

# Selected regional developments in human rights and democratisation in the Asia Pacific during 2016: Been 'down' so long, it looks like 'up' from here

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*Abstract: This report card of protecting human rights and advancing democracy in the Asia Pacific during the year 2016 is mixed. On the one hand, the year will be remembered for the brutal actions in the Philippines war on drugs and the mass expulsion of the Rohingya. These severe events all occurred in democratic countries with strong popular support, demonstrating how democracy is manipulated to take away the rights of some groups. The fabricated security threats are used to solidify a political base and win elections. On the other hand, there were also other landmarks in 2016, such as 11 ratifications of human rights treaties across the region, and successful court cases. In the coming years, human rights defenders may see these developments as a turning point. Treaty ratification and the activities of the UN special procedures are positive signs for human rights protection, although actual implementation is critical. States have embraced instruments with which they are comfortable, but on other matters, such as political rights and freedom of expression, they remain more reluctant. In the context of these significant threats to human rights, there is disappointment that regional mechanisms (in particular, ASEAN, SAARC and PIF) did little, and it was left to the UN to monitor and coax Asia Pacific states to act in protecting rights.*

**Key words:** Duterte's war on drugs; expulsion of Rohingya, rise of religious extremism; ratification of human rights treaties; ASEAN; SAARC; PIF

## 1 Introduction

There is an air of gloom throughout the reviews of the Asia Pacific in the year 2016. In their annual surveys, human rights and democracy organisations, such as Amnesty International (AI), Human Rights Watch (HRW) and Freedom House (Amnesty International 2017; Puddington & Roylance 2017; Roth 2017; Tamang & Bakken 2017), all note with despair

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the attacks on democracy and human rights, alongside the rise of populist leaders. There are some common features to the retreat of human rights as noted in the annual reports: the shrinking space for civil society; limits to civil rights through restrictive laws; and the shameless violation of human rights without fear of repercussions. Migrants, refugees, ethnic minorities and the poor have all been blamed for a variety of social and economic problems, in particular by populist leaders. As this overview of regional developments in the Asia Pacific notes, many countries across the region are retreating from their obligations to human rights. The election of Donald Trump, with his sympathy for white supremacists, the blame he puts on Mexican migrants, and his retreat from international standards on peace and the environment, has come to symbolise the threat to human rights. In the Asia Pacific region, these threats are best exemplified by the election of Rodrigo Duterte in the Philippines, who instigated a programme of extra-judicial killing, resulting in as many as 7 000 deaths.<sup>1</sup> Unfortunately, the Philippines was not the only country to witness a dramatic slide in the protection of human rights and democracy, with the ethnic cleansing of the Rohingya and the rise of religious extremist violence as two other notable challenges.

The rise of populism and attacks on democracy are in some respects novel. The year 2016 witnessed the emergence of a form of democracy which, ironically, uses the democratic process itself to take away the very values of democracy from the people: People vote in regimes that dismantle checks and balances, reduce people's participation, and avoid obligations to their own citizens. While this may not be a new phenomenon, it has rarely been as pervasive as in 2016. A transformation is underway in the politics of the region where abuses of military and authoritarian government continue, but under democratic governments that replicate activities of previous military regimes. The actions of a democratically-elected Duterte in many ways mirror the abuses of power of the Marcos military regime in the Philippines from the late 1960s to the 1980s.

Rather than merely focusing on the cases where human rights and democracy are failing, this review explores if, and how, the downturn in human rights and democracy may turn around. The catalogue of violations and challenges has been extensively detailed in other annual reports by organisations such as AI and HRW, and there is little doubt regarding the problems faced. However, is 2016 the year where the bottom has been reached and, finally, there will be a turning point? What are the advances made (if any), the lessons learned, and the challenges to be faced? In some countries small advances have been made in democracy, and human rights have improved in some sectors. The section on the United Nations (UN) in this review notes that states continue to ratify human rights treaties. At the domestic level, as discussed in the democratisation section, courts have supported human rights with successful cases against the police and governments. For some groups, such as women, children and the poor, improvements continue to be made. Yet, how significant are these

1 While the numbers are disputed, most organisations put the death toll for 2016 at around 6 000 to 8 000. AI and HRW put the figure at around 7 000 (Amnesty International 2017a; Human Rights Watch 2017a). The official figures from the Government of the Philippines are 2 206 killed by the police, and 4 049 killed in vigilante killings (Palatino 2017)

advances? It could be a case that it has been ‘down’ so long for human rights defenders that anything looks ‘up’. There is a purpose to discussing how to look up at these small, but positive, developments. Although 2016 is a year of significant violations of rights and a decline in democracy, it is important not to lose sight of how human rights have been defended and democracy promoted.

