

# Hiding behind Its Limits

A Performance Report on the first year  
of the ASEAN Intergovernmental Commission on Human Rights (AICHR)

## SAPA Task Force on ASEAN and Human Rights

### 1. Introduction

In the 43-year history of ASEAN, the year 2007 is significant for the adoption of the ASEAN Charter among 10 Member States: Brunei Darussalam, Cambodia, Indonesia, Laos (Lao PDR), Malaysia, Myanmar (Burma), the Philippines, Singapore, Thailand and Viet Nam. The momentous act of ratifying the ASEAN Charter (hereinafter the Charter) during the 13<sup>th</sup> ASEAN Summit in November 2007 has transformed the once loose association into a formal legal entity. The Charter notably contained provisions endorsing human rights promotion and protection, leading to the launching of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on 23 October 2009. In commemorating the one-year anniversary of AICHR, it is a purpose of this report to evaluate the mandate, structure and mechanisms of AICHR and review the work that AICHR has done in its first year.

This report offers a critical performance assessment of AICHR based on its core documents, structure, appointment process of members to AICHR, institution building, implementation of mandates, handling of cases and consultation with civil society. It examines AICHR's progress, achievements and shortcomings in addressing the human rights situation in Southeast Asia. It will conclude with key findings of the evaluation and propose recommendations to AICHR and ASEAN for the improvement of AICHR in the years to come.

### 2. Brief Historical Background of the AICHR

Regional initiatives for a human rights body in Southeast Asia date back to the World Conference on Human Rights in Vienna in 1993. The Vienna Declaration and Programme of Action noted needs for regional human rights bodies that are able to pay attention to "regional particularities and various historical, cultural, and religious backgrounds", and was signed by all 10 member countries of ASEAN. In the month following the World Conference in Vienna, the foreign ministers of member countries met in the 26<sup>th</sup> ASEAN Ministerial Meeting (AMM) on 23-24 July 1993 to publish a Joint Communiqué, which

welcomed the Vienna Declaration and included, albeit ambivalently, one recommendation of action considering an arrangement of a regional human rights mechanisms.

A long period of silence ensued after the Joint Communiqué of 1993 until the drafting of the Charter which started in late 2005. The 11<sup>th</sup> ASEAN Summit in December 2005 established an Eminent Persons Group (EPG) to lay down guiding principles of the Charter. A High Level Task Force, which consisted of 10 representatives from each member, was formed in February 2007 to draft it. In the Charter, Article 14 is titled “ASEAN Human Rights Body” and spells out its establishment through a terms of reference to be determined by the ASEAN Foreign Ministers Meeting. The Charter was officially adopted during the 13<sup>th</sup> ASEAN Summit on 20 November 2007 and entered into force on 15 December 2008.

Subsequently, another High Level Panel (HLP) was appointed by ASEAN to draft the Terms of Reference (ToR) for the ASEAN human rights body on 21 July 2008. On 23 October 2009, the human rights body was officially named as the ASEAN Intergovernmental Commission on Human Rights (AICHR) and officially inaugurated during the 15<sup>th</sup> Summit in Cha-am Hua Hin, Thailand.

### **3. Terms of Reference of AICHR**

A review of the performance of AICHR in its first year cannot be detached from its founding documents. The Terms of Reference of AICHR (hereinafter ToR) lays out the purposes, principles, roles, and mandate of AICHR, as well as its basic structure and functioning. This section will thus briefly review the problematic provisions in the ToR to examine its impact on the operation of AICHR in its first year.

#### **a. Purposes of AICHR and cultural relativism**

The ToR stipulates in Article 1.6 that one of the purposes of AICHR 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.” However, in Article 1.4, provides another purpose of AICHR, namely “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.” This leaves serious concern that member states could justify human rights violations based on “regional particularities” or that cultural relativism or “Asian values” may make a comeback through this provision.

SAPA TF-AHR would like to stress, however, that nowhere does the TOR provide for Article 1.4 to have any priority over Article 1.6. AICHR should therefore adhere to international human rights law and standards and interpret Article 1.4 as a provision to be taken into consideration, but one that should give way in case of a clash between “national and regional particularities” and binding human rights law or universally upheld standards.

## b. State Sovereignty

Article 2 of the TOR reiterates the principles state's independence and sovereignty, non-interference, and respect for different cultures in Article 2 of the ASEAN Charter. This tone continues throughout the Article in their adoption of "non-confrontational" (2.4) and "evolutionary" (2.5) approach.

However, SAPA TF-AHR would like to remind AICHR that no state has a sovereign right to torture, "disappear" or starve its people. Article 2.3 of the TOR recognises, rightly, "that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State." But when a state fails to live up to its responsibility, it can no longer claim that its sovereignty, right to non-interference or unique culture is compromised by AICHR stepping into the breach and exercise its duty to protect those whose rights have been violated or who are facing such violations.

