

**4th Roundtable Discussion on Human Rights in ASEAN:
Realizing the People-Oriented ASEAN Community
with Human Rights**
20-21 November 2008
Bangkok, Thailand

SUMMARY OF PROCEEDINGS

I. Introduction

1. The Fourth Roundtable Discussion (Roundtable) on Human Rights in ASEAN: Realizing the People-Oriented ASEAN Community with Human Rights was held in Bangkok, Thailand, on 20-21 November 2008. The Roundtable was co-organized and co-hosted by the Ministry of Foreign Affairs of the Kingdom of Thailand, the National Human Rights Commission of Thailand and the Working Group for an ASEAN Human Rights Mechanism (Working Group).
2. The Roundtable was attended by participants representing governments (the Foreign Ministry and agencies which are responsible for ASEAN cooperation on the rights of women, children and migrant workers), national human rights institutions, and members of the Working Group from Brunei Darussalam, Cambodia, Indonesia, Lao P.D.R., Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. Also in attendance were observers from funding organizations.
3. In his welcome remarks, Dr. Marzuki Darusman, Co-Chairperson of the Working Group, noted that this roundtable is being held at a time when all ASEAN member states have ratified the ASEAN Charter whose human rights centre-piece is Article 14 which calls for the establishment of an ASEAN human rights body (AHRB). He congratulated Ambassador Sihasak Phuangketkeow, Chair of the High Level Panel on an AHRB (HLP), for taking a clear, coherent and comprehensive direction and approach in his calm and communicative leadership role. He observed that what is expected to emerge from the endeavours of the HLP is an AHRB with Internationally credible functions, activities and expectations. He concluded that ultimately, the promotion and protection of human rights, explicitly stated in the Charter as ASEAN's objectives, will only be effectively observed if they can be fully voiced.
4. Commissioner Naiyana Supapeung also welcomed the participants and delivered the address of Prof. Saneh Chamarik, Chairperson of the National Human Rights Commission of Thailand, who was unable to attend. She spoke of how far ASEAN has come since the 1997 ASEAN Vision 2020 and how it is significant that the progress

towards an AHRB is not the exclusive business of political leaders but is understood as the collective effort, both governmental and non-governmental, in the common task of developing a people-oriented ASEAN Community. Mention was also made of the recent Declaration on the Rights of Indigenous Peoples and how this was the product of hard work and struggle over time particularly on the part of the South American advocates and a suggestion was proffered that this could actually be a common ground for upcoming partnerships among regional human rights communities in different parts of the world. Lastly, the need to consider the promotion of mutual people-to-people learning and understanding in the discussion of the proposed evolutionary approach was also underscored, and a recommendation was made that participatory research involving real and ordinary people across ASEAN could be initiated in addition to planned studies on thematic issues.

5. H.E. Charivat Santaputra, Deputy Permanent Secretary for Foreign Affairs of Thailand, delivered the Keynote Address in behalf of the Permanent Secretary, H.E. Mr. Virasakdi Futrakul. He observed that the ratification of the Charter marks a new chapter for human rights in ASEAN and described the foreign ministry's co-organizing of the Roundtable as part of the Royal Thai Government's ongoing efforts to encourage greater participation and involvement of all stakeholders in the ASEAN community building process. He expressed the belief that the establishment of the AHRB will put ASEAN on par with other regional organizations which already have their own human rights bodies, and that the AHRB can indeed play a significant role in mainstreaming human rights in ASEAN including to raise public awareness on human rights and to strengthen the capacity of states to promote and protect human rights. He also touched on the evolutionary process and observed that the body can develop incrementally and move forward at a comfortable pace for all but that it must also be able to strike the right balance between promotion and protection functions so as to be credible in the eyes of the international community as well as the people of ASEAN. His Excellency also described the AHRB as one of the manifestations of the commitment to building a people-oriented ASEAN and cited the HLP's regular consultations with regional stakeholders, and asserted that this participation and access by the people should continue once the AHRB is operational. He emphasized that the commitment and support of all ASEAN member-states is crucial for the smooth and credible operation of the AHRB and popular support helps ensure that the necessary political and financial support is rendered to the body when launched. In conclusion, he encouraged participation at the Roundtable and opined that the deliberations during the next two days would be critical to ASEAN's future and expressed his confidence that the collective wisdom, experience and dedication of the participants will provide the guiding light for the new era of cooperations on human rights in ASEAN.

