

HUMAN RIGHTS

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BACKGROUND

What are human rights?

According to Amnesty International, human rights are “basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language, or other statuses.”¹ The Office of the High Commissioner for Human Rights of the United Nations defines human rights as being universal and inalienable, interdependent and indivisible, and equal and non-discriminatory². In simple terms, human rights are a basic, universal set of inalienable rights that belong to all humans equally. Today, these essential rights are enshrined in the United Nation’s Universal Declaration of Human Rights (UHDR), which is the foundation for the international system of guarding human rights used by member nations of the United Nations around the world. The Universal Declaration of Human Rights was adopted by the United Nations in 1948 and came into effect as an international law in 1976. Various other treaties passed between 1948 and 1976, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), resulted in creating UDHR a binding resolution between countries that have signed those treaties. Today, many human rights conventions of individual states either mirror or are directly influenced by the UDHR.

The Office of the High Commissioner for Human Rights also dictates that human rights are both rights and obligations; it is the obligation of the state to ensure that their citizens enjoy basic human rights and protect individuals and groups from being violated or deprived of their rights. The mere existence of the Universal Declaration of Human Rights do not guarantee the existence of human rights in countries around the world; it is the responsibility and the duty of the state to ensure that human rights are established and protected for all of its people.

It must be noted that the Universal Declaration of Human Rights serves a guideline outlining the most essential and the basic human rights that all humans

should have a right to. Individual countries may opt to create their own laws that are more extensive than what is outlined in the UDHR; for example, the Canadian Charter of Rights and Freedoms, which guarantees certain political rights to Canadian citizens and civil rights of all Canadian residents, was based on the principles laid out in the Universal Declaration of Human Rights.

Human Rights Instrument

The Universal Declaration of Human Rights is a declaration that was passed in the United Nations; a declaration is a resolution that was adopted but is not legally binding. In contrast, conventions are legally binding instruments under international laws; this means that any Members who agree to those conventions are legally responsible for fulfilling the terms set out in those conventions. ICCPR and ICESCR are two conventions passed by the United Nations, and those two conventions set out legal terms based on the Universal Declaration of Human Rights. All three treaties – UDHR, ICCPR, and ICESCR – are international human rights instruments; other treaties and international documents that pertain to international human rights laws and the protection and promotion of basic human rights are considered to be international human rights instruments as well.

United Nation's Human Rights Council, the International Criminal Court, and the European Court of Human Rights are examples of treaty bodies, which are mechanisms set up by most conventions to oversee the implementation of their protocols; essentially, the treaty bodies are responsible for ensuring that human rights outlined in the conventions are protected, and to promote human rights in general.

Regional Zones

The Universal Declaration of Human Rights has given the United Nations with an international human rights instrument. On a regional level there exist three principle organizations that have adopted a human rights charter of their own. The Council of Europe, one of the oldest European organization working towards greater European integration, adopted the European Convention on Human Rights in 1953. The European Union adopted a separate treaty, the Charter of Fundamental Rights of the European Union, in 2000 and entered it into legal effect in 2009. It is expected that, as the two organizations move towards harmonization, the two separate treaties will converge into one. In the Americas, the Organization of American States (OAS) established the Inter-American Commission on Human Rights in 1959 based on the OAS Charter, the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights. The African Union, the pan-African supranational organization composed of 53 African nations, maintains the African Charter on Human and Peoples' Rights as its principal human rights instrument. The African Commission on Human and

People's Rights and the African Court on Human and People's Rights serve as the judicial organ of the Africa Union, responsible for promoting and protecting human rights in Africa.

Asia, however, does not have a coherent organization dedicated to promote and protect human rights. In addition, various Asian countries have poor history of human rights protection – Burma and Cambodia being two examples.

ASEAN AND HUMAN RIGHTS

In 1993 ASEAN adopted the ASEAN Inter-Parliamentary Organization's Declaration on Human Rights, its members agreeing that there should be a regional human rights mechanism in Asia. Following this Declaration, a Working Group for an ASEAN Human Rights Mechanisms³ was formed to advise ASEAN on the process of establishing such mechanism. By 2002, ASEAN member nations have signed and ratified the Convention on the Rights of the Child (CRC) and all but one Member were members of the Elimination of All Forms of Discrimination against Women (CEDAW), showing that member states of ASEAN were increasingly involved with key international human rights treaties and mechanisms.

Between 2002 and 2007, member states of ASEAN discussed the various ways of forming mechanisms to oversee, promote, and protect human rights in Asia. This is resulted in the ASEAN Charter. This charter, launched in 2007, states that its Member states will act in accordance with several principles, one of which is the “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice” and to “to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN.”⁴ The Charter also laid the framework for an ASEAN body specifically tasked with promoting and protecting fundamental human rights. In 2009, following the promise made in the Charter, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established with a specific purpose: to promote and protect human rights and fundamental freedoms of the peoples of ASEAN.

