

ASEAN HUMAN RIGHTS MECHANISM: TOWARDS AN
EFFECTIVE HUMAN RIGHTS SYSTEM

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THESIS SUBMITTED IN FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF
SOCIAL SCIENCE

FEBRUARY 2012

ACKNOWLEDGEMENT

Foremost, I would like to express my sincere gratitude to my supervisor Dr. Benny Teh Cheng Guan for the continuous support of my Master's degree study and research, for his patience, motivation, enthusiasm, and immense knowledge. His guidance helped me in all the time of research and writing of this thesis. I could not have imagined having a better advisor and mentor for my study.

I would also like to express my gratitude to the interviewees for allocating time to answer my questions and also for parting their knowledge to me. The interviews have provided me insight on the human rights scene.

I would also like to extend thanks to the support staff of the School of Social Sciences for making this a pleasant journey. Not to forget too friends from the School of Social Sciences who have been with me throughout this period.

Finally i would like to thank my parents for supporting me through all these years of study. Without them i wouldn't have made it so far.

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LIST OF ABBREVIATION

AEC-ASEAN Economic Community

AHRD-ASEAN Human Rights Declaration

AHRMECH- ASEAN Human Rights Mechanism

AICHR-ASEAN Inter-governmental Commission on Human Rights

AIPO-ASEAN Inter-Parliamentary Organisation

AMM-ASEAN Ministerial Meeting

APF-Asia Pacific Forum of National Human Rights Institutions

APSC-ASEAN Political-Security Community

ASCC-ASEAN Socio-Cultural Community

ASEAN-Association of South East Asian Nations

CMLV-Cambodia, Myanmar, Laos and Vietnam

COMANGO-Coalition of Malaysian NGOs

CPT-Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CSOs-Civil Society Organisations

EPG-Eminent Persons Group

EU-European Union

FDIs- Foreign Direct Investments

HLP-High Level Panel

HR-Human Rights

HRIE-Human Rights Institution Effectiveness

ICC-International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights

INGOs-International Non Governmental Organisations

ISIS-Institute of Strategic and International Studies

KOMNAS HAM- Komisi Nasional Hak Asasi Manusia.

LICADHO-Cambodian League for the Promotion and Defense of Human Rights

NGOs-Non Governmental Organisations

NHRI-National Human Rights Institution

OHCHR-Office of the High Commissioner for Human Rights

ROP-Rules of Procedure

SAPA-Solidarity for Asian Peoples Advocacy

SAPA TFAHR-Solidarity for Asian Peoples Advocacy Task force on ASEAN Human Rights

SIDA-Swedish International Development Cooperation Strategy

SUARAM-Suara Rakyat Malaysia

SUHAKAM-Suruhanjaya Hak Asasi Manusia Malaysia

TAC-Treaty of Amity and Cooperation

TOR-Terms of Reference

UDHR-Universal Declaration on Human Rights

US-United States

UN-United Nations

UNDP-United Nations Development Program

UNESCO- United Nations Educational, Scientific and Cultural Organization

UNHCR-United Nations High Commissioner for Refugees

UNICEF-United Nation Children Foundation

VAP-Vientiane action program

MEKANISMA HAK ASASI MANUSIA ASEAN: KE ARAH SISTEM HAK ASASI MANUSIA YANG EFEKTIF

ABSTRAK

Penciptaan Suruhanjaya Hak Asasi Manusia ASEAN telah diterima dengan pesimistik oleh pelbagai suku walaupun terdapat pelbagai masalah hak asasi manusia di rantau Asia Tenggara. Tesis ini menilai keberkesanan suruhanjaya hak asasi manusia dengan mengambil kira latar belakang dan landskap sosio-politik rantau tersebut. Tesis ini mengkaji faktor-faktor institusi AICHR yang merupakan ciri-ciri, kapasiti dan rangkaian dalam menentukan keberkesanannya. Ia mengkaji pendekatan AICHR dalam mempromosi dan menangani masalah hak asasi manusia dan juga meneliti cabaran yang wujud daripadanya. Hasil kajian menunjukkan AICHR kurang berupaya untuk mempromosi dan menangani masalah hak asasi manusia dan kuasa sebenar terletak dengan negara anggota masing-masing. Suruhanjaya itu tidak mempunyai mandat yang kuat dan terdapat pelbagai peluang untuk AICHR untuk bekerjasama dengan badan-badan tidak berkanun di rantau ini. Kajian ini menunjukkan terdapat peluang untuk penambahbaikan keberkesanannya dan harap AICHR mengambil langkah demikian.

