A DECADE IN REVIEW:
Assessing the Performance of the AICHR to Uphold the Protection Mandates
ACRONYMS AND ABBREVIATIONS

ACHPR  African Charter on Human and People’s Rights
ACHR  American Convention on Human Rights
ACMW  ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
ACSC/APF  ASEAN Civil Society Conference/ASEAN People’s Forum
ACTIP  ASEAN Convention against Trafficking in Persons, Especially Women and Children
ACW  ASEAN Committee on Women
ACWC  ASEAN Commission on the Protection of the Rights of Women and Children
AHA Centre  ASEAN Coordinating Centre for Humanitarian Assistance
AHRD  ASEAN Human Rights Declaration
AI  Amnesty International
AILJ  Australian International Law Journal
AICHR  ASEAN Intergovernmental Commission on Human Rights
AJIL  American Journal of International Law
ALA GA  ASEAN Law Association General Assembly
ALTSEAN-Burma  Alternative ASEAN Network on Burma
AIM  Asian Institute of Management
AMM  ASEAN Ministerial Meeting/ASEAN Foreign Ministers’ Meeting
AMS  ASEAN Member States
AMMSWD  ASEAN Ministerial Meeting on Social Welfare and Development
APA  ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children
APLPJ  Asia-Pacific Law and Policy Journal
APSC  ASEAN Political Security Community
APWLD  Asia Pacific Forum on Women, Law and Development
ASBs  ASEAN Sectoral Bodies
ASEAN  Association of Southeast Asian Nations
ASICL  Annual Survey of International and Comparative Law
AU  African Union
BHR  Business and Human Rights
CAT  Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment
CEDAW  UN Convention on the Elimination of All Forms of Discrimination Against Women
CCJ  Community Court Justice
CCAD  ASEAN Community and Corporate Affairs Department
CPR  Committee of Permanent Representatives
CNRP  Cambodia National Rescue Party
CRC  UN Convention on the Rights of the Child
CRC Asia  Child Rights Coalition Asia
CRPD  UN Convention on the Rights of Person with Disabilities
CSA  Contemporary Southeast Asia
CSO  Civil Society Organisation
CSR  Corporate Social Responsibility
CUP  Cambridge University Press
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<tr>
<th>Acronym</th>
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<tr>
<td>OUP</td>
<td>Oxford University Press</td>
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<td>RPA on EVAC</td>
<td>ASEAN Regional Plan of Action on the Elimination of Violence Against Children</td>
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<td>RPA on EVAW</td>
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<td>SAPA</td>
<td>Solidarity for ASEAN Peoples’ Advocacies</td>
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<td>SDGs</td>
<td>Sustainable Development Goals</td>
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<td>SOMSWD</td>
<td>Senior Officials Meeting on Social Welfare and Development</td>
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<td>SOMTC</td>
<td>ASEAN Senior Officials Meeting in Transnational Crime</td>
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<td>TIPs</td>
<td>Trafficking in Persons</td>
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<td>ToR</td>
<td>Terms of Reference</td>
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<tr>
<td>TWQ</td>
<td>Third World Quarterly</td>
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<td>UCP</td>
<td>University of California Press</td>
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<td>UN</td>
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<td>UN Doc</td>
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<td>UNHCR</td>
<td>UN Refugee Agency</td>
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<td>UNHRC</td>
<td>United Nations Human Rights Council</td>
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<td>UNOCHA</td>
<td>United Nations Office for the Coordination of Humanitarians Affairs</td>
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<td>UNTS</td>
<td>United Nations Treaty Series</td>
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<td>USCIRF</td>
<td>United States Commission on International Religious Freedom</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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<td>VCLT</td>
<td>Vienna Convention on the Law of Treaties</td>
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<td>VPDA</td>
<td>Vienna Declaration and Programme of Actions</td>
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<td>Working Group</td>
<td>Working Group for an ASEAN Human Rights Mechanism</td>
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Foreword

As part of its advocacy on the ASEAN human rights mechanisms, FORUM-ASIA and the Solidarity for ASEAN People’s Advocacy (SAPA) produce an annual assessment of the performance of the ASEAN human rights mechanisms: the ASEAN Intergovernmental Commission on Human Rights (AICHR), and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). To date, FORUM-ASIA and SAPA have produced eight annual assessments of the performance of the ASEAN human rights mechanisms with a summary of their performance and recommendations to strengthen the institutions. This year, 2019, marks the 10-year anniversary of the AICHR’s creation, and provides a timely opportunity to assess and review its promotion and protection function. As part of the 10 years anniversary of the AICHR’s creation, FORUM-ASIA and SAPA will publish two report, the first volume (this report) will be focus on the result of interviews and content analysis of the impact of AICHR. The second volume will consist of articles and essays by CSOs, academician and AICHR’s representatives on the performance of AICHR.

As such, this report presents a review of the performance of the AICHR from 2009-2019. It assesses the AICHR’s evolution, milestones, key activities and challenges; how the AICHR has implemented its protection mandates; and its engagement with CSOs and other stakeholders in compliance with the highest attainable human rights standards and norms. The report further offers a set of recommendations for ASEAN Member States, Foreign Ministers, and relevant stakeholders to strengthen the AICHR’s protection mandates, as well as providing practical recommendations for the AICHR to advance its political ownership and independence in creatively utilizing their current protection mandate to address the grave human rights situation in ASEAN region.

This review is based on primary and secondary sources, including official information from the AICHR, the ASEAN Secretariat, and ASEAN Member States; publicly accessible reports; and interviews with key individuals and organisations including CSOs, activists, former and current AICHR representatives, former Ministers of Foreign Affairs, NHRIs, and academics. The first draft of this report was shared with key respondents for further input. At the same time, this performance review was designed not as an exhaustive audit of the ASEAN human rights mechanisms, but rather as a qualitative assessment from the viewpoint of civil society with the aim of contributing to the accountability and effectiveness of the AICHR in its service of human rights.
Executive Summary

During the first decade of the existence of the ASEAN Intergovernmental Commission of Human Rights (AICHR), the ASEAN region has witnessed widespread and systemic human rights violations perpetrated by state authorities through the region, as well as abuses by non-state actors. In Myanmar, the ethnic minority Rohingya have faced systematic violence, discrimination and segregation, which the Human Rights Council-mandated Fact-Finding Mission on Myanmar reported could amount to genocide. Crimes against humanity and war crimes are being perpetrated in Kachin and Shan States, as well as against the Rohingya in Rakhine State. In the Philippines, aside from increasing restrictions on freedom of expression, largely through the curtailment of online and offline press, and moves toward populist authoritarian policies, large-scale extrajudicial killings in the name of ‘war on drugs’ have reportedly resulted in the death of over 27,000 people, most of them from poor and marginalised communities.

A majority of ASEAN Member States (AMS) governments have suppressed a vast array of human rights, including the rights to life and to political participation; freedom of expression; peaceful assembly and association; freedom from torture, arbitrary arrest, prosecution, and punishment; as well as the rights to adequate standard of living and highest attainable standard of health. In many AMS, discrimination in various forms persists, often manifested in violence, intimidation and persecution of minorities and other vulnerable groups. From 2010-2018, AICHR have conducted 121 activities (not inclusive of AICHR’s meeting or ad-hoc programmes, but includes the task force/working group meeting) and have spent 6 million USD for the implementation of the activities. Unfortunately, the activities have not yet answered to the human rights situation on the ground and failed to provide human rights protection for ASEAN people. After a decade of its existence, the AICHR has yet to a mature into an effective regional human rights mechanism.

4 ibid.
6 ibid.
7 See e.g. HRW, World Report from 2009 to 2019; APHR, Related statements and Press Release; AI, Relevant Reports.
8 ibid.
Unfortunately, to date, it has failed to provide protection and serve as a regional recourse for victims of human rights violations for people whose own states have failed to protect them.\textsuperscript{10}

On 23 October 2009, the AICHR was established as an overarching institution mandated to promote and protect human rights in ASEAN. Article 14 of the ASEAN Charter, which provides for the establishment of “an ASEAN human rights body,” does not specify the type or nature of this body, only that it would operate under Terms of Reference (ToR) “to be determined by the ASEAN Foreign Ministers Meeting (AMM)”.\textsuperscript{11} The AMM created and tasked the High-Level Panel to draft the ToR, and they concluded its task with a consensus of establishing the AICHR with intergovernmental and consultative characteristics.\textsuperscript{12}

This report has been prepared by FORUM-ASIA and SAPA to review the performance of the AICHR from 2009 to 2019. It seeks to examine AICHR’s evolution, milestones, key activities, and challenges during the past decade, and proposes strategies and recommendations for stronger human rights protections in the region. Some interviewees whose views contributed to this report, including Ms. Debbie Stothard, Coordinator of ALTSEAN-Burma, recalled differing views among AMS during the drafting of the Terms of Reference (ToR) of the AICHR. Some AMS actively sought for the establishment of an independent, professional and empowered human rights body, while others wanted the AICHR to be established as an exclusive intergovernmental body whose members follow instructions from the capitals, and with one of its main roles being “a defender against criticism of human rights situations in ASEAN at international human rights forums”.\textsuperscript{13} H.E. Hassan Wirajuda, who was Indonesia’s Foreign Minister during the drafting of the AICHR’s ToR, described Indonesia’s disappointment at the way the negotiations concluded, highlighting the imbalance between the Commission’s promotion and protection mandates in the document. He argued that the AICHR’s main flaws lie within the ‘intergovernmental’ nature of the body. The AICHR needed to be independent and impartial if it was to successfully fulfill its protection mandate, and so this model was always going to be detrimental to such fulfillment. He stated that the protection capacity under the AICHR’s ToR is inferior even to the protection capacity of the Indonesian National Human Rights Commission, which enables investigations and has the right to call witness, let alone compared with the other regional human rights mechanisms which are equipped by enforcement mechanisms to ensure justice and remedy for victims. He highlighted that Indonesia sought to address the gaps in the ToR by drafting a political


\textsuperscript{13} Interview with H.E. Yuyun Wahyuningrum, the Representative of Indonesia to the AICHR 2019 – 2020 (Jakarta, 8 April 2019); Phone interview with Debbie Stothard (Jakarta, 8 April 2019).
A Decade in Review: Assessing the Performance of the AICHR to Uphold the Protection Mandates

declaration, the known as the Cha Am Hua Hin Declaration on the AICHR, as a condition to accepting the ToR. The Declaration was subsequently adopted by the ASEAN leaders the same year and emphasized, among other clauses, the need to review the ToR “every five year after its entry into force to strengthen the mandate and functions of the AICHR in order to further develop mechanisms on both the protection and promotion of human rights”.

To this day, however, there has never been such a review despite calls from both CSOs and AICHR itself to strengthen AICHR’s protection mandate. H.E. Hassan Wirajuda underlined that now would be a critical time for the AICHR ToR to be implemented in line with the Cha Am Hua Hin Declaration, in order to strengthen its protection mandate. FORUM-ASIA and SAPA however, have not seen any indications of this happening. Instead, despite the considerable political clout of Indonesia in the region, those Member States who hold more restrictive views of AICHR’s mandates appear to have had the upper hand, despite their relative political weakness.

H.E. Dr. Seree Nonthasoot, the Representative of Thailand to the AICHR between 2013-2018, mentioned that during the AICHR’s first ten years of operation, the intergovernmental and consultative characteristics of the AICHR posed a number of structural and operational challenges. There was no common understanding among Representatives on the AICHR’s functions within the parameters of its ToR, and very little synchronization with relevant ASEAN Sectoral Bodies. The AICHR is composed of states’ representatives, often long-serving government officials with differing levels of expertise and understanding of human rights, not to mention disparity in their political will, commitment, and impartiality in fulfilling their role in promoting, and in particular protecting, human rights in the region.

As captured by the annual performance reports by FORUM-ASIA and SAPA, and collectively expressed by a number of experts and interviewees, another reason for AICHR’s continued passivity and inaction in the face of egregious human rights violations in the region has been the lack of political will of AMS. This has manifested in a selected and inflated invocation of ASEAN’s non-interference principle, strict adherence to the consensus decision-making principle, and, also, the aforementioned opaque and undemocratic selection process of its Representatives in the majority of member states.

To address this aspect, it is important to establish a comprehensive independent and transparent selection process of the AICHR representatives, with the active engagement of CSOs. FORUM-ASIA and SAPA, together with other organizations including the Indonesia Coalition for the

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16 Online Consultations of Forum Asia and members of SAPA TFHAR (15 April 2019).
17 Phone Interview with H.E. Dr. Seree Nonthasoot, (Jakarta, 30 March 2019).
18 ibid; See e.g. Tan, The AICHR; Doyle, 'The AHRD and the Implication'; SAPA Forum Asia and TFHAR, Annual Report from 2010 to 2017.
AICHR Selection Process, have developed a suggested selection process and criteria which was adopted by the Malaysian government in 2018 as the foundation of their first open selection process.

As expressed by Dr. Yuval Ginbar, Legal Adviser of Amnesty International (AI), ASEAN’s principles of non-interference and consensus-based decision-making are not superior to other principles upheld under article 2 of the ASEAN Charter and the AICHR ToR; rather, they are equally provided for along with other principles, including human rights, fundamental freedoms, social justice, and democracy as well as regional peace, security and prosperity. However, in practice, the non-interference principle has often been invoked by some AMSs in order to preserve their perceived national interests, using “consensus” as a way of imposing a veto on any AICHR protection activities, even when grave violations of human rights have occurred. AICHR’s failure to even look for, let alone find, a way out of the debilitating consensus has been widely deemed to have diminished AICHR’s ability to encourage AMSs to abide by their obligation to implement international human rights law in the region or to tackle disagreements among its member states. Interestingly, H.E. Hassan Wirajuda emphasized the opportunity of the consensus-based decision-making for progressive governments to ensure AICHR’s alignment with the highest attainable international norms. He argued that the alternative decision-making process, such as voting, would be more detrimental for AICHR, especially with the aim of strengthening their protection mandates. In order for this to be effective, however, the Indonesian Ministry of Foreign Affairs and AICHR Representative need to lead on negotiations to use the ‘reasoning process’ and consensus-making to galvanize such strengthening of AICHR’s protection mandate.

The impartiality of AICHR Representatives, non-interference principle, and lack of political ownership have collectively allowed AMS to hold tight control over the AICHR, hindering its responsiveness, works efficiency, institution-building ability and protection capacity. Compared to other regional and international human rights mechanisms, the AICHR has the weakest protection record – in fact it has no protection record to speak of. This is not least because the majority of the Representatives have consistently refused to implement even the limited protection mandate provided by its ToR, let alone interpret them creatively and progressively, for instance by developing strategies for the protection of human rights, or obtaining information from member states regarding gross violations of human rights under their jurisdiction, or creating a complaint and communications mechanism.

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19 Phone interview with Dr. Yuval Ginbar (Jakarta, 16 March 2019)
20 SAPA Forum Asia and TFHAR, Annual Report from 2010 to 2017; Statements from a number of interviewees and concurrences from a number of respondents to Forum Asia’s questionnaire.
21 ibid.
The result of the above has been a resounding silence of the AICHR on any human rights violations, in the years that saw the deterioration of human rights in the region, some of which amount to the worst crimes under international law. Another result is the widely criticized ASEAN Human Rights Declaration (AHRD), with a large number of stakeholders criticizing the fact that it has attempted to water down international human rights standards, not least by imposing wide-ranging restrictions. Under the AHRD’s General Principles (GPs), the enjoyment of the rights provided in the Declaration is to be “balanced with the performance of duties” (GP 6), subjected to “national and regional contexts” and to considerations of “different cultural, religious and historical backgrounds” (GP 7). Moreover, all of the rights provided in the Declaration would be subject to restriction on a wide array of grounds including “national security” and “public morality” (GP 8). It has been suggested that these terms provide Governments with wide discretionary powers to violate even non-derogable human rights.

There were varied opinions from the interviewees and respondents on the state of the AHRD and the ways forward for post-AHRD standard setting priorities in light of those criticism. The International Commission of Jurists (ICJ), Amnesty International, FORUM-ASIA, SAPA and other CSOs actors expressed the view that the AHRD, being the departure point of ASEAN standards on human rights, needs to be amended to ensure that it accords with international human rights treaties and other universally accepted standards. H.E. Edmund Bon Tai Soon, the Representative of Malaysia to AICHR between 2016-2018 and H.E. Yuyun Wahyuningrum preferred to elevate the existing agreements in the AHRD by translating them into general comments, position papers, advisory notes, human rights guidelines and principles. H.E. Rafendi Djamin, the Representative of Indonesia to the AICHR between 2009-2015 and others stated that future standard setting under article 4(2) of the ToR should rather be focused on the development of a general legally-binding human rights instrument which duly upholds universal standards. Prof. Vitit Muntarbhorn emphasized that the AHRD can never be read without its overriding statement, namely the Phnom Penh Statement on the Adoption of the AHRD.

23 ibid.
26 Phone interview, Dr. Yuval; Consultations of Forum Asia and SAPA TFHAR; See also ICJ, ‘Memorandum on the ToR of the AICHR’ <https://www.icj.org/wp-content/uploads/2014/06/Memorandum-on-TOR-of-AICHR.pdf> accessed 6 April 2019. ‘The Memorandum on the ToR of the AICHR’ appears as ANNEX 3.
27 Interview with H.E. Edmund Bon Tai Soon (Jakarta 13 March 2019); Interview, H.E. Yuyun.
28 Interview with H.E. Rafendi Djamin (Jakarta, 26 March 2010); Statements from a number of interviewees and concurrences from a number of respondents to Forum Asia’s questionnaire.
29 AHRD and PP Statement.
reminded that the overriding Statement formed a compromised consensus that was reached in light of the heavy criticism towards the AHRD, and that it has nevertheless grounded the AHRD in the international standards. It should be noted that CSO legal experts disagree with the latest view, arguing that the Phnom Penh Declaration refers, in its Article 3, not only to universal standards but also to “relevant ASEAN declarations and instruments pertaining to human rights” thus creating a legal loop where the AHRD is also a basis for its own implementation.

AICHR activities during the past decade included standard setting and institution building, capacity building, public awareness, engagements with various actors, human rights mainstreaming as well as alignment with relevant ASEAN Sectoral Bodies. Along with the challenges presented above, some achievements are noteworthy, including the adoption of ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities which has manifested an example, on how an overarching institution should lead the development of key policy actions for the three ASEAN community pillars with close consultations with relevant sectoral bodies and stakeholders, and due regard to universally accepted standards. FORUM-ASIA and SAPA expressed their expectation that the key policy actions under the Masterplan will be implemented nationally and that Monitoring and Evaluation (M & E) system will be put in place to measure their implementation. On human rights mainstreaming, it is notable that the AICHR has undertaken a number of activities with a view to mainstreaming human rights across the three community pillars of ASEAN, as well as into the works of other stakeholders including ASEAN Sectoral Bodies, Judiciary and Law Enforcement Officials. To effectively leverage the momentum of AICHR’s 10 years anniversary, AICHR should go beyond implementing activities and conduct an impact assessment to assess the extent to which its activities have improved human rights mainstreaming in the ASEAN countries, and how its activities have impacted those who participate in them.

According to the Annual Report of AICHR activities in 2017, the increasing number of applications from CSOs for Consultative Relationships with the AICHR was a testament to the increasing visibility of the AICHR’s work and the interest of civil society to engage with it. Currently, there are at least 30 CSOs with Consultative Relationships to the AICHR, working on areas of civil and political rights, rights of women, the rights of persons with disabilities, the rights of children, indigenous peoples, migrant workers, labour rights, the right to development, and the right to peace – among others.

31 ICJ, ‘The AHRD’; Phone Interview, Dr. Yuval.
35 Consultations of Forum Asia and SAPA TFHAR
36 See e.g: AICHR, Annual Report 2016-2018; AICHR, Five-Year Work Plans.
The AICHR has ostensibly strengthened its relations with accredited CSOs over the past few years. It organised an interface meeting with CSOs in November 2017 as part of a Roundtable Discussion on the AHRD and the AICHR-CSO Symposium in 2018. These meetings, with financial support allocated for the travel expenses of the CSOs, was not initially in the 2017 and 2018 work plan but was added later in the spirit of collaboration between the AICHR and CSOs. Participants from both the AICHR and CSOs agreed that such meetings could be improved in the future by providing additional time for discussions and interactions, and that future meetings should be based on the principles of mutual respect and open collaboration.

Under the Guidelines on the AICHR’s Relations with CSOs, the AICHR can leverage its relations with accredited CSOs by regularising the communications between CSOs and the AICHR through conducting an annual meeting with CSOs. According to the AICHR, this will enhance the value of the consultative relationship for both the AICHR and the accredited CSOs and contribute to the ASEAN community-building process.

Nonetheless, there remain significant concerns among members of civil society regarding their relationship with the AICHR. Perhaps most seriously, interviews with CSOs showed that there is a feeling of apprehension by CSOs over their interactions with the AICHR, particularly on sensitive human rights issues. On a more structural level, the consultative relationship mechanism, which sets the parameters within which the AICHR representatives determine whether to grant civil society organisations a consultative relationship, is very vague. This implies that CSOs are not seen as meaningful partners within the regional mechanism – in contrast with their counterparts within international mechanisms such as the Universal Periodic Review (UPR) process, in which CSOs have a defined role and opportunity to raise even the most sensitive human rights issues.

According to one CSO interviewee, the AICHR fails institutionally to recognise the engagement of the national and regional CSOs as an added value which can ensure the sustainability and institutional strengthening of the body. Some AICHR representatives initiate and organise national meetings with CSOs but as invitees to such meetings are limited, as are systematic and clear follow-up plans, there is much room for improvement. One interviewee reported that even when CSOs are invited to various meetings by the AICHR Representatives, severe limitations are imposed on their participatory role. The national and regional CSOs demanded more active participation, not least by being granted the possibility to speak and comment on the human rights situation on the ground. CSOs have also faced financial constraints which prevented them from attending the AICHR’s activities.

Engagement of CSOs with the AICHR is, in theory, set out through the AICHR’s CSO Participation Guidelines and its ToR, but in practice it relies on the assessment and proactivity of individual representatives. Instead, the AICHR can, and should, model its involvement with CSOs on the

norms, attitude, and access granted by the UN Human Rights Council, which allow CSOs to actively engage with, and thus strengthen, sessions as key stakeholders.

According to interviews, another key challenge was the absence of or limitations in CSOs participation in, or at least input into, the development of the AICHR’s work plan. Although the work plan was circulated in regional and/or national workshops, CSOs did not have any opportunity to provide input, analyse, or strengthen it in view of their familiarity with the human rights situation on the ground. In the instance that CSOs were invited to propose projects and activities to the AICHR work plan at the national level, the timeframe between the announcement of calls for proposal and the deadline of submission was quite limited (e.g., around five working days).

CSOs in the region also believed that AICHR Representatives could better act for the protection of human rights nationally and regionally if took the opportunity to hear the perspectives on the actual situation of human rights on the ground in their respective countries, through taking part in fact-finding missions and/or field visits to areas that tend towards human rights violations – such as grassroots community areas or conflict areas.

As for the usefulness of the consultative relationship given by the AICHR to CSOs, the interviewees’ responses significantly varied. While some interviewees applauded the AICHR’s effort to provide a formal mechanism for CSOs engagement, others expressed concerns about the mechanism’s lack of transparency in providing consultative relationships, and pointed to a significant risk of excluding groups who hold dissenting positions and question national governments.

The Guidelines on the AICHR’s Relations with CSOs are a significant milestone in further advancing the AICHR’s mandate on engagement with CSOs, as provided in Article 4.8 of its ToR. Through the Guidelines, CSOs can formally request information from the AICHR (and vice versa), which is a valuable mechanism. However, the level of engagement between CSOs and the AICHR representatives was mixed and remained dependant on the willingness of the AICHR representatives.

The AICHR should be commended for its initiative, in 2014, to undertake its own assessment of its own record, through stock-taking and analyzing its programs and activities during the first five years of its establishment. Although there is some criticism of the process of the review, it is somewhat encouraging that the AICHR undertook two consultation meetings with a range of stakeholders on the review of its ToR at all. This is undermined, however, by the fact that the review has not been published to this day.

With a decade having passed since its establishment, a number of stakeholders highlighted the need for the AICHR to submit another review to the AMM, including recommendations for changes in the TOR based on AICHR’s own assessment on the extent to which its mandate have helped or hindered the Commission in promoting and particularly protecting human rights in the region.40 H.E. Yuyun Wahyuningrum emphasized that the AICHR needs to submit specific recommendations to the ASEAN Foreign Ministers, as opposed to a general assessment, by directly identifying the provisions that need to be amended for the consideration of the AMM.41

It is to be acknowledged that the creation of the AICHR and the implementation of its activities have generated discourse on human rights within the ASEAN system, its member states and the wider public. Further, they have also created spaces for human rights discussions within ASEAN, and to some extent and in certain situations may have positively changed AMS’ attitudes towards human rights.42 However, some CSOs are of the view that such changes in attitudes remain to be seen, given the consistent patterns of resistance employed by some AMSs towards any attempts to strengthen of the AICHR.43

Some progressive AICHR Representatives have made considerable efforts in creatively using their “regional hats”. The trust-building and collegial nature of some former and current Representatives has to some extent contributed towards the increase of some AMS’ acceptance of human rights. The diplomacy of some progressive former and current Representatives, notably from Indonesia, Malaysia, the Philippines and Thailand, has also gradually furthered cooperation on human rights among the 10 very different nations.44 These Representatives have sought to mainstream protection practices within the AICHR by conducting mini-UPRs to mirror the international mechanism, proposing various formula to possibly set up complaints and correspondence procedures for the AICHR, and enhancing AICHR’s standard setting functions in a number of human rights fields. They have built a consensus with AICHR to conduct activities on sensitive human rights issues such as torture, and enhanced AICHR’s relations with various actors.45 Finally, in 2018, two AICHR Representatives issued a joint statement after failing to reach consensus within the AICHR to respond to egregious human rights violations against the Rohingya in Myanmar,46 though their statement failed to mention either the Rohingya or human rights violations.47 It is to be hoped that the AICHR Representatives will continue their efforts

40 Phone Interview, Dr Yuval; ICJ, ‘Memorandum’; Consultations of Forum Asia and SAPA TFHAR.
41 Interview, H.E. Yuyun.
42 Interview, H.E. Rafendi; Interview, H.E. Yuyun.
43 Consultations of Forum Asia and SAPA TFHAR.
45 Interview, H.E. Yuyun; Phone Interview, H.E. Dr. Seree; Interview, H.E. Rafendi; AICHR, Annual Report 2016-2018; AICHR, Five-Year Work Plans.
47 Phone interview, Dr. Yuval.
to break the silence and in trying to unlock the barriers that keep the AICHR from engaging in human rights protection, given that these efforts have not yet succeeded in transforming the AICHR into a body that actually protects human rights.  

At the international level, AMSs tend to show limited adoption of international human rights laws and standards, particularly of those which provide for strong monitoring procedures or those which could be considered sensitive given AMS’ domestic politics.  

Although all AMS have ratified the treaties they consider to be less politically sensitive, namely the CRC, the CEDAW and the CRPD, the commitment to even these of several AMSs is still greatly limited by their reservations and declarations. In addition, a majority of AMSs have yet to ratify most of the Optional Protocols (OPs) to these three treaties, especially those that involve communication procedures. Furthermore, the status of AMS’ ratification of and reservations to other core human rights treaties, including their OPs, reflect an even a lower level of commitment by many AMSs. The human rights situation in the AMSs has revealed serious discrepancies between the ratification to international human rights treaties, notably the International Covenant on Civil and Political Rights (ICCPR), and the implementation of human rights protection guaranteed under those treaties.

Ideally, where gaps are identified in implementing human rights treaties or in respecting and protecting human rights more generally, every attempt should be made to address such gaps, including at the regional level. In ASEAN, AICHR is the regional body that should be taking up this task, while AMSs should ensure that it has the mandate, resources, expertise and independence needed to carry it out.

AICHR, AMSs and ASEAN as a whole have so far failed, individually and collectively, to create or develop a viable human rights mechanism. Regional human rights mechanisms elsewhere in the world are above all protection mechanisms, where those whose rights have been violated can lodge their complaint. These regional human rights body, be they in Africa, America or Europe, would have complaints investigated and considered; states submitting their positions in response; and a mechanism taking steps to prevent and stop violations, provide redress and accountability, and ensure that violations are not repeated.

48 Consultations of Forum Asia and SAPA TFHAR.
50 All AMS have ratified Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD).
51 See OCHHR, ‘Status of Ratification’; Davies, ‘States of Compliance?’
52 See e.g. HRW, World Report from 2009 to 2019; APHR, Related statements and Press Release; AI, Relevant Reports; See also Oona A. Hathaway, ‘Do Human Rights Treaties Make a Difference’ (2002) 111(8) YLJ 1935.
53 SAPA Forum Asia and TFHAR, Annual Report from 2010 to 2017: Statements from a number of interviewees and concurrences from a number of respondents to Forum Asia’s questionnaire; ICJ, ‘Memorandum’.
54 ibid.
AICHR, by contrast, has consistently refused to even listen to or discuss complaints, let alone try to protect complainants from human rights violations or seek justice for victims. Even in the face of some of the worst atrocities so far in this century, AICHR’s has remained passive, silent, indifferent. This has to change.\(^{56}\)

**Key recommendations**

Member states of other regional mechanisms have granted robust powers to their relevant institutions to ensure human rights respect, protection and fulfilment of their people. They have adopted binding human rights instruments, and established strong monitoring, communication and enforcement mechanisms. Likewise, AMSs should ensure that AICHR is capable of fulfilling its current protection mandate while working to expand it, and ensure a human rights system that provides protection at least on a par with international and other regional human rights systems. By doing so AMSs could meaningfully work towards making a people-centered and people-oriented ASEAN Community as it has proclaimed to be in various statements and documents.\(^{57}\)

Moving forwards, it is critical for both the AICHR and AMSs to step up to the task. AICHR’s current ToR includes an explicit protection mandate, and it is high time that the AICHR puts this into practice it, while seeking to strengthen the mandate and the Commission’s professionalism, independence and decision-making capacities.

Specifically, the AICHR should:

1. Respond to human rights crises by requesting information from relevant AMS, conducting investigations and studies, issuing statements and consulting with UN human rights bodies and National Human Rights Institutions;
2. Establish a robust complaints mechanism that would receive individual communications, look into them, request responses from the relevant AMS, seek solutions and follow up;
3. Enhance engagement with CSOs, including allowing attendance of CSOs in AICHR meetings, consulting CSOs in their activities and major decisions making, sharing the agenda in advance and providing a role for CSOs in communicating complaints of human rights violations; and

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\(^{56}\) SAPA Forum Asia and TFHAR, Annual Report from 2010 to 2017; Statements from a number of interviewees and concurrences from a number of respondents to Forum Asia’s questionnaire; ICJ, ‘Memorandum’.

4. Pressure the AMS to revise the ToR to ensure:
   a. A more elaborate and detailed protection mandate,
   b. Professionalism and independence of representatives, and
   c. A decision-making procedure that would rely on a majority where consensus cannot be reached.

The AMSs, and specifically the ASEAN Ministries of Foreign Affairs who are tasked with overseeing the AICHR, must abide by their obligations under Article 9(6) of the AICHR ToR and paragraph 7 of the Cha-Am Hua Hin Declaration on the AICHR and review the AICHR ToR with a view to strengthening and detailing AICHR’s protection mandate, as well as ensuring that AICHR is more independent, professional and capable of effective decision-making.

Specific measures taken by the AMS should include:

1. In consultation with AICHR, revise its ToR to ensure:
   a. A more elaborate and detailed protection mandate,
   b. Professionalism and independence of representatives,
   c. A decision-making procedure that would rely on a majority where consensus cannot be reached.

2. Provide the AICHR with both a clear mandate and the resources to establish expert working groups, to assist the AICHR in the maximum implementation its mandates related to (1) the development of strategies for the promotion and protection of human rights and fundamental freedoms; (2) the obtainment of information from member states pertaining to its promotional and protective mandates; and (3) the development of a common approach and position on human rights matters.

3. Task the AICHR with drafting an ASEAN convention on human rights, while providing explicitly that rights protections under this convention must not fall below international human rights law and standards;

4. Agree and clarify that the principle of non-interference does not extend to allowing AMS to violate the human rights of their people.
Objectives and Structure

On the 10th anniversary of the AICHR, this report has been prepared by FORUM-ASIA and SAPA to review the performance of the AICHR from 2009 to 2019. It seeks to examine AICHR’s evolution, milestones, key activities, and challenges during the past decade, and proposes strategies and recommendations for stronger human rights protections in the region.

Chapter I presents a brief overview of key human rights developments in the AMSs in 2009–2019 and examines the historical and political contexts of the AICHR. Chapter I also examines the status of AMS’ ratification of international human rights treaties, which can provide insight into each country’s interpretation and implementation of international human rights law: AMS’ commitments towards the international human rights legal framework may reflect their attitudes towards adopting stronger human rights instruments and mechanisms in the future.

Chapter II uses the Principles for Regional Human Rights Mechanisms published by OHCHR’s Southeast Asia Regional Office as yardsticks for analysing AICHR’s mandate, and particularly performance. The analysis will focus on the following parameters:

1. Human rights standard setting and institution building;
2. Responsiveness to key human rights developments in ASEAN;
3. Engagement with CSOs;
4. Alignment and collaboration among relevant ASEAN system and entities;
5. The Review of the AICHR ToR; and
6. The AICHR’s activities.

Chapter III examines various enabling factors that can potentially allow the AICHR to further operationalise its protection mandate. It also recommends strategies and to strengthen human rights protection in the region.

Finally, the report concludes with general findings on the points outlined above.
Methodology

This report relies on primary and secondary data, obtained through interviews with relevant stakeholders and desk research. The interview questions were formulated based on the report structure and tailored to the specific expertise and areas of works of the interviewees to obtain targeted information. The interview questions appear as ANNEX 6.

The desk research covered relevant documents and sources, including but not limited to previous annual performance reports by FORUM-ASIA and SAPA (2010-2017), international and regional instruments on human rights, relevant documents of ASEAN, the mandate and work plans of the AICHR, annual reports of the AICHR, press releases, academic literature, case laws, letters of complaints, submissions and reports from CSOs, speeches and statements by ASEAN officials and AICHR Representatives, news and media reports from various sources, as well as other online information from the websites of international and regional human rights mechanisms and CSOs.

Respondents

Interviews were conducted with relevant stakeholders, including the former Minister of Foreign Affairs of Indonesia, former and current AICHR Representatives, experts, academics and CSOs actors and activists. The list of interviewees is provided in Annex 7.
Chapter I:

Background and Context
This Chapter commences with a brief overview of human rights developments in the AMS between 2009 and 2019. It then examines the historical and political contexts of the AICHR, by (1) looking briefly at the advocacies and processes that led to the inclusion of human rights provisions in ASEAN instruments, in particular, the ASEAN Charter, and the creation of the AICHR; and (2) reviewing the political and structural constraints on AICHR and its inaction and silence in responding to human rights violations during the past decade. To provide an outlook of the positions of AMS vis-a-vis human rights issues, including towards a stronger human rights mechanism, this Chapter also presents a brief analytical study of legal commitment towards the international human rights framework by examining the status of AMSs’ ratification of and compliance with international human rights treaties.


Human rights issues are a major concern in the ASEAN region. While AMSs vary widely in their political, economic and social characteristics, and consequently in the nature, type and severity of human rights violations, below is a brief discussion focusing on five human rights issues that have been prevalent throughout the region during the past decade: the rights of refugees and asylum seekers, the rights of minorities, freedom of expression and peaceful assembly, human trafficking and the rights of migrant workers, as well as the rights to liberty and fair trial.\(^\text{58}\) This brief survey only provides examples and should by no means be understood as an exhaustive coverage of human rights violations in the region.

1.1.1. Rights of Refugees and Asylum Seekers

Only two AMS have ratified the 1951 Convention on Refugees and the 1967 Protocol Relating to the Status of Refugees,\(^\text{59}\) and generally protection for refugees in the region is weak.

