

ASEAN Law and Policy

Seminar 8

ASEAN and Security (1 – Rights) (Pillars 1 and 3: Political-Security and Socio-Cultural)

- The development of a 'Caring and Sharing' and 'People-centred' ASEAN
- Why human rights and democracy are included as part of ASEAN's legal transformation – influences from individual member states and civil society stakeholders vs. the eventual claw-back
- Human rights in ASEAN – only in the Political-Security and Socio-Cultural Communities and not the Economic Community?
- The ASEAN human rights system (to be illustrated with case-studies):
 - Primary (and overarching) regional mechanism ASEAN Intergovernmental Commission on Human Rights (AICHR)
 - Special Regimes – ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC); ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)
- Powers and competences; guiding instruments and how international law has shaped them; promotion and protection of rights; competition and overlaps among regimes; exhaustion of remedies and potential of individual recourse
- Interplay between national, regional, and international protections

Reading list:

- Alison Duxbury, Tan Hsien-Li, Can ASEAN Take Human Rights Seriously? (CUP, 2019) - E-book downloadable from NUS Libraries
 - Chapter 2: Understanding the Tensions and Ambiguities in Southeast Asian Attitudes Towards Human Rights (CUP, 2019) ONLY 111-160
 - Chapter 3: The Utility of Human Rights Mechanisms in the ASEAN Region, ONLY 3.3.1 Access to Justice, Courts and Protecting Constitutional Rights, 213-231
- Catherine Renshaw, The ASEAN Human Rights Declaration 2012, 13(3) HRLR (2013) 557, ONLY 561 - 571.
- Attilio Pisano, Towards an ASEAN human rights mechanism: the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, 20(3) International Journal of Human Rights (2016) 321. ONLY 325-32; 335-7.
- Overview of AICHR –pp. 42-6 https://aichr.org/wp-content/uploads/2018/10/AICHR_What_You_Need_to_Know_Compedium_FINAL_min.pdf
- Eric Paulsen, AICHR ready to become stronger human rights mechanism, Jakarta Post, 13 June 2020. <https://www.thejakartapost.com/academia/2020/06/13/aichr-ready-to-become-stronger-human-rights-mechanism.html>
- AICHR Indonesia's complaints mechanism (either link should work -- basically it's a simple snapshot of the mechanism:
<https://www.facebook.com/602290429814598/posts/3224273330949615/?d=n>
<https://www.facebook.com/602290429814598/photos/a.713967771980196/3045651245478492/?type=3>

ASEAN instruments (from CIL treaties database or www.asean.org):

- ASEAN Charter (2007)
- ASEAN Political-Security Community Blueprint 2025 (2015), para. A.2 – reiteration of 2009 Blueprint

- ASEAN Socio-Cultural Community Blueprint 2025 (2015), para. B – reiteration of 2009 Blueprint
- Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (2009)
- ASEAN Human Rights Declaration (2012)
- Terms of Reference of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (2009)
- ASEAN Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children (2013)

Further reading:

General

- Yuval Ginbar, Human rights in ASEAN – Setting sail or treading water? 10(3) HRLR (2010) 504.
- Gerard Clarke, The evolving ASEAN HR system: The ASEAN Human Rights Declaration of 2012, 11(1) Northwestern JIHR (2012) 1.
- Mathew Davies, The ASEAN Synthesis: Human rights, Non-Intervention, and the ASEAN Human Rights Declaration, 14(2) Georgetown Journal of International Affairs (2013) 51.
- Gino Naldi and KD Magliveras, The ASEAN Human Rights Declaration, 3(2) International Human Rights Law Review (2014) 183.
- Suzannah Linton, ASEAN States, Their Reservations to Human Rights Treaties and the Proposed ASEAN Commission on Women and Children, 30(2) HRQ (2008) 436.
- Thio Li-ann, Implementing Human Rights in ASEAN Countries: "Promises to keep and miles to go before I sleep", 2 Yale Hum. Rts. & Dev. L.J. (1999) 1
- Avery Poole, "The World is Outraged": Legitimacy in the Making of the ASEAN Human Rights Body, 37(3) Contemporary Southeast Asia (2015) 355.
- Nicholas Doyle, The ASEAN human rights declaration and the implications of recent Southeast Asian initiatives in human rights institution-building and standard-setting, 63(1) ICLQ (2014) 67.
- Vitit Muntarbhorn, Enlarging the Space for the People: Whither Human Rights and Governance in ASEAN? (2017)
https://www.eria.org/ASEAN_at_50_4B.2_Muntarbhorn_final.pdf
- Irene Hadiprayitno, Deadlock and Denial: Domestic Challenges and the Institutionalization Human Rights in ASEAN (2019, Global Jurist), ONLY her discussion of human rights in Indonesia from 6 – 7.

