

Human  
Rights  
in Asia

**NATIONAL HUMAN RIGHTS INSTITUTIONS  
IN SOUTHEAST ASIA**  
SELECTED CASE STUDIES

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JAMES GOMEZ & ROBIN RAMCHARAN

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James Gomez • Robin Ramcharan  
Editors

# National Human Rights Institutions in Southeast Asia

Selected Case Studies

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\*Strategic Information and Research Development Centre  
Petaling Jaya, Malaysia



The print edition is for sale only in Malaysia and Singapore. Customers outside Malaysia and Singapore please order the print book from: Palgrave Macmillan. [978-981-15-1073-1]

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This edition is published in Malaysia and Singapore in 2020 by:  
Strategic Information and Research Development Centre  
No. 2, Jalan Bukit 11/2, 46200, Petaling Jaya, Selangor, Malaysia  
Email: gerak@gerakbudaya.com  
Website: www.gerakbudaya.com  
ISBN: 978-967-2165-88-0  
For sale in Malaysia and Singapore Only.

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Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

National Human Rights Institutions in Southeast Asia: Selected Case Studies /

Editors: James Gomez, Robin Ramcharan.

ISBN 978-967-2165-88-0

1. National human rights institutions--Southeast Asia.

2. Human rights--Southeast Asia.

I. Gomez, James.

II. Robin Ramcharan.

341.480959

Printed by Vinlin Press Sdn. Bhd.  
2 Jalan Meranti Permai 1  
Meranti Permai Industrial Park  
Batu 15, Jalan Puchong  
47100 Puchong, Selangor, Malaysia

341.480959

## PREFACE

Asia Centre is a think-tank whose Human Rights Programme takes an evidence-based research approach in examining the three main mechanisms that hold the potential to enhance human rights protection in the region. The three mechanisms are National Human Rights Institutions (NHRIs) in Southeast Asian countries, the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights (AICHR) and the Universal Periodic Review (UPR) of the United Nations' Human Rights Council, which the Centre dubs as the nexus of an emerging human rights architecture in the region.

Asia Centre, through its Human Rights Programme, seeks to advocate for protection provisions and mechanisms in this emerging regional human rights architecture by identifying the protection gaps and engaging with policy makers, academia, civil society, the private sector and other stakeholders to bridge the gap. To this end, Asia Centre undertakes the evidence-based research, convenes expert conferences, undertakes capacity-building trainings and produces publications. The Human Rights Programme aims to produce actionable, policy-oriented research that will serve to enhance the capacity of all stakeholders to advance the protection of human rights in Southeast Asia. The Centre does this by bringing together different stakeholders regularly to foster constructive dialogue and exchange best practices on human rights and other related issues. It fosters and nurtures networks of stakeholders in order to improve engagement with each of the mechanisms over time.

In this book, Asia Centre and the contributors to this volume examine whether these government-sponsored NHRIs are effective in providing

protection of human rights in the region. The book demonstrates that while NHRIs constitute a welcome development across Southeast Asia, they have yet to fulfil a strong protection role. This is vital in the context of the protection gap left by other components of the regional human rights architecture, namely the UPR mechanism and the ASEAN Intergovernmental Commission on Human Rights (AICHR). In the *Universal Periodic Review of Southeast Asia: Civil Society Perspectives* (Palgrave Macmillan, 2017), analysis pointed not only to the utility of the UPR as an avenue for regional civil society organization (CSO) engagement, but also to systemic problems with regard to engagement with other stakeholders, the implementation of recommendations by governments, the efficacy of follow-up processes and the UPR's ability to address hard political issues. AICHR, which will be examined in a forthcoming work of the Centre, has a purely promotional mandate and lacks bite as it disseminates the ASEAN Declaration of Human Rights (AHRD)

