

## Special Feature: Human Right Issues

# Southeast Asia's Human Rights Crisis: When Illiberal States meet weak National Human Rights Commissions <sup>1</sup>

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## Introduction

Southeast Asia has seen a marked regression in human rights in recent years. Since coming into office in June 2016, Philippine President Duterte is waging a “war on drugs” in his country, targeting alleged drug dealers and users. According to human rights organizations, 12000 people have been killed during the campaign since 2016 – the government is speaking of “only” 3900 killed persons. Duterte also has used criticism of his campaign to threaten human rights activists and political opponents. He arrested former human rights commissioner and critic of the drug war Senator Leila de Lima and charged her for being close to the drug trade. Duterte has also withdrawn the Philippines from the International Criminal Court after it had opened a crimes against humanity investigation into his campaign. Likewise in Myanmar, the Burmese military has conducted military clearance operations in northern Rakhine State in August 2017, after Rohingya militants of the Arakan Rohingya Salvation Army (ARSA) attacked several police posts in Rakhine state. The operation drove 700.000 Rohingya into neighbouring Bangladesh, entire villages were burned down, gross human rights violations occurred such as summary executions, torture and rape. The UN Commissioner for Human Rights has called the violence against the Rohingya a “textbook example of genocide”; an independent UN fact-finding mission concluded that the atrocities committed by the military amounted to genocidal intent. While rights violations in the Philippines and Myanmar might be particularly serious, the yearly reports of human rights organisations show that they are hardly an exception in the region. All Southeast Asian states have seen a marked regression in human rights protection in recent years (Amnesty International 2018).

This is especially puzzling, since we have seen promising developments in the field of human rights in the last decade. A number of states have established National Human Rights Commissions (NHRI) and indicated their willingness to accept human rights more broadly. Regionally, the new ASEAN Charter of 2007 listed human rights as a fundamental

norm of the organisation and called for the establishment of a regional human rights body. In 2009, Southeast Asian states created the ASEAN Intergovernmental Commission on Human Rights, and, in 2012, they released the ASEAN Human Rights Declaration (Renshaw 2013; Ciorciari 2012). All these developments seemed to indicate that human rights were firmly embedded in the discourse of a region and the region was clearly on track in complying with global commitments towards human rights. Asia's exceptionalism in terms of human rights witnessed in the Asian Values debate in the early 1990s<sup>2</sup> seemed to be a spectre of the past. The ongoing human rights crisis in a number of states, however, calls this again into question and we have to ask: What is the status of human rights in Southeast Asia? How can we explain the gap between rhetorical commitment on one side and the actual practice on the other?

This article aims to offer an in-depth analysis of human rights compliance in Southeast Asia. Compliance is conceptualised as a continuum involving several sequential steps, like the ratification of human rights treaties, the fulfilment of reporting requests by supervisory bodies, the ratification of norms in domestic law and rule-consistent behaviour on the domestic level (Kent 1999: 236; Risse/Ropp/ Sicking 1999). On the domestic level, National Human Rights Institutions (NHRI) serve as a bridge between international human rights law and domestic human rights practice. They play an important role in socialisation, agenda-setting, holding governments accountable and network with civil society (Cardenas 2002; Cole and Ramirez 2013). In this article, I look at the interplay of state compliance and National Human Rights Institutions. I argue that the compliance of Southeast Asian states to human rights is still tactical and there continues to be a deep divide between ratified standards and actual practice. On the domestic level, the optimism towards NHRI is misplaced as they are often either dysfunctional or weakened by an oppressive state. The article unfolds in three stages: First, it provides an overview of compliance understood as ratification of major human rights instruments. It is shown that Southeast Asian states have increasingly committed to the most important human rights treaties. Yet, Southeast Asian states also bring forward a number of reservations which illustrate that the commitment is primarily strategic. The second section gives an overview over human rights compliance by using quantitative and qualitative data. I use data from Freedom House (to measure political rights and civil liberties) and data from the Political Terror Scale to highlight state repression over the past decade. To illustrate recent human rights concerns I use Amnesty International's and Human Rights Watch reports and documents of the Universal Periodic review. The third section shifts to the establishment of National Human Rights Institutions, which is a form of compliance as well. It is shown that Southeast Asian states have

rejected these institutions or have made them structurally too weak to have an impact on government's actions.

## **An Analysis of Southeast Asia's Human Rights Commitment**

According to liberal scholarship of International Relations human rights values have a strong and positive impact, particularly on Non-Governmental Organisations (NGOs), who are using these norms and pushing states' decisions to legally embrace universal human rights values (Risse/Ropp/Sikking 1993). The following treaties build the core of the international human rights regime: The International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965), the International Covenant on Civil and Political Rights (ICCPR, 1976), the International Covenant on Economic, Social and Cultural Rights (CESCR, 1976), the Convention on the Elimination of all Discrimination against Women (CEDAW, 1976), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), the Convention of the Rights of the Child (CRC, 1989), the Convention on the Protection of Migrant Workers (CPMW, 1999), the Convention on the Rights of Persons with Disabilities (CRPD, 2006), and the International Convention for the Protection of all Persons from Enforced Disappearance (ICCPED, 2006). These treaties have a strong transformational impact on states' behaviour. Building on a statistical analysis and a few case studies, Simmons shows that these human rights treaties play a crucial "constraining role"; they create incentives for domestic actors to challenge existing norms (Simmons 2009; see also Hathaway 2002). Emilie Hafner-Burton and Kiyuteru Tsutsui (2005) argue that the global ratification of human rights has been "a double-edged sword". Rather than showing a serious commitment to implement respect for human rights in practice, these treaties allow for window-dressing and a primarily rhetorical or tactical commitment. What is the status of compliance in Southeast Asia?

