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**The AICHR and NHRI Effectiveness
in Its Implementation of Human
Rights Protection in The Region.
Case Studies : The Philippines and Thailand**



SUMMARY

This edition of *ASEAN Briefs* examines the effectiveness of the ASEAN Intergovernmental Commission on Human Rights (AICHR), the importance National Human Rights Institutions (NHRI) and the implementation of human rights protection in ASEAN Member States. This *ASEAN Briefs* addresses the current situation and development of human rights protection in ASEAN, which is premised on the presence of a human rights body at the regional level and human rights commission at the national level to bring better protection of human rights in ASEAN. However with existence of various unresolved cases of human rights violation such as enforced disappearance, use of violence by the military and police against civilians, and extrajudicial killings, etc., there are concerns that human rights violations in the region will continue to take place.

As such this issue of *ASEAN Briefs* seeks to explore how ASEAN deals with these serious human rights violations, whether the regional human rights body and the national human rights commission work effectively to resolve the problems, and how the ASEAN member states sought to implement the efforts of promoting and protecting human rights. This was done by examining the various policy issues at the regional, national and practical levels which resulted in this issue of *ASEAN Briefs* recommendations.

ASEAN Briefs is a regular publications about current development on ASEAN regionalism, especially in the Political-Security, Economic as well as Socio-Cultural Pillars.

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Introduction

The development of human rights protection in ASEAN is considered to have not achieved much significant progress. This is indicated by various unresolved cases of human rights violation that have occurred in the region, such as the case of violence against Rohingya minority ethnic group in Myanmar, which has caused hundreds of deaths¹ and 125,000 refugees² to flee into several neighboring ASEAN countries. Moreover, there are cases of human trafficking involving syndicates in Laos PDR³, Myanmar⁴ and Thailand⁵ which have caused many people to be trapped in human trafficking syndicates in the region. At the same time, the kidnapping and murder of human rights activists such as Munir Said Thalib⁶ in Indonesia, Sombath Somphone⁷ in Lao PDR and Somchai Neelaphaichit⁸ in Thailand have also raised public attention at the lack of progress in human rights protection across the ASEAN region.

The principle of non-interference which became the basis for ASEAN interaction with itself, led to the regional organization being considered “toothless” and lacking the authority to intervene in cases of human rights violation in the region. This is due to the doctrine of non-interference which means the member states of ASEAN can claim such cases of human rights violations as a purely domestic/internal issue rather than a regional problem; and so ASEAN could not intervene on the investigation and prosecution process. However, to demonstrate its concern for the human rights situation in the region, ASEAN took the initiative of establishing the ASEAN Intergovernmental Commission on Human Rights (AICHR), which aims to strengthen the promotion and protection of human rights in ASEAN. In addition, several ASEAN member states such as Indonesia, Malaysia, Myanmar, the Philippines and Thailand have also established National Human Rights Institutions (NHRIs) as their commitment for better human rights protection at the national level.

Nevertheless, question marks remain. What is the AICHR's role regarding human rights protection issues in the region? Are the various National Human Rights Institutions effective for the protection of human rights violations in the country? How will ASEAN member states implement human rights

protection at the national level? To answer these questions, this issue of ASEAN Briefs aims to examine the various policy issues at the regional, national and practical levels by: (1) exploring the role of AICHR with regards to the human rights protection issues in the region, (2) exploring the importance of NHRIs in implementing the human rights protection at the national level, (3) taking case studies from the Philippines and Thailand – as two countries in ASEAN considered to be some of the strongest proponents of human rights in the region – to analyse the facts and realities of member-states implementation on human rights protection and measuring the effectiveness of its laws, policies and institutional capacity, and (4) to suggest recommendations for better promotion and protection of human rights in the ASEAN.

Policy Issues

1. The Role of AICHR Regarding Human Rights Protection Issues in ASEAN

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is the region's human right body for ASEAN which was established on October 23, 2009.⁹ The discussion on establishing AICHR could be traced back to the World Conference on Human Rights in Vienna in 1993. There, world leaders including those from ASEAN member states reiterated in the Vienna Declaration and Programme of Action (VDPA), “the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist”.¹⁰ In the same line, with global awareness on human rights protection, the Foreign Ministers of ASEAN Member States adopted a Joint Communique during the 26th ASEAN Ministerial Meeting on 23-24 July 1993 in Singapore, reaffirming the VDPA and agreeing that ASEAN should consider the establishment of an appropriate “regional human rights mechanism”.^{11 12}

According to Gerard Clarke (2012), the development of regional human rights systems has been encouraged by the United Nations since the late 1960s, especially due to the General Assembly Resolution 32/127 of 1977.¹³ He argues these regional human rights systems have an important role to play in the international promotion and protection of human rights in a tiered and mutually-dependent structure of national, regional and global institutions.¹⁴ Gerard Clarke (2012) also explained that the ASEAN human rights system was the fourth regional human rights system to be established

