

**Eighth Workshop on the  
ASEAN Regional Mechanism on Human Rights**  
Bangkok, Thailand  
14-15 July 2009

**SUMMARY OF PROCEEDINGS**

**I. Introduction**

1. The Eighth Workshop on the ASEAN Regional Mechanism on Human Rights was held in Bangkok, Thailand, on 14-15 July 2009. The Workshop was co-organized and co-hosted by the Ministry of Foreign Affairs of the Kingdom of Thailand and the Working Group for an ASEAN Human Rights Mechanism (Working Group).
2. The Workshop was attended by participants representing all ASEAN governments, the Chair of the ASEAN Committee on Women, the Chair of the Senior Officials Meeting on Social Welfare and Development, the national human rights institutions of Indonesia, Malaysia, the Philippines, and Thailand, and civil society organizations from around the region. Also in attendance were observers from the United Nations, international civil society organizations, and funding groups.
3. In his Welcome Remarks, Dato Param Cumaraswamy of the Working Group noted the completion of the drafting of the Terms of Reference (ToR) of the ASEAN Human Rights Body (AHRB) and its imminent establishment. He said that many would have preferred a much stronger and more balanced body than what the imminent one will most likely be. However, early on, the Working Group has always adopted a constructive, consultative and step-by-step process involving governments and civil society groups, and the workshops are the best example of this. He then outlined some issues for consideration by the workshop: Does the coming into effect of the ASEAN Charter spell a genuine sea change in ASEAN's character which we can take advantage of? How do we operationalize the AHRB's promotion AND protection functions, given the current limitations of its powers? How should the process of selecting representatives be capitalized on? How can an enlightened composition be ensured to temper the effects of its limited powers? How are the parallel processes on women and children, and migrant workers, faring? He stressed that the Working Group will not fade away at the AHRB's establishment and will continue to work for an effective system of promoting and protecting human rights in the region.
4. H.E. Ms. Chitriya Pinthong, Deputy Permanent Secretary for Foreign Affairs of Thailand, delivered the Keynote Address in behalf of the Foreign Minister, H.E. Mr. Kasit Piromya. She observed that the workshop provides an invaluable opportunity to dialogue on one of the most important issues that has real impact on the lives of ASEAN peoples – the issue of their own rights and fundamental freedom. While ASEAN has increasingly paid attention to this issue, she cautioned everyone to bear in mind that ASEAN is not people-oriented by its own history, hence people-oriented values in the ASEAN Charter like democracy, adherence to the rule of law, good governance, and respect for human rights and fundamental freedoms, still have to be nurtured. She said that the AHRB should not be a stand-alone body but, together with other bodies, be part of a human rights regime to be created within ASEAN, and which will comprise mechanisms and a set of norms. She urged civil society organizations to continue engaging with the AHRB and other ASEAN organs and to help shape the evolution of the human rights regime in ASEAN.

