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# Civil Society Perspectives on Rights and Freedoms in the Association of Southeast Asian Nations

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## Abstract

This pan-regional analysis of non-governmental organisations' (NGO) perspectives on the contemporary factors which constrain or repress civil society in the Association of Southeast Asian Nations (ASEAN) is based on United Nations' Universal Periodic Review (UPR) data. It shows that, paradoxically, whilst the majority of ASEAN states have ratified the International Covenant on Civil and Political Rights (ICCPR) that upholds civil society's political role in promoting rights and democracy, this is inimical to the region's political elites who regard civil society's primary function as non-political delivery of social welfare and development. This disjuncture results in repression, performativity, and legitimation. The UPR data reveal an ever-shrinking civil space. Civil society, including human rights defenders (HRDs), faces a raft of rights pathologies, including threats, violence and murder—as well as increasing state restrictions on freedom of association and expression. This is compounded by impunity for offenders, corruption, and government inaction following earlier UPR recommendations.

## Keywords

civil society – human rights – rights defenders – Association of Southeast Asian Nations

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## 1 Introduction

This study explores non-governmental organisations' (NGO) perspectives on the contemporary factors which constrain or repress civil society in the Association of Southeast Asian Nations (ASEAN). This is deserving of attention because globally, the United Nations has referred to a 'shrinking civic space and imminent threats or other human rights violations experienced by human rights defenders' (United Nations 2018, 4). It has proceeded to note: 'in too many places, an open space for this [civil society] participation is shrinking. Repressive laws are spreading, with increased restrictions on freedoms to express, participate, assemble and associate ... human rights defenders ... are increasingly threatened ... This shrinking of civic space is frequently a prelude to a more general deterioration in human rights' (United Nations 2018, 4). A key question is how does this relate to the ASEAN region? As the following discussion reveals, the majority of ASEAN states have signed the International Convention on Civil and Political Rights (ICCPR), thereby extending protections to human rights defenders and civil society in general, including freedom of association and expression. This may be interpreted as rights-oriented progress compared to South or East Asia, but it should be remembered that ASEAN lags behind the rest of the world. Of the about 20 countries in the world that have not ratified ICCPR, four are in South East Asia, as shown in Table 1.

Moreover, every other major region has some human rights promotion and protection mechanism, yet the ASEAN Intergovernmental Commission on Human Rights (AICHR) is the weakest of them all.

In addition, to the ICCPR, in 2012 many of its obligations were incorporated into the ASEAN Human Rights Declaration (AHRD). At the time, the adoption of the AHRD was hailed as 'mak[ing] ASEAN one of the most advanced sub-regions in Asia from a human rights institution building perspective' (Petcharamesree 2013, 46). However, at its launch, the UN warned 'For the ASEAN human rights system to complement the work of the United Nations human rights system ... it is imperative that, as a minimum, ASEAN's landmark human rights instrument maintains international human rights standards' (United Nations 2012, 1). Contemporary accounts also noted that, 'The importance of the Declaration remains to be seen ... its utility to other actors in the human rights space across Southeast Asia may be far more wide-reaching than the framers of the document intended ... it has left the door open for multiple futures' (Davies 2014, 117). A decade on we now explore the future that has transpired in the region.

Our focus in this study is factors which may act to shrink the civil society space by constraining freedoms and suppressing rights. This largely, yet not exclusively, applies to human rights defenders. The two concepts are not

TABLE 1 ASEAN: international human rights law—obligation to protect HRDs (status/ ratification of relevant UN treaties), date of last UPB and current global rights ranking etc.

UN Treaty	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
International Covenant on Economic, Social and Cultural Rights ICESR	N/R	1992	2006	2007	N/R	2019	1974	N/R	1999	1982
International Covenant on Civil and Political Rights ICPR (Art. 2)	N/R	1992	2006	2009	N/R	N/R	1986	N/R	1996	1982
Convention on the Elimination of All Forms of Discrimination against Women CEDAW (Art. 3)	2006	1992	1984	1981	1995	1997	1981	1995	1985	1982
ASEAN Human Rights Declaration	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012
Human Freedom Index (Global Ranking)	135/162	108/162	94/162	132/162	113/162	150/162	102/162	52/162	124/162	110/162
Global Human Rights Ranking	113/173	138/173	98/173	111/173	106/173	164/173	141/173	63/173	143/173	140
Population (Million)†	0.43	16.7	273.5	7.3	32.3	51.4	109.6	5.7	70	97.3
Per Capita GDP (USD \$).†	27,466	1,507	3,869	2,630	10,401	1,400	3,298	59,797	7,189	7,785
Date of Last UPB	2019	2019	2017	2020	2018	2021	2017	2021	2021	2019

‡ Not Ranked. † Source: World Bank, N/R—Not Ratified  
 THE DATA FOR INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS ICPR (ART. 2) AND FOR CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN CEDAW IS FROM UNITED NATIONS HUMAN RIGHTS TREATY BODIES (2023). THE DATA FOR HUMAN FREEDOM INDEX (GLOBAL RANKING) IS FROM VÁSQUEZ AND MCMAHON (2020). THE DATA FOR GLOBAL HUMAN RIGHTS RANKING IS FROM GLOBALECONOMY.COM (2023).

discrete but are integral to any analysis of civil society freedoms. The UN Secretary-General's Office explains the relationship between the two. It notes "human rights defender" sometimes refers to civil society with the understanding that not all civil society actors are human rights defenders, but that human rights defenders generally are part of civil society'. As the UN goes on to note, although the Declaration on Human Rights Defenders is not a legally binding instrument (United Nations 1998), it contains rights that are already recognized in many legally binding international human rights instruments, including, as noted, the International Covenant on Civil and Political Rights (ICCPR). The Declaration asserts: 'everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels' (Article 1). As the Office of the High Commissioner for Human Rights (OHCHR) explains, the activities undertaken by HRDs include: 'acting to address any human right (or rights) on behalf of individuals or groups; the promotion, protection and realization of economic, social and cultural rights; collecting and disseminating information on violations' (United Nations 2021, 2).

The data source for the present study comes from submissions by civil society organisations to the last cycle of the Universal Periodic Review (UPR), the United Nations' five-yearly monitoring programme (see Methodology—below). In social theory terms, the present study uses critical discourse analysis because, as the interpretive school of policy analysis and social constructivism (Kukla 2002) emphasises, social research benefits from attention to values, beliefs and interpretations germane to a given policy issue (Eden and Ackermann 2004). Thus, we draw upon standpoint theory, in particular, exploring the 'situated knowledge' (Stoetzler and Yuval-Davis 2002) of those working with civil society organisations (or CSOs—alternatively known as non-governmental organisations—or NGOs) covering the region—as set out in their UPR submissions to the UN. This is a valuable complement to records of institutional proceedings and jurisprudence for the use of discourse analysis which allows first-hand accounts to 'speak' directly to us.

Accordingly, this study's aims are to explore civil society perspectives on the contemporary factors which constrain or repress civil society, including human rights defenders, in the Association of Southeast Asian Nations. Associated questions are: at a regional level, what are the main violations facing civil society? And, at a country level, how can we summarise the threat to civil society and the situation of HRDs? The remainder of this paper is structured thus: following outlines of the research context and study methodology, the findings are presented in two parts. The first summarises developments across

the ASEAN region. The second explores developments in each of the case study countries. The conclusion then discusses the implications of the findings of the study.

