

MODULE 2



Human Rights and ASEAN



Module 2

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MODULE 2.1

Affirming the Universal Declaration of Human Rights (UDHR)



Objectives:

- » To reaffirm the basic principles of human rights.
- » To familiarise participants with the key principles/concepts of human rights.



Knowledge Acquired:

- » Familiarity with the basic principle of universality of human rights.



Time: 1.5 hours

Materials:

- Video link: <https://www.youthforhumanrights.org/what-are-human-rights/> (9.29)
- Articles from the UDHR



Procedure:

Part 1: (1 hour)

1. The facilitator selects five articles from the UDHR and divides participants into five groups.

2. Instruct each group to do a “ still” or” portrait” theatre about the impression of the article assigned to the group. Allocate five minutes for practice. Remind them that it is a theatre without sound and movement, Everyone should be still when they are presenting it to the whole group.
3. Ask each group to present their portrayal and ask participants to guess what rights are being presented.
4. After the five groups have taken their turns, continue discussing another five articles of the UDHR by screening video clippings. Show one short video depicting the article and then have a brief discussion about the main rights protected under that article and the realities of such rights in some countries. When this is complete, move to Part 2.

This module is adapted from Poverty to Dignity Manual

Part 2: (30 minutes)

1. Ask group to return to their original groups and assign them civil, political, economic, social and cultural rights.
2. Ask each group to pick from the UDHR which rights they think belong to their category i. e. political group would pick out the rights they think to mean political rights Transfer each right onto a metacard. Give groups different colours.
3. Ask each group to post the metacards in a line on the wall. Then ask the plenary if the rights are placed in the correct category. This will obtain various reactions and discussions about which right belongs to which category.
4. Question the groups if they are able to note similarities, connections and linkages amongst these rights.



Debriefing:

- » Reaffirm the importance of the UDHR and how it has gained recognition globally by governments and even some judicial systems, although it is a Declaration and not a binding treaty obligation.
- » Introduce/reaffirm the concepts of universality, interdependence and interrelatedness, inalienability, indivisibility, etc.



Conclusion

- » All human rights are important for all people.
- » Knowing the minimum standards of human rights is crucial for people to claim their rights.

Handout Material 2.1.1.

Universal Declaration of Human Rights

Preamble:
"...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world..."

PRINCIPLES OF HUMAN RIGHTS	
	Universal
Inherent	Inalienable
Indivisible	Interrelated

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Adopted by the UNGA on 10 December 1948 in Paris

"Fundamental constitutive document of the UN"

Described by the Guinness Book of Records as the "most translated document" in the world

First global expression of rights to which all human beings are entitled

Has been adopted in or influenced most national constitutions since 1948

Arose directly from WW II experience

Comprised of 30 articles setting forth rights

(Source: Intro to Human Rights: a power-point presentation by the Phil. Working Group)

Handout Material 2.1.2.

The Universal Declaration of Human Rights (abbreviated)

Article 1	Right to Equality		Article 16	Right to Marriage and Family
Article 2	Freedom from Discrimination		Article 17	Right to Own Property
Article 3	Right to Life, Liberty, Personal Security		Article 18	Freedom of Belief and Religion
Article 4	Freedom from Slavery		Article 19	Freedom of Opinion and Information
Article 5	Freedom from Torture and Degrading Treatment		Article 20	Right of Peaceful Assembly and Association
Article 6	Right to Recognition as a Person before the Law		Article 21	Right to Participate in Government and in Free Elections
Article 7	Right to Equality before the Law		Article 22	Right to Social Security
Article 8	Right to Remedy by Competent Tribunal		Article 23	Right to Desirable Work and to Join Trade Unions
Article 9	Freedom from Arbitrary Arrest and Exile		Article 24	Right to Rest and Leisure
Article 10	Right to Fair Public Hearing		Article 25	Right to Adequate Living Standard
Article 11	Right to be Considered Innocent until Proven Guilty		Article 26	Right to Education
Article 12	Freedom from Interference with Privacy, Family, Home and Correspondence		Article 27	Right to Participate in the Cultural Life of Community
Article 13	Right to Free Movement in and out of the Country		Article 28	Right to a Social Order that Articulates this Document
Article 14	Right to Asylum in other Countries from Persecution		Article 29	Community Duties Essential to Free and Full Development
Article 15	Right to a Nationality and the Freedom to Change It		Article 30	Freedom from State or Personal Interference in the above Rights

Source: Appendix 5, Human Rights Here and Now, Celebrating the Universal Declaration of Human Rights¹

¹ Minnesota Univ. et al., Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights., ed. Nancy Flowers (Minneapolis: Human Rights USA Resource Center, 1998), <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-5/default.htm>.

Handout Material 2.1.3.**Human Rights Principles**

2005

Author: UNFPA

Publisher: UNFPA

Human rights are universal and inalienable; indivisible; interdependent and interrelated. They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural or ethnic background. Inalienable because people's rights can never be taken away. Indivisible and interdependent because all rights – political, civil, social, cultural and economic – are equal in importance and none can be fully enjoyed without the others. They apply to all equally, and all have the right to participate in decisions that affect their lives. They are upheld by the rule of law and strengthened through legitimate claims for duty-bearers to be accountable to international standards.

Universality and Inalienability: Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."

Indivisibility: Human rights are indivisible. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.

Interdependence and Interrelatedness: Human rights are interdependent and interrelated. Each one contributes to the realisation of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information.

Equality and Non-discrimination: All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.

Participation and Inclusion: All people have the right to participate in and access information

relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.

Accountability and Rule of Law: States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. Individuals, the media, civil society and the international community play important roles in holding governments accountable for their obligation to uphold human rights.

UNFPA supports the integration of human rights standards into all stages of its programming framework, including:

Analysing the immediate, underlying and structural causes of human rights violations.

Setting strategies and goals to address the main causes of human rights violations and to empower the most vulnerable people as well as to reinforce the capacity of duty bearers.

Supporting initiatives for the establishment or improvement of an enabling legal and social framework on population and development, reproductive health and gender equality

Following the recommendations of UN treaty bodies such as the Committee on the Elimination of Discrimination Against Women.

Evaluating and monitoring programmes with participatory processes and using human rights indicators.

UNFPA also recognizes that a rights-based approach should be founded on an analysis of gender and social exclusion to ensure that programmes reach marginal and vulnerable segments of the population, especially poor women and young people.

Source: UNFPA, available at <https://www.unfpa.org/resources/human-rights-principles>

Handout Material 2.1.4.**International Human Rights Law: A Short History²**

By Frans Viljoen

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The phrase “human rights” may be used in an abstract and philosophical sense, either as denoting a special category of moral claim that all humans may invoke or, more pragmatically, as the manifestation of these claims in positive law, for example, as constitutional guarantees to hold Governments accountable under national legal processes. While the first understanding of the phrase may be referred to as “human rights”, the second is described herein as “human rights law”.

While the origin of “human rights” lies in the nature of the human being itself, as articulated in all the world’s major religions and moral philosophy, “human rights law” is a more recent phenomenon that is closely associated with the rise of the liberal democratic State. In such States, majoritarianism legitimises legislation and the increasingly bureaucratised functioning of the executive. However, majorities sometimes may have little regard for “numerical” minorities, such as sentenced criminals, linguistic or religious groups, non-nationals, indigenous peoples and the socially stigmatised. It therefore becomes necessary to guarantee the existence and rights of numerical minorities, the vulnerable and the powerless. This is done by agreeing on the rules governing society in the form of a constitutionally entrenched and justiciable bill of rights containing basic human rights for all. Through this bill of rights, “human rights law” is created, becoming integral to the legal system and superior to ordinary law and executive action.

In this article, some aspects of the history of human rights law at the global, regional and subregional levels are traced. The focus falls on the recent, rather than the more remote, past. To start with, some observations are made about the “three generations” of human rights law.

Three generations of international human rights law

Human rights activism can be described as a struggle to ensure that the gap between human rights and human rights law is narrowed in order to ensure the full legal recognition and actual realisation of human rights. History shows that governments do not generally grant rights willingly but that rights gains are only secured through a successful challenge to absolutist authority. The Magna Carta, which set limits on the powers of royal Government in 13th century England, the 1776 American Declaration of Independence and the 1789 French Déclaration des droits de l’Homme et de du citoyen (Declaration of the Rights of Man and Citizen) were landmarks of how revolutionary visions could be transformed into national law and made into justiciable guarantees against future abuse.

The traditional categorisation of three generations of human rights, used in both national and

² Frans Viljoen, “International Human Rights Law: A Short History,” UN Chronicle, <https://www.un.org/en/chronicle/article/international-human-rights-law-short-history>.

international human rights discourse, traces the chronological evolution of human rights as an echo to the cry of the French revolution: Liberté (freedoms, “civil and political” or “first generation” rights), Egalité (equality, “socio-economic” or “second generation” rights), and Fraternité (solidarity, “collective” or “third generation” rights). In the 18th and 19th centuries, the struggle for rights focused on the liberation from authoritarian oppression and the corresponding rights of free speech, association and religion and the right to vote. With the changed view of the State role in an industrialising world, and against the background of growing inequalities, the importance of socio-economic rights became more clearly articulated. With growing globalisation and a heightened awareness of overlapping global concerns, especially due to extreme poverty in some parts of the world, “third generation” rights, such as the rights to a healthy environment, to self-determination and to development, have been adopted.

During the period of the cold war, “first generation” rights were prioritised in Western democracies, while second generation rights were resisted as socialist notions. In the developing world, economic growth and development were often regarded as goals able to trump “civil and political” rights. The discrepancy between the two sets of rights was also emphasised: “civil and political” rights were said to be of immediate application, while “second generation” rights were understood to be implemented only in the long term or progressively. Another axis of division was the supposed notion that “first generation” rights place negative obligations on States while “second generation” rights place positive obligations on States. After the fall of the Berlin Wall, it became generally accepted that such a dichotomy does not do justice to the extent to which these rights are interrelated and interdependent. The dichotomy of positive/negative obligations no longer holds true. It seems much more useful to regard all rights as interdependent and indivisible, and as potentially entailing a variety of obligations on the State. These obligations may be categorised as the duty to respect, protect, promote and fulfil.

Global level

For centuries, there was no international human rights law regime in place. In fact, international law supported and colluded in many of the worst human rights atrocities, including the Atlantic Slave Trade and colonialism. It was only in the 19th century that the international community adopted a treaty abolishing slavery. The first international legal standards were adopted under the auspices of the International Labour Organization (ILO), which was founded in 1919 as part of the Peace Treaty of Versailles. ILO is meant to protect the rights of workers in an ever-industrialising world.

After the First World War, tentative attempts were made to establish a human rights system under the League of Nations. For example, a Minority Committee was established to hear complaints from minorities, and a Mandates Commission was put in place to deal with individual petitions of persons living in mandate territories. However, these attempts were not very successful and came to an abrupt end when the Second World War erupted. It took the trauma of that war, and in particular Hitler’s crude racially-motivated atrocities in the name of national socialism, to cement international consensus in the form of the United Nations as a bulwark against war and for the preservation of peace.

The core system of human rights promotion and protection under the United Nations has a dual basis: the UN Charter, adopted in 1945, and a network of treaties subsequently adopted

by UN members. The Charter-based system applies to all 192 UN Member States, while only those States that have ratified or acceded to particular treaties are bound to observe that part of the treaty-based (or conventional) system to which they have explicitly agreed.

Charter-based system

This system evolved under the UN Economic and Social Council, which set up the Commission on Human Rights, as mandated by article 68 of the UN Charter. The Commission did not consist of independent experts, but was made up of 54 governmental representatives elected by the Council, irrespective of the human rights record of the States concerned. As a consequence, States earmarked as some of the worst human rights violators served as members of the Commission. The main accomplishment of the Commission was the elaboration and near-universal acceptance of the three major international human rights instruments: the Universal Declaration of Human Rights, adopted in 1948, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the latter two adopted in 1966. As the adoption of those two separate documents indicates, the initial idea of transforming the Universal Declaration into a single binding instrument was not accomplished, mainly due to a lack of agreement about the justiciability of socio-economic rights. As a result, individual complaints could be lodged, alleging violations by certain States of ICCPR, but not so with ICESCR.

The normative basis of the UN Charter system is the Universal Declaration of Human Rights, adopted on 10 December 1948, which has given authoritative content to the vague reference to human rights in the UN Charter. Although it was adopted as a mere declaration, without a binding force, it has subsequently come to be recognized as a universal yardstick of State conduct. Many of its provisions have acquired the status of customary international law.

Faced with allegations of human rights violations, particularly in apartheid South Africa, the Commission had to devise a system for the consideration of complaints. Two mechanisms emerged, the “1235” and “1503” procedures, adopted in 1959 and 1970, respectively, each named after the Economic and Social Council resolution establishing them. Both mechanisms dealt only with situations of gross human rights violations. The difference was that the “1235” procedure entailed a public discussion while “1503” remained confidential. In order to fill the gap in effective implementation of human rights, a number of special procedures were established by the Commission. Unique procedures take the form of special rapporteurs, independent experts or working groups looking at a particular country (country-specific mandate) or focusing on a thematic issue (thematic mandate).

