
Lessons to be Learned from the Inter-American Commission on Human Rights Concerning Precautionary Measures: A Blueprint for ASEAN

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Abstract

Regional or sub-regional institutions are a necessity in a modern legal system, considering that similar systems have long been established in Europe and Latin America. The two regional mechanisms provide an alternative for justice seekers at the national level who do not find justice and whose cases tend to meet exhausted local remedy, regional human rights bodies have an important role in promoting and protecting human rights because they are closer to the condition of the people. Specifically related to precautionary measures such as those in the Latin American mechanism, ASEAN sub-regional institutions must dare to build similar mechanisms so that serious and gross violations of law and human rights can be prevented. It is time for ASEAN sub-regional institutions to strengthen their presence in ensuring legal and human rights protection in the Region, one of which is through the precautionary measures mechanism to prevent potential legal and human rights cases from having a wider impact. The Inter-American human rights system is one of the best examples for ASEAN to learn from, because there are some similarities between ASEAN and Latin America. For example, both regions have had a history of dictatorship, suffered from the Cold War and nowadays are transitioning to democracy and progressing in promoting human rights.

Kata Kunci: ASEAN; Timor Leste; Human Rights

INTRODUCTION

This paper examines the urgency and feasibility of applying a mechanism of precautionary measures in the member states of the *Association of Southeast Asian Nations (ASEAN)*, and whether such measures can be enforced within *ASEAN*. It also explores the question: to what extent would precautionary measures benefit or strengthen the protection of human rights in *ASEAN*? These questions are crucial for *ASEAN* to address, as it currently lacks a mechanism to protect individuals from the widespread practice of enforced disappearances.

This paper notes that precautionary measures are granted in serious or emergency situations to prevent irreparable harm to individuals or potential victims. Furthermore, the Inter-American system distinguishes between precautionary and provisional measures: the *Inter-American Commission on Human Rights (IACHR)* issues precautionary measures, while the *Inter-American Court of Human Rights (IACtR)* issues provisional measures. As part of human rights protection, the precautionary measures mechanism discussed in this paper specifically focuses on enforced disappearances.

The absence of a regional protection mechanism within the *ASEAN* framework has created a legal vacuum in addressing urgent and serious human rights violations, particularly enforced disappearances. While *ASEAN* has established the *ASEAN Intergovernmental Commission on Human Rights (AICHR)*, its mandate is limited to promotion rather than protection, making it incapable of issuing precautionary or provisional measures during emergencies. In contrast, the Inter-American human rights system—particularly through the *IACHR*—has long implemented a precautionary measures mechanism to prevent irreparable harm and ensure rapid responses to

threats against life and liberty. *ASEAN* and Latin America share several historical and political parallels, including experiences with authoritarian regimes and transitional democracies, making the Inter-American model a relevant and applicable example for *ASEAN* to emulate.

This paper argues that the *ASEAN* system would benefit from the creation of a mechanism providing precautionary measures, similar to that which already exists in the Inter-American human rights system. Protection measures have played a significant role in the Inter-American system, with the *IACHR* able to grant them to individuals or communities facing serious threats in specific countries. This mechanism is intended to prevent irreparable harm to persons. Generally, a request for precautionary measures over member states aims to ensure that states or governments take positive action, such as “providing protection for human rights activists, journalists, or judges who have offended those in power.”

The Inter-American human rights system is one of the most effective models from which *ASEAN* can learn, due to several similarities between the two regions. Both regions have experienced dictatorships, suffered the impacts of the Cold War, and are now transitioning toward democracy and progress in human rights promotion.

To demonstrate this standpoint, the paper is structured into several sections: **Section I** explains why *ASEAN* needs to establish a human rights protection mechanism, particularly one focused on precautionary measures. *ASEAN* must learn from the *IACHR* to apply such measures and avoid irreparable harm. **Section II** describes the paper’s methodology, which uses normative legal research. **Section III** outlines the normative legal framework and the components of the precautionary measures mechanism in the Inter-American system. **Section IV** analyzes the possibility for the *ASEAN* region to adopt and learn from precautionary measures in order to strengthen human rights protection. **Section V** presents the paper’s conclusion and recommendations.

