

ASEAN BRIEFS

Reviewing the Enforcement of International
Human Rights Law in Southeast Asian Prisons:
A Push for Reform



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Introduction

The relationship between human rights and the fate of prisoners might often seem counter-productive to some. The common perception is that when an individual breaks the law, they shall be deprived of their rights as civilians as a form of punishment. Part of this perception is true, but regardless of the circumstances, international law recognises a list of non-derogable human rights that cannot be taken away from any human being – no matter what crimes they have committed, such as the right to life and the prohibition on torture, and a number of other rights that may be limited but still cannot be taken away, such as adequate standards of sanitary and access to healthcare.

In general, states are responsible for the management of their own penitentiary systems, commonly managed under a Ministry of Justice as part of the state's law enforcement system. However, the system can easily go wrong when authorities exercise arbitrary control upon prisoners and treat them not in accordance with what international human rights law has to say, as indicated by cases of human rights violations that have been regularly discovered in prisons across Southeast Asia. It is of high importance that prison standards need to be upheld and enforced in line with international human rights law, as the prohibition against torture and cruel, inhuman, or degrading treatment or punishment applies without exception or derogation to any person in any circumstances, including those deprived of their liberty.



This edition of ASEAN Briefs will thus argue why ASEAN member states need to reform their prison systems through reviewing the standards relevant with international human rights and how they are implemented in ASEAN member states, as well as addressing the existing problems found in prisons across Southeast Asia.

International human rights law standards

Adopted by the United Nations General Assembly in 1948, the Universal Declaration of Human Rights outlines a number of prisoners' fundamental rights, including the right to life, liberty, and security of person, as well as the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. There are also international human rights law documents such as the International Covenant on Civil and Political Rights ("ICCPR"),

the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), which provide more specific rules of protections relevant to the rights of prisoners.

Article 10 of the ICCPR refers to the protection of prisoners’ rights, stating that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”, and Article 7 supports the protection against torture and cruel, inhuman or degrading treatment or punishment. On the other hand, CAT specifically states rules of negative obligation requiring that each of its state party shall “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.

One of the very first documents to set out rules upholding prisoners’ rights is the 1957 United Nations Standard Minimum Rules for the Treatment of Prisoners. Enforced primarily under the work of the United Nations Office on Drugs and Crime, the rules serve as the minimum standard for the treatment of prisoners, providing guidelines for good principles and practices in the treatment of prisoners.

The United Nations Basic Principles for the Treatment of Prisoners was adopted and proclaimed by the General Assembly of the United Nations by resolution 45/111 on 14 December 1990, serving as a set of principles to follow in treating prisoners, in compliance with internationally accepted human rights standards. It is stated in the document that “[e]xcept for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain



the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.”

Aside from international treaties, the international community also takes its part in showing its support for the enforcement of prison standards compliant with international human rights law. The International Committee of the Red Cross (“ICRC”) issued the “Water, Sanitation, Hygiene and Habitat in Prisons” document along with its Supplementary Guidance, intended for use by people who work in prisons to improve the condition for prisoners.

These documents will be taken into account and serve as the basis during the following review on the condition of prisons in Southeast Asian nations.

Problems in ASEAN countries’ prisons

Systematic problems start to rise when national laws fail to provide adequate protection of the prisoners’ human rights. This is due to the non-compliance of ASEAN member states with international human rights laws as they have not ratified or acceded to the abovementioned instruments, as well as the non-conformity of national legal system with international (customary) laws. More specifically, a number of problems that can be found in prisons of ASEAN member states are as below:

• Overcrowding (prison overpopulation)

Overcrowding is a key problem in prisons that can inevitably lead to more human rights problems (elaborated below). Aside from potentially depriving prisoners of their basic rights, overcrowding may also cause issues in prison management, such as overworked prison officials and financial management difficulties, resulting in the ineffectiveness of the penitentiary system as a whole.