Leapfrogging a few decades to 2005, in his report *In Larger Freedom: Towards Development, Security and Human Rights for All*, the former UN Secretary-General, Kofi Annan, called for the replacement of the Commission by a smaller, permanent and human rights-compliant Council, able to fill the credibility gap left by States that used their Commission membership “to protect themselves against criticism and to criticise others”.³ The major reason for replacing the Commission was the very selective way in which it exercised its country-specific mandate, due mainly to the political bias of representatives and the ability of more powerful countries to deflect the attention away from themselves and those enjoying their support. In 2006, the General Assembly decided to follow the Secretary-General’s recommendation, creating the Human Rights Council as a replacement to the Commission on Human Rights.⁴

³ the Secretary General UN, “In Larger Freedom: Towards Development, Security and Human Rights for All,” 2005, https://www.un.org/en/events/pastevents/pdfs/larger_freedom_exec_summary.pdf.

⁴ General Assembly UN, “A/RES/60/25 Human Rights Council” (2006).

There are some important differences between the former Commission on Human Rights and the current Human Rights Council. As a subsidiary organ of the General Assembly, the Council enjoys an elevated status compared to the Commission, which was a functional body of the Economic and Social Council. It has a slightly smaller membership (47 States) and its members are elected by an absolute majority of the Assembly (97 States). To avoid prolonged dominance by a few States, members may be elected only for two consecutive three-year terms. The Council serves as a standing or permanent body, which meets regularly, not only for annual “politically charged six-week sessions” as the Commission did. Following the more human rights-sensitive selection criteria, the list of States elected by the Assembly contrasts with countries which, in 2006, served on the Commission. The Assembly may, by a two-thirds majority vote, suspend a member that engages in gross and systematic human rights violations.

The Human Rights Council retained most of the special procedures, including the confidential “1503” (now called the “complaint procedure”), and introduced the Universal Peer Review (UPR). Starting in April 2008, one third of UN Member States have undergone this process. The UPR shows similarities with the African Peer Review Mechanism, which has been set up under the New Partnership for Africa’s Development (NEPAD). Apart from the Universal Declaration on Human Rights, the General Assembly adopted numerous other declarations. When sufficient consensus emerges between States, declarations may be transformed into binding agreements. It is revealing that the required level of agreement is lacking on crucial issues, such as the protection of non-hegemonic citizenship. The two relevant declarations – the Declaration on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, adopted in 1992, and the Declaration on the Rights of Indigenous Peoples, adopted in 2007, have not been translated into binding instruments. The same is true of the Declaration on the Right to Development, which was adopted in 1986.

Treaty-based system

The treaty-based system developed even more rapidly than the Charter-based system. The first treaty, adopted in 1948, was the Convention on the Prevention and Punishment of the Crime of Genocide, which addressed the most immediate past experience of the Nazi Holocaust. Since then, a huge number of treaties have been adopted, covering a wide array of subjects, eight of them on human rights – each comprising a treaty monitoring body – under the auspices of the United Nations.

The first, adopted in 1965, is the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), followed by ICCPR and ICESCR in 1966. The international human rights regime then started to move away from a generic focus, shifting its attention instead to particularly marginalized and oppressed groups or themes: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child (1989); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); and the Convention on the Rights of Persons with Disabilities (2006). The latest treaty is the International Convention for the Protection of All Persons from Enforced Disappearances (ICED), adopted in 2006, but is yet to enter into force. With the adoption of an Optional Protocol to ICESCR in 2008, allowing for individual complaints regarding alleged violations of socio-economic rights, the UN treaty system now also embodies the principle that all rights are justiciable.

Office of the UN High Commissioner

Twenty years after the adoption of the Universal Declaration, the first International Conference on Human Rights was held in 1968 in Tehran, Iran. As the world was at that stage caught in the grip of the Cold War, little consensus emerged and little was achieved. The scene was very different when the second World Conference took place in Vienna, Austria, in 1993. The Cold War had come to an end, but the genocide in Bosnia and Herzegovina was unfolding. Against this background, 171 Heads of State and Government met and adopted the Vienna Declaration and Programme of Action. It reaffirmed that all rights are universal, indivisible and interdependent. Several resolutions adopted there were subsequently implemented, including the adoption of an Optional Protocol to CEDAW and the establishment of the Office of the United Nations High Commissioner for Human Rights, with the first High Commissioner (José Ayala Lasso) elected in 1994. The High Commissioner has the major responsibility for human rights in the United Nations. The increasingly important human rights field presence in conflict-ridden countries also falls under this Office.

Other conferences have also highlighted important issues, such as racism and xenophobia, which were discussed at the 2001 World Conference Against Racism, held in Durban, South Africa. This culminated in the adoption of the Durban Declaration and Programme of Action. A review conference to assess progress in the implementation of the Declaration took place in April 2009.

Regional level

Since the Second World War, three regional human rights regimes— norms and institutions that are accepted as binding by States— have been established. Each of these systems operate under the auspices of an intergovernmental organisation or an international political body. In the case of the European system— the best of the three— it is the Council of Europe, which was founded in 1949 by 10 Western European States to promote human rights and the rule of law in post-Second World War Europe, that avoided a regression into totalitarianism and served as a bulwark against Communism. The Organisation of American States (OAS) was founded in 1948 to promote regional peace, security and development. In Africa, a human rights system was adopted under the auspices of the Organisation for African Unity (OAU), which was formed in 1963 and transformed in 2002 into the African Union (AU).

In each of the three systems, the substantive norms are set out in one principal treaty. The Council of Europe adopted its primary human rights treaty in 1950: the European Convention of Human Rights and Fundamental Freedoms. Incorporating the protocols adopted thereto, it includes mainly “civil and political” rights, but also provides for the right to property. All 47 Council of Europe members have become party to the European Convention. OAS adopted the American Convention on Human Rights in 1969, which has been ratified by 24 States. The American Convention contains rights similar to those in the European Convention but goes further by providing for a minimum of “socio-economic” rights. In contrast to these two treaties, the African Charter, adopted by OAU in 1981, contains justiciable “socio-economic” rights and elaborates on the duties of individuals and the rights of peoples. All AU members are parties to the African Charter.

The way in which the principal treaty is implemented or enforced differs in each region. In an evolution spanning many decades, the European system of implementation, operating out of Strasbourg, France, developed from a system where a Commission and a Court co-existed to form a single judicial institution. The European Court of Human Rights deals with individual cases. A dual model is in place in the Americas, consisting of the Inter-American Commission, based in Washington, D.C., and the Inter-American Court of Human Rights, based in San José, Costa Rica. Individual complainants have to submit their grievances to the Inter-American Commission first; thereafter, the case may proceed to the Inter-American Court of Human Rights. The Commission also has the function of conducting on-site visits. After some recent institutional reforms, the African system now resembles the Inter-American system.

Fledgling Arab and Muslim regional systems have also emerged under the League of Arab States and the Organization of the Islamic Conference (OIC). According to the Islamic world view, the Koran and other religious sources play a dominant role in the regulation of social life.

The League of Arab States was founded in terms of the Pact of the League of Arab States of 1945. Its overriding aim is to strengthen unity among Arab States by developing closer links between its members. The Pact emphasises the independence and sovereignty of its members, but no mention is made in its founding document of either the contents or principles of human rights.

At the Tehran World Conference in 1968, some Arab States managed to have the position of Arabs in the territories occupied by Israel included in the agenda and successfully articulated it as a human rights issue. This created awareness of human rights among the Arab States in the aftermath of a number of defeats at the hands of Israel in 1967. However, at the Tehran Conference and thereafter, the commitment of the Arab League to human rights was primarily directed at criticism against Israel over its treatment of the inhabitants in Palestine and other occupied areas. In 1968, a regional conference on human rights was held in Beirut, where the Permanent Arab Commission on Human Rights (ACHR) was established. Since inception, the ACHR has been a highly politicised body, with its political nature accentuated by the method of appointment. The Commission does not consist of independent experts, as in many other international human rights bodies, but of government representatives. On 15 September 1994, the Council of the League of Arab States adopted the Arab Charter on Human Rights, whose entry into force, which required seven ratifications, was reached in 2008.

The OIC, established in 1969, aims at the promotion of Islamic solidarity among the 56 Member States and works towards cooperation in the economic, cultural and political spheres. The major human rights document, adopted in Cairo in 1990 under this framework, is the Cairo Declaration on Human Rights in Islam, which is of a declamatory nature only. As its title indicates, and given the aims of OIC, the declaration is closely based on the principles of the Shari'ah. In 2004, OIC adopted a binding instrument with a specific focus: the Covenant on the Rights of the Child in Islam. This Convention is open for ratification and will enter into force after 20 OIC member States have ratified it. Although the Convention provides for a monitoring mechanism— the Islamic Committee on the Rights of the Child— its mandate is only vaguely drafted.

Overlapping to some extent with the Muslim world, the heterogeneous Asian region stretches from Indonesia to Japan, comprising a diverse group of nations. Despite some efforts by the United Nations, no supranational human rights convention or body has been established

in the Asia-Pacific region. In the absence of an intergovernmental organisation serving as a regional umbrella that unites all the diverse States in this region, a regional human rights system remains unlikely.

Subregional level

In more recent times, the subregional level has emerged as another site for human rights struggle, particularly in Africa. As a result of a weak regional system under the African Union, a number of African sub-Regional Economic Communities (RECs) emerged from the 1970s: most prominently, the Economic Community of West African States, the Common Market for Eastern and Southern Africa, the Southern African Development Community (SADC) and the East African Community (EAC). Although these RECs are primarily aimed at subregional economic integration, and not at the realisation of human rights, there is an inevitable overlap in that their aims of economic integration and poverty eradication are linked to the realisation of socio-economic rights. In a number of the founding treaties of RECs, human rights are given explicit recognition as being integral to the organisations' aims. By creating sub regional courts with an implicit, or sometimes explicit, mandate to deal with human rights cases, it is apparent that these economic communities have become key players in the African regional human rights system.

Two decisions of subregional courts illustrate the growing significance of RECs to human rights protection. In a case brought against Uganda, it was contended that Uganda violated the EAC Treaty when it re-arrested 14 accused persons after they had been granted bail.⁵ The Court, in 2007, held that Uganda had violated the rule of law doctrine, as enshrined among the fundamental principles governing EAC.

In its first decision on the merits of a case, delivered in November 2008,⁶ the SADC Tribunal held that it had jurisdiction, on the basis of the SADC Treaty, to deal with the acquisition of agricultural land by the Zimbabwean Government, carried out under an amendment to the Constitution (Amendment 17). The Tribunal further found that, as it targeted white farmers, the Zimbabwean land reform programme violated article 6(2) of the SADC Treaty, which outlaws discrimination on the grounds of race, among other factors. As to the remedial order, the Tribunal directed Zimbabwe to protect the possession, occupation and ownership of lands belonging to applicants and pay fair compensation to those whose land had already been expropriated.

Promising developments towards subregional human rights protection have also recently occurred in the Association of Southeast Asian Nations (ASEAN), bringing together the founding States of Indonesia, Malaysia, Singapore, Thailand and the Philippines. Although ASEAN was established in 1967, a formal founding treaty (the ASEAN Charter) was adopted only in 2007. The Charter envisages the establishment of an ASEAN human rights body – a process that is still underway.

⁵ James Katabazi and 21 Others v Secretary-General of the EAC and Attorney-General of Uganda (2007).

⁶ Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe (2008).

Not by States Alone

Advances in human rights are not dependent only on States. Non-governmental organisations have been very influential in advancing awareness on important issues and have prepared the ground for declarations and treaties subsequently adopted by the United Nations.

The role of civil society is of particular importance when the contentiousness of an issue inhibits State action. The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity is a case in point. Although it was adopted in November 2006 by 29 experts from 25 countries, the 29 principles contained in the document – related to State obligations in respect of sexual orientation and gender identity – are becoming an internationally accepted point of reference and are likely to steer future discussions.

The international human rights law landscape today looks radically different from 60 years ago when the Universal Declaration was adopted. Significant advances have been made since the Second World War in expanding the normative reach of international human rights law, leading to the proliferation of human rights law at the international level. Over the last few decades, however, attention has shifted to the implementation and enforcement of human rights norms, to the development of more secure safety nets and to a critical appraisal of the impact of the norms. Greater concern for human rights has also been accompanied with greater emphasis on the individual liability of those responsible for gross human rights violations in the form of genocide, crimes against humanity and war crimes. The creation of international criminal tribunals, including the International Criminal Court in 1998, constitutes a trend towards the humanisation of international law. The further juridification of international human rights law is exemplified by the establishment of more courts, the extension of judicial mandates to include human rights, and the unequivocal acceptance that all rights are justiciable. With the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, there is much clearer acceptance of the principle of indivisibility under international human rights law. However, the constant evolution of the international human rights regime depends greatly on non-State actors, as is exemplified by their role in advocating for and preparing the normative ground for the recognition of the rights of “sexual minorities”. There is no doubt that the landscape is to undergo dramatic changes in the next 60 years.

