

**Fifth Workshop on an ASEAN Regional Mechanism on Human Rights
Kuala Lumpur, Malaysia
29-30 June 2006**

SUMMARY OF PROCEEDINGS

I. Introduction

1. The Fifth Workshop on the ASEAN Regional Mechanism on Human Rights (the Workshop) was held in Kuala Lumpur, Malaysia, on 29-30 June 2006. The Workshop was co-organized and co-hosted by the Ministry of Foreign Affairs of Malaysia, the National Human Rights Commission of Malaysia (SUHAKAM), the Centre for ASEAN Studies of Universiti Teknologi MARA (UiTM) and the Working Group for an ASEAN Human Rights Mechanism (Working Group).
2. The Workshop was attended by participants representing governments of most ASEAN Member Countries, the ASEAN Secretariat, the national human rights institutions (NHRIs) of Malaysia, the Philippines and Thailand, and members of civil society organizations. Also in attendance were representatives of local, regional and international non-governmental organizations, international institutions, and donor agencies as observers.
3. Opening remarks were delivered by Mr. Marzuki Darusman, Co-Chairperson of the Working Group, Prof. Dr. Rahmat Mohamad, Director of the Centre for ASEAN Studies, and Tan Sri Abu Talib Othman, Chairperson of SUHAKAM, who each delivered welcome remarks.
4. Mr. Darusman noted that the Workshop shows the level of cooperation between governments and civil society organizations on the issue of the regional human rights mechanism. He said that ASEAN had asked the Working Group's assistance in implementing four programme areas on human rights in the Vientiane Action Programme (VAP) and that the Working Group will be conducting consultations on this. He expressed the hope that the ASEAN Charter, which will soon be drafted, will recognize the universality of human rights as a primary organizing principle.
5. Prof. Dr. Rahmat Mohamad discussed the need for cooperation in meeting various challenges in the region and the importance of ASEAN Vision 2020 and the three pillars of the ASEAN Community. He also emphasized the need for minimum standards and the desirability of a regional human rights mechanism to promote accountability. He said that the Centre for ASEAN Studies would like to be involved in establishing this.
6. Tan Sri Abu Talib Othman said that a regional mechanism would be an important milestone in the work of promoting and protecting human rights in the region. He pointed out that since 2004, the four NHRIs in ASEAN have increased joint efforts on issues of common concern and have agreed to sign a Declaration of Cooperation. He hoped that the NHRIs will act as a catalyst for the establishment of the regional intergovernmental human rights mechanism.

7. The Keynote Address of the Minister of Foreign Affairs of Malaysia, Dato' Seri Syed Hamid Albar, was delivered by the Honorable Dato' S. Thanarajasingam. He said that Malaysia has long been aware of the importance of the Working Group's advocacy and mentioned that Prime Minister Dato' Seri Abdullah Haji Ahmad Badawi, as Foreign Minister in 1996, kept his word when he assured the Working Group that Malaysia, as then incoming Chair of the ASEAN, would be open for dialogue on the regional mechanism. He added that the Working Group's meetings with ASEAN have been productive as shown by the number of VAP programme areas on human rights which have been culled from earlier workshops. He proposed that in the same spirit of promoting and protecting human rights within ASEAN, a regional human rights mechanism be set up comprising states within the grouping which are ready.