1 BBC News Online, Burma violence: UN calls for Rohingya deaths inquiry, retrieved from : <http://www.bbc.com/news/world-asia-25866350>, accessed by 26 June 2014

2 Human Rights Watch, Burma: End ‘Ethnic Cleansing’ of Rohingya Muslims, retrieved from : <http://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>, accessed by 26 June 2014

3 The Diplomat, Sex Trafficking Victims Go Unnoticed in Laos, retrieved from : <http://thediplomat.com/2014/03/trafficking-victims-go-unnoticed-in-laos/>, accessed by 26 June 2014

4 The Huffington Post, Human Trafficking: Muslim Women Vulnerable in Myanmar, retrieved from : http://www.huffingtonpost.com/engy-abdelkader/human-trafficking-rohingya-women_b_4501815.html, accessed by 26 June 2014

5 CNN News Online, Tackling Thailand's human trafficking problem, retrieved from : <http://edition.cnn.com/2014/06/20/world/asia/thailand-trafficking-report/>, accessed by 26 June 2014

6 BBC News Online, Profile Munir Thalib, retrieved from : <http://news.bbc.co.uk/2/hi/asia-pacific/4544568.stm>, accessed by 26 June 2014

7 The Sidney Morning Herald, Sombath Somphone, Lao activist missing for 10 months, spurs wife's desperate plea, retrieved from : <http://www.smh.com.au/world/sombath-somphone-lao-activist-missing-for-10-months-spurs-wifes-desperate-plea-20131022-2vy38.html>, accessed by 26 June 2014

8 ABC Radio Australia, Mystery remains over disappeared Thai lawyer, retrieved from : <http://www.radioaustralia.net.au/international/2010-02-08/mystery-remains-over-disappeared-thai-lawyer/198320>, accessed by 26 June 2014

9 ASEAN Intergovernmental Commission on Human Rights, About AICHR, retrieved from : <http://aichr.org/about/>, accessed by 20 June 2014

10 United Nations Human Rights, Vienna Declaration and Programme of Action, retrieved from : <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>, accessed by 20 June 2014

11 Working Group For An ASEAN Human Rights Mechanism, Joint Communique Of The Twenty-Sixth Asean Ministerial Meeting : Singapore, 23-24 July 1993, retrieved from : http://www.aseanhrmech.org/downloads/1993_Joint_Communique.pdf, accessed by 20 June 2014

12 Human Rights In ASEAN Online Platform, ASEAN Intergovernmental Commission On Human Rights, retrieved From : <http://Humanrightsinasean.info/Asean-Intergovernmental-Comission-Human-Rights/About.Html>, accessed By 17 June 2014

13 Gerard Clarke, The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration Of 2012, Northwestern Journal of International Human Rights, Volume 11/Issue 1/Article 1/Fall 2012, page 1, retrieved from : <http://scholarlycommons.law.northwestern.edu/njihr/vol11/iss1/1/>, accessed by 18 June 2014

14 Ibid.



The AICHR Representatives for their special meeting in March 2013
(Image: aichr.org)

and the first since 1981; following on from the establishment of European, Inter-American and African human rights systems respectively in 1950, 1969 and 1981.¹⁵

As the legal basis for ASEAN's regional human rights body, article 14 of the ASEAN Charter states that: (1) In conformity with the purposes and the principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedom, ASEAN shall establish an ASEAN human rights body, (2) This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.¹⁶ To interpret this article, a High Level Panel was set up to draft the Terms of Reference (TOR) that would specify the mandate and structure of an ASEAN Human Rights Body. The TOR of AICHR was adopted by the ASEAN Foreign Minister Meeting in 20 July 2009 during the 42nd ASEAN Ministerial Meeting in Thailand. On 23 October 2009 the ten AICHR Representatives, one from each Member State, were then appointed and AICHR was officially inaugurated at the 15th ASEAN Summit in Cha-am Hua Hin, Thailand by the ASEAN Leaders.¹⁷

Furthermore, the main purpose of the establishment of the AICHR was to strengthen the promotion and protection of human rights in ASEAN, as well as noted in the TOR article 1 which states inter alia: (a) to promote and protect human rights and fundamental freedom of the peoples of ASEAN, (b) to uphold the rights of the peoples of ASEAN to live in peace, dignity and prosperity, (c) to contribute to the realization of the purposes of ASEAN as set out in the ASEAN Charter, (d) to promote human rights within the regional context and have mutual respect for different historical, cultural and religious backgrounds, (e) to enhance regional cooperation with on the promotion and protection of human rights, and (f) to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, and the Vienna Declaration and Programme of Action.¹⁸

