

ASEAN HUMAN RIGHTS MECHANISM ANNUAL PERFORMANCE EVALUATION BY FORUM-ASIA AND SAPA

HIGHLIGHTS OF THE AICHR 2017

The highlights of AICHR 2017 performance is an exclusive sneak peak of 'The performance evaluation of the human rights mechanisms of the Association of Southeast Asian Nations (ASEAN) – the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children (ACWC) – in 2017'. This eight annual review is produced by the Asian Forum for Human Rights and Development (FORUM-ASIA) and the Solidarity for Asian People's Advocacy (SAPA) Task Force on ASEAN and Human Rights and Working Group on ASEAN (SAPA TFAHR & WGA). For further information, please contact East Asia - ASEAN Programme FORUM-ASIA (ea-asean@forum-asia.org)



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WHAT IS AICHR?

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was created in 2009, when its Terms of Reference (ToR) were adopted at the 42nd ASEAN Ministerial Meeting. It is responsible for promoting and protecting human rights in ASEAN, and is comprised of representatives selected by each member state's President or Ministry of Foreign Affairs either through direct appointment or open election. Representatives have come from different background and experiences, and are guided by 14 specific mandates as set out in the ToR. Each ASEAN member state shall elect one representative to the AICHR. The body is work under the ASEAN Political Security Pillar and shall report its activities to the ASEAN Foreign Ministers Meeting (AFMM).

THE AICHR MILESTONES IN 2017

AICHR have managed to conduct several activities during the year. Majority of AICHR's program priorities were focused on dissemination and education activities, and on legal cooperation on ASEAN human rights. AICHR activities in 2017 were dominated by workshops, followed by regional dialogues. Overall, the AICHR convened 12 activities in 2017 that contributes to the AICHR's Mandate and the ASEAN Community Vision 2025.

Several achievements of AICHR, including the ASEAN Youth Debate, a Regional Dialogue on Disabilities, and Journalist's Training for Human Rights, are planned to become flagship activities replicated every year. Furthermore, AICHR has begun to dive deeper on trafficking in person issues to follow up on the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP). Some of the achievement on the area such as successfully encouraged nine ASEAN countries to ratify ACTIP and convened an ASEAN Senior Officials Meeting in Transnational Crime (SOMTC) in combatting trafficking. Other issue that were highlighted in the year such as the study in juvenile justice and study in access to justice in ASEAN, among others.

In terms of engagement with civil society, AICHR conducted the AICHR – CSO roundtable discussion in Bohol, the Philippines (a first of its kind).

THE ASSESSMENT OF AICHR'S PERFORMANCE IN 2017

Despite the milestones achieved by AICHR in 2017, there are questions on the follow-up activities and monitoring mechanisms to ensure the relevance of its impact to the AICHR's mandate. Furthermore, it is unfortunate that none of the activities were directed to address gross human rights violation in the region, such as the issue of war on drugs, Rohingya crisis, reprisal against human rights defenders and vulnerable communities in various ASEAN member states as the impact of election, among other. Amidst various criticisms made by international and national human rights mechanisms in regards to this issue, unfortunately none of public statement was issued by AICHR to address grave human rights violation happened in the region. Later in 2018, a joint media statement were released by AICHR Indonesia and Malaysia reps to address the situation in Rakhine state of Myanmar. The joint media statement was a great starting point for the AICHR to address the issues and need to be follow up by an AICHR special meeting on the issues.

The pace and actions of AICHRs, creates a big question mark among the civil societies on the relevance of the AICHR's mandate as an institution with an aspiration to be an overarching body for the promotion and protection of human rights in the ASEAN. Nevertheless, the civil societies are still having faith to the body and aim to collaborate and strengthened it further to ensure its functionality in addressing key human rights issues in the region.