A vital complement to this regional human rights architecture is the group of NHRIs that lie at the intersection of civil society (national, regional and international) and the state. Six NHRIs have been established in the region, some pre-dating the regional mechanism. They are the Commission on Human Rights in the Philippines (CHRP), Indonesia National Commission on Human Rights (Komnas HAM), Human Rights Commission of Malaysia (Suhakam), National Human Rights Commission of Thailand, Myanmar National Human Rights Commission (MNHRC) and the Provedor for Human Rights and Justice of Timor-Leste (PDHJ). The latter is a special case. As of now, Timor-Leste has yet to be admitted as a full member of ASEAN. In addition, in order to face the regional developments and challenges, these NHRIs, while seeking to improve their national capacities, have also evolved and formalized their network and named it as the Southeast Asia NHRI Forum (SEANF) in 2009. The formalization of SEANF is considered a commitment of the Southeast Asian NHRIs in further strengthening and enhancing their roles in protecting human rights in the region. Beyond Southeast Asia, they are also members in the Asia-Pacific Forum of National Human Rights Institutions (APF) and are part of the Global Alliance of the National Human Rights Institutions (GANHRI), formerly known as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). They also contribute stakeholder submissions to the UPR process of the Human Rights Council.



This book emanated from a regional analysis undertaken by Asia Centre and its research network to evaluate the impact of NHRIs on the protection of human rights. Contributors were convened by Asia Centre in the “International Conference on National Human Rights Mechanisms in Southeast Asia: Challenges of Protection” on 13 and 14 July 2017, at Asia Centre in Bangkok. The conference served as a platform for representatives from NHRIs, academics, researchers, students and civil society to explore, through evidence-based research, the potentials, challenges and opportunities of these Southeast Asian NHRIs and their contribution to human rights protection in the region. They questioned the effectiveness of NHRIs in providing protection and explored their protection roles at the national, regional and international levels. The conference addressed such themes as:

- *NHRIs, international human rights systems and networks.* What kind of interaction exists between NHRIs at the international level, for example, with the UPR and the UN? What is the role of GANHRI in the growth and development of the NHRIs worldwide?
- *NHRIs in the national context.* Why did states create NHRIs? What are their mandates, legal bases, powers, functions and compliance with the Paris Principles? What happens to states that do not have an NHRI?
- *NHRIs and regional human rights systems and networks.* Now that the AICHR has been established, what is the relationship between NHRIs and the AICHR? How have the NHRIs responded to the AHRD? To what extent have the regional networks such as the SEANF and the APF helped in terms of advancing the protection role of the NHRIs?
- *NHRIs and human rights protection.* NHRIs’ mandates and powers are varied; do they help in securing remedies or compensation? What are their impacts on protecting human rights? Now that NHRIs have engaged with other human rights networks regionally and globally, how have they assisted in dealing with transboundary human rights issues?

The evidence-based research undertaken by the author-practitioners assembled in this book assessed the mandates of NHRIs, their capacity to exercise a quasi-judicial function in pursuit of the protection of human rights, issues that they have addressed and their ability to provide redress and remedies.

Amidst the burgeoning literature on NHRIs globally, works on Southeast Asia needed updating. In addition, this book features rare analysis of Indonesia's national commission and even more rare analysis of Myanmar's national commission by author-practitioner. There is also a review of advocacy efforts for a human rights commission in Singapore that outlines the challenges in countries in Southeast Asia that do not yet have an NHRI. We see this book as both updating and filling gaps in the literature, which will inform theoretical analysis on the capacity of NHRIs to provide protection and thereby advancing international human rights norms in the region.

Asia Centre welcomes collaboration with prospective partners to monitor developments on NHRIs and their protection function within the context of the emerging human rights architecture in the region. In the meantime, Asia Centre will contribute to the discourse and capacity-building initiatives to improve the capacity of NHRIs to undertake their mandates and to develop and enhance national human rights protection systems. Asia Centre will continue with its evidence-based research on NHRIs and the emerging regional human rights architecture moving forward.

Bangkok, Thailand  
15 August 2019

James Gomez  
Robin Ramcharan

## ACKNOWLEDGEMENTS

This book was conceived amidst Asia Centre’s ongoing work aimed at responding to the changing global human rights landscape and its impact on the region. It involved over a year of conversations with academics, civil society activists, professional staff in international non-governmental organizations, officials from the Association of Southeast Asian Nations (ASEAN) and representatives from the ASEAN Intergovernmental Commission on Human Rights (AICHR), National Human Rights Institutions (NHRIs) and the United Nations about the state of human rights protection in Southeast Asia.

