



The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Responsibility to Protect (R2P): Opportunities and Constraints

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Executive Summary

This report is the second of two working papers examining the recently inaugurated Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights (AICHR) and its potential to aid the implementation of the Responsibility to Protect (R2P) in the region.

The first report examined the development of R2P and the AICHR, and explored how regional and sub-regional arrangements have a crucial role to play in supporting and strengthening the promotion and protection of human rights and the implementation of R2P. The second report builds upon the first by assessing the potential opportunities to optimise the AICHR's Terms of Reference (TOR). The report proceedings in two parts:

Section One analyses the content of the TOR in order to, first, identify strengths and weaknesses; and second, to locate opportunities for strategic maximisation of the Commission's mandate. In particular, this section proposes a hub-and-spoke model of operation, whereby the Commission acts as a central 'hub' to coordinate and facilitate individualized programs of assistance to each of the ASEAN States (the 'spokes') to assist in building national capacities to promote and protect human rights.

Section Two examines the potential of the AICHR to play an instrumental role in implementing R2P in Southeast Asia. It recommends that the proposed hub-and-spoke model be the means by which the AICHR can play a unique role in implementing R2P by contributing to strengthening human rights promotion and protection and therefore removing a structural precondition to R2P crimes.

Overall, this report asserts that ASEAN and the ASEAN Intergovernmental Commission on Human Rights have the responsibility to play a major role in protecting the region's peoples from mass atrocity crimes. By maximizing the strengths of the Commission's TOR and by enacting the hub-and-spoke model for coordination and assistance between the AICHR and ASEAN States, there is great potential for the increased promotion and protection of human rights in the region, as well as for the prevention of future mass atrocities. The report concludes with a detailed list of recommendations for the Commission, ASEAN, civil society and other stakeholders.



1.0 The Terms of Reference (TOR) of the ASEAN Intergovernmental Commission on Human Rights (AICHR): Maximising Potential

It must be acknowledged that the Terms Of Reference (TOR) for the ASEAN Intergovernmental Commission on Human Rights (AICHR) is ultimately a political document born of negotiation and compromise. Having recognised this pragmatism it is also important to bear in mind the ultimate objective of an effective regional human rights system is the promotion and protection of human rights. As such, the purpose of this section is to explore the potential of the TOR of the AICHR to be interpreted liberally and in accordance with its object and purpose, to provide opportunities to maximise the effectiveness of the Commission's current mandate and functions.¹

This section proceeds in two parts. It first analyses the content of the TOR and identifies its strengths and weaknesses before addressing the windows of opportunities present that allow for creative maximisation of the activities and functions of the Commission. This section posits that the strategic value of the Commission lies in its ability to facilitate the strengthening of individual national capacities for human rights promotion and protection. In doing so, it has the potential to aid the protection of human rights at the national level through a regional framework and approach.

1.1 Strengths and Weaknesses of the TOR

Prevailing assessments of the strengths and weaknesses of the AICHR discussed in Southeast Asian media sources and civil society outputs are grounded in a comparison of the TOR against a basic set of powers, responsibilities and structural characteristics often associated with effective regional human rights mechanisms in other parts of the world. These characteristics are reflected in those expressed as *minimum requirements* by the Office of the High Commissioner for Human Rights (OHCHR) Regional Office for Southeast Asia's 'Principles for Regional Human Rights Mechanisms'² and include monitoring, education and capacity-building functions as well as composition, support and receipt of communication requirements. Such powers, responsibilities and structural requirements have to a large extent been reflected in almost every civil society proposal of draft terms of reference for the AICHR,³ every submission to the HLP⁴ during the TOR drafting process and also form the basis of continuing civil society calls⁵ to further strengthen the mandate of the AICHR. As such, this section will first summarise the key strengths and weaknesses of the TOR from the perspective of civil society, academia, media and rights activists in the Southeast Asian region who advocate for the AICHR to be established as a model with the minimum features that characterise regional rights mechanisms elsewhere in the world.

1.1.1 Monitoring and Communications

Integral aspects of the minimum monitoring requirements of regional human rights mechanisms include that the body be mandated to observe and report on the general human rights situation in the region, to request information from State Parties, to carry out on-site visits in order to investigate specific human rights concerns, issue reports and recommendations, and develop an early warning system to help prevent gross violations of human rights including crimes against humanity, war crimes and genocide.⁶ As a corollary to investigative powers, regional human rights mechanisms should be empowered to receive communications from any person, group of persons, NGO or Member State alleging human rights violations against another Member State. They should also obtain any information necessary in the course of an investigation and require States to report on the steps they have taken to implement findings and recommendations.⁷

The AICHR is far cry from possessing the minimum monitoring powers outlined. The general sentiment expressed by civil society groups, rights activists, academia and media in the region, as well as international observers such as the UN High Commissioner for Human Rights, is that the TOR is a disappointment for its adoption of a 'promotion first protection later' ethos.⁸ Despite the TOR's provision for the Commission '[t]o develop strategies for the promotion *and protection* of human rights and fundamental freedoms,'⁹ the TOR's fourteen mandate and function articles focus overwhelmingly on promotion rather than protection of human rights. The AICHR is not endowed with any investigative, evaluative or enforcement powers, nor an early warning capacity. The only monitoring function the Commission is empowered with is the ability to 'obtain information from Member States on the promotion and protection of human rights.'¹⁰

This lack of monitoring powers within the TOR has been criticised by numerous groups. Some have speculated that the ability to 'engage with...civil society organisations and other stakeholders'¹¹ (albeit only appropriately accredited ones) may serve as a limited ability to monitor situations of concern through the work of such groups.¹² One anonymous ASEAN official has indicated that the Commission will create a database for human rights violations.¹³ Yet, as the AICHR does not have the power to accept individual complaints or petitions, it is not entirely clear from where information for the database will be drawn or how comprehensive it will be. Civil society organisations are also concerned that the lack of watchdog powers will erode the credibility of ASEAN and have continually called for the Commission to be given the power to investigate complaints of abuses, conduct country visits, review the human rights situation in the region and establish an early warning capacity.¹⁴ They fear that the Commission as currently mandated will not fulfil its pledge to live up to the 'people oriented' spirit of the ASEAN Charter and further damage the standing of the Association in the eyes of the international community for creating a sub-standard regional human rights mechanism unable to respect and protect basic human rights and fundamental freedoms.¹⁵

A further major weakness of the Commission is that it lacks the majority of the communication functions the OHCHR deems indispensable for effective regional mechanisms. This is a direct consequence of the AICHR's lack of power to investigate specific alleged human rights violations. The ability of the Commission to receive communications of any nature from individuals, groups of persons or NGOs is noticeably absent from the TOR, whether they concern specific human rights violations or not. The TOR only provides for one-way communication from the Commission to the public through enhancing public awareness through education, the dissemination of research¹⁶ and by keeping 'the public periodically informed of its work and activities through appropriate public information materials.'¹⁷ The lack of provision for communication between the peoples of ASEAN and the AICHR has served to further engender calls from civil society that the Commission will be elitist, meaningless, ineffective and lacking credibility in the eyes of the ASEAN people, particularly as a so-called 'milestone' in the professed people oriented ASEAN Community building process.¹⁸

However, the TOR does provide a role for the Secretary-General of ASEAN to bring relevant issues to the attention of the AICHR.¹⁹ The effective use of this provision will depend on the personal characteristics and integrity of the Secretary-General and his or her belief in the Commission. The current Secretary General, Dr Surin Pitsuwan, has long been a supporter of human rights and was the first to suggest, in July 1998, that the Association adopted a flexible interpretation of the principle of non-interference to allow for open and frank discussion of internal affairs of States that had trans-boundary effects, particularly the issue of human rights. He argued that 'ASEAN members perhaps no longer can afford to adopt a non-committal stand and avoid passing judgement on events in member's countries,'²⁰ acknowledging that if ASEAN failed to address ongoing challenges of globalisation and interdependence, the Association's credibility and capacity to promote and protect its interests would erode. Secretary General Surin Pitsuwan has remained an adamant supporter of human rights through the establishment of the AICHR and, by holding this office until 2012, offers some hope that he will bring issues to the attention of the Commission.

In addition, the TOR provides for a mandatory five year review. A report which gives a general overview of the human rights situation in the region based on information drawn from the various thematic reports and activities of the AICHR for the first five years may offer a way for the Commission to report on human rights in the regional generally. This is an OHCHR prescribed minimum requirement of regional human rights mechanisms. Additionally, the five year report may also be valuable to the Commission as a means of illustrating the progress it has made since its establishment and the value it adds to ASEAN.

Despite the substantial monitoring and communication shortcomings of the TOR, they need not remain. The five year review is for the purpose of 'enhancing' the promotion and protection of human rights in ASEAN, which has the potential to enhance the powers and functions of the Commission in line with the 'evolutionary approach' to protection espoused by ASEAN leaders as the foundation on which the AICHR was established.²¹

1.1.2 Capacity Building and Education

The OHCHR minimum requirements stipulate that regional human rights mechanisms should be empowered to carry out capacity building and educative functions. These include providing and contributing to human rights training programmes for various government and non-government sectors, raising public awareness of human rights through publishing and distributing studies on specific subjects, organising conferences, seminars, meetings with relevant government and non-government actors and advising on national and regional policies and legislation to ensure harmonization and compliance with international human rights standards.²² Regional mechanisms should also be mandated to respond to States' requests for advice, adopt general comments that help to clarify the meanings of human rights standards, conduct promotional country visits, encourage ratification of or accession to all core international human rights treaties and cooperate and consult with international, regional, national and local institutions concerned with human rights, including NGOs and the media.²³

A key strength of the TOR is that the Commission's promotional mandate is broadly phrased and empowers the AICHR to undertake much of the capacity building and educational functions required by the OHCHR's minimum characteristics of regional human rights mechanisms. The AICHR is tasked to enhance public awareness of human rights through education, research, thematic studies and dissemination of information.²⁴ It has been suggested that 'education' in this context can and should include human rights training for the police, military, parliamentarians, NGOs, schools and universities, which is an integral aspect of a regional human rights mechanism's functions as articulated by the OHCHR.²⁵ The AICHR can also assist with the important task of clarifying application of international human rights standards in Southeast Asia through its mandate to develop the proposed ASEAN Declaration on Human Rights, to promote human rights in the diverse regional contexts of Southeast Asia and to develop common approaches and positions on human rights matters of interest to ASEAN.²⁶ However, inaugural Indonesian representative and highly reputed human rights advocate, Rafendi Djamin, has commented that insofar as the Commission is tasked to enhance public awareness of human rights, this will *not* extend to raising awareness about human rights violations currently taking place.²⁷ This, unfortunately, is a function of the lack of monitoring powers assigned to the Commission. However, the Commission is mandated to encourage ASEAN States to accede and ratify international human rights instruments and to promote capacity building for the effective implementation of such international and regional human rights instruments,²⁸ which, as will be seen, offers some potential for the AICHR to move towards a monitoring role.

The TOR also includes the power to provide advisory services and technical assistance on human rights to ASEAN Sectoral Bodies on request.²⁹ However, this does not go so far as to empower the Commission to provide technical or advisory services to States. The AICHR therefore cannot respond to States' requests for advice or make recommendations pertaining to the development of policy or legislation for harmonization with international human rights standards – both of which are key

aspects of the OHCHR's minimum characteristics of regional human rights mechanisms.

