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AHRD—Protecting Regimes or Civilians?

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In six months, ASEAN will have its very own Human Rights Declaration (AHRD) patterned after the 1948 Universal Declaration of Human Rights (UDHR). The ASEAN Intergovernmental Commission on Human Rights (AICHR) is working toward a November deadline with the agreement by ASEAN members that the Declaration be adopted at the 21st ASEAN Summit to be held later this year in Phnom Penh.

The AHRD being a work in progress, AICHR representatives have been engaging with civil society and NGOs within the region to ensure that the declaration be inclusive. Ironically, this is being done without sharing the text of this vital declaration but discussing the content. Responding to this criticism, the AICHR representatives have stated that they are limited by the instructions that drafts have to first be submitted to the Foreign Ministers before it can be disseminated to the other organisations. ASEAN Foreign Ministers meet next in July and will assess the draft and set the agenda but not before AICHR meets in Myanmar June 3-6 and then in Kuala Lumpur June 22, 2012 for a series of closed door consultations.

On the surface this seems like sharp progress but after close to three years of mandate, many NGOs and civil society have hoped for greater advancement and transparency. The repeated defence cited of having to navigate between the various differences among member states - religious, government systems, language, ethnicity - now comes across as more of an excuse rather than a reason. One however has to acknowledge the very real difficulty of manoeuvring through agendas when each ASEAN member state has the privilege of veto power especially when it comes to sensitive concerns such as human rights.

At this point, ASEAN is pushing the time-limit of remaining relevant when it comes to implementing human rights mechanisms. Though these things cannot and should not be rushed, the longer it takes to unveil the AHRD, the more negative comments solidify a growing notion that the organisation is a talk-shop rather an action orientated regional body. Many have named ASEAN a toothless organisation and cited the shortcomings of the ASEAN-way in not being able to move forward fast enough, especially since almost all its initiatives are not legally binding. As such, there seems to be a tendency for this new rush to adopt the ADHR to be seen as just another task to tick-off from a long to-do list before the 2015 deadline of building an ASEAN community.

While there is plenty of apathy and distrust about a truly workable human rights mechanism being in place within ASEAN, the reality is that there are high hopes pinned on the AHRD and the vast content it has to address in order to be relevant. Civil society for now has a haphazard, un-collated list of what needs to be included in the AHRD, ranging from the protection of migrant workers, discrimination in law and policies, economic rights, trafficking of women, children and drugs to personal data protection, LGBTQ, political participation of women, statelessness, non-refoulement of refugees, protection of human rights defenders, border conflicts, money laundering, enforced disappearances, terrorism and even CSR – the content list seems rather daunting.

The question that then needs to be asked is how comprehensive or vague will the AHRD be in order to ensure that it includes the long list of issues that need to be addressed? Secondly, what will ASEAN contribute by shadowing the UDHR when there are other human rights mechanisms in place such as the Commonwealth Human Rights Initiative which some ASEAN countries are party to and that are also not legally binding. And thirdly, can ASEAN then prove its role as protector once the AHRD is in effect?

Sadly as per the Universal Declaration of Human Rights (UDHR) (which all 10 ASEAN member states are party to by default as UN members), the AHRD is also not binding by international law. This then leads to the fourth pertinent

question, on how the AHRD will ensure that ASEAN countries follow through on legally binding treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) which all ASEAN countries have ratified. If the AHRD is weak, then it could provide an avenue for governments to neglect their responsibilities, a grave concern and rationale to ensure a comprehensive drafting process now instead of after the draft is complete.

In its current state, the AHRD has the potential of not only taking ASEAN leaps and bounds forward in how it is perceived as a protector of the ASEAN peoples but the AHRD could also be a game changer giving ASEAN more bite in its mandate – steering the regional organisation in a more relevant direction. The opportunity to set the tone of ASEAN's seriousness in upholding the tenets of human rights to go beyond existing international human rights mechanisms is being sabotaged by the lack of meaningful discussion and an opaque drafting process.

In line with ASEAN Secretary-General Surin Pitsuwan calling it the “road-map for regional human rights development”, the AHRD also could play an important role in influencing member states to aspire towards setting the foundations of human rights tenets and upholding them within their own country boundaries.

However, the 10 member taskforce is in a delicate position of ensuring that the AHRD is a relevant timeless document. Certainly not being transparent during the drafting process will work against the AHRD being a document that will be accepted and is inclusive to all, and runs the risk of undermining the protection guaranteed by international human rights law. For these reasons it is vital that the drafting process be fully comprehensive in order for it to be complete, credible and meaningful.

Indeed hosting the next consultation meeting in Rangoon is a huge step forward for ASEAN- to be discussing human rights in a country accused of many human rights violations and atrocities. It would be a pity to trip up an opportunity to engage with those on the ground in their country, where years ago Aung San Suu Kyi while under house politely asked the world to ‘use your freedom to promote ours’.