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DOI
10.4324/9780367422080-6

Publication date
2023

Document Version
Final published version

Published in
Routledge Handbook of Civil and Uncivil Society in Southeast Asia

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LEGAL MOBILISATION AND CIVIL SOCIETY

On the use and usefulness of strategic litigation in Southeast Asia

Adriaan Bedner and Ward Berenschot

On 16 May 2013, Indonesia's Constitutional Court issued a ruling that meant an important victory for the petitioner, the Indigenous Peoples' Alliance of Nusantara (AMAN). AMAN had requested a review of the 1999 Forestry Law, claiming that the way in which this statute defined customary forests as state forests was unconstitutional. This contested definition gave the Indonesian state legal control over the territory of Indonesia's many indigenous communities. The Constitutional Court was one of the many avenues AMAN deployed to challenge this excessive claim and to prevent the state from providing concessions to mining, palm oil, timber, and pulp and paper companies on indigenous communities' land. The Court ruled that the term 'state' in Article 1 (6) of the Forestry Law – 'customary forests are state forests located in indigenous peoples' territories' – should be deleted. A small change, but one with considerable implications, as it would mean that the land rights of indigenous communities are original in nature and do not derive from an ultimate right of the state (Bedner and Van Huis 2008: 170–171). At the time, this judgement was considered a formidable breakthrough in the rights struggles of indigenous communities. Within Southeast Asia, it established Indonesia as at the vanguard of judicial activism in matters concerning human rights and proved the effectiveness of legal mobilisation as a strategy for citizens to influence public policies.

However, after eight years, AMAN's legal victory has lost some of its lustre. Implementation of the Constitutional Court's ruling has blunted its critical edge: while formally acceding to the Court's demand to recognise customary land, the Indonesian government has continued to enforce strict criteria for communities to qualify as 'indigenous' (called *adat* in Indonesia) (Van der Muur 2018; Bedner and Arizona 2019). As a result, the number of communities that have regained control over their land has remained extremely limited (see KPA [Konsorsium Pembaruan Agraria] 2019).[1]

AMAN's appeal to Indonesia's Constitutional Court is an example of a worldwide trend in which civil society organisations incorporate legal strategies within their repertoires of contention to further a collective cause. Also referred to as public interest litigation or cause lawyering, these strategies are now usually labelled 'legal mobilisation'. This term refers to the practices of individuals or civil society organisations invoking legal rights and using litigation to pursue public interest goals (cf. Tam 2012, 4;

DOI: 10.4324/9780367422080-6

Handmaker 2019; Lehoucq and Taylor 2020). Legal mobilisation has become an increasingly common element of NGO strategies – so much so that observers have referred to this development as a 'rights revolution' (Epp 1998) and speak in glowing and hopeful terms about its potential to 'overcome political blockages, channel important information to political and bureaucratic actors … and hold states accountable for incomplete commitments …. while benefiting … the under privileged' (Brinks and Gauri 2008, 6; see also Franco 2008).

In this chapter, we will discuss the characteristics of legal mobilisation in Southeast Asia and its role in the strategies of civil society organisations aiming to strengthen citizen rights. Employing and synthesising studies on two fields of NGO activism – land conflicts and labour rights – we will explore how regularly NGOs in the region make use of legal mobilisation strategies, how they employ them, and how effective these strategies have been. To this end, we couch our analysis in a brief comparative analysis of the 'legal opportunity structure' (cf. Schramm 2020) shaping legal mobilisation strategies. We limit our analysis to the four Southeast Asian countries where legal mobilisation is most viable and most common: Thailand, Indonesia, the Philippines, and Malaysia.

On the basis of our analysis, we conclude that, while particularly Indonesia, Thailand, and the Philippines have legal frameworks of justiciable rights that are conducive to legal mobilisation, civil society organisations do not employ legal mobilisation as a preferred means to achieve their goals, with their use of Indonesia's Constitutional Court as an outstanding exception. When organisations turn to the court system, they mostly do so to seek redress for specific complaints or conflicts; they rarely employ the legal system in a systematic way to achieve changes in governmental policies or laws. We observe that a vicious cycle is at work here: because of the reluctance of NGOs to turn to the courts to promote legal change, the legal systems in the countries under study face limited pressure to become more activist. The limited use of legal strategies, moreover, reduces the incentive for courts and legislators to develop consistent lines of precedent and strengthen citizens' rights, which, in turn, discourages civil society organisations from employing legal strategies.

This chapter proceeds as follows. We first provide an analysis of the ways in which the character of legal systems across Southeast Asia shapes (and curtails) the scope for legal mobilisation. Subsequently, we discuss legal mobilisation strategies concerning land conflicts and labour. To foster comparative analysis in a relatively short essay, we will engage in paired comparisons: for land rights, we discuss legal mobilisation in Indonesia and the Philippines; for labour rights, we focus on Malaysia and Thailand. These analyses are based on a comparative reading of available studies on NGO activism in these two fields.[2]

Legal mobilisation and legal opportunity structures in Southeast Asia

With legal mobilisation, we refer to the practices of individuals' or civil society organisations' invoking legal rights and using litigation to pursue public interest goals. While the term is sometimes used to describe a more general invocation of legal rights, in this chapter, we focus specifically on the use of litigation for the purpose of advancing public aims that exceed individual interests. When the pursuit of an individual interest before a court has implications for a wider group or for state policy and when the plaintiff is aware of this broader interest, such a case will fall under our definition. An important feature of legal mobilisation is that its main objective need not be winning a case, but it may be part of a political strategy to draw attention to an issue, to start a

debate on extending the scope of a particular right, or even to enable the media to write about something that they could otherwise not openly address.

To understand the usage and effectiveness of legal mobilisation in Southeast Asia, we need to start with a brief comparative analysis of the legal context facing civil society in the region: to what extent are conditions conducive to legal mobilisation, and are there any clear differences among the countries we discuss? Building on scholarly studies concerning legal mobilisation (e.g. De Fazio 2012; Vanhala 2012; Schramm 2020; Gauri and Brinks 2008), we employ the concept, 'legal opportunity structure' to analyse these conditions. We focus on three key aspects of legal opportunity structures: the availability of a legal framework of justiciable rights, the degree of independence of the judiciary, and the availability of resources for civil society. While relevant, the broader issue of the political opportunity structure facing civil society, such as the (un)democratic character of prevailing political regimes, is already discussed at length in other contributions to this volume; therefore we will not address it directly here.