There are lessons to be learned from this context. For example, human rights defenders should be more sensitised as to how security threats are created, as negative views on migrants, drug dealers and religious minorities are circulated through social media by politicians and other pressure groups. The new landscape of social media, which has done much to invigorate civil society, is also the space where racist and sexist values are instilled and enflamed. An important question is: How do human rights and democracy activists respond to the popular support of gross human rights violations? What went wrong in the democratisation process for the people, and even in some cases civil society, to turn on themselves and support undemocratic values? These lessons reinforce the importance of human rights education. The general public easily subscribe to discriminatory views without considering people’s rights because, in part, human rights are seen as a fringe topic held only by an elitist marginalised group. The mainstreaming of rights in education can lead to more robust social discourses that confront discriminatory and violent behaviour. The year 2016 demonstrated that gains in human rights and democracy can quickly be lost because the language and values of rights and democracy are still not widespread and entrenched in the community.

This overview of regional developments in the Asia Pacific has four sections. The first section discusses three case studies that epitomise the threats to human rights and democracy in the region: Duterte’s war on drugs; the expulsion of the Rohingya; and the rise of religious extremism and its attacks on religious freedom. These severe situations all occur in democratic countries with strong popular support, demonstrating how democracy is manipulated to take away the rights of some groups. The fabricated security threats (drug dealers or Muslims) are used to solidify a political base and win elections. The second section examines the status of democracy and the rule of law in the region, demonstrating both advances and steps backward. The third section examines how the major regional bodies in the Asia Pacific – the South Asian Association for Regional Co-operation (SAARC); the Association of Southeast Asian Nations (ASEAN); and the Pacific Islands Forum (PIF) – are developing human rights and democracy. The final section discusses the Asia Pacific at the UN.

## 2 Threats to human rights and democracy

### 2.1 Case one: Rodrigo Duterte and the ‘war on drugs’

Rodrigo Duterte was elected President of the Philippines in May, and sworn in in June 2016, after a very close campaign where he won with only 39 per cent of the votes, with the next two challengers receiving 23 and 21 per cent and essentially splitting the opposition votes. His campaign received attention because of his off-handed comments about supporting rape, jokes about disabled people, and his plans to fight crime. In many ways, his statements and his campaign mirror those of other

populist politicians, such as Donald Trump in the United States (USA), Abdel Fattah al-Sisi of Egypt, and Recep Tayyip Erdoğan of Turkey. All these figures highlight threats to security as a central election issue, often isolating migrants, criminals and terrorists as the main threats. Also, like these other leaders, Duterte may be populist, but not popular, in that they win not with the majority of votes (or through a fair election), but with enough of a minority to win government.<sup>2</sup> During the campaign, Duterte pledged to eradicate drugs by promising to kill thousands of drug dealers. Upon ascending to power in 2016, police operations under the Oplan: Double Barrel campaign, and killings by vigilante groups, led to an estimated 7 000 deaths in 2016, with the killings continuing in 2017 (Human Rights Watch 2017a). Duterte, a lawyer who served as a government official and mayor for over 20 years, has been complicit in the violent campaign with his use of irreverent language, on-air naming-and-shaming of drug personalities, and offers to pardon any policeman charged with extra-judicial killing (Mendez 2016). As was noted in the media at the time: ‘Duterte has been consistent about his support for the active targeting of criminals, from his time as mayor of Davao, and now as President, in his “war on drugs”’ (Reyes 2016: 125). There has been little response to the excessive use of violence, and only recently, in mid-2017, have a handful of policemen been punished. One case of the murder of three teenagers (Carl Arnaiz, Kian Delos Santos and Reynaldo de Guzman) in August 2016 resulted in the transfer of post for the senior policemen involved. The widespread criticism of the teenagers’ murders shows that public support for the war is declining as many see it as targeting the poor, triggering a drop in his recent popularity ratings (Ballaran 2017; Kine 2017).

Apart from the ‘war on drugs’, Duterte has proposed other policies counterproductive and contradictory to human rights principles. A Bill reinstating the death penalty for drug-related cases was proposed in 2016 (and passed in March 2017) by his allies in the House of Representatives. The law makers decided to sideline serious cases, such as rape, treason, and plunder, to fast-track the passage and avoid running into a heated debate regarding which crimes are ‘heinous’ (Cayabyab 2017; Corrales 2017). The passage of the Bill was pushed through regardless of the fact that the Philippines had ratified the International Covenant on Civil and Political Rights (ICCPR)’s Second Optional Protocol to abolish the death penalty. Earlier in March, the House of Representatives introduced a Bill lowering the age of criminal liability from 15 to nine years. It aimed to address the supposed soaring numbers of children working as drug couriers, but it was later scrapped for a substitute Bill requiring child offenders aged nine to 14 years to be turned over to local social welfare development officers (Dumlao 2017; Panti 2017).

