

Human Rights in Asia

Introduction

Several regional organisations have developed human rights instruments and institutions, reflecting the history, culture and legal tradition of the respective region. These regional human rights systems are an important part of human rights protection. They complement and reinforce the international human rights system.

In Asia, a human rights system that covers the entire region does not exist yet. There are, however, initiatives on a sub-regional level. This tool, complementary to our **ABC of Human Rights for Development Cooperation**, will highlight existing or emerging sub-regional human rights instruments and monitoring mechanisms.

The tool focuses on **BMZ partner countries** as well as on member states of the Association of Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC), i.e. those Asian (sub-) regional organizations with a mandate on human rights.

This publication seeks to encourage development practitioners to draw on existing human rights instruments and mechanisms in their engagement with partners, for instance in policy dialogue and programming.

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1. Relevance for Development Cooperation

By ratifying international human rights treaties, partner countries accept legally binding obligations. In Asia, regional human rights instruments are of declaratory nature and thus do not present any additional legal obligations. However, political dialogue can encourage member states to implement existing regional declarations (see chapter 2) and encourage the development of binding regional human rights instruments that are consistent with states' existing international human rights commitments (see chapter 3).

Political dialogue may further recommend the establishment or strengthening of independent **National Human Rights Institutions** (NHRIs).

Development cooperation may support regional organizations such as ASEAN and SAARC in their efforts to further develop and implement regional human rights instruments, e.g. through cross-regional knowledge exchange and collaboration. Programmes in a range of policy areas can support dialogue between decisionmakers and non-state actors such as civil society, NHRIs and academia. These experiences can then be used to facilitate participation and consultation of these actors in the development of regional human rights instruments and mechanisms. In addition, programmes can help develop the capacities of non-state actors, e.g. by supporting them in their advocacy, human rights education and empowerment activities.

To identify human rights challenges, development cooperation can use studies by the ASEAN Intergovernmental Commission on Human Rights (AICHR), the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and other regional mechanisms as well as country information from Civil Society Organizations (CSOs).

Civil society efforts play an important role in the promotion of human rights in Asia, especially given the lack of monitoring mechanisms. One such example is the Asian Forum for Human Rights and Development, which has repeatedly called for the establishment of a human rights mechanism in South Asia since 2010 (see the latest **Kathmandu Statement** from 2021).

2. Asian Human Rights Instruments

Human Rights in Asia – Background

It has been argued that human rights are a concept "imposed" upon Asian states by the West. This argument is part of the so-called "Asian values" debate, questioning whether human rights are a relative or universal concept. This debate is reflected in the 1993 **Bangkok Declaration on Human Rights**, which several Asian states adopted ahead of the milestone 1993 World Conference on Human Rights: The signatory states stress the importance of Asian cultures and traditions, warn of the "imposition of incompatible values" and highlight the principles of sovereignty and non-interference. They express concern over a focus on "one category of rights" (namely civil and political rights) and emphasize the importance of economic, social and cultural rights.

This relativist stance is contested, including in Asia: In parallel to the regional meeting of states in 1993, participants of over 100 non-governmental organizations (NGOs) from 26 Asian countries met and agreed on the **Bangkok NGO Declaration on Human Rights**, highlighting the universality, indivisibility and interdependence of all human rights, including civil and political rights.

In addition, scholars from Asia and beyond have argued that, historically, the discourse about political rights and individual liberty



is not unique to the West. For example, Economics Nobel prize winner Amartya Sen points out that Buddhism attaches great importance to freedom; he also illustrates how theories on tolerance and freedom have been substantial and important parts of Asian tradition for centuries.

Example: The Edicts of Ashoka

In the third century BC, the Indian King Ashoka issued a number of inscriptions, collectively referred to as the **Edicts of Ashoka**. They describe reforms he instituted and the moral principles he recommended in an attempt to create a just and humane society, including tolerance and individual freedom. The edicts are often considered one of the roots of human rights standards and principles in Asia.

There are two regional organizations in Asia with mandates on human rights: the **Association of Southeast Asian Nations** (ASEAN) and the **South Asian Association for Regional Cooperation** (SAARC). While other sub-regional organizations, such as the **Shanghai Cooperation Organization** (SCO) exist, they have other priorities, such as security, economic and cultural cooperation.

ASEAN Instruments

ASEAN was established in 1967 and, today, has **ten member states**: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. When the organisation was founded, its main purpose was to guarantee peace and stability within the region. Today, economic integration is a key focus of ASEAN, especially in the context of the ASEAN Economic Community (AEC). The AEC is one of the **three pillars of the ASEAN Community**, which was established in 2015. The other two pillars are the ASEAN Political-Security Community and the ASEAN Socio-Cultural Community.