II. Roundtable Sessions

6. The Roundtable was divided into six sessions covering the following topics: (a) The ASEAN Charter: The New Age of Human Rights in ASEAN; (b) Promotion and Protection of Rights of Women and Children in ASEAN Context; (c) Promotion and Protection of Rights of Migrant Workers in ASEAN Context; (d) The Role of National Human Rights Institutions in the Changing Environment of ASEAN; (e) Establishing an ASEAN Human Rights Body and its Relationship with Other Human Rights Mechanisms in ASEAN: Pending Issues for Consideration; and (f) Conclusions and Recommendations.
7. In Session One, "The ASEAN Charter: The New Age of Human Rights in ASEAN", H.E. Sihasak Phuangketkeow, Chairperson of the HLP shared the progress and developments in the drafting of the terms of reference (ToR) for an ASEAN human rights body. He discussed some of the key elements that are being considered by the HLP taking into consideration both the international and regional context. He shared that although ASEAN has made progress in the areas of women and children, migrant workers and human trafficking, a lot still has to be done in terms of promotion and protection of human rights. He briefly traced the roots of the discussion on an ASEAN human rights body and concluded that the Working Group for an ASEAN Human Rights Mechanism has inspired ASEAN to do the groundwork leading to the current developments. During the open forum, a number of participants brought up certain issues for the consideration of the HLP: the importance of AHRB to deal not only with promotion but also with protection, to see the human rights body have an effective enforcement mechanism, the cross-cutting nature of human rights in the three communities of ASEAN, the possible relationship of the human rights body with other specialized human rights mechanisms that is being considered by ASEAN, and reconciling the principles of consensus and non-interference with the mandate of the human rights body. The HLP Chair took note of a suggestion to map the current human rights practices and laws across ASEAN countries. The session was moderated by Mr. Wigberto Tañada, Chairperson of the Philippine Working Group for an ASEAN Human Rights Mechanism.
8. In Session Two, "Promotion and Protection of Rights of Women and Children in ASEAN Context", Dr. Sriprapha Petcharamesree of Mahidol University's Office of Human Rights Studies and Social Development, made a brief survey of the laws, policies, and mechanisms regarding the rights of women and children in ASEAN countries and outlined the existing relevant regional human rights systems. She shared her insights on the value that may be added by the establishment of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), such as the fact that it can have the ability to address issues specific to women and children. In conclusion, she raised pending issues for determination such as possible functional cooperation overlaps, one or two separate bodies, whether an instrument or an institution should come first, and whether all ten ASEAN Member States should

be on board or whether the “minus-x” formula should be used. Comments from the floor included the possibility of proceeding on the matter of the ACWC independently without waiting for the AHRB to be created, the importance of political will in the process, and how establishing the ACWC might contribute better to capacity-building. Updates were also given regarding the two joint roundtable discussions and meetings which the focal points for ACW and SOMSWD had in April and October and the resulting consensus to set up a multi-disciplinary working group whose terms of reference will be presented to the ACW and SOMSWD for consideration in the 1st quarter of 2009. The session was moderated by Ms. Hesti Armiwulan, Vice Chairperson for External Affairs of the Indonesian National Human Rights Commission (KOMNAS HAM).

9. In Session Three, “Promotion and Protection of Rights of Migrant Workers in ASEAN Context”, Ms. Braema Mathiapparanam, Chairperson of the Singapore Working Group for an ASEAN Human Rights Mechanism, gave a comprehensive overview of the mobility of labor within and from ASEAN where an estimated 12 million migrant workers are from. She also discussed the nexus between human rights and migrant workers at length and the implications of the ASEAN Declaration on Migrant Workers. She concluded her presentation by tabling recommendations which included, among others, the establishment of a commission beyond a committee for the promotion and protection of the rights of migrant workers; the consideration of a protocol on the protection of migrant workers; serious review of a common definition of a migrant worker; the alignment of regional efforts with local laws; raise awareness among ASEAN countries to encourage recruiters of labor to comply with corporate social responsibility principles; and stepping up government consultations with relevant civil society organization. During the open forum, issues raised included the present exploitative state of migration with only the unscrupulous labor export companies benefiting, the possibility of having free movement of services and people within ASEAN in the future comparable to the present EU set-up, the need for cohesion in policies across the region as migrant workers issues are oftentimes trans-border, and the fundamental duty of the state to protect its own people. The advisability of advocating for a separate commission as well as the need to advocate for ratification of the UN Convention on Migrants’ Rights were also touched upon. Ideas for follow-up programming on critical issues such as children migrants were also floated. The session was moderated by Commissioner Ma. Victoria Cardona of the Commission on Human Rights of the Philippines.
10. In Session Four, “The Role of National Human Rights Institutions in the Changing Environment of ASEAN”, Tan Sri Datuk Seri Panglima Simon Sipaun, Vice Chairperson, National Human Rights Commission of Malaysia (SUHAKAM), touched on the cooperation of the four NHRIs and how they can contribute to the changing environment of ASEAN. He gave an overview of the initiatives of SUHAKAM and the other NHRIs in ASEAN, both independently and collectively, in the