This paper aims to explore the urgency and feasibility of adopting a precautionary measures mechanism within *ASEAN* by analyzing the normative and institutional frameworks of the Inter-American system. Specifically, it seeks to identify the core legal components of such a mechanism, assess *ASEAN*’s current legal capacity for implementation, and formulate a contextually adapted blueprint. The implications of this research are both normative and practical: it contributes to the discourse on strengthening regional human rights mechanisms in Southeast Asia and offers actionable recommendations for policymakers and civil society actors to enhance institutional readiness. By adopting such measures, *ASEAN* can evolve from a promotional to a protective human rights system—ensuring that violations like enforced disappearances no longer go unaddressed in the region.

RESEARCH METHODS

This article is the result of *normative legal research*, which examines legal rules, principles, and doctrines related to the issues in this study to formulate legal arguments. Data collection was carried out using the *librarianship study method* by gathering legal materials and information in the form of *primary*, *secondary*, and *tertiary* legal sources. To ensure clarity and coherence, the collected data were then organized systematically and analyzed using descriptive methods.

Research Techniques

1. Conducting data analysis through a review of various bibliographic sources, statutes, applicable laws and regulations, as well as scholarly opinions from lecturers and other legal experts; and
2. *Document study*, which involves collecting research data that is not solely focused on the research subjects but also includes supporting documents relevant to the topic.

RESULTS AND DISCUSSION

A. The ASEAN Human Rights Body: Urgency of Human Rights Protection

On August 8, 1967, Thailand, Indonesia, Malaysia, the Philippines, and Singapore declared the Association of Southeast Asian Nations (ASEAN). ASEAN currently has ten country members (*The ASEAN Charter*, 2019). ASEAN was born to promote peace and security in its region. Furthermore, in order to promote human rights in the region and pursuant to the ASEAN Charter, article 14 on the ASEAN Human Rights Body, on October 23, 2009, ASEAN established the ASEAN Intergovernmental Commission on Human Rights (AICHR). Although AICHR is still new and does not yet have a strong mandate, state parties have an obligation to promote human rights in their territories (*Term of Reference (TOR) AICHR*, 2020).

Indeed, ASEAN was established forty-six years ago, in terms of development of the regional human rights mechanism, ASEAN remains behind the other regional human rights bodies, namely the Inter-American, African and European Commissions. ASEAN established AICHR with a very limited mandate, namely only the promotion of human rights. AICHR cannot receive complaints from victims of human rights abuses or civil society; the Commission also cannot grant or request protection in order to save human lives.

In 2010, civil society organizations from Indonesia, the Philippines, Singapore and Malaysia submitted six cases concerning migrant workers, press freedom and freedom of expression, past human rights violations on crimes against humanity, mass killings, women's rights and the death penalty (for Asian People's Advocacy Task Force on ASEAN & TFAHR, 2017). Nevertheless, the Chairperson of AICHR stated, "The Commission cannot receive these cases, because the Commission has not yet adopted its Rules of Procedure on how to handle cases of human rights violations [...] (International, 2015)."

Between 2011 and 2012, AICHR made some progress in strengthening regional human rights instruments by enacting the ASEAN Declaration on Human Rights (ADHR) ((AFAD), 2014). The enactment of the ADHR is a good starting point to strengthen the mandate of the AICHR, especially to develop a protection mandate (Djamin, 2016).