	Prison Population Rate (per 100.000)	Prison Population Total	Official capacity of prison system	Occupancy level based on official capacity
Thailand	506 534 based on an estimated national population of 69.22 million at beginning of November 2018 (from United Nations figures)	369.499 at 1.11.2018 (national prison administration)	217.000 (17.9.2015 - maximum design capacity)	144.8% (17.9.2015)
Philippines	179 based on an estimated national population of 105.21 million at end of May 2018 (from United Nations figures)	188.278 at 31.5.2018 (national prison administrations)	40.610 (31.5.2018)	463.6% (31.5.2018)
Indonesia	93	248.389 at 30.9.2018 (national prison administration)	125.132 (30.9.2018)	198.5%
Laos	119 based on an estimated national population of 6.88 million at early 2016 (from United Nations figures)	8.201 at early 2016 (via Thai Criminology)	N/A	N/A
Brunei Darussalam	134 based on an estimated national population of 423,000 at mid-2015 (from United Nations figures)	565 at mid-2015 (via Asian and Pacific Conference of Correctional Administrators)	366 (13.8.2007)	132.8% (13.8.2007)

Singapore	201	11.691 at 31.12.2017 (national prison administration)	16.249 (September 2013)	79.2% (September 2013)
Malaysia	177 based on an estimated national population of 31.27 million at September 2017 (from United Nations figures)	55.413 at September 2017 (Ministry of Home Affairs)	45.640 (September 2017)	121.4% (September 2017)
Cambodia	155 based on an estimated national population of 16.38 million at September 2018 (from United Nations figures)	25.449 at September 2018 (national prison administration, via LICADHO)	8.500 (15.10.2015)	206.1% (15.10.2015)
Myanmar	145 based on an estimated national population of 54.84 million at February 2017 (from United Nations figures)	79.668	26.100 (31.12.2002 - not including labour camps)	144.3% (31.12.2002 - not including labour camps)
Vietnam	137	130.002	N/A	

Source: compiled from www.prisonstudies.org

As seen in the table above, Singapore is the only ASEAN member state whose prison population does not exceed its official capacity. This shows a generally widespread failure of states to ensure that either their prisons are adequate enough to house the number of prisoners they have – in fact, while Thailand has the sixth largest prison population in the world as per July 2018, the Philippines has the highest overcrowding rate nearing a shocking 500%. As President of the Philippines Rodrigo Duterte has been consistently strict in enforcing his ‘war on drugs’, consequently the number of prisoners has skyrocketed – more than what the existing establishment can afford or cope with. According to ICCPR, “[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” It is feared that when prisons are overcrowded and prison officers are overworked, such an essential aim would not be achieved and prisons would just become a transit place where criminals stay for a certain period before they are released to repeat their crimes.

• Food and health issues

Article 11(1) of the ICESCR specifies that state parties shall “recognize the right of everyone to an adequate standard of living [...], including adequate food, clothing and housing”. More specifically, the UN Standard Minimum Rules for the Treatment of Prisoners state that “every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.” This right is often neglected by states, as evident in Cambodia where the government allots for each prisoner only approximately US\$0.70 for food and five litres of water per day for washing and drinking.



Prisoners are in general among the most vulnerable people in any state, as they often have limited access to prevention and medical treatment. Added with low food and sanitary standards in penitentiary establishments, prisons then become breeding grounds for communicable diseases and infections. It is reported that in a single prison establishment in the Philippines, three to five prisoners die every month – caused by easily preventable diseases such as skin disease to serious ones such as heart attack – due to the lack of medical access and the sub-standard conditions of the prison. Such practice is a violation of the prisoners’ human rights, as Article 12(1) of the ICESCR protects “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. To elaborate, the UN Standard Minimum Rules for the Treatment of Prisoners provides that “the provision of healthcare for prisoners is a state responsibility. Prisoners should enjoy the same standards of healthcare that are available in the community, and should have access to necessary healthcare services free of charge without discrimination on the grounds of their legal status.”

• **The enforcement of solitary confinement**

Solitary confinement is not expressly forbidden under international law, as it is still considered a common practice as found in Myanmar, Malaysia, and Singapore. However, the efforts to abolish solitary confinement as a punishment, or to restrict its use, should be undertaken and encouraged. This is due to the treatment applied to those who are in solitary confinement, which can be detrimental to both the prisoners' physical and mental health.