## 2 Research Context

The Association of Southeast Asian Nations was created in 1967. Comprised of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam—it covers an area of 4.5 million km<sup>2</sup> and has an estimated population of 664 million. Its purpose is to promote intergovernmental cooperation and facilitate economic, political, military, security, educational, and cultural cooperation between members—and other countries in Asia. ASEAN aims to promote economic growth, development, regional peace, and stability. It has a GDP equivalent to \$3 trillion (USD). Yet, as the following discussion reveals, the region is beset with major inequalities and human rights challenges.

Over a decade ago analysis revealed that CSOs' self-organisation was mostly centred on service delivery and development work. For example, one account concluded that, 'Although authoritarian and illiberal democratic states attempt to restrict civil society, by a combination of legal and extra-legal means, citizens still organise ways of improving their health and environment ... Many donor and governmental organisations favour direct service-delivery to advocacy or reform, offering limited space for citizens' action. As a result, civil society is often passive when advocating about major issues ...' (Wells-Dang and Wells-Dang 2011, 792). At this juncture it is important to avoid the assumption of weak civil society in the region. This perception is widely held and is understandable, given that many of the widely-read histories were written by western researchers. These have tended to present some inaccuracies. However, as new histories show, human rights NGOs in South East Asia often occurred before, and were more developed, than most European and American NGOs. For example, the first NGOs in Thailand, Indonesia, and the Philippines emerged in the late 1960s and early 1970s. They set a trend which is followed by Europe and North America (Jensen 2016).

Prior to the ratification of the ASEAN Human Rights Declaration (AHRD) in 2012, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was founded in 2009. Whilst some argue 'civil society has not been a crucial component in the establishment of AICHR' (Asplund 2014, 196) others take a persuasive, contrary view by highlighting how AICHR was basically established by civil society pressure through the working group. Such debates aside, over

recent years democracy, rights, and government engagement with civil society in ASEAN has waxed and waned. As Gerard Kelly explains,

In the period of reform that followed the regional financial crisis beginning in 1997, the idea of a 'people centered' ASEAN became a motif of discussions regarding the anticipated direction of the Association. This was accompanied by overtures of opening the Association to stakeholders, particularly civil society organisations (CSOs). This rhetorical appeal to widen participation in ASEAN signalled an abrupt shift from its previous style of regional governance, characterized by closed-door meetings and tacit agreements among leaders. Such practices led to the widely held perception of ASEAN as an elitist and exclusive organization.

KELLY 2012, 267

However, despite discussions about greater inclusiveness, and experiments with state decentralisation (Ruland 2012), over the intervening years, as a part of a legitimisation process, the Association's governments have maintained strict controls over the form of civil society participation and advocacy. As Laura Allison and Monique Taylor (2017, 24) conclude, 'despite the rhetorical emphasis on participatory regionalism, it continues to be the case that regional civil society organisations and non-state actors have limited capacity to influence ASEAN'. Kelly's later work supports this. It cogently notes that, in the case of the ASEAN Civil Society Conference (ACSC—a participatory forum held annually since 2005 to extend stakeholder input into government policy), 'While civil society organizations coordinate this event in consultation with governments, the latter have largely dictated who participates and how, shutting down spaces for participants to contest specific policies or projects ... Government interventions in the ACSC have seen representation expand but the scope for contestation contract, delegitimizing policy for those seeking to advance alternatives' (Kelly 2021, 443). As the concluding section of this paper explains, this has strong parallels with the contemporary situation of HRDs in the region and ASEAN governments' engagement with the UPR.

Accordingly, against this backdrop, the following analysis examines civil society organisations' views and experiences of governments' compliance with their treaty obligations, thereby providing key insights into the contemporary situation of civil society across the region. Having outlined the research context, attention now turns to the study methodology.

### 3 Methodology

The present study uses critical discourse analysis to examine the UPR submissions. This ‘is a type of discourse analytical research that primarily studies the way social-power-abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context’ (Van Dijk 2001, 352). There are two components to its application in this study: thematic analysis and framing. In addition to analysis of the UPR submissions, the country summaries in the second section of research findings also examine the (albeit markedly limited) reference to HRDs and civil society in ASEAN governments’ reports to the UPR. Framing here refers to the way that language is expressed. Derived from the work of Erving Goffman (1974, 27), discursive framing refers to the language used by policy actors. It is concerned with the intrinsic meanings, sentiments, emotions, messages, and criticality in relation to social and political communication (Heine and Narrog 2015). It may explicitly or immanently advance a particular understanding of a problem. In the case of discursive framing, a key goal is to be critical and persuade other policy actors of the existence of social issues. In contrast, collective action framing comes from the literature on social movements and is concerned with advocacy of appropriate solutions to rights violations through activism in order to secure legal and policy change (e.g., boycott, mass demonstrations, and civil disobedience) (Pedriana 2006).

The principal data source is the most recent cycle UN Universal Periodic Reviews in each of the ten Association of Southeast Asian Nations. It has two components: CSOs’ UPR submissions, and the ASEAN Governments’ UPR submissions. These are described in detail below. First, it is germane to consider the role and significance of civil society in the UPR and how CSOs work with the review process. The UPR is not designed to be an elite process. Instead, it provides the chance for each state to set out the actions that they have taken to advance human rights. Crucially, it allows civil society organisations to provide formal written submissions. Since its introduction, ASEAN civil society has embraced the UN review process with dozens of CSOs submitting their reports. The CSO submissions constitute a rich dataset that informs understanding of the role of civil society as a political space for resisting oppression and promoting rights.

Rather than rely on the stakeholders’ summary report compiled by the OHCHR, this study examines all CSO submissions to the most recent cycle of the UPR for each of the ten ASEAN countries. Many of the reports are joint submissions co-authored by several CSOs. For example, the Cambodian NGO Committee on the United Nations Convention on the Elimination of Discrim-

ination Against women (CEDAW) is a coalition of 37 Cambodian-based civil society organizations and the Coalition of Malaysian NGOs (COMANGO) an alliance of 52 CSOs. Typically, the joint UPR submissions were longer. Some were over 9,000 words. There are limited requirements regarding the format or specification of the CSO submissions. To a significant degree, they constitute ‘free text’. This preserves CSOs’ criticality. The corpus of reports submitted by each country under the five-yearly rolling UPR cycle overseen by the OHCHR are examined. In each case, these are made up of international and indigenous (country-based) CSOs.

Having outlined the study methodology, attention now turns to the study findings. These are organised in two parts. The first, region-wide analysis, has three sub-sections. First, initial attention centres on the thematic analysis and the different rights issues reported in CSOs’ last-cycle UPR submissions. Second, this is followed by analysis of CSOs’ discursive framing—or use of language with reference to their evocations of meanings, sentiments and emotions in their UPR submissions. Finally, there is collective action framing. Part Two of the findings then explores developments in each of the case study countries.

## 4 Region-Wide Analysis

### 4.1 *CSOs’ Reporting of Human Rights Issues*

The deteriorating situation across the ASEAN region is confirmed by the fact that repressive legislation (generic references) is the first-ranked pathology, as reflected in Table 2.

For example, as one CSO complained, ‘repressive legislation fuels [the] crack-down on civil society ... Extensive domestic legislation that prohibits the “abuse” of rights that infringe on “state interests and policies” also enables authorities to imprison HRDs’ (International Federation for Human Rights and Vietnam Committee on Human Rights 2018, 3). Violence, threats, torture, and murder were the second-ranked pathology and are typified by ‘Defenders are regularly attacked for peaceful expression of opinion, and the sphere of human rights protection work has grown steadily more dangerous in Vietnam’ (Front Line Defenders Vietnam 2019, 2) and the ‘human rights situation remains deeply concerning, human rights defenders faced significant threats to their safety and security. In one of the most serious cases, political activist [... name] was abducted, tortured and found dead ... six other activists were detained and tortured in police custody’ (Arus Pelangi, Kontras, National Legal Aid Reform Consortium Indonesia 2019, 5).



