



The ASEAN Intergovernmental Commission on Human Rights: Origins, Evolution and the Way Forward

Yuyun Wahyuningrum



International IDEA

© International Institute for Democracy and Electoral Assistance 2014

International IDEA

Strömsborg, SE-103 34, STOCKHOLM, SWEDEN

Tel: +46 8 698 37 00, fax: +46 8 20 24 22

E-mail: info@idea.int, website: www.idea.int

The electronic version of this publication is available under a Creative Commons Licence (CCI) – Creative Commons Attribute-NonCommercial-ShareAlike 3.0 Licence. You are free to copy, distribute and transmit the publication as well as to remix and adapt it provided it is only for non-commercial purposes, that you appropriately attribute the publication, and that you distribute it under an identical licence. For more information on this CCI, see: <http://creativecommons.org/licenses/by-nc-sa/3.0/>.

International IDEA publications are independent of specific national or political interests. Views expressed in this publication do not necessarily represent the views of International IDEA, its Board or its Council members.

Graphic design by: Turbo Design, Ramallah

Contents



Abbreviations	5
Introduction	6
Human rights in ASEAN: the context	7
ASEAN Intergovernmental Commission on Human Rights (AICHR)	13
<i>AICHR members and the domestic selection process</i>	14
<i>The Secretariat and AICHR's five-year work plan</i>	15
<i>AICHR's new initiatives</i>	16
<i>ASEAN Human Rights Declaration (AHRD)</i>	18
<i>Review of the Terms of Reference (ToR)</i>	20
<i>The AICHR's relations with the stakeholders</i>	22
Lessons learned, challenges and opportunities	24
Policy recommendations	27
<i>Strengthening the AICHR requires the promotion of multiple strategies</i>	27
<i>Strengthening the AICHR requires support from everyone</i>	27
<i>Efforts should focus on making the AICHR an independent institution for human rights</i>	27
<i>The AICHR should address cross-border human rights issues</i>	28
Conclusion	28
References and further reading	30
Notes	34
About International IDEA	36
<i>What is International IDEA?</i>	36
<i>What does International IDEA do?</i>	36
<i>Where does International IDEA work?</i>	36



Table 1. Human rights provisions in the constitutions of ASEAN member states	7
Table 2: Ratification record of ASEAN member states	11
Table 3. Status of ASEAN member states' recommendations in UPR first cycle (2008–11)	12

Abbreviations



ACEVAWC	ASEAN Convention on the Elimination Against Women and Children
ACSC	ASEAN Civil Society Conference
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
ADF	ASEAN Disability Forum
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AMM	ASEAN Minister Meeting
APF	ASEAN People's Forum
ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination and Discrimination Against Women
CRC	Convention on the Rights of the Child
EU	European Union
HLTF	High-Level Task Force
JHRD	Jakarta Human Rights Dialogue
ToR	Terms of Reference
UN	United Nations
UPR	Universal Periodic Review



The ASEAN Intergovernmental Commission on Human Rights: Origins, Evolution and the Way Forward

Yuyun Wahyuningrum

Introduction

The Association of South East Asian Nations (ASEAN) was established in 1967. Its charter, which was ratified by all the ASEAN member states in 2008, built the momentum for the development of human rights norms and institutions in the region. The ASEAN Charter recognizes human rights as among its values, principles and purposes, along with democracy, rule of law and good governance. Furthermore, article 14 of the charter stipulates ASEAN's commitment to institutionalizing human rights through a regional human rights mechanism: the ASEAN Intergovernmental Commission on Human Rights (AICHR), which was created in October 2009. This development was followed in April 2010 by launching of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). These measures symbolize the commitment of ASEAN leaders to recognizing human rights as an integral part of ASEAN's path toward a cohesive regional community.

AICHR's fifth anniversary in October 2014 represents a great opportunity to assess how this regional mechanism on human rights has dealt with internal and external challenges to implementing human rights' promotion and protection. This assessment is timely, as the AICHR's Terms of Reference (ToR) are currently under review. Indonesia will take the lead in this review process, together with Singapore and Thailand. The review will have important implications for the development of the region's human rights architecture; Myanmar, currently holding the ASEAN chairmanship has a great responsibility to define the specific purposes and desired outcomes of the review, and may have the potential to reverse its progress. Therefore it is of the utmost importance that the regional civil society organizations actively participate in the process.

With this in mind, this paper analyses the AICHR's progress since its establishment by examining the evolution of its relationship with stakeholders, institution-building processes and norm-setting exercises as indispensable

elements of community building. The paper is structured into six sections. Following the introduction is a discussion of the development of human rights norms in ASEAN member states. Next is an analysis of the human rights institutionalization of ASEAN before and after the charter, including the development of regional human rights mechanisms. The following section examines the AICHR’s mandate and functions, as well as the challenges and opportunities it faces. Civil society involvement in strengthening human rights mechanisms in ASEAN is analysed next, followed by lessons learned and policy recommendations for the way forward.

This paper argues that although the AICHR has a limited mandate that does not entail protective measures to enforce human rights in the region, it is moving in the right direction in terms of human rights institutionalization and norm building. At the same time, it still faces great challenges: it needs to establish itself as the most authoritative organ for human rights protection in the region, and it requires more political and financial support from ASEAN member states. Finally, the AICHR should develop a stronger partnership with civil society in the region and focus on complementing the evolution of the global human rights system.

Human rights in ASEAN: the context

Every nation, including ASEAN member states, has recognized human rights. Acknowledging that the main responsibility to respect and protect human rights rests with each country,¹ human rights have been included in the constitutions of ASEAN member states, despite some differences (see Table 1).

Table 1. Human rights provisions in the constitutions of ASEAN member states

No.	Rights that are guaranteed	State
1.	Right to life and livelihood	Philippines, Thailand, Malaysia, Cambodia, Singapore, Indonesia
2.	Right to equality, personal freedom	Philippines, Thailand, Malaysia, Cambodia, Myanmar, Singapore, Indonesia
3.	Right to property	Philippines, Thailand, Cambodia, Myanmar, Vietnam, Indonesia

4.	Right to safety	Philippines, Cambodia, Indonesia
5.	Right to be free from arbitrary arrest, detention and raid	Philippines, Thailand, Malaysia, Laos, Myanmar, Vietnam
6.	Right to privacy on communication and correspondence	Philippines, Vietnam
7.	Freedom of opinion and expression, the press	Philippines, Thailand, Malaysia, Cambodia, Laos, Myanmar Singapore, Vietnam, Indonesia
8.	Freedom of assembly	Philippines, Thailand, Malaysia, Cambodia, Laos, Myanmar, Singapore, Vietnam, Indonesia
9.	Right to deliver objection and petition	Philippines, Thailand, Laos, Vietnam
10.	Freedom to practice religion or belief	Philippines, Thailand, Brunei, Malaysia, Cambodia, Laos, Myanmar, Singapore, Indonesia
11.	Right to information and communication	Philippines, Thailand, Vietnam, Indonesia
12.	Right to a just trial	Philippines, Thailand
13.	Right to be free from coercion, torture and intimidation	Philippines, Cambodia, Indonesia
14.	Right to be presumed innocent until proved guilty	Philippines, Thailand, Vietnam
15.	Right to be free from slavery and forced labour	Philippines, Thailand, Malaysia, Singapore
16.	Right to be free from cruel and degrading punishment	Philippines, Myanmar, Indonesia
17.	Right to be free from imprisonment due to the inability to pay debt or tax	Philippines
18.	Right to be free from being adjudicated and punished twice for the same act	Philippines, Malaysia
19.	Right to be free from being punished based on retroactive legislation	Philippines, Thailand, Malaysia, Myanmar, Indonesia