## c. Role of AICHR

Article 3 of the ToR is entitled, "Consultative inter-governmental body" and consists of two sentences. It limits the role and the nature of AICHR to being intergovernmental and consultative. The crucial element of "independence" of the Commission is sorely missing in this determination of its role and nature.

SAPA TF-AHR would like to remind the AICHR, however, that nothing in the TOR prevents it from acting independently, impartially and objectively. In fact, all AICHR representatives are required to act impartially under Article 5.7 of the ToR. This would be the proper way for the Commission to exercise its promotion and protection mandate.

## d. AICHR's Mandate and Function

Article 4 of the ToR establishes the mandate and functions of AICHR. They are summarised as follows:

1. Develop strategies to promote and protect human rights
2. Develop ASEAN Human Rights Declaration
3. Raise public awareness on human rights
4. Promote capacity building on implementation of international human rights treaties
5. Encourage ratification of human rights treaties
6. Promote implementation of ASEAN human rights instruments
7. Provide advisory role and technical assistance to ASEAN sectoral bodies
8. Engage in dialogue and consultation with ASEAN bodies and entities associated with ASEAN
9. Consult with other national, regional and international institutions and entities concerned with human rights

10. Obtain information from member states on human rights promotion and protection
11. Develop common approaches and positions on human rights matters
12. Prepare thematic studies on human rights
13. Submit annual report
14. Perform other tasks assigned by ASEAN Foreign Ministers Meetings

Based on the above mandates and functions, SAPA TF-AHR maintains that it is the duty of AICHR to develop mechanisms and programs on both promotion and protection of human rights. Equal attention and resources should be accorded to these two areas of work.

e. Composition

The AICHR is composed of one representative from each Member States of ASEAN. The power to appoint a representative resides in the ASEAN Member State.

Article 5.6, which provides that “the appointing Government may decide, at its discretion, to replace its Representative” before the three year term is completed is of concern. Insecure tenure may compromise the representative’s independence from the government. This is a serious obstacle in protection and promotion of human rights, considering the nature of tasks that human rights bodies are expected to perform. There is also no modality to ensure gender balance in the make-up of the members of the commission.

f. Consensual Decision Making

AICHR adopts the consensual decision making process that ASEAN is known for. With concerns regarding member composition as above, it is obvious that consensual decision process may, and indeed has undermined efficiency and effectiveness of the Commission. Civil society organisations have recommended that the Commission should attempt to reach consensus, but revert to majority vote if such consensus cannot be reached.

g. Work Plan and Funding

Article 8 of the ToR provides for AICHR to produce a five-year work plan and funding. Provision 8.2 may restrict the fiscal autonomy of the AICHR, and the limit on external funding from non-ASEAN Members as provided for in Provision 8.6 may further restrict AICHR’s capacity to protect human rights. However, nothing in the TOR prevents AICHR from budgeting for protection activities and lobbying ASEAN bodies to support such budgeting.

## 4. Appointment Process of AICHR Members

Article 5.4 of the ToR stipulates that in terms of Member States appointing their representative to AICHR, they “should consult, if required by their internal processes, with appropriate stakeholders in the appointment of their Representatives to the AICHR”.

It is encouraging that two Member States – Indonesia and Thailand—used an open and transparent procedure to appoint their representatives. In both countries, the position was publicly advertised and public members were able to nominate candidates to the government’s select committee. As a result, two independent human rights experts, Rafendi Djamin and Dr. Sriprapha Petcharamesree were appointed for Indonesia and Thailand respectively. Rafendi Djamin of Indonesia is the Coordinator of the National Human Rights Working Group Indonesia and also the convener of SAPA TF-AHR. Dr. Sriprapha Petcharamesree is a professor and a former Director of the Office of Human Rights Studies and Social Development at Mahidol University. She has spent her 30 years of career in both academia and human rights activism.<sup>1</sup>

On the other hand, appointment processes in other countries were carried behind closed doors. Moreover, most of them have had their career span in the diplomatic or civil services, often without any experience in human rights work. Many have not resigned from their government posts. Their direct or indirect affiliation with the government without necessary competency in human rights work may seriously undermine the independence and effectiveness of AICHR. (Brief profiles of the professional background of each AICHR Representative is provided as ANNEX 1 of this document)

Despite provisions in the ToR that the Member State should “give due consideration to gender equality, integrity and competence in the field of human rights” (Provision 5.3), there are only two women appointed to the 10-member AICHR. This is due to the lack of clear mechanism in the ToR to ensure gender balance will be achieved in the appointment process.