A first indispensable condition for effective legal mobilisation is the presence of *a legal framework of justiciable rights*. Legal mobilisation strategies require the availability of a rights framework that provides the basis for judicial review of laws, regulations, and/or policies. These rights may be constitutional or statutory in nature or have their basis in judicial precedent. While no country in Southeast Asia is completely devoid of such rights, there are major differences among them. A country like Myanmar has hardly any legally acknowledged citizen rights, while on the opposite end, countries like the Philippines, Indonesia, Malaysia, and Thailand have legal systems that provide extensive legal protection of citizens (Harris and Lang 2015, 31). All four have subscribed to the major international human rights conventions,[3] Malaysia's constitution has included a bill of rights from when it became independent in 1957, the Philippines adopted such a bill when it enacted a new constitution in 1987, Thailand adopted a comprehensive constitutional bill of rights in 1997 (retained in its subsequent 2007 constitution), and Indonesia followed suit in 1999–2002. Particularly Indonesia, the Philippines, and Thailand have quite extended lists of social-economic rights, in the Thai case mainly formulated as duties of the state, including the right to (or duty to provide) housing, health, a proper environment, and education.

An exceptional issue is the right to property, which is of special importance in cases concerning land. In Indonesia, it is curtailed by Article 33(3), which grants the state control of all natural resources. As we will explore below, this has had considerable negative effects for rural communities wishing to defend their land against incoming mining or palm oil companies.

Malaysia has a somewhat less extensive rights framework, as its illiberal democracy has generated a more restricted legal environment (Weiss 2006, 30). A number of laws and court verdicts have curtailed access to constitutionally guaranteed rights and, consequently, 'rights thus remain, in many ways, aspirational standards' (see Elias 2015, 234). For example, Malaysian courts emasculated the right to life in 2003 when in the Bakun Dam case, the Court of Appeal argued that economic growth was more important than the environment and therefore the right to life could not be used as grounds for review of the decision to build the dam in question (Boyd 2012, 191).

In all four countries, these rights are justiciable. Following the common law tradition, Malaysia and the Philippines have given the power of constitutional review to the ordinary courts with the Federal Court and the Supreme Court, respectively, at the top.[4] In Indonesia, the Supreme Court and the Constitutional Court share this power, while in Thailand the

Constitutional Court has exclusive power of constitutional review. Constitutional courts provide a particularly promising avenue for legal mobilisation, as their purpose is directly to review statutory clauses. This means that one does not need to bring an actual case concerning an infringement on a right to court and pursue it to the highest level to get a final decision. The establishment of the Constitutional Court in Indonesia in 2003 caused a surge in legal mobilisation: between 2003 and 2013, NGOs brought 119 cases to the court (see Nardi 2018, 249, 256). These cases yielded some impressive results, such as lifting the ban on the Indonesian Communist Party, reversing the privatisation of the water and electricity sectors, and ensuring the possibility of registering a wider range of faiths on identity cards. During its early years, the court upheld more than a quarter of all petitions and was considered 'unusually activist' (Dressel and Inoue 2018, 158).

Yet, a favourable legal framework matters only if civil society organisations are allowed to engage in public interest litigation – in other words, they need to be granted legal standing. This standing to sue can be a major hurdle for NGOs, as in Thailand until 2007, when citizens were not allowed to petition the Court directly but could do so only indirectly, through normal courts or institutions as the Ombudsman of the National Human Rights Commission. In 2007, this changed, but citizens still need first to exhaust all other legal options (Tonsakulrungruang 2018). In both the Philippines and Indonesia, judges themselves have extended the rules on standing (Lin 2015, 595). Indonesia's Supreme Court already allowed NGOs to bring public interest cases to court since 1989 (Sonnenfeld 2002), while its Constitutional Court has recognised almost unlimited rights of standing (Hendrianto 2015). Similarly, the Philippine Supreme Court assumes that people have a legal interest in public matters in their capacity as citizens and taxpayers. By contrast, Malaysia has been much more restrictive in this respect: NGOs cannot file a case on behalf of communities or groups of people who do have legal standing; the role of NGOs is limited to assisting them (Harding and Sharom 2007, 61–64).[5]

A second condition concerns the *independence of the judiciary*, in particular, of the highest court involved in public interest litigation. Legal mobilisation strategies are more likely to be successful when the judiciary is independent from the executive and willing to uphold cases in the face of resistance from ruling elites, even if this requires expanding interpretations of certain rights. This independence is shaped not just by formal, institutional guarantees but also by informal practices such as patronage and judicial corruption.

Once again, courts differ greatly in this respect. In terms of formal guarantees of judicial independence, Indonesia and the Philippines do relatively well, as (the scope for) political involvement in the appointment and transfer of judges is limited (even though, occasionally, such involvement cannot be ruled out; see Hendrianto 2016). Particularly in the Philippines, judges have felt emboldened and independent enough following the democratic reforms after 1987 to engage in considerable judicial activism, which provided a stimulus for public interest litigation (Dressel 2011, 530–531; Sanchez Urribarri et al. 2011). In Malaysia and Thailand, however, courts have been more politicised: it has been argued that Thailand's Constitutional Court basically serves the purpose of keeping the old elite in power (cf. Hirschl 2009), while Malaysia's court system has been under severe political pressure from the ruling party for over four decades (Tew 2016, 678–681). Indonesia and the Philippines are not without problems, either, as their judiciaries have been reported to suffer from corruption, access problems, and incidental political interference (Dressel 2011, 531; Crouch 2019). A particular problem in Indonesia is underdeveloped legal discourse, which enables wide judicial discretion (Bedner 2016).

The weak independence of the judiciary is particularly noticeable after courts do issue progressive rulings that favour NGO claimants. In the case of Indonesia's Constitutional Court, political elites tightened their grip over the appointments and everyday functioning of the Court. The result is not only that corruption has entered the Court (with two former constitutional judges convicted of accepting bribes) but also that the Court has become more conservative (Dressel and Inoue 2018, 179–180).[6] The fate of Indonesia's Constitutional Court illustrates an important aspect of the legal opportunity structure in Southeast Asia: a rise in judicial activism is often quickly followed by political backlash and a subsequent decline, narrowing the chances for those pursuing litigation to realise their rights. This pattern can also be observed in Thailand. Although the Thai Constitutional Court was never so activist as their Indonesian colleagues, initially they showed their independence through fairly unbiased hearing of cases and they upheld a number of important petitions concerning gender equality, the right to property, and freedom of occupation (Tonsakulrungruang 2018). However, over the years, the Court has become increasingly politicised and 'the growing ideological ties between judges and elites … since 2006 have eroded the court's political neutrality'. This has made the Constitutional Court one of the least successful constitutional courts in Asia (Dressel and Tonsakulrungruang 2019, 16–17).

These examples of limited judicial independence should be interpreted in the context of the oligarchic nature of politics across Southeast Asia. As economic and political elites are very closely connected, and economic power often serves as a conduit to political power (and vice versa), civil society organisations deal with state institutions that are often controlled by political elites representing key economic interests. This oligarchic nature of politics in the region not only fosters a regular undermining of the independence of the judiciary but also constitutes a major obstacle to efforts to strengthen citizen rights through legal reform.

