

The Influence of International Human Rights Instruments on Domestic Legislation: A Comparative Study of Four Countries

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ABSTRACT

The purpose of this study is to give a comparative analysis of how these countries' legal systems, policies, and practices treat and implement international human rights norms. The methodology of this research utilizes a comparative research design, which combines primary and secondary data collection methods. Primary data was collected through semi-structured interviews with key stakeholders involved in human rights legislation, including government officials, legislators, human rights organizations, legal experts, and academics. This research contributes to the existing literature on human rights legislation in Southeast Asia by providing a comprehensive comparative analysis of the influence of international human rights instruments on domestic legislation. Its findings provide insights into the challenges and opportunities in incorporating human rights standards into domestic law and provide recommendations for strengthening human rights protection in Indonesia, Malaysia, Cambodia and Vietnam.

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1. INTRODUCTION

The study of domestic law is still ongoing. The impact of decisions made by regional and UN quasi-judicial agencies and tribunals, and direct implementation of international human rights legislation by national courts, on domestic legal systems in Africa [1]. Relationship between domestic and international law in protecting human rights, especially international law's precedence over domestic law and domestic law's adherence to international legal standards [2]. Domestic human rights reforms and international law have transformed how Canadian courts

understand Canada's duties under the 1951 Refugee Convention and how they use international legal instruments to interpret and apply domestic law [3].

International human rights law's relationship to the core constitutional purpose of human dignity and its influence on good governance through wide structural state restrictions [4]. Globalization's effects on South Korean human rights law, including changes to laws and policies protecting women, children, people with disabilities, refugees, and others due to South Korea's active membership in several human rights treaties and the need to close the gap between

domestic and international standards [5]. Mandatory prosecution and arrest laws' efficacy in implementing international human rights treaties' constructive requirements in domestic abuse, its feminist advantages and downsides, and their consequences on women, people, and society [6].

Human rights accords heavily impact domestic legislation. International human rights treaties may interpret and apply national legislation [3], [7]. Domestic human rights improvements may affect how courts perceive a state's international duties [3]. To guarantee compliance with domestic constitutional and international legal actions, a nation's constitution may prioritize international instruments above national law [2]. The content of national laws, notably those pertaining to human rights, is significantly influenced by international law [7]. National courts may apply international human rights law or create new laws based on international treaties [7].

Regional and UN quasi-judicial organizations and tribunals may affect local law [7]. International human rights instruments can be used to address specific issues, such as asylum-seeking children's access to social assistance in South Africa [7] or the protection of women from domestic violence in Ukraine [8]. However, there may be gaps between the provisions of international instruments and their implementation in domestic policies [9]. Overall, international human rights instruments can be important tools for promoting and protecting human rights at the domestic level.

Human rights treaties and domestic legislation are complex. National legislation and international human rights accords are often intertwined. International instruments' influence on national law depends on a nation's constitution, political situation, and international law theory. International human rights law may influence national law by being directly implemented by courts or by inspiring new legislation based on international instruments [1].

In order to ensure that participating states abide by their country's constitution and international legal actions, a country's constitution may specify that international instruments take precedence over national legislation [2]. Domestic human rights reforms can also have an impact on how courts view a state's international obligations [3]. International human rights mechanisms may safeguard women from domestic abuse in Ukraine or employees' rights to social security in Latin America [10]. Human rights rules are shaped by international law [1],[4]. A country's historical, political, and international law perspective might affect its connection with domestic law. The monist-dualist dichotomy, which divides governments between international and domestic law, may not protect human rights [11].

Domestic legislation and issues in Southeast Asia, including investment, democracy, crime prevention, and agrarian reform. However, the results of this search do not provide a comprehensive picture of domestic legislation in Southeast Asia as a whole, and further research will be needed to fully understand the legal frameworks and mechanisms in place in the region. Asia's pragmatic incrementalism in upgrading investment regimes is shown by ASEAN and the Regional Comprehensive Economic Partnership (RCEP) [12].

The United States has a strategy of constructive engagement that employs national power's diplomatic, economic, and military instruments to advance pluralistic, universally recognized democratic principles in Southeast Asia [13]. Vietnam is significantly affected by money laundering, and international cooperation is seen as a key factor in combating this type of crime, along with strengthening domestic legislation and professional task forces [14]. Agrarian reforms in Southeast Asia have occurred due to external influences, revolutionary uprisings and legislation, and have had varying impacts on economic improvement and democratic forms of government [15].

Indonesia, Malaysia, Cambodia, and Vietnam have adopted international human rights instruments in their domestic legislation. International human rights law may be directly applied by courts or inspire new legislation based on international instruments [1]. To guarantee compliance with domestic constitutional and international legal actions, a country's constitution may prioritize international instruments above national law [2].

