

Submission to the AICHR Regional Consultation with Civil Society on the Review of the AICHR TOR¹

**By. Solidarity for the Asian People's Advocacy
Task Force on ASEAN and Human Rights (SAPA TFAHR)**

Jakarta, 29 April 2014

Introduction

The Solidarity for Asian People's Advocacy - Taskforce on ASEAN and Human Rights (SAPA TFAHR) believes that the Terms of Reference (TOR) of the ASEAN Intergovernmental Commission on Human Rights (AICHR) need to be revised substantially for this body to work effectively and justify its continued existence as a regional human rights body in ASEAN.

The TOR that was adopted in 2009 states in article 9.6. that a review would be taken "with the view of further enhancing the promotion and protection of human rights in ASEAN." The need for such enhancing has become very clear, since the current TOR still needing more provision which allow the AICHR to have stronger decision making power and mechanism to address human rights situation. One can say a human rights body is credible when the body show effort to address actual human rights violations on the ground, towards a single individual or a group of people whose lives are threatened. Unfortunately, so far the AICHR cannot claim that it has done so. The AICHR has consistently refused to accept petitions for it to intervene in actual human rights situations in ASEAN, relying in its refusal on the limits within its TOR. Clearly then, the TOR must be revised.

As one of the stakeholders in ASEAN, and particularly in the work of the AICHR, civil society, including SAPA TFAHR, has contributed its ideas and suggestions as early as when the TOR was still discussed by the High Level Panel on the ASEAN Human Rights Body in 2008. Since then, CSOs have remained keen observers of AICHR's work, aiming to ensure that the AICHR will evolve as a true human rights body working in line with international human rights law and standards. As noted, this has not so far been the case.

A general recommendations in this proposal is made in the hope that with a revised TOR, the AICHR can change its course and become a true defender of human rights in ASEAN.

1. Review and revision process

For the revision to be fruitful, it must involve:

¹ This submission was prepared in the SAPA TFAHR meeting in Bangkok, 21-22 April 2014.

- Meaningful participation of all stakeholders, including civil society, other sectoral bodies, experts from the region and internationally, human rights bodies from other regions and more;
- Frequent, detailed and inclusive consultations with stakeholders, both regionally and nationally in all Member States, based on true self-selection of representatives of CSOs and other stakeholders;
- Sharing drafts of revised texts of the TOR with stakeholders in an open and timely fashion to enable meaningful discussions;
- Participation of stakeholders in the composition and mandate of any bodies, such as a High Level Panel, appointed to carry out the review and revision of the TOR.

2. Key changes required in the current TOR

SAPA TFAHR has identified several key issues which are required to strengthen the work of the AICHR in enhancing the promotion and protection of human rights in ASEAN. Those are:

a. Independence and effectiveness of the AICHR

The principles of decision-making by consensus only and non-interference have been used to greatly diminish the ability of the AICHR to act effectively and independently in promoting and protecting human rights.

The future AICHR TOR must allow for decisions to be reached by a majority in situations where decision cannot be reached by consensus, especially to address or prevent serious human rights violations.

The future TOR must also ensure that the principle of non-interference cannot be used as a barrier against the AICHR acting to protect people from human rights violations, which by definition are mostly acts of states against people within their borders.

b. Protection Mandate

The current AICHR TOR provides a limited protection mandate only, and provisions for this mandate are very few and very general, in particular “To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community” (Article 4.2) and “to obtain information from ASEAN Member States on the promotion and protection of human rights” (Article 4.10). While the AICHR has failed to interpret these and other provisions progressively and use them to actually do protection work, it would be preferable to expand the protection mandate and include explicit provisions empowering the AICHR to engage in human rights protection.

Such expansion could include:

- 1) provisions that authorize the AICHR to carry out a review of the human rights records of ASEAN Member States;
- 2) provisions that enable the AICHR to conduct country/on-site visits; and to receive, investigate and address complaints on human rights issues and violations;
- 3) provisions that enable AICHR to appoint independent experts (Special Procedures, including Special Rapporteurs) – similar to the Special Procedures mechanism of the UN Human Rights Council and other regional mechanisms. These experts must be independent and not be bound by the consensus and non-interference rules, so that they can effectively implement actual human rights protection work.

c. Engagement with other institutions and CSOs

The AICHR is one among many actors and institutions which work on the promotion and protection of human rights in ASEAN region. Within the same ASEAN platform, there are other institutions, in particular the ACWC and the ACMW. At the national level, there are a number of National Human Rights Institutions (NHRIs). Both at regional and national levels, many civil society organizations and think tanks also work to enhance the promotion and protection of human rights.

As “the overarching human rights body” in ASEAN, the AICHR has been to a certain extent engaging with these different actors and institutions in implementing its mandate and work plan. Nevertheless, the absence of clear and comprehensive guidelines for such engagement has prevented the AICHR from working in better cooperation with these actors. We therefore recommend that the future TOR, addresses this point clearly.

Conclusion: Review and Revision of the AICHR TOR

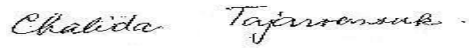
Ultimately, whether or not this review of the AICHR TOR will result in a revision of the TOR is at the discretion of the ASEAN Foreign Ministers Meeting (AMM). The assessment by the AICHR of its work (as provided in Article 9.7) which will be the basis for their recommendation to the AMM is nevertheless important to set the tone of this review. Therefore, a thorough substantive and objective assessment process which allows critical and constructive views is essential. Such an assessment cannot, in our view, escape the conclusion that the AICHR needs to improve radically before it can truly be considered a “human rights commission” and the first step in the improvement process should ensure a revision of the TOR that will give the AICHR independence, expertise, a strong protection mandate, adequate resources and meaningful engagement with civil society and other stakeholders.

Jakarta, 29 April 2014

SAPA Task Force on ASEAN and Human Rights



Evelyn Balais Serrano
Executive Director of FORUM-ASIA
Convenor of SAPA TFAHR



Chalida Tajaroensuk
Executive Director of PEF - Thailand
Co-convenor of SAPA TFAHR

SAPA TFAHR Focal points:

- Cambodia: The Cambodian Human Rights and Development Association (ADHOC)
- Indonesia: The Commission for the Disappeared and Victims of Violence (KontraS)
- Malaysia: Suara Rakyat Malaysia (SUARAM)
- Myanmar: Task Force on ASEAN Burma (TFAB)
- Singapore: Think Centre
- Philippines: Task Force Detainees of the Philippines (TFDP) & Philippines Alliance of Human Rights Advocates (PAHRA)
- Child Rights: Child Rights Coalition Asia (CRC Asia)
- Migrant Worker: Task Force on ASEAN Migrant Worker (TFAMW)
- Refugee's rights: Asia Pacific Refugee Rights' Network (APRRN)
- Rights of Person with Disability: Disabled People's International – Asia Pacific (DPI/AP)
- Indigenous Peoples: Asia Indigenous Peoples Pact (AIPP)
- LGBTIQ's rights: ASEAN SOGIE Caucus

Contact:

Atnike Nova Sigiro

Email: atnike@forum-asia.org / asean@forum-asia.org

Jl. Borobodur No. 14, Jakarta – Indonesia, 10320.