CHALLENGES

In order to be able to fully effectively addressing human rights violation in the region, as well as to remain relevant as a human rights mechanism

ahead of its 10 years anniversary, these are the challenges that need to be addressed by AICHR:

1. THE NON-INTERFERENCE PRINCIPLE

The ASEAN Charter and the AICHR TOR reiterate the principle of non-interference in internal affairs and decisions by consensus, and in practice also rely on informality, and backdoor diplomacy, emphasising progressive changes without public participation making it very difficult for ASEAN human rights institutions to address national and regional human rights issues by publicly challenging member states' actions and policies. The 'ASEAN Way' hinders the obligation to implement international human rights law in the region and significantly limits the capability of ASEAN human rights mechanisms to overcome disagreements amongst the ASEAN members. As a consequence, The 'ASEAN Way' of non-interference, and its non-alignment with the human rights value of universality, is a fundamental limiting factor of AICHR.² This has also manifested itself in the one instrument that AICHR has so far drafted – the AHRD – which provides governments with a wide margin for restricting and indeed violating human rights in the name of balancing rights with duties, "national and regional contexts," considerations of "different cultural, religious and historical backgrounds", "national security", "public morality" and more.

In contrast, ASEAN member states, and ASEAN as a whole, have had no problems influencing domestic policies with regards to economic cooperation and collaboration. There is a problematic double standard in applying these principles to limit discussion and action to address key human rights issues in the region.

2. LACK OF TRANSPARENCY AND OPENNESS IN SELECTION MECHANISMS OF AICHR REPRESENTATIVES

The independence, impartiality and professionalism of the representatives and, by extension, the Commission as a whole. To date, only three member states have held a

democratic selection process for the positions, namely Thailand, Indonesia and The Philippines. The Philippines no longer uses this process.

Nevertheless, the involvement of CSOs in the selection process is still very limited across the region, which creates a tendency for AICHR representatives to be more aligned to the government than to the people, and to subordinate their human rights work to national political considerations.

Most AICHR Representatives are either state officials, or appointed by the state, or both, which poses a serious challenge.³ For example, the representative of Cambodia, Laos, Myanmar and Vietnam in particular avoid conversations regarding human rights in their respective countries because they are selected by and aligned to the state. It is widely perceived that they see their task as preventing criticism of their respective governments on human rights issues, and more generally opposing any active protective role for AICHR.⁴

3. THERE ARE NO STANDARDS ON INSTITUTIONAL-BUILDING OF THE AICHR.

The AICHR was established to implement the mandates and functions embodied within its ToR. Nevertheless, the CSOs interviewees agree that both ToR and mandate are limited, because both fall in line with the ASEAN Way, rather than international human rights law and standards. The ToR calls for the development of strategies to promote and protect human rights and fundamental freedoms; however, AICHR's mandates were formulated with a 'promotion first, protection later' approach. The ToR does not include the powers of investigation, monitoring or enforcement, 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.'⁷

² Interview with Fatia Maulidiyanti, International Advocacy, KontraS, Indonesia, 6 August 2018.

³ Interview with Hazel Bitana, Advocacy and Communications Coordinator of CRC Asia, 8 August 2018.

⁴ Interview with Debbie Stothard, Director of ALTSEAN-Burma, Secretary General of FIDH, 11 August 2018.

⁷ <https://www.idea.int/sites/default/files/publications/the-asean-intergovernmental-commission-on-human-rights-origins-evolution-and-the-way-forward.pdf>.

4. FULFILLING EXPECTATIONS AND IMPROVING RESPONSE TO HUMAN RIGHTS ISSUES IN THE REGION

Many of the AICHR reps later argued that CSOs' expectations were too high to encourage ASEAN to align with American standards. One respondent mentioned *"No, I even encourage that at least we can be equal to African standards in the context of rules, engagement, willingness, and investigation. ASEAN can reach African standards in at least the next three years to build more advanced systems."*