The TOR does, however, mandate the Commission to consult, 'as may be appropriate', international, regional and national institutions concerned with human rights.³⁰ It also empowers the AICHR to 'engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders.'³¹ At first glance, this may be perceived to be fulfilling one of the OHCHR's minimum requirements by allowing the Commission to engage with civil society groups. However, the Article does not specifically institutionalise a mechanism for regular or consistent dialogue or consultation and further restricts such exchanges with civil society and other stakeholders to organisations that are 'associated with ASEAN...as provided for in Chapter V of the ASEAN Charter.'³² Chapter V, Article 16(1) of the ASEAN Charter specifies that entities associated with ASEAN are ones that 'support the ASEAN Charter, in particular its purposes and principles'³³ in accordance with the 'Guidelines on ASEAN's Relations with Civil Society Organisations.'³⁴ Noel Morada points out the significant drawback of this qualification is that these guidelines force accredited civil society organisations to conform with State-centred ASEAN principles and policies, and exclude groups that may be critical of the Charter's objectives and principles or whose work is perceived as detrimental to ASEAN's interests.³⁵ Further, ASEAN may terminate the affiliation at its own discretion if civil society organisations 'engage in acts inimical to ASEAN', 'act in ways contrary to the aims, objectives, and fundamental principles of ASEAN', or 'are found to have committed gross misconduct which brings disrepute to ASEAN' among other things.³⁶ The likelihood of active human rights organisations in the region being accredited by ASEAN is minimal, and is reflected in the fact that there are no human rights groups listed as accredited civil society organisations. The only relevant group recognised as an 'other stakeholder' is the Working Group for an ASEAN Human Rights Mechanism who have maintained formal, yet painfully slow, dialogue with ASEAN officials since 1998.³⁷

However, the final and potentially useful mandate provision is one which empowers the Commission to perform any other task that may be assigned to it by the ASEAN Foreign Ministers Meeting.³⁸ While this will ultimately depend on the Foreign Ministers, this provision does give the Commission the ability to undertake *any* other function – be it robustly protectionist or merely an extension of its promotional function, but its presence in the Charter does provide an opportunity for expansion in the future.

1.1.3 Composition and Support

According to the OHCHR, requirements concerning composition and support of regional human rights mechanisms are often viewed as crucial to ensure the independence and integrity of the mechanism. They include requiring that members be impartial, independent from government and persons of integrity with recognised competence in the field of human rights.³⁹ They should serve a single non-renewable

term of five years after being nominated and selected through a fair and transparent national process that aims to ensure gender equality and includes close consultation with civil society, NGOs and national human rights institutions (NHRIs).⁴⁰ Member States are also required to provide the mechanism with adequate resources, the authority to use such resources freely in order to properly fulfil its mandate while being supported by its own Secretariat and a competent, impartial and independent administrative staff.⁴¹

The composition and support of the AICHR are some of the major shortcomings of the TOR. In direct contrast to the OHCHR's requirements that Commissioners be independent from government, the TOR establishes that the AICHR is to be intergovernmental in nature and comprised of one representative from each of the ten Member States who are each appointed by and accountable to their respective governments.⁴² In fact, the majority of the inaugural representatives occupy current positions within their respective governments.⁴³ The representatives remain liable to removal at any time at the discretion of their individual appointing governments.⁴⁴ This essentially removes any security of tenure and provides each Member government with a means to regulate its representative's actions on the Commission if he or she proves too vocal. Curiously, despite most being official government representatives, the Commissioners are required to be *impartial* in the carrying out of their duties, yet does not go as far as to define the extent of the impartiality required, or whether it is intended to be equated with independence.⁴⁵ The TOR therefore places a great deal of faith in the calibre of individual Commissioners, which in turn increases the importance of fair and impartial national selection processes.

When appointing Commissioners, Member States are to give 'due consideration' to gender equality, integrity and competence in the field of human rights, yet the TOR only stipulates that Member States should consult with appropriate stakeholders if their internal processes already require them to do so.⁴⁶ In practice, only Indonesia and Thailand have transparent and open recruitment processes and have appointed Commissioners who are known human rights academics and advocates.⁴⁷ The remainder of the Member governments exercise their exclusive rights of appointment and have appointed government officials who may not be as qualified as other potential candidates. The minimum term is three-years, a significantly shorter duration than the five years prescribed by the OHCHR, however, Commissioners may consecutively be reappointed for one more term, extending the possible complete term to six years.⁴⁸ Additionally, according to Article 6.1, decisions are made, characteristic of ASEAN, by consultation and consensus. This has led to criticism by some that the Commission will be reduced to a talking shop that will produce numerous affirmations, but little action, in protecting human rights.⁴⁹

In terms of secretarial and financial support, the TOR does not establish a separate and independent Secretariat but instead specifies that the AICHR will receive secretarial support from the ASEAN Secretariat to ensure its effective performance.⁵⁰ The level of Secretarial support to be allocated to the AICHR is yet to be finalised, however, currently the AICHR consists of 'a table or two' at the ASEAN Secretariat at

Jakarta but there are plans afoot to establish its permanent offices, research centre and staff.⁵¹ However, its seed funding of US\$200,000 (\$20,000 per Member State in accordance with the equal funding basis⁵²) is grossly inadequate. One commentator remarked that it is likely the seed funding is likely to cover only the cost of the Commission's meetings for the year, and is highly unlikely to extend to any substantive programmes or activities.⁵³ By way of comparison, the African Commission on Human and People's Rights has an annual budget of over US\$3 million⁵⁴ and the Inter-American Commission on Human Rights has an annual budget of over US\$8 million.⁵⁵ Granted those Commissions have broader mandates than the AICHR, but the Council of Europe's Commissioner for Human Rights who has solely promotional and advisory functions, has a budget of over US\$3 million and the Council of Europe allocates an additional over US\$2 million for human rights awareness raising and training alone.⁵⁶ Well known academic and alternate member for Thailand on the HLP, Professor Vitit Muntarbhorn, points out that ASEAN has the resources but it 'just needs political will and proper allocation.'⁵⁷

However, the Commission may receive resources from any ASEAN Member State for specific extra-budgetary programmes.⁵⁸ It may also receive voluntary contributions from ASEAN Member States, non-ASEAN Member States and other sources, yet the TOR contains a caveat that funding and resources from non-ASEAN Member States shall be used solely for human rights promotion, capacity building and education activities.⁵⁹ This means that sponsors wishing to see the AICHR develop more progressive protectionist functions are unable to fund it for that very purpose. It remains to be seen what level of voluntary commitment ASEAN States and non-Member States will contribute to the AICHR, however, if the initial seed funding is reflective of ASEAN States' commitment to the Commission, its future prospects do not look optimistic.

1.1.4 Additional Elements

The OHCHR says nothing directly pertaining to purposes and guiding principles of regional mechanisms but these are nonetheless key strengths of the TOR of the AICHR. The Commission's primary purpose is to *promote and protect* human rights and fundamental freedoms of the peoples of ASEAN.⁶⁰ It is also established with the objective of upholding the rights of peoples to live in peace, dignity and prosperity. This in turn contributes to the realisation of the purposes of ASEAN which include stability, harmony, friendship and cooperation among ASEAN States as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the Community building process.⁶¹ HLP Chairman, Sihasak Phuangketkeow, has described the Commission as an important contributing factor to the creation of a people-centred ASEAN Community⁶² – which, as mentioned earlier, is itself indicative of a positive institutional movement towards human and people oriented policies. The Commission is to be guided by adherence to the rule of law, good governance, democracy, constitutional governance as well as respect for fundamental freedoms, the promotion and protection of human rights and social justice.⁶³ The TOR also stipulates that the AICHR shall uphold international human rights standards and respect international human rights principles including universality, indivisibility,

interdependence and interrelatedness of all human rights and fundamental freedoms as well as impartiality, objectivity, non-selectivity, non-discrimination and avoidance of double standards and politicisation.⁶⁴ Additionally, as a clear recognition of an R2P Pillar One obligation, the TOR recognises that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State.⁶⁵ These broad purposes and principles are essential interpretive tools when seeking to maximise the mandate and function provisions. They enable particular Articles to be interpreted in light of the overarching aims and objectives of the AICHR which emphasise the unqualified promotion and protection of human rights.

However, as the overarching rights institution in ASEAN, the TOR also requires the Commission be guided by respect for traditional ASEAN principles such as sovereignty, non-interference in the internal affairs of Member States and the right of Members to lead their national existence free from external interference, subversion and coercion.⁶⁶ Southeast Asian media sources have suggested that the AICHR's lack of protection mechanisms was a means of avoiding having to compromise the founding principles of the regional bloc.⁶⁷ Some civil society groups who view non-interference as incompatible with human rights fear this codification of non-interference will serve as a means by which certain Member States could avoid scrutiny and have called for its removal from the TOR.⁶⁸ However, recent trends towards a more flexible notion of non-interference support the view that commentary and progress on human rights are no longer within the bounds of what constitutes 'interference' and that the norm of non-interference does not represent the substantial impediment to improving human rights that it once did.⁶⁹

The OHCHR also does not touch on the number of meetings or organisational framework within which the mechanism would reside. These two aspects are addressed in the TOR and are worth mentioning briefly. The TOR specifies that the Commission shall meet twice annually, but may hold additional meetings as and when appropriate, or when directed to do so by the Foreign Ministers.⁷⁰ In an informal meeting alongside its inauguration, the AICHR resolved to meet three times in 2010 given the ground work involved with getting up and running.⁷¹ However, in light of the sheer size of the civil, political, social, economic and cultural fields to be covered as well as the varying domestic human rights frameworks in existence in the ten States, the amount of work that can be achieved in only two or three meetings per year is speculative. This dilemma is acutely amplified given the fact that the majority of the Commissioners have other full time postings and thus their roles on the AICHR are essentially 'unpaid job[s]'.⁷²

Another drawback of the TOR is that it establishes the AICHR as wholly subordinate to the ASEAN Foreign Ministers. As such, some news sources have described the Foreign Ministers as being able to 'fully control' the AICHR and may therefore block efforts of the Commission if they are not appropriate within ASEAN politics.⁷³ Specifically, the Foreign Ministers must approve the workplan and proposed budget of the Commission upon recommendation by the Committee of Permanent Representatives⁷⁴ –yet another layer of bureaucratic oversight and opportunity for

State interests to exert themselves to the detriment of the AICHR's work. The Commission reports directly to the ASEAN Foreign Ministers Meeting⁷⁵ and has no purview to report to any other ASEAN Ministerial Level Meeting, Sectoral Body or the ASEAN Summit. The Commission is located within the Political-Security Pillar, but it is widely recognised that human rights spans across all three Pillars of the ASEAN Community (the other two being the Socio-Cultural Community and the Economic Community). While the AICHR is mandated to ensure the 'ultimate alignment' of human rights policies across all ASEAN sectoral bodies,⁷⁶ it is unclear how the Commission will communicate with and report to the Ministers, for example, in the Economic and Socio-Cultural pillars in order to harmonise policies regarding human rights.

In sum, as it currently stands, the TOR creates a deficient regional human rights Commission that contains a broad promotional capacity but lacks basic protection powers to fulfil its mandate effectively. However, in seeking to address the pragmatic utility of the Commission, insight may be drawn from the comment of an ASEAN official that 'ASEAN is operating in the real world and has to be realistic about what it can or cannot do.'⁷⁷ The remainder of this section accepts the real limitations contained in the TOR, but seeks to use the strengths outlined above to aid the creative and liberal interpretation of the TOR provisions. Such interpretation can provide a focus for current advocacy work and practical action in encouraging the Commission to maximise the effectiveness and scope of its current mandate and functions.

STRENGTHS	WEAKNESSES
Monitoring and Communication	
<ul style="list-style-type: none"> • Ability to obtain information from Member States on promotion and protection of human rights • Ability to engage in dialogue with certain civil society groups • Ability of the ASEAN Secretary General to bring relevant issues to the attention of the AICHR • Ability to keep the public periodically informed of its work and activities • Five year review for the purpose of ‘enhancing’ the promotion and protection of human rights in ASEAN 	<ul style="list-style-type: none"> • Lack of monitoring, investigative, evaluative or enforcement powers • Inability to receive complaints, petitions, communications from individuals, groups of individuals or NGOs/CSOs • One-way communication from Commission to public
Education and Capacity Building	
<ul style="list-style-type: none"> • Broad promotional mandate focusing on raising awareness, education, capacity building and implementation of treaty obligations • Develop an ASEAN Human Rights Declaration and promote human rights in the regional context • Ability to engage in dialogue with certain civil society groups as well as international, regional and national human rights entities • Mandate to perform any other task assigned to it by the Foreign Ministers Meeting 	<ul style="list-style-type: none"> • Cannot raise awareness of existing human rights violations • Cannot provide advisory services or technical assistance to States • Limiting of dialogue to accredited civil society organisations and other stakeholders • Lack of institutionalised mechanism for consultation with civil society, international, regional or national human rights institutions and entities or other relevant stakeholders
Composition and Support	
<ul style="list-style-type: none"> • ‘Due consideration’ to gender equality, integrity and human rights competence when selecting Commissioners 	<ul style="list-style-type: none"> • Lack of independence and security of office of Commissioners, three year minimum term and lack of mandatory requirement for transparent national selection process • Consensus based decision making • Failure to ensure adequate funding • Limits on what voluntary contributions from non-ASEAN Member States can be used for • Lack of independent Secretariat and support staff
Additional Elements	
<ul style="list-style-type: none"> • Principle purpose to promote and protect human rights • Guiding principles regulate the relationship between the State and its people and uphold principles of international human rights law • Clear recognition of R2P Pillar One responsibility to promote and protect human rights rests with the State 	<ul style="list-style-type: none"> • Guiding principles include sovereignty, non-interference and freedom from external interference • Only ensures two regular meetings per year • Wholly subordinate to the ASEAN Foreign Ministers

Figure 1. Strengths and Weaknesses of the AICHR Terms of Reference

1.2 Opportunities for Maximisation of the AICHR's Powers and Functions

Upon inauguration of the AICHR, the United Nations High Commissioner for Human Rights, Navi Pillay, stated that in light of the disappointing lack of protection mandate the AICHR should focus on 'tackling shortcomings in national frameworks.'⁷⁸ This is precisely what a liberal interpretation of the AICHR's mandate permits. When read as a whole, the essence of the TOR is the creation of a regional framework to support the improvement of human rights at the national level. This core function of the AICHR can be clearly identified when the mandate and function provisions are organised into two broad categories:⁷⁹

1. Provisions for regional human rights norm building; and
2. Provisions focused on implementation of human rights obligations at the national level.