ASEAN Human Rights Mechanism: Towards an Effective Human Rights System

ABSTRACT

The region of South East Asia has multiple human rights problem but the creation of the ASEAN Inter-governmental Commission on Human Rights was received with pessimism by different quarters in the region. This thesis evaluates the effectiveness of the human rights commission taking into consideration the regions background and socio-political landscape. This thesis looks into the institutional factors of the AICHR that is the characteristics, capacity and network in determining its effectiveness. It examines the approach of AICHR in promoting and promoting human rights and also the challenge that present itself along the way. The findings show that the ability of AICHR to promote and protect human rights is skewed and that real power lies with member states. The commission lacks a powerful mandate and there are multiple opportunities for AICHR to work with NGOs and CSOs in the region. This study brings to light the window of opportunity for improvement and it is suggestive that AICHR capitalise on it.

CHAPTER ONE:
A STUDY ON ASEAN HUMAN RIGHTS MECHANISM:
A FRAMEWORK ANALYSIS

1.1 BACKGROUND OF STUDY

This study will examine and analyse the effectiveness of the ASEAN Inter-Governmental Commission on Human Rights in promoting and protecting human rights and looks at other strategies to improve it. The view of human being having virtue to their own humanity entitling them to human rights is not a new issue. It has always been an issue that has been sidelined compared to other state issues. While human rights remained an important issue even in the new millennium, there is a greater urgency to address the basic rights of the individual in line with the growing movement of civil societies in the region. This study is therefore truly relevant in understanding the role of ASEAN / the AICHR in relations to human rights developments in SEA.

1.1.1 SOCIETAL BACKGROUND/SOCIETAL DEVELOPMENT

The South East Asia today is the group of countries that became independent in the post colonial era with the exception of Thailand that was never colonized. These countries with different ideologies and resources strive to improve their position in the world politically and economically but not all grew at the same rate.

Most states in the region are less developed with only the exception of Singapore that has achieved a developed nation status. Poverty is an issue in some countries and in some states the gap between the rich and the poor increases rapidly due to imbalances in economic development.

Politically, democracy is lacking in certain countries and the suppression of the right to choose a government is a big problem in Myanmar and there are even killings reported over peaceful protest.¹ Freedom of speech is an issue even in the more developed country such as Singapore.²

Culturally and socially some groups are suppressed and others are marginalized.³ Being a region with states consisting of multicultural societies, social discrimination does occur especially to minority races in certain country.⁴ The 1999 widespread killings of Chinese Indonesian linger in the mind of others as one of the cruellest racial abomination in the region.⁵

Human rights problem in South East Asia is like opening a can of worms. As human rights group start flourishing and the press start highlighting these issues, more and more problems surface. The issue of human rights cannot be ignored as it is getting important. This brings us to the role of the Association of South East Asian Nations (ASEAN).

The Association of South East Asian Nations (ASEAN) being a regional association is still far behind from other regional associations especially the European Union (EU). Since the establishment of the association, it has not done much and integration is slow compared to the other regional groupings. The enactment of a Charter in 2007 shows the intention that ASEAN is moving forward and turning itself into a more serious force.

Article 14 of the ASEAN charter made possible for the establishment of a human rights body. The establishment of a human rights commission in the region of South East Asia has long been anticipated. The establishment of the ASEAN Inter-Governmental

¹New York Times. (2007).

²Amnesty International USA.(2009).

³ Amnesty International. (2009).

⁴ BBC News. (2010).

⁵ United Nations High Commission for Refugees. (2004).

Commission on Human Rights has been lobbied by activist, national human rights institution, civil society and many supporting parties.

1.1.2 THE DEVELOPMENT OF HUMAN RIGHTS PRACTICES IN SOUTH EAST ASIA

So far in South East Asia there are 10 countries and only 4 has human rights commission that is in the Philippines which was created in 1986 followed by Indonesia in 1993, Malaysia in 1999 and Thailand in 2001. The other six countries do not have commissions to safeguard their basic rights and most of them are considered the poorer and less democratic countries. The creation of the ASEAN Human Rights Commission is timely to improve human rights situation in the region.

Eventhough it is a historical move, many parties are critical of the new body, even before its endorsement. According to critics, the new body is deemed as not independent and not credible as reflected from its Terms of Reference (TOR) and deemed to play a minimal role in the promotion and protection of human rights in the region.⁶ This study will focus on the effectiveness of the human rights commission is in promoting and protecting human rights.

⁶ International Federation for human rights (FIDH). (n.d.).

1.2 STATEMENT OF PROBLEM

The concept of human rights that has been accepted in the world is codified in the Universal Declaration of Human Rights (UDHR). The UDHR itself is a yardstick for human rights. The idea of human rights did not just stop at the UDHR, it has been constantly evolving just as it evolved from natural rights.

The idea of human rights is commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. Western countries human rights have evolved to the current level because of its historical backdrop such as the American civil war which center on the issue of slavery, the holocaust which sees Nazi's persecution of Jews. The historical backdrop of South East Asia is different from these western countries and as most countries in the region were colonies of the western world, the acceptability of these ideas maybe intolerable.