initiative for the establishment of an AHRB. With a view to the possibility of other countries establishing NHRIs, Tan Sri Simon then shared his personal insights on the matter, which included advocating for wide consultation with civil society on the draft bill to set up the NHRI, comprehensiveness of its mandate, transparent procedures such as appointments, and fixed-term appointments, to ensure its independence. He then expressed the hope that the future NHRIs learn from the lessons and challenges faced by the existing ones. In her turn, Dr. Kek Galabru, President of LICADHO and Chairperson of the Cambodian Working Group for an ASEAN Human Rights Mechanism, spoke of the global and regional factors which have directly affected human rights and the institutions designed to protect them. She commented on how a rising "Southeast Asian" spirit appears to be emerging in the field of human rights even as there remains instability brought about by economic and geopolitical factors, and how this context means that the establishment of a national human rights institution (NHRI) will face considerable challenges, e.g., countries with poor human rights records may try to use the NHRI to whitewash the government's image. She maintained that an NHRI can only act effectively if the political system is functioning properly. She observed how even countries with NHRIs appear to have been bothered by internal conflict but that the challenges and problems this situation presents can also be viewed as opportunities for an NHRI to present itself as an efficient mediator. Lastly, she underscored that NHRIs should try to foster good relations with both government and citizens to ensure legitimacy, and keep in constant communication with NGOs as well as with the UN and multilateral bodies in order to ensure their independence while adjusting themselves to international human rights standards. During the open forum, the three other NHRIs shared their views regarding their role vis-à-vis the proposed AHRB and agreed that it could be viewed as being catalytic, complementary, and coordinative. In relation to countries whose governments were interested in establishing an NHRI, the existing ones can also provide technical assistance, including strengthening the capacity of stakeholders. Suggestions coming from the floor included looking into possible working relationship with ASEAN, engaging other stakeholders, following up on earlier signs of interest on the part of certain governments to work towards the establishment of NHRIs, and encouraging these governments to publicize their preliminary efforts at a step-by-step consideration of an NHRI. The session was moderated by Dato Param Cumaraswamy of the Working Group.

11. In Session Five, "Establishing an ASEAN Human Rights Body and its Relationship with Other Human Rights Mechanisms in ASEAN: Pending Issues for Consideration", Prof. Vitit Muntarbhorn of Chulalongkorn University and Co-Chairperson of the Working Group gave an overview on the three current tracks in ASEAN (relating to the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, the VAP-proposed ACWC, and the Charter-based AHRB) and the current discussion on "aligning" these mechanisms. He then

raised questions for discussion: (1) What will be the relationship of the ASEAN bodies to be created with each other? (2) Is there a need for such bodies? Why or why not? (3) Who should compose them? (4) What should these bodies do? (5) How are they to be created? (6) How can real impact be ensured?