The assessments that the World Justice Project makes of the quality of the rule of law in Southeast Asia reflect this reality: Singapore and Malaysia score highest (0.78 and 0.57, respectively, on a scale from 0 to 1) with Indonesia (0.52), Thailand (0.50), and the Philippines (0.46) scoring somewhat lower.[7] In short, the four countries we focus on are not far apart, and it seems that, in all four, problems with judicial independence and oligarchic politics discourage civil society actors from taking recourse to the courts.

A third key issue is *the availability of material and legal resources to those who want to bring a suit to court*. Appealing to legal rights in public forums requires organisation, time, and money, and going to court requires the same plus legal expertise. As Epp has argued, 'a support structure for legal mobilisation is a necessary condition for sustained high-court attention to rights. A support structure makes extensive rights litigation and sustained judicial attention to rights possible' (Epp 2011, 409). The same argument applies to access to alternative bodies such as National Human Rights Commissions or ombudspersons: these avenues have little impact without the presence of organisations capable of using them. Rosser and Curnow (2014) include such organisations among 'support structures for legal mobilization'.

In this regard, available assessments provide a mixed picture. On the one hand, all four countries have long histories of civil society organisations' employing legal mobilisation strategies. In Indonesia, activists established a very influential Legal Aid Institute (LBH) in the early 1970s. LBH carefully selected cases for their publicity value and referred to itself as a 'locomotive for democracy' (Lev 2018). Post-New Order Indonesia has seen a number of spectacular cases of public interest litigation in which organisational support

Table 5.1 Opportunities for legal mobilisation – comparing legal systems across Southeast Asia

	Malaysia	*Philippines*	*Indonesia*	*Thailand*
Legal framework/justiciable rights	Moderate	Very strong	Strong	Strong
Independent judiciary	Moderate	Moderate	Moderate	Very weak
NGO support structure for legal mobilisation	Moderate	Strong	Strong	Moderate

from NGOs played a key role, like AMAN's constitutional court case, mentioned above (see, e.g., Rosser and Curnow 2014; Tjandra 2016). Civil society organisations have also played an important role in protecting the Constitutional Court from attempts to circumscribe its powers and thus actively participated in protecting the opportunity structure for legal mobilisation (Nardi 2018, 256–258, 264).

A recent study describes the Philippines' NGO community as 'passionate, vibrant and broad'; the Philippines also has a long history of small peasants' mobilisation (Schramm 2020; also Dressel 2011, 534). The same applies to labour organising (Hedman 2001, 932). Even the authoritarian Marcos regime sustained a 'robust support structure' for legal mobilisation, which led to surprising attention of judges for human rights, including social-economic rights (Epp 2011, 409). In the 1990s, 'Alternative Law Groups' formed to connect and support a growing network of legal aid organisations across the Philippines (see Franco, Soliman, and Cisnero 2018).

Even in Malaysia's illiberal democracy, a vibrant civil society developed with considerable attention to legal aid (Weiss 2006), while Thailand's civil society emerged from successful student protests in the 1970s focused on direct political action, but gradually started exploring the possibility of creating the constitutional conditions for litigation in the 1990s (Munger, Thoviriyavej, and Rabiablok 2021).

Table 5.1 summarises this very brief comparative assessment of the opportunities for legal mobilisation in Malaysia, the Philippines, Indonesia, and Thailand. We conclude that while these countries do have legal frameworks that provide guarantees of citizen rights and promising avenues for legal mobilisation strategies, such strategies are hampered by distrust of the judiciary and, to a lesser extent, by the limited number of NGOs with the legal knowledge required.

Legal mobilisation in practice: struggles for land and labour rights

So, given this context, how do civil society actors actually employ the legal system in practice? How important are courts in the strategies of civil society organisations to achieve their goals? We will try to answer this question by looking at civil society activism in two fields: land and labour rights. For each, we compare two countries: Indonesia and the Philippines for land rights, Thailand and Malaysia for labour. Within limited space, we aim to provide brief sketches of how civil society organisations do (and do not) employ the courts in their campaigns, for what purpose, and how effective these efforts have been.

Land rights in Indonesia and the Philippines: a negotiated affair

Rural Southeast Asia is undergoing a period of rapid transformation as large tracts of agricultural land are turned into plantations, mines, and residential areas. This leads to numerous land conflicts since rural communities (often supported by NGOs) endeavour

to defend their access to land against incoming companies, or to regain land taken from them. These communities are struggling not just against unyielding companies, but also against state policies and regulations that tend to favour the interests of companies over their rights. The intensity of this struggle, and its widespread nature across Southeast Asia, makes this an interesting case study to explore whether and how civil society organisations are adopting legal mobilisation strategies.

In both Indonesia and the Philippines, the land rights of rural citizens have been curtailed, but Indonesia is the more extreme case. The state has constitutionally declared its ownership of all land. Attempts at land reform in the 1950s and 1960s failed and the state rejects private or community ownership of land in areas officially designated as *kawasan hutan* or forest areas – currently encompassing around 63% of Indonesia's territory. In non-forest areas, private rights need to be registered in order be recognised (Bedner 2016). Many, if not most, rural Indonesians are consequently forced to rely on customary law and informal methods of land registration to organise their land dealings, in particular in forest areas. The status of land as state domain (*tanah negara*) has enabled the Indonesian state to provide land concessions to companies for mining, agro-business, palm oil, and other forms of exploitation. The result is that while such companies have a firm legal basis for appropriating land, communities feel that this land is being stolen from them. In many cases, their formal legal position is weak, but in some cases, community members have registered land or are in a position potentially to claim a preferential right (Bedner 2016).

Nonetheless, only few land conflicts between rural Indonesians and companies end up in court. A recent study of 150 major conflicts between communities and palm oil companies (Berenschot et al. 2022) found that communities rarely submitted their grievances to a court: they filed a court case for only 40 (27%) of the conflicts studied. Aside from the difficulty of substantiating land claims, the lengthy procedures, high costs, and perceived corruptibility of judges all discourage communities from bringing their grievances to Indonesia's legal system. Instead, in most conflicts (73%), communities rely on informal mediation, led by local authorities. Campaigns are mostly directed at convincing local politicians and officials to agree to help broker compromises between companies and communities.

As a result of this reliance on such mediation, most land conflicts are not settled on the basis of laws or citizens' rights but rather, on the basis of the relative bargaining position of communities and companies. As communities' bargaining position is generally rather weak, this research project found that most conflicts (68%) end up unresolved.

A recent study of 18 court cases concerning conflicts between rural communities and palm oil companies, too, found that few cases were decided on substantive grounds (see Peterson et al. n.d.). Communities' claims tend to be either dismissed on procedural grounds or decided per a very narrow, formal reading of the law. This study also reinforces the conclusion that litigation tends to be a relatively ineffective strategy to achieve actual on-the-ground results: in 2 of the 3 (out of 18) cases in which the court did arrive at the substance of the case and uphold claims against companies, the resulting judgements were never implemented – even though these cases had gone all the way up to the Supreme Court.