ASEAN emphasizes national sovereignty. This is reflected in agreements such as the **Treaty of Amity and Cooperation in Southeast Asia** which highlights non-interference as a key principle for cooperation within the region. ASEAN therefore operates based on processes of consensus, compromise and consultation, frequently referred to as the “ASEAN Way”.

At their **annual meeting** in 1993, ASEAN member states agreed that ASEAN should coordinate a common approach on human rights and consider the establishment of a regional human rights mechanism.

ASEAN Charter

The **ASEAN Charter**, adopted in 2007, includes the protection of human rights as a goal and as a principle in Art. 1 (7) and Art. 2 (2). Furthermore, Art. 14 calls for the establishment of an ASEAN Human Rights Body. On the basis of this article, ASEAN member states established the **Intergovernmental Commission on Human Rights** (AICHR) in 2009.

ASEAN Human Rights Declaration

The first task of the AICHR was to draft a human rights declaration. The **ASEAN Human Rights Declaration** (AHRD) was adopted unanimously by the ASEAN member states in November 2012. ASEAN member states celebrated the Declaration as a historical step for human rights in Asia. Civil society and the UN High Commissioner for Human Rights welcomed it as a sign of renewed commitment but warned that it was falling short of global standards and efforts in other regions. While in Africa, Europe and Latin America, member states have committed to binding regional human rights treaties, the AHRD is a non-binding declaration. However, declarations help to hold countries to account for their political commitments and can lead to the adoption of treaties.

The AHRD largely overlaps with the rights laid down in the Universal Declaration of Human Rights (UDHR). It further contains the rights to safe drinking water and sanitation (Art. 28 (e)), to a safe, clean and sustainable environment (Art. 28 (f)), to development (Art. 35) and to peace (Art. 38).

However, the AHRD has significant limitations and gaps compared to the UDHR and international human rights treaties. For instance, despite the cultural and ethnical diversity in Asia, the prohibition of discrimination (Art. 2) does not include ethnicity or sexual orientation and gender identity as prohibited grounds of discrimination. Some human rights standards such as freedom of association and the rights of Indigenous Peoples are entirely missing.

Moreover, the AHRD has been criticized for including general clauses that can be used to undermine its provisions. For instance, Art. 6 stipulates that the enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties, which contradicts the fact that human rights are universal and inalienable. Further, Art. 7 stipulates that the political, economic, legal, social, cultural, historical and religious context of each country must be considered, which allows member states to make further limitations and exceptions.

Other ASEAN Conventions and Declarations

Aside from the AHRD, ASEAN member states have adopted several conventions and declarations on the protection of specific human rights. The 2007 **Consensus on the Protection and Promotion of the Rights of Migrant Workers** addresses the human rights obligations of both receiving and sending states. The Consensus contains a list of fundamental rights of migrant workers and their families (chapter 3) as well as specific rights of migrant workers (chapter 4).

Key provisions include:

- Right to fair and appropriate remuneration and benefits regardless of gender in accordance with the laws, regulations, and policies of the receiving state,
- Right to access information on matters pertaining to their employment and employment-related conditions from relevant authorities,
- Freedom of movement within the receiving state,
- Right to join trade unions and associations subject to the national laws, regulations and policies of the receiving state.

The Consensus is complemented by the **Declaration on Portability of Social Security Benefits for Migrant Workers in ASEAN** (2022), the **Declaration on the Protection of Migrant Workers and Family Members in Crisis Situations** (2023) and the **Declaration on the Placement and Protection of Migrant Fishers** (2023).

The 2015 **Convention Against Trafficking in Persons, Especially Women and Children** (pdf, not barrier-free) includes the following measures to prevent trafficking of women and children:

- Protection of the integrity of passports and identity documents,
- Exchange of information on migratory flows,
- Strengthening of the supervisory capabilities and monitoring mechanisms in the field of migration,
- Implementation of actions aimed at respecting the dignity and the human rights of trafficking victims,
- Reinforcement of regional and international cooperation to prevent and combat trafficking in persons.



The **Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN** of 2013 makes reference to the UN-Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and its treaty body. It includes the following political actions to eliminate violence against women:

- Adoption of gender mainstreaming policies,
- Promotion of strategies to eliminate gender stereotyping practices and inclusion of women and children in prevention and elimination of violence against women and children,
- Development of appropriate legislative, educational and social measures.

This Declaration has been followed by action plans both on **women** and **children**. The 2023 **Declaration on Gender Equality and Family Development** makes reference to both CEDAW and the UN-Convention on the Rights of the Child (CRC). The Declaration includes:

- Development, implementation, and evaluation of family-centred policies in ASEAN and its Member States, and promotion of gender-mainstreaming in these policies,
- Promotion of economic empowerment of women,
- Increasing opportunities for girls and women in education and vocational education training.