The opportunities for liberal interpretation of the mandate and function provisions are underpinned by this emphasis on strengthening national capacities through a regional approach. As such, the remainder of this section argues that the present value offered by the Commission lies in its ability to facilitate and oversee the improvement of human rights situations in each of its ten Member States by both contributing to a regional human rights culture, and supporting States to improve their domestic capacities for human rights promotion and protection. This hub-and-spoke model of assistance, whereby the Commission acts as a central coordination 'hub' for individualized programs of assistance (the 'spokes'), is reinforced by both the first and second pillars of R2P; that the 'primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State'⁸⁰ and that the international community, through regional organizations, has a duty to assist States build the requisite capacities to protect their populations from egregious human rights violations. The remainder of this section speaks to how specific TOR provisions can be creatively interpreted to support this 'hub and spoke' model of assistance approach.

However, it is important to note at the outset that this paper does not seek to argue that the AICHR will have the human capacity, financial resources or political will to act as a sole benefactor to each individual member state with regard to a comprehensive program of institutional and normative human rights reform. Rather what is contemplated is the use of a regional framework to aid ASEAN Member States to improve their domestic human rights situation. This may include assisting States to identify strategies and steps they themselves can take, with support of the AICHR, to improve their national promotional and protection capabilities or may include facilitating the formulation of priority programs for capacity-building with strategic partners such as the OHCHR, relevant NGOs, NHRI forums, development funds, donor States or other interested parties; some of whose programs are explored below.

1.2.1 Human Rights Norm and Constituency Building

The TOR's promotional provisions that focus on constructing regional human rights norms are broadly phrased. They include Article 4.2 ('[t]o develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation...') and Article 4.11 ('[t]o develop common approaches and positions on human rights matters of interest to ASEAN'). The current Indonesian AICHR Commissioner, Rafendi Djamin, terms this role as 'standard setting' for the region and lists it as one of the primary functions of the Commission.⁸¹ Read together, these provisions identify prospects for human rights norms to become entrenched in the region's political and cultural arenas and to act as progenitors for a solid ASEAN Human Rights Declaration. Notable human rights advocate in the region and Co-Chair of the Working Group for an ASEAN Human Rights Mechanism, Vitit Muntarbhorn, believes such a Declaration is important to help elevate the region to international standards and argues that the norm-setting role of the AICHR in this regard can be bolstered by the ASEAN Charter, which legitimises human rights as a permeating principle that applies across the entire ASEAN structure.⁸² In this sense, regional norms can guide the improvement of national human rights conditions and practices in line with regional values and beliefs which, in turn, seek to uphold international human rights standards.⁸³

Other key norm promotion provisions are Article 4.1 ('[t]o develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of an ASEAN Community'); Article 4.3 ('[t]o enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information') and Articles 4.12 and 4.13 ('[t]o prepare studies on thematic issues of human rights in ASEAN'). This can extend to the organising of conferences and seminars on specific human rights topics, publishing widely on human rights topics of thematic research and raising awareness about human rights obligations of ASEAN States contained in the regional and international treaties. 'Education' can and should include human rights training for the police, military, parliamentarians, NGOs, schools and universities, which is an integral aspect of a regional human rights mechanism's functions as articulated by the OHCHR.⁸⁴ Such education and training could address what current human rights standards are, why they are important internationally, regionally and locally, what the role of each branch of government has in upholding them. They could inform individuals on what assistance is available to them at the national level, what assistance is available for States in instituting their own human rights education and training programs as well as what broader assistance is available at the regional and international levels. It should be noted that such training on human rights will not involve specific enquiries into specific instances of human rights violations currently existing in ASEAN States. Rather it will involve a positive focus on the identification and promotion of basic human rights as outlined in the Declaration to be drafted by the AICHR in the coming year.

Such training could be done in tandem with human rights education in universities and schools through links with premier institutions.⁸⁵ The ASEAN-ISIS network of

leading strategic studies institutes from across the ASEAN region is an accredited entity 'associated with ASEAN' as required by Ch V of the Charter and Article 4.8. This network has a number of civil society engagement forums and a Track Two diplomacy process that enjoys a close relationship with the ASEAN government process⁸⁶ and would be key partners of the AICHR in its promotional, educational and thematic research oriented activities. Additionally, the inaugural representatives from Thailand and the Philippines, both current or former academics and lecturers at leading universities in their respective countries, could play an integral role in seeking to establish relationships between such institutions and the AICHR to support the Commission's work in human rights promotion, education, training and research on an academic level.

Also relevant to optimising the effectiveness of the Commission's norm and constituency building potential are Articles 4.8 and 4.9 which allow the AICHR to engage with external actors. As noted above, although Article 4.8 limits the Commission's interaction with civil society organisations to those accredited by ASEAN, the individual Commissioners may have a strategic role to play in involving non-accredited civil society organisations in the Commission's work. Both the Indonesian representative, Rafendi Djamin, and the Thai representative, Sriprapha Petcharamesree, have indicated their intention to hold broad civil society based consultations and 'road shows' to raise awareness about the Commission and gather the perspectives of the constituents,⁸⁷ but this has yet to be matched by commissioners from the other States. It is likely that some individual Commissioners will conduct promotional activities and seek to engage domestic constituents at least to some extent on certain issues with which the AICHR is dealing at the time.⁸⁸ Commissioners should embrace this role and seek to engage widely with all interested domestic individuals and groups – both ASEAN accredited and not.

Article 4.9 of the TOR empowers the AICHR to 'consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights.' This provision facilitates the sharing of information and experience to strengthen the effectiveness of the AICHR itself, and in this regard the Commission has already engaged on two region-to-region learning endeavours to the US and Europe in November 2010.⁸⁹ Article 4.9 could be used more creatively in tandem with Article 4.1 ('[t]o develop strategies for the promotion and protection of human rights and fundamental freedoms...') to allow the AICHR to encourage and support the establishment and strengthening of NHRIs in Southeast Asia. The primary role of NHRIs to investigate individual complaints of human rights violations is crucial in light of the AICHR's lack of investigative powers. Therefore, any way in which the AICHR can promote and strengthen the role of NHRIs has the potential to contribute to human rights protection domestically where the AICHR has no coercive powers. Under these provisions, the AICHR could thus consult and cooperate not just with NHRIs, but with regional institutions such as the Asia-Pacific Forum on NHRIs, a network of NHRIs that facilitates the establishment, strengthening and development of NHRIs in the region. Additionally, the ASEAN NHRI Forum, a sub-regional network of the four NHRIs from ASEAN countries (Indonesia, Malaysia, Thailand and the Philippines), would also have an instrumental

role to play in rendering expertise and assistance in the establishment of NHRIs in ASEAN Member States that do not yet have NHRIs. The ASEAN NHRI forum has continually reminded the AICHR of the Commission's complimentary role with NHRIs and has proposed a 'partnership', particularly with respect to monitoring human rights situations, sharing information and encouraging treaty compliance at the national level.⁹⁰ The support and strengthening of NHRIs in the Southeast Asian region has also been a key focus of the OHCHR's work in its Regional Southeast Asian office in the last two years.⁹¹ Support from the AICHR could include modules on the roles, functions and assistance provided by NHRIs in their general educational, training and public information materials. This promotion of NHRIs would aid the current dependence of such institutions on NGOs for their contact with the public, a result of reportedly low levels of public awareness of NHRIs, particularly in remote or rural areas of some countries such as Indonesia.⁹² The focus and rationale of regional norm and standard setting through the AICHR's promotional mandate is to foster improved cooperation for the strengthening of national capacities for human rights promotion and protection, a theme that stands out clearly in the second category of TOR provisions, national level implementation.

1.2.2 Overseeing the Domestic Implementation of Human Rights Obligations and Strengthening National Capacities for Promotion and Protection

The Articles of the TOR that emphasise national implementation of international and regional human rights obligations are also couched in enabling language. Article 4.4 mandates the AICHR to 'promote capacity-building for the *effective implementation* of international human rights treaty obligations undertaken by ASEAN States.'⁹³ Similarly, Article 4.5 empowers the Commission to 'encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments'⁹⁴ and Article 4.6 allows it to 'promote the *full implementation* of ASEAN instruments related to human rights.'⁹⁵ The substance of these provisions taken together elicits a push for the domestic implementation of regional and international human rights treaties and obligations to improve national human rights situations. Substantive and 'effective' implementation of such responsibilities logically extends beyond mere political acclamation and procedural domestic legislative enactment to include the positive provision for structures of assistance and protection mechanisms to aid the effective realisation of the numerous human rights ASEAN States have signed up to that span the civil, political, social, economic and cultural fields.

Unfortunately, the Commission is not empowered to provide technical or advisory services directly to States to assist in policy and practical implementation. However, under its mandate to 'promote *capacity building for the effective implementation* of IHR treaty obligations (Article 4.4),'⁹⁶ and its ability to engage with other international, regional and national institutions concerned with human rights (Article 4.9),⁹⁷ the AICHR could promote national partnerships with the OHCHR, relevant NGOs, NHRI forums, development funds, donor States or other interested parties to facilitate the provision of advisory and technical services to States. For instance, a core function of NHRIs includes 'promoting and ensuring the harmonization of

national legislation, regulations and practices with the international human instruments to which the State is a party, and their effective implementation.⁹⁸ NHRIs could aid the Commission in the overview and appraisal of existing legislation and domestic mechanisms through information sharing, analysis and consultation. By promoting the role of NHRIs in advising governments on appropriate legislative reforms and mechanisms to institute, the AICHR is strengthening the role of NHRIs and further contributing to the general aim of the TOR provisions that seek the domestic implementation of regional and international human rights obligations to improve national human rights situations. However, as only Indonesia, Thailand, the Philippines and Malaysia currently have NHRIs (with a Cambodian commitment to establish one in the near future⁹⁹), alternative partners, such as the OHCHR may be more effective providers of capacity building services.