These studies suggest that many Indonesians involved in land conflicts are wary about the prospects of resolving their grievances through litigation. This conclusion can be extended to the practices of well-known national NGOs such as AMAN, Konsorsium Pembaruan Agraria (KPA, Consortium for Agrarian Reform), and Wahana Lingkungan

Hidup Indonesia (WALHI, Indonesian Forum for the Environment), which mostly focus on achieving redress in individual cases. The consequence of this tendency to avoid going to court is that judges seldom arrive at evaluating the merit of land claims and thus cannot build a solid basis of case-law extending community rights. Moreover, as precedent is hardly recognised in Indonesian law (e.g. Bedner and Wiratraman 2019) and these particular land conflicts cannot be taken to the Constitutional Court (they need to go through the entire legal system before arriving at the Supreme Court), one legal victory in court concerning a particular case offers little prospect for achieving structural change. For these reasons, strategies to address the widespread land conflicts in Indonesia tend to revolve around pursuing negotiated settlements and political lobbying rather than litigation.

Some studies paint a similar picture of land conflicts in the Philippines. Annette Schram concluded that NGOs seldom choose to go to court. Like their Indonesian counterparts, they instead turn to government agencies, officials, and politicians to help them enforce the law, which seems to offer better prospects of success than detouring through the judiciary (Schramm 2020, 229–230). NGOs only go to court as a last resort (Golub 2007, 58–59).

However, it is questionable whether this view is justified. To start with, there are a few key differences between the Philippines and Indonesia. The most important one is that the basic legal framework in the Philippines is much more favourable for landless farmers and indigenous communities than it is in Indonesia. The Philippines rejected the 'regalian doctrine' – meaning that all lands in the public domain belong to the state – in introducing a legal framework for land reform in 1988 (Comprehensive Agrarian Reform Program or CARP) and by adopting a law recognising indigenous communities' communal rights to land in 1997 (the Indigenous Peoples' Rights Act or IPRA). Both laws are implemented by government agencies specifically created for that purpose, the Directorate of Agrarian Reform (DAR) and the National Commission for Indigenous Peoples (NCIP) (Prill-Brett 2007, 16–17). While these programmes have met with formidable resistance, large parts have been successfully realised (Prill-Brett 2007, 21–22). This means that the legal mobilisation to create legal change – as initiated by AMAN in Indonesia – is less necessary in the Philippines' case.

What we do see in the Philippines is something we might call 'counter legal mobilization'. This means that NGOs mobilise against economic elites' attempts to use the Supreme Court as a means to undermine the rights of indigenous communities. In 1998, retired Supreme Court judge Izaganiz Cruz and lawyer Cesar Europe – 'as citizens and taxpayers' – challenged the constitutionality of basic IPRA provisions, arguing that ancestral rights to land were subordinate private rights to the state's rights over natural resources. While the claimants sued the government and the National Commission on Indigenous Peoples, a host of indigenous people's representatives and NGOs joined on behalf of the defendant. Both in the first instance and in a subsequent review, the Supreme Court upheld the constitutionality of the challenged provisions, but it was a close call: in the first judgement, the IPRA survived in a Court split 8 to 7 (Carino 2001; Prill-Brett 2007, 16–17).[8]

The seeming scarcity of land disputes in courts in the Philippines is also misleading. Jennifer Franco has argued that, in fact, 'many rural poor are using state law to claim land rights' (Franco 2008, 991). However, the large majority of cases are brought to a special adjudication board, which is part of the DAR. This board has jurisdiction over all CARP-related land conflicts and – in contrast to the courts – it has faced a rising number of cases (Cruz and Manahan 2014, 19).

In summary, unlike in Indonesia, in the Philippines, rural land dwellers have had little need to change the state's legal framework through legal mobilisation. However, they have deployed legal mobilisation to defend it. Moreover, the DAR's adjudication board has provided an alternative type of court, which has been relatively accessible to them through NGOs able to provide the legal literacy needed to bring a successful claim and to elaborate a legal framework sustaining their position. Franco maintains that a 'proactive, integrated political-legal strategy' has been crucial for success (Franco 2008, 992; see also Franco and Borras 2007).

Labour rights in Thailand and Malaysia: limited strategic litigation

In the past 50 years, Southeast Asia has transformed from an agricultural region to a major exporter of industrial products. All countries in the region today have sizeable labour forces and different degrees of unionisation. Unions are supported by the ILO, unions from rich countries, and transnational, national, and local NGOs. Nonetheless, labour in Southeast Asia is politically weak. Market liberalisation, the informalisation of labour, outsourcing, and migration of workers have all reinforced the power of companies and promoted flexible legal regimes. In some countries, for instance, Vietnam, all trade unions belong to a single confederation controlled by the Communist Party, while, in a country like Myanmar, the absence of freedom of association has made it near-impossible to establish trade unions.

Thailand and Malaysia do allow freedom of association, albeit with constraints. Thailand has had laws allowing for the establishment of trade unions and collective bargaining agreements since 1975. Most of this legislation is still in place, but it imposes fairly strict requirements on the right to strike, severance pay, trade union rights, and other labour-regulation tools (Charoenloet 2015). Migrant workers are not allowed to establish or join trade unions (Campbell 2013,132), nor can trade unions represent employees in firms that employ fewer than ten (Brown 2016, 203). In practice, trade unions have remained weak, fragmented,[9] and often captured by state elites and capital. Thailand's union density of only about 4% is lower than that of Indonesia (7%), the Philippines (8.7%), and Malaysia (8.8%).[10] Labour inspection is also weak, and many firms reportedly dodge minimum-wage standards (Leckcivilize 2015). On top of that, more than 60% of the labour force are employed in the informal sector and hence fall outside the scope of the labour-law regime (Kongtip et al. 2015, 1–3).[11]

This is the legal context in which NGOs (remarkably often headed by women) have focused on issues related to workplace health and safety, reform of the social security system, outsourcing, etc. (Brown and Ayudhya 2012, 120–125; Munger, Thoviriyavej, and Rabiablok 2021). Many of these NGOs have their roots in the 1973 student movement and are well-established (Munger 2014, 31, 41, 48). Like the trade unions, they are often supported by transnational NGOs and international branches of trade unions in Europe and the US (Foran 2001, 29; Brown 2016, 203). They constitute a community of practice that now spans at least four generations (Munger, Thoviriyavej, and Rabiablok 2021, 4).