### *Ratification of major human rights treaties in Southeast Asia*

In recent decades, Southeast Asian states have slowly and steadily signed and ratified the nine major treaties, which form the legal core of the global human rights architecture. By the end of 2017, Southeast Asian states have signed nearly two third (63 percent) of all human rights documents (see Table 1).

Despite this broad commitment, one has to concede that not all treaties enjoy the same unequivocal support. For instance, the CEDAW, the CRC and the CRPD are the only treaties signed by all eleven states; their ratification was also smooth, all Southeast Asian states

**Table 1:** Southeast Asian Ratification of Major Human Rights Treaties

States	CERD 1965	CESCR 1976	CCPR 1976	CEDAW 1979	CAT 1984	CRC 1989	CPMW 1990	CRPD 2006	ICCPED 2006
Brunei				2006	2015S	1995		2016	
Cambodia	1983	1992	1992	1992	1992	1992	2004	2008	2013
Indonesia	1999	2006	2006	1984	1998	1990	2012	2011	
Laos	1974	2007	2009	1981	2012	1991		2008S	2008
Malaysia				1995		1995		2010	
Myanmar		2017		1997		1991		2011	
Philippines	1969	1974	1986	1981	1986	1990	1995	2008	
Singapore	2017			1995		1995		2013	
Thailand	2003	1999	1996	1985	2007	1992		2008	2012
Vietnam	1982	1982	1982	1982	2015	1990		2015	

S: Signature (not yet ratified)

Source: UN Human Rights, Status of Ratification, Interactive Dashboard (<http://indicators.ohchr.org>, accessed 2 October 2018).

ratified the CRC within six years. The reason for this might be the historical significance of women's rights in ASEAN states, which hosted the ASEAN-Women Leaders Conference in 1975 and formed an ASEAN Subcommittee on Women in 1976 (Davies 2014). Equally important, the treaties on children's rights have been supported by all ASEAN states. While these rights enjoy broad support in all Southeast Asian States, the pact on the protection of migrant's rights has only received the support of half of the states – only those states signed that are actively sending migrants (such as the Philippines or Indonesia). Those states that are heavily affected by migrants from neighbouring countries such as Thailand, Malaysia or Singapore did not. When we look at the more political treaties, such as CAT or the CCPR, we see a clear reluctance. CAT has been signed by seven countries, the CCPR by six. Signing human rights treaties broadly correlates with regime type (Sorpong 2014), as the more democratic states have signed significantly more treaties than the non-democratic ones. As to be expected, Indonesia, the sole unqualified democracy in the region, has signed all treaties since the fall of long-term autocrat Suharto in 1998. Apart from Indonesia, only Cambodia has signed all human rights treaties. The 1991 Paris Accords mandated that the country follow global human rights standards. The Philippines and Thailand, which both experimented with more democratic forms of governance during the 1990s, also join this group. Interestingly, following these more democratic states we find authoritarian Laos and Vietnam, although the latter signed most of the human rights treaties already in the early

1980s. As can be expected, the main proponents of the Asian values position in the 1990s, Singapore and Malaysia (and Myanmar), have only signed three treaties. Yet, Malaysia might soon follow some of the more democratic states. After the defeat of the long-term ruling party UMNO in the 2018 elections, the manifesto of the opposition promises to sign all human rights treaties and there is a debate in the country to sign some of the most important human rights treaties – yet, Islamic groups in the country still object to the ratification of some of the treaties that might touch their privileged position (Carvalho 2018). All in all, we can say that Southeast Asian states have shown some rhetorical commitment towards human rights. However, there are also strong reservations and rejections towards the global human rights framework.

### *Tactical Commitment and weak compliance: reservations and reporting*

Southeast Asian states have put forward a number of reservations and declarations to the treaties they signed, which cast their real commitment into question. Mathew Davies has analysed these reservations and has shown that they refer to three broader issues: First, states do not comply when their political and territorial sovereignty is affected. For instance, in a statement for the CCPR Indonesia and Laos reiterated that the issue of self-determination and territorial integrity should be interpreted in accordance with international law governing friendly relations. Second, Brunei, Indonesia and Thailand have objected to any form of arbitration of state disputes. Again, state sovereignty was put against international standards. Third, a number of reservations entail the primacy of national law, culture, and religion in any interpretation of the treaty. Indonesia, Brunei and Laos have rejected several aspects of these global treaties because they were not in line with national cultures (Davies 2014: 420). These reservations seem to be brought forward to subvert or avoid treaty obligations – a pattern Linton already worked out for the ratification of CEDAW (Linton 2008). Consequently, we can say that the commitment towards human rights treaties is predominantly tactical or strategic – directed at Western states and the global human rights regime.