TABLE 2 Thematic analysis—human rights issues affecting HRDs in CSOs' UPR submissions in ASEAN countries 2017–2021<sup>a</sup>

Rights issue affecting HRDs	Legal basis of rights violation	Ranking
Repressive legislation	UHDR (Art. 2) Everyone is entitled to all the rights and freedoms set forth in this Declaration. ICCPR (Art. 2)	1
Violence, threats, torture and murder	UDHR (Art. 3) Everyone has the right to life, liberty and the security of person. ICCPR (Art. 9.)	2
Freedom of association	UDHR (Art. 20) Everyone has the right to freedom of peaceful assembly and association. ICCPR (Art. 22).	3
Freedom of expression / Censorship	UDHR (Art. 19) Everyone has the right to freedom of opinion and expression ICCPR (Art. 19).	4
Authorities' maladministration of justice (false arrest, judicial harassment and arbitrary detention)	ICCPR Article 14: All persons shall be equal before the courts ... everyone shall be entitled to a fair and public hearing ...	5
Failure to address past UPR recommendations on HRDs	UDHR (Art. 2), ICCPR (Art. 2).	6
Impunity for offenders / need for greater police investigation and protection	UHDR (Art. 2) Everyone is entitled to all the rights and freedoms set forth in this Declaration. ICCPR (Arts. 2, 14)	7
State surveillance	ICCPR (Art. 17) No one shall be subjected to arbitrary or unlawful interference with his ( <i>sic</i> ) privacy, family, home or correspondence ...	8
Abduction / enforced Disappearance	International Convention for the Protection of All Persons from Enforced Disappearance.	9

a Issues that are not necessarily concerned with discrete human rights violations based on breach of a single treaty article, but thematic rights-oriented pathologies that limit civil society freedoms.

THE DATA IS FROM UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (2023).

Violations of freedom of association is the third-ranked pathology. For example, 'the right to freedom of association is significantly restricted in Vietnam. All associative activity is controlled by the Communist Party of Vietnam and the Vietnamese Fatherland Front (VFF), an umbrella of mass organizations that has a constitutional mandate to oversee the implementation of CPV policies at the grassroots level ... The right to freedom of peaceful assembly is severely restricted. Police and plainclothes security agents have routinely repressed peaceful demonstrations' (International Federation for Human Rights and Vietnam Committee on Human Rights 2019, 7). It is followed by breaches of

the right to freedom of expression (including censorship). The latter strand of the UPR discourse is typified by this example, ‘this case [government prosecution of HRD] is emblematic of how the Bruneian government manipulates the Sedition Act, a speech restrictive legislation, to impede freedom of expression and quash dissent’ (Human Rights Foundation Center for Law and Democracy Brunei 2017, 2).

Authorities’ maladministration of justice (false arrest, judicial harassment, and arbitrary detention) is the fifth-ranked pathology. For example, ‘Human rights defenders active in land disputes frequently face violence, judicial harassment, and other forms of targeted actions intended to halt and punish their activism. Land rights activists regularly face trumped-up criminal charges or high-value civil lawsuits aimed at intimidating and silencing them, particularly where local authorities or politically connected economic actors are involved in land disputes’ (Forum Asia 2019, 4).

Failure to address past UPR recommendations on HRDs is the sixth-ranked issue. For example, ‘During the second UPR of the Lao PDR, the government accepted ... recommendations on freedom of opinion and expression ... Since 2015, the situation concerning the right to freedom of opinion and expression has worsened’ (Lao Movement for Human Rights 2019, 5). A further key issue in the corpus is impunity for those who offend against HRDs’ need for greater police investigation and protection. For example, ‘Myanmar’s culture of impunity and the military’s continued dominant role in politics ... Unlike the HRDs, activists and journalists mentioned above, these state and non-state perpetrators face no legal action’ (RW Welfare Society and Rohingya Youth Association 2021, 7). Amongst the remaining issues are state surveillance, for example ‘human rights defenders in the country [are] still subjected to a range of attacks and abuses by state and non-state actors. They include serious human rights violations including the harassment and imprisonment of human rights defenders for their exercise of civil and political rights ... surveillance and legislative and judicial harassment’ (Front Line Defenders Thailand 2021, 4). Abduction / enforced disappearance is a further rights pathology across the region. For example, ‘Nine pro-democracy activists in exile in neighbouring countries have been abducted or subjected to suspected enforced disappearances, including by unidentified perpetrators, apparently linked to their public commentary on authorities and the monarchy’ (Amnesty International Thailand 2021, 5).

#### 4.2 *CSOs’ Discursive Framing of the Rights Situation of HRDs*

The discursive frames fall into two categories: normative and experiential. The former is concerned with establishing or upholding norms (or ideal princi-

TABLE 3 Discursive framing of constraints issues in CSOs' UPR submissions: ASEAN countries 2017–2021

Frame category	Discursive frame	Ranking
Normative	Accountability / criticality of government	1
	Independence from government control	2
	Fairness / rule of law	3
	HRDs and promotion of peace	4
Experiential	HRDs' fear / terror / reprisals	5
	Criminalization of HRDs	6
	HRDs' vulnerability / need for Protection	7
	Suffering of HRDs	8

ples) and values. The latter illuminates HRDs' subjective, lived experiences. The first-ranked discursive frame in the CSO corpus is accountability / criticality of government, as shown in Table 3. For example, 'Thailand has faced years of political disputation ... an interim constitution that allowed the NCPO chairman General Prayuth Chan-ocha, in his concurrent position as Prime Minister, to wield absolute power to arbitrarily restrict peaceful political activities and the exercise of other human rights without oversight or accountability' (Civicus—Thailand 2021, 4).

Independence from government control was the second-ranked frame. This strand of the discourse is typified by 'the government has intensified its onslaught on Cambodia's political opposition, civil society, and independent media, with the aim of dismantling, silencing, and exiling them in the lead-up to the general election' (Human Rights Watch 2021a, 5). Other normative frames include: Fairness / rule of law, for example 'ensuring that human rights violations, including those committed by Indonesian security forces, are investigated and that those deemed responsible are prosecuted in a fair, prompt and impartial manner' (Civicus and Legal Aid Institute for the Press 2017, 8); and HRDs and promotion of peace, such as 'the government has continued to prosecute human rights defenders and critics for organizing peaceful meetings and criticizing authorities' (Amnesty International 2021a, 5).

HRDs' fear and terror over reprisals is foremost amongst the experiential frames and was the third-ranked discursive frame overall. For example, 'The climate of fear among members of civil society in the Lao PDR since the disappearance of civil society leader Sombath Somphone [it ...] has allowed the government to successfully isolate Lao civil society from its regional counterparts'

(International Federation for Human Rights and Lao Movement for Human Rights 2020, 4). Criminalization of HRDs was fourth-ranked. For example, ‘The Peaceful Assembly and Peaceful Protest Law (PAPPL) and the Telecommunications Law have been utilised in order to criminalise protest and freedom of association’ (All Arakan Students Youth and Congress 2021, 7). Amongst the remaining frames is HRDs’ vulnerability / need for protection and the suffering of HRDs. For example, ‘the Cybercrime Prevention Act ... makes journalists and human rights defenders particularly vulnerable to be punished for critical statements under this law’ (Aktionsbündnis Menschenrechte—Philippinen 2017, 4) and ‘CSOs have also documented the torture and ill-treatment of HRDs while locked up in Vietnam’s secretive network of prisons and detention centres. This includes prolonged periods of incommunicado detention and solitary confinement; the infliction of severe physical pain and suffering; and the withholding of medical treatment’ (Civicus 2019, 8).