In 2001, these NGOs and trade unions together established the Thai Labour Solidarity Committee and started a campaign for realising human and labour rights, which registered some initial success (Kongtip et al. 2015, 5). However, according to Brown and Ayudhya, this campaign and subsequent ones have failed to address the structural causes of adverse labour conditions, while political developments in Thailand since the rise (and fall) of Thaksin Shinawatra have led to rifts between NGO leadership

supporting the urban elites wishing to get rid of Thaksin (the 'yellow shirts') versus workers and ordinary union members who have tended to support Thaksin's movement (the 'red shirts') (Brown and Ayudhya 2012, 129–131; see also Elinoff 2014). Of importance for this chapter is that, according to the same source, these NGOs have not used the courts for their purpose but have mainly petitioned employers and parliament (Brown and Ayudhya 2012, 126).

This limited usage of courts to achieve structural legal change has a few notable exceptions. In 1999 – during the most liberal period in Thailand's history – the NGO Friends of Women filed a case on behalf of 30 Burmese labourers whose employer had imprisoned them. The employer claimed that Thai labour law did not apply to them because they were foreigners. The judges ruled that the labour law did apply, setting the stage for many other suits on behalf of undocumented migrant workers in the labour courts (Munger, Thoviriyavej and Rabiablok 2021, 21–22). Furthermore, in a high profile case against Triumph International, the labour courts were used to fight the dismissal of a trade union leader (see Meesen 2013).

Despite these exceptions, the general pattern is that labour unions and NGOs rarely use courts to achieve policy or legal reforms and there are no other examples of labour-related court cases' leading to the overturn of government policies. According to Munger, Thai NGOs tend to use the courts only to address individual grievances (such as a dismissal), while rarely engaging in strategic litigation to achieve reform or strengthen labour rights because the 'support structure for legal mobilization' is lacking (Munger 2014, 48–49, 55). The focus of NGOs' legal strategies has generally been on obtaining remedies for individual cases. Thailand has special, tripartite labour courts, which even migrant workers have successfully accessed. Local NGOs like Yaung Chi Oo, the Migration Assistance Programme (MAP) Foundation, and the Joint Action Committee for Burmese Affairs (JACBA) have played key roles in assisting them, informing workers (many of whom are from Laos and Myanmar) of their legal rights, and helping them to formulate legal claims (Campbell 2013: 140, 145; see also Foran 2001, 29; Munger, Thoviriyavej, and Rabiablok 2021, 15 ff.).

Some observers argue that the labour courts have been captured by authoritarian forces, making them 'ineffectual' (Brown 2016, 204, 206–207, 210). The problem seems to be that, while labour courts do regularly rule in favour of workers, these rulings are often not implemented. An example is a protracted conflict between Goodyear and the Tire & Worker Union about outsourcing, collective bargaining, and union membership between 2000 and 2010. In this dispute, the labour courts ruled three times in favour of workers who were unfairly dismissed. However, the company ignored the rulings or took other measures to the same effect as the ones that the court had judged unlawful (Hewison and Tularak 2013, 257–259). Other scholars have reported cases in which the labour courts upheld claims for compensation but where it was unclear whether they were implemented (e.g. Foran 2001, 22–24).

An important obstacle seems to be the 'statist' inclination of the Thai judiciary: while reportedly less prone to corruption than, for example, Indonesia's, the Thai judiciary is typically conservative and unlikely to go against government policies (Munger 2014, 50). Finally, bringing complaints concerning labour to court can be risky. There are reports of firms' taking complaining workers to court for defamation, sometimes leading to convictions (Dutta 2020, 4–8). As a result, Thai courts have been unable to change the structural political conditions that favour capital over worker interests (Brown 2016, 208).

The second country we consider is Malaysia, which differs from Thailand in that its industry is more advanced and produces for the 'higher end of the market'. Even though much of its workforce is more skilled than in Thailand, a strong labour movement never developed in Malaysia and freedom to associate in trade unions remains a problem. The Malaysian legal framework for industrial relations was established during the 1950s and 1960s and has remained largely unchanged since (Crinis and Parasuraman 2016, 218). Malaysia has not acceded to ILO Convention 87 (Freedom of Association and Protection of the Right to Organise) and has made reservations in its accession to ILO Convention 98 (Right to Organise and Collective Bargaining) (Miles and Croucher 2013, 413). Workers in free trade zones are not allowed to join a trade union unless more than 50% of all workers in a factory agree (Crinis 2010, 589, 597–598; Ramesh Kumar, Ramendran, and Yacob 2012, 533). Outside these zones, employers actively prevent their workers from joining trade unions. Nonetheless, Malaysia's 8.8% union density is a little bit higher than Thailand's (Miles and Croucher 2013, 413). Furthermore, just as in Thailand, a number of labour-related NGOs are active in Malaysia (Croucher and Miles 2018, 295).

The problems of labour result mainly from the semi-authoritarian nature of the Malaysian state, which has consistently maintained tight control of labour in its pursuit of economic development (Miles and Croucher 2013, 413; Crinis and Parasuraman 2016, 215). Before the law was abrogated in 2012, the Malaysian government even regularly used the Internal Security Act to prevent workers from establishing unions or striking. The government strictly monitors unions and worker gatherings, and strikes and rallies need prior permission from the government (Ramesh Kumar, Ramendran, and Yacob 2012, 534). As in all other fields of social life in Malaysia, ethnic division has also posed problems for unionisation (Croucher and Miles 2018, 296). Malaysia, moreover, has many migrant workers, who often work in dire conditions and cannot join unions. In 2008, it was estimated that a quarter of the labour force were migrant workers (Crinis 2010, 597–598, 605), a number that has only increased since.

Nonetheless, there are quite a few NGOs supporting workers' rights, and these organisations have adopted legal strategies. Just like Thailand, Malaysia has a system of labour courts to adjudicate industrial conflicts and to protect the rights of workers. These courts suffer from similar problems: the cases take long and rulings that favour workers often remain unimplemented. Another problem with the labour courts is that they can be used by employers to prevent worker action. While a case is pending in court, the workers involved are not allowed to go on strike. Miles and Croucher report a case in which workers planned to go on strike on Monday, which they announced the Friday before (following a legal obligation); in response, their employer filed a claim at the labour court on Saturday to prevent the strike (2013, 418).

Yet, in some cases, the (labour) courts have provided effective protection to workers through novel legal interpretations. A good example concerns cases about so-called constructive dismissal, meaning that workers terminate their contracts due to unacceptable behaviour by their employers. In these cases, the employer is liable for damages. A judicial precedent in Malaysia's apex Federal Court opened this avenue in 1988.[12] These cases are not easy to win, because the burden of proof is on the worker, who has to provide evidence of improper conduct by the employer. Nonetheless, the labour courts have upheld the majority of the 663 claims made under constructive dismissal between 2009 and 2013, often awarding substantial damages (Muniapan 2015, 294–295). Another example of effective legal mobilisation concerns a campaign for trade union recognition and collective bargaining at Euromedical Industries in the state of Kedah,

which started in 1983 and lasted for more than 15 years. Despite persistent efforts of the company's management to prevent unionisation, collaboration between Malaysian and Danish labour unions led to a number of court victories, after which the company finally recognised the labour union (see Wad 2013, who argues that such forms of collaboration have become increasingly common).