In applying the theory of human rights in the South East Asia region, there is also the need to look at the socio-political landscape. As ASEAN is a body that was primarily formed for the protection of its borders and economic development, applying the cooperation in the field of human rights in the region itself is something new and could be a challenge to ASEAN.

As the human rights commission that was created doesn't have much power evidently shown from its founding documents and from criticism of CSOs, how is it going to be able to promote and protect human rights? This study is about evaluating the effectiveness of the human rights commission taking into consideration the regions background and socio-political landscape and providing recommendations to further improve its role in promoting and protecting human rights in South East Asia.

1.3 RESEARCH QUESTIONS AND OBJECTIVES

The main aim of this study is to look at how the ASEAN human rights mechanism works in promoting and protecting human rights. It looked into its structures, processes, and strategies in promoting and protecting human rights in South East Asia. It evaluated its effectiveness in relation to the stated matter and also in relation to states and NGOs.

The study brought a perspective on the dynamics between the commission and state which tells us the interaction between the two main actors and other non state actors as well. As the study proceeded it depicted the challenges that are faced by the commission in implementing its mandate. This allowed recommendations to overcome these challenges.

The study added value to the literature on human rights and work on ASEAN. It allows other researchers to dwell into it and use it as a linkage between literature and practice.

The TOR has already been agreed by the representatives of ASEAN and it includes the mandate and functions, methods of operation, and composition. The TOR is up for review every five years. This study is completed before the next review and hopefully will be useful for the betterment of the commission.

1.3.1 RESEARCH QUESTIONS

1. To what extent can the ASEAN Inter-Governmental Commission on Human Rights be successful in promoting and protecting human rights in South East Asia?
2. What are the key challenges that are hindering the ASEAN Inter-Governmental Commission on Human Rights in promoting and protecting human rights in SEA?
3. What best case practices can be adopted in elevating the role of the AICHR?
4. How can the AICHR function as an intermediary between states and non state stakeholders?

1.3.2 RESEARCH OBJECTIVES

The Objectives of the research are

- 1 To find out whether the ASEAN Inter-Governmental Commission on Human Rights is capable in promoting and protecting human rights in South East Asia.
- 2 To identify the challenges that is hindering the body from promoting and protecting human rights in South East Asia and opportunities available to be effective.
- 3 To identify strategies and best case practices from other institution that can be adopted by the ASEAN Inter-Governmental Commission on Human Rights in promoting and protecting human rights in South East Asia.
- 4 To examine the dynamism of relationship between the ASEAN human rights body and state and non state stakeholders.

1.4 IMPORTANCE OF STUDY

This study is important for several reasons. First of all it provided an important understanding on how the ASEAN Inter-Governmental Commission on Human Rights works in promoting and protecting human rights. In looking at an organization it is important to know its fundamentals, structures and processes to understand its decision making.

Secondly, it provided a framework for those interested in understanding the strategic and operational level of human rights institution planning. The study documented steps that have been planned and executed by the body.

Also, this study is significant as it exposed the challenges faced by the ASEAN Inter-Governmental Commission on Human Rights in promoting and protecting human rights. It is intended to those who aspire to be in the humanitarian field and prepare themselves as it gives a general idea about the main concern in the promotion and protection of human rights in the region.

Lastly, some parties might have an experienced background, be it in terms of theory or those who have been on the ground. This study provided a bit of both theoretical and practical insight on the promotion and protection of human rights.

1.5 THEORETICAL FRAMEWORK

The study incorporated the institutional theory which will look into institutional aspects of the AICHR in its interaction between the ASEAN human rights commission and states and other actors. It delved into aspects pertaining to characteristics, capacity and networking of the human rights commission and look at its effect on state behavior. To have a successful human rights institution is to have an effective human rights institution that is able to improve states human rights performance.

1.5.1 THE DEVELOPMENT OF HUMAN RIGHTS

The idea of human rights goes through years or more precisely centuries of development. What initially started as virtue in the classical age developed into today's human rights.

From the idea of virtue by Plato, it developed along the way to natural rights which draw power from an almighty power where religion played an influence. It then branched out to objective and subjective right. The difference of objective right and subjective right is that objective right means that something is right or the right thing to do, as according to our freedom to interpret it whilst subjective rights is something that is a right that an individual possess. Moving on to further development, Locke's idea reinforced the rights of all man. Cook states that Locke's idea was that men have equal rights and that the state plays a role in upholding these rights. Rights itself it is to come from society and that it shall be imposed

with regards to fundamental properties of individuals.⁷ Locke's idea was crucial in setting the stage for the next wave of rights recognition.

Thomas Jefferson who later became the third president of the United States of America principally drafted the American declaration of independence in 1776. In that declaration itself Jefferson promulgated that all men are born equal with rights coming from a supreme being and that government are formed by the people's consent to safeguard these rights and the people has the right to revolt if it becomes destructive and affect their safety and happiness.