II. Workshop Sessions

8. The Workshop was divided into eight sessions covering the following topics: (1) Stocktaking of Efforts to Implement the Human Rights Provisions of the Vientiane Action Programme (2004-2010) and Recent Developments; (2) Joint Efforts of National Human Rights Institutions in Advancing an ASEAN Human Rights Mechanism and on Human Rights Issues of Common Concern in ASEAN; (3) Efforts to Help Establish a Commission on the Promotion and Protection of the Rights of Women and Children and Steps to be Undertaken; (4) Efforts to Help Implement the Human Rights Provisions of the Vientiane Action Programme on Migrant Workers; (5) Efforts to Help Implement the Human Rights Provisions of the Vientiane Action Programme on Human Rights Education; (6) The Kuala Lumpur Summit (2005) and an ASEAN Charter: a Window of Opportunity for Human Rights; (7) Towards an ASEAN Human Rights Mechanism; and (8) Plenary Discussion on the 5th Workshop Conclusions and Recommendations: Identifying Practical Steps Within the Framework of the Vientiane Action Programme (2004-2010) for the Establishment of an ASEAN Human Rights Mechanism.
9. In Session One, Dr. Khiane Phansourivong of the ASEAN Secretariat gave an overview of cooperation on human rights in ASEAN and discussed current efforts to implement the VAP's human rights provisions, noting the Working Group's meeting with ASEAN SOM in Vientiane in 2005 where it was asked to assist ASEAN in implementing four of the human rights programme areas. The Secretary-General of the Working Group, Mr. Carlos Medina, reviewed the Working Group's initiatives, highlighting its continuous dialogue with ASEAN on the regional mechanism initiative. Prof. Dr. Rahmat Mohamad of UiTM's Centre for ASEAN Studies, as commentator, observed that while many ASEAN countries have signed international human rights instruments, the problem is one of implementation. He asked: *Do we have the political will?* During the open forum, joint efforts involving civil society in activities concerning the VAP's human rights programme areas were discussed as well as the possibilities of the ASEAN Charter as a window of opportunity for human rights. The issue of gender parity of the Working Group was also raised. The Session was chaired by Mr. Bounnheuang Songnavong of the Ministry of Foreign Affairs of Lao P.D.R.

10. In Session Two, Mr. Wilhelm Soriano of the Philippine Commission on Human Rights talked about joint efforts of NHRIs to advance the regional mechanism initiative, including a Declaration of Cooperation. During the open forum, the NHRIs were commended for their networking efforts. The feasibility of having NHRIs in other ASEAN Member Countries was also discussed. Dr. Chiam Heng Keng of SUHAKAM chaired the Session.
11. In Session Three, Dr. Sriprapha Petcharamesree and Ms. Varaporn Chamsanit of Mahidol University's Office of Human Rights Studies and Social Development discussed the existing laws, policies, institutions and relevant documents of four countries as well as programmes, policies, and relevant documents at ASEAN level as part of a preliminary study on the promotion and protection of women and children's rights in the region in preparation for the establishment of a commission. They explained that the study will need input during planned consultations with governments, NHRIs and civil society. Mr. Ple Priatna of the Department of Foreign Affairs of Indonesia and Mr. Duong Chi Dung of Ministry of Foreign Affairs of Vietnam, focused on the possible modalities of the proposed commission. Mr. Duong also stressed the need to assess and explore existing mechanisms in related fields (such as the ASEAN Committee on Women, and children's unit within the ASEAN Committee for Social Development) and to study the value added of a regional mechanism to the existing UN mechanism as well as to the national one. During the open forum, various questions were raised about the proposed study, including need to define terms and to look at existing laws, policies, and gaps in implementation. It was also suggested that separate commissions for women and children be considered. The Session was chaired by Hajah Roslizawati Haji Ibrahim of the Ministry of Foreign Affairs and Trade of Brunei.
12. In Session Four, Dr. Raj Abdul Karim of SUHAKAM discussed the problems and challenges faced by migrant workers, refugees and asylum seekers in the region and in Malaysia in particular. She encouraged governments to remain committed to the Bali Process of managing regional migration. Mr. Sinapan Samydorai of the Working Group pointed out that most countries have ratified the core ILO conventions but fall short of full implementation. He emphasized that any instrument for migrant workers should include the core labour standards, minimum working conditions and terms of employment. Ms. Pittara Damrithamanij of the Ministry of Foreign Affairs of Thailand, as commentator, discussed the situation in Thailand and stressed the need to ensure that the protection of migrant workers' rights is balanced with various state concerns. She also said transitional problems like migrant workers' issues require transnational solutions. Questions during the open forum focused on the need for human development education, on problems facing undocumented workers, the need to look at migration holistically, and the need to consider existing multilateral frameworks as an entry point. The session was moderated by Mr. Wigberto Tañada of the Working Group.
13. In Session Five, Ms. Paulynn Sicam of the Working Group explained the findings of a research on human rights education (HRE) and the results of a three-day roundtable discussion on "Engaging ASEAN Governments on Human Rights Education" held in March 2006. She explained the gains, initiatives and directions on HRE in ASEAN, and strategies for human rights promotion in the region. Dr. Suthin Nophaket of the Human Rights Commission of Thailand commented on the need for cooperation among

various stakeholders in human rights education. The Session was chaired by Mr. Kyaw Thu Nyein of the Ministry of Foreign Affairs of Myanmar.