Yet, as in Thailand, despite such success stories, labour unions seldom employ the courts in their campaigns for labour rights. They apparently expect more from direct political action than from lengthy court procedures. This tendency seems at odds with a trend during the past decade of labour issues' becoming part of the political debate again, with NGOs, followed by trade unions, increasingly framing these issues in human rights terms (Croucher and Miles 2018, 303). Together trade unions and NGOs have campaigned, for example, for a national minimum wage (2008), for a compulsory weekly day off for domestic workers (2008), to prohibit employers' deducting fees from migrant workers' wages (2009), and for the legal position of migrant workers (2008 and 2010) (see Croucher and Miles 2018, 303). Yet all these campaigns focused on political mobilisation, ignoring the courts.

In short, this overview indicates that, just as in Thailand, courts in Malaysia do not play a central role in most labour campaigns but still have provided a rallying point, and that NGOs seem aware of the possibilities of legal mobilisation. In both cases, the judiciary tends to favour corporate interests, but it has sided with labour against company interests on several occasions.

Conclusion

Only a minority of countries in Southeast Asia have legal systems that make them suitable for legal mobilisation. These include Indonesia, Thailand, the Philippines, and Malaysia, all of which have the necessary legal opportunity structures as well as vibrant civil societies with sufficient legal know-how and material resources to combine political campaigns with legal action. Given also the availability of a court system that gives such petitions a friendly hearing, legal mobilisation can become an important form of political action. The outstanding example in the region is the Indonesian Constitutional Court. This Court was established especially to deal with cases involving citizen rights and it has demonstrated an impressive degree of judicial activism, reversing many important statutory provisions and even entire statutes.

However, Indonesia's Constitutional Court is exceptional. Thailand's Constitutional Court is characterised by problems with standing and a steep decline in judicial activism over the years, while the Philippines and Malaysia have no special constitutional courts. The procedure to bring a case to the attention of their Supreme or Federal Court is long and cumbersome. This is also the case in Indonesia for lawsuits outside the jurisdiction of the Constitutional Court, which have to find their way slowly up through a system deemed corrupt and erratic before they are judged by a Supreme Court that has never matched the Constitutional Court's independence.

Indeed, in the two fields of civil society activism we examined – land and labour rights – civil society organisations mostly appeared reluctant to take recourse to courts. While court cases are neither absent nor always fail, in general, NGOs and trade unions tend to prefer political lobbying over litigation to achieve legal change and in individual cases, prefer various forms of alternative dispute resolution. The Philippines proved an exception to some extent, which has to do with the relatively favourable situation

concerning land rights of local communities. Here we also noticed the phenomenon of 'counter legal mobilization', meaning that NGOs do defend their position against legal attacks in court. Finally, special adjudication boards for land cases deal with considerable numbers of claims and seem to function rather well. By contrast, in cases of land conflicts in Indonesia, NGOs try mediation rather than litigation. Reasons to avoid litigation include the difficulty of proving land claims in court as well as negative perceptions regarding the length of trials, implementation of judgements, and judicial corruption. Similarly, our survey of legal mobilisation strategies concerning labour rights in Thailand and Malaysia indicates that going to court takes much time and effort.

And if NGOs do engage in litigation in these fields, they seldom do so with the objective of policy change. When NGOs turned to the court, their cases mainly involved attempts to seek redress for individual grievances or particular conflicts. While we could only focus on struggles for land and labour rights in this short chapter, studies on other fields, such as health and education (e.g. Susanti 2008) or pollution (Nicholson 2009), suggest that these findings apply more broadly.

Importantly, this reluctance to engage in legal mobilisation cannot be mainly attributed to weak legal protections or inadequate laws. While we noted some variation – for example, land rights are better protected in the Philippines than in Indonesia and labour rights have less legal support in Malaysia – in general, the applicable legal framework does provide considerable opportunities for litigation and establishing precedents favourable to those seeking justice. This is also evidenced by our observation that when NGOs actually did turn to courts, they achieved some noticeable victories. We speculate that the problem lies less with the content of the law than with distrust of the judiciary and the ineffectiveness of judicial decisions in individual cases. In all four countries, the courts are operating in contexts of oligarchic political systems where everyday governance is highly skewed towards the interests of political and economic elites. As a result, NGOs seem to share the widespread perception that these elites can use bribes and personal connections to obtain favourable court rulings or avoid the implementation of unfavourable court rulings. Such perceptions may discourage activists from recourse to the courts.

The downside of this understandable distrust of the legal system is that it limits the pressure on the judiciary and government to improve regulation. Studies in the fields discussed in this chapter contain various examples of how strategic litigation can serve to clarify and strengthen existing law and generate pressure to improve this legal framework. If such means are not used, the effect in the end is erosion of the legal system as a structure to control the executive and the legislative. A vicious cycle seems to be at work here: as the perceived unreliability of legal systems discourages civil society organisations from employing legal means to achieve their aims, the effect of this lack of engagement is that legal systems have no incentive to improve.

Notes

1 In 2020, the formal recognition of customary forests remained limited to 65 customary law communities and covers only a very small area of 35,150 hectares (Dhiaulhaq and Berenschot 2020).

2 We are grateful to Dorien Conway for the excellent literature review she conducted for this chapter.

3 A partial exception here is Malaysia's refusal to ratify the International Convention to Eliminate Racial Discrimination (ICERD).

4 Malaysia has a parallel, non-federal system of Islamic courts. This makes legal mobilisation concerning family law for Muslims more difficult than, for instance, in Indonesia, where the Islamic courts are a special branch of the judiciary under the Supreme Court.
5 We have found no evidence that these rules have been relaxed.
6 A telling example is a petition the Family Alliance brought in 2018 to change the criminal code so as to include a ban on homosexual relations, which was only defeated by a 5–4 vote. Another example is the rejection of the petition against the Blasphemy Law, a statute that drastically circumscribes freedom of religion.
7 See https://worldjusticeproject.org/rule-of-law-index/global.
8 For the actual court ruling, see https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/36882 (accessed 20 January 2022).
9 Thailand's political struggle between 'red shirts' and 'yellow shirts' has further divided the labour movement.
10 For these statistics, see https://ilostat.ilo.org/topics/union-membership/ (accessed 28 February 2022).
11 Separate legislation has covered informal workers since 2010, but its scope is limited and it is extremely hard to implement (Kongtip et al. 2015, 18).
12 See Wong Chee Hong v Cathay Organisation (M) Sdn Bhd (1988) 1 MLJ 92,SC.