## II. Workshop Sessions

5. The Workshop was divided into five sessions covering the following topics: (a) Developing an ASEAN Human Rights Regime; (b) Operationalization of the AHRB's Promotion and Protection Functions; (c) The Setting Up of the AHRB: Selection Process and Composition; (d) Updates on Parallel Processes: The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the ASEAN Instrument on Migrant Workers; (e) Exploring the AHRB's Future Engagement with Stakeholders in ASEAN; and (f) Conclusion and Recommendations.
6. In Session One, "Developing an ASEAN Human Rights Regime", Prof. Vitit Muntarbhorn, the Alternate Member of Thailand to the High Level Panel (HLP) on an AHRB, discussed the three C's: context, content, and contours. Under context, he discussed the political nature of ASEAN's origins where, from a human rights perspective, there was more diversity in an imputed unity. He said that a major challenge is for ASEAN to develop into an inter-peoples' organization, and not just be an inter-executive association. On content, he suggested that the ToR be read with the ASEAN Charter where human rights is a permeating principle together with others like non-interference. Hence, there is a need to balance them. He said that while the ToR may not contain the usual language of protection, what it does not prohibit is not forbidden; hence, there are openings for protection activities. On the AHRB's contours, he stressed the following: the AHRB should protect ASEAN peoples, not states; under the international human rights framework, human rights advocacy is not deemed interference in internal affairs; the promotion and protection of human rights should be balanced; civil society should also work around the AHRB and make use of other platforms within ASEAN; the best people should compose the body; the ToR be interpreted in a proactive and creative way; AHRB should be aligned with other bodies in ASEAN; forward-looking strategies must be adopted and stakeholders must remain vigilant in protecting rights; other complementary channels must be used, like the United Nations; and ASEAN should be people-oriented.
7. Dr. Termsak Chalermphanupap, the Director for Political and Security Cooperation of the ASEAN Secretariat, said that the AHRB's establishment is merely a new beginning and can be improved, that it is part of the ASEAN Charter, and that it was important to start from a point of common interests since ASEAN is building a community. He added that ASEAN is not a supranational body which can sanction members. He asked everyone for support and cooperation in the ASEAN Secretariat's work for the AHRB. The questions and comments during the open forum focused on the need to make use of good practices on human rights at country level, the importance of the AHRB's composition and impartiality, the need to ensure that human rights will cut across all three pillars of the ASEAN community, and the implications of a rules-based approach in ASEAN. Session One was chaired by Ms. Alicia Bala, Undersecretary for Policy and Program, Department of Social Welfare and Development of the Republic of the Philippines, and the Chair of the ASEAN Senior Officials Meeting on Social Welfare and Development.
8. In Session Two, "Operationalization of the AHRB's Promotion and Protection Functions", Dato Misran Karmain, Senior Undersecretary of the Multilateral Political Division of the Ministry of Foreign Affairs of Malaysia and the Alternate Member of Malaysia to the HLP on an AHRB, said that the functions, whether on promotion or protection, are closely related. He explained that the body may focus on human rights promotion initially, and proceed gradually to protection based on the evolutionary approach. He added that the AHRB should complement the international and national human rights systems and also provide a link between the two. He also hoped that the AHRB and national human rights institutions will be

able to work in effective partnership. For his part, Mr. Wigberto Tañada, former Senator of the Philippines and the Chairperson of the Philippine Working Group for an ASEAN Human Rights Mechanism, focused on the need to balance the promotion and protection functions. He suggested that progressive operationalization of the AHRB's functions is the pragmatic approach, and that ToR provisions be liberally interpreted to allow for greater protection of human rights. He also stressed the importance of having competent, knowledgeable and impartial representatives in the AHRB. In the open forum, participants focused, among others, on the following: the need to clarify the relationship between the AHRB and NHRIs, and between the AHRB and the other ASEAN bodies on women and children, and migrant workers; the importance of supplementing formal commitments with application and implementation; the interface between human rights concerns and economic development issues; and the need for a clearer formulation of the AHRB's protection functions. The session was chaired by Dr. Vongvilay Thiphalingy, acting Director of the Human Rights Division, Treaty and Laws Department of the Ministry of Foreign Affairs of Lao P.D.R.

9. In Session Three, "The Setting Up of the ASEAN Human Rights Body: Selection Process and Composition", Ms. Hesti Armiwulan, the Vice Chairperson for External Affairs of Indonesian Human Rights Commission (Komnas HAM), emphasized the need to have persons with integrity, and extensive knowledge and experience in human rights, who will act like independent experts in the body. She suggested that the AHRB Chairperson be selected by the representatives, and not follow the ASEAN rotation. She said Komnas HAM's selection process, based on the Paris Principles, has very minimal intervention from government and political bodies. She also said steps have been taken concerning the selection process for the AHRB in Indonesia. She recommended the establishment of an independent selection committee. Mr. Rafendi Djamin, the Co-Convenor of Solidarity for Asian Peoples Advocacy – Task Force on ASEAN and Human Rights (SAPA-TFAHR), noted suggestions from various stakeholders and highlighted certain values which should be taken into consideration in the selection process: independence, professionalism, integrity, competence, and service in a personal capacity. He also expressed other concerns like gender equality, the term of office, and the election of the Chairperson. He supported the idea of having a selection committee at national level. During the open forum, participants discussed, among others, the question of accountability of the representatives, the operational definition of "independence", and the need for prompt action on the selection process since the AHRB will likely be set up in October 2009. The session was chaired by Ms. Cao Thi Thanh Thuy, the Deputy Director General for International Cooperation Department of the Ministry of Labour, Invalids and Social Affairs of the Socialist Republic of Viet Nam, and the Chair of the ASEAN Committee on Women.
10. In Session Four, "Updates on Parallel Processes: The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the ASEAN Instrument on Migrant Workers", Mrs. Jiraporn Kesornsujarit, Chief Inspector-General, Ministry of Labour of the Kingdom of Thailand and Representative of the Chairperson of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), discussed how the ACMW was established and its subsequent meetings and activities concerning the drafting of an instrument for migrant workers. She said the drafting will focus on who should be covered, the extent of coverage, and the rights to be covered. Ms. Kanda Vajarabhaya, Deputy Permanent Secretary of the Ministry of Social Development and Human Security of the Kingdom of Thailand and Chair of the Working Group for the Establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (WG-ACWC), also shared the WG-ACWC's drafting process, which makes use of the AHRB ToR drafting process as a model. She said that among the difficult issues encountered