In this respect, the United Nations' Technical Cooperation Programme in the Field of Human Rights,¹⁰⁰ administered by the OHCHR, offers substantive assistance in areas such as drafting legislative and constitutional reforms, assistance with treaty reporting, ratification of international human rights instruments and electoral assistance. The UN Human Rights Commission and its successor the Human Rights Council has appealed to governments in the Asia-Pacific region to make use 'of the possibility offered by the United Nations to organize, under the programme of advisory services and technical assistance for the promotion and protection of human rights, information and/or training courses at the national level' since at least 1993.¹⁰¹ The work of the AICHR in promoting and facilitating such relationships has the potential to support broader UN programs working in Southeast Asian countries that are aimed at mutually beneficial objectives and outcomes. For instance, the UN Development Assistance Framework in the Philippines (2005-2009) which focused on issues such as macroeconomic stability, broad based and equitable development and basic social services also contributes to the building of human rights norms and policies through its specific programs on good governance conflict prevention, peacebuilding and cooperation strategies.¹⁰²

Encouraging the establishment of national action plans on human rights would also be a key way the AICHR could promote the full and effective implementation of ASEAN Members' human rights obligations. The OHCHR has developed a comprehensive Handbook on National Human Rights Plans of Action that seeks to consider the role of civil society, consultative mechanisms and regional and international partnerships in the development phase, content, structure, implementation, monitoring, evaluation and successor plans¹⁰³ for the strengthening of national capacities for human rights promotion and protection. It is important to recognise that the proposed programs of assistance do not purport to start from scratch. Indonesia, Thailand and the Philippines already have national action plans on human rights in existence.¹⁰⁴ Laos, Cambodia, Thailand and Indonesia all have national action plans on human rights education developed and implemented in conjunction with the Office of the High Commissioner for Human Rights under the World Programme for Human Rights Education.¹⁰⁵

It is also important that the AICHR engage in dialogue and establish partnerships with countries such as Australia and other Western States committed to the promotion of, and capacity building initiative in, human rights. Many Southeast Asian states already have assistance and development programs in place with donor States external to ASEAN which support both civil and political as well as cultural, economic and social rights. For instance, Australia has aid programs in both Cambodia, which focuses on, *inter alia*, strengthening the criminal justice and law enforcement system,¹⁰⁶ and in Laos which focuses on education, rural infrastructure development and poverty reduction.¹⁰⁷ In a substantively different focus to direct aid programs, the Australian government also has a development cooperation partnership with Vietnam that pledges \$91 million over 2009 and 2010 to support infrastructure development, poverty reduction, economic growth and good governance with a specific focus on human rights through the Vietnam-Australia Human Rights Technical Cooperation Program. The program aims to build institutional capacity to assist in the further development of institutional capacity for human rights promotion, training, education as well as mechanisms for protection and the strengthening government processes for transparency and accountability.¹⁰⁸ This model of cooperative partnership focusing on strengthening indigenous institutional capacity has been described as ‘exemplifying a ... model partnership’ in contrast to traditional bilateral aid relationships.¹⁰⁹ Australia has similar sector specific partnership strategies with Indonesia¹¹⁰ and the Philippines.¹¹¹ These types of partnerships are particularly important in light of the limited resources ASEAN has allocated to the Commission and also Article 8.6 of the TOR, which limits funding from sources external to ASEAN solely to ‘human rights promotion, capacity building and education.’

In addition to facilitating programs and partnerships for strengthening national capacities for human rights promotion and protection, the AICHR also has the potential to play an oversight role in the effectiveness of such efforts. In accordance with Article 4.10, the AICHR can ‘obtain information from ASEAN Member States on the promotion and protection of human rights.’ Information provided under this provision can and should include information regarding steps each State has taken with regards to improving human rights promotion and protection nationally. While ASEAN States are adamant that they would not submit themselves to a duplication of the Human Rights Council’s Universal Periodic Review process¹¹² and the TOR provides no power to require States to report, the power to ‘obtain’ rather than merely ‘request’ information suggests a stronger and perhaps coercive power. Article 4.10, coupled with Articles 4.4 to 4.6 which emphasise the ‘effective’ and ‘full implementation’ of human rights obligations, may allow the AICHR to take stock of what domestic legislation and mechanisms ASEAN States have in place *vis-a-vis* their human rights obligations and essentially ‘oversee’, or ‘monitor’, the implementation of international human rights responsibilities domestically. In this respect, Rafendi Djamin has indicated that monitoring will serve as the key protection element despite the fact that it ‘has not yet been made explicit in the TOR.’¹¹³ This is supported by a sentiment expressed by numerous ASEAN commentators that the Commission is not precluded from doing what the TOR does not prohibit.¹¹⁴ These factors support an interpretation of the TOR that allows provisions to be read

together which can provides a substantive basis for a power that enables the Commission to oversee the implementation of any proposed national programmes of assistance or efforts at strengthening national capacities. In addition, this form of monitoring of the implementation of obligations may be the prelude to the Commission's expansion of monitoring powers to specific human rights situations of concern in the region.

1.2.2.1. Monitoring Specific Human Rights Situations

The ability to discuss and address specific human rights situations of concern is a key monitoring function characteristic of strong regional human rights mechanisms and a standard against which many in Southeast Asia will judge the Commission's relevance and effectiveness. As the AICHR was never intended to be a finger pointing body that aims to name and shame its Members, it remains unlikely that the Commission will be able to discuss specific human rights violations openly as items on the formal agenda or go as far as to produce country assessments or reports.¹¹⁵ However, the TOR does offer creative opportunities to circumvent the likely constraints of the AICHR in discussing specific human rights violations.

The most promising opening, suggested by Indonesian representative Rafendi Djamin is the potential for the Commission to discuss and report to the Foreign Ministers on specific human rights situations where they are raised within an informal or thematic area of discussion.¹¹⁶ The AICHR plans to research, discuss and report to the Foreign Ministers on at least two thematic human rights areas each year.¹¹⁷ The two thematic topics for 2010 are corporate social responsibility and migration.¹¹⁸ In order for the AICHR to discuss and report on these issues in a thematic context, consideration of the specific human rights situations in ASEAN States in the thematic area will need to be addressed. This may in turn lead to the suggestion of steps that should be taken to remedy and improve ASEAN's position. Thematic reports of this nature offer an informal avenue through which the Commission can gather information and highlight issues of specific concern in a less sensitive and accusatory way that focuses on the issue from a regional, rather than situational and nationally specific level.

Similarly, specific issues of human rights concern may be addressed if they are included in informal consultations, thematic or otherwise, between the Commission and entities with whom it is empowered to hold dialogues. The TOR provides that the AICHR may engage in dialogue and consultation with ASEAN sectoral bodies, international, regional and national human rights institutions as well as with civil society organisations and other stakeholders which are 'associated with ASEAN.'¹¹⁹ The Commission's meetings are closed proceedings; however, informal meetings, which have become an institutionalised feature of ASEAN diplomatic relations, may provide a degree of leeway for AICHR action which may set the wheels turning for further engagement. Such informal avenues for addressing sensitive issues are not uncommon at the UN level where, for instance, sponsors of Security Council initiatives often find creative ways to make issues less sensitive such as including them in informal briefings under thematic issues and Working Groups. For instance,

the human rights situation in Zimbabwe was initially discussed at the Security Council under 'other matters'¹²⁰ and later under the thematic topic of 'Peace and Security in Africa.'¹²¹ Political repression in Myanmar was initially addressed through closed, informal briefings¹²² and the human rights dimension of the Tamil civil war in Sri Lanka was the epitome of all informality with a briefing held in a basement room of the Secretariat.¹²³ Listing an issue under a thematic, rather than country name, appeases those opposed to formal action, naming and shaming or those who are sensitive to interference in the internal affairs of Member State. Special Representative to the UN Secretary General on the Responsibility to Protect Edward Luck has remarked that the exploration of thematic issues (by the UN Security Council) has provided the UN's larger membership with a sort of normative compass to guide their exploration of new substantive territory as well as played a role in norm and standard setting.¹²⁴ The AICHR and its thematic agenda provide an opportunity to do the same for ASEAN by allowing the monitoring of specific issues through thematic and informal lens to facilitate the building of human rights norms from a regional perspective. Moreover, the presence of activists such as Sriprapha Petcharamesree and Rafendi Djamin on the Commission provide hope that the reports will not be resigned to being merely 'window dressing' for ASEAN that ignores present human rights situations of concern,¹²⁵ but will come from adept and experienced Commissioners and be dexterously utilised to protect human rights in the region.

Furthermore, individual Commissioners have the potential to make themselves available to individuals and non-accredited civil society groups for the purposes of receiving complaints or discussing human rights concerns. Commissioner for Indonesia, Rafendi Djamin suggested that, if a victim came to him to demand justice, he could make a recommendation to his government as an individual Commissioner.¹²⁶ This presents an opportunity for victims and individuals in countries where no NHRI exists or where the NHRI will not or has not dealt adequately with a complaint. Yet, it must be remembered that as Commissioners are liable to removal at the government's discretion and so such opportunities will ultimately depend on the calibre of the individual Commissioner and their relationship with his or her respective government. Commissioners in some countries such as Thailand and Indonesia will be more accessible than others. For instance, Rafendi Djamin is currently organising a consultation where he can speak with NGOs, academics, the government and individuals in relevant sectors who are concerned with human rights and the Commission. Similarly, Thai Commissioner Sriprapha Petcharamesree met civil society groups at the Foreign Ministry in February 2010 to inform them of her plan to organise 'road shows' throughout Thailand to inform the public of the priorities of the AICHR and also provide an opportunity to hear civil society's concerns.¹²⁷ In sum, there will be channels of communication available between individuals, civil society and the AICHR but they will not be formal, institutionalised, ASEAN ones.

A further way in which the Commission may discuss and address issues of specific human rights concern is through issuing statements to respond to calls from civil society groups about human rights situations and violations. Southeast Asian expert,

Noel Morada, argues that although the Commission is not mandated to receive petitions or complaints from civil society groups or individuals, if such complaints are officially filed with the Commission and repeated appeals are made through the media, the Commission's refusal to respond to such calls would bring incredible pressure and negative media attention to bear on the AICHR and on ASEAN.¹²⁸ Similar suggestions were made in an OHCHR expert dialogue on regional human rights mechanisms in Southeast Asia in May 2009, where a 'kind of a *fait accompli*' upon receipt of the facts of human rights violations could force the AICHR to take some kind of action.¹²⁹

As the AICHR is empowered by its TOR to issue 'appropriate public information materials' to keep the public periodically informed of its work and activities,¹³⁰ the AICHR could produce a statement on a particular matter, whether or not it calls on parties to take certain actions, which would draw attention to the issue. This may, in turn, lead to intensified diplomatic and political pressure on ASEAN officials to resolve the issue. Noel Morada notes that ASEAN has a history of responding to pressure from the international community and civil society groups. Even if that response is not dramatic or immediately effective, he points out that ASEAN feels the need to be seen as credible and responsive and that it needs to remain relevant.¹³¹ The Commission's response to calls from civil society and individuals will be a crucial benchmark against which such groups in the region will measure the effectiveness of the AICHR and of ASEAN's promise to create a 'people-oriented' organisation. ASEAN will be particularly interested in proving the AICHR's value to counter the widespread criticism attending its birth that the Commission is 'not just weak and toothless...but almost universally decried as defective.'¹³² However, Morada contends that even if the AICHR seeks to avoid internal tension and is unable to act collectively to produce statements on particular human rights issues, individual commissioners will use their positions to speak out. He posits that the reputation of the individual countries is far more important than the collective reputation of the Commission and where action is reflected at the national level through individual representatives, 'the Commission will be a function of domestic politics.'¹³³

1.3 Realistic Timeframe and Expectations

It must be acknowledged that there is a culture within Southeast Asia of governments proclaiming their intention to commit themselves to improving human rights standards and accountability for perpetrators, but few of these promises are fulfilled.¹³⁴ The success of this proposed model whereby the AICHR has the ability to oversee and support the strengthening of national capacities in individual Member States will ultimately and inevitably depend on the adroitness and calibre of the individual commissioners to push the Commission to work to its full extent under the present TOR and the individual government's willingness to cooperate with the AICHR.

It is probable that the building of regional and domestic human rights norms to the extent that they permeate decision making and are elevated to prime consideration

in the national policy context is a development that, given the history and continuing internal challenges faced by States in the region,¹³⁵ will take some time. However, even if the prior pace at which ASEAN developments in the human rights field have been made dictates slow progress for the AICHR, it must immediately be recognised that it is even more counterproductive to be lax on civil society and academic pressure to force the AICHR to fulfil what it is mandated to do, in the most liberal way interpreted. If the development since the Foreign Minister's statement in 1993 pledging to establish a human rights body have demonstrated anything, it is precisely that civil society, academic, international and diplomatic pressure has brought ASEAN to where it is today to endow the AICHR with the potential to contribute to and support the improvement of national human rights situations.

