

## Review Terms of Reference of the AICHR (by Article)

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;

**TH CSOs recommendation:**

1.3 To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter and International instruments that ASEAN member states ratify 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;

**TH CSOs recommendation:**

1.4 To promote and protect universal 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, regional 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;

**TH CSOs recommendation:**

[b) non-interference in the internal affairs of ASEAN Member States; although this principle shall not prevent the AICHR from engaging in work relating to human rights situations 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;

**TH CSOs recommendation:**

[2.3 Recognition that the primary responsibility to promote and protect human rights and fundamental freedoms of all ASEAN Member States shall be based on international standards;

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

**TH CSOs recommendation :**

[2.4 Pursuance of a constructive 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.

**TH CSOs recommendation:**

[2.5 Adding value to international standards by an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN.]

### **3. CONSULTATIVE INTER-GOVERNMENTAL BODY INDEPENDENCE HUMAN RIGHTS BODY**

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

**TH CSOs recommendation**

The ASEAN Human Rights Commission (AHRC) is an independent human rights body, which is an integral part of the ASEAN organizational structure.

#### 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;

**TH CSOs recommendation**

4.2 To develop an ASEAN Human Rights Declaration **consistent with international law and standards** 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;

**TH CSOs recommendation:**

4.3 To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information **and engagement with other activities of international human rights bodies.**

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;

**TH CSOs recommendation :**

4.5. To **encourage** ASEAN Member States to acceding to and ratifying international human rights instruments **with concrete time frame.**

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;

**TH CSOs recommendation :**

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

**TH CSOs recommendation :**

4.8. To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, **with transparency, information sharing and meaningful participation.**

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;

**TH CSOs recommendation :**

4.10. To obtain **and collect** information **from ASEAN member states and stakeholders** on the promotion and protection of human rights.

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

**TH CSOs recommendation :**

4.11. To have common approaches and position on human rights matters as the regional human rights body.

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

**TH CSOs recommendation:**

4.12. To prepare studies on thematic issues of human rights in ASEAN and open to CSO to participate in studies research.

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

**TH CSOs recommendation [new article]:**

4.14 To submit ASEAN (regional) human rights report every 2 year, parallel with CSOs report to the ASEAN Foreign Ministers Meeting]

4.15 To receive individual complain to full fill human rights protection mandate.

4.16 To develop common key indicators for the implementations of international human rights instruments that ASEAN States have acceded and ratified with concrete time flame.

4.17. 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.

**TH CSOs recommendation:**

5.2 Each ASEAN Member State shall select and appoint a Representative to the AICHR.

The selection and appointment procedures shall be open, transparency, inclusive and active participatory of stakeholders and accountable to the people.

### 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.

**TH CSOs recommendation :**

5.3 When select/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.

**TH CSOs recommendation :**

5.4 Member States should **explain to the public** if required by their respective internal processes, 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.

**TH CSOs recommendation:**

5.5 Each Representative serves a term of **five years to align with budget and activity plan and shall serve for only one term.**

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

**TH CSOs recommendation:**

5.6 a) Notwithstanding paragraph 5.5, the appointing Government may decide, at its discretion, to replace its Representative **through public transparency.**

b) **10,000 People's signature can complain to their government to change their AICHR 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.

#### **TH CSOs recommendation :**

6.1 Decision-making in the AICHR shall be based on consultation and consensus. In case the efforts to reach a consensus have failed the decision can be made through a majority voting method or by applying ASEAN+ or ASEAN- approach.

6.2 Public hearing on important documents is needed before the making of final decisions by the AICHR

### **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.

#### **TH CSOs recommendation :**

6.9 The AICHR shall work with all ASEAN sectoral bodies dealing with human rights and National Human Rights Institutions 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.

#### **TH CSOs recommendation (new article):**

[6.10 The AICHR shall appointing special procedures such as working groups and special rapporteurs etc. to support protection mandate..

### **Relationship and Engagement with public and CSOs**

6.11 The AICHR should sharing document /information during a drafting process, to the public for meaningful participation .

6.12 a. formulate and a public policy to ensure its policy, decisions and activities are regularly shared to and understood by the civil society and the public.

b. AICHR shall develop a communication strategy and mechanism to share information with the media both at national and regional level.

## **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.

### **TH CSOs recommendation (new article):**

7.3 a) The Secretary-General shall setting up of dedicated regional secretariat for AICHR in order to ensure proper and effective implementation of its work plan as well as perform its functions and mandates.

b) The dedicated regional secretariat for AICHR shall be equipped with staff and necessary resources efficiency for full function of AICHR.

7.4 The dedicated national secretariat of AICHR should setting up with full support of each state member

## **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.

### **TH CSOs recommendation (new article):**

8.6 Funding and other resources from non-ASEAN Member States shall be solely for human rights activities.

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.

#### **TH CSOs recommendation:**

[9.6. This TOR shall be reviewed every five years. This review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting, with meaningful input/participation of CSOs and 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.

#### **TH CSOs recommendation:**

9.8 Any difference concerning the interpretation of this TOR which cannot be resolved shall be referred to the International instruments and for the benefit of ASEAN people.