

A close-up photograph of a man with dark skin and a mustache, smiling and looking off-camera to the right. He is wearing a red polo shirt and a blue and white badge on his left chest. The background is blurred, showing other people. A blue gradient overlay covers the left side of the image, where the text is placed.

English edition

OUR HUMAN RIGHTS, OUR FUTURE!

An Introduction to
Human Rights in
Southeast Asia

2022



Global Campus
of Human Rights

Europe
South East Europe
Latin America-
Caribbean

Asia-Pacific
Caucasus
Arab World
Africa

“Our Human Rights, Our Future!”
An Introduction to Human Rights in Southeast Asia”
(English edition)

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Undergraduate students participate in the celebration of the international human rights day at the UNTL Human Rights Centre (2020)

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INTRODUCTION

From 2019 to 2022, the Global Campus of Human Rights had been working together with the National University of Timor-Lorosa'e (UNTL) to build capacities in the field of human rights education and research, with the aim of contributing to the enhancement of democracy, human rights, and sustainable development in the youngest nation of Asia. This process, made possible thanks to the support of the European Union, was based on the creation of a UNTL Human Rights Centre tasked with developing training, research and outreach activities. During the project, a team of lecturers, teaching assistants, researchers and staff was trained to mainstream human rights education across all UNTL faculties. In this context, a curriculum revision led to the adoption of a compulsory human rights module as part of a renewed general undergraduate course now including *"An Introduction to Human Rights in Southeast Asia"*. This course was firstly implemented as a pilot edition in selected UNTL departments during the second semester of the academic year 2021, enrolling about 1130 students, majority of whom women, with a success rate of 85% at the final examination.

"Our Human Rights, Our Future" has been specifically developed to support teachers and students of this new course, as well as any other effort to promote human rights higher education in Timor-Leste and beyond. The textbook is an adaptation of *"Introduction to Human Rights in Southeast Asia - Vol. 1, 2, 3"* published by the Southeast Asian Human Rights Studies Network (SEAHNRN), a teaching tool that aims at the promotion of human rights education in current and perspective ASEAN countries. Available in English, Tetum and Portuguese, *"Our Human Rights, Our Future"* lays out the fundamental notions and standards of human rights, followed by a thematic selection of subjects related to the most pressing issues in Timor-Leste. The textbook was abridged and then adapted to UNTL needs, as well as tested with students to ensure it is well suited to their learning purposes. Moreover, several Timorese civil society organizations have contributed to the development of the materials, especially in the preparation of boxes with local examples and practices.

Very importantly, *"Our Human Rights, Our Future"* is complemented by a **Digital Learning Initiative** which makes the three e-books, over six hours of video-lessons, PowerPoint slides and a glossary freely available. This education tool, entirely designed in Tetum and English, makes it possible to combine training and in-class participation with e-learning materials, thus contributing to the academic innovation of the National University.

We hope that lecturers and students will enjoy teaching and studying with the support of these new materials!

The Editorial Team

DIGITAL LEARNING INITIATIVE

“An Introduction to Human Rights in Southeast Asia”

This book is complemented by a Digital Learning Initiative to support the lecturers and students of the UNTL transversal course “An Introduction to Human Rights in Southeast Asia”. Visit the UNTL Human Rights Centre project webpage to freely access the following materials:



Teaching plan



E-book



Video-lessons



PPT slides



Glossary

www.gchumanrights.org/hrc-untl/digital-learning-initiative

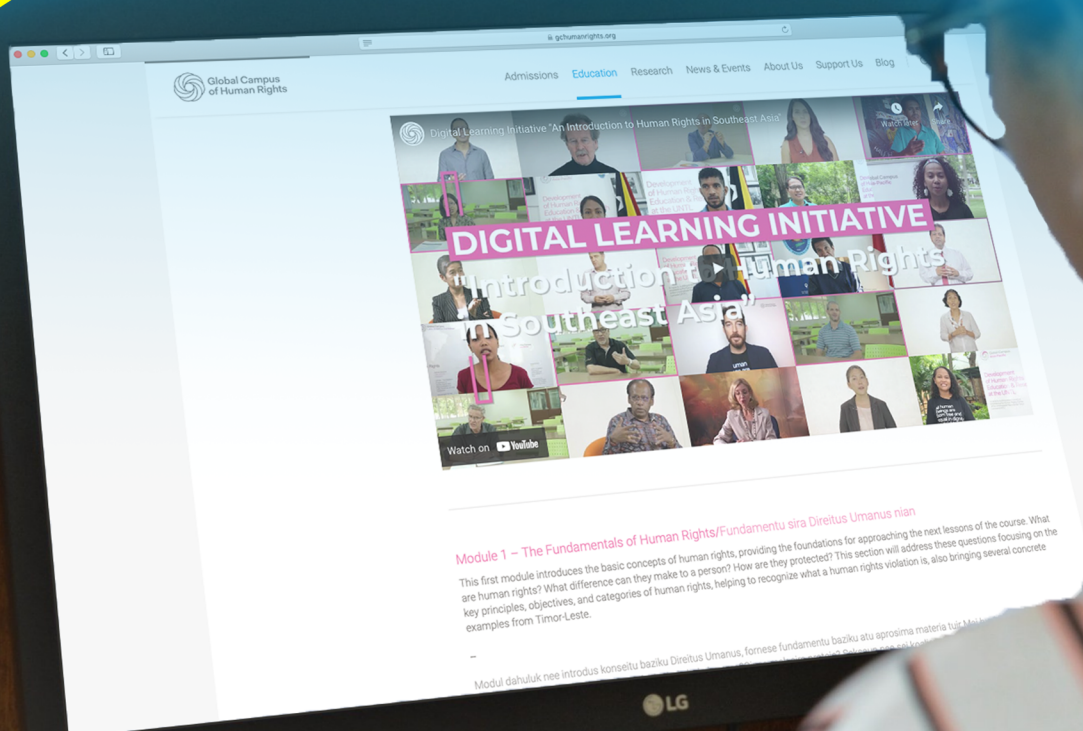


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A beneficiary of the UNTL Human Rights Centre at the beginning of his studies at the Global Campus Asia-Pacific Master Programme at Mahidol University (Bangkok)



Example



Discussion



Case Study



Definition



CHAPTER 1

The Fundamentals of Human Rights



Example 1

The Santa Cruz massacre refers to the killing of 250 people at the Santa Cruz cemetery in Dili on 12 November 1991. Around 2,000 people marched to Santa Cruz cemetery in honour of a young man shot dead by Pro-Indonesian forces. The group, waving pro-independence flags and protesting the Indonesian occupation, were attacked by Indonesian soldiers inside the cemetery. Most victims were shot, but some were stabbed and beaten to death. This massacre was recorded and the video was smuggled out of East Timor and broadcast around the world, leading to widespread protests against the Indonesian military.



Example 2

Victor is eight years old and lives in the rural areas of Timor-Leste. Like all the children from his village, he has difficulties in access to education due to the distance to school. Every day, he is forced to cross rivers and spend more than one hour to commute each way. Victor feels unsafe going to and from school during the rainy season. Some girls from his village have suffered abuse and violence during their way to and from school. These girls did not continue their education.

Victor's parents are worried, because his little sister Maria is very small for her age. She is suffering from malnutrition. Studies show that half of children under the age of five are stunted, which means they are not getting the nutrients they need to grow and develop. They eat what their parents grow, mostly corn, sweet potatoes and different leaf green vegetables.

The first example shows an extreme violation of human rights from Timorese history and the second one is, unfortunately, an everyday reality of many children in our country. Protecting human rights means not only preventing the worst cases of violations – they also determine how society treats its most vulnerable populations, like children, the poor or disabled.

1.1 WHAT ARE HUMAN RIGHTS?

There is both a simple and a complex answer to the question of what are human rights, and both help to understand the meaning of human rights. The simple answer is: human rights are rights a person has because they are human.

The complex answer is that human rights involve an internationally recognised standard of how all humans should be treated, regardless of their situation, or where they live. Under this definition, human rights are legal in basis, and they guarantee governments and other parties do not limit freedoms or bring unnecessary suffering. If these rights are upheld, people should be able to live a life of dignity.

Human rights can be described by what they provide for humans:

- **Freedom to do certain activities**
(for example travel, express themselves or practice a religion).
- **Freedom from certain conditions**
(for example torture and slavery).
- **Rights to services**
(for example education, health, a fair legal system and the ability to work).
- **Protection for groups of vulnerable people such as the disabled, children, women and refugees.**

To summarise, human rights guarantee that people have the ability to participate fully in society and live a life of dignity. Human rights also ensure our human worth is recognised and protected.

1.1.1 The Rights of Humans

The concept of a 'right' can be both obvious and difficult. Put simply, a right is something a person is rightly entitled to, free to do or protected by. There are a wide variety of rights: consumer rights, passenger rights, citizen rights, viewer rights, property rights, student rights, academic rights, visiting rights and so on. Each one implies a person's right to **do** something.

The legal concept of a right includes a number of characteristics. First, a right must relate to something (what is referred to as the object of the right); that is, the particular thing a right provides, allows or guarantees. This is the content of the right, such as food, education or voting which people have a right to, and for human rights these objects are detailed in laws and treaties. For each type of right there are specific privileges: for instance, a student has a right to ask questions in a classroom, borrow books from a library and have a fair opportunity to graduate. A driver has a right to use the roads, a passenger to ride a public bus and so on. But note, these may be rights but not necessarily human rights.

Second, a right must relate to someone or something which has a duty to provide that right. This means that a second party (whether the state, a company or a university for example) can be called upon to respect and uphold that right. A right only exists to protect a person's access to the object. For example, there is no need to give someone the right to breathe air because there is plenty of air to breathe, there is no need for anyone to provide air. However, if air becomes polluted and difficult to breathe, then some duty bearer is needed to guarantee people's rights to breathe fresh air.

1.1.2 The Foundations of Human Rights

Human rights are formed at the intersection of legal, moral and social rights. First, human rights should be considered a **right by law**. There are many legal rights (for example, the right to get married or to legally own property) which are protected under the law. Governments should respect human rights not only because it is 'right' or 'moral', but because they are legally obligated to. By agreeing to international human rights standards, or by joining the United Nations (UN), governments agree their citizens have human rights and that these rights have a legal basis. Because human rights are based in law, governments and other parties are obligated by the law to respect them. For example, the state of Timor-Leste has the obligation to make primary education compulsory and available free to all children, not just because it is the right thing to do, but because it is obligated as a country which has ratified the International Covenant on Economic, Social and Cultural Rights¹ and the Convention on the Rights of the Child.²

Second, human rights are also **moral rights**: they exist because they are considered moral or proper. However, not all moral rights are based on the law; there are many acts that are seen as immoral but not illegal (for example, cheating in a relationship). Though morals are often culturally specific and change over time, the respect of people and what they do is basically the same around the world, particularly for important things like their safety and their treatment by the government.

Third, human rights are **social rights** which ensure people live safely and happily together in society. Again, not all social rights are protected by law, but they do ensure the smooth run-

¹International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

²Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

ning of society. Social rights include what any person can expect from their government (for example, education and health), but they also cover expectations which come from living in a community. Social rights are the patterns of politeness, friendly assistance and tolerance that make life easier and more pleasant for all of us. Social rights mean that people should be safe and secure, and that their needs are addressed by society or state.

One debate in human rights is whether human rights are natural (and come from natural law), that is every society around the world sees them the same way, or whether they are a political choice. The idea of natural law has been controversial. First, the idea of what is 'natural' has changed over time: for example, racial discrimination and slavery were long considered justified by natural law thinkers, and women were considered inferior to men, which is now widely understood as wrong. If an idea changes over time and differs between societies, perhaps it cannot be considered a natural concept but a social one. This is why human rights researchers, organisations like the UN and human rights activists more often take a **'positivist' view**, according to which human rights are invented by humans to give people special rights and duties. They can be further developed and modified. They are regulated through laws which limit the power of the state, on the one hand, and direct state actions in positive ways on the other.



Discussion and Debate: The Right to Vote

In Timorese history, the process of choosing the leaders (*liurai*) was based on the royal lineage (monarchy system), and was usually passed down from father to son. Most of the time it was given to the oldest son without voting. It was a long held traditional belief that leaders were selected from a natural order, they were born leaders. Nobody believed that people should pick their leaders by seeing who was the most popular. This is an example where a natural law (inherited leaders) was supported over a positivist law (voting).

The system of choosing the leaders (on national or local levels) changed during the Portuguese colonial times, Indonesian occupation and independence. The *liurai* system no longer exists in Timor-Leste. Leaders at the national and local levels are chosen through elections based on the constitution and electoral laws, which provide citizens the ability to choose the President of the Democratic Republic of Timor-Leste, a representative in parliament and a representative on the village level through free and fair elections by secret ballot.

Why do we no longer have inherited leaders?

Why do people prefer to choose their leaders?

Do you think it is more 'natural' for a leader to be decided by voting for them, or by being the son of a leader?

Human rights were not always accepted as a universal legal standard. Rights have existed in many countries for centuries, but they varied according to religion, constitutions and cultures, so they were not universal. Further, in many cases only certain people had rights – indigenous groups, non-citizens or women were often not given rights. A major change occurred as a response to the horrors of the World War II when some governments, in particular Germany under National Socialism, ignored the notion that all people have rights and treated some groups (the Jews, Roma,³ political opposition groups and homosexuals) as if they were not human at all. Their rights were taken away and millions lost their lives. Legally, there was little the rest of the

³A traditionally nomadic ethnic group who originated in northern India, but now live worldwide.

world could do. The Holocaust⁴ provided an incentive to make human rights legally binding on all states as a universal standard. This means that if something like this happens again it would be against the law and should result in action from the international community.



Case Study: How are Rights Protected?

Ms Anita is an 80-year-old widow who lives in Suco Madohi, Dili Municipality. Ms Anita has three children, who have formed their own families. The children now live in their own homes.

Given that Ms Anita is elderly and alone, the children do not let her live by herself. Therefore, they ask for their niece from the village to stay with Ms Anita. The children continue to support and sustain their mother.

One day, the niece who stays with Ms Anita has to go to the village because her mother is ill. Ms Anita feels lonely and she has to go to the clinic by herself for a medical check-up. However, she is lucky because she lives in a neighbourhood where people always look after each other. Hence, a girl from the neighbourhood accompanies Ms Anita to the clinic.

The sense of protection given to Ms Anita by her family and neighbours originates in Timorese culture. Sometimes protection is found in community values, such as looking after your parents.

Also, the state also has an obligation to take care of the elderly people (which is a social right). In this case the state should provide healthcare. It should ensure Ms Anita has a place to live. If Ms Anita has no children, the state should care for her.

CASE STUDY

1.2 FUNDAMENTAL CHARACTERISTICS AND CONCEPTS IN HUMAN RIGHTS

Human rights have a small number of characteristics which makes them different from other rights, which are necessary to protect and empower people. These differences can be separated into two areas: the core principles of human rights (universality, inherent and inalienable), and the purpose of human rights (dignity, equality and the rule of law).

1.2.1 Principle 1: Universality

In general, rights are limited as to where and when they apply. However, human rights do not have this limitation—they are **universal**. The simple fact of being human on this earth is enough to have human rights. Human rights are not dependent on citizenship or living in a territory that recognises such rights. This makes them different from most other rights which are limited in some way. For example, you have to be old enough to attend school for student rights, or be a citizen for voting rights. Universality ensures that each person has human rights which are always available to them everywhere.

⁴The mass murder of European civilians and especially Jews during World War II.



Discussion and Debate: Universality

A woman faces violence and abuse regularly from her husband, but this is typical of her society and considered part of the culture. She does not complain. Besides, there is no one to turn to in the community as everyone accepts domestic violence as normal. Culturally, the wife also believes her husband is allowed to hit her and so does not report him to the police.

This is, unfortunately, also often the case in Timor-Leste, where many women suffer domestic violence in silence, because of the social stigma related to reporting their husbands.

Does this mean the act of the husband hitting the wife should be allowed? Is it a crime? Is it a human rights violation?

The assumption of universal human rights means that the woman has human rights even if she does not know, or even if she does not agree. The woman's right to protection from violence is universal and inalienable, and cannot be denied. The only reason she is not protected is because people told her to accept such treatment. Even though it may not be a crime because she has not reported it to the police, the abuse is still a violation of her rights. In other words, whether she agrees to it or not, the act of violence against her person is a violation.

It is impossible for anyone to lose their human rights. Many rights, such as the right to property or student rights, end at some point; that is, once you sell your bicycle, you lose rights to it, or once you graduate, you are no longer a student. People cannot lose their rights as a result of doing something, regardless of how terrible their act was. It is not possible for a state to decide that human rights do not exist anymore, or to decide that rights once recognised are now no longer relevant. However, it is important to note, inalienable does not mean a person can never lose any rights, as often the number of rights a person can have changes; for example, when a person turns 18, they lose their rights as a child and their status will change. In this case, the person still keeps their human rights, but not their rights as a child.

1.2.2 Purpose 1: Dignity

One of the main objectives of human rights is to ensure people can live with dignity: in other words, that they are respected, treated well and have a sense of worth. If a person has their human rights, then they can lead a life of dignity. If a person's rights are taken away, then they are not treated with dignity. Dignity is not only about making sure laws are not broken, but it is about treating people in such a way that they are respected as humans, like any other human. For example, the right to food is not just a matter of quantity, of having the necessary 2,200 calories a day. The number of calories means little if a person is forced to eat leftovers off the floor or if a Muslim is forced to eat pork. The nutritional value alone does not ensure dignity. Dignity means the person can eat food like a dignified human, and this is by respecting the social and cultural values around food, such as eating food with friends and family in what is considered a normal way.

1.2.3 Purpose 2: Equality

Human rights exist to ensure **equality**. This concept is featured in all human rights documents, emphasising the equal enjoyment of rights without discrimination. The first article of the Uni-

Universal Declaration of Human Rights states 'All human beings are born free and equal in dignity and rights'.⁵

Equality ensures people receive the same treatment, whether before the law, at work or in a marriage. However, no society is entirely equal in every aspect. In some cases, the expectation is not equality but fairness. For example, not everyone has equal access to a university education. Though higher education is a human right, students often need to fulfil certain requirements to be accepted – for example, pass a test or submit high school diplomas. Rather than equal access, it is fair that university admittance be based on non-discrimination. **Discrimination** refers to someone being treated differently or punished because of a particular characteristic about them. The most common and obvious form of discrimination is against women. In many societies, it is believed that women are not as strong or capable as their male colleagues and so they do not deserve to be paid equally. Other common basis of discrimination include race, religion, minority or citizenship status.



Definition: Discrimination refers to someone being treated differently or punished because of a particular characteristic about them.



Discussion and Debate: Recognising Discrimination

Early pregnancy is a major concern in Timor-Leste. If a girl gets pregnant, she often tries to hide it from her family and she will also drop out of school.

Even though some girls want to go back to school after having a baby, most of the time the family and school directors do not allow it. But if the father of the baby wants to go back to the same school, he will be allowed to continue his education.

Is this discrimination?

Why should the father be allowed to continue his education but not the mother?

Is it because the mother has to look after the child (but why shouldn't the father also look after the child)?

Is it because the school does not want to have a pregnant student in the classroom, because it does not look good? But isn't the duty of the school to provide education to everyone?

Is the school director's decision not to let them an act of discrimination?

Girls have a right to continue going to school after having a baby. In our society, there is a belief that once girls or women have a baby, they need only to take care of them. These social norms influenced the school director's decision as well as the family, which prohibited the young mother to re-enter the school. This is an example of challenges girls face in access to education and the different treatment between girls and boys.

DISCUSSION

1.2.4 Purpose 3: The Rule of Law

Human rights are legal rights, but they can only be ensured when there is a fair, working legal system. The existence of a fair legal system can only occur if the society is based on the idea of the **rule of law**. In order to enforce human rights, systems need to be in place allowing citizens to seek justice.

⁵Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), art 1.

Living in a society which is based on the rule of law means that:

- Everyone will be judged and protected by the same law.
- Everyone will be equal before the law.
- Everyone will have the same protection before the law.
- Legal rules will be public knowledge without 'secret' understandings that only selected individuals know.
- Individuals will have the right to find assistance to understand the law.

The **rule of law** guarantees a just and fair system which protects people and their property, keeping them safe. The main elements of the rule of law are that everyone is equal before the law and nobody should be able to escape the effects of the law. However, in some cases certain people escape legal punishment; for example, the wealthy, politicians and senior government officials sometimes avoid punishment for crimes or corruption. The law should not exist to protect or benefit a select group of people.

Equality before the law also means equal protection under the law for everyone. Unfortunately, there are many who are not protected by the police, but in some cases are actually abused by them, such as migrant workers or women who have reported domestic violence. In some countries, if a teacher hits a young student this may not be against the law and the student is not protected from this violence. However, in all Southeast Asian countries if a student hits a teacher this would be considered a crime and the police would protect the teacher. It seems unfair that if a teacher hits a student the police may do nothing, but if a student hits a teacher they may be punished by the law. The law here is not equally protecting the student, as it only protects the teacher. This different treatment is unfair, as the law should protect both teacher and pupil equally.

Another feature of the rule of law is that all people should have access to the legal system and be provided with an understanding of how that system works and what it can and cannot do. This may be achieved through legal assistance or legal aid, or ensuring the information is freely available.

1.3 HUMAN RIGHTS LAW: RIGHTS AND DUTIES

The power of human rights comes from the fact they are backed up by law. The idea that human rights are universal and morally good is not enough to enforce them. They are understood as laws which are protected by legal bodies, which discourages people and organisations from breaking them. The section below details the important features of human rights as law.

1.3.1 Human Rights Duties

For every human right there is a **duty bearer** who has a duty to ensure that right is respected; duty bearers have duties and obligations towards the **rights holder**. Duty bearers can include the government, people, corporations, universities, hospitals and so on. The duty bearer and the rights holder are in a relationship, because when the rights holder claims a right, the duty bearer must act in some way.

It is important that individuals themselves realise their role as duty bearers; parents have obligations to their children, teachers to their students and friends to each other. Many of these duties are only social or moral in nature, as discussed above. However, important duties, espe-

cially human rights duties of individuals, are detailed in criminal law. If a person violates another's right to property, right to practice religion, right to privacy or freedom of movement, the duty bearer is committing a crime.

The most important duty bearer is the state, which has the legal obligation to uphold rights in treaties. States' duties are clearly outlined in various human rights treaties. The duty can be defined in two ways. Firstly, many rights require someone or something to provide a good, service or other activity (for example, building schools and hospitals so that children receive their right to education or healthcare). This is called a **positive duty**: a duty to **do** something. Secondly, the duty may be to simply not interfere, or to ensure individuals are free from something – for example, there is a right not to be tortured or to speak freely without government interference – which requires the state to **refrain** from a particular action. This is called a **negative duty**. Negative duties limit the power and activity of the state and call on it to be passive when, for example, someone is trying to express their opinions or religious beliefs. However, some rights can contain a mixture of positive and negative duties. For example, freedom of movement requires both negative duties, so that the state does not prevent individuals moving around the country, but also positive duties requiring it to make the movement possible – by providing public transport, maintaining roads or building ramps so wheelchair users get access to buildings.

1.3.2 Vertical and Horizontal Protection

States have legal obligations not to violate a person's right, which is clear from human rights standards. However, what if a non-state party violates a right? For example, if a company takes someone's land from them, a factory pollutes a river or a husband hits his wife? These cases are not related to the state but involve an individual seeking protection from, or requiring a service from, other people, corporations or groups. This is called horizontal protection. There is a difference between being protected from, or requiring a service from, the state – which is called **vertical protection** – and being protected from, or requiring a service from, other people, corporations or other groups – which is called **horizontal protection**. Human rights are primarily about vertical protection, that is protecting the person from the power of the state, but recently there is an awareness that horizontal protection is increasing in its importance. Horizontal protection should be guaranteed through the state writing laws against the actors violating other's human rights, and having bodies who protect people's rights, such as the police, welfare organisations and the media.

1.3.3 State Duties: 'Respect, Protect and Fulfil' and 'Promote, Protect and Prevent'

There have been attempts to define more clearly what states should do to ensure people get their human rights. This has been detailed in two related, but different, statements from the UN. First, it was declared that states should 'respect, protect and fulfil' rights:

- **Respect:** States should ensure human rights are taken seriously and recognise those rights.
- **Protect:** States should ensure there is a working legal structure and protection mechanism to protect individuals from violations by non-state actors (horizontal protection).
- **Fulfil:** States should ensure that individuals who have so far not gotten all their rights – for example, children not yet attending school – will in future have these rights fulfilled.

It was later realised these activities could be better designed to ensure states are doing all they can to ensure their citizens are getting human rights. So, during the 1990s, a new list was introduced with 'promote, protect and prevent':

- **Promote:** The duty to 'respect' does not ask the states to do much. Respect is more of an attitude than an action. The new action to 'promote' human rights requires states to actively reach out and plan human rights education, including building awareness, introducing rights to improve the legislature, mainstreaming initiatives and teaching human rights in universities.
- **Protect:** (same as above).
- **Prevention:** States should ensure they do more than just respond to violations after they occur. Rather, they should have policies and plans in place to avoid such violations occurring; for example, human rights education, better trained police or publicising laws.

Both 'respect, protect, fulfil' and 'promote, protect, prevent' provide useful summaries of what is expected of states, and also what human rights actors should be working on.

1.4 CATEGORIES OF RIGHTS

Predominantly, human rights come from international treaties which have defined a number of categories of rights. It is important to describe these categories because the rights and duties are slightly different for each of them. However, each category is an important part of an individual's human rights. You will learn more about these rights in the following chapters.

Fundamental Rights

These are considered the most important rights, and they include freedom from slavery and torture, the right to life, non-discrimination and the idea that everyone is born equal. Regardless of the situation, no state can ignore or violate these rights.

Rights in the Legal System

Legal rights are in place to guarantee individuals enjoy an equal legal identity and that the legal system is based on the idea of true justice.

Civil Rights

Civil rights protect an individual's personal liberty and ensure liberties such as freedom of expression, conscience, speech, religion, expression and movement.

Political Rights

Political rights allow individuals to participate in politics and ensure a fair political system which includes the right to vote, the right to be a politician and the right to join a political party.

Economic Rights

Economic rights ensure an individual's economic welfare. The main economic rights include the right to work, the right to get welfare and leisure rights.

Social Rights

Social rights are the rights to government services such as health and education. They are also rights to basic necessities such as food, water, housing and clothing.

Cultural Rights

The rights for a person to participate in their culture can be divided into three elements: rights to language, religion and cultural activities.



Discussion and Debate: Assessing the Categories of Rights in Timor-Leste

Take another look at Section 1.4 Categories of Rights. Not all countries are good in every category, particularly developing countries like Timor-Leste. How would you assess our country in these categories: what rights are well protected and what rights are not?

Discuss which categories of rights are strongly enforced and which ones are weak in Timor-Leste:

Fundamental rights: right to life, freedom from torture, freedom from slavery.

The court system: right to a fair trial, equal before the law, no unfair detention.

Civil freedoms: freedom of expression, religion, movement. Rights to privacy and right to be a citizen.

Political rights: to vote or join political parties.

Economic rights: right to work and right to welfare when there is no work.

Social rights: housing, food, water, health and education.

DISCUSSION

1.4.1 The Separation and Unification of the Categories of Rights

Dividing rights into these categories is useful because each category is slightly different in the nature of the rights and the duties. For example, fundamental rights have the power of international law to enforce them, which civil freedoms mostly do not, social rights detail government services and are not immediate like civil rights, and cultural rights will mainly target minority groups. However, there is also a danger in separating these rights into categories because some governments may favour some categories and ignore others, or they may selectively choose which category of rights to support.

For much of the period between 1950 and 1990, the major division has been between those countries which support civil and political rights against those supporting economic and social rights. As a result, these categories have been seen as separate and distinct. This coincided with the Cold War, when the world was divided ideologically between western countries supporting liberal capitalism and communist countries (such as China, the Soviet Union and Vietnam) who supported communist political systems. There was a tendency for western countries to support civil and political rights and for communist countries to support economic and social rights.

This can be seen in Southeast Asia where countries such as Singapore and Malaysia have favoured economic and social rights over civil and political ones. In these countries everyone has good access to health and education, many people have good jobs and may be richer than people from Laos, Timor or Cambodia. However, political rights in these countries are limited. Singapore is known to have little freedom of expression, because the government does not recognise many political rights. This debate relates to what has been known as the Asian values debate: that Asian governments think that people should not criticise the government if they provide good social services. The action of giving priority to one set of rights has been strongly discouraged since the 1993 Vienna World Conference on Human Rights where it was argued that all rights should be treated the same.

1.4.2 Vienna Declaration and Programme of Action

The second World Conference on Human Rights in Vienna in 1993 and its outcome document, the Vienna Declaration and Programme of Action (VDPA),⁶ brought an important evolution in human rights. The VDPA revolutionised the understanding of human rights: it was an attempt to codify the concept of 'all human rights for all'. It declared that the protection of human rights should be a legitimate concern of the international community and that protection of these rights was not exclusively a national matter. It also showed that there cannot be rights without democracy, democracy without development and development without human rights.

A major concept proposed by the VDPA was that human rights are **indivisible**, **interdependent**, and **interrelated**. This means that human rights do not exist as separate categories, but form one single group of interrelated categories of human rights.

- **Indivisible** means that a government cannot divide up rights and only choose specific categories. A government must take human rights as a whole and not just address separate categories.
- **Interdependent** means each category of rights does not work independently: civil rights often depend on social rights, which may depend on political rights, which may depend on economic rights. For example, the right to education (a social right) depends on freedom of movement to reach school (a civil right), but movement depends on having enough money for a bus ticket (an economic right). To ride the bus, one needs to be healthy (a social right), but being healthy may depend on demanding that the government ensures people's right to healthcare (a political right).
- **Interrelated** means many rights are related to each other across categories. For example, the right to assemble (a political right) also includes the right to join a trade union (an economic right) and a right to be part of a minority group (a cultural and civil right). Similarly, the right to have children is both a civil and a social right (as is the right to healthcare). This inter-relationship clearly shows that rights relate to and re-enforce each other.

Since the VDPA, it is expected that all countries equally recognise all rights. While countries may agree to this in principle, it is not always true in practice. Some countries have a poor record providing social services, other ones do not recognise political freedoms or fair trials.

⁶Adopted on 25 June 1993.



Case Study: Interrelated Rights

If a student goes to university, they do not just rely on one category of rights, but all rights must work together, so the person can be educated at university. A country cannot decide to only recognise some categories of rights, but it must see rights as interrelated and interdependent.

To go to a university, every category of rights may be relevant to the student:

- **Fundamental rights:** the student should not be discriminated against in being selected to go to university nor discriminated while learning in the classrooms.
- **The court system:** the right for the university campus to be safe and protected by the police. The right to use the courts if treated unfairly by the university or if the university does not allow the student to seek justice.
- **Civil freedoms:** freedom of movement to get to university, freedom of expression in the classroom.
- **Political rights:** the right to join student political groups and to vote for student presidents.
- **Economic rights:** the right for the student or their family to earn enough money to go to university.
- **Social rights:** the right to food at university and the right to education to have a university.

CHAPTER SUMMARY AND KEY POINTS

What are Human Rights?

Human rights are the rights a person has just by being human. These rights start from birth and cannot be taken away. Other rights, like student rights or citizen's rights, need to be earned or can be lost, so they differ from human rights.

Human rights are enforced by law, so they are **legal rights**. They are also seen as moral and help a society work better, so they are both **moral** and **social rights**. Human rights place **duties** on states to protect people inside their country. However, people, businesses, universities and armies also have **obligations** to not violate other people's rights.

Religions, cultures and societies all have rights-based values about the treatment of human beings.

For some cultures it was seen to be part of a '**natural law**,' but mostly human rights are now seen as a rights written into law.

Fundamental Concepts

Human rights are in a special category because these rights are **universal** (everyone has them), **inalienable** (they can't be lost), and **inherent** (someone gets them from being born human).

Human rights are about ensuring people lead a life of **dignity**, so they are respected and treated well, especially by the state. Also, they ensure people are treated **equally**, so that people are not treated differently.

Human Rights Law

The aim of human rights is to ensure people can live in a society that obeys the **rule of law**. In order to achieve this, individuals must know the law and the state must ensure these laws are **respected** and **protected** by the police and judges, and that the law regards everyone as **equal**. These are some of the duties a state must do to ensure people get their rights. Most involve protecting people from the power of the state (**vertical protection**), but people must also be protected from having their rights violated by other individuals or organisations (horizontal protection). To do this states must '**respect, protect, fulfil**' and '**promote, protect, prevent**' human rights.

Categories of Rights

For much of the modern history of rights, countries favoured one category over another, and there have been many arguments which category is more important. This was caused in part by the Cold War, but also human rights theorists themselves considered rights were different in nature. However, since the Vienna Declaration and Plan of Action in 1993, it has been accepted by both states and human rights actors that all the categories are **indivisible** (a category cannot be forgotten or ignored), **interrelated** (categories are connected) and **interdependent** (categories rely on all other categories).



ARD/Henri Verhoef

The UNTL HRC promotes the universality of human rights
and their international dimension



Discussion



Definition



Focus on



CHAPTER 2

Introduction to International Human Rights Standards

2.1 INTRODUCTION – HUMAN RIGHTS STANDARDS

The term ‘human rights standards’ refers to the level or quality of life that must be met under human rights treaties and corresponding domestic laws. For example, ‘standard of living’ refers to the level at which people live a life of quality; human rights standards of living are the necessary things (such as sustainable food, clean water or adequate housing) so that people can live a life of dignity. Human rights standards should be seen then as minimum standards which people have a right to and which states can ensure. As it is sometimes expressed, human rights are like a floor, and not a ceiling: they define the bottom level and not the top.

When the international human rights system was started by the United Nations (UN), it set in motion a number of activities which have been expanding over time: developing a set of standards defining human rights; building a number of bodies to monitor human rights; and providing ways to respond to states which violate those rights. International human rights standards are defined and detailed in international treaties. These treaties establish rules and standards for how states should treat people and how people should treat one another. However, the international treaties cannot be forced upon a state. The act of agreeing to a treaty is almost always voluntary. In other words, a state must willingly agree to and assume the obligations of a treaty. Once a state agrees, it is called a ‘state party’ to the treaty and is considered responsible for any consequences which may happen if it does not fulfil the obligations of the treaty.

Table 2-1: Ratification of Conventions by Timor-Leste

| Treaty | Signature Date | Ratification Date |
|--|-------------------|-------------------|
| Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) ¹ | – | 16 April 2003 |
| Optional Protocol of the Convention against Torture (CAT-OP) ² | 16 September 2005 | – |
| International Covenant on Civil and Political Rights (ICCPR) ³ | – | 18 September 2003 |
| Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (CCPR-OP2-DP) ⁴ | – | 18 September 2003 |
| Convention on the Elimination of All forms of Discrimination against Women (CEDAW) ⁵ | – | 16 April 2003 |
| International Convention on the Elimination of All Forms of Racial Discrimination (CERD) ⁶ | – | 16 April 2003 |

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

² Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 18 December 2002, entered into force 22 June 2006) 2375 UNTS 237.

³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁴ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted 15 December 1989, entered into force 11 July 1991) 1642 UNTS 414.

⁵ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

⁶ Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (CERD).

| | | |
|--|---|-----------------|
| International Covenant on Economic, Social and Cultural Rights (ICESCR) ⁷ | - | 16 April 2003 |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) ⁸ | - | 30 January 2004 |
| Convention on the Rights of the Child (CRC) ⁹ | - | 16 April 2003 |
| Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-OP-AC) ¹⁰ | - | 2 August 2004 |
| Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC) ¹¹ | - | 16 April 2003 |

As can be seen from the table, Timor-Leste has voluntarily agreed to most human rights treaties. Also, by looking at the dates, it shows that Timor-Leste agreed to these treaties very soon after becoming a country. However, Timor-Leste has not agreed to a treaty for over 15 years, and is still to recognise the right of people with a disability and enforced disappearance. You will learn more about the challenges in the adoption of the Convention on the Rights of Persons with Disabilities¹² in Chapter 7.



Discussion and Debate:

If Treaties are Legally Binding, How Can States Violate Human Rights?

Treaties are legally binding on states, meaning that there are sanctions on states if they do not abide by these treaties. But human rights are violated all the time and states do not seem to face punishment for this. Does this mean that human rights are nice to have but ultimately meaningless?

While it is true that states may get away with violating human rights, it does not mean that there is no purpose to them. All treaties, because they are part of international law, are more difficult to enforce. A treaty is an agreement between states, and if other states are not interested or ignore how Timor-Leste abides by human rights, then little can be done. But other states are interested and do follow human rights in the country, especially when these states are meeting at the UN. Also, when a treaty is ratified, citizens in Timor-Leste (and this includes university students) can pressure the government to respect human rights. Though these actions do not have a lot of power to force the Timorese government to comply with human rights, they can make a difference.

⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

⁸ Convention on the Protection of the Rights of All Migrant Workers (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (CMW).

⁹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

¹⁰ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222.

¹¹ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227.

¹² Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).



Definition: International Legal Documents

All treaties (covenant, convention, charter and protocol), regardless of their name, have the same legal obligations and authority.



Definition: Non-Binding International Agreements

Treaties are legally binding, which means states can face some penalties if they do not comply with the treaty. There are other types of international documents signed by nations, which are not legally binding. For example:

Declaration: A declaration can resemble a treaty, but it does not have the same legally binding obligations.

Resolution: The UN produces many resolutions on a wide range of issues. Those coming from the UN General Assembly are non-binding. Consequently, breaking such a resolution will not result in consequences for the state. However, a resolution from the UN Security Council can be binding and can call on states to act, or to stop, certain activities.



Discussion and Debate: How do Human Rights Conflict with State Sovereignty?

Before international human rights law was developed, international law mostly regulated relations **between** sovereign states. This principle is still strong in international politics, and can be found in the Charter of the United Nations (the UN Charter)¹² (article 2.7) which states, 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State'. But the dividing line between domestic issues under a state's sovereignty and international human rights standards managed by the UN is an area of much debate in human rights. There is also no simple dividing line between what is purely domestic and what is international. In determining what health services they can provide, deciding what is free speech or at what age children can face criminal punishment, it is up to the state.

But in other cases, the state does not have a choice. For example, if a country passes a law forbidding girls from going to school, can other states or the UN intervene? On the one hand, if a government is democratically elected by its people to govern, it should have the authority and legitimacy to decide domestic policy. On the other, by agreeing to a human rights treaty, the state has agreed that it will not allow discrimination based on sex. So, in this case, it is clear that the international standards would overrule the state's sovereignty and say that girls should be equal to boys in their access to education.

States will often argue their interpretation of human rights is their sovereign right. In some cases, this may be true. But also, in other cases there may be clear international standards which they are ignoring. The task of deciding who is correct can be done by UN human rights bodies or national human rights institutions.

DISCUSSION

2.2 PUBLIC INTERNATIONAL LAW: THE BASICS

Human rights are part of both national level laws (domestic law) and in international law (for example in treaties). At the international level human rights laws are a part of public

international law (PIL), which deals with the structure and conduct of sovereign states and international organisations. Though much development of human rights standards happens at the international level, they are usually enforced at the national level. A main distinction between national and international laws is related to how the laws are written and how they are enforced.

Domestic laws are written by the legislative body (like a parliament), accepted by the executive body and implemented by the judiciary. Here is a simple example: a parliament makes a law, the police arrest anyone who breaks the law and the courts decide if the person is guilty or innocent, punishing the person if they are found guilty. In international law states write the law themselves **and** they are the main subjects of it. If a state wants no part of the law, there is little anyone can do to force them to agree to it. However, there are some international laws, such as customs (detailed next) which states have to obey. The international legal system is predominantly voluntary in nature. Enforcing international laws is more difficult than national laws because there is no equivalent international police force which protects the law and ensures compliance. While domestic law can work through powerful institutions (such as the police and the courts), international law can only be enforced if a strong state can encourage or force other states to comply, or if the UN takes actions such as sanctions.

