

Advancing Human Rights in the Asia-Pacific: A Focus on Institution Building

Dr. Anjum Hassan

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ABSTRACT

This research paper, by critically examining the prospects for institutionalizing human rights protection in the Asia-Pacific with special reference to the right to education, aims to contribute to the ongoing debate and provide valuable insights for policymakers, practitioners, and scholars working towards a more just and equitable region where the inherent dignity and fundamental freedoms of all individuals are respected and protected.

The Asia-Pacific region grapples with a stark contrast: remarkable economic growth and development juxtaposed with a significant deficit in robust human rights protection mechanisms. This research paper, "Advancing Human Rights in the Asia-Pacific: A Focus on Institution Building," delves into this complex landscape, critically examining the prospects for strengthening and expanding human rights institutions within the region. While the Asia-Pacific lacks a unified regional human rights framework, the establishment of ASEAN's sub-regional human rights commission in 2009 signals a potential shift. This paper, employing a multidisciplinary approach drawing upon legal scholarship, international relations, and Asian studies, analyses this pivotal moment. It challenges the prevailing skepticism surrounding the region's readiness for stronger human rights mechanisms and explores diverse forms these institutions might take. This research posits that a tailored approach to institutional development, emphasizing context-specific solutions reflecting the region's unique characteristics and challenges, is crucial for advancing human rights protection in the Asia-Pacific.

Key words: *Asia-Pacific region; human rights; institutionalizing*

Introduction

The Asia-Pacific region presents a compelling paradox in the realm of human rights. While experiencing remarkable economic growth and development, the region grapples with a significant deficit in robust human rights protection mechanisms. This stark contrast underscores a critical challenge: how to reconcile rapid socioeconomic progress with the imperative of safeguarding fundamental human rights.¹ This research paper delves into this complex issue, examining the prospects for strengthening and expanding human rights institutions within the diverse and dynamic Asia-Pacific context.

The pursuit of human rights is a universal endeavor, enshrined in the United Nations Declaration of Human Rights and numerous international treaties. These instruments articulate a shared vision of a world where individuals are entitled to fundamental freedoms and protections, irrespective of their nationality, ethnicity, religion, or any other status.² However, translating these universal principles into tangible realities requires effective institutional frameworks at both national and regional levels.

The Asia-Pacific region, home to a tapestry of cultures, political systems, and levels of economic development, faces unique challenges in realizing this vision. Unlike other regions, such as Europe or the Americas, the Asia-Pacific lacks a comprehensive regional human rights architecture.³ This absence of a unified framework is often

¹*Associate Professor, IMS Law College, Sector 62, Noida, Uttar Pradesh 201301

Dowelani, Musimuni, and Faith Dowelani. "Curriculum development in South Africa: the role of professional bodies," June 2, 2020. <https://doi.org/10.4995/head20.2020.11188>.

² Siddika Rabia, "Evaluation and Development of Human Rights on National and International Levels," *International Journal for Multidisciplinary Research* 3, no. 3 (June 22, 2021), <https://doi.org/10.36948/ijfmr.2021.v03i03.4156>.

³ Celermajer, D., and K. Grewal. "Preventing Human Rights Violations 'From the Inside': Enhancing the Role of

attributed to the region's diversity and the perceived lack of political will to prioritize human rights over other competing interests.⁴

The "Asian values" debate further complicates the discourse on human rights in the region. Proponents of this perspective argue that cultural relativism should guide the interpretation and application of human rights norms, emphasizing collective rights and social harmony over individual liberties.⁵ This perspective has been used to justify limitations on freedom of expression, assembly, and association in some countries.

However, framing the debate solely through the lens of cultural relativism risks overlooking the significant progress made in promoting human rights within the region. Many countries have incorporated international human rights standards into their domestic laws and established national human rights institutions. Civil society organizations play a vital role in advocating for human rights, monitoring government actions, and providing support to victims of human rights violations.⁶

Despite these positive developments, significant challenges persist. The lack of a strong regional human rights mechanism limits the ability to address cross-border human rights concerns and hold states accountable for their obligations.⁷ The diversity of political systems, ranging from democracies to authoritarian regimes, creates complexities in fostering regional cooperation on human rights issues.

This research paper argues that the Asia-Pacific region stands at a pivotal juncture in its human rights journey. The establishment of ASEAN's sub-regional human rights commission in 2009, while imperfect, signals a growing recognition of the importance of human rights within the region. This development, coupled with the increasing interconnectedness of the region and the growing influence of civil society, presents both opportunities and challenges for advancing human rights protection.

This paper contributes to the ongoing discourse by critically examining the prospects for deepening and widening human rights institutions in the Asia-Pacific. It challenges the prevailing skepticism surrounding the region's readiness for stronger human rights mechanisms and explores the diverse forms that regional and sub-regional institutions might take.

Drawing upon legal scholarship, international relations, political science, and Asian studies, this research paper adopts a multidisciplinary approach to provide a nuanced understanding of the complex interplay of factors shaping the future of human rights in the Asia-Pacific. It moves beyond simply identifying the challenges to propose concrete solutions and explore the potential for innovative institutional designs tailored to the specific context of the region⁸.

This research paper argues that a tailored approach to institutional development is essential, emphasizing the need for context-specific solutions that reflect the region's unique characteristics and challenges. It explores the potential for hybrid models of human rights institutions, drawing upon best practices from other regions while adapting them to the specificities of the Asia-Pacific context.

The paper further argues that the success of any human rights institutional framework in the Asia-Pacific hinges on several key factors:

- **Political will:** Governments must demonstrate a genuine commitment to upholding human rights and

Human Rights Education in Security Sector Reform." *Journal of Human Rights Practice* 5, no. 2 (July 1, 2013): 243–66. <https://doi.org/10.1093/jhuman/hut012>.