This interpretation of a tactical or strategic commitment is confirmed when we look at the reporting requirements. Each of the treaties mentioned above has certain compliance mechanisms installed, such as the creation of a committee to report periodically. Southeast Asian states have submitted 123 of the 193 required reports – this is only two-thirds (64 percent) of the requirements. Roland Rich argues that some of this might result from the lack of state capacity to draft these reports, which sometimes requires technical and legal

expertise and therefore might not necessarily reflect a lacking commitment to the human rights framework (Rich 2011). However, if we look at the status of the optional protocols, it becomes clear that most of the commitment by Southeast Asian states is only rhetorical. Four of the six optional protocols have not been supported by Southeast Asian states. The only protocol that has been signed is the extension to the CRC that concentrates on children in armed conflict and children as victims of sexual abuse – both of which do not come with the right of individual petition. Only Cambodia, Indonesia and the Philippines have signed these protocols. Six Southeast Asian signatories of the CEDAW have declined to sign the associated optional protocol on individual petition. Only Cambodia, Indonesia, the Philippines and Thailand have endorsed it – although it has not been ratified by the Philippines and Thailand. Six Southeast Asian countries have not signed any optional protocol so far (Brunei, Laos, Malaysia, Myanmar, Singapore and Vietnam). This hesitation to sign binding protocols with mandatory mechanisms shows a clear reluctance to international monitoring and the enforcement of rights (Ciorciari 2014). This underlines the argument that human rights commitment is strategic at best. This is evident through an analysis of Southeast Asian human rights practices, which illustrates the decoupling between human rights norms and state behaviour.

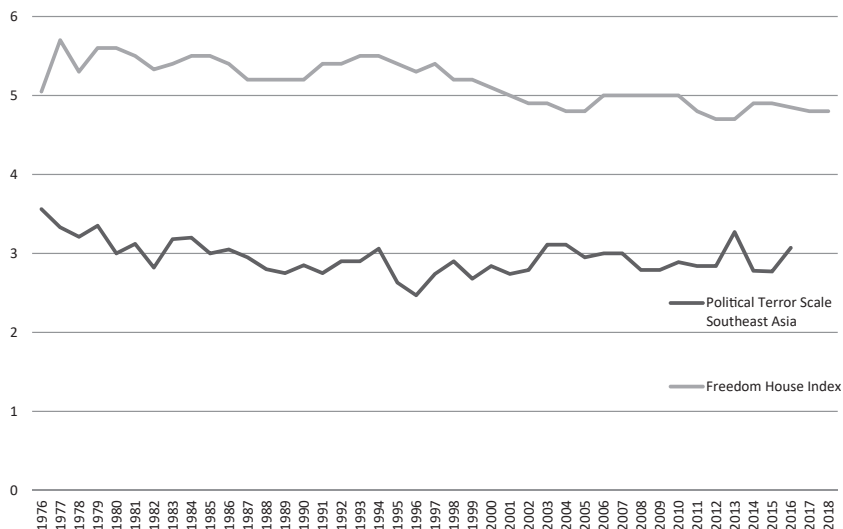
### **From Commitment to Compliance? Southeast Asia's Human Rights Situation**

In order to examine the rights actually enjoyed and exercised I examine data from Freedom House and the Political Terror Scale data. Both datasets are widely used in comparative analyses of human rights practices and allow us to compare human rights violations over time.

#### *Political Rights and Civil Liberties*

The Freedom House data gives us an overview of the extent of (political) freedom and democracy, which is not only a component of human rights but often helps to explain (lacking) commitment towards human rights. Democracy is not only a 'global value' (Sen 1999), but it often leads to economic growth and the advancement of other rights of people to basic human needs, such as food, education, shelter (Kim 1997; Peou 2015). The Freedom House dataset measures civil and political liberties on a 7-point scale, ranking states from most free (1) to least free (7). States ranking from 1.0 to 2.5 are considered free, those with values from 3.0 to 5.0 are seen as partly free, and from 5.5 to 7.0 as unfree.

The Freedom House data actually point a quite discouraging picture for Southeast



**Figure 1:** Freedom House Data and Political Terror Scale Data for Southeast Asian Countries  
 Source: own compilation based on Freedom House and PTS data.

Asian states. On average, Southeast Asia’s status of civil liberties and political rights has hardly improved over the last 40 years. On average, it remains in the unfree category (above 5) until 2002. From 2002 to 2005, values remain in the low “partly free category (4.8-4.9) and fall back into the unfree category again in 2005 – developments that may be attributed to the crisis of the Thai state, the military coup in Thailand in 2006 and the democratic deficits in the Philippines (Croissant and Bünte 2011). Since 2008, however, we see a slow and gradual improvement. However, we hardly see any changes, when we look at the individual country level data. Brunei, Burma, Cambodia, Laos and Vietnam remained unambiguously authoritarian for the past 40 years. Although the most recent liberalization of the military regime in Myanmar has raised hopes for more freedom in the country, shrinking spaces for civil society and the ongoing repression of ethnic minorities under the NLD government are a clear sign that we see more continuity than change (Bünte 2016). At the same time, Singapore and Malaysia remained “partly free” over the last 40 years. Although civil liberties and political rights are restricted, both states have not seen such a high abuse of human rights, as the political terror scale data indicates (see below). The situation has been far more volatile in the more “democratic” states in the region. Indonesia has made some progress in civil and political rights since democratization in 1998, although observers see an authoritarian backlash on the horizon (see below). The Philippines has seen some improvements since democratization in 1986 – however, it is facing a strong

downward trend since the election of Rodrigo Duterte in 2016 (see below); Similarly, in Thailand, democracy broke down completely after the coup in 2014 and the government shut down political spaces for peaceful protest or criticism against the military (Amnesty International 2017: 37). These observations on political freedoms and civil liberties and political rights can be complemented by looking at the Southeast Asian use of terror and repression.