International law is also more open to interpretation and negotiation because, as states write the laws themselves, they can also interpret it themselves. For example, while all states see child marriage is wrong, the interpretation of a child marriage (is it when someone under 18, or 15, or 13 gets married?) is up to the state. Generally speaking, in international law there is no single law-making body (like a parliament), neither is there a powerful enforcer of the law (like a policeman) or a court where all disputes must be referred to. Though these two systems of law do differ significantly, they do interrelate. Domestic laws can influence international laws, although, more commonly, international law influences domestic law.



Discussion and Debate: Differences Between International Standards and Timorese Law

In the table below you will see that sometimes Timorese standards match international standards and sometimes they are different. Discuss in groups why you think this is the case?

For example, why do you think that according to international standards, the legal age to marry is 18, while in Timor-Leste people can get married at a younger age?

Is it just to consider them criminally responsible at 16?

| | Timor-Leste | International standards |
|---------------------------------------|--|---|
| Age at which can marry | 17 years old If 16 years old, with parental consent | 18 years old |
| Age of criminal responsibility | 16 years old | Suggest age of 15 years old |
| Age of compulsory education | Age 6-17 (class 9 or until 17 years old) | 5-11 years old, though in many countries it is 5-15 years old |

2.3 THE SOURCES OF INTERNATIONAL LAW

The source of domestic law is most commonly the parliament, which makes the laws. In international law there is more than one source of law. So far, the discussion has concentrated on treaties as the main source of international law, though the use of treaties to define international law is a recent phenomenon (post World War II). There are four sources of international law:

2.3.1 Treaties

Treaties are agreements between states. They usually occur in written form and are created after negotiations between states. Once a state has agreed to be a party to a treaty they must obey the rules within it. However, only parties to a treaty are bound by its rules. A bilateral treaty occurs between two states. A multilateral treaty occurs between more than two states. A major role of the UN has been to draft such treaties which individual states are then invited to sign (for example the nine human rights treaties).

2.3.2 Custom

Customary international law or 'custom' is an unwritten form of law which is created after years of state practice. States around the world may behave a certain way for centuries and, after a period of time, accept that the practice is legally binding. When this happens a customary international law is created and it becomes binding on all the states in the world. For example, the practice of diplomacy was primarily custom until these laws were converted to a treaty in the 1960s. Another example of custom is how states treat visiting heads of state. States do not arrest visiting presidents or prime ministers. There is no existing international law or treaty preventing this, but this has been the practice for centuries. Some human rights laws can also be considered customary, such as not sending back a refugee to the country he or she is escaping from, the prohibition of slavery and the right to life. Customs have a broader effect than treaties because once a custom has been established and confirmed, it becomes binding on all the states (that act according to the custom), unlike treaties which are only binding on its parties.

2.3.3 General Principles of Law

International law also includes general principles of law, which are parts of the law so commonly used in national systems that they are expected to be part of international law as well. These include most of the standards of a fair trial such as the right to a defence, to access a court and to the presumption of innocence. Custom and general principles ensure that even if a state has not agreed to any human rights treaty, or if a person falls outside any jurisdiction (for example, they are in the middle of the ocean), there are still laws. This means practices as slavery, torture or murder are considered illegal no matter what. Custom and general principles are also important for human rights defenders in states which have agreed to very few human rights treaties. Human rights defenders cannot ask a state to meet treaty standards, but they can instead ensure that human rights which are part of customary law are protected.



Focus on General Principles of the Law

FOCUS ON

The impartiality of judges and the presumption of innocence are two examples of general principles which exist in courts around Southeast Asia. These two standards can be found in human rights treaties and in the Timor-Leste constitution (section 34 for presumption of innocence and section 132 for impartiality).

The law in Timor-Leste should be based on these principles, even though the constitution only talks about these principles in relationship to criminal law. So for example, it can be argued that judges in family courts should not be biased and people who may face sanctions in immigration law should have the presumption of innocence, even though the constitution may not recognise this.

2.3.4 Judicial Decisions and Teachings of International Law

A final source of international law comes from judicial decisions and the teachings of international law. Judicial bodies can include international courts such as the International Court of Justice (ICJ), the International Criminal Court and human rights treaty bodies (discussed in Chapter 4). It must be noted here that judicial bodies in international law are very different from those in domestic law. If a person is accused of violating a domestic law, he/she will be taken to court and face judgment there. International courts, however, are voluntary in nature; states have to agree to be bound by a court's rulings before a court can even have jurisdiction over them.

The emergence of international human rights law has changed the landscape of international law. Before, international law basically consisted of the rules that states placed on one another. However, human rights law regulates state behaviour inside its own borders. It introduces a new set of principles and standards for states. For example, when international human rights were first introduced in the 1940s many states openly practiced discrimination based on race. But when human rights are recognised states can no longer treat people differently because of their ethnicity. Some states like South Africa which had apartheid, or Australia, which did not give its indigenous Aboriginal people many rights, were pressured to change their internal laws to comply with international standards. For South Africa this took decades of pressure eventually eliminating apartheid¹³ in 1994, which Australia changed its laws in the 1960s.

¹³Apartheid, a law that governed relations between South Africa's white minority and non-white majority, characterised by racial segregation and political and economic discrimination against non-whites.



Discussion and Debate: Who Interprets Human Rights Principles?

DISCUSSION

The exact interpretation of some human rights is open to argument. On one hand, the legal system expects the interpretation of rights to be determined by treaties and international legal mechanisms, such as the ICJ or the UN human rights treaty bodies. Moreover, how a state interprets, for example, freedom of expression, is in practice largely determined by the state itself. Standards of freedom of expression vary greatly even throughout Southeast Asia, especially on expression of a political nature.

Who should be given more power to interpret human rights: the state or the international community? If interpretation is left up to states, they could weaken their commitment and duties by using excuses such as culture or the economy. On the other hand, a universal interpretation from the international system may not take into consideration the social, cultural and economic variations of different states. Should one body be given the power of interpretation, or can there be a balance between a state and the international bodies?

2.4 BACKGROUND TO THE DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS STANDARDS

Before the emergence of the UN, people's rights existed mostly at the national level where states, for example, the United States of America, the former United Socialist Soviet Republic, Portugal or Netherlands, protected people's rights at the national level. This was mostly done through constitutional rights. There were some protections of rights at the international level, but this was much less developed than the domestic laws. The international human rights standards which exist today were developed over time by:

- Treaties on the slave trade and slavery dating from the early 1800s.
- Humanitarian provisions in the Geneva Conventions and laws of armed conflict dating from the 1860s.
- Provisions on specific minority rights in peace treaties that ended World War I in Europe.
- Worker's rights developed by the International Labour Organization (ILO) starting from the 1920 ILO Constitution.
- Customary practices on protecting refugees.

One of the earliest objectives of the UN when it was founded immediately after World War II in 1945 was to establish a basis for international human rights. To do this they used both existing rights found in national constitutions and international standards found in custom and international treaties.

2.4.1 The Universal Declaration of Human Rights

The UN Charter, which is like the constitution of the UN, states that the UN must work toward ensuring world peace by establishing conditions where states can keep friendly relations. To ensure these conditions, the UN would carry out important work in responding to threats to international peace and security, ensuring the economic and social development of member states, and establish human rights and fundamental freedoms.

While the UN Charter does not specifically define human rights, the UN gave itself this task by appointing a Commission on Human Rights (the Commission) to draft the Universal Declaration of Human Rights (UDHR).¹⁴ To do this, the Commission, led by Eleanor Roosevelt, met over a period of about two years to draft the document which later became the UDHR. The people working on the draft came from around the world. There were lawyers, diplomats and government officials from countries such as Chile, Philippines, France, Canada, Lebanon and China. The drafting was done by first compiling a set of rights from national constitutions, domestic laws, religious and philosophical commentary, and other expert input from around the world. This compilation was then discussed and modified by the 15 country members of the Commission. The UDHR was adopted by the General Assembly on 10 December 1948, which has since become known as Human Rights Day.

The final document that was presented as a declaration to the UN General Assembly contains 30 articles which form the backbone of human rights today. The UDHR, however, is not a treaty which is binding on states, although many have argued that it has gained a status equivalent to a treaty. With the adoption of the UDHR, a universally accepted list of rights which states must recognise as universal human rights was introduced.

As the very first universal human rights document, the UDHR has an important place in history and in human rights law. It provides details on the universal rights that all states must agree to if they wish to be considered part of the international community under the UN. Second, the UDHR brings together many different types of rights. It includes legal rights, civil rights, economic rights and so on. Previously, human rights was divided into different areas such as minority rights or abolishing slavery, but now they form a single category. An examination of the UDHR shows how rights are categorised and ordered – the rights and freedoms presented in the UDHR follow a progression: from fundamental rights, through civil and political rights, to economic, social and cultural rights. Finally, the UDHR started a movement towards human rights becoming legally binding. Eventually the UDHR would become two separate legally binding treaties: the ICCPR and the ICESCR. These treaties are discussed in the next chapter.

List of Rights in the Universal Declaration of Human Rights

| | |
|-------------------|---|
| Article 1 | Everyone is born equal |
| Article 2 | Freedom from discrimination |
| Article 3 | Right to life, liberty, personal security |
| Article 4 | Freedom from slavery |
| Article 5 | Freedom from torture and degrading treatment |
| Article 6 | Right to recognition as a person before the law |
| Article 7 | Right to equality before the law |
| Article 8 | Right to remedy by competent tribunal |
| Article 9 | Freedom from arbitrary arrest, detention and exile |
| Article 10 | Right to a fair public hearing |
| Article 11 | Right to be considered innocent until proven guilty |
| Article 12 | Freedom from interference with privacy, or reputation |
| Article 13 | Right to free movement |
| Article 14 | Right to asylum |
| Article 15 | Right to a nationality and the freedom to change it |
| Article 16 | Right to marriage and family |
| Article 17 | Right to own property |

¹⁴Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)(UDHR).

| | |
|-------------------|--|
| Article 18 | Freedom of belief and religion |
| Article 19 | Freedom of expression and information |
| Article 20 | Right of peaceful assembly and association |
| Article 21 | Right to participate in government and in free elections |
| Article 22 | Right to social security |
| Article 23 | Right to work and to join trade unions |
| Article 24 | Right to rest and leisure |
| Article 25 | Right to adequate living standards, including healthcare, food, housing. |
| Article 26 | Right to education |
| Article 27 | Right to participate in the cultural life of a community |
| Article 28 | Right to a world where human rights are protected |
| Article 29 | Community duties essential to free and full development |
| Article 30 | Duty not to use rights to interfere with others |

2.5 CREATING TREATIES: AN OVERVIEW

Treaties create legally binding obligations on states under international law. So, how is a human rights treaty created? The first stage is the lobbying process where interested parties (often a mixture of states, international organisations and civil society) gather to plan and lobby for a set of rights. For example, before the treaty on children's human rights was introduced, various states that supported the idea, together with such organisations as Save the Children and UNICEF, began to lobby states for support. During the next stage, the UN agrees to take on this project of creating a treaty, then begins the process of deciding what rights should be included in the treaty and how these rights or standards should be defined. This is when the drafting process actually begins.

Next, a working group is established to write the treaty consisting of state representatives and international lawyers from the UN. It is becoming more common now to allow input from non-state actors such as non-governmental organisations in drafting the treaty. The treaty-making process culminates when it is adopted by the General Assembly and countries vote to accept the final wording of the document. However, this does not actually turn the document into an international law. Rather, it approves the final version of a treaty to which states may voluntarily agree to. The treaty is then open for signature, which allows any member state of the UN, by signing the treaty, to initiate the process by which it will become law in that country. The state is only properly legally bound to the treaty when it goes through a process called ratification. The process of ratification varies greatly between states. Most states in Southeast Asia require the treaty to be approved by a majority of legislative assembly.



Focus on: Ratification Process in Timor-Leste

The formal procedure of how a treaty is ratified in Timor-Leste starts with the Council of Ministers (made up of the government's ministers) approving the treaty to be signed authorising the Ministry of Foreign Affairs and Cooperation to sign the treaty, normally through a government resolution. Once this is done, the Directorate Legal Affairs and Treaties, which is in the Ministry of Foreign Affairs, then starts the process of having the treaty approved by the parliament. A draft resolution, accompanied by the text of the convention, is sent to the National Parliament for approval. At the parliament the resolution and issues around the treaty are debated and eventually approved. The final approved document is sent to the president who will organise for its publication in the National Gazette (Jornal da República), at which point it is law in Timor-Leste.

The ratification of treaties by Timor-Leste is different than in most countries. While the table shows the dates of ratification of the international treaties as 2003 or 2004, human rights did exist in Timor-Leste before. During the colonial period, if Portugal had ratified any human rights treaties, they would have also been valid in Timor-Leste, because it was a Portuguese colony. However, at that point in time Portugal had not ratified any treaties, so no treaties existed in Timor-Leste. After Timor-Leste was occupied by Indonesia in 1975, the treaties which Indonesia ratified existed also in Timor-Leste. Those were CEDAW, CRC, CAT and CERD, although the last two were ratified only in the last two years of Indonesian rule in Timor-Leste. When Timor-Leste gained its independence, it did ratify these treaties. However, they were already in existence in the country, because one feature of human rights is that once a treaty is ratified, it cannot be undone, it is ratified forever.



Focus on: Implementing International Laws in Timor-Leste

How international law is implemented in Timor-Leste is outlined in the constitution which says that the principles of international law are accepted by the country (which relates to the source of international law, discussed above), but that the rights contained in international treaties have to be approved, ratified and published in the National Gazette before they come into force as law.

The National Parliament can approve and denounce (or leave) agreements and ratify international treaties and conventions (article 95(3)(f)).

The government can prepare and negotiate treaties and agreements. It can also approve and denounce some treaties that are not the responsibility of the National Parliament or the President of the Republic (article 115n(1)(f)).

The President of the Republic has the responsibility to promulgate, or to announce, the new laws and have them published in the National Gazette (article 85a).

As an example, the National Parliament Resolution through which CEDAW was incorporated into the Timorese legal system is National Parliament Resolution No 11/2003, of 17 September. The text of the resolution is simple: 'The National Parliament resolves ... to ratify the Convention on the Elimination of All Forms of Discrimination against Women, the text of which in the Portuguese version, it is attached as an integral part of this resolution'.

FOCUS ON

2.5.1 Reservations and Understandings

Sometimes, governments find it too challenging to implement specific human rights because they go against certain beliefs existing in their society, or they might be too expensive, or they may conflict with widely supported existing laws. In these cases, governments can modify the treaty by either making a reservation (which means a right in the treaty is temporarily dropped from the treaty, like in team sports when the reserves wait on the side lines to join the game later). A 'reservation' modifies the legal effect of an article or provision of a treaty only in the country that makes the reservation. An 'understanding' is a statement that clarifies how the state will interpret the right. For example, many states interpret the right to 'self-determination' to only mean a right for a state to decolonise, not a right for part of a country to break off and form a new state. Sometimes states use reservations and understandings to fundamentally weaken a treaty, which should not occur. As an example, some states make reservations

and understandings that women's rights do not apply to religious values, so any discrimination in religion against women is not considered discrimination. When monitoring a state's human rights record these reservations are often discussed and the state is urged to drop the reservations. Reservations should not be considered a weakness in the treaty system, as they may give confidence to states to become state parties before they are ready, and give time for them to work on legal and social changes so they can eventually drop the reservations and comply with all the rights.

There are currently nine international human rights treaties which have passed through the entire treaty process. Six of the nine treaties have optional protocols, which are separate but linked treaties that add something to the original treaty, either additional rights or a mechanism to help protect these rights, such as those allowing investigation or complaints.

NINE CORE INTERNATIONAL TREATIES **(in order of when they came into force)**

(1). International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Adopted 1966. Into force 1969.

(2). International Covenant on Economic, Social, and Cultural Rights (ICESCR). Adopted 1966. Into force 1976. Optional Protocol (OP): Individual complaints. Adopted 2008. Into force 2013.

(3). International Covenant on Civil and Political Rights (ICCPR).

Adopted 1966. Into force 1976.

OP: Individual complaints. Adopted 1966. Into force 1976.

OP: Death penalty. Adopted 1989. Into force 1991.

(4). Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Adopted 1979. Into force 1981.

OP: Individual complaints. Adopted 1999. Into force 2000.

(5). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Adopted 1984. Into force 1987.

OP: Investigation and visits. Adopted 2002. Into force 2006.

(6). Convention on the Rights of the Child (CRC).

Adopted 1989. Into force 1990.

OP: Children in armed conflict. Adopted 2000. Into force 2002.

OP: Sale of children, child prostitution, pornography. Adopted 2000. Into force 2002.

(7). International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).

Adopted 1990. Into force 2003.

(8). Convention on the Rights of Persons with Disabilities (CRPD).

Adopted 2006. Into force 2008.

OP: Individual complaints. Adopted 2006. Into force 2008.

(9). International Convention for the Protection of All Persons from Enforced Disappearance (ICED).

Adopted 2006. Into force December 2010.

CHAPTER SUMMARY AND KEY POINTS

Human Rights Standards

Human rights establish a specific **standard of treatment** for all human beings. Standards are found in both **public international law** (PIL) and **domestic laws**. The development of these standards started as a reaction to the horrors of World War II. International human rights standards are upheld through **treaties** which are legally binding agreements. Human rights standards were initially more common in domestic law, but now human rights standards are an important part of PIL.

Public International Law: The Basics

International law and domestic law differ in many ways. **Domestic law** is made by the government and enforced by courts. The subjects of domestic law are the country's citizens, who are not directly involved in making or enforcing the law, but are subject to that law. PIL concerns the structure and conduct of sovereign states and international organisations. It is written by states to manage their own conduct. Public international law comes from **four sources**: (1) treaties, (2) customs, (3) general principles and (4) judicial decisions and writings on international law. **Treaties** are agreements between states and usually occur in written form which states volunteer to agree to. Once a country has agreed to be legally bound to a treaty they become a **state party** to it. **Customary international law** is an unwritten form of law that is a result of long established practices of states. **General principles** are parts of the law which are so common in domestic law that they are expected to be part of PIL as well. Customary law and general principles are part of PIL that do not need treaty ratification to be considered a law to a state. Examples include freedom from torture and slavery, and right to life.

Background to the Development of International Human Rights Standards

The present-day international human rights standards are mainly post World War II, but they are preceded by earlier agreements and treaties on subjects such as slavery, the conduct of war and the protection of minorities. A crucial event for the development of international human rights standards was the foundation of the **UN**, which defined human rights as a primary goal. The first universal document is the **UDHR**, which was completed after two years of drafting by the Human Rights Commission. The UDHR is a declaration without official legally binding status, though it is argued that it, or parts of it, do have legally binding obligations on member states of the UN. The UDHR laid the foundation for the development of **legally binding** human rights treaties.

The Creation of Treaties: An Overview

Treaties start when the international community sees the need for people to be protected by international laws. The momentum may be created by interested groups such as states, international organisations and civil society. Human rights treaties are normally drafted by a UN body which, when completed, is opened for **signature** to member states. States become legally bound to a treaty when they have ratified it and it comes into force. Governments can modify their commitment to a treaty by either making a **reservation**, which means they choose not to be legally bound to the reserved article, or making an **understanding** that details how they will interpret the article or right. International human rights treaties are legally binding, but only on those states that ratify it.



Human rights treaties and other key resources can be consulted at the Library of the UNTL Human Rights Centre



Discussion



Definition



Focus on



CHAPTER 3

International Human Rights Treaties

The International Covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

3.1 INTRODUCTION

The objective of the United Nations (UN) and the world community was for human rights to be legally binding on all states. They needed to be legally binding to ensure states would respect and protect people's rights. The **Universal Declaration of Human Rights** (UDHR)¹ is a declaration, which means it is not legally binding. So, immediately after it was adopted, a process began to transform it into a treaty, incorporating it into international law. The original plan was for a single treaty, an international bill of human rights, but for various reasons the plan was changed and instead, two treaties were drafted: the **International Covenant on Civil and Political Rights** (ICCPR)² (covering basically articles 1-21 of the UDHR) and the **International Covenant on Economic, Social and Cultural Rights** (ICESCR)³ (covering articles 1-2 and 22-27 of the UDHR). There were different reasons for this decision: the political divisions caused by the Cold War (with western states favouring civil and political rights, and communist states favouring economic, social and cultural rights). There were also legal differences between, for example, civil rights and social rights: enforcing the freedom of movement is quite different to the right to health.

It was decided that the two sets of rights should be enforced through different procedures. In most cases, **civil and political rights** must be respected and ensured from the moment the treaty comes into force. For example, states should not gradually introduce changes to stop torture – they must immediately stop it. The only exception is that some rights are derogable, which means that, under special circumstances, like a disaster or a pandemic, States do not have a duty to enforce them. In a sense, ICCPR rights are either **on** or **off** (like when you turn on a light, it is either on or off). However, some rights (the non-derogable ones), like right to life or freedom from torture, must be **on** all the time.



Focus on Civil Rights

Civil rights are mainly individual freedoms for a person living in a society. The word civil means both an ordinary person (a civilian), and it also means to be polite and ordered, as in 'civilised'. Civil rights are mostly about protecting an ordinary person from restrictions or interferences from the government, such as freedoms of movement, religion and expression, and the rights to privacy, citizenship and marriage.

Focus on Political Rights

Political rights are those rights which ensure people can participate in the political process, such as voting or being a politician, or being represented by a politician. It also includes rights around doing political activities like meeting (or assembly) and talking (expression).

¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

On the other hand, poorer and developing states may need to work gradually towards giving its citizens full **economic and social rights** such as access to healthcare or ensuring high schools are widely available. When developing nations agree to a treaty, it would be unrealistic to expect that they immediately provide rights to healthcare, education and housing on the day they ratify the treaty. A state cannot immediately build a health or education system, it must be given the time to do this gradually. As will be explained below, the state has an obligation to progressively move towards fulfilling everyone's economic and social rights.

As a result of these differences, the two treaties were drafted separately but simultaneously adopted at the UN General Assembly (UNGA) and entered into force at nearly the same time in 1976. The process took a long time – the two treaties were presented at the UNGA for signature and ratification in 1966, after 18 years of drafting. During these negotiations many decolonising states from Asia and Africa were involved. They brought into the UN other perspectives on human rights. For them, the most important rights were to be free from colonialism (self-determination) and to be free from racism (the elimination of racial discrimination).

3.2 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The ICCPR makes civil and political rights in the UDHR legally binding. However, it is not identical to the UDHR, because it adds some rights which are not in the UDHR, such as self-determination and the prohibition of expulsion and hate speech. It also drops some rights which are in the UDHR, such as the right to property and asylum, which does not appear in the ICCPR. There are two Optional Protocols to the ICCPR. The first allows individuals to make complaints to the UN Human Rights Committee and the second outlines a commitment to abolish the death penalty.

List of Rights in the International Covenant on Civil and Political Rights

| | |
|-------------------|---|
| Article 1 | Right to self-determination |
| Article 2 | Right to non-discrimination for all people in the territory and jurisdiction |
| Article 3 | Equal rights of men and women |
| Article 4 | Derogation from state obligations to be strictly limited |
| Article 5 | Derogation from state obligations to be strictly limited |
| Article 6 | Right to life |
| Article 7 | Freedom from torture |
| Article 8 | Freedom from slavery or servitude |
| Article 9 | No person shall be arrested or detained arbitrarily |
| Article 10 | Everyone deprived of liberty shall be treated with respect |
| Article 11 | No person shall be imprisoned for merely failing to pay a debt |
| Article 12 | Freedom of movement and to leave and enter one's own country |
| Article 13 | Expulsion only in accordance with law |
| Article 14 | Right to a fair trial, equality before the law, right to presumption of innocence until proven guilty |
| Article 15 | Prohibits prosecutions under retroactive laws |
| Article 16 | Everyone is recognised as a person before the law |
| Article 17 | Right to privacy |
| Article 18 | Right to freedom of thought, conscience and religion |
| Article 19 | Right to freedom of opinion and expression |
| Article 20 | Prohibits propaganda and hate speech |

| | |
|-------------------|--|
| Article 21 | Right to peaceful assembly |
| Article 22 | Right to freedom of association, including the right to join a trade union |
| Article 23 | Right to marry, have children and be equal within a marriage |
| Article 24 | Children have protection and the right to a nationality |
| Article 25 | Right to take part in public affairs and to vote |
| Article 26 | Equality before the law and equal protection of the law |
| Article 27 | Right for minorities to enjoy their own culture, language and religion |

State parties to the ICCPR are immediately obligated to 'respect and to ensure' the rights in the treaty for all people within the territory of the state and under its power. The jurisdiction of human rights treaties is territorial, meaning that people get their rights not through citizenship, but because they are physically present in the country. However, there are two rights in the ICCPR which are exclusive to citizens only, that of political rights to vote in that country and the freedom of movement.

3.3 RIGHTS IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This section briefly lists some of the important articles in the ICCPR. Many of these rights will be discussed in-depth in later chapters of this textbook.

3.3.1 Self-Determination

The first article in the ICCPR on self-determination is identical to the first article of the ICESCR. This concerns the rights for political groups to choose their own political system and to use their own resources as they wish. Self-determination in the ICCPR and the ICESCR essentially refer to a freedom from colonialism. They were not intended to allow freedom to indigenous, cultural or ethnic groups to start their own countries, although this article does give some rights to ethnic and cultural groups. This right has been extremely important in Timor-Leste's history, which has claimed its right to self-determination at the UN and in international courts such as the International Court of Justice while it was colonised by Indonesia. You will learn more about it in the context of Timor-Leste in Chapter 10.

3.3.2 Non-Discrimination

All human rights treaties recognise rights to equality and non-discrimination. As was covered in Chapter One, it is never justified nor permitted to discriminate on the grounds of race, sex, language, political opinion and so on. The ICCPR provides a list of possible grounds of discrimination, but also contains an important comprehensive formulation 'or any other status', meaning that discrimination can come from any categorisation. An important development in this area is the recognition that people can be discriminated based on sexuality. Sex, that is whether a person is biologically male or female, is listed in the article, but not sexuality. The formulation 'or any other status' allowed for this expansion.



Focus on: Anti-Discrimination Legislation in Timor-Leste

As a democratic country and a state party to the ICCPR, Timor-Leste guarantees its citizens non-discrimination under the National Constitution (C-RDTL) on a number of grounds:

Article 16 (Universality and equality) 'All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties. No one shall be discriminated against on grounds of colour, race, marital status, gender, ethnic origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition'.

Article 17 (Equality between women and men) 'Women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life'.

Article 25 (State of exception) 'In no case shall a declaration of a State of siege affect [...] the guarantee of non-discrimination'.

3.3.3 Right to Life

The right to life means the state cannot take someone's life arbitrarily or without legal justification. There are laws which allow the state to take someone's life, for example with the death penalty, in armed conflict or in self-defence. A significant change in the right to life from the UDHR is the inclusion of limitations to the use of the death penalty in the ICCPR. The right to life must be protected by law. Though, in reality, all states have already criminalised murder or other actions which lead to a person's death. The ICCPR requires states to have conditions on the use of the death penalty: it can only be used for the most serious crimes, the sentence must be open for appeal and a death sentence cannot be given to certain people such as pregnant women or children. While the article does not ban the death penalty, states can agree to the Second Optional Protocol, which deals with the abolition of the death penalty. The Second Optional Protocol has been agreed to by 75 states and has been in force since 1991. However, in Southeast Asia, only Timor-Leste and the Philippines have ratified it. The Second Optional Protocol requires states to abolish the death penalty forever.

3.3.4 Legal Rights



Definition: Legal Rights

Legal rights are the rights a person has when they seek justice from the court system. The UDHR and ICCPR outline a number of rights people have in the court system. These include the right to access justice, to have a fair trial and for non-discrimination. Some of these rights are only for criminal cases (such as arrest and the presumption of innocence). Other rights are for any court case, whether it is in the family court or for civil cases.

A number of articles in the ICCPR ensure that the legal system is just, fair and effective. These rights cover such concepts as equality before the law, unjust imprisonment and the right to

competent, unbiased and fair courts. There are three main areas of legal rights: (1) rights upon arrest and detention, (2) rights in the courtroom and (3) rights when imprisoned. Here is a short overview of the main rights in these areas:

- **Arrest:** A person cannot be arrested without reason. They must understand why they are being arrested, have access to a court and be presumed innocent until the court decides their innocence or guilt.
- **Trial:** Judges in the court must be qualified and unbiased. Individuals should have access to a lawyer, be able to cross-examine witnesses and be brought to trial within a reasonable period of time. The accused should also have the right to challenge or appeal a finding of the court. There should be a different trial system for children. The punishment should be appropriate for the seriousness of the crime.
- **Detention:** Individuals cannot be detained without reason. They should be informed about the reasons for their detention. They cannot be detained for a long period without being taken before a court. The conditions of the detention should be humane.



Focus on: Legal rights Timor-Leste

Here are some key legal rights guaranteed to the citizens of Timor-Leste when they are suspected of a crime:

- An arrested suspect has the right to know why they have been arrested.
- They have the right to be free from ill treatment and torture when in detention.
- The duration of the detention is limited. After the suspect has been identified, he or she can be detained for 12 hours, after which the suspect is released home and instructed to wait for a written notification from the Public Prosecution Service regarding the next stage of the process.
- In case of a flagrante delitu (when the police directly witness an incident), the arrested suspect can be detained for 72 hours. The police will then take the suspect to be presented to the Public Prosecution Service.
- The government provides free legal aid.

3.3.5 Freedom of Movement

The freedom to move addresses both movement **inside** a country and movement **between** countries. However, both have many limitations. A person has the right to leave any country, but only the right to enter their **own** country. A state, for whatever reason, can refuse a non-citizen entry into their country, and can even act completely arbitrarily in making this decision. For example, Singapore in the 1960s and 1970s regularly refused entrance to males with long hair, and as a result the rock band, Led Zeppelin, cancelled shows after refusing to cut their hair. A state cannot, however, refuse entrance to a refugee, because seeking asylum is a human right.

People are also free to move inside a country, although the ICCPR limits this right to people who are 'lawfully within the territory'. There are obvious limitations to the freedom of movement, for example, people cannot enter other people's houses uninvited. These limitations, as will be detailed below, must be specified in the law, and necessary for reasons such as morality or the rights of others.



Discussion and Debate: Freedom of Movement From and To Oe-cussi and the Mainland

Timor-Leste has one enclave called Oe-cussi, which is inside the territory of Indonesia. As it is a Special Administrative Region of Timor-Leste, Timorese citizens are free to travel from Dili to Oe-cussi, or from Oe-cussi to Dili by boat or by airplane. In some cases, they must travel through Indonesia, which means they must use a passport when they cross the border. The visa is free. While any Timorese citizen has the right to leave Timor-Leste, Indonesia does not have to allow everyone to enter their country, but they always do.

Do you think this is a limitation of the freedom of movement inside the country?

What about Timorese citizens who do not have a passport and would like to visit Oe-cussi?

3.3.6 Freedom of Religion

People have the right to believe and practice their religion. The freedom of religion protects individuals who want to express or practice their faith. This may be done individually or collectively. The freedom of religion can extend to the workplace and place of education. The right also protects people from being forced to believe a religion. There are always complex debates around religious freedoms and human rights. While the ICCPR recognises the right to change religions, this is not always accepted by many religions. Further, some Southeast Asia states have a state religion, which often results in discrimination of people who do not practice that religion. Some religious practices can be limited by law, for example polygamy, but limitations must be in the law and be necessary for specific reason such as health or security.



Focus on: Freedom of Religion in Timor-Leste

Although the majority of the population identifies as Catholic, various religions are represented in Timor-Leste:

- Catholicism (97.57%)
- Protestantism (1.96%)
- Islam (0.24%)
- Traditional (0.08%)
- Buddhism (0.05%)
- Hinduism (0.02%)
- Other religions (0.08%)

(Source: Population census 2015)

Freedom of religion in Timor-Leste is guaranteed by article 45 of the constitution:

Article 45 (Freedom of conscience, religion and worship)

1. Every person is guaranteed the freedom of conscience, religion and worship and the religious denominations are separated from the State.
2. No one shall be persecuted or discriminated against on the basis of his or her religious convictions.
3. The right to be a conscientious objector shall be guaranteed in accordance with the law.
4. Freedom to teach any religion in the framework of the respective religious denomination is guaranteed.

3.3.7 Freedom of Expression

Freedom of expression includes the right to look for information (for example, by allowing access to libraries, newspapers or the internet), the right to receive information (for example, health, government or safety information), and the right to share information (or to express oneself). Some limits to the freedom of expression are needed. Freedom of expression can be abused to invade people's privacy or to promote false or dangerous ideas (such as bad medical advice or promoting racism). To limit freedom of expression, three important criteria must be met. First, limitations must be written in the law and cannot be based simply on a person's or a state's opinion or belief. Second, there must be a valid reason for the law other than personal or state preference. In other words, the law must serve a purpose in society. And finally, these necessary limits must be for one of the following five reasons: to ensure the rights of others, to protect national security, to maintain public order, to maintain public health and to maintain public morals. For example, not allowing someone to give a racist speech can be found in laws against racism, which have the purpose of protecting other people from abuse and violence the racism may create. Every country in Southeast Asia has debated freedom of expression and has limited it through many laws such as libel laws, intellectual property laws and national secrecy acts. Sometimes these laws are necessary and sometimes they are not.



Focus on: Freedom of expression

Timor-Leste's constitution guarantees freedom of expression, as described in articles 40 (freedom of speech) and 41 (freedom of the press and mass media). These freedoms can be limited by laws of speech and freedom of the media.

3.3.8 Right to Marry and to Have Children

The right to marry includes the right for anyone to marry and insists that both partners have equal status within the marriage. As yet this right does not extend to same sex couples (though some countries do recognise the right for same sex marriage). Anyone can marry once they have reached a 'marriageable age', though this is not specified in the treaty. In Southeast Asia, the minimum legal age to marry is generally 18, which is the most common standard around the world, though there are some allowances for people under 18 to marry with parental consent. Further, people must marry with free and full consent: nobody can be forced to marry. An arranged marriage is not necessarily a violation of this right, as people can give full consent to an arranged marriage.

It is expected that men and women enter and leave marriages equally. Unfortunately, this has not always been the case in many Southeast Asia countries. Divorce laws in certain Southeast Asia countries often favour the male over the female, but this is now changing. For example, in Indonesia, under the old system, women divorcing under Islamic law were treated differently. Divorce is not allowed in the Philippines, the only state in the world to maintain this law. Same sex marriage is not recognised anywhere in Southeast Asia.

In Timor-Leste, the legal age to marry is 17. Divorce cases are settled in court.

3.3.9 Right to Associate and Assemble

The right to associate enables people to form groups. While the main focus is on groups of a political nature (for example, political parties), the right also includes, for example, student groups and those interested in specific issues such as women's rights or sport. The right to associate in order to form political parties is contentious in some Southeast Asian countries. For example, in Vietnam and Laos it may not be legal to form political parties.

The right to peaceful assembly is the right to meet publicly. The main political purpose of this is for people to meet and talk about politics, to protest or to advocate for specific issues in a peaceful way. It also covers non-political meetings such as cultural activities or funerals. In Southeast Asia, some states have lots of restrictions on the freedom to assemble, although not all these limitations go against human rights. Laws which are reasonable and objective can also help ensure assemblies are peaceful. In practice, these restrictions have severely limited the ability of people to assemble in public. All countries require authorities to be notified about an assembly in advance and many have broad powers to deny it. Countries with the strictest regulations in the region are Singapore and Vietnam, where protestors are regularly arrested or jailed.



Focus on: Freedom of Assembly

During the Indonesian occupation, there was no freedom of assembly in Timor-Leste. The Indonesian military prohibited any activities related to expression of criticism or demonstrations. Any such activity, particularly carried out by pro-independence groups, was considered illegal and against the Indonesian government. The military arrested and tortured people who participated in demonstrations. The most brutal example is the 1991 Massacre of Santa Cruz, when the Indonesian military killed hundreds of Timorese youth protesting against the Indonesian government in the Santa Cruz Cemetery in Dili.

Things changed drastically after independence. Even though the constitution guarantees its citizens the right to demonstrate, persons or entities wishing to hold demonstrations must submit a written notice of their purpose to the civil and police authorities in the area, at least four working days in advance. The notice must be signed by five promoters identified by name, address and profession or, in case of legal persons, by the respective management bodies. Demonstrations are also prohibited in a space less than 100 metres from public buildings (Law no 1/2006 Freedom of Assembly).

3.3.10 Right to Vote

The right to vote is the most well-known, and maybe the most important, political right. This right is understood mainly through the process of choosing a government by election. The procedure has a number of elements. First, elections must be periodic, which means they should take place at regular intervals. Most countries hold elections every three to six years. The election must be genuine, meaning that the results must reflect the will of the people. Non-genuine elections occur when there is no opposition or when people cannot vote for who they want. Rules governing the right to vote should be based on every person getting a vote, with reasonable limitations such as age and citizenship. Further, each person's vote should be counted equally, ensuring that some people do not get more than one vote or have more influence. Fi-

nally, voting should be secret to keep political views private and keep the voter safe from repercussions. Examples are that wives should vote separately from their husbands or villagers from their village leaders, so they have a free choice and will not be forced to vote a specific way.

The constitution guarantees that 'Every citizen has the right to participate in the political life and in the public affairs of the country, either directly or through democratically elected representatives'. All citizens aged 17 and above, in possession of an election card, are allowed to vote. Parliamentary and presidential elections are held every five years, while village elections are held every four years.

3.4 LIMITS TO CIVIL AND POLITICAL RIGHTS

As noted above, some civil and political rights can be legitimately limited in specific circumstances. It is important to remember that human rights do not allow individuals ultimate freedom to do whatever they wish, because people cannot use their rights to violate the rights of others. For example, a person cannot use their right to freedom of expression if it violates another's rights. Furthermore, governments can limit the scope of certain rights, but such a decision has to be authorised in law and the government must demonstrate that such a law is necessary to ensure human rights. According to the ICCPR, limitations can happen only for the following specific reasons: public order, upholding the rights of others, public health, national security or morality.

In very specific situations, called '**public emergencies**', certain rights can be limited. According to the ICCPR, a 'public emergency' is something that 'threatens the life of the nation': this could be a natural disaster, a conflict or a pandemic. In these situations, states can derogate from some of their obligations towards civil and political rights for a limited time. For example, during a pandemic, freedom of movement may be limited. However, not all rights are derogable. Non-derogable rights are those which under any circumstances must be protected, such as freedom from torture and slavery, the right to religion, non-discrimination and the right to be recognised as a person before the law. When a government declares an emergency, it should be done in public, detail what rights are derogated and when the emergency will end. Public emergencies can give states more power and there are often complaints that they sometimes abuse this power by arresting political opposition groups or detaining suspects for months without charging them. Indeed, this has been the case during the COVID-19 emergencies where political opponents have been arrested in Thailand and Cambodia.



Focus On: Public Emergency in Timor-Leste – Measures and Rights Derogated by the State

To protect its citizens from the Covid-19 pandemic, Timor-Leste declared a state of emergency on 28 March 2020, for one month, followed by the second state of emergency declared on 26 April 2020. The law of the state of emergency derogated from some of the citizens' rights, such as:

- Freedom of movement,
- Right to association and assembly
- Right to petition and demonstration.

Furthermore, the law included measures regarding social distancing, personal hygiene, mandatory 14 days of quarantines, and isolation for and surveillance of persons who have tested positive for COVID-19. Following this, the State of Timor-Leste extended the states of emergency until November 2021, which only limited freedom of movement (for international travel).

3.5 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

This section will cover the main rights found in the ICESCR and detail how these rights are protected.