20.	Right to take part in the government of the country, directly or through freely chosen representative (to participate in elections)	Philippines, Thailand, Brunei, Malaysia, Cambodia, Laos, Myanmar, Vietnam, Indonesia
21.	Right of indigenous people, ethnic group, tribe, and traditional community to conserve local customs and wisdom	Philippines, Thailand, Laos, Indonesia
22.	Right to place of dwelling	Philippines, Thailand, Vietnam, Indonesia
23.	Right to healthcare	Philippines, Thailand, Cambodia, Laos, Vietnam, Indonesia
24.	Right to protection and equality for female labour	Philippines, Cambodia, Myanmar, Vietnam
25.	Right to partake in social, political and economic life	Philippines, Thailand, Cambodia, Vietnam, Indonesia
26.	Right to education	Philippines, Thailand, Cambodia, Laos, Myanmar, Singapore, Vietnam, Indonesia
27.	Right to be equal before the law and have the protection of the law	Thailand, Malaysia, Cambodia, Laos, Myanmar, Singapore, Vietnam, Indonesia
28.	Right to be free from discriminative treatment on any grounds	Thailand, Cambodia, Laos, Indonesia
29.	Freedom of movement	Thailand, Malaysia, Cambodia, Vietnam, Indonesia
30.	Right to family's right, dignity, reputation and privacy	Thailand
31.	Right to confidentiality of personal data	Thailand
32.	Right of children, juveniles, women, pregnant women, elderly and persons with disabilities to protection and service	Thailand, Laos, Myanmar
33.	Right to freedom of venture and occupation, and guarantee of work safety	Thailand, Cambodia, Laos, Myanmar, Vietnam, Indonesia
34.	Right to academic freedom	Thailand

35.	Right to welfare, public facility and relief from the state for the poor and groups with special needs	Thailand, Laos, Indonesia
36.	Right to sue government institution owing to an action perpetrated	Thailand
37.	Right to follow up and request responsibility from political officials	Thailand, Laos
38.	Right to form unions and associations	Thailand, Malaysia, Cambodia, Laos, Myanmar, Singapore, Vietnam, Indonesia
39.	Right to not be banished or excluded	Malaysia, Singapore
40.	Right to social security	Cambodia, Indonesia
41.	Right of housewives to have the same value as when they are working outside the house	Cambodia
42.	Right to perform strikes and demonstrations	Cambodia
43.	Right of women to be free from discrimination and exploitation	Cambodia, Vietnam
44.	Right of children to life, growth and development, to obtain education, protection and be free from discrimination	Cambodia, Vietnam, Indonesia
45.	Right and freedom to perform study, research and development of science and technology	Laos
46.	Right to establish a family and to generate offspring through a lawful marriage	Indonesia
47.	Right of peoples to collectively advance themselves in a fight for their rights	Indonesia
48.	Right to nationality	Indonesia
49.	Right to prosper and deserve a healthy environment	Indonesia

Source: ASEAN Human Rights Working Group 2012

ASEAN member states have also signed and ratified numerous international covenants on human rights (see Table 2).

Table 2: Ratification record of ASEAN member states

Country	CERD	ICCPR	ICESR	CEDAW	CAT	CRC	CMW	CED	CRPD
Brunei				X		X			Signed
Cambodia	X	X	X	X	X	X		X	X
Indonesia	X	X	X	X	X	X	X	Signed	X
Laos	X	X	X	X	X	X		Signed	X
Malaysia				X		X			X
Myanmar				X		X			X
Philippines	X	X	X	X	X	X	X	X	X
Singapore				X		X			X
Thailand	X	X	X	X	X	X		Signed	X
Vietnam	X	X	X	X		X			Signed

Note: 'X' means ratified/acceded.

Source: United Nations Office of High Commissioner on Human Rights website, <<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>>.

ASEAN member states have also participated in the Universal Periodic Review (UPR) under the auspices of the UN Human Rights Council since 2008. The UPR, which was established in 2006 by UN General Assembly Resolution 60/251, is a mechanism that assesses the human rights records of all UN member states and produces a report with recommendations on improvements. The UPR process provides an opportunity for each state to participate in an 'interactive dialogue' on its human rights situation. During this discussion, any UN member state can pose questions or make comments and recommendations to the states under review. States can also declare what actions they have taken to improve, or overcome challenges to, the enjoyment of human rights. The UPR also includes sharing best human rights practices around the world. The review results in an outcome report, which summarizes the discussion and responses by the reviewed state.

All ASEAN member countries participated in the first cycle of the UPR, and are now currently participating the second cycle until 2016 (Indonesia, the Philippines, Malaysia and Thailand). Table 3 shows the status of the ASEAN member states' UPR recommendations during the first cycle.

Table 3. Status of ASEAN member states' recommendations in UPR first cycle (2008–11)

ASEAN member state	Date of UPR	Recommendations			
		Accepted	Rejected	No clear positions	Pending decision*
Brunei	Dec 2009	33	27	0	25
Cambodia	Dec 2009	91	0	0	0
Indonesia	Apr 2008	9	0	4	0
Laos	May 2010	86	18	0	0
Malaysia	Feb 2009	62	22	19	0
Myanmar	Jan 2011	77	95	12	3
Philippines	Apr 2008	12	4	0	4
Singapore	May 2011	84	28	0	0
Thailand	Oct 2011	134	49	0	0
Vietnam	May 2009	94	46	5	1

*Pending decision refers to the state's response to recommendations that need to be consulted to the capital city.
Source: adapted from <<http://www.upr-info.org>>.

Several issues were highlighted during this first cycle of UPR:² torture, protection of human rights defenders, freedom of opinion and expression, enforced disappearances, extrajudicial executions, freedom of religion, and cooperation with civil society at the national level. Recommendations that were commonly accepted by ASEAN member states relate to the rights of persons with disabilities, human rights education, right to education, right to health, right to housing, poverty reduction, trafficking in persons, women's rights, efforts to combat corruption, improving and strengthening national human rights institutions, and children's rights.³ Issues related to death penalty, asylum seekers, emergency decrees, recruitment of child labour, ratification of the Rome Statue, working with special procedures, freedom of expression, freedom of opinion and freedom of association were the most rejected recommendations by ASEAN member states.⁴

During the first cycle of UPR (2008–11), ASEAN member states (except Malaysia and Myanmar) also made voluntary pledges on issues related to the engagement with civil society organizations, ratification of international instruments, addressing socio-economic problems, right to education, incorporating international conventions into domestic legislation, gender

responsive to issues on women and children, issuing standing invitations to special procedures, strengthening national human rights institutions, addressing the killings of activists and media professionals, amending national laws to be in line with international laws, accelerating reform on justice systems, and disseminating information to the public on human rights conventions.⁵

The accepted recommendations and voluntary pledges offered by ASEAN member states show their level of comfort in dealing with various issues. They also reflect how more efforts are directed to promote and protect human rights in the areas of women and children, right to education and socio-economic problems rather than in the area of political and security.

