

COMMENTARY

NATIONAL HUMAN RIGHTS INSTITUTIONS IN SOUTHEAST ASIA: POTENTIAL AND CHALLENGES

Khoo Ying Hooi

ABSTRACT

This paper explores the potential of the six national human rights institutions (NHRIs) in promoting and protecting human rights in the Southeast Asia region. With the adoption of the ASEAN Charter in 2008 and the establishment of the ASEAN Intergovernmental Human Rights Commission (AICHR) in 2010, ASEAN faces high expectations to deliver human rights commitments. In order to face regional developments, these government-established NHRIs in the Philippines, Indonesia, Malaysia, Thailand, Timor-Leste and Myanmar evolved from an initial informal network to a formalised network called the Southeast Asia NHRIs Forum (SEANF) in 2009. This paper therefore identifies the challenges of these NHRIs in enhancing human rights promotion and protection in the region.

Keywords: national human rights institutions, Southeast Asia, Southeast Asia NHRIs Forum, human rights

INTRODUCTION

Southeast Asia is known as a region with a complex human rights record. In 2008, the ASEAN Charter came into force. After years of discussion coupled with external pressure, the ASEAN leaders ultimately consented to include an article on human rights that eventually lead to the establishment of the AICHR in 2010. Both developments are considered as milestones for an association that is rooted in the principle of non-interference in the domestic affairs of neighbouring states.

Today, six NHRIs have been established in the region. They are the Commission on Human Rights in the Philippines (CHRP) in 1987, Indonesia National Commission on Human Rights (Komnas HAM) in 1993, Human Rights Commission of Malaysia (Suhakam) in 2000, National Human Rights Commission of Thailand (NHRCT) in 2001, the Provedor for Human Rights and Justice of Timor Leste (PDHJ) in 2004, and Myanmar National Human Rights Commission (MNHRC) in 2011. From the initial informal network of just four NHRIs, these NHRIs have evolved in order to face the regional developments. In 2009, these NHRIs formalised their network under the name of SEANF. Yet, the question arises on whether these government-sponsored NHRIs could have significant roles in human rights protection in the region.

Traditionally, sovereignty and non-interference principles are crucial in ASEAN's regional approach. Very often, the NHRIs are recognized as a bridge between international norms and local implementation with the purpose to assure the state's compliance with its international legal obligations¹. In view of these regional developments, the formalisation of SEANF is considered a commitment of the Southeast Asia NHRIs in contributing their roles in transboundary human rights issues. Though, it is clear that their incorporation into national human rights struggles cannot be ignored².

ASEAN EXCEPTIONALISM?

The 1993 Vienna Conference on Human Rights left its mark on the Asian approach on human rights. After a heated debate at their meeting in Bangkok, these Asian countries that participated in the Vienna Conference came to a consensus that paved the way to the drafting of the Bangkok Declaration that reflected their aspirations. The Bangkok Declaration asserted three principles. First, the Declaration highlighted three key principles of respect for national sovereignty, territorial integrity, and non-interference in internal affairs. Second, the Declaration emphasizes the need to link between the first-generation rights referring to civil and political rights, and second-generation rights referring to economic, social and cultural rights. The third principle in the Declaration is the need to emphasize on aspects such as economic growth and social development on rather than human rights and fundamental freedoms.

The roots of this debate among the Asian countries are based on the “Asian values” debate, initiated by two former prime ministers, Singapore’s the late Lee Kuan Yew and Malaysia’s Tun Dr. Mohammed Mahathir in the late 1980s. Based on this argument, Asian cultures were inclined to emphasize on economic and social rights rather than to civil and political rights³. Putting that aside, the Bangkok Declaration however is constructive from another perspective, as it “welcome(s) the important role played by national institutions in the genuine and constructive promotion of human rights...”

Globally, there is around 106 NHRIs globally with six in the Southeast Asian region. In recent years, the governments of Cambodia and Vietnam have also displayed increasing interest towards the establishment of an NHRI in the country. NHRIs have been conferred a certain degree of recognition in the international human rights system, with formal roles and rights given to them. However, these Southeast Asian NHRIs have not been able to achieve “full recognition” at the regional level. The reason being the fact that although AICHR was formally established in 2010 and the ASEAN Human Rights Declaration (AHRD) was subsequently formally launched in 2013, the role of NHRIs are to some extent neglected.

