

No Longer Taboo and Yet still Awkward: Human Rights in ASEAN

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Overview

- **Issues**
 - ASEAN Structural Weaknesses
 - ASEAN Human Rights Framework in a Nutshell
 - Weaknesses of ASEAN Human Rights Framework
- **Possible role for the international community and the ASEAN's public**
- **Alternatives (without violating the caveats)**

General Problems: Structure

ASEAN is an inter-governmental organisation (Charter, Art. 3)

- It operates on the basis of consensus decision-making and non-interference
 - It is not in a position to create binding decisions or obligations
 - ✓ It cannot delve into issues which potentially question a member state's decision in its domestic jurisdiction

ASEAN Human Rights Framework in a Nutshell

- Since 2007, ASEAN has established three human rights bodies:
 - ASEAN Committee on the Implementation of ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers (ACMW);
 - AICHR; and
 - ASEAN Commission on the Promotion and Protection of Women and Children Rights (ACWC)
- With the exception of the ASEAN charter and the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR), all other ASEAN HR institutions and commitments are based on soft laws

ASEAN Human Rights Framework in a Nutshell

- Post-2007, all ASEAN human rights instruments recognise universal human rights standards with caveats: the principle of non-interference and due regard to the different culture, history, and socioeconomic condition in each ASEAN member state. These caveats are stipulated in, among others:
 - ASEAN Charter, Article 2 (a, e, i and l);
 - AICHR TOR, point 1 (4);
 - ACWC TOR, para. 2(1); and
 - ASEAN Human Rights Declaration, points 7-8.

ASEAN Human Rights Framework in a Nutshell

ADHR

General Principle

...

- **7. All human rights are universal, indivisible, interdependent and interrelated.** *All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. **At the same time, the realisation of human rights must be considered** in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.*

Weaknesses within ASEAN's Human Rights Framework

- The absence of implementation and compliance monitoring mechanisms
- The absence of formal cooperation mechanisms among ASEAN HR bodies as well as with national HR bodies and CSOs
- Exclusion of HR issues that happen in domestic jurisdiction, including those affecting the region, from any ASEAN forum
- The ASEAN Way as the only means to alleviate pressing human rights issues

Possible Role for the International Community and the ASEAN Public

- Continuous pressures by and participation of the international community *vis-à-vis* the betterment of regional HR framework
 - The commitment to establish and the creation of AICHR (1993 and 2010)
 - The adoption of the ASEAN Convention against Trafficking in Persons, especially women and children in 2015
- Continuous ASEAN public's pressures and participation *vis-à-vis* their respective government's stance on HR in ASEAN
 - The legislative and public pressure on Indonesia to insist on the inclusion of HR provisions in the ASEAN Charter

Alternatives to Improve ASEAN's Existing Human Rights Mechanism (without violating the caveats)

1. The Role of Academics and Think-Tanks

Drafting a Commentary to the AHRD

1

Collaboration between academics & think-tanks

2

Develop a regional sense of ownership for the advancement of ASEAN HR mechanism

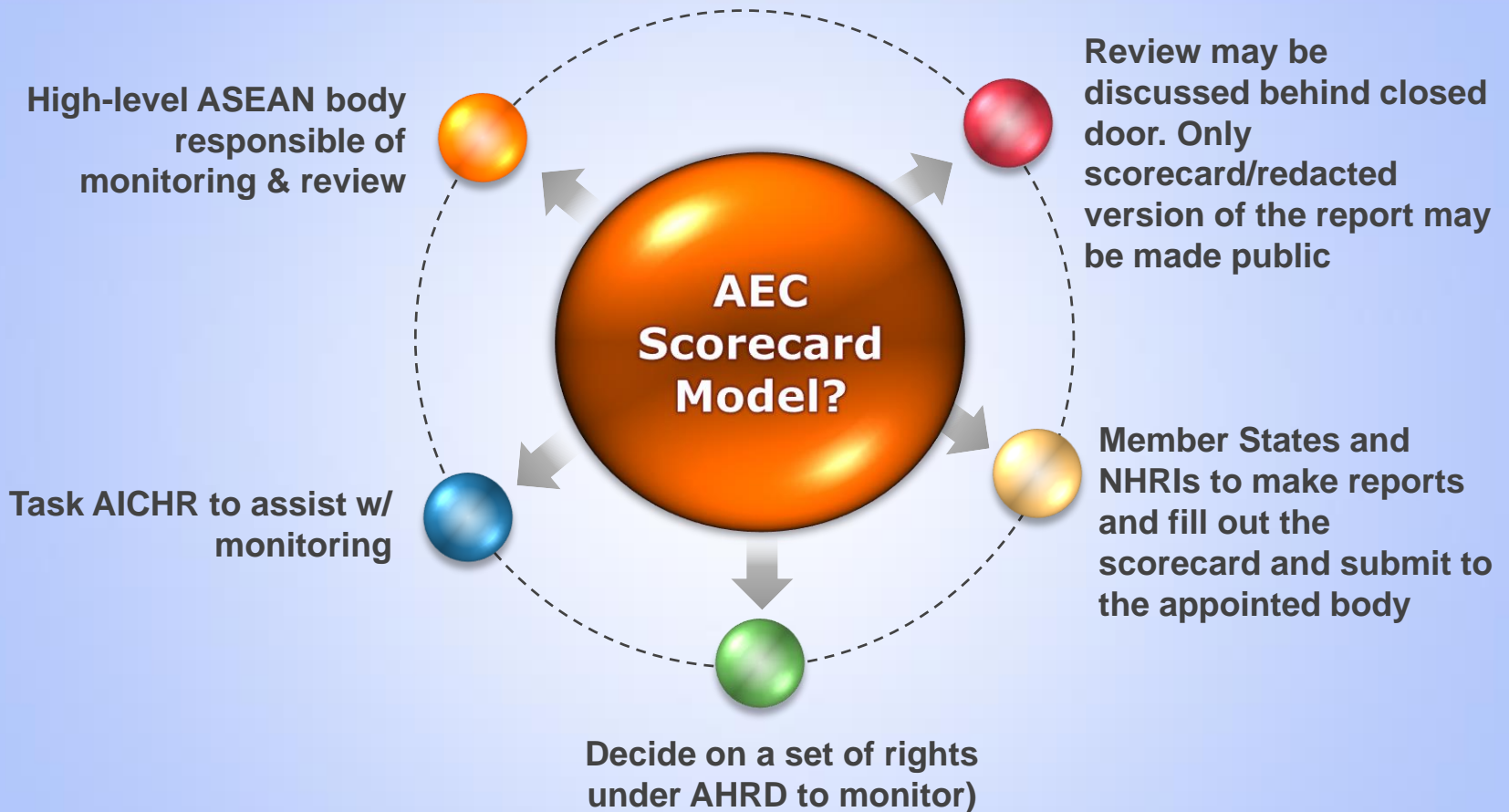
3

Raise public awareness on regional HR mechanism

4

Pave a way for the protection of human rights in the region

2. Compliance Monitoring Mechanism



3. Improving Institutional Relationship

1 ASEAN Inter-institutions' Relationship

- Subordination instead of coordination

AICHR being the overarching HR institution
assisted by ACW and ACMW responsible for
thematic issues

2 Relationship w/ other HR institutions in SEA

- AICHR to hold regular dialogues with CSOs and NHRIs
- To include CSOs and NHRIs reports in its annual report

Thank You

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