## **5. Institution Building**

### **5.1 AICHR Meetings Shrouded in Secrecy**

Following the inauguration of AICHR, the Commission had an introductory meeting the following day with Thailand as Chair. On 18-19 December 2009, the Commission had an informal meeting in Bangkok, Thailand .

The first official regular meeting of AICHR was held on 28 March to 1 April 2010 in Jakarta, Indonesia with Vietnam as Chair, as this coincided with its term to chair the ASEAN for 2010. A press release was issued by the Chair of AICHR on the outcome of the meeting. During the meeting, the Commission discussed the formulation of the Rules of Procedures, which was to lay down comprehensive guidelines for the conduct in all aspects of AICHR’s work. The Commission also discussed development of the Five-year Work Plan which is a roadmap of programmes and major activities to be undertaken by AICHR from 2010 to 2015. Both developments were originally expected to be completed in time for adoption by the

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<sup>1</sup> For the full list of the Representatives and a brief overview of their professional backgrounds, refer to Annex 1.

43<sup>rd</sup> ASEAN Ministerial Meeting (AMM) in July 2010. Although the Work Plan 2010-2015 was adopted in July, there is no official information regarding the Rules of Procedure, severely obtruding the efficiency and the speed of AICHR's work. This problem will be elaborated in detail in Section 3.2.

The second official regular meeting occurred from 28 June to 2 July, 2010 in Da Nang, Vietnam. Again, no information on the agenda, proceeding, or outcome of this meeting is publicly available to this day. Regrettably this time, the AICHR did not even issue a press release to inform the result of their meeting as a matter of public interest.

The third meeting, which was an additional meeting to the second meeting, was held in Kuala Lumpur, Malaysia, from 20-24 September, 2010. It was learned that the meeting discussed the implementation of the Priority Programmes/Activities for 2010-2011 as a follow-up to its Work Plan adopted at the recent 43<sup>rd</sup> AMM in July 2010. There were also discussions of the process of drawing up the Indicative Budget for the remaining period 2012-2015 to finalize the Five-Year Work Plan. The meeting also discussed the preparation for the drafting of the ASEAN Human Rights Declaration.

The press releases issued at the end of AICHR meetings are posted in the ASEAN website<sup>2</sup>. On the whole, these releases omit the details of the meetings, nor do they give a full account of the decisions and agreements made.

SAPA TF-AHR demands AICHR meetings to be open and effective. We request the meeting details such as agenda, minutes and outcome to be disclosed to allow civil society organizations and general public to participate in the work of AICHR. These procedures are common in the Inter-American Commission on Human Rights and the African Commission on Human and People's Rights. Regrettably, AICHR has been to a large extent shrouded in secrecy since its establishment with scant information released to the public.

## **5.2 Rules of Procedure**

The AICHR has so far failed to adopt its Rules of Procedures, which are crucial as an operational guideline for its effective functioning. The negotiations on the Rules of Procedure hit a snag after objections from certain representatives. They asserted that the Commission could operate based on the ToR without any Rules of Procedure. With the consensual decision making principle within AICHR, the objection of these representatives practically became a veto. The incident is a classic illustration of how consensual decision making can slow down the progress of AICHR in making important decisions.

The SAPA TF-AHR submitted a comprehensive proposal<sup>3</sup> for a Rules of Procedure of the AICHR on 17 March 2010. The submission was circulated to all members of AICHR.

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<sup>2</sup> The full text of the two press releases of AICHR is provided as ANNEX 2 of this report.

<sup>3</sup> The full text of SAPA\_TFHR's Civil Society Proposal for the AICHR RoP may be accessed at [http://forum-asia.org/2010/CS\\_RoP\\_for\\_AICHR.pdf](http://forum-asia.org/2010/CS_RoP_for_AICHR.pdf)

The development of Rules of Procedure is essential and necessary. The Five-Year Work Plan as a matter of fact, relies on the development of Rules of Procedures. Without Rules of Procedures, the Commission will be forced to draft Terms of Reference for every major activity and programme. In other words, the absence of Rules of Procedures is severely detrimental to the smooth implementation of the Work Plan. The absence of Rules of Procedures also creates ambiguity regarding how AICHR will carry out its work and establish relationship with external parties.

### **5.3 Inadequate Budget and its Control**

In establishing the AICHR, each Member State contributed US\$20,000 as a seed fund for the operation of AICHR. This amount is relatively small when taking into account the situation of human rights in the region that need to be addressed by AICHR. This is far from the adequate amount that is needed, as promised by ASEAN in its Cha Am Hua Hin Declaration on AICHR.