Looking at macro-economic indicators, ASEAN GDPs are more robust than in the African region. Nevertheless, inequality is growing and there appear to be very little intention of prioritizing human rights, which is key for sustainable development and the creation of a just society.⁸ The lack of responsiveness from the AICHR to human rights violations and crises within ASEAN member states takes a toll on how the public perceives its work. AICHR has not taken any action or positions on any human rights violations in the region, even in the year when the Rakhine State crisis erupted, the extrajudicial executions on a massive scale continued in the Philippines, the military government in Thailand extended its repressive rule civic space continued shrinking in Cambodia, Laos, Malaysia and Vietnam and was virtually absent altogether in Brunei Darussalam, and discrimination against religious and ethnic minorities in Indonesia showed no sign of abating. CSO representatives have said that when they question this lack of action, the answer is often 'we discussed this seriously many times'. However, no discussions of any human rights violations have taken place officially, as part of the AICHR agenda. What they mean by 'discussing' is that representatives spoke unofficially among themselves or during retreats. But serious human rights violations cannot be addressed by talking about them in private, but rather by overtly, officially addressing them through both statements and other action.⁹

⁸ Interview with Debbie Stothard, Director of ALTSEAN-Burma, Secretary General of FIDH, 11 August 2018.

⁹ Interview with Braema Mathiapparanam, President of Maruah, Singapore.

STRATEGIES

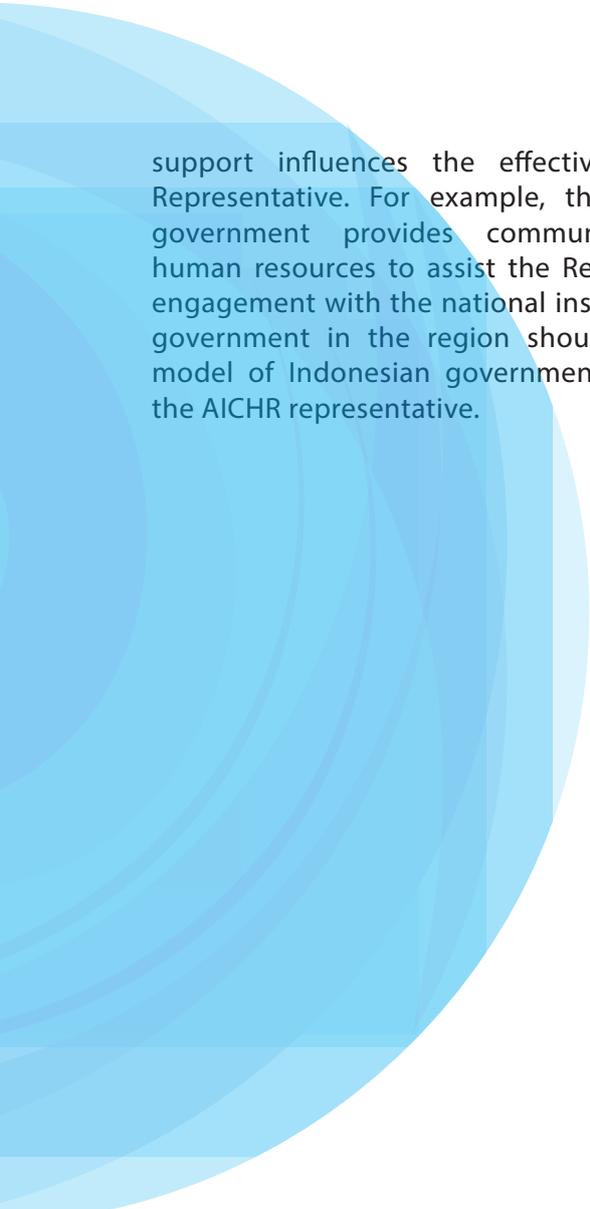
Since the work of AICHR is dependant on the ASEAN chairship and fluctuates on its commitment to human rights, the AICHR needs strengthened cross-sectoral and cross-pillar cooperation and coordination with other ASEAN sectoral bodies, such as Senior Officials Meeting Responsible on Information (SOMRI), Senior Officials Meeting on Rural Development and Poverty Eradication (SOMRDPE), Senior Officials Meeting on Health Development (SOMHD), ASEAN Senior Officials on the Environment (ASOEN), ASEAN Senior Law Officials Meeting (ASLOM), Senior Officials Meeting on Transnational Crimes (SOMTC), and Senior Economic Officials Meeting (SEOM). By engaging with these bodies through joint activities, meetings and interfaces, and inviting them to participate in and contribute actively to AICHR's activities and agenda, the AICHR's could better mainstream human rights in all three pillars of ASEAN regardless of the chairship.¹²

