

ASEAN Intergovernmental Commission on Human Rights (AICHR)

Module 3

ASEAN Intergovernmental Commission on Human Rights (AICHR)

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MODULE 3.1.

AICHR... mandates and structures



Objectives:

- » To know and understand the principles and purposes of the ASEAN Intergovernmental Commission on Human Rights (AICHR).
- » To understand the upheld principles and purposes of AICHR in the concrete realities of the peoples in ASEAN.



Knowledge Acquired:

- » Understanding of the values behind the principles and purposes of AICHR.



Time: 1.5 hour

Materials: Video documentary of 10-15 minutes on issues of ASEAN on human rights violations.

Human & Labour Rights in the ASEAN Region - Update 15 March 2018
<https://www.youtube.com/watch?v=-W8MtSJ8Zc8>

Claiming Human Rights in ASEAN

https://www.youtube.com/watch?v=KPVHBHwY_9c&t=345s



Procedures:

1. Divide the participants into three groups: Group A is "analysis", Group B is "Rights of ASEAN Peoples" and Group C is "AICHR Purpose".
2. After viewing the video ask groups to list the following using meta cards;
 - Group A : List the human rights violations in ASEAN.
 - Group B: List what rights that each person in ASEAN countries should enjoy.
 - Group C: List what rights are guaranteed by the " purpose" of the AICHR's Terms of Reference.

3. Arrange Group B's metacards in one column and another column for group C. Then make comparisons and identify which rights are missing from list C. Place a tick in red on items on List B which are missing in List C.
4. Arrange Group A's metacards in another column. Then check if column C is able to respond to the violations in List A. Whenever it is not possible, place a tick in red on that meta-card.
5. Allow an open plenary discussion on the emerging issues. Key questions/ points to stimulate open discussion could be:
 - Q 1: What are the minimum standards for HR protection in ASEAN?
 - Q 2: How can we expect the AICHR to ensure effective protection standards for human rights?



Debriefing:

- » There is a need to improve the standards of AICHR in order to afford better human rights protection in ASEAN.
- » AICHR is the first regional HR mechanism in Asia and while we must appreciate the potential within the AICHR to the advantage of the communities and individuals for greater human rights protection, we must also be aware of its weaknesses.
- » AICHR's effectiveness must be gauged from the perspective of victims, who are in need of effective remedy and venues that would improve and help his/her situation.



Conclusion:

- » AICHR is 10 years old (per 2019)
- » AICHR must be made to operate in an effective way through the active participation of ASEAN peoples

Handout Material 3.1

Timeline of Human Rights Regime in ASEAN¹

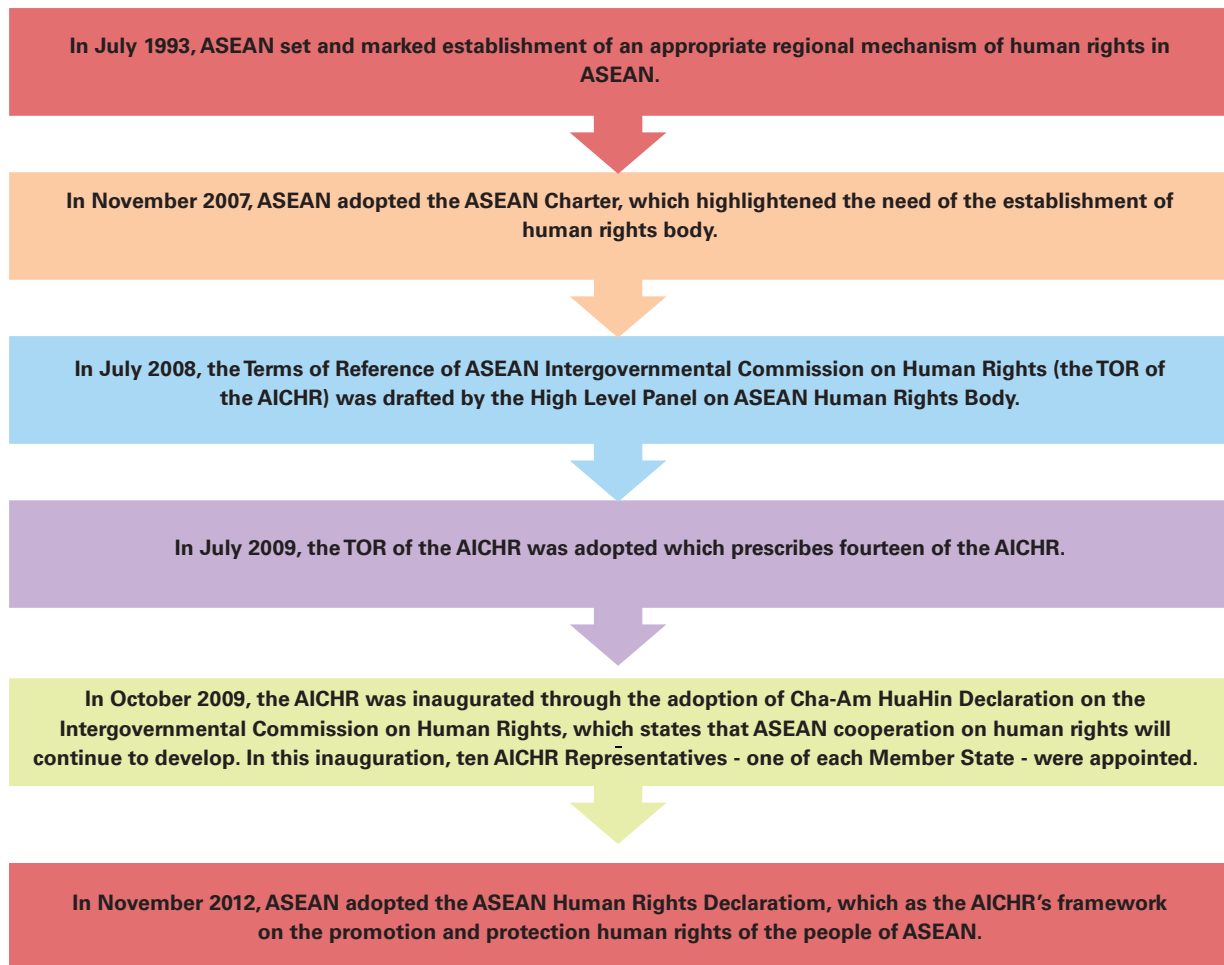
The ASEAN Intergovernmental Commission on Human Rights (AICHR) was inaugurated by the ASEAN Leaders on 23 October 2009 at the 15th ASEAN Summit in Cha-Am Hua Hin, Thailand. This was further enhanced with the promulgation of the ASEAN Human Rights Declaration (AHRD), adopted in November 2012 with the Phnom Penh Statement on the Adoption of the AHRD signed by ASEAN Leaders. The establishment of the AICHR demonstrates ASEAN's commitment to pursuing forward-looking strategies to strengthen regional cooperation on human rights. The AICHR is designed to be an integral part of ASEAN organisational structure and an overarching institution with the overall responsibility for the promotion and protection of human rights in ASEAN.

The AICHR members are called Representatives, who are nominated by their respective Governments. Decision-making of the AICHR is based on consultation and consensus. Since its establishment, the AICHR has adopted several key documents, including the Guidelines on the Operations of AICHR and the Guidelines on the AICHR's Relations with Civil Society Organisations (CSOs). The AICHR's priority areas on human rights are found in the Five-Year Work Plan, which is based on the 14 mandates of the AICHR outlined in their TOR. Each year, the AICHR specifies their high priority programmes and activities for the year based on the Work Plan and in response to emerging exigencies on human rights in the region. The AICHR has completed two Five-Year Work Plans 2010 – 2015 and 2016-2020 and currently is implementing the work plan of 2021-2025. Past and future work plans can be accessed here: <https://aichr.org/aichr-five-year-work-plan/>

The AICHR holds two regular meetings per year and additional meetings when necessary, and reports to the ASEAN Foreign Ministers.

(Source: About AICHR Structure, Work and History of AICHR, available at <https://aichr.org/about-aichr-2/>)

¹ AICHR, "About AICHR", <https://aichr.org/about-aichr-2/>.



(Source: About AICHR Structure, Work and History of AICHR, available at <https://aichr.org/about-aichr-2/>)

MODULE 3.2.

Principles of AICHR and Human Rights Compliance



Objectives:

- » To know and understand the principles of the ASEAN Intergovernmental Commission on Human Rights (AICHR) that may raise difficulties for human rights protection.
- » To be able to offer a credible critique on these concepts.



Knowledge Acquired:

Increasing knowledge to offer a counter view to governments reasoning on concepts within the AICHR purpose.



Time: 1 hour

Materials: Meta-cards with words listed.



Procedures:

1. Give out a list of words on cards:

respect for the independence sovereignty equality

territorial integrity national identity non-interference

national existence free from external interference, subversion and coercion

2. Divide the participants into two groups: Group 1 possessing the word list above will prepare a 1-minute speech on why this word is crucial for countries in ASEAN. Each card is given to one to two persons depending on the size of the group. Members of Group 2 will be asked to prepare counter arguments to correspond to the list above. For each word/phrase 1-2 persons will discuss to prepare for it.
3. Each person/s will be given 5-7 minutes to prepare their arguments.
4. When a member from Group 1 elaborates on a chosen word, a corresponding person from Group 2 stands and offers a counter argument on how this still works well for human rights focus.
5. This goes on till the list is complete or as time permits Then invite all for a discussion in the plenary.



Debriefing:

- » Debunk the state ideas that limit the scope of human rights. The trainer would need to assert that all states suffer this common tactic. The states commonly use arguments on concepts above to restrict human rights work.
- » Help participants delve deeper and critique these ideas of nationalism that are being “ accepted” by the common person. Elaborate on how to help ensure that respect for human rights obligations does not conflict with true nationalism.
- » Put the arguments of the groups in a column beside the debated word.



Conclusion:

- » Protection of human rights, as a matter of fact, strengthen nation state development.
- » Sovereignty is not compromised through voluntary opening up of borders to international public scrutiny in terms of human rights. Human rights compliance is the strength of a nation and a positive value that can be considered achievement in any nation.
- » We need to articulate a human rights argument to counter state-centric opinions that weakened people’s claim to human rights.