Notes

1. In Larger Freedom: Towards Development, Security and Human Rights for All, Report of the Secretary-General, UN Doc A/49/2005, 21 March 2005.
2. UN Doc. A/RES/60/251 (para 13), 3 April 2006, recommending to the Economic and Social Council to “abolish” the Commission on Human Rights on 16 June 2006.
3. James Katabazi and Others v Secretary-General of the EAC and Attorney-General of Uganda, Reference 1 of 2007, East African Court of Justice, 1 November 2007.
4. Mike Campbell (Pvt) Limited and Others v Republic of Zimbabwe, Case SADCT 2/07, SADC Tribunal, 28 November 2008.

MODULE 2.2.

Human Rights and Asian Values



Objectives:

- » To challenge the myth that Asian values are contradictory to states' obligations to respect, protect and fulfil human rights.
- » To have a debate on what Asian values are.
- » To "verify" Asian values that support or contradict human rights principles



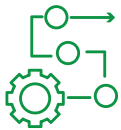
Knowledge Acquired:

- » Knowledge of the core intent of Asian values.



Time: 1.5 Hours before or during the session

Materials: PowerPoint presentation



Procedure

1. Ask for five volunteers. They will take on the role of the Government of one ASEAN country if it is a national training. If it is a regional training, then choose any country in ASEAN.
2. Allocate 10 minutes for groups to rehearse their usual political speeches about Asian values (i.e. respect, economic rights first, majority needs will take priority, sacrificing human rights for the greater good of all is acceptable, etc.)
3. Invite each minister to give a 2 minute speech on one of the values. It must be convincing to the audience. Then invite other participants to act as the common public who will then argue against that value
4. After all the five have spoken and all the counter arguments are completed, conduct a plenary discussion on Asian values. Use a PowerPoint presentation as a discussion tool.

**Debriefing:**

- » The “Asian values” myth must be challenged. Think about how we can make human rights arguments against the proponents of Asian values.

**Conclusion**

- » Reaffirm the concept of universality of human rights.
- » Present a convincing argument against cultural relativism that limits human rights scope.

Handout Material 2.2

Universality of Human Rights and Asian Values

Slide 1:

Cultural Relativism argues that:

- No moral values are universal.
 - Meaning varies from place to place, from time to time.
- Traditions limit the scope of HR.
- HRs are elitist (good for the West but not East).
- HRs are a conspiracy.

Slide 2:

The problem with Cultural Relativism is . . .

- ...not about respect for cultural rights, or acknowledging diversity (ESCR).
- It is in justifying violations on the ground of cultural or moral differences.
- It is an excuse to abuse.

Slide 3:

Universality of human rights

- Agreement on valuing human dignity or the worth of the person as a person.
- Rights as a human being, norms of conduct of states.
- "Common standard of achievement" of all humanity.
- UN Charter and UDHR.

(Source: Ed Legaspi, Universality of Human Rights and Asian Values. 11th ATSS, Bangkok.)

MODULE 2.3

Country and trans-border issues and situations



Objectives:

- » To familiarise oneself with the national and regional understanding of the present state of human rights.
- » Exposition of various situations and responses towards resolution of domestic and trans-border issues.
- » To have a common analysis on the ground reality of human rights violations in ASEAN.



Knowledge Acquired:

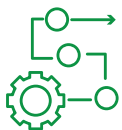
- » Understanding of various situations of ASEAN peoples.



Time: 1.5 Hours

Materials:

- Prepare 20-30 old newspaper cuttings/printouts on issues that affect the neighbouring country i.e. haze, trafficking, migrant workers, conflict zones, refugees, economic business practise, etc.
- coloured A4 paper cut into quarters and scissors.



Procedures:

1. Draw an outline of the physical map of ASEAN on the floor. It must be big enough so that participants can sit on the outer side of this map.

2. Display the newspaper cutting on a wall and give participants 15 minutes to walk around to read these clippings.
3. Prepare stacks of coloured paper. One colour representing one country. The stack should be placed on the left boundaries on the countries' map.
4. Ask one participant to start relating a problem that he/she reads from the newspaper cutting. Ask the others the following questions: *Where did the problem start? Where are the affected people based now? Does it have an impact on people in other countries?*
5. As they answer the questions, place the respective coloured paper to the country to indicate the issue, i.e. haze. For instance, if the question states Indonesia (i.e. assigned red paper) as the starting point, write on one piece "HAZING" and stick it on Indonesia. As the participants follow through the issue, hazing might have affected or travelled to Malaysia and Thailand. Then take the red paper from Indonesia, write hazing and place it in Malaysia and Thailand.
6. Repeat this exercise for others issues that come up in the discussion.
7. Finally, the map should show all colours mixed up in various countries on particular issues.

Debriefing:



- » Issues are not localised and have a direct and/or indirect effect on other countries and peoples.
- » How do we analyse the root causes of some of these issues?
- » Who should take responsibility for these problems? The government and/or non-state actors?

Conclusion:



- » A regional block should move in the direction of working on issues that have trans-border impact and find mechanisms that can help resolve these issues.
- » The new ASEAN body will have to move away from its rigid non-intervention policy to a more constructive and critical engagement
- » The price for non-action on trans-border issues can have devastating impact on the rights of peoples as well as the prosperity of its neighbour.

Handout Material 2.3.1

ASEAN Civil Society Conference/ASEAN 3 Peoples' Forum (ACSC/APF 2019)

ADVANCING PEOPLES' MOVEMENTS FOR JUSTICE, PEACE, EQUALITY, SUSTAINABILITY AND 9 DEMOCRACY IN SOUTHEAST ASIA 10 11 ACSC/APF 2019 STATEMENT 12 SEPTEMBER 10-12, 2019 13 PATHUM THANI, THAILAND

The situation of Southeast Asian peoples

In Southeast Asia, despite the fact that ASEAN member states have made policy pronouncements on building a "rules-based, people-oriented, people-centered, dynamic, resilient and harmonious ASEAN 25 community" as declared in the ASEAN Community Vision 2025, the association is at a crossroads as it enters a new development period characterised by uncertainties, instabilities and high security risks. All these are taking place amid the US-China economic rivalry which could impact ASEAN's political and economic situation.

Politically and strategically, Southeast Asia lies at an important junction, giving ASEAN a central role in determining the region's future, while being at the centre of competition between the big powers.

The South China Sea territorial dispute has long been a critical test for ASEAN, causing strategic trust erosion between some member states.

Power shifts and regime changes in some ASEAN countries have led to the undermining of democratic processes, with the rise of authoritarian and right wing populist leaders resulting in widespread violations of human rights including extrajudicial killings, forced disappearances, and ethnic cleansing- all contributing to a human crisis in ASEAN.

Economically, although ASEAN is a huge market of more than 600 million consumers and is expected to become the fourth largest economy in the world by 2030, the region is confronted with a variety of challenges, including inequalities within and between countries, poor integration in terms of trade and investment, inefficient economic governance leading to corruption, and pressures brought about by the increase in migrant labour.

In the social and cultural sphere, gender inequalities persevere despite advances in legal initiatives in some countries. Social protection in terms of education, health, housing, living wages, and public services are still inadequate especially for poor and marginalised populations. This is partly due to the widespread privatisation of essential services and non-implementation of ILO convention and resolutions protecting worker's rights. Furthermore, continuing ecological deterioration and severe weather disturbances brought about by climate change as well as the proliferation of large infrastructure and mega development projects have intensified environmental disasters.

ACSC/APF 2019 - issues and recommendations

All four ACSC/APF 2019 plenary sessions raised the issue of democracy and its status as a key concern. The suppression, arrest and prosecution of activists critical of governments have continued unabated. Southeast Asia has been confronted by issues on security, justice, ecological destruction and assaults on human rights. Deteriorating democratic institutions threaten individual security without which there can be no national security. Moreover, many Southeast Asian people are losing their land and livelihoods due to mega projects, which also impact on the environment. Indigenous peoples and ethnic nationalities who have long lived and relied on nature are now deemed illegal in their own land.

To achieve sustainable and equitable development, equal partnership must be forged between governments, peoples' organisations, civil society groups, and all stakeholders. Affordable and accessible health care for everyone and protection of the rights of persons with disabilities, which are enshrined in constitutions and laws in ASEAN member countries, can only be delivered within the context of strong commitment by governments and service providers.

There is a widening gap between the poor on one hand, and the rich and prosperous on the other, resulting in economic disparities and social inequalities in various dimensions. Southeast Asia peoples must build alternatives based on the peoples' fundamental right to live with dignity and resist policies that favour and privilege only investors and corporate interests.

The seven convergence spaces under ACSC/APF 2019 are (1) peace and security, (2) human rights, democracy and access to justice, (3) trade, investment and corporate power, (4) ecological sustainability, (5) innovation, new, and emerging technologies and digital rights, (6) migration, and (7) life with dignity (decent work, health and social protection). Several workshops under the seven convergence spaces discussed and adopted the following analyses and recommendations:

I. Peace and Security

Southeast Asia continues to be challenged by critical security issues such as terrorism, piracy, cross border crimes, drug and human trafficking, smuggling, the migration crisis, natural disasters, climate change, and the rise of authoritarian leaders. Moreover, in the context of a rapidly changing world, the region is caught in a strategic competition between major powers, undermining efforts at unity and solidarity within ASEAN. The United States, for one, has long engaged actively in the region through its military presence and economic agenda, while China is using both financial tools and military power to expand its territorial claims especially in resource-rich marine areas. Conflicts between ASEAN states also exist particularly trade disputes, conflicting territorial claims, as well as those related the treatment of migrant workers and cross-border pollution. Internal conflicts in ASEAN countries continue to fester such as the Rohingya crisis in Myanmar, and separatist movements in Southern Thailand and West Papua. All these threaten regional peace and human security and peoples' livelihoods.

Recommendations to ASEAN governments:

- Synergize ACWC and AICHR by strengthening their mandates and functions and create regional mechanisms for reporting and resolving human right violations including and gender-based violence;

- Engage people from all walks of life, including women in solving peace and security-related problems and fully achieve the SDGs;
- Push for the settlement of disputes by peaceful means, in the spirit of solidarity and respect for international law; develop an alternative approach committed to multilateralism, a shared regional identity and people-to-people concerns; and,
- Hold developed countries accountable for the effects of climate change and toxic waste disposal.

II. Human Rights, Democracy and Access to Justice

Urban and rural workers, smallholder farmers, urban poor, fisherfolk, women, children, indigenous peoples and ethnic nationalities, older persons, professionals and rank-and-file employees, persons with disabilities, youth, LGBTIQ persons, human rights defenders, and migrants suffer exclusion from the mainstream of social, economic, and political aspects of Southeast Asian societies and communities. ASEAN member states, either by indifference or by deliberate effort, have allowed LGBTIQ persons to be targeted as threats to national security and public morality.

ACSC/APF deplores the rise of authoritarian regimes, the shrinking civic space in the region, and the ineffectiveness and inaction of AICHR in addressing the human rights issues facing Southeast Asian people. Commissioners are appointed in a non-democratic manner while civil society groups face difficulties in engaging with AICHR officials and representatives.

Recommendations to ASEAN governments:

Ratify the International Convention for the Protection of All Persons from Enforced Disappearances (CED) and recognise that enforced disappearances are a crime against humanity;

- Support and assist independent human rights investigations and international fact-finding missions in countries or areas of critical circumstance;
- Establish new human rights architecture/bodies and transform AICHR from an intergovernmental commission to an independent and autonomous body and strengthen its mandate for information gathering/fact finding and providing justice for victims;
- End all forms of militarism and the misuse of emergency laws and security related legislation;
- Respect the fundamental rights of peoples including freedom of expression, association and assembly, release all political prisoners/detainees and drop all charges against dissident voices;
- Promote, enhance, formalise, respect, and trust human rights defenders especially the youth and enable their participation in all decision-making processes;
- Affirm the civil and human rights of LGBTIQ persons in accordance with international human rights standards; and,
- Review and revise the ASEAN Charter particularly on providing space for CSOs to engage fully at the policy and implementation levels.

III. Trade, Investment and Corporate Power

ASEAN governments continue to push for a corporate-driven development framework/ paradigm that has worsened poverty and inequality, undermined peoples' rights, intensified vulnerabilities, and destroyed fragile ecosystems. Trade and investments continue to be the main drivers of economic growth and development in Southeast Asia. Governments have defaulted on their responsibility for economic development in favour of corporations, prioritised investor protection while weakening regulation, and continuing to push for unjust international trade and investment agreements such as the Regional Comprehensive Economic Partnership Agreement (RCEP).

