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AICHR WHITE ELEPHANT: THE CASE FOR A REGIONAL PROTECTION FRAMEWORK IN ASIA

I. Brief Background of AICHR

A. 23 October 2009--- Asean Intergovernmental Commission on Human Rights (AICHR) established by ASEAN based on Article 14 of the ASEAN Charter, which states that:

1) In conformity with the purposes and the principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedom, ASEAN shall establish an ASEAN human rights body.

2) This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.

B. AICHR established by its Terms of Reference (TOR) and launched during the 15th ASEAN summit in Hua-hin, Thailand

C. Salient features of the AICHR TOR

1) The AICHR shall be guided by the following principles: xxx “a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States; b) non-interference in the internal affairs of ASEAN Member States; c) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;”

2) “3. CONSULTATIVE INTER-GOVERNMENTAL BODY
The AICHR is an inter-governmental body and an integral part of the ASEAN organisational structure. It is a consultative body.”

3) “5. COMPOSITION
Membership

5.1 The AICHR shall consist of the Member States of ASEAN.5.2 Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government.”

4) “Review

9.6. This TOR shall be initially reviewed five years after its entry into force. This review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting, with a view to further enhancing the promotion and protection of human rights within ASEAN.”

II. **Duhay vs. The Philippines:** AICHR ‘s disappointing performance in combating impunity

A. 23 November 2009- 58 persons, including 32 journalists and media workers, were massacred in Sitio Masalay, Brgy. Salam, Ampatuan, Maguindanao, Philippines in the worst single attack on journalists (“Maguindanao massacre”)

B. 197 Accused perpetrators of the Maguindanao massacre— then incumbent regional governor, a former provincial governor, an incumbent local mayor, other local government officials, police officers, policemen, and paramilitary personnel

C. 3 February 2010- CenterLaw filed a communication, *Duhay, et al. vs. The Philippines*, before Asean Intergovernmental Commission on Human Rights (AICHR) entitled:

“PRELIMINARY REQUEST FOR AN URGENT PRONOUNCEMENT ON THE 23 NOVEMBER 2009 MASSACRE IN SITIO MASALAY, BARANGAY SALMAN, AMPATUAN TOWN, MAGUINDANAO PROVINCE, THE PHILIPPINES, CALLING ON THE PHILIPPINE STATE TO ENSURE THAT THE PERPETRATORS OF THE HEINOUS HUMAN RIGHTS VIOLATION –WHO ARE ALL AGENTS OF THE PHILIPPINE STATE –ARE BROUGHT TO JUSTICE AND THAT ADEQUATE REPARATIONS AND SATISFACTION ARE MADE TO THE HEIRS OF THE VICTIMS UNDER APPLICABLE RULES OF INTERNATIONAL LAW”

D. In *Duhay, et al. vs. The Philippines*, the victims of the Maguindanao massacre asked the AICHR to:

“4. Petitioners hereby make a preliminary request for an urgent declaration from the Commission calling on the Philippine State to ensure that the perpetrators of the heinous human rights violation – who are all agents of the Philippine State – are brought to justice and adequate reparations are made to the heirs of the victims under applicable rules of international law.”

E. Basis for the Communication:

1. Moreover, complicity by the Philippine State in the carnage is established by the following points:

2. *First*, the Republic of the Philippines could have disarmed the Ampatuans. Its top officials have pronounced that they are “violent people” but continued to supply them with high-powered firearms so that the clan could maintain a private army.
 3. *Second*, the Republic of the Philippines could have sent police and military personnel to accompany Mangudadatu’s supporters to the capitol but it did not, despite intelligence reports received from personnel on the ground of the massing of armed men along the highway leading to Shariff Aguak.
 4. This security provision could have prevented the massacre. Yet the Republic of the Philippines’ top Army officers in the region refused to heed requests by the Mangudadatus and their media companions, on the lame excuse that they did not have enough personnel for the purpose. Worse of all, they gave assurances that the highway leading to the capitol is safe and secure.
 5. The avoidance by both the police and the military officials in the region of security duty on that ill-fated day is inexplicable, given that the violent tendencies of the Ampatuans are well-known to them and to the high civilian officials of the Republic of the Philippines and the abundant intelligence information passed on from the ground to the chain of command about the massing of armed men along the highway.
 6. Too, this avoidance of duty by responsible officers and men of the Philippine national police and armed forces constitutes a failure to prevent impunity under international law.
 7. It is clear from the above-discussion that the Philippine State is responsible under international law for the acts of its agents who were either complicit in the 23 November Massacre or were its direct perpetrators.
 8. By reason of the above, there are well-founded fears that the Philippine State will be under very heavy pressure from the Ampatuans to whitewash the investigation or to cover up crucial evidence and witnesses. Thus, the need on the part of the Commission to issue an urgent declaration calling on the Philippine State to abide with its obligations under international law and ensure the prosecution and conviction of the perpetrators of the massacre as well as the provision of adequate reparations, including compensation and satisfaction, to the victims and their heirs.
- F. 29 March 2010- Petitioners in *Duhay vs. The Philippines* and their counsels visited the AICHR Secretariat in Jakarta, Indonesia to follow-up on their communication
- G. Philippine response to *Duhay vs. The Philippines*