Handout Material 3.2

| ASEAN Intergovernmental Commission on Human Rights | |
|--|---|
| Principles | Purpose |
| <ul style="list-style-type: none"> • Respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States; • Non-interference in the internal affairs of ASEAN Member States; • Respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion; • Adherence to the rule of law, good governance, the principles of democracy and constitutional government; • Respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice; • Upholding the Charter of the United Nations and international law, including international humanitarian law, subscribed to by ASEAN Member States; and • Respect for different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity. • Respect for international human rights principles, including universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, as well as impartiality, objectivity, non-selectivity, non-discrimination, and avoidance of double standards and politicization; • Recognition that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State; • Pursuance of a constructive and non confrontational approach and cooperation to enhance promotion and protection of human rights; and • adoption of an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN. | <ul style="list-style-type: none"> • To promote and protect human rights and fundamental freedoms of the peoples of ASEAN; • To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity; • To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process; • To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds and taking into account the balance between rights and responsibilities; • To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and • To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties. |

MODULE 3.3.

AICHR's ToR and its effectiveness



Objectives:

- » To understand the AICHR Term of Reference and identify its mandate of protection and promotion of human rights in ASEAN.
- » To identify opportunities and limitations of the ToR for peoples' continuing engagement.



Knowledge Acquired:

Knowledge and information of the AICHR.



Time: 1 hour

Materials: AICHR mandate, meta-cards, pens



Procedures:

1. Divide the participants into "promotion group" and "protection group" . Hand them copies of the AICHR ToR, meta-cards and pens
2. The "promotion group" extracts/decodes the promotion mandate from ToR while the "protection group" extracts/decodes the protection mandates. Write on the meta-cards the keywords or phrases pertaining to the promotion and protection aspects of the ToR.
3. Ask the groups to post them on the board and invite them to form a circle around a big pot of sand situated in the centre of the conference hall.

4. Invite everyone to take two handfuls of sand; clench them to avoid spilling (These represent the mandates the groups called out from the ToR.) Ask each participant to read aloud each mandate/principle posted on the board with appropriate expressions and hand gestures as though they are demanding the governments for them. In every gesture, observe that grains of sand fall out of hand.
5. Ask and discuss:
 - How does it feel to have too much at the beginning (interpretation level of the ToR) but actually possessing too less as we move on with the activity?
 - What do we hold on with what is left in our hands?
 - How do we transform seemingly promotion mandates to protection aspects or vice-versa?
6. Ask the participants to get back to their original grouping and elaborate possibilities of engaging AICHR through its mandate. Create opportunities out of the limitation of the AICHR mandate.
7. Write them on flap-paper and present workshop results in the plenary.



Debriefing:

- Help the participants fully understand the distinction between protection and promotion mandates.
- What is at stake when less protection mandates and more promotion functions; less promotion and more protection?
- Protection mandate defines the “ performance aspect” of the AICHR while promotion mandate defines the “ maintenance aspect” (orientation aspect) of the commission.



Conclusion:

- The lack of protection mandate in the ToR makes it difficult for people to seek a mechanism (and resolution) on actual cases of human rights violations in ASEAN.
- For the AICHR to be effective, it must have human rights protection mandates and mechanisms to address violations of rights.
- We need an AICHR with “teeth”.

Handout Material 3.3.1

AICHR MANDATE AND FUNCTIONS

1. To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;
2. To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights;
3. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information;
4. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;
5. To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments;
6. To promote the full implementation of ASEAN instruments related to human rights;
7. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;
8. To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter;
9. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;
10. To obtain information from ASEAN Member States on the promotion and protection of human rights;
11. To develop common approaches and positions on human rights matters of interest to ASEAN;
12. To prepare studies on thematic issues of human rights in ASEAN;
13. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and
14. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.

MEMBER COMPOSITION

Membership:

- The AICHR shall consist of the Member States of ASEAN;
- Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government.

Qualifications:

- When appointing their Representatives to the AICHR, Member States shall give due consideration to gender equality, integrity and competence in the field of human rights;
- Member States should consult, if required by their respective internal processes, with appropriate stakeholders in the appointment of their Representatives to the AICHR.

Term of Office

- Each Representative serves a term of three years and may be consecutively re-appointed for only one more term;
- Notwithstanding paragraph 5.5, the appointing Government may decide, at its discretion, to replace its Representative.

Responsibility

- Each Representative, in the discharge of his or her duties, shall act impartially in accordance with the ASEAN Charter and this TOR;
- Representatives shall have the obligation to attend AICHR meetings. If a Representative is unable to attend a meeting due to exceptional circumstances, the Government concerned shall formally notify the Chair of the AICHR of the appointment of a temporary representative with a full mandate to represent the Member State concerned.

Chair of the AICHR

- The Chair of the AICHR shall be the Representative of the Member State holding the Chairmanship of ASEAN;
- The Chair of the AICHR shall exercise his or her role in accordance with this TOR, which shall include, leading in the preparation of reports of the AICHR and presenting such reports to the ASEAN Foreign Ministers Meeting; coordinating with the AICHR's Representatives in between meetings of the AICHR and with the relevant ASEAN bodies; representing the AICHR at regional and international events pertaining to the promotion and protection of human rights as entrusted by the AICHR; and undertaking other specific functions entrusted by the AICHR in accordance with this TOR.

Immunities and Privileges

In accordance with Article 19 of the ASEAN Charter, Representatives participating in official activities of the AICHR shall enjoy such immunities and privileges as are necessary for the exercise of their functions.

DECISION MAKING

Decision-making in the AICHR shall be based on consultation and consensus in accordance with Article 20 of the ASEAN Charter.

NUMBER OF MEETINGS

- The AICHR shall convene two regular meetings per year. Each meeting shall normally be not more than five days;
- Regular meetings of the AICHR shall be held alternately at the ASEAN Secretariat and the Member State holding the Chair of ASEAN;
- As and when appropriate, the AICHR may hold additional meetings at the ASEAN Secretariat or at a venue to be agreed upon by the Representatives;
- When necessary, the ASEAN Foreign Ministers may instruct the AICHR to meet.

LINE OF REPORTING

The AICHR shall submit an annual report and other appropriate reports to the ASEAN Foreign Ministers Meeting for its consideration.

PUBLIC INFORMATION

The AICHR shall keep the public periodically informed of its work and activities through appropriate public information materials produced by the AICHR.

RELATIONSHIP WITH OTHER HUMAN RIGHTS BODIES WITHIN ASEAN

- The AICHR is the overarching human rights institution in ASEAN with the overall responsibility for the promotion and protection of human rights in ASEAN;
- The AICHR shall work with all ASEAN sectoral bodies dealing with human rights to expeditiously determine the modalities for their ultimate alignment with the AICHR. To this end, the AICHR shall closely consult, coordinate and collaborate with such bodies in order to promote synergy and coherence in ASEAN's promotion and protection of human rights.

ROLE OF THE SECRETARY-GENERAL AND ASEAN SECRETARIAT

- The Secretary-General of ASEAN may bring relevant issues to the attention of the AICHR in accordance with Article 11.2 (a) and (b) of the ASEAN Charter. In so doing, the Secretary-General of ASEAN shall concurrently inform the ASEAN Foreign Ministers of these issues;
- The ASEAN Secretariat shall provide the necessary secretarial support to the AICHR to ensure its effective performance. To facilitate the Secretariat's support to the AICHR, ASEAN Member States may, with the concurrence of the Secretary-General of ASEAN, second their officials to the ASEAN Secretariat.

WORK PLAN AND FUNDING

- The AICHR shall prepare and submit a Work Plan of programmes and activities with indicative budget for a cycle of five years to be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN;
- The AICHR shall also prepare and submit an annual budget to support high priority programmes and activities, which shall be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN;
- The annual budget shall be funded on equal sharing basis by ASEAN Member States;
- The AICHR may also receive resources from any ASEAN Member States for specific extra- budgetary programmes from the Work Plan;
- The AICHR shall also establish an endowment fund which consists of voluntary contributions from ASEAN Member States and other sources;
- Funding and other resources from non-ASEAN Member States shall be solely for human rights promotion, capacity building and education;
- All funds used by the AICHR shall be managed and disbursed in conformity with the general financial rules of ASEAN;
- Secretarial support for the AICHR shall be funded by the ASEAN Secretariat's annual operational budget.

GENERAL AND FINAL PROVISIONS

This TOR shall come into force upon the approval of the ASEAN Foreign Ministers Meeting.

AMENDMENTS

- Any Member State may submit a formal request for an amendment of this TOR;
- The request for amendment shall be considered by the Committee of Permanent Representatives to ASEAN in consultation with the AICHR, and presented to the ASEAN Foreign Ministers Meeting for approval;

- Such amendments shall enter into force upon the approval of the ASEAN Foreign Ministers Meeting;
- Such amendments shall not prejudice the rights and obligations arising from or based on this TOR before or up to the date of such amendments.

REVIEW

- This TOR shall be initially reviewed five years after its entry into force. This review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting, with a view to further enhancing the promotion and protection of human rights within ASEAN.
- In this connection, the AICHR shall assess its work and submit recommendations for the consideration of the ASEAN Foreign Ministers Meeting on future efforts that could be undertaken in the promotion and protection of human rights within ASEAN consistent with the principles and purposes of the ASEAN Charter and this TOR.

INTERPRETATION

Any difference concerning the interpretation of this TOR which cannot be resolved shall be referred to the ASEAN Foreign Ministers Meeting for a decision.

