



NTS Alert November 2010 (Issue 2)

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## ADVANCING PROTECTION OF CIVILIANS THROUGH THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR)

In the first issue of this month's NTS Alert, the importance of a robust human rights framework to complement international humanitarian law, and address its shortcomings in protecting civilians caught up in intrastate conflict and violence in Southeast Asia, was explored. Against this backdrop, this issue of the NTS Alert examines the potential for the recently established ASEAN Intergovernmental Commission on Human Rights (AICHR) to enhance civilian protection through a human rights framework.



Buddhist monks protest against the country's military regime, Myanmar, 24 September 2007.

Credit: racoles, flickr.com

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### Introduction

On 23 October 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was inaugurated. It was born out of the blueprint for the ASEAN Political-Security Community (APSC). The APSC, together with ASEAN's economic and socio-cultural pillars, will form the foundation of an ASEAN Community, which is set to be established by 2015. Under the Socio-Cultural Community plan of action, ASEAN's emerging human rights framework was also bolstered by the establishment of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in April 2010. Although the precise modalities remain to be seen, the AICHR is to work in conjunction with the ACWC to ensure that the interests of women and children are encompassed in all its initiatives.

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These regional mechanisms point to the gradual reshaping of ASEAN's normative terrain, from one dominated by a state-centric conceptualisation of security, to one more cognisant of the human security concerns of individuals and communities. A broad protection of civilians agenda, which draws on a coherent and effective human rights framework as one of its core elements, is essential to respond to the numerous protection concerns of individuals and communities in the region affected by intrastate conflict and violence, especially women, children, refugees and internally displaced persons. It is also particularly important because needs which were not protected during intrastate conflict situations often continue to affect individuals' human security once the overt signs of violence have subsided.

As the overarching human rights body for ASEAN, the AICHR has the potential to drive the momentum for a more inclusive human security framework. Although the AICHR has already been criticised as 'a window dressing' (SAPA-TFAHR, 2010a) and for subordinating the protection of human rights to the imperatives of the 'ASEAN way', particularly to the principle of non-interference and to a lowest common denominator, consensus style of decision-making, it should nonetheless be seen as a significant development in a region in which serious discussion about human rights and human security was severely contentious as late as the early 1990s.

While an in-depth analysis of the AICHR's potential is premature at this stage, given that its 2010–2015 Work Plan has yet to be circulated publicly and it has not formalised its Rules of Procedure (RoP), an analysis of its Terms of Reference (TOR) suggests that the AICHR provides a platform for ASEAN members and other non-state actors to incrementally internalise human rights awareness, promotion and, implicitly, protection within Southeast Asia, particularly through norm building. In essence, the AICHR could be viewed as an important mediator between the international and the local, drawing on universal human rights standards and resources, but in the process localising the promotion and 'monitoring' of these standards. In the next section, some of the AICHR's mandated functions that could bolster a civilian protection agenda will be examined.

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## The AICHR's Terms of Reference: Towards a Consolidated Framework for Civilian Protection?

In order to address the protection concerns of individuals caught up in situations of intrastate conflict and other situations of violence in Southeast Asia, Issue 1 of the November 2010 NTS Alert suggests that a consolidated approach to civilian protection should be based on international humanitarian law (IHL) and a comprehensive human rights framework. This section, through an examination of the AICHR's TOR, explores the potential for the AICHR to engender a framework for human rights protection in the region.

### ***Article 4.4: To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States.***

This represents the 'promotional' aspect of the AICHR (Hermawan, 2010). Measures could encompass education and training on human rights, not only for public awareness, but also for the actors responsible for protecting these rights, such as the police, military and various government agencies.

Capacity building is something that ASEAN states are arguably receptive towards as it resonates with the 'preventive culture' that has been nurtured within the association since its inception. The recent UN General Assembly (UNGA) debates on the Responsibility to Protect (RtoP), essentially a rights-based concept, are a case in point. During the course of the debates, many ASEAN states strongly affirmed their support for capacity building as a measure for preventing severe human rights violations (ICRtoP, 2009).