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of happiness.—That to secure these rights, Governments are instituted among Men deriving their powers from the consent of the governed.—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness”⁸

Many more development took place since then and mostly after the American war of independence. The developments of the idea of rights were put into paper where it is legally binding. In our modern day scenario after two devastating world wars and an ineffective league of nations, countries in the world grouped together to form the United Nations, this would be the world gathering of leaders.

In the Charter of the United Nations, it seeks to safeguard human rights. The idea of rights can be seen in Chapter ix Article 55 which calls for the creation of stability and well-being which would promote good relations that are based on principle of equal rights and self-determination of peoples. It looks to promote

- a. higher standards of living, full employment, and conditions of economic and social progress and development;

⁷ Locke, J. (1969). P.ix.

⁸ Independence Hall Association. (n.d.).

- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.⁹

The idea of human rights is that human beings are of the same kind and that everybody is equal and has the same rights. This can be seen in the first sentence of the first article under the preamble of the Universal Declaration of Human Rights “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹⁰

In 1976 after entering into force, the International Covenant on Social, Economic and Cultural Rights was born. It included rights for one to enjoy their culture as stated in the preamble “the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights”¹¹ This solidifies the idea of non discrimination and expanded its scope to different cultural groups.

From United Nations point of view we can say that human rights is the unalienable right that an individual can claim by virtue of being a member of the human race, and it is non- discriminating and equal to all. These include civil, political, social and economic rights.

John Stuart Mill explains rights in terms of utility said that it is something that can be claimed from another person as his moral rights

“when we call anything a person’s right, we mean that he has a valid claim on society to protect him in the possession of it, either by force of law, or by that of education and opinion. If he has what we consider a sufficient claim, on whatever account, to have something guaranteed to him by society, we say he has a right to it”¹²

⁹ United Nations. (1945).

¹⁰ United Nations. (1948).

¹¹ United Nations. (1976).

¹² Mahoney, J. (2007).

In civil society, we can say that these rights can be claimed from a government as explained in Lockean fashion by Cook. Cook states that Locke's idea was that men have equal rights and that the state plays a role in upholding these rights, on rights itself it is to come from society and that it shall be imposed with regards to fundamental properties of individuals.¹³ Earlier author's such as Hobbes and Rosseau has promoted the idea of a state where rights of man are laid and the state is to safeguard them ensuring equality. As Hobbes puts it

“To lay down a man's right to anything is to divest himself of the liberty of hindering another of the benefit of his own right to be the same... So that the effect which redoundeth to one man, by another man's defect of right, is but so much diminution of impediments to the use of his own right original”¹⁴

Giddin said that “Under the social contract all are equally subject to obligations it imposes and all enjoy the rights it confers. The social contract is therefore valid or legitimate”¹⁵ We can observe here that man gave up their right of their nature to a body that has political powers toward men. This idea puts the state at the center of safeguarding individual rights.

From the development of the idea of rights, we can see that there are various notions on human rights, mostly centered on liberty. ‘Willingness’ is the key element that defines western concept of human rights. As the South East Asian region is a region where the conception of community is central, it has to include the community leader and in this case, it is the state. For the purpose of this study, human rights is the inalienable civil, political, social, economic, and cultural rights of mankind, which the governments plays a role in safeguarding by being equal and does not discriminate.

¹³ Locke, J. (1969). P.ix.

¹⁴ Ibid, P.67.

¹⁵ Ibid, P.32.

1.5.2 THE DEVELOPMENT OF INSTITUTIONAL THEORY

The idea of institutional theory was born from the development of the study of organisation. Scott, Berger, Luckmann, and Meyer in their studies put forward the idea that type of actors and action are product of social norms and rules.¹⁶ The idea was expanded by authors such as Meyer, Scott et al to be used for the study of different forms of organisations.¹⁷ The idea of organisation is a rationalised system where rules and norms exist to facilitate means-end relationship for the pursuance of specific goals, the model of rationality itself is a cultural system.¹⁸

In studying institutional change, Di Maggio & Powell looks at it from a different point of view whereby institutional change is facilitated by coercive and normative forces from institutional actors such as states, professional bodies, and lastly mimetic influences from similar organisations. In other words, the new institutional theory would reject rationality as explained by many other authors.

In recent studies, institutional theory according to Scott deals with deeper and more resilient aspects of social structure and “It considers the processes by which structures, including schemas, rules, norms, and routines, become established as authoritative guidelines for social behavior.”¹⁹

Scott’s interpretation deals with more explicit form of institutionalism, something that guides behavior. Jönsson and Tallberg saw that these actors have preferences“...informed by rational choice theory, assumes that utility-maximizing individuals (or, at the international

¹⁶ Scott, W.R. (2004). Pp.4-5 suggests that the behaviours are socially constructed rather than socially influenced through interaction. It is said that institutional forces shape organisational system.

¹⁷ Ibid.

¹⁸ Ibid, Pp.5-6.