List of Members of the HLP 2009

| No | Country | Delegate | Position |
|-----|-------------------|--|---|
| 1 | Brunei Darussalam | H.E. Dato Shofry Abdul Ghafor | Permanent Secretary Ministry of Foreign Affairs and Trade |
| 2 | Cambodia | H.E. Mr. Om Yentieng | Advisor to the Royal Government of Cambodia; President of the Human Rights Committee of Cambodia |
| 3. | Indonesia | H.E. Mr. Rachmat Budiman | Director of Political, Security and Territorial Treaties Department of Foreign Affairs |
| 4. | Lao PDR | H.E. Mr. Bounkeut Sangsomsak | Deputy Foreign Minister Ministry of Foreign Affairs |
| 5. | Malaysia | H.E. TAN SRI AHMAD FUZI ABDUL RAZAK | Ambassador-at-Large Ministry of Foreign Affairs |
| 6. | Myanmar | H.E. Mr. U Myat Ko | Secretary of Myanmar Human Rights Group Director-General, General Administration Department Ministry of Home Affairs |
| 7. | Phillipines | H.E. Ambassador Rosario G. Manalo | Special Envoy; Department of Foreign Affairs |
| 8. | Singapore | H.E. Mr. Bilahari Kausikan | Second Permanent Secretary Ministry of Foreign Affairs |
| 9. | Thailand | H.E. AMBASSADOR SIHASAK PHUANGKET-KEOW | Permanent Representative of Thailand to the UN Office in Geneva |
| 10. | Viet Nam | H.E. Mr. Pham Quang Vinh | Assistant Minister Ministry of Foreign Affairs |
| | | | |

(Source: Terms of Reference of ASEAN Intergovernmental Commission on Human Rights, 2009)

Handout Material 3.3.2

REVIEW THE PERFORMANCE OF THE AICHR FROM 2009 TO 2019

(A Summary from A Decade in Review: Assessing the Performance of the AICHR to Uphold the Protection Mandates, FORUM ASIA)

ASEAN Human Rights Declaration

Forum Asia supported by the Solidarity for ASEAN People's Advocacy (SAPA) Task-Force reviewed the performance of the AICHR from 2009-2019 based on the following parameters:

1. Human rights standard setting and institution building

The AICHR contributed to preparing and setting up an ad hoc task force on drafting an ASEAN Human Rights Declaration (AHRD) with the TOR²- according to one of the Mandates and Functions of the AICHR: to develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights.³

To develop an AHRD, AICHR has supported and strengthened ASEAN's legal instruments on human rights.⁴ AICHR has also been working together with other ASEAN bodies to actively promote holding discussions/workshops; and responding to human rights violations – whether on an individual level, addressing systemic human rights issues in its member states, or violations that occur across borders – and, in this way, advancing the quality of life of ASEAN people.⁵

The AHRD was adopted on 18 November 2012,⁶ and is an adaptation of the Universal Declaration of Human Rights (UDHR). The AHRD has been criticised however by CSOs, who said their participation was limited. During discussion of the AHRD process-making, CSOs expressed grave concern that the AHRD Draft prepared by AICHR still falls short of international human rights law and standards. It also contains several major flaws that prevent it from providing robust protection of human rights for the people of ASEAN, including imposing overarching limitations and conditionality on the enjoyment of rights; a lack of clear commitments not to lower human rights protections; subjugating rights to national laws; a restricted and exclusionary provision for non-discrimination; failing to protect the rights of specific groups; and provisions for specific rights that are vague, weak or otherwise fall below international standards.⁷

2 Desi Hanara, "A DECADE IN REVIEW: Assessing the Performance of the AICHR to Uphold the Protection Mandates," 2019, <https://www.forum-asia.org/uploads/wp/2019/06/AFreviewdecadeFAR1-1.pdf>.

3 AICHR, "ASEAN Intergovernmental Commission on Human Rights (Terms of Reference)," 2009, <https://www.asean.org/storage/images/archive/publications/TOR-of-AICHR.pdf>.

4 Hanara, "A DECADE IN REVIEW: Assessing the Performance of the AICHR to Uphold the Protection Mandates."

5 Forum Asia, "On the 50th Anniversary of ASEAN, Civil Society Demands Stronger and More Forceful Human Rights Mechanisms," 2017, <https://www.forum-asia.org/uploads/wp/2017/08/PR-50-years-of-ASEAN.pdf>.

6 ASEAN, "ASEAN Human Rights Declaration," 2012, https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf.

7 Forum Asia, "ASEAN Human Rights Declaration Must Not Provide Protections Lower than International Human Rights Law and Standards," 2012, <https://www.forum-asia.org/?p=15320>.

The United States' Department of State also has given their response that criticises the use of the concept of "cultural relativism" to suggest that rights in the UDHR do not apply everywhere; stipulating that domestic laws can trump universal human rights; incomplete descriptions of rights that are memorialised elsewhere; introducing novel limits to rights; and language that could be read to suggest that individual rights are subject to group veto.⁸

The ASEAN Enabling Masterplan 2025

The AICHR has initiated two consultations on the feasibility of developing legal instruments on human rights. However, both of the consultations have had no result in terms of making any concrete moves forward.⁹ Since 2015, the AICHR has initiated the establishment of a Task Force on the Mainstreaming of the Rights of Persons with Disabilities in the ASEAN Community, which drafted the ASEAN Enabling Masterplan 2025, adopted by the ASEAN Leaders at the 33rd ASEAN Summit.

The Enabling Masterplan outlines key action points for the three ASEAN community pillars to ensure the alignment of protection and promotions of the rights of persons with disabilities within ASEAN with the CRPD and with regional instruments. Despite being non-binding, the Masterplan is unique in creating a reporting mechanism to the ASEAN Summit, manifesting the commitment of the leaders in making persons with disabilities at the centre of the ASEAN Community Building. Nevertheless, FORUM-ASIA and SAPA highlighted that the Enabling Masterplan would be significantly more effective were AICHR to develop a complaint mechanism to enable people with disabilities to have their concerns addressed.¹⁰

Regional Human Rights Protection Mechanism for Women and Girls.

AICHR has published a paper entitled "Human Rights Protection Mechanisms for Women and Girls in the Southeast Asia Region: An Explanatory Strategy Paper for the AICHR", which aims to coordinate work between the AICHR and other relevant ASEAN Sectoral Bodies to ensure synergy in the protection of women and girls' human rights, as well as to serve as a regional resource pool to provide training, capacity-building and technical expertise to the ASEAN Member States. This was to be followed by the convening of the AICHR Cross-Sectoral Consultation on the Effective Implementation of ASEAN Commitments on Human Rights of Women and Children in the Region. However, the paper has not been made public, so it cannot be analysed further.¹¹

Continued Failure to Establish Reporting Mechanism

There are two broad reasons why the AICHR continued to fail to address egregious human rights violations in the region, in a year that saw such violations peak in several ASEAN member states: ASEAN's non-interference and decision-making by consensus principles, and the opaque and undemocratic selection process of its representatives in the majority of member states, which has a significant impact on its impartiality. These two factors have given ASEAN member states' governments control over the region's human rights bodies, hindering

⁸ Victoria Nuland, "ASEAN Declaration on Human Rights Press Statement," US Department of State, 2012, <https://2009-2017.state.gov/r/pa/prs/ps/2012/11/200915.htm>

⁹ Hanara, "A DECADE IN REVIEW: Assessing the Performance of the AICHR to Uphold the Protection Mandates.

¹⁰ Hanara.

¹¹ Ibid.

their work and their institution-building ability. Compared to other regional and international human rights mechanisms, they have the weakest protection record. This is because they have consistently refused to implement even the limited protection mandates provided by their ToRs, while also interpreting them creatively and innovatively, for instance by creating complaint and correspondence mechanisms.¹²

Individual AICHR Representatives Initiative

The Representative of Indonesia to the AICHR, H.E. Yuyun Wahyuningrum, has expressed a commitment to continue the standard setting functions by aiming to develop advisory notes of the AHRD, Human Rights Guidelines, and Principles.¹³

Institutional building

Forum Asia found the Southeast Asia regional human rights system has developed late and is characterised by lack of dynamism, independence and professionalism, as well as by passivity, silence and a low – indeed non-existent – level of protection, in a region where human rights violations are rife. The AICHR was equally silent in the face of continued repression of peaceful dissent and freedom of expression throughout the region, the criminalisation of LGBTIQ and human rights defenders and repression of minorities, and numerous other human rights violations.¹⁴ According to the annual reports of FORUM-ASIA and SAPA examining the performance of the AICHR and ACWC, and a number of experts and interviewees, one of the main reasons for AICHR's continued inaction towards egregious human rights violations in the region is the lack of political will by the AMS, as well as the rise of populist authoritarian regimes that hinder democratic practices in ASEAN countries.¹⁵ The impact of these factors is often manifested in a selective and twisted invocation of ASEAN's non-interference principle, strict adherence to decision making by consensus, as well as the opaque and undemocratic selection process of AICHR representatives in the majority of member states. Based on these factors, the AMS governments have tight control over the AICHR, hindering its responsiveness, work efficiency, institution-building ability and protection capacity.¹⁶

2. Responsiveness to key human rights developments in ASEAN

There is a lack of substantive response from AICHR on key human rights incidents in ASEAN. For example, in the case of Sombath Somphone's forced disappearance in Laos, the AICHR response was to only discuss the matter during the informal retreat.¹⁷

3. Engagement with CSOs

The resolution provides a set of criteria for eligible NGOs: an organisation is required to have standing or competence in a particular field; to have a headquarters with an executive officer; the authority to speak on behalf of its members; as well as a representative structure and

¹² Cornelius Hanung, Miko Susanto Ginting, and Rachel Arinii Judhistari, "Reasonable Doubt The Journey Within: A Report on The Annual Performance of The ASEAN Human Rights Mechanisms in 2017," 2018, <https://www.forum-asia.org/uploads/wp/2018/11/ASEAN-Human-Rights-Institution-Performance-Report-2017-Final-2-1.pdf>.

¹³ Hanara, "A DECADE IN REVIEW: Assessing the Performance of the AICHR to Uphold the Protection Mandates."

