

Promoting Human Rights through Dialogue in ASEAN

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THE ESTABLISHMENT of a regional human rights mechanism by the Association of Southeast Asian Nations (ASEAN) in 2009 was welcomed with mixed responses from the general public. The mechanism, known as the ASEAN Intergovernmental Commission on Human Rights (AICHR), has been criticized for having more mandate for human rights promotion than for human rights protection.

While strengthening its power to protect the human rights of the people of ASEAN member-states is very important, the promotional role of AICHR should not be underestimated. There are many initiatives that can be categorized as human rights promotion activities such as mainstreaming human rights, capacity-building, and dialogue to name a few. This article focuses on dialogue as a form of human rights promotion.

Human Rights Dialogue with ASEAN Member States

Various referred to as a modality, a project, an activity and a method, the term “dialogue” is not unfamiliar in ASEAN. It can be found in numerous ASEAN outcome documents, agreements and statements, including in the Terms of Reference (TOR) Article 4.8 that tasks AICHR to engage in dialogue and consultation with stakeholders on human rights.¹ While ASEAN member-states (AMS) are the main bearer of duty to uphold human rights, AICHR interaction with them is less compared to interaction with the civil society organizations, ASEAN sectoral bodies and scholars in the subregion.

The first Human Rights Dialogue with AMS happened in 2013 and was hosted by the government of Indonesia. This Dialogue (often called a mini-UPR [Universal Period Review of the United Nations]) was designed as a space for AMS and AICHR Representatives to discuss the human rights situation in the subregion. In 2013, the government of Indonesia shared the progress and challenges of upholding human rights since the political and

economic reforms in 1998. Member-states such as Lao PDR, Malaysia, the Philippines, Singapore, and Thailand probed Indonesia on some human rights issues.

This Dialogue was recognized as a good example of the fact that human rights discussion can be done effectively without employing the “naming and shaming” approach. Not only that it received positive responses from AICHR Representatives and AMS officials, but this Dialogue also introduced a new way of discussing human rights in the context of the “ASEAN Way” of non-interference principle.

After seven years of hiatus, AICHR included the ASEAN Human Rights Dialogue as its priority program for 2021. On 21 September 2021, AICHR hosted the ASEAN Human Rights Dialogue combining the physical meeting in Jakarta and video conference. This Dialogue was attended by forty participants from ten AMS, including the AICHR Representatives, and officials of National Human Rights Institutions (NHRIs), Ministries of Foreign Affairs, Ministries of Law and Human Rights, Ministries of Internal Affairs, Ministries of Justice, Ministries of Women Empowerment and Child Protection, and ASEAN Secretariat.

Different from the Dialogue in 2013, in the 2021 Dialogue eight out of ten AMS voluntarily provided human rights briefings on best practices and challenges in complying with the ASEAN Human Rights Declaration (AHRD) and other international human rights instruments, including ensuring the inclusion of human rights in measures to address COVID-19. Cambodia and Brunei Darussalam participated in the Dialogue but decided to observe the process.

In the Dialogue, AMS interacted on each other’s human rights issues including best practices in fulfilling the right to education and the right to health during the pandemic, measures to ensure freedom of expression and opinion online, freedom of religion and belief, freedom of association, civil society engagement, death penalty, the implementation of the rights of migrant workers, the rights of the child, the rights of women, the rights of persons with disabilities, Sustainable Development Goals (SDGs), business and human rights, the rights of older persons, and measures on the prevention of torture.

The AMS officials also discussed the progress of their countries’ ratification of international human rights conventions, cooperation with the United

Nations and strategies in implementing the Universal Periodic Review (UPR) recommendations.

At the end of the Dialogue, some AMS expressed the view that the ASEAN Human Rights Dialogue displayed the positive contributions to the development of human rights in the subregion and thus proposed to continue holding it. One of them wanted to include the participation of stakeholders such as civil society organizations in the dialogue process.

