Human rights Situation and System in ASEAN/SEA

Sriprapha Petcharamesree, Ph.D.

Institute of Human Rights and Peace Studies, Mahidol University, Thailand.

Human rights situation in SEA

- Contextualising SEA
- Issues challenging human rights in SEA
- Dynamics of human rights in SEA
- ASEAN human rights system

Contextualising SEA

- Varying political regimes which shape the human rights situation in each country;

-absolute monarchy –Brunei

-vibrant democracy – Indonesia

-democracy with political turmoil– Philippines

-military regime and unsettled political struggle - Thailand

-limited democracy and lack of genuine multi-party rule- Singapore

Cont.

- Elected system with one party rule- Cambodia/Singapore

• Socialist states with one party rule-Laos

and Vietnam

• Political system in transition – Myanmar

• Democracy- Indonesia, Malaysia,Timor Leste

Varying political space

- From very limited political space and no to limited civil society- Brunei, Laos, Vietnam,
- Emerging political space- Myanmar
- struggling civil society – Singapore, Cambodia
- civil society in trouble- Philippines, Thailand
- Vibrant civil society - Indonesia
- Civil society in violent condition- Timor

Human rights at principle level

- All countries espouse human rights
- Constitutions guarantee rights and freedoms, to a lesser or greater extent;
- All countries agree to the UDHR;
- Increasing number of ratifications of international

human rights treaties;

- Active engagement with the new Un monitoring system and UPR process;
- Development of national human rights institutions

But….Challenges

- Gaps between recognition of rights and its implementation on the ground;
- Many constitutions leave a wide margin of discretion to the executive to limit the exercise of rights, especially in the civil and political fields still seen as sensitive;
- Minimal pluralistic political setting (except in three countries)
- Use of national security laws and anti-terrorist laws to limit exercise of rights and to control their political opponents

Challenges

- Strong executive, weak judiciary and malleable parliament- conflicting relationships between ordinary courts and the religious courts and laws;

- Media freedoms, freedom of expression,freedom of association, and dissidence, hesitation towards a strong role for a pluralistic civil society;

- Criminal justice system/treatment of accused persons – ranging from poor prison conditions to low age of criminal responsibility

Challenging situation

- Violence against civilians, especially women and children –from domestic violence to systematic violence, extrajudicial killings, enforced disappearances, torture and cruel treatments,human trafficking, corporal punishment;

- Treatment of indigenous peoples and minorities, statelessness,l and rights, environmental conservation and political economic participation, migrant workers, refugees, displaced persons;

Challenging situation

- Equitable growth, the poverty factor and governance – distribution of wealth, corruption;

- Internal tensions and armed conflicts –use of emergency laws, violent conflicts in South most Thailand, Myanmar, Philippines, Indonesia, Timor

Development of ASEAN Human Rights Regime

- ASEAN is not a regional human rights organisation;
- Human rights was not included in the Bangkok Declaration of 1967 as objective(s)
- Members of ASEAN

- Founding members- Indonesia, Malaysia,Philippines, Singapore, Thailand;

- Additional members – Brunei (1984), Vietnam(1995), Lao PDR, Myanmar (1997), Cambodia(1999)

- Observer status- Timor Leste (2007)

Cont.

- 1993- 1st Turning point- inclusion of human rights into the AMM Joint Communique;
- 1997-2nd Turning point- recognition of a human rights NGO-Working Group for an ASEAN Human Rights Mechanism
- 2004-3rd Turning point-inclusion of human rights in the Vientiane Declaration and Plan of Action;
- 2005-4th Turning point –decision to draft the ASEAN Charter
- 2007- Adoption of the ASEAN Charter by AMS

Cont.