The significance of this analysis of experiential framing lies in revealing the human dimension of state repression of HRDs. It gives insight into felt emotions, anxieties and personal costs attached to their rights advocacy—factors that can inform their self-care and coping strategies. It also provides transferrable lessons for practice on the ground and the types of support needed by HRDs.

#### 4.3 *CSOs’ Collective Action Framing to Address the Contemporary Rights Situation of HRDs*

As noted, collective action framing comes from the literature on social movements and is concerned with advocacy of solutions to issues such as rights violations through activism to secure legal and policy change. It aligns with what Charles Tilly refers to as repertoires of contention (Tilly 2002). The first-ranked collective action frame is CSOs’ advocacy of legal reforms, as shown in Table 4. For example, ‘In the 2015 UPR, Myanmar supported eight recommendations regarding the freedom of expression and calling for the legal reform. However, Myanmar has not seen any amendment of problematic legal provisions of the laws is in line with international human rights standards’ (Athan 2021, 6). The second-ranked frame in the corpus is imploring people to act to ensure the release of HRD detainees (e.g., ‘Immediately release HRDs detained or imprisoned in connection with their peaceful defence of the rights of others’ (FIDH (International Federation for Human Rights) and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) 2018, 4).

Amongst the remaining frames were generic calls for civil society campaigning / advocacy of HRDs. For example, ‘improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns,

TABLE 4 Collective action framing in CSOs' UPR submissions: ASEAN countries 2017–2021

Frame	Ranking
CSOs' advocacy of legal reforms	1
Imploring people to act to ensure release of HRD detainees	2
Generic calls for civil society campaigning / advocacy of HRDs	3
Specific calls to protest/ mobilise for HRD rights	4
Calls to press government for receptiveness, negotiation and dialogue on HRD rights	5
Calls for solidarity to support HRDs	6

and lobbying activities' (Commission for the Disappeared and Victims of Violence (KontraS) and Democracy Education Association 2017, 1), and 'advocate for the respect of human rights in Malaysia ... especially the right to trial, freedom from abuse of police powers and law enforcement agencies; freedom of expression and information ...' (Suara Rakyat Malaysia 2018, 6); and calls for civil protest and mobilisation. For example, 'Reform laws to protect the right to protest' (Free Expression Myanmar 2021, 6). These were followed by the need for greater government negotiation and dialogue with civil society (e.g., 'The authorities use bureaucratic procedures to disrupt CSOs' work, trainings and prevent public discussions / dialogues on critical human rights issues' (Access to Justice Initiative and Association of Human Rights Defenders and Promoters 2021, 9), and calls for solidarity to support HRDs sixth-ranked, such as 'strengthen solidarity and a collective voice among Asian civil society engaged in democracy [and] human rights ...' (Civicus and Asia Democracy Network 2021, 3).

The significance of this analysis of collective action framing lies in revealing CSOs' prioritisation and envisioning of collective action approaches to addressing the rights pathologies faced by HRDs shaped by the prevailing political opportunity structures across ASEAN states. Having summarised CSOs' UPR discourse at an aggregate, region-wide level, attention now turns to their perspectives on the situation of HRDs in each ASEAN country.

## 5 The Situation of HRDs in ASEAN Countries

### 5.1 *Brunei Darussalam*

Brunei has distinctive characteristics. It is 'an absolute monarchy ... [and] a typical example of a rentier state through both patronage and coercion'

(Mukoyama 2020, 232). Hitherto it was ‘the only ASEAN country without general elections, an organized opposition, or an independent civil society’ (Müller 2017, 111). In its submission to the UPR, the Government said that it ‘continues to promote and protect human rights in the country, through an inter-agency consultative mechanism in cooperation with various NGOs as partners. This includes the formulation of legislation and implementation of relevant programmes’ (Government of Brunei Darussalam 2019, para 36). Yet the CSO discourse contradicts this by highlighting a broad range of treaty violations faced by HRDS. Notably, ‘Limitations on the right to freedom of information, opinion and expression’ (Statelessness Network Asia Pacific 2019, para 25). As the United States Department of State, Bureau of Democracy, Human Rights and Labor (2020a, 1) complained, ‘Neither domestic nor international human rights groups c[an] operate freely due to government restrictions. No registered civil society organizations deal directly with human rights, mostly due to self-censorship’. A core trope is that Brunei is yet to ratify the ICCPR and International Covenant on Economic, Social and Cultural Rights (ICESCR). In April 2019 the government introduced a revised Penal Code with the death penalty for some offences. The UN Human Rights Working Group condemned the fact that ‘the penal code marked a serious setback for human rights’. It added that it remained ‘concerned about restrictions on freedom of expression, association and peaceful assembly, and on political participation’ (UN Human Rights Council 2019a, 11).

## 5.2 *Cambodia*

The rights situation in today’s Cambodia is a troubling one. Caroline Hughes’ account explains its origins. Specifically, how the UN, the World Bank, and major donor countries have accommodated a neo-liberal doctrine of global governance at considerable cost to the national sovereignty of countries like Cambodia. The comparative success of the Cambodian People’s Party (CPP), in power since the 1980s, is to a significant degree due to ‘the Party’s politico-military network making all the correct rhetorical responses to the international community, and then building the state to ensure its own dominance. In turn, the state’s legitimacy deficit leads to greater dependence upon those who clearly control the power and the money, namely the donor community’ (Hughes 2009, 84).

In its UPR report, the Government of the Kingdom of Cambodia said, ‘human rights defenders, and civil society actors as well as other individuals are equal before the law, protected by the law, and responsible before the law altogether. Freedom of expression or freedom of expression in profession are not offences’ (Government of the Kingdom of Cambodia 2019, 12). However, UN and CSO

discourse refute this. One CSO referred to how ‘The climate of violence and insecurity for trade unionists and other human rights defenders has been reinforced by the absence of effective investigations and judgments against guilty parties creating a situation of impunity, which is extremely damaging to the exercise of fundamental rights in Cambodia’ (ITUC 2017, 5). Accordingly, in its 2019 report, the UN Human Rights Working Group recommended that the government ‘create conditions conducive to free political debate and competition with a view to rebuilding a democracy in which the media and civil society, including human rights defenders, can freely carry out their work without interference or hindrance’ (UN Human Rights Council 2019b, 17). Yet, as one CSO noted, ‘The authorities’ misuse of the judicial system to silence human rights defenders and critical voices has increased, while the security forces continued to harass and intimidate civil society members and HRDs. HRDs faced threats, physical attacks, arrest, judicial harassment and arbitrary detention ... Intimidation, judicial harassment and heavy surveillance [have] caused several to leave the country in fear for their safety’ (Front Line Defenders Cambodia 2019, 2).

The UPR discourse also highlighted how recommendations from the first and second cycle remain to be properly implemented. These include tackling illegal land evictions, especially those against indigenous people. As this CSO explained, ‘Indigenous Peoples in Cambodia continuously face land evictions ... 600,000 people have been forcibly evicted from their homes. Protesting land grabs has proven deadly ... a culture of intimidation against human rights defenders, and Indigenous Peoples seeking recognition of their land rights’ (Cultural Survival 2017, 2). The CSO discourse charts a further deterioration in the rights situation over the past two years. For example, ‘During the year [2020–2021] ... Cambodian authorities used the repressive Law on Associations and NGOs (LANGO) to designate as illegal groups human rights defenders exposing practices that caused environmental degradation’ (Amnesty International 2021a, 36). Moreover, ‘Prime Minister Hun Sen ... [has] used the Covid-19 pandemic as a pretext to further tighten his grip on power’ (Human Rights Watch 2021b, 128).

