

The NTS Alert Team

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mitigating the causes and consequences of these situations of internal conflict and violence. International humanitarian law (IHL), as expressed through the Geneva Conventions, has proven to be limited in its applicability to the intricacies of contemporary internal conflicts and the specific protection concerns of individuals in the Southeast Asian region (Abresch, 2005; OHCHR, 2009). This NTS Alert argues that there is a need to strengthen the human rights framework in Southeast Asia to fill the civilian protection gaps left by IHL. The next issue of the NTS Alert expands on this by considering the utility of the recently established Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, or AICHR, in advancing the human rights agenda.

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Human Rights and the Protection of Civilians

In 2009 Asia was identified as the area with the highest number of armed conflicts for the seventh consecutive year (SIPRI, 2010:62). In Southeast Asia, continued tensions with internal armed opposition groups can be seen in Myanmar, the Philippines and Thailand (Ploughshares, 2010a, 2010b and 2010c). Recently, ethnic and religious minorities in East Borneo and East Kalimantan in Indonesia and Christians from Katin village in Lao PDR experienced physical and socioeconomic displacement, whilst the Burmese Army clashed with ethnic Shan paramilitary groups (Hariyadi, 2010; Sulaiman and Hajramurni, 2010; Christians Expelled, 2010; Mai, 2010). Filipino and Thai authorities continue to be challenged by their Muslim-dominated southern provinces. Thailand has endured, over the last six years, 10,284 acts of violence which resulted in 4,039 fatalities (Thailand's Southern Conflict, 2010). The Philippines experienced a recurrence of attacks as village elections commenced (5 Hurt, 2010). The response strategies of states appear to emphasise the use of armed forces rather than focus on addressing the underlying causes, such as religious and ethnic differences (Schulze, 2007:84–8; Caballero-Anthony, 2007:157–9). This is despite the centrality of human rights in civilian protection (Table 1).

Domestic security challenges faced by Indonesia, the Philippines, Thailand and Myanmar reveal some common underlying causes and consequences of conflict and violence. The politicisation of identities, which includes discrimination on religious and ethnic grounds, is a significant common underlying cause of tension between the state and marginalised communities (Caballero-Anthony and Sukma, 2010; Caballero-Anthony, 2007:153–5; Askew, 2007:106; Guan, 2007:124). The armed forces of the various countries committed extra-judicial killings, abductions, ill-treatment including the destruction of housing and farms and other human rights abuses (Caballero-Anthony and Sukma, 2010:17, 19; AHRC, 2010:v, 109–12, 218–24). A consequence of these human rights violations has been the mass displacement of persons across borders and an estimated 665,000 internally displaced persons (IDMC, 2010:75).

Whilst human rights violations invariably cause domestic security challenges, the particularities of this causal relationship between human rights violations and internal conflict are indistinct (Parlevliet, 2009; Clements, 2004; Thoms and Ron, 2007). Under some circumstances, persistent horizontal inequalities in access to socioeconomic resources such as education, employment and social services, which underlie grievances in societies, can mobilise violence (Kaur and Gong, 2010; Thoms and Ron, 2007:676). Thoms and Ron (2007:695) observe that state repression of civil and political rights, and attacks against the personal integrity and security of individuals, such as indiscriminate killings, torture or systematic disappearances, have the ability to convert latent grievances into active antagonism. Also, prolonged conflict and persistently poor socioeconomic conditions can contribute to individuals becoming subjects of trafficking syndicates and transnational crime (Askew, 2007:111–6).

The above circumstances weaken the political authority of states and can trigger armed insurgency (Caballero-Anthony, 2007:152, 156; AHRC, 2010:224, 233; Askew, 2007; Guan, 2007). This situation may be exacerbated by weak judiciaries and law enforcement agencies, as seen in Indonesia and Myanmar (AHRC, 2010: 61–73, 228–46, 309–13). An analysis of conflict in southern Thailand reveals that an individual's sense of threat increases when they lack access to social, economic, political and judicial institutions, and security forces are not held accountable (Nishikawa, 2009:221).

The preceding demonstrates the centrality of human rights to the protection of individuals adversely affected by ongoing internal conflict and violence. Various provisions under international human rights law address these protection concerns, as outlined in Table 1. Southeast Asia, however, has numerous reservations to the international human rights instruments. These reservations tend to debilitate the protection objectives of the instruments (Caballero-Anthony and Bhalla, 2010). This points to some of the protection gaps which exist, and which even IHL cannot address. The limitations of IHL in providing comprehensive support to security policy frameworks necessary for the protection of civilians in Southeast Asia is discussed in the next section.

