
Finding ASEAN's Tongue: Systemic Trappings of the AHRD

"No person shall be deprived of life save in accordance with law." So reads Article 11 of the ASEAN Human Rights Declaration (AHRD). However, a decade after this bold pronouncement, the noble principles embodied in it remain mere words on paper. In the Philippines, more than 7,000 lives have been claimed in extrajudicial killings since former president Rodrigo Duterte launched his drug war: teenagers shot by policemen, faces wrapped in packaging tape, and drugs planted on their dead bodies (Bouckaert, 2017). The graphic truth of these violations ought to horrify us.

Still, an eerie silence surrounds ASEAN. This inaction, though, does not come from apathy. Instead, the AHRD's ineffectiveness is rooted in three systemic problems: (1) the ASEAN's principle of non-interference, (2) the AHRD's acceptance of cultural relativism, and (3) the lack of a complaint mechanism.

Because ASEAN is bound by the principle of non-interference, it cannot act on human rights violations within member-states' borders (ASEAN, 2008). This limits it to an advisory role, in which it avoids issues that may offend member-states. For instance, in the 121 human rights-related activities that ASEAN hosted from 2010 to 2018, none have even acknowledged the extrajudicial killings in the Philippines (FORUM-ASIA et al., 2019). Indeed, ASEAN's human rights policy focuses more on the promotion of human rights than their protection, with little on-the-ground action addressing victims (Gavilan, 2017).

Besides this principle of non-interference, the AHRD adopts a cultural relativism that undermines the universality of human rights. While Article 2 affirms that all persons are entitled to human rights "without distinction of any kind," Article 7 then outlines several contexts through which rights must be considered: political, cultural, religious, and so on (ASEAN, 2013, p. 4). Worryingly, Article 8 also allows human rights to be limited to "meet the just requirements of national security" (ASEAN, 2013, p. 5).

These articles are vaguely worded enough for member-states to perpetuate oppression in the guise of public order, or to justify their actions within their nation's moral context. For example, a survey revealed 82% of Filipinos were satisfied with the drug war (Petty, 2019). The former presidential spokesman has since used this approval rating to wash their hands, stating that if there really were human rights violations, then the "country will rise against this administration" (Petty, 2019, para. 7). Even if this were true, the tacit approval of the public still cannot excuse killings outside the law.

Clearly, this is when regional bodies should hold nations accountable. But again, ASEAN has failed to do this because it has not established any complaint mechanism. To date, Southeast Asia has no intergovernmental body for receiving human rights complaints, whereas other regions already have robust systems to act on these, such as the European Court on Human Rights, African Court on Human and People's Rights, and Inter-American Commission on Human Rights (Hara, 2019). ASEAN can

take the lead in Southeast Asia, but without the mechanism to receive complaints in the first place, then any declaration ASEAN makes is just a tongue without teeth.

These three problems identified are not readily solved. Following Hara's (2019) analysis, the ASEAN is still in the "promotion" stage of a human rights regime, from which it must steadily evolve into the "enforcement" stage. For ASEAN to begin this, it must first reevaluate its principle of non-intervention. In cases of human rights violations, ASEAN must be willing to suspend this principle; one cannot protect what one cannot reach. Next, ASEAN must recognize the unqualified universality of human rights, without giving the power to limit these rights to the very persons who may abuse them. Finally, they must establish a mechanism to receive human rights complaints from individuals and civil society organizations. Having a regional platform to voice the stories of victims would raise more awareness than any promotion campaign can hope to do.

The AHRD is a bold first step in the right direction. But we cannot celebrate its first ten years as a victory. We must use it to recognize all the work that is left to be done. We must use it to acknowledge, unapologetically, what the AHRD has failed to do and what it may still change.

(Total 695 word count)

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