Not surprisingly ASEAN, with its institutional culture of non-interference, has been quiet about Duterte. No ASEAN leader has critically commented on Duterte regardless of the fact that the violence is widespread and systematic. The international community and global civil society have been vocal on the violations during the first year of his rule,

2 Duterte won with only 39% of the votes because more moderate candidates split the opposition vote in the Philippines’ first-past-the-post system. In the USA, Trump won the presidency, although losing the popular vote. Erdoğan and al-Sisi won elections that were not considered free and fair.

to the level that Human Rights Watch, and some independent activists, claim that he should face the International Criminal Court (ICC) on charges of crimes against humanity (Human Rights Watch 2017a: 20). At the national level, Duterte has a strong voting base influential enough to make him politically safe in his actions. This base arises from the continued belief in 'strongman' politics in the Philippines, which is also found in other Southeast Asian countries, dating back to supporters of President Marcos, Lee Kwan Yew and Suharto. Some commentators note this with disbelief, as Reyes comments: 'Duterte's persona as a leader who actively targets criminals and uses the power of the state as means to pursue his end of killing criminals is a sharp contradiction to the kind of leadership that had been imagined in post-Marcos regimes' (Reyes 2016: 129). The politics of the base, a standard in populism, allows for these violations to continue.

## 2.2 Case two: Rohingya expulsion

The 2016 expulsion of the Rohingya is the latest mass expulsion of this ethnic and religious group from Myanmar by the government and the military. There have been previous expulsions with over one million Rohingya refugees already outside of Myanmar, mostly living in Bangladesh but also found in other countries.<sup>3</sup> In Bangladesh, the majority live in refugee camps in Cox's Bazar District, where it is estimated that as of June 2016, about 300 000 Rohingya are in makeshift and temporary sheds. Refugees are also found in other areas of Bangladesh, such as Chittagong (Kaladan News 2016).

The Rohingya are a minority ethnic group, mostly Muslim, in Myanmar's Northern Rakhine state. They have faced historical persecution and are denied citizenship by the government of Myanmar, who claim that the ethnic group is from Bangladesh. The persecution of the ethnic minority has manifested in both physical violence from state military forces and institutionalised discrimination in the form of 'restrictions on marriage, family planning, employment, education, religious choice, and freedom of movement' (Albert 2017). The latest expulsion was triggered by an event on 9 October 2016, when a group of several hundred Rohingya insurgents launched an attack on a border guard police base along the Myanmar-Bangladesh border. Nine police officers were killed by the Muslim men, who were 'armed mostly with knives and slingshots and about 30 firearms' (Albert 2017). The attackers also raided other posts, taking with them firearms and rounds of ammunition. The Myanmar military responded with raids on Rohingya villages, setting houses on fire, destroying crops, committing systematic rapes and murders, and enforced displacement. Government forces cut off humanitarian aid to the Rohingya internally-displaced people (IDPs) in a bid to capture those who were responsible for the attacks (Human Rights Watch 2016). As reported in the *New York Times*, 'much of northern Rakhine remained inaccessible to international relief agencies because of the military operations and travel restrictions ... thousands of Rohingya people [were also not] permitted to leave their villages' (Ives 2016). These events have been described as

3 The largest groups of Rohingya refugees outside of Bangladesh are found in Indonesia, Thailand and Malaysia. There are refugee populations in Saudi Arabia, and resettled refugees in many Western countries. The UNHCR reports that as of October 2016, there were 54 856 Rohingya refugees and asylum seekers in Malaysia (Kang 2016).

'ethnic cleansing' by some prominent UN figures, and as genocide by some civil society activists.<sup>4</sup>

ASEAN's response, much like its response to the Philippines war on drugs, has been muted. As the Council on Foreign Relations notes: 'ASEAN itself has been silent on the plight of the Rohingya and on the growing numbers of asylum seekers in member countries, largely because of its members' commitment to the principle of non-interference in each other's internal affairs' (Albert 2017). The response is compounded by weak protection for refugees, with few South and Southeast Asian states ratifying the Refugee Convention. A further problem is that the crisis occurred at the border between Southeast and South Asia (and thus between the territories of ASEAN and SAARC), with both regions considering the problem not one of their making.

The Myanmar government denies allegations of human rights violations. However, the democratically-elected government is in a difficult position. The Myanmar military, with its long history of brutal repression of ethnic minorities, such as that against the Karen, Shan, and the current war in Kachin State, have the capacity to undertake a campaign of ethnic cleansing. The democratically-elected government of Aung San Suu Kyi does not have the power to control the military, nor is there popular support for the Rohingya, with most people supporting their expulsion. This is a difficult choice for these elected officials: To side with the Rohingya would mean losing popular support, and most likely their elected positions, and facing off against the military may also end their political career. By remaining silent on the issue, they stay in government and may initiate change from the inside, which some claim to do. However, many overseas critics see this as too little to stop what is becoming a genocide.