During the drafting process of the ADHR, a group of civil society organizations in ASEAN, including organizations such as the Asian Federation Against Involuntary Disappearances (AFAD), called on the AICHR to refer to the practice of enforced disappearance in the ASEAN Declaration on Human Rights. AFAD stressed that enforced disappearance is one of the most serious crimes ((AFAD), 2014). Subsequently, other human rights groups such as the Asian Human Rights Commission (AHRC), the largest NGO in Asia, also stressed, "[...] in the forum of the Asian Nations such as ASEAN [...] the issue of enforced disappearances needs to be discussed seriously. (on Human Rights (AHRC), 2018)"

Finally, even though the final draft of the ADHR does not specifically mention enforced disappearances, the ASEAN Foreign Ministers (AFM), as the highest forum in the region,

finally incorporated a provision that can be interpreted to protect people against involuntary disappearance. Article 12 of the ADHR states, “Every Person has the rights to personal liberty and security; no person shall be subjected to arbitrary arrest, search, detention, abduction or any other form of deprivation of liberty. (*ASEAN Human Rights Declaration*, 2017)”

B. A General Assessment of the Ten ASEAN Countries

Recently, ideas to strengthen the AICHR’s mandate have become controversial issues among the country members of ASEAN. With regard to the development of human rights in the ASEAN region, ten countries of ASEAN can be divided into two groups. The first group would consist of countries with relatively high levels of democracy and promotion of human rights, namely Malaysia, Indonesia, Philippines and Thailand. The second group would consist of countries with relatively low levels of democracy and human rights promotion, namely Laos, Cambodia, Brunei Darussalam, Singapore, Vietnam and Myanmar (Presse, 2018).

Furthermore, the second group could incorporate Myanmar, since the government has made some progress toward promoting reforms. For example, the country’s military junta released Aung San Suu Kyi and hundreds of political prisoners. The government also allowed The National League for Democracy (NLD), an opposition party, to take part in the general election (*Myanmar Frees Political Prisoners on day of historic Obama visit*, 2019).

The countries in the first group could take more initiative to promote the idea that the AICHR must have precautionary measures to protect people from enforced disappearance. Generally, the Commissioners of AICHR from these countries have better understanding and knowledge about human rights and they have close relationships with civil society in ASEAN. For instance, the Commissioners from Indonesia, Thailand and the Philippines were selected by the civil societies in their respective countries through transparent and democratic elections (*Burma Election Commission Allows NLD Registration*, 2020).

C. Precautionary Measures in the Inter – American Human Rights Body

“... I am a great believer and advocate of the need for and the importance of regional systems in the global system of human rights precisely because I think they have proved to be as they were first intended; in many ways, they are able to be more effective, deeper, and more solid than the global system. They are closer to the state and citizen they affect...(Abramovich & others, 2009)” (Professor Paolo Carozza)

The above-mentioned paragraph shows that regional human rights bodies have an important role in promoting and protecting human rights because they are closer to the condition of the people. One of the protection mechanisms in the Inter-America is that precautionary measures, and with regard to this mechanism, in article 63 (2) of the American Convention on Human Rights, states:

“In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission. (on Human Rights, 2006)”

Moreover, the Inter - American Convention on Forced Disappearance of Persons (IACFD) Article IV stresses that “Every State Party shall, moreover, take the necessary measures to establish its jurisdiction over such cases in the following instances (*Inter American Convention on Forced Disappearances of Persons*, 2007).” Petitioner must file a complaint no more than six months after the case meets the rule of exhaustion remedy in the domestic legal system. However, the

Commission also has authority to admit or refuse complaints based on specific circumstances and taking into account situations where there are serious threats and there is no remedy in domestic law (Mendez & others, 2012).

The IACHR also has a Rule of Procedure, which specifically governs precautionary measures. Article 25 paragraph 1 of the Rule of Procedure, states:

“In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons (*Rule of Procedure of the Inter-American Commission on Human Rights*, 2010).”

This provision strengthens the protective measure that already existed in the Inter - American Convention on Forced Disappearance of Persons.

The Inter-American Commission on Human Rights (IACHR) is one of the regional human rights bodies, which is very progressive in dealing with enforced disappearance cases. Between the years of 1970 -1990, enforced disappearances were a significant issue in many countries of Latin America (*Commission Report on the Situation of Human Rights in Chile*, 2009). This paper notes that Inter American Human Rights Court has had three essential cases that occurred between 1986 and 1989, in which Honduran security forces were involved in the enforced disappearances of *Velasquez, Godinez and Solis* (Mendez & others, 2012).