References

Bedner, A. 2016. 'Indonesian Land Law: Integration at Last? And for Whom?' In *Land and Development in Indonesia*, edited by J. McCarthy and K. Robinson, K. (eds.), 63–88. Singapore: ISEAS Publishing.

Bedner, A., and Arizona, Y. 2019. 'Adat in Indonesian Land Law: A Promise for the Future or a Dead End? *The Asia Pacific Journal of Anthropology*, *20* (5): 416–34.

Bedner, A., and Van Huis, S. 2008. 'The Return of the Native in Indonesian Law: Indigenous Communities in Indonesian Legislation'. *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia*, *164* (2): 165–93.

Bedner, A., and Wiratraman, H. P. 2019. 'The Administrative Courts: The Quest for Consistency'. In *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, edited by M. Crouch, 133–48. Cambridge: Cambridge University Press.

Berenschot, W., Dhiaulhaq, A., Afrizal, Hospes, O., Erysa, P., and Rebekha, A. 2022. 'Anti-Corporate Activism and Collusion: The Contentious Politics of Palm Oil Expansion in Indonesia.' *Geoforum*, *131*, 39–49.

Boyd, D. R. 2012. *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*. Vancouver: UBC Press.

Brinks, D. M., and Gauri, V. 2008. 'Introduction: The Elements of Legalization and the Triangular Shape of Social and Economic Rights'. In *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, edited by V. Gauri and D. Brinks, 1–37. New York: Cambridge University Press.

Brown, A. 2016. 'Political Regimes and Employment Relations in Thailand'. *Journal of Industrial Relations*, *58* (2): 199–214.

Brown, A., and Ayudhya, S. C. N. 2012. 'Labour Activism in Thailand'. In *Social Activism in Southeast Asia*, edited by M. Ford, 118–32. London: Routledge.

Campbell, S. 2013. 'Solidarity Formations under Flexibilisation: Workplace Struggles of Precarious Migrants in Thailand'. *Global Labour Journal*, *4* (2): 134–51.

Carino, J. 2001. 'The environmental crisis in the Philippines', *Cultural Survival Quarterly*, September, https://www.culturalsurvival.org/publications/cultural-survival-quarterly/environmental-crisis-philippines.

Charoenloet, V. 2015. 'Industrialization, Globalization and Labour Force Participation in Thailand'. *Journal of the Asia Pacific Economy*, *20* (1): 130–42.

Crinis, V. 2010. 'Sweat or No Sweat: Foreign Workers in the Garment Industry in Malaysia'. *Journal of Contemporary Asia*, *40* (4): 589–611.

Crinis, V., and Parasuraman, B. 2016. 'Employment Relations and the State in Malaysia'. *Journal of Industrial Relations*, *58* (2): 215–28.

Crouch, M. 2019. 'The Judicial Reform Landscape in Indonesia: Innovation, Specialisation and the Legacy of Dan S Lev'. In *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, edited by M. Crouch, 1–28. Cambridge: Cambridge University Press.
Croucher, R., and Miles, L. 2018. 'Ethnicity, Popular Democratic Movements and Labour in Malaysia'. *Economic and Industrial Democracy*, *39* (2): 294–311.
Cruz, J. P. D., and Manahan, M. A. B. 2014. 'CARPER Diem: A Socio-Legal Analysis of the State of the Comprehensive Agrarian Reform Program in the Aquino Administration.' Ateneo LJ, 59, 930.
De Fazio, G. 2012. 'Legal Opportunity Structure and Social Movement Strategy in Northern Ireland and Southern United States'. *International Journal of Comparative Sociology*, *53* (1): 3–22.
Dhiaulhaq, A., and Berenschot, W. 2020. A 150-year old obstacle to land rights. *Inside Indonesia*, 141.
Dressel, B. 2011. 'The Philippines: How Much Real Democracy?' *International Political Science Review*, *32* (5): 529–45.
Dressel, B., and Inoue, T. 2018. 'Megapolitical Cases before the Constitutional Court of Indonesia since 2004: An Empirical Study'. *Constitutional Review*, *4*, 157.
Dressel, B., and Tonsakulrungruang, K. 2019. 'Coloured Judgements? The Work of the Thai Constitutional Court, 1998–2016'. *Journal of Contemporary Asia*, *49* (1): 1–23.
Dutta, N. 2020. 'Protecting activists from abusive litigation: SLAPPS in the Global South and how to respond'. International Center for Not-for-Profit Law.
Elias, J. 2015. 'Realising Women's Human Rights in Malaysia: The EMPOWER Report'. *Asian Studies Review*, *39* (2): 229–46. https://doi.org/10.1080/10357823.2015.1024100
Elinoff, E. 2014. 'Unmaking Civil Society: Activist Schisms and Autonomous Politics in Thailand'. *Contemporary Southeast Asia*, *36* (3): 356–85.
Epp, C. R. 1998. The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective. Chicago and London: University of Chicago Press.
Epp, C. R. 2011. 'The Support Structure as a Necessary Condition for Sustained Judicial Attention to Rights: A Response'. *The Journal of Politics*, *73* (2): 406–9. https://doi.org/10.1017/S0022381611000089
Foran, T. 2001. *Corporate Social Responsibility at Nine Multinational Electronics firms in Thailand: A Preliminary Analysis*. Berkeley, CA: Nautilus Institute.
Franco, J. C. 2008. 'Making Land Rights Accessible: Social Movements and Political-Legal Innovation in the Rural Philippines'. *Journal of Development Studies*, *44* (7): 991–1022.
Franco, J. C., and Borras Jr, S. M. 2007. 'Struggles Over Land Resources in the Philippines'. *Peace Review: A Journal of Social Justice*, *19* (1): 67–75.
Franco, J., Soliman, H., and Cisnero, M. R. 2014. *Community based Paralegalism in the Philippines: From Social Movements to Democratization*. Washington: World Bank.
Gauri, V., and Brinks, D. M. 2008. *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. Cambridge: Cambridge University Press.
Golub, S. 2007. 'The Rule of Law and the UN Peacebuilding Commission: A Social Development Approach'. *Cambridge Review of International Affairs*, *20* (1): 47–67. https://doi.org/10.1080/09557570601155328
Handmaker, J. 2019. *Researching Legal Mobilisation and Lawfare* (Working Paper, no. 641). ISS Erasmus University.
Harding, A., and Sharom, A. 2007. 'Access to Environmental Justice in Malaysia (Kuala Lumpur)'. In *Access to Environmental Justice: A Comparative Study*, edited by A. Harding, 125–56. London: Kluwer Law International.
Harris, P. G., and Lang, G. 2015. *Routledge Handbook of Environment and Society in Asia*. Abingdon: Routledge.
Hedman, E.-L. E. 2001. 'Contesting State and Civil Society: Southeast Asian Trajectories.' *Modern Asian Studies*, 35 (4), 921–51.
Hendrianto, S. 2015. 'Convergence or Borrowing: Standing in the Indonesian Constitutional Court'. *Constitutional Review*, *1*, 28.
Hendrianto, S. 2016. 'The Rise and Fall of Heroic Chief Justices: Constitutional Politics and Judicial Leadership in Indonesia'. *Washington International Law Journal*, *25*, 489.
Hewison, K., and Tularak, W. 2013. 'Thailand and Precarious Work: An Assessment'. *American Behavioral Scientist*, *57* (4): 444–67.

