



National Human Rights Institutions in Southeast Asia: Can They Become A Game Changer?

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October 2015

Working Paper
SHAPE SEA Research Project

NATIONAL HUMAN RIGHTS INSTITUTIONS IN SOUTHEAST ASIA: CAN THEY BECOME A GAME CHANGER?¹

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INTRODUCTION

Southeast Asia is known as a region with complex human rights record. The establishment of the ASEAN Intergovernmental Human Rights Commission (AICHR) in 2010 is considered a milestone for an association that is rooted in the principle of non-interference in domestic affairs of neighbouring states. Today, six national human rights institutions (NHRIs) have been established in the region. They are the Commission on Human Rights in the Philippines (CHRP) in 1987, Indonesia National Commission on Human Rights (Komnas HAM) in 1993, Human Rights Commission of Malaysia (Suhakam) in 2000, National Human Rights Commission of Thailand (NHRCT) in 2001, the Provedor for Human Rights and Justice of Timor Leste (PDHJ) in 2004, and Myanmar National Human Rights Commission (MNHRC) in 2011. From the initial informal network of just four NHRIs, these NHRIs evolved and in order to face the regional developments, these NHRIs formalised their network and renamed as the Southeast Asia NHRIs Forum (SEANF) in 2009. Yet, the question arises on whether these government-sponsored NHRIs could have significant roles in human rights protection in the region.

Sovereignty and non-interference principles are trademarks of the ASEAN regional approach. NHRIs, most often characterized as a bridge between international norms and local implementation, are in principle constructed to assure the state's compliance with its international legal obligations (Cardenas, 2001). In 2008, the ASEAN's first-ever Charter came into force. After years of discussion coupled with external pressure, the ASEAN leaders ultimately consent to include an article on human rights that eventually lead to the establishment of the AICHR. In view of these regional developments, the formalisation of SEANF is considered a commitment of the Southeast Asia NHRIs in contributing their roles in transboundary human rights issues. Though, it is clear that their incorporation into national human rights struggles cannot be ignored (Cardenas, 2001).

The position of NHRIs is a peculiar one. Although these NHRIs are established by the government, but at the same time, they are the "watchdog" on the government. They also serve as the bridge between the non-governmental organizations (NGOs) and the state. The key challenge for these NHRIs is hence on how to maintain their unique role by securing their independence and at the same time, utilise their "advantages" in enhancing the human rights promotion and protection in the region.

¹ Paper prepared for National Seminar on Human Rights: Progressing Rights in Malaysia, 22 October 2015, Pullman Hotel Bangsar, Kuala Lumpur.

UNLOCKING THE MYTH OF NHRIs

The current departure point to discuss NHRIs is the Paris Principles. Paris Principles is devised in 1991 in Paris and adopted by the UN General Assembly in December 1993. Although debatable, the Paris Principles is recognized as an important document for all the NHRIs because it provides an international standard for such institutions. NHRIs are statutory bodies and generally state funded. These human rights institutions are set up either under an act of parliament, the constitution, or by decree with specific powers and a mandate to promote and protect human rights. NHRIs vary significantly in their composition and structure. NHRIs can take many forms, such as Ombudsmen, Hybrid Human Rights Ombudsmen and Human Rights Commissions.

To enable them to hold the state and other bodies to account for human rights violations, it is therefore crucial for these NHRIs to possess autonomy from the state so that they are able to investigate the state and other actors committing human rights abuses. This however leads to two paradoxes. First, states are creating institutions that will or should act as a watchdog on them. This raises the question as to why governments wanted to create these institutions in the first place. One proposition as offered by Cardenas (2001) is, NHRIs are “created largely to satisfy international audiences; they are the result of state adaptation”. This meaning, some governments believe that by establishing these human rights institutions, it “will be a low-cost way of improving their international reputation” (International Council on Human Rights Policy, 2000).