With regard to enforced disappearances in Latin America, Professor Juan E. Mendez explains, “In most countries, such as Chile, Argentina and Honduras, disappearances are conducted during a definite period and at some point the practice stops. In others such as Guatemala, El Salvador, Peru and Colombia, a steady stream of disappearances is recorded every year [...] The victim is generally arrested by the security forces or by persons acting under some form of governmental authority (Mendez & others, 2012).”

Professor Mendez stresses that enforced disappearances were a widespread practice in most Latin America countries. This situation can be said to have been a trigger for the General Assembly of the Organization of America States (OAS) to stress that enforced disappearances are “crimes against humanity” (*OAS G.A Res. 666 (XIII – 0/83)*, 1983). Subsequently the Commission drafted a Convention on Disappearances which was widely supported by civil societies and NGOs (*Inter-American Convention on Enforced Disappearance of Persons*, 1994). “[...] (OAS) also recognizes the authority of the Commission to adopt precautionary measures in cases of forced disappearance (*Basic Document Pertaining To Human Rights in the Inter American System*, 2000).”

If the State fails to comply with the Commission request, the Commission may apply article 45 of the Rule of Procedure on referral of the case to the Court. In relation with article 45 of the Rule of Procedure, Professor Juan Mendez and Jose Miguel Vivanco stress, “The Commission, however, must use his provision prudently. Dialogue with the State increases the Commission’s sources of information, even where there exists varying degree of state cooperation. The Commission must also maximize its sources of information and base its decisions on detailed and rigorous analysis of all available evidence (Mendez & others, 2012).”

This paper also notes, the IACHR and IACtHR have a legitimation in granting precautionary measures on the basis of *pacta sunt servanda*. In this respect, the IACtHR stated: States Parties to the Convention should fully comply in good faith [*pacta sunt servanda*] to all of the provisions of the Convention, including those relative to the operation of the two

supervisory organs; and, that in view of the Convention's fundamental objective of guaranteeing the effective protection of human rights [Articles 1 (1), 2, 51 and 63 (2), States Parties must not take any action that may frustrate the restitution in *integrum* of the rights of the alleged victims (on Human Rights, 2006).

Precautionary measures granted by the IACHR will give more benefit to the victims or applicants. More or less, for more than thirty years precautionary measures have been a protective mechanism in the Inter – American Human Rights System. This mechanism has contributed to saving thousands of people “at risk in the member states of the OAS (Cejil, 2012).” In so far, the system can be said as one of the most effective mechanisms in the Inter-American system.

In 2012, there were around twenty-six cases of precautionary measures (*Comparative Analysis of the Practice of Precautionary Measures Among International Human Rights Bodies*, 2012). Two of these cases occurred in Cuba and Mexico. In the case of Yoani María Sánchez Cordero, Cuba: “[.....] The request for precautionary measures indicates that Yoani María Sánchez Cordero is at risk, due to the publication of several articles on an Internet blog about the human rights situation in Cuba. Specifically, the petitioners allege that she has had threats, acts of harassment, and smear campaigns waged against her [.....].”

Taking into account the situation in Cuba, the Commission stresses its recommendation to the Cuban Government. The Commissions, states “ [..] urges the Cuban State to adopt measures to prevent and eradicate the different forms of harassment of those who exercise the right to association and assembly for humanitarian and trade union purposes, and against those who are dedicated to defending and promoting human rights (*IACHR Annual Report 2012*, 2012).” This paper notes that this circumstance will be a challenge for ASEAN in enforcing precautionary measure, because ASEAN also has member states like Cuba, for instance Vietnam and Myanmar. Therefore, besides publish an annual report, ASEAN must develop a mechanism whose “an authority” to impose political sanction to member states, which do not comply with the Commission's recommendation to grant a precautionary measures.