Cambodia has repeatedly deported asylum seekers from the indigenous minority Montagnard people from the central Vietnamese highlands, who faced persecution on the ground of their belief in Anglicanism,\(^\text{60}\) back to Viet Nam, despite the risk of torture, persecution, unfair trials and imprisonment. This is in clear violation of Cambodia’s obligations under human right law and the 1951 Refugee Convention.\(^\text{61}\)

\(^{58}\) See e.g. HRW, World Report from 2009 to 2019; APHR, Related statements and Press Release; AI, Relevant Reports.

\(^{59}\) OHCHR, Status of Refugee


One recent example is the case of Sam Sokha, a labour activist, who was convicted in absentia of “incitement” for her peaceful political activism and sentenced to over two years imprisonment plus a fine. She had been granted recognition as a refugee in need of international protection by the UN Refugee Agency (UNHCR), but was forcibly returned to Cambodia on February 2018 and arrested and detained by Cambodian authorities.62

Thailand, while hosting thousands of asylum seekers and refugees, has arrested hundreds and separated more than 50 children from their parents in 2018 alone. Those arrested have been detained indefinitely. Over 60 ethnic minority Uighurs from China have been detained since March 2014.63 Despite Thailand’s contribution in accepting refugees, the state laws do not provide formal legal status to refugee and asylum-seekers. As such, refugees and asylum-seekers are vulnerable to arrest, detainment, and deportation. Those arrested are often detained for months. Many refugees struggle to find employment to sustain themselves given that they have no right to work, and also face challenges in accessing education, healthcare and legal protections. The Thai government has also refouled refugees and asylum-seekers to China, Cambodia, Viet Nam and Pakistan, where they are subject to torture, persecution, and other serious violations of human rights.64

1.1.2. Rights of minorities

Persecution against marginalized and vulnerable groups in ASEAN region is particularly prevalent within the context of freedom of expression, press freedom, freedom of association, and freedom of religion and belief.

In Brunei Darussalam, religion-based laws and policies have resulted in discrimination and other human rights violations. For instance, rewards are awarded to those that converts to Islam and sanctions imposed upon those who promote “deviated” beliefs and practices in public. Recently, the Syariah Penal Code came into force, which imposes punishments that under international law constitute torture. Rape, as well as “sodomy” and “adultery” – acts that should not be crimes in the first place – are punishable by death by stoning; theft is punishable by amputation of the right hand and the left foot; and other punitive measures such as whipping, imprisonment and fines are imposed for drinking alcohol or “sexual intimacy between two women,”65 which similarly should not be a crime.

In Cambodia, the country’s main political opposition, the CNRP, was dissolved by the Supreme Court of Cambodia in November 2017 ahead of national elections in 2018. The Supreme Court also banned 118 senior members of the party from politics for five years. Former opposition leader Sam Rainsy has been in exile after his conviction on a politically motivated charge, while the president of CNRP, Kem Sokha, is currently under house arrest after his release from jail, where he spent nearly a year on dubious charges. Cambodia’s onslaught on democratic space was compounded by banning civil society groups and independent media. Those who peacefully criticize the government are routinely targeted by the politicized and corrupt judiciary. To avoid arbitrary arrest, large numbers of oppositions and activists have fled the country. Human rights defenders and opposition activists continue to be harassed and arbitrarily arrested since elections. Recently the Phnom Penh Municipal Court issued arrest warrants against CNRP leaders who have been in exile. They have been charged with “plotting and incitement to commit felony” under articles 453, 494 and 495 of the Criminal Code.66

Religious intolerance and persecution of minorities have also been major issues in Malaysia. The politicization of Islam has been used by politicians in a perceived effort to “divide and rule” between communities. The Malaysian dual legal system where civil law works in parallel with Sharia Law, has created confusion and led to human rights violations,67 such as child marriage with girls as young as 15 years old.68 Furthermore, minority groups continue to face discrimination. Shi’a and Ahmadiyya communities have been publicly attacked by other Muslim groups for being “un-Islamic” and are seen as threat to national security. There have been attempts to convert communities and individuals within Sabah state to Islam. For example, government-aided Christian schools in the state are gradually changing their religious orientation following the appointment of ustaz as principle of mission schools, and there has been a rise in reports of conversions in rural schools.69 The Malaysian laws endorses conversion to Islam but prohibits conversion to other religions.70 Lastly, LGBT communities have been criminalized and lived under harassment and threats. The Pakatan Harapan government, which came to power in 2018, has pledged to continue efforts aimed at “helping LGBT Muslims “return to the right path” through conversion camps and seminars”.71

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71 APHR and IPPFoRB, Vitalizing FoRB Protection.
In Myanmar, Rohingya Muslims have faced systematic violence, discrimination and segregation which at times have amounted to genocide, crimes against humanity (including apartheid\textsuperscript{72}) and war crimes.\textsuperscript{73} Other minorities have also suffered serious human rights violations, especially in Chin State. On 25 August 2017, Myanmar military brutally responded to an attack on police outposts by Rohingya insurgents.\textsuperscript{74} Atrocities included massacres, rape, torture of detainees, burning down whole villages and more. The crisis forced hundreds of thousands of Rohingyas to flee into Bangladesh, as did thousands of non-Muslims. As of March 2019, over 900,000 stateless Rohingya refugees reside in poor conditions in refugee camps across the border in Bangladesh.\textsuperscript{75}\textsuperscript{76} Negotiations have taken place between Myanmar and Bangladesh to repatriate the Rohingyas, but agreements have not included representatives from the Rohingya community and have not ensured safety, dignity, equality and citizenship for those returning. CSOs have raised their concerns that the MoU between the Myanmar government and the UNHCR failed to address the root causes of the crises, especially with regards to the lack of citizenship and that the repatriation deal was not consulted with Rohingya representatives. This is contrary to the concept of Safe and Voluntary Return, which prioritizes not only safety, but also freedom of movement, access to services, a clear and voluntary path to citizenship, and sustainable solutions for the Rohingya communities.\textsuperscript{77} In addition, many Christians have been reportedly restricted from public worship and subjected to coerced conversion to Buddhism.\textsuperscript{78}

In Indonesia, discrimination, harassment and violence against religious minorities has spread and persisted.\textsuperscript{79} In 2013 alone, 230 mob attacks were carried out against members of religious minority groups such as Christians, Ahmadiyya, Shi’a and Sufi Muslims. Between 2014 and 2018, increased number of attacks and similar incidences occurred.\textsuperscript{80} Religious intolerance is often supported by abusive interpretations of Indonesia’s unclear and discriminatory blasphemy law.\textsuperscript{81} Amnesty International reported that at least 30 prisoners of conscience have been detained for peaceful exercise of their rights to freedom of expression or of religion or belief during 2018.\textsuperscript{82}

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\textsuperscript{72} AI, “Caged without a Roof”.

\textsuperscript{73} See e.g. UNHRC, A/HRC/39/CRP.2; AI, ‘We will destroy everything: Military responsibility for crimes against humanity in Rakhine State, Myanmar’ (Index: ASA 16/8630/2018), 2018.


\textsuperscript{76} See e.g. UNHRC, A/HRC/39/CRP.2; AI, ‘We will destroy everything: Military’,


\textsuperscript{78} See e.g. USCIRF, Annual Report 2017 – Tier 1: USCIRF-recommended Countries of Particular Concern (CPC) – Burma, https://www.refworld.org/docid/59072f5411.html, access 14 April 2019.


\textsuperscript{80} According to Setara Institute’s report, there were 107 attacks or incidences in 2014, 194 cases in 2015, 206 cases in 2016, 201 cases in 2017, and 202 cases in 2018.

\textsuperscript{81} Article 156(a) of Indonesia Criminal Code; Act No. 1/PNPS/1965 on Religious Blasphemy.

in Vietnam, ethnic minorities, religious groups and their leaders continue to face intimidation and discrimination.  

1.1.3. Freedom of Expression and Peaceful Assembly

In Cambodia, a member of the Cambodian National Rescue Party (CNRP), Kong Mas, faces up to two years in prison and a maximum fine of 3,480 USD for “public insult” and “incitement” for a Facebook post pertaining to European Union rice tariffs. The arrest been widely considered an act of political repression by the Cambodian government. The Cambodian Penal Law criminalizes criticism of the government, without sufficient protections of the rights of the accused. Journalists and others who criticize the government are exposed to risks of legal action, imprisonment, attacks, and even death.

The Cambodian, Vietnamese, Lao PDR and Bruneian governments exercise tight control over the media, including television and radio.

The ruling National Council for Peace and Order (NCPO) of Thailand has banned political gatherings of more than five persons. Since the coup in May 2014, at least 80 people are recorded to have been arrested for taking part in peaceful public gatherings. In 2016, 27 people were arrested and charged with sedition for criticizing the military and violating NCPO’s ban on public assembly.

In 2017, Vietnamese authorities arrested at least 21 bloggers and activists for peacefully expressing their opinions, which the government views as threatening national security. There were 36 incidents in which unknown men in civilian clothes beat rights activists and bloggers between January 2015 and April 2017, resulting in injuries.

1.1.4. Human Trafficking and the rights of Migrant Workers

Human rights abuses against migrant workers in Singapore are routine. Foreign domestic workers in Singapore are excluded from the Employment Act, and as such are not protected by

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88 HRW, World Report 2019, 517.
regulations such as limits on their daily working hours. The Employment Act also discriminates against foreign workers by barring them from organizing and registering unions.  

In Indonesia, violations against Indonesian migrant workers persist. Despite the inclusion of greater protection for citizens abroad into the key policy priorities of the Ministry of Foreign Affairs, millions of Indonesian migrant workers abroad are still subject to exploitation, abuse, kidnapping and in some cases capital punishment.

1.1.5. Rights to liberty and fair trial

In Cambodia, arbitrary arrests are often made during street sweeps against sex workers, trans(women), homeless children and families, beggars, and people who use drugs. Those arrested are detained in government-run ‘social affairs’ centres where they are subjected to various forms of torture and other ill-treatment, including sexual abuse, and insufficient medical care and sustenance. During 2015, at least three people died while detained in such centres.

Lao DPR has been subject to international criticism following the enforced disappearance of civil society leader Sombath Somphone on 15 December 2002. He was last seen during his arrest where he was taken away by a car. There is no evidence of any credible investigation into his disappearance, despite the state having signed the International Convention for the Protection of All Persons from Enforced Disappearance in September 2008, and despite the wave of criticism from the international community.

Malaysia continues to detain individuals without trial for up to two years under both 1959 Prevention of Crime Act and 2015 Prevention of Terrorism Act. Arbitrary detentions can be renewed indefinitely, and be followed by restrictions on freedom of movement upon release through electronic monitoring.

In the Philippines, large-scale extrajudicial killings in the name of President Duterte’s ‘war on drugs’ have reportedly resulted in the thousands of deaths, with the overwhelming majority of victims from poor urban communities. In December 2018, the Chairman of the Philippines commission on human rights, Chito Gascon, stated that the overall toll could be as high as 27,000, although he underlined the complexity of investigations given that police have withheld records

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94 See e.g. The Guardian, ‘Duterte’s Philippines drug war death toll rises above 5,000’
on anti-drug operations.\textsuperscript{95} There have not been any independent or impartial investigations on extra-judicial killings; investigations have either been non-existent or weak, making any effort made by victims’ families to gain access to justice futile.\textsuperscript{96} These extrajudicial killings, of those suspected of using or selling drugs have been perpetrated with near-complete impunity, by who claim to be operating in self-defense.\textsuperscript{97}

Philippine Senator Leila de Lima has been in arbitrary, prolonged and politically motivated detention since February 2017. Her arrest and subsequent detention came as she was in the midst of leading a Senate investigation into the ‘war on drugs’.\textsuperscript{98} Shortcomings in the Philippines justice system can also be seen from the ousting of the first female Chief Justice, Maria Lourdes Sereno, for her outspoken criticism of Duterte’s ‘war on drugs’ and other abusive policies.\textsuperscript{99}

\textbf{1.2. AICHR: Historical and Political Context}

\textbf{1.2.1. Inclusion of Human Rights in the ASEAN Framework}

In 1993, six Southeast Asian states, now all AMSs, participated in the World Conference on Human Rights in Vienna. The Conference adopted the Vienna Declaration and Program of Action (VDPA) which emphasizes, among other things, “the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist”.\textsuperscript{100} ASEAN responded to the VDPA through the Joint Communique of the 26\textsuperscript{th} ASEAN Foreign Ministers Meeting (AMM) in 1993 which, among others, expressed ASEAN’s agreement “to coordinate a common approach on human rights” and “to consider the establishment of an appropriate regional mechanism on human rights”.\textsuperscript{101} This marked the initial commitment by ASEAN to the development of a regional human rights system.

Following these developments, CSOs, notably the Working Group for an ASEAN Human Rights Mechanism (Working Group), SAPA, and the Women’s Caucus for the ASEAN Human Rights Body, undertook extensive advocacy for the establishment of a strong human rights

\textsuperscript{95} ibid.
\textsuperscript{97} HRW, World Report 2018, 430.
mechanisms in ASEAN.\textsuperscript{102} The Working Group met with ASEAN officials on various occasions\textsuperscript{103} and produced a draft agreement on the Establishment of an ASEAN Human Rights Commission.\textsuperscript{104} Nevertheless, these efforts and subsequent proposal did not receive a concrete response from ASEAN, though they were acknowledged diplomatically in the Joint Communique of the AMM in 2000.\textsuperscript{105} Attempting an alternative approach, the Working Group convened a number of meetings to explore “multi-track, multi-sectoral strategies pursued through interim arrangements...”, including a number of human rights workshops focused on substantive rights and institution building. During the drafting process of the ASEAN Charter, the Working Group continued its advocacy, together with a wide array of national, regional and international CSOs, and contributed to ensuring the inclusion of human rights under the ASEAN Charter.\textsuperscript{106}

The ASEAN Charter mentions “human rights” seven times, including in its Preamble and as one of the purposes and principles of ASEAN.\textsuperscript{107} The Charter also provides for the establishment of an ASEAN Human Rights Body.\textsuperscript{108} ASEAN also appeared to signal its commitment to human rights with the ASEAN Political-Security Community (APSC) Blueprint 2009-2015,\textsuperscript{109} section ‘A.1.5. Promotion and Protection of Human Rights’, as well as APSC Blueprint 2025\textsuperscript{110} under section ‘A.2.5: Promote and protect human rights, fundamental freedoms and social justice to ensure our peoples live with dignity, in peace, harmony and prosperity’.

Following the instruction in the ASEAN Charter, a High-Level Panel was established in 2008 to draft the ToR for the ASEAN Human Rights Body. The ToR of the AICHR was adopted by the ASEAN Foreign Ministers in July 2009 and the AICHR was subsequently inaugurated on 23 October 2009 by ASEAN Leaders during the 15th ASEAN Summit in Cha-am Hua Hin, Thailand.

\textbf{1.2.2. Political Context and Challenges}

The establishment of the AICHR put the promotion and protection of human rights on the regional agenda. As enshrined in the Cha-Am Hua Hin Declaration on the AICHR, it was “a


\textsuperscript{103} The Working Group met with ASEAN Officials in 1996 (Jakarta), 1997 (Kuala Lumpur), 1998 (Manila), 1999 (Singapore) and 2003 (Phnom Penh).


\textsuperscript{106} Hao Duy Phan, A Selective Approach to Establishing a Human Rights Mechanism in Southeast Asia; The Case for a Southeast Asian Court on Human Rights (MNP 2012) 68.

\textsuperscript{107} ASEAN Charter arts 1(7) and 2(2)(i).

\textsuperscript{108} ibid art 14.


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historic milestone in ASEAN Community Building Process", and was expected to be "a vehicle for progressive social development and justice, the full realization of human dignity and the attainment of a higher quality of life for ASEAN peoples".111

Article 4 of the AICHR ToR, entitled "Mandate and Functions", outlines 14 specific tasks that the AICHR is mandated to perform.112 The ToR actually vests a relatively robust protection mandate in the AICHR, were it to be applied in holistic, progressive and creative ways. For instance:

- Article 4(1) provides for developing strategies for protecting human rights, clearly including ways of preventing, stopping, investigating and redressing human rights violations, both generally and specifically;
- Article 4(2) tasks the Commission with a human rights standard setting function, including by developing ASEAN conventions and other instruments;
- Article 4(3) provides the AICHR with opportunities to conduct research as a means of enhancing public awareness of human rights;
- Under Article 4(10), the AICHR can request and obtain information from AMS, including on human rights violations (as a means of "protection of human rights");
- Article 4(12) furthers the AICHR’s research capacities by mandating it to prepare studies on thematic human rights issues, with violations obviously being a key theme in any human rights study, and field investigations being a key component of such studies.

However, despite the aspirations expressed in the Cha Am Hua Hin Declaration and the opportunities presented in its ToR, the AICHR has roundly failed to apply its protection mandate, remaining totally silent and passive even when some of the worst atrocities so far in this century were committed within the ASEAN region.113

It is widely recognized that efforts to protect human rights in ASEAN have been thwarted by "domestic political security concerns, internal circumstances, the differing views of Asian values, the debate over an ASEAN human rights mechanism, the principle of non-interference and the ASEAN Way".115 As indicated, the ASEAN Charter and the ToR uphold the principles of non-interference, sovereignty and territorial integrity, "without any external interference, subversion

111 Cha Am Hua Hin Declaration on the AICHR.
112 ToR of the AICHR art 4.
113 SAPA Forum Asia and TFHAR, Annual Report from 2010 to 2017; Statements from a number of interviewees and concurrences from a number of respondents to Forum Asia’s questionnaire.
114 ASEAN has adopted non-interference as its guiding principle since its establishment in 1967. This is evidenced in the Bangkok Declaration establishing ASEAN which provides that "...that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities..." This cardinal principle is central to the conduct of ASEAN relations. Although some viewed that there has been positive development in the understanding and interpretation of this principle, however this principle remains the fundamental rule of ASEAN conducts as it is enshrined in the preamble of the ASEAN Charter.
115 Jurgen Haacke (2003) defines ASEAN Way as "a code of conduct and set of diplomatic and procedural norms that have fundamentally guided interactions among regional states for a very long time". He is of the view that the ASEAN Way is decomposed into six elements: sovereign equality, quiet diplomacy, non-recourse to use or threat to use of force, non-involvement in bilateral disputes, non-interference and quiet diplomacy. Meanwhile, Hiro Katsumata (2003) and Beverly Loke (2005) mentioned that there are generally four characters of the "ASEAN Way", namely (1) respects for the internal affairs of other members; (2) non-confrontation and quiet diplomacy; (3) non-recourse to use or threat to use of force; and (4) decision making through consensus.
No less importantly, the ToR describes the AICHR, in Article 3, as an “intergovernmental” and “consultative” body, thus providing AMSs with opportunities to constrain its independence. This has contributed to a number of structural and operational challenges, which include lack of understanding among AMS on how the AICHR should function within the parameters of its ToR as well as lack of synchronizations with relevant ASEAN Sectoral Bodies. Furthermore, article 5(2) of the TOR, which provides that “Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government,” has been interpreted by most AMSs as meaning that governments have full discretion in appointing their AICHR Representative and that Representatives have no independence. An additional result of this interpretation has been that not all representatives have adequate expertise in human rights, let alone the commitment and impartiality needed to do meaningful human rights protection work. As some interviewees and respondents viewed, in addition to differing working modalities, the AICHR Representatives also have differing approaches, with representatives from more democratic member states (i.e. Indonesia, Malaysia, Philippines and previously Thailand) tending to be more open to a stronger AICHR and more active civil society engagement than those from more authoritarian States (i.e. Brunei Darussalam, Cambodia, Lao PDR, Myanmar, Singapore and Viet Nam).

The divergence of approaches to regional human rights cooperation among AMSs has manifested in a growing gap between countries who favour rethinking traditional norms with a view to progressive change, and who consistently work to preserve the status quo. As far as the AICHR is concerned, the pro-status quo states have had the upper hand. The divergence of approaches to human rights is also reflected in the ratification status of major international

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116 ASEAN Charter art 2.2(a), 2.2(e), 2.2(f); ToR of the AICHR arts 2.1(a), 2.1(b) and 2.1(c).
117 ASEAN Charter art 20 and ToR of the AICHR art 6.1.
118 SAPA Forum Asia and TFHAR, Annual Report from 2010 to 2017; Statements from a number of interviewees and concurrences from a number of respondents to Forum Asia’s questionnaire.
120 Phone interview, H.E. Dr. Seree.
121 See e.g. Tan, The AICHR; Doyle, ‘The AHRD and the Implication’; SAPA Forum Asia and TFHAR, Annual Report from 2010 to 2017; Statements from a number of interviewees and concurrences from a number of respondents to Forum Asia’s questionnaire.
human rights treaties as will be elaborated below, particularly in relation to accepting the authority of complaint procedures under these treaties, as well as their implementation and reporting processes.\textsuperscript{123}

\textbf{1.3. ASEAN vis-à-vis the International Human Rights Framework; Evaluating AMS’ Acceptance to International Accountability}

A country’s ratification of international human rights treaties can potentially “represent prima facie acceptance of international accountability” and provide insight into the country’s interpretation and implementation of international human rights law.\textsuperscript{124} AMS’ commitments towards the international human rights legal framework may reflect their attitudes, readiness and willingness to adopt stronger human rights instruments and mechanisms regionally\textsuperscript{125}, and help inform suitable ways forward for the enhancement of human rights protection in ASEAN, to be outlined in Chapter III.

In weighting such commitment, this section briefly examines (i) the status of AMS’ ratification of core human rights treaties and optional protocols; (ii) AMS’ reservations and declarations made when ratifying these treaties and optional protocols, as well as (iii) the compliance of AMS with international human right law and standards reflected in the reporting procedures of the treaty bodies and the UPR by the UNHRC.

\textbf{1.3.1. Ratifications}

While all AMS have ratified human rights treaties perceived as less contentious or politically sensitive areas – such as those involving the rights of women, children and persons with disabilities – AMS ratification of other core human rights treaties has been less uniform. While the majority of UN member states have ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR), to date only six AMSs, namely Cambodia, Indonesia, Lao PDR, Philippines, Thailand and Viet Nam have ratified all of these treaties.\textsuperscript{126} The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has been ratified by Cambodia, Indonesia, Lao PDR, Philippines, Thailand and Viet Nam. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) has only been ratified by Indonesia and the Philippines. The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol has only been ratified by the Philippines and Cambodia.\textsuperscript{127}

\textsuperscript{123} Phan, A Selective Approach 42 – 90.
\textsuperscript{125} Phan, A Selective Approach 68.
\textsuperscript{126} OHCHR, ‘Status of Ratification’.
\textsuperscript{127} Ibid.
Most AMS have failed to ratify Optional Protocols (OPs) to international human rights treaties that allow access for individual complaints. AMS have only given a widespread support to the two OPs to the CRC concerning children in armed conflict and children as victims of sexual abuse, neither of which include a right to individual complaints. While the Philippines, Thailand and Cambodia have indicated a good level of endorsement towards individual petitions under several OPs, the remaining seven AMS have not ratified any single OP which endows a right to individual complaints.

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1.3.2. Reservations and Declarations

AMSs have put forward a number of reservations and declarations whilst ratifying human rights treaties. Mathew Davies groups the types of AMS’ reservations and declarations into three categories: (i) Those that purport to protect the integrity of the state from internal secessionist movements, such as Indonesia’s and Lao’s PDR declarations on Article 1 of the ICCPR on the rights of peoples to self-determination, which reflects the preoccupation of AMS with their political and territorial integrity; (ii) Those that reject provisions for arbitration and international adjudication of inter-state disputes over the interpretation and application of the treaties, as shown, among others, by several AMSs opting out of article 29(1) of the CEDAW and Thailand and Indonesia’s opting out of Articles 22 of ICERD and 30(1) the CAT; and (iii) Those that seek to preserve the primacy of national law, culture and religion in the interpretation of the treaty. For instance, Brunei Darussalam made reservations to all provisions of CEDAW and CRC that it considered contradictory to its Constitution and to Islam, and Lao PDR declared that its adherence to the ICCPR is without prejudice to its Constitution and laws.

AMS’ reservations to international human rights treaties are to be questioned in light of the well-established principle in international law that requires the compatibility of the reservations with the object and purpose of the treaty, although some have viewed them a necessary step of AMS’ gradual engagement and compliance with the global human rights treaty system. However, while under international human rights law, some rights may be realised progressively, especially certain economic and social rights, it does not allow derogation in the implementation of key human rights such as freedom from torture and slavery, the right to a fair trial and freedom from discrimination – including in fulfilling economic, social and cultural rights. Similarly, religion, history and culture must not be an excuse for violating human rights.

128 Ibid; Davies, ‘States of Compliance’.
129 All AMS are state parties to OP to the CRC on the involvement of children in armed conflict (OP-CRC-AC), except for Myanmar, who is the signatory. All AMS are state parties to OP to the CRC on the sale of children, child prostitution and child pornography (OP-CRC-SC), except for Singapore.
132 See e.g. Suzannah Linton, ‘ASEAN States, Their Reservations to Human Rights Treaties and the Proposed ASEAN Commission on Women and Children’ (2008) 30(2) HRQ 436-493; Davies (n 28).
133 See e.g. International Covenant of Economic, Social and Cultural Rights, Article 2(1).
1.3.3. Implementation and Compliance

The gaps are clear between the obligations undertaken by AMS upon ratification of international human rights treaties and their actual implementation. Ratification of human rights treaties is often seen by AMS as “a strategic act to suggest agreement with human rights standards, rather than to represent, or even spark, meaningful change”. The human rights development in some AMS, as well as the UPR reports, reveal that most AMSs which have ratified the ICCPR failed to comply with its provisions: governments of these countries routinely committed serious violations of civil and political rights.

For instance, the sheer contempt shown by the Philippines police to the lives of thousands of poor people extrajudicially killed in his “war on drugs” clearly violates the right to life provided in Article 6 of the ICCPR. The Cambodian authorities have carried out several arbitrary arrests, followed by unfair trials by courts essentially doing the government’s bidding, in addition to frequent violations of the right to freedoms of expression and peaceful assembly. An example is the escalating prosecution of Cambodian lawmakers as part of the efforts of the ruling party to cripple the opposition ahead of national elections in 2017 and 2018. This has culminated in the dissolution of the CNRP by the Supreme Court of Cambodia, the ban of over 118 senior members of the party from politics for five years and the issuance of arrest warrants against CNRP leaders by the Phnom Penh Municipal Court.

AMS’ ratifications and reservations to international human rights treaties leave much to be desired, with key treaties not yet ratified by several AMS. Those AMS that have ratified such treaties have not followed up by ratifying Optional Protocols providing for individual complaints. Some reservations mirror AMS’ view that the enjoyment of human rights should be constrained by religious, cultural and similar contexts, and thus defeat the treaties’ object and purpose. There have been serious discrepancies between the provisions of international human rights instruments ratified, and their actual implementation.

135 Hathaway, ‘Do Human Rights Treaties Make a Difference’.
136 See e.g. The Guardian, ‘Duterte’s Philippines drug war death toll rises above 5,000’.
139 ibid; Davies, ‘States of Compliance’.
Chapter II:

10 Years in Review; Evaluating the Performance of the AICHR between 2009-2019
2.1 Setting the Standards and Parameters for Human Rights Protection

Strong regional mechanisms and instruments can contribute to effective compliance with international human rights law, particularly if they are tailored to specific issues, priorities and conditions in the region, provided that such mechanisms and instruments are themselves compliant with international law and provide protections that do not fall below universally accepted standards. This is consistent with the 1993 VDPA, which emphasized that regional arrangements should “reinforce universal human rights standards, as contained in international human rights instruments, and their protection” and that they must render cooperation with the United Nations (UN) Human Rights activities.

At FORUM-ASIA’s Expert Consultation Meeting on Preparation of the Report of 10 Years Evolution of the AICHR, held on 25-26 February 2019, Prof. Vitit Muntabhorn opined that the OHCHR’s Principles for Regional Human Rights Mechanism outlines an ideal standard for human rights protection by a regional human rights mechanism. The Principles provide that a regional human rights mechanism should be mandated to independently promote and protect human rights in accordance with the human rights commitments of the individual state parties. The mechanism needs to be conferred with a number of powers, including:

1. Monitoring capacity to observe the general human rights situation, request information in relation to the promotion and protection of human rights, carry out on-site visit to states parties to investigate specific human rights concerns, issue and circulate progress reports on a periodic basis following on-site visits and reports, and develop an early warning system to help prevent gross violations of human rights.
2. Communication procedures which allow receipt, investigations, analyses and decisions on communications from any person, group of persons or non-governmental organization alleging human rights violation(s) by a member state.
3. Capacity building including training and education functions, public awareness raising and providing states with advice on regional and national policies legislation.
4. Composition and support to ensure independence from governments, impartiality and competence of members, to be nominated by each state party following a fair and transparent selection process with involvement by civil society, ensuring gender and geographical balance and that members are accorded necessary privileges and immunities to conduct their work.
5. Provision of adequate resources, and authority to use these resources freely and independently, to properly carry out the mandate.

141 VPDA art 37
Examining the mandate and composition of the AICHR using the above Principles as yardsticks, bearing in mind the relevant legal framework of ASEAN, notably the ASEAN Charter, the Cha Am Hua Hin Declaration on the AICHR, the AICHR ToR and its Five-Year Work Plans, this chapter reviews the AICHR’s evolution, milestones, key activities, and challenges during the period of 2009 to 2019, focusing on the following parameters:

1. Human rights standard setting and institution building;
2. Responsiveness to key human rights developments in ASEAN;
3. Engagement with CSOs;
4. Alignment and collaboration among relevant ASEAN system and entities;
5. The Review of the AICHR ToR; and
6. The AICHR’s activities.

2.2. AICHR’s record at 10

2.2.1. Human Rights Standard/Norm Setting and Institution Building

2.2.1.1. Standard/Norm Setting

AHRD: Pursuant to the mandate of article 4(2) of its ToR, the AICHR drafted the AHRD which was subsequently adopted by the ASEAN leaders at the ASEAN Summit in 2012. The AHRD was adopted together with the Phnom Penh Statement on the Adoption of the AHRD. The AHRD has been subject to various criticisms, including that the AHRD falls below international human rights standards and that it was developed without any CSO engagement. Of particular concern is the inclusion of General Principles that impose sweeping restrictions on all the rights in the Draft Declaration. These subject the full range of rights provided in the Declaration to restrictions not permitted under international law. Under these General Principles, the enjoyment of the rights provided in the Declaration is to be “balanced with the performance of duties” (General Principle 6), subject to “national and regional contexts” and to considerations of “different cultural, religious and historical backgrounds” (GP 7). Moreover, all of the rights set out in the Declaration may also be restricted on a wide array of grounds including “national security” and “public morality” (GP 8). These terms risk being used as a pretext by Governments to put arbitrary, unnecessary and disproportionate restrictions on human rights or to directly violate them.

A number of CSOs, such as the ICJ, AI and FORUM-ASIA, are of the view that the AHRD, being the departure point of ASEAN standards on human rights, needs to be amended to ensure that it upholds the universally accepted standards. H.E. Rafendi Djamin and other respondents

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143 AHRD and PP Statement.
144 See e.g. OHCHR, ‘AHRD Should Maintain International Standards’; Mong Palatino, ‘Human Rights Declaration Falls Short’; HRW, ‘Civil Society Denounces Adoption of Flawed AHRD’; ICJ, ‘The AHRD, Questions and Answers’.
145 Phone interview, Dr. Yuval; Consultations of FORUM-ASIA and SAPA; See also ICJ, ‘Memorandum on the ToR of the AICHR’.
expressed the view that the remaining standard setting tasks under article 4(2) of the ToR should focus on the development of legal instruments on human rights which upholds universal standards. On the other hand, H.E. Yuyun Wahyuningrum and H.E. Edmund Bon Tai Soon preferred to elevate the existing agreements in the AHRD and translate them into general comments, position papers, advisory notes, human rights guidelines and principles. Prof. Vitit Muntabhorn emphasized that the AHRD can never be read without the Phnom Penh Statement on the Adoption of the AHRD. The Statement was a compromised consensus reached in the context of heavy criticism, and it has to some extent grounded the AHRD in international standards, through the reaffirmation of AMS’ commitment “to ensure that the implementation of the AHRD be in accordance with AMS’ commitment to the UN Charter, the Universal Declaration of Human Rights, the Vienna Declaration and Program of Action, and other international human rights instruments to which ASEAN Member State are parties...” CSO legal experts, however, argue that the Phnom Penh Declaration refers, in its Article 3, not only to universal standards but also to “relevant ASEAN declarations and instruments pertaining to human rights” thus creating a legal loop where the AHRD is also a basis for its own implementation. 

Legally-binding instruments on human rights: In line with the mandate of article 4(2) of the AICHR ToR, the AICHR has initiated two consultations on the feasibility of developing legal instruments on human rights with relevant ASEAN Sectoral Bodies. Despite the fact that neither consultation has resulted in any concrete ways forward, AICHR saw them as important steps in providing a platform to identify common concerns and explore means of developing processes towards this endeavour. 

ASEAN lacks progressive substantive law on human rights. To date, there has been no consensus on whether or not the AICHR will proceed with the development of a general ASEAN convention on human rights or other specific conventions on human rights, irrespective of the clear mandate of the AICHR under article 4(2) of its ToR. CSOs are reluctant to encourage such developments in view of the substandard protections under the AHRD.

If ASEAN is to develop a binding human rights instrument, it must be in line with international human rights law and standards. In Europe, the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) serves as “the comprehensive bill of rights

146 Interview, H.E. Rafendi.
147 Interview, H.E. Edmund; Interview, H.E. Yuyun.
148 Consultation, Prof. Vitit.
149 ICJ, ‘The AHRD’, Phone Interview, Dr. Yuval.
151 Phone interview, H.E. Dr. Seree; Interview, H.E. Edmund.
152 American Convention on Human Rights (adopted 22 November 1969, entered into force 18 June 1979) UNTS 1144 art 2 (ACHR); Interviews with some AICHR Representatives, Experts and CSOs actors.
of the Western liberal model. The Convention established the European Commission of Human Rights (later disbanded) and the European Court of Human Rights. In the Americas, the American Convention on Human Rights (ACHR) includes an extensive set of provisions of civil and political rights, as well as provides for the progressive development of economic, social and cultural rights. The ACHR established the Inter-American Court on Human Rights (IACtHR), along with the Inter-American Commission on Human Rights to ensure the protection and enforcement of the rights enshrined in it. In Africa, the Organization of African Unity (OAU) adopted the African Charter on Human and People’s Rights (ACHPR), which not only encompasses civil, political, economic, social and cultural rights, but also recognizes peoples’ rights, in addition to individual’s rights and also provides for duties of the states parties. Article 30 of the ACPHR provides for the establishment of the African Commission on Human and Peoples’ Rights (African Commission) and the Protocol on the African Court on Human and Peoples’ Rights established the African Court on Human and Peoples’ Rights (ACtHPR), now merged into the African Court of Justice and Human Rights.

All the bodies established by these regional treaties have first and foremost protected human rights, in particular by dealing with or ruling on complaints from individuals and groups on human rights violations, and through them affecting changes in law, policy and practice in the states concerned and throughout the respective regions. Compared to the achievements of these regional human rights bodies in protecting human rights, the record of the AICHR pales into insignificance, and its failure to protect human rights in ASEAN is even starker.

The AICHR has attempted to supplement the work of relevant ASEAN Sectoral Bodies, such as ACWC, ACW and Senior Officials Meeting on Social Welfare and Development (SOMSWD) in the areas of commonly ratified instruments, namely CEDAW, CRC and CRPD.

Rights of persons with disabilities: 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; Mainstreaming the Rights of Persons with Disabilities 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

153 James Crawford, Brownlie’s Principles of Public International Law (OUP 2012) 660.
154 ECHR (adopted 4 November 1950, entered into force 3 September 1953, as amended by Protocols Nos. 11 and 14 and supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13) s II.
155 ACHR (adopted 22 November 1969, entered into force 18 June 1979) UNTS 1144 ch III.
156 ibid ch IV.
159 ASEAN Enabling Masterplan 2025.
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 complaints addressed.