### 2.3 Case three: Strengthening of religious extremism

Commonly religious extremism is wrongly associated with Islam. It is important to note that, particularly in the Asia Pacific region, extremism is found in all major religions. The violence against the Rohingya is fuelled, in part, by a growing Buddhist extremist movement in Myanmar, led by the Mandalay-based monk Wiranthu. The success the Hindu nationalist Bharatiya Janata Party (BJP) with the election in 2014 of its leader, Narendra Modi, to be Prime Minister in India, is parallel to the rise in religious violence against Christians and Muslims, with around one violent attack a day in the country (Curry 2018). The BJP, like other religious extremists groups, hold beliefs that their religion is under threat from both liberal secularists and opposing religions. Extremist groups are strongly nationalistic, and they reject advances made to women and children's rights in the past decades, particularly in women's equality and family law. The consequences of these beliefs are attacks against women and children, attacks on religious communities and their places of worship, and threats to the security of those who support democracy and human rights.

4 The term 'ethnic cleansing' has been used by UN Human Rights Commissioner Zeid Ra'ad Al Hussein, and the UNHCR head in Bangladesh (Holmes 2016). Malaysia's Prime Minister, Najib Razak, has publically used the term 'genocide'.

In Pakistan, attacks are more frequent after the Pakistan Islamic party was elected in 2013 upon a mandate of implementing Shari'a law (Physician for Social Responsibility 2015). As a result, violence has increased against women and religious minorities. The violence itself is not novel, as violence has been consistently increasing, from a recorded 6 761 attacks in 2000 to 28 982 in 2011 (Ispahani 2017). What has changed is government complicity (often through inactivity) in the violence and the rise of powerful home-grown extremist groups. As a result, there is little chance for extremism to be controlled because of an inactive government and areas that are no longer controlled by the government (Crawford 2016). The instability in Pakistan and Afghanistan is further exacerbated by the neighbouring armed conflicts. These countries also had to contend with massive numbers of forced migrants from armed conflicts. Pakistan has an estimated 1,3 million refugees and a further 1 million IDPs according to the United Nations High Commissioner for Refugees (UNHCR), numbers similar to those entering the entire continent of Europe. Each of these conflicts is the result of religious extremist groups, with the Islamic State, Taliban and Al-Qaida the most well-known. Furthermore, extremism has contributed to refugee and IDP numbers in Myanmar and the Philippines.

Another target of religious extremism is the lesbian, gay, bi-sexual, transgender and intersex (LGBTI) community. In Bangladesh, two prominent gay activists were murdered by members of an Islamic extremist group, Ansarullah Bangla Team (Rahman 2017). The Indonesian province of Aceh criminalised homosexuality in 2014, punishable by public whipping.<sup>5</sup> Similarly, religious views are used to justify denying people's rights or silencing minorities. The crime of blasphemy (or insulting religion) is found in a number of countries in the region, and is used to silence or jail members of minority groups. As an example, a recent Bill in Indonesia to abolish child marriages was withdrawn in January after having been criticised by Council of Islamic Ideology, an advisory body to the parliament on Islamic law as being 'anti-Islamic' and 'blasphemous' (Human Rights Watch 2017c). Similarly, a law to stop child marriages in Malaysia in early 2017 did not receive the necessary votes, partly, as stated by Shabudin Yahaya, a former Shari'a court judge and member of the ruling Barisan Nasional coalition: 'Girls reach puberty at the age of nine or 12. And at that time, their body is already akin to them being 18 years old. So physically and spiritually, it is not a barrier for the girl to marry' (Haas 2017). Violence against women is widespread in extremist groups, with the most famous case the attempted murder of the child girl activist, Malala Yusuf Zai, by the Pakistani splinter group of the Taliban, commonly known as Tahreek Taliban Pakistan (TTP). This group also is known for openly flogging girls that do not comply with dress codes (Dawn 2009; Perry 2016). Threats against women's security, such as honour killing, forced marriage and a denial of basic rights to education and movement, have little chance of being eradicated because of the influence of the extremist groups.

Religious radicalisation is also challenging basic democratic standards. Although Indonesia is known for its religious tolerance, the conservative

5 While no whippings were carried out in 2016, two men were whipped for homosexuality in March 2017.

application of Shari'a law in Aceh and the rise of conservative Islamic political groups have threatened democracy (Rasakotta 2017). In Aceh, a total of 339 people were lashed for violations of Shari'a law in 2016 (Human Rights Watch 2017b). At the end of the year, during the election for the Jakarta governor, Islamic groups alleged that the popular Christian governor had committed blasphemy. He was facing two years' punishment for blasphemy against Quran, a punishment which was eventually handed out in 2017 (*The Atlantic* 2017). One critic noted that the election 'became a referendum on the future of Indonesia's ethno-religious diversity and tolerance after unwanted intervention by a number of radical Islamist groups, most notably the Islamic Defenders Front (FPI)' (Arifianto 2017).