Another example is the case of Edgar Ismael Solorio Solís *et al.*, Mexico. The commission granted Precautionary measure. “[...]The petition alleges that since July 2012, all of the organization's members have been subject to continual death threats. It indicates that on October 13, 2012, members of a mining company allegedly beat up Ismael Urrutia, after which he sought protection from the competent authorities; this protection allegedly was not implemented. The petitioners add that on October 22, 2012, Ismael Urrutia and Manuela Marta Solís were reportedly killed, after which their three sons requested protection, without having received a response [...].”

The lessons from these cases are that the the victims or potential victims must be under serious and imminent threat. With regard to the Precautionary measure, Professor Paolo Carozza and Professor Dinah Shelton, state “The purpose of the rule is not only to preserve the matter of dispute in contentious cases but also to respond to situations of imminent risk of irreparable harm to the life of personal integrity of person under the jurisdiction of member states (Carozza & Shelton, 2012).” Thus, imminent is one of the key words for the Commission to request precautionary measure to be applied to a particular member country.

Strengthening Protection Mechanism in ASEAN Region

A. ASEAN needs to learn precautionary measure

“Other regions have shown how regional human rights systems can evolve and improve over time, and I am confident this will be the same for ASEAN. Looking ahead, it is essential that ASEAN ensures that any language inconsistent with international human rights standards does not become a part of any binding regional human rights convention.” (Navanethem “Navi” Pillay)

This paper develops a legal argumentation that the ASEAN Intergovernmental Commission on Human Rights (AICHR) should have a protection mandate, but the protection will be more focused on precautionary measures. Why should ASEAN develop a precautionary measure mechanism? In order to answer this question, we should refer to the past and current experiences of enforced disappearances which are still a serious issue in ASEAN.

Furthermore, none of the ASEAN countries have been success stories in dealing with enforced disappearances. None of victims have been given remedy and none of perpetrators have been convicted in national courts. Tragically, none of the ASEAN countries ratified the International Convention for the Protection of All Persons from Enforced Disappearance (Gonzales, 2012). So far, only the Philippines makes a progress by issuing the National Law on Anti-Disappearances.

Therefore, in order to develop a blueprint of a precautionary measure in ASEAN, this paper will first identify the legal framework of ASEAN:

Firstly, the Terms of Reference (TOR) governs the ASEAN Intergovernmental Commission on Human Right (AICHR) and the TOR has specific provisions on human rights protection. Article 1 paragraph 1.1 of the TOR states that its intention is “To promote and protect human rights and fundamental freedoms of the peoples of ASEAN (*Term of Reference (TOR) AICHR*, 2020).” This provision is clear in that AICHR has jurisdiction not only to promote but also to protect fundamental rights.

Secondly, besides the TOR, ASEAN also has the ASEAN Declaration on Human Rights (ADHR). Particularly, in the preamble of the Declaration: “Reaffirming our adherence to the purposes and principle of ASEAN as enshrined in the ASEAN Charter, in particular the respect for and promotion and protection of human right and fundamental freedoms, as well as the principle of democracy and the rule of law and good governance (International, 2015).” In general, the previously quoted passage can be interpreted in favor of an argumentation to develop a legal framework on protection of human rights in ASEAN.

Thirdly, the ASEAN Charter states in article 1 paragraph 7 that the goal of the Charter is “To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regards to the rights and responsibilities of the member of States of ASEAN (*The ASEAN Charter*, 2019).”

Based on these basic rule and legal frameworks of the human rights system in ASEAN, ASEAN must be aware that in order to have better human rights enforcement among its State members, ASEAN must establish a progressive definition about the protection of human rights. Diego Rodriguez Pinzon writes, “[...] the notion of protection necessarily involves the power to receive and adjudicate human rights cases. Thus, every American state has accepted the competence of the Commission to consider individual complains concerning alleged human rights violations that occur in their jurisdiction just by ratifying the Charter (Parra et al., 2018).”