Rights of women and children: AICHR has explored the feasibility of developing a regional human rights protection mechanism for women and girls. The exercise concluded with a document entitled “Human Rights Protection Mechanisms for Women and Girls in the Southeast Asia Region: An Explanatory Strategy Paper for the AICHR”, which has not been made public. From an interview with H.E. Edmund Bon, the paper recommended that the AICHR develop an “ASEAN Inter-Sectoral Bodies Technical Working Group on Women and Girls’ Human Rights”, with an aim 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 AMS.

This was to be followed up with 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, this consultation has to date not taken place, and as the full text of the document has not been made public, it cannot be analysed further.

Strengthening the human rights commitment of AMSs: Under article 4(4) of the ToR, the AICHR is mandated to “provide capacity building for the effective implementation of international human rights obligations” undertaken by AMSs. In December 2014, the AICHR organized a Regional Workshop on Domestication of Human Rights Obligations, in Luang Prabang, Lao PDR. During the workshop, participants shared national experiences on the implementation of human rights treaty obligations in AMSs, particularly CEDAW and the CRC. Participants also shared their national perspectives on incorporation and application of human rights treaties.

Earlier, under the leadership of Viet Nam in 2010, the AICHR conducted a regional workshop on Reporting Obligations, which provided a platform for relevant agencies of AMSs to share and acquire knowledge about reporting procedures under the human rights treaty bodies as well as the Universal Periodic Review (UPR). Speakers at the Workshop included members of the UN Committee on the Rights of the Child, the UN Committee on Economic Social Cultural Rights (CESCR) and the UN Human Rights Committee. There have been no follow-up to either of these workshops, the last of which was carried out five years ago, and it is unclear to what extent either have had any practical effect. This is typical of many of the AICHR activities, which appear haphazard rather than part of a coherent strategy with benchmarks and self-evaluation.

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160 Phone interview, H.E. Dr. Seree; See also Nonthasoot, ‘ASEAN Enabling Masterplan 2025’.
161 Online consultation of FORUM-ASIA and SAPA.
162 Interview, H.E. Edmund.
163 Interview, H.E. Yuyun.
164 See e.g.: AICHR, AICHR Annual Report 2016-2018; AICHR, AICHR Five-Year Work Plans.
H.E. Rafendi Djamin argued that the drafting and adoption of the AHRD created an ‘appetite’ among AMSs to learn more about human rights; encouraged more ratifications by AMSs of international human rights treaties framework; and stimulated AMS’ keenness, especially that of Lao PDR and Viet Nam, to provide a platform for capacity building on effective implementation of international human rights treaties.\(^{166}\) However, H.E. Rafendi provided no concrete evidence of increased ratification by AMSs post-AHRD, and Lao PDR and Viet Nam continue to have a poor record of compliance with their human rights obligations.

As pointed out in the previous chapter, AMS’ ratification of human rights treaties beyond CEDAW, CRC and CRPD has been limited, in particular when it comes to treaties with strong monitoring procedures or those perceived as being politically sensitive. Several AMSs entered reservations, including opting out of provisions for arbitration of inter-state disputes, or as an attempt, unacceptable under international law, of preserving the primacy of national law, culture and religion in the interpretation of the treaty.\(^{167}\)

Although some AMS have signed and ratified international human rights treaties and their optional protocols during the past decade,\(^{168}\) There is no evidence that the AICHR has taken concrete steps to encouraging such ratifications even though this is mandated under Article 4(5) of its ToR.\(^{169}\)

Standard setting initiatives by individual AICHR Representatives: H.E Edmund Bon Tai Soon, consistently pushed for better standard setting practices by the AICHR, suggesting that the AICHR develops common approaches and positions on the rights stipulated in the AHRD, including through general comments on its provisions. For instance, in conjunction with the AICHR Youth Debate on Human Rights in 2016, he issued a “General Observation No. 1/2016: Interpretation of Articles 6, 7 and 8 of the ASEAN Human Rights Declaration 2012.” These Articles, already mentioned above, provide for (a) duties and responsibilities; (b) application of human rights in regional and national contexts, and (iii) limitations on human rights.\(^{170}\) However FORUM-ASIA and SAPA expressed the view that the General Observation, while reflecting a welcome desire to harmonise human rights in ASEAN with international human rights law and standards, is over-apologetic for the AHRD, not always accurate and glosses over clear discrepancies that can only be properly redressed through revising the AHRD and removing the General Principles. Moreover, it has not been adopted by AICHR and remains just an individual endeavour.\(^{171}\) H.E. Edmund Bon Tai Soon further organized a regional consultation on the Right to Safe Drinking Water & Sanitation in ASEAN which resulted in a proposed Consultation Position Paper regarding Article 28(e) of the AHRD.\(^{172}\) This Paper was not adopted by the AICHR either.

\(^{166}\) Interview, H.E. Rafendi.

\(^{167}\) See e.g. OHCHR, ‘Status of Ratification’; Mathew Davies, ‘States of Compliance?’.

\(^{168}\) See Annexes 9 and 10.

\(^{169}\) Phone interview, H.E. Dr. Seree.

\(^{170}\) The General Observation appears as ANNEX 11.

\(^{171}\) Online consultation of FORUM-ASIA and SAPA.

\(^{172}\) The position paper appears as ANNEX 12.
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.\textsuperscript{173} Well-intentioned thought these measures are, however, fundamental flaws of the AHRD – including, for example, restrictions on the realisation and enjoyment of human rights in the AHRD’s General Principles 6–8, the absence of a right to freedom of association, and the absence of a provision on the rights of LGBT+ people – cannot be excused or whitewashed through General Comments or other exercises in interpretation. These flaws can only be redressed through a revision of the AHRD text itself.\textsuperscript{174}

As long as the AHRD is ASEAN’s key human rights document, there is a serious danger that any future ASEAN human rights convention would be based on the AHRD and its rights-diminishing General Principles. It is therefore imperative that ASEAN in general and the AICHR in particular should work to revise the AHRD to bring it in line with international human rights law and standards before any efforts are made to draft an ASEAN convention on human rights.\textsuperscript{175}

\subsection{2.2.1.2. Institution Building:}

\subsubsection{2.2.1.2.1. Comparative Insights:}

Human rights standard setting worldwide included the establishment of supervisory and/or enforcement mechanisms. At the UN level, Charter-based bodies were established to fulfil the relevant mandates under the UN Charter.\textsuperscript{176} Succeeding the Commission on Human Rights, the Human Rights Council was established with a number of protection mechanisms which, among other things include (1) the Universal Periodic Review (UPR), as “a form of peer review of UN member states’ action to fulfil their human rights obligations, as well as means of identifying areas in which help and advice are required”;\textsuperscript{177} (2) mechanisms to respond to human rights crises, by convening urgent sessions or holding urgent debates during regular sessions;\textsuperscript{178} (3) Special Procedures mandated “to investigate and address human rights situations in a particular country (country situation) or a particular global human rights problem (thematic concern)”; as well as (4) a complaint procedure, which identifies “consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world under any circumstances”\textsuperscript{179}.

\begin{thebibliography}{99}
\bibitem{173} Interview, H.E. Yuyun.
\bibitem{174} Online consultation of FORUM-ASIA and SAPA.
\bibitem{175} ibid.
\bibitem{177} Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), \textit{International Human Rights Law} (OUP 2014) 363 – 365.
\bibitem{178} ibid 365 -366.
\bibitem{179} OHCHR (18 June 2007) Un Doc A/HRC/RES/5/1, annex para 85.
\end{thebibliography}
In addition, treaty-bodies, established under respective international human rights treaties, are mandated to examine states parties’ compliance with their treaty obligations. They are comprised of independent experts, which are nominated by the states parties but do not represent them. Except for the Sub-Committee on the prevention of torture and other cruel, inhuman or degrading treatment or punishment, all treaty bodies examine periodic reports by states parties and issue concluding observations, including detailed recommendations. They also issue general comments explaining states parties’ obligations under specific provisions within their respective treaties, developed following consultations with states, NGOs and other stakeholders.

Some treaty bodies are also empowered to undertake inquiries “upon receipt of reliable, well-founded indication of serious, grave and systemic violations of the respective conventions by a state party”. The ICCPR, the ICESCR and UNCAT allow for a state party to complain to the relevant treaty body that another state party is not fulfilling its treaty obligations where both states concerned have accepted their competence. Some treaties and Optional Protocols establish individual complaints procedures, which enables individuals to file a complaint claiming that a state party has violated their convention rights. These include the 1st Optional Protocols of the ICCPR and the ICESCR, the 3rd Optional Protocol of the CRC, UNCAT, ICERD and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED). In some situations of particular urgency which require immediate action to prevent irreparable harm to the complainant, treaty bodies may also issue interim measures, particularly in cases related to the death penalty, or life-threatening deportation or extradition cases.

As for regional human rights systems, in Europe, the Council of Europe has established supervisory and enforcement mechanisms: the now defunct European Commission of Human Rights and the European Court of Human Rights (ECtHR). The ECtHR rules on individual’s and state’s applications claiming violations of the rights protected under the ECHR and related treaties. Since the ECtHR sat as a full-time court in 1998, it has delivered more than 10,000 judgments which are binding upon states parties. The judgments have also instigated adjustments to legislation and administrative practices in various sectors.

The Inter-American human rights system was created by the Organization of American States (OAS). the key bodies are the Inter-American Commission on Human Rights and the Inter-
American Court on Human Rights (IACtHR). The Commission is composed of independent experts who are elected by secret ballot of all OAS member states at the OAS General Assembly.\(^{189}\) Its primary function is to examine individual petitions claiming human rights violations. In addition, the Commission also prepares country studies about serious human rights situations in member states. Further, the Commission also undertakes thematic studies concerning violations of certain types of rights throughout the hemisphere, and monitors the situation of particular vulnerable groups.\(^{190}\) The IACtHR is authorized to adjudicate contentious cases, issue advisory opinions and order states to take provisional measures, so as to protect persons who are in grave and imminent danger.\(^{191}\) While the IACtHR sits on a part-time basis, it has played a significant role in holding perpetrators accountable, ensuring reparation to the victims in 81 percent of the cases.\(^{192}\) In addition, the Court’s judgments have led to “the amendment or repeal of national laws and changes in policies and practices.”\(^{193}\)

In Africa, the Organization of African Unity (OAU) and its successor, the African Union (AU) has played a leading role in setting the regional human rights treaties and bodies, notably the African Commission on Human and Peoples’ Rights and the African Court of Justice and Human Rights. The Commission is composed of independent commissioners. To ensure their impartiality, the AU Commission provides guidelines that exclude senior civil servants and diplomatic representatives from being nominated. The Commission is provided with a number of protection functions, including a complaint procedure, which allows both states and individuals to bring complaints alleging violations of the African Convention by the state parties. It also provides for on-site visits/missions which are categorized as either promotional or protective. While the protective mission is undertaken in the situation of massive violations of human rights, or is linked to a case under the consideration of the Commission, the promotional missions assist the Commission to obtain information from the governments and CSOs on human rights situation in a country.\(^{194}\)

The Commission also play a monitoring/supervisory role by considering states parties’ reports on their compliance with the ACHPR. It appointed a number of special rapporteurs and working groups, which monitor human rights developments in areas under the Commission’s mandate and engage with CSOs. Upon receipt of reliable information on ongoing violations of the ACHPR, the Commission communicates with the government, informs the media or takes other steps. The Special Rapporteurs also conduct on-site visits and produce reports with recommendations to the governments in question.\(^{195}\)

\(^{189}\) Sivakumaran (eds), *International Human Rights Law*, 402.

\(^{190}\) ibid, 404.

\(^{191}\) ibid.


\(^{194}\) Sivakumaran (eds), *International Human Rights Law*, 448 - 452.

\(^{195}\) ibid.
Compared to other regional mechanisms, it is evident that the AICHR has failed to maintain its independence. The systematic effort by AMS to weaken the Commission has contributed to its failure to provide even a complaint mechanism to conduct investigations, let alone to effectively address human rights violations.

2.2.1.2.2. Economic Community of West African States (ECOWAS)

Since the creation of Community Court of Justice of ECOWAS in 2001, ECOWAS has increasingly showcased a solid model of human rights protection by a sub-regional mechanism. The ECOWAS Court was initially established by its member states to adjudicate inter-state economic disputes, but later was given a relatively broad and far-reaching human rights jurisdiction in response to a coordinated campaign and lobbying by bar associations, NGOs and ECOWAS officials (including its judges) for the expansion of its jurisdiction.196

Since 2005, the Court has had powers to adjudicate over “cases of violation of human rights that occur in any member states”.197

The ECOWAS Court has a far-reaching accessibility as its locus standi permits direct access for individual litigants. Within the ECOWAS Court, individuals and NGOs are allowed to submit petitions without having to undergo “a quasi-judicial commission that screens complaints and issues non-binding recommendations for those petitions that it deems admissible”.198 In addition, the ECOWAS Court is distinct from other international and regional adjudicating bodies in that it has no requirement to exhaust domestic remedies before approaching it.199

To date, the ECOWAS Court has released a number of decisions finding violations of human rights by its member states. For instance, it ruled that Gambia was responsible for the torture of journalists and that Nigeria has failed to adequately control multinational companies that have caused environmental degradation in the oil-rich Niger Delta.200

For AICHR to be more effective, it could follow the example of ECOWAS by establishing a regional human rights court that is similarly able to rule on human rights violations by its member states.

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198 See e.g. Saidykhan v The Gambia Case No ECW/CCJ/APP/11/07 (ECOWAS Court 30 June 2009) para 39; Hadijatou Mani Koraou v the Republic of Niger, Case No. ECW/CCJ/JUD/06/08 (ECOWAS Court 27 October 2008).
199 ibid.
2.2.1.2.3. The ASEAN Human Rights System: Failing Regional Human Rights Standard?

Unlike the regional mechanisms just described, the Southeast Asian 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. While individual AMSs, as noted, ratified international human rights treaties and reported to UN human rights bodies under the Charter-based and Treaty-based systems, ASEAN did not move collectively towards creating a regional human rights mechanism before 2007 and the first mechanism, the AICHR, was only established in 2009. A decade on, the deep flaws and weaknesses of the AICHR are a matter of widespread concern.\(^{201}\) 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 rising of populist authoritarian regime that hinders democratic practices in the ASEAN countries. 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 opaque and undemocratic selection process of AICHR representatives in the majority of member states.\(^{202}\) Other interviewees believed that the main challenge lies with the intergovernmental nature of the AICHR, which has resulted in structural and operational challenges.\(^{203}\)

These factors have meant that AMS governments have exercised tight control over the AICHR, hindering its responsiveness, works efficiency, institution-building ability and protection capacity. As compared to other regional and international human rights mechanisms outlined above, the AICHR has by far the weakest protection record. The majority of the AICHR Representatives, as instructed by their governments, have consistently refused to implement even the limited protection mandate expressly conferred by its ToR, let alone interpret the protection provisions creatively and progressively.\(^{204}\) The result has been a resounding silence of the AICHR on any human rights violations, in a decade that saw mass human rights violations, some of which – in Myanmar and the Philippines in particular – amounted to the worst crimes under international law. AICHR was equally silent in the face of continued repression of peaceful dissent and freedom of expression throughout the region, criminalisation of LGBTIQ and human rights defenders and repression of minorities, and numerous other human rights violations.\(^{205}\)

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\(^{201}\) See e.g. Tan, The AICHR; Doyle, ‘The AHRD and the Implication’; FORUM-ASIA and SAPA, Annual Report from 2010 to 2017; Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire.

\(^{202}\) FORUM-ASIA and SAPA, Annual Report from 2010 to 2017; A number of respondents and interviewees also gave similar assessment.

\(^{203}\) Phone interview, Dr. Seree.

\(^{204}\) FORUM-ASIA and SAPA, Annual Report from 2010 to 2017; Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire.

\(^{205}\) ibid.
Some current and former AICHR Representatives have raised to the AICHR the urgent need to consider establishing complaints or correspondence procedures or at least responding to letters of complaints addressed to the AICHR.\textsuperscript{206} AICHR Malaysia, under H.E. Edmund Bon Tai Soon, proposed a communication procedure which he suggested to be initially developed with a formula that requires minimum commitments from AMSs and be tailored to ASEAN's circumstances accommodating the requirements of ASEAN's principles. AICHR Malaysia has also offered its services in drafting a proposal to establish an AICHR communications procedure for AICHR's consideration.\textsuperscript{207} However, these proposals are extremely weak: they grant the AICHR Representative (and thus his/her government) veto power on whether or not to even consider a complaint, thus ensuring that complaints against the AMSs with the worst record would never be heard.\textsuperscript{208} At any rate, there has been no positive response from the AICHR to these proposals, and the Commission has not responded to any letters of complaint addressed to it.\textsuperscript{209}

In its tenth anniversary, only three AMSs conducted democratic selection processes for the selection of AICHR Representatives: Indonesia, Malaysia and Thailand. While the ToR requires that AMSs "give due consideration to gender equality, integrity and competence in the field of human rights", the majority of AMSs appear to give much greater consideration to ensuring that representatives are able to protect government interest. Article 5(4) of the AICHR ToR does not require consultation when selecting the AICHR Representatives. This means that AMSs often select Representatives who, once selected, represent their respective governments rather than act in an independent capacity. In practice, just a few progressive Representatives have been able to preserve their independence.

The AICHR does not have a Monitoring and Evaluation (M & E) system in place to measure its impact and relevance. Unlike the ASEAN Socio-Cultural Community (ASCC) Blueprint which provides a framework for a considerably robust M & E scorecard, which includes outcome-based objective, key results areas and indicators,\textsuperscript{210} the ASEAN Political-Security Community (APSC) Blueprint, under which the AICHR falls, does not provide the same. Currently, M & E is done through the ‘Monitoring of the Implementation of the APSC Blueprint (2016-2025)’, which is completed by activity leaders following the programme conclusion. It has sections on output, status, assessment and recommendations.\textsuperscript{211} From 2010-2018, the AICHR spent over six million USD on 121 activities.\textsuperscript{212} The absence of impact analysis of any AICHR activities is concerning. A

\textsuperscript{206} AICHR Thailand and Indonesia have brought to the attention of the AICHR on the need to establish communication procedure or at least to respond to letter of complaints addressed to AICHR.


\textsuperscript{208} Online consultation of FORUM-ASIA and SAPA.

\textsuperscript{209} Interview, H.E. Edmund.


\textsuperscript{211} H.E. Edmund Bon Tai Soon, Presentation at the Workshop on Access to Justice; Lesson Learned and Pathways Forward: ‘Strategising to Encourage AICHR to Adopt and Implement the Recommendations of the Thematic Studies Report’ (Bangkok, 29 – 30 April 2019).

\textsuperscript{212} Presentation of H.E.Edmund Bon Tai Soon,'Workshop on Access to Justice: Lessons Learnt and Pathways Forward'. 29-30 April 2019.
robust M & E framework is critical to provide clear direction and help evaluate AICHR’s activities, and therefore the AICHR should incorporate an M & E framework into its Five-Year Work Plan. M & E exercise could include a stock-taking of AICHR activities, which would be beneficial for the purpose of submitting AICHR’s recommendations to the AMM on the review of its ToR especially with a view to strengthening the protection mandate.

On the Role of the Secretary-General of ASEAN vis-à-vis the AICHR, under article 7.1 of the AICHR ToR, the Secretary-General is authorised “to bring relevant issues to the attention of the AICHR in accordance with Article 11.2 (a) & (b) of the ASEAN Charter...” H.E. Yuyun Wahyuningrum mentioned that the late Secretary-General, H.E. Surin Pitsuwan often consulted regional CSOs on human rights matters and brought the matters to the attention of the AICHR through various unspecified avenues. However, H.E. Rafendi Djamin mentioned that while the AICHR has annual interface meetings with the Secretary-General of ASEAN, he did not recall if H.E. Surin had specifically brought specific human rights issues to the attention of the AICHR, pursuant to this specific mandate.

Currently, the ASEAN Secretariat provides secretarial and administrative support to the AICHR. In line with the recommendation of the High-Level Task Force (HLTF) on Strengthening the ASEAN Secretariat and Reviewing the ASEAN Organs. In January 2016 the division in the ASEAN Secretariat supporting the AICHR was renamed as the Human Rights Division. The division was moved from the ASEAN Community and Corporate Affairs Department (CCAD) to the ASEAN Political-Security Community Department (APSC) to provide dedicated support to the AICHR.

ICJ was of the view that the AICHR should be supported by its own secretariat, that is, independent from the ASEAN Secretariat. The staff should comprise professionals with expertise in substantive areas of human rights, including international human rights law, be headed by an Executive Director, and be granted adequate funding to ensure effective implementation of its activities. H.E. Rafendi Djamin stated that since its establishment, some AICHR Representatives have advocated instead for stronger support from the existing Secretariat. Various options were presented, one of which was for the overarching status of the AICHR to be reflected in the functions of the Secretariat. This could be done by granting the existing Division overarching coordinating roles across the ASEAN Secretariat to support various ASEAN Sectoral Bodies dealing with human rights. However, this suggestion has not been approved by the AICHR either.

This overall pattern has been maintained throughout the AICHR’s first 10 years – those believing in inaction, lack of independence and towing government line have always had the upper hand.

213 Interview, H.E. Yuyun.
214 ICJ, ‘Memorandum on the AICHR’.
thwarting every attempt even at incremental progress. This is surprising in view of the political strength of some of the states behind the more progressive Representatives such as Indonesia, Malaysia and Thailand.

2.2.2. Responding – or not – to human rights violations

In addition to the general mandate of the Cha Am Hua Hin Declaration and the ToR of the AICHR, the Joint Communique of the 48th and 49th ASEAN Foreign Ministers’ Meetings, in 2015 and 2016, respectively, encouraged the AICHR to “engage more in current human rights challenges in the region...” However, the AICHR has had an abysmal record when it comes to addressing the common human rights issues outlined in chapter I, or any other issues for that matter, including widespread and systematic violations such as Rohingya genocide and serious atrocities against other ethnic and religious minorities in Myanmar, as well as extra-judicial killings in the Philippines. There has similarly been zero response to individual violations such as the enforced disappearance of activist Sombath Somphone in 2012, an ongoing case. No statements have been made in condemnation of these – or any - human rights violations, let alone investigations or any measures at all to ensure that perpetrators are held accountable and victims are given access to justice and reparations.

Meanwhile, the Five-Year Work Plan of the AICHR and its Priority Programmes/Activities have not been programmatically tailored to address effectively human rights issues in the region or respond to specific violations, despite the AICHR’s explicit protection mandate. Of the five common issues highlighted in the previous chapter, the AICHR has done programmatic activities only on trafficking, none of which involved protection elements. Instead, activities were confined to capacity building, awareness raising, sharing best-practices and consultation. The following are the records of AICHR activities relevant to the five common issues outlined in Chapter I:

Rights of refugees and asylum seekers:
- Regional Workshop on Statelessness and the Rights of Women and Children, Manila, 18 – 19 November 2011.

Rights of minorities:
- The AICHR Five-year Work Plan 2016 – 2020 incorporated a thematic study on freedom of religion or belief; however, the AICHR has not implemented this activity. Nevertheless, it is hoped that the study will commence when AICHR Indonesia implements the process in 2020.


217 The sentence was adjusted and developed from FORUM-ASIA and SAPA, Reasonable Doubt, The Journey Within, 17.

218 See e.g.: AICHR, AICHR Annual Report 2016-2018; AICHR, AICHR Five-Year Work Plans.
Freedom of Expression and Peaceful Assembly:
- AICHR High-Level Dialogue on Managing Freedom of Expression in the Information Age, Medan, Indonesia, 11 – 12 April 2018.

Human trafficking and the rights of Migrant Workers:
- Roundtable Discussion and First Coordination Meeting of the AICHR Thematic Study on Migration and Human Rights, Bandung, 5 – 6 November 2012;
- AICHR Workshop on Effective Communication Strategies to Combat Trafficking in Persons, Nha Trang, Viet Nam, 23 – 24 June 2016;
- Panel Discussion on Socialization of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) and the ASEAN Plan of Actions on Trafficking in Persons, Especially Women and Children (APA) Focusing on Sharing of Good Practices on Anti-trafficking Initiatives, Jakarta, 15 August 2016;
- AICHR Regional Workshop on Strengthening National Plans of Action on Trafficking in Persons to Ensure Effective Implementation of the ACTIP and APA, Phnom Penh, Cambodia, 1 – 2 December 2016; and

Rights to liberty and fair trial:

2.2.2.1. The Enforced Disappearance of Sombath Somphone

Lao PDR has signed the CPED, but has yet to ratify it. Nevertheless, enforced disappearance is a human rights violation and a crime under customary international law, therefore binding on all nations irrespective of treaty ratification. It is also a violation of a range of human rights including the prohibition of arbitrary arrest and detention, of torture and other ill-treatment, and often also of the right to life. Since the evening of 15 December 2012, Sombath Samphone has been reported to have been forcibly disappeared. CCTV footage showed that he was stopped by police and then abducted. Human rights advocates and other stakeholders worldwide have expressed deep concerns over his whereabouts.

Multiple statements have been released addressed to the government of Lao PDR. As Phil Robertson, the deputy Asia Director of Human Rights Watch, said: “Sombath’s disappearance highlights enforced disappearance, widespread human rights violations, and the culture of...”

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impunity protecting government officials in Laos.”

CSOs have responded to Sombath’s case in various ways, such as by organizing a workshop on Enforced Disappearance in April 2015 during the ASEAN Civil Society Conference/ASEAN Peoples’ Forum 2015 (ASCS/APF) to raise awareness of the barriers that victims face in accessing justice and the mechanisms ASEAN can use to stop enforced disappearance. CSOs’ concerns over the case were also addressed in the statements of ACSC/APF and other related statements, which highlighted the lack of immediate and transparent investigation, and condemned oppressive laws and abuse of democratic freedoms.

CSOs have also published reports and held press conferences which have consistently called for the government of Laos to undertake impartial, independent and effective investigations to discover and reveal Sombath’s fate and whereabouts.

2.2.2.2. The Human Rights of Minorities in Myanmar

In Myanmar, The Rohingya Muslim minority, especially in Northern Rakhine state, has faced violence and discrimination, including denial of citizenship, for decades. At least since 2012, the systematic discrimination and segregation, sweeping restrictions on the right to movement, violence and other human rights violation have constituted crimes against humanity, including apartheid.

Starting on 25 August 2017, the Myanmar military brutally responded to an attack on police outposts by Rohingya insurgents. Atrocities included massacres, rape, torture of detainees, and the burning down whole villages. The crisis forced hundreds of thousands of Rohingyas and others caught in the conflict to flee into Bangladesh. Over 740,000 Rohingya were forced to seek refuge in Myanmar, with the total number of Rohingya refugees in Bangladesh rising to about a million. An independent fact-finding mission established by the Human Rights Council determined that these acts amounted to human rights violation, crimes against humanity, war crimes and genocide.


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224 As of March 2019, over 909,000 stateless Rohingya refugees reside in Ukhiya and Teknaf Upazilas (UNOCHA, ‘Rohingya Refugee Crisis’). See also e.g. UNHRC, Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2; Al, ‘We will destroy everything:’


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Human rights NGOs and the fact-finding mission have in addition reported large scale human rights violations, crimes against humanity and war crimes in Myanmar’s Kachin and Shan states.227

There were efforts within the international community generally and by international human rights bodies in particular to investigate and ensure justice and accountability for these violations and crimes. The HRC established its independent fact-finding mission in its resolution 34/22, adopted on 24 March 2017. The UN Committee on the Elimination of Discrimination against Women (CEDAW) requested Myanmar to submit a special report on the situation of women and girls from the Rakhine state by May 2018. In its report, Myanmar denied any wrongdoing. However, in its concluding observations, the CEDAW Committee found among other things, that “sexual violence against women and girls included rape, gang rape, sexual slavery, forced nudity, sexual humiliation, mutilation and sexual assault and in some cases the subsequent killing of victims.”228 The Committee made a string of recommendations concerning legislation, policy and practice to end atrocities, ensure justice and reparation to victims, ensure the safe, voluntary and dignified return and resettlement of refugees and more. Recently, a resolution on the situation of human rights in Myanmar was adopted at the 40th Regular Session of the UN Human Rights Council, which recalled the UN Security Council’s authority to refer the situation in Myanmar to the ICC, and reiterated the “urgent needs to ensure that all those responsible for crimes under international law, (...) in particular in Rakhine, Kachin and Shan States, are held to account through credible and independent national or international criminal justice mechanisms.”229

Further, it is important to note that the Philippines is the only AMS that voted against a resolution of the UNHRC condemning the continuing human rights abuses in Myanmar, while 37 out of 47 member-nations of the UNHRC voted in favor of the resolution. This followed what had become a pattern: it also voted against a related resolution on the situation of Rohingya in Myanmar at the 39th UNHRC session in September 2018. In 2017, the Philippines voted against a UN resolution which called on Myanmar authorities to end its military campaign against Rohingya Muslims.230

2.2.2.3. The absence of ASEAN’s Response to Sombath’s enforced disappearance and the atrocities in Myanmar

2.2.2.3.1. What has been done

ASEAN established the ASEAN Coordinating Centre for Humanitarian Assistance (AHA Centre) in 2011, with a primary mandate of facilitating cooperation and coordination in disaster

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227 See e.g. AI, Myanmar: “All the Civilians Suffer”: Conflict, displacement, and abuse In Northern Myanmar (Index: ASA 16/6429/2017), 2017; UNHRC, IIFFM Report.
228 See Committee on the Elimination of Discrimination against Women, Concluding observations on the exceptional report of Myanmar, UN Doc. CEDAW/C/MMR/EP/CO/1, 8 March 2019, para. 5.
management among the member states. In 2017, ASEAN authorized the AHA Centre to explore ways to cooperate in bringing about the repatriation of Rohingya from Bangladesh. H.E. Dinna Wisnu expressed the view that while this is a precedent, being the first time that ASEAN leaders have given an ASEAN body additional powers, the human rights aspects of the situation in Myanmar was avoided altogether, with the AHA Centre focusing only on the humanitarian dimension. This point was also made by the Representatives of AICHR H.E. Associate Professor Dinna Wisnu and H.E. Mr. Edmund Bon Tai Soon, who highlighted the need for the Centre to take into account the human rights perspective to effectively respond to the crisis. In this context, the Representatives made the following address: “A transparent, comprehensive, on-the-ground, needs and rights-based assessment and risk analysis must now be undertaken to not only provide aid that is comprehensive, but also to ensure effective protection for the affected communities and to provide long-lasting solutions. This would require Myanmar to open up and share information in ASEAN Meetings. Member States through relevant Sectoral Bodies will then be able to propose assistance whether through technical expertise or financial and resource aid. We must be serious if we are to end the crisis, and the problems faced by the affected peoples. To achieve this goal, Myanmar could invite the Representatives of AICHR for a visit to Rakhine. The visit would allow us to obtain a fuller picture of the current situation, and to find better ways in reaching a lasting solution.”

It should be emphasised that the joint statement, issued eight months after the atrocities began, failed to mention the Rohingya by name even once, thus capitulating to Myanmar’s official position that the Rohingya do not exist as a distinct community. Nor did the statement mention, even once, human rights violations of any kind, or even the term “human rights violations”, let alone crimes under international law or the need for investigations or accountability. The fact that even with its tardiness and glaring omissions, this joint statement is considered the most radical effort by AICHR representatives in the last decade towards protecting human rights, attests to the sorry state of this body.

In December 2018, the ASEAN Secretary-General met high-ranking officials of key Myanmar and Rakhine State ministries to discuss plans for displaced people in the state. The plans included undertaking an assessment to identify possible areas for cooperation to facilitate the repatriation process. Terms of Reference for such process were discussed along with capacity building programs and resources, as well as the establishment of a coordination mechanism. It was later agreed that the needs assessment mission would be led by ASEAN with a specific mandate for the AHA Centre to utilize the ASEAN Emergency Response and Assessment Team

233 Ibid.
234 Human Rights in ASEAN, ‘Joint Media Statement by H.E. Associate Prof. Dinna Wisnu and H.E. Mr. Edmund Bon Tain Soon.’
235 Online consultation of FORUM-ASIA and SAPA.
members, both at regional and national levels.\textsuperscript{236} No mention was made of any role for the AICHR in these efforts. As noted, all efforts to repatriate the Rohingya have so far failed, mainly due to the Myanmar government failure to create the conditions for safe, dignified and voluntary return.

When questioned on the ways forward, H.E. Yuyun Wahyuningrum stated that she is planning to propose that the AICHR to invite the AHA Centre, with a view to obtaining updates on the progress of needs assessments while providing the Centre with insights on linking humanitarian actions with human rights, so as to ensure that the human rights dimension of the crisis is being equally addressed, and that repatriation takes place in a dignified, voluntary and safe manner.\textsuperscript{237}

\textbf{2.2.2.3.2. Inaction on Sombath}

A number of stakeholders, including CSOs actors, emphasised that despite the horrendous human rights situations in the region, not a single protective action from AICHR has ever been initiated.\textsuperscript{238} On Sombath, it is noted that the AICHR only discussed the matter during the informal retreat. H.E. Rafendi Djamin mentioned that during the discussion, the Lao PDR representative stated that disappearances have occurred in many parts of the world, and questioned the fact, as he saw it, that Lao PDR is being singled out for criticism. He also stated that Lao PDR had completed its investigation and confirmed that the Laos government was not involved. He refused to have the matter discussed officially, let alone addressed, by the AICHR, and based on the consensus principle, that was the end of AICHR’s “involvement” in the case.\textsuperscript{239}

\textbf{2.2.2.3.3. What could have been done}

The 2017 FORUM-ASIA and SAPA Report outlined a number of ways in which the AICHR could have responded to the Rakhine state crisis—all of which are within the AICHR’s mandate under its ToR:\textsuperscript{240}

1. Issued an immediate statement expressing concern about the situation and calling for human rights violations to end and for an independent inquiry (Article 4(3) of the ToR);
2. Urgently requested information from the Government of Myanmar on the human rights crisis and how the member state is addressing it (Article 4(10) of the ToR);
3. Carried out its own investigations into the Rakhine state human rights crisis, as part of a thematic study (Article 4(12) of the ToR);\textsuperscript{241}


\textsuperscript{237} Interview, H.E. Yuyun.

\textsuperscript{238} Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire.

\textsuperscript{239} Interview, H.E. Rafendi.

\textsuperscript{240} FORUM-ASIA and SAPA, Reasonable Doubt, The Journey Within, 13.

\textsuperscript{241} It is to be underlined that this recommendation is put forward to the AICHR, and not identical to the Independent Commission of Enquiry formed by Myanmar which was chaired by former Philippines Foreign Affairs Undersecretary and Representative of the Philippines to the AICHR 2009-2015, H.E. Amb. Rosario Manalo.
4. Urged AMSs to send an investigation team to Myanmar to investigate any human rights violations in the Rakhine state to provide clarity and to plan for further interventions to safeguard the rights of the victims and survivors (Article 4(12) of the ToR);
5. Consulted with the UN human rights bodies as to the best way to respond to the crisis (Article 4(9) of the ToR);
6. Developed strategies to protect vulnerable communities (Article 4(1) of the ToR).

2.2.3. Engagement with CSOs

2.2.3.1. Guidelines on the AICHR’s Relations with CSOs

Pursuant to the AICHR’s Five-Year Work Plan 2010-2015, the AICHR adopted guidelines on its relations with CSOs on 11 February 2015. The Guidelines are designed to enable the AICHR to engage and interact with CSOs “to further enhance cooperation in the promotion and protection of human rights and fundamental freedoms in ASEAN.”

The Guidelines provide a framework for AICHR’s relationship with CSOs. As outlined in Part VI of the Guidelines, the CSOs or institutions with consultative status (1) will be informed on the agenda of consultations; and (2) may submit statements relevant to the work of the AICHR. In addition, Article 18 provides for seven modalities through which the AICHR may seek to consult with CSOs: consultation; seminars; workshops; regular reporting/briefing; implementation of specific studies; as project implementer; and through other formats determined by the AICHR.