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

appropriate mechanisms of accountability to its members. In addition, there's a provision of documents proving the relevance of CSOs' programs to the principles and purposes of ASEAN and AICHR; provision of the CSOs' constitutions or charters; provision of financial reports, publications, list of members, as well as papers identifying the areas in which the organisation proposes to contribute to the AICHR's work.¹⁸ On 30 April 2018, 30 CSOs were granted a consultative relationship with AICHR.¹⁹

The engagement with CSOs has been limited to receiving input, dialogues, and forums on different occasions. On 22 June 2012, the AICHR received input from representatives of national, regional and international CSOs on the AHRD. However, the overwhelming majority of CSOs' recommendations on the text of the AHRD were ignored. From July 2016 until June 2017, the AICHR met with a number of CSOs, but they did not have a consultative status. In November 2017, the AICHR met with CSOs at the ASEAN Round Table Dialogue on the HRD, at which CSOs urged the AICHR to : (1) Strengthen communication and exchange of ideas between CSOs and AICHR by attracting more CSOs and involving CSOs to every AICHR consultations, both regionally and nationally; (2) Create a communication mechanism between AICHR and CSOs to identify key human rights issues in the ASEAN region; (3) Ensure that the results of consultations and dialogues have concrete impacts. However, the meeting was deemed as mere tokenism with no substantial output.²⁰ The discussion had a complex situation, and was exacerbated by an atmosphere of distrust and tension during the meeting;²¹ the meeting had no specific agenda;²² and the results of the discussion were not disclosed to the CSOs participants;²³

4. Alignment and collaboration among relevant ASEAN system and entities;

The efforts of alignment among ASEAN Sectoral Bodies started with a consultation session between the AICHR, the ASEAN Committee on Women (ACW) and ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD), on 30 March 2010 at the ASEAN Secretariat, which was followed by a Dialogue between the AICHR and ACWC during the 7th Meeting of the AICHR on the effective alignment among human rights institutions and mechanisms. Since then, the AICHR has engaged relevant ASEAN Sectoral Bodies on a number of occasions, notably during the AICHR meetings, the drafting process of the AHRD and other consultation meetings with relevant sectoral bodies. The efforts culminated in the adoption of Guidelines on Alignment between AICHR and ASEAN Sectoral Bodies in 2015, which aims to ensure alignment and coherent function of the promotion and protection of human rights in ASEAN, identify modalities of engagement and prevent duplication in the implementation of mandates of various mechanisms and institutions. However, the Guidelines have yet to be operationalized, pending decision from the bodies and mechanisms involved.²⁴

Based on reviews from Forum-Asia and SAPA, the AICHR and the ASEAN Leadership have not officially engaged each other.²⁵

18 *Ibid.*

19 *Ibid.*

20 Forum Asia, "CSOs Recommendations to the AICHR for the Promotion and Implementation of ASEAN Human Rights Declaration – Bohol, 28 November 2017," 2017, <https://www.forum-asia.org/?p=25216>.

21 Hanara, "A DECADE IN REVIEW: Assessing the Performance of the AICHR to Uphold the Protection Mandates."

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 *Ibid.*

5. The Review of the AICHR ToR

In 2014, AICHR fulfilled its mandate under article 9(7) to some extent by undertaking an assessment of its own record through stock-taking and analysing its programs and activities during the first five years of its establishment. Despite the assessment being mandated in Article 9 (7), Southeast Asia Women's Caucus found that the implementation of assessment had an arbitrary selection for consultation over the review of CSOs that were allied with AMS governments, as well as rejection of other CSOs' selected representatives, specifically from Cambodia.²⁶

During the AMM in October 2014, the AICHR submitted its assessment and recommendations on the review of its ToR, presenting the following 10 proposals to the AMM:

- As the overarching human rights institution in ASEAN, the AICHR will mainstream human rights across all three pillars of the ASEAN Community, in consultation with relevant ASEAN Sectoral Bodies;
- The AICHR may be invited by any ASEAN Member State on a voluntary basis, to engage in dialogue on the national implementation of human rights commitments;
- On the basis of voluntary invitation by the ASEAN Member State concerned, the AICHR may be engaged in thematic visits to share best practices on the promotion and protection of human rights;
- Upon the request and consent of an ASEAN Member State, the AICHR can assist in the provision of technical assistance and capacity-building for the promotion and protection of human rights, in accordance with the ASEAN Charter, including for the establishment or strengthening of national human rights institutions/bodies or any other national mechanism that are suited for that ASEAN Member State;
- An annual consultation between the AICHR and civil society shall be held on the promotion and protection of human rights in ASEAN and implementation of the AHRD;
- The AICHR to publish their Annual Report on its website;
- Seek establishment of a dedicated unit within the ASEAN Secretariat to support the work of the AICHR;
- Establish national secretariat/unit/office to assist the AICHR Representative for its national work;
- Stagger term of the office of the AICHR Representatives in order to maintain the institutional memory of the AICHR; and
- Recommend the ASEAN Foreign Ministers to consider the contribution of the AICHR on the review of the ToR as an input to the review process that shall be undertaken by the Foreign Ministers.

However, in CSO's review, those recommendations are extremely weak and limited. The recommendations are not clear, specific, and fail to enhance protection of human rights in the region. Likewise, the recommendations avoided tackling the AICHR's institutional weaknesses, such as lack of independence and expertise, and the veto powers given to AMS through the provision of decision-making by consensus. Also, since those recommendations were submitted by AICHR, no further information has been forthcoming on any development or decision by the ASEAN Foreign Ministers pertaining to the process.²⁷

²⁶ *Ibid.*

²⁷ *Ibid.*

6. The AICHR's activities

Research

According to the AICHR Five-Year Work Plan 2016-2020, thematic studies are published and disseminated as an exercise in human rights education and to raise awareness, as well as to build AICHR's visibility, which is designed to explore human rights issues in AMSs in order to gain a thorough understanding of them. There have been three drawbacks to the AICHR's thematic studies.

- The research undertaken for the thematic studies could have been used as an avenue to obtain information on human rights violations in pertaining to the specific studies;
- The AICHR has also acknowledged the urgent need to design a standardised framework for conducting thematic studies and their follow-up activities, including the appointment of experts, assessing the feasibility of studies, measurement impact, and ensuring relevance to the advancement of ASEAN Community;
- The replacement of AICHR Representatives

Capacity building²⁸

- combating human trafficking;
- rights of persons with disabilities;
- rights of child; and
- business and human rights.

Human rights awareness of youth²⁹

- Activities of the AICHR include the AICHR Youth Debates. The debates have been designed to sensitise the youth representatives to human rights issues within the host country. For instance, the AICHR Youth Debate in Cambodia provided an opportunity for the participants to visit the Tuol Sleng Museum, which documents and memorialises one of the darkest chapters in human history – the atrocities and crimes committed by the Khmer Rouge during the 1970s.

Human Rights mainstreaming³⁰

- mainstreaming human rights in various sectors of ASEAN: education, environment and climate change, security, social welfare and development.

For instance, the AICHR Regional Dialogue on Mainstreaming of the Right to Education in the ASEAN Community was held 10 to 12 November 2017 in Phnom Penh, Cambodia. The event aimed to raise awareness of the right to education as a cross-cutting issue in ASEAN; garner input from ASEAN Sectoral Bodies and stakeholders to mainstream the right to education across the three community pillars of ASEAN; and create a platform to strengthen regional cooperation on education and human rights

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

- mainstreaming human rights in the implementation of ACTIP and APA:
 - » AICHR Cross-Sectoral Consultation on the Human Rights-based instruments related to the Implementation of the ACTIP and APA, which was conducted in Yogyakarta, Indonesia between 29 and 30 August 2017;
 - » a national focal point (NFP) who is mandated to refer TIP cases to relevant agencies in each ASEAN country, and a standardisation in monitoring evaluation.
 - » The participants also recommended various measures in dealing with victims of TIP based on human rights approach
- mainstreaming human rights in the environment and climate change sectors:
 - » the AICHR Workshop on Rights-Based Approach to Regional Management Strategy for an Effective Environmental Impact Assessment (EIA), was conducted in Yangon, Myanmar, between 29-30 October 2017;
 - » the AICHR has conducted three regional dialogues, a training program, and the establishment of a task force to draft a Regional Action Plan on Mainstreaming the Rights of Persons with Disabilities in the ASEAN Community;
 - » the AICHR has also attempted to mainstream human rights into the works of the judiciary by conducting two workshops. The first one looked into sharing best practices regarding international human rights law.

Reflections on AICHR's activities

From 2010 to 2018, the AICHR spent more than USD 6 million conducting 121 activities. However there is no impact analysis of AICHR's activities, and in general the CSOs perceive a failure in these activities to protect human rights in ASEAN. In particular, CSOs pointed out that no access to the AICHR's assessment of the implementation of outcomes and action points of its activities; some activity reports (although very few recommendations) should be made public on the AICHR's website; the substantive recommendations from the programmes should be transmitted to the national level.³¹

Strategies and Recommendation

Recommendations given by CSOs to AICHR:³²

- review and revise the AICHR's ToR;
- use all the mandates currently under its ToR holistically, with providing immediate response to human rights violations and crises by obtaining information from relevant AMS issuing urgent statements and consulting with UN human rights bodies; and use the thematic studies strategically.

³¹ *Ibid.*

³² *Ibid.*

MODULE 3.4.

AICHR... Role in ASEAN



Objectives:

- » To identify the role of AICHR within ASEAN.
- » To identify accountability structures of AICHR.



Knowledge Acquired:

Knowledge of the power and relevance of AICHR in propelling a future peoples' ASEAN.



Time: 1.5 hours

Materials: Copy of the AICHR TOR, the ASEAN Charter, post-ifs, and meta-cards



Procedures:

1. Divide the participants into five small groups: ASEAN Summit group; "ASEAN Coordinating Council group"; "ASEAN Community Councils' group"; "ASEAN Sectoral Bodies' group"; and "Secretary-General" and "ASEAN Secretariat's group".
2.
 - a. Assign the "ASEAN Summit group" to identify the role, responsibilities and powers of the AICHR to the ASEAN Summit particularly on human rights issues and autonomy;
 - b. "ASEAN Coordinating Council group" to identify the roles, responsibilities and powers of AICHR to the ASEAN Coordinating Council particularly on human rights issues and autonomy;

- c. the “ASEAN Community Councils’ group” on the roles, responsibilities and powers of the AICHR on the ASEAN Community Councils;
 - d. the “ASEAN Sectoral Bodies’ group” on the roles, responsibilities and powers of the AICHR to the ASEAN Sectoral Bodies;
 - e. the “ Secretary-General and the ASEAN Secretariat’s group” on the roles, responsibilities and powers of the AICHR to the Secretary-General and the ASEAN Secretariat on human rights issues and autonomy.
3. Write on the colour-coded meta-cards the roles, responsibilities and powers of the AICHR to these ASEAN bodies on issues of human rights and autonomy. Paste the meta-cards on a wall designated for the specific ASEAN Bodies.
 4. Allow discussion on the coordination of roles and powers.
 - What is your observation on the balance of roles, responsibilities and powers of the AICHR on other ASEAN Bodies?
 - How do we help AICHR to effectively implement their mandates given the imbalance of roles, responsibilities and powers among ASEAN Bodies?
 - What concrete possible issues, initiatives and opportunities of engagements on HR and Autonomy can you think to pursue engagement with other ASEAN Bodies on human rights and autonomy questions for the AICHR? (Evoke from the participants concrete issues and possible initiatives. Ask to write them on post-it papers and paste one of them near the ASEAN bodies you wish to engage with.)