### 5.3 *Indonesia*

Writing over a decade ago Verena Beittinger-Lee observed, ‘the post-Suharto era yielded a proliferation of CSOs, but illiberal, uncivil forces within Indonesia’s civil society have thrived’ (Beittinger-Lee 2009, 210). More recently, Haryanto’s (2020) analysis highlights how some CSOs elect to ‘boundary hop’ and use direct strategies to enter the state field to secure an insider position to promote rights and effect change. However, the majority of CSOs remain outside

the state arena and are concerned with service delivery. Yet, as the following reveals, all CSOs are potentially subject to government repression. Despite this, through dissembling, the government seeks to give a different impression to external audiences. For example, in its report to the UPR it referred to its 'continued commitment to inclusive process and multi-stakeholders partnership, national human rights institutions, civil society organizations and other stakeholders' (Government of Indonesia 2017, 3). This, it claimed, evidenced a 'robust commitment to strengthened partnership with civil society'. The UN and CSO discourse contradict this. For example, one CSO complained that 'Human rights defenders and activists, meanwhile, continue to face serious threats such as torture, murder, enforced disappearance, and other abuse. In the last four years, most of the human rights defenders working on land rights, anti-corruption, legal aid, and on advocating human rights policy have faced abuse. It is the State apparatus and law enforcement agencies that have mostly conducted assaults and threats against right defenders' (Asian Legal Resource Centre 2017, 2).

In response to such concerns, in its review the UN Human Rights Council (2017, 16) called on the government to 'Adopt legislative measures to prevent and combat intimidation, repression or violence against human rights defenders'. The CSO discourse reveals little progress and highlights an ethnic dimension to the rights violations of HRDs. For example, one noted an 'increase in attempts to criminalize, intimidate or even physically attack human rights defenders ... The threats and physical offenses against HRDs are closely related to the Indonesian government's conservative security-based approach ... The high number of cases indicates an increasingly shrinking democratic space in West Papua ... [HRDs] have to work in an all-pervasive atmosphere of fear and are subject to repressive actions' (International Coalition for Papua 2017, 9).

The UPR discourse also highlights a gendered dimension. For example, 'Acts of Discrimination against women are not only experienced during demonstrations, but in particular also against female human rights defenders providing assistance to victims of human rights abuses and political activists who were facing criminal charges for peaceful political activity ... The vulnerability of female human rights defenders has not been widely discussed in Indonesia ... they face a bigger risk of intimidation and physical violence than their male colleagues' (Coalition for Enforcement of Law and Human Rights 2017, 9). More recently the CSO discourse reveals increased state repression of HRDs. As one noted, 'The right to freedom of expression was curtailed with the issuance of a directive by the National Police criminalizing criticism of the government's response to the pandemic. An increasing number of people were imprisoned solely for expressing their opinions or organizing peaceful protests. Unidenti-



fied parties digitally intimidated ... human rights defenders ... trying to silence their critical voices ...' (Amnesty International 2021b, 86).

#### 5.4 *Lao PDR*

Writing almost a decade ago, Belloni's prescient account highlighted 'that human rights issues will soon emerge on the domestic agenda, and local organisations may become protagonist in advancing them ... perhaps even playing a countervailing role in relation to the government. Needless to say, this expectation, which is common among international actors, clashes with the government's view that local organisations should only assist the government in its duty of poverty alleviation' (Belloni 2014, 362). This clash has indeed played out over the last few years. Government rhetoric has continued to talk of civil society freedoms. For example, in its report to the UPR, it said, 'The Government considers the associations and foundations, as well as civil society organizations of both domestic and from abroad as important contributors to the national building and development. The Government has laid out the policy, improved and adopted a number of legislations with an aim to better facilitate the approval processes of registration and activities of Lao associations.' (Government of the People's Democratic Republic of Lao 2019, para 24)

In contrast, the present analysis reveals increasing government repression of CSOs' political, rights-oriented work. For example, the UN Working Group has expressed its 'concern about the detention and enforced disappearance of human rights defenders' (UN Human Rights Council 2020, 7). It has demanded that the government 'Amend Decree No. 238 ... to align it with the international human rights obligations and commitments of the Lao People's Democratic Republic, including by eliminating burdensome registration requirements [on CSOs]; arbitrary curtailment of activities and finances of associations; criminalization of unregistered associations and the Government's harassment of their members; and the ability to arbitrarily dissolve non-profit associations, without the right of appeal' (UN Human Rights Council 2020, 17). A key trope in the CSO discourse is increasing violence against HRDs. As one observed, 'we regret that our colleague Lao civil society leader [... name] remains missing. The Lao PDR government has made no progress in determining his fate and whereabouts and has instead embarked on a smear campaign against him and his family. In the meantime, the number of cases of enforced disappearances in the country has increased ...' (Lao Movement for Human Rights 2019, 4). The CSO UPR discourse also repeatedly highlights the government's failure to address previous UPR recommendations on HRDs and civil society freedoms. For example, one complained 'during the 2nd UPR cycle, the Government of Lao PDR received 33 recommendations relating to civic space ... [since then

it ...] has partially implemented only three recommendations and not implemented 30 others. While the government has persistently failed to address unwarranted restrictions on civic space ... and the protection of human rights defenders' (Civicus, Manushya Foundation and Forum Asia 2019, 14).

The UPR discourse also alludes to the specific restrictions facing indigenous peoples. For example, 'access to effective remedy for communities affected by development projects and investments is further restricted because of shrinking civil society space in Lao PDR... those who advocate for rights of affected communities or raise awareness of human rights violations risk being arrested or even being forcibly disappeared' (Manushya Foundation and Asia Indigenous Peoples Pact 2019, 7). Over the past two years other observers point to a further deterioration in the human rights situation in the country: 'Significant human rights issues include: arbitrary detention; political prisoners; serious restrictions on free expression ... the rights of peaceful assembly and freedom of association, ... police and security forces committed human rights abuses with impunity' (United States Department of State 2020a, 1).

### 5.5 *Malaysia*

Writing back in 2009, Meredith Weiss said, 'Civil society in Malaysia is a relatively small, closely knit sphere, so it might be too much to expect those still on the outside to critique their long-time friend ... And yet that is exactly what they must do, if activists within civil society are to continue to help nudge the Malaysian polity toward ever-greater political inclusiveness, openness, and innovation' (Weiss 2009, 741). More than a decade on, some civil society organisations have become more critical and rejected the passive welfare service delivery role envisaged for them by the state. Yet because their human rights advocacy directly challenges the ruling elite, the government is taking increasing measures to repress them through strict new laws, judicial and police harassment, and authorities' use of violence with impunity.

However, the rhetoric in the government's UPR report seeks to conceal this from external audiences. For example, 'The Government launched the National Human Rights Action Plan in March 2018 with the aim to ... cultivate a strong culture of human rights in the country ... [and] To provide guidelines for government officials, NGOs, professional bodies, academia and civil society in carrying out their responsibilities to ensure human rights are safeguarded' (Government of Malaysia 2018, 18). In contrast, the CSO discourse raises multiple concerns and refers to a raft of violations against HRDs. One complained, 'defenders of the human rights of indigenous peoples have also faced intimidation and obstruction in access by those in authority or control, especially when indigenous peoples live in indigenous land reserves, forest reserves, or

land over which a logging or other concession has been granted to a commercial enterprise' (Bar Council Malaysia 2018, 1). Furthermore, the CSO discourse highlights a strong gender dimension to violations against HRDs. For example, 'Patriarchal interpretations of Islamic laws and public policies continue to be enforced, which block progressive legislative amendments aimed at upholding the rights of women and minorities. Attacks against human rights defenders, especially women human rights defenders, are often framed within a purportedly religious perspective' (Cultural Survival 2017, 3). CSOs also point to how 'LGBT human rights defenders ... face multiple forms of reprisals, discrimination and violence' (Coalition for SOGIESC Human Rights in Malaysia 2018, 5). Reflecting the prevailing rights issues, the UN Human Rights Working Group called on the government to 'Sign and ratify the ICCPR, bring its national law ... into conformity with international human rights law and refrain from judicial and administrative harassment of journalists and human rights defenders' (Coalition for SOGIESC Human Rights in Malaysia 2018, 5).