Moreover, the notable developments in human rights practices of ASEAN States in recent years demonstrate the Commission is not working against the tide. For instance, more ASEAN countries are participating actively at the international level in the human rights arena by competing to gain membership on the UN Human Rights Council and have on some occasions announced drastic human rights policy changes in order to better their chances of election. Indonesia and the Philippines served on the Council from 2006 to 2010, Malaysia and Thailand are current members with Thailand, having made comprehensive pledges to 'safeguard human rights and freedom and liberty' being elected President in 2010.¹³⁶

Further, there have been an increasing number of ratifications and accessions to key international human rights instruments by ASEAN States in recent years. All ASEAN States are now parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and Cambodia, Laos, Vietnam, Philippines, Thailand and Indonesia are all parties to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESCR).¹³⁷ Additionally, the Thai cabinet has most recently given its consent to ratify the Convention Against Torture (CAT).¹³⁸

Indonesia, Thailand, Malaysia and the Philippines all have "A" Status accredited NHRIs that are independent from government and possess broad mandates to investigate human rights violations.¹³⁹ Another may soon be established in Cambodia after PM Hun Sen declared his commitment to establishing a Paris Principles compliant institution in 2006 and supported a considerably open and collaborative joint government-civil society process to draft the enabling law.¹⁴⁰ The four existing NHRIs have also formed the ASEAN NHRI Forum and in 2007 signed a Declaration of Cooperation to enhance coordination and collaboration the promotion and protection of human rights in their individual domestic situations and regionally.¹⁴¹

Human rights bodies at the national level that fall short of the Paris Principles minimum guidelines for independence and a broad investigative mandate are still being set up in ASEAN States. The AICHR is empowered to engage with such bodies 'concerned with the promotion and protection of human rights under Article 4.9. For instance, at present Cambodia has a National Assembly and Senate Human Rights

Committees, Laos a Human Rights Council and Myanmar a Human Rights Group that exists somewhat opaquely within the Department of Foreign Affairs. They may not be openly assessed as credible or effective,¹⁴² but their presence provides an institutional capacity which the AICHR and other human rights bodies can cooperate to achieve the complimentary goals.

Moreover, however impenetrable some regimes in Southeast Asia appear to be, there is a common consensus that most States remain particularly sensitive to criticism of their human rights practices and have responded, however slightly, to international and regional pressure in order to ensure they are 'seen' to be doing the right thing.¹⁴³ Myanmar's military junta's release of Aung San Su Kyi, the passing of new (albeit oppressive) election laws and the historic holding of proclaimed multi-party elections in November 2010 have been observed to be reactions to heavy handed international pressure against widespread political oppression by the regime.¹⁴⁴ By the same token, the Malaysian government went to extraordinary lengths to push through two changes to the Suhakam National Human Rights Commission law in order to avoid having its status downgraded from an "A" to "B" by the International Coordinating Committee of NHRIS for the Promotion and Protection of Human Rights. Such a downgrade would have limited the Commission's privileges before the UN Human Rights Council and served a blow to the government's credibility.

Further, a number of national constitutions, such as Thailand's 'People's Constitution' adopted in 1997 and strengthened in 2007, and the Philippine Constitution, have explicitly acknowledged their international human rights foundations.¹⁴⁵ Similarly, ASEAN has made numerous regional declarations that reflect international human rights standards including the 2004 ASEAN Declaration against Trafficking in Persons particularly Women and Children, the 2004 Declaration on the Elimination of Violence against Women in ASEAN, and the 2007 Declaration on the Protection of the Rights of Migrant Workers. All of these factors are indicative of the increasing expression human security oriented concerns for human wellbeing are finding in regional discussions and policy behaviour.¹⁴⁶

The value added by the Commission under the proposed hub-and-spoke model is not necessarily the imposition of yet another overlapping program of assistance but rather, with a focus on strengthening overall national capacities for human rights promotion and protection, the AICHR can help evaluate, coordinate and facilitate existing programs, identify gaps and drawbacks in existing network of programs and design new partnership strategies to address problematic issues. Although the Commission has no direct powers of offer advisory and technical assistance, it has the opportunity to act as a coordinating body to take stock essentially of what existing and overlapping programs of assistance and aid are in place and address gaps by facilitating individual State cooperation with external donor States willing to engage in cooperative partnerships. While it will require substantial funding and commitment on the part of the Commissioners and Southeast Asian governments, the AICHR offers a way to re-energise existing overlapping commitments as well as providing a mechanism for oversight, encouragement and support to strengthen

national capacities for human rights promotion and protection on the ground, where it matters.



2.0 The AICHR's Role in Implementing R2P in Southeast Asia

ASEAN does not have an official position on R2P and has made no statement which suggests consideration has been afforded to the ways in which the Association might aid the implementation of R2P in Southeast Asia. However, this is not to say that ASEAN States are unaware of, or unengaged with, the principle. The Eminent Persons Group (EPG) tasked in 2005 with providing recommendations and directions for the ASEAN Charter, included among its members former Philippines President, Fidel Ramos, who was also a member of the International Commission on Intervention and State Sovereignty (ICISS) which produced the seminal report 'The Responsibility to Protect' in 2001. The 2006 Report of the EPG on the ASEAN Charter made explicit reference to R2P crimes when it called upon ASEAN to '*reaffirm and codify* the fundamental principles as already contained in ASEAN's various declarations, agreements, concords and treaties.'¹⁴⁷ It specifically sought the reaffirmation of the '[r]ejection of acts of genocide, ethnic cleansing, torture, the use of rape as an instrument of war, and discrimination based on gender, race, religion or ethnicity.'¹⁴⁸ Although such an explicit principle was not adopted into the 2007 ASEAN Charter, the EPG composition and report does suggest a level of awareness of R2P among Southeast Asian political elites.

More substantively, in recent years ASEAN has made numerous commitments that resonate with the three pillars of R2P. The TOR of the AICHR acknowledges that the '*primary responsibility* to promote and protect human rights and fundamental freedoms rests with each Member State.'¹⁴⁹ The ASEAN Political-Security Blueprint highlights the importance of a '*shared responsibility*' to a comprehensive concept of security that goes beyond traditional security and takes into account non-traditional security concerns that includes the needs and rights of peoples.¹⁵⁰ The ASEAN Political and Security Community (APSC) also acknowledges the need to take action to ensure an '*effective and timely response* to urgent issues or crisis situations affecting ASEAN'¹⁵¹ which would clearly include R2P crimes.

Given these existing obligations on the part of ASEAN, it is the assessment of this report that the AICHR provides an opportunity for the Association to work towards fulfilling these commitments through implementing R2P. It can do so in three ways:

1. Explicitly including R2P in its activities;
2. Promoting sovereignty as responsibility; and
3. Assisting states build the capacity to promote and protect human rights therefore preventing a structural precondition of R2P crimes.

2.1 Explicitly Including R2P in the AICHR's Activities

The immediate prospects for including R2P explicitly on the AICHR agenda are minimal. This is predominantly due to a lack of regional awareness and critical understanding of R2P and its allied relationship with sovereignty and as a consequence, a continuing uncertainty and political sensitivity to R2P. However, the complementarity between the purpose and objectives of the AICHR and R2P provide many avenues for the eventual introduction of R2P into the Commission's work.

Opportunities include introducing R2P modules into human rights education and training for State apparatuses, the media and educational curriculums; using R2P as a topic for thematic discussions and reports to the ASEAN Foreign Ministers; and issuing factsheets and information for the public that explain what R2P is, what responsibilities a State has towards its own population and populations in other countries.¹⁵² When obtaining information from Member States on the promotion and protection of human rights, the Commission could also request specific information on what actions States are taking with regards to implementing R2P, encourage Member governments to identify strategies and steps to improve domestic implementation and provide information on available assistance or models to follow.¹⁵³ The Commission could also encourage Member States to build the capacity to develop national action plans on R2P or national action plans on human rights that include specific R2P strategies. For instance, the harmonising of legislation for the protection of minorities and the elimination of political, social and economic discrimination have been identified as important measures designed to address significant structural causes of R2P crimes.¹⁵⁴ It may also be possible for the AICHR to create a sub-committee on R2P tasked with raising awareness through education, training and research, which would in turn encourage the domestic policy implementation of R2P.

As a function of the R2P sub-committee or as a separate subsidiary body, the AICHR could also develop an early warning mechanism for mass human rights violations and conflict.¹⁵⁵ While early warning is not a function explicitly delineated in the TOR, it is open to the Commission to 'develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community.'¹⁵⁶ One of the three characteristics of the ASEAN Political-Security Community—an integral blueprint for the building of the ASEAN Community—is a 'shared responsibility for comprehensive security' that includes a significant emphasis on conflict prevention and a specific objective of establishing an ASEAN early warning system to prevent the occurrence and escalation of conflicts.¹⁵⁷ While this objective of the APSC is expressed, characteristic of traditional ASEAN norms, within the context of preventing conflict *between* ASEAN Member States, the applicability of early warning to mass human rights violations and conflict occurring *within* ASEAN Member States may find its introduction through ASEAN's nascent regional disaster management framework.

Despite being primarily geared towards natural disasters, the touchstone of the Association's disaster management, the ASEAN Agreement on Disaster Management

and Emergency Response (AADMER),¹⁵⁸ incorporates a broad definition of ‘disaster’ which can certainly include R2P crimes as a ‘serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses.’¹⁵⁹ Like R2P, the AADMER focuses on prioritising prevention and mitigation,¹⁶⁰ and legally obliges Member States to develop and implement national plans which include strategies to identify disaster risks, develop monitoring, assessment and early warning mechanisms as well as standby arrangements for disaster relief and emergency response.¹⁶¹ The AADMER also provides for the establishment of an ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre), which was officially launched in February 2011 and is based in Jakarta. The AHA Centre will facilitate operational cooperation and coordination of activities under the agreement, collect information from each Member State and disseminate data risk level analyses for early warning as well as establish, maintain and periodically review regional standby arrangements for disaster relief and emergency responses.¹⁶² There exists a real potential for the AICHR to coordinate with the ASEAN Committee for Disaster Management (ACDM) and the AHA Centre to achieve the key goals of the AADMER aimed at the prevention of humanitarian disasters constituted by mass human rights violations and atrocities. The proposed AICHR human rights database offers a means through which the Commission can aid the AHA Centre in the collection and analysis of information and existing situations to serve as an early warning mechanism, to call attention to situations with the potential to decline into mass conflict disasters and to advise the AHA Centre in identifying how best to utilise its mandate to facilitate the coordination of preventative and emergency responses.

It is acknowledged that natural disasters and mass atrocities are discrete and separate fields requiring distinctive analysis and responses. However, given the broad understanding of ‘disaster’ in the AADMER, this framework provides the institutional basis and potential for the introduction of mass atrocity early warning in the region. Such regional and sub-regional early warning capacities have been highlighted by the UN Secretary General in his 2010 report on early warning and R2P¹⁶³ as crucial information sharing and assessment tools in a regional-global partnership aimed at preventing mass atrocities.¹⁶⁴ Further, the General Assembly interactive dialogue on the early warning and R2P in July 2010 recognised the importance of regional early warning arrangements and supported the holding of a 2011 dialogue on the role regional and sub-regional arrangements can play in the prevention of R2P crimes.¹⁶⁵ Advocacy efforts should be directed at encouraging ASEAN to acknowledge the importance of early warning of mass human rights violations and the potential for the AICHR to feed into the AADMER framework in this regard. Such initiatives could be directed towards including atrocity early warning in the formulation of the ASEAN-UN Strategic Plan of Cooperation on Disaster Management (2011-2015), a new plan pledged by ASEAN and the UN at the 17th ASEAN Summit held in October 2010.¹⁶⁶

Despite these opportunities to introduce R2P into the Commission’s work and notwithstanding repeated acknowledgements from ASEAN States of the importance of protecting vulnerable populations from genocide and mass atrocity crimes,¹⁶⁷ R2P

remains a politically sensitive ‘buzz word’ for some States in the region. The pervasive nature of implementing R2P across all national policy areas has engendered ambiguity and debate surrounding precisely *how* to do so effectively. This, compounded with a generally opaque understanding of R2P’s relationship to the traditional norm of non-interference, suggests some ASEAN States which have tentatively accepted R2P in principle would resist overt attempts to introduce it explicitly onto either the national or regional agendas. Nonetheless, there exists the potential for R2P to eventually be explicitly taken up by the AICHR. The extent to which it can do so will depend on the Commissioners being politically conscious of R2P, believing in its importance and adroit in seeking its incorporation into the AICHR’s work. Civil Society, Track Two diplomatic forums and academic institutions in the region will be crucial in raising the profile of R2P, bringing it to the attention of the individual Commissioners and advocating for it to be included in the AICHR’s agenda and activities.