Concerning children's rights, ASEAN has recently published several Declarations and other instruments including the **Declaration on Strengthening Education for Out-of-School Children and Youth** (2016), the **ASEAN Leaders' Declaration on Ending All Forms of Malnutrition** (2017), the **Declaration on Rights of Children in the Context of Migration** (2019), the **Roadmap on the Elimination of the Worst Forms of Child Labour by 2025** (2020),

the **Declaration on the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN** (2019), the **Declaration on the Elimination of Bullying of Children in ASEAN** (2021) and the **ASEAN Leaders' Declaration on Early Childhood Care and Education in Southeast Asia** (2023).

In 2023, in line with the **ASEAN enabling masterplan 2025**, ASEAN issued the **Declaration on Disability-Inclusive Development and Partnership for a Resilient ASEAN Community**, referencing the UN-Convention on the Rights of Persons with Disabilities (CRPD).

Some of these recent declarations do not contain new substantive rights. Nevertheless, the significant increase in human rights-related activity by ASEAN is a clear step away from the understanding of human rights as a concept imposed by the West.

SAARC Instruments

SAARC was founded in 1985 with the primary regional integration and has eight member states: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. SAARC has granted observer status to the European Union, the USA, China, Iran, Australia and others. Some SAARC member states face particular challenges, including ongoing conflict. Like ASEAN, SAARC's model of cooperation is based on the principles of sovereignty and non-interference. SAARC has significantly reduced its activities since 2016, at first due to conflicts between the two members Pakistan and India, later due to Covid-19. After years of stagnation, SAARC has taken up its work again in **December 2023**.

The **SAARC Charter** of 1985 makes only indirect reference to human rights in Art. 1 (b) by stating that all individuals should have the opportunity to "live in dignity and to realise their full potential". It does not list any specific measures and does not encourage the development of a SAARC human rights body.

However, SAARC has adopted several conventions addressing specific human rights. The **SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution** (pdf, not barrier-free) came into force in 2006. It emphasizes that the trafficking of women and children for prostitution is a human rights violation. It recognizes that trafficking can occur with or without the consent of the victim and does not require the victim to move across borders. The Convention is, however, limited to trafficking for prostitution and cannot be applied to other forms of trafficking. Moreover, trafficking of men is not included in the Convention. The Convention does not mention the need to cooperate multilaterally or inter-regionally with countries outside of the SAARC.

The 2002 **Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia** (pdf, not barrier-free) is a regional affirmation of the international commitments countries have made under the CRC. A key focus is on knowledge sharing through training programmes and the promotion of greater awareness through mass education. It further prohibits child labour and the entry of children into hazardous and harmful labour.

The 2004 **Social Charter** (pdf, not barrier-free) states as one of its objectives the promotion of universal respect for the observance and protection of human rights. It refers to existing human rights standards, in particular women's rights, children's rights and the rights of persons with disabilities, and highlights the right to development. Some see the Charter as a possible precursor to a regional human rights instrument.

Resources:

- **SAARC, Agreements and Conventions**
- **Forum-Asia (2021), Regional Human Rights Mechanisms in South Asia: Past efforts and ways forward**

3. Monitoring mechanisms and procedures

ASEAN Mechanisms and Procedures

In the absence of a binding ASEAN human rights convention, there is also no ASEAN human rights court yet. However, ASEAN has established several mechanisms to support the implementation of its human rights declarations. These focus on the promotion rather than on the protection of human rights. In other words, they seek to raise awareness on human rights but, so far, do not offer a complaints mechanism for individuals or groups or a procedure for member states to report on their commitments at the regional level.

ASEAN Intergovernmental Commission on Human Rights

In 2009, ASEAN established the **AICHR** in accordance with Art. 14 of the ASEAN Charter and as part of its political security pillar. In line with ASEAN procedures, decisions are taken by consensus. According to its **Terms of Reference (ToR)**, the AICHR is an intergovernmental body with an advisory function. Members are appointed by their governments for three years. This is a fundamental difference to human rights bodies in other regions where members act in their personal capacity. It means that the Commission is not functionally independent from the ASEAN member states.

In addition to the development of the AHRD (see above), the mandate of the AICHR includes:

- Coordination of cooperation on human rights in the region,
- Promotion of human rights through public awareness campaigns, capacity building, advisory services and technical assistance on human rights,



- Preparation of thematic studies based on information obtained from member states on a voluntary basis as well as through consultation with CSOs and other stakeholders.

The AICHR is tasked with mainstreaming human rights across sectors and can thus influence and engage with all three ASEAN pillars. The Commission has used its fairly broad promotion mandate to establish a **working group on environmental rights**, which formed in 2022 and has been tasked to develop a framework for environmental rights in ASEAN. **CSOs have criticized** the current draft framework as lacking ambition, e.g. regarding Indigenous Peoples and rights defenders.

The AICHR has recently published a **thematic study on migration management for the most vulnerable groups**. The study examines state practice, existing cooperation mechanisms and best practices and provides recommendations for the ASEAN Sectoral Bodies on the protection and promotion of the rights of migrant workers.