¹⁹ Scott, W.R. (2004).

level, states), acting out of self-interest, are central actors in the political process, and that institutions emerge as a result of their interdependence”²⁰

In studying types of institutions Hall and Taylor categorises institutionalism into historical institutionalism where institution shapes individual behavior in terms of development in the past, rational choice institutionalism whereby actor’s every move has a motive behind it and it forms the institution and lastly sociological institutionalism where every rational choice is guided in terms of institutional cultural sense.²¹

From the above definitions we can see that institutional theory deals with how social behavior are affected from the acceptance and rejection of the elements such as rules, norms and routine and form a social structure that is the institution itself which govern social behavior.

There are a number of definitions about institutionalism in the literature which are adapted to fit the field that the authors are studying but all deal with the aspect of understanding means and choices actors make influence by institutional factors.

As Ortuoste puts it “institutions should be categorised by what they are and what they do.”²² Hence for this study the role of the institution shall be defined and parameters shall be set before any further research is done.

Firstly, institution governs actor behavior. An institution is created by its actors for the good of all its actors. There are rules created for the good of all its members and it applies to each and every actor. Secondly, institution is not rigid and can change according to situation. The creation of the institution is by the actors for the good of themselves and that an actor normally acts according to their own preferences. The preference may change and that they will seek to justify their preference. Lastly, institution encompasses all relation with

²⁰ Jönsson, C and Tallberg, Jonas. (n.d.).

²¹ Hall, P,A. and Taylor, R,C,R.(1996).

²² Ortuoste. (n.d.). P. 4.

the actor that can change its social behavior. When an actor is bound by its institution, it will accept and reject rules, norms and routine. While some authors mentioned that institutions are norms and rules that are explicitly available (formal rules, procedures)²³ but alike, there are those who look at relationship that is not implicitly stated.²⁴ For this paper, the ASEAN intergovernmental commission on human rights mechanism to change the states behavior is the institution. It encompasses the rules, procedures and relationship that affects its moves be it constraining or encouraging certain response.

Every theory has its assumption so does institutional theory. Firstly, it employs behavioural assumption that is every actor has their own worldview. The human rights bodies, states, NGOs, INGOs have their own stand. Secondly, decisions made by actors are guided by institutional elements such as rules, procedures and relationship. Thirdly, decisions made by the actors are path dependant. Lastly, it has to be noted that the institution creates and impact on states behaviour directly or indirectly.

The strength of the theory is that firstly, institutions are readily identifiable and they are useful as a starting point of analysis.²⁵ Each institution has its own culture and this make it a great point to start an analysis. The institution culture comes in the form of its characteristics, its capacity and also its networks. By dwelling into it, analysis can be done upon human rights development in the region while looking at these factors. It enable explanation of how institutions affect or can affect human rights development. In studying the AICHR, this theory enabled us to identify the institutional factors that affect human rights performance and thus an analysis was done on how it could affect human rights. It has allowed scrutiny of institution roles and human rights performance.

²³ Refer to Ortuoste, P.5. The author quoted authors who support the notion of where institution are structured explicitly that is Jepperson (1991), Holthoefer (2006).

²⁴ Hall, P, A and Taylor, R,C,R. (1996) .

²⁵ Peters, G,B. (2000).

Second, it also helps to enhance the explanatory and predictive capacity of social science research.²⁶ The availability of institutional theory with its assumption will allow the phenomenon to be explained and predicted in the future. For example historical institutionalism dictates that what happens in the current setting is because of development in the past. This allows us to look at the institutional culture like its characteristic and capacity which dictates how institutions can improve human rights development. Putting rational choice institutionalism into play allowed us to view things from a state point of view where we can analyse the reason AICHR is created and also how states will fare to its recommendations. In studying AICHR too, it allowed analysis of the effectiveness of the current institutional setting based on the historical factors that are the characteristic, capacity and the network.

Third, it will also provide a framework for analysis where models can be built to enhance our understanding of it and be used for analysis in the future. As institutional theory dictates what is done in the past affects how things are being done in the present, observation of the mechanism allows for a model to be drafted explaining the phenomenon. The model includes all the factors that will play a role in institutions trying to improve state human rights performance. This enables us to look at it as a whole and see the effectiveness of the institution. Further research can be done to enhance the understanding and strength of the theory. Using this framework to look at AICHR, enabled the gauging of how effective the human rights institution is going to be. As the model looked into the AICHR institutional factors, it hypothesizes the ability of the AICHR to promote and protect human rights in the region. Matching it with current human rights development enabled us to see what it can do to promote and protect human rights in the region.

²⁶ Ibid.

The weakness is in its inability to provide coherent explanations of political phenomena as one of the common problems is in measuring because of variations of institutional theory (Historical institutionalism, rational choice institutionalism, and sociological institutionalism).²⁷ There is contrast between methods of analysis of historical, rational choice and sociological institutionalism. Different institutional definitions have different approaches and will yield different findings when applying them. In order to avoid confusion, the assumptions are stated to better provide a framework for it to work. The assumptions are that institutions govern actors behavior, they are not rigid and can change, institution encompasses all relation with the actor that can change social behavior.

