

H.E. Mr. Phoukhong Sisoulath

Chair of the ASEAN Intergovernmental Commission on Human Rights (AICHR)
Representative of Lao PDR to the AICHR

3 June 2016

Your Excellency,

On 16 February 2016 the International Commission of Jurists (ICJ) received notice that the ASEAN Intergovernmental Commission on Human Rights (AICHR) had rejected the ICJ's application for a consultative relationship. The AICHR presented two reasons for rejecting the ICJ's application: (a) "a lack of transparency in the ICJ's sources of funding (i.e. anonymous donors)" and (b) "the ICJ has made strong adverse remarks against the AICHR which may have caused discomfort to some ASEAN Member States." The AICHR did not give the ICJ the opportunity to respond to objections before the decision, and the AICHR did not specify whether or how the ICJ could submit responses to the objections, or otherwise request subsequent review or reconsideration of the decision.

On 24 March 2016 the ICJ submitted a comprehensive request for reconsideration to the AICHR, noting that (a) a very small percentage of the ICJ's funds are submitted by anonymous donors and that this practice is well-accepted and (b) the ICJ had only made statements that contained constructive criticism of the AICHR meant to support it by strengthening the institution and its work; no statements had been directed "against the AICHR".

On 3 June 2016 the ICJ received a letter from the AICHR stating that the AICHR procedures "do not provide an appeal procedure", and that, "unsuccessful applicants that wish to be reconsidered may wish to submit a new application to the AICHR".

The ICJ wishes to clarify that our previous letter did not seek to invoke a formal appeal procedure, but rather urged the AICHR to reconsider its own decision in light of the additional information submitted in response. The ICJ believes that the AICHR could very well do this by enhancing and adapting its existing working methods to include the provision of notice and opportunity to respond to concerns prior to any final decision, similar to other international organizations' accreditation processes. We explain the reasons for this in more detail in the present letter.

The ICJ was established 63 years ago and is composed of leading eminent jurists from around the world (including several ASEAN countries). It enjoys consultative status with the United Nations Economic and Social Council, the Council of Europe, the African Union, and UNESCO. The ICJ is a nongovernmental and nonpartisan

organization. It has worked closely with regional organizations around the globe. The ICJ respects the principles and purposes of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, and conducts itself consistently with the other principles identified by the guidelines.

In a previous submission to the AICHR, the ICJ urged the AICHR to ensure that rejected applicants are provided the opportunity to respond to objections and be able to furnish additional information as may be required.¹ The ICJ again urges the AICHR to ensure that its processes for considering civil society organizations' applications for accreditation allow affected organizations to respond to objections raised by the AICHR. In the context of the ICJ's own application, the ICJ urges the AICHR to remedy the absence of such an opportunity by reconsidering its decision in light of the information the ICJ has subsequently provided in response to the objections.

The United Nations High Commissioner for Human Rights, in an April 2016 report, emphasizes that:

Vibrant civil society participation in the United Nations human rights system is indispensable to the effective protection and promotion of human rights. Civil society actors identify protection and other gaps in the international architecture, alert the international community of impending crises and campaign for the creation of new standards and mechanisms. Their participation enriches the system's responses by linking them to what is happening at the country level.²

The same considerations apply to regional human rights institutions, which is why the High Commissioner concludes his report as follows:

Regional and international entities should:

- ...
- (b) Throughout their activities and processes, provide for the effective participation of civil society, in conformity with international standards of non-discrimination, the freedoms of expression, association and peaceful assembly and the right to participate in public affairs;³

The High Commissioner also notes that, "Allowing voices to be heard, even when they express criticism or unpopular views, is key to holding decision makers to account and to ensure that policies are reviewed, lessons learned and improvements made."⁴

An earlier report by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, stated: "Protection of the right to freedom of association at the multilateral level begins with ensuring the effective participation of civil

¹ International Commission of Jurists, Memorandum on the ASEAN Intergovernmental Commission on Human Rights Draft Guidelines on Relations with Civil Society Organizations (2013), para. 19.

² Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned, Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/32/20, 11 April 2016, para. 8

³ Report of the United Nations High Commissioner for Human Rights, para. 89(b).

