



EUROPEAN POLICY BRIEF

COMPETING INTEGRATIONS IN SOUTHEAST ASIA

National Human Rights Institutions in Southeast Asia: The failure to protect human rights in Myanmar



National Human Rights Institutions can play an important role in the promotion and protection of human rights. More often than not, however, National Human Rights Institutions in Southeast Asia lack the power and resources to constrain government actions and protect human rights. Myanmar is a case in point. As the youngest National Human Rights Commission in ASEAN, the Myanmar National Human Rights Commission was set up as part of liberalization efforts of the Thein Sein government. Although reformed in 2014, the current National Human Rights Commission lacks credibility and is incapable of properly protecting human rights in the country.

Marco Bunte, May 2020

INTRODUCTION

National Human Rights Institutions (NHRIs) have proliferated globally in the last two decades. By mid-2019, 122 countries around the world had established NHRIs in the form of ombudsmen, public defenders and human rights commissions. NHRIs play an important role in the promotion and protection of human rights, particularly at a time, when human rights are increasingly under threat, democracies are backsliding and spaces for civil societies are shrinking. Although created and funded by the state, strong and effective NHRIs form an important link between civil societies and the government. They address discrimination in all its forms, as well as promote the protection of civil, political, economic and cultural rights.

However, more often than not, they are too weak to constrain government actions. They are not sufficiently funded, do not have enough space to address human rights abuses by the state or lack the legal tools to address severe human rights violations. Adopted by the UN General Assembly in 1993, the Paris Principles are generally regarded as an international benchmark NHRIs are required to meet to guarantee their independence and to be able to constrain government actions. The six Paris Principles are: a broad mandate, autonomy from the government, independence guaranteed by the constitution (or by statute), a pluralist representation, adequate powers of investigation and sufficient resources.

Five of 11 Southeast Asian states have established National Human Rights Institutions in the last two decades. However, the commitment of Southeast Asian governments varies tremendously. Brunei, Laos, Singapore and Vietnam have so far opposed the establishment of a NHRI, Cambodia has repeatedly committed to establishing one, but has not yet taken any action. Myanmar and Thailand have both established National Human Rights Commissions, but these are lacking a strong mandate and are only partially compliant with the Paris Principles. We find the strongest Commitment in Indonesia, Malaysia and the Philippines, where governments have established stronger commissions with some significant powers to investigate. Yet, our research on the effectiveness of NHRIs in Southeast Asia shows that those commissions established in the wake of conflict or during political transitions face a number of difficulties such as a legitimacy deficit, lack of trust, and lack of resources and capabilities. Myanmar's National Human Rights Commission is an exemplary case to illustrate these complexities and challenges.

EVIDENCE AND ANALYSIS

Myanmar's National Human Rights Commission (MNHRC) was set up by presidential decree in September 2011. It was part of the broader liberalization policy of the quasi-military government of U Thein Sein and intended to increase the government's legitimacy in the eyes of the international community. Since the members of the first commission were close to the President, the Commission lacked credibility from the beginning. Members of Parliament and civil society criticised both the new commission. Though Myanmar's Parliament pushed for reforms and came up with a new law in March 2014 to strengthen the commission's legal basis, the body could hardly improve the dire human rights situation in the country, which is rooted in the long seclusion from the outside world due to self-isolation and external sanctions, the deep and long-term involvement of the military in political affairs and the ongoing civil wars in the country – particularly, though not only, in Rakhine, Kachin State and Shan State.

The Myanmar National Human Rights Commission Law (21/2014) envisions to create “a society where human rights are respected and protected in recognition of the Universal Declaration of Human Rights” (Section 3b). Another objective is to “effectively promote and protect the human rights contained in the international conventions, decisions, regional agreements and declarations related to human rights accepted by the State” (Section 3c). The law includes some problematic legal provisions, which limit the mandate and impact of the Commission. For instance, the power to inspect the scene of human rights violations is heavily circumscribed, because Section 22 of the law mandates a prior notification of the relevant authorities. For inspections to be effective and prevent a cover-up by the authorities, they should be unannounced. According to the same section, the MNHRC can only summon a person if the security of the state and defence are not affected or documents are not classified by the government. These security-related provisions limit the effectiveness of the Commission significantly.

The selection process and composition of the Commission contribute to a lacking pluralism and representativeness of the protection body. Commission members are chosen in secrecy, without public vetting or public debate. The President chooses (in consultation with the Hluttaw speakers) 7-15 members from a list of 30 persons drawn up by a selection board made up mainly of state officials. Consequently, members of all three commissions (2011-2014; 2015-2020, 2020-today) have been predominantly former state officials, ex-diplomats and bureaucrats. Although the percentage of civil society members was increased in the most recent appointment as university lecturers and NGO representatives were included, the current Commission lacks prominent and outspoken human-rights defenders. The Commission also lacks gender balance. All this has undermined the credibility of the commission, creating distrust from civil society and the general population.