### *Terror and Repression by State Agencies*

The Political Terror Scale is produced annually and uses Amnesty International, Human Rights Watch and State Department data to indicate the use of terror by state agencies; it measures violations of physical and integrity rights (extrajudicial killings, torture, disappearance, and imprisonment) on a five-point fixed scale and is one of the most used indicators in comparative analyses of human rights practices. Level one on the scale indicates that states are under secure rule of law, people are not imprisoned for their views and torture is rare. Level three is characterised by extensive political imprisonment, execution, or other murders and brutality. Unlimited detention (without or with trial) is accepted. The highest level is five, when terror has expanded to the whole population. The executives of these societies do not place any limits on their behaviour in the pursuit of their goals (Gibney et al 2015). When we look at the data from the political terror scale over the past three decades, we see that the level of state induced violence has only slightly been reduced. Southeast Asia's average score oscillates between a peak of 3.56 in 1976 and a lowest value of 2.47 in 1996. The development of the data is not linear, it is bouncing back and forth. We also find high values of violence by state agents at the beginning of this century (with averages of 3.11 in 2003 and 2004 or 3.27 in 2013).

Looking at the country data from various decades, we see some important continuities. For instance, Brunei and Singapore have a firm "rule of law" and we do not see political terror exercised by state agents of these states. People are not imprisoned for their beliefs and torture is rare. Malaysia has been listed under that rubric for three decades, although the repression of the political opposition and the imprisonment of opposition leader Anwar Ibrahim already indicated a more repressive stance of the government. Consequently, Malaysia has been listed in the "moderate" category recently, where we find Thailand, Cambodia, Laos and Indonesia (after democratization). The worst score with continuously high levels of state repression is held by Myanmar. The Philippines experienced this form of high state repression under authoritarian rule in the 1980s and in the recent two decades (1990s and 2000s).



**Table 2: State Repression in Southeast Asia: Political Terror Scale Data since 1980**

Decade	Low		Medium		High	
1980s	Singapore	Brunei Malaysia	Thailand	Cambodia Indonesia Laos	Myanmar Philippines	
1990s	Brunei Singapore	Laos Malaysia	Thailand	Cambodia Philippines	Indonesia	Myanmar
2000s	Brunei Singapore	Malaysia	Cambodia Laos	Indonesia Thailand	Myanmar Philippines	
2010s	Brunei Singapore	Laos	Cambodia Indonesia Malaysia	Thailand	Myanmar Philippines	

Source: PTS (Gibney, Corneett, Wood, Haschke and Arnon 2015)

Own calculation based on the average data from PTS. Low 1 to 2.33 (High Low from 1.67 to 2.33), Medium from 2.34–3.66 (Low Medium 2.34 to 3, High Medium 3–3.67), High 3.67 to 5 (Low high 3.66 to 4.33, High High 4.33 to 5).

Whereas the Freedom House data and Political Terror Scale might help us discern general trends over time and lay the foundation for a comparative overview of human rights in Southeast Asia, an analysis of the recent reports of Amnesty International and Human Rights Watch helps to identify important human rights concerns of selected countries. These reports mostly concentrate on political rights, while the UPR statements of states often focusses on social and cultural rights (Gomez/Ramcharan 2018).

***The most recent human rights regression in Southeast Asia: Deepening Illiberalism and Shoring up Authoritarianism***

Southeast Asian human rights commitment is primarily tactical and we see a moderate to high degree of repression in a number of states, and both the Freedom house data and the Terror Scale Data indicate a slight human rights regression in the last half-decade. In line with global developments, we can identify a deepening illiberalism in the region’s democracies (Indonesia and the Philippines) and a growing authoritarianism in the non-democratic countries (Thailand, Myanmar and Cambodia). We see shrinking spaces for civil society and growing risks for human rights activists. Ongoing extrajudicial killings, torture and other ill-treatment and enforced disappearances persist with impunity. Human rights activists and peaceful protesters were often subjected to human rights violations. (AI 2018). Apart from the deteriorating situation in the Philippines (drug war) and Myanmar

(Rohingya) mentioned in the beginning of this article, human rights organisations also criticised the growing police killings of suspected drug dealers in Indonesia and increasing repression in Thailand and Cambodia (AI 2018). Let us take a closer look at the record of both democratic and non-democratic states in Southeast Asia:

In Southeast Asia's oldest democracy in the Philippines, we have seen already at the beginning of the decade "a repeat of the human rights nightmare" experienced under dictator Ferdinand Marcos in the 1970s and 1980s (Pangalangan 2011). Extrajudicial killings, disappearances, the intimidation or killing of witnesses, and the assassination of lawyers were common concerns illustrating the fragile foundation of the rule of law in the country – something, that could not be cured during the six-years of reformist and relatively liberal President Benigno "Noynoy" S. Aquino, III (Thompson 2017). However, since President Rodrigo Duterte assumed office in June 2016, things went from bad to worse. Duterte's "war on drugs" has claimed an estimated 12.000 lives of primarily urban poor, including children. Data from the Philippine Drug Enforcement Agency (PDEA) indicate that the police operations resulted in the deaths of 3906 suspected drug users and dealers – but according to the 2017 report by Human Rights Watch unidentified gunmen and death squads have killed thousands more, bringing the death toll to more than 12.000 (HRW 2018, 430). Duterte has also threatened the press, human rights defenders and defenders. ("if they are obstructing justice, just shoot them"). He jailed his most prominent critic Senator Leila de Lima on politically motivated drug charges. In May 2017, the Philippines underwent the Universal Periodic Review. In its' September response, the Philippines rejected 99 of the 154 recommendations – particularly those intended bring an end to extrajudicial killings, ensure an independent investigation into the deaths and stop the reintroduction of the death penalty (Human Rights Watch 2018, 435).