⁴ Addo, Michael K. "Practice of United Nations Human Rights Treaty Bodies in Reconciliation of Cultural Diversity with Universal Respect for Human Rights." *Human Rights Quarterly* 32, no. 3 (January 1, 2010): 601–64. <https://doi.org/10.1353/hrq.2010.0012>.

⁵ Ahdanisa, Dissa Syakina, and Steven B. Rothman. "Revisiting international human rights treaties: comparing Asian and Western efforts to improve human rights." *SN Social Sciences* 1, no. 1 (November 23, 2020). <https://doi.org/10.1007/s43545-020-00018-0>.

⁶ Bartels, Rogier. "The Relationship between International Humanitarian Law and the Notion of State Sovereignty." *Journal of Conflict and Security Law* 23, no. 3 (January 1, 2018): 461–86. <https://doi.org/10.1093/jcs/lkry021>.

⁷ Bui, Hien. "The ASEAN Human Rights System: A Critical Analysis." *Asian Journal of Comparative Law* 11, no. 1 (June 16, 2016): 111–40. <https://doi.org/10.1017/asjcl.2016.9>.

⁸ Ch, Lucia, Muhammad Ashri, Marwati Riza, Aminuddin Salle, Johan Jasin, Tanggung Jawab, Pemerintah Daerah, et al. "A Human Rights-Based Approach to Education: Role of Local Government," May 1, 2019. <https://doi.org/10.7176/jlpg/85-22>.

translating rhetoric into concrete action.

- **Regional cooperation:** Effective human rights protection requires collaboration among states, regional organizations, and civil society actors.

- **Public participation:** A vibrant civil society and an informed public are essential for holding governments accountable and ensuring that human rights are respected in practice.

This research paper, by critically examining the prospects for institutionalizing human rights protection in the Asia-Pacific, aims to contribute to the ongoing debate and provide valuable insights for policymakers, practitioners, and scholars working towards a more just and equitable region where the inherent dignity and fundamental freedoms of all individuals are respected and protected.

1.1 Legal Materials and Method

This research paper employs a multidisciplinary approach to analyze the complex issue of human rights institutionalization in the Asia-Pacific region. It draws upon a variety of legal materials, supporting documents, and research methods to provide a comprehensive and nuanced understanding of the subject.

1.1.1. Legal Materials:

The legal materials examined in this research paper encompass a broad range of sources, including:

- **International Human Rights Instruments:** This includes core UN human rights treaties, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It also encompasses regional human rights instruments relevant to the Asia-Pacific context, such as the ASEAN Human Rights Declaration.

- **Domestic Legal Frameworks:** The research paper analyzes the constitutions, legislation, and judicial decisions of various Asia-Pacific states to assess the incorporation of international human rights standards into domestic law and the effectiveness of national mechanisms for human rights protection.

- **Regional and Sub-Regional Agreements:** This includes agreements establishing regional human rights mechanisms, such as the ASEAN Intergovernmental Commission on Human Rights, as well as other regional frameworks that touch upon human rights issues, such as trade agreements and security arrangements.

1.1.1. Supporting Documents:

In addition to legal materials, the research paper draws upon a variety of supporting documents to provide context and empirical grounding for its analysis. These include:

- **Reports and Publications by Intergovernmental Organizations:** This includes reports by UN human rights treaty bodies, special procedures, and other relevant UN agencies, as well as reports by regional organizations such as ASEAN and the Asia-Pacific Forum of National Human Rights Institutions.

- **Scholarly Literature:** The research paper engages with existing academic literature on human rights in the Asia-Pacific, drawing upon diverse disciplinary perspectives, including law, political science, international relations, and sociology.

- **Civil Society Reports and Advocacy Materials:** The research paper incorporates the perspectives and experiences of civil society organizations working on human rights issues in the region, recognizing their crucial role in monitoring human rights violations, advocating for policy reforms, and providing support to rights-holders.

1.1.1. Research Methods:

This research paper utilizes a combination of research methods, including:

- **Normative Juridical Method:** This method involves analyzing legal texts, such as treaties, constitutions, and legislation, to interpret their meaning, scope, and application to human rights issues in the Asia-Pacific.

- **Comparative Legal Analysis:** This method involves comparing and contrasting the human rights frameworks and institutional arrangements of different Asia-Pacific states to identify best practices, challenges, and opportunities for regional cooperation.

- **Case Study Analysis:** The research paper utilizes in-depth case studies of specific countries or thematic issues to illustrate the practical challenges and opportunities associated with human rights institutionalization in the region.

- **Qualitative Analysis of Policy Documents and Reports:** This involves analyzing policy documents, reports by intergovernmental organizations and civil society groups, and other relevant literature to identify trends, patterns, and key actors influencing the human rights landscape in the Asia-Pacific.

By employing this multi-faceted methodological approach, this research paper aims to provide a rigorous and comprehensive analysis of the complex and evolving landscape of human rights institutionalization in the Asia-Pacific region.

Results and Discussion: Institutionalizing Human Rights in the Asia-Pacific Region: A Comprehensive Analysis

The Asia-Pacific region stands at a crossroads in its journey towards robust human rights protection. While the region has witnessed significant economic progress, the development of strong and effective human rights institutions has lagged behind. This lag is particularly striking given the region's cultural and political diversity, its history of colonialism and conflict, and the rise of new challenges such as globalization and climate change.⁹ A key characteristic of the Asia-Pacific's human rights landscape is the absence of a single, overarching regional human rights mechanism. The Asia-Pacific area does not have a similar organization with binding legal power, in contrast to the Americas and Europe, where regional courts as well as commissions significantly contribute to maintaining human rights norms.¹⁰ This absence is partly due to the region's historical context, marked by a strong emphasis on state sovereignty and non-interference in domestic affairs.

