referred to the freedom of religion and belief, reporting that while certain new places of worship could be registered, hundreds of others were denied registration. Citizens who tried to independently exercise

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50 See A/HRC/WG.6/18/VNM/2 (November 2013), chapters I, II, III; CRC Concluding observations (2012) CRC/C/VNM/CO/3-4, Concluding observations (2006) CRC/C/OPAC/VNM/CO/1, Concluding observations (2006) CRC/C/OPSC/VNM/CO/1; CERD Concluding observations (2012) CERD/C/VNM/CO/10-14; CEDAW Concluding observations (2007) CEDAW/C/VNM/CO/6; Human Rights Committee Concluding observations (2002) CCPR/CO/75/VNM.

51 See reports on health A/HRC/20/15/Add.22; on foreign debt and other related international financial obligations A/HRC/17/37/Add.2; on extreme poverty A/HRC/17/34/Add.1, and on minority issues A/HRC/16/45/Add.2.

52 Such as the mandates on freedom of opinion; extrajudicial, summary or arbitrary executions; food; foreign debt; water and sanitation; torture; human rights defenders; migrants; and sale of children.

their right to freedom of religion continued to be subject to harassment. The government continued to prohibit independent human rights organisations. Other submissions addressed violence and discrimination against women. Discrimination based on ethnicity, sexual orientation, gender identity and HIV/AIDS status persisted. The government also limited workers' rights to form and join independent unions and failed to adequately enforce safe and healthy working conditions.[53]

Summary

In summarising the above overview of the ASEAN states, it may be said that the development of the human rights situation in the ten member states reveals an institutional process that aims to reform structural elements of governance irrespective of the diversity of implementation processes. The process related to human rights standards leaves governance open to challenge by internationally agreed-upon (human rights) law standards and language. This trend can be observed in most of the countries – even in the observer states Papua New Guinea and Timor-Leste – with the notable exceptions of Brunei Darussalam and Singapore.[54] With regard to the core human rights treaties, there is much room for ASEAN countries to accede to the full range of these treaties – beyond the CEDAW and CRC, to which all are party. All ASEAN countries have participated in the Universal Periodic Review and principally accepted the rules. ASEAN states were less open-minded with regard to being monitored by the Special Procedures, though the Special Rapporteurs are a key component in ensuring human rights. An effective and comprehensive human rights protection system is absent in every country of the region and in ASEAN itself.

Such an assessment of the institutionalisation of human rights corresponds – to a certain extent – to the institutionalisation process in general. In Thailand, Indonesia, the Philippines, Singapore and Malaysia, supreme courts supervise the governments. In Indonesia, Thailand and Vietnam, administrative courts monitor local and provincial governments. In Thailand, the Philippines and Indonesia, audit systems control

53 A/HRC/WG.6/18/VNM/3 (November 2013), chapter I segment C; Human Rights Watch 2014: 399–403; Human Rights Watch 2013: 382–388; Human Rights Watch 2012: 401–409; US Department of State 2014j.

54 See, for instance, A/HRC/WG.6/11/PNG/2 (February 2011) and A/HRC/WG.6/11/PNG/3 (February 2011) for Papua New Guinea; A/HRC/WG.6/12/TLS/2 (July 2011) and A/HRC/WG.6/12/TLS/3 (July 2011) for Timor-Leste.

the budget issues of the state. From a viewpoint of institution-building, the information provided in this text allows us to conclude that there is a trend towards creating a constitutional state that is based on the rule of law, providing common ground for the increasing participation of non-state actors and offering minimum guarantees for their personal integrity as well as for their participation as citizens in policy-making.

Given the reality on the ground, the gap between the aspirations of the normative obligations and standards, on the one hand, and their actual implementation, on the other hand, is significant. At the level of state institutions, omissions related to the rule of law and human rights are rampant. Despite the diversity of given situations, freedoms such as of opinion and expression, religion and belief, peaceful assembly, and of the media can potentially be restricted in nearly every country. Access to the Internet, Twitter and blogs is monitored by governments. Torture used to obtain confessions, even in simple criminal cases, is endemic. The low ratification rate of the CAT and its optional protocol corresponds to this kind of state organisation of public order. Every country in ASEAN is confronted with a high rate of discrimination, a broad variety of child labour activities, a high rate of violence against women, and the impunity that is partially responsible for all of those statistics. There is no doubt that security and public order pose a real problem in many countries, but they are also instrumentally abused by the government to counter public dissent.