The precautionary measures will be a good starting point in order to develop protection of human rights in ASEAN’s future because the nature of this mechanism is to avoid serious harm

or damages. Based on the legal assessment and the nature of the precautionary measure, the AICHR can start to convince the country members of ASEAN that this mechanism will not undermine national judicial process.

As argued by Felipe Gonzales, “[...] three hypotheses for the granting of these measures can be distinguished: one of a general nature referring to the prevention of irreparable harm to persons in the context of cases pending before the IACHR; second one, concerning the safeguarding of the subject matter of the proceedings before the Commission; and a third one relative to avoiding irreparable harm outside the scope of the cases system (Gonzales, 2012).”

An important lesson on the implementation of this mechanism in Latin America is that this mechanism can apparently be used to strengthen national judicial processes. The regional human rights body, by requesting precautionary measures, can ensure the seriousness of the state in protecting its citizens. Some state members of the OAS have applied internal measures to recognize the precautionary measures that are issued by the Commission. For instance in 2003, the Constitutional Court of Colombia made a very progressive decision by issuing a decision “[...] imposing sanctions on public officials for not complying with precautionary measure or provisional measure.”

This paper notes that in 2006, the General Assembly of OAS “also made references to this issue [...] encouraging member states to follow up on the recommendations of the IACHR, including *inter alia*, precautionary measures (Gonzales, 2012).”

A. Develop a Proposal on the Blueprint of Precautionary Measures

ASEAN has three significant problems that potentially can be serious obstacles to developing precautionary measures in the region. The first problem is the gap of human rights and democracy among the member countries. The second problem is that ASEAN does not have a convention for protection against involuntary disappearances. The third problem is that ASEAN does not have a regional human rights court that can issue provisional measures.

With regard to the first problem, as mentioned in the section two of this paper, those countries, which are in the first group must take more initiative or play a significant role in promoting the idea of precautionary measures and benefit for ASEAN. The countries in group one - Indonesia, the Philippines, Thailand and Malaysia - have a higher level of democracy and human rights than the countries in the group two plus Myanmar. The Commissioner from the countries of group one can apply the TOR of the AICHR to promote this idea, because the promotion of human rights that is mentioned in the article 1.1 of the TOR can be interpreted to promote new instruments or develop new instruments of human rights in the region (*Term of Reference (TOR) AICHR*, 2020).

The Commissioner of the AICHR from group one can promote this idea in every occasion, namely official meetings of the Commissioners of the AICHR, official meetings between AICHR and ASEAN Ministry of Foreign Affairs, national consultation with the civil societies and media in their respective countries (*OAS G.A Res. 666 (XIII – 0/83)*, 1983).

In addition, the Commissioners of the AICHR from group one could also initiate formal and informal lobbying to convince the other Commissioners about the benefit of precautionary measures for ASEAN members. The key message of the lobby is that precautionary measures could avoid irreparable harms; therefore, States do not need to pay reparation if they prevent or refrain from committing human rights violations against their citizens. Moreover, precautionary

measure also could be able to give legal certainty for victims and potential victims throughout the countries of ASEAN.

The second problem is that ASEAN does not have a regional convention for protection against involuntary disappearances. A lesson from the Inter-American system is that the IACHR could apply precautionary measures on enforced disappearances because they have the Convention. Despite the fact that ASEAN does not have a regional convention that specifically governs enforced disappearances, the AICHR has the five-year work plan of the ASEAN Intergovernmental Commission on Human Rights. Article 4.12 of the five year work plan clearly mentions rights to life. Indeed, the provision about the right to life can be used to develop a proposal on the regional convention for the protection against involuntary disappearances in ASEAN. By citing international human rights instruments as well as Inter – American human rights instruments (*Basic Document Pertaining To Human Rights in the Inter American System*, 2000), AICHR could argue that enforced disappearances have a strong relation with the rights to life. At the least, AICHR could influence the next five-year plan of the AICHR in 2015 - 2020 to ensure the incorporation or adoption of enforced disappearances as an important issue in ASEAN (*Term of Reference (TOR) AICHR*, 2020).