3.5.1 Economic Rights

Economic rights help to ensure a person's economic security. This covers the right to work and rights in the workplace. Many workplace standards are determined by the International Labour Organization (ILO), which has promoted such ideas as minimum age, minimum wage and maximum hours in a working week. Economic rights include the right to form a trade union to protect workers from mistreatment. Other key rights include non-discrimination in the workplace, leisure time and the provision of safe and healthy work conditions. The right to rest and leisure is sometimes neglected because many see it only as a child's right. However, the right to leisure is linked to the right to work. People have a right to not work and take time off for a holiday or to be with their family and friends.

Economic rights also include the right to access welfare or social security if a person is unable to work; that is, if a person is unable to ensure their economic livelihood, the government must provide them with some form of welfare. Most countries in Southeast Asia have weak or non-existent social security systems, so this is an area requiring much more development.

3.5.2 Social Rights

Social rights include rights to health, education, food, water and housing. The main objective of these rights is to ensure an adequate standard of living. The rights to food, water, and housing (**livelihood rights**) are not directly provided by the government. It is not expected that governments should provide everyone with a house and a meal. However, when people are unable to provide these necessities for themselves (because of war, disaster or because they are sick, disabled or otherwise unable to work), it is expected that the government will provide for them.

Livelihood rights ensure a person's dignity. To achieve this, health, education, food, water and housing must be **available**, **accessible**, **acceptable** and **appropriate**. As an illustration, let us look at the right to food.

- **Available** means there must be a sufficient supply for everyone.
- **Accessible** means that even if the supply is sufficient, people must also have access to it. Sometimes there is enough food, but people are still malnourished because the food is too expensive, or it is too far to travel to get it.
- **Acceptable** means that food and water need to be of an acceptable level of cleanliness and free from contaminants.
- **Appropriate** means that the right to food also ensures individuals eat like human beings.



Discussion and Debate: Right to Food in Timor-Leste

According to the 2020 Global Hunger Index scores, Timor-Leste is one of three countries with alarming levels of hunger (together with Chad and Madagascar).

Why do you think this is the case? Let us see whether food in Timor-Leste is available, accessible, acceptable and adaptable.

Available: Not enough food is available, because Timor-Leste relies on subsistence farming (which means that farmers grow food only to meet the needs of their families). As a result, there is poor agricultural productivity and the food supply depends heavily on the climate conditions. To supplement domestic deficits, Timor-Leste imports food (for example, around 40% of cereal foods are imported).

Accessible: Because the country must import food, food can be available in the larger towns and cities, but not in more remote areas. Also, food prices depend on the changing global prices, so food can be too expensive for some Timorese. Furthermore, households in the rural districts, especially in the mountainous areas, often have problems reaching markets, because of the bad road infrastructure. On average, 60% of Timor-Leste's aldeias (small villages) are inaccessible by road during the wet season.

Acceptable: The high levels of malnutrition are mostly caused by an inadequately diverse diet. The average Timorese has a sufficient dietary energy supply, which means they take enough calories, but the problem is that the diet mostly consists of staple foods such as rice, corn or bananas, but not enough protein and micro-nutrients which can come from meat, dairy products and vegetables.

Adaptable: Data about the diets of pregnant women and young children show deficiencies in this regard. Cultural and social issues can sometimes prevent improving nutritional practices, including taboos on what pregnant women should or should not eat. Furthermore, according to the World Food Programme, cultural practices result in very low diversity in young children, who mostly are given plain rice porridge.

3.5.3 Culture and Human Rights



Definition: Cultural Rights

The rights to culture are those rights around how a person identifies with their community. This can be at the local or national level. A person's culture is those activities and beliefs which are shared among a large group of people, such as the way they speak, dress and relate to each other. Culture does not always have to be a part of the national culture, because celebrating New Year's Eve could be considered a cultural right.

Culture can be understood in many different ways, and as a result there are many debates around cultural rights. Culture is primarily defined as the right to speak your language, practice your religion and undertake cultural activities. This can include cultural events surrounding births, deaths and marriages. It could also include culture relating to traditional ceremonies and law. There is still much debate if clothes, social events, media, entertainment and non-religious spirituality can also be included. In particular, the issue of clothes, for example the veil worn by Muslim women, has been heavily debated across the world. There may be political reasons for the lack of clarity around cultural rights. Some governments try to ensure the dominant culture in the country remains dominant or that minority cultures do not get too much power. The basis of cultural rights should be more related to ideas of multiculturalism – that states should allow many cultures and not support only one dominant culture. However, across Southeast Asia, most governments favour a majority culture and religion.

In promoting and protecting cultural rights, human rights defenders do not rely on ICESCR alone, but often use rights found in other treaties such as non-discrimination, minority rights, freedom of expression and freedom of religion from the ICCPR. Cultural rights are heavily interdependent and inter-related between economic, social and cultural and civil and political rights.



Discussion and Debate: Is *Barlake* a Cultural Right?

Timor-Leste is a country with various customs and traditions, transferred from generation to generation. There are many practices which can be described as cultural rights, such as weddings, funerals and celebrations to get blessings from ancestors. One tradition at a wedding is *barlake* (bride price). Similar to traditions throughout Southeast Asia, the husband gives money and/or gifts to the wife's family for taking her away from them. But even though this is a tradition, should there be a right to this cultural practice?

There are a lot of criticisms about *barlake*. Some believe that this practice disadvantages women, because it leads to expectations that she would be the property of her husband and only be responsible for protecting the house and taking care of the children. Timorese human rights organisations, such as Rede Feto and JSMP, have even suggested it leads to an increase in domestic violence because the husbands see their wife as their property, because they have 'paid' for her with *barlake*. To other people, *barlake* is an integral part of Timorese culture, which has been practiced for generations. It serves to seal the relationship between two families, it honours the woman by recognising her value to the husband's family and it forms part of the ceremonies at the wedding.

Do you think *barlake* should be protected as a cultural right? Or should it be modified because it disadvantages women? But if it is modified, how should it be modified?

List of Rights in the International Covenant on Economic, Social and Cultural Rights

| | |
|---------------------------|--|
| Article 1 | Right to self-determination |
| Article 2 | Right to progressive realisation |
| Article 3 | Equal rights of men and women |
| Articles 4 & 5 | Limitations only when necessary |
| Article 6 | Right to work |
| Article 7 | Right to good work conditions |
| Article 8 | Right to trade unions |
| Article 9 | Right to social security |
| Article 10 | Family protection, especially for mothers and children |
| Article 11 | Livelihood rights, including food, clothing, housing |
| Article 12 | Right to physical and mental health |
| Article 13 | Right to education |
| Article 14 | Right to compulsory and free primary education |
| Article 15 | Right to culture |

3.6 REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The division between civil and political rights and economic and social rights still influences human rights protection today. Some consider economic, social and cultural rights more important, because they guarantee life: a person needs food, water and health to survive. Others say that economic, social and cultural rights are not really rights but government programmes such as education or health, or they are plans because economic and social rights are not immediately available (like civil and political rights). Instead of being immediately available, they are progressively realised. Others argue that it is difficult to prove a violation of economic, social and cultural rights. For example, if a person is homeless, is the government responsible for finding that person housing? Can they do it through a court of law? In order to address this problem, it is important to discuss two important concepts in economic, social and cultural rights, progressive realisation which explains how a government should attain economic, social and cultural rights, and justiciability, which means the ability to determine rights and duties in the justice system.

3.6.1. Progressive Realisation

When a country becomes a state party to the ICESCR, it must protect and uphold some rights immediately when it ratifies the treaty. These rights are called the **minimum core rights**. Minimum core rights, like primary education or people not starving, are legally binding once the treaty is in force. Other rights, however, do not create immediate obligations on the state. Many rights in the economic, social and cultural rights fall under this category of **progressive realisation**, which means that rather than immediately realising these rights, states have a duty to work towards fulfilling them in the near future. The obligation is for the states to show progress towards fulfilling these rights. For example, poor and developing states which cannot immediately provide adequate healthcare, social welfare or high schools for everyone must demonstrate they have policies and plans that work to achieve these goals.

Simply stated, progressive realisation requires states to always progress towards meeting their duties to provide economic and social rights. While the exact measurement of what progress means is flexible, there are some recognised standards. States should know how many people have access to water or education, and always increase this number till everyone has these rights. States may not take away anyone's economic, social and cultural rights. If someone's right is met (for example, their right to housing), this cannot be removed under any circumstances, even if they are living in illegal homes. If a government wants to evict these people, it could only do so if they are provided with alternative housing. It would be a violation for a state to cause a person's homelessness or hunger, regardless of the situation. However, the duty of the state and the individual is a little more complex than this. The individual has a duty to meet economic, social and cultural rights themselves. They must find their food, education or housing. It is only if they cannot do this, for example, if they are disabled, they live in poverty or they live in a conflict zone, that the state must assist them.



Focus on: Progressive Realisation of the Right to Education

In the past decade, Timor-Leste has adopted a number of measures to improve the quality of education in the country. When Timor became independent the enrolment rate in primary school was about 75% of children. Only about 45% of students in 2003 finished grade 9. The enrolment rate from 2017-2019 at primary school was 95.99% and for secondary school it was 60.5%. This is an example of progressive realisation, where the government is increasing the number of students who have high school education.

Part of progressive realisation is creating policy and practice. From 2011 onwards, the Ministry of Education has provided pedagogical, ethics and Portuguese language training to all educators as well as specialised training or Bachelor degrees to those educators who were not previously trained as teachers. Also, the vision of the National Education Strategic Plan states that all Timorese should have access to school and receive a quality education through comprehensive curriculum reform. In 2013, the Ministry of Education conducted and adopted a curriculum reform for grades 1 to 6.

The education policy provides equal opportunities for all people to gain access to education. It specifically addresses female students, so they do not drop out and encourages parents to provide equal opportunities to their daughters and sons to gain access to education. Educators have the obligation to help provide solutions to children to gain access to schools.

(Source: UPR report 2016)

3.6.2 Justiciability

A common criticism of economic and social rights is that it is difficult to prove either a state's obligations, or its violations, or specific rights. This is the problem of justiciability or the ability to take violations of economic and social rights through a justice system. There are many elements which influence how economic and social rights can be brought before a court. First, there must be a law on the right which the courts recognise and use. Some Southeast Asia countries lack basic laws protecting rights to food and water. Rights protecting housing or access to healthcare may be very weak. Further, most constitutions in Southeast Asia only offer limited protection of economic and social rights. In most of Southeast Asia, a person's access to food or water is only protected in policy, not in law.

Second, from the discussion on progressive realisation, it can be seen that legally enforcing a state's progress can be very difficult in some areas, which brings up many questions: Is the state progressing fast enough? Is it using its maximum resources? Has it taken steps? Can the state produce results to show people are getting their rights met?

A further complexity asks which part of government should manage these duties. Rights around work, food, housing, water and education are managed mostly by government departments (such as the Ministries of Labour, Health or Education). But having legislation in this area implies that the courts will decide if the policies are effective, which can potentially lead to conflicts between ministries and the courts. As an example, a person with cancer requires expensive treatment, but the government hospital insists this treatment is too expensive to provide to everyone. Who should determine this: health officials who have an idea of budgets,

illnesses and the capacity of hospitals, or the courts who ensure people have their rights to healthcare?

Enough examples exist now to show that economic and social rights are justiciable. This is particularly true in the area of work, as most Southeast Asian countries now have effective labour laws and labour courts. The same can also be said for housing, as Southeast Asian countries now have laws of property rights and rental laws. These laws and courts do not guarantee people's rights are met, but they do show their justiciability.



Focus on: Right to food and housing in Timor-Leste

Much like the rest of Southeast Asia, there are no specific articles in national laws or the constitution on the right to clean water and food, but the right to housing is in the constitution. As a state party to the ICESCR, Timor-Leste has an obligation to progressively implement these rights. As part of this, the government adopted a national action plan on food called Zero Hunger, which will see the end of hunger by 2030. In the past decade the rate of people not eating enough has gone from about 30% to 25%.

With housing rights there has also been progressive realisation. The National Constitution of Timor-Leste guarantees the right to housing as described in article 58 section 58(Housing): 'Everyone has the right to a house, both for himself or herself and for his or her family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy'.

Timor-Leste has a national housing policy (2007) *Hamutuk Hari'l Futuru* (Together Building the Future). While homelessness is not a significant problem, there are many people who have been displaced, and many people still live in houses with no electricity and dirt floors. However, the number of people with access to electricity has increased from 68% in 2014 to nearly 90% now.

CHAPTER SUMMARY AND KEY POINTS

Introduction

The process of changing the rights in the UDHR into an international treaty resulted in two conventions: the **ICCPR** (covering basically articles 1-21 of the UDHR) and the **ICESCR** (covering articles 1-2 and 22-27 of the UDHR). The reason for dividing the UDHR into separate treaties was the result of **legal distinctions** (between derogable civil and political rights and progressively realised economic, social and cultural rights) and also some argue **political differences** (western states favouring civil and political rights and communist states favouring economic, social and cultural rights). When both treaties came into force in 1976, much of the UDHR became legally binding to those countries who ratified the treaties. Rights protected by the ICCPR and the ICESCR apply to all people in the **jurisdiction** of the state, regardless of their citizenship.

The International Covenant on Civil and Political Rights

The ICCPR protects **fundamental rights**; for example, the right to **self-determination**, the right to **non-discrimination** and the **right to life**. A feature of the right to life is the limit upon the use of the **death penalty**. Other important rights include those in the legal system, such as rights under arrest, detention, and in the court. CPR also includes human rights in the political arena and life in civil society, such as **freedom of religion**, **freedom of expression** and the **right to vote**.

The ICCPR allows the limitation of these rights in three ways: first, all rights are limited in that they cannot be used to violate the rights of others; second, specific **rights may be limited by law** if this is necessary to provide public order, public health, national security or for moral reasons. Thirdly, states can be allowed to **derogate** from a right for a limited time under specific circumstances of a public emergency. There are a number of rights which are **non-derogable** and they must be observed at all times regardless of the situation.

The International Covenant on Economic, Social and Cultural Rights

Like the ICCPR, the ICECSR protects fundamental rights such as the right to self-determination and equality for men and women. Furthermore, the ICESCR includes rights concerning work, education, family protection, health, education and housing. Rights in the ICESCR are sometimes defined and researched by related UN bodies such as the World Health Organization for health and ILO for labour.

Economic, social and cultural rights differ from civil and political rights in that some rights are **progressively realised**, or where the state does not have immediate obligations but rather obligations to work towards achieving the right. States must have policies and plans which are put into action and use the **maximum available resources** available to them. Some argue that economic, social and cultural rights are not real rights like civil and political rights because they are rather **goals or ambitions** rather than rights. Also, because it is difficult to define state obligations towards progressive realisation it is difficult to **define a violation of economic, social and cultural rights**. For many rights such as work, health and food the **person is primarily responsible** for meeting their economic, social and cultural rights, but in some cases the state has a duty to fulfil the right, if that person is unable to meet the right themselves. For this reason, it is argued that economic, social and cultural rights are **non-justiciable**, or they are difficult to put through the justice system, but there are many examples to show this is not true.

An important category of economic, social and cultural rights is **livelihood rights**, or the rights to food, water, housing, education and health. States must ensure these rights are **available**, **accessible**, of an **acceptable standard** and **appropriate to people's needs**.

Culture and Human Rights

Cultural rights are much debated in the field of human rights protection. The definition of a culture is unclear and culture is often politicised by States. Cultural rights occur in many parts of the ICESCR and ICCPR, for example in religious rights, minority rights and freedom from discrimination.



The UNTL HRC is proud to be a member of the civil society forum organized by the United Nations in Timor-Leste



Focus on



Report



Discussion



CHAPTER 4

Human Rights Protection: The United Nations
and the International System

4.1 INTRODUCTION

The most significant international body protecting human rights is the United Nations (UN), which has promoting and protecting universal human rights as one of its mandates. This chapter examines human rights at the UN in three areas. The first section will examine how human rights are protected across the major bodies such as the General Assembly and Security Council. The second section will look at the Human Rights Council, the main political body managing human rights at the UN. The third section will examine the treaty bodies, which are committees that manage individual human rights treaties.

4.2 HUMAN RIGHTS IN THE BROADER UNITED NATIONS SYSTEM

Human rights are promoted and protected in many parts of the UN. The most important bodies are the six 'organs', meaning the six most important parts of the UN. Though no organ has a human rights specific mandate they all deal with human rights issues on a regular basis. Five UN organs will be addressed here (since the sixth organ is no longer active):

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

4.2.1 The Security Council

The UNSC consists of 15 members: five permanent members (China, France, the Russian Federation, the United Kingdom and the United States of America) and ten non-permanent members elected for a two-year term by the UNGA. The UNSC's function is to ensure international peace and security, and it can only become involved in situations which are considered a 'threat to international peace and security'. It is a powerful organ because it can make legally binding resolutions and it has powers to punish states which do not comply with its resolutions. These powers include putting sanctions on states, the use of peacekeepers and the use of force.

Given that conflict always involves threats to people's human rights, the UNSC addresses human rights concerns. Though, it is only in the past 30 years that human rights are regularly addressed by the UNSC, in particular after the Cold War in 1991 when the UNSC considered that any 'gross and systematic human rights violations' are threats to international peace and security, which empowers it to act. This change in definition meant the UNSC could enter countries without their approval, if gross and systematic violations were occurring. Examples of this include actions in Iraq, Somalia and the Former Yugoslavia (all in the early 1990s), where the UNSC authorised the use of military force.

The UNSC can respond to human rights violations in conflict situations by providing peacekeepers, authorising the use of force or establishing transitional authorities to manage a country's passage from conflict to peace. This was the case with the United Nations Transitional Administration in East Timor (UNTAET), established in 1999 by the UNSC Resolution 1272. UNTAET was responsible for the administration of East Timor until its independence in 2002. The UNSC can

also protect human rights by referring cases to the International Criminal Court (ICC) which can try people who have committed serious crimes such as genocide, war crimes or crimes against humanity. The UNSC responds to violations by producing resolutions which recognise or improve the protection of vulnerable groups. Examples include resolutions on protecting women in conflict, on child soldiers and on civilians caught in a conflict situation.



Focus on: United Nations Security Council Resolutions on Timor-Leste

There have been around 30 UNSC resolutions on Timor Leste. The first was in 1975 and the most recent in 2012. The resolutions are legally binding. Most of them are the extension of UN operations in Timor, though they also include the following important resolutions:

Resolution 384. Adopted 22 December 1975.

The first resolution on Timor-Leste just after the invasion by Indonesia. It calls on all parties (including Portugal, which wrote a letter to the UNSC triggering the resolution) and Indonesia to recognise the rights of the Timorese people to self-determination. This was followed by Resolution 389 requesting Indonesia's withdrawal.

Resolution 1246. Adopted 11 June 1999.

This resolution established the United Nations Mission in East Timor (UNAMET) to organise and conduct the referendum for independence in August that year.

Resolution 1272. Adopted 25 October 1999.

This resolution is in response to the post-referendum violence. It establishes UNTAET, with numerous functions including providing security, developing social services. It also includes finding those responsible for the violence during the independence movement, with the establishment of the Serious Crimes Unit (which was then closed in Resolution 1543).

Resolution 1414. Adopted 23 May 2002.

In this resolution, the UNSC recommends to the UNGA that the Democratic Republic of East Timor be admitted to membership in the United Nations. UNSC approval is necessary for any state to enter the UN,

Resolution 2037. Adopted 23 February 2012.

The last resolution by the UNSC. It closes the UN Mission in Timor-Leste at the end of 2012. After this, UN activities in Timor-Leste move from the UNSC to other parts of the UN like the United Nations Development Programme (UNDP) and Office of the High Commissioner for Human Rights (OHCHR).

4.2.2 United Nations General Assembly

The UNGA is the main representative organ of the UN where all members of the UN (193 countries as of 2020) can meet. It discusses all issues relevant to the UN – from the environment to the economy, education and other UN activities. The UNGA meets every September for about three months. Other times of the year it may meet as a UNGA subcommittee, for example for the budget. The UNGA can influence human rights in a number of ways. It may authorise resolutions on human rights, but because it does not have the same power as the UNSC to pass legally binding resolutions, they are considered more as recommendations. These resolutions may propose how human rights will be promoted and protected by the UN on various topics (for example, ending the death penalty). The UNGA can shame countries with bad human rights records by passing resolutions to criticise them. Similarly, it can call on the UNSC or other bodies in the UN to conduct more research or activities on those countries with poor human rights records. Finally, human rights treaties are approved and become open for signature by state members at the UNGA. So, although the UNGA does not seem as powerful as the UNSC, it is able to influence and direct human rights policy at the international level.

UN General Assembly admits Timor-Leste as 191st member on 27 September 2002



The flag of Timor-Leste is raised in a special ceremony to mark the occasion at United Nations Headquarters New York.

4.2.3 International Court of Justice

The ICJ, sometimes called the world court, has the duty of managing international law and is central in deciding how international law is understood and arbitrated. It mainly does this in two ways: firstly by issuing advisory opinions, commonly in response to a question given to it by a body in the UN (for example, by the General Assembly of the UNSC); and secondly by settling a dispute between countries.

The ICJ has contributed to the understanding of human rights by its decisions on self-determination. In one such case which reached a decision in 1995, Portugal (the colonial administrator of Timor-Leste) brought a case against Australia for entering into an agreement with Indonesia regarding its rights to gas fields in Timor-Leste's territory. Portugal argued that the people of Timor-Leste (and Portugal) should be the ones to benefit from the gas fields, not Australia. Another case relating to human rights concerned the legality of Israel's wall around the Pales-

tinian territory. The ICJ decided the wall was a violation of various international obligations, including freedom of movement.



Focus on: Timor-Leste at the International Court of Justice

There have been two cases involving Timor-Leste at the ICJ.

***Portugal v Australia*¹**

In this case Portugal claimed that a treaty between Australia and Timor-Leste over maritime areas was illegal because neither Timor-Leste nor Portugal were part of the treaty. The court did not give a judgment on this because Indonesia was not in the case, though it did acknowledge that Timor was a 'non-self governing territory'.

***Timor-Leste v Australia*²**

Timor-Leste complained about Australia Security Intelligence Organization seizing documents belonging to Timor-Leste. The documents seized from the offices of one of its legal advisers were about negotiations on the Timor Sea Treaty. The ICJ decided that Australia should ensure that the content of the materials may not be used to the disadvantage of Timor-Leste, but in the end an 'amicable settlement' was made between Australia and Timor-Leste and the case closed.

4.2.4 The UN Secretariat

The UN Secretariat is the body which administers the UN; it enables the UN to function smoothly from overseeing basic duties such as the cleaning of rooms to the more challenging task of putting together peacekeeping forces. The UN Secretariat is managed by the UN Secretary-General (UNSG), the person elected to head the UN. One power possessed by the UN Secretariat relevant to human rights is the appointment of special representatives, who report to the UNSG on human rights concerns. These representatives can focus on thematic or geographic human rights issues, depending on their mandate. They can facilitate negotiations and investigate human rights violations on behalf of the UN Secretariat.

4.2.5 The Economic and Social Council (ECOSOC)

The main area of ECOSOC's concerns is economic and social development, however, it can establish institutions to manage human rights, the most important of which is the Human Rights Commission. Alongside this commission are the Commission on Women, and the Permanent Forum on Indigenous Issues, which also work on human rights. The Human Rights Commission (replaced by the Human Rights Council in 2006) will be discussed in the next section.

4.2.6 Other Bodies

The UN has many funds and programmes which work on human rights issues. Some of the more important include:

¹ East Timor (Portugal v Australia) (Judgment) [1995] ICJ Rep 90.

² Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v Australia) <https://www.icj-cij.org/en/case/156>.

- UNICEF, which was initially established to help children in the aftermath of World War II. Its activities have diversified to health, education, and child rights. In Timor-Leste, the main focus has been on child survival and child development, quality education, child protection and child participation, and social inclusion.
- UN-Women, which promotes women's empowerment through areas of action such as violence against women, peace, leadership, and economic empowerment. In Timor-Leste, UN-Women works in the following areas: gender-responsive planning and budgeting, women in politics, implementation of the convention on the elimination of discrimination against women, as well as women, peace and security.
- UNDP is the UN's largest development agency. In Timor-Leste, UNDP focuses on: economic empowerment, democratic governance, sustainable development and resilience and gender equality.

4.3 THE UNITED NATIONS HUMAN RIGHTS BODIES

UN bodies are most commonly categorised into two groups: (1) **charter bodies** (set up by the Charter of the UN (the UN Charter)),³ and (2) **treaty bodies** (attached to human rights treaties). An important difference is that charter bodies receive their power from the UN Charter, so they are relevant to all state members of the UN who must follow the UN Charter. Treaty bodies are only relevant to those states which have ratified the treaty. Each treaty has its own body, and these work separately from other treaty bodies, and from the Human Rights Council (HRC). This chapter will first look at the main charter bodies, before turning to treaty bodies.

Table 4-1: Major Differences Between Charter Bodies and Treaty Bodies

| | Charter Body | Treaty Bodies |
|-------------------------------------|--|---|
| Established by | UN Charter | Human rights treaty |
| Scope | Human rights according to the UN Charter | Human rights as outlined in the treaty |
| States in compliance | Members of the UN | States which have ratified the treaty |
| Mechanisms to examine states | Special procedures: special rapporteurs, universal periodic reviews, complaints procedures | State party reports, individual complaints, site visits |
| Composed of | Representatives from state members of the UN | Individual experts nominated by state parties |

4.3.1 Charter Bodies: The Human Rights Council

The HRC, known as the Human Rights Commission till 2006, is the main charter body. States meet at the HRC to discuss human rights, pass resolutions and initiate a number of activities to protect human rights. Currently, they meet at least three times a year. There are usually many issues on the agenda, including discussing the protection of human rights, special human rights concerns (such as older persons or genocide) and listening to reports from experts appointed by the HRC.

The HRC is a political body because it is made up of 47 state representatives. This differs from the individuals on the treaty bodies who make decisions based on their expertise and not be-

³United Nations Charter (adopted 24 October 1945) 1 UNTS XVI.

cause of the state they represent. Since the HRC is political, there will be both limitations and benefits. It is important for states to give their views on human rights as they are bound to respect them by the treaties they have ratified, and they alone have legal obligations towards human rights. Ideally, states will gather to discuss how to promote human rights, how to engage with states that have violated human rights and how to enforce human rights standards. However, some states can be skilled at avoiding human rights concerns and can let politics influence their attitude to human rights. For example, states often avoid criticising each other on their human rights record, knowing if they do so, other states may criticise them. Similarly, a state's politics may often influence decisions on human rights, especially around politically sensitive concerns, such as the issue of Palestine, or the rights of lesbians and gays.

4.3.2 Human Rights Council Actions to Promote and Protect Human Rights

The HRC has a number of tools it can use for the promotion and protection of human rights. For example, **special procedures** – people who can report on human rights concerns – are often used to monitor human rights. Other mechanisms include the Universal Periodic Review (UPR) and a complaints procedure against states which systematically violate human rights. These activities are detailed below.

Universal Periodic Review

The UPR examines every country and reviews all core areas of human rights. The UPR is a mandatory review process in which each UN member state must have their human rights record examined every four years. The review covers human rights listed in the Universal Declaration of Human Rights,⁴ human rights treaties agreed to by the state and other voluntary commitments. During the review, the state publicly discusses the status of human rights in its country and responds to comments and criticisms from other states. The review process begins with the submission of three documents:

1. **UN information:** A ten-page compilation of UN information, which outlines the country's human rights situation from the UN's perspective. This may include information from special rapporteurs, human rights treaty bodies and other UN entities such as UNICEF or UN-Women.
2. **Stakeholder report:** A ten-page report from civil society (and in some cases national human rights institutions) which is mainly done by non-governmental organisations (NGOs) and other similar bodies. Often, NGOs will meet to plan the content of the report and decide the key issues to be included in the ten-page summary.
3. **State report:** A 20-page report prepared by the state under review, which can take the form of a 'national report'.

The review process takes place at the HRC in Geneva. A delegation of the state under review gives a presentation on its human rights situation as discussed in the report and receives a number of questions and statements from other states in a session called an 'interactive dialogue'. This term implies the review is not meant to criticise or punish states, but rather constructively discuss how to improve human rights. After the dialogue, an outcome document is written which gives recommendations to the state. The recommendations are not binding, but may carry political weight. The state may also choose to either accept or reject the recom-

⁴Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

mendation. Though civil society members may attend, they are not permitted to ask questions. However, they may participate by advocating with sympathetic states to take on their ideas and requests.



The Second Cycle of Timor-Leste UPR Reports Related to Ratification of UN Human Rights Treaties

A. Reports

State Report

The preparation of the second cycle of the UPR was led by the Ministry of Justice and supported by human rights focal points from relevant ministries such as: Education, Health, Social Solidarity, Defense and Interior, Foreign Affairs and Cooperation; secretaries of state (for the Socio-Economic Support of Women and for Professional Training and Policy and 12 human rights focal points from the municipalities and the Special Administrative Region Oé-Cusse). Furthermore, as part of the preparation process before elaborating the draft state report, the technical team conducted public consultations at the municipalities level and at the national level. During the drafting process the technical team faced challenges in data collection and slow responsiveness from relevant ministries.

The state report asserted that Timor-Leste is carrying out efforts to comply with its commitment to international human rights instruments, as stated in its national reports and is currently preparing resources (human and financial) and endeavouring to increase their institutional capacity to ensure that these international instruments are implemented in the future when the Convention on the Rights of Persons with Disabilities (CRPD)⁵ and its Optional Protocol⁶ is signed and ratified, as recommended by the HRC.

UN Compilation

The UN country team in Timor-Leste noted that, during the first UPR, Timor-Leste had indicated that it planned to ratify CRPD, but that it had not yet done so. The Committee on the Elimination of Discrimination against Women encouraged Timor-Leste to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)⁷ and the CRPD. The Committee on the Rights of the Child recommended that Timor-Leste ratify the Optional Protocol to the Convention on the Rights of the Child (OP-CRC-IC)⁸, CRPD and ICPPED.

⁵ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

⁶ Optional Protocol to the Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2518 UNTS 283.

⁷ Convention for the Protection of All Persons from Forced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3.

⁸ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227



Summary of Other Stakeholders' Information

There were around 15 human rights organisations also submitting reports which were compiled by the OHCHR. This includes:

National human rights institution reports

During the second UPR cycle, the Office of the Provedoria for Human Rights and Justice (PDHJ) also submitted a report to the Human Rights Council. PDHJ noted that Timor-Leste had not ratified the CRPD and the ICPPED. The PDHJ recommended that Timor-Leste ratify the latter treaty immediately.

NGO reports

Reports were received from international NGOs like Amnesty International, which noted concerns around arbitrary arrests, to local NGOs such as the Association for Disability Timor-Leste which requested ratification of the CRPD. Other NGOs provided submissions on lesbian, gay, bisexual and transgender rights, women's rights and the right to food.

B. List of recommendations

Timor-Leste received about 160 recommendations. Among them are recommendations from:

- Many states, including Japan, Angola, Bulgaria, Turkey and Pakistan, recommended that Timor-Leste should ratify the remaining important international human rights treaties, the CRPD and the ICPPED.
- Ukraine recommended that Timorese migrant workers be allowed to vote from overseas.
- Thailand recommended to provide adequate health and education facilities for all.
- Japan and France recommended to protect freedom of expression, especially in the new media law.
- Indonesia recommended a national human rights action plan and for Timor-Leste to ratify the CRPD.

Special Procedures

Special procedures can take a number of forms, but they all involve the appointment of a person or group of people to investigate specific human rights concerns. This can occur as an investigation of a specific country or an investigation of a specific type of right violation. The investigation may be done by a single person (an individual expert or special rapporteur), or it may involve a group of people (a working group). Most procedures are about a specific right (like the Special Rapporteur for Adequate Housing) but some are for countries (like the Special Rapporteur for Myanmar).

Special rapporteur, experts and working groups of the HRC are independent and do not represent any country. This autonomy brings both credibility and challenges. Their reports are considered highly because the experts are known to be indepen-

dent and free from political influences. However, this independence of special procedure holders can make it difficult for them to get invitations to visit countries they wish to investigate. Typically, a written request is made to the state, and if the state agrees, it issues an invitation. The disadvantages of this procedure can be seen in the cases of North Korea and Myanmar whose rapporteurs were granted few (or no) chances to visit the country in the previous decade.

Like reporters or researchers, special rapporteurs collect information and develop reports by visiting countries for further investigation. In addition, they may assess and offer advice on the status of human rights. Their mandate allows for the examination, monitoring, advising and public reporting of the situation. They may respond to individual complaints, conduct studies, start promotion and awareness activities, and provide any technical assistance which may be needed. In practice, special procedures are usually used for responding to urgent appeals as they are the quickest way to respond to urgent rights issues such as a disappeared person or threats to someone's life.⁹



Focus On: Visit to Timor-Leste by the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz in April 2019⁹

When the Special Rapporteur visited Timor-Leste she made a number of recommendations including:

- Improving access to justice for indigenous groups by improving the mobile court system and having more interpreters.
- Improve indigenous women's legal rights through a constructive dialogue between formal and customary justice systems.
- To address disputes and conflicts in relation to land. The government should protect the traditional ownership of the Timorese to their lands and prioritise the adoption of the laws complementary to the Land Law. This includes recognising the equal right of women to own property. Any evictions should be fully in line with international human rights obligations.
- To ensure indigenous people get their right to education, the government should increase the budget for building schools and educational materials. It should also avoid the loss of languages and protect mother tongues in Timor-Leste by, for example, including the use of the mother tongue in schools.

Complaints Procedure

The HRC can also use other procedures to investigate countries with poor human rights records. Since 2007, in cases where it is considered that there are 'gross and reliably attested violations of human rights and fundamental freedoms', the HRC will take individual complaints and then may make a confidential investigation. This investigation only applies to 'gross' violations, which means the violation must be severe. The HRC will not investigate individual violations or situations where it is unclear the state has played a role in them. Further, this process is confidential, meaning the HRC is required to investigate behind closed doors and the discussion is not released to the public.

⁹ HRC 'Visit to Timor-Leste Report of the Special Rapporteur on the rights of indigenous peoples' (2 August 2019) A/HRC/42/37/Add.2.

The HRC plays a key role in promoting and protecting human rights within the UN system. Although it is careful and limited politically, as a body composed only of states monitoring the human rights standards of other states, the activities of the HRC have started to show a difference in human rights standards. Human rights obligations cannot be avoided by states anymore.

4.4 THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

The task of managing human rights activities at the UN and of assisting states to comply with their obligations at the UN is undertaken by the OHCHR. The OHCHR is headed by the High Commissioner who is appointed by the Secretary-General.

Many ongoing activities take place at the OHCHR including movements to mainstream human rights within the UN system and to provide a strong voice to protect human rights. In addition, it provides assistance to governments, such as expertise and technical training, to enable them to meet their human rights obligations. It also coordinates human rights activities within the UN, and supports human rights bodies, for example, by coordinating the UPR. The OHCHR also carries out education activities, public information and advocacy on behalf of the UN. Unlike the HRC, it is not comprised of state representatives, but of individuals with expertise in human rights.

The OHCHR is notable for its field presence, with 25 country and regional offices around the world. In Southeast Asia, the regional office is based in Bangkok. Timor-Leste has a Human Rights Adviser's Unit (HRAU) which is part of the OHCHR. It was established in 2013 and it assists government and civil society in promoting and protecting human rights.

4.5 TREATY BODIES

When the treaty comes into force (that is, when enough countries agree to it), one of the main results is the creation of a committee, whose job it is ensure states comply with their treaty obligations. Treaty bodies are created from human rights treaties – their formation, mandate and rules are detailed within the treaties themselves. While charter bodies are often composed of state representatives, treaty bodies are made up of independent individual experts. Normally, members of a treaty body are human rights experts, like lawyers, diplomats or NGO workers. They are nominated by state parties to the treaty, but their position is independent from the state (which ensures governments cannot control them). These bodies meet three to four times a year in Geneva. Treaty bodies carry out a number of activities which vary from treaty to treaty. The rest of this section will detail treaty body activities and discuss how they protect human rights.

4.5.1 State Party Report

When a state agrees to a treaty, it also commits to writing a periodic report, in which the state details how it is meeting its treaty obligations. States must describe the steps, such as legislative, judicial, policy and other measures, which they have taken to ensure the rights from the treaty are protected. The state party report is usually a large document, sometimes nearly 200 pages long, which responds to the treaty, article by article. The report should explain how rights in the treaty have been put into domestic law, how many people enjoy the right in that

country and other activities it has done to ensure the protection of the right. Typically, states are expected to submit an initial report one or two years after ratification, after which the reporting becomes periodic (usually every four or five years). However, this is a hard task, and unsurprisingly, many states are reluctant to do the research and admit they are not complying to the treaties. The result is that many states are late with their reports.

Table 4-2: Timor-Leste and State Party Reports

| Human Rights Conventions | Timor-Leste submitted report | Overdue |
|--|---|---------------------|
| International Covenant on Civil and Political Rights (ICCPR) ¹⁰ | | Ten years |
| International Covenant on Economic, Social and Cultural Rights (ICESCR) ¹¹ | | Ten years |
| Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ¹² | Initial report, 2 nd and 3 rd combined report | |
| Convention on the Rights of the Child (CRC) ¹³ | Initial report (2009) 2 nd and 3 rd combined report (2015) | |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) ¹⁴ | Initial report (2017) | |
| Convention on the Protection of the Rights of All Migrant Workers (CMW) ¹⁵ | Initial report (2014) Progress report (2015) | |
| International Convention on the Elimination of All Forms of Racial Discrimination (CERD) ¹⁶ | | Less than ten years |

Once a report is submitted, it is read by the treaty body members who will meet with the state to discuss its progress. Because reports are a form of self-assessment, states often do not share information of human rights violations or make claims about high standards which may not be true. This is why treaty bodies allow independent stakeholders, such as NGOs, to submit their own reports (called 'shadow reports') to give an independent view. The actual review is a session in which the treaty body meets representatives from the state party at the OHCHR office in Geneva and the state delegation answers questions from the treaty body in a 'constructive dialogue'. Often the treaty body will raise issues mentioned in the shadow reports and the state may be requested to give further information on violations occurring in its country.

¹⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

¹¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

¹² Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

¹³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

¹⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

¹⁵ Convention on the Protection of the Rights of All Migrant Workers (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3.

¹⁶ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (CERD).



Discussion and Debate: Do Countries Change Because of the State Report Procedure?

DISCUSSION

It may seem that state reports have a limited effect on compliance to human rights. However, they may be used in a number of ways to improve human rights, and many such examples can be found within the region itself. For example, Thailand changed its divorce laws for women as a result of its compliance to both the ICCPR and the CEDAW. The CEDAW treaty body noted that Thailand's divorce laws discriminated against women: it was harder for women to divorce men as they had to prove either adultery or that the male had disappeared for two years; while men had the option of a no-fault divorce. Further, women had to change their surnames to that of their husband. In 2005 Thailand changed these laws.

4.5.2 Individual Communications

In addition to receiving state reports, some treaty bodies may also accept complaints from individuals and state parties. When an individual considers their human rights have been violated, in some circumstances they can complain to the UN. There are many conditions: (1) the state must have ratified the treaty, (2) have allowed individuals to complain and (3) the person must have gone through the state's legal system or equivalent. Timor-Leste allows complaints to the CEDAW, but it has never faced an individual complaint.

4.5.3 The Procedure for Making a Complaint

The individual complaints procedure is a quasi-legal process in which the treaty body gathers information from a person who considers their rights have been violated. The procedure to make a complaint varies slightly between treaty bodies but basically follows this process:

1. The author (or someone representing him/her) submits to the treaty body in writing: the facts of the event, other relevant information and outlines the reasons why they could not get justice in their own country. The rights violated and the failure to get justice must be detailed in the first submission.
2. The committee decides if it has the authority to accept this complaint. In order for a treaty body to consider a complaint, a number of criteria must be reached:
 - a) The treaty needs to be ratified and the state party must have agreed to allow complaints.
 - b) The complaint is not anonymous, so the person whose rights are violated must be clearly identified.
 - c) There is a violation of an article of the treaty, and this must be stated.
 - d) The person has complained to the state without result. This is known as 'exhausting domestic remedies'. In other words, there is no other way the person can seek justice from the state. The treaty bodies will only consider a complaint if all other processes have been exhausted.
3. The treaty body sends the complaint to the state party.
4. The state party responds to the allegations.
5. The state response is sent to the authors to allow them to respond. In some cases, this may be done twice.