AICHR is considered as an important human rights regional mechanism in the region, and is defined by ASEAN in the AICHR's TOR article 6.8 as, "[the] overarching institution responsible for the protection and promotion of human rights in ASEAN."¹⁹ As Gerard Clarke (2012) explains, AICHR was expected as an intergovernmental and consultative body, charged to be operating in a constructive and non-confrontational way, with limits on its independence and any ideas of having a supra-national character. The AICHR consists of ten representatives one per country, each accountable to their government. Moreover, similar to other ASEAN bodies, the decision making process in AICHR would be based on consultation and consensus and it was also noted that the AICHR representatives were in reality accountable to their "appointing government."²⁰

As already noted in AICHR's TOR article 1.2, the regional human rights body has been given the formidable task of "upholding the right of the peoples of ASEAN to live in peace, dignity and prosperity" but with the caveat that AICHR shall remain within the scope of ASEAN principles.²¹ Theoben Jerdan Orosa (2012) reminds that the ASEAN principles include the principles of respect for independence, sovereignty, equality, territorial integrity and national identity, non-interference in internal affairs, and respect for the right of every member state to be without external interference.²² Theoben Jerdan Orosa also mentioned that these principles are also codified in the TOR in Article 2.1, with the principles of international human rights law following in Article 2.2. The latter principles thus constitute limitations for AICHR.²³

However beside the important task of upholding the human rights protection, AICHR faces the problem of its limited role. AICHR's human rights instruments are considered lower and weaker than other regional human rights body in the world. Dr. Yuval Ginbar from Amnesty International argued that the existing provisions of AICHR for decision-making by consensus have given states sweeping veto powers, preventing AICHR from responding to human rights situations.²⁴ In his view, this leaves AICHR powerless in the face of significant human rights violations and situations that the region regularly grapples with.²⁵ As such calls have been made for the revised TOR of AICHR to provide alternatives option when a consensus cannot be reached. Furthermore, in order to become more effective the revised TOR should empower AICHR to receive complaints from individual, organizations and states, conduct investigations, make recommendations and publish the human rights reports in the region.²⁶

Considering the purpose of the establishment of AICHR as the regional human rights body, it is appropriate that the human rights standard and protection mechanism of AICHR should be stronger than any NHRIs or national mechanism of ASEAN

19 Ibid

20 Gerard Clarke (2012) op.cit. page 12

21 ASEAN Official Site, TOR of AICHR, retrieved from : <http://www.asean.org/images/archive/publications/TOR-of-AICHR.pdf>, page 3, accessed by 1 June 2014

22 Theoben Jerdan C. Oroza, ASEAN Integration In Human Rights : Problems And Prospects For Legalization And Institutionalization, Asian Regional Integration Review, Volume 4, page 67, retrieved from : <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=143441> , accessed By 18 June 2014

23 Ibid.

24 Forum Asia, The International Human Rights Community Should Amplify the Call for an Extensive Review of the AICHR TOR, retrieved from : <http://www.forum-asia.org/?p=17379>, accessed by 23 June 2014

25 Ibid.

26 Ibid

15 Ibid.

16 Human Rights In ASEAN Online Platform, ASEAN Intergovernmental Commission On Human Rights, retrieved From : <Http://Humanrightsinasean.Info/Asean-Intergovernmental-Comission-Human-Rights/About.Html>, Accessed By 17 June 2014

17 ASEAN Intergovernmental Commission on Human Rights, About AICHR, retrieved from : <http://aichr.org/about/>, accessed by 20 June 2014

18 ASEAN Official Site, TOR of AICHR, retrieved from : <http://www.asean.org/images/archive/publications/TOR-of-AICHR.pdf>, page 3-4, accessed by 1 June 2014



Indonesia's Komnas HAM, one of the NHRI established in ASEAN
(Image: okezone)

2. The importance of National Human Rights Institutions to implement the human rights protection in the national level

An important milestone in the development of NHRIs as a human rights mechanism at the national level came in 1991 following the drafting of the Paris Principles which were later adopted by the UN General Assembly.³⁰ According to the Suraina Pasha (2010), the Paris Principles envisage NHRIs as independent institutions with powers that encompass the promotion and protection of human rights.³¹ The Paris Principles also require NHRIs to have clearly defined legal mandates, be pluralistic in their composition, be provided with adequate resources to fulfill their responsibilities, and have the competence to work together with other stakeholders, including civil society and the UN.³²

Suraina Pasha (2010) goes on to explain that the Paris Principles outline a number of core responsibilities for NHRIs, including: (a) to submit recommendations on human rights issues to the executive, parliament, the judiciary, and any other competent authority within its national territory; (b) promoting conformity between domestic laws and practices, and international human rights standards; (c) encouraging ratification and implementation of international human rights instruments; (d) contributing to treaty reporting processes; and (e) educating and promoting awareness of human rights within the government and civil society.³³