The conversations centred around the role of NHRIs and their effectiveness in enhancing human rights protection. Collectively, the conversations identified a need for national rights commissions to enhance their protection capacities, at a time when democracy and rights seem to be in regression in the region and globally.

One way to understand the gap was to undertake a systematic analysis of the record of six national institutions—hence the need for evidence-based research by author-practitioners to take stock of their track records as revealed in their annual reports, in reports by regional watchdogs and in the UPR process.

Thanks, therefore, are due to the authors who marshalled their experiences into these chapters and who were diligent in revising and editing their submissions within a short time frame. Their insights point not only towards the great potential of NHRIs, but also to their challenges in providing protection in authoritarian social and political contexts.

Thanks are also in order to the team at Asia Centre, Tessa Allebas for her assistance in the editorial work and Patcharee Rattananong for her administrative support. The Centre is appreciative of its short-term consultants, interns and volunteers, who helped put together the NHRI conference and the subsequent publication.

We are grateful to Gerakbudaya for the publication and distribution of the regional edition of the book and to Palgrave who came onboard for the publication and distribution of the international edition of the book.

We are pleased to bring out this publication at this critical juncture in regional and international affairs when national human rights protection systems hold the key to the advancement of human rights and yet are being severely challenged by the evolving political forces in the region and beyond.

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## ABBREVIATIONS

ACHPR	African Commission on Human and People's Rights
ACS	ASEAN SOGIE Caucus
ACTIP	ASEAN Convention against Trafficking in Persons
ACWC	ASEAN Commission on Women and Children
AfHRC	African Human Rights Court
AFP	Agence France-Presse
AHRC	Asian Human Rights Commission
AICHR	ASEAN Intergovernmental Commission on Human Rights
ANNI	Asian NGO Networks on National Human Rights Institutions
AP	Associated Press
APF	Asia Pacific Forum
APF-NHRI	Asia Pacific Forum of National Human Rights Institutions
ASEAN	Association of Southeast Asian States
CADP	Andean Council of Defensorías del Pueblo
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CHRP	Commission on Human Rights, Philippines
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities

CSOs	Civil Society Organizations
DFID	Department for International Development
DKBA	Democratic Karen Benevolent Army
DPR	House of Representatives
EAGs	Ethnic armed groups
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
EN-NHRIs	European Network of NHRIs
EMPOWER	Selangor Community Awareness Organization
ESCR	Economic, Social and Cultural Rights
F-FDTL	Timor Leste Defence Force
FIO	Iberoamerican Federation of Ombudsmen
FPP	Forest Peoples Programme
GANHRI	Global Alliance of National Human Rights Institutions
GCs	General Comments
GDP	Gross Domestic Product
HDI	Human Development Index
HIV-AIDS	Human immunodeficiency virus- Acquired Immune Deficiency Syndrome
HRC	Human Rights Council
HRE	Human Rights Experimentalism
HRCT	Human Rights Commission of Thailand
HRL	Human Rights Law
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Subcommittee on Accreditation
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IGOs	International Organizations
KIA	Kachin Independence Army
KIO	Kachin Independence Organization
KND	National Disability Commission
KOMNAS HAM	National Commission on Human Rights
Komnas Perempuan	National Commission on Violence Against Women