are whether the commission should be inter-governmental or consultative, and whether “experts” or “representatives” should be employed. She urged ASEAN governments to conduct their own consultations with local CSOs. During the open forum, questions were raised concerning, among others, the interrelatedness of issues affecting women, children and migrant workers; the need to make use of existing instruments and to implement them well; timelines; and plans for consultations and dialogues with civil society and other stakeholders. The session was chaired by Dr. Budiono Kusumohamidjojo, Secretary-General of the Indonesian Working Group for an ASEAN Human Rights Mechanism.

11. In Session Five, “Exploring the AHRB’s Future Engagement with Stakeholders in ASEAN,” Ms. Braema Mathiapparanam, Chairperson of the Singapore Working Group for an ASEAN Human Rights Mechanism, gave an overview of possibilities for future engagement with the AHRB, assuming the AHRB is formed as an intergovernmental body along the lines of the current draft ToR. She then raised questions for discussion by the participants, who have been divided into three break-out groups representing governments, national human rights institutions (NHRIs), and civil society organizations (CSOs): (1) What will be your engagement with the AHRB? (2) How will you engage the AHRB? The government group was moderated by Dr. Sripapha Petcharamesree, Chairperson of the Thai Working Group for an ASEAN Human Rights Mechanism, with Ms. Alicia Bala of the Philippines as rapporteur. The NHRI group was moderated by Datuk Dr. Chiam Heng Keng, Commissioner of the Malaysian Human Rights Commission (SUHAKAM), with Ms. Peeyanuj Thitipatana, Human Rights Officer of the National Human Rights Commission of Thailand, as rapporteur. The CSO group was moderated by Mr. Boonthan Verawongse, member of the Thai Working Group for an ASEAN Human Rights Mechanism, with Mr. Soe Aung, Deputy Coordinator of the Burma Partnership, as rapporteur. In the open forum, questions were raised regarding the difficulties of addressing transnational human rights issues such as trafficking, and the importance of ensuring that the AHRB address national issues which may have spill-over effects on regional peace and security. Concerns were raised that the AHRB should not displace or distract from international standards. The AHRB should also serve as an alternative forum for human rights issues after the exhaustion of domestic remedies. The AHRB should include a structured space for interaction with stakeholders. It was also noted that all three groups expressed support for the work of the AHRB.
12. In the final session, entitled “Conclusions and Recommendations”, the participants discussed and adopted the proceedings of the Workshop, including the conclusions and recommendations. The session was chaired by Ms. Usana Berananda, Head of the Policy Section, Department of ASEAN Affairs of the Ministry of Foreign Affairs of Thailand, assisted by Mr. Carlos Medina, Jr., Secretary-General of the Working Group for an ASEAN Human Rights Mechanism, as rapporteur.
13. Ms. Usana Berananda also delivered the Closing Remarks where she emphasized that cooperation is needed to build an ASEAN Community that is socially responsible and where the human rights and fundamental freedoms of ASEAN peoples are respected and promoted. She observed that while the ToR may not be a perfect document, it still provides a decent platform to start with and will hopefully increase the “comfort level” of all ASEAN member-states to be able to accept a more enhanced role of the AHRB in the future. She also emphasized that Thailand will work closely with all stakeholders to ensure transparency in the selection process.