The expansion of special economic zones, capitalist ocean grabbing, and mega infrastructure projects have displaced and marginalised communities of farmers, fishers, rural women, and indigenous peoples and ethnic nationalities. There is also an alarming rise in extra-judicial killings of environmental, land and human rights defenders.

However, peoples' resistance to the above developments continues and is intensifying. The building of alternatives are also underway, anchored in various community-based initiatives.

Recommendations to ASEAN governments:

- Stop corporate attacks on workers, farmers, indigenous peoples and ethnic nationalities and local communities, and hold governments and corporations accountable amid prevailing investment liberalisation and the corporate capture of the sustainable development agenda driven by international finance institutions;
- Put in place stronger and more effective regulations that curb the power of corporations and are anchored in protecting people's rights and promoting their welfare;
- Reject RCEP and other new generation free trade agreements, and initiate processes to review existing trade and investment agreements; and,
- Support the process towards a legally binding instrument on TNCs and human rights at the United Nations Human Rights Council and support other such mechanisms to exact accountability of corporations for human rights abuses and provide effective remedies and access to justice.

IV. Ecological Sustainability

Southeast Asia is facing multiple environmental crises. Lands, forests, rivers, biodiversity, water and air quality, which are critical to people's well-being and sustainable development, are being polluted, degraded and destroyed. Climate change is exacerbating these impacts, undermining people's resilience and increasing displacement. The prioritisation of economic

interests and corporate profits are marginalising environmental concerns and crippling people's rights. A people-centred ASEAN, which is just prosperous, and genuinely sustainable, cannot be achieved unless the roles, rights and livelihoods of people are respected and upheld. Recommendations to ASEAN governments:

- Launch a fourth strategic pillar on the environment, to put international best practices and environmental sustainability at the centre of decision-making;
- Ensure transparency and public participation in environmental decision-making. Establish an open access e-data platform on development, infrastructure, energy and land projects including project information and impact assessments to outline both trans-boundary and cumulative impacts;
- Ensure and guarantee genuine free, prior and informed consent (FPIC) of indigenous peoples and ethnic nationalities in development projects and promote best practices for implementing FPIC by corporate actors.
- Strengthen and enforce legal regimes to monitor and punish environmental polluters;
- Prioritise energy policies and plans that ensure just energy transitions that maintain the integrity of ecosystems and respect the rights and well-being of people;
- Promote allocation of resources to support people in creating and developing environmentally sound social innovations and people-centred markets, trade and investment; and,
- Recognise local communities' rights over their land and resources. Ensure their rightful participation in all development decisions affecting their lands, life and survival, environment and future.

V. Innovation, New and Emerging Technologies and Digital Rights

New and emerging technologies promoted to address climate, food and environment crises and raise productivity and efficiency are mostly developed and controlled by corporate interests, making them inaccessible to local communities and detached from the needs and realities of Southeast Asian people.

Corporate digital platforms are being run without meaningful peoples' participation in governance; and data is being collected without informed consent and mainly for profit.

Recommendations to ASEAN governments:

- Channel resources, support, and upscale participatory, transparent and democratic governance of technologies, ensure peoples' ownership and control of their data, and evaluate the potential impacts on human health, society, livelihood and the environment prior to technological deployments;

- Uphold and integrate people’s digital rights in the ASEAN digital masterplan, on cybersecurity cooperation, and data protection and privacy; and,
- Immediately stop prosecuting and drop all pending charges against activist filmmakers and journalists for posting content, videos, and photos on social media.

VI. Migration

Despite the 2018 adoption of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, the framework, documentation and nationality of migrant workers and their family members remain the main challenges for upholding migrants’ human rights and fundamental freedoms on citizenship, fair wages, affordable working permits, simple application processes, debt bondage, and social protection issues including health, trafficking, abuses and modern slavery.

Recommendations to ASEAN governments:

- Promote and protect human rights of migrants by strengthening existing mechanisms for both documented and undocumented workers and their families;
- Undertake effective consultation and collaboration with civil society and trade unions in the implementation of the ASEAN Consensus on the Protection and Promotion of Migrant Workers;
- Protect the rights of refugees and asylum seekers, including preventing their forcible return to a country where they face prosecution (non-refoulement) and advance progress across the region on refugee legal status, work rights, and access to education and health care; and,
- Recognise and address the vulnerability of stateless people, especially girls, by establishing a single protocol and standard in defining legal identity.

VII. Life with Dignity (decent work, health and social protections)

Most people in Southeast Asia continue to experience poverty, vulnerability, and inequalities. Majority of the workforce, including migrant workers, are engaged in the precarious informal economy. Non adoption and implementation of the ILO Core Labor Standards, and lack of rights awareness have aggravated workers’ conditions. Social protection to address inequalities and ensure vulnerable groups from falling into poverty have remained limited and largely temporary. The social dimension is clearly missing in ASEAN. But there exist alternative development practices by and among peoples that may be promoted as alternatives to ASEAN’s business-oriented economic integration.

Recommendations to ASEAN governments:

- Legislate and implement a rights-based and inclusive social protection framework, policies, and processes, ensure living wage and income for all;
- Ratify and implement the ILO core labour standards essential to creating conditions to achieve decent work, guarantee universal healthcare for all, and end efforts at

- privatising health and other public services;
- Commit to dialogue, collaborate and share knowledge and resources towards advancing a common agenda to realise a life of dignity for all with people's movements, trade unions, NGOs, parliamentarians, and academia;
 - Recognise sex work as work and repeal laws and rescind policies that criminalise and stigmatise sex workers and violate their rights; and,
 - Commit to the ILO-recommended 6% international minimum standard country budget allocation for social protection and continue to increase the fiscal space for universal social protection.

(Source: ACSC/APF2019 Statement available at <http://www.yrdp.org/wp-content/uploads/2020/03/ACSC-APF-2019-Statement-FINAL-30Sept2019.pdf>)

Handout Material 2.3.3

COVID-19 in ASEAN: the Human Rights Crisis and How to End it

Briefing Paper by FORUM-ASIA (2020)

[...].

I. The COVID-19 Impact on Human Rights, Democracy and Civic Space in ASEAN

The new coronavirus disease (COVID-19) has wrought havoc globally. The World Health Organisation (WHO) announced it as a pandemic on 11 March 2020. It originated in the city of Wuhan in China, and then spread, initially to neighbouring countries. Due to their proximity to China and extensive interconnections in tourism and trade, the Association of Southeast Asian Nations (ASEAN) member states were affected early. The ASEAN countries have reported at least 56,001,277 COVID-19 cases with 764,410 deaths in total as of 5 March 2022⁷⁸⁹ The ASEAN Secretary-General, Lim Jock Hoi, estimated that the real numbers are likely to be higher than those officially provided,¹⁰ and the figures continue to rise. Beyond the catastrophic health impact, the pandemic is also dramatically affecting the economy. According to the Asian Development Bank, the ASEAN region is expected to grow by a meagre 1 per cent in 2020, compared to 4.6 per cent in 2019.¹¹ As a consequence, millions are expected to lose their jobs, and for a region with a large informal sector and where social protection is not evenly developed, the implications for many will be dire.

[...]

ASEAN member states have responded to COVID-19 by a wide number of measures, including the introduction of new laws and policies. Cambodia, Laos, Thailand, and the Philippines, instituted state of emergency laws, granting governments sweeping powers. Singapore, Malaysia and Indonesia did not declare emergencies but instead used existing laws and/or introduced specific, non-emergency legislation. Indonesia, Malaysia and Thailand utilised contact tracing apps that acted as surveillance on people's movements. The president of Indonesia declared that he is withholding some information about COVID-19.¹² In addition, despite the crucial role the internet plays in ensuring access to information about COVID-19, there was a more than one year internet restriction in eight townships in Rakhine and Chin States.¹³ In Malaysia, more than 20,011 people have been arrested for violating the country's Movement Control Order since it was issued on 18 March 2020.¹⁴

⁷ <https://covid19.who.int/>

⁸ CSIS, "Southeast Asia Covid-19 Tracker," CSIS, <https://www.csis.org/programs/southeast-asia-program/southeast-asia-covid-19-tracker-0>.

⁹ Ibid.

¹⁰ Lim Jock Hoi, "ASEAN Solidarity and Response in The Face of COVID-19," The Jakarta Post, 2020, <https://www.thejakartapost.com/academia/2020/06/02/asean-solidarity-and-response-in-the-face-of-covid-19.html>.

¹¹ ASEAN, "ASEAN Policy Brief" (ASEAN, 2020), https://asean.org/storage/2020/04/ASEAN-Policy-Brief-April-2020_FINAL.pdf.

¹² Dyaning Pangestika, "We Don't Want People to Panic: Jokowi Says on Lack of Transparency about COVID Cases," The Jakarta Post, 2020, <https://www.thejakartapost.com/news/2020/03/13/we-dont-want-people-to-panic-jokowi-says-on-lack-of-transparency-about-covid-cases.html>.

¹³ Thu Thu Auung and Sam Aung Moon, "Myanmar Reimposes Internet Shutdown in Conflict-Torn Rakhine, Chin States: Telco Operator," Reuters, 2020, <https://www.reuters.com/article/us-myanmar-rakhine/myanmar-reimposes-internet-shutdown-in-conflict-torn-rakhine-chin-states-telco-operator-idUSKBN1ZZ0LC>.

¹⁴ Nuradzimmah Daim, "Over 20,000 Arrested for Violating MCO since March 18," The Straits Times, 2020, <https://www.nst.com.my/news/nation/2020/04/587646/over-20000-arrested-violating-mco-march-18>.

These numbers include men, women and children, migrants and refugees. In Vietnam, by the end of March, 700 individuals had already been fined by the public security forces, who operate under the Ministry of Public Security, for peacefully expressing views related to the Coronavirus.¹⁵ In summary, the broad trend of ASEAN governments’ response to COVID-19 has accelerated the rise of authoritarianism and increased the use of the military in further repressing democracy, human rights and civic space. The policies also further exacerbate public health risks of marginalised populations, including women, the homeless, people living in poverty, indigenous groups, and LGBTIQ people.

Table 2. ASEAN Member States Laws and Policy to Address COVID-19

Country	Law and Policies on COVID-19
Cambodia	State of Emergency Law (10 April 2020)
Laos	The Prime Minister’s Order (29 March 2020)
Thailand	Emergency Decree (26 March 2020)
Philippines	Republic Act No. 11469: The Bayanihan to Heal as Once Act (23 March 2020) and Republic Act No. 11494: Bayanihan to Recover as One Act (15 September 2020)
Singapore	Circuit Breaker Measures (07 April 2020)
Indonesia	Law No.1 2020 on COVID-19 Health Emergency Law (31 March 2020)
Malaysia	Movement Control Order (16 March 2020)
Myanmar	Creation of COVID-19 Control and Emergency Response Committee
Vietnam	Creation of National Steering Committee for COVID-19 Prevention and Control
Brunei	No specific law or policy created

Having researched the impact of state responses to COVID-19 on human rights in Asia since March 2020, FORUM-ASIA observed several general trends, including governments resorting to a security-approach. These approaches have had a detrimental impact on civic space, involving violations of human rights, including the right to liberty, freedom of expression and peaceful assembly and association, and the wide-scale and arbitrary use of surveillance.

1. Securitisation and civic space

ASEAN Governments have increasingly used a security-focused response rather than a public health approach to deal with COVID-19. In Southeast Asian countries, the police and the military often led the implementation and enforcement of pandemic-related restrictions. This has involved intimidation of ordinary individuals, and at times, the use of violence. The security-focused response has come at the expense of much needed public health interventions.

The emergency decrees, laws and policies effectively provide governments, and often the security forces, with a range of powers that have been used to institutionalise existing repressive practices. In Indonesia, broad powers were given to the President to respond to the crisis, as well as inclusion of the police and military as part of the COVID-19 task force with full authority

¹⁵ The 88 Project, “Censorship Tactics Overshadow Vietnam’s Successful COVID-19 Response,” Global Voices advox, 2020, <https://advox.globalvoices.org/2020/06/10/censorship-tactics-overshadow-vietnams-successful-covid-19-response/>.

to implement the large-scale social restrictions.¹⁶ In Cambodia, Hun Sen's rule was effectively cemented by an emergency decree that allowed his government almost unlimited powers.

In Malaysia, armed police rounded up and detained hundreds of Rohingya refugees and other migrants, arguing that they were doing so to halt COVID-19.¹⁷ This action, aside from being counterproductive, highlights the disproportionate use of force by the government against an extremely vulnerable group. In the Philippines, the government adopted a 'war' narrative, where the police led the implementation of the restrictions and were implicated in many cases of cruel, inhuman or degrading treatment of alleged lockdown violators.

