

Fact Sheet: Institutions Series: Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights

Institution: ASEAN Intergovernmental Commission on Human Rights (AICHR)



Snapshot: The AICHR is a step towards greater promotion and protection of human rights in ASEAN. However, there are flaws within the AICHR including the inability of AICHR to sanction Member States for human rights abuses and the failure to provide measures for effective human rights protection.

Introduction

This factsheet provides an overview of the [AICHR](#), which was established on 23 October 2009. The AICHR is provided for under Article 14 of the [Charter](#) for [ASEAN](#). The AICHR is the overarching human rights body for ASEAN and is the first of its kind in Asia. The [Terms of Reference](#) for the AICHR (“ToR”), which were also adopted on 23 October 2009, outline the purposes and functions of the AICHR which include to promote and protect human rights and fundamental freedoms of the peoples of ASEAN, as well as creating an ASEAN Human Rights Declaration. This factsheet is written by Cambodian Center for Human Rights, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia.

Consultative Role

The AICHR is a consultative body (Article 3). Pursuant to the ToR it is to provide advisory services and assistance on human rights matters (Article 4.7), obtain information from Member States on human rights issues (Article 4.10) and prepare thematic studies (Article 4.12). The AICHR also works with all ASEAN Sectoral Bodies to bring them into alignment with human rights principles (Article 6.9). The ToR places a lot of emphasis on the promotional aspect of the AICHR’s role, which focuses on encouraging Member States to accede to human rights treaties and to conduct activities in a more human rights friendly manner. There is no clear guidance on the protection element of the AICHR’s mandate which begs the question: how can it monitor adherence to human rights standards, investigate violations and provide Member States with recommendations when there are no provisions for such measures in its constituting document? Importantly, in this regard, while there was discussion during the drafting of the ToR about creating an individual complaints mechanism, it was not entered into the final draft of the ToR.

Lack of Independence

The AICHR is an inter-governmental body; it is not independent of either ASEAN or the Member States. Under Article 5.2, Member State representatives are responsible to the appointing government and while the term of office is three years (Article 5.5) they may be removed at any time by the appointing Government (Article 5.6). Although it states in Article 5.7 that representatives “shall act impartially” it is questionable how they can effectively do so when they risk being removed from their position if they act in a manner that their appointing Government is opposed to. AICHR work plans (Article 8.1) and annual budgets (Article 8.2) must also be approved by the ASEAN Foreign Ministers Meeting (AFMM), which are first vetted by the Committee of Permanent Representatives to ASEAN (CPRA). This process shows the level of control Member States have over AICHR activities considering that budgets or work plans will not be approved where consensus cannot be reached in the CPRA or the AFMM.

Functioning of the AICHR

It is very difficult to assess the functioning of the AICHR as there is very little information released to the public regarding its activities. What is known about the AICHR is that it does not operate in an

efficient manner. Although a Five Year Action Plan has been adopted, the process of implementation has been very slow, largely due to the consensus and consultation decision-making process adopted by AICHR (see Article 6.1). As with the Five Year Action Plan, the adoption of Guidelines on the Operations (GO) of the AICHR has been a very lengthy process. The GO was only adopted in February 2011, nearly one and a half years after AICHR was created. Up to this point ambiguity surrounded the manner in which the AICHR would carry out its work and establish relationships with external parties. It is difficult to discern whether these issues have been clarified since the GO has been implemented because there is such a lack of information released regarding AICHR activities.

ASEAN Human Rights Declaration

Pursuant to Article 4.2 on developing an ASEAN Human Rights Declaration (AHRD), the AICHR adopted the Terms of Reference for the Drafting Group in April 2011. The Drafting Group consists of ten officials and experts from the ten ASEAN member countries with a background in human rights, knowledge of the ASEAN Charter and ASEAN processes. International human rights standards stated in the Universal Declaration of Human Rights as well as other human rights instruments that ASEAN Member States are parties to shall be upheld by and incorporated into the draft. It is expected that a draft of the AHRD will be submitted to the AICHR in December 2011, and hopefully be adopted in 2012. To date, a draft of the AHRD has not been released to the public.

Human Rights vs Non-Interference

As with the ASEAN Charter, the principle of non-interference is of considerable importance within the ToR of the AICHR. Article 2.1(b) of the ToR states that the AICHR will act in accordance with the principle of “non-interference in the internal affairs of ASEAN Member States”. Linked to this is the principle in Article 2.1(c) that every Member State has the right “to lead its national existence free from external interference, subversion and coercion”. These principles frustrate the protection of human rights. The AICHR cannot make binding legal decisions or sanction Member States for violating human rights instruments or for failing to provide information on human rights. Related to this is the fact that the AICHR must operate on a consensual basis (Article 6.1). Decisions made by the AICHR are therefore the lowest common denominator acceptable to all. As a result, the progression of human rights protection and promotion within ASEAN will be a slow process.

Conclusion

The creation of the AICHR should be considered an important move towards the protection and promotion of human rights in ASEAN. However there are deficiencies in both its constituting document and the way in which it operates, particularly in relation to its inability to sanction Member States for human rights abuses, the principle of non-interference and its lack of independence. Under Article 9.6, the ToR is tabled for review after it has been in force for five years in 2014 and amendments may also be put forward by Member States at any time (Article 9.2). It is hoped that the above issues will be addressed at that time and that AICHR is given the independence and capacity to act as a bulwark for human rights, justice and equality throughout ASEAN.

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