As these three cases demonstrate, 2016 has not been a good year for rights and democracy. There is no solution in sight yet for those threatened by the war on drugs, the expulsion of the Rohingya and threats by extremist groups. From these case studies of the worst violations of rights, the review now turns to assess the status of democracy.

### 3 Overview of democracy: A democratic rollback

The loss of democratic freedom is seen in the Philippines, Indonesia, Thailand and Cambodia. However, developments in Nepal, South Korea, Taiwan and Sri Lanka show that authoritarianism can be challenged. It could be debated that this process is a phenomenon similar to Huntington's 'waves', where democratic advances are followed by periods of democratic regression (Huntington 1991). There is an increase in 'guided' or 'limited' models of democracy. Yet, democracy, even in its weakened form, still exists in the majority of Asia Pacific countries. According to Freedom House rankings, there are a majority of free states (17 free and 14 partly free of the 39 ranked) in the region (Freedom House 2017: 14). There were seven national elections in the Asia Pacific. Of these, three elections in Hong Kong, South Korea and Taiwan importantly saw an increase in support for pro-democracy and rights parties. In Hong Kong, a group of young activists, known for their role in the 2014 Umbrella Movement, a social movement similar in outlook to the occupy movements in other parts of the world, gained seats in the government. In both Taiwan and South Korea, democratic progressive parties increased their number of elected members.

Regardless of these positive developments, there are still states with an almost total lack of democracy, such as Thailand, Laos, North Korea and China. However, democracy has not disappeared in these states. Thailand is a useful case study to show how democratic elements continue regardless of military control. Thailand emerged from decades of military dictatorship in 1992 into a period of democracy. Underpinned by a strong rights-based Constitution in 1997, democracy then was restricted first, by the rise of a populist regime under the Thaksin Shinawatra (who initiated his own 'war on drugs' similar to Duterte, with its predictable violations and failures) and second, by military *coups* in 2006 and 2014. In 2016, Thailand is still under the dictatorship, with no guarantee from the military Junta for an election and no effective political participation, and it would seem that democracy has disappeared. Yet, civil society is active, human rights are taught in some institutions, human rights violations are discussed and debated in a variety of forums, and a political opposition



does exist, though obviously under threat. While it may be too much to claim these as democratic achievements, there are organisations, cultures and knowledge solidly in place and even expanding, and which cannot be erased by the military government regardless of how hard they try. Democracy has not been eradicated, as even the military government acknowledges that it is delaying (but never eliminating) the plan for an election. This may be an overly optimistic view of democracy under dictatorships (the cases of North Korea and China being vastly different from that of Thailand), but it does show that democracy does not merely involve elections, who won them, and who holds power. Democracy is also the organisations, cultures, and knowledge.

The democracy movement in Malaysia illustrates the power of organisations, cultures and knowledge in demanding democracy. The Malaysian Bersih movement (*bersih* meaning 'clean' in Malay) is perhaps the strongest democracy movement in the Asia Pacific. Bersih is organised as a social movement working toward the democratisation of Malaysia by protesting the corruption and the unfair electoral system. It has held five rallies, with numbers estimated at around 100 000 for the most recent rally in November 2016. Bersih are protesting the growing undemocratic government of Prime Minister Najib Razak and his United Malay National Organisation (UMNO) party, which holds power even though losing the popular vote in the last election (with 47 per cent of the votes compared to the opposition's 51 per cent). UMNO is attempting to consolidate its power by introducing anti-democratic laws and attacking political opponents. Even in this environment of growing authoritarianism, the Bersih rallies have been an avenue for hundreds of thousands of Malaysians to express their opposition to the government and their desire for democracy and rights. Part of the success of Bersih is that it highlights issues which have been addressed in few other places. The restrictive Malaysian media, which is either controlled by or highly sympathetic to the government, avoids criticising the current government. A major issue avoided by the media is the recent corruption scandal involving the Prime Minister who was found to have about US \$700 million in his personal bank account which had reportedly been taken from the Malaysian sovereign wealth fund, IMDB (Wright & Clark 2015; Maza 2016). The national media has not touched on this issue (with the exception of *Malaysiakini*, perhaps the only non-government controlled media platform), but it has become one of the rallying points for the Bersih movement. It has not come without costs for people in Bersih, as 15 prominent activists and members were arrested, under the supposed 'anti-terrorist' Security Offences (Special Measures) Act (SOSMA).