6. Once all this information has been gathered, the committee then meets to decide if there is a violation and what should be the outcome. If they find that a violation has occurred, they may ask the state to deal with the problem, compensate the person and change laws or practices to prevent it happening again.

The process itself is slow, and it may take over a year before a conclusion is reached. Emergency complaints are often channelled through other procedures (such as special rapporteurs), where an action may be taken in days rather than years. Because the committee has no binding power, it cannot enforce the outcome of its findings. In many cases, treaty bodies may find a violation has occurred and ask a state to offer compensation only for the state to ignore its suggestion. While these limitations may imply that the complaints procedure is weak and ineffectual, it has some important contributions to offer. Treaty body findings can lead to amendments in the law to ensure human rights are protected (for example, one body found that laws criminalising homosexuality were a violation of rights in *Toonen v Australia* (1992)).¹⁷ It can stop the process to execute someone waiting for the death penalty until a proper investigation has been completed (for example, *Piandiong v Philippines* (1999)),¹⁸ and other cases in Jamaica, Belarus and Kyrgyzstan). Moreover, treaty bodies can introduce a new human rights standard to assist states in the understanding and interpretation of human rights (for example, a recent case clarified situations where access to an abortion was considered a right under *Llantoy Huaman v Peru* (2003-5)).¹⁹

4.5.4 General Comments

Another activity of treaty bodies is to assist states in their understanding of the treaty. This is done by written comments, mostly on specific rights in the treaty. General comments allow for clarification on the exact nature of a state's obligation to the treaty. As an example, the treaty body for the ICESCR has made very useful general comments on the standard of livelihood rights such as food, water and housing. General comments have also provided specific elements to livelihood rights such as availability, accessibility and acceptability.

It is important to note that general comments can expand the scope of a right. For example, water as a human right was included in a general comment as it was not written explicitly in the treaty. General comments also include access to the internet as part of the freedom of expression. However, these modifications to rights in a treaty can lead to arguments among state parties. In particular, the question most asked is: is the general comment legally binding? A main objective of the general comment is to assist the state in understanding rights, and consequently its duties and obligations, when the time comes to report to the treaty body.

4.5.5 Other Procedures

A small number of other activities can be undertaken by treaty bodies to promote and protect human rights, such as inquiries into gross and widespread human rights violations in a country and 'early warning and urgent action' procedures used to stop serious violations which may occur as a result of increased racial tension (such as genocide, communal violence or ethnic cleansing).

¹⁷ Communication No 488/1992 CCPR/C/50/D/488/1992 (1994).

¹⁸ Communication No 869/1999 CCPR/C/70/D/869/1999 (2000).

¹⁹ Communication No 1153/2003 A/61/40 (2005).

CHAPTER SUMMARY AND KEY POINTS

The United Nations and Human Rights

The UN is the most significant body at the international level which protects human rights. It has formalised a system of promotion and protection of universal human rights. States commit to human rights when they become a UN member, though the protection of rights in some cases is difficult to enforce.

Human Rights in the Broader United Nations System

As an international political body, the UN can be highly technical and multi-layered. Human rights are protected by the UN organs, which are the most important parts of the UN. The UNSC plays an important enforcement role, particularly related to 'gross and systematic human rights violations'.

The UNGA gives equal voice to all UN member states on human rights issues, and it is where human rights treaties are adopted and signed by member states. The ICJ gives opinions and interpretations on international law, including human rights law, and it also makes state to state rulings on issues of international law. The UN Secretary-General plays an administrative role when it comes to human rights, and can appoint special representatives. The Economic and Social Council promotes human rights through the UN Charter, primarily by creating human rights bodies. All Southeast Asian countries have been active in the UN and taken roles in many of the organs.

UN Human Rights Charter Bodies

The charter bodies get their legitimacy through the UN Charter. One body is the HRC, which replaced the Human Rights Commission in 2006. The HRC is comprised of 47 states who meet regularly to discuss human rights concerns and implement special procedures. This includes the appointment of mechanisms to report on human rights issues, such as special rapporteurs and working groups. Another very important mechanism is the UPR, where every state in the UN has its human rights record reviewed by the HRC.

The other main charter body is the Office of the High Commissioner for Human Rights, which works on the promotion of human rights through education, human rights research, awareness raising, advocacy, and technical support and expertise to governments.

UN Human Rights Treaty Bodies

The treaty bodies are established when the treaty comes into force. The body is made up of people who give expert advice to the state on how to comply with the treaty. It does this in a number of ways, including reviewing reports made by the state party on implementation of the treaty, clarifying the meaning and function of the treaty by writing general recommendations, and in some cases hearing complaints from individuals or conducting investigations.



The UNTL HRC supports initiatives and partnerships to fight gender based violence



Focus on



Discussion



Definition



Concept



CHAPTER 5

Women's Human Rights

5.1 INTRODUCTION

Societies across the world and throughout history have rarely, if ever, given women the same opportunities as men. Women face discrimination in a number of ways: women are paid less than men for the same amount of work; women frequently face violence; women and girls are discouraged from going to school; women and girls are not given the same importance as men in history, traditions and cultural activities. Over the past decades there has been much advancement towards women's equality in society, but there are still changes which have to be made to ensure women are treated the same as men in every country, including Timor-Leste.



Definition: Women's human rights are human rights ensuring women are treated equally and with dignity. Many women's human rights are about ending discrimination at work, at school or in law. Because women are not treated equally in any country in the world, human rights are necessary to protect women and to address their unequal situation.

5.1.1 Brief History of Women's Rights

There have been debates and movements for giving women more rights throughout history. During the European Enlightenment (17th and 18th century), when an early version of human rights emerged, women's rights were discussed by leading thinkers such as John Locke, Thomas Paine and a pioneer advocate for women's rights, Mary Wollstonecraft. Through the 19th and early 20th centuries, women held conferences and lobbied around issues of war, equality, the right to vote and the prohibition of alcohol. The **Suffragettes**, who were advocating for women's right to vote, are probably the best-known early movement. Women's rights advocates achieved major lobbying successes in the areas of work and protection of women, for example, the International Labour Organization (ILO) supported the principle of equal pay for work of equal value in the preamble of its constitution (1919), while the Charter of the United Nations¹ prohibits discrimination on the basis of sex. These successes show that women have been advocating for their rights at the international level for over a century.

There is also a history of activism for women's rights in Southeast Asia. Feminist pioneers, like Kartini and Dewi Sartika from Indonesia, advocated for the education for girls and women in the late 19th and early 20th centuries. Another important figure at the time was Concepción Roque, who started one of the first women's organisations in the Philippines. She was also an active humanitarian, working on the well-being of mothers and their children, and advocating for prison and labour reform for women and children. By the 1960s, there were numerous women's organisations calling for women's rights throughout the region.

¹ United Nations Charter (adopted 24 October 1945) 1 UNTS XVI.

Women and the Struggle for Independence of Timor-Leste

Female activists and feminists have contributed to women's political participation during the struggle for independence of Timor-Leste. Those women were brave and put much effort into protecting their rights, while also advocating for gender equality. After the Carnation Revolution in Portugal, in 1974, the OPMT (*Organização Popular de Mulheres de Timor* – Popular Organization of Timorese Women) was created by the Central Committee of FRETILIN (Revolutionary Front for an Independent Timor-Leste). Its most prominent leaders included **Rosa 'Muki' Bonaparte, Maria do Ceu Pereira 'Bui Lear', Maia Reis, Aicha Bassarawan** and **Isabel Lobato**. The group's primary goal was to take part directly in the fight against colonialism and 'to eliminate any form of violation and discrimination' suffered by women in colonial society.

Some women joined the guerrilla forces fighting Indonesian occupation, while many more were involved in the clandestine networks supporting the freedom fighters. Some former guerrilla fighters became prominent peace activists, such as **Magdalena Bidau Soares** (Mana Kasian).

Rosa 'Muki' Bonaparte – A Portrait

Rosa 'Muki' Bonaparte is celebrated as the bravest young Timorese female politician, women's rights activist, and independently smart and influential young woman in the history of the country. She was born on 18 February 1957 in Manatuto, a small town on the northern coast. After finishing her senior high school year in a Canossian school, she gained a scholarship to study in Lisbon, Portugal.



Rosa Muki Bonaparte, photo sourced: Facebook

She arrived there in the early 1970s, and got involved in a political movement called Movimento Reorganasative de Proletariat Portuguese (MRPP). She met with other Timorese students at *Casa Timor* in Lisbon, to discuss politics and anticolonial activism. Aware of the difficulties facing her country, she abandoned her studies and decided to return to Timor-Leste, where she joined as a member of FRETILIN's National Committee

around 1974. Furthermore, she was one of the founders of the OPMT and was actively engaged in many activist organisations, also with her male activist colleagues, until the day she was captured and executed by the Indonesian Army in December 1975.

In the 1960s and 1970s, there was a broad social movement in the West called the '**women's liberation**' movement. It called for women to be liberated from the unfair structures of society such as marriage and unfair labour laws. Influential feminists at this time include Simone de Beauvoir,

Gloria Steinman and Betty Friedan. These movements for women's equality were influential in the United Nations (UN), which chose 1975 as International Women's Year, followed by an International Decade for Women.

5.2 UNDERSTANDING DISCRIMINATION AGAINST WOMEN

Human rights began the task of addressing women's inequality by eliminating discrimination against women in the Convention on the Elimination of Discrimination against Women (CEDAW)² which was adopted in 1979. In order to understand discrimination, we will start by differentiating between two terms people often mix in everyday life, 'sex' and 'gender'. We will show why not distinguishing between these concepts can contribute to discrimination.

5.2.1 Sex and Gender

Simply put, '**sex**' refers to the physical and biological characteristics of men and women, while '**gender**' refers to the social roles men and women play in society. Sex is biologically determined according to the physical and biological characteristics of someone's body. Gender is the expected role a male or female plays in society, and the values associated with that role. From birth and throughout their lives, society imposes specific characteristics, roles and tasks to men and women. These may be traditional values, for example, men are expected to be strong, and women to be mothers. Different cultures give different roles and values to men and women. However, what is similar across cultures is that these roles are given according to the biological sex of the person, even though the roles and values have little to do with biology. Instead, they are socially constructed. Consequently, if gender is socially constructed, so is inequality.

5.2.2 Linking Discrimination to 'Sex'

A common assumption is that the sex you are born will automatically determine how you talk, walk and think. People born of one sex are forced to play the gender roles associated with that sex. However, many of the values and beliefs of those gender roles are discriminatory. For example, the belief is that men are physically strong and rational. They are expected to be the breadwinners in the family, the protector, the leader and the decision-maker. According to this belief, their primary domain is the public, in the world of work outside the home and in politics. On the other hand, the belief is that women have motherly instincts, so their roles are centred on emotions, relationships and care. For example, women are expected to be mothers who primarily have duties to care about children, the sick and elderly in the family. These views are disempowering for women as they restrict women to the domestic sphere, and give men freedom and privilege.

Ideas about these gender roles are based on the physical differences between the bodies of men and women. The fact that men are bigger and women give birth is used to explain the division of labour between men and women and the value given to the work they do. However, physical differences have very limited significance in modern societies. Physically, women can be very strong. For example female weight lifters at the Olympics can lift much heavier weights than most men. Men can take care of babies, shown by a recent trend of 'stay at home dads' in

²Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

some countries. Women can be aggressive, decisive and ambitious. Many people believe that treating women differently is justified by nature, when really it comes from social values.

Societies invent a gender role for males and females to perform. An example of **socially constructed roles** is clothing and appearance. Nowadays men wear pants and women wear dresses, but these conventions are socially constructed. In parts of Southeast Asia, for example, men can wear sarongs. Similarly, in Timor-Leste, *kabala tais* is part of men's traditional attire. In fact, in most Southeast Asia countries gender differences in appearance were almost non-existent, unlike in Western societies where they were strictly differentiated. In Western societies, women have always worn dresses. They began to wear trousers, sometimes as a form of protest, around the 1920s. However, in 19th century Siam (Thailand), women's clothing was very similar to that of men. Foreigners visiting Siam at this time found it difficult to differentiate between men and women. Both had short hair, wore the same clothing and shared similar names. The point here is that how gender is determined, whether it is through clothes, language, or other status, is a cultural process, not a biological one.



Concept: Socially Constructed Roles

If a role is socially constructed, it means that society has invented it, and it does not come from nature or biology. The role of the mother is often considered to be biological, because women give birth to babies. Yet, women who are not biological mothers can still play the role of mothers to their adopted babies. Different societies see motherhood differently, for example a good mother could be very strict to the children in some places, and very caring and kind in others. This shows that the role of motherhood is socially constructed.

The process of imposing gender roles should be confronted to eliminate discrimination. Institutions such as the family, schools, workplaces, religious institutions, government and the media play an important role in deciding what males and females should be good or bad at, or how they should look. They use a system of rewards and punishments to socialise a person into the roles of male and female. So, for example, schools sometimes teach different subjects to boys and girls. Parents buy children different toys according to their sex. The media highlights what beauty looks like. It is important to note that institutions pressure both men and women to follow gender conventions.

The objective of these pressures is to make men's and women's behaviour fit society's expectations. There are negative impacts of this process. In the worst cases, women end up feeling weaker and inferior to men, and men are taught not to show emotions and to act aggressively. Men and women who do not act in accordance with the gender norms and practices of their society may be exposed to various forms of discrimination, social pressure, shame and abuse. For example, women who experience sexual violence may be blamed because of the clothes they wear. Boys are called weak if they cry. Within this process human rights violations can occur, because the pressure or violence people face to perform their gender violates their safety and security.



Discussion and Debate: Traditional Gender Roles in Timorese society

Traditionally, Timor-Leste's society has faced great challenges in securing women's human rights and gender equality. For example, strict division of gender roles in domestic work is still present in the family. In the traditional mindset, men and boys must never be in the kitchen washing dishes or preparing meals, because the responsibility of taking care of the household is still considered a woman's job.

It is also assumed that only men can fully access public positions and be free to engage in public spaces, without any restriction or discrimination. Women are still restricted only to being a mother and taking care of the children in the family. Even though the contemporary mindset introduces different interpretations of gender roles, the majority of the Timorese people still rely on traditional values and existing social constructs.

- How do the current generation of university students see this gender division?
- Do many students believe that men make better politicians? Or that women should stay at home to look after children?
- Is there a different view between male and female students on the role women play in society?

5.3 THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

CEDAW is an important development in protecting women's human rights. Its key message is that women and men should have equal rights in all aspects of their lives. It defines what discrimination is and how states could fight such discrimination. It presents the different areas on which governments should focus to achieve equal rights for women. States which ratify CEDAW are committed to amend their national laws to guarantee women's equal rights and to provide opportunities and remedies where gaps exist. They must submit a report every four years to show their progress in implementing the treaty obligations. The treaty established the Committee on the Elimination of Discrimination against Women to monitor state compliance with CEDAW. CEDAW is a historical achievement for women around the world, because it became the main international standard to measure the treatment of women.

In ratifying CEDAW, states have duties to:

- **Change laws or introduce new laws:** to incorporate the principle of equality and non-discrimination of men and women, abolish all discriminatory laws and practices, and adopt appropriate measures to prevent discrimination against women;
- **Ensure access to justice:** to ensure the effective protection against discrimination through courts and similar institutions;
- **Develop programmes to accelerate equality:** implementing temporary special measures to help achieve equality (for example reserving seats for women in government);
- **Modify culture:** to change cultural and traditional practices and attitudes including stereotypical roles of women and men.

CEDAW creates obligations on states to work towards the equality of women, whether this is with government bodies or the private sector. It identifies at least 12 areas of discrimination directly: culture, law, trafficking, politics, international politics, nationality, education, health, economics, rural women, marriage and family. Further, CEDAW supports giving women information on family planning and supports equal pay for equal work.

CEDAW has near universal ratification. Currently, only six countries have not ratified the convention (Iran, Palau, Somalia, Sudan, Tonga and the United States of America). All Southeast Asia countries are state parties. Timor-Leste ratified CEDAW in 2003, without any reservations. This means it has committed to fully comply with it.

5.3.1 Non-Discrimination in the Convention on the Elimination of All Forms of Discrimination against Women

Discrimination can occur in two ways: as a product of laws (*de jure* discrimination) or discrimination in reality (*de facto* discrimination). Laws that do not give women equal marriage rights to men or restrict women from certain jobs are examples of *de jure* discrimination. *De facto* discrimination occurs where even though there are no laws discriminating against women, the reality is that women do not have equality. For example, even though there are no laws restricting girls from going to school or women from entering formal politics in Southeast Asia, in these countries there are fewer girls in school and fewer female politicians.

5.3.2 Concept of equality in the Convention on the Elimination of All Forms of Discrimination against Women

To address discrimination effectively, eliminating discrimination should result in the equality between men and women. However, there are different views of what equality means.

The **formal model of equality** is based on the understanding that men and women are the same, and therefore should be treated the same. Thus, if men can vote and compete in elections for public office, women should have the same opportunities. However, this model does not take into account different gender roles. For example, although the law recognises that both men and women have a right to be a politician, social conventions expecting women to stay at home may restrict them from participating in the public sphere.

The **protectionist model of equality** recognises the differences between the positions of men and women in society. However, to protect their interests, it uses those differences to impose restrictions against women. For example, if women are working at night this may appear dangerous because women may be vulnerable to sexual harassment and danger at night. The protectionist model recognises that the social environment may not be safe for women at night, so it would prohibit such work for women to protect them. However, the impact may be that some employers will not want to hire women, as these restrictions would burden the other employees. As a result, women will have fewer opportunities in employment.

The **substantive model of equality** recognises that the unequal position of women is due to discriminatory policies and practices. It also recognises that gender roles act as a barrier preventing women from achieving parity with men. This approach calls for the elimination of such barriers by creating conditions to offer women practical help to achieve substantive equality with men. Taking the earlier example, the substantive model would require states to pass laws requiring employers to provide safe transport to women and/or engage adequate numbers of

security guards in the work space for night workers. It might also call upon states to take steps to make public transport and roads safer during the night, for example by increasing police patrols, introducing better lighting and better connectivity in terms of public transport etc.

CEDAW uses a substantive equality approach based with both *de jure* and *de facto* equality between women and men. It is not enough to ensure laws promote equality – the result of the laws, and the practice in society, must ensure equality and non-discrimination.



Concept of equality in the National Constitution of Timor-Leste (C-RDTL)

It is important to remember that the constitution places special emphasis on the equality between men and women. In a number of articles, the constitution does highlight special rights or protection for women. For example:

Article 6.j (Objectives of the state): to promote an effective equality of opportunities between women and men.

Article 16.1 (Universality and equality): All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties.

Article 17 (Equality between women and men): Women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life.

Article 39.4 (Family, Marriage and Maternity): Maternity leave is protected at the Timorese workplace.

Article 50.1 (Right to Work) Every citizen, regardless of gender, has the right and the duty to work and to choose freely his or her profession.

Furthermore, the Timorese Penal Code and Civil Code also contain provisions protecting women.

CONCEPT

5.3.3 State Obligations in the Convention on the Elimination of All Forms of Discrimination against Women

State parties to CEDAW are obligated to ensure their laws and activities relating to women result in the elimination of discrimination. Like with all other human rights treaties, state parties have the duty to **respect**, **protect** and **fulfil** women's human rights. The obligation to **respect** refers to the obligation of the state party to ensure that it does not violate women's rights. The obligation to **protect** refers to the obligation to prevent violations by non-state actors (such as companies, schools or husbands), and the duty to investigate, punish and compensate for violations when they do occur. The obligation to **fulfil** refers to the state obligation to create enabling conditions for all women to enjoy their human rights.

The General Recommendation from the United Nations Committee on the Elimination of Discrimination Against Women to Timor-Leste (2015)³

Examining Timor-Leste's obligations as a state party to CEDAW, the CEDAW Committee made a number of recommendations in several key areas:

- Violence against women and domestic violence: The Committee recommends to the state to ensure that the Domestic Violence Law and the National Action Plan on gender-based violence be strictly implemented. This is to guarantee the victims of domestic violence or any other forms of violence access to their rights. The Committee called upon the state to strictly consider rape cases as a crime in the Penal Code and through the domestic violence law itself. Also, the Committee continued to emphasise the role of the state to protect victims of domestic violence and ensure that the perpetrators are adequately punished.
- Women's political participation and access to justice should be guaranteed by the state. The state should promote comprehensive legislation on gender equality, including serious consideration to enact legislation that should guarantee the enjoyment of women's rights, instead of using traditional system practices which disvalued women's rights.
- Eliminating discrimination and other stereotypes or social practices that disvalue women's rights, including those related to marriage, such as bride price and polygamy.

5.4 PROTECTION MECHANISMS FOR WOMEN'S RIGHTS

The protection of women's rights at the international level is found in the treaty bodies, with an Optional Protocol allowing for complaints and investigations. Further, the UN has established a number of bodies to protect women's rights. There are also mechanisms at the regional level in the Association of Southeast Asian Nations (ASEAN).

5.4.1 Treaty Body Protection Mechanisms: The Optional Protocol

An Optional Protocol to CEDAW (OP-CEDAW)⁴ came into force in 2000. It does not create new rights but is a procedure for people to claim their rights. In Southeast Asia, only four countries have ratified the OP-CEDAW, one of which is Timor-Leste.

³ Committee on the Elimination of Discrimination against Women, 'Concluding observations on the combined second and third periodic reports of Timor-Leste' (24 November 2015) CEDAW/C/TLS/CO/2-3; UN Press Release, 'Committee on the Elimination of Discrimination against Women considers the report of Timor-Leste' (11 November 2015) <<https://www.ohchr.org/en/press-releases/2015/11/committee-elimination-discrimination-against-women-considers-report-timor>> accessed 28 June 2022.

⁴ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83.



Focus on: Individual Communication to the United Nations Committee on the Elimination of Discrimination Against Women

In 2015 an anonymous woman, represented by Asisténsia Legál ba Feto no Labarik (Women's and Children's Legal Aid), made a complaint to the CEDAW Committee that her rights under CEDAW were not recognised by the Timorese government. The woman was married to a member of the defence force, who would frequently return from base drunk and abusive. She made complaints to the defence force and to the local police, neither of which helped her. The defence force did get the husband to sign a declaration saying he would stop the beatings, but they also said the problem is common, using a Timorese saying about violence between spouses that 'the plate and spoon hit each other'. Her beatings became worse, and eventually fearing for her life she stabbed and killed her husband in self-defence. She was arrested and detained. During her trial, she was represented by four different lawyers. The fact that she was regularly beaten was not submitted before the court, and judges made biased statements. After two retrials, she was eventually released on parole after being detained for seven years.

The CEDAW Committee found that her rights had been violated.⁵ The state had a duty to protect her from violence, which they failed to do on numerous occasions. Her complaints to the police, the village leaders and to the defence force were not taken seriously. They recommended the government to provide training to judges, prosecutors, lawyers and law enforcement officials on domestic violence. Further, the legal system should be investigated for structural failures leading to victims of domestic violence not getting protection.

5.4.2 Women's Organisations at the United Nations

UN Women is the umbrella UN organisation dealing with women's issues. It currently gives priority to three issues: violence against women, women's political participation and economic integration. Apart from these, other women's issues have been included into a number of the UN's programmes and activities. For example, the Sustainable Development Goals (SDG) include gender equality as a goal (SDG 5). Other UN organs working on women include the UN Security Council, which has produced a number of resolutions on women in conflict. Gender issues have been mainstreamed into development programming, with most organisations requiring gender equality in all stages of development.

It is important to note that, over time, women's organisations have been effectively lobbying at the UN and other inter-governmental organisations. While some of the basic goals of these women's organisations are broadly accepted in theory, progress has been slow towards reaching some goals of women's empowerment and gender equality. For example, giving priority to reproductive rights is still controversial at the UN, as many states do not recognise women's control over their own fertility.

5.4.3 Association of Southeast Asian Nations Mechanisms

An ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was formally established in 2010, made up of 20 representatives nominated from the

⁵ Communication No 088/2015 CEDAW/C/69/D/88/2015 (2018).

ten member states in ASEAN (two representatives from each state, one in women's rights and another on children's rights). ACWC's primary purpose is promoting the human rights of women and children in ASEAN. It does not have the ability to receive or investigate human rights violations. It is predominantly a body dealing with promotion, not protection.

5.5 WOMEN'S HUMAN RIGHTS CONTEMPORARY CONCERNS

As the chapter so far has highlighted, there are many areas of concern for women's rights. We will now discuss three concerns: violence against women, women in politics and women in work.

5.5.1 Violence Against Women

Women face violence at home, at work and in public at a much higher rate than men. Only in recent years much of this violence started to be considered a crime. Previously a husband beating a wife was considered a private matter and was socially acceptable in many cultures and communities. Similarly, there was no law against a husband raping a wife in Southeast Asia. With the coming into force of CEDAW there was greater recognition of the violations caused by violence against women. We will now take a brief look at three important concepts:

Violence against women (VAW) covers any form of violence which is directed at women because they are women. VAW is not just an act of violence, but also a mechanism of disempowering women. VAW is a result of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men. Violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions compared to men. When communities and cultures tolerate VAW, they are ensuring that women cannot gain equality in society. When governments, police, schools and families do nothing to stop the violence, they are complicit in it.

Domestic violence (DV) is violence that happens at the home and can include gender-based violence (GBV), VAW and violence against children. Domestic violence is a term most commonly used in national laws. Domestic violence may take many forms. Along with physical and sexual violence against wives and daughters, it can also include economic and emotional abuse. Economic abuse is when a partner controls the financial resources, resulting in the loss of freedom or being forced to perform some activities. Domestic violence can also be done by women to other women, as punishment for not conforming to gender values. An example would be a mother in law harming her daughter in law, because she does not look after her son well enough.

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



Focus on: Law Against Domestic Violence (LADV)

LADV was passed in 2010, making domestic violence a public-order crime in Timor-Leste (under article 36).

The LADV defines domestic violence as

Article 1: '[DV is] any act or sequence of acts committed within a family context, with or without cohabitation, ... which resulted ... in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom'.

The LADV also requires the state to engage in awareness raising on the issue, educations and to conduct studies. The state should initiate a national action plan to stop domestic violence.

Though it has been in force over ten years, women are still experiencing discrimination and violence in their everyday lives. Although the LADV foresees punishments for the perpetrators of domestic violence, the problem lies in its implementation. In many cases, the victims of domestic violence face different challenges in accessing justice, due to a lack of judicial assistance.

States address these issues through domestic violence laws. However, their weakness can be that they often do not give full protection from the different forms of violence. Some only cover marriages, so girlfriends, ex-wives or a gay person is not protected. The laws also vary in what kind of protection they offer. While some acts include providing shelters and counselling to victims, other laws do not address this need of the victim. The other major concern is that laws may be strong, but they are not strictly enforced. Many cultures and communities still see domestic violence as a private issue that the family has to resolve. A woman may go to the police for help, but they send her back to her husband to sort out the problem herself. Unfortunately, such responses are very dangerous, because most women who are murdered are not killed by strangers, but by their husbands. While the rate does vary across the region, the fact is that homes can be more dangerous for women than public spaces.



Focus on: Violence against Women in Timor-Leste

The rate of VAW, GBV and domestic violence in Timorese society is higher than other forms of violence or discrimination. A major challenge lies in the implementation of the LADV, as well as in the stereotypes concerning gender roles in society, particularly within the household.

According to a JSMP (Judicial System Monitoring Program) report (2013), about 71% of domestic violence cases are charged by the public prosecutor as a simple assault, without considering the gravity of the abuse faced by victims. As a result, the majority of domestic violence cases are being suspended by the court, or they substitute a prison sentence with a fine, even though the perpetrators are legally found guilty. Most of the perpetrators are family members or partners of the victim.

The World Bank's study in 2018 states that 47% of partnered women aged 15-49 had experienced physical and/or sexual violence in the 12 months preceding the survey⁶.

⁶ World Bank Group, 'Timor-Leste Systematic Country Diagnostic: Pathways for a New Economy and Sustainable Livelihoods' (2018).

5.5.2 Women's Political Representation

One of the top priorities at UN Women has been on women's political representation. In 2011 the UN General Assembly passed a resolution on women's political participation which calls on all countries to increase the number of women at all levels of political decision-making, including monitoring progress, conducting trainings and increasing media coverage on the issue. The facts on women's participation show their significant underrepresentation: as of February 2019, only 24.3% of all national parliamentarians around the world were women. As of June 2019, 11 women are serving as head of state and 12 are serving as head of government out of around 200 governments. As of January 2019, only 20.7% of government ministers were women.

Electoral systems are often biased against women because men can raise more money, travel more freely and are better connected to police, army and industry than women. Access to funds is a significant challenge because male politicians are more likely than women to have connections to (male) leaders in business and finance. To help overcome these obstacles, some countries introduce electoral quotas to secure the political representation of women. In Southeast Asia, Indonesia and East Timor are the only countries with electoral quotas for women in the lower house.

Women in Politics in Timor-Leste

According to article 12(3) of Timor-Leste's Law on the Election of the National Parliament (2006), the submitted electoral lists must include at least one female candidate for every group of three candidates. This law gives women and men a chance to run for key positions at the local and national levels, for example, as local chief or governor.

As a result of the electoral quota, 38% of seats in the National Parliament of Timor-Leste are held by women. Women hold two ministerial seats, four vice-ministerial seats and another four secretary of state seats. At the local level, there are currently 11 women village chiefs (*Chefes de Suco*), two women sub-village chiefs (*Chefes de Aldeia*) and six elders that function as traditional leaders (*lian nain*). Each village council is guaranteed three women representatives country-wide (information from September 2020). This is some of the highest rates of female participation in politics in the region.

Although the electoral quota system guarantees women's political participation or possibilities for important leadership positions at the local and national levels, the decision-making process is still influenced by male domination. Furthermore, female leaders have been experiencing personal attacks from social media. This is limiting female leaders in expressing their political opinions. As an example, a current MP, Ms Nélia Menezes and former MP Ms Nurima Alkatiri, in an interview with Adrienne Woltersdorf (2018), stated from personal experience that, regardless of their qualifications and achievements, female leaders are constantly attacked (both personally and professionally) in social media and compared negatively to male colleagues⁷.

⁷ Network for Social Democracy: Friedrich Ebert Stiftung: <https://asia.fes.de/news/are-timor-lestes-quotas-for-women-in-government-a-good-thing-of-course-say-female-mps/>

5.5.3 Women at Work

Equality in economic rights for women is still a distant goal. To illustrate this, what follows is a list of some facts on Women's Economic Participation from UN Women:

- Women in most countries earn on average only 60 to 75% of men's wages.
- Women devote one to three hours more a day to housework than men.
- Around 50% of the world's working women were in vulnerable employment.
- In one study almost 90% of countries have at least one law restricting women's economic opportunities, for example allowing men and not women to inherit property.
- Most countries restrict women's access to land, credit or property for women.
- 40% of women leave the workforce early, the majority of them for family reasons.
- Women are always under represented at senior levels in business.

These differences are mostly in fact and not in law. All Southeast Asian countries have laws against discrimination in the workplace and equal pay for equal work is protected in law, yet there is still a significant economic disparity between men and women. The reasons given for women's inequality are similar in many countries. In many countries, women lose their jobs when they get pregnant. Women's livelihood and earning continue to be seen only as an addition to their husband's income, although they suffer more from economic and financial crises.

Though women's labour participation has increased during the last decades, their responsibilities at home have not decreased. A majority of women continue doing household work, care work for the children, the sick and the elderly, while at the same time earning a living for the family. Often they are also involved in community work, which is an extension of their household responsibilities. Another reason is that women often work in lower paying and insecure jobs, such as cleaners, or in hospitality and service industries. Other inequalities add to these problems, such as access to education, sexual harassment in the workplace and men doing business in male only venues (such as sports arenas).



Discussion and debate: Domestic work in the household

Following the information given above, let's take a look at how we understand domestic work in the household.

- How do brothers and sisters give support in the kitchen (preparing meals, washing dishes)?
- Should husbands/male partners cook and help in domestic work in the household?
- If male family members are working outside the home and earning an income for the family, does that mean they don't need to do domestic work?
- Are there any household jobs which only women should do?

Inadequate conditions with regard to maternity leave is another great problem faced by women in the workforce. In Southeast Asia, many countries offer maternity leave, but this is as low as eight weeks in Malaysia and only as high as four months in Vietnam. Further, with little help in childcare, women are often forced to leave work to look after their children. According to the Timor-Leste Labour Law (2012), the employee is entitled to a maternity leave with pay for a period of at least 12 weeks, ten weeks of which must necessarily be taken after childbirth without loss of seniority rights and remuneration.

Women's economic inequality is not just in the workplace, as women can be locked out of other income generating resources such as land. The most common tradition with inheritance throughout Southeast Asia is that the eldest son gets the property or family business. This practice is also widespread in Timor-Leste, as the majority of the community applies the patriarchal line of inheritance. According to this tradition, males (sons) are considered to have more right to a family heritage. Only a minority of women have the same rights in the context of inheritance.

Women's Economic Participation

When it comes to economic participation, women in Timor-Leste face different challenges, which negatively impact the realisation of their economic rights. There are various factors contributing to women's economic dependency in society, particularly in the family. The majority of women are still financially dependent on their husband's income. Often, they are not allowed to work in the public sphere by their partner (husband), which leaves them economically vulnerable.

About 63% of men in Timor-Leste have full time jobs compared to 45% of women.

Employment in each sector is very uneven. Men have 69% of government jobs, with women only having 31%. Men own 76% of businesses and farms (women only 24%), and men have 68% of jobs at embassies and other international organisations. The only sector where women work more is in self-employed jobs, where women make up 57% of the workforce. The 2015 Timor-Leste Population and Housing Census shows that, among the women who do work, 75.4% are in vulnerable employment. Only 22.9% of women are in managerial positions, compared to 77.1% men.

(Source: UN Women)

CHAPTER SUMMARY AND KEY POINTS

Introduction

Women are rarely, if ever, given the same opportunities as men. Women face discrimination in many areas including work, education, culture and health. The history of the women's rights movement focuses on women's suffrage and the rise of feminism in the 1960s, but the struggle for women's equality has a longer history. Women were active from ancient society, through the European enlightenment, to contemporary times. In Southeast Asia, early activists worked on education, voting, and welfare. The modern women's liberation movement was influential in the UN's International Women's Year and with the adoption of CEDAW (1979).

Defining Discrimination

Discrimination conflates the concepts of sex (or a person's biology) and gender (or a person's social role and expectations as a male or female). Sex is biologically determined, though recently scientific studies have shown a body is not always either male or female. Gender is the attributes and traits, many linked to traditional values, that men and women are expected to adhere to. One assumption is that people of a sex will automatically play the gender role. This can be disempowering for women as they are expected to be mothers or housewives, and not active in politics or business. These roles are socially constructed, and supported by institutions such as the family, schools, workplaces and religion. Men and women who fail to conform to these gender norms may be subjected to various forms of discrimination, social pressure, shame and abuse.

The Convention on the Elimination of Discrimination against Women

The CEDAW defines discrimination and identifies where governments should focus on their efforts to achieve equal rights for women. Most opposition to CEDAW is about rights which clash with culture and religion, especially around the family and marriage. CEDAW asks states to modify laws to incorporate the principle of non-discrimination, ensure women access to justice, accelerate equality, and modify culture. Discrimination in CEDAW has three elements: some kind of distinction, exclusion or restriction, which is based on sex, with the result that a woman does not get equal human rights to a man. Discrimination can occur in two ways: as a product of laws (*de jure* discrimination) or discrimination in fact or reality (*de facto* discrimination). State parties have to ensure that actions and laws result in the elimination of discrimination.

Concept of Equality in the Convention on the Elimination of Discrimination against Women

The formal model of equality is based on the argument that men and women are the same and, therefore, they should be given the same treatment. The protectionist approach to equality means that women are restricted from doing certain types of work or activities for their own protection. The substantive model of equality, which is used by CEDAW, sees equality in terms of opportunity and results. CEDAW also has corrective approaches where states must correct practices that perpetuate women's subordination and inferiority. CEDAW could be stronger in violence against women, diversity issues and promoting the empowerment of women

Protection Mechanisms for Women's Rights

The protection of women's rights at the international level is found in the Optional Protocol to CEDAW which has a communications procedure for individual complaints. A number of programmes, offices and agencies have been established within the UN such as UN Women in

2010. While some goals of these women's organisations are accepted, progress has been slow towards goals of women's empowerment, reproductive rights and violence. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children is a regional body promoting women's and children's rights.

Violence Against Women

Women faced violence at home, at work and in public at a much higher rate than men. VAW covers all forms of violence, though more recently the term domestic violence is used to talk about violence by a partner, and now GBV includes any violence done because people are not complying with their gender roles. VAW is both an act of violence and a mechanism for disempowering women. When communities and cultures tolerate VAW they are ensuring that women cannot gain equality in society. Violence is socially constructed and can be done as punishment for not conforming to gender values. Domestic violence may take forms of physical, sexual, economic and emotional abuse. Nearly all Southeast Asian countries have domestic violence laws but they can be weak when they do not give full protection from the different forms of violence, and they are not strictly enforced.

Women's Political Representation

Women's political representation is a UN Women priority. Women are significantly underrepresented in Southeast Asian governments. The challenges to women getting elected are that men can raise more money, travel more freely and are better connected to police, army and industry than women. Some countries have electoral quotas for women, but there is still some debate on this.

Women at Work

Women do not have equality in economic rights. Women are paid less, work more and do not get equal access to credit, income generating resources and inheritance. Women work more in lower paying and insecure jobs while also being unprotected from sexual harassment in the workplace. When women get pregnant, they may get fired or have insufficient maternity leave. Labour has changed with globalisation, with more women working and increased migration for work, which has both positive and negative consequences.



Beneficiaries of the UNTL-HRC during a field trip as part of their studies at the Global Campus Asia-Pacific Master Programme, Mahidol University (Bangkok)



Discussion



Definition



CHAPTER 6

Children's Human Rights

6.1 INTRODUCTION

Childhood is understood differently today than it was in the past. Although parents always loved their children, opinions on how they should be protected, what rights they should have and what type of work they can do change according to how society views children and childhood. Centuries ago, some children could be forced to do hard labour, face criminal charges as adults and were often married as adults. Why were children treated this way? Not because society disliked them, but because they were seen and treated as adults. It is argued that the idea of childhood emerged in the 17th century when people first believed that children are different from adults and should be treated differently.

In the last few decades improvements have been made in the treatment of and protection given to Southeast Asian children. Various special services, from education to health, are now given specifically to children. For example, harsh labour has been forbidden and a lot of effort has been made to protect children from abuse and neglect. These changes result from the values society gives to the idea of childhood. While this concept varies between different cultures, childhood is now seen as a period of safety and security, meant for play, learning and development during which children should be protected from violence and abuse. The acceptance of these ideas led to the introduction of children's human rights.



Definition: Children's Human Rights

Human rights which seek to ensure children get the safety and services they deserve, and protect children from abuse.

6.1.1 Background to Children's Rights

The first steps in recognising children's rights were made in Europe in the 1800s, with the introduction of labour laws protecting children and laws on compulsory education. Other changes to laws relating to children in court and the introduction of juvenile justice systems came around the early 1900s, when many European nations outlawed corporal punishment for children. These changes reached Southeast Asia mostly after 1945, during early periods of independence. In Southeast Asia labour laws began changing in the 1950s, although the process was not complete until the 1990s. Compulsory education followed in the 1960s, but some countries did not develop juvenile justice systems until after 2000.