To access this fund, AICHR submitted its Work Plan 2010-2015 with an indicative budget for 2010-2011 for the approval of the ASEAN Foreign Ministers Meeting in July 2010. The Work Plan and budget was already vetted by the Committee of Permanent Representatives (CPR) before going to the Foreign Ministers Meeting.

This process describes how member states have total control on how what kind of activities would be allowed in the Work Plan of AICHR and how the budget is going to be expended. This process clearly indicated that there is no financial autonomy for AICHR to carry out its work.

At the time of writing this report, AICHR has yet to receive any external funding for its activities.

### **5.4 Secretariat Support Under-Resourced**

AICHR does not operate an independent secretariat but is supported by the ASEAN Secretariat, more specifically by the Director-General of the Political Security Community of ASEAN and its team. A new position, the Assistant Director for the Promotion and Protection of Human Rights was created in 2010 within ASEAN Secretariat to support the work AICHR. However, it must be noted that the whole team, including the Assistant Director for the Promotion and Protection of Human Rights, is not responsible only for AICHR, but a whole range of issues and institutions under the Political and Security Community of ASEAN.

In order for the AICHR to operate effectively and efficiently, AICHR will need an independent Secretariat of its own, including additional financial and human resources. AICHR should be given power to determine the recruitment of its staff for its own Secretariat based on the needs of the Commission. Gender balance and thematic representation should be ensured in the composition of the secretariat.

## **6. Implementation of the Mandate**

The mandate and functions of AICHR as outlined in Article 4 of the ToR has 14 points. However, in this first year of its existence, it only managed to develop some work in four areas, namely: developing strategies to promote and protect human rights, thematic studies, advisory role to ASEAN sectoral bodies, and ASEAN Declaration of Human Rights.

### **6.1 Developing strategies to promote and protect human rights: the Five Year Work Plan**

In its first year of operation, the AICHR managed to adopt its five year work plan for the period of 2010-2015. The work plan was subsequently presented along with the budget and approved by the ASEAN Foreign Ministerial Meeting in July 2010. Regrettably, the text of this work plan has not been made public.

As the general purpose of the commission is to promote and protect human rights, it should strive to have equal balance of work on promotion and protection of human rights in its work plan. However, basing the Work Plan on the ToR meant working with the ToR's limitations. Despite the structural limitation, we believe it is still AICHR's job to look at entry points to achieve the balance of promotion and protection mandates.

### **6.2 Thematic Studies**

According to the Work Plan, AICHR is to prepare at least one study per year on the following 11 thematic issues relating to human rights:

- corporate social responsibility
- migration
- trafficking in person, particularly women and children
- child soldiers
- women and children in conflicts and disasters
- juvenile justice
- right to information in criminal justice
- rights to health
- rights to education
- right to life
- right to peace

The first thematic study to be conducted is on the issue of corporate social responsibility. The terms of reference of this thematic study is still being discussed by the Commission and has yet to be finalised.

SAPA TF-AHR welcomes AICHR's decision to conduct thematic studies. It calls on AICHR to ensure that the studies are thorough, involving country visits, dialogue with stakeholders, in particular victims of



relevant human rights violations, civil society organisations and experts. Each thematic study should be concluded in a wide-ranging report that should be made public and should include specific and detailed recommendations for individual states and other entities (such as corporations), as well as to ASEAN bodies.

### **6.3 Advisory role to ASEAN sectoral bodies**

AICHR received its first task in its advisory role to ASEAN sectoral bodies when the ASEAN Health Ministers Meeting sought the opinion of the commission on the issue of HIV mandatory blood tests on migrant workers.

SAPA TF-AHR, along with Coordination of Action Research on Aids and Mobility in Asia (CARAM-ASIA), sent a written submission to AICHR on the issue of the mandatory blood testing on HIV on migrant workers when the commission met in September 2010 in Kuala Lumpur. The submission was acknowledged by Do Ngoc Son, Chairperson and Representative of Viet Nam to AICHR.

However, while SAPA welcomes the initiative of the Health Ministers, it is not known how what modalities have been developed, if any, for AICHR to produce advisory opinions to the ASEAN sectoral bodies. The Commission has yet to deliberate on the particular issue of mandatory blood test for HIV on migrant workers.

Their advisory role should not rely on the requests from the ASEAN sectoral bodies but should be proactively provided by the AICHR in all matters (agreements, activities, etc) of the ASEAN that will have an impact to the enjoyment of the peoples of the ASEAN to their human rights and fundamental freedoms. They should also provide advice to ASEAN Member States on improving their human rights performance.

