

**A. With regards to bringing accountability for serious violations related to the exercise of the right to freedom of association<sup>1</sup>**

**2) How would accountability for serious violations and the harm suffered by those exercising their rights to freedom of association look like?**

The efforts to create accountability for major violations and suffering caused by individuals exercising their right to free association should need three fundamental and interconnected rights: the right to truth, justice, and an effective remedy and reparation. Following serious violations, it is essential to determine the truth about the international crimes and grave violations that occurred. Knowing the truth gives the victims and their families closure and restores a feeling of dignity.. The right to an effective remedy and reparation will aid in the repair of the harm caused by grave human rights abuses. reparations are important to survivors' claims for a life of dignity, respect, and equality.

Independent bodies should be set up if governments do not provide proper accountability, regional and international mechanisms and victims must be placed at the centre of accountability strategies that will contribute to the sustainability of accountability and justice efforts.

Repressive laws which arbitrarily restrict freedom of association of civil society organisations do not have redressal mechanisms embedded within the law, which leads to arbitrary and systemic violations of the right to freedom of association. The role of National Human Rights Institutions in ensuring accountability to these violations should be emphasised.

Genuine judicial oversight over police actions and investigative malpractice at the pre-trial stages, especially in cases where trial is being delayed, for instance censure of the practice of prolonged investigations and greater judicial scrutiny of grounds for arrest is needed.

Disciplinary action at the least, and/or prosecution of police officers, authorities against whom investigative lapses and/or falsification is prima facie found in cases of violation of right to association

**C. With regards to the role of other actors in bringing accountability for serious human rights violations in the context of exercising the rights to freedom of peaceful assembly and associations.**

**1) What role have civil society, victims and victims' representatives/associations, and social movements played in the creation, design and implementation of accountability processes regarding serious human rights violations in the context of freedom of association and assembly?**

CSOs, victims, and social movements can support and facilitate the accountability process through documentation and reporting violations related to freedom of association and assembly. Despite the fact that collecting and reporting information might be dangerous, it combats perpetrators' sense of impunity and can provide victims with justice and a new sense of social inclusion (indeed documentation process can be empowering for victims and affected communities)

CSOs can also provide training on how to conduct participatory documentation and in identifying, investigating and documenting human rights violations and submit to the relevant regional mechanism, Special procedure mandate-holders, UN bodies etc

CSOs can engage in monitoring a public assembly, protest or demonstration with respect to international human rights standards by producing reports based on their findings.

Apart from the actors mentioned above, also diaspora communities' activism can be impactful. This is because they are safer than those in their home countries and may therefore directly amplify voices to foreign media outlets, providing an alternative to the regime's narrative over information.

FORUM-ASIA is contributing to create, design and implement accountability processes regarding serious human rights violations in the context of freedom of association and assembly. As part of this effort, FORUM-ASIA organised a regional consultation with the SR FoAA in December 2022 to identify effective practices and tactics to resist limits on peaceful assembly and association rights, including through restrictions on access to resources and demonstrations during crises, and to advance accountability for violations. This platform provided an opportunity for grassroots movements, CSOs, and activists from Central Asia, South Asia, and East Asia to continue meaningful engagement with the UN Special Rapporteur to ensure the reflection of Asian civil society experience in their work, as well as to make meaningful contributions to the work of UN special procedure mandates.

Some representatives from Asia CSOs also got the chance to meet with the special rapporteur in order to better understand the context of existing and growing multidimensional challenges to civic space in their respective countries.

## **2) What role have National Human Rights Institutions played/could play in the creation, design and implementation of accountability processes regarding serious human rights violations in the context of freedom of association and assembly?**

NHRI can be one of the first bodies to whom CSOs, movements, and victims could handle the documentation collected as well as monitoring and investigating the human rights violations in the context of freedom of association and assembly on the ground. So both work for promotion and protection. However, some NHRIs lack proactiveness when it comes to upholding the principles of human rights and ensuring the independent, impartial and effective exercise of their powers and functions.

In Myanmar, MNHRC failed to conduct credible investigations into allegations of widespread human rights violations by the military against ethnic minorities.<sup>1</sup> Civil society has been

---

<sup>1</sup> <https://forum-asia.org/?p=33900>

critical of the performance of the Myanmar National Human Rights Commission (MNHRC) in not denouncing human rights violations by the military<sup>2</sup>

The MNHRC has remained silent. The people are on the streets every day, putting their lives at risk for a better future in which they can enjoy their fundamental rights and the MNHRC has not done anything to condemn the takeover by the junta, nor the violence inflicted on peaceful demonstrators.<sup>3</sup>

That is why Myanmar CSOs called for replacing the MNHRC with a new national human rights commission that can promote and protect human rights independently and fairly in accordance with international standards.<sup>4</sup>

In the Philippines, the Commission on Human Rights (CHR) is empowered under the 1987 Philippine Constitution to investigate human rights violations and promote respect for human rights in the country. For the past years, the CHR showed its strong iron fist and stance against violence perpetrated under the Duterte regime. For example, on 16th May 2022, the Commission on Human Rights (CHR)condemned reports of alleged efforts to impede the right to assembly and free speech, as well as the red-tagging of students shortly after the May elections.

In a statement, Jacqueline de Guia, executive director of the CHR, denounced “any form of intimidation, harassment and red-tagging of students and civilians in their exercise of civil liberties.”<sup>5</sup>

In Thailand, National Human Rights Commissioners of Thailand (NHRCT) engage to a certain extent with local CSOs to monitor the pro-democratic protest, especially protest led by the youth and students. While it may be criticised for ineffective complaints mechanisms, the NHRCT can be one of the key stakeholders to increase the pressure on the government in holding them accountable as well as to urge the military-led government to unconditionally comply to the ICCPR (as of today Thailand is a state party to the International Covenant on Civil and Political Rights (ICCPR) but not complying). Another area where the NHRCT could do more in relation to the Non-Profit Organisation Law; the demand from CSOs is to repeal the law and the commission can be an ally in advocating for the repeal.