6.2 CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child (CRC)¹ entered into force in 1990 and is now the most widely ratified human rights treaty in history, ratified by every country except the United States of America. There are three optional protocols to the CRC. Two were introduced in 2000 to address child soldiers and the sexual exploitation of children.² A third optional protocol, which

¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC)

² Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227.

entered into force in 2014, allows the CRC treaty body to accept individual complaints,³ but in the region only Thailand has ratified it.

What makes the CRC special is that it treats human rights as indivisible, placing civil and political rights alongside economic and social rights. Significantly, it includes participation as a right. Another major difference to previous treaties is that it moves away from a legalistic approach of defining rights and violations to a more rights-based approach. The CRC sees human rights as a method to address and solve problems using the 'best interests of the child' as a guiding principle. The CRC brought together rights found in existing treaties, but it also introduced some new rights, such as protection from various abuses, rights to protection in conflict and rights during adoption. The CRC is also slightly different from other treaties because it places rights and duties among three parties:

1. **States**, who have **duties** and **obligations** to meet children's rights.
2. **Children** who are the **right holders**.
3. **Parents** who have various **duties** towards their children, for example, to provide protection and access to education and healthcare, but who are also **rights holders**, for example, they have the right to influence a child's religion and education, rights to services like childcare, and to protection from having their children removed.

At the regional level, the work of the Association of Southeast Asian Nations (ASEAN) Commission on the Promotion and Protection of the Rights of Women and Children is focused on the promotion and protection of the rights of women and children, aiming to develop cooperation, policies and activities to achieve these goals.

6.2.1 General Principles of the Convention on the Rights of the Child

The CRC is guided by four overarching principles:

1. **Non-discrimination:** children should not be denied their rights because of discrimination.
2. **Best interests of the child:** when making decisions about children, the best interests of the child should be the most important criteria.
3. **Survival and development of the child:** the life and survival of the child should be of the greatest importance to states in their activities. States are obligated to ensure children develop into healthy adults.
4. **Respect of the views of the child, or rights to participate:** children should be able to participate in decisions that concern them according to their age and maturity.

These four general principles are important throughout the CRC, as they influence the way children's rights are met while also providing solutions to some problems facing children. We will now look at them in more detail.

³ Optional Protocol to the Convention on the Rights of the Child on a communications procedure (adopted 19 December 2011, entered into force 14 April 2014) A/RES/66/138.

6.2.2 Survival and Development of the Child

In societies around the world, ensuring the survival of children is always given high priority. However, this does not always happen. For example, 100 years ago a large proportion of the population (30%) died as children. Even if children survived their first five years of life, they could still face hunger, join the military or perform harsh labour. The principle of survival and development is to ensure a child's survival by reducing child mortality, protecting children from violence and investing in healthcare. The principle of development covers rights to health which enables children to grow into healthy adults, the right to education which teaches children how to be responsible adults and freedom of expression which develops a child's knowledge. Because the state is responsible for a child's right to life, these concerns should be their priority. This means that if a government reduces spending on maternal health, while increasing spending on the military, it would clearly be in violation of this principle. The same principle also ensures that children cannot face the death penalty and gives them special protection in areas of armed conflict.

6.2.3 Best Interests of the Child

This principle means that decisions concerning a child should give the child's interests priority over other interests, like those of the parents, the government, the culture, the economy etc. For example, when deciding if a child should be separated from abusive parents, the fact that the parents are violent is more important than the parents' rights to look after their child, and the government's economic interest to avoid paying for the child's relocation. What is a 'best interest' of the child is not defined, though obviously it includes things like their rights, their survival and development.



Discussion and Debate: Best Interests of the Child

'Best interests of the child' is a difficult concept open to much interpretation. It should be a principle used when making decisions about a child, for example in education, justice and family law. If a court has to decide who should look after a child, they should think firstly about the child's interests such as safety, the importance of living with the family, access to education and so on. The court may decide it is better for the child to stay with an uncle and not the mother because the child can go to school and will be safe from potential violence at home.

Applying the 'best interests of the child' principle, discuss the following situations:

What would be the best interests for the police to consider when they deal with a 12-year-old boy who has been caught stealing food from a shop?

What are the best interests for a 14-year-old girl when they are learning about reproductive health?

6.2.4 Non-Discrimination

This principle covers discrimination against **specific** groups of children. Some groups of children face constant discrimination. For example, girls in many countries have fewer rights

than boys. They are forced to leave school earlier, or do not receive the same education as their brothers. Disabled children also face discrimination. Across the region, they rarely get the same access to education, while governments offer little support to their parents. Other groups facing discrimination may also include gay, lesbian, and transgender children, as well as ethnic minority children, the children of migrant workers and child migrants.

6.2.5 Right to Participate

According to this principle, children should have a say in how their rights are met and delivered. This is particularly important when it comes to rights to religion, education and media. A child's right to participate in decisions concerning them is relevant in many areas including adoption, education, judicial decisions, custody, development and policies relating to children. For example, courts should hear the views of children alongside their parents in a custody case. However, the extent of the participation of the child is determined according to the age and maturity of the child.

The principle of participation clashes with more traditional social views that parents, or in some cases, only the father, should have the final say on their children's lives. The right for children to choose their own religion and to have access to their own media is not widely accepted in some communities. This is mainly why rights to participation are poorly institutionalised in Southeast Asia.



Discussion and Debate: Social Attitudes Towards Children in Timor-Leste

Let us see how children are engaged in society, particularly within the family. In traditional social practices, the importance of children's self-expression and public participation has usually been underestimated. Traditionally, a child is perceived to have limited understanding about themselves and, therefore, parents still maintain control over their children. It is uncommon for parents to ask children for their opinion on decisions about the family. It is expected that children will not disagree with their parents.

This remains prevalent in Timor-Leste's society. Children who passively follow the rules of the family, remain quiet and do not express protest are in return considered good children. Not expressing any protest or claims in the family regarding the rights of the child is also considered important.

However, more than 60% of children aged 5-17 years are often actively in charge of domestic work, for example, helping mothers cleaning-up the house or washing clothes, helping gardening and preparing meals for the family.

Given the big responsibilities Timorese children and youth have in their families, do you think they should also have more rights? How can children and youth more actively participate in decision-making in their families, schools and communities?

6.3 PROTECTION OF CHILDREN AGAINST VIOLENCE

Protecting children from violence is one of the most important duties of both state and family. Violence is a major problem in Southeast Asia. In fact, institutions which should protect children (the family and the school) are frequently complicit in this violence. The CRC states that every child has a right to protection from abuse, neglect, violence and exploitation. Violence can take on many forms: physical or mental, injury, abuse, neglect and so on. Other forms of violence include corporal punishment, forced marriages and initiation rites. To prevent violence, governments should ensure appropriate educational programmes, laws and government agencies are in place. States must provide proper forms of prevention, investigation and follow-up of instances of child maltreatment or exploitation.

6.3.1 Domestic Violence and Violence in School

In most Southeast Asian society children face violence everywhere: from parents and teachers disciplining naughty children to violence in detention, orphanages and the workplace. Children can be hit by their parents, sometimes by slapping them, or with a bamboo stick. At school many teachers carry a long cane with them and they hit the students on their hands if they are not working. Police are known to hit young males they suspect of doing something wrong. Other types of punishment include putting chili pepper in the eyes of students in Thailand or having to stand outside in the sun on a hot day in Cambodia and Myanmar.

Communities often ignore such violence, accepting it as a parent's right or acceptable cultural practice. Many societies even see the hitting of children as good parenting. No laws exist against parents hitting their children in the region, although they do in many other countries. UN bodies, such as UNICEF and the Committee on the Rights of the Child (the treaty body to the CRC), have called for a ban on corporal punishment at home. Similarly, teachers are still permitted to hit children in most Southeast Asian countries, as are employers, although striking an adult in the workplace is a criminal offence. Violence in schools and educational settings is widespread in the region because no specific prohibitions prevent it, and also parents and teachers often believe it is the most effective way to teach naughty children.

Corporal Punishment for Children in Timor-Leste

Corporal punishment means punishment on the body, mostly to cause pain. Corporal punishment for children is prevalent in Timor-Leste, occurring both in schools and the place children should feel the safest – at home. Parents use corporal punishment to discipline children's behaviour, to force them to study or help with household work. According to a study headed by World Vision, 87.4% of children in Timor-Leste are subjected to violent discipline at home.

In school, corporal punishment is used as a 'teaching method' by the majority of teachers. Children are punished for being absent from school and breaking school rules, or even if they lack the ability to understand specific subjects. A 2015 survey shows that seven in ten children in Timor-Leste reported experiencing physical violence by their teachers, while eight in ten teachers stated it is acceptable to beat a child under certain circumstances.

6.3.2 Children and Sexual Abuse

Sexual abuse is a particularly disturbing form of violence against children. Studies conducted in 2011 showed that nearly 33% of girls in Africa and 23% of girls in Asia had faced sexual abuse. While the rate for boys is lower, it was still estimated that nearly 10% of boys had faced sexual abuse. The problem of child sexual abuse has led to the introduction of laws on the age of consent, child sex and rape laws. The last two crimes, in particular, face harsh penalties but despite this, the sexual abuse of children is still prevalent in all Southeast Asian countries. Laws on these crimes only came into force in the 1960s, with many countries in the region either having no legislation against child sex, or ignoring the ones they did have.

Children and Sexual Abuse in Timor-Leste

In Timor-Leste, two out of three women between 15 and 19 report experiencing physical or sexual violence.

According to the 2016 Joint Stakeholders Submission for the Universal Periodic Report of Timor-Leste, on the situation of children and women in Timor-Leste:

Few cases of violence and even fewer cases of sexual abuse against children go to court. The law places primary responsibility on parents to initiate cases of sexual abuse for a child under 15 years old; problems arise, however when the alleged offender is a parent. This leaves the child trapped in an abusive family. Also when the perpetrator of sexual abuse comes from a wealthy or powerful family, they are generally not held accountable and thus there is an inability to prevent future violations.⁴

Unfortunately, some forms of child sexual abuse (like child marriage) have not been legally addressed. Child marriage in Timor-Leste is prevalent. UN Population Fund (UNFPA) research (2017) shows 24% of youth aged 15-29 were married before they were 18 years old. The CRC, ratified by Timor-Leste in 2003, sets the minimum age of marriage at 18. Apart from that, the age of consent to marriage is also guaranteed by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁵ also ratified by Timor-Leste, emphasising the role of the state to ensure full consent to marriage, particularly if the person is underage. When it comes to the domestic legal framework, the Civil Code of 2011 sets the minimum age of marriage to 17. 16- year-old girls and boys may get married, with parental consent. The following table presents the legal framework of child marriage in Timor-Leste.

Table 6-1: Age of Marriage in Timor-Leste

| Age of consent to marriage in Timor-Leste | CRC 2003 | Civil Code 2011, Timor-Leste | Civil Code (with parental consent) |
|---|--------------|------------------------------|------------------------------------|
| | 18 years old | 17 years old | 16 years old |

⁴ Human Rights Council, 'Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21' (17 August 2016) A/HRC/WG.6/26/TLS/3 para 30.

⁵ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 1 (CEDAW).

Child abuse is closely linked with the abuse of authority, as most cases involve someone known to the child. This can be a family member or relative, a teacher or a boss at work. Sexual abuse is a particularly serious problem because of its long-term negative effects, both physical and mental, which can result in psychological disorders including depression, drug addiction and anxiety. A study conducted across six Asian countries found that around a third of those who had committed sexual abuse had themselves been abused as children. Another troubling issue concerns the commercial exploitation of children, which often takes the form of child prostitution or pornography.

6.3.3 Children in Armed Conflict

The main laws governing the conduct of armed conflict, including the protection of children in armed conflicts may be found in international humanitarian law (IHL). Although limited protection is offered by the Geneva Conventions (1949) and its Protocols (1977), they only offer limited protection for children. The CRC and its Optional Protocol have since gone further. The Optional Protocol on Children in Armed Conflict sets the minimum age of a soldier at 18. Children should be protected in times of armed conflict, whether the child is a civilian, a victim or a combatant. Protection can include being removed from conflict areas and providing humanitarian support. In Southeast Asia, use of children as soldiers or porters in the 1980s and 1990s was once a significant problem. Many children were involved in armed forces and in non-state armed groups. The number now is much smaller. Factors explaining this reduction include: changing attitudes to children, stricter enforcement mechanisms and the reduction of armed conflict in the region. Child soldiers require special rehabilitation to integrate them back into the community.

6.4 THE RIGHT TO EDUCATION

The right to education is a crucial human right relevant to all children and is found in many human rights treaties. All of them say that primary level education must be compulsory and free to all children, regardless of their nationality, gender or any other category. But just getting children into school is not enough, as quality and safety standards must also be met. We will now look into the main elements of the right to education.

6.4.1 Elements of the Right to Education

The right to education can be divided into three stages: the right to primary education (for children aged around 5-12), the right to secondary or high school education (for children aged around 12-18) and the right to tertiary, university or vocational education (for those over 18). Primary education must be free and compulsory. That is, every child aged between 5-12, although the age varies slightly throughout the region, must have access to free primary education. Children cannot be denied primary education because they do not speak the language, or they are children of migrant workers, or they are refugees. Every child must have a free primary education. In addition, high school education must be available and accessible to every child but it does not have to be compulsory or free.

Rights to education encompass many different issues and activities, from simply getting an education, to the quality of education itself. State duties have been summarised in the so-called 4A framework:

- **Availability:** education is available to everyone, requiring sufficient schools, rooms and seats.
- **Accessibility:** education should be accessible to all, and no one should be denied it due to distance, expense or discrimination.
- **Acceptability:** education should be relevant, up-to-date, appropriate and of necessary quality, with properly trained teachers and adequate facilities.
- **Adaptability:** education should be able to keep up with new innovations such as computers, adaptable to suit specific groups such as children with disabilities or from minority groups, and be able to address challenges such as gender or racial discrimination.

6.4.2 Availability and Accessibility of Education

Although primary education is widely available in the region, this does not mean all children go to school. The availability of education – which basically means enough school places for all children in the country – requires governments to allocate resources to build enough schools and to train enough teachers. Accessibility is the main reason children miss out on school. This means that even though places in the class may be available, something like the cost, distance, the need to work, or not speaking the language prevents a child from attending.

The major factor why children do not finish their education is economic – some parents are poor and they cannot afford to send children to school even if it is free, as additional costs, such as uniforms, books, lunch, travel and pencils, may be too high. This is why governments should ensure education is accessible by also providing free uniforms, food and transport. There are also cases where the family is so poor, the child must work to help support the family. Discrimination can be another reason why schools are not accessible to some children. Globally, the most common form of discrimination in education targets girls. Many societies believe a girl's main role in life will be to look after her husband and children, making an education pointless.



Discussion and Debate: Right to Education

Let us now think how we understand the education process and how children in Timor-Leste exercise their rights to education.

Let's explore this right using the framework we learned in Chapter 3 when it comes to livelihood rights (availability, accessibility, acceptability, adaptability). Think about the following questions to see if the right to education was met.

Availability:

Are there schools in your area?

At these schools were there enough places for everyone?

Accessibility:

How far away was your school? How long did it take to travel there?

Was school free? Could everyone afford to go to school?

Acceptability:

Was the classroom big enough?

Were there enough books, tables, chairs, bathrooms and other facilities?

How many students were there in your classroom? Was the class too big, making it difficult to learn?

Adaptability:

Did you learn about things relevant to your life now like computers, media and human rights?

Could disabled kids go to school?

Did all children understand the language in the classroom?

Think of your, your relatives' and your friends' experiences and discuss the following questions:

- What are the most common obstacles for a student to enrol in school?
- How do families manage to afford school materials, such as uniforms, books, pens, transportation?
- How do children who live far away from the nearest school manage the distance? What kind of impact does this have on their lives?

6.4.3 Acceptable and Adaptable Education

Just getting children to go to school is not enough – they must also be able to learn in the schools they attend. Acceptable and adaptable education is related to the quality of education, which covers the following elements:

- **Curriculum:** children should be educated to enable them to contribute to society. Basic literacy and numeracy are considered essential, as are science and social science.
- **School facilities:** adequately sized classrooms with tables, chairs, blackboards and other facilities such as playgrounds, toilets and shelter from the weather.
- **Qualified teachers:** teachers must have the necessary training.
- **Access to information:** a library, books to assist education and other sources of information.

- **A safe and non-discriminatory learning environment:** children should feel safe from bullying, be able to reach school safely and girls should not feel threatened by boys or male teachers.
- **Inclusive teaching methods:** children should be encouraged to ask questions and be curious. They should be allowed to participate in all activities and their education should include activities which encourage their learning and socialising.

A common problem throughout Southeast Asia concerns the language of instruction, particularly when teaching children from ethnic and linguistic minorities. As already mentioned, education should be acceptable in terms of quality and adaptability to be inclusive to children from different backgrounds. Given that most lessons are taught in the national language, the cultural and linguistic diversity in Southeast Asia means that many children do not speak their national language at home.



Discussion and Debate: Language of Instruction for Ethnic Minority Children

Throughout the region, many ethnic minority children do not speak the national language. Southeast Asia has hundreds, if not thousands of ethnic minorities, all of whom speak their own language (such as the Chin, Katchin and Naga of Myanmar, the Akka and Hmong hill tribes of Thailand and Laos, and the Dyak and Papuan people of Indonesia). What should the language of instruction for these children be: the national language or the language they speak at home? Advantages and disadvantages for both options are:

Learning in the National Language

If a child plans to attend high school and university, they will need to learn the national language as this is the language of instruction.

Most workplaces use the national language.

Government services (such as a driver's licence test) normally use national languages.

Most teachers only speak the national language and it may be difficult to find and train teachers who can speak ethnic languages.

Children able to speak the national language are also able to socialise with a much broader group of people.

Learning in One's Ethnic Language

If children don't understand their teachers they cannot learn in the classroom.

Children need to be able to communicate with their families at home.

Ethnic cultures should be respected, and if children no longer speak their mother tongue, they will lose touch with their cultural roots.

What language should be used in schools?

Is it preferable that all children speak the national language so they can go on to attend high school and university?

But shouldn't governments respect local cultures? If children stop speaking their ethnic language, culture and traditions may be lost.

How does this relate to the language(s) of instruction in Timor-Leste?

Another area where discrimination stops a child's access to school involves disabled children. While it is estimated that about 3-5% of children have a disability, the number of disabled children in school in Southeast Asia is much smaller. Schools are generally not equipped to teach them and teachers may not, for example, understand sign language or have Braille texts available. Further, parents may be too embarrassed to take their disabled children to school, or they may worry about bullying. As a result, very few disabled children get access to education.

6.5 JUVENILE JUSTICE

States face many challenges when dealing with children who are in conflict with the law. The term 'in conflict with the law' is used rather than 'breaking the law', because often children do not commit crimes on purpose. For example, they may be forced to steal food because they are hungry. They may not have enough understanding of the law to know that what they did was a crime. In these cases, it is not only the child's fault that the law has been broken. The state also has some responsibility, because they are not providing food, housing or education to the children to prevent them from breaking the law. According to the CRC, children in the justice system should have their rights protected by promoting these practices:

- **Diversion:** keeping children out of the juvenile justice system and avoiding juvenile detention should be a priority (for example, by releasing children to the supervision of their family, or the use of alternative sanctions like community service or counselling).
- **Restorative justice:** this means that the objective of justice is the restoration of peace and human rights to the victim, perpetrator and community.
- **Community-based rehabilitation:** reintegrating the child back into the family and community to avoid further conflicts with the law.

The juvenile justice system consists of the laws recognising crimes and punishments for minors, the police and courts which arrest minors and put them on trial, and the detention centres which incarcerate them. Juvenile courts should ideally be separate from the adult system, with judges who have experience dealing with minors. The following criteria should also be met:

- **Access to legal aid:** ensuring children will be adequately defended by competent lawyers.
- **The separation of children and adults during the process:** ensuring children are not imprisoned with adults who may threaten them.
- **Avoiding the use of corporal punishment on children.**
- **Adequate training for legal professionals:** ensuring those working with children receive training in areas like counselling and child psychology.
- **Disallowing the death penalty or life imprisonment:** no state in Southeast Asia permits children to face the death penalty.

Up to now, no state in Southeast Asia has managed to develop a functioning juvenile justice system based on CRC principles, although developments have been made. The best interests of the child are often not the priority, but rather punishment. Further, for whatever reason, a government may simply be unwilling to develop a separate justice system for children. As a result, the principles of diversion and restorative justice are often not respected.

Juvenile Justice System in Timor-Leste

Since Timor-Leste gained independence in 2002, several relevant international laws or instruments have been ratified by the state of Timor-Leste, such as the CRC. National and international organisations, including UN agencies working on child rights, have been putting much effort into designing a holistic approach in protecting and promoting children's rights to accessing justice, however, Timor-Leste has not yet established any juvenile justice system.

Only in some instances, UN agencies, such as UNICEF in collaboration with the Timor-Leste government and its national organisations, have promoted and developed approaches to provide legal assistance for disadvantaged children in Timor-Leste. For example, UNICEF in Timor-Leste, in collaboration with the Ministry of Social Solidarity (MSS) and the organisation Ba Futuru have developed an approachable system to assist children's access to justice. Existing data reveals that Timor-Leste's justice system, including the provided legal assistance, is still poor and faces great challenges due to inadequate resources, including human resources. As a result, the juvenile justice system itself is inadequately discussed and, therefore, has not been established yet.

The age of criminal responsibility in Timor-Leste is 16. However, the Penal Code defines offenders between the ages of 16 and 21 as 'youth offenders'. According to article 20 of the Penal Code, they should enjoy special provisions regarding the application and execution of criminal penalties.

6.6 CHILDREN AND WORK

Children working can be seen as a violation which must be stopped, or a useful, educational and productive activity for older children. The difference depends on the age of the child, the type of work and the effect the work has on other parts of the child's life. A duty of states is to protect children from unacceptable working conditions, which means they should be 'free from economic and social exploitation'. States should therefore prevent children from performing any work that is bad for their health, development and education. A child who cannot go to school because they work all day in a factory is being exploited. Not only must they miss school, their work may be unsafe, preventing them from growing and developing as other children. A child who is unpaid or who is forced to work is also exploited. These conditions need to be eliminated, for example, by introducing a minimum age of employment, regulating work conditions, and banning certain types of labour.

6.6.1 International Law on the Protection of Working Children

Most international laws on minimum wage and working conditions were introduced by the International Labour Organization (ILO). ILO Convention 138⁶ requires states to progressively increase the minimum age of employment. It established 15 as the minimum age, but also allowed for it to be adapted under certain circumstances. For example, the age is raised to 18 where work is hazardous, and this includes work done in mines or on fishing boats. Developing countries can also reduce the minimum age to 14 if justifiable, and it may even be set at 12

⁶ C138 - Minimum Age Convention, 1973 (No 138).

for 'light work', or work that does not interfere with education, health or social development. Examples of light work may be washing dishes at the family restaurant, domestic work or feeding animals on a farm. Another especially important document is ILO's Worst Forms of Child Labour Convention,⁷ which has been ratified by all Southeast Asian countries. Its purpose is to protect children from the worst forms of child labour, including: slavery, trafficking, debt bondage, commercial sex work and criminal activities.

Child Labour in Timor-Leste

When it comes to the international framework, the CRC and the ILO's Worst Forms of Child Labour Convention are relevant, as Timor-Leste has ratified both. When it comes to the domestic legal framework, relevant provisions can be found in the National Constitution of Timor-Leste, the Labor Code, specifically in Section II on the regulation of work of minors, as well as the Penal Code, when referring to the sentences.

The National Child Labor Survey (2016) discussed some of the disadvantages of working conditions of children in Timor-Leste, mainly affecting children's education and health. According to the 2015 census, there were 421,655 children aged 5-17 years in Timor-Leste. The National Child Labor Survey identified that about 65.8% of children in this age category are actively engaged in household chores, 56% are mostly employed in the agricultural sector as field crop and vegetable growers, 26% are working as housekeeping and restaurant service workers, and about 8% as street vendors.

6.7 RIGHT OF ADOLESCENTS TO REPRODUCTIVE HEALTH

One of the more challenging issues around child rights concerns children and sex. Although states generally have strict laws protecting children from sexual violence, they have found it more difficult to address the issue of teenagers having consensual sex. The average age of a child's first sexual experience is getting lower in the region – it is estimated that across the region about one third of children (more boys than girls) have sex before the age of 18. This is why it is very important to educate teens about responsibility and safe sex. States would much rather pretend this does not exist, and they offer poor information and services for children regarding safe sex. The main laws that address teenage sex concern the age of consent – that is, the age a person can legally consent to having sex. The age of consent in Timor-Leste is set at 14, although an adult having sex with a 14 or 15-year-old is a crime.

Increased teenage sexual activity can lead to many problems including the spread of sexually transmitted diseases, non-consensual sex and poor reproductive health choices. It is worrying that many sexually active teenagers have no access to contraception and are taking risks. In addition, sexually transmitted diseases may go untreated because of poor knowledge or embarrassment. As a result of this lack of information, there are concerns about rising levels of teenage sexual abuse, especially relating to the definition of consensual sex: is sex consensual if a girl is facing peer pressure or coercion? Another problem that must be addressed is the discrimination faced by lesbian, gay and transgender children.

⁷ C182 – Worst Forms of Child Labour Convention 1999 (No 182).

States have shown the most concern on the issue of teenage pregnancy which is a problem in some Southeast Asian countries. In Timor-Leste for example, teenage girls are vulnerable due to a lack of education on reproductive health, as well as the prevalent traditional values, which limit young teenagers from exercising their reproductive rights. About 24% of teenage girls aged 15-19 have had a child before turning 20.⁸ From a human rights perspective, the right to sexual and reproductive health is guaranteed to be protected. These 24% of young women are vulnerable to not getting their rights to education (they have to leave school) or their right to work (they cannot work because they are looking after their child). Also their social position may be affected as their family and friends may look down at them because they are pregnant teenagers.

This is partly due to lack of information and understanding about reproductive health. Most Southeast Asian parents tell their children very little about sex and sexuality. In fact, most children in the region only get basic access to such information, so that few children understand how pregnancy occurs or how to protect themselves from sexually transmitted diseases. Most information about sexuality is received from friends or the internet, both of which are unreliable sources. As a result, many teenagers will not get access to contraception because it is either too embarrassing to ask for, illegal to buy or simply unavailable. Other issues may arise from young males pressuring girls to engage in sex at an early age or from teenage girls dating older males.

The consequences of pregnancies on teenage mothers can be huge ranging from medical complications which are more likely when the mother is young, to social stigma which can be especially destructive if a girl is forced to leave school, to difficulties in finding employment later on in life. For these reasons, states now wish to reduce their teenage pregnancy rates. Of course, the most effective way to inform children of the risks would be through sex education, but laws and policy and reproductive health in the region are either basic or non-existent.

⁸ UNFPA (2017).

CHAPTER SUMMARY AND KEY POINTS

The Rights of Children

Children are given much more protection now than they have ever had in history. Previously, children were treated like adults but this changed over time. The passing of labour laws and compulsory education in the 1800s and humanitarian protection in the early 1900s gave extra protection to children. More improvements have been made in the last few decades especially in the fields of education, health and labour rights. Today, no other set of rights has been as widely accepted as children's rights, but protection gaps still exist.

Convention on the Rights of the Child (CRC)

Some children's rights exist in the **Universal Declaration of Human Rights**⁹ and other declarations before 1990 when the CRC was introduced. The **CRC** is now the **most widely ratified human rights treaty**. It has a post-Cold War understanding of rights as indivisible, participatory and rights-based. The CRC also differs from other treaties in **recognising three parties**: the state, children and their parents. It is based on **four general principles**: (1) the survival and development of the child, (2) the best interests of the child (meaning that decisions concerning a child should give the child's interests priority), (3) non-discrimination against specific groups of children like girls or indigenous children and (4) the child's right to participate.

Protection of Children Against Violence

Every child has a right to protection from abuse, neglect, violence and exploitation, but **violence against children** is a hidden global phenomenon with serious impacts. Children experience violence at home (often committed by family members) or at schools or institutions (at the hands of teachers or other authority figures). Measures to reduce it include: alternative ways to discipline children, educating parents and teachers about its negative effects and involving parents and children in decisions about school. A disturbing form of violence against children is sexual abuse. Most incidents involve someone the child knows. Some forms of child sexual abuse like child marriage have not been legally addressed. In Southeast Asia, the commercial sexual exploitation of children may occur in the form of child prostitution or pornography.

Children in Armed Conflict

The protection of children in **armed conflicts** can be found in IHL and the Optional Protocol on Children in Armed Conflict which sets the minimum age of a soldier at 18. Children should be protected in times of armed conflict, whether the child is a civilian, a victim or a combatant. Protection can include being removed from conflict areas and providing humanitarian support. In Southeast Asia, use of children as soldiers or porters in the 1980s and 1990s was once a significant problem with many in armed forces and in non-state armed groups. The number now is much smaller. Child soldiers require special rehabilitation to integrate them back into the community.

The Right to Education

Primary education must be **free** and **compulsory**; high school education must be **available** and **accessible**. The standard used to determine the right to education is known as the **4As: avail-**

⁹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)(UDHR).

able, accessible, acceptable and adaptable. Availability means ensuring there are enough places at school for all children. Accessibility means children should be able to reach school. Schools can be inaccessible because of cost (some parents cannot afford to send children to school) and discrimination (usually affecting such groups as girls, non-citizens or children of ethnic minorities). Acceptable refers to the quality of education meaning it should be relevant, up-to-date and help children develop into productive adults. Adaptable education ensures the inclusion of different groups and subjects in the learning process. Common problems in South-east Asia involve the language of instruction as many children do not speak their national language at home, and also the education of children with a disability.

Juvenile Justice

The safety and security of children in conflict with the law is a concern. Juvenile justice systems in Southeast Asia are still undergoing development. **Juvenile justice** consists of: (1) the laws recognising crimes and punishments for minors, (2) the police and courts which arrest juveniles and put them on trial and (3) the detention centres which incarcerate them. The justice system should be concerned about the impact of punishment on a child's development. Children are often arrested for relatively minor crimes and made vulnerable to violence and mistreatment in detention. Ideally, juvenile courts should be separate from the adult system. The child should also have access to legal aid, be protected against corporal punishment and have access to counselling. The policy of diversion (to divert children from the justice system) is widely supported and involves alternatives to justice and detention.

Children and Labour

Although in some cases it is reasonable for older children to work, labour which exploits children or stops them attending school violates their rights. Measures to protect children include: minimum age laws, regulations on work conditions and laws banning certain types of labour. The first laws protecting children were introduced by the ILO; more recently, the Convention on the Worst Forms of Child Labour has outlawed such situations as slavery, trafficking and debt bondage. Violations of child labour in the region include hazardous jobs like fishing, begging and garbage scavenging.

Right of Adolescents to Reproductive Health

Although states may have strict laws protecting children from sexual violence, they have found it more difficult to address the issue of teenagers engaging in consensual sex. Although important, education on responsibility and safe sex tends to be poor. Problems of sexually transmitted diseases, non-consensual sex and poor reproductive health choices can be especially damaging to young adults. Lack of access to contraception and social pressures (particularly on girls) may lead to teenage pregnancy, an issue which is a concern of many Southeast Asian states.



RHTO - Ra'és Hadomi Timor Oan

High school students from Liquisa simulate the use of PwD equipment during a training on social inclusion



Discussion



Focus on



CHAPTER 7

The Rights of Persons with Disabilities

7.1 INTRODUCTION

Throughout history, people with disabilities have been treated with fear, suspicion and contempt. In many societies, such individuals were even considered a source of shame to their families and were locked away. In some cultures, it was believed that people with disabilities were possessed by demons, so religious leaders were often called to exorcise those evil spirits. Governments forced people with disabilities to be sterilised to prevent them giving birth to children who might be disabled. These attitudes have changed over time. Sometimes it was because of medical advances, treating the disability. Other times it was because of the increased inclusion of disabled people in society through technology like sign language or wheelchairs. However, while conditions have improved across the globe, people with a disability are one of the most commonly marginalised groups in any society.

The rights of persons with disabilities were not specifically identified in any of the early human rights documents, such as the Universal Declaration of Human Rights (UDHR).¹ There were some specific actions and documents on the rights of persons with disabilities such as the World Programme of Action Concerning Disabled Persons (WPA) in the 1980s, with the objective of realising the goals of 'full participation' and 'equality' for people with a disability. In order to advance these goals, the United Nations (UN) General Assembly declared 1983-1992 the Decade of Disabled Persons during which many activities were conducted to improve the situation and status of persons with disabilities. These measures included the facilitation of equal opportunities in education and employment to encourage their full participation in society.

However, it was the treaty specifically for people with a disability, the UN Convention on the Rights of Persons with Disabilities (CRPD)² in 2006, which was the milestone for recognising the rights of disabled people, as it no longer views persons with disabilities as objects of charity requiring medical treatment and social protection, but instead recognises them as rights holders capable of making decisions about their own lives. Disability tends to be found more in poorer countries and in post conflict situations. As Timor-Leste has both these features, it is an important issue the government has to face.



Discussion and Debate: Disability in your society

How are people with disabilities perceived in your society?
Have these perceptions undergone change over time?

7.1.1 Evolving Approaches to Addressing Disability

Over the years, society's understanding of disability has evolved along with the way it addresses the needs and concerns of people with disabilities. This section examines the evolution through four main perspectives: (1) the charity model, (2) the medical model, (3) the social model and (4) the human rights-based approach.

¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

² Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

Charity Model

This model sees persons with disabilities as victims who need help from 'abled' people. It treats people with a disability as unable to think or provide for themselves, meaning it is the duty of society to take care of them. Consequently, persons with disabilities are dependent on the charity of others. Since charity depends on goodwill, the quality of care may be considered less important. This approach led to the creation of care institutions or asylums. Even though this was done with the intention of providing support, people with disabilities were removed from their families and communities and placed in special institutions.

Medical Model

This model is based on the view that disability is a medical condition that is defined by a medical understanding and, in some situations, can be treated by medicine. Disability is viewed in terms of a person's physical or mental limitations which can be managed with medical care. Comparable to the previous approach, this model also encourages loss of independence and institutionalisation. As disability is considered a treatable problem, medical professionals are given great power to decide the best interests of such persons. The discrimination against disabled people, or stereotypes about them in society, are not addressed in this model. Again, as in the above approach, persons with disabilities lack choice and control of their lives and will have little opportunity to participate in decisions affecting them.

Social Model

This model shifts the focus away from the individual to society and sees disability as originating from the society which constructs barriers in the environment. These barriers include buildings, attitudes and media designed without caring for the needs of some members of society. This prevents people with disabilities from fully enjoying their position in society like others. For example, according to this approach, a wheelchair user may not be able to move freely due to a lack of ramps on buses or steps, which limits their access.

The social approach focuses on eliminating such barriers from the environment. At the same time, it recognises that persons with disabilities may require special care and support. Accordingly, it puts them at the centre, requiring care providers to respond to the expectations of persons with disabilities only after listening to their wants and needs.

Human Rights-Based Approach

This model builds on an understanding of the social approach and recognises that persons with disabilities are still rights holders; therefore, states have an obligation to take appropriate measures to ensure they can enjoy their rights equally with others. As such, it acknowledges that environmental barriers can lead to discrimination and recognises the importance of enabling access to justice and appropriate remedies. The human rights approach also focuses on empowering persons with disabilities so they can participate in society to the fullest extent.

In the last few decades, there has been a noticeable transition from the medical and welfare models (which denied persons with disabilities agency) to social and human rights-based approaches (which promote equal rights and opportunities).

Table 7-1: Illustration how Different Models Treat Visual Impairment

| Approach | How Visual Impairment is Viewed | How to Treat Visual Impairment | Duty Bearer |
|------------------------------------|---|---|---|
| Charity Model | Blindness is a tragedy of nature. Blind people cannot look after themselves and they need to be helped. Society must take care of them. | Give money to blind people. Place them in shelters with each other. Keep them away from society because they could harm themselves. | Charitable and religious institutions. Compassionate persons in society. |
| Medical Model | Blindness is a medical problem. There are a variety of sight impairments, which can be measured to determine how disabled the person is. | Some blindness can be fixed with eye glasses, some needs surgery to treat the eyes. Other cases are untreatable. Use medicine to try to prevent blindness from occurring. Doctors and hospitals are where blind people should be helped. | Medical professionals. State (the health ministry and related departments). |
| Social Model | Visually impaired people will have trouble in a community if information is not given to them in a way they can understand, such as by Braille or verbally. Public areas should be safe for blind people who may not see obstacles. Blind people should not be stopped from going to school and having jobs like everyone else. | Eliminate barriers in the social environment such as information which blind people cannot read or schools which do not accept blind children. | State and society. |
| Human Rights-Based Approach | Blind people have the same human rights as everyone, including movement, expression, religion, education, work and health. They should be able to participate in society and face no discrimination. | Blind people are rights holders. Any rights they are not receiving should be identified and the problem fixed. | State is the primary duty bearer. The community should work to include blind people and stop any discrimination against them. |

7.2 SOCIAL ATTITUDES AND LANGUAGE REGARDING DISABILITY IN TIMOR-LESTE

In Timor-Leste, persons with disabilities are treated, in the best-case scenario, as people to be pitied, who need assistance from their family members. Some face severe mistreatments – such as tying up people with mental disabilities at home. Traditional beliefs according to which, if one's family member is disabled, it is due to the bad behaviour of other family members or ancestors in the past or is the result of a curse. This leads to dangerous stereotypes and discrimination. These have serious consequences on people's everyday lives – including limited access to social and cultural activities, as well as to government services.


In many cases, for example, people with mental disabilities are still taken to the local shaman or healer to be cured by sending the evil spirits out from that person's body. This is due to the belief that mental (or psychosocial) disabilities are closely related to the supernatural. It is assumed that bad spirits live in their bodies and control their lives and decisions. The local healer therefore performs several traditional rituals, killing pigs or chickens. By doing this, it is believed that all bad luck, curse and sins will be washed away from the bodies of persons with mental disabilities.

The discrimination against people with disabilities is reflected in, but also perpetuated through the use of offensive language. For example, calling persons with disabilities *invalidu* or *ema alezadu, bulak* (invalid, defective and crazy) is most common in Timor-Leste. People with disabilities are labelled as an invalid group who cannot do anything in society.

Terms relating to disabilities have evolved over time, from the use of insulting words like 'idiot' or 'cripple' to terms reflecting respect such as persons with intellectual or physical disabilities. The term 'person with a...' is important because it places the person first. A person may have a disability, but they are not defined only by their disability.

Table 7-2: Changes in Terminology Regarding Persons with Disabilities

| Terms No Longer in Use | Terms in Use |
|---|---|
| Retarded, idiots | Persons with intellectual disabilities |
| Crippled | Persons with physical disabilities |
| The disabled, the handicapped | Persons with disabilities |
| Wheelchair-bound | Wheelchair users |
| Victims of (certain diseases that cause disabilities) | Persons with (certain diseases or disabilities) |
| Handicap | Disability |
| Normal people | Persons without disabilities |
| Suffers from (e.g. asthma) | Has (e.g. asthma) |



Discussion and Debate: Terminology

Take a look at the terms listed below and discuss the following questions:

- Are you familiar with these terms?
- Do you think they are acceptable or offensive?
- What do you think people with disabilities feel if someone calls them this way?
- What are the alternative acceptable terms?
- What can YOU do to spread awareness on why using this type of language is wrong?

| | |
|---|---|
| Fiziku Ain-a'at sira Liman a'at Ain kadik. Ain tiding Mau badak (Anau) Mau dada Mau dolar | Tilun ho kolia Tilun Dihuk Mau fa'ak Tilun a'at Mau gagu Mau bla'ar |
| Intelektual Phsico social Mau fa'ak/Maubeik Mau geger Ema bulak Miring, mau miring Maun ne'e | Defisienisa matan Matan delek Mata Satu Matan kleuk (a kleuk) Matan A'at Pendekar si buta |

7.3 CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The CRPD, adopted in 2006, reaffirms the human dignity of persons with disabilities and their equal rights to enjoy the full range of human rights. It defines persons with a disability in article 1 as people 'who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'. This definition notes the main types of disability (such as physical or mental), and it also explains the social model or rights-based view of disability: that disability is the barriers put up by society which hinders a person with a disability from realising their rights. As the CRPD states, a disability 'results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.³



Focus on: Statistics on Disability in Timor-Leste

According to the National Census (2015), there are 38,118 persons with disabilities, or 3.2% of the population of Timor-Leste, out of which 20,140 are male and 17,978 are female. However, according to the national statistics from 2010, the total number of persons with disabilities is 48,248. There is a significant difference between the two numbers, in only five years, which suggests there might be a problem with the statistics. Furthermore, according to a 2011 World Health Organization (WHO) and World Bank estimate, 15% of the world's population has a disability.⁴ If this statistic is applied to Timor-Leste, there could actually be over 175,000 people with disabilities in the country.

