



ROYAL UNIVERSITY OF LAW AND ECONOMICS

Final Report on

**Impunity Unveiled: Analyzing the Causes of Impunity and
Accountability in Southeast Asia**

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ABSTRACT

This thesis critically examines the persistent issue of impunity within the context of Southeast Asia, especially in the Association of Southeast Asian Nations (ASEAN) and its member states. Despite ASEAN's stated commitments to promoting peace, stability, and human rights, the phenomenon of impunity where perpetrators of serious crimes, including human rights violations, evade accountability remains deeply entrenched across the region. The study explores the interplay between ASEAN's normative framework, particularly the principles of non-interference and consensus decision-making, and the structural and political barriers that hinder effective accountability mechanisms. Employing a qualitative research approach, the thesis integrates an analysis of Southeast Asia's institutional limitations with in-depth case studies from select member states, providing a comprehensive assessment of how these dynamics contribute to the persistence of impunity. The research also draws on primary data from interviews conducted with key stakeholders, including government officials, legal practitioners, and representatives of civil society organizations, to elucidate the multifaceted challenges this region faces in addressing impunity. The findings reveal that while Southeast Asia has made incremental progress in certain domains, significant obstacles remain in the pursuit of justice and accountability. These obstacles are further exacerbated by the disparate levels of political will, legal capacity, and commitment to reform across member states. The thesis argues that for Southeast Asia to play a more effective role in combating impunity, it must transcend its traditional adherence to non-interference and adopt a more cohesive and proactive approach to human rights and justice. The study concludes with a set of policy recommendations aimed at enhancing Southeast Asia's institutional capabilities and fostering a regional environment conducive to the eradication of impunity.

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LIST OF ABBREVIATION

AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nation
BCE	Before Common Era
EU	European Union
GII	Global Impunity index
H.E.	His/Her Excellency
ICC	International Criminal Court
ICJ	International Criminal Court of Justice
NGOs	Non-Governmental Organizations
OHCHR	Office of the United Nations High Commissioner for Human Rights
P.M.	Prime Minister
TRCT	Truth for Reconciliation Commission of Thailand
U.S	United States
UDHR	Universal Declaration of Human Rights
UN	United nation
UNCAC	United Nations Convention against Corruption
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations Human Rights Council
WB	World Bank

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INTRODUCTION

Human beings have evolved in the course of history becoming civilized but following a consistent hierarchy and power dynamics. Powerful people have often enjoyed advantages that are beyond common citizens, from past tribal chiefs to today's politicians as well as aristocrats. This kind of power imbalance can cause abuse of authority as some leaders take advantage of their office for personal gain without regard for norms and laws.¹

Although there have been tremendous improvements in legal systems and human rights, impunity continues to be a major concern, especially in the political arena. In such cases, powerful leaders and groups breach the law without any consequences as seen in Southeast Asia where historical, political, and economic factors make it hard to hold anyone accountable as it is hindered by the issues of corruption and weak Rule of law.² All these incidents further prove that justice is often elusive in a world without robust accountability.

This paper will mainly focus on the ASEAN countries in Southeast Asia, which includes Brunei, Cambodia, Myanmar, Indonesia, Malaysia, Thailand, Laos, the Philippines, Vietnam, and Singapore. These countries are known for their rich cultural legacy, economic activity, and geopolitical significance. However, beneath the surface, the region is riddled with human rights violations, corruption, and a deeply entrenched system of impunity that has continuously shielded powerful individuals from legal consequences, as this region has several difficulties with accountability and justice, including unlawful killings, enforced disappearances, speech limitations, and marginalization of vulnerable people.³

This thesis extensively examines the mechanisms through which influential individuals or group evade accountability in Southeast Asia. As similar to the rest of the world, here in Southeast Asia power manifests itself in various forms, including political influence, economic wealth, and societal status, shaping the administration of justice and the fairness of legal proceedings.⁴ High-ranking figures in politics, the military, and entrenched ruling elites typically wield excessive control, leveraging their authority to evade repercussions and suppress opposing voices.⁵ Furthermore, the weakness of the Rule of Law allows business interests and political power to further complicate efforts to hold perpetrators accountable, as profit often takes precedence over equitable treatment of individuals, and human rights.

¹ Hellmann, O. (2017). The historical origins of corruption in the developing world: A comparative analysis of East Asia. *Crime, Law and Social Change*, 68(1-2), 145-165. Retrieved from <https://link.springer.com/article/10.1007/s10611-016-9679-6>

² Gerard, K. (2017). ASEAN, anti-politics, and human rights. In P. Fawcett & M. Flinders (Eds.), *Anti-politics, depoliticization, and governance* (pp. 112-135). Oxford University Press.

³ Vuković, D. (2018). The quest for government accountability and rule of law: Conflicting strategies of state and civil society in Cambodia and Serbia. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*.¹ Retrieved from <https://link.springer.com/article/10.1007/s11266-018-9984-z>

⁴ Lawrence, B. (2021). Outlawing opposition, imposing rule of law: Authoritarian constitutionalism in Cambodia. *Asian Journal of Comparative Law*, 15(2), 225-249. Retrieved from <https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/abs/outlawing-opposition-imposing-rule-of-law-authoritarian-constitutionalism-in-cambodia/019C366E10FAE3667B2850EADC2C8864>.

⁵ McAuliffe, P. (2011). UN peace-building, transitional justice and the rule of law in East Timor: The limits of institutional responses to political questions. *Netherlands International Law Review*. Retrieved from <https://www.cambridge.org/core/journals/netherlands-international-law-review/article/abs/un-peacebuilding-transitional-justice-and-the-rule-of-law-in-east-timor-the-limits-of-institutional-responses-to-political-questions/409E54F7F47587265C1F6DFF8E69CE2C>

Furthermore, the enduring legacies of colonialism and authoritarian rule continue to exert a profound influence on the region for the better, but also for the worse, shaping institutional practices and defining societal norms. Historical injustices, unresolved conflicts, and severe disparities among various social groups contribute to an environment where violation of the law and norm often goes unchecked, continuing the cycles of violence and injustice.⁶ Within this context, individuals and organizations advocating for fairness and human rights assume critical roles, even in the face of personal threats. Their efforts are essential in holding perpetrators accountable and advancing the cause of justice in Southeast Asia.

The thesis employs a multidisciplinary approach to its assessment, drawing on viewpoints from political science, and international relations. It aims to provide a strong understanding of the complicated topic of impunity in Southeast Asia and its broader implications by analyzing specific occurrences, theoretical models, and real-world data. The ultimate goal of this thesis is not only to shed light on the numerous aspects of impunity but also to contribute to the ongoing efforts to address and challenge the entrenched power structures that reinforce it. The thesis also seeks to accelerate progress toward a future characterized by more accountability and fairness, both within the Southeast Asian region and beyond.

1. Definition

- **Impunity:** This refers to the absence of punishment or consequences for wrongdoing, granting individuals freedom from accountability.⁷
- **Unveiled:** This refers to the revelation or disclosure of information to the public that was previously concealed or unknown. It doesn't always involve a physical unveiling but rather the exposure of hidden facts or truths. For example, an investigation that might uncover a hidden corruption scheme.⁸
- **Analyzing:** This involves a thorough examination and deconstruction of a subject to comprehend its elements and interconnections. For instance, in our thesis, we will be dissecting the concept of impunity.⁹
- **Cause:** The reason why something is happening.¹⁰
- **Accountability:** This signifies the obligation to take responsibility for one's actions and face the resulting consequences and also the ability to give a satisfactory reason for those actions.¹¹
- **Region:** This indicates a distinct geographical area characterized by shared attributes. In our study, we will be concentrating on Southeast Asia.¹²

⁶ Jones, L. (2012). State power, social conflicts and security policy in Southeast Asia. In *Routledge Handbook of Southeast Asian Politics* (p. 15).

⁷ *Impunity*. (n.d.). In Cambridge University Press & Assessment [Cambridge Dictionary]. Retrieved April 18, 2024, from <https://dictionary.cambridge.org/us/dictionary/english/impunity>

⁸ *Unveiled*. (n.d.). In Cambridge University Press & Assessment [Cambridge Dictionary]. Retrieved April 18, 2024, from <https://dictionary.cambridge.org/us/dictionary/english/Unveiled>

⁹ *Analyzing*. (n.d.). In Cambridge University Press & Assessment [Cambridge Dictionary]. Retrieved April 18, 2024, from <https://dictionary.cambridge.org/us/dictionary/english/Analyzing>

¹⁰ *Cause*. (n.d.). In Cambridge University Press & Assessment [Cambridge Dictionary]. Retrieved April 18, 2024, from https://dictionary.cambridge.org/dictionary/english/cause?q=Causes#google_vignette.

¹¹ *Accountability*. (n.d.). In Cambridge University Press & Assessment [Cambridge Dictionary]. Retrieved April 18, 2024, from <https://dictionary.cambridge.org/dictionary/english/accountability>

¹² *Region*. (n.d.). In Cambridge University Press & Assessment [Cambridge Dictionary]. Retrieved April 18, 2024, from <https://dictionary.cambridge.org/us/dictionary/english/region>

- **Southeast Asia:** This is designated geographical region comprising the following countries: Cambodia, Brunei, Vietnam, Thailand, Indonesia, Malaysia, Singapore, Myanmar, Laos, the Philippines, and Timor-Leste, which located in Southern Asia.¹³

¹³ *Southeast Asia*. (n.d.). In Cambridge University Press & Assessment [Cambridge Dictionary]. Retrieved April 18, 2024, from <https://dictionary.cambridge.org/us/dictionary/english/southeastasia>

LITERATURE REVIEW: IMPUNITY AND ACCOUTABLILITY IN SOUTHEAST ASIA

There is no doubt that there is rising corruption, especially in Southeast Asia countries, and Impunity is endemic to the region. This has a devastating negative impact on the region's governance structure and the 'Rule of Law' thereby allowing for the perpetration of corruption and human rights abuses as well as non-prosecution and impunity of various violent crimes. Through various evidence from intergovernmental organizations including the Association of Southeast Asian Nations (ASEAN) and the United Nations (UN) as well as universities and organizational academic studies, this literature review aims to describe and identify the factors that contribute to impunity and the improvement of accountability in the region.

I. Causes of Impunity

1. Weak Legal Frameworks and Institutions

ASEAN Report: The ASEAN study has consistently highlighted fundamental deficiencies in its member states' legal systems and judicial institutions.¹⁴ For instance, judicial systems in countries such as Myanmar and Cambodia are often undermined due to the decline of independence and inadequate powers. In particular, the limitation on their ability to effectively prosecute crimes becomes increasingly more pronounced especially when executing cases that involve highly influential persons and high-ranking political figures and officials, who often escape justice because the system cannot hold them responsible for their crime.¹⁵ ASEAN reports emphasize that in the absence of strong and independent legal and judicial systems, impunity will continue to remain.¹⁶ This situation highlights the urgent need for comprehensive justice reforms aimed at strengthening criminal organizations and enabling them to operate free of undue political interference. To emphasize the ASEAN reports mean that without having an effective legal or judicial system, offenders will continue to roam free without punishment. Because of this, substantial justice improvement mechanisms are desperately needed in order to address the growing power and centralization of criminal groups.

UN Studies: The UN investigations have given more understanding and detail concerning the effects of corruption within the law enforcement and judicial organs in Southeast Asia.¹⁷ Even research on human rights abuses like those that happened in Myanmar shows that systematic corruption and political influence protect the offenders.¹⁸ And drawing from the UN research, the paper identifies that where judicial systems are weakened, and the accountability process is compromised, it will lead to impunity. This becomes evident in the understanding that in countries where these crimes have deeply rooted themselves, one of the most effective way to bring change is through international pressure such as sanctions and diplomatic matters, while the effectiveness

¹⁴ Nurhidayah, L., Lipman, Z., & Alam, S. (2014). Regional environmental governance: An evaluation of the ASEAN legal framework for addressing transboundary haze pollution. *Australian Journal of Asian Law*, 15(1), (pp. 87-110).

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ United Nations Office on Drugs and Crime. (2020). Thematic brief on gender and corruption in Myanmar: Initial insights from focus group discussions. United Nations Office on Drugs and Crime. (p. 5)

¹⁸ Ibid.

is mixed depend on different variables such as the strength and forcefulness of the pressure and the domestic power, it is far better than nothing.¹⁹ The demand for an independent court structure that is protected from corrupt representatives of political groups is an important topic in discussions concerning increasing the level of accountability in the regions, according to the UN.²⁰

World Bank Analysis: A World Bank study focusing on the political implications of the justice system in various Southeast Asian countries adds further context to how political influences undermine its Member States' judicial system. Based on its findings, political interference and judicial corruption in Indonesia and the Philippines are serious barriers to accountability.²¹ These factors often undermine the court's ability to punish powerful individuals, which further increases the cycle of impunity.²² The studies of the World Bank emphasize the importance of judicial independence as a foundation for effective implementation. It highlights the importance of removing political interference from court proceedings to establish a justice system in which everyone is held accountable for their actions, regardless of position or power.

2. Corruption and Lack of Political Will

Transparency International Reports: From the works of Transparency International, Southeast Asian governments have been described in detail to be bedeviled with corruption. These reports confirm that public officials often abuse their authority for their own benefits, thus, keeping the cycle of impunity alive.²³ For example, high levels of corruption have been cited as significant barriers that undermine the efforts towards greater accountability in the Philippines and Indonesia since it is challenging to pursue justice when there is corruption at all levels of government and within law enforcement systems, particularly when the cases involve powerful figures.²⁴ Data of Transparency International reveals that corruption in the nations of South Asia is entrenched and eradicated, it often falls flat without political will. Depending on the circumstances, the reports advise reformists to aspire for support and pressure coming from external forces.²⁵

World Bank Studies: World Bank research underlines the importance of political commitment to support the enforcement of accountability. They also highlight how their research signifies that due to the absence of a proper commitment towards going after high-profile cases, especially those connected to political associates or influential personalities, the process of enforcing accountability is greatly affected.²⁶ This results in a lack of political will suggesting that political leaders or the ruling party do not intend to put themselves on the line to support the anti-corruption agency especially if the corrupt networks threaten their power base. Thus, according to the World Bank, where there is no proper political willingness to change for the better in terms of media transparency and accountability, all the changes orchestrated will be in vain.²⁷ This underlines the necessity to

¹⁹ Ibid.

²⁰ Ibid.

²¹ Bhargava, V., & Bolongaita, E. (2003). *Challenging corruption in Asia: Case studies and a framework for action*. (World Bank Documents & Reports). (p. 3).

²² Ibid.

²³ Transparency International. (n.d.). Global Corruption Barometer. Retrieved from https://www.transparency.org/en/gcb?gad_source=1&gclid=CjwKCAjw2dG1BhB4EiwA998cqLUxaUhoeB8NM0SkAYCIL5eGxvVd3DbMatuBIfqFjRbgf9wJlrIB_RoCjuMQAvD_BwE.

²⁴ Ibid.

²⁵ Ibid.

²⁶ *Supra* note, 19.

²⁷ *Supra* note, 19.

establish political contexts in which real change is possible and leaders strive to combat corruption and bring corrupted officials to justice.

3. Cultural and Social Factors

UNESCO Research: The research by UNESCO find that there is the widespread influence of norms of impunity and social politics in Southeast Asia. Gender-based violence in many countries determines it's, as such people perceiving some types of violence as normal or as a private matter.²⁸ This explains why there is impunity and lack of protection of victims in society due to acceptance of violence. For example, in certain cultures of some countries in Southeast Asia, beliefs and culture can justify the use of violence on women and other vulnerable persons hence it is hard for the violators to be prosecuted.²⁹ Therefore, from UNESCO data the issue of impunity in these frameworks means not only a legal and institutional changes, but social changes as well. This comprises awareness creation campaigns within the public domain through anti-rape crusades, increased chronicling of the heinous acts, and other communal activities that can contribute to the change of the mindset of the society towards rape.³⁰

Research on ASEAN: Research on ASEAN show that some of its member states' societal cultures lead to impunity in an indirect way undermining any attempt to confront authority.³¹ From a social political perspective, most of the Southeast Asian societies are composed of people who have a cultural sense of deference especially to authority hence they will not turn on the powerful people. This cultural fallacy can lead to People with power not being held accountable for their misconduct.³² The perspectives derived from the ASEAN context imply that impunity cannot be fought without paying attention to these cultural forms, and a society should be fostered that encourages critical thinking. This may include raising awareness of civil duties, increasing voter turnout, celebrating the democratic spirit, and designing a society that does not suppress or condemn knowledge-seeking and demanding.

II. Mechanisms of Accountability

1. International Pressure and Sanctions

United Nations Initiatives: The UN has used a variety of tactics to put pressure on the Southeast Asian governments namely, its applied sanctions, diplomacy efforts, and special rapporteurs on impunity.³³ For instance, the UN's investigation into the Rohingya Muslims in Myanmar has progressively led to Myanmar being under sanctions and global concern about its government.³⁴ From the UN's data, it emerges that such a campaign, at times supported internationally, can indeed be useful in ensuring that governments are keen on questions of impunity. But the UN also recognizes that, with these measures, there must be ongoing work to promote legal justice and fight

²⁸ UNESCO. (2021, May 25). Reimagining South-East Asia's development: Towards inclusion and equity. Retrieved from <https://www.unesco.org/en/articles/reimagining-south-east-asias-development-towards-inclusion-and-equity>.

²⁹ Ibid.

³⁰ Ibid.

³¹ Nguyen, H. T. (2009). Universalizing core human rights in the new ASEAN: A reassessment of culture and development justifications against the global rejection of impunity. *Goettingen Journal of International Law*, 1(1), (pp. 77-102).

³² Ibid.

³³ Human Rights Watch. (2024). Myanmar. In *World Report 2024*. Retrieved from <https://www.hrw.org/world-report/2024/country-chapters/myanmar>.

³⁴ Ibid.

systematic corruption. Otherwise, global pressure might not be enough to make profound changes in the educational systems.³⁵

ASEAN Interventions: ASEAN has traditionally been limited by its neutrality on matters within its member states mainly due to the policy of non-intervention, however, the regional organization has recently embraced actions that encourage accountability and solutions like the ASEAN Human Rights Declaration and the formulation of the ASEAN Intergovernmental Commission on Human Rights (AICHR), which are counter to human rights violations as well as the impunity in ASEAN.³⁶ These steps demonstrate ASEAN members' shifting awareness of the necessity to act collectively to address the problem of impunity in the region, by exploring accountability through ASEAN's data.

2. Judicial Reforms and Strengthening Institutions

World Bank Projects: The World Bank has financed initiatives aimed at enhancing the judicial systems and legal changes throughout Southeast Asia. Consequently, in Indonesia the World Bank was funding its court development where facilities have been upgraded, training of judges conducted, and increased publicity of the courts.³⁷ These projects are aimed at strengthening judicial structures' institutional capacity to deliver justice and be less dependent on external support regarding accountability.³⁸ The data analyzed in the World Bank's report demonstrates that aside from offering technical assistance in the course of structural changes in the judiciary, there must be political support to ensure those changes are carried out effectively. So, even when there is a meticulous plan, incompetent political backing may lead to complete frustration.

ASEAN Initiatives: ASEAN has also embarked on measures that seek to enhance cooperation within countries that are members of the community in the area of Judiciary cooperation and Mutual Legal Assistance. These initiatives are particularly relevant in addressing transnational crimes since different countries have to be held accountable.³⁹ For instance, ASEAN aims to cooperate in mutual legal assistance and judicial matters in systematic and consistent endeavors to enhance the legal capacities and efficiency of the judiciary systems of the nations in Southeast Asia.⁴⁰ Thus, the data of ASEAN can indicate that regional cooperation may contribute to the improvement of the efficiency of the judiciary as well as strengthen the mechanisms of accountability to be as comprehensive as possible and associated with the implementation of measures with the involvement of regional organizations, the ASEAN member states would be able to work on the cross-border crimes effectively and develop the united strategy for handling the impunity.

3. Role of Civil Society and Media

Human Rights Watch and Amnesty International Reports: Daily, civil society organizations and independent media work as watchdogs exposing the abuses and seeking justice in Southeast

³⁵ Ibid.

³⁶ ASEAN. (n.d.). Human Rights. Retrieved from <https://asean.org/our-communities/asean-political-security-community/rules-based-people-oriented-people-centred/human-rights/>.

³⁷ Justice Reform Practice Group, Legal Vice Presidency, The World Bank. (n.d.). Initiatives in justice reform 1992-2012. (p. 44)

³⁸ Ibid.

³⁹ ASEAN. (n.d.). ASEAN Political-Security Community. Retrieved from <https://asean.org/our-communities/asean-political-security-community>.

⁴⁰ Ibid.

Asia. Research studies from Human Rights Watch and Amnesty International further substantiate the propositions stating the roles of such actors to document human rights abuses and keep check on the governments.⁴¹ For instance, independent media and NGOs who are operating in the Philippines were the ones who have documented cases of extrajudicial killings and other violations, although they have faced threats and intimidation.⁴² These organizations' data show that civil society and media must be safeguarded and sustained to contribute to an accountability framework.