The Guidelines provide a screening process to determine CSOs’ or institutions’ eligibility for consultative status as well as to consider suspension or revocation of their consultative relationship. FORUM-ASIA and SAPA viewed that the Guidelines attempt to dictate to CSOs the positions they may or may not hold. Thus Article 8(a) provides that to have a consultative status with the AICHR, CSOs must “Abide by and respect the principles and purposes of the ASEAN Charter, ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD and the Terms of Reference of the AICHR.” As noted, many CSO have strongly criticised the “principles” within most if not all of these documents.

Indeed, some organizations have been rejected for being too critical of ASEAN. For instance, in February 2016, the ICJ received a notice that its application was rejected. In March 2016, the ICJ submitted a request for reconsideration addressing the concern over eligibility process. In June 2016, the ICJ received a reply stating that the AICHR does not provide an appeal procedure.

243 ibid.
244 ibid.
245 Online consultation of FORUM-ASIA and SAPA.
clarified in its following response that it was not seeking an appeal, but rather calling the AICHR to create a fairer and more effective eligibility process by notifying them of the reasons for rejection and granting CSOs the opportunity to respond to any objections made against them, as the UN Economic and Social Council (ECOSOC), Organization of American States, and the Council of Europe all allow.\footnote{ICJ, ‘ICJ Urges AICHR to Adopt Transparent Accreditation Procedure’ (6 June 2016), https://www.icj.org/icj-urges-aichr-to-adopt-transparent-accreditation-procedure/, accessed 13 April 2019.}

While the AICHR’s Guidelines was to an extent based on the ECOSOC’s arrangements for consultative status, the scope of engagement and eligibility under the two guidelines vary widely. AICHR’s Guidelines limit CSOs’ access to the AICHR only, while AICHR Consultative status in the UN human rights framework confers access to a range of ECOSOC subsidiary bodies as well, including special events organized by the UN itself.\footnote{NGO Branch, ‘Basic Facts about ECOSOC Status’, https://csonet.org/?menu=100, accessed 24 March 2019.} Eligibility criteria for CSOs are also more complex under the AICHR’s Guidelines. The consultative relationship between the UN and NGOs is regulated under ECOSOC Resolution 1996/31 adopted in July 1996. Based on the resolution, in rendering recommendations, ECOSOC is bound to ensure the participation of NGOs from all regions, and particularly from developing countries. This implies that consultative relationship in the UN human rights framework aims to include as broad a range of NGOs as possible. The resolution provides a set of criteria for eligible NGOs: an organization 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 appropriate mechanisms of accountability to its members.\footnote{ECOSOC, (25 July 1996) UN Doc Resolution 1996/31 para 9-13.}

However, additional criteria are required by the AICHR: 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 organization proposes to contribute to the AICHR’s work.\footnote{AICHR, ‘Guideline on the AICHR’s Relations with CSOs.} Some respondents and interviewees expressed the view that these requirements are onerous and intrusive, and deter from applying smaller and poorer CSOs, as well as groups who hold dissenting positions and question national governments.\footnote{Online consultation of FORUM-ASIA and SAPA.}

As highlighted in the 2017 Report of FORUM-Asia and SAPA Report, the views of interviewees are significantly varied when it comes to the the usefulness of holding consultative status with the AICHR. While some interviewees applauded the AICHR’s effort to provide a formal mechanism for CSO engagement, some CSOs consider that the limited consultative relationship mechanism implies that they are not considered meaningful partners, and led to increased caution by CSOs over their interaction with the AICHR, especially on sensitive human rights issues. This is a
direct contrast with counterpart relationships within the UN mechanisms, such as during the UPR process, in which CSOs are given a defined role and opportunity to bring up even the most sensitive human rights issues.252

2.2.3.2. CSOs with Consultative Status

As of 30 April 2018, thirty CSOs have been granted consultative relationship with AICHR. The areas of work covered by CSOs include the rights of children, the rights of women, the rights of persons with disabilities, indigenous people, migrant workers, labour rights, right to development, and right to peace, as well as CSOs with more general mandates.253

2.2.3.3. CSOs Engagement with the AICHR

Since 2009, engagement with CSOs has been limited to receiving input, dialogues, and forums on different occasions. As affirmed by the AICHR Five Year Work Plan 2016-2020, cooperation with CSO focuses on building dialogue and sharing practices on implementing of human rights.254

The AICHR conducted two regional consultations with CSOs on the AHRD on 22 June 2012, in Kuala Lumpur, Malaysia and on 12 September 2012, in Manila, Philippines. Throughout the consultations, 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. The AICHR also held two consultation meetings with a range of stakeholders on the review of its TOR, as will be elaborated in the next section.255

The AICHR has met with a number of CSOs from July 2016 until June 2017, including the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, the Working Group for and ASEAN Human Rights Mechanism, the Human Rights Resource Center, the Due Diligence Project, and the ASEAN Corporate Social Responsibility (CSR) Network. Some of these CSOs do not have consultative status, at least when some meetings took place, i.e. Roul Wallenberg Institute of Human Rights and Humanitarians Law.256 These meetings should serve to encourage more engagement between AICHR and CSOs (with and without consultative status). Furthermore, AICHR should meet with CSOs that are work on more politically sensitive issues such as sexual orientation and gender identities, human rights, and environmental justice, among others. In November 2017, an interface meeting between the AICHR and CSOs was held in Bohol, as part

252 FORUM-ASIA and SAPA, Reasonable Doubt, The Journey Within, 18.
255 See e.g.: AICHR, AICHR Annual Report 2016-2018; AICHR, AICHR Five-Year Work Plans.
256 ibid.
of the ASEAN Round Table Dialogue on the AHRD. During the meeting, the CSOs highlighted the need for effective engagement with AICHR’s work on human rights. At the Roundtable Dialogue, CSOs put forward the following proposals for the AICHR could consider as steps to enhance cooperation with the AICHR: (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.  

Despite being regarded as the first interface between AICHR rep and CSOs with consultative status, the meeting was deemed as a mere tokenism with no substantial output. Conducted with the AICHR Meeting on Discussion of AHRD, the results of the discussion were not disclosed to the CSOs participants. The meeting had no specific agenda, which violated one of the provisions in CSO-AICHR engagement guideline requiring all related information and agendas to be distributed before the meeting by AICHR and ASEAN Secretariat. An already complex situation was exacerbated with an atmosphere of distrust and tension during the meeting.  

Lastly, it remains unclear whether, and unlikely that, the recommendations were discussed internally and subsequently followed up.

In October 2018, and AICHR-CSO Symposium was held in Chiang Rai, Thailand. The symposium aimed at furthering communications and coordination between AICHR and other relevant bodies, including CSOs. The host of the symposium, H.E. Dr. Seree Nonthasoot was at the time Thailand’s Representative to the AICHR. He stated that the gathering marked a significant progress of AICHR’s relations with CSOs, recalling that it had taken three to four years to secure such level of engagement with CSOs. CSOs made a joint statement for the AICHR Symposium, which highlighted two key conditions for an effective consultative relationship: to continue convening interface meetings among CSOs, AICHR, and other relevant sectoral bodies of ASEAN; and to recall the commitment to “galvanize joint activities between CSOs and AICHR.”

CSOs also raised the need for AICHR to urgently response for the Rohingya crisis, to protect human rights defenders, and to address closing civic space in the region.


CSOs have been invited in a number of the AICHR’s activities, such as the AICHR Interregional Dialogue on Sharing Good Practices of Business and Human Rights (BHR), held in Bangkok, Thailand, in June 2018. CSOs focused on the need to establish a regional action plan on BHR given that Member States were so far planning a variety of contrasting approaches. CSOs also addressed the need for continuity of dialogue and transparent follow-up to such forums in AICHR’s future work. Ms. Debbie Stothard mentioned a number of concerns with the dialogue, including the limited speaking roles of CSOs and women as well as the inconsistent representation from CSOs. More worryingly, she also reported that input from CSOs or efforts to follow up the process were either accommodated poorly or distorted, when such input did not align with the co-organisers’ views. Accordingly, CSOs submitted a Memorandum demanding a Code of Conduct to ensure that activities are undertaken in the spirit of mutual respect, as well as calling for clear commitments with regards to business and human rights rather than limiting it to Corporate Social Responsibility (CSR).

On general notes regarding AICHR’s engagements with CSOs, Ms. Debbie Stothard, Ms. Braema Mathi and a number of respondents to FORUM-ASIA and SAPA annual reports expressed a collective view that the AICHR needs to consider its engagement with the CSOs as an added value which can help ensure the sustainability and institutional strengthening of the body. Despite initiative taken by some AICHR Representatives to organise national meetings with the CSOs, the participants of such meetings were limited, and it remains unclear if the outcomes of the meetings were systematically followed up. One interview of the 2017 Report also mentioned that “even when CSOs were invited to various meetings by the AICHR Representatives, severe limitations were imposed on their participatory role.”

CSOs should further be able to take part, or at least input into, the development of the AICHR’s work plan and activities. According to the interview records of the 2017 Report, “although the work plan was circulated in regional and/or national workshops, CSOs did not have any opportunity to provide input, analyse, or strengthen it in view of their familiarity with the human rights situation on the ground. In the instance that CSOs were invited to propose projects and activities to the AICHR work plan at the national level, the timeframe between the announcement of calls for proposal and the deadline of submission was quite limited (e.g., around five working days).”

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261 See e.g.: AICHR, AICHR Annual Report 2016-2018; AICHR, AICHR Five-Year Work Plans.
263 Phone interview, Ms. Debbie.
264 Phone interview, Ms. Debbie; Phone Interview, Ms. Braema; FORUM-ASIA and SAPA, Reasonable Doubt, The Journey Within, 18.
265 FORUM-ASIA and SAPA, Reasonable Doubt, The Journey Within, ibid.
266 ibid.
2.2.4. Alignment and Collaboration among ASEAN System and Entities

2.2.4.1 Alignment among ASEAN Sectoral Bodies dealing with Human Rights

Alignment and coordination among mechanisms and institutions contributes to greater efficiency, and H.E. Rafendi Djamin highlighted a number of efforts within the AICHR to institutionalize alignment and complementarity among ASEAN human rights mechanisms. He mentioned that efforts 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.267

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.268 The Guidelines have yet to be operationalized, pending decision from the bodies and mechanisms involved.269

Moving forwards, H.E. Rafendi Djamin stated that the AICHR could enhance alignment by developing ASEAN common policies on human rights, involving relevant sectors in ASEAN. He emphasized that the process would need to be taken up at the Secretariat level, with the Secretary-General ensuring secretarial support to the development and implementation of these common policies.270

In the context of the rights of persons with disabilities, H.E. Dr. Seree Nonthasoot has shown leadership providing an example on how the AICHR can work in alignment across the ASEAN community pillars with close consultations with relevant sectoral bodies and stakeholders in to develop the ASEAN Enabling Masterplan 2025, by (i) involving the relevant ASEAN bodies, namely ACWC and SOMSWD in the Task Force on the Mainstreaming of the Rights of Persons with Disabilities in the ASEAN Community; (ii) consulting wider stakeholders, including CSOs through various avenues, including through series of Regional Dialogues on Mainstreaming the Rights of Persons with Disabilities in the ASEAN Community; and (iii) developing actions plans for the three community pillars of ASEAN to ensure the mainstreaming of the rights of

267 Interview, H.E. Rafendi Djamin.
268 Interview, H.E. Rafendi Djamin.
269 Interview, H.E. Edmund Bon.
270 Interview, H.E. Rafendi Djamin.
persons with disabilities.271 Meanwhile, H.E. Dinna Wisnu has made attempts to engage the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and the Promotion of the Rights of Migrant Workers (ACMW) to mainstream human rights in the implementation of ASEAN Consensus on Migrant Workers. However, it is learned that there has been not much responses from ACMW on the attempts.272

The AICHR has also emphasised the need to mainstream a human rights-based approach to combat Trafficking in Persons (TIP). As noted above, the AICHR has actively engaged with SOMTC on a number of aspects, among them: (1) mainstreaming the ACTIP and APA in the implementation of existing instruments related to human rights; (2) cross-sectoral consultation on the human rights-based instruments related to the implementation of the ACTIP and APA; and (3) strengthening national plans of action on trafficking in persons to ensure effective implementation of the ACTIP and APA.273

Despite those efforts, according to H.E. Edmund Bon Tai Soon, the alignment process still appears to be problematic and has not been institutionalized adequately. "Confidence building is needed given that the ASEAN Sectoral Bodies are composed of government officials," he said. "Despite the continued attempts by several AICHR Representatives, the AICHR still needs to undertake a holistic strategy to ensure human rights-based approach to the implementation of ACTIP and APA as well as the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers."274

2.2.4.2. Enhancing ASEAN Leadership and Collaboration with relevant Institutions

Some stakeholders emphasised the important role of the Senior Official Meeting (SOM) and the ASEAN Foreign Ministers’ Meeting (AMM) in driving regional human rights efforts forward – or ensuring that the current stalemate prevails. Prof Vitit Muntarbhorn explained that human rights progress often relies on institutions that do not include human rights in titles, yet possess important authority in human rights decision making, such as the UN Security Council at the global level, or the ASEAN Summit and AMM at the ASEAN level.275 H.E. Edmund Bon Tai Soon said that his good relations with SOM has assisted him in voicing his positions and concerns relating to the AICHR at the SOM level. He further stated that thanks to such good relationships, he was tasked by Malaysian Ministry of Foreign Affairs with a number of important and influential responsibilities such as drafting speeches and statements for the Foreign Minister on human rights issues facing the region.276

271 Interview, H.E. Dr. Seree Nonthasot.
272 Interview, H.E. Edmund Bon.
273 See e.g.: AICHR, AICHR Annual Report 2016-2018; AICHR, AICHR Five-Year Work Plans.
274 Interview, H.E. Edmund.
275 Consultation, Prof Vitit.
276 Interview, H.E. Dr. Seree; See also Seree Nonthasoot, ‘ASEAN Enabling Masterplan 2025
Over the past ten years, FORUM-ASIA and SAPA have not been able to find any record of the AICHR officially engaging or consulting with parliamentarians in the region. This is disappointing, given their important functions in law-making, budgeting and oversight, which at least in some AMSs place them in a position to influence human rights policies. In the context of regionalism in ASEAN, parliamentarians could help expedite the ratifications of international human rights treaties and promote a regional human rights agenda through engaging their colleagues, constituencies, political parties, the media and the public as a whole.

Collaboration with the ASEAN Institution for Peace and Reconciliation (AIPR) is highly desirable, not least in the context of racism, hate speech and religious extremism. Likewise, as presented above, the AICHR needs to engage the AHA Centre to ensure that the human rights issues are equally attended when addressing humanitarian crises in the region.

2.2.5. The Review of the AICHR’s ToR

Pursuant to the Cha-am Hua Hin Declaration on the AICHR 2009, and article 9(6) of the AICHR ToR, the AMM is mandated to undertake a review of the AICHR ToR five years after its entry into force, with a view to strengthening the mandate and functions of the AICHR in order to further enhance the promotion and protection and promotion of human rights within ASEAN.²⁷⁷

The review has not been published to this day.

Under Article 9(7) of its ToR, the AICHR is mandated “to assess its work and submit its recommendations for the consideration of the AMM 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 the ToR”.

In 2014, AICHR for fulfilled its mandate under article 9(7) to some extent by undertaking an assessment of its own record through stock-taking and analyzing its programs and activities during the first five years of its establishment. This review was criticised by, for instance, Southeast Asia Women’s Caucus who highlighted issues such as 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. It is nevertheless encouraging that the AICHR organised two consultation meetings on the review of its ToR. The first consultation was held on 28-29 April 2014 in Jakarta, with the first day focusing on consultation with the ASEAN Sectoral Bodies, and the second, with CSOs and other stakeholders.²⁷⁸ The subsequent consultation was convened on 27-28 June 2014 in Bangkok, Thailand, and was attended by approximately 115 participants, ranging from government officials of AMSs, ASEAN Sectoral

²⁷⁷ The ToR of the AICHR, art. 9(6).
Bodies, representatives from UN regional offices in Bangkok, representatives of national human rights institutions, representatives of national and regional CSOs, and academics.279

The 2014 FORUM-ASIA and SAPA Report revealed an extensive number of recommendations for the review of the AICHR ToR, put forward by stakeholders, notably CSOs, during the two consultation meetings. The recommendations revolved mostly around (1) AICHR institutional building and (2) AICHR’s mandates and functions. On institution building, the ICJ reiterated the need to set tighter criteria on the selection of AICHR Representatives, and a transparent, consultative and participatory process in the nomination and appointment of AICHR Representatives. CSOs also widely criticized the principles of non-interference and consensus in decision making of ASEAN, pointing to the former as “a political shield to avoid accountability for human rights violations and failure to fulfill human rights obligations”. Other critics pointed to issues with the ASEAN Secretariat’s capacity, limited accessibility to AICHR’s information and documents, and lack of meaningful and regular engagement with various institutions and stakeholders, notably the CSOs, relevant ASEAN Sectoral Bodies and NHRIs.

On mandates and functions, most CSOs participating in the consultation meetings strongly called for the expansion and strengthening of AICHR protection mandate and functions. Recommendations were made for the TOR to be amended to include more explicit protection functions to empower the AICHR, among them:

1. To carry out a review of human rights records of AMS;
2. To conduct country/on-site visits;
3. To receive, investigate and address complaints on human rights issues and violations;
4. To appoint independent experts to handle specific human rights issues similar to the Special Procedures mechanism of the UN Human Rights Council;
5. To develop an early warning system to prevent gross violations of human rights;
6. To develop measures to protect individuals and groups from reprisals by Member States;
7. To make recommendations to the Member State concerned, including recommendations of appropriate remedies where it finds that violations of human rights have been committed; and
8. To request Member States to adopt specific precautionary measures to prevent irreparable harm to persons in serious and urgent cases.280

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:

1. 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;

280 FORUM-ASIA and SAPA, 2014 Report; The Future of Human Rights in ASEAN.
2. The AICHR may be invited by any ASEAN Member State on voluntary basis, to engage in dialogue on national implementation of human rights commitments;

3. 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;

4. 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;

5. An annual consultation between the AICHR and civil society shall be held on promotion and protection of human rights in ASEAN and implementation of the AHRD;

6. The AICHR to publish their Annual Report on its website;

7. Seek establishment of a dedicated unit within the ASEAN Secretariat to support the work of the AICHR;

8. Establish national secretariat/unit/ office to assist the AICHR Representative for its national work;

9. Stagger term of the office of the AICHR Representatives in order to maintain the institutional memory of the AICHR; and

10. Recommending 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.281

While the initiative itself is to be commended, these recommendations are extremely weak and limited. They fail to call for clear, specific, enhanced protection functions, and avoid tackling the AICHR’s institutional weaknesses, such as lack of independence and expertise, and the veto powers given to AMS through the provision for decision-making by consensus.

Since AICHR’s submission of its Assessment and Recommendations, no further information has been forthcoming on any development or decision by the ASEAN Foreign Ministers pertaining to the process. The last response, made in 2016 by the Foreign Ministers, was that they “took note of the recommendation for the AMM to consider, when as appropriate, the review of the ToR of the AICHR as provided for in the ToR, consistent with purposes and principles of the ASEAN Charter, with a view to further enhancing the promotion and protection of human rights within ASEAN”.282 It should be noted though that the ToR explicitly provides that “This ToR shall be initially reviewed five years after its entry into force,” rather than conferring any discretion upon the AMM to review it whenever they deem it appropriate. In postponing the review indefinitely, the AMM are in fact breaching the ToR.


The ToR has not been reviewed, let alone revised, to this day. The ASEAN 2025: Forging Ahead Together adopted by the ASEAN Summit in 2015, mentioned the AICHR ToR review as among key elements of the ASEAN Political Security Blueprint: “Consider, as appropriate, the review of the ToR of AICHR as provided in the ToR, consistent with the purposes of the ASEAN Charter, with a view to further enhancing the promotion and protection of human rights within ASEAN” (section A.2.5-xii). Other proposals submitted by the AICHR regarding its ToR are also found in the new blueprint. However, so far this has not led to any actual developments.

H.E. Rafendi Djamin argued that the AICHR fulfilled its responsibilities regarding the review of the ToR by stock-taking and analyzing its programmes and activities. He stated that “the onus lies with the AMM to determine the modality of the review and to decide whether or not to review the ToR.”283 In the meantime, Amnesty International has stated that the AICHR needs to submit another recommendation to the AMM based on its own assessments on the extent to which its mandate has helped or hindered them in the protection of human rights in the region.284 H.E. Yuyun Wahyuniningrum emphasized that the AICHR needs to submit specific recommendations to the ASEAN Foreign Ministers, as opposed to a general assessment, by directly identifying the provisions that need to be amended for the consideration of the AMM.285

The review of the AICHR ToR was a golden opportunity for the AICHR and the AMM to tackle the areas of the ToR that have hindered the performance of the AICHR and its inability to bring impact towards human rights protection in the region, notably its lack of impartiality, selected and twisted invocation of ASEAN’s non-interference principle, strict adherence to consensus decision making principle as well as inadequate protection mandates.286 Since the review has not been completed, there is still an opportunity to revive it and turn the AICHR into a real human rights body.

2.2.6. Assessment of the Activities of the AICHR

This section critically examines activities of the AICHR, which are categorized under thematic studies, capacity building, human rights awareness for youth and human rights mainstreaming.

2.2.6.1. Thematic Studies

Under the AICHR Work Plan of 2012-2015, the AICHR planned to carry out eleven thematic studies: corporate social responsibility and human rights; migration; trafficking in persons; child soldiers; women and children in conflicts and natural disasters; juvenile justice; right to

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283 Interview, H.E. Rafendi.
284 Phone interview, Dr. Yuval.
285 Interview, H.E. Yuyun.
286 Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire.
information in criminal justice; right to health; right to education; right to life; and right to peace. Meanwhile, the AICHR Work Plan 2016-2020 added two further thematic studies: legal aid, and freedom of religion or belief.

So far, only three thematic studies of the eleven have been completed: (1) on corporate social responsibility and human rights; (2) on women affected by natural disasters; and (3) on legal aid. The thematic study on juvenile justice is expected to be completed and launched in 2019. Meanwhile, the remaining nine studies from the 2012-2015 Plan were included again in the AICHR Work Plan 2016-2020, meaning that some are still undergoing.

Thematic studies are designed to explore human rights issues in AMSs in order to gain a thorough understanding of them. As stated in 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 build AICHR’s visibility. Before completing a thematic study, regional consultations are usually convened to help refine the findings of the study and gather input from various stakeholders. One particular example is the Regional Consultation on the Thematic Study on Legal Aid, held on October 2017 in Bangkok, Thailand. The consultation enabled the Study’s researchers to obtain information from participants regarding legal aid services for specific groups as well as the status of implementation of legal aid for thematic areas, for instance cases concerning natural resources and criminal cases.

Other forms of data gathering include the convening of workshops. A recent example is the AICHR Workshop on the Thematic Studies on the Right to Peace, held in Vientiane, Lao, in December 2018.

There have been three drawbacks to the AICHR’s thematic studies. First, despite the fact that thematic study reports address human rights issues, the reports have not been used to advocate or to encourage governments to address the studied issues. In this regard, a mechanism has yet to be established to follow-up on reports and ensure they actually make a difference. Further, 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. In addition, the AICHR could have launched thematic studies on human rights crises, and conducted investigative visits to the sites of such crises as part of the data gathering the studies. This can still be done now and in the future.

290 See e.g. Human Rights Resource Centre Asia, ‘AICHR CSO Symposium 2018: Enhancing CSO Engagement with ASEAN Human Rights Bodies’.
The second drawback was described in the AICHR 2016 Annual Report – the difficulty in searching for suitable national focal points has been a delaying factor. The AICHR has also acknowledged the urgent need to design a standardized 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 third drawback is the replacement of AICHR Representatives. Each of the Representatives has their own priorities, such as economic rights, or trafficking in persons. As such, previous plans to conduct thematic studies are prone to be left unattended once representatives who supported them have left. In addition, the subjects of the thematic studies appear to be chosen from among the least politically sensitive areas, rather than targeting human rights issues relevant to ASEAN as highlighted in the previous sections. Thus, no studies have so far been launched into topics such as torture and other ill-treatment, extrajudicial killings, discrimination or serious crimes under international law.

H.E Edmund Bon Tai Soon mentioned that in 2017 AICHR adopted the Modality of Approving AICHR Thematic Studies. The modality provides the standard structure of thematic studies, and explains the key procedures in conducting studies. H.E. Dr. Seree Nonthasoot expressed the view that the current Modality has proven to be more effective than the previous modality for undertaking thematic studies. However, some CSOs and other respondents have argued that the expertise of national focal points has at times been questionable. In addition, the quality of the national reports seems to be lower than existing studies at national level.

2.2.6.2. Capacity Building

Capacity building has been one of the main thrusts of the AICHR activities. Training sessions and workshops have been conducted in different sectors of human rights, including combating human trafficking; rights of persons with disabilities; rights of the child; and business and human rights. Such activities are also designed to equip different stakeholders, from law enforcement officials to journalists, with the knowledge and skills necessary to practice or

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292 Interview, H.E. Edmund.
293 Phone interview, H.E. Dr. Seree.
294 Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire.
295 Regional Workshop on the Human Rights-based Approach to Combat Trafficking in Persons, Especially Women and Children held from 27 to 28 November 2013 in Makati City, Philippines.
296 AICHR Training Programme on the Rights of Persons with Disabilities held from 11 to 14 October 2016, in Bangkok, Thailand.
297 AICHR-ACWC Training Workshop on the UN Convention on the Rights of the Child (UNCRC), held from 13 to 14 July 2017, in Singapore.
298 AICHR Training Programme on Business and Human Rights held from 13 to 16 November 2017 in Bangkok, Thailand.
300 The AICHR Programme on Human Rights: Training of the Trainers for Journalists in ASEAN Member States held from 25 to 29 July 2015, in Bangkok, Thailand.
advance human rights. Capacity building activities have also been undertaken as a strategy to achieve consensus within the AICHR over difficult issues, such as torture.

AICHR’s training activities have often involved tapping the expertise of other organizations. An example of this is the Advanced Programme on Human Rights: Training of the Trainers, held in Bangkok in November 2013. This training was organized with partial support from the Thailand Institute of Justice. Participants included personnel from the national police, the Attorney-General’s Office, supreme courts, the prime minister’s office, and university educators.\(^{301}\) As such, capacity building does not only depend on the resources and skills of those conducting the program, but also allows participants to share and learn from one another. Since training activities enhance human rights awareness and hopefully lead to human rights-friendly practices, they are positive contributions by the AICHR.

At the 27\(^{\text{th}}\) Meeting of the AICHR, held in the ASEAN Secretariat in Jakarta in May 2018, the AICHR adopted a concept paper for a capacity building workshop on Article 14 of the AHRD on the right to be free from torture and other cruel, inhuman or degrading treatment or punishment. The capacity building workshop was then held in August 2018 in Semarang, Indonesia. Participants included law enforcers and officials from correction facilities. The two-day workshop may be considered as a milestone, as it marked the first time that the topic of torture made it into an official AICHR regional agenda.\(^{302}\)

2.2.6.3. Human Rights Awareness for Youth

One of the regular, and largely positive, activities of the AICHR is the AICHR Youth Debates. The purpose of these debates is to raise awareness among youth of human rights. The events also give the participants a chance to understand the unique cultures and diversity within ASEAN through peer-to-peer interactions. Youth debaters also participate in moot competitions where they argue on fictional human rights case studies. In total there have been five youth debates, the first being held in 2013,\(^{303}\) before it was held annually from 2015\(^{304}\) – the most recent was held in 2018.

The AICHR Youth Debate on Human Rights 2018, held between 8-10 September 2018 in Phnom Penh, Cambodia, aimed to raise awareness among young people of the AICHR and human rights. It saw the participation of 30 undergraduate students, ASEAN Sectoral Bodies and Organs, and UN agencies.\(^{305}\)


\(305\) Ibid.
The debates have been designed to sensitize 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. According to testimonies, youth debates have indirectly encourage interaction and friendship among youths from diverse background and affiliation in all 10 AMSs, and allowed the AICHR regular engagement with young generation. They also increase human rights awareness among the ASEAN youth – at least, those who participate – given that the agenda of the Youth Debate includes workshops on the related topics.

While the youth debates have been an important feature of the AICHR’s human rights promotion and awareness raising activities, the participants from urban areas disproportionately outnumbered those from rural areas. Dissemination of information about the youth debate needs to be wider to ensure a more diverse pool of participants.

2.2.6.4. Human Rights Mainstreaming

AICHR has undertaken a number of activities with a view to mainstreaming human rights in various sectors of ASEAN, such as 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 10-12 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.

AICHR has also undertaken a number of activities to mainstream human rights in the implementation of ACTIP and APA. These included the 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 29–30 August 2017. The Workshop recommended the establishment of regional referral system in the TIP case, appointed a national focal point (NFP) who is mandated to refer TIP cases to relevant agencies in each ASEAN country, and a standardization in monitoring evaluation. The participants also recommended various measures in dealing with victims of TIP based on human rights approach.

306 ibid
308 See e.g. AICHR, ‘AICHR Youth Debate on Human Rights 2018’.
The AICHR has also undertaken a programmatic approach to mainstreaming human rights in the environment and climate change sectors through organising three workshops, one of which, 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 workshop provided a platform for sharing national and regional policies and good practices concerning EIA and discussing the challenges in their implementation. It underlined the importance of public participation, as well as the right to information and access to justice through the EIA process as an effective tool in promoting and safeguarding the environment and human rights.  

In addition, 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, and the second focused on the rights of accused persons in criminal cases.

2.2.6.5. Reflections on AICHR’s Activities

From 2010-2018, the AICHR spent over six million USD conducting 121 activities. But there is no impact analysis of AICHR activities, and in general the CSOs perceive a failure in these activities to protect human rights in ASEAN.

Some respondents, particularly CSOs, pointed out that there has not been any access to the AICHR’s assessment of the implementation of outcomes and action points of its activities, due to the confidentiality of the AICHR. Some activity reports (although very few recommendations) have been made public on the AICHR’s website. Consequently, it is difficult for the public and stakeholders to measure the progress of AICHR’s activities and to participate in monitoring their implementation and follow up.

In addition, it remains to be seen, whether any of the substantive recommendations from the programmes have even been transmitted to the national level, let alone been implemented.

317 FORUM-ASIA and SAPA, Reasonable Doubt, The Journey Within, 16.
domestically. It is therefore unclear whether the AICHR is implementing an overall strategy, with clearly defined targets and milestones or just haphazardly conducting activities hoping they will have a cumulative effect.

H.E. Edmund Bon Tai Soon stated that it is unfortunate that the AICHR has not been able to effectively follow through the often clear and progressive recommendations made during its own activities. He mentioned that since its establishment, the AICHR has produced more than 33 reports containing a wealth of information and recommendations. For instance, an activity by the AICHR Philippines on the Protection Mechanism for Women and Girls’ Human Rights developed a number of pertinent recommendations, including the development of an “ASEAN Inter-Sectoral Bodies Technical Working Group on Women and Girls’ Human Rights”, which was agreed by the AICHR. However, this activity was not immediately followed up until Malaysia, Philippines and, later, Indonesia decided to do so a few years later.\(^1\)

These reflections should leave the AICHR contemplating whether funds amounting to six million USD that it has spent on activities since 2010 represent a positive impact to the people of ASEAN, especially vulnerable and marginalised groups whom it is supposed to protect.

\(^{1}\) Interview, H.E. Edmund; H.E. Edmund Bon Tai Soon, Presentation at the Workshop on Access to Justice; Lesson Learned and Pathways Forward.
A Decade in Review: Assessing the Performance of the AICHR to Uphold the Protection Mandates
Chapter III:

Strategies and Recommendations for Stronger Human Rights Protection in ASEAN
3.1. Enabling Factors

Amidst the slow progress of ASEAN human rights cooperation and the difficulties that the AICHR continues to face, there remain various enabling factors that can potentially allow the Commission to finally start implementing its protection mandate. Those enabling factors include:

First, creative usage of AICHR’s existing protection mandate. As noted, ‘protection’ is one of the AICHR’s key mandates as stipulated in its ToR. It contains several protection-related provisions that could, with some determination and creativity, be operationalised. Yet these have not been explored and implemented despite the efforts of progressive Representatives in the past decade who have pushed for the Commission to engage in protection work. That AICHR continues to fail to live up to its human rights protection function is a violation of its own ToR. Although the experiences of the past 10 years have not proved promising, the momentum of AICHR’s ten years anniversary should be leveraged as an opportunity for the AICHR and its Representatives to finally implement their protection mandates and practices.

Second, the meaningful engagement of CSOs. ASEAN has a strong, vibrant and dedicated civil society which is determined to engage with the Commission to ensure that the human rights of people in Southeast Asia are protected. But questions over AICHR’s independence and its silence on key human rights issues has led to growing scepticism of CSOs of ASEAN’s human rights mechanism. As highlighted, CSOs in the region have played prominent advocacy roles since the initial incorporation of human rights into the ASEAN charter and throughout the establishment of ASEAN Human Rights Mechanisms itself, and CSOs will continue to advocate for a stronger ASEAN human rights mechanism and a fully operational AICHR. CSOs have put the ASEAN establishment under sustained pressure to improve its human rights system, not least by pushing for the AICHR to be more independent, transparent, professional, active and engaged in protection work. This will be realised only if there is constructive engagement with CSOs, in which civil society is seen as equal partners providing check and balance mechanisms to the AICHR, and a safe and enabling environment to do so.

Third, the continuous existence of progressive Representatives. Few progressive AICHR Representatives have effectively leveraged their “regional hats”. The trust-building and collegial nature of some former and current Representatives has to some extent increased some AMS’ acceptance of human rights. The creative manoeuvring of some progressive former and current Representatives, notably from Indonesia, Malaysia, the Philippines and Thailand, has also gradually furthered cooperation on human rights among the 10 very different nations. These Representatives have sought to mainstream protection practices within the AICHR by conducting the so-called “mini Universal Periodic Review (UPR)”, which was done under H.E. Rafendi Djamin, H.E. Dr Seree Nonthasoot and H.E. Amb Rosario Manalo, when they initiated dialogues between

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319 Desi Hanara. ‘Seeking RI Figure for ASEAN Rights Body’.
their governments and AICHR Representatives in an attempt to develop a common approach and position and to obtain information from AMS. In this respect, H.E. Yuyun Wahyuningrum reported that the discussion with Indonesian government took place openly and touched upon serious issues of the countries. Some AICHR Representatives, such as H.E. Edmund Bon, proposed various formula for setting up complaints and correspondence procedures for the AICHR and have sought to enhance the AICHR’s standard setting functions in a number of human rights fields as reviewed above. Further, they have also successfully introduced sensitive topics of human rights, such as torture, into the regional agenda and enhanced AICHR’s relations with various actors. Finally, in 2018 Representatives from Indonesia and Malaysia issued a joint statement on the Rakhine Crisis after failing to reach a consensus within the AICHR to respond to egregious human rights violations against the Rohingya in Myanmar, although their statement failed to mention the human rights violation faced by Rohingya. It is hoped that the progressive AICHR Representatives will continue to break the silence by utilizing the coalition of willing, and persistently try to unlock the barriers that keep AICHR from engaging in human rights protection in the region.

3.2. Strategies and Recommendations

ASEAN needs a human rights mechanism that is independent, transparent, professional and is actively and efficiently working to protect human rights in every AMS and regionally, in line with international human rights law and standards. Our proposed strategies and recommendations target the two main groups of actors in the AICHR field – the AICHR representatives themselves, and the AMM, the body overseeing the AICHR and which is mandated to review and revise the AICHR's ToR.

Clearly, the responsibility for changes goes beyond these two bodies. We recommend that every AMS government study this report including the proposed strategies and recommendations and, guided by the real interest of their people, adopt and implement these recommendations. We similarly recommend that the ASEAN Secretariat, and in particular the ASEAN Secretary-General, H.E. Lim Jock Hoi, adopt the recommendations and work to ensure their implementation. ASEAN need not be the weakest link in the comprehensive and holistic human rights system – as a region that is rapidly gaining strength economically, scientifically and culturally, ASEAN can become a world leader in human rights too.