Since 2011, MNHRC has nevertheless promoted human rights by organizing several workshops, public seminars and training of parliamentarians and bureaucrats. Despite this progress in human rights education, shortcomings in human rights protection prevail. The Commission failed to act in the interest of victims of human-rights abuses on several occasions, proved unable to protect the complainants, and remained passive in cases involving the military. It did not speak out against violence against the Rohingya or victims of human rights violations in areas of violent conflict in the

minority regions. Although the MNHRC has been strengthened significantly since its inception in 2011, it still falls short of being an independent and effective human rights advocate.

POLICY IMPLICATIONS AND RECOMMENDATIONS

Human rights are increasingly under threat in the illiberal democracies of Southeast Asia. NHRIs serve as important watchdog agencies that can constrain government actions and impunity. The case of Myanmar has revealed, however, that they often serve primarily as tools to gain international legitimacy without constraining governments and without protecting human rights adequately. In order to help strengthening the human rights regime in Myanmar, the EU and its member states should consider the following actions.

1. The EU should encourage the Myanmar government to address the lack of transparency in the selection of the commissioners, broaden the mandate of the commission, and expand the connection to civil society. To achieve this goal, the legal framework governing the MHRC and its work may need to be reformed.
2. The EU should step up its capacity building programmes for human rights training, advocacy and research. Commissioners should be empowered to act objectively and independently, though this would require greater capabilities in the field of human rights research and investigation than currently exist.
3. The EU should continuously track the human rights situation in the whole country reaching beyond its focus on Rakhine state issues. It should deepen the human rights dialogue with the government including both civilian and military arms in the human rights dialogue. Setting up a track-two dialogue on human rights in Myanmar which includes civil society and academia can broaden the human rights discourse in the country.

RESEARCH PARAMETERS

Competing Regional Integrations in Southeast Asia (CRISEA) is an interdisciplinary research project that studies multiple forces affecting regional integration in Southeast Asia and the challenges they present to the peoples of Southeast Asia and its regional institutional framework, ASEAN.

CRISEA innovates by encouraging ‘macro-micro’ dialogue between disciplines: global level analyses in international relations and political economy alongside socio-cultural insights from the grassroots methodologies of social sciences and the humanities.

Coordinated by the Ecole française d’Extrême-Orient (EFEO) with its unique network of ten field centres in Southeast Asia, the project brings together researchers from seven European and six Southeast Asian institutions, with three objectives:

1. Research on regional integration

Multiple internal and external forces drive regional integration in Southeast Asia and compete for resources and legitimacy. CRISEA has identified five ‘arenas of competition’ for the interplay of these forces, investigated in the project’s five research Work Packages. It further aims to assess the extent to which they call into question the centrality of ASEAN’s regional model.

2. Policy relevance

CRISEA reaches beyond academia to engage in public debate and impact on practitioners in government and non-government spheres. By establishing mechanisms for dialogue with targeted audiences of policymakers, stakeholders and the public, the project furthers European science diplomacy in Southeast Asia and promotes evidence-based policymaking.

3. Networking and capacity-building

CRISEA reinforces the European Research Area (ERA) in the field of Asian Studies through coordinated EU-ASEAN academic exchange and network development. It connects major research hubs with emerging expertise across Europe and Southeast Asia. CRISEA also promotes participation of younger generation academics in all its activities, notably policy dialogues.

PROJECT IDENTITY

PROJECT NAME	Competing Integrations in Southeast Asia (CRISEA)
COORDINATOR	Andrew Hardy, EFEO, Paris, France, hardyvn25@yahoo.com.
CONSORTIUM	Ecole française d'Extrême-Orient – EFEO – Paris, France University of Hamburg – UHAM – Hamburg, Germany University of Naples l'Orientale – UNO – Naples, Italy Institute of Social and Political Sciences – ISCSP - Lisbon, Portugal University of Lodz - UL – Lodz, Poland University of Oslo – UiO – Oslo, Norway University of Cambridge – Cam – Cambridge, UK Chiang Mai University – CMU – Chiang Mai, Thailand The Centre for Strategic and International Studies - CSIS – Jakarta, Indonesia Ateneo de Manila University – ADMU – Quezon City, Philippines University of Malaya – UM – Kuala Lumpur, Malaysia Vietnamese Academy of Social Sciences – VASS – Hanoi, Vietnam The University of Mandalay – MU – Mandalay, Myanmar
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WEBSITE	www.crisea.eu
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FURTHER READING	Marco Bünte and Björn Dressel (2017): <i>Politics and Constitutions in Southeast Asia</i> , London: Routledge. Marco Bünte (2019): Southeast Asia's human rights crisis: When illiberal states meet weak human rights commissions, <i>Hiroshima Peace Journal</i> 6(1), pp. 21-45. Marco Bünte, Patrick Köllner, Richard Roewer (2019): Taking Stock of Myanmar's Political Transformation since 2011, <i>Journal of Current Southeast Asian Affairs</i> , 3, pp. 249-264. Marco Bünte (2020): Religious mobilisation, ethnic conflict and the problem of trust, in: Aurel Croissant and Peter Walkenhorst (eds): <i>Social Cohesion in Asia: Historical Origins, Contemporary Shapes and Future Dynamics</i> , London: Routledge, pp. 169-189.