The CSO rights discourse charts how the human rights situation has deteriorated further following the collapse of Malaysia's nascent reform movement in March 2020 under the Pakatan Harapan coalition government. The successor administration led by Muhyiddin Yassin has clamped down on HRDs. As one CSO reported, 'Freedom of expression came under attack immediately after the change in government, when authorities opened a sedition investigation into [named] activist ... for organizing a protest against the method by which the new government came to power. Since then, authorities have opened investigations into numerous activists ... The police opened 262 investigations into the spread of "false and seditious news" as of May 11 [2020], and 264 investigations into "false news" on Covid-19' (Human Rights Watch 2021b, 429).

## 5.6 *Myanmar*

A decade ago, there were hopes of a democratic future in Myanmar. As Michael Lidauer (2012, 87) points out, 'An undercurrent of the government-led transition process from an authoritarian to a formally more democratic regime was the development of a politically-oriented civil society ...' For their part, in March 2018, the UN Special Rapporteur on Myanmar (2018, 1) reported that 'while the historic election of a civilian government for Myanmar promised a new era of openness, transparency and the expansion of democratic space, the rapporteur has only seen that space shrink, with journalists and members of civil society placed in an increasingly perilous position'. For its part, under the heading 'Protection and promotion of human rights', the government's UPR submission claimed 'a National Human Rights Mechanism is being developed to protect and promote human rights and to implement the recommendations

of the Universal Periodic Review'. It also tried to explain the increasing regulation of the civil space in terms of protecting HRDs: 'Regarding the protection of those holding peaceful assemblies or peaceful processions, the police shall take necessary protective and safeguarding measures ... to keep those persons safe from danger in accordance with Section 13 of the 2016 Peaceful Assembly and Peaceful Procession Law' (Government of Myanmar 2020, 15).

All hopes for a thoroughgoing democratic transition were finally swept away following the military coup of February 2021. In its wake the rights situation has deteriorated. As one CSO noted, 'Rights of LGBTI persons are furthermore violated in the legal and justice sector. Transgender and gender-queer persons are especially subjected to unrestrained policing, arbitrary arrests and detentions' (Civil Authorize Negotiate Organization 2021, 2). Another observed that 'Persecution of human rights defenders continued around the country. Authorities [have] imposed arbitrary restrictions on the rights to freedom of expression, association and peaceful assembly' (Amnesty International 2021b, 257).

Whilst in 2021 China vetoed a draft UN Security Council condemnation of the *coup d'état*, the UN has been highly critical of widespread human rights violations. At the end of 2021, the UN High Commissioner for Human Rights said: 'We are appalled by the alarming escalation of grave human rights abuses in Myanmar. In the last week alone, security forces have killed and burned to death 11 people—among them five minors—and rammed vehicles into protesters exercising their fundamental right to peaceful assembly' (UN Office for the High Commissioner for Human Rights 2021, 1).

### 5.7 *The Philippines*

Over the years democracy has struggled in the Philippines due to oligarchic politics, the dominance of established political elites, corruption, and military coups. As Jasmin Lorch notes 'Since the 1990s, CSOs have sought to strengthen the state and the democratic system ... civil society actors have usually achieved relatively autonomous 'agency' in individual policy fields only by allowing themselves to become co-opted by some of precisely those traditional and/or populist elites whose influence they have sought to curb' (Lorch 2017, 184). In its UPR report, the Government of the Philippines asserted that: it 'affirms the universality, indivisibility, interdependence, and interrelatedness of all human rights ... This administration shall implement a rights-based approach to development and governance'. As part of this commitment, it also promised 'To uphold freedom of expression' (Government of the Philippines 2017, 18). However, the CSO and UN discourse presents a different assessment. Under the heading 'Killings of Human Rights Defenders' one observed, 'During its 2012 UPR the Philippines accepted a recommendation to take all necessary mea-

asures to provide adequate protection to journalists and human rights defenders. However, for these groups, the Philippines remains one of deadliest places worldwide. Since the Philippines' last UPR in May 2012, at least 147 HRDs have been killed in 123 separate incidents' (AMP 2017, 3). The UPR discourse reveals manifold rights pathologies. For example, one CSO observed that 'the military engages in torture of civil society activists and alleged insurgents in its custody' (Human Rights Watch 2017, 5), whilst another noted that 'Extrajudicial killing of Human Rights Defenders ... [a named HRD] was shot at close range by a lone gunman on September 17, 2016, while he was on his way home ... he [had] organized Persons with Disabilities in Talisay to campaign for social protection and social services for their sector ... These killings have created a chilling effect to all HRD, as they have become far less secure ...' (Philippine Alliance of Human Rights Advocates 2017, 4). The CSO and UN discourse also reveals how the government variously uses the 'war on drugs', anti-terrorism policy and/or the COVID-19 pandemic as pretexts for further repressive government measures against HRDs and civil society in general. For example, one CSO noted, 'Violations of the right to freedom of assembly occurred amid the COVID-19 pandemic. In April, police violently dispersed residents of an urban poor community in Quezon City peacefully demanding government aid' (Amnesty International 2021b, 293).

### 5.8 *Singapore*

In the early 2000s, elements in Singapore's government began to advocate 'active citizenship' and public participation, such that civil society was re-framed using political buzzwords like 'openness' and 'inclusiveness'. As Terence Lee explains, 'the appropriation and propagation of such rhetoric remains by and large gestural' (T. Lee 2005, 133). This is because 'Singapore is marked by a very strong hegemonic state, which allows little room for independent activism to flourish ... This leaves little space for external policy advocacy' (Ortmann 2012, 13S).

In its submission to the UPR, the Government of Singapore sought to create the impression of inclusive governance alluded to in the rhetoric of the early 2000s. It said, 'the freedoms of peaceful assembly, association, and expression are necessary to facilitate civic participation, democratic process, and increase social cohesion and resilience'. The document continues, 'This is a constitutionally protected right in Singapore. Similar to the ICCPR, Singapore recognises limits to freedom of expression, consistent with international standards' (Government of Singapore 2021, 14). However, the UPR data refute this. In 2019, after the sentencing of a HRD, the UN Special Rapporteur said, 'We are concerned that this is yet another conviction which targets the legitimate exercise

of the right to freedom of expression and freedom of peaceful assembly in Singapore, and we urge the Government to reverse its tightening of civic space' (UN Special Rapporteur on the Situation of Human Rights Defenders 2019, 1). In a similar vein, another referred to how 'The Administration of Justice Protection Act (AJPA) has been used to silence activists, human rights defenders, and journalists ... Singapore continues to criminally prosecute activists, human rights defenders, and journalists for their online social and political activities under anti-defamation laws' (Access Now 2019, 2). Others highlighted government failure to address early UPR recommendations. As this CSO observed, 'At its 2016 [UPR] review, Singapore accepted recommendations to adopt legislative measures to permit the realization of peaceful demonstrations and promote freedom of expression ... It has clearly not done so. Not only has the government continued to use existing laws to imprison or fine those speaking critically of the government, it has enacted new laws' (Human Rights Watch 2021a, 4). The latter is typified by the Protection from Online Falsehoods and Manipulation Act (POFMA) that is being used to stifle government critics. In addition, the government uses the Public Order Act to maintain tight control on the right to peaceful assembly. Not least, by requiring a police permit for any 'cause-related' gathering if it is held in a public place. In the face of these developments the UN Working Group on Human Rights re-emphasised that the government should 'Ensure full respect for the rights to freedom of expression and freedom of association by taking measures to enhance the security of civil society, journalists and human rights defenders' (UN Human Rights Council 2021, 8).