Indonesia's human rights record was also examined in the Universal Periodic Review Process in May 2017. Human rights groups criticized particularly the lack of accountability for past human rights abuses, such as the killing of human rights activist Munir in 2001 or the human rights violations of the military in West Papua. Dozens of West Papuans remain imprisoned for nonviolent expression of their view (Human Rights Watch 2018). Moreover, the Jokowi government has taken a more authoritarian turn recently, indicating a slow degeneration of the country's democracy (Hadiz 2017, Mietzner 2018). Amnesty International also criticised the ongoing use of blasphemy provisions to imprison those who peacefully exercised their rights to freedom of religion and belief. At least 30 prisoners remained in detention for exercising their rights to freedom of expression or religion and

belief (Amnesty 2018). Moreover, violence and discrimination against religious minorities such as Ahmadiyah, Bahai, Christians and Shia continues.

In Thailand, Myanmar and Cambodia, repression serves to shore up authoritarianism. Since the military coup in 2014, Thailand's military government has continuously repressed dissent and prevented people from speaking or assembling peacefully. The May 2014 coup is marking the beginning of the worst phase of repression since the 1970s: At least 475 people were arrested by the junta authorities between the coup in 2014 and the end of June 2015, nearly half of them for peaceful protests (Haberkorn 2015, 242). The military junta has increased its use of the draconian *lèse majesté* law (Article 112) and sedition law (Article 116). Most of the cases involved criticizing the monarchy or the military junta (Haberkorn 2015, 242). The 2014 coup has been interpreted as an attempt by the royalist military and established elites to narrow political space to allow a smooth and peaceful royal transition. Democracy was interrupted and people were stripped off their basic rights, including to assemble and freedom of expression. The goal seemed to have been to ease social polarisation and conflict between the old established elites (military, royalists and the middle and upper classes in Bangkok) and the supporters of Thaksin Shinawatra in the North and the Northeast of the country (Pavin 2014). Despite the royal succession in 2016, this repressive phase has not ended. In 2018, dozens of pro-democracy activists faced investigations and prosecutions, although the crown Prince has apparently ordered to tone down repression and the military junta has repeatedly promised to hold elections (Crispin 2018).

In Myanmar, we witnessed ongoing human rights abuses despite the slow liberalisation of the military regime since 2011 and the relatively free elections in 2015. Both the NLD and the military continue to repress the news media, when reporting on human rights abuses by the military or revealing so-called state secrets. Social activists protesting against land grabs or military projects face repression (Bünthe 2018). The Muslim-Minority population is increasingly discriminated, particularly in the case of the Rohingya in Rakhine-State, which are not seen as citizens of Myanmar but as immigrants from Bangladesh. In response to coordinated attacks by Rohingya rebel groups on security forces in Northern Rakhine, the military conducted clearance operations against the Rohingya population. Military units attacked Rohingya villages and committed brutal massacres and murder – crimes that have been described by the UN Rapporteur as “textbook example of ethnic cleansing”. Hundreds of Thousands of Rohingya fled into neighbouring Bangladesh. According to human rights organisations the crimes amounted “crimes against humanity” (Amnesty International 2018, Human Rights Watch 2018). According to the UN documentation and human rights group

the army is also committing widespread human rights violations against ethnic minority populations, particularly in Shan and Kachin State.

The gap between human rights norms and practice is equally wide in Cambodia and Laos. In Cambodia, repression has increased markedly before the 2018 elections: the main opposition party Cambodia National Rescue Party (CNRP), which had made gains in the 2013 elections and the 2017 commune elections, was dissolved, its leaders were arrested and banned from political activities for five years – on dubious charges for treason. Hun Sen and his Cambodian People’s Party (CPP) won the elections in a landslide. The Special Rapporteur for the Situation of Human Rights in Cambodia called into question the “genuineness of these elections” (UN 2018). In previous rounds of the UPR-process, Cambodia has been urged to prevent acts of torture in prisons and ill-treatment, including sexual violence and to put an end to any form of arbitrary and unlawful detention. ILO also reported serious violence against trade union leaders and members. Laos has similar problems, and the UPR documents reported allegations of torture and ongoing problems with enforced disappearance of human rights activists working on land grabbing (Bünte 2017,178).

### Economic, Social and Cultural Rights

Human rights are not indivisible; simply focussing on civil and political rights does not give the full picture. Economic, social and cultural rights are equally important. In order to do this, we are going to look at the key development indicators, which incorporate both civil and political aspects, as well as economic, social and cultural rights. I am looking at the Human Development Index Data (HDI), which provide a way of measuring the impact of all human rights. It includes both civil and political aspects as well as the economic, social and cultural rights. Moreover, a selected look at the data on mortality rates, school enrolment and adult literacy rates will provide a coherent picture on social and economic development in Southeast Asian States (see Table 3 and Table 4).

**Table 3:** Human Development Index Southeast Asian Countries

Country or Region	HDI 1990	HDI 2000	HDI 2010	HDI 2017	Annual Growth HDI 1990-2000	Annual Growth HDI 2000-2010	Annual Growth HDI 2010-2017	Rank
Brunei	0.782	0.819	0.842	0.853	0.46	0.28	0.19	39
Cambodia	0.364	0.420	0.537	0.582	1.44	2.49	1.15	154
Indonesia	0.582	0.606	0.661	0.694	1.39	0.88	0.69	116
Laos	0.400	0.466	0.546	0.601	1.53	1.59	1.39	139