Meanwhile, according to Theoden Jerdan Oroza (2012), there are several members of ASEAN that now have established their own NHRIs: Indonesia (1993) known by its acronym Komnas HAM; Malaysia's SUHAKAM (2000); the Commission on Human Rights of the Philippines, or CHRP (1987); Thailand's Khamakarn Sit (2001) and the latest one is the Myanmar National Human Rights Commission, or MNHRC (2011). Such institutions theoretically provide monitoring for key checks and balances against abuse of power. It may be theorized that NHRIs could serve as the focal point of preference formation on the local level.³⁴

As an example of an NHRI role in human rights protection at the national level, one could point to Indonesia's Komnas HAM which has already conducted several inquiries on important human rights violation cases in Indonesia. These include the cases of: (a) East Timor in 1999; (b) Tanjung Priok in 1984; (c) Abepura in 2000; (d) the Jakarta May Riots in 1998; (e) Trisakti, Semanggi I and Semanggi II; (f) Wasior-Wamena (2001-2003); (g) enforced disappearances (1997-1998); (h) Talangsari in 1989; (i) the Mysterious Shootings in 1982-1985; and (j) the 1965-1966 tragedy.³⁵

However, Komnas HAM inquiries did not generate the positive results when the inquiries report was later submitted since the Attorney General did not immediately conduct the

Member States. This view was expressed by Indonesian NGO, KontraS, which called for: (1) AICHR's mechanism to not be lower than the mechanism of national constitutions of each ASEAN member-states; and (2) Regional mechanisms should be established on the basis of strengthening and complementing the existing national mechanisms.²⁷

There are many recommendations for AICHR members to strengthen the capacity of the organization but they have been unable to form a consensus due to different perceptions about individual and collective rights. One of the much-debated ideas is to allow ASEAN commissioners to take complaints officially on human rights. Currently, complaints on rights violations are submitted informally to certain AICHR members who take up the matter in a private capacity. These include the mass killing of journalists in Maguindanao (2009), while the Philippines including the forced disappearance of Indonesian activist, Munir Thalib (2004) and Thai lawyer, Somchai Neelaphaichit (2005). Last year, for example, AICHR members discussed Sombath Somphone case in a closed-door session in Brunei Darussalam following numerous appeals but no decision was reached.²⁸

On the other hand, the current AICHR TOR does not provide in enough details the mandate protection that would explicitly enable it to respond to human rights violations and issues in the ASEAN region. Critical voices from civil society organizations in the 6th Regional Consultation on ASEAN and Human Rights discussed the need for AICHR to receive a stronger mandate when the TOR is reviewed. That notion was reinforced by the opinion from, Dr. Yuval Ginbar who said:

"So far during their first term...AICHR (2009-2012)... have adopted a narrow interpretation of their protection mandates. The AICHR has not seized these opportunities to protect people from human rights violations. Even pending the revision, the AICHR should broaden its understanding of its protection mandate, as well as fully implement its current mandate including in fields such as encouraging ratification of human rights treaties and obtaining information on human rights from Member States".²⁹

27 KontraS Official Site, KontraS' Input on the AICHR TOR Review in 2014, retrieved from : http://www.kontras.org/eng/index.php?hal=siaran_pers&id=188, accessed by 2 June 2014

28 Kavi Chongkittavorn, The Nation Online, AICHR Can Do More To Protect Asean Citizens, retrieved from : <http://www.nationmultimedia.com/opinion/AICHR-Can-Do-More-To-Protect-Asean-Citizens-30232324.Html>, accessed By 17 June 2014

29 Forum-Asia Official Site, Civil Society Organisations demand meaningful engagement with ASEAN human rights bodies, retrieved from : <http://www.forum-asia.org/?p=16420>, accessed by 2 June 2014

30 Suraina Pasha, National Human Rights Institutions And Their Role In The Struggle Against Torture In The Asia-Pacific Region, page 86, retrieved from : <http://projects.essex.ac.uk/ehrr/V6N2/Pasha.pdf>, accessed by 18 June 2014

31 Ibid.

32 Ibid.

33 Ibid

34 Op-Cit, Theoben Jerdan C. Oroza, page 76

35 United Nations Human Rights, Comments Of The Indonesian National Human Rights Commission on Indonesia's Compliance with The International Covenant on Civil and Political Rights, page 5, retrieved from : http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IDN/INT_CCPR_IFN_IDN_14340_E.pdf, accessed by 23 June 2014

	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
ICCPR (1966)	No	Yes	No	No	No	No	Yes	No	Yes	Yes
ICESCR (1966)	No	Yes	No	No	No	No	Yes	No	Yes	Yes
ICERD (1966)	No	Yes	Yes	Yes	No	No	Yes	No	No	Yes
CEDAW (1979)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
CAT (1984)	No	Yes	Yes	No	No	No	Yes	No	No	No
CRC (1989)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
CPRMW (1990)	No	Signed	Yes	No	No	No	Yes	No	No	No
CRPD (2006)	Signed	Signed	Yes	Yes	Yes	No	Yes	No	Yes	Signed
CPPRD (2006)	No	No	Signed	Signed	No	No	No	No	No	No