“During their meeting, Roque said he was informed by Dr. Termsakthat “the complaint was received and forwarded to the president of ASEAN [Vietnam]” as well as to the Philippine government “and that the Philippine government has already responded – and that the response was that it’s a purely domestic issue and that the ASEAN commission could not get involved in it.”¹ - See more at: <http://verafiles.org/govt-tells-asean-body-maguindanao-massacre-a-domestic-legal-issue/#sthash.3FG9NkSu.dpuf>

H. Oral response by some AICHR officers to *Duhay vs. The Philippines*

- 1) As of the filing of Duhay, there was no individual complaint mechanism for AICHR.
- 2) AICHR’s main mandate is promotion of human rights.

III. **Udin murder case in Indonesia:** 17-year struggle for justice for a murdered journalist

- A) In 1996- Udin began writing a series of articles that focused on the regent selection process in Bantul, a suburb of Yogyakarta. This included an article on a Rp. 1 million bribe paid by Bantul’s regent Sri Rosso Sudarmo to the Dharma Foundation, a foundation run by President Suharto, to secure his reappointment for a second term.²
- B) Following these publications, Udin suffered threats of legal action for defamation, offers of bribes to stop his reporting as well as threats of violence. He filed several reports concerning this harassment with the Legal Aid Institute in Yogyakarta.³
- C)
 - D) 13 August 1996- 2 men came to Udin’s house and subsequently beat Udin in the head and stomach with a metal rod and left him on the floor covered in blood and bleeding from his ears.
 - E) 16 August 1996- Udin dies
 - F) 21 October 1996-- police arrested taxi driver Dwi Sumaji for the murder. However, the case did not add up.
 - G) The office of the Public Prosecutor refused to follow through on the case four

1 <http://verafiles.org/govt-tells-asean-body-maguindanao-massacre-a-domestic-legal-issue/>

2 Udin communication before AICHR.

3 Id.

times due to the lack of evidence, and when the case was eventually brought to trial in July 1997, the prosecution withdrew the case before the trial had come to a conclusion.⁴

- H) November 1997---Sumaji was acquitted.⁵
- I) Following the acquittal, no further efforts were made to investigate Udin's murder.⁶
- J) July 2013- CSO filed a communication before AICHR for the Udin murder. The communication is denoted as:

“REQUEST FOR AN URGENT PRONOUNCEMENT CONCERNING THE AUGUST 1996 MURDER OF FUAD MUHAMMAD SYAFRUDDIN (ALSO KNOWN AS “UDIN”) IN DUSUN GELANGAN SAMALO, PARANGTRITIS ROAD KM 13 YOGYAKARTA, INDONESIA CALLING ON THE STATE OF INDONESIA TO ENSURE THAT THE PERPETRATORS OF THIS HEINOUS HUMAN RIGHTS VIOLATION ARE BROUGHT TO JUSTICE– TO STOP THE CYCLE OF IMPUNITY AGAINST INDONESIAN JOURNALISTS – AND THAT ADEQUATE REPARATIONS AND SATISFACTION BE MADE TO THE HEIRS OF UDIN UNDER APPLICABLE RULES OF INTERNATIONAL LAW”

- K) Reliefs asked in Udin communication

Petitioners hereby urgently request the Commission:

- (a) To make an urgent declaration calling on the State of Indonesia to ensure that the perpetrators of the August 1996 murder of Fuad Muhammad Syafruddin (also known as “Udin”)– are brought to justice; and
- (b) To make an urgent declaration calling on the State of Indonesia to make adequate reparations to the Petitioners as heirs of Udin.

- L) As of date, AICHR has not made any pronouncements on the individual communications filed before it.

4 Id.

5 Id.

6 Id.