The International Council on Human Rights Policy (2000) put forward three categories of why there is a worldwide increase in the creation and consolidation of NHRIs. First category refers to countries that make their transitions from conflict, such as Ireland, South Africa and the Philippines. Second category refers to those countries where a NHRI is established to with the purpose to construct and fortify other human rights protections. For example, Australia, Canada and France. Finally, third category refers to those countries that come under pressure to respond to allegations of human rights violations. Therefore, one solution is to establish a national commission in order to be seen to be doing something to address the problem. Some examples are Mexico and Nigeria. Third category is also the most relevant to most of the Southeast Asian NHRIs.

Second paradox is the credibility of some NHRIs comes from the fact that they are state funded. While this is arguable, in some countries, there is a certain degree of expectation that NHRIs reach out actively with civil society and thus, become an effective channel for these non-state actors to further their claims to the state. Ideally, their nature and structure within government should provide them “advantage” in engaging with other human rights related institutions and accessing to information and documents that most of the non-governmental organizations (NGOs) may not easily be able to obtain and a closer engagement with government officials. Nevertheless, this is at least not always the case for the Southeast Asian NHRIs.

Having said that, such “unique” position, which seems to offering opportunities for NHRIs, also gives rise to dilemmas. NHRIs have to confront with the awkward dilemma of how to be independent from both government and NGOs, while at the

same time also establishing and maintaining harmonious working relationships with both actors. That said, in managing their “unique” position, NHRIs have to define and defend their role in relation to where and how they fit in with both entities - government and civil society. In the mean time, this can also generate challenges for NHRIs with reference to their independence and accountability. These two key concepts, independence and accountability are crucial for a NHRI’s legitimacy, credibility, and eventually its efficiency. For that reason, NHRIs have diversified accountabilities to fulfil: “downwards” to their partners, beneficiaries, staff and civil society in general; and “upwards” to their funders, parliament and host governments (Smith, 2006).

NHRIs cross at a point with state compliance in its own ways. When a state decides to establish a NHRI, it is already considered as complying with a host of international standards calling for the establishment of NHRIs. Since the post-1993 Vienna Conference on Human Rights, the expectation has been set that states should create NHRIs in order to implement international norms domestically (Cardenas, 2001). Also, NHRIs should conform minimally to international criteria as elaborated in the Paris Principles.

ASEAN EXCEPTIONALISM?

The 1993 Vienna Conference on Human Rights left its mark on the Asian approach on human rights. Asian countries participated in the Vienna Conference after having debated on human rights during their regional meeting in Bangkok resulting in the drafting of a document on their own, known as the Bangkok Declaration. The Bangkok Declaration asserted three principles. First, respect for national sovereignty, territorial integrity, and for the principle of non-interference with internal affairs. Second, the Declaration emphasizes the need for a synthesis among first-generation rights referring to civil and political rights, and second-generation rights referring to economic, social and cultural rights. Third principle is the need to strengthen economic growth and social development rather than human rights and fundamental freedoms.

The roots of this debate are to be found in the “Asian values” debate, initiated by two former prime ministers, Singapore’s the late Lee Kuan Yew and Malaysia’s Tun Dr. Mohammed Mahathir in the late 1980s. Based on this argument, Asian cultures were inclined to emphasize on economic and social rights than to civil and political rights (De Bary, 1998). Putting that aside, the Bangkok Declaration however is constructive from another perspective, as it mentioned, “Welcome the important role played by national institutions in the genuine and constructive promotion of human rights...”