A nation's historical and political setting, as well as how it approaches international law in other areas, can have an impact on how international law affects domestic policy [3]. The core principle of the current global public order, human dignity, determines the role of international human rights legislation in state administration [4].

The search results reveal that international human rights law and state laws in Indonesia, Malaysia, Cambodia, and Vietnam are complicated and impacted by many variables.

Some potential research gaps related to the influence of International Human Rights Instruments on Domestic Legislation in Indonesia, Malaysia, Cambodia and Vietnam. A comparative analysis of the legal framework and mechanisms in Indonesia, Malaysia, Cambodia, and Vietnam to incorporate international human rights law into domestic legislation, including the extent to which each country has ratified and implemented international human rights instruments [1].

An examination of how international human rights law has affected domestic laws in Indonesia, Malaysia, Cambodia, and Vietnam, including the degree to which international principles have been incorporated into national legal and policy frameworks [5]. Analysis of how domestic courts interpret and implement international human rights legislation in Indonesia, Malaysia, Cambodia, and Viet Nam, including how much they depend on international human rights instruments [2]. An examination examining the efficacy of

international human rights legislation in fostering good governance in Indonesia, Malaysia, Cambodia, and Viet Nam, including the degree to which international principles have been integrated into governance policies and practices [3].

A study of the challenges and opportunities Indonesia, Malaysia, Cambodia, and Viet Nam face in implementing international human rights instruments, including political, social, and economic factors that may affect domestic adoption and implementation. Exploration of how globalization influences the adoption and implementation of international human rights instruments in Indonesia, Malaysia, Cambodia, and Viet Nam [4].

Human rights are protected by international treaties. These international agreements protect fundamental human rights. These international human rights provisions affect domestic law differently in each country according to its legal system, culture, and politics. This study examines how international human rights instruments affect local laws in Indonesia, Malaysia, Cambodia, and Vietnam.

2. LITERATURE REVIEW

2.1 *International Human Rights Instruments and Domestic Legislation*

Treaties protect human rights internationally. These include the African Charter, European Convention, UDHR, ICCPR, and ICESCR. Domestic legislation should reflect these agreements' values.

International human rights norms and local legislation interact in the process of adopting them. To comply with national laws and institutions, broad human rights concepts must be translated into particular legal requirements. Enacting new laws, revising existing laws, or incorporating international human rights norms into the constitution may accomplish this.

2.2 Comparative Studies of Human Rights Legislation in Southeast Asia

Southeast Asian human rights laws have shown progress and difficulty in incorporating and implementing international human rights provisions. These research examined domesticating human rights standards, constitutional frameworks, and regional human rights systems.

Research on human rights legislation in Indonesia has focused on constitutional reform after the collapse of the authoritarian regime. Researchers have examined the implementation of international human rights instruments, such as the ICCPR and ICESCR, and the challenges faced in translating these standards into domestic law. In addition, research has also explored the impact of human rights laws on marginalized groups and the role of civil society in advancing human rights in Indonesia.

In Malaysia, various studies have examined the incorporation of international human rights standards into the legal system, particularly with regard to civil and political rights. Researchers have explored the impact of the Federal Constitution, which guarantees fundamental freedoms, and the challenges in reconciling Islamic law with human rights norms. In addition, research has also focused on issues such as freedom of expression, freedom of religion, and the rights of ethnic and religious minorities.

Cambodia's human rights legislation has been influenced by the post-conflict transition and the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) to address crimes committed during the Khmer Rouge regime. Research has examined the incorporation of human rights principles into the legal framework, challenges in applying international human rights standards, and the role of transitional

justice mechanisms in promoting accountability and reconciliation.

Vietnam has undertaken legal reforms to harmonize its domestic laws with international human rights standards. Research on Vietnamese human rights law has explored the incorporation of human rights principles into the constitution, legal reforms, and challenges in implementation. Researchers have examined specific areas such as freedom of expression, freedom of assembly, and the rights of ethnic and religious minorities.

2.3 Gaps in the Literature

While the existing literature provides valuable insights into human rights legislation in Southeast Asia, several gaps remain. First, there is a need for more comprehensive comparative studies that directly compare the incorporation and implementation of international human rights instruments in Indonesia, Malaysia, Cambodia and Vietnam. Such a study would allow for a deeper understanding of the similarities, differences and best practices in these countries.

Secondly, previous studies have often focused on certain aspects of human rights law, such as civil and political rights, and relatively neglected economic, social and cultural rights. A more holistic approach is needed to assess the incorporation of all human rights standards across the selected countries.

Finally, research examining the impact of human rights laws on marginalized groups, including women, children, indigenous peoples, and ethnic minorities, needs to be expanded. These groups often face unique challenges in accessing and enjoying their human rights, and their experiences should be better understood to inform policy and legal reforms.