The AICHR, through its consultations and collaborations with various actors, could develop its knowledge of local or national protection needs, and international or regional best practices, acting in effect as a repository of information. It could then draw on such information to assist state and non-state actors in the implementation of capacity building measures. The AICHR's possible role as a focal point to coordinate various ad hoc measures could ensure that duplication is minimised and best practices are shared among actors at various levels of governance. For example, the AICHR could bring together diverse bodies such as the ASEAN National Human Rights Institutions (NHRI) Forum, or ANF, and the Malaysian peacekeeping training centre in capacity building exchanges, harnessing the strengths of each of these bodies. The ANF is a regional network of four national human rights commissions, and one of its strategies encompasses providing human rights education to the police and the military. At the state level, the Malaysian peacekeeping training centre aims to enhance the operational capacities of peacekeepers. The AICHR could link these two bodies in order to, for instance, mainstream human rights awareness through peacekeeping training.



Ceremony for the International Day of Peace, Timor-Leste, 21 September 2010.

Credit: UN Photo

**Article 4.5: To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments.**

The commitments of ASEAN states to the core international human rights instruments are still limited, in terms of the political and civil, and the economic, social and cultural rights covenants, as well as specific agreements regarding the elimination of racial discrimination, the prohibition of torture and other cruel, inhumane or degrading treatment or punishment, the rights of migrant workers and the protection needs of refugees and internally displaced persons (see Table 1). Encouragingly, it has been noted that, within the Asia-Pacific region, there have been increased ratifications of human rights treaties and full participation in the universal periodic review process (UNGA, 2010:6).

However, it is observed that many Southeast Asian states tend to make reservations to human rights instruments which they have ratified or acceded to, especially where those provisions invoke international monitoring mechanisms (Bhalla and Caballero-Anthony, 2010). Arguably, with the creation of the AICHR, there is less of a risk for external intrusion into the affairs of ASEAN states, with the AICHR able to serve as an intermediary between universal norms and ASEAN development and compliance.

As well as encouraging ratification, the AICHR could discuss – giving due consideration to the justifications for these reservations (which are often made on the basis of incompatible domestic laws and cultural/religious contexts) – the withdrawal of members' specific reservations to the human rights instruments. In terms of IHL, Cambodia is the only ASEAN State to have ratified or acceded to the Rome Statute, a critical element in reducing impunity and a pillar of a protection of civilians framework (ICC, n.d).

Table 1. Key international legal instruments for the protection of civilians

States	ICERD	ICCPR	ICESCR	CRC	CEDAW	CAT	ICRMW	IRC and Protocol	Rome Statute
Brunei Darussalam	---	---	---	√	√	---	---	---	---
Cambodia	√	√	√	√	√	√	Signature	√	√
Indonesia	√	√	√	√	√	√	Signature	---	---
Lao PDR	√	Signature	√	√	√	---	---	---	---
Malaysia	---	---	---	√	√	---	---	---	---
Myanmar	---	---	---	√	√	---	---	---	---
Philippines	√	√	√	√	√	√	√	√	---
Singapore	---	---	---	√	√	---	---	---	---
Thailand	√	√	√	√	√	√	---	---	---
Vietnam	√	---	√	√	√	---	---	---	---

**Key:**

--- not signed, acceded or ratified

√ acceded or ratified

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

CRC – Convention on the Rights of the Child

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CAT – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

ICRMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

IRC and Protocol – Refugee Convention 1951 and its Additional Protocol 1967

*Source:* Compiled from Plantilla (2008); ICC (n.d.); UNHCR (2008).

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**Article 4.8: To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter.**

Civil society organisations (CSOs) have been pivotal in bringing human rights and the human security discourse into ASEAN's agenda (Caballero-Anthony, 2004). However, at present, CSOs do not have a formal role within the AICHR, and the practice in its first year has been to engage only with entities associated with ASEAN, on the basis that no RoP or engagement mechanism regarding external parties has been finalised (according to SAPA-TFAHR, 2010b:11; for the list of entities, see MFA of the Republic of Indonesia, 2009).

With regard to receiving complaints of human rights violations (16 of which were submitted by various parties, e.g., on the Maguindanao killings and the mandatory death penalty), the AICHR has also rejected these allegedly on the basis that it does not have procedures in place to accept them (SAPA-TFAHR, 2010b:10).

