

Reflecting on the Present: A Critical Look on the ASEAN Human Rights Declaration and its Regional Impact

The ASEAN was founded against the backdrop of rising communism in Southeast Asia in the 1960s—aiming to preserve security and advance economic growth among member states. But the advent of the 21st century has seen the incorporation of human rights in its political discourse and initiatives. It was evidenced by the establishment of the ASEAN Charter in 2007 and the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009. But the adoption of the ASEAN Human Rights Declaration (AHRD) in 2012 was the culmination of all these human rights efforts. This Declaration was believed to attest to the ASEAN’s commitment to safeguarding the human rights of its people. However, a question came to light as to how this Declaration contributed to the human rights cause of the regional bloc ten years later.

The AHRD was reckoned to promote social justice in Southeast Asia—laying down the fundamental rights as well as the rights to development and peace to be observed in the member states. However, the contemporary regional situation of human rights proves otherwise. The Amnesty International Global Report from 2013 to 2021 unveiled the relentless curtailment of human rights of ASEAN people (Amnesty International, n.d.), including the enforcement of policies abusive to women, LGBTQIA+, indigenous people, and religious minorities, and suppressive to freedoms of the press and civil society members. There was a lack of accountability to the police-sponsored culture of impunity that can be stemmed from the judiciary’s flawed or absence of investigations due to government interference. There was also widespread arbitrary detention and death penalty imposition that respectively transgressed the rights to liberty and trial and the right to live. Furthermore, member states have underperformed in the Freedom of the World Report from 2013 to 2022 (Freedom House, n.d.), with six countries scoring 30 and below in the last two years—classifying them as “Not Free.”

It can be argued, therefore, that the AHRD has failed its purpose as human rights violations are pervasive. The Declaration’s problematic provisions and poor application can account for this. Articles 6, 7, and 8 of the AHRD expressed reservations in the exercise of human rights as the other’s welfare and national interests should be taken into account. Though there is a need for one to act responsibly so as not to harm others, it undermines the absoluteness and inalienability of human rights. Its universality is also compromised when these rights are considered in various contexts, including political, social, and cultural. Drawing from the two aforementioned points, national policies have to be crafted in accordance with human rights and not the other way around. Meanwhile, the “public morality” mentioned in the Declaration is subjective (Palatino, 2012) and can be prejudicial to gender and religious minorities. Moreover, Article 40 expressed the conformity to ASEAN’s principles, one of

which is the "non-interference" in the member states' domestic affairs. This has been the major criticism in ASEAN in general (Davies, 2013) as it restrains the ability of the regional bloc to help address socio-political issues within a member state which could be of potential regional concern. Another problem lies in the chance that each member state could have a varying interpretation of AHRD (Davies, 2014), thus, leading to different internal human rights policies and imposition. This is exacerbated by the Declaration's not being legally binding (Doyle, 2014). Lastly, the AICHR, although it led the human rights awareness drive in the region through its educational programs and information dissemination, failed to fully engage the civil society members and other stakeholders in dialogue and consultation as per Article 4.8 of its Terms of Reference (TOR) (Wahyuningrum, 2021).

With the extensive human rights transgression in Southeast Asia, enhanced promotion and protection have never been more important. Hence, the ASEAN must rethink the ASEAN Charter's "non-interference" clause and the AHRD's controversial provisions to bring about a genuine impact on the human rights situation in the region. There must also be a precise enforcement mechanism in the Declaration. Finally, the AICHR must be critically evaluated based on the fulfillment of its mandates in the TOR. Only through these ways can ASEAN attest to its commitment to protecting human rights and promoting social justice in Southeast Asia.

(Word Count: 697)

REFERENCES

- Amnesty International. (n.d.). *Amnesty International Annual Reports*. Retrieved August 31, 2022, from <https://www.amnesty.org/en/annual-report-archive/>
- Davies, M. (2013). The ASEAN Synthesis: Human Rights, Non-Intervention, and the ASEAN Human Rights Declaration. *Georgetown Journal of International Affairs*, 14(2), 51–58. <https://www.jstor.org/stable/43134411>
- Davies, M. (2014). An Agreement to Disagree: The ASEAN Human Rights Declaration and the Absence of Regional Identity in Southeast Asia. *Journal of Current Southeast Asian Affairs*, 33(3), 107–129. <https://journals.sagepub.com/doi/pdf/10.1177/186810341403300305>
- Doyle, N. (2014). The ASEAN Human Rights Declaration and the Implications of Recent Southeast Asian Initiatives in Human Rights Institution-Building and Standard-Setting. *International and Comparative Law Quarterly*, 63(1), 67–101. <https://doi.org/10.1017/S0020589313000390>
- Freedom House. (n.d.). *Freedom in the World*. Retrieved August 31, 2022, from <https://freedomhouse.org/report/freedom-world>
- Palatino, M. (2012, November 28). *Human Rights Declaration Falls Short*. The Diplomat. Retrieved August 30, 2022, from <https://thediplomat.com/2012/11/human-rights-declaration-falls-short/>
- Wahyuningrum, Y. (2021). A Decade of Institutionalizing Human Rights in ASEAN: Progress and Challenges. *Journal of Human Rights*, 20(2), 158–175. <https://doi.org/10.1080/14754835.2021.1875811>