2.2 Promoting Sovereignty as Responsibility

The second way in which the Commission could aid the implementation of R2P is by promoting sovereignty as responsibility—the notion that state sovereignty involves not only rights but responsibilities for the well-being of a State’s people—which is a central tenet of R2P.¹⁶⁸ The AICHR can promote sovereignty as responsibility in two ways: either implicitly through its existence and activities; or explicitly through its educational, research and reporting functions. By its existence and mandated functions, the Commission is already implicitly promoting sovereignty as responsibility. As discussed in the first report of this two part series, *The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Responsibility to Protect: Development and Potential*, the establishment of the AICHR aids an extension of the regional human rights discourse. While the ASEAN Charter introduced the relationship between a State and its people as a legitimate feature of the regional normative framework, the AICHR provides the institutional mechanism for the development of the standards that govern the State’s treatment of its own people. Such normative progress is indicative of recognition that each sovereign State has a responsibility towards its people to promote and protect their human rights; or in other words, that *sovereignty entails responsibility*.

The Commission also has the opportunity to explicitly promote sovereignty as responsibility through its human rights education, research, information dissemination, training and reporting functions. Given that the TOR for the AICHR accepts that the ‘primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State’¹⁶⁹ to promote sovereignty as entailing responsibilities towards populations should not be controversial. However, sovereignty, as it is championed in Southeast Asia must be understood against the historical backdrop of post-1945 decolonisation, national liberation, Cold War ideologically fuelled internal instability and subversive regional politics that brought it to its pinnacle position within ASEAN. ASEAN’s strident defence of Westphalian sovereignty as a political tool to protect Member States’ independence was crucial for maintaining political stability, regime security and to ensure freedom ‘from

external interference in any form or manifestation.’¹⁷⁰ Given the continuing existence of internal instability, conflict and repression to an extent in most ASEAN States, it is possible that efforts directed towards altering an understanding of sovereignty that has long protected illiberal regimes from criticism for the treatment of their populations will be met with hostility. Notwithstanding official hesitations, civil society groups, Track Two forums, academic institutions and domestic populations should encourage the AICHR to embrace sovereignty as entailing responsibilities towards populations, particularly the protection of their human rights, and advocate for the specific inclusion of this premise in the Commission’s activities.

2.3 Assisting States Build the Capacity to Promote and Protect Human Rights Therefore Preventing a Structural Precondition of R2P Crimes

The third way in which the AICHR can aid the implementation of R2P holds the most promise. It involves the Commission operating as a ‘hub-and-spoke’ model to facilitate the building and strengthening of national capacities for human rights promotion and protection with a view to mitigating mass human rights violations—a structural precondition of R2P crimes.¹⁷¹ In essence, a hub-and-spoke model would see the AICHR act a central agency, or hub, which would coordinate with various domestic programs, some of which have already been touched on, in order to facilitate a specialised programme of assistance to each individual Member State with the aim of strengthening the national capacity for human rights promotion and protection. The strategic value of the proposed hub-and-spoke approach lies in its ability to allow the Commission to assist certain States who already have national action plans or legislation on human rights in place, such as Indonesia, the Philippines and Thailand, to progress their human rights promotion and protection further while at the same time assisting the remaining States with slower and more fundamental steps towards human rights promotion and protection. This offers a unique opportunity to overcome lowest common denominator outcomes—an oft cited drawback of ASEAN’s consensus based decision making.

The focus on building State capacity goes to the heart of Pillar One of R2P and reaffirms the acknowledgement in the Commission’s TOR that the ‘primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State.’¹⁷² This approach also locates the role of the AICHR firmly within Pillar Two—international capacity building and assistance—and through its focus on assistance has the potential to encourage local actors and governments to take a stake in championing human rights, localising international human rights norms and creating national human rights constituencies. National human rights constituencies can encourage respect for human rights at the local level and prevent the mobilisation and escalation of violence and human rights violations that may lead to R2P crimes.

In order to construct specialised assistance programmes for individual Member States, the AICHR could undertake a needs assessment mission to determine the need and scope of the assistance required, identify target sectors for education,

training and technical services, take stock of existing legislative and institutional opportunities for human rights promotion and protection as well as consult with relevant members of government, civil society, UN officials and academia. The Commission could play a role in encouraging the establishment and strengthening of NHRIs by drawing upon and supporting the extensive work of the Asia-Pacific Forum of National Human Rights Institutions (APF) in this field.¹⁷³ The Commission could also utilise the OHCHR's Technical Cooperation Programme in the Field of Human Rights to facilitate the building and strengthening of national institutions capable of promoting and protecting human rights and democracy as well as the formulation of national plans of action on human rights. The OHCHR's provision of expert advisory services, technical training courses, workshops, seminars and funding grants would prove useful where the Commission is not mandated to provide such advisory, technical or financial services to Member States. The Commission also has the potential to strengthen national capacities through encouraging state-to-state and region-to-regional staff exchanges, cooperative partnerships and transfers of best practices and lessons learned.

The success of a hub-and-spoke model of assistance in any Member State will depend on the willingness of ASEAN governments to work towards increased human rights promotion and protection, the physical and financial capabilities to implement proposed strategies and the receptivity to the proposed assistance from other institutions such as civil society, academia, the media and the judicial system. However, an increasing trend which suggests that no ASEAN State wants to be seen as lagging behind in the quest for human rights, bodes well for the notion that progress in some States encourages progress in others. Senior research fellows at the Australian Centre for Human Rights, for example, believe that the existence of a NHRI in a powerful nation is a factor that has inspired other nations within that region to emulate them in the creation of NHRIs. For instance, when the Malaysian government established SUHAKAM (Human Rights Commission of Malaysia) in 2002 it did so with an eye on the recent or imminent establishment of commissions in Thailand, the Philippines and Indonesia. Particularly human rights establishments that have an institutional presence, such as an NHRI, are viewed as desirable for their ability to maintain relationships with the UN (through their right of participation in the UN Human Rights Council¹⁷⁴) and its regional neighbours (through NHRI networks such as the APF). This, in turn, confirms the State's status as an equally progressive state also in possession of an institution which can work collaboratively within similar regional institutions to achieve joint goals.¹⁷⁵ By the same token, human rights institutions established in response to a growing regional trend towards the need for national governments to be seen to be addressing human rights such as the National Human Rights Committee in Cambodia and the Human Rights Desk at the Myanmar Ministry of Foreign Affairs—however ineffective and lacking credibility they may be¹⁷⁶—provide an institutional capacity with which to build strategic partnerships as well as a number of staff members whose *prima facie* occupational objectives coincide with the AICHR's mandate to promote and protect human rights.

As such there exists significant opportunities for the AICHR to aid the implementation of R2P through facilitating a hub-and-spoke model of assistance aimed at the building and strengthening of national capacities for human rights promotion and protection with a view to mitigating mass human rights violations. In doing so, the Commission is also actively contributing to preventing a structural precondition of R2P crimes and fulfilling a classic Pillar Two R2P function in coordinating international assistance for national capacity building. While the prospects for explicitly including R2P or sovereignty as responsibility in the Commission's activities remain slightly too optimistic at current, future potential does exist for the Commission to move towards a more defined role in implementing R2P in the Southeast Asian region.



3.0 Conclusion and Recommendations

Mass atrocity crimes are preventable, and progress toward doing so begins with political will and leadership. The Southeast Asian region has seen numerous mass atrocities in past decades, including genocide, war crimes, ethnic cleansing and crimes against humanity, and continues to face diverse human rights challenges. The Responsibility to Protect is the principle that States around the world have unanimously agreed upon to prevent future mass atrocities, and it is the responsibility of Southeast Asian States, regional organisations such as ASEAN, and the international community as a whole, to prevent these crimes from reoccurring in the future.

In 2009, ASEAN inaugurated its long-awaited human rights body, the ASEAN Intergovernmental Commission on Human Rights (AICHR), which many hoped would herald a new era in the ASEAN community-building process and a progressive change for the promotion and protection of human rights. This report is the second in a two-part series that seeks to examine the development of, and prospects for, the AICHR to make a meaningful contribution to the advancement of human rights and the prevention of R2P crimes. As discussed in the first report, *The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Responsibility to Protect: Development and Potential*, regional and sub-regional arrangements such as ASEAN and the AICHR have a crucial role to play in translating R2P from word to deeds. This report seeks to build on the first, and places significance on the Commission's broad-ranging powers to promote human rights and to facilitate the effective domestic implementation of international human rights obligations. Notwithstanding its deficiencies, this mandate provides opportunities for regional human rights norm building and domestic internalisation, the strengthening of national capacities for human rights promotion and protection, and the potential to move towards monitoring of human rights issues of concern. In particular, this report has proposed a 'hub-and-spoke' model whereby the AICHR coordinates the strengthening of each ASEAN State's national capacity for human rights promotion and protection by facilitating assistance programs through a variety of stakeholders and service providers. The strategic value of the proposed hub-and-spoke approach lies in its ability to allow the Commission to assist State specific and appropriately graduated progress on human rights, a unique way to overcome lowest common denominator outcomes characteristic of consensus based decision making, and a pragmatic approach to human rights progress in the region. The report concludes, with cautious optimism, that with sustained encouragement and commitment the AICHR can play a more progressive role in advancing human rights and preventing R2P crimes in Southeast Asia than initial assessments of its potential suggested.

The following **recommendations** are the result of the foregoing analysis and are made for ASEAN governments, the AICHR's Commissioners, civil society organisations and stakeholders, as well as for those undertaking further research:

Recommendations for ASEAN States:

Individual State commitments to preventing mass atrocities. Each State has a role to play in the prevention of mass atrocities. States should support the UN's measures in this area, but also devise their own, national strategies and policies for prevention. This may, for example, take the form of identifying and taking steps to address both structural and direct causes of, and escalation triggers for, mass atrocities¹⁷⁷ – one of which being the systematic violation of human rights. Each State in the region should also seek regional consensus and effective mechanisms for prevention, most appropriately exercised through support for the AICHR's mandate and work.

Regional cooperation and support for the AICHR. The Commission has the opportunity to develop into a major institution for the prevention of mass atrocities and the protection of human rights in the region. Each State within ASEAN should therefore seek to increase their support for the AICHR, including through strengthening domestic policy support for the Commission's activities, by providing prompt and thorough reports and information to the AICHR as requested and by being receptive to AICHR initiatives to assist States strengthen national capacities for promotion and protection. ASEAN States should also support their individual Commissioners to engage in wide community discussions not limited to ASEAN accredited civil society organisations, remove State appointed government officials as AICHR representatives and adopt a transparent and consultative appointment process to select appropriate Commissioners qualified and experienced in the human rights field.

Increased financial contribution and budgetary independence. The Commission's current budget is inadequate to uphold its mandate. Each State should substantially increase its financial contribution to the AICHR. States should also support the granting, at the five year review stage if not earlier, of work plan and budgetary independence to the Commission.

Recommendations for the AICHR:

Region-to-region learning. The Commission, as an institution for human rights promotion and protection at a regional level, provides an opportunity for region-to-region learning. The Commission has already engaged on two region-to-region learning endeavours and the Commissioners should continue to endeavour to develop, learn from and pass on best practices and lessons learned by proactively seeking engagement with other regional bodies.

Localising human rights norms. Regional human rights bodies such as the AICHR are best placed to play a role in localising international human rights norms. The

Commission should focus on adapting these norms to reflect regional values and regional circumstances, while still promoting international human rights standards.

Complement and build upon existing human rights structures and mechanisms. The AICHR should capitalise on existing structures, organisations and institutions within the region to enhance their work. By collaborating with these existing bodies, such as for instance, cooperating with the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management on early warning and rapid reaction to mass atrocities, the Commission stands to benefit from shared information and reporting as well as increased capacity to promote human rights in the region.

Cooperate with existing national human rights institutions. The AICHR should work to strengthen the capacity of existing NHRIs in the region, such as those in the Philippines, Indonesia, Thailand and Malaysia, and its own capacities to promote human rights. Information-sharing as well as capacity building in areas of best practice and operational efficiencies and technical expertise between the AICHR and NHRIs should be enhanced. Specialist networks between NHRIs and the AICHR should be developed for the exchange of information.