The third problem is that the ASEAN human rights system does not have a regional court. The absence of such a court can be an obstacle. How does AICHR address disputes if the state party does not comply with the Commission's request or order to grant precautionary measures? A clear lesson from the Inter-American system is that the Commission could apply article 45 of the Rule of Procedure to address the problem to the Court and the Court could issue provisional measures.

In order to anticipate the lack of enforcement of precautionary measures due to the absence of a regional court, ASEAN must amend the ASEAN TOR. The TOR must have a provision of precautionary measures and the mechanism to enforce it. After that, ASEAN must promote four proposals to develop mechanisms that can be used to replace the absence of the regional court.

The first proposal is that AICHR must address the problem to domestic courts [national courts], but this paper notes that not all of the State members of ASEAN have fair judiciary systems. Therefore, AICHR must develop standard of the national exhaustion and what should be the conditional exception that petitioners do not have to meet national exhaustion?

The second proposal is that AICHR must address this problem to the ASEAN Coordinating Council, which consists of ASEAN Foreign Ministers (AFM) as the highest forum in ASEAN (*The ASEAN Charter*, 2019). A Lesson from the Organization of American States (OAS) is that the OAS General Assembly under article 54 (a) of the OAS Charter, the General Assembly could "[...] decide the general action and policy of the Organization, determine the structure and functions of its organs, and consider any matter relating to friendly relations among the American States." Therefore, the AFM must strengthen the enforcement of the precautionary measures, which are issued by the ASEAN Intergovernmental Commission on Human Rights (AICHR). To a certain extent, the AFM must have an authority to impose sanctions on the State members, which refuse to comply with the requests of the Commission.

The third alternative proposal in relation to the absence of the regional court is that ASEAN can develop a quasi-judicial system. In other words, AICHR must have two roles: the protection of human rights by the Commission itself and to some extent the Commission could perform

as the Regional Court. Nevertheless, ASEAN must develop the quasi-judicial option within very limited authority, namely to deal with the precautionary measures on enforced disappearances.

The fourth alternative is that ASEAN could also promote an idea of an ad hoc regional court, in which the court only has jurisdiction over the dispute of precautionary measures on enforced disappearances between the Commission and state parties. The ad hoc regional court should be governed by specific rules and it should have specific time and period and specific case of dispute of the precautionary measures.

In addition, civil society in ASEAN has a significant role in promoting the idea of protection of human rights and strengthening the Commission mandate. In the last two years, civil society and NGOs, through the ASEAN People Forum (APF), have strongly demanded that AICHR should have protection of human rights. Lastly, AICHR should also establish a standard of proof that can be used to consider whether or not the Commission should request precautionary measures for a particular State. AICHR should realize that “human rights bodies issue precautionary measures based on prima facie evidence of the risk of irreparable harm and damage (Cejil, 2012).”

CONCLUSION

Taking into consideration all the foregoing—particularly the practice of the *Inter-American Commission on Human Rights* in issuing measures *proprio motu* based on its rules of procedure—the *ASEAN Intergovernmental Commission on Human Rights*, as one of the human rights bodies in the world, is entitled to develop its own precautionary measures mechanism. At least three considerations can be used to legitimize this proposal. The first is the widespread practice of enforced disappearances within *ASEAN*. The second is that none of the *ASEAN* member countries have ratified the *UN Convention for the Protection of All Persons from Enforced Disappearance*. The third is that most cases of enforced disappearance in *ASEAN* remain unpunished, and up to the present day, these violations continue to occur.