Another weakness is that international relations or the political world is a shade of gray and they are no definite yes or no to certain actions and this causes irregularities in state decisions. A political institution consists of a group of states and it is more complicated to study. In order to research about it, a suitable theory has to be chosen and the institutional theory is the most suitable theory because it considers all actors (state and institutions) in its analysis. This enables the analysis of the whole human rights scene from different perspective thus giving it a more wholesome view of it.

²⁷ Ibid.

1.6 RESEARCH STRATEGIES

The literature review in chapter 2 has shown that past works mostly have been done from a qualitative approach and more current research has been using a quantitative approach. Through past researches a leading theory has been identified. The availability of a theory that is the institutional theory would help to understand the structure and mechanism that determine the effectiveness of the ASEAN human rights body.

Through the literature review, variables used in past studies are used to help draw the model to be used for this study. With the availability of the model, observable phenomena and the regularities of the dynamics between the institution and state and non state actors was done.

Secondly, empirical method was used to explain the model further. This method helped to quantify the variables at hand and create an instrument to better understand the model. It was then used to explain the model to show the relations between the variables and human rights performance.

Thirdly, data collection was done. Data collection on characteristics, capacity and networking of institutions was done through scrutiny of social artefacts which relied on document content analysis, using both primary and secondary sources. Data is collected from primary sources that are official documents of the ASEAN Intergovernmental Commission on Human Rights. Secondary data includes books, journals, and online materials such as articles, official websites, and magazine.

Data about the institution were found in official documents and can be examined immediately. Data on human rights violations came from reports of NGO institution on states performance in human rights. Projects of the commission were available in the media. The capacity of the organization which are the mandate and the human resources of the commission were scrutinize through its structure and official document.

Fourth, to further strengthen the study, interviews with knowledgeable persons were carried out to provide a neutral and a more holistic understanding of the matter at hand. Knowledgeable persons here are expert analyst of the ASEAN regional association, policy makers, government officials, commission representatives and other human rights analyst experts. The interviews were conducted through emails, and if necessary through phone calls and face to face interviews.

Data for different variables (characteristics, capacity and network) from different sources were analysed and it provide a wider and more neutral perspective. These data are vital for the understanding of the effectiveness of the commission and are used to explain the model. There were two sets of data, one is the elements of the effectiveness of the institution which was put into a scale and analysed. The second are reports of states human rights performance.

1.7 METHODOLOGY

1.7.1 DETERMINANTS OF EFFECTIVENESS

The elements that determine the effectiveness of the Human rights institution is called the elements of institutional effectiveness. Various authors have different outlook on the matter but they can be classified into Characteristics, Capacity and Networking.²⁸

a. Characteristic

A characteristic of an institution is formed by its foundation principles, composition, and decision making process.²⁹ An effective institution in changing states behavior is one that has clear goals, independent, has plural representation and has the freedom to make decision. Refer to chapter 2 for a more in depth look at the factors.

²⁸ Refer to Table 1.

²⁹ Çah and Wyss (2008), Shaver (n.d.), Flood (1998), Jacquemin (2005), Alfredson (2005), Alston (2006), Byrnes, Durbach and Renshaw (2008).

The foundational principles will allow us to learn about the goals of the human rights body, it is stated in its constitution, charter and foundation documents. An independent body is one that has clear direction and goals in pursuing the promotion and protection of human rights and free from influence of government in their foundation principles.

Not only does the foundation principle affect the characteristics of the institution but also its composition. Composition will allow us to find out if its membership is free and fair. This is seen from its membership representation, and membership criteria. A free and fair representation should be plural and represent all states, with different gender, race, and religion and member(s) that are free from government influence.

Also another characteristic of an institution is its decision making process. Decision making process will allow us to understand the involvement of the members in making a decision. This can be seen through decisions by its commissioner. It should be free from government interference.

b. Capacity

The capacity of the institution is its ability to perform its role in promoting and protecting human rights, and it is seen in its mandate and resources.³⁰ The larger and more powerful an institutions mandate and the adequate quantity and excellent quality of the resources of the institution will lead to a more effective human rights institution in changing states behavior for better human rights performance.

The mandate of the institution is the power or the legitimate role that it can play in upholding human rights in its constituent. This is seen in its foundation document and subsequent roles that are in play in promoting and protecting of human rights. A large and powerful mandate is one that is able to exercise its role to protect and promote human rights

³⁰ Cardenas, S. (2003), Shaver, L. (n.d.), Flood, P, J. (1998), International Council on Human Rights Policy (2004), Çah and Wyss (2008), Hafner-Burton and Tsutsui (2005), Ortuoste (n.d.), Nickel, J.W.(2008).

without constraints. This can be through its comments, programs it runs and stand it takes on human rights violation.

