

## **“High level Dialogue on Human Rights in ASEAN – Assessing the 10 Years Evolution of AICHR”**

**Jakarta, 8 May 2019**

**Co-organized by  
The Asian Forum for Human Rights and Development (FORUM-ASIA)  
ASEAN Parliamentarians for Human Rights (APHR)  
Centre for Strategic and International Studies (CSIS)**

On 8 May 2019, 33 representatives from national, regional, and international civil society organizations (CSOs) met in Jakarta, Indonesia to deliberate on the 10 years evolution of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and how the institution need to move forward to fully function for the promotion and protection of human rights in South East Asia. The meeting discussed among other things the progress made and challenges experienced by AICHR in the past decade and how the institution has shown its relevance, or lack thereof, to the human rights situation in ASEAN.

### **Protection Mandate and (no) Action**

Reflecting on the performance of AICHR in the last 10 years, the CSOs acknowledged the efforts of AICHR to promote human rights in Southeast Asia. The CSOs took note on the efforts conducted by progressive AICHR representatives to move beyond their mandates in order to exercise its protection function, including fostering their relationship and openness with CSOs and its engagement. So far since 2009 – 2018, CSOs have recorded 121 promotional activities conducted by AICHR in order to build common understanding about human rights in the region. Yet CSOs also pointed out that, despite some important promotion initiatives, the AICHR has yet to mature into an effective regional human rights mechanism a decade after its establishment.

It was concluded that AICHR has not been very effective to provide protection and serve as a regional recourse for victims of human rights violations, people whose own states have failed to protect them. This failure stems to a large extent from a lack of political will by AICHR and the ASEAN Member States (AMS) behind them to implement their protection mandate actively and creatively, as well as the inclusion of relatively limited explicit protection functions in the TOR of the AICHR. Further, from the 121 promotional activities conducted by AICHR, none of them has mentioned any action to address emerging human rights crises in ASEAN. The absolute majority, if not the totality, of activities conducted by AICHR in the past decade have been about promotion rather than protection.

Overall, AICHR as an institution has rejected all efforts to convince it to engage in human rights protection. Participants emphasised the urgent need to devise a concrete plan for AICHR to engage in protection work under the current TOR as well as strengthen its protection mandate and contribute in a holistic manner to human rights protection, in conformity with international human rights law and standards.

## **Addressing the Human Rights Situation in ASEAN**

CSOs have observed that there has been a consistent and total silence from AICHR as an institution when it comes to addressing human rights violations in the ASEAN member states. The regional mechanism has failed to act meaningfully – or to act at all, for that matter - on emerging reports of egregious violations and crimes against Rohingya and other ethnic minorities in Burma/Myanmar, the mounting death toll from extrajudicial killings in the Philippines' 'war on drugs', persecution against Lesbian, Gay, Bisexual, and Trans community (LGBT) and other minorities, shrinking space for civil society, criminalisation of journalism and repression of independent media, enforced disappearance cases, uneven, environmentally unsustainable development and rising intolerance as well as discrimination in the region.

Participants highlighted that ASEAN's approach of so-called solidarity has often been solidarity of governments and elites at the cost of overlooking serious human rights violations and the rise of autocratic regimes in the region. AICHR, a Human Rights Commission, has prioritised the so-called principles of non-interference and consensus in decision making over the victims and survivors of human rights violations throughout the region.

Further to this, there is a growing sentiment and distrust toward ASEAN on its ability to address human rights situation in the region. With limited resources, CSOs and communities tend to seek for justice and remedy by directly tapping international human rights mechanisms such as the UN, given the fact that these mechanisms provide more substantive and solid output comparing to those that of ASEAN. If these concerns are not going to be addressed, ASEAN and its human rights mechanisms will lose the trust of its people and subsequently being forgotten.

## **Engagement with Civil Society Organisations**

Civil Society Organisations (CSOs) have played a critical role in advocating for the creation of a human rights body in the Association of Southeast Asian Nations (ASEAN). This eventually resulted in the creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR). AICHR is mandated to seek consultation with relevant bodies, including CSOs, to be able to effectively perform its mandate to promote and protect human rights in the region.

Since the Guidelines on AICHR's Engagement with Civil Society were adopted in 2015, 30 CSOs have been accredited by AICHR. However, using the onerous requirements in the Guidelines, AICHR has also rejected applications from several CSOs for what appear to be political reasons. AICHR has conducted two interface meeting with CSOs: 2017 in Bohol (Philippines) and 2018 in Bangkok (Thailand). While participants generally welcomed these developments, they expressed concern on the way the meetings were conducted. CSOs were not informed about the meetings' agenda beforehand nor given access to the action points developed by the consultations. As consultative status holders, CSOs have no access to AICHR meetings, which encumbers efforts to track progress made by AICHR and to demand accountability from the institution. Reiterating the spirit of people-centred ASEAN

in both the ASEAN Charter and ASEAN Community Blueprint, participants called on AICHR to see more benefits by having CSOs as partners in promoting and protecting human rights.