The Association of Southeast Asian Nations, a major regional bloc, exemplifies this cautious approach. ASEAN has traditionally prioritized economic cooperation and political stability over human rights, often viewing the latter as a sensitive issue that could potentially disrupt regional harmony. However, growing awareness of the interconnectedness of human rights, development, and security has led to a gradual shift within ASEAN.¹¹ The establishment of the ASEAN Intergovernmental Commission on Human Rights in 2009 marked a significant, albeit tentative, step towards regional human rights engagement.

Despite its symbolic importance, the AICHR faces considerable limitations. Its mandate remains restricted, lacking the power to receive individual complaints or issue legally binding decisions. This lack of enforcement power significantly hampers the AICHR's ability to effectively address human rights violations within the region. Critics argue that the AICHR's current structure reflects a reluctance among ASEAN member states to cede sovereignty on human rights issues, prioritizing a consensus-based approach that often prioritizes the lowest common denominator.¹²

At the national level, the picture is equally mixed. Many countries in the Asia-Pacific have established National Human Rights Institutions tasked with promoting and protecting human rights domestically. These institutions play a crucial role in monitoring human rights violations, investigating complaints, raising awareness, and providing advice to governments on human rights issues. However, the effectiveness of NHRIs varies significantly across the region, with some institutions facing challenges related to independence, resources, and political will.¹³ In some cases, NHRIs are hampered by a lack of adequate funding or are subject to political interference, limiting their ability to operate effectively. This is particularly concerning in countries with weak rule of law or authoritarian tendencies, where independent oversight mechanisms are crucial for holding governments accountable for human rights abuses.¹⁴

⁹ Chitimira, Howard, and Pontsho Mokone. "The Functions of Selected Human Rights Institutions and Related Role-Players in the Protection of Human Rights in Zimbabwe." *PER* 19 (May 17, 2017): 1–40. <https://doi.org/10.17159/1727-3781/2016/v19i0a1150>.

¹⁰ Desyana, Siti Rochmah Aga. "Is Asean's Practice of Non-Interference and Regional Particularism Principles A Source of Hindrance for Human Rights Law Enforcement in South East Asia?" *Padjadjaran Journal of International Law* 4, no. 1 (January 31, 2020): 1–14. <https://doi.org/10.23920/pjil.v4i1.339>.

¹¹ Do, Doanh-Ngan-Mac, Linh-Khanh Hoang, Cuong-Minh Le, and Trung Tran. "A Human Rights-Based Approach in Implementing Sustainable Development Goal 4 (Quality Education) for Ethnic Minorities in Vietnam." *Sustainability* 12, no. 10 (May 20, 2020): 4179. <https://doi.org/10.3390/su12104179>.

¹² Esala, Jennifer J., Liz Sweitzer, Craig Higson-Smith, and Kirsten L. Anderson. "Human Rights Advocacy Evaluation in the Global South: A Critical Review of the Literature." *American Journal of Evaluation/the American Journal of Evaluation* 43, no. 3 (January 12, 2022): 335–56. <https://doi.org/10.1177/10982140211007937>.

¹³ Forsythe, David P. "Regional application of human rights norms." In *Cambridge University Press eBooks*, 121–51, 2006. <https://doi.org/10.1017/cbo9780511808357.007>.

¹⁴ Griffin, E. A. "The Dilemmas of the Postgraduate International Human Rights Law Educator." *Journal of*

The challenges facing human rights institutionalization in the Asia-Pacific are multifaceted and deeply rooted. The region's diverse cultural and political landscape, coupled with its history of colonialism and conflict, has created a complex environment for the development of strong human rights norms and institutions. The "Asian values" debate, which posits a conflict between universal human rights and local cultural values, continues to be used by some governments to justify restrictions on civil and political rights.¹⁵

Moreover, the region faces a number of deeply entrenched structural issues that contribute to human rights violations, including poverty, inequality, discrimination, corruption, and weak governance. Addressing these root causes is essential for creating an environment where human rights can flourish. This requires a holistic approach that tackles both the symptoms and the underlying causes of human rights violations.

- **Incorporation of Human Rights into Domestic Law: Bridging the Gap Between International Commitments and National Realities**

The Asia-Pacific region presents a complex and often contradictory picture when it comes to incorporating international human rights standards into domestic law. While many countries in the region have ratified key international human rights treaties, translating these commitments into tangible legal and policy changes at the national level remains a persistent challenge. This gap between international obligations and domestic realities highlights the complexities of human rights implementation in a region characterized by diverse legal systems, political ideologies, and socio-cultural contexts.¹⁶

One of the primary challenges lies in the varying degrees of legal and constitutional recognition of international human rights law within domestic legal frameworks. Some countries in the region have adopted a monist approach, where international treaties automatically become part of domestic law upon ratification. This direct incorporation, however, does not necessarily guarantee effective implementation, as enforcement mechanisms and judicial interpretations play a crucial role in translating treaty provisions into enforceable rights.¹⁷

Other countries follow a dualist system, requiring specific legislative acts to incorporate international treaty obligations into domestic law. This approach often leads to delays and inconsistencies in implementation, as the political will to translate international commitments into concrete domestic legislation can vary significantly depending on the nature of the rights in question and the prevailing political climate.¹⁸

Furthermore, even when international human rights standards are incorporated into domestic law, their practical application can be hampered by a lack of awareness, capacity, and resources within the justice sector. Judges, lawyers, and law enforcement officials may lack adequate training on international human rights law and its application in domestic courts. This lack of capacity can undermine the effectiveness of human rights litigation and hinder access to justice for victims of human rights violations.¹⁹

Another significant obstacle is the persistence of legal and cultural norms that contradict international human rights standards. Traditional practices, religious beliefs, or customary laws that discriminate against certain groups or restrict fundamental freedoms can pose significant challenges to the full realization of human rights at the national level. Addressing these deeply ingrained norms requires a nuanced approach that balances respect for

Human Rights Practice 7, no. 1 (September 30, 2014): 18–39. <https://doi.org/10.1093/jhuman/huu017>.