### **III. Conclusions and Recommendations**

#### **General**

14. The Workshop notes that the ASEAN Charter entered into force on 15 December 2008 following its ratification by all member-states.
15. The Workshop notes that the timeline agreed upon by the ASEAN foreign ministers to have the ToR of the AHRB finalized by 2009 will be met and that the HLP intends to submit the final draft of the ToR of the AHRB to the ASEAN foreign ministers on 19 July 2009 for consideration and endorsement.
16. The Workshop anticipates the establishment of the AHRB by the 15<sup>th</sup> ASEAN Summit in October 2009.

#### **ASEAN Human Rights Regime**

17. The Workshop believes that this annual workshop provides an invaluable opportunity for government officials, NHRIs, the academe, and civil society to engage in dialogue on the development of an ASEAN human rights regime for the promotion and protection of human rights and fundamental freedoms in the region.
18. The Workshop recognizes that while member-states of ASEAN still have diverse records on human rights, it is encouraging that ASEAN itself, as a rules-based regional organization, has increasingly paid attention to human rights.
19. The Workshop recognizes that the evolution of the AHRB will depend not only on a preset roadmap, but also on how ASEAN will evolve as a community.
20. The Workshop envisages a regional system on human rights which is progressively capable of effectively promoting and protecting human rights.
21. The Workshop reaffirms that it is the State which has the primary obligation to protect and to promote the human rights and fundamental freedoms of its citizens.
22. The Workshop acknowledges that NHRIs in ASEAN are important stakeholders which the AHRB must engage. In particular, the NHRIs' role vis-à-vis the AHRB is viewed as catalytic, complementary, and cooperative in character.
23. The Workshop encourages civil society to continue to engage the AHRB and other ASEAN organs, and to make its opinions count in shaping the human rights architecture of ASEAN.
24. The Workshop recognizes that a main challenge for ASEAN is to develop from an inter-executive association into an inter-peoples and people-oriented organization.
25. The Workshop notes that while there appears to be an imbalance between the promotion and protection functions of the AHRB, there are openings in the ToR which can be taken advantage of, and forward-looking strategies may be adopted to advance human rights in the region.
26. The Workshop reiterates that the AHRB has to be seen in the context of the ASEAN Charter. Although the AHRB is the main venue for asserting human rights, stakeholders should make use of all other platforms within ASEAN for the purpose of human rights promotion and protection.

## **Operationalization of the ASEAN Human Rights Body**

27. The Workshop emphasizes that the promotion and protection functions are closely connected and recognizes the preponderance of promotion over protection mandates in the ToR. It takes note of the opening in the current draft ToR and that the full implementation of the AHRB will progressively and fully optimize the space provided under the promotion functions. It encourages strategic links with well-placed institutions such as universities in ASEAN and NHRIs in countries where they are present.
28. The Workshop highlights the importance of the AHRB's composition in the operationalization of its functions and, given that the AHRB will operate by consensus, emphasizes the value of having representatives who have the capacity to act impartially and knowledgeably.
29. The Workshop highlights the complementary and linking role of the AHRB, given the existence of national structures and the international system.
30. The Workshop acknowledges that ASEAN Member States will appoint members of the AHRB, taking into consideration people with the right qualifications of integrity, competence, knowledge, and experience who, upon being appointed to the AHRB, will act with impartiality.
31. The Workshop encourages the governments of ASEAN member-states to adopt a participatory and transparent process of selecting the representatives to the AHRB.