AICHR

- André Asplund, ASEAN Intergovernmental Commission on Human Rights: civil society organizations' limited influence on ASEAN, 7(2) Journal of Asian Public Policy (2014) 191.
- Abubakar Eby Hara, The struggle to uphold a regional human rights regime: the winding role of ASEAN Intergovernmental Commission on Human Rights (AICHR) (2019) Rev Bras Polít Int, 62(1): e011
- The AICHR Five-Year Work Plan 2021-2025 will be submitted to the 53rd ASEAN Foreign Ministers' Meeting in September. See the Press Release 31st Meeting of the AICHR, 9-10 June 2020, Video Conference <https://aichr.org/news/press-release-31st-meeting-of-the-aichr-9-10-june-2020-video-conference/>
- Eric Paulsen, AICHR ready to become stronger human rights mechanism
<https://www.thejakartapost.com/academia/2020/06/13/aichr-ready-to-become-stronger-human-rights-mechanism.html>

COVID-19

- Press Release on Coronavirus Disease 2019 (COVID-19) by the ASEAN Intergovernmental Commission on Human Rights (AICHR) <https://aichr.org/wp-content/uploads/2020/05/Adopted-AICHR-Press-Release-on-COVID-19.pdf>
- Braema Mathiaparanam, Human Rights Derogations in Southeast Asian Countries during the Covid-19 Pandemic (2020) Penang Institute Monographs <https://penanginstitute.org/wp-content/uploads/2020/09/Human-Rights-Derogations-in-Southeast-Asian-Countries-during-the-Covid-19-Pandemic.pdf>

Human Rights in the UN

- “UN human rights bodies – Complaints Procedures”
<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

Further Instruments – optional

- ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007)
- ASEAN Convention Against Trafficking in Persons (2015)
- ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities
- AICHR 5-Year Work Plan (2016-2020)

CONCEPTUAL

1. Read Duxbury & Tan, Ch.2 and 3 and share your analysis on the following:
 - a. It is generally held that democracies uphold human rights better. Do you agree? Do you think that the democratisation and political transitions of ASEAN states have fostered a less reluctant attitude towards human rights?
 - b. (Read, 2.3 - The Asian Values Debate) Was the Asian Values debate an obstacle towards the institutionalisation of human rights in ASEAN? What are other push and pull factors for ASEAN taking on human rights?
 - c. (Read 2.4 - The ASEAN Way and the Rise of Human Rights) Why is the ASEAN Way often blamed for being antithetical to human rights? What do you think the effect of the ASEAN Way is on ASEAN’s practice of human rights is/will be?
 - i. Should the ASEAN Way be modified to allow respect for human rights? How?
 - d. (Read 2.5 - *Developments Surrounding the ASEAN Charter* and 2.5.1 - *The Commitment to Human Rights in the Context of Regional Integration*) Human rights were for the first time legally enshrined in the ASEAN context in the 2007 Charter. How has the Charter taken human rights more seriously? What are some developments from the Charter that demonstrates this? Are these developments convincing and strong?

SUBSTANTIVE

2. (Refer to Renshaw and the ASEAN instruments above, including the ASEAN Charter and Blueprints). ASEAN has (1) specific regional human rights instruments and (2) general instruments which have specific provisions to **promote and protect** human rights.
 - a. Please list these instruments and where applicable the corresponding provisions. Please also list the bodies which govern these instruments.
 - b. There are certain human rights issues that ASEAN prioritises. Which are these and why do you think they are given priority?
 - c. A common criticism of the ASEAN human rights system is that they focus more on ‘**promotion**’ and less on ‘**protection**’. What does this criticism mean? Considering the geopolitical and social context of how some of these instruments and bodies came to be, do you think that human rights are adequately protected in the region?

3. Has the AICHR been an effective overarching regional mechanism for human rights? Can you find substantiation in the readings for where they have and have not made a difference?

Note: Each of the answers would need a detailed breakdown and brief analysis. This exercise would also require some independent analysis and personal opinion as not all the answers are found in the readings.

4. (Read Pisano). On women and children's rights in ASEAN and the principles of non-interference, how has the international community both encouraged and impacted the realisation of these rights in the region?

IMPROVEMENTS

5. Read the ASEAN 'petition' system in the AICHR "What You need to Know" Compendium (p. 43-4; FAQ #6). Compare this to the AICHR Indonesia complaints mechanism, and the new communications protocol (see Paulsen's article). Do you think that these mechanisms would improve the protective function of the ASEAN human rights system?
6. What other possible avenues can serve as alternatives for ASEAN citizens to report human rights violations? Think creatively – lobbying, courts, etc.

[EXTRA – ONLY OF INTEREST. NOT COVERED IN SYLLABUS THEREFORE NOT EXAMINED.]

7. Human rights institutionalisation in ASEAN was a lengthy process, beginning in the 1990s through to the ASEAN Charter in 2007 and then culminating in the establishment of the ASEAN Intergovernmental Commission on Human Rights in 2012.
 - a. Please detail this evolution. Are you impressed/convinced by the official efforts?
 - b. Although ASEAN is silent on this, civil society's contribution to human rights institutionalisation has been considerable. Please detail the NGO efforts.
 - c. What are your opinions on the official-civil society interface on human rights?
8. (Read Hadiprayitno). Indonesia subscribes to the importance of human rights on paper, but struggles to implement it. Identify the main deadlock raised by Hadiprayitno, and suggest how this deadlock should be addressed. Does, or should ASEAN play a larger role?
9. Some of the ASEAN human rights mechanisms reiterate/overlap with international (UN) human rights mechanisms – is this good or bad for the regional promotion and protection of human rights? Please explain both pros and cons.