• **Torture, either 'legal' or illegal, by prison officers, resulting in severe injuries or even death**

To ensure that all of its state parties adhere to their obligations, CAT requires states to systematically "review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment [...] with a view to preventing any cases of torture." In addition, Article 16(1) requires state parties to prevent "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Forms of corporal punishments are still systematically legalised in several states, despite the aforementioned laws prohibiting such actions. For example, caning as a form of corporal punishment is still legal in Malaysia, Brunei Darussalam, and Indonesia, for various reasons that states deem to be adequate to continue the practice.

The 'mysterious' death of Do Dang Du – formerly a Vietnamese prisoner – in October 2015, for example, shows a lack of transparency in how the prison system treats prisoners behind the walls and how prison officers deny responsibility for allegations

of torture in the establishment. It is reported in Laos that former prisoners described the practice of punishing inmates by locking their legs in wooden stocks for most of the day as "common", lasting up to several months, aside from prison officers kicking and severely beating prisoners using their hands and batons, and burning their genitals and other body parts with cigarettes. Moreover in Myanmar, electric shocks, genital mutilation, waterboarding, stress positions and other methods of physical torture are also reported to be routinely used in detention centres, as are psychological forms of torture such as threats, hooding and blindfolding, sleep deprivation and solitary confinement.

To address the aforementioned problems, the United Nations Human Rights Committee reaffirmed in 1992 that states indeed have "a positive obligation toward persons who are particularly vulnerable because of their status as persons deprived of liberty", and therefore those persons shall not be subjected to "any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons." Furthermore, Article 12 of CAT also stipulates that "[e]ach State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction." A national government is normally the only party with the authority to change and make improvements to prison condition, but it becomes difficult when governments do not act upon those issues effectively and efficiently. External and independent watchdogs may be able to conduct investigations, but ultimately, any reform on the penitentiary system depends on the government. When the government hesitates to take action on the reported condition in prisons, no effective changes can be done, as said by Myanmar National Human Rights Commission Chair U Win Mya in handling prison overcrowding: "The government finds a solution. No human rights commission can carry out the solution. We can only give advice."

Policy recommendations

Based on the review above, there are a number of policy recommendations for ASEAN member states upon the issue of prison reforms.

- ASEAN member states shall demonstrate their good intentions to take measures aimed at improving prison conditions in line with related international law documents. With regards to this, states shall then review and strengthen their commitments to said documents, by ratifying or acceding to them. Where necessary, states shall then amend domestic legislation to comply with international human rights law.
- In relation with demonstrating good intentions, ASEAN member states shall provide regularly updated data on the total prison population, the official capacity of existing prison establishments, as well as general information on facilities related to the fulfilment of prisoners' basic human rights such as health services. Such data will not only be beneficial for checks and balances purposes, but also for families of the prisoners who are often left misinformed of how the actual condition really is behind the concrete walls.
- ASEAN member states shall allow external and independent monitoring of prison conditions to report back to them and have such report followed up in a prompt and fair manner.
- In following up with reports of human rights violations against prisoners, ASEAN member states must conduct fair and thorough investigations into all allegations of torture, ill-treatment, and deaths. When allegations are proven to be true, ASEAN member states must take firm actions in holding those responsible accountable, handling the cases in due process, and provide fair compensation to the victimised prisoners as well as their families.
- ASEAN member states shall consider opening opportunities of working together with other states as well as international institutions to improve prison conditions through humanitarian aids. For example, the United

Nations Office for Project Services (UNOPS) is working together with Sweden, Switzerland, the United Kingdom, and the United States to establish health clinics in four prisons of Myanmar: Myitkyina Prison in Kachin State for basic healthcare services with a focus on tuberculosis, Lashio Prison in Shan State, Insein Prison in Yangon Region, and Mandalay Prison in Mandalay.

- To avoid prison overcrowding, if a prison maximum capacity has been reached yet prisoners keep being sent in, ASEAN member states must review their related existing laws to seek for non-custodial alternatives to imprisonment.
- At the very end, it should be borne in mind that no one shall be deprived of basic human rights – in this case, just because they are serving their time as a punishment for the crimes they have done. As how it is said: “[a]ll prisoners shall be treated with the respect due to their inherent dignity and value as human beings”.