In India, the National Human Rights Commission has not intervened in the misuse of Foreign Contribution (Regulation) Act against civil society organisations and also on issues of rampant violations on right to protest, especially during the anti-citizenship law protests in 2019.

### **3) How do you see the role of regional bodies in helping your government to bring accountability for serious violations against those exercising their rights to freedom of association and peaceful assembly?**

#### **ASEAN**

The Association of Southeast Asian Nations (ASEAN) was established in 1967 as Asia's first regional organisation. ASEAN's critics frequently argue that the organisation's values of non-interference and consensus-based decision-making preclude it from influencing the course of regional affairs. Indeed, numerous events in the bloc have confirmed how these two principles limit progress and favour avoiding delicate problems such as human rights and

---

<sup>2</sup> Making Institutions Count: Strengthening Support for Women Human Rights Defenders in Asia by National Human Rights Institutions

<https://forum-asia.org/wp-content/uploads/2022/04/Making-Institutions-Count-Strengthening-Support-for-Women-Human-Rights-Defenders-WHRDs-in-Asia-by-National-Human-Rights-Institutions-NHRIs.pdf>

<sup>3</sup> <https://forum-asia.org/?p=34124>

<sup>4</sup><https://progressivevoicemyanmar.org/2022/08/07/time-for-the-emergence-of-a-new-national-human-rights-commission-representing-the-people-of-myanmar/>

<sup>5</sup> <https://newsinfo.inquirer.net/1598561/chr-condemns-red-tagging-of-students>

conflict rather than confronting them.

## **Myanmar**

ASEAN failed to reflect a strong, united voice in the face of a February 2021 coup attempt in Myanmar. ASEAN has not suspended Myanmar's membership since then. It has also not prevented junta officials from participating in its regular cycle of meetings. The idea of non-interference was placed over democracy and human rights, with serious implications for those who took to the streets to protest. Security forces have increased their violence in response to protests, starting a statewide systematic crackdown that includes killing nonviolent protesters and forcible disappearances. For example, in March 2021, activists said that 38 protestors were murdered in one of Myanmar's deadliest days since the military attempted coup.

ASEAN should keep the consensus-based decision-making mechanism in place when practicable, and use a majority-vote system when dealing with matters where agreement is impossible. A perfect example is the 5-point consensus reached in April 2021. Despite the agreement, the governing junta has ignored all of the agreements and has continued its ruthless crackdown on dissent while ramping up a savage countrywide campaign to suppress massive public opposition to its authority.

## **AICHR**

AICHR was established in 2009 with the primary objective to promote and protect human rights. AICHR has been criticised for having too much promotion of human rights and less on their protection. The AICHR is designed to be an integral part of the ASEAN organisational structure and an overarching institution with overall responsibility for the promotion and protection of human rights in ASEAN.

Since it is linked to ASEAN, AICHR must be guided by the principles of non-interference, sovereignty, territorial integrity, and respect for independence. These principles are deemed in conflict with the international human rights standards as enshrined in the UDHR and the Vienna Declaration, such as universality, interdependence, indivisibility, and interrelatedness of all human rights.

Furthermore, the AICHR suffers from a lack of independence among its country representatives. Indeed, the AICHR is made up of 10 commissioners who are all selected by their respective governments. It lacks institutional compliance and enforcement measures because it is an intergovernmental consultative organisation mechanism. Its Terms of Reference do not envisage the AICHR having any judicial mandate or providing any legal procedure through which a state or individual can file a suit or seek redress for alleged human rights atrocities committed by member-states, distinguishing it from the African, European, and Inter-American regional human rights systems.

As noted previously, the AICHR's commissioners are appointed by member-states and are thus accountable to their appointing governments, who may opt to replace them at their discretion. As a result, in discussions and dialogues concerning the AHRD, the AICHR commissioners did not operate as independent agents interested in promoting human rights debate. They are bound by their government's stringent orders, which prevents them from carrying out their task gradually and holding their own or any member-state accountable.

## **4) How do you see the role of the International Criminal Court (ICC) or the creation of other international tribunals (special courts) to secure accountability for mass serious human rights violations such as these committed in the context of protests in your country?**

As of today, in Myanmar, there are not any realistic options domestically, international legal

accountability mechanisms provide an alternative avenue for justice.

Given that crimes against humanity are potentially being committed in Myanmar, there are international legal mechanisms that are relevant.

**IIMM Myanmar** → In September 2018, the Human Rights Council established the Independent Investigative Mechanism for Myanmar (IIMM). The IIMM is intended to collect evidence of the most serious international crimes and violations of international law and build case files that could facilitate criminal proceedings against individuals in national, regional, or international courts. Since the coup, the IIMM has been collecting evidence to analyse whether crimes against humanity have been committed. However, it is unclear to which courts the IIMM would submit its case files for crimes committed in the current crisis.

**ICC** → In 2019, the international criminal court (ICC) authorised the investigation into forced deportations in Myanmar on the ground of cruel acts, enforced deportation as well as the persecution of the Rohingya, might be considered crimes against humanity. Although Myanmar is not a party to the ICC's Rome Statute, the court concluded that it had jurisdiction over the alleged crimes since some of them happened in Bangladesh, which is a member of the ICC. However, for the crimes committed after the attempted coup occurred entirely within Myanmar, this denying the ICC jurisdiction without a referral by the Security Council, which is improbable.