Debriefing:

- Powers and roles define the extent of influence of an organisation, a group or a person within the organisation.
- There is a need for AICHR to define its roles within those various ASEAN bodies with integrity and autonomy.
- It needs to assert its autonomy in the implementation of its mandates through the roles it would take with these ASEAN bodies.
- Understand clearly the lines of reporting.



Conclusion:

- ASEAN people and CSOs should help define concrete roles of AICHR to other ASEAN Bodies.
- Engagement with ASEAN does not end with the establishment of the AICHR.

Handout Material 3.4.1

REGIONAL SYSTEMS INTERNATIONAL JUSTICE RESOURCE CENTER

Regional human rights bodies monitor, promote and protect human rights in several geographic regions around the world. In Africa, the Americas, and Europe, the regional human rights systems play an important role in protecting human rights among their Member States, including by deciding States' responsibility for violations alleged in complaints submitted by individuals. Additionally, newer bodies with fewer functions monitor human rights conditions in the countries of the Middle East and Southeast Asia.

The regional human rights bodies are:

- African Commission on Human and Peoples' Rights
- African Court on Human and Peoples' Rights
- Arab Human Rights Committee
- ASEAN Intergovernmental Commission on Human Rights
- European Court of Human Rights
- European Committee of Social Rights
- Inter-American Court of Human Rights
- Inter-American Commission on Human Rights

Note that a number of **regional economic integration initiatives**, such as the European Union and Economic Community of West African States, have established courts to deal with disputes arising between member States or concerning the community's laws. These tribunals are not generally considered to be human rights courts because their core mandate is not human rights protection. However, some are authorised to consider individual complaints involving fundamental rights or to directly apply human rights treaties. Please see the page on Courts and Tribunals of Regional Economic Communities for more information.

COMMON FEATURES

Each of the regional human rights systems was established under the auspices of an intergovernmental organisation composed of Member States; these are: the African Union, Organization of American States, Council of Europe, League of Arab States, and Association of Southeast Asian Nations.

Under the regional systems, **only States may be held accountable** for human rights violations. These systems do not prosecute individuals or decide individuals' responsibility for human rights violations. By creating and joining regional human rights treaties, States have agreed to

respect, protect, and guarantee the enjoyment of specific freedoms for all people within their territories. States may be held accountable for violations of these freedoms that are caused by the State's laws or policies or by the actions of State agents, as well as for violations that the State or its agents allowed to occur or failed to prevent.

In the Americas, Africa and Europe, the key feature of each system is a **complaints mechanism** through which individuals can seek justice and reparation for human rights violations committed by a State party. The regional human rights commissions and courts determine whether the State is responsible for the alleged violation and, if so, what the government should do to repair the damage. These bodies can also ask States to take action, or refrain from taking action, to avoid irreparable harm to the complainant; these orders or requests are often referred to as "interim measures" or "provisional measures."

However, human rights systems are not meant to take the place of national courts. Rather, individuals alleging human rights violations before a regional human rights body must generally first try to resolve the problem using any appropriate remedies that are available at the local or national level. States will only be considered internationally responsible for human rights violations that the government failed to remedy, in a suitable and timely manner, when it had the opportunity to do so.

In addition to deciding individual complaints, the regional human rights systems engage in a range of human rights **monitoring and promotion** activities. The Inter-American Commission and African Commission, in particular, prepare reports on human rights practices of concern, carry out country visits, and monitor emerging human rights themes and the rights of vulnerable groups by appointing experts (usually called "rapporteurs" or "special rapporteurs") to focus on those topics. The regional human rights courts typically only receive complaints and do not engage in other monitoring or promotion activities. These courts also contribute to the understanding of regional human rights treaties through "advisory opinions" on the meaning of treaty provisions.

The nature and duties of each regional human rights system, as well as the standards they interpret and apply, are established in regional treaties and in each body's statute or rules of procedure.

INTER-AMERICAN

The Inter-American Commission on Human Rights may decide complaints ("petitions") against all 35 Member States of the Organization of American States (OAS). Petitions must allege a violation of the American Declaration of the Rights and Duties of Man or of the American Convention on Human Rights, provided the State concerned is one of the 23 States that are parties to the Convention. The Commission accepts petitions from individuals, groups of individuals, non-governmental organisations recognized by any OAS Member State, and States. The Commission also issues emergency protection requests ("precautionary measures"), undertakes country visits, publishes reports on human rights conditions, holds public hearings on cases and thematic questions, and monitors priority topics through its rapporteurships.

The Inter-American Court of Human Rights may only examine contentious cases against States that have both: ratified the American Convention and recognized the Inter-American Court's jurisdiction (currently 20 States). Cases must first be decided by the Commission before they can be referred to the Court, either by the State party involved or by the Commission. The Court also has jurisdiction to issue advisory opinions and to order emergency interim measures ("provisional measures").

EUROPEAN

The European Court of Human Rights has jurisdiction to decide complaints (“applications”) against all 47 Council of Europe Member States. Individuals, groups of individuals, non-governmental organisations and States may submit applications concerning alleged violations of the European Convention on Human Rights. The European Court may issue emergency protective orders (“interim measures”) when the applicant faces a real risk of serious, irreparable harm.

The European Committee of Social Rights monitors compliance with the European Social Charter among the 43 Council of Europe Member States that are party to the original 1961 Social Charter or the 1996 revised Charter. States submit periodic reports on their implementation of the Charter’s provisions. The Committee may also decide complaints against those States that have chosen to accept the collective complaints procedures (currently 15 States). Complaints may be submitted only by approved employers’ organizations, trade unions and certain non-governmental organisations.

AFRICAN

The African Commission on Human and Peoples’ Rights may decide complaints (“communications”) against 54 Member States of the African Union, all parties to the African Charter on Human and Peoples’ Rights. Morocco, rejoined the African Union in 2017, becoming its 55th Member State, but had not yet ratified the African Charter as of June 2017. [IJRC] Individuals, organisations and States may submit communications concerning alleged violations of the African Charter. The Commission also reviews States’ reports on their implementation of regional human rights treaties, conducts country visits, monitors priority issues through its rapporteurships and other special mechanisms, and may request “provisional measures” to prevent irreparable harm to victims.

The African Court on Human and Peoples’ Rights has jurisdiction to give advisory opinions, and to decide complaints against the States that have accepted its jurisdiction. The Court accepts complaints from: the African Commission, a State party to a complaint before the Commission, States parties to the Court whose citizen alleges a human rights violation, and African intergovernmental organisations. When accepting the Court’s jurisdiction, a State may also authorise the Court to receive complaints against it from individuals and certain non-governmental organisations. As of July 2017, eight States have authorised such complaints. In April 2017, Tunisia made the necessary declaration for the Court to receive complaints from individuals and non-governmental organisations.

(Source: International Justice Resource Center, Regional Systems, available at <https://ijrcenter.org/regional/>)

Handout Material 3.4.2

CASE STUDIES ON ROHINGYA AND EJK

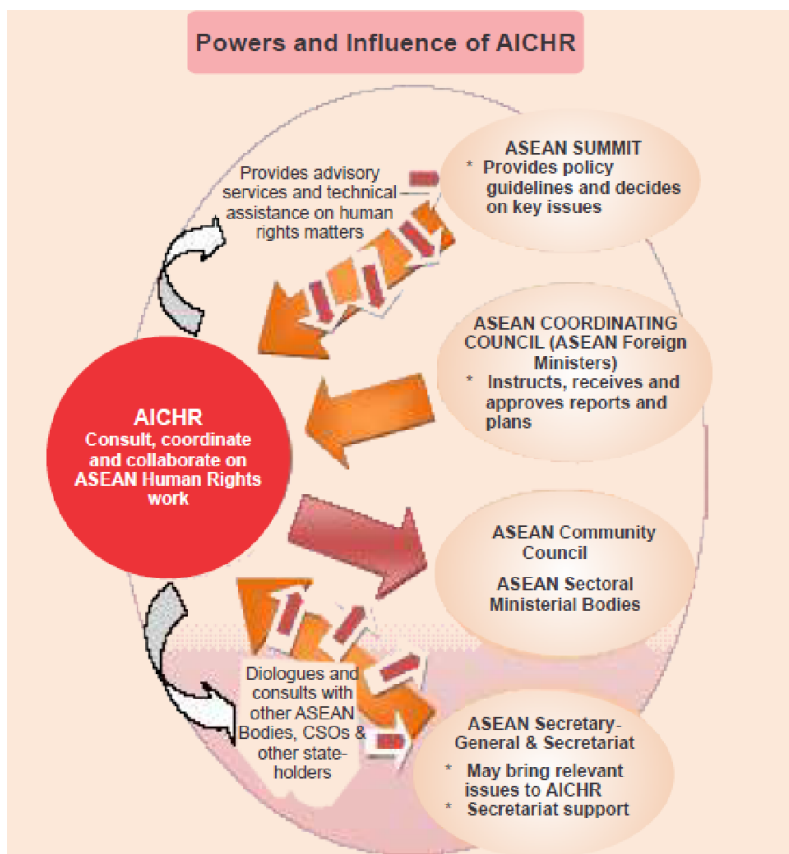
AICHR Responsibilities:

- May be instructed by ASEAN Foreign Ministers to meet.
- Submits annual report to ASEAN Foreign Ministers for consideration.
- Prepare and submit work plan and budget to the ASEAN Foreign Ministers for approval upon the recommendation of the ASEAN Permanent Representatives.
- Keep the public periodically informed of its activities.
- May be tasked by the Secretary General on relevant issues.