321 Ibid.
322 Interview, H.E. Edmund; Interview, H.E. Dr. Seree.
323 Human Rights in ASEAN, ‘Joint Media Statement’.
3.2.1. To the AICHR

3.2.1.1. Use the current ToR to Undertake Protection work

A number of experts, practitioners and CSOs identified the need for the AICHR to use all the mandates currently under its ToR in a holistic, progressive and creative manner so as to enable the realization of its protection work. This could be done by adopting and implementing the following measures:

1. Provide immediate response to human rights violations and crises by obtaining information from relevant AMSs, issuing urgent statements and consulting with UN human rights bodies.

   Article 4(10) of the AICHR ToR could serve as a justification for the AICHR to request for information from AMSs to address human rights emergencies and violations in the region. This could be done through dialogue with the government of member states in question, hearing, referrals, documentation of cases, issuance of statements and consultation with National Human Rights Institutions and UN human rights bodies.

2. Strategic use of the Thematic Studies

As has been identified by a number of CSOs, and as highlighted in Chapter II, the AICHR is expected to conduct investigative visits to the sites of human rights crisis as part of the data gathering of its thematic studies under article 4(12) of the AICHR ToR. Furthermore, the outcome of the thematic studies should be used to advocate or call on political leadership of AMSs to address issues revealed in the thematic studies through various measures, including legislation.

   Once completed, the thematic studies need to be followed up with annual reports tracking implementation of recommendations. Annual reports can serve as an online monitoring system, if AMS were to institutionalize it. Further, the chosen themes themselves need to better reflect human rights priorities on the ground and the urgency faced by people of Southeast Asia to address these, not chosen merely as a means to reach consensus among AMSs.

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324 Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire.
325 ibid.
327 Indonesia In-depth, ‘ASEAN Through the Lens of a Human Rights Activist Working Inside ASEAN’.
3. Enhance AMS’ commitments under the global human rights framework

The AICHR needs to take steps to enhance domestication and implementation of AMS’ human rights obligations under the international human rights frameworks. The AICHR needs to find common issues and undertake regional initiatives to address regionally relevant issues and recommendations. At the national level, AMSs need to provide participatory platforms to discuss the implementation of UPR recommendations, and develop concrete and time-bound action plans, in consultation with civil society, independent national human rights institutions, regional human rights mechanisms, and other stakeholders. Furthermore, the AICHR needs to take a lead in directly encouraging AMSs to ratify international human rights instruments and reconsider their reservations and declarations.

4. Develop more strategies for the protection of human rights in ASEAN

One of the mandates that has remained unfulfilled by the AICHR is article 4(1) of its ToR, which relates to protection strategies. Based on the current five-year work plans of the AICHR, it has not included specific action plans to remedy this. H.E. Dr Seree Nonthasoot highlighted that AMSs need to work to develop a common understanding on who should operate the protection function given the absence of collective agreement of AMSs on the AICHR’s protection capacity, which would require AMSs’ decisions on the circumstances in which protection can be rendered and the type of support that should be provided. This should at a minimum include provision of circumstances in which the ‘non-interference’ principle can be overruled in the name of human rights protection.

3.2.1.2. Pressure the AMM to revise the AICHR TOR

AICHR should press both the AMM and ASEAN more generally for a review of its ToR, as the AMM should have done in 2014, with a view to ensuring:

1. A more elaborate and detailed protection mandate, including explicit provisions for establishing a robust complaints mechanism and AICHR expert working group;
2. Professionalism and independence of Representatives, including through elaborate, democratic, inclusive and representative procedures for selecting AICHR representatives; and
3. A decision-making procedure that would rely on a majority where a consensus cannot be reached.

328 Interview, H.E. Dr. Seree.
3.2.1.3. Enhance standard setting functions by developing ASEAN Convention on Human Rights, ASEAN common policies on human rights, as well as human rights guidelines and principles

It is essential for ASEAN to develop a binding human rights instrument that is in line with the universally accepted standards, as it ensures consistent application of human rights standards and imposes obligations to its states parties to undertake legislative or other measures to protect rights and freedoms guaranteed under at the domestic, regional and/or international level.\textsuperscript{329} Regional instruments can be particularly effective in ensuring compliance with international human rights law as they can be tailored to specific issues, priorities and conditions of the region. A binding human rights instrument would also enable, for example, the incorporation of an enforcement mechanism in ASEAN, which it so far lacks.

As a start, the AICHR should lead on the development of ASEAN common policies, guidelines and principles on human rights, as some current and former Representatives have suggested.\textsuperscript{330}

3.2.1.4. Enhance Engagement with CSOs

A wide range of civil society groups participates fully in UN human rights forums and mechanisms. This participation is possible because the Human Rights Council recognises the essential role of CSOs in supporting the human rights movement at sub-regional, regional, and even international levels. This can be seen from Council statements that reaffirm “the right of everyone, individually and in association with others, to unhindered access to communication with sub-regional, regional, and international bodies.”\textsuperscript{331}

The ICJ believes that the AICHR can benefit significantly from the substantive contribution of CSOs in the framework of regional human rights protection.\textsuperscript{332} In order to attain the most benefit, the ICJ has suggested that paragraph 4(8) of the ToR should be amended to reflect the importance of CSOs and their roles in support of the AICHR in a way that enables the AICHR to engage in a wide network of CSOs.\textsuperscript{333} H.E. Dr. Seree Nonthasoot argued that the Guidelines should be amended to enable more open and meaningful engagements with CSOs.\textsuperscript{334} Furthermore, 16 CSOs submitted a communication to AICHR in 2018 to demand a more meaningful and participatory engagement between AICHR and CSOs, including by creating an enabling environment for dialogue that is inclusive and free from discrimination.\textsuperscript{335}

\textsuperscript{329} American Convention on Human Rights; Interviews with some AICHR Representatives, Experts and CSOs actors.
\textsuperscript{330} Interview, H.E. Yuyun; Phone Interview, H.E. Dr. Seree; Interview, H.E. Edmund.
\textsuperscript{331} See e.g. UNHRC (27 September 2013) Un Doc A/HRC/RES/24/21 para 6.
\textsuperscript{332} ICJ, ‘Memorandum on the ToR of the AICHR’, 18.
\textsuperscript{333} ibid 17.
\textsuperscript{334} Phone interview, H.E. Dr. Seree.
\textsuperscript{335} FORUM-ASIA, et al. Joint submission to the ASEAN Intergovernmental Commission on Human Rights: Civil Society Organisations request meaningful engagement.
Given the expectations of a number of interviewees and respondents, and in light of AICHR’s own aspirations to leverage its relations with CSOs by enhancing communication and involvement, there are some areas that should be improved. First, AICHR must respect and uphold the principle of inclusivity and non-discrimination on engaging with CSOs. There are instances in which Representative of AICHRs refused to engage with representatives from CSOs working on ‘sensitive’ issues and cases. Given the vagueness of this caveat, it has often been used to silence CSOs and hinder any discussion on human rights. In the future, if the AICHR aspires to be an independent body promoting and protecting human rights in Southeast Asia, it needs to accommodate and ensure meaningful participation of all CSOs, including those who work on all human rights, and actively include grassroots and marginalised communities.

Second, the AICHR must formalize a consultation mechanism between itself and CSOs by, for example, creating space for an annual consultation meeting. This should be a safe and enabling environment for civil society to engage in dialogue with AICHR, in accordance with sound procedures and good practices as identified in the international human rights standards, to strengthen overall engagement of CSOs with AICHR.

Third, the AICHR needs to use the significant expertise of CSOs and their first-hand experiences in human rights cases, which could be done through consultations on AICHR activity-planning to ensure that CSO voices have space and opportunity to feed in.

Forth, there needs to be transparency. Article 6(7) of the ToR requires the AICHR to keep the public periodically informed of its work and activities. However, the AICHR has not allowed public access to its documents and deliberations. The transparency issue is also confirmed by a number of interviewees and respondents, who question the rationale of the AICHR closed-door meetings when they should involve at least the CSOs with whom they share a consultative relationship. Fifth, the participation of CSOs in AICHR consultations meetings or activities needs to be funded. In many cases, CSOs lack resources and this provides a significant barrier to participation. Sixth, the AICHR needs to consider avenues for engagement with CSOs who do not have consultative relationships with the AICHR. Seventh, the AICHR needs to set up a mechanism to address reprisals against CSOs and human rights defenders.

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337 Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire.
339 Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire.
340 Phone Interview, Ms. Braema.
341 Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire.
CSOs themselves are encouraged to take stock of the substantive needs and limitations of the AICHR and other regional human rights mechanisms in general, to enhance their advocacy and diplomacy capacity, follow the ASEAN landscape and continue to equip themselves to serve as information sources on human rights in the region. CSOs also need to consolidate their advocacy so as to attain measurable progress of advocacy. This could be done by organizing pre-meeting prior to the interfaces with the AICHR so as to prioritize the issue and ensure coherent approaches.

3.2.1.5. Enhance engagements with stakeholders

The AICHR also needs to engage more extensively and adopt alignment strategies with human rights entities such as the UN human rights system, National Human Rights Institutions (NHRIs), parliamentarians, academics, AIPR, AHA Centre, affected communities, human rights defenders, and victims of human rights violations, particularly when planning its activities and implementation of its mandates.

3.2.1.6. Create M & E system

The AICHR should put a robust M & E system in place to measure the progress and implementation of its activities, either based on the AICHR’s own assessment or on feedback from relevant stakeholders. The indicators need to be clearly formulated to measure the performance of the AICHR not only through the completion of its activities, but also through their impact and outcome on the protection and promotion of human rights.

3.2.1.7. Ensure transparency

To ensure transparency, the AICHR needs to allow public access to summary records of its meetings, draft work plans, draft and final version of its budget, thematic studies, activity reports, requests that it received and interventions that they have made, and other documents relating to its activities and decision-making. In addition, the AICHR needs to make its meetings accessible to public observers unless there are legitimate reasons for closed meetings. As a regional human rights mechanism and a means of setting the standard in ASEAN, the AICHR needs to be at the forefront on respecting, protecting, and fulfilling the right of everyone, individually and in association with others, to unhindered access of information to and communication with regional and international human rights bodies, their representatives and mechanisms. This can be done only if the AICHR adopts full-fledged transparency policy and practices.

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342 Phone Interview, Ms. Braema.
343 Interview, H.E. Rafendi.
344 FORUM-ASIA and SAPA, Reasonable Doubt, The Journey Within.
3.2.2. To the AMM

3.2.2.1. Review and revise the AICHR ToR

The ASEAN Ministries of Foreign Affairs must abide by their obligations under Article 9(6) of the AICHR TOR and paragraph 7 of the Cha-Am Hua Hin Declaration on the AICHR and review the AICHR TOR, in consultation with the AICHR.

The TOR should be revised to ensure:

a. A more elaborate and detailed protection mandate, including explicit provisions for establishing a robust complaints mechanism and AICHR expert working group;

b. Professionalism and independence of Representatives, including through elaborate, democratic, inclusive, and transparent procedures for selecting AICHR Representatives; and

c. A decision-making procedure that would rely on a majority where consensus cannot be reached.

3.2.2.2. Establish an AICHR Expert Working Group

To enable the AICHR to fully implement its mandate under articles 4(1), 4(10) and 4(11) of its ToR, the AMM needs to establish an AICHR Expert Working Group that can assist in (1) developing strategies for the promotion and protection of human rights and fundamental freedoms; (2) obtaining information from member states relevant to its promotion and protection mandates; and (3) developing a common approach and position on human rights matters.

The AICHR Expert Working Group mechanism is suggested to replicate the mandates of the UN Special Procedures, with responsibilities to look into the human rights situation in particular country (a country situation mandate) or a particular human rights theme (a thematic concern mandate).345 The mechanism is also recommended to replicate the working methods of the UN Special Procedures who conduct country visits at the invitation of states, undertake thematic studies, conduct expert consultations, receive complaints from individual or human rights defenders regarding alleged human rights violations relevant to their mandates, develop authoritative opinions and standards, release joint or individual press statements and engage with the media, especially when conducting country visits.346

The mechanism should be composed of ASEAN national independent experts, who may be selected on the basis of a similar criteria developed by Human Rights Council (and under the Paris Principles), on the basis of gender balance, equitable geographic representation and appropriate representation of the legal system.347

347 OHCHR, ‘Special Procedure.’
The country mandates may be formulated as human rights issues escalate in certain AMSs so as to enhance the responsiveness of AICHR. They could also be established to engage countries with complex human rights issues in a constructive dialogue and assist them in addressing the root causes of the problems. Although country visits are normally conditioned upon states’ invitations, it is hoped that AMS will be more open with experts that are indigenous to the region in assisting them by offering recommendations to address human rights situations of concern.

An AICHR Experts Working Group would also assist the AICHR developing strategies for the promotion and protection of human rights and fundamental freedoms, developing common approaches and positions on human rights matters, neither mandate of which have been implemented. It is important that these mandates are exercised with due regards to the rights and fundamental freedoms of ASEAN people, and the AICHR Experts Group, as independent experts, would balance the state-centric paradigm of some AICHR Representatives and help to ensure the development of people-centered, people-oriented strategies, approaches and positions.

Furthermore, the AICHR Expert Working Group would also assist the AICHR in ensuring coherent design and effective undertaking of its thematic studies. It is also expected that the Working Group could leverage the undertaking of thematic studies as opportunities to carry out the AICHR’s investigations into human rights crises as part of fact-finding and data-gathering exercises. Since its establishment, the AICHR has planned a number of thematic studies, but completed only three.

3.2.2.3. Establish Correspondence Procedures

The AMM should enable the AICHR to develop correspondence procedures as part of its human rights protection strategies. Ideally, the AICHR, as a regional human rights body, should be able to receive complaints and communications, deliberate on them closely, and engage the member states in question with a view to resolve the issues, end the violations, reform related laws and policies to ensure non-repetition of human rights violations, prosecute the perpetrators, and ensure remedy and reparations for victims.

348 ibid.
349 Statements from a number of interviewees and concurrences from a number of respondents to FORUM-ASIA’s questionnaire; See e.g. Human Rights Resource Centre Asia, ‘AICHR CSO Symposium 2018: Enhancing CSO Engagement with ASEAN Human Rights Bodies’; AICHR, AICHR Annual Report 2016, 15.
350 Phone interview, Dr. Yuval.
3.3.3.4. Selection Process of the AICHR Representatives

The AMM should ensure that the relevant AMSs adopt tighter criteria for the selection of AICHR Representatives to ensure an open, transparent, consultative and participatory process when nominating and appointing the Representatives, and ensure the independence and effectiveness of the AICHR. The AMM should recommend similar criteria to that applied by the UNHRC in selecting mandate-holders of special procedures, which includes expertise, experience in the field of the mandate, independence, impartiality, personal integrity and objectivity, with reference to the Paris Principles and the General Observation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights’ Sub-Committee on Accreditation.\textsuperscript{351}

3.2.2.5. Revisit the Practices and Application of ASEAN Principles of Non-Interference and Consensus Decision-Making

The selected and inflated invocation of ASEAN’s non-interference principle and strict adherence to decision-making by consensus have been widely identified as part of the main challenges in moving the ASEAN human rights agenda forward. As reported in the FORUM-ASIA and SAPA report in 2014, these two principles formed the most debated issues during the two AICHR’s consultations on the review of the ToR.\textsuperscript{352} In a submission, the ICJ said that the way ASEAN interprets the principle of non-interference has been “wholly out of step with the now longstanding understanding of the principle within the international community” and that it “has been invoked a number of times by the AMS to prevent discussions of country-specific human rights situations, including laws, policies and practices of States that negatively impact human rights,” and “such restrictive view, if accepted, would mean that human rights issues could only be considered at an abstract level, rendering any efforts to address human rights concerns by ASEAN ineffective and futile.”\textsuperscript{353}

The ICJ called on ASEAN to return to the well-established international principle which views that “the protection and overall realization of human rights is not exclusively a matter of internal affairs of states, but the international community has an interest, including a legal interest in this realization.” It highlighted that “the UN Charter, under articles 55 and 56, makes it a core obligation of all states to engage in joint cooperation to ensure universal respect for and observance of human rights” and “the premise has long been accepted by the international community, including the AMS, notably in paragraph 4 of the 1993 VPDA, which emphasizes the protection of all human rights as a legitimate concern of the international community.”\textsuperscript{354}

\textsuperscript{351} ICJ, ‘Memorandum on the ToR of the AICHR’.
\textsuperscript{352} FORUM-Asia and SAPA, Report: The Future of Human Rights in ASEAN; Public Call for Independence and Protection Mandates 16 – 19.
\textsuperscript{353} ICJ, ‘Memorandum on the ToR of the AICHR’.
\textsuperscript{354} See e.g.: Hidetoshi Hashimoto, The Prospects for a Regional Human Rights Mechanism in East Asia; Ben Saul, Jacqueline Mowbray, Irene Baghoomians, ‘The Last Frontier of Human Rights Protection’.
Others also viewed that the blanket application of ASEAN’s principle of non-interference has been widely claimed to have ‘arrested’ regionalism, hindering ASEAN from tackling gross human rights violations such as the worst crimes against the Rohingya and other religious and ethnic minorities in Myanmar, numerous enforced disappearance cases in the region, (including Sombath Somphone), and extra-judicial killings in the Philippines. It has continually resulted in the irrelevance of AICHR and ASEAN as a whole to address gross human rights violations.

In this respect, it is important to recall the view of ASEAN’s own former Secretary-General, Rodolfo Severino, which saw that the ASEAN’s principle of non-interference “is not a doctrine that is adhered to and applied on dogmatic or ideological grounds. It springs from a practical need to prevent external pressure from being exerted against the perceived national interest – or the interest of the regime. Essentially arising from pragmatic considerations, ASEAN’s practice of non-interference has not been absolute.”

In fact, there have been instances in the past where the non-interference principle was not practiced. ASEAN opted to intervene in the political and human rights situations of AMSSs in 1986 when it called for peaceful resolution of political upheaval in the Philippines and in 2003 when the Joint Communiqué of the 36th ASEAN Ministerial Meetings expressed concern over the Depayin massacre and “urged Myanmar to resume its efforts of national reconciliation and dialogue among all parties concerned leading to a peaceful transition to democracy.” In 2007, the Chairman’s Statement of the 13th ASEAN Summit recommended that the Myanmar Government continue to work with the UN in order to establish constructive dialogue with Daw Aung San Suu Kyi and the National League for Democracy (NLD), lift restrictions on her, release all political detainees and to work towards a peaceful transition of democracy.

Further, the AMM should allow AICHR Representatives to follow ASEAN leaders in institutionalizing informal meetings such as working dinners to discuss sensitive issues affecting AMSSs. The late Dr. Surin Pitsuwan mentioned that this practice was initiated by former president Abdurrachman Wahid (Gusdur), when he updated other ASEAN Leaders on the issues of Indonesia and Timor Leste. Since then, the leaders have “institutionalized” a practice of updating their own ASEAN family on the situations of their respective countries, without others having to ask, and hence being perceived as intervening on domestic affairs. This practice has manifested in several Joint Communiques and Chairman’s statements, which regularly include country-specific issues such as the dispute of Thailand and Cambodia over Temple of Preah Vihear, and the situation between Indonesia and Timor Leste.

356 Rodolfo C Severino, Southeast Asia in Search of an ASEAN Community: Insights from the former ASEAN Secretary-General (ISEAS 2006), 94
In the language of the Amnesty International, “the AICHR Representatives shall lead by example, initiating a practice of updating their fellow Representatives on their country situations,” with a premise of discussing the matter constructively, focusing on how the AICHR can help address the situation without losing its integrity, relevance and credibility as an overarching institution responsible for the promotion and protection of human rights.

On consensus decision-making, some CSOs recommended to set certain limitations on the principle. While acknowledging the importance of consultations in decision-making, a number of CSOs suggested that the ToR be amended to allow exceptions to the consensus.\(^{359}\) SAPA TFAHR recommended that decisions be made by a majority in situations where they could not be reached by consensus, especially to address or prevent serious human rights violations.\(^{360}\) The ICJ recommended for the ToR of the AICHR to include a provision that “allows the AICHR to make a decision by majority vote, after all reasonable efforts have been exhausted to achieve consensus,”\(^{361}\) while the Thai Civil Society Network on ASEAN argued that “in certain cases when consensus could not be made, the majority vote approach or ASEAN plus X or ASEAN minus X approach should be taken into consideration.”\(^{362}\)

Is to be emphasized that exceptions to consensus decision-making should not preclude certain decisions, actions or statements from being labelled as AICHR’s, so as to ensure institutional responsiveness and relevance of the body towards pressing human rights issues in the region.

In light of the above, it is valid to reflect on what Amnesty International stated to FORUM-ASIA during the interview session that the ASEAN’s principles of non-interference and consensus decision-making are in fact not superior to other principles upheld under article 2 of the ASEAN Charter as well as the AICHR ToR, and therefore cannot be read exclusively, but are equally upheld along with other principles, among others, human rights, fundamental freedoms, social justice, democracy as well as regional peace, security and prosperity. It is reasonable to conclude that all principles should be embraced and applied collectively, and that the application of these two principles need to be balanced with due regard to the aspirations for full protection of human rights and fundamental freedoms of ASEAN people.\(^{363}\)

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\(^{361}\) FORUM-ASIA and SAPA, Report: The Future of Human Rights in ASEAN; Public Call for Independence and Protection Mandates 18.


\(^{363}\) Phone interview, Dr Yuval.
Thus, with the 10 years anniversary of the AICHR, when its ToR is due to be evaluated and strengthened for the second cycle, it is suggested that the AICHR will put forward another recommendation to the AMM, with an objective to strengthen its ToR, by proposing a different approach and exceptions in the application of ASEAN’s principles of non-interference and consensus-driven decision-making towards pressing human rights matters. To embed this, the AICHR needs to amend the relevant provisions of the Guidelines on the Operations of the AICHR to end disproportionate weighting of the two principles.
Conclusions

During the decade that has passed since its establishment, the AICHR, together with AMSs and ASEAN as a whole have failed, individually and collectively, to create or develop a viable human rights mechanism. Regional human rights mechanisms elsewhere in the world are more than anything else protection mechanisms, where those whose rights have been violated can lodge their complaints. Other regional human rights bodies, be they in Africa, America or Europe, have complaints investigated and considered, with states respectfully submitting their positions, and the mechanism taking steps to prevent and stop violations, provide redress and accountability, and ensure that violations are not repeated.

AICHR, by contrast, has consistently refused to listen to or discuss complaints, let alone try to protect complainants from human rights violations or seek justice for victims. Even in the face of some of the worst atrocities so far in this century, AICHR’s has remained passive, silent, indifferent. After ten years, the AICHR cannot as yet point to a single woman, man or child whose human rights it has protected – or even attempted to protect. It has not even protested or expressed concern when the rights of people in ASEAN were violated. Ten years is too long for excuses of “step by step” or “learning the ropes.” A body that cannot, or will not protect – or even attempt to protect – human rights is not worthy of being called a “Human Rights Commission.”

This has to change.
A Decade in Review: Assessing the Performance of the AICHR to Uphold the Protection Mandates
Annexes
Annex 1: The Terms of Reference of the AICHR

Terms of Reference of the
ASEAN Intergovernmental Commission on Human Rights

Pursuant to Article 14 of the ASEAN Charter, the ASEAN Intergovernmental Commission on Human Rights (AICHR) shall operate in accordance with the following Terms of Reference (TOR):

1 PURPOSES

The purposes of the AICHR are:

1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;

1.2 To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;

1.3 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;
1.4 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;

1.5 To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and

1.6 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.

2 PRINCIPLES

The AICHR shall be guided by the following principles:

2.1 Respect for principles of ASEAN as embodied in Article 2 of the ASEAN Charter, in particular:

   a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;
   b) non-interference in the internal affairs of ASEAN Member States;
   c) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;
d) adherence to the rule of law, good governance, the principles of democracy and constitutional government;

e) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

f) upholding the Charter of the United Nations and international law, including international humanitarian law, subscribed to by ASEAN Member States; and

g) respect for different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity.

2.2 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 politicisation;

2.3 Recognition that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State;

2.4 Pursuance of a constructive and non-confrontational approach and cooperation to enhance promotion and protection of human rights; and

2.5 Adoption of an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN.
3 CONSULTATIVE INTER-GOVERNMENTAL BODY

The AICHR is an inter-governmental body and an integral part of the ASEAN organisational structure. It is a consultative body.

4 MANDATE AND FUNCTIONS

4.1. To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;

4.2. 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;

4.3. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information;

4.4. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;

4.5. To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments;

4.6. To promote the full implementation of ASEAN instruments related to human rights;
4.7. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;

4.8. 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;

4.9. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;

4.10. To obtain information from ASEAN Member States on the promotion and protection of human rights;

4.11. To develop common approaches and positions on human rights matters of interest to ASEAN;

4.12. To prepare studies on thematic issues of human rights in ASEAN;

4.13. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and

4.14. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.
5 COMPOSITION

Membership

5.1 The AICHR shall consist of the Member States of ASEAN.

5.2 Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government.

Qualifications

5.3 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.

5.4 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

5.5 Each Representative serves a term of three years and may be consecutively re-appointed for only one more term.

5.6 Notwithstanding paragraph 5.5, the appointing Government may decide, at its discretion, to replace its Representative.
Responsibility

5.7 Each Representative, in the discharge of his or her duties, shall act impartially in accordance with the ASEAN Charter and this TOR.

5.8 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

5.9 The Chair of the AICHR shall be the Representative of the Member State holding the Chairmanship of ASEAN.

5.10 The Chair of the AICHR shall exercise his or her role in accordance with this TOR, which shall include:

a) leading in the preparation of reports of the AICHR and presenting such reports to the ASEAN Foreign Ministers Meeting;

b) coordinating with the AICHR’s Representatives in between meetings of the AICHR and with the relevant ASEAN bodies;

c) representing the AICHR at regional and international events pertaining to the promotion and protection of human rights as entrusted by the AICHR; and
d) undertaking other specific functions entrusted by the AICHR in accordance with this TOR.

Immunities and Privileges

5.11 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.

6 MODALITIES

Decision-making

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

Number of Meetings

6.2 The AICHR shall convene two regular meetings per year. Each meeting shall normally be not more than five days.

6.3 Regular meetings of the AICHR shall be held alternately at the ASEAN Secretariat and the Member State holding the Chair of ASEAN.

6.4 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.
6.5 When necessary, the ASEAN Foreign Ministers may instruct the AICHR to meet.

**Line of Reporting**

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

**Public Information**

6.7 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**

6.8 The AICHR is the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN.

6.9 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.
7 ROLE OF THE SECRETARY-GENERAL AND ASEAN SECRETARIAT

7.1 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.

7.2 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.

8 WORK PLAN AND FUNDING

8.1 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.

8.2 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.
8.3 The annual budget shall be funded on equal sharing basis by ASEAN Member States.

8.4 The AICHR may also receive resources from any ASEAN Member States for specific extra-budgetary programmes from the Work Plan.

8.5 The AICHR shall also establish an endowment fund which consists of voluntary contributions from ASEAN Member States and other sources.

8.6 Funding and other resources from non-ASEAN Member States shall be solely for human rights promotion, capacity building and education.

8.7 All funds used by the AICHR shall be managed and disbursed in conformity with the general financial rules of ASEAN.

8.8 Secretarial support for the AICHR shall be funded by the ASEAN Secretariat's annual operational budget.

9 GENERAL AND FINAL PROVISIONS

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

Amendments

9.2. Any Member State may submit a formal request for an amendment of this TOR.
9.3. 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.

9.4. Such amendments shall enter into force upon the approval of the ASEAN Foreign Ministers Meeting.

9.5. 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

9.6. 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.

9.7. 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

9.8. 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 HIGH LEVEL PANEL ON AN ASEAN HUMAN RIGHTS BODY (HLP)

Brunei Darussalam

H.E. DATO SHOFRY ABDUL GHAFOR
Permanent Secretary
Ministry of Foreign Affairs and Trade

Cambodia

H.E. MR. OM YENTIENG
Advisor to the Royal Government of Cambodia
President of the Human Rights Committee of Cambodia

Indonesia

H.E. MR. RACHMAT BUDIMAN
Director of Political, Security and Territorial Treaties
Department of Foreign Affairs

Lao PDR

H.E. MR. BOUNKEUT SANGSOMSAK
Deputy Foreign Minister
Ministry of Foreign Affairs

Malaysia

H.E. TAN SRI AHMAD FUZI ABDUL RAZAK
Ambassador –at-Large
Ministry of Foreign Affairs
Myanmar

H.E. MR. U MYAT KO  
Secretary of Myanmar Human Rights Group  
Director-General, General Administration Department  
Ministry of Home Affairs

The Philippines

H.E. AMBASSADOR ROSARIO G. MANALO  
Special Envoy  
Department of Foreign Affairs

Singapore

H.E. MR. BILAHARI KAUSIKAN  
Second Permanent Secretary  
Ministry of Foreign Affairs

Thailand

H.E. AMBASSADOR SIHASAK PHUANGKETKEOW  
Permanent Representative of Thailand to the UN Office in Geneva

Viet Nam

H.E. MR. PHAM QUANG VINH  
Assistant Minister  
Ministry of Foreign Affairs
Annex 2: The ASEAN Human Rights Declaration; Questions and Answers

The ASEAN Human Rights Declaration: Questions and Answers

1. What is the ICJ’s position on the ASEAN Human Rights Declaration (Declaration)?

The Declaration is a fatally flawed document and falls below and risks undermining international human rights standards.

The international community in June this year marked the 20th anniversary of the watershed adoption in 1993 of the Vienna Declaration and Programme of Action (VDPA), which was endorsed by all States, including those of the ASEAN. States affirmed unreservedly that the universal nature of all human rights and fundamental freedoms is "beyond question". They agreed that "it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." This VDPA was widely seen as having firmly rejected once and for all the contention of a very few that human rights are relative in nature. Yet the ASEAN Declaration attempts to undo the Vienna consensus by requiring that human rights be conditioned on regional and national particularities.

The VDPA also underscored the fundamental role of regional arrangements in promoting and protecting human rights, stressing that regional systems “should reinforce universal human rights standards, as contained in international instruments.” ASEAN, in adopting this retrogressive Declaration, has employed its human rights system to undermine rather than reinforce universal standards.

While ASEAN member States remain bound by their obligations in respect of universal standards, ASEAN has missed an important opportunity to fulfill the promise of the VDPA by enhancing universal human rights.
The ASEAN Human Rights Declaration: Questions and Answers

2. Why is the Declaration below international standards?

The Declaration is below international standards since it contains provisions in its General Principles that:

- Subjects the enjoyment of fundamental rights to a “balancing” with State-imposed duties on individuals (General Principle No. 6).

- Challenges the principle of universality of human rights by making their realization subject to regional and national contexts (General Principle No. 7).

- Allows for broad and all-encompassing limitations on rights, including those that may never be restricted under international law (General Principle No. 8).

The Declaration is a significant and worrying departure from existing international human rights law and standards, including those found in other regional human rights instruments, in Europe, the Americas, Africa, and the Middle East and North Africa (League of Arab States).
The ASEAN Human Rights Declaration: Questions and Answers

3. What is the effect of the General Principles on all the provisions in the Declaration?

The General Principles serves to guide how the succeeding provisions in the Declaration are to be read and applied. They are the principles by which all the provisions in the Declaration should be interpreted. Below are examples of how provisions might be read and interpreted in the light of the General Principles.

General Principle No. 6:

"The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms."

Under General Principle No. 6, the enjoyment of rights and freedoms "must be balanced with the performance of corresponding duties". The ICJ notes the idea that all human rights are to be 'balanced' against individual responsibilities contradicts the very idea of human rights agreed upon in the 1948 Universal Declaration of Human Rights and at Vienna. Under universal standards all persons are entitled to realization of human rights; the enjoyment of human rights cannot be made conditional upon their performance of duties. In fact, human rights limit the scope and nature of the duties that States may impose on an individual and not the other way around.

General Principle No. 6 could serve to provide ASEAN Member States with a basis and justification to violate human rights, instead of providing safeguards to the people, since the terms "duties" and "responsibilities" are not defined adequately.

Example- Reading Article 27 of the Declaration in the light of General Principle No. 6:
Article 27 of the Declaration provides every person the right “to enjoy just, decent and favorable conditions of work.” However, ASEAN Member States
The ASEAN Human Rights Declaration:
Questions and Answers

could read Article 27 in the light of the language of General Principle No. 6 to deny this right to workers in the interest of “balancing” this right with their “duty” and “responsibility” of contributing to the national economy. Under General Principle No. 6, labourers in the ASEAN may be required to work in factories with inadequate safety regulations and impossibly low wages under the justification that they are called upon to fulfill their “duty” and “responsibility” to help the national economy.

General Principle No. 7:

"All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realization of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, and cultural, historical and religious backgrounds.”

Under General Principle No. 7, the realization of human rights “must be considered in the regional and national context, bearing in mind different political, economic, legal, social, cultural, historical, and religious backgrounds.” This construction severely distorts and effectively contravenes the language of 1993 VDPA, as noted above, affirming the principle of universality of human rights. While the VDPA did express that the significant different backgrounds should be born in mind, it in no manner imposed any obligation to consider human rights in regional and national contexts. On the contrary, it stressed that "it is the duty of States, regardless of their political economic and cultural systems to promote and protect all human rights and fundamental freedoms.” Furthermore, under international law ASEAN Member States have the duty, regardless of their political, economic and cultural systems, to respect and protect all human rights and fundamental freedoms.

Example—Reading Article 30, par. 3 of the Declaration in the light of General Principle No. 7:
Article 30, par. 3 of the Declaration provides that "every child, whether born in or out of wedlock, shall enjoy the same social protection.” Reading Article 30,
The ASEAN Human Rights Declaration: Questions and Answers

par. 3 in the light of General Principle No. 7, an ASEAN Member State could decide that it was entitled to provide for less social protection for children born out of wedlock based on the rationale that its majority religion frowns upon extramarital unions and therefore, discourages bearing children out of wedlock.

General Principle No. 8:

"The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society."

General Principle No. 8 subjects all the rights in the Declaration to broad and all-encompassing limitations: “national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.” General Principle No. 8, therefore, permits limitations and restrictions for all rights across the entirety of the Declaration. In addition, it allows them without imposing the required conditions of necessity and proportionality and for purposes far more expansive than under international law.

Under international law, certain rights may only be subjected to limitations under specific and narrowly defined situations. For example, under the International Covenant for Civil and Political Rights (ICCPR), to which 167 States are party, including six of the 10 ASEAN States, only a few rights are subjected to such limitations.

These include freedom of movement, freedoms of association, expression and peaceful assembly and freedom to manifest one's religion. But even limitations on these rights are subject to tight conditions of necessity and proportionality: they must be strictly necessary for protection of national security, public order, public health or morals or to protect the rights of others.
The ASEAN Human Rights Declaration: Questions and Answers

The ASEAN Declaration extends the possibility of imposing limitations to all rights, even those that are absolute under international law, such as freedom from torture and cruel, inhuman and degrading treatment and punishment. Rather than applying a condition of strict necessity, General Principle 8 merely says that limitations have to be imposed for the purpose of meeting the “just requirements” of national security and other purposes.

The ASEAN Declaration, unlike the ICCPR, allows for limitation on the bases of “general welfares of peoples in a democratic society”. This category is so broad that it could be interpreted to encompass almost all State activity.

Example—Reading Article 14 of the Declaration in the light of General Principle No. 8:
The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment is provided for explicitly under Article 14 of the Declaration. However, this provision would have to be read in light of General Principle No. 8. Therefore, under terms of the ASEAN Declaration, Member States would be allowed the use of torture to extract information from suspected terrorists in the name of “national security” and “public safety”. Torture, however, is a peremptory norm of international law, allowing no exceptions. This principle has been accepted by all States, including all ASEAN States, in United Nations General Assembly resolutions adopted by consensus.
The ASEAN Human Rights Declaration: Questions and Answers

4. Does the Phnom Penh Statement correct the Declaration’s flaws?

The Phnom Penh Statement on the Adoption of the Declaration provides some language that aims to mitigate the defects in the Declaration. But these cannot serve to make the Declaration itself consistent with international human rights law and standards. The Phnom Penh Statement provides that ASEAN Member States:

"REAFFIRM further our commitment to ensure that the implementation of the AHRD be in accordance with our commitment to the Charter of the United Nations, the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and other international instruments to which ASEAN Member States are parties, as well as to relevant ASEAN declarations and instruments pertaining to human rights."

