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Bumpy Road to the ASEAN Human Rights Declaration

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Last November, the Association of Southeast Asian Nations (ASEAN) reached a milestone with the adoption of the ASEAN Human Rights Declaration (AHRD) in Phnom Penh, Cambodia. However, regional and international responses to this development have been lukewarm at best. The yearlong drafting process was criticized for lacking transparency and the document itself contains provisions that some experts believe weaken international human rights standards. Whether the AHRD is viewed as an achievement or a setback, a number of key observations can be drawn from this document.

Katherine G. Southwick,
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Development Consultant recently
based in the Philippines, explains
that for ASEAN “Progress will be
slow, but the establishment of
human rights institutions is an
irreversible process, through
which member states will be held
to account.”

Background Consistent with Article 14 of the 2007 ASEAN Charter, member states established the ASEAN Intergovernmental Commission on Human Rights (AICHR) in late 2009. The ASEAN Committee on the Rights of Migrant Workers (ACMW) and the ASEAN Commission on Women and Children (ACWC) were created in 2007 and 2010, respectively. These institutions do not possess any compliance or enforcement procedures, meaning there is no mechanism through which to submit complaints and receive binding judgments and remedies. The AICHR does however have a mandate to develop strategies for the promotion and protection of human rights and develop an ASEAN Human Rights Declaration.

With the establishment of these regional human rights institutions, ASEAN has conveyed that development in the region cannot be measured solely through economic growth numbers. Progress must also be based on good governance, inclusivity, and protection of human rights. These institutions also signal to strategic partners and neighbors that individual ASEAN member states expect international relations to be conducted according to international rules and standards. This influences how territorial and economic disputes are resolved, along with the enhancement of trade and other ties.

Drafting Process and Content of the AHRD AICHR began drafting the AHRD in 2011, but no complete drafts were formally circulated. However, some were leaked in 2012 and AICHR representatives from Thailand, Indonesia, and the Philippines did conduct informal public consultations. AICHR officials also held two formal consultations with selected civil society groups in 2012. Key concerns included the AHRD’s principles of “balancing” human rights and fundamental freedoms with corresponding duties, considering human rights within “regional and national context,” subjecting human rights to limitations such as national security and “public morality,” and specifying that certain basic rights, such as the right to life, conform to domestic law. There is no explicit mention of lesbian and gay communities or indigenous groups.

Sharing some of these concerns, the UN High Commissioner for Human Rights, Navi Pillay, urged “the governments of the region to take the necessary time to develop a declaration that fully conforms to international human rights standards.” The US Department of State expressed deep concern that “many of the ASEAN declaration’s

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principles and articles could weaken and erode universal human rights and fundamental freedoms as contained in the [Universal Declaration of Human Rights].”

Aside from these points, the AHRD’s long list of civil, political, economic, social, and cultural rights is notable. The rights to development and peace are also novel contributions, less elaborated on in other regional human rights systems. However, some worry that the right to peace could be used to limit accountability for human rights abuses. The provision on human rights cooperation is sparse given that under AICHR’s terms of reference, the declaration is to be developed “with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights.” How the ASEAN human rights system will now move forward is unclear. Some civil society groups have rejected the document as an “anti-human rights instrument,” adopting their own ASEAN Peoples’ Human Rights Declaration and pledging to continue advocacy based on international standards. Others may decide to use the AHRD for regional standard-setting. Some ASEAN officials have stressed that the AHRD is a “living document,” subject to review and improvement. Meanwhile, work continues on the ACWC’s drafting of a Declaration on the Elimination of Violence against Women, the drafting of a Migrant Workers Convention, and AICHR’s research on corporate responsibility.

Observations Some observations can be drawn from AICHR’s experience thus far. First, given the variety of human rights records within ASEAN’s membership, an imperfect declaration is not necessarily surprising, and a faultless document might have stretched credibility. Instead, the AHRD reveals some of the underlying dynamics in promoting human rights in the region, as some ASEAN governments do take restrictive positions on human rights. This invites more debate and discussion at both local and international levels on the relationship between the state and the individual. Through such processes, more attention might be paid to strengthening member states’ compliance with existing obligations and to signing key international instruments, such as the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR).

Additionally, the AHRD has highlighted the need for more careful review of how to reconcile ASEAN’s human rights agenda and desire to be “people-oriented” with principles of consensus and noninterference. These latter principles may also be in tension with ASEAN’s efforts to strengthen economic integration and other ties which will increase interdependence. The question arises as to what extent the historical basis for ASEAN’s emphasis on consensus and noninterference—including colonial legacies and Cold War interventions—still resonates. Regarding human rights advocacy, the AHRD experience has revealed that the opinions of other major partners, such as the United States and the United Nations, matter. Also, the creation of ASEAN’s regional human rights system has been complemented by the development of more coordinated advocacy across the region within civil society. The drafting process of the AHRD brought civil society groups from all ASEAN countries together to build networks and share expertise on human rights and member states’ international legal obligations. It has enabled human rights discourse to penetrate some of ASEAN’s less accessible societies.

Finally, the AHRD suggests that stakeholders should keep expectations measured. High expectations are needed for the normative purpose of upholding fundamental standards, affirming the universality of human rights, and pursuing measures to actually improve human rights in the region. Low expectations should not be discounted as ASEAN’s human rights system is intergovernmental, comprising a diverse group of regimes with a variety of human rights and development challenges. Progress will be slow, but the establishment of human rights institutions is an irreversible process, through which member states will be held to account. The drafting and adoption of the AHRD has demonstrated that the AICHR and related bodies cannot be used as a shield from scrutiny, provided that civil society and other stakeholders sustain constructive engagement.