Because of this, relevant civil society organisations, such as the Disabled Person Organization (DPO), and academics have raised their doubts over the accuracy of the official data on disabilities. They point to some limitations in the census design and implementation, including the application of too narrow a definition of 'disability'. Another critical issue is the fact the Washington Group Questionnaire⁵ was not adopted. Several more issues were identified, such as underreporting because of stigma, undercounting (because the census questions did not include all forms of disability), as well as insufficient understanding of participants and enumerators of disability.

Population Census 2015 Statistics on Disability, Disaggregated by Sex and Main Type of Disability

| Main Type of Disability | Total | Male | Female |
|-----------------------------------|--------|-------|--------|
| Walking | 7,466 | 4,269 | 3,197 |
| Seeing | 14,828 | 7,805 | 7,023 |
| Hearing | 12,511 | 6,379 | 6,132 |
| Intellectual/ mental condition | 3,313 | 1,687 | 1,626 |

³ Preamble (e).

⁴ WHO and World Bank, World Report on Disability (WHO and World Bank 2011).

⁵ An internationally recognised standard for data gathering on disability.

The CRPD also notes in the preamble that ‘disability is an evolving concept’. The definition of disability has changed much over time. Further, with medical advancements the idea of what a disability is has changed. Some conditions have been identified, say around mental illnesses such as bi-polar disorder or autism. Others conditions are no longer considered a disability, such as homosexuality. Importantly, the social model addresses the discrimination faced by persons with a disability and identifies measures that may be taken by states to eliminate it. The CRPD does recognise a small number of new rights, though each of these is based on existing rights guaranteed in the international bill of rights (UDHR, International Covenant on Civil and Political Rights⁶ and International Covenant on Economic, Social and Cultural Rights).⁷ For example, rights to accessibility or universal design of public goods, such as elevators, are both based on freedom of movement.

The Ratification Process of the Convention on the Rights of Persons with Disabilities in Timor-Leste

Timor-Leste has been for long time the only country in the Southeast Asia region which had not ratified the CRPD. However, after nearly two decades, on July 12 2022, the CRPD was signed and ratified by the National Parliament and the President of Republic, José Ramos Horta.

Prior to the ratification of the CRPD, crucial measures have been taken as part of the preparation process:

- The Government of Timor-Leste has taken an important step to prepare a four-year National Action Plan for the Rights of Persons with Disabilities (NAPPD). The NAPPD includes comprehensive guarantees when it comes to the rights of persons with disabilities and used in practice to improve the lives of persons with disabilities in Timor-Leste. The Council of Ministers approved the NAPPD with the Government Resolution number 14/2012, May 2012.
- Furthermore, financial commitments were made ‘to ensure the implementation of all the strategies provided in the NAPD, all the Government departments and all the State Institutions include the NAPD in their annual action plan and carry out activities to promote the Rights of Persons with Disabilities and budget for each objective’.
- Finally, the proposal for the establishment of the National Council for Persons with Disabilities (NCPD) was presented to the Council of Ministers, and waits for approval.

(Source: MSSSI)

The following section gives an overview of the CRPD and elaborates on a few important articles.

⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

7.3.1 Disability as a Concept

According to the CRPD, disability results from barriers in society which prevents a person from fully enjoying their rights. We will now look into the nature of these barriers and their effects.

Attitudinal Barriers

Stigma, prejudice and bias against persons with disabilities can result in a denial of their rights. In addition, negative attitudes may have the impact of creating a disabling environment. Examples of such attitudes are thinking that persons with disabilities are inferior, having low expectations of persons with disabilities or making a person with a disability feel like a burden to society. Such attitudes can affect the self-perception of persons with disabilities and result in low self-esteem.



Focus on: Women with Disabilities

Globally, women with disabilities face discrimination on two grounds – their gender and their disability. This is also the case in Timor-Leste, in various aspects of life, for instance:

- Education: young women with disability have lower literacy rates (27%), than young men with disabilities (36%).
- Health: women with disabilities face difficulties accessing sexual and reproductive health care – the non-governmental organisation (NGO) Association of Persons with Disabilities in Timor-Leste (ADTL) reports that health care providers often assume that persons with disabilities are not sexually active and don't need relevant information.
- Gender-based violence: the Nabilan Program on Ending Violence Against Women's 2016 study showed that, in Timor-Leste, women with disabilities were 2.5 times more likely to have experienced domestic violence. Furthermore, women with disabilities face additional challenges in reporting violence. Some lack the knowledge how to do it. Others, who did manage to report, report their testimonies were not considered credible by the police or courts.

Environmental Barriers

This refers to barriers present in a person's everyday environment restricting participation and inclusion. This may include physical barriers, such as steps, doors or elevators not facilitating easy access. For example, public transport may lack ramps, making it difficult for persons with disabilities to access without aid.

Information Barriers

Communication systems may make it difficult for some people to access information and knowledge, which restricts their opportunities to fully participate in many aspects of everyday life. Public information may need to be in Braille, so people with a visual impairment can read it, or in sign language for people who cannot hear.

Institutional Barriers

These include laws and policies discriminating against persons with disabilities, which restrict the opportunities available to them. For example, some countries do not allow people with visual impairments to open bank accounts or the state may not recognise that people with mental disabilities have capacity to make their own decisions, forcing them into custodial care.

The CRPD recognises disability as a result of the barriers existing in society and lays down a framework to eliminate them, while empowering persons with disabilities to participate in society to the fullest extent. An important concept it uses is universal design: that public objects which all people should have access to should be designed to enable this. For example, a hospital should ensure that people in wheelchairs can access it and there is information available for people with sensory impairments.

Universal Design in Schools

Universal design is related to physical and information accessibility that can enable persons with disabilities to access public buildings, transportation and other relevant services.

Generally, the main barriers to access in schools are environmental and communication barriers. When schools do not meet the criteria of universal design, access to education becomes quite difficult, and sometimes impossible, for students with disabilities. Accessibility is crucial, including access to classrooms, the library, bathrooms and other facilities in the schools, as well as access to information. This means that universal design does not only mean adaptation of the school facilities, but also providing adequate information and technology.

This simple checklist provides can help determine if a school meets the universal design criteria:

| | | |
|---|---|-----------------------------|
| Is the bathroom accessible to all students? | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| Does the school have a wheelchair ramp? | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| Are the desks adjusted to the needs of students with disabilities? | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| Does the school provide sign language interpretation? | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| Do students with visual impairment have access to screen reading software (e.g. JAWS), stylus pen and tape recorders? | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| Does the school provide books and material in Braille? | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| Does the school provide wheelchairs or guide canes? | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |

7.3.2 General Principles

The CPRD calls for the recognition of the dignity of every person and their individual autonomy. Persons with disabilities should not be treated as objects of pity, but as individuals able to think and act for themselves. This is why they must be guaranteed effective participation and

inclusion in society. If instead they are forced into special institutions such as care homes for people with mental disabilities, they are segregated from the rest of society. Consequently, segregation confirms already existing stereotypes and prejudices, which can lead to further discrimination. The CRPD prohibits discrimination on the basis of disability and requires states to eliminate all forms of discrimination. Obstacles causing discrimination can also include invisible barriers, such as society's negative attitudes. For example, people with disabilities are often considered abnormal and are treated differently. In order to counter such attitudes, awareness building is necessary, to show that human society is diverse and all persons are different. Persons with disabilities are part of this human diversity and therefore deserve respect.

The CRPD also recognises that women with disabilities may face multiple discrimination as a result of both their gender and impairment. Therefore, states must take appropriate measures to eliminate barriers preventing women from enjoying their rights equally with men. Similarly, the Convention on the Rights of the Child⁸ calls for states to support the development, autonomy and self-expression of children with disabilities.

7.3.3 State Obligations

The CRPD details numerous obligations of the state, which can be reviewed in the general framework of respect, protect, fulfil, non-discrimination and progressive realisation:

Obligation to respect: state parties must not engage in any act or practice inconsistent with the rights recognised in the CRPD.

Obligation to protect: state parties must prevent the violation of a person's rights by third parties or private actors, by taking appropriate measures (for example, passing legislation to prohibit discrimination by third parties, establishing effective mechanisms for enforcing the law and providing access to justice).

Obligation to fulfil: states must take appropriate legislative, administrative, budgetary, judicial and other actions to realise such rights. The CRPD requires states to:

- Adopt appropriate legislative, administrative and other measures to implement the rights recognised in the CRPD.
- Ensure that all policies and programmes are inclusive of concerns of the rights of people with disabilities.
- Undertake or promote research and the development of universally designed goods, services and facilities that meet the specific needs of people with disabilities, and facilitate the availability and use of such goods.
- Provide easily accessible information about mobility aids, devices and assistive technologies, and other forms of assistance, support services and facilities.
- Promote the training of professionals and staff working with persons with disabilities on the rights guaranteed in the CRPD and the corresponding obligations.

Obligation of non-discrimination: states must take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise.

⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

Obligation with regard to economic, social and cultural rights: states must use the maximum available resources to work progressively towards the full realisation of the rights of people with a disability. Progressive realisation means targets will be achieved over a period of time. Some economic and social rights, however, must be immediately realised, such as obligations to not discriminate and to protect people with disabilities.

Obligation of participation: states must ensure that people with disabilities are included in the drafting of laws and policies and other decision-making processes concerning them.

7.3.4 Right to Equality and Non-Discrimination

The definition of discrimination in the CRPD includes both direct (purpose) and indirect (effect) forms of discrimination, and this is similar to the definition to the Convention on the Elimination of All Forms of Discrimination Against Women⁹ dealing with women's rights, and the International Convention on the Elimination of All Forms of Racial Discrimination¹⁰ dealing with racism. An example of direct discrimination is when the law allows forced sterilisation of people with disabilities. Indirect discrimination occurs, for example, when interviews for jobs are held on the second floor of a building only accessible by stairs and one of the candidates is a wheelchair user. Such a person would be in an unequal situation with other candidates, as he or she will not be able to attend the interview. The solution could be, for example, arranging the interview on the ground floor, a measure that would not cause much difficulty or big expense for the employer conducting the interviews.

7.3.5 Accessibility

As discussed before, disability is the result of the interaction of a person having some form of impairment with environmental barriers existing in society. Removal of such barriers is essential to enable persons with disabilities to live independently and participate fully in society. States must take appropriate measures to ensure persons with disabilities are on an equal basis with others. In addition, they should also have access to the physical environment and full access to information, communications and other public services. This obligation is applicable to both urban and rural areas. Furthermore, even private actors have an obligation not to discriminate on this basis, so the goods, products and services they offer must ensure accessibility.

⁹ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 1 (CEDAW).

¹⁰ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (ICERD).



Discussion and Debate: Societal Barriers

Imagine a person with a disability attempting to travel from your home to the classroom you are now sitting in.

What would be the challenges for:

- a person with a visual impairment?
- a deaf person?
- a person in a wheelchair?

When they are in the classroom, what barriers would they face?

7.3.6 Equal Recognition Before the Law

States have obligations to ensure the equal rights of persons with disabilities to own and inherit property, to control their own financial affairs, to have equal access to bank loans, mortgages and other forms of financial credit, and to ensure they are not arbitrarily deprived of their property. At the same time, not all persons with disabilities are able to make use of these rights independently. States must provide support in this regard. Accessibility measures may be used, for example, requiring a bank to provide information in a format accessible to a visually impaired person. Furthermore, persons with disabilities may choose someone to assist them in exercising their rights. However, this brings the risk that other people may try to influence their decision. A good example is with voting. A person with a visual disability may not be able to read a voting ballot and has to ask someone to fill it in. However, how do they know if the person filled it in correctly? Ballots should be available in Braille, and this does not happen in Timor-Leste.

Voting Rights of Persons with Disabilities in Timor-Leste

Each citizen of Timor-Leste is guaranteed voting rights by the constitution; under sections 16 and 21 all citizens are entitled to the same universal rights and duties. However, according to key advocacy groups working on disability issues, such as the DPO, many persons with disabilities have had limited opportunities to vote.

During the 2017 parliamentary elections, the National Election Commission (CNE) and the Technical Secretariat for Electoral Administration (STAE) made some important steps to include persons with disabilities in election monitoring. Raés Hadomi Timor Oan (RHTO), the national DPO, in collaboration with international organisations, CNE and STAE members, observed disability access to polling stations, documenting the various barriers for persons with disabilities during election day:

- **Physical barriers and environmental accessibility:** not being able to access the facilities at the polling stations due to lack of ramps, inadequate doors or height of stairs, lack of accessible toilets as well as great distances from the polling stations.
- **Communication barriers and institutional barriers:** primarily lack of awareness, knowledge and skills by the polling staff to provide proper assistance to voters with disabilities (for example, inability to communicate properly with persons with hearing, cognitive or visual impairments). Furthermore, there was no accessible format of the voting card, such as large lettering or easy-to-understand written materials, or techniques such as Braille and sign language).
- **Attitudinal barriers:** many people with disabilities lacked the confidence to come out to vote for fear of discrimination at the polling station.

7.3.7 Statistics and Data Collection

States must collect appropriate information including statistical and research data, so they are better able to formulate and implement policies to meet their obligations. Such information helps the state identify and address the barriers faced by persons with disabilities. At the same time, in order to ensure confidentiality and respect for the privacy of persons with disabilities, state parties must comply with internationally accepted ethical principles in the collection and use of data. The Director General of Statistics in Timor-Leste does keep information on disability, including the number of people with a disability, their age, employment rate, education, mobility and where they live.

7.4 POLICIES IN SOUTHEAST ASIA RELATED TO DISABILITY

The CRPD has been ratified by all Association of Southeast Asian Nations (ASEAN) countries, but not yet by Timor-Leste. Some steps have also been taken by ASEAN countries at the regional level to promote and protect the rights of persons with disabilities. In 2011, ASEAN member states adopted the Bali Declaration on the Enhancement of the Role and Participation of Persons with Disabilities in the ASEAN Community. The Bali Declaration was an important milestone. It urged member states to promote the quality of life of persons with disabilities

and ensure the fulfilment of such rights by mainstreaming disability perspectives in the development and implementation of policies and programmes of ASEAN across its three pillars – economic, political security and socio-cultural.

7.5 RIGHT TO EDUCATION FOR PERSONS WITH DISABILITIES IN TIMOR-LESTE

The state, as a duty bearer under international human rights law, must guarantee access to education to its citizens, including persons with disabilities. This is also guaranteed by the National Constitution of Timor-Leste in section 59, which refers to the right to access to education and culture. According to this article, the state shall ‘promote the establishment of a public system of universal and compulsory basic education that is free of charge’. It further specifies that ‘everyone has the right to equal opportunities for educational and vocational training’.

Even though both the constitution and international human rights law guarantee the right to access education, many persons with disabilities cannot exercise that right. According to a 2016 report by the ADTL, most persons with disabilities have never had access to education. This is confirmed by the 2015 National Census, which showed that around 25,000 persons with disabilities never had access to schools (around 12,000 men and 17,000 women). Even though 5,858 persons with disabilities (3,982 men and 1,876 women) did finish primary school, the numbers are much lower for higher levels of education: 1,880 (secondary school), 260 (polytechnic/diploma) and 649 (university).

These numbers show that Timor-Leste has a long way to go when it comes to providing equal access to education to persons with disabilities; however, there have been some encouraging trends lately.

7.5.1 Good Practice in Education

In 2014, a Diploma 1 programme called ‘Community Based Rehabilitation-CBRD-1’ was established at the National University of Timor-Leste (UNTL), at the Community Development Department (Faculty of Social Sciences). Community-based rehabilitation programmes were initially designed by the WHO to address the lack of rehabilitation services to the majority of people with disability in countries lacking resources. The idea was to support and advance a good quality of life for people with disabilities and their families through empowerment programmes for inclusive participation with the concept of grassroots level, within the communities.

As an example of a good collaboration between civil society (ADTL) and the UNTL, this programme has provided great opportunities for persons with disabilities to access education. The advantage of this programme is that it not only provides an opportunity for persons with disabilities, but is also designed for other stakeholders, volunteers and NGO staff who enrolled in this programme.



Debate and Discussion: A Personal Testimony

Mr Gaspar Afonso is a student currently enrolled at the UNTL. Mr Afonso entered this university as the first student with a visual impairment at the Department of Political Science, Faculty of Politics and Social Science. Being a student at the UNTL, since 2018, has been a source of great pride for Mr Afonso, as it demonstrated that UNTL, as the national university, is willing provide opportunities for persons with disabilities, especially for people with visual impairments like him.

However, before entering university, he went through a bitter struggle. Although he finished primary school in 2011, he did not have many opportunities to continue his education. Thanks to his persistence and initiative, he managed to earn a high school certificate in 2017, in Kupang-Indonesia. With this certificate, he was finally able to access UNTL as a regular student.

Mr Afonso's story is very inspiring, however, he had to take a very difficult path in order to access higher education.

Do you know similar personal stories?

Is it fair that talented students like Mr Afonso had to struggle so hard to get an education?

What can be done to make it easier for Timorese youngsters with disabilities to access higher education?

CHAPTER SUMMARY AND KEY POINTS

Approaches to Disability

Approaches to persons with disability have evolved over the years. This evolution can be explained through four main perspectives: the **charity model**, the **medical model**, the **social model** and the **human rights-based approach**: (1) the charity model sees persons with disabilities as victims who need help from 'abled' people. It treats people with a disability as unable to think or provide for themselves, meaning it is the duty of society to take care of them; (2) the medical model is based on the view that disability is a medical condition, which in some situations, can be managed with medical care. It encourages loss of independence; (3) the social model sees disability as originating from the society, which constructs barriers in the environment. It focuses on eliminating such barriers from the environment and (4) the human rights-based approach builds on an understanding of the social approach and recognises that persons with disabilities are rights holders.

Social attitudes and language regarding disability in Timor-Leste

In Timor-Leste, persons with disabilities are treated, in the best-case scenario, as people to be pitied, who need assistance from their family members. Traditional beliefs are that, if one's family member is disabled, it is due to the bad behaviour of other family members or ancestors in the past or is the result of a curse. This leads to **dangerous stereotypes** and **discrimination**. These have serious consequences on people's everyday lives – including limited access to social and cultural activities, as well as to government services. The discrimination against people with disabilities is reflected in, but also perpetuated through, the use of offensive language. This is why it is important to use **appropriate and respectful language**.

Convention on the Rights of Persons with Disabilities

The **CRPD** lays down rights and obligations as regarding persons with disabilities. It does not guarantee new rights, but elaborates upon the rights recognised in the international bill of rights and their significance in relation to the concerns of persons with disabilities. While providing no definition of disability, it recognises it as a **social construct** which evolves over time and which may have different meanings across different societies. The CRPD focuses on **eliminating the barriers** that persons with disabilities face in the enjoyment of their rights (including attitudinal barriers, environmental barriers, information barriers and institutional barriers).

Initiatives at the Association of Southeast Asian Nations Level

ASEAN has taken several initiatives to mainstream disability across all three pillars of the ASEAN community. Currently, it is implementing the action points identified in the **ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities**.

Right to Education for Persons with Disabilities in Timor-Leste

Even though both the constitution and international human rights law guarantee the right to access education, many persons with disabilities cannot exercise that right. According to a 2016 report by the ADTL, most persons with disabilities have never had access to education. Those who do mostly only finish elementary school.



Global Campus Visual Contest / Jewel Chakma (2018)

In Timor-Leste, like in the rest of the Southeast Asia, environmental rights are becoming ever more important especially for the most vulnerable groups



Discussion



Focus on



Case study



CHAPTER 8

Environment and Human Rights

8.1 INTRODUCTION TO HUMAN RIGHTS AND THE ENVIRONMENT

Human beings depend on the environment for survival. However, people only recently realised their treatment of the environment could have a permanent and devastating impact. During the 1960s and 1970s, the **environment movement** became a global phenomenon, as high-profile environmental disasters like the **Minamata mercury poisoning** tragedy in Japan made people realise the harm caused by environmental degradation. Other developments such as the anti-whaling movement and books like *Silent Spring* (1962),¹ which highlighted the dangers of pesticides, also helped to bring the environment into public consciousness. In the following decades, these concerns began to be linked to human rights.

The interaction between human rights and the environment works both ways: a clean environment is a human right and the well-being and protection of the environment depends on the protection of human rights. In other words, human rights are necessary to assert environmental rights. Similarly, the rights to health, food and water sanitation depend on a safe, clean, healthy and sustainable environment. The connection between the environment, cultural rights and heritage may be even stronger for groups who have a cultural connection to the land and nature.



Case Study: The Southeast Asian Haze

Caused by the burning off of agricultural land, this occurs every year around August to September. The fires are often started illegally as a cheap way to clean land before sowing another crop. Although palm oil plantations and timber reserves are generally blamed for the fires, recent research now points to other causes as well, including businesses clearing land by fire, conflict over land titles (especially of forests) and ineffective firefighting by the Indonesian government. Much of the haze comes from Indonesia, but Malaysia is also a contributor. Affected countries include Malaysia, Singapore, Brunei and Indonesia, and sometimes southern Thailand and the Philippines. Despite being in existence for over a decade, the ASEAN Agreement on Transboundary Haze Pollution (2002) has not yet reduced the size of the haze.

Southeast Asia has a rich history of individuals and communities fighting environmental degradation as a result of development. The civil society groups that emerged in the 1970s can be separated into two broad groups: those concerned with issues of land and livelihood (mostly consisting of indigenous or poor communities) and middle class groups concerned with quality of life, urban pollution and environmental protection. In the 1980s, a global social movement for environmental justice emerged in response to environmental disasters, such as the one at **Bhopal**, where a factory leak of poisonous gas killed over 5,200 people. Concern also grew over the threat of nuclear energy in response to the **Chernobyl** incident in the Soviet Union (now in the Ukraine), where the meltdown of the nuclear reactor affected tens of thousands of people, and then later the Fukushima incident in Japan where the reactor melted down as a result of damage from a tsunami. Finally, the **Exxon Valdez oil spill** – at the time, the largest oil spill with the greatest environmental impact – also caused much anger in the community because people felt the corporation had not done enough to avoid environmental destruction.

Today, people in Southeast Asia are more aware of the importance of a clean environment and more likely than ever to oppose developments which could be dangerous to the environment.

¹Rachel Carson, *Silent Spring* (Houghton, Mifflin 1962).

One particular concern is that the benefits and burdens of changes to the environment are not equally distributed, which is referred to as **environmental racism**. This means that the destruction of the environment has a disproportionate negative effect on certain ethnic, racial or economic groups to the benefit of wealthier segments of the population. A simple example of this can be seen in cases of **resource extraction**, where land is damaged around poor and marginalised areas to provide products and services for the middle and upper classes. On a larger scale, environmental discrimination can occur between countries, when rich countries build factories in poorer countries to avoid pollution in their own territories.



Focus on: Outsourcing Environmental Problems and the Case of Dams on the Mekong River

FOCUS ON

The Mekong River is one of the longest in the world and tens of millions of people depend on it for their livelihood. However, it is also a heavily dammed river, with China, Laos People's Democratic Republic (LPDR) and Cambodia all building dams. These dams can damage wildlife, create food insecurity and threaten the livelihood of fishing community along the river. For China, which builds these dams near the river source, they are not greatly affected by dams as the impacts tend to happen lower down the river. For Vietnam, which has over 20 million people living in the delta, dams can have a significant impact. This is a case of a country gaining advantages (in this case hydropower), while impacting the environment of neighbouring countries. This is also the case in other rivers, such as the Salween River in Myanmar where Thai electricity companies are building dams for hydropower. The dams greatly impact the communities on the river, but the electricity benefits go to Thailand.



Discussion and Debate: What are the Environmental Concerns of Your Country?

DISCUSSION

How many of the following problems exist in your country or community?

- Air pollution
- Over-logging of forests
- Dirty or contaminated water
- Industrial pollution, pollution from factories
- Noise pollution from traffic
- Contaminated food
- Unclean water for drinking or washing
- Destruction of natural forests
- Agricultural pollution
- Destruction of marine environments such as coral reefs and beaches

Do further research to find out the impacts of these concerns. Also, consider who created the problem, and how can they be solved?

Around the world, there is a history of environment rights defenders being targeted, attacked and killed. At least 185 environmental activists were killed in 2015, with Southeast Asia being one of the worst regions. For example, 33 activists were killed in the Philippines, the second worst country (after Brazil), with deaths also occurring in Indonesia, Myanmar, Cambodia and Thailand. Environmental activists face threats because they oppose the interests of powerful

businesses and challenge the development agenda of governments. In many cases, activists are villagers whose family and communities are directly threatened by environmental damage. In Southeast Asia and elsewhere, governments have done little to protect these people. Despite the influence of powerful forces, environmental rights defenders and their organisations have continued to protest for their human rights.

8.2 ENVIRONMENTAL STANDARDS

Until the 1960s and 1970s, the environment laws were less concerned with protecting the environment than protecting those who wanted to exploit it. Over the years, such thinking slowly changed leading to the development of jurisprudence on environmental protection. At the national level, environmental laws were first passed in the late 1800s to establish national parks. Other national laws include those managing pollution, for example, the Clean Air Acts. Significantly, most countries now have air pollution laws. In Southeast Asia, only Timor-Leste, Myanmar, Laos and Cambodia have not yet introduced them. Similarly, laws on water pollution, waste management, the handling of dangerous chemicals, and the protection of wildlife, forest and other biodiverse areas have also been passed. While these laws can protect environmental standards, they do not address the human rights consequences of damage to the environment.

Environmental Laws in Timor-Leste

In Timor-Leste, environmental issues are managed by the State Secretariat for the Environment (SEMA), under the Ministry of Economy and Development and the Ministry of Agriculture and Fisheries (MAF). The MAF is mainly responsible for resource management, including forests, fisheries and biodiversity conservation. SEMA, on the other hand, focuses more on monitoring, assessment, controlling and protection. It is in charge of conducting environmental impact assessments (EIA), pollution control, environmental law and enforcement, biodiversity conservation, environmental awareness raising, environmental databases, environmental laboratories and international environmental affairs.

The very foundations of the legal framework for the protection of the environment in Timor-Leste, can be found its constitution:

Section 61 (Environment)

1. Everyone has the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations.
2. The State shall recognise the need to preserve and rationalise natural resources.
3. The State should promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy.

Furthermore, environmental issues are regulated by the following laws:

Environmental Framework Law (Basic Law on Environment) Decree Law No 26/2012

The purpose of this law is to set out fundamental principles on the protection of the environment, such as inter-generational equity (that the environment should be preserved for future generations), precaution and the polluter pays principle. It

is also the legal basis for the conservation of the environment and it requires the sustainable use of natural resources. It also provides for sanctions (punishments) for people who illegally destroy the environment.

Legal Regime of Protection and Conservation of Biodiversity Decree Law No 6/2020

This law is based on the international standards on biological diversity and it identifies the responsible government ministries (which are commerce and agriculture). The law can create protected areas, protected species and the rehabilitation of ecosystems.

Environmental Licensing Decree-Law No 5/2011

This establishes the procedures for doing EIAs. It creates three categories of projects: Category A require a full EIA, Category B a simplified EIA and Category C do not require an EIA. It also give the rules on the evaluation body and the process of public consultation.

National System of Protected Areas Decree-Law No 5/2016

Like the Protection and Conservation of Biodiversity Decree, this law also can establish protected areas, such as national parks. It also allows for monitoring of these areas and dispute resolutions, for example for people who may be living in protected areas.

The first major step towards the claim that a clean environment is a human right was introduced in the **Stockholm Declaration (1972)**, at the very first United Nations (UN) conference dealing with the environment, called the Stockholm Conference. Although the Stockholm Declaration does not explicitly recognise the right to a clean environment as a human right, but rather as necessary for human rights to be met, it clearly demonstrates their interdependence. It also accepted a responsibility to protect and improve the environment, not just in the present, but also for future generations. Although the Stockholm Declaration has no binding legal force, it is a statement of principles agreed to by its signatories.

The human right to a clean environment did not receive wide support in the period immediately following the Stockholm Conference. International lawyers felt the concept was too vague and unenforceable. For example, how to define a 'clean environment'? Does it refer to how clean the air is? Or is it about trees, parks and animals? Is its intention to restrict pollution to only some areas of the country?



Focus on: Elements of a Right to a Clean Environment

There is no precise definition to a clean environment, but the elements may include:

Freedom from pollution, which can include:

- pollution in drinking water;
- pollution in the air;
- freedom from garbage and waste; or
- freedom from poisons such as insecticides and herbicides.

The right to a healthy environment, which can include:

- not getting sick from unclean water, air, or food;
- laws banning the use of poisons; or
- prohibiting factories from polluting.

The right to access a clean or a natural environment, which can include:

- the right to parks and playgrounds;
- the right to national parks or other natural areas; or
- the right to access clean public beaches.

The right to a sustainable environment, which can include:

- the right to save forests, wetlands, or other areas from destruction; or
- the right to ensure lands, forests and rivers remain productive by preventing over-logging, over-fishing or over-fertilizing.

8.2.1 Substantive Right to a Clean Environment

For the right to a clean environment to work, two separate but interrelated functions must be present: there must be a **law** and a **mechanism to enforce it**. In other words, it is not enough for individuals to have a right, it must also be codified into law. Similarly, if a right is codified into law, but there are no procedures to enforce it, it is not useful. Procedures such as tribunals, court systems or mediation must be in place to ensure individuals can realise their rights. To summarise, substantive rights refer to the existence of the right itself, while procedural rights cover the ability to use courts or equivalent mechanisms.

The substantive right to a clean environment exists in different laws, both international and domestic. In international law, the International Covenant on Economic, Social and Cultural Rights (ICESCR)² made an indirect statement on the issue, in relation to the right to health. Although it does not mention a specific right to a clean environment, it indicates that a clean environment might be necessary to ensure the right to health. Therefore, elements of a state's duty towards a clean environment include providing clean drinking water, sanitation and freedom from pollution. Other international documents include the Rio Declaration on Environment and Development (1992) which discussed the relationship between a clean environment and human

² International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

rights. However, as a declaration it is non-binding and does not explicitly recognise a human right to a clean environment.

On the other hand, the right to a clean environment does exist at the regional level. In South-east Asia, the ASEAN Human Rights Declaration (2012) clearly mentions the right to a clean environment. The situation is very different at the national level. From the 1980s onwards, a human right to a clean environment was established in over 90 countries worldwide. In fact, most developments have been made at the national level, through constitutional interpretation, specific provisions or court cases on the environment.

8.3 PROCEDURAL RIGHT TO A CLEAN ENVIRONMENT

The procedural right to clean environment is summarised in a number of international documents. It consists of three main elements: (1) a right to environmental information, (2) a right to participate in environmental decision-making and (3) access to courts or other forms of administrative mechanisms in the case of a dispute.

8.3.1 Right to Environmental Information

Without information, it is impossible to create a strong argument against a proposal or project which may harm the environment. A situation can occur where people could wake up and find a large construction site next to their house. When attempting to find out what is being built, they may be denied information. If parents, they may be worried about the dangers of pollution or increased traffic on their children. If farmers, they may worry about the impact on their farmland. If business owners, they may be concerned about the impact on their business. Whatever the worry, there is no way for any of these groups to prepare for the consequences of the construction, if they are denied information. States must have freedom of information laws in order for citizens to be able to exercise the right to environmental information.

8.3.2 Right to Participate in Environmental Decision-Making

There are several ways the public can participate in environmental decision-making. Two of the more common methods are through environmental planning regulations and EIA regulations, both of which should include public participation.

Environmental planning should allow public participation during the drafting of long term plans for a town or city. The public should also be allowed to express their concerns or opposition to more specific planning decisions, especially when their immediate environment is impacted – for example, opposition to the building of a chemical plant near a housing area.

An **EIA** is a study which assesses the environmental impacts of a development. The report should detail how the air, water, and land will be affected. Sometimes, this will also include social and livelihood impacts. Projects which may cause a substantial amount of pollution, or larger projects, may require EIAs by law before approval is given. In addition, the EIA should include environmental effects, as well as all mitigating measures taken to lessen that effect, during both building and operation stages. Further, an EIA system should include a public participation mechanism.



Discussion and debate: Environmental Impact Assessment in Timor-Leste

Timor-Leste has a national regulation on license and EIA, stipulated in Decree-Law No 5/2011 about Environmental Licensing, as well as Decree-Law No 26/2012, the Basic Law on the Environment.

One such EIA has been conducted within the framework of the Timor-Leste Road Climate Resilience Project, for emergency repairs of sections of the Dili-Ainaro road, financed by the World Bank and implemented by the Ministry of Public Works. The EIA examines the environmental and social impacts of the project, including the main concerns expressed during the Suco-level public consultations, as well as plans how to address those concerns.

Some examples of the impacts are:

- Removal of vegetation to build the road
- Impact of coastal erosion (for the road built along the sea shore)
- Flooding from runoff caused by rain
- Managing sewerage and wastewater from worker camps
- Banning workers from using guns and hunting equipment.
- Workers respecting villages privacy and security

Most of these impacts deal with the environment, but do any relate to human rights? Does a new road affect people's rights to a clean environment?

Have there been any big infrastructural projects in your district?

If so, how did you find out about them?

Have you, your family or friends ever taken part in public consultations about such projects?

Do you think it is important to hold public consultations, and why?

Public participation is the most important aspect of environmental planning and the EIA, and is crucial to secure human rights. But to be effective, participation must also be meaningful. It is not enough that the authorities hear the citizens' views, they must also consider them seriously. The entire process must be transparent and the final decision must clearly demonstrate that the views of the public were considered. Participation is only inclusive if it ensures all groups have access to it. A group frequently left out of participation is women, although women's rights are often violated as a result of environmental damage. For example, given their role in agricultural work, rural women can be significantly harmed by degrading environments.

States sometimes attempt to limit, or even fake, participation in many ways. Examples include allowing smaller pro-development groups to participate knowing they will support the project, while preventing opponents from being heard. Other cases are when states hold public meetings while setting up road blocks to prevent access to the meeting. Similarly, states may delay participation until it becomes meaningless because the development has already started. In worst case scenarios, the public is simply excluded from the entire process.

The Role of Timorese Civil Society Monitoring Environmental Compliance

Local and foreign companies, as well as state-owned enterprises, do not always comply with existing policies and regulations. Civil society groups, which are well-connected with the local communities most affected by negative environmental phenomena, have been regularly monitoring such violations.

Lao Hamutuk is one of the local non-governmental organisations (NGOs), which is very active in terms of advocating for compliance and monitoring environmental impacts. This NGO, with other allies, has often protested against various infrastructure projects, including megaprojects. Most of their concerns have been related to issues of licensing or the process of doing an EIA. According to the regulations, high-risk projects should be marked as category A, while moderate-risk projects as category B. However, in practice, some projects are given the wrong category license. They should have a full EIA (category A), but they are allowed to do a smaller one (category B) or in some cases there is no EIA (category C).

In other cases, companies have done constructions work, despite the fact they did not have a license at all. Below are some examples documented by Lao Hamutuk. The first table lists roads built which should have had a full EIA done, but they were categorised as B level. The second table lists development projects in which there was no EIA conducted.

Table 8-1: Table of Road Works Categorised as B Level

Some of road works are labelled 'upgrades' and categorised as B, although the Licensing Law says that construction of a road longer than 10km is a category A work.

| Project Type | Areas | Project Proponent |
|--|---|-----------------------------------|
| Highway Construction 2018 | Baucau-Viqueque | MTK (with Asian Development Bank) |
| Highway 2016 | Dili-Baucau | MTK (with Asian Development Bank) |
| Road Network Upgrading Sector Project (2) 2013 | Dili, Manatuto, Tacitolu-Liquica, Tibar-Gleno, others | MTK (with Asian Development Bank) |
| Water Supply and Sanitation Project 2020- | Baucau | MTK (with Asian Development Bank) |

(Source: Lao Hamutuk <<http://mail.laohamutuk.org/Env/18EnvRegistry.htm#TasiMane>>)

Table 8-2: Development Projects With No EIA Conducted

The following projects were implemented without licenses, in violation of the law.

| Project Type | Areas | Project Proponent |
|--|--------------------------|--|
| Building- Timor Plaza | Dili | Dili Development Company / Tony Jape (private) |
| Hera power plant for central electrical in Timor-Leste | Dili | EDTL/MOP (public/state-owned) |
| Ministry of Finance Building | Dili | Ministry of Finance (public/state-owned) |
| Palm Business and Trade Center | Dili | Jackson Lay (private) |
| Pacific Beach Resort | Dili, near the beachside | Dili Development Company / Tony Jape (private) |

(Source: Lao Hamutuk (<<http://mail.laohamutuk.org/Env/18EnvRegistry.htm#TasiMane>>)

8.3.3 Access to the Court System

A problem in procedural rights is that a person will usually have to prove they have been directly affected by the environmental damage, for example their health, wealth or property, to appear in court. In environmental cases this damage or economic loss may not be obvious, because things like deforestation or pollution have long term effects, and are sometimes not immediately evident. In most Southeast Asian countries, a person must prove he or she has an interest in the matter beyond that of the average person. This may include an environmental NGO with a special interest in wildlife or pollution in some jurisdictions. Restricting access to courts has led some groups to turn to alternative methods of complaint such as public demonstrations.

8.4 RIGHT TO A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

The UN's Special Rapporteur on human rights and the environment outlined the obligations of the state to ensure a safe, clean, healthy and sustainable environment. He acknowledged that there is clear evidence that human rights are threatened by environmental harm. Furthermore, because all UN bodies and all states recognised that environmental harm violates human rights in a variety of ways, States have duties to respond. State obligations are:

Substantive Obligations

States should have laws against environmental harm that may interfere with the enjoyment of human rights. Examples of these laws are standards for air and water quality, and anti-pollution measures.

To fulfil this obligation, states should find a balance between environmental protection and other issues of societal importance, such as economic development and the rights of others. But the balance cannot be unreasonable or result in unjustified human rights violations. The state obligation includes a duty to protect against environmental harm caused by corporations and other non-state actors, as well as by state agencies.

Procedural Obligations

States have obligations to:

- (a) make assessments of environmental impacts and make environmental information public;
- (b) ensure public participation in environmental decision-making on the basis of freedom of expression and association;
- (c) ensure there are remedies for people whose rights have been interfered with by environmental harm.

Regarding procedural obligations, states must ensure awareness, participation and access to legal procedures which includes environmental impact studies, public participation processes and mechanisms for individuals and communities to seek remedy if they experience environmental harm. Procedural rights to a safe, clean, healthy and sustainable environment are inter-dependent with civil and political rights, in particular, freedom of expression and the right to a remedy.

Transboundary (or extra-territorial) state obligations can arise when pollution crosses borders, impacting people in neighbouring countries. Examples of this include the **Southeast Asian haze** and the impact of dams. In both these cases, one country's action negatively impacts people from neighbouring countries. For example, children in Malaysia and Singapore could not attend school and fell ill because of the Southeast Asian haze.