AICHR Powers:

- Overarching institution on Human Rights promotion and protection in ASEAN.
- Consult, coordinate, and collaborate with ASEAN Sectoral Bodies to determine modalities of HR work.

Powers and Influence of AICHR



ROHINGYA CASE

The Basic Facts:

The Rohingya are a Muslim minority who live in Rakhine State, Myanmar, that are recognised as one of the most persecuted minority groups in the world, according to the United Nations (UN)³³ Going back several centuries, long before Myanmar came into existence as the clearly separated boundaries of the post-colonial nation-state of today, the Rohingya trace their ancestral roots in the Rakhine region. Despite this, a lack of respect and contemptuous disregard of the history of the Rohingya and their Muslim ancestors today largely persists in Myanmar. Violent events that started in 2012, as well as those of 1978, 1992, 2001, and 2009, were due to the widespread discrimination against the Rohingya in Rakhine State.³⁴ This systemic discrimination against the ethnic group has been institutionalised by way of government policies and practices, including restrictions on marriage, family planning, employment, education, religious choice, and freedom of movement for a long time. Direct violence against the Rohingya was made possible by this system.³⁵

In May and June 2015, mass graves were discovered at smugglers' camps at the Thailand-Malaysia border. As a result of a crackdown by authorities at this time, thousands of Rohingya from Rakhine State and economic migrants from Bangladesh were stranded in the Strait of Malacca off the coast of Thailand, Malaysia and Indonesia. In the Asian region, for several reasons, the Rohingya crisis is a relevant concern that cannot be ignored. A host of repressive measures have been allowed to be imposed by local governments due to Myanmar's Race and Religion Protection Laws. Imposition of these laws came during the on-going racial and religious discrimination violence, believed to be part of an intentional sharp turn towards systemic Rohingya persecution.³⁶

In 2012 Human Rights Watch issued a report on the Rohingya crisis and urged the Myanmar government to take responsibility for the rejection of citizenship, degrading of human rights, forced relocations, use of force against the minority, and many other accusations on human rights issues. All of these accusations refer to the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women 1981 (CEDAW), the Convention on the Right of the Child 1989 (CRC), and the Convention on the Rights of Persons with Disabilities 2008 (CRPD) which Myanmar is a party to. Moreover, the fact shows that until now more than 1 million Rohingyas have fled Myanmar to Bangladesh. Many international organisations and NGOs such as the UN High Commissioner for Human Rights, Amnesty International, the European Commission, Human Rights Watch, and others, undeniably mentioned the Rohingya as the most victimised minority in the world. The Myanmar government has also been accused of ethnic cleansing against the Rohingya, while the AICHR, which was established to be directly responsible for the protection of human rights in ASEAN, has completely failed to act on the Rohingya issue.³⁷

Further, the United Nations (UN) record shows that the Rohingya are one of the world's most

33 Arifin N.A., "ASEAN's Role in Mitigating the Risks of Rohingya Radicalization," *Jurnal Hubungan Internasional*, 2016, 75.

34 Zawaki B., "Defining Myanmar's 'Rohingya Problem': The Human Rights Brief," 2013.

35 Alenor Albert, "The Rohingya Migrant Crisis, Council on Foreign Relations," 2017, https://ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/resources/docs/CFR_The_Rohingya_Migrant_Crisis_-_Council_on_Foreign_Relations.pdf.

36 Kimberly Ramos Games, "Examining The Asean Intergovernmental Commission on Human Rights (AICHR): The Case Study of The Rohingya Crisis" (Tilburg University, 2017).

37 Nattapat Limsiritong, "The Power of ASEAN Inter-Governmental Human Rights Commission Under the Perspective of ASEAN Charter in Case of the Rohingya Issue," *International Journal of Crime, Law, and Social Issues* 5, no. 2 (2018): 33.

persecuted minorities. Also, as AICHR is a human rights body that is responsible for the promotion and protection of human rights in the Southeast Asia region, it is reasonable to look into how it has responded to the ever-worsening Rohingya crisis that has persisted since the AICHR was established in 2009.

AICHR-Rohingya Crisis

According to Article 14(1) of the ASEAN Charter, the ASEAN established the AICHR as the ASEAN human rights body after the adoption of ASEAN Foreign Minister Meeting. In October 2009, the AICHR was adopted at the 15th ASEAN Summit and the ten AICHR Representatives were appointed. The establishment of AICHR determines ASEAN's commitment to develop regional cooperation on human rights. The main purpose of AICHR is to promote and protect human rights in ASEAN. Further, the AICHR was established to be a potential forum that provides ASEAN with a mechanism where the case of the Rohingya crisis and the refugee crisis could be addressed. Consequently, the AICHR is sometimes as being a "toothless tiger" due to its limited power to protect human rights in ASEAN.³⁸

AICHR's response to Rohingya Crisis

So far, the AICHR's response to the Rohingya crisis just has never been properly discussed. The reason for this is because according to the statement of the AICHR Chair in 2011, it does not have such a mechanism to receive complaints.³⁹ Moreover, the TOR of the AICHR does not include powers to receive and investigate complaints of human rights violations and undertake investigations. The AICHR is legitimately empowered by the TOR. The TOR regulates all regulations related to the AICHR such as the structure, purposes, principles, mandate, functions, funding, and especially decision-making mode of AICHR.

Furthermore, based on the ASEAN Way, especially the ASEAN principle of non-interference in the internal affairs of ASEAN Member States under Article 2(e) of ASEAN Charter, in practice AICHR must get permission from the ASEAN Summit to act on the Rohingya issue. Furthermore, the decision-making model of the ASEAN Summit is referred to as the consultation and consensus method, which requires all ASEAN Member States, including Myanmar itself, to agree on this matter. Moreover, the TOR is limited only to the monitoring of human rights rather than protection or enforcement.

Another issue with AICHR is its place in the ASEAN hierarchy, at the bottom of the pyramid. In practice, ASEAN was established with a "top down" power structure, with AICHR near the bottom, below that of the ASEAN Summit. AICHR is also not independent from government interests, and the lack of financial support granted to it by ASEAN demonstrates the bloc's lack of intention to empower the body to support human rights implementation in the region.

38 Sharom A et al., "An Introduction to Human Rights in Southeast Asia Volume 1" (Nakhon Pathom: Institute of Human Rights and Peace Studies, 2015).

39 Petcharamesree S, "The ASEAN Human Rights Architecture: Its Development and Challenges," *The Equal Rights Review*, 2013, 11.

Extrajudicial Killings in the Philippines

Basic Facts:

The Duterte administration's "war on drugs" continued in 2018 and expanded into areas outside the capital, Metro Manila, including to the provinces of Bulacan, Laguna, Cavite, and the cities of Cebu and General Santos. According to the Philippine Drug Enforcement Agency (PDEA), 4,948 suspected drug users and dealers died during police operations from July 1, 2016 to September 30, 2018. However this does not include the thousands of others killed by unidentified gunmen. According to the Philippine National Police (PNP), 22,983 such deaths since the "war on drugs" began are classified as "homicides under investigation." The exact number of fatalities is difficult to ascertain because the government has failed to disclose official documents about the "drug war." It has issued contradictory statistics and, in the case of these "homicides under investigation," stopped releasing the figures altogether. Masked gunmen taking part in killings appeared to be working closely with police, casting doubt on government claims that most killings have been committed by vigilantes or rival drug gangs. Duterte has vowed to continue his anti-drug campaign until his term ends in 2022. In July 2018, he again pledged to continue the "war on drugs," saying "it will be as relentless and chilling as on the day it began." Duterte has also vowed to protect police officers and agents carrying out the "drug war" from prosecution. Except for a few high-profile cases, the killings have not been investigated.

Reports of killings increased in cities where police chiefs who had previously overseen abusive operations were appointed. Based on government data, police killed at least 155 people from April to July 2019, compared to 103 people from December 2019 to March. Killings by unknown individuals, many with suspected links to the police, continued, and victims were overwhelmingly poor. Despite repeated calls for an international investigation, the UNHRC adopted in October a resolution providing technical assistance and capacity-building to the government. The resolution required the UN Human Rights Office to continue to provide the UNHRC with updates over the next two years.⁴⁰

AICHR response:

At the regional level the situation is desperate. There has been no voice from the ASEAN Intergovernmental Commission on Human Rights (AICHR) on this point. The AICHR has remained silent, never commenting on or acknowledging the situation. Upon review of the AICHR's website and annual report one can observe an absence of an official statement concerning the situation of human rights abuses in the carrying out of Duterte's war on drug policy. Nevertheless, CSOs are still working to find a resolution to the abuses against suspected drug personalities in the Philippines. There is another prominent strategy of CSOs in dealing with this matter, illustrated in the next part.⁴¹

⁴⁰ <https://www.amnesty.org/en/countries/asia-and-the-pacific/philippines/report-philippines/>

⁴¹ Stanati Netipatalachoochote, Aurelia Colombi Ciacchi, Ronald Holzhaecker, Human Rights Norm Diffusion in Southeast Asia: Roles of Civil Society Organisations (CSOs) in Ending Extrajudicial Killings in the Philippines, *Journal of Southeast Asian Human Rights*, Vol. 2 No. 1 June 2018, p. 265-266.

MODULE 3.5.

AICHR... Rules of Procedure



Objectives:

- » To understand how the AICHR functions and how its mechanisms operate.
- » To locate areas of possible coordination with the CSO, peoples' participation and engagement in AICHR's work



Knowledge Acquired:

- » Knowledge on various procedural matters defining the conduct of AICHR.