KPAI	Komisi Perlindungan Anak Indonesia (Indonesia Commission on Child Protection)
KPP-HAM	Commission of Inquiry on Human Rights Violations
LANGO	Law on NGO
LGBTIQ	Lesbians, Gays, Bisexuals, Transsexuals and Intersex, Queer
LOIs	List of Issues
LPSK	Witness and Victim Protection Agency
LWF	Lutheran World Federation
MFA	Ministry of Foreign Affairs
MNDAA	Myanmar National Democratic Alliance Army
MNHRC	Myanmar National Human Rights Commission
MLHR	Ministry of Law and Human Rights
NAPHR	National Action Plan on Human Rights
NCA	Nationwide Ceasefire Agreement
NCPO	The National Council for Peace and Order
NGOs	Nongovernmental organizations
NHRI	National Human Rights Institutions
NHRCT	National Human Rights Commission in Thailand
NLD	National League for Democracy
OAS	Organization of American States
OHCHR	United Nations Office of the High Commissioner for Human Rights
OP CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities
PAP	People's Action Party
PDHJ	Ombudsman for Human Rights and Justice
PNTL	Timor-Leste National Police
PP-PA	Ministry for Women Empowerment and Child Protection
PTPPO	Eradication of Human Trafficking Crime
PWDs	Persons with Disabilities
RECOFTC	Center for People and Forests
RWI	Raoul Wallenberg Institute
SCA	GANHRI Sub-Committee on Accreditation
SEANF	Southeast Asia National Human Rights Institution Forum
SEA NHRIs	Southeast Asia National Human Rights Institutions
SDGs	Sustainable Development Goals
SHRF	Shan Human Rights Foundation
SIDA	Sweden International Development Agency
SOGIESEC	Sexual Orientation, Gender Identity and Expression of Sex Characteristics

SRS	Sex reassignment surgeries
SSPP/SSA-N	Shan State Progressive Party/Shan State Army—North
STDs	Sexually transmitted diseases
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (Human Rights Commission of Malaysia)
TBs	UN Human Rights Treaty Bodies
TNLA	Ta'ang National Liberation Army
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNGA	UN General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNHRC	UN Human Rights Council
UPR	Universal Periodic Review
WHO	World Health Organization

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# Introduction: National Human Rights Institutions in Southeast Asia: Challenges to the Protection of Human Rights

*James Gomez and Robin Ramcharan*

A United Nations (UN) report of a 2003 meeting of National Human Rights Institutions (NHRIs) from 22 commissions noted the centrality and importance of the Paris Principles “and the quasi-judicial powers of national institutions” (United Nations 2004: 15). While safeguarding the respective roles of NHRIs and judiciaries was important, it was highlighted that NHRIs, through sound investigative practices, “can facilitate a greater understanding within the judiciary of international human rights norms to ensure their application in national jurisprudence” (United Nations 2004: 15). In addition, “the advantage of this quasi-judicial mode of complaints-handling is that the procedures are less time consuming, more flexible, informal, non-confrontational, inexpensive and thus more accessible to vulnerable groups, than the courts” (Lindsnaes and Lindholt 2000: 26). The hallmark of a good NHRI is the effective “protection” of human rights, that is, the investigation of complaints by citizens alleging

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© Asia Centre 2020

J. Gomez, R. Ramcharan (eds.), *National Human Rights Institutions in Southeast Asia*,

[https://doi.org/10.1007/978-981-15-1074-8\\_1](https://doi.org/10.1007/978-981-15-1074-8_1)

violations of human rights, the conduct of a quasi-judicial proceedings to determine the validity of the claims and the rendering of decisions or recommendations that aim at securing justice for the victims consistent with international human rights standards and through appropriate remedies.

NHRIs in Southeast Asia are part of a nascent architecture for the protection of human rights that also includes the ASEAN (Association of Southeast Asian Nations) Intergovernmental Commission on Human Rights (AICHR), created in 2010, and the Universal Periodic Review (UPR) of the UN Human Rights Council (HRC) in 2006. The critical question is whether they individually or collectively provide protection of fundamental human rights. On both fronts, the protection function of this emerging human rights architecture appears to be missing and is well documented (Forum Asia 2015; Gomez and Ramcharan 2012, 2017; Morada 2019). AICHR is constrained by its promotional mandate. The UPR, as shown in Gomez and Ramcharan's *The Universal Periodic Review of Southeast Asia*, holds great potential for civil society organizations (CSOs) "to hold up a mirror to their respective governments" (Gomez and Ramcharan 2017: 3). CSOs, who are not participants in AICHR's formal reviews of member states' human rights situations, have engaged enthusiastically with the UPR process, and that trend has continued into the third cycle (2017–2021). However, critiques of the UPR include its ritualism, states' tendency to "note" recommendations they do not like and inadequate mid-term reviews and follow-up processes at the national level.