Table 1: ASEAN member-states commitment to International Human Rights Law, 2012
(Clarke, The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration Of 2012)

investigation and prosecution process into those human rights cases. Meanwhile, there are several cases where legal proceedings have taken place - such as the case of Timor Timur, the case of Tanjung Priok and the case of Abepura – which however, ended with disappointing result; in some cases only light charges were meted against the perpetrators and some of them ended with the release of the defendant because of cassations granted by the court.³⁶

For a more in-depth look at the role of NHRI's and the protection of human rights, this edition of *ASEAN Briefs* will examine two case studies: the human rights protection in the Philippines and Thailand. Drawing on the case studies from these two countries, this edition of *ASEAN Briefs* aims to see more deeply about human rights violation cases that have occurred, to review how far the two countries provide the legal basis and covenant ratification related to human rights, to assess how developed the implementation of human rights protection, and to measure the role and effectiveness of NHRIs with regards to human rights protection there.

3. Case Study – The Philippines:

a. The Philippines Law and Constitution on Human Rights

As one of the most democratic country in the ASEAN region, the Philippines is considered have a great commitment to international covenants related to the protection of human rights in the region. According to the table below: 'ASEAN Member-States Commitment to International Human Rights Law in 2012', the Philippines has already signed and ratified almost all international human rights treaties including: International Covenant on Civil and Political Rights (ICCPR) ratified on 23 October 1986; International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified on 7 June 1974; International Convention on the Elimination of Racial Discrimination (ICERD) ratified on 15 September 1967;

Convention on the Elimination of Discrimination Against Women (CEDAW) ratified on 5 August 1981; Convention Against Torture (CAT) acceded on 18 June 1986; Convention on the Rights of the Child (CRC) ratified on 21 August 1990; Convention on the Protection of the Rights of Migrant Workers (CPRMW) ratified on 5 July 1995; the Convention on the Rights of Persons with Disabilities (CRPD) ratified on 15 April 2008; and the last one that remains to be ratified by the Philippines being the Convention on the Protection of all Persons from Enforced Disappearances.³⁷

If compared with other ASEAN member states, the Philippines is the highest ranked in terms of signing and ratifying international legal instruments relating to the human rights protection. In the context of the national law, the Philippines also adopted the 1987 Constitution of the Republic of the Philippines. One of the articles that specifically relates to the human rights could be found in Article III about the Bill of Rights. This article regulate about the equality before the law, freedom of speech and expression, freedom of religion, freedom to form unions or associations, and freedom of political preferences.³⁸

Meanwhile in Article XIII, it is noted that there is another explanation on human rights in the Philippines. The article mentioned about the protection of the citizens' rights, reducing social-economical inequality, and the distribution of wealth and political power for the common good. Furthermore, the article also regulate the protection of labor and employment, the protection of farmer's rights, the protection of fisherman's rights, the protection of disabilities people, the protection of women rights, and the rights to participate and engage in politics.³⁹

³⁷ Op-Cit, Gerard Clarke, page 9

³⁸ Official Gazette, The 1987 Constitution of the Republic of the Philippines – Article III, retrieved from : <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-iii/>, accessed by 24 June 2014

³⁹ Official Gazette, The 1987 Constitution of the Republic of the Philippines – Article XIII, retrieved from : <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-xiii/>, accessed by 24 June 2014

In addition, in the 1987 Constitution article XIII section 17-19 it is set up on the formation of the Commission on Human Rights which has the authority and functions, as follows: (a) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights; (b) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court; (c) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines.⁴⁰

b. The role of National Human Rights Institution in the Philippines

Responding to the many cases of human rights violations in the country, the Philippines took the initiative of establishing an NHRI called The Commission on Human Rights of the Philippines (CHRP). The CHRP was created under the 1987 Constitution to investigate human rights violations, monitor government compliance with international human rights obligations, and provide human rights education and training among others.⁴¹

According to the CHRP's submission to the UN Universal Periodic Review, the national human rights body recorded from 2001-2010: (a) 385 complaints related to incidents of extra-judicial killings that resulted in 589 victims; (b) 78 incidents of enforced disappearance that resulted in 210 victims; and (c) 112 incidents of torture with 211 victims.⁴² In the year of 2011, despite seeing a reduction in the number of human rights violation in the country, the conclusions of the U.N. Special Rapporteur on extrajudicial killing remained, "the Government has failed to make sufficient substantive progress, so far too little accountability has been achieved for the perpetrators". While the government has underscored a political solution to ending armed conflict, there remains a disjoint between policy and operation.⁴³