World Bank (WB) Analysis: The role of civil society and the media receives a special focus in the World Bank's work of governance. Strong civil society and free media are often helpful in putting pressure on governments not to practice impunity.⁴³ Thus, the given informational and qualitative characteristics of the WB sources indicate that supporting civil society organizations and press freedom protection should become the leading focus for any attempts to enhance accountability in Southeast Asia.⁴⁴ This entails offering funds to NGOs, guaranteeing the freedom of untamed news reporters, and creating laws that support civil society and the press.

III. Comparative Analysis

A comparative analysis of the various studies and reports reveals several key themes and differences in the approaches to addressing impunity and promoting accountability in Southeast Asia:

- **Common Challenges:** Various studies have emphasized the information on the general region revealing poor judiciaries, corruption, and poor political will as some of the **outstanding causes of impunity.**
- **Diverse Approaches:** The UN and the World Bank are keen on structural changes and the use of pressure in top-down conception but this is not the case with ASEAN since it operates based on the principle of non-interference. Nevertheless, recent ASEAN projects indicate the corresponding awareness of the necessity for joint actions to tackle these problems, including regional limitations.
- **Role of Civil Society:** Civil society and free media have universally been acknowledged as highly influential concerning the fight against impunity. However, the efficiency of these actors is highly dependent on the space allowed and the amount of support they receive in those countries. In some States, civil society and the mass media are exposed to threats that hinder their activities, in particular, related to the exposure of government abuses. To dismantle impunity the mentioned risks have to be mitigated so that the media can function normally. However, national law and regulation have to be taken into account since even media shall not be exempt from upholding the Rule of Law, under the cover to seek justice.

⁴¹ Amnesty International. (2023). Amnesty International report 2022/23: The state of the world's human rights. Retrieved from <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>.

⁴² Ibid.

⁴³ Malena, C., Forster, R., & Singh, J. (2004). Social accountability: An introduction to the concept and emerging practice. World Bank. (p. 13).

⁴⁴ Ibid.

METHODOLOGY OF RESEARCH

Concerning the reasons behind impunity and accountability in Southeast Asia, this research methodological approach is descriptive, using both primary and secondary data collection. This involves conducting a review of the literature with data obtained from literature, reports, and publications from intergovernmental Organizations such as ASEAN, UN, and World Bank. The methodology includes the following steps:

- **Literature Review:** Carrying out a synthesis of different sources is the first step to establishing the background and nature of the impunity and accountability crisis in Southeast Asia. Such as journal articles, books, and reports from various recognizable organizations.
- **Data Collection:** This research collectively uses primary sources such as reports from intergovernmental Organizations, studies from both government and NGO, statistics, World Bank Data, history, Laws, interviews, and secondary sources like cases, and papers from reputable institutions and universities. The comprehensive analysis and synthesis of information from reputable sources provide a robust foundation for understanding the causes of impunity and accountability mechanisms in Southeast Asia.
- **Historical Context:** This research will go through the archives to investigate the changes that have occurred in impunity and accountability systems. This is important in making long-term views and patterns since the results reflect the historical context.
- **Comparative Analysis:** This involves a comparison of the results obtained in the assessment of the different countries within Southeast Asia in a bid to identify possible patterns as well as individual country peculiarities. This entails evaluating the success levels of different strategies for tackling impunity and striving for accountability.
- **Qualitative and Quantitative Analysis:** This paper conducts qualitative content analysis by reviewing case studies, and narrative data from academic sources for additional understanding, especially on the causes of Impunity. Furthermore, quantitative data was obtained from academic research and reports to measure the level of impunity, as well as the accountability systems.
- **Synthesis of Findings:** Combining all the collected data from the sources, it is possible to offer a comprehensive picture of the causes of impunity and the accountability mechanisms. This is the process of combining non-numerical and numerical data to enable research findings.

CHAPTER I: HISTORY

It's believed that impunity has been embedded in human civilization since we evolved into intelligent beings. Just as nature has bestowed upon us various physical attributes like height, size, and strength, it has also endowed us with unique intellectual capacities. This inherent diversity among humans naturally creates disparities within society, with those possessing greater intelligence and physical power often enjoying privileges and advantages over others. This inequality in human society gives rise to issues of power distribution, leading to the establishment of social hierarchies and statuses. Over time, these disparities in equality have only widened, exacerbating the challenges faced by humanity today.

I. Impunity in the past?

1. Lack of Robust legal rules, laws, and Well established social norm

In the distant past, the lack of severe regulations and established social norms was primarily responsible for the prevalence of impunity. Where there were little or no written rules, punishments were inconsistent or absent, allowing certain individuals in positions of authority to get away with most crimes. This left the weak without laws to protect them, and vengeance consumed the majority of their life leading to the cycle of revenge and retribution.⁴⁵

Furthermore, when laws and regulations existed in the past few centuries, there was a lack of Rule of Law implying that wealthy and powerful individuals benefited from such distorted arrangements.⁴⁶ As the issue was exacerbated by a lack of central authority influence and systematic enforcement, making it difficult to enforce the law, resulting in increased impunity and corruption in numerous locations because there were no well-established laws and regulations, and even when there were some in the past, they tended to contain many loopholes which make it easy to exploit.⁴⁷

The Hittite Empire (1600-1180 BCE): The Hittites, a great civilization in Anatolia (modern-day Turkey), developed a sophisticated legal system. However, much of its enforcement was based on the king's judgment and the accuser's authority. Powerful people, particularly those close to the king, may frequently behave with impunity.⁴⁸ In this case, the Hittite legal code existed, but its enforcement was not always consistent, particularly for the powerful. This lack of consistent application created a situation where powerful figures could potentially act with impunity.

2. Lack of means and method of monitoring and enforcement

The advancements in technology have greatly enhanced the means and methods to commit crimes. However, it also enhanced law enforcement and monitoring capabilities. Despite these gaining access to and knowledge of all situations and crimes committed worldwide can still be challenging. It's important to recognize that in the past, without the aid of the advanced technologies and resources available today, the difficulties and limitations faced by law enforcement and governing

⁴⁵ Peerenboom, R., & Zurn, M. (2012). From rule of law promotion to rule of law dynamics. In R. Peerenboom, M. Zurn, & A. Nollkaemper (Eds.), *Rule of law dynamics: In an era of international and transnational governance* (Cambridge University Press) (pp. 305-328).

⁴⁶ Slater, D. (2010). *Ordering power: Contentious politics and authoritarian leviathans in Southeast Asia*. Cornell University Press. (p. 9-24)

⁴⁷ Ibid.

⁴⁸ Gurney, O. R. (1990). *The Hittites*. Penguin Books. (p. 59).

authorities were even more pronounced.⁴⁹ So, this underscores the significant strides we've made in enhancing our ability to address and prevent crime with the aid of modern technology.

Additionally, central authority in ancient times was not as robust as it is today, with power often concentrated in the hands of territorial lords or rulers. As a result, governance and oversight were less effective, particularly in distant territories where control was tenuous.⁵⁰ Moreover, the vastness of territories under the lord's control, which most of the time run by only a small portion of the population, so it meant that they were often unaware of all the activities taking place within their domains due to limited resources, methods, and mechanisms for monitoring as well as enforcing.⁵¹ This is why this is a massive loophole where crime could easily take advantage and escape from law enforcement which then leads to impunity.

3. Unintentional injustice and impunity

The lack of effective investigative methods in the past has undoubtedly contributed to impunity. As such investigations of the past often lacked the support of advanced tools such as toxicology, fingerprints, and DNA evidence. Instead, people's reliance was placed on eyewitness testimonies, and confessions which are often obtained under oppression, and circumstantial evidence, all of which are prone to inaccuracies.⁵² Additionally, biases based on social class, race, or gender could result in overlooking suspects or dismissing leads that did not fit preconceived notions. This led to certain groups being wrongly accused while the true perpetrators escaped justice. Furthermore, the absence of proper crime scene protocols meant that evidence could easily be compromised or lost, making it challenging to build a robust case against suspects.⁵³ Besides, in some regions, the use of unethical or religious methods to identify criminals and conduct trials was unreliable. For example, relying on religious rituals or prayers to reveal the perpetrator lacked scientific validity and could not be proven. Consequently, these ineffective methods in the past significantly contributed to impunity.⁵⁴

As such these are some factors that could possibly lead to wrongful accusations and criminals escaping:

- **False Confessions:** Innocent individuals may confess to crimes they did not commit when subjected to torture or threats of violence.
- **Mistaken Identity:** Eyewitness misidentification, particularly common before the advent of photography and widespread literacy, significantly contributes to wrongful convictions.
- **Focus on the Wrong Suspect:** Investigative tunnel vision and confirmation bias may lead authorities to fixate on a particular suspect, disregarding evidence that implicates others, thereby allowing the true perpetrator to evade capture.

⁴⁹ Kumar, C. R. (2011). *Corruption and human rights in India: Comparative perspectives on transparency and good governance*. Oxford University Press. (P. 16).

⁵⁰ Hadiz, V. (2010). *Localizing power in post-authoritarian Indonesia: A Southeast Asia perspective*. Stanford University Press. p. 48.

⁵¹ Ibid., 49.

⁵² Reedy, K. (2005). *The problem of unintended consequences in international law*. *Michigan Law Review*, 103(6), (p. 45.)

⁵³ Haberkorn, T. (2018). *In plain sight: Impunity and human rights in Thailand*. University of Wisconsin Press. (P.62).

⁵⁴ Ibid.

4. Corruption and impunity of the past

Corruption has been deep-rooted in human civilization since its early stages of evolution and the development of societal structures. Initially employed as a means to gain favor or induce indebtedness, corruption has evolved alongside human civilization into the bribery practices we recognize today.⁵⁵ This indicates that corruption is not a novel issue confined to modern times. In fact, corruption and bribery cultures were more prevalent in the past due to the ineffectiveness of legal systems and law enforcement mechanisms.

Corruption has historically hindered the pursuit of justice, enabling criminals to evade punishment through various means such as:

- Bribery: Corrupt officials could be bribed to engage in misconduct such as turning a blind eye to crimes, tampering with evidence, or exerting influence over judicial proceedings, leading to compromised outcomes.⁵⁶
- Intimidation: Individuals exposing corruption, such as whistleblowers or journalists, faced threats, harassment, or imprisonment, silencing them and deterring others from speaking out. This climate of fear has continued to reinforce corruption.⁵⁷
- Weakened Institutions: Corruption undermines public trust in law enforcement and the justice system, discouraging individuals from reporting crimes or cooperating with investigations. This lack of cooperation impedes efforts to apprehend criminals and uphold justice.⁵⁸

II. Impunity countermeasure of the past

1. Societal rules and legal law

There has been development of laws and regulations throughout history that aimed to address impunity despite varying degrees of effectiveness and vulnerability to exploitation. And while the mechanisms for combating crime in the past may have differed from contemporary legal systems, the concept of utilizing rules and regulations to uphold justice is not a recent innovation. In distant and recent past these measures took various forms, including religious rules, societal norms, traditions, and customs, tribal laws, and judicial decisions.⁵⁹ Despite their differences, these early forms of legal frameworks also played a miniature role in mitigating and reducing impunity within their respective societies.

Regarding impunity, the notion that individuals can commit crimes without facing repercussions has presented a persistent challenge throughout history. While the concept of universal law and justice has evolved over time, past civilizations employed various methods to promote accountability:

⁵⁵ Burgis, T. (2015). *Kleptocracy: The Global Struggle for Justice Against Stolen Wealth*. Penguin Books. (p. 4)

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid., 5.

⁵⁹ Hart, H. L. A., & Green, L. (2015). *The concept of law* (3rd ed.). Oxford University Press. (p. 45).

- **Formal Law and Justice Systems:** Ancient societies, such as Mesopotamia with the Hammurabi Code (18th century BCE), established codified laws and judicial systems.⁶⁰ However, enforcement often wavered allowing powerful figures to evade punishment.⁶¹
- **Social Codes:** Unwritten social codes governed conduct in many societies, with violations met by exile, blood feuds, or community-sanctioned retribution. Despite providing some accountability, these systems could perpetuate violence.⁶²
- **Transitional Justice:** Although the concept of transitional justice is more recent, historical instances, such as the Roman Republic's trials of former governors, demonstrate attempts to hold perpetrators of past atrocities accountable during shifts in power.⁶³

As evidence in China's Qin Dynasty (221-206 BCE): The Qin Dynasty developed a strict legal system with set punishments for numerous crimes. This system was designed to dissuade crime and ensure that everyone, regardless of social rank, suffered the repercussions of breaking the law. Countless trials and punishments have been documented in historical documents, including those of high-ranking officials.⁶⁴

2. Criminal courts of the past

Obviously, the concept of legal courts has existed throughout history, although the composition and practices may have varied from contemporary standards. In ancient times, the role of judges differed from modern judicial systems. Unlike today, where judges are typically independent entities with legal expertise, in the past, trials were often presided over by individuals in positions of power, such as tribal chiefs, territorial lords, kings, or emperors.

While the idea of scholars or legal experts serving as judges was not as widespread in ancient times, the concept of courts to adjudicate criminal matters did exist. These courts, despite with different structures and procedures, both served as venues for resolving disputes and dispensing justice within their respective societies.⁶⁵

Criminal courts played a significant role in combating impunity in past eras, although their effectiveness was somewhat constrained. These courts offered a structured framework for investigating and prosecuting crimes, providing a more impartial alternative to revenge-based systems or the arbitrary judgments of rulers.⁶⁶ Furthermore, the threat of punishment through a court system served as a deterrent to potential criminals, thereby reducing overall crime rates⁶⁷. Additionally, court proceedings created a public record of offenses and punishments, serving as a reminder of the authority of the law.

As evidenced in England's Assize Courts (12th-19th Centuries): These mobile courts transported the justice system to various parts of England. They heard both civil and criminal

⁶⁰ King, L. W. (Translator). (1910). *The Code of Hammurabi: Translated by L. W. King*. The Colonial Press.

⁶¹ Ibid.

⁶² Sachs, S. E. (2013). The unwritten constitution and unwritten law. *University of Illinois Law Review*, 2013(5), 1797-1845. (P. 17).

⁶³ Gruen, E. S. (1984). *The Hellenistic World and the Coming of Rome*. University of California Press. (p.2).

⁶⁴ Keay, J. (2009). *The History of China*. Basic Books. (p. 16)

⁶⁵ Ashman, A., & Parness, J. A. (1974). The concept of a unified court system. *DePaul Law Review*, 24(1), (pp. 1-33).

⁶⁶ Ibid.

⁶⁷ Ibid.

matters, establishing a method for punishing crimes outside local jurisdiction. The records reveal trials for charges like theft, assault, and murder, proving efforts to hold offenders accountable.⁶⁸

3. Public opinion

Public opinion has had a minor impact on government policies throughout history in different contexts. This said, it is common knowledge that most of the time leaders enjoy enormous powers and freedom to commit crimes without being held liable. However, they cannot act with complete impunity as they are subject to scrutiny by society.⁶⁹ Although it is not decisive at all times, collective society may bring an element of responsibility in governance. As public dissatisfaction and demonstrations can be used to pacify excessive abuse of power on the side of politicians regardless of who they are. Consequently, public opinion does not have a vast impact on the fight against impunity but it still has its role in strengthening the rule of law and encouraging adherence to ethical standards.⁷⁰

Throughout history, public opinion wielded influence in curbing impunity despite of varying degrees of effectiveness influenced by the prevailing social and historical context. It serves as a tool for raising awareness and exerting pressure on authorities.⁷¹ In instances of crime or injustice, public outcry can draw attention to the matter and compel authorities to respond. This may manifest through protests, petitions, or media campaigns, as seen in historical movements for civil rights or against police brutality.

- **As Evidence, The Civil Rights Movement in the United States (1954-1968):** The prolonged public indignation, protests, and boycotts organized by African Americans, combined with media coverage, put pressure on the US government to confront racial segregation and discrimination. This finally led to landmark laws such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965.⁷²
- **As Evidence, The Tiananmen Square Protests in China (1989):** Despite the fact that the protests were violently suppressed, the international outrage and public condemnation of the Chinese government's conduct highlighted public opinion's potential power, even in the face of authoritarianism.⁷³

4. Religion reduce impunity

Religion has been a longstanding institution that comes before the modern era, influencing societies throughout history and playing a significant role. Particularly in times when legal systems were still evolving, religion served as a crucial stabilizing force, providing structure and order to human civilization. Many countries' legal systems and rules have been greatly influenced by religious principles and teachings.⁷⁴

⁶⁸ Stephen, H. J. (1883). *A History of the Criminal Law of England*. Cambridge University Press. (p. 3).

⁶⁹ Axelrod, R. (1967). The structure of public opinion on policy issues. *Public Opinion Quarterly*, 31(1), (pp. 51-60).

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Anderson, C. (2019). *Freedom on the move*. W. W. Norton & Company. (p. 19).

⁷³ Meisner, M. (1990). The Tiananmen Square protests: A reinterpretation. *The Australian Journal of Chinese Affairs*, (33), (pp. 1-61).

⁷⁴ Johnson, B. R., & Jang, S. J. (2010). Crime and religion: Assessing the role of the faith factor. In R. Tewksbury & C. D. Brantingham (Eds.), *Contemporary issues in criminological theory and research: The role of social institutions* (Sage Publication) (pp. 117-150).

Religion has also served as a forum for fostering understanding and unity among people, despite differences in beliefs. While various religions may offer different explanations and interpretations of the world, a common theme across many is the encouragement of virtuous behavior and peaceful coexistence. The belief in divine justice, where wrongdoing will not go unpunished, serves as a deterrent to crime and contributes to the reduction of impunity.⁷⁵

In essence, religion has historically played a vital role in promoting morality, fostering social cohesion, and deterring criminal behavior, thereby contributing to efforts to combat impunity. The relationship between religion and reducing impunity is indeed complex, with varying degrees of impact on actual practices. So, these are some ways in which religion can potentially contribute to reducing impunity:

- **Moral Code:** Many religions emphasize moral values and ethical principles that condemn criminal behavior and advocate for justice. These teachings can instill a sense of accountability and responsibility among adherents, creating societal expectations for holding wrongdoers accountable.⁷⁶
- **Religious Authority:** Religious leaders often wield significant influence and moral authority within their communities. They can act as guardians, speaking out against injustice and advocating for the fair enforcement of laws by authorities.⁷⁷
- **Rituals and Practices:** Some religious traditions incorporate rituals or practices aimed at addressing wrongdoing and seeking forgiveness. Public confessions or acts of redemptions may serve as deterrents against future misconduct and promote accountability.⁷⁸
- **Social Cohesion:** Religion can foster strong communal bonds and a sense of belonging among its followers. In close-knit religious communities, members may hold each other accountable for their actions and encourage adherence to moral principles, thereby reducing the likelihood of impunity.

While religion has the potential to play a positive role in reducing impunity through these mechanisms, it is important to recognize that the actual impact may vary depending on factors such as cultural context, interpretation of religious teachings, and the integrity of religious leaders and institutions.

As evidence Abrahamic Law Codes (Judaism & Islam): These codes prioritize fair trials, recompense for victims, and proportionate punishments. While execution differed, their goal was to construct a just legal system.⁷⁹

⁷⁵ Liverani, M. (2004). Divine justice and early law: The case of ancient Mesopotamia. *Journal of the American Oriental Society*, 124(4), (pp. 387-405).

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Shamsy, A., & Coulson, N. J. (2024, July 3). *Sharia*. In *Encyclopædia Britannica*. Retrieved From <https://www.britannica.com/topic/sharia>

CHAPTER II: EVOLUTION OF LAW TO MITIGATE IMPUNITY

Based on common law codification of Laws is the “process of compiling rules and laws into an orderly, formal code. The code is a systematic compilation of existing laws to be included in a legislative statute. It is a compilation of all the laws in force, including the enacted laws and case law, covering a complete legal system or a specific area.”⁸⁰

Based on civil law codification is the act or process of framing systematic body of law: it may be real codification, entailing a comprehensive reform and the creation of a new body of laws and it can also be constant-law codification, which requires reclassification of existing laws by not changing it substances.⁸¹

The establishment of nation-states and the codification of laws in the 17th and 18th centuries marked an important turning point in the evolution of legal systems, with a greater focus placed on holding individuals accountable for their actions regardless of their economic status.⁸² This time witnessed the emergence of modern legal frameworks that attempted to offer defined standards and procedures for resolving conflicts and administering justice.

I. Regulation of the 17th, 18th and 19th centuries

1. Development of Nation-States and Codified Laws

During the 17th and 18th centuries, centralized nation-states consolidated authority across Europe. Monarchs and rulers attempted to exert their power over their territories, resulting in the development of centralized legal systems. One important development during this period was the codification of laws, which involved the methodical writing down of legal concepts and rules and their uniform application across the world.⁸³

The codification of laws helped to create a more structured and predictable legal environment, setting the framework for the contemporary legal notion of holding people accountable for their acts based on a consistent set of standards. Individuals, regardless of socioeconomic rank, were increasingly subject to the same legal norms and might be held accountable for their actions.⁸⁴

2. Continue Impunity among the Elites

Despite advances in legal systems, strong elites frequently acted with impunity due to their connections and relationships that they have with political and judicial authorities. Since the law was not always applied fairly, and persons with wealth, social prestige, or political power might occasionally avoid consequences for their conduct.⁸⁵ However, the increased codification of laws and the establishment of legal institutions were steps toward greater accountability and the rule of law.