Another observation relates to the victims of human rights violations. An increasing number of people are engaged and understand human rights standards as a platform for self-organisation which entitles and enables them to fight for citizenship. It was truly amazing to observe civil society self-organise in Southeast Asia by way of consulting with the state, submitting reports, and organising follow-up communication in relation to the UPR. NGOs have used the UPR mechanism to improve the scope of participation as well as to raise awareness for certain segments of the national population. A kind of institutionalising by the UPR process occurred at the level of civil society forming the counterpart to the government while simultaneously depending on the guarantees of the core international human rights standards. Asia has no regional court system to help enforce the legal provisions.

All these observations emphasise the overall ambiguity of the region's development in terms of international human rights law and its institutional structure. This is affirmed by the predominating approach of interaction among and beyond member states of ASEAN. Amitav Acharya has identified an "approach [which] involves a high degree of

discreteness, informality, pragmatism, expediency, consensus-building, and non-confrontational bargaining styles", contrary to what can be expected from the expanding references to the international human rights standards, their process, regulation and coordination (Acharya 1997: 329, quoted in: Loewen 2008: 10). Despite the formal acknowledgement of the international involvement, member states of ASEAN continue to define the state's interest in the human rights context predominantly in terms of public order, political stability, economic welfare and further instruments to maintain the state's sovereignty against "international intervention" on human rights (see Harris 2000: 1–22; on state sovereignty and human rights, see Donnelly 2007: 281–306; also Donnelly 2003). However, the member states of ASEAN are embedded into an international system in which human rights standards prevail as a core element, and most of the ASEAN member states feel the need – for different reasons – to gain a reputation and legitimacy *vis-à-vis* this system (Emmerson 2008). In addition, the growing articulation of civil society stakeholders favouring more participation, open discussions on state affairs and a greater institutionalisation of human rights constitutes a valid contribution to improving the human rights structure in Southeast Asia.[55]

ASEAN in the Context of Human Rights

Human rights have become a permanent agenda item in ASEAN, an organisation that previously dealt predominantly with trade, investment and other economic issues. Human rights take up part of the ASEAN Charter of 2007, although it is not a legally binding human rights treaty.[56] According to the Charter, ASEAN and its member states should act in accordance with respect for fundamental freedoms and should promote and protect human rights and advocate social justice. Another principle ASEAN member states have subscribed to is to uphold the United Nations Charter and international law, including international humanitarian law. As the previous section revealed, the human rights situations in the ASEAN area are rather blemished in various ways. Long-running conflicts and disagreements exist between and within ASEAN states. A number of territorial disputes affect the relationships between, for in-

55 For an overview, see <http://humanrightsinasean.info>.

56 See <www.aseansec.org/documents/Declaration-AICHR.pdf>; <www.asean sec.org/documents/TOR-ACWC.pdf>; for details on structure and institutional embedding, see chapter and links at <www.asean.org>.

stance, Thailand and Cambodia (Preah Vihear Temple), Indonesia and Malaysia (Borneo), and the Philippines, Malaysia and Singapore (maritime boundaries). In the South China Sea, Brunei Darussalam, Malaysia, the Philippines and Vietnam have competing claims on certain areas rich in natural gas deposits.

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in 2009 in order to promote regional cooperation and regional standard-setting on human rights. The AICHR was key in the adoption of the ASEAN Human Rights Declaration in November 2012. The Declaration claims to set the standard for codifying the basic human rights and fundamental freedoms that ASEAN member states must respect, promote and protect. The commission has no power to investigate governments or impose sanctions. It is strictly a consultative mechanism accountable to the foreign ministers of ASEAN. Civil society organisations had expressed their disappointment about this restriction in a number of statements even before the AICHR was officially established. Also international NGOs, such as Amnesty International, conducted several campaigns to strengthen the mandate in addressing human rights violations across the region, and to investigate individual complaints and the general country and regional situations. Some representatives of civil society cast doubts on whether the AICHR under the given conditions has a protection mandate at all. At least there is a mandate for the AICHR to develop strategies for such protection. Other provisions relate to obtaining information from ASEAN member states on the promotion and protection of human rights.

ASEAN has also developed other human rights instruments, such as the Declaration on the Protection and Promotion of the Rights of Migrant Workers. The member states of ASEAN are supposed to promote decent, humane, dignified and sufficiently paid employment for migrant workers, and to develop programmes for an adequate reintegration of migrant workers into their countries of origin. The Declaration further encourages ASEAN governments to take measures in order to prevent or curb smuggling and trafficking in persons – by, for instance, introducing stiffer penalties – and to protect and promote migrant workers' rights and welfare. Finally, ASEAN is supposed to develop an instrument to protect and promote the rights of migrant workers, and direct the Secretary-General of ASEAN to submit an annual report on the progress made on the implementation.