Ever since its inception, however, AICHR has been criticized for its lack of response to various complaints regarding human rights abuses in ASEAN member nations. Soon after AICHR's first meeting, Amnesty International expressed its disappointment at AICHR's refusal to look into complaints made by victims and families of victims of human rights abuse in ASEAN member nations. Amnesty International also “[called] upon the Commission to reverse its decision and apply

its mandate, which includes protection of human rights, in line with international law and standards.”⁵ In response, ASEAN stated that AICHR was a “work in progress”⁶, and that AICHR does not have the authority to investigate cases of rights violation.

Regardless of the criticisms, it is clear that ASEAN is progressing towards creating a fully working human rights mechanism. However, AICHR is based on the ASEAN Charter, which is not exclusive to human rights, and it lacks the authority and the power to enforce human rights protection or promotion in ASEAN member states. Since the ASEAN Charter was written to convert ASEAN into a EU-like transnational union, perhaps ASEAN should too create a separate human rights charter, a true mechanism for protecting and promoting human rights, and establish a judicial organ to enforce the human rights charter.

CURRENT SITUATION

One issue has been plaguing ASEAN in regards to human rights and human rights violation: Myanmar.

Myanmar

Myanmar/Burma has been part of ASEAN since 1997. The country had been ruled by the military junta since the 1962 military coup d'état, when a revolutionary council composed of General Ne Win and various other military officials took over the government and instituted a socialist system of government. Under the military junta, several hundred thousand people have been forced into working against their will and hundreds more have been officially reported to have suffered torture and rape by government forces. The junta also abolished the freedom of the press, the freedom of religion, and the freedom of speech and political freedom. The international community has continually responded to this serial violation of human rights; in November of 2009, the General Assembly adopted a resolution that strongly condemned “the ongoing systematic violation of human rights and fundamental freedoms.”⁷ Amnesty International called for the Myanmar government to “uphold universal human rights standards enshrined in the Universal Declaration of Human Rights, especially those of freedom of expression, peaceful assembly, freedom from torture and ill-treatment, and fair trial.”⁸

ASEAN has been criticized in the past for continuing to turn a blind eye to the ongoing human rights violation in Myanmar, especially during 2008 when the ASEAN Charter was signed. ASEAN responded to these criticisms by stating that it has been continuing on “with a ‘constructive engagement’ approach”⁹. Three years of constructive engagement has not reduced the level of human rights

violation in Myanmar; in order for ASEAN and its efforts in countering human rights violation in Asia to be effective, it is clear that the situation in Myanmar must be, at the very least, improved.

Basic Summary – and the future

Asia is one of only two regions in the world where there is no regional mechanism dedicated to preserving, promoting, and protecting fundamental human rights. Of those two regions, Pacifica has maintained a generally high standard of maintaining human rights; Asia, however, has various countries with less-than-stellar record on human rights, including Myanmar.

ASEAN has been moving towards adopting a regional human rights mechanism.

However, its current subsidiary organization on human rights –ASEAN Intergovernmental Commission on Human Rights – does not have a strong mandate, have no proper human rights declaration or a charter, and have no authority or the power to enforce human rights protection or promotion within ASEAN member countries. These apparent shortcomings of AICHR are not because of the lack of ASEAN member nation's commitment to human rights; rather, it is because ASEAN is committed towards creating a stronger political and economic union ahead of establishing a proper human rights mechanism, and of its conflicting interest between maintaining close ties within the bloc (between Myanmar and other ASEAN member nations) and establishing and enforcing a standard of human rights.

Delegates present at ASEAN's session during ConnectMUN 2011 will, therefore, have several responsibilities and duties to attend to. Delegates will be responsible on deciding on the fate of human rights in Asia: will ASEAN adopt a human rights charter and create proper bodies to enforce that charter? Or, instead, will delegates decide that matters of economics and politics take absolute priority over matters of human rights?

BLOCK POSITIONS

ASEAN10:

Members in this bloc are committed to creating a human rights mechanism within ASEAN. However, their current priorities are set on improving and harmonizing their economic and political viewpoints, leaving human rights as a distant third on their list of priorities. As well, ASEAN10 has proven, in the past several years, that it is willing to concede its platform, including protection and promotion of civil rights, for maintaining close relations and economic ties with Myanmar.

European Countries/ +8:

European countries that are part of the EU will definitely want to see ASEAN adopt a human rights charter and treaty bodies. European Union has been stalling

on agreeing to a full free trade agreement with ASEAN over matters of human rights issues, especially with Burma.

QUESTIONS TO CONSIDER

1) How should ASEAN create its human rights charter? What kind of rights should be included in it?

Delegates should keep in mind of various areas of human rights that is relevant to ASEAN, including civil, political, and labour rights Myanmar is unlikely to change its current political position regarding human rights.

2) If this is the case during the committee sessions, how will ASEAN +8 respond to this?

If Myanmar were to be allowed to continue in its violation of human rights, it would be in straight contradiction to ASEAN's proposed human rights charters and its ideals

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⁹ <http://www.time.com/time/world/article/0,8599,1825357,00.html>