### **6.4 ASEAN Human Rights Declaration**

AICHR is mandated to draft an ASEAN Human Rights Declaration under Article 4.2 of its ToR. As of the time of writing, the AICHR is still discussing the terms of reference of the drafting team and its processes. Again, very little information has so far been made available to the public on this very important issue of human rights standard setting in the region. SAPA-TFAHR hopes that the drafting process includes consultations at the national and regional level with civil society, national human rights institutions and other.

## **7. Handling of Human Rights Violation Cases**

In the first year of AICHR, SAPA-TFAHR recorded a total of 16 cases of human rights violations submitted to the commission. Of these cases, 15 were submitted during the AICHR's first meeting in Jakarta and one case during the AICHR meeting in Kuala Lumpur. The cases submitted are as follows:

Thematic issues	Number of cases	Concerned Countries	Concerned Organisations
Migrant workers	9	Indonesia	Serikat Buruh Migran Indonesia (SBMI)
Press freedom and freedom of expression	2	Indonesia	LBH Pers
Past human rights violations on crime against humanity	3	Indonesia	KontraS/ IKOHI
Killings in Maguindanao	1	Philippines	Center for International Law
Women's rights	1	Indonesia	Koalisi Perempuan Indonesia Untuk Keadilan dan Demokrasi
Death penalty	1	Singapore/ Malaysia	Save Vui Kong Campaign
Total	16		

During the meeting of AICHR in March 2010, civil society organizations who made the submission of cases to AICHR were informed by the Chair of AICHR that the commission was not able to receive these cases on the ground that the Commission has yet to adopt its Rules of Procedures on how to handle cases of human rights violations submitted to them. The Chair of the Commission refused to come out from their meeting at the ASEAN Secretariat to receive these cases, instead dispatched the director-general on political and security of ASEAN, Dr. Anish Roy to meet with the delegation from civil society organizations. In the mean time, Rafendi Djamin, the Indonesia representative to AICHR, came out to meet with civil society delegation and received the cases in his own capacity.

### Submission on the Case of Yong Vui Kong

The Save Vui Kong Campaign submitted a case to a representative from AICHR on 24 September 2010 in Kuala Lumpur. The campaign, represented by Ngeow Chow Ying and Tah Moon Hui, was formed after Yong Vui Kong, a Malaysian youth, was sentenced death in Singapore for drug trafficking. Yong was charged under the Misuse of Drug Act which dictates a mandatory death penalty, leaving the judge no discretion to consider any mitigating factors when passing sentence.

The case submission urges AICHR to exercise its mandate to look into the case, to conduct a thematic study on mandatory death sentencing and to impose a regional moratorium on death penalty. The memorandum was received by the Malaysia representative to AICHR, Muhammad Shafee Abdullah.

While receiving the case, it has been reported that Shafee indicated his awareness of Yong's case and that he will attend Yong's judicial review application in January 2011. He also further indicated that a thematic study on mandatory death penalty has been proposed to the AICHR.<sup>4</sup>

<sup>4</sup> The full text of the memorandum submitted by the Save Vui Kong Campaign can be accessed at [http://forum-asia.org/2010/Memorandum%20on%20YVK%20to%20AICHR\\_v2.pdf](http://forum-asia.org/2010/Memorandum%20on%20YVK%20to%20AICHR_v2.pdf)

## **8. Consultation with Stakeholders, including Civil Society and NHRIs**

### **8.1 Consultation at National Level**

The performance of AICHR in engaging and consulting civil society and other stakeholders, especially on the regional level and as regards the national human rights institutions in the region, has been very disappointing.

At the national level, while there were meaningful engagement made between civil society organisations in some Member States such as Thailand and Indonesia, this is not the case in other countries. In Singapore, the AICHR representative called two meetings with civil society organizations but more meaningful sharing of information and exchange of views is needed. In Malaysia, the AICHR representative failed to organize any consultation meeting with civil society, and only met once with civil society on the work of AICHR— as a speaker at a forum of the Bar Council of Malaysia. For the rest of the countries, the representatives have yet to conduct any meaningful engagement with civil society organisations since their appointment.

### **8.2 Consultation at Regional Level**

At the regional level, throughout the whole year since its establishment, the AICHR has failed to engage and consult with civil society organizations and other stakeholders in the process. Both the SAPA-TFAHR and the four national human rights institutions in Indonesia, Malaysia, Thailand and the Philippines had requested for a dialogue with AICHR during its meetings in March and September 2010. These requests were rejected by the AICHR on the ground again that the commission has yet to adopt the Rules of Procedure that define its engagement with external parties.

The one and only group met by the AICHR in September 2010 was the Working Group for an ASEAN Human Rights Mechanism, which is one of the 76 organizations as listed as “entities associated with ASEAN”.