The wide-ranging restrictions implemented by the security sector, at a time when protests or gatherings have been prohibited, have compromised spaces for dissent. Several governments have also used this period to promote or implement legislation that would further increase the role of the security sector. In the Philippines, the government fast-tracked an anti-terror bill incorporating vague and broad provisions on the definition of terrorism, that would severely crack down on civic space, and foster abuse by the security sector. In addition, abuse of emergency laws and measures to impede the legitimate work of human rights defenders (HRD) was also seen as part of this trend.

2. Violations of the rights to Freedom of Expression, Peaceful Assembly and Association

Government responses have involved a crackdown on the rights to freedom of expression, peaceful assembly and association as well as violation of the right to liberty. While under international human rights law certain restrictions on these rights are allowed in times of emergency,¹⁸ in most cases, governments have failed to limit those to a minimum and meet the principles of necessity and proportionality needed to justify such exceptions.

Within already increasingly authoritarian countries, governments used the pandemic as a cover to further the implementation of existing policies that curtail peaceful dissent. For others, the pandemic served as a justification for initiating new decrees, laws and policies – or using existing ones- to arbitrarily restrict human rights.

Several governments have failed to provide access to vital information on the pandemic to their people. The most prominent example is Myanmar, where conflict-affected townships suffered from an internet ban for months. These have rendered the Rohingya and other ethnic minorities living in Rakhine and Chin states extremely vulnerable to the spread of COVID-19. In Indonesia, President Joko Widodo admitted hiding information related to COVID-19, fearing public uproar.¹⁹

Almost all ASEAN Member States have criminalised the dissemination of disinformation or what they consider to be 'fake news' in offline and online spaces, supposedly as parts of the effort to curb the pandemic. These have, however, resulted in the curtailment of necessary information and dialogue, and often became a cover to measures targeting peaceful government critics or dissidents.

16 Admin, "Tiga Jurusan Darurat Melawan Pandemi Covid-19," Indonesia.go.id, 2020, <https://www.indonesia.go.id/narasi/indonesia-dalam-angka/ekonomi/tiga-jurusan-darurat-melawan-pandemi-covid-19>.

17 Kamil Ahmed, "Malaysia Cites Covid-19 for Rounding up Hundreds of Migrants," The Guardian, 2020, <https://www.theguardian.com/global-development/2020/may/02/malaysia-cites-covid-19-for-rounding-up-hundreds-of-migrants>.

18 General Assembly UN, "International Covenant on Civil and Political Rights" (1966).

19 Ihsanuddin, "Jokowi Akui Pemerintah Rahasiakan Sejumlah Informasi Soal Corona," Kompas.com, 2020, <https://nasional.kompas.com/read/2020/03/13/16163481/jokowi-akui-pemerintah-rahasiakan-sejumlah-informasi-soal-corona>.

In Myanmar, artists were arrested for a street painting promoting awareness of the epidemic because authorities argued that their depiction of the virus resembled a Buddhist monk.²⁰ In Cambodia, members of the dissolved opposition Cambodia National Rescue Party were among those charged under the ‘fake news’ restrictions.²¹ In the Philippines, the ‘fake news’ provision in a new law was used to target individuals criticising the government’s response to the pandemic.²² In Malaysia, activists were arrested for allegedly violating the country’s movement control order.²³

Other Southeast Asian countries such as Singapore, Laos and Vietnam all recorded arrests of individuals for allegedly spreading ‘fake news’ related to the pandemic. This criminalisation of ‘fake news’ adopted by ASEAN governments, has severely limited the discussion on how to counter disinformation effectively, and in ways that respect and protect freedom of expression.

Laws, decrees and policies in Cambodia, Thailand, Myanmar, Indonesia, and the Philippines also imposed bans on public gatherings to halt the spread of the pandemic, similar to many countries outside the region. While physical distancing measures appear necessary to curb COVID-19, governments in ASEAN have used such measures as justification to clamp down on human rights defenders and activists. These have included activists calling for justice for a missing activist in Thailand²⁴ and the violent dispersal of community defenders in the Philippines.²⁵

These measures disproportionately target community-based human rights defenders, specifically land and environmental human rights defenders as well as indigenous people’s rights defenders (e.g: the case of James Watt of Central Kalimantan WALHI case) and ordinary individuals who have limited access to legal resources to fight against judicial harassment. Within an already repressive climate, threats of reprisals or arrests for speaking out, not only violate the rights of the specific people concerned but risk further marginalising vulnerable communities and depriving them of much-needed representation.

Such measures also risk perpetuating structural violence. In Indonesia, where the LGBTIQ community faces discrimination and violence, such restrictions have become a form of reprisal to target the community. In late March, a gathering of transgender women was dispersed by authorities in Mojokerto using COVID-19 as a cover.²⁶ During the same month, hundreds of Jakartans flouted the social restrictions to mark the last day of a fast food outlet.

The lack of access to necessary and reliable information on the virus for the general public also disproportionately affects the Rohingya refugees in Malaysia, as they have become scapegoats for the disease, reinforcing the systemic and structural discrimination and violence against them.²⁷

20 Mizzima, “Criminal Charges against Street Artists Should Be Dropped – HRW,” Mizzima, 2020, <https://www.mizzima.com/article/criminal-charges-against-street-artists-should-be-dropped-hrw>.

21 Reuters Staff, “Cambodia Uses Coronavirus Crisis to Arrest 17 Critics, Rights Group Says,” Reuters, 2020, <https://www.reuters.com/article/us-health-coronavirus-cambodia-arrests/cambodia-uses-coronavirus-crisis-to-arrest-17-critics-rights-group-says-idUSKBN21B0JJ>.

22 CNN Philippines Staff, “32 Arrested over ‘Fake’ COVID-19 News,” CNN Philippines, 2020, <https://www.cnnphilippines.com/news/2020/4/6/arrests-over-coronavirus-fake-news.html>.

23 John Bunyan, “Five Activists Charged with Violating CMCO Following Arrests Outside Ipoh Hospital,” Malay Mail, 2020, <https://www.malaymail.com/news/malaysia/2020/06/04/five-activists-charged-with-violating-cmco-following-arrests-outside-ipoh-h/1872363>.

24 Coconuts Bangkok, “#SaveWanchaleerm Activists Detained for Tying Bows at Democracy Monument,” Coconuts Bangkok, 2020, <https://coconuts.co/bangkok/news/savewanchaleerm-activists-detained-for-tying-bows-at-democracy-monument/>.

25 “Groups Decry Violent Dispersal Barricade Mining Film,” Rappler, <https://www.rappler.com/nation/groups-decry-violent-dispersal-barricade-mining-film>.

26 Enggran Eko Budiarto, “Arisan Waria Di Mojokerto Dibubarkan Cegah Penyebaran Corona,” Detik.com, 2020, <https://news.detik.com/berita-jawa-timur/d-4954417/arisan-waria-di-mojokerto-dibubarkan-cegah-penyebaran-corona>.

27 A. Ananthalakshmi and Rozanna Latiff, “Rohingya Targeted in Malaysia as Coronavirus Stokes Xenophobia,” Reuters, 2020, <https://www.reuters.com/article/us-health-coronavirus-malaysia-rohingya-idUSKBN22Z00K>.

3. Surveillance and violations of the right to privacy

The use of contact tracing applications to counter the spread of COVID-19 became one of the critical responses of governments. Civil society has raised concerns about its potential for violations of privacy. In a region where data protection laws are lax, and where governments have been accused of using state surveillance to intimidate the public, the wide-scale use of applications to monitor movement raises concerns of possible abuse.

Governments have readily adopted contract tracing applications, without necessarily ensuring that the principles of necessity and proportionality in any infringement of the right to privacy have been adequately met. Besides, most governments in ASEAN have not adhered to the 17 principles on utilising digital tracking for COVID-19 as issued by the WHO.²⁸ The Trace together app in Singapore enables contact tracing and duplication of contact without consent. The 'peduli lindungi' app in Indonesia records the COVID-19 patient's movement for fourteen days without any informed consent or protection of private data confidentiality. The Thai Chana application has been deployed at shopping malls, restaurants and other venues that required location tracking.

While lauded for their ability to monitor movement and halt or minimise transmissions, there have been few discussions of the scope and the limitations of the use of these technologies. Human rights defenders have raised issues of possible future abuse of these movement tracking mechanisms, and the data accumulated in the hands of authoritarian governments.

These violations of the right to privacy may be disproportionately targeting or affecting vulnerable groups. For instance government monitoring may result, albeit unintentionally, in outing LGBTIQ individuals, making them susceptible to backlash or discrimination.

In a region with lax data protection laws and non-democratic governments, the mismanagement of data and the wide-scale use of surveillance pose significant risks for human rights defenders who are already being targeted. Individuals and communities who face discrimination such as the stateless, refugees and migrants may be increasingly targeted through the wide-scale use of surveillance.

II. ASEAN's Response to COVID-19

ASEAN's response to the COVID-19 pandemic started officially on 15 February 2020, with the Chairman's Statement entitled *ASEAN's Collective Response to the Outbreak of the 2019 Coronavirus*, on behalf of ASEAN's heads of states and governments.²⁹ The statement highlights the need to strengthen coordination of national and regional efforts in ensuring ASEAN's readiness and responsive measures to mitigate and subsequently eliminate the threats of COVID-19. In addition, the statement provides that the people should be "rightly and thoroughly informed on the COVID-19 situation."

²⁸ WHO, "Ethical Considerations to Guide the Use of Digital Proximity Tracking Technologies for COVID-19 Contact Tracing" (WHO, 2020), <https://apps.who.int/iris/rest/bitstreams/1278803/retrieve>.

²⁹ ASEAN, "CHAIRMAN'S STATEMENT ON ASEAN COLLECTIVE RESPONSE TO THE OUTBREAK OF CORONAVIRUS DISEASE 2019," 2020, <https://asean.org/storage/2020/02/ASEAN-Chairmans-Statement-on-COVID-19-FINAL.pdf>.

On 9 April 2020, the ASEAN Foreign Ministers held a video conference on COVID-19 that resulted in a commitment to maintain peace and stability as well as the establishment of a COVID-19 ASEAN Response Fund which was initiated by Indonesia.

ASEAN member states discussed the regional response to the COVID-19 pandemic further during the ASEAN special summit (as well as ASEAN+3 discussion) on COVID-19, on 14 April 2020.

Table 3. The ASEAN mechanisms responding to COVID-19



 <p>THE ASEAN RESPONSE TO COVID-19</p> 	ASEAN Plus Three Senior Officials Meeting for Health Development (APT SOMHD)
	Mechanism Responding to COVID-19
	ASEAN Health Ministers and ASEAN Plus Three Health Ministers in Enhancing Cooperation on COVID-19
	ASEAN Emergency Operations Centre (EOC) Network for public health emergencies
	ASEAN BioDiaspora Virtual Centre (ABVC) for Big Data Analytics and Visualisation
	ASEAN Coordinating Council Working Group (ACCWG) on Public Health Emergencies
	ASEAN Plus Three Field Epidemiology Training Network (ASEAN+3 FETN)
	ASEAN Risk Assessment and Risk Communication Centre (ARARC)
	Public health laboratories network under the ASEAN Health Cluster 2 on Responding to All Hazards and Emerging Threats
	Regional Public Health Laboratories Network (RPHL) through the Global Health Security Agenda platform

In addition, the ASEAN Economic Ministers Meeting on 4 June adopted the Hanoi Plan of Action on Strengthening ASEAN Economic Cooperation and Supply Chain Connectivity in Response to the COVID-19 pandemic. At the meeting, the ministers also discussed the prospects of a post-pandemic economic recovery plan, including the proposal by the ASEAN Business Advisory Council to establish a high-level special commission in dealing with the current crisis.³⁰ Lastly, the ASEAN Intergovernmental Commission on Human Rights (AICHR) issued a statement in early May on the need to integrate “human rights values” within the response to the pandemic.³¹

30 ASEAN, “ASEAN Economic Ministers Adopt Action Plan to Increase Resilience amid Pandemic,” ASEAN, 2020, <https://asean.org/asean-economic-ministers-adopt-action-plan-increase-resilience-amid-pandemic/>.

31 AICHR, “Press Release on Coronavirus Disease 2019 (COVID-19) by the ASEAN Intergovernmental Commission on Human Rights (AICHR)” (AICHR, 2020), <https://aichr.org/news/press-release-on-coronavirus-disease-2019-covid-19-by-the-asean-intergovernmental-commission-on-human-rights-aichr/>.

[...]

The ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

As noted, AICHR issued a statement on COVID-19 on 1 May 2020.³² The statement calls on ASEAN member states, among other things, to bear in mind the importance of promoting and protecting all human rights while tackling the pandemic. The statement mentions the importance of ensuring access to healthcare services to “women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups,” but significantly omits LGBTIQ people. It also highlighted the importance of access to information and freedom of opinion and expression in this context.