Malaysia	0.643	0.725	0.772	0.802	1.20	0.63	0.54	57
Myanmar	0.358	0.431	0.530	0.578	1.86	2.09	1.25	156
Philippines	0.586	0.624	0.665	0.699	0.64	0.64	0.71	113
Singapore	0.718	0.819	0.909	0.932	1.33	1.05	0.36	9
Thailand	0.574	0.649	0.724	0.755	1.24	1.10	0.59	83
Vietnam	0.475	0.579	0.654	0.694	1.99	1.23	0.99	116
<b>Regional Averages</b>								
OECD	0.785	0.835	0.874	0.895	0.692	0.45	0.33	NA
East Asia	0.517	0.597	0.692	0.733	1.45	1.48	0.83	NA
Arab States	0.557	0.613	0.675	0.699	0.95	0.96	0.51	NA
Latin America	0.626	0.626	0.686	0.758	0.92	0.65	0.51	NA
South Asia	0.439	0.503	0.584	0.638	1.38	1.51	1.26	NA
SS-Africa	0.398	0.421	0.498	0.537	0.57	1.70	1.09	NA

Source: UNDP Human Development Report 2018, New York. Statistical Annex

**Table 4:** Selected Social Indicators for Southeast Asian Countries

Country or Region	Under 5 Mortality Rate (per 1000 live births, 2016)	Primary School Enrollment 2017 (in%)	Adult literacy rate (in percent) (2006-2016)	Government Expenses for Education (% of GDP)	Gender Inequality Index Rank (out of 189 countries, 2017)
Brunei	9.9	107	96.1	4.4	51
Cambodia	30.6	110	73.9	1.9	116
Indonesia	26.4	103	95.4	3.9	126
Laos	63.9	110	58.3	2.9	109
Malaysia	8.3	103	93.1	4.8	62
Myanmar	50.8	112	75.6	2.2	106
Philippines	27.1	113	96.4	N	114
Singapore	2.8	101	97	2.9	12
Thailand	12.2	101	92.9	4.1	20
Vietnam	21.6	110	93.5	5.7	54
<b>Regional Averages</b>					
OECD	N	102	N	5.0	N
East Asia	14.2	103	94.4	N	N
Arab States	35.9	98	73.4	N	N

Latin America	14.8	107	92.2	5.5	N
South Asia	37.8	112	68.7	3.6	N
SS-Africa	77.3	100	59.9	4.9	N
World	39.3	105	82.1	4.8	N

Source: UNDP Human Development Report 2018, New York. Statistical Annex

Looking at these data sets, we can state that all Southeast Asian states have improved their social and economic fabric over time. With Brunei, Singapore and Malaysia we find three “very high developed” states in the region, Thailand is considered “high”, whereas the rest of the countries show “medium” development – the Philippines, Indonesia and Vietnam are listed in the higher categories of these countries, whereas Cambodia, Myanmar and Laos are listed in lower category of “medium development” (UNDP 2018). When we compare the Southeast Asian region with other world regions in terms of development, we see that the medium and high developing countries are performing better than countries in Latin America, South Asia or Africa. The average ASEAN score is below Europe, Latin America and the Arab states, but above South Asia and Sub-Sahara Africa. Indeed, socio-economic conditions are often much better than the political. With the exception of Laos, Cambodia and Myanmar are all states above the global average for primary school enrolment; all but these states are below the world average for child mortality and all but these three states are above the adult literacy average. Many citizens enjoy first world conditions in parts of Southeast Asia – this is a great credit to the governments.

### National Human Rights Institutions in Southeast Asia: Against all Odds

The creation and empowerment of National Human Rights Institutions (NHRIs) can be seen as a different form of compliance. NHRIs can become domestic actors in their own right and serve as a bridge between international norms and local implementation. Although their establishment may be seen as pure window-dressing, they often have an impact on the state’s compliance by challenging the state and mobilising social groups to protect human rights. In order to do challenge the state, NHRIs should have the capacity to protect and promote human rights in the domestic arena by processing complaints, investigating abuse and holding office holders accountable. To mobilise social groups, NHRIs need to build awareness and educate the public on human rights questions (Cardenas 2002; 2014). In order to perform these functions effectively, NRIs should have a broad mandate, enjoy a certain degree of independence from the executive branch of government, have sufficient

resources and close relations with civil society (Cardenas 2011). The international community reached a consensus on the role, composition, status and functions of these institutions in Paris 1991. After these minimum standards were adopted by the UN General Assembly in 1993, the so-called Paris Principles became an international norm to guide the full independence of these institutions (Linos/Pegram 2016). According to data from the Global Alliance of National Human Rights Institutions (GANHRI), which is the accrediting body at the international level, currently 77 national human rights institutions are listed as fully compliant with the Paris Principles (Status A), 33 are partially compliant (B) and 10 are listed as non-compliant (GANHRI 2018).<sup>3</sup>

International diffusion also led some Southeast Asian states to experiment with National Human Rights Institutions, though domestic considerations shape the actual scope for human rights improvements (Büntje 2017). However, the region actually shows the lowest concentration of NHRI worldwide, and some states successfully blocked transnational diffusion from becoming influential (Cardenas 2014: 251). Consequently, the commitment towards establishing a National Human Rights Institutions varies tremendously (See Table 5): Some (authoritarian) states have not yet established a NHRI – they have either rejected the establishment of National Human Rights Institutions or gave an unfulfilled promise to establish one. This group includes Brunei, Laos, Singapore and Vietnam. For Singapore, this is not surprising, since the country has long been the main proponent of the Asian values debate<sup>4</sup> propagating cultural relativism in terms of human rights (Leong 2008). Vietnam and Laos have both signed major human rights treaties, but have resisted so far any pressure to install a human rights body. This can only be explained by the concentration of power in the executives of these one-party states and the lacking room for NGOs to pressure these states. Myanmar and Cambodia so far have resisted pressure to establish human rights bodies that follow the Paris Principles. Cambodia has repeatedly promised the establishment of a NHRI, but did not take steps to establish such a body; Myanmar has recently established a National Human Rights Commission to convince the international community of its commitment to reform (Lileblad 2015). However, the commission is not in line with the Paris Principles, since it is considered too close to the government and avoids to take on cases with army or government involvement (ANNI 2018). Consequently, the High Commissioner for Human Rights encouraged Myanmar's National Human Rights Commission to interpret its mandate more broadly and become a more effective promotor and protector of human rights (ANNI 2018). Momentarily, the Commission is lacking trust and concentrates on a "long-term strategy" of raising awareness towards human rights only (ANNI 2018) – despite the dire human rights situation in the country.