The practice adopted by the AICHR pending the completion of its Rules of Procedures to only engage and consult organizations listed under Annex 2 of the ASEAN Charter is unacceptable and unjustifiable. It must be noted that Article 4.9 of the ToR also stipulates that the commission may consult with other national, regional and international institutions and entities concerned with the promotion and protection of human rights.

AICHR’s refusal over the past year to consult and meet with civil society organizations, and other stakeholders, including the four national human rights institutions in the region is therefore disappointing. As a matter of fact, consultations with civil society and other stakeholders took a step backwards, when compared with the practice of the High Level Panel that drafted the ToR. There were engagements between High Level Panel on an ASEAN Human Rights Body and civil society organizations on multiple levels throughout the drafting process of the ToR.

## 9. Conclusion

The inauguration of AICHR was met with mixed responses. As one researcher noted,

Does all this herald a new era of steady progress towards the realisation of human rights in Southeast Asia, or are these developments little more than a legitimacy-seeking, ‘window-dressing’ exercise, not to be followed by any concrete implementation? Or, perhaps worse, is ASEAN on the road to launching a new, alternative and possibly more restrictive version of human rights to rival the by-and-large uniform version prevailing internationally as well as in other regions?<sup>5</sup> (Ginbar 2010: p. 505)

AICHR’s performance in its first year has seen some positive developments, but overall it is disappointing and worrisome on several accounts.

First, access to official information is difficult with the Commission. In terms of transparency and accountability, little information was made available to the public on the meeting agenda of the commission, the outcome of the meetings, the decisions made by individual representatives in the commission. Many documents of the commission that are of public interest should have been circulated to enable broader participation.

Second, there was very little meaningful consultation and participation of civil society and other stakeholders, including the four national human rights institutions in the region. Only a minority of the commission’s members have conducted some form of consultation with civil society at the national level, while the commission as a whole has rejected any form of consultation or dialogue at the regional level.

Third, consensual decision making has hampered the efficiency and effectiveness of the commission. This is illustrated in its failure to adopt the Rules of Procedures at the time of writing.

Fourth, there seems to be resistance by several representatives in the commission to have clear working modalities to be outlined for the commission to conduct its work more efficiently and effectively. The fact that the commission needs to draft terms of reference for activity, such as conducting thematic studies, taking on advisory roles, and standard setting; its failure to meet with relevant stakeholders, including civil society; and its refusal to officially receive cases of human rights violations are all made on the justification that there is no rules of procedure in place. This underscores the urgent need for the commission to adopt a set of comprehensive and effective rules of procedure in order for it to function effectively and efficiently.

Fifth, the independence and the credibility of the commission are still unresolved with the questionable selection criteria, and appointment processes of the representatives to AICHR in many countries. This has been illustrated in the career background of the members appointed to the AICHR.

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<sup>5</sup> Yuval Ginbar (2010) “Human Rights in ASEAN – Setting Sail or Treading Water?” *Human Rights Law Review*. 10:3. Oxford University Press. P. 504-518

Sixth, the resources provided to the AICHR, has not been sufficient and adequate, in both financial and human resources, at both national and regional level. Without the much needed resources, the AICHR would not be able to function efficiently and effectively.

Seventh, the protection mandate of the AICHR is yet to be clearly spelled out in their Work Plan. Furthermore, there is no clear mechanism within the AICHR on how it will ensure the protection of the rights of disadvantaged and marginalized sectors.

While establishment of the Commission indeed is significant and to be congratulated, AICHR needs to critically review its work in the past year and strive to improve in the coming years.

In conclusion, SAPA TF-AHR recommends the following:

For AICHR

1. AICHR should allow civil society to observe at least some of the meetings of the commission, to ensure transparency and accountability. AICHR should make information about its activities more accessible, in line with Article 6.7 of its ToR.
2. AICHR needs to uphold Article 4.9 in its own ToR and engage and consult with civil society organizations and other stakeholders, especially the four national human rights institutions in a broad and meaningful manner at national and regional level. The consultation should not only focus on the program work of the commission, but also institution building issues such as the adoption of the rules of procedure for the commission.
3. AICHR should adopt its Rules of Procedure as soon as possible. The rules of procedure should, among others, ensure that AICHR is able to receive and investigate individual and other complaints of human right violations, make country visits, publish annual reports assessing each member state's human rights record and engage fully with civil society.
4. AICHR members should act impartially in their work despite being appointed by member states to ensure the independence and credibility of AICHR.
5. AICHR should establish its own separate secretariat capable of independent operation and fiscal autonomy. The composition of the secretariat should ensure gender balance and thematic representation.
6. As the mandates of the AICHR is both to promote and protect human rights, the workplan of AICHR for the period of 2010-2105 should be adjusted to reflect better balance for both promotion and protection of human rights in its work program and budget allocation. It should also reflect the monitoring of the adherence of member states to their international obligations.
7. AICHR should assign focal persons and set up working groups to handle particular issues such as indigenous peoples, refugees, and persons with disability to look into the respect, protection and implementation of the rights of these groups.
8. The ASEAN Declaration on Human Rights should be drafted in broad consultation with civil society and all stakeholders. It must fully uphold international human rights law and standards as enshrined in the Universal Declaration of Human Rights and take note of developments in

human rights law since. It must contain no compromises on the level of protection and respect for all human rights for all peoples in ASEAN.