14. In Session Six, Tun Musa Hitam, the Chairperson of the Eminent Persons Group on the ASEAN Charter, said that the consultative process on the ASEAN Charter is very important for the EPG and it was the most important development that has happened to ASEAN since its inception. This will help transform ASEAN from a government-centred to a people-centred institution. He hopes that there will be a firm definitive concept of good governance based on democracy and human rights in the Charter itself. However, he said the EPG will only draft the conceptual paper discussing the approach to the Charter while a high-level task force will draft the Charter itself. Prof. Herman Joseph Kraft, as commentator, suggested that the Charter should include minimum standards of behaviour for ASEAN Member Countries and noted that the advantage of the ASEAN Charter process is its openness to civil society consultation. During the open forum, questions were raised about enhancing mechanisms for civil society participation in ASEAN and on gender parity of the EPG. The session was chaired by Dato Param Cumaraswamy of the Working Group.
15. In Session Seven, Professor Vitit Muntarbhorn of the Working Group discussed the rationale and the various options for the ASEAN human rights mechanism. During the open forum, the need for an instrument as legal basis of any mechanism on women and children was discussed. This session was chaired by Dr. Macarthur Corsino of the Philippine Department of Foreign Affairs.
16. The Concluding Session was a plenary discussion on the Workshop's conclusions and recommendations identifying practical steps within the framework of the VAP for the establishment of an ASEAN human rights mechanism. The Session Chair, Amb. Tan Seng Sung of the Ministry of Foreign Affairs of Malaysia, together with the rapporteurs, Mr. Carlos Medina of the Working Group, Ms. Suraina Pasha of SUHAKAM, and Ms. Umminajah Salleh of the Centre for ASEAN Studies, presented for plenary deliberation the draft summary of the proceedings and the conclusions and recommendations of the 5th Workshop.
17. The closing remarks were delivered by Dato' S. Thanarajasingam, Acting Secretary-General of the Ministry of Foreign Affairs of Malaysia, to formally end the 5th Workshop. He said that the establishment of the regional mechanism would create a positive ripple effect not only in this region but also to other regions. He emphasized the importance of a partnership among governments, NHRIs, civil society groups and ASEAN peoples in shaping the regional mechanism. He said that Malaysia, as Chair of the ASEAN Standing Committee, is looking forward to receiving the Working Group's report at the upcoming 39th ASEAN Ministerial Meeting in Kuala Lumpur. Finally, he thanked all organizers, participants and observers of the 5th Workshop.

III. Conclusions and Recommendations

General Statements and Recommendations

18. The Workshop acknowledges the need to strengthen efforts to set up a regional human rights mechanism which will promote and protect the rights of all sectors of society, including women, children, migrant workers and refugees. It also recognizes that in setting up the ASEAN human rights mechanism, standards set by international instruments (e.g., the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination against Women, and the Migrant Workers Convention) need to be adhered to.
19. The Workshop affirms the step-by-step, multi-track and building block approach towards the regional mechanism. It acknowledges the important role of civil society organizations in the initiative and welcomes the willingness of civil society to support ASEAN and the governments of ASEAN Member Countries in addressing various human rights issues in the region, particularly through a regional mechanism. It further suggests that civil society participation in ASEAN processes be further institutionalized through transparent mechanisms.
20. The Workshop acknowledges that the advocacy of human rights in general should not be perceived as intervention in the affairs of states as the international community recognizes the right to advocate human rights and particularly since most ASEAN countries generally accept the universality of human rights principles.
21. The Workshop suggests the creation of a human rights desk in the ASEAN Secretariat in accordance with ASEAN processes.
22. The Workshop encourages governments to attend the forthcoming United Nations high-level dialogue on migration and development as this dialogue seeks to synthesize various efforts on these issues.
23. The Workshop recommends that a study be conducted to assess the possible contributions of a regional human rights mechanism to the policies and institutions now existing in ASEAN.
24. The Workshop emphasizes the need for ASEAN's action plans to relate to the peoples of Southeast Asia as it is only by doing so that ASEAN can become truly relevant to the ordinary Southeast Asian.
25. The workshop welcomes the presence of representatives of U.N. agencies, including the regional representative of the Office of the High Commissioner for Human Rights (OHCHR). It expresses appreciation to the OHCHR's offer of assistance on human rights capacity building and related matters.