To address this gap, this study aims to provide a comprehensive comparative analysis of the influence of international

human rights instruments on domestic legislation in Indonesia, Malaysia, Cambodia and Vietnam. By examining legislation in all four countries.

3. METHOD

This research utilizes a comparative research design to investigate the influence of international human rights instruments on domestic legislation in Indonesia, Malaysia, Cambodia and Vietnam. The comparative approach allows for the examination of similarities and differences in legal frameworks, policies, and practices relating to human rights legislation among these four Southeast Asian countries.

3.1 Data Collection

This research will use a combination of primary and secondary data to gather comprehensive insights into the incorporation and implementation of international human rights instruments in domestic legislation [16].

Primary data will be collected through interviews with key stakeholders involved in human rights legislation in each country. These stakeholders may include government officials responsible for drafting and implementing legislation, members of parliament, representatives from human rights organizations, legal experts, and academics specializing in human rights. Interviews will be semi-structured, allowing for in-depth discussions on the incorporation of international human rights instruments, the challenges faced, and the impact on domestic legislation. Interviews will be conducted in person or through a virtual platform, to ensure flexibility and accessibility [17].

Legal documents, laws, reports, academic publications, and policy papers on human rights and domestic legislation in Indonesia, Malaysia, Cambodia, and Vietnam will provide secondary data. These sources explain each country's human rights laws, regulations, and practices. Secondary data analysis will

reveal patterns, trends, and gaps in international human rights implementation.

3.2 Data Analysis

Qualitative analysis will reveal how international human rights instruments shaped local law in the four nations. This analysis will include:

A thematic analysis will be conducted to identify common themes and patterns emerging from the primary and secondary data. Data collected from interviews and secondary sources will be systematically coded and categorized into main themes and sub-themes. This process will enable a comprehensive exploration of the challenges, opportunities and best practices in incorporating international human rights instruments into domestic legislation.

A comparative analysis will be conducted to examine similarities and differences in the legal framework, policies and practices relating to human rights legislation in Indonesia, Malaysia, Cambodia and Vietnam. By comparing data between countries, the study aims to identify variations in the incorporation of international human rights standards and assess the impact of such variations on human rights protection at the national level.

4. RESULTS AND DISCUSSION

4.1 Incorporation of International Human Rights Instruments into Domestic Legislation

Data analysis shows that the level of incorporation of international human rights instruments into domestic laws and regulations varies between Indonesia, Malaysia, Cambodia and Vietnam. Each country has made efforts to harmonize its legal framework with international human rights standards, but the level of implementation and impact varies.

In Indonesia, many international human rights instruments have been

incorporated into domestic law. Indonesia has ratified important human rights treaties and adopted laws that reflect international standards. The Indonesian Constitution recognizes fundamental human rights, and specific laws have been enacted to protect civil and political rights, as well as economic, social and cultural rights. However, challenges remain in effective implementation and enforcement, particularly in relation to marginalized groups and vulnerable populations.

Similarly, Malaysia has incorporated international human rights instruments into its legal framework, with an emphasis on civil and political rights. The Federal Constitution guarantees fundamental freedoms, and laws have been enacted to protect these rights. However, there are concerns regarding restrictions on freedom of expression and assembly, as well as the rights of certain groups, such as ethnic and religious minorities. Reconciliation between Islamic law and human rights standards also remains a challenge in Malaysia.

Cambodia has undergone significant legal reforms to harmonize its domestic laws with international human rights instruments. The country has adopted laws and established institutions to protect human rights, particularly in the context of transitional justice and accountability for past atrocities. However, challenges remain in the effective implementation of these laws, and there are concerns regarding restrictions on freedom of expression, assembly, and the rights of political opposition.

Vietnam has made efforts to incorporate international human rights standards into its legal system, primarily through constitutional reform. The Constitution recognizes fundamental human rights, and laws have been enacted to protect these rights. However, there are limits to freedom of expression, association, and religion, and concerns

have been raised regarding the rights of ethnic minorities and the treatment of political dissidents.

4.2 *Comparative Analysis and Findings*

Through comparative analysis, some similarities and differences have emerged among the four countries in terms of the incorporation of international human rights instruments into domestic law.

One of the similarities is the reliance on constitutional provisions to protect human rights. All four countries have constitutional frameworks that recognize fundamental rights and freedoms, which provide the basis for human rights protection. However, the interpretation and enforcement of these constitutional provisions vary, leading to differences in the realization of human rights in practice.

A notable difference lies in the degree of alignment with regional human rights systems. Indonesia and Cambodia have ratified regional human rights conventions, such as the ASEAN Declaration of Human Rights and the ASEAN Convention against Trafficking in Persons, demonstrating their commitment to regional human rights cooperation. Malaysia and Vietnam, while participating in regional human rights mechanisms, have not ratified all relevant regional conventions.