The CHRP's submission goes on to acknowledge that the high number of complaints it received demonstrates the need to review the effectiveness of its human rights education program.⁴⁴ Beside its important role on the protection of human rights in the country, the CHRP also have the problems of its limited funding and institutional capacity. It has been noted that the CHRP's "monitoring and investigation of alleged violations continued to face difficulties due to insufficient resources."⁴⁵ For example, the nationwide budget of the human rights body was estimated at about 273 million pesos (\$6.7 million) in 2012.⁴⁶ The CHRP itself continues to believe that it lacks sufficient funding and staff to investigate and follow up all cases presented to its regional and subregional offices with the UN Human

Rights Committee noting that the CHRP financial and human resources were not adequate.⁴⁷

However this financial problem considered is not being an obstacle for the CHRP to uphold the promotion and protection of human rights in the country. For example, a report by the US Department of State maintained that the CHRP "continued to fulfill its constitutional mandate to protect and promote human rights, investigate all human rights violations, including those requested by NGOs and monitor government compliance with international human rights treaty obligations."⁴⁸

4. Case Study – Thailand :

a. Thailand Law and Constitution on Human Rights

At the time of writing, Thailand is currently experiencing an uncertain political transition process after the civilian government was toppled by the military in a coup on 22 May 2014. The military junta government, officially called the National Council for Peace and Order (NCPO), has abolished the 2007 Constitution and is set to replace it with a new one.⁴⁹ Nevertheless for the purpose of this edition of *ASEAN Briefs*, the recently abolished 2007 constitution shall be reviewed in relation to human rights protection viz-a-viz human rights.

Chapter III of the 2007 Constitution provides for a variety of rights and freedoms of the Thai people. In particular, Section 26 to 69 sets out an extensive range of specific rights that include: the right to have equality before the law including non-discriminations between the genders; the protection from torture and violence; the right to get the liberty of dwelling; the right of the freedom of religion; the protection for the individual property rights; the freedom of expressing the opinion; the right to receive the basic education for 12 years; the rights for the people to receive standard public health service; the right for the elderly to receive assistances from the State; the right for the disabled or handicapped person to get the appropriate aids from the State; the right to consumer protection; the right to form of associations; and the political rights to unite and form political party.⁵⁰

Thailand has ratified a number of international human rights treaties, especially after 2000s. Among others, Thailand has ratified: International Covenant on Economic, Social, and Cultural Rights and International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Optional Protocol to the Convention on the Elimination of Discrimination against Women; United Nations Convention against Transnational Organized Crime; and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially

40 Ibid

41 Commission On Human Rights Of The Philippines (CHRP), Submission To The Universal Periodic Review Philippines : June 2012, Page 1, Retrieved From : http://Lib.Ohchr.Org/Hrbodies/UPR/Documents/Session13/PH/CHRP_UPR_PHL_S13_2012_Commissiononhumanrightsofthephilippines_E.Pdf, Accessed By 20 June 2014

42 Ibid

43 Ibid, page 2

44 Ibid.

45 United States Department of State, 2013 Country Reports on Human Rights Practices - Philippines, 27 February 2014, available at: <http://www.refworld.org/docid/53284a8814.html> [accessed 11 July 2014]

46 United States Department of State, 2012 Human Rights Reports: Philippines, April 19, 2013. <http://www.state.gov/j/drl/rls/hrrpt/2012/eap/204231.htm>

47 United States Department of State, 2013 Country Reports on Human Rights Practices - Philippines, 27 February 2014, available at: <http://www.refworld.org/docid/53284a8814.html> [accessed 11 July 2014]

48 United States Department of State, 2013 Country Reports on Human Rights Practices - Philippines, 27 February 2014, available at: <http://www.refworld.org/docid/53284a8814.html> [accessed 11 July 2014]

49 Australia Network News, Thailand coup: Military leader announces plans for new constitution and October 2015 poll, retrieved from : <http://www.abc.net.au/news/2014-06-28/thai-elections/5556846>, accessed by 7 July 2014

50 Unofficial Translation Constitution of the Kingdom of Thailand, page 5–15, retrieved from : <http://www.constitutionalcourt.or.th/dmdocuments/Constitution2007byIFES.pdf>, accessed by 7 July 2014

Women and Children. In addition it has also supplemented the United Nations Convention against Transnational Organized Crime Preamble; the United Nations Convention against Transnational Organized Crime, Convention on the Rights of the Child; Convention concerning Forced or Compulsory Labour Equal Remuneration Convention Abolition of Forced Labour Convention; Employment Policy Convention, and some conventions on armed conflict, and terrorism and human rights convention.⁵¹

Based on this data, it can be said that Thailand has ratified quite a lot of conventions. Numerous Thai governments have placed its intentions to respecting and protecting human rights for the people. However, the key test for these intentions is always on the implementation process. This depends very much upon responsive laws, policies, programmes, mechanisms, resources, and effective practices at the national and local levels.