Similar democracy movements can be found in many Asia Pacific countries. In Cambodia, a youthful democracy movement has challenged the control on power of the established Cambodian People's Party (CPP). The popularity of the CPP dropped from 59 per cent in the 2008 elections to 48 per cent in the 2013 elections.<sup>6</sup> The youth vote and social media are considered the forces that have caused the growing strength of the opposition parties (Wallace 2016). The erosion of support has been addressed by the CPP with the suppression of the opposition movement

6 The declining popularity of the CPP continued in the 2017 commune elections where the opposition parties gained around 2 500 Commune Chiefs and Councillors.

that continued in 2017 when most opposition politicians were in exile or jail, or had moved to the CPP.

The Cambodian example reveals that an active media does influence and consolidate democracy through supporting people's participation, but this is a space which is closing. Civil society and media groups are operating under increased restrictions across most of the region, much like restrictions found in the other regions covered in this *Journal*, such as on freedom of the press, rights to association and assembly. Nevertheless, it is worth noting two restrictions that feature in the Asia Pacific: first, the requirements to register civil society organisations, in particular organisations receiving foreign funding. The purpose is not to ensure standards, but to target human rights and democracy organisations and brand them as being influenced by foreign powers and needing heightened surveillance. A second important phenomenon is government activity in social media: Governments no longer attempt to block or censor; instead they create their own social media presence in competition. The most famous case is Russia's attempts to influence elections in the USA (and also France, Ukraine and Latvia). In the Asia Pacific, China may be the most famous manipulator of the social media, but right-wing pro-government groups have a very active social media presence in Thailand, Indonesia and India. Indeed, 2016 was the year when Facebook went from a relatively innocent social media platform to a potentially dangerous tool in the hands of religious extremists and anti-democracy movements.

The year 2016 is also a reminder that democracy is not just about elections, but also necessarily a system where people can participate politically and have their views represented. It is a system based on civil rights: the rule of law; justice; and checks and balances. In some cases the developments in law and the protection bodies enforcing these laws tell a mixed story. Advances were made in establishing and enforcing democracy and rights principles. For example, the ratification of the Convention against Torture (CAT) in Fiji is important, although it may not have much significance unless enforced. The level of democracy in Fiji has for many years been criticised, and even with the military government winning the election in 2014, the attacks on political opponents have not diminished. The police and military forces have been known to use torture and inhuman treatment on criminal suspects, leading to five deaths in the past decade. The ratification of the CAT may not bring about an immediate solution to these problems, but it can both highlight this problem (and in a sense work as human rights promotion as protection), and also provide future advocates with a tool to limit the abusive power of states. A similar example is the Philippines, which ratified CAT in 1986, but it was not until 2009 that a law on the prevention of torture came into being, but this law was first used in 2016. In this case, a policeman was convicted of torture under this Act (Amnesty International 2016b). There are two ways of interpreting this: It either took 30 years from ratification to finally protecting this right, or 2016 was the year in which courts were enabled to make a decision on torture. Giving significance to this case may be claiming developments yet to be consolidated, but it should be recognised that there is a law against torture which the courts are willing to enforce. For Fiji, only in future years will it be seen whether the ratification leads to enforcement, but an impact may be seen in the fact that the police force no longer feel that they are immune to charges of torture.

Similar milestones were reached with Sri Lanka ratifying the Convention on the Protection of People from Enforced Disappearance (CED), although by the end of 2016 it had yet to be adopted into national law. Sri Lanka, with around 100 000 people still having disappeared, has much to do to respond to this violation, such as informing the family of those disappeared, and convicting those complicit in the activity during their decade-long war with the Tamil Tigers. Similar small, but positive, advances were made with regard to anti-discrimination law in Japan against hate speech and *Buraku* discrimination (the *Buraku* are an historic untouchable caste).

A number of Asia Pacific states ratified treaties during 2016, with the Convention on Rights of Persons with Disabilities having been ratified by five states.<sup>7</sup> These are small advances for human rights in the region, and may be a case of human rights being ‘down so long, anything looks up’. However, converting these rights into law does offer opportunities in the future for people to claim them.

## 4 Regional institutional developments

### 4.1 Association of Southeast Asian Nations

In Southeast Asia, the regional human rights mechanism receives widely-divergent assessments of its ability to promote and protect human rights. 2016 was a year when human rights bodies – the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) – met regularly, passed resolutions, and openly addressed human rights issues. One advancement to regional legal standards is in the area of trafficking in persons, with the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) receiving the necessary ratification to enter into force.<sup>8</sup> The ACTIP is also the first binding regional convention on trafficking, and shows a willingness on the part of ASEAN states to build a legal infrastructure, although it is not clear how much this convention will add to the already-existing near-universal ratification of the Palermo Protocol across ASEAN. However, it was also a year where the sole focus of activities was the promotion and not the protection of rights, exemplified by the failure to discuss some of the most serious issues, such as the Rohingya expulsion or the war on drugs.

