

Mahdev Mohan and Cynthia Morel (eds.), *Business and Human Rights in Southeast Asia: Risk and the Regulatory Turn* (London: Routledge, 2015) pp xx + 284.

Southeast Asia has experienced rapid economic growth over the past few decades. The establishment of the ASEAN (Association of Southeast Asian Nations) Economic Community (AEC) in 2015 has raised the possibility of creating a European Union-style single economic market, thus attracting further investment and opportunities in the region. Against this backdrop lies the spectre of human rights abuses, which have already marred the historical legacy of many of the resource-rich countries within ASEAN. Many nations in the region are still evolving in their transition towards democracy, respect for the rule of law, and good governance. The World Bank has recently emphasized that policy makers in the region ‘must remain focused on structural reforms that lay the foundation for sustainable, long-term and inclusive growth’ in order to ‘reassure investors and markets, and help sustain growth that can help lift people out of poverty’.<sup>1</sup> It is thus both timely and necessary for all stakeholders within Southeast Asia, including those investing in the region, to identify and understand critical risks and challenges inherent in this environment.

Against this background, the book under review is a welcome addition to the existing literature. The book is authored by a distinguished panel of experts in the field of business and human rights (BHR). It is both a strength and a weakness of the book that the authors are from diverse disciplines and backgrounds. Each contributing chapter is well-written and is a valuable contribution in its own right, and together the chapters create an overall impression of the ‘regulatory space’ in Southeast Asia. The book struggles a little to present the chapters in a cohesive framework, but this is perhaps understandable given the range of topics and the variety of methodological approaches taken by the contributing authors.

The book is divided into four discrete parts. As the reader progresses from Part I through to Part IV and from chapter to chapter within each of the constituent parts, there is at first no obvious link between them other than the over-arching theme of the intersection of business with human rights in the Southeast Asia region. Nonetheless the fragments taken as a whole provide the reader with a sense of the complexity of both the BHR landscape in Southeast Asia, and the multi-level, multi-faceted approaches that will be required to navigate the terrain.

Part I of the book contains four chapters. Chapter 1 starts off on an optimistic note: it looks at the current state of corporate social responsibility (CSR) in ASEAN and whilst acknowledging that the UN Guiding Principles on Business and Human Rights (UNGPs) ‘are still a relatively new concept and Governments as well as businesses have a considerable task ahead in implementing the *Protect, Respect and Remedy Framework*’, concludes confidently that the regional human rights system in ASEAN

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<sup>1</sup> World Bank, ‘East Asia and Pacific Economic Update, October 2015: Staying the Course’, <http://www.worldbank.org/en/region/eap/publication/east-asia-pacific-economic-update> (accessed 10 February 2016).

‘can evolve and improve over time’.<sup>2</sup> Chapter 2 starts with an overview of the policy and regulatory contexts of five of the ASEAN member states—Indonesia, Laos, Myanmar, the Philippines and Singapore—with particular reference to the impacts upon the rights of rural and indigenous peoples. The author ends the chapter with some general observations highlighting lack of enforcement as an ongoing concern but finishes on a somewhat optimistic note, concluding: ‘in many states progress is being made to embed the notions of respect for and the protection of rights of people in the areas of land, labour, and the environment’.<sup>3</sup> Chapter 3 is more thematic in its approach, focusing on ‘what it means to bring a gender perspective to the field of human rights’.<sup>4</sup> This chapter explores gender in relation to the state duty to protect and the corporate responsibility to respect, with case studies to illustrate how human rights principles relating to gender play out in practice. Chapter 4, which completes Part I of the book, examines the information and communication technology (ICT) sector and the existing human rights mechanisms that guide the business response towards ICT-enabled child abuse in Southeast Asia. The chapter presents the challenges in protecting the rights of children in the region and considers the ICT industry’s ‘added dimension to its responsibility to protect human rights’ in the context of its ability to transcend national borders.<sup>5</sup>

Part II of the book is more directly concerned with the regulatory and risk profile of certain industries operating within ASEAN. It opens with Chapter 5, which examines the extent to which social and environmental risks are being accounted for in project finance during the process of AEC financial integration. The author highlights the gap between principles and practice with reference to the financing of the Xayaburi dam by Thai banks conducted without due regard for the Equator Principles.<sup>6</sup> The case study illustrates the author’s argument for the need to link standard setting for responsible investment to the process of financial integration in ASEAN. Chapter 6 continues the theme of environmental responsibility with a look at how ASEAN has responded to the pollution haze caused by the palm oil industry that engulfed Malaysia and Singapore in the summer of 2013. Alongside Singapore’s passing of the Transboundary Haze Pollution Act of 2014 and Indonesia’s long-awaited ratification of the Agreement on Transboundary Haze Pollution (Haze Agreement) in 2014, the author calls for business and government cooperation in order to acknowledge the gap that still exists at the enforcement level.