Endnote

- 1 Article 3.
- 2 Article 5.
- 3 Article 10(1).
- 4 Article 2(1).
- 5 The document was initially approved in 1957, but has been subsequently revised and adopted by the UN General Assembly on 17 December 2015.
- 6 UN General Assembly, Basic Principles for the Treatment of Prisoners : resolution / adopted by the General Assembly, 28 March 1991, A/RES/45/111.
- 7 Article 5.
- 8 <https://www.icrc.org/en/publication/0823-water-sanitation-hygiene-and-habitat-prisons>
- 9 <https://www.icrc.org/en/publication/4083-water-sanitation-hygiene-and-habitat-prisons-supplementary-guidance>
- 10 This is with exception of Laos and Vietnam which data is not available.
- 11 <https://www.statista.com/statistics/262962/countries-with-the-most-prisoners-per-100-000-inhabitants/>
- 12 Ginny Stein, "Philippine prisons overflowing with hungry inmates as Duterte's drug war intensifies" (*ABC News*, 20 September 2017) <<https://www.abc.net.au/news/2017-09-20/philippine-prisons-overflowing-as-war-on-drugs-intensifies/8959448>>
- 13 Article 10(3).
- 14 UN Standard Minimum Rules for the Treatment of Prisoners, Rule 22(1).
- 15 "Monitoring & Protection: Prisons Project" (*Cambodian League for the Promotion and Defense of Human Rights*) <<https://www.licadho-cambodia.org/programs/prisonproject.php>>
- 16 UN Standard Minimum Rules for the Treatment of Prisoners, Rule 24(1).
- 17 Basic Principles, Paragraph 7.
- 18 See for example Terry A Kupers M.D., "The Harm of Solitary Confinement" (*Psychology Today*, 12 July 2017) <<https://www.psychologytoday.com/us/blog/prisons-and-prisms/201707/the-harm-solitary-confinement>>
- 19 Article 11.
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- 21 Articles 49 and 50, Laws of Brunei Chapter 51 on Prisons <http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap051.pdf>
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- 25 Bo Kyi, "The need for prison reform in Myanmar" (*Asia Times: Opinion*, 13 September 2018) <<http://www.atimes.com/the-need-for-prison-reform-in-myanmar/>>
- 26 UN Human Rights Committee, "CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)" (10 April 1992), paragraph 3
- 27 Aung Kyaw Min, "Prison overcrowding is human rights violation, says group" (*Myanmar Times*, 24 January 2018) <<https://www.mmtimes.com/news/prison-overcrowding-human-rights-violation-says-group.html>>
- 28 "A New Health Clinic Means Better Healthcare for Prisoners in Myanmar" (*UNOPS*, 18 June 2018) <<https://www.unops.org/news-and-stories/news/a-new-health-clinic-means-better-healthcare-for-prisoners-in-myanmar>>
- 29 Basic Principles, 1



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The ASEAN Studies Program was established on February 24, 2010, to become a center of excellence on ASEAN related issues, which can assist in the development of the ASEAN Community by 2015. The Habibie Center through its ASEAN Studies Program, alongside other institutions working towards the same goal, hopes to contribute to the realization of a more people-oriented ASEAN that puts a high value on democracy and human rights. The objective of the ASEAN Studies Program is not merely only to conduct research and discussion within academic and government circles, but also to strengthen public awareness by forming a strong network of civil society in the region that will be able to help spread the ASEAN message. With the establishment of ASEAN Studies Program, The Habibie Center aims to play its part within our capabilities to the ASEAN regional development.

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Talking ASEAN is a monthly public dialogue held at The Habibie Center in Jakarta. Covering a wide array of issues related to ASEAN, Talking ASEAN addresses topics of: Economic Integration, Socio-cultural, & Democracy, human rights and regional peace, among others. Featuring local and visiting experts, Talking ASEAN is one of a series of twelve dialogues regularly held each month and open to a target audience consisting of ASEAN officials, foreign ambassadors & diplomats, academics, university students, businesses, and the media.

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