- 2008-entry into force of the ASEAN Charter;
- 2009- adoption of the TOR of AICHR (ASEAN Intergovernmental Commission on Human Rights) and its establishment;
- 2010-adoption of the TOR of the ACWC (ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children
- 2012-establishment of the ASEAN Institute for Peace and Reconciliation

ASEAN normative framework

- 1988-ASEAN Declaration on Advancement of Women
- 1993,1999-ASEAN Plan of Action on the protection and welfare of the child
- 2004-ASEAN Declaration on the Elimination of Violence Against Women;
- 2004-ASEAN Declaration on Anti-Trafficking in Human Persons, women and children in particular
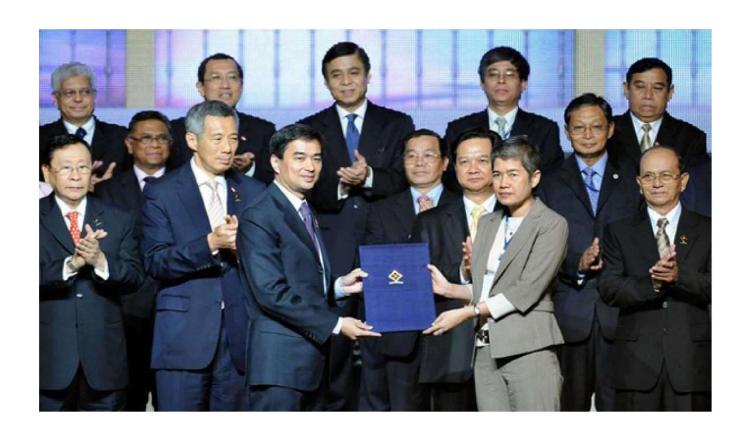- 2007-ASEAN Declaration on the Protection of the Rights of Migrant Workers;

Cont.

- 2012-ASEAN Human Rights Declaration;
- 2013-ASEAN Declaration on the Elimination of Violence against Women and Children
- 2013-ASEAN Declaration on Social Security
- 2015-ASEAN Convention on Anti-Trafficking in Human Persons, women and children in particular

The AICHR

- Its TOR
- Its mandates and functions
- Its composition
- Its working principles;
- - Respect of state sovereignty and non interference in international affairs,

- Consultation and consensus

- Cooperation not confrontation

- Its competency
- Its work plan
- Its effectiveness
- Its limitations
- criticisms

Inauguration

Representatives

Representatives

ASEAN Human Rights Declaration

- Process of drafting
- Controversial issues

-gender and sexual identities

-public morality

-reference to national laws

-inclusion of particularities

-strong emphasis on the non interference principles

-rights and duties

-enforced disappearance

-limitation clause

AHRD

- The adoption

- Final version- values added? Yes and No

- Its implementation

Ways forward

- Towards a legally binding document?
- Review of the TOR of the AICHR
- Review of ASEAN Charter
- Towards a stronger AICHR?
- Possibility for ASEAN Human Rights Court?

References

- In addition to the readings already assigned, the slides were based on the following literature
- Clark D. Neher and Ross Marlay. Democracy and Development in Southeast Asia: The Winds of Change, (Boulder, Co.: Westview Press, 1996)
- Daniel A. Bell. East Meets West: Human Rights and Democracy in East Asia, (Princeton: Princeton University Press, 2000)
- Francis Loh & Ojendal, Joakim. Southeast Asian Responses to Globalization:
- Harold Crouch and James Morley. "The Dynamics of Political Change," James W. Morley (ed.)
- Driven by Growth: Political Change in the Asia-Pacific Region. (NewYork: M.E. Sharpe, 1993), pp. 313-354.
- Joanne R. Bauer and Daniel A. Bell (eds.) The East Asian Challenge for Human Rights. (New York: Cambridge University Press, 1999)..
- Peter Van Ness. (ed.). Debating Human Rights: Critical Essays from the United States and Asia. (London: Routledge, 1999).
- Kishore Mahbubani. "The Dangers of Decadence: What the Rest Can Teach the West," in Mahbubani, Can Asians Think? Understanding the Difference Between East and West (New York: Steerforth Press, 2002).
- Mark Thompson. "Whatever Happened to Asian Values?" Journal of Democracy,12/4 (October 2001): 154-165.
- And other readings noted in some slides.