Although this is the only official response so far issued by AICHR, it is the first statement made by AICHR addressing a current human rights issue, on which all representatives from the ten member states agreed. For AICHR this is quite remarkable given the heavy influence of the non-interference, non-confrontational and decisions-by consensus approach of ASEAN bodies, including AICHR. This statement gives a ray of hope that the Commission, which has been widely criticised for being ineffective and inactive in addressing human rights situations in the region, can develop and become more active. It should be remembered, however, that the statement, beyond making calls for recommendations, does not promise to follow them by monitoring member states’ laws, policies or practices with respect to COVID-19. So while this statement is a small step in the right direction, we are yet to see AICHR, whose key mandate is to protect and promote human rights in the region, doing any actual protection work..

Individual AICHR commissioners have been more active than the Commission as a whole during the pandemic, in particular the representatives of Indonesia and Malaysia. The representative of Indonesia has called out the Government of Malaysia for aggravating the situation of undocumented migrants, asylum seekers, and refugees in the country, and the rising of xenophobia in the country during the pandemic.³³ The representative of Malaysia has called for a review of the AICHR Terms of Reference (TOR) since the COVID-19, demonstrating the necessity to reconsider how the consensus and non-interference principles are applied in the context of human rights. The Malaysia representative points to the fact that currently a member state’s representative can veto any action or discussion of human rights in his/her state, and suggests ensuring an alternative decision-making process for AICHR where consensus cannot be reached.³⁴

While there is no documented evidence of ACWC COVID-19-related interventions, the ASEAN ministerial meeting on social welfare and development (AMSWD), to which ACWC reports, issued a joint statement, entitled “Mitigating Impacts of COVID-19 on Vulnerable Groups in ASEAN.”³⁵ Among specific points highlighted are the impacts of the spread of the virus on poor children, older persons, women and girls, persons with disabilities, and the profound effects of the pandemic and containment measures on children which include susceptibility to domestic, online and other forms of violence and abuse. Like the AICHR, the AMSWD neglects to mention LGBTIQ among groups that may be particularly vulnerable in view of discriminatory laws and practices in several ASEAN member states.³⁶

³² Ibid.

³³ Rahmad Nasution, “AICHR Indonesia Concerned over Reports of Malaysia Refusing Rohingya,” Antara News, 2020, <https://en.antaranews.com/news/146632/aicHR-indonesia-concerned-over-reports-of-malaysia-refusing-rohingya>.

³⁴ Eric Paulsen, “AICHR Ready to Become Stronger Human Rights Mechanism,” The Jakarta Post, 2020.

³⁵ ASEAN, “JOINT STATEMENT OF THE ASEAN MINISTERIAL MEETING ON SOCIAL WELFARE AND DEVELOPMENT MITIGATING IMPACTS OF COVID-19 ON VULNERABLE GROUP,” 2020, https://asean.org/storage/2020/06/AMMSWD-Joint-Statement-on-COVID19_ADOPTED.pdf.

³⁶ Ibid.

The above mentioned examples illustrate how each regional human rights mechanism has responded to the human rights risks that the COVID-19 pandemic poses. Acknowledging that there is no one-size-fits-all approach and the flaws that each regional mechanism might have, the response by ASEAN human rights mechanisms nevertheless sticks out as evidently insufficient in comparison to the other mechanisms.

This insufficiency is especially stark against the backdrop of severe human rights violation taking place during the first few months of the pandemic, and considering the severity of the pandemic in Southeast Asia. It is for the duty of the AICHR and ACWC to maximise their admittedly limited powers to influence the ASEAN member states, for instance by providing guidelines and advisory notes, but also by taking it upon themselves to conduct studies and monitoring through other means the compliance of member states with their human rights commitments and hold them accountable for any failures. One statement, which has so far not been translated to further action, is not enough.

Recommendations to ASEAN member states:

- Respect human rights, fundamental freedoms, and human dignity, and in particular abide by international human rights law and standards when implementing measures to address the COVID-19 pandemic as well as in developing ASEAN's post-pandemic recovery plans (including the economic recovery plan);
- Ensure that full access to social and legal protection mechanisms, including access to justice for women, girls, and those who are affected by sexual and gender based violence during the lockdown is available at times of quarantines;
- Encourage all national human rights institutions to monitor the human rights impact of their State's measures, together with civil society, and facilitate such monitoring by providing access to relevant information and officials;
- Provide holistic measures, through law, policy, and practice, to uphold and ensure workers' and migrant workers' rights, welfare, safety, and security, regardless of legal status;
- Provide temporary and safe shelter during enforced quarantines for the homeless and members of other vulnerable communities;
- Facilitate regular and transparent access to accurate, timely, and comprehensive information to the public regarding the disease, including the risk of transmission, prevention, and governmental efforts to address the situation;
- Ensure that all employers, including public institutions and private companies and businesses, provide adequate compensation to all employees affected by the pandemic – with government support if necessary;
- Generate a timely and adequate response accessible to all people without discrimination, including those who have limited access to healthcare facilities;
- Provide free and high quality tests, treatment, and care to all people affected by the pandemic, including members of marginalised groups and undocumented populations;
- Respect legal obligations under treaty and customary international law regarding the principle of *non-refoulement*;
- Take immediate action to counter dangerous xenophobic and other hateful narratives against undocumented migrants, refugees, asylum seekers, minorities and any other groups;
- Ensure that the needs and concerns of refugees and asylum seekers are included in all policies in response to COVID-19, including relief packages;

- Enact measures to promote women’s voices and leadership, deliver gender-sensitive assistance that enables them and prevents gender-based violence;
- Mobilise all available macro, financial, and structural policy tools to be aligned with business and human rights principles within the economic recovery plan;
- Strengthen social safety nets for all.

Recommendation to ASEAN Human Rights Mechanisms

- Establish an ad-hoc mechanism to monitor, identify and address human rights violations under the pretext of COVID-19 in all ASEAN member states;
- Share best practices and cooperate with other regional human rights mechanisms;
- Review the TORs of the AICHR and ACWC to enhance their independence and expertise; enable the creation of meaningful complaint mechanisms and other forms of human rights protection; and enable majority decisions where a consensus cannot be reached;
- Proactively provide member states with advice on holistic measures in law, policy and practice, to protect, respect and fulfil vulnerable groups’ rights, welfare, safety, and security, regardless of legal status;
- Expedite collaboration with other ASEAN mechanisms to create a holistic COVID-19 response where the safety, rights and dignity of women, girls, the LGBTIQ community, persons with disabilities, and other vulnerable communities are protected;

Recommendation to ASEAN member states for HRD protection:

- Ensure HRDs can continue monitoring the human rights situation and keep state and non-state actors accountable during the period of ‘lockdown’ & ‘state emergency’. This includes: 1) Stopping the increased judicial harassment and arrest of HRDs, and guaranteeing freedom of expression of defenders scrutinising government policies and response measures on COVID-19; 2) Ensuring access to information on COVID-19. Stop using emergency laws and anti-fake news laws against HRDs and journalists; 3) Ensuring transparency on the use of surveillance technology, and ensure that the use of these tools, and all other measures that may compromise people’s privacy, are legal, necessary, proportionate and non-discriminatory. Increased surveillance poses a concern for citizens and HRDs privacy.
- Recognise the important role of HRDs in overcoming the pandemic in a way that is inclusive and respectful of human rights, and ensure transparency and meaningful participation in decision making processes. This includes halting all business operations with potential adverse impact on human rights as the public participation is very limited or denied;
- Ensure that full access to protection mechanisms for HRDs, including access to justice, do not cease under quarantine. This includes:
 - 1) Releasing all detained HRDs;
 - 2) Facilitating grassroots/local HRDs’ access to external resources (e.g. funding, legal support, networks);
 - 3) Ensure, through judicial, administrative, legislative or other appropriate means that HRDs and those affected by business-related human rights abuse have access to effective remedy.

(Selected sections of **COVID-19 in ASEAN: the Human Rights Crisis and How to End it, FORUM-ASIA (2020)** full text available at *ASEAN-COVID-Briefing-paper-FINAL.pdf* (forum-asia.org))

- 1 <https://www.csis.org/programs/southeast-asia-program/southeast-asia-covid-19-tracker-0>
- 2 <https://www.csis.org/programs/southeast-asia-program/southeast-asia-covid-19-tracker-0>
- 3 <https://www.thejakartapost.com/academia/2020/06/02/asean-solidarity-and-response-in-the-face-of-covid-19.html> 4 https://asean.org/storage/2020/04/ASEAN-Policy-Brief-April-2020_FINAL.pdf
- 5 <https://www.thejakartapost.com/news/2020/03/13/we-dont-want-people-to-panic-jokowi-says-on-lack-of-transparency-about-covid-cases.html>
- 6 <https://www.reuters.com/article/us-myanmar-rakhine/myanmar-reimposes-internet-shutdown-in-conflict-torn-rakhine-chin-states-telco-operator-idUSKBN1ZZ0LC>
- 7 <https://www.nst.com.my/news/nation/2020/04/587646/over-20000-arrested-violating-mco-march-18>
- 8 <https://advox.globalvoices.org/2020/06/10/censorship-tactics-overshadow-vietnams-successful-covid-19-response/>
- 9 <https://www.indonesia.go.id/narasi/indonesia-dalam-angka/ekonomi/tiga-jurus-darurat-melawan-pandemi-covid-19>
- 10 <https://www.theguardian.com/global-development/2020/may/02/malaysia-cites-covid-19-for-rounding-up-hundreds-of-migrants> 11 See for instance International Covenant on Civil and Political Rights, Article 4.
- 12 <https://nasional.kompas.com/read/2020/03/13/16163481/jokowi-akui-pemerintah-rahasiakan-sejumlahinformasi-soal-corona> 13 <http://www.mizzima.com/article/criminal-charges-against-street-artists-should-be-dropped-hrw>
- 14 <https://www.reuters.com/article/us-health-coronavirus-cambodia-arrests/cambodia-uses-coronavirus-crisis-to-arrest-17-critics-rights-group-says-idUSKBN21B0JJ>
- 15 <https://www.cnnphilippines.com/news/2020/4/6/arrests-over-coronavirus-fake-news.html>
- 16 <https://www.malaymail.com/news/malaysia/2020/06/04/five-activists-charged-with-violating-cmco-following-arrests-outside-ipoh-h/1872363>
- 17 <https://coconuts.co/bangkok/news/savewanchalerm-activists-detained-for-tying-bows-at-democracy-monument/>
- 18 <https://www.rappler.com/nation/257275-groups-decry-violent-dispersal-barricade-mining-firm>
- 19 <https://news.detik.com/berita-jawa-timur/d-4954417/arian-waria-di-mojokerto-dibubarkan-cegah-penyebaran-corona/2,%2026%20March%202020> 20 <https://www.thejakartapost.com/academia/2020/05/13/mcdonalds-farewell-gathering-the-cost-of-covid-19-lies.html>
- 21 <https://www.reuters.com/article/us-health-coronavirus-malaysia-rohingya/rohingya-targeted-in-malaysia-as-coronavirus-stokes-xenophobia-idUSKB N22Z00K>
- 22 <https://apps.who.int/iris/rest/bitstreams/1278803/retrieve>
- 23 <https://asean.org/storage/2020/02/ASEAN-Chairmans-Statement-on-COVID-19-FINAL.pdf>.
- 24 <https://asean.org/asean-economic-ministers-adopt-action-plan-increase-resilience-amid-pandemic/>
- 25 <https://aichr.org/news/press-release-on-coronavirus-disease-2019-covid-19-by-the-asean-intergovernmental-commission-on-human-rights-aichr/> 26 <https://form.jotform.com/201661697866065> [...]
- 40 <https://aichr.org/news/press-release-on-coronavirus-disease-2019-covid-19-by-the-asean-intergovernmental-commission-on-human-rights-aichr/>.
- 41 <https://en.antaranews.com/news/146632/aichr-indonesia-concerned-over-reports-of-malaysia-refusing-rohingya> 42 <https://www.thejakartapost.com/academia/2020/06/13/aichr-ready-to-become-stronger-human-rights-mechanism.html> 43 https://asean.org/storage/2020/06/AMMSWD-Joint-Statement-on-COVID19_ADOPTED.pdf.
- 44 https://asean.org/storage/2020/06/AMMSWD-Joint-Statement-on-COVID19_ADOPTED.pdf.

MODULE 2.4

ASEAN

Commitments to Human Rights



Objectives:

- » To introduce the three-fold obligations of ASEAN states on human rights.
- » To survey ASEAN governments' commitment to international human rights covenants and treaties.
- » To map-out the relationship/expressions of these commitments to the principles and actions of ASEAN and its membership.



Knowledge Acquired:

- » Familiarity with the international human rights obligations and the commitments of the ASEAN states.



Time: 1.5 hours

Materials: Asni's case (Handout Material 2.4.1)



Procedures:

1. The facilitator gives an overview of the three-fold obligation of the State to human rights.
2. Divide the participants into five groups according to economic, social, cultural, civil and political categories. Hand them the case-study of Asni to discuss and fill in the table.