Another instrument is the ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children. The Declaration requests that member states establish a regional focal network to prevent and

combat human trafficking in the ASEAN region. States should adopt measures to protect the integrity of their passports, official travel documents, identity and other official travel documents from fraud. Information on relevant migration flows and patterns should be shared, victims distinguished from the perpetrators, the countries of origin of such victims identified and medical and other forms of assistance provided. A third instrument is the Declaration on the Elimination of Violence Against Women in the ASEAN Region. The member states should co-operate in research and data collection and dissemination, including data disaggregated by sex, age and other relevant measures. The states are required to establish programmes combating and eliminating violence against women; to provide meaningful methods and instruments to understand the nature and causes of such violence; and to allow women and girls to protect themselves. For that to happen, domestic legislation needs to be improved, judicial enforcement officers to be trained, advocacy programmes need to be developed and women's initiatives, NGOs and community-based organisations need to be supported. Finally, in 2011 ASEAN established a communication process on corporate social responsibility and in 2012 engaged in the AICHR that accompanied the implementation, particularly in the areas of conducting studies and organising workshops (see details and explanations at Vitit Muntarbhorn and European Parliament 2012; see further Tan 2011; Yuval 2010: 504–518).

While improvements in these domains were made, the culture of impunity and human rights violations continued at nearly the same rate as before. Furthermore, the AICHR is an ambitious but ambiguous project. On the one hand, it promotes and disseminates human rights, acting as a reference point for the region, whereas in previous times, human rights were not even mentioned in the ASEAN context. On the other hand, the intention to come up with a mutually acceptable definition of human rights among ASEAN member states may weaken the concept, currently defined and understood in the framework of the UN Universal Declaration on Human Rights and its subsequent treaties. The AICHR is meant to promote human rights within the regional context, bearing in mind national and regional particularities and with respect for different historical, cultural and religious backgrounds, taking further into account the balance between rights and responsibilities. Thus, the AICHR and the ASEAN Declaration will go against core elements, including the universality, of the UN's view of human rights. Such a misuse of the regional framework is not beyond ASEAN's scope of realistic action, as ASEAN includes countries with a long track record of notorious human

rights violations. The current regional framework allows for the possibility that international human rights law will be undermined.

Conclusion

According to the assessment in this text, the large majority of states in Southeast Asia understand governance predominantly in terms of state stability, ultimately ensured by military enforcement, such as in Thailand. Constitutional provisions, rule of law and legal procedures are instrumental mainly to that aim. Thus, the military is entitled to build up parallel governance structures which are not controlled by outsiders. The judiciary will have to struggle, if it is even willing to do so, to gain independence from the executive power. The situation is aggravated by lacking protection programmes for witnesses, insufficient forensic capacities, untrained law enforcement personnel, and politically motivated barriers, all serving to make good governance in terms of rule of law and adherence to international human rights standards a real challenge. Unfortunately, the priority of maintaining a functional public order to the detriment of transparent and democratic procedures is shared to a certain extent by a number of state partners worldwide, including the EU.

In such an environment, the process of regional standard-setting on human rights within ASEAN will remain ambiguous by nature. Nevertheless, there is an increasing number of civil society organisations and actors who may not currently comprise a critical mass but who are sufficiently large in number and are, thus, effective at insisting on procedures for impartial human rights assessments. Through the UPR, they learned what is considered standard worldwide and that Southeast Asian governments should adhere to that procedure in the full scope of international understanding. Within the ASEAN area, human rights appear a pervasive principle, one which gained legitimacy by being included in the ASEAN Charter, and which will develop into something more genuine through its further legitimation. However, such a process will be lengthy and may be hampered by a number of obstacles. Thus, the process remains open-ended, as there is not yet an ASEAN court of justice or court of human rights by which to incorporate a regional judicial role at the ASEAN level for disputes between states and other stakeholders. The institutionalisation process on human rights matters is still weak.

Considering the concerns expressed by many engaged people affiliated with human rights over the ASEAN Human Rights Declaration (ADHR) – that is, that this Declaration may undermine rather than affirm international human rights law and standards – support is needed to

turn the aspirations named in the ADHR into reality. There are examples from the past, such as actively engaged non-state actors who succeeded in the 1980s and 1990s to overcome dictatorships in Indonesia, the Philippines, Thailand and Cambodia. The list of contributors to the UPR Summaries for all countries presented in this text testify that such active engagement exists today as well. There is hope that individuals and civil society groups will remain persistent and committed to making international human rights standards a reality and turning the pertinent ASEAN institutions into a true part of them. Further, there is hope that, for instance, the EU will encourage ASEAN to improve the human rights situation in Southeast Asia according to international standards.

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