It is essential therefore that consensus on the RoP is prioritised, and for the AICHR Chair to use its leadership to try to ensure consistent CSO consultation, or at a minimum, address the ambiguity related to the notion of engagement with 'associated entities'. It also needs to clarify its capacity to receive information on cases of human rights violations.

**Article 4.9: To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights.**

The national human rights commissions of Indonesia, Malaysia, Thailand and the Philippines have formed the ANF, which aims to develop collective strategies on the following: human rights education, specifically for the military and police; the rights of migrant workers; the rights of trafficked persons; anti-terrorism; and the promotion of economic and social rights (ANF, n.d.).

Consultation with the ANF would be a way for the AICHR to gain information from the ground regarding the protection concerns of groups and individuals; the AICHR could in turn mainstream its principles and objectives through the various national commissions and capitalise on their mandates to monitor human rights compliance (ANF, n.d.). The ANF perceives its role vis-à-vis AICHR as 'catalytic, complementary and cooperative' in character (see Cook et al., 2009). However, the AICHR has yet to engage with the ANF, stating once again that it is unable to do so until its RoP is adopted (SAPA-TFAHR, 2010b: 11).

The establishment of overarching national human rights commissions within ASEAN nations has not been consistent. Some nations have established national human rights commissions with a consolidated portfolio to address rights promotion and protection, and others have extended this portfolio to a range of national bodies with responsibility for human rights promotion and protection. The AICHR could act as an overarching body bringing together national human rights commissions with diverse human rights networks, including national bodies (see Table 2), CSOs, non-governmental organisations (NGOs) and academic think tanks. As the AICHR is designed to cut across each of the three pillars of the ASEAN Community, it could also work to mainstream a human rights perspective into various initiatives under the other pillars, for instance, into climate change adaptation and mitigation policies (Cook et al., 2009).

Already, external parties have expressed their support for the development of an effective human rights system in the region. To this end, representatives from the AICHR – as well as those from the ACWC, the ASEAN Secretariat and the NHRIs – recently came together in workshops with senior United Nations (UN) staff, including representatives of the Office of the High Commissioner for Human Rights (OHCHR), to explore areas of possible UN engagement and support for the region's emerging human rights system. AICHR commissioners identified several areas for engagement and support: assistance with its thematic studies; the provision of access to relevant human rights knowledge and lessons learned, including experiences in aligning separate human rights bodies; the provision of

technical support; and capacity building (UNDP and OHCHR, 2010b). Nonetheless, it should be acknowledged that there have been suggestions that because the AICHR falls outside the Paris Principles, the likelihood of international engagement may be reduced (ANF, 2009; see OHCHR, 1993 for the Paris Principles).

Table 2. Existing national institutions, offices and bodies with human rights functions with which the AICHR could engage

State	NHRI (National Human Rights Institutions)	Child Rights Commission	Women's Rights Commission	Human Rights Tribunal
<b>Brunei Darussalam</b>	—	National Children's Council  National Committee for Handling Social Issues	National Committee for Handling Social Issues	—
<b>Cambodia</b>	National Human Rights Committee	Cambodian National Council for Children (CNCC)	Cambodian National Council for Women	Extraordinary Chambers in the Courts of Cambodia
<b>Indonesia</b>	National Human Rights Commission (Komnas HAM)	National Commission for Child Protection (Komnas Anak)	National Commission on Violence against Women (Komnas Perempuan)	Ad Hoc Human Rights Court for East Timor  Indonesia-Timor Leste Joint Commission for Truth and Friendship (CTF)  Human Rights Courts
<b>Lao PDR</b>	National Committee of Human Rights	National Commission for Mother and Child  National Supervising Committee on the Abolition of the Use of Child Labour	National Committee for Advancement of Women	—
<b>Malaysia</b>	Human Rights Commission of Malaysia (SUHAKAM)	—	—	—
<b>Myanmar</b>	—	National Committee on the Rights of the Child  Committee for the Prevention of Military Recruitment of Under-age Children	Myanmar National Committee for Women's Affairs	—
<b>Philippines</b>	Commission on Human Rights (CHR)	Philippine Council for the Welfare of Children	National Commission on the Role of Filipino Women (NCRFW)	Specially designed courts for the issuance of the writ of amparo; some courts with power to issue writ of habeas data
<b>Singapore</b>	—	—	—	—
<b>Thailand</b>	National Human Rights Commission	Office of Welfare Promotion and	National Commission on	—