State Obligations	Where in Asni's story does it speak of the violations of rights within your category?	What did the State do or fail to do with regards to its obligation?	Which ASEAN member-countries have ratified the UN Human Rights treaties/ covenant?	ASEAN Expression of International commitments
ECONOMIC				
SOCIAL				
CULTURAL				
POLITICAL				
CIVIL				

3. Share in the plenary and clarify if necessary.
4. Identify the common trends of ratification/accession by ASEAN countries and locate their expression in the ASEAN structure.



Debriefing

- » All member countries of ASEAN support the Universal Declaration of Human Rights by virtue of being members of the United Nation.
- » Only a few members of ASEAN signed or ratified the major human rights treaties of the United Nations.
- » Realisation of rights is the primary duty of the State.
- » For any particular issue it is not necessary that one obligation is highlighted, in many cases it is a combination of few if not all generic obligations.
- » ASEAN has yet fallen short of their expression of commitment as a regional body.



Conclusion:

- » People need to organise to demand from the States its obligation and duties to its peoples.
- » Governments have to be reminded of their obligations to human rights.
- » By subscribing to the Universal Declaration of Human Rights, a State is bound by minimum standards of obligation to protect rights even has it has not acceded yet to a particular covenant

Handout Material 2.4.1

Asni's Story

Asni, her husband and three children were living in a rural area of the province, and belonged to a local indigenous community that was a minority. In the village, they owned a plot of land where they grew rice and vegetables. Asni was semi-literate and her husband had only completed primary school.

In 2005, the government evicted Asni's family and other small farmers to set up a plantation producing fruit for export as part of the government's policy to develop the economy. The World Bank supported the plantation project. The government paid some compensation to the evicted farmers. As a small indigenous community, they were not able to demand proper compensation.

Asni's husband used the money for his sister's wedding. He also bought clothes and jewellery for Asni and the children. The compensation money was soon gone. The government did not have a policy or program providing alternative occupations or advising the farmers evicted from their land. Without any money or land, the family moved to the city. Asni found a job in a factory as a sweeper, but was not even paid the minimum wage. Male workers were paid more for the same work. The factory did not permit unions to be formed. Asni's husband found a job in a multinational company producing shoes for export. The workers were not paid minimum wages and there was no insurance or social security benefit. Government policy forbade the formation of unions in the factories producing goods for export.

Asni was keen for her children to study. There were no government primary schools near the place they were living. She sent them to private schools and paid high fees for their primary education. Living in a place without proper hygiene, water and sanitation, Asni's daughter was affected by malaria and one of her sons contracted dysentery. The family's medical expenses were constant and high. Asni and her husband balanced the family budget by borrowing money at a high interest rate. They were able to borrow money because they had a monthly income.

In 2008, due to the global stock market crash, the country's economy was affected. The multinational company closed down the shoe factory and moved to another country. Asni's factory also cut down production and Asni lost her job.

Asni and her husband did not have any social security. The couple's children stopped going to school. Asni's daughter became invalid, since she was not able to get proper nourishing food. Without jobs, they were not able to pay the rent and were evicted from their house. Now they are living on the street.

Handout Material 2.4.2

THE CORE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS		
There are nine core international human rights treaties. Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its States parties Some of the treaties are supplemented by optional protocols dealing with specific concerns		
	Human Rights Instruments	Ratification by ASEAN member states
ICCPR	International Covenant on Civil and Political Rights	Cambodia, Indonesia, Laos, Philippines, Thailand, Vietnam
ICESCR	International Covenant on Economic, Social and Cultural Rights	Cambodia, Indonesia, Laos, Myanmar, Philippines, Thailand, Vietnam
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	Thailand, Philippines, Laos, Cambodia, Singapore, Vietnam, Indonesia
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Cambodia, Indonesia, Laos, Philippines, Thailand, Vietnam
CRC	Convention on the Rights of the Child	Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Indonesia, Philippines
ICED	International Convention for the Protection of All Persons from Enforced Disappearances	Cambodia
CPD	Convention on the Rights of Persons with Disabilities	Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam

Handout Material 2.4.3

State Human Rights Obligations		
Obligations to Respect	Obligations to Protect	Obligations to Fulfil
States have the obligation to refrain from interfering with the enjoyment of rights	States have the obligation to prevent violations of rights by other persons or third parties	States have the obligation to take appropriate measures towards the realization of rights

Responsibility to Protect

In the 1990s the international community grappled with the question of how to react to gross and systematic violation of human rights. This issue surfaced primarily due to the atrocities in the Balkans and Rwanda, which they failed to prevent, and the NATO military intervention in Kosovo, which triggered a debate on whether it was a violation to the prohibition of the use of force against another State in the UN Charter.³⁷ Much discourse drew upon Francis Deng's idea, which, as explained by the UN Office on Genocide Prevention and The Responsibility to Protect, involves looking at sovereignty not only as a right but also responsibility."³⁸ Subsequent reports from the High Level Panel on Threats, Challenges and Change and the Secretary General endorse the principle "that State sovereignty carried with it the obligation of the State to protect its own people, and that if the State was unwilling or unable to do so, the responsibility shifted to the international community to use diplomatic, humanitarian and other means to protect them."³⁹ The international commitment was established during the 2005 high-level UN World Summit meeting, which Outcome Document, in paragraph 138 and 139 stated that:⁴⁰

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind

³⁷ UN, "RESPONSIBILITY TO PROTECT," n.d., <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

The UN Secretary General subsequently issued reports to the General Assembly and Security Council on the conceptual and practical development of R2P, which served as the basis for the three pillars for the strategy to implement R2P:⁴¹

- **Pillar I** Addresses how States can fulfil their primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement (A/67/929-S/2013/399).
- **Pillar II** Outlines the collective responsibility of the international community to encourage and help States meet their responsibility to protect their populations (A/68/947-S/2014/449) as well as to help States build capacity in doing so.
- **Pillar III** Elaborates on the responsibility of the international community to use appropriate diplomatic, humanitarian and other means to protect population from those crimes and violation. It also presents options for timely and decisive response, including collective action, in accordance with the United Nations Charter and on a case-by-case basis, when national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity (A/66/874-S/2012/578).

From the reports the UN prescribes the following policy tools to implement R2P:⁴²

Pillar I: Building National Resilience

- Impartial Oversight of Political Transitions
- Professional and Accountable Security Sector
- Rule of Law and Human Rights
- Early Warning and Atrocity Prevention Capacity
- Capacity for Dialogue and Conflict Resolution
- Legitimate and Effective Transitional Justice
- Equitable Distribution of Economic Resources
- Education Relevant to Atrocity Crime Prevention

Pillar II: International Encouragement, Assistance and Capacity-Building

- International Human Rights Monitoring and Peer Review
- Preventive Diplomacy
- Mediation and Political Dialogue
- Support for a Professional and Accountable Security Sector
- Support for Impartial Institutions for Overseeing Political Transitions
- Support for Independent Judicial and Human Rights Institutions
- Building Early Warning and Atrocity Prevention Capacity
- Building Capacity for Dialogue and Conflict Resolution

⁴¹ UN, "Secretary-General," n.d., <https://www.un.org/en/genocideprevention/secretary-general.shtml>.

⁴² Ibid.

- Building Capacity to Counteract Prejudice and Hate Speech
- Support for Legitimate and Effective Transitional Justice
- Denying the Means to Commit Atrocity Crimes
- Dispute Resolution Expertise
- Monitoring or Observer Missions
- Criminal Investigations, Fact-Finding Missions, & Commissions of Inquiry
- Protection of Refugees and Internally Displaced
- Protection of Civilians in Humanitarian Emergencies
- Peacekeeping and Stabilization Assistance
- Gender
- Support for efforts to combat sexual violence

Pillar III: Timely and Decisive Response

- Preventive Diplomacy
- Mediation and Political Dialogue
- Public Advocacy
- Criminal Investigations, Fact-Finding Missions, & Commissions of Inquiry
- Monitoring or Observer Missions
- Referral to the ICC
- Sanctions
- Protection of Refugees and Internally Displaced
- Protection of Civilians in Humanitarian Emergencies
- UN Charter Chapter VII Authorised Use of Force

MODULE 2.5

The United Nations Human Rights System in ASEAN



Objectives:

- » To locate the role of the UN Human rights system in an ASEAN framework.
- » To enhance knowledge on the UN Human Rights system and its relevance to human rights work in ASEAN.



Knowledge Acquired:

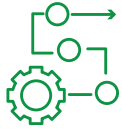
- » Knowledge on the overview of the UN systems for the promotion and protection of human rights.



Time: 1.5 hours

Materials:

- Resolution A/HRC/RES/12/20 12 October 2009 (pg. 57)
- PowerPoint presentation on UN HR system



Procedures

1. Present the PowerPoint of the UN human rights system as background-input on Human Rights Council (HRC)
2. Roleplay the Human Rights Council.
 - Assign each participant a country representing all regional groupings of the Council (Asia, Latin America and the Caribbean, Africa, Western Europe & Other States, Eastern Europe, etc.).
 - The facilitator will act as the Chairperson of the HRC in session.
 - Act out the scene of a discussion just before voting on a resolution at the HRC.
 - The chair will read out the resolution as per handout below. Each person will be given three minutes to frame their arguments representing the country they are assigned to on the resolution being tabled.
3. Remind participants that governments think of all their other relationships and economic agreements and needs with other countries while they debate this topic.
4. Invite 2-3 from each group to present their views within a minute. Finally, open the floor to the Myanmar representative.
5. The Chairperson's role must use the proper UNHRC language in addressing the government representatives in the role play i. e. Your Excellency, The Ambassador of Haiti, the distinguished member of Senegal, etc...
6. Finally, after the debate is over, carry out a vote. Call each country one by one and ask them to say yes (in favour of the resolution), no (against the resolution) or abstain.
7. Remind the participants that countries may also follow the trend according to their regional grouping, etc.
8. Tally the results and then give them the actual result of the voting. For this example resolution used, the actual decision was by a consensus (adopted without a vote).



Debriefing:

- » After the activity, discuss the politics behind the debates and the resolutions.
- » Would ASEAN be one small bloc amongst the bigger groupings? Would individual nations be overtly anti-human rights on a global platform?
- » How could we use the decisions that ASEAN members have agreed to in the HRC as a point to lobby them to adhere to the same standards within ASEAN?

**Conclusion:**

- » ASEAN and the United Nations' Human Rights Systems are two separate entities.
- » Both have the same membership in the ASEAN region.
- » Both are independent organisations but bounded by a memorandum of understanding on cooperation for regional partnership on peace and stability and the realisation of the Millennium Development Goals.
- » Elaborate on cooperation, complementariness and inter-dependence of these two organisations.
- » It's the same government that sits on these 2 various bodies. Thus we are able to refer to decisions made by member countries in the HRC and others to demand for similar positions within ASEAN.

Handout Material 2.5.1.

UN Human Rights System

UNGA A/RES/75/287
The Situation in Myanmar
18 June 2021

[...]

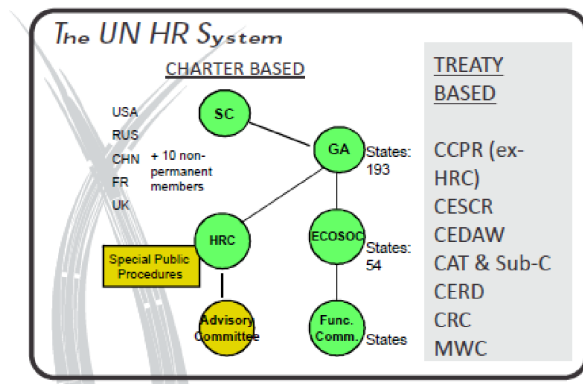
1. *Calls upon* the Myanmar armed forces to respect the will of the people as freely expressed by the results of the general election of 8 November 2020, to end the state of emergency, to respect all human rights of all the people of Myanmar and to allow the sustained democratic transition of Myanmar, including the opening of the democratically elected parliament and by working towards bringing all national institutions, including the armed forces, under a fully inclusive civilian Government that is representative of the will of the people;
2. *Also calls upon* the Myanmar armed forces to immediately and unconditionally release President Win Myint, State Counsellor Aung San Suu Kyi and other government officials and politicians and all those who have been arbitrarily detained, charged or arrested, including to ensure their rightful access to justice, and to engage and support the Association of Southeast Asian Nations constructively with a view to realizing an inclusive and peaceful dialogue among all stakeholders through a political process led and owned by the people of Myanmar to restore democratic governance;
3. *Calls upon* Myanmar to swiftly implement the five-point consensus reached at the Leaders' Meeting of the Association of Southeast Asian Nations held on 24 April 2021 to facilitate a peaceful solution in the interest of the people of Myanmar and their livelihoods, and to that end calls upon all stakeholders in Myanmar to cooperate with the Association and the Special Envoy of the Chair of the Association, and expresses its support for these efforts;
4. *Calls upon* the Myanmar armed forces to immediately stop all violence against peaceful demonstrators, as well as members of civil society, women, youth and children, and others, and to end restrictions on medical personnel, civil society, labour union members, journalists and media workers and restrictions on the Internet and social media;
5. *Also calls upon* the Myanmar armed forces to fully cooperate with and immediately facilitate a visit by the Special Envoy of the Secretary-General on Myanmar without delay, encourages complementarity of her work with the work of the Association of Southeast Asian Nations Special Envoy, and in this regard calls for ensuring unhindered access to and communication with the United Nations and other human rights entities and mechanisms without fear of reprisals, intimidation or attack;
6. *Calls for* safe and unimpeded humanitarian access to all people in need, including to people in detention, allowing for unimpeded humanitarian assistance, including from the United Nations, the Association of Southeast Asian Nations Coordinating Centre for Humanitarian Assistance on Disaster Management and other organizations, and calls for respect for the safety of medical facilities and staff;
7. *Recalls*, in line with the Secretary-General's call for a global ceasefire as supported by the Security Council in its resolution 2532 (2020) of 1 July 2020, the need to de-escalate violence, and in that regard calls upon all Member States to prevent the flow of arms into Myanmar;
8. *Calls upon* Myanmar to continue engaging with the Association of Southeast Asian Nations in seeking a sustainable peaceful resolution to the current political crisis, taking into account the important role of the Association in continuing to assist Myanmar in its transition to democracy;
9. *Decides* to remain seized of the matter, inter alia, on the basis of reports of the Secretary-General, the Special Rapporteur on the situation of human rights in Myanmar and the Special Envoy of the Secretary-General on Myanmar, and as warranted by the situation on the ground.