The resources of an institution are its monetary and non-monetary resources. This is seen quantitatively and qualitatively. The adequate quantity and excellent quality of the resources is seen from its availability of manpower in the field of human rights such as having a human rights research team, complaints handling team, and other teams that are related to the promotion and protection of human rights and lastly adequate funding to run its program. An adequate quantity and excellent quality of human resources is having adequate staff and having placed manpower in necessary fields to run all functions.

c. Networking

The Networking of an institution is its relation and work with states, NGOs or INGOs. The wider the network of a human rights institution spans, the more effective the institution is in helping to change states behavior for better human rights performance.³¹

Its networking with state is seen through the role they play that is consulting, advising, supporting state human rights effort and reporting findings to states. It comes in the form of meetings, training for states personnel, report to state's minister, and appearance in programs of the government.

Its networking with NGOs and INGOs is seen through the role it plays in consulting, learning, supporting, and cooperation with these bodies. This comes in the form of meetings, training, and programs. Good networking with NGOs and INGOs is seen in the commission's ability to perform these roles.

³¹ Alston (2006), Ortuoste (n.d.), International council on human rights policy (2004), Dam (2008) , Byrnes, Durbach and Renshaw (2008).

1.7.2 DETERMINANT OF STATE HUMAN RIGHTS PERFORMANCE

This is the indicator that can be measured to see how effective improvements have been made in human rights compliance. This will allow us to measure the overall effectiveness of the Human rights institution in changing state behaviors. This can be measured by states failure in complying with international human rights or the enjoyment of rights for the people. Quantitatively and qualitatively it can be measured by event-based data, socio-economic data, household perceptions and expert judgments.

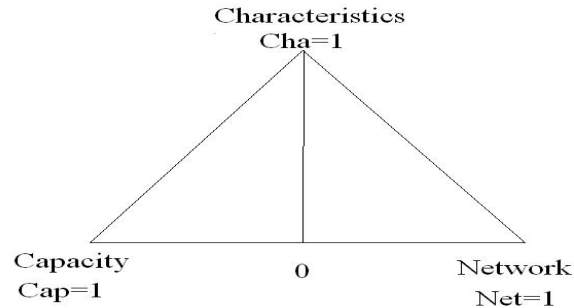
Beco (2008) said that in order to measure the performance of state one can have three indicators that is structural, process and outcome. Structural indicator is state ratification of treaty and establishment of independent human rights institutions.³² Process indicator is the measure of effort that could be laws and policy.

Lastly outcome indicators are results from the process (states effort) and among things to measure are civil and political rights. It can be gauged through data from Freedom House's annual report on countries freedom, human development index (HDI) and other relevant data. This won't be included in this study as the effect in the change of policy will only be reflected in the long run and the time frame of this study is inadequate to measure it.

³² Beco, G. D. (2008).

1.7.3 HUMAN RIGHTS INSTITUTION EFFECTIVENESS MODEL

Figure 1.1 Human Rights Institution Effectiveness Model



Note: This triangle is a metaphor for Human Rights Institution Effectiveness space. Available space is determined by the score of the triangle three sides: Characteristics (Cha), Capacity (Cap) and Networking (Net). The greater the capacity, the more positive the characteristic and the larger and wide span the network and work of a human rights institution is the greater the space for Human rights institution effectiveness that can be seen in state performance. All three variables can be measured as indices, ranging from 0 to 1 (maximum)

(Source: Author)

Table 1.1 : Human Rights Institution Effectiveness Factors

Determinants		Why is it important	<u>1</u>	<u>2</u>	<u>3</u>
Characteristic	Foundation Principles	It will tell of directions, goals, and the level of autonomy the institution has	-	-	-
	Composition and Decision Making Process	It will tell of the freeness and fairness of membership, and involvement of members in decision making and whether there is government interference	-	-	-
Capacity	Mandate	It will tell of power or the legitimate role that it can play in upholding human rights in its constituent	-	-	-
	Resources	It will tell of the quality and quantity of the resources available to the institution	-	-	-

Network	State	It will tell of the relations and works of the institution with states	-	-	-
	Non Governmental Organisation (NGO)	It will tell of the relations and works of the institution with NGOs	-	-	-

(Source:Adapted from a variety of authors³³)

Table1.2 Human Rights Institution Effectiveness Factors Explanation

Determinants		Positive (3)	Average (2)	Negative (1)
Characteristics	Foundation Principles	An independent body is one that has clear direction and goals in pursuing the promotion and protection of human rights and free from influence of government in its foundation principles.	Unclear direction and goals in pursuing promotion and protection of human rights and free from influence of government(s)/ Clear directions and goals in pursuing promotion and protection of human rights and not free from influence of government(s)	Unclear direction and goals in pursuing promotion and protection of human rights not free from influence of government(s)
	Composition and decision making process	A fair and free representation should be plural and represent all states, with different gender, race and religion and member (s) that are free from government influence. A fair decision making process should be one that comes from its commissioner without government interference	Has one/ two unfair representation in terms of attribute of state, gender, race or religion and members(s) that are free from government influence/ Has fair representation but member (s) are not free from government influence. Decision making process is flawed and would allow certain group full control	Has three/ all unfair representation in terms of attribute of state, gender, race or religion and members(s) that are free not from government influence. Decision making process that is completely manipulated by governments