While this language is welcome so far as it goes in reaffirming the existing commitment of ASEAN Member States, as a political Statement it can in no way serve to override the plain language of the Declaration itself, certain provisions of which are in clear contravention of the instruments mentioned. To be clear, a political Statement does not override a declaratory instrument, which is the ASEAN Declaration.
The ASEAN Human Rights Declaration: Questions and Answers

5. Is the Declaration “better than nothing”?

The Declaration was justified by its supporters within and outside ASEAN as “better than nothing”. They note that bringing those ASEAN Member States with poor human rights records to sign such a document is already a step forward.

This argument fails on two important factors:

First, the applicable human rights legal framework is not ‘nothing’ – there is in fact a wide body of existing international human rights law that applies to ASEAN member states, including binding customary international law and large number of international human rights treaties ratified or acceded to by the Member States. To the extent that the Declaration deviates from—and weakens—these applicable laws, it is, in fact, significantly ‘worse than not doing anything at all.’

Second, the Declaration, if applied, will bring all ASEAN Member States – without exception - a step backwards in fulfilling its obligations under international human rights law. If States take the Declaration as the primary standard, it is possible that they may disregard the universal standards, including hard legal obligations, when formulating their domestic law, policies and practices.

Should the Declaration result in States applying its provisions instead of universal standards, it would erode not only human rights protections, but also the rule of law generally in the ASEAN region. To disregard international legal obligations, as well as other international commitments can never be a step forward. For that reason, ASEAN Member States and all ASEAN stakeholders should continue to adhere strictly to universal international human rights standards and take measures with a view to revising the ASEAN Declaration in order to bring it line with international law and standards.
Annex 3: The Memorandum on the Terms of Reference of the AICHR

Memorandum on the Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (AICHR)

I. Introduction

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the process of reviewing the Terms of Reference (TOR) of the ASEAN Intergovernmental Commission of Human Rights (AICHR). It is our hope that the AICHR will take this opportunity to demonstrate its commitment to transparency and integrity by undertaking consultations with a wide variety of stakeholders as it reviews and revises its TOR.

2. The importance of regional and sub-regional mechanisms playing a fundamental role in promoting and protecting human rights was underlined in the 1993 Vienna Declaration and Programme of Action (VDPA). The VDPA emphasized that regional arrangements should “reinforce universal human rights standards, as contained in international human rights instruments, and their protection” and that they must cooperate with the United Nations Human Rights activities.\(^1\)

3. The ICJ supports the idea of a regional human rights mechanism that effectively promotes and protects human rights in a manner that is particularly adaptive to the distinctive conditions of the region, provided that it abides by principles that reinforce and do not fall below international human rights law and standards.

4. In this memorandum, the ICJ identifies and discusses what we take as problematic provisions in the TOR that may prevent the AICHR from fully functioning as a body tasked “to promote and protect human rights and fundamental freedoms of the peoples of the ASEAN” and makes recommendations on the amendment of these provisions. The ICJ also discusses additional functions and institutional improvements that may be undertaken to strengthen the AICHR as a regional human rights mechanism, in line with the commitments made by ASEAN member States in Vienna in 1993 and in the ASEAN Charter.

II. Problematic provisions in the TOR of the AICHR

A. Part II: Principles – the principle of non-interference

5. Paragraph 2.1 of the TOR provides that the AICHR shall be guided in its work by the principle of non-interference. This principle is also contained in the ASEAN Charter. Some representatives of ASEAN Member States have interpreted this principle within the ASEAN context to mean that Member States are prohibited from commenting on the domestic affairs of other Member States. The interpretation, however, is wholly out of step with the now longstanding understanding of the principle within the international community.

\(^1\) Article 37 of the Vienna Declaration and Programme of Action (hereinafter VDPA)
6. Nonetheless, the principle of non-interference has been invoked a number of times by ASEAN Member States to prevent discussions of country-specific human rights situations, including laws, policies, and practices of States that negatively impact human rights protection. This radically restrictive view, if accepted, would mean that human rights issues could only be considered at an abstract level, rendering any efforts to address human rights concerns by ASEAN ineffective and futile.

7. In rejecting this narrow interpretation, the ICJ recalls the well-established principle that protection and overall realization of human rights is not exclusively a matter of internal affairs of States, but the international community has an interest, including a legal interest in this realization. The United Nations Charter, under articles 55 and 56, makes it a core obligation of all States to engage in joint cooperation to ensure universal respect for and observance of human rights. The protection of human rights is therefore not exclusively a matter of internal affairs of States. This premise has long been accepted by the international community, including ASEAN Member States, notably in paragraph 4 of the 1993 Vienna Declaration and Programme of Action (VDPA), which emphasizes the protection of all human rights as a legitimate concern of the international community.

8. Over the years, ASEAN Member States have invoked the non-interference principle inconsistently, but often it has been wielded as a political shield to avoid accountability for human rights violations and failure to fulfill human rights obligations.

9. There have been, however, several notable occasions where the ASEAN diverged from this principle and commented on the internal affairs of Member States. One recent example is the ASEAN’s strong recommendation to Indonesia to ratify and operationalize the ASEAN Transboundary Haze Agreement. The Joint Communiqué issued after the 46th ASEAN Foreign Ministers’ Meeting (AMM) in Brunei Darussalam in June 2013, called upon ASEAN Member States that have “not yet ratified and operationalized” the ASEAN Transboundary Haze Agreement “to do so expeditiously”. Indonesia is the only Member State that has yet to ratify and operationalize the treaty. 2

10. The ASEAN has discussed, on several occasions, the situation of Myanmar and made recommendations on steps it may take towards a more democratic government and to address human rights violations. For instance, in 2003, the Joint Communiqué issued after the 36th ASEAN Ministerial Meeting in Phnom Penh included an expression of concern over the Depayin massacre, which occurred on 30 May 2003, and where 70 people associated with the National League for Democracy (NLD) were killed by a government-facilitated mob. Moreover, the Joint Communiqué urged Myanmar “to resume its efforts to national reconciliation and dialogue among all parties concerned leading to a peaceful transition to democracy.” 3 In 2007, the Chairman’s Statement made upon the conclusion of the 13th ASEAN Summit in Singapore included clear recommendations to Myanmar on actions it must take to improve its human rights situation. The ASEAN recommended to Myanmar that it should continue to work with the United Nations in order to initiate a meaningful dialogue with NLD leader Aung San


Suu Kyi, lift restrictions on her, and release all political detainees. The ASEAN also reiterated its call to Myanmar to work towards a peaceful transition to democracy.4

11. ASEAN Member States are regularly subjecting their domestic human rights performance to scrutiny by other States through the mechanisms and procedures established under the international instruments they have ratified or acceded to. All ASEAN Member States, for instance, are party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As State parties, ASEAN Member States, like all States, submit reports to the Committee on the Elimination of Discrimination Against Women on national action taken to improve the situation of women. The Committee, in turn, would comment on these reports, request specific information on the laws, policies and practices within the country, and draw conclusions and make recommendations to the States concerned. In addition, all ASEAN Member States are party to the Convention on the Rights of the Child (CRC), whose supervisory body, performs a similar function. Many ASEAN Member States are subject to similar review by a range of other treaty bodies, such as the Human Rights Committee, Committee on Economic, Social and Cultural Rights, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on Migrant Workers, and the Committee on the Rights of Persons with Disabilities.

12. Furthermore, ASEAN Member States have voted favorably on a number of country-specific resolutions at the United Nations and regularly unanimously welcome reports of UN Special Procedures of fact-finding missions to assess human rights situations in specific countries. For instance, all ASEAN Member States recently voted in favor on the resolution on the right of the Palestinian people to self-determination (A/C.3/67/L.54).5 A number of ASEAN Member States voted favorably on the resolution on the situation of human rights in the Syrian Arab Republic (A/C.3/67/L.52).6

13. Finally, all ASEAN Member States are subjected to the Universal Periodic Review (UPR) at the UN Human Rights Council. Each ASEAN Member State goes through the UPR every four years. Under the UPR, all UN Member States examine each other’s actions on how human rights are improved in their countries. The reports, appraisals, and commitments all contain specific information as to law, policies and practices of the States under review.

B. Part IV: Mandate and Functions

13. In October 2012, the AICHR made public its Five-Year Work Plan (2010-2015), which outlines specific activities under each mandate and function listed in its TOR. Based on the Five-Year Work Plan, there is still substantial room for improvement in the AICHR’s implementation of its mandates and functions. The ICJ observes that many of the listed mandates and functions in the TOR have not yet been implemented by the AICHR.

14. The ICJ, therefore, believes that all of the mandates and functions listed in the TOR must be maintained, with certain modifications. Among the mandates that should be maintained is that “to develop an ASEAN Human Rights Declaration” (AHRD).7 The ICJ, along with many other human rights stakeholders, considers the AHRD to be fatally

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4 TOR of the AICHR, paragraph 4.2.
flawed, which falls below and risks undermining international human rights standards.\(^8\) The ICJ therefore considers it imperative that this mandate be maintained to enabling the AICHR to amend the AHRD and to bring it in line with international human rights law and standards.

**a.) Dialogue and consultation with civil society and non-governmental organizations**

15. The TOR must reflect the importance of continued dialogue and cooperation between the AICHR and a wide range of stakeholders including civil society organizations (CSOs) in respect of all of its areas of work, including standard setting.

16. The AICHR has the existing mandate under paragraph 4.8 of the TOR "to engage in dialogue and consultation with other ASEAN bodies and entities associated with the ASEAN, including civil society organizations and other stakeholders".\(^9\) However, this mandate is subject to Chapter V of the ASEAN Charter, which limits the engagement of the AICHR only to those ‘entities associated with the ASEAN.’ Such entities are presently limited to a group of parliamentarians (the ASEAN Inter-Parliamentary Assembly), business organizations (e.g. ASEAN Alliance of Health Supplement Association, ASEAN Business Forum), a think tank (ASEAN-ISIS Network), and accredited civil society organizations consisting mostly of professional groupings (e.g. ASEAN Council of Teachers, ASEAN Federation of Accountants, ASEAN Federation of Electrical Engineering Contractors).\(^10\) There are no human rights CSOs or national human rights institutions among the accredited groups.

17. The ICJ considers that paragraph 4.8 of the TOR should be amended to reflect the importance of the role of a wide range of CSOs in supporting the work of the AICHR. This paragraph should be amended to ensure that the AICHR is able to engage with a wider network of CSOs in order to enrich its work by tapping into the experience and expertise of individuals and groups that have been working to promote and protect human rights. Clearly, it makes little sense to exclude the stakeholders of human rights from the work ASEAN does in the name of human rights.

18. The ICJ is convinced that the AICHR will necessarily benefit greatly from substantive contributions from civil society organizations in the process of setting regional human rights standards, in addition to carrying out the promotional and protective functions of its work. Providing for the space and opportunity, and indeed encouraging, civil society organizations to engage in and contribute to its work will also greatly enhance the credibility of the processes and enable AICHR to produce a solid body of regional standards that are consistent with international human rights law.

19. In the United Nations human rights system, a wide range of civil society human rights stakeholders, including ECOSOC-accredited non-governmental organizations and national human rights institutions, participate fully in the forums and mechanisms. The Human Rights Council, which is the principal UN human rights organ, recognizes the essential role of civil society and non-governmental organizations in supporting the work of sub-regional, regional, and international organizations. In a resolution adopted on 23 September 2013, the Human Rights Council emphasized that civil society plays an important role in supporting the work of sub-regional, regional, and international organizations by sharing their expertise and experience through their participation in these organizations’ meetings. In that regard, the Human Rights Council, in that resolution, reaffirmed “the right of everyone, individually and in association with others, to unhindered access to communication with sub-regional, regional, and international

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\(^9\) TOR of the AICHR, paragraph 4.8

bodies.” That right is also affirmed in another resolution by the Human Rights Council on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, which was adopted on 25 September 2013.

20. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Individuals, and Associations (known as the UN Declaration on Human Rights Defenders), adopted by the UN General Assembly, similarly affirms the right of everyone, individually or in association with others, and for the purpose of promoting and protecting human rights and fundamental freedoms, “to communicate with non-governmental or governmental organizations.” This includes communicating with regional mechanisms such as the AICHR on issues pertaining to the promotion and protection of human rights.

21. The UN Declaration on Human Rights Defenders also provides that everyone has the right, individually or in association with others, “to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial, and administrative systems.” Individuals and groups should therefore be able to access information from the AICHR on how human rights and fundamental freedoms are given effect in ASEAN Member States.

b.) Protection functions to increase effectiveness of the AICHR

22. To enhance the AICHR’s effectiveness, it is important to include strong protection competencies in its TOR in addition to its existing mandate and functions. The ICJ notes that even before the establishment of the AICHR in 2009, a number of authorities and stakeholders, including the Office of the High Commissioner for Human Rights (OHCHR), submitted recommendations on types of protection functions that should be vested in the AICHR. Prior to the establishment of the AICHR, the OHCHR’s Regional Office for Southeast Asia published a non-paper on Principles for Regional Human Rights Mechanisms, which contains recommendations as to the minimal powers, responsibilities, and the structure appropriate to a regional human rights mechanism.

23. Recommendations by the OHCHR, which the ICJ believes should be integrated in the TOR, include that the AICHR should have the following mandated functions:

(a) to observe the general human rights situation in each country and when necessary, request further information on the promotion and protection of human rights from each Member State;

(b) to undertake on-site visits to investigate specific human rights concerns, publish reports and recommendations following these visits, including progress reports issued on a periodic basis, which shall be publicly circulated;

\[11 \text{ Human Rights Council, Resolution on civil society space: creating and maintaining, in law and practice, a safe and enabling environment, UN Doc. A/HRC/24/L.24 (2013), para. 6.}
\[13 \text{ UN General Assembly Resolution 53/144, Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/144 (1999).}
\[14 \text{ UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter, the UN Declaration on Human Rights Defenders), UN Doc. A/RES/53/144 (1999), para. 5(c).}
\[15 \text{ UN Declaration on Human Rights Defenders, para. 6(a).}
(c) to develop an early warning system to prevent gross violations of human rights;
(d) to receive and investigate communications from individuals or groups, alleging human rights violations committed by Member States;
(e) to develop measures to protect individuals and groups from reprisals by Member States;
(f) where it finds that violations of human rights have been committed, to make recommendations to the Member State concerned, including recommendations of appropriate remedies; and
(g) to request Member States to adopt specific precautionary measures to prevent irreparable harm to persons in serious and urgent cases. 17

25. The ICJ considers that for the AICHR to effectively carry out both its present functions and any additional functions it might assume, it should, along the lines of the UN and other regional human rights mechanisms, be given the mandate to appoint independent experts or special rapporteurs for key thematic concerns such as freedom of expression, freedom of assembly and association, the situation of human rights defenders, economic, social and cultural rights, the rights of the child, women’s human rights, torture, enforced disappearance, and business and human rights. Reports of these independent experts or special rapporteurs shall feed into discussions of the AICHR so that it will be able to fulfill its mandate “to develop common approaches and positions on human rights matters of interest to ASEAN.” 18

C.) Cooperation with national human rights institutions and the UN

26. The AICHR must vigorously engage with appropriate national human rights institutions (NHRIs) and the UN and this must be clearly reflected in its mandate. Under the current TOR, the AICHR has the mandate “to consult, as may be appropriate, with other national, regional, and international institutions concerned with the promotion and protection of human rights.” 19 The ICJ believes that it is not enough for the AICHR to merely “consult” NHRIs and the UN, but it should be clear that they should cooperate with and complement the work of these bodies, provided that those NHRIs comply with the Principles Relating to the Status of National Institutions (Paris Principles). The Paris Principles, adopted by the UN General Assembly, 20 set out the appropriate characteristics and framework for the work of NHRIs, including the requirement that they are independent and represent a pluralism of social forces involved in the promotion and protection of human rights in their particular country.

27. Article 37 of the VDPA emphasizes the importance of cooperation of regional bodies with the United Nations human rights activities. This is because regional bodies, such as the AICHR, have an important role to play in reinforcing universal human rights standards, as contained in international human rights instruments.

28. Five ASEAN Member States have established NHRIs: Indonesia, Malaysia, Thailand, Philippines, and Myanmar. Except for the Myanmar National Human Rights Commission, all the other NHRIs have been given “A” status accreditation by the International Coordinating Committee of NHRIs, which means that they comply fully with the Paris Principles.

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17 Ibid.
18 TOR of the AICHR, paragraph 4.11.
19 TOR of the AICHR, paragraph 4.9.
29. In 2008, the NHRIs of Indonesia, Malaysia, Thailand, and the Philippines formed the ASEAN NHRI Forum (ANF), with the aim of creating a platform for discussions among them on "practical and most feasible actions to facilitate the process of establishing an ASEAN Human Rights Mechanism."\(^{21}\) ASEAN NHRIs view their role vis-à-vis the AICHR as "catalytic, complementary, and cooperative."\(^{22}\)

30. The ICJ observes, however, that these ASEAN NHRIs have been effectively excluded from the discussions of the AICHR, most notably during the process of development of the TOR and the ASEAN Human Rights Declaration (AHRD). ASEAN NHRIs made efforts to engage in dialogue with AICHR, but were rejected by the latter based on the ground that the AICHR had yet to develop its own Rules of Procedure prior to engaging with external parties.\(^{23}\)

31. ASEAN NHRIs may have varied mandates, but all of them have mechanisms set up to receive information and investigate complaints regarding human rights violations.\(^{24}\) The use of readily available information received from NHRIs would serve to significantly bolster AICHR's ability to fulfill some of its existing mandate, such as "to develop common approaches and positions on human rights matters of interest to ASEAN"\(^{25}\) and "to prepare studies on thematic issues of human rights in ASEAN."\(^{26}\)

32. ASEAN NHRIs also have experience conducting human rights capacity building, including training groups in the security sector (e.g. police, military). The AICHR could draw from this experience to fulfill its existing mandate "to promote capacity-building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States."\(^{27}\) Indeed, the AICHR could consider carrying out such promotional work in cooperation or partnership with NHRIs and/or civil society organizations.

C. Part V: Composition

   a.) Qualifications and Selection Process of Representatives

33. Under the current TOR, Representatives to the AICHR are required to possess "integrity and competence in the field of human rights."\(^{28}\) The ICJ believes that further qualifications beyond these two should be required of Representatives to increase the effectiveness of the AICHR.

34. The examples from other human rights institutions may serve as a starting basis for establishing enhanced criteria for the AICHR Representatives. The set of criteria followed at the UN Human Rights Council in nominating, selecting, and appointing mandate-holders of Special Procedures is particularly instructive in that regard. Special procedures mandate holders are selected on the basis of: "(a) expertise; (b) experience

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\(^{25}\) TOR of the AICHR, para. 4.11.

\(^{26}\) TOR of the AICHR, para. 4.12.

\(^{27}\) TOR of the AICHR, para. 4.4.

\(^{28}\) TOR of the AICHR, para. 5.3.
in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.”

35. Under the existing TOR, it is not mandatory for Member States to consult relevant stakeholders in the process of selecting Representatives to the AICHR. Member States will generally only consult “if required by their respective internal processes.”

36. Consultation with a broad variety of stakeholders is important in ensuring the selection of the best candidates who meet appropriate criteria, including independence. The Paris Principles, for example, suggest following a selection procedure that affords “all necessary guarantees to ensure the pluralist representation of social forces (civil society) involved in the promotion and protection of human rights.”

37. The Sub-Committee on Accreditation of the International Coordinating Committee of NHRIs (hereinafter, the ICC Sub-Committee on Accreditation) noted in its General Observations that the selection and appointment process of the governing body of an NHRI is critically important in ensuring its independence. The same can be said for a regional human rights mechanism like the AICHR. Factors listed by the ICC Sub-Committee on Accreditation that would help ensure the selection of an independent candidate are a transparent process of selection; broad advertisement of vacancies; and maximizing the number of potential candidates from a wide range of societal groups.

38. In this respect, it would be advisable for ASEAN Member States to establish a procedure to allow for the receipt of nominations for Representatives. These nominations may be received from the government itself, CSOs, and individuals. NHRIs may also nominate candidates.

39. The Paris Principles and the General Observations of the ICC’s Sub-Committee on Accreditation are valuable in the task of reviewing the TOR, as the AICHR shares similar characteristics and functions of NHRIs.

b.) Term of office; security of tenure

40. AICHR Representatives shall serve for a period of three years, renewable for an additional three years. However, at any given time and for any reason, the appointing Member State “may decide, at its discretion, to replace its Representative.” This means therefore that AICHR Representatives do not enjoy a guarantee of tenure.

41. The Paris Principles notes that a human rights body cannot be independent if its members are not given a guarantee of tenure or a stable mandate. Hence, the Paris Principles provide that to ensure independence, appointments shall be effected by an official act that shall establish the specific duration of the mandate. Removal of members of human rights bodies must be “in strict conformity with all the substantive 29 Resolution 5/1 on the Institution-building of the United Nations Human Rights Council, 18 June 2007, para. 39.
30 TOR of AICHR, para. 5.4.
31 Principles relating to the status of national institutions (Paris Principles), Part B, para. 1.
32 Ibid.
33 Supra note 30 at para. 42.
35 TOR of AICHR, para. 5.6.
36 Paris Principles, Part B, para. 3.
and procedural requirements as prescribed by law," and "should not be allowed based on solely the discretion of appointing authorities."

D. Part VI: Modalities

42. Under the existing TOR, decisions are reached by the AICHR based on "consultation and consensus". Consensus is interpreted to mean that there is agreement by all Representatives.

43. Requiring consensus for decision-making may mean that no decision is reached to address substantive human rights issues. The ICJ, therefore, recommends that the TOR include a provision that allows the AICHR to make a decision by majority vote, after all reasonable efforts have been exhausted to achieve consensus.

E. Part VII: Role of the Secretary-General and the ASEAN Secretariat

44. At present, the AICHR is provided secretarial and administrative support by the ASEAN Secretariat. Member States are not required under the TOR to provide funds for the smooth conduct of the activities of the AICHR, but the TOR allows Member States to second their officials to provide secretarial and administrative support to the AICHR.

45. One of the key features of regional human rights mechanisms in Europe, the Americas, and Africa is "competent and full-time secretariat support with sufficient resources". A strong, independent, and well-resourced infrastructure for support is also one of the key components identified in the Paris Principles to guarantee the independence of a human rights body. It is therefore important that the AICHR should have its own Secretariat that is independent from the ASEAN Secretariat. This should be reflected in the TOR.

46. The staff of the secretariat should be adequately resourced not only by persons competent to carry out strictly administrative functions, but also by professionals who are experts in the substantive areas of human rights, including international human rights law.

47. The Secretariat of the AICHR should have adequate funding for the effective implementation of its activities so that it can hire its own staff and premises. This would help ensure that it is able to operate in a way that it cannot be subjected to the financial control of any Member State that might affect its independence.

48. The ICC Sub-Committee on Accreditation likewise underlines the importance of adequate funding for a support infrastructure of a human rights body, which it explains should "ensure the gradual and progressive realization of the improvement of the organization's operations and the fulfillment of their mandate."

49. The Secretariat of the AICHR should be headed by an Executive Director, who shall be of high moral character and has recognized competence in the field of human rights.

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37 General Observations of the ICC Sub-Committee on Accreditation, October 2011, para. 2.9 (b).
38 General Observations of the ICC Sub-Committee on Accreditation, October 2011, para. 2.9 (c).
39 TOR of AICHR, para. 6.1.
42 Ibid.
43 General Observations of the ICC Sub-Committee on Accreditation, October 2011, para. 2.6.
44 Statute of the Inter-American Commission on Human Rights, Article 21, para. 2.
50. The Secretariat should be empowered to employ its own staff. It might accept staff seconded from government agencies of Member States, but as recommended by the ICC Sub-Committee on Accreditation, as a matter of good practice, “senior level posts should not be filled with secondees”\(^45\) and that “the number of secondees should not exceed 25% and never be more than 50% of the total workforce”\(^46\) of the organization.

51. Funding from external sources, such as development partners, might be allowed for the Secretariat. However, it is recommended that this shall not compose the core funding of the Secretariat. It should be emphasized that Member States still have the responsibility to ensure the AICHR Secretariat’s minimum activity budget so that it may be able to operate smoothly and fulfill its mandate.\(^47\)

III. Recommendations on revising the TOR:

A. Part II: Principles

52. Paragraph 2.1(b) should be deleted. Should paragraph 2.1(b) be maintained, the TOR should make clear that it should not be construed to mean that AICHR may not engage in work relating to human rights situations of Member States. (See paragraphs 5 to 12)

B. Part IV: Mandate and Functions:

53. Paragraph 4.8 should be revised so as to read:

To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations and other stakeholders, as provided for in Chapter V of the ASEAN. (See paragraphs 15 to 22)

54. Paragraph 4.9 should be revised so as to read:

To consult and cooperate, as may be appropriate, with other national human rights institutions, other regional human rights mechanisms, the United Nations, and other national, regional, and international institutions and entities concerned with the promotion and protection of human rights. (See paragraphs 15 to 21)

55. Part IV in general should include protection functions to increase its effectiveness. The following are recommended to be included:

(a) to observe the general human rights situation in each country and when necessary, request further information on the promotion and protection of human rights from each Member State;

(b) to undertake on-site visits to investigate specific human rights concerns, publish reports and recommendations following these visits, including progress reports issued on a periodic basis, which shall be publicly circulated;

(c) to develop an early warning system to prevent gross violations of human rights;

(d) to receive and investigate communications from individuals or groups, alleging human rights violations committed by Member States;

\(^{45}\) General Observations of the ICC Sub-Committee on Accreditation, October 2011, para. 2.4(a).
\(^{46}\) General Observations of the ICC Sub-Committee on Accreditation, October 2011, para. 2.4(b).
\(^{47}\) General Observations of the ICC Sub-Committee on Accreditation, October 2011, para. 2.6.
(e) to develop measures to protect individuals and groups from reprisals by Member States;

(f) where it finds that violations of human rights have been committed, to make recommendations to the Member State concerned, including recommendations of appropriate remedies; and

(g) to request Member States to adopt specific precautionary measures to prevent irreparable harm to persons in serious and urgent cases. 48 (See paragraphs 22 to 23)

56. Part IV should also include a paragraph that allows the AICHR to appoint independent experts or special rapporteurs for key thematic issues, such as freedom of expression, freedom of assembly and association, and the situation of human rights defenders, economic, social and cultural rights, the rights of the child, women’s human rights, torture, enforced disappearance, business and human rights, or other thematic areas viewed by the AICHR as necessary for achieving its mandate. These independent experts or special rapporteurs shall seek and receive information from all relevant stakeholders and submit their reports to the AICHR on a regular basis. (See paragraph 25)

C. Part V: Composition

a.) Qualifications and selection process of representatives

57. Paragraph 5.3 should be revised to read:

When appointing their Representatives to the AICHR, Member States shall give due consideration to gender equality, expertise, experience in the field of human rights, independence, impartiality, personal integrity, and objectivity. (See paragraphs 33 to 34)

58. Paragraph 5.4 should be revised to read:

Member States should ensure that it undertakes a transparent process involving a wide variety of consult, if required by their respective internal processes, with appropriate stakeholders in the selection and appointment of their Representatives to the AICHR. (See paragraphs 35 to 38)

b.) Term of office; security of tenure

59. Paragraph 5.6 should be deleted. (See paragraphs 40 to 41)

D. Part VI: Modalities-Decision-making

60. Paragraph 6.1 should be revised to read:

Decision-making in the AICHR shall be based on consultation and consensus, in accordance with Article 20 of the ASEAN Charter. Decisions may be made by a majority vote if all reasonable efforts have been exhausted and consensus still cannot be reached. (See paragraphs 42 to 43)

48 Ibid.
E. Part VII: Role of the Secretary-General and the ASEAN Secretariat

61. Paragraph 7.2 should be revised to read:

**There shall be an independent Secretariat created to** The ASEAN Secretariat shall provide the necessary secretarial support to the AICHR to ensure its effective performance. **It shall be headed by an Executive Secretary, who shall be a person of high moral character and recognized competence in the field of human rights. The Secretariat shall be empowered to hire its own staff, which should comprise of competent professionals who are experts in a variety of substantive human rights areas, including international human rights law. To facilitate the Secretariat’s support to the AICHR, ASEAN Member States may, with the concurrence of the Executive Secretary, Secretary-General of ASEAN, second their officials to the ASEAN Secretariat, provided that senior level posts shall not be filled with secondees, and that the number of seconded personnel shall not be more than 50% of the total workforce of the Secretariat.** (See paragraphs 44 to 46, 49 to 50)

F. Part VIII: Work Plan and Funding

62. Paragraph 8.1 should be revised to read:

The AICHR shall prepare and adopt 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. (See paragraphs 47 and 51)

63. Paragraph 8.2 should be deleted. (See paragraph 47)

64. Paragraph 8.3 shall be revised to read:

The annual budget of the Secretariat shall be funded on equal sharing basis by ASEAN Member States. (See paragraph 47)

65. Paragraph 8.6 shall be revised to read:

**Funding and other resources from non-ASEAN member States, development partners, or external sources, shall be solely for human rights promotion, capacity building, and education shall be allowed provided that it does not compose the core funding of the Secretariat.** (See paragraph 51)

66. Paragraph 8.8 should be deleted. (See paragraph 47)

For questions and clarifications, please contact Ms. Emerlynne Gil, International Legal Adviser for Southeast Asia, tel. no. +662 619 8477, fax no. +662 6198479 or emerlynne.gil@icj.org
FIVE-YEAR WORK PLAN OF
THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (2010 – 2015)

Pursuant to the Terms of Reference of the AICHR, this five-year Work Plan for the period of 2010 – 2015 includes programmes and activities of the AICHR with indicative budget to be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.

AICHR is guided by the ASEAN Charter, the TOR of AICHR and the purposes and principles contained therein. AICHR desires that the ASEAN community shall be free from fear, war, aggression and poverty. The peoples of ASEAN shall enjoy the right to live in peace, dignity and prosperity. There shall be a balance between rights, duties and responsibilities of individuals in the context of the ASEAN Community. The Member States of ASEAN and all sectors of their respective societies have the shared responsibility to ensure the promotion and protection of these rights and duties.

The objective of the AICHR Work Plan 2010-2015 is to give reality to the Terms of Reference of AICHR. To that end, the Work Plan is aimed at realizing the aspiration of the people of ASEAN on human rights, strengthening AICHR, promoting awareness on human rights in ASEAN and enhancing cooperation with external partners, as well as to implement AICHR’s overarching mandate on human rights, thereby contributing to the successful building of an ASEAN Community by 2015.

I. PRINCIPLES

The Work Plan of AICHR, together with all its activities must be in accordance with the principles, mandate, functions and modalities under the TOR of AICHR.

Participation by various sectors of society of each ASEAN Member State in the implementation of the Work Plan shall be determined by AICHR, taking into consideration the need to encourage as broad a participation as possible.

IV. WORK PLAN (based on the 14 Mandate and Functions of AICHR as provided for in the TOR)

4.1. To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;
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<tbody>
<tr>
<td>1.</td>
<td>Develop Rules of Procedure of AICHR</td>
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<td>2.</td>
<td>Complete the Five-Year Work Plan</td>
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<tr>
<td>3.</td>
<td>Develop and complete the various activities in the immediate and longer term that will support the implementation of the Five-Year Work Plan</td>
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<tr>
<td>4.</td>
<td>Dialogue and consult with the three Communities on their respective Blueprints concerning the promotion and protection of human rights, and submit to each of them recommendations for their consideration upon the review of their respective Blueprints</td>
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<tr>
<td>5.</td>
<td>Start in 2014 the review of the TOR of AICHR, and in this process, identify ways and means that will strengthen the functions of AICHR in the promotion and protection of human rights</td>
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<tr>
<td>6.</td>
<td>Strengthen the ASEAN Secretariat’s support for AICHR, and consider the establishment of a dedicated secretariat that should evolve with the work of AICHR</td>
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<tr>
<td>7.</td>
<td>Exchange visit(s) with international and other regional human rights bodies (as necessary or on invitation)</td>
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### 4.2. 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:

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<tbody>
<tr>
<td>1.</td>
<td>Set up an ad hoc task force on drafting an ASEAN Human Rights Declaration (ADHR) with the TOR to be prepared by AICHR</td>
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<tr>
<td>2.</td>
<td>Take stock of and assess status of existing human rights mechanisms and instruments in ASEAN</td>
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<td>3.</td>
<td>Work towards ASEAN conventions on Human Rights upon the adoption of the ASEAN Human Rights Declaration</td>
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<tr>
<td>4.</td>
<td>Support the development of other ASEAN legal instruments on human rights undertaken by other ASEAN sectoral bodies</td>
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<tr>
<td>5.</td>
<td>Support and strengthen the framework of legal cooperation on ASEAN human rights</td>
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### 4.3. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information:

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<tbody>
<tr>
<td>1.</td>
<td>Develop general basic information about AICHR including translation in each national language</td>
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<td>2.</td>
<td>Disseminate information relating to the work of AICHR as it may be approved, including publications in both English and national languages</td>
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<td>3.</td>
<td>Organise AICHR Road-Shows on human rights and AICHR</td>
</tr>
<tr>
<td>4.</td>
<td>Organise workshops/seminars with track I, II and III, either on its own or in cooperation with other institutions/organisation, at regional and national levels</td>
</tr>
<tr>
<td>5.</td>
<td>Taking stock of existing human rights education/studies programs in the region</td>
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</tbody>
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The Rules of Procedure is now named the Guidelines on the Operations of AICHR
6. Support the efforts of ASED to develop a regional education programme on human rights

7. Support the efforts to develop common media programmes on AICHR and ASEAN human rights, in close consultation and cooperation with AMRI and AMCA

8. Develop a website of AICHR both at the regional and national level that is accessible to the public

4.4. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;

**ASEAN activities**

1. Undertake needs assessment for capacity building

2. Design and organise a general course/advanced annual training program on human rights for government officials, law enforcement officers, teachers etc.

3. Design and organise an annual thematic workshop

4. Design and organise annually specific courses for target groups

5. Share best practices among ASEAN Member States

4.5. To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments;

1. Complete a stocktaking of existing human rights instruments acceded and ratified by ASEAN Member States

2. Identify priority for accession and ratification of international human rights instruments for ASEAN Member States

3. On request of the ASEAN Member State concerned, provide necessary assistance to facilitate the accession and ratification of international human rights instruments

4.6. To promote the full implementation of ASEAN instruments related to human rights

1. Compile ASEAN instruments related to human rights including translation into the national languages

2. Coordinate with relevant ASEAN sectoral bodies to ensure the effective implementation of ASEAN instruments related to human rights

4.7. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;

1. Identify resources and areas of competence where AICHR may provide advisory services and technical assistance to ASEAN sectoral bodies

2. Hold consultations with relevant ASEAN sectoral bodies to identify their needs for assistance

3. Organise joint meetings as needed with ASEAN sectoral bodies concerned.

4.8. 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;

1. Develop in the Rules of Procedure the modalities and guidelines for engagement with different stakeholders associated
A Decade in Review: Assessing the Performance of the AICHR to Uphold the Protection Mandates

4.9. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;

| 1. Develop in the Rules of Procedure the modalities and guidelines for consultation with other national, regional and international institutions and entities concerned with the promotion and protection of human rights |
| 2. Study visits to other regional human rights mechanisms |
| 3. Participate in regional and international events on promotion and protection of human rights |
| 4. Jointly organise events with other regional and international human rights mechanisms |
| 5. Meeting with other human rights mechanisms and entities as agreed to by AICHR |
| 6. Share best practices on the implementation of human rights with other regional human rights mechanisms |

4.10. To obtain information from ASEAN Member States on the promotion and protection of human rights;

| 1. Obtain a copy of country reports submitted by ASEAN Member States to the human rights bodies in the UN system |
| 2. Invite ASEAN Member States to share additional and updated information on their country reports |

4.11. To develop common approaches and positions on human rights matters of interest to ASEAN;

| 1. Identify the current and potential human rights matters of interest to ASEAN |
| 2. Develop and make recommendations on the common ASEAN approaches and positions on these matters |
| 3. Support the efforts of ASEAN Committees in Geneva and New York to arrive at a common ASEAN position on the review of the UPR mechanism and the review of the UN Human Rights Council |

4.12. To prepare studies on thematic issues of human rights in ASEAN;

| 1. Initiate thematic studies on issues relating to human rights, at least one issue per year, in close consultation with sectoral and other relevant ASEAN bodies. |

Regional-base study
- Corporate Social Responsibility
- Migration
- Trafficking in person particularly women and children
- Child soldiers
- Women and children in conflicts and disasters
- Juvenile justice
- Right to information in criminal justice
- Rights to health
- Rights to education
- Right to life
- Right to peace

| 2. | Hold workshop upon completion of the draft of the relevant thematic studies for discussion and consultation with the relevant stakeholders as provided for in the Guidelines on the Conduct of Thematic Studies for purposes of obtaining further inputs |
| 3. | AICHR shall publish and disseminate the studies, as appropriate (as part of human rights education & raising awareness as well as for building AICHR’s visibility, release periodic publications) |

| 4.13. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; |
| 1. | Meet with AMM |
| 2. | Prepare annual report on activities of AICHR, and other appropriate reports as deemed necessary |
| 3. | Submit thematic report(s) for further guidance |

| 4.14. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting. |
| 1. | Meet with AMM |
I. INTRODUCTION

Pursuant to the Terms of Reference of the AICHR, this five-year Work Plan for the period of 2016 – 2020 includes programmes and activities of the AICHR with indicative budget to be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.