¹⁵ Gündoğdu, Ayten. "On the ambivalent politics of human rights." *Journal of International Political Theory* 14, no. 3 (July 23, 2018): 367–80. <https://doi.org/10.1177/1755088218783787>.

¹⁶ Hanara, Desi. "Mainstreaming Human Rights in the Asian Judiciary." *Constitutional Review* 4, no. 1 (May 31, 2018): 77. <https://doi.org/10.31078/consrev414>.

¹⁷ Jamaludin, Rozinah, Elspeth McKAY, and Susan Ledger. "Are we ready for Education 4.0 within ASEAN higher education institutions? Thriving for knowledge, industry and humanity in a dynamic higher education ecosystem?" *Journal of Applied Research in Higher Education* 12, no. 5 (March 13, 2020): 1161–73. <https://doi.org/10.1108/jarhe-06-2019-0144>.

¹⁸ Jensen, Steven Lb, Stéphanie Lagoutte, and Sébastien Lorion. "The Domestic Institutionalisation of Human Rights: An Introduction." *Nordic Journal of Human Rights* 37, no. 3 (July 3, 2019): 165–76. <https://doi.org/10.1080/18918131.2019.1682235>.

¹⁹ Kumar, C Raj. "Institutionalisation of Human Rights in Asia: Developmentalizing Rights to Promote Good Governance." *Asia Pacific Law Review/Asia Pacific Law Review* 12, no. 2 (December 1, 2004): 143–59. <https://doi.org/10.1080/18758444.2004.11788133>.

cultural diversity with the universality of human rights principles.²⁰

Moreover, the incorporation of human rights into domestic law is often influenced by political considerations and power dynamics. Governments may be reluctant to fully embrace human rights obligations that they perceive as challenging their authority or undermining national interests. This is particularly relevant in countries with weak democratic institutions or a history of authoritarian rule, where human rights are often seen as a threat to state power rather than a cornerstone of a just and equitable society.²¹

Bridging the gap between international human rights commitments and national realities requires a multi-faceted approach that addresses both legal and practical barriers to implementation. Strengthening legal frameworks to ensure the effective incorporation of international human rights treaties into domestic law is crucial. This includes adopting comprehensive human rights legislation, harmonizing domestic laws with international standards, and establishing independent and accessible mechanisms for monitoring and enforcing human rights.²²

Equally important is the need to invest in human rights education and capacity building for legal professionals, law enforcement officials, and government officials. Raising awareness of human rights principles and providing practical training on their application is essential for fostering a culture of respect for human rights within government institutions and society at large.²³

Addressing the root causes of human rights violations, such as poverty, inequality, and discrimination, is also crucial for creating an environment where human rights can flourish. This requires a holistic approach that tackles both the symptoms and the underlying causes of human rights abuses, promoting inclusive development and social justice.²⁴

Ultimately, the successful incorporation of human rights into domestic law requires a sustained commitment from governments, civil society organizations, and the international community. It demands a continuous process of dialogue, advocacy, and capacity building to ensure that international human rights standards are not merely empty promises but become a lived reality for all people in the Asia-Pacific region.

- **Emergence of Regional Human Rights Mechanisms: A Step Towards Regional Solidarity or a Stumbling Block?**

The pursuit of regional human rights mechanisms in the Asia-Pacific has been marked by both cautious progress and persistent challenges, reflecting the region's complex geopolitical landscape and diverse cultural perspectives on human rights. Even if these organizations demonstrate the growing importance of regional cooperation in addressing human rights issues, the extent to which they foster regional unity and enhance human rights protection is a matter of ongoing debate. Supporters of regional human rights mechanisms argue that, compared to their international equivalents, these mechanisms provide a number of advantages in the fight against human rights violations.²⁵

They contend that regional bodies are better positioned to understand the specific cultural, political, and economic contexts of their respective regions, allowing for more tailored and effective responses to human rights challenges.

²⁰ Mubangizi, John C. "A Human Rights-based Approach to Development in Africa: Opportunities and Challenges." *Journal of Social Sciences/Journal of Social Sciences* 39, no. 1 (April 1, 2014): 67–76. <https://doi.org/10.1080/09718923.2014.11893270>.

²¹ Muttaqien, M. "ASEAN Charter: A Compromise Agreement on Democracy and Human Rights." *International Journal of Academic Research in Business & Social Sciences* 9, no. 5 (May 24, 2019). <https://doi.org/10.6007/ijarbss/v9-i5/5889>.

²² Narine, Shaun. "Human Rights Norms and the Evolution of ASEAN: Moving without Moving in a Changing Regional Environment." *Contemporary Southeast Asia* 34, no. 3 (January 1, 2012): 365. <https://doi.org/10.1355/cs34-3c>.

²³ Nations, United. *Universal Declaration of human rights (Multilingual Edition)*. *United Nations eBooks*, 2016. <https://doi.org/10.18356/c578b5fa-en-fr-es-ru-ar-zh>.

²⁴ Nosratabadi, Saeed, Thabit Atobishi, and Szilard HegedHus. "Social Sustainability of Digital Transformation: Empirical Evidence from EU-27 Countries." *Administrative Sciences* 13, no. 5 (May 8, 2023): 126. <https://doi.org/10.3390/admsci13050126>.

²⁵ Ratanawijitrasin, Sauwakon. "The Evolving Landscape of South-East Asian Higher Education and the Challenges of Governance." In *Springer eBooks*, 221–38, 2015. https://doi.org/10.1007/978-3-319-20877-0_15.