⁴ Report of the United Nations High Commissioner for Human Rights, para 7.

society.”⁵ The Special Rapporteur made detailed recommendations to this end, including that multilateral institutions should, “Implement thorough and consistent policies that emphasize the importance of substantive engagement with civil society organizations and recognize that participation at the multilateral level is an inherent component of the right to freedom of association”; and that these policies should, among other things, “Encourage diversity of perspectives...among civil society representatives”.⁶ He also urged that NGOs not be unduly prevented from obtaining accreditation, having noted concerns about arbitrary decision-making in accreditation bodies, including in cases where NGOs were not given a reasonable opportunity to respond to allegations against them, stating that he found such practices “deeply disconcerting” and that they profoundly undermined the ability of the relevant institutions to constructively engage with civil society.⁷

As a matter of practice, the accreditation procedures of intergovernmental organizations generally provide civil society organizations applying for consultative status a right to respond to objections. The United Nations Economic and Social Council stipulates that a nongovernmental organization applying for consultative status “shall have the opportunity to respond to any objections being raised in the Committee before the Committee takes its decision.”⁸ To this end, in addition to providing a period for written responses, the ECOSOC NGO Committee provides opportunities for such organizations to appear in person to participate in an oral question and answer period, at every session.⁹ Similarly, the Organization of American States provides that “if a member state comments on or requests information with respect to an application to participate, the civil society organization referred to should be informed in time for it to be able to respond.”¹⁰ The Parliamentary Assembly of the Council of Europe noted that in applications for consultative status, “basic fairness requires that the [nongovernmental organization] concerned be given an opportunity to respond to the allegations made against it.”¹¹ The Parliamentary Assembly further specified that such a process must adhere to “principles of impartiality and independence, of promptness and due expedition and that of *audi et alteram partem* (the right of both sides to be heard).”¹²

A process where civil society organizations are allowed to respond to concerns of the AICHR regarding their applications would further the mandate of the AICHR “to engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations and other stakeholders.”¹³ The AICHR and ASEAN member states would benefit from the work of civil society organizations, and it is in the interest of the AICHR to deepen partnerships and

⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/69/365, 1 September 2014, para. 38.

⁶ Report of the Special Rapporteur, para. 87.

⁷ Report of the Special Rapporteur, paras , 90(c), 74, 78 and 80.

⁸ Economic and Social Council Res. 1996/31, 25 July 1996, para. 15.

⁹ See, e.g., Environmental and Social Council Committee on Non-Governmental Organizations, 2016 Regular Session, Information Note for Participants, 25 January to 3 February and 16 February 2016, p. 3. http://csonet.org/content/documents/Information%20Note_11%20Jan%202016.pdf

¹⁰ Permanent Council of the Organization of American States Res. 759 (1217/99), 15 December 1999, para. 12.

¹¹ European Parliamentary Assembly, Recommendation 1697 (2005).

¹² *Id.*

¹³ Terms of Reference of ASEAN Intergovernmental Commission on Human Rights [AICHR] art. 4, para. 2.

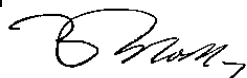
expand dialogue with civil society organizations. In the rare instance where the AICHR has concerns that a consultative relationship with a particular civil society organization might not be appropriate, the AICHR should have the opportunity to make a decision based on all available information. One way to guarantee that the AICHR has access to all relevant information would be to establish an oral dialogue between the AICHR and the civil society organization concerned. Such a process would ensure that applications are not rejected on easily remediable grounds, safeguarding the AICHR's ability to consult with a wide range of civil society organizations.

Furthermore, a process of allowing responses from civil society organizations would likely reduce the administrative costs of the AICHR. Under the current Guidelines on the AICHR's Relations with Civil Society Organizations, a civil society organization that is not approved for a consultative relationship may resubmit a revised application.¹⁴ The revised application must go through the same process of consideration as the original application.¹⁵ This process is inconvenient for both civil society organizations and the AICHR. Again, a simpler, more effective process would be to grant civil society organizations the opportunity for an oral hearing to clarify key information and directly address the AICHR's concerns *before* a decision is taken.

The purposes of ASEAN enumerated in the ASEAN Charter include strengthening democracy, good governance, and the rule of law and maintaining ASEAN's position "as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive."¹⁶ The ICJ calls upon the AICHR to live up to these purposes by establishing a transparent process granting civil society organizations the right to respond to objections prior to a final decision. The ICJ respectfully requests the AICHR to reconsider the ICJ's application for a consultative relationship within this framework.

Please do not hesitate to contact the ICJ if you have any further comments or queries. We look forward to receiving your reply.

Sincerely yours,



Professor Sir Nigel S. Rodley

President

International Commission of Jurists

For questions or clarifications, please contact Ms. Emerlynne Gil, ICJ's Senior International Legal Adviser, emerlynne.gil@icj.org or +66840923575

¹⁴ Guidelines on the AICHR's Relations with Civil Society Organizations, 11 February 2015, para. 11.

¹⁵ *Id.*

¹⁶ Charter of the Association of Southeast Asian Nations [ASEAN] art. 1, paras. 7-15.