Chapter 7 completes Part II with a focus on the regulatory environment and risks for the extractives industry operating in emerging economies known as the ‘CLMV’ states (namely, Cambodia, Laos, Myanmar and Vietnam), all associated with weak governance. The chapter seeks to position transnational human rights litigation as both a risk and a remedy in these environments, noting that as ASEAN is increasingly affected

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<sup>2</sup> Mahdev Mohan and Cynthia Morel (eds.), *Business and Human Rights in Southeast Asia: Risk and the Regulatory Turn* (London: Routledge, 2015) 28–9.

<sup>3</sup> *Ibid.*, 55–6.

<sup>4</sup> *Ibid.*, 57.

<sup>5</sup> *Ibid.*, 93.

<sup>6</sup> Equator Principles Association, ‘Equator Principles III’ (2013), <http://www.equator-principles.com/index.php/ep3> (accessed 10 February 2016). The author notes that despite the widespread adoption of the Equator Principles by global banks, banks from ASEAN countries have not yet adopted the Equator Principles or comparable policies to guide project finance lending decisions. Mohan and Morel (eds.), note 2, 107.

by the linkage of free trade and investment to compliance with international labour standards 'it is critical for ASEAN to recognize the importance of business and human rights to its development as an integrated economic community'.<sup>7</sup> National and regional action plans are proposed as the way forward, offering a 'pluralistic and de-centralised approach to regulation' which the author regards as 'crucial in securing regulatory legitimacy and compliance in the face of the specific human rights challenges that CLMV States face'.<sup>8</sup>

Part III of the book focuses on the operationalization of the UNGPs, especially the role and shape of due diligence measures applicable to different contexts. Chapter 8 looks at Myanmar as a strategic location within ASEAN, and explores the challenges facing foreign investors as they face risks including allegations of unclear land ownership, ethnic conflicts and allegations of complicity related to businesses with close connections to the former military junta. The chapter documents the business culture of Myanmar's transition from one reliant on back-room deals to one of accountability and transparency, and offers the UNGPs as a model framework for capacity building in the region. Chapter 9 takes a look at how the process of conducting human rights audits is evolving in an effort to set standards that embed international human rights law and the UNGPs. Chapter 10 concludes Part III of the book by taking a look at the role the finance sector could play in protecting and promoting human rights. The author calls upon the industry to take a leadership role in bridging the divide between business and human rights through sectoral collaboration similar to that achieved by the Thun Group of Banks in Europe.

Part IV of the book is devoted to varying accounts of how access to remedy for BHR-related harms is achieved in Southeast Asia. Chapter 11 looks at judicial remedies for environmental harms in the Philippines. The author argues that judicial innovation in the area of environmental protection marks a 'progressive evolution of the judiciary's role in protecting legal rights, especially when executive or legislative means are unavailable or lacking'.<sup>9</sup> The author cites a number of cases brought by communities affected by socially and environmentally harmful business practices that reveal the tensions that exist between judicial process and procedural innovation on the one hand and enforcement efforts on the part of government agencies on the other.

Chapter 12, on the other hand, explores the efficacy of grievance handling practices in the mining industry as a means of access to remedy. The authors present a case study of a foreign-owned mining company operating in Southeast Asia to illustrate the challenges that exist at an operational level where the socio-political context is one in which the state ostensibly adopts internationally agreed norms, while at the same time preserving conflicting domestic standards. Chapter 13, the book's concluding chapter, ends on an optimistic note (similar to how the book begins). It draws a link between access to remedy and the right to development, in light of the adoption of the latter in the normative scope of ASEAN Human Rights Declaration of 2012.<sup>10</sup> The author argues

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<sup>7</sup> Mohan and Morel (eds.), note 2, 157.

<sup>8</sup> *Ibid.*, 159.

<sup>9</sup> *Ibid.*, 226.

<sup>10</sup> ASEAN, 'ASEAN Human Rights Declaration 2012', <http://aichr.org/documents/> (accessed 10 February 2016).

that whilst the 2012 Declaration has been criticized for falling short of international standards, the inclusion of the right to development in this landmark document lends hope to the fact that access to remedy may nonetheless be achieved in a manner that is responsive to the unique needs and challenges of the region.

The editors' stated aims are for the book to be a 'scholarly yet accessible source for academics, students and professionals', and for it to be 'policy-relevant'.<sup>11</sup> It has certainly succeeded in these aims, for it contains a wealth of information that will provide a valuable resource to its intended audience. What, in my view, would have increased its strength as a reference tool for policy-makers at the regional level is the collation of the recommendations found dotted throughout the book into a readily accessible framework. Nevertheless, the book is a valuable contribution to the field of BHR in the Southeast Asia region.

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<sup>11</sup> Mohan and Morel (eds.), note 2, xix.