Regional mechanisms, they argue, can also foster a sense of shared responsibility and solidarity among states within a region, encouraging greater cooperation and peer pressure to uphold human rights standards.²⁶

Furthermore, regional mechanisms can provide more accessible and culturally sensitive avenues for redress for victims of human rights violations. Individuals and groups who face barriers to accessing international human rights mechanisms, such as language barriers or lack of resources, may find it easier to seek justice and remedies through regional bodies.²⁷

However, the establishment and effectiveness of regional human rights mechanisms in the Asia-Pacific face significant hurdles. One of the most significant challenges stems from the region's diversity, both in terms of political systems and cultural values. The Asia-Pacific region encompasses a wide spectrum of political ideologies, ranging from liberal democracies to authoritarian regimes, each with varying levels of commitment to human rights principles. This diversity makes it challenging to reach a consensus on the scope and mandate of regional human rights mechanisms, as states with differing human rights records may be reluctant to cede sovereignty or subject themselves to external scrutiny.²⁸

The "Asian values" debate, which posits a conflict between universal human rights standards and Asian cultural values emphasizing collective rights and state sovereignty, continues to influence regional discussions on human rights. While the universality of human rights is widely accepted within the international community, some governments in the Asia-Pacific have invoked cultural relativism to justify restrictions on certain rights, particularly civil and political rights. This tension between universalism and cultural relativism poses a significant challenge to the development of robust regional human rights mechanisms, as it can hinder agreement on the core values and principles that should underpin such mechanisms.²⁹

Another challenge lies in the lack of political will among some states to prioritize human rights over other national interests. Economic development, national security, and regional stability are often prioritized over human rights concerns, leading to a reluctance to establish strong and independent regional human rights mechanisms that could potentially challenge state power or expose human rights abuses.³⁰

Furthermore, the effectiveness of regional human rights mechanisms is contingent on the willingness of states to comply with their decisions and recommendations. Without strong enforcement mechanisms, regional bodies risk becoming toothless tigers, unable to hold states accountable for human rights violations.

Notwithstanding these obstacles, the Asia-Pacific region has taken a giant leap towards better human rights cooperation with the establishment of regional human rights bodies. The establishment of the ASEAN Intergovernmental Commission on Human Rights, while limited in its mandate and powers, signifies a growing recognition within ASEAN of the importance of addressing human rights concerns at the regional level.³¹

However, there are a number of critical things that must be in place before regional human rights institutions can be used as powerful tools for protecting human rights and fostering regional cooperation. First, there needs to be a stronger political commitment from states to prioritize human rights and to support the development of robust and independent regional human rights mechanisms. This includes providing adequate resources and ensuring the independence and impartiality of these bodies.³²

²⁶ Rathgeber, Theodor. "Documentation: International Legal Human Rights Framework." *Journal of Current Southeast Asian Affairs* 33, no. 3 (December 1, 2014): 131–65. <https://doi.org/10.1177/186810341403300306>.

²⁷ Bartels, Rogier. "The Relationship between International Humanitarian Law and the Notion of State Sovereignty." *Journal of Conflict and Security Law* 23, no. 3 (January 1, 2018): 46186. <https://doi.org/10.1093/jcsl/kry021>.

²⁸ Siddika Rabia, "Evaluation and Development of Human Rights on National and International Levels," *International Journal for Multidisciplinary Research* 3, no. 3 (June 22, 2021), <https://doi.org/10.36948/ijfmr.2021.v03i03.4156>.

²⁹ Forsythe, David P. "Regional application of human rights norms." In *Cambridge University Press eBooks*, 121–51, 2006. <https://doi.org/10.1017/cbo9780511808357.007>.

³⁰ Forsythe, David P. "Regional application of human rights norms." In *Cambridge University Press eBooks*, 121–51, 2006. <https://doi.org/10.1017/cbo9780511808357.007>.

³¹ Desyana, Siti Rochmah Aga. "Is Asean's Practice of Non-Interference and Regional Particularism Principles A Source of Hindrance for Human Rights Law Enforcement in South East Asia?" *Padjadjaran Journal of International Law* 4, no. 1 (January 31, 2020): 1–14. <https://doi.org/10.23920/pjil.v4i1.339>.

³² Griffin, E. A. "The Dilemmas of the Postgraduate International Human Rights Law Educator." *Journal of Human Rights Practice* 7, no. 1 (September 30, 2014): 18–39. <https://doi.org/10.1093/jhuman/huu017>.

Second, regional human rights mechanisms need to be designed in a way that reflects the specific cultural and political contexts of the region while upholding the universality of human rights principles. This requires striking a balance between respecting cultural diversity and ensuring that human rights standards are applied consistently across the region.³³

Third, effective mechanisms for monitoring and enforcing compliance with regional human rights standards are crucial. This could involve establishing independent monitoring bodies, developing effective complaint mechanisms, and imposing targeted sanctions on states that persistently violate human rights.³⁴

The emergence of regional human rights mechanisms in the Asia-Pacific presents both opportunities and challenges. While these mechanisms have the potential to foster regional solidarity and advance human rights protection, their effectiveness will depend on the political will of states to prioritize human rights, to design mechanisms that are both culturally sensitive and effective, and to ensure compliance with regional human rights standards. The journey towards a more rights-respecting Asia-Pacific region requires a sustained and collective effort from states, civil society organizations, and the international community.

- **The Role of National Human Rights Institutions: Guardians at the Gate or Toothless Watchdogs?**

Recognizing their ability to promote and preserve human rights at the domestic level, national human rights institutions have grown across the world. However, the effectiveness of NHRIs in fulfilling this mandate varies significantly, with some emerging as powerful guardians of human rights while others struggle to exert meaningful influence, often perceived as toothless watchdogs lacking the necessary authority or resources to effectively address human rights violations.³⁵ This disparity in effectiveness stems from a complex interplay of factors, including their legal mandates, political contexts, and relationships with both state actors and civil society.³⁶

NHRIs are typically established through legislation or constitutional provisions, which outline their mandate, powers, and functions. Protecting and promoting all human rights—civil, political, economic, social, as well as cultural—is the hallmark of strong and autonomous NHRIs.³⁷ They are empowered to investigate human rights violations, monitor government compliance with human rights obligations, and provide remedies for victims of abuses.