The AICHR has successfully completed mandate 4.2 of the first Five-Year Work Plan ie to develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation in ASEAN. As the Five-Year Work Plan 2016 – 2020 is the continuation of the AICHR Work Plan 2010 - 2015, this five-year Work Plan will continue AICHR’s works on the promotion and the implementation of the Declaration itself and the Phnom Penh Statement. The AICHR will also work on engaging with ASEAN Organs and ASEAN Bodies dealing with human rights through mainstreaming of human rights in the three pillars of ASEAN.

II. OBJECTIVES OF AICHR’s FIVE-YEAR WORK PLAN 2016 - 2020

AICHR is guided by the ASEAN Charter, Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights and the TOR of AICHR. The AICHR desires that the ASEAN community shall be free from fear, war, aggression and poverty. The peoples of ASEAN shall enjoy the right to live in peace, dignity and prosperity. There shall be a balance between rights, duties and responsibilities of individuals in the context of the ASEAN Community. The Member States of ASEAN and all sectors of their respective societies have the shared responsibility to ensure the promotion and protection of these rights and duties.

The objective of the AICHR Work Plan 2016-2020 is to give reality to the Terms of Reference of AICHR. To that end, the Work Plan is aimed at realizing the aspiration of the people of ASEAN on human rights, strengthening AICHR, promoting and protecting human rights in ASEAN and enhancing cooperation with external partners, as well as to implement AICHR’s overarching mandate on human rights, thereby contributing to the successful building of an ASEAN Community and beyond.
This Work Plan reflects the AICHR as a vehicle for progressive social development and justice, giving full realization to human dignity and the attainment of higher quality of life. In this respect, AICHR will continue to work to promote and protect human rights\(^1\).

### III. PRINCIPLES

The Work Plan of AICHR, together with all its activities must be in accordance with the principles, mandate, functions and modalities under the TOR of AICHR as well as the AHRD and the Phnom Penh Statement.

Participation by various sectors of society of each ASEAN Member State in the implementation of the Work Plan shall be determined by AICHR, taking into consideration the need to encourage as broad a participation as possible.

### IV. WORK PLAN (based on the 14 Mandate and Functions of AICHR as provided for in the TOR)

<table>
<thead>
<tr>
<th>Characteristics and Elements</th>
<th>Actions</th>
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<tbody>
<tr>
<td><strong>Mandate 4.1. To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community</strong></td>
<td>2016</td>
</tr>
<tr>
<td>1. Complete the second Five-Year Work Plan 2016-2020</td>
<td>✓</td>
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<tr>
<td>2. Develop and complete the various activities in the immediate and longer term that will support the implementation of the Five-Year Work Plan 2016-2020</td>
<td>✓</td>
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<tr>
<td>3. Dialogue and consult with the three Communities on their respective activities in the ASEAN Community Post-2015 Vision and its</td>
<td>✓</td>
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\(^1\) References to the term human rights encompasses fundamental freedoms.
<table>
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<tr>
<th>Attendant Documents concerning the promotion and protection of human rights.</th>
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<tbody>
<tr>
<td><strong>4.</strong> Develop regional plans of action, recommendations, or ASEAN policy frameworks on human rights for women, children and persons with disabilities to mainstream and enhance human rights across the Community pillars, organs and bodies</td>
<td>√</td>
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<tr>
<td><strong>5.</strong> In the periodic review process of the TOR of AICHR, the AICHR shall assess its work and submit recommendations to the AMM on future efforts that can be undertaken in the promotion and protection of human rights within ASEAN</td>
<td>√</td>
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</table>
| **6.** Contribute to the strengthening of a dedicated unit within the ASEAN Secretariat and improving its visibility to support more effectively the work of the AICHR | √  
√  
√  
√ |
| **7.** Continue the exchange of visit(s) with international and other regional human rights bodies (as necessary or on invitation) | √ |
| **8.** Continue to develop regional strategies and undertake initiatives for further integration of human rights based approach, to environmental policy making and protection in line with the ASEAN Human Rights Declaration (the ‘AHRD’) and the Phnom Penh Statement on the Adoption of Human Rights (the ‘Phnom Penh Statement’) | √ |
| **9.** Drafting a policy that will protect women and girls against violence | √ |

**Mandate 4.2.** 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

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2 This mandate has been completed. The AICHR has drafted the ASEAN Human Right Declaration, which was adopted by the ASEAN Foreign Ministers in 2012.
1. Take stock of and assess status of existing human rights instruments in ASEAN

2. Work towards ASEAN conventions and other instruments dealing with human rights, in light of the adoption of the AHRD and the Phnom Penh Statement

3. Support the development of other ASEAN legal instruments on human rights undertaken by other ASEAN sectoral bodies

4. Support and strengthen the framework of legal cooperation on ASEAN human rights

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<tr>
<th>Mandate 4.3. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information</th>
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<tbody>
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<td>1. Develop/update general basic information about AICHR including translation in each national language</td>
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<td>2. Disseminate information relating to the work of AICHR as it may be approved, including publications in both English and national languages</td>
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<tr>
<td>4. Organise workshops/seminars with track I, II and III, either on its own or in cooperation with other institutions/organisation, at regional and national levels</td>
</tr>
<tr>
<td>5. Design and organize courses/training programmes on AHRD and Phnom Penh Statement / human rights for targeted groups of participants from AMS</td>
</tr>
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</table>
6. Taking stock of existing human rights education/studies programs in the region

7. Support the efforts of ASEAN Education Ministers Meeting (ASED) to develop a regional education programme on human rights

8. Support the efforts to develop common media programmes on AICHR, AHRD and the Phnom Penh Statement, and human rights, in close consultation and cooperation with AMRI and AMCA

9. Develop a website of AICHR both at the regional and national level that is accessible to the public

10. Increase awareness and information sharing among relevant stakeholders on CSR and Human Rights

11. Organise activities to raise awareness on the role of AICHR and the importance of promoting and protecting human rights for relevant stakeholders, including students and youth

12. Dissemination of the AHRD and the Phnom Penh Statement

**Mandate 4.4. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States**

1. Undertake needs assessment for capacity building

2. Design and organise a general course/advanced annual training program on implementation of international human rights treaty obligations undertaken by AMS for government officials/public officers of AMS

3. Design and organise an annual thematic workshop
### Mandate 4.5. To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments

1. Complete a stocktaking of existing human rights instruments acceded and ratified by ASEAN Member States
2. Identify priority for accession and ratification of international human rights instruments for ASEAN Member States, through study and dialogue
3. On request of the ASEAN Member State concerned, provide necessary assistance to facilitate the accession and ratification of international human rights instruments
4. Encourage the sharing of experiences and best practices in implementing the Convention on the Rights of Persons with Disabilities

### Mandate 4.6. To promote the full implementation of ASEAN instruments related to human rights

1. Compile ASEAN instruments related to human rights including translation into the national languages
2. Coordinate with relevant ASEAN sectoral bodies to ensure the effective implementation of the AHRD and the Phnom Penh Statement
3. Coordinate annually or biennially with the Committee of Permanent Representatives to ASEAN on activities related to human rights and in the implementation of the ASEAN Human Rights Declaration and the Phnom Penh Statement
4. To engage and exchange views with the judiciary via symposium and workshops to promote the full implementation of the AHRD and the Phnom Penh Statement and other ASEAN Instruments related to human rights

5. Promote the enhancement of the role and participation of persons with disabilities in ASEAN Community, including working with relevant stakeholders

6. Promote increased access to education for children with disabilities, including working with relevant stakeholders

**Mandate 4.7. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request**

1. Identify resources and areas of competence where AICHR may provide advisory services and technical assistance to ASEAN sectoral bodies

2. Hold consultations with relevant ASEAN sectoral bodies to identify their needs for assistance

3. Organise joint meetings as needed with ASEAN sectoral bodies concerned

**Mandate 4.8. 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;**

1. Enhance dialogue with CSOs which have “consultative relationship” on promotion and protection of human rights

2. Engage in dialogue with regional stakeholders on emerging human rights issues of interest to ASEAN pertaining to the promotion and protection of human rights in accordance with the AHRD and the Phnom Penh Statement and the TOR of AICHR
Mandate 4.9. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights

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<tbody>
<tr>
<td>1.</td>
<td>Study visits to other regional human rights mechanisms</td>
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<td>Participate in regional and international events on promotion and protection of human rights</td>
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<td>3.</td>
<td>Jointly organise events with other regional and international human rights mechanisms</td>
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<td>Meeting with other human rights mechanisms and entities as agreed to by AICHR</td>
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<td>5.</td>
<td>Share best practices on the implementation of human rights with other regional human rights mechanisms</td>
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Mandate 4.10. To obtain information from ASEAN Member States on the promotion and protection of human rights

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<tbody>
<tr>
<td>1.</td>
<td>Obtain a copy of country reports submitted by ASEAN Member States to the human rights bodies in the UN system</td>
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<td>2.</td>
<td>Invite ASEAN Member States to share additional and updated information on their country reports</td>
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Mandate 4.11. To develop common approaches and positions on human rights matters of interest to ASEAN

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Mandate 4.12. To prepare studies on thematic issues of human rights in ASEAN

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<td>1.</td>
<td>Initiate thematic studies on issues relating to human rights, at least one issue per year, in close consultation with sectoral and other relevant ASEAN bodies.</td>
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<td>Regional-base study</td>
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<td>- Legal aid</td>
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<td>- Freedom of religion and belief</td>
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<td>Hold workshop upon completion of the draft of the relevant thematic studies for discussion and consultation with the relevant stakeholders as provided for in the Guidelines on the Conduct of Thematic Studies for purposes of obtaining further inputs</td>
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<td>AICHR shall publish and disseminate the studies, as appropriate (as part of human rights education &amp; raising awareness as well as for building AICHR’s visibility, release periodic publications)</td>
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Mandate 4.13. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting

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<tbody>
<tr>
<td>1.</td>
<td>Meet with AMM</td>
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<td>2.</td>
<td>Prepare annual report on activities of AICHR, and other appropriate reports as deemed necessary</td>
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Adopted on 15 June 2015, Endorsed at the 48th AMM on 3 August 2015
3. Submit thematic report(s) for further guidance

Mandate 4.14. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting

1. Meet with AMM

*******
Annex 6: (a) List of Interview Questions to Experts, Officials, Academics and other Stakeholders to assess AICHR’s Performance in 2009-2019

PART I - List of Interview Questions to Experts, Officials, ASEAN Secretariat Staff, Academics and Other Stakeholders to assess AICHR’s Performance in 2009-2019

I. How do you see the political context of ASEAN (non-interference and consensus decision making principles) correlates with AICHR performances in the undertaking of its human rights mandates in ASEAN?

II. In your view, what should be the standard for human rights protection in ASEAN? Have AICHR implement its functions on protection of human rights in 2009-2019?

III. To what extent the AICHR has made progress in terms of human rights norm/standard setting and institutionalisation in ASEAN?
   - On norm/standard setting:
     (i) What is the prospect of the development of legal instruments on human rights led by the AICHR Philippines?
     (ii) Do you think ASEAN needs a legally binding human rights instrument, such as an ASEAN Convention on Human Rights?
   - On institutionalisation:
     (i) What are the requirements for a strong regional human rights mechanism?
     (ii) What are the missing infrastructures in ASEAN?
     (iii) How should we advocate the possible establishment of the following mechanisms?
       a. Communication procedures or individual complaints system
       b. AICHR special procedure

IV. Rohingya crisis (to selected interviewers)
   - Noting that ASEAN has agreed with giving more responsibilities to the ASEAN Coordinating Centre for Humanitarian Assistance (AHA Centre) to explore for steps and types of cooperation needed for repatriating the Rohingya from Bangladesh to Myanmar, what should AICHR do to ensure that the human rights dimension of the crisis is being equally addressed, and that the repatriation will take place in a dignified and safe manner with due regards to the rights of the vulnerable groups?

V. Other human rights issues in the region:
   - How have you seen AICHR react to Sombath Samphone Disappearance?
   - How have you seen AICHR respond to threat to human rights and democracy by ASEAN leaders or states apparatus in the ASEAN countries?
   - What have been done by the AICHR to ensure the protection of the rights of minorities?

VI. AICHR Engagements with the CSOs:
   - In your opinion, how are the AICHR engagements with the CSOs in 2009-2019?
   - In 2015, AICHR came up with the guideline of interaction with CSOs. In alignment with that how should engagement mechanism with the CSOs with consultative relationship be formalised? How AICHR can ensure meaningful participation of CSOs with non-consultative relationship?
VII. **Compliance with Global Human Rights Framework:**

- Has the AICHR played its roles in enhancing the capacity building for effective implementation of international human rights treaty obligations undertaken by AMS?
- Have you seen the AICHR Representatives encouraged the AMS to consider acceding to and ratifying international human rights instruments?
- To what extent the AICHR has taken into account cases reviewed by the Human Rights Committee and UN Special Procedures?

VIII. **Alignment with ACWC and other ASEAN Sectoral Bodies dealing with human rights, catalysation of ASEAN leadership and promotion of full implementation of ASEAN instruments related to human rights**

- As part of evidences of better alignment of the works of AICHR and ACWC, it is noted that the AICHR has convened a number of activities in close collaboration with ACWC during the period of 2009 - 2019. How do you see these joint initiatives? Were they substantially successful in advancing the protection of rights of women and children in ASEAN? Given that all AMS have ratified CEDAW and CRC, the expectation on ASEAN's commitment to ensure advanced protection of these rights shall be higher.

- How do we ensure constructive relations with the ASEAN Foreign Ministers, Senior Officials Meeting and Parliamentarians for better promotion and protection of human rights?

- How AICHR should engage with AHA center and AIPR, especially in ensuring human rights elements within the sectoral bodies approach and response to the key human rights crisis in the region?

- What have been done to promote full implementation of ASEAN instruments related to human rights?

IX. **Assessment of other Milestones and Activities of the AICHR**

- How have you seen AICHR progressing on the following functions?
  a. AICHR Thematic Studies
  b. AICHR Capacity Building Activities
  c. AICHR Activities on Human Rights Promotion
  d. AICHR Activities on Human Rights Protection
  e. Mainstreaming Human Rights to Judiciary, Law Enforcement Officials and other stakeholders

X. **Review of the TOR**

- What is the prospect of the review of the AICHR TOR by the ASEAN Foreign Ministers?
- Is it necessary to review the TOR?
- Is the TOR sufficient as it is now to empower AICHR to undertake its protection mandates?

XI. **The roles of the AICHR Representatives**

- Since the establishment of the AICHR, AICHR representatives have played important roles in increasing some ASEAN Member States' acceptance of human rights and gradually furthered human rights cooperation among the ASEAN member states. How do you see the roles of AICHR representatives since its
establishment? Have they been creative, innovative and progressive in interpreting and implementing the protection mandates of the AICHR under its TOR? Have they exhausted their “regional hat” to move the human rights agenda forward?
- What are your views on independent and transparent selection mechanism of AICHR Representatives?

XII. Independence, Accountability and Transparency
- What measures need to be adopted to ensure the progress of AICHR’s independence, accountability and transparency in its processes, activities, operational procedures and decision making in the future?

XIII. Strategies and recommendations
- What are your proposals for strategies and recommendations for stronger human rights protection in ASEAN
Annex 6: (b) List of Interview Questions to current and formed AICHR Representatives

List of Interview Questions to the current and former AICHR Representatives to assess AICHR’s Performance in 2009 - 2019

I. How do you see the political context of ASEAN (non-interference and consensus decision making principles) correlates with AICHR performances in the undertaking of its human rights mandates in ASEAN?

II. In your view, what should be the standard for human rights protection in ASEAN? Have AICHR implement its functions on protection of human rights in 2009-2019?

III. To what extent the AICHR has made progress in terms of human rights norm/standard setting and institutionalisation in ASEAN?

- On norm/standard setting:
  (i) What is the prospect of the development of legal instruments on human rights led by the AICHR Philippines?
  (ii) Do you think ASEAN needs a legally binding human rights instrument, such as an ASEAN Convention on Human Rights?
  (iii) To what extent other AICHR Representatives value the initiatives of former representative of Malaysia to the AICHR (H.E. Edmund Bon Tai Soon) in the development of common approach and position on the rights stipulated in the ASEAN Human Rights Declaration (AHRD), or general comments on the AHRD? Were they helpful in term of setting up common understanding of ASEAN Member States on the obligations arising from the AHRD?

- On institutionalisation:
  (i) What is the AICHR's position on any proposals to establish a communication procedure, including AICHR Malaysia's recent initiative to draft the proposal to operationalise AICHR's communications procedure?
  (ii) How many letters of complaint have been received by the AICHR? Is there any new development with regard to the modality of receipts of letters of complaint on human rights violations?
  (iii) Has any of the AICHR Representative institutionalised the practices of receiving human rights complaints and act upon human rights violations, even within their national capacity?

IV. Rohingya crisis:

- Noting that ASEAN has agreed with giving more responsibilities to the ASEAN Coordinating Centre for Humanitarian Assistance (AHA Centre) to explore for steps and types of cooperation needed for repatriating the Rohingya from Bangladesh to Myanmar, what are the efforts by the AICHR to ensure that the human rights dimension of the crisis is being equally addressed, and that the repatriation will take place in a dignified and safe manner with due regards to the rights of the vulnerable groups?
- To those willing and able in addressing the Rohingya issues (especially former AICHR Representatives from Indonesia, Thailand, Malaysia and the Philippines), what would be the advice to ensure the continuity of the advocacy from within the AICHR system? Was the joint media statement issued in April 2018 deemed effective internally and externally? Shall this precedence be continued and adapted to enhance responses on human rights emergencies in the region?
- What are the updates from ASEAN Secretary-General’s visit to Myanmar in December 2018?
- What are the outcomes of the meeting of former Representatives of Indonesia and Malaysia to the AICHR with the Independent International Fact-Finding Mission on Myanmar?

V. Other human rights issues in the region:
- How did AICHR react to Sombath Samphone Disappearance?
- How did AICHR respond to threat to human rights and democracy by ASEAN leaders or states apparatus in the ASEAN countries?
- What have been done to ensure the protection of the rights of minorities?

VI. Protection Practices:
- Has there been any AICHR Representative who was willing to address Rohingya issues and other human rights emergencies and violations in the region “by requesting information from the government of Myanmar or other concerned governments on the human rights crisis and how the Member States concerned is addressing it (Article 4.10 of the ToR) and carrying out its own investigations into the sites of human rights crisis, as part of a thematic study (Article 4.12 of the ToR) as well as by developing strategies to protect vulnerable communities (Article 4.1 of the ToR)”?

VII. AICHR Engagements with the CSOs:
- In your opinion, how are the AICHR engagements with the CSOs in 2009-2019?
- Acknowledging the AICHR CSOs symposium 2018 as a good initiative in moving the AICHR-CSOs relations forward, what are the key follow ups from the Symposium?
- Has the AICHR discussed a formalised engagement mechanism with the CSOs after granting them with the consultative relationship status (what is post-accreditation)? How AICHR can ensure meaningful participation of CSOs with non-consultative relationship?
- Has the AICHR deliberated CSOs’ suggestion to formalise annual meeting between the AICHR and the CSOs under the Guidelines on the AICHR’s relations with CSOs?
- What is the status of AICHR Guidelines on Correspondences?

VIII. Compliance with Global Human Rights Framework:

1 Adopted from Joint Civil Society Statement for AICHR Symposium 2018
- What are capacity building activities done by the AICHR to ensure effective implementation of international human rights treaty obligations undertaken by AMS?
- Have the AICHR Representatives encouraged the AMS to consider acceding to and ratifying international human rights instruments?
- To what extent the AICHR has taken into account cases reviewed by the Human Rights Committee and UN Special Procedures?

IX. Alignment with ACWC and other ASEAN Sectoral Bodies dealing with human rights, catalytation of ASEAN leadership and promotion of full implementation of ASEAN instruments related to human rights

- As part of evidences of better alignment of the works of AICHR and ACWC, it is noted that the AICHR has convened a number of activities in close collaboration with ACWC during the period of 2009 – 2019. How do AICHR Representatives see these joint initiatives? Were they substantially successful in advancing the protection of rights of women and children in ASEAN? Given that all AMS have ratified CEDAW and CRC, the expectation on ASEAN’s commitment to ensure advanced protection of these rights shall be higher.

- The AICHR has adopted the Guidelines on Alignment between AICHR and ASEAN Sectoral Bodies dealing with Human Rights on 13 February 2015. It is noted that the purpose of the document is to establish a coordination process between the AICHR and ASEAN Sectoral Bodies related to human rights with a view to enhancing synergy and coherence in the promotion and protection of human rights in ASEAN. What is the status of the implementation of the document?

- How AICHR should engage with AHA center and AIPR, especially in ensuring human rights elements within the sectoral bodies approach and response to the key human rights crisis in the region?

- How do we ensure constructive relations with the ASEAN Foreign Ministers, Senior Officials Meeting and Parliamentarians for better promotion and protection of human rights?

- What have been done to promote full implementation of ASEAN instruments related to human rights?

X. Assessment of other Milestones and Activities of the AICHR

- How have you seen AICHR progressing on the following functions?
  a. AICHR Thematic Studies
  b. AICHR Capacity Building Activities
  c. AICHR Activities on Human Rights Promotion
  d. AICHR Activities on Human Rights Protection
  e. Mainstreaming Human Rights to Judiciary, Law Enforcement Officials and other stakeholders

XI. Review of the TOR
IX. Alignment with ACWC and other ASEAN Sectoral Bodies dealing with human rights, catalysation of ASEAN leadership and promotion of full implementation of ASEAN instruments related to human rights

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XII. The roles of the AICHR Representatives

- Since the establishment of the AICHR, AICHR representatives have played important roles in increasing ASEAN Member States’ acceptance of human rights and gradually furthered human rights cooperation among the ASEAN member states. How does AICHR representatives see their roles during the period of 2009-2019? Have they been creative, innovative and progressive in interpreting and implementing the protection mandates of the AICHR under its TOR? Have they exhausted their “regional hat” to move the human rights agenda forward?
- What is your views on independent and transparent selection mechanism of AICHR Representatives?

XIII. Independence, Accountability and Transparency

- What measures have been adopted to ensure the progress of AICHR’s independence, accountability and transparency in its processes, activities, operational procedures and decision making in 2018?
- Is there any M & E system in place to assess and measure the impacts of AICHR activities and its meetings?

XIV. Strategies and recommendations

- What are your proposals for strategies and recommendations for stronger human rights protection in ASEAN?
Annex 6: (C) CSOs Questionnaires

Questionnaire for AICHR-10 Report:
Evaluating 10 Years Performance of the Overarching Mechanism

The following is a questionnaire for FORUM-ASIA’s ten year’s monitoring and assessment report on the performance of the ASEAN Intergovernmental Commission on Human Rights (AICHR) for the period of 2009 - 2019. Your inputs and comments are important to us, as they will provide a more comprehensive picture of the perceived performance of AICHR, the usefulness of activities carried out by the AICHR and sharpen the proposed strategies and recommendations for the bodies and other relevant stakeholders. Kindly note that information provided in this survey will be used solely for the report, any sensitive information will not be disclosed unless with the prior consent.

1. Details
   a. Name of organization:
   b. AICHR CSO consultative status- does your organization have the consultative status? Yes/ No/ other (please let us know if you are currently processing the applications to obtain the consultative status)
   c. Country and Scope of Work (national/ regional organization):

2. How long you have been working with and or towards utilizing AICHR?

3. Was your organization involved in the advocacies that had led towards the inclusion of human rights into the ASEAN frameworks and the creation of the AICHR?

For the next session, please rate your assessment on the performance of AICHR in 2009 – 2019 for each question.

1. AICHR’s role and effort on the promotion of human rights in the region, particularly on the full implementation of ASEAN instruments related to human rights

2. Implementation of their protection mandates, especially those under its Terms of Reference 4(1), 4(2), 4(10) and 4(12)? If yes. Can you specify the related responses/ activities?

3. AICHR ToR, particularly in terms of protection mandate

4. AICHR responds towards key human rights issues in ASEAN Please give an example.

5. Complaints
   a. Did your organization submit any complaints to the AICHR? If yes, did you receive a response? (Kindly share a copy of the complaint, if possible.)
6. How do you assess the performance of AICHR in comparison to global human rights framework? To what extent AICHR has been working in alignment with international human rights norms and standards?

7. How does AICHR align its work with ASEAN Sectoral Bodies dealing with Human Rights?

8. Please rate the independence, accountability and transparency of the AICHR (including the selections, decision making process, information sharing, among others)

9. Planning
   a. Was your organization invited by AICHR for the purpose of the drafting of AICHR Five-Year Work Plan and annual Priority Programmes?
   b. Was your organization engaged by AICHR, as a regional body, or the AICHR Representatives, in their national capacity in the preparation of their activities?

Section on Engagement of CSO and Advocacy

10. Was your organization invited to attend any AICHR consultation meetings (national and regional level) during the period of 2009 - 2019?
    a. If yes, please provide details of event (eg. title, date, key discussions)
       i. Were documents of the meeting shared beforehand, in a timely manner?
       ii. How do you rate CSOs engagement in AICHR events? Does CSOs have a significant influence in providing comments and oriented the discussions?
    b. If no, did your organization face any difficulties/challenges in accessing or joining consultation meetings (national and regional level) organized by AICHR Representatives in 2009 - 2019? Please explain.

11. Did your organization organize activities that were attended by AICHR Representatives in 2009 - 2019?
    a. If yes, please provide us details of the Representative that attended and details of the event (Kindly share documents of the activity, if possible).

12. Did your organization produce any other advocacy documents (eg. statements and analyses) for purposes of contributing to the development of the ASEAN human rights mechanism? (If yes, please share with us a copy of the documents or links to the documents.)


14. What are your proposals for strategies and recommendations for stronger human rights protection in ASEAN?
## Annex 7: (1) List of Interviewees

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<th>Name</th>
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<tr>
<td>1</td>
<td>Yuyun Wahyuningrum</td>
<td>Indonesia Representative for AICHR (2019 - 2021)</td>
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<tr>
<td>2</td>
<td>Edmund Bon</td>
<td>Former Malaysia Representative for AICHR (2016-2018)</td>
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<tr>
<td>4</td>
<td>Eric Paulsen</td>
<td>Malaysia Rep for AICHR (2019-2021)</td>
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<td>4</td>
<td>Lini Zurlia</td>
<td>Regional Coordinator, ASEAN SOGIE Caucus</td>
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<td>5</td>
<td>Ratna Mathai-Luke.</td>
<td>Program Officer, Global Alliance Against Trafficking in Women (GAATW)</td>
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<td>6</td>
<td>Joel Mark Barredo</td>
<td>Program Director, Shape-SEA, ASEAN Youth Forum</td>
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<tr>
<td>7</td>
<td>Aviva Nababan</td>
<td>Human Rights Resource Center</td>
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<tr>
<td>8</td>
<td>Fitri Bintang</td>
<td>Researcher, Center for Strategic and International Studies</td>
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<td>9</td>
<td>Vitit Muntarbhorn</td>
<td>Expert in ASEAN, Professor at Chulalongkorn University</td>
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<td>10</td>
<td>Maulani</td>
<td>ASEAN Disability Forum</td>
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<td>12</td>
<td>Yuval Jinbar</td>
<td>Amnesty International</td>
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<td>13</td>
<td>Asfinawati</td>
<td>Director, Yayasan Lembaga Bantuan Hukum</td>
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<tr>
<td>16</td>
<td>Fatia Maulidiyanti</td>
<td>Staff of International Desk at KontraS</td>
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<td>17</td>
<td>Arpee Santiago</td>
<td>WG for ASEAN HR Mechanism</td>
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### Annex 7: (2) List of Participants of FORUM-ASIA Expert Meeting on the Preparation of 10 Years Evolution of AICHR Report

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<tr>
<td>1</td>
<td>H.E. Hassan Wirajuda</td>
<td>Indonesia Representative for AICHR (2019 - 2021)</td>
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<td>2</td>
<td>H.E. Dr. Seree Nonthasoot</td>
<td>Former Malaysia Representative for AICHR (2016-2018)</td>
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<tr>
<td>3</td>
<td>H.E. Rafendi Djamin</td>
<td>Representative of Thailand to the AICHR 2013-2018</td>
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<td>4</td>
<td>H.E. Edmund Bon Tai Soon</td>
<td>Regional Coordinator, ASEAN SOGIE Caucus</td>
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<tr>
<td>5</td>
<td>H.E. Yuyun Wahyuningrum</td>
<td>Program Officer, Global Alliance Against Trafficking in Women (GAATW)</td>
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<tr>
<td>7</td>
<td>Ms. Braema Mathi</td>
<td>Human Rights Resource Center</td>
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<tr>
<td>8</td>
<td>Ms. Debbie Stothard</td>
<td>Researcher, Center for Strategic and International Studies</td>
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## Annex 7: (3) List of CSOs Respondents

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<tr>
<td>1</td>
<td>Task Force Detainees of the Philippines (TFDP)</td>
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<td>2</td>
<td>People’s Empowerment Foundation (PEF)</td>
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<td>3</td>
<td>Suara Rakyat Malaysia (SUARAM)</td>
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<td>4</td>
<td>Penang Stop Human Trafficking Campaign</td>
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<td>5</td>
<td>HOPE Worldwide-Pakistan</td>
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<td>Maruah</td>
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<td>KontraS</td>
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<td>Think Center</td>
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<td>9</td>
<td>Program Coordinator, Innovation for Change</td>
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<td>10</td>
<td>Amnesty International</td>
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<td>11</td>
<td>Asia Pacific Refugee Rights Network (APRRN)</td>
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<td>12</td>
<td>People Empowerment Foundation (PEF)</td>
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<tr>
<td>13</td>
<td>Regional Coordinator, ASEAN SOGIE Caucus</td>
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<tr>
<td>14</td>
<td>Task Force on ASEAN Migrant Workers</td>
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<td>15</td>
<td>ALTSEAN-BURMA</td>
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Annex 8: OHCHR’s Principles for Regional Human Rights Mechanisms

Principles for Regional Human Rights Mechanisms (Non-Paper)

A regional human rights mechanism shall be mandated to independently promote and protect human rights in accordance with the human rights commitments of the individual States Parties, with the following powers, responsibilities and structure as a minimum:

Monitoring

- Observes the general human rights situation in the region and publishes reports which include recommendations for collective action at the regional level;
- May request States Parties to provide it with information in relation to the promotion and protection of human rights, including information on specific human rights situations;
- Carries out on-site visits to States Parties to investigate specific human rights concerns. These visits shall result in a report regarding the human rights situation observed which will contain recommendations to the relevant State Party on the adoption of measures to remedy any violations determined;
- Issues progress reports on a periodic basis following initial on-site visits and reports;
- The reports will be made public and widely circulated, with the help of States Parties, to media outlets, legislatures, academic institutions, public libraries, relevant international institutions and to the relevant government departments of all States Parties, as well as being placed on the Internet;
- Develops an early warning system to help prevent gross violations of human rights, including crimes against humanity, war crimes and genocide.

Communications

- Receives, investigates, analyses and decides on communications from any person, group of persons or non-governmental organisation alleging human rights violation(s) by a State Party;
- The communication must show that the victim has exhausted all means of remedying the situation at the national level. If national remedies have not been exhausted, it must be shown that the victim tried to exhaust national remedies but failed because: 1) Those remedies did not provide for adequate due process; 2) Effective access to those remedies was denied, or; 3) There had been an unreasonably prolonged delay in the decision on those remedies;
- In the course of an investigation, the mechanism shall have the power to obtain all necessary information (including unrestricted, confidential access to alleged victims, witnesses, and places of relevance) with a guarantee that the State Party will not engage in reprisals against those persons providing information to the mechanism;
- Where the mechanism finds that there has been a violation of human rights, recommendations shall be made in the form of specific findings to the State Party concerned and the recommendation of appropriate remedies;
- To help ensure compliance, States Parties must report within 90 days on steps that they have taken to give effect to the findings or decisions of the mechanism. Furthermore, a secretariat shall be established to follow up on information pertaining to compliance and implementation of remedies and recommendations of the mechanism;
- Complainants, witnesses, those conducting the investigation and others involved in investigations shall be protected from violence, threats of violence and any other form of intimidation;
- In serious and urgent cases, and whenever necessary according to the information available, the mechanism may request that the State Party concerned adopt specific precautionary measures to prevent irreparable harm to persons;
- Any State Party may send a communication to the regional human rights mechanism alleging that another State Party has committed a violation of human rights.
Capacity Building and Education

- Provides and contributes to human rights training programmes for relevant groups including the police, the military, parliamentarians, non-governmental organisations, national human rights institutions, schools and universities. Also assists with the formulation of programmes for the teaching of human rights to various groups;
- Develops wider public awareness and knowledge of human rights in the region by carrying out, publishing and distributing widely studies on specific subjects and by organising conferences, seminars and meetings with representatives of governments, academic institutions, non-governmental organisations and UN representatives in order to disseminate information;
- Advises on national and regional policies and legislation in order to ensure harmonization and compliance with international human rights norms and standards;
- Responds to requests for advice from States Parties on matters concerning human rights;
- Adopts general comments that help to clarify the meanings of human rights standards, taking into account the general comments issued by international human rights treaty bodies;
- Conducts promotional country visits with the purpose of engaging with government officials, reminding the States Parties of their obligations, and otherwise promoting human rights standards;
- Encourages ratification of or accession to all core international human rights treaties;
- Cooperates and consults with international, regional, national and local institutions that are competent in the areas of the promotion and protection of human rights, including national human rights institutions and the United Nations;
- Cooperates and consults with non-governmental organisations devoted to promoting and protecting human rights;
- Establishes contact with representatives of non-governmental organisations, other relevant non-state institutions and the media to publicise its work and mandate.