³³ Shaver (n.d.), Alston (2006), Paris Principles, Jacquemin (2005), Jacquemin (2005), Ortuoste (2008), Donelly (1986), Alfredson (2005), International Council on Human Rights Policy (2004), International Council on Human Rights Policy (2005), Dam (2007), Durbach and Renshaw (2008)

Capacity	Mandate	A large and powerful mandate is one that is able to exercise its role to protect and promote human rights without constraints.	A mandate that would allow protection and promotion of human right but with constraint	A mandate that does not allow protection or promotion of human rights
	Resources	Adequate quantity and excellent quality of resources is having adequate staff to run all functions and having enough monetary resources	Inadequate human resources but enough monetary resources or vice versa	Inadequate human resources and monetary resources
Network	State	Good networking with state is seen as been able to perform consulting, advising, supporting state human rights effort and reporting findings to states.	Unable to perform either one or two roles in consulting, advising, supporting state human rights effort and reporting findings to state	Unable to perform either three or all roles in consulting, advising, supporting state human rights effort and reporting findings to state
	Non Governmental Organisation (NGO)	Good networking with NGOs and INGOs is seen been able to perform consulting, learning, support and collaboration with these bodies	Unable to perform either one or two roles in consulting, learning, supporting and collaborate with NGOs and INGOs	Unable to perform either three or all roles in consulting, learning, supporting and collaborate with NGOs and INGOs

Adapted from: Shaver (n.d.), Alston (2006), Paris Principles, Jacquemin (2005), Jacquemin (2005), Ortuoste (2008), Donnelly (1986), Alfredson (2005), International Council on Human Rights Policy (2004), International Council on Human Rights Policy (2005), Dam (2007), Durbach and Renshaw (2008)

Formula

$$\begin{aligned} \text{HRIE} &= \frac{1}{2} \left[\left(\frac{\text{Cap}}{6} \right) + \left(\frac{\text{Net}}{6} \right) \right] * \frac{\text{Cha}}{6} \\ &= \frac{1}{2} \left[\left(\frac{\text{Man+Re}}{6} \right) + \left(\frac{\text{Sta+Ngo}}{6} \right) \right] * \frac{\text{Fop+ComDmp}}{6} \\ &= x (\leq 1) \end{aligned}$$

HRIE=Human Rights Institution Effectiveness	Cha=Characteristics
Cap=Capacity	Net=Network
Fop=Foundation Principle	
ComDmp=Composition Dmp=Decision Making Process	
Man=Mandate	
Re=Resources	Sta=Network and works with States
Ngo=Network and works with NGOs and INGOs	Peo=Network and works with people

Source: Adapted from Shaver (n.d.), Alston (2006), Paris Principles, Jacquemin (2005), Jacquemin (2005), Ortuoste (2008), Donnelly (1986), Alfredson (2005), International Council on Human Rights Policy (2004), International Council on Human Rights Policy (2005), Dam (2007), Durbach and Renshaw (2008).

Maximum integer is 1 which means an effective human rights institution in terms of characteristics, capacity and networking. The higher the number denotes a more effective human rights institution and the lower the number denotes a less effective human rights institution.

At the end of the research, to measure effectiveness of the human rights institution, an analysis of the Human Rights Institution Effectiveness (HRIE) triangle was done alongside recorded cases of state violation of human rights/enjoyment of rights through event based

data. Change in state behavior is seen through structural indicator that is ratification of treaty, and process indicator that is new laws, policy and human rights promotion.

1.8 PROBLEMS AND LIMITATIONS

A major strength of this study is that it explores AICHR human rights institution effectiveness through its institutional factors and it will help solidify in the understanding of the institution. There are also limitations present in the research and they are:

Statistical Problem

Data that collected consist of primary and secondary data. There are a variety of data and consist of quantitative and qualitative data. Different analysis from different institution will provide data which was define with different concepts.

To overcome the problem, the most efficient and effective way was to classify the data into the determinants that has been stated in this study. The collected data are scrutinized and placed accordingly.

Statistics by non-governmental organisations might not be complete and not thorough as they have restricted access to the subjects limited by manpower, money and other factors. Statistics by state institutions might not be accurate because states want to create a positive image of it. The best way is to using what is available and get the most wholesome data available.

Time Problem

As the period of study of the institution is short due to the nature of the researcher's academic period, and most data on state human rights performance is only available at the end of the working year of the organization, the research will have to rely on structural (ratification of