National Human Rights Institutions

26. The Workshop commends the efforts of existing NHRIs in the region to address various human rights concerns and acknowledges and the important role they play in filling the gaps in human rights implementation in their respective countries.

27. The Workshop welcomes the proposed Declaration of Cooperation of the four NHRIs in ASEAN to be signed by their respective Chairpersons at their next consultation meeting scheduled in October 2006, which includes the agreement to urge their respective governments to take necessary steps to establish an appropriate ASEAN Human Rights Mechanism.
28. The Workshop recognizes that many of the human rights programmes of the VAP are the same issues identified by the NHRIs as issues of common concern and that the First Regional Conference on Building Networks to Strengthen ASEAN Human Rights Cooperation (Networks Conference) in Manila was a good opportunity to discuss these points of convergence.
29. The Workshop reaffirms the importance of establishing national human rights institutions which would endeavour to comply with the Paris Principles in all ASEAN countries, and urges the NHRIs to extend a hand, in partnership with the Asia Pacific Forum of National Human Rights Institutions, to states considering the establishment of one.
30. The Workshop adopts the agreement in the Networks Conference in Manila for the NHRIs to partner with the Working Group in advancing the regional mechanism initiative.
31. The Workshop recommends that the NHRIs also look at gaps in the capacity of governments to monitor treaty obligations and to prepare country reports. The Workshop further recommends that the NHRIs assist governments in enhancing full implementation of their international obligations and in preparing the country reports as they are in the best position to offer such assistance.

The Rights of Women and Children

32. The Workshop affirms the need to hold extensive consultations with representatives of governments of ASEAN Member Countries, NHRIs and civil society organizations in the process of considering the proposed commission on the promotion and protection of the rights of women and children.
33. The Workshop encourages ASEAN Member Countries without national women's rights commissions to consider the establishment of one.
34. The Workshop makes the following recommendations and suggestions for the Working Group's research project on women and children's rights:
 - a. That the study should consider the possibility and feasibility of proposing separate commissions for women and children to ASEAN;
 - b. That the study should contain clear definitions of women and children. It should also provide for the pertinent terms and a clear idea of the proposed commission's coverage;
 - c. That there should be a discussion of the basic functions and modalities of the proposed commission;
 - d. That aside from reviewing *de jure* status of laws and policies, there is a need to study if these laws and policies ensure *de facto* realization;

- e. That the study should consider special sectors and issues such as youthful offenders, bonded labour, human trafficking, migrant smuggling, and women in detention;
 - f. That the study assess and explore relevant existing mechanisms and look into the value added of a regional mechanism to existing international and national mechanisms;
 - g. That the study should consider ASEAN documents relevant to this topic including the two recent relevant declarations on violence against women and human trafficking; and
 - h. That the study should look at three points: (i) the strengths and positive points of existing laws, policies and institutions; (ii) the continued existence of discriminatory legislation; and (iii) the gaps and deficiencies in the present laws, mechanisms and policies, both national and regional.
35. The Workshop recommends that a joint task force be constituted after the submission of the research study on women and children to look at the specific steps in establishing the commission on the promotion and protection of the rights of women and children.
36. The Workshop affirms that, in any case, any proposed commission should be an intergovernmental legal entity adhering to international laws for example CRC and CEDAW and national human rights laws, working closely with NHRIs and civil society.
37. The Workshop expresses the hope that while the VAP has 2004-2010 as its time frame, the commission on the promotion and protection of the rights of women and children should be established well before the end of the VAP.
38. In order to further advance the mechanism initiative, the Workshop suggests the following:
- a. That future AMMs deliberate possible elements for an ASEAN Commission on Women and Children, or separate commissions for women and children;
 - b. That governments of ASEAN Member Countries continue to engage civil society groups to further discuss ideas on this mechanism and agree on its shape and form by 2007, in coordination with the review of the implementation of the VAP.

The Rights of Migrant Workers

39. The Workshop affirms the need to encourage governments to ratify all relevant UN conventions and protocols related to migrant workers, refugees and asylum seekers, and to act on commitments made.
40. The Workshop affirms the need to hold extensive consultations with relevant government institutions, NHRIs, and civil society organizations regarding the elaboration of an instrument for migrant workers, refugees and asylum seekers.
41. The Workshop recognizes that while the ASEAN Member Countries have acceded to a good number of international conventions, the major problem is one of implementation and that therefore governments are urged to pass and enforce pertinent laws and instruments.