ASEAN Intergovernmental Commission on Human Rights (AICHR)

ASEAN's founding document—the 1967 Bangkok Declaration—did not mention human rights, and the term itself had been perceived with deep hesitation by the participating governments at that time (Muntarbhorn 1997). Member states were more concerned with national security than the implementation of human rights.

Nevertheless, 17 years later, ASEAN managed to secure consensus from its member states to institutionalize human rights; the term first appeared in the 1993 Joint Communiqué of the 26th ASEAN Ministers Meeting.⁶ ASEAN foreign ministers reiterated their commitment to 'respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993' (paragraph 16) and 'agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights (paragraph 18). Two years after the adoption of the Joint Communiqué, a group of lawyers in the Human Rights Committee of the Law Association of Asia and the Pacific set up the Working Group to advocate the establishment of an ASEAN human rights mechanism through number of seminars, roundtable discussions and workshops.⁷

In 1997, ASEAN leaders adopted ASEAN Vision 2020, which describes the broad vision of creating an ASEAN caring and sharing community (ASEAN 1997a). Following this commitment, ASEAN adopted the Hanoi Plan of Action in 1997 to translate ASEAN Vision 2020 into actions, including the exchange of information on human rights among ASEAN countries (ASEAN 1997b). Since then, the debate on human rights has intensified in a number of ASEAN official documents, such as the 2003 Bali Concord II,

the 2004 Vientiane Action Program, the 2007 Political Security Blueprint and the Social-Cultural Blueprint. Finally, in 2008 ASEAN leaders ratified the ASEAN Charter, including article 14, which stipulates the establishment of a human rights body that shall operate in accordance with the ToR to be determined by the ASEAN Foreign Ministers Meeting.

On July 2009, the ToR of the AICHR was adopted at the 42nd ASEAN Ministerial Meeting. The ToR calls for the development of strategies to promote and protect human rights and fundamental freedoms; however, AICHR's mandates were formulated using the 'promotion first, protection later' approach. The ToR does not include the powers of investigation, monitoring or enforcement, or any rights catalogue, though it provides that the commission is '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'⁸.

Observers and human rights specialists called the AICHR a 'toothless' human rights body (Fuller 2009); nevertheless, its very existence has the potential to trigger further human rights debate in the region and open avenues for actions (Kelsall 2009). By focusing on the idea of the commission as an incompetent body without any independent enforcement powers, most observers undermine the essential process of ASEAN human rights norm diffusion. Termsak Chalermphanupap, the former director for political and security cooperation of the ASEAN Secretariat, stated that the AICHR was never meant to be an independent watchdog, as its critics argue (Hermawan 2010). Its launch was with the Cha-am Hua Hin Declaration, which emphasized the ASEAN leaders' commitment to pursue forward-looking strategies to strengthen regional cooperation on human rights, which will continue to evolve in order to make the AICHR an overarching institution responsible for the promotion and protection of human rights (ASEAN 2009a).

AICHR members and the domestic selection process

Article 5.1 of the ToR stipulates that the AICHR shall comprise the member states of ASEAN. Furthermore, article 5.4 states that member states 'should consult, if required by their respective internal processes, with appropriate stakeholders in the appointment of their representative to the AICHR'. Each representative serves a term of three years and may be consecutively reappointed for only one more term (article 5.5).⁹

AICHR representatives come from different backgrounds. The first batch of representatives (2009–12) was from the profession of judge/former judge (Singapore and Brunei Darussalam), lawyer (Malaysia), former diplomats (Myanmar and Philippines), civil society organization (Indonesia), university professor (Thailand) and government officials working at the Ministry of Foreign Affairs (Laos, Cambodia and Vietnam). In 2009, only Indonesia and Thailand conducted a participatory selection process at the national level as suggested by article 5.4 of the ToR. At the time of writing, the AICHR is in the middle of its second term. Representatives from Indonesia, the Philippines, Myanmar and Malaysia were reappointed in the second term (2013–15). The composition of AICHR representative for this term is a combination of former diplomats/ambassadors (Vietnam, Laos and Singapore), government official (Cambodia), retired minister (Brunei Darussalam) and lawyer (Thailand). Once again, only representatives from Indonesia and Thailand were chosen using the national selection process.

The Secretariat and AICHR's five-year work plan

The AICHR currently has no dedicated Secretariat. Three staff members from the Community and Corporate Affairs in the ASEAN Secretariat have provided logistic support for the AICHR's work since its establishment. AICHR's five-year work plan (2010–15) aims to strengthen ASEAN Secretariat support for the AICHR, and 'consider the establishment of a dedicated secretariat that should evolve with the work of AICHR'. The need to create a dedicated unit to function as the secretariat for AICHR was also stipulated in the chairman's statement of the 20th ASEAN Summit in April 2012 (ASEAN 2012a, paragraph 33).

Furthermore, at the 12th Meeting of the AICHR in Jakarta on 6-10 May 2013, the secretary-general of ASEAN, H.E. Le Luong Minh, expressed the organization's readiness to consider a proposal for a dedicated unit to support the AICHR's work by reorganizing the structure of the ASEAN Secretariat (AICHR 2013e). The AICHR reiterated its request to have a dedicated Secretariat at the ASEAN Foreign Ministers' Meeting on 8 August 2014 (AICHR 2014b).

Article 8.3 of the ToR said that the annual budget of the AICHR should be funded equally by the ASEAN member states. At the moment, each member state has contributed USD 20,000 as a seed fund for the AICHR's operation since 2009 (*Prokerala News* 2009). This amount is relatively small, considering the human rights situation in the region that requires AICHR's

responses. To access the fund, the AICHR must submit its Work Plan and budget for a cycle of five years for approval at the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of the Permanent Representatives (CPR) of ASEAN (article 8.1).

The AICHR's five-year work plan consists of various activities, such as convening meetings, workshop, training and seminars related to human rights, conducting studies, and engaging with other regional human rights mechanisms and international systems on human rights.¹⁰ The AICHR planned to prepare at least one study per year on selected thematic issues: corporate social responsibility, migration; trafficking in persons, 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 and right to peace.

The first AICHR thematic study on the issue of corporate social responsibility and human rights was completed in 2014. The study, led by Singapore and Malaysia, was presented at the ASEAN Foreign Ministers' Meeting on 8 August 2014 (AICHR 2014b). The rest of the thematic studies are still ongoing. Indonesia is the focal point for the research on migration and human rights. Thailand and the Philippines are coordinating the drafting of the AICHR Guideline on engaging civil society groups. On the area of human rights issues, Laos is disseminating information on rights to peace by organizing workshops and seminars (AICHR 2014b), and the Philippines is taking the lead on trafficking in persons, maternal mortality and women's rights. The focal point for post-2015 and human rights is Indonesia. Vietnam was the focal point for organizing the Regional Workshop on the Reporting Obligations: Sharing Experiences and Best Practices (AICHR 2014d).

AICHR's new initiatives

In order to raise awareness and the appreciation of human rights, the AICHR launched the first ASEAN Youth Debate on Human Rights, together with the Department of Foreign Affairs of the Republic of the Philippines, the Ateneo Human Rights Center and the Ateneo Society of International Law at the Ateneo Professional Schools in Rockwell, Makaty City, the Philippines in April 2013.¹¹ Students, mainly from law faculties from universities in ASEAN countries, participated in the debate competition.