### 5.9 *Thailand*

Earlier work has outlined the distinctive nature of civil society in Thailand. As Thorn Pitidol explains,

Civil society political objectives tended to be defined as the promotion of collective virtues. This priority tends to eschew any recognition of the importance of equality in political rights. This explains why a large part of civil society ... demands political leaders who match their vision of those possessing appropriate "morality," making them suitable to be the promoters of the collective virtues that are seen as required for a virtuous community ... these discourses impose limits on the democratic potential of civil society ... The power to define who has appropriate morality and collective virtues tends to lie only with those in power in CSOs.

PITIDOL 2021, 520

More recently, Janjira Sombatpoonsiri's (2020, 333) analysis supports this assessment. It notes that Thailand is 'an extreme case whose historical roots of authoritarianism, consolidated anti-system elites, protracted polarisation, and extensive repression configure the unique development of authoritarian civil society (ACS) ... the components and repertoires of ACS have induced democratic collapse and subsequently autocratic surge in Thailand'.

However, the Government of Thailand's UPR report seeks to deflect such talk of autocratic governance. Instead, it refers to its 'comprehensive perspective on the promotion and protection of human rights .... [and how] The role of academia, civil society, the private sector, volunteers, women and children and others has been promoted' (Government of Thailand 2021, 2). It continues, 'The Government respects and protects freedom of opinion and expression'. As the following analysis reveals, the CSO UPR discourse tells a different story. For example, one CSO referred to how:

The space for public discourse has shrunk. Human rights defenders are judicially harassed. Some face over 50 trials each, hundreds of years' imprisonment, and bail conditions that illegally prohibit fundamental freedoms. They have been detained incommunicado, in remote locations, or under unhygienic prison conditions leading them to contract Covid-19. They are also harassed online and off by the military and vigilantes.

Destination Justice 2021, 2

Others condemn government failure to address earlier UPR recommendations. As one noted, 'At Thailand's second UPR, eight states asked Thailand to stop intimidating and harassing human rights defenders. Nevertheless, activists and protesters continue to face harassment and intimidation. Protesters, including minors, have reported that they are under surveillance and that police have visited and searched their schools and residences. Police have also confronted protesters to pressure them to remove social media posts about the pro-democracy movement' (Article 19 2021, 4). Another complained about ongoing violations, 'In the previous UPR cycle, Thailand received 9 recommendations on the protection of HRDs, CSOs and journalists. The government has thus far failed to effectively implement any of the received recommendations. Crime reporting and strategic lawsuits against public participation (SLAPP) are repeatedly used as a tool to suppress HRDs and dissidents by authorities' (Manushya Foundation 2021, 2).

According to the UN Secretary General's Office (2016), Thailand is amongst the ten most dangerous countries for environmental defenders. This is reflected in the CSO discourse. For example, one noted that 'more than 50 environmen-

tal rights defenders have lost their lives in Thailand in the last 20 years. In some cases, land rights defenders have been victims of enforced disappearances and extrajudicial killings' (Manushya Foundation and Sai Thong Rak Pah Network 2021, 2). The CSO discourse also reveals how the COVID-19 pandemic has compounded the deteriorating situation. As one explained, 'Thailand faced a serious human rights crisis in 2020. Prime Minister Gen. Prayut Chan-ocha's government imposed restrictions on civil and political rights, particularly freedom of expression, arbitrarily arrested democracy activists, engineered the dissolution of a major opposition political party on politically motivated grounds, and enforced a nationwide state of emergency, using the Covid-19 pandemic as a pretext' (Human Rights Watch 2021b, 154). The combined impact of these rights pathologies was captured by the UN who noted during 2020–2021 'human rights defenders, including land rights, indigenous and community defenders, as well as trade union, pro-democracy and student activists were subjected to violent attacks, abduction, arbitrary detention, harassment and intimidation by state officials, companies and unidentified perpetrators ... [as well as ...] gender-specific attacks against women human rights defenders' (UN Human Rights Council 2019c, 4).

### 5.10 *Vietnam*

Over a decade ago Vietnam's leaders were continuing to negotiate among themselves the pace and scope of change. Observers noted that 'political civil society' had been 'decapitated and left without political influence after the government crackdowns in 2007 and especially in 2010–early 2011. It was felt that civil society, in particular NGOs working as service providers, as well as those civil organizations affiliated with the party/state, were acting to enhance and support legitimacy and efficiency of the authoritarian regime' (Thayer 2009a, 64; see also Thayer 2009b). Subsequently, for a number of years human rights flat-lined. Latterly, they have declined markedly in the face of increased state repression (Vásquez and McMahon 2020, 368). Despite this, as Jörg Wischermann (2011, 386) explains, 'the legitimacy of the authoritarian system is increased through advancements in welfare delivery'. For this reason and because of CSOs' predominantly service-oriented welfare role, the government remains keen to associate itself with CSOs. Thus, in its last UPR report to the UN it said: 'Citizens are entitled to the rights to freedom of expression, freedom of the press, freedom of association, assembly and demonstration ... As of 2017, there are more than 68,125 associations in Viet Nam, including ... NGOs' (Government of Vietnam 2018, 10–11). However, the UPR data reveal a deep mistrust between government and civil society and ongoing repression of 'political CSOs', in other words, those that are rights advocates prepared to criticise the



government. As one CSO complained, ‘The government, under the one-party rule of the Communist Party of Vietnam, tightened restrictions on freedom of expression, association, peaceful assembly ... Online dissidents faced routine harassment and intimidation in 2020. Several were arrested and charged under Vietnam’s penal code, which criminalizes speech critical of the government or which promotes “reactionary” ideas. The government prosecuted numerous dissidents throughout the year’ (Human Rights Watch 2021b, 743).

## 6 Conclusion

Drawing on the situated knowledge of CSOs’ UPR discourse, this study offers a pan-regional analysis of ASEAN and the contemporary factors which constrain or repress civil society. Contingent processes and local specificities of culture, politics, and history notwithstanding, it shows that across the ten countries there are key commonalities. Expressed in the early 2000s, the ‘people centred’ aspirations and hopes for a more democratic future have not been realised. Instead, the current analysis reveals how ASEAN is subject to a new wave of authoritarian governance. Across the region, civil society is increasingly subject to a shrinking civil space and HRDs face a raft of human rights violations including: repressive legislation; governments’ failure to address past UPR recommendations on HRDs’ rights; authorities’ maladministration of justice (including false arrest and arbitrary detention); and threats, violence, torture and murder. The analysis also shows how HRDs’ work is being curtailed by increasing state restrictions on freedom of association and expression. The malaise is compounded by impunity for offenders, corrupt practices by the authorities, and (mis)use of COVID-19 pandemic measures to repress the civil space.