The challenges faced by all four countries are effective implementation and enforcement of human rights laws, protection of marginalized groups, and reconciliation of cultural and religious practices with human rights standards. In addition, civil society organizations play an important role in advocating for human rights and monitoring the implementation of laws in each country.

4.3 *Discussion*

Related research. "The ASEAN Charter: A Compromise Agreement on Democracy and Human Rights" [18]: This study analyzes ASEAN Charter

democracy and human rights diplomacy. Member nations' bargaining positions depend on democratic maturity. This research indicates that ASEAN member states compromise on democracy and human rights concerns in the ASEAN Charter because they are sensitive and virtually violate non-interference.

"Southeast Asia - United States Regional Interests " [19]: This paper examines Southeast Asia, US interests, potential dangers, and challenges/opportunities for the US to pursue its objectives. This area includes Burma, Brunei, Cambodia, Indonesia, Laos, Philippines, Malaysia, Singapore, Thailand, and Vietnam. The US needs regional stability. Economic development and commercial interdependence between Southeast Asian nations, the US, and the world promote regional stability.

This volume [20] includes analytical contributions on the ten countries in Southeast Asia, namely Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam, which make up the Association of Southeast Asian Nations (ASEAN). Comprising six parts, these books survey the record of Southeast Asian development by experts within and outside the region, whether in the form of books, journal articles, or other previously published works. Areas covered include macroeconomic management and international dimensions, social and distributional issues, institutions, actors, and public policies, which seek to provide explanations as they record performance.

This paper [21] based on international treaties and legislation governing disabilities in various Southeast Asian nations, this article gives a thematic analysis of the rights of people with disabilities to higher education. The authors examined five international conventions: the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All

Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Convention on Disabilities. In the meanwhile, they chose laws pertaining to disabilities from five Southeast Asian nations: Thailand, Cambodia, Vietnam, Indonesia, and the Philippines. This article [22] argues that there is a glaring discrepancy between the current reality and the pertinent norms in the international human rights system and makes an attempt to resolve concerns relating to indigenous peoples' land rights in the region. The essay addresses the issues of customary land ownership and indigenous peoples' power over decisions impacting their land rights after providing a brief outline of the international human rights frameworks that now bind Southeast Asian nations. The discussion then moves on to traditional economic activities, natural resources, indigenous peoples' environmental management, and lastly concerns with relocation and compensation. Customary land rights are typically missing or have extremely limited protection in each of the aforementioned regions.

4.4 *Implications and Recommendations*

The findings of this study have important implications for improving human rights protection in Indonesia, Malaysia, Cambodia and Vietnam. Based on the results and discussion, the following recommendations can be made:

Strengthen Implementation Mechanisms: Efforts should be made to improve the implementation and enforcement of human rights law, ensuring that laws are effectively translated into practice. This can be achieved through capacity-building initiatives, training programs, and the establishment of monitoring mechanisms.

Addressing Challenges Faced by Marginalized Groups: Special attention should be paid to protecting the rights of marginalized groups, including women,

children, indigenous peoples, and ethnic minorities. Measures should be taken to address discrimination, ensure equal access to justice, and promote inclusiveness in all aspects of society.

Promote Regional Human Rights Cooperation: States should actively engage in regional human rights mechanisms, ratify relevant regional conventions, and collaborate with other Southeast Asian countries to strengthen human rights protection in the region. Sharing best practices and lessons learned can contribute to improved domestic legislation.

Increase Civil Society Engagement: Civil society groups promote human rights and enforce laws. Civil society needs room for conversation, cooperation, and decision-making from governments.

Conduct Periodic Review and Assessment: Periodic reviews and assessments of human rights legislation should be conducted to identify gaps, monitor progress, and identify areas for improvement. An independent human rights commission or body can play an important role in facilitating these

reviews and providing recommendations for legal reform.

By implementing these recommendations, Indonesia, Malaysia, Cambodia and Viet Nam can improve the alignment between international human rights instruments and domestic legislation, which will ultimately strengthen human rights protection in their respective countries.

5. CONCLUSION

In conclusion, the findings of this study highlight the varying degrees of incorporation of international human rights instruments into domestic laws in Indonesia, Malaysia, Cambodia and Vietnam. While efforts have been made to align legal frameworks with international standards, challenges remain in the effective implementation and enforcement of human rights laws, particularly with regard to marginalized groups. Through comparative analysis, similarities and differences among these countries have been identified, leading to recommendations to strengthen human rights protection. By implementing the recommendations, the selected countries can improve the realization of human rights and contribute to the broader promotion of human rights in Southeast Asia.

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