THE ASEAN INTER-GOVERNMENTAL COMMISSION ON HUMAN RIGHTS AND BEYOND
Introduction – Objectives and Scope

- ASEAN human rights cooperation and the ASEAN Inter-Governmental Commission on Human Rights (AICHR)
- Different Approaches to Regional Human Rights Cooperation in Southeast Asia: Inclusive vs. Selective
- The Case for a Southeast Asian Court of Human Rights (SEACHR)

- Institutionalization of HR cooperation framework
- Development of HR norms at the *regional level*

- Selective Approach
- Inclusive Approach
Introduction – Structure

1. ASEAN Human Rights Cooperation
2. AI CHR
3. ASEAN Inclusive Approach of HR Coop
4. Proposal for a Selective Approach
5. Major Aspects of the Case for SEACHR
ASEAN Human Right Cooperation

40 YEARS:
Declarations

The Advancement of Women 1988
Children Plan of Action 1993
Children Commitment 2001
Elimination of Violence against Women 2004
Rights of Migrant Workers 2006
ASEAN Human Rights Cooperation

**Timeline**
- Before 1990s
- After 1990s

**Content**
- A group of rights
- Political # Legal

**Monitoring Body**
- Current: N/A
- Future: ACWCR AICHR
AICHR - Process

1993

1995

2005

2007

AICHR (2009)
“1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, 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.”
AICHR: Significance and Contribution

1. Step forward in promoting universal human rights in the region (AICHR covers all ASEAN member states)

2. Step forward in moving the organizations from being state-centric to being more people-oriented, although at initial stage.

3. HR cannot be considered as a solely domestic issue under ASEAN. At least, there is a forum on HR within ASEAN.
AICHR: Will it be strong?

Indicators

- ASEAN Human Rights Cooperation
- The Evolution towards AICHR
- ASEAN Charter
- Human Rights Discourse
- The Case of Myanmar
AICHR: Will it be strong?

- Principles
- Status
- Mandates Authority
- Decisions
- Composition
AICHR – Survey Results

Do you think the AI CHR will be a strong body?

Do you think the AI CHR will have the authority to issue binding decisions?

Do you think the AI CHR will be an independent body?
ASEAN Human Rights Development in a Context

A. Political Context
B. Diversity
C. ASEAN’s Principles & Ways
D. Human Rights under ASEAN
There is a group of nations that may be more ready than the other for a stronger HRM. They may want and have conditions to establish a more effective HRM that their people deserve to have. Realistically, they do not have to wait until the latter is ready.
Inclusive vs. Selective

**AI CHR (Inclusive)**
1. Under ASEAN
2. Subject to ASEAN Principles
3. Promotional Mandates
4. Government Representatives
5. Consensus
6. Political Statements
7. Political Body

**Proposed Mechanism (Selective)**
1. Not Under ASEAN
2. Not Subject to ASEAN Principles
3. Protective Mandates
4. Experts Acting Independently
5. Majority-Rule
6. Binding Decisions
7. Judicial Body
Selective: Why should it be a court?

Among others:
– Offering authoritative interpretation and obligatory application.
– Delivering stronger message, leading to a deeper understanding and more sensitive treatment of HR.
– Assisting regional countries in addressing shortcomings of their national HRP.
– Better influencing state behavior – causing national leaders to think more carefully → prevention.
– Raise awareness.
– Building peaceful and rule-of-law SEA.
Possible Members (Tentative list)

SEACHR

Indonesia

Thailand

Philippines

Malaysia

Timor-Leste
Bases to Determine Possible Members – Existing Conditions

- Human Rights Policy
- Participation into Intl HR Framework
- NHRI's
- NGOs
- Regional Cooperation
Political Will of Prospective Members

More Relaxed Understanding of NI

More Relaxed Understanding of NI

Position in AI CHR + SEAN Charter

HR Initiatives

Legislature Role and Receptiveness

Political Statements

Receptiveness to Norm Changes

Political Will?
Prospective Members’ Participation into the Global Human Rights System

PROSPECTIVE MEMBERS

Accession to/Ratification of International Human Rights Treaties

Active Participation in the Work of Global Human Rights Institutions
Existing Conditions – NRHIs

1. KOMNAS HAM (Indonesia):
2. SUHAKAM (Malaysia)
3. CHRP (Philippines)
4. KHAMAKAM SI T (Thailand)
5. PROVEDOR (Timor-Leste)
Prospective Members – NGOs

- National NGOs
- Regional NGOs: Forum-Asia; SAPA, ATLASEAN; AHRC, etc.
- International NGOs: AI, HRW, ICJ, etc.
Existing Conditions – History of Regional Selective Cooperation

- ASA
- MALPHI LINDO
- ASEAN
- COMMUNICATION PROCEDURES
- SECURITY; AIR FORCE TRAINING
- PIRACY
- MILITARY INFORMATION EXCHANGE
- NAVAL/AIR FORCE EXERCISES

Conditions + Interests + Political Will $\rightarrow$ Selective Mechanisms
Lessons from other regions

Europe
Americas
Africa
European Human Rights System

1. Court (before Protocol No. 11: Court + Commission)
2. Other bodies: European Committee of Social Rights, Commission against Racism and Intolerance, Committee for the Prevention of Torture, Commissioner of Human Rights...
Inter-American Human Rights System

1. Commission: OAS organ for all OAS member states.
2. Court: optional.
3. Other bodies: Inter-American Commission of women, Committee for the Elimination of All Forms of Discrimination against Persons with Disability...
African Human Rights System

1. Commission: all AU member states.
2. Court: optional.
Lesson 1
All have regional human rights courts. IA - A began process to establish HR courts in an environment not entirely favorable for HR.

Lesson 2
All started with a compulsory + optional approach.

Lesson 3
All have multiple mechanisms.
Survey Result

1. Is it necessary to establish SEACHR?
2. Most important factor?
3. Do you really believe that SEACHR can be a long-term possibility?
SEACHR

- Founding Treaty
- Contentious Jurisdiction
- Advisory Jurisdiction
- Composition
- Structure
- Procedure
- Enforcement
- Funding + Administration
- Relationship
Founding Treaty

SEACHR must be established by a treaty.

Treaty on procedural issues?

Treaty on substantive rights and procedural issues?
Jurisdiction

SEACHR

Cases

Individuals?
States?
AHRB + NGOs?
Structure – Administration

Structure
Single Court
or
Chamber-divided?

Funding
Administration (Location, Language)
Enforcement – Follow-up

- Issuing binding judgments;
- Hearing on implementation;
- Reporting to Meeting of State Parties

- Bearing obligation to implement;
- Reporting to Meeting of State Parties

- Monitoring;
- Adopting Resolution
Conclusion: The Way Forward

Political Will
Awareness
Technical Resources
Money

Challenges + Possibility
Inclusive Approach + Alternative Approach should be explored
AICHR + Advancing the Idea of a Strong Human Rights Mechanism
E-A-A: Possible for HRCs

SEA: Conditions to Gradually Realize that Goal in the Future
Thank You!