**Table 5:** Commitment towards the Establishment of National Human Rights Institutions: Empty Promises and Legal Foundations

Rejection	Rhetorical Commitment	Strong legal Commitment
Brunei	Cambodia	<b>Philippine Commission on Human Rights</b> <ul style="list-style-type: none"> <li>- Constitution 1987</li> <li>- Executive Order 163 (1987)</li> </ul>
Laos	<b>Myanmar</b> <ul style="list-style-type: none"> <li>- National Human Rights Commission 2011 fails to meet the Paris Standards (too close to the government, civil society not actively involved)</li> </ul>	<b>Indonesia</b> <ul style="list-style-type: none"> <li>- Presidential Decree 50(1993)</li> <li>- Human Rights Act 39 (1999)</li> </ul>
Singapore	<b>Thailand</b> <ul style="list-style-type: none"> <li>- National Human Rights Commission which fails to meet the Paris Criteria after military coup (downgraded to B)</li> </ul>	<b>Malaysia</b> <ul style="list-style-type: none"> <li>- Human Rights Commission Act 1999</li> </ul>
Vietnam		

Four other Southeast Asian States have established NHRI, either following liberalising reforms (Philippines, Indonesia, Thailand) or to show commitment despite serious decline in human rights across countries. The oldest Commission in Southeast Asia is the Filipino Commission on Human Rights, which was established in the midst of a wave of political liberalization after the fall of President Marcos, in 1986. The Commission's mandate was delineated in Article XII (Section 17-19) of the 1987 Constitution, which made it the first constitutionally mandated Human Rights Commission worldwide (Cardenas 2002, 32). In 1988, the mandate of the Commission was broadened in order to give it more "teeth" to address ongoing human rights in the country (Cardenas 2002, 36). The Philippine Human Rights Commission has five members, who are appointed by the President for a period of seven years. This allows political considerations to play a role in the selection, although the long tenure and the commissioners full-time commitment in practice strengthens the independence of the body – making it fully in line with the Paris Principles (Stokke 2007, 8).

Indonesia's Human Rights Commission (Komnas HAM) was established in 1993 by the Suharto Regime, to deflect criticism of its poor human rights record in the aftermath of the Dili massacre in November 1991. Initiated by Presidential decree, it was not only



a symbol of the period of political openness in the early 1990s but also became a critical voice after this liberalization ended in 1996 (Cardenas 2002; Setiawan 2013). Renewed international pressure following another human rights crisis in East Timor and the country's democratization in 1999 led the regime to establish a reformed human rights commission. A new law on human rights replaced the 1993 presidential decree, and granted KOMNAS HAM far broader powers of investigation, research, and the important power of summons. It also brought Komnas HAM's legal status in conformity with the Paris Principles (Setiawan 2013, 47). The members of the Indonesian Human Rights Commission were initially selected by the president from a group of prominent national figures. Consequently, the first commissioners were closely connected to the members of the Suharto regime – after democratization, the selection process has been changed. No more than 35 members are chosen by the House of Representatives, on the recommendation of the plenary of the Commission. This grants them some autonomy. Commissioners are elected for a period of five years and work part time. A reappointment is possible. The Commission has a nationwide network of branch offices and local commissions (Stokke 1997, 17).

Thailand followed Indonesia with the establishment of the Thai National Human Rights Commission in 1999. An elite movement for political reform and good governance led to the promulgation of the liberal 1997 “people constitution”, which included a human rights catalogue and called for a National Human Rights Commission to protect and promote these rights. Following serious discussions about the role of the Commission and its independence from traditional politics, the New Rights Commission Act was promulgated in 1999 and the NHRCT was established in July 2001 (Klein 2001). However, in the wake of the coup against Thaksin, the liberal 1997 constitution was abolished – the 2007 Constitution retained the NHRCT – but changed the selection process. With these changes, the Commission was supposed to be too close to the military – particularly after the 2014 coup. The Global Alliance of National Human Rights Institutions (GANHRI) downgraded the Thai Human Rights Commission from A (fully in Line with the Paris Principles) to B status (Partially in Line with the Paris Principles). The Malaysian Human Rights Commission (SUHAKAM), which was established in 1999 to deflect international criticism after the arrest of Anwar Ibrahim, faced a similar fate in 2008. The short tenure of the commissioners who are picked by the Prime Minister's Party led to a debate about SUHAKAM's independence. Civil Society organisations pushed for a downgrading of the human rights body – yet, they did not succeed.

Consequently, we can say that only some of Southeast Asian states meet the structural

criteria of the Paris Principles (Philippines, Indonesia, Malaysia). Thailand and Myanmar meet these criteria partially – though it seems as if Thailand wants to improve its status. The new 2017 Constitution envisions a new Human Rights Commission that promises to have a stronger human rights body within the next seven years (ANNI 2018, 53). What is the effect of these institutions on human rights?