Time: 1 hour

Materials: CSO proposal for AICHR Rules of Procedure



Procedures:

1. Elicit for the participants about complaint mechanism or procedure in different levels at the family, local, national and international levels.
 - What is the general pattern observed?
 - How are the rules and procedures important to all the stakeholders? How is it related to human rights issues?
 - What does the AICHR say about its rules of procedure?
2. Provide general input on the possible elements of AICHR RoP
3. Divide the participants into 4 groups:
 - Petitioner's group: What would be your procedure in handling a petition or complaint? How can CSO / ASEAN people coordinate/participate/engage the AICHR on this procedure?

- Rapporteur's group: What would be your procedure on the reporting process? How can CSO /ASEAN people help/ coordinate/ participate/ engage the AICHR on matters of reporting?
- Educator's group: What would be your procedure in initiating promotional activities? How can CSO /ASEAN people facilitate/coordinate/participate/ engage the AICHR on matters of education and other promotional activities?
- AICHR group: What would be your procedure on on-site investigation and observation? What would be your procedure in conducting the hearing? How can CSO / ASEAN people facilitate/ coordinate/ participate/ engage the AICHR on matters of on-site observation and investigation?



Debriefing:

- Exhaustive discussion on the proposed procedures by putting up scenarios of difficulties based on the characters of ASEAN member States.



Conclusion:

- AICHR has no Rules of Procedure yet.
- Rules of Procedure provide guidance for effective management of work.
- They provide opportunities for various advocacies

Handout Material 3.5

Summary of GUIDELINES ON THE OPERATIONS OF THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR)⁴²

To operations of the AICHR in the promotion and protection the human rights in ASEAN, the AICHR shall be conducted in accordance to the following the guidelines that rules about format of meeting, the agenda, notification of representation, chairmanship, documentation, summary record, public communication, establishment of working group or task force, reporting procedure, relationship with other ASEAN bodies, interaction with entities associated with ASEAN and other stakeholders, representation at regional and international events, resource mobilisation and utilisation, support from the ASEAN Secretariat, general and final provisions.

[https://aichr.org/wp-content/uploads/2018/10/Guidelines_on_the_Operations_of_AICHR.pdf]

See Appendix Module 3 Appendices for the full text of the CSO Proposal

42 AICHR, "GUIDELINES ON THE OPERATIONS OF THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR)," 2012, https://aichr.org/wp-content/uploads/2018/10/Guidelines_on_the_Operations_of_AICHR.pdf.

MODULE 3.6.

Analysing the AHRD



Objectives:

- » Discussion on and formulation of possible content of an ASEAN Human Rights Declaration.



Knowledge Acquired:

- » Knowledge on principles of human rights that are universal.



Time: 1.5 hour

Materials: UDHR and Bangkok NGO Declaration 1993 Procedures:



Procedures

1. Ask all participants to lie down (sit and face up if more appropriate) on the floor. and; play soft music in the background.
2. In the hall, hang from the wall all the rights contained in the UDHR cut out, written out or drawn out in cards and so that participants can see these words clearly above them when lying down.
3. Instruct them to be silent and look at the words and phrases. Then after 5 minutes ask them to close their eyes and listen to the music.
4. Ask participants to envision the rights we should want in our declarations. Ask them to picture what kind of rights we should have in an ASEAN declaration. After 10 minutes, ask all to write down their wish list on meta-cards.
5. List them on the wall and group them according to their similarities.

6. Split participants into five groups according to the rights categorisation (i.e. civil, political, economic, social and cultural). Invite each group to select from the master list on the wall and add on. They could also refer to the UDHR. Compile this list.
7. Open the floor for a plenary discussion.

Key questions/points to stimulate open discussion could be:

Q1: Can this list be realistically workable for ASEAN people?

Q2: How does this differ from the UDHR? And is this list built on the standards within the UDHR?



Debriefing:

- AICHR is mandated to develop an ASEAN HR Declaration.
- CSO must be vigilant that the Declaration must not be lower than the present international commitments, HR standards, the UDHR and the treaties.
- ASEAN HR Declaration would then be used as a basis for a long-term demand for a Human Rights Court like that in Africa, Europe and Latin America



Conclusion

- CSOs must advocate for its voices in the promulgation of ASEAN HR Declaration.
- ASEAN should make sure that the governments align to a proper human rights standard and not "average" it.

Handout Material 3.6

ANALYSIS OF ASEAN HUMAN RIGHTS DECLARATION

A Summary of Rachminawati and Syngellakis, *Law and Policy: A Useful Model for ASEAN*; Catherine Shanahan Renshaw, "The ASEAN Human Rights Declaration 2012"; and Human RightsWatch, "Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration,"

The form chosen for the AHRD was that of a 'declaration'. The AHRD does not contain a commitment binding ASEAN States that the rights recognised in the text shall be assured to those subjects to their jurisdiction. However, the AHRD hopes to be a significant development for human rights in the Southeast Asia as a source of 'soft law'. The AHRD was adopted by the 10 ASEAN Heads of State/Government at the 21st ASEAN Summit in Phnom Penh on 18 November 2012.⁴³ The AHRD affirmed that it adheres to the purposes and principles of ASEAN as enshrined in the ASEAN Charter, in particular respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance; is committed to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties; and also promotes human rights, including the Declaration of the Advancement of Women in the ASEAN Region and the Declaration on the Elimination of Violence against Women in the ASEAN Region. The AHRD will help establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process.

The statement of adoption purported to reiterate the commitment of ASEAN and its Member States to, *inter alia*, international human rights instruments to which ASEAN Member States are parties. This statement is curious since it appears to reflect a standard-setting commitment of ASEAN itself to the human rights treaty regimes in respect of which its Member States individually do not exhibit such a diverse approach. The establishment of the AHRD shows the improved recognition of human rights in ASEAN countries, and was appreciated by many groups because it is considered as a main gate for the protection of human rights in Southeast Asia. ADHR is a cornerstone for "ASEAN citizens" to have more binding regional instruments in human rights.⁴⁴ Yet, on the other hand, it has been highly criticised.

Civil society groups in ASEAN have expressed disappointment over the content and process of the first-ever ASEAN human rights declaration, which aims to ensure human rights protection for 600 million people in the region.⁴⁵

ASEAN LGBT Caucus is disappointed by the decision of the ASEAN Head of States to adopt an AHRD that intentionally excludes SOGI. Despite countless attempts and demands by the members of civil society, including LGBTIQ groups, to push for its inclusion, ASEAN has remained reticent to the attempts. The AHRD not only shows a lack of respect to LGBTIQ people but also makes a mockery of the international human rights values and principles that all nations and citizens abide by and are held accountable to.

Collectively, CSOs denounced the adoption of the flawed ASEAN Human Rights Declaration. Their criticism essentially says that ADHR should have reflected the universally-held conviction that respecting human rights necessarily limits the powers of government. Instead, the

⁴³ ASEAN, "ASEAN Human Rights Declaration."

⁴⁴ Rachminawati and Syngellakis, *Law and Policy: A Useful Model for ASEAN*, ed. Novotny and Portela (United Kingdom: Palgrave Macmillan, 2012).

⁴⁵ Human Rights Watch, "Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration," 2012, <https://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration>.

Declaration that was adopted, through some of its deeply flawed “General Principles”, will serve to provide ready-made justifications for human rights violations of people within the jurisdiction of ASEAN governments. These include balancing the enjoyment of fundamental rights with government-imposed duties on individuals, subjecting the realisation of human rights to regional and national contexts, and broad and all-encompassing limitations on rights in the Declaration, including rights that should never be restricted. In many of its articles, the enjoyment of rights is made subject to national laws, instead of requiring that the laws be consistent with the rights. The Declaration fails to include several key basic rights and fundamental freedoms, including the right to freedom of association and the right to be free from enforced disappearance. The last-minute addition made to the leaders’ statement upon adopting the declaration, reaffirming ASEAN member governments’ commitment to the Universal Declaration of Human Rights and other human rights instruments in the implementation of the ASEAN Human Rights Declaration, does little to address the fundamental problem. As long as the Declaration’s General Principles and the loopholes they provide remain, the wrong signal will be sent to governments that international human rights obligations may be circumvented. It is highly regrettable that governments in the ASEAN who are more democratic and open to human rights succumbed to the pressure of human rights-hostile governments to adopt a deeply flawed instrument.

CSOs have also raised their objections to the ASEAN’s “consultation and consensus” decision-making system, which has failed its people again. This reveals that the ASEAN human rights agenda is dictated by its Member States with little meaningful consultation with the vast array of civil society and grassroots organisations that are working each day for the human rights of the people of the ASEAN region. This Declaration is not worthy of its name. Therefore, CSOs reject it. They will not use it in their work as groups engaged in the protection of human rights in the region, and will not invoke it in addressing ASEAN or ASEAN member states, except to condemn it as an anti-human rights instrument. Instead, CSOs will continue to rely on international human rights law and standards, which, unlike the ASEAN Human Rights Declaration, provide all individuals, groups and peoples in ASEAN with the freedoms and protections to which they are entitled. We remind ASEAN member states that their obligations under international law supersede any conflicting provisions in this Declaration. This Declaration should never be the basis to excuse the failure of a state to meet its international human rights obligations.⁴⁶

The ASEAN Human Rights Declaration has been widely criticised for not meeting the standards of international best practice – and not just with respect to Sexual Orientation and Gender Identity (SOGI) rights.⁴⁷ As well as being part of the AICHR, many individual states within ASEAN have National Human Rights Institutions for example, Komnas HAM in Indonesia, SUHAKAM in Malaysia, the National Human Rights Commission in Thailand, among others⁴⁸ and when these institutions or the states they serve do not align with international best practices, they fail against an established standard- one that includes the protection of LGBTQ populations.

The AHRD also did not accommodate self-determination and the rights of indigenous peoples. The right to self-determination is found in Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural

46 Human Rights Watch, “Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration,” 2012, <https://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration>

47 Catherine Shanahan Renshaw, “The ASEAN Human Rights Declaration 2012,” *Human Rights Law Review* 13, no. 3 (2013): 557–79, <https://doi.org/10.1093/hrlr/ngt016>.