During 2017, AICHR raised its public profile activities through events, engagement with...? and media coverage. This included the AICHR Youth Debate on Human Rights, which has become an annual AICHR activity since it was first organized by the Philippines in 2013 to engage ASEAN youth and students in human rights discussions,¹³ and the ASEAN Youth Video Competition. The AICHR Representative from Indonesia delivered and convened public lectures in Indonesian universities on ASEAN human rights mechanisms, including AICHR. Nevertheless, AICHR needs to further increase its media presence and better disseminate information about its work to the public though, again, the road to doing so start with doing actual human rights protection work, which among other things would make AICHR much more 'newsworthy'.

Another strategy that can be imposed such as to foster mutual cooperation among AICHR Representatives, who have to work together to initiate and plan activities. Better cooperation would leverage more institutional ownership of activities. Furthermore, the government

¹² See AICHR Annual Report 2018, pg 13.

¹³ Op.cit.



support influences the effectiveness of its Representative. For example, the Indonesian government provides communication and human resources to assist the Representative's engagement with the national institution. More government in the region should follow the model of Indonesian government support for the AICHR representative.



RECOMMENDATION

PROVIDE TIMELY AND ADEQUATE RESPONSES

Provide timely and adequate responses to key human rights issues in the region, including timely public statements on human rights violations by member states.

SHARE PUBLICLY ITS PROCESS

Share publicly its process of formulating work plans, annual budgets, thematic studies and deliberating other important issues.

ESTABLISH A COMPLAINT AND CORRESPONDENCE MECHANISMS

Establish a complaint and correspondence mechanisms that would receive complaints from individuals, groups and states, request information from the relevant member state(s), conduct its own investigations, make recommendations to the state(s) concerned and report publicly on the cases it has reviewed.

REASSESS THE PROCESS OF GRANTING CONSULTATIVE RELATIONSHIP STATUS

Reassess the process of granting consultative relationship status to CSOs to ensure inclusivity and effectiveness in creating space for providing CSO input into policies,

RECOMMEND THAT RELEVANT MOFAS FACILITATE

Recommend that relevant MoFAs facilitate and ensure an open and transparent selection process for AICHR representatives.

CREATE A BETTER ALIGNMENT STRATEGY

Create a better alignment strategy for engaging with the ACWC and other ASEAN Sectoral Bodies beyond invitations to events and meetings.

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CONDUCT FREQUENT, REGULAR, BROAD-BASED AND INCLUSIVE MEETINGS

Conduct frequent, regular, broad-based and inclusive meetings on human rights issues and institution-building with a range of stakeholders including CSOs, national human rights institutions, affected communities, human rights defenders, and victims and survivors of human rights violations at both the regional and national levels in every ASEAN member state.

MONITOR, INVESTIGATE, COMMENT ON AND RECOMMEND SOLUTIONS

Monitor, investigate, comment on and recommend solutions for human rights violations in the ASEAN region, such as extrajudicial killings, crimes against humanity, the treatment of minorities and Indigenous Peoples, the rights of LGBTIQ people, torture and other ill treatment, land rights, right to education, attacks against human rights defenders and more.

ESTABLISH A MONITORING AND EVALUATION SYSTEM

Establish a monitoring and evaluation system to measure the progress and implementation of submitted complaints either based on the AICHR's own assessment or on feedback from stakeholders, with clear and measurable indicators that are formulated to measure performance not only through the completion of activities but through outcomes and impact on the protection and promotion of human rights.

FULFILL ITS PROTECTION MANDATE

Fulfill its protection mandate by implementing, innovatively and progressively, the provisions within it's the TOR, including to obtain information from ASEAN member states on the protection of human rights, including information on human rights violations; and to develop common approaches and positions on human rights matters of interest to ASEAN based on international law and standards.

BUILD AN INTERNAL KNOWLEDGE MANAGEMENT MECHANISM

Build an internal knowledge management mechanism that can be accessed by AICHR, by the ACWC and by CSOs to ensure the maintainence of institution memory.