## **Parallel Processes: The AIMW and the ACWC**

32. The Workshop believes that, as there are parallel processes, and as the AHRB does not make up the entire regional system, there must be some sort of alignment and synchronization where each part of the system adds value to the whole. The parallel processes will complement the establishment of an AHRB, nurture regional responses to issues specific to women and children's rights as well as the rights of migrant workers, and contribute more effectively to building the capacities of stakeholders across the region.
33. The Workshop supports the endorsement of the ACMW of its Work Plan which comprises four areas of cooperation, namely: (a) stepping up protection and promotion of the rights of migrant workers against exploitation and mistreatment; (b) strengthening protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN countries; (c) regional cooperation to fight human trafficking in ASEAN; and (d) the development of an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers (AIMW).
34. The Workshop appreciates the ACMW's view that, with regard to human trafficking, joint cooperation with the SOM on Transnational Crime (SOMTC) must be sought to avoid duplication of efforts.
35. The Workshop welcomes the resolution of the ACMW to discuss the possible and proper cooperation modalities between the AHRB and the ACMW in its second meeting later this year.
36. The Workshop notes that the ACMW has mandated the establishment of the Drafting Team (ACMW-DT) for the AIMW with Indonesia, Malaysia, the Philippines and Thailand as members, and supports the ongoing discussions on the possible outline or structure of the ASEAN Instrument. In this connection, the Workshop

emphasizes that the AIMW should have value added beyond that which is already provided by the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

37. The Workshop supports the assertion that the process of drafting the ToR of the ACWC should be inclusive to ensure a credible and effective commission and should be consistent with the objective of establishing a people-oriented ASEAN. In this connection, it welcomes the joint resolution of the ACW and SOMSWD for member-states to conduct their own consultations with NHRIs, where they exist, and national civil society groups, and for the WG-ACWC to convene open dialogue sessions with them as consultative partners.
38. The Workshop encourages the WG-ACWC to ensure that the proposed ACWC is consistent with international standards while capitalizing on the wisdom of the ASEAN region.
39. The Workshop asserts that the WG-ACWC should take into account the guiding principles of the ASEAN Charter and use the CEDAW and CRC as benchmarks for common legal standards.
40. The Workshop supports the efforts of WG-ACWC to consult the HLP to ensure that relations between the ACWC, the AHRB, and other human rights-related ASEAN bodies will be complementary; and to take advantage of the experience which the HLP has in negotiating the terms of reference of a novel institution.
41. The Workshop encourages the release of the first draft of the ACWC's ToR for public discussion and comments once it has been submitted to ACW and SOMSWD by October 2009.

#### **Recommendations from the Break-out Workshops**

42. The Workshop further supports the following recommendations:
  - A. From the Government Agencies:
    - a) Relevant government agencies in ASEAN countries should carry out stocktaking on how governments promote and protect human rights in their own countries which will serve as a benchmark to carry out the promotion and protection functions of the AHRB;
    - b) Governments should provide logistical support for the AHRB representatives in terms of staff, financing, and office space; and
    - c) Governments should provide substantive support in a variety of ways – during the AHRB selection process, to provide input for policy guidelines, to provide feedback to the AHRB, to coordinate with the line agencies, to ensure the relationship between the AHRB and the other specialized bodies, and to assist in capacity building and raising awareness, particularly in promoting ASEAN as a people-oriented community.
  - B. From the Civil Society Organizations:
    - a) CSOs should play a role in determining the selection and composition of the AHRB, by proposing criteria based on the Paris Principles, and ensuring that countries have appropriate measures and transparency in the selection process;

- b) CSOs should be proactive in engaging the AHRB, by assisting, supporting and facilitating the work of the AHRB, while also acting as a watchdog; and
- c) CSOs should work with academic institutions to establish monitoring mechanisms, organize an NGO forum alongside AHRB meetings, serve as a conduit between the AHRB and public concerns, and help to disseminate information for the promotion and protection of human rights.

C. From the NHRIs:

- a) The NHRIs should be consulted in the selection process of AHRB representatives and by the AHRB on a regular basis through an institutionalized mechanism;
- b) The NHRIs should espouse collaboration and partnership in promoting and protecting human rights in the region, such as training workshops, providing assistance in capacity building, providing supporting information, submitting complementary reports to the Secretary General of ASEAN, and assistance, as needed, to countries intending to establish NHRIs; and
- c) The NHRIs should be able to make recommendations to the AHRB and submit reports to the AHRB, especially in cases of violations of human rights.

#### **IV. Acknowledgment**

43. The Workshop participants expressed their appreciation to the Ministry of Foreign Affairs of the Kingdom of Thailand and the Working Group for an ASEAN Human Rights Mechanism for co-hosting and co-organizing the *Eighth Workshop on the ASEAN Regional Mechanism on 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 Workshop secretariat for all their hard work.