It is important that the Dialogue becomes a regular event in ASEAN to help establish a subregional practice of debating the member-countries' human rights situation without being accused of breaching the non-interference principle, and of seeking further subregional cooperation on human rights. To arrive at this point, there are requirements to be satisfied, including (a) the agreement among AMS on the conduct of the Dialogue, (b) willingness of AMS officials to interact, ask and answer questions without feeling threatened, (c) ensuring a safe space for AMS officials to share their concerns and (d) developing the agreed modalities together.

A Dialogue can be an effective human rights policy tool if it is based on cooperation, persuasion, trust and recognition that all participants of the Dialogue are equal partners. While the Dialogue can be directed to the formulation of regional goals on human rights, it is equally important to appreciate its step-by-step process and its role in maintaining cordial relations between and among AMS regarding human rights issues.

For AICHR, the Dialogue provides an opportunity to seek information and receive an update on the national human rights situations as implementation of Article 4.10 (To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community) of the TOR. Dialogue may also provide "the most appropriate and efficient framework [for raising] human rights concerns" and contribute to a mutual understanding of AMS' social contexts. The regular convening of Dialogue among AMS with AICHR as facilitator would elevate its (AICHR) role in the subregion.

The coverage of the Dialogue can be expanded to include civil society organizations and its procedures can be improved when the AMS are ready for such changes. Holding Dialogue regularly may also lead to the shaping of a desired regional human rights body that fit the context of ASEAN.

AICHR's indispensable role as the overarching human rights body in Southeast Asia that promotes and protects human rights and fundamen-

tal freedoms cannot be overstated. The effective implementation of AICHR's mandate and functions as provided in its TOR is key to securing AICHR's meaningful contribution to the building of the people-oriented and people-centred ASEAN community.

Other Initiatives related to Human Rights Dialogue

AICHR has also organized a series of dialogues on human rights with stakeholders such as civil society, national, regional and international human rights institutions and ASEAN sectoral bodies. For instance, AICHR engaged with different stakeholders when drafting the AHRD in 2011 and 2012.

In 2015, AICHR organized the Dialogue with ASEAN Community Councils on AHRD and the Phnom Penh Statement on the Adoption of the AHRD.² In 2018, AICHR hosted a Civil Society Organizations Symposium and in 2019 AICHR held A Roundtable Discussion with civil society organizations in an event called Jakarta-AICHR Human Rights Dialogue (JHRD). The participants of JHRD recommended having regular dialogue with stakeholders and exploring ways of ensuring ASEAN as a safe region for human rights defenders.

As for engagement with NHRIS, AICHR included in its regular meeting in 2019 a session with Southeast Asia National Human Rights Institutions Forum (SEANF). The 2019 meeting was followed by another meeting in 2020. AICHR also held regular human rights policy dialogue with external partners such as with the European Union since 2015 and with the United Nations since 2011.

Human Rights Dialogue: Indispensable in ASEAN

Human Rights Dialogue is not only a promotional activity but also a diplomacy tool in dealing with human rights issues of AMS. It provides a space for peer pressure and is a powerful persuasion tool. Human Rights Dialogue has the potential of improving respect for human rights, facilitating a platform for diffusion of human rights norms among AMS, discussing challenges to complying with their international human rights obligations, and helping accelerate cooperation on human rights within ASEAN.

For the stakeholders, Human Rights Dialogue is also an effective way to surface issues that concern the people the most. As ASEAN is moving

forward to ensure that it works toward a people-centred, people-oriented community, the organization needs more dialogue platforms to make the voices of the people heard and respected.

Endnotes

1 “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,” Terms of Reference of ASEAN Intergovernmental Commission on Human Rights, <https://aichr.org/wp-content/uploads/2020/02/TOR-of-AICHR.pdf>.

2 For information on this Dialogue see Press Release: The AICHR Dialogue with ASEAN Community Councils on the ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD, 25 – 26 May 2015, Jakarta, Indonesia, <https://aichr.org/news/press-release-the-aichr-dialogue-with-asean-community-councils-on-the-asean-human-rights-declaration-ahrd-and-the-phnom-penh-statement-on-the-adoption-of-the-ahrd-25-26-may-2015-jakarta-indones/>.