Composition and support

- The regional mechanism shall be composed of members who are independent from government, and are impartial persons of integrity with a recognised competence in the field of human rights;
- Members shall be nominated by each State Party following a fair and transparent selection process at the national level which includes close consultation with civil society, non-governmental organisations, and national human rights institutions (if applicable);
- If a member is alleged to be engaged in actions that are incompatible with service on the regional mechanism, at first instance the matter shall be decided by the mechanism itself and, in the second instance, by the Foreign Ministers Meeting;
- Membership of the mechanism will reflect representation of geographical areas and shall aim to achieve gender balance;
- Members shall be elected for a single, non-renewable term of five years. They shall be accorded necessary privileges and immunities by the States Parties in order to conduct their work;
- States Parties shall provide the mechanism with adequate resources, and the authority to use these resources freely and independently, to properly fulfil its mandate. In this regard, the work of the members shall be supported by a secretariat, with professional administrative staff appointed according to criteria of competence, impartiality and independence.
Annex 9: List of AMS’ Ratification to the International Human Rights Instruments after 2009

List of ASEAN Member States’ Ratification to the International Human Rights Instruments after 2009

<table>
<thead>
<tr>
<th>Countries</th>
<th>Convention</th>
<th>Date of signature</th>
<th>Date of ratification</th>
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<tr>
<td>Brunei Darussalam</td>
<td>- OP to CRC on the involvement of children in armed conflict</td>
<td></td>
<td>17 May 2016</td>
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<tr>
<td>Cambodia</td>
<td>- CEDAW OP</td>
<td>11 Nov 2001</td>
<td>13 Oct 2010</td>
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<td></td>
<td>- International Convention for the Protection of All Persons from Enforced Disappearance</td>
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<td>27 Jun 2013</td>
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<td>24 Sep 2001</td>
<td>24 Sep 2012</td>
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<td>- OP to CRC on the sale of children, child prostitution, and child pornography</td>
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<td></td>
<td>- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families</td>
<td>22 Sep 2004</td>
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<td>Laos</td>
<td>- CAT</td>
<td>21 Sep 2010</td>
<td>26 Sep 2012</td>
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<td></td>
<td>- Convention on the Rights of Persons with Disabilities</td>
<td>15 Jan 2008</td>
<td>25 Sep 2009</td>
</tr>
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<td>Country</td>
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<td></td>
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<td>Singapore</td>
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<td>Vietnam</td>
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Annex 10: List of AMS’ Signature of the International Human Rights Instruments after 2009

<table>
<thead>
<tr>
<th>Countries</th>
<th>Convention</th>
<th>Date of signature</th>
<th>Date of ratification</th>
</tr>
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<tr>
<td>Brunei Darussalam</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<td>Indonesia</td>
<td>International Convention for the Protection of All Persons from Enforced Disappearance</td>
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<td>Myanmar</td>
<td>Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict</td>
<td>28 Sep 2015</td>
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<td>International Convention for the Protection of All Persons from Enforced Disappearance</td>
<td>9 Jan 2012</td>
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Annex 11: General Observations No. 1/2016: Interpretation of Articles 6, 7 and 8 of the ASEAN Human Rights Declaration 2012

GENERAL OBSERVATION NO. 1/2016

Interpretation of Articles 6, 7 & 8 of the ASEAN Human Rights Declaration 2012

Context
1. The Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Human Rights Declaration (AHRD) on 18 November 2012.
2. The AHRD has been the subject of criticism that it dilutes international human rights standards. In particular:
   2.1 That, under Article 6, rights must be balanced with duties.
   2.2 That, under Article 7, the realisation of rights may differ from one ASEAN Member State to another due to different national contexts.
   2.3 That, under Article 8, the limitation provision applies to all rights under the AHRD, without exception.
3. Pursuant to my mandate in paragraphs 4.1, 4.3 and 4.8 of the Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (AICHR), I set out my response to these arguments in this Observation.

Interpretation
4. The AHRD contains a mixed basket of rights. Some of these rights are not ‘new’ in the sense that Articles 10 and 26 merely affirm all existing civil and political, and economic, social and cultural rights in the Universal Declaration of Human Rights 1948 (UDHR).
5. By virtue of the affirmation, the specific rights listed in Articles 11 to 25 and 27 to 34 are not exhaustive.
6. Further, the Preamble to the AHRD reaffirms the commitment of ASEAN Member States to the UDHR, the Charter of the United Nations, the Vienna Declaration and Programme of Action and other international human rights instruments to which the States have signed.
7. As such, there must be no inconsistency or conflict between the AHRD and the UDHR (and other international human rights norms) in relation to the minimum applicable standards of human rights.
8. To achieve a harmonious interpretation of the AHRD with the UDHR (and other international human rights norms), reference would constantly need to be made to the interpretation of the UDHR rights as the foundational starting-point for rights under the AHRD.

Article 6 AHRD
9. In relation to Article 6:
   9.1 It should be noted that a similar provision appears in Article 29(1) of the UDHR, and a more extensive emphasis on ‘duties’ appears in Articles 27 to 29 of the African Charter on Human and Peoples’ Rights 1981.
   9.2 Article 6 merely calls for a ‘balance’ in the performance of ‘corresponding duties’. The enjoyment of one’s right does not rely on his or her due performance of duties because ultimately the primary responsibility still rests with ASEAN Member States to promote and protect all the rights of the right-holders.
   9.3 Notwithstanding, Article 6 is not a specific ‘limitation’ clause that permits restrictions to the enjoyment of rights.
Article 7 AHRD

10. In relation to Article 7:

10.1 Article 7 states that all human rights are universal, indivisible, interdependent and interrelated. All human rights must be treated in a fair and equal matter, on the same footing and with the same emphasis. This is the correct minimum international standard that defines the core features of human rights.

10.2 However, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds. This is a recognition that different regional and national contexts may serve to enrich the discourse on human rights. For as long as the minimum standards are met, then the concern about Article 7 is misguided.

10.3 Further, it is now commonly accepted that certain rights may be realised through different means so long as the minimum standards are met. In some instances, and in respect of certain types of rights, States may be given the benefit of a ‘margin of appreciation’ or deference through a ‘progressive realisation’ of the rights to the maximum of their available resources.

10.4 Notwithstanding, Article 7 is not a specific ‘limitation’ clause that permits restrictions to the realisation of rights.

Article 8 AHRD

11. In relation to Article 8:

11.1 It should be noted that a similar provision appears in Article 29(2) of the UDHR. The same argument made against Article 8 may also be made against Article 29(2).

11.2 However, Article 29(2) was drafted the way it was because none of the specific rights under the UDHR also provided for specific limitation clauses, where applicable. New instruments were required to elaborate on the specific rights, hence the International Covenant on Economic, Social and Cultural Rights 1966 and the International Covenant on Civil and Political Rights 1966.

11.3 Similarly, the specific rights enumerated in the AHRD in Articles 11 to 25 and 27 to 34 were not restricted by specific limitation clauses. Rather, Article 8 provides for permissible restrictions couched in a general way without meaning to potentially apply to all human rights under the AHRD. The intention could not have been to apply to all rights considering by the time the AHRD was adopted, certain rights had been well-entrenched as being non-derogable.

12. In any event, it is well-established that any interpretation of human rights must be towards the promotion, and not the destruction, of the same rights.

Dated this 23rd day of September 2016
Edmund Bon Tai Soon
Representative of Malaysia to the AICHR
Annex 12: Consultation Position Paper regarding Article 28(e) of the ASEAN Human Rights Declaration

[Proposed] Consultation Position Paper Regarding Article 28(e) of the ASEAN Human Rights Declaration 2012 (AHRD)

[Drafted by Edmund Bon Tai Soon, the Representative of Malaysia to the ASEAN Intergovernmental Commission of Human Rights (AICHR) 2016-2018, and presented for adoption at the 26th Meeting of the AICHR, Singapore, 24-26 January 2018 (Doc 6.5aiii)]

The views expressed in this document are those of the Representative and do not necessarily represent those of the ASEAN, including the AICHR. The document has yet to be adopted.

Regarding Article 28(e) of the ASEAN Human Rights Declaration 2012

I. Context

1. The Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Human Rights Declaration (AHRD) on 18 November 2012. The Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration affirms ASEAN Member States’ commitment to the full implementation of the AHRD to advance the promotion and protection of human rights in the region.

2. Following the ‘AICHR Regional Consultation on the Right to Safe Drinking Water and Sanitation in ASEAN (with emphasis on rural communities)’ held in Sabah, Malaysia from 25 to 27 October 2017, and pursuant to our mandate in paragraphs 4.1, 4.3, 4.8, 4.9, 4.10 and 4.11 of our Terms of Reference, we set out in this Consultation Position Paper an elaboration of the right to safe drinking water and sanitation in the ASEAN context and an interpretative guide regarding Article 28(e) of the AHRD.

II. Introduction

3. Water is fundamental to the enjoyment by everyone, of an adequate standard of living including good health, nutritious food, sufficient housing and sustainable livelihood; and proper sanitation is essential for a life of dignity, health and well-being. While water resources are limited, demand has multiplied due to various factors such as rapid urbanisation, increasing populations, the adverse effects of climate change, industrialisation and economic growth, and the corresponding higher demands for food, energy and environmental security.

4. Social and economic development are closely dependent on water, and poverty is prevalent mostly in areas that face water shortage. Ill-health associated with deficits in water and sanitation undermines productivity and economic growth, and traps vulnerable households in cycles of poverty.

5. Water-related disease, caused by unsafe drinking water and the absence of proper sanitation facilities, are now among the leading causes of death across the developing world. Women and children from poor, low-income and rural communities are particularly vulnerable.

6. Article 28 of the AHRD states as follows:

   Every person has the right to an adequate standard of living for himself or herself and his or her family including:a. The right to adequate and affordable food, freedom from hunger and access to safe and nutritious food;b. The right to clothing;c. The right to adequate and affordable housing;d. The right to medical care and necessary social service.e. The right to safe drinking water and sanitation.f. The right to a safe, clean and sustainable environment.

7. Article 28 enumerates a number of rights emanating from, and indispensable for, the realisation of the right to an adequate standard of living for every individual and his or her family. In particular, Article 28(e) uniquely recognises the right to safe drinking water and sanitation as part of the same right.
8. The importance of clean water and sanitation is also recognised in the United Nations Sustainable Development Goal (SDG) 6 of the 2030 Agenda for Sustainable Development, adopted by the UN General Assembly in 2015. Goal 6 seeks to achieve universal and equitable access to safe and affordable drinking water for all by 2030. It also seeks to achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations.

9. ASEAN Member States have within the ASEAN framework agreed to, and undertaken, various initiatives to realise the right to safe drinking water and sanitation.

9.1 The ‘ASEAN Strategic Plan of Action on Water Resources Management’ that was developed in 2005 complemented national-level efforts to address common challenges managing the region’s water resources, and included ways to improve access to safe drinking water and sanitation. Among the key targets was to reduce by 50% inadequate access to safe drinking water and sanitation by 2015. The Plan was administered by the ASEAN Working Group on Water Resources Management (AWGWRM) that was established under the auspices of the ASEAN Senior Officials on the Environment (ASOEN) that in turn reports to the ASEAN Ministerial Meeting on the Environment (AMME).

9.2 Under the ‘ASEAN Post-2015 Health Development Agenda’, any initiatives directly addressing safe drinking water and sanitation will be implemented under ‘Health Priority 11: Environmental Health and Health Impact Assessment’ within ‘Health Cluster 2: Responding to All Hazards and Emerging Threats’ for the years of 2016 to 2020. This Agenda falls to be implemented by the Senior Officials Meeting on Health Development (SOMHD) that reports to the ASEAN Health Ministers Meeting (AHMM).

9.3 In terms of uplifting the economic status of rural communities in the region, the ‘ASEAN Framework Action Plan on Rural Development and Poverty Eradication’ for the years of 2016 to 2020 addresses the challenges of reducing poverty. The Framework Action Plan is being implemented by the Senior Officials Meeting on Rural Development and Poverty Eradication (SOMRDPE) that reports to the ASEAN Ministers Meeting on Rural Development and Poverty Eradication (AMMRDPE).

9.4 The 10-year ASEAN blueprint titled ‘ASEAN 2025: Forging Ahead Together’ situates the importance of safe drinking water and sanitation as an element of development to build a sustainable and resilient ASEAN community by 2025.[2]

10. Further, all ASEAN Member States are parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Person with Disabilities (CRPD). In different ways, these conventions affirm the right to water and access to the related benefits of water.[3]

III. Interpreting Article 28(e) of the AHRD

11. The following substantive elements of the right to safe drinking water and sanitation under Article 28(e) of the AHRD should be noted.

11.1 Availability
a) Safe drinking water and proper sanitation should be available to all within the region.
b) Safe drinking water should be available in sufficient quantities, and in continuous supply. The quantity of water available for each person should correspond with the guidelines by the World Health Organization (WHO).[4]
c) Effective steps should be taken to ensure the availability of safe drinking water even in the face of current and future challenges such as floods, droughts, the rise in sea levels and any other natural or man-made causes, including the adverse effects of climate change.
d) Regional cooperation and dialogue should be undertaken for the protection and sustainable management of water resources that are shared across national boundaries.
e) Proper sanitation facilities should be available to all, including for those in rural or remote areas. The type of sanitation facilities to be made available may differ depending on cultural practices.

11.2 Accessibility
f) Everyone should be able to access safe drinking water and proper sanitation without undue difficulties such as having to travel long distances or face dangerous situations.
g) Safe drinking water and proper sanitation should be accessible to all without discrimination in law and in practice, based on any of the prohibited grounds especially in the case of the most vulnerable and marginalised sectors of the population.
h) Accessibility includes the right to seek, receive and impart information concerning water issues. This includes information about the different types of water or sanitation systems available, and involves the right of everyone to be consulted and to effectively participate in decision-making processes regarding water and sanitation issues. Information indicators with regards to consultation and participation include public hearings, community assemblies and publication and distribution of relevant materials.

11.3 Affordability
i) Safe drinking water and proper sanitation should be affordable for all. In countries where a tariff is charged, measures should be taken to ensure that the lowest income groups are still able to afford water and sanitation services. In this regard, there should be a regulatory body to ensure that prices are affordable, whether the service provider is public or private.
j) The total costs including indirect costs associated with water and sanitation, should not threaten or impede the realisation of other rights and basic needs.

11.4 Acceptability
k) Water should be of acceptable colour, odour and taste. This means that drinking water and sanitation facilities should be culturally acceptable, culturally appropriate and sensitive to gender, life-cycle and privacy requirements.
l) To ensure the acceptability of water and sanitation facilities, there should be meaningful consultation involving the free, prior and informed consent of local communities in the preparation, construction and management of any water, sanitation and hygiene systems.
m) There should be proper and effective feedback and redress mechanisms with authorities and regulatory bodies.

11.5 Quality
n) The provision of safe drinking water of good quality involves a holistic approach, beginning with the protection of raw water sources, to the provision and maintenance of good infrastructure and equipment for treatment and distribution.
o) The minimum standards for the quality of water should be in accordance with the WHO’s guidelines. Water-related diseases should be effectively prevented, controlled and treated.
p) Essential hygienic sanitation facilities should be made available.
q) There should be proper systems for the treatment of sewage and proper maintenance of such systems.

12. Similar to other human rights, there are three types of obligations in the realisation and implementation of the right to safe drinking water and sanitation: the obligations to respect, protect and fulfil. The examples below under each type of obligation are illustrative rather than exhaustive examples.

12.1 The Obligation to Respect
The obligation to respect includes State actors refraining from engaging, directly or indirectly, in any activity or practice that interferes, denies or limits access to adequate and safe drinking water and proper sanitation facilities, on the basis of equality and non-discrimination.

12.2 The Obligation to Protect
The obligation to protect requires State actors to prevent third parties from interfering in any way with the enjoyment of the right to safe drinking water and sanitation. Third parties include
individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation also includes adopting necessary and effective legislative and other measures to restrain third parties for example, from denying or compromising equal, affordable and physical access to sufficient and safe drinking water and proper sanitation.

12.3 The Obligation to Fulfil
The obligation to fulfil can be further disaggregated into the obligation to facilitate, promote and provide:

- The obligation to facilitate requires State actors, among others, to take positive steps to assist individuals and communities, without discrimination, to enjoy the right to safe drinking water and sanitation. Particular attention should be paid to women and children in vulnerable and marginalised groups.
- The obligation to promote includes taking steps to ensure that there is appropriate education and awareness concerning the hygienic use of drinking water and sanitation facilities, protection of water sources and methods to minimise water wastage. Active, free and meaningful participation should be encouraged as part of the exercise of the right.
- The obligation to provide safe drinking water and sanitation to individuals and groups who are unable, for reasons beyond their control, to provide for themselves by the means at their disposal. Examples of such situations include emergencies and crisis situations such as extreme weather events, disasters and conflicts.

The obligation to fulfil requires sufficient recognition of the right to safe drinking water and sanitation within the national, political and legal systems preferably by the adoption of legislation, a national water strategy framework and/or a plan of action to realise the right.

13. As Article 28(e) is an economic, social and cultural right, it should be read with Article 33. Therefore, ASEAN Member States should take steps, individually and through regional and international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the economic, social and cultural rights recognised in the AHRD. Further, Article 28(e) is to be complemented by the right to development and its related facets contained in Articles 35 to 37 of the AHRD.

IV. Towards Implementing Good Practices and Developing a Common Approach on the Right to Safe Drinking Water and Sanitation in ASEAN

14. The positive and progressive work being undertaken by the sectoral bodies to deliver safe drinking water and sanitation to the peoples of this region is encouraging and should be supported.

15. Further measures that could be considered are noted as follows.

15.1 Indicators and Collection of data
- Indicators on the availability, accessibility, affordability, acceptability and quality of safe drinking water and sanitation should be identified for data collection. This will assist in the evaluation of the access to safe drinking water and sanitation.
- Data to be collected should also be disaggregated based on the prohibited grounds of discrimination, including by gender, ethnicity, age and restrictions due to physical disabilities. This is to ensure that no particular group is being left behind in accessing safe drinking water and sanitation.

15.2 Communication and Dissemination of Information
- A regional programme of communication will augment efforts to share information and raise awareness regarding good hygiene practices and the right to safe drinking water and sanitation.

15.3 Integrated Water Resources Management
- The provision of safe drinking water and sanitation involves multiple sectors within government as well as the private sector and civil society organisations. Multi-sectoral coordination and engagement is thus key to ensuring that the right to safe drinking water and sanitation is realised. This coordination should be holistic and should extend coverage to
include the protection of raw water resources, ensuring efficient treatment and distribution of water and waste water, and appropriate transboundary and water efficiency approaches.

15.4 Disaster Management
· A regional plan or guidelines to mitigate the negative impacts on the availability, accessibility, affordability, acceptability and quality of safe drinking water and sanitation during natural disasters or emergencies will augment efforts to build the capacity of first responders in the emergency services.

Footnotes:
[1] A new ‘ASEAN Strategic Plan of Action on the Environment’ (ASPEN) for the years of 2016 to 2025 is due to be adopted. The proposed draft Plan has a strategic priority on Water Resources Management which includes a programme component on improving water quality and sanitation with the Senior Officials Meeting on Health Development (SOMHD) identified as a supporting sectoral body/partner.
[2] See paragraphs C.2. item iii. and D.5., item iii. under the ‘ASEAN Socio-Cultural Community Blueprint 2025’.
[3] Article 14(2) CEDAW, Article 24(2) CRC and Article 28(a) CRPD.
Annex 13: Guidelines on the AICHR’s Relations with CSOs

GUIDELINES ON THE AICHR’S RELATIONS WITH CIVIL SOCIETY ORGANISATIONS

I. Introduction

1. The purposes and objectives of these guidelines are to establish an enabling environment for meaningful and constructive engagement and interaction between AICHR and civil society organisations (CSOs), to further strengthen ASEAN cooperation in the promotion and protection of human rights and fundamental freedoms in accordance with the ASEAN Charter, the ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD, and international human rights instruments to which ASEAN Member States are parties, and to contribute to the building of a people-oriented, people-centred ASEAN Community.

2. The AICHR recognises that the Guidelines on Accreditation of Civil Society Organisations (CSOs) adopted by the ASEAN Coordinating Council (ACC) provide an overall framework for the engagement between ASEAN and CSOs.

3. The engagement between the AICHR and CSOs shall be conducted in adherence to the principles set out in the ASEAN Charter as well as the TOR of the AICHR.

II. Definitions

The following definitions shall be applicable:

4. Civil Society Organisations (CSOs) are defined as the association of persons, natural or juridical, that is non-profit and non-governmental in nature, which are organized voluntarily to promote, strengthen and help realise the aims and objectives of ASEAN activities and cooperation in the promotion and protection of human rights.

5. Institutions are defined as academic/policy research institutions or network of such institutions, which can be national, regional or international stature, dedicated to the promotion and protection of human rights.

III. Eligibility – The Principles to be applied to receive Consultative Relationship

6. The AICHR may have consultative relationships with national, regional, sub-regional and international CSOs and institutions, who are actively involved in the advancement, promotion and protection of human rights and fundamental freedoms.

7. The AICHR shall not have consultative relationships with CSOS and institutions that:
   a. advocate the use of violence to obtain their organizational objectives,
   b. operate under the clear instruction of a political party or foreign entity attempting to exercise external influence, or
   c. do not respect the principles and purposes of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms.

8. For the assessment of their eligibility, these CSOs and institutions will need to:
   a. Abide by and respect the principles and purposes of the ASEAN Charter, ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD and the Terms of Reference of the AICHR;
   b. Have specific expertise or proven experience and capacity in the promotion and protection of human rights and fundamental freedoms;
c. Provide documents supporting or demonstrate that their programme of work is of relevance to the principles and purposes of ASEAN and to the AICHR’s mandate, functions and Work Plans;

d. Have been in existence for at least two (2) years with a legally established entity in one of the ASEAN Member States, appropriate mechanisms of accountability and democratic and transparent decision-making processes.

e. Provide copies of their constitution/charter to the ASEAN Secretariat including a copy of their registration papers/or proof of existence;

f. Provide a list of members of the governing bodies and their nationalities;

g. Provide a copy of the most recent financial statement and annual report, including a statement whether they receive financial support, direct or indirect from a Government;

h. Provide a copy of publications and recent articles or statements;

i. Provide a paper identifying the areas in which the organisation proposes to contribute to the AICHR’s work in the promotion and protection of human rights in ASEAN.

9. The AICHR will establish a Screening Panel which will assess the eligibility of the CSOs and institutions for consultation as well as consider the suspension or revocation of their consultative relationship. The Screening Panel will be composed of three (3) members. The three (3) members will be appointed from amongst the AICHR representatives and is on voluntary basis and is for one year. The Screening Panel will screen all applications and submit their recommendations to the AICHR for final decision at plenary. The process for endorsement should not exceed 10 weeks following submission by the Screening Panel. Decision making of the Screening Panel is based on consensus.

10. In the screening process, the Screening Panel may consult relevant ASEAN Sectoral Bodies and the Committee of Permanent Representatives to ASEAN (CPR) as and when necessary to ensure transparency and consistency in ASEAN’s engagement with CSOs.

11. CSOs and institutions which are approved by the AICHR for consultative relationship will be informed of the decision. CSOs that are not approved will also be informed. Non-approval does not preclude resubmission of new application. The AICHR will provide written explanation for the non-approval and the CSOs can decide whether to resubmit a revised application to the AICHR. The revised application will have to go through the same process of consideration, as outlined in paragraphs 6 and 7, again. Approval by the AICHR will remain valid until revocation.

IV. Obligations Following Approval of Consultative Relationship

12. CSOs and institutions which are approved to have consultative relationship shall abide by the following obligations:

a. To commit themselves to respect the principles contained in the ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD;

b. Refrain from any conduct which will undermine the mandate and functions of the AICHR;

c. Undertake to support the work of the AICHR, in accordance with their own purposes and scope of their competence;

d. Submit annually a written summary of their activities and a list of funding sources to the AICHR;

e. Inform the AICHR of changes in their officials and memberships (if any), as well as changes of address; and

f. Respect and comply with the national laws and regulations of the concerned ASEAN Member State where their activities/programmes take place.
V. Suspension and Revocation of Consultative Relationship

13. The consultative relationship may be suspended or revoked by the AICHR on the following grounds:
   a. The consultative relationship of the CSOs and institutions will be suspended if they fail to submit an annual summary of their activities and a list of funding sources, as required under paragraph 12 (d). If, after the period of six (6) months following notification of suspension, they fail to submit the annual summary of their activities, the AICHR may revoke their status;
   b. If the CSOs and institutions either directly or through their affiliates or representatives acting on their behalf, abuse their status by engaging in a pattern of acts contrary to the purposes and principles of the ASEAN Charter and or the AICHR’s mandate and purposes relevant to the protection and promotion of human rights, including acts which are either manifestly unsubstantiated or clearly motivated by political interests against any ASEAN Member State;
   c. If there exists substantiated evidence of influence from proceeds resulting from internationally recognised criminal activities such as the illicit drugs trade, money-laundering or illegal arms trade.

14. The suspension or revocation of consultative relationship will be decided by the AICHR following a recommendation from the Screening Panel, based on its own initiative or following a request from any AICHR Representative made to the Panel or at the AICHR Meeting, and will take effect immediately upon notification of suspension or revocation. CSOs or institutions whose consultative relationship has been revoked will not be eligible for re-consideration for three (3) years after notification of revocation.

15. In cases where the AICHR has decided that the consultative relationship of a CSO be suspended or revoked, the CSO concerned shall be given written reasons for that decision and shall have an opportunity to present its response for appropriate consideration by the AICHR as expeditiously as possible.

VI. The AICHR Proceedings on Consultation and Types of Consultative Relationship

16. The AICHR will observe the following proceedings in its engagement with CSOs and institutions that are accorded consultative relationship:
   a. The agenda prepared by the AICHR for consultations with civil society with consultative relationship will be forwarded to them well in advance to enable the CSOs concerned to be prepared for the Consultation.
   b. Written statements relevant to the work of the AICHR may be submitted by CSOs and institutions with consultative relationship on subjects in which they have relevant competence. Such statements shall be circulated by the ASEAN Secretariat to the AICHR, except those statements that have become obsolete, for example, those dealing with matters already disposed of and those that had already been circulated in some other forms;

17. The consultations or dialogues between the AICHR and CSOs shall always be substantive and towards a mutually satisfactory result, carried out in an environment of friendliness and respect.

18. In addition to the above proceedings, the AICHR may seek to consult with such CSOs and institutions through the following modalities:
   a. Consultation - meeting to seek views and advice on something that is being decided. The consulted parties should be given adequate information and study the matter to be discussed prior to the meeting. While the response from consulted parties should be noted, it does not necessarily imply any commitment for the consulting parties to do anything about the response;
b. **Seminar** - meeting to provide information on one of more subject matter, primarily via lecture and discussion;

c. **Workshop** - a meeting of a group of people, to engage in intensive discussion and activity focuses especially on methods, techniques and skills in a particular field;

d. **Regular reporting/briefing** to the AICHR on its activities, which may include policy recommendations and feedback on various initiatives undertaken at national and regional levels in line with the AICHR's Work Plans;

e. **Implementation of specific studies** Upon request of the AICHR, any organization with consultative relationship may carry out specific studies or prepare specific papers, subject to the relevant financial regulations;

f. **Project implementer** of the AICHR Work Plans; and

g. **Any other format determined by the AICHR**

19. Official transmission of documents from CSOs and institutions shall be submitted to the ASEAN Secretariat who will circulate to the AICHR Representatives.

### VII. Registry and Confidentiality

20. ASEAN Secretariat will maintain the registry of CSOs and institutions with AICHR's consultative relationship. ASEAN Secretariat shall make available the current list of the CSOs and Institutions with their consultative relationship on the AICHR Website.

21. All information submitted to the AICHR and the ASEAN Secretariat will be kept confidential.

### VIII. Final Clauses

21. The consultative relationship accorded to CSOs and institutions is not automatically endorsed under any other ASEAN instrument. These CSOs and institutions are not deemed to be accredited CSOs under Annex 2 of the ASEAN Charter and are not entities associated with ASEAN.

22. These Guidelines are subject to revision and amendment. Any AICHR Representative may propose amendments to the Guidelines which shall be decided by consensus.

23. These Guidelines are subject to review after three (3) years or when the AICHR deems necessary.
Annex 14: List of CSOs with Consultative Relationship with the AICHR

List of Civil Society Organisations/Institutions with Consultative Relationship with the AICHR:

1. Asylum Access Malaysia (AAM)
2. ASEAN Service Employees’ Trade Union Council (ASETUC)
3. Asia Indigenous Peoples Pact (AIPP)
4. Center for Reintegration of Ex-prisoners into Society
5. Child Rights Coalition Asia
6. Development Action for Women Network, Inc. (DAWN)
7. FORUM-ASIA
8. Global Alliance Against Traffic in Women (GAATW)
9. Human Rights and Development Foundation
10. Human Rights Resource Centre (HRRC)
11. Institute for Workers and Trade Unions (IWTU)
12. Islamic Renaissance Front (IRF)
13. Institute for Strategic and Development Studies, Inc.
15. Malaysian Confederation of the Disabled (MCD)
16. MARUAH (Working Group for an ASEAN Human Rights Mechanism, Singapore)
17. Movement for the Intellectually Disabled of Singapore (MINDS)
18. Persatuan Kesedaran Komuniti Selangor (EMPOWER)
19. Persatuan Korban NAPZA Indonesia (PKNI)
20. Persatuan Penyandang Disabilitas Indonesia (Indonesia Disabled Association)
21. Persatuan Promosi Hak Asasi Manusia (Society for the Promotion of Human Rights or PROHAM)
22. Philippine Migrants Watch, Inc. (PMRW)
23. Pusat KOMAS
24. Raoul Wallenberg Institute of Human Rights and Humanitarian Law
25. Save the Children Philippines
26. The Singapore Council of Women’s Organisation
27. Suara Initiative Sdn Bhd (SUARAM)
28. Thailand Association of the Blind (TAB)
29. The Vietnam Peace and Development Foundation
30. Women’s Aid Organisation (WAO)
Annex 15: Joint Civil Society Statement for AICHR Symposium 2018

Joint Civil Society Statement for AICHR Symposium 2018

We, the undersigned civil society organizations, applaud the AICHR for convening the AICHR and CSOs interface meeting within the “AICHR Training/Symposium” in Chiang Rai, Thailand, on 13 – 15 October 2018, as a follow up to the CSOs, AICHR and relevant bodies’ interface meeting in November 2017.

We note AICHR’s effort to provide updates in regards to the promotion and protection of rights of women, children, and persons with disabilities, business and human rights as well as the implementation of SDGs in ASEAN. We, however, would like to express concern on the experience of those women, children, and persons with disabilities who suffer intersecting discrimination since they also belong to marginalized and vulnerable groups such as refugees, migrant workers, indigenous peoples, stateless people, minorities and people with diverse sexual orientation and gender identity and expression in various ASEAN member states. Recalling the multi-level oppression faced by them, which varies from being denied health services, denied citizenship, discrimination and stigmatization, disregard for rights, violations of their civil and political rights, torture and other physical and psychological abuse and more, we call on AICHR to take note of these complex violations in its work on this topic.

We would also like to bring your attention to the ongoing threats faced by human rights defenders working on behalf of the aforementioned or other communities and issues in the region. Repressive laws are used to target human rights defenders, especially marginalized groups such as women, children and LGBTI (lesbian, gay, bisexual, trans, and intersex) defenders, for they remain subject to fabricated charges, State-sanctioned violence, imprisonment and extrajudicial killings. The recent cases includes, but are not limited to the arbitrary detention and deportation of Debbie Stothard in Vietnam1, the imprisonment of artist and activist, Seelan Palay, who’s also charged under Singapore Public Order Act2, for a one-person performance art, on the past detention without trial of Mr Chia Thye Poh, for 32 years; charges against Jolovan Wham under the Public Order Act for exercising his rights to freedom of expression and peaceful assembly and association in Singapore; and the killing of land rights defender Mariam Uy Acob in Maguindanao, Philippines3. These violations contribute to the shrinking civil society space and democracy deficit in the region4.

In addition, the crimes against the Rohingya, as well as other ethnic minorities, continues as documented and analysed in the report of the Independent International Fact Finding Mission on Myanmar (IIFMM)5. The report has set the record straight by bringing to light the longstanding institutionalised and systematic oppression and atrocities committed by successive regimes. Furthermore, the report found similar patterns of violations by the Myanmar military in ethnic areas in northern Myanmar as minorities continue to experience discrimination and persecution on ethnic and religious grounds.

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5 https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx
We also express concern over the issue of business and human rights, particularly the violations of rights by business sectors such as labour and land rights abuses and environmental degradation. We call on ASEAN to mainstream the UN Guiding Principle on Business and Human Rights in the region, taking into account the importance of advancing the rights of women workers, informal sector workers, and migrant workers, through both national and regional action plans, to mitigate the adverse human rights impacts of primarily the ASEAN Economic Blueprint in the integration across the Political-Security, Socio-Cultural Blueprints and the environment focus as outlined in the ASEAN Vision 2025.6

After joining the discussions in this event, we recommend that AICHR take action along the following lines:

1. Inform CSOs of the steps that AICHR has been taking to follow up the recommendations made by CSOs at the 2017 interface meeting in Bohol;
   a. Continue to convene annual interface meetings between CSOs, AICHR and relevant sectoral bodies of ASEAN. The annual interface meeting shall be added within the article VI of the Guidelines on the AICHR’s relations with CSOs;
   b. Recalling the commitment to galvanize joint activities between CSOs and AICHR;

2. Reiterating the importance of having a mechanism to address feedback by requesting the actions to accelerating the creation of the AICHR guidelines on correspondence;

3. Implement its protection mandate by establishing a complaint mechanism to receive complaints from individuals and groups on human rights violations, investigate and address them in accordance with international human rights law and standards;

4. In particular, to act urgently in addressing the suffering of and the crimes against the Rohingya by requesting information from the government of Myanmar on the human rights crisis and how the Member State is addressing it (under Article 4.10 of the ToR) and carrying out its own investigations into the Rakhine State human rights crisis, as part of a thematic study (under Article 4.12 of the ToR) as well as by developing strategies to protect vulnerable communities (under Article 4.1 of the ToR);

5. Provide a platform for open discussions and analysis of all human rights issues in the region (such as racism and religious bigotry, the recognition of indigenous peoples in ASEAN, LGBTI persons and the rights of refugee and asylum seekers), and not limited to those human rights issues prioritised by AICHR;

6. Aside from the annual activity report, to provide and publicize annual human rights report that highlights the key human rights issues in the ASEAN’s countries;

7. Ensure that the rights of migrant workers, especially women, including those engaged in the informal economy, are recognised, respected and promoted in the existing regional and national labour and migration related policies.

8. Provide timely and adequate responses to key human rights issues in the region especially the emblematic cases, including by issuing public statements on human

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6 Oral Statement from CSO’s during the AICHR Interregional Dialogue: Sharing Good Practices on Business and Human Rights, 4-6 June 2018, UNESCAP, Bangkok
rights violations by member states;
9. Accelerate, finalize, promote, and monitor implementation of ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities;
10. Ensure meaningful civil society participation during the development of the regional plan of action for the implementation of UNGP in Business and Human Rights;
11. Enable an environment that promotes mutual respect and constant engagement between CSOs, AICHR, and related parties;
12. Engage with civil society and related parties on a human rights-based approach to ASEAN Convention Against Trafficking in Persons (ACTIP) implementation;
13. Urge AICHR to highlight the protection of human rights defenders as the key priority issue in the 2019-2020 work plan. Withal, to create a regional study, capacity building and workshop on the plethora of W/HRD protections aspect with engaging the various sectoral bodies, three pillars of ASEAN communities as well as stakeholders at the regional and national level in every AMS.

Lastly, we reiterate our role as civil society organizations to strengthen the mandate and action of the AICHR as a body to encourage and help ASEAN Member States in fulfilling as well as expanding their obligations under international human rights law.

Endorsed by:
Asia Indigenous Peoples Pact - AIPP
Asian Forum for Human Rights and Development (FORUM-ASIA)
Asylum Access Malaysia
Child Rights Coalition Asia
DAWN- Development Action for Women Network
Global Alliance Against Traffic in Women
Islamic Renaissance Front
Malaysian Confederation of the Disabled
MARUAH
Persatuan Promosi Hak Asasi Manusia – PROHAM
PMRW- Philippines Migrants Rights Watch
PUSAT KOMAS
SUARAM- Suara Inisiatif
A Decade in Review: Assessing the Performance of the AICHR to Uphold the Protection Mandates
A Decade in Review: Assessing the Performance of the AICHR to Uphold the Protection Mandates