⁵ Resolution 260 A (III), annex.

It should be noted that the UNGA resolution on the Status of Myanmar was adopted after the language calling for arms embargo was removed at the behest of nine Southeast Asian countries.⁴³ The passed resolution contained a call to all UN Member States "to prevent flow or arms into Myanmar" and was passed by 119 UN member states voting yes, 1 (Belarus)

43 Tom Allard and Michelle Nichols, "SE Asia States Want to Drop Proposed U.N. Call for Myanmar Arms Embargo," Reuters, 2021, <https://www.reuters.com/world/asia-pacific/southeast-asian-nations-oppose-arms-embargo-myanmar-report-2021-05-28/>.

voting no, 36 abstentions, and 37 members not voting. Among the ASEAN member states, Brunei, Cambodia, Laos and Thailand abstained.⁴⁴



The UN HR Treaty Based System

Treaty-based system: based on State Party obligations under international treaty law

Principles of signature and ratification

Principle of national implementation and good faith

Principle of non-derogability with respect to certain rights

Possibility of reservations to implementation of derogable rights

Source: 1st UN Advocacy Training Session for Asian Human Rights Defenders (FORUM-ASIA)

44 Michelle Nichols, "United Nations Calls for Halt of Weapons to Myanmar," Reuters, 2021, <https://www.reuters.com/world/asia-pacific/un-chief-urges-general-assembly-act-myanmar-2021-06-18/>.

Handout Material 2.5.2.

Summary of OVERVIEW OF ASEAN-UNITED NATIONS RELATION

ASEAN Secretariat's Information Paper as of July 2021

ASEAN's relations with the United Nations (UN) system started in the early 1970s with the UN Development Programme (UNDP), with ASEAN-UNDP sub-regional programme launched in 1977 to assist ASEAN in its regional cooperation and integration efforts. ASEAN was granted observer status at the UN General Assembly (UNGA) through the adoption of Resolution (A/RES/61/44) on 4 December 2006.

The following year, a Memorandum of Understanding (MoU) on ASEAN-UN Cooperation was signed, followed by ASEAN-UN Joint-Declaration on Comprehensive Partnership during the 4th ASEAN-UN Summit in 2011.

ASEAN cooperation with the UN has been done across the three ASEAN pillars:

Political-Security Cooperation which ranges from the adoption of new ASEAN UN Plan of Action (2021-2025), flagship programmes such as the ASEAN-UN Regional Dialogue (AURED) series and the ASEAN-UN Training in Preventive Diplomacy, activities involving ASEAN Peacekeeping Centres Network which saw a total of 4,868 military and police peacekeeping personnel from seven ASEAN Member States deployed to 10 global UN peace operations. Cooperation for political-security also includes exploring areas for potential collaboration with the ASEAN Intergovernmental Commission on Human Rights (AICHR), including through sharing best practices. The AICHR-UN Interface has occurred in 2018 and 2019.

Economic Cooperation which involves UN support for ASEAN's pursuance of regional economic cooperation and integration to be a more competitive ASEAN Economic Community (AEC), including facilitating trade through UN Economic and Social Commission for Asia and the Pacific (ESCAP) a continued ad hoc engagement to support the ASEAN Joint Trade Facilitation Consultative Committee under the Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific. UN Food and Agriculture Organization (FAO) and ASEAN also endorsed FAO's Technical Cooperation Programme (TCP) on Scaling-up agroforestry in the ASEAN region for food security and environmental benefits.

Socio-cultural Cooperation includes cooperation in disaster risk reduction and management through the implementation of the ASEAN-UN Joint Strategic Plan of Action on Disaster Management 2016-2020 (JSPADM III). UN also supports the capacity building programs of ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA Centre) and ASEAN Emergency Response and Assessment Team (ASEAN-ERAT). Under this rubric cooperation related to climate change and environmental issues are implemented under the ASEAN-UN Action Plan on Environment and Climate Change (2016-2020). Labour cooperation to promote decent work for all under the ASEAN-International Labour Organisation (ILO) Work Programme 2016-2020 has also been achieved. ASEAN and UN Women also cooperate in launching "HeforShe" Campaign, while in commemoration of the 30th anniversary of the adoption of the Convention on the Rights of the Child ASEAN and UNICEF prepared a joint

report on 'Children in ASEAN: 30 Years of the Convention on the Rights of the Child'. Specifically for COVID-19 ASEAN and the UN have been collaborating in sharing of information, including the UN Secretary-General's Policy Brief on the Impact of COVID-19 in Southeast Asia issued in July 2020.

Also in order to align the ASEAN Community Vision 2025 and the UN 2030 Agenda for Sustainable Development Goals (SDGs) ASEAN and UN engages in cross-sectoral cooperation, including but not limited to writing a Joint Report on the progress in implementing the complementarities between the two Frameworks in 2017 and the Complementarities Roadmap (2020-2025), prepared jointly by the ASEAN Member States led by Thailand, ESCAP, and the ASEAN Secretariat, which was launched on 3 November the ASEAN Smart Cities Network (ASCN) and the ASEAN Centre for Sustainable Development Studies and Dialogue (ACSDSD). 2019. In the 11th ASEAN-UN Summit in 2020 UN reiterated its continued support to ASEAN including

Both organisations' secretariats also engage in cooperation that ranges from convening Secretariat-to-Secretariat (S2S) meetings since 2006 (biannually since 2016). The S2S meetings become a mechanism to the Joint Declaration on ASEAN-UN Comprehensive Partnership to the (ASEAN-United Nations (UN) Ministerial Meeting) AUMM and through it to the ASEAN-UN Summit. UN also deployed four UN Liaison Officers to ASEAN for security issues, humanitarian affairs, gender equality as well as drug control and crime prevention matters. Additionally, since 2016 the Resident Coordinator in Indonesia to represent the UN with ASEAN in Jakarta and the year prior UNESCAP (United Nations Economic and Social Commission for Asia and the Pacific) has appointed a Regional Adviser on ASEAN.

(Source: Overview Of Asean-United Nations Relation, ASEAN Secretariat's Information Paper as of July 2021. Full text available at: [Overview-of-ASEAN-UN-Cooperation-as-of-21-July-2021.pdf](#))

MODULE 2.6

The Role of National Human Rights Institutions in ASEAN



Objectives:

- » To establish the relevance of a national mechanism for the protection and promotion of human rights in ASEAN.
- » To locate the role of National Human Rights Institutions in ASEAN as well as the function of the AICHR in the establishment of National Human Rights Institutions in all ASEAN countries.
- » To develop advocacy work plan at the national level in collaboration with existing National Human Rights Institutions (NHRIs) on ASEAN engagement.



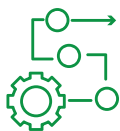
Knowledge Acquired:

- » Knowledge on the importance of national human rights institutions for the promotion and protection of human rights.



» **Time:** 1 hour

Materials: Colored meta-cards, pens, flap papers



Procedure:

1. Participants are divided per country (for regional trainings) or per NHRI program (for national training of countries with NHRIs) or per 'wish-list' program (for those who have no NHRIs). Groupings are dependent on the number of countries, or general programs an NHRI has or must have.
2. Each group is asked to discuss the programs of their NHRIs. They are provided with colour-coded meta-cards and pens to write on the activities conducted by their NHRIs. Countries and participants with no NHRIs are asked to think of what should be the activities of their future NHRIs.
3. While the group session is going on, the facilitator prepares a two intersected circle chart. The left circle is marked "protection mandate/activities"; the right circle, "promotion activities/mandates". On the intersection of the two circles is the phrase "effective HR work".
4. The groups are then asked one by one to present and explain their discussion while posting the meta-cards to the appropriate mandate. Each group should decide the placement of each meta-card as to the nearest or furthest it has been from the intersecting circles. This goes on until the last group has reports.
5. At the end of the reporting, the facilitator will ask three volunteers to help the re-alignment of the activities under a specific mandate category. Two volunteers will take charge of rearranging the placements according to the discussion and unity of the whole participants. The last volunteer will be in-charge of writing on another flap-paper, suggestions and ideas of engaging NHRIs through their programs and mandates.
 - o Solicit ideas why it is far from or near the centre?
 - o What are the perceived needs to push it nearer to the centre?

This becomes the basis of a national advocacy work plan in engaging NHRIs

6. In the plenary, query how we can push for the agenda of setting up an NHRI in all ASEAN states.



Debriefing:

- » This activity generally explains the participants' assessment of the work of their NHRIs.
- » It provides a picture of possible engagement to further enhance the work on NHRIs for the protection and promotion of human rights in the country and in ASEAN in general.

- » NHRIs in the ASEAN region vary in terms of their development as an institution.
- » There is a lot to do to realise a human rights regime in ASEAN.
- » International protection mechanisms alone are inadequate in safeguarding the rights of individuals in each country. There is a strong need of national institutions to assist the government to realise the international standards at national level.



Conclusion:

- » Effective implementation of international human rights standards is ultimately a national issue.
- » UN has emphasised the importance of NHRI and encouraged governments to establish NHRIs ever since the adoption of UDHR.
 - Paris Principle was drafted in 1991 and approved in 1993 to set Minimum Criteria/Guideline on the Status and Function of NHRIs, but this is NOT an Absolute Standard/Indicator.
 - 1993 World Conference on Human Rights called upon governments to strengthen National Institutions. As a result, the number of NHRIs increased in the late 90s.
 - Handbook on Establishment & Strengthening of National Institutions (1995) lists elements for effective functioning of NHRI as:

Independence, Adequate Powers, Accessibility

Cooperation and Operational Efficiency

- » It is a mandate of AICHR to help ASEAN member countries establish their own NHRIs.

Handout Material 2.6

National Human Rights Institution

Slide 1

What is NHRI? Its Components/Pillars

- National institution for the promotion and protection of human rights;
- An institution established by government at the national level for the promotion and protection of human rights (domestic human rights protection mechanism).

Component	Description
1. National	<ul style="list-style-type: none"> • Scope of jurisdiction and political nature (nationstate) • Linking domestic (national and local) and international (regional and global)
2. Human Rights	<ul style="list-style-type: none"> • Objective and mandate • both promotion and protection • Not civil rights, not constitutional
3. Institution	<ul style="list-style-type: none"> • Commission, Ombudsman, institute, etc. • Linking UN, Government and NGOs

Slide 2

Basic Understanding About NHRIs

(a) Quasi-jurisdictional / a hybrid entity;

(b) Three main aspects:

1. International	Brain
2. Government	Body
3. NGO	Heart/Spirit

(c) NGOs take two steps, the NHRI takes one step, and the government takes ½ step.

Slide 3

The Paris Principles

- Principles relating to the status and functioning of national institutions for protection and promotion of human rights (drafted in 1991 and adopted by the UN GA in 1993).

• Key principles:

- Independence (autonomy, interdependence), Pluralism (composition), Indivisibility (inclusive and comprehensive), Competence, Accessibility, Effectiveness (remedy).

Mandate of NHRI

(Competence and responsibilities)

Monitoring and documentation	Advise to government	Remedy
Harmonisation of laws	Cooperate with UN	Education
Recommend ratification	Research	

Functions of an NHRI

(Methods of Operation)

Handle complaints	Hearing and investigation	Issuing recommendation publicly
Consult relevant government bodies		Cooperate with NGOs

(Source: An Overview of NHRIs by Emerlyn Gil)

Additional Reading Materials for Module 2 (see Module 2 Appendices)