The situation in each ASEAN country is shaped by tensions between the external transformative agenda of the UN and the legacy of local governance and cultural traditions. The former transformative agenda is based on CSOs working to safeguard freedom of speech, have fair elections, and uphold civil society criticality and independence—as well as extend universal rights and freedoms regardless of ethnicity, gender, faith, sexual orientation or political views. In contrast, local governing practices and cultural norms mean ASEAN states largely envision CSOs as development and welfare service delivery bodies—not political, rights-based advocacy entities. The past three-to-four years in particular have seen a significant clampdown with ASEAN governments exercising increasing control over associational life, managing or co-opting some groups, and attempting to marginalise others. Governments in the region are clear that CSOs should not seek to limit the power of the state over

society but instead to work along-side it in delivering social services. This effectively means it is only this 'cooperative' service-oriented, apolitical variant of civil society that is authorised to operate.

At this point it is germane to consider how the present findings relate to social theory on civil society, human rights, and governance. Governments' and CSOs' contrasting views on the nature and role of civil society in ASEAN reflect wider conceptual debates. While liberal theorists like De Tocqueville define civil society as a strong, vibrant set of networks founded on associational life that act as the watchdog of democracy, neo-Marxist scholars like Gramsci see it as a site of hegemonic and counter-hegemonic struggle (Kumar 1993). Other scholars, such as Habermas, define it as the 'public sphere' where private individuals transcend their ascribed identities and come together as a public and form an interactive body of citizens engaged in a rational critical discourse (Calhoun 1992). Thus, these liberal, 'Western' strands of thinking, notably the De Tocquevillian view, generally regards civil society as inherently 'political'; an arena of associational life wherein, albeit in different ways, CSOs generally work to uphold citizens' rights and democracy (De Tocqueville 1835/1956). Thus, civil society is a 'sphere of solidarity' to protect public interest (Alexander 1997, 120). When the state tries to violate or undermine such values, civil society mobilises to remind the state of its obligations. According to this perspective, civil society is neither governed by the logic of acquiring state power (like political parties) nor by the logic of maximising profit (as with private enterprises following market forces).

Application of the foregoing conceptions of civil society to Southeast Asia is not straightforward. It is historically contingent and shaped by factors such as colonialism, ethnic relations, religion, ideology, and politics. As Lee Hock Guan (2004, 3) explains, 'Civil society forms in the post-independence period were ... radically shaped by the means and ways the European colonizers initiated and instituted the social, cultural, economic, and political transformations of the indigenous societies. Generally, civil society in Southeast Asia in the early years of the post-colonial period remained depoliticized in varying degrees'. Subsequently, in the 1950s and 1960s military-backed regimes in Burma, Thailand, and Indonesia suppressed civil society groups that were critical of, or perceived as a threat to, the state. The rise of communism in Vietnam, Cambodia, and Laos in the 1970s also curtailed the development of civil society. Later, for a period, civil society groups again became active in Singapore, the Philippines, Thailand, Indonesia, and Malaysia (notably students' movements). In the 1980s and 1990s civil society activism achieved some democratic gains, such as the defeat of the 1991–1992 attempted military *coup d'état* in Thailand. Whilst the early 2000s were characterised by hopes of further democratic

advances, democratisation in Malaysia and Singapore was curtailed, in part through governments' use of the 'Asian values' argument. This asserts the Western democratic model is not suited to such societies. During this period the military regime in Myanmar and the communist party in Vietnam used less subtle means to keep democratising elements in check. Thus, by the time covered in this study (2017–2021), and repeating the patterns seen in Africa and elsewhere (see Muchadenyika 2017 and Njoku 2021), the growth and cooperation between state and civil society in ASEAN states has largely centred on a non-political notion of civil society complementing state welfare delivery, development initiatives, and poverty reduction measures. Undoubtedly guided by the overshadowing influence of China, ASEAN states have become increasingly nervous and intolerant of 'political' civil society and its concern with rights advocacy and holding ruling elites to account. This has led to the current entrenching of authoritarianism across ASEAN, characterised by increasingly severe government repression and the widespread rights violations faced by HRDs. As Garry Rodan notes, in consequence 'the political space of civil society has been in decline in some regimes, with authoritarian politics making significant gains over the last decade or more' (Rodan 2022, 54).

Furthermore, analysis of the ASEAN governments' UPR discourse (as set out in the country summaries above) shows how ruling elites appear to embrace civil society engagement and the promotion of HRDs' rights in a way that seeks to advance governments' political legitimacy on the international stage. In contrast, CSOs' UPR discourse tells us this is manifestly untrue. Such state rhetoric that ignores the widespread, serious ongoing rights violations of HRDs and repression of civil society is an example of performativity—or what Maarten Hajer calls the 'performative dimension of policy deliberation' (Hajer 2005, 629). It means that the UPR resonates with what Emily Hafner-Burton et al. identify as mechanisms that offer: 'opportunities for rights-violating governments to display low-cost legitimating commitments to world norms, leading them to ratify human rights treaties without the capacity [or, political will] ... to [subsequently] comply with the provisions' (Hafner-Burton, Tsutsui and Meyer 2008, 138). In a similar vein, as Abram Chayes and Antonia Handler Chayes (1993, 176) observe, in truth, such regimes often sign international treaties without the intent to comply. Rather, they ratify treaties like the ICCPR in order 'to appease a domestic or international constituency'. Moreover, as Hiro Katsumata (2009, 619) concludes, 'Observers of Southeast Asian affairs commonly assume that the members of the Association of Southeast Asian Nations are reluctant to pursue liberal agendas, and that their main concern is to resist pressure from Western powers to improve their human rights practice ... such a conventional view is too simplistic. In the past, the Southeast Asian countries

have voluntarily pursued liberal agendas [the ADHR was introduced a decade ago when Brunei held the chair of the Association], and their main concern here is to be identified as advanced countries with legitimate international status' (Katsumata 2009, 619). When, through mechanisms such as the UPR, CSOs have increasingly pressed human rights claims on governments in the region, they have adopted increasingly repressive measures to counter the perceived threat that this poses to state hegemony. As noted, this has been achieved by new laws clamping down on HRDs' freedom of association and expression (latterly under the pretext of countering terrorism and/or restricting social gatherings in response to the COVID-19 pandemic). This marks the latest chapter in authoritarian governing practices across ASEAN. It has been boosted by the growing influence of China in the region and the powerful example of its social contract whereby individual freedoms are swapped for seemingly political stability and growing prosperity. In such circumstances CSOs might do well to eschew the subordinating ASEAN government model of civil society based on complementing government welfare delivery. As John Dryzek (1996, 484) warns, activists from civil society must carefully weigh the pros and cons of entering formal state structures: 'A flourishing oppositional civil society is the key to further democratization. If civil society is absorbed into the state under the cooperation model, often involving co-option and repression and a state-centric re-distribution of power, civil society will be left too compromised and depleted to remain an effective force for upholding rights and government accountability'.

The UPR has a number of shortcomings. Key reforms are needed to address contemporary rights violations by ensuring the justiciability of UPR recommendations, the ICCPR and Declaration on Human Rights Defenders—both in domestic courts and at the international level, via the International Criminal Court (Cole 2015, 409). Despite this, civil society organisations should embrace the UPR because, in an increasingly hostile political context, their use of the UPR to expose and criticise rights breaches experienced by HRDs is an invaluable and powerful mode of symbolic politics (Edelman 1964). Such civil society criticality remains a key factor in seeking to safeguard citizenship rights across the generations. As Eric Neumayer (2005, 931) explains, 'improvement in human rights is typically more likely the more democratic the country ... [And] ratification [of human rights treaties] is more beneficial the stronger a country's civil society is'. This is why the increasing repression of civil society and HRDs across ASEAN is such a threat. However, at this historical juncture, given the breadth and seriousness of the rights pathologies revealed in this study, it is difficult to foresee future improvements being recorded in the next round of the UPR.

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