The AICHR held its twentieth meeting in February, and during 2016 it held meetings on media freedom, combating trafficking, and accrediting non-governmental organisations (NGOs) with consultative status. Several new projects were initiated in areas such as child rights, advancing gender, peace and security in ASEAN, and developing guidelines to address victims of trafficking in accordance with the ACTIP. As far as the ACWC is concerned, meetings were held on early childhood care; women’s

<sup>7</sup> Section four details ratification in the region.

<sup>8</sup> The treaty was signed on 21 November 2015 in Kuala Lumpur, Malaysia, and came into force on 8 March 2017, which was 30 days after the deposit of the sixth instrument of ratification by the Philippines. The other states that have ratified the treaty are Vietnam, Myanmar, Malaysia, Thailand, Singapore and Indonesia.

empowerment; a law review on identifying victims of trafficking; and a baseline study on child protection systems. Apart from these two bodies, other ASEAN organisations worked on rights-related issues, such as the ASEAN-Occupational Safety and Health Network (on strengthening labour and safety inspections); the ASEAN Work Plan on Education; the ASEAN Work Plan on Youth (youth employment and resilience); and the ASEAN Committee on Women (on gender equality, the elimination of violence against women, and economic empowerment). The ASEAN University Network-Human Rights Education (AUN-HRE) was active in lecturer training on human rights and developing curricula, including an undergraduate textbook on human rights, for use in ASEAN universities. While this is an impressive list of activities, it should be remembered that these bodies only promote rights, and any appeals made by victims of rights abuses were not acted upon.

#### 4.2 South Asian Association for Regional Co-operation and human rights

Regional co-operation in South Asia continues to pose significant problems, and in 2016 SAARC failed to achieve any significant milestones. Formed in 1983, SAARC is one of the youngest regional associations in the Asia Pacific. Nowhere in its charter does it specifically mention human rights, although many of its objectives implicitly support human rights. The SAARC Charter is framed by the importance of economic, social and cultural development – in the 1980s this was one of the poorest regions in the world – and its opening articles are on promoting welfare and improving the quality of life. The objectives are sympathetic to human rights as they mention providing all individuals with the opportunity to live in dignity and to realise their full potential. However, currently balancing the rights of people in a period of accelerated development is challenging. South Asia has about a quarter of the world's population, and about 13.5 per cent of its population lives in extreme poverty (World Bank 2015). There are many human rights violations in the region resulting from the clash between rapid development and human rights, such as child labour, forced labour, human trafficking, conflicts over resources, violence against female workers, and the extra-judicial detention or enforced disappearances of environment and labour activists. Despite having a common platform to address these issues, SAARC as yet does not have any separate and specific human rights programme, nor does it produce policy or create mechanisms to work on the protection of human rights. As noted by Basnet, '[s]ub-regional co-operation is still at a very rudimentary stage, and there is little evidence of any real desire to act on a subregional basis' (Basnet 2014). There are no initiatives in its summits to address violations of human rights, nor any explicit political commitment to meet their obligations.

Civil society, human rights activists and academics in SAARC countries advocate the creation of a SAARC human rights mechanism, with many using ASEAN's AICHR as a suggested model,<sup>9</sup> but political, religious and cultural differences in the region make co-operation on this issue difficult. Three key challenges generally given are the conflict between India and Pakistan; the non-existence of a human rights agenda in the SAARC

9 For example, see Forum Asia (2017).

Charter; and the provision for non-interference in the internal issues of member states (Junejo 2017). The annual summit has now already been cancelled for two years because of the political rivalry between India and Pakistan, and official representatives of India have been publically denouncing the role of SAARC. It may be a long time before SAARC will develop a human rights mechanism, leaving the national level protection mechanisms (with only two credited national human rights commissions) or the UN system (with no South Asian state agreeing to treaty body communications mechanisms) as the main protection bodies.

### 4.3 Pacific Islands Forum

While the Pacific Islands Forum (PIF) is relatively small in terms of population, it is an old organisation (having been established in 1971, or four years after ASEAN). It covers a large area of the Asia Pacific, and has been relatively dynamic with regard to human rights. The PIF is a regional organisation of 16 Pacific Islands states, and Australia and New Zealand. Although it has neither a human rights mechanism nor a specific human rights programme, it has a working group on the establishment of a mechanism, it deals indirectly with human rights through the divisions of development and politics, and it is the only organisation in the region to suspend a member (in this case Fiji) for not holding an election.