Furthermore, on the 30th anniversary of the Vienna Declaration on Human Rights, on 25 June 2013, the government of Indonesia invited AICHR representatives from the human rights dialogue to hear its report on the human

rights situation, its challenges and possible future cooperation between the government of Indonesia and the AICHR.¹² Indonesia was of the view that establishing a dialogue with an overarching body in ASEAN like AICHR would contribute significantly to improving the promotion and protection of human rights at both the domestic and regional levels. This breakthrough practice may lead to the implementation of article 4.10 of the ToR, ‘to obtain information from ASEAN Member States on the promotion and protection of human rights’, which is one of the few strong mandates of the AICHR. This exercise has the potential to restore public confidence in the regional system of human rights. As a follow-up to this initiative, Thailand has agreed to be the state to report to the AICHR on its human rights situation by the end of 2014, focusing on trafficking in persons and migrant workers. More and more member states are expected to take voluntary initiative to bring their human rights record to the AICHR for the purpose of establishing human rights accountability as a norm toward building the ASEAN community.

In conjunction with the 46th ASEAN anniversary in the Secretariat, Jakarta, Indonesia, AICHR and the CPR jointly held the public discussion with the theme ‘Community Building through the Implementation of the ASEAN Human Rights Declaration (AHRD)’ (AICHR 2013d). This event is the first of its kind since both AICHR and CPR was established post the charter. The meeting, which was also attended by the representative of civil society, media and diplomatic community based in Jakarta, launched the translated version of the AHRD into ten local languages of ASEAN countries.

Although the AICHR has no power to discuss country specific on human rights, in March 2013, the body held a retreat to discuss the missing activist of Sombath Somphone of Laos¹³ and the Rohingya crisis in Myanmar.

In the last five years, AICHR has received two human rights opinions requests regarding HIV/AIDS testing for migrant workers, and on human rights curriculum at the undergraduate level. This is in line with the AICHR’s mandate in article 4.7 ‘to provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request’. Yet to date, the AICHR has not aired its opinion on the matters.¹⁴

As for domestic initiatives related to the regional human rights situation, the Indonesian representative to the AICHR has been hosting the annual Jakarta Human Rights Dialogue (JHRD), the main objective of which is to establish a dialogue with human rights stakeholders—including civil society and victims—with regional and national human rights mechanisms as well as with the ASEAN government representatives on some sensitive issues. The

topic for the first JHRD in 2012 was a review of the ASEAN Charter and its implications for the regional human rights architecture. The second JHRD in 2013 focused on the prevention of torture (AICHR 2013b).

The above initiatives reinforce the fact that despite its limitations, the AICHR has generated a different platform of regional debates on human rights and the emerging regional dimension on regional responses in ASEAN. Since the AICHR was established, civil society groups representing, for example, indigenous peoples and migrant workers, have become more organized at the national and regional levels. The AICHR also generates human rights discussion among member states in ASEAN and with dialogue partners, for example workshops, seminars and exchange of best practices in the ASEAN and China Strategic Partnership (ASEAN 2003) and the ASEAN-EU partnership (ASEAN 2013b).

ASEAN Human Rights Declaration (AHRD)

Based on article 4.1 of the ToR, the AICHR is required 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’. This mandate includes: (1) the AICHR is expected to develop human rights standards; (2) the purpose of such standards is to provide a framework for cooperation; and (3) various ASEAN conventions and other instruments dealing with human rights should be taken into consideration, and more are expected to be created in the future.

ASEAN adopted the ASEAN Human Rights Declaration (AHRD) along with the Phnom Penh Statement during the 21st ASEAN Summit in Cambodia on 18 November 2012. The United Nations Office of the High Commissioner on Human Rights expressed concern over the AHRD’s in compliance with international norms, yet welcomed ASEAN leaders’ renewed commitment to human rights. The high representative of the European Union for Foreign Affairs and Security Policy, Catherine Ashton, believes that the adoption of the AHRD represents an important step toward strengthening the protection of human rights in Asia (EU 2012).

A statement signed by 64 civil society organizations in the region denounced the adoption of AHRD, as it ‘undermines, rather than affirms, international human rights law and standards’ and contains deeply flawed ‘general principles’ that will serve as ready-made justifications for human rights violations of people within the jurisdiction of ASEAN governments (HRW

2012). These principles include balancing the enjoyment of fundamental rights with government-imposed duties on individuals (article 6), subjecting the realization of human rights to regional and national contexts (article 7), and broad and all-encompassing limitations on rights in the declaration, including those that should never be restricted (article 8). In many of its articles, the enjoyment of rights is made subject to national laws (articles 25.1, 25.2) instead of requiring the laws to be consistent with the rights. Furthermore, the declaration fails to include several key basic rights and fundamental freedoms, including the right to freedom of association and the right to be free from enforced disappearance.

It is worth noting that the AHRD includes many of the universal human rights: it guarantees freedom and equality in dignity and rights, and forbids discrimination; supports the preservation of human life, and the protection of one's honour, family and property; and affirms the human right to education, medical and social care and protection, and a clean environment.¹⁵ It also asserts that development is an inalienable part of human rights and encourages the right of peace for everyone.¹⁶ The last-minute addition of the Phnom Penh Declaration¹⁷ reaffirms ASEAN member governments' commitment to the Universal Declaration of Human Rights and other human rights instruments in the implementation of the AHRD. Yet it is insufficient to address the fundamental problem presented in the general principles because it provides evidence that international human rights obligations in the ASEAN region may be circumvented (Amnesty International 2012).

The AICHR drafted the AHRD in two steps. The first step was to set up a drafting team consisting of nine government representatives and one practicing lawyer (from Thailand) appointed by each AICHR representative, and the second step was the negotiation process among AICHR representatives. The meetings and negotiations were intensive until September 2012 (Petchamesree 2013). Consultations with stakeholders comprised the second step of the process, including with civil society and ASEAN sectoral organs such as the ACWC. Civil society groups criticized the process of drafting the AHRD as secretive and not participatory. The AICHR consulted civil society twice—only toward the very end of the process, without sharing the text of the draft—and ignored most of their recommendations (Asian Forum for Human Rights and Development 2012). While some individual AICHR representatives held consultations with civil society groups nationally, in some countries no consultations were held at all (Petchamesree 2013).

The AICHR was required to report the progress made and challenges faced to the ASEAN Ministers Meeting. The most controversial section in the AHRD

drafting process was related to the section on general principles and articles related to civil and political rights; one analyst attributed the controversy to ASEAN's way of working, which she described as 'minority hegemony' (Petchamesree 2013).

The AHRD is, after all, a political document in the context of democracy deficits in ASEAN member states. Member states' records on ratifying international instruments is relatively low, so perhaps it is not surprising that the AHRD chose the lowest common denominator. From the beginning, the AHRD was not intended to be a legally binding document, but rather to give meaning to 'human rights' as mentioned as one of the purposes of ASEAN in its charter. By consolidating and pronouncing the existing norms, the AHRD contributes to human rights protection by aiming to ensure progress rather than regress, as often witnessed in ASEAN's turbulent past. Therefore, there should be an opportunity in the future to revisit and revise the declaration.

Review of the ToR

The review of the AICHR's ToR that is underway may have both positive and negative implications for ASEAN's future human rights architecture. It has the potential to create a clear target or benchmark to improve the protection mandate of the AICHR, which is currently lacking. The review also strives to acknowledge the contribution of stakeholders and encourage their continuing engagement and dialogue.