48 Asian Pasific Forum, <http://www.asiapacificforum.net/establishment-of-nrh/is/what-is-an-nhri>.

Rights (ICESCR), and the principle of self-determination is found in Articles 1(2) and 55 of the UN Charter. All ASEAN States voted in favour of the adoption by the UN General Assembly of the Declaration on the Rights of Indigenous Peoples, which includes self-determination as a right by virtue of which 'a peoples' may 'freely determine their political status and freely pursue their economic, social and cultural development'. The explanation for the exclusion of these rights is probably that several ASEAN governments face the problem of how to achieve national unity among diverse ethnic and religious groups, and no Southeast Asian government wished to inflame secessionist causes with a reference to 'self-determination' in the AHRD. Article 46(1) of the Declaration on the Rights of Indigenous Peoples, which makes clear that the principle of self-determination does not include the right to act in a way that undermines sovereignty, in likelihood offered insufficient comfort to these governments.

Indonesia, for instance, since gaining independence from the Dutch after the Second World War, has engaged in several armed conflicts with ethnic groups, who have all claimed a right to independence from the Republic of Indonesia. These include the Aceh/Sumatra National Liberation Front; the movement of the Republic of South Moluccas; the Independence movement of West Papua; and the Fretilin of East Timor. East Timor gained independence from Indonesia in 1999, following a United Nations-sponsored referendum. The Free Aceh Movement signed a peace accord with Indonesia in 2005, in the wake of the Asian Tsunami. The largely Christian inhabitants of the Moluccas, which were part of the Netherlands East Indies, but only formed part of Indonesia after decolonisation, continue to call for independence from Indonesia. West Papua also continues to call for independence, and for the reversal of the 1969 United Nations Resolution concerning the handover of then-West New Guinea and West Papua from the Netherlands to Indonesia.⁴⁹

Myanmar has endured decades of ethnic conflict. The 1948 Constitution of Burma provided for a right of secession for the Shan and Kayah peoples. The 2008 Constitution, however, specifically provides: 'No part of the territory constituted in the Union such as Regions, States, Union Territories and Self-Administered Areas shall ever secede from the Union.'⁵⁰ 2 Under the 2008 Constitution, ethnic groups are arranged into States, which possess some powers of self-government. But it is, at the time of writing, unclear precisely how self-government will work; how autonomous the States and self-administered zones will be; and whether the different ethnic groups will be satisfied with the degree of independence which they have been given.

In the Philippines, the Muslim Moro peoples of Mindanao, in the country's south, have been engaged in a violent struggle for autonomy since the United States granted the Philippines independence after the Second World War. In October 2012, the Philippines finally announced a peace agreement with the Moro peoples, paving the way for the establishment of a new autonomous region, the 'Bangsamoro new autonomous political entity', by 2016. , as in the case of Myanmar, it is unclear whether or not the 'Bangsamoro new autonomous political entity' will answer the people's demands for self-determination and, if it does not, whether peace will last. In the Cordillera region of the Philippines, the Igorot peoples have also called for the right to maintain control over their land and resources, practice and develop their own cultures, and determine their own path of development. But there has been deep disagreement among the Igorot people themselves about precisely what political form self-determination

49 UN General Assembly, "Agreement between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian), A/RES/2504," 1969.

50 Myanmar Legislative, "Constitution of the Union of the Republic of Myanmar 2008" (2008).

should take. The Cordillera People's Liberation Army has called for the establishment of an independent 'Cordillera Nation'. The Cordillera Peoples Alliance has called for the establishment of a 'Cordillera Autonomous Region' within the Republic of the Philippines. The Congress of the Philippines is currently deliberating on House Bill No 5595 and Senate Bill No 3115, which would create a Cordillera 'autonomous region'. If passed, the measures will allow the regional government to control its resources and oblige the national government to increase its annual revenues. Whether the people of the Cordilleras will be satisfied with these most recent measures is unclear.⁵¹

Given that self-determination was not included in the AHRD, it is perhaps unsurprising that a reference to the rights of indigenous peoples was also not included in the Declaration. The AICHR representative from Laos stated that the right was 'not appropriate for countries that have no indigenous populations, such as Laos'. The AHRD is not a reflection of reality. Laos, together with Vietnam, Indonesia and most other countries in Southeast Asia, still possess indigenous populations. These populations exist in relative poverty and are politically under-represented at local, regional and national levels. Because they are often geographically located in remote areas, they are vulnerable to the effects of development projects and natural resource exploitation (logging, damming and mining).⁵²

51 Catherine Shanahan Renshaw, "The ASEAN Human Rights Declaration 2012," *Human Rights Law Review* 13, no. 3 (2013): 557–79, <https://doi.org/10.1093/hrlr/ngt016>.

52 *Ibid.*

MODULE 3.7.

In-Country Role and Function of AICHR National Reps



Objectives:

- » To understand the in-country functions and the roles of AICHR's national Representatives.
- » To locate areas of possible coordination for CSOs, peoples' participation and engagement with the AICHR's national Representatives.



Knowledge Acquired:

- » Knowledge on various procedural matters defining the conduct of AICHR.



Time: 1.5 hour

Material: AICHR Terms of Reference, report card templates



Procedures:

1. Ask participants to look at the qualities of their AICHR Representative in line with, for example, "integrity and competence in the field of human rights". Make an evaluation of the Representatives to identify their strengths and weaknesses in terms of human rights competencies.
2. Split participants into five groups and request each group to focus on one section in the report card. Use score cards to make a report card of the Representative's functions and roles since his/her appointment.
3. Ask each group to report to plenary after the group activity has been completed. Have a plenary discussion on how to demand for better performance by the representative.

4. Have an open discussion in the plenary and list the main points on a flip chart. Key questions/points to stimulate open discussion could be:

List what you think should be the role and function of an AICHR representative in your country.

5. Send a letter of the evaluation to the National Representative to encourage her/his work.



Debriefing:

- Need to work in a systematic fashion with AICHR representatives to make them realise that CSOs are keeping a close watch on them.
- Need to familiarise ourselves with the functions of the AICHR representatives.
- To be creative in finding means to engage with AICHR representatives.

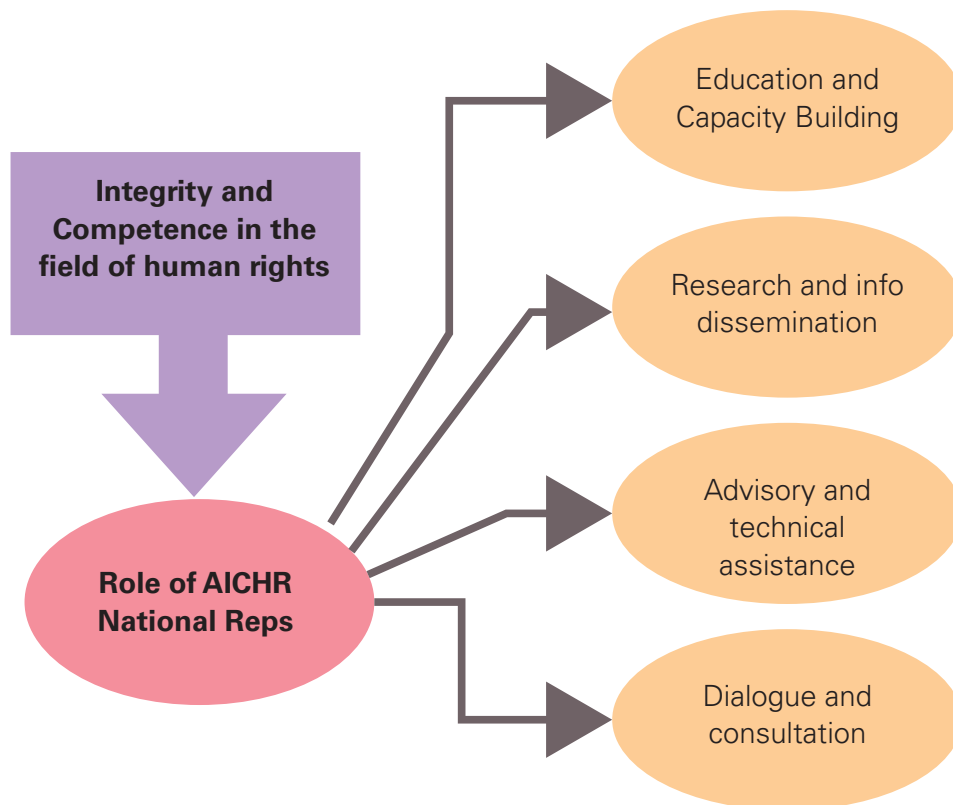


Conclusion:

- AICHR representatives are important links for CSOs in the country.
- Need to work closely with AICHR representative in a consistent manner so that he/she is able to carry the CSO's input into AICHR.

Handout Material 3.7.1

ROLE OF AICHR NATIONAL REPRESENTATIVES



Role and Function of AICHR National Representatives

A. Promotion Mandate

Enhance public awareness of human rights among the ASEAN peoples through education, research, and dissemination of information; encourage AMS to accede and ratify international human rights instruments; develop common approaches and positions on human rights matters of interest of ASEAN; submit annual reports to the AMM, and release public information; and perform any task as assigned by the AMM.⁵³

B. Protection Mandate

Prepare thematic studies on human rights in ASEAN; engage in dialogue and consultation with other ASEAN bodies, including CSOs, also with other regional/international institutions;

C. Suggestions on strengthening AICHR's power by strengthening the Representatives

Forum Asia mentioned that the AICHR selection process is opaque and undemocratic.

The suggestions: establish a comprehensive independent, transparent, and fair selection process of the AICHR representatives, with the active engagement of CSOs.⁵⁴

It is suggested that the TOR should be revised to ensure a more elaborate and detailed protection mandate, including explicit provisions for establishing a robust complaints mechanism and AICHR expert working group; raising the Professionalism and independence of Representatives, including through elaborate, democratic, inclusive, and transparent procedures for selecting AICHR Representatives; and establish decision-making procedure that would rely on a majority where consensus cannot be reached.⁵⁵

⁵³ ASEAN, "What You Need to Know," 2012, https://aichr.org/wp-content/uploads/2019/02/web_FA_AICHR_19102012_FINAL.pdf.

⁵⁴ *Ibid.*

⁵⁵ Hanara, "A DECADE IN REVIEW: Assessing the Performance of the AICHR to Uphold the Protection Mandates."