⁸⁰ Cornell University. (2023, October 26). codification | Wex | US Law | Legal Information Institute. Retrieved from <https://www.law.cornell.edu/wex/codification>

⁸¹ Van der Vlies, P. (2017). Codification as a legal reform mechanism. *Eleven Journal of Law and Regulation*, 4, 19-36.

⁸² *Supra* note. 80.

⁸³ *Rule of Law*. (2022, June 22). Retrieved from <https://plato.stanford.edu/entries/rule-of-law/>

⁸⁴ *Ibid*.

⁸⁵ *Ibid*.

3. Rise of International Law and Humanitarian Principles in the 19th Century

Significant advancements in humanitarian principles and international law occurred in the 19th century, especially in response to the atrocities of war and the necessity of protecting civilians during armed conflicts. The First Geneva Convention of 1864, officially “**Convention for the amelioration of the condition of the wounded in war**” which was adopted on 22nd August 1864 and entered into force on 22nd June 1865, was a turning point in the evolution of international humanitarian law, that established a precedent for following treaties and conventions aimed at protecting persons during times of armed conflict, and it has greatly enhanced human rights and fight for accountability.⁸⁶ These agreements sought to control the conduct of war and safeguard the rights of prisoners of war and civilians while fighting wars. The protection of injured soldiers, the creation of unbiased humanitarian groups like the Red Cross, and the acceptance of specific military regulations, such as the ban on attacking civilians, were among the fundamental ideas.⁸⁷ The emergence of humanitarian principles and international law marked a change in the approach to holding governments responsible for crimes and atrocities committed during hostilities. The Geneva Conventions established the groundwork for subsequent attempts to hold people accountable for transgressions of international humanitarian law, even if their primary goal was to regulate the conduct of nations and military forces. In general, there have been notable advancements in the establishment of legal frameworks intended to promote accountability and fight impunity at the national and international levels during the 17th, 18th, and 19th centuries. The efforts to hold people and governments accountable for crimes against humanity, war crimes, and other atrocities continued to advance, and these accomplishments laid the groundwork for subsequent advancements in the 20th and 21st centuries.

II. 20th century and beyond

In the twentieth century and beyond, notably in the aftermath of World Wars I and II, considerable advances were made in legal frameworks aimed at combatting impunity and holding individuals accountable for war crimes, genocide, and crimes against humanity. Here are some important developments.

1. Post-World War I

The Treaty of Versailles (art-227)

The Treaty of Versailles, signed on June 28, 1919, signaled the conclusion of World War I and imposed severe sanctions on Germany. Article 227 of the treaty dealt especially with the subject of individual responsibility for war crimes and atrocities perpetrated during the conflict.⁸⁸ The notion of refusing impunity arose in response to the tragedies of World War I, which saw unparalleled levels of violence, including the use of chemical weapons and mass crimes against

⁸⁶ International Committee of the Red Cross (ICRC). (n.d.). *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (First Geneva Convention). Retrieved from <https://ihl-databases.icrc.org/en/ihl-treaties/gc-1864>

⁸⁷ Ibid.

⁸⁸ Schulenburg, W. J. (2003). *The triumph of empathy: How the treaty of Versailles made the world safe for democracy*. W. W. (Norton & Company) (p. 14).

civilians. Following the conflict, there was a general feeling that those guilty for such atrocities should be held accountable and that the concept of impunity for such crimes should be abandoned.⁸⁹

Article 227 of the Treaty of Versailles stated: "The Allied and Associated Governments formally accuse William II of Hohenzollern, the former German Emperor, of a supreme violation of international morality and treaty sanctity.⁹⁰ A special tribunal will be formed to try the accused, providing him all the assurances necessary for his right to a defence. It will be made up of five judges, one nominated by each of the following powers: the United States of America, Great Britain, France, Italy, and Japan." This explicitly attacked the previous German Emperor, Wilhelm II, and held him directly accountable for the war. It asked for the formation of a special tribunal to try him for his actions, safeguarding his right to defend himself while also signifying a substantial shift away from traditional state-centric approaches to accountability in international law.

Article 227 of the Treaty of Versailles indicated a growing realization of the importance of individual accountability for war crimes.⁹¹ It established a precedent for future efforts to hold individuals accountable for war crimes, crimes against humanity, and genocide, laying the groundwork for institutions such as the International Military Tribunal at Nuremberg after WWII and the International Criminal Court in the modern era.⁹²

In the aftermath of the First World War, there was a political will to promote in public opinion the idea that crime should not go unpunished (emergence of the principle of the rejection of impunity). The Member of Parliament for Lille, Mr. Dolory, demanded trial, declaring: "not to demand justice would be a crime against France, a crime against humanity". It is in this context that Article 227 was drafted. It suggests that there may be a new international criminal order powerful enough to establish universal legal rules.

This is the first time in history that a Head of State has been indicted. A special court was to be set up to try the accused with the essential guarantees of the right of defense. It was to be composed of five judges, appointed by each of the following five Powers: the United States of America, Great Britain, France, Italy and Japan; the tribunal was to judge on grounds inspired by the highest principles of international politics, with a view to ensuring respect for solemn obligations and international commitments and international morality.⁹³ This is an attempt to establish the universality of international criminal justice. But because it was to be for this court to determine the sentence it considers should be applied, the principle of legality was not respected. In the end, the Netherlands refused to extradite the Emperor to the Allied Powers, which would then abandon the idea of creating this international tribunal, leaving only the German Supreme Court, which would only hold 21 officers responsible. Nevertheless, it is worth noting the extent of the progress because first of all it realizes the affirmation of a new legal conception according to which perpetrators of war crimes must answer in justice (principle of individual responsibility in

⁸⁹ Ibid.

⁹⁰ Schwartz, J. M. (2019, August 21). Trying and Failing to Put Kaiser Wilhelm II on Trial. *Lawfare* [Lawfare Institute].

⁹¹ Treaty of Versailles, June 28, 1919, Article 227.

⁹² Ibid.

⁹³ Schwartz, J. M. (2019, August 21). Trying (and Failing) to Put Kaiser Wilhelm II on Trial. *Lawfare* [Lawfare Institute]. (p.2).

international criminal law), also because article 227 of the Treaty of Versailles contains a universal vision with principles applicable to all and above States.

Overall, the Treaty of Versailles was one of the most noticeable treaties that took action against high-ranking monarch “Kaiser Wilhelm II” to make him accountable for his actions. These actions have long been overlooked as such because people of his caliber are usually above the law itself. So, the Treaty of Versailles was kind of one of the first and most noticeable ones that brought people's attention to certain problems and the emergence of the principle of the rejection of impunity, as everyone is equal before the law, no matter who they might be, they should always take accountability for their action. Besides this, the Treaty of Versailles were also one of the first treaties that led to the evolution of the international criminal laws and courts that exist today.

2. Post-World War II

The Nuremberg Trials (1945-1946):

The tragedies of World War II, particularly the Annihilation and other atrocities committed by the Nazi dictatorship, compelled the international community to take unprecedented measures to hold individuals accountable for war crimes, crimes against humanity, and genocide. The Nuremberg Trials, which took place in Nuremberg, Germany, between 1945 and 1946, were a great breakthrough moment in international law.⁹⁴ The trials saw senior Nazi commanders charged with planning, initiating, and carrying out the Destruction and other war crimes.

The Nuremberg Trials established several significant legal doctrines, including the concept of individual criminal responsibility for conduct taken during conflict, the prohibition of crimes against humanity, and the acknowledgment of genocide as a global crime. The trials also provided the groundwork for subsequent efforts to establish international criminal justice procedures, such as the modern-day International Criminal Court (ICC).⁹⁵

The Tokyo Trials (1946-1948):

In addition to the Nuremberg Trials, the world community organized the world Military Tribunal for the Far East, better known as the Tokyo Trials, to punish those responsible for war crimes and atrocities committed during World War II in Asia and the Pacific.⁹⁶ The Tokyo Trials, which ran from 1946 to 1948, involved the prosecution of Japanese military and government officials for their roles in planning and carrying out aggressive warfare, atrocities against civilians, and other crimes.

The Tokyo Trials, like the Nuremberg Trials, contributed to the evolution of international law by establishing precedents for holding persons accountable for crimes against humanity, war crimes, and other international crimes. While the Tokyo Trials got less publicity than the Nuremberg Trials, they were still a significant step toward justice for victims of wartime atrocities in the Asia-Pacific area.⁹⁷

⁹⁴ Heydecker, J. J., & Leeb, J. (1975). *Judgment at Nuremberg*. Penguin Books. (p. 13)

⁹⁵ Ibid.

⁹⁶ Minear, R. H. (1971). *The Tokyo Trials: A functional and comparative history*. Princeton University Press. (p. 1).

⁹⁷ Ibid.

Overall, the post-World War I and World War II eras saw tremendous progress in the establishment of legal systems aimed at reducing impunity and fostering accountability for war crimes and atrocities. The Nuremberg and Tokyo trials, in particular, had a significant impact on formulating international criminal law concepts and establishing methods for holding persons accountable for egregious abuses of human rights and humanitarian law.

Universal Declaration of Human Rights (1948):

The Universal Declaration of Human Rights (UDHR), established by the United Nations General Assembly in 1948, is regarded as a fundamental document in the promotion of human rights and combating impunity. Among its provisions, the UDHR upholds everyone's fundamental right to a fair trial and access to justice. By enshrining these values in an internationally recognized text, the UDHR helped to promote accountability and combat impunity on a worldwide scale.

Rise of International Criminal Justice:

The latter half of the twentieth century saw an increase in international efforts to establish procedures for holding persons accountable for serious human rights breaches. Building on the precedents set by the Nuremberg and Tokyo Trials, the international community established permanent organizations to prosecute individuals for genocide, war crimes, and crimes against humanity. One of the most notable achievements in this regard was the formation of the International Criminal Court (ICC) in 2002. The ICC is the first permanent international court with the authority to prosecute persons for the most severe crimes of global significance. The International Criminal Court (ICC) is an important vehicle for combating impunity and promoting accountability on a global scale since it provides a platform for the prosecution of those accountable for significant human rights crimes.⁹⁸

Transitional Justice:

Transitional justice is a combination of measures implemented by countries transitioning from conflict or authoritarian rule to rectify previous human rights violations and promote accountability. Truth commissions, prosecuting criminals, restitution for victims, institutional reforms, and measures to foster reconciliation and avoid future impunity are all examples of transitional justice processes.⁹⁹ Transitional justice measures seek to achieve a balance between responsibility and reconciliation, acknowledging the need of correcting historical injustices while also laying the groundwork for long-term peace and democracy. Transitional justice is important in promoting peace, democracy, and respect for human rights in post-conflict and post-authoritarian states because it addresses the legacy of human rights violations and promotes accountability for previous atrocities.¹⁰⁰

Overall, the twentieth century and beyond saw tremendous progress in the battle against impunity and the promotion of responsibility for serious human rights crimes. From the founding of

⁹⁸ Schabas, W. A. (2004). *The International Criminal Court and the transformation of international law*. Oxford University Press. (p. 2)

⁹⁹ Robinson, N. (2018). *Transitional justice: Global practices and challenges* (2nd ed.). Routledge. (p. 43).

¹⁰⁰ Ibid.

international criminal tribunals to the implementation of transitional justice measures, these developments are significant milestones toward creating a more just and humane world.

United Nations Convention against Corruption (UNCAC):

The United Nations Convention Against Corruption, established by the United Nations General Assembly in 2003, is the most comprehensive international convention fighting corruption. It lays out a framework for combating corruption, prosecuting perpetrators, and retrieving stolen assets. The UNCAC helps to promote accountability and reduce impunity by tackling corruption, which frequently entails the misuse of authority and privilege. The convention mandates member nations to put in place measures to fight corruption, such as implementing anti-bribery legislation and establishing anti-corruption agencies, in order to hold individuals and institutions accountable for corrupt actions.¹⁰¹

Rome Statute: Establishment of ICC:

The Rome Statute, passed in 1998 and put into effect in 2002, establishes the ICC as the first permanent international criminal court with jurisdiction over the most serious crimes of international concern, such as genocide, war crimes, crimes against humanity, and the crime of aggression.¹⁰² The International Criminal Court (ICC) is established to prosecute persons guilty for these crimes when national jurisdictions are unable or unwilling to do so, ensuring that criminals cannot dodge justice by seeking sanctuary in countries without the capacity or political will to pursue.¹⁰³

Individual Criminal Responsibility:

The Rome Statute emphasizes the principle of individual criminal responsibility. Individuals who commit or order the commission of significant international crimes are held personally liable for their actions.¹⁰⁴ This principle directly combats impunity by guaranteeing that individuals, regardless of official competence or position of authority, are held accountable for their involvement in crimes.

Complementary:

The Rome Statute is based on the idea of complementarity, which means that the ICC complements rather than replaces national jurisdictions. In other words, the ICC prosecutes cases only when national authorities are unwilling or unable to conduct thorough investigations and prosecutions of individuals accused of international crimes. By highlighting the essential responsibility of national authorities in combating impunity, the Rome Statute urges states to strengthen their legal systems and promote domestic accountability.¹⁰⁵

¹⁰¹ Transparency International. (2006). *Combating Corruption: The Role of the United Nations Convention against Corruption*. <https://www.transparency.org/en>

¹⁰² International Criminal Court (ICC). (n.d.). Website: <https://www.icc-cpi.int/>. Retrieved April 21, 2024.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Schabas, W. A. (2010). *The Rome Statute of the International Criminal Court: A Commentary*. Oxford University Press. (p. 1).

No impunity for head of States:

Importantly, the Rome Statute specifically specifies that acting in an official role, even as a head of state or government, does not absolve individuals of criminal culpability under international law.¹⁰⁶ This provision assures that even the most senior officials cannot seek immunity from prosecution for serious international crimes. Overall, the Rome Statute and the ICC it formed are significant advancements in the global struggle against impunity. The Rome Statute helps to ensure that perpetrators of the most serious crimes under international law are held accountable for their actions, contributing to deterrence, justice, and the protection of human rights around the world.

International Criminal Court (ICC):

The International Criminal Court (ICC), founded in 2002 by the Rome Statute, is the world's first permanent international court with jurisdiction over the most serious crimes of international concern, such as genocide, war crimes, crimes against humanity, and aggression. When national authorities are unable or unwilling to prosecute the perpetrators of these crimes, the ICC takes action. By bringing perpetrators of egregious human rights crimes accountable, the ICC contributes significantly to the fight against impunity and the promotion of justice on a worldwide scale.¹⁰⁷

National Anti-Corruption law:

National anti-corruption laws are critical instruments for combating impunity because they criminalize corruption, prosecute criminals, discourage corrupt behavior, promote openness and accountability, and improve the rule of law. They create legal norms and repercussions for corrupt behavior, give law enforcement authorities the authority to investigate and prosecute cases, and promote societal integrity. By holding individuals accountable for their acts, these laws help to prevent and reduce corruption, develop trust in government institutions, and promote an accountability culture.

¹⁰⁶ Ibid.

¹⁰⁷ International Criminal Court (ICC). (n.d.). Rome Statute. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>. Retrieved April 21, 2024.

CHAPTER III: IMPUNITY IN SOUTHEAST ASIA

Brunei: The Implementation of Sharia Law

In 2019, Brunei imposed strict laws under Sharia, which were the implementation of laws that involved stoning as punishment for crimes such as adultery and homosexuality.¹⁰⁸ On an international level, these laws faced an outcry in which various human rights organizations claimed the punishments to be inhuman and barbaric.

Analyses: Under international pressure, nevertheless, the Brunei government justified those laws and claimed that they were in line with the religious and cultural values of the country.¹⁰⁹ The case of Brunei and the imposition of Sharia law represent a tension between state sovereignty and international human rights norms. These have raised concerns from the United Nations and other international bodies over what the laws portend on the affected, especially the LGBTQ+ community and women.¹¹⁰ While Brunei has obligations towards several international human rights treaties, the government applies impunity in the execution of such laws without the mandate of being a legally accountable externalized source.

Cambodia: Impunity under the Regime of Lon Nol (1970-1975)

In the period from 1970 to 1975, Cambodia experienced yet more chaos when General Lon Nol's military dictatorship that had come to power through a coup d'état embarked on mass murder. It was targeted at civilians, particularly those suspected to be sympathizers of the Khmer Rouge or in support of Vietnamese interests. These killings targeted military-ravaged villages across the Cambodian countryside, ending thousands of lives. Though such actions were well documented by international observers and in local reports, none of the perpetrators was prosecuted for these crimes.¹¹¹

Analyses: At the same time, the atrocious crimes committed under the Lon Nol regime set a dangerous precedent in Cambodian politics, fostered a culture of impunity, and culminated in the most notorious bloodbath to be conducted by any regime, the Khmer Rouge. According to historians like David Chandler, the abuses of the government were followed in a general pattern of impunity that has spilled over and had continuing effects on Cambodian society and the lack of prosecution during that period undermined efforts at establishing the rule of law in Cambodia in which political influence has considerably weakened the judicial system, which is mostly unable to prosecute high-level offenders, especially if they are affiliated with the ruling class.¹¹²

Indonesia: The Killing of Munir Said Thalib (2004)

In 2004, Munir Said Thalib one of the forefront human rights activists in Indonesia was murdered on his way to the Netherlands. He had been poisoned with arsenic, allegedly by agents linked to

¹⁰⁸ Brunei Government. (2019). *Statements on Sharia Law and Religious Practices*.

¹⁰⁹ Ibid.

¹¹⁰ United Nations General Assembly. (2019). *Statements Regarding Human Rights in Brunei*.

¹¹¹ Kiernan, B. (1996). *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79*. Yale University Press.

¹¹² Chandler, D. (2008). *A History of Cambodia*. Westview Press.

Indonesia's state intelligence agency. Although one intelligence officer was convicted, some of the main actors that are thought to have masterminded the operation were not brought to justice.¹¹³

Analyses: The case of Munir's assassination is just an addition to the previous unsatisfactory investigation process, where powerful state actors failed to ensure justice with respect to human rights violations in Indonesia and though the killing has left many Indonesians calling for justice and many civil society groups turning up the pressure on the government.¹¹⁴ Human rights organizations such as Amnesty International and the Indonesian Legal Aid Foundation have long criticized the government's actions and the Investigations into these contentious activities by the Indonesian National Commission on Human Rights (Komnas HAM) have yielded inconclusive results, and the primary subjects, who are mostly politicians with strong political networks, have been cleared of their actions due to an ineffective judicial body that lacks independence.¹¹⁵ As such, this impunity reflects a broader issue in Indonesia, as state agencies are rarely prosecuted for human rights violations, particularly when such incidents are perceived to serve national security goals (Hadipuro, 2018).

Laos: The Enforced Disappearance of Sombath Somphone (2012)

In this case, the police stopped Lao civil society leader Sombath Somphone at a checkpoint in Vientiane in December 2012 and security camera footage showed him being taken away in a car, and he has not been seen since then. However, despite vigorous international pressure and an excessive number of evidence showing state involvement, the Lao government has consistently denied its implication in his disappearance and has refused to conduct a meaningful investigation.¹¹⁶

Analyses: The case of Sombath Somphone exemplifies impunity in Laos, a country where the state holds a firm grip over civil society and often uses its security apparatus to curb dissent. Most scholars and international organizations consider it a sign of patterns of enforced disappearance in Laos, where activists and critics of the government are usually held or disappear without a trace in which the Lao judicial system is seen as an instrument of state repression lacking of independence and incapable of making inquiries into abuses of human rights (UNWGEID, 2020).¹¹⁷ ASEAN's Intergovernmental Commission on Human Rights (AICHR) and international bodies such as the United Nations Working Group on Enforced or Involuntary Disappearances have repeatedly called for accountability, but Laos remains resistant to external pressure.¹¹⁸

Malaysia: Enforced Disappearances of Amri Che Mat and Raymond Koh

There were two cases of very high-profile disappearances in Malaysia between 2016 and 2017. The first, Amri Che Mat, was a social activist, and the second, Raymond Koh, was a Christian pastor.

¹¹³ Amnesty International. (2019). *Indonesia: Time to Break the Silence on Munir's Case*.

¹¹⁴ UN Human Rights Council. (2020). *Reports on Human Rights in Indonesia*.

¹¹⁵ Indonesian Human Rights Commission (Komnas HAM). (2016). *Munir Case: Investigative Report*.

¹¹⁶ UN Working Group on Enforced or Involuntary Disappearances. (2020). *Communications on the Disappearance of Sombath Somphone*.

¹¹⁷ Ibid.

¹¹⁸ ASEAN Intergovernmental Commission on Human Rights (AICHR). (2019). *Human Rights Reports on Laos*.