At the time of writing, there have been two consultations with stakeholders including with civil society groups on the review of the ToR AICHR, in April and June 2014 (AICHR 2014a). Civil society provided the following assessment of the AICHR's work over the last five years:¹⁸

- 1) The lack of a protection mandate and the absence of strong expertise and a dedicated secretariat are the main hindrances to AICHR's work to promote and protect human rights in the region.
- 2) AICHR mandates as stipulated in the ToR have not been implemented:
 - a) institutionalizing relationships with national human rights institutions and civil society organizations (articles 4.8, 4.9);
 - b) obtaining information from ASEAN member states on their promotion and protection of human rights (article 4.10);
 - c) encouraging member states to ratify and accede to international conventions (article 4.5), fully implementing ASEAN instruments (article 4.6);

- d) providing advisory and technical assistance to ASEAN sectoral bodies (article 4.7); and
 - e) developing common approaches to and positions on human rights (article 4.11).
- 3) There has been a contradiction in conceptual frameworks and formulations in relation to the principles of the rule of law, good governance, respect of fundamental freedoms and sovereignty, and the non-interference doctrine in ASEAN.
 - 4) The ongoing lack of respect for human rights and impunity has undermined efforts to keep the ASEAN human rights standard on par with international standards.
 - 5) The AICHR has not been transparent and accessible at the national and regional levels, which generates gaps in understanding the role of regional human rights mechanisms in ASEAN.
 - 6) The AICHR is dominated by representatives who were government appointed rather than domestically selected, which contributes to the body's lack of independence.

There were two schools of thought regarding the review of the AICHR ToR in the second consultation meeting. The first school advised the AICHR to retain the current text of the ToR, but to interpret it more creatively in future implementation. The second school suggested amending the text to make it stronger and more straightforward. Nevertheless, civil society groups recommended a review of the AICHR ToR as follows:

- 1) Engage with stakeholders, including civil society, in decision-making processes more actively, and open space for stakeholder participation at the national and regional levels.
- 2) The AICHR should have more protection mandates, including precautionary measures, monitoring and complaint mechanisms, country visits, country peer reviews and a communication strategy.
- 3) The AICHR should consider strengthening the institutionalized platform of cooperation with human rights institutions and other national actors in its ToR. It should make the rights of vulnerable groups a priority and provide adequate support from its Secretariat and national board.
- 4) The AICHR needs to raise more awareness among the people in ASEAN and hold more training that involves stakeholders.
- 5) There must be a space in the ToR to articulate the state's responsibility and accountability to uphold international human rights obligations to the AICHR.

- 6) The AICHR should pay more attention to intergenerational rights in regards to sustainable development.

The AICHR's report and suggestions on the review of its ToR was presented to the 47th ASEAN Ministers Meeting in Myanmar on 8 August 2014 (ASEAN 2014). The review can be a way to gradually correct the weaknesses of the AICHR. Cooperation between the progressive governments, civil society, victims and the media would ensure that the review will make strengthening the organization's human rights mechanisms an irreversible process.

The AICHR's relations with the stakeholders

The AICHR is mandated to 'engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society and other stakeholders, as provided for in Chapter V of the ASEAN Charter' (article 4.8). It is also asked to consult with other national, regional, and international institutions and entities concerned with the promotion and protection of human rights (article 4.9).

The AICHR has been debating the guidelines on its 'Relations with Civil Society Organizations' since 2012 and is not yet finished. A number of national consultations in Thailand, Indonesia and the Philippines were held to collect input on the text of the guideline (ASEAN 2014c). One of the stumbling blocks in the debate has been the different interpretations of the role of civil society in ASEAN member states. The draft guideline is considered a confidential document and is therefore not publicized. Another obstacle to civil society engagement with the AICHR is the fact that article 4.8 of the ToR only mentions organizations registered by the ASEAN Charter, which only refers to the Working Group on ASEAN Human Rights Mechanism¹⁹ based in Manila.

It is worth noting that in consultations that were organized by the AICHR, each country could nominate two or three organizations to attend the meeting. Article 11.2 of the revised Guidelines on Accreditation of Civil Society Organizations states that the AICHR is allowed to consult with other non-accredited national, regional and international institutions when it deems it appropriate (ASEAN 2012b). The manner and modality of such consultations are to be 'mutually agreed upon by both the commission and the national institutions/entities concerned'.

Regarding the relationship between the AICHR and other sectoral bodies dealing with human rights in ASEAN, article 6.9 of the ToR states that

the AICHR shall expeditiously determine the modalities for their ultimate alignment. This matter has also been governed in section 10 of the adopted Guideline on the Operation of the AICHR.²⁰ Nevertheless, the adopted guideline does not suggest specific methods by which the AICHR could work with ASEAN sectoral bodies.

Before the first discussion between the AICHR and the ACWC on the matter of alignment in December 2011,²¹ the Indonesian representative to both human rights mechanisms held a meeting in December 2009 to develop a paper²² that suggests three forms of ASEAN human rights mechanisms: substantive, procedural and administrative alignment. Each form requires effort to ensure an integrated, comprehensive and effective framework for ASEAN human rights mechanisms to protect the human rights of all individuals. During the process of drafting the AHRD (AICHR 2012a), as well as the consultation on the assessment and review of the ToR (AICHR 2014a), the AICHR invited ASEAN organs such as ACWC, ASEAN Committee on Women, the ASEAN Defense Senior Officials Meeting, Senior Labor Officials Meeting and the Senior Officials Meeting on Health Development. Beyond these few interactions between the AICHR and ACWC, there is no further publicly available information on to what extent dialogue on the alignment issue has progressed since the December 2011 meeting.

Even though article 4.9 states that the AICHR has to consult with other national, regional and international institutions concerned with the promotion and protection of human rights, some AICHR representatives were also reluctant to engage with such organizations²³ in part because not all member countries have them (i.e., Indonesia, Thailand, the Philippines, Malaysia and Myanmar).²⁴ The Southeast Asia Network for National Human Rights Institutions includes six national human rights institutions.²⁵ Even though each human rights organization is bound by its domestic jurisdictional mandate, they agreed on a common plan of action to target cross-border issues related to anti-terrorism; economic, social and cultural rights; human rights education and human trafficking/migrant workers.²⁶ National commissions in Indonesia, Thailand, the Philippines and Myanmar have the authority to receive complaints from victims, monitor human rights implementation, conduct investigations, carry out field visits for fact-finding and offer remedies through recommendations. The Cambodian Government has to date committed to establish an independent national human rights institution.

Lessons learned, challenges and opportunities

In 2005, the chair of the Eminent Persons Group on the ASEAN Charter said, ‘...recent developments in ASEAN show that human rights emerge as an important concern in the organisation and it is time to go forward rather than recount it. It has been shown that although ASEAN may not make quick progress on human rights there has been some progress. But, only the time and actions to be taken by ASEAN will prove how serious ASEAN is about human rights issues’.²⁷ This statement sounds still relevant.

The establishment of the AICHR five years ago has created a different dynamic in terms of states’ relationship with and cooperation within ASEAN. At least five lessons can be learned from the AICHR’s experiences during the last five years. First, ASEAN prefers a systematic, ‘step-by-step’ approach. The review of the AICHR ToR provides an avenue through which the region can transform the human rights mechanism through a process of evolution. This is also the case with choosing to draft a declaration rather than a more legally binding document as a first measure to set the standard on human rights. Attempts to force the AICHR to become a strong human rights mechanism have not worked well.