REFERENSI

- (AFAD), A. F. A. I. D. (2014). *Official Letter to the AICHR*. <http://www.afad-online.org/issues/mrrafendidjamin2011.htm>
- Abramovich, V., & others. (2009). Advocacy Before Regional Human Rights Bodies: A Cross Regional Agenda. *American University Law Review*, 59, 163–198.
- ASEAN Human Rights Declaration*. (2017). <http://aichr.org/documents/>
- Basic Document Pertaining To Human Rights in the Inter American System*. (2000). <http://www.cidh.org/basicos/english/Basic1.Intro.htm>
- Burma Election Commission Allows NLD Registration*. (2020). http://www2.irrawaddy.org/article.php?art_id=22643
- Carozza, P., & Shelton, D. (2012). *Regional Protection of Human Rights*. Oxford University Press.
- Cejil. (2012). *CEJIL's Response to the IACHR Consultation Module II: Precautionary Measure*. <http://cejil.org/en/documentos/cejil's-response-iachr-consultation-module-ii-precautionary-measures>
- Commission Report on the Situation of Human Rights in Chile*. (2009).

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- Comparative Analysis of the Practice of Precautionary Measures Among International Human Rights Bodies.* (2012). <http://scm.oas.org/pdfs/2012/CP29948E.pdf>
- Djamin, M. R. (2016). *ASEAN must address human rights violations.* <http://www.bt.com.bn/news-national/2013/01/31/asean-must-address-hr-violations>
- for Asian People's Advocacy Task Force on ASEAN, S., & TFAHR), H. R. (SAPA. (2017). *Hiding Behind Its Limits: A Performance Report on the First Year of the ASEAN Intergovernmental Commission on Human Rights (AICHR) 2009-2010* (hal. 12–13). Forum Asia. [http://forum-asia.org/2010/Report on AICHR%27s first year _for_dist.pdf](http://forum-asia.org/2010/Report%20on%20AICHR%27s%20first%20year%20for%20dist.pdf)
- Gonzales, F. (2012). *Urgent Measures in the Inter-American Human Rights System.* *International Journal on Human Rights.* http://www.surjournal.org/eng/conteudos/getArtigo13.php?artigo=13,artigo_03.htm
- IACHR Annual Report 2012.* (2012). <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp>
- Inter-American Convention on Enforced Disappearance of Persons.* (1994). <http://www.oas.org/en/iachr/mandate/Basics/disappearance.asp>
- Inter American Convention on Forced Disappearances of Persons.* (2007).
- International, A. (2015). *ASEAN Human Rights Commission Stumble at First Hurdle.* <http://www.amnesty.org/en/library/asset/IOR64/001/2010/en/3fbaf72a-9182-43dc-882b-7fd30924d712/ior640012010en.html>
- Mendez, J. E., & others. (2012). *Precautionary Measures in the Inter-American System.*
- Myanmar Frees Political Prisoners on day of historic Obama visit.* (2019). <http://www.reuters.com/article/2012/11/19/us-myanmar-prisoners-idUSBRE8AI05520121119>
- OAS G.A Res. 666 (XIII – 0/83).* (1983).
- on Human Rights (AHRC), T. A. C. (2018). *The need to criminalize Enforced Disappearances.* <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-169-2012>
- on Human Rights, I.-A. C. (2006). *First Report on the Situation of Human Rights Defenders in the Americas.* http://www1.umn.edu/humanrts/iachr/guantanamomeasures2002.html#_ftnref3
- Parra, I. C. R., Zanotti, L., & da Silveira, D. (2018). *Making Media: Collaborative Ethnography and Kayapó Digital Worlds.* In *From Filmmaker Warriors to Flash Drive Shamans. Indigenous Media Production Engagement in Latin America.* Vanderbilt University Press.
- Presse, A. F. –. (2018). *ASEAN rights body should include all member: panel.* <http://www.asiaone.com/News/Latest%2BNews/Asia/Story/A1Story20080613-70743.html>
- Rule of Procedure of the Inter-American Commission on Human Rights.* (2010). <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>
- Term of Reference (TOR) AICHR.* (2020). http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.aseansec.org%2FDOC-TOR-AHRB.pdf&ei=YCCEUPreCMWTyQHh2YDgCA&usq=AFQjCNElgGkdElhVmJ_Ogi m72Knzw_tQxQ
- The ASEAN Charter.* (2019). <http://www.aseansec.org/11835.htm>