Focus on: Deforestation and Mechanisms to Protect and Preserve the Environment

Environmental problems in Timor-Leste, particularly regarding floods, erosion, landslides and forest destruction, had started occurring in the era before it gained its independence in 2002. For example, several reports from national and international environmental organisations demonstrate that environmental damage occurred during the colonial period. The data released by the NGO WithOneSeed shows that around 80% of forests in Timor-Leste were destroyed the Indonesian occupation (1975-1999). Deforestation was the result of 'illegal logging operations for teak, redwood, sandalwood, and mahogany for export'.

Similarly, the traditional farming system and lack of knowledge of the local communities on environmental issues cause environmental damage. According to the director of the environmental NGO Naterra, 'the Timorese tradition which relies on the traditional agricultural practices has become the main contributor'. The community often cuts down forests and burns their gardens to clear up farming space. Moreover, in rural areas, people still use firewood for cooking. The dependence on cooking with firewood, present since ancient times, is another factor contributing to the destruction of forests.

The way to avoid deforestation, there are some best practices that can be adopted:

- Government regulations policy related to environmental issues are under the State Secretariat for the Environment (SEA), Ministry of Economic and Development and the Ministry of Agriculture and Fisheries (MAF). There are some legal procedures and frameworks used by these institutions to control environmental issues.
- Reducing the use of firewood with some new alternatives: for example, there is a cooperation between the Timor-Leste government and the UN Development Programme (UNDP) in promoting the use of more efficient cooking stoves for people in rural and urban areas.
- Re-forestation programme: various NGOs and international organisations have implemented re-forestation programmes. For example, WithOneSeed has collaborated with the government to implement a 'one seed, one tree' programme. This programme allowed the community to plant more seeds, at least one person, one seed. In addition, the NGO Carbon Offset (FCOTI) has carried out a tree-planting programme. Around 300,000 trees have been planted in Laclubar and Soibada since 2010. Another example is the mangrove planting programme on the coast by UNDP and the Timor-Leste government.

To conclude, states also have an obligation to groups with particular vulnerabilities or who may suffer disproportionately from environmental destruction. This includes large groups such as women, children, the poor and indigenous peoples. Women are particularly impacted because in many poorer regions they do a significant amount of the agricultural and household labour, which can be made more difficult by environmental problems. Children are more vulnerable to pollution, as demonstrated by the previous examples of Minamata and Chernobyl, where pollution led to deformities in newborns, or the Southeast Asian haze which caused respiratory illnesses.

8.4.1 Indigenous Groups and the Environment

In many Southeast Asian countries, indigenous people face disproportionate violations from development and environmental degradation. These can be caused by large projects such as dams, deforestation, mining and forced displacement because of changes to land regulations. Indigenous groups often do not have the same level of wealth or political power as the businesses they are in dispute with, making them vulnerable to exploitation in a number of ways. Their ownership of land may be traditional and not clearly stated in law. In other cases, groups migrating between plots of land in different regions may return and find someone else in possession of their land. Further, substantially degraded environments can lead to a complete loss of livelihood from hunting, gathering and cultivating. Land holds more significance than simple property ownership to indigenous groups, as they may have a strong cultural connection to the land. This is why damage to the environment also affects their culture and heritage. For these reasons, special measures are required to protect indigenous groups. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)³ states indigenous peoples shall not be forcibly removed or relocated from their lands and movement can only be done with free, prior and informed consent.

³ UN Declaration on the Rights of Indigenous Peoples (UNDRIP)(adopted 13 September 2007) A/RES/61/295.



Discussion and Debate: Teaching Traditional Timorese practices on the Environment

Tara bandu, a traditional Timorese conflict resolution practice, can be relied on to protect the environment. *Tara bandu*, which regulates people to people relations, people to animal relations, as well as peoples' relationship with the environment, is acknowledged in article 8 of the Basic Law on the Environment:

1. The state recognizes the importance of Tara Bandu as an integral custom of Timor-Leste culture and as a traditional mechanism for regulating the relationship between man and his environment.
2. Tara Bandu may be applied in accordance with the rituals instituted by local common law which are intended to conserve and promote the environment and the sustainable preservation and use of natural resources, as long as it is compatible with the aims and principles established herein.

This shows that caring about the environment is not just about following international regulations, but it is deeply rooted in Timorese culture. The *tara bandu* has been used to regulate the time for harvest or fishing according to climatic shifts, to prevent overfishing and ensure all members of the community have equal benefits. *Tara bandu* has also been used to prevent deforestation. Sanctions include slaughtering buffalo or even financial payments.

It is important that youth learn these principles, but is this still occurring? How many students in the class are aware of these principles and have seen them in action? How should these traditional practices be taught?

Should these principles be taught in primary school and high school, or should it be left to families and maybe village leaders?

DISCUSSION

8.5 Climate Change and Human Rights

Climate change has both long term effects and immediate consequences on people's livelihoods. While the most damaging impacts in terms of rising sea levels have not yet occurred, the region is beginning to see extreme weather conditions and temperature changes. Eventually this can lead to more frequent droughts, water shortages, floods, storms and heat waves. All of these will affect the lives of millions through changes in food production and humanitarian disasters. In Southeast Asia, one of the greatest concerns is the damage done to river deltas as a result of rising sea levels. For example, the river deltas in Vietnam, Thailand, Myanmar and Bangladesh are some of the most agriculturally productive and populous areas in the region. Because they produce large amounts of food, damages in these regions could lead to human rights violations on a massive scale. Furthermore, rising sea levels could force tens of millions of people to leave their homes, turning them into **environmental refugees**. Currently, there is neither legal recognition nor protection for these people.

Other areas of concern include more extreme weather events, such as stronger typhoons hitting the Philippines, Vietnam and Myanmar, harsher winters in northern Myanmar and Vietnam, and droughts. Entire countries in the Asia-Pacific, like the Maldives and Tuvalu, face extinction, as projections on the rising water level show both island states will end up under water. All of this demonstrates that climate change can impact the realisation of human rights.

Human-made greenhouse gas emissions are the primary cause of climate change. The worst of the concerns we discussed may be avoided if states cooperate. When it comes to human rights, two relevant actions are required: (1) the prevention of violations to people due to climate change should be a government priority and (2) countries, industries and groups that are most responsible for climate change should be held accountable for their actions. However, states have not yet fully accepted this. First, they are not reducing emissions enough to delay climate change. Second, there is a significant difference between the costs caused by climate change and the capacity or willingness of states to pay that money. People living in poorer countries will not have the financial or technological protection of those living in rich countries.

The Intergovernmental Panel on Climate Change (IPCC) and the Office of the High Commission for Human Rights (OHCHR) are developing a rights-based response to climate change. The human rights based-approach ensures that states responding to climate change do not violate human rights. This is needed since many plans to mitigate climate change do not fully assess their impact on human rights. For example, closing coal plants or reducing traffic on roads are obvious responses to climate change, yet the impact on people's livelihoods or other rights has not been fully examined. Currently, UN bodies are working to incorporate human rights into existing development and climate change documents such as the UN Framework Convention on Climate Change (UNFCCC)⁴ and the 2030 Agenda for Sustainable Development.



Discussion and Debate: Human Rights Impact of Climate Change

What are going to be the human rights implications of climate change to your country?

1. Look into the consequences of the following climate change implications:

- rising sea levels;
- more storms or typhoons;
- more droughts;
- changes to agricultural production;
- diseases such as malaria migrating to new areas;
- hotter temperatures and heat waves.

2. What can be done to reduce the impact of climate change? Consider the changes that need to occur to reduce the emission of greenhouse gases. Consider the following:

- what can individuals do to change their behaviour?
- what can families do?
- what can communities, villages, and suburbs do?
- what can cities do?
- what should a national government do?

DISCUSSION

⁴ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).

CHAPTER SUMMARY AND KEY POINTS

Introduction

Concern for the environment can be traced back to the late 1800s, but it was during the 1960s and 1970s that it became a **worldwide phenomenon**. High profile environmental disasters made people realise the impact of environmental degradation. Human rights were soon after linked to the environment. The interaction between human rights and the environment works both ways: a **clean environment** is a human right and the **well-being and protection of the environment** depends on the protection of human rights. Southeast Asia has a history of environmental activists on issues such as protecting nature and pollution. Pollution is now international, like in the case of the haze caused by forest fires in Indonesia. The **transboundary haze** lead to international agreements on the environment in the region. **Environmental activism** is dangerous, with many activists being attacked and killed.

Environmental Standards

Until the 1960s and 1970s, laws regarding the environment were more concerned with the exploitation of the environment. There were national parks laws and laws on river uses, but during the 1970s many **international laws** on water pollution, dangerous chemicals and protection of endangered species were introduced. The first claim that a clean environment is a human right was in the **Stockholm Declaration** (1972). The human right to a clean environment did not receive widespread support because some saw it as too vague and unenforceable.

A Substantive Right to a Clean Environment

The **right to a clean environment** has two separate but interrelated objectives: there must be a **law** (or substantive rights) and a **mechanism** to enforce it (procedural rights). Substantive rights exists in both international and domestic laws such as the International Covenant on Civil and Political Rights,⁵ ICESCR, and at the regional level in the ASEAN Human Rights Declaration. More substantive rights can be found at the national level in Southeast Asia.

The Procedural Right to a Clean Environment

The **procedural right** consists of a right to environmental information, a right to participate in environmental decision making and access to the courts or other forms of administrative mechanisms in case of a dispute. **Information** is needed so people know, and can prepare for, impacts on their local environment. These can be freedom of information laws. **Participation** can come through EIAs and participation in town planning. Participation from the public should influence the final decision making. The report on a project should consider public opinion and responses to them. **Access to a remedy** for dispute resolution or compensation and access to the courts is part of this right, though it can be limited.

The Right to a Safe, Clean, Healthy and Sustainable Environment

Another model from the UN's Special Rapporteur on human rights and the environment details obligations of the state to ensure a **safe, clean, healthy and sustainable environment**. This includes obligations to protect individuals from environmental harm, ensure awareness, participation and access to legal procedures, an obligation to protect against violations by private

⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

actors and to take into account the needs of groups who may have particular vulnerabilities or suffer disproportionately from environmental destruction such as women, children, the poor and indigenous groups.

Indigenous Groups and the Environment

Indigenous people face many violations from degradation of the environment through large projects such as dams, deforestation and mining. There are **special measures** to protect the indigenous because their ownership of the land is traditional, and in the law they are vulnerable to encroachment by farmers and forced displacement. UNDRIP states indigenous peoples shall not be forcibly removed or relocated from their lands and movement can only be done with free, prior and informed consent.

Climate Change and Human Rights

The **changes to climate** have long term effects like sea level rise and immediate consequences such as extreme weather conditions. Food prices and availability will be affected through a drought, floods and storms. The result could lead to tens of millions of environmental refugees. The negative impact of climate change will face disadvantaged communities. The worst of these concerns may be avoided if states cooperate through reducing greenhouse gases, but this is yet to be realised. Many plans to mitigate climate change do not fully assess the impact on human rights. While human rights are mentioned in the more recent climate change documents there is no specific details on duties and obligations of states.



Students attend a seminar by the Provedoria for Human Rights and Justice, a key partner of the UNTL HRC since its establishment



Discussion



Focus on

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CHAPTER 9

Protecting Human Rights and Democratisation in Southeast Asia

9.1 INTRODUCTION

To protect human rights is to ensure that anyone who is entitled to a right is actually able to get those rights. For example, a child who has a right to attend school can indeed go to school or a journalist can freely write the news. Protecting human rights is done by various organisations in a number of different ways. At the national level police, judges, courts and lawyers work to enforce human rights, as do civil society organisations and government officers. They can protect human rights by enforcing laws, promoting tolerance, educating people, providing services and so on. In a similar way, organisations at the regional level, or at the international level, also work to protect human rights. Protection means more than just ensuring a government does not violate human rights; it can also mean ensuring that a company or a school follows the law, so that individuals' rights are protected from any violation, whether from the government, individuals, companies or any other kind of organisation. This chapter looks at how human rights are protected at both the national level (what is happening in Timor-Leste), but also at the regional level – how regional bodies protect human rights.

9.2 STATUS OF HUMAN RIGHTS PROTECTION IN SOUTHEAST ASIA

In order to determine how effective protection is, it is necessary to discuss the current status of human rights protection in the region. This is challenging because there is no simple way to measure human rights. Organisations such as Amnesty International, Human Rights Watch and the United States State Department each examine the human rights of many countries, according to certain criteria. These studies, called annual country reports, are available online. Another way to look at the status is by examining rankings put out by different organisations. In the table below it is possible to get an idea of how human rights protection compares between countries in Southeast Asia.

Table 9-1: Status of Human Rights Protection

| Country | Freedom Ranking* | Human Development Index** | Press Freedom Ranking*** | Human Rights Ratifications# | Quality of Life (Economic and Social Rights)**** |
|-------------|------------------|---------------------------|--------------------------|-----------------------------|--|
| Brunei | Not free | Very high | Difficult | 5/18 | Not available |
| Cambodia | Not free | Medium | Difficult | 12/18 | Not available |
| Timor-Leste | Free | Medium | Problematic | 11/18 | 51.4% |
| Indonesia | Partly free | High | Difficult | 10/18 | 66.7% |
| Laos | Not free | Medium | Very serious | 9/18 | 62.0% |
| Malaysia | Partly free | Very high | Difficult | 5/18 | 84.5% |
| Myanmar | Not free | Medium | Difficult | 6/18 | 70.7% |
| Philippines | Partly free | High | Difficult | 14/18 | 71.6% |
| Singapore | Partly free | Very high | Difficult | 5/18 | Not available |
| Thailand | Not free | High | Difficult | 12/18 | 92.8% |
| Vietnam | Not free | High | Very serious | 9/18 | Not available |

* Freedom House's 2021 ranking of Freedom in the World. Three rankings are awarded: free, partly free or not free.

** From the United Nations Development Programme's 2020 Human Development Index, states can have very high, high, medium or low human development.

*** From Reporters Without Borders' 2021 World Press Freedom Index. The situation can be good, satisfactory, noticeable problems, difficult or very serious.

**** The Human Rights Measurement Initiative Rights Tracker (2017) measures how well the country is doing compared to what is possible at that country's income level. 100% means a country is using their available sources effectively. A lower score means the country could do better with the resources it has at its disposal.

How many of the nine United Nations human right treaties and nine optional protocols the state has ratified or agreed to.

The table shows that the status of human rights protection in the region is mixed. For example: the Association of Southeast Asian's (ASEAN's) richest country (Singapore) has the worst treaty ratification record; countries with high ratifications (like Philippines and Cambodia) also have many concerns; countries with poor civil freedom have good development; low corruption does not have to mean a good human rights record. Most countries in Southeast Asia may have areas where human rights are good, but they also have significant weaknesses. Some issues are common to most Southeast Asian countries, such as migrant workers and indigenous rights. Other issues like poverty, freedom of expression, education and health vary greatly across the region. What a region-wide overview does show is that human rights status is often specific to a country, and it is difficult to attempt to rank or rate countries by their human rights standards.

9.3 DOMESTIC IMPLEMENTATION OF HUMAN RIGHTS

In order to understand how human rights are protected within states, this chapter will first look at what human rights exist in the country as law. There are three main ways human rights appear in domestic laws:

- Firstly, many human rights are automatically a part of domestic law. Laws protecting people from violence and theft, or laws for providing education for example, exist in most Southeast Asian countries.
- Secondly, human rights treaties can be incorporated into law. The treaties are important because they keep a country's laws up to date with human rights developments, and they expand the protection of people. For example, laws giving women equal rights at work and marriage, or protecting children from violence, were not common in Southeast Asia 20 years ago. But as countries have agreed to women and children's rights, they can be found in nearly all Southeast Asian countries.
- Thirdly, human rights commonly (but not always) appear in the constitution. Because constitutions are the fundamental legal document of a country, this gives human rights the highest order of protection.

Of course, the existence of laws does not mean the laws are upheld. There are still many challenges to ensure the protection of human rights. The law needs to be enforced by the relevant authorities. People need to know about the law so they can follow it. Judges need to understand the law so they can make decisions based on it. And governments may need to develop national action plans or national policy, so that the people who should be protected by the law are indeed protected.

9.3.1 Human Rights in Southeast Asian Constitutions

International human rights standards can appear as part of the country's constitution. A constitution is a document that outlines how a government must govern a country. It details how the government is structured, how laws are made, how politicians are elected and what they must do. Further, it outlines the duties of the state towards its people and the duties of people towards their state.

Constitutional rights are considered strong and fundamental and all Southeast Asia constitutions do have elements of rights in them (though Brunei's constitution does not have a hu-

man rights section, it does acknowledge that people have rights). Most countries' original constitutions did not have human rights. Rights were incorporated later as amendments or they appeared in re-written constitutions. Rights equivalent to international standards were introduced recently – for Indonesia it was in 2002, Thailand was in 1997, and 2008 for Myanmar.

In Southeast Asia, there are many cases where constitutions limit rather than ensure rights. They focus more on the sovereignty and development of the state, rather than the rights of its people. Examples exist where a right is guaranteed, but only with certain limitations. Most commonly, this is done by referring to citizens' duties. This goes against the fundamental principles that rights are inherent and inalienable. There should be no duty necessary to deserve a right. Southeast Asian constitutions are also notable for giving priority to certain religious or ethnic groups. For instance, article 29 of the Indonesian constitution declares that the state should be based upon the belief in the one and only God. In the Brunei, Myanmar and Malaysian constitutions only a limited number of religions are recognised, thus limiting religious freedom.



Discussion and Debate: Knowledge of Your Constitution

Do you know what rights you get from your constitution? Have you ever had a class on your constitution? Do any of your friends and family know about the constitution?

For most students in Southeast Asia the answers to these questions will be no. Why do you think this is?

Human Rights in the Constitution of Timor-Leste

In a plenary session on 22 March 2002, the Constituent Assembly approved and adopted the Constitution of the Democratic Republic of Timor-Leste.

The Constitution contains 170 sections, organised into seven parts (Part I – Fundamental Principles; Part II – Fundamental Rights, Duties, Liberties and Guarantees; Part III – Organization of Political Power; Part IV – Economic and Financial Organization; Part V – National Defense and Security; Part VI – Guarantee and Revision of the Constitution; Part VII – Final and Transitional Provisions.

The Constitution includes human rights commitments, especially in Part II which describes fundamental rights, duties, liberties and guarantees, including civil and political rights (in Part II, Title II) and economic, social and cultural rights (Part II, Title III). These titles guarantee respect for the most basic and internationally accepted human rights. The Constitution also guarantees universality and equality, and equality between women and men. Moreover, section 9 of the Constitution incorporates all international treaties, conventions and agreements to which Timor-Leste is a state party. According to it, any national laws that contradict with the international norms and standards shall be invalid.

Section 69 of the Constitution states that Timor-Leste is founded on universal, democratic principles and separation of powers.



Focus on: The Human Rights in the Constitution of Timor-Leste

There are many rights in the constitution. The following is a partial list of some important rights.

Fundamental Rights, Duties, Liberties and Guarantees

General Principles

- 16 Universality and equality
- 17 Equality between women and men
- 18 Child protection
- 19 Youth
- 20 Senior citizens
- 21 Disabled citizens
- 22 East Timorese citizens overseas
- 28 Right to resistance and self-defense

Personal Rights, Liberties and Guarantees

- 29 Right to life
- 30 Right to personal freedom, security and integrity
- 37 Inviolability of home and correspondence
- 39 Family, marriage and maternity
- 40 Freedom of speech and information
- 41 Freedom of the press and mass media
- 47 Right to vote

Economic, Social and Cultural Rights and Duties

- 50 Right to work
- 51 Right to strike and prohibition of lock-out
- 52 Trade union freedom
- 53 Consumer rights
- 54 Right to private property
- 58 Housing
- 59 Education and culture
- 61 Environment

9.4 NATIONAL HUMAN RIGHTS INSTITUTIONS

A national human rights institution (NHRI) is an official state institution that is established by law to promote and protect human rights in a country. The NHRI serves to complement other government institutions such as the courts, but it is unique in that it acts as an important bridge between the government and the community, and between its country and the United Nations (UN) human rights system. Another feature of the NHRI is that it is autonomous from the government. Its independence is critical to the effective performance of its functions.

9.4.1 Activities of National Human Rights Institutions

The objective of a NHRI is the promotion and protection of human rights at the national level. In order to promote and protect rights, the NHRI will have a broad range of roles, which may include:

- Working with the government and the community to promote human rights education and awareness.
- Working with the government to help develop human rights policies and programmes.
- Working with the legislature to help ensure drafts, existing laws and regulations are compatible with the country's human rights obligations.
- Contributing to court proceedings that raise human rights questions.
- Undertaking investigations or inquiries into systemic human rights issues.
- Receiving and resolving human rights-related complaints from individuals, including through mediation and conciliation.
- Observing and monitoring places of detention.
- Contributing to the work of the UN's human rights mechanisms.

In addition to their domestic responsibilities, NHRIs also act as an important bridge between their countries and the UN human rights system. NHRIs enjoy observer status and participation privileges with a number of UN human rights mechanisms, including the Human Rights Council and the UN's human rights treaty monitoring bodies (discussed in Chapter 4). As independent bodies with national-level expertise, NHRIs transmit important information and perspectives to the UN's work and to its decision-making processes. By promoting awareness and implementation of UN decisions in their societies, NHRIs also help to translate UN decisions into positive change.

Table 9-2 National Human Rights Institutions in Southeast Asia

| Country | Name | Type | Year Established |
|-----------------|---|-------------------------|------------------|
| Indonesia | Indonesian National Commission on Human Rights (Komnas HAM) | Human Rights Commission | 1993 |
| Malaysia | Human Rights Commission of Malaysia (SUHAKAM) | Human Rights Commission | 1999 |
| Myanmar | Myanmar National Human Rights Commission | Human Rights Commission | 2011 |
| The Philippines | Commission on Human Rights of the Philippines | Human Rights Commission | 1987 |
| Thailand | National Human Rights Commission of Thailand | Human Rights Commission | 1999 |
| Timor-Leste | Provedoria for Human Rights and Justice | Hybrid institution | 2004 |

9.4.2 Types of National Human Rights Institutions and Their Functions

While a country can only have one official NHRI, it is free to decide on the particular roles it should play. This decision will be informed by a number of considerations, including the country's existing human rights protection framework, the legal, political and cultural systems, and the availability of human and financial resources. There are four main types of NHRI: (1) human rights commissions, (2) advisory and consultative bodies, (3) research bodies and (4) hybrid institutions (which combine different types of roles). The Timor-Leste Office of the Provedor for Human Rights and Justice (PDHJ) is an example of a hybrid NHRI.

The Provedor for Human Rights and Justice (PDHJ)

The PDHJ is an independent institution established under section 27 of the Constitution of the Democratic Republic of Timor-Leste with the function of examining and seeking to settle citizens' complaints against public bodies, certifying the conformity of the acts with the law, preventing injustices and initiating the whole process to remedy injustices. PDHJ may receive complaints from individuals concerning acts or omissions on the part of public bodies, who shall undertake a review without power of decision, and shall forward recommendations to the competent organs as deemed necessary. In addition to section 27, under sections 150 and 151 of the constitution, PDHJ is mandated to request a declaration of unconstitutionality of legislative measures and to request the Supreme Court of Justice to review the unconstitutionality by omission of any legislative measures as deemed necessary to enable the implementation of the constitution.

The institution is operationalised through Law No 7/2004 of 26 May that approved the Statute of the Office of the Provedor for Human Rights and Justice, a hybrid institution, and was mandated with human rights, good governance and anti-corruption. When Law No 8/2009 of 15 July on the Anti-Corruption Commission was approved, the mandate of combating corruption under PDHJ was transferred to the Commission of Anti-Corruption. Henceforth, the institution has a twofold mandate covering human rights and good governance. As an independent NHRI guided by the 1993 UN's approved Paris Principles,¹ PDHJ is required to have a broad mandate based on universal human rights norms and standards, autonomy from the government, independence as guaranteed by the constitution, pluralism, adequate resources and adequate powers of investigation.

The institution is accordingly established to protect and promote human rights and good governance through education, promotion of cooperation, resolution, investigation, inquiry and monitoring with four strategic priorities that include strengthening the institutions' capacity and independence in order to guarantee a good implementation of their mandate, for the public authorities to possess good knowledge related to human rights and good governance, the protection of vulnerable people against human rights abuses and access to public services and to prevent and remedy violations of human rights and good governance.

PDHJ works closely with relevant institutions for human rights and good governance such as the government and public service, law enforcement and security (the National Police of Timor-Leste), the Defence Force of Timor-Leste and prison guards),

¹ Principles relating to the Status of National Institutions (The Paris Principles) (adopted 20 December 1993) General Assembly resolution 48/134.

community leaders and civil society organisations (CSOs). It engages with media for public outreach in order to ensure that public authorities possess a decent knowledge on human rights and good governance. To prevent and remedy violations of human rights and good governance, the institution is empowered to investigate complaints made to the PDHJ, to monitor and review regulations, administrative instructions, policies and practices in force or any draft legislation for complying with customary international law and the highest standards of internationally recognised human rights and good governance, as laid down in international human rights instruments ratified by Timor-Leste.

(Source: The PDHJ)

9.5 REGIONAL MECHANISMS

9.5.1 Regional Human Rights Regimes: Europe, Americas and Africa

The UN has supported regional organisations working in development, security and human rights since its birth in 1945. The belief is that the UN cannot respond to all the human rights concerns around the world, and it is better if they are dealt with at a national level (through NHRIs) or at the regional level. Regional organisations make sense because they better address the common concerns of human rights in their region. For example, Europe is wealthy and developed and its human rights concerns are going to be very different to the concerns in poorer and less developed Africa. The regional mechanisms can develop special tools to respond to the local situations. Currently, there are three developed human rights regional organisations (based in Europe, the Americas and Africa), and a number of smaller sub-regional organisations.

An obvious gap in regional mechanisms is Asia. There are many arguments why Asia has not developed a regional mechanism, including the diversity of the countries, its size and the lack of a regional identity. There are, however, a number of sub-regional initiatives, including ASEAN, which are a step towards creating human rights protection at the regional level. The biggest development towards a regional mechanism in Asia is the ASEAN Intergovernmental Commission on Human Rights (AICHR).

9.5.2 ASEAN Human Rights Mechanisms

The regional human rights body called the AICHR was established in 2009. This is the first governmental regional human rights body in Asia. AICHR is made up of one appointed representative per government, serving for three years, and their appointment can be renewed once. The representatives themselves come from a variety of backgrounds. Some are academics, others diplomats, and others are from non-governmental organisations (NGOs).

Among the list of purposes of AICHR are:

- To promote and protect human rights and fundamental freedoms of the peoples of ASEAN.
- To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity.
- To promote stability, harmony, friendship and cooperation among ASEAN members.
- To promote human rights within the regional context.

- To enhance regional cooperation.
- To uphold international human rights standards.

Promoting and protecting human rights requires a range of abilities, an important one being the ability to receive complaints from individuals who have had their rights violated. AICHR currently is tasked with promoting human rights, but not their protection. It is not yet allowed to receive complaints. Without complaints, commissioners cannot respond to violations by addressing systemic problems that leave people unprotected.

Timor-Leste's Road to the Association of Southeast Asian Nations

Timor-Leste made a formal request to join ASEAN in 2011. This formal submission came after a number of years of ASEAN observer status.

Timor-Leste is the only country in Southeast Asia which has not yet joined ASEAN. However, it has made gradual steps towards its admission, including becoming a member of the ASEAN Regional Forum in 2005, and signing the ASEAN Treaty on Amity and Cooperation in 2007.

According to the Timor-Leste Strategic Development Plan 2011-2030, the country will pursue ASEAN membership as a priority foreign policy goal to enhance Timor-Leste's long-term strategic interests.

In order to comply with ASEAN's requirements, Timor-Leste has taken some steps, including developing infrastructures to host ASEAN's summit and meetings, and establishing diplomatic presence in all ASEAN capitals. Also, it continues its economic and social development.

Furthermore, ASEAN has given Timor-Leste an opportunity to gain exposure to its work process and methods by participating in different kinds of ASEAN activities.

9.6 THE ROLE OF NON-GOVERNMENT ORGANISATIONS

NGOs are often the first place people will go to when facing human rights violations. NGOs work at all levels, from international with large organisations like Amnesty International (AI) and Human Rights Watch (HRW), to grass roots organisations working inside communities. This section will overview the types of human rights NGOs and discuss what kind of work they do.

Firstly, it is important to distinguish an NGO from a CSO. All NGOs are CSOs, but many CSOs are not NGOs. A CSO is an organisation which has these features:

- It is not part of the government.
- It is non-profit (hence, not a company or a business).
- Its task is to contribute to society, civil and social order (hence, not a criminal organisation).

What makes NGOs distinct from other CSOs is that they work in areas of government interest. CSOs can be fan clubs, sports associations, art societies or student groups which are doing this unrelated to government work. However, NGOs do work on government related issues such as providing services like health or education, protecting the environment or assisting in community development. These are activities which the government has an interest or a role in.

The key feature of an NGO is the sector or issue it works on. Some NGOs have broad mandates which cover all rights, for example HRW and AI, or they may work in specific areas, such as disability rights or indigenous rights. NGOs frequently are parts of larger networks where they are connected to similar organisations on a national or international level.

9.6.1 Non-Governmental Organisation's Activities

Human rights NGOs can undertake a number of activities. Below are some of the more common activities:

Human Rights Education

Though states have taken on the task of human rights education (according to their commitments in the International Covenant on Civil and Political Rights² and the Convention on the Rights of the Child),³ knowledge of human rights in the region is still basic. Because of this, many NGOs have education campaigns to make people aware of human rights; these could cover human rights in general, or involve specific rights for specific people (for example, women's rights or disability rights).

Human Rights Advocacy

The term advocacy literally means to add a voice to, or to speak about something. NGOs can speak on behalf of a group who may not have the power or the resources to challenge the government. NGOs may also advocate for great recognition or understanding about a right. An example of this is advocacy for refugee rights in Southeast Asia. Advocacy often uses the media, but it can be done through education, street theatre, social media such as Facebook campaigns or making documentary films.

Monitoring and Investigation

Some people are more vulnerable to human rights violations than others because traditional state protection mechanisms are either not present or are not doing their job properly. This is the case for prisoners in jail, or indigenous groups living far away from city centres. Human rights NGOs can monitor and report on these situations and ask for action to be taken to stop violations. NGOs doing this kind of work typically release reports and press releases to update the media and other interested parties on the situation. A widely known example of this is HRW, which annually releases around 50 reports on Asia.

Documentation

Victims of violations seeking justice must be able to prove that a violation has taken place. The process of collecting evidence of a violation is called documentation. The collected data can be used in either advocacy or a court of law. Documents can be witness statements, medical reports, photographs of scenes, accounts of events and so on. The documents collected need to be accurate and must show a clear violation has occurred. Documentation can also help in advocating for changing government practice or for advocacy at the international level. Further, collecting a lot of documents can be useful to show patterns of violations. If the NGO can prove that a violation is occurring frequently by having many documents all showing a similar violation (for example, people are abused in prison), then they may be able to prove the violation is widespread and systematic, which can be used to encourage UN bodies to become involved.

² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

Complaints and Litigation

NGOs can play a role in the legal process. Examples of this are NGOs who work in the area of access to justice, as public defenders or providers of legal aid. NGOs have assisted individuals in making complaints against a government and initiated what is known as 'strategic litigation' or winning a case which can be used to change laws and government practice.

9.6.2 Non-Governmental Organisations in the Field

NGOs vary in terms of size and where they work. Small and local NGOs are often called 'grass-roots' NGOs, implying they work directly with people in their local environments.

Grassroots NGOs are largely made up of local people, speaking the local language and familiar with the local context. They rarely deal with governments, but are more likely to interact with government officers in the local environment.

The institute *Maun Alin iha Kristu*, which began its work in 1960 in Dare, is an example of a grass-roots organisation operating in Timor-Leste. The work of institute is dedicated to children who face social and cultural barriers to education. Its programmes include five boarding houses for students, an informal popular education programme, medical services and self-sufficient agricultural work.

National NGOs may run programmes in different locations, but may be headquartered in one of the main cities. It is likely these NGOs will also have a relationship with the government or government ministries in their area of expertise. However, a national NGO may undertake grass-roots activity, or may be networked with a number of smaller grassroots NGOs.

Association Hak, established in 1996, is a human rights organisation operating on the national level. Their work includes documentation of human rights violations, advocacy and educational programmes. They have established three people's centres in Baucau, Maubisse and Maliana. The centres provide emergency assistance and training. The goal is to strengthen the ability of people at the grassroots to deal with reconstruction. They also provide training to community leaders on human rights, law and legal procedures.

Another prominent national-level NGO is *FOKUPERS*, a women's organisation with a focus on women's rights and gender-based violence. They are based in Dili, but they work in other areas as well, such as Liquisa, Suai and Maliana. In the countryside, they provide counselling for women regarding gender-based violence. They do advocacy work and operate shelters in Dili, Suai and Maliana.

Regional level NGOs tend to work across a number of countries and may run programmes or advocate in more than one country. Within Southeast Asia, regional NGOs work on issues such as migrant workers or women's rights. While they will have a central office, they may have offices in other countries as well. The usefulness of regional NGOs is that they can address human rights problems which are not specific to a location, and they can advocate more strongly at the regional and international level. Within Southeast Asia, a number of regional NGOs have taken on advocacy at ASEAN venues.

Asia Justice and Rights (AJAR) is a regional organisation operating in the Asia Pacific Region (currently in Indonesia, Myanmar, Timor-Leste and Sri Lanka). They are focused on empowering national and regional partners seeking to end impunity by establishing a foundation of accountability and human rights protection by providing them with opportunities to increase their skills and knowledge, strengthening the organisations' capacity.

International level human rights NGOs undertake advocacy across different regions: they are active at the UN level, but also support grassroots and national level NGOs by assisting in their advocacy or developing their capacities. They can undertake work in numerous countries at the same time. The largest two are HRW (based in New York) and AI (based in London).

Plan International has been working in Timor-Leste since 2001, shortly before the country regained independence. Plan International is a recognised and respected organisation in Timor-Leste, working on community development and children's rights in the country, with a focus on girls' rights and gender equality.

Human Rights Defenders

People who work in NGOs can be considered human rights defenders (HRD). A HRD is defined as someone working on the promotion and protection of human rights, including human rights educators, government officers working in human rights and human rights NGO workers. The work of a HRD, particularly in the Southeast Asia region, can be dangerous. Over the past years, a number of HRDs have lost their lives or been jailed because of their work. Famous examples include the death of Munir, an Indonesian HRD, who was poisoned with arsenic on a flight to Amsterdam in 2004. Three people linked to the government have been jailed for this murder. The Philippines has a particularly poor record of protecting HRDs with many being killed in recent years, particularly for protecting villages and indigenous groups from having their land taken by business interests.

A Portrait of a Human Rights Defender

José Ramos-Horta, was born on 26 December 1949 in Dili. He is a human rights defender advocating for self-determination of the Timorese people. He dedicated his adult life to the fight for the independence of Timor-Leste.

When he was 18, he was exiled from Timor-Leste, during the Portuguese colonial rule under a military dictatorship to Mozambique, because of his outspoken criticism of the government's failure to deal with underdevelopment and widespread poverty. He later returned briefly to Timor-Leste, but was exiled again from 1970 to 1971 for speaking out against Portuguese military rule.

In 1975, Timor-Leste declared its independence from Portugal, followed shortly thereafter by an invasion from Indonesia and another brutal occupation. Having left Timor-Leste three days before the invasion, he spent 24 years in exile, bringing the plight of Timor-Leste to the attention of the world.

He became the youngest person to address the UN and convinced UN representatives to pass a resolution supporting the independence of Timor-Leste. Despite this victory, Indonesia continued its occupation and José Ramos-Horta persisted in urging the UN and other world leaders to convince Indonesia to grant Timor-Leste its freedom.

In the mid-1980s, Ramos-Horta began advocating dialogue with Indonesia, and in 1992 he presented a peace plan. It contained concrete proposals for humanitarian cooperation with the occupying power and a growing international presence headed by the UN. He was a recipient of Professor Thorolf Rafto 1993 Human Rights Prize and received the Laureate Nobel Peace Prize in 1996.

In 2002, Timor-Leste became independent and in 2006 Jóse Ramos-Horta was appointed as the Prime Minister of Timor-Leste, and then elected as President in 2007.

He continues his engagement as a committed advocate for human rights, including child rights, poverty eradication and the environment.

9.7 HUMAN RIGHTS AND DEMOCRACY

Democracy is considered the best system to protect human rights because it ensures voices are heard and interests are represented in the political system. The presence of opposing voices in a political process ensures that no one person or group can control the agenda. When voices are silenced and people are unrepresented, repression and oppression of human rights is often the result. Human rights are both a cause and an effect of democracy. Increasing human rights will lead to a more democratic country, which will improve people's rights. Many of the important principles of human rights are also vital to democracy such as the rule of law, participation, equality and self-determination. In many ways, human rights and democratisation share similar goals.

9.7.1 Human Rights and Democracy in the Vienna Declaration and Programme of Action

As mentioned in Chapter 1, the 1993 Vienna Declaration and Programme of Action (VDPA) created a global consensus on a number of human rights debates. The VDPA recognised that democracy and human rights are interdependent and mutually reinforcing, which means that one cannot exist without the other.

Interdependent means that democracy depends on the existence of human rights and vice versa. States cannot propose to have human rights unless they also support democracy. The interdependent relationship between human rights and democracy applies to all human rights. If a group's economic or cultural rights are unprotected, that is a failure of democracy. When democratic institutions fail, this will undermine both civil and political rights, and economic, social and cultural rights. The VDPA makes democracy, development and human rights equally important.

Mutually reinforcing means that human rights can only be strengthened by encouraging democratisation and vice versa. With a democratic voice, people will be able to articulate the rights they need and desire. In addition, leaving minority groups out of democratic processes will undermine other human rights. Throughout Southeast Asia, many politically marginalised groups are also marginalised socio-economically. Human rights can reinforce democracy because, for example, the right to education, women's rights and freedom to associate make democracies more effective by producing informed citizens. In particular, education can lead to higher levels of political inclusion for groups such as women. Further, by teaching people more about the political process and ensuring the right to associate, political parties can be more active. In practice, the human rights and democracy movements often overlap and share common goals.

Numerous articles in the VDPA mention the importance of democracy, especially to developing countries. It notes that the process of democratisation should be supported by the international community through developmental assistance, and that the UN, civil society and other organisations need to support democratisation throughout the world. The VDPA is the global consensus on human rights and democracy because of its near universal support at the UN.

9.7.2 Current Status of Democratisation in Southeast Asia

Democracy in the region is a fairly recent trend. Though there have been democracies and elections from the 1940s, it was not until the People's Power protests of the 1980s and 1990s that democracy became established in most Southeast Asian countries. Southeast Asia went from two democracies in the mid-1980s to seven in the early 2000s. In other regions, democratisation moved at a much slower pace.

We will now examine the status of democracy in Southeast Asian countries by using the following categories: electoral democracies, liberal democracies, pseudo-democracies and non-oppositional authoritarianism.

Liberal democracies are the closest to full democracies. In this category, apart from regular competitive contests for power through elections, no political force, including the military, has privileged access to power. Political participation goes beyond regular elections and there are checks and balances to government power, including the rule of law. Countries such as the Philippines, Timor-Leste and Indonesia may be considered liberal democracies.

Electoral democracies (also known as formal or procedural democracies) are a minimalist form of democracy characterised by regular elections where parties and candidates compete for power, but popular participation is mostly limited to elections, and the elections themselves are no guarantee of democracy. Countries like Malaysia and Singapore may be considered electoral democracies.