Second, persistent efforts from progressive member states and country representatives to the AICHR to strengthen it and creatively seek more action can effectively change how the body operates. With a heavy emphasis on sovereignty and non-interference, ASEAN member states cannot be forced to do anything without their consent. Taking countries’ voluntary initiatives with the hope of gradually establishing a norm in ASEAN has been seen as one possible approach toward human rights protection. In ASEAN, the formula of ‘practice first, institutions later’ is workable and effective for norm setting.

Third, the establishment of the AICHR has generated debates and dialogue on human rights in ASEAN at the national, regional and international levels. Regardless of the position of ASEAN member states on human rights, each is obliged to serve as chair of the AICHR and host numerous meetings on human rights, which attracts media coverage and public attention on human rights. As mentioned in the previous section, ASEAN agreements with dialogue partners require the ASEAN chair to initiate discussions on human rights. In the last five years, the AICHR has received a number of invitations to participate in or speak at international forums from the human rights-related bodies in the United Nations, the African Commission on Human and Peoples’ Rights and the European Union.²⁸

Fourth, a steady effort from civil society groups to engage the mechanism has contributed to the current situation of the AICHR, and civil society movements have evolved along with the AICHR. Civil society groupings have expanded and become more organized toward human rights advocacy in the region. Since 2008, new networks have been formed and frequently engage with ASEAN organs, such as the Task Force on Migrant Workers, the Task Force on ASEAN Human Rights and Indigenous People; the Coalition on the Rights of the Child; the ASEAN Youth Movement; the Southeast Asia's Women Caucus for ASEAN Human Rights; the ASEAN Disability Forum; and the ASEAN Sexual Orientation and Gender Identity. National coalitions on human rights have also been established in Indonesia, Philippines, Cambodia and Thailand to complement the work of regional networks. They perform different roles to ASEAN, and work from both inside and outside the system to ensure that the mechanism upholds the human rights of the people in ASEAN. Civil society members have also initiated forums and discussion platforms to keep the groups updated on the progress in ASEAN and AICHR. It is worth noting that these formations did not exist ten years ago, as human rights were perceived to have no future in ASEAN.

Fifth, over the last five years, AICHR's approaches and activities related to human rights are still at the stage of 'courting' member states in ASEAN, rather than 'upholding' the promotion and protection of human rights. Even though the AICHR and AHRD are the symbols of collective agreement among ASEAN member states on human rights, the individual members have very different attitudes. Indonesia, the Philippines and Thailand are considered the supporters of human rights in the region, while Singapore and Malaysia belong to the 'wait-and-see' category when it comes to human rights issues.²⁹ Therefore the progressive member states are courting the rest to embrace human rights in the region through the AICHR. The selection of human rights topics and the implementation methods of each activity have been carefully planned to take into account the different levels of comfort of ASEAN member states.

One of the most challenging tasks of the AICHR is to maintain its significance and accountability to its people. The AICHR needs to move forward to progress beyond the institutionalization of human rights to their genuine protection and implementation in ASEAN. The AICHR should immediately address the problem with a proactive and robust system for dealing with regional crises and advancing common projects. It must ensure the effective participation of civil society and other stakeholders in all AICHR processes. Despite the many references to people-oriented participation in ASEAN's

various instruments,³⁰ there is still no long-term strategy for the AICHR that represents people's interest and voices.

At the same time, the democracy deficit in ASEAN members,³¹ the excessive use of the non-interference doctrine when it comes to human rights in domestic affairs, and the imbalance concept of development that is dominated by economic progress could also hinder AICHR efforts to evolve as a credible human rights mechanism. In fact, the deeper the regional integration is, the more vulnerable ASEAN member states are to exposing their domestic affairs to each other and to the world. Being open is a constitutive implication of regional integration. Unfortunately, this fact scares some countries in ASEAN, as they will be the subjects of international community criticism.

However, opportunities to develop AICHR into a strong human rights mechanism remain. There are four processes happening in parallel in ASEAN that will contribute to the development of the AICHR's protection mandates. The first is the review of the ToR. Even though it is still unclear how ASEAN foreign ministers will conduct the review process, there may be a window of opportunity to develop human rights in the region. The second is the review of all ASEAN organs by establishing a group of ten member state representatives to function as the High-Level Task Force (HLTF) on Strengthening the ASEAN Secretariat and the Review of ASEAN Organs (ASEAN 2013a). By end of 2014, the HLTF will make recommendations to ASEAN leaders on the possible structure to strengthen the institutionalization of human rights in the ASEAN Secretariat as the logistical support centre for AICHR.³² Without sound, substantive and authoritative support provided by the Secretariat, it would be difficult for the AICHR to progress. Third, one of the recommendations of the HLTF was to review the ASEAN Charter.³³ Article 50 provides that the charter may be reviewed five years after its entry into force. Article 14 relates to the establishment of the AICHR, so reviewing the charter may also help strengthen the AICHR as a human rights mechanism. Last, ASEAN is drafting its Community Blueprint Post-2015 (ASEAN 2013a); human rights can be included as a value and action point for the roadmap for the next 15 years.



Policy recommendations

Strengthening the AICHR requires the promotion of multiple strategies

As discussed earlier, realizing human rights in ASEAN is possible, but it will take time. A number of opportunities can serve as starting points for the AICHR's evolution, which requires multiple strategies and approaches. It also requires various regional drivers to bring about change such as pressure from civil society, progressive member states and AICHR representatives, political opportunities in standard and norm setting, and most importantly political will from the member states.

Cross-pollination with other ASEAN organs would serve the AICHR's strategic objective to promote human rights in the region. In addition to working closely with the ACWC, the AICHR could also work with the ASEAN Institute for Peace and Reconciliation³⁴ to mainstream human rights in the process of reconciliation and peace. The AICHR needs to establish its expertise and gain recognition from all ASEAN organs to be able to function as an overarching human rights body, as stipulated in article 6.8 of the ToR.

Strengthening the AICHR requires support from everyone

The active roles of the regional human rights systems, national human rights institutions, civil society organizations and parliamentarians are all important to human rights promotion in the region. The fact that the AICHR is not popular among the population in ASEAN should be addressed immediately. There have been a number of civil society forums and events that can be maximized by the AICHR to promote its work and, more importantly, its mandate to protect human rights. For example, the ASEAN Civil Society Conference (ACSC)/ASEAN People Forum³⁵ can help raise awareness about human rights in ASEAN and of the AICHR's role among the citizens of all ten ASEAN countries.

Efforts should focus on making the AICHR an independent institution for human rights

The AICHR should evolve to become an independent human rights body. Having a group of independent representatives and experts as a member of the AICHR would help it respond to human rights challenges in the

region. It is important for the AICHR to limit governments' control over the functioning of the commission; it must be able to act independently from governments in order to be a credible and effective human rights mechanism. The expected rotation of some AICHR representatives in 2016 is another chance to move the body in a different direction if the new representatives are more independent.

The AICHR should address cross-border human rights issues

The AICHR needs to function as an advisory body as well as complement the existing human rights measures and mechanisms. While the roles of the national human rights institutions are limited by geographical jurisdictions, the AICHR can address cross-border issues such as trafficking in persons or migrant workers' rights. As uniform policies are absent within the region, a comprehensive human rights approach and solution from the AICHR would help prevent victims from being exposed to further dangers and risks of exploitation, trafficking and subjection to forced labour, abuse and discrimination. The AICHR also would be in the strategic position to bring together all key stakeholders³⁶ who work on the issue. The AICHR is now conducting a study on migration and human rights (AICHR 2012b), as well as a study on trafficking in person in ASEAN as part of its work plan priorities for 2010–15 (AICHR 2013c).