Crucially, effective NHRIs operate with a high degree of independence from government interference. This independence is often enshrined in their founding documents and is further strengthened by mechanisms that ensure financial autonomy, secure tenure for commissioners, and transparent appointment processes that prioritize expertise and integrity over political considerations.

The larger political environment in which non-governmental organizations (NHRIs) function is crucial to their capacity to adequately protect human rights. It is more probable that NHRIs will flourish as autonomous and significant players in nations where democratic institutions are robust, civil society is active, and human rights are culturally valued. They can leverage their mandate and powers to hold governments accountable, advocate for policy changes, and provide a platform for marginalized voices.

Conversely, in countries with weak rule of law, authoritarian tendencies, or a history of human rights abuses, NHRIs often face significant challenges. They may encounter resistance from governments reluctant to cede control over human rights issues, face restrictions on their activities, or lack the necessary resources to effectively

³³ Siddika Rabia, "Evaluation and Development of Human Rights on National and International Levels," *International Journal for Multidisciplinary Research* 3, no. 3 (June 22, 2021), <https://doi.org/10.36948/ijfmr.2021.v03i03.4156>.

³⁴ Nations, United. *Universal Declaration of human rights (Multilingual Edition)*. United Nations eBooks, 2016. <https://doi.org/10.18356/c578b5fa-en-fr-es-ru-ar-zh>.

³⁵ Jensen, Steven Lb, Stéphanie Lagoutte, and Sébastien Lorion. "The Domestic Institutionalisation of Human Rights: An Introduction." *Nordic Journal of Human Rights* 37, no. 3 (July 3, 2019): 165–76. <https://doi.org/10.1080/18918131.2019.1682235>.

³⁶ Desyana, Siti Rochmah Aga. "Is Asean's Practice of Non-Interference and Regional Particularism Principles A Source of Hindrance for Human Rights Law Enforcement in South East Asia?" *Padjadjaran Journal of International Law* 4, no. 1 (January 31, 2020): 1–14. <https://doi.org/10.23920/pjil.v4i1.339>.

³⁷ Rathgeber, Theodor. "Documentation: International Legal Human Rights Framework." *Journal of Current Southeast Asian Affairs* 33, no. 3 (December 1, 2014): 131–65. <https://doi.org/10.1177/186810341403300306>.

carry out their mandate. Under these conditions, NHRIs may find it difficult to function autonomously and may even be enticed by the government, which would diminish their legitimacy and efficacy.

The relationship between NHRIs, state actors, and civil society is crucial to their success. Effective NHRIs actively engage with government agencies, legislatures, and the judiciary to promote human rights compliance and advocate for policy changes. They build constructive relationships with government officials while maintaining their independence and impartiality.³⁸

Equally important is the relationship between NHRIs and civil society organizations. In order to collect data on human rights abuses, provide victims a stronger voice, and rally public support towards human rights, NHRIs must be seen as approachable, responsive, and responsible to civil society.

In order to close the gap between home reality and international human rights obligations, NHRIs might be crucial. Their functions include keeping an eye on how domestic laws are doing in comparison to international norms, promoting human rights treaty implementation, and serving as a meeting place for governments as well as civil society to work together on human rights concerns.³⁹

However, the mere existence of an NHRI does not guarantee effective human rights protection. The true measure of an NHRI's success lies in its ability to translate its mandate into tangible improvements in the lives of individuals and communities. This requires not only a strong legal framework and adequate resources but also a genuine commitment from both the state and the NHRI itself to uphold human rights principles and to engage in meaningful dialogue and cooperation with all stakeholders.

The question of whether NHRIs are guardians at the gate or toothless watchdogs is not easily answered. Their effectiveness is contingent on a complex interplay of factors, including their legal mandates, political contexts, and relationships with state actors and civil society. However, by embracing their role as independent and impartial guardians of human rights, by actively engaging with both government and civil society, and by demonstrating a steadfast commitment to upholding human rights principles, NHRIs can play a transformative role in promoting and protecting human rights at the domestic level.

The ASEAN Community and the Pursuit of Educational Rights

The establishment of the ASEAN Community in 2015 marked a significant step towards regional integration in Southeast Asia. This ambitious project aimed to create a politically cohesive, economically integrated, and socially responsible community. Within this framework, the right to education emerges as a crucial pillar, underpinning human development, social progress, and sustainable peace in the region. "The Right to Education in the Era of the ASEAN Community" (Juwita, 2020) explores the complexities and challenges surrounding this fundamental right within the evolving context of ASEAN.⁴⁰

The right to education is not merely a desirable aspiration but a universally recognized human right, enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. It encompasses not only access to education but also its availability, quality, and adaptability to the evolving needs of individuals and societies. In the context of ASEAN, realizing these right faces unique challenges posed by diverse political systems, economic disparities, cultural norms, and historical legacies.

The ASEAN Human Rights Declaration, adopted in 2012, represents a landmark achievement in the region's human rights landscape. While not legally binding, the AHRD recognizes the right to education as an integral part of the region's human rights framework. It emphasizes the importance of equitable access to quality education for all, including vulnerable and marginalized groups. The AHRD also highlights the role of education in promoting tolerance, understanding, and respect for diversity, crucial elements for fostering a harmonious and cohesive ASEAN Community.⁴¹

³⁸ Griffin, E. A. "The Dilemmas of the Postgraduate International Human Rights Law Educator." *Journal of Human Rights Practice* 7, no. 1 (September 30, 2014): 18–39. <https://doi.org/10.1093/jhuman/huu017>.