b. The role of National Human Rights Institution in Thailand

The organic law that established the National Human Rights Commission (NHRC) of Thailand was passed in 1999. This followed a lengthy process in which the organic law went through 17 drafts over a seven-year period from 1992-1999. Indeed, as Andrew Harding (2006) notes, "its original conception [was] long before the 1997 Constitution itself was conceived."⁵² He goes on to highlight how a key issue during the NHRC's formation was whether it would be an independent body or not, stating,

"the NHRC became a battleground between those who wanted to see a strong and independent NHRC, which they saw as the very foundation of human rights, and those who saw its role as limited and who emphasised national security and the efficacy of Thai traditions." The human rights movement was probably too ambitious in expecting that the NHRC could be a kind of human rights body with powers to enforce human rights over the jurisdiction of other bodies.⁵³

Andrew Harding (2006) adds that the selection process involved the Senate appointing a 27-strong Selection Committee, which was responsible for choosing 22 candidates.⁵⁴ Of these 22 candidates, 11 would be chosen as commissioners of the NHRC by the Senate. Here it is worth noting the wide representation involved in the 27-strong Selection Committee. Andrew Harding (2006) lists its members as: "the presidents of the Supreme Court and the Supreme Administrative Court, the attorney general, the chairman of the Law Society of Thailand, all ex officio, and the following members elected by the representatives of the relevant bodies from amongst their own number, ten from registered human rights NGOs, five from the political parties, five from the academic institutions and three from the media."⁵⁵

Regarding on the function of the NHRC, Andrew Harding (2005) then explained that the NHRC was an independent body and has charge of the execution of its own enabling act.⁵⁶ To ensure its independence, active government officials and politicians are not allowed to sit on the NHRC's membership. The NHRC functions include:

- promoting respect for human rights;
- education and research;
- appraisal and dissemination;
- examining and reporting violations;
- making proposal in respect of law, policy and international treaties regarding human rights; &
- promoting coordination among public and private agencies.⁵⁷

In terms of responding to allegations of human rights violation, the organic law that established the NHRC is said to strongly emphasize its role.⁵⁸ Andrew Harding (2006) mentions that the NHRC is mandated to receive such allegations directly from a member of the public who is a victim or indirectly via human rights organizations.⁵⁹ Upon receiving such allegations, the NHRC has the authority to: investigate the facts surrounding the allegations; offer mediation and attempt to secure a compromise solution; report that a violation has indeed occurred; and propose remedial actions.⁶⁰

Although the NHRC has been active for less than two decades, the national human rights institution is perceived to have made some steady progress, especially in terms of human rights education.⁶¹ Andrew Harding (2006) adds that the NHRC has "reported trenchantly on the situation in the south of Thailand."⁶² In his conclusion, Andrew Harding (2006) argues that,

"It is important to understand that a human rights commission does not have sole responsibility for rectifying human rights violations, it has a duty to investigate and other bodies, including executive, legislative and judicial organs, have direct responsibility for enforcing and supporting human rights."

However, with the current situation in Thailand whereby the civilian government has been removed from office, parliament abolished, and the (civilian) judicial courts powerless since military law is in force, the NHRC now faces exceptional handicaps to conducting proper investigation at a time when there is political instability and fragmentation that make human rights violation all the more likely.

51 University of Minnesota, Ratification of International Human Rights Treaties – Thailand, retrieved from : <http://www1.umn.edu/humanrts/research/ratification-thailand.html>, accessed by 24 June 2014

52 Harding A., Thailand's Reform: Human Rights and National Commission, in Journal of Comparative Law, 2006. Retrieved from: <http://wildy.com/jcl/pdfs/harding.pdf>

53 Ibid

54 Ibid.

55 Ibid

56 Ibid.

57 Ibid

58 Ibid.

59 Ibid.

60 Ibid

61 Ibid.

62 Ibid.

Conclusions and Recommendations

At the outset, this edition of *ASEAN Briefs* sought to address a number of questions related to the human rights protection issues in the region, the role of AICHR, and the importance of NHRI. Chief among these questions were: What is the AICHR's role regarding human rights protection issues in the region? Whether the National Human Rights Institution will be effective for the protection of human rights violations in member-states? How ASEAN member states implement human rights protection at the national level?

As such, this edition of *ASEAN Briefs* firstly explored the role of AICHR regarding human rights protection in the region, and the NHRI as the human rights body in the national level before taking case studies from the Philippines and Thailand – as examples of democratic countries in the region- to analyze the realities of member-states implementation on human rights protection. It was noted that the AICHR have problem with the principle of non-interference in internal affairs of ASEAN, so that the AICHR could not work properly and effectively as the human rights regional body. On the other side, it was also noted that the AICHR have problem of its limited role, with the AICHR instrument considered lower and weaker than other regional human rights body. Moreover, the existing provisions of AICHR also could be obstructed by the veto powers from ASEAN states member, leading to the human rights body left powerless in the face of human rights violations in the region.