They were individually abducted under very mysterious circumstances. Subsequent investigations point toward the involvement of the Malaysian Special Branch, in which there was no significant prosecution and accountability for the disappearances.¹¹⁹

Analyses: The disappearances of Amri and Koh have come to symbolize religious intolerance and impunity in Malaysia from its state security forces. It is argue that at core issue in these cases is an intersection highlighting between state power and religious authority in which those who challenging the dominance of either religious or political order are being targeted. Independent investigations and public demands for greater accountability and transparency was call upon by Malaysia's Human Rights Commission, even though the little progression was made.¹²⁰ Besides it can also be argue that the lack of judicial independence within the country, as in many instances, members of the state implicated in human rights violations are shielded from facing prosecutions for the cases due to political interference.¹²¹

Myanmar: Military Crackdown on Rohingya Muslims (2017)

In 2017, the Myanmar military conducted a brutal operation against the Rohingya Muslim minority in Rakhine State. The operation, including mass killing, raping, and torching villages, made over 700,000 Rohingya cross into neighboring Bangladesh. This indicated that there was a violation of war crimes and crimes against humanity, such as reports by the UNFFM (2019), however even with overwhelming evidence senior military officials have largely escaped accountability.¹²²

Analyses: The crisis of the Rohingya is a very great example of state impunity within Southeast Asia. In fact, accountability has remained practically challenging despite the case against Myanmar being brought to the ICJ in 2019.¹²³ This can be argued that its military, known as the Tatmadaw, operates almost with complete impunity, shielded by the entrenched power it holds within the government and the support of nationalist elements within the country. While the international community has condemned the violence, it has been unable to take significant steps against Myanmar because of political considerations but also because of opposition from countries like China and Russia, which has prevented action by the UN Security Council.

Philippines: Killings outside the Rule of Law in the War on Drugs

Since the year 2016 the Philippines has been caught in a bloody war on drugs under President Rodrigo Duterte. Thousands of killings of supposed drug offenders by the Philippine National Police, often without witness or concrete evidence, and almost all cases are carried out without due process. Human rights organizations estimate that as many as 30,000 people may have been killed during the campaign, yet very few police officers have been prosecuted.¹²⁴

¹¹⁹ Human Rights Commission of Malaysia (SUHAKAM). (2019). *Report on Enforced Disappearances*.

¹²⁰ United Nations Working Group on Enforced or Involuntary Disappearances. (2020). *Inquiries into Malaysia's Accountability*.

¹²¹ United Nations Working Group on Enforced or Involuntary Disappearances. (2020). *Inquiries into Malaysia's Accountability*.

¹²² United Nations Fact-Finding Mission on Myanmar. (2019). *Report on Atrocities Against the Rohingya*.

¹²³ International Court of Justice. (2019). *Proceedings Regarding Myanmar and the Rohingya Crisis*.

¹²⁴ Philippine National Police. (2019). *Annual Report on the War on Drugs*.

Analyses: Duterte's administration has justified these extrajudicial killings in the battle against drugs and as part of the restoration of public order. But human rights organizations at the international level have describe the campaign as a gross violation of human rights. The International Criminal Court (ICC, 2020) initiated a preliminary examination of the killings, drawing it on the issues of state-sponsored impunity and the non-accountability of the Philippine judiciary.¹²⁵ This case indicated that the administration of Duterte had created an environment where impunity flourished in which political goals were considered over the rule of law and under the authority of the administration the police operate with impunity without fear of repercussion.¹²⁶

Singapore: The Impunity of the Death Penalty and the Judiciary

Singapore is among those countries that have the highest execution rates relative to their population. This is because it is among the States that apply the death penalty to drug offenses with particular strictness. Due to such compelling situations, human rights activist organizations such as Amnesty International are forced to comment negatively on the structure of the judiciary in this country. Therefore, these organizations blame the mandatory death sentences in Singapore for not having a sense of judicial discretion since judges lack the flexibility to decide otherwise based on the unique circumstances of each case, which is unfair and leads to disproportionate punishments.¹²⁷

Analyses: While the government of Singapore argues that the death penalty represents an effective preventive measure against crime, many critics argue that it is representative of an authoritative outlook toward justice, wherein the exercise of state power is least mindful of human rights.¹²⁸ The heavy-handed influence that the government exerts on the judiciary has created a situation where individuals, especially small-time drug offenders sentenced to death with little to no way of judicial safeguards or rights of appeal. As such, while the legal system in Singapore is robust, the death sentences that it might impose on certain criminals might not have been the most deserving, in which might lead to the question of its judicial legitimacy.

Thailand: 2010 Crackdown on Red Shirt Protesters

In 2010, Thailand experienced one of its most remarkable episodes of political violence when the military cracked down on the Red Shirt protesters, a political organization supporting the current Prime Minister in exile, Thaksin Shinawatra. More than 90 people were killed and hundreds were injured as the military violently dispersed the demonstrations in Bangkok.¹²⁹

Analyses: Publicly, no prosecution of any senior military personnel was initiated even in the face of strong demands for accountability.¹³⁰ The impunity with which the Thai military has acted symbolizes much more significant problems in the country's political system where the military

¹²⁵ International Criminal Court. (2020). *Preliminary Examination into the Philippine War on Drugs*.

¹²⁶ Commission on Human Rights (Philippines). (2019). *Investigations on Extrajudicial Killings*.

¹²⁷ Amnesty International. (2021). *Report on Singapore's Judicial System*.

¹²⁸ Singapore Ministry of Law. (2020). *Official Statements on the Application of the Death Penalty*.

¹²⁹ Truth for Reconciliation Commission of Thailand. (2015). *Report on the 2010 Crackdown*.

¹³⁰ Ibid.

has a very strong hand in the government and the judiciary of Thailand is usually manipulated to protect military interests, and not much is done to probe or bring to justice those who commit crimes against the people. For instance, while the Truth for Reconciliation Commission of Thailand (TRCT) had a report on the events in 2010, accountability recommendations were largely disregarded by the government.¹³¹ The UN and many other quarters in the international community have been calling upon Thailand to make sure there is accountability for this bloodbath, but the domestic political dynamics have stalled such initiatives.

Vietnam: Suppression of Political Dissent

Political dissidents, including journalists, bloggers, and human rights activists, are being repressed by the one-party state in Vietnam. Those who dare speak against the government usually find themselves arrested, detained without trial, or jailed for lengthy periods. There are hundreds of cases documented by various human rights organizations whereby individuals were charged with very vague crimes like "propaganda against the state" and "abusing democratic freedoms".¹³²

Analyses: The Vietnamese government continues to exert a tight grip on its judiciary, thus, it remains a political weapon for the subjugation of the opposition. Scholars note that such systemic impunity in Vietnam closely relates to the country's political culture, citing that Vietnam considers any form of dissent as a threat to national security, and instances where law enforcement officers commit abuses are rarely taken to account.¹³³ Human Rights International organizations have condemned the Vietnamese government for suppressing free speech and assembly and have demanded a change in practices involving human rights.

¹³¹ United Nations Human Rights Council. (2020). *Statements and Reports on Thailand's Political Situation*.

¹³² Human Rights Watch. (2019). *Report on Human Rights Abuses in Vietnam*.

¹³³ United Nations Human Rights Council. (2020). *Report on Political Suppression in Vietnam*.

CHAPTER IV: UNVEILING THE CAUSES OF IMPUNITY IN SOUTHEAST ASIA

I. Politic and Impunity

1. Politics

Politics has long been viewed as deceptive and unreliable. Therefore, politicians are often portrayed as corrupt and dishonest, leading to widespread distrust of political figures and institutions. Despite advancements in political science and great benefits to mankind, many people, especially in developing countries, still lack confidence in politics, such as: creating and maintaining the structure and balance within human society, gives rise to ideas, ideologies, rules, and laws, and responsible for upholding and enforcing them. So, without the framework provided by politics, societies would lack organization and direction, leading to chaos and disorder.¹³⁴ Overall, politics is an essential contributor to the development of human civilization. Despite its flaws and the negative perceptions surrounding it, politics remains a fundamental aspect of society that shapes the world we live in.¹³⁵

What is Politics?

Politics is frequently described as a power struggle between individuals or groups. This is seen in party politics, where several parties compete to put their policies into action.¹³⁶ Beside, politics has traditionally been viewed as a question of who gets what, when, and how. This indicates that politics is about redistributing resources. However, in recent decades, there has been a rise in "**post-ideological**" politics, which prioritizes values and lifestyles over monetary resources. This implies that politics is about identity and culture.¹³⁷

Additional interpretation: politics is as a struggle of ideas. Different parties try to influence how problems are seen, which can have a significant impact on how resources are allocated.¹³⁸ This is relevant to the current arguments about "fake news" and how various groups interpret political issues.

2. What are the connections between politics and impunity?

While politics has undoubtedly made significant contributions to mankind, it is far from perfect. One of the major challenges usually stems from unethical individuals and groups driven by greed for power and resources.

Politicians of the Authoritarian Regimes in Southeast Asia:

In this region, several countries are governed by authoritarian regimes because of the legacy of colonialism and the instability in the region since authoritarian rules are some of the most effective methods to stabilize the nation.¹³⁹ Under such regimes, politicians wield immense authority and

¹³⁴ Kacmar, K. M., & Carlson, D. S. (1997). Further validation of the perceptions of politics scale (POPS): A multiple sample investigation. *Journal of Management*. doi: 10.1016/S0149-2063(97)90019-2.

¹³⁵ Ibid.

¹³⁶ The British Academy. (2021). What is politics? [Blog post]. Retrieved from <https://www.thebritishacademy.ac.uk/blog/what-is-politics/>

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Pickett, J. (2023, October 26). The more things change: Elections and authoritarianism in Southeast Asia. *Australian Outlook*, 77(4), (pp. 322-330). Retrieved from <https://www.internationalaffairs.org.au/australianoutlook/the-more-things-change-elections-and-authoritarianism-in-southeast-asia/>

centralized control of power in the hands of a selected few granting the ruling class unprecedented control over other branches of power, including the legal and enforcement apparatus.¹⁴⁰ This dominance allows them to safeguard their position and mitigate the risk of losing power by employing unethical tactics to suppress rival political parties or strip them of their authority. While such actions may contravene legal norms, the substantial influence wielded by their political parties often results in impunity for crimes committed by allies, as they control both the judicial and enforcement systems.

The impunity in the Philippines under Duterte political group

After assuming office in 2016, President Rodrigo Duterte then launched his "war on drugs," policy, resulting in thousands of deaths, primarily among the urban poor.¹⁴¹ According to the United Nations Office of the High Commissioner for Human Rights (OHCHR) in a 2020 report the death toll was at least 8,663 people.¹⁴² Additionally, Human Rights Watch discovered that the police often manipulated evidence to justify unlawful killings.¹⁴³ Even so, little to no high-ranking officials responsible were prosecuted which indicated the authority of the Philippine authoritarian regime on the national level. Internationally, there were efforts taken by the International Court of Justice (ICC) to launch an investigation on this matter in September 2021.¹⁴⁴ However, the Philippines requested the court to suspend the investigation and subsequently withdrew from the ICC and appeal the investigation under the principle of non-intervention and sovereign equality on the United Nations (U.N) charter.¹⁴⁵ Even so, the ICC still retains its right to investigation under the provision of the Rome statute.¹⁴⁶ But, since then there has been no significant progression. Therefore, the criminals have yet to be prosecuted, resulting in impunity derived from a political group in the Philippine's authoritarian regime.

II. Impunity and Weak Rules of Law

1. Rules of law

The concept of the rule of law has evolved over centuries, with its roots in ancient Greece where philosophers like Plato and Aristotle discussed the importance of laws in governing society. Roman law further developed the idea with its emphasis on codified laws and due process.¹⁴⁷ However, the Magna Carta of 1215 marked a significant milestone by limiting the power of the monarch and establishing the principle that nobody is above the law.¹⁴⁸ Christianity then revolutionizes the concept of the "Rule of Law" by greatly influencing Western justice and government through its emphasis on moral equality and individual dignity, with principles of equality and responsibility encompassed with Christian teaching on the inherent worth of every person, it then formally

¹⁴⁰ Ibid.

¹⁴¹ Human Rights Watch. (2023, February 13). International Criminal Court's Philippines Investigation. Retrieved from <https://www.hrw.org/news/2023/02/13/international-criminal-courts-philippines-investigation>.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Author, R. F. [Russell Fowler]. (2023, May 1). *The Rule of Law: Origins, Meaning and Endangerment*. Tennessee Bar Association. [online] Retrieved from <https://www.tba.org/articles/2023/05/the-rule-of-law-origins-meaning-and-endangerment>.

¹⁴⁸ Ibid.

embodied in documents such as the Magna Carta.¹⁴⁹ Enlightenment thinkers such as Montesquieu extended these ideas in favor of the separation of power and individual rights shaping the modern understanding of the rule of law. The American and French Revolutions further cemented these principles in their Constitutions, emphasizing equality before the law and checks on government power.¹⁵⁰ Despite its long history, the concept of the rule of law continues to evolve, with many countries striving to strengthen legal institutions and ensure fair application of laws.

2. What are the Rules of law?

The concept of the Rule of Law is not the invention of any single individual, rather, it is a product of historical evolution dating back to ancient times, notably in ancient Greece. While the term "**Rule of Law**" may be subject to varying interpretations and debates among philosophers and scholars, its impact on world history has been profound and beneficial. This principle embodies certain norms that are integral to an advanced, responsible, and just society.¹⁵¹ The most widely accepted and effective definition of the Rule of Law is that "political power must be exercised under established rules." Alternatively, it can be defined as "the principle that government authority is bound by written laws adopted through a formal procedure." The primary purpose of the rule is to protect against arbitrary actions by the government.¹⁵²

3. Weak Rule of Law leads to Impunity

The Rule of Law is indeed a crucial concept and principle that has significantly contributed to the advancement of human society, particularly in combatting impunities and crimes. However, despite its widespread acceptance and adoption, not everyone adheres to or respects this principle, especially in developing countries and regions.

The development and adoption of the Rule of Law saw significant progress during events of the American and French revolutions, where people began to embrace and champion this principle. While the Rule of Law has thrived in Western societies, its success has been more limited in regions like Southeast Asia. In Southeast Asia, the principle of the Rule of Law may be formally accepted and adopted by states and governments, but numerous challenges and obstacles hinder its prosperous implementation.¹⁵³ Factors such as corruption, weak institutions, political instability, and cultural differences pose significant barriers to the effective implementation of the Rule of Law in this region.¹⁵⁴ Besides, the historical and civilizational differences between Asian countries and the West have contributed to Asia's resistance to the Western concept of the rule of law. Many Asian countries have unique histories shaped by imperialism, colonialism, and local traditions, resulting in legal and political systems that differ from Western models. Asian cultures typically incorporate communal values, hierarchical relationships, and social solidarity takes precedence

¹⁴⁹ Kirk, R. (1983, April). We cannot separate Christian morals and the rule of law. *Imprimis*, 12(4). Retrieved from <https://imprimis.hillsdale.edu/we-cannot-separate-christian-morals-and-the-rule-of-law/>.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ West, L., & Leong, T. Q. (2020). *Assessing the state of the rule of law in Southeast Asia* [Griffith University]. Retrieved from <https://blogs.griffith.edu.au/asiainsights/assessing-the-state-of-the-rule-of-law-in-south-east-asia/>

¹⁵⁴ *Ibid.*

over individual rights and legal provisions.¹⁵⁵ This emphasis may influence the adoption of Western legal concepts. In addition, the history of a centralized or authoritarian region tends to value stability and control over democratic principles.¹⁵⁶ Furthermore, economic and social factors, including the challenges of modernization, also influence the reception of Western legal concepts. These unique historical and cultural contexts shape the legal and political institutions of Asian countries differently from Western values.

In Southeast Asia because of the limited adoption of the Rule of Law, it has provided fertile ground for exploitation by influential figures and businesses to manipulate the system and evade accountability.¹⁵⁷ This lack of a robust Rule of law allows for selective enforcement, where the wealthy and well-connected often escape punishment through bribery or preferential treatment, while ordinary citizens face the full force of the law. Moreover, weak institutional frameworks and pervasive corruption further exacerbate the situation, leading to under-resourced police forces and judicial systems that struggle to conduct thorough investigations, gather evidence, and prosecute offenders effectively.¹⁵⁸ As a consequence, even when crimes are reported, the lack of investigative capacity frequently results in perpetrators going unpunished, undermining trust in the legal system and perpetuating a cycle of impunity.¹⁵⁹

In the case of the military coup in Myanmar in February 2021 inflicted significant damage to the rule of law in the nation, leading to a cascade of dire repercussions. Firstly, the integrity of the legal system has been systematically undermined by the military junta, which manipulates laws to its advantage, eroding public trust in the judiciary.¹⁶⁰ Secondly, the military's imposition of its supremacy has resulted in violence and arbitrary arrests to quash dissent, fostering a culture of impunity that further undermines legal order.¹⁶¹ Thirdly, the military's unchecked violence against protestors and civilians has gone largely unpunished, instilling fear and stifling opposition.¹⁶² Lastly, enforced disappearances of regime critics have created an atmosphere of terror, silencing dissent through intimidation and violence.¹⁶³ These developments have created a hazardous environment marked by widespread human rights violations and a flagrant disregard for legal norms. International bodies are documenting these abuses and pressuring the military to restore order and uphold principles of justice and accountability.

¹⁵⁵ *Asian Tigers Group*. (2021, November 30). The differences between East and West in culture and education. Retrieved from <https://asiantigersgroup.com/news/industry-news/the-differences-between-east-and-west-in-culture-and-education/>.

¹⁵⁶ Eales, J. (2021, May 6). The rising tide of authoritarianism in Central Asia. *Australian Outlook*. Retrieved from <https://www.internationalaffairs.org.au/australianoutlook/the-rising-tide-of-authoritarianism-in-central-asia/>.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ The United Nations Office on Drugs and Crime. (2023, World Crime Report). <https://www.unodc.org/>

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

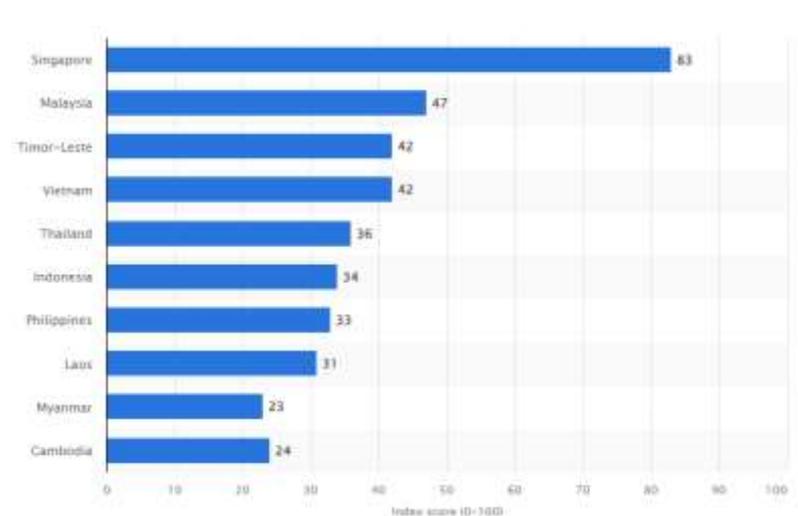
¹⁶³ *Ibid.*

III. Corruption

1. What is corruption?

Corruption, characterized by the misuse of entrusted power for personal gain, presents a multifaceted threat to society, impacting various aspects of life.¹⁶⁴ It diminishes trust among citizens, undermines democratic principles, hinders economic growth, and worsens inequality, poverty, and environmental degradation.¹⁶⁵ Corruption manifests in diverse forms, spanning from public officials soliciting bribes to politicians diverting public funds and businesses engaging in bribery for advantageous deals. It permeates across sectors, including government, business, media, and civil society, implicating individuals at all levels.¹⁶⁶ Often facilitated by professional intermediaries and opaque financial systems, corruption operates covertly, allowing for the laundering and concealment of ill-gotten gains.