Although the existing six Southeast Asian NHRIs under the umbrella of SEANF have been established prior to the formation of AICHR, these NHRIs however do not enjoy any privileges in this regional human rights entity. Article 4.9 of the AICHR Terms of Reference stipulates that AICHR has mandate “to consult, as may be appropriate, with other national... entities concerned with the promotion and protection of human rights,” but this mandate is not fully implemented. This further reaffirms the general view that ASEAN was born and in many ways remains a club of elites with a top-down approach. Its origins was mainly due to a shared concern for regime survival among a group of Southeast Asian leaders facing internal challenges to their authority and demands for political openness. That means little space is given to civil society actors, not to mention the NHRIs.

HOW COULD THE NHRIs FLEX THEIR MUSCLES?

As a consequence of the adoption of the ASEAN Charter and the birth of AICHR, ASEAN faces high expectations to deliver human rights

commitments. But it is not without debates. This is because most political systems have established in law a variant of an NHRI, but not all of these political systems can be considered as consolidated democracies⁴. The political stability in the region remains uncertain and vulnerable; hence, the question is how could these Southeast Asian NHRIs flex their muscles?

The empirical evidence strongly propose that states that are subject to human rights pressures or poor human rights records created NHRIs largely to pacify critics. This is particularly relevant to NHRIs across the Asia Pacific, Africa and Middle East. In general, it works in such a way where human rights pressures present states with a problem for which NHRIs are believed to be able to provide a solution. Though it is not a popular request that critics demand an NHRI to be created, states however may consider the creation of an NHRI as a relatively low-cost strategy to satisfy the critics. When pressure serves as the key motive, that would normally lead to the possibility in creating a relatively powerless NHRI, since the goal is not to further advance human rights promotion and protection, but to suppress human rights critics.

According to Kieren Fitzpatrick and Catherine Renshaw⁵, the most protective and promotive NHRIs should be found in states subject to both international and domestic pressures. In countries where international pressures are strong but domestic pressures are relatively low, an NHRI may tend to be fairly promotive. This common situation exposes how long standing democracies with comparably strong human rights performance still may choose to have an NHRI that is promotive in nature or, alternatively, why an abusive regime with poor human rights records will attempt to establish an NHRI. The weakest NHRIs, however, are normally linked with low domestic and international pressures.

However, it does not deny the influence of other factors. For example, civil society groups can be essential in applying international pressure and in supporting the processes of democratization and constitutional reform. At the level of civil society, NHRIs can tap into the mobilizing role of the media, while human rights awareness can lead to rising demands and claims for human rights protection. Additionally, the role of individual leadership should not be missed. It

is a common fact that many NHRIs, just like any other organization, shine under the independent-mindedness or dedication of particular commissioners or, alternatively, struggle if it faces passive leadership.

CONCLUSION

Traditionally, ASEAN leaders have preferred to respond to human rights concerns domestically. However with the introduction of the ASEAN Charter and AICHR, Southeast Asian NHRIs are useful institutions and have potential to make an immense contribution to not only the promotion but also protection of human rights. At present, independence and accountability are key objectives, but at the same time, they are also key problems for Southeast Asian NHRIs. They lack adequate mechanisms for the enforcement of human rights in the region, partly because ASEAN and the AICHR does not provide enough necessary support and “legitimacy” to these NHRIs.

The formation of NHRIs undoubtedly spells hope for a possible avenue to address human rights concerns domestically. It is a common misperception that the public tends to view the level of human rights abuses as the main barometer in evaluating an NHRI’s influence. Thus, the key challenge for an NHRI is not only to define its space, but also to protect itself from excessive interference, be it from government, non-governmental organizations (NGOs) or other institutions in society.

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NOTES

¹ Sonia Cardenas. (2001). *Adaptive States: The Proliferation of National Human Rights Institutions*. Carr Centre for Human Rights Policy, Kennedy School of Government, Harvard University. Working Paper Series T-01-04.

² Cardenas, “Adaptive States.”

³ William Theodore. De Barry. (1998). *Asian Values and Human Rights: A Confucian Communitarian Perspective*. Harvard University Press: Cambridge.

⁴ Thomas Pegram. (2010). Diffusion across political systems: the global spread of national human rights institutions. *Human Rights Quarterly*, 32, 729-760.

⁵ Catherine Renshaw and Kieren Fitzpatrick. (2012). "NHRIs in the Asia Pacific region: Internationalizing Human Rights in Asia," in Ryan Goodman (ed.), *National Human Rights Institutions*. Cambridge University Press: Cambridge.