12. After Prof. Muntarbhorn's initial exposition of issues, the participants joined three break-out groups moderated by Ms. Sutarti Soedewo of the Indonesian Ministry for Women Empowerment, Dr. Budiono Kusumohamidjojo of the Working Group, and Atty. Jake Mejia of the Commission on Human Rights of the Philippines. Rapporteurs from each break-out group then shared the results of the discussions in plenary. Tan Sri Simon Sipaun of SUHAKAM reported the discussion of Group 1 which, while discussing other issues of concern, focused on the ACWC with the consensus that its establishment should go on but should not be at the expense of the AHRB. Their discussions included the rationale for a separate commission on women and children and its possible composition, the importance of the protection elements of the AHRB and of the ToR providing benchmarks for such mandate including the competence to receive communication from individuals in the evolution process. Group 1 also endorsed the results of the Joint Roundtable Discussion on the Establishment of an ASEAN Commission on the Protection and Promotion of the Rights of Women and Children of April 2008. Comm. Cardona of the CHRP presented the report of Group 2 and observed, among other things, that they agreed that the AHRB should go beyond promotion and just getting reports, the ACWC should be established separately, and all selection processes should be non-politicized and non-partisan. Group 2's discussion acknowledged the need for further dialogue to bridge the differing views on various issues dealing with human rights among governments and civil societies in the ASEAN region. Ms. Braema Mathiapparanam of the Singapore Working Group relayed the discussions of Group 3 which was able to tackle all the questions. Highlights of their discussion include the agreement that the specialized bodies cannot merely be subsumed under a general AHRB but that the latter can be similar to a governing parent body while the ACWC and a suggested ASEAN Commission on Migrant Workers (ACMW) are aligned with it but act independently albeit in cooperation with each other and from a rights-based framework. They also discussed the value and ratio of having regional bodies (e.g., distance of the UN and the need to consider matters as *our* issues), as well as possible national selection procedures and criteria for the composition of the bodies. The session was synthesized by Prof. Muntarbhorn and moderated by Dr. Budiono Kusumohamidjojo, Secretary-General of the Indonesian Working Group for an ASEAN Human Rights Mechanism.
13. In the final session, entitled "Conclusions and Recommendations", the participants discussed and adopted the proceedings of the Roundtable, including the conclusions and recommendations. The session was moderated by Mr. Manasvi Srisodapol, Deputy Director-General of the Department of ASEAN Affairs of the Ministry of Foreign

Affairs of Thailand, who also delivered the Closing Remarks.

III. Conclusions and Recommendations

General

14. The Roundtable believes that human rights should not be considered in isolation but should also take into account other fundamental principles such as the rule of law and democracy.
15. The Roundtable welcomes the imminent entry into force of the ASEAN Charter following its ratification by all member-states.
16. The Roundtable notes that the HLP intends to submit the first draft of the ToR of the AHRB to the ASEAN Foreign Ministers in December 2008.
17. The Roundtable notes that the timeline agreed upon by the ASEAN Foreign Ministers is to have the ToR of the AHRB finalized by 2009. In this connection, the Roundtable welcomes Thailand's commitment, as Chair of ASEAN, to ensure that the ToR of the AHRB can be concluded by July 2009 and that the body can be launched by the end of 2009.

Promotion and Protection of the Rights of Women and Children

18. The Roundtable resolves that the process of establishing the ASEAN commission on the promotion and protection of the rights of women and children (ACWC) can and should be independent and separate from the process of establishing the AHRB and acknowledges that while there are streamlining issues to consider, these can be dealt with more competently after the establishment of these bodies.
19. The Roundtable believes that the establishment of the ACWC will complement the establishment of an AHRB, nurture regional responses to issues specific to women and children's rights, and contribute better to building the capacities of stakeholders across the region.
20. The Roundtable asserts that the ACWC should be seen as an end in itself.
21. The Roundtable acknowledges the possible value of the ACWC as a platform for regional and international dialogue which not only can assist ASEAN Member States in complying with international standards but actually upgrade the standards.
22. The Roundtable believes that any process involving the establishment and workings of the ACWC should engage civil society as consultative partners and that the functioning ACWC should be accountable to both the governments and the peoples of ASEAN.

23. The Roundtable welcomes the news that the ASEAN Committee on Women (ACW) and the Senior Officials Meeting on Social Welfare and Development (SOMSWD) have resolved to work together and to set up a multidisciplinary Working Group (the "ACW-SOMSWD Working Group") in the first quarter of 2009 as a first step towards the establishment of the ACWC.
24. The Roundtable encourages the ACW-SOMSWD Working Group to ensure that the proposed ACWC is consistent with international standards while capitalizing upon the wisdom of the ASEAN region, and should be based on the Paris Principles, with emphasis on independence from governments, pluralistic composition and representation, broad mandate with adequate powers, sufficient resources and accessibility.
25. The Roundtable further recommends that the ACW-SOMSWD Working Group take into account the guiding principles of ASEAN and use the CEDAW and CRC as benchmarks of common legal standards under which ASEAN must not go below.

Promotion and Protection of the Rights of Migrant Workers

26. The Roundtable reaffirms the obligation of every ASEAN Member State to protect its citizens. It notes that while the government of a receiving state has an important role to play in the promotion and protection of the rights of migrant workers, it must not be forgotten that the state of origin also has the responsibility to protect the human rights of its own citizens.
27. The Roundtable recommends that the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers ensure that the ASEAN instrument will be developed and will include a clear definition of migrant workers.
28. The Roundtable encourages all ASEAN Member States to consider the ratification of international conventions relevant to migrant workers rights, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
29. The Roundtable recommends that ASEAN Member States give renewed attention to the state of implementation of national laws and policies which affect migrant workers, and coordinate where possible to attain a cohesive strategy for trans-border concerns.
30. The Roundtable believes that measures to protect ASEAN migrant workers have to be improved and that looking at the good practices of other countries and regions can be beneficial. In this connection, the Roundtable notes further that the establishment of a thematic commission specifically for migrant workers' rights is an idea which can be further examined.