For ASEAN

1. ASEAN should rectify the deficiencies within the TOR as illustrated in this report at the earliest possibility
2. All other member states are encouraged to adopt transparent and participatory nomination and selection processes of their representative to AICHR, as in the case of Thailand and Indonesia.
3. ASEAN should develop clear mechanism to ensure that the selection of members to AICHR will be gender balance.
4. ASEAN should provide adequate financial resources to AICHR and allow financial autonomy in order for AICHR to carry out its mandates and functions effectively and efficiently.
5. ASEAN should support the establishment of a separate and independent secretariat for AICHR that are staffed with adequate human resources.

Solidarity for Asian People's Advocacy  
Task Force on ASEAN and Human Rights (SAPA-TFAHR)  
27 October 2010

**ANNEX 1****Brief Profiles of the Members of the ASEAN Intergovernmental Commission on Human Rights****Abdul Hamid Bakal (Brunei Darussalam)**

Abdul Hamid Bakal was the Syar'ie Chief Judge, State Judiciary Department of the Prime Minister Office from 2001 until 2008. Prior to this Abdul Hamid Bakal served as Chief Kadhi in the Ministry of Religious Affairs. He is also a member of the Privy Council, Brunei Religious Council, Royal Meeting Council and Adat Istiadat Council. He holds two degrees from Al-Azhar University, Egypt in Islamic Studies. His professional career has spanned more than 40 years.

**Om Yentieng (Cambodia)**

Om Yentieng is the Chair of the Cambodia Human Rights Committee and Senior Advisor to Prime Minister Hun Sun. Om Yentieng was a member of the High Level Panel which drafted the Terms of Reference for the AICHR.

**Rafendi Djamin (Indonesia)**

Rafendi Djamin is the Coordinator of the National Human Rights Working Group Indonesia, a national rights lobby, and is also the convener of Solidarity for Asia Peoples' Advocacy Task-Force on ASEAN and Human Rights (SAPA TF-AHR). He has worked as part of the Indonesian human rights movement since his arrest and detention under Suharto for his work as a student leader at the University of Jakarta. Rafendi Djamin also holds a Master's degree in Development Studies from the Institute of Social Studies – The Hague, The Netherlands.

**Bounkeut Sangsomsak (Lao PDR)**

Bounkeut Sangsomsak is currently Vice Minister of Foreign Affairs and was a Member of the High Level Panel which drafted the Terms of Reference for the AICHR. He holds degrees from the Royal Institute of Law and Administration, University of Sisavangvong, Vientiane; International Institute of Public Administration Paris; and the University of Sorbonne, Paris, France. His career in the Ministry of Foreign Affairs has spanned more than 30 years.

**Muhammad Shafee Abdullah (Malaysia)**

Muhammad Shafee is a serving Member of Malaysia's National Human Rights Commission; Member of the Criminal Law and Finance Committee of the Bar Council. The main areas of his professional work are in the areas of Human Rights, Criminal Defense Rights, and investigation into the independence of Judiciary. He holds law degrees from the University Malaya and the London School of Economic and Political Sciences (LSE) and has spent more than 30 years in the legal profession.

**Kyaw Tint Swe (Myanmar)**

Kyaw Tint Swe is the Permanent Representative of Myanmar to the United Nations. He holds degrees from the University of Yangon and a post-graduate diploma in International Relations and Development from the Institute of Social Studies, The Hague, The Netherlands. His diplomatic career has spanned more than 40 years.

**Rosario Gonzalez Manalo (the Philippines)**

Rosario Manalo currently lectures and is the Chair of the European Studies Program in the Ateneo de Manila University and was a Member of the High Level Panel which drafted the Terms of Reference for the AICHR. She holds degrees from the University of the Philippines and Long Island University, USA. She is a career diplomat which included posts across Europe and the posts of Chairwoman of the UN Committee for the Elimination of Discrimination Against Women (CEDAW) and the UN Commission on the Status of Women. Her professional career has spanned over 50 years.