It is useful to note that while this book focuses on NHRIs in its modern form, some countries in Southeast Asia which have NHRIs have also established Ombudsman offices, for example, Indonesia (2008), Philippines (1987) and Thailand (1997), while Cambodia, which does not have an NHRI, has introduced subnational Ombudsman services in 2017. There is also the Asian Ombudsman Association, where, apart from ASEAN member states Indonesia, Philippines and Thailand, Vietnam's Government Inspectorate (2012) and Malaysia's Public Complaints Bureau (1971), which was designated in 2018 to be an Ombudsman (New Straits Times 2018), are also members (<http://www.asianombudsman.com/>). Primarily, the Ombudsman is government appointed and examines maladministration by public authorities (see generally Hossain 2000). Human rights violations may arise but this is not the mandate of the Ombudsman. However, many around the world have come to embrace

this aspect, as in the case of the Ombudsman in Timor-Leste, which performs the central function of an NHRI.

## NHRI'S PROTECTION ROLE AND SOUTHEAST ASIA

In this context, this collection seeks to determine the potential of NHRIs in Southeast Asia to advance the protection of human rights. Many NHRIs have been established around the world, and since 1987, as discussed by Michael J.V. White in Chap. 1, five out of the ten member states of the ASEAN have established NHRIs. Timor-Leste, which has applied for ASEAN membership, established an Ombudsman for Human Rights and Peace in 2004. The 2007 ASEAN Charter provides for the protection role of NHRIs. Article 16 (1) of the Charter states that its members' "common interest" in the promotion and protection of human rights "shall be achieved through, inter alia, cooperation with one another as well as with relevant *national*, regional and international institutions/organisations, in accordance with the ASEAN Charter."

The protection role of NHRIs has been widely acclaimed by practitioners and academicians (Ramcharan 2005). They were recognized by the UN Office of the High Commissioner for Human Rights (OHCHR) as pillars of national human rights systems for the promotion and protection of human rights, as playing a crucial role in these endeavors (United Nations 2011), and in advancement of the rule of law. The HRC has encouraged states "to establish effective, independent and pluralistic national institutions" and, where they already exist, "to strengthen them" (United Nations 2013: 2–3). The HRC encouraged national institutions to "play an active role in preventing and combating all violations of human rights" (United Nations 2013: 2–3).

NHRIs, along with Ombudsman offices and other hybrids, have proliferated in the last three decades along with the inexorable march of democracy across the globe since the end of the Cold War and in particular since the World Conference on Human Rights in Vienna in 1993. There are now many such institutions around the world and they take several forms: national commission, national advisory commission, national antidiscrimination commission, an Ombudsman and a "defender of the people" (*defensor del pueblo*) (Cardenas 2004; De Beco 2007). They reflect a particular stage in the evolution of the post-1945 human rights movement, which has gone from norms creation to norms diffusion and now to norm implementation. The first gathering to consider the protection role of

This book reviews Southeast Asia's National Human Rights Institutions (NHRIs) as part of an emerging assessment of a nascent regional human rights architecture that is facing significant challenges in protecting human rights. The book asks, can NHRIs overcome its weaknesses and provide protection, including remedies, to victims of human rights abuses? Assessing NHRIs' capacity to do so is vital as the future of human rights protection lies at the national level, and other parts of the architecture—the ASEAN Intergovernmental Commission on Human Rights (AICHR), and the international mechanism of the Universal Periodic Review (UPR)—though helpful, also have their limitations. The critical question the book addresses is whether NHRIs individually or collaboratively provide protection of fundamental human rights. The body of work offered in this book showcases the progress of the NHRIs in Southeast Asia where they also act as a barometer for the fluid political climate of their respective countries. Specifically, the book examines the NHRIs' capacity to provide protection, notably through the pursuit of quasi-judicial functions, and concludes that this function has either been eroded due to political developments post-establishment or has not been included in the first place. The book's findings point to the need for NHRIs to increase their effectiveness in the protection of human rights and invites readers and stakeholders to find ways of addressing this gap.

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