The AICHR should become involved in the process of drafting the 'Instrument to Protect and Promote the Rights of Migrant Workers', which is led by the ASEAN Committee of the implementation of the Declaration to Protect and Promote the Rights of Migrant Workers. Input from the AICHR would help establish a nexus between human rights and migration in ASEAN. The other cross-border human rights challenge under the competency of the AICHR is the rights of refugees. The AICHR should be able to discuss the matter and help find regional solutions.

Conclusion

The establishment of the AICHR indicated that ASEAN is moving beyond economic integration to cover common values such as fundamental human rights. The AICHR is expected to increase the visibility and credibility of ASEAN in the international community. ASEAN will be recognized for proactively creating a culture of human rights in the region, which may ultimately make an important contribution to peace and security. The establishment of the AICHR is considered a concrete step toward the full

incorporation of universal human rights standards and values into the daily operations of ASEAN.

Expectations of the AICHR have been high since its inception. It has made progress in the last five years, and is going in the right direction. However, mainstreaming human rights in ASEAN still has a long way to go. It is more important than ever to progress beyond the legitimization and standardization of human rights toward their protection.



References and further reading

Amnesty International, *Civil Society Rejects Flawed ASEAN Human Rights Declaration, 2012*, <<http://www.amnesty.org/en/library/asset/IOR64/005/2012/en/cd2af858-753e-477a-9bad-9b9d863dd3bd/ior640052012en.html>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Fifth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD)* (Jakarta: ASEAN Secretariat, 2012a), <<http://aichr.org/press-release/press-release-fifth-meeting-of-aichr-on-the-asean-human-rights-declaration-ahrd/#more-449>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Press Release of the Round Table Discussion and the First Coordination Meeting of the AICHR Thematic Study on Migration and Human Rights* (Jakarta: ASEAN Secretariat, 2012b), <<http://aichr.org/press-release/press-release-of-the-round-table-discussion-and-the-first-coordination-meeting-of-the-aichr-thematic-study-on-migration-and-human-rights/>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Advanced Programme on Human Rights: Training of the Trainers* (Jakarta: ASEAN Secretariat, 2013a), <<http://aichr.org/news/aichr-advanced-programme-on-human-rights-training-of-the-trainers/>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Building a Torture-Free ASEAN Community* (Jakarta: ASEAN Secretariat, 2013b), <<http://aichr.org/report/building-a-torture-free-asean-community/>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Philippines Promotes Human Rights-Based Approach to Combat Trafficking in Persons, Especially Women and Children in ASEAN* (Jakarta: ASEAN Secretariat, 2013c), <<http://aichr.org/news/philippines-promotes-human-rights-based-approach-to-combat-trafficking-in-persons-especially-women-and-children-in-asean/>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Press Release – ‘Special Meeting of the ASEAN Intergovernmental Commission on Human Rights 2013’* (Jakarta ASEAN Secretariat, 2013d), <<http://aichr.org/press-release/press-release-special-meeting-of-the-asean-intergovernmental-commission-on-human-rights-2013/#more-1174>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Twelfth Meeting of The ASEAN Intergovernmental Commission on Human Rights*, (Jakarta: ASEAN Secretariat, 2013e), <<http://www.asean.org/news/asean-secretariat-news/item/twelfth-meeting-of-the-asean-intergovernmental-commission-on-human-rights>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Second Regional Consultation on the Contribution to the Review of the Terms of Reference of the AICHR and the Special Meeting of the AICHR* (Jakarta: ASEAN Secretariat, 2014a), <<http://aichr.org/report/second-regional-consultation-on-the-contribution-to-the-review-of-the-terms-of-reference-of-the-aichr-and-the-special-meeting-of-the-aichr/>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Special Meeting of AICHR and the Meeting of the AMM with the AICHR* (Jakarta: ASEAN Secretariat, 2014b), <<http://aichr.org/press-release/special-meeting-of-aichr-and-the-meeting-of-the-amm-with-the-aichr/#sthash.m2kPbXD2.dpuf>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Annual Consultation between Representative of Thailand to the AICHR and Representatives of Civil Society Organizations (CSOs)* (Jakarta: ASEAN Secretariat, 2014c), <<http://aichr.org/category/activities/thailand/>>

ASEAN Intergovernmental Commission on Human Rights [AICHR], *Regional Workshop on the Reporting Obligations: Sharing Experience and Best Practices* (Jakarta: ASEAN Secretariat, 2014d), <<http://aichr.org/press-release/aichr-regional-workshop-on-the-reporting-obligations-sharing-experience-and-best-practices>>

Association of Southeast Asian Nations [ASEAN], *ASEAN Vision 2020* (Jakarta: ASEAN Secretariat, 1997a), <<http://www.asean.org/news/item/asean-vision-2020>>

Association of Southeast Asian Nations [ASEAN], *Hanoi Plan of Action* (Jakarta: ASEAN Secretariat, 1997b), <<http://www.asean.org/news/item/hanoi-plan-of-action>>

Association of Southeast Asian Nations [ASEAN], *Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity* (Jakarta: ASEAN Secretariat, 2003), <<http://www.asean.org/news/item/plan-of-action-to-implement-the-joint-declaration-on-asean-china-strategic-partnership-for-peace-and-prosperity>>

Association of Southeast Asian Nations [ASEAN], *Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights* (Jakarta: ASEAN Secretariat, 2009a), <<http://www.asean.org/images/archive/documents/Declaration-AICHR.pdf>>

- Association of Southeast Asian Nations [ASEAN], *Chairman's Statement of the 20th ASEAN Summit, Phnom Penh, 4 April 2012* (Jakarta: ASEAN Secretariat, 2012a), <<http://www.asean.org/archive/documents/20th%20summit/FINAL%20Chairman%20Statement1330.pdf>>
- Association of Southeast Asian Nations [ASEAN], *Guidelines on Accreditation of Civil Society Organization (CSOs)* (Jakarta: ASEAN Secretariat, 2012b), <<http://www.asean.org/images/2012/documents/Guidelines%20on%20Accreditation%20of%20CSOs.pdf>>
- Association of Southeast Asian Nations [ASEAN], *Chairman's Statement of the 23rd ASEAN Summit* (Jakarta: ASEAN Secretariat, 2013a), <<http://www.asean.org/images/archive/23rdASEANSummit/chairmans%20statement%20-%2023rd%20asean%20summit%20-%20text%20-%20final.pdf>>
- Association of Southeast Asian Nations [ASEAN], *Bandar Seri Begawan Pan of Action to Strengthen the ASEAN-EU Enhanced Partnership (2013-2017)* (Jakarta: ASEAN Secretariat, 2013b), <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/129884.pdf>
- Association of Southeast Asian Nations [ASEAN], *Joint Communiqué 47th ASEAN Foreign Ministers' Meeting 8 August 2014 Nay Pyi Taw, Myanmar* (Jakarta: ASEAN Secretariat, 2014), <<http://www.asean.org/images/documents/47thAMMandRelatedMeetings/Joint%20Communique%20of%2047th%20AMM%20as%20of%209-8-14%2010%20pm.pdf>>
- Asian Forum for Human Rights and Development, *A Commission Shrouded in Secrecy: A Performance Report of the ASEAN Intergovernmental Commission on Human Rights, 2010-2011*, Bangkok, Thailand, 2012
- European Union [EU], *Statement by High Representative Catherine Ashton on the Adoption of the ASEAN Human Rights Declaration* (Brussels: EU, 2012), <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/133682.pdf>
- Fuller, Thomas, 'ASEAN Inaugurates Human Rights Commission', *New York Times*, 23 October 2009, <<http://www.nytimes.com/2009/10/24/world/asia/24asean.html>>
- Hermawan, Ary, 'AICHR: ASEAN's Journey to Human Rights', *Jakarta Post*, 11 January 2010, <<http://www.thejakartapost.com/news/2010/01/11/aichr-asean%E2%80%99s-journey-human-rights.html>>
- Human Rights Watch [HRW], *Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration* (New York: HRW, 2012), <<http://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration>>