Pseudo-democracies are political systems where regimes mask their authoritarian character by adopting formal democratic institutions and processes. Cambodia and Myanmar may be considered pseudo-democracies because either single parties have control like the Cambodian People's Party in Cambodia, or the military maintains significant power as they do in Myanmar (by controlling 25% of the elected positions in government).

Non-oppositional authoritarian regimes are political systems based on the repression of political opposition, laws which outlaw or greatly limit popular participation in politics, and where there is commonly no strong opposition movement. These regimes may have an appearance of democratic institutions and processes but lack the building blocks of even minimal democracy, such as independent opposition parties. Thailand, Laos, Brunei DES and Vietnam may be considered non-oppositional authoritarian regimes. In other words, liberal democracy cannot be said to exist in countries where there is single party control (Vietnam and Laos), military control (Thailand) or absolute monarchy (Brunei).

This overview demonstrates that the majority of Southeast Asian countries still have a long way toward ensuring a functioning democratic system. Some changes have occurred though, particularly at the regional level. During their 13th Summit in Singapore (2007), ASEAN countries adopted the ASEAN Charter which explicitly established democracy as a principle, even stating that one of its purposes was to promote democracy. The adoption of the ASEAN Charter can be seen as a radical shift in ASEAN's position. While ASEAN countries have tended to be hostile towards democracy, the adoption of the ASEAN Charter acknowledges that ASEAN is a collective based on the principle of democracy. Despite their accommodation to this principle, most Southeast Asian states still find democracy a challenge to reach.

The Democratisation Process in Timor-Leste

In 1999, the UN held a referendum in the Indonesian-occupied territory of Timor-Leste. Two options were given – either to accept or reject the proposed special autonomy within Indonesia. After 24 years of occupation, the Timorese were finally given the opportunity to determine their own future through voting. 78.5% Timorese voters had rejected integration with Indonesia and expressed their desire to transition towards independence. Following this, Timor-Leste entered a ten-year long process of post-conflict peacebuilding, one aspect of which is to create conditions for democracy in countries where this has been absent or destroyed by violent conflict.

Timor-Leste has had several cycles of presidential and legislative elections since the reestablishment of the state in 2002. During the transition period, the first elections were held in Timor-Leste in 2001 with the support of the UN, in which an 88-member Constituent Assembly was elected. The assembly had the mandate to write the constitution.

In 2006, Timor-Leste experienced a political crisis that resulted in significant loss of life, personal injuries and widespread destruction of property. The crisis extended beyond the security forces, leading to the fall of the government. This crisis was a setback in the consolidation of Timor-Leste's democracy.

The period from 2012 to 2017 was a time of relative political stability, largely the result of a period of consensus politics.

There has been some success in holding politicians accountable for criminal behaviour.

There was a peaceful transfer of power, despite the political impasse that has persisted since July 2017. This demonstrates the commitment of the political parties to respect the voters' decision.

Today, Timor-Leste is a liberal democratic country, guaranteeing the principle of democracy, including free and fair elections, protection of human rights and upholding the rule of law. These guarantees are not only enshrined in its constitution, but also in practice.



Focus on: Media, Human Rights and Democracy

Media freedom is vital to the development of liberal democracy. As a social institution, the press continues to play an important role in informing the public, shaping public opinion and checking abuses of government power. The press also helps to express public views on the economy, development and political change. All these activities relate directly to the status of human rights in a country. The better the media is at reporting on society, the more chance there will be of improving human rights standards.

Journalists and media in the region face a number of challenges in their work, ranging from economic pressures (through defamation⁴ lawsuits), strict rules on ownership and registration, strict censorship laws, to intimidation, physical violence and even murder (as in the 2009 Maguindanao massacre in the Philippines, in which 34 journalists were killed).

Organisations like Reporters Without Borders and Freedom House annually analyse and publish rankings of media freedom in the world. The 2020 Reporters Without Borders' World Press Freedom Index places all Southeast Asian countries, except for Timor-Leste, in the lower half of the Index. Timor-Leste is ranked 78th (out of 180 countries).

Questions: How are the World Press Freedom Index rankings related to the status of democracy in Southeast Asian countries?

Were media in Timor-Leste free before independence? What has changed?

What are the biggest challenges for Timorese media today?



Discussion and debate: Should Defamation be a Crime?

If a journalist insults someone, and it is based on a lie, this can have very serious consequences for the insulted person. They may lose their job. People will look down at them. For these reasons laws of defamation are very important. But what should the punishment be of journalists who defame?

If a journalist deliberately lies, should they go to jail for this? What happens if the journalist accuses someone of committing crimes they never did or of corruption when they are innocent? Jail may be justice because the person's life is deeply affected by defamation.

But if journalists are put in jail for what they write, this can have lots of negative consequences for the media. Powerful people will threaten a court case and possibly jail journalists who want to write a negative story. If the politicians are powerful and the judges are supportive of them, any journalists who criticise the government can end up in jail.

Question: In 2020 there was a debate in Timor-Leste over a law to make defamation a criminal offence. What do you think?

⁴ An untrue statement which harms someone's reputation.

CHAPTER SUMMARY AND KEY POINTS

Human Rights Protection

Human rights protection is done by a **wide range** of bodies, people and other organisations who can protect people from violations. These may include police, courts, civil society and international organisations. It is difficult to determine the status of a country's human rights protection, as it may depend on the level of **development**, the **political system** and how many human rights the state has **recognised**. In Southeast Asia most states have a mixed status, good in some areas and not good in others.

Protection can be examined by seeing if the **international standard of human rights** exists within the country. This will occur as rights being a part of the law or rights existing in the constitution. Currently all Southeast Asian states have human rights in their constitutions, with the exception of Brunei. The legal systems of Southeast Asia will have human rights in them, but these are spread across numerous laws and acts.

National Human Rights Institutions

A NHRI is an organisation devoted to the **protection of human rights at the domestic level**. There are currently six NHRIs in Southeast Asia. These are based on the **commission model** (except East Timor's hybrid model), which gives them a broad mandate to promote, protect, investigate and monitor human rights situations. NHRIs can face **challenges** because they do not receive adequate funding, or they are not independent from the government and these may limit their functions.

Regional Mechanisms

Regional mechanisms protect human rights in countries of a certain geographic region. There are three regional bodies, based in Europe, Africa and the Americas. ASEAN established a sub-regional body called AICHR in 2009 to promote and protect human rights. AICHR has overseen the drafting of a declaration and works with ASEAN governments to promote and protect human rights. There is still much debate among civil society and governments about its strength and effectiveness.

Non-Governmental Organisations and Human Rights Defenders

NGOs are often seen as one of the main organisations working for the **promotion** and **protection** of human rights. Their numbers have constantly increased. NGOs undertake **activities** such as human rights education, human rights advocacy, monitoring and investigation activities, human rights documentation, complaints and litigation, and input into developing laws and policy. A recent concern is the **protection** of NGO workers and other HRD from violence.

Human Rights and Democracy

There is a clear relationship between human rights and **democracy** and they are considered interdependent and mutually reinforcing. Rights do lead to a more democratic society, and people's rights are mostly improved under democracy. **Freedom of the press** covers the right of journalists and media to express credible information. It is necessary for a functioning democracy. As a social institution, the media plays a vital role in informing the public, shaping public opinion and checking abuses of government power. Media is limited by censorship and can also be constrained by harsh penalties, intimidation and violence. In some places, strict rules govern ownership and registration.



Beneficiaries of the UNTL HRC visit the permanent exhibition of Centro Nacional Chega! as part of their training

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CHAPTER 10

History of the Struggle for Human Rights
in Timor-Leste: Transitional Justice, Reconciliation
and Memory

10.1 INTRODUCTION TO THE CONFLICT IN TIMOR-LESTE

For a long time, the Timorese fought hard to secure freedom and become an independent and sovereign nation. According to the UN principle on self-determination, the people of Timor-Leste, like other nations, have the right to freely choose their structure namely: Independence, Free Association with an existing state or integrate into another state. In 1960, some 42 nations, especially in Africa, were decolonized becoming members of the UN. That same year, Timor-Leste was part of the UN agenda as a nation with the same rights. In 1963, President António Salazar rejected the support of the UN Security Council for the self-determination of the Timorese people.

In 1974, a coup took place in Portugal that ended Salazar's dictatorship regime. After this it was possible to start the process of decolonization in Timor-Leste, through the establishment of political parties, such as the UDT Party, formed on May 11, 1974, which advocated a transition to independence together with Portugal, the Fretilin Party, formed on May 20, 1974, which advocated immediate independence from Portugal, and the Apodeti party created on 27 of May 1974 for the integration of Timor Portuguese in Indonesia. After negotiations between the political parties, and due to the influence of regional and international politics of the time, on November 28, 1975, Fretilin unilaterally proclaimed the independence of the Democratic Republic of Timor-Leste (RDTL). After only nine (9) days, on December 7 of the same year, the Indonesian military launched a large-scale invasion to occupy the entire territory for the next 24 years. The presence of the Indonesian New Order Regime triggered several human rights violations, forcing Timor-Leste to resist this occupation, in order to demand the right to independence/self-determination through three mechanisms: the clandestine network, the armed front and the diplomatic front. The latter was responsible for diplomatic actions at the United Nations and developed international solidarity in recognizing the existence of Timor-Leste in the world.

After the resignation of President Suharto in 1988, the referendum in Timor-Leste was possible the following year, on August 20, 1999, with 78.5% of the population choosing independence over integration in Indonesia. These results of the referendum triggered a strongly violent reaction from the pro-Indonesian military and militias, resulting in 1,200 Timorese killed, as well as many people tortured. After the Indonesian occupation of Timor-Leste, a period of UN administration began, with the formal independence of Timor-Leste and its international recognition in 2002. In 2006, an internal crisis arose that required the intervention of international troops to calm the country's situation. There are suspicions that this political and military crisis was the responsibility of politicians and leaders of the security sector.

This long process of struggle, between 1974 and 1999, in Timor-Leste triggered numerous human rights violations by those involved in the conflict, since the beginning of the internal conflict between the political parties, extending during the period of Indonesian Occupation of Timor-Leste. In 2001, Timorese leaders met to prepare CAVR Reconciliation through a conference organized by the National Political Commission CPN-CNRT. The results of this conference were presented by the CPN-CNRT to the UN Representative in Timor-Leste, Sérgio Vieira de Melo. Thus, the "Reception, Truth and Reconciliation Commission (CAVR) was constituted, which is based on the final draft approved by the national council on 23 June 2001, in addition to UNTAET Regulation Nº 10/2001 of 13 July 2001. THE CAVR is a transitional justice mechanism constituted by Timor-Leste to respond to conflicts in the past.

According to UNTAET Regulation No. 10/2001, the CAVR's mandate includes the investigation of human rights that occurred in the context of the political conflict that occurred from 1974 to 1999, promoting reconciliation and the presentation of a report and recommendations for the promotion of human rights.

The conclusion of the CAVR report reveals that the Indonesian military and civilian government, together with their militia-organized supporters, committed crimes against humanity in Timor-Leste, victimizing people who advocated independence. The CHEGA! Report also concludes that, during the period of internal conflict, political parties and the organization of the resistance to Independence committed violations of human rights among those who did not support their policies.

CAVR's final report collected a total of 7,824 testimonials/testimonies from nearly 1,500 interviews with eminent people. In addition to these statements, 1,300 statements were also recorded by authors who committed minor crimes in 1999. Through the contribution of international agencies and eminent persons, the CHEGA! report was prepared with the presentation of a total of 204 recommendations including aspects such as reconciliation, human rights, the commitment to reparation to victims of human rights violations and institutional reform, culminating in the constitution of the institution designated as CAVR.

10.2 TRANSITIONAL JUSTICE

Transitional Justice (JT) refers to the condition of society's last (or joint) action: authoritarian governance or armed conflict. According to the Secretary-General of the United Nations in his guidance note, the complete process and the mechanism of association with society receives the abuses of the past that have occurred on a large scale, by accountability, sense of justice and to achieve reconciliation.¹

Transitional Justice is a means used by young nations after a period of conflict or repressiveness in order to respond to serious and systematic human rights-related violations that the normal justice system cannot respond to.² It is a mechanism that includes judicial and non-judicial mechanisms, the search for truth, reparation, recognition of victims, the promotion of peace, reconciliation through amnesty and institutional reform.

Transitional Justice can be implemented in several ways, so there is no single method of transforming society, other than each nation having its own context.

In the late 1980s and early 1990s, an approach arose in response to political changes in Latin America and eastern Europe due to the demand for justice. At that time, human rights activists, along with other groups, demonstrated their intention to resolve systematic violations of human rights in past regimes, but without disturbing the political transformations in force today.

From this change, popularly called "democratic transition", the new multidisciplinary area referred to as "transitional justice" emerged. Governments have adopted a holistic approach to transitional justice based on four main pillars, namely:

10.2.1 Right to the Truth

Non-judicial investigation from different mechanisms, to investigate, document and write reports on the atrocities committed. The Right to Truth can be implemented by official bodies established by the state or government, as well as by civil society organizations. A known Truth

¹ United Nations Security Council Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies S/2004/616 (23 august de 2004), available at <https://www.un.org/ruleoflaw/files/2004%20report.pdf>.

² ICTJ, "What is Transitional Justice?", <https://www.ictj.org/about/transitional-justice>

Search mechanism was the establishment of the Truth and Reconciliation CAVR. The CAVR also makes recommendations for reparation and formal justice proceedings.

10.2.2 Right to Reparation

For the valorization and dignification of victims, the state sponsors and supports reparations of material and moral damage for violations that have occurred in the past. Generally speaking, this program includes the distribution of material and symbolic benefits to victims, benefits that sometimes include monetary compensation and public apology.

10.2.3 Right to Justice

A judicial mechanism with the aim of prosecuting those responsible for human rights violations in the search for fair justice. Prosecutor-General often demands investigations of the “big fish”, that is the suspect with greater responsibility for massive systematic crimes. In this type of judicial proceedings, the application of justice against gender-based violations is also considered in an effort to justify and challenge impunity for sexual rape and gender-based rape, ensuring equal and fair access to women in order to recover from human rights violations.

10.2.4 Guarantee that It Won’t Happen Again

The last mechanism that is sometimes complex in its implementation corresponds to the Guarantee that the Violation Won’t Happen Again. One way to ensure this mechanism is institutional political reform. This institutional reform aims to implement changes in military institutions, police, secret services, public administration, and judiciary, in addition to other relevant state institutions, through the introduction of human rights-related instruments such as training, laws and operational procedures. This institutional reform also focuses on not fostering the culture of impunity.

10.3 RECONCILIATION

Reconciliation is a unique path that reunites the Timorese with ideological and political differences during a period of conflict, to decide the future of the nation. These conflicts arise between two people, two groups, between two countries, with the desire to win as the main reason. Each conflict has its own duration, longer or shorter. This time depends on the specific content of each conflict.

What is the main cause of this conflict? This type of question arises from a person or group that feels affected in their day-to-day life by this. From the existing conflict, people or groups are invited to solve problems with words of reconciliation between these individuals or groups, whether for small or large-scale conflicts, as well as for conflicts at national or international level.

Violent conflicts arise for a variety of reasons, including disputes related to ideology, land, and access to natural resources, as well as an interest in removing power from the state, ethnic, religious and border conflicts.

The conflict that occurred in Timor-Leste over a period of 24 years included acts of human rights violations in various forms by the intervener in this conflict, which arose from the dispute over the right to self-determination.

The crying of a child in a particular nation. *

At that time a whisper was heard, with a melodious voice. It was only a few seconds to the announcement that Timor Loro Sa'e has achieved Independence. But why are Timorese children still scattered everywhere? Sunrise on May 20th represents the first Day of your independence. On this day, you feel an immense joy. On this day, you hear your children clapping, laughing, and hugging. However, why, among them, there is a feeling of woe? You can hear their groans and their suffering. Loro Sa'e, don't you feel there's something that doesn't exist anymore, something that's been lost?

Throughout its mandate, the CAVR is saddened to see the division between our people. When these recommendations were written, it was estimated that hundreds of Timorese still lived in Indonesia, especially in the western part of the island of Timor, with many choosing Indonesian citizenship. Some of these Timorese still live in refugee camps, while others have rebuilt their own lives in exile. This division arose not only between the Timorese who lived in Timor-Leste and Indonesia, but also within the Timorese community itself soon after their independence. However, these differences result from new tensions and problems, although often the basis of these conflicts go back to the past, specifically to the time of old divisions.

This process occurred through various levels of approximation. At the level of national leadership, political leaders were asked to publicly explain the events that marked the civil war in 1975. For four days, THE CAVR organized a National Public Hearing on Internal Political Conflict between 1974-76 in December 2003. This moment was an important milestone for all Timorese, as it allows a better understanding of the events that occurred in these difficult times, in addition to allowing leaders to be heard to assume their responsibilities.

At the community level, THE CAVR facilitated the mediation process for aggressors who committed minor crimes, harming their communities voluntarily. They recognize their failures in front of the public to promote reconciliation with their communities. This process involved a total of 1,400 aggressors, who successfully completed the reconciliation process with their communities.

THE CAVR believes that for the effectiveness of the reconciliation process in Timor-Leste it is necessary the involvement of each person, family and community group included in all parts of the political conflict, in an effort at the highest level of national leadership, continuously in future years.

a. Reconciliation in the community

Violence spawned within the community level between 1974 and 1999. This violence arose during the civil war, which began in Dili in 1975, which spread rapidly to the other communities, confronting neighbors and members of their own families. The Indonesian military had set up a large network of secret services and a paramilitary organization. The members of these organizations were responsible for human rights violations against members of their own communities. During 1998 and practically until the end of 1999, militia groups formed by the Indonesian Armed Forces (TNI in Indonesian) spread terror again, further dividing the community.

CAVR's Community Reconciliation Process (PRC) clearly demonstrates that the community continues to need support to end the divisions that occurred during the long years of political

conflict. THE CAVR commends the effort of the communities belonging to the various sucos, for their adaptation to the Process of Reconciliation of Communities in the face of their local situation. THE CAVR also praises the courage of those who have spoken honestly, without hiding anything, about the damage done to each person and to communities. For these, efforts have been made to re-integrate them as members of their communities. The CAVR also has enormous respect for those who have been victims of these actions, but who inside again accept their aggressors as members of their community. THE CAVR shows its special respect to traditional leaders, as well as the authorities, who have provided their support during these processes.

From these experiences through communities, the CAVR recognizes that reconciliation is not a simple act and cannot be completed quickly. Thus, it is not attainable through a single step, or a single procedure, and it is not possible to compel people to reconciliation to yield to the will of a particular institution or state. However, it was well known that the communities, victims, and their aggressors often show a willingness to expose themselves and support this process, and thus, together, to solve the problems of the past in order to establish a lasting peace in the future. The CAVR also believes that a great effort is still needed to ensure peace built by all communities in the territory at the end of this conflict.

b. Reconciliation in the political community of Timor-Leste.

The CAVR worked to understand the causes that marked the political conflict in Timor-Leste, as well as the violence perpetrated by the Timorese and the Indonesian armed forces. The commission heard from victims of violence belonging to all parties and interviewed political leaders about their views, including interviews in Indonesia. The commission believes that the strong division existing in our society during the 25 years of conflict, as well as the violence that arose in Timorese political life in 1975, continues to be imposed as an obstacle to the development of culture for sustainable democracy and peace in Timor-Leste.

Violence and intimidation have no place in political life in Timor-Leste – it is too expensive a price. The committee held strong hope when political leaders demonstrated their unity to testify at the National Public Hearing on Internal Political Conflict between 1974-76, in addition to the strongly positive response of communities after the leaders opened up. However, these still have a long way to heal the deep wounds of this period, and thus consolidate pluralist development and promote a peaceful political life in Timor-Leste.

c. Reconciliation with Indonesia.

Since 1999, Timor-Leste and Indonesia have demonstrated a willingness to build a new relationship. The committee truly appreciates this behavior which shows an inner openness and a vision of the future. The committee trusts that in the development and prosperity of this new friendship, the principles that recognize the truth of the past time, the taking of responsibility for violent acts and the open spirit to support those who have been subjected to violence are really important. During the work with the communities, especially the victims of serious violations perpetrated by Indonesian officials, the Commission was very impressed by the openness towards Indonesia. Communities throughout the country have clearly demonstrated to the Commission the need for justice for serious crimes committed during the time of conflict. However, in the scope of this justice, there is often no sense of revenge and hatred, nor are generalizations made against individuals or the people of Indonesia. When the competent and other responsible authorities assume their responsibilities or respond to their actions, then a path to a new deep relationship based on true reconciliation is opened.

10.3.1 Community Reconciliation Process

In addition to giving the community the opportunity to reflect and find solutions to problems in a dispute between an individual and several communities, the Community Reconciliation Process (PRC) is also a mechanism for resolving political conflicts that occurred in 1999.

The Community Reconciliation Process (PRC) represents the first opportunity for communities to reflect on their specific experience during the past conflict. In addition, PRC takes place in a safe and controlled environment in which communities can share their old wounds, before declaring acceptance that it is time to heal these wounds in the face of the solutions presented. One example is the tragedy that occurred between 1975 and 1999, which resulted in numerous casualties. Most of the suspects are Timorese and, therefore, the PRC was set up to promote the acceptance of these individuals. This is a new program, so no attempt has previously been made to promote reconciliation in communities. This goal was achieved by the integration of people in their own community, excluded in the past for committing minor violations related to the political conflict in Timor-Leste. This program is based on the confidence that the communities in Timor-Leste, and those who have caused harm by committing minor crimes, are willing to accept reconciliation. The PRC procedure is based on the confidence that the ideal means to achieve community reconciliation is the participatory mechanism at the suco level. This mechanism combines the practice of transitional justice, arbitration, mediation, and aspects of criminal and civil law. During the design of PRC, the communities were also heard, having the opportunity to share the feelings of impossibility of reconciliation with people responsible for serious crimes, such as murder, sexual rape and torture, before prosecution and proceeding to the trial of these people. Thus, the CAVR assumes a mandate based on Regulation 10\2001 for community-based meetings. In these meetings, the victims, the aggressors, and the whole community participate directly in the search for solutions, in order for the community to receive these aggressors again. This regulation defines the basic steps required during the PRC process, although there are no details about its implementation. Thus, it is possible to make the PRC process more flexible to incorporate traditional elements.

PRC is a voluntary process. The meetings are held in impacted communities, through a panel composed of community leaders and the leaders of the regional commission responsible for the district in which the meeting takes place. At this meeting the perpetrator is asked to acknowledge his involvement during the conflict in question. Victims and other community members are then given the opportunity to question and comment on the perpetrator's statements. These meetings are often quite emotional for participants, so they can last all day, or even last until dawn. After completing the declarations of the relevant parties, the panel facilitates an agreement in which the perpetrator receives a certain sanction. This type of sanction may include a community service or a reparation payment to victims. Only then is it possible to reintegrate the perpetrator into the community. Lisan elements are also used in PRC, depending on each local culture. Before any meeting, it is necessary to ask the Office of the Attorney General to review the cases presented and approve the resolution of these cases through PRC or, else, these will be handled by court. Reconciliation agreements made at the meetings may be approved in decrees for the Court, for follow-up in judicial proceedings. If the Court approves, the perpetrator carries out his obligations under the agreement, so that the perpetrator may be granted immunity from prosecution of criminal or civil law for the case in question.

The PRC results show that this process has made real contributions to community reconciliation in Timor-Leste, as well as to the reintegration of past crime perpetrators into their communities. Thus, this process has already involved a total of 1,371 perpetrators, most from initial

targets of a total of 1000 individuals. Many people ask for the continuation of the PRC process. The perpetrators, victims, and participants told the CAVR that the PRC greatly helps to create peace and resolve the disputes of the past time in their communities. Sometimes, the most real indicator of success of the PRC was the creation of peace and stability in Timor-Leste in the early difficult times, despite many predictions of possible retaliation to the perpetrators due to their role in the violence that occurred in 1999. The results obtained during the implementation period of the PRC program include:

A total of 1,541 witnesses made statements to participate in the PRC and all these statements were presented to the Attorney General's Office, according to the CAVR. Through the PRC meetings it was possible to solve 1,371 cases. In the resolution of 85 cases, the Prosecutor General's Office did not allow the application of the PRC, so these cases were handled directly and by the Prosecutor General's Office.

Thirty-two cases were suspended due to the existence of reliable information confirming the sporadic involvement of the witness in "serious crimes actions", or due to the fact the community did not accept the witness. The above figures show that almost 90% of the cases treated were able to be solved. The 10% of unsolved cases include cases in which witnesses did not participate in the scheduled meetings, or because the meeting was postponed, or by the Prosecutor General's Office not allowing the resolution of these cases through the PRC.

10.4 MEMORIALIZATION/DISSEMINATION OF ALTERNATIVE TRUTH BY CIVIL SOCIETY

Through a long process and a past that is difficult to forget, a remembering period is created that passes from generation to generation, where the history and origin of Timor-Leste is based in the search for truth and peace for all. Memory becomes a reference full of dark feelings, joy, hatred, etc., that humans have faced in the struggle for independence for a long time.

Memorialization (which means recall/memorialize/celebrate): is a process to form public memory with the effort to physically memorialize or through any activity in events with public space. Activities or memorials are performed to attract reactions and recognition about a particular event or the role/experience of a particular person. They are also spaces that allow personal reflection or expression of condolences, the feeling of pride, irritation, or sadness towards something from the past.

Place of consciousness: a public memorial that invites communities to democratic dialogue on the past and current social issues, in addition to giving space to communities for dialogue and a commitment to improve in the future.

Victim participation: One of the lessons we can learn from the experiences of other nations is the importance of victim participation to discuss forms of memorialization that are more accurate to express the victim's experience. In these cases, it is also important not to note the experiences of victims who are sometimes excluded, such as children, women, or victims of the divergent parties.

10.5 VIOLATION OF HUMAN RIGHTS

"Violation of human rights is an action committed by an individual, group or state official who limits, impedes, eliminates and ignores the right of another person." The constitution also ensures respect for and appreciation of the rights of other persons included in the International Conventions.

10.5.1 Facts about the Violation of Human Rights

The violation of human rights can happen directly or indirectly. When there is a direct intention of the state or indirectly, then the state fails in the protection of citizens' rights. Violations often occur associated with the holding of power. Violations of human rights can occur physically or non-physically, as well as in several other ways. These violations are linked to the declaration of human rights based on international human rights pacts.

In Timor-Leste, human rights violations occurred as early as 1975, when the civil war between UDT, APODETI and Fretilin began. The Chega report estimates that 102,800 Timorese were killed between 1974 and 1999. Among the number of people who sacrificed their lives, the causes include murder and disappearance, in addition to 844,200 people who died from disease and hunger. The various forms of human rights violations that occurred in Timor-Leste between 1975 and 1999 are classified as explained below.

Arbitrary detention, torture, and cruel treatment

During 1975 and until the presence of the world peacekeeping force at the end of September 1999, twenty thousand seven hundred and seventy-nine people (20,779) were captured and detained by the Indonesian military in violation of individual freedom and movement in the national territory.

The condition of detention was a huge danger, as many were beset by hunger and disease during detention.

Large-scale violation of Economic and Social Law

Serious violations of civil and political rights, included in international humanitarian law (IHL), which occurred during the occupation have an indirect influence on basic social and economic law for the people of Timor-Leste. Other types of violations include corporal punishment and sexual violations against women and mothers, including cruel treatment that directly affects health, education, and the possibility of searching for sustenance.

Violation of natural resources

In the use of sources of natural resources, the people of Timor-Leste face a huge obstacle to the exploitation of maritime resources, due to the agreement between Indonesia and Australia for the Timor Sea in 1989, without asking the opinion of the Timorese people.

Land-related violations show that during the Indonesian occupation there were mandatory changes for the Timorese, including changes in the divisions of the administrative territory in which the Indonesian state did not recognize rai kultura as the preferred right to propose a dispute, culminating in people without land.

Institutional Responsibility

Statistics on Institutional Responsibility

From the testimonies of witnesses and victims to the CAVR, a total of 71,917 elements of the Indonesian forces, perpetrators of 84.4% of human rights violations, were identified among a total of 85,165 cases.

The graphic with the historical facts of the Violation of Human Rights perpetrated by Indonesia, Falintil and the UDT is included in the Chega! report.

Table 1. Violation of human rights action whose authors come from Indonesia

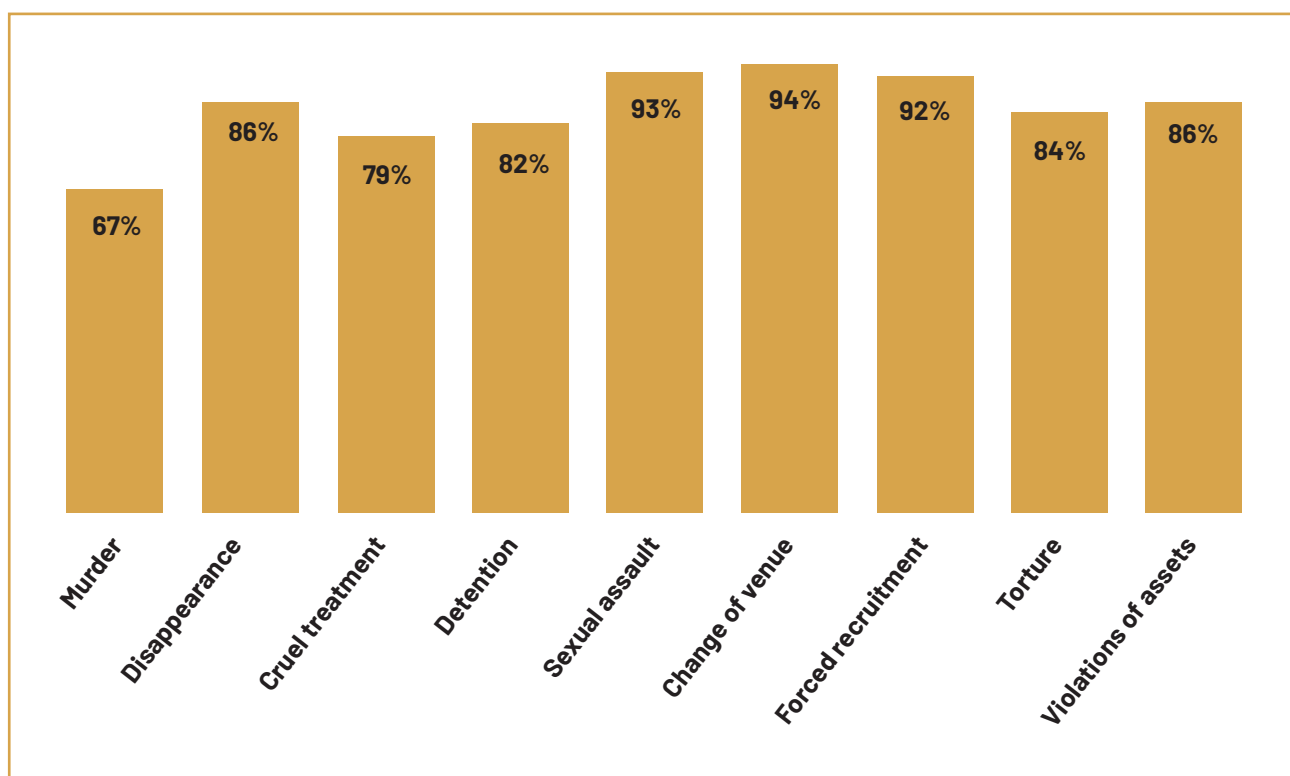
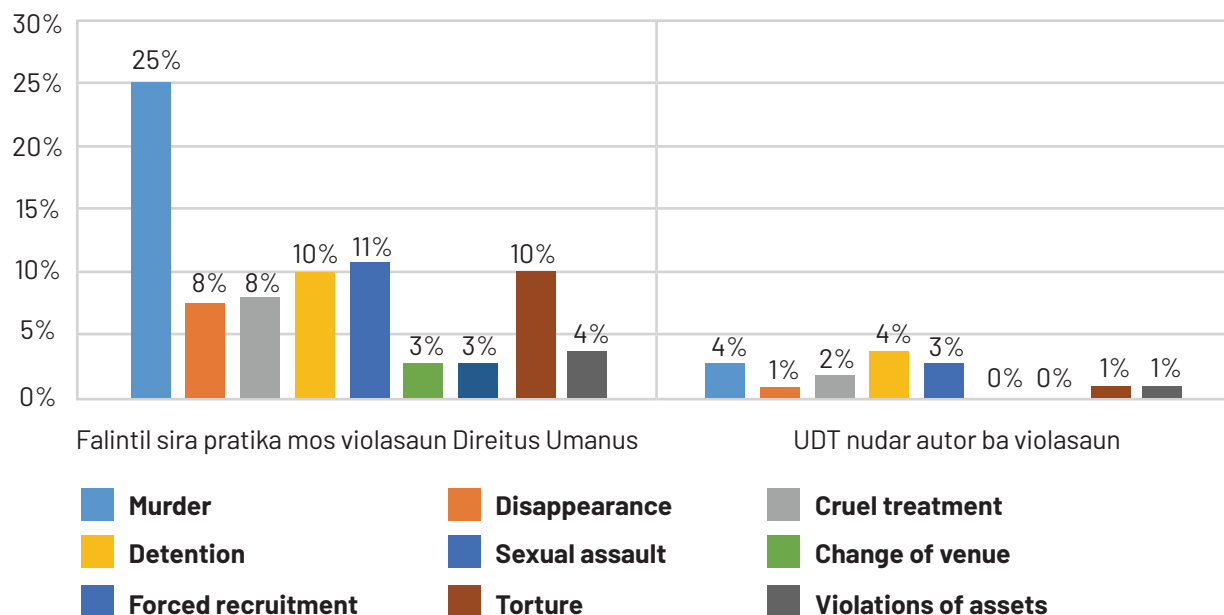


Table 2. Graph 1. Violation of human rights whose authors come from Indonesia



- The CAVR also identified 8,306 cases, or 9.8%, of the practice of human rights violations by Falintil in a total of 85,165 cases.

- The UDT is the author of 2,151 cases of HR violations, corresponding to a percentage of 2.5%, out of a total of 85,165 cases of HRV.

10.6 THE RIGHT TO TRUTH AND THE OBLIGATION OF REMEMBRANCE

What is the Right to The Truth?

Instinctively, victims for long periods understand and fight for the truth. The right to the truth is a right that emerged twenty years ago, first mentioned in the UN mechanism in 1974. In the development of the world's human rights law, the right to the truth initially arose from the struggle of the families of the missing victims, who claim the right to know what happened to their relatives who disappeared. However, when progressing slowly, the right to the truth also includes other serious crimes, such as murder and torture. The various International Treaties on human rights, domestic law, the decisions of the regional mechanism and the UN agencies establish that the right to the truth is related to the violation of human rights of a serious nature, as well as violations of laws related to war. The right to truth is mentioned in several international treaties and decisions, and it can be said that it is a law in progress (there is still no human rights instrument that binds):

- The convention for protection against enforced disappearance states that "every victim has the right to know the truth about what happened in relation to the forced disappearance, progress and outcome of the investigation into the missing person." [But this convention still has few signatures from nations, so it is still in the process of becoming a binding treaty].
- The Geneva Convention in 1949 (Protocol I) also refers to the family's right to know the fate of family members.
- The Human Rights Committee also recognizes the right of victims of serious human rights crimes and their families to know what happened and who are responsible.
- The principles and basic script on the Right of Resolution and reparation for victims of serious human rights violations, the principles against impunity and the principles on internal displacement are some of the human rights treaties that recognize the right to the truth, based on the human rights treaty, decisions of human rights mechanisms, along with various sources on the right to the truth since 2005.
- And also of the various decisions of regional mechanisms and judicial decisions in different countries.
- The right to truth is a right that exists on its own, regardless of judicial process.
- The right to the truth is a right of the victim, together with the right to justice and the right to redress.
- Especially for the families of the missing victims it is not necessary to wait for the judicial process for the nation that seeks the missing persons.
- From the right to truth, several mechanisms have emerged to facilitate authors to reveal past facts (without giving amnesty but through the application of light punishments for the exchange of information revealed by the authors).
- The right to truth is a part of the development of democracy, responsibility, resolution, etc.).
- Some of the mechanisms for exercising the right to truth include: CAVR truth, team for

the search for facts, the mechanism of the court, the use of historical archives and laws that allow access to national documents related to one's own identity (freedom of information), the creation of documentation centers, the search for the remains of the missing, and so on.

- From the right to truth came the obligation of the state and society to remember, "avoid forgetting" and avoid lying.

10.7 OFFICIAL RECOGNITION OF THE RESPONSIBILITY FOR VIOLATIONS IN TIMOR-LESTE

In 2008, through the report TFC (Truth and Friendship Commission) it was discovered that the Indonesian military, police, and civil authorities were responsible for criminal events against humanity in Timor-Leste at that time. Thus, the discovery of the TFC is contrary to the true appeal by the ad hoc court case for cases in Timor-Leste (until the moment grants freedom to all perpetrators, including the decision of the supreme court for the case Eurico Guterres). Elsewhere, according to the Truth and Friendship Commission (TFC), these crimes arise from policies that are rooted in Indonesia's security institutions. Specifically, the TFC states that these findings are relevant and are linked to what happened in other conflict areas in Indonesia: Aceh, Papua, Ambon and Borneo. The TFC presents a set of recommendations for reforming the security sector, including human rights training programs, legislative amendments, planning and special mechanisms for investigating and trial of rape cases and for security forces. With the official support of the Indonesian government for the TFC, there is a real opportunity and political will to implement the recommendations presented. Key security-related recommendations aim to change "military doctrine and practices and institutional mindset", including:

- Stop using armed civilian groups and change the military reserve system according to the laws;
- Clear distinction between the roles of the civil authority responsible for the design of policies and the authorities of the security institutions implementing those policies;
- Separation between the role of the police and the military.

However, the main weakness of the TFC's recommendations is the lack of proposal on how to end the careers of those involved in crimes against humanity within the military ranks. When it is intended to demonstrate to the world that Indonesia seriously intends to reveal the truth, then, according to the CVA report, it is necessary to implement swift action through an independent inquiry into the practices that cause serious violation of human rights and at least to apply administrative sanctions to the persons involved.

CHAPTER SUMMARY AND KEY POINTS

Transitional Justice

Transitional Justice is an instrument used by post-conflict nations, such as Timor-Leste, to respond on a large scale to systematic violations against human rights during the period of colonization and occupation, which the justice system cannot give an immediate response to. Transitional Justice itself uses different judicial and non-judicial mechanisms: it recognizes victims, promotes peace, reparation and supports reconciliation and institutional reform, including the education sector.

Reconciliation

In post-conflict nations such as Timor-Leste, reconciliation is a means of reorganizing people of different ideologies and political orientations, to decide the fate of a nation and a path to peace and democracy. Conflicts occur between individuals, groups, nations with the reason being a will to win or lose. The duration of wars is relative because it depends on the type of conflict that exists. But this does not mean that people directly or indirectly involved as perpetrators of human rights violations can escape justice, as they always end up facing justice a day later.

Memorialization

A state like Timor-Leste needs to constitute its own memory of the experience of suffering and struggle for independence to dignify lost lives. Memorialization is a process that allows to give a physical form to memory, and thus celebrate history in public places.

To know more about the development of human rights education at the National University of Timor-Lorosa'e, contact or visit the UNTL Human Rights Centre



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OUR HUMAN RIGHTS, OUR FUTURE!

An Introduction to Human Rights in Southeast Asia

This textbook is an output of the capacity development project for the mainstreaming of human rights education at the National University of Timor-Leste (UNTL), implemented in 2019-22 by the Global Campus of Human Rights with the support of the European Union. Available in English, Portuguese and Tetum languages, the textbook is meant to support the lecturers and students of the newly established curricular course *"An Introduction to Human Rights in Southeast Asia"*, as well as any other higher education initiatives in Timor-Leste and beyond.



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