Encourage the formation of new national human rights institutions. The AICHR should encourage those ASEAN States currently without NHRIs to establish independent human rights institutions and support States such as Cambodia, who have pledged to establish such institutions.¹⁷⁸ These NHRIs should comply with the *Paris Principles* governing such institutions.

Increase interaction with civil society stakeholders. The Commission should increase its interaction with civil society and non-government stakeholders. Where the Commission itself is constrained in its ability to do so formally by the TOR's reference to ASEAN accredited civil society organisations, the individual Commissioners should endeavour to create productive and meaningful networks and relationships with these stakeholders in their national jurisdictions. Individual Commissioners should seek to use their position on the AICHR to address issues of concern to their national constituencies.

Establish Relationships with Non-ASEAN Partners. The Commission should take steps to establish dialogue and assistance partnerships with non-ASEAN States and organisations willing to support technical and advisory service based capacity building programs and to contribute funding and resources for human rights promotion and education programs in Southeast Asian countries. For instance, Australia already has a number of capacity building programs with Southeast Asian States, and the EU and the US are other potential partners given recent invitations for, and support already expressed through, region-to-region learning experiences for the AICHR.

The AICHR's role in implementing R2P. The Commission has the potential to become an effective institution for regional coordination and leadership on the Responsibility to Protect. The AICHR can begin to build upon this potential by:

- Explicitly including R2P into its agenda: such as by introducing R2P modules into its education and training programs, by using R2P as a topic for thematic discussions, and by delivering information about R2P to stakeholders and government bodies.
- The AICHR could also facilitate regional cooperation and consensus on support for R2P by working with ASEAN States on domestic and regional implementation strategies and by promoting sovereignty as responsibility.

Adopting a Hub-and-Spoke Model. A further way the AICHR can support States to implement R2P would be by assisting them to promote and protect human rights, thus preventing a structural precondition of mass atrocity crimes. The hub-and-spoke model proposed by this report, by which the AICHR acts as a coordinating and supporting body for the member States, would assist more progressive States to build upon their existing capacities to protect, while at the same time assisting other States to take more fundamental steps towards human rights promotion and protection.

Recommendations for Civil Society Stakeholders:

Engagement with the AICHR. Civil society and non-governmental organisations and stakeholders should proactively seek further engagement with the AICHR. They should take part in national consultations with the AICHR or its individual Commissioners, submit information about the situation of human rights domestically during these consultations and lobby the Commission and governments to address local human rights situations. The fact that the TOR does not speak to AICHR action upon the receipt of correspondence concerning human rights violations by civil society organisations does not preclude these organisations from providing such information to the Commission or individual Commissioners. Drawing Commissioners' attention to human rights violations or issues of concern may influence the way in which they choose to direct their efforts in the AICHR.

Encourage support from States. Civil society groups should encourage the individual Member States of ASEAN to increase their political and financial support for the Commission.

Lobby for increased powers of the AICHR in its five-year review. The AICHR's Terms of Reference are due to be reviewed in 2014. Civil society organisations and NGOs should lobby individual states, the ASEAN Secretariat and the Commission itself to increase the monitoring and investigative functions of the Commission, to allow the receipt of complaints of human rights violations from individuals and organisations and to allow for formal dialogues between the Commission and all interested actors and stakeholders rather than only ASEAN accredited ones. They should also advocate for the implement new guidelines for transparent and consultative national appointment processes and standards of qualification for Commissioners as well as support budgetary and workplan independence for the AICHR

Recommendations for further research:

Identify shortcomings in national frameworks and existing partners with policies or capacities to address such gaps. Further research should be first directed to creating a database or catalogue of national capacities for human rights promotion and protection. The national human rights promotion and protection policies and capacities of ASEAN States should be surveyed and shortcoming precisely identified. Stakeholders and external partners with policies and capacities to give technical and advisory assistance, such as the UN Development Programme (UNDP) or the Office of the High Commissioner for Human Rights (OHCHR), should be located and efforts to coordinate package assistance programs should be undertaken.

Qualitative monitoring and evaluation of the AICHR's promotion activities. Future research should also focus on monitoring the effectiveness of the Commission's efforts to promote human rights and educate regional and national constituencies of the importance of human rights. The outcomes of such evaluation studies should be used to design future AICHR promotion and educational activities with a view to maximising receptivity to human rights and the building of a human rights culture.



Author Details and Notes

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Notes

¹ The focus of this section is on maximising the *functions* of the AICHR. While many civil society groups also take issue with its composition, guiding principles and the financial and administrative framework within which it operates, these are aspects that require amendment of the TOR – a prospect which is unlikely to occur until at least the five year mandatory review of the TOR (see Article 9.6). It is speculative whether textual amendments to the TOR will be adopted even then. This section thus focuses on the extent to which the mandate provisions of the TOR can be liberally construed within their present wording to allow the Commission to fulfil a stronger role in the promotion and protection of human rights. The composition, guiding principles and financial and administrative framework of the AICHR will be explored to the extent it impacts upon the Commission's mandate and functions.

² Office for the High Commissioner for Human Rights Regional Office for Southeast Asia, 'Principles for Regional Human Rights Mechanisms (Non-Paper)', 2009, available at <http://bangkok.ohchr.org/programme/asean/principles-regional-human-rights-mechanisms.aspx>, accessed 21 December 2009; Ban Ki-moon, 'Report of the Secretary General on the Workshop on Regional Arrangements for the Promotion and Protection of Human Rights', 24-25 November 2008 (A/HRC/11/3), 28 April 2008.

³ For example see Working Group for an ASEAN Human Rights Mechanism (WGAHRM), 'Proposed Elements for the Terms of Reference Of An ASEAN Human Rights Body', paper submitted at the first consultation meeting with the High Level Panel, 12 September 2008, Manila, the Philippines, available at www.aseanhrmech.org/downloads/WGsubmissiontoHLP.pdf, accessed 12 December 2009; ASEAN National Human Rights Institutions' Forum (ASEAN NHRI Forum), '[Terms of Reference] of the ASEAN

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⁴ For example, see National Human Rights Institutions' Forum (ASEAN NHRI Forum), 'Position Paper on Terms of Reference of the ASEAN Human Rights Body', paper submitted at the second consultation meeting with the High Level Panel, 20 March 2009, Kuala Lumpur, Malaysia, available at http://www.aseannhrforum.org/attachments/030_pospaper_20March09.pdf, accessed 7 January 2010; SAPA Task Force on ASEAN and Human Rights, 'Key Points of Concern on the Draft Terms of Reference (TOR) of the ASEAN Human Rights Body', paper submitted at the second consultation meeting with the High Level Panel, 20 March 2009, Kuala Lumpur, Malaysia, available at http://www.forum-asia.org/news/press_releases/pdfs/3rd-CS-Submission-TOR-AHRB-2009-Mar.pdf, accessed 7 January 2010; 'Submission from the Second Regional Consultation on ASEAN and Human Rights to the High Level Panel on the Establishment of the ASEAN Human Rights Body', 7 August 2008, paper submitted by SAPA Task Force on ASEAN and Human Rights on behalf of the Second Regional Consultation meeting at the first consultation meeting with the High Level Panel, 12 September 2008, Manila, the Philippines, available at [http://www.forum-asia.org/news/press_releases/pdfs/1st-CS-Submission-TOR-AHRB-2008-Sept\(2\).pdf](http://www.forum-asia.org/news/press_releases/pdfs/1st-CS-Submission-TOR-AHRB-2008-Sept(2).pdf), accessed 7 January 2010.

⁵ ASEAN National Human Rights Institutions' Forum (ASEAN NHRI Forum), 'Position Paper Concerning the Political Declaration on the ASEAN Intergovernmental Commission on Human Rights (AICHR)', paper submitted at the third consultation meeting with the High Level Panel on 28 August 2009, Jakarta, Indonesia, available at <http://www.aseannhrforum.org/bm/home/joint-statements.html>, accessed 7 January 2010; Allen V. Estabillo, 'Toothless? ASEAN Approves Regional Rights Body', *Minda News*, 20 July 2009.

⁶ Office for the High Commissioner for Human Rights Regional Office for Southeast Asia, 'Principles for Regional Human Rights Mechanisms (Non-Paper)', 2009, available at <http://bangkok.ohchr.org/programme/asean/principles-regional-human-rights-mechanisms.aspx>, accessed 21 December 2009; Ban Ki-moon, 'Report of the Secretary General on the Workshop on Regional Arrangements for the Promotion and Protection of Human Rights', 24-25 November 2008 (A/HRC/11/3), 28 April 2008.

⁷ Office for the High Commissioner for Human Rights Regional Office for Southeast Asia, 'Principles for Regional Human Rights Mechanisms (Non-Paper)', 2009, available at <http://bangkok.ohchr.org/programme/asean/principles-regional-human-rights-mechanisms.aspx>, accessed 21 December 2009.

⁸ Robert Evans, 'U.N. Rights Chief "Disappointed" On New ASEAN Body', *Reuters India*, 22 July 2009; Pia Lee Brago, 'ASEAN Human Rights Body Lacks Clear Protection Mandate', *The Philippine Star*, 26 July 2009; Singapore Institute of Foreign Affairs, 'ASEAN Human Rights Body Criticised, Lacks Investigative Powers', 29 June 2009.

⁹ *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Article 4.1. Emphasis added.

¹⁰ *Ibid.*, Article 4.10.

¹¹ *Ibid.*, Article 4.8.

¹² Veby Mega, 'Long Way to Fight for ASEAN HR Body', *International Institute of Journalism (IJJ) of Inwent (Capacity Building International Germany)*, 30 July 2009, available at <http://inwent-ijj-lab.org/Weblog/2009/07/30/long-way-to-fight-for-aseans-human-rights-body/>, accessed 20 January 2010. For further discussion of the AICHR's association with 'accredited' civil society organisations, see the section on Capacity Building and Education below.

¹³ 'ASEAN Rights Body To Rely on "Peer Pressure"', *Agence France Press*, 21 July 2008, as reported by the Singapore Working Group for an ASEAN Human Rights Mechanism, available at <http://maruah.org/2008/07/29/asean-human-rights-body-to-rely/>, accessed 22 January 2010.

¹⁴ Leila Salaverria, 'Toothless Rights Body Would Hurt ASEAN Group', *Philippine Daily Inquirer*, 30 June 2009.

¹⁵ *Ibid.*

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- ¹⁶ *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Article 4.3.
- ¹⁷ *Ibid.*, Articles 4.13, 6.6, 6.7.
- ¹⁸ SAPA Task Force on ASEAN and Human Rights, 'Key Points of Concern on the Draft Terms of Reference (TOR) of the ASEAN Human Rights Body', paper submitted at the second consultation meeting with the High Level Panel, 20 March 2009, Kuala Lumpur, Malaysia, available at http://www.forum-asia.org/news/press_releases/pdfs/3rd-CS-Submission-TOR-AHRB-2009-Mar.pdf, accessed 7 January 2010.
- ¹⁹ *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Article 7.1.
- ²⁰ Pitsuwan, Surin, *Opening Statement by His Excellency Dr. Surin Pitsuwan Minister of Foreign Affairs of Thailand at the 31st ASEAN Ministerial Meeting*, 24 July 1998, available at <http://www.asean.org/4519.htm>, accessed 12 December 2009.
- ²¹ 42nd ASEAN Ministerial Meeting Press Release, 'HLP Chair: ASEAN Body to Take Evolutionary Approach in Promoting and Protecting Regional Human Rights', Phuket, Thailand, 20 July 2009. See also the first report in this two-part series: *The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Responsibility to Protect: Development and Potential*.
- ²² Office for the High Commissioner for Human Rights Regional Office for Southeast Asia, 'Principles for Regional Human Rights Mechanisms (Non-Paper)', 2009, available at <http://bangkok.ohchr.org/programme/asean/principles-regional-human-rights-mechanisms.aspx>, accessed 21 December 2009.
- ²³ *Ibid.*
- ²⁴ *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Articles 4.3, 4.11.
- ²⁵ Ary Hermawan, "'We Will Engage Civil Society Groups'", *The Jakarta Post*, 11 January 2010.
- ²⁶ *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Articles 1.4, 4.2, 4.11.
- ²⁷ Ary Hermawan, "'We Will Engage Civil Society Groups'", *The Jakarta Post*, 11 January 2010.
- ²⁸ *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Articles 4.4, 4.5, 4.6.
- ²⁹ *Ibid.*, Article 4.7.
- ³⁰ *Ibid.*, Articles 4.9.
- ³¹ *Ibid.*, Articles 4.8.
- ³² *Ibid.*, Article 4.9.
- ³³ *The ASEAN Charter*, 20 November 2007, Article 16(1).
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- ⁴⁶ *Ibid.*, Article 5.4.
- ⁴⁷ Asian Forum for Human Rights and Development (FORUM-ASIA), 'Can AICHR Promote and Protect Human Rights?' *Human Rights Defender* 5(2): 6-10, p. 9; Ary Hermawan, "'We Will Engage Civil Society Groups'", *The Jakarta Post*, 11 January 2010.
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- ⁶⁶ *Ibid.*, Articles 6.8, 2.1(a)-(c).
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⁷⁷ Termsak Chalermpananupap, '10 Facts about ASEAN Human Rights Cooperation', available at <http://www.aseansec.org/HLP-OtherDoc-1.pdf>, 2009, accessed 3 January 2010, p. 5.