		Protection of Children Youth, the Vulnerable, the Disabled and the Elderly	Women's Affairs	
Vietnam	—	National Committee on Population, Family and Children	National Committee for the Advancement of Women	—

Source: Plantilla (2008).

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#### **Article 4.10: To obtain information from ASEAN Member States on the promotion and protection of human rights.**

This provision is significant in that it provides the AICHR (and by extension ASEAN) with the platform and mandate to request updates on issues of general or specific concern. In the case of Myanmar, this is a capability that ASEAN clearly felt has been lacking. This provision could be seen as a fact-finding function, although it remains that AICHR commissioners will have to negotiate around ASEAN's norm of non-interference in the internal affairs of member states in order to obtain information in the context of politically sensitive situations. Nonetheless, the ability to do so on a more general (thematic) basis could raise awareness and inform possible capacity building measures.

#### **Article 4.12: To prepare studies on thematic issues of human rights in ASEAN.**

A primary mode of the AICHR's operation seems to be the preparation of thematic reports, with a focus on highlighting and raising awareness of an issue. Of eleven proposed studies, the two immediate intended ones are concerned with corporate social responsibility (CSR) and, in 2011, migration (SAPA-TFAHR, 2010b:8; UNDP and OHCHR, 2010a:17). The study on CSR could help to identify the role of states in ensuring that corporate entities act on their social responsibilities.

In terms of the role of civil society, it was also suggested recently by the Indonesian commissioner to the AICHR, Rafendi Djamin, that 'victims could raise their problems by putting it together under one of [the] thematic issues', thus helping to build a comprehensive human security framework, on the principle that approaching the development of common standards through an issue-based analysis would allow for a broader spectrum of human rights norms to be considered and incorporated (It is the Main Task, 2010).

#### **Article 4.13: To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting.**

This article, in combination with the mandate to obtain information from ASEAN states – as well as from NGOs, CSOs, NHRIs, etc. – on the status of human rights protection within their borders effectively affords the AICHR a supervisory role. The prospect for country reports was rejected along with a peer review mechanism on the basis that individual countries are already subject to the UN Human Rights Council's universal periodic review (Hermawan, 2010). Therefore, the AICHR's reports will in principle be limited to evaluating progress that has been made in terms of promotion and in human rights standards setting. However, in doing so, they are likely to have to implicitly touch upon national issues. It may also be that the AICHR could engage in the universal periodic review process and at least gain information from it, to reflect and comment on national human rights issues.

In its first year, the AICHR has been lax in making its documents available to the public. Making its annual reports, and minutes and outcomes of meetings, accessible could help build public awareness of rights, provoke discussion and bolster the likelihood that national commissioners will correspondingly take particular human rights concerns and reform seriously. This would significantly enhance the AICHR's transparency and credibility, while incurring minimal cost.

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### **Indonesia's Chairmanship in 2011: Advancing the Human Rights Agenda?**

Although more focused on the promotion of human rights, the AICHR's TOR clearly provide entry points for incrementally building a framework for the protection of civilians in the region. As incoming ASEAN Chair in 2011, Indonesia's commissioner to the AICHR will, in accordance with Article 5.9 of the AICHR's TOR, correspondingly take over as chair of the commission. As a consolidating democracy, Indonesia has come a long way in the past decade. It has been at the helm of most of the liberal, people-centred developments in ASEAN, including the initial proposal for an ASEAN Security Community. It remains to be seen what initiatives an Indonesian chair might push for,

both within ASEAN and with regard to the AICHR's agenda. However, this examination indicates that the fate of the AICHR has by no means been written, and a key variable will be the ability of an effective leader to instil a collective sense of purpose in taking the rights agenda forward.

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