### The Impact of Human Rights Institutions

More than a decade ago, Sonia Cardenas concluded that “states have permitted these commissions to perform seemingly innocuous tasks, which have resulted in a high level of human rights demands and a growing awareness of human rights norms. The long-term impact of these institutions is unclear, but it may depend on the extent to which the state is willing to meet these demands” (Cardenas 2002, 48). Looking at the scope and structural constraints of Southeast Asian human rights institutions, it seems that their immediate impact on human rights compliance seems to be negligible. These institutions play a very important role in human rights socialization, particularly in the Southeast Asian countries, where the human rights discourse is still in its infancy. Both in Thailand and Malaysia human rights commissions could improve the human rights culture (Connors 2011, 107, Thio 2009: 1300). In Malaysia SUHAKAM affirmed the legitimacy of human-rights concerns as an integral part of the political discourse – this importance cannot be discounted in states where the idea of human rights has been delegitimized by projecting it as an alien, imperialistic discourse (Thio 2009:1338). Following its creation by President Suharto in 1993, the Indonesian Human Rights Commission also made an important contribution to the socialization of human rights. The Commission was particularly effective in educational activities providing human rights training for members of the army, the police, for NGOs and the press. Due to the repressive nature of the Suharto regime, this was new (Setiawan 2013, 41f).

Assessing the broader political impact of human rights protection, however, is more difficult. The structural impediments mentioned above and the political pressure of state leaders on the commissioners is immense. Although the Philippine National Human Rights Commission looks promising on paper – constitutional foundation, independent selection of commissioners, and a broad mandate – its effectiveness and impact have been described as weak. The Asia Pacific Human Rights Network concluded in 2002 that its execution was poor and that civil society had little faith in it, perceiving it as compromising government lackeys (ANNI 2002: 109-118). A decade later the organisation came to a similar conclu-

sion: weak leadership, outreach to civil society only through personal and not systemic contacts and little impact (ANNI 2013). Under Duterte the whole human rights community, including the Human Rights Commission, is under threat. President Duterte not only threatened to kill human rights activists and ordered the police to shoot those who obstruct justice, he also threatened to shut down the Human Rights Commission (Human Rights Watch 2017). The Chairman of the Commission Chito Gascon criticised the drug war killings as unprecedented declaring that the death toll had overwhelmed the commission's capacity to adequately investigate them (Human Rights Watch 2017). Duterte cut the budget of the Commission for 2018 drastically, he also personally attacked the chairman of the commission and accused him of being paedophile (Guardian 2017). All these steps are intended to undermine the impact of the human rights body, undermine human rights work and disavow the legitimacy of the human rights discourse. Similarly, in the Indonesian case, the lack of leadership and corruption in the last half-decade reduced the effectiveness in investigating human rights abuses. Consequently, we can conclude that the more authoritarian states (Vietnam, Laos, Thailand and Myanmar) have either not established a human rights commission or established a body that does meet international standards. The more democratic states in the region have found ways to cut the effectiveness of the human rights body or democratic deficits – such as a lack in the rule of law and corruption – are taking a toll on the human rights work as well.

## Conclusion

Southeast Asian states have reluctantly embraced human rights over the last three decades. Although roughly two-thirds of the states have signed the most important human rights treaties until now, deeper commitment is slow and uneven. Looking at the human rights practice through an analysis of data from Freedom House and the Political Terror scale over the last three decades, it becomes clear that the region is experiencing an ongoing human rights crisis. This crisis started at least since the Asian Financial Crisis (1996), continued during the war on terror and is ongoing in this decade. Since the human rights commitment reflects a lack of democratization, we see growing illiberalism and suppression of human rights defenders even in the region's democracies. However, whenever we have seen a liberalisation in the region, it has also resulted in growing pressures to adhere to human rights – something, we witness in Malaysia these days. Yet, here the verdict is still out, since the Muslim groups and the elite elected out of office in 2018 mobilise the public against signing some of the most important human rights treaties. The human rights crisis in the Philippines and the Rohingya exodus make clear that a human rights crisis is ongoing.

ing. Altogether, human rights commitment of Southeast Asian states is shallow and tactical. Although we have seen positive developments at the regional level over the last one and a half decades – such as the installation of an ASEAN Intergovernmental Commission on Human Rights and the ASEAN Human Rights Declaration – we can say that these developments have not been accompanied by growing commitments on the national level. As our analysis of Southeast Asian Human Rights Institutions has shown, states executives have successfully blocked the installation of these bodies or pressured them effectively and curbed their influence. Human rights in Southeast Asia are under threat visible in lacking room for civil society activists (Hansson/Weiss 2018). The optimism towards National Human Rights Institutions (NHRI) is misplaced, since they are either dysfunctional or weakened by an illiberal and oppressive state in Southeast Asia.

## NOTES

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- 2 In the Asian Values debate Southeast Asian state leaders (particularly Malaysia's Mahathir and Singapore's Lee Kuan Yew) argued that human rights are culturally specific and that Asian societies have a unique, special set of values that do not fit with Western human rights ideals. They argued that Asian societies place much greater emphasis on the community than on the individual and privilege order, and on social harmony over personal freedom. They also claimed that stability and economic development are necessary preconditions for political rights and democratization (Mauzy 1997; Christie 1995). The debate slipped off the public agenda during the Asian financial crisis 1997, though controversies over rights remained (Bünte 2017; Thompson 2015).
- 3 The status is important, since an A status allows the participation at the UN Human Rights Council meetings.
- 4 Singapore has been a main proponent of the Asian values debate and remains an exception in regards to well-being and human rights restrictions today (Leong 2008).

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