Other means of action, such as the appointment of special rapporteurs or the formulation of comments on the AHRD, could be within the AICHR's mandate.

The Commission's ToR require a review of its work with a view to further enhancing the promotion and protection of human rights within ASEAN (see art. 9.6 and 9.7 ToR). Since 2014 the AICHR has had regular **consultations** with CSOs, who recommend establishing a complaints mechanism, improving the independence of Commission members and increasing engagement with CSOs (see, for example, this **joint CSO statement**).

CSOs have long advocated for the establishment of exceptions on the principle of consensus in urgent situations. AICHR has now found a solution: Whenever AICHR cannot find a consensus, ASEAN-Chairman's-Statements are issued, e.g. on the humanitarian and human rights situation in **Myanmar**.

ASEAN leaders concluded their 5th Human Rights Dialogue 2023 with a **Declaration** that establishes the Human Rights Dialogue as a regular event. It instructs the AICHR to work on a common understanding and develop strategies for the promotion and protection of human rights in ASEAN. The involvement of CSOs is encouraged.

Other Mechanisms

In 2004, ASEAN adopted the Vientiane Action Plan (VAP) which highlighted the promotion of human rights and envisaged a commission focusing on the rights of women and children. The **ACWC** was established in 2010 as part of ASEAN's socio-cultural pillar of cooperation.

Like the AICHR, the ACWC is an intergovernmental body which does not have a complaints mechanism or a state reporting procedure. Its mandate focuses on the promotion of women's and children's rights. The commission's **action plan 2021-2025** formulates the four main areas of work: advocate, collaborate, weave and mainstream, and capacitate. In addition, the ACWC encourages member states to undertake periodic reviews of national legislation, regulations, policies and practices and to collect disaggregated data. It can also, upon request, provide technical assistance to member states, namely, to prepare periodic reports to UN treaty bodies and to the Universal Periodic Review (UPR) of the UN Human Rights Council, and to implement Concluding Observations by UN treaty bodies in relation to the rights of women and children.

The ASEAN Committee on the Implementation of the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers (ACMW) was **established in 2007** to ensure the effective implementation of the Declaration on the Promotion and Protection of the Rights of Migrant Workers (see above). It aims to facilitate the development of an ASEAN instrument on the protection and promotion of the rights of



migrant workers. The ACMW's activities include a policy repository to promote best practices in migrant worker management policies, workshops on best practices in protecting migrant workers and capacity building on labour markets.

SAARC Mechanisms and Procedures

Although strongly **advocated for by CSOs**, there is no regional human rights mechanism in SAARC. There are six **Technical Committees** within SAARC, each composed of government representatives. They are responsible for the implementation, coordination and monitoring of the programmes in their respective areas. No Technical Committee was established expressly as a human rights monitoring mechanism, but **two of them focus on human rights-related activities**:

The Technical Committee on Women, Youth and Children (TCWYC) is tasked with reviewing the status of implementation of the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia and the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. In 2009, the TCWYC recommended the development of a reporting mechanism for countries to report their national progress. In 2014, the SAARC Gender Policy Advocacy Group was established. However, TCWYC has not held any meetings since 2015. The Technical Committee on Health and Population Activities has, inter alia, been tasked with preparing guidelines for a regional initiative on basic healthcare services, nutrition, safe water and sanitation. The Committee advocates for a rights-based approach and has established annual meetings on non-communicable diseases.

Resources:

- AICHR, **documentation of activities**
- AICHR, **Five-Year Work Plan 2021-2025**
- SAARC, **Areas of Cooperation, Social Affairs**

4. Additional links

- **Federal Ministry for Economic Cooperation and Development (BMZ), Human Rights Strategy for German Development Policy**
- **Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Sector Programme on Human Rights (global) “Implementing Human Rights in Development Cooperation“**
- **OHCHR, South East Asia as well as South and West Asia Regional Office**
- **Asian Forum for Human Rights and Development**
- **South Asia Forum for Human Rights**
- **Asia Pacific Forum of National Human Rights Institutions**

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Registered offices
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Sector Programme Human Rights
Friedrich-Ebert-Allee 32 + 36
53113 Bonn, Germany
T +49 228 44 60-0
F +49 228 44 60-17 66

E sv-menschenrechte@giz.de
I www.giz.de

Responsible:

Juliane Osterhaus
juliane.osterhaus@giz.de

Layout:

Agnes Weegen, Cologne

In cooperation with:

German Institute for Human Rights
Zimmerstraße 26/27, 10969 Berlin, Germany

On behalf of:

German Federal Ministry for Economic Cooperation and Development (BMZ)
Division G 13 Human rights, disability inclusion, media
Dahlmannstrasse 4
53113 Bonn, Germany

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