Furthermore, *ASEAN Briefs* also noted that the NHRI (example case of Indonesia's Komnas HAM) could not work properly because the NHRI inquiries of human rights report did not generates the positive results. There were problems when the Attorney General did not immediately conduct the investigation and prosecution of those human rights cases. Meanwhile, there are several cases of human rights violations that have been processed but at the end left with disappointing results, with lights charges for the suspects and some of them instead seeing the release of the defendant because of the cassation granted by the court.

ASEAN Briefs then went on to examine the case study of the Philippines which revealed that the biggest problem of human rights violation there is cases regarding the kidnapping and extrajudicial killings of opposition activist and terror or separatist suspects committed by police and military personnels. In response to these issues, the Philippines signed and ratified almost all of the international covenant related to the human rights protection. The Philippines also established the CHRP as the national human rights institution that contributed to the monitoring and protection of human rights in the country. It is also noted that there is the trend of reduction of the human rights violation cases in the Philippines now. However the CHRP also have the problem of its limited funding, insufficient resources and the lack of institutional capacity which causes the human rights protection process in the Philippines to be slightly constrained.

On the other hand, *ASEAN Briefs* also noted that Thailand too has ratified quite a lot of conventions related to the human rights protection and set up the 1997 Constitution as the landmark in terms of public participation, human rights and democratic process in the country. Although the constitution has ensured democracy and human dignity as the foundations, there still can be found human rights abuse

especially related to the security forces, police and military officials. In dealing with that, Thailand has already established the NHRC as the national human rights institution. During twelve years of its contribution, the NHRC already made the progress of the human rights protection in Thailand. Nevertheless, the military tension to government resulted in gaps between the constitutional aspiration and the spirit of human rights protection which is extremely hard to bridge in Thailand. The NHRC is considered to not work effectively for human rights protection without the willingness from the government to protect human rights seriously.

Based on these findings there are three recommendations this edition of *ASEAN Briefs* would like to propose:

Firstly, the AICHR immediately needs to revise its Term of Reference in order to strengthen the institutional capacity of the human rights body. The human rights standard and protection mechanism on AICHR should be stronger than any National Human Rights Institutions or national mechanism of ASEAN member states. Therefore, the regional mechanism should not be lower than the national mechanism, and even the regional mechanism should be established on the basis to strengthen and complement the existing national mechanism. In addition, the AICHR should broaden its understanding of its protection mandate, as well as fully implement its current mandate including in fields such as encouraging ratification of human rights conventions and obtaining the report and information on human rights from ASEAN member states.

Secondly, the NHRIs should be to given more authority and strengthen its institutional capacity on the inquiries process of human rights report. The NHRI could not work properly because the NHRI inquiries of human rights report were not immediately followed-up by the Attorney Generals and other relevant authorities. Meanwhile, there are several cases which had been processed but ended up with disappointing result, with light charges and release of the defendants. With the improvement and strengthening of NHRI's authority and institutional capacity, it is expected that the NHRIs could pushed the Attorney General and other relevant authorities to immediately conduct the investigation and prosecution of those important human rights violation cases in the country.

Thirdly, based on the case studies of the Philippines, the CHRP as the national human rights institution there have the problem of its limited funding and insufficient resources. Its very important for the Philippines government to provide more allocation of budget to increase the institutional capacity of the CHRP. Beside that, there is also need the improvement of institutional resources of the CHRP with the larger recruitment of personnel and the expand of the CHRP regional office which distributed proportionally in whole of the country. In another case in the Thailand, the NHRC is considered to not work effectively without the willingness from the government to protect human rights. In this case, the role of civil society in Thailand its very important to play a greater role in pushing the people's agenda on human rights issues and work closely with the NHRC and other related goverment bodies in order to achieve better human rights protection for the people in Thailand.



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The ASEAN Studies Program was established on February 24, 2010, to become a center of excellence on ASEAN related issues, which can assist in the development of the ASEAN Community by 2015. The Habibie Center through its ASEAN Studies Program, alongside other institutions working towards the same goal, hopes to contribute to the realization of a more people-oriented ASEAN that puts a high value on democracy and human rights.

The objective of the ASEAN Studies Program is not merely only to conduct research and discussion within academic and government circles, but also to strengthen public awareness by forming a strong network of civil society in the region that will be able to help spread the ASEAN message. With the establishment of ASEAN Studies Program, The Habibie Center aims to play its part within our capabilities to the ASEAN regional development.

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The Habibie Center was founded by Bacharuddin Jusuf Habibie and family in 1999 as an independent, non-governmental, non-profit organisation. The vision of The Habibie Center is to create a structurally democratic society founded on the morality and integrity of cultural and religious values.

The mission of The Habibie Center are **first**, to establish a structurally and culturally democratic society that recognizes, respects, and promotes human rights by undertaking study and advocacy of issues related to democratization and human rights, and **second**, to increase the effectiveness of the management of human resources and the spread of technology.



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