³⁹ Forsythe, David P. "Regional application of human rights norms." In *Cambridge University Press eBooks*, 121–51, 2006. <https://doi.org/10.1017/cbo9780511808357.007>.

⁴⁰ Da Wan, Chang. "Academic Freedom in Malaysian Public Universities." *Kajian Malaysia* 40, no. 2 (October 31, 2022): 1–19. <https://doi.org/10.21315/km2022.40.2.1>.

⁴¹ Tang, Qian. "Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all." *United Nations Chronicle/UN Chronicle* 51, no. 4 (June 24, 2015): 11–12.

Despite the AHRD's recognition of the right to education, its realization in practice remains uneven across ASEAN Member States. Persistent challenges include:

Disparities in access to quality education: Significant disparities persist in access to quality education, particularly between urban and rural areas and among different socioeconomic groups. Limited access to schools, qualified teachers, and educational resources disproportionately affects marginalized communities, including ethnic minorities, girls, and children with disabilities.

Inadequate funding for education: Public spending on education in many ASEAN countries remains below internationally recommended levels. This chronic underfunding results in overcrowded classrooms, outdated teaching materials, and limited opportunities for teacher training and professional development, ultimately impacting the quality of education provided.⁴²

Relevance and responsiveness to the needs of the 21st century: Education systems in some ASEAN countries struggle to keep pace with the rapid technological advancements and evolving demands of the 21st-century job market. This disconnect between education and employment can lead to skills gaps, unemployment, and social inequality.

Protection of academic freedom and institutional autonomy: Ensuring academic freedom and institutional autonomy is crucial for fostering critical thinking, innovation, and a vibrant intellectual environment. However, restrictions on academic freedom and undue political interference in educational institutions persist in some ASEAN countries, hindering the full realization of the right to education.

Addressing these challenges requires a multi-pronged approach involving governments, civil society organizations, educators, and the private sector. Key areas for action include:

Increasing public investment in education: ASEAN Member States should prioritize increasing public expenditure on education to meet the internationally recommended benchmarks. This investment should target improving infrastructure, enhancing teacher training and development, and ensuring equitable access to quality learning materials for all students.⁴³

Promoting inclusive and equitable education systems: Policies and programs should be implemented to address the specific needs of marginalized and disadvantaged groups, ensuring that all children, regardless of their background, have equal opportunities to access quality education. This includes promoting gender equality in education, supporting children with disabilities, and providing culturally appropriate education for ethnic minorities.

Strengthening the relevance and quality of education: Education systems need to adapt to the demands of the 21st century by integrating technology into the learning process, promoting critical thinking and problem-solving skills, and fostering creativity and innovation. This requires ongoing curriculum reform, teacher training in new technologies, and partnerships with the private sector to align education with industry needs.

Protecting academic freedom and institutional autonomy: Governments should uphold academic freedom and institutional autonomy by refraining from undue interference in educational institutions and protecting the rights of students and educators to express their views freely and peacefully.⁴⁴

The role of the ASEAN Intergovernmental Commission on Human Rights and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children is crucial in advancing the right to education within the region. While facing limitations in their mandates and enforcement mechanisms, these bodies play a vital role in raising awareness, promoting dialogue, and encouraging Member States to uphold their human rights obligations, including the right to education.

The AICHR, as the region's primary human rights body, can contribute by developing a dedicated thematic

<https://doi.org/10.18356/b2b87b7d-en>.

⁴² Wessells, Michael G. "Bottom-up approaches to strengthening child protection systems: Placing children, families, and communities at the center." *Child Abuse & Neglect* 43 (May 1, 2015): 8–21. <https://doi.org/10.1016/j.chiabu.2015.04.006>.

⁴³ Tang, Qian. "Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all." *United Nations Chronicle/UN Chronicle* 51, no. 4 (June 24, 2015): 11–12. <https://doi.org/10.18356/b2b87b7d-en>.

⁴⁴ Da Wan, Chang. "Academic Freedom in Malaysian Public Universities." *Kajian Malaysia* 40, no. 2 (October 31, 2022): 1–19. <https://doi.org/10.21315/km2022.40.2.1>.

mechanism on the right to education, facilitating regional dialogues on best practices, and providing recommendations to Member States on aligning their national frameworks with international standards. The ACWC, focusing on the rights of women and children, can strengthen its efforts by advocating for increased investment in girls' education, addressing gender-based violence in schools.⁴⁵

Conclusion and Suggestions

The pursuit of human rights, a journey towards a world where dignity, equality, and justice prevail, is an ongoing and multifaceted endeavor. It necessitates a nuanced understanding of the interplay between universal principles and regional particularities, the delicate balance between state sovereignty and individual rights, and the crucial role of both state and non-state actors in upholding human rights standards. The Asia-Pacific region, characterized by its rich tapestry of cultures, political systems, and economic realities, presents a unique and often challenging landscape for the advancement of human rights.

The establishment of regional human rights mechanisms, while facing significant hurdles, signifies a growing recognition within the region of the importance of collective action in addressing human rights concerns. These mechanisms, designed to complement rather than supplant global human rights frameworks, offer the potential for a more tailored and contextually sensitive approach to human rights protection. However, their effectiveness hinges on a steadfast commitment from states to prioritize human rights, to equip these mechanisms with the necessary authority and resources, and to engage in good faith efforts to implement their decisions and recommendations.

The "Asian values" debate, often invoked to justify limitations on certain rights in the name of cultural relativism, underscores the complexities inherent in navigating the intersection of universal human rights principles and regional particularities. While respecting cultural diversity is paramount, it is crucial to ensure that such considerations do not undermine the universality and indivisibility of human rights. A nuanced approach that recognizes the inherent dignity and equal worth of all individuals, regardless of their cultural background, is essential for the development of a robust and inclusive human rights framework in the region.