**Richard Magnus (Singapore)**

Richard Magnus is a Member of the Public Service Commission; Chairman of the Casino Regulatory Authority; a board member of the Land Transport Authority and a member of the Bioethics Advisory Committee; Chairman of the Political Films Committee; and Senior Fellow at the S. Rajaratnam School of International Studies. He holds two law degrees. He served for over 40 years in the legal profession.

**Sriprapha Petcharamesree (Thailand)**

Dr. Petcharamesree is currently a Professor and a former Director of the Office of Human Rights Studies and Social Development of Mahidol University, Thailand and a member of the Subcommittees on Human Rights Situation Assessment, Child Rights, and Administration of Justice and Legislation of the Thai National Human Rights Commission. She holds a degree in political science from Thammasat University, and her D.E.A. and Ph.D. in International Politics from the University of Paris-X Nanterre,



France. She started her career as a social worker for the UNICEF's Emergency Operations for Cambodian Refugees and subsequently joined the Department of Technical and Economic Cooperation. Sriprapha Petcharamesree has spent her career both in academia and human rights activism. Her professional career has spanned over 30 years.

**Do Ngoc Son (Viet Nam)**

Do Ngoc Son is Assistant Minister of Foreign Affairs and Director-General of the Asia II Department. He is a former Head of ASEAN Department in the Ministry of Foreign Affairs, a former Ambassador to Thailand; and was Governor of the Asia-Europe Foundation in 2003. His diplomatic career has spanned over 30 years. He holds a degree from the University of La Habana, Cuba.

*(Compiled, published and distributed by NTS-ASIA Secretariat Centre for NTS-Studies S. Rajaratnam School of International Studies Nanyang Technological University, Singapore. The full CVs of each AICHR member can be found at this webpage: <http://www.aseansec.org/22769.htm>)*

## ANNEX 2

**Publicly Available Documents Released by the AICHR**

Below is a compilation of all the publicly-available documents released by the ASEAN Intergovernmental Commission on Human Rights (AICHR), which can be found in the ASEAN Secretariat website. AICHR has issued only two brief press releases, despite having three official meetings.

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**Press Statement by the Chair of the ASEAN Intergovernmental Commission on Human Rights on the First Meeting of the ASEAN Intergovernmental Commission on Human Rights**

*ASEAN Secretariat, 1 April 2010*

The ASEAN Intergovernmental Commission on Human Rights (AICHR) convened the First Meeting from 28 March – 1 April 2010 at the ASEAN Secretariat, during which the Representatives had extensive discussions among themselves and with other relevant ASEAN bodies on how to ensure its effective operations as the overarching human rights institution in ASEAN.

The Meeting discussed among others, the formulation of the Rules of Procedure which will lay down the operational guidelines for the conduct of AICHR's work in all aspects. The Meeting also discussed the development of the Five-Year Work Plan to provide a comprehensive roadmap of programmes and activities to be undertaken by AICHR in the next five years. It is expected that the Rules of Procedure and the Five-Year Work Plan will be completed in time to be submitted to the 43rd ASEAN Ministerial Meeting (AMM) in July 2010 for adoption.

AICHR Representatives also had fruitful consultations with the relevant ASEAN sectoral bodies, including the Committee of Permanent Representatives to ASEAN (CPR), the Senior Officials Meeting on Social Welfare and Development (SOMSWD) and the ASEAN Committee on Women (ACW). Of notable importance was the agreement reached among AICHR and SOMSWD and ACW on the necessary steps to ensure the proper alignment of the would-be ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) with AICHR.

The Second Meeting of AICHR will be held from 28 June – 2 July 2010 in Viet Nam.

Source: <http://www.aseansec.org/24445.htm>

**Press Release of the Third ASEAN Intergovernmental Commission on Human Rights***Kuala Lumpur, 24 September 2010*

The ASEAN Intergovernmental Commission on Human Rights (AICHR) convened its Third Meeting from 20-24 September 2010 in Kuala Lumpur, Malaysia.

The Meeting discussed the implementation of the Priority Programmes/Activities for 2010-2011 as a follow-up to its adoption at the recent 43rd ASEAN Ministerial Meeting (Ha Noi, July 2010). The Representatives also discussed the process of drawing up the Indicative Budget for the remaining period 2012-2015 to finalize the Five-year Work Plan.

The Meeting also discussed, the preparation for the drafting of the ASEAN Human Rights Declaration (AHRD). The next Meeting of AICHR is expected to take place in November in Thailand.

On the sidelines of the Third Meeting, AICHR also met with the Working Group for an ASEAN Human Rights Mechanism, which is an entity associated with ASEAN. The two sides exchanged views on the directions for their future cooperation.

Source: <http://www.aseansec.org/25238.htm>