Table 1: Relevance of international human rights law to the consequences borne by individuals

Key Themes for the Human Rights Agenda	International Human Rights Law
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Consequences of Internal Conflict and Violence	International Covenant on Civil and Political Rights (ICCPR)	International Covenant on Economic, Social and Cultural Rights (ICESCR)	Other International Human Rights Law
Unlawful deaths	<ul style="list-style-type: none"> Article 6 – Right to Life 		
Extra-judicial abuse	<ul style="list-style-type: none"> Article 6 – Right to Life Article 14 – Equality before the Law Article 15 – Protection against Retroactive Laws Article 17(2) – Protection of the Law from Arbitrary and Unlawful Interference 		<ul style="list-style-type: none"> International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Trafficking, forced labour		<ul style="list-style-type: none"> Article 6 – Right to Work Article 7 – Right to Just and Favourable Conditions of Work 	<ul style="list-style-type: none"> CEDAW CRC International Convention on the Protection of the Rights of All Migrant Workers UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the Convention against Transnational Organised Crime
Displacement; refugees, asylum seekers, internally displaced persons	<ul style="list-style-type: none"> Article 2 – States to Respect and Ensure that All Individuals are Entitled to Rights without Discrimination 		<ul style="list-style-type: none"> Refugee Convention 1951 UN Guiding Principles on Internal Displacement Convention Relating to the Status of Stateless Persons 1954 Convention on the Reduction of Statelessness 1961
Poor socioeconomic living conditions; access to healthcare, food, education or resources		<ul style="list-style-type: none"> Article 2 – State to Achieve Progressively the Full Realisation of Rights, as contained in the ICESCR Article 9 – Right to Social Security Article 11 – Right to Adequate Standard of Living; Food, Clothing and Housing Article 13 – Right to Education 	

<p>Minority rights; religious, ethnic and cultural</p>	<ul style="list-style-type: none"> ● Article 18 – Freedom of Thought, Conscience and Religion 	<ul style="list-style-type: none"> ● Article 1 – Right of Self-Determination ● Article 3 – Equal Rights of Men and Women 	<ul style="list-style-type: none"> ● CEDAW ● CRC ● UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities ● Convention on the Elimination of All Forms of Racial Discrimination 1966
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Key:

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CRC – Convention on the Rights of the Child

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International Humanitarian Law: Its Provisions and Limitations

As mentioned earlier, Southeast Asia encounters predominantly intrastate security challenges. In contrast, IHL regulates conflict between, rather than within, states, a distinction based on the premise that internal armed conflict raises questions of sovereign governance, not international regulation (Stewart, 2003:316). IHL’s application of different rules to international or internal armed conflicts has been said to ‘frustrate the humanitarian purpose of the law of war in most of the instances in which war now occurs’ (Reisman and Silk in Stewart, 2003:313). The 1949 Geneva Conventions, while still strongly favouring a state-centric view of conflict, have over the years, created space for regulating internal armed conflicts, particularly through common Article 3, which extends the basic principles of humanitarian protection to those involved in armed conflicts not of an international nature.

Nevertheless, as Stewart (2003:318) points out, the ‘scant’ principles enumerated in Article 3 only apply where the intensity of hostilities reaches the level of ‘protracted armed violence’. Whilst Additional Protocol II 1977 represents the continued development of provisions regulating internal conflict, it maintains the bias towards the regulation of interstate warfare: it does not apply to conflicts between two dissident warring parties (conflicts not having the state as one of the belligerents) (Stewart, 2003:318–20). The issue becomes even more complex in the case of ‘internationalised conflicts’, which have both internal and international dimensions, due to the lack of clarity over what law should be applied (Stewart, 2003).

The above outlines the gaps in IHL in protecting civilians facing intrastate security challenges. Therefore, comprehensive intervention based on a consolidation of human rights and humanitarian law approaches is needed for effective reduction of violence and for civilian protection, and for the reconciliation between parties to situations of internal conflict and violence in Southeast Asia.

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Bridging protection of civilians in ASEAN with human rights

Credit: Vibracobra23

International Humanitarian and Human Rights Law: Towards Complementarity?

