

Saving the Day: Can National Judiciary make ASEAN Human Rights Framework Effective

Ranyta Yusran

ABSTRACT

Since the adoption of the Charter of the Association of Southeast Asian Nations (ASEAN Charter) in 2007, tremendous developments have been taking place within ASEAN in relation to human rights. The Charter incorporates human rights and fundamental freedoms as fundamental principles of the organisation and pledges to establish a proper regional human rights mechanism for the first time in ASEAN's forty years of existence. Staying true to these commitments, ASEAN established the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of Women and Children Rights (ACWC) in 2010 with a general mandate to promote and protect human rights in the region. In 2012, ASEAN Heads of State/Government signed and adopted ASEAN Human Rights Declaration (AHRD), affirming the obligation of ASEAN Member States to promote and protect human rights. The AHRD was soon followed by the adoption of another regional human rights instrument addressing the issue of violence against women and children. These are indeed uplifting developments, especially considering that human rights were considered 'taboo' in the region's not-too-distant past.

However, unlike human rights framework and mechanism in other regional organisations, ASEAN's human rights framework and mechanism most likely has little to no effect in both regional level and domestic jurisdiction. From regional perspective, ASEAN does not enjoy any supranational aspects of a regional organisation hence it does not have any power to oblige Member States to abide to the provisions of ASEAN human rights instruments. Even its human rights institutions are considered to have limited mandate and weak independent authorities. On top of these weaknesses, there is no regional human rights institution with decisive power to handle violations of ASEAN human rights instruments. From domestic point of view, it is hard to implement ASEAN human rights instruments at domestic level since all ASEAN human rights instruments are non-binding instruments, which under national laws of Member States cannot be adopted and implemented in national jurisdiction. Additionally, ASEAN human rights instruments such as the AHRD do not prescribe any clear compliance obligation and monitoring function with regard to the implementation of the rights guaranteed under AHRD, therefore the implementation of these instruments still depends solely on Member States' willingness.

The underlying idea of this article is that ASEAN has only managed to agree, albeit very limited, on the rhetoric of human rights. It has yet translated this rhetoric into regional action, let alone domestic actions. Based on these, the first part of this article will discuss the dynamic behind ASEAN decisions to establish its human rights framework and mechanism. Particular attention will be given to individual Member States' attitude toward the idea of creating a regional mechanism on human rights in ASEAN. The Second part of the article will identify and explore the problems that ASEAN human rights mechanism faces both at the regional and national level. At the regional level, the discussion will scrutinise ASEAN human rights instruments such as the AHRD and an analysis on the limitation of ASEAN human rights institutions and what can be done to enhance their powers. At the level of national implementation, the article will investigate the impact of ASEAN human right framework and mechanism in individual Member States especially in relation to the practice of national judiciaries. For this purpose, the article will take up to analyse the situations in Indonesia and Singapore as samples. Most importantly, this part will analyse potential roles that national judiciary can play to implement ASEAN human rights instruments in domestic jurisdiction, which possibly can also boost regional practice. The last part of the article will concentrate on alternatives that can be taken to improve the existing ASEAN human rights mechanism including whether the prospect of having a legally binding regional human rights instrument and a regional human rights court in ASEAN are visible in the near future.