At the Forty-Seventh Pacific Island Forum, held in Pohnpei, Micronesia, in September 2016, human rights issues were discussed in the context of violations in West Papua by the Indonesian government. The Forum Secretary-General, Dame Meg Taylor of Papua New Guinea, stated that the issue would remain on the agenda despite being sensitive for Australia and Papua New Guinea because of their relationship with Indonesia. Also identified at the forum were the following priorities related to human rights: persons with disabilities; regional mobility regarding issues of migration; and the environment, in particular the management of ocean resources. The Pacific Framework for the Rights of Persons with Disabilities (PFRPD) was also endorsed in 2016 to promote the rights of persons with disabilities.

The environment and climate change are issues central to the many low-lying Pacific islands. In October 2016, the Pacific Islands Forum produced the Framework for Resilient Development in the Pacific (FRDP) which addresses numerous key issues related to climate change and disaster risk management. To ensure ocean management, the Pohnpei Oceans Statement: A Course to Sustainability was endorsed by the leaders. Pacific leaders gave support to the Marshall islands in their battle with the United States over managing the negative impact of the US Nuclear Testing Programme. The Australian-led Regional Assistance Mission to Solomon Islands (RAMSI) ended successfully in 2017. Operating since 2003 to stop a civil conflict, RAMSI has ensured peace in the Solomons. In other development areas, Samoa took the lead in the region by being the first Pacific country and Small Island Developing State to submit its National Voluntary Report on the Sustainable Development Goals (SDGs).

## 5 Asia Pacific countries in the United Nations human rights system

During the period of the second cycle of the Universal Periodic Report in 2016, six Asia Pacific countries were reviewed, namely, Papua New Guinea; Samoa; Singapore; the Solomon Islands; Thailand; and Timor-Leste. In terms of recommendations emanating from this review, Singapore and Thailand received the most recommendations (278 and 291 respectively), with Singapore accepting under half of these (126) and Thailand accepting over two-thirds (209). Timor-Leste accepted the most, accepting 173 out of 181 recommendations. It is not surprising to find Singapore rejecting the most recommendations, as Singapore is known for its hard line on not ratifying treaties (it has one of the worst records in the Asia Pacific of only ratifying four of the 18 treaties and Optional Protocols).

As far as human rights treaty ratification is concerned, there were 11 ratifications across the region in 2016. Five of these were for the Convention on the Rights of Persons with Disabilities (Brunei Darussalam, North Korea, Micronesia, Samoa and Sri-Lanka). Similarly, Brunei Darussalam and Samoa agreed to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC). Samoa also ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OP-SC), and accepted the inquiry procedure under the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-IC). As mentioned previously, Fiji ratified the Convention against Torture, and Sri Lanka ratified the Convention on Enforced Disappearance. Some of these ratifications are notable in that they occurred in countries where ratification can have an impact on the protection of rights, such as disappearances in Sri Lanka, and Pakistan's ratification of the Optional Protocol on children in armed conflict. Myanmar's ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (which was ratified in 2017 but signed in 2016) is an important development in the protection of rights as this is the first of the four Southeast Asia 'problem' states to have ratified either the ICCPR or ICESCR (the other three being Singapore, Malaysia and Brunei). Fiji's ratification of the CAT is also important, given the concerns expressed about the Fijian police's use of torture, as detailed in a 2016 report by Amnesty International which expressed concern about the fact that 'security forces have resorted to using excessive and unnecessary violence against suspected criminals or escaped prisoners in policing operations' (Amnesty International 2016).

In other areas, there was active monitoring of rights in the Asia Pacific at the UN level. There were many calls by Special Rapporteurs and other bodies to establish a commission of inquiry into the Rohingya situation, which eventually occurred in 2017. Other special mechanisms related to the Asia Pacific include the continuing mandates of the Special Rapporteurs for North Korea, Cambodia and Myanmar. The Human Rights Council appointed an independent expert from Thailand on the Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity. The appointment of this independent expert is a significant move towards the rights of LGBTIs, and comes after much

debate at the UN. Mechanisms such as the UPR, Special Rapporteurs, fact-finding missions and commissions of inquiry play a very important role in the region because of the lack of a strong regional mechanism. For many human rights defenders, the UN is the only way of ensuring the promotion and protection of human rights.

## 6 Conclusion

This report card for the region is mixed: On the one hand, the year 2016 will be remembered for the brutal actions in the Philippines war on drugs and the mass expulsion of the Rohingya, but in coming years, human rights defenders may see the treaty ratifications and successful court cases as a turning point. Treaty ratification and the activities of the UN special procedures are positive signs for human rights protection, although actual implementation is critical. States have embraced instruments with which they are comfortable, but regarding other matters, such as political rights and freedom of expression, they are more reluctant. In the context of these significant threats to human rights, it is disappointing that regional mechanisms did little, and it was left to the UN to monitor and coax Asia Pacific states to act in protecting rights.

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