
Strengthening the Role of ASEAN Human Rights Declaration in the Implementation of Human Rights-Based Approach to Climate Change through Regional Complaints Mechanism

Southeast Asia (SEA)'s high vulnerability to adverse impacts of climate change threatens the ability of its people to enjoy human rights, including the right to life, health, safe drinking water, food, adequate housing, and clean environment (Sasipornkarn, 2021; Lewis, 2018; Nonthasoot, 2014).¹ Ironically, the current national policies of Association of Southeast Asian Nations (ASEAN) Member States (AMS) are inadequate in mitigating climate change and its impacts based on Paris Agreement (ASEAN, 2021; Overland *et al.*, 2021). Therefore, these policies are not in line with AMS' responsibility to protect human rights as enshrined in the ASEAN Human Rights Declaration (AHRD). This essay argues that AHRD has a critical role in institutionalizing human rights-based approach to climate change in ASEAN through its human rights body, ASEAN Intergovernmental Commission on Human Rights (AICHR).

The adoption of AHRD in 2012 marks a significant progress in the development of human rights system in ASEAN (Clarke, 2012).² It can be viewed as "a hortatory text setting common standards" for protecting human rights in the region (Naldi & Magliveras, 2014). Clearly recognizing environmental-related human rights as previously mentioned and AMS as primary duty-bearers,³ AHRD can be used as an agreed "reference point" for all AMS to integrate human rights protection into climate policies (Nonthasoot, 2014).

However, ten years after its adoption, AHRD has hardly played any role in ASEAN's effort to address climate change. No recent key documents relating to climate change were made with reference to AHRD or human rights in general.⁴ AICHR, tasked with promoting the implementation of AHRD, only briefly explores the relationship between AHRD and climate change in workshop reports. Moreover, AICHR has not published any specific work plan or thematic study on this issue. These indicate a gap between ASEAN human rights system and climate change governance.

Strengthening the role of AHRD as "common standard" and "reference point" is important to bridge this gap. This can be done by establishing a complaints mechanism within AICHR for climate change victims in SEA. The environmental-related human rights in AHRD will be more operationalized because they serve as regional human rights foundation that must be considered by victims in filing the

¹ These impacts include rising sea levels, heat waves, drought, flooding, and intense rainstorms.

² Davies (2014) mentions that the "very fact that it [AHRD] exists is remarkable given the lack of concern ASEAN member states displayed in the human rights field just twenty years ago."

³ See Art. 6, 11, 29(1), and 28 of AHRD.

⁴ Particularly ASEAN Joint Statement on Climate Change to the 26th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, and ASEAN State of Climate Change Report 2021.

complaints and AICHR to address those complaints.⁵ Hence, complaints mechanism enables further interpretation and implementation of these rights. This mechanism also emphasizes the state obligation to protect human rights through adequate climate actions (Jodoin *et al.*, 2021),

This proposal faces two challenges. First, AICHR has no explicit mandate for complaints mechanism in their Terms of Reference (ToR). Second, AMS put strong emphasis on national sovereignty and non-interference in their regional relations. This limits any confrontational forum where AMS can effectively be held accountable for their inadequate action to mitigate climate change and consequently protect human rights (Aguirre & Pietropaoli, 2012).

There are rooms for improvement to answer the first challenge. The specific mandate can be added through ToR review process, but its development remains stagnant. For temporary measure, AICHR agreed in 2019 that complaints on human rights violations will be acknowledged, tabled, and forwarded to the relevant country representative (Wahyuningrum, 2019). This presents a significant groundwork for more robust complaints mechanism.

For the second challenge, AMS have been more open to recognize each state responsibility to address regional environmental problems, notably transboundary haze pollution (Nurhidayah *et al.*, 2015).⁶ This offers a potential for greater recognition in addressing transboundary harm caused by climate change. Climate action in one state has been increasingly linked to adverse human rights impacts in another state.⁷ Institutional transformation in ASEAN politics should be prioritized in order to implement stronger regional state accountability regime.

In the short term, AICHR should conduct non-confrontational means in responding to these complaints. Instead of addressing individual complaints to individual states, AICHR can call or urge AMS to implement more ambitious human rights-based climate policies.⁸ AICHR can also conduct regional hearing with victims, develop a thematic study to better understand the relationship between

⁵ The articles of a non-binding regional human rights instrument like AHRD for human rights-based climate change complaint has been primarily used and referenced in a landmark case filed by Sheila Watt-Cloutier on behalf of "all Inuit of the arctic regions of the United States of America" to the Inter-American Commission on Human Rights (IACHR). They alleged that the greenhouse gas contribution of United States has threatened the enjoyment of several human rights guaranteed by the American Declaration of the Rights and Duties of Man, a regional non-binding human rights instrument in the inter-America region. For a more detailed analysis of this petition, see, e.g., Chapman (2010) and Osofsky (2009).

⁶ All AMS have adopted the ASEAN Agreement on Transboundary Haze Pollution (AATHP). Article 3(1) of AATHP states that the "Parties have ... responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment and harm to human health of other States or of areas beyond the limits of national jurisdiction." However, the recognition of state responsibility is limited due to weak enforcement of this responsibility and absent liability regime or dispute settlement in the agreement. See Nurhidayah *et al.* (2015) and Varkkey (2014).

⁷ In the regional context, this extraterritorial linkage has been mainly used in the Americas, but it has some potentials to be used in other jurisdictions. See, e.g., Savaresi & Auz (2019) and Peel & Osofsky (2018).

⁸ On May 2020, AICHR took an unprecedented measure by issuing a statement that "directly addressed a human rights issue of concern to the region" relating to AMS' responses to the COVID-19 pandemic. See: ASEAN (2020) and Paulsen (2020). AICHR can and should produce similar statement using stronger language and concrete recommendations for all AMS to address climate change and human rights protection.

human rights, climate change, and state obligations in ASEAN, and create policy recommendations/guidance for AMS. Therefore, establishing complaints mechanism within AICHR based on AHRD can present strategic opportunities to provide regional platform for victims, increase public awareness, spur government actions, and push the mainstreaming of human rights-based approach to climate change in ASEAN.⁹

(Total 700 words count)

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⁹ For more analysis on the strategic impact of human rights-approach to hold states accountable for mitigating climate change, see, e.g., Guruparan & Moynihan (2021) on international and national experiences, and Osofsky (2009) on inter-American regional experience.

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