⁷⁸ Robert Evans, 'U.N. Rights Chief "Disappointed" On New ASEAN Body', *Reuters India*, 22 July 2009.

⁷⁹ The Articles not discussed in depth are Articles 4.7, 4.8 and 4.9 that concern the AICHR's power to provide advisory and technical services to ASEAN sectoral bodies and to engage in dialogue and consultation with associated entities, international, regional and national institutions concerned with human rights may come under either the first or second category, depending on the nature of the advice given or the content of the dialogue and consultation. Article 4.14 (the AICHR can 'perform any other task ...assigned to it' by the Foreign Ministers) can also fall under either category.

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⁸⁷ Achara Ashayagachat, 'Human Rights Issues Step into the Regional Spotlight', *Bangkok Post*, 22 February 2010.

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⁸⁹ *Press Release of the Fourth ASEAN Intergovernmental Commission on Human Rights*, 10-13 February 2011, available at <http://www.aseansec.org/25872.htm>, accessed 27 February 2011.

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- ⁹⁸ *Principles Relating to the Status of National Institutions (The Paris Principles)*, Annex to A/RES/48/134, 4 March 1994. The four ASEAN NHRIs (Indonesia, Malaysia, Thailand and the Philippines) are all 'A' status accredited NHRIs in accordance with the Paris Principles. See International Coordinating Committee of National Human Rights Institutions, 'Chart of the Status of National Institutions Accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights: Accreditation Status As Of January 2010', January 2010, available at <http://www.nhri.net/?PID=605&DID=0>, accessed 30 January 2010.
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¹⁴⁵ 'Constitution of the Kingdom of Thailand', 2007, available at <http://www.asianlii.org/th/legis/const/2007/>, 3 April 2010.

¹⁴⁶ Paul M. Evans, 'Human Security *In Extremis*: East Asian Reactions to the R2P', in Sorpong Peou (ed.), *Human Security in East Asia: Challenges for Collaborative Action* (New York, 2009), p. 79.

¹⁴⁷ Report of the Eminent Persons Group on the ASEAN Charter, December 2006, p. 28. Emphasis added.

¹⁴⁸ Ibid.

¹⁴⁹ *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Article 2.3. Emphasis added.

¹⁵⁰ Blueprint for the ASEAN Political-Security Community (2009-2015), 1 March 2009, Cha-am Hua Hin, Thailand, p. 14.

¹⁵¹ Ibid., p. 8.

¹⁵² In accordance with Article 4.3: '[t]o enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information,' Article 4.12: '[t]o prepare studies on thematic issues of human rights in ASEAN' and Article 4.13: '[t]o submit ... other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting.'

¹⁵³ In accordance with Article 4.10: '[t]o obtain information from ASEAN Member States on the promotion and protection of human rights' and Article 4.9: '[t]o consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights.' Article 4.4: '[t]o promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN States' can

also be drawn on here as the implementation of R2P measures directed at, for instance, minority protection and discrimination (both directed at combating social divisions that may constitute preconditions to R2P crimes) certainly aids in the implementation of obligations under international human rights treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, to which some or all ASEAN States are parties.

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¹⁵⁶ *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Article 4.1. Alternatively, the ASEAN Foreign Ministers may assign 'any other tasks' to the Commission which would include the power to maintain an early warning system in accordance with Article 4.14.

¹⁵⁷ Blueprint for the ASEAN Political-Security Community (2009-2015), 1 March 2009, Cha-am Hua Hin, Thailand, p. 14.

¹⁵⁸ Established by the ASEAN Committee on Disaster Management (ACDM), the ADDMER was signed in 2005 and entered into force on 24 December 2009. It is a legally binding agreement that promotes regional cooperation and collaboration in reducing disaster losses and intensifying joint emergency response. Margareta Wahlström, the UN Secretary-General's Special Representative for Disaster Risk Reduction, has described the agreement 'as the first of its kind in the world' and one which affirms ASEAN's commitment to the UN Hyogo Framework for Action (2005-2015) on implementing disaster risk reduction. See ASEAN Secretariat Press Release, 'ASEAN Disaster Management Agreement to Enter into Force by End of 2009', 16 September 2009, available at www.aseansec.org/PR-AADMER-EIF-End-2009.pdf, accessed 15 February 2010; *ASEAN Agreement on Disaster Management and Emergency Response*, 26 July 2005, Vientiane, Laos, available at <http://www.aseansec.org/17579.htm>, accessed 15 February 2010.

¹⁵⁹ *ASEAN Agreement on Disaster Management and Emergency Response*, 26 July 2005, Vientiane, Laos, available at <http://www.aseansec.org/17579.htm>, accessed 15 February 2010, Article 1(3).

¹⁶⁰ Ibid., Article 3(4).

¹⁶¹ Ibid., Articles 4, 6(1)-(2), 22(1). It should be noted that the ADDMER provides no sanctions for States that fail to live up to their obligations and there are concerns over the lack of sufficient funding and Secretariat staff necessary to coordinate the implementation of such a wide ranging agreement. See Thin Lei Win, 'Disaster-prone Southeast Asia Comes Up With Landmark Pact', Relief Web Alert Net, 22 January 2010, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNA-7ZY4PZ?OpenDocument>, accessed 15 February 2010.

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¹⁶³ Ban ki-Moon, 'Early Warning, Assessment and the Responsibility to Protect: Report of the Secretary General,' (A/64/864) 14 July 2010, 5.

¹⁶⁴ Ibid.

¹⁶⁵ International Coalition for the Responsibility to Protect, *GA Dialogue on Early Warning, Assessment and the Responsibility to Protect*, August 2010, 4. See also Indonesia's support for regional-UN cooperation on early warning and R2P: Dr Raden Mohammad Marty Muliana Natalegawa, *Statement by H.E. R.M. Marty M. Natalegawa, Permanent Representative of the Republic of Indonesia to the United Nations at the 97th Plenary Meeting of the United Nations General Assembly (A/63/PV.97)*, 23 July 2009, New York. Current proposals for an R2P early warning mechanism centre around the Office of the Special Adviser on the Prevention of Genocide, the Special Adviser on the Responsibility to Protect and the UN Secretariat.

¹⁶⁶ *Joint Declaration on ASEAN-UN Collaboration in Disaster Management*, 30 October 2010, Ha Noi, Vietnam, available at <http://www.aseansec.org/25539.htm>, accessed 11 January 2011.

¹⁶⁷ For instance, see the statements by Indonesia, Malaysia, Myanmar, the Philippines, Singapore and Vietnam at the General Assembly Debate on R2P in July 2009: Dr Raden Mohammad Marty Muliana Natalegawa, *Statement by H.E. R.M. Marty M. Natalegawa, Permanent Representative of the Republic of Indonesia to the United Nations at the 97th Plenary Meeting of the United Nations General Assembly (A/63/PV.97)*, 23 July 2009, New York; Zainol Rahim Zainuddin, *Statement by H.E. Zainol Rahim Zainuddin, Charge d'Affaires of the Permanent Mission of Malaysia to the United Nations at the 101st Plenary Meeting of the United Nations General Assembly (A/63/PV.101)*, 28 July 2009, New York; U Kyaw Zwar Minn, *Statement by H.E. Mr Kyaw Zwar Minn, Deputy Permanent Representative of the Union of Myanmar to the United Nations at the 100th Plenary Meeting of the United Nations General Assembly (A/63/PV.100)*, 28 July 2009, New York; Hilario G. Jnr. Davide, *Statement by H.E. Hilario G. Davide Jnr, Permanent Representative of the Republic of the Philippines to the United Nations at the 97th Plenary Meeting of the United Nations General Assembly (A/63/PV.97)*, 23 July 2009, New York; Vanu Gopala Menon, *Statement by H.E. Vanu Gopala Menon, Permanent Representative of the Republic of Singapore to the United Nations at the 98th Plenary Meeting of the United Nations General Assembly (A/63/PV.98)*, 24 July 2009, New York; Bui The Giang, *Statement by H.E. Ambassador Bui The Giang, Deputy Permanent Representative of Viet Nam to the United Nations at the 98th Plenary Meeting of the United Nations General Assembly (A/63/PV.98)*, 24 July 2009, New York.

¹⁶⁸ The contemporary understanding of sovereignty as responsibility was developed by Francis Deng and Roberta Cohen in their work on internally displaced persons in the 1990s. See Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement*, (Washington DC: The Brookings Institution, 1998); Francis M. Deng, 'The Impact of State Failure on Migration', *Mediterranean Quarterly* 15(4) (2004): 16-36; Francis M. Deng, 'Divided Nations: The Paradox of National Protection', *The Annals of the American Academy of Political and Social Science* 603(1) (2006): 217-225.

¹⁶⁹ *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Article 2.3.

¹⁷⁰ *The ASEAN Declaration (Bangkok Declaration)*, 8 August 1967, Bangkok, Thailand.

¹⁷¹ Asia-Pacific Centre for the Responsibility to Protect, *Preventing Genocide and Mass Atrocities: Causes and Paths of Escalation*, 8 June 2009, p. 24.

¹⁷² *Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights*, 23 October 2009, Article 2.3.

¹⁷³ Founded in 1996, APF is a network of NHRIs that play a significant role in the dissemination of international human rights principles and practices in the Asia-Pacific and beyond and whose primary roles are to support the establishment and strengthening of NHRIs in accordance with the Paris Principles. See Asia-Pacific Forum of National Human Rights Institutions, 'About APF', 2009, available at <http://www.asiapacificforum.net/about>, accessed 15 December 2009.

¹⁷⁴ UN Human Rights Council, 'Information for National Human Rights Institutions' [no date], available at <http://www2.ohchr.org/english/bodies/hrcouncil/nhri.htm>, accessed 6 January 2010.

¹⁷⁵ Kieren Fitzpatrick and Catherine Renshaw, 'NHRIs In the Asia-Pacific', paper presented at the National Human Rights Institutions in the Asia-Pacific Workshop jointly organised by Harvard Law School and New York University Law School, September 2009, available at <http://www.ahrcentre.org/content/Activities/APFproject.html>, accessed 30 January 2010, pp. 5-6.

¹⁷⁶ The ineffectiveness of these mechanisms is gleaned from the continuing human rights abuses in Cambodia and Myanmar, both of which have caused the United Nations to call for action. See, for instance, A/HRC/4/36, 30 January 2007, The Report of the Special Representative for the Secretary General for Human Rights in Cambodia, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled 'Human Rights Council and UN News Centre, 'Upcoming Polls Must be Inclusive, Free and Fair, Ban Tells Myanmar Authorities'*, 13 August 2010, available at <http://www.un.org/apps/news/story.asp?NewsID=35621&Cr=Myanmar&Cr1>, accessed 20 August 2010.

¹⁷⁷ See, for instance, Asia-Pacific Centre for the Responsibility to Protect, *Preventing Genocide and Mass Atrocities: Causes and Paths of Escalation*, 8 June 2009.

¹⁷⁸ Dr Lao Mong Hay, 'Cambodia: Establishing an Independent National Human Rights Institution in Cambodia', *Asian Human Rights Commission*, 17 December 2008, available at <http://www.article2.org/mainfile.php/0704/327/>, accessed 10 March 2010.



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