Figure 1. Corruption Perception Index in Southeast Asia in 2022, by country¹⁶⁷



Southeast Asia's 2022 Corruption Perceptions Index reveals the level of perceived corruption across the region. With a score from 0-100, with 0 meaning the most corrupted. Singapore leads the way with a high score of 83, indicating a very low perception of corruption and strict adherence to the rule of law. Malaysia follows with a score of 47, indicating moderate difficulties in tackling corruption. Timor Leste and Vietnam both scored 42, indicating similar levels of corruption. Thailand's score of 36 and Indonesia's score of 34 indicate perceived high levels of corruption, while the Philippines with a score of 33 face similar concerns with Laos and Cambodia scoring 31 and 24, respectively, for perceived high levels of corruption. Myanmar has the lowest score in the region at 23, indicating serious corruption issues. These scores highlight how different approaches

¹⁶⁴ Transparency.org. (n.d.). *Corruption*. Retrieved from <https://www.transparency.org/en/what-is-corruption>

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Statista. (2022). *ASEAN: perceived corruption by country 2022*. <https://www.statista.com/statistics/651015/most-corrupt-countries-asean-region/>

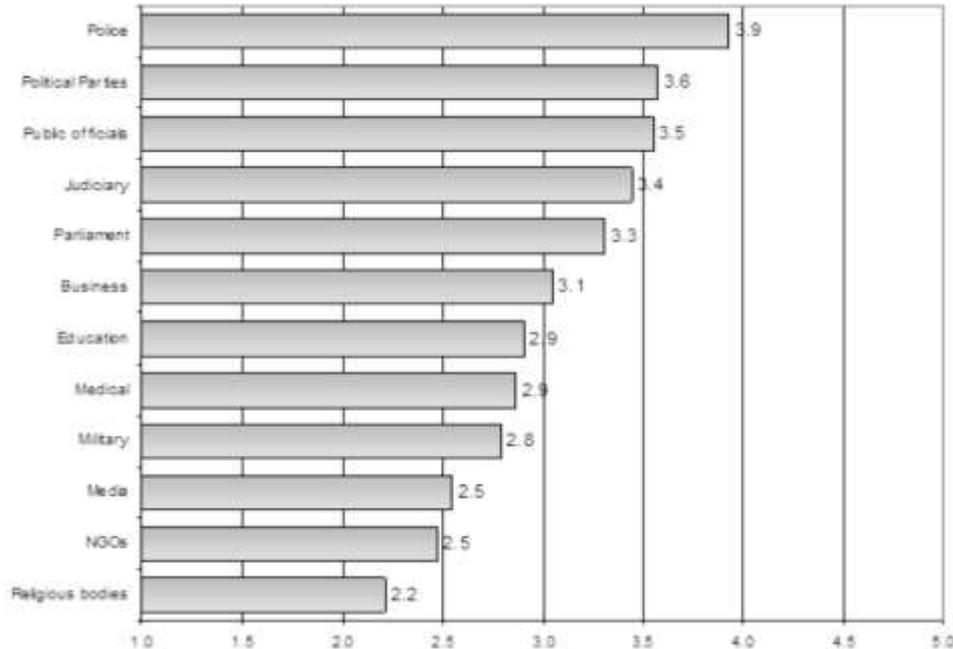
to anti-corruption and governance work across Southeast Asia, with some countries facing more significant challenges than others.¹⁶⁸

The index reveals that the majority of Southeast Asian nations struggle with corruption, as none, aside from Singapore, attain a score surpassing 50.¹⁶⁹ This underscores the widespread nature of corrupt practices and the challenges they pose to the region's development and governance. Besides, the prospects for immediate improvement appear dim, particularly in light of the economic setbacks brought about by the COVID-19 pandemic. Many countries in Southeast Asia continue to grapple with economic downturns and inflationary pressures, hindering efforts to combat corruption effectively.

2. Corruption leads to impunity in Southeast Asia

In Southeast Asia, corruption creates perpetuating cycles of impunity, undermines institutions, changes legislatures, suppresses media coverage, and legitimizes corrupt practices while corruption weakens legislative and judicial integrity through bribery, it creates a culture of impunity among those in power.¹⁷⁰ Beyond these, intimidation tactics, including violence against whistleblowers and journalists, thus create an atmosphere of fear, impede investigations, and stifle protests. In addition to using corrupt media to suppress them and limiting negative feedback, it can also be used to limit public scrutiny and accountability.¹⁷¹ When corruption is endemic, it undermines anti-corruption efforts, perpetuating a cycle.

Figure 2. Public perception of corruption in Southeast Asia, by institution¹⁷²



¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Transparency International. (2023, September 6). *Tackling Grand Corruption Impunity: Proposals for a Definition and Special Measures*. Retrieved from <https://www.transparency.org/en/publications/tackling-grand-corruption-impunity>.

¹⁷¹ Ibid.

¹⁷² Transparency International. (2015). *ASEAN Integrity Community: A vision for transparent and accountable integration*. Retrieved from https://images.transparencycdn.org/images/TransparencyInternationalASEANIntegrityCommunity_web.pdf

On a scale of 1 to 5, where 1 means not at all corrupt and 5 means extremely corrupt. Average scores given for ASEAN countries covered (Cambodia, Indonesia, Malaysia, Philippines, Thailand, and Vietnam).

From the above, it indicated that high levels of institutions in more than half the region of Southeast Asia are highly corrupted. Therefore, it is prone to impunity as there was little to no power to keep those corrupted officials in check.

Case of corruption in coal mining and Impunity in Indonesia:

This case shows how Bakri uses his political connections to secure undervalued coal assets, by delaying legal processes to benefit his business. While on the other side, Churchill Mining is facing a warrant, confiscation and alleged falsification of documents by its rival and this is a solid proof of how political influence can lead to irregularities and impunity given that Strategic agreements between regional and national elites perpetuate corruption, with local PEPs using their positions to facilitate business gains and maintain corrupt practices, while national elites exploit these connections for political and economic gain.¹⁷³ Through the decentralization of power from central to local government, PEP was able to issue business licenses and influence decisions in resource-rich areas, increasing local corruption.¹⁷⁴ Furthermore, government subsidies and monetary incentives for the coal enterprise lower the manufacturing charges and growth income, similarly encouraging corrupt practices.¹⁷⁵ In this context, the cycle of corruption and impunity prosper, undermining efforts to enforce the guidelines of regulation and the Rule of Law.

IV. Human nature and impunity

Blaming external factors and societal issues for corruption and impunity can sometimes obscure a fundamental truth, human actions and motivations are at the core of these problems. While it's easy to point to power, politics, and systemic corruption as the origins of impunity, a closer examination often reveals that these are merely tools exploited by individuals driven by greed and self-interest.¹⁷⁶

If we carefully study instances of impunity, it becomes clear that human behavior is frequently the root cause. Whether it's an abuse of power, manipulation of resources, or engagement in corrupt practices, these acts are carried out by individuals seeking personal gain.¹⁷⁷ The political systems and structures mentioned, positions of authority, and economic resources are not inherently corrupted. Rather, they were corrupted by the people who misuse them.¹⁷⁸ By understanding that human greed and selfishness are the underlying drivers of impunity is crucial. Acknowledging this fact compels us to confront the ethical and moral dimensions of these issues. Instead of solely focusing on external fixes like policy changes or new regulations, we must also address the human element. This involves fostering a culture of integrity, accountability, and ethical behavior, and

¹⁷³ Greenpeace. (2018, December). *Coalruption: Shedding Light on Political Corruption in Indonesia's Coal Mining Sector*. Retrieved from <https://www.greenpeace.org/static/planet4-indonesia-stateless/2018/12/727d7a2d-coalruption-english-web.pdf>.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Garon, N. (2024). The right to a just remedy in private law—a right and a human instinct: An analysis of how greed and lawlessness removes confidence. *International Journal of Law, Ethics, and Technology*, 2(2), (pp. 264-276). From doi: 10.55574/DFMH7601.

¹⁷⁷ Abrahamson, D. (1944). *Crime and the human mind*. Columbia University Press. doi: 10.7312/abra90784.

¹⁷⁸ Ibid.

emphasizing the importance of personal responsibility in all aspects of life. Ultimately, recognizing that humans are at the heart of the problem will be the key to enabling people to get closer to the root cause of Impunity.

1. Human nature causes Impunity

Greed the inherent nature of human: Greed is described as an excessive or immoderate preference for wealth, particularly things like cash, actual property, or different symbols of wealth and power.¹⁷⁹ It is the result of natural and social corruption. In nature it is associated with self-preservation and reproduction, as seen in early organisms such as "Hermann" who showed greedy behavior to survive and propagate.¹⁸⁰ This desire then accumulated and turned out to be a natural tendency in human beings to create wealth. However, as social creatures, humans must balance these incentives in social systems. While greed can bring benefits, it can also destroy social cohesion. Which is why societies have often created rules and principles to deal with it, and unchecked greed can lead to conflict and inequality and in addition lead to impunity, somewhere in which individuals act without care of consequences.¹⁸¹

In Southeast Asia, impunity is a significant problem, largely rooted in human nature shaped by historical and environmental factors. Compared to other parts of the world, this region experiences higher levels of impunity due to the traumatic legacy of recent history and ongoing struggles.¹⁸² The people in this region are profoundly influenced by their surroundings and the conditions in which they were raised. Many countries in this region are developing nations that have suffered greatly from Cold War-era conflicts and proxy wars. The devastation and violence associated with these wars have instilled a deep-seated sense of distrust and an intensified struggle for survival among the population.¹⁸³ These attitudes are often passed down to newer generations, who continue to operate under the belief that mistrust and aggressive self-preservation are necessary for survival. Consequently, people in this region are more prone to developing darker tendencies compared to those in the West, where there is generally more stability, security, and trust within society.

Similar to corruption, greed can contribute significantly to impunity by undermining mechanisms designed to ensure responsibility and fairness. Individuals pushed by self-interest tend to prioritize themselves over ethical concerns and resort to unethical behavior without predicting collective consequences.¹⁸⁴ This selfish attitude allows them to manipulate the political systems and policies. For instance, wealthy individuals can use their information and resources to guide or pressure policymakers to shape regulatory guidelines to their advantage or create loopholes to protect themselves from scrutiny.¹⁸⁵ Moreover, they will expand their financial power toward strong agents of corruption at the top, which will impact judgment court proceedings, and intimidating witnesses. Also, greed contributes to the creation of safety nets in which influential people uniquely shield each other from punishment, as well as perpetuate an impunity way of life through the

¹⁷⁹ Taflinger, R. F. (n.d.). Taking advantage: The sociological basis of greed. Retrieved from <https://public.wsu.edu/~taflinge/socgreed.html>.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Anderson, B. (2013). Impunity and reenactment: Reflections on the 1965 massacre in Indonesia and its legacy. *The Asia-Pacific Journal: Japan Focus*, 11(15), (pp. 29-39).

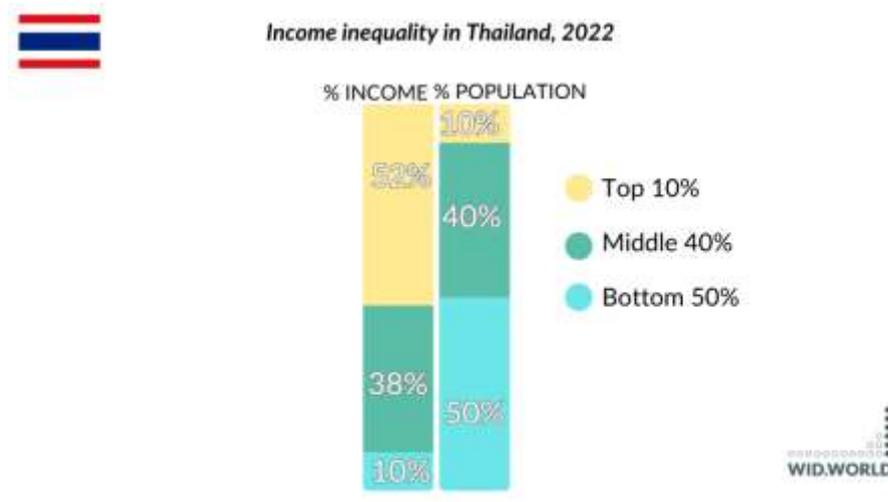
¹⁸³ Ibid.

¹⁸⁴ Vatikiotis, M. (2017). *Blood and silk: Power and conflict in modern Southeast Asia*. Orion. (P. 24).

¹⁸⁵ Ibid., 25.

normalization of corruption, which will weaken various sectors of State institutions, including Law enforcer authority and regulatory bodies.¹⁸⁶ Consequently, a situation where illegal and immoral behavior is not only rampant but also persists with crimes without consequences reinforces the cycle of impunity.

Figure 3. Thailand income inequality, of 2022¹⁸⁷



The above graph indicates the percentage of the population (on the right) in comparison to the national income (on the left). So, in the year 2022, the top 10% of the Thai populace earns more than half of the country's income. While the bottom half of the population earns only around 10% of the overall State income. This indicates a big disparity between different classes in Thailand. In addition to this, according to the World Inequality Database, "countries like Indonesia, and Vietnam have the richest 10% of the population earning between 40-50% of the national income."¹⁸⁸

The concept of greed is closely linked to the aforementioned graph and studies that illustrate the disparity between the rich and the impoverished, which is a typically prevalent in several Southeast Asian nations. This massive gap shows that many people in this vicinity adopt capitalist behaviors, regularly prioritizing their very own benefit without safely addressing the wishes of the lower socioeconomic classes. This phenomenon indicates that, in Southeast Asia, people are inherently prone to greed, which is a pathway to impunity.

¹⁸⁶ Ibid.

¹⁸⁷ WID.world. (2023, November 22). *What's new about inequality in South and Southeast Asia in 2023?* Retrieved from <https://wid.world/news-article/2023-wid-update-south-and-southeast-asia/>

¹⁸⁸ Ibid.

V. The imbalance distribution of powers

1. What is power?

Power is a complex concept encompassing the ability or capacity to act or refrain from acting, and the exercise of influence, control, or force through various means. It significantly impacts people's circumstances and, consequently, their motives.¹⁸⁹ Unlike income and wealth, power exists within relationships between individuals and groups, often manifesting in both visible and covert ways. Additionally, power is context-specific, meaning individuals may wield significant power in some situations but be powerless in others.¹⁹⁰ These characteristics differentiate power as a fundamental cause of impunity and inequalities.

2. What is the imbalance of powers?

A power imbalance occurs when one partner or group of partners dominates decision-making or asserts power in ways that disadvantage other partners or hinder the achievement of partnership objectives.¹⁹¹ One of the core principles of partnering is equity, which means all partners commit resources and bring something essential to the partnership, granting them an equal say.¹⁹² Consequently, when a power imbalance manifests, it undermines the equity of the partnership, leading to a poor partnering dynamics. Additionally, an imbalanced distribution of power also referred to as power inequality, where power is concentrated in the hands of a selected few or groups, while others have significantly less.¹⁹³ This can happen on various scales, from individual relationships to entire societies.

For instance, power imbalances can be seen in various contexts, such as:

- Governments: where a small group holds significant political power and can make decisions without considering the needs of the broader population;
- Workplaces: where employers have much more control over employees' wages, working conditions, and job security;
- Relationships: where one partner has more control over finances, decision-making, or emotional well-being in a romantic relationship.

3. Why does unequal power lead to impunity?

According to Impunity Watch Organization, “Impunity results from profoundly unequal power relations, unaddressed historical abuses, lack of transparency, authoritarian governments clinging to power, failed international interventions, and the capture of state institutions by corrupt elites. In societies where we work, and where impunity is prevalent, there is no accountability for wrongdoing and no opportunity for legal or political action to bring about change. Powerful actors suppress calls for accountability and intimidate the opposition through hate speech, division, and persecution..”¹⁹⁴ Therefore, inequitable power distribution can lead to impunity, which is closely

¹⁸⁹ Public Health Scotland. (2024, May). *Power inequality*. Retrieved from <https://publichealthscotland.scot/our-areas-of-work/equity-and-justice/health-inequalities/what-are-health-inequalities/>

¹⁹⁰ Ibid.

¹⁹¹ The Partnering Initiative. (n.d.). *Anticipating, managing and mitigating power imbalances*. Retrieved from <https://archive.thepartneringinitiative.org/wp-content/uploads/2018/12/Managing-power-imbalances.pdf>

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Impunity Watch. (n.d.). *What is impunity?* Retrieved from <https://www.impunitywatch.org/what-is-impunity/>

linked to human greed, excessive ambition, and a sense of superiority, since when a political party accumulates near or absolute power, its sense of superiority and greed intensifies. This combination of ambition and a belief that they are above the law can drive them to resort to illegal means by abusing their significant power, evading consequences, and manipulating the judicial and enforcement systems to escape accountability.

Excessive impunity in Southeast Asia is largely due to an imbalance of power distribution, stemming from the region's composition of developing countries that have recently emerged from destruction and war.¹⁹⁵ This has left governmental and societal systems underdeveloped and weak. Consequently, various groups, parties, and individuals can accumulate disproportionate power, with executive and military powers often holding the highest positions. This dominance enables them to control and manipulate legislative and judicial powers at will. As a result, it is nearly impossible to hold high-ranking individuals from the executive and military factions accountable for their crimes, as evidence and judgments against them can be easily tampered with if they abuse their power.¹⁹⁶ Overall, the developing status of the region and its weak systems create numerous loopholes, allowing groups and individuals to accumulate excessive power, leading to an imbalance of power and enabling them to abuse their positions to evade prosecution.

The impact of a dominant power in the region of Southeast Asia: The case of Thailand

Newly elected presidents in Thailand frequently face substantial obstacles as a result of the military and rich elites' entrenched dominance. Its current political climate reflects this tension, the Move Forward Party, which received the most seats in the May 2023 election, failed to establish a government due to opposition from the military-appointed Senate, due to the party's progressive policies, which includes military reforms and modifications in monarchy-related laws, that antagonized the military-royalist establishment, resulting in a political standstill.¹⁹⁷ Since Thai Senate is a remnant of military rule, that wields significant authority, including the ability to obstruct prime ministerial candidates.¹⁹⁸ Additional key actor, the Pheu Thai Party, eventually formed a coalition government but was forced to join with military-affiliated parties, including those involved in past coups against its predecessors.¹⁹⁹ Some voters saw this deal as a betrayal, expecting a more definitive split with military control. The arrangement illustrates how the military's influence and ties with affluent elites continue to define and control Thailand's political landscape, often at the expense of true democratic governance.

Imbalance of power and impunity in Myanmar

Myanmar's long-standing military leadership has produced a culture of impunity in which military officers and high-ranking officials frequently operate beyond the law. Several factors contribute to this situation: the 2008 constitution, drafted during military rule, gives the military significant control by reserving one-quarter of parliamentary seats for military appointees, effectively giving them veto power over constitutional amendments, and impeding legal reforms, which make

¹⁹⁵ Case, W. (Ed.). (2010). *Contemporary authoritarianism in Southeast Asia: Structures, institutions, and agency*. Routledge. (p. 87).

¹⁹⁶ Ibid.

¹⁹⁷ BBC News. (2023, May 7). *Thailand election: Reformists 'confident' they will form government*. Retrieved from <https://www.bbc.com/news/world-asia-6556778>

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

Myanmar's court lacks independence and is vulnerable to military coercion, with judges typically hesitating to rule against influential individuals or institutions for fear of repercussions.²⁰⁰ Furthermore, the military controls key security ministries and has enormous influence over civilian institutions, making accountability for human rights violations or other crimes difficult. This impunity is evident in countless human rights violations against ethnic minorities and civilians, including extrajudicial executions, torture, and arbitrary detention, which are rarely investigated, and the culprits are rarely brought to justice.²⁰¹ Additionally, the military engages in rampant corruption, enriching itself through control of critical sectors such as mining and jewels, which frequently go unchecked. Besides, military-owned firms lack transparency and accountability, and they may engage in unfair practices or cause environmental damage. Despite international sanctions and civil society attempts to document abuses and push for accountability, attaining meaningful accountability in Myanmar remains a difficult task that necessitates a diversified strategy.²⁰²

Overall, the above cases prove how much of an impact dominant factions (military and elites) from a country in the region of Southeast Asia can have on the country's future and direction.

VI. World superpowers and impunity

1. Superpower of the world

Table 1. The top 10 most powerful countries according to Forbes,²⁰³

Power Rank & Country	GDP	Population*
#1 United States	\$28.78 trillion	339.9 million
#2 China	\$18.53 trillion	1.42 billion
#3 Russia	\$2.06 trillion	144 million
#4 Germany	\$4.59 trillion	83.2 million
#5 United Kingdom	\$3.5 trillion	67.7 million
#6 South Korea	\$1.76 trillion	51.7 million
#7 France	\$3.13 trillion	64.7 million
#8 Japan	\$4.11 trillion	123.2 million
#9 Saudi Arabia	\$1.11 trillion	36.9 million
#10 UAE	\$527.8 billion	9.51 million

Superpower status can be viewed through different lenses. **The United States** is currently considered the world's sole superpower, boasting the largest economy by GDP, a formidable global military presence, and significant influence in international politics.²⁰⁴ The United States' strengths include a strong economy, powerful military, technological innovation, and cultural influence.

²⁰⁰ Fortify Rights. (2021, August 19). *Ending Impunity in Myanmar*. Retrive from <https://www.fortifyrights.org/mya-inv-rep-2021-08-19/>

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ The Forbes. (2024, May 02). *Top 10 most powerful countires in the world 2024*. Retrive from <https://www.forbesindia.com/article/explainers/top-10-powerful-countries-in-the-world/87201/1>

²⁰⁴ Ibid.

China on the other hand, often seen as a rising superpower, has experienced tremendous economic growth in recent decades, becoming the world's second-largest economy and heavily investing in its military and technological sectors.²⁰⁵ China benefits from a rapidly growing economy, a large population, increasing military power, and technological advancements. Besides these, **Russia** remains a key global player with a large nuclear arsenal and a permanent seat on the UN Security Council, although its economy is much smaller than that of the US and China.²⁰⁶ Russia's strengths lie in its nuclear capabilities, significant natural resources, and its UN Security Council position. The concept of a superpower is complex and fluid, subject to change over time and debate.

2. Riots cause by the superpower: seeds of impunity

ASEAN and Cold War

The Cold War, a period of intense ideological rivalry between the US and the Soviet Union (1947-1991), had a big impact on Southeast Asia. This region, strategically located at the crossroads of major trade routes and rich in natural resources, became a battleground for influence between the superpowers.²⁰⁷ The Cold War fueled a series of **“proxy wars”** in Southeast Asia, where superpowers provided covert or overt support to opposing factions in internal conflicts. These conflicts served not only ideological purposes but also strategic ones, aimed at expanding spheres of influence and containing the spread of communism.²⁰⁸ Furthermore, The Cold War witnessed the rise of **“communist insurgencies”** across Southeast Asia, in which further aggravated regional tensions. Faced with the turmoil and uncertainties of the Cold War, Southeast Asian leaders increasingly recognized the need for **“regional cooperation and self-reliance”**. This desire for a unified voice and a buffer against external intervention led to the formation of **“ASEAN”** in 1967.²⁰⁹ By creating a platform for dialogue and collaboration, ASEAN hoped to navigate the complexities of the Cold War and chart its course.