Network of National Human Rights Institutions in ASEAN (NHRIs)

31. The Roundtable acknowledges that NHRIs in ASEAN are important stakeholders which the proposed AHRB will necessarily have to deal with. In particular, the NHRIs' role vis-à-vis the AHRB is viewed as catalytic, complementary and cooperative in character.
32. The Roundtable acknowledges the numerous ways by which the NHRIs can contribute to the AHRB and other regional mechanisms of protection which may be established, including: monitoring compliance with international instruments; receiving and sharing information with the AHRB and coordinating activities on the national level; working together to assist in the establishment of future NHRIs in the region; and assisting the AHRB in forming cooperative ties with other regional systems.
33. The Roundtable welcomes the shared news that some ASEAN Member States are presently considering, on a step-by-step approach, the feasibility of setting up an NHRI and encourages such Member States to publicize information on these efforts and developments.
34. The Roundtable welcomes the support that the network of the four existing NHRIs in Indonesia, Malaysia, the Philippines, and Thailand continues to extend to Cambodia in its efforts to establish its NHRI.
35. The Roundtable further acknowledges and supports the ways by which the 4 ASEAN NHRIs may be able to assist in the setting up of future NHRIs, including by strengthening the capacity of stakeholders and also providing technical assistance.
36. The Roundtable recommends that any ASEAN Member State wishing to set up an NHRI consider the following lessons and insights from the existing commissions:
 - Civil society consultation on the process of establishing the NHRI, including discussions on the draft bill providing for such establishment;
 - Transparency in the various steps and procedures, including the appointment of commissioners
 - Fixed-term and full-time appointments for the commissioners to ensure independence and focus, as well as staggered retirement to maintain continuity and institutional memory
 - Insistence on the inclusion of visitorial powers, whether announced or unannounced, to places of detention for the NHRI
 - Definition of human rights as those contained in the articles of the Universal Declaration on Human Rights.

Synthesis of Group Presentations

37. The groups had an excellent opportunity to discuss the possible bodies in an open manner, and the flow of thoughts appear to be to open the door to a variety of bodies but within a reasonable timeframe and with due respect to the effectiveness of each in a complementary manner;
38. The groups envision an overarching framework which includes the AHRB and the commissions (on women and children as well as migrant workers), with due regard to alignment as well as cooperation and collaboration between and among them;
39. The groups highlight the need to go beyond promotion towards protection, bearing in mind that a value added by such regional mechanisms is its proximity to the people; it is nearer than the UN and could be more accessible;
40. The groups affirm that the bodies should be rules-based and that they should function consistent with international norms and standards;
41. The groups assert the need for transparent and effective body or bodies;
42. The groups believe that the individuals composing the bodies should act impartially and effectively, with due regard to pluralism, gender sensitivity and balance, and with active people participation in the nomination and selection processes;
43. The groups opine that impact is to be measured very much in terms of how the bodies function well and effectively with due regard to the interrelationship and interface with the peoples of ASEAN. Possible entry points in terms of impact assessment would include media, ASEAN poll, etc.;
44. The groups emphasize the importance of implementation of human rights through these human rights bodies and these should abide by international standards;
45. The groups welcome the possibility of the bodies linking up with the various ASEAN organs including the ASEAN Summit; and
46. The groups recognize the need to give "life" to the bodies. This includes providing it with support and necessary resources for their effective functioning.

IV. Acknowledgment

47. The Roundtable participants expressed their appreciation to the Ministry of Foreign Affairs of the Kingdom of Thailand, the National Human Rights Commission of Thailand and the Working Group for co-hosting and co-organizing the *Fourth Roundtable Discussion on Human Rights in ASEAN: Realizing the People-Oriented ASEAN Community with Human Rights*, to the Friedrich Naumann Foundation, the Canadian International Development Agency (CIDA)-sponsored Southeast Asia Regional Cooperation on Human Development (SEARCH) project, and the European Commission (EC) under the project "Enhancing the Role of National Human Rights Institutions in the Development of an ASEAN Human Rights Mechanism", for providing crucial financial support, and to the members of the conference secretariat for all their hard work.