Globally, there is around a total of 106 NHRIs globally with six in the Southeast Asia region. Recent years, the governments of Cambodia and Vietnam have also displayed increasing interest towards the establishment of an NHRI in the country. NHRIs have been conferred a certain degree of recognition in the international human rights system, with formal roles and rights given to them. However, these Southeast Asian NHRIs’ has not been able to achieve “full recognition” in the regional level. The reason being the fact that although AICHR is formally established in 2010 and subsequently in 2013, the ASEAN formally launched the ASEAN Human Rights Declarations (AHRD), the role of NHRIs are to some extent neglected. Although the

existing six Southeast Asian NHRIs under the umbrella of SEANF has established prior to the formation of AICHR, these NHRIs however do not enjoy privilege in this regional human rights entity. Article 4.9 of the AICHR Terms of Reference stipulates that AICHR has mandate “to consult, as may be appropriate, with other national...entities concerned with the promotion and protection of human rights,” but this mandate is not fully implemented. This further reaffirms the general view that Asean was born and in many ways remains a club of elites with a top-down approach. Its origins was mainly due to a shared concern for regime survival among a group of Southeast Asian leaders facing internal challenges to their authority and demands for political openness. That meaning, little space is given to the civil society actors, and not to mention, also the NHRIs.

HOW COULD THE NHRIs FLEX ITS MUSCLE?

As a consequence of the adoption of the ASEAN Charter and the birth of AICHR, ASEAN faces high expectations to deliver human rights commitments. But it is not without debates. This is because most political systems have established in law a variant of an NHRI, but not all of these political systems can be considered as consolidated democracies (Pegram, 2010). The political stability in the region remains uncertain and vulnerable; hence, the question is how could these Southeast Asian NHRIs flex its muscle?

The empirical evidence strongly proposes that states that subject to human rights pressures or poor human rights records created NHRIs largely to pacify critics. This is particularly relevant to NHRIs across the Asia Pacific, Africa and Middle East. In general, it works such a way where human rights pressures present states with a problem for which NHRIs are believe to be able to provide a solution. Though it is not a popular request that critics demand an NHRI to be created, states however may consider the creation of an NHRI as a relatively low-cost strategy to satisfy the critics. When pressure serves as the key motive, that would normally lead to the possibility in creating a relatively powerless NHRI, since the goal is not to further advance human rights promotion and protection, but to suppress human rights critics.

According to Kieren Fitzpatrick and Catherine Renshaw (2012), the most protective and promotive NHRIs should be found in states subject to both international and domestic pressures. In NHRI where international pressures are strong but domestic pressures are relatively low, an NHRI may tend to be fairly promotive. This common situation exposes how longstanding democracies with comparably strong human rights performance still may choose to have a NHRI that is promotive in nature or, alternatively, why an abusive regime with poor human rights records will attempt to establish an NHRI. The weakest NHRIs, however, are normally linked with low domestic and international pressures.

However, it does not deny the influence of other factors. For example, civil society groups can be essential in applying international pressure and in supporting processes of democratization and constitutional reform. At the level of civil society, NHRIs can tap into the mobilizing role of the media, while human rights awareness can lead to rising demands and claims for human rights protection. Additionally, the role of individual leadership should not be missed. It is a common fact that many NHRIs, just

like any other organizations shine under the independent-mindedness or dedication of particular commissioners or, alternatively, struggle if it faces passive leadership.

CONCLUSION

Southeast Asian NHRIs are useful institutions and has potential to make an immense contribution to not only the promotion but also protection of human rights. Traditionally, ASEAN leaders have preferred to respond to human rights concerns domestically. However with the introduction of ASEAN Charter and AICHR, at the very least, the motivations for and contexts in which NHRIs in the region have been established vary significantly. There is also notable uniformity in their form.

At present, independence and accountability are key objectives, but at the same time, they are also key problems for Southeast Asian NHRIs. They lack adequate mechanisms for enforcement of human rights in the region, partly because the ASEAN and the AICHR did not provide enough necessary support and “legitimacy” to these NHRIs. The formation of NHRIs undoubtedly sends the hope for a possible avenue to address human rights concerns domestically. It is common misperception that the public tended to view the level of human rights abuses as the main barometer in evaluating an NHRI’s influence. Thus, the key challenge for a NHRI is not only to define its space, but also to protect itself from excessive interference, be it from government, NGOs or other institutions in society.

Acknowledgements

This paper is part of the project supported by the SHAPE-SEA Programme funded by SIDA.

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