Hirschl, R. 2009. *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Cambridge, MA: Harvard University Press.

Kongtip, P., Nankongnab, N., Chaikittiporn, C., Laohaudomchok, W., Woskie, S., and Slatin, C. 2015. 'Informal Workers in Thailand: Occupational Health and Social Security Disparities'. *New Solutions: A Journal of Environmental and Occupational Health Policy*, *25* (2): 189–211.

KPA (Konsorsium Pembaruan Agraria). 2019. 'Navigating the Uneven Policy Terrain: CSO Land Monitoring Report in Indonesia 2018'. *Coalition for Agrarian Reform and Rural Development (ANGOC) and Land Watch Asia (LWA) 2019*, 134.

Leckcivilize, A. 2015. 'Does the Minimum Wage Reduce Wage Inequality? Evidence from Thailand'. *IZA Journal of Labor & Development*, *4* (1): 1–23.

Lehoucq, E., and Taylor, W. K. 2020. 'Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies?'. *Law & Social Inquiry*, *45* (1): 166–93.

Lev, D. S. 2018. 'Between State and Society: Professional Lawyers and Reform in Indonesia'. In *Making Indonesia*, edited by D. S. Lev and R. T. McVey, 144–63. Ithaca: Cornell University Press.

Lin, J. 2015. 'Climate Change Litigation in Asia and the Pacific'. In *Research Handbook on Climate Change Mitigation Law*, edited by G. van Claster, W. Vandenberghe, and L. Reins, 578–600. Cheltenham: Edward Elgar Publishing.

Meesen, N. 2013. 'Labour Protection in Thailand: A Case Study of Triumph International and Labour Union'. In *Human Rights and Peace in Southeast Asia Series 3: Amplifying the Voices*, edited by A. Sharom, 112–32. Nakhon Pathom: Southeast Asian Human Rights Studies Network.

Miles, L., and Croucher, R. 2013. 'Gramsci, Counter-Hegemony and Labour Union–Civil Society Organisation Coalitions in Malaysia'. *Journal of Contemporary Asia*, *43* (3): 413–27.

Muniapan, B. 2015. 'Labour Relations and International Business: The Doctrine of Constructive Dismissal and Labour Relations in Malaysia.' In Beyond the UN Global Compact: Institutions and Regulations, edited by Liam Leonard and Maria Alejandra Gonzalez-Perez, 291–315. Bingley: Emerald Group Publishing Limited.

Munger, F. 2014. 'Revolution Imagined: Cause Advocacy, Consumer Rights, and the Evolving Role of NGOs in Thailand'. *Asian Journal of Comparative Law*, *9* (1): 29–64. https://doi.org/10.1515/asjcl-2013-0054.

Munger, F., Thoviriyavej, P. and V. Rabiablok. 2021. 'Women Lawyers for Social Causes: Professional Careers and Legal Development in Thailand'. *Thai Legal Studies Journal 1*, 97–132.

Nardi Jr., D. J. 2018. 'Can NGOs Change the Constitution? Civil Society and the Indonesian Constitutional Court'. *Contemporary Southeast Asia*, *40* (2): 247–78.

Nicholson, D. 2009. *Environmental Dispute Resolution in Indonesia*. Leiden: KITLV Press.

Peterson, D., Bedner, A., Berenschot, W., and Poetry, E. n.d. 'Can Indonesia's Courts Solve Palm Oil Conflicts? Unpublished manuscript.

Prill-Brett, J. 2007. 'Contested Domains: The Indigenous Peoples Rights Act (IPRA) and Legal Pluralism in the Northern Philippines'. *The Journal of Legal Pluralism and Unofficial Law*, *39* (55): 11–36.

Ramesh Kumar, M. H. M., Ramendran, C., and Yacob, P. 2012. 'The Impact of Employment of Foreign Workers: Local Employability and Trade Union Roles in Malaysia'. *International Journal of Academic Research in Business and Social Sciences*, *2* (10): 530–41.

Rosser, A., and Curnow, J. 2014. 'Legal Mobilisation and Justice: Insights from the Constitutional Court Case on International Standard Schools in Indonesia'. *The Asia Pacific Journal of Anthropology*, *15* (4): 302–18. https://doi.org/10.1080/14442213.2014.916341

Sanchez Urribarri, R. A, Schorpp, S., Randazzo, K A., and Songer, D. R. 2011. 'Explaining Changes to Rights Litigation: Testing a Multivariate Model in a Comparative Framework'. *The Journal of Politics*, *73* (2): 391–405.

Schramm, A. 2020. *Legal Mobilization in Large-Scale Land Deals: Evidence from Sierra Leone and the Philippines*. Baden-Baden: Nomos Verlagsgesellschaft mbH & Co. KG.

Sonnenfeld, D. A. 2002. 'Social Movements and Ecological Modernization: The Transformation of Pulp and Paper Manufacturing'. *Development and Change*, *33* (1): 1–27.

Susanti, B. 2008. 'The Implementation of the Rights to Health Care and Education in Indonesia'. In *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, edited by V. Gauri and D. Brinks, 224–67. Cambridge: Cambridge University Press. doi:10.1017/CBO9780511511240.008

Tam, W. 2012. *Legal Mobilization under Authoritarianism: The Case of Post-Colonial Hong Kong*. Cambridge: Cambridge University Press.
Tew, Y. 2016. 'On the Uneven Journey to Constitutional Redemption: The Malaysian Judiciary and Constitutional Politics'. *Washington International Law Journal*, *25*, 673.
Tjandra, S. 2016. *Labour Law and Development in Indonesia* [PhD Dissertation]. Leiden University.
Tonsakulrungruang, K. 2018. 'The Constitutional Court of Thailand: From activism to arbitrariness'. In *Constitutional Courts in Asia: A Comparative Perspective*, edited by A. Chen and A. Harding, 184–213. Cambridge: Cambridge University Press.
Van der Muur, W. 2018. 'Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia'. *Citizenship Studies*, *22* (2): 160–74.
Vanhala, L. 2012. 'Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK'. *Law & Society Review*, *46* (3): 523–56.
Wad, P. 2013. 'Getting international labour rights right at a foreign controlled company in Malaysia: A Global Labour Network perspective.' *Geoforum*, 44, 52–61.
Weiss, M. L. 2006. *Protest and Possibilities: Civil Society and Coalitions for Political Change in Malaysia*. Stanford: Stanford University Press.

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