42. The Workshop encourages ASEAN Member Countries to remain committed to the Bali Process for managing regional migration, and likewise encourages ASEAN NHRIs to be guided by the Zacatecas Declaration and the Campeche Declaration on Irregular Migration.
43. The Workshop acknowledges that the International Labour Organization framework can be considered, and that what is needed to enhance the protection of migrant workers' rights in the region is a practical entry point on the basis of safe managed migration and refugee protection.
44. The Workshop recognizes that there is a need to reevaluate the memoranda of understanding between states and the various bilateral agreements regarding migrant workers and undocumented workers to ensure compliance with minimum human rights standards and core labour standards, and that there is a need to review the concept of criminalization as it relates to migrant workers and refugees.
45. The Workshop acknowledges that issues regarding migrant workers and refugees are not isolated matters and must be related to other pressing state concerns and issues such as national security, employment, health, education and trafficking.

Human Rights Education

46. The Workshop urges that governments of ASEAN Member Countries adopt the specific recommendations of the Round Table Discussion in Bangkok on what ASEAN itself and individual ASEAN nations could do initially to promote human rights and human rights education in the region.
47. The Workshop specifically recommends that ASEAN Member Countries aim for:
 - a. The adoption of national HRE plans;
 - b. The adoption of HRE policies and programmes for schools, critical government agencies and the general public;
 - c. The establishment of mechanisms for dialogue between government and HRE providers;
 - d. The promotion of human rights education in an expanded environment (e.g., families, the media, employers, and multinational corporations) and the mainstreaming of gender perspectives in all human rights education; and
 - e. The allocation of an adequate budget for HR promotion and education.
48. The Workshop encourages ASEAN to adopt the following regional goals:
 - a. The promotion of compliance by member nations with international HRE standards, e.g., adoption of the UN's World Programme for HRE;
 - b. The strengthening of the dialogue/engagement between ASEAN, the United Nations, and other partners regarding human rights and the right-based approach and HRE in ASEAN;
 - c. The establishment of an ASEAN Regional Human Rights Research and Training Centre;

- d. The development and implementation of joint ASEAN HRE projects;
and
- e. The creation of an ASEAN Committee on HRE.

The ASEAN Charter

- 49. The Workshop recognizes the potential of the ASEAN Charter as a window of opportunity for human rights concerns and holds that the ASEAN Charter must reaffirm democratic values, the promotion of human rights and reflect people-centredness. It should provide for the establishment of a regional human rights mechanism as envisaged in the 1993 Singapore Communiqué.
- 50. The Workshop recognizes the important role of the Eminent Persons Group (EPG) for the ASEAN Charter and resolves to engage the EPG to ensure that human rights concerns will be included and given full consideration in the Charter to reflect the visionary intent of the Kuala Lumpur Declaration.

Towards an ASEAN Human Rights Mechanism

- 51. The Workshop recognizes that among the reasons for the mechanism are the following:
 - a. to promote and protect human rights;
 - b. to complement national human rights protection systems; and
 - c. to fill gaps at the national level and provide redress where domestic remedies have been exhausted or where no domestic remedy is available.
- 52. The Workshop acknowledges the following possible forms for the mechanism:
 - a. commission;
 - b. commission and court;
 - c. court;
 - d. commission, court and committee of ministers;
 - e. NHRIs and networking; and
 - f. promotion of activities without any mechanism.
- 53. The Workshop recommends that any commission be possessed with the following powers:
 - a. assess or review the human rights situation;
 - b. provide access to those affected, especially vulnerable groups;
 - c. advise on needed reforms;
 - d. act where national remedies have been exhausted and where states have agreed to become parties to the commission; and
 - e. advocate for the protection of those affected, especially vulnerable groups, in cooperation with key partners and stakeholders.

IV. Acknowledgments

The Workshop participants and observers expressed appreciation to the Ministry of Foreign Affairs of Malaysia, the National Human Rights Commission of Malaysia (SUHAKAM), the Centre for ASEAN Studies of Universiti Teknologi MARA and the Working Group for an ASEAN Human Rights Mechanism for co-hosting and co-organizing the Fifth Workshop, and to the Canadian International Development Agency (CIDA) sponsored Southeast Asian Regional Cooperation for Human Development (SEARCH) project and the Friedrich Naumann Foundation for providing invaluable financial support.

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