ASEAN's dominant 'comprehensive security' discourse incorporates economic, social and political dimensions but views the state as the primary security referent, thus fundamentally relegating the specific security concerns of individuals to a lower order of priority. To address this as well as the gaps in IHL, a robust human rights agenda – encompassing humanitarian and human rights principles – is needed. For Southeast Asia, the objective could be to explore relevant norms of international human rights and humanitarian law, and merge them into complementarity (Eden and Happold, 2009:446). This comprehensive notion of human security should be integrated into national security policy frameworks (Nishikawa, 2009:215).

The recognition of the need for human rights regulations within a human security framework to fill civilian protection gaps is gaining prominence amongst the international community (Human Rights Council, n.d.). The United Nations is currently leading efforts to establish minimum humanitarian standards. It seeks to identify fundamental rules of human rights and humanitarian law that can be applied in all circumstances (UN, n.d.:3). The Office of the High Commissioner for Human Rights has convened expert consultations on the issue of protecting the human rights of civilians in armed conflict, premised on the Human Rights Council's resolution 9/9 of 2008 (OHCHR, 2009; see also Human Rights Council, n.d.). This resolution suggests an increasing convergence between international humanitarian and human rights laws. According to the resolution, grave breaches of the Geneva Conventions may constitute gross violations of human rights, and so require an extension of the equal obligation of respect and enforcement – the same as that associated with the Geneva Conventions – to human rights protection (Human Rights Council, n.d.). Regionally, the Philippines' Comprehensive Agreement on Human Rights and International Humanitarian Law is an example of the consolidation of humanitarian and human rights principles (Arroyo, 2010:45).

Table 2: Protection of rights under international humanitarian and human rights laws

Protection Needs	International Humanitarian Law ¹	International Human Rights Law ²
Right to Life	Common Article 3 to the Geneva Conventions, Article 4(2) Additional Protocol II	Article 6 ICCPR – Right to Life
Protection from Slavery or Servitude	Article 4(2) Additional Protocol II	Article 8 ICCPR – Protection from Slavery, Servitude, Forced or Compulsory Labour
Protection from Retroactive Criminal Laws	Article 6(2) Additional Protocol II	Article 15 ICCPR – Protection from Retroactive Criminal Laws
Protection through the Rule of Law	Common Article 3 to the Geneva Conventions, Article 6(2) Additional Protocol II	Article 16 ICCPR – Right to Recognition before the Law
Freedom of Thought, Conscience and Religion	Article 4(2) Additional Protocol II	Article 18 ICCPR – Freedom of Thought, Conscience and Religion
Protection from Arbitrary Imprisonment	Common Article 3 to the Geneva Conventions, Article 6(2) Additional Protocol II	Article 9 ICCPR – Right to Liberty and Security of Person
Protection from Subjection to Torture, Cruel, Inhuman or Degrading Treatment or Punishment	Common Article 3 to the Geneva Conventions, Article 4(2) Additional Protocol II	Article 7 ICCPR – Protection from Torture, Cruel, Inhuman or Degrading Treatment or Punishment Article 10 ICCPR – Protection of Humanity and Inherent Dignity if Deprived of Liberty

Key:

ICCPR – International Covenant on Civil and Political Rights

Notes:

¹ International humanitarian law (IHL) is more specific and applicable only in situations defined as internal 'armed conflicts' (Common Article 3 to the Geneva Conventions 1949, Article 1 Additional Protocol II 1977).

² International human rights law is applicable in all situations. Fundamental rights are non-derogable in all situations while other rights may be derogated from in situations of public emergency (Article 4 ICCPR).

Conclusion

This NTS Alert sets out the rationale for a human rights agenda in the context of internal conflicts and violence in Southeast Asia. Whilst IHL still has a crucial role to play in regulating the conduct of conflicts, both of an international and internal nature, the provisions of the Geneva Conventions are decidedly state-centric and need to be complemented with human rights law to effectively address the concerns of individuals and societies affected by situations of internal conflict and violence.

The next NTS Alert will consider the potential for regional mechanisms to push this rights agenda forward. The prevalent strategy in Southeast Asia is preventive rather than protective. Nonetheless, capacity building measures aimed at enhancing human rights protection is an important means of legitimising states' political authority vis-à-vis their citizens, in a region where conflict is primarily manifested in struggles between states and their citizens.

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