- Kelsall, Michelle Staggs, 'The New ASEAN Intergovernmental Commission on Human Rights: Toothless Tiger or Tentative First Step?', *Asia Pacific Issues-Analysis from the East-West Center*, 90 (September 2009), pp. 1–8
- Muntarbhorn, Vitit, *Legal Cooperation among ASEAN Countries* (Bangkok: Institute of Security and International Studies, 1997)
- Petchamesree, Sriprapha, 'The ASEAN Human Rights Architecture: Its Development and Challenges', *The Equal Rights Review*, 11 (2013), pp. 46–60, <<http://www.equalrightstrust.org/ertdocumentbank/Sriprapha%20Petcharamesree%20ERR11.pdf>>
- Prokerala News, 'ASEAN Inaugurates Human Rights Body', 23 October 2009 <<http://www.prokerala.com/news/articles/a87795.html>>
- Wahyuningrum, Yuyun, 'It is not the Time for ASEAN to Draft a Human Rights Convention', *Jakarta Post*, 6 May 2013d, <<http://www.thejakartapost.com/news/2013/05/06/it-not-time-asean-draft-a-human-rights-convention.html>>



Notes

¹ This is also emphasized in the ToR of the AICHR: article 2.3 declares ‘Recognition that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member States.’

² See <http://www.upr-info.org>.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Indonesia, Malaysia, Singapore, Thailand, Philippines and Brunei Darussalam participated in this meeting.

⁷ See <http://www.aseanhrmech.org/aboutus.html>.

⁸ Terms of Reference of ASEAN Intergovernmental Commission on Human Rights, art. 1.6.

⁹ For further information, see <http://aichr.org/documents/>.

¹⁰ For further text of the work plan, see <http://aichr.org/documents/>.

¹¹ See <http://aichr.org/2013/04/#sthash.5x4Zb2fB.dpuf>.

¹² See <http://aichr.org/news/asean-human-rights-dialogue-with-the-government-of-indonesia/#sthash.RFsZO2js.dpuf>.

¹³ Laotian activist who was abducted by the police officers on 15 December 2012.

¹⁴ There is already an established universal position anchored on human rights protection, for example, the universal principle that HIV/AIDS testing should be based on a person’s informed consent and that it should safeguard their right to privacy and data confidentiality. Moreover, it is important to highlight the principles of non-discrimination and access to health care for those living with HIV.

¹⁵ See <http://aichr.org/documents/>.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ This assessment is based on the author’s participation in both consultations.

¹⁹ The profile of the organization is available at <http://www.aseanhrmech.org/>.

²⁰ For the full text of this guideline, please see <http://aichr.org/documents/>.

²¹ See <http://www.asean.org/news/asean-secretariat-news/item/press-release-of-the-seventh-meeting-of-the-asean-intergovernmental-commission-in-human-rights-aichr>.

²² See <http://www.komnasperempuan.or.id/wp-content/uploads/2011/03/ACWC-Non-Paper-Report-2010.pdf>.

²³ Based on information shared by Indonesian representative to the AICHR, June 2014.

- ²⁴ Ibid.
- ²⁵ These organizations are from Indonesia, Malaysia, Myanmar, Philippines, Thailand and Timor Leste.
- ²⁶ In 2007 the network issued a Declaration of Cooperation to carry out jointly, either on a bilateral or multilateral basis, programmes and activities in areas of human rights identified and agreed upon at the meetings; to advise their respective governments to take necessary steps to establish an appropriate human rights mechanism and/or any organ in the ASEAN Charter; to formalize cooperation among national human rights commissions; to host regular meetings; and to consider joint efforts with other like-minded organizations in order to promote respect for and the protection of human rights in their respective countries, in the region and in the international community. For further information, see <http://www.aseannhrforum.org/en/about-us.html>.
- ²⁷ Statement delivered by Ton Sri Musa Hitam, 5th Workshop on ASEAN Human Rights Mechanism, 29 June 2005, Kuala Lumpur, Malaysia.
- ²⁸ Invitations are not public, so the AICHR does not provide them on its website. This is the information shared by Indonesia's representatives to the IACHR in a number of consultations with Indonesian civil society organizations from 2010–14.
- ²⁹ Carlos Medina, paper presented at the ASEAN-ISIS Colloquium on Human Rights, 15 May 2006.
- ³⁰ For example, article 1.13 in ASEAN Charter states the aim of ASEAN Community Building in promoting 'a people-oriented ASEAN in which all sectors of society are encourage to participate in, and benefit from, the process of ASEAN integration and community building'.
- ³¹ The annual 2014 Report of the Freedom House indicates that ASEAN consists of two categories: five not-free countries (Brunei Darussalam, Cambodia, Laos, Myanmar and Vietnam) and five partly free countries (Indonesia, Thailand, the Philippines, Malaysia and Singapore).
- ³² Presentation of Ngurah Swajaya, member of HLTF from Indonesia on 24 July 2014 in Jakarta.
- ³³ Ibid.
- ³⁴ The institute's functions are mainly to research, conduct capacity-building activities, develop a pool of experts from ASEAN member states, and establish linkages/networks with relevant institutions and organizations in ASEAN on peace and reconciliation.
- ³⁵ The ACSC is a conference of the people, organized by the people, for the people and from the people. At the end of each conference, it issues statements that are usually presented to ASEAN leaders.
- ³⁶ Actors such as non-governmental and intergovernmental organizations, government ministries, national and international bodies, and human rights organizations.



About International IDEA

What is International IDEA?

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

The objectives of the Institute are to support stronger democratic institutions and processes, and more sustainable, effective and legitimate democracy.

What does International IDEA do?

The Institute's work is organized at global, regional and country level, focusing on the citizen as the driver of change.

International IDEA produces comparative knowledge in its key areas of expertise: electoral processes, constitution building, political participation and representation, and democracy and development, as well as on democracy as it relates to gender, diversity, and conflict and security.

IDEA brings this knowledge to national and local actors who are working for democratic reform, and facilitates dialogue in support of democratic change.

In its work, IDEA aims for:

- increased capacity, legitimacy and credibility of democracy;
- more inclusive participation and accountable representation; and
- more effective and legitimate democracy cooperation

Where does International IDEA work?

International IDEA works worldwide. Based in Stockholm, Sweden, the Institute has offices in the Africa, Asia and the Pacific, Latin America and the Caribbean, and West Asia and North Africa regions.