Another point brought in the discussion was to demand AICHR to broaden its engagement with civil society outside the consultative framework. Many of CSOs, particularly those that are working with grassroots local and indigenous community, are having difficulties to be registered in their respective countries yet their voice is very important to be heard because they are representing the people.

There is a need for CSOs to share information in a consolidated platform in which CSOs can strategise and exchange ideas on how to conduct advocacy and engage with AICHR. This platform will hopefully be able to reach all CSOs and communities across the region, particularly those who have never been heard. Nevertheless, there should be an active participation from AICHR as well to conduct outreach and subsequently welcome the engagement with both CSOs with and without consultative relationship with the body.

### **Revision of AICHR's Term of Reference**

CSOs also reaffirmed that the AICHR needs to continuously evolve, develop and strive to fulfil its purpose to become the overarching institution responsible for the promotion and protection of human rights in ASEAN. This involves, among others, a review of AICHR's Term of References (ToR) every five years to strengthen its mandate as stipulated in the 'Cha Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights' as well as in AICHR's TOR itself. Responsibility for the review is with the ASEAN Ministers Meeting, but so far it has failed to exercise it properly, and AICHR should take the initiative in rekindling the process. It is in particular important for the AICHR to embrace and work to strengthen its protection mandate, which it has so far failed to implement, as well as ensure the Commission's independence, professionalism and ability to make decisions.

CSOs also realised that the decision to strengthen the AICHR ToR shall be taken by the ASEAN Ministries of Foreign Affairs (MFAs). Therefore, it is necessary to push for institutional change within the MFAs and related bodies to mainstream the necessity of strengthening AICHR ToR in all level. Strengthening of AICHR ToR will only happen if the efforts are conducted and mainstreamed in all level (CSOs, Governments, Committee of Permanent Representatives, and AICHR themselves). Having said so, coordination and cooperation among stakeholders are imperative to achieve such objective.

### **Recommendations**

Moving forward, participants agreed that it is critical for both the AICHR and ASEAN Member States to step up to the task. AICHR's current Terms of Reference includes an explicit protection mandate, the importance of which, particularly against the widespread human rights violations and abuses by state and non-state actors alike in the region, cannot be stressed enough. It is high time that AICHR devotes itself to the task of protecting human rights in the region while maintaining and strengthening its ongoing promotion activities. Therefore, it is imperative for the body to put this into practice it, while seeking to strengthen the mandate and the Commission's professionalism, independence and decision-making capacities.

Specifically, the CSOs call on the AICHR to:

1. Respond to human rights crises by requesting information from relevant AMS, conducting investigations and studies, issuing statements in timely manner and well thought-out, and consulting with UN human rights bodies and National Human Rights Institutions;
2. Establish a robust complaints mechanism that will receive and investigate specific human rights violations brought to its attention; facilitate requests for responses from the relevant AMS; and explore measures to address and resolve these complaints, and monitor actions taken by the duty bearers;
3. Enhance engagement with CSOs, including allowing attendance of CSOs (with and without consultative status) in AICHR meetings, consulting CSOs in their activities and major decisions making, sharing the agenda in advance and providing a role for CSOs in communicating complaints of human rights violations; and
4. Earnestly call upon all AMS to revise the ToR to ensure:
  - a. A more elaborate and detailed protection mandate,
  - b. Professionalism and independence of representatives, and
  - c. A decision-making procedure that would rely on a majority where consensus cannot be reached.

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

The CSOs, therefore, recommended the following measures be adopted by the AMS:

1. In consultation with AICHR, revise its ToR to ensure:
  - a. A more elaborate and detailed protection mandate,
  - b. Professionalism and independence of representatives,
  - c. A decision-making procedure that would honour or adopt a majority decision where consensus cannot be reached.
2. Provide the AICHR with both a clear mandate and the resources to establish expert working groups, to assist the AICHR in the implementation of its mandate related to (1) the development of strategies for the promotion and protection of human rights a; (2) the timely generation of data and information from member states pertaining to its promotional and protective mandates; and (3) the development of a common approach and position on human rights issues and challenges.
3. Task the AICHR with drafting an ASEAN convention on human right while providing explicitly that rights protections under this convention must not fall below international human rights law and standards.

4. Clarify the principle of non-interference that the principle of non-interference does not extend to allowing AMS to violate the human rights of their people, therefore any protection AICHR would not violate this principle.