National Human Rights Institutions, operating at the frontlines of human rights protection, play a pivotal role in bridging the gap between international commitments and domestic realities. Their ability to effectively safeguard human rights is contingent on a complex interplay of factors, including their legal mandates, the political contexts in which they operate, and their relationships with both state actors and civil society. Strong and independent NHRIs, empowered to investigate abuses, monitor government compliance, and provide redress for victims, can serve as vital guardians of human rights. However, their effectiveness is often constrained by limited resources, political interference, or a lack of political will to address human rights concerns.

The role of civil society organizations, human rights defenders, and individuals committed to upholding human rights principles is paramount in advancing the human rights agenda in the Asia-Pacific region. These actors play a crucial role in monitoring human rights violations, advocating for policy changes, providing support to victims, and holding states accountable for their human rights obligations. Their efforts, often carried out in the face of significant risks and challenges, are essential for creating a culture of respect for human rights and for ensuring that human rights principles are translated into tangible improvements in the lives of individuals and communities.

The realization of the right to education within ASEAN remains a work in progress. While the establishment of the ASEAN Community and instruments like the AHRD signal a commitment to human rights, including the right to education, significant challenges persist. The AICHR and ACWC, while limited in their capacities, offer avenues for promoting dialogue and encouraging policy reforms. Ultimately, achieving the full realization of the right to education in ASEAN requires sustained commitment from Member States, coupled with increased investment, robust legal frameworks, and active participation from civil society. Only then can the ASEAN Community truly harness the transformative power of education for its people and its future.

The pursuit of human rights in the Asia-Pacific region is an ongoing journey, marked by both progress and setbacks. It requires a sustained and collective effort from states, regional bodies, national human rights institutions, civil society organizations, and individuals to overcome the challenges, to seize the opportunities, and to build a future where human rights are respected, protected, and fulfilled for all.

⁴⁵ Wessells, Michael G. "Bottom-up approaches to strengthening child protection systems: Placing children, families, and communities at the center." *Child Abuse & Neglect* 43 (May 1, 2015): 8–21. <https://doi.org/10.1016/j.chiabu.2015.04.006>.

2. Suggestions

This exploration into the landscape of human rights in the Asia-Pacific region, with a particular focus on the role of national human rights institutions, reveals a complex and evolving terrain. While the proliferation of NHRIs signifies a growing recognition of their potential in safeguarding human rights, their effectiveness remains contingent on a myriad of factors, ranging from their legal mandates and resource allocation to the broader political and social contexts in which they operate. This research, while shedding light on the challenges and opportunities confronting NHRIs in the region, underscores the need for further investigation into specific aspects of their functioning and impact.

A promising avenue for future research lies in conducting comparative studies of NHRIs across different countries in the Asia-Pacific region. Such studies could delve into the variations in their mandates, powers, and resources, examining how these differences translate into varying levels of effectiveness in promoting and protecting human rights. For instance, comparing the experiences of NHRIs in countries with robust democratic traditions to those operating in more authoritarian regimes could provide valuable insights into the impact of political context on their ability to function independently and effectively.

Furthermore, future research could explore the relationship between NHRIs and other stakeholders in the human rights field, including civil society organizations, government agencies, and international human rights mechanisms. Examining the dynamics of these relationships, including instances of collaboration, tension, or co-optation, could shed light on the factors that enable or hinder NHRIs in fulfilling their mandate. For example, investigating how NHRIs leverage their position to amplify the voices of marginalized communities, collaborate with civil society organizations on advocacy initiatives, or engage with government agencies to promote policy reforms could provide valuable insights into their practical impact.

Another area ripe for further exploration is the role of NHRIs in addressing specific human rights issues within the Asia-Pacific context. This could involve examining their efforts to combat discrimination based on gender, religion, ethnicity, or sexual orientation, their role in promoting the rights of refugees and migrants, or their engagement with issues related to environmental degradation and climate change. Such research could assess the effectiveness of their interventions, identify best practices, and highlight areas where their mandate or resources need to be strengthened.

Moreover, future research could delve into the impact of regional human rights mechanisms, such as the ASEAN Intergovernmental Commission on Human Rights, on the work of NHRIs in Southeast Asia. This could involve examining the extent to which NHRIs engage with AICHR, whether their recommendations and decisions have influenced national-level policies or practices, and whether the existence of a regional mechanism has strengthened or hindered their ability to operate effectively.

To strengthen the right to education within ASEAN, the author suggests several key actions. First, both the AICHR and ACWC need enhanced institutional capacity, including increased funding and stronger mandates. This will allow them to better address the complexities of the right to education within the region. Second, the author calls for the creation of a dedicated thematic mechanism within the AICHR specifically focused on the right to education. This would facilitate more focused attention and targeted recommendations. Finally, the author emphasizes the need for a collaborative approach, urging stronger partnerships between ASEAN bodies, Member States, and civil society to effectively address the multifaceted challenges hindering the full realization of the right to education in Southeast Asia.

In addition to these thematic areas, future research could employ a variety of methodological approaches to gain a deeper understanding of NHRIs in the Asia-Pacific region. This could include conducting surveys of NHRI staff and commissioners to gather data on their perceptions of their role, challenges, and opportunities; analyzing their annual reports and other publications to assess their activities and impact; or conducting case studies of specific NHRIs or human rights issues to provide in-depth analysis of their work.

Ultimately, a nuanced and comprehensive understanding of NHRIs in the Asia-Pacific region requires a multi-faceted research agenda that combines quantitative and qualitative methods, comparative perspectives, and a focus on both institutional frameworks and practical impact. By delving deeper into the complexities of their operations, challenges, and opportunities, future research can contribute to strengthening their effectiveness in promoting and protecting human rights for all individuals and communities in the region.

2.1 Conclusion and Suggestions

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Declaration

The author hereby declares that there is absence of any conflict of interest in this work.

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