The U.S. and China rivalry, Why?

One critical factor driving the intense competition is the **“strategic location”** of Southeast Asia. The region occupies a critical position at the nexus of the Indian and Pacific Oceans, bordering major trade routes and connecting vital economic arteries.²¹⁰ Beyond this, Southeast Asia's **“economic potential”** plays a crucial role in attracting both the US and China.²¹¹ The region boasts a rapidly growing population and a booming economy, presenting an attractive and lucrative market for both powers. With a combined GDP exceeding \$3 trillion and a young and increasingly affluent population, Southeast Asia offers significant **“investment opportunities”** and trade potential.²¹² But ultimately, the US-China rivalry in Southeast Asia reflects their broader **“geopolitical ambitions”** and their quest for **“global dominance”**.²¹³ Both powers seek to

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ngoei, W-Q. (2021, March 9). *Looking Back on ASEAN and Sino-US Rivalry in the Cold War. E-International Relations*. Retrieved from https://www.e-ir.info/2021/03/09/looking-back-on-asean-and-sino-us-rivalry-in-the-cold-war/#google_vignette

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Campbell, C. M. (2022, March 3). *Don't Make Us Choose: Southeast Asia in the Throes of U.S.-China Rivalry*. Retrieved from <https://www.brookings.edu/articles/dont-make-us-choose-southeast-asia-in-the-throes-of-us-china-rivalry/>

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid.

maintain their influence in the region and shape the future of the “**regional order**” according to their respective visions.

3. Chaos in the region and impunity

The competition between the US and China creates a difficult situation for Southeast Asian countries, who are pressured to choose sides. This rivalry breeds distrust among member states, potentially threatening regional stability and centrality.²¹⁴ On the other hand, maintaining centrality is crucial for Southeast Asia. As it allows them to collectively assert their interests on the world stage, since individual countries lack the power to compete with major powers, so regional unity is essential. However, the US-China rivalry could potentially threaten peace and stability in Southeast Asia. It risks reigniting past conflicts and turning the region into a battleground for superpowers. Countries could be manipulated or forced into proxy wars.²¹⁵ This chaos will breed impunity, as instability creates fertile ground for crime and corruption. In essence, Southeast Asia as a battleground for superpowers could plunge the region into chaos, opening the door for widespread crime and lawlessness.

Cases of superpowers indirectly fuel impunity

The U.S. assists Israel in evading the crime committed during the Israel-Palestinian War

The US-Israel relationship exemplifies how superpowers can indirectly foster impunity. The United States provides substantial military and economic aid to Israel, creating a dynamic where the US is reluctant to criticize Israel's actions, even when they violate international law.²¹⁶ This close alliance allows the US to use its veto power in the UN Security Council to shield Israel from resolutions condemning its actions in the Israeli-Palestinian conflict, thereby enabling a lack of international pressure that permits Israel to continue contentious policies. While the US benefits strategically from this relationship, such as maintaining regional stability and access to resources, it also faces criticism for seemingly condoning actions that are widely considered unacceptable. The complexity of the Israeli-Palestinian conflict, with violence from both sides, further complicates the issue. The US posits that its support for Israel allows it to maintain influence and play a vital mediating role, but this stance contributes to an environment where impunity persists, demonstrating how superpower actions, or inaction, can have significant global repercussions.²¹⁷ In short, because Israel and the U.S. have close relations with one another, the U.S. plays a vital role in the contribution to assist Israel in the act of impunity. As we all know, Israel has conducted a series of violations of humanitarian laws and human rights laws in the wars in GAZA. As such those breaches of international law mostly involve the unlawful killing of citizens and unarmed groups and the lack of precaution in attack which lead to great destructions and unnecessary suffering. These actions have been called into action a few times in the United Nations Security

²¹⁴ Wilson Center. (2023, December 21). Southeast Asia and US-China competition: Contours, realities, and implications for the Indo-Pacific. Wilson Center website. Retrieved from <https://www.wilsoncenter.org/article/southeast-asia-and-us-china-competition-contours-realities-and-implications-indo-pacific>.

²¹⁵ Ibid.

²¹⁶ Global Affairs. (2023, December 18). How the US has used its power in the UN to support Israel for decades. Retrieved from <https://globalaffairs.org/bluemarble/how-us-has-used-its-power-un-support-israel-decades>.

²¹⁷ Ibid.

Council. However, because of oppression and pressure by the United States side, the resolution had yet to be made.²¹⁸

The impunity conducted by Russia in the recent Russian invasion of Ukraine

Russia's invasion of Ukraine in February 2022 exemplifies how a superpower's actions can indirectly foster impunity. Russia's nuclear status creates a deterrent effect on international responses, as many countries hesitate to take strong actions that could provoke a wider conflict with a nuclear-armed state. Furthermore, Russia's veto power in the UN Security Council further allows it to block resolutions condemning its actions, impeding international accountability efforts.²¹⁹ Additionally, Russia's economic leverage as a major exporter of oil, gas, and other resources causes some countries to be cautious in their criticism to avoid jeopardizing their access to these resources. Historical ties with former Soviet republics can also create reluctance to condemn Russia's actions despite disagreements with the war. Domestically, Russia controls information and uses propaganda to shape the narrative of the war, complicating accountability for war crimes and human rights abuses. These factors contribute to a lack of strong international pressure to end the war, discourage forceful intervention due to the threat of nuclear escalation, and limit responses from economically dependent countries.²²⁰ Despite these challenges, the international community has imposed significant sanctions on Russia and the International Criminal Court (ICC) has launched an investigation into potential war crimes in Ukraine, aiming to prosecute those responsible for atrocities. Public outrage has also driven pressure on governments to hold Russia accountable. The situation remains fluid, and whether Russia faces true accountability will depend on the effectiveness of international pressure, war crime investigations, and future legal actions.

Overall. This is a clear example of how superpowers of the world, namely the U.S. and Russia in evading repercussions of their unlawful actions.

VII. Immunity and Impunity

1. What is Immunity?

There are many definitions of immunity. In a general context, the term refers to "protection or exemption from something." In biological terms, immunity means "the body's capability to protect itself against disease-causing microorganisms." Our body encounters numerous pathogens daily, but only a few cause illness because our body produces antibodies that combat these pathogens, thereby safeguarding us from diseases.²²¹ This protective mechanism is referred to as immunity. However, in this research, we focus on social and legal contexts. Here, immunity refers to "legal protection that exempts a person from liability, punishment, or legal action that would otherwise apply." Immunity can be granted in various contexts, including criminal and civil cases, administrative proceedings, and legislative inquiries.²²² For instance, immunity from prosecution

²¹⁸ Ibid.

²¹⁹ UK Government. (2024, March 28). Russia's veto is about its breaching of sanctions in pursuit of weapons to use against Ukraine: UK statement at the UN Security Council. [GOV.UK website]. Retrieved from <https://www.gov.uk/government/speeches/russias-veto-is-about-its-breaching-of-sanctions-in-pursuit-of-weapons-to-use-against-ukraine-uk-statement-at-the-un-security-council>

²²⁰ Ibid.

²²¹ BYJU'S. (n.d.). *Immunity - Explore About Immunity And Immune System*. From <https://byjus.com/biology/immunity/>

²²² Cornell University Law School. (n.d.). *Immunity*. *Wex Legal Dictionary*. <https://www.law.cornell.edu/wex/person>

protects individuals from being tried for certain actions. The concept of immunity has its roots in common law but has been codified in various statutes and legal codes. For example, the U.S. Constitution's Supremacy Clause grants immunity to federal officials performing their official duties.²²³ In legal concept, there are a few types of immunity:

- **Diplomatic immunity**

Diplomatic immunity is a status that exempts diplomats from the host country's laws, and it is a privilege granted by the state they represent. However, if a diplomat violates legislation in the host country, only their home country may intercede or object on their behalf, the diplomat cannot contest the accusation or legal action.²²⁴ The Vienna Convention on Diplomatic Relations (1961) provides ambassadors with broad protection from the host country's criminal, administrative, and civil laws while being subject to the laws of their home country. The home country determines whether the host country can prosecute the ambassador. In the United States, diplomatic immunity is governed by the Diplomatic Relations Act of 1978, which gives varied levels of protection depending on the diplomat's status. Article 31 of the Vienna Convention provides three exceptions to this immunity: actions involving private property, succession difficulties, and professional or commercial activity outside of official obligations.²²⁵

- **Qualified immunity**

Qualified immunity is a legal doctrine that protects government officials from lawsuits alleging violations of a plaintiff's rights, as long as they did not violate a "clearly established" statutory or constitutional right.²²⁶ This notion balances public officials' accountability with their protection from harassment, distraction, and liability while doing their jobs properly. Furthermore, to decide whether a right was "clearly established," courts consider whether a reasonable official would have recognized that their behavior was unlawful at the time of the claimed infringement, based on the laws in effect at the time. Typically, a plaintiff files a lawsuit under the Civil Rights Act of 1871 (Section 1983) against a public officer, who may then claim qualified immunity. This defense shields authorities from liability unless their conduct was plainly inept or deliberately illegal, even if the official acted reasonably but incorrectly.²²⁷ Qualified immunity protects authorities from the burdens of judicial proceedings, not monetary damages. As a result, courts seek to handle qualified immunity issues early in the proceedings, ideally before discovery.²²⁸ This immunity only extends to specific government officials, not the entire government, and is frequently used in police personnel cases. Other executive branch officers benefit from qualified immunity, whereas various immunity theories protect judges, prosecutors, lawmakers, and some other authorities.²²⁹

- **Sovereign immunity**

Sovereign immunity is the idea and doctrine that shields the government, in which exempt them from being sued unless they expressly consents with the investigation and trial. This concept deeply

²²³ Ibid.

²²⁴ Cornell University Law School. (n.d.). *Diplomatic Immunity*. *Wex Legal Dictionary*. https://www.law.cornell.edu/wex/Diplomatic_immunity

²²⁵ Ibid.

²²⁶ Cornell University Law School. (n.d.). *Qualified Immunity*. *Wex Legal Dictionary*. https://www.law.cornell.edu/wex/qualified_immunity

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

stems from British common law, which held and assumed that the “King can do no wrong”.²³⁰ While it was intended to shield and safeguard the governments from legal action it often limit the general public ability to obtain justice and compensation when the violation committed by the government. To balance this, numerous jurisdictions have implemented special procedures, such as government consent to resolve disputes between citizens and government officials through specific legislation or supervised tribunals.²³¹

The principle of immunity: State immunity is the main international principle of immunity. The primary international principle of immunity protects sovereign governments from being sued in foreign courts, encouraging mutual respect and allowing them to function without fear of being sued overseas.²³² Key aspects of state immunity are:

- Immunity for Sovereign Acts (*Acta jure imperii*): States are normally immune from lawsuits arising from their governmental actions, such as signing treaties or conducting military operations.²³³
- Exceptions to Immunity: In some cases, state immunity is limited. For example, if a state engages in commercial activity (*acta jure gestionis*), such as acquiring property or engaging into contracts, it may lose its immunity for those particular actions.²³⁴
- Presumption of Immunity: The default position is that a state enjoys immunity, and it is up to the party bringing the case to prove that an exception applies.²³⁵

State immunity is a complex issue of international law, with continuous controversies over its scope and limitations. In short, The presumption of immunity under international law means that a State is commonly presumed to be immune from lawsuits in foreign tribunals, which serves as the starting point. However, this immunity is not absolute and can be challenged in limited cases when exceptions apply, allowing the State to be brought before a foreign court. Even if the defendant State declines to participate in the legal process, the court is still required to consider the case and determine whether any exceptions to immunity apply.

2. The connection between immunity and impunity

This research condemned that immunity is one of the factors potentially contributing to impunity. While Immunity does not systematically lead to impunity, it can create a situation where accused person are not held accountable for their action. It may also be beneficial to recall the reasons why the principle of immunity is applied in international relations. In this context immunity protects diplomats and state actors from legal action in host countries, it ensure that they can perform their duties without fear of prosecution.²³⁶ This principle facilitates international cooperation and collaboration by providing protection for officials acting in their official capacity. However, the issue here is to balance this protection with the need to prevent abuse and ensure accountability. In

²³⁰ Chemerinsky, E. (2001). Against sovereign immunity. *Stanford Law Review*, 53(5), (pp. 1201-1224).

²³¹ Ibid.

²³² Schmitt, C. (2012). *State immunity in international law*. (pp. 33-74). Cambridge University Press.

<https://doi.org/10.1017/CBO9781139016377.00>

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Ozdan, S. (2018). Immunity vs. impunity in international law: A human rights approach. *4 Baku St. U.L. Rev.*, (p. 43).

circumstances where a person is granted immunity, the ordinary legal framework may not apply to them. For example, a diplomat may violate the legislation of the host country while claiming to be supporting their country's interests.²³⁷ The host country cannot take legal action against them because international accords such as the Vienna Convention require that they be tried in their home country. If the diplomat is a powerful figure in their home nation, they may be able to manage the situation to avoid punishment for their misdeeds.²³⁸ Besides these, diplomats are not the only ones who enjoy immunity, high-ranking officials are sometimes granted immunity as well. This can inflate their ego and make them feel above the law because they are exempt.²³⁹ As a result, the power if immunity is not rigorously managed, it might lead to scenarios in which a person with immunity commits crimes but is not prosecuted, leading to impunity.

The relation between immunity and impunity by an Austrian jurist, legal philosopher, and political philosopher, “ Hans Kelsen”:

As according to Dr. Hans Kelsen's views on immunity in international law, he stresses on conflict between immunity, which protects individual against prosecution, and impunity. Kelsen argues that international law grants immunity to those officials executing obligations, including government leaders and soldiers, which create barrier to accountability²⁴⁰ He also claim that immunity increase the risk of fostering impunity by allowing powerful individual to commit crime without consequences.²⁴¹ While Kelsen's views are not universally accepted, they continue to have an impact on worldwide legal disputes over immunity. Kelsen's comments highlight the delicate balance that international law must achieve blance between granting immunity and prohibiting impunity as it still remains a significant challenge in international criminal justice.

Case: Ferdinand Marcos.

From 1965 to 1986, Ferdinand Marcos was the President of the Philippines and had been alleged of widespred human rights violations, and embezzlement of public funds. As a president still in service, Marcos defended himself against the accusation by claiming immunity.²⁴² However, even after being overthrown and going into exile in Hawaii, the question of immunity as an ex-head of state remained contentious. Nevertheless, these assertions were refuted by legal challenges faced by Marcos when U.S. government arrested him for corruption and human rights abuse following the uprising in the Philippines on June 1986 under pressure from international human rights organizations. And the Philippine government finally obtained back its loot in 1995.²⁴³ These complexities exemplified through this case indicate how high-ranking officials within Southeast Asia may use their positions to avoid accountability, however it also manifests a more fundamental challenge pertaining immunity to justice and redress requirements.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid., 44.

²⁴⁰ Haque, A. A. (2020). *Immunity and impunity In Law*. (pp. 423-449). Oxford University Press. <https://doi.org/10.1093/law/9780198825203.003.0019>.

²⁴¹ Ibid.

²⁴² Hilao, M., Clemente, V., Piopongco, J., et al. v. Estate of Marcos, 25 F.3d 1467 (9th Cir. 1994).

²⁴³ Ibid.

VIII. ASEAN and Impunity in Southeast Asia

1. ASEAN

The Association of Southeast Asian Nations (ASEAN) is a regional organization established in 1967 to foster cooperation and integration among its 10 member and soon to be 11 including countries such as Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. This political and economic union has a population of over 600 million and covers a large section of Southeast Asia's continent.

ASEAN's principal goals are to maintain regional peace and stability, promote economic integration to build a more integrated and developed area, and improve the general quality of life for its population.²⁴⁴ To achieve these objectives, ASEAN has three primary pillars: the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC).²⁴⁵ The APSC seeks to promote a peaceful and harmonious environment through diplomacy and collaboration on security problems. The AEC prioritizes economic integration by encouraging free trade, recruiting investment, and improving economic relations among member states.²⁴⁶ Finally, the ASCC aims to promote cultural interaction, social growth, and the overall well-being of the region's population.²⁴⁷ ASEAN aims to create a unified Southeast Asia that is economically, secure, and culturally diverse.

2. ASEAN's indirect connection to Impunity in the region

This research induce that ASEAN has inadvertently created conditions that could lead to impunity in the region. There are potential loopholes in the ASEAN Charter that may be exploited, fostering impunity within its Member States. Namely:

CHAPTER I
PURPOSES AND PRINCIPLES
ARTICLE 2
PRINCIPLES

1. In pursuit of the Purposes stated in Article 1, ASEAN and its Member States reaffirm and adhere to the fundamental principles contained in the declarations, agreements, conventions, concords, treaties, and other instruments of ASEAN.
2. ASEAN and its Member States shall act in accordance with the following Principles:

(e). Non-interference in the internal affairs of ASEAN Member States;²⁴⁸

The principle of Non-interference means that ASEAN Member States should firmly follow the principle of non-interference in one another's domestic affairs. This implies they respect each nation's sovereignty and avoid becoming engaged in domestic political concerns or disputes. This

²⁴⁴ ASEAN Charter (2007). Chapter I: *Purposes and principles* [Article 1]. <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

²⁴⁵ ASEAN Political-Security Community Blueprint. (2016). From https://asean.org/wp-content/uploads/2021/03/APSC_BluePrint.pdf.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ ASEAN Charter (2007). Chapter I: *Purposes and principles* [Article 2(2)e]. <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

idea contributes to regional stability while avoiding tensions between members with diverse political systems. However, it has been chastised by scholars for enabling human rights violations to go undetected in some member countries.²⁴⁹

CHAPTER VII
DECISION-MAKING
ARTICLE 20
CONSULTATION AND CONSENSUS

1. As a basic principle, decision-making in ASEAN shall be based on consultation and consensus.²⁵⁰

The article regarding Consensus means that decision-making within ASEAN is based on consensus, which means that all member states must agree before taking any action. This strategy promotes equality and prevents any single nation from controlling the organization. Although this procedure can be slow, it encourages cooperation and prevents decisions that may be regarded as unjust or controversial.

3. ASEAN: A Double-edged Sword of Impunity

The Association of Southeast Asian Nations (ASEAN) is based on two fundamental principles: consensus and noninterference. While these principles promote collaboration and regional stability, they may indirectly lead to a culture of impunity in Southeast Asia.

3.1. Non-intervention

- **Respects Sovereignty:** This principle ensures Member States' independence and prevents intervention in their internal affairs. This is critical for preserving regional stability amidst varied political systems. (positive effect)
- **Shielded abuses:** Non-interference can provide as a cover for authoritarian governments, allowing them to crack down on dissent or minorities without being pressured to reform by the regional community. This creates an environment conducive to uncontrolled human rights breaches. (negative effect).

3.2. Consensus

- **Strengthens cooperation:** Consensus inhibits unilateral actions and creates a sense of shared responsibility by requiring unanimous agreement among all members. This technique is useful for addressing regional issues that necessitate collaborative action. (positive effect)
- **Limits Accountability:** Because of the emphasis on consensus, it may be difficult to hold member nations accountable for human rights violations or internal conflicts. Human rights watch critics, have heavily criticized ASEAN, considering its lack of consensus a threat to

²⁴⁹ Haryono, E., & Sumrahadi, A. (2023). The principle of non-interference curtails ASEAN action in addressing human rights violation in Myanmar (p. 13).

²⁵⁰ ASEAN Charter (2007). Chapter VII: *Decision-making* [Article 20]. <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

unity, allowing rights violations to continue without regional repercussion.²⁵¹ (Negative effect)

4. The connection between ASEAN and Impunity in Southeast Asia

According to the above articles from ASEAN Charter and the explanation provided, we believe that there are a few ways that ASEAN can connect to impunity in Southeast Asia.

- **Silence on Abuse:** The dependence on consensus and non-interference hinders ASEAN from adopting a strong stance on human rights issues among its member countries. This lack of regional pressure permits human rights violations to go unchecked, fostering an environment of impunity.²⁵²
- **Weakened Civil Society:** Without regional support for human rights defenders, it is more difficult for civil society organizations to confront authoritarian administrations. This undermines internal checks and balances within member states, thereby solidifying impunity.²⁵³
- **Sensitive issues:** Human rights issues are a sensitive topic for the whole Southeast Asia regions and the world since addressing this topic mean contesting the national authorities. Because of this, nations are discouraged from addressing international human rights problems in member countries due to the principle of non-interference.²⁵⁴ Besides, addressing these issues might worsen the relationship between the member states which greatly affects the region's interest as a whole since in ASEAN, the principle of consensus and non-intervention was first established to strengthen the region's unity and to become a strong force on the international stage to better acquire great interests. In short, addressing human rights issues in Southeast Asia might affect the unity of ASEAN.

Overall, while ASEAN values consensus and non-interference, they can foster an environment of impunity. Moving forward, ASEAN must look into methods to strengthen its human rights institutions and encourage member states to fulfill their duties without intruding on sovereignty. This will be a difficult balancing act, but it is critical to creating a more equitable and peaceful Southeast Asia.

Impunity in Myanmar: A Case Study of Non-Interference and Consensus

The situation in Myanmar exemplifies the challenges faced by ASEAN's principles of non-interference and consensus, particularly in terms of human rights violations and a lack of accountability. The Tatmadaw, Myanmar's military, has behaved with impunity, as seen by its persecution of the Rohingya, a Muslim minority community. The 2017 military crackdown, which included extensive bloodshed and forced displacement, demonstrates the gravity of the impunity problem.²⁵⁵ ASEAN's fundamental principle of non-interference has inadvertently sheltered the

²⁵¹ Human Rights Watch. (2022, April 22). Myanmar: ASEAN's failed '5-point consensus' a year on. Retrieved from <https://www.hrw.org/news/2022/04/22/myanmar-aseans-failed-5-point-consensus-year>.

²⁵² Sepaham Journal. (2023). An Urgent Appeal to Reinterpret the ASEAN Non-Interference Principle (p. 130).

²⁵³ Ibid., 131.

²⁵⁴ Ibid., 130.

²⁵⁵ Phongpaichit, P. (2018). *The Rohingya Crisis and the Limits of ASEAN*. ISEAS Perspective [Institute of Southeast Asian Studies], (p. 61).

Tatmadaw, allowing it to carry out its repressive acts without facing major repercussions even when most of the ASEAN Member States expressed their concern. They have been hesitant to explicitly and forcefully oppose Myanmar, fearing regional instability or Myanmar's possible exit from the organization.²⁵⁶ This cautious attitude has empowered the Tatmadaw, who perceive no immediate consequences for their actions. Furthermore, ASEAN's consensus-based decision-making procedure has generated new barriers. While Indonesia has urged for a more critical stance, Thailand prefers passive diplomacy. Therefore, ASEAN's internal disparities hinder it from delivering a united and powerful response to Myanmar's human rights crimes.²⁵⁷

The repercussions of such impunity are serious. The Tatmadaw continues its brutal policies against the Rohingya and other minorities, resulting in ongoing human rights violations. The Rohingya community's rage and misery have been worsened by a lack of justice, putting any hopes of a safe and dignified return to Myanmar at risk.²⁵⁸ Furthermore, unchecked human rights breaches in Myanmar threaten to undermine regional stability, setting a dangerous precedent within ASEAN by allowing such abuses to continue without consequences.²⁵⁹ Therefore, Myanmar's impunity issue highlights the limitations and challenges of ASEAN's values of non-interference and consensus, emphasizing the need for a more strong and unified approach to addressing serious human rights breaches in the region.

❖ Pattern of Impunity in Southeast Asia

- _ **Systemic corruption in the region:** Officials use their positions in the country for personal enrichment. There is no respect for anti-corruption since corruption is currently rampant, and poor compliance measures enable highly influential individuals to not face justice and continue to roam freely. Rather, the current corrupt system encourages endless escapes from accountability, and responsibility, which weakens people's expectations of their governance.
- _ **Imbalance of power:** Accountability is worsened by the fact that there is a clear-cut power imbalance. Various powers are centralized leading to a lack of checks and balances. This approach allows the ruling elites to dominate the judiciary and law enforcement bodies, thus getting them shielded from the law. That is why these dynamics contribute to the weakening of the rule of law and the decline of equality in the region.
- _ **The social context:** is equally a common reason that leads to impunity in the South East Asian region. The culture of respect for authorities and social hierarchy often leads to the acceptance of corruption and a lack of willingness to fight against corruption. Such a situation aggravates the problem as society accepts it as a norm.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

❖ Interview: H.E. Huy Pisid view on Impunity in Southeast Asia and the situation in Cambodia

In an interview with high-ranking officials in Cambodia **His Excellency (H.E) “Huy Pisid” Deputy Director of Prime Minister’s Office**, impunity is one of the biggest concerns for the region of Southeast Asia. H.E. admitted that corruption and a weak rule of law are what the countries in this region have in common, as it undermines accountability and governance. **H.E. Huy Pisid** expressed that Southeast Asian countries' chance to develop was torn apart by civil wars, the Cold War, and proxy wars. These have heavily impacted the development of the region and are therefore making Southeast Asia underdeveloped if compared to the West, in particular, the European Union and North America. H.E. also added that, in this regard, from historical roots, the West has a head start which is why the issue of inequalities and corruption there are less prominent. H.E. stated that In the case of Cambodia, the government has shown remarkable efforts to enhance accountability and fight corruption, which would nurture the rule of law. Ever since the previous **Prime Minister (P.M.) Hun Sen** was in power in 1998 and later united the country in 1999, Cambodia has been stable and peaceful. Over the past two decades, **P.M Hun Sen** leadership has proven that his policies have helped in the development, reduced corruption, and achieved greater equality in various sectors, including the ministerial, educational, and private sectors. This was evidenced in his service, there was almost a complete elimination of corruption in the education sector, especially in the national examinations which he based on the principle "If you have sufficient knowledge, you will succeed", which proves that his policy is actively involved in Reducing corruption in the country. Similar efforts have been taken by the current Prime Minister **(P.M.) Hun Manet**, who put great emphasis on furthering the fight against corruption and improving the rule of law. Accountability has gone a notch higher with thorough inspection in governmental and private sectors, supported by training of personnel, legislative enchantment, and initiatives aimed at discouraging corruption. The government has also improved the legal and judicial systems in this country. Besides in the promotion of real freedom of expression, **P.M. Hun Manet** is said to recognize genuine ideas and debates which are free from propaganda. The ongoing commitment to these reforms represents one of several ways in which Cambodia's governance standards are being elevated to meet global norms of transparency and accountability.

❖ Contradiction in governmental Narratives and External actors

Argument 1: The Government as an Agent of Impunity. There is wide recognition that in many Southeast Asian nations, it is government institutions that maintain the status quo of impunity. In its reports, Human Rights Watch mentions that politicians, police officers, and military personnel have often been let off the hook because they have control over the judicial and law enforcement systems.²⁶⁰ For example, there is hardly ever prosecution in countries like the Philippines and Myanmar of high-ranking officials involved in corruption and violation of human rights.²⁶¹ According to the UNODC's latest report of 2020, there has been a significant lack of independent

²⁶⁰ Human Rights Watch. (2022). *World Report 2022: Events of 2021*. Retrieved from <https://www.hrw.org/world-report/2022>

²⁶¹ Ibid.

oversight in these countries, where impunity thrives with no questions asked.²⁶² The concentration of power in the hands of the elite and the manipulation of legal systems are shown as the primary reasons for impunity in the region.

Argument 2: Governmental Claims of Reform. In contrast, most governments in Southeast Asia claim to be actively dealing with the issue of impunity through legal reforms and anti-corruption measures. On the other hand, a report from the Indonesian government reveals that major strides have been made regarding charging corrupt officials, while transparency initiatives have been launched as an antidote to impunity in State institutions, such campaigns aim to restore the confidence and trust of the people within the country's institutions.²⁶³ In addition, the Vietnam government praises its anti-corruption campaign as a significant achievement and indicates that "more than 1,000 officials were brought to court in 2021" on charges of corruption under its rule.²⁶⁴ From such governmental statements, it is indicated that there are indeed solutions to address impunity and that the problem is being tackled at a high level.

The Contradiction: In this context resides the contradiction in governmental versus external and international body reports. On one hand, the argument that governments are part of the problem is that they facilitate impunity through corruption and lack of accountability since there are so many cases of political interference with legal proceedings. On the other hand, these very same governments claim that they are combating impunity through reforms and prosecution of corrupt officials. This, however, raises an important question: Can the very same institutions often implicated in the perpetuation of impunity be trusted with actually addressing it?

Analysis: This contradiction calls into question the credibility of governmental sources in the evaluation of the root causes of impunity. Government reports, which often highlight successes, at the same time might understate or ignore structural issues that create an environment for impunity within its respective systems. Thus, the Transparency International 2022 Corruption Perceptions Index ranked most Southeast Asian nations as highly corrupt, despite official measures affirming reform.²⁶⁵ The disparity in narrative between the government and external actors suggests that the reports of either the government or external actors may be partially incomplete or biased, and therefore make it hard to assess the causes of impunity.

²⁶² United Nations Office on Drugs and Crime (UNODC). (2020). *Southeast Asia Anti-Corruption and Rule of Law Report*. Retrieved from <https://www.unodc.org/southeastasiaandpacific/>

²⁶³ Government of Indonesia. (2021). *Annual Anti-Corruption Report*. Jakarta: Ministry of Justice.

²⁶⁴ Vietnamese Government Report. (2021). *Anti-Corruption Measures in 2021*. Hanoi: Government Publishing Office.

²⁶⁵ Transparency International. (2022). *Corruption Perceptions Index 2022*. Retrieved from <https://www.transparency.org/en/cpi/2022>

CHAPTER IV: ACCOUNTABILITY AND MECHANISM TO MITIGATE IMPUNITY

I. Accountability in the region

Table 2. Global Impunity Index 2020 (GII-2020), which ranks ASEAN countries based on levels of Accountability²⁶⁶

Country	Global Impunity Rank	Key Accountability issues	Sources
Thailand	High	Weak rule of law, corruption,	(GII-2020)
Philippine	High	Extrajudicial killings, police impunity	(GII-2020)
Indonesia	Moderate	Corruption, weak legal enforcement	(GII-2020)
Myanmar	High	Military impunity, human rights violations	(GII-2020)
Vietnam	Moderate	State control over judiciary, limited freedoms	(GII-2020)
Cambodia	High	Corruption, weak judiciary	(GII-2020)
Malaysia	Moderate	Corruption, political accountability issues	(GII-2020)
Laos	High	State oppression, limited judicial independence	(GII-2020)
Brunei	High	Restricted civil liberties, royal impunity	(GII-2020)
Singapore	Low	high state control	(GII-2020)

In the above table, in the context of GII-2020, high rank refer to countries with significant impunity issue with low accountability and justice. While moderate rank, just like the name suggest, it refer to countries with moderate impunity issues and do not have fully effective accountability mechanisms. In contrast, low rank refer to countries with little impunity, strong rule of law and effective enforcement. Therefore according to GII-2020, the region of Southeast Asia as a whole have collectively low accountability mechanism since 6/10 of the countries face significant impunity and accountability problem, while only one which is Singapore has relatively low accountability issue.

²⁶⁶ UDLAP Jenkins Graduate School. (2020). *Global Impunity Index 2020 (GII-2020)*. Universidad de las Américas Puebla. Retrieved from <https://issuu.com/webudlap/docs/global-impunity-index-2020>.

II. Mechanism to mitigate impunity

1. Solidarity and Transparency: A Powerful Force Against Impunity

Two fundamental cornerstones in the struggle against impunity are transparency and solidarity. Solidarity or collective action, or speaking out against injustice as a group, is a key component of solidarity since it has an effective deterrent impact. This collective voice lessens the possibility of abusers acting without consequence by demonstrating to them that they will be scrutinized and denounced by the public. Because they know they have the community's backing, victims of solidarity are also more empowered to disclose wrongdoing, which can make it less intimidating to confront influential people. Furthermore, authorities find it far more difficult to disregard a united demand for accountability than a series of isolated complaints.

On the contrary, transparency serves as a purifying agent by bringing wrongdoing to light and making it more difficult for people in positions of authority to cover up their crimes. Mechanisms like freedom of information laws, which ensure public access to official records and processes, and a free and active press that looks into and publishes abuses of power are two ways to do this. Furthermore, whistleblower protection protocols guarantee the safety of those who expose misconduct in establishments. Additionally, transparency increases public confidence in government institutions since it makes people more inclined to think that they are run fairly.

Transparency and unity work together to build a potent force against impunity. A cohesive and knowledgeable society can ensure that everyone is subject to the law and hold authority responsible. Examples of this dynamic in action include social movements such as Black Lives Matter, which demand accountability and increase awareness of police brutality through social media and solidarity.²⁶⁷ In a similar vein, investigative reporting and leaked documents are used by journalists worldwide in their anti-corruption investigations to reveal official misconduct.²⁶⁸ Truth commissions are another example of this strategy in action since they provide victims of violations of human rights with a platform to speak up and share their stories, mending differences and encouraging responsibility.

While the above model is effective to an extent, it also has some drawbacks such as criticism from locals and scholars that it would undermine the values and tradition as some community respect hierarchy culture.²⁶⁹ Additionally, adopting a Western model without considering the local values and government structure might ultimately lead to resistance and backlash from the general public.²⁷⁰ Therefore, to adopt these values, one should carefully take into consideration the local context accompanied by initiatives to build local capacity and trust through long-sustainable terms.

²⁶⁷ Diancheng Li (2022, May 26). *The Black Lives Matter Movement Fights against Systemic Racism [Working paper]*. Social Science Research Network. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4262992

²⁶⁸ Olsen, T. D., Payne, L. A., Reiter, A. G., & Wiebelhaus-Brahm, E. (2010). When truth commissions improve human rights. *The International Journal of Transitional Justice*, 4(3), (pp 457–476).

²⁶⁹ Rorty, R. (2000). Solidarity or objectivity? In R. Menand (Ed.), *The pragmatism reader* (pp. 221-241). Blackwell Publishing Ltd. <https://doi.org/10.1515/9781400838684-025>.

²⁷⁰ Ibid.

Solidarity and Transparency to combat impunity in Southeast Asia

- **Solidarity:** “agreement between and support for the members of a group, especially a political group”.²⁷¹
- **Transparency:** “the quality of being done in an open way without secrets”.²⁷²

The key to overcoming oppression by governments is solidarity. Persecuted journalists and activists may unite and find a network of support from regional solidarity through cross-border cooperation on social media and online forums. On the other hand, activists may draw attention to violations of human rights and apply pressure for change throughout the area.

To fight impunity in Southeast Asia, transparency is equally important. There is a thriving independent media scene in the region, even with official constraints. It is essential to assist these media organizations and make sure they are protected to reveal abuses of human rights. Moreover, citizen journalism allows regular individuals to report on wrongdoings and disseminate information on social media, circumventing censorship and reaching a larger audience. By gathering and evaluating information on violations of human rights, society organizations may increase transparency even further and strengthen their arguments for responsibility.²⁷³

There are noteworthy instances of openness and unity in action. One instance of how regional cooperation from NGOs and human rights groups has put pressure on the Myanmar government and brought attention to the Rohingya crisis in Myanmar, it has been well-received on a global scale. Similarly, families of the vanished have united across borders to share information and demand responsibility in the anti-disappearance movement, which challenges the tactic of enforced disappearances used by authoritarian regimes.²⁷⁴ But it is not close to being enough yet, since only pressure is applied and the alleged offenders have not yet been trialed as they are being shielded by their authorities.

2. Upholding the Rule of Law: A Cornerstone in Combating Impunity

Southeast Asia has unique challenges in upholding the law because of several circumstances. Many nations have authoritarian regimes in place, where powerful individuals or inadequate democratic institutions frequently make certain that the law protects the rights of the powerful rather than the interests of all citizens. Furthermore, certain Southeast Asian countries' judiciaries are underfunded and lack independence, making judges prone to bribery or political pressure, which undermines the ability of the legal system to administer justice fairly and impartially.²⁷⁵ Besides, the state of affairs is made worse by corruption, which makes it possible for powerful people and organizations to escape responsibility for their deeds and erodes the rule of law.²⁷⁶ Another key barrier is low public

²⁷¹ Cambridge University Press. (n.d.). Solidarity. In Cambridge University Dictionary. Retrieved from <https://dictionary.cambridge.org/dictionary/english/solidarity>.

²⁷² Cambridge University Press. (n.d.). Transparency. In Cambridge University Dictionary. Retrieved from <https://dictionary.cambridge.org/dictionary/english/transparency>.

²⁷³ Berliner, D., & Prat, A. (2020). The transparency paradox: Why transparency can be harmful for informational accountability. *American Political Science Review*, 114(2), 404-418. <https://doi.org/10.1017/S000305541900091X>.

²⁷⁴ Bennett, A., & Chan, S. (2020). The role of transnational advocacy networks in addressing the Rohingya crisis in Myanmar. *Global Governance: A Review of Multilateralism and International Organizations*, 26(3), 379-397. <https://doi.org/10.1163/19426720-02603006>

²⁷⁵ Transparency International Knowledge Hub. (2020). *Corruption in ASEAN countries: Regional trends and country spotlights*. https://knowledgehub.transparency.org/assets/uploads/kproducts/Corruption-in-ASEAN-2020_GCB-launch.pdf

²⁷⁶ Curley, M., Dressel, B., & McCarthy, S. (2018). Competing visions of the rule of law in Southeast Asia: Power, rhetoric and governance. *Pacific Review*, 31(2), (pp. 192-209). <https://doi.org/10.1080/10357823.2018.1448753>.

trust in the legal system, if individuals view the system to be biased or ineffective, it can develop a culture of impunity in which people believe they can breach the law without consequence.

To address the above issue, a just society needed to be built on the foundation of the rule of law, which guarantees that all people are subject to the same rules that are applied equally and consistently, regardless of their history or status. This idea is essential to the struggle against impunity. It guarantees that nobody is above the law, no matter how powerful or influential they may be.²⁷⁷ This implies that just because they have a lot of influence, powerful people and organizations cannot avoid responsibility. Fair trials are another benefit of the rule of law, guaranteeing that people facing criminal charges have access to legal counsel, a fair investigation, and the presumption of innocence unless proven guilty. And judges must be free to make decisions without fear of coercion or political pressure, a strong and independent judiciary is crucial to upholding the rule of law. Furthermore, the laws themselves must be clear, publicly accessible, and consistently applied, allowing citizens to understand their legal obligations and trust so that laws will be enforced impartially.²⁷⁸ There are many challenges to upholding the rule of law including political interference, where politicians may attempt to manipulate the judiciary or laws for personal gain. Corruption, on the other hand, poses another significant threat, as it can enable powerful individuals to escape accountability.²⁷⁹ While, weak institutions, such as under-resourced law enforcement agencies and judiciaries hinder the effectiveness of the enforcement of the law.

There are many instances of enforcing and upholding the rule of law to combat impunity. Serious crimes like genocide and crimes against humanity are prosecuted by international criminal tribunals like the International Criminal Court (ICC), as well as, truth and reconciliation commissions support healing and reconciliation while assisting in the discovery of historical violations of human rights.²⁸⁰ It send a strong message that impunity is not acceptable. By maintaining the rule of law, we promote an environment in which people are held responsible for their deeds and justice is served.

Maintenance of Rule of Laws in Southeast Asia

Several techniques can help to maintain the rule of law in Southeast Asia. Such as:

- Judicial reform is vital, including steps to increase judicial independence and encourage merit-based selections for judges.²⁸¹
- Implementing strong anti-corruption measures, such as strict legislation and effective enforcement procedures, can assist prevent corruption and restore public trust in the legal system.²⁸²
- Empowering civil society organizations to monitor the government, campaign for legislative reform, and give legal assistance to marginalized people is also critical.²⁸³

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ United Nations. (2012, December 31). *The role of the International Criminal Court in ending impunity and establishing the rule of law.* <https://www.un.org/en/chronicle/article/role-international-criminal-court-ending-impunity-and-establishing-rule-law>

²⁸¹ Carothers, T. (2003). Promoting the rule of law abroad: The problem of knowledge. Carnegie Endowment for International Peace. (p. 8)

²⁸² Ibid.

²⁸³ United Nations Office on Drugs and Crime (UNODC). (n.d.). *The role of civil society in promoting the rule of law.*

<https://www.unodc.org/unodc/en/ngos/the-civil-society-role-in-preventing-and-combating-organized-crime-in-western-and-central-africa.html>

- International collaboration can help promote the rule of law by exchanging best practices and offering technical assistance.
- Public education about citizens' rights and the legal system can give individuals the ability to hold authorities accountable and demand equitable treatment.²⁸⁴

As of now, there are some efforts to protect the rule of law in Southeast Asia including the establishment of independent commissions against corruption or human rights violations, which serve as checks on the authority of prominent individuals and organizations, grassroots movements led by local activists and attorneys work relentlessly to defend human rights and hold governments accountable for violations in which playing an important role in promoting justice, regional collaboration through initiatives such as ASEAN, which promotes good governance and the rule of law, and can serve as a foundation for regional progress.

3. Power Division and Balance: A Crucial Safeguard Against Impunity

In general, when concentrated power is in the hands of a few people or institutions, it can provide an ideal environment for impunity. Power division and balance, which are both fundamental concepts of a functioning democracy, are critical protections against the threat of impunity

3.1. The Importance of Power Division and Balance

- **Checks and Balances:** The division of authority among the three departments of government, which includes legislative power, executive power, and judicial power creates a system of checks and balances within the government internally.²⁸⁵ This arrangement ensures that each branch can hold the others accountable, preventing any one group from accumulating excessive influence and misusing its authority. This balance is critical in reducing the potential for impunity.
- **Independent Oversight:** Independent institutions, such as an authoritative court and a free press, are vital in investigating and exposing misconduct by powerful individuals or organizations. This transparency prevents abuses of power and fosters accountability by exposing wrongdoing and ensuring that those guilty face the consequences.
- **Decentralization:** Transferring power from the central government to local authorities promotes greater citizen participation and minimizes power concentration at the national level.²⁸⁶ This distribution makes it more difficult for abuses to go unreported and allows local communities to hold their leaders accountable, cultivating a culture of transparency and responsibility.

3.2. Subjects to be fixed to combat impunity

Power division and balance are two fundamental characteristics of any democratic society, where little impunity happen. Due to specific obstacles in Southeast Asia, the region's political landscape frequently involves:

²⁸⁴ *Supra* note 349.

²⁸⁵ Somin, I. (2014). The political and economic benefits of separation of powers. *Harvard Journal of Law & Public Policy*, 37(3), 791-823. <https://doi.org/10.2139/ssrn.2381553>

²⁸⁶ Falletti, T. G. (2005). Theory of decentralization: A comparative analysis. *The Journal of Politics*, 67(4), 1041-1064. <https://doi.org/10.1111/j.1468-2508.2005.00355.x>

- **Dominant Ruling Parties:** In numerous Southeast Asian countries, political power is concentrated in a single party that has dominated for long periods of time.²⁸⁷ This dominance can weaken opposition groups and undermine the efficiency of legislative and judicial power checks on the executive branch, resulting in a lack of accountability and transparency.
- **Weak Institutions:** Many countries in the region are lacking in resources or politically corrupted institutions, such as legislative bodies and judicial systems, which are unable to function independently.²⁸⁸ These institutions frequently lack the capacity to adequately oversee the executive branch, allowing abuses of power to continue and contributing to an environment of impunity.
- **Patronage Systems:** Favouritism systems are widespread in Southeast Asia, where political allegiance is frequently rewarded with favors and privileges.²⁸⁹ These networks weaken institutions' neutrality and make it difficult to hold powerful figures accountable, as devotion to the ruling class frequently surpasses adherence to the rule of law.

3.3. Strategies for enhancing power division and balance

- **Strong Institutions:** Improving legislative bodies, judicial systems, and independent media is critical to achieving a more equitable political landscape.²⁹⁰ International cooperation and domestic reforms can offer the resources and support required to strengthen these institutions' capacity and independence, allowing them to successfully carry out their supervisory functions.
- **Strengthening parliament:** Supporting efforts that enable legislators to hold the executive branch accountable is critical. Efforts should be directed towards strengthening parliaments' ability to critically examine government actions and enforce laws impartially, ensuring effective supervision.
- **Judicial Independence:** Implementing procedures for selecting judges based on merit and safeguarding them from political retaliation is essential for maintaining an independent judiciary.²⁹¹ These phases contribute to the development of a judicial system competent for reaching unbiased decisions while also acting as a safeguard for other departments of government.
- **Decentralization:** Promoting attempts to delegate authority to local governments can boost public engagement and hold authorities more accountable to their areas. Decentralization makes governance more responsive to local demands and minimizes the concentration of power at the central level.
- **Promoting Civil Participation:** Encouraging citizens to participate in the political process, such as voting, activism, and peaceful protest, may help generate pressure for better

²⁸⁷ Weiss, M. L. (2013). Politics in Southeast Asia: Clientelism and electoral dynamics. *Journal of Southeast Asian Studies*, 44(2), 293-295. <https://doi.org/10.1017/S002246341300012X>

²⁸⁸ Pepinsky, T. B. (2010). Weak states and steady state: Economic performance and governance in Southeast Asia. *Journal of East Asian Studies*, 10(3), 423-441. <https://doi.org/10.1017/S1598240800000386>

²⁸⁹ Slater, D. (2010). The ironies of instability in Indonesia. *American Political Science Review*, 104(3), 505-523. <https://doi.org/10.1017/S000305541000020>

²⁹⁰ Nyman, M. (2015). Building strong institutions in Southeast Asia: The role of legislative reforms and judicial independence. *Asian Journal of Public Policy*, 8(3), 223-240. <https://doi.org/10.1080/17516234.2015.1035407>

²⁹¹ Peerenboom, R. (2008). Judicial independence in China and its relevance for reforms in Southeast Asia. *Asian Journal of Comparative Law*, 3(1), 1-32. <https://doi.org/10.2202/1932-0205.1012>

accountability and transparency.²⁹² Active public involvement develops a culture of alertness and demand for fair government, which is required to sustain a balanced power structure. As such by empowering civil society organizations to monitor government actions and push for democratic reforms, it is important for ensuring checks and balances. Such organizations can provide marginalized populations with an outlet to expose abuses and advocate for greater transparency and responsibility in governance.

- **Anti-Corruption Measures:** Strong anti-corruption legislation and mechanisms are essential for deconstructing corrupt systems and strengthening institutions to combat illicit activity. As such, effective anti-corruption measures can weaken institutions that protect the powerful, ensuring that all individuals, regardless of status, are held accountable to the rule of law.
- **Regional Cooperation:** Initiatives launched by regional organizations such as ASEAN can promote democratic standards and best practices for power division and balance.²⁹³ Southeast Asian countries may learn from each other and work together to develop democratic institutions and governance by encouraging regional cooperation and sharing experiences.

Overall, Building a system of power distribution and balance in Southeast Asia is an ongoing effort that must be handled, since it is the region's unique issue. Furthermore, significant progress may be made toward eliminating impunity and creating a fairer and more just society by supporting measures that enhance democratic institutions and empower citizens. A strong democracy is probably one of the most effective methods to keep the balance of powers in check.

4. Ensuring Accountability and Strong Enforcement: Combating Impunity

Demanding responsibility draws attention to abuses of power, encouraging victims to disclose crimes, and discouraging potential offenders by signaling no tolerance for misconduct. Meanwhile, strong enforceability guarantees that those who violate the law face the penalties, promoting equality under the law and breaking cycles of impunity. Together, these initiatives generate a surveillance mechanism in which public scrutiny and vigorous enforcement work in sync to promote a culture of law-abiding behavior and justice for all.

4.1. Essential Elements for Enhancing Accountability and Enforcement

While accountability and enforceability are critical for sustaining justice and the rule of law to combat impunity, Southeast Asia has unique challenges to their implementation:

- **Cultural Considerations:** Many Southeast Asian countries' cultural norms emphasize respect for hierarchy and authority, which is why this can make people hesitant to criticize or report misconduct by prominent individuals, contributing to a climate in which impunity prevails.²⁹⁴

²⁹² Berenschot, W. (2016). The impact of participation on democracy and accountability in Southeast Asia. *Journal of East Asian Studies*, 16(2), 297-320. <https://doi.org/10.1017/S159824080000371X>

²⁹³ Acharya, A. (2012). Regionalism and multilateralism: Essays on cooperative security in Asia. *Journal of International Relations and Development*, 15(3), 281-302. <https://doi.org/10.1057/jird.2012.16>

²⁹⁴ Scott, J. C. (1977). The moral economy of the peasant: Rebellion and subsistence in Southeast Asia. In *The moral economy of the peasant: Rebellion and subsistence in Southeast Asia* (pp. 210-235). Yale University Press.

- **Collective Identity:** A strong feeling of community and collective identity may sometimes favor group peace over individual accountability, resulting in a reluctance to address group corruption or abuses.²⁹⁵
- **Underfunded Institutions:** Law enforcement and judicial systems in many Southeast Asian countries frequently lack adequate financing and resources, limiting their ability to undertake complete and timely investigations.²⁹⁶
- **Training Deficits:** A lack of competent training and resources for law enforcement and court officials can result in ineffective case management and law enforcement, limiting the effectiveness of accountability mechanisms
- **Fear of Repercussions:** In areas where powerful individuals or groups wield great authority, witnesses may be discouraged from testifying or reporting crimes due to fears of severe repercussions, such as assault or social ostracization.²⁹⁷

4.2. Key Components to Make Southeast Asia More Accountable and Enforceable

▪ Solutions for Communities

- Mechanisms Based on Localization: Establishing community-based mechanisms of reporting crimes and corrupt practices, which allow anonymous reports can enhance trust and participation in the legal system.²⁹⁸
- Involving Traditional Elites: Encompassing the involvement of known local or traditional leaders in enhancing legal compliance and helping victims could bridge the gap between institutional law enforcement and community confidence.²⁹⁹

▪ Victim-Centric Approach

- Making NGOs Stronger: Encouraging non-governmental organizations (NGOs) to offer legal aid services will increase their participation in justice systems among victims and witnesses.
- Legal Aid that is Obtainable by All: This strategy will ensure that more people can afford lawyers regardless of their financial situation.

▪ Technology & Innovation

- Mobile Justice Services: Mobile justice services, such as mobile courts and legal aid clinics, can reach remote or underserved communities, increasing legal access and accountability.³⁰⁰
- Digital Evidence Gathering: Using digital tools to collect and preserve evidence, such as forensic technology and secure communication channels for whistleblowers, can improve investigative capabilities and safeguard informants.

²⁹⁵ Dumont, L. (1979). Hierarchy and accountability: The Southeast Asian context. *Comparative Studies in Society and History*, 21(1), 1-20. <https://doi.org/10.1017/S001041750000900X>

²⁹⁶ Quah, J. S. T. (2006). Corruption in Asian countries: Can it be minimized? *Public Administration Review*, 66(6), 707-720. <https://doi.org/10.1111/j.1540-6210.2006.00642.x>

²⁹⁷ Hurwitz, A. (2014). Universal rights and local repression: Protection of human rights defenders in Southeast Asia. *Journal of Human Rights Practice*, 6(2), 260-278. <https://doi.org/10.1093/jhuman/huu011>

²⁹⁸ Wood, R. C. (2013). Community-based reporting and legal empowerment in Southeast Asia. *Law and Development Review*, 6(1), 87-111. <https://doi.org/10.1515/ldr-2012-0042>

²⁹⁹ Alieva, D. (2014). The role of traditional leaders in conflict resolution and governance in Southeast Asia. *Journal of Peace Research*, 51(4), 515-529. <https://doi.org/10.1177/0022343313517654>

³⁰⁰ Mbazira, C. (2010). Mobile justice: A new frontier for access to justice in Africa and Southeast Asia. *African Human Rights Law Journal*, 10(1), (pp. 92-112).

- **Regional Cooperation**

- Cross-Border Legal Frameworks: Creating regional legal frameworks and cooperative agreements to combat transnational crime and corruption can increase enforcement and accountability across boundaries.³⁰¹
- Joint Task Forces: Creating joint task forces across Southeast Asian countries can help share intelligence, resources, and best practices, thereby increasing the overall capacity to deal with complex legal concerns.

5. Potential reform of ASEAN Principles

In solving the problem of impunity, a combination of the ASEAN's principles of non-interference and consensus-based decision making proves to be challenging.

Non-Interference: The pillar upon which ASEAN is founded rests on non-interference, but it has adverse effects especially on matters regarding human rights violations and impunity.³⁰² This principle prohibits any member state from interfering with another member state even if such interference is based on grave concerns for human rights abuses.³⁰³ Consequently, ASEAN countries often shy away from expressing concerns or taking steps even when there are serious human rights violations., this is why the lack of pressure from outside allows such regimes to continue disregarding human rights with impunity.³⁰⁴ In short, efforts aimed at improving human rights records within the region may be delayed by the shield of non-interference.

Consensus-Based Decision Making: Due to ASEAN's consensus-based decision-making process has made addressing impunity even more complicated. "For the process of decision-making to be fulfilled, all member states must agree unanimously to take collective action. This manner of doing things aims at giving every country a voice and ensuring that no one country hijacks it completely but conversely allows an individual member state to veto any move."³⁰⁵ Therefore, when their own rights records or those of their allies get questioned, they can stop such initiatives from being implemented against them. Consequently, this has led to watered-down policies or no action at all regarding crucial issues leading to continued perpetuity.

5.1. Possible Solutions

- **Reinterpreting Non-Interference:** ASEAN may redefine non-interference so as not to interfere with national sovereignty while allowing constructive engagement and intervention in human rights matters.³⁰⁶ If this principle was redefined, it would enable ASEAN to deal with human rights without being seen as a meddler in domestic affairs.

³⁰¹ Findlay, M. (2015). Southeast Asian legal cooperation: Challenges for the future. *Asian Journal of Criminology*, 10(1), 1-19. <https://doi.org/10.1007/s11417-015-9218-5>

³⁰² Jones, L. (2011). ASEAN, sovereignty and intervention in Southeast Asia. In *ASEAN, sovereignty and intervention in Southeast Asia* (pp. 45-68). Springer.

³⁰³ Dosch, J. (2012). ASEAN's reluctant approach to human rights: A reconciliation of human security and state sovereignty. *Asia Europe Journal*, 10(1), 41-58. <https://doi.org/10.1007/s10308-012-0313-9>

³⁰⁴ Davies, M. (2014). ASEAN and human rights: The long road to an ASEAN human rights regime. *Asian Survey*, 54(6), 1165-1186. <https://doi.org/10.1525/as.2014.54.6.1165>

³⁰⁵ Katsumata, H. (2003). ASEAN's cooperative security enterprise: Norms and interests in the ASEAN Regional Forum. *Asian Survey*, 43(3), 429-448. <https://doi.org/10.1525/as.2003.43.3.429>

³⁰⁶ Haacke, J. (2003). The concept of non-interference and its consequences for regional order in Southeast Asia. *Australian Journal of International Affairs*, 57(3), 353-372. <https://doi.org/10.1080/1035771032000139078>

- **Alternative Mechanisms:** Making alternative mechanisms for addressing human rights abuses will prove beneficial. For example, creating a commission of inquiry or regional human rights council would constitute a structured and authoritative platform to expand and deal with such abuses. These bodies could act without the need for consensus allowing tough action against impunity.
- **External Pressure:** Whilst maintaining respect for ASEAN's autonomy, the international community must come in urging ASEAN to develop stronger remedial measures concerning these issues of human rights. This can be done through diplomatic pressure, economic incentives, and engagement with international human rights organizations to motivate ASEAN to improve its accountability and enforcement mechanisms.
 - **Reform Ideas: For better accountability and mitigate impunity**

Redefining Non-Interference: ASEAN could arguably gain much from redefining the non-interference principle, and possibly bring about a more positive approach to handling issues that are related to human rights and impunity. This redefinition could involve:

- _ **Peer Review Mechanisms:** Building up a practice in which the members of the group check on each other's performance in the field of human rights transparently and encouragingly.³⁰⁷
- _ **Confidential Dialogues:** The possibility to establish private, anonymous discussions where concerns about human rights have to be expressed, not to embarrass a certain State, but to preserve the idea of sovereignty and avoid useless confrontation at the same time.

Alternative Mechanisms: To avoid the limitations of consensus-based decision-making, ASEAN could develop independent bodies tasked with addressing human rights issues,³⁰⁸ such as:

- _ **Independent Commissions of Inquiry:** These bodies may scrutinize human rights abuse and prescribe actions that are not dependent on the agreement by all members.
- _ **Regional Human Rights Council:** The formation of a human rights council/Court will eliminate the problem as recommended because it would create a focal point that individuals implicated in human rights abuses would report to regularly, and be able to face accountability for their actions.³⁰⁹

Strengthening Civil Society: This means that shielding and supporting regional NGOs and human rights defenders is essential. This can be achieved by:

- _ **Providing Legal Protections:** We need to guarantee that human rights activists and NGOs as specific types of participants are safeguarded under the legislation of their countries to work independently without facing sanctions.

³⁰⁷ Huxley T. ASEAN and the Peer Review Mechanism: Towards Greater Accountability. *Pac Rev.* 2015;28(3):379-394. doi:10.1080/09512748.2015.1013497.

³⁰⁸ Senaratne, K. (2013). Alternative mechanisms for human rights protection in Southeast Asia: Lessons from regional practices. *Human Rights Review*, 14(2), 141-162. <https://doi.org/10.1007/s12142-012-0255-0>

³⁰⁹ Peerenboom, R. (2014). The role of Human Rights Councils in promoting accountability in Southeast Asia. *Journal of Asian Studies*, 73(3), 547-570. <https://doi.org/10.1017/S002191181400039X>

- **Facilitating Regional Networks:** To increase the effectiveness of civil society organizations in putting pressure on their governments, it is useful to promote the formation of regional networks that can coordinate and aid each other.³¹⁰

5.2. Finding a Balance to the ideas of reform

Striking a balance between respecting national sovereignty while at the same time promoting human rights is very crucial. Although historically principle of non-interference has fostered regional peace and stability, this however in the context of the present should adapt itself according to the regional needs. The reforming of ASEAN should find effective ways of dealing with impunity without undermining the stability provided by the non-interference principle throughout history. Moreover, it must be noted that there were instances when ASEAN took collective action such as in the area of maritime security, and these examples indicate that progress is possible on human rights too, if there is a common will and strategy.³¹¹ Consequently, to find creative solutions to problems like impunity without undermining the stability and unity of the region, the core principles of ASEAN must be well thought out.

To establish an effective framework for combating impunity while maintaining regional peace, ASEAN should:

- **Uphold National Sovereignty:** the challenge of guaranteeing that some reforms are not damaging to the member state's sovereignty and political landscape.
- **Promote Human Rights and Accountability:** Develop structures and protocols that shape accountability and justice and foster its development.
- **Foster Regional Cooperation:** Fostering teamwork and cooperation between nations in the fight against the odds and achievement of collective goals among the member states.

Through the adoption of such reform ideas and by engaging the above-mentioned issues, ASEAN can work towards fulfilling its goal of attaining a more accountable ASEAN that can fight impunity without compromising regional peace and cooperation. To conclude, for addressing impunity in the region effectively ASEAN needs to reform its approach from non-interference and consensus-based decision-making. In this regard, with a range of interpretations available along with alternative mechanisms, ASEAN can be more involved in protecting human rights and holding those who violate them accountable.

³¹⁰ Purnomo, A. Y. (2011). Civil society networks and their impact on accountability in Southeast Asia. *International NGO Journal*, 6(4), 95-110. <https://doi.org/10.5897/INGOJ11.023>

³¹¹ Emmers, R. (2009). The role of ASEAN in managing maritime security in Southeast Asia. *Pacific Review*, 22(4), 521-539. <https://doi.org/10.1080/09512740903068363>

CONCLUSION

The issue of impunity in Southeast Asia, particularly within the context of ASEAN member states, is a deeply ingrained problem shaped by the region's complex historical, political, and socio-cultural dynamics. Despite ASEAN's formal commitment to peace, stability, and human rights, the principles of non-interference and consensus decision-making have often constrained the organization's ability to address the pervasive culture of impunity. This study highlights how the persistence of impunity is further entrenched by weak legal frameworks, systemic corruption, and the uneven distribution of power across the region, all of which collectively undermine the rule of law and obstruct the path to justice. The research reveals that these factors converge to create environments where human rights violations, corruption, and abuses of power are not only tolerated but often institutionalized. Throughout the region, the influence of powerful political, military, and economic elites frequently results in the subversion of legal processes, allowing them to evade accountability for serious offenses. The thesis demonstrates that the rule of law in Southeast Asia is frequently compromised by political interests, making justice elusive for many citizens. The study also explores the role of external influences, such as international pressure and the involvement of global organizations. While these external forces are important, they have often proven insufficient in effecting substantial change. The research concludes that addressing impunity in Southeast Asia requires a comprehensive approach that includes legal reforms, a shift in political will, regional cooperation, and a transformation in societal attitudes toward accountability.

RECOMMENDATION

To effectively combat impunity in Southeast Asia, a comprehensive approach that integrates legal, political, and social reforms is essential. Strengthening legal and judicial institutions across ASEAN member states should be a priority. This involves enhancing the independence and capacity of the judiciary, ensuring that legal frameworks are robust enough to address cases involving powerful figures. Judicial reforms should aim to protect the judiciary from political interference, allowing it to function impartially and effectively, thus upholding the rule of law and ensuring unbiased justice. ASEAN must take a more proactive role in addressing human rights violations and systemic impunity within the region. The organization should move beyond its traditional non-interference policy and embrace a more interventionist approach, actively monitoring and addressing violations among its member states. Strengthening the ASEAN Intergovernmental Commission on Human Rights (AICHR) and establishing binding regional mechanisms for accountability would be crucial steps in this direction. ASEAN's evolving role should focus not only on promoting dialogue but also on enforcing compliance with human rights standards among its members. Political will is a critical element in the fight against impunity. Governments in the region must show a genuine commitment to upholding the rule of law and ensuring accountability, particularly in cases involving corruption and human rights abuses. This includes enforcing anti-corruption laws, promoting transparency in government operations, and ensuring that influential figures are held accountable for their actions. Without strong political will, efforts to combat impunity are likely to fall short. Empowering civil society and independent media

is also vital in the fight against impunity. These entities play a crucial role in exposing abuses, advocating for justice, and holding governments accountable. Therefore, it is essential for ASEAN member states to create an environment where civil society organizations and independent media can operate freely and without fear of retaliation. Providing legal protections for journalists, activists, and whistleblowers, along with ensuring that they have the resources and support needed, will enable them to carry out their work effectively. Lastly, the international community has an important role in supporting Southeast Asia's efforts to combat impunity. Sustained international pressure, whether through diplomatic channels, targeted sanctions, or global advocacy, can be instrumental in driving reforms. However, these efforts must be complemented by support for local initiatives aimed at strengthening accountability. Moreover, cultural and societal reforms are necessary to shift public attitudes toward authority and justice. Educational programs, public awareness campaigns, and community engagement can help foster a culture that values